

Studying legal responsibility of governments against their own citizens for air pollution, tiny pollen and nuclear waste

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Abstract: Air pollution issue is one of the problems that have arisen in the International Community recently. For example, the dust which enters from one country to other country or countries, creates a lot of problems for them and it may impose many costs for governments to remove its traces. Radioactive materials are one of the contaminants of human environment which have been considered today given increasingly use of nuclear materials in producing energy. Contamination resulted from these materials may be due to peaceful use of nuclear energy such as: Nuclear waste disposal, nuclear power plants, or the result of a nuclear war and nuclear weapons. Based on customary rules and according to provisions of the related convention, Unnecessary & avoided damage to environment is forbidden either directly or indirectly. It is natural that the government has civil and legal liability against people and is responsible for the damage and losses. Thus, air pollution is prosecutable from both legal and criminal perspective. If we want to follow from criminal perspective, we should meet ill will and special purpose elements that would seem unlikely that someone attempt to make it knowingly and intentionally, but legally, one can lawsuit & demand for compensation for damages entering people.

[Abdollah Ghaderi, Taher Rahbar, Peiman Latifi. **Studying legal responsibility of governments against their own citizens for air pollution, tiny pollen and nuclear waste.** *Academ Arena* 2015;7(6):91-96]. (ISSN 1553-992X). <http://www.sciencepub.net/academia>. 11

Key words: government responsibility, air pollution, tiny pollen

1. Introduction

Air pollution is existence and distribution of one or some pollutants such as: solid, liquid, gas, radioactive and non-radioactive radiation in the air to the extent and time that change its quality in a way that is Harmful for humans or other living creatures or plants or monuments. Air pollution may be resulted from Motor vehicles, factories and workshops, power plants and commercial and domestic resources and other sources. Experts believe that dusts and tiny pollens can be sometimes seen as Chronic obstructive of respiratory tract as well as pulmonary adherence on the people exposing this phenomenon in long-term. The most effects that dusts have on human beings are on respiratory system and nose mucous membranes & eyes which appear as itching, burning, runny eyes and increasing eye sensitivities & in nose, Pharynx & throat as Increasing in upper respiratory tract secretions. This phenomenon impacts on Lower respiratory tract and most on the people who have respiratory tract allergies or asthma & in those cases, some states such as shortness of breath, coughing and wheezing are observed. So, no matter how air pollution is created, there is no doubt that air pollution causes material and spiritual damage. Government has civil & legal liability against citizens and is responsible for their damages and losses. Plan adopted

by the International Law Commission on the Responsibility of States in 1976 has considered air & sea pollution as the international responsibility of States. For example, International Court of Justice commented on the request of the General Assembly and the World Health Organization's regarding the legality of using nuclear weapons: "The threat or use of nuclear weapons is generally contrary to the rules of international law & is applicable in armed conflicts & when countries use military wares legally and necessarily, should consider environmental considerations and follow necessity and proportionality requirements.

1. Cause of air pollution by tiny pollens:

Soil structure is a collection of various particles which its main particles are sand, silt and clay. These particles are classified according to their diameter. The smallest particles of this structure are clay particles which are less than 2 micron or 0.002 millimeter which are very tiny. One gram of surface clay particles covers 300 square meters and if these soil particles aren't linked together, they have high vulnerability. We should know that Soil erosion occurs in two forms: natural factors such as: Drought, lack of rainfall, lack of vegetation, earth warming & climate changes which damage soil & soil texture will get messy and moves by an ordinary breeze. The acts

that human being does on the soil has the most effect on its erosion and cause transporting, disposing and creating dust on the air. Manipulation in nature at any point of earth creates problem but this problem is seen less in the areas where rainfall is good and there is enough moisture. So, the factors which cause dusts are equal everywhere.

2. Governments strategies dealing with tiny pollens:

Reclamation and destruction are two long-term processes. There will be long time for natural destruction for a phenomenon but it is farther hard to resuscitate a destructed area.

In an overall view, overcoming tiny pollens crisis can be divided in to crisis management and prevention management. It's obvious that the priority is with Implementing treatment plans and actions or the crisis management that covers index operations such as: spray, planting trees and constructing carminative. According to local sources of tiny pollens, these plans have supposedly transnational aspect that it needs political will and required technical cooperation in this section among relevant agencies in the region (abdinezhad, 2010, p.43).

So, in the form of crisis management, creating & maintaining vegetation and reducing human intervention in nature and "spray" are the ways to counter influencing dusts to country (toofan, 2010, p. 945).

3. Iran government actions to solve tiny pollens problem:

18 members of parliament on March 7, 2010 asked Foreign Minister, Manouchehr Mottaki, in terms of government action in this area.

In response, he said: part of this issue has internal origin is of the deserts of the southern & western provinces and some other part has external origin which comes toward Iran regarding wind direction.

He added: part of the issue which is relating to external origin, is followed up according to the Department of State's duty to find a collective solution relating region states, and in this regards Department of State held common meetings by inviting relevant agencies and some representatives in the Ministry of Foreign Affairs for four months and periodically, in this regards, Possible actions was done by international experts in Ministry of Foreign Affairs, its result was entering into bilateral and multilateral actions.

In its newest action, Iran government has allocated a budget to counter this phenomenon that of course was criticized by some politics. Their reason was that Iraq government should provide required budget not Iran government. Some others know this budget very low and for that they look at government

actions from critical position. We shouldn't forget that tiny pollens have destructed 15% of zagros forests in lorestan and Bee breeders are actually on the verge of losing their job.

4. Human rights and air pollution issue

Air pollution has been integrated with modern life. This contamination is lateral products of urban construction, the waste sector remaining from activities such as manufacturing goods, transportation, producing heating energy light for living areas, human entertainment and job (varak, 2010, pages. 11-66. Appearance of human international rights in the contemporary world has faced the governments with a multitude of tasks that were absolute rulers throughout history, despite many differences, which sometimes can be seen in the provisions of these Laws, all are common in a factor which is human rights. One cannot claim properly that which ones of these rights are true foundations of human rights. But some fundamental human rights are right of living, right of health and right of healthy environment.

The Stockholm 1972 & Rio 1992 Declarations attracted world's attention to environment importance more than before. The goals and objectives of the United Nations are preserving the human race and his survival in a safe & free from war environment. Environment quality degradation is a serious threat to human survival. Thus, respecting to human rights has close & direct relationship with supporting and preserving environment. The relationship between human rights and the right of healthy environment have attracted the attention of many thinkers. Fitz mooris thinks that there are 3 major thought schools in this regard:

In the first one, it is claimed that there won't be human rights without environment right. In the second view, existing environment right is highly questionable and in the third one, it is believed that healthy environment right is one of the parts of human rights such as: right to live, right for health, right of information which can be extracted and identified.

In other approach, the relationship between human rights and environment has been discussed based on two views: human-oriented and environment-oriented. Despite the differences between these 2 views, there is considerable overlap between them. For example, high pollution is a direct threat both for human health and environment (molaei, bita, 32).

The right of healthy environment has been identified among the international documents on human rights, in addition to the Stockholm and Rio declarations, the World Charter for Nature (1982), Declaration of Hague on Environment 1989 & Declaration of pishkak 1999. In regional level, the first document which has clearly confirmed the

environment right has been African Charter on Human and Peoples' Rights in 1981. In the level of American nations, San Salvador Protocol 1989 has recognized environment right in its article 11. It's interesting that European convention of human rights doesn't refer to healthy environment, but European court of human rights has confirmed environment right by broad interpretation of Articles 6 and 8 of the Convention. In this regard, it should be mentioned that it is not mentioned explicitly in the Rio Declaration; however, many experts believe that by interpreting sustainable development, this right is extracted.

Aarhus Convention 1998 in its Article 1 says that Protection of human rights and the environment are associated with each other (molae, the same).

Given the mentioned cases, health environment right is converting to one of the fundamental human rights with its slow movement over time, many documents and treaties have identified this principle explicitly. Dark dimensions of this right was emphasized which had already caused identifying this right as soft or not-consistent laws, are converting to hard laws. On the other side, change and evolution in this area has well clarified the necessity of international cooperation. The governments have found this reality that making healthy environment is hard if it isn't impossible without people and non-state government's cooperation (jam, 2010, p.7 & 42), cooperation principle.

On one side, public in preserving environment and the principle of common but different responsibility are principles that are considerable (LINDBLUM, 205, PP450-455).

4-1 The right of clean air

Air pollution is any change in ideal ingredients which changes its quality in a way that is harmful for public health. The right of clean air is subset of the right of healthy environment & it has endorsed in some rules "right to breathe clean air". Based on that every citizen has the right to breath in clean & healthy air & Governments are obliged to take measures to ensure it.

4-2 the relationship of air pollution and the right of living

The right of living is inherent right of every person which should be protected under the law (fatemi, 2010, p21). This right has been emphasized in various human rights documents (mousavi, 2002, 12). regarding the relationship between this right and that of environment, there is a delicate connection & we can say that each person's living depends on his environment quality which includes both "mere living" and "living quality" & has relationship with environment in both 2 aspects. In the fields of air pollution and right of living, we can reason that given the importance of air in human life, there is direct

relationship between protecting air against pollution and right of living. On the other hand, existing air is related to mere living and lack of pollution in it related to quality of living. Thus, to determine the least quality of life for citizens dealing with air pollution is important.

4-3 the relationship between air pollution and the right of health

May be the most important reason for dealing with air pollution is related to the effects it has on people's health & the dangers that threat citizens. Air is the most important factor in human living & if pollution exceeds some extent, it will have direct & indirect dangers on human health. These dangers are important especially for sensitive persons such as: patients who have asthma, children and aged people. We can say in this regard that being health against harmful factors is the right of each citizen & respecting this right particularly with regard to vulnerable persons (children, aged persons ad patients) is very important. "Right to Health" and having the minimum collective environment standards have been noted in different international documents and having obtainable standards have identified health & have created negative and positive obligations for governments in this field; negative obligations of governments related to air pollution and the right to health, we can refer to "Commitment to avoid making air pollution illegally". So, we can say that Illegal air pollution is violation of civil rights & health right & needs legal strategies against this violation (javid, 2010, p.45).

5. Commitments of global communities against air pollution

United Nations Convention is desertification of the countries which are facing drought or desertification seriously. Perhaps among all treaties and declarations that have been developed on environmental law, none is directly related to the tiny pollens issue. But desertification convention is more related to our issue. As the introduction of the convention has been established primarily desertification is resulted from a mutual & complex interaction of physical, biological, political, social, cultural and economic factors. Desertification and drought impact on sustainable development through their own mutual communications with important social issues such as: poverty, poor health and nutrition, food insecurity and problems of migration, displacement of people and the interaction of population.

Conclusion of this treaty was the result of attempts of Rio Summit participants. Chapter 12 of Agenda 21 Century had been acknowledged entitled desertification that One-sixth of the world's population lives in arid areas. Agenda encouraged The UN

General Assembly to start negotiations about signing an international treaty against desertification and present it in 1994 for approval. The required cost for this action in agenda had been predicted 8.6 billion dollars (Legal office and Parliamentary Affairs of the President, 2001, p.32).

In the introduction of this treaty has been established that reaffirming the Rio Declaration on Environment and Development states in its second chapter that states can govern regarding their own environmental and developmental policies according to UN charter & international laws principles to extract their resources & they are also responsible to ensure that internal activities within jurisdiction or controlling them don't cause damage to the environment of other States or areas beyond their national jurisdiction.

Articles 3, 4 and 12 of the Convention emphasize on participation in decision and decision making. Article 19 says about the importance of training and capacity building and public awareness in implementing treaty aims. Compensation inequality has been accepted to cope with desertification in paragraph 7 of Article 20 & convention introduction.

To summarize, with exact look at this convention's introduction, the emphasis is on the principle of Participation of individuals and non-governmental organizations and other major groups in desertification.

6. Iran government commitments regarding ensuring right on environment and fighting air pollution:

According to Article 50 of the Iran constitution, "in the Islamic Republic of Iran", protecting environment should be a public duty in which today and future generations should have growing social life. So, economic activities and others which are associated with environmental pollution or irrecoverable degradation" is forbidden (habibi, 2004, p.156-163).

What is proposed given this principle regarding tiny pollens is that referring the last part of Article 50 of the constitution can't be a basis in defying people's rights in the international arena. Because, any way this principle is rooted in internal rights & one cannot cite in internal rights in the international arena inclusively (the same, 131, and 170). The reality that the origin of tiny pollens is external can't exculpate government of doing commitments mentioned in this principle. Based on that, in crisis management framework, government undertakes to its commitments as long as it reaches a comprehensive agreement with other neighbors. Thus, by the time of solving problem, one should reduce adverse effects of these pollutions as large-scale management using regular plans and programs.

Accordingly, the right to health should be tied up

with presenting strategies such as: providing appropriate protective masks and treating people in certain clinics & etc. mulching is estimated an appropriate action totally to reduce the intensity of this phenomenon. Creation of green belts around cities, particularly in provinces such as Kermanshah, Ilam, Kurdistan and Khuzestan is certainly helpful in reducing the severity of these hazards.

In an overall view, overcoming the tiny pollens crisis can be divided in to crisis management and prevention management. It's obvious that the priority is with Implementing treatment plans and actions or the crisis management that covers index operations such as: spray, planting trees and constructing carminative. According to local sources of tiny pollens, these plans have supposedly transnational aspect that it needs political will and required technical cooperation in this section among relevant agencies in the region (toofan, the same, p.945 & 946).

7. Legal and criminal liability of governments in air pollution

Pursuant to Article 688 of Islamic penal code: any act which is considered a threat against public health has become a criminal.

This article describes instances allegorically and says: Such as contaminating water and pouring substances and toxins, etc. it means that if any one contaminate air intentionally & has ill will, by virtue of this provision is guilty.

Given that air pollution is the result of combination of chemicals with oxygen & air, if this is the instance of intentional crimes, it will surely have criminal title. Regarding the protection of the environment we are faced with two other Legal Regulations. One is the rule of protecting environment approved in 1974 and the other is the rule of preventing air pollution approved in April 1995. In the year 1995 rule has been written that: according to the fiftieth principle of the constitution for cleaning and protecting the environment and preventing air pollution, all agencies are required to respect these legal regulations and if not, their action could be considered criminal. In article 2 of this rule has been written that:

Air pollution is existence and distribution of one or some pollutants such as: solid, liquid, gas, radioactive and non-radioactive radiation in the air to the extent and time that change its quality in a way that is Harmful for humans or other living creatures or plants or monuments.

Its instances have been mentioned in article 3 of the same rule:

The air pollution may be the result of Motor vehicles, power plants and factories, workshops, commercial and domestic sources and other sources. Article 29 of this Act has expressly stated that owners

of contaminated factories and workshops or the ones who are the cause of pollution, are convicted to fine and if repeated, to imprisonment and fine according to law.

If we want to consider government as criminal, we need spiritual element in addition to legal one and this is ill will. It must be established that there is ill will and it has been done knowingly and intentionally. But regarding that government is contaminant is there legal liability or it just has criminal liability, in authors view, Pursuant to Article 1 of the law of civil liability, it is expressly stated that anyone with any action will be liable for damages to natural and legal persons, is responsible for damage. So, there is no doubt that this air pollution has spiritual and financial damages for those companies and organizations according to the reports which have been published about related organizations. Natural people who have physical damage to their bodies for contamination of pollutants or legal persons, who are damaged financially, Or incurable diseases that lead to their death, all these cause responsibility for the person or government who is contaminant. If private companies and factories have to close their companies for pollution or their job gets slow for that, the contaminant factor is responsible. Here judicial authority should clear that contaminant person or company has ill will and he has done this knowingly and intentionally to be able to remove other legal obstacles. In addition, if the presence of pollutants is the whole reason of loss for patients, aged persons & children or causes the illness gets worse, they can refer to legal court and lawsuit by getting report from coroner or the relevant institutions and condemn guilty persons to pay damages or losses resulting from the act.

It is natural that the government has civil and legal responsibility against its people and their losses and damages. Air pollution is prosecutable from both legal and criminal perspective. If we want to follow from criminal perspective, we should meet ill will and special purpose elements that would seem unlikely that someone attempt to make it knowingly and intentionally, but legally, one can lawsuit & demand for compensation for damages entering people. Radioactive materials are one of the contaminants of human environment which have been considered today given increasingly use of nuclear materials in producing energy. Contamination resulted from these materials may be due to peaceful use of nuclear energy such as: Nuclear waste disposal, nuclear power plants, or the result of a nuclear wars and nuclear weapons (jam, 2009, p.13) Based on customary rules and according to provisions of the related convention, Unnecessary & avoided damage to environment is forbidden either directly or indirectly. Four Geneva Conventions of 1949 in which almost all countries are

members protect environment in articles 35, 53 and 147 of their fourth convention. Using nuclear weapons due to the immediate and long-term effects of them such as genetic lesions violates the principles of humanitarian international law. The Plan adopted by the International Law Commission on the Responsibility of States in 1976 has widely regarded air and sea pollutions as international liability of governments. International court commented about the request of the General Assembly and the World Health Organization concerning the legality of using nuclear weapons: "The threat or use of nuclear weapons is generally contrary to the rules of international law & is applicable in armed conflicts & when countries use military wares legally and necessarily, should consider environmental considerations and follow necessity and proportionality requirements.

Conclusion:

Environment is a growing place for human being & is a place in which all human rights are demanded. Existence of rights without a place for their proper implementation is difficult. May be in the past talking about environment and healthy weather wasn't supported so much in scientific meetings, but being clarified some dangerous aspects of air pollution problems attracted public thoughts to itself. Here, the right to clean air is more exquisite. This is the subset of healthy environment. Governments are committed to ensure this right based on a customary that they have recognized that in the form of Domestic constitutions. On the other side, we shouldn't forget that in some cases, environment problems have two-dimensional aspect. These cause problems in the internal level of national borders and such issues have border crossing aspect. This reality faces the government with 2 commitments against 2 right owners: on one side, the right of its own citizenship having a healthy environment, on the other side, Prohibition of creating harm and damage to other states, in other words, prohibition of harmful usage of land in international laws.

Regarding natural contaminants and especially tiny pollens, we should acknowledge that although, they don't have conventional and clear commitments against each other regarding involved countries, international customary and legal general principles show that governments should prevent losses to their neighbors. This is the reality of international law that it hasn't built any mechanism or proper Executive and judicial arms in many fields for instance: international law of environment. It is in such an atmosphere that political equation and fundamental principle of peaceful solving of problems can be helpful in solving problem via diplomacy more than any other approach.

Diplomacy by negotiating is the best approach for removing the issue or prevention management.

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6/25/2015