Critique of the Law on the Method of Acquisition of Lands and Properties for Governmental Projects in Light of the Principle of Freedom of Contract

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Abstract

The acquisition of privately owned lands and properties for the implementation of public, developmental, and military projects constitutes one of the most significant instruments available to the government for realizing public interests; however, such measures may give rise to conflicts with individual property rights and the principle of freedom of contract. Accordingly, examining the legal frameworks governing this issue is of particular importance. The objective of the present study is to analyze and critically evaluate the Legal Bill on the Method of Purchase and Acquisition of Lands and Properties for the Implementation of Public, Developmental, and Military Programs of the Government, with emphasis on its impact on individual property rights and the principle of contractual freedom, and to propose solutions for establishing a balance between public and private interests. The study was conducted using a descriptive–analytical method based on library resources, statutory laws and regulations, judicial precedents, and comparative legal analysis. Furthermore, relevant legal principles, Islamic jurisprudential rules, and legal doctrines were employed to clarify the theoretical foundations of the research. The findings indicate that although the aforementioned legal bill was designed to facilitate the execution of public projects, in practice it has, in certain instances, resulted in restrictions on property rights and the weakening of the principle of freedom of contract. The absence of transparent procedures for determining fair compensation, the prolongation of administrative and judicial processes, deficiencies in public notification and participation, and the economic and social consequences of compulsory acquisition constitute the most significant identified challenges. The results of the research suggest that land acquisition should be treated as an exceptional measure and carried out only with full observance of legal formalities, fair compensation for damages, and respect for the principle of freedom of contract. Legislative reform, procedural transparency, and strengthened public participation can contribute to balancing public interests with private rights and promoting sustainable development.

Keywords: Land acquisition, Property rights, Freedom of contract, Development projects, Legal bill on purchase and acquisition of lands and properties.

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1. Introduction

The right to property, as one of the natural and fundamental human rights, guarantees individuals' inherent freedom, and governments are obliged at all times to provide legal protection for it. In Iran, this right enjoys a particularly elevated status, especially in light of its religious and jurisprudential foundations (Katouzian, 2007; Mohaghegh Damad, 2004). Nevertheless, social development and the expansion of urbanization have compelled governments and municipalities to acquire private property for the implementation of public, developmental, and military projects. Municipalities, as executors of urban development, may in performing their duties require the acquisition of privately owned assets, which are governed by private law rules and specific legal formalities, whereas public property merely falls under municipal administration. In cases where implementation of public projects necessitates the deprivation of individual proprietary rights, municipalities or governmental authorities proceed with acquisition in accordance with relevant statutory regulations.

Among these regulations are the Legal Bill on the Method of Purchase and Acquisition of Lands and Properties for the Implementation of Public, Developmental, and Governmental Programs enacted in 1979, the Law on Determining the Status of Properties Located within Governmental and Municipal Plans enacted in 1988, and the Law on the Valuation of Buildings, Properties, and Lands Required by Municipalities enacted in 1991, all of which establish conditions relating to acquisition procedures, payment of proprietary compensation, determination of current market value, allocation of substitute land, and limitations on possession. The legislator, in order to satisfy public needs, has granted certain privileges to governmental institutions so that, in the absence of agreement with the owner, acquisition may proceed upon payment of fair compensation. Despite the expansion of governmental intervention, the principle of dominion (taslit) remains the general rule, while compulsory acquisition constitutes an exception (Katouzian, 2011c; Tabatabaei Yazdi, 1996).

Conversely, the principle of freedom of contract—derived from the principle of autonomy of will and reflected in Article 10 of the Civil Code—guarantees individuals' freedom to conclude agreements. However, this principle may be restricted in circumstances involving conflict with economic public order (Alami & Nikmanesh, 2024; Salehi & Mohammadi Sardoo, 2017). Economic public order emerges with the aim of protecting economically vulnerable groups and directing the national economy through regulations such as tax, monetary and banking laws, import and export controls, and land acquisition regulations, thereby limiting contractual freedom. Agreements contrary to mandatory economic rules are therefore considered invalid. In Imamiyya jurisprudence, the rule concerning the obligation to preserve social order and prevent disorder provides the religious basis for governmental intervention aimed at safeguarding economic stability and preventing chaos (Ansari, 2015; Sanhouri, 1954).

Accordingly, acquisition laws must always be interpreted in light of their exceptional nature so that, while respecting private ownership, an equilibrium between public interests and individual rights is preserved. Compulsory acquisition of private land is legally and religiously permissible only in cases of necessity, absence of alternative solutions, and realization of conditions such as hardship or harm, while priority should be given to governmental lands, public domain resources, and ownerless properties (Ghasemzadeh, 2013; Mohaghegh Damad, 2004). Nevertheless, existing legislation demonstrates that governmental and public institutions do not adhere to a unified standard in exercising acquisition powers, a situation lacking coherent legal justification.

Governmental and public bodies may, where necessity exists and specific legal procedures are observed, acquire privately owned property for the implementation of public projects. Acquisition is not confined to movable property; in relation to land, the legal classification of the land must first be determined, since wasteland (mawat land) is not regarded as private property. The legal nature of acquisition, in the absence of agreement with the owner, constitutes a unilateral legal act, and even where consent formally exists, it is often regarded as an imposed contract due to the owner's compelled sale. Acquisition of private property is therefore considered one of the legal causes through which ownership is transferred to the state. If legal formalities concerning land classification are not respected or compensation is not paid, jurisdiction lies—depending on the case—with either the Administrative Justice Court or the general courts of justice (Katouzian, 2011b; Shahidi, 2009).

Population growth, urban expansion, industrial and technological advancement, and the increasing need for public services have made governmental intervention, particularly by municipalities, unavoidable. Nevertheless, given the importance of the principle of dominion and the exceptional character of acquisition, the mere needs of executive bodies cannot justify weakening

this principle. The present research therefore seeks, relying on the rule of dominion and jurisprudential principles such as hardship and prohibition of harm, to examine the foundations of ownership and land possession by executive authorities. In practice, implementation of the Legal Bill on the Method of Purchase and Acquisition of Lands and Properties for Public, Developmental, and Military Programs has revealed conflicts with certain statutory provisions, making a critical assessment of this legislation necessary.

One such conflict concerns the relationship between Article 18 of the Iran Electricity Organization Law and Articles 1 and 12 of the Legal Bill on Land Acquisition. Some scholars maintain that adoption of the Legal Bill implicitly repealed Article 18. Under Article 18, where electricity transmission lines pass through lands located outside urban boundaries, compensation relates only to constructed improvements and must not delay project implementation; the provision further refers to free passage of transmission lines across agricultural lands. Another conflict arises between the Legal Bill and Paragraph 9 of Article 50 of the 1972 Planning and Budget Law. Although Article 4 of the Civil Code establishes the rule for resolving conflicts between earlier and later statutes, judicial practice—particularly before and after interpretative opinions of the Guardian Council—has been inconsistent and occasionally contradictory, creating outcomes incompatible with established legal principles (Jafari Langroudi, 2007; Rahmani Fard, 2007). Moreover, conflicts between various provisions of the Legal Bill and the principle of contractual freedom necessitate independent examination of each instance. Clarifying the scope of application of these provisions, while supporting contractual freedom, can define the limits of governmental and municipal acquisition authority and help eliminate legislative ambiguities and conflicts. Consequently, a comprehensive analytical evaluation of the Legal Bill on land acquisition is essential for establishing a unified legal practice and resolving existing inconsistencies.

2. The Principle of Freedom of Contract and Its Scope

The principle of freedom of contract—derived from Articles 10 and 754 of the Civil Code and supported by jurisprudential doctrines such as the rule of adherence to agreements, the validity of contractual conditions, and the principle of validity and binding force of contracts—is regarded as the most important and widely applied principle in contract law (Katouzian, 2011a; Safaei, 2016; Shahidi, 2009). According to this principle, individuals are free to conclude any type of contract under any designation and may establish agreements without formalities or specific formulaic expressions, provided that no legal obstacle exists. The contract produces legal effects determined by the parties themselves unless it contradicts mandatory legal rules. On this basis, the inclusion of contractual conditions is generally valid except in exceptional circumstances where legal prohibitions intervene (Alavi Yazdi & Babazadeh, 2010; Salehi & Mohammadi Sardoo, 2017).

2.1. Concept and Characteristics of Right

Numerous meanings have been attributed to the term “right” in linguistic sources; however, these meanings ultimately converge upon a unified concept referring, in its verbal sense, to “establishment” and, in its descriptive sense, to something “established” or “fixed” (Gharavi Isfahani, 1998). From a technical legal perspective, disagreement exists among jurists regarding its definition. Some Iranian legal scholars define a right as an authority or entitlement granted by the legal system for the protection of individual interests (Katouzian, 2011c). Others describe it as a specific power or capacity attributed to a person over another person, property, or object, enabling the holder to exercise control or derive benefit from it (Mohaghegh Damad, 2004). Another view considers a right to be an authority allowing a person to perform or refrain from performing an act (Shahidi, 2009). Certain foreign jurists likewise regard a right as an interest possessing economic value protected by law (Sanhouri, 1954).

Among some jurists, a right is viewed as a weaker form or degree of ownership (Tabatabaei Yazdi, 1996). Many scholars, however, have linked rights to the concept of dominion and authority, historically describing them as actual powers, although later jurists criticized this interpretation and instead characterized rights as particular legal constructs whose effects vary according to their instances (Ansari, 2015; Gharavi Isfahani, 1998). Subsequent analyses emphasized that a right constitutes a legal and normative construct whose essential effect is the authority of disposition. This latter interpretation appears more

precise because it avoids conflating the definition of a right with its particular manifestations and offers a comprehensive concept encompassing all instances.

2.2. Characteristics of Rights

Generally, rights possess three principal characteristics: transferability, waiver, and extinction (Tabatabaei Yazdi, 1996). Another characteristic that may be inferred—though not always explicitly mentioned—is the possibility of undertaking obligations concerning the exercise or non-exercise of a right, as illustrated in discussions relating to waiver of contractual options (Ansari, 2015). Not every right necessarily contains all these characteristics; however, many jurists maintain that at least the possibility of waiver exists in most rights. Nevertheless, there is no absolute correlation between the existence of a right and its waivability, since a right may possess any of these characteristics independently. In all cases, however, rights inherently include the capacity to undertake commitments concerning their exercise or abstention, because the minimum degree of authority inherent in a right is the freedom to exercise or refrain from exercising it, and such freedom logically allows the assumption of obligations related to that choice (Katouzian, 2016; Safaei, 2016).

3. The Relationship Between Limiting Factors of the Principle of Freedom of Contract, Supplementary Rules, and the Concepts of Right and Legal Ruling

The limiting factors of the principle of freedom of contract, as well as supplementary legal rules and the conditions necessary for agreement concerning them, are examined in this section with reference to jurisprudential discussions regarding the distinction between *right* (haqq) and *legal ruling* (hukm).

3.1. Public Order

In order to properly understand and identify public order and its manifestations, careful attention must be given to its concept, position, and origin.

3.2. Concept of Public Order

Public order consists of the set of regulations governing the proper administration of affairs within a country across various domains, ensuring the establishment and continuity of social order and determining the direction of governmental action. Any individual intention expressed through contracts or unilateral legal acts that contradicts these regulations is legally ineffective (Ghasemzadeh, 2013; Katouzian, 2016).

Unlike legal scholarship, classical jurisprudential writings do not discuss the effects of public order on legal acts in a systematic manner. Nevertheless, the legal notion of public order closely corresponds to the jurisprudential concept of preservation of social order (*hefz-e nezam*). Within jurisprudential discourse, preservation of order refers to reforming social life in its various aspects and preventing disruption. The reference to the state and governmental authority in defining public order stems from the understanding that governance—headed by the legitimate authority—is responsible for safeguarding social organization and preventing disorder (Ansari, 2015).

3.3. Position of Public Order

From the standpoint of certain jurisprudential opinions, public order has been analyzed within the framework of secondary legal titles that give rise to secondary rulings. However, it may be argued that the obligation to preserve social order constitutes a primary legal ruling; other primary rulings may change when required to protect it, and such modified rulings should then be regarded as secondary rulings rather than considering preservation of order itself as secondary.

In situations where preservation of social order can be achieved only through abandoning an obligation or committing a normally prohibited act, reliance on the necessity of preserving order and its definite public interest may justify the permissibility of what would otherwise be unlawful or the suspension of an obligation (Mohaghegh Damad, 2004; Rashti

Gilani, 1981). Jurisprudential opinions in public law matters illustrate this reasoning; for example, in order to preserve social order and prevent violation of people's rights, some jurists have relaxed the requirement that a judge must necessarily be a fully qualified jurist when factual ambiguity exists.

In private law as well, certain jurists believe that the legislator's refusal to validate some transactions has been motivated by preservation of public order, such as the prohibition of usurious transactions. Likewise, some jurists have considered the stability of commercial order as justification for recognizing written contractual declarations as legally valid. Preservation of economic order and protection of the livelihood system of society may even render transactions with foreign merchants impermissible where national economic stability is threatened.

As demonstrated, public order within jurisprudence is treated as a legal ruling capable of modifying other rulings, transforming obligations into permissions or prohibitions depending on circumstances. This understanding corresponds to the view expressed by certain legal scholars that public order encompasses all binding legal rulings regulating social life (Jafari Langroudi, 2007).

4. Examination of the Legal Bill on the Method of Purchase and Acquisition of Lands

Population growth and urban expansion inevitably necessitate the development of highways and urban infrastructure. However, numerous legal difficulties arise in implementing development projects, the most significant being determination of the legal status of lands situated within project boundaries. Various laws and regulations have been enacted to address this issue.

A mere administrative directive ordering acquisition of private property is insufficient to justify interference with citizens' ownership rights and lacks legal validity. The project itself must be formally designed and approved by the highest executive authority. According to Article 1 of the Legal Bill on the Method of Purchase and Acquisition of Lands enacted in 1979, one of the essential conditions for compulsory acquisition is the genuine need of executive authorities for property owned by private individuals. The wording of the legislation indicates that confirmation by the highest executive authority is required to establish the necessity of implementing the project. In municipal contexts, this authority is the mayor, whereas for other institutions reference must be made to their statutory charters. The following sections examine additional regulations adopted in this field.

4.1. Urban Renewal and Development Law (1968)

The Urban Renewal and Development Law enacted in 1968 aimed to reform urban structures, meet public needs, establish parks and recreational spaces, reconstruct neighborhoods, develop communication routes, and promote balanced urban growth consistent with approved urban plans. Under Articles 32 and 33 of this law, municipalities were authorized to take possession of lands and properties necessary for public needs upon payment of compensation to their owners. In practice, portions of this legislation replaced the Street Development Law enacted in 1941, which was consequently repealed.

4.2. Legal Bill on the Purchase and Acquisition of Lands and Properties for Governmental Public Programs

Article 1 of the Legal Bill on the Purchase and Acquisition of Lands and Properties for Public Programs provides that whenever ministries, governmental institutions, state-affiliated companies, municipalities, banks, or similar entities require lands, buildings, installations, or related property rights belonging to natural or legal persons for public, developmental, or military programs—and where the required funding has been secured—the executive body may acquire the property directly or through an authorized organization in accordance with the procedures specified in the law.

Under this legal bill, financial resources for the project must be secured prior to acquisition, and pursuant to Article 2, implementation necessity must be approved by the highest executive authority of the acquiring body.

4.3. Law on Determining the Status of Properties Located in Governmental and Municipal Plans (1988)

In 1988, the Law on Determining the Status of Properties Located in Governmental and Municipal Plans was enacted. According to its single article, all ministries, governmental institutions, affiliated companies, and municipalities are required to act under the following conditions:

1. The necessity of implementing the public or development project must be approved and publicly announced by the minister or highest executive authority in accordance with legal standards.
2. The project must concern legally owned private lands or properties located within urban boundaries, towns, or protected zones.
3. Following official notification, authorities must complete the definitive transaction, transfer of title, and payment of compensation or substitute property within a maximum period of eighteen months.

This law was adopted to resolve the uncertainty faced by property owners whose lands were included within approved urban plans and who were unable to exercise ownership rights such as sale or construction.

4.4. Law on Valuation of Buildings, Properties, and Lands Required by Municipalities (2001)

This statute applies exclusively to municipalities; other governmental bodies continue to rely on the Legal Bill governing land acquisition. Under its single article, whenever municipal laws authorize acquisition of privately owned buildings, properties, or lands and no agreement is reached between the municipality and the owner, valuation must be conducted based on current market price and paid accordingly. In the absence of agreement, the competent court where the property is located appoints an expert to determine value.

To provide substitute compensation for legally owned buildings and lands transferred to municipalities, the government is obliged to allocate ten percent of transferable lands and residential units to municipalities at cost price so that, following agreement between owners and municipalities, these assets may be delivered as substitute property.

5. Instances Leading to the Restriction of Proprietary Rights

A. Properties Located Adjacent (Laterally) to the Project Area: In the course of implementing a project, the price of properties adjacent or close to the project's operational boundary—and naturally the value of the proprietary rights attached to such properties—may decline. The question arises as to whether the legislator has provided compensation for the resulting loss. Given that municipalities may implement projects only after such plans have been approved by legally competent authorities, it is not possible—under the fault-based liability principle—to demand compensation from municipalities for the constraints and restrictions that arise, because the projects have been approved by the competent legal authorities and, in reality, those authorities are the source of the restriction. In other words, the legislator has not treated such measures as compensable "restrictions," such that the damage arising therefrom would be recoverable.

B. Properties Located Within the Project Buffer Zone (Harim): In certain development projects, in addition to the project's operational boundary, a further area may be formally designated by law as a protective buffer zone (*harim*). This zone is determined to enable better use of the project's operational area. In such cases, although the municipality, as executor of the public plan, creates restrictions that reduce the value of proprietary rights, it bears no liability; just as the law creates rights, it may also restrict them in favor of others or in favor of the public at large.

6. Instances Leading to the Deprivation of Proprietary Rights

Implementation of municipal development projects in many cases results in deprivation of individuals' proprietary rights, because in some situations such projects are not feasible without depriving owners of their rights. Where municipal execution of plans entails deprivation of proprietary rights (ownership), the municipality is obliged to pay compensation. However, under certain special statutes, deprivation of proprietary rights for the purpose of implementing a plan has been envisaged as occurring gratuitously and without payment of any substitute consideration (Paragraph 9 of Article 50 of the Planning and Budget Law) (Katouzian, 2016).

6.1. Compensation Through Agreement on Price

The municipality and holders of proprietary rights may reach agreement and mutual consent regarding the price and value of rights located within a municipal plan. Proprietary-rights holders are ordinarily not subject to constraints in agreeing upon a price, and the municipality is, in principle, free to determine a price and negotiate with the rights-holder; however, statutory limitations exist on price agreements under applicable laws.

6.2. Compensation Through Agreement on Transfer

Pursuant to Article 8 of the Legal Bill on the Method of Purchase and Acquisition of Lands, transfer and conveyance is treated as being based on agreement; accordingly, the agreement between the executive body and the rights-holder can be achieved without the need for intervention by other authorities, and the law has not provided an alternative method for concluding the contract. Consequently, if—despite agreement on price—the rights-holder refuses to transfer the right to the executive authority, the transfer will be carried out non-consensually. Moreover, in conducting the transaction for transfer of proprietary rights, the municipality is not required to comply with the Municipal Transactions By-Law.

6.3. Compensation Where No Agreement on Price Is Reached

Article 4 of the Legal Bill on the Method of Purchase and Acquisition of Lands and Properties provides: "Where no agreement is reached between the executive body and the owner regarding determination of the fair price of lands, buildings, installations, related rights, and damages incurred, the fair price shall be determined by a panel composed of three official experts of the judiciary." (Katouzian, 2016).

7. Examination of the Case Where No Agreement on Transfer Is Reached

A necessary preliminary step for a non-consensual transfer of proprietary rights to the municipality is notification to the owner. This means that the municipality must first inform the proprietary-rights holder that their property lies within the project's operational boundary and request that they attend for negotiations concerning transfer to the municipality. Without completion of these formalities, compulsory acquisition of such rights is not legally possible.

Property ownership is the most prominent right protected under regulations governing the implementation of public plans by public bodies, including municipalities. The legislator, in various provisions of the Legal Bill on the Method of Purchase and Acquisition of Lands, has treated ownership rights as worthy of respect during implementation of public projects and has regarded the rights-holder as entitled to legal protection and to receive compensation and damages for their property. Accordingly, in defining "proprietary rights," it should be stated: first, these rights belong to individuals and, during implementation of municipal public projects, constitute the primary object of attention; and second, these rights have a financial and material character—in the sense that individuals are willing to give or receive consideration in exchange for them. Municipal public projects are those which, first, are designed and implemented in the course of performing assigned municipal duties in pursuit of diverse objectives. Third, these plans and programs are implemented by a specific institution known as the municipality. A "public project" is the set of specified operations and services carried out—based on justificatory, technical, economic, or social studies conducted by the executive body—within a defined period and with allocated funding to realize the goals of a particular development program.

8. The Social Concept of Contract Formation

Before examining the foregoing subject in light of applicable laws and regulations, it is necessary to briefly address the concept of contract—particularly its social concept. It is clear that, in order to identify the concept of contract, it is not sufficient merely to know that it falls within the category of legal acts and that its formation requires concurrence of two wills. This is necessary, but insufficient. The definition of contract must be compared with the orientations of sociological scholars and proponents of individual freedom so that a comprehensive and exclusive definition can be achieved. The key question here is: to what extent does the expansion of mandatory rules—under which proprietary rights and freedom of contract are restricted

in various ways and parties may be compelled to transact—remain compatible with the concept of contract itself? Moreover, with the broad increase in the number of contracts and the evolving role of autonomy of will and the transformation the concept of contract has undergone in contemporary law, identifying the concept of contract becomes difficult (Katouzian, 2011c).

"A contract is the cooperation of the reciprocal wills of two or more persons in creating a legal relationship." (Shahidi, 2009). What can be understood from this definition is that, within the legal system, agreement and cooperation of two wills constitute the principal element of the contract; however, the meaning of "agreement" varies depending on the adopted theory regarding the function of contract and the basis of the binding force arising from it.

8.1. Legal Nature of Acquisition

Where agreement exists concerning the price, and considering that laws governing acquisition and possession generally recognize agreement and mutual consent regarding the transaction and determination of compensation for the required property as the primary rule, the legal nature of the act shall be regarded as a contract whenever the owner or owners and the acquiring executive authority reach agreement regarding both the transaction and the amount of compensation or damages. Pursuant to Article 1 of the Law on the Purchase of Leased Educational Facilities—which allows acquisition exclusively through agreement—the legal nature of such action clearly constitutes a contract.

However, in many statutes, without expressly referring to agreement or consent concerning the transaction itself, the law merely addresses the determination of the price of lands, properties, and other proprietary rights, while implicitly assuming that agreement between the parties constitutes the governing principle. Under various legislative provisions, the owner is legally obliged to transfer the property to the state or municipalities. If the owner refuses, the executive authority acquires and takes possession of the property through legally prescribed mechanisms. Nevertheless, since agreement usually occurs regarding valuation and price determination, the legal nature of such governmental or municipal action may best be described as an imposed contract.

In such situations, the party wishing to conclude the contract must either completely refrain from entering the transaction or accept all predetermined conditions and effects without reservation, effectively adhering to a framework already prepared independently by another party. For this reason, this category of agreements is commonly referred to as adhesion contracts, such as contracts concluded with public service institutions for water, electricity, gas, telephone, transportation services, or purchases from large commercial establishments where prices are predetermined. Some scholars have also characterized acquisition and possession of land for public needs as a form of administrative contract (Ansari, 2015).

8.2. Analysis of Agreement

Every agreement within contractual relations results from the interaction of two opposing yet compatible elements. They are opposing because each party seeks its own benefit, yet compatible because their interaction ultimately creates a shared legal objective—the formation of a legal relationship—even though each party achieves its own, potentially conflicting, interests through that relationship. These two elements are known as **offer** and **acceptance** (Katouzian, 2011c).

Agreement emerges from the meeting of these two opposing elements. A question therefore arises: does the governmental or municipal announcement concerning acquisition and possession of private property constitute an offer? The answer appears negative. Such an announcement cannot be regarded as an offer because it lacks the essential characteristics of an offer. A valid offer must be complete, definite, decisive, and addressed specifically to a contracting party (Katouzian, 2011c). Public acquisition notices generally lack these attributes and therefore do not qualify as contractual offers.

8.3. Theory of Unilateral Legal Act (Iqāʿ)

Because certain laws and regulations permit acquisition of private property without regard to the owner's intention or consent, it becomes necessary to examine the legal nature of such acts. As previously noted, acquisition accompanied by agreement on price or compensation has been described as an imposed contract. By contrast, the concept of *iqāʿ* (unilateral legal act) provides another analytical framework.

Linguistically, *iqāʿ* signifies realization or bringing something into existence. In legal terminology, it refers to a unilateral legal institution recognized by law that comes into existence through the declaratory intention of the acting party and produces legal effects independently of another party's consent (Shahidi, 2009). Accordingly, where acquisition occurs solely by virtue of legal authority without reliance on mutual consent, its legal nature may be classified as a unilateral legal act rather than a contract.

9. Existing Challenges in Preserving Freedom of Contract

Commentators on the Civil Code and legal scholars, when explaining limitations on contractual freedom, have primarily focused on prohibitions against entering into certain transactions or obligations compelling parties to transact. However, it appears that a broader range of limitations arises at the stage of contract formation itself, particularly regarding the form and manner in which contracts are concluded and the extent to which formation procedures influence contractual validity. Any factor affecting formation beyond the will of the parties should therefore be considered a limitation on contractual freedom.

Although Articles 10, 190, and 191 of the Civil Code demonstrate the legislator's departure from strict formalism and acceptance of party autonomy as the essential element of contract formation, in exceptional cases the will of the parties is restricted through additional requirements such as delivery (*qabz*), mandatory verbal formulae, compulsory use of tendering or auction procedures, or registration in official notarial offices. In these instances, protection of public order has led the legislator to depart from the doctrine of autonomy of will and make contract formation dependent upon specific formalities (Katouzian, 2011a; Safaei, 2016).

9.1. Limitations on the Principle of Autonomy of Will Regarding Form and Method of Contract Formation

Although, pursuant to Article 190 of the Civil Code, the meeting of two wills through offer and acceptance is generally sufficient for formation of a contract, examination of statutory provisions reveals contracts that require additional elements at the formation stage. These may include delivery of the subject matter, registration in the land registry, completion of transactions through auction or tender procedures, written documentation, or use of specific wording.

In such contracts, the legislator has effectively moved away from the doctrine of will-based contractual formation and toward legal formalism and increased governmental intervention. Preservation of public order and protection of public interests and assets have compelled the legislator to restrict the operation of autonomy of will and condition contract formation upon compliance with specific procedural requirements. Comparable intervention exists in other legal systems. For example, English law classifies contracts into four categories according to form: contracts requiring execution by deed, contracts required to be in writing, contracts requiring written evidence, and contracts that may be concluded in any form (Alavi Yazdi & Babazadeh, 2010).

Accordingly, contracts may be analyzed from the perspective of form and formation procedure, demonstrating how modern legal systems increasingly balance contractual freedom with regulatory oversight and protection of collective interests.

9.2. Written Form Requirement of Contracts

Note to Article 140 of the Labor Law, concerning collective labor agreements, provides for the necessity of written form. The note stipulates that where collective labor negotiations lead to the conclusion of a collective labor agreement, the text of the agreement must be prepared in three copies and signed by the parties.

Article 2 of the Insurance Law enacted in 1937 provides that the insurance contract and its conditions must be embodied in a written instrument known as an insurance policy.

In certain jurisdictions such as France, drafting either an official or ordinary written document has been made mandatory in specific contracts—for example, the assignment of patent licenses or publishing agreements—and contracts lacking such written form have been declared void. These formal requirements were established to safeguard the rights of both contracting parties and third parties. In some legal systems, compliance with special formalities, including written form, constitutes a condition for the validity of declarations of intent. For instance, commercial law characterizes negotiable instruments as written

documents, and company formation is made conditional upon preparation of articles of association. Similar emphases on written declarations appear in many legal systems worldwide (Alavi Yazdi & Babazadeh, 2010).

International instruments likewise sometimes emphasize the necessity of written declarations or written notices. For example, international transport conventions encourage the use of simplified documentary procedures and written instruments in transportation matters.

From Articles 3, 5, 23, and 24 of the Pre-Sale of Buildings Law, the requirement of written and formal contracts may also be inferred. Although the legislator has not explicitly determined the sanction for non-compliance, judicial practice has not yet provided a definitive interpretation. Consequently, some scholars consider violation of these formalities to result in invalidity of the contract, whereas others argue that non-observance prevents formation of a legally recognized pre-sale contract under the special statute. Nevertheless, this does not mean that no contractual relationship arises between the pre-seller and pre-buyer; rather, failure to comply with formalities removes the agreement from the scope of the special law and subjects it to the general rules of civil law, thereby depriving the parties—especially the pre-buyer—of statutory protections.

A comparable legislative approach exists in commercial law concerning bills of exchange: failure to satisfy formal requirements does not eliminate the document entirely but removes it from the category of commercial instruments and subjects it to general civil law rules. Similarly, under the 1997 Law on Landlord and Tenant Relations, ordinary lease agreements must be prepared in two copies, signed by the parties, and certified by two witnesses. Legal doctrine and judicial practice have concluded that failure to comply with these formalities excludes the lease from the scope of the special statute and subjects it to the Civil Code. Some jurists therefore consider the insurance contract to be a formal contract whose validity depends on written documentation (Safaei, 2016).

In French law, however, despite the existence of provisions similar to Article 2 of the Iranian Insurance Law, doctrinal opinion and judicial precedent recognize the validity of oral agreement and do not regard written form as a condition for contractual validity. French jurisprudence has consistently held that the insurance contract is a consensual contract concluded upon offer and acceptance, and that written form serves merely evidentiary purposes rather than constituting a condition of validity (Babaei, 2014).

9.3. Obstacles and Challenges

In every contract, will and intention play a fundamental role; nevertheless, limitations exist on autonomy of will that apply to both private and governmental contracts. Restrictions in private contracts generally arise from law, public order, and morality, whereas governmental contracts are additionally subject to procedural requirements such as tendering and auction procedures, technical qualifications, and selection of contracting parties.

When parties determine the governing law of their contract, the chosen law may itself decline jurisdiction and designate another legal system as applicable. The principle of contractual freedom is founded upon the idea that individuals are born free and may freely conclude bilateral or multilateral agreements; no limitation may be imposed upon their will except those arising from law or their own consent. Proponents of unilateral legal acts maintain that a person may, through individual will alone, create obligations for himself. However, some jurists argue that this phenomenon should not be classified strictly as contractual freedom but rather as an expression of the broader principle of autonomy of will, which extends beyond the contractual sphere (Salehi & Mohammadi Sardoo, 2017).

9.4. Rules Limiting Freedom of Contract in Competition Law

Under the principle of contractual freedom—supported by Article 10 of the Civil Code—individuals are free regarding contract formation, choice of conditions, contractual type, and selection of contracting party, provided that mandatory legal rules are respected. Nevertheless, the Law on Implementation of the General Policies of Article 44 of the Constitution, which constitutes the principal source of competition law in Iran, has expanded limitations on contractual freedom by imposing prohibitions in multiple areas.

Unrestricted reliance on contractual freedom within monopolistic markets may enable dominant firms to impose unilateral conditions upon consumers, effectively forcing acceptance of unfair terms. Some scholars have even compared such situations

to authoritarian rulemaking. Consequently, in order to preserve economic public order, the legislator must first prevent agreements that create monopolistic market power under the guise of contractual freedom and, second, prevent abuse of dominance through imposition of unfair contractual conditions. Limiting contractual freedom therefore becomes unavoidable (Sadeghi, 2011; Van & Bellis, 2005).

Article 44 of the aforementioned legislation prohibits anti-competitive agreements. The purpose of this provision is to combat arrangements concluded among producers or suppliers seeking excessive profit through elimination of competitive market effects. Agreements relating to price fixing, output limitation, market division, restriction of market access, or barriers to entry may all disrupt competition and harm consumers and other producers; accordingly, the legislator has prohibited such agreements (Rashvand Boukani, 2011).

The prohibition reflects influences comparable to Article 81 of the Treaty establishing the European Community and Section 1 of the U.S. Sherman Act, both of which prohibit agreements or decisions restricting competition. Anti-competitive agreements encompass all arrangements among economic actors that, by object or effect, conflict with competitive market structure and lead to restriction, distortion, or prevention of competition. It should not be assumed, however, that all such agreements are inherently anti-competitive; in some cases they are necessary for commercial activity. Hence, prohibition depends upon demonstrable distortion of competition rather than mere existence of coordination.

Agreement constitutes a broader concept than contract. Any concurrence of wills expressed within a legally recognizable framework becomes a contract, whereas agreement refers more generally to the meeting of two or more wills concerning a common subject irrespective of form or binding force (Katouzian, 2011c). For this reason, the legislator, recognizing the importance of competition policy, has prohibited all forms of coordination so that parties cannot evade regulation by avoiding formal contractual structures. Actions capable of constituting anti-competitive agreements include unilateral practices, coordinated conduct, or collective decisions by associations of undertakings. Even exchange of information that shapes future market behavior may be treated as an agreement where firms align conduct based upon shared information (Rashvand Boukani, 2011; Van & Bellis, 2005).

9.5. The Role of the State and the Legislator

From its earliest emergence and throughout most historical periods, the contract has been regarded as belonging to the sphere of private law. Because the state—equipped with the necessary mechanisms and sovereign powers—did not exist, and because this institution was largely left in the hands of the people, most ancient and modern Western jurists considered contract a matter of private law. The question of whether contract is an institution of private law or public law has also been debated and disputed among French jurists. According to some, such as Léon Duguit, contract is situated among the foundational institutions of private law; accordingly, certain writers have argued that the private character of contract is immutable. Adherents of this view maintain that there is no difference in nature between public-law contracts and private-law contracts, and that both share the same characteristics, effects, and features. French judges, too, have generally not favored treating the administrative contract as an autonomous concept independent from private-law contracts. This view resembles the position advanced within the common-law system.

Analytically, with respect to the dominance of this view in contract law, it may be argued that contract itself is not an institution that changes: in all situations, offer and acceptance exist between the parties to this relationship. Thus, the contractual character remains intact; what changes relates to the attributes and features of contracts, one being described as “private” and another as “public.” Because public and administrative contract law is not fully independent from the system of private contract law, it cannot be claimed that the public and administrative legal order is self-sufficient without private contracts. Even where public-law contract rules are silent, if the objectives of the administration are secured, one may resort to the principles and rules governing private-law contracts. At the same time, the differences between the two domains have grown to such an extent that it is possible to speak of the dominance of distinct rules over each legal system and to argue for the independence of each (Alavi Yazdi & Babazadeh, 2010).

10. The Public-Law Character of Contract Under the Influence of the State's Role

The most significant transformation in the public-law governance of contracts relates to ownership—an institution that, in both public law and private law, has undergone profound changes due to the mutual influence each exerts upon the other. In Western law, ownership affected the institution of contract and brought about a transformation such that it moved from a public form toward a more privatized form. Ownership, under the influence of feudalism, required transformation, and transformation in this field necessitated transformation in contract law. The roots of this ownership regime can be traced to the feudalism prevailing in Western countries. In medieval Europe, several hundred feudal lords governed and claimed ownership of all mineral resources within their territories. Over centuries, this right was transferred to kings and governing states. From a doctrinal perspective, this system is considered more justifiable than private ownership, because it appears more rational to treat the state or sovereignty as the owner of something that private individuals may not even be aware exists. In a major social transformation of contract—namely, the expansion of the petty bourgeoisie and the decline of the bourgeoisie—support for private ownership increased as the foundation of the capitalist system. Yet, unlike the past, it is widely accepted that state intervention is a prerequisite for modern social and economic organization through transformation of the legal system (Rahmani Fard, 2007). In practice, this legal system also has advantages, because it allows the state—responsible for defending the legal interests of society—to determine the conditions for exploitation of mineral resources as it deems appropriate (Amani, 2010).

It should be clarified, however, that in certain countries where feudalism did not historically take root, this mode of thinking was nonetheless followed in an extreme form during certain periods. Thus, state interference in individuals' affairs becomes easier to justify on the basis of sovereign authority. In this context, the state may nationalize certain activities in this sphere or place them under its exclusive control. Other examples of this system can be found; Mexico, Chile, Brazil, and Argentina are among such cases. It should be noted that this matter is more closely related to principles than to practical realities, because even where state monopolies exist, assistance from the private sector has always been present.

11. The Transformation of Contract From a Private-Law System Toward a Public-Law System

That contract is an institution that emerged within private law is certain and self-evident. Historical documents, reason, logic, and the structural weakness of the state all indicate this. The point, however, is that this concept did not remain in its former shape with the emergence of the modern state. In today's world, countless social and economic events have produced changes in the form and nature of various kinds of contracts, and these changes have continued to such an extent that, in some cases, one may speak of a transformation in the contract itself. In this discussion, reference is first made to the emergence of contract in private law, and then its course of development is examined in the light of the modern state. In response to the question whether contract belongs to private law or public law, it can be stated explicitly that the emergence and growth of this concept occurred in private law. Indeed, based on important historical records, one may point to numerous written or oral contracts among individuals in which the state played no role in their formation or evolution. The reason is, first, that the state in the true sense of the term—equipped with the mechanisms that are today necessary for the creation and continuity of a state—did not exist; and second, even if an institution resembling the state existed, there were serious doubts about its capacity to exercise authority over the private sphere. In reality, state sovereignty was weak and insufficient to supervise and organize even all sectors defined by itself, let alone private affairs among people. Thus, the contract—considered before the eighteenth century AD to be a complete and purely private-law institution—entered the individual–state relationship through the ideas advanced by the principal founders of liberalism. The view introduced under the title of the "social contract" was itself a major transformation in the concept of contract. Although it did not create a distinct legal system and was limited to an important public-law theory or political theory, the subsequent transformation of contract law and the "public-law clothing" placed upon contracts can be regarded as a major transformation within the contract-law system itself (Talebian, 2024).

12. Clarifying Functions and Policies

Contractual freedom signifies citizens' free and voluntary choice, granting them the right to conclude contracts to regulate their economic relations and commercial dealings within society, and supporting their freedom of will through the rule of law

so that this innate and natural right is not impaired. The foundations of contractual freedom in Iranian and French law possess rich and valuable content that increasingly requires legal protection for each citizen. Qur'anic verses, as well as Articles 10 and 1134 of the Iranian and French Civil Codes, affirm this innate and natural principle. Like many individual rights and freedoms that secure a dignified social life for persons in their mutual social relations, obstacles may be applied to ensure the proper functioning of individuals' economic and commercial affairs in relation to the principle of contractual freedom, and instruments such as public order, morality, and the law have, in certain cases, restricted this principle. Political governance, through the prominent functioning of each of the legislative, executive, and judicial branches, provides citizens with reassurance—regarding contractual freedom—that it will legally protect this principle, because, by virtue of its social contract with citizens, it is the guardian of the rule of law (Alami & Nikmanesh, 2024). Contractual freedom is one of the fundamental legal principles that plays a vital role in securing economic and social relations. This principle allows individuals to freely agree with one another and determine the terms and conditions of their contracts. However, contractual freedom is not without limits and must always operate within the framework of legal rules and regulations. Contractual freedom means that individuals may choose their contracting parties, determine contractual terms and conditions, and conclude various types of contracts. This principle is based on respect for individual autonomy and free will and is recognized as one of the basic principles of private law. Contractual freedom enables individuals to conclude different contracts according to their needs and preferences and to enjoy the rights and obligations arising from those contracts (Ebrahimi & Shirjian, 2014).

13. Conclusion

The principle of freedom of contract constitutes one of the fundamental pillars of private law, enabling individuals to determine their legal relationships through free will. However, implementation of public, developmental, and military projects by the state may require compulsory acquisition of private lands and properties, a process that can restrict both contractual freedom and individual proprietary rights. This study examined the Legal Bill on the Method of Purchase and Acquisition of Lands and Properties in Iran through a critical analytical approach, focusing on challenges arising at the intersection of public interests, contractual freedom, and property rights.

Although the legal bill establishes regulatory mechanisms for acquisition—including determination of fair value, administrative and judicial procedures, and protection of owners' rights—analysis demonstrates that these safeguards are not always fully realized in practice. One of the most significant challenges concerns determination of fair compensation. Due to the absence of transparent valuation procedures, compensation is sometimes paid at a level below the real market value of the property, thereby undermining the principle of justice in compensation. Furthermore, the complexity and prolonged nature of administrative and judicial procedures impose additional financial and psychological burdens on property owners.

Another important issue relates to insufficient public awareness and limited participation of affected owners. In many cases, property owners lack adequate knowledge of their legal rights and obligations and therefore play only a minimal role in decision-making processes. Compulsory acquisition also produces broader economic and social consequences beyond its legal dimensions, including reduction of household income, forced displacement, and disruption of local community structures. These impacts demonstrate that land acquisition policies must be evaluated not solely from a legal perspective but also through social and economic considerations.

Comparative experiences indicate that many countries have achieved a more balanced relationship between public interests and private property rights by establishing transparent valuation mechanisms, ensuring fair compensation, and strengthening public participation. Drawing upon such experiences may assist in improving domestic regulations and enhancing legitimacy and efficiency in acquisition procedures.

The findings of this research confirm that while the Legal Bill on the Method of Purchase and Acquisition of Lands was enacted to facilitate implementation of public projects, reform remains necessary. Greater transparency in procedures, effective guarantees for fair compensation, improvement of administrative and judicial processes, and expansion of public information and participation mechanisms are essential for protecting property rights and preserving the principle of freedom of contract.

Overall, the study demonstrates that compulsory acquisition, despite its necessity for public development, must remain exceptional in nature and carefully regulated. Legal reform aimed at procedural clarity, equitable compensation, institutional accountability, and participatory governance can strengthen protection of proprietary rights while maintaining the effectiveness

of public development policies. Achieving such balance will contribute to safeguarding contractual freedom, reinforcing public trust in governmental action, and promoting sustainable and balanced development.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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