

OWNERSHIP RESTRICTIONS IN THE LAWS OF IRAN WITH AN EMPHASIS ON CULTURAL HERITAGE LAWS

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Abstract. Although, according to the general rules of civil law, ownership is known as an inviolable and inalienable legal principle, but it is sometimes restricted in various ways, and sometimes this principle is generally denied by the legislator. Cultural heritage principles are considered one of the means of restriction and dispossession. Provisions of the cultural heritage, because of direct contact with the public rights of individuals, are effective in private property of owners in two ways. In some cases, these rules will lead to the dispossession that the general legal principles emphasize on establishing the ownership of persons in that way, and in some cases also, the rules sometimes restrict the ownership of the private owners. These restrictions limit the scope of the ownership dominance in many ways.

Keywords: ownership, dispossession, ownership restriction, cultural heritage laws

1 Introduction

Cultural heritage is a set of movable and immovable cultural works and properties left from the past which is very worthwhile. An important part of these works is possessed by individuals as their owner that they may either inherited as a legacy from their fathers or have possessed them through discovery. Today, preserving these works due to their cultural aspects, is one of the concern of the government. We face with two kinds of rules in the field of cultural heritage in Iran law: first category includes a set of domestic rules and regulations related to cultural heritage. Article 1 of the Law on Cultural Heritage Act of 1985 and Paragraph 12 of Article 3 of the Statute of the Cultural Heritage Organization considered one of the essential tasks of the organization as registration of movable and immovable properties which should be placed in the national index. Second category is part of the international regulations that should be respected and considered by the states as Iran joined the rules or due to interaction and international works (Emami, 2004; Bariklou, 2006).

The rules, which are legislated and applied mainly with an emphasis on the general aspect of cultural heritage have serious conflicts with the general rules relating to ownership including the jurisprudential and religious rule of Absolute Legal power of the Owner to Exercise Control Over property which is a jurisprudential certainty which is emphasized in Articles 22 and 47 of the constitution, and sometimes it is ignored under the ownership provision which is created under the ownership jurisprudential and legal generalities (such as ownership of the treasure) and sometimes an owner who under legal generalities and Absolute Legal power of the Owner to Exercise Control Over property, has the right to seize the property and prevent the transferring acts (Jafari Langroodi, 2001; Hayati, 2010).

Thus, this paper which is gathered using desk and descriptive methods, will first explain the concept of ownership and its elements, then discuss whether or not ownership can be restricted and finally it will seek to answer the main research question, "what is the restriction and dispossession in cultural heritage rules?"

2 Concept of ownership

Ownership in Persian is an Arabic word from fictitious infinitive and it is taken from the word MELK. Some have stated its literal

meaning as being owner and some to own etc. Farhikhte in his dictionary defines ownership as an adjective that is achieved based on being owner. In other words, ownership means to have, own and being eligible. Addressing the precise meaning of ownership and its nature is useless. The Civil Code also doesn't define ownership, but it just mentioned some of its features.

What is important is to understand its common concept and it is a sense that everyone understand it and use it in their conversations: "having" which is of course a universal meaning indicating a traditional interest between a (natural or legal) person and an object.

In the Iranian legal system, ownership right is not defined in laws, however, ownership assurance is greatly considered in the constitution. In addition to the special status in the constitution, legal rules also guarantee it. In accordance with articles 15, 16 and 17 of constitutional amendments to the constitution, ownership is respected and protected, and the general principle in the third chapter of the Islamic Republic constitution guarantees people's ownership in the general and privative context, is Article 22. In addition, Articles 40, 46 and 47 of the constitution guarantees ownership. Civil law does not provide a definition of ownership as well, but it spoke about its qualities and effects and limits in some Articles such as 30, 38, 130 and 131.

The area of ownership is widened in line with global developments and technology trends, so that intellectual property is now raised that was quite unfamiliar and unimaginable by a few decades ago. That's why the basis for ownership needs a proper definition to include all properties and assets even immaterial ones. In other words, it should be said that "anything other than material possessions includes intellectual property."

As noted above, without providing a definition of property, civil law at the beginning of the first book states that property has two types: movable and immovable which is given in Article 11 of the Civil Code. In other laws, there is no definition of property; as stated this may be because the concept of property is clear and in other words it is an obvious concept; but this seemingly obvious concept has raised debates among the scientific dialogue common in the faculties of law, so that one of the most important practical disputes among Iranian lawyers can be seen in the definition of property (Deilami, 2005; Safaei, 2014). Despite the silence of Iranian law on ownership, it can be stated that "ownership consists of entrusting commitment and allocation of a material or spiritual thing, an object or interest, financial or non-financial, movable or immovable, absolutely and authentically to the certain person or nation."

2.1 Three elements of ownership

Like French law, Iranian law has recognized three elements (application, exploitation, right to possess the property) regarding the ownership.

Right to application means that the owner is entitled to use and benefit from his property without intermediary and others have no right to stop this right, this is explicitly expressed in Article 30 of the Civil Code (Katoozian, 2005 and 2015). The right to application is the most tangible direct right that the owner has toward the owned object. But sometimes using this property is not tangibly possible. It should be noted that the impossibility of using or not using the property, won't stop him from owning.

Right to exploit means the right to receive the fruit and result of the property, because the interests are created in the property of owner. This allows the owner to receive the result of his property. The effect of this right is that the interest can be used only with the owner's will.

The right to possess the property; owner can do all financial and legal acts about the property (Mohammadi, 1996; Mir Damad, 2001). That is, the right affirmatively means that the owner can do financial acts like, consuming the property or removing it or by legal acts such as: donation, peace or selling, remove the property of his ownership. And privatively he has the right not to accept the destruction of his property or not to be satisfied to sell his property. Of course, this discretion is limited and sometimes for various reasons, some limitations are created.

2.2 Ownership features

Ownership is the most complete financial right because unlike other financial rights that the owner of a right has the authority for a certain seizure, in ownership right, the owner will have the authority for a variety of possessions. In Article 30 Civil Code, the right of ownership is referred to a right whose owner can do all sort of possessions in the belonging property. Owner possessions in servient estate can be divided into three types: use, benefit and transfer of property, but in old Rome Rights and from the perspective of some French lawyer, it has attributes like being absolute, being exclusive, and perpetuity.

The absoluteness of ownership is clearly manifested in Iranian civil law. In accordance with Article 30 of the Civil Code, "every owner has the right to seize and benefit to his own property, except in cases where the law has exceptions." It is understood from the article that basically owner has the right of any seizure in his property and exceptions to this rule must be raised in the rules. One of these exceptions are Articles 40, 44 and 47 of constitution. According to the principles of ownership, it must be legitimate, in accordance with the law and causes the country's economy promotion, also the owner should not use the ownership right to harm others. So it can be concluded that ownership right is respected to the extent that it does not conflict with the law. Finally the principle of owner free boundary is that the ownership would not harm the society (land speculation, monopoly, etc.).

The absoluteness of property and that the owner can seize his possessions is indicative of its exclusiveness. The owner is entitled to do any sort of seizure in his property and in turn prevents the profit of others. Ownership is an individual rights that the law protects the right against aggregation of others. As a result of this issue, Article 31 of the Civil Code states that: "No property cannot remove from the seizure of its owner except in accordance with law". Among the exceptions entered to the description of property, we can refer to the public interests and private contracts which thereby ownership loses its monopolistic aspect.

Another feature of the ownership right is its perpetuity, i.e. it is not limited to a certain time. This means when a person owns something, as long as he is owner can use it without being bound to a specific time. One of the differences of owner with all people who can use and benefit from the property on behalf of him, is that the use and operation of the owner is not bound to a certain time but other people can benefit from it in a certain time. So, ownership is a perpetual right and perpetuity of ownership doesn't mean that the owner cannot transfer it to another person or heirs cannot own it if the owner is deceased, even in cases where the ownership is not apparently permanent like tenant ownership of the leased property interests, is in fact the perpetual ownership of the owner to the property interests which is granted to the tenant for a limited period. So, what is meant by perpetuity is not eternity, but is that time and duration of ownership of the owner is not limited to a specific period, unlike other financial rights which normally is limited to a certain time.

3 The nature of restriction and deprivation of ownership rights

About the ownership restriction, we can consider restriction as part of the government's unilateral action for the public interest

despite the everyday rules and given the increasing development of social thought and its reflection on rights and increased government involvement in the private relationships and rights, especially about the owner authority and scope of the private ownership.

These restrictions will not result in dispossession but restrict part of the ownership rights. For example, prey belongs to the hunter according to jurisprudential law, but the government apply some restrictions for the ownership like hunting license, hunting time, hunting place and type of hunting. If the restrictions are observed, prey will belong to the hunter. The owners will have some restrictions on construction if they are placed in the scope of some national monuments and buildings (Hashemi & Taghizadeh, 2012; Esfahani, 1997).

According to what was said recently, ownership is a right in which durability, applicability and exclusive nature are the main conditions forming the right. However, it may be restricted or withdrawn based on legislative frameworks and some interests related to the public order. According to some "dispossession for public interests, is also a kind of transfer of ownership."

It is worth mentioning the term dispossession literally means abstraction, robbing and coercive (forced) taking that its idiomatic meaning is very close to the term "forced taking" or compulsory possession.

Since the ownership is considered as a permanent right by which one can assign the seizure of his property to himself within the laws of [exceptions] and use all its benefits, so we can say that dispossession means coercive removal of property or exploration or its compulsory acquisition and leads to ignoring the ownership rights of the owner. If it is legally licensed, it is legitimate, otherwise it is unlawful and usurpingly.

Articles 30 and 31 of the Civil Code also while expressing the owner's ownership right show that the owner may be deprived of these rights only through the rule of law in some cases.

In Article 17 of the Universal Declaration of Human Rights of 1948, presence of ownership was recognized as one of the human rights and was considered as a guarantee against arbitrary deprivation of property, however, in accordance with Article 3 of the Declaration, ownership can be restricted for general needs, in accordance with fair rules and by paying fair compensation.

3.1 Methods of ownership restriction in Iranian law

Methods of restriction and dispossession are different in the Iranian legal system and based on the rules governing the different legal systems is different in various manifestations. Restriction and dispossession may take place based on a contract. For example, a person with commitments to sell his property during a contract, has deprived his ownership over a property and transferred it to another person or some contracts may cause restrictions on the use and possession of the property that time sharing contracts can be mentioned in this connection.

In such restrictions which are generally bilateral and are created based on the decision of the parties to the contract that sale and lease contracts or partnership are among them, time is somehow the criterion for ownership or how to profit is intended.

In another type of contractual restrictions which are also called unilateral administrative contracts, a person ownership is restricted or deprived using the law and the owner will be forced to accept the contract for a minimum use of the property, such as restrictions on property development in civil projects.

Another method of dispossession and restrictions in Iran's legal system is based on the law. In this type of restriction and dispossession, governments restrict properties by nationalization or confiscation of property or approving urban development projects or housing.

In general government try dispossession for the public interest or legal criteria. Given the public interests, it is more like a political rather than legal theory. Thus, the area of dispossession gets wider day by day and this is also due to the diversity of government functions and increased legal persons and public law that benefit from dispossession.

What is obvious is that it is not possible to use the property right indefinitely and dispossession is in fact a privilege that the government protects the public interest through it.

Nationalization that means the permanent transfer of private property and assets to public ownership which is done in pursuit of some political and economic objectives in return for compensation which finally, government is the successor to the original owner.

Nationalization of property is always associated with loss to the persons, in this action it is assumed that using sovereignty, government attempt restriction and deprivation to secure the public interest and to comply with public interest.

For example, to prevent inappropriate use and destruction of forests and rangelands, pursuant to Act 1924 of the government as well as the enactment of the Forest Act of 1942, and also forest nationalization law passed in 1962, government tried nationalization of forests and rangelands and applied some restrictions for allies and thereby caused the dispossession of some of them.

In another type of restriction and dispossession, the government attempted to confiscate property. Confiscation of property is: "an operation whereby government unilaterally transfers property of natural and legal persons to itself to meet exceptional and temporary needs". Confiscation includes, "permanent seizure of private property without compensation." That's why the most severe form of dispossession is done by the state. It is worth mentioning that the confiscation of property is considered as a source of financing for the government.

3.2 Ownership lack of restriction based on the general principles of civil rights

Ownership in civil law means the legal relationship between the human and the property. By virtue of this relationship, one has absolute authority and full ownership to his property. This prevents the seizure of ownership by others. Based on the principle of despotic dominion in Iran civil law, which has confirmed the full authority of owner in profit and seizure of his property, the effect of ownership is on the one hand positive and on the other hand negative. In fact, the owner has the right for any dispossession of his property positively and nobody has the right to seize the right negatively (Panahi, 2015; Ninam, 2005).

Articles 30 and 31 of the Civil Code explicitly stated the right to seizure and benefit of owner to his property and the protection of property rights. In the law of Islamic Republic of Iran, Articles 46 and 47 of the constitution refer to the rule in another way. Some lawyers believe that the ownership is absolute. Because under Article 30 of the Civil Code, "the owner has the right for any manipulation in his property except in cases where the law has exceptions." According to Articles 40, 22, 46 and 47 of the Islamic Republic of Iran's constitution and Articles 15, 16 and 17 of constitutional amendments to the constitution, ownership is respected and protected. In the case of immovable property, ownership is absolute, except in cases where the law has exceptions. Of course, absoluteness of ownership is allocated with things such as losses to others.

In contrast, other legal experts believe that in the current law, exceptions to absolute rule is so great that we can hardly speak of ownership rights. Realism requires to indicate the term law in its nature rather than using the ownership right and it is said "it is a right which gives the owner to benefit from or possess his property in accordance with the laws."

However the "Principle of despotic dominion" is mentioned with great respect, but the principle doesn't have the former concept. So in principle 44 of Constitution, it is said about ownership constraints that "Ownership in this three parts is protected by the Islamic Republic's law, as far as is consistent with other principles in this chapter and is not outside the scope of Islamic laws and results in the country's economic growth and prosperity and does not harm society". In the interpretation of this principle, it is said that ownership is not the natural rights of human personality, but a means to protect the public interest and the last frontier of freedom for owner is that it would not harm society.

In Islam, ownership is never absolute and there is no sign of absolute right of ownership. Religious morality knows wealth as God trust to human and the principle of "no harm" rules over the "principle of despotic dominion". Some legal experts believe in Islamic jurisprudence based on "principle of despotic dominion" ownership of some monuments is equal to absolute ownership in Roman law and the owner has the right to seize on his property. Some also believe that exceptions to Article 30 of the Civil Code, is highly developed in proportion to the economic and social developments, and abundance of these laws has raised the famous issue of maximum appropriation.

In respect of ownership on cultural properties, specifically treasure in Iranian law, it must also be stated that overall, in this context, we are faced with two kinds of attitudes by the legislature. First, treasures which are not considered national monuments and antiquities, that according to Article 173 of the Civil Code: "It is a property buried in a building or ground and is found by chance." Iran's law in this part respects the private ownership and according to civil law, if the owner is not known or found in permissible lands, it belongs to the finder. Second: treasures which are considered as a part of national monuments and antiques (treasure) that under the single article of bill in 1979 which is about prevention of measures done to discover antiques, treasures that they are at least a hundred years old, are considered antiques and national monuments.

Now given that, on the one hand, according to some legal experts and civil laws and constitution of Iran, the absolute ownership is exclusive and permanent and on the other hand, in some cases, such as cultural heritage laws, ownership is limited, in the following we will discuss the cases of restriction and dispossession in cultural heritage laws.

4 Restriction and dispossession in cultural heritage laws

Cultural heritage is a worthwhile treasure, containing thousands of buildings and hills, historical sites and hundreds of thousands of movable and immovable historical works that should be protected competently and given to the future generations. Therefore, in areas related to cultural - historical heritages, there are protection regulations such as Articles 1, 3, 5, 6 and 10, about preserving national monuments act of 3 November 1930, Single Article of National Heritage Act enacted in October 1973, Article 1 and statutes of the country's cultural heritage, single article of the law concerning the Cultural Heritage Organization Act of 1985. Also on the implementation of laws related to historical - cultural monuments that have regulations and protection conditions and regulations in the field of records and privacy of historical monuments, and clearly explain the method of administrative intervention in monuments or their privacy (about monuments), we can refer to Articles 1, 2, 3, 4, 7, 8, 9 of executive regulations to Preserve National Monuments Act - passed in 1932 of the Council of Ministers; sample of privacy and protection regulations of buildings, complexes and hills in historic sites, sample of public safety regulations, and sample of specific privacy laws and regulations (grade one, grade two). Given that the rules and regulations as well as regulations for protection of monuments regarding the restriction and dispossession of cultural heritage is different, in this review, we try to separate these two by an example and provide further clarification on these issues.

4.1 Laws and regulations governing the ownership restriction

According to the rules relating to Preservation of National Monuments, the limitations arising from the implementation of protective rules of historical - cultural monuments that may be raised for their owners can be divided into two parts: moveable and immovable cultural - historical monuments that at first we analyze the limitations arising from the rules of Preservation of National Monuments regarding immovable monuments.

Regarding the limitations arising from immovable monuments protection regulations, it must be stated that according to relevant provisions of law relating to Preserving National Monuments, enacted in November 130 and Single Article of registration of Works approved in November 1973, the country's cultural heritage and the Statute of the Cultural Heritage Organization, works registered in the national index, are protected and supervised by the country's cultural heritage organization and are subject to protection regulations specified in the rules for monuments. So, considering the fact that after registration, any action that leads to the destruction of or damage to the monument, is prohibited. Therefore, registering a work in the national index also causes a limitation in performing some interventions in monuments. The most important of them is ban, destruction and renewal of immovable monuments.

In relation to ownership, ownership of monuments according to Article 3 and 5 of the Act relating to Preservation of National Monuments Act 1930 and Article 7 of the rules of procedure of the latter regulation, dispossession will not be done in monuments and the owner of the monument preserves the right of ownership or possession of property and only through registration of the monument in the national index and rules related to it, some limitations will be applied for owners through protective criteria, after recording the monuments by cultural heritage organization.

According to Article 12 of the Statute of the Cultural Heritage Organization, determining the Privacy and Criteria for Protection of Privacy of monuments registered in the national index is done by the Cultural Heritage Organization that based on the criteria regarding interventions and measures in areas of privacy of monuments which include areas surrounding historic monuments, some limitations, such as, restrictions in the height of construction in adjacent plaque or surrounding the immovable monuments or restrictions on the use of some materials in architectural design or building façade around the immovable monuments will be applied that by applying these rules and regulations, some property owners located in the historical monuments will face some restrictions.

In some cases, depending on the type of work, field size, height, etc., monument privacy is rated to grade 1, 2, ... by the Cultural Heritage Organization, and specific protective criteria will be separately defined and notified for each of the privacies, and in such cases the limits established for property owners differ in the privacy of Grade 1 and Grade 2, etc.

For example; determining the privacy of Ramsar cultural - historical complex that construction in the privacy grade 2 is strictly prohibited. Or privacy restriction for Baq Ferdows cultural heritage where the property is located, in the vicinity of this monument, construction over 3 floors and a height of 9 meters is prohibited.

About the limits arising from movable monument protection regulations, it should also be noted that based on relevant cases from statute law of Cultural Heritage Organization and the law of Preservation of National Monuments Act 1930, law for forming Cultural Heritage Organization and rules of procedure of the latter law, registration of historical monuments on the list of movable monuments also results in limitation for their owners.

According to Article 9 of the law relating to Preservation of National Monuments Act 1930 and Articles 15 and 16 of the rules of procedure of foregoing law, passed in 1932 by registering the monument in movable property, any transfer, sale and repair will be limited for the owner and the owner without the knowledge of the cultural heritage organization and receiving permission from the organization will not have the right to transfer, sell or repair the movable property registered in the national index.

4.2 Laws and regulations supervising dispossession

According to paragraph 12 of Article 3 of the Statute of the Cultural Heritage Organization and Article 9 of the rules of procedure relating to Preservation of National Monuments Act, if a non-standing property is located in the hills or historical sites registered in the national index, due to the prohibition of construction in the area of monuments registered in the national index, building permits will be withdrawn from the owner. And if a property located in the hills or historical site registered in the national index, with a non-agricultural usage, is authorized to construct such as residential, commercial, service uses and so on, permission for the construction will be withdrawn from owner. In fact, the owner cannot benefit from his property interests, because he is not permitted to construct and by that ban, the monetary value of the property will be lost. Despite the fact that the owner can transfer or sell his property by informing and asking authorization from the Cultural Heritage Organization, but no buyer is willing to buy a property wherein there is no possibility of construction or any other intervention and thus, benefiting from the property is denied for the owner. The only way facing the owners of such properties is to transfer or sell it to the cultural heritage organization and due to lack of credit and other financial issues, this may take years and the owner will be still deprived of his property interests.

In other words, despite the rules for preserving ownership in monuments that have been previously discussed, by creating such conditions for the owners of these properties, we can consider a form of dispossession of the owner.

4.3 Factors limiting private ownership in cultural heritage

Factors like government, time and registering the work limit private property of people in property and cultural heritage. Government limits the private ownership in three ways:

State ownership: Anfal (property truly belonging to Prophet Mohammad or to any of the imam) is state-owned, so imposing conditions and requirements by the government on how to exploit it, is legally legitimate and follows the general reasons of ownership.

Public ownership: supervision of such ownership of cultural heritage is at disposal of the state and hence the content of the preceding paragraph is true about it. The difference is that here the interest of the ward should be observed. The owner of this kind of cultural heritage are all people. The government is obliged to observe interests of people in policy-making on how to take advantage of this property. In this case, restrictions of this type caused by the government, will have legitimacy. The legitimacy of government decisions in this sector, is a function of leadership general arguments.

Private property and endowment: The government can impose obligations on private ownership of cultural – historical monuments. So here specifically no separate discussion than what has already been said, seems to be raised.

Time lapse is a legal interpretation that has found its way to our law from the West Legal Dictionary. Time lapse, in French law plays a role in two ways: acquisitive and landing place, so it is a way for the acquisition or acquittal, meaning that over a certain time, the legislator consider the owner rightful to own his property, and considers lack of main owner complaints a reason

for waiver or not being rightful. Likewise, he considers the debtor discharged and non-complaint of creditor in a certain period as a sign of waiver of right.

Since Islamic law doesn't consider time lapse in this form legitimate, former legislator considered time lapse as indicating cognizance, without any intervention in right and current legislator has accepted time lapse just in case of the preventive punishments that is considered a state constitute; punishment for crimes which are deemed crime by the government and are not crime in the principles of religion. And non-deterrent punishments, time lapse is not even accepted as cognizance. In Article 1039 of the Civil Code and Article 731 of the former civil procedures, cognizance, had been subject to the filing of it the legal deadline. The Guardian Council in Theory 7257 dated 16.02.1984 considers lack of cognizance after a legal period against the religious boundaries and voted to revocation of the cases. Therefore, as a general legal rule, time lapse has no place to prove or waive the right.

Now the question is raised whether contrary to the requirements of this public rule, cultural heritage has a special feature which can consider the time lapse as the reasons and causes of creating or transferring the right about the manifestations of cultural heritage? This means that when a cultural heritage is in the possession of a person, and the government has decided to take it for a long time and that person has not raised a claim against it, the government has the right, based on time lapse, to possess a monument?

It seems that if the mentioned monument is not so important that state ownership on it can be explained based on what is given in this chapter to justify the qualification of government for possessing private ownership to cultural works, time lapse will not be qualified per se to correct the government ownership. So, the object still remains in the possession of the person and he can set lawsuit and restore the right against the government.

Obviously, contrary is inconceivable, so that an inherited monument that is owned by the government, is in the hand of others for a long time and by recourse to time lapse, he can set lawsuit against the government over the acquisition of the object. Of course, we may state a reasonable meaning for this assumption, in this way that sometimes the inherited monument is among *Mobahat* (things without a known owner that may be possessed by any private citizen under paragraph 92 of the Civil Law of Iran) or *Anfal*. In the discussion of ownership we said that *Anfal* belongs to the government and based on generalities and predications indicating the *Anfal* ownership of possession or reclamation, if an inherited instance is acquired by a person and the government does not protest in a long time, if silence of government means permission for ownership, based on predications, it can be said that this person is the owner of the object. Of course, this is in the case that in the discussion of *Anfal*, we have accepted the evidence of ownership by means of restoration; but we raised a contrary debate and said that the requirement for evidences only permits individuals to take advantage of the *Anfal* and its ownership is dedicated to the state and restoration won't cause the right of ownership. This means that government ownership over *Anfal* is not a right to spoil it or his silence discoverer his satisfaction for the property of individuals; so the government cannot transfer *Anfal* to others, and at least it is suspected and as the first principle in trading, transferring *Anfal* will not be enforced. But the enjoyment of the *Anfal* is so sure that evidence proves it, so despite the evidence, we suffice the same amount of the principle.

The result is that time lapse doesn't create a right against people in private property rights of cultural heritage – the ownership that is not placed in custody or supervision of the government; as it has not considered a right by possession or recovery against the government and in favor of entities.

In Iran, there are many movable and immovable antiquities. Although each of these works are valuable, but their frequency

on the one hand and limited resources on the other hand, causes the government to act selective based on some criteria and protect works that have greater priority to maintain. One of the tools of the government to stabilize the selected items and notifying it to the government institutions and people is registration of the monument. Government does it by registering the works which have criteria for priorities to be classified as historical monuments, so the registration of work has an instrumental role. Through recording the work, government supports the selected monuments by creating restrictions for the owners; in the sense that if these works were not recorded, just government general restrictions like declaring the monument to the state would be applied to them, but now they have registered, they have more restrictions. The nature of registering a work is not hampered legally, but the consequences that appear following it eliminating the owner authority or custodian of the endowment, is contrary to the demands of the law.

5 Conclusions

Property is a right that someone has to a property (whether movable or immovable) that belongs to him and he has the right to any seizure and use of it. So they have three features like: being absolute, perpetuity and exclusivity. The ownership right is an inviolable right because of the privilege of owner than others in a property, and legislator should protect it to maintain social order. Under Iranian law, especially civil law and constitution, although there is no definition for this concept, but both laws have protected the ownership right and have guaranteed it. However, people private ownership is not absolute in all kind of properties and, in some cases including the historical-cultural property, it may be restricted or denied.

Ownership restriction means creating some restrictions for the owner to use the property without leaving ownership from its private status and based on Article 44 of the Iranian constitution, the preference of public law for economic growth and development has accepted private ownership and insists that in some cases, we can apply some restrictions to some properties. Preserving public interest is one of the main reasons to limit ownership right or in some cases it can lead to foreclosure; especially regarding cultural property that the property belongs to all nations and no one can claim ownership toward them.

In the Law of Islamic Republic of Iran, on the one hand, private ownership of people is respected and guaranteed and on the other hand, in some special laws, including statutes pertaining to Cultural Heritage in 1989, the Law to Preserve National Monuments Act 1930, the Single Article of Law concerning Registration of National Monument in 1974, and rules of procedure to preserve National monuments Act 1932, private ownership in the historical-cultural properties is restricted and in some cases has been negated.

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