

The Developments in Iranian Environmental Law in Light of International Law Norms and Imami Jurisprudence

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Undoubtedly, one of the most significant challenges facing all nations globally is the issue of environmental protection, which has been under relentless attack over the past half-century. In pursuit of comfort and prosperity, humanity has inflicted severe damage on the elements of nature and life, with Iran's environment being no exception. Examples include unauthorized well-digging and groundwater extraction, illegal and unlicensed hunting, the use of chemical pesticides in agriculture, littering in public spaces, and the increased use of fossil fuels in vehicles. These issues have raised concerns among experts in international law, public law, and environmental law. Efforts are underway to address these challenges by adopting new international legal norms and modern environmental protection techniques such as aerial monitoring with drones and satellites, thermal scanning, and enacting laws informed by the successful experiences of other nations. The research question addresses the impact of international law and Imami jurisprudence on the evolution of Iranian environmental law. The research method employed is descriptive-analytical. The findings demonstrate that reliance on effective frameworks of international law has contributed to standardizing environmental law criteria in Iran while leveraging the principles of Imami jurisprudence to strengthen and transform Iranian environmental law.

Keywords: *Environment, Imami Jurisprudence, International Law, Environmental Law, Iran.*

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1. Introduction

Undoubtedly, one of the most significant duties of every individual is the protection of the environment and the elements of life. Over the past two centuries, especially after the invention of the steam engine by James Watt of Scotland and the initiation of mass production, the survival of the environment has been severely threatened. As Rachel Carson, author of the renowned book *Silent Spring*, declared, for the first time in human history, every individual is exposed to

various environmental hazards and diverse chemical and plastic toxins from the moment of conception until death. This exposure jeopardizes not only human life but also the survival of other living creatures and plants. The excessive consumption of fossil fuels and the relentless pursuit of comfort will inevitably lead to devastating global environmental disasters (Carson, 2009).

Preventing harm and damage to others and the people of other nations is a fundamental customary principle of international law. This principle stipulates that no



country or individual is permitted to exploit their territory in a manner that causes harm. The arbitration decision in the Trail Smelter case, a dispute between the United States and Canada, underscored this customary rule by stating that each country, in accordance with international environmental law, is responsible for compensating damages resulting from transboundary air pollution. Countries are not permitted under international law to utilize their territories for activities that contravene international norms. Furthermore, they must avoid projects or initiatives that cause environmental harm to neighboring countries or other members of the international community. Any action resulting in serious and collective harm to the citizens of other nations is entirely prohibited and entails liability (Fahimi & Mashhadi, 2014).

Given that many countries perceive the content of international environmental protection obligations as soft law—recommendatory and non-binding—the most effective approach to global environmental protection emphasizes international responsibility, compensation for damages, and adherence to legal principles governing serious environmental protection. This approach can lead to changes in global production and consumption patterns of fossil fuels and renewable and non-renewable natural resources (Arashpour, 2013).

2. Research Background

Mostafavi (2018), in his book *Fifty-Seven Jurisprudential Rules (Legal, Penal, and Devotional)*, refers to the rules of "no harm" (La Darar) and "waste" (Etlaf), citing a narration from 'Uqba ibn Khalid by Imam Sadiq (PBUH) and further quoting the Prophet Muhammad (PBUH). Sheikh Ansari (RA) considers this narration to be mutawatir (widely transmitted) (Mousavi, 2016).

Farahi (2011), in his book *Research on Islamic Jurisprudential Rules*, identifies consensus (ijma) as another basis for the rule of waste (Farahi, 2011). Bagheri Asl (2020), in *Mandatory Rules of Contracts in Imami Jurisprudence*, reports that Imam Khomeini (RA) interpreted the Prophet Muhammad's (PBUH) statement on the rule of "no harm" as a law and governmental decree, which is undoubtedly applicable to environmental issues (Bagheri Asl, 2020). Taqizadeh Ansari (2018), in *Environmental Law in Iran*, emphasizes the necessity for legislators to establish rules addressing

soil and noise pollution, as specific laws on these issues are lacking (Taghizadeh Ansari, 2018).

Arab Ahmadi and Jokar (2016), in their article titled *Liability and Civil Responsibility for Environmental Damage from the Perspective of Jurisprudential Rules*, explore environmental issues from various angles and recommend applying the rules of liability and civil responsibility to environmental damage (Arab Ahmadi & Jokar, 2016). Bagheri Zarrin Qabayi (2013), in *Criminal Sanctions for Environmental Protection in Iranian and English Legal Systems*, examines criminal sanctions in environmental protection laws in Iran and England, advocating for raising public awareness and environmental education (Bagheri Zarrin Qabayi, 2013).

3. The Concept, Importance, and Function of Environmental Law in Iran

The environment refers to the surrounding habitat of human life, composed of various elements, including natural, artificial, and social environments (Ebadi Bashir, 2022).

Urban population growth in many countries has increased greenhouse gas and carbon emissions. While fuel quality has gradually improved, the world urgently requires green technology and binding environmental regulations to restore environmental health and sustainability (Kaltorp, 2015).

Sooner or later, courts worldwide will be compelled to adjudicate environmental pollution and destruction cases, potentially paving the way for the implementation of environmental law principles and mitigating environmental challenges (Shilton & Kies, 2010).

Environmental pollution is a consequence of industrialization and the widespread use of machinery, which has profoundly transformed human living patterns (Alagiri & Kumar, 2012, p. 4).

Since 1970, scientists have recognized the potential for a new ice age, attributing the gradual increase in Earth's temperature to ozone layer depletion and global warming, both of which could hinder sustainable development (Dey, 2012).

Given the public interest in environmental issues, particularly in recent years, it is essential to address environmental damage through criminal regulations and enforce environmental law (White, 2012).

4. The Orientation of the Constitution of the Islamic Republic of Iran Toward Environmental Protection

Article 50 of the Constitution of the Islamic Republic of Iran regards the protection of the environment as a public duty, emphasizing the rights of current and future generations. This focus highlights the principle of intergenerational equity. Constitutional principles addressing environmental protection may be categorized as either affirmative or prohibitive.

Affirmative aspects include:

- Ensuring equality among citizens and the government's obligation to guarantee access to a healthy environment, including clean air (Articles 19 and Clause 14 of Article 3).
- Realizing justice through mechanisms ensuring fair access to a healthy environment (Articles 121 and 156).
- Emphasizing the welfare of humanity as a whole (Article 154).
- Providing equitable living conditions for all citizens (Article 3).
- Upholding human dignity by establishing justice (Article 2).

Prohibitive aspects include:

- The government's effort to reduce poverty and deprivation related to access to a healthy environment (Articles 3 and 43).
- Prohibiting monopolies by restricting private ownership of forests and coastal areas (Article 3).
- Banning discrimination (Article 3).
- Addressing public wealth and natural resources under Article 45, public ownership under Article 44, and the prohibition of societal discrimination under Article 48 (Molaei, 2009).

Interestingly, over 60 constitutions worldwide refer to environmental rights and protection measures, assigning this responsibility primarily to governments and subsequently to citizens (Harisi Nejad, 2009).

Environmental protection is not limited to Article 50; implicit references can be found in Chapters 3 (Rights of the Nation) and 4 (Economy and Financial Affairs). For instance, the right to life (Article 42), the right to health (Article 43), prohibition of economic waste (Article 44), and public wealth as part of environmental resources

(Article 45) all pertain to the environment (Habibi, 2003).

Natural resources and the environment are extensively emphasized in Articles 45, 48, and 50, making these provisions obligatory and non-derogable, like other constitutional principles (Hojati & Abbasi, 2013).

The neglect of environmental protection in many countries can be attributed to conflicts of interest, insufficient environmental awareness, persistent challenges in enforcing regulations, and the lack of prioritization (Ebadi Bashir, 2022). Iran's primary strategy for environmental protection lies in leveraging political initiatives coupled with legislative and legal measures, which can pave the way for effective environmental conservation (Behrami Ahmadi, 2009). This is part of a global effort shared by all nations.

Article 50 of the Iranian Constitution serves as the cornerstone for environmental protection, stating:

"In the Islamic Republic, the protection of the environment, where present and future generations must lead a thriving social life, is considered a public duty. Therefore, economic and other activities leading to environmental pollution or irreversible destruction are prohibited" (Molaei, 2020a, 2020b).

5. Environmental Protection in Iranian Law

Under Articles 77 and 125 of the Constitution, regional and international treaties and agreements signed and ratified by the Iranian government are legally binding, as stipulated in Article 9 of the Civil Code. Constitutionally, the Iranian legal system places the Constitution at the top of its hierarchy.

Article 167 obliges judges to issue judicial rulings based on statutory laws or, in their absence, credible Islamic sources and jurisprudential fatwas. This ensures the prohibition of judicial abstention. Among relevant jurisprudential rules is the principle of "anyone who benefits must also bear the loss". Additionally, Article 40 prohibits individuals from harming others or endangering public interests for personal benefit. These provisions support judicial rulings on environmental damages and provide a foundation for preventing environmental destruction and pollution, provided a causal link between the harm and the damages is established (Lotfi & Molaei, 2010).

6. Specific Environmental Laws in Iran

One of the primary objectives of enacted environmental laws is sustainability and environmental health, accelerated through cultural groundwork. Relevant legislation focusing on public awareness includes:

- Article 150 of the Third Development Plan Act, mandating in-service training for executive bodies to enhance employee efficiency, particularly in environmental protection.
- Article 17 of the Fourth Development Plan Act, addressing governmental responsibilities regarding water resources and promoting public awareness about sustainable water consumption.
- Article 60, emphasizing general and specialized environmental education in academic institutions.
- Article 64, requiring the Department of Environment to enhance public awareness.
- Article 140, emphasizing the institutionalization of education (Molaei & Rezaei, 2011).

Tools such as preferential or negative taxes are effective in reducing pollution by incentivizing green production (Lotfi & Molaei, 2010, p. 79). Monetary penalties to partially cover pollution control costs are another protective measure (Molaei, 2020a, 2020b).

Other notable environmental laws include:

- The Nationalization of Forests Act (1962).
- The Water and Nationalization Act (1968).
- The Hunting and Fishing Act (1967).
- The Environmental Protection and Improvement Act (1974).
- The Forests and Rangelands Protection and Exploitation Act (1967).
- The Act on Marine and Border River Pollution with Petroleum Substances (1975).
- The Equitable Distribution of Water Act (1982).
- The Mines Act (1998).
- The Act on Maritime Areas of the Islamic Republic of Iran (1993).
- The Plant Protection Act (1967).
- The Act on Preservation and Expansion of Green Spaces in Cities (1980).
- The Act on Aquatic Resources Protection and Exploitation (1995).

- The Act on Establishing a Committee to Reduce Natural Disaster Impacts (1991).
- The Radiation Protection Act (1989).
- The Waste Management Act (2004).
- The Clean Air Act (2017).
- The Soil Protection Act (2017) (Ebadi Bashir, 2022).

7. Public Institutions Supporting Environmental Protection in Iran

Generally, in every country, there is only one main institution under which other entities operate in the field of environmental protection. This national institution possesses extensive authority in safeguarding nature and the environment. It has the competence to set policies in environmental matters and implements locally enacted regulations concerning nature and the environment. In some countries, the environment is protected under a dedicated ministry. In Iran, however, this important responsibility is entrusted to the Department of Environment, a governmental body. The most significant public institutions for environmental protection in Iran are:

1. The Department of Environment
2. The Supreme Council for Environmental Protection
3. The National Environmental Fund (Ebadi Bashir, 2022)

At times, environmental problems become so vast and alarming that all three branches of government—legislative, executive, and judicial—pay attention to the issue. Through legislation, executive oversight, and the arrest and prosecution of violators of public environmental rights, they engage in direct and indirect environmental protection.

Additionally, institutions such as municipalities, the Ministry of Agriculture Jihad, and the Ministry of Energy play crucial roles. By delineating the environmental competencies of each through the enactment of laws related to their functions, the issue of environmental protection can be effectively addressed (Molaei, 2020a, 2020b).

8. Techniques and Tools of International Law for the Evolution and Development of Iran's Environmental Law

Today's environmental problems are not the same as traditional issues, and past solutions are insufficient for current challenges. Relying solely on domestic environmental laws cannot resolve global and transboundary environmental problems. We require techniques and tools established and innovated by international law.

The European Union exemplifies a region that has succeeded in serious environmental protection through the interplay of law and policy. Legislators, courts, and non-governmental organizations have synergized as effective actors to engage in environmental protection (Steele, 1998a, 1998b). Currently, under international law norms, eliminating or controlling pollution is considered an ideal approach for countries facing environmental disasters, potentially leading to economic and social growth—provided that legal limitations regarding the proper use of the environment are observed (Robinson, 1998).

International law can strengthen national constitutions in environmental rule-making. It offers mechanisms for implementing environmental regulations in countries, especially since many environmental laws are recommendatory rather than binding (Jewell, 1998). Resorting to civil liability in environmental protection can be highly effective, serving as a fair solution to control, manage, and reduce environmental damages (Steele, 1998a, 1998b). Access to environmental information can increase public awareness and foster environmental consciousness among citizens (Kimber, 1998).

Furthermore, viewing the environment as the common heritage of humanity is a new mechanism established by international law, promoting the rights of future generations because the environment belongs to everyone (Somsen, 1998). In this regard, the United Nations aims to resolve environmental problems globally by providing international solutions, considering environmental protection objectives (Evans, 1998).

The primary challenge facing environmental law in many countries is the conflict of interest between environmental advocates and proponents of industrial development. By adhering to international environmental standards and utilizing international law's capabilities to encourage countries to protect the environment, these conflicts can be resolved. Many

international legal solutions in the environmental field are innovative. Notably, Imami jurisprudence is also rich in this area and can transform Iran's environmental law (Chinkin, 1998).

The Most Important Tools of International Law for the Evolution and Development of Iran's Environmental Law Are:

1. International environmental treaties
2. International institutions active in environmental matters
3. Judgments of the International Court of Justice related to the environment

9. Perspectives of Imami Jurisprudence on Environmental Protection

In principle, general arguments or theoretical foundations regarding legal responsibility in Islamic jurisprudence establish the responsibility of governments in environmental protection and the right to a healthy environment. Extensive transboundary destruction is recognized under the terms "rebellion" (*baghi*) or "aggression" (*tajavoz*), and is considered deserving of punishment (Pourhashemi & Noori, 2015).

10. The Rule of Etlaf (Destruction) and Its Role in the Evolution of Iran's Environmental Law

This rule holds a valuable place in jurisprudence and is unanimously agreed upon by scholars. It is invoked whenever the discussion of damage and responsibility arises. The main purport of this rule is: "Whoever destroys the property of another is liable." It declares that anyone who destroys or eliminates another's property is responsible for adequately compensating the incurred damages. This interpretation has rational justification, and some believe that the mere occurrence of damage negates the need for further evidence, considering the rule as textual and based on the opinion of the Infallible (*Ma'soom*).

This rule applies to the environment and justifies the incurred damages. Therefore, if someone harms the environment—whether through destruction or pollution—they must accept civil liability. The person who caused the damage must be prepared to pay compensation or restore it to its previous state (Arab Ahmadi & Jokar, 2016).

The environment is considered common property. Interestingly, the jurisprudential viewpoint is very

progressive in this regard. As soon as a person takes an action harmful and destructive to the environment, they must pay for the damages caused, known as the "polluter pays" principle. Therefore, damages inflicted on the environment can be recovered under strict liability, even if caused indirectly. Some narrations confirm this, including a narration from Abu al-Salah quoting Imam Sadiq (PBUH): "Whoever harms something on the path of Muslims is liable," meaning anyone who, through something, causes harm to the path of Muslims is liable (Fahimi & Mashhadi, 2014).

From the Islamic viewpoint, whoever destroys property or benefit commits a sin and is liable for the lost property or benefit. They must compensate for their actions by either returning it or paying its value.

With this reasoning, it can be concluded that the right to the environment falls under this rule. If a person creates pollution in the environment and nature—whose health and purity is a collective and public right—and thus causes harm and destroys public assets, they are obliged to compensate for the damages. Deliberate pollution or destruction of nature is considered sinful, reflecting the highest level of moral and legal commitment through which the environment can be protected (Mousavi, 2016).

In the rule of *etlaf* (destruction), intent is not a condition. This is one of the best foundations for attributing responsibility to those causing damage to the environment, nature, and natural resources (Helali & Sadeghian, 2016). Interestingly, many foundations of responsibility in international law align completely with the rule of *etlaf* in Islamic jurisprudence.

11. The Rule of Causation and Its Manifestation in Compensating Environmental Damages

Based on the rule of causation (*tasbib*), any person who causes damage or harm or leads to the loss of another's property must pay for the incurred damages and will be held responsible. This is because fault is the most important basis for identifying the culprit in both criminal law and civil law, as the causer disrupts the balance of daily affairs and causes harm.

According to this rule, it is the causer who provides the grounds for damages, leading to the destruction or pollution of the environment and nature, and even the extinction of animal or plant species. Examples include digging a well without covering it with wood or iron,

causing someone to fall into it while passing by; not leashing one's dog, resulting in the dog injuring someone; or lighting a fire during a picnic to prepare food but forgetting to extinguish it, allowing the wind to spread the fire and cause a forest fire. In such cases, the causer is responsible for the damages (Arab Ahmadi & Jokar, 2016).

Of course, proving the causal relationship between the causer and the incurred damage is essential for implementing this rule. Interestingly, the application of this theory in relation to environmental protection objectives is more significant than other jurisprudential arguments. It fully aligns with environmental obligations and can enhance the level of environmental care. This rule is considered a serious competitor to the rules of *etlaf* (destruction) and *la zarar* (no harm).

However, proving the causal link between the causer's action and the damage inflicted on the environment is very difficult and exhausting. For instance, Sahib al-Jawahir believes that the factor in establishing civil liability is the rule of *etlaf*, not *tasbib*, and extending it to the environment is somewhat problematic. Some also consider *tasbib* to be the conventional concept of *etlaf*.

Nevertheless, the rule of causation is a completely independent rule. Although intent is not involved in *tasbib*, the choice to perform the act and its occurrence is entirely accepted by custom and rational people. In this case, the actor or perpetrator of such an act is liable to compensate for the incurred damages because they have unjustly caused harm to the environment (Helali & Sadeghian, 2016).

Behnoudi, in describing the rule of causation and its independence, introduces the rule of fairness. Based on this, fairness is inferred from the narration "whoever opens a water channel," which establishes the general rule of causation. That is, any act performed voluntarily that results in damage to another's property or life makes the indirect or direct perpetrator liable for the incurred damages (Fahimi & Mashhadi, 2014).

12. The Rule of No Harm and the Obligation of the Polluter to Pay Compensation

This rule is general and applicable in every era. It is not permissible for anyone to destroy, damage, or pollute the environment, natural resources, or nature. Islam has not legislated even a single harmful rule and does not permit

causing harm to others. The rule of *la zarar* (no harm) is nothing but the prohibition of imposing harm on others. Article 50 of the Constitution of the Islamic Republic of Iran is also based on this rule, declaring all activities harmful to the environment as prohibited. Such actions cause social harm, infringe upon the public rights of others, and endanger collective interests.

Moreover, having a healthy environment is the right of every human being. Polluting or destroying the environment is prohibited, and according to this jurisprudential rule, no one has the right to infringe upon the environmental rights of humans (Mousavi, 2016).

The importance of this rule is so significant that it is applied from acts of worship to transactions. It is supported in the Quran, Sunnah, and reason. For instance, verses in the Quran such as Surah Al-Baqarah (verses 282, 196, 233, 221, and 173), Surah An-Nisa (verse 12), and Surah At-Talaq (verse 6) refer to the rule of *la zarar*.

Some jurists believe that the purpose of the rule of *la zarar* is to prohibit individuals from causing harm absolutely. It has been suggested that a distinction must be made between the negative "la" and the prohibitive "la." Thus, it becomes clear that in Islam, harmful rules have not been legislated and are not legitimate. This illegitimacy is absolute, both at the stage of legislation and implementation. It is not permissible for anyone to harm another for personal interests.

Therefore, from the Islamic viewpoint, polluting air and water, destroying and annihilating the environment and nature are examples of causing harm to others, which Islam has explicitly and decisively prohibited. No one has the right to harm the life cycle and the environment; otherwise, they will have civil liability (Arab Ahmadi & Jokar, 2016).

13. Conclusion

The results of the research demonstrate that today's world faces horrific environmental challenges that can endanger human security and pose serious risks to life on Earth. The most significant of these is the gradual violation of the human right to a healthy environment, which is one of the standards of human rights.

Given that this research conducted a brief comparative study between international law norms and Imami jurisprudence in the field of environmental protection, the following suggestions are offered to enhance the

function of Iran's environmental law in supporting the right to a healthy environment:

- **Utilize the Experiences of International Organizations:** Especially the United Nations Environment Programme (UNEP) in the field of environmental protection and the right to a healthy environment.
- **Ratify International Conventions and Treaties:** Related to the protection of the right to a healthy environment and transform them into domestic laws under public law legislation techniques.
- **Emulate Legislative Experiences of Progressive Countries:** Particularly European countries in the field of the right to a healthy environment, focusing on statutory laws and constitutions.
- **Establish Various Mechanisms for Environmental Protection:** Especially non-governmental organizations, and utilize their experiences in protecting the right to a healthy environment.
- **Update Laws Related to the Right to a Healthy Environment:** In terms of content and enforcement guarantees of these rights.
- **Strengthen Foundations with Religious Perspectives:** Relying on religious perspectives and the dynamic Imami jurisprudence to reinforce the right to a healthy environment.
- **Educate at All Levels:** Teach the importance of the right to a healthy environment at all educational levels, from kindergarten to higher education in universities.
- **Enact Citizenship Laws on Environmental Rights:** Promote the importance of observing the right to a healthy environment for public interests.
- **Establish Specialized Environmental Branches in the Judiciary:** Provide specialized training for judges with environmental law norms, and use the expertise of environmental and natural resources specialists during the adjudication of environmental destruction and pollution cases. This aims to protect the environment and the right to a healthy environment under the norms of international

law, international environmental law, and public law.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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