



The Function of “Lazarar” Rul In Protection Of Environmental Law

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ABSTRACT

The principle of “No Harm” is among the strong jurisprudential principles that dominates the whole realm of jurisprudence. According to this principle, harm does not have any place in Islam. This principle is very useful in protecting environment and preventing from its destruction. It can serve as a firm jurisprudential basis for codification of laws in defense of environment. Accordingly, no one is allowed to trespass other people's rights by modifying the nature and society. Polluting nature and destructing natural resources is an example of doing harm to other living beings and it is certainly banned based on the no harm rule. Overharvesting and overuse of the natural resources is also a major type of harm that can be done to the nature and human society. In this essay the author has used the descriptive and analytic method for applying this rule to those who do harms to nature and environment by polluting it. These people are condemned as harm doers.

Keywords: No Harm Principle, Jurisprudential Rules, Environment, Natural Resources.

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INTRODUCTION

Quite the same way the human beings know it their own right to enjoy the earthbound gifts and the nature, the nature knows it its right to continue its life and the mankind's enjoyment of the nature should not be causing destruction and annihilation thereof. The various Islamic teaching texts have pointed to the nature and its elements as well as to the advantages and effects thereof in different ways; moreover, there is dealt with the necessity to conserve nature and environment. The axiom of “no-harm” is inter alia the rules that play a considerable role and is of a great importance in jurisprudence. The axiom originally is adopted from a narrative that is quoted from the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of His regards). It is quoted from His Highness that “there is no “harm” and no “Reciprocal harming” in Islam”. Corresponding to the foresaid axiom, there is no decree in Islam in which harming to anything can be perceived. It means that one can neither harm himself nor the others in Islam. The axiom of “no harm” is very extensive in Islam and it encompasses the entire angles of the mankind's life. Destruction of the environment and imposing losses to the mankind's individual and social life is amongst the harm cases and any harm should be withdrawn from being imposed on anything as ruled by the decree. There are questions posed in this regard, including the question as to how can the environment be conserved according to the concept and the function of the “no harm” axiom? Does it only embrace the harm to the human beings and/or does it additionally include the harms to the animals and plants? Is it possible to enact other rules and regulations according to the axiom of “no

harm”? The necessity for dealing with this issue manifests itself in preventing any harm and damage to the natural elements and any action carried out opposite to the aforesaid axiom should be sued and the harmer should be held liable for the compensation of the loss or harm s/he has caused as perceived from the axiom. There is a need for pondering over policies regarding the issue. Meanwhile dealing with the concept of “no-harm” axiom, the current research paper tries to elaborate the role of the axiom in environment conservation through drawing proofs from the AYAT and Narratives as well as the other documents and the inquiry of the notions from the popular jurisprudents and considering the fact that the legislature follows the Imammiyyeh Jurisprudence regarding the prevalence of the aforementioned axiom and concerning the inclusion circle of the axiom that incorporates the negating and proving verdicts. Therefore, the analysis and investigation of the no-harm axiom are presented succinctly in the first place.

1. The Literal Meanings of Harm and Harming:

There are numerous meanings expressed for the word “harm”, including a saying that states the “harm is opposite to benefit” (Jowhari, 1988, v.2, p.719, Vaseti, 1992, v.7, p.122). The author of Qamoos accompanies the denotation “benefit” with “a malicious state” as the antonym for “harm” (Qoreshi, 1990, v.4, p.177). Others interpret harm as causing defection in one's right (Jezry, no date, v.3, p.81) and some others know harm as meaning performing an undesirable action in respect to a person or causing defectiveness in the superstructure of a building (Foyumi, no date, v.2, p.360).

There are also a great many of the other denotations posited for the term “Reciprocal harming” that are based on the mutuality of the relationships including the one that proposes

“a person harms the other to gain benefit for oneself” and a sort of neutral harming can also be understood from the statements made in this regard that the harmer acquires no advantage and also it is stated that both of the terms have the same meaning and the use of them one following the other is for emphasis (Jezry, no date, v.3, p.82). The investigation of the use cases of harm and Reciprocal harming in Islamic sources indicates that “harm” includes all the damages and harms imposed on another person but “Reciprocal harming” includes the cases that a person imposes a harm on another by making use of a canonical rule or permission and such cases are currently being interpreted as misuse of right (Mousavi Khomeini, no date, v.1, p.28 on).

2. The Articles of No-Harm Axiom”

Based on the axiom, any religious law that is found harmful cannot be canonized; to put it differently, the sacred canonical ruler does not enact in Islam any law that is basically harming. There is a disagreement regarding the meaning of this axiom in such a way that each of the scholars of the jurisprudential rules has interpreted the axiom differently. There are different elucidations regarding as to what could be the contents of the axiom of no harm, each of which has been briefly dealt with below.

A) The late Sheikh Morteza Ansari’s Theory:

The Sheikh takes the negative maker in the sentence “no harm and no reciprocal harming” as a type negating “no” and expresses that the inclusion circle of the negation encompasses whatever has been decreed in the sentence in such a manner that one can say “there is no decree in Islam ordering a harm”, meaning that the term “decree” has been used by sheikh to refer to whatever the type of the decree and therefore it has to be said that the great apostle of the God (may Allah bestow him and his sacred progeny with the best of his regards) intended to assert that there is no decree issued in Islam that bears a harm or an intention of harm to anyone”. In other words, any verdict that entails the imposition of harm or its implementation is accompanied by harm to the people should be removed corresponding to the axiom of no harm, thus because there is no such a decree is issued in Islam that carried harm to anyone, so, Islam is essentially devoid of any harm (Ansari, 1992, pp.113&114&115).

B) The Deceased Mohaqeq Khorasani’s Theory:

In his idea, in the sentence “there is no harm”, the negation intention covers any subject matter; for instance, when we say ‘ablution is necessary’, here the ablution is the subject matter and the predicate complement ‘necessary’ is the “decree”. There are decrees issued on topics like ablution such as their being obligatory and these decrees have been stipulated as the primary provisions related to such subject matters. Now, if such topics are recognized as causing harms then their decrees should be removed. If ablution is found causing harm, then its decree which is indicative of its necessity should be removed (Khorasani, 1987, pp.381&382).

C) The Late Shari’at Esfahani’s Theory:

In his idea the negating “no” in the sentence “there is no harm and no reciprocal harming in Islam” has been applied to indicate the prohibition of harm and he bases his proofs on evidences from the Book and the Tradition in which “no” has been used to prohibit from similar things, including the one in the Holy Quran that orders “”, meaning “there is [to be for him] no sexual relations and no disobedience and no disputing during Hajj” (BAQARAH: 197)

The Late Naraqi’s Theory:

He believes that the sentence conveys an “uncompensated harm” meaning that there is no such a thing in Islam as unreimbursed harm. Exercising such a decree, the holy canonical ruler requires everyone to compensate for the losses meaning that anyone who has caused a loss or a damage to another person should compensate or better said provision it and there is no one single case of harm considered by the canonical ruler in which the harmer is held immune of compensating the harm and, said it differently, there is no such a thing in Islam as un-provisioned harm (Naraqi, 1995, p.51).

D) Imam Khomeini (may Allah sanctify the sacred soil of his tomb)’s Theory:

Imam Khomeini (may Allah sanctify the sacred soil of his tomb) orders that the aforementioned decree in the HADITH “no harm and no reciprocal harming” should be considered as a governmental and executive verdict applied by the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of His regards) and then we can say that His Highness the God’s Messenger (may Allah bestow him and his sacred progeny with the best of His regards), as a governor, prohibited his subordinate people from imposing harms and damages to one another with the above statement as a governmental criterion and it is, of course, the compulsory duty of every Muslim to obey the order (Mousavi Khomeini, 2003, v.3, p.112 and Mousavi Khomeini, no date, v.1, p.50 on). The abovementioned elaborations, each, in a way or another, is connected to the environment conservation as a general benefit or expediency and the necessity to remove or repel the harm thereto. Whether the use of the negation in the aforementioned sentence be a negation of the decree or a negation of the subject matter or be it the prohibition from imposing any harm, any harmful abuse, to the environment, as the place to which every individual belongs and in which their rights can be collectively fulfilled, it is canonically forbidden and can be sued and compensated, if any. The discussed axiom is of course more implicative of the privative aspect of the issue, to wit the forbiddance of treating the environment harmfully but it is by way of the same implication that it can be concluded that the obligatory aspect of the subject, to wit the conservation of the environment, has also been carefully considered and validated by the canonical ruler. If the imposition of harm to a subject matter is found canonically forbidden, it becomes clear that the subject matter is seen as a supportable value from the canonical viewpoints. Whether in the way of conduct chosen by the intellectuals or the consensus reached by the canonical rulers, there is a supportable value on the line wherever there is a prohibition and punishment (Omidi and Yusefipour, 2014, no.10, p.7).

3. Does the No Harm Axiom Govern the Negating Verdicts? Does the axiom of No Harm Proves any Verdict?

There is no doubt that the axiom of no harm incorporates the existential verdicts. Now if there is caused any loss or harm due to the absence of an existential issue, can the no-harm axiom be envisioned as governing the issue? For example, if the absence of a verdict brings about the grounding for the imposition of some sort of a harm, can the no-harm axiom be applied and negated the harm thereby to enact a rule? There is a discrepancy amongst the jurists in this regard. But, it can be said according to the revelation stance of No-Harm Axiom as well as based on the theorem that any sort of harm has been negated in the circle of the religion that the compensation for the harm imposed should be recounted as the ancillary stipulations and provisions related to the denial of harmful verdict, because the main objective of the axiom is

compensation of the harm and the removal of the harmful verdicts can also be deemed an instrument for compensating the harms; as in an incident in which Samrah Ben Jondab was involved, His Highness declared the No-Harm HADITH as an introduction to and the reason behind the issuance of a verdict prohibiting the uprooting of the palm tree and this way His Highness compensated the loss caused to the Ansari man. Thus, it is hardly believable that the inclusion circle of No-Harm Axiom is limited to the removal of harmful verdicts and certain injurious existential actions and that it plays no role in cases where legal gaps cause the imposition of losses and damages because the same way that fabrication of statutory provisions can be harmful to an individual or a society then taking a silent position and non-fabrication might be more detrimental and more damaging. The No-Harm Axiom can be applied as one premise of the civil liability, albeit the negating “no” a prohibiting auxiliary used parallel to the dismissal of all harmful verdicts; because justification of a liability is a secondary principle to the dismissal of the harmful verdicts. That is because if the loss is left unreimbursed by the one who or which has caused it then the harmed should incur the loss and this is not in accordance to the canonical rules (Taheri, 2008, v.1, pp.94&95).

4. The Evidences of No-Harm Axiom:

In terms of the evidence and documents, the no-harm axiom possesses a robust and solid support that range from the book and the tradition to the reason. The no-harm axiom that is per se derived from a prophetic HADITH is also based on the Holy Quran, to wit there are numerous AYAT in the Holy Quran that vividly imply the no-harm axiom, including the AYAT 282, 196, 231, 233 and 173 from SURAH BAQARAH, AYA 12 from the SURAH NISA'A and AYA 6 from the SURAH TALAQ all of which explicitly express the same idea and here we suffice to the mentioning of several of them.

4.1. The Book:

4.1.1 “meaning “no mother should suffer a loss for her child and no father identically should be incurred with any harm for his child” (BAQARAH: 233).

4.1.2 meaning “when you divorced your wives and their respite came to an end, then do not keep them so that you might not harm them or act tyrannically” (BAQARAH: 231).

4.1.3 , meaning “after any bequest which was made or debt, as long as there is no detriment [caused]” (NISA'A: 12).

4.1.4 “meaning “and, do not harm the scribes and the witness” (BAQARAH: 282).

4.1.5 meaning that “inhabit your divorced wives in whatever the place you are residing and you can afford. Do not harm them so that you might be hard on them” (TALAQ: 6).

4.2. Narratives:

Regarding the No-Harm Axiom, there are many narrations that have been made rather succinct based on their frequency meaning that although not all of the narratives are expressed by the same wording, they carry the same theme, including:

4.2.1 The most famous HADITH in this regard pertains to the story of Samreh Ben Jondab below which the No-Harm axiom can be vividly pointed out. The late Kolayni in the book “Al-Kafi” quotes Imam Baqer (peace be upon him) who has ordered that “at the time of the God’s apostle (may Allah bestow him and his sacred progeny with the best of His regard), Samreh Ben Jondab had a palm tree

beside the house of a man from Ansar group and he had to pass through the Ansari man’s property to reach to the tree. Samreh had caused annoyance to the Ansari man’s family by his repeated visiting of the tree. Samreh kept on saying that I do not need to declare my presence and ask for a permission to visit the tree because it is my right to pay a visit to the tree whenever I think it is necessary. The Ansari man was forced to complain to the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of His regards). After suggesting a peaceful solution and finding Samreh disapproving it, His Highness (may Allah bestow him and his sacred progeny with the best of His regards) ordered “truly, you are a nasty man and there should be no harm and no harmful intention on a believer” and then his highness ordered to uproot the tree and throw it before Samreh (Kolayni, 2007, v.10, p.476 on).

4.2.2 The deceased Kolayni cites a quotation from Aqabah Ben Khalid who had heard it from Imam Sadeq (peace be upon him) that his highness (peace be upon him) was judging the preemption between the partners in land and housing and ordered that “there should be no harm and no harmful intention” (Borujerdi, 2007, v.24, p.202).

4.2.3 Another narrative has been cited in Al-Kafi from Imam Muhammad Baqer (peace be upon him) bearing the content that the great apostle (may Allah bestow him and his sacred progeny with the best of His regard) has been judging between the people of Medina regarding the irrigation of palm gardens and between the desert dwellers regarding the potable water and has ordered that “there should be no harm and no harmful intention” (Kolayni, 2002, v.10, p.483 and Borujerdi, 2007, v.23, p.1028).

4.2.4 Another narrative cited in Al-Mostadrak is about the shared wall between the adjacent neighbors and quotes the great apostle (may Allah bestow him and his sacred progeny with the best of His regards) to have ordered “there is no harm and reciprocal harming” (Nouri, v.3, p.150).

The AHADITH mentioned above indicate that the no-harm axiom radius embraces the entire aspects of the human life. The reasoning style of the above-cited AHADITH and Narratives demonstrates that Islam does not accept harming and damaging the others and the destruction of the environment and the other living being is undoubtedly an example of harm.

4.3. Reason:

The most important foundation for the rejection of harm and reciprocal harming is the reason. The purport of this axiom is enumerated among the reason-specific topics that deals with such issues for which the reason can reach to a conclusion without it being assisted by the canonical rules and the wisdom of every wise man knows it unwise to harm another and demands compensation in case of any harm (Taheri, 2008, v.1, p.83).

4.4. The Intellectuals’ Foundation:

Disregarding the expressional reasons opined about the no-harm axiom, it seems that the Intellectuals’ foundation provides for a concrete support for this axiom. Evidently, the intellectuals’ foundation is realized in the idea that harming the others in a social life is firstly an unfavorable affair and secondly there is no rejection and prohibition made regarding

the axiom of no harm hence the canonical ruler's agreement to the axiom can also be verified by way of this. Surely, the intellectuals know the harmer as the one who has to compensate it and as it was mentioned, the major support in the no-harm axiom is the very foundation of the intellectuals and their endorsement is ascertained via their lack of proposing any rejection and denial (Mohaqqeq Damad, 2015, p.151).

5. The Axiom of No Harm and Its Function in Environment Conservation:

The sacred canonical ruler has not enacted any rule in Islam that is basically found harmful to the others or to he himself. As a specimen, the human being are the proprietors of their own legal personal possessions and they can take the possession of their properties in any way it is deemed desirable by them, but if such an ownership takes the form that is found harmful to another person then it is to be included in the inclusions cope of the axiom and based thereupon, the individual cannot gain such an ownership. The revelation stance of the axiom is well clarifying the issue. Based on these diverse and numerous AHADITH, the God's apostle (may Allah bestow him and his sacred progeny with the best of His regards) has forbid any action and deed that bears a harm to another; and, in the well-known Samreh HADITH, the harmfulness of an individual made the prophet to disallow Samreh to take possession of his tree. Now, if some taking of possessions are found harmful to a great many of the people, then there would be no doubt that the axiom neutralizes the foresaid possessions; very much like the deforestations that have caused devastating and harmful floods and/or contamination of the soils and hence their erosion and/or the establishment of a large factory the emitting smoke and gases of which can be harmful to the entire people residing in cities in the vicinity thereof or the use of the vehicles that cause air pollution or discharging the factories' sewage into the rivers and/or contamination of the lakes and other issues of the like that bring about harms to the environment all of which are not permitted corresponding to this jurisprudential axiom. It is evident that the more the harmfulness is found huger and the more it exerts more drastic destruction to the environment then the more increasingly it has to be covered by the axiom in a more distinct manner. Contemporarily, the demolition of the large forests worldwide and the destruction and contamination of the soil, the establishment of the factories that is followed by the emission of the greenhouse gases and increases the temperature of the earth or the gases that damage the ozone layer as well as the contamination of the water are inter alia the most dramatic harms and reciprocal harming the fire of which will hold a firm grip of all the human beings. If the great God's apostle (may Allah bestow him and his sacred progeny with the best of His regards) was alive at our time, he would decisively put a rein on these uncontrolled measures based on the aforesaid straightforward HADITH and Axiom. Based thereon, the No-Harm Axiom can be very useful both legally and punitively. In other words, from jurisprudential perspectives, the environment protection can be proposed and analyzed within the framework of the No-Harm Axiom.

Thus, meanwhile dealing with the concept of no-harm axiom and its analysis through basing our proofs on the AYAT and the Narratives, we try to elaborate the role of the axiom in the law on environment conservation via tracking the legislator's obedience of the Imamiyyeh Jurisprudence regarding the aforementioned axiom's supremacy and inclusion of the negating and proving verdicts.

The main objective in protecting the environment is preventing the damage and harm to the natural elements (water, soil, air and the living organisms) and any action taken

against it should be sued. The general and all-inclusive verdicts provide for the actualization of the abovementioned objective, i.e. environment conservation, through their compliance with the temporal exigencies. There are general principles in the Islam rites through resorting to which the rules connected to the environment can be enacted according to the status quo of the affairs. Some of these principles are: the principle (axiom) of no harm (Jowzi; Ja'afarpour; Sho'ariyan, 2010, p.48) based on which no harming and reciprocal harming is allowed in Islam both in the enactment of the codes of law and in the enforcement of them. Therefore, if a law is passed that causes some individuals or the society to incur a loss or in case that it is found causing harm upon its enforcement, it is not considered as legitimate in Islam (Taghizadeh Ansari, 1995, p.42).

5.1. The jurisprudential Nature of the Bioenvironmental Resources:

Bioenvironmental resources encompass the entire sources on which the mankind is dependent directly or indirectly and all man's activities and his life are tied thereto. A great many of these resources are examples of a general title called "properties" for which the humans' proprietorship law is the governing principle; however, there are an even greater number of the resources that are not envisioned as properties of the human beings but are surely the rights of all of them and abusing them is accompanied by legal and jurisprudential outcomes. For instance, having a safe environment in terms of the noise is a right of all people and the creation of noise is for sure an example of the breach to such a law and in some of the cases it brings about a civil liability and obligation (Mohaqqeq Damad, 2014, p.178).

5.2. Bioenvironmental Resources:

A) Soil and Land:

It is stated in a prophetic HADITH that "meaning "the land has been made a place for me to prostrate and its soil is purifying and I pray to the God wherever when it is the time to say prayers" (Horr Ameli, 1987, v.5, p.118; Abi Jomhour, 1983, v.2, p.208). Having a glance at the aforesaid HADITH is undoubtedly revealing of the sanctity of the soil and based thereon it can be decreed that the contamination of soil is forbidden. With such a HADITH, it can be stated that nobody is canonically allowed to urinate and excrete wherever s/he desires or to throw out waste materials and this way make the others' life environment dirty. The substantial resources of soil contamination are the application of chemical and nuclear weaponry, the dispersion of hard and non-degradable garbage, the use of poison for the elimination of pests (Karimi, 1994, v.6, p.70), storage and carriage of materials through substance transferring pipes, storage of urban sewage and factories' waste materials as well as the use of sewage as a secondary raw material all of which cause severe contamination of the soil; furthermore, the contamination of the surface water can lead to the soil contamination (Mohaqqeq, 2014, p.204).

There are numerous AYAT revealed in the Holy Quran regarding the prohibition of depravity including in SURAH QISAS (AYA: 77), SURAH MU'MINUN (AYA: 71) and SURAH MA'IDA (AYA: 79) and "never seek corruption on earth because the God does not like the vice people" and carnal temptations have been introduced as the source of all depravities and it also knows the behavior of the individuals indifferent to the corrupts as being the worst conduct. It is worth mentioning that by corruption here the canonical vice is intended and it is a corruption type that is committed by the mankind one of the most tangible of which is the corruption in the God-endowed blessings and it occurs when the mankind causes changes in

the nature for the purpose of satisfying his own wants; a devastative occupation in the nature with no concern about the rules governing it (Amigh; Hosseini, 2006, pp.38&39). Therefore, the human beings are commissioned to make prosperity and flourishing on earth not corruption and demolition. So, the human beings are responsible for the conservation of the natural resources and prevention of its destruction because a denotation understood from corruption is the destruction of the environment. In compliance to the jurisprudential axiom of no harm, there should be no harm in Islam and there is thus no harm in the Islamic verdicts for the obliged individuals nor there is prescribed harming to the others. The humans cannot harm the others for such reasons as extreme exploitation of the nature and it is not at all ordered by the sacred canonical lawgiver. If the excessive exploitation and jobbery of the environment causes one to harm oneself and the others, then it has to be surely considered as an example of corruption and it is rejected from the perspective of Islam because no such a thing as harm and reciprocal harming exists in Islam.

B) Air and Space:

According to the law on the method of prevention of air pollution, approved in 1968, and the rules of procedure of the same law, passed in 2000, the important sources of air pollution are: smoke emitting from the land, railroad, aerial and marine vehicles; the smoke given out through the chimneys of the industrial and manufacturing workshops and factories; the smoke discharged of the garbage when burning them; the fuel burning in the houses and shops; fires; accumulation of waste and stinky materials in open air and other sources of the like.

Besides their direct and immediate effects, the pollutants that are currently being created threaten the humans and the other creatures' health and life and are followed by intermediated and indirect dangers that will eventually cause the wastage of the humans' rights in their enjoyment of a safe and sound environment. The most important effects of the pollutants on the physical health are: intoxication, acute eye discomforts, sciatic, tuberculosis, cancer, rheumatoid, vascular diseases, childbirth disorders, itchy eye, pulmonary system sensitivities, increase in allergies, asthma and dyspnea. Besides exerting severe exacerbating effects on the somatic health, these pollutants are also accompanied by psychological outcomes like depression, aggressiveness, impatience, decline of IQ and so on (Mohaqqeq Damad, 2014, pp.209&210&211). The depleting use of the fossil fuels (like petroleum, gas and coal) causes air pollution which is per se the most tremendous danger to the human health. The short-term effects of the air pollution are: eye, nose, larynx sensitivities, upper pulmonary system infections such as bronchitis and pneumonia, headache, nausea and allergic reactions; the long-term outcomes of air pollution can include the chronic respiration diseases, pulmonary cancer, heart diseases and even cerebral, nerve, hepatic and renal damages. Air pollution is the most enormous risk factor in the creation and exacerbation of asthma and it causes disruptions in the process of blood circulation in the diabetics and also cases of early deaths have been reported in the urban polluted areas. The pollutants reduce the plants' ability for fighting the diseases and pests and negatively influence their growth (Amigh, Hosseini, 2006, p.74). Many of the historical buildings have been turned into ruins due to the air pollution and also it is proved that the acid sedimentation causes damages to the forests, wild life and agriculture. The air pollution effect has been found emergent even a thousand kilometer away from the source of pollution. Therefore, it is clear that the air pollution is in need of an international reaction. The governments need to come to an agreement

regarding the tools of likely reductions in the extant and prospective air pollution (Habibi, 2002, v.2, pp.26&27).

It was concluded in a brief survey of the No-Harm Axiom that imposing harm on the life and the property of the people is canonically forbidden and Islam prohibits it and based on the liability proof it was asserted that should anyone cause a damage to the life or the personal possessions of another person s/he has to compensate it (a group of writers, no date, v.31, p.65). With the explanations presented so far, there remains no doubt that the air pollution causes harm to the life of the others and contaminating the air and the space and ignoring the effects and the outcomes derived thereof on the physique and the psyche of the people are but two examples of such harm that is reproached by the canonical ruler as a result of which any verdict found harmful should be dismissed.

Based on the natural law principles, the No-Harm Axiom and the premise of "there is no harm and reciprocal harming in Islam" point to the inborn characteristics of the mankind and are endorsed by the mankind's innate rights accordingly, especially when considering the HADITH that states "nobody has the right to deprive another from his or her innate rights and/or make them wasted and injured the same as the wastage of right caused by Samreh Ben Jondab in respect to that man from Ansar group. The next generation's responsibility and the environment conservation and protection of the other creatures are all formed based on the principle that the universe follows a wise system and the entire creation moves towards certain goals in such a manner that the creation itself has formulated certain rights because the universe is chasing an objective so it is the time that we appear as liable individuals (a group of writers, no date, v.52, p.130).

C) Seas, Beaches and General Waters:

Water pollution originates from a multiplicity of sources. It might be caused via the treatment factories' waste waters that are oozed from waste material or insufficiently treated substances, the inflowing of the surface waters to the rivers and the lakes or through the application of harmful substances in agriculture (like fertilizers and pesticides) as well as via the chemically dangerous and poisonous materials or from the waste materials piled up in the garbage dumping localities or from the industrial installations all of which cause water contamination one way or another. The extreme exploitation of water resources like making use of the well water for irrigation has led to the emergence of problems regarding the reduction or even the complete termination of these resources. The water contamination via the organic waste results in such diseases as cholera, typhoid fever and bloody diarrhea. The waterborne dangerous materials that either exists in the potable waters naturally or due to the gigantic sewage treatment factories in their vicinity are the other causes of the diseases and therefore threaten the humans' lives (Habibi, 2002, v.2, p.75&76).

Seas, gulfs and rivers pollution are amongst the marine contaminations. The half life and the survival of the nuclear compounds lengthen upon entering to the sea water. Plutonium is amongst the very dangerous radioactive elements featuring a life of 24400 years and it is dreadfully capable of lasting for long centuries and contaminating the environment. Upon their entry to the environment, including the seas, these elements find their way into the food chain thereby to the human body. The establishment of fossil power plants as well as the nuclear power plants along the aquatic streams and the coastal lines can change and jeopardize the water ecosystem and bring about the hearing of the sea water and resultantly the destruction of sea creatures. Homemade and industrial wastes are also inter alia the sea contamination sources;

because the discharging of the urban waste materials and the transferring of the urban sewage to the seas and rivers contaminate the environment. Also, the transferring of the petroleum and nuclear products, exploration and exploitation of sea floor or the beaches for the exploitation of oil, the collision of the oil tankers on sea and their wreckage and sinking in the sea and so forth are the other sources of sea contamination (Mohaqqeq Damad, 2014, pp.189&190). Besides endangering the humans' sanitation, health and environment, the waters that have been polluted from various sources make the animals and plants faced with ecological problems and dangers (E'tezad; Malek Chashm Siah, 1996, v.8, p.73).

It was seen that there is a difference in the viewpoints by the lexicographers regarding the conceptualization of harm but it is generally accepted that harm is a term that is used to refer to a deflection in the life and personal properties and the damages brought about in the environment are all tied to these two topics. According to the fact that tributes are to be considered as public properties in which all people have a share the optimum use of the public properties necessitates the supervision of an Islamic government so that the wastage of the people's rights can be prevented and so as not to pave the way for the immethodical profiteering and despotic exploitations. Corresponding to the No-Harm Axiom that expresses that there is not decreed any harmful verdict in Islam, if our malicious deeds cause harms to the environment and bring about the wastage of the others' rights and/or cause the others to be annoyed and irritated, such a behavior is deemed incorrect, denounced and against the common as well as the canonical rules and since the primary objective in environment conservation is the prevention of harm to the natural elements like water, any action in opposite that causes the damage to the environment and finally the humans has to be sued in accordance to the No-Harm Axiom.

As it was mentioned, a debatable point regarding the no-harm axiom is its inclusion of the missing verdicts meaning that can a damage of any type which is caused as a result of the absence of an existential affair be revoked through resorting to this axiom or not. Some jurisprudents have accepted this belief (Sistani, 1992, p.290; Makarem Shirazi, 1989, v.1, p.79). In this case, it has to be said that not only the damages resulting from the destructive actions can be ceased via the no-harm axiom but also the axiom can fight leaving undone the corrective and constructive actions that end in the environmental damages. Thus, the Islamic government and the environment authorities should know themselves obliged to apply their best of vigor in enactments and establishments of the rules as well as in the enforcement of executive strategies for the revitalization and protection of the environment. For example, the utilization of scientific methods for the prevention of soil erosion and revitalization of the pastures and forests, tree plantation and expansion of greeneries are all auspicious measures that leaving them undone leads to irreparable losses and the no-harm axiom tends to fight them. In this way, the aforementioned axiom, plus its deterring role, will have a constructive role. The justification of civil responsibility is amongst the results derived out of the axiom's inclusion of the missing verdicts (Sistani, 1989, p.293). The no-harm axiom not only prevents damage to the environment but it also make the harmer shoulder the damages and harms s/he has caused through taking devastative measures or via leaving undone the corrective actions.

D) Plants and Animals:

Forests and pastures that are amongst the public tributes and wealth surely play a considerable role in the safe and sound mankind environment. These resources have been damaged in

various ways and, on the one hand, the governmental measures are in close touch with such resources in line with urban and country developments and, on the other hand, these resources have always been envied by the individuals who have overtly and covertly cut the trees for such purposes as profiteering and accumulation of wealth the results of which have manifested in the conversion of the forests to arable land or occasionally places of residence (Mohaqqeq Damad, 2014, p.185). As it was pointed out, the Islamic canonical verdicts, including both obligatory and the situational, are laid upon the foundation of denial of any sort of typical and general harm corresponding to the no-harm axiom and the axiom is not exclusively specific to personal harms and it incorporates the public harms, as well, and even the importance of the latter is more increasingly higher than the former. Damage of the environment is usually a public harm that exposes the mankind's life to a serious danger.

According to the various perspectives that were proposed on the contents of the no-harm axiom, it is evident that harm of any sort is not legitimate in Islam. Such illicitness encompasses both the legislating stages and the law enforcement process (Sistani, 1992, p.134; Makarem Shirazi, 1989, v.1, p.68). In other words, any sort of law-making that leads to harm or any sort of individual or social behavior that results in harm is prohibited based on such an axiom. Therefore, first of all, the legislative body of the society does not have the right to enact rules that lead to the destruction and demolition of the environment and, secondly, any sort of behavior by the people that result in the environmental damage is illegitimate and entails obligatory prohibition and, thirdly, based on Imam Khomeini (may Allah sanctify the sacred soil of his tomb)'s viewpoint indicating the idea that no-harm axiom requires the governmental prohibition (Mousavi Khomeini, 1986, v.1, p.51) it is the duty of the Islamic government to fight with such behaviors that are actualized by individual society members or some centers of power and influence.

5.3. The Legal Deficits of Environment Conservation:

Corresponding to the Act 50 of the Constitution, environment conservation is the duty of individual society members, including both real persons and private and public sectors. An extant issue in the area of environment is the inadequacy of the regulations. In addition, the existing rules pertain to two or three decades ago. Thus, it can be stated that there is a legal shortage in Iran's area of environment. For example, the following specimens can be pointed out:

- 1) Part of our problems stem from the out-of-date nature of the regulations. For instance, the law of hunting in Iran dates back to the 1960s and the regulations specified therein are for the 1980s. Also, the law on hunting has been established at the time that Iran's population was in a range between 25 and 30 million people which has increased to 80 million individuals for the present time and the same law still persists. Thus, the issue is indicative of the idea that our regulations do not conform to the status quo of the affairs. In some of the cases, the punishments are found disproportionate to the violations, such as in the area of wild life and, unfortunately, one reason that has caused the increase in the number of the abuses in such an area is the low rate of the punishments. To put it differently, when an individual sees that s/he can earn a profit by hunting the wild animals that is greater than the punishment so s/he will easily perpetrate the crime (as an example, please refer to the articles 10 to 13 of the hunting law, enacted in

- 1967 as well as the amendments 53 and 75); it happens that there is a total absence of any law in some of the areas meaning that there is an absolute legal gap. The legal investigations indicate that one reason behind the lack of observing the animal law in Iran is the extant legal gaps as well as the imperfect or inaccurate implementation of the rules. For instance, there is no clear-cut rule regarding the rights of the animals like dog and cat. In confrontation with the violators of the animals' rights, we see rules that are outdated. The law on hunting clearly states punishments for and forbids the hunting of wild rare or otherwise protected northern animals as well as for killing or annoying the domestic animals like poultry that have no specific possessor but there is no law on killing the street animals.
- 2) During the past several years, severe damages have been caused to the nature as a result of the humans' interventions and such phenomena as dust have come about under these conditions. According to the fact that the air pollution prevention law pertains to 1995, the law has not pointed to the pollution sources resulting from the dust. Therefore, we are having legal provisions missing in this regard. So, we are required to codify new regulations in relation to the mankind and the nature. The entire array of the reactions that occur in the political and legal structures of the country to the bioenvironmental catastrophes solely end in the expression of worries. The Environment Organization is the institution that has to enforce the relevant rules but it seems devoid of any executive ability for acquiring its legal rights.
 - 3) The necessity for the amendment of the environment guards' protection law: the law of environment conservation and forest guards' protection needs revisions so as to bridge the legal gaps. As a specimen, it can be said that the environment guards have been recently authorized to carry weapons but their use of their weapons has not been clearly specified and the government should exemplify the use cases. The environment guards are faced with shortages even in their basic equipment while they are fulfilling their duty of protecting the environment countrywide with such little equipment. Thus, it has to be stated that the environment guards are in need of more facilities and supports so an overall revision is inevitable and this necessitates the specific consideration of the state authorities. It is now for years that for such reasons as the lack of the legal supports, the injury of unauthorized weapons used by the hunters have remained on the body of the environment guards and/or they are awaiting gallows for their self-defense and somehow hunted by the law. Considering the fact that the lack of legal support for the environment guards brings about the grounding for their discouragement and according to their difficult and specific work conditions, the necessity for the amendment of the environment guards' protection law is tangibly felt.
 - 4) Suggestions:
 - 5) According to the materials presented up to this point, the jurisprudential no-harm axiom can be the premise of a great many of the bioenvironmental decrees and pave the way for the coinage of law in regard of environment conservation. For example, the following cases can be pointed out:
 - 6) In case that the experts and specialists declare high-rise building activities in residential areas as the factor contributing to the emergence of climatic problems, then such measures would be considered as abuse to the public interests hence canonically forbidden.
 - 7) In case that in experts' ideas the uncontrolled exploitation of water in regions that there is a deficiency of water for personal uses and enjoyments such as filling the swimming pools in personal houses is considered as an abuse to the public interests and hence canonically forbidden, the payment of water bills to the Urban Water and Sewage Organization does not seem to resolve any problem.
 - 8) Although the breeding activities on the country's forests is envisaged as a must, cutting the trees therein for such purposes as developing the residential areas is considered as an abuse to the public interests and hence canonically forbidden if opined as causing destruction of biological resources and elimination of the factors restoring the environment by the specialists.
 - 9) Discharging the home sewage and the factories and the other places' waste materials and garbage into the rivers, seas and to the ground water is also canonically forbidden.
 - 10) The establishment of smoke-producing factories with no detrimental gas filtering equipment in the regions that cause the destruction and damage of the biological resources is an example of abuse to the public interests and therefore canonically forbidden.
 - 11) The real or legal persons' uses of smoke-producing vehicles that cause air pollution as confirmed by the specialists is forbidden and in some of the cases bring about canonical liabilities.
 - 12) Placing the garbage containers in localities where it causes the gathering of disease transferring insects and contaminates the space is canonically forbidden and brings about liability.
 - 13) Throwing out the residues of the fruits and other things in the public passageways that provides for the gathering of harmful agents is canonically forbidden and brings about liability in case that harms are caused.
 - 14) Creation of noise if it is to the degree that causes harm to the citizens is canonically forbidden and brings about liability.
 - 15) The Government is obliged to take preventive measures in respect to the factors giving rise to the environment destruction and the citizens can demand it in case of negligence.
 - 16) When in armed clash with the enemy, the use of weapons that cause the destruction of bioenvironmental resources is canonically forbidden and prohibited. Contamination of waters by the use of poisoning and microbial agents for the elimination of natural resources, farms and planted areas as well as domestic and undomesticated animals in the territory of Kaffirs is prohibited.
 - 17) The experts are advised to prepare and deliver a codified law in line with the protection of animal rights to the Islamic Consultative Assembly. The codification and presentation of a law collection based on the Islamic jurisprudential affairs as well as according to the rules exercised by the other countries was initiated since the sixth congress by the association for the protection of animals but the

representatives seem to have neglected the enactment of such regulations. Nowadays, a great many of the animal rights sponsors and the bioenvironmental specialists demand the preparation and codification of the regulations as well as making the punishments in respect to the law-breakers in regard of the animals more up-to-date.

- 18) Based on his jurisdiction, the attorney general can issue criminality sentences and/or deterring punishments for the violators. Also, supplementary punishments can be utilized in the lawsuits pertaining to the annoyance and nuisance of the animals.
- 19) The entire array of the developmental plans that are going to be enforced in the country, including the urban, industrial, agricultural and service ones, should be appended with bioenvironmental notes meaning that the long-term outcomes of the plan should be taken into account.
- 20) The cultivation of plants that need too much water should be prohibited countrywide.
- 21) It is necessary that the Environment Protection Organization in cooperation with the presidency institution bring to the congress the faulty legal articles and then we can hopefully and rapidly witness the safeguarding of the environmental health through the amendments made thereby to make greater efforts parallel to the protection of valuable animals of our country and then we can think of solutions for the protection of the environment guards who are innocently hunted by the unauthorized hunters.

CONCLUSION:

Considering the discussions presented so far, we can come to the conclusion that prohibiting the abuse to the bioenvironmental resources and encouraging the protection of them has been in line with the valuable and holy nature of those resources to the Islamic jurisprudence and not exclusively for such purposes as dismaying the abuse to the others' properties and possessions. In other words, one should not think that the order to conserve the environment and prohibition of the destructive actions is solely for the sake of abuse to the properties and possessions of the others so that it can be made permissible if the consent from their owners was acquired. From the Islamic law perspective, the bioenvironmental resources have been dealt with independently and they enjoy a particular value and sanctity and corresponding to the no-harm axiom, any sort of harmful abuse to the environment as the locus of the public society's attachment and gathering is canonically forbidden and indictable. Thus, according to the privative implications of the axiom to the forbiddance of treating the environment harmfully, the obligatory aspect thereof, to wit the environment conservation, has also been considered by the canonical lawgiver and the biological resources, if wasted through excessive use, bring about liabilities even if they are not owned privately.

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