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# Identification of Damages Arising from the Implementation of Municipal Projects for Adjacent Properties

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## ABSTRACT

It is evident that when public and civil-development projects intersect with private ownership, the implementing authority is obligated to pay the value of the property that falls within the designated project area. However, in certain cases, the implementation of urban projects leads to a decrease in the value of properties located adjacent to these projects, even though ownership of the affected properties continues uninterrupted. Under this assumption, and despite the fact that no direct encroachment upon the property has occurred, the question arises as to whether the municipality or the project executor bears liability for compensating the resulting damages. The data for this study were collected through note-taking from legal and jurisprudential books and articles, as well as from statutes related to the subject. Regarding the damages inflicted upon owners of properties adjacent to municipal projects, the final clause of Article 11 of the Civil Liability Act has been invoked by opponents of municipal liability as grounds for exempting municipalities from compensation, based on the belief that such actions fall under the exercise of public authority (a subject that has been examined and analyzed in a separate article). However, both from a jurisprudential perspective—where the principles of *la-zarar* (no harm) and *itlaf* (destruction), especially the principle governing constructive destruction (*talf-e hokmi*), recognize the necessity of compensation—and from the explicit provisions of the later statute, the “Law on the Acquisition of Land and Real Property for the Implementation of Public, Civil, and Military Programs of the Government,” enacted on February 6, 1980, which refers to the “assessment of damages” alongside “payment of property value,” the recognition of compensation within positive law is evident. This research examines the various dimensions of this issue.

**Keywords:** *damages, municipal projects, real property, construction*

## Introduction

The lexical definition of ownership, derived from the root *mulk* (with an open “m”), refers to “having,” “possession,” and “holding something under control.” The technical and legal definition of ownership consists of the right that every owner has to benefit from their property, enabling them to exercise any form of disposition as they wish, while no one else is permitted to oppose such use or disposition. The legislator has affirmed this right through Article 47 of the Constitution and Article 30 of the Civil Code, thereby solidifying property rights. Although the right of ownership is the most complete real right and permits the owner to make any kind of disposition over their property, it is nonetheless subject to the condition that such disposition must not result in harm to others. The concept and



attributes of ownership have always been subject to change, particularly in modern times when the advancement of public ownership doctrines and nationalization movements has transformed the limits of private property, restricting individual rights in favor of public authority (1).

With the advancement of human societies, science, technology, urban development, road widening, and the allocation of private lands for green spaces and parks—and more broadly, the alignment of urban conditions with new planning standards—the meaning of ownership, as the most complete right a person may possess, becomes limited. Unlike the past, owners can no longer fully exercise absolute proprietary dominion. Governments, for the sake of public welfare, improved community life, and in response to population growth and increased public needs, increasingly require rules governing the expropriation of property for urban development, civil construction, housing provision, and planning purposes. Urban and housing planning today constitutes one of the most complex forms of planning worldwide, particularly in developing countries. All these developments lead to changes in land use, affecting an owner's property and imposing limits on private ownership (2). In this regard, several statutes have been enacted to further restrict private property rights, including the Law on Determining the Status of Properties Situated within Governmental and Municipal Development Plans (1988), the consolidated text of the Law on the Preservation of Agricultural and Orchard Lands (1995) and its 2006 amendment, relevant judicial precedents, the Urban Renewal and Development Act (1968), the Legal Bill on the Acquisition of Lands for Public and Civil Projects (February 6, 1980), and the Law on the Valuation of Buildings and Lands Needed by Municipalities (1991). Considering the multilayered legal dimensions and the influence of executive authorities in interpreting and applying these laws, addressing this subject requires a separate, comprehensive research framework (3).

The restriction of private ownership in the implementation of civil-development projects serves as a mechanism that, on the one hand, enables public authorities to compel landowners to sell their properties, and on the other hand, allows landowners and rights holders to seek compensation and indemnification arising from compulsory acquisition (4).

Adjacent properties to development projects are not physically appropriated, yet they are affected in various indirect ways. In many cases, the implementation of a project imposes limitations on the property rights associated with neighboring lands, and as a result of the project, the value of adjacent properties may decrease. The question therefore arises: Has the legislator accounted for this limitation and the resulting diminution in property value? And is there a legal mechanism designed to compensate for the loss in value of such properties (5)?

## Research Background and Theoretical Foundations

Adib and colleagues (2020) conducted a study titled *“Determination of Private Ownership in the Implementation of Public Projects and Compensation for Damages Arising from It in the Legal Systems of Iran and England.”* They argue that the necessities of social life have compelled the legislator to authorize, in certain cases, through public authority and in pursuit of collective interests, the restriction and even deprivation of private ownership. However, this authority is not absolute; executive bodies are obligated to pay the value of property subject to acquisition. In Iran's legal system, commencement of expropriation requires an approved plan, secured budget, necessity of execution, and official notification. Unlike jurisdictions such as England, citizens do not participate in the approval process nor is there a pre-approval objection mechanism. Furthermore, in some foreign legal systems, compensation is not limited to properties directly included in a project; compensation may also be obligatory in

cases where no land is expropriated but public services or subsequent utilization of public facilities cause harm to properties (6).

Khosravi (2020), in his research titled *"Infringement of Property Rights through Land-Use Change,"* explains that, based on the jurisprudential principle of *taslit* and Article 30 of the Civil Code, an owner has the right to any material or legal disposition over their property. The scope of such dispositions depends on the nature and manner of exercise. At times, however, the owner's actions may harm neighboring owners; in such cases, the principle of *la-zarrar* overrides *taslit* to prevent potential harm, inherently restricting ownership rights. Moreover, due to population growth, rapid urbanization, migration, industrial expansion, and the expansion of urban infrastructure—streets, highways, parks, public facilities—executive authorities increasingly engage in the expropriation of private properties as a social necessity. Nonetheless, executive bodies including municipalities sometimes misuse their legal authority, resulting in violations of ownership rights (7).

Kamal Pendar (2018), in his study *"Legal Examination of Private Property for Public Interest,"* states that in the past, private ownership of land was considered sacred and seldom restricted under Article 30 of the Civil Code. Today, however, in pursuit of public welfare, private ownership—particularly land ownership—has been restricted in various ways; in many countries, even expropriation for public interest has attained statutory form. This global trend is also evident in Iran's legal system. With population growth and increased public needs, the necessity of laws governing the restriction and deprivation of ownership for urban development and civil-planning purposes has become more apparent (1).

### Municipal Development Plans in Iran

Legal doctrine provides multiple definitions of "project" (*tarh*). Some scholars distinguish between specific and general dimensions of the term (3). A general definition holds that municipal public projects are those developed and implemented by the municipality to fulfill its legally assigned duties and achieve its various operational objectives. These programs acquire practical form through an organization with specific characteristics known as the municipality. Thus, in its broad meaning, a "project" refers to measures undertaken by a municipality in performing its duties. The reason for distinguishing between general and specific definitions lies in the phrasing of Articles 1 and 2 of the Legal Bill on the Acquisition of Lands for Public, Civil, and Military Programs of the Government (February 6, 1980).

In this understanding, all municipal programs—including construction, urban planning, cultural, and other initiatives—are included. In the narrow sense, however, a "project" refers to plans approved by competent authorities, usually pertaining to civil and urban development and urban improvement. Municipal public projects appear in various planning documents, such as master plans, comprehensive plans, and detailed plans (8).

### Property Rights

Property rights refer to the rights individuals hold over tangible and intangible assets; it is a broader concept than ownership and has two essential characteristics. First, it is capable of monetary exchange and valuation, distinguishing it from non-financial rights. Second, these rights pertain to objects (3). The financial rights held by individuals—and which concern this discussion—are associated with objects that are encountered during municipal projects. Therefore, in the execution of municipal development plans, various assets come into contact with such

plans, and individuals maintain various forms of relationships with those assets, all of which possess material value (9).

### **Expropriation of Urban Lands with a Social Justice Approach**

The expropriation of urban lands with a social justice approach is one of the issues that has been overlooked in many urban development projects. This research, through examining property rights and analyzing several major legal rules related to ownership in both Western and Islamic perspectives, provides recommendations for enhancing social justice within urban law. The findings show that within the liberalist doctrine, certain limitations are imposed on state authority in depriving individuals of property, and expropriation laws are justified only when public interests are fulfilled. The results obtained from analyzing private property rules in Iran, based on indicators of justice and ownership rights through reviewing relevant legal documents, have been extracted in the form of nine principles. These include: requiring beneficiary groups of urban projects to contribute toward public costs, transferring development rights to the people, and recognizing the legality of expropriation only where public interest prevails over private interests. Among the challenges associated with expropriation of lands in urban development projects are weaknesses in laws relating to proof of damages suffered by current owners or in comparing the harm to owners with that of citizens, as well as the absence of clear articulation of each landowner's rights regarding regulations on land use and zoning (4).

### **Expropriation and Protection of Ownership Rights in Public Urban Projects**

The expansion of urbanization today is an undeniable reality. The logical consequence of this expansion is that municipalities must keep pace with such growth and implement necessary civil-development projects. The implementation of public projects frequently intersects with individuals' ownership rights. The law seeks to resolve the conflict between public interests and private ownership in the most effective manner. This endeavor has produced a legal order whose dimensions merit careful examination. At times, such an examination is theoretical and structural, while at other times it is practical and operational. From a theoretical perspective, the concepts, foundations, and sources of this legal order are analyzed to achieve a comprehensive understanding of its structure and principles. In practical review, existing legal mechanisms are examined independently from their theoretical foundations to understand their application in reality. This includes assessing how executive authorities operate and how laws are implemented in practice (8).

### **Land Ownership Rights and Various Perspectives on the Concept of Ownership**

Ownership is the most complete real right and is recognized in the constitutions of many countries as one of the most fundamental natural rights of human beings. However, due to the evolution of government functions and public needs, it has been subjected to numerous restrictions. Therefore, ownership can no longer be assumed to be absolute. Issues concerning compensation after the deprivation or restriction of ownership, evaluated through the lens of social justice, constitute significant legal and economic discussions—particularly regarding the amount and method of determining compensation. The land ownership system in Iran has deep historical roots, as land has always been a principal factor of production, and large landowners historically held considerable social power (1).

### **Stabilization of Ownership**

In most cases, individuals' properties fall within residential, commercial, and other urban zones that correspond to their private needs, reflecting situations in which the owner intends to construct residential, commercial, or service buildings on their land, and the approved plan aligns with such intentions. In such cases, the approval and even implementation of the plan does not restrict or deprive the owner of property rights but rather stabilizes ownership. Accordingly, the owner may construct or benefit from existing structures and, in effect, "acquired rights" are created for the owner, taking into account all circumstances and existing conditions (3).

### **Restriction of Ownership**

Some approved plans do not entirely deprive the owner of property rights but impose extensive restrictions. These restrictions may be temporary or permanent. Examples of circumstances in which ownership rights are restricted due to urban planning include:

Under the Law on Determining the Status of Properties Located within Governmental and Municipal Development Plans, all ministries, institutions, organizations, and government-affiliated bodies are obligated, in public or civil-development plans approved by a minister or highest administrative authority and encompassing private legal properties, to complete the final transaction and official transfer within a maximum of 18 months following official notification of the plan. If the implementation of an approved plan is postponed for any reason for a period less than five years, the owner, when applying for a construction permit, must undertake that if the plan is initiated within five years, they shall have no right to claim construction or renovation expenses.

Urban comprehensive and detailed plans approved by the Supreme Council of Urban Planning and Architecture and the Article 5 Commission determine regulations concerning land use, buildable space, density, subdivision, and consolidation parameters, all of which restrict owners' rights in using their property. These approvals are valid and binding on both individuals and municipalities. It should be noted, however, that if the approval of a plan violates mandatory legal rules, it may be annulled by the Administrative Justice Court (5).

### **Effects of Protective Zones (Harim) on Lands and Properties**

In some development projects, the law may designate not only the area intended for execution but also an additional surrounding area as a protective zone (*harim*). Such a zone is established to ensure optimal use of the project or for safety considerations. In certain cases, the existence of a protective zone prohibits or severely restricts the exercise of ownership rights to an extent that is customarily regarded as a deprivation of rights. However, in most protective zones defined for different types of projects, ownership is not removed; instead, limitations are imposed on the lands that fall within the designated zone.

### **Reduction of Property Value Due to Project Implementation**

In some situations, although the project is not implemented on private property, its execution nonetheless decreases the value of nearby properties. For example, the construction of bridges adjacent to commercial units that previously bordered a busy street—where commercial prosperity depended on high traffic—may reduce traffic flow due to an overpass or underpass, thereby decreasing the value of neighboring properties.

To determine whether the implementing authority is obligated to compensate for this decrease in property value, it is first necessary to determine whether the element of damage has been established.

### Damage Resulting from the Decrease in Value of Adjacent Properties

Among the losses suffered by individuals due to the implementation of public and municipal development programs is the reduction in the monetary value of properties located adjacent to such projects, where implementation causes the loss of their economic advantages, such as overground passages, underground routes, bridges, and similar structures. It is well established that the location of commercial and business premises along major streets constitutes an economic advantage and affects property valuation. Thus, if a property was previously situated along a main thoroughfare and a municipal development project deprives it of this advantage, thereby diminishing its economic value and causing harm to the owner, the question arises as to whether this loss may be claimed from the municipality or whether the municipality is obligated only to compensate owners whose properties fall within the project area.

In other words, is the municipality responsible only for compensating expropriation-related losses, or must it also compensate for the reduction in property value despite the owner's continued ownership?

It appears that when municipalities engage in relationships resembling private contractual relations, governed by contract law, they must act in a way that ensures that subsequent regulations do not undermine the acquired rights of citizens. Since the municipality, assuming compliance with these principles, issues construction permits after receiving all legal fees and based on preexisting commercial status of the location, it is implicitly committed to preserving that status—unless the change occurs due to reasons not attributable to the project executor, or is deemed a force majeure event, or constitutes an act of public authority, in which case compensation may be excluded under the exception in Article 11 of the Civil Liability Act (5).

The basis for municipal liability in compensating damages inflicted upon properties adjacent to public and development projects is the jurisprudential principles of *la-zarar* (no harm) and *itlaf* (destruction) (10).

In Islamic jurisprudence, *itlaf* is divided into two categories: real destruction, such as burning clothing, and constructive destruction, such as concealing ice in the summer and returning it in winter. Some jurists, based on statements such as “*man atlaf māl al-ghayr*” (whoever destroys another's property) and “*the property of a Muslim is as inviolable as his blood*,” apply *itlaf* only to real destruction, where the essence of property is physically lost, and exclude constructive destruction, where the property remains but loses economic value. These views are attributed to earlier jurisprudential writings found in traditional sources (10).

Conversely, other jurists and legal scholars consider the evidences of liability under *itlaf* applicable to both categories. They argue that although in constructive destruction the property is not physically destroyed, it is effectively destroyed because it has lost its economic value. What remains cannot be recognized as “property,” because the subject of *itlaf* is economic value, not the physical object. Therefore, liability arises in cases where economic value is lost.

Thus, the liability stemming from destruction of property includes both real and constructive destruction, obligating the destroyer to compensate for damages.

Islamic jurisprudence does not explicitly address municipal liability for compensating damages arising from the reduction in value of properties adjacent to public and development projects. However, given the general application



of the *itlaf* principle, which holds that the injurer is liable regardless of legal capacity or governmental status, it can be concluded that municipalities are religiously obligated to compensate for such losses (10).

Accordingly, just as the principle of collective participation in public expenses supports, given that public projects (such as aerial bridges) generate societal benefits, members of society are responsible for compensating damages through their public representative, namely the municipality (4).

In this regard, many jurists argue that all citizens must pay taxes for the administration of the country, and no one is exempt. All must participate in meeting social needs and contributing to public expenditures. Therefore, if damage results from actions of governmental bodies or public institutions, compensation should be funded through public revenues. It is unjust for all citizens to pay taxes for collective objectives while the burden of losses falls solely upon the injured party. Thus, fairness, justice, and equity dictate that the cost of compensation be shared among all citizens. This reasoning aligns closely with contemporary approaches in urban justice literature (8).

In contrast, theorists of “risk creation” (strict liability) argue that fault is not an element of liability. According to them, anyone who causes harm must compensate for it, regardless of whether the act causing harm was lawful or unlawful. The key consideration in this theory is the causal relationship between the actor’s conduct and the resulting harm; once this relationship is established, liability is realized.

Careful examination of the provisions of the Legal Bill on the Acquisition of Lands (1980) reveals that the legislator, in addition to requiring valuation of lands, buildings, structures, installations, and related rights, also provides for “damage assessment.” Given that legislative drafting is purposeful, and considering that in expropriation cases owners whose properties lie within the project area experience no additional compensable losses beyond transfer of ownership, it can be inferred that the term “damage assessment” in Article 3, its Note 1, and Article 4 of the aforementioned Legal Bill encompasses damages and losses inflicted upon properties adjacent to public and development projects or any damages arising from implementation of the project (3).

Therefore, although damages arising from the exercise of public authority are generally non-compensable, the provisions of the Legal Bill on the Acquisition of Lands represent a specific exception. The rules in Article 11 of the Civil Liability Act, concerning damages inflicted upon private properties during implementation of public and municipal projects, are thereby superseded, and the government and municipalities are obligated to compensate such damages (5).

## Conclusion

This study was conducted with the aim of identifying and determining the limitations that municipal development plans impose on the ownership rights of properties adjacent to or near such projects, as well as identifying the damages and restrictions arising from these plans—specifically the decrease in the value of neighboring properties—and proposing a legal solution for compensating such losses. In certain instances, the implementation of urban development plans leads to a reduction in the value of properties located near the project area, even though ownership of the property continues uninterrupted. Under this assumption, and despite the absence of any direct encroachment upon the property, the question arises as to whether the municipality or the project executor bears responsibility for compensating the resulting loss.

Although Islamic jurisprudence does not explicitly address municipal liability for compensating damages affecting properties adjacent to public projects—and perhaps such issues did not arise or hold significance at the time—an examination of jurisprudential principles such as *la-zarar* (no harm) and *itlaf* (destruction), particularly in relation to

constructive destruction where the economic value of property rather than its physical substance is lost, suggests that the municipality does bear responsibility for such damages from a religious perspective. It should be noted, however, that opponents of municipal liability invoke governmental authority and Article 11 of the Civil Liability Act, arguing that the state and municipalities are generally exempt from compensating such damages.

Contrasting these positions, the Legal Bill on the Acquisition of Land and Real Property for the Implementation of Public, Civil, and Military Programs of the Government (February 6, 1980) not only requires valuation of lands, structures, installations, and related rights, but also provides for the “assessment of damages.” Therefore, it cannot be asserted that the municipality is responsible only for paying the proprietary rights of lands directly included within the project boundaries; otherwise, the inclusion of the term “assessment of damages” in the statute would be meaningless—an assumption incompatible with rational legislative drafting. Consequently, it follows that Article 11 of the Civil Liability Act does not apply in cases governed by specific provisions found in the aforementioned Legal Bill. In effect, general legal principles, including the “principle of full compensation,” and more specifically the Legal Bill on the Acquisition of Lands, operate as exceptions to the Civil Liability Act, rendering the municipality responsible for compensating all forms of damage, including the reduction in value of properties adjacent to development projects.

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### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

### **Transparency of Data**

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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