Iran’s Criminal Policy for Preservation of Marine Environment

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Abstract
The environment in its broad meaning has such a broad range that in addition to nature elements and their balance includes quality of human life as well. Aquatics are among the most important organisms present in life chain that have a superior place and their prominent importance of them is related to nutrition, health and economy of human societies. Primary imagination of human from Renewable and valued resources of sea is that they are endless and inexhaustible. However, today with a better recognition of humans from aquatics resources, the myth of endlessness of aquatic resources has changes into the reality of the end of resources. Therefore, fish and its products have a great share in providing food security for humans. A security which has been defined as the access of all the people in all the time to sufficient and healthy food for having a good and active life. Food value and importance of fish in humans heath and prevention of diseases is such that eliminating it from humans’ diet is impossible. Irresponsible overfishing from marine resources have endangered the life of so many animal specimens. For controlling this danger responsible organizations and entities have tried to raise complementary measures at national, regional and international levels in terms of domestics laws, regional contracts and international conventions. Iran’s criminal policy in Legislative area is influences by the legislation and enactment of laws that according to them a number of actions such as fishing rare specimens and endangered specimens, fishing without permit, industrial fishing in coastal areas, fishing in prohibited areas or seasons, fishing with prohibited equipment’s and tools, transportation, storage, processing and sale of aquatics are considered as crime. The fundamental strategy in this policy is to formulate and organize initiatives that can prevent the imposition of serious damages on marine environment.

Keywords: aquatic resources, fishing, retribution, fisheries.

Introduction
The topic of the environment protection in favor of human interests and elimination of destructive effects of industrial activities have turned in to a serious issue in the contemporary world and is one of the common characteristics of domestic policies in different countries. Today, human is at the risk of self-destruction by the very tools that he had made for his development and salvation. For fighting with the threat human requires a decisive action through taking appropriate measures. This goal will not be realized, unless, through the required and necessary cooperation and coordination both at national level between the responsible organizations and at international level between different governments. Law as the most important social and cultural tool for regulating social relations play an important role here, because creates order in environmental issues in terms of binding rules and regulations. Considering the broad range of the environment topics and issue, it can be studied from different legal dimensions. Here, criminal law, considering to the special characteristics that it has which is it binding aspect and its Enforcement, has a higher efficiency.

One of the goals of criminal law is to inspect the outcome which is resulted from this relationship. Whether criminal rules and regulations have management to be effective in protecting the environment?
Protecting the environment will be fully realized when all violations will be dealt with seriously. For this purpose, first the environment should be regulated and then general lines of a criminal law should be provided. It is clear that law and especially criminal law is not only the only tools which guarantee success in this regard. Considering its secondary role, criminal law necessary is dependent on Legal regulation of the environment (formation and support) by other branches of law. Without any doubt the necessity of regulation of a criminal law, even if we accept it is one of the rather independent branches of law, is dependent on one or another fundamental solution.

Without any doubt, the necessity of Thematic legislative regulation in a way gains the entity of the caused relationships. For it being efficient, based on Legal principle of crime and punishment (nullum crimen sine lage) criminal law should be sufficiently compatible with the realities of its times so that it can play its Preventive role.

In fact, the environment is a collection which contains a number of branches of law (private law, public law, forest, aquatics and ...) and hence, the regulating protection issue should be allocated to the related branches of law.

the Environment in its general sense is so much broad that in addition to nature elements and its balance includes quality of human life as well, human with his power and talent of conquering nature and with his power of creativity with combining nature elements with the element of his life quality in his living place, workplace and recreation place, can organize an environment for himself that in addition of using nature can create cultural, historical and spiritual dimensions that form the hidden dimension of the environment.

Protecting the aquatics population against dangers that threaten their reproduction are among the primary goals of protecting their life in national and Transnational levels. At present, aquatics provide 20% of the animal protein human needs. Aquatics’ protein is of a high quality and has the necessary amino acids for Growth and repair of tissues and finally for critical functions of human.

Damaging the environment, specially damaging marines resources can take place in different forms, such as (water, air) pollution and (rivers, animals and ...) destruction , and hence, environmental crimes can be divided in a number of categories such as irresponsible and uncontrolled fishing from Marine reserves which has endangered so many animal specimens. For controlling this danger responsible organizations and entities have tried to raise complementary measures at national, regional and international levels in terms of domestics laws, regional contracts and international conventions. In this study we will discuss the importance of aquatics and will also study judicial procedure Iran’s criminal law in environmental protection as much as possible.

1- Importance of aquatic resources in food chain

Aquatics are among the most important organisms in life chain that have a superior place. Their prominent importance is related to nutrition, health and economy of human societies. Supply of the protein that human body needs it, from renewable marine resources, has always received great attention.

Aquatics’ meat is rich with minerals and also with the necessary vitamins for providing human needs and hence, based on multiple scientific studies in this regard, it is established that those who are have a diet of fish and other aquatics have a better health and Higher IQ. In addition, the fat existing in aquatics has a great quantity and the present fatty acids in it are effective in providing health and preventing arteries blockage. Therefore, those societies who are using more of aquatics in their diets will suffer less from Cardiovascular Disease.

Also, the activities related to fishing and Aquaculture create considerable employment for society and activities in this regard today are so much extensive that have also occupied a social place in global trade as well and for some counties the foreign currency income results from it has become critical. (Banagar/2008/p.27)

Clearly it is seen that activity in aquatics area is related both to food security stability and food health.

In addition to the fact, that in economic area, employment and obtaining foreign currency income also are of great importance and place.
2. Fishing in today’s world

Total production of the world in 1992 remained equal to the production level of 1991. From 1989 to the end of 1992, not only no increase was obtained in fishing from the seas, but it was also reduced a little bit. This is while, the diagram of investment volume in this sector shows a very high level.

Sea fishing has been reducing for the third year in a row and in 1992 it reached 81.5 million tons. This reduction is around 0.4% comparing to the previous year.

Aquaculture production in freshwater is still increasing and in 1992 has increased about 2.1% comparing to 1991 and this is while that aquaculture in these waters in 1991 has increased 3.8% comparing to 1990 and in 1990 has increased 5.7% comparing to 1989.

Among the 5 major producing countries of marine products only China and Chile have kept their production increase in 1992. China as the main producer of marine products in 1992 has had about 11.2% increase in its production and in total had had 14.6 million tons of gross production. Chile country also with 56.1% growth rate comparing to the previous years in 1992 has increased its production for 4.6 million tons. Aquaculture in the newly independent states of the former Soviet has reduced about 16.8% and in total has reduced to 7.7 million tons.

3. Global situation of fishing management

Although Food and Agriculture Organization of the United Nations (FAO) from previous years has raised the importance of the issue of Public Participation in fishing management and also in chapter 17 of the agenda 21 of the United Nations Conference on Environment and Development (CHAPTER 17 UNCED’S AGENDA 21) has clearly talked about public participation specially for preserving natural resources and the environment, however, still coastal communities and specially Representatives of fishermen haven’t found their special place in policy makings of coastal management and development. The issue of public participation above is one of the issues and topics which has been raised in most of the international meetings and most of the countries are supporting it. (Nasrzdeh Shirazi/2001/p.24)

Although, participating public (related parties) in fishing management is a policy that should be implemented stage-wise, however, it seems that expediting the commencement of this work by countries is necessary, so that through it sustainable improved exploitation and preservation of marine resources are provided.

It is necessary to consider that since at the time of implementing public participation policy or before it, at the time of developing such as a policy, we need to have sufficient recognition and knowledge of social situation and condition of societies. The important point here is that, among coastal societies and specially fishermen, the existing managerial traditions have been transferred from one generation to another and these traditions are well-established in the traditional society of fishermen. Gaining knowledge and understanding these traditions and analyzing them are so much important and can be a solution to developing new policies. In some cases it is sufficient to only codify those very traditional methods of management into law and to enhance them with the support of government and judicial authorities. These regulations can be implemented easily, since they are rooted in people’s traditions and will have public acceptability as well and as the result of this acceptability will have the required customary legitimacy.

3. Criminal policies of Iran in line with environmental protection

Regarding environmental protection, multiple international regulations also have been enacted that Islamic Republic of Iran has also joined in so many of them. In this regard, in June of 1992, The United Nations witnessed a grand meeting in the City of Rio de Janeiro (in Brazil) known as "Earth Summit" in which Delegations from around 180 countries including Islamic Republic of Iran were present.

That fact that environmental protection has been mentioned in Iranian Constitution and also the membership of this country in multiple conventions of environmental protection and air pollution prevention, indicate to alignment of Iran with global activities in this regard and also to the sufficient attention of this country toward the issue of environmental protection. The number of the existing rules and regulations is to such an extent that it appears that from now on our main
attention should be focused on improving the quality of these rules and regulations and creating the Principles of Environmental Law. However, as it was mentioned earlier also, environmental protection is not realized only with enacting direct rules and regulations for preventing pollutions and eliminating destructive environmental factors, but since the issue of environment is almost related to all the existing issues in a county, hence, it is necessary that in the development of all the policies, rules and regulations, the environmental aspect would be paid attention to. In this regards, it appears that it is necessary to develop more general regulation regarding the protection of environment; regulations that prevent the endangering of environment in any possible form.

World Bank studies show that the main root of environmental damages and destruction of resources are Wrong economic policies.

The first Regulation of fishing in the Caspian Sea was developed and implemented in 1952. Preservation and increasing fish specimens were among the main goals of the formation of Iranian Fisheries Company. However, nothing has been said regarding Authorized and prohibited fishing seasons and authorized fishing areas in this regulation. In line with the protection of aquatics resources respectively in 1956 and 1960 "The law of establishing north’s fisheries company" and the single article of "the law related to Statute of fisheries company and Cartilaginous fish" are enacted. In note 5 of the single article of 1960, fishing cartilaginous fish (Estrogen) and Caviar are turned into a monopoly for the government. Selling and exporting them without the permission of the government is considered as smuggle and violators were punished as per the act of Smuggling of goods. With enacting this law only fish with Caviar are included in criminal law support.

The support of criminal law from aquatics in Caspian Sea and other catchment areas of the north is followed by the legislation of "Punishment for illegal fishing in the Caspian Sea" in 1967. From the enactment date of this law, fishing any kind of aquatic from Caspian sea, Swamps and estuaries is become subjected to obtaining a permit. Those who were fishing without permit, or those who were hiding fished aquatics or were presenting them for sale, in addition to confiscating their property (fished aquatics) were being fined equal to two times of the discovered smuggled products or convicted to 1 to 6 months of imprisonment or both.

One of the fundamental principles regarding criminal policy is the prediction of consistent set of rules for achieving its goals. Policy makings regarding criminal issues guarantee informed and appropriate selection of Criminalization and objective punishments. Usually in written legal systems, these crimes are manifested in General Penal Codes and other items based on the issue and topic are collected and gathered in Set of technical and specialized rules.

The basis of the above mentioned division is that general crimes should be criminalized in general criminal law.

Beside general criminal law, there are some scattered specialized and technical laws that have been developed for the purpose of organizing specialized and technical matters. The environment also is one of these specialized and technical topics that requires the development of a consisted and unique set of regulations. This approaches practically has numerous advantages, because due to this action, all legal materials will become more consistent and ordered.

Based on Iran’s fishery organizations in 2008, the number of active authorized fishermen in north and south beaches of Iran are around 142000 who are active in fishing with 12006 ships (Iran's fishery organizations/2007). The above mentioned factors and necessities have caused the industry of fishing and aquaculture to find a Significant boom in the world and that has caused the global production of aquatics to increase from 35 million tons to 100 million tons during the past 30 years (from 1960s to 1990s).

In out country also after Islamic Revolution considerable activities were performed in Field of fisheries and the development of its industry and facilities and following the initiatives taken by the government, considerable investment was also made from the part of private sector for development of exploitation from natural waters as well as aquaculture. In a way that the production rate was increased from 50000 tons in the beginning of revolution to about 350000 tons. What is so much important today is the protection and development of exploitation from aquatics in our country. Fishing activities have vital characteristics as well as special sensitivity in
our age in which the world is at the verge of food shortage and it is necessary that a proper action will be taken with regards to this crucial problem.

Fishing from natural water (coastal waters and domestic water sources) should be conduct as per certain rules and regulations, because aquatics in these waters are the renewable resources and any kind of carelessness in the necessary regulation and order for exploiting them can have its own certain consequences.

Constitution of the Islamic Republic of Iran has clearly named environment and has placed the duty and responsibility of preserving it on the shoulders of the government. Protection and improvement law of environment in line with the 50th act of constitution law has decided that any action which causes pollution in the environment is prohibited. From the perspective of Islam also, if a person or a society bear a loss as the result of the action of another person, the person who have borne the loose can ask for compensation through legitimate ways. Also, upon polluting the environment, those whose life surrounding has become polluted can purse punishment for those who have caused this pollution, because Persecution and oppression according to the four evidences is forbidden and Obscene. (Gorji/1984/p.111)

However, according to violating environmental regulations and creating pollution and destructing and ruining the environment is various cases is a criminal acts and the person who has committed them will be persecuted and punished as per the related rules and law.

Iranian Department of Environment is a member of International Union for Conservation of Nature and Natural Resources and has an effective relationship with it. Also, another number of governmental and non-governmental international organizations have a close relationship with Iran's Department of Environment and aid this organization in various aspects of its activities.

For preserving seas, passage of Foreign vessels from Iran's water in case of creating any kind of pollution to marine environment is not without harm and will be subjected to criminal and civil regulations. (www.isna.ir)

Also, thematic regulations in which the regulations related to smuggle of monopoly goods have been mentioned (Cartilaginous fish and caviar) which are currently valid are: note 5 of the Single Article related to Fisheries Statutes and fishing Cartilaginous fish which has been approved on 1339/2/11, article 2 of the Act to punish illegal fishing in the Caspian Sea and Persian Gulf approved on 1358/5/4, that the executive regulations related to these laws are a number of Vote of the General Board of the Supreme Court precedents which are binding as law and for courts in similar cases.

Conclusion

The responsibility of law in every society is to regulate the relations between people through development of rules and regulations. Law will be efficient when it is followed by everyone and in case of violence will have an effective Enforcement. This issue specially is more clearly raised in criminal law, because the main mission of it is to enforce rules and regulations in terms of punishment. However, criminal law of the environment in Iran doesn't have such a Deterrent power to prevent the commitment of crime.

Existence of regulations with the condition of result and outcome - enforcement of some of the environmental regulations in Iran are subjected to obtaining a certain outcome, for example, paragraph E 0 article 12 of fishing and hunting law that according to that polluting the water of rivers and lakes is not a crime and only in case that such an action would destroy aquatics it is considered as a crime.

In order for environmental regulations to have a good enforcement power, they should not be subjected to a certain outcome, especially considering the fact that often in environmental issues outcome doesn't reveal itself soon and requires a long period of time to show itself. For example, a factory which is polluting the water of a river might not cause the death of aquatics immediately, but can cause this outcomes on the long-term. In this case whether the activities of this factory shouldn't be stopped. In addition to that fact that minor polluting of rivers although might not cause the death of aquatics but can cause different diseases for humans through the consumption of fish and other aquatics.
The other thing is that, in Iran’s criminal law the principle of reliability has been accepted on the basis of error and fault, in other words, criminal intention should be realized first in order to punish the offender. It seems that considering the fact that environmental issues are dealing with the health of creatures including humans, therefore, legislation orientation should be directed in a way that any kind of damage to the environment, even if without any intention, should be prosecuted and the offender should be punished. Of course, it should be mentioned also that this orientation is the dominant orientation in international law specially with regards to the environment that absolute reliability principle has been accepted in it.

Therefore, environmental regulations should be legislated in this direction. In this case, Milder punishment can be considered for those who have unintentionally committed a crime comparing to those who have committed a crime intentionally and with full knowledge.

Therefore, criminal environmental law will be followed practically when in addition to having good regulations in this regard, at the stage of implementation also responsible entities and authorities seriously will be informed about their mission and duty and seriously would supervise the correct implementation of these regulations. Unfortunately, in this regard criminal environmental law is facing with some problems, because in some cases the entities which are responsible of these laws themselves not only don’t perform sufficient supervision but also themselves violate these regulations.

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