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The Concept and Scope of Public Property in Afghanistan's Legal System

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ABSTRACT

Public property is a type of property consisting of a group of assets and resources that are owned by the state and society for the common benefit of the public. These properties, or "assets", include roads, forests, infrastructure, parks, pastures, water, natural resources, and all other properties open for public use and benefit. The objective of this study is to introduce the types of public properties according to the law of Afghanistan. The study adopts a descriptive-analytical research method and uses library data collection. The key findings include pastures, roads, bridges, parks, and recreational areas, and wetlands, trees, and forests, water resources, public buildings and estates, infrastructure facilities, and transportation and telecommunications, which are all forms of public property. Each of them has a historical background and holds particular significance.

INTRODUCTION

Public property is property that is owned by the community and the state, and available to the public. These assets form the basis for the sustainable development of societies and are considered strategic resources to meet social, economic, and cultural needs. Public property occupies a special position in the Afghanistan legal context; this is especially the case from the perspective of public law, given its wide impact on public welfare, in particular, it is the basis of development and prosperity. Different types of these properties, such as roads, bridges, forests, infrastructure, water resources, and natural resources, play a major role in the development and growth of public infrastructure. Thus, they have a special place in the current legal system of the country. Their status as common property, available for society's needs, makes their contribution to the realization of social rights and protection of the public interest a major one. Under Afghanistan law, the defense of these assets is perceived not just as a tool to ensure the sufficiency of assets essential for a worldly life but also as a mode of sustenance to social order and economic viability. This issue, particularly in terms of attaining sustainable development goals and enhancing some janata's quality of life, is regarded as a high-priority agenda led by the government.

LITERATURE REVIEW

The concept of public property has been an object of in-depth academic scrutiny vis-à-vis Afghanistan law. In his work *Individuals and Property*, Safaei (2016) further emphasizes the importance of public assets in the Afghanistan legal system, discussing extensively in what they are and their implications for legal frameworks behind their management. Safaei notes that they serve as

the primary line of defense in keeping private property free of private interests, and highlights that the response of people should be in service of public good and therefore, public property. Likewise, Nezamuddin (2017) in *The Commentary on the Civil Code of Afghanistan* provides an in-depth description of the legal nature of public property in Afghanistan. In his examination of the different classifications of public property under Afghanistan law, Nezamuddin posits that such assets are critical in serving the public interest and fulfilling the functional capacities of the state's socioeconomic system. His insight on the legal arrangements required for the protection and regulation of public property in Afghanistan offers an understanding of its significance. Moreover, Afghanistan is facing challenges to protect the public property. Abdul Hussain Rasouli in his book *The Rights of Property* has introduced the advantages¹¹⁶ and disadvantages of the public property protection in the Afghanistan legal system. Treatise based on Rasouli's work assesses the effectiveness of the existing framework for public assets and makes recommendations on steps that could be taken in changing the legal structure to ensure an equitable distribution and preservation. His argument is that safeguarding public property is more than simply protecting physical assets it is preserving the integrity of the public trust.

The Concept of Property and Public Property

To enter the main and fundamental discussions, it is first necessary to define the concept of property, and subsequently, the concept of public property. Each of these concepts is addressed separately below.

The Concept of Property

Property is anything of value or a quality that is owned by

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an individual. This definition encompasses both tangible assets (e.g., real estate, vehicles, and cash) and intangible assets (e.g., copyrights, intellectual property rights, and legal entitlements). Property, in the legal sense, is anything that can be owned, bought, sold, transferred, or possessed. Be they material commodities or immaterial rights or privileges (Sprankling, 2014). In other words, property refers to an object or economic right that an individual can use or possess (Wyman, 2017). From a legal standpoint, property includes the rights and responsibilities associated with its owner or holder, and in law, property can refer to things or rights that belong to individuals and are transferable (Underkuffler, 2005). Since property can be interpreted in different ways depending on the legal system, there may be more specific definitions in each jurisdiction (Cole & Grossman, 2002). In the Afghanistan legal system the term property refers to wealth, assets, belongings, possessions, estates, goods, and anything owned by an individual. Linguistically, it is derived from the past tense of, meaning “to desire,” and in Persian, it is also referred to as *khwāstah* (desired possession). In legal and economic contexts, it is defined as anything with exchange value, economic worth, and the ability to be appraised in monetary terms (Langroudi, 2007). The Civil Code of Afghanistan defines property as: “Property consists of tangible assets or rights that hold material value in the eyes of people.” Various scholars and jurists have offered different definitions of property. For instance, Article 126 of *Al-Majallah al-Ahkām al-Adliyyah* defines property as: “Anything that human nature inclines toward and that can be stored for future need, whether movable or immovable.” Some Islamic jurists define property as follows: “Property is an abstract concept derived by rational beings from external objects; it is essential to human life and fulfills both basic and advanced needs” (al-Ghita, 2001). Legal scholars also define property in a similar manner: “Property is anything that is usable, holds economic exchange value, and is tradable.” (Safae, 2003). A homeowner’s ownership right over a house is legally recognized as property. The relationship between the right and the house is so intertwined that laypeople often equate the house itself with property. However, when the house is sold, the house itself remains unchanged in location and structure; what is actually transferred is the legal right of ownership, which entails authority, privilege, and control over the house in exchange for a sum of money. Once the transaction is complete, the former owner must vacate the property and no longer holds any legal right to it, having transferred that right to another party (Rasouli, 2017).

The Concept of Public Property

Public property is what the government owns and has everything going to the public. Such resources include parks, buildings, other urban shape and natural services provided for the use of the community (Cole & Grossman, 2002). While private property is under individual control, public property is managed by

public laws and regulations that ensure it works for the common good (Wyman, 2017). Public property can provide public services like libraries and schools or recreational green spaces or environmental conservation. Public goods are subject to democratic processes that govern their management and allocation and their role in promoting the common good (Underkuffler, 2005). This kind of property is critical for providing social order and equitable resource access; this property helps all constituents of society without regard to social or financial standing (Bromley, 1991). In the Afghanistan legal system Public property refers to assets that do not belong to any specific individual owner (Qasemzadeh, 2011). According to this definition, any property without a designated owner falls under the category of public or communal property. The term public signifies common ownership, general accessibility, and collective use, as opposed to private ownership (Amid, 2010). However, properties with unknown owners or lost items (*luqṭah*) that originally had a specific owner, even if their owner remains unidentified, are not considered public property. It is important to note that the definition provided above is not entirely comprehensive, as it merely states that public property lacks a private owner without explicitly addressing its function for public benefit and welfare. A more precise definition would be that public property consists of assets designated for the benefit and welfare of all members of society (Langroudi, 2007). These assets may be:

1. Directly accessible to the public, such as roads, public squares, bridges, and other public infrastructures.

2. Accessible under certain conditions, where usage is subject to specific regulations and eligibility criteria, such as public schools, state orphanages, and government universities. Several alternative definitions of public property have also been proposed:

“Public property refers to assets that belong to the public or remain unclaimed.” (Katouzian, 1998). According to this definition, public property comprises assets collectively owned by the people, which neither individuals nor legal entities can appropriate as private property. Examples include roads, bridges, mosques, parks, pastures, and other shared resources. Public property is closely associated with the concept of common property, which refers to: “Assets collectively owned by a nation or the residents of a region, such as a city, and utilized for public purposes, including parks, public squares, endowments, streets, and highways” (Jafari, 2007). Based on this definition, no individual may claim ownership over public streets, open-ended alleys, bridges, caravanserais, public reservoirs, historical schools, public squares, or wells used by the general public. The prohibition of private ownership over such assets stems from the fact that their intended function and purpose inherently conflict with private appropriation. Another comprehensive definition states: “Public property consists of assets owned by the state or public legal entities, designated for public welfare. These assets may be directly available for public use such

as roads, bridges, museums, squares, and parks or may be subject to specific usage criteria, such as public universities, government schools, and military buildings, which are accessible only to individuals meeting certain conditions.” (Rasouli, 2017). Afghanistan Civil Law provides a legal definition of public property: “Public property refers to assets that do not belong to individuals and are designated for the public interest and welfare.” Additionally, under the Civil Code of Afghanistan (CMA), public property may be either movable or immovable, provided that it is designated for public benefit and welfare. Based on the definitions provided, the author of this study proposes the following definition: “Public property consists of assets collectively owned by society, managed by public legal entities, and allocated for the common good and public welfare.”

Categories of Public Property in Afghanistan Law

As previously discussed, public property refers to assets and resources owned by society or the state, designated for public use and accessibility. These assets typically include land, parks, roads, natural resources (such as water, forests, and minerals), and public facilities (such as schools, hospitals, and cultural centers). The primary characteristics of public property are as follows:

1. Public Accessibility – These assets must be available for public use.
2. Absence of Private Ownership – Public property does not belong to any individual or specific group; rather, it is owned by the government or public institutions.
3. Sustainable Use – The management and utilization of these assets should be conducted in a way that preserves them for future generations.

The protection and regulation of public property hold significant importance in Afghanistan’s legal system. However, public property is not consolidated under a single legislative document but rather addressed across various legal texts. The key categories of public property under Afghanistan law include:

Public Buildings and Estates

Public buildings and estates are critical components of the infrastructure of cities and rural settlements, providing venues for governance, education, healthcare and cultural activities. Inactivity is sustained by the real estate maintenance law, policy, rules, and regulations for public ownership. Public buildings and estates: Public buildings and estates are usually owned by a government or public institution. The law regarding their ownership is based on the public trust doctrine, which requires that such properties be held for the public benefit. The public trust doctrine allows public buildings and land to be used in a way that meets the public good; according to Sax (1970), the state must retain the title to certain lands for the public good, and no one can take it away as it serves the public good (Sax, 1970). Public buildings and estates are among the primary forms of public property under Afghanistan law. The Afghanistan Penal Code

classifies public buildings and estates as public property and criminalizes any act that results in their destruction or damage. Given that these assets are allocated for public benefit, their destruction is considered a criminal offense under Afghanistan criminal law, and perpetrators are subject to legal penalties. (Afghanistan Penal Code, 2017).

Infrastructure Facilities

Infrastructure facilities are another category of public property recognized in Afghanistan law. Any destruction or intentional damage to infrastructure is considered a criminal act, and those responsible are subject to prosecution and punishment. (Afghanistan Penal Code, 2017).

Communications and Telecommunications

Communications and telecommunications are fundamental to modern society, enabling the exchange of information across vast distances and supporting economic, social, and cultural activities. The legal and regulatory frameworks governing these sectors are complex, involving a mix of national and international laws, policies, and standards. Below is an overview of key issues, legal principles, and challenges in the field of communications and telecommunications, supported by reputable sources. The telecommunications sector is heavily regulated to ensure fair competition, protect consumer rights, and promote universal access to services. In many jurisdictions, regulatory bodies oversee the licensing, pricing, and quality of telecommunications services. For example, in the United States, the Federal Communications Commission (FCC) is responsible for regulating interstate and international communications (Crandall & Singer, 2020). Telecommunications refers to the transmission of any type of message or information through electrical, magnetic, electromagnetic, optical, or related energy forms (Telecommunications Regulation Law, 2019). Similarly, telecommunication services are defined as services provided to subscribers via telecommunication and internet networks for a fee Article 3, Clause 23. Given that telecommunication infrastructure is established by the government to meet public needs, these systems are considered state property made accessible to the public (Telecommunications Regulation Law, 2019).

Trees, Pastures, Roads, Parks, and Recreational Areas

A prominent category of public property in Afghanistan law particularly within the Penal Code includes trees, pastures, roads, parks, and recreational areas. Any form of encroachment or damage to these properties is legally considered an offense, and violators are subject to criminal penalties. (Afghanistan Penal Code, 2017).

Pastures

Pastures are legally recognized as public property in Afghanistan law. However, pastures have historically been a source of conflict among different ethnic groups in Afghanistan, particularly between nomadic communities

and settled residents of central Afghanistan. (Abdullah, 2018). This classification of public property in Afghanistan demonstrates its legal significance and the various forms it takes within the country's legal framework. If you need additional details or further references, let me know!

Historical and Cultural Heritage

A historical artifact refers to a building or a movable object that belongs to a particular society or individual and, due to its historical or artistic value, is placed under legal protection through an administrative classification. According to the Encyclopedia Britannica, the term "antique" is defined as: "A term commonly used to describe objects of artistic and historical significance that are at least one hundred years old." Thus, cultural property generally consists of movable objects, specifically historical artifacts (antiquities) that hold historical or informational value and are at least one hundred years old, even if they lack substantial financial worth or have deteriorated from their original condition. Examples include items unearthed through excavations or artifacts commonly referred to as "underground relics" (Nejad & Narouei, 2011). The Afghanistan Penal Code explicitly addresses historical and cultural artifacts and the offenses committed against them in Article 731, which states:

(1) Any offense committed against historical or cultural artifacts as outlined in this chapter shall be recognized as a crime, and the offender shall be punished according to the prescribed legal penalties.

(2) For the purposes of this chapter, historical or cultural artifacts regardless of their origin or ownership include the following:

1. Movable or immovable property of special cultural significance to all nations, including architectural, artistic, or historical monuments (both religious and non-religious), archaeological sites, historically or artistically significant buildings, works of art, manuscripts, books, and other artistic or historical objects, as well as scientific collections, archives, and reproductions of these items.

2. Buildings specifically intended to protect or display cultural assets defined in Clause 1, such as museums, major libraries, and archival centers. Additionally, movable cultural property housed in these facilities or displaced due to armed conflict for preservation purposes is also included.

3. Movable or immovable historical and cultural artifacts discovered within the country or buried underground are considered state property. (Afghanistan Penal Code, 2017). This legal framework underscores the national importance of cultural and historical artifacts and the state's responsibility in their protection and preservation. Let me know if you need additional clarifications!

Forests

Forests are often considered public property, meaning their ownership belongs to the government or public institutions, and their use should benefit the public. This concept is rooted in the public trust doctrine, which

holds that the government acts as a trustee of natural resources to protect public interests (Sax, 1970). In many countries, national laws have vested forest ownership in the government and restricted their private use (FAO, 2020). The Forestry Law of Afghanistan defines a forest in Article 4, Clause 12 as: "An area exceeding 2.5 jeribs (0.5 hectares) of land covered with at least 10% tree canopy, which is not designated for agricultural or non-forestry purposes." According to Afghanistan's Forestry Law, forests are categorized into the following types:

Community Forests

"Forests officially designated and managed by local communities for the purpose of sustainable resource management for public benefit. The rights to use these forests for timber, firewood, non-timber products, livestock grazing, and conservation must be specified in the law." (Forestry Law, 2012).

Urban Forests

"Forests located on state-owned land within urban areas, planted or cultivated by the municipality, and used for forestry resources, wildlife habitat, water conservation, recreation, and environmental education" (Forestry Law, 2012).

Private Forests

"Forests that grow on privately owned or leased land in accordance with property laws." (Forestry Law, 2012).

State Forests

"All other forests that are classified as state property, located on government-owned land, and not claimed by local communities. These include national parks and forest reserves" (Forestry Law, 2012).

According to Afghanistan forestry regulations, forest resources are the property of the state: "The state, as the general trustee of the people of the Islamic Republic of Afghanistan, holds forests under its administration, except for private forest ownership, which is an exception" (Forestry Law, 2012). The Afghanistan Penal Code (Articles 820–835) does not explicitly refer to public forests but instead focuses on state forests. For example, Article 820 of the Penal Code states:

"Anyone who usurps, buys, or sells state forest land shall, in addition to the restitution of the land and compensation for damages, be subject to fines for land seizure as stipulated in this law." Although the Penal Code does not explicitly differentiate between public forests and state forests, the use of the general term "forest" in Articles 823, 827, and 828, as well as Clause (1) of Article 829, suggests an implicit recognition of public forests. However, in most cases, the law specifically mentions state forests when outlining criminal provisions. Given this inconsistency, the author argues that the Afghanistan Penal Code should have included specific legal provisions regarding public and private forests to ensure clearer legal distinctions and protections.

Water Resources

Water resources, including rivers, lakes, groundwater, and oceans, are typically considered public property, owned and managed by the state or public institutions. This concept is rooted in the public trust doctrine, which holds that certain natural resources, including water, must be preserved for public use and benefit (Sax, 1970). In many countries, water resources are constitutionally or statutorily recognized as public property, with private ownership or use strictly regulated (FAO, 2020). Regarding ownership of water resources, the Afghanistan Water Law explicitly states: “Water is public property, and the state is responsible for its protection and management.” According to Article 2 of the Water Law (2009), water resources include: “Surface and groundwater sources (rivers, streams, canals, reservoirs, lakes, glaciers, dams, springs, karez systems, and wells) where water regularly or intermittently flows, accumulates, or is stored.” Water resources are classified as public property, designated for public benefit and legally protected against destruction, obstruction, or alteration. Any such actions are considered an encroachment on public property, and offenders are subject to legal penalties (Water Law, 2012).

Waqf (Endowment) Lands

Waqf land refers to land designated for charitable purposes, either for the general public or specific groups (Abdullah, 2018). According to Article 3, Clause 15 of the Land Management Law of Afghanistan, waqf lands are public property allocated for charitable activities, regardless of whether they serve the entire public or a specific social group (Land Management Law, 2017).

Unclaimed Lands

There are also unclaimed lands, or lands that fall under nobody’s ownership or domain, that do not belong to individuals, groups, or specific governments. Such lands could either not have documents of official ownership, or could have opted to abandon their ownership for not occupying and making use of them. In international law, this is also called terra nullius, concerning those territories that no country has claimed as its own (Shaikh & Khan, 2024). In some countries, governments manage these lands as public property and utilize them for public purposes such as infrastructure projects, agriculture, or resettlement (Public Lands Foundation, 2020). Conversely, in certain regions, these lands become subjects of legal and social disputes due to the absence of defined ownership (Smith & Travis, 2010).

In the field of environmental protection and natural resources, unclaimed lands can become significant natural habitats that are either preserved or exposed to illegal occupation and degradation (Kasimbazi, 2018). The term “mawat” literally means “dead,” “lifeless,” or “uninhabited.” According to Article 127 of AlMajallah al-Ahkām al-Adliyyah, mawat land refers to: “Lands that do not belong to any individual, are not designated as pastures, firewood collection sites, or village commons,

and are located far from populated areas.” The Afghanistan Civil Code distinguishes between:

1. Unclaimed agricultural land (la-mālik agricultural land), which cannot be privately claimed.
2. Unclaimed non-agricultural land (mawat), which may be acquired only with the approval of the President. The Land Management Law (2017) categorizes land into: Agricultural land, Non-agricultural land, Waqf land, Common land, State land, Private land, Public land and Pastureland (Abdullah, 2018).

CONCLUSION

The study examined public property in Afghan law in terms of its classifications from a legal and jurisprudential perspective, including the Afghanistan Penal Code, Water Law, Land Management Law, and Forestry Law, among others. The arguments set forth will establish that public property is a significant public service to enhance equality of access and safeguard the natural resources of Afghanistan for the benefit of the public. Such assets, comprising roads, bridges, water resources, forests, and various other public infrastructures, are vital to promoting social justice and sustainable development in the country. Yet literature and resources suggest there are considerable obstacles to securing and equitably using these resources. Afghanistan lawmakers, therefore, must review and amend existing legal frameworks related to property rights and resource management to improve the protection and management of state assets. Additionally, drawing from international best practices in public property management can help provide practical and effective solutions. My main suggestions are as follows:

Legislative Review and Amendments

Afghanistan legislative bodies should review and amend existing legal provisions to ensure a clearer and more precise classification of public property within the relevant legislative documents.

Expert Consultation in Drafting Laws

The development of laws related to public property should involve specialists, legal experts, and scholars from relevant fields. Given the technical nature of these laws, the input of legal professionals and subject-matter experts is essential to avoid ambiguities and inconsistencies in legislation.

Encouraging Research on Legal Protection of Public Property

Legal scholars and researchers should explore various aspects of public property protection, particularly its criminal law dimension, through academic research and publications. Unfortunately, this area remains largely underdeveloped in Afghanistan, and further studies could contribute to knowledge production and legal advancements in this field.

Abbreviations

CMA – Civil Code of Afghanistan
 PC – Penal Code
 FAL – Forest Law of Afghanistan
 WLA – Water Law of Afghanistan
 PL – Pasture Law of Afghanistan

REFERENCES

- Abdullah, N. (2018). *Commentary on the Afghanistan Civil Code (Real Rights)* (9th Ed.). Saeed Publications.
- Amid, H. (2010). *Amid Persian Dictionary. Tehran: Shafi'i Publications*, 860.
- Bromley, D. W. (1991). *Environment and economy: property rights and public policy* (pp. xi+-247pp).
- Cole, D. H., & Grossman, P. Z. (2002). The meaning of property rights: law versus economics?. *Land Economics*, 78(3), 317-330. <https://doi.org/10.2307/3146892>
- Crandall, R. W., & Singer, H. J. (2020). *The FCC and the Regulation of Telecommunications*. Brookings Institution Press.
- FAO. (2020). *Global Forest Resources Assessment*. Food and Agriculture Organization, <https://www.fao.org/forest-resources-assessment/2020>
- Jafari Langroudi, M. J. (2007). *Legal Terminology*. Tehran: Ketabkhaneh Ganji Danesh.
- Kashif al-Ghita, S. M. H. (2001). *Tahrir al-Majallah* (Vol. 1, 1st Ed.). Tehran: World Forum for Proximity of Islamic Schools of Thought.
- Katouzian, N. (1998). *The Civil Code in the Current Legal System* (1st Ed.). Tehran: Dadgostar Publishing, 42.
- Kasimbazi, E. (2018). *Land Tenure and Rights*. UNCCD Global Land Outlook Working Paper. https://www.unccd.int/sites/default/files/2018-06/5.%20Land%2BTenure%2Band%2BRights__E_Kasimbazi.pdf
- Naqdi Nejad, M., & Narouei, A. (2011). *Crimes against Cultural Heritage in Iranian Law and International Documents* (2nd Ed.). Iran: Javdaneh Publications.
- Public Lands Foundation. (2020). *Sustainability and Management Policy for the National System of Public Lands*. <https://publicland.org/wp-content/uploads/2020/11/Sustainability-and-Management-Policy.pdf>
- Qasemzadeh, S. M. (2011). *Interpretation of the Civil Code* (5th Ed.). Tehran: SAMT – Center for Research and Development of Humanities.
- Rasouli, A. (2017). *Property Law* (2nd Ed.). Kabul: Farhang Publications.
- Safaei, S. H. (2003). *Persons and Property* (2nd Ed.). Tehran: Mizan Publishing.
- Shaikh, F., & Khan, M. F. (2024). Understanding the Legal Basis of Land Ownership. *Global Journal of Human-Social Science*, 24(9), 36-40. <https://www.grpublishing.org/journals/index.php/gjhss/article/view/127>
- Smith, J. B., & Travis, W. R. (2010). *Adaptation to Climate Change in Public Lands Management*. Resources for the Future. <https://media.rff.org/documents/RFF-IB-10-04.pdf>
- Sprankling, J. G. (2014). An international definition of “property”. In *The International Law of Property* (pp. 1–38). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199654543.003.0002>
- Sax, J. L. (1970). The public trust doctrine in natural resource law: Effective judicial intervention. *Michigan Law Review*, 68(3), 471-566, <https://home.heinonline.org>
- Telecommunications Regulation Law. (2019). *Official Gazette of the Ministry of Justice*.
- Underkuffler, L. (2005). The idea of property: Its meaning and power. *Oxford Journal of Legal Studies*, 25(4), 793–805. <https://doi.org/10.1093/ojls/gqi042>
- Water Law, Official Gazette of the Ministry of Justice. (2009, April 27). Issue No. 980, Serial No. 120, Article 35.
- Wyman, K. M. (2017). The new essentialism in property. *Journal of Legal Analysis*, 9(2), 183–246. <https://doi.org/10.1093/jla/lay002>