

Juridical and Legal Basics of Environment Protection

¹Mohammad Javad Heidari Khorasani, ²Mohsen Malek Afzali Ar-Dakani, ¹Abdollah Omid Fard,

¹Mohammad Nouzari Ferdosieh, ¹Alireza Ibrahimi and ³Ali Mohammadi

¹University of Qom, Qom, Iran

²Jamia Al Mustafa, Al-Mustafa Open University, Qom, Iran

³Payame Noor University, Tehran, Iran

Abstract: This research aims to study juridical and legal basics of Islam about environment protection with descriptive and analytical method. In order to determine Islam's view about the environment, basic issues like: position of human among creatures, relationship of human with nature and extent of human action were studied. Results of this research show that for solving environmental problem, following actions are necessary: reforming the thought which is possible through common education, books and environmental associations; resistance and fortitude which achieves through international and regional laws with guarantee; spirituality which forms by this belief that nature is one of the divine signs and human is obliged to obey the divine commands; enacting regulations and encountering with criminals and environment whether common or charity its destruction and personal use of it brings liability, Islamic government is obliged to punish the aggressors with regulations. Values, ethical, juridical and legal basics in Islam are studied in this research and reached to this result that Islam provided theoretical and practical solutions for presenting a comprehensive and suitable program in order to protect the environment and prevent irregular use of natural resources.

Key words: Environment, rights, pollutants, environment protection, ethics, economy

INTRODUCTION

In modern world having healthy environment is one of the divine blessings which is considered by people because by intensification of this issue in the world it is necessary to pay more attention to its dimensions from juridical and legal point of view. From religion view, environment its protection and interaction with it and strategies to use have special importance. Islamic decrees about environment are numerous and abundant. Some of these decrees-even necessary or voluntary are obligatory and invite Muslims to do acts about the nature and environment. For example, Quran invites people to think about the nature and environment and considers this thinking about nature very suitable for human such that God reminds some aspects of nature in these verses and invites human to think about it.

Today, environment has exposed to the destruction and degradation due to cruel interest-seeking and selfishness of super-powers. Increasing pollution of soil, water and air has threatened the environment more than before and caused irreparable damages to it. Pollution of oceans, seas and rivers, green forests which are important factors of oxygen production, desertification, air pollution in many large cities of world, sound pollution,

extinction of some bird and animal species, depletion of ozone layer and such issues are concerns for most people, specially experts. As a result, experts have developed valuable works about this issue and increased people awareness about the adverse consequences on the environment. Some Muslim scholars tried to highlight the Islam view in this regard and provided writings about it. They believe that the best solution for this problem can be found in the speeches of saints and Quran verses. Certainly there is no environmental decree in the Islamic resources but without doubt there are various decrees about water, soil, cleanness, fire and etc. in these verses and hadith that by help of them. Regarding this, human should know himself and nature and become aware of nature advantages and adverse losses and destruction and try to keep it healthy.

LITERATURE REVIEW

Environment in Persian means place of living and it includes all threatening or improving factors of life environment (Valaei, 2009). Generally, environment is a space with all physical, biological, social and political conditions which encompasses all living creatures in it and their relationships. Elements which form environment are: inanimate elements (soil, air, water) and animate

elements (plants and animals). From Islam's view, human is a part of being that his elements complement other elements of life and divine wisdom has obliged that human is heir of land; therefore, human, in addition to being a part of world is executor of divine command.

Islam meddles in all human relations and has regulations for them but this does not mean that it has a special decree for each modern issue. Environment is one of these issues. Certainly there is no environmental decree in the Islamic resources but without doubt there are various decrees and verses about water, soil, cleanness and other issues that by help of them we can achieve accurate regulations for environment problems. If someone pollutes the environment, he can be prosecuted for this because annoying others is haram and forbidden. Islam gives considerable importance for health and cleanness and considers it as sign of faith. Holy Prophet (Peace Be Upon Him) said: protect the soil because it is truly your mother. In fact, if Islam emphasizes the support of basic elements in the environment and its protection it is for goodness of human and providing needs of human whether for current generations or future generation and attracts human to environment protection such that we can say that in Islam, the most comprehensive view and method for interaction with nature and environment has been mentioned (Khamenei, 2004).

With a look to religious texts and especially holy Quran we can find that environment and attempt for protection of it is considered by Islam for using safe and healthy environment. There are verses in the Quran which consider environment as common right. These verses state that God has created nature and environment for human and human can manipulate it in all times. In other words, there are various verses and narrations which show that God has created nature and environment for human and he can manipulate it but on the other hand it emphasizes that the right of using environment does not allocate to one generation. Therefore, exploiting it should be fair such that current generation and future generation can have healthy life with it. Therefore, misusing this right leads to pollution, destruction and degradation of environment and as a result, violating the rights of future generations is forbidden. Islam invites people to science, identifying nature and dominating it and opposes any conviction to material life. Therefore, view of Islam is such huge that all creatures are dominated by him by the order of God and are in service of him including those voluntary actions for achieving his benefits (like seas and animals) and on the other hand it includes all issues determined by God for serving human (like sun).

JURIDICAL AND LEGAL BASICS OF ENVIRONMENT

Juridical basics are juridical evidences including Quran, tradition, consensus, wisdom and juridical rules by which duties and responsibilities of human against environment. Juridical look is in the scope of scholars and jurists. Responsible actions of human against environment can be analyzed in both negative and positive actions. Negative actions include abandoning all behaviors which lead to imbalance of environment and destruction of elements. Positive actions are all good works which lead to restoration of environment and keeping its health and balance. These two types of actions form do and don't in relation with environment.

In fact, juridical study of environment is not just a technical work but it is caused by Islamic ideology which considers human as axis of life and contrary to new material civilization which considers human as a tool for advancement and serving certain class of society.

Reason: By decree of reason about environment we mean practical intellectual evidences which are considered in the books and are based on the goodness and evil rule which is recognized by scholars (Mozafar, 1967). Regarding reason, every action which ruins the balance of environment and disturbs the life system and human life is forbidden. In contrary, human attempts for protection of environment and restoration of it which enhances the balance of elements, preserves the system and it is instance of good action. Detailed expression of reason is based on the anthropologic discussion. Undoubtedly, human has superior position and unique creation in the creation book. He is a creature who deserved the mercy of God which rules the land and the world and its elements are dominated by it. All things in the world are lower in position relative to human. Nature and its structure is dominated by human and should be recruited for perfection. Undoubtedly, losing this order creates basic problems and exposes human to serious damages. Every action which leads to it is cruel and forbidden and every action which enhances system and environment organization facilitates perfection of human is just and fair.

Another point in this category about environment is decrees based on the goodness and evil. In other words, acting to reform environment and preventing its destruction and badness of action to destruct is contingency. These are not two complete causes for goodness and evil. Because titles of requirement related to environment are not definite and exceptional because when it meddles with superior discretion, environment health discretion defeats. Verses like whatsoever

palm-trees ye cut down or left standing on their roots it was by Allah's leave and act of prophet for cutting palm trees and burning them in the Bani-Nazir issue and some religious orders about legal jihad are in conflict with protection of environment. It is clear that if restoration of environment is the complete reason for goodness and destruction is badness reason there would not be an exception in it because reasoned decrees cannot be allocated.

Quran: Allameh Tabatabaee, in interpretation of verse 205, Baghare Surah, considers that consolidation of human depends on the nutrition and reproduction. Then, he refers to the relying of human nutrition on the animals and plants and importance of protecting plant though cultivation and believes that corruption in land occurs by destruction of generation and environment. According to this, we should accept that because degradation of environment leads to destruction of human it is the clear indication of corruption in the land. On the other hand, this verse negates the corruption in the earth and according to this verse, corruption is not popular near God and God's will is against it. This forms major reasoning and its result is forbidding any destructive action in the environment. Regarding this issue we can find that there are many verses in the holy Quran which negates the destruction of environment and knows its result as death of human.

Tradition: Tradition, like holy Quran, pays attention to the environment and its protection. This indicates that general spirit of these narrations is developing responsibility for natural phenomena and creatures. This is seen in the first speech of Imam Ali (AS) in his reign. These issues indicate that human responsibility about phenomena and objects is serious and comprehensive. Following are some quotes of jurists:

War: It is a symbol of violent human behavior in encountering other people, objects and surroundings that its direct result is destruction and losing balance of human population and natural resources. Manner of the Holy Prophet in wars and his recommendations to commanders show that mental requirement of war and jihad should not have unusual behaviors and do not destroy anything.

Rights of animals: An important part of religious decrees relates to the rights of animals and duties of human. Importance of animal right in Islamic jurisprudence is so high that some jurists consider it as right of God.

Protection of plant life: Protection of plants and attempt to restoring nature is another issue considered by religion. There are various quotes about cutting the trees. One quote is from Imam Sadegh (Nouri, 1987) cutting the trees.

Polluting environment resources: Negating pollution of water: there are various quotes about obscenity of water. Among them are quotes which negates urinating in the water including quote by Imam Sadegh and Holy Prophet.

Negating pollution of earth: Some quotes are about negation of polluting land, river banks, roads, fruit trees and recreational sites including Hadith of Prophet.

Negating pollution of air: Although, air pollution is a common issue of modern life that is caused by the increase in population, advancement of industries, density of factories and transportation means, increasing use of fossil fuel and conditions imposed to the human in regional and global conflicts and using microbial, chemical and nuclear weapons which are serious threat against human life. But there are signs in the juridical comments and hadith by which we can find the position of religion about it.

Juridical rules: The last part of juridical basics belong to juridical rules that here we discuss about the regulations which can be adjusted by environment transformation.

No loss rule: This important juridical rule has roots in the reason and manner of scholars and evidences of Quran and tradition implies it and four evidences support it. This rule, in addition to religious documents has solid intellectual reasons. In other words, this is one of reasoned rule. The most famous rule in this case is Samareh-Ibn-Jondab story. First, although, there are different views among the lexicologists about the concept of loss but it can be accepted that loss applies about the defect in life and property and environmental damages relate to both categories. Second, this rule do not belong to personal losses and includes general emergency and even the importance of general loss is higher than individual loss. Loss imposed to environment are general losses which exposes human to serious damages. Third, about the provisions of no loss rule, regarding the 5 views presented (Mousavi, 1987), it is clear that loss is not legitimate in Islam. This illegitimacy includes legislation step and law implementation process.

Forth, one of the points about no loss rule is that this rule includes all lacks. This means that when something

appears by the lack of necessary thing can we negate this by relying on the no loss rule. Some scholars believe that in this case, not only the losses caused by destructive actions eliminated by no loss rule but also if abandoning the corrective and constructive actions leads to the loss in the environment this rule will resist against it. Therefore, Islamic government and researcherities of environment are obliged that in the legislation and regulation step and by applying executive measures, they will use all their ability for correcting environment and supporting. As a result, no loss rule not only prevents damaging the environment but guaranteeing damages caused by destructive action or abandoning corrective actions is the duty of one who imposes damage.

Integration rule: This rule is adapted from the verse of the holy Quran that one who damages you will be damages same and some narrations and based on this one who destroy and waste the assets of other people including private and public assets is liable to compensate. There is a narration by Imam Ali about the environment which reminds the civil liability of destruction and corruption of environment resources which indicates the duty of Islamic ruler to impose liability to violators.

Causality rule: This rule is based on the some narrative documents and consensus of jurists. The different if this rule with no loss rule is that the first is wasting by participation and the second is wasting with mediation. Based on this rule, every action which destroys, pollutes or wastes the elements of environment will bring liability.

Hand guarantee rule: This rule is adapted from the jurists, religions method and hadith. Some consider the content of the hadith as issuing a decree by which legislator reminds the necessity to preserve the property and compensation of it. Based on this rule, it is clear that in the case of dominating the environment we should preserve it and in the case of defect and destruction, compensation of it is the responsibility of the individual (Mousavi, 1987).

Corollary rule: This is companion to reason and religion. When reason discovers a discretion or corruption by lemma and reasoning we decree by cause-effect that religion has a decree here for using that discretion or rejecting that corruption. Although, this decree has not been reached to us by quoting and where the religion gives necessary or sanctioning decree to us we discover it by reason and by reasoning cause and effect that there

is some corruption here. Although, our reason is not aware of that discretion or corruption. Destruction of natural resources has great corruption and the reason considers the protection of resources as necessary act and destruction of environment as haram and according to corollary, religion will have this decree because according to late Naienee: in the case of admitting that these decrees follow the discretion and corruptions and reason will understand these discretions and corruptions, denying this corollary is senseless.

DISADVANTAGES OF JURIDICAL RULES OF ENVIRONMENT

At the end of this topic researchers will present some disadvantages:

First disadvantage; dominance rule and environment: One of the most important juridical rules is domination rule. This rule is based on the Quran, tradition, consensus, manner and method of scholars and the most important document for it is the Hadith by Prophet. This rule consolidates ownership of human on property rule and recognizes his independence for manipulating his properties. The most important criticism of this rule is that some manipulation of human in his properties meddles with the individual and social rights.

Second disadvantage; analysis of public assets and environment: One of the most important juridical challenges which environment encounters it is public assets analysis. Based on the famous juridical comment, public assets are permissible for Muslims in the era of Absence such that they can manipulate it freely. Some jurists consider this analysis only for residences and gardens and other believe to absolute analysis of public assets. Regarding this disadvantage when Shia restore the natural resources by manipulating it there is no problem. The problems is when free manipulation and irregular consumption leads to the destruction of nature resources and water, plant and jungles reserves. Besides, in this case, those who have power and facilities try to exploit more and this leads to the higher deprivation of people and ignoring the principle of Islamic justice. Generally, Islamic government is responsible to protect basic interests of Islam including life of human, social justice and like. These interests which form the spirit of religion are so important that for realizing them, initial decrees will be reviewed, if necessary or implementation of them stop at the certain time. From this view, we can find the significant position of Islamic guardianship in setting the limiting and supporting rules for environment.

Third disadvantage; common property environment:

Public properties includes those assets provided by God for Imam and guardian of Muslims to use them for empowering the religion and religious values and interest of Islamic society. Naturally, action of other people for acquiring the ownership of them is not permissible without the permission of Islamic governed (Valaei, 2009). Assets related to the common properties or interest of Islamic society should be spent for the interest of social life but some narrations show that grandsons of Prophet considered it halal for Shia.

Common assets are those assets which are not considered as public assets and do not belong to anyone like public roads, mosques, parks, sport arenas and other places for public. In relation to common assets, some modern jurists believe that air, soil, sunlight and environment are common assets that all people have the right of regular and correct use of them. Researcher of Javahir says that grasslands, water, fish, wild animals before hunting are common assets and buying and selling them is not permissible because they do not belong to anyone but all Muslims have share in them.

CONCLUSION

Developing basic principles for exploitation like no loss rule, balancing nature of human in correct way by

giving rewards and punishment, observing the intra and inter-generation justice and developing responsibility of human toward beliefs and values are strength points from religious view for using natural resources. Various discussions are seen about the environment from juridical discussions including cleanness, jihad, restoration, hunting, limits and liabilities and there are hundreds of narrations and Hadith in this field that most juridical discussions are based on them. For example, public assets which were permissible for all people in the past, by changing the time and position of public assets have two conflicted decrees and what was permissible for Shia in the past now is considered as public assets.

REFERENCES

- Khamenei, A., 2004. Message to Congress on Environmental Law. Iran Daily Press, Tehran, Iran.
- Mousavi, K.R., 1987. Tahrir al-Wasilah. Vol. 1, The Institute of Qom Darul Qalam Press, Qom, Iran.
- Mozafar, M., 1967. Principles of Qom Jurisprudence. 3rd Edn., Islamic Propagation Office Publisher, Rabwah, Pakistan.
- Nouri, H., 1987. Human and World. Tehran Press Institute, Tehran, Iran.
- Valaei, I., 2009. Islam and the Environment. Qom Rumi Publishing, Qom, Iran.