

Refutation of Private Ownership of Land: An Islamic Perspective

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Abstract

It is normally accepted that, Islam recognized the private ownership of land just like other items. Private ownership is an accepted institution in Islam. No doubt this institution is well admitted in Holy Book, however, it does not accept the private ownership of land. Arguments which are given in this context from Qur'an & Hadith do not qualify any standard of reasoning. The foremost gap in the arguments given in Holy Book is that, Qur'an definitely accepts the ownership of houses, gardens and agriculture production, but doesn't the land on which they are situated. It is wrongly assumed that, the land on which houses or gardens are situated or from which cultivator attains production is also in the possession of individual, it is the basic deception. Holy Book has admitted the ownership of all those items which are the result of human labor. Since land is not the result of human labor; hence its private ownership is not recognized.

Key Words: Private Ownership, Islamic Economics, Mudarba,

1. Introduction:

The Land ownership significantly contributes in the ethico-legal and historical manifestation of the societies, it reveals the importance of politico-economic institution (Iqbal, 2000). Normally private ownership of land is considered as recognized fact by Muslim thinkers. The base of feudalism is the concept that, private ownership of land is lawful up to unlimited extent (Haque, 1977). Federal *Shariat* Court of Pakistan's decision in this regard has provided a religious base for it. The arguments which are given in this context are taken form *Qur'an* and *Hadith*. But the real fact is that, there are serious fallacies in the arguments which are given in this regard. Actually the ground on which these arguments are based, do not have any rational. As a matter of fact in all arguments it is already assumed that, *Qur'an* has recognized the private ownership of land like other items e.g. cash, gold, ships, houses and other assets, it is not alike. Indeed, *Qur'an* has recognized the institution

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of private ownership, but with the exception of land (Ali, 1959). In the following lines rebuttal of all reasons are given which have been collected for this research.

2. Venial of Arguments Given From *Qur'an*


In this context different verses of *Qur'an* are presented in which ownership of houses, gardens, and agricultural production is accepted, and it is assumed that, since the private ownership of these items is valid, and all of these items are situated on earth, hence land is also considered in private ownership (Qadri, 1975). But this is the main fallacy. No doubt *Qur'an* has admitted the ownership of all these items except the land, on which these are situated. This is the basic and the most imported point which is deliberately or un-deliberately ignored. This situation is same in all arguments which are given from *Qur'an*. On this basis individual analysis of different *Qur'anic* verses which are presented in this context in later session. Hence, the system of land ownership as viewed in Islam is founded in the concept of trust (Salasa, 1998).

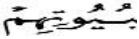
2.1 Verses in Which Private Ownership of Houses is admitted

Private ownership of houses is recognized by *Qur'an* in the verses (24:27) & (43:33).

It is assumed that, since the ownership of houses has been recognized, hence the land on which any house is constructed will automatically be in the ownership of owner of that house. Hence the private ownership of land exists from *Qur'anic* point of view. (Mududi, 1969). Further to the discussion the link between good governance and an efficient land policy is well established (Sait & Lim, 2001).

It should be clear that, *Qur'an* definitely has accepted the ownership of houses, but not the land on which these houses are situated. It can be cleared from the words of *Qur'an*, which are used in these verses for this purpose. These words are:

 (24:27) Own Houses

 (43:33) Their Houses

These words are clearly showing that, ownership is restricted just to houses, not the land on which these houses are situated.

If the argument, of supporters of private ownership of land is accepted, then on this basis, anyone can claim any piece of land, by constructing a house on it (Rashed, 1959). And if this argument is expanded, then the owner of any asset, like the owner of a car can claim the ownership of any piece of land by parking his car, because car is an asset like the house. But definitely this reason can not be accepted. Hence when this reason can not be accepted in case of car then how it can be admitted in case of houses?

2.2 Verses Related to Private Ownership of Gardens

Second argument from *Qur'an* is the verses in which private ownership gardens is recognized. These verses are (18:32-42) in which at different places private ownership of gardens is accepted by *Qur'an* by saying that:

جَعَلْنَا لِأَحَدِهِمَا جَنَّتَيْنِ (18:32) *We have given two gardens to one of them.*

وَدَخَلَ جَنَّتَهُ (18:35) *He entered in his garden.*

جَنَّتِكَ (18:40) *Your garden*

It is said that since *Qur'an* accepts the ownership of gardens hence on this basis ownership of land is possible (Taseem, 2002)

At here situation is quite similar, ownership of gardens is admitted but not the land. If a person sets up garden on a land, then definitely he cannot claim the ownership of that part of land. His maximum claim may be upto the plants and trees which are no doubt will be considered in his ownership, due to his labor on them but not the land on which these are grown.

2.3 Proof of Private Ownership of land From the Acceptance of Ownership of Agriculture Production

Third argument from *Qur'an* is given from those verses in which ownership of agricultural production is recognized by God in private hands. Words of these verses are:

حَقَّهُ يَوْمَ حَصَادِهِ (6:141) *And pay the right on the day of harvesting.*

أَنِ اعْبُدُونِي أَعِدُوا عَلَىٰ حَرْثِكُمْ إِن كُنْتُمْ صَادِقِينَ (68:22) *If you want to pluck then reach early in the morning on your farm.*

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طِبْعَتِكُمْ مِمَّا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ (2:267)

O'who believes! Spend, out of your sacred income and from those items which we grow from the earth

On the basis of these verses it is said that, *Qur'an* is not ready to distinguish between the ownership of consumer goods & land, and its behavior is same in both cases. (Usmani, 1994).

In all of these verses important point is that, ownership of agriculture production is recognized, not the land from which it is grown. Moreover, most important point is

that, in all of these verses particularly in (6:141) and (68:22) order to donate agriculture production is given to cultivator. It simply means that, *Qur'an* openly recognized the cultivator as the owner of his production. Definitely order of donation can be given to that person, who is the owner of that thing. This fact simply proves that, cultivator is the owner of agriculture production, in the eyes of *Qur'an*, not the so called owner of land. The word *حَرْثُكَ* (Your crop) openly negating the concept of private ownership of land.

2.4 Verses Relating to Heir-ship of Nations

Some times those verses of *Qur'an* are also quoted in this context, in which God has said, how He makes the successor of one nation to the other with His own will.

إِنَّا بَارِكْنَا فِي الْأَرْضِ لِلَّذِينَ يُؤْتُونَهَا مِنْ بَيْنِكُمْ إِنَّ فِي ذَلِكَ لَآيَاتٍ لِّقَوْمٍ يَعْقِلُونَ (7:128) No doubt God is the owner of earth, and He makes Successor of it, to whom He wants to do so.

Definitely, this verse does not have any relationship with the concept of private ownership of land. This verse clearly indicates the absolute power of God and His will, with which He makes heir one nation to the other on the earth.

3. Rebuttal of Arguments Given from *Hadith*

The *Hadith* which are presented in this regard can be divided into four parts, which are as follows:

- i. Those *Hadith* which are related to justification of *Mazara 'a*.
- ii. In which the orders are given for the cultivation of land.
- iii. Which are consisting of threatening orders to those who has taken the land of others by force?
- iv. Which are related to the sale, purchase, endowment and gift of land? Individual analysis of these *Hadith* is as follows.

3.1 Those *Hadith* Which Are Related To Validity of *Mazara 'a*

In this context those *Hadith* are presented with which act of *Mazara 'a* it is justified. Since the concept of *Mazara 'a* based on private ownership of land, hence on this basis private ownership of land is justified.

In this regard historical analysis shows that, Madina was an agricultural town, and before the arrival of Prophet (P.B.U.H.) agriculture was the common practice. At that time, practice of *Mazara 'a* was quite common. All those *Hadith* which are related to

this practice belongs to that time period. But when the law of prohibition of *Riba* (interest) was enforced then the concept of ownership of land was automatically vanished. Unfortunately, the order of prohibition of *Riba* is normally taken in a very limited range. Actually through it *Qur'an* has stopped the reward of each and every type of asset (Farooq, 2007). In the other words, there is not any concept of unearned income in *Qur'an* i.e. the income which is not the result of human labor and earned through any capital / asset. On this basis, no room is left for *Mazara 'a*, and this is the reason that, all *Hadith* in this context cannot be acceptable.

Moreover *Mazara 'a* itself do not have any legal base. No justification from *Qur'an* and *Hadith* can be provided in its favor (Farooq, 2008). Sometimes it is said that, since *Mudaraba* is a lawful activity and *Mazara 'a* has an extra ordinary resemblance with it hence it is valid. This rationale is is completely wrong, *Mudaraba* also do not have any logical or religious base and is completely unlawful (Farooq, 2008). Hence it cannot be said, that, on the basis of *Mudaraba* any validity of *Mazara 'a* can be derived.

3.2 *Hadith* in Which the Orders Are Given for the Cultivation of Barren Land

There are some *Hadith* in which it is said that, a person who cultivates any barren land will be more equitable to cultivate it. Analysis of all these *Hadith* openly show that, in any *Hadith* it is not said that, due to this action cultivator will get the rights of ownership of that land. In the other words in any *Hadith* nothing is said about transfer of absolute ownership. Just preference is given to that person, who will do the same. Hence any proof of private ownership of land cannot be derived from these *Hadith*.

Moreover there is almost consensus on the fact that, if a person fails to do so, then after three years his privilege will be cancelled, and the land will transfer to state. This basic fact itself is an open negation of private ownership of land.

3.3 *Hadith* Which Are Consist of Threatening Orders to Those Who Has Taken The Land of Others By Force

As for as those *Hadith* are concerned in which threatening orders are given for those persons who has captured the land of others by force, there may be two possibilities about them. One is that, their time period is before the prohibition of *Riba*. If it is so then again due to implementation of prohibition of *Riba* order these *Hadith* will lose their importance. Or, it may be that, they belong to after enforcement of prohibition of *Riba* order, when state has given different pieces of land to different cultivators. It may be possible that, due to some conflicts between different cultivators, Prophet (P.B.U.H) has given such type of statements. In both cases concept of private ownership of land can not be derived from them.

3.4 Hadith Which Are Related to the Sale, Purchase, Endowment and Gift of Land

In the light of the above discussion, it is quite confirm that, these *Hadith* are related to the period before the prohibition of *Riba*. Because only in that time period, such type of transactions were possible. After the imposition of prohibition of *Riba* order, there was not any chance of such type of transactions. Since these *Hadith* are related to time period before this order, hence cannot be accepted under the normal rules of examination of *Hadith*.

Hence on the basis of above discussion it can be concluded that, the concept of private ownership of land cannot be proved from *Hadith* also. Real fact is that, according to *Qur'an* land is quite open for all mankind. In this regard reasons are as follows:

4. According to Qur'an Land is Open for All Mankind

According to *Qur'an* it is the right of human being to get benefits from land. It is an open right and in different verses this right is given to all mankind, e.g. (2:22), (7:10), (55:10), (41:10), (79:30-33), (80:25-32) etc.

5. Additional Arguments

Some more arguments from *Qur'an* can be given in this regard, which are as follows:

5.1 Why The Private Ownership of Land Is Restricted to a Particular Limit?

A basic question about the private ownership of land is that, why it is restricted up to a certain limit? If it is legal then why it is not expended to rivers, lacks, deserts and seas etc?

Supporters of this concept give reason in this regard that, since above mentioned items are for all human being hence their private ownership is not possible. This is just a lame excuse. The question is, rest of the land which is under private ownership is not beneficial to human being? The actual fact is that, the land which is under private ownership is much more beneficial to men as compare to deserts, mountains and seas etc. Contradiction of argument is now quite clear that, the land which is more beneficial is under private ownership and which is less beneficial its ownership is restricted.

5.2 Why the Order of *Infaq* of Land is not given in *Qur'an*?

Infaq is an important *Qur'anic* order, which means that spend each and every thing in the way of God beyond the requirements. As *Qur'an* said:

These people ask you how much we spend in the way of God? Said each and every thing beyond your requirements. (2:219)

Interesting point is that, this order is given many times in *Qur'an*. But at all places this order is for cash and other assets not for land. This is the basic question why it is so?

The answer is quite simple. *Qur'an* does not recognize the private ownership of land; hence no order is given in this regard.

5.3 Why there is Not Any Punishment on Concentration of Ownership of Land in *Qur'an*?

Another important point is that, *Qur'an* has clearly said that all misers will get sever punishment in this world and hereafter. But why there is not a single word about those persons who captured very large pieces of land and stopped them for themselves?

Its answer is again same, *Qur'an* does not recognize ownership of land, and hence there is not any punishment in this regard. Otherwise rule will remain same for all and there is not any exception in it.

5.4 Why *Qur'an* has Allowed Open Movement on the Earth?

It is an open fact that, *Qur'an* has allowed all mankind to move on the earth without any restriction (67:15). The question is, in the presence of private ownership of land how mankind can enjoy from this right?

This fact should be kept in mind that, Islam does not allow to anyone to enter in the house of others without taking permission. Then how it is possible that in the presence of private ownership of land, this freedom can be given? Definitely there is not any concept of ownership of land, otherwise this freedom is meaningless.

5.5 Private Ownership of Land is the Mother of Nationalism

No doubt the root cause of nationalism is the concept of private ownership of land. And definitely there is no room for such type of concepts in Islam. The main question

is that, by accepting the concept of private ownership of land how it will be possible to escape from its ultimate result?

5.6 God is The Owner of Land

This fact is categorically mentioned at different places in *Qur'an* that, God is the only owner of land e.g. (7:128), (29:56) and (23:84-85) etc., when it is an open fact, then, how any human being can claim its ownership? Definitely it is open polytheism. Sometimes it is said that, if God is the owner of land and on this basis it cannot be given in private hands. Then on this basis, each and every thing of earth and universe is also under the ownership of God. Hence man cannot claim the right of ownership of any item why it is just restricted to land?

Its simple answer is that, simultaneous ownership of God and human being is quite possible and, no contradiction is created, because if the ownership of God is admitted then on this basis negation of private ownership is not compulsory. But simultaneous ownership of any assets between two men is not possible. If it is so, then both owners will claim to get the benefits from that asset. This situation is not with God. He is completely sublime from any type of any need.

He is the creator of this universe, and with His own will He has granted all these things to human being for their benefit, subject to their labor. Human being against their labor got the right of ownership on different items. And this right is given to them by God in *Qur'an*. At almost 85 places ownership of different items by mankind is recognized by God, but the important point is that, all these items are the result of dint of human labor. Land is not the result of human labor; hence its ownership is not admitted by *Qur'an*.

6. Conclusion

The claim of private ownership of land, which is normally accepted as a matter of fact, is just based on delusion. The arguments given in this regard are completely baseless. In the arguments which are given by Holy Book, already admitted that, the private ownership of land, like other assets, but it is not so. Divine Book of Muslims, definitely has recognized the ownership of houses, gardens and agricultural production etc., but not the land on which they are situated.

The reasoning from *Hadith* is also based on deception. Scope of prohibition of *Riba* deliberately just restricted to debt. Actually the reward of each and every capital is restricted. On this basis any unearned income is banned in Islam. Hence private ownership of land is vanished. *Hadith* which are quoted in this regard about sale, purchase & gift of land are belonging to the period prior to this order. Hence these *Hadith* are not valid.

Moreover, absence of order of *Infaq* for land, and absence of order of punishment on concentration of ownership of land in *Qur'an* further supported this claim.

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