

The Concept of Land Ownership in Islam and Poverty Alleviation in Pakistan

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In the Name of Allah Most Gracious, Most Merciful

1. “Nay, this is a Glorious Qur’ān. (Inscribed) in A Tablet Preserved” *Sūrah al-Burūj vv. 21–22*).
2. “It is He who has spread out the earth for His creatures”. (*Sūrah al-Rahman v. 10*).
3. “Do they not look at the Earth,—how many noble things of all kind shave produced therein”. (*Sūrah al-Shu’arā’*)
He Who Has made for you the earth like a carpet spread out; has enabled you to go about therein by roads (and channels)...
4. “Eat for (yourselves) pasture your cattle: verily in this are signs for men endued with understanding”. (*Sūrah Ta Ha vv. 53–54*).

INTRODUCTION

Land ownership—in its ethico-legal and historical manifestations, reflects the importance of being a politico-economic institution. In the process of its development, it includes various heterogeneous elements of different systems of ownership. With the growth of the *Ummah*, the principles of laws of ownership represent and embody the relations, rights and duties to form the general law of obligations at the state as well as individual level. This is the case of economic and legal theory, regarding the ownership of land with implicative infrastructure to build social welfare institutions of Islam.

It is generally and basically have been ordained that according to the teachings of Islam, Real ownership belongs to Allah Almighty. Man being the vicegerent holds property in trust for which he is accountable to him in accordance with the clearly laid down economic philosophy of Islam. Ownership of man is a concept alien to Islam as it belongs to Allah Almighty only. The Holy Qur’ān says:

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Behold, thy Lord said to the angels: "I will create A vicegerent on earth".
 They said: "Wilt Thou place therein one who will make Mischief therein and shed blood?—
 Whilst we do celebrate Thy praises And glorify the thy holy (name)?"
 He said: "I know what ye know not". (*Sūrah al-Baqarah* v. 30).
 It is He Who hath made You (His) agents, inheritors Of the earth: He hath raised You in ranks, some above Others: that he may try you In the gifts He hath given you:
 For thy Lord is quick In Punishment: Yet He Is indeed Oft-forgiving, Most Merciful. (*Sūrah al-An'ām* v. 165).

The fundamentals represented are in the legal rights of private ownership, its protection, and the conditions it entails upon the ownership to establish social justice, economic equilibrium, and security of the human labour. To make it more responsive, flexible and efficient in contributing to economic growth and alleviation of poverty, all schools of *fiqh* are unanimous that ownership is a perpetual human action, which rests on the assumption of owner's inalienable right over his property. However, land ownership with some regulations to limit its character, is neither absolute nor unconditional in Islam. As land is God's and it has no possessor among human beings because the earth is God's and He has to give it as a Heritage to such of His servants, the vicegerents—the trustees. This concept has been explained in *Sūrah- al Rā'ad* v. 4, *Sūrah al-Hajj* v. 19, *Sūrah al-Rehman* vv. 10-13; where as the verses 53-54 of *Sūrah al-Ta Ha* says:

He who has made for you the earth like a carpet spread out; has enabled you to go about therein by roads (and channels).
 Eat (for yourselves) and pasture your cattle; verily in this are signs for men with Endued with understanding. (vv. 53–54).

HISTORICAL PERSPECTIVE

Till the advent of Islam, Arabs had no concept of neither land ownership nor the individual property. They knew only about the '*Himma*'—land kept as a preserve in the collective interest of the community and they use to share the benefits by some agreements. In case of tribes the strong tribe used to impose such levy in kind, and in return for refraining from attacking and for protecting them against any danger. These types of payments developed a sense of land ownership. At the advent of Islam, this concept of land ownership developed in accordance with the teachings of Islam. This development transform the Bedouin tribes into towns people and subsequently into a civilised nation. For example, the Holy Prophet (peace be on him) granted land "either to reconcile their hearts or for the sake of encouraging the reclamation of land. Muslim jurists term this as *Iqta'Tamlīk* (i.e. conferring the rights of property). Following the practice of the Holy Prophet (peace be on him) the

Caliphs granted land in the same manner, and the grantee was secure in it and none was capable of revoking it. At any rate *iqta'* is an innovation introduced by Islam, for the purpose of establishing private ownership of land within certain limits. Thus in due course the concept of '*Hima*' developed into *iqta'* and land became saleable property. The legal theory and the related socio legal concepts were developed and systematised by the *Fuqaha* in the 2nd/8th century starting with the administrative practices of the Ummayyed Caliphs and their governors. The basic elements and concrete ideas of these theories were present in the 1st to 7th century, after the great conquests of the early decades. The early conquests of lands of Bunu Nadeer, Banu Qurrayze and Khuber etc., raised fundamental questions as to how to dispose off the lands. During the early period the answer to this question was based on the principle that Muslims as members of the *Ummah* were generally equally entitled to wealth and privileges accruing from the conquered lands. Though the net economic-political framework was not established as institutionalisation could have, but a strong moral consciousness was provided to the community. The nature of 'land ownership' in Islam whether it is perpetual or through the state's legislation, it is in its historical perspective where it can best be realised from. In the address which the Holy Prophet (peace be on him) delivered on the occasion of the Farewell Hajj, he said: 'Your lives and properties are forbidden to one another till you meet your Lord on the day of Resurrection'.

GENERAL CATEGORIES OF LAND OWNERSHIP

Land in the Islamic countries are of two categories: owned and unowned. Here we have a clear perception of the owned and unowned lands, as explained the notions in detail, as follows:

Unclaimed Land (Unowned)

1. Land that is not owned by any person but is used for the common benefit of all the residents of a locality or from which certain things of common use like salt, kerosene oil, petrol etc: is being extracted.
Such property shall for ever remain open for public use (like "Wakf") under the supervision of the Muslim Government. Neither any Ruler or Amir can become himself the owner of such land nor can be make any one else owner thereof.
2. Dead Land/Useless Land which is uncultivable and cannot be used for the of benefit of the residents of any locality. Anybody who can make such land cultivable or otherwise useful, he can, with the permission of the authority make improvements therein. On his being successful in task, he will become the owner of such land. In such cases there is neither any restriction of eligibility nor distinction of between a Muslim or non-Muslim. Any person

who applies for this purpose can get such land. "Authority" has the following powers to dispose off such land:

- (a) Cultivable land be given on lease and residential property be rented out. The income of rent or lease money be deposited in *Bait-ul-Mal*.
- (b) Converts such property into mosques, *Madaris*, Inns etc. and other instruction of public welfare.

Private Property (Owned Land)

1. The owners of land whereof converted to Islam at the time of conquest; the property will remain with such owners and "*Ushr*" will be levied on them, in case of agricultural lands.
2. Owners do' not convert to Islam, but by way of peace and compromise surrender to the obediences of Muslim rule. Terms and conditions of the compromise or facts are to be honoured forever. It is provided in the terms of agreement, that the owners of land will retain possession of the land with them. Then these owners will remain in possession of land and the Islamic government shall have no interference therein.
3. When a country is conquered by force and fight, the land of that country shall be dealt with in any of the following three ways:
The Muslim Ruler has the option to adopt any one of the following:
 - (a) He may distribute the land as bounty in the peoples entitled to the benefits of war. In such situation the person to whom a particular land allotted shall become the owner thereof.
 - (b) Allow the person owners to retain possession of their land on payment of "*Kharaj*". In this situation the previous owners shall become the owners of their land.
 - (c) Take away the land from their owners and then give the land on lease/rent to any person including the ex-owners. In this way the land will cease to be private property and shall become a part of *Bait-ul-Mal*.

Though in Islam the ownership of property is not denied, Islam allows individual the right to own property, but this right is not absolute. Because God is the Supreme Owner: man and society are His vicegerents. This is not a hollow concept and without implication.

ROLE OF TAXATION

The proposition/subject of land ownership in Islam is based on the Islamic theory of taxation. The Holy Qur'ān in *Sūrah al-Baqarah* v. 267 and *Sūrah al-An'ām* v. 141; says:

Ye who believe! Give of the good things Which ye have honourably earned, And of the fruits of the earth Which We have produced For you, and do not even aim At getting anything Which is bad, in order that Out of it ye may give away Something, when ye yourselves Would not receive it Except with closed eyes.

And know that God Is Free of all wants, And Worthy of all praise. (*Sūrah al-Baqarah* v. 267).

It is He who produceth Gardens, with trellises And without, and dates, And tilth with produce Of all kinds, and olives And pomegranates, Similar (in kind) And different (in variety): Eat of their fruit In their season, but render The dues that are proper On the day that the harvest Is gathered. But waste not By excess: for God Loveth not the wasters. (*Sūrah al-An'ām* v. 141).

It is therefore evident that it was based on the financial and political relationship between the state and the territory under its jurisdiction. The Muslim land holders were allowed to retain possession of their lands with 'Ushr as tax such as the lands in Makkah and Madinah, Taif, Yemen, and Bahrayn. The Holy Prophet (peace be on him) however, sometimes exercised his authority to make *Hima* (exclusive enclosures) of lands in the collective interest of the community. For example, the Holy Prophet (peace be on him) declared the land of Naqi as *Hima* for rearing the chattels of Zakat. Similarly, in the vicinity of Madina, "Umar made *himas* of Rabadhah and Sharaf, i.e. common pasture grounds for the use of all. 'Umer is also reported to have earmarked as *Hima* a piece of land owned by Banû Tha'labah for rearing the chattels of the Muslims. On being objected by some influential persons of the tribe, Hazrat 'Umer declared that these lands belonged to God and would remain as *Him* for the Muslims. In case of conquered lands, the Holy Prophet (peace be on him) brought under his control estates of arable lands during his encounters with the Arab Jewish tribe who were mainly Agriculturists. Moreover, the Holy Prophet (peace be on him) set up the organisation in Khayber and Banû al-Nadeer as well as in other conquered Jewish villages. The jurists deduced their different viewpoints based on the precedents. Some of them held the view that Muslims had the right to hold the conquered lands. Others said that these lands were the property of the state and that individuals could only have the right of working on them. Later jurists tried to ascribe to 'Umar, the system of taxation and the institution of land ownership. Many explanation suggest themselves for this policy. The available evidence points to the fact that this was done for two basic reasons:

- (1) To check Muslim conquerors from becoming absentee land lords.
- (2) To ensure main revenues and rents for the state and the fighters.

KINDS AND TYPES OF LAND OWNERSHIP

1. *Fay'* Lands

The conquered agricultural lands. *Fay'* means (literally *rujū*), or return of thing. This has been derived from the word *afā'a* which occurs in the verses 6-7 of

Sūrah al-Hashr. Though the *fay'* verses of *Sūrah al-Hashr* fall into two distinct parts, and belong to two different historical context but have more or less similar Commandments:

- (i) That *fay'* or conquered lands belong to all Muslims' the verse 7 of *Sūrah al-Hashr* reads as follows:

What God has bestowed On His Apostle (and taken Away) from the people Of the townships,—belongs To God,—to His Apostle And to kindred and orphans, The needy and the wayfarer; In order that it may not (Merely) make a circuit Between the wealthy among you.

So take what the Apostle Assigns to you, and deny Yourselves that which he Withholds from you. And fear God; for God Is strict in Punishment. (*Sūrah al-Hashr* v. 7).

- (ii) The second category of the *fay'* verse relates to the lands of the Banū Nadeer. These verses have reinforce the concept of “Common” *fay'*. It has clearly been stated that conquered lands belong to all the three classes of the poor Muslims mentioned in these verses of the Holy Qur'ān:

“Whatever spoils of war God has given to His Messenger (peace be on him) from the people and the cities, belong to God, and His Messenger (peace be on him) and the near Kinsmen, Orphans, the needy, and the traveller, so that it be not a thing taken in turns among the rich of you, whatever the Messenger (peace be on him) gives you take; what eve he forbids, you give over. And fear God; Surely God is terrible in retribution”.

2. *Khassa Lands*

Khassa or the exclusive land are of three types:

- (i) Fadak and the land of Banū Nadeer and all the goods therein which “God had returned”, to him without war. Fadak was reserved for poor travellers who used to sojourn with Muslims.
- (ii) Safīya which the Holy Prophet (peace be on him) selected from the booty before it was divided among the Muslims.
- (iii) One fifth of the Khums of booty.

3. *Hima*

Before the advent of Islam in the tribal eco-structure the concept of private ownership of land was not much in vogue. The reason of this non-developed concept was that land was more or less a common source of subsistence. This was also

characterised as *Hima*, the collective reserves for grazing of cattle. So, in the pre-Islamic period *Hima* had generally become as privileged holding of a tribe or a ruling class. Concurrently as we have seen the concept of *fay'* of the Muslim; *hima* also had a definite transformation from the *hima* of one particular tribe to the common *hima* of the Muslims. Consequently *Hima* was made a common land.

4. *AK-IQTĀ* (Grant or Benefice, or a Piece of Land)

In the beginning of the Islamic history the state used to grant “dead” uncultivated unowned lands. The purpose behind this action was to increase agricultural production. *Iqtā* has been classified into two categories:

- (i) *Iqtā-tamlīk*
 - (ii) *Iqtā'irfāq*.
- (i) *Iqtā-tamlīk* is the grant which made according to the Holy Sunnah of the Holy Prophet (peace be on him) and becomes a private property with the right of ownership.
 - (ii) The second category of relates to the benefice, as a source of gain and profit as long as it retains, it is inalienable.

5. *Ihyā Al-Mawāt*

This is a concept which means bringing of uncultivated and dead land to life. This is very important being basic to understand the nature and extent of private establishment.

6. *Bay Lands*

Bay—literally means transaction (both sale and purchase). In the legal terminology of the *fuqaha*, it means *mubādala*, or simple exchange. In both senses of the word an element of contract or agreement (*mu'āhada*) enters into the meaning. The contract of bay forms the core of the Islamic Law of Obligations.

The Islamic teachings have validate five various forms of tenancy; which are following:

- (a) Free Tenure;
- (b) Partnership Tenure;
- (c) Lease of bare land;
- (d) *Muzāara'* a Tenancy;
- (e) Labour Tenancy.

RELATIONSHIP OF LAND AND THE OWNER

Before we proceed on, it is necessary here to classify the relationship of land and the owner. There are two types of relationships:

- (1) With the land itself; which can be called in terms of Al-Raqabah;
- (2) With the use, whatever can be made either in cultivation, or for building or for infrastructure etc;

Islam by acknowledging the private/public ownership of land, not absolute but as viceregency, lays down rules regulating the ownership of the land and the permissibility to benefit from it.

ECONOMIC IMPLICATIONS FOR POVERTY ALLEVIATION IN PAKISTAN

Poverty—a state of distressed deficiency which occurs in the form of disequilibrium between the required ‘basic needs’ and the dearth of ‘available resources’. In other words poverty is a symbol of negative relationship between the wants/necessities and the scarcity of economic resources. Actually the problem lies not only with the security of the resources but also with the access towards the resources. As we have seen repeatedly in the Holy Qur’ān:

- (i) Land has been declared ‘living’, producing rich crops of fodder and corn, nuts and fruits, to satisfy the hunger of man and beasts.
- (ii) We have ordained principles. In the Holy Qur’ān *Sūrah al-Imran*, v. 159, *Sūrah al-Nisa* vv. 58-59. gives the basic comprehensive concept of what v. 41 of *Sūrah al-Hajj* reads as:

They are those who, if We establish them in the land, establish regular prayer and give zakat, enjoin the right and forbid wrong. With Allah rests the end (And decision) of all affairs.

The question arises how can the land; not only in the form of agriculture but in all its uses; for example, buildings, and infrastructure etc. can best improve the conditions of the poor? And, is Land development an important instrument in the tool boxes of policy-makers and is the development authorities concerned with the alleviation of poverty; which is the main duty/obligation of the state, particularly the Islamic State.

It has become a matter of self-evidence that the recent developments have been ascribed with benefiting the rich more than the poor, well-endowed citizens more than disadvantaged ones, the agricultural more than the non-agricultural and landed more than the landless people. The real indicators suggest that land development has helped raise incomes, and productivity, enable growth in food production to meet population growth, uplift the general standard of living by generating and utilising natural resources.

According to the Islamic teachings, poverty is an appropriate point of departure for the following reasons:

- (a) Poverty reduction can; be an effective demand factor that influenced the land reforms/development agenda, positively.
- (b) Target specifically land development and vice versa.
- (c) Adequately accomplish multiple goals.

Keeping in line with these teachings, there must be a consensus on the main ingredient of poverty reduction programmes in Pakistan. For example, where as land development can affect poverty ... e.g., increases in output, savings in inputs, area expansion, risk reduction, reduction in marketing costs, improved nutrition, better health etc. the natural resources—poverty linkages can design initiatives for alleviating the poverty. Since the principal factor, conditions the impact of land development on poverty it is the quality of available natural resources, to help poverty targeted programmes. These programmes are to be guided principally by that factor, and that factor is one of the factors of production i.e. the land. The promotion of the institutional models can increase the land's role in poverty alleviation productively.

At the advent of 21st century, the plight of massive numbers of disempowered poor people must weigh heavily on the minds of policy-makers. Why?...; the true question to be answered; does poverty continue to reign, despite the huge, social economic and technological developments. What can be done to open pathways for the millions and millions who are desperate to make the journey towards self-reliance. The questions must deeply concern the policy-makers to eliminate poverty as the central goal.

Anticipating the expanding role of the land—natural resources, most of the benefits can reach the poor by four main avenues:

- (1) Raising farm incomes by offering technological innovations that boost agricultural productivity.
- (2) Generating employment in the farm as well as non-farm sectors.
- (3) Stabilising the prices of food.
- (4) Fuelling economic growth.
- (5) More Competitive Sectoral Growth.

A BLUNT INSTRUMENT TO PAY THE MORAL DEBT

Despite having much evidence of impact, unanimously, the land development has been considered “a blunt instrument for reducing poverty”. There is certainly an element of truth in those facts/arguments. On the strength of that record, Land Development Reforms, must be having a vital role in paying society's huge moral debt to the millions of people who live in absolute poverty.

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have drawn on *Landlords and Peasants in Early Islam: A Study of the Legal Doctrine of Muzara'a or Sharecropping* by Zia ul Haq.

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Comments

The topic of the paper has a significant importance in the context of poverty alleviation/reduction debate, not only in Pakistan's official circles but also amongst global donors who are showing a concern about poverty in Pakistan. The author has made a good attempt in this direction.

Some of my observations on the paper are as follows:

- The paper starts with the following objectives in view: to ascertain the origin of land ownership, its concept, classification into different kinds and categories, the economic implication of ownership and its relevance to poverty alleviation in Pakistan. The author has tried to establish a relationship between land and the owner within the theoretical framework of Islamic jurisprudence. Out of a number of objectives only a few and mainly the categories and kinds of uses of land are discussed to some extent at length, while the rest are not given proper consideration by the author.
- The statement, "Till the advent of Islam, Arabs had no concept of neither land ownership nor the individual property", is rather misconception, on the part of the author. Hasanuzzamen in his book entitled, "Economic Functions of an Islamic State" has quoted from Tarikh Tabri that all three forms of ownership (Individual, community and by the state) were known to the Arabs at the advent of the Prophet (peace be upon him). Actually Islam provided the meaning and perspective to all three forms of land ownership, which were in vogue even before the advent of Islam.
- The author has explained the theory of land ownership from the Islamic perspective in a limited sense, but has altogether ignored to explain the status of land ownership in Pakistan according to the Islamic principles. Moreover the author is completely silent on the issues that whether the land owners in Pakistan has acquired lands through fair or unfair means and how for they are applying the Islamic concept of inheritance. Since it has direct bearing on poverty issue related with land ownership.
- The author has given an account of land distribution practice exercised by the Prophet (peace be upon him) and followed by his Caliphs. But has completely overlooked to mention about determining the size of holding, acquisition, cancellation, and re-allotment powers of the state to be exercised to maximise the welfare of the people.
- In Pakistan where a majority of the population lives in rural areas, the land is not equitably distributed as is documented in the Agricultural Census of

Pakistan. This inequality sets the stage for exploitation of the rural population by the landowners. They become concentrated centres of power and act as overloads over a dominant part of the rural population, which is either landless or has small uneconomic holdings. This scenario has been completely ignored by the author. In the absence of this analysis it is not possible to ascertain the economic implications of land ownership, which is the main theme of the paper.

- The landholder tenant relationship has not find any place in the paper. Unless these relationships are not settled in conformity with demands of socio-economic justice pattern of Islam the alleviation of poverty can not be addressed properly.
- The author has emphasised on the enhancement of productivity of farming system but has neither explained any strategy in this regard nor the mechanism that how different classes in the rural communities will be able to get their share out of the enhanced productivity.
- In the absence of discussion on the above issues it is difficult to comprehend the economic implications of land ownership and its linkage with poverty alleviation in Pakistan.

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