



## Environmental Problems in Iran's Law

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**ABSTRACT:** As we know issues related to and due to the destruction of the environment have caused a lot of limitations for the life of human beings, and these problems have been noticed as having global dimensions by researchers from different fields such as international law and even international organizations including the United Nations. On the one hand, the growth of international law in this realm without considering it in the domain of the domestic law of countries is impossible, and on the other hand as countries notice these issues in their domestic laws, they should also pay attention to such problems in regional agreements and international treaties-based on their domestic laws. So while these problems threaten the earth and the global society and the need for global endeavors to face them is necessary, the underlying requirement of this issue is the attention of domestic laws of countries to these problems. Regarding this the practices of the domestic laws of our country concerning these issues have been noticed to see whether we can reach any unified strategy to face them? For close observation of the problem, attention to constitution, other domestic laws and especially particular laws approved in this regard is necessary. On the other hand, studying the participation of our country in international treaties related to this issue seems necessary since after which strategies in order to develop the attention to these problems and even making them performable will be proposed.

**Keywords:** Environmental issues, Iran's law, Constitution, Ordinary laws, International environmental treaties

### INTRODUCTION

Noticing the increasing importance of environmental problems in our time, the close observation of the aspects of these problems and how-to-face them in domestic laws of counties and international rules has gained vital importance. Problems such as global warming, acid rains, oil and nuclear pollutions, extinction of some of living species, floods, the destruction of the ozone layer, etc. have gained such importance that are called the 'second generation of environmental problems' (Mirzaee Yangajeh, 1371: 91) and the full recognition of domestic and international environments is impossible without considering them; moreover, the convergence of world countries to face them is necessary (Doerty and Faltezgraph, 1372: 101-133/1). The analysis of the mentioned issues in domestic laws of countries in order to provide appropriate harmony for growth of such laws in international law is essential. To study all aspects of the environmental issues in domestic laws of Islamic republic of Iran, we will study and analyze the status of constitution, ordinary laws, and also international cooperation of Iran related to this subject.

#### A. Constitution and environmental issues

Today possibly due to the revolutions in the environmental laws in international realm especially after the Stockholm conference, 60 countries have noticed the environmental problems in their constitution directly or indirectly (UNESCO Peace Corps, 1389, 313-314). The constitution of our country, Iran, has noticed this issue in two principles: the first one is related to common and general wealth including seas, jungles, natural bushes, etc. which are considered at the disposal of the Islamic government. The government has to perform and act on them based on public interest (constitution, article 45). However, the key point regarding this is in act number 50 of the constitution which mentions:

“The preservation of the environment, in which the present as well as the future generations have a right to flourishing social existence, is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden”.

It's surprising to see that most lecturers of law in their discussions of article 50, paid attention to it just in terms of economic and financial affairs (Madani, 1370: 131-132; Shabani, 1388: 246 and Tohidi, 1386: 208-209) while mentioning economic activities in article 50 is just for providing examples. This is possibly due to the fact that most of environmental problems are due to abusive activities. Anyhow with an analysis of this article we extract five key terms regarding the environment as follows:

1. "The rights of the current and future generations", although the how-to-reach this right is not clear, and generally except the principle of devotion, the right to enjoy in social laws is just conditioned on the current generation.
2. Equity between generations and inside a generation; that is following the necessity to verify the rights of the future generations. This means that the current generation is the trustee of the next generations.
3. The growth of the life of human beings in which the meaning of growth is more general than economic uses, and based on that the social and economic growth should be adapted on life and environmental necessities.
4. Public obligation to protect the environment in our law means that our law is obligation-based, although public obligation means it is based on public rights. To this regard to the extent of punitive responsibility there are a number of cases in law for protection of the environment and also the life settings of human beings, although the discussion of civil responsibility is left unsaid. The possibility of inquiry in our courts if a misuse happens to the environment has never been institutionalized.
5. The prohibition of any destructive activity, although the decision about this is in the realm of organizations related to environmental affairs or at least having a veto right by these organizations if environmental problems occur. (UNESCO Peace Corps, 1389: 315-323).

#### *B. Ordinary laws and environmental issues*

Among the ordinary laws of Iran, the law of Islamic punishment pays attention to environmental issues especially under two articles: destruction of properties and animals (chapter 25) and outrage of houses and other properties (chapter 26). The essentials of these two are as follow:

The punishment of imprisonment or financial penalty for killing, poisoning, or mutilating animals whose hunting have been prohibited (article 679).

The penalty of imprisonment or financial punishment for performing illegal hunting of protected wild animals (article 686).

Compensation of the damage and penalty regarding the cutting and destruction of trees: the subject of article 1 in developing green spaces (article 686).

The punishment of imprisonment for threats against public health (article 688) and the point that the recognition of the pollution of the environment is the responsibility of environment protection organization (note 1 of the same article).

The punishment against the destruction of natural resources and the environment (article 690) and out of sequence investigation of these cases (note 1 of the same article).

It should be mentioned that in state laws of our country the definition of the pollution of the environment is described as follows (note 2 of the article 688):

"By pollution of the environment we mean the mixing or distribution of outside materials to soil, air, or water in a way that the physical, chemical, or biological quality of them change so that the status of human beings or other living creatures will be in danger".

Besides the laws regarding punishment, the trace of environmental issues can be found in a series of laws as follows:

The legal proposal regarding hunting (approved in 11/11/1351); according to article number one of this the formation of hunting club of Iran has been forecasted. This was the first time that the protection of wild life (and not the environment) has come into the law with a protective view (and not extractions in civil laws). The management of this has been appointed to an independent club with the supervision of the first person responsible of the country. (UNESCO Peace Corps, 1389: 323).

The law of hunting and fishing (approved in 16/3/1364 and revised in 30/10/1353 and 25/9/1375) in describing the duties of Iran's hunting club mentions that this organization not only must keep the hunting preserves and natural settings of hunttable animals (paragraph p of article number 6), but also has to cooperate with organizations related to jungles, grassland, soil, and water to preserve natural resources (paragraph d) and even with foreign similar organizations (paragraph e).

In some of articles this law has predicted financial and imprisonment penalties for hunting or illegal fishing, destructing trees in protected areas, pollution of Caspian sea and Persian Gulf and Oman sea with non-oil materials or the death of aquatics or jeopardizing their life settings (articles 10 to 13).

It seems that practical steps have been taken in Iran to pay attention to environment with the establishment of the Environment protection organization in 1350 (which is legally responsible for protection and enhancement of the environment) and also with the approval of the executive bylaw of protecting and enhancement of the environment in 1354 (which has put quadripartite areas national parks, preserves, wild shelters and natural national monuments under the management of the Environment protection organization (Madani 1370: footnote 2/131-132).

Before this the law of protecting the environment (approved in 28/3/1353) has caused revolutionary reforms in Iran's law due to international movements in which not only the wild life but also all aspects of natural settings and the environment of life of human beings and inorganic settings have been noticed; so the management of the environment of the country has been appointed to an organization with the title of the Environment protection organization (UNESCO Peace Corps, 1389: 325). According to this law, protection and enhancement of the environment and prevention of any kind of pollution causing the disturbance of the harmony of the environment also all affairs of wild animals and aquatics of domestic waters are among the tasks of the Environment protection organization.

The law of protection against rays is another law (approved in 21/1/1368) with the aim of protecting the environment, future and current people of the society (article 3). This law is the first case in which it is spoken of future generations. The court of administrative justice too put this law in their common committee polling for cancellation of the circular number 14977/29/7/1373 approved in 8/8/1368 of the customs administration in importing sources of ray production (UNESCO Peace Corps, 1389: 326-327).

The law of the committee of oceanic studies (approved in 20/5/1370) has appointed 3 committees of 7 specialized committees as follows:

1. The committee of protection of sea environment and controlling sea pollutions (Environment protection organization)
2. The committee of organic sea resources (the fishery and Aquatics Company)
3. The committee of inorganic sea resources (the geology organization of the country)

The law of sea areas of Islamic republic of Iran in Persian Gulf and Oman Sea (approved in 31/1/1372) in delineating the safe passing has evicted the generation of any kind of pollution against the rules of Islamic republic of Iran from the title of safe issues, and according to each case civil and criminal penalties have been considered (article 6). This law also provided the criminal and civil qualification of the government of Islamic republic of Iran for performing the requisite acts to prevent the disobeying of laws including the environmental ones and chasing and punishing the offenders (article 13).

In laws regarding hunting and slaughter (approved in 1387), besides recognizing rights for animals and emphasizing these rights, legal hunting and slaughter have been named as the channel for protection of the rights (UNESCO Peace Corps, 1389: 332).

### *C. International cooperation and treaties of Iran and environmental issues*

It seems that for the first time the law of hunting and fishing in delineating the responsibilities of the hunting club has paid attention to cooperation with foreign similar organizations in order to protect wild and migrant animals (article 6). In general the status of Iran in terms of cooperation in approving international treaties and memorandums of understanding regarding environmental issues is high. Approving 20 international conventions concerning this issue with global and regional dimensions and 2 documents for establishing environmental organizations (the global alliance for protection of natural resources in the environment and UNEP) and approving a number of mutual agreements and tens of mutual memorandums of understanding between the Environment protection organization and other equal organizations in other countries of the world are noticeable.

It is necessary that the rights of the Islamic republic of Iran regarding this subject becomes legal so that all become followers of these laws. This way processes and domestic bureaucracies do not exonerate governments for fully performing these treaties. (UNESCO Peace Corps, 1389: 332-334).

### **CONCLUSIONS**

The importance of environmental; problems has prompted the discussion of these cases in domestic and international law. Since the development of these cases in international law is more noticeable, it seems that the study of the view of domestic laws of countries regarding these issues is necessary because they require public strategies and international cooperation. On the other hand, the attention of countries to these issues in cooperation and international treaties is observable whose development is based on the development of domestic laws of countries in this regard. The study of the collection of domestic laws and international treaties regarding this issue show that Iran is among countries which attends to environmental issues either in its domestic or international law. However, the domain of environmental problems in our country like other countries is expanding. So we propose the following criteria:

- a. Increasing environmental laws in terms of quality and quantity for providing limitations against destructive environmental activities and overuse of natural resources and applying changes to them,
- b. Increasing attention to the relationship between the environment and sustainable development (clean development),

- c. Providing the required background for increasing the cooperation of the country in international treaties,
- d. More active cooperation of the judiciary for confronting people who perform criminal environmental activities even giving feedback regarding the practicality of related laws and eliminating the defects of the laws and even generalizing appropriate changes in current laws,
- e. Increasing environmental education in different levels of education in schools and universities including the development of environmental law in universities and higher education centers.

## REFERENCES

- Kazemi, Ali Asghar, (1991). *International relations in theory and practice*), Ghoms publications.
- Mirzaee Yangajeh, Saeed (1992). *The revolution in the concept of governance in the UN*, the center for political and international studies.
- Madani, Seyyed Jalaleddin (1989). *Fundamental law and the organizations of Islamic republic of Iran*, Hamrah publications, 1st edition.
- Robert I. Pfaltzgraff, James E. Dougherty, (1993). *((Contending theories of international relations))*, volume 1, translated by Alireza Teyyeb and Vahid Bozorgi, Ghoms publications, first edition.
- Shabani, Ghasem (2008). *((Fundamental law and the structure of the government of Islamic republic of Iran))*, Etelaat, 37th publications.
- The law of forming the committee of oceanic studies, the environment protection organization portal, doe.ir
- The law of protection and enhancement of the environment, the environment protection organization portal, doe.ir
- The law of protection and enhancement of aquatic resources, the environment protection organization portal, doe.ir
- The law of hunting and fishing, the environment protection organization portal, doe.ir
- The law of Islamic punishment, Majd collection of applied rules (criminal and juridical), Seyyed Abbas Hosseini Nik, Maj scientific and cultural center. 10th publications. 2010.
- The law of sea areas of the Islamic republic of Iran in Persian Gulf and Oman Sea, the environment protection organization portal, doe.ir
- Tohidi, Ahmadreza, (1987). *((Thinking about the general principles of the system (regime), peoples' rights and freedom in the constitution volume 1))*, Maaref publications, second edition.
- UNESCO Peace Corps (human rights, peace and democracy), (2009). *The environmental rights of people*, Ddadgostar publications, 1st edition.