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PROTECTING THE ENVIRONMENT THROUGH CRIMINAL LAW: a FOCUS ON STATE CRIME

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Environmental protection has gained particular significance as a global problem, drawing the attention of many thinkers and states people. However, given their legislative power, environmental protection responsibilities, and the requirements for protecting corporations, governments play a vital role in ensuring greater economic interests since, on the one hand, the global economic development has an undeniable impact on the modern world and, on the other, the significant damages to the environment caused by these activities may lead to irreversible harms including climate change and the decline in biodiversity. Therefore, the question is how states can strike a balance between these two opposing views. However, a deeper look into how states behave in this area clearly shows that they attempt to identify and define development-oriented economic value along the environmental values, making states and their related corporations the biggest force behind the criminal activities that seek greater profits at the expense of the environment. Given the first principle of the Stockholm Declaration (1972) and the principle of equality before law, efforts need to be made to properly and effectively protect the environment against state crimes while states must be held criminally accountable for their environmental crimes, because turning a blind eye on the environmental harms caused by wrongly formulated state policies and keeping states immune from criminal prosecution will turn on the green line for further environmental pollution.

Introduction. Publication of Rachel Carson's *Silent Spring* in 1962 raised a new wave of media pressure, public opinion, and emergence of novel research ideas increasingly focused on environmental crimes that shaped critical views resulting in a considerable number of legislations, conventions, and agreements signed and executed at national and international levels. These policies, in turn, heightened sensitivity to environmental issues in domestic and international arenas. The legal arena too witnessed an abundance of scientific research into this area, particularly after the 1970s and following the emergence of critical criminology. The extensive research into this area reported a significant impact on the environment caused by such variables and factors as industrialization of societies, level of economic development of countries, cultural development of people, and the economic significance of the environment in terms of per capita income. However, at the macro level, one can also point to the environmental interventions of states since states, driven by competition with other states, political ambitions, and costly military projects, inflicted serious damages on the environment.

Following the industrial revolution in the eighteenth century, different forms of profit-seeking activities irreversibly damaged the environment. The greatest damages in this period of history, however, were caused by states in pursuing their political goals and economic development. Excessive, unbalanced focus on economic aspects, uncontrolled development of economic activities, unregulated utilization of resources, and extensive environment-unfriendly activities have exerted an unbearable pressure on the global environment (Bo *et al.*, 2012; 122-130; Nouri *et al.*, 2016; 41-52; Dhami *et al.*, 2017). As Harvey (1996) argued, states deny these harms based on their economic goals and by citing forms of sustainable development which essentially imply further environmental degradation.¹ As such, while a major portion of environmental crimes is committed by states and powerful corporations, the criminalization system is also governed by states. The natural outcome is that states will not criminalize their own improper behaviors or will evade prosecution for the crimes they committed, because criminalization of state acts or prosecution of authorities will not only subject them to harsh criticism but will also gradually undermine the bases on which states rely to act. In this way, criminalization becomes a means that states can use to achieve the goal of maintaining their political system instead of serving the justice (Rezvanifar, 2011). Thus, the criminal justice system loses its resistance and enforcement power against white-collar criminals.

Here, green criminology, as an offspring of critical criminology, aims to re-conceptualize and present the principle of sustainable development by focusing on and analyzing environmental harms and damages, because if the rate at which the environment is damaged outweighs the rate at which it is restored, the future generation will undoubtedly face serious problems in using the environment. Therefore, protecting the environment through criminal law presents a public duty and a responsibility for human today.

¹ Harvey, D. (1996). *Justice, Nature and the Geography of difference*. Oxford: Black Well.

The present study attempts to examine the role played by states as major perpetrators of environmental crimes. It also aims to de-immunize state actions in this area by identifying state liabilities proportional to the environmental harms caused by actions of states.

Why it is necessary to protect the environment through criminal law

The environment and the elements that form the environment constitute an integral part of our lives. It is hard to imagine a sustainable life for human in the absence of these elements. However, humans still present the largest threat to the environment. It is interesting to note that despite the undeniable importance of the environment and its centrality in human life, the public often turn a blind eye on environmental crimes, failing to properly criminalize environmental crimes and their perpetrators. Still, all legal systems provide some protections for environmental crimes (Azizi, 2015: 47). In this respect, Shilton and Case (2010) argued that today it is necessary to protect the environment not just as a voluntary measure but also as an inevitable duty.² Therefore, the criminal law must provide overarching protection for the environment to which everyone has a fundamental right (Abdollahi, 2007: 98). This can be realized only through a strict, equitable treatment of all perpetrators of environmental crimes.

Since the early 1990s, when Lynch coined the term "green criminology", this area of research has gained particular importance in sociological studies (South & Brisman, 2013: 3). Along these studies, a number of legislations intended to protect the environment made their ways to the constitutional laws of states through a process that can be called "constitutionalization of the right to the environment". This also enabled formation of a new discipline known as "environmental constitutional law". The new discipline with the characteristics of domestic public law is in fact a branch of domestic environmental law that deals with the environmental rules and principles in constitutions and guarantees the relevant content at the constitutional level (Mashhadi, 2009: 297).

Along the same line over years, the Iranian legal system has witnessed passage of a wide range of environmental rules and regulations. They represent the willingness and intent of the Iranian legal system to protect the environment and natural resources through legislations established in different areas. However, due to the problems faced by the criminal justice system, this set of laws and regulations involved confusions over the course of enforcement or judgment, disabling relevant authorities to properly use these sometime conflicting, unclear, or even apparently obsolete laws and regulations. a major challenge here is the personal criminal liability. An initiative adopted by the legislature in the Iranian Islamic Penal Code (IPC) of 2013 was to recognize criminal liability for legal entities. Although this represents a step forward, it still involves a number of flaws as a note to Article 20 of IPC relieves state, as the most important legal entity, from criminal liability in exercising sovereignty. It is important to note, however, that criminal liability of state has always represented a challenging topic at both domestic and international levels (Hajivand, 2018: 2). Solutions to environmental crimes include administrative options. In Iran, these administrative regulations are implemented through directives, instructions, codes, and other instruments. They are operationally enforced through instructional programs, scoring systems, clarification of concepts and ideas, regulation, and prevention programs. Relevant laws also provide for punishments. For example, Note 13 to the 1st and 2nd Plan for Economic, Social, and Cultural Development of the Islamic Republic of Iran passed in 1989 requires that one-thousandth of the revenue gained by the Iranian factories should be allocated to compensation for environmental damages. But since, as many jurists believe, application and impact of sanctions under criminal law often outweigh those of civil and administrative measures, greater emphasis should be placed on criminal law measures.

Clearly, Iranian authorities in the criminal justice system present major challenges both in legislation and in enforcement of relevant laws. Firstly, since the criminal justice system is not capable of effectively dealing with powerful, influential perpetrators of environmental crimes, the system simply amend and pile up laws concerning environmental crimes. As Najafi Tavana (2007) stressed, an inevitable outcome of this unprincipled treatment of issues is development of laws hastily legislated without required expertise and reflection, leading to disorganization across the criminal justice system and threatening and encroaching on the rights of citizens in different ways (Najafi Tavana, 2007: 33). Another problem, in addition to the environment-related codes piled up in the criminal legal system, is the lack of provisions to harshly punish criminal actions. Given the importance of the environment in our lives and the widespread nature of environmental damages and victims, punishments must be developed in a way that meets the minimum requirements and goals in connection to punishing such acts.

Why it is necessary to involve independent non-government organizations in protection the environment

² Shilton, D., Case, A. (2010). Handbook of Environmental Law, Translated to Persian by Mohsen Abdollahi, 1st Ed., Tehran: Khorsandi.

Far-reaching impacts of environmental damages across the globe reminds us of the fact that environmental crimes must be prosecuted at different levels using any capacity available in the public and non-governmental sectors. This implies that it is a public duty to monitor perpetrators of environmental crimes, particularly white-collar crimes, given the wide range of their activities and the damages they inflict on the environment. Involvement of NGOs and environment protection communities can play an essential role toward achieving this goal.

An NGO represents a group of people voluntarily choosing to collaborate toward shared goals and causes in an organized way. Today, NGOs can help the criminal justice system in two ways. On the one hand, they can help the criminal justice system in detecting and prosecuting crimes by reporting these crimes and, on the other hand, they can particularly help victims by contributing to the criminal justice process. In addition, they can sharpen public sensitivity through programs aiming at promotion, publicizing, and raising awareness about environment protection. The criminal justice system will move faster toward achieving its goals at a higher level of quality if the society is culturally and socially prepared for this purpose (Koushki, 2009: 102). NGOs bring their important capacity into this area, prompting many countries to note this capacity in their national legislations. This also applies to the Iranian legislations which, under the Article 66, Criminal Procedure Code, legally authorized NGOs whose articles of association include protection of public health and natural resources to report environmental crimes and attend the whole proceeding in dealing with these crimes. Furthermore, the second note to the article noted above requires all judicial authorities and law enforcement agents to inform victims of environmental crimes that they can seek help from NGOs. This approach indicates the importance attached by Iranian legislators to NGOs in adopting legal measures. This becomes particularly important in cases where environmental crimes do not concern a specific victim or where there is no certain authority to adopt such legal measures.

The significance of NGOs and their rights in this area was raised by Rio Declaration on Environment and Development and its Agenda 21 on the right to informing the public about the environment and engaging them in making decisions concerning improvements in the environment. In its Chapter 23, Agenda 21 stresses reinforcement of the role played by major NGOs and public groups in accessing environmental information. This implies that people can and must have access to environmental and development information held by the public authorities. This information includes data and activities with potentially significant impact on the environment, and the public must be provided with access to such information concerning environmental protection.

However, these institutions are not properly recognized in the process of policymaking since (1) their reports of crime are not taken seriously, (2) they face major challenges in attending legal proceedings and hearings, and (3) there is a lack of publicly developed measures to progressively and collaboratively work with these organizations in a constructive manner. Therefore, absence of NGO engagement presents a major challenge in the pre-hearing stage.

The Role of States in Environmental Crimes. a major issue faced by many countries is how to protect the environment over the course of economic development. a classification of environmental pollutions can lead us to two groups of polluters: (a) natural persons and (b) legal entities. Many criminologists regard legally incorporated firms and companies as a greater source of threat to the environment compared to other perpetrators of environmental crimes since they commit environmental crimes in a systematic way by relying on their connections to the sources of power and authority. From the green, environment-centered economy, it can be argued that the state and state-run companies are among the major polluters that cause environmental damage and degradation (Gholampoor, 2017: 125–152).

Activities carried out by economic firms are often linked to the environment. These include utilization of natural resources. Excessive utilization of natural resources can produce industrial wastes or cause accidents connected to industrial activities. Environmental crimes take the form of various crimes committed by corporations.³ In other words, most environmental crimes are committed by corporations while the criminalization system is run by the state which prioritizes a flourished economy over anything else. Clearly, states will not criminalize their own actions or those committed by corporations as long as those actions meet the economic benefits of the state. On the other hand, corporations rely on their wealthy, powerful lobbies to prevent criminalization of harmful actions taken by socially powerful, influential groups. In addition, it is difficult to actually quantify environmental crimes for the purpose of criminalization since although all manufacturing firms commit some form of environmental crime, some regions or countries may lack strict environmental standards, providing violators with a safe haven where they can continue their illegal activities by redirecting the flow of the waste or the harmful impacts they cause.

³ Encyclopedia of white collar crime, Edited by Jurg Gerber and Eric L. Jensen, GREENWOOD PRESS, London, 2007, p 54.

This creates a major challenge for enforcing environmental rules and regulations as it presents a conflict between protecting the environment and interests of the industries.⁴ In other words, today a major portion of biologically harmful activities constitute a part of daily activities carried out by large firms and corporations. While these activities present a serious threat to the environment, these corporations often manage to evade criminal liability because of the support provided by states that focus on economic flourishing and creating jobs. As Beder argued, private interests of corporations translate into significant degradation of the environment.⁵

States' environmentally harmful actions are not limited to supporting economic firms and corporations. Many states fail to properly manage and allocate budget to environment protection agencies and institutions while states are expected to play a central part in fighting environmental crimes. This is why Situ and Emmons stress that although corporations are the actual perpetrators of environmental crimes, other persons and organizations can also commit environmental crimes.⁶

Zemiological Approach. Based on the foregoing, it can be importantly noted that most environmentally harmful actions of states and their associated corporations are legal and in compliance with the applicable laws in the sense that many potentially criminal activities that negatively impact the environment have not been included in the description of criminal acts under the "legality principle of crime and punishments". Under these circumstances, a zemiological approach can be utilized to help detecting major perpetrators of environmental crimes by examining environmental harms caused by these actions.

Zemiologists regard behaviors based on constructs of postmodern and critical thinking through "analysis of the concept of crime", "problematization of *mens rea*", and eventually "representation of crime" (Husak, 2008: 221). Thus, they look for an established, albeit dynamic and experimental, framework to analyze social hazards, criminalization, and methods of crime control. The school of zemiology notes the narrow concept of crime and insists that a broader range of actions must be included in criminal sanctions (Kalantari *et al.*, 2017: 140). By making use of criminological findings, the criminal justice system has become an industry where harms are views through specific lens that defines harms in a particular way and increasingly replaces impartial measures to counteract harms and establish justice. Consequently, intervention measures are selected accordingly in connection to this view. In contrast, zemiology adopts a preventive approach that proposes the concept of "harm" to replace "crime". In this way, zemiology moves beyond the concept of crime by widening its scope of studies to cover social harms as well (Nobahar & Ansari, 2018: 188).

This is why green criminologists incorporate any environmentally harmful action into their definition for environmental crime. They believe that the legality principle of crime and punishment may not be cited for environmental crimes since many criminal actions are not criminalized only because they are committed by state. It is clear that a state will never criminalize its own actions. On the other hand, environmental harms like air pollutions, drying up lakes, endangered animal and plant species, and the like have shifted public attention toward survival and preservation of the environment, shaping a wave of dissidence and campaigns run by NGOs to protect the environment. In response to these demands, legislators have enacted laws to protect the environment in an attempt to meet the public demands and stop the growing wave of public protests. However, the fact is that states will never put the environment before their economic gains, pushing the environment into the lower ranks of the top agenda (Shamsi, 2016: 88).

Based on the foregoing discussion on the concept of environmental crimes, it is important to note that the definitions proposed by domestic laws and international conventions for this type of crime cannot provide an acceptable, all-encompassing definition of environmental crime because such definitions are a product of the attitudes held by those in power. Therefore, in the case of environmental crimes, crime can be defined not as the violation of rules and regulations but as a form of risky behavior that potentially harms the environment. This can be useful in examining all environmental risks and threats of which crime is only one single instance.

Conclusion. Today, the right to the healthy environment represents a top human value, rendering the environment as something that deserves protections to be provided by criminal law. In this respect, criminal law plays an essential role in establishing and institutionalizing environmental values. Meanwhile, a sensitive responsibility is assigned to states as they not only have the authority over environmental protection but also need to guarantee national interests and economic boost. However, a closer look into the major sources

⁴ Shamsi, F. (2016). Relationship between crime and the environment: a criminological approach. M.A. dissertation, criminal law and criminology, Allameh Tabatabaie'i University.

⁵ Beder, S. (2006). Suing Themselves: How Corporation Drive the Global Agenda.

⁶ Situ, Y, and Emmons, D. (2000). Environmental Crime: The Criminal justice System's Role in Protecting the Environment. Thousand Oaks, CA: Sage. Smith, M. (1998) Ecologism: Towards Ecological Citizenship. Minneapolis, MN.

of environmental pollutions across the globe indicates that where striking a balance between environmental and economic demands is increasingly needed, states often focus on their latent economic goals and agendas which they relentlessly pursue. Thus, it can be argued that today a growing connection exists between environmental crimes and state crimes.

When it comes to environmental crimes, the legislative policy faces numerous challenges, including (1) insufficient consistency in laws governing this area and (2) lack of intimidating force behind punishments for environmental crimes. An important characteristic of any punishment is that it should be able to provide deterrence and, as noted earlier, a major issue in criminal law concerning the environment is the non-proportionality of punishment to crime. This lack of an intimidating element in some punishments encourages perpetrators to blatantly continue what they do in ignoring legal rules and standards. And finally, when it comes to counteracting environmental crimes, societies are often rated based on their legal regimes and how effective their respective laws are in dealing with such crimes. However, this legal evaluation should be combined with cultural, social, and instructional measures to effectively prevent environmental crimes and prompt states to shift toward a green economy.

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