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Principles and purposes of expropriation and restriction of ownership of urban lands by the government

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Abstract
Clarification of the legal and religious status of property ownership rights and paving the way for elimination of defects and completing existing rules and therefore, expanding economic security as well as determining and explaining the limits of expropriation by religious legitimate government and religious statement of permission of such an action from the Islamic State and clearing objectives which cause political system ignore ownership of individuals and expropriation of them are among thing which are required to be reviewed in the Iranian legal system because article 1 of the urban land law approved in 1987 states that: "this law was passed in order to regulate and formulate issues related to land and increased supply and reforming and stabilizing its price as one of the major factors of production and public and social welfare and creating more accurate and wider backgrounds to maintain and exploit the lands as well as allowing for the implementation of Article 31 and meeting the goals set forth in Articles 43, 45 and 47 of constitution of the Islamic Republic of Iran to provide housing and public facilities". Nevertheless, the author of this article is trying to answer this question that what are legal basis and purposes of expropriation and limiting urban lands ownership? To answer this crucial question; we will initially explain the concept of expropriation and then, we will review principles and legal reasons for permission for this action by the government and then, we will explain the purposes of expropriation and limiting land ownership. Legal Principles of expropriation and limitation of ownership of urban lands by the government are cases such as special powers of the supreme Leader, private owners being bound to observe the legal criteria, preventing injurious to others in the exercise of the ownership right and the necessity of observing Islamic standards in financial and economic affairs. Objectives of expropriation and Limitation of Urban lands ownership by the government are items such as Public service, avoiding loss of others and issuing fines and penalties (financial punishment).

Key words: *expropriation, public service, public interest, justice, the supreme leader.*

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Introduction

We will explain the concept, nature and reason for expropriation in this chapter in three sections

The first section: the concept of expropriation:

Expropriation is a two part mixed term and we have to separately understand the concept of "ex" to understand the exact meaning of it and then we will explain it along with the word "appropriation" which has been previously explained. The word "ex" means abstraction, kidnap and violent removal of something and in term is consistent with violent removal and since ownership rights are considered to be permanent and whereby one can seize a property in line with the law and us all of its benefits and when we add ex to the appropriation with the concept explained above, we create the word of "expropriation" which means appropriation of property without the consent of the person and depriving the owner form proprietary rights. Thus we can say that means forcible expropriation of the owner from ownership and compulsory acquisition of the property which results in ignoring the ownership rights of the owner. Obviously, this act is legal if it is done with legal authority, otherwise, it is considered to be unlawful and conquest action. For this reason, articles 30 and 31 of the Civil Code of Iran expresses property rights of the owner and shows that owner of property can be deprived of the rights only in some cases and as provided by law.

A weaker and lower degree of expropriation is depriving the owner of the rights of ownership and both cases will be legitimate in case of being done legally and based on religious, otherwise, these actions are considered to be unlawful and unauthorized based on evidences of ownership such as the principle of "despotic dominion" and "prohibition of certain property".

The second section: the legal nature of expropriation:

Even though terms such as "buying", "selling" and "trading" have been used majority of laws related to the possession and expropriation in order to express this one sided action of the government about private property and lands of individuals, the fact is that the legal nature of expropriation is not only inconsistent with the aforementioned concepts or other common legal contracts, but also according to some analysts of administrative law, what is applied as a principle in such administrative contracts may be considered as an anti-principle in private rights. Thus, we have to follow the administrative law scholars and explain and review the legal nature of ownership in two titles including "administrative contract" and "unilateral administrative action".

A) Administrative contract

Some believe administrative contract to be scientific term related to contracts which least one side of those are an office of public administrations and are concluded to provide some public services and as public rights and some others have considered administrative contract as an agreement of the parties to carry out a united action while laws governing ownership allow executive organs to unilaterally determine and pay a price for a property in case of needing it for public services even without supervision and agreement with the owner and seize properties. Thus, the nature of the rights of ownership cannot be considered as administrative contract based on this assumption because the will of the owner has the least interference in the realization of this process. But we can be close to the concept of administrative contract to some extent when the consent of the property owner is taken and a fair price is determined for the property and other rights and damages are determined by agreement between the administration and owners in the course of acquisition . This matter may be the reason for some administrative law authors to consider compulsorily purchase of land from the people for government projects as he most important examples of administrative contracts. While, this does not exactly

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show the mutual consent of the parties about discussed land acquisition and agreement with owner or owners has been done only to determine the fair value and the damage and the actual acquisition has been done without their will and consent and unilaterally.

B) Unilateral administrative action

Since most of unilateral administrative decisions are made in form of unilateral contracts which are supervisor of status of certain persons, these decisions are called e personal unilateral contracts. Acquisition is considered to be a "Personal unilateral action" from this perspective. But this does not mean that the mere will of the executive organ will lead to the realization of acquisition and this will is subject to compliance with legal requirements and lack of compliance with those by public authorities will lead to canceling of expropriation process, because as stated by some scholars: "Civil Unilateral contracts are one-sided in occurrence but two sided in implementation similar to bilateral contracts and its effects are not exclusively limited to unilateral contractor. Thus, if provisions of unilateral contract are about creating unilateral rights and obligations for others, it requires another side which is for creator and its implementation is not inevitable". Thus, although the legal nature of acquisition is a unilateral act of executive government and public organs, it is more or less a controlled measure according to regulation which its completion process can be affected by property owners.

The third section: the reason for empowering the government with expropriation

One of the definitions of the concept of "government" is: "it is an organized legal power in order to implement justice and performing public service". On this basis, any state and government is the depositary and servant of its people, let alone an Islamic state which is actually a faithful servant of God and the nation and is obliged to provide complete public life of society according to the martyr Sayyid Muhammad Baqir Sadr.

Thus, most governments are nowadays proud of their service and their national interests more than being proud of their coercion and force. This duty and therefore responsibility of legitimate governments is based on two pillars:

A) The principle of public bail: according to this principle, all Muslims are responsible for the fate and status of each other from the religious perspective and are responsible for each other and narratives and traditions are confirm this fact and all of the members of the Muslim community have mutual responsibility towards each other and are required to meet the needs and requirements each other.

B) The principle of sharing revenue with community and its religious reasons: Another responsibility of government to meet the interests of the people who justify the grant of authority for expropriation of property is participation of all people in government revenues. Public property which has been accepted in both tradition and religion and lands conquered by Muslims and revenues from it, as well as bridges, museums and public places are among these properties. Thus, the government is obliged to provide public services and fair distribution of amenities from public funds. It is obvious that the importance of serving duty of the government will be doubled when government property and what is owned by Islamic state with the ruling of Islamic law such as property and similar assets are added to the public properties and empowering for possession and expropriation to this servant organ will have justification. Scientist martyr, Sayyid Mohammad Baqir Sadr has referred to the sayings and traditions in this case and has stated that: "Clear sayings and traditions have determined the principle of social security and explain the direct responsibility of the government in providing a decent life for individuals. The government is directly responsible for implementing this principle of social security but its theoretical basis must be searched in common right of society in sourc-

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es of wealth".

The second chapter: Principles of expropriation in Islamic Republic of Iran

Constitution is in its highest possible position in the hierarchy of legal sources and laws of the Islamic Republic of Iran and d governmental laws and regulations must necessarily be set, approved and executed in accordance with this law and there must be no objection to its principles that is why seventy-third principle of constitution emphasizes that: "Islamic Consultative Assembly cannot pass laws that conflict with the principles of the official religion of the country or constitution…" such a great position for constitution in the Islamic Republic has also been considered by some other countries of the world in a way that one of the legal experts says: constitution is s legally beyond the ordinary rules in some countries and its particular validity is s revealed from monitoring compliance with laws. However, none of constitution's principles have directly and specifically referred to the issue of appropriation and expropriation by government although due to the fact that constitution is general, some guidelines can be observed with a close look at some of the principles of this general regulation and licenses for such actions by the Islamic State can be found in it or terms and conditions can be taken for it.

The first section: Special powers of Supreme Leaders in constitution

The fifth principle of constitution expresses that "Guardianship and leadership of the people in the Islamic Republic of Iran in the absence of Imam Zaman are the duties of a supreme leader who is righteous and pious, knowledgeable, courageous, resourceful manager who has these duties based on Article one hundred and Seven". As it was proven in the first article with Quranic verses and traditions and ideas of great Islamic scholars, Supreme Leader who is considered as legitimate successor of Imam Mahdi has all the powers of the Prophet and the infallible Imams in time of occultation. On the other hand, one of the powers of the Infallible Imams which has been used many times in ruling system of the Prophet and Imam Ali to solve social problems has been consideration of expedient. According to Imam Khomeini the Holy Prophet used his authority to expropriate the property of Samra and ordered his tree to be cut down in story of Samra and Ansari man and similar events or the Prophet said about someone who refused to pay zakat for camel: "I will take his Zakat along with half of his property".

Thus, constitution of the Islamic Republic of Iran accepts the leadership of the supreme leader at the helm of affairs and has indirectly paved the way to rule by decree and expropriation by Government under his command.

The second section: respect to private property being bound by the observance of the law

Another form selected by constitution to express the lack of absoluteness of private property is making it subject to being obtained from a legitimate way. As article forty-seven states: "legitimately acquired private ownership should be respected. Its relevant criteria are laid down by law". It also states elsewhere that: "The dignity, life, property, rights, residence, and occupation of the individuals are inviolable except in cases sanctioned by law". Obviously According to this principle, the field has been provided for land acquisition for road services and facilities in ordinary laws. However, legal restrictions on ownership in the constitution are not limited to the abovementioned principles and other principles have made limitation of ownership clear. For example, forty fourth principle which divides Islamic Republic of Iran's economy into three state, cooperative and private sectors notes that ownership in these three sectors is supported by law of Islamic Republic of Iran as far as being consistent with other articles of this chapter and does not going out of the scope of Islamic laws and leads to the economic development of the country and does not lead to not harm society.

Third section: preventing injurious to others in

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the exercise of property rights in constitution
There is a principle in Islamic Republic of Iran Based on the legal principle of "no harm" and noble Hadith of the Prophet which states: "no harm and no loss" which states: "nobody can use his/her actions to harm others or violate public interests".
Based on this principle and the fifth paragraph of Article Forty Three which considers "prevention of injurious to others" as one of the principles of Islamic Republic of Iran in a way that it can deal with individual who is taking advantage of his/her position and act about expropriation if necessary; That is why some off the experts of fundamental rights have considered "prevention of injurious to others" as principle limiting ownership and have noted that "Constitutional legislator should prohibit illegitimate use and application of ownership as much as it should respect and support legitimate ownership".
The fourth section: the necessity of observing Islamic standards in financial and economic affairs
Based on the fourth principle of the constitution "All the rules and regulations of civil, criminal, financial, economic, administrative, cultural, military, political and other affairs must be based on Islamic criteria; This principle applies absolutely and generally to all principles of the constitution and other laws and regulations and its detection is a duty of the Guardian Council". And on the other hand, even though the manner of the holy Prophet and the Infallible Imams in the practice and implementation is the best reason on the legality of the Islamic government's right to expropriation when necessary, there are rigorous rules and regulations in the field of Islamic jurisprudence which are honest principles in this regard by being based on sharia and verses and traditions. The rule of "necessity" and the principle of "no harm and no loss" and "the need to respect the public interest" and "interests of the Muslim community" compared to interests of individuals are among jurisprudential foundations of permissibility of expropriation by the government along with their strong documentations which emphasize on the necessity of observing the Islamic principles of finance and economy in the constitution.
The third chapter: the objectives of expropriation by government
Providing public services, prevention of damage to others and punishment of offenders are among the most important objectives of expropriation of property owners and properties and each will be discussed below in a separate review.
The first section: Providing public services
Some experts believe that "Public service" has no special significance compared to other services other than the fact that it aims to meet public interest. Thus, all of the governmental activities in which public interest is targeted are considered as public services. However, since there is no decisive criterion to separate concepts such as "public service" and "public interest" and features such as interest of the majority or superior interest are not reasonable and clear as much as they should be, "the last resort is to have law as the criterion of public services".
Accordingly, "Matters relating to security, defense of the community against foreign enemies, public education, public health, public work and administration of justice and judgment can be named as famous examples of public services". Hence, some correctly believe the philosophy of having government and governmental agencies in Iran's Administrative law is providing public services but the reality is that "Governments in all countries want to be the true servants of the country and be guardian of the interests of the country under the title of government".
The Theoretical Foundations of ownership is also based on the theory of public service an example of the government's actions because acquisition occurs to solve conflict between the interests of the people and the individual

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interests and due to public service and applying preferential rules of administrative laws in acquisition also take place by the support of the same service.

But there are two considerable notes about full compliance of the act of acquisition and the classical theory of public service which will lead to risk of injustice and the loss of people's rights in case of being ignored:

A) Limiting industrial and commercial activities of the government to framework of civil and commercial law even though based on principle forty fourth of constitution: "Economic system of the Islamic Republic of Iran is based on three state, cooperative, and private sectors with systematic and sound planning…" thus, if the government forgets it main task to carry out public services and protect national interests and pursue objectives of justice system and look into commercial and industrial activities purely from economic and profit stand point and use government rates and special powers in order to exploit such goals, it will lead to Violation of individual rights and private property and will form a bottleneck for economic activities of others. Hence, some of the fundamental rights lawyers believe the philosophy of acceptance of state ownership in the Islamic system to be for supporting national interests and regulating social relations and state that:

"Major economic activities should be given to the governments due to requiring huge investment and slow returns because the private section will be basically incapable of managing those due to inadequate and scattered capital and requiring instantaneous interest …. And thus, the government takes over the responsibility for this great task as representative in charge of the service of society and the protection of national interests and adjustment of social relations".

A) Legal entities of public administrators and supervisors of plan

From the perspective of the classical theory of public service, only state legal entities are allowed to be in charge of managing or monitoring administrative action. Thus, non-governmental entities are legally incompetent even if their actions involve common interest.

Of course there are exceptions in this matter and private rights individuals have been allowed by the legislature to have acquisition like the government within a small limit.

Municipalities which are also among the public service provider and supplier of general interest and are among non-governmental public institutions are exceptionally allowed to use expropriation and acquisition of required land and property to perform public services in accordance with the normal rules.

For example, under Article 9 of the Land Act of 22.6.1987, "Department of Housing and Urban Planning is required provide land for housing and public services from wasteland and established urban lands while using all government wastelands in the cities where it is a necessity by Annex to this law due to inadequacy of the mentioned land".

Owners of wasteland and established urban lands including natural and legal persons and foundations, institutions and government and nongovernmental agencies are required to sell the lands which are required by government or municipality and subject to this law with the following purposes and with the calendar of government (state and municipal):

1. Separation and selling by Department of Housing and Urban Development to individuals eligible to receive land for housing or residential building projects.
2. Building public and civil and administrative facilities and implementation of approved urban projects and …
3. Protection of Cultural Heritage

Also Note 8 of this article mentions that "established lands which are needed by government or municipalities in all cities and towns cannot be sold to anyone except government and municipalities after approval of project and announcing to registration offices".

Another one of the articles in ordinary laws

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of the Islamic Republic officially and transparently dealing with expropriation of private Lands is note 2 of the law of creating new cities passed in 2001. This note expresses that "after approval of the ability of creating a new city, the Department of Housing and Urban Development can act for land acquisition and Nongovernmental demander can act on purchasing ands and property in accordance with the regulations of the act".

It should be noted that in accordance with the above rules and based on the law of Buildings, Real Estate and lands required by municipalities approved on Wednesday, November 27, 1991, those who take the properties are obliged to fairly pay the price of lands and properties which is done with mutual consent or is entrusted to official and reliable judicature delegation of three experts one of which is selected by the municipality, one is selected by the owner and the third person is selected by both sides.

Based on article 5 of law of method of purchasing and Acquisition of lands and properties for public, civil and military projects approved on Wednesday, February 6, 1980 "the criterion for determining the price is fair price of lands and buildings and facilities and the rights and similar damages located in area of project operation without considering their impact on those".

The note of the same article mentions: "15 percent will be added to the price of the property in cases where property is place of residence or subsistence".

It is obvious that this approach in acquisition of properties does not change issue of expropriation and seizure of private property with is not with satisfaction but the legislator has given the priority to public services and reforming projects and has had the most efforts to protect the rights of citizens and their relative satisfaction. Therefore, in accordance with Article 9 of the mentioned law, government only has three months to pay fair price to the owner occupied real estate and "the owner can refer to court to request shut down of operation until the payment and the court can issue the necessary decree out of turn and project will start again after payment of the specified price".

Another point worth mentioning about acquisition is that based on Article Eighty five of constitution of Islamic Republic of Iran, Islamic Consultative Assembly can assign Permanent adoption of the Statute of Organizations, corporations, government or government-related agencies to mentioned Commissions in accordance with article seventy two or give its authority to the government as the legislature. Thus, in addition to the ordinary law, statutes of state-owned companies are considered as one of the sources of acquisition law and National Iranian Oil Company Statute is one of its obvious examples.

B) The reason for compensation in the expropriation for the purpose of public service

Even though government's expropriation of properties are done regardless of owner's will, justice demands that price of taken property be paid to its owner and the possible damages leveled against owner be compensated because since all of the people are involved in public wealth, they have equal responsibility about public spending. The basis of this perspective in addition to the principle of justice is Theory of "equality for all in public finance" which has been considered by some as a theory of "compensation arising loss caused by responsibility out of error and risk".

One of the authors states the following in justification of this theory and need for its implementation:

All of the citizens are equally responsible for costs spent by government for public finance or establishment of order and accordingly, this equally is broken if specific person or persons suffer damages due to performance of government agencies because everyone can benefit from public service in this case while some suffer its losses and that is why the government compensates damages to the extent

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that the mentioned equality is restored so that everyone prevents the loss of damaged individuals.

Accordingly, based on existing legislation of acquisition, not only the government is obliged to pay a fair price for land or buildings or facilities of owners, it has to compensate damages resulting from the acquisition as well

C) Conditions of expropriation for the purpose of public service

Typically legislator makes any action subject to conditions which are indispensable and inevitable for its correct operation. Legal action of acquisition of private land in line with interests of Public is subject to conditions which are as follow according to various substances of "law of method if purchasing and land ownership":

1) Existence of public approved projects and necessary to implement them

The purpose of project in above law is a program that its timely implementation is essential for public affairs of executive organ and this necessity has been confirmed by the highest position of this organ. The public affairs mentioned here are activities which ensure public needs and interests and their management has gone out of free relations and private initiatives and has become a duty of government. In this regard, if executive organs require properties of natural or legal persons for Public, civil, military, and similar projects, these properties can be seized and their owners are expropriated. Master plans and detailed urban projects and conductor projects in villages are the most common projects in the country which have specific and comprehensive legal effects. Paying attention to duration and details is characteristic of each of these projects and development, Regional and similar projects have been referred to in other statutes. The important note about article 2 of law of method of purchasing and acquisition of Lands and property or public, civil and military projects approved in Wednesday, February 6, 1980 is that: "the necessity of the project must be confirmed by the highest executive authority of the executive organ" but there is no clear reason for need or lack of need to provide proof of necessity of project by the highest executive authority and this matter has led to stating that the highest executive authority does not need to provide proof to make decision about implementing such projects and the announcement is enough

2) Obligation of the government to provide sufficient funds for Acquisition

As mentioned before, executive organs are required to pay a fair price for property and inflicted damage and other rights of owners in the expropriations aimed at civil works and corrective action.

As it is derived from provisions of the "law of the purchase and acquisition of Lands", financing is not considered as a part of the acquisition and it is rather a binding preliminary action which should be met by the administration even though this legal requirement to make the right allocation in the budget does not form a right for owners in itself and its payment is subject to the full realization of acquisition. Given that executive organ is required to comply with provisions of this law based on Article 1 of the mentioned law, the seizure of required lands and properties before funding can be followed-up and canceled by Administrative Justice Court.

3) Failing to provide the land and property form national or state Lands

Given the place of private property in Islamic laws and regulations and the fact that no person or organ can normally violate property rights, legal article of method of buying and acquisition of lands and properties has allows government and public organs to have purchase and Acquisition of required land for public, civil and military projects and has limited the compulsory purchase or expropriation in this case to lack of national and public land for services and activities. The mentioned legal article has stated in this regard as follows:

The executive organ is required use national or

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state Lands for the projects as much as possible. Lack of such Lands should be confirmed by Ministry of Agriculture and Rural or Urban Land Development Authority offices and branches in Tehran and the provinces.

As it can be observed, based in this this law and change of Ministry of Agriculture Lands Development Organization, the executive organs which require land for services should inform y the Ministry of Agriculture and housing about the lack of national lands and can start purchasing lands of natural and legal persons after approval and this act can be followed-up and canceled after acquisition by administrative Court of Justice. But it seem unlikely to void actions of executive organ which have been done to protect the public interest and solve the problems of society and the country merely due to the fact that officers have had negligence to take approval of lack of national and public Lands if it is determined that despite the lack of national or state approval about the lack of land, there has been no land for operations at the time of acquisition of natural or legal person's property. In addition to this, annulment of the measures taken will have little practical impact because the executive organ will take the ownership of those lands again after taking approval from the related Ministries.

4) Announcing acquisition by the Administration to property owners

As it is derived from Note 2 of article 4 of the law of the land purchase and acquisition, this article has determined the deadline for introducing expert to determine a fair price for the land by the owner or owners to be maximum of one month from the date of announcement form executive agencies. Announcing acquisition by the Administration can be considered as one of the legal requirements of such expropriation which is publicized one of the forms of written communication, publication in a newspaper of mass circulation or advertised on the site according to the law. It is obvious that such an announcement has a significant role in informing the owner or owners to make informed decisions and they can defend their rights better using created opportunity

5) Transaction and fairly paying for all rights and claims

Transaction and fairly paying for all rights and claims to owner or owners are among other legal requirements of acquisition. Article 3 of method of purchase and acquisition of land has stated in this regard:

Lands, buildings, constructions, installations and other rights and damage inflicted through an agreement between "executive organ" and owner or owners are determined by the rights holders.

Since the possibility of the emergence of differences of opinion about fair value of seized property is high in such situations due to having unilateral acquisition and initial dissatisfaction of owners, the legislator has considered another logical solution in article 4 and has stated:

"Whenever no agreements can be reached between executive organ and the owner in case of determination of fair value of Lands and buildings and facilities and the rights and inflicted damage, the fair value will be determined by a committee of three official judicature experts. One of the experts is form executive organ, on is on owner's behalf or the owner itself and the third person is selected by both sides or by a competent court in case of disagreement or denial. The majority vote of the mentioned committee is final and binding".

The mentioned legal article has then noted that "Criteria for determining is fair value of Lands and buildings and facilities and the rights and similar damages in area of operation of project regardless of effect of project on those" because the price of properties may grow manifold as soon as the design of the project is determined or conversely the price of properties may drop due to special design features such as a sewage treatment plant or military installations. Another important point

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considered by the legislator in order to preserve the rights of the owner at the time of the expropriation of their property is adding fifteen percent to the property prices which are either place of residence of owner or a tool for subsistence and income.

The final point about expropriation with the objective of Public interests from the perspective of ordinary laws is that there is enough attention in these laws based on the Sharia to protect the rights of owners as emphasized by the constitution of the Islamic Republic and the efforts have been in line with providing a platform for public service in the community as well as preventing Loss or damage to natural or legal property owners.

The second section: preventing damage to others

Another objective for expropriation and limiting the powers of ownership in legal system of Iran is based on purpose of the legislation to prevent damage to others in course of ownership rights of individuals. In fact, the legislator has paved the way for implementation of the rule of "no harm" with such regulations and has considered this jurisprudential principle to be superior to "monarchy" principle.

Reviewing different articles of Civil Code of Islamic Republic of Iran show that property rights have been denied or abridged in at least in sixteen articles of this law and we will review and analyze some of them.

It is important to note before addressing the mentioned legal matters that civil legislators has paved the way for other articles containing expropriation in Articles 30 and 31 of this Act and notes while accepting the rights of ownership and possession of property for the owner that "each owner has the right of every occupancy and profit in properties except in cases where there are exceptions by the law" and "none of the properties can be seized form owner except as provided by law".

As it can be observed, the absolute features of the property have been damaged under the provisions of these two articles of the Civil Code and with these preparations, the rights and ownership of property owners have been denied or restricted directly and in order to prevent damage to others in many other cases of this law, some of which will be expressed below.

Article 132 of the civil code states: "No one can make changes to property which cause damage for neighbors unless it is as much as usual and to meet a need or solve losses".

According to this legal article, the owner cannot do all ownership possessions in property and some of the rights have been denied in order to prevent damage to others in a way that some lawyers believe the violation of this legal article as a civil liability and have given the right to court to eliminate risk factors. The Author of "civil law in the current legal order", the late Professor Katouzian states in this regards that:

Violation of the provisions of article, not only leads to civil liability but also gives the right to court to stop the owner and destroy harmful source

The third Section: penalties and fines for offenders (financial punishment)

Penalties and punishment of offenders and criminals are among the important purposes of expropriation by the Islamic government and its features and benefits and different types will be reviewed and its religious and legal principle will be expressed in this article and the position of this type of expropriation will be explained in the rules of the Islamic Republic of Iran.

A) Reasons for the legitimacy of punishing expropriation

Jurists have defined punishment as a non-ordained retribution and an act done with the discretion of religious judge against offenders. Thus, it is being discussed unlike ordained and extending punishments which are accepted by all scholars due to existence of clear reasons in Book and the Sunnah and there are disagreements about the legitimacy of its principle as well as its extend and type of punishment

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which can be determined by the governor for each punishment. Thus, given the fact that using financial penalties which is usually done in the form of an expropriation are very high efficient in governance of society, it has also been accepted in Islamic Republic of Iran which is ruled under the supervision of supreme leader and religious judge and its rules should be in line with Islamic principles and should not be illegal according to principles fourteen and seventy two of the constitution and there is no doubt about legitimacy of such punishments.

Even though there might be common points in different instruments of punishment such as imprisonment, lashes, dispossession and exile in terms of inhibition and punishment of offenders, one of the negligible advantages of expropriation and financial penalties they will provide a part of the cost of governance and public security and direct and indirect damages which have been imposed on the economy and the facilities of the county through criminal offenses and criminal acts will be compensated.

One thing that might be said in this case as criticism is that we can use prisoners in administrative works instead of financial penalties in order to compensate for the mentioned damages and cover the costs of security and governance and create income opportunities using this method. The answer to this objection is that firstly, this criticism does not consider the advantage mentioned above and secondly, priority and permission of financial penalty can never reject or deny the positive effects of other types of penalties

Conclusion and Recommendations

Expropriation means coercively taking property from the owner and its compulsory acquisition which leads to ignoring the ownership rights of the owner of property. It is obvious that this act is legitimate if it is done with legal permission and otherwise will be considered to be illegal and conquest. For this reason, articles 30 and 31 of the Civil Code of Iran express the rights of ownership and show that the owner can only be deprived of the rights under the law and in some cases. A weaker and lower degree of expropriation is depriving the owner of the rights of ownership and both cases will be legitimate in case of being done legally and based on religious, otherwise, these actions are considered to be unlawful and unauthorized based on evidences of ownership such as the principle of "despotic dominion" and "prohibition of certain property".

Government is obliged to provide public services and fair distribution of welfare facilities using public funds. It is obvious that the importance of the duty of serving of government will be doubled when government property and what is owned by Islamic state by the ruling of Islamic law such as properties and similar assets are added to public property and providing the power for acquisition and expropriation will then have logical justification.

Legal Principles of expropriation and limitation of ownership of urban lands by the government are cases such as special powers of the supreme Leader, private owners being bound to observe the legal criteria, preventing injurious to others in the exercise of the ownership right and the necessity of observing Islamic standards in financial and economic affairs. Objectives of expropriation and Limitation of Urban lands ownership by the government are items such as Public service, avoiding loss of others and issuing fines and penalties (financial punishment)

We face the following items with a review of the set of laws and regulations of urban land:

1. Emotional encounters as well as detailed and superficial perspective of legislators.
2. Diversity and plurality of rules in this field and sometimes conflict between them and lack of determined priority and preferences of laws.
3. Multiplicity of authorities in formulation and planning rules and regulations related to this issue.
4. Frequent and fast changes of rules which

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have led to lack of timely declaration of executives and an audience of laws and sometimes lead to application of abrogated laws.

5. Not paying attention to experts' views in order to include the views of various aspects and effects that such laws have in the society.

Legislative course in regulations related to the implementation of public projects and stripping and limiting property rights of individuals is affected more by rules and principles which prefer Public and government rights to ownership rights of individuals. There is no doubt that there should be efforts to reach the goals that the public interest and provide social welfare but the costs paid by individuals and freedoms and private property that should be passed in this way are important that deserves attention. Islam has emphasized respect for private property as one of the main sources of law. Thus, it is recommended that legislatures shooed pay special attention to the rights of individuals in development of rules. The current state of laws in deprivation and restriction of property rights of urban land by the government is not satisfying and do not cause necessary guarantees to preserve the property rights of individuals. With these qualities, the laws should be modified and orientation of modification must be in a way that there can be a kind of judicial supervision on acquisition process so that arbitrariness and authoritarianisms of incumbents are prevented. There are two important notes in this regard; firstly, this supervision is necessary but it should not cause prolongation and slow acquisition process. Secondly, this judicial supervision must be done by judicial authorities. Specialization of this supervision is a public interest and attracts the support of property rights.

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