Restrictions on the Right to Private Property in the Iranian Legal System

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Abstract

Doubtlessly the right to private property is regarded as one of the most fundamental human rights. However, that right unlike other basic rights such as freedom, the right to security, and the right to work, is not absolute, and so because of various reasons and considerations some restrictions have been imposed on it; of the most significant justifications of the restrictions that have been imposed on the right to private property the public discipline, the social benefits and the public interests can be mentioned. These restrictions have been accepted in the constitution of the Islamic Republic of Iran and other rules and regulations and the conditions and borders to them have been specified. Of the most important methods and means to restrict the right to private property can be confiscation, compulsory acquisition, and nationalization which are imposed for different reasons. The compulsory acquisition fundamentally occurs during the implementation of the state and municipal public projects and constructions; confiscation is the case when the right to private property of individuals is not legitimate and legal; and nationalization happens when the government on behalf of the community announces the wealth or economic sector as national; they are explained in details in this paper.

Keywords: Private Property, Iranian Legal System, Restrictions.
Introduction
Since the time that man recognized himself, revealed his privacy to avoid others trespass it. The so-called right or authority on objects belonging to him was extended too. Needless to say, the long history of the right to property and its continuation in human's social life has brought a high and enhanced position to that right in comparison to other fundamental rights which may be newer. Since the limitless property and absolute freedom of the owner to seize his possession would result in the man's rebellion and may lead to chaos, corruption and destruction of communities, it has long been encompassed according to wisdom among the nations and communities and it has developed through time along with the expansion of the ownership dimensions.

One of the most important signs of recognition of the right to private property is the prohibition to compel the owner to take an action towards his property against his will. The guarantees that have been established in many laws will not have any other outcomes. However, we need to ascertain whether that right enjoys such a situation against the government too. A primary reflection on different regulations would clearly reveal that this right against the government does not have the same concept and effect as it has for private parties; the government has restricted that right significantly and it has had, it still has, and it will have the potential to ignore it in different ways.

The roots of this possibility for government must be sought in the relationships and functions defined to it; the functions that appear in the typical literature with the titles such as fair distribution of wealth, public service delivery, public interests supplying, controlling the housing market, social gap reduction, controlling the energy consumption and the environmental protection. Estate and capital acquisition by government is the most obvious evidence and proof of identification of this authority to the government, and the difference in definition of property right and its influence against the government has the same concept in personal relationships with each other which is recognized in all the legal systems. In case that the right to private property of individuals is to be restricted because of the functions mentioned to the government, it must be done based on the equality before the law, a consequence of which may be ruling out the possibility to impose further costs on a group of citizens, therefore the compensation for losses incurred must be paid.

In this article we intend to study the restrictions imposed on the right to private property, first, though, we need to evaluate the justifications of the restrictions on the right to private property, and in the next part we will discuss the rules and regulations imposed on the private property right, and finally we will review the practices of restrictions on the private property.
First Paragraph- The Restrictions on the Right to Private Property in the Constitution

One of the most basic legal principles governing property is the legitimacy of ownership. Under this principle, the legitimacy and accuracy of ownership is the basis. Therefore, illegitimacy of property requires some causes and proofs in the court. For this reason the constitution of the Islamic republic of Iran has emphasized on the legitimate property too and in articles (44), (22), (47), (46), and (49) this has been stressed. Article (47) of the constitution states that: "a personal property is respected if it is legitimate." And the article (46) states: "everyone is the owner of the outcome of his own legitimate business." And the article (44) states: "ownership in these three sections is supported by the Islamic Republic Law." And article (22) states: "the prestige, life, property, occupation, and housing of individuals are inviolable."

The notable point in all the principles that support the ownership right is that this right is supported by the constitutional legislator and it will be inviolable if the property is legitimate. In other words, that right should have been reached legitimately. Therefore the illegitimacy of ownership is the conscious gaining of property of others in forbidden legal ways or prohibited religious means which is the meaning of gaining property in a wrong way which has been mentioned in verse (188), Surah Baqarah and verse (29), Surah An-Nisa.

Therefore, with regard to the generality of the mentioned rule and its juridical history any kind of conscious gaining of wealth and income through illegal ways is regarded as illicit way of making money and gaining void property and so it is a crime. Other examples of unlawful ownership or, in other words, gaining money illegally are the cases mentioned in article (149) of the constitution. Therefore, the first and most important feature and condition that is stated in the constitution on the right to ownership is the legitimacy of the property.

Article (49) of the constitution states: "government must take the wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and deals, sales of main permissible and uncultivated lands, establishing centers of corruption and other non-legitimate cases back and return them to the rightful owner, and in the case the owner is not known, give it to the national treasury. This verdict should be implemented with due care, research and legal stability by the state." The constitution of the Islamic Republic of Iran emphasizes as much on the legality of the ownership as it stresses on the return of property obtained unlawfully to their owners if they can be recognized or to the national treasury in case of ambiguity.

Accordingly, article (44) of the constitution in the very final part states that: "the ownership in these three sections is supported by the Islamic Republic Law in so far as it is consistent with the other principles in this season and is not out of the framework of the Islamic law and it may bring about growth and economic development and does not cause any harms to the society." According to this article, the property must be gained based on the Islamic rules. The Islamic principle primarily recognizes the right to life and then affirms the human freedom through laying down the basic principles such as the presumption of innocence, the permissibility
principle, principle of Helliat\textsuperscript{1} and the principle of inherent equality of human beings, and thirdly the private and individual property right is recognized as an inherent right.

The institute to legitimate ownership is recognized in all rules and regulations. The ethical and legal rules have been emphasized to respect the property and privacy of others. Holy Quran emphasizes the legitimacy of business and property and the obligation to maintain the property and the importance of the private ownership in the verses relating to inheritance, dowry, atonement, prohibition of confiscation of the properties of others. According to the final part of article (44), property in each and every public, private and cooperative section is supported as far that can lead to the economic growth and flourishing of the community. So if property in each of those sections causes harm to the society and causes retardation in it, it will not enjoy any supports.

Article (40) of the constitution considers the exercise of the right of ownership provided that it causes non-injurious to others and non-violation of the public interests. That article which is related to the stage of exercising right of ownership relates the exercise of this right to meeting two conditions: non-injurious to others and non-violation of the public interests. This article states: "nobody can suppose to exercise his right as a means of injurious to others or detrimental to public interests." About the restrictions and legitimacy of the property right, focusing on providing economic independence to society through eradicating poverty and deprivation and meeting human needs in the process of his growth and preserving his freedom, article (44) of the constitution determines the economic regulations of the Islamic Republic of Iran, and for that reason it has established some restrictive criteria besides the supportive and guiding instructions: "banning injurious to others and monopoly and hoarding and usury and other vicious and unlawful transactions;" The fifth paragraph of article forty three states: "prohibition of extravagance and wastefulness in every respect relating to economy, including consumption and manufacturing investment and distribution and services." According to this paragraph of article (43) of the constitution the ownership right cannot cause the rightful owner to use his right in any way he wills. So the private property is considered respected and supported by law only if it has been gained legitimately and according to the Islamic rules and can lead to economic growth and progress in the community.

Second Paragraph- the Restrictions on the Right to the Private Property in Common Rules

As much the government's interference in the economic and business affairs increases, the private property right and the possession of owners in their properties and possessions will be limited for owners because in many cases the government determines specific regulations in how to use property and sometimes even orders expropriation from owners. In other words, the

\textsuperscript{1} The permission to have right to something that have been achieved in Halal (accepted according to the Islamic rules) ways.
legislator restricts the possession of property and even prescribes expropriation in many cases to respect the social benefits and protect the public interests.

Pricing and price-fixing, prevention from hoarding and overcharging, formalities for exploitation of mines, nationalization of oil industry, the obligation to sell lands adjacent to the transcontinental railroad, prohibition of importation of certain goods into the country, preserving the national monuments, development of passages and many other similar acts are restrictions devised by the government to protect the public rights and national capitals for the private property right and free trade. In this paragraph few regulations will be discussed that confine the owner's authorization in his own properties.

a- Mining Act

According to the civil law, basically the mines located in any property would belong to its owner. However, the mining Act has categorized the mines in order to preserve the national wealth and only allows the possession of mines such as construction stones, clay and similar materials to the land owners and puts the authority of other mines in the hands of government. In addition to that, it regards the exploitation of such mines as subject to licensing from the Department of Mines. About the mines several laws have so far been passed, some of the most important of which are: the mining law approved in 1983 and the mining act approved in 1998. The mining law approved in 1983 has chosen the criterion of land surface ownership and stated that mines located in the lands and properties are the private parts belonging to their owners and other mines because of being placed in the public lands belong to the state (Kanani, 2008: 329). According to article (7) of the aforementioned law, the outcomes of exploration and the deposits discovered belong to the state unless they are located in the usable or previously revived lands within the boundaries of the property to the depth typically known as the part of the property and so the extracted minerals in the exploration would belong to the owner. Obviously before beginning to explore, the owner has to provide a plan and take the necessary licenses from the Ministry of Mines. Articles (10) and (12) of the new legislation have omitted the ownership criterion and recognize the mines in general as subject to the provisions of the public law (Ibid: 330).

According to article (22) of the new legislation, if the mines explored are located within the boundaries of the usable or previously revived lands, after the approval of the Ministry of Industries and Mines, enforcement operator must pay the rent cost excluding minerals in the updated price on the expert's view. The only prerogative of the owner is that he has have priority over others in the extraction of building stones and decorative stones.

Unlike the former law which followed the private trading rules and contracting in extracting mines with people and somehow regarded the state ownership and government authority and private law criteria in signing contracts, the new law mainly follows the regulations of the public law and is based on supporting the investors and their achieved rights and respects their
exploration rights. According to the new law the state rights decreased from the position of a legal reference to a licensing authority.

b- Municipal and Urban Planning Rules:
Resourcefulness to control the orderly urban development and to meet the needs of citizens on the one hand and the necessity to create the situations that can bring urban problems to a minimum and provide the possibility of an urban life requires devising rules and regulations of urban design. These rules and regulations which are resultants of locating the property within the boundaries of cities will naturally cause to impose restrictions on free exercising of the absolute property rights of citizens. The restrictions on owners' authorities which derive from these criteria in different dimensions and areas of the right to ownership and occur in different forms sometimes appear in the form of expropriation which is the resultant of implementation of urban development projects, and sometimes crystallizes in the form of requiring owners to implement the rules and regulations of the municipality.

On the other hand, the aim of the legislator of regulations relating to urbanism is providing safety and health and comfort of the urban life and the equal enjoyment of facilities and equipment and public services of the urban society for all sections in the society. Accordingly for any constructing operations or buildings and adopting the rules and regulations of urbanism, the individuals are obliged to take permission from municipality and the municipalities must issue the building permits in accordance with the regulations discussed above too.

So the building permit is the warranty issued to enforcing the urbanism rules and a document to confinement of property rights and occupancy of individuals in the national territory. Ratifying specific regulations align with the necessity of obtaining the building permits, the legislator determines obligations for citizens. Article (100) of the Municipal Law has mandated the owners of lands and properties located within the city limits to obtain a license from municipality before any civil actions or the separation of lands and prior to dealing with construction. Municipality by means of its agents can prevent from the constructing operations of buildings without a license or contrary to the provisions of the license, no matter the construction is located in enclosed or non-enclosed lands. Paragraph (24) of article (55) of the municipal law regards the issuance of building permits a task to the municipality however in this law no tasks have been determined for individuals in obtaining the construction permit.

According to the additional note to paragraph (24) of article (55) the municipalities in cities where the comprehensive plan of the city has been provided have to state the type of building usage in accordance with the map aforementioned in the building permits; as you can see all persons, whether real or legal, involved in public law and private law are required to use their property as predicted in the urban regulations and build their construct according to the aforementioned regulations. Otherwise according to the sentence in note (1) article (100) of the municipal law any unauthorized possession of persons in their property is a wrongdoing and
contrary to the law and is subject to investigation of commission forecasted in the note of the mentioned law and will be subject to implementation of legal regulations.

Paragraph (14) of article (55) of the municipal law has placed some obligations upon the owners; according to that paragraph: "adopting effective interventions and necessary measures to protect the city from the threats of flood and fire and also warding off danger from constructs and cracked and dangerous walls placed in the public passages and the public and private corridors and filling and capping the wells and holes in the roads and avoidance of placing any objects on the balconies and porches overlooking and adjacent to public places and the building chimneys that may cause trouble and damage to the residents." Article (110) of the law states: "about the lands or dilapidated buildings and non-proportional to the neighborhood which are located within the city limits or borders and which are contrary to the norms of purity and cleanliness and beauty of the city or municipal regulations, with the approval of the City Council, the municipality can notify the owner to deal with creating a fence or wall or restoration of it within two months. If the owner neglects or refuses to act appropriately, then the municipality can do whatever it recognizes as necessary for providing perspective and the implementation of the approved project in the field of beauty and cleanliness and urban development." The regulations mentioned in this article in terms of coercion of the owner in how to maintain the property regarding the fact that it is located within the city limit and obliging him to adapt his property with the environmental conditions of the area with regard to the beauty and cleanliness are an exceptions to the feature of absoluteness of the owner and the principle of owner's freedom that are imposed to the owner for providing the public interests.

According to the paragraph (20) of article (55) of the municipal law: "in order to prevent from creating and establishing all sites that in a way or another may cause the annoyance for residents or be against hygiene in cities, the municipality has to prevent from the establishment of the factories, workshops, public garages, repair shops and shops and also the centers that produce explosives and in general all the occupations and businesses that cause annoyance and noise or produce smoke and infection and cause insects and animals to aggregate, and deal with destruction of the furnaces and public bathhouses that are against hygiene and through observing the situation of the chimneys in sites and factories and vehicles that working with which will produce smoke should prevent from the polluted air in the city and in cases where the establishments had been engendered before the adoption of this law shut them down or transfer them to the suburbs.

c- The Law to Preserve National Monuments

One of the measures that limit the right of private property has been committed by the Cultural Heritage Organization in preserving the national monuments and has related it to article (5) of the law to preserve the national monuments adopted in 1930. According to the aforementioned article: "persons who are owners or possessors of a property that is recorded in the national index can preserve their property or possession right, however the government should not be prevented
from taking actions that may recognize necessary for protecting the national monuments. In the case that the state measures for preserving the national monuments require expenditure, the government will demand compensation and those measures will not undermine the ownership rights.

Article (1) of the law discussed above defines all works, both movable and immovable created in the country until the completion of Zand dynasty, as the national works. With regard to article (5) of the aforementioned law a property just because of being recognized as national to the competent authority is not enough to undertake restrictive actions. But it is required that the aforementioned property be legally recorded in the list of national works. Also, article (5) states that the owner can maintain his property or possession right and the state measure will be limited to protecting the property. Therefore, with its unilateral decision, the relevant authority cannot allocate the property to the public visit or restrict the entrance or exit of the owner or the authorized people. Unlike what has been claimed in article (5), the measures of the Cultural Heritage Organization in protecting the property that is known as the national work will naturally restrict the property or possession rights and the conflicts between the mentioned authority and the owners originate from this issue, because the necessity to protect the property is nothing except determining the restricting criteria.

**Paragraph Three: the Tools and Methods of Restricting the Right to the Private Property**

In this part the methods that lead to the restriction of the right to the private property will be discussed. They involve: confiscation, compulsory acquisition and nationalization which are discussed in the following sections.

**Section One: Confiscation**

Confiscation is the action noun adopted from Arabic meaning to fine and take fine and it also refers to a demand and to ask for something from someone and also the compensation for the property by somebody” (Dehkhoda, 1973: 235). The law Terminology in expressing the concept of confiscation states: "the word confiscation means the property demand and in term of the Persian language is the demand and taking the property by state through legal or conventional methods" (Jafari Langeroudi, 1991: 653).

Confiscation and distrainment of persons by the state would result in negation of the private ownership. Compulsory acquisition of private buildings and lands by the government and public institutions and organizations for implementation of the public and constructive projects would lead to deterioration of private ownership. These cases are raised solely in domestic law. But the nationalization of private property issued by the government is the intersection of the international law and the domestic system of countries. Many supporters of protection of the private property right believe that the private property right must be recognized by the
government without taking other considerations into account, and the society needs to respect the right of ownership and refrain from undue violations and limitations to it (schrode.2004:1).

Confiscation of the private property is a kind of punishment; however the compulsory acquisition of the private properties by the government and public institutions and organizations occurs for presenting public services and developments. Unlike nationalization which has a general and pervasive aspect, confiscation and compulsory acquisition do not have a general aspect and include certain individuals and properties.

One aspect of expropriation of the private property is confiscation of property by the state. In most legal texts the words "distrainment" and "confiscation" have been used as synonyms. The legislator has also used the word "distrainment" in two different meanings; in some legal articles the concept of distrainment implies the temporary seizure of a property (article (10) of the Islamic punishment law) and in some other articles the word distrainment is applied as a synonymous for confiscation and conveys the meaning of expropriation and transfer of a property to the public sector (the punishment reinforcement law to the perpetrators of embezzlement, bribery and fraud approved in Parliament on 09/18/1985).

The private property right is respected and protected by law when the way and how of the legitimate finance being obtained is legitimate and the legal standards are applied, otherwise the illegal properties will go out of the possession of persons under the provisions of the law and the courts and in the case the rightful owner is not known, it will be possessed by the public sector. Hereof article (49) of the constitution states: "government must take the wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and deals, sales of main permissible and uncultivated lands, establishing centers of corruption and other non-legitimate cases and return them to the rightful owner, and in the case the owner is not known, give it to the national treasury."

Here distrainment and confiscation of properties are kinds of punishment and penalty and are related to the properties seized illegally and unlawfully by people. In the process of nationalization, however, which requires confiscation (private expropriation) of the properties of individuals whether insiders or outsiders, wherein the focus is on the public benefits and the national interests (cole, 2005:3).

Article (49) of the Iranian constitution as the legal basis of confiscation of the illegitimate property has made the government confiscate the illicit property and wealth in favor of the public treasury provided that initially and with the investigation in accordance with the law the non-legitimate acquisition of these assets has been proved. In the Iranian legal system, the confiscation of private property exists both as punishment and as the financial penalty. Of course the confiscation due to nationalization, which is not regarded as a punishment, is an economic policy of the state, however, and is used in order to use the national and natural resources. On the other hand, unlike the criminal confiscation that is applied for a particular person and a certain case, it has a public and pervasive aspect.
Article (47) of the constitution recognizes the private property achieved in a legal way as respected provided that the legal standards and lawful regulations have been observed. The permit issued for confiscation of the illegal properties based on the mentioned article (the principle of legality in obtaining a property) has been issued by the legislator of the constitution. Besides raising examples of the illegal wealth, the constitution has obliged the state to take these properties and return them to their real owners and if the owner is not known, it will be confiscated for the benefit of the public treasury. In fact, the holder of an illegal property is considered as the wrongful occupant and the usurper of the property of individuals or society. Article (49) of the constitution in this regard states: "government must take the wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and deals, Sales of main permissible and uncultivated lands, establishing centers of corruption and other non-legitimate cases and return them to the rightful owner, and in the case the owner is not known, give it to the national treasury." Of course the confiscation is permitted just after investigating and proving the illegality of the property by the court. Today, with the continuous development of the ownership rights, the development of a legal framework for supporting the ownership right is necessary. Such a framework will be beneficial not only with regard to the social matters but for the development of the property right also (Yu.2011:2).

**Section Two: Compulsory Acquisition of Private Property**

Article (1) of the law on how to buy and possess the lands and buildings recognizes the acquisition as the transfer of ownership of a person's estate and the rights related to it to the public authorities subject to the law and for Mouawad. Therefore acquisition would necessarily lead to expropriation. Acquisition can only refer to movable properties or immovable properties and the rights derived from them and can involve both of them, the aim of acquisition can be macroeconomic or political or even military (Zargoush, 2012: 45). Acquisition conveys the meaning of becoming an owner, a possessor, catching a property and having authority on it (Dehkhoda, 1973: 705). In terms of law, acquisition and possession are the main essence and the essential elements of the contracts; trading can take the title of a correct contract only when it is signed on the basis of reciprocity and consent of the parties. Therefore although the possessor institute is obliged under the law to pay a fair and updated price of the lands and estates for the compulsory acquisition of the private property, compulsory description of the compulsory acquisition states that in this action the acquisition element is not involved and in case of absence of the owner's intention and satisfaction the fulfillment of the contract is denied. So if an owner deals with transferring his property to the applicant institution with the consent and intent and willing to the applicant institution, with the conclusion of the contract the matter is no more the concern of the compulsory acquisition.
In the discourse to the administrative rights it is typical to determine the basis of a legal establishment in accordance with its direct and primary goal; in this regard the foundation of a legal establishment can be one of the following quartet cases:

1) The idea of public power: when the purpose of a legal establishment is exclusively protecting the interests of public authorities and the state in the broad sense of the word, it should be said that the basis of that legal establishment is the idea of public power. In that case, any ambiguity or conflict in the private rights of individuals or the collective interests of the society members with the interests or intentions of the state will be justified in favor of the state by the law.

2) The idea of public services: when the primary or direct objective of a legal establishment is providing a mechanism to satisfy the public demands and accountability to the constant and continuous needs of the society, it should be stated that the basis of that legal establishment is the public services.

3) The idea of private rights: if the direct objective of a legal establishment or a legitimate verdict is protecting the rights of beneficiaries or specific people, the possessors or corporations for example, against the interests of the society or a group, the basis of such a legal establishment will be the idea of private rights.

4) The idea of the common good: a law or a legal establishment can simultaneously be accounted for meeting the needs of the public and maintain the public power; in such a situation the basis of the legal establishment is the common good.

With regard to the above principles it can be inferred that in some regulations such as the Mining Act the idea of public services seems to be the brightest aim, and also in the law to the fair distribution of water the reason for estate acquisition is recognized as dependent on its clear positioning in the irrigation path and water supply lines which is a guarantee to public services. But in some other rules, the idea of the public power enjoys more prominence. For example, the first article of the law on the purchase and ownership recognizes the public and civil and military programs as the context of implementation of this law and article two of that law defines these concepts as the programs whose due implementation is necessary for the public and security affairs. It seems that the two terms of public and constructing are related to the public services of acquisition and the terms military and security indicate the identity of the public power and its objective is to protect the public authorities against the private rights of individuals, so in this law the idea of public power is premier (Zargoush, 2012: 53).

The result of such an idea as far as the law is concerned gives an operational license to this program if the enforcement of the program supports the aim of the public power but is against the society interests, such as a plan that causes unemployment (Ibid: 54). Therefore, although the private property right has been recognized as one of the man's natural rights, this is not an absolute right and it is restricted by the law in order to maintain the public order and the general
welfare. So expropriation against the public interests and social benefits is allowed provided that it is based on law and with compensation.

Section Three – the Definition and Concept of Nationalization
Among the measures of the authority that may result in the deprivation from the private property right, nationalization is the most outstanding. Nationalization and the compulsory acquisition of the private property can be distinguished in two aspects; first, unlike confiscation and compulsory acquisition that are related to certain objects and people, nationalization is inclusive and pervasive and contains the whole properties in one economic section or a chain of industrial activities. Secondly, confiscation and compulsory acquisition often refer to the Iranian residents, but in nationalization since the incentive for the government is the management and administration of all components of an economic sector in order to meet the national interests in addition to the properties of the domestic residents, the investment by foreigners are also included. As the word nationalization conveys, it is an action attributed to the nation and because of that the concept of nationalization has not been taken away from its literal meaning. Nationalization is among the actions taken by the authority by which the properties of the private section can be controlled and managed by the government and are transferred to the public section of the society; in other words, a part of the private property and the actions attributed to it will be allocated to the nation totally and absolutely and without exception and it comes under the domain of public property as a result of nationalization.

The nationalization system should not be confused with the state system, the recent system is the organization of a source of national wealth or the economic or social activities as a public organization which is operated by a public and state system of rules and regulations while the nationalization system is organizing and managing it according to the regulations of the private right and commerce just like a private institute. The state may resort to nationalization in two situations: 1) when it realizes that the system of private property is not capable of managing the resources or certain economic and social activities; 2) when a source of a national wealth or an economic and social activity takes a considerable importance economically or finds the attributes and specialties of a public service (Tabatabaee Motemani, 2005: 371).

It should be mentioned that nationalization is one of the effects of government authority in changing the contracts unilaterally and respecting the state sovereignty on the national and natural resources and this is an inalienable right of every government to be able to use its own resources and wealth as it realizes and this right is officially known by the united nation (Resolution No. 1083). The basis of nationalization derives from the national authority, autonomy of nations and exercising the state sovereignty. It means that the political society enjoys an institutionalized indisputable authority. This power has been delegated to the administration by the nation. In conjunction with nationalization, the government rules on behalf of the society and the nation, and the acceptance of the government actions derives from the
nation's will (Emami, 1993: 18). The governments often deal with nationalization with economic and political incentives and in order to exploit the national resources and wealth for the welfare of people in the society. Therefore with the aim of an economic reform and for providing the social benefits and collective interests, the state takes actions for nationalization and transfers the private property to the public section to prevent from monopolization through handling and managing the national economy.

**Paragraph Four: the Loss Compensation**

Anyway, if the public powers cause some losses to the citizens through restricting the private possession, they will be obliged to compensate the losses. Compensation of losses may happen in different forms.

**a- Loss Compensation in the Case of Restricting the Private Possession**

If implementation of a plan depends on expropriation of individuals, the first hypothesis can be that the implementing agency can, like the applicants of transferring the ownership rights to them, enter into negotiations with the rightful owner and these rights may be transferred to them through dialogue and negotiation and compromise; the equity owners can transfer their equity rights involving possession right, usufruct and easement rights to the implementing agency through the contracts as sale, peace, lease and etc. (Beheshtian, 2006: 99).

Paying attention to the bill the law of the lands sale, acquisition and ownership for enforcement of the public, constructing, and military programs approved by the government in 1979, it can be concluded that an adaptive agreement on the equity right is preferred to other ways. But if for any reasons, no agreement could be reached between the owner and the public institutions, the implementation of the public plans cannot actually be postponed because of disagreement of the equity rights on the transference of their right to the public agencies. Accordingly, while emphasizing the principle of agreement and compromise, the legislator has predicted the mandatory and enforced deprivation from the equity rights and its transfer to the public agencies. Disagreement may derive from different views of the parties on the price. Article (4) of the bill of the law on how to buy in this regard states: "whenever no agreement is reached between the implementing agencies and the owner on determining the fair value of lands and buildings and facilities and the rights and damages, the fair value will be determined by a committee composing of three official experts of the Justice. One expert is selected from the implementing agency, another form the owner or the rightful possessor and the third is chosen based on the agreement of the parties and in the case of disagreement or refusal to introduce one, the competent local court will choose one. The vote by the majority of the board is conclusive and binding (ibid: 108). But disagreement may derive from the owner's discontent in transferring the property. In that case: "if the owner does not refer to a deal within a month after the date announced by the implanting agency or denies the transaction in any manner, he will be announced for the second time and after the expiry of 15 days of the second deadline, the
property value will be determined by the expert bodies as mentioned in article (4) or clause (2) according to the area of the acquisition and will be deposited into the local fund and the prosecutor or his representative will sign the transfer document and will act to evacuate within a month and expropriation will take action and the property price or rights or loss will be paid to the beneficiary by the registration office according to as much possession as is established in the relevant authorities for him, and the previous documents of the owner will undertake modification or revocation if it is necessary and the surplus deposit will be refunded to the state funds according to relevant regulations. Based on the transfer document signed by the prosecutor or his representative, the local registration office must issue a new document in accordance with the area of lands, buildings and establishments possessed in the name of the administration and submit it.” It is worth mentioning that the legislator in this article recognizes the announcement to the owner as the introduction required for non-consensual transfer of the equity rights to municipalities. It means that the municipality must primarily inform the owner of the equity rights that his property is within the scope of the project implementation and asks him to refer to municipality for agreement on the transfer. Therefore it is impossible to take any actions for the compulsory acquisition of property rights of individuals before formalities (Ibid: 111).

b- The Loss Compensation in the Case of Nationalization

Of the consequences of the withholding verdict are ownership reverence, liability restraining warrant and liability for damages arising from a breach of this provision. Without doubt the aim of general regulations of the civil liability is the loss compensation. In other words a disservice must have occurred to its compensation a responsibility can be created and the responsible person becomes liable. How to calculate the amount of compensation and damages payable in case of expropriation or confiscation of property is discrepant for lawyers (Alidousti Shahraki, 2009: 79).

According to the views, if the confiscation and ownership are legal, the full value involves its value at the time of expropriation. In other words, the property value includes its value at the time of expropriation, but if the expropriation is unlawful, its full value is its value at the time of expropriation added to the lost profit in the interval between the expropriation and the issuance of the verdict of article (9) of the law to the foreign investment promotion and protection that has been developed aligned with presenting a strategy to the loss compensation. According to that article: "the foreign investors will not be subject to expropriation and nationalization unless for the public interests and through a legal process in a non-discriminatory manner for the payment of an appropriate compensation on the basis of the intrinsic value of the investment prior to expropriation." So if there are considerations such as: the government is acting in accordance with the interests of the nation, the government's action is non-discriminatory, some procedures can be adopted for the determination and payment of compensation to the injured party, then the government's commitment in expropriation will be justifiable and is called legitimate.
Usually the illegal and unlawful expropriation happens rarely and the investigating authorities very rarely consider the commitment of a government in expropriation as illegal unless the government obviously states a non-economic and irrelevant to national interests as the incentive in confiscation of properties. If the expropriation is illegal and the demand for uselessness is justified, this compensation will be limited to the profit that has been wasted when a decree is to take actions and the possible and hypothetical cases are not payable (Ibid: 83).

Align with supporting the foreign investors and in order to ascertain them about the confiscation and expropriation or damages in the bilateral agreements of the foreign investors, considerable regulations have been provided. Article (5) of the aforementioned law between Iran and France on confiscation and expropriation states: "investments of each of the contracting parties by another national contracting party will neither undergo confiscation or expropriation nor go under similar measures, unless these measures are carried out clearly, effectively and appropriately for the public aims and through lawful processes in a indiscriminate method against the loss compensation. The loss compensation must equalize the investment value immediately before nationalization, confiscation or expropriation. Recompense must be paid without delay. In case of delay, the recompense would involve these relating costs too. This recompense must be payable in practice and transferrable freely (Iran and France Foreign Investment Promotion and Protection Agreement Act approved in 2003).

Paragraph Five: the Administrative Court of Justice and Its Role in Supporting the Right to Private Property

According to article (173) of the constitution of the Islamic Republic of Iran, the Administrative Court of Justice has been established in order to investigate the complaints, violations and protests of people against officers, government departments, bylaws and government regulations and realization of people's rights. As far as the constitution and its article (173) concern, the Administrative Court of Justice is qualified to investigate all claims against the state administrations. This qualification is absolute and general. It means that in a claim that one party is an administration attributed to the government, regardless of the subject, its dimensions and its importance, this is the duty of the Administrative Court of Justice to investigate it (Falahzadeh, 2005: 17).

While the way of judicial supervision in various legal systems is different, the fundamental component of this kind of supervision is the judiciary that assesses the decisions and functions of the executive in terms of compliance with the constitution. The position of the judicial control in the constitution is specified in articles (173) and (170). In fact, the judicial control in the constitution on functions of the executive occurs in two ways: 1) by the Administrative Court of Justice about the actions and decisions of governmental bodies and their authorities in order to perform the task and the bylaws and legislations of the government. 2) by the court judges: according to article (170) of the constitution, the court judges must deny the implementation of
bylaws and regulations that are contrary to the Islamic laws or go beyond the limits and jurisdictions of the executive, and this kind of supervision takes place with judicial control on a group of administrative measures, that are regulations (Amir Arjmand, 2006: 55). Anyway, if the government or its authorities, through ratifying regulations or with their administrative actions, deprive the equity rights of citizens in any manner such as confiscation, compulsory acquisition or expropriation unlawfully, the Administrative Court of Justice will investigate the complaints.

**Results and Suggestions**

The right to private property is the most perfect objective right and in the constitutions of countries it has been recognized as the most significant natural right of humans, however in terms of evolution of government functions and general needs, it has undergone numerous restrictions. Nowadays because of interferences of governments in every field, speaking of absolute ownership is getting extremely pale. On the other hand, the public need and its priority over the individual rights in most legal systems at the time of conflict between the two has been accepted. But it should be said that this priority and mastery should not be accomplished with negligence and non-compliance with the laws and regulations, and if it is necessary, much care should be given to its negation. Therefore, the first way of creating the right of ownership is benefiting from proprietary contracts that will be realized with the offer and acceptance of the parties. So using the contracts of sale, lease, peace and other contracts, the citizens can delegate the ownership or other rights of them to the municipality and government.

Then, based on the constitution the private ownership that has been achieved legally is respected, and different rules have predicted several sanctions to support this right. So the municipalities and the administrative organizations should not be leaning on legislative seats and lay down rules and obligations under the name of the city benefits and the public interests. The government authority in restricting the ownership and expropriation of individuals in order to protect the public interests of the society and implementation of the public and constructing plans in case of being accomplished without observing the legal mechanisms may cause the aggression of the other basic rights of individuals by government for various excuses, therefore the government must follow the lawful measures and procedures provided in restricting the right to the private ownership for individuals. In this area, the authorities that are responsible for supporting and protecting the legal and lawful rights and freedoms of citizens have an important role in protecting the right of private property. One of the authorities having a significant role in supporting and protecting the right of private property is the Administrative Court of Justice.

Eventually, it should be said that the right of private property must be seen as a fundamental right and in the regulations, especially the constitutions, separate articles and principles should be allocated to it, and adequate sanctions in supporting it against the limitations placed on it should be considered.
References

- Holy Quran

Rules and Regulations:
- Iran’s constitution amended in 1989
- Law to Preserve National Monuments Act 1888
- Mines Act, 1377 approved
- Civil law, passed in 1887
- The Islamic Penal Code, adopted in 2013
- The law on how the implementation of Article 49 of the constitution approved in 1989