

## Legal analysis – crime cognition of speculation phenomenon and effective solutions to fight it

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**Abstract:** Ownership is a right for man so that he would be able to live freely and without concerns and to develop his personality. Islam considers ownership as a component of man's nature and instinct and deals with it realistically. Issues associated with lands and properties have had a special position in the legal system of country for a long time; therefore, the need to explain rules and regulations monitoring various aspects of the process governing lands and properties system is inevitable. The first chapter in this research explains the law of transferring national lands with an emphasis on the process of nationalization of the lands. In the second chapter, crimes associated with the methods of transferring lands are expressed in the form of deforce, speculation and illegal change of the lands. The third chapter expresses prevention of commitment crimes associated with national lands with an emphasis on the role of the agencies municipal, natural resources and agricultural Jihad. According to the research, this result is obtained that protecting and using lands optimally both have special definitions and positions in agricultural or national resources which are either owned by people or owned by the government and are under its supervision.

**Key words:** Crime cognition; Transmission lands; Regulations; Natural resources; Urban land

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### 1. Introduction

Although in enacted laws associated with transmission of national lands, issues such as definitions and protection and exploitation, side effects, financial regulations and organization, conversion and transmission of lands and grasslands and their punishments are expressed, but the rate of speculation is still increasing, a main part of which is national land deforce (Shams, 2007). In domestic laws, as it is understood from the concept of article 30 of civil laws, <<each owner has all kinds of deforce and exploitation rights towards his properties, except in cases that the law has announce as an exception>>, ownership is a right that a person has towards the same external thing and he is able to exploit it in anyway and occupy it as he wants, unless the law has made it an exception. This is the definition of ownership provided by the civil law (Ahmadi Bahrami, 1991).

### 2. Crimes associated with land transmission methods

#### 2.1. Misdemeanor use change

In a broad sense the land use is the various options in order to use the surface of the land. In legal terms, land use has been defined as getting

permission to use the land in a different way from what has been predicted in urban approved plans.

#### 2.1.1. Crime realm of the law of use maintenance of gardens and agricultural lands

In order to maintain the use of agricultural lands and gardens and continuity of their exploitation, land use change of agricultural lands and gardens which are not in the legal range of cities and towns has been prohibited except for necessary cases and specifying necessary cases of use change in each province is the responsibility of a commission combined from agricultural Jihad organizations, manager of land affairs, head of housing and urbanization organization, director of Environmental Protection of the province and a representative of the governor.

#### 2.1.2. Illegal land use change

The law of maintaining use of agricultural lands and gardens was approved in 1995 and then in 2006 it was reformed. Given the changes that were made due to the reformation of the above law, especially change of implementation guarantee of land use change, in case of reviewing misdemeanor of land use, it is necessary for the hearing court to determine the precise time of the occurrence of material element of the crime so that it would be able to identify the governing law based on it. In verdict of the discussed issue, in addition to the fact

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that material element of the occurrence time of the crime of land use change hasn't been determined, one of the basic problems in the area of agriculture, is land use change which has recently been intensified. This issue will disturb the process and balance of production of agricultural crops in the long run.

### **2.1.3. Enforcement guarantee of non-use change**

In specific cases, use changes of properties and lands inside the urban area are considered a crime in terms of penalty and criminal enforcement guarantee has been predicted for this. By reviewing the laws, we can divide the above enforcement guarantee in two categories:

### **2.1.4. Use change of buildings**

The legislator has expressed how to deal with use change of buildings in the following note of paragraph 24 of article 55 of urban laws. According to this note: <<municipal in cities in which a comprehensive map of the city has been provided, is obligated to mention the type of use of the building in building permits in accordance with the rules of the mentioned map. If in a non-commercial area a store or shop or business was established contrary to the contents of the building permit, the municipal shall mention the case in the stipulated commission in note 1 of the article 100 of this law and in case the owner or tenant's violation was verified, the commission shall make a decision about closing the store or shop or business place in one month by determining a proper deadline that shall not be more than 2 months>>.

### **2.1.5. Use change of urban gardens**

According to the article 6 of the legal bill of maintaining and developing green spaces in cities approved in 1980.24.05: <<whoever, knowingly and in contrary to the rules of this law, commits the crime of cutting down or destroying the trees included in this law, will be sentenced with alleged prison up to three years and paying fines based on the type and environment and age and position of the tree between 1000 and 100000 Rials.

NOTE 1 – if owners cut down the trees in a way that would destroy the garden and used its land separately and for construction, all of the land would be recorded in favor of the municipal and it would be used for public services of the city and the poor>>.

According to this article, cutting down the trees in gardens, green spaces of the cities and other public and personal properties is considered a crime and the criminal will be sentenced with the punishment stated in the article.

### **2.1.6. Spatial range of law enforcement of the maintenance of use of agricultural lands and gardens**

<< Law of the maintenance of use of agricultural lands and gardens>> in the year 2006 has been the most important approval that grabbed attention. This law has been approved in order to prevent the use change of agricultural lands and gardens; but by considering the interest that lies in this use change, it has been attempted to reduce the range of implementation in various ways, to an extent that now there is a disagreement about the enforcement location of this law. About the spatial range of enforcement of this law, we shall refer to its 1<sup>st</sup> article which states: <<in order to maintain the use of agricultural lands and gardens and continuity of their exploitation, since the publication date of this law, changing the use of agricultural lands and gardens outside the legal range of cities and towns is prohibited except for necessary cases. Based on this, the spatial range of the enforcement of the law of maintaining the use of agricultural lands and gardens located outside the legal range of the cities and towns has been determined.

### **2.1.7. Violation of the law of maintenance of use with domination principle**

Despite the positive points of the approved law about maintaining land use, we shall also review its criticizable points as well, because one of the problems of this law is conflict of materials with the ownership right of persons or individuals. By considering this principle, the owner is legitimately permitted to do any kind of deforce in his property and legally, except for cases in which his ownership is legitimately threatened that can be found in the article 30 of the civil law. Then, according to the domination rule, Muslims have the right to do all kinds of domination and exploitation in their properties and this principle is current when it doesn't disturb the no-damage rule; but in reviewing its conflict with the law of maintaining agricultural land use, we shall say that this law does not limit the domination of arena and lords, but it rather considers any kind of deforce in it as a crime and it seems that demonization of buildings is in conflict with and disturbs the ownership principle, domination principle and legal element of crime.

## **2.2. Speculation phenomenon**

Fraudulent and illegal actions of individuals, organizations and groups which lead to occupation and aggression against governmental lands and properties are referred to as speculation. Speculation is among those corruptions, which has made news frequently over the past years and accidentally, everybody agrees on fighting with it (even speculators). Speculation is in fact considered as an illegal activity for transferring national land ownership to public goods for private individuals. But in a comprehensive definition, "speculation" means ignoring the ownership rights of individuals associated with personal lands and properties or occupying grasslands and uncultivated lands,

environment of national lands or properties which belong to the government or companies depending on government or public organizations. The speculation crime is mostly committed by some people who are referred to as white collars in crime cognition and normal people do not act as a speculator as much. Those with power and wealth and influence in governmental offices and so on do their illegal activities in a substrate which is apparently legitimate and by taking advantage of outsourcing or governing authorities of themselves or others, they commit corruptive crimes such as speculation.

### **2.3. Analysis of the law of maintaining use of agricultural lands and gardens**

By considering dispersion and lack of a unified legal coherence in the statutory laws and lack of considering enforcement guarantee and inter-sectional importance and ultra-sectional importance of protecting agricultural lands and lack of sufficient attention to the irregular change of lands and following this uncontrolled expansion of urbanization without serious study and its harmful effects, an introduction was provided in 1995 that approved the law of maintaining agricultural lands and gardens and according to this law, the unpermitted use change of agricultural lands and gardens was considered as legal elements of crime and in accordance with this law, the criminals requiring prosecution are the ones associated with this law; but it seems that this law attempts to punish only without considering the ownership principle and despite its name, it is only about encountering with criminals without preventing the crime. Firstly, I review the historical background and a detailed review based on its legal and jurisprudence principles and then in overall conclusion, I mention the problems of it (Sarkhili, 2012).

### **3. Concept of prevention**

The word prevention has two dimensions in its current and common meaning today: prevention both means (forestall, overtaking and outshining) and also means (to inform, giving news about something and to warn about something). Thus, in preventive crime cognition, the first meaning of prevention is used, which means using various techniques in order to prevent the occurrence of delinquency, and the goal is to go against the crime and overtake the delinquency. But scientifically, prevention is a logical-empirical concept which is simultaneously caused by rational thinking and empirical observations. "Perhaps, we can say that the number of presented definitions and classifications (typology) of prevention is as many as crime cognition experts" (Najafi Abran Abadi, 2004).

### **3.1. Types of prevention**

#### **3.1.1. Penal prevention**

"Penal prevention with penal threat of the followers of criminal laws on one hand, and enforcing this threat through punishing those who have violated the penal prohibitions on the other hand, are considered as general prevention and specific prevention of crime" (Abrand Abadi, 2004).

#### **3.1.2. Non-penal prevention**

This type of prevention is done before the crime occurs which means resorting to non-coercive and non-violent actions which have an economic, cultural, social, situational, educational and etc. nature.

In order to make the individuals socially accepted and rule-oriented and protecting crime conservations in order to prevent the occurrence of a crime, the non-penal prevention itself has been divided into two situational and social types:

#### **3.1.3. Social prevention**

"Social prevention is a series of preventive actions which affects all of the environments surrounding a person which have a role in socialization and is socially efficient. This method of prevention of crime by concentrating on additional programs, attempts to improve the health of the family life, education, housing, job opportunities and leisure time so that it would provide a healthy and safe environment". In fact, social prevention "is an effective direct or indirect goal on the personality of individuals so that they would avoid organizing their activity revolving around criminal incentives." (Raymon, 1996).

#### **3.1.4. Situational prevention**

Situational prevention has been defined as "a preventive action focused on the circumstances in which crimes might occur and its purpose is to have an arrangement that would make the cost of committing a crime more than the profit obtained from it for the criminal, because in the opinions of the followers of situational prevention, man is a creature that calculates and measures the benefit and harm of his action" (Abrand Abadi, 2004).

### **3.2. Role of the government and dependent agencies in preventing land used change**

Demanding causes lead to individuals' tendency towards land use change including the fact that agriculture is not economic, high prices of agricultural institutions, high cost of production and small size of land, temptation of building a villa, low interest of agricultural activities, low value of agricultural lands and in contrast, lands becoming valuable in case of use change, development of cities, speculation of some real estate agents to change the

use of the lands, unawareness of people of the laws of land use change, low and inappropriate price of crops especially rice, lack of supportive policies, presence of brokers and dealers who speculate freely and without any constraints in the field of land and villa, lack of reformation of the structure, little interest in integrating lands and lack of trying to make the agricultural crops economic and increasing production incentive in persons who are active in this section alongside with indiscriminate, illogical and untimely importation of all types of agricultural crops including rice and citrus, development of cities, inheritance, presence of some ambiguities and defects in the approved regulations, non-executive plans of experimenting on the land, shortage of skilled human force and high price of lands with housing and industrial uses, the rate of laws without value and the ones with delayed approval, laws' inefficiency and so on. Thus, the government shall completely support the farmers so that this serving class wouldn't lose their required incentive for any kind of production. For this, the government and other relevant agencies, in order to encourage the owners of agricultural lands (the rate of ownership of whom is less than the technical limit economic), are required to accumulate and integrate those lands with the determined area and larger, to give special privileges and facilities including: financial, credit, legal, business, technical privileges and building productive infrastructures and paying the required supportive subsidies. In addition to the above article, we see that the legislator in the article 9 of the law of land use change has stated that: in order to support the continuity of use of agricultural lands and gardens located inside the legal range of cities and towns that have agricultural uses in comprehensive and detailed plans, the government and municipalities are required to give urban services and facilities to the owners based on the tariff of green area of municipalities. The considerable point about the city's privacy for which the municipality is required to do actions such as determining the range of privacy and preparing a comprehensive map of urbanization by considering the city's probable development, preparing regulations for all of the civil actions including segmentation and separation of lands, street system, creating garden and building, creating workshops and factories and also providing regulations associated with protecting the public health specially associated with city's privacy by considering the civil map of the city (article 99 of the law, 1964.16.02). the legislator has prohibited any kind transmission of land to contributive house companies and natural and legal persons for housing outside the range (legal) of cities including inside or outside of the cities' private range, except for in the approved range of new cities and towns which have been or are being established according to the regulations and based on approved plans, in order to support the above properties according to the article 4 of prohibition of the transmission and sale of lands that lack housing use approved in 2002.28.07. Another point is that since after changing the use,

the criminal needs to use it optimally, thus, he should use the preliminary branches and for this, if the relevant agencies do not serve a user without getting permission from the commission of the first article's note, this action itself will have a positive role towards preventing crime. Therefore, the legislator has stated in the article 8 of the law of changing the use of agricultural lands and garden: issuance of any kind of permission or license of construction and supply and transmission of infrastructural services such as water, electricity, gas and telephone by the relevant agencies in agricultural lands and gardens, the issue of article (1) if this law by agricultural Jihad, housing and urbanization, provincial governments, and municipalities ministries and other relevant references will permit this law due to the need to change the use after the note commission (1) of the article (1) confirms it. The final point is that the government, in the respect of preventing the above crime, can lead individuals to construct garden houses in low efficiency, mountainous lands and lands with low agricultural value so that they would have their own favorite garden house and also the destruction of agricultural lands and gardens would be prevented.

#### **4. Conclusion**

National lands are public properties and they belong to every single citizen. Thus, the authorities of the public domain should pay attention to them in the respect of public interest and everybody's usage. The profit-seeking deforce of national lands and natural resources and free activity of opportunistic and jobber elements with speculation costs, destroys forests and grasslands, the river and the sea coasts and etc. and engaging in the construction and ownership of their possessions is an old and erosive wound which has become deeper and wider over the past two decades. The researcher has found an organized method and has formulated the criminal material elements and a network of crimes in a complex way: on one hand, the researches show the daily increasing intensity of criminal incentive of speculation due to its profitability and also porosity and weakness of preventive measures and on the other hand, lack of serious legal encounters and in a sense presence of legal resorts. During this time, one of the most important judicial conflicts of the courts is the cases associated with the issue of land and adopting some measures to minimize this problem is necessary. In order for this goal to be achieved, in the respect of executing great policies of the judicial system, which are followed as judicial development, with the invention of the head of the judiciary at the time, the maintenance of the rights of the public treasury council associated with the national lands and natural resources was established in 30 provinces. After the formation of this council, the activities of the abusers of the public treasury and the national lands were somewhat decreased and occupation of national lands and natural resources at

the level of the provinces of the country was reduced to some extent.

#### 4.1. Effective solutions

One of the effective solutions in fighting speculation is forming a institution superior to the forces, consisting of the experts of natural resources and forests and agricultural sector, representatives of the police and judiciary and executive and legislative forces. This institution shall do more serious actions. Definitely, a look at the aerial maps specifies that based on what the lands occupied by people have been converted into their properties. If this occupation is legal, they shall also deliver the documents associate with it to this institution and if it's illegal, they shall seriously be dealt with. By executing the "how did you get it" law, we can take the illegal ownership of the lands and help make the country healthy. Of course some believe that by accurately reviewing the capital of the wealthy people, the safety of them will be in danger, but do not forget that it is better for their safety t be in danger than for people's public trust and intellectual security to be destroyed. Of course, we shall support those persons who have become wealthy by producing and presenting services to people and are qualified. Also, in some regions, the best way to prevent speculation is to form a police for the forest or grasslands and national resources. This specialize police, who shall be supported by the government, can be informed of the smallest actions associated with speculation and prevent them as much as he can by supervising all of the national lands and forests and grasslands. Today, with the advent of modernity culture and development of machinism in society, ordinary people have become informed of the importance of maintaining productive resources (soil and agriculture) and natural resources. Although some people provide a proper substrate in order to avoid productive thinking in the agricultural and non-agricultural sectors due to shortage of awareness or some because of self-interest and greed, but making the importance of this issue significant in gatherings, meetings and media and so on, with the goal of securing the sustainable resources and continuity of production, can have a very effective and applicable role in preventing the loss of this divine give.

With a brief look at the mentioned issues, maintenance and optimal using of the lands or any land, which is often referred to a place for constructing of house or villa and colonizer, both have special positions and definitions in the agricultural or natural sources issue, in providing food which is owned by people or is owned and supervised by the government. Although government only supports that section of lands which belong to individuals and are used with the aim of agricultural productions, horticulture, animal husbandry, growing poultry, mushroom cultivation, apiculture and etc, and guarantee exploitation, continuity and conservation of productive resources,

but by considering the increase of population growth and limits of agricultural lands, in order to create industries and activities additional productions associate with agriculture has been realized to some extent by transferring national and governmental lands as well and it has been or is under the authority of natural and legal individuals.

Since the described lands belong to the government and they are considered as the public rights. A serious supervision on these types of lands is not only a religious duty, but it also has been determined as a legal and organizational duty. The significant point is that the need to maintain the mutual rights of government and people is considered crucial and quasi-judicial duty and timely decisions in Iran in this regard provide the conditions for establishment of public rights, continuity of the executors' actions of agricultural plans, development and acceleration in the mentioned plans. In order to do this and with the purpose of improving the productions of the agricultural and non-agricultural sectors in the mentioned lands, the agricultural Jihad complex, in addition to providing a proper substrate in order for the executors of the plans to achieve the predetermined goals, will convince all the plans with a non-negligible action so that in a certain time period it would attempt to complete and execute the plan in order to follow the overdue affairs. Otherwise, about those groups of executors whose plan of executive operations is in contrast with the predetermined timetable, by getting the opinions of the relevant references, pursuant to the paragraph 12 of the article 7 of the terms at the time of concluding the lease contract which refer to the note 1 of the reformative article 33 of the law of maintaining and exploiting forests and grasslands and also in execution of the article 8 of the bylaw of legal actions, the contract will be breached and expropriation will occur and other individuals will be replaced.

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