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Jurisprudence and legal review of environmental protection

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Abstract

Regarding the importance of environment in material and spiritual lives of nations, preservation of the environment and preventing the acts taking place against the environment are of great importance for each person, community and country. Thus, in order to explain and clarify this important right, the present research the philosophy of s and its effects. By philosophy of laws it is meant the general theory governing the law and sometimes it is referred to as generalities of the law whose subject is discussing the logical relation among the existing rules. But, two important things are involved in law philosophy: the basis of the law and its purpose. Regarding the basis of the law, there are some disagreements among the learned men of this skill and also there are some disagreements concerning the question " Is originality individual, community and government, or combination of the two, and this disagreement lead to different results in practice one of which is discussion about philosophy of s and depending on its nature (philosophy of s, materialistic or divine point of view) it leads to double-edged results. Thus, discussion about philosophy of s is a basic discussion that requires to be studied before the long discussions about environment laws. In short, it can be said: According to theologians, philosophy of defending the environment is having knowledge of obligation in preservation of (common heritage of human being) the environment and this philosophy, according to materialists, is profit seeking (as much as possible) and if they talk about environment, it's because they want to enjoy more profits in long-term. But, alas! Modern materialist individual who , for the purpose of gaining the land, turns his face away from the heaven, should know that he will lose the land just because of lacking the heaven and it is clear that difference in philosophic point of view, will also have different consequences. Steps related with environment and dealing with environment pollution and destruction of environment, like most of social issues, is far from legal issues and leads to different legal aspects.

Keywords: Juris plosophy, law, environment philosophy, environment laws.

طبقه‌بندی **JEL**: فقه - حقوق - جزا و جرم شناسی - حقوق بین الملل - حقوق خصوصی

Questions for Discussion:

In this regard, we are encountered with many questions. The most important question which makes the ground ready for other questions and their answers is a question about philosophy of and the reason for necessity of preserving the natural gifts.

1. Why should environmental law be defended? Is the philosophy of defending this law the same according to Divine schools and Materialistic ones? And other important questions that are related to this question and is not of philosophic nature.
2. May the environmental law be regarded as the common heritage of human being?
3. Is the environmental law the right of individual or that of community?
4. In private law, no one can be considered as the inheritor of the patrimony, the patrimony becomes his/her property and he/she has the right to interfere it as an owner. Concerning the environmental law, and taking this point into account that environmental elements are heritages for all human beings, has the owner the right of possession in own in any way he/she wants?
5. In discussing the environmental law, is this law limited to geographical borders of the countries or the support isn't limited to a special geographical border?
6. In this category, should one talk only about the rights of present generations or, taking the advantage of further view, rights of future generations should also be considered?
7. In relation to "invitation" of religions from their own followers not to be dependent on temporal world, is it encouraging to destruction of natural gifts or the reality is its opposite?
8. What is the duty of local governments and international organizations in supporting the environmental law? And, what is the mission of theocracy in this regard? Aren't enlightening the minds of people, cultural preparation, and discussing the philosophy of environmental law among the duties of theocracy?

Introduction

One of the very serious challenges in the third millennium is considering the environment and studying the difficulties arising from its destruction. Industrial revolution in Europe and new technology in human life have caused consequences such as pollution of sea and river waters, destruction of forests and pastures – that has been led to desertification -, emergence of gap in the ozone layer specially in large cities that have been due to irregular consumption of fuel and ... that have caused irretrievable damages to universe so that at the level of human being situation, as is present, there isn't any issue, for survival of the whole system of nature – such as human being, to be more important and more urgent than the issue of environment and this results in movements and measures that have taken place during the past years and an overview about them is as follows.

In 1954, the first convention related to environment bearing the title "International Convention on Preventing the Sea Pollution Due to Petroleum" was held in London and in 1982 the most important conference in relation to environment and development was held by United Nation at the presence of 181 countries in Rio de Janeiro, Argentine. However, in 1998, regulations of international courts of felony (ICC) in Italy were signed and began to investigate the crimes against genocide, humanity, and war crimes and didn't pay any attention to the offenses that take place every day against the environment.

In Iran, approval of the first dates back to 1956 that has been published bearing the title "The Hunting Law" and there after, several laws in this regard have been enacted that are indicatives of the importance of paying attention to environmental discussion, so that, Article 50 of Iran's Constitution Law has been dedicated to this important issue and has regarded the preservation of the environment as a public duty and forbidden other activities that inevitably involve pollution of the environment or cause irreparable damage to it. However, this amount of regard to the issue doesn't restrain local and international continuous invasions to natural gifts belonging to all ages and human being generations, and in this regard more serious and worthy measures are needed. The most basic action here is discussing and studying the in depth, caring the main questions and finding appropriate answers to it that are background for appropriate decisions.

other sciences and provides general theories governing their outsiders. For instance, philosophy of sciences, philosophy of history, philosophy of arts and philosophy of law are samples of philosophic system of human being knowledge. (Katozian, 1337, p.117).

This paper discusses the recent meaning of philosophy, that is, general governing theory and the reason for preservation of the environment.

B. The Laws:

Although several meanings have been mentioned for the word "law", in the present paper by the word "law" we mean the set of obligatory rules that should /shouldn't be done by members of a community and they have to obey those rules. (Danesh Pajouh, Khosroshahi, 1381, 16).

Thus, by philosophy of the law it is meant a field of knowledge of law that answers the questions such as coordination of a law.

C. Environment:

Environment is used in two concepts. The first is the one that is caused by nature's science in which human being is dealt with ecological insight, i.e. a set of natural events and balance between rival forces in nature that limits the life of a biological group. The second concept is the one that is caused by architectural and urban development sciences and it is in relation with an interaction present between the structure (in the general sense) and the environment in which it is created (natural environment). Environment talks about the three elements of nature, natural resources, and cities and landscapes.

1. Nature: by nature it is meant different kinds of animals and biological balance between them.

2. Natural Resources: by natural resources it is meant climate and mines.

3. Cities and Landscapes: Sometimes, environment is used in relation to the cities and landscapes.

(Collection of Essays on Koran and New Age Gathering, p. 222. The author's paper).

D. Philosophy of Environment:

And tens of other questions that, upon being encountered, cause every scientist to encounter the environmental difficulty. It is clear that in a single paper, it is impossible to answer all of the above mentioned questions. Now, after bringing up the questions and introducing the challenges related to the subject in brief, and taking the "necessity of responding the category of philosophy of environmental law into account, we begin to answer the first question in brief. In other words, we will bring up two conflicting point of view about the causes for supporting the environmental law and effects due to these two points of view. Finally, we will discuss the standpoint of environmental law from philosophic view point of Islam.

A. Description of Concepts:

A. Philosophy: Originally, "philosophy" is a Greek word and it is a coined infinitive of Arabic word "فيلوسوفيا". "فيلوسوفيا" consists of the two words "فيلو" + "سوفيا". "فيلو" means "loving" and "سوفيا" means "wisdom". Thus "فيلوسوفيا" means loving wisdom and the word philosophy which is an Arabic coined infinitive means being engaged in philosophy. (People and Nahl Shahrestani, Vol.II, and Dr. Human, History of Philosophy, Vol.I, p 20). Philosophy means "love to insight". It comes from thinking on the affairs and also it is an intellectual attempt to reach the reality and understand the events (Larose Dictionary).

A similar definition has been made by Khajenasir-al-din Toosi in definition of theosophy, that is: "Theosophy is having knowledge of things as they exist and to do things as much as possible, for the purpose of human being soul to be reached the perfection that he/she deserves." (Khajenasir-al-din Toosi, 1367); philosophy, according to Muslims, is the name of a special skill, and in itself it is not a special knowledge. They named all intellectual knowledge vs. narrative knowledge, such as "word knowledge", "interpretation" ... under the general title of philosophy and that was why they told: "Anyone who is philosopher, will become a scientific universal, similar to subjective world."

Historically, philosophy includes all knowledge, however, nowadays at the presence of different branches for science each single branch has independently brought a special subject under its own domain. Philosophy has been limited to the issues that studying them is not under the jurisdiction of any of those branches. However, philosophy is still protecting

ago, followers of this very materialistic thought began to think about determining a border to take the advantage of natural gifts, and these attempts are also of materialistic nature. And if, sometimes some steps are taken in this regard, they are not for divine nature toward the environment but their motivations are profiteering as much as possible. They want to continue plundering the boundless wealth gifted by God in long term and not to stop the wheels of their plants of moving and haste, and that is not the case that they show great concern for future generations and their share of the nature.

B. Divine Point of View (Religious):

The word “environment” is sometimes used together with the word “heritage”, and the purpose is to enter a spiritual, ethic and legal element into preservation of the environment. And as a common human being-heritage and like a good father for a family we want to insure management and preservation of the environment. The word heritage used together with the word environment associates that very hereditary concept which we have taken its possession from our previous generations. It is our duty to deliver it to future generations in just the same manner, that is, without any damage causing right of possession because providing a healthy environment is a global issue.(environmental research paper, P.82)

According this point of view, monotheist individual doesn't look at the universe as a materialistic, mindless, aimless and vain system, rather, he considers it as an alive, self-conscious and determined set and assumes the nature as a coordinated set that has been formed through accurate and scientific system and follows a high aim. According to such an approach, subjects such as perfection, moderation, and preventing the wasting will be relevant to be put forward. So, the first step in environmental improvement is improvement of philosophy and its theoretical school.

The aim of religious community is human's prosperity in its real sense, that is, what the common sense considers it as prosperity. In other words, its purpose is modifying the whole dimensions of human being and observing the justice in all cases. This will satisfy both his materialistic and spiritual needs, and one of them is

Regarding the descriptions offered in substances, definition of environmental law will be as follows: a general look governing the reasons for obligatory rules that should /shouldn't be done by natural and juridical members of society regarding the observance of substances related to the continuous set of outside factors that life and development of living human beings, animals and plants are influenced by them.

Now that the required concepts for philosophy of environmental law were described, it comes to discuss the philosophy of environmental law from the two different points of view.

PART II: Double Edged Views in Philosophy of the Laws Governing the Environment:

These two points of view, that are sometimes interpreted bearing the titles (materialistic and spiritual) or (materialistic and divine) or “laical and religious” in discussing the environmental law, deal with the philosophy of environmental law – each one according to its own ability.

A. Materialistic Point of View (Laical)¹:

After the Middle Ages, availability of some scientific and experimental tools for selfish and egotist human being caused him to disobey slavery and to consider himself the absolute owner of universe such the Earth. Thus, he looks at the nature as a thing that he is able and has the right to have control over it, in any way he likes to, and consequently, satisfy his needs, ambitions, and whims. And since, the documents used for evaluation of his values are of materialistic and commercial nature, he becomes indifferent toward most things that are fruitful for both individual and all human beings. That is why being lone ranger has thrown him away from intellectuality and being in interrelation with the One God. Worshiping the science and egotism is as much discreditable as idolism. Nowadays, when human being considers the natures range as a gloomy thing and as the absolute property of his own, then, it is clear that he will permit himself to take possession of it as he likes. He is unaware of the fact that limitation of natural resources and gifts, and its belonging to all generations of human being, both at the present time and in future, don't permit him to behave like that. Accordingly, since long time

¹. Unesco.org

Generation". (Iran's Environment Organization, 1999, P. 265.).

Some of the shocking statistics that result from the effects of this materialistic point of view and lead to critical consequences are as follows:

1. 98% of carbon dioxide and other harmful gases are caused by industrialized countries and 2% are caused by non-industrialized ones.
2. Due to technical activities, the amount of carbon dioxide has been increased by 25%.
3. Industrialized plants produce 99% of radio active waste materials of the world.
4. seventeen million hectares of forests are destroyed every year and this is two times greater than the area of Austria.
5. Production of greenhouse gases that enter the atmosphere by poor people of the world, is 110 tons per year, while the amount produced by United States is 11 tons. (Universal Center for Islamic Sciences, 2005.)

B. Effects Due to Divine Point of View:

The quote "Human being lives as he thinks" is not a false quote. Religious thought invites its followers to deal with natural gifts in an appropriate way and to use them honestly and offers them the following principles:

1. To adjust the human desires in using the environment.
2. To grant the moral perfection.

Since religion creates close connection between materialistic and spiritual life, and its goal is bringing the man to moral perfection, it teaches to human beings that their use of the environment is merely a means for achieving the great goal, and that is not the case that to make use of the nature is human being's goal in his life.

3. Forming the wakeful consciousness that guarantees the enforcement of environmental laws.

Faithful human being is aware of the firm reality of the world and his own role in it as well as the relationship

being in peace due to the nature. But, the aim of non-religious community is gaining profit and capital and following the animal desires.

According the religious point of view, the purpose of life is not to be more comfortable, rather it is reaching transcendence which is considered as appropriate use of the nature as a means for achieving the goal, while in materialistic life the aim is only better use of natural gifts and not other things. Accordingly, changing the approach in attitude to nature is among the primary and necessary steps to be taken. Necessity of changing the world-view in attitude to nature has also been shown in researches done by scientists. In 1998, research done by more than one thousand scientists from different countries of the world for Harvard University, showed that approaching the religious teachings is the only final technique for preservation of the environment of the world.(Iran Environment Organization).

PART III: Effects Due to These Two Philosophic Point of Views:

A. Effects Due to Material Point of View:

According to this point of view, lifeless nature has been taken in captive by desires and drives of profiteer human being and he will deal with it as he likes. Here we are going to remind some of these effects.

Together with beginning of 21st century and advancement in civilization, technology goes forth as a lone-rider factor and in an unbridled manner. Technological wastes continuously pollute the environment and destroy forests, and acid rains, sea pollutions, perforation of ozone layer, dissolving the polar ices, greenhouse gases, incalcescence of the climate of the earth, and uncontrolled extraction of minerals originate from this very human being's selfish point of view. Governments, in are thinking about profit and taxes within the rings of commercial companies and technical plants but they have nothing to do with the fact that together with conserved foods how much chemical materials they feed them.

Every year 6 million hectares of cultivable land are destroyed. Swamps are being dried and corals are demolished. Ground and underground waters in oceans are polluted due to chemical and atomic materials and all of these result from profiteer point of view. Such attitudes, have caused the United Nations to offer a council named "Council of Future

their courses, and he has made subservient to you the night and the day (Chap. 14 V.33)”

2. Koran Assumes the Environment A General Right for People: “and the earth, he has set it for living creatures; (Chap.55, V.10)”All of the world’s wealth is the real property of the One God and He has allowed people to devote, it for themselves according to regulations. (Tabatabaee, Tafsir-al-mizan,), so, all people have the right to benefit from it and consequently, taking the advantage of this gift should be in such a manner that the possibility of using and enjoying it to be reserved for the present and future generations.

3. The Importance of Plants in Islam: The holy prophet has quoted: If resurrection is established and there is a seedling in one’s hand, he/she should plant it.

4. The Holy Koran has considered the environment as a trust and divine’s sign: About 750 verses have been mentioned in Koran concerning theism through the nature: “there are signs in it for a people who would hear (Chap. 10, V.67)”.

5. Koran and Preservation of the Environment: “he brought you into being from the earth, and made you dwell in it... (Chap.11, V.61)”. “ and those who do corruption in the land, they shall be losers (Chap. 2, V.27)”.

6. Koran introduces the earth as the means of nourishment : “he it is who sends down water from the cloud for you; it gives drink, and by it (grow) the trees upon which you pasture (Chap.16, V.10)”

7. Koran and Air Pollution: “cast not yourselves by your own hands into destruction. (Chap.2, V.195)”. Polluting the air of environment is considered corruption on the earth.

8. Koran and Water Pollution: “and we have made of water everything living, will they not then believe? (Chap.30, V.21). Also the holy prophet (S) has quoted: “Avoid polluting the enemies’ water (Kolaini, Foroo’e Kafi V.P.65) So, considering that creatures’ lives depend on water, it is our duty to preserve water, because nowadays, due to pollution in sea waters millions of tons fish are lost every year, and the environment is involved damages.

between the universe and its evolutionary movement. He believes in ant does the duties and messages resulted from this relation. One who believes in God surrenders to all realities and he acts in accordance with those realities.

Making use of all God blessings is pledged in environmental security, and creating environmental security is one of the religious obligations, i.e., it is a necessity for any Muslim to take into account this very important task. So, regarding the continuous relation between environment and human beings’ health, and paying attention to the ways of reducing pollution and preserving the environment according to method developments and gathering and reusing those methods is an essential task. And, in order to maintain our health as well as other people’s who live at the present time and will live in future, and preservation of the environment, it is necessary for us to be steady under the protection of unity and fulfillment of our promises.

PART IV: Position of Environment Laws from Philosophic Point of View of Islam:

Taking the importance and standpoint of environment in human being’s life into account, and in order to be able to answer the question “Is it possible to find the regulations for problems present in the present century, such as acid rains, destroying the forests, and emergence of gap in the ozone layer, and how?”, we are going to study the position of Islam toward the environment. Therefore according to comprehensiveness of Islam we may search for regulations related to the environmental problems. According to a general classification, regulations in Islam are of two types:

A. Special and Explicit Commandments on Environment:

These are commandments that have explicitly been expressed about the environment. In this regard, there are several narrations and traditions quoted by innocent Imams (A) and the Holy Prophet (S) and several verses in the Holy Koran

1. Environment and Nature Conquered by Human Being: God has created everything in the nature for human being and has decided the natural gifts to be at disposal of human being. “and he has made subservient to you the sun and the moon pursuing

residents of the earth, but it will be a means for achieving the optimal. Like other social grounds in which man-oriented teachings haven't been able to provide prosperity for people, in case of preservation of the environment law, religious teachings have the ability to restrain the hasty troops of people in science-oriented centuries, because, due to special valuation for individual and community health, Islam always encourages people to the knowledge that is a good-life provider for human beings.

سپاسگزاری

از معاونت محترم پژوهشی به خاطر حمایت معنوی در اجرای پژوهش حاضر سپاسگزاری می‌شود.
از آقای دکتر عبدالله علیزاده به خاطر بازبینی متن مقاله و ارائه نظرهای ساختاری تشکر و قدردانی می‌شود.
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9. Koran and Soil Pollution: "from it we created you and into it we shall send you back and from it will we raise you a second time (Chap.55, V. 20). Also, Imam Ali quotes: "Peoples are being asked even about lands and livestock. (Koleini-Osool-Kafi, V.2, P.331).

10. Koran and Sound Pollution: "and the rumbling overtook those who were unjust, so they became motionless bodies in their abodes, (Chap.11, V.67)" and because of disadvantages of the loud noise, it has been forbidden.

B. General Commandments on Environment:

The purpose of preservation of the environment is preventing the loss and damage to natural elements. Any action against preservation of the environment should be pursued and prosecuted. In Islam there are some general commandments according to them gaining the above said aim will be possible. The reason is that these commandments can be adjusted in accordance with the needs of the time and, basically, the reason for their being is solving the problems that come to existence as the time passes – such as the principle of "لا ضرر", [meaning no harm]. In fact, this is the governing spirit on all Islamic rules.

Conclusion:

Regarding the philosophy of environment and by virtue of verses of the Holy Koran, it is concluded that human being should always and in every field resort to Koran because it is a facilitator, both from an opinionative and economic, social, political, cultural, scientific, ... viewpoints. In fact, Koran is a great charter and its greatness is to the amount that the more we close it, the more we see, and the more we realize the depth of the problems the more we understand the burning sensation of the main reality of the problems with all our being. No one enjoys the same amount in this valley because it depends on nature, believing, and strengthening the religious beliefs. Thus, faithful being should follow three determined programs: piety in gaining, politeness in using, and the aim consuming.

Therefore, it is attitudes toward the environment and its law that determines the type of human beings operations. Accordingly, improving the worldview and thought is prior to any other improvement in the earthy world. Having an accurate look at religion causes right-oriented spirit to be changed into obligation-oriented spirit. In this case, using natural manifestations will not either be the aim for the

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Abstract

The main purpose of life is based on perfection. God Almighty has provided the best tools for guiding human beings in the path of happiness and merit in the service of human beings. In the meantime, jurisprudence explores all the cases in which human beings need to know the divine rule and discovers the laws related to it. This research is an inferential analytical method based on evidence; the Holy Quran and narrations, and the rules of harmlessness and tasbib, lahrāj. achieved this result that happiness is one of the natural needs of human beings and can be taught and has different levels and is an important factor for moving sincerely in the path of worship and creating motivation and ability to do Sharia duty and healthy communication in the family. The purpose of creation is achieved by reaching the highest level of happiness, which is possible by paying attention to spiritual values, basic needs, and having a purposeful life. Therefore, Islamic jurisprudence by presenting principles, framework, and laws tried to draw man's attention to the fact that happiness is not limited to material happiness and man should not always remain in material happiness and immaturity, rather, he must reach for the higher joys, science, discovery of unknowns, invention, etc. Hence, citing the four arguments of the book, tradition, consensus, and reason, have identified praiseworthy happiness and encouraged human society to be truly happy and confirmed the impact of happiness on the life process of individuals and the intellectual and practical manifestations and dynamism of the family and the progress of society.

Keywords: Jurisprudence, freshness, human society, vitality.

JEL Classification: Jurisprudence - Law - Criminal and Criminology - International Law - Private Law

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