Iran's Penal Policy against Oil Pollution Crime

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Abstract

Today, the international community is facing serious environmental dilemmas including oil pollutions that these oil pollutions are known as criminal or hazardous actions in terms of available rules and regulations. Whenever we face a dangerous phenomenon, we become worried, and generally will resort to criminal legislation to confront it, often assuming that new criminal legislation would solve the problem. Legislating criminal laws during the past two or three decades to protect the environment is a clear and tangible example of such thinking. With this interpretation, the question arising is whether the criminal laws of environmental crimes in the field of oil pollution are adequate and effective in protection of the environment or not. Thus, considering the importance of topic of crimes related to oil pollution in Iran, this study tried to explain and evaluate the criminal laws related to oil pollution offenses by recognizing various aspects of such crimes. Meanwhile investigating the major criminal cases (regarding oil pollution), the judicial decisions made were also examined. We wish that the study results lead to identify solutions to prevent oil pollution crimes in the region and would be a useful step in the development of the country (Iran).

Keywords: Oil pollution crimes, Environmental hazards, Criminal (penal) policy, Penal support

Introduction

The oil pollutions crisis is a very serious and dangerous matter. The scope of contamination and environmental devastation is so widespread and serious that has rung the alarms for most of the countries and the people living on earth. Environmental pollution, especially oil pollutions, are one of the most important environmental problems making the human environment faced with difficulties.

Some believe that despite the role of criminal laws in protecting the environment, as the main problem in this area involves legal regulation of the oil industry activities, the most effective means to achieve such a goal is to determine the precise criteria related to dissemination and emission of pollutants and to use these criteria through legal provisions (Taghizadeh, 1998).

However, the fundamental question is what kind of law is right and efficient for the protection of the environment against the oil pollutions? Some believe it is criminal law, since these laws are the most effective means of supporting basic social values, are scornful and also some sort of leverage. The society greatly valorize the creation of a healthy environment for a good life, and uses criminal law against those with anti-environmental activities to show such an importance. In contrast, some other lawyers have not a positive view on the fact that the criminal law is the only means of protecting the environment against these pollutions, and see the criminal law efficient in the following contexts: In the exercise of voluntary and intentional behaviors by carelessness, private behaviors and actual and practical damage to the victim. However, mass actions, carelessness and neglect are involved sometimes in damaging the environment. In addition, environmental damage would cause damage to the whole community rather than harming a specific
individual. For these reasons, they believe to use administrative laws for the protection of the environment (Ghavam, 1997).

But, in general, in a reasonable attitude and consideration, the loss caused by oil pollutions crimes seems to be sometimes much more than offenses such as fraud, theft and, etc. For example, an oil pollution disaster in a region may lead to killing dozens of people. Then, it comes to the mind that the criminal laws have a more effective performance in dealing with oil pollutions, since the oil pollutions perpetrators that are often Big Oil Companies can be just confronted by criminal law leverage.

According to this group opinions, those who deliberately burn oil tanks or cause vast oil pollution, would certainly deserve humiliation and will be subject to criminal law.

Here, the criminalization issue of oil pollution and its criminal aspects are first studied, and then, by explaining the purposes of punishments, the study will evaluate whether the use of criminal laws and punishing the oil pollution offenders would help us to prevent oil pollution crime or not?

In many countries, offenses related to pollutions have been considered as unpardonable crimes with severe penalties. In our country (Iran), although late, but appropriate measures have been taken regarding issues related to oil pollutions with proper legislation in the whole country, unfortunately with non-satisfactory results in practice. However, relying on legal instruments, particularly the criminal law, further fundamental measures can be still carried out in this regard, since the predominant role of criminal law cannot be ignored in this area. Therefore, fighting against oil pollution should be seriously considered and followed in various ways, such as legal regulations especially developing penal regulations.

**Methodology**

The method used in this study included the review of library resources and literature, relevant Internet content, and relevant various articles and reports, field studies (with attending in the related criminal courts and investigating the process of criminal cases related to oil pollution crimes), interviews with environmentalists and legal experts and talking to local informants and experts in the area. In this paper, to reveal the performance of courts and judicial procedures, the important judicial judgements and decisions of judges of criminal tribunals on crimes of oil pollution in Khuzestan province were reviewed, which may shed light on Iran’s judicial procedure regarding oil pollution crimes and its success or failure in preventing such crimes.

**Criminalization of oil pollution**

If the primary purpose of criminal law is to prevent the crime, should the decisions on who and how the offender to be punished be taken according to the aim of crime prevention? For example, determining sentences for crimes related to unauthorized vehicles stops, even not stopping such crimes totally, would at least reduce the rate greatly. On the other hand, although such a punishment is likely effective, it would be quite abusive and unfair. Criminal laws in should be established and implemented fairly and equitably in perform their task to attract the public respect.

Criminal law establishes criteria that mainly reflect the community values on what is wrong and harmful. To enact such measures, criminal law is faced with two major problems (Arshadi, 2011):

First, what are those values so important of the society that should be performed (i.e., having a criminal sanction) by criminal laws (instead of other means of control, such as education, ethics or religion)?

The second problem of criminal law is to define the prohibited acts (i.e., crimes) with a relative accuracy. The criminal law needs to be precise regarding establishing the rules. The problem is to determine the conditions and circumstances under which a certain crime may occur.
For example, when a law considers the oil pollution as a crime, under what conditions and with what elements, the crime is actually committed. If the rights of society and the environment appear to be compromised, the dangerous state of the natural or legal person can be confronted even though has not yet committed a crime. For example, if an oil refinery has not anticipated appropriate measures for its wastewater treatment by using proper systems and machinery, the activity of such a refinery would be clearly followed by potential risks for the environment in the future. Therefore, from the beginning, necessary measures can be made to prevent the refinery activity or to modify its output and sewage system.

**The constituent elements of oil pollution crime**

In domestic and international laws, the crime occurrence is known subject to the presence of three legal, material and spiritual elements (Noorbaha, 1992). The presence of these three pillars is required to prove the oil pollution crime.

**The legal element in oil pollution crime**

There are many legal provisions in our laws to be considered as a legal element of oil pollution crime. For example, Article 688 of the Islamic Penal Code, referring to crimes against public health, explains:

"Any action that would be considered a threat to public health, such as contaminating the drinking water, pouring toxic substances in the river, etc. is prohibited, and the perpetrators, if not subjected to more severely punishment, will be sentenced to imprisonment for up to one year ".

According to this, the oil pollution can be considered in many cases as a threat to public health.

Also, Article 9 of the law of protection and improvement of environment says:

"Any act or practice leading to environmental pollution is prohibited."

**The material element in oil pollution crime**

The law has addressed performing the material act as the material element of the crime. However, in a few cases, non-conducting an action has been also considered as the material element of the oil pollution crime. For example, in Article 5 of the law on how to prevent the air pollution, failure to receive the special certification related to compliance with emission limits of air pollutants in facilities and oil factories is considered a crime. Another component of the material elements of the crime is the means of committing a crime. In most of pollution crimes, the means play no role in their occurrence. According to Article 46 of the Water Fairly Distribution Act, water contamination is prohibited and this contaminating could be done in any way and by any means. For example, an industrial oil refining company can cause contamination by any material.

**The spiritual element in the oil pollution crime**

The presence of two legal and material elements is not always sufficient to fulfill a crime. Another factor required to prove crimes is the spiritual element. In other words, a criminal act may be committed, but due to lack of criminal intent or criminal liability, the law may not detect the offender subject to punishment. But, oil pollution offenses are often seen deliberate, and in very few cases, they are classified as unintentional crimes.

**Individuals’ criminal responsibility in oil pollution crimes**

In Iran’s Penal Code, and especially, the laws of the Islamic and General Penal, the materials explicitly referred to the criminal liability of legal entities are rarely found, and in a few cases, the criminal liability of legal persons are referred, and even sometimes, how to punish the offenders is explicitly described (Jozi, 2011).

Thus, the prosecution of legal persons committed crimes of oil pollutions should be possible as prosecuting real individuals committing these crimes. Even if in such crimes, the responsibility cannot be attributed directly to a certain person of the human factors of the contaminating
establishments and companies, the superiors and CEO of the companies or the polluting unit should directly bear the criminal responsibility. Also, regardless of the fact whether the environmental damage has resulted from an individual or collective action or non-action, the legal person must be prosecutable for damage caused by the crime against the environment (Ghavam, 1997).

Judicial procedure in Iran suggests that oil polluting companies, companies and units as legal entities bear the criminal responsibility.

EPA is considered as the private complainant, claimant and plaintiff in claims for oil pollution offenses. The Article 14 of the Law on the Protection and Improvement of the Environment refers to:

"In the case of environmental crimes, the EPA is known as the private plaintiff or claimant based on the case."

In addition to the EPA, other agencies and institutions pursue the environmental affairs in the scope of their duties, and accordingly, they can be considered as plaintiff or complainant on environmental crimes such as oil pollutions. Municipalities, Fisheries Organization, Forest Range and Watershed Management Organization, of Forest, Ministry of Health as well as real individuals (all people) can be referred to as a plaintiff or claimant in raising a criminal lawsuit in oil pollution offenses (Jozí, 2011). The defendant or the accused of claims for oil pollution offenses may be natural or legal persons based on the case.

**Position of oil pollution offenses in crimes classification**

In general, the law is divided into two main branches of public law and private law (Habibi, 2003). Generally in crimes classification issue, the oil pollutions as part of crimes against the environment have not been mentioned talk, and even in the examples raised for crime groups, there is no indication of such crimes. This indicates the neglect to these offences in legal issues and studies. Many crimes are critically reviewed and analyzed in multiple courses at the Faculty of Law. However, not only none of the crimes against the environment are unfortunately studied, but also, the offenses related to oil pollutions are not even mentioned in the curriculum and research issues. Thus, naturally there would be no place for these crimes in the classification of crimes.

**The effects and characteristics of oil pollutions crimes**

On one hand, one can say that these crimes are against physical and psychological integrity, since the variety of environmental pollutions compromise the health, accuracy and psychological well-being of people.

On the other hand, as some types of oil pollutions have adverse and destructive effects on people property or economy or public property or lead to their destruction and demolition, they can be considered among the crimes against property.

In addition, oil pollutions have adverse effects on health and mental and psychological peace and health of all people and other living creatures (Rahimzadeh, 2008). Therefore, according to this argument, the crimes against environment can be classified among crimes against public welfare. However, with regard to the fact oil pollutions molest and invade humans, plants and animals and endanger the life area of all beings, including human beings, animals and plants, they should be put it in the category of offenses against public welfare. Also, as the oil pollutions-related crimes are considered as crimes against the environment, they should better classified as specific criminal offenses category (Ghavam, 1997).

Therefore, we can say that oil pollutions as a part of crimes against the environment are study and evaluated as one of the categories of specific criminal law, which is a branch of criminal law.
Types of penalties to confront different oil pollution offenses

According to the criminal policies of various countries, all or some of the penalties along with other sanctions and supplementary tools are used in the case of oil pollutions. However, due to the situation, specific context, character and objectives of the perpetrators of such offenses, it requires that specific and appropriate penal policy and penalties are employed.

In the proposal for Canada Law Reform Commission, certain factors have been presented. According to this proposal, certain factors and components must be considered in addressing the punishments related to environmental pollution crimes. Especially when a company or an industry is responsible for environmental pollution, the courts need to have a specific attitude (Farshchi, 2008).

In Iran’s criminal law, criminal sanctions are predicted for persons causing oil pollution. The criminal sanctions considered in Iran’s law in penal support against oil pollutions include:

- Imprisonment
- Fine
- Ceasing the institute activity
- Stages of the criminal proceedings in cases of oil pollution offenses

To address the oil pollution offenses, they must be first detected and identified; in other words, the crime must be first exposed. The exposure of oil pollution crimes is done in three ways:

1. Local and regional people reports: Sometimes, people directly face with oil pollution, and witnessing its harmful effects, they complain to the police station or courts and demand an investigation.

2. Reports by police: Sometimes, the police is somehow informed about the occurrence of oil pollution crimes, and directly reports the matter to the higher tribunals of officials.

3. The Environmental Protection officials’ reports, known actually as specific justice sergeants, are of great importance, since accordingly, the EPA immediately begins urgent actions to deal with the polluting activity. The characteristics of justice sergeants are predicted for these enforcement agents in laws addressing the protection issue, of which the Article 15 of the protection and improvement of the environment act in relation to Environmental Protection Agency officials can be noted. In case of observing an evident crime, these agents should arrest the offender and report to their superiors or the court and confiscate the crime tools (Taghizadeh, 2009).

After the exposure of the crime, the EPA informs the oil pollution unit about the consequences of their polluting activity through warning to take action to eliminate the pollution. In the notification, the EPA specifies a certain deadline according to the law to take action to eliminate the pollution caused by or to end their activities by describing reasons for owners and managers of the oil pollution source. In accordance with Article 11 and 12 of the Protection and Improvement of the Environment Act, the owners of polluting industries are required to stop their polluting activities upon receipt of the notification and postpone their activity to the court order or the EPA order.

Finally, if the polluting oil companies and units take no effective measure to eliminate the pollution according the issued notice, the violators’ case along with documents and evidence are referred to the court and a criminal litigation will be raised. Ultimately, following the writ issuance, the criminal case is referred from the Prosecutors Office to the criminal court for final judgment.

Oil pollution offenses in the judicial procedure domain

To complement the efforts done by the legislature to protect the environment against the oil pollutions in the first and second stages, exposure of crime and determining the penal, applying appropriate and effective prescribed penalties by the courts and the judiciary system will be necessary as the third phase of the supporting response. Also, the relevant executive agencies such
as the Supreme Council for the Protection of Environment, EPA, various ministries such as the Ministry of Interior, Ministry of Oil, Ports & Shipping Organization and other agencies should also take action in coordinating with the legislative and judiciary branches in support of the environment and confronting with oil pollutions to achieve a full support. Now, to understand the implementation of judicial decision about the oil pollution behaviors and imposing punishment actions, in other words, to recognize the procedure of courts and judicial functions and their precedent, some of the judgements and decisions made are reviewed to clarify Iran legal procedures significance and effectiveness in this regard:

Khuzestan province is one of the most oil-rich regions in Iran and the world. The management of Iran’s south oil-rich areas is responsible for more than 85% of production of oil exports, feeding the refineries and Iran National Gas Company as well as supplying the hydrocarbon feedstock for Iran's petrochemical complexes. The mentioned companies are also consisted of 9 staff organizations, 9 management companies and 5 subsidiary companies, namely, Karoon Oil and Gas Exploitation, Maroun, Aghajari, Gachsaran and Masjed Soleiman. However, such a widespread oil activity imposes significant environmental side effects and pollutions on water, soil and air, and consequently, the rate of crimes related to oil pollutions is high in the region (Mousavi, 2013). Thus, here, we reviewed and studied a number of decisions on legal cases related to oil pollutions in Khuzestan province as the most important province in the area of petroleum activities.

Given the sentences issued by Iran courts regarding the oil pollutions, we come to the conclusion that the legislation in this area lacks the deterrent power to stop this type of crimes. Thus, one of the most important questions of this study, i.e., “Are criminal laws effective in reducing crimes related to oil pollutions or not?” can be answered. According to the topics discussed in this study and review of criminal cases in this regard, we can say that the major oil activities of Iran are governmental or in government monopoly. Also, the statistics show that the government has a major role in most types of oil contamination crimes occurred. Due to the fact that many of the country's political and security issues are involved in these issues, the Judiciary system has not the sensitivity necessary to prevent such crimes. In some cases, lack of laws and firm performance bond has worsened the situation. For example, in most of cases examined in this study, the fixed penalty fines had been decided as sentence. However, fixed fines alone would be enough to hold this high volume of oil pollution offenses. Also, this punishment cannot have a great impact on the realization of the ultimate goal of penal to prevent the crimes. Therefore, the nature of many of these determined sanctions cannot be effective in reducing oil contamination crimes. Then, it is better to use relative fine or daily fine instead of fixed fine or assigning fine for elimination of oil pollutions.

In addition, the sentence of imprisonment is one of the major drawbacks of the criminal law offenses related to oil pollutions. For example, Article 688 of the Islamic Penal Code, which criminalizes threats to public health and prescribed sentence as the punishment for it, cannot be considered a perfect solution to prevent oil pollutions crimes. Since, instead, the lawmaker can use the punishments such as relative fines due to the damage caused by contamination to the environment, temporary license closure, temporary closures, transfer of pollutants units to remote areas from residential areas and even providing public services in the field of oil decontamination. In general, we came to the conclusion that in many cases, there is no proportionality between the oil pollution crime occurred and criminal response determined in terms of crime and punishment. For example, in the criminal case related to oil pollution of Maroon Petrochemical Company, there is no proportionality between the seriousness of the offense and the punishment prescribed, and this amount of pollution in the area needed more severe punishment. This is one of the major shortcomings of our criminal laws in the field of oil pollutions. Another criticism of the judiciary in criminal cases related to oil pollutions reviewed in this study is in fact the behavior inconsistency of
some judges with penal laws. For example, in Article 688 of the Islamic Penal Code, the legislator has stated the Environmental Protection Agency as one of the sources of detecting the contamination. But unfortunately, in most court cases, we witnessed that despite the explicit report by environmental experts to the obvious occurrence of pollution, the judge had ordered the police to examine and detect the oil pollution although with no expertise in the detection of oil pollution. In fact, this is somehow a backward for the judicial system. Thus, in dealing with court cases of pollutions, the judges should be trained in this regard to prevent behaviors inconsistent with the law to address these crimes and making decisions.

**Conclusion**

However, there are many environmental offenses in Iran criminal laws that include the oil contamination crimes as well; but these crimes have no clear and defined place in the of crimes classification. Then, it is not clear that such crimes are in the domain of crimes against property, or crimes against the security or crimes against the individuals, although the oil pollution offenses involve all crimes classifications. For example, an oil pollution crime can damage individuals, property and security as well. Therefore, due to the characteristics of such oil pollution crimes, they cannot be classified in a particular category, and separate classification should be made for them. For better prevention of oil pollutions crimes, the way of dealing with the perpetrators of these crimes must be changed. As acts or crimes such as theft, fraud, etc., are among the obscene acts in public, and the community sees them as guilty people, since such actions are not only lack social value, but also considered as negative and anti-value actions, thus, measures must be taken that the public opinion similarly deal with the perpetrators of pollutions crimes, including oil pollutions. This not only requires appropriate legislation, but also needs social training of people and changing their thinking about such crimes. In this regard, the mass communication and media can be used to explain this concept for the community. Thus, more efficient measure than enacting the legislation would be taken to prevent these crimes, since prevention is always better than treatment.

The oil pollution crisis and its harmful and adverse effects in life of humans, animals and plants are extremely dangerous and should be considered by judiciary system, people, the government and relevant institutions and organizations. Before the crisis reaches an acute, dangerous and irreversible stage, the necessary measures to prevent and deal with the crisis should be taken. In fact, the criminal laws are observed in these issues scientifically and practically when in addition to having appropriate legislation, the institutions and organizations responsible will supervise their proper implementation. The crisis of oil pollution and environmental degradation appear to be a global and widespread problem nowadays. Its solution depends on the activities and joint efforts of countries and international organizations.

Regarding the use of punishments for confronting oil contamination crimes, according to what mentioned, meanwhile more emphasizing on relative fine and daily punishment (due to profit-seeking objectives of many of contaminators and destructors), the use of other sanctions and security and corrective measures is considered necessary based on the case. For example, the use of fines for environmental purposes and eliminating oil contaminations can be much more effective. We wish that through overcoming the obstacles and problems in the future and providing the appropriate fields, we will have a very useful judicial procedure in this area.

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