



Review Article

PRESERVATION OF AGRICULTURAL AND HORTICULTURAL LANDS IN THE CRIMINAL POLICY OF IRAN

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ABSTRACT

The way the criminal policy of Iran deals with the preservation of agricultural and horticultural lands use is currently among the hot topics of the country. Unfortunately, with a lack of careful study as well as a concentration on criminalization and penal reaction, this policy seeks keeping these lands. However, the scientific criminal policy contains important points that should be considered as a whole – and not separately–and besides the penal measures, adherence to active social and cultural activities as well as creation of the needed infrastructures should be exercised so as to achieve the intended goals. Otherwise, stressing the preservation of these lands, while the people under this law don't know the consequences of their activities, together with a lack of support for agriculture sector and insufficient revenues of agricultural works in Iran, lack of NGO activities to support this sector, and lack of territorial planning, seems to be in vain. Instead of criminalization in suchlike cases, Iranian policymakers should legitimize the constructions in Iran and pay more attention to the respective commissions (i.e. the commission under acts 92 and 100 of the Municipalities Law), which are about the unauthorized constructions.

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INTRODUCTION

Regarding the conditions of agricultural and horticultural lands in Iran, a reference to statistics shows that out of the total 165 million hectares of Iran's area, only 18.5 million hectares are allocated to agricultural and horticultural lands. Out of this sum, around 14 million hectares are under agricultural and horticultural cultivation every year, with the remaining 4.5 million hectares left fallow. So, the Iranians' share of the agricultural and horticultural lands is around 0.28 hectare per capita. However, according to experts' opinion, the per capita share of land needed for production of enough plant and animal-based food is about 0.485 hectare. This shows that Iran needs to double its cultivable lands to reach the optimal per capita share of agricultural and horticultural lands. What exacerbates this situation is that in the light of the population increase and the development of cities and industries in a 20-year perspective, nearly 4 million hectares of Iranian cultivable lands are doomed to a change in use (Soleimani et.al, the expert advice regarding the reform bill for.

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The Preservation of Horticultural and Agricultural Lands Use Law enacted in 1995 and its rectifications, the Parliament Research Center, No. 1692, date: 10/24/2011). In the light of the present regulations and different legislative, judicial, and official measures, this article aims at examining and criticizing the criminal policy of Iran regarding the change of use of the agricultural and horticultural lands. Consequently, the present problems are enumerated and the due solutions are offered.

Concepts

Criminal policy

Today and based on the current viewpoints, criminal policy is defined within two frameworks. The narrow set of definitions considers the criminal policy within the criminal law and criminology framework as well as repressive measures of government and public powers. The second group of definitions – which is more up-to-date and more widely accepted – is expressed through a more extensive viewpoint and has been brought about by expansion of humanistic thoughts and human rights bases, as well as doubting the exclusive right of the necessarily governmental criminal system (Hosseini, 2003, p. 4) to deal with crime and criminals, demeaning its role,

underlining the social aspects of different affairs, creating the social reaction against offending, and providing non-penal solutions. One of the most comprehensive definitions among such broad definitions is offered by Mireille *Delmas-Marty*, the famous French scholar, in which she states “criminal policy is a set of methods by using which the public organizes its responses to the criminal phenomenon” (Delmas-Marty, 2002, p.23). According to this definition, criminal policy is synonymous with different aspects of social control where the criminal law is the nucleus. Regarding the above-mentioned broad definition of criminal policy, there are some points which should be noted, including the generality of the measures in criminal policy and inclusion of posterior and anterior measures (i.e. penal and non-penal ones) (Mir Khalili, 2012, p.15). The executor of the criminal law is the public itself. This body includes different legislative, official, and judicial powers as well as people’s cooperation which all should act in an organized way to achieve the intended goals.

Agricultural and horticultural lands

In the Persian dictionary of Mo’in, the word *Araazi* is an Arabic irregular plural noun, taken from the word *Arz*, and is defined as cultivated lands and fields. Besides, the word *Zeraa’i* is an Arabic-Persian relative adjective which is attributed to *Zeraa’t* (equal to farming). Finally, the word *Baagh* is a Pahlavi-Sogdian noun which is defined as a usually enclosed area where different kinds of trees and flowers are planted (Mo’in, 2000, p. 461). In the executive bylaw of the Preservation of Horticultural and Agricultural Lands Use Law Reformation, enacted on 05/23/2007 by the Board of Ministries, the cultivated lands and wastelands, dry or irrigated horticultural lands, either cultivated or wastelands – which have been exploited formerly - , and lands allocated to activities under the fourth extended note (i.e. activities like construction of greenhouses, aviaries, fish farms, and other agricultural products as well as supplementary and alimentary industries in villages) are considered as agricultural and horticultural lands and are under The Preservation of Horticultural and Agricultural Lands Law.

Changing the use of the agricultural and horticultural lands

Changing the use of the agricultural and horticultural lands is attributed to activities that change the usual use of land and garden – i.e. agriculture and horticulture – and prevents the production, exploitation and maintenance of agriculture. According to the 10th article of The Preservation of Horticultural and Agricultural Lands Law, specification of the instances of this law is incumbent upon the ministry of agriculture.

Besides, in its instructions for specification of the instances of unlawful change of use of the agricultural and horticultural lands enacted on 07/10/2007, the Board of Ministers has considered activities like addition or extraction of sand and grit, construction of buildings and facilities, excavation, embankment, walling off, etc. which are done unlawfully as change of use of the agricultural and horticultural lands. An interesting point is that in the aforementioned instructions, the Iranian executive has trespassed the limits in specification of the instances, and has considered activities like construction of temporary places of residence – which might be used to

perform agricultural affairs -, construction of roads and electrical wires networks, as well as construction of buildings, tubing, and walling – which are sometimes necessary for improvement of productivity in the respective lands and for safekeeping them – as instances of the change of use of the agricultural and horticultural lands.

The history of legislation regarding preservation of agricultural and horticultural lands use

The statute law before the Islamic Republic of Iran

As separation of agricultural and horticultural lands is a prologue for changing their use, different countries enact strict rules as to prevent separation of such lands. One such measure is the reformation of the inheritance regulations regarding suchlike lands. This issue, however, is still a problem in Iran. Nonetheless, before the Islamic Republic of Iran, most of the regulations which were enacted to protect the agricultural and horticultural lands aimed at preventing the separation of such lands, although these regulations came to contradict some rules related to inheritance as well as the land reform rules and so, did not yield the optimal results. From a historical standpoint, the first rule which has been enacted with such standpoint was the lands reform rule, enacted in 196. In the 2nd note of its 19th article, this rule specified regulations to prevent the separation and partitioning of fields (even though from a general viewpoint, this rule is against the main standpoint to prevent the separation of lands).

Another legal requirement that is worth noting in this regard is the Expansion of the Agricultural Poles Law, enacted on 04/05/1975. According to the 1st article of this law, and also as to make a full use of the water, soil, and governmental investments in the lands under the law and the agricultural poles mentioned in the 2nd article, this law was enacted and 20 parts of the country were brought under this law. Besides, under the 12th article, separation of the agricultural or cultivable lands – which are before the comprehensive plan of the land including all fields, wastelands, and lands out of the legally specified urban range – to pieces less than 20 hectares and changing the use of the lands in the realm of the agricultural poles – except for what has been mentioned in the comprehensive plan – has been banned. Moreover, under this same article, in case the use of the lands was changed or the lands of the poles were kept with no use without obtaining the legal permission, dispossession of the respective lands were enforced and those lands were rented to authorized entities. According to the 13th article of the aforementioned law, in case the use of the aforesaid lands was changed and constructions were built in them, the natural resources guards should destroy those constructions. However, some exceptions were foreseen as following:

- Construction of houses and agricultural facilities in reasonable and normal scope.
- The needed lands for public, infrastructural, and developmental services.
- Lands located out of the Caspian Sea frontage (500 meters out of the frontage boundary).
- As it can be seen, the aforementioned laws have been restricted and have been applicable in limited areas of the country.

The statue law after the Islamic revolution of Iran

As it was shown, in the statute before the Islamic Revolution, the legislator hasn't used criminalization to protect the agricultural lands. However, after the Islamic Revolution and in the light of the then hot topics of Revolution protection and self-sufficiency of the country, the legislator's consideration about agricultural lands protection has been deepened, and enactment of penal regulations in this regard has been expedited. From among these regulations, we can refer to the Bill of Punishing the Agricultural Affairs Disruption, enacted in 1979, whose content has been repeated in the 690th article of the Islamic Penal Law, enacted in 1996. It considers the deforcement of the lands, where some punishments have been foreseen for the deforciant of the lands including agricultural ones.

Moreover, in the 10th article of the executive bylaw of the Cultivation Law, enacted in 1986, prevention of agricultural lands change of use and separation has been foreseen. Besides, in the 110th article of the Modification of Some Parts of the Government Financial Regulations Law, the ministry of agriculture was obliged to specify the condition *lands use should be protected* when it wants to transfer agricultural lands. The enactment of The Preservation of Horticultural and Agricultural Lands Use Law in 1995 was the pinnacle of efforts to protect the agricultural and horticultural lands, because in this law, some specific regulations about protection of agricultural and horticultural lands were foreseen. This law bans the change of use of the agricultural and horticultural lands out of the legal areas of cities and towns, except for the indispensable cases. Moreover, some punishments are foreseen for committers of such activities as well as the governmental agents who breach this law. Despite the enactment of the abovementioned law, the huge benefits of changing the use of agricultural lands – especially to villa construction and public services occupations – for the committers far outweighs the accompanying possible risks, and so, no significant results have been obtained by the policymakers. So, the aforementioned law was reformed on 10/23/2006.

This law first foresees destruction of the unlawful buildings and facilities which have not got permission from the commission mentioned in the 1st article of the same law. This commission is consisted of the manager of the Organization of Agricultural Jihad, the manager of the lands affairs, the manager of the Housing and Urban Development Organization, the provincial director generals of the environment preservation, and a representative of the province office, and is responsible for determining the necessity of changing the use of agricultural and horticultural lands, while in the light of the law of Agricultural Development in agricultural Poles, this duty was incumbent upon the board of ministers. Moreover, this law has specified punishments for those who issue any permission for construction of buildings and transfer the services and infrastructure facilities like water, electricity, natural gas, and telephone line.

Reactions

Reactions of the criminal policy of Iran to the change of use of agricultural and horticultural lands based on the Reformation of the Preservation of Horticultural and Agricultural Lands Law, enacted on 10/23/2006

Penal reactions

Pecuniary punishment

Pecuniary punishment is one of the main and highly used punishments specified in the Preservation of Horticultural and Agricultural lands. Indeed, in all cases where a person is sentenced for his/her infringement of the regulations specified in the law, he/she will face this kind of punishment. The reason might be related to the enormous financial benefits that committers of agricultural and horticultural land use change enjoy from.

The cases for which the aforementioned law has specified pecuniary punishments are as following:

Change of use of the agricultural and horticultural lands by landowners or deforciant

In such cases and due to the 3rd article of the aforesaid law, the landowner or deforciant is sentenced to pecuniary punishment from one to three times of the agricultural and horticultural lands price – the price has been foreseen as the present price of the land with its changed use intended by the violator. Moreover, in case the crime is repeated, the aforesaid person will receive the maximum of these penalties besides other punishments. Please note that in the light of the 13th note of the 2nd article of the aforementioned law, pricing and evaluation of the agricultural and horticultural lands will be performed by a commission consisted of representatives from the Agricultural Jihad Organization, province office, and Ministry of Economy and Finance Affairs of every city (a three-handed committee).

Government, municipality, and institutions agents' nfringement of the law:

Due to the 2nd note of the 3rd article of the Preservation of Agricultural and Horticultural Lands Law, any government, municipality, and institution agent who commit infringement in the execution of this law – discerned by the court of law – besides nullification of the issued permission, will be sentenced to pecuniary punishment from one to three times of the agricultural and horticultural lands price – the price has been foreseen as the present price of the land with its changed use intended by the violator. Moreover, in case the crime is repeated by these people, beside other punishments, the aforesaid punishment will be indispensable. The point that is worth noting is that the content of the intended 2nd note is in a way repeated in the 8th article of the same statute where the infringements have been enumerated more clearly. However, the punishments of the intended people are attributed to the 3rd article of the Preservation of Horticultural and Agricultural Lands Use Law Reformation, though it seems that the intention of the legislator is the same punishments specified in the 2nd note of the 3rd article of the aforementioned law.

The 8th article of this law states that

Issuance of any permission or license to construct, supply, and transfer services and infrastructural facilities such as water, electricity, gas, and telephone line by the respective organizations – i.e. the ministry of Agricultural Jihad, the ministry of Housing and Urban Development, province offices, municipalities, and other related authorities – in the agricultural

and horticultural lands under the 1st article of this law will be allowable after the commission specified in the 1st article of this law confirms the necessity of the change of use. Anyone who breaches this article will be punished according to the regulations stipulated in the 3rd article of the aforesaid law.

Imprisonment punishment

In the Preservation of Horticultural and Agricultural Lands Use Law Reformation and in the light of the spreading stances against the extensive use of imprisonment punishment, the use of this kind of punishment has been foreseen for the second stage of the infringement, that is, repetition of the crime. The instances under this condition include:

Repetition of the change of use of the agricultural and horticultural lands by landowners and deforcians

Due to the 3rd article of the foregoing law, in case the infringement of changing the use of agricultural and horticulture lands is repeated by these people, the committer will be sentenced to the pecuniary punishment as well as imprisonment from one to six months.

The notary publics' repeated breaching of the regulations specified in the Preservation of Horticultural and Agricultural Lands Use Law regarding the separation, partitioning, and dividing the agricultural and horticultural lands and changing their use in the areas out of the legal areas of cities and town as well as the villages with approved projects (the 5th note of the 2nd article of the foregoing law).

Deracination of unlawful constructions and buildings as a punishment

If this type of punishment – which has been added to the 3rd article of reformation of the aforementioned law in 2006 – is enforced by supervising and executing organizations, it can boost the effectiveness of the law. In this regard, the 3rd article of the aforesaid law stipulates that all landowners or deforcians of agricultural and horticultural lands under this rule who unlawfully change the use of the lands, will be sentenced to deracination of the constructions as well as pecuniary punishment.

Deprivation and dismissal from governmental and municipal occupations and deprivation from notary public positions

Due to the 2nd note of the 3rd article of the Preservation of Horticultural and Agricultural Lands Law, this kind of punishment is foreseen for those who repeat the breaching of the foregoing regulations and those agents in governmental, municipal, and notary public positions who breach in execution of the aforementioned law.

The 2nd note of the 3rd article says

In case the agents of government, municipalities, institutions, etc. repeat there breaching of this law, besides the aforementioned fine, they will be sentenced to permanent dismissal from governmental and municipal positions. The trespasser notary publics will also be condemned from six

months to 2 years of suspension, and in case of repetition, to six months of imprisonment and deprivation from notary public position. It should be noted that in the Preservation of Horticultural and Agricultural Lands Use Law Reformation, enacted in 2006, no attention has been paid to the dangers that might stem from the change of use by legal personalities. However, in the light of the 20th and 143rd articles of the Islamic Criminal Law, enacted in 2013, it seems that in case the criminal activities mentioned in the 3rd article of the aforesaid law are committed by legal personalities, it might be possible – by observing the respective regulations and taking into account the severity of the committed crime and its harmful consequences – to sentence the legal personalities as well as the natural persons running them to one or two types of the following punishments:

- Disbandment of the legal personality
- Seizing its all assets
- Prohibition of performing one or some occupational or social activity (activities) forever or for at most 5 years
- Prohibition of issuing some business documents for at most 5 years
- Pecuniary penalty
- Publishing the sentence through mass media (the Islamic Criminal Law enacted in 2013)

Non-penal reactions

Contrary to the perception of the aforementioned law developers, it seems that we should consider non-penal measures to prevent the change of use of the agricultural and horticultural lands. Unfortunately, this law has lots of faults in this regard. However, there are few cases where the foregoing law has considered non-penal measures to some extent. Some of these cases are as following:

- The real estate registration offices, notary public offices, and other commissions and formal authorities should be ordered to inquire from the Ministry of Agricultural Jihad in cases of separating, partitioning, and dividing the agricultural and horticultural lands and changing their use in spots beyond the legal areas of cities and towns (3rd note of the 1st article);
- The permissions unlawfully issued by governmental, municipal, and institutional organizations should be nullified: one of the measures that can be somehow effective in execution of the foregoing law is courts' nullification of the permissions issued through unlawful paths. This will have an effective role in preventing the continuation of the unlawful activities and reliance on such permissions to justify the illegal activities by trespassers (the 2nd note of the 3rd article).
- The respective organizations should be prevented from providing the trespassers with infrastructural services and facilities such as water, electricity, and gas.
- The Ministry of Agricultural Jihad agents and the general officers of the Ministry of Justice should be ordered to prevent the continuation of unlawful activities and to stop suchlike undertakings (the 10th article of this law)

The present challenges in the criminal policy of Iran regarding the preservation of agricultural and horticultural lands use

Lack of detailed and comprehensive information about the present status of the lands

Despite the recent developments, unfortunately there is not a comprehensive set of information about the status of lands in Iran and their types of use as well as the status of constructions. It is even possible that in the law enforcement, the previous status of the lands – which might have been non-agricultural or even might have had constructions in them – is not taken into account. With later introduction of such issues and in the light of the necessity to examine them, then the treatment of such cases will fall into the long way of judicial scrutiny. This deferment and the consequent hopes stemmed from it for the trespassers will in turn persuade the trespassers.

Lack of enthusiasm on the side of the country's officials to regulate constructions

Unfortunately, it is not common yet in our country to get permission for construction of buildings. Besides, some laws like Municipalities Law lead people toward infringement of the regulations by their specification of the instances of construction regulations infringement. A clear example of this phenomenon is specifying an amount of fine for no-permit constructions which is lower than constructions with surplus area (refer to Municipalities Law).

Delegating the right to determine the necessity of changing the use of agricultural lands to provincial commissions

Due to the 1st article of the aforesaid law, specification of the necessary cases of agricultural and horticultural lands change of use in each province is incumbent upon a commission consisted of the manager of the Organization of Agricultural Jihad, the manager of the lands affairs, the manager of the Housing and Urban Development Organization, the provincial director generals of the environment preservation, and a representative of the province office. In the light of the economic benefits of the permissions issued by this commission, its existence might lead to unfair discriminations and even to common official crimes. However, posing prejudice in execution of this law can be a factor in its rejection by the society.

People's partial awareness about existence of the Preservation of Agricultural and Horticultural Lands

Unfortunately, the Preservation of Agricultural and Horticultural Lands has most of its encounters and confrontations with community of farmers, horticulturalists, and villagers. On the other hand, the foregoing law is among specific laws and even some of the people educated in law are unaware of that. So, it is not possible to expect the farmer, horticulturalist, and villager class know about such a law. This in turn causes the aforementioned classes of people to commit most of the infringements regarding this law and receive most of the damages from these infringements.

Not foreseeing the minimum construction right for landowners

Unfortunately, contrary to the Expansion of the Agricultural Poles Law enacted in 1975, the possibility to construct the needed building in an acceptable size – which is a factor in development of agriculture and horticulture – is not foreseen in the Preservation of Agricultural and Horticultural Lands Law. This will in turn lead to a decrease in the facilities needed for agricultural development.

Lack of support for agriculture and horticulture and lack of economic gains in suchlike activities

The expensive inputs needed for agricultural production and lack of support by governments are among the main inconveniences faced by the agriculture sector. Unfortunately, most of the economic gains in the agricultural production and market go into the dealers' and middlemen's pockets rather than their original owners – i.e. farmers, as in some cases, the final price of a certain agricultural product increases by four times from the field to the end-user (<http://www.tabnak.ir/fa/news/272477>). In such conditions, the inclination of the farmers and horticulturalists to achieve easy and immediate income will lead to further destruction of agricultural and horticultural lands. However, in many countries, only 30 to 50 percent of a given product cost is added by the activities of the service sector (<http://www.zn-arzeshi.ir>).

Lack of needed facilities to preserve the lands

Unfortunately, one of the main problems facing the enforcement of this law is lack of human and logistic facilities to preserve the lands. The second tangible problem in this regard is lack of cooperation between the National Lands Preservation Guards with the agents of the agricultural sector. This in turn leads to deferment in preparation of reports and sometimes to hindrance of the law enforcement as well as loss of national assets as a result of constructions deracination.

The problems stemming from the necessity of examining the exact time of building the constructions

One of the issues facing the execution of the Preservation of Agricultural and Horticultural Lands regards the problems about determination of the exact time of the constructions, because if the constructions belong to a time before 10/23/2006 and are under the law enacted in 1996, then they might not be destroyed. However, if the constructions have been built after 10/23/2006, they should be destroyed. This issue leads to prolonged judicial treatments and protracts the court trial. On the other hand, unfortunately the clear aerial photos of the recent three decades are not easily accessible in our country, which has caused some problems in this regard.

Conclusions

An examination of the conducted research projects shows that regarding the agricultural and horticultural lands change of use, the developers of the criminal policy of Iran have unfortunately paid attention more to the reactive and penal facets rather than the preventive and active aspects. On the other hand, despite the cogent arguments for dejudicialization and

decriminalization, the Iranian Legislative still seeks to determine penalties so as to achieve the intended goals. However, the recent years experiences regarding the execution of laws which are related to preservation of agricultural and horticultural lands use does not show a significant progress in this regard. As it was stated, the criminal policy of Iran should include all posterior and anterior as well as active and passive aspects, and it should use all state powers and the public to achieve its goals. Nevertheless, not only most of the efforts in this regard have been done through reactive measures, but also the government hasn't been successful enough in gaining the participation and acceptance of the society. One of the main reasons of this goes back to lack of the needed infrastructures to support agriculture and horticulture, as well as insufficient attention to enculturation of related people and their familiarization with the foregoing law(s). On the other hand, there is not a comprehensive data bank about the status of the country lands and constructions. Another main problem of Iran in achieving its goals is using the lands to gain revenues for the national treasury. There are numerous evidences in this regard in the aforementioned law.

Therefore, regarding the discussed issue, it seems that the venerable policymakers should first provide the necessary infrastructures and then, in accordance with the present conditions, adopt the suitable solutions. Moreover, regarding the aforementioned cases, they might avoid criminalization as much as possible, as those cases can be treated by other commissions – such as the commissions under the articles 99th and 100th of the Municipality Law – with some changes in the respective laws.

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