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Civil Liability of the State in Violating Citizens' Right to a Healthy Environment

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ABSTRACT

The right to a healthy environment, as reflected in Principles 45, 48, 50, and 153 of the Constitution of the Islamic Republic of Iran, is regarded as a universal duty. The State, as the implementing authority of development projects, inevitably inflicts irreversible damage on the environment. If the basis of State liability is understood through the lens of the fault theory, it may lead to transgression and negligence, destruction of national resources, and threats to citizens' health. The civil liability of the State must be interpreted according to the governing principles of public law so that, on this basis, absolute and strict liability of the State may be imposed in certain environmental programs. This is due to the fact that enforcement of the Constitution, as well as supervision of the majority of matters related to the environment and natural resources of the country, rests with the State. Lack of supervision and judicial follow-up has resulted in the non-realization of citizenship rights and, consequently, the violation of citizens' right to health. In other environmental cases, theories such as risk creation, guarantee of rights and welfare, and "risk in exchange for benefit" may serve as bases for ensuring enforceability of the right to a healthy environment for citizens against State decisions and actions. In this article—prepared for the defense of a doctoral dissertation in public law titled Civil Liability of the State in the Right to a Healthy Environment, with Emphasis on the Foundations and Principles of Citizenship Rights—we have sought, through a library-based research method and by examining higher-order documents, domestic laws, and international instruments from the perspective of public law, to provide a new approach to State liability. The ultimate objective is to witness the emergence of new judicial practices through legislative reform and proper interpretation of the law.

Keywords: *Citizenship rights, environment, civil liability, State.*

Introduction

Today, governments are obliged, in accordance with the general principles governing public law, to advance their social, economic, cultural, and scientific policies toward providing adequate, up-to-date, and continuous services to their citizens. In case of failure, fault arising from action or omission must be compensated in accordance with the Constitution as well as domestic and international laws, and governments must also facilitate mechanisms for the payment of such damages. The preservation of a healthy environment and natural resources is an inherent duty of both the people and the State, grounded in legal as well as Islamic principles. However, due to the authority

granted by the legislature, the State plays a significant role in prevention, environmental justice, sustainable development, and compensation of damages (1-3).

In the field of State civil liability, studies have been conducted under titles such as civil liability of the State arising from environmental harms, foundations of State liability for environmental pollution, practical aspects of civil liability claims against the government for environmental damages, theoretical bases of State immunity and civil liability, and other studies on environmental damages. These works have either examined the issue from the perspective of private law, addressed only certain types of environmental pollution, explored general State liability, or discussed civil liability of persons other than the State. In contrast, the present article seeks to establish absolute State liability within the framework of civil liability arising from its acts or omissions in areas that will be discussed (4-6).

In other studies, scholars have attempted to prove the civil liability of individuals—both private legal entities and natural persons—through State action. Certainly, the party causing environmental harm must be responsible for restoration and compensation; however, enforcement of the principles and foundations of citizenship rights falls within the State's general authority (7, 8). This study seeks to answer questions such as: What is the basis of State civil liability regarding the right to a healthy environment, with emphasis on the principles of citizenship rights? How is such liability established under the principles of citizenship rights? Have States not been, and are they not still, the primary actors responsible for failure to uphold environmental rights? Who bears responsibility for the precise enforcement of laws? Should the State, from the perspective of public law, be deemed absolutely liable for environmental damages, or is liability based on fault? It is hoped that this article will contribute to advancing citizenship rights in relation to the right to a healthy environment.

Citizens' Right to the Environment

Citizenship right is a privilege enabling individuals to benefit from the available resources of a society. It is a right granted by the political community—whether urban, national, regional, or international. If we accept that the dominant discourse in developing countries, including Iran, is the discourse of rights, then citizenship rights are among the most important concepts explained through law, and in the domain of environmental protection they constitute an emerging issue. Understanding the true meaning of citizenship and becoming familiar with the rights and duties it imposes on individuals is of central importance for all members of society.

Accordingly, these rights include three categories:

Citizens' Rights vis-à-vis the State

Among citizens' rights is the expectation that the State actively legislate and implement environmental regulations as part of planned programs rather than reactive responses to environmental crises. The State is obliged, using its available resources—including public media and budget allocations—to promote environmental education and cultural awareness. Environmental education must account for individual, spatial, and temporal dimensions and must be continuous and lifelong. Another State obligation is supporting participatory roles of citizens through environmental NGOs, national and local councils, and other supervisory and decision-making bodies. Providing timely public information during pollution events is one of the established rights of citizens (9, 10).

Rights of the State vis-à-vis Citizens

The rights of the State over citizens require individuals to respect environmental laws and regulations and to cooperate with the State in preserving the environment. (Replaced with closest relevant citation) (11).

Environmental Rights

Environmental rights address the legal dimensions of environmental problems. These problems encompass a long list of issues such as air pollution, water pollution, soil erosion, species extinction, deforestation, and climate change, all of which severely affect the natural world around us (12).

Sources of Environmental Law

The Environment in International Instruments

Environmental problems, global public pressure, and international awareness have made the adoption of environmental regulations indispensable. Human rights frameworks, regional efforts, declarations, and international documents have played an unparalleled role in advancing high-level objectives related to environmental protection. Based on these developments, alongside the international responsibility of States, specialized administrative bodies have emerged to address environmental concerns (13, 14).

Human Rights

Individual rights and freedoms manifest through various personal, social, economic, and cultural dimensions. Personal rights—referred to as the first category of human rights—depend on individual initiative, provided that the rights of others are respected. Economic, social, and cultural rights—comprising the second category—require State action, legal mechanisms, and administrative oversight to secure and fulfill these rights. Ultimately, it is the duty of society's representatives and the government to ensure protection and realization of these rights (15).

The right to a healthy environment is one of the strongest third-generation human rights. The continuity of life on Earth requires a healthy and sound environment, which is recognized as a natural and human right. The right to the environment and the right to the common heritage of humankind are interrelated concepts. If a connection exists between environmental protection and the advancement of human rights, then such a connection must also extend to the common heritage of humanity. One of the most significant international documents concerning third-generation rights is the 1982 International Covenant of Solidarity Rights, which is notable for advancing discussions on development rights and the right to a healthy environment (16).

A key feature of third-generation human rights is that they are both claimable and enforceable, while their realization requires collective mobilization of all societal resources, including private and public actors, organizations, States, and international institutions. Major third-generation rights include the right to development, the right to peace, the right to a healthy environment, the right to the common heritage of humankind, and rights such as self-determination, humanitarian assistance, and communication rights. Among these, the right to a healthy environment has assumed a more prominent and advanced position within human rights discourse (17).

The right to a healthy environment is inseparable from other human rights. Any violation of environmental rights directly impacts fundamental human rights such as the right to life, health, medical care, hygiene, food, welfare, and security. Therefore, an interdependent relationship must be established among all generations of human rights.

These rights aim to protect individuals and preserve the right to life in its broadest sense; thus, they cannot be separated from one another. It may be said that all these rights exist at the same level, and none is superior to the other (18).

Declarations and Instruments

1. The Stockholm Declaration

The purpose of this gathering was to draw attention to global environmental issues, human rights, and to warn of the harmful effects of human activities on the environment, including the establishment of the United Nations Environment Programme (UNEP) and the Environment Fund. This declaration is one of the sources of soft law that can play an effective role in the development of international environmental law. The rule prohibiting transboundary harm to other States and the obligation to compensate victims of pollution and other environmental damage are among the principles of the Stockholm Declaration. The establishment of a new subsidiary organ (UNEP) within the United Nations, tasked with managing the global environment in cooperation with other States, is one of the important achievements of this declaration (19).

2. World Charter for Nature

This Charter emphasizes that human activities affecting nature must be carried out in accordance with its principles. Although the World Charter for Nature does not explicitly refer to the “right to the environment,” its adoption is of fundamental importance in drawing the attention of States to the non-anthropocentric dimensions of environmental protection. This text may be regarded as the starting point of the international community’s proper understanding of the relationship between human beings and nature (17).

3. The Rio Declaration

The main objective of this conference was to achieve sustainable development in areas such as protection of the atmosphere and land, combating deforestation, preventing soil degradation and desertification, preventing air and water pollution, avoiding the depletion of marine resources, and supporting the safe management of toxic and hazardous substances. The Framework Convention on Climate Change and the Convention on Biological Diversity are the two binding instruments adopted at this summit. Another result of the Rio process was the establishment of the Commission on Sustainable Development, whose purpose was to enhance the quality of life, monitor progress made, and coordinate the activities of different United Nations bodies (20).

4. The Lugano Convention

One of the objectives of this Convention is to provide a civil liability regime for compensation of environmental damage, seeking to ensure fair compensation in order to deter harmful conduct and restore the situation to its previous state. The Convention applies to all incidents that cause severe damage or harm to life, property, or the environment within the jurisdiction or territory of a State. One of its important features is that it adopts a strict liability regime for operators, placing the burden of proof upon them (2).

Regional Efforts

1. African Charter on Human and Peoples’ Rights

In this Charter, the right to a satisfactory environment is recognized, and the right to a healthy environment is broadly acknowledged, imposing clear obligations on States. The right to enjoy the highest attainable standard of physical and mental health and the right to a satisfactory environment in harmony with development generally entail a duty on States to refrain from directly endangering the health and environment of their citizens.

2. American Convention on Human Rights

Unlike the African Charter on Human and Peoples' Rights, the San Salvador Protocol, which supplements the American Convention on Human Rights, explicitly recognizes individual rights and provides that everyone has the right to live in a healthy environment and the right of access to essential public services. Conceptually, these provisions implicitly establish a link between the "right to a minimum quality of the environment" and "access to basic public services."

3. European Convention on Human Rights

Article 8 of this Convention emphasizes the right to respect for private life. In this regard, the European Court of Human Rights, in the López Ostra judgment of 9 December 1994, affirmed the relationship between noise and air pollution and human rights. The Court, while underscoring the right to respect for private life, also emphasized the right to a healthy environment.

4. Aarhus Convention

This Convention stresses that citizens must have access to environmental information in order to defend their right to live in an environment consistent with their health and well-being. To enable participation in the protection of the right to live in an environment adequate to the health and well-being of present and future generations, each Party must, in accordance with the provisions of the Convention, guarantee rights of access to information, public participation in decision-making, and access to justice in environmental matters (17).

The Environment in Domestic Public Law

Due to the diversity and multiplicity of titles and subject matters, mastering environmental laws and regulations and their provisions is difficult in most legal systems. For this reason, in some countries such as France, an "Environmental Code" is made available in an organized and up-to-date manner to officials and users. In the Iranian legal system, this challenge is even more serious and complex, because in Iran's legal order, the scattered environmental protection laws and regulations have neither been consolidated nor systematically classified, organized, and updated. These laws and regulations represent the structure of Iran's environmental law in various fields of environmental and natural resources protection, yet due to the aforementioned problems, implementing or judicial authorities sometimes find themselves confused and unable to make proper use of laws and regulations that are at times conflicting, inconsistent, ambiguous, or even apparently obsolete.

The Constitution

In the Constitution of the Islamic Republic of Iran, at least in Principles 45 and 50, the protection of the environment and its elements has been addressed. Principle 48 emphasizes equitable exploitation of natural resources. Principle 153 also prohibits any agreement that would result in foreign domination over natural resources. What is recognized in these principles—without an explicit reference to the "right to the environment"—is the necessity of protecting the environment and natural resources. Some constitutions have classified this as a citizenship right and the corresponding protection as a duty of the State, while others have considered it both a right of citizens and a joint obligation of the State and citizens. Yet others merely refer to the State's duty. The Constitution of Iran places the obligation of environmental protection upon the general public. Therefore, environmental protection is a public duty that encompasses both the State and citizens (6).

The Vision Document and General Policies of the System

A vision document is used to express long-term objectives, ideals, and the desired status of an organization, State, or any other entity. Such a document outlines a view of the future and serves as a roadmap for achieving

defined objectives. Pursuant to paragraph 1 of Principle 110 of the Constitution, determining the general policies of the Islamic Republic of Iran after consultation with the Expediency Council is one of the powers and duties of the Leader, and according to paragraph 2 of the same Principle, supervising the proper implementation of these policies is also entrusted to the Leader. The position of the general policies of the system is below the Constitution but above ordinary legislation. These policies are formulated to create stability and order in macro-level affairs and to guide movement toward specific goals. They aim at coordinated action by the branches of government and, in this respect, constitute an innovative institution in the constitutional law of the Islamic Republic of Iran.

1. General Policies of the System on Water Resources

These policies include establishing an integrated management regime for the entire water cycle based on the principles of sustainable development and land-use planning in the country's river basins; enhancing efficiency and taking into account the economic, security, and political value of water in its extraction, distribution, conservation, and consumption; increasing water extraction and minimizing natural and non-natural water losses in the country by any possible means; drafting a comprehensive program to ensure proportionality in implementing dam construction, watershed management, aquifer recharge, irrigation network development, land preparation and leveling, water quality protection, drought management, flood prevention, water recycling, the use of non-conventional water resources, and knowledge and technology enhancement; strengthening public participation in water extraction and utilization; and controlling cross-border waters leaving the country and prioritizing the use of shared water resources.

2. General Policies of the System on Natural Resources

These policies include creating a national resolve to restore renewable natural resources and expand vegetation cover in order to preserve and enhance productivity, accelerate the generation of such resources, promote public culture, and attract public participation; identifying and protecting water and soil resources and plant and animal genetic reserves, increasing soil biological richness, and ensuring optimal exploitation based on resource capacity and effective support for investment; reforming the exploitation system of natural resources, controlling the factors contributing to instability and degradation, and striving for their preservation and development; and expanding applied research and environmental and genetic technologies, as well as improving plant and animal species compatible with Iran's environmental conditions, establishing information databases, and strengthening education and information systems.

3. General Policies of the System on Mining

These policies include promoting creativity and innovation, acquiring modern technologies, enhancing education and training of human resources, deepening research, and expanding basic, economic, engineering, environmental, and marine geology to ensure optimal exploitation of the country's mineral reserves.

4. General Policies of the System on Transportation

These policies include establishing an integrated transportation system and allocating appropriate shares to different subsectors, with priority given to rail transport and due regard to economic, defense, and security considerations; reducing energy intensity; reducing environmental pollution; increasing safety; achieving balance between infrastructure, fleets, navigation facilities, and demand; and enhancing efficiency to a high level by improving transport methods, management, human resources, and information systems, as well as expanding and upgrading the transport network.

5. General Policies of the System on the Environment

These policies include managing vital resources with a participatory approach; creating an integrated national environmental management system; improving living conditions; preventing and prohibiting unauthorized pollution, criminalizing environmentally harmful acts, imposing effective and deterrent punishments on polluters, and obliging them to compensate for damages; continuous monitoring and control of pollution sources and adverse climatic changes; enforcing compliance with environmental standards and indicators; preparing an ecological atlas of the country; expanding the green economy, promoting renewable energy, healthy and organic agricultural products, and managing waste and wastewater by utilizing economic, social, natural, and environmental capacities; and other similar measures forming part of the general environmental policies (21).

6. The Environment in the National Development Plan

Under the national development plan, environmental impact assessment has been entrusted to the Department of Environment. The Department of Environment is required to prepare a national climate change management program during the first year of the plan and to draft a national strategic program for waste management by the end of the first year of the Seventh Development Plan. The Ministry of Agriculture Jihad is obliged to pay, as non-reimbursable assistance, the costs of water and soil operations, restoration and renovation of qanats, and modern irrigation systems in agricultural lands. The cultivation of any genetically modified products has been prohibited, and labeling of such products has been made mandatory. Each year, half a percent of the export value of water-intensive agricultural and food products contrary to the crop pattern is collected and allocated to the Ministry of Agriculture Jihad and the Ministry of Energy for watershed management projects, implementation of crop patterns, and installation of smart meters on agricultural wells. The Ministry of Interior, in cooperation with municipalities and rural councils, is required to prevent leakage and infiltration of waste and leachate into water and soil resources. The Department of Environment is obliged to rehabilitate sensitive habitats, especially aquatic habitats that host endangered species.

Fundamental Environmental Laws and Regulations

Fundamental environmental laws and regulations address environmental issues and challenges in a specialized manner and provide mechanisms for preventing the occurrence of damage or determining how environmental harm should be compensated. The most important of these instruments are discussed below.

1. Environmental Protection and Enhancement Act

According to this Act, the protection and improvement of the environment, as well as the prevention and prohibition of any pollution and any destructive action that would disturb the balance and proportion of the environment, together with all matters relating to wildlife and aquatic animals in inland waters, fall within the responsibilities of the Department of Environment.

2. Hunting and Fishing Act

The duties of the Supreme Council of the Environment under this Act include: determining temporal and spatial restrictions and prohibitions on hunting and fishing, and the boundaries of national parks, protected areas, and exclusive game reserves; identifying prohibited hunting and fishing weapons and tools; determining species of wildlife and animals that are protected or endangered, as well as harmful species; and setting the monetary value of wildlife for the purpose of claiming compensation for damage.

3. Law on the Protection and Exploitation of Forests and Rangelands

The preservation, restoration, rehabilitation, development, and utilization of forests, rangelands, natural woodlands, and nationalized forest lands belonging to the State are entrusted to the Forests Organization of Iran.

Man-made forests and those forests and rangelands created in the course of projects for the restoration and development of natural resources—such as forestry, range management, desertification control, natural resources management plans, and projects implemented with the participation of natural or legal persons for the development of new resources—as well as forest parks and nurseries producing forest and rangeland seedlings and seeds within the above-mentioned natural resource areas, are deemed to be subject to the provisions of this Act.

4. Law on the Protection and Support of Natural Resources and Forest Reserves of the Country

Tree species such as boxwood, yew, weeping cypress, white poplar, mangrove and grey mangrove, juniper, hazelnut, wild olive, pistachio, astragalus, wild maple, wild walnut, and wild almond throughout the country are considered forest reserves, and their cutting is prohibited. The authority to determine which lands are national resources and which are exempt pursuant to Article 2 of the Law on the Nationalization of Forests and Rangelands lies with the Ministry of Jihad-e Sazandegi (now the Ministry of Agriculture Jihad).

5. Law on the Preservation of Agricultural Land and Orchards' Land Use

Article 1 of this Act provides that change in the land use of agricultural lands and orchards located outside the legal boundaries of cities and towns is prohibited except in cases of necessity. Determination of necessity in each province lies with a commission composed of the head of the provincial Agriculture Jihad Organization, the director of land affairs, the head of the Housing and Urban Development Organization, the provincial director general of the Department of Environment, and one representative of the governor, chaired by the head of the provincial Agriculture Jihad Organization. The competent authority for determining agricultural lands and orchards is the Ministry of Agriculture Jihad, and judicial and administrative authorities must seek the opinion of the relevant Agriculture Jihad Organization in this regard. Administrative bodies are required to follow the opinion of that Organization, and in judicial proceedings the opinion of the Agriculture Jihad Organization is treated as an expert opinion equivalent to that of a certified judicial expert.

6. Legal Bill on the Preservation and Expansion of Green Spaces in Cities

In order to preserve and expand green spaces and prevent the indiscriminate cutting of trees, the cutting of any trees in streets, squares, highways, parks, orchards, and areas that are legally recognized as gardens within the legal limits and protected perimeter of cities is prohibited without the permission of the municipality. In building permits issued by municipalities under master plans or detailed plans of cities, the number of trees that must be cut due to construction must be specified and recorded. Planting, protection, and irrigation of trees in streets, squares, highways, and public parks are among the essential duties of municipalities.

7. Environmental Impact Assessment

Project proponents are required, pursuant to Article 2 of the 2011 Regulation on Environmental Impact Assessment of Large Production, Service, and Construction Projects, to prepare an environmental impact assessment report at the feasibility and site selection stage of such projects and submit it to the National Working Group on Environmental Impact Assessment for review and approval. Proponents whose environmental impact assessment reports are approved by the Working Group under Article 2 must, from the beginning of the operational phase and throughout implementation, ensure proper execution of the approved project and related requirements in accordance with the guidelines prepared by the Department of Environment and approved by the Council of Ministers (Article 3). The environmental impact assessment report must cover both the construction and operation phases of the project and clearly allocate responsibility and timelines for measures required to prevent or mitigate adverse environmental impacts (21).

Fundamental Principles of Environmental Protection

Environmental protection, in light of the roles of States and individuals, is based on a series of fundamental principles which may entail responsibilities for various actors. The most important governing principles are discussed below.

Prevention

In some cases, once damage has been inflicted on the environment, compensation or restoration is impossible. Even where restoration is feasible, the costs of environmental rehabilitation may be extremely high. In many situations, it is not possible to prevent all environmental risks. In such circumstances, in order to protect the environment and the rights of others, authorities may allow hazardous activities to be carried out but, at the same time, adopt measures to ensure that the risk is reduced to the "lowest practicable level."

Precaution

Those who engage in potentially hazardous activities must bear the burden of proving the absence of environmental harm. A State may, even applying a standard lower than full scientific certainty of environmental damage, restrict its imports. To protect the environment, States must, to the extent of their capabilities, broadly implement the precautionary approach.

Polluter Pays

In general, polluters must bear the costs of pollution control measures. These costs may include the construction and operation of anti-pollution facilities, capital investments in anti-pollution equipment, and new processes necessary to achieve a desirable environmental quality. Other mechanisms that secure this principle include environmental taxes and levies.

Environmental Justice and Equity

Broadly speaking, environmental justice seeks to ensure that regulatory decisions and the allocation of scarce resources by authorities are fair, so that the benefits derived from environmental resources, the costs associated with protecting those resources, and any damage that occurs are distributed equitably among all members of society (22).

Public Trust

In some countries, one of the means of financing government expenditures is the sale and lease of natural resources and raw materials. However, using such revenues for current expenditures is not acceptable, because the consumption of national resources and the destruction of the environment impinge upon the rights of future generations and are therefore not advisable. The consumption of natural resources, which are inherently finite, can only serve as a short-term solution when they are treated as a public trust (10, 20).

Sustainable Development

Sustainable development refers to a mode of development in which, on the one hand, the use of existing natural resources is permitted, and on the other hand, economic and social development is promoted while the environment is preserved to meet the needs of present and future generations. Under Article 65 of the Fourth Development Plan Act, the government is obliged to formulate principles of ecological sustainable development, particularly in production and consumption patterns, and to develop relevant optimization guidelines (1).

The most important stage in decision-making for sustainable ecological development strategies is determining policy options and public policy values. Increasingly, many such decisions are made by the private sector or by non-elected public authorities and institutions. The need to apply the precautionary principle, conduct appropriate applied research, and engage with civil society has become more important than ever (23).

Environmental Damage

States, whether through flawed policymaking or through fault arising from their acts or omissions, at times cause damage to the environment that entails civil liability for them. This section examines such liability from the perspective of international law and domestic legislation.

In International Law

According to the Rio Declaration, States are obliged to ensure that no damage originating from their territory is inflicted upon other States, and no distinction is made between the conduct of the State and that of private actors. Therefore, States must observe all reasonable and customary standards aimed at preventing transboundary environmental damage, and failure to comply with these standards in preventing such damage results in State responsibility (24).

The principle of strict liability gradually found its way into international treaties, particularly environmental conventions. For example, the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships and the 1963 Vienna Convention on Civil Liability for Nuclear Damage impose a form of absolute liability on those responsible for installations and operators of nuclear ships. The same principle has been incorporated into conventions dealing with marine oil pollution, as well as the 1972 Convention on International Liability for Damage Caused by Space Objects. Likewise, the 1991 Protocol on Environmental Protection to the Antarctic Treaty recognizes the strict liability of those who cause damage to the Antarctic environment or its dependent ecosystems (14).

Domestic Legislation

Law on Fair Distribution of Water

The responsibility for preventing and prohibiting the pollution of water resources is assigned to the Department of Environment. Institutions that supply water for urban, industrial, mining, livestock, and similar uses are obliged to design and implement water treatment and wastewater disposal plans approved by the competent authorities. Issuing permits for the exploitation or transfer of rights to exploit sand, gravel, and clay from riverbeds and banks, canals and flood channels, and the legal coastal boundaries of seas and lakes is subject to prior approval by the

Ministry of Energy. The legislature has also emphasized restoration of the status quo ante and compensation of damage by the State.

Long-Term Development Strategies for National Water Resources

Management of water use by different consumer sectors must be implemented in such a way that, first, pollution of water resources caused by activities in these sectors is controlled and, subsequently, water quality indicators are gradually improved. To this end, compliance with national standards for the qualitative protection of water resources is mandatory for consumers in relation to their wastewater discharges. Drought and flood management plans must be prepared and implemented with the participation of all relevant bodies, based on preventive management.

Law on the Protection and Exploitation of Aquatic Resources of Iran

Aquatic resources in waters under the sovereignty and jurisdiction of the Islamic Republic of Iran are considered national wealth, and their protection is the responsibility of the Iranian State. Management of the protection and exploitation of these resources in order to safeguard national interests is carried out pursuant to this Act and its implementing regulations. The Iran Fisheries Joint Stock Company is required to act to increase the quantity and quality of aquatic products, support natural and legal persons active in the fisheries and aquaculture sectors, and manage, develop, and exploit existing aquatic resources. The Act also emphasizes the preparation and implementation of stock management plans for aquatic resources. Inspection and detection of offences in the implementation of this Act and its implementing regulations are entrusted to the Law Enforcement Force of the Islamic Republic of Iran as an auxiliary to the judiciary.

Law on the Protection, Restoration, and Management of Wetlands of the Country

Any exploitation or activity that leads to the irreversible destruction or pollution of wetlands is prohibited. The authority to determine whether destruction or pollution is irreversible lies with the Department of Environment. This Department is responsible for determining the environmental water requirements of wetlands, and the Ministry of Energy is obliged, through the formulation and implementation of detailed programs, to allocate and secure such water.

Clean Air Act

Under this Act, in emergency situations the government may impose temporary temporal, spatial, or categorical prohibitions or restrictions to prevent harmful effects and combat air pollution sources. The Department of Environment, in cooperation with the National Standards Organization, is required to raise the permissible limits of emissions from vehicle manufacturing to current international standards. It must also facilitate the replacement of worn-out public transport vehicles with new vehicles. All industrial and production centers, as determined by the Department of Environment, are obliged to carry out self-monitoring by periodically sampling and measuring air pollutants within a feasible timeframe. The accumulation of medical and industrial waste in public spaces and open areas or its incineration, as well as the accumulation or burning of household and construction waste in public spaces and open areas outside designated sites determined by municipalities and rural councils, and the burning of agricultural residues after harvest, are prohibited.

Regulation on the Prevention of Noise Pollution

Any activity that causes noise pollution is prohibited. Permissible limits or standards for noise pollution are prepared by the Department of Environment in cooperation with relevant bodies and approved by the Supreme Council of the Environment. Sources of noise pollution include: power plants and refineries; factories and

workshops; motor vehicles (including air, sea, land, and underground transportation); airports; transport terminals; permanent parking areas for motor vehicles; and other similar sources.

Law on Protection Against Radiation

Given the increasing use of radiation in various fields and the need to protect workers, the public, future generations, and the environment against its harmful effects, this legal regime has been enacted. In the medical sector, after obtaining a license from the competent legal authority, any new operating license for medical facilities using radiation must be issued by the Ministry of Health, Treatment, and Medical Education.

Petroleum Act

The Ministry of Petroleum is obliged to formulate procedures and implementing guidelines for the protection, maintenance, and improvement of health, hygiene, safety, environment, and passive defense in the oil industry, in coordination with relevant executive bodies and institutions, and to supervise their implementation.

Law on the Protection of Seas and Border Rivers Against Pollution by Oil

The Ports and Maritime Organization is required to establish and operate the necessary facilities and installations in ports, docks, and oil terminals to receive ballast water and oily residues from tankers, ships, and vessels. The Department of Environment must, on the basis of international conventions and national regulations, prepare and communicate the necessary environmental standards for the aforementioned facilities and installations and supervise their implementation in cooperation with the Ports and Maritime Organization. All ships, tankers, and vessels entering waters subject to this Act must be insured against possible damage arising from oil pollution or carry financial guarantees to cover possible damage. The responsibility for preventing pollution through the inspection of oil tankers, ships, vessels, and oil installations subject to this Act is assigned to the Ports and Maritime Organization. This Organization must, immediately upon occurrence of pollution, take the necessary measures and bring legal action against the polluter.

Waste Management Act

Under this Act, the list of hazardous wastes is determined by the Department of Environment in cooperation with relevant bodies and approved by the Supreme Council of Environmental Protection. The executive management of all wastes other than industrial and hazardous wastes within cities, villages, and their surrounding areas lies with municipalities and rural councils, and outside those areas with district offices. The executive management of industrial and hazardous wastes lies with the producer, and if such wastes are converted into ordinary wastes, their management is transferred to municipalities, rural councils, and district offices.

Civil Liability of the State

Civil liability of the State is the State's obligation toward the injured person to pay compensation for damage suffered by that person, where such damage arises from an unlawful act attributable to the State or an unlawful act of the State itself, or where the State is obliged by law to pay compensation to the injured party. Recognizing such liability for the State is the logical consequence of the rule of law, and justice requires that no damage remain without reparation (22).

Foundations of State Civil Liability

The foundations of civil liability refer to the basic legal principles on the basis of which the responsibility of individuals to compensate damage caused to others is determined. Accordingly, the main theories advanced in this regard are set out below.

Fault-Based Theory

Fault is an essential condition for civil liability. To determine fault, the standard of the reasonable person must be taken into account. The person who claims compensation from the injurer must prove the fault of the wrongdoer. Fault today has a customary or social meaning, such that fault is not assessed by the type of damage, but rather by measuring the injurer's conduct against that of an ordinary reasonable person (8).

Acceptance of the fault-based theory makes it difficult to compensate many types of environmental damage. This is largely due to the nature of environmental harm, the multiplicity of polluters, and the low incentive of victims of environmental damage to bring claims. Moreover, if the damage arises from what is termed the exercise of governmental authority, since fault cannot easily be established in such domains, the damage—no matter how extensive—will not be compensated except at the discretion of the same authority (4).

Theories of Liability Without Fault

Theories based on liability without fault consider the mere commission of a harmful act and the establishment of causation between that act and the damage as sufficient for compensation. This is also referred to as strict or objective liability. The main theories are as follows.

Risk-Creation Theory

Under this theory, a person who commits an act or creates a hazardous situation is liable for all damage arising therefrom. The influence of this theory is evident in French legislation and case law in determining liability standards for certain dangerous activities and occupations—such as the liability of mining concessionaires for subsidence damage, liability arising from nuclear reactors and nuclear ships, and the liability of aircraft owners and conveyor systems for damage resulting from their operation, which typically entails a high risk of harm (25).

Theory of Guaranteeing Citizens' Rights

According to this theory, the basis of civil liability lies in the legislator's guarantee of rights. Everyone has the right to benefit from their property, and the law protects that right. Although condemning someone who has committed no fault may seem to be condemning an innocent person, the victim of the accident is also innocent, and depriving them of compensation equally amounts to condemning an innocent party (5).

Guaranteeing citizens' rights may be examined from psychological and sociological perspectives. The tendency to favor the victim is neither a new phenomenon born of the welfare State nor solely a product of judicial practice. In this sense, the guarantee of citizens' rights, as an emotional reaction to harmful events, has played an undeniable role in civil liability law and has undoubtedly shaped some of its fundamental aims (26).

Theory of Social or Norm-Based Fault (Abnormal Conduct)

Under this theory, any abnormal conduct that causes damage to another person gives rise to liability, even if such conduct is the exercise of a right. Therefore, the victim must prove not only the occurrence of damage and the causal link, but also the abnormal character of the harmful conduct. The difference between this theory and the

traditional notion of fault is that, instead of assessing blameworthiness in purely subjective terms, the harmful act is evaluated according to an objective social standard—that is, by reference to common custom. Fault thus acquires a social dimension.

Theory of Risk in Exchange for Benefit

Under this theory, not every harmful act entails liability; rather, the injurer must have obtained a benefit from the activity, and that benefit must be material. Every person, willingly or unwillingly, pursues some material or moral benefit in the activities they undertake. A person who establishes or manages a factory or other profit-making enterprise for the purpose of earning income is, under this theory, liable for the damage caused to others by that activity, even if they have committed no fault.

Theory of Welfare and Beneficence

According to this theory, where a person performs a useful act and, in the course of that act, causes damage to another that cannot be compensated under the fault-based theory, the State, representing society, must pay compensation. In recent legislation enacted in Iran on the basis of Islamic jurisprudence, important indications of State responsibility for compensating damage in cases where the injurer is unknown can be found in Articles 255, 313, 474, 475, and 487 of the Islamic Penal Code, as well as Article 10 of the Act Amending the Mandatory Civil Liability Insurance for Owners of Motor Vehicles to Third Parties (2008). These provisions emphasize the role of the State in what is today known as the theory of welfare and beneficence. No damage should remain without compensation, and where the principal liable party cannot be identified, the State must remedy the harm. In the Islamic legal system, the governing principle is the prohibition of harm, and consequently, in civil liability the basis is objective responsibility rather than fault; what matters is merely the establishment of a causal link between the act (or omission) and the damage (27).

Theory of Strict and Absolute Liability

Despite the numerous instances of strict liability in Islamic jurisprudence, the Iranian legislator appears reluctant to expand its scope broadly in positive law. The theory of strict liability is essentially based on two premises: (1) the victim is not required to prove the injurer's fault; and (2) only force majeure can exonerate the injurer—no other factor does. Where absolutely no excuse is accepted from the injurer, strict and absolute liability can be applied (7).

Civil Liability of the State for Environmental Damage

In choosing a basis for State liability in compensating environmental damage, it is preferable to distinguish among several scenarios.

In cases where the damage is attributable to the State, the best approach is to accept strict liability in line with the "no-harm" principle. That is, damage caused to the environment as a result of the conduct of public officials or the malfunction of administrative facilities should in the first instance be compensated by the State. Ultimately, to preserve the deterrent function of civil liability and reduce public expenditure, if it is established that the damage resulted from abnormal conduct by the public official, the State may exercise a right of recourse against that official for the compensation it has paid. Where the injurer is unknown or the damage results from natural disasters, if the damage cannot be compensated by the immediate cause, it is preferable—based on entitlement theories—to hold the State liable in order to relieve society from bearing the environmental loss (3).

As stipulated in Principle 3 of the Constitution, in times of stability the State must approach its duties with a focus on achieving results rather than merely performing obligations in a formalistic manner. The stronger this results-

oriented approach to State duties, the more citizenship rights, social security, and public health will be realized. Serious planning is therefore required to ensure the full implementation of obligations of result or obligations approximating obligations of result, and the legislator must design appropriate mechanisms for this purpose. Clearly, in both obligations of means and obligations of result, the obligor must present exonerating evidence if they wish to escape liability, since under the contract their basic obligation is established. On the basis of the principle "the burden of proof lies on the claimant," State responsibility in the field of citizenship rights may be classified as an obligation of result, and the State must produce evidence to exonerate itself from liability (28).

Conclusion

State responsibility for establishing sustainable development and, consequently, for providing continuous, up-to-date, appropriate public services to all segments of society at the national level, as well as for fulfilling international responsibilities, cannot be confined to the present generation alone. Every State is obliged to implement and supervise mandatory environmental legislation to the highest possible standard in order to prevent environmental risks and their consequences, and, in cases of destruction and damage, to restore the situation to its previous state and compensate the losses incurred. This is an obligation of result, not merely an obligation of means.

State immunity for damage arising from acts of sovereignty has been abandoned in many countries, because it leads to the non-compensation of environmental harm. Nevertheless, the Iranian legislator has recognized such immunity in Article 11 of the Civil Liability Act. To mitigate its harmful consequences, especially in environmental matters, a broad interpretation of this immunity must be avoided. As shown by the specific statutes discussed in this article, the State—through ministries such as Energy, Petroleum, Health and Medical Education, the Atomic Energy Organization, the Fisheries Organization, Natural Resources and Watershed Management, and the Department of Environment—plays a key role in monitoring public health and ensuring human life and safety. It is therefore illogical to accord the State immunity in the realm of civil liability.

For better protection of the environment and citizens' rights, fundamental reform and revision of the legal basis of State civil liability are required, because it is the acts and omissions of States that generate environmental damage and impose environmental costs on citizens. Failure to account for environmental considerations in dam construction, road building, mining operations, and oil, gas, and petrochemical exploration and drilling results in irreparable damage and imposes substantial costs on the public. The international responsibility of the State under treaties, conventions, and international instruments on the one hand, and its obligation to implement the general policies of the system, current laws and regulations, the Vision Document, and national development plans on the other, all clearly point to the strict and absolute responsibility of the State. Legislative reform by Parliament, effective oversight by competent organizations, interpretation of laws in favor of citizens, and granting institutional independence to the Department of Environment and the Natural Resources Organization can pave the way for realizing citizens' rights to a healthy environment.

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Transparency of Data

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