



THE NEED FOR INTEGRATED ENVIRONMENT PROTECTION LAW IN ARAB WORLD

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ABSTRACT :

Government must take a precautionary approach to the control of pollution, relating the scale of effort to the degree of risk. This basic principle may be conducted and guided by a number of additional aims: to prevent pollution at source, to minimize the risk to human health and to the environment, to encourage and apply the available technical solutions, while recognizing the integrated nature of the environment and the need to achieve the best practicable environmental options, to apply a critical loads approach by assessing the levels of pollutants that local environment can tolerate and to ensure that the polluter must pay for the restoration of the environment.

These principles are unified in a new system of the integrated pollution control. The principle legislative weapon against the environment pollution must be "Integrated Environment law".

Integrated Environment Control will be the best method for environment protection, accordingly it is necessary to change the concept of environmental legislation to be integrated environment laws, putting into consideration that the sources of environmental law are general laws, special laws, international laws and penal laws.

The study proposed that fines may be applied to make the sanction system more effective in addition to such measures as compensation of damages, confiscation and restoration.

1-HIGHLIGHTS ON ENVIRONMENTAL CRIMES:

The problem of environmental crimes is becoming a matter of great concern not only in Arab Countries but all over the world.

The term "Environment" as a new value which appears onto the value system of societies and which arise a new comprehensive concept of the "human Environment" as a whole with the component of all different elements. The Environment may be defined as that outer physical and biological system in which man and organisms live with many interacting components of the environment including : its rocks, minerals, soils and waters, its land and their present and potential vegetation, its animal life and potential for livestock husbandry, and its climate[1].

There is said to be a close interaction among these various components which seem to produce some kind of an equilibrium in the scheme of nature which is usually termed as "Ecological Balance".

This system is useful to man. The welfare and existence of human race is dependent upon the proper interaction of man and his environment. Perfect ecological balance cannot be expected in the wake of growing industrialization and modernization. So pollution of environment is inevitable. If the present rate of pollution is not checked, the human beings will see, eat and breath pollution [2].

So the problem of environmental Pollution is a complex one of which there can be no single solution. Any viable control must take into account not only the physical nature of the problems but also human factors involved. The environmental pollution can be attributed to several factors like urbanization, industrialization, automation, unsound planning, lack of general awareness in the masses and several other factors like illiteracy, poverty, economic and social backwardness. In fact, pollution has become a great menace to life and all the countries, whether developing or developed suffer from environmental crisis.

Thus, it can be said that pollution, of whatever kind it may, causes serious damage to man, animals, birds, aquatic life, crops and vegetation.

Pollution is writ large on the fields, factories and facets of all forms of life which are destroying the ecosystem and consuming the qualities of environment.

Hence, there is growing need to regulate pollution through law, so that the environment is saved from being polluted beyond repair, in the interest of mankind.

No doubt, some fragmentary legislative and administrative steps have been taken to meet this challenge but the size and seriousness of the problem have been increasing day by day at a much greater space [3].

It seems necessary that all acts against "Human Environment" should be both administratively and penalty controlled as

the comparative legislative studies indicated on different trends, strategies and policies of the legislative, and criminal protection of the human environment.

As it is clear that from the comprehensive scientific concepts, "Integrated Environment Control" will be the best method for "Human Environment" protection, accordingly it is necessary to change the philosophy of the environmental policy and strategy and also modify and adopt the definition of environmental legislation to be integrated environmental laws, putting into consideration that the sources of that new environmental law are general laws, special laws, penal law and international laws[4].

For that it is necessary for the legislator to understand that the Environment legislation from its narrow view which were conducted in most developed and developing countries failed to a large extent against the Human Environment Problems therefore the "Integrated Environment Laws"[5] should be considered .

Consequently it is necessary that Arab governments must take a precautionary approach to control of pollutants, relating the scale of effort to the degree of risk. This basic principle will be conducted and guided by a number of additional aims: to prevent pollution at source, to minimize the risk to human health and the environment, to encourage and apply the available technical solutions, while recognizing the integrated nature of environment options and the need to achieve the best practicable environmental

options, to apply a critical loads approach by tolerate and to ensure that the polluter must pay for the restoration of the environment to put the environment crimes under the control of human beings.

And also it is important for the legislator to know that there is no limits between water, air and soil pollution of the natural level and also there is no limits between all human environment elements whatever its tech or socio-environment and their effects within the natural environment as a "Human Environment" [6].

These principles must be unified in our legal policy and strategy "Integrated Pollution Control"[7].

Integrated environment control will be the best method to Human Environment Protection for that the principle legislative weapon. What is warranted for is integrated environmental law for controlling pollution so that the society is freed from this hazard.

Legislation must envision positive action and not stop with the policing the pollution .

A national and regional environmental policy and ecological plan must be promoted by law so the man and nature love and live in harmony.

There is no escape from pollutants. It reaches us through the air we breath, the water we drink, the food we eat, the sound we hear and the site we see. The environmental pollution has many views which warn us. In view of the alarming proportions of pollution and its impacts what is called for integrated

pollution control through technology, determination of administrators public and judiciary. Because only a healthy environment provides a healthy body and a healthy mind. Man is maker of his own environment, and he should not add to his miseries by himself polluting it. People should be made increasingly aware of the part that natural environment plays in determining the quality of their lives; Participation in environmental protection should be properly championed through local organizations, conservation councils and commissions. Environmental law societies should be encouraged in all parts of the country [8].

Public Interest litigation is the right measure and a positive help by judiciary for curbing pollution and for promoting the cause of environmental quality throughout the country. Apart from this, law schools should include environmental law in the curriculum of the law course so that the law students are acquainted with the problems relating to environment.

Integrated Environmental law can provide a guideline for a national survival, ethic-survival not only of our environment and our race but of our system of government taking into consideration social, economic, political cultural, technical, ecological and administrative aspect for the trends legislative policies thus for the trend of penal policy, there are three fundamental standpoints taken by: First, that the criminal policy has to be regarded as a part of general social policy, Second, the function of certain punishment and the control system are seen as essentially

general preventive. To avoid misunderstanding, it is worth emphasizing that the general preventive legalism doesn't imply making punishment more severe[9].

Third, and this is very important for the protection of the environment and its regulations by means of the sanction system. The responsibility legal objects, as corporation will be reevaluated in the penal policy for the effectiveness of the sanction system and should include such measures as compensation of damages, confiscation and restoration as stiff penalties.

In addition, when a person commits an offence for which he had been convicted earlier the court can publish his name and all other details in newspapers and the cost of such publication should be met by such person[10].

2- THE LEGAL PROTECTION OF ARAB ENVIRONMENT LEGISLATIONS:

Realizing the inadequacy of existing legislation's regulating and managing the environmental pollution, the government of most of Arab countries have formed a new department of environment. Such as:

- * "KUWAIT" has formed "The Council For Environment Protection" according to the environment law NO. 62, 1962.**
- * "OMAN" has formed a "Special Ministry of Environment Affairs" according to the Royal statutory NO. 47, 1984.**

* "SYRIA" has formed "The Highest Council For Environment", according to the law NO. 11, 1991.

* "LIBIA" has formed "The Technique Center for the Environment Protection". According to the law No. 7, 1982.

And Egypt has recently formed a new ministry of the state for the Environment Affairs and also Egypt has formed a new department of Environment "Egyptian Environment Affairs Agency". EEAA in 1982, the government of Egypt sponsored a bill for this purpose. Subsequently, there were a vast change of the Arab legislative policies in requiring a new treatment of the penal and legal aspect of the Arab legislators trends to formulate an independent uniform law in the philosophical legislative framework of the environmental protection in Arab region which guarantee operative unit of application and implementation for all.

Environment crimes of different types and levels occur against the Arab human Environment. For that there were some Arab legislators attempted that in their environment protection legislation's Such as:

* KUWAIT Act for the protection of Environment No. 62, 1962.

* OMAN Act for the protection of Environment No. 10, 1982.

* LIBIAN Act for the protection of Environment No. 7, 1982.

* JORDAN Act for the protection of Environment. 1993.

* TUNSIAN Act for the protection of Environment No. 9.1, 1982, August.

* DUBIA Act-local order for the protection of Environment NO. 61, 1991-United Arab EMIRATES.

Egyptian Act of the new Environmental (Protection), No. 4, 1994 includes new measures for environmental management to provide for the legal protection and improvement of environment and for matters connected there with such points of situations need consideration in this connection to ensure more effective implementation for the new legal protection policy, plan and strategy through the new responsibility for preventing contouring and managing the environment of EEAA and other Arab environmental departments and agencies according to the new Act (Article 2) [11]:

Firstly: our Arab policies with regard to environment management are good but their implementation is not integration for want of trained and dedicated personnel. Therefore, steps should be liken to impart right type of training to the concerned people in the process of environmental management.

Secondly: unfortunately, the municipal organization today which are required to enforce existing provisions against pollution are themselves the major polluters. Thus, there is a need of change of attitude on this part of the municipal institutions by adopting model techniques.

Thirdly: financial inadequacy, too, is responsible for this crises. Therefore, it is essential that the state and the local institution should be given adequate financial

help and autonomy to raise their additional source to meet this menace.

Fourthly: local authorities lack the power and authority to control the agencies responsible for environmental crisis. Particularly, they feel helpless to direct the big and medium industries, both in the public and private sectors to take measure for environment protection.

Fifthly: like other programmers there is a lack of people's participation. The people generally do not take interest and consider it to be the responsibility of the government to work for the protection of environment they do not adopt the governmental policies and programmes as their own, nor try to take part in the formulation and the implementation of these policies. Under these conditions, there is a dire need to bring complete change in the attitude of the people towards environment and its law.

There should be people's participation in programmes concerning environment in an increasing measure for [12]:

- a- This problem is so vast, it is difficult for the governmental agencies on their own, even if best efforts are made to make much of an impact .
- b- Unless people begin to participate in implementing, evaluating and monitoring, various programmes there is a possibility that many of these programmes may not finally serve the interest of the masses at large but the interest of those few, who bank up in the disinterest and apathy of the people to get on with the

task of exploiting one and all. But to talk of people so far as possible voluntary agencies should also be involved in the environmental protection schemes.

The Environment Law No. 4 1994 (and its Executive Regulation No. 338, 1995) in Egypt is quiet novel, so in order to make the environmental protection effective, it is important to facilitate by a gamut of appropriate measure the Prevention, discovery and the prosecution of offenses.

The act contains effective provisions for tackling the interrelationship between nature and human beings and the diverse kinds of pollutants. It empowers the EEAA to make rules for the maximum allowable limits of concentration of various environmental pollutant for different areas and there are stringent measures to check hazardous pollution.

In order to avoid establishment of new industries without pollution control, the licensing procedures and subsequent follow-up action need to be streamlined while setting up any new industry. The act should include new rules for environment impact assessment "EIA" which is necessary for making correct decisions regarding possible for mitigating negative impact and nature and extent of abatement technology required ill- effects of pollution and possible eco-degradation similarly. In urban sector, a proper land use plan will have to be evolved and adopted for containing the stress of environmental pollution on resident population for that it need a specific mandatory provision for that

to prepare and submit to the concerned authorities a suitable environment impact assessment report before the location chosen is approved [13].

Most positive and progressive trend of new act is including international laws as a source of it (Covenants and Protocols) specially where the state ratification according to the Article 151 of Egyptian constitution 1971 which indicated that the ratification of covenants are apart of the national legislation in Egypt.

For conservation and upgrading of Arab human environment following are useful suggestions [14]:

- a- The increasing population makes excessive demands of environmental utilization which results in its degradation. The challenge before environmentalists and policy makers should be to protect environment from human depreciation. This will be effective only if it is linked to population growth control.
- b- It is being realized that the enactment of a code is not the ultimate solution of this multi-dimensional problem of environmental management but much depends upon those who are entrusted with the task of implementing the provisions of such legislation. Government should take such negligent officials to task who do not perform their duties to protect environment. There is no birth of environmental law but we need firm hand to implement it.
- c- There is acute shortage of properly trained manpower in the subject and the areas related to environmental administration, poor implementing and monitoring machinery are causes of its failure. It is the environmental field which necessitates proper training to the persons dealing with environmental problems. Environment should not be regarded as just another sector of development.
- d- The environmental problem has to be viewed collectively by all, because the environment as such affects. The very existence of human beings on this planet which is one for all without any division of any form. The effort of the State must be supplemented by the efforts of the individuals and other agencies. To check environmental pollution, it is necessary to raise public opinion against this dreadful problem. Environmental education can contribute much in this direction, For mobilizing people to undertake constructive programmes aimed at environmental conservation, voluntary agencies and non-governmental organizations can play an important role, to ensure full implementation and effective enforcement of the pollution control laws, it is essential to impart meaningful and worthwhile education of the subject so as to train a cadre. of personnel fully aware of the dynamics of law in this area.
- e- Case studies and empirical research projects be launched with the help of modern technology, methodology and

applied science, so as to evolve new methods of environmental protection.

- f- Regulations, rules and prescribed standards should be suitable to the changing conditions, the society with growing urbanization and industrialization so as not to hamper the national progress.
- g- Separate courts of Tribunals should be established for trying cases connected with environmental pollution.
- h- The recognition of public interest litigation in the conservation and improvement of environment should be encouraged by the courts. It is for the courts to recognize that representatives of the community whether an individual or an association have as good a right as anyone else to come to the courts for relief to prevent an injury to public interest or to protect and improve public property or environment.
- i- Industrial and town planning should be given due importance. The pollution can be controlled to some extent by proper industrial town planning, i.e., by locating new industries in such a way that residential areas are not affected by it, Centralizing the identical industries at one place, a single treatment plant can be installed to check pollution.
- j- Research should be encouraged to device processes which are less expensive but efficient for recycling of the industrial wastes so as to them as by-product or raw material for sister industry and develop their secondary uses.

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التشريعات البيئية المتكاملة فى الوطن العربى

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دكتوراه فى التشريعات البيئية - خبير بالمركز القومى للبحوث الاجتماعية والجنائية

المخلص :

أصدرت كل الدول العربية دون استثناء مئات التشريعات البيئية أو ذات المغزى البيئى بهدف الحفاظ على البيئة أو صحة الإنسان فى البيئة المغلقة أو بهدف حماية صحة البيئة.

وبعد القيام بعملية مسح لكل التشريعات التى صدرت فى الوطن العربى المتعلقة بالبيئة من قريب أو بعيد ، أتضح أن صدورها فى كثير من الأحيان ليس بهدف بيئى ، وإنما لتنظيم إجراءات الهدف منها فى المقام الأول صحة الإنسان العربى ، أى أنها ذات مغزى بيئى وليست صادرة بهدف حماية البيئة ، اللهم إلا أحوال نادرة فى بعض الدول العربية حيث صدرت قوانين مثل قانون رقم ٤ لسنة ١٩٩٤ فى شأن البيئة المصرى وقوانين مشابهة فى كل من الكويت والأردن وقطر وعمان وغيرها .

والمتابع حتى للتشريعات البيئية الصادرة بهدف بيئى يجد أنها صدرت بهدف علاج أحد المشاكل البيئية المتسبب عنها عنصر من عناصر البيئة الثلاث رغم أن المشرع يعرف تماماً أنه لا توجد حدود فاصلة بين عناصر البيئة الثلاث فتلوث الهواء يعنى تلوث الماء ويعنى تلوث التربة ويعنى تلوث الغذاء ويعنى تلوث الإنسان ، وهذا يعنى ضرورة أن تكون هناك تشريعات لمكافحة تلوث عناصر البيئة ككل وبصورة متكاملة ، وهو ما أطلق عليه مكافحة المتكاملة لتلوث

عناصر البيئة "Integrated Environment Control".

ولقد تنبتهت الدول المتقدمة لذلك وأصدرت التشريعات المتكاملة القادرة على مكافحة التلوث الناتج عن كل مصادر التلوث فى آن واحد ، وهو ما يطلق عليه التشريعات البيئية المتكاملة .

كما أن المتتابع للتشريعات البيئية أو ذات المغزى البيئى الصادرة فى أية دولة عربية يجدها تقريباً متماثلة فى معظم الدول العربية نظراً لتشابه مشاكل البيئة فى كثير من الدول العربية مع بعضها فدون الخليج على سبيل المثال يهتما فى المقام الأول التلوث البترولى سواء البحار والخلجان أو تلوث الهواء الناتج عن عوادم السيارات أو عوادم المصانع التى تعمل بالبترول ، وسنحاول فى هذا البحث وضع تصور لتشريع بيئى متكامل يمكن تطبيقه فى كل الدول العربية .