



The sustainable dimension of environmental protection between Sharia and law

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Abstract

The environment is the natural home for man. It is the source of his needs and inquirments. But the abuse of the natural resources creates a real threat to the environment especially with the industrial and technological progress all over the world. Besides, the need of all countries to develop their econmy and industry led to the shaking of the environment's ecological systems

In this critical and bad environmental status, it becomesan urgent priority to put certain rules and principles which might organize the individual and countries behaviours towards the environment .It is the only solution to maintain the ecological balance required for the Mankind surviving on this planet.

In fact, this matter has been recognized since fourteen centuries by the Islamic legislation (law). It has given the ruler the right to determine the means and ways which can organize the relationship between Man and environment.

Keywords: *environment protection, National and international legal legislation, Protection is international , Bilateral agreements, Islamic law , sustainable dimension.*

Introduction

Since the beginning of creation, humans have been concerned with protecting the environment and all its various elements, recognizing it as the natural and essential habitat for their lives. As ages have passed and life on Earth has evolved, significant challenges have emerged for humans to confront the risks posed by their actions and daily behaviors that impact the environment. Ancient civilizations assigned great importance to safeguarding the environment in all its aspects, ranging from the cleanliness of cities to the necessity of preserving the natural habitat.

Moreover, the world's religions emphasized the obligation to care for the environment due to its connection to ethical and religious principles. This led to the establishment of a set of regulations and concepts governing the relationship between humans and the environment. With global and technological advancements and the escalating threats of pollution, along with the evolution of legal frameworks, environmental protection has become a paramount concern for nations. They strive not only to safeguard and preserve the environment through comprehensive national legal measures but also through international protection fostered by collaboration within international organizations and the formation of bilateral agreements.

In Islamic jurisprudence, despite the absence of a direct mention of the concept of the environment in the Quran, the concept of human stewardship (khilafah) is a strong link between humans and their environment. This concept is rooted in the Quran and revolves around the idea that humans are entrusted with the responsibility of developing the Earth, utilizing the resources provided to them, which include both living beings and non-living elements. They are guided by divine principles in managing this shared relationship. There are several verses in the Quran that indicate the interconnectedness between humans and the universe.

It can be stated that the legal protection of the environment found its expression in the interpretations through which the legislator aimed to establish legal principles aimed at addressing the problems afflicting the environment as a whole.

The Problem Statement

Interest in environmental terminology has existed since ancient times, and it has become crucial in both scientific and legal realms. This is particularly evident as understanding and accurately defining these terms have become highly important for legal professionals, as they work on formulating laws related to the environment, whether on a domestic or international scale. Based on this premise, the following question can be posed: **What is the legal and religious perspective on the environment and its protection?**

First Axis: Environmental Protection from the Perspective of Islamic Jurisprudence

Since the emergence of Islamic jurisprudence, a comprehensive Islamic system has been established regarding the environment and its protection. Islamic jurisprudence has served as the practical foundation for building a solid scientific structure for safeguarding and conserving the environment. This system starts by interpreting environmental phenomena and extends to identifying the sources and mechanisms of protection, elevating environmental preservation to a matter of faith.

Firstly: Sharia Regulations in the Field of the Environment

Islam considers the environment, including everything within it, as a creation of God. This belief is supported by several clear verses, such as the Almighty's saying: "And it is He who created the night and the day and the sun and the moon; all [heavenly bodies] in an orbit are swimming." (Al-Anbiyā33) and His saying: "And We did certainly create the heavens and earth and what is between them in six days, and there touched Us no weariness." (Qāf 38) and His saying: "And there is no creature on [or within] the earth or bird that flies with its wings except [that they are] communities like you. We have not neglected in the Register a thing. Then unto their Lord they will be gathered." (Al-An'ām 38).

The Islamic creed precisely outlines the relationship between humans and the universe. In Islam, humans are considered stewards on Earth. The Quran states: "And [mention, O Muhammad], when your Lord said to the angels, 'Indeed, I will make upon the earth a successive authority (khalifah).'" (Al-Baqarah 30). This concept of stewardship involves upholding justice and refraining from following personal desires, as mentioned in the verse: "[We said], 'O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allāh.'" Indeed, those who go astray from the way of Allāh will have a severe punishment for having forgotten the Day of Account." (Sād26).

This stewardship entails responsibly interacting with the environment as a blessing from God. Humans are entrusted to use the environment within the bounds of necessity, without wastefulness or neglect, as highlighted in the verse: "Do you not see that Allāh has made subject to you whatever is in the heavens and whatever is in the earth and amply bestowed upon you His favors, [both] apparent and unapparent?" (Luqmān20).

Many rules within Islamic jurisprudence advocate for the preservation and protection of the environment. This can be elucidated through the following points:

Efforts of Jurists in Environmental Care: Islamic jurists faced the risks of environmental pollution that emerged in their times by deriving rulings from Islamic legal sources. These rulings can serve as a foundation for addressing contemporary environmental hazards and those that may arise in the future.

In the books of jurisprudence across various schools of thought, rules have been established that prohibit actions leading to water pollution or excessive use of water.

Jurists in their writings addressed the issue of air pollution and its management. They considered air as a common resource among all people and believed that no one has the right to cause harm or corruption to it.

Jurists called for the preservation of the purity and cleanliness of the land, the removal of harm from pathways, the care of homes and their surroundings, the protection of vessels and water sources from contamination, and the attention to cleanliness in gathering places.

Scholars unanimously discouraged the extinction of a species of animals and prohibited the confinement or mistreatment of animals. There were discussions among jurists about the breeding of animals through hybridization, resembling genetic engineering, with regard to its negative impact on species. They also discussed the prohibition of adding harmful substances to animal feed.

Jurists paid attention to detailing rulings related to plants, highlighting the importance of cultivation, caring for various plant species, improving them for human and animal consumption, as well as for adornment, beauty, joy, pleasant scents, and medicinal purposes. They also outlined regulations concerning the establishment of protected areas for plants to conserve their diverse species and benefit from them. They addressed the prohibition of damaging these protected areas. Jurists also discussed the

use of impurities in nurturing or altering plants and their impact on their nature. They provided eloquent discussions on maintaining the balance of plant life, prohibiting harmful agricultural practices detrimental to the body or the mind, and forbidding the unnecessary cutting of trees and crops.

Rules and Regulations for Environmental Protection: There is a significant collection of jurisprudential rules associated with environmental protection that align with the nature of the environment. One of the most important examples is the principle of "No Harm and No Reciprocal Harm."

No harm and no reciprocal harm

Harm entails causing harm to others, and reciprocating harm with harm only perpetuates a cycle of damage. This principle is a well-regarded contemporary concept, with support from scripture and tradition. It serves as a fundamental basis for pursuing benefits and preventing harm, and its relevance to environmental protection is evident. Thus, any actions resulting in harm to the elements of the environment, including soil, water, plants, animals, and air, are prohibited according to religious law. Similarly, anything that disrupts ecological balance is religiously prohibited. Numerous derivative principles emerge from this foundation, each carrying more specific implications, all revolving around the religious prohibition of causing harm, including the twelfth principle.

Harm should be eliminated: This means that harm must be removed, and its consequences rectified, whether the harm is general or specific.

Harm is not eliminated by equivalent harm: It is not permissible to commit actions that lead to harm to the one causing harm or to others, in order to eliminate the harm. Accordingly, harm should be removed without causing harm of the same kind or greater magnitude.

Bearing personal harm to prevent general harm: When there is a conflict between an individual's rights and the collective rights, the rights of the collective take precedence, even if it entails sacrificing individual rights for the sake of community preservation.

More severe harm is eliminated by lesser harm: When balancing multiple harms that are inevitable, the more severe harm can be mitigated by a lesser harm.

Harm should be prevented to the greatest extent possible: It is necessary to prevent harm before it occurs, as prevention is better than cure. If harm does occur, it should be mitigated to the best of one's ability.

Preventing Harm Takes Precedence over Bringing Benefit: This principle holds that preventing harm is prioritized over pursuing benefits because harm spreads and expands rapidly, similar to an epidemic or a fire. It is wise and resolute to eliminate harm at its inception, even if it leads to foregoing certain advantages or delaying their realization.

Necessities Permit Prohibitions: When avoiding a prohibition results in a greater harm, the necessity allows for engaging in the prohibited action. For instance, preserving one's life from peril takes precedence over respecting someone else's property rights. From this principle, other rules emerge that carry specific meanings.

Necessities Are Proportionate: This principle is a qualification of the previous one. Necessity permits only what is required to avert danger. Once the danger ceases, the prohibition is reinstated.

These principles underscore the pragmatic and balanced approach within Islamic jurisprudence, ensuring that critical situations are handled while maintaining ethical standards and minimizing harm.

Need Reduces the Status of Necessity: This means that the legislative exceptions are not limited to cases of necessity alone; they also extend to communal needs that fall

below the threshold of necessity. Thus, exceptional facilitations are warranted for such needs as well.

Compulsion Does Not Invalidate the Right of Others: This is because a person under compulsion is absolved from sin and is exempt from legal liability for transgressions and infringements against others. However, if the right of another person is established in terms of equivalence or value, compulsion does not invalidate it, and the right does not lapse.

Secondly: Measures and Mechanisms for Environmental Protection in Islamic Jurisprudence

The measures and mechanisms that Islam ensures, whether in the form of legislative texts or practical procedures, aim to achieve environmental stewardship. It becomes evident that environmental care in Islam is comprehensive, encompassing all its elements. It is guided by specific methodologies, rules, and principles that promote the harmonious interaction between humans, who are stewards, and their entrusted environment. This interaction serves to fulfill human goals while preserving the environment's integrity, enabling both to fulfill their designated roles.

1. Measures: These measures encompass the logical rules, guidelines, and principles rooted in the essence of the universal nature. They are deduced from the evidence of religious texts, the objectives of Sharia, the principles of jurisprudence, and the most important of these measures are:

(Note: The text provided is incomplete and does not provide specific details about the measures. If you would like more detailed information, please provide more context or specific points for translation.)

The precision, beauty, and creativity with which Allah Almighty has created the environment, safeguarding it with protective shields and establishing it on a delicate and balanced system, necessitate its care. Everything around us has been placed with wisdom.

The Quran has drawn attention to the mastery and excellence of God's craftsmanship in this environment, as it states, "Verily, all things We created with predestination." (Al-Qamar 49). Thus, Muslims are urged to contemplate and reflect upon it, as stated in the Quran, "Say, 'Observe what is in the heavens and the earth'." (Yūnus101).

The Quran frequently highlights the elements of beauty within the environment and its components, such as when it says, "And We have placed within the heaven great stars and have beautified it for the observers." (Al-Hijr16).

Caring for the environment is a duty in exchange for enjoying its blessings. This implies that the protection and preservation of the environment are religious obligations that humans must adhere to. On the contrary, harming the environment is considered prohibited. The Quran also warns that corruption will spread on the earth due to the deeds of humanity, as stated, "And cause not corruption upon the earth after its reformation. And invoke Him in fear and aspiration. Indeed, the mercy of Allah is near to the doers of good." (Al-A'rāf56).

The teachings of Islam emphasize the sanctity of the environment and the importance of stewardship, encouraging humans to fulfill their role as caretakers and protectors of the Earth's delicate balance.

The necessity of caring for the environment to fulfill its functions is evident. The importance of the environment is defined by the roles that Allah Almighty has created it for. The resources of the environment were created with divine wisdom, and among its most significant functions are worship in its various aspects and its essential role in sustaining life.

The Quran acknowledges these functions and states, "Beautified for people is the love of that which they desire - of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allāh has with Him the best return [i.e., Paradise]." (Āl-‘Imrān14).

Caring for the environment is an essential aspect of fulfilling humanity's role as stewards of the Earth. It is the duty of humans to cultivate the land and utilize the environment responsibly. Allah has provided humans with the right to use and benefit from the environment while ensuring its proper management, without causing harm or corruption. As Allah states, "Thus We subjected them to you that you may be grateful." (Al-Hajj36).

Mechanisms These mechanisms are defined within the concepts of criminalization, responsibility, and imposing punishment. This is evident through:

The Concept of Responsibility The foundation of responsibility in Islam traces back to human freedom of choice between good and evil. If a person commits a crime while fully aware of the nature of their actions and freely chooses to commit them, their criminal responsibility is established, and they deserve punishment. However, if the person is not fully aware or not exercising their free will, there is no punishment for them.

Islamic jurisprudence (Fiqh) establishes the principle of criminal responsibility based on two fundamental principles:

First, the basis of criminal responsibility is free choice or will as a general principle. Second, the basis of criminal responsibility is criminal danger as an exceptional principle.

In the Islamic legal framework, the establishment of criminal responsibility is built on these principles, aiming to maintain a just and balanced system of accountability.

Environmental Crimes in Islamic Law Islamic law criminalizes any harm to the environment, and these crimes can be categorized into the following criminal groups:

Crimes of Depleting Environmental Resources in Their Various Forms
Depletion of Water Resources: Water is mentioned in the Quran in 59 places. Depletion of Plant Resources. **Depletion of Animal Resources:** Prophet Muhammad (peace be upon him) emphasized treating animals kindly and responsibly, and their well-being is a consideration. **Crimes Related to Environmental Pollution, Whether in the Air, Sea, or Land.**

Punishment and Penalties for Environmental Crimes Environmental crimes intersect with crimes involving boundaries, retribution, and blood money. In such cases, one of the appropriate penalties must be applied. The Quran states: "O you who have believed, do not kill game while you are in a state of ihram. And whoever of you kills it intentionally - the penalty is an equivalent from sacrificial animals to what he killed, as judged by two just men among you as an offering [to Allah]" (Al-Mā'idah95).

Islamic jurisprudence provides a framework for dealing with environmental offenses, with penalties that are commensurate with the harm caused and the intent behind the actions. The aim is to ensure justice, maintain balance, and protect the environment from harm and degradation.

In the case of considering environmental crimes as punitive offenses, it is permissible for the governing authorities, according to their jurisdiction, to impose the punishment of either life imprisonment or temporary imprisonment.

Second Axis: Environmental Protection from the Perspective of Legal Principles The environment has gained significant attention within legal texts due to its importance and the role it plays in individuals' lives.

The Environment as a Legal Concept Environmental issues and their protection have garnered substantial attention both at the national and international levels due to

their direct relevance to human, animal, and plant life. This has led governments and societies to convene specialized conferences to address environmental challenges and concerns. The legal framework aims to regulate and safeguard the environment, ensuring its sustainable use and preservation for current and future generations. This recognition emphasizes the responsibility of society and the state in preserving and maintaining a healthy environment.

The legal system establishes guidelines and regulations to prevent and address environmental harm, pollution, and degradation. It encompasses laws and regulations related to air quality, water resources, waste management, land use, and the conservation of natural habitats and biodiversity. The legal framework also includes provisions for penalties and sanctions against those who violate environmental laws.

In conclusion, both Islamic law and modern legal principles emphasize the importance of protecting the environment. Islamic law provides a comprehensive framework for environmental stewardship, considering the divine role of humanity as custodians of the Earth. Modern legal principles reflect a similar commitment to safeguarding the environment, with a focus on sustainable development, pollution control, and the preservation of natural resources. Ultimately, the combined efforts of legal systems and ethical considerations are vital for ensuring the well-being of the planet and its inhabitants.

The issue of the environment has become a global concern that affects every region on Earth. Countries, organizations, and parties have begun to address this matter seriously, convening conferences, signing agreements, and enacting laws and regulations. These efforts span both international and domestic levels, and various agreements have been established to tackle environmental issues:

On the International Level

Numerous and diverse agreements have been established at the global level to address environmental challenges. Some of the most important agreements include:

- The 1954 London Convention concerning the Prevention of Pollution of the Sea by Oil.
- The 1960 Paris Convention on Nuclear Testing.
- The 1969 Intervention Convention regarding Interventions in the High Seas in Cases of Pollution Damage.
- The 1970 Brussels Agreement on the Conservation of Albatrosses and Petrels.
- The 1972 Paris Agreement concluded under the United Nations Educational, Scientific and Cultural Organization (UNESCO) concerning the Protection of the World Cultural and Natural Heritage.
- The MARPOL 1973/78 Convention, addressing marine pollution through the disposal of wastes from aircraft and ships.
- The OECD Principles issued by the Organization for Economic Cooperation and Development (OECD) in 1972.
- The Stockholm Declaration on the Human Environment in 1972, which is considered the foundational document in the field of international environmental law.
- The Washington Declaration 1977, within the framework of the International Labour Organization (ILO), concerning the protection of workers from occupational hazards resulting from air pollution, noise, and vibrations.
- The World Charter for Nature in 1982.
- The United Nations Convention on the Law of the Sea (UNCLOS) agreements in 1982.
- The Vienna Convention in 1982 on the Protection of the Ozone Layer determined that the parties must cooperate in promoting development, technology transfer, and knowledge sharing, in accordance with their laws, regulations, and scientific practices, while taking into consideration the needs of developing countries.

- The International Convention established in 1986 on Mutual Assistance in Case of a Nuclear Accident. In this context, a series of international declarations and agreements were issued, containing principles related to the environment, including notably:
- The Declaration of the Earth Summit in 1992.
- The Kyoto Protocol on March 16, 1998, which obligates advanced countries to limit economic activities.

On the Regional Level

- The African Convention on the Conservation of Nature and Natural Resources in 1968.
- The Helsinki Convention in 1974 on the Protection of the Marine Environment of the Baltic Sea Area.
- The Helsinki Principles of 1975 issued by the Conference on Security and Cooperation in Europe.
- The Barcelona Convention on the Protection of the Mediterranean Sea Against Pollution in 1976.
- The Declaration of Principles issued within the framework of the Council of Europe in 1978 regarding the combating of air pollution.
- The Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution in 1978.
- The Environmental Protection Convention of 1979 between Scandinavian countries.
- The European Convention of 1979 on the Conservation of European Wildlife and Natural Habitats.
- The Convention of 1979 within the framework of the United Nations Economic Commission for Europe on Long-Range Transboundary Air Pollution.
- The Jeddah Convention of 1982 concerning the Protection of the Marine Environment of the Red Sea and Gulf of Aden.

On the Bilateral Level- The Hungarian-Austrian Treaty of 1956 concerning the Economic Uses of Waters.

- The Indian-Pakistani Treaty of 1960 concerning the Use of the Indus River.
- The Russian-Polish Treaty of 1964 concerning the Conservation of Surface and Groundwater and Pollution Control.
- The American-Canadian Treaty of 1972 concerning Water Quality in the Great Lakes Basins.

Secondly: Environmental Regulation and the Establishment of Specific Legislation

After international and national efforts in the field of environmental regulation and legislation, specific environmental laws were established at both the international and national levels. Environmental law is defined as:

"A branch of law that regulates a type of human relationship in the field of the environment."

Environmental law, or law of environmental and natural resources, is a collective term that describes a set of treaties, basic systems, regulations, general and customary laws that address the impacts of human activities on the natural environment. The topics addressed by environmental law are broad, including preventing marine pollution, ensuring protection and rational use of marine resources and ecosystems, protecting the atmosphere from pollution, safeguarding plants, forests, wildlife, and unique species. Environmental law is fundamental to environmental sustainability, and the full implementation of its goals has become more urgent than ever due to increasing environmental pressures. Violations of environmental law undermine the pillars of sustainable development and environmental sustainability.

International environmental law is defined as: "A collection of rules and principles of international law that regulate the activities of states in the field of preventing and reducing the various damages resulting from different sources to the environmental ecosystem."

Conclusion

- The methodology of Islamic law in preserving the environment is the most comprehensive and just, as its provisions stem from the truthful wellspring of revelation, both Quran and Sunnah.
- Islam concerns itself with environmental matters and conservation as an inseparable rule from its care for human beings themselves.
- The concept of environmental protection in Islamic law is very comprehensive.
- Islamic law has made environmental protection a religious duty that must be respected and adhered to, in accordance with the teachings of the Quranic verses and Prophetic traditions.
- The Islamic religion has provided a comprehensive legislative system within the framework of environmental protection.
- The emergence of international and national laws and regulations for environmental protection and conservation.
- The establishment of legal bodies, systems, and judicial frameworks.
- The current international system has yet to provide sufficient legal solutions to address environmental pollution issues, whether in the realm of international customs disregarded by those who find them conflicting with their interests, or in the slow process of turning agreements into enforceable laws and the lack of firm commitment.

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