

## **CLEAN AIR AS A HUMAN RIGHT**

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### **Abstract:**

*When you can't breathe, nothing else really matters. We have not inherited earth from ancestors; rather we have borrowed it from our coming generations. Environmental justice is same exact there, you have to take care of the people who don't have the power to take care of themselves, you have to represent them in halls sometimes as representative because if you don't do that, you are not really on the life's mission that is worth-while. Air pollution has grown up a serious hazard for human, environment and economy, till now, environmental laws has failed to fight for clean air against air pollution. The reason is that, there is lack of uniform use of the ways for achieving the goal of clean air as a human right. This paper is an attempt to prove clean air as a human right in the perspective of National as well as International Environmental Protection instruments.*

**Key Words:** Human Right, Health, Clean Air and Pollution.

### **Introduction**

Even if we don't think about it, it's still there, more valuable than anything on earth. We cannot imagine ourselves without it; it's with us from our first day on this mother planet. Sometimes we don't often think about it, but it is for sure that we cannot survive without it and we all need it and that's "Air". It has been estimated that a human being might live for five weeks without eating food, and might live for five days without drinking water, but a human can live for just five minutes without breathing in the air. When we think of health we often think that even healthy exercising isn't enough to; and exercise isn't sufficient to maintain good health. Due to its direct impacts on human health, air

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quality matters tremendously, when we talk about human health; there are some things which are humanly controllable and some are uncontrollable. Diet can be changed, we can do more exercise; but when it comes to air, it is something which cannot be changed and controlled by a single human being. We breathe air to live, each of us over three thousand gallons of air every day, normally we don't think about the next breathe where it comes from, we take it as fore - granted.<sup>1</sup> We never stop and think about the earth that we are breathing in and the physiological and physical effects that air pollution is having upon us.

When we breathe in the polluted air, we breathe in the mixture of Ozone, NO<sub>x</sub>, Sulphur and Particulate Matter from the variety of sources, such as burning of fossil fuel in the power houses and coal and cars etc. Even though we don't see Ozone, when its level is high it gets our attention. Eyes may burning water, there may be coughing, the thought is irritating and feel scratching, the chest might hurt, and shortness of breath.

Similarly, Particulate Matter (PM) is the mixture of tiny particles and liquid drop-lids. It is mainly consists of Acids, organic chemicals, metals and soils.<sup>2</sup> These particles are responsible for causing human health issues, because of their microscopic size they can easily pass to the throat, nose and into the lungs and eventually make their way into the blood strain causing various infectious diseases.

## **1. Air pollution in Medical perspective**

### **1.1. Pollutants in our Air**

A) Particulate Matter: The size of this PM is 2.5 microns, when we breathe or 1/20 of the size of the human hair. When we breathe in air containing this PM these particulate succeeds to penetrate to the deepest parts of the lungs cause's inflammations and lung diseases.<sup>3</sup> Breathing in the air containing PM causes lung diseases such as asthma can lead to heart attacks.

B) Ozone: is helpful because the Atmospheric Ozone reduces the risk of getting skin cancer; however ground level Ozone causes problems. Sunlight together with Nitrogen Oxide and Volatile organic compounds produces photochemical smog and Ozone, visible more often in the summer.<sup>4</sup> This smog together with the ground Ozone causes breathing problems, asthma attacks and can lead to lung diseases.

C) Nitrogen Dioxide: its emission comes from cars, and factories, study has proven that there is a casual relationship between the symptoms of bronchitis a respiratory disease in the asthmatic children.

D) Sulphur Dioxide (SO<sub>2</sub>): It results from the burning of fossils and results in affecting our respiratory system and causing the irritations of the eyes. If you breathe this in, you will more likely to cough and secrete more mucus and will be at a high risk of developing chronic bronchitis. Air pollutants cause un-necessary deaths especially when the pollution can be avoided through the use of catalytic convertors in cars and by scrubbing of power station gases.

Through year of research only few of the ill effects of the smog on human health has been discovered, it is very necessary to know that what smog really is. Smog is basically the mixture of harmful gases, which might be in solid or in liquid for known as Particulate Matters.<sup>5</sup> More than 50,000 people are dying per year due to toxic air emission as a bi -production of human activities and emitted from cars, buses and taxies as well as agriculture and factories, but road traffic is worst contender contributing 70% to the air pollution. Some of the early findings suggest that even a short term exposure to a type of pollution that we find along busy freeways can activate gene in your brain that are genes we associate with cancer. There is a preliminary proof that when a pregnant woman breathes the PM particles that are microscopic transmit through her blood stream to the fiddles causing possible brain damage which is a very scary stuff.

On the face of this mother planet all governments of the world must bend together come-out with some reversing policies to shut the door of this alarming threat. We have seen that a number of international treaties and instruments of environmental protection has been introduced. Similarly, environmental protection has been put in the category of non-individual enforceable right.<sup>6</sup> For the past of a few year nexus between Human Right and Clean and Healthy Air has been realized and recognized. It has been recognized that for the purpose to enjoy and enforce a fundamental right, right to clean air must be respected.<sup>7</sup> From this onward, this right to clean and healthy air was used as a tool to fight against air pollution and for improved quality air, but still it needs an un-changing approach. Furthermore, it should be clarified that right to clean

air has its assertion from tow angles; (1) as human right itself; and (2) due to its derivation from the globally recognized human rights as well. Besides as a hazard to human right, Air Pollution is a serious threat to environment as well. Bad quality of air leaves a long term adverse effect on standing crops, wildlife, trees and on the marine creatures. Similarly, economy is directly or indirectly suffers with air pollution, by its bad effects on human health illness is caused and which results in hundreds and thousands of absentees from schools, colleges, universities and work-places. In the same way it affects agricultural outcomes also, due to this crop and other profitable timberlands yield billions of dollars every year.<sup>8</sup>

## **2. Human Right – The Basic**

According to the universally accepted definition; “Human Rights are inherent to every human being, regardless of ethnic origin, nationality, sex, colour, religion or any other status. They are commonly understood as inalienable fundamental rights, “to which a person is inherently entitled simply because she or he is a human being.”<sup>9</sup> Under International Human Rights instrument, there are certain important obligations on the states parties to the agreement or treaty to act or refrain from doing certain acts for the purpose to encourage and develop fundamental freedoms and human rights of the groups as well as of the individuals.<sup>10</sup>

Breathing in fresh, clean and healthy air cannot be compromised at any cost under any circumstances. This is very easy, logical and understandable claim; when we talk about healthy air to be a fundamental right leaves a question, weather do we have a right to healthy air protected universally? Does it help in reducing air effluence? The answer is very difficult and non-satisfactory. Though it might not illuminate air pollution from the glob completely but yet it may be a positive step of leaving positive change, as a human right is trump as compare to additional legal responsibility, a holder of human right is politically, legally and morally empowered.<sup>11</sup> This the reasons whereby holder of the right is entitled to compel the authority by challenging their actions in the court of law to respect his right and not to curtail the rights granted to him. It is acceptable that it can be used as a proof and tool to

fight against air pollution and increase air quality, and can be used from two ways firstly;

### **2.1. Right to Clean and Healthy Air is Independent Itself**

We have a plethora of international instruments of protecting human right including environmental protection documents as well but till now a very little attention has been given to develop awareness regarding protecting right to health air as a separate human right. We have Stockholm Declaration 1972 a very helpful and successive step of protecting natural environment for all human beings of this planet in its very first principle.

Stockholm declaration provides a base for human to have a protected healthy environment for a standard and quality life, here it can be presumed that for a healthy, deified and quality life clean and healthy air is the prime need. However, it will be very right to say that the Stockholm Declaration protects only the existing human right and does not go further to safeguard any of the autonomous rights, in this regard principle one is criticised for the derivation of environmental right from a right to life.<sup>12</sup> There was no repetition of the statement in Rio Declaration, where the issue of sustainable development and right to a healthy, clean environment as a human right was placed, but in-terms of clear language for the using and emphasising on rights is also failed. We see later that it opened the era of new debates in the shadow of environmental law.<sup>13</sup> There are many examples in-terms of environmental instruments that comes under the umbrella of Human Rights fresh and clean air as a right as well.

The most solid proof on this right as independent right is the Article 24 of the African Charter on Human and People's Right.<sup>14</sup> The protection and recognition of this right is further strengthened by CESR VS Nigeria,<sup>15</sup> in this case stress was given on the point that the most basic element in human health is non-other than clean air, which then called greening of the human rights. This principle was adopted and implemented by other human rights commissions as well, as in European Convention, protection was not only given to life but also for taking reasonable and appropriate actions for its protection, such as blocking the way of environmental hazards like, pollution, deforestation, water

contamination, waste disposals etc.<sup>16</sup> This right has recognition in a case filed in Indian Supreme Court, where ICJ clearly remarked that right to clean air does covers right to life, putting into another way; it's is like that when someone's right to clean water is violated his right to life is trespassed in the like manner.<sup>17</sup>

## **2.2. Derivation from Recognized Human Rights**

Right to privacy is an internationally protected and recognized human right available against public as well as private infringers, often includes environmental matters; article 12 of the Universal Declaration of Human Right is very clear evidence on the point.<sup>18</sup> Though environmental protection is not precisely and clearly provided under ECHR, but still it has been seen in a number of cases where violation has been addressed and contamination someone's water, polluting his air and food were covered under this provision.<sup>19</sup>

Similarly, a human right to good health is dependent on the enjoyment and getting required standard of healthy life, indirectly requires the Government to take necessary actions for providing basic needs for a healthy life to the possible extent.<sup>20</sup> For the purpose to meet the necessities, clean air is pre-requisite of all, and right to good health is protected under many international Human Rights Instruments, it is very obvious that there is no fulfilment of the right to good health without providing clean and healthy air.

Likewise, the excellence of surrounding atmosphere is a determining fact of people health; this point was made a base for Marangopoulos VS Greece,<sup>21</sup> where there was a total recognition of pollution free environment, and right to clean air was certainly incorporated in that only then the dream of a healthy life can be achieved. There is a clear demonstration of linkage between good health as human right and air contamination. Before coming to determine the superior approach between the two concepts, it is to be realized that to improve air quality human right is not the only avenue, rather putting the traditional environmental laws and policies would be much more effective and fruitful towards getting the aim of cleaner air. Human rights con only are used as a mean for the improvement clean air and reduction of air pollution.

Unfortunately, there is no specific recognition and acceptance of clean air as an independent human right in any international instrument, if it would or becomes then it will be an ideal platform to make a clear difference in the improvement of air quality and combating against air pollution just like the greening human rights. It is also clear that environmental protection and human rights covers multiple rights but does not fit into a specific category, which shifts the obligations of the corresponding state, and results in confusion and uncertainty to the concerned parties. Instead, a recognised right to clean air would certainly under all conditions will leave a positive effect on the quality of air.

### **3. Status of Right to Clean Air in Pakistan**

There is not a single word of Environment in the constitution of Pakistan, but at a number of occasions the Apex court of Pakistan has recognized that clean and healthy environment is one of the pre-requisites of life. It has been stressed on that stable healthy environment is an essential component of human life, in the same way hazardous and pollutant environment is critical rather dangerous to human life and right to life is a fundamental right granted and protected under the constitution of Pakistan 1973.<sup>22</sup> However, there are a number of grounds in our legal system which can be made a legitimate base for protecting right to clean air these includes;

- ❖ Article 9 of the constitution of Pakistan 1973; protects the life and liberty of the people, which indirectly include healthy environment incorporated in it, which covers healthy and fresh air as well.
- ❖ Article 4 (2) (a) provides about the inalienability of the right, which cannot be taken at any cost under any circumstances, except in accordance with the laws of the land. The state holds natural resources of the land as trust for future generations and it covers all natural resources in the state.
- ❖ Article 5 (2) is about the obedience of the people of Pakistan towards the constitution. Causing harm to environment is indirectly violating the rights of other citizens of the country.
- ❖ Article 14 protecting the dignity of man. Degraded environment affects the life quality of the people.

- ❖ Article 19A provides for Right to Information regarding the important matters of public interests. A large number of people do not know that clean and health environment is their constitutional right and hence they can invoke Article 184(3) in this regard.
- ❖ Article 23 gives right to the people for holding acquiring and disposing property within the state with some reasonable limitations. A country's natural settings, ecosystem and Natural environment is a heritage of its citizens and they are dependent on it, and changing the climate ultimately changes the ecosystem.
- ❖ Article 24(1) prohibits compulsory deprivation from the property, millions of Pakistanis depends on this climate and ecology, there is no doubt about the fact that fresh, clean and healthy life depends on the climate, polluting environment is violating people fundamental right protected by the constitution.
- ❖ Article 25(1) provides for the equality of all citizens of the state and equal protections of the laws of the land.

The window of environmental protection was opened from the leading case of *Shehla Zia versus WAPDA*; the conclusion of the case was on the recognition of clean, healthy and dignified life as incorporated in right to life.<sup>23</sup> In another case the supreme court of Pakistan stopped the violation of human rights by prohibiting the concerned authorities from dumping wastes adjacent to the coastal area, that it's burning shall affect the air quality directly affecting the lives and quality of the people of that area.<sup>24</sup>

The role of judiciary in Pakistan is praiseworthy in protecting and promoting environmental rights, courts are actively involved in the application and interpretation of laws to meet the international standards, by applying the international laws to cover the local need.<sup>25</sup> Comparatively, we have less interest in environmental litigation, though large numbers of population are faced with serious environmental hazards. The supreme court of Pakistan has rendered environmental human rights as legitimate according to the constitution of Pakistan, known as the most high legal status in the country but still the courts



activism cannot be termed as substituted for making comprehensive policies and their implementations.

### **CONCLUSION**

We know that the economy is got to be considered, we know that we have to put people before economy, so it's just a horrific balance again and we have to continuously work on it. Placing industrial uses next to homes is a very deliberate and decisive decision that you are going to pollute those families. Our health is costing us a lot more because the high level of pollution being produced by these polluting agencies. It is the time to raise voice to demand justice to make compromise about the human right we have. As community members it's our duty to come together and to shed light on the damaging fact that these corporations has on human health and on the environment. We need to demand better air quality and insist the corporations to clean up the dirt they made and stop polluting our community. We can make them to take responsibility of their actions if we work together and educate ourselves about our rights as human beings. It's our responsibility to keep our air clean and its start by putting our foot down and letting them know that we had enough.

Clean air is certainly a right and it's a matter of justice, the tragedy is when certain communities because of their economic interest or lack of awareness on the subject are taking it for granted. You see where the abuse is more rampant people thinks they can dump things, people think they can have different types of industries that will not have an impact and that will not be contested. I think we have the same right as everybody else has the right to breathe. There are two ways by means of which we can fight for clean and healthy air as a human right. One is short term and easy to achieve where the existing human rights and right to healthy environment is interpreted in such way whereby right to clean air is recognized as part of it. The second one is comparatively far reaching but difficult whereby right to clean air is incorporated in human rights instruments as an independent human right.

**Note and References**

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<sup>7</sup> Musimedia BV, *Human Right to Environment*, online: Right to Environment: <http://www.righttoenvironment.org/default.asp?pid=53>.

<sup>8</sup> Office of the High Commissioner for Human Rights, *What are Human Rights?*, online: United Nations Human Rights, <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>>

<sup>9</sup> Magdalena Sepulveda & Theo van Banning, *Human Rights Reference Handbook* (Ciudad Colon, Costa Rica: University of Peace, 2004). P-12-13.

<sup>10</sup> Office of the High Commissioner for Human Rights, *What are Human Rights?*, online: United Nations Human Rights, <<http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>>

<sup>11</sup> David Bollier & Burns H. Weston, *The Human Right to a Clean and Healthy Environment*, (20 December 2013), online: The Corporate Social Responsibility Newswire:

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<http://www.csrwire.com/blog/posts/1157-the-human-right-to-a-clean-and-healthy-environment>.

<sup>12</sup> Sumudu Atapattu, “The Right to a Healthy Life or the Right to Die Pollution?: The Emergence of a Human Right to a Healthy Environment Under International Law” (2002) 64 (16) *Tulane Environmental Law Journal*.

<sup>13</sup> Dinah L. Shelton, “What happened in Rio to Human Rights?” (1992) 82 (3) *Yearbook of the International Law Commission*.

<sup>14</sup> Article 24 of the Charter states that: “all peoples shall have the right to a general satisfactory environment favorable to their development.” The right to a general satisfactory environment means a clean and safe environment, which would include clean air.

<sup>15</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Commission on Human and Peoples’ Rights, Comm. No. 155/96 (2001).

<sup>16</sup> P Havers & C Neenan, “Impact of the European Convention on Human Rights on Medical Law” (2002) 78 (10) *Postgraduate Medical Journal*.

<sup>17</sup> *K.M. Chinnappa & T.N. Godavarman Thirumulpad v. Union of India*, AIR 2003 SC 724.

<sup>18</sup> Article 12 states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence ... every has the right to the protection against such interference or attacks.”

<sup>19</sup> *Lopez Ostra v. Spain*, 16798/90 [1994] ECHR 46.

<sup>20</sup> World Health Organization, *The Right to Health*, (1 November 2013), online: WHO, <http://www.who.int/mediacentre/factsheets/fs323/en/>.

<sup>21</sup> *Marangopoulous Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, European Committee of Social Rights (E.C.S.R.) (2006).

<sup>22</sup> *Shihla Zia v. WAPDA*, P L D 1994 Sup. Ct. 693. (Pakistan Supreme Court 1994).

<sup>23</sup> *Shehla Zia v. WAPDA* (1994) PLD 693 (SC)

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<sup>24</sup> *Syed Mansoor Ali Shah v. Government of the Punjab and Others*, Writ Petition No. 11148/1997, cited in J. Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh* (Kluwer Law International, 2004), at 113–14; *Environment Pollution in Balochistan*, HR case No. 31-K/92(Q), PLD 1994 SC 102; *Dr. Zahir Ansari v. Karachi Development Authority*, PLD 2000 Karachi 168; and *Shehri v. the Province of Sindh*, 2001 YLR 1139

<sup>25</sup> P. Hassan, 'Environmental Rights as Part of Fundamental Human Rights: the Leadership of the Judiciary in Pakistan', *Global Judges Symposium on Sustainable Development and the Role of Law at Johannesburg, South Africa, 18–20 August 2002* (United Nations Environment Programme, 2002), at 18.