



The effect of the instant registration of official documents in the current legal order of Iran

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Abstract

Notary's office plays a significant role in legal community of Iran as the regulatory reference of legal relations between individuals and prevents disputes between individuals and related litigations in the courts by signing contracts and documents, relying on the rules and regulations of the country. Today, e-government should be promote the use of information and communication technologies in all their sections and organizations and the Notary Public Office of Real Estate Registration is one of effective pillars which has to move more quickly and accurately toward being electronic and facing instant registration of documents.

According to the Fifth Development Plan and development of an integrated system of Real Estate Registration and whereby the Organization for Registration of Deeds and Properties shall until the end of the second year of the program, operationalize the entire process of official documents and property registration and transfer in electronic form.

Instant registration of transactions was one of the components of e-government in the second half September 2013 emphasized by the Organization for Registration of Deeds and Properties in the register of official documents, which, without doubt, is considered as the most important change in registration system and a turning point in the transition from traditional to modern registration.

Legal order is one of the most important features in light of which instant registration of documents and transactions can be examined, evaluated and analyzed. The results of the study showed that instant registration of official documents, could have a significant effect on the current legal order and meet the main purpose of the scope of their impact on society and legal order which is justice through two important axis, the judicial authorities and registration authorities.

Keywords: official documents, instant registration, notary's officers, electronic document

1. Introduction

In application of Articles (46) and (211) of the Law for the Fifth Development Plan as well as Article 12 of the administrative law and paragraph (b) of article (48) of Law for the Fifth Development Plan, Organization for Registration of Deeds and Properties obliged the notary's offices of the entire country from 26th September 2016 to set the document through the organization system.

Given the importance and benefits of this scheme and its distinctive and undeniable approach, full utilization and optimization of the system, which is also known as "instant registration of transactions system" has an important role in the fight against forgers of documents, speculators and financial corrupts and thus transparency of economic processes at the macro level.

The comprehensiveness of these provisions is so much that their consideration results in comprehensive understanding of the functioning of the system, the functions of Organization for Registration of Deeds and Properties and notary's offices which prevents any discrimination on the roles and duties.

Moreover, paragraph "b" of Article (48) of the Fifth Development Plan regarded an electronic document as a paper document provided that its authenticity and integrity are established. Therefore, the same rights and duties for paper document are applied on the electronic document.

In accordance with paragraph "F", article (46) of the Fifth Development Plan, Organization for Registration of Deeds and Properties has to electronically record all stages of official documents and property transfers by the end of the

second act in order to develop a unified system of registration of official documents and property.

In addition in the same sentence in paragraph "M" of article (211) of the same law, the organization is obliged to launch the National Center for registration data and electrification of all the stages of transactions registration so that the instant response to inquiries made by e-mail becomes possible. It is noteworthy that electrification of all the transactions appears in two separate processes and thus Registration of Deeds and Properties and notary's offices are involved. These two processes are electrification of transactions on notary's offices and then electric registration of transaction in estate offices based on the reports received from notary's offices.

On the other hand, in accordance with paragraph "c" of article 12 of the Law of Administrative System Health Promotion, the organization is obliged to facilitate the exchange of all official documents and events of Registration of Deeds and Properties and notary's offices within one year and setup a shared network and database through a centralized system between Registration of Deeds and Properties and notary's offices of Iran.

Due to the fact that the events of notaries public summed in "sending inquiries from the office", "sending replies to inquiries by the registered offices to the notary's office", "sending a summary of the transaction by the relevant registry office to the notary's office" and finally, "recording the summary of transaction in estate office posted to the notary's office", legislator in this matter "once again emphasized on the involvement of the Registration of Deeds and Properties

as well as notaries public simultaneously in e-registration process”.

Thus, it is obvious that the success of this project would not be possible but in the light of collaboration of these two sections. Present study tries to deal with the concepts, principles and instant registration of official documents in the current legal system of Iran.

2. Definition of Document

In general, document refers to any trusted guide who can rightly claim to attract other beliefs, whether it is written or spoken. If the document is said to be absolute written or spoken, it will be synonym to evidence (Fazell angroodi, 2009, p. 364). It's said that such a document or speech is valid which means that a reliable and trustworthy person has narrated it.

However, the document in a certain sense is a written piece which can prove the claim and find the way to reality. In this sense, the document is not synonymous with evidence but it is a specific type of that general concept which is written, and thus not movable (Katouzian 2011, p. 275) ^[13].

Document is also defined as “the written document by the debtor to indebted indicating the debt or something like that. A written piece which indicated a debt” (Dehkhoda, 1998, p. 1215) ^[9]. Another definition stated that “a document is written proof to be applied in lawsuits and other proceedings” (Jafari Langroodi, 2007, No. 8183) ^[6]. Article 1284 of Civil Code of Islamic Republic of Iran defined document as “document is meant any writing which can be referred to in connection with a claim or a defence” (Haeri Shahbaghi, 2008, p.1158). Another definition, defined document as “an instrument to prove an action, contract or obligation” (Erfani, 2009, p.11) ^[11].

3. E-document

In electronic commerce law of Iran, there is no definition of e-document. However, article 2 of this law defined data message and signature. And regarding the validity of data messages or electronic signature, articles 6, 7 and 12 discussed the validity of electronic documents. Some (Bakhtiarvand, 2003, p. 49) argue that due to the lack of definition concerning electronic documents in electronic commerce law of Iran, the term data message in this law and UNICTRAL electronic commerce is used instead of electronic documents.

Obviously, data message is different from the electronic document. Data message is every symbol of the event, information or concept that is created, received, sent, stored and processed by electronics, optical or new information technologies. So data message is not same as electronic document. Data message is a part of electronic document because the electronic format includes the electronic signature.

United States of America Uniform Code of electronic transactions in paragraph 7 of article 2 in defining the electronic document, provides: "electronic document include: document produced, sent, exchanged or stored by electronic means". The law in defining the document in Article 2 stipulates that the document is "recorded data on a tangible medium or stored in an Electronic Media or other media which be as understandably recycled" (Rezai, 2006, p. 31) ^[10].

4. Registration of e-documents

E-document is defined as technology with digital electronic capabilities, magnetic, wireless, optical, electromagnetic, or similar cases (Dehkhoda, 1998, p. 324) ^[9]. The use of modern methods of communication and new technologies of communication and information for the registration of documents is so-called registration of electronic documents (Elsan, 2006, p. 1) ^[11].

5. Legislation in cyberspace

As it is reported in historical records since the invention of new technologies of information and communication and technologies related to cyberspace, was began in western countries, especially United States, therefore, this science has found a surprising development rate and since it is not limited to geographical and physical boundaries so it has penetrated without any restrictions to all countries, including Iran and in terms of useful services that have been done including doing all the ordinary things with great ease, speed, accuracy and less cost, it has caused all the people and the governments not to hesitate to use the new technology services and always use virtual space and network to do personal and social activities (Barati Hossein-Abad, 2010, p. 13) ^[3].

The virtual space is as a material world, living in which creates rights assignments, the defects and failure to perform the duties of which leads to civil and criminal liability. Therefore cyberspace as well as the physical world needs relevant rules and regulations, application of which guarantees the implementation of the rights of the people in this new world and also guarantee their rights. However, the arrival of new technologies to communities along with the privileges and extended service, also caused some threats and violations of user rights, certain new offenses committed in cyberspace so that the regulations and laws of the physical world were not any more efficient to address crimes and prosecute offenders and to determine the punishment in the new environment. Therefore, the legislators were forced to make the law in two areas (Barati Hossein-Abad, 2010, p. 17) ^[3].

6. The role of the Real Estate Registration in signing electronic documents

Registration of Deeds and Properties as an agency of the country's sovereignty which is headed by deputy head of the judiciary is indispensable as one of the most important organizations that as the trustee in accordance with the relevant provisions of the Land Registry documents, companies, patents, and other intellectual property rights and execution of documents. Real Estate Registration Nations role in the implementation of their duties properly is important since that the legal obligations of the Organization stabilize and strengthen the rights of legitimate public ownership and registration of properties and other rights by the organization leads to the recognition of the legal validity and ownership of the property and consequently would benefit from the legal and judicial support.

As if that organization performs its duty properly, the origin of many irregularities, social and legal conflicts has dropped dramatically and even disappears. And as we unfortunately witness today, there will be not be any cases related to rights and properties, the root and cause which is due to lack of proper documentation of regulations and properties. Indeed

the society where its organizations, in line with its legal obligations and proper regulation, register the rights and property of people in notary's office, not only consolidate and guarantee the rights of citizens but also leads to socio-economic and security order and security of investment in community mental health and abundant ratings and ultimately contribute to the growth and prosperity of society. Today, unfortunately, due to the lack of updates in all areas of its service, weak improvement in matching the body of the organization with the science and new information and communication technologies and insisting on running organization based on traditional and manual management of eighty years ago, organizations are not able to meet the needs of society of the current century and have many negative consequences that are harmful and sometimes irreversible. Some negative effects of the Real Estate Registration function is as follows (Tavakoli, 2002, p. 47)^[5].

7. Nature of electronic registration

Electronic registration is not first, simply limited to sign a certificate (as in Article 31 of legislation on electronic certification service offices byelaw was prepared to consider it). Second, to establish the department does not require a hard work by notary's offices. It not only requires to entrust its management to a technical expert (non-lawyer), but it also needs to design a technical system to delegate it the competent organization in the field of registration like any other notary's offices and avoid any mere technical viewpoint in this area (Elsan, 2006, p.16)^[1].

Thirdly, changing the current notary's offices to electronic record offices requires only one condition and it is the necessity to have technical and scientific possibilities where the notary's office can use specialists to meet the condition. Obviously, notary's offices are not required to electronically register and in case of doing this type of registration, they cannot be limited to this type of registration and prohibit them carrying out paper registration activities.

So, electronic register is not entitled to a nature which is legally different from the effects compared to paper records since what has changed related to the equipment used to perform the various stages of the document registration (the relevant evidence, store, archive, marketing, access, print, copy, etc.) and this should not logically mean to change the nature of electronic official document opposed a paper one (Elsan, 2006, p. 18)^[1].

8. Validity of Electronic Document in Law

In order to examine the validity of electronic documents by Iranian law, with respect to freshness of technology to Iran, new legal resources in the registration rules and Notarial Law are discussed along with comparative issues, preferably with regulations of U.S.A which is a leading country regarding the electronic documents all over the world, with an emphasis on the role of notary's offices. It must be admitted that technology has benefits which cannot be achieved with the existing registration system. For example proving the authenticity of electronic documents is possible only pursuant to matched technology and traditional registration does not work in these areas.

Today, updated scientific technologies with efficiency for production, storage, processing, recording and registration of documents in cyberspace are introduced which cannot be

denied or there are less probative value granted for them because there is no evidence of the superiority of paper documents to electronic equivalent. Another fact should be accepted is that the physical presence of the person who asks for issuing a document, document, or generally any action placed within the jurisdiction of registration offices or notaries public in computer system or electronic communication is not conceivable and to face up to this willingly notary that came to the notary's office with satisfaction to complete the registration document cannot be imagined in cyberspace (Gladman, Ellison and, Bohm, 1999, p100)^[15].

There are still things that machines fail doing it. For example, the realization of the content of Articles 63 to 67 of the law is difficult to imagine about an electronic record and in this case it should be noted that the electronic record is not possible. So that the lack of physical presence has consequences which lead to increased fraud, related crimes such as forgery of documents and abuse (Parvin, 2012, p. 43).

With electrification of registration there is no need to attributes used for normal document or official paper document required in substantive or procedural laws. Because all the benefits of electronic official document will be provided for other support and guarantee documents, Therefore, procedures and standards must be adhered to so that they would not hesitate the safety of documents. Several rules and regulations solved the issue that electronic documents are valid or not For example, in the United States electronic sign has become de facto legal standards globally.

The same validity has been recognized compared with known paper documents for electronic documents. The processes is completed based on two rules of The UNCITRAL Model Law adopted in 1996 and 2001. Clause (a) (2) of article 62 of Digital Signature Act 1997 of Malaysia Act implicitly approved the validity of the data message that is used to create an electronic document. Under this clause "Notwithstanding any written law to the contrary, a document signed with a digital signature in accordance with this Act shall be as legally binding as a document signed with a handwritten signature, an affixed thumbprint or any other mark and a digital signature created in accordance with this Act shall be deemed to be a legally binding signature".

In Iranian law under Article 6 of the Law of Electronic Commerce "When the existence of a written document is deemed legally requisite, "data message" can be used as a replacement" and thus according to Article 8 "Where the law requires that the information be presented or retained in its original form, it is also possible to retain it as "data message". Further, according to article 9 of the same law, "Under any circumstance where the distribution of a "data message" is terminated from a certain point in time and it is replaced with a paper document, this shall be expressly stated in the paper document. Such a replacement will on no occasion affect previous rights and obligations between both parties".

Finally article 12 of this law eliminates any doubt about the validity of the electronically registered data stating that "Evidence and any supporting document may be in the form of "data message". The evidential value of a "data message" can by no means be repudiated solely due to its form and framework at any court or governmental office". It should, however, be insisted that no document, evidence, record or electronic signature are not officially registered before

spending the legal formalities and in this regard, we can cite judicial decisions that although these documents have not been considered due to not discussing the electronic documents directly, but they contains general rules for how documents are counted official (Elsan, 2006, p. 19)^[1].

9. Consequences of Instant (Electronic) Registration of Documents

9.1 Validity of Electronic Document's Contents

Provision of electronic documents are kept through a secure and safe methods of production and have probative value and in terms of obligations and rights under which the parties and their surrogate ruled as valid, legal and are reliable in all jurisdictions. Iranian legislator for the first time stipulated in article 12 of the Electronic Commerce Act that "Evidence and any supporting document may be in the form of "data message". The evidential value of a "data message" can by no means be repudiated solely due to its form and framework at any court or governmental office".

Legislator in Article 15 of the law inadvertently or deliberately, without explicitly declare that electronic documents are official, in Article 15 differentiated official documents from electronic documents and data messages. According to this article, "The validity of a secure "data message", secure electronic record and secure electronic signature may not be questioned or denied; only a claim of forgery of a "data message" or a proof of its invalidity on a legal basis may be considered".

Despite such a position, as long as the rules related to electronic documents do not expressly recognizes these documents based on law, they cannot be called an official document despite their credibility.

9.2 Claims against the contents of electronic documents

Contemplating in the statute of Iran, it is seen that article 1309 of the Civil Code says: "Against an official document or a document whose validity has been established at the court, no claim which is in contradiction with the substance or contents thereof can be proved by evidence".

As well as Article 1324 of the Civil Code says: "the circumstantial evidence left to the view of the judge are the conditions and circumstances regarding the issue (of a claim), and can be accepted only in cases where the claim is provable by the evidence of witnesses, or where it (the circumstantial evidence) completes other evidence". Based on the two of the above mentioned articles, lawsuit against official contents cannot be substantiated by witnesses or evidence.

Although the Council of Guardians revoked and considered article 1309 as unlawful and there is conflicts among the lawyers on the qualification or disqualification of the Council is the case of cancellation of legal provisions is put of its legal status, however, it is inferred from the content of the article that not only documents and electronic evidence are exempted in articles 1309 and 1324 but the logic of articles 10 to 15 of Iran e-commerce law has approved any claim against electronic documents, audibility and according to each of Evidence contained in Article 1258 of the Civil Code the invalidity of electronic documents can be proved (Fadwi, 2011, p. 21).

9.3 Validity of Electronic Evidence against Individuals

At present condition of our legislation, it is evident that safely produced and kept electronic evidence, are valid and binding to the parties and their deputy and have fully legal effect consequences. However, according to Article 1290 of the Civil Code that "Official documents are binding in respect of the two parties and their and successors. They are binding in respect of third persons if this has been stipulated by the law", electronic documents are primarily effective for third parties if predicted and approved by the legislator in legal context. Otherwise, these reasons are only effective and binding in respect of two parties and have legal consequences for them.

9.4 The Official Electronic Document Entry into Force

One of the positive and valuable consequence of document registration is that their provisions will be binding without the need for a ruling from the Court of Justice and law enforcement and other government forces and the general public are obliged to act for the implementation of the act provision in the case the officers shall be carried out to see them. Article 92 of the registration law states that all the official documents on loans and other properties are obligatory without the need for an order by the justice unless in case of giving the same property owned by the third person. In addition article 93 of the same provision states that all the official documents of the real estate transactions are obligatory independently and without need for reference to the courts. Accordingly it is understood that electronic documents are only applicable regarding obligations and if there is no evidence of obligation in the document, there would be no order of obligation. There is no difference between the classic and electronic documents in terms of obligation and even the specific advantages of electronic documents such as precision and safety approves the issue. However, since this effect of legal documents is applicable on documents which are signed at registration offices and based on traditional practices. In case of correcting the legal mechanism and removing the legal gap regarding the electronic documents, the obligation order can be issued without any difference to the traditional documents and the owners of electronic documents can use the specific advantages of it.

10. The enforcement effects of electronic documents at courts

Changing the traditional documents into electronic documents at courts is significant in terms of judgment and judicial proceedings which is briefly discussed below.

10.1 electronic documents and claims

In many legal cases and problems in form of legal cases. Legal document is the principle of the claims and the documents of the plaintiffs or complainants. The case which is formed based on a normal or legal document is a case claimed due to ambiguity and problems at judiciary. For instance, the buyer of a property has purchased it using a normal estate contract and the seller avoids to register it legally and so the buyer refers to the court for purchase contract and legal documentation. Plaintiff at first act to submit a petition and pay the cost. Whenever the case is claimed based on traditional system, the plaintiff is not aware of the condition of the estate including the court, legal

ownership, the presence of third person in legal case, the number of claimants and the cost to be paid and others. Thus there would be problems at the first stages of hearing including formation of cases and proceedings leading to unfair order. Sometimes the righteous one acts for a legal claim and order and spends a long time facing difficulties to gain the right. However, a claim based on electronic system in a judicial system leads to minimized errors or removal of problems. For example, the plaintiff can make use of legal advice before registering the case and confirms the ownership and also can find any problems in ownership. It is also known if the plaintiff has made correct selection base on the Law. Further based on article 73 of tax income collection regarding the cost of proceedings, the plaintiff pays the exact cost and court can easily control the case. Even after the case is formed, sine any hearing is based on registered case in the system to approve the claim, and regarding ownership problems, it would reduce the time for hearing and judicial proceedings. There would also be no cost for the plaintiff and judicial system and no delay based on a legal process in electronic registration system and so many cases can be proceeded at the same time and there would be no problem in proceedings (Osoli, 2009). In other cases, the electronic registration system also facilitates the task of judicial proceedings. For instance in a case of fraud, an electronic legal document immediately reviews the claims for charge before issuing any order for securing and in fact makes decision making easier and thus respect the right of the plaintiff and avoids any arrest.

10.2 Electronic Documents and Insolvency

One of the rights for those condemned under the criminal and legal cases is the issue of insolvency. Whenever the accused cannot pay the cost of the proceedings due to lack of money or no access to his property, based on insolvency act approved in 1982, he has to submit an insolvency claim. So, if he is recognized as insolvent, he can pay the cost based on his financial condition determined by the court or is exempted from paying the cost. In Iran one of the payment sources of rich people are the estates recognized by state offices. Sometimes the accused is rich but in order to avoid payment, uses the insolvency term to claim insolvency. In this case, the accuser is deprived of his rights due to the traditional registration system where the judiciary accepts the insolvency and approves the insolvency. The accuser also has to accept the order due to lack of registered evidences. However, electronic registration uses new technology to provide the access for judiciary authorities to any document including movable and immovable property and so cannot accept insolvency claim without approval since the system is electronic and so a rich person cannot make a fake insolvency claim. In case of claiming fake insolvency, the system can review the banking and job activities so that a rich person cannot make a wrong insolvency claim. Using electronic registration can help avoid any wrongful act regarding insolvency claim (Mahmoudi 2012)^[14].

10.3 Electronic Documents and Claim Support

The main philosophy of judiciary system is to act based on Law and present justice for society and meet the people's needs. With electrification of registration there is no need to attributes used for normal document or official paper

document required in substantive or procedural laws. Because all the benefits of electronic official document will be provided for other support and guarantee documents, Therefore, procedures and standards must be adhered to so that they would not hesitate the safety of documents. Several rules and regulations solved the issue that electronic documents are valid or not For example, in the United States electronic sign has become de facto legal standards globally. The same validity has been recognized compared with known paper documents for electronic documents. The processes is completed based on two rules of The UNCITRAL Model Law adopted in 1996 and 2001. Clause (a) (2) of article 62 of Digital Signature Act 1997 of Malaysia Act implicitly approved the validity of the data message that is used to create an electronic document. Under this clause "Notwithstanding any written law to the contrary, a document signed with a digital signature in accordance with this Act shall be as legally binding as a document signed with a handwritten signature, an affixed thumbprint or any other mark; and digital signature created in accordance with this Act shall be deemed to be a legally binding signature".

11. Enforcement of Electronic Documents at Notary

This section discusses the enforcement of electronic documents and its effect in notaries.

11.1 Electronic Documents and Registration Rules

Changing the registry practices into electronic documentation at Notary office is one of the most important issues and a change which has facilitated the task of registration in these offices. If the registration system achieves the registration through electronic system and people's rights are legally documented, the result will be a stabilized system of registration which has supported legal claims and enforcement of law by the legislator. Further, the registration system gets rid of bureaucracy and act as an electronic system which makes it possible to quickly meet the need through social media.

11.2 Legal Electronic Documents and Contradictory Documents

Today and regarding the present condition, the registration operation is so that due to wide volume of registration affairs, long and complicated process of issuing the orders for a real estate at various stages, the second document is called the contradictory one which leads to some problems in registration. However, a mechanized registration system leads to avoidance of any contradictory document and so any extra cost for people and society.

11.3. Electronic Documents and Tax Return

The registration office defines the ownership due to being responsible for all registry affairs and any practice related to real estates, ownership and block of the property along with many other affairs are performed by the office. Thus, the judiciary ask the registration office on the issues related to provision and arrest of properties before registration about the ownership or possible blocking of the properties. The present system requires bureaucracy to define the ownership and spending time for this purpose which in turn creates challenges and problems including mistakes in response, delay in blocking the estates, delay in registration,

blocking other estates instead and many other problems. However, an electronic system can immediately do the affairs and in addition to increasing the speed, it would avoid any errors and problems (Mahmoudi, 2012)^[14].

12. Conclusion

Although human societies have been slowly progressed due to dependence on traditional ways of life before the present century, the completion and development of human civilization at the present century is met with strange and wonderful phenomenon of communication technologies which have shorten the long way of development and have quickly taken the societies over. Thus, today the advantages and potentials of using social media have had tangible impact on human life so that even the most incognizant people do not hesitate using new technologies. Iran is not an exception and any delay for using new technologies would have harmful and negative effects. One of the issues discussed at the present study is that the developing countries, especially Iran have had no role in development of communication and have been the mere users. However, since advantageous technologies have entered these societies and have had unlimited advantages for them, it is inevitable for the government to play more active role by taking basic and correct practices as the national and strategic policies to increase the level of using the latest technologies at all areas including legislation and technology transfer to change the traditional system of the government and improve the electronic systems. This would not be possible without the efforts by the state men and all the corners of the society. It can be stated for certain that in evaluating the effects of modern technologies, development and advancement of ever society at all cultural, social and economic dimensions depends on development of information technology and one of the criteria for evaluating development in every society is the development of information technology there. Thus it is suggested to keep pace with advances of the present century along with maintaining all the religious values and principles and developed the social media as quickly as possible. In addition, the registry offices are the units dependent on judiciary and Registration Organization of Landed Estates and Documents which are responsible for registration of legal documents and signature certificates based on law and people refer to these offices to make their documents legal and valid. Electronic government is formed to reduce bureaucracy of the registry offices through immediate electronic registration of documents since the increased diversity and level of activities at registration offices and at the same time the increased registration of crimes, distribution and using ten millions tons of paper at registration system reveals the inefficiency of traditional registration system to meet legal requirements of the society. This has led the authorities to use the modern technology systems for registration. It was found that the registration offices can secure the information through using the electronic system and use it as a comprehensive information bank for registration and also register documents and contracts in this system so that it is possible to prevent registration offenses. Further, this system have some challenges and problems, the most important of which is the slow pace of doing the affairs through social media due to software and infrastructure deficiencies with vast effects on judiciary and registration offices. These weak points can be

resolved through using the electronic documents and are negligible so that we can try to remove the probable deficiencies and strengthen the legal infrastructures instead.

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