

Environmental Law

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I am thankful to International Union of Conservation of Nature (IUCN) and ADB providing me an opportunity to speak my mind and ideas on Environmental Law. This subject has attained importance in the world in the last 50-60 years. The word “environment” simply means as “a world around us” i.e., surrounding conditions and atmosphere. It is a sum total of all the external impacts effecting the development of life of every organism such as pollution of land, air and water by deforestation, vehicular smoke, spillage of industrial waste as well as oil spill from tankers and chemical waste which has caused devastating effects not only on lives of human being but also on all the living beings. During ancient time, religion and protection of environment both were closely related. The religion was regarded as an un-coded law of conduct to follow and violation thereof was considered as a devil act. According to Islamic thought, the preservation and conservation of natural resources have been given very significant place. The ethical base of Islam which is derived from the imperatives laid down in the Holy Quran and expressed in the practices of the Holy Prophet (PBUH) come under numerous headings. The Holy Quran has prescribed a broad spectrum of way which deals with every aspect of life of human being from one’s conception to grave and thereafter. The life of the Holy Prophet (PBUH) is a total reflection of the Qur’anic edicts. In Surah Al-Taubha verse no. 108, it is stated that “Allah loves those who make themselves clean, pure and purify themselves”. It is the saying of the Holy Prophet (PBUH) that the cleanliness in every respect is a major part of human being, i.e., half of one’s faith. God has given precedence to human being over all other living being and termed him as “Superior Creature”, i.e., (Ashraf-ul-Makhlookat). The Qur’anic view holds that everything on the earth has been created for the benefit of human being. In Surah Al-Hijr, in verse 85, it is stated as under:

“and we created not the heavens and the earth and all that is between them except with truth”.

This mandate was again reiterated in Surah Al-Sad, verse 27, in the following terms:

“And we created not the heaven and the earth and all that is between them without purpose”.

These are the gifts from Allah Almighty but a gift with conditions nevertheless. It is the duty of the human beings to respect the laws of nature which would certainly result in the advancement of the standard of their lives. If we go against it, it would result in devastation. The natural resources should be treated as a trust and we should be moderate in their uses so as to make the lives of our future generation comfortable and free from environmental pollution. God Almighty has mandated to do what is right, forbid what is wrong and act with

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moderation at all times. In Surah Al-Imran, verse no. 104 in the Holy Quran it is stated as under:

“Let there be a community / group among you who invites to all that is good and enjoying the right and forbid the wrong. They are the ones who succeed and blessed”.

It is the primary duty of the Islamic state to promote good and forbid wrong doing. As part of these functions it is mandated to protect land and natural resources from abuse and misuse. In Surah Al-Araf verse 31, it is directed:

“Eat and drink but waste not by extravagance, certainly God Almighty likes not those who waste by extravagance”.

The interest of the community takes precedence over the interest of the individual and relieving hardships take precedence over promoting benefit. In this regard the Holy Prophet (PBUH) said that after recitation of Kalma, i.e., (believing in oneness of God and the Holy Prophet (PBUH)), being Messenger, the best thing for a person would be to remove any sort of obstacle from the general path. He has deprecated that one should not place any dirt under a tree or at the site of drinking water. He has also encouraged the plantation of trees as they would be beneficial to the public at large.

Environment remained a neglected subject even in our legal and constitutional history. Though in the sub-continent, the offences concerning environmental pollution were for the first time incorporated in the Indian Penal Code, 1860 (now Pakistan Penal Code, 1860). Apart from that provisions contained in the Easement Act, 1882 dealt with the pollution of water, air and nuisance and under the said law, no right to pollute air and water could be acquired by prescription. Apart from these there are plethora of laws to upgrade the environmental process like, Motor Vehicles Ordinance, West Pakistan Prohibition of Smoking in Cinema Halls Ordinance, The Forest Act, The Cutting of Trees Prohibition Act and many others in the field. However, due to lack of awareness and absence of proper Judicial Forums the provisions of these laws could not be effectively implemented which has resulted in an alarming increase in the pollution of environment. For the first time in the constitution of Islamic Republic of Pakistan in 1973, item no. 24 of the concurrent legislative list provided the subject of “Environmental Protection and Ecology” on which both federal as well as provincial legislatures could legislate. However, with the passage of the 18th amendment, this subject is now the responsibility of provinces. Similarly in Article 9 in the chapter of Fundamental Rights, it is provided that no person shall be deprived of life or liberty save in accordance with law and Article 14 provides that the dignity of man and privacy of his home shall be protected which is in line with the command of Allah Almighty creating human being as a “Superior Creature” (Ashraf-ul-Makhlookat).

Article 38(d) in the chapter of “Principles of Policy” has stated that the state shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. However, the executive takes this article simply as a guideline being non justice able and serious efforts has not been done to ameliorate the plight of the teeming millions who are passing through in human living conditions and have not got even pure water to drink.

Deforestation and forest degradation has shattered the entire green area. Majority of the people have got no sense or awareness about the remedies available under the law relieving them of the maladies which they are facing in their lives. There is a saying in Arabic culture that if a person is provided with pure food, uncontaminated water and air free of every sort of pollution, the life span would be very long. The United Nations chalked out an environmental programme in the year 1972. Pakistan has entered into many international commitments, protocols and ratified treaties to uplift the environment. All this did not have any appreciable results in arresting the pollution in the environment in different form because of the inaction on the part of the persons in authority. This can only be possible if the laws in the field to control the pollution are implemented in letter and spirit without fear or favour.

A full bench of the Supreme Court of Pakistan in Shehla Zia case reported in PLD 1994 adjudicated a public interest issue under Article 184(3) of the constitution on a simple application being violative of fundamental rights and matter being of public importance, it was held that any encroachment in any manner upon these rights would impinge fundamental rights of the citizens which enables the human being not only to sustain life but to enjoy it properly. A wider meaning to the term “life and dignity” were given by the Honourable bench and the same proved to be a wakeup call which set up the stage for the uplift of environment. The “life” accordingly includes all personal rights and their enjoyment by acquiring useful knowledge, establishing home, right to marry and bring up the children in a cleaner atmosphere. Unfortunately the pace of progress in this field remained very slow. This is mainly due to the lack of awareness among the general public of their rights / duties and cumbersome procedure for the implementation of the laws prevalent in the field to arrest the environmental pollution in every respect.

In the year 1997, “Pakistan Environmental Protection Act” was passed whereby different Agencies and Tribunals were set up. This law even authorizes the Magistrates to redress the grievances of the general public. I feel sorry in saying that the Tribunal created under this law in the province of Punjab is not working nearly for about one year because of the non-appointment of the Chairperson as section 20(3) provides that for every sitting of the Environmental Tribunal, the presence of the chairperson and not less than one member shall be necessary. Further section 12 of the Act provides that Environmental Impact assessment shall be presented before the Agency prior to the commencement of the construction of any project which is likely to cause an adverse environmental effect. However, this clause too is not implemented in letter and spirit. Similarly, the cases respecting environmental pollution before the magistrates are negligible because of the unawareness by the general public of their rights in this regard.

In Pakistan, Academies respecting the capacity building of the civil servants are in vogue sine long. However, Federal Judicial Academy and Sindh Judicial Academy have been undertaking training of judicial officers and all other stakeholders for more than one decade. Seeing the above scenario / plight of the environmental pollution, the Punjab Judicial Academy which was set up under the Punjab Judicial Academy Act, 2007 and became operational in the year 2009 with an object to impart pre-service and in-service training to the Judicial Officers and all other stakeholders so as to inculcate ethical values and standards and legal intricacies in their minds enabling them to dispense justice even-handedly to all.

It is the saying of the Holy Prophet (PBUH) that the nations fail in their objective because of the ignorance and laziness. Both these maladies are rampant unfortunately in the country and serious steps are required to be taken in this regard. The socio, economic and political factors are major issues which play an important role to create a stable and peaceful atmosphere in the country and peace of mind of the general public. In our society socio political environment being basic pillar for the advancement of the country is at the lowest ebb because of the maladies of VIP culture of few and corruption both have plagued the whole society. It is next to impossible to create a harmonious and peaceful stable economic environment in any institution of the country without burying the aforementioned maladies.

As I have already stated in the beginning that the ethical base of Islam which is derived from the imperatives laid down in the Holy Quran and expressed in the practices of the Holy Prophet (PBUH) mainly concern for the benefits of human being created by Allah Almighty as superior creature. Noticing the appalling conditions created by environmental pollution and naked violation of imperatives ordained by God Almighty respecting the use of natural resources, the subject of environmental law was introduced in the Punjab Judicial Academy. During this short span of three years, the training in this subject among others has been conducted of all the stakeholders who are in one way or the others having any nexus towards the dispensation of justice. The Academy to achieve this object arranged three months pre-service training of about 300 new inducted Civil Judges in batches, sixty (60) Additional District & Sessions Judges as well as quite number of Public Prosecutors and Jail Personnel. At present in-service one week refresher courses of District & Sessions Judges is being conducted in batches which training would continue till May, 2012.

The subject of environmental law is taught to all the trainees by our Director Research / Faculty Member, Mr. Qaisar Javed Mian, Ms. Nusrat Jahan Nabeela and Ms. Saima Khawaja so as to make the trainees abreast with the subject and the remedies for the redressal of the same. The Academy has also started training of the lawyers in this respect with the collaboration of Lahore Bar. 250 lawyers from Lahore Bar attended more than three hours workshop having question and answer session on the Environmental Law which was conducted in a befitting manner by Ms. Nusrat Jahan Nabeela and Ms. Saima Khawaja on 27th February, 2012. This effort on the part of the Academy was highly appreciated by the Lahore Bar President and his team. They have showed their keen interest to have more lectures for other lawyers in this subject so as to make them abreast with the environmental pollution which has plagued the whole society. They were also made aware about many International Conventions, Protocols, Agreements as well as treaties where in Pakistan is also a signatory.

So as to make comprehensive reforms in the subject of environment, serious attention must be focused upon the Capacity Building of all the stakeholders in the subject. This cannot be achieved simply by their training in isolation as it would have little effect on its practical enforcement. The desired results cannot be achieved unless and until there is a provision of adequate staff, equipment, infrastructure and financial resources which would give job satisfaction to the incumbents. This would also go a long way in implementing the National Judicial Policy to check the environmental pollution. If it is acted upon religiously, it would make the lives of common citizens free from all worries. It is better to move in this direction steadily by chalking out firstly a short term plan leading to medium and long term programmes through which general public shall be made aware of their rights and duties

announced by the constitution and ordained by Allah Almighty. Side by side importance of clean environment shall be disseminated through print and electric media and the services of religious scholars shall also be secured who can use the platform of mosques to make the people aware regarding the maladies generated in the society through environmental pollution.

The subject of environmental law should be made compulsory and in this regard and I would hope that Pakistan Bar Council shall at the earliest make this subject compulsory in all the educational institutions imparting legal knowledge. The curriculum of the environmental law should consist of national and international laws with comparative analysis. In making the curriculum of environmental law the preamble of Pakistan Environmental Protection Act 1997 shall also be kept in view which has provided for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development and for matters connected therewith and incidental thereto. The curriculum should also include national and international laws with comparative analysis. Sincere dedication to this subject would be required to make Pakistan a prosperous and model state.

Here I would with utmost humility, suggest that all the recommendations to make a "Pollution Free Environment" would only be possible if everyone of us clear the self-inner environmental pollution from their hearts. Allah Almighty has given a status of Ashraf-ul-Makhlookat (Superior Creature) to the human being and similarly, in Article 14 of the constitution of Islamic Republic of Pakistan it is mandated that the dignity of man subject to law and privacy of home shall be inviolable.

In Surah Abas part 30, it is narrated that the Holy Prophet (PBUH) showed his displeasure and did not pay attention to Hazrat Abdullah Bin Umme Maktum, a blind Companion who came to him while he was preaching to some of the Quresh chiefs. Allah Almighty did not appreciate this gesture of the Holy Prophet (PBUH) shown towards his blind Companion and admonished him for not paying attention to him in preference to chiefs of Quresh.

It is open secret that more than 80% of world resources are utilized by less than 10% elites of the world, while the rest of the population is living beyond below poverty line in a miserable condition. This demonstrates that we are trampling the mandates of Allah Almighty with impunity.

Keeping in view the imperatives of Holy Quran and the Sunnah, the Academy has made its motto in achieving its goals by incorporating three fundamentals which are firstly Self-respect and dignity for all, secondly one should endeavour (relentlessly) hard to make the lives of other people smooth and comfortable and never create obstacles of any sort in their day to day life and lastly whatever one considers best for oneself, the same should be considered for other persons.

If the aforementioned imperatives announced by the Holy Prophet (PBUH) are acted upon in true spirit, than that day would not be far when Pakistan would become a model welfare state which concept was earlier acted upon by our Caliphs. Unfortunately, we have abandoned all those concepts and as already stated millions of people in Pakistan are living below poverty line in polluted areas. The value of a "Pollution Free Environment" would

have VALUE for the entire world only if its value is valued by all the countries being a global village.

I would be closing my presentation by quoting a saying of Hazrat Ali Karam Ullah Wajhu which is thought provoking wherein he said:

“Life of a person would be considered good if he is leading a happy life but at the same time, it would be termed as the BEST and most rewarding if he MAKES the lives of other people smooth and comfortable”.