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**REVIEW AND INVESTIGATION OF THE HISTORICAL PROCESS OF URBAN LAW
FORMATION IN THE FIELD OF THE URBAN PLANNING IN IRAN**

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ABSTRACT

This study examined the historical process of the urban law formation in the field of urban planning in Iran, it tries to determine the process of creating rules and civil rights legislation in the field of urban planning from the beginning (Baladie, 1286). One century passed from its approval to investigate and review the laws and rules during different times, for this investigation a library and archive method were applied and for evaluation the qualitative analysis was done. In this study the compliance of these laws with climate, culture, tradition and Iran's architecture was performed, it refers to influential factors that are important for Iran's housing rules and factors that have been formed in recent decades. Some essentials exist that should be considered for developing and modifying these rules which are in accordance to the Iran's situation that should be notified in terms of Iran's rich architecture and culture. We should prevent to import the civil rights legislation from other countries which are not compatible with the Iran's characteristics. Laws should be stated that determined the mutual responsibilities of citizens and urban management to give a discipline and organization to citizen's life and leads to the welfare and tranquility of them.

Keywords: Civil rights, civil law, housing, urban development, Iran

INTRODUCTION

Neanderthals lived in forests and for their own survival they used fruits and leaves. They were looking for innovations and

exploration of unknown things in their life and little by little they preferred being a caveman than woodsman and after they

tamed their animals they preferred nomadic life than caves. When they learned how to plant and harvest crops they concluded that settlement is better than nomadic life. People who planted their food produced their own requirements and by passage of time and human's needs the idea of increasing agricultural productions increased. Increase of the products led to the development of the business and trading and humans were encouraged to live in one place and step by step a stable house or place for living created. Gradually the houses caused the formation of large villages and rural towns created (Soltanzadeh, 7, 1362), ownership is also important in the creation of house and by developing of the houses cities were created. City as an important manifestation of civilization and culture of human's existence is an area that demands discipline and specific legal system (Faghih Iarjani, 10, 1392). However, the primary cities in compare to the new ones were very small and actually a developed kind of a village which had a small percentage of the population. For example, Rome that was famous and important city just had three hundred thousand people. Life in the city without limitation was impossible, in an extensive set that houses stands next to each other there were some rules that represented the

relationship and social rights carefully. Rules of 72-77 of Hammurabi code, one of the oldest and richest covenant laws were allocated to housing issues. Unfortunately, from these rules nothing is remained and most of them were destroyed (in one of that context it is mentioned that if an architect build a house and doesn't follow the principles and that house destroyed on its residents, the architect's house is also should be demolished. Also principles and proximity rules of housing and respecting neighbors for building houses must be observed). By investigation of historical evidence and documents of the past people it can be said that: urbanization was influenced by two limiting factors from the first: a) natural factors. b) Non-natural or human factor: like heat and coldness, rain and snow and climate are influential in line with architecture and also extension of the city. For example, Kerman's direction (the old city) is eastern and western, there is a storm that called Black storm and if this city was made in another direction it is impossible to build a house (Kamyar, 16. 1389). In addition, some human factors like the threat of nations and tribe's attack led to the limitation of the city and it is impossible to expand it. Religion was also beginning to prevent overcharge of the building and didn't allow

the extravagance, Quran prohibited the annoyance of the people. The base of the prophet's Sunnah determined that annoying others even in different forms like making a high building that would be prohibited neighbors house air was forbidden. Customs, prosperity and poverty were also influential in the house creation. Attitude to the past shows the influence of religious and moral beliefs in buildings creation. So in this study because of the importance and necessity of these rules and its formation we decided to determine the attitude and rules evaluation that have been developed in urban areas. In this study some questions raised, including:

1. Factors affecting the formation of rights and municipal housing laws in Iran?
2. What changes did happen during last decades?
3. Do the changes in municipal housing laws in Iran is accordance to custom, culture, climate and religion or not?
4. What are Iran's criticisms on the housing rules?

Theoretical issue

City definition: based on the definition and division rules of the country volume 1. Iran (Approved 4/5/1362) "City is the location with limited domain which is located in geographical area, and it has its own texture

and construction, employment and other factors with its own special characteristic. So that the majority of permanent residents have business, jobs, trade, industry, agriculture, services and administrative activities and in the field of municipal service is relatively self-sufficient. It should have the base of the social, cultural and political exchange and the penetration domain around itself and at least 10 thousands population (Razavian, 23. 1381).

Convenient housing definition

Appropriate shelter doesn't mean just a roof over one's head, a good shelter means good comfort, adequate space, enough security and physical access, ownership security, stability and durability of structures, lighting, ventilation, suitable heating system, appropriate basic infrastructure, such as water, health and education, waste disposal, environmental quality, affordable health factor, suitable place for work and primary facilities, all of these factors should provide by people's financial power (Poormohamadi, 3. 1389).

Civil rights definition

A set of laws, are rules and regulations that regulate and determine the citizen's relation with local offices and relevant situations and explains the rules and assignments of the

councils, municipalities and other urban offices (Kamyar, 32, 1389).

Citizen and urban development laws and regulations

In all developed countries and even many underdeveloped ones like India and Turkey, urban development regulations come into laws and approved by the legislative authority. In Iran in addition to the lack of a coherent legal issue as civil law and scattered rules, generally in the legal system of the country the urban development rules don't have an appropriate position. Most of the time it represents as administrative rules and in the event of any conflict with the rules the urban development rules were ignored (Sarafi & Mozafar, et al.).

Civil rights resources

Law is the first urban rights resources, this word used in general sense and in special meaning includes "legislation of Islamic council that approved by the guardian council and its implementation is mandatory for all person subject to the law. Law in general meaning includes legislations, circular and instructions that designed and prepared in line with the rule's implementation. Case law: another source of civil rights that is similar to rules and used in two meanings. In general meaning, it refers to an idea's complete or partial unity of

judges on the issue of a unit topic that obeys the theoretical unit without the legal requirement.

Custom: it means the principles that gradually became customary among all or some groups of people and it's a mandatory principle. Now the acceptance of this idea that rules resources in the order of rights, custom, case law and doctrine is important (Kamyar, 22. 1389).

Doctrine: it refers to the theory, principle, beliefs, ritual and valid fundamental schools and rules that guides some actions in supporting policies and programs to meet the goals and allow their users to have requirements understanding and also appropriate and logical decisions. It is another definition of doctrine.

Urban housing legislation before revolution

However the importance of the need for an institution that supports the interest of the city and removes its needs leads to the legislation of laws in the first municipality and legislation period by National Assembly Council. This law contains 108 articles, which was adopted on 03.12.1286 (which is related to the amendment of the law dated 30.2.1309). Paragraph 7 of the article 2: one of the municipality's duties is that the city's pathways have clear and specific map. In

1304 penal code was adopted and article 276 of this rule allocated to the manner of preparation and approval of the regulations of offense. On 22.05.1324 the offense regulations were approved by minister of justice and the third article refers to this issue. The following people to seven or ten days in prison and from 100 to 200 Riyals compensation were sentenced, those without an approved municipal license started to build a house that has overlooks to the street. This article prepared the creation of the building without license in a situation that based on the article 1 is necessary and essential for the city and the amount of meters from any house or wooded land would be considered as square or street. After the approval of the Association of municipalities and the governor it was sent to the interior ministry and interior ministry send it to municipal council for acceptance, municipal council by determining the time of performance that could be at least 3 months after publication or written warning, is presented to their owners or their legal representatives in a formal written notes. At the time of necessity and urgency the municipal council by approval of interior ministry can reduce the time of three months based on time and location. Note: from the time of the ad's publication the owners of the

Crossing Street or creation of the square can protest in the municipal map and send the protest municipal map to the interior ministry. But in the field of urban housing, it can be said that establishment law of the supreme council of architecture and urbanization that was approved in 1351 was one of the most important legal developments in the country's urban law (Kamyar, 363, 1389). This council is the highest authority in the country plan's approval that its secretariat is in the ministry of housing and urban planning and at that time it is an important part of the ministry of roads and city planning. The purpose of this council is to coordinate the urban plans with other institutions needs that are related to the urban issues. The emphasis on the principles of the architecture, using of new scientific and technical methods in preparation of projects, comment on proposals or provisions relating to the determination of urban and architectural rules and regulations and finally adopting of comprehensive plans and regional rules are the council's responsibility. Members of the council: ministers of roads and urban development, interior agriculture energy, economy, culture and Islamic guidance, planning department, minister of defense and environment are those who are active and the president of this council is

minister of city construction. In this regard, the rules of the renaming of the ministry of development and housing and also determination of its responsibility was approved in 1352, it's another important step in the evolution of Iran's urban rules. However, considering the architectural and urbanism principles and creating the facilities to increase the quality of people's work which has the responsibility of supervision and execution of projects in building and urbanization leads to the approval of architectural and engineering rules in 1.03.1352 in 15 articles and 9 notes and in 6.06.1356 some of these rules were amended (Ansari, 44. 1374). In the fifties decade because of the torrential immigration to Tehran and prevalence of illegal construction this factor reached to its peak and this issue led to the adoption of law regulating on Tehran's expansion on 7/05.1352. This law would allow to municipal officials to prevent the construction and destroying of the building outside of the allowed domain. At the same time, note 100 was amended and consequently on 8.06.1356 six notes were added to the article 100 of the municipal rules. Article 100: the owners of lands and properties that are located within the city or its territory must take license from municipal for every civil action or separation of lands

or even starting construction. The municipality can stand against the construction of the building without license or on the contrary of the accepted rules, this can be done by officials for those who make building in enclosed or non-enclosed lands. In Iran the background of delivering building license by municipalities backs to less than half a century ago, this license for the first time became mandatory for all of the buildings that were made on 11th of Tir in 1332 (paragraph 24, article 55).

Laws related to the housing after Islamic revolution

After the achievement of Islamic revolution, the council amended the provisions of article 100 and added three new notes. Of course, the most important issue that was raised to the commission. The issue was the legitimacy of the commissions of the article 100. Guardian council stated that the ballot of commission of article 100 isn't based on the judge's rules and it's against the religious. By following of this issue the criminal courts on the basis of the article 217 of amendment law from the criminal procedure that was approved in 1361, started to investigate the construction violations. In the early of the 1367, the commission of suspended state by the use of the general permission of Imam Khomeini and the

accepted bylaw of prime minister in municipals started and took the responsibility of investigating the violations. After a short time this commission was closed and case files of the building's violations were remained pending. Correspondence of deputy minister and the head of Tehran's municipality with Iran's leader and his permission the commission of article 100 started to work again. In 26.03.1371 in order to formulate the related issues to the architecture, engineering, construction and urbanism, utilities and other fields that are related to the construction engineering was approved. It was supposed to perform for two years in trial. The excessive spread of Tehran and surrounding towns led to the incorporation of a clause and 3 notes to paragraph 3 to article 99 in 1.12.1372. From the features of this law that has the power of acting is that it allows to Tehran's municipality to protect the approved privacy of the cities and stopped the destruction of the buildings without license. After this on 22.12.1374 engineering act of parliament and building's control was approved by Islamic council, article 32 of this law believes that disobedience of urban rules and regulations in the domain which includes the buildings national regulations are infringement and article 40 of that rules refers to this action as

crime and it followed by financial punishment from one hundred thousand rials to ten million rials (Kamyaran, 334, 1389).

Selected rules related to the civil rights

Article 3- the municipality has a legal personality. Article 14 of paragraph 55 refers to the municipal rules (amendment 27/11/45), in all cases that are related to the removal of danger from buildings and elimination of the risk of harassment that mentioned in the article, the municipal after obtaining the expert's opinion represent an appropriate notification to the owners or the owners of equipments. If the municipality commands don't implemented in a given period of time the municipalities directly remove or eliminate the threat or harassment and will get the spent money in addition to the fifteen percent of compensation. Section 24- giving license and permission for all buildings that are established in the city. Note -(Approved on 17/05/1352), the municipality must determine the model of the building and its usage in every license. If against the mentioned rules of the buildings license a business building is established in a non-commercial area, the municipality could represent the case in a commission of the note 1 of the article 100, and commission make decision if the owner or tenant abuse from their own building in a specific time

that shouldn't go beyond more than two months and for places that are business like shops it should be done within a month. The legal bill of how to buy and gain a land for implementing the public, civil and military of government' plans (11/27/1358) Article 1- whenever for implementing the public, civil and military plans of the ministries, government companies and institutions that are dependant or independent to the government, as well as municipalities, banks, public organizations and public universities which are not included the rules, from now on they need to be called "administrative system". Lands, buildings, constructions, installations and other rights that are related to natural or legal persons and their validity should be provided and examined by administrative organizations by management and human resources of the president. Administrative organization can purchase everything that is required directly based on rules that are mentioned in the purchasing law. Article 2- Mentioned programs of one article include those programs that should be implemented immediately and it is necessary for all of the public and security affairs. The necessity of plan's implementation must be accepted and approved by the highest rank of the administrative authority.

Article 3- the fair value of the land, buildings, constructions, installations and other rights or damages can be determined through an agreement between the executive organization and the owner or owners of the rights. The rules of determining property in governmental and municipal plans that are approved on 29th of Aban 1367, all of the ministries, institutions, organizations, governmental companies or those that are related to the government or municipal or even institutions that are included to this name, are required to existed in the public or civil plans which their necessity should determine by minister or highest executive authority in accordance to the relevant regulations that are adopted, it should be stands inside of the cities and jurisdiction privacy. After the formal announcement of the plans, within 48 months they must take an action to the transfer of the certain official document and pay the rent or charge according to the relevant laws.

Analysis

Law is responsible for the regulation of personal relationship. As much as this relation diverse, of course rules and regulations were various too. These locations are big centers of population that contain a large number of people and there are also added every day. Without doubt we should

accept that the continuous of the urban life and prevention of its urbanization crisis requires efficient legislation in various areas of the city. Anyway, although civil rights didn't ignore the investigation and analysis of the municipal law but academic and scientific locations like universities have neglected this field. The expectation of law faculty that has a special mission is very important because the judges, lawyers and jurists of our future are from the current students. Unfortunately, in the curriculum of the B.A level, there isn't any courses of civil rights and just in the level of M.A specially for general law a trivial opportunity exist to study about urban and rural law. Of course, it is fortunate that some of the academic courses like architecture, geography urbanism and urban planning consider the regional and urban planning completely and show its kindness to the growth and development of this field. The promotion of this field among some jurists that are familiar with mastering of the basic legal principles and rules that are related to this topic factors like density, usage, per capita and technical rules of urbanization is very important. It can be said that some of this chaos in urban planning is because of the lack of familiarity with the rules and regulations of the urban's legal community. In this regard, the poverty

of research is also noticeable. Lawyers simply passed from this topic and just watch their content. It is also important that top professors pay more attention to this issue and express shortcoming through its evolution.

However, we shouldn't forget that our predecessors were creators of cities that are the reason of our pride today, and people of the world admire their beauty and talk about the power of Iranian's architecture and its mixture with art, love and faith. But it is also correct for our future or not, will they be proud of us? Definitely not, we had cities that are the crystallizations of the lack of identity and they wouldn't have anything except dejection and fatigue for citizens. How can we defense from the cities that have the lowest power against natural disaster? It seems that these failures are the result of getting distance from our wise and thoughtful people in our society. It should be admitted that law is one of the most important tools of development and excellence of the city. Today more than ever the existence or creation of a comprehensive law is important; loyalty to such a law will lead us to the desired city. No doubt that the importance of the need for legislation and development of laws in the field of urban housing and also other specific areas related

to the urban planning is noticeably undeniable. Legislators and drafters of law with predicting the future and careful planning should legislate rules that avoid interference with current rules specially in establishing house and those areas that should have regulations and today they have imported laws or even don't have it; necessity required that serious attention was given to this domain. Domains like city's appearance, city's skeletal system, and priorities of the city, location of the city, urban network, urban growth patterns and spatial distribution or directions of the development of the city. These areas are allocated to geography and special urban planning; necessity requires serious attention for developing these laws.

SUGGESTIONS

1. According to the development of the urbanization culture and imported architecture that is inspired by the urban system and theories of the European architects and also the lack of accordance to the Islamic architecture and urbanization, it is necessary that legislators and planners provide rules that are compatible with Iran's Islamic architecture.

2. Development of the housing and urban planning took five decades in Iran, however, due to the cultural, social and political situation of the country the necessity of revision and development of new rules in line with today special situation is an unavoidable factor.
3. Because of the expansion and development of the sciences that each of them needs its own specific domain; development and separation of the rules are essential tasks. For example, some courses like urbanization or architecture, and although each of them has its own duty but other fields like city and regional planning, geography and urban planning have the same and similar ideas that should be considered in new legislation to avoid any interference.
4. Basic attention is given to the development and planning of the rules in the urban housing domain in line with architecture, tradition, culture and various climate that has various groups and ethnics with different styles and tastes.
5. Use of the legal experts, urban planning, architecture and other urban

management teams to coordinate and provide useful expertise and solutions in order to prevent overlapping and parallel legal tasks to have welfare and tranquility in city of Iran.

6. Lack of the fixed charge for planning of urban housing in Iran from the past, interference of the plans and urban rules by order of time of establishing city, ministry of housing development, department of urban planning and ministry of road and urbanization. Necessities determine that the area of urban housing, architecture and urban planning in housing with expertise and coordination between sections in implementing rules and following a technical duty for each part is important.
7. Oldness and fatigue, an important part of the municipal law and outcomes in the urban management of today are clear that is out of date and it's not in accordance to the newest and best rules of the world, so it is necessary to develop and create ideas, plans and strategies to make them consistent and comprehensive.

REFERENCES

- 1-Ansari, V. (1374). General Administrative Law. Tehran. Mizan publication, First edition.
- 2-Emami, M. (1380). Investigation the Process of Effective Legislative Changes in Urbanization. Shiraz University, Human and Social Sciences, First issue.
- 3-Kamyar, Gh. (1389). Civil rights and urbanization, Tehran, Majd publication.
- 4-Larijani, F. (1392). Rights of the council and municipal, Tehran, Majd publication.
- 5-Poor Mohamadi, M. house planning, Tehran, SAMT publication.
- 6-Razavian, M. (1381). Management of Urban Developemnt. Tehran. Peyvand Now publication.
- 7-Sarafi, M., and Abdolahi, M. (1387). Analysis and Evaluation of Citizenship Concept and its Place in the Regulations and Laws of the Country's Urban Management. No. 63. P. 115-132.
- 8-Shiee, S. (1370). An introduction to the Basics of Urban Planning. Tehran, Science and Technology University.
- 9-Soltanzadeh, H. (1362). The formation of Religious centers in Iran. Tehran, Agah publication.