

INVESTIGATING CHANGES IN THE FOUNDATIONS (PRIVATIZATION AND COLLECTIVIZATION) OF CIVIL LIABILITY IN THE ENVIRONMENTAL DAMAGE LAWS OF IRAN AND THE EUROPEAN UNION

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Abstract: *In the current research, the evolutions of collective and privatized civil liability due to environmental damages have been investigated in the laws of Iran and the European Union. The substantive changes can be seen as "privatization" and "collectivism" of civil liability caused by environmental damages. On the other hand, formal changes can be considered as "absolutism and absolutism" of civil liability caused by environmental damage and "evolution in the system of proof and proof of claims regarding civil liability caused by environmental damage". In fact, it should be said that due to the importance of environmental damages and the very destructive effects and consequences that these damages bring to people's daily lives, many legal systems have tended to identify the criterion of fault to realize civil responsibility. caused by environmentally damaging behaviors, which naturally puts the onus of proving harmful behavior on the judicial authority and can create many difficulties for the judicial authorities in this field, the identification of pure civil liability, which in fact, is a return to the risk criterion can be considered, the duty of proving the commission of harmful behavior and the occurrence of loss has been removed from the responsibility of the judicial authority, and this time, the occurrence of loss and the commission of harmful behavior is assumed, and it is the defendant or accused of committing this behavior who must prove such He has not committed any behavior basically or he has not committed it with the intention of causing harm. This can be seen as the most important development that the civil liability system due to environmental damage has experienced in the European Union. The current type of research is fundamental and its approach is descriptive-analytical, its method is a library study and the tool for collecting information is also a survey.*

Keywords: *civil liability, environmental damages, Iran's rights, European Union rights, pure and absolute responsibility, collective responsibility, privatization of responsibility*

1- INTRODUCTION

The issue of environmental rights is one of the new issues that modern man is seriously facing. One of its dimensions is the civil liability caused by the destruction of the environment, which expresses the type of responsibility considered for those who destroy the environment. Environmental rights, either through the subject of these rights or through its overlapping with economic-development issues, have characteristics that without considering them, criminal law cannot fulfill its mission, i.e. protection of the environment and A gradual change of related values is achieved(1). Civil liability will be a suitable tool for controlling and protecting property, interests, etc., especially the environment and its animate and inanimate components and its various manifestations, it constitutes an independent branch of law science whose main purpose The development of justice and an efficient system is to compensate for the damages that occur, and in the field of environmental damage, it should not be replaced by trying to punish the perpetrators of damage or reduce pollution, although there is such an idea and sometimes measures are taken in this direction. Accept Important developments have occurred at the international level in order to



identify the basics of civil liability caused by environmental damage, which deserve to be investigated, and the status of the domestic legal system of Iran in terms of identifying the type of civil liability caused by environmental damage can also be investigated. (2) The main goal of environmental protection in Islamic and legal sources is to avoid harming natural elements and preventing their destruction. The environment is a gift from God, whose beneficial use and maintenance can have positive effects on human life and human dignity. Islamic rulings pay special attention to the rules related to the preservation of the environment, whose goal is the common interests of humanity, and it states that the right to the environment carries with it the obligation and responsibility towards the environment. The need to protect and protect the environment is important to the extent that the traditional international responsibility regime based on fault and the commission of a wrongful act is shaky, and since a few decades ago, international responsibility resulting from non-prohibited actions was proposed by the International Law Commission and led to the approval of two draft plans in 2001. and 2006 in the field of prevention and compensation of transboundary damages caused by dangerous activities are not prohibited. According to this theory, in order to prove the damage to the environment, there is no need to have a causal relationship between wrongdoing and damages, and the cause of the damage is obliged to compensate for the damages. The goal of the International Law Commission in proposing this idea is to provide a compensatory basis for activities that, while having harmful effects, are completely beneficial and necessary from a social point of view. (3) Of course, it should be stated that the principle of responsibility due to the wrongful actions of governments for environmental damage is not rejected, but the governments came to the conclusion that transferring the responsibility to the operator of the damaging activity and the issues related to responsibility and actually lowering it from the intergovernmental level to the level of private claims and courts. Internal is more correct and reassuring. This transfer is the way in which private litigation replaces intergovernmental relations. Determining the concept and location of environmental damages and examining its rules in the international liability law of governments is of fundamental importance and is one of the factors that prevent governments from polluting the environment and also the factor of repairing environmental losses and damages. Compensation for environmental damages is always faced with problems, such as the fact that these damages cannot be easily assessed and, in most cases, it is not possible to restore the previous situation; For example, nuclear activities can have long-term effects on health and hygiene, the symptoms of which appear years later. In responsibility based on the traditional system, most of its private aspect has been considered, in the sense that the ecosystem has gained meaning in connection with the private right of individuals and as a result, the same traditional rules have been followed in explaining the rules of responsibility; Therefore, in order to achieve the purpose of preserving the environment, in the sense of the public right, which includes both the collective right of man and the duty of preserving it on the responsibility of man, it is necessary to step in new ways of responsibility, which according to the requirements of new technologies He investigated each of these damages in a useful way. (4) On the other hand, due to the different viewpoints regarding the type and nature of environmental responsibility, there have been differences in the definition of responsibility in the laws of various countries. If in countries such as France, Spain, England and the Netherlands, responsibility is based on the traditional system of civil liability, and at the same time, special laws have been formulated for cases where these damages cannot be claimed in the traditional way, and on the other hand, in other countries As in Germany, Finland and Sweden, this responsibility is generally based on specific legislation. But in the end, it can be said that pure environmental damages cannot be claimed by civil laws and traditional civil liability, and this is why in most European Union countries, in relation to "pure environmental damages", liability Purely and in other pollutions, fault-based responsibility has been accepted, whether the principle of responsibility is based on a specific law or a traditional responsibility system. Regarding why environmental damages need to be explained, in addition to mentioning the special importance of environment and that in many cases it is impossible to restore the initial conditions, it can be said that another important aspect of such damages is their long-lasting property, which causes damage particles to form over time and long after To make it

visible, as a result, it becomes very difficult to attribute the relationship of causation to the cause of the loss. This factor makes the preventive principle doubly important, and this is the reason why the European White Paper bases the policy of this union on the principle of caution and the necessity of preventive action; That is, in addition to the principle of compensation, it has also put a preventive policy on its agenda, which is a responsibility different from the traditional responsibility, and the supervisor is also responsible for possible future damages.

2-ACCUMULATION OF CIVIL LIABILITY DUE TO ENVIRONMENTAL DAMAGE

The collective responsibility of civil responsibility is a new intellectual approach that has been formed in relation to environmental damage and the explanation of civil responsibility caused by committing harmful behaviors towards the environment, and is the basis of theoretical analyzes and practical measures for the protection of the environment. .

2-1- The concept, components, conditions and effects of collective civil liability caused by environmental damages

The approach of collective responsibility has created important changes in the attitude towards environmental damages and the distribution of legal responsibilities regarding them. In this talk, we will first examine the concept, then the components, and after that, the requirements for the collective responsibility caused by environmental damage.

2-1-1-The concept of collective civil liability due to environmental damages

Collective responsibility is an approach against collective responsibility. The approach of collective responsibility, theoretically, is based on the premise that some risks have a social aspect and their effects and consequences are not limited to a few individuals or groups of people, but target and affect the entire human society. . Therefore, it is logical that all those who are somehow affected by environmental damage can participate in the compensation process. Based on this, it seems that it can be said that the approach of collective responsibility, somehow, aims to determine the way of distributing responsibility among the causes of loss.(5) In further explanation and explanation, it can be said that collective responsibility refers to a population that has been harmed by committing environmentally damaging behaviors, but collective responsibility refers to a group that can or has been able to, potentially or actually. It harms the environment. So, if we consider the concepts and principles of environmental criminal law as a basis, the collective responsibility approach is actually criminological, but the collective responsibility approach is actually culpable. The purpose of collective responsibility is to share all those who have been harmed by committing harmful or criminal environmental behaviors in the process of compensation for environmental damages, but the purpose of collective responsibility is to share all those who commit harmful behaviors or They have committed environmental crimes in the process of responsibility distribution and obligation to compensate. Of course, it is also necessary to mention that some people may be fundamentally opposed to such a separation and insight and think it is just a kind of rhetoric and a game with words, but it seems that this conceptual separation between these two legal interpretations has a correct basis and These two, in addition to having a specific conceptual meaning, are basically related to two separate categories, which may appear to be the same on the surface, but in practice and in the field of implementation and operation, they are related to two independent issues.(7) Become In the shadow of the formation of the approach of collective responsibility, it has been argued that the liability resulting from risky actions is not prohibited, and is first imposed on the operator, which means that the operator must compensate for the damage caused. Now the problem is, what is the responsibility of the government of origin? The country of origin has two duties: a. The country of origin has the duty to guarantee immediate and adequate compensation by the operator; B. The ultimate responsibility of the source government in compensating for the loss, if for any reason it is not possible to collect compensation from the operator.(8)

Therefore, as can be seen, the country of origin plays an important role in compensation for cross-border damages. The first task of the state of origin can be realized in several ways, that is, the government's guarantee is done through insurance and the creation of special funds



.(6)International law tries to balance interests in dealing with damages caused by non-prohibited hazardous practices to the environment. On the one hand, it imposes responsibility on the person who did not commit a wrongful act, and on the other hand, it stipulates proportional compensation with a fair approach to compensation. In this regard, international law supports, firstly, actions that are beneficial to the society but risky; secondly, support innocent victims; Thirdly, do not impose a very heavy environmental damage on only one operator.(8) In fact, according to the realities of the international community, international law has tried to divide the social costs, and it is not far from the truth that the responsibility resulting from non-prohibited actions is a kind of sharing compensation for environmental damages. Also, compensation by the government leads to social distribution of risk and benefits social cohesion. Explanation: Although the operator directly benefits from the operation of nuclear facilities, the members of the society also benefit from this industry through the use of nuclear products. If the government indirectly compensates the victims, the whole society does this indirectly by paying taxes. Since all members of the society benefit from this activity, it is unfair that only a percentage of them bear the costs of its unavoidable damages. As mentioned, this is due to the government's responsibility for the welfare of citizens and the principle of social solidarity. It should be mentioned that the aforementioned reasons are indirectly applicable to foreign victims of cross-border incidents, as in this case compensation from victims of other countries is based on mutual agreement; In order for the government to expect other countries to compensate the damage caused to its citizens when the incident occurred in another country, it must compensate the damage caused to the citizens of that country when the incident occurred in its territory. And because for the above reasons, he is obliged to compensate his citizens, he should do this transaction reciprocally.(10)

2-1-2- Components of collective civil liability caused by environmental damages

When we talk about collective civil liability caused by environmental damages, we naturally seek to explain the way of realization and distribution of civil liability caused by these damages. This development has three main components that must be taken into account when discussing collective responsibility; One, facilitating the proof of responsibility and the distribution of responsibility among the loss factors; Second, increasing the ways and methods of compensation for environmental damages and not being satisfied with traditional methods and third, lack of individualism and instead, relying on the principles of collectivism in the process of protecting and protecting the environment.(11) In the explanation of the first component, it can be said that collective responsibility does not have many problems of proving civil responsibility and distributing this responsibility among the causes of loss and damage, because it is assumed that the method of compensating damages can be collective and universal. This universalization will naturally not lead to the problems and dilemmas of explaining the individual responsibilities to find the cause of the loss and creating an obligation to compensate for the damage, and perhaps better than personal and individual responsibilities, it can protect the environment and prevent Committing harmful behaviors towards the environment should be effective(8).

The second component implies that because the responsibility becomes universal and collective, the methods of compensation for environmental damages also become diverse and therefore, we never need to be satisfied with traditional methods in this case, but can be Alternative methods are also available. Including the calendar of monetary damages and the obligation of the injured party to pay it to the injured party, it can easily be replaced by the obligation to provide free public services, which seems to have a much more deterrent effect than material and monetary compensations. . In fact, the obligation to provide public services will make the cause of damage understand that as a member of human society and as a potential or actual beneficiary of the environment, he is obligated in case of committing a harmful behavior towards the environment that In this case, it is assumed that the damage is to each individual member of the society, to provide free public services to the same human community so that the damage caused is compensated in this way, otherwise it seems to be only the requirement of material and monetary compensations. , especially towards natural or legal persons who have rich material and monetary resources and capital, it has no deterrent effect and these persons, confident of their financial and



monetary power, may commit harmful behaviors towards The environment will also be more sustainable.(10) Finally, regarding the third component, it can be pointed out that collectivism and its replacement instead of individualism in the trends and processes of compensation for environmental damages is, in fact, a return to the principle that each member of human society is a part They are a coherent and interconnected whole, and each of them must compensate for the damages caused to the environment, according to their share and size. In fact, a theoretical basis of the approach of collective responsibility for environmental damages is that each citizen should consider himself obliged to compensate for the damages and be aware that if he commits harmful behaviors towards the environment, he will definitely be punished. Your dignity and legal obligations will be placed. So it is better that they use all their efforts to protect the environment and avoid and stay away from committing harmful behaviors towards the environment. (12) The sum of these three components causes the view of how to explain and distribute civil responsibility in compensating environmental damages, compared to existing traditional approaches, to change and evolve. At the same time, paying attention to these components leads to a series of specific requirements regarding the governance of the collective approach of civil liability caused by environmental damages, which cannot be discussed. In the next paragraph, we will try to identify these requirements.(13)

2-1-3- Effects of collective civil liability due to environmental damages

In the following, it will be addressed to the effects of collective civil liability caused by environmental damage to clearly confirm the existence of this approach.

A: The emergence of liability insurance and financial guarantees

Individuals in any society do not need any insurance or guarantee for most of the activities they perform, and in principle there is no compulsion for individuals to insure their activities and their effects. But not every activity can be like this. Many people engage in activities that may cause damages that the person carrying out that activity cannot compensate for. With the emergence of industrial devices and complex devices in human life and their widespread use, although life became easier for humans, but its effects also appeared and caused social, economic and legal problems that had to be solved. The atomic energy industry is one of the inherently dangerous industries, and in some cases of related accidents, damages are caused, which most probably are not the fault of anyone, and compensation is beyond the power of the nuclear operator. This is where, like other dangerous activities, the existence of a support is needed to ensure the compensation of damages, therefore, the existence and presence of the "insurance industry" in the field of nuclear activities is a necessity. And the compulsion to prepare it to compensate for the damages caused to third parties and even the nuclear facility itself is presented as a principle and rule. It will not be an exaggeration if it is said that the international system of nuclear civil liability would not exist in its current form if it was based on the solid foundation of insurance. Atomic civil liability was not relied on. In fact, insurance has played a decisive role in the development of the atomic industry. Nuclear operators would never accept the huge risks of nuclear activities if there was no insurance coverage for both their facilities and third party liability. Also, the amount of insurance should be equal to the amount of liability as much as possible.(13) (Article 10 of the Paris Convention and Article VII of the Vienna Convention) This is what is referred to as the "Principle of Equality of Liability and Insurance Coverage", and ensures that the operator's liability is always covered with an equivalent amount of money. The existence of insurance and its equality with the amount of responsibility is both for the benefit of the injured party and for the benefit of the operator; The victim is sure that the damage caused to him is covered by insurance and his claim for compensation will be successful. The operator is also relieved that there are funds necessary to compensate for the damage up to the extent of his responsibility and he does not need to liquidate his property. But matching the amount of insurance with the amount of responsibility also has disadvantages. This principle causes the amount of responsibility to be determined at a level that can be insured. Therefore, the operator's liability limit is determined based on and considering the insurance capacity, not based on the actual amount of the intended risk .(12)



B: Creating special compensation funds

Another measure that governments can adhere to in order to guarantee compensation for transboundary damages and especially damages caused by the environment is the creation of special funds to compensate the victims. The establishment of compensation funds should be for those costs that cannot be identified and determined or cannot be attributed to any polluter. Also, the funds collected in this fund can be used to compensate for damages caused to natural resources such as surface water, air, land, wild animals and plants. These funds can be established based on several main sources, such as an air pollution compensation fund or noise pollution compensation funds or different types of damage, for example damage to a forest.(11)

One of these compensation funds is the "Super Fund" fund, which is a multi-million dollar fund established in the United States based on the "comprehensive law related to response, compensation and responsibility for environmental damage and disturbance" in It was established in 1980 to clean up abandoned hazardous and harmful waste dumping sites. The budget of this fund is provided by the American federal government with the help that is collected in the form of taxes from the oil and chemical industries. This fund is administered by the Environmental Protection Agency(14).

Next, in order to get more familiar with this topic, the explanation of another one of these funds, which was created in the nuclear field for compensation, will be discussed in detail. He brought up nuclear damage. In this resolution, the conference asked the International Atomic Energy Agency to establish a standing committee to carefully study the possibility of forming an international fund to compensate for nuclear damages. The Agency's Board of Governors established such a committee on September 18, 1963. Although this committee held six meetings until 1987, it was never able to come to a conclusion on the development of a document regarding the additional compensation of nuclear damages.(15)

The 1986 accident of the Chernobyl nuclear power plant reactivated the attitude and way of thinking of the member states of the Vienna Convention on compensation for nuclear damage in order to study and investigate the issue further. During the negotiations and discussions of this committee, some members suggested that additional compensation for nuclear damages can be realized through a convention based on the direct responsibility of governments in compensation for nuclear damages (in addition to the responsibility of the operator), this proposal was accepted. It was not accepted and the drafting of a convention in which the main responsibility for compensation for nuclear damage rests with the governments was removed from the committee's agenda. Supplemental nuclear damages, prepared. In September of the same year, this convention, along with the amendment protocol of the Vienna Convention, was approved by the International Atomic Energy Agency and was opened for signature and ratification by governments. The Supplementary Compensation Convention has not yet entered into force. The first Convention on Supplementary Compensation for Nuclear Damages (Brussels Convention) has committed the contracting states to pay 300 million special drawing rights for compensation for human and financial losses caused by a nuclear accident.(16)

2-1-4-Analysis of the collective environmental civil responsibility in the light of the concept of collective environmental benefits

A: The concept of the theory of collectivity of environmental benefits

The theory of the collective nature of the right to the environment was raised and developed in the lap of solidarity rights. It can be safely said that all authors who have published works in the field of solidarity rights, introduce the right to the environment as one of the examples of "collective rights" and "solidarity rights". This is the dominant view of the analyzes presented by theorists of the right to the environment, especially at the international level.(17) Some international documents, including Article 24 of the African Charter of Human Rights and Article 17 of the Barcelona Declaration, recognize this right as a collective right of the people. The recent declaration has stated that benefiting from a healthy and ecologically balanced environment is considered part of the collective rights of the people. Proponents of this view consider the nature of the right to the environment as separate from the nature of the rights of the first and second

generation and consider this right to have all the characteristics of the rights of the third generation that belong to or are owned by the society and people. In fact, in this view, the rights of the third generation are among the rights that are related to the collective interests of individuals because they live in society. In this view, this right does not have an individual aspect and is linked to non-unique and impersonal interests. In this theory, the feature of "collectiveness of interests" connects this right to the definition of collective rights.(18)

B: The social context of realizing the right to the environment

The right to a healthy environment is understood in human society. In fact, the crystallization of this right is based on the concept of "public benefit" or "public benefit" in which the members of the society collectively benefit from a healthy environment. In this perception, the collective nature of the right to the environment is compared to the rights of the first generation, which emphasizes the interests of the individual or "individual rights". In fact, the realization of every "right" in collective rights requires a "social context" and the theories of contemporary, temporal and spatial. In addition, in the formation of this analysis, the environmental situation of some societies in the current world has also been considered.(15) In defense of the collective right to the environment and the need to introduce it as a collective right, Professor Michel Prior, a famous French professor of environmental law, points to the situation in Africa. In this regard, in his opinion, why in Africa "the right to the environment" has been introduced as a "collective right" both in the African Charter of Human Rights and in the judicial procedure, it states that "the difficulty of identifying the right to a healthy environment as a right The collective (and not the rights of individuals) in Africa has probably been aimed at benefiting and supporting the victims of ecological disasters and the refugees caused by these disasters. In fact, these analyzes are based on the environmental conditions of some developing and less developed societies(16).

-3PRIVATIZATION OF CIVIL LIABILITY CAUSED BY ENVIRONMENTAL DAMAGE

Another approach that is proposed in line with the analysis of environmental damages and requiring the cause of damage to compensate, and which has led to important developments in terms of basis and theory, is the privatization of civil liability caused by environmental damages. In this section, in the first speech, we will examine the concept, components, requirements and effects of the privatization of civil liability due to environmental damages, and then in the second speech, we will examine the approach of the European Union and Iranian law to this category(17).

3-1- The concept, components and conditions and effects of privatization of civil liability caused by environmental damage

Privatization of civil liability resulting from the commission of harmful behaviors towards the environment has been a very important and significant evolution in environmental law and also in civil liability law regarding environmental damage. In this speech, the concept, components, requirements and effects of the privatization of civil liability due to environmental damage will be discussed and investigated.

3-1-1- The concept of privatization of civil liability due to environmental damage

An approach that is clearly seen in responsibility for non-prohibited acts, after the preventive approach, is the approach of privatizing responsibility, which means that according to the rules of classical international responsibility, or responsibility for international wrongful acts, responsibility is raised at the state level. However, in the international responsibility resulting from non-prohibited actions, the responsibility is not only at the government level, but the responsibility has been manifested with a private approach.(16) In other words, the privatization of responsibility in non-prohibited actions has been achieved in two ways, the first way is to accept the primary responsibility of the operator instead of the responsibility of the state of origin, which is also referred to as channeling the responsibility towards the operator, and the second way is to reduce The responsibility is from the intergovernmental level to the level of the internal law of the source of the damage. It should be noted that the first method actually facilitates the second method, in the sense that claiming damages from the operator by resorting to the internal laws of the country of origin is much easier than claiming the same damages from the public authority or the same

government in the structure of the domestic laws of the country of origin. although it is possible that the government is also considered as an administrator in some cases⁽¹⁸⁾. This approach of privatization has had very important functions, including that it has caused governments to show interest in this type of responsibility. Because governments are very cautious and reluctant to accept responsibility and, as a result, compensate damages when they have not committed a breach of obligation, and this privatization approach has greatly reduced opposition. It has also made it easier to compensate the victims of risky acts.⁽¹⁹⁾ From a conceptual point of view, it should be said that the approach of privatizing civil liability caused by environmental damage is based on the premise that not only governments are obligated and obliged to compensate for environmental damage, but also the private and non-governmental sectors can and even should do so. accept a requirement and be responsible for its effects. The approach of privatizing civil liability caused by environmental damages, this approach is justified by two reasons; First, it is more compatible with choosing the theory of risk as the basis of responsibility for compensation of cross-border damages caused by dangerous activities. In fact, according to this theory, the person who created the risk and seeks to gain economic benefit, must bear the harmful results of controlling the activity. Considering the predominance of the private economy system in today's world, such a person is the beneficiary of a harmful activity, and secondly, the extent, irreparability and unknown nature of many transboundary damages, especially environmental damages, encourage governments to abdicate responsibility in the field of transboundary damages. It has been effective.⁽²⁰⁾ In terms of concept and basis, the approach of privatization is based on the principle that the scope and extent of civil liability can be extended to non-governmental private individuals in addition to the government by committing harmful and harmful behaviors towards the environment. It is widespread. This transformative approach also has important components that we will examine in the next paragraph.

3-1-2- The components of privatization of civil liability caused by environmental damages

In discussing the components of privatization of civil liability caused by environmental damage, it can be said that unlike in the past, in the international system, governments are not exclusively responsible, but other persons who are called "beneficiaries" in international documents are also recognized as responsible. and must compensate for the damage caused. It should be noted that although the responsibility is initially imposed on the operator, but in some cases, the government of origin has ultimate responsibility, that is, it must guarantee the compensation of the damage by the operator, and if it is not possible to realize the compensation of the damage by the operator, the government of origin itself must accept the compensation for the damage.⁽²¹⁾ to be It is worth mentioning that the concept of beneficiary is different according to different activities. By accepting the privatization approach in the field of civil liability caused by environmental damage, on the one hand, there is no direct obstacle to the progress of science and technology, and on the other hand, the damage caused to the environment is compensated and balanced. And we achieve a proper balance between the rights and interests of the cause of damage and the injured party. The fact that non-governmental private entities, like the government, are considered obligated to compensate for environmental damages, is based on several main components, which are mentioned here⁽²¹⁾:

a; Non-governmental private individuals are also beneficiaries of the environment, just like every real person in the society, and therefore, there is no logical reason to exclude them from the rules and regulations requiring compensation for damages caused by environmentally damaging behaviors. In fact, according to the jurisprudential rule of "man leh al-ghanam falliyeh al-gharam", anyone who benefits from a matter will also be responsible for its damages and costs. This is due to the identification of non-governmental private individuals with natural persons benefiting and exploiting the environment in environmental rights and civil liability rights.

B; Non-governmental private individuals, perhaps basically because they are usually among the most privileged sections of the society, consider themselves exempt from many rules and regulations, and they believe that in case of committing illegal behaviors, due to having rich financial resources, They can easily afford to fulfill the performance guarantee set for their

harmful behavior by paying even huge sums. This feeling creates the impression in them that they, basically equal to other real persons present in the society, cannot be considered responsible and guarantors for the environment and its productivity, while this idea, It is completely wrong, and by the way, the discussion of the privatization of civil liability caused by environmental damages is precisely aimed at removing this misconception. Based on this development, there is no reason or basis for non-governmental private individuals to be immune from the duty of compensation.

P; Basically, the regime of determining the area of civil liability caused by environmental damages without considering the area of responsibility of private individuals is an incomplete regime and lacks optimal performance. Today, non-governmental private individuals are an undeniable reality in human societies, in such a way that the existence and activity of these societies without the presence and participation of these individuals is fundamentally unimaginable. These people not only have a real and physical presence, but they are an active member benefiting from the material and spiritual facilities and talents of human societies, and it is very unfair if we consider the possibility of them benefiting from these facilities and talents, but We believe in the non-extension of the scope of civil liability caused by committing environmentally damaging behaviors towards them. In fact, these people, due to having the conditions to benefit from the facilities and talents of the society, must also accept the consequences of this benefit and, among other things, they are obliged to compensate for the damages caused by their harmful behavior towards Let the environment and users know about it.

These three main components have caused the privatization of civil liability caused by environmental damage to have its own requirements, which we do not need to address in the discussion of this category. The next paragraph is dedicated to examining these requirements.

3-1-3- Requirements for privatization of civil liability caused by environmental damage

When the privatization of civil liability caused by environmental damage is accepted and recognized, then all the rules governing the explanation of civil liability caused by environmental damage and the imposition of this responsibility on private individuals will be possible. Therefore, it is never in vain if it is said that the extension of rules and regulations of civil liability caused by environmental damage to legal entities and non-governmental structures is one of the most important developments that environmental law and civil liability law regarding environmental damage in the world He has seen himself today(16).

Naturally, the extension of this responsibility has certain requirements, the most important of which can be considered as two items(19):

First; When legal entities and non-government structures are considered eligible for civil liability due to environmental damage, in fact, it means accepting and recognizing their legal existence and that they can also be subject to legal rules and rulings regarding this type. will be responsible. This, in itself, paves the way for imposing the principle of civil responsibility on these persons and structures, as well as for imposing other related rules, including how to determine and implement the guarantee of legal and judicial enforcement against legal entities and non-governmental structures that violate and commit harmful behaviors. will open

Second; Privatization of civil liability caused by environmental damage will give legal entities and non-governmental structures an equal position with the government and government institutions as well as natural persons who commit acts that harm the environment. This, in turn, will update and adapt the system of determining and imposing the guarantee of executions related to environmental damages with the nature of legal entities and non-governmental structures of the offender. In this way, the problems that the critics of identifying responsibility for legal entities and non-governmental structures due to the commission of environmentally damaging behaviors have introduced or are causing and believe that the existing executive guarantees cannot be applied to legal entities and non-governmental structures will be resolved. became.

4-1-4- Effects of privatization of civil liability due to environmental damages

Here, two important effects of privatization of responsibility will be explained, i.e. acceptance of the primary responsibility of the operator instead of the responsibility of the state of origin and the



reduction of responsibility from the intergovernmental level to the level of the domestic law of the state of origin of the loss.

A: Accepting the responsibility of the curator

However, private individuals or companies are generally not subject to public international law. Nowadays, the procedure of transferring environmental responsibility to private actors has been developed to a large extent to the international responsibility of governments in damages caused by pollution. But the issue of attributing the actions of private individuals to governments rarely affects the responsibility for non-implementation of the government's environmental obligations in international law. Because this responsibility of the government is due to his wrongful act. When the activities of private individuals cause environmental damage, as in the case of Trail Smelter, one of the duties of the government is to monitor, cooperate and inform other governments. The government cannot avoid this task by handing over the activity to the private sector. In this sense, the government is the guarantor of the behavior of private individuals. But the government's responsibility is the responsibility of his own lack of care⁽¹⁷⁾. The main problem of the International Law Commission in relation to the issue of responsibility resulting from non-prohibited actions was centered on the purely imposed concept of the responsibility of governments. The purpose of the International Law Commission was to propose a form of liability based on the concept of strict liability to a series of states, limited to developing states opposed to such a scheme, for transboundary damages caused by hazardous activities. . The common attitude among the governments was that either a prohibited act has occurred, in which case the law governing the responsibility of the state must provide for any compensation for damages resulting from its results, or a prohibited act has occurred. It has not been done and no international legal responsibility can be attached to the works created by that act. The International Law Commission came to the conclusion that states are not willing to support the idea of creating a form of international legal responsibility for the results of actions by those states that are not prohibited by international law. Finally, progress was achieved by planning a program based on the risk-based privatization approach. The obligation to compensate for transboundary damage caused by risky actions is primarily on the shoulders of operators and not the governments of origin. In this way, there was a proposal containing a series of principles based on which the private sectors can be expected to bear the responsibility of compensation for the damages, reflecting the principles contained in the 2006 plan in most aspects, previously also in a certain part of the conventions. There has been civil liability in the fields of oil pollution, transportation of dangerous, radioactive and nuclear materials. The main difference is that, as it was intended from the beginning, the principles included in the plan propose a comprehensive system for compensation of transboundary damages caused by risky activities.⁽²⁰⁾ In the draft principles of 2006 of the International Law Commission, first of all the responsibility and as a result the compensation of damages has been imposed on the operator, in this regard, paragraph 2 of principle 4 of the plan states: "The actions mentioned in the first paragraph must impose responsibility on the operator. or include other persons or units in the appropriate case. Such liability does not require proof of fault. Any conditions, limitations or exceptions to this liability must be consistent with Article 3 of the draft."⁽²¹⁾ Also, Clause (g) of Article 2 of the 2006 Draft Principles of the International Law Commission defines an operator as follows: "An operator is any person under whose command or control an activity that has resulted in cross-border damage has occurred. "In the following, the acceptance of the responsibility of the curator or the channeling of responsibility towards the curator will be explained, both conceptually and in terms of examples in various international documents, and then it will be criticized and justified.

- Explanation of the principle of channeling responsibility

According to the general rules of responsibility, anyone who causes damage to another by his act or omission must accept the responsibility of compensating for that damage and pay compensation to the victim. According to the law, no person is responsible for the damage caused by another's act.



killed "A" cannot be prosecuted due to the damages caused by the activity of "B". This is a basic principle in civil liability law.

In the liability arising from non-prohibited actions, including atomic civil liability, the aforementioned principle has been abandoned and a new principle has been replaced. The new principle, which is interpreted as the principle of "legal channeling" of responsibility, means that only the operator, that is, the person under whose control the risky activity occurred, will be held responsible. For example, the operator of a nuclear facility is responsible for all damages caused to third parties, and no other person can be held responsible even for damages caused by their actions or omissions or their fault. This concept, which is not prohibited from the characteristics of responsibility resulting from actions, is a new and unique concept and is not compatible with other areas of civil responsibility.⁽¹⁹⁾

It should be noted that this principle, which can be called the principle of "exclusive responsibility of the operator", does not mean that others are also responsible, but the operator compensates for the damage instead of them, rather, no one but the operator "legally" He is not responsible and in fact he is the only one who can be the defendant and only he can be sued. In other words, all the responsibilities of other persons are collected in one channel and directed towards the operator.

One of the reasons involved in the creation of this principle is the acceptance of the "polluter pays" principle, which has been accepted by governments. With the explanation that, since the operator is in charge of controlling the risky activity, therefore, in case of environmental damage, he as a polluter must compensate for the damage.

Article 2 of the 2006 Principles defines an operator, but it should be noted that there is no general definition of an operator in international law. However, this term is used in national laws and treaties. For example, the French environmental responsibility bill defines the operator as follows: "According to the purpose of the European Community legislator, the operator must be a person who can effectively and efficiently carry out damage prevention and compensation measures. The control that he will do regarding his activity, job or company means their effective and efficient management. This article does not include shareholders, credit institutions, government officials who are responsible for administrative control, and also official officials.

Also, Article 2(2)(c) of the Additional Protocol on Liability and Compensation for Damages Caused by Transboundary Activities on Genetically Modified Living Organisms to the Cartagena Protocol on Environmental Protection (2010) defines the operator as follows⁽²¹⁾:

"Operator is a person who directly or indirectly controls genetically modified organisms..."

It should be noted that the concept of operator depends very obviously on the nature of the activity. Channeling liability towards an owner or operator is a sign of a pure liability regime. Therefore, in some cases, persons other than the operator may be held liable for the interests they have in relation to a particular risky practice. For example, in the 1969 conference that led to the adoption of the International Convention on Liability for Pollution Damage, the possibility was considered that liability may be imposed on the ship owner or the cargo owner or both. However, according to the agreement, the responsibility of the ship owner was assumed.

- **Criticism and justification of the principle of channeling responsibility**

This principle is not immune from criticism. This principle was criticized especially in Germany and Austria. The authors criticized it for this reason that it is an unfair rule because it keeps the participants in the loss and those who may be the real cause of the loss immune from responsibility and exempt from compensation and imposes the harmful results of their actions on others. slow. In addition, this concept is harmful from the point of view of legal policy, because in this case, no one takes preventive measures to prevent accidents and damage.

But the establishment of this principle is not without wisdom, and the valid reasons for its existence not only justify it, but also make it necessary.⁽²²⁾

First: the lack of this principle prevents the development of technology and industry such as the atomic industry. Because, for example, in nuclear activities, on the one hand, from the very beginning, suppliers of nuclear materials, equipment and technology were afraid of complex and



costly liability claims, and for this reason, they refused to enter the field of nuclear activities. On the other hand, if all those who are active in the field of supply of atomic materials and fuel or transportation of atomic materials are responsible, they have to insure themselves for such liability, and as a result, considering that atomic activities may be a small part of the activities it is them and the cost of insurance is also expensive, they add this cost to the price of nuclear materials and goods and services and cause their prices to increase, so the operator who is supposed to provide such goods and services faces a financial problem. and may stop its nuclear activity.

Secondly: The possibility of others being responsible makes them also prepare insurance for themselves, which causes unnecessary pyramiding of insurance, which on the one hand increases the cost of insurance, and on the other hand, according to the capacity limited insurance coverage has a negative effect on the existing insurance capacity.

Thirdly: This principle is in the interest of the victim to have no doubts about the responsible person, considering that nuclear activities are complex, specialized and technical, the victim alone cannot or perhaps cannot determine from which part of the activity the damage is caused. It is atomic and related to what personal action it was. Legal channeling of responsibility to the operator gives assurance, certainty and peace to the victim regarding who should be prosecuted. It also benefits the operator because it makes him better able to evaluate costs and risks.

These are convincing reasons for establishing the responsibility of the operator of nuclear facilities, and it is interesting to note that countries that have not accepted the principle of legal channeling of responsibility, have been forced to arrange the responsibility of persons other than the operator under the operator's insurance or guarantee. to earn the government's finances, and this is that the United States has established the economic channeling of responsibility. As mentioned, one of the grounds for establishing this principle is the acceptance of responsibility resulting from non-prohibited actions by governments.

In this regard, the International Law Commission in the 2006 draft of principles has established an obligation requiring the state of origin to take measures based on which the victims can resort to the tools available in the state of origin for immediate and adequate compensation. Of course, this requirement of the state of origin does not negate the injured party's right to resort to other ways and means to compensate for his loss.

Clause 6 of Article 7 of the Additional Protocol on Responsibility and Compensation for Damages Caused by Transboundary Activities on Genetically Modified Living Organisms to the Cartagena Protocol on Environmental Protection (2010) also refers to the right of victims to immediate and adequate compensation by resorting to tools Available in the state of origin.

After examining the concept and requirements of the privatization of civil liability caused by environmental damages, in the next speech, we will examine the approach of the legal system of Iran and the European Union towards the privatization of civil liability caused by environmental damages.

2-3- The approach of the legal system of Iran and the European Union towards the privatization of civil liability caused by environmental damages

The approach of privatizing civil liability caused by environmental damage has more or less entered the approach of the Iranian legal system. This is despite the fact that at the level of the European Union, this category has been faced in a more serious way and important documents in this field have been approved by the member states of the Union. In order, we examine the approach of both legal systems.

3-2-1- The approach of Iran's legal system

The most important manifestation and aspect of identifying the category of privatization of civil liability caused by environmental damages in Iran is specifying the responsibilities of legal entities in order to preserve and protect the environment. In this case, the legislature can indirectly punish legal entities by ruling to prevent the establishment of polluting places, such as the budget law of 1328 of the whole country, which, according to its note 30, prohibits the establishment of



establishments and workshops that are harmful to health and cause the deprivation of the comfort of the neighbors. Cities and their suburbs are prohibited.(22)

And sometimes he punishes legal entities by punishing the manager of legal entities. For example, according to Article 568 of the Islamic Penal Code, in case of destruction of historical and cultural property by legal entities, any of the managers and officials who give orders will be sentenced to the prescribed punishments according to the case, although the principle of personal punishment is accepted, but the responsibility of these managers and officials as in The relationship with the polluting activity of the company or institution is under their control, in fact, the responsibility of legal entities is considered indirectly. (22) In the discussion of the approach of Iranian law in order to identify the civil liability caused by environmental damages for legal entities based on the privatization of the civil liability caused by these damages, it is possible to examine the judicial procedure regarding the responsibility of legal entities in Iran. In this case, we present two cases, one of which is related to the direct responsibility of legal entities and the other is related to their indirect responsibility; The first case is related to Miandoab sugar factory and the second case is related to Margh Pardis slaughterhouse.

- **Judicial procedure regarding the independent responsibility of legal entities (Miandoab sugar factory case)**

Following the discharge of sewage from the Miandoab sugar factory into the Zarineroud river and the contamination of the river water with chemicals, etc., the aquatic life of this river was seriously threatened, therefore the Department of the Environment of West Azarbaijan province announced a crime against the said factory and demanded the prosecution and punishment of the perpetrators. Pollution was done based on paragraph C of Article 12 of the Hunting and Hunting Law.(20) In the minutes of the meeting organized in this regard on 8/7/1663 by the representatives of agriculture, justice, environment and health and gendarmerie departments, it is stated that more than five million fish have been lost in this river. In response to this complaint, the manager of the factory announced in the prosecutor's office that Miandoab city does not have an urban sewage network, and on the other hand, the necessary machinery for sewage treatment must be procured from abroad due to the country's economic problems for the Atka organization, to which the factory is affiliated. It is not possible and with these arguments, he absolves himself of responsibility.(21)

After the statements of the prosecutor in charge of the case, he writes as follows: "The factory itself is a legal entity and its management is determined by the legal authorities and the limits of its powers are clear. On the other hand, shutting down the factory will cause severe economic damage, and the removal of pollution will also At present, it is not possible with the existing facilities, on the assumption that the factory management will be prosecuted and the person who does not have the full authority to create or change the existing system will not be able to solve the problem, and after this indictment, the case will be sent to the criminal court The investigating judge also confirms the opinion of the prosecutor's office and issues and announces the order prohibiting the prosecution of the factory management.(22)

Following the issuance of this order, the Environmental Protection Organization objects to it, considering that, from the legal point of view, the organization's arguments and the response of the criminal court and the legal court that was formed to deal with the organization's claim for damages, the organization's protest bill is structured as follows(24):

- "In the issued order, the respected investigator has repeatedly limited himself to the fact that the sugar factory is a state-owned and legal entity, and preventing the violations of the sugar factory will cause it to be shut down, and the provision of machinery for sewage treatment is beyond the responsibility of the factory and it is not possible to provide it. Criminal prosecution of the factory director will not solve the problem. As you may recall, in Article 50 of the Constitution, the legislator has mentioned a great mission to preserve and protect the environment and has explicitly prohibited any economic activity that is associated with pollution and destruction of the environment. . In this principle, there is no mention of being real or legal, being governmental or private. Law enforcement is the same for everyone. How can it be said that the head of the factory

was not responsible, the head is the responsible person who is questioned, so in such cases, according to Note (1) of Article 33 of the organization's regulations, which is available in the file, legal entities and the CEO or the head of the legal entity are responsible. are known

-The insertion of this sentence by the investigator "in terms of the lack of investigation of the fish waste and the legal personality of the sugar factory, which is one of the government-affiliated bodies, a ban on prosecution will be issued and announced" even though in this regard they have the rule of waste and attribution and with Paying attention to the meaning and context of Article 10 of the Environmental Protection and Improvement Law approved on 3/28/1953, which mandates the organization to prevent any destructive action in order to disrupt the balance and suitability of the environment, as well as all matters related to wild animals and inland water bodies. He objects to the order prohibiting prosecution and requests a re-examination and announcement of the result to this authority. It is appropriate here to refer to the feature of the Environmental Protection and Improvement Law in relation to the criminal responsibility of legal entities, which is that in this law, it is a combination of both methods, i.e., the method of independent responsibility of legal entities and the method of criminal responsibility of real persons. We apply to legal entities. Because according to Article 12 of this law, in case of pollution caused by legal entities, the responsibility is obliged to refrain from continuing the work and shut down the factory according to the order of the organization to stop work and activity. In the following article, it is stated: In case of violation of these regulations and continuing the activity without the permission of the organization or the court, the prescribed punishment is 61 days to one year of imprisonment or five thousand to fifty thousand Rials fine or both punishments. will be. (23) In this way, this article holds both the legal person responsible, because at the top of it, it foresees the suspension of it, and also the officials of the legal person, because in the bottom of the article, it threatens them with the foreseen punishment in case of non-compliance with the provisions of this law, and thus to It is a combination of both responsibilities, which is also mentioned in some court decisions.

- **Judicial procedure regarding liability through legal entities (Margh Pardis chicken slaughterhouse case)**

Pardis Chicken Slaughterhouse was prosecuted by this organization and then by the prosecutor's office and the court based on the repeated complaints of the residents to the Environmental Protection Organization regarding causing severe pollution of the surrounding environment and endangering the health of the people. Criminal sentences were issued about it. Based on the first criminal verdict, Murgh Pardis slaughterhouse is accused of not respecting environmental health. According to the comments of the officials responsible for the environmental department and other competent authorities, the attribution of the unsanitary environment to Pardis chicken slaughterhouse is fixed and certain. According to Article 12 of the Environmental Protection and Improvement Law, the defendant is sentenced to pay fifty thousand riyals as a fine and close the premises until the defects are corrected. (24)

Despite the issuance of this ruling, the abattoir opens the seal and starts working, which is complained about again, and the court again gives the following opinion in a separate ruling: In this case, Pardis Meat, Poultry and Egg Packaging and Distribution Company is accused of non-compliance. Environmental health standards. According to the complaint of the Karaj Environmental Organization and the minutes of the meeting dated 17/4/71 and the statements of the representative of the said company in the court session regarding the unauthorized activity of the company and other available evidences, the imputed guilt is certain and confirmed and based on Article 12 of the penal regulations of Environmental Protection Law 28 June 1353, the court sentenced the mentioned company to pay a fine of fifty thousand riyals to the government and shut down until the environmental organization fixes the deficiencies. The vote was issued in person and communicated to the representatives of the mentioned organization and company. As can be seen in this case, the court found criminal responsibility against the company, which is a legal entity, and not against its officials, and in this sense, it has ordered to pay a fine and shut it down. (25)



3-2-2- European Union approach

In its amendment bill, the European Commission, imitating the Lugano Convention, has moved the responsibility to the "operator" or "user". In this document, an operator is a person who controls and supervises an activity. In other words, the operator is a person who is responsible according to the principle of "the polluter must pay" and therefore is a person other than the owner or occupier of the contaminated land and areas. In the proposed directive, co-user was defined as a person who performs the activities intended by the directive. The definition of "user" was one of the most important differences between the commission and the member countries of the union and non-governmental organizations. In general, the common opinion was obtained that the user is the person who has control over the harmful activity. With the caveat that we are talking about "practical control"; It means a person who has effective practical control over harmful activity. From the point of view of the directive, "user" is a natural or legal person, whether private or public, who implements or controls a professional activity, or if it is provided for in the national law, it is a person who has significant economic power and determines the technical function. Such an activity has been assigned to him and the license holder also includes the said activities; An operator is a person who has direct control, i.e. daily management responsibility, not indirect control. Therefore, it does not include parent companies. Also, it can be said that any economic enterprise that exploits an activity - even if it is practical - can be recognized as an exploiter according to the guidelines.(23)

In Article 7-161 of the French Environmental Liability Bill, combining Articles 6-2 (Definition of Operator) and 2-7 of the Instruction (it is about professional activities), "Operator" is defined as follows: "According to the European Community legislator, the user must be a person who can effectively and efficiently carry out damage prevention and compensation measures. The control that he will do regarding his activity, job or company means their effective and efficient management. This article does not include shareholders, credit institutions, government officials who are responsible for administrative control, and also official officials.(34)

According to the first paragraph of articles 5 and 6 and the instructions, the operator has two basic obligations:

A: Commitment to action

If the environmental damage has not yet occurred but there is an imminent risk, the operator must take preventive measures without delay. When environmental damage occurs, the operator is obliged to inform the competent government authority of all relevant aspects of the situation without delay and take the following actions:

- take all practical measures to control, contain and reduce damage;
- According to Article 7 of the directive, he will take the necessary measures to compensate for the damage that has been approved by the competent government authority.

Obligation to provide information:

If the environmental accident has not yet occurred, but there is an imminent risk, and the said risk does not disappear despite the preventive measures taken by the operator, the operator must inform the competent government authorities of all aspects of the case within a reasonable period of time.

Also, the beneficiary has two types of financial responsibilities. Sometimes his financial responsibility is direct, that is, he provides the financial costs of environmental damage prevention and compensation measures from the beginning, and sometimes the competent government authority himself or through certain persons carries out damage prevention or compensation measures and in It uses the maximum costs.(25)

The commission predicted in its notification bill that if the user cannot be identified and the damage caused is an "orphan", the government is obliged to prevent or compensate for such damage. In the approved instruction, it was determined that if the operator cannot fulfill the obligations of prevention and compensation measures or if he cannot be identified, the government can carry out such measures. Of course, the measures taken by the government have no effect on the responsibility of the intended user according to the current instructions. So, in general,



according to the "polluter must pay" principle, the final responsibility rests with the operator and ultimately ends with him.(26)

It should be added that most countries with customary laws have accepted the responsibility of legal entities.

The other category is the countries that have not accepted such responsibility. The argument of the countries denying the responsibility for legal entities is that these individuals cannot be subjected to punishment such as imprisonment, but the countries in favor, including the European Council of Ministers, justify that in these cases financial and cash punishments should be used instead of imprisonment.(27)

In punishing legal entities, two points should be considered. First, the monetary punishment should not be so low that it is not a significant monetary penalty for environmental pollution, for example, for a factory, nor should it be so high that it causes economic problems and unemployment.(28)

One of the reasonable ways that the European Council of Ministers has considered is depositing the obligation on behalf of legal entities. Obligation is an amount that is considered as an estimate or it is a certain amount that is considered for each day of delay in fulfilling the obligation, in order to oblige a different agent to implement it by the judge and allows the judge to ensure the implementation of his decision. This punishment forces the polluter to quickly take the necessary measures to stop the pollution, otherwise a heavy fine will be waiting for him.

Another basis considered by the European Union in the practical realization of the approach of privatization of civil liability caused by environmental damage is social regulation. Regulation is a process or action by which the government allows or disallows certain activities for individuals and companies. These activities are mostly private and sometimes public, and the government takes control of them through a continuous administrative process and generally through specific administrative organizations (regulatory organizations). Regulation, which is also interpreted as "organization", "regulation", "provision" or "adjustment". It is a tool or process that largely expresses the interventionist and effective presence of the government in social and economic relations. Governments monitor and control many products and services that are offered in the tools.(29)

Some common examples of social regulation are:

- Applying safety standards in the construction and operation of buildings, roads, bridges, ports, airports, nuclear weapons factories, cars, airplanes, machinery, etc. ...
- Application of safety and health criteria in the production, labeling and distribution of food and medicine
- Application of rules regarding the private exploitation of mines, forests, wild animals, barren lands and other natural resources.
- Prohibition of polluting air, water and other aspects of environmental protection, forests, pastures and plant and animal species.
- Zoning regulations and prohibition of posting notices in order to preserve the beauty of the living environment.

Therefore, regulation means approving and applying the regulations approved by the parliament or the administration to influence the economic market and social phenomena and a special stimulus mechanism based on mandatory measures and obvious threats in cases of non-compliance as well as relational It is special between the government and its citizens.

Social regulation forces individuals, companies, or lower levels of government to take certain actions in order to improve public welfare. Such regulations are used as government tools to achieve many public goals. Many social regulations, such as regulations related to food hygiene and environmental protection, are used to prevent harm to people. Determining the boundaries of social regulation is a difficult task because regulation as a government tool includes various activities, various policy areas, different levels of government and various executive approaches. In fact, the term social regulation itself is misleading because it is commonly used to refer to a variety of social, environmental, public health, and safety regulations.(30)

In general, regulation implies the establishment of rules that specify the permitted and prohibited activities in relation to individuals, companies or government administrative organizations and is



accompanied by punishment or reward or both. The purpose of social regulation is to limit or prohibit behaviors that directly threaten the public health, safety, welfare, or well-being of the people. These threats include environmental pollution, unsafe working environments, unsanitary living conditions, and social deprivation.

Social regulation involves four key components⁽³¹⁾:

- Rules that govern expected behaviors and results.
- Standards that are used as compliance criteria.
- Determining penalties (enforcement guarantees) in cases of non-compliance with the aforementioned rules.
- The administrative body that enforces the rules and executes the punishments.

These rules require deadlines for taking action and complying with executive standards. Compliance with the rules is evaluated according to the date or process by which various actions were performed or according to the compliance of the relevant standards. To the extent that the compliance with the rules should be imposed by the threat of punishments, the existence of monitoring systems for the compliance and realization of the implementation of the rules is necessary.

Social regulation requires four main and basic steps:

1- Creating rules that determine expected behavior or results;

Rules form the core of social regulations and determine expected behaviors. The fact that rules are written and codified distinguishes them from non-codified codes of conduct such as norms of social interaction. "Good" rules can be distinguished according to their validity (justification and acceptance), fairness and predictability. Righteousness is related to both the legal source of the rule and the suitability of the rule to the situations to which that rule is applied. Several legal considerations govern these aspects of existing rules in their regulation and formation. Specifically, the basic rules are based on a clear legal authority and must be in accordance with predetermined rule-making processes. Fairness is the most difficult aspect of the rules because it requires a balance between internal harmony (same, similar, and similar interactions and preventing arbitrary and capricious behavior) and the flexibility of the possibility of reacting according to specific situations. Predictability is very important in determining uniform and integrated expectations and is achieved by formulating simple regulations instead of complex formulas.⁽³²⁾

Thus, the elements of a good rule can be summarized in the following:

Its necessity is accepted by everyone.

- Appropriate and suitable for the situation for which it was created.
- There should be the possibility of its coordinated and integrated implementation and application, along with reasonable and conventional exceptions.
- It has set predictable expectations.
- To be understandable for the institutions that are affected by it.
- Rule-making ritual (rule-making processes)

Many rule-making legal systems usually involve complex and detailed processes and rituals. The purpose of these rules is to protect citizens against arbitrary and capricious administrative actions, which is guaranteed through openness and the possibility of information and access to the rule-making process.

In some legal systems, it is clear that the process of establishing rules requires taking the following steps:

- The pre-formulation phase, which includes the analysis of possible standards and the possible announcement of new rules.
- The stage of the proposed rule, which includes printing and publishing the proposed rule in the official government publication to receive comments.
- The stage of receiving public comments and evaluating them, which is followed by drafting and monitoring and revising the final rule (or in some cases by rejecting it).



- The final rule stage, which includes the printing and publication of the final rule in the government's official journal, along with a description and a report about the response to public comments and observations.

- Implementation and implementation of rules or standards

Informal setting of rules has an obvious advantage in terms of low cost and time saving. But even informal rules can take years. The main issue in the field of rulemaking is balancing the necessity of using expertise and at the same time the desirability of a fair and open process. Critics have not been able to prevent the regulatory process from being time-consuming and cumbersome while achieving the public desirability and transparency of the regulatory process.

2- Creating standards based on which compliance with these rules is evaluated;

The considerable complexity of the rules requires specifying implementation standards. Standards are used as criteria to determine and evaluate compliance with related rules. The types of references can be described as follows:

- Design standards and specifications: These standards specify the use of special materials and tools that must be used in compliance with the rules.

- Performance standards: These standards specify the expected level and amount of performance. For example, the maximum daily amount of sulfur present in a certain volume of water.

- Reference standards: design or implementation standards created by national or private standard setting organizations.

The technique of standards allows an activity that occurs without any prior control, but a supplier who fails to meet certain quality standards has made a mistake. Standards can be divided into two subsets: performance (or output) standards that require certain quality conditions to be supplied but the supplier is allowed to decide how to meet these conditions, and specification standards that supply validates the use of specific materials or production methods or prohibits the use of specific material production methods. The most important economic variables between these types of standards are the costs of becoming aware of the technological means of achieving control goals and the implementation costs of formulating appropriate standards and monitoring the usefulness.(33)

In principle, companies should be given the right to choose how to meet their goals since it encourages innovation in loss reduction techniques. In addition, this assumption is in line with interventionist measures. The benefits of such measures may be outweighed by their implementation costs and their costs to participate in obtaining information on loss reduction technology.(34)

3- Considering the necessary punishments and rewards to force and encourage compliance with these rules;

One of the key challenges for designing social regulations is finding the right combination of punishment and reward to encourage and compel compliance.

- Designing punishments

The use of penalties is based on the premise that the institutions subject to the regulations comply with the regulations due to the fear of being fined (or other enforcement guarantees). Obviously, it is assumed that the persons subject to the regulations calculate the costs and benefits of complying with the regulations. The relevant costs include the expected costs resulting from the penalties, taking into account the probability of being caught. From this point of view, the appropriate punishment is the punishment that leads the cost-benefit calculations towards compliance and observance of regulations.(35)

The compliance rate is sensitive to the amount of punishment, but it is more sensitive to the probability of detection and recognition of the violation. More precisely, the continuity of the inspection is more important compared to the amount of punishments. In his field research, the author has reached the importance of the compliance rate from the inspectors of private companies cooperating with the Environmental Protection Organization.(36)

Records show that some individuals and institutions subject to regulation consider fines and other legal (civil) penalties as a cost of doing business. One of the approaches to change this view is to



impose criminal penalties that can be imposed in relation to flagrant violations and violations of the rules, such as gross negligence or other attempts to subvert and destroy regulations. be applied Regulatory agencies usually present a significant number of defendants to courts throughout the year. In addition to playing a role as a deterrent against certain violations of the regulations, criminal penalties are also used as a general warning to the persons subject to the regulations that severe penalties may await them.(37)

The approval of heavy fines by the legislator is one of the approaches to change the view that fines are a part of the cost of doing business, which can be seen in the laws of some countries, including China's new environmental protection law. In 2015, environmental cash crimes will increase sharply. For example, a factory that currently refuses to use approved generators under the old law will only be fined about \$1,600, while under the new law they will have to pay a fine of \$80,000. The new law also changed the system of estimating environmental pollution by government officials in order to ensure environmental protection measures along with economic growth. The law also empowers non-governmental organizations to file lawsuits against polluters.(32)

- Designing rewards

The use of rewards or incentives is based on the premise that the persons subject to the regulations have the desire to comply and comply with the regulations, but they do not know how to comply or that they cannot afford to take the necessary measures. For example, regulatory organizations design operational models that manufacturers can adapt to in specific situations. This action exempts companies from the costs of creating these models and aligning themselves with the comprehensive regulatory framework.(38)

Incentives use positive rewards to encourage compliance. These incentives include public announcement of compliance, awarding of "best practices" and greater leniency to those with the highest compliance rates. As a successful example that has led to the voluntary acceptance and application of energy standards, manufacturers who have complied with the discussed standards can inform consumers of this fact in their product advertising and the label confirming this compliance. For example, stick the title "Energy Star" on their products. This certificate means confirming the product and is effective in the choice of consumers. In another common method of "self-policing (self-declaration)" companies that voluntarily discover, report and correct environmental regulations, their civil and criminal penalties are reduced.(39)

4- Designing and using the enforcement and implementation system to monitor and ensure compliance with regulations;

Executive systems are necessary to determine cases of non-compliance and decide on punishment and other necessary measures to achieve compliance with the regulations. Regulatory programs usually have extensive enforcement systems including an army of inspectors and immediate penalties for non-compliance. At the same time, such extensive enforcement systems are rarely used. The details of the executive system, or in short, the compliance system, are reflected in the executive strategy of regulatory organizations and the executive style of inspectors. Here, the key decisions that are effective in establishing an executive strategy are considered.(41)

- Discovery and identification of violations

The design of the monitoring and inspection system requires making decisions about the processes used in discovering and identifying cases of violation of regulations and determining the priority of inspection objectives. Complaint-oriented systems for detecting violations are the most common form of surveillance. These systems, while being simple, are confused and random in terms of the level of comprehensiveness.(42) In addition, complaints can be used as a justification for retaliating against dissatisfied people or as a tool in the hands of employers to punish those who have complained. Complaint-oriented systems have been modified by using methods such as toll-free numbers for filing complaints and mechanisms that allow filing complaints anonymously.(43)

Due to the inevitable gap between the resources required for inspection and the need for inspection, inspection priorities must be determined. The general recommendation given is that in the inspection, the industries that the records show have had the most violations, and those institutions that have a high percentage of their activities subject to regulations, should be



prioritized for inspection. This approach requires a historical basis to determine compliance patterns and a history of individuals and institutions subject to regulations. A good example of targeted inspections is the use of the taxpayer compliance model, which is used by tax agencies to review returns by tax officials based on past patterns of violations and rediscovery of income. (44)

- Resorting to punishments

Regardless of the process and objectives of the inspection, formal rules and regulations must be established in order to apply punishments. (45) Applicable penalties and other means of inducing compliance are usually determined in full detail by the relevant regulatory administrative agency as part of the social regulatory authority. It is necessary to go through steps to apply civil and criminal penalties. Civil penalties are usually applied through the existing administrative law systems in regulatory agencies, such as administrative law judgments and appeals procedures. (46) Both of the above-mentioned paths require compliance with regulations for notifying individuals and institutions subject to regulations of violations, giving an opportunity to protest, preparing documents and reasons, appointing case judges, imposing appropriate punishments by judges, and judicial appeal procedures. (47)

- Reporting systems

The details of the executive systems lead to the development of reporting systems to track inspections, violations and care. Such reports provide the necessary foundations for improving the implementation goals. This requires the creation of systems to maintain documents and to report the results of the implementation. (48) For example, some regulatory organizations publish the report of the conducted inspections every three months, which contains information about the inspections and cases of violations and violations of the regulations. (49) The publication of these reports also has an educational function and shows that regulatory organizations are serious in implementing regulations and this work is considered a deterrent against non-compliance with regulations. (50)

Economic drivers that can be integrated into social regulation as "economic tools for social regulation" are briefly (51):

- Ownership rights: assigning ownership rights and the possibility of exploitation in collective matters.
- Example: ceding the right to fish in specific hunting territories or specific periods of time.
- 2- Receiving tax charges: demanding a fee or tax for the supply of products with a certain level of harm. Example: receiving branching rights or waste disposal fees.
- Performance guarantee: obtaining a financial guarantee to ensure the completion of the work. Example: financial guarantees required for construction contracts as a condition for obtaining a license.
- Pledge return systems: cash guarantees or other guarantees for the return and delivery of waste and waste materials according to specific rules. Example: a loyalty system to encourage the return of empty bottles and segregation of waste.
- The system of permits that can be bought and sold: the rationing system of pollution assignment that motivates the use of low-cost tools to reduce the emission of pollution. Example: Permit system, reduction of pollution, reduction of conflicts: the new form of regulation and participation of industries. In the new approach, more informal methods are used to reduce conflicts, such as prior notice, informal consultations, and the use of rule-making through negotiation. In addition, in the new approach, an attempt has been made to make the rules more flexible. (52)

It should be added that due to the variety of directives in the field of environmental responsibility, here are two main ones, namely the European Commission's statement of positions on environmental responsibility (2000) referred to as the white book, and directive 35/2004 of the Council and Parliament of the Commission. Europe on environmental responsibility with regard to the prevention and compensation of environmental damages (2004), it is mentioned. (53-54)

4 -CONCLUSION

The main and fundamental approach of the international responsibility system to environmental damages is the preventive approach, which can be said that all the differences and all the approaches are derived from this preventive approach. In other words, the international liability law's view of environmental damages is a preventive view rather than a curative one due to their specific nature, including their vastness and in some cases irreparable nature. Of course, this preventive approach has been realized in two ways in this type of responsibility: one, the development of primary rules through secondary rules; And the other, acceptance of pure responsibility for the operator.

Regarding the development of primary rules through the secondary rules, it should be said that, in the liability resulting from non-prohibited acts, the primary rules have appeared from the heart of the secondary rules, because the category of prevention essentially takes into account the stage before the secondary rules, and the field of prevention activity. The rules are not secondary. Based on this, the International Law Commission, following the development of liability rules for non-prohibited actions, resorted to the primary rules, i.e. the 2001 articles of the International Law Commission regarding "prevention of transboundary damage caused by risky acts" and the 2006 principles of the Commission regarding "allocation of losses in Cross-border damage caused by risky actions. Also, regarding the acceptance of pure responsibility for the operator, it should be stated that the imposition of pure heavy responsibility is considered a good stimulus and motivation for the operator to prevent losses in the future, because the operator assesses the state of the legal rules governing the liability resulting from actions. Not prohibited and worried about imposing a heavy burden of pure responsibility on him, he sees the best and most economical way to prevent the occurrence of environmental damage as much as possible. So it can be said that the best way to protect the environment is to prevent damage. In this regard, the International Law Commission has taken an effective step in adopting a preventive approach through the acceptance of pure responsibility for the perpetrators of risky acts not prohibited in international law in the 2006 draft of principles regarding "allocation of losses in cross-border damages caused by risky acts". Is.

The second approach that is clearly seen in the responsibility for actions that are not prohibited, after the preventive approach, is the approach of privatizing responsibility. In the sense that, according to the rules of classical international responsibility, or the responsibility for international wrongful acts, responsibility is raised at the state level, but in the international responsibility resulting from non-prohibited acts, the responsibility is not only raised at the state level, but responsibility with a private approach. has appeared The approach of privatizing responsibility in non-prohibited actions has been achieved in two ways: the first way is to accept the initial responsibility of the operator instead of the responsibility of the state of origin, which is also referred to as channeling the responsibility towards the operator; And the second way, lowering the responsibility from the inter-governmental level to the level of the internal rights of the government is the source of the loss.

In the explanation of the first method, it should be said that, in the international system, unlike in the past, governments are not solely responsible, but other persons, who are called "operators" in international documents, are also recognized as responsible and must compensate for the damage caused. In such a way that the obligation to compensate for transboundary damage caused by risky actions is primarily on the shoulders of operators and not the governments of origin, although the origin government has the duty of guaranteeing compensation by the operator and the ultimate or final responsibility for compensation. is in charge One of the reasons that have been involved in accepting the initial responsibility of the operator is the "polluter pays" principle that has been accepted by governments, and this principle means that, since the operator is responsible for controlling the hazardous activity Therefore, in case of environmental damage, he as a polluter must compensate for the damage.

Also, in the explanation of the second method, it should be stated that, in fact, the responsibility is no longer only between governments with compensation at the international level, but compensation is also possible through the domestic laws of the country of origin. And the country





of origin of the loss must provide this platform so that the victims can easily compensate the damage caused to them by the operator by adhering to the internal rules and regulations. Of course, it should be noted that Appealing to the internal laws of the country of origin of the loss clearly implies the principle of "equal access to the court or non-discrimination in access to the court" and the country of origin of the loss must, in order to objectify the appeal to the domestic courts of the country of origin by the victim, equal conditions and To provide equality between the victims and their nationals in terms of access to the courts of justice.

The last approach that can be seen in this responsibility is the approach of collective responsibility. In this context, the liability resulting from risky acts that are not prohibited is firstly imposed on the operator, that is, the operator must compensate for the damage caused, and the government of origin has the duty to, first, guarantee immediate and adequate compensation for the damage by the operator; And secondly, if for any reason it is not possible to collect compensation from the operator, he will compensate the damage himself. Therefore, as can be seen, the country of origin plays an important role in compensation for cross-border damages. The first task of the state of origin has been achieved in two ways. The first way, liability insurance and financial guarantees; And the second way is the creation of special compensation funds, which have shown a clear manifestation of collective compensation in this responsibility. Therefore, international law to, firstly, support actions that are beneficial to society but risky; secondly, support innocent victims; Thirdly, do not impose very heavy environmental damage on only one operator; It has taken the approach of collective responsibility, that is, it has tried to group compensation by making insurance or financial guarantees or establishing compensation funds. Of course, the emergence of the right to a healthy environment as one of the examples of the third generation of human rights or solidarity rights in the world community has not been ineffective in adopting the approach of collective responsibility, because to realize the right to a healthy environment, not only positive and negative actions are needed. It is every government, but the behavior of all individuals and societies is also effective in its realization and it requires joint efforts and solidarity of all actors of social life. This privatization approach has had important functions, including that it has caused the governments to show a desire for this type of responsibility, because the governments are very cautious and careless in accepting responsibility and thus compensating for damages when they have not committed a breach of obligation. and this privatization approach has greatly reduced opposition. Also, through this new concept, there is no direct obstacle to the progress of science and technology, and the damage caused to the environment is compensated, and we achieve a proper balance between the rights and interests of the cause of damage and the injured party. Guaranteeing and realizing the responsibility of the private sector is basically the responsibility of the national legal systems, and the national legal systems refuse to implement the responsibility regime for them for various reasons. In practice, the responsibility of the private sector is not very real and usually the regulations Conventions face many obstacles in this regard. Despite this, paying attention to the growing awareness and sensitivity of the international community regarding the protection and protection of the environment, as well as paying attention to the emerging issues related to compensation for environmental damages in international law, the development and formulation of a special compensation system for this area in It does not make international law far away in the near future. A special legal system that, while complying with the general and general international principles, is appropriate to the unique nature of the environment and the damages caused to it, and finally, can help the international community in achieving the goal of peaceful settlement of disputes between On the one hand, the international environmental protection and protection of the international environment helped, which seems to be the approval of the 2006 plan of the International Law Commission, a proof of approaching this approach.

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