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# Examination of the Foundations of the State's Authority in Expropriating Land and Real Property and the Method of Compensating Damages

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## ABSTRACT

The concept, authority, and subject matter of compulsory acquisition in the legal systems of Iran and England exhibit substantial similarities, with no significant legal divergence. Although the two legal systems employ different terminologies and doctrinal vocabularies, their underlying legal concepts and the nature of the relevant legal regimes remain analogous. With respect to the authority responsible for compulsory acquisition in English law, a broad approach is adopted that even includes private bodies performing public functions, such as public-sector contractors or certain professional associations and nongovernmental organizations with a private nature that nevertheless undertake public responsibilities. In contrast, in Iran, the authority and organization empowered to undertake compulsory acquisition are limited to executive bodies, which are predominantly subordinate to the executive branch. Regarding the statutory process of compulsory acquisition, the procedure in England includes the issuance of a compulsory purchase order, notification and publication, confirmation of the compulsory purchase order, and ultimately the acquisition of the land. However, in Iranian law, the process consists of the existence of an approved development plan, the securing of financial resources, and the formal announcement of the plan through public notice and service upon the owner, followed by registration formalities. Based on the sources and documentary evidence presented, this study employs a descriptive-analytical method, and data collection has been conducted through library research. The present article seeks to answer the central question of what differences exist between the legal systems of Iran and England regarding the authority and procedure of compulsory acquisition. In England, the process involves the issuance of a compulsory purchase order, notification and publication, and confirmation of the order. In contrast, in Iran, the process requires an approved plan, the securing of financial credit, and the formal announcement of the plan through public notice, service upon the owner, and registration procedures. Under the Iranian legal system, the initiation of expropriation measures depends on the existence of an approved plan, the availability of financial resources, the necessity of implementing the plan, and its formal announcement. Unlike English law, however, citizens in Iran do not participate in the approval process or in determining the content of such plans, and no pre-approval objection mechanism has been provided for challenging the plan before its final adoption.

**Keywords:** *State authority, expropriation, land, real property, compensation for damages*

## Introduction

One of the legal innovations in English law, which can be used to protect individual rights, is the possibility of awarding compensation even for land and real property that have not been expropriated. The first situation concerns land subdivision: compensation is not limited to the compulsory acquisition of land and buildings. Rather, when a



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parcel of land is subdivided and the remaining portion loses value or its value decreases, owners may claim compensation. For example, if a railway passes through a parking lot in such a way that vehicles can no longer access part of the lot, rendering that portion functionally unusable and less valuable, compensation is provided in such circumstances. Another situation concerns injurious affection, based on which compensation may be claimed for properties situated adjacent to the construction or use of a public project, where the value of the property decreases due to construction activities, the manner of operation of the public project, excessive noise, vibration, fumes, unpleasant odors, or other factors arising from the project.

Moreover, English legislation governing compensation for nuisance and disturbance, reinvestment costs for acquiring substitute property, and mitigation of adverse effects resulting from development activities after expropriation—such as noise insulation and advanced landscaping—is far more developed than the equivalent provisions in Iran. Iranian law not only lacks explicit regulations in these areas but also suffers from deficiencies in the mechanisms established for resolving disputes between the administrative authority and property owners. The legislature has not fully addressed proprietary rights nor enacted the necessary rules for compensating individuals for resulting losses. In other words, the available statutory solutions are confined to valuation of property included within the project and its financial aspects, while other issues—such as compensation for properties adjacent to the project—remain unaddressed.

At present, for compensation claims, in addition to the general principles of civil liability—such as Articles 1 and 11 of the Civil Liability Act of 1959—and based on risk theories, equality before the law, and the principle of legitimate expectation, it is possible, though difficult, to impose liability on the State and municipalities to compensate such losses. Nevertheless, judicial practice has tended to favor the immunity of administrative authorities from payment of compensation. In any case, it appears that current legislation requires reform both regarding public participation in approving development plans and regarding compensation for loss of value to properties adjacent to such plans. It is suggested that national legislation incorporate mechanisms for public participation and citizen involvement, and that objections to proposed plans be permitted before approval by the Commission under Article 5 in order to allow modification or amendment of such plans.

Furthermore, the legislature should enact provisions, based on analogy to Clause (z) of Article 44 of the Fair Water Distribution Act—which states: “If, as a result of implementing the plan, damage is incurred without the necessity of possession or purchase, the damage shall, in the absence of agreement, be compensated according to the judgment of the competent court”—so that in all cases where loss arises as an incidental result of implementing a public project, injured parties may rely on statutory grounds to claim compensation.

The process of compulsory acquisition in English and Iranian law is carried out pursuant to specific procedural rules that may be subject to judicial challenge. One such form of challenge is judicial review, which falls within the scope of superior judicial oversight and is conducted to ensure that all procedural and substantive elements necessary for lawful compulsory acquisition have been met. The doctrinal foundations of judicial review in English law are not unanimously agreed upon among theorists; three views have been proposed, of which the hybrid common-law approach combined with the “ultra vires” doctrine enjoys the greatest acceptance. In contrast, in Iran, despite the efforts of judicial practice, a statutory-interpretive approach continues to govern this subject.

English case law has taken significant steps in expanding this theory within the field of compulsory purchase and has identified various grounds for judicial review, including substantive and procedural ultra vires, violation of human rights norms, breach of legitimate expectation, denial of natural justice, disproportionality, and unreasonableness.

The comparative findings of this study in the two legal systems of Iran and England show that English judicial practice, relying on general principles and rules applicable to private legal persons, analyzes compulsory acquisition of private land without drawing the rigid distinction between public and private law domains observed by some theorists and judicial decisions in Iran.

The expression of concepts such as statutory contract, quasi-contract, and presumed sale indicates that English courts analyze compulsory acquisition by applying the structural logic of private relations—particularly contract law—to assess the nature and effects of the act. Accordingly, although this approach views the act of expropriation as an exercise of authority granted by the legislature to the acquiring body, the reliance on concepts such as conditional contracts, estoppel, and even presumed consent of the parties regarding compensation determined by the court demonstrates the English judiciary's adherence to principles governing that country's administrative law system.

## Literature Review

1. Abbasi and colleagues (2022) examined “the evolution of legislation on the appropriation of land by the State before and after the Islamic Revolution, with a brief comparative view of English and French law.” Their study notes that contemporary societal development, population growth, the interaction between public and private interests, the State's transition from a single-purpose authority to a welfare and democratic State, and increased emphasis on collective welfare in democratic systems have heightened the importance of compulsory acquisition as a means to remedy legislative gaps. The research therefore seeks to examine the legislative evolution before and after the Revolution, following conceptual analysis of the subject and historical study of the relevant enactments.
2. Alizadeh and Parsa-pour (2021) analyzed “the place of public and private law doctrines in determining the nature of compulsory acquisition and its consequences in English and Iranian judicial practice.” Their study found that in English law, the nature of compulsory acquisition is conceptualized within private law, with doctrines of statutory contract, quasi-contract, and presumed sale applied. In Iranian law, some scholars analyze the issue within public law, treating it as an act of sovereignty or a legal act (unilateral act or administrative contract), while others adopt a private-law approach and regard it as a sale or private contract.
3. Akbari and colleagues (2021) explored “State civil liability in the process of national land acquisition.” After analyzing governmental acts in determining national lands and reviewing various judgments, they concluded that in cases of nationalizing exempt lands, the State's civil liability is undeniable.
4. Adib and colleagues (2020) investigated “limitations on private ownership in implementing public projects and compensation for resulting damages in Iranian and English law.” The study explains that social necessity enables the legislature to authorize administrative bodies, acting through public power and in pursuit of collective interests, to limit or even deprive private ownership. However, this authority is not absolute; administrative bodies may acquire land only upon payment of compensation and in compliance with statutory procedures. In Iran, the commencement of expropriation measures depends on an approved plan, financial credit, necessity of execution, and official announcement of the plan. Unlike English law, citizens have no role in approving plans or determining their content, and no pre-approval objection mechanism exists. Additionally, in English law, compensation is not limited to land directly acquired;

compensation may be mandatory even where no land is taken, but the implementation or operation of public services causes damage to adjacent properties.

## Research Methodology

The present study employs a descriptive-analytical research method. Data and information were collected through library research by consulting specialized Persian and foreign legal texts and journals to establish the theoretical foundations of the study. This included examining types of existing laws and regulations and conducting library review and note-taking from relevant books and articles.

## Theoretical Foundations of the State's Authority to Expropriate Land and Real Property

One of the most important issues related to the expropriation of land and real property concerns the theoretical foundations and normative bases of the State's authority to exercise such a power. The significance of this discussion lies in the fact that expropriation of land and real property places the State's action in direct tension with private interests in society and appears to conflict with the civil dimension of social life, especially the principle of respect for private ownership (1).

Some scholars ground this authority in the implied consent of owners and citizens to such interventions. According to this view, individuals who live in a city implicitly accept that, should the city one day need their land or property, they will transfer it to the municipal authorities, and that this is one of the preconditions of living in an urban environment (2).

Nevertheless, irrespective of this implied-consent rationale, legal theorists have identified several primary theoretical bases for the State's authority to deprive individuals of private ownership, including the following.

### *Public Order*

According to some scholars, public order requires the State, where necessary and in situations of genuine need, to expropriate property from individuals. In certain circumstances, the continuation of social life and the provision of public welfare and comfort can only be achieved through measures such as expropriation, which, by realizing social and economic justice, contributes to the establishment of public order in society (3).

There has, however, always been disagreement about the concept of public order, and this notion has been the subject of multiple and even conflicting definitions in legal scholarship. In general terms, and as one of the essential features of a social system, public order may be understood as the state of calm and equilibrium necessary for a legal order to perform its functions properly. It can be said that public order is realized where conditions exist in which no factor operates contrary to the inherent purposes of social institutions (4).

Expropriation for the purpose of maintaining public order can, for example, be seen in the deprivation of ownership from persons who have unlawfully acquired property. In this regard, Article 49 of the Constitution of the Islamic Republic of Iran, by granting the State the authority to confiscate illicit property, in practice provides a clear legal basis for expropriating land and real property acquired through unlawful means.

### Necessity of Securing Social Interests

One of the most frequent tensions in society is the conflict between individual interests and social interests, which makes it inevitable to prioritize one over the other. Legal scholars, drawing on specific rationales, have long emphasized the necessity of preferring social interests over individual and personal interests, and have grounded such preference in the higher purpose and more fundamental effects of public interests for the community as a whole. According to this group of theorists, the aim of legal rules is to secure the welfare of society and establish order in the collective life of individuals. Consequently, if law concerned itself solely with individual life and personal freedom, without attending to the needs arising from living together with others, it could not achieve its ultimate goal, namely, the regulation of social relations.

Therefore, and in contrast to theories that privilege individual rights, jurists who favor social interests contend that individuals possess no absolute rights vis-à-vis the public interests of society. Rather, living with others imposes a set of obligations on them, and for this reason, individual freedom—both in economic and legal domains—is respected only to the extent that it remains within the framework of public interest. On this view, given the priority of public over private interests, whenever private ownership, as the representative of individual interests, stands in opposition to the collective interests of society, the legislature may resort to expropriation of private property as a mechanism to ensure the precedence of public over individual interests (5).

### The Common Good

One of the most important and longstanding theoretical bases for expropriation of private property is the doctrine of the common good, whose initial contours were articulated by Greek philosophers and later developed into a more coherent and complete form by the Dutch jurist Hugo Grotius. In his famous work, *The Law of War and Peace*, which sets out the theoretical foundations of international law, Grotius explains the formation of early human societies and advances the view that, in primitive communities, individuals' ownership of property was collective, and their share in such ownership was determined by the degree of their need (6).

Over time, however, this arrangement gradually changed. With the emergence of civil society, the first steps were taken toward codifying rules of property and transferring part of individuals' powers over their property to the State. This development ultimately provided the basis for conceptualizing the common good as one of the foundations for the State's authority to intervene in private property. Under this general framework, the State's significant responsibility for the collective fate of individuals requires that specific powers and competences be granted to it with respect to critical components such as private ownership. These powers enable the State, in pursuit of the common good, to take measures, including expropriation of private property, when necessary (7).

### *Compensation for Damages and Payment of the Value of Real Property*

#### Manner of Paying the Value of Property Located within the Project in Iranian Law

In Iranian law, payment of the value of property located within the scope of a public project occurs either by consensual or non-consensual arrangement. Where the parties agree on the price, it can be inferred from the governing provisions that the administrative authority and the holder of proprietary rights may reach an agreement regarding the value of rights affected by the project and determine the price by mutual consent (8).

The price may be determined through agreement with the owner, without any need for special formalities or consultation with competent bodies, including obtaining the opinion of official court-appointed experts (Article 3 of the Legal Bill on the Purchase and Expropriation of Real Property enacted in 1979). The notion of “agreement,” as used in the Legal Bill on the Manner of Purchase and Expropriation of Real Property of 1979, does not always imply the immediate conclusion of a contract and transfer of ownership; rather, it may constitute a preliminary step toward concluding a transaction in the future (2).

Another mechanism that the legislature refers to as a means of securing proprietary rights is the provision of an equivalent or substitute property, as mentioned in Article 6 of the aforementioned Legal Bill (9).

Non-consensual acquisition, which is also referred to as compulsory or involuntary acquisition, likewise takes place in return for payment of compensation (10).

If owners refuse to appoint an expert to value their property, Article 8 of the Legal Bill provides that the expert committee shall be appointed by the court, the assessed value of the property shall be deposited in the account of the local registry office, the public prosecutor or his representative shall sign the transfer deed, and the property shall be vacated within one month. Thus, in compulsory acquisition, unlike private contracts, the absence of the owner’s consent does not affect the validity of the expropriation (11).

In other words, agreements concluded between the municipality and property owners must be regarded as forms of expropriation subject to public law, rather than private contracts formed solely under the principle of freedom of contract. The obligation of private owners to transfer property included in a public plan to the municipality stems from the superiority of public law over private law and the precedence of public interests over private interests (12).

One consequence of consensual expropriation is that, if the necessity of implementing the project ceases to exist and its execution is canceled, the former owners of the land may no longer request annulment of the transfer. This has been explicitly affirmed in decisions of the Administrative Justice Court, which has held that such forms of expropriation fall outside the scope of acts of sovereignty (7).

#### Manner of Compensating Damages for Property Located within the Project in English Law

No one can be required to surrender all of their real and personal property for the benefit of society without receiving compensation for its value. Parliament, with all its power, takes pride in the fact that it has never engaged in such an encroachment upon private property; and if such incidents have occurred in the past, they reveal the dangerous nature of the rulers’ unlimited authority and must be viewed as the exercise of power rather than the enforcement of right. In English law as well, compensation for property located within a public project may be arranged either by agreement or by non-consensual (compulsory) means. Administrative authorities may not exercise a power of compulsory purchase until the minister responsible for the subject matter of the acquisition has confirmed the compulsory purchase order. However, once the order has been confirmed, they may purchase the property at any time by agreement and may attempt to do so before resorting to compulsion. If, nonetheless, the acquiring authority cannot reach agreement with the owner, it proceeds along the path of compulsory purchase. The price paid by the acquiring authority in such cases generally conforms to the “law of compensation,” meaning that, in addition to the value of the land, the compensation may include amounts corresponding to severance, injurious affection, damage, and disturbance. In English law, compensation following compulsory purchase is based on the principle of equivalence: the individual whose private property is taken should, after compulsory acquisition, be in no worse financial position than before, but also in no better position. The valuation date for assessing



compensation is the date on which the acquiring authority enters onto the land and assumes ownership. As to the amount of compensation, where the market value is ascertainable, it is calculated on the basis of the land's market value. In exceptional situations, such as where no general market exists for the land in question, compensation is assessed by reference to the cost of an equivalent asset (13).

In cases of private expropriation, the right to compensation for the land taken is clearly articulated in statute, and the rules for assessing compensation for expropriated land are set out in Part 5 of the Land Compensation Act 1961. In total, six principal rules have been identified in this regard:

1. No additional penalty is payable, since the acquisition is compulsory.
2. Compensation is calculated on the basis of the land's market value.
3. Any increase in value attributable to the manner in which the acquiring authority intends to use the land is disregarded, in order to avoid compelling the authority to pay more merely because it is the only potential buyer.
4. Any increase in value attributable to an unlawful use is disregarded.
5. Where there is no demand or market from which to estimate value, compensation is based on the equivalent value of the land's utility.
6. Compensation must be calculated according to current market value, although this does not prevent the owner from lodging a claim for additional compensation (14).

## Conclusion

The inevitability of expropriation for the implementation of public projects by administrative bodies is clear and undeniable. However, this does not mean that municipalities or other executive authorities may disregard private rights on this basis; rather, they must compensate all losses suffered by individuals. What is paid to the right-holder for the purpose of compensating such losses is referred to as "compensation" or "indemnification." Indemnification is not limited to the current appraised value of land, buildings, and installations; instead, it encompasses all financial losses sustained by the right-holder. The Legal Bill on the Manner of Purchase and Expropriation expressly refers, alongside payment of the price, to compensation for damages and "similar losses." As seen in the discussion of the types of compensation that may be claimed, personal losses directly resulting from expropriation must, as in English law, also be compensated. Nevertheless, judicial practice in Iran has not made effective use of these statutory capacities, and courts routinely limit executive authorities to the payment of the current value of the property or enforceable rights, rejecting—as observed—even claims for rental value (*ujrat al-mithl*). For this reason, it is necessary for courts to align their practice with the law.

Compensation for third parties—that is, persons whose property or rights have not been expropriated by executive authorities but who nonetheless suffer harm from the implementation of a public project—is not recognized under Iranian law, unlike English law, even though imposing such losses on these individuals is unjust. The legislature must therefore enact provisions enabling the compensation of such persons as well. Naturally, acceptance of such a right for injured parties entails accepting the converse principle that, if the value of property increases due to the implementation of a project, the benefiting party should also pay an amount corresponding to such added value to the executive authority.

The authority of the State and public institutions to expropriate private land and property is grounded in specific theoretical foundations, the most important of which include securing public order, the common good, and social

interests. Nevertheless, this authority is not absolute or unconstrained and must therefore be restricted by legal conditions. Consequently, principles such as equality before the law and doctrines such as loss distribution, public service, and social solidarity require that losses arising from expropriation undertaken contrary to legal standards be compensated. Given that the State exercises significant powers in implementing public and development projects, and that expropriation of land and property is carried out on the basis of such powers, the need to examine this issue with respect to the State and its affiliated institutions becomes even more essential.

The powers of the State regarding expropriation are set out in the Legal Bill on the Registration of Wastelands of Tehran (1955), the Act on Determining Wastelands and Annulment of Related Deeds (1986), the Urban Land Act (1987), and the laws governing the acquisition of land and property for public and development projects. Under these legal standards, if State action in this domain is not based on statutory requirements or amounts to unlawful possession, different legal remedies are available. These include actions for ejectment and demolition of structures, claims for the current value of the occupied property, and actions to compel the municipality to deliver substitute property, which may be brought before the Administrative Justice Court or the general civil courts.

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### Authors' Contributions

All authors equally contributed to this study.

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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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