

State Civil Liability for Environmental Damage in Jordanian Legislation

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Modern countries are directly responsible for the damage that befalls society, including normal and juridical individuals, resulting from constructions, licensing and enacted laws relevant to the environment. Some of such regulations are arbitrary, others are unlawful as they might lead to damage of environment, society and individuals. The state had to compensate for the materialistic, moral, personal or environmental damages in compliance with its civil liability. But what is the rule to be adopted for compensation, how much should it be and what are the amounts to be compensated for? This study attempts to suggest a mechanism for indemnity through creating a special fund, updating rules and regulations, enhancing, protecting, maintaining, consolidating environmental enlightenment, avoiding environment pollutants, assigning industrial zones, adopting world quality criteria in this respect, and resorting to clean energy. The state should also be held accountable for its affiliates and for issuance of administration licenses in addition to activating the role of the Ministry of Environment and securing qualified people and materialistic cadres.

Key words: *Environmental Damage, Civil Liability, State Liability, Indemnity.*

Introduction

Protecting the environment is one of the most important modern issues due to the environment being mostly affected by the damage incurred by humans, factories, pesticides and the pollution of rivers, seas, oceans and air. Thus, its protection has become an urgent need at a national and international level.

Every human has the right to live in a clean and unpolluted environment. The state is held accountable for enacting rules and legislations relevant to the environment in order to protect it from damage and contamination. The state liability might be caused by its inability to protect the environment or for not taking necessary measures to protect human or animal environments from pollution of air, water or soil.

People and private properties which constitute this environment might suffer from damage and pollution, hence the state is compelled to take necessary measures to protect natural components such as air, water, and soil from pollution. The liability of the state is manifested in the error it commits, due to absence of rules, regulations, and activities it directly or indirectly performs that lead to damage, whether through officials who operate its systems or through issuing licenses. It is the citizen's personal or moral right to ask for complete indemnity for the damage he went through. According to the by-laws, the state levies fines from people who violate them, keeping such money in a special state fund.

Problems of the Study

There are no laws that hold the state accountable for the damage and pollution incurred upon the environment resulting from errors it commits or that are committed by its affiliates who run its activities. The state has no special fund assigned for environment protection or indemnities through all legislation enacted by the state to impose financial penalties on citizens for the infringement of such legislations. Basically, money levied by the state should be assigned for indemnities against the damage incurred upon citizens.

There are no legislations that determine state liability, ways of litigation, ways of indemnity payment, basics of indemnity, state arbitrary decisions, sources of funding indemnities and all that is related to state sovereignty, prevention of damage and environmental pollution.

Another problem of the study is that the state authorises real or juridical associates to run its activities which might cause damage. The state itself doesn't take necessary measures against such associates who might cause damage. Moreover, the state itself might be the pollutant via the experiments it conducts or the licenses it issues to establish industrial projects.

The study problem generates numerous questions:

- 1- What are the bases to be considered in order to hold the state liable for damage and environment pollution?
- 2- What are the rules on which the citizen can rely to ask for indemnity from the state?
- 3- What is the range of state liability towards the environment and ways of indemnity payment?
- 4- What are the sources of indemnities given to citizens against environment damage?
- 5- Is there any special fund set for indemnities?
- 6- Is there any active legislation which gives the right to citizens to ask for indemnity because of the damage incurred upon them by the state?
- 7- Are there laws and systems that facilitate indemnity payments for citizens?

Objectives of the Study

The study aims to establish the basics of state liability regarding indemnity against environment damage and pollution that affect citizens due to state negligence or not taking necessary measures on the issue. The study also attempts to initiate a legislation for state liability and indemnity that is more effective for damage reparation incurred upon citizens in the country.

Significance of the Study

The significance lies in examining the extent to which the state should go to in order to secure an environment free from damage and pollution. This can be achieved through enacting legislations that protect nature from all types of pollution, thus keeping it clean for future generations.

Review of Literature

Past studies discussed international liability toward environment pollution, in addition to liabilities of investors and individuals regarding environmental damage and indemnity lawsuits. The civil liability of the state regarding the issue was never tackled; that was what prompted the researcher to write on the issue to create a kind of relevant literature in the field. The state's shouldering liability of indemnities for damage obligates it to care for and protect the environment by enacting legislations and utilising its capabilities to prevent environmental pollution.

Methodology

In answering questions of the study, the researcher adopted the descriptive analytical method to determine the efforts exerted by the state to protect citizens from environmental damage and establish state liability for indemnity and foundations on which it rests.

Study Division

The researcher divides the study into two sections. In the first, he will define: environmental damage and the state adapting its laws to shoulder liability.

In the second, he will tackle the state's liability toward environmental damage and divide it into two sub-sections: liability and indemnity methods.

First Section: Identify environmental damage, legal adaptability of state liability and terms of responsibility

Environmental pollution is one of the most important problems that humanity encounters. Many countries, at the national or regional level, exert efforts to keep the environment clean as pollution threatens natural elements such as soil, water and air. The researcher will hereby introduce environmental damage and state legal liability as the first requisite and liability terms second.

First Requisite: Definition of Environmental Damage

Al-Samhury (1964) defines it to be “the damage that affects any individual’s interest which isn’t necessarily protected by law.” Saed (1994) defined it as “the present or future damage resulting from personal or natural activities that affect any element of environment and lead to disequilibrium of environment whether the source was internal from the polluted environment itself, or external.”

According to Jordanian law of environment protection, article 2, environmental pollution is defined as “any negative change that trespasses, directly or indirectly, any of the standards and specifications of the ministry of environment and leads to economic or aesthetic devaluation of such elements.”

Legislations in many countries adopted the definition issued by the organisation of cooperation and economic development which states that pollution is represented by “individual’s direct or indirect introducing of materials that might harmfully affect human beings, environment, or natural resources.”

Second Requisite: State Legal Liability for Environmental Damage

What is meant by state liability for environmental damage is that, the state being a legal person doing lots of activities and utilising its privileges, will be held accountable for the damage it causes to public facilities, hence it should pay indemnities.

The state, which has an absolute sovereignty over its territory, should enact legislations to protect the environment from pollution, to punish violators of such laws and to pay indemnities for whoever suffers from the errors committed by the state or by any of its representatives. The state is responsible for protecting environmental elements through sustainable development programs whose aim is to sustain an environment clean from all types of pollution by using modern technology and by active participation of the public through legislations enacted and through environmental reform.

As for state liability, the Jordanian legislator put down rules and legislations to organise industrial, commercial and agricultural activities to control environmental pollution and fight damage.

Jordan has a set of rules and laws to protect the environment among which are the Ministry of Environment and the Royal Management for Environment protection. As for the legislative part, Jordan has laws for: environment protection, agriculture, nuclear energy, renewal energy, energy rationalisation, food control, municipalities, penalties etc.

Any Jordanian citizen has the right to go to the competent court asking for his right of compensation for the damage from which he suffered. This damage goes back directly or indirectly to the state which issued licenses to establish factories or petrol refineries near residential areas, using pesticides and licensing old cars that emit monoxide which pollute air. All these got permissions from the state which is held accountable for any damage caused by issuance of licenses for the aforementioned.

Second Section: State Liability for Environmental Damage and Pollution

The state is not a normal person to whom we may ascribe mistakes; it is a moral kind of person who runs facilities and controls them through representatives. Therefore, the state is held accountable for any damage caused by any error committed by its representatives. To hold the state accountable for environmental damage, the following conditions should exist:

Environmental Damage has been Actualised

To ask for damage indemnity, the damage should have actually happened and led to materialistic or moral loss. But if the loss might be futuristic, then it is excluded unless lots of damages occurred and were substantiated. The Iraqi court of Cassation pointed out that the damage that required indemnity had to be substantiated and not expected to happen. (Decree no. 1462/64, 1965).

Damage indemnity of futuristic type has been approved of legally and jurisdictionally by Jordanian court of cassation. Other damages caused by state activities for which it didn't take protection procedures and hence require indemnity are: deforestation, wastewater purification plants, drainage, trash dumping areas etc.

Environmental Damage Should be Direct

There should be a correlation between state error and state inability to meet its obligations in protecting the environment or for not enacting enough legislations relevant to environment protection.

Article 266 of Jordanian civil law 34 stipulates that in all cases, a warranty suit assesses the range of damage befallen, pending that it was a natural outcome of the damaging act.

Direct damage obligates indemnity. For example, if the state licenses smoke emitting factories in residential areas, establishes grids or allows garbage dumping close to populated areas in cities causing direct damage, then it is held responsible for any damage affecting others.

Environmental Damage Effects on Acquired Right or Victim's Legal Interest

If the natural elemental sources water, air, and soil suffer from damage and pollution and that damage affects the victim morally or materially, that obligates indemnity.

Environmental Damage Affects the Victim Personally

The damage should affect the victim in person: financially, corporally, or morally. Society, as well, has the right to be protected from environmental damage and to ask for indemnity.

Any person has the right to file a case, in person or as a group, for indemnity, due to the environmental damage affecting him as:

1. The damage shouldn't have been compensated for.
2. Some of the forms of environmental pollution which result in damage to humans are, death and contracting cancer caused by gases emitted from factories, water contamination, etc.
3. Environmental damage might also be moral and obligates indemnity.

Article 267 of the civil law no. 43 states:

A- Anyone who suffered from moral damage whether it was in freedom, dignity, fame, social or financial status could litigate for indemnity.

B- Husbands and kin can litigate for the damage affecting them by the death of the victim.

An example of environmental damage from which the human suffers morally is sickness, genetic deformation, death resulting from toxic gases, damage of plants and animals, or death of a relative or family member. Such things obligate indemnity.

Realisation of Civil Liability Requisites Relevant to Environmental Damage

Substantiation of Environmental Damage

Damage is the cornerstone of state civil liability for nature pollution and individuals' damage which must be testified for the court. When damage has been confirmed, then the victim has the right to ask for indemnity. The state, in issuing licenses, not taking precautionary measures to protect the environment and not enacting legislations to protect and maintain it clean and free from pollutants is held accountable for the damage that affects normal or juridical persons whether materially or morally.

Amer, Hussein & Amer Abdul Hamid (1979) pointed out that environmental damage is that which harms the person corporally, financially or stops a legal business of financial benefit for him; or it is anything that affects the person's wealth, body or any of his legal rights.

Establishing a Causal Relationship

There should be a causal relationship between environmental damage and victims to hold the state accountable for that damage. If the relation is non-existent, then the state is not held accountable and in that case the person has no right for indemnity. The verification of the causal relation is extremely difficult to provide because it depends on technical issues to account for environmental damage and pollution.

This damage might be traced back to many reasons as it might take a different shape through time, or it might be mutual. The state might not be held responsible for the environmental damage that might be caused by an extraneous factor, a force majeure, action of others, or by a mistake committed by the victim.

Liability and Indemnity Lawsuit

Environmental damage, whether moral or material, might affect normal or juridical persons or even a group of individuals or other creatures giving the victim the right to ask for indemnity. In that case he can file a case against the state. This issue will be discussed from two perspectives: case parties and law of indemnity associated with environmental damage.

Civil Case Liability Pertaining Environmental Damages

The state, through playing its role of licenses, runs projects that might cause damages. Therefore, normal or juridical person, in the event of state default, has the right to ask for indemnity and to sue the state in court.

Case Parties

Parties of the case of civil liability associated with environmental pollution are the plaintiff, the person affected by damage, and the defendant, in this case the state. The person here might be a regular or juridical one, or any other person concerned with the case which might be materialistic or moral. Thus, the liability case will be rejected except from those who were affected as stipulated in article 26 of civil law: Causing damage to others compels the doer, event if unknown, to ask for indemnity. The plaintiff might delegate a proxy or trustee. The juridical person also has the right to file a case against the state for the damages affecting him because of the state's acts, to ask for indemnity, and to stop damage-causing acts. Though damage might afflict a section of the community, the Jordanian legislator hasn't yet included in the laws any right for a sect of the community to sue the state.

Al-Mathhan (2006) pointed out that the damages might be social (when a portion of the society not necessarily the whole, might be affected by inhaling bad smells emanating from wastewater purification plants, for example).

Based on article 267 of civil law, inheritors can file a case asking for indemnity for the moral damage afflicting them. Spouses and family kin can also file a case for the moral damage afflicting them by the death of the victim. This, according to paragraph 2 of article 267 of Jordanian civil law, is known as retroactive damage.

There are countries whose legislation gives the right to establish societies for environment protection. Article 4, law no. 6, 2017 compels competent parties to license private non-profit associations and companies working in the field of environment to obtain the ministry's approval for licensing or for renewing the license.

This kind of association has the right to file a case against the state requesting to stop transgression at the environment in addition to pollution afflicting it. These associations also play a preventive role as well by asking for reparation for the victims.

The Defendant

Based on general regulations, a civil case is filed against anyone who causes damage or commits it and against any accomplice. According to general regulations, the defendant in this case is the state which is the litigant in this lawsuit.

Paragraph B of article 1 / 228 from Jordanian civil law stipulates that the state is responsible for its employees and their actions, Al-Jammal (2007), pointed out that the state is also held accountable for environmental damage resulting from any of its public facilities. The French

court of Cassation ruled against an administrative body for holding the responsibility of damage afflicting a fisherman due to the municipality dumping of pollutants in rivers. Based on articles 291 and 292 of the civil law on forms of responsibilities, the state is also held accountable for security.

The state and administrative units affiliated to it such as: municipalities, public officials and semi-official departments are all subject to provisions of the law as they enjoy authority rights. Thus, they are all held responsible for any damage affecting them by state affiliates who issue licenses to establish installations such as: grids, garbage dumping sites, wastewater purification plants etc. which might cause damage. The state is also held responsible for maintaining rivers and seas clean of pollutants. Articles 3 and 4 of Jordanian law of environment protection stipulate that the state is the body that is in charge of setting public policy for environment protection, planning development programs, implementation of such programs, determining sites and areas that need special protection for that particular environment, ensuring safe execution of projects, protecting nature reserves and preparing contingency plans in addition to banning activities affecting nature.

Civil Liability Case Proscription Regarding Environment Damages

The Jordanian legislator in the law of environment protection stipulated that related to penalty case and criminal penalties are not subject to proscription. He never tackled civil liability but left that to public regulations in Jordanian civil law. Paragraph 1 of article 272 for warranty suit doesn't accept any indemnity case that results from a harmful act three years after the date the victim knew about the damage.

Paragraph 2 of article 272 of the same law points out that warranty suit doesn't accept any case after 15 years of damage occurrence.

Based on state administration law no. 28, 2017, a case is filed to public attorney against state departments which here imply the government of the Hashemite Kingdom of Jordan or any official institution. The case is a civil one administered by regular courts.

State Motives Behind Avoiding Responsibility for Environmental Damage

Among the foremost motives the state raises to avoid shouldering civil liability relies on texts of general rules such as prosecution, lapse of right or conciliation for the case being ruled out. As for the motives which the state raises and ascribes to its special legislations is the extraneous motive in which the state is not involved. Article 261 of Jordanian civil law stipulates that "if the person proves that the damage was caused by an extraneous factor of which he had nothing

to do such as: sudden incident, force majeure, action of others, or by the victim himself, then it won't be binding for a warranty suit unless the law rules otherwise."

The state could replicate the juridical case by referring back to the previous license in which the plaintiff allowed an industrial installation to be established close to his project and never objected.

Article 1026 of Jordanian civil law stipulates that "if anyone has a legal property beside which a new building was erected but afflicted by the old one, the new building owner had no right to ask for indemnity which he had to repatriate for himself."

If any person constructs an installation or a house close to the state installation like a grid, or water purification station and knows that such installations emit gases and pollutes rivers, then he has no right for indemnity as such state installations were established prior to his.

Indemnity for Environmental Damage

The state performs its duties which are mostly legal, but some of which conflict with environmental laws, rules, and by-laws. The state, being the authority which runs its projects and facilities, will be held responsible for the damage caused by it or by its representatives, hence compelled to pay compensation as reparation for the environmental damage afflicting the victim.

The state, from the viewpoint of absolute liability as a foundation of responsibility, is held accountable for damages though it legally runs its projects. Yunus, Mohammed (1992) pointed out that the idea of taking risk means that whoever runs a very hazardous activity is held responsible for the dangers that activity causes. He is also held responsible for the consequences of damage resulting from it, even though the activity was legally executed.

Fadi, Sameer (1976) pointed out that some international agreements adopted the idea of absolute liability regarding peaceful use of nuclear energy.

The state fulfils its obligations toward the damages afflicting the victim, regardless of the legal basis on which it relies, either by reparation, project halting, indemnities, or cash compensation.

Article 62 of the Jordanian civil law stipulates that "there should be no harm to malice." Article 63 of the same law stipulates that "Necessity doesn't invalidate the right of others." Article 292 of the same law also stipulates that "use of the general right is governed by safety of others. Whoever utilizes that right and causes a could-be avoided damage to others, is held accountable.

Ruling of the court of cassation asserted to indemnify the victim. Yunus, Mohammed. (1992) pointed out that “arbitrary use of right is one form of default which obligates indemnity. The default here is akin to one of trespassing rights and license domain. The ruling of the court of cassation pointed out that the Jordanian law of environment didn’t include rulings relevant to damage. Despite what the violator does legally, he has to pay indemnities for the damages caused by him. The indemnity issue will tackle two points: methods of indemnities, and indemnity evaluation.

First: indemnity methods for environmental damage.

The state civil responsibility for the damages afflicting the environment and for the harms it inflicts upon the normal or juridical person obligate it to pay indemnities commensurate with environmental damage. Abdul Hakim et. al, (2006) define damage to be “the amount of money paid or any conciliation equivalent to the loss that afflicted the victim as a result of the harmful act.”

Article 266 of Jordanian civil law stipulates that “in all cases the warrantor estimates the damage afflicting the victim in addition to the loss of gains pending that they are the natural outcome of the act.”

Article 2/269 of Jordanian civil law revealed that indemnity could be material or compensatory. As for indemnity methods when the state is held accountable for the damage, it must indemnify the victim in one of the following ways:

1. Material Indemnity

The major objective of this is to repair the damaged thing, not to restore the situation to original status to what it was before damage. Examples of its complete material indemnity is represented in the shutdown of stations of nuclear energy, lake constructions or grids. It might be also partial as typified in installation repair, modifying it, or moving it to other areas where it won’t affect people or the environment.

Article 2/269 of Jordanian civil law stipulates that “pending on conditions and upon request of the victim, the court can render a judgement to restore the situation to what it was or issue an order relevant to the harmful act for the sake of warranty.

Another form of material indemnity is nullifying licenses issued by the state for establishing certain installations which produce environment damaging materials. Article 16/A of Jordanian civil law number 6, 2017 stipulates that “the minister, in case of emergency pollution, and in compliance with a report from environment inspector, can take urgent necessary measures to

stop pollution via closing the installation temporarily complete or partially for a two-week period till causes of pollution are removed and the situation is corrected as decided by the ministry which removes pollution at the expense of the violator. It adds 25% to the cost of elimination if he declines from removing that within the period set by the ministry.

2. Cash Compensation

Cash compensation is one of the forms of reparation for the damage afflicting the victim that resulted from environment pollution and state activities. The state in this case pays cash to the victim in compensation for the damage to be repaired. Al-Jammal, Sameer (2007) explains: “it is an obligation of the person in charge to pay cash money to the victim in compensation for the damage that afflicted him.

Cash compensation might be paid for a damage that affected the victim personally, his fortune, or his morale. In origin the compensation is a certain amount of money paid to the victim all at once

Indemnity Evaluation

Generally, the judge to whom the dispute is presented asks for assistance from expertise to determine the type of damage that affected the individual as a person, his fortune, properties or his morale, based on case testimonies presented by the adversaries to the court. The evaluation issue will be left for the expertise as previously mentioned.

With regard to moral damage, article 267 of Jordanian civil law stipulates that “any trespassing of the others regarding freedom, dignity, fame, social or financial status holds the transgressor responsible for warranty.”

Based on articles 266 and 267 of Jordanian civil law of environmental damage, indemnity should be paid to any human affected corporally, financially or morally. The corporal damage for which the victim has the right to be indemnified might be a partial or permanent impairment which prevents him from making his living. It is worth mentioning that the Jordanian legislator in the social security law determined the hypothetical age of man as 65.

The financial damage that might have affected the victim is considered economic and manifested in the damage of plants, guppies, air pollution with dust and airport’s reverberation which might cause damage to buildings. Based on certain principles, the court estimates the compensatory amount.

Damages of environmental nature that are indemnified are those that don't affect personal financial affairs. The indemnified might be person or embryo deformations or any damage that might afflict the morale of the person. Paragraph 1/267 of Jordanian civil law stipulates "in origin anyone who was morally harmed should be indemnified." If the damage led to death of the victim, then we have to distinguish between the deceased and the damage afflicting his relatives. Paragraph 2/267/ of the civil law stipulates that "spouses and family relatives can be indemnified for the moral damage affecting them because of the deceased." Sultan, Anwar (n.d) explains that indemnity is confined to those who were virtually afflicted.

In conclusion, the state is responsible for all types of environmental damage that afflict normal or juridical persons. The Jordanian law of environment protection has allocated a fund for environment protection as demonstrated in project and activities funding based on environmental properties, ways of spending and financial resources.

Conclusion

The state, the authority that has a control over the country, is held responsible for protecting it from all sides: economic, social, political and environmental including water, air, soil and all elements of nature. It needs also to conduct anticipatory studies before establishing any of its projects or before issuing licenses to others to establish their own. The state is also the body that controls environmental elements such as water and natural resources, nature preserves and water basins etc. In addition, it sets general policies to protect the environment, since the state runs its own projects and licenses others to establish theirs. Such things might cause damage to people and environment. Therefore, it is liable to pay indemnities against environmental damages.

Findings

The researcher, hereby, lists the findings he came up to:

- 1- The state, in establishing installations that lead to damage and harms the lives of man and other creatures, is held liable for indemnities.
- 2- The state is also held accountable for issuing licenses to establish smoke-emitting installations that dump wastes in waterways and rivers, thus polluting the environment.
- 3- The state is obligated to refrain from doing anything that might lead to environmental pollution, being the sole authority that legislates rules, laws and by-laws.
- 4- The state is obliged to compensate for any damage it causes in the country and harms people.
- 5- The state should take necessary measures to protect the environment and not to be the cause for any damage that afflicts people.

Recommendations

The study recommends the following:

- 1- The Jordanian legislator need to include in the law of protecting nature a mechanism to determine state liability, indemnity assessment and competent judiciary.
- 2- There should be an environment protection fund whose resources can be gathered from subsidies and fines so as to pay indemnities for the people who were affected by corporal, moral or financial damages.
- 3- The state should constantly work on updating and amending by-laws in order to protect nature.
- 4- The state should assign special areas for the construction of installations away from residential areas, water sources, and plantation environment.
- 5- The state should apply international standards of quality assurance and use modern technology for environment protection.
- 6- It should resort to clean energy to protect humans from dangers
- 7- State liability should also cover the dangers done by its representatives so as to be the only one accountable for indemnity.
- 8- The state should also hold responsibility for licensing any installation that might cause environmental damage, thus liable for indemnity.
- 9- Activating the role of the Ministry of Environment to constantly repair damage and secure the financial and qualified human cadre for environmental protection.



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