

THE SCOPE OF ISLAMIC GOVERNING RIGHTS IN CAPTURING INHABITED LANDS (NON-VACANT LAND)

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Abstract: Ownership is considered as an issue, which has been specially considered in Islam. From the perspective of Islam, the true owner is God, and God has given human beings the gift of grace and mercy, so that humans are the owner of their own efforts. The most important things that ownership matters are the land, because the provision of many human needs is done with the land. The land, in law, is divided into two kinds of vacant and non-vacant, and the vacant lands belong to the Imam. However, there is a controversy over the scope of the Islamic state's ownership of the non-vacant lands, among jurisprudence. Since the most important reason for the Islamic ruler's ownership of the land is to carry the sentence to Anfal, which is dedicated to Imam Ali (as), and if Imam's ownership of the non-vacant lands is proved, it is somehow possible that is generalized For the supreme leader, in the time of absence and we should prove the validity of the verdict of the supreme leader in capturing, in non-inhabited lands that have no owner does, or otherwise, such ownership will not exist.

Keywords: Land, Land Ownership, Islamic State, Non-Vacant Lands, Anfal.

EXPLAINING THE ISSUE

The study is based on the viewpoints of jurists and Muslim lawyers and Imam's religion and attempts to find the extent of the domination of the Islamic ruler over inhabited lands that are not owned. Such as: forests, pastures, mountain range and other land without owner.

The meaning of the Islamic state is a government in which the rules of Islam are the basis of the laws, and the authorities of the country are obliged to adhere to the Islamic law and, in a way, in addition to the Islamic law, the Islamic state will be dominated.

On the other hand, the land is one of the main sources of production and is one of the most important natural and divine wealth. Throughout history, land and property, and its use, are at the top of the most important human needs. And today, it has become far more important in order to expand urbanization and development of industries, in addition to agriculture, for residential and urban services and industrial use, in such a way that the economic prosperity of a country is dependent on the development and development of the land.

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The first topic: the owner of the inhabited lands by itself

The divisions of the land in the Imamite jurisprudence are not based on a single principle. The jurisprudence has not discussed the issues of land and its divisions, in a particular book, but in various positions and jurisprudential subjects, on the occasion, the land and its divisions have been raised. Hence, sometimes the land is divided into vacant and non-vacant. (Karki, Ali ibn Husayn, Qattab al-Lajj, p. 44) Sometimes, for property, they have divided it into Voluntary, Peace, tribute, Open cursed, and Anfal. (Tusi, Mohammad, Mabsut., P. 1, p. 234)

According to the second division, which most jurisprudence has also accepted, these four categories of land can be included in three categories of land, private, public, and government, as some contemporary jurisprudence has said. (Sadr, Mohammad Baqir, Econometrics, p. 419)

Using the traditions, the owner of the inhabited land by itself is the Imam. Imam Baqir quotes from Amir al-Mu'minin (peace be upon him): "... And the earth is all ours" (Kūlini, Muhammad al-Kafi, vol. 5, p. 279) In the narration of Omar Ibn Yazid from Imam Sadiq (peace is upon him) it is close to the same statement (Tusi, Muhammad, Tethysb al-Akkam, p. 4, p. 144), as well as narratives that counted the Lands without owner in Anfal, and the Imam (as) stated explicitly: "Every land that has no owner... ", are anfalls. Like; the narration of Ali ibn Ibrahim in his commentary on Imam Sadiq (as). (Hur Amali, Mohammad, Wawa al-Shi'a, vol. 3, p. 144)

The jurists, in the statement of the owner of the lands, mainly have two views:

1. These lands are for Anfal

In the words of the jurists, as it was mentioned in the discussion of examples and cases of Anfal, one of the cases of Anfal was referred to as the lands without an owner. Also, among the valleys and peaks of the mountains, even some of the jurists, such as Mohaghegh Helli, the shores of the seas have also been considered as cases of Anfal. What is certain is that the feature of the above items is having no owner, not necessarily, being lifeless. Therefore, it is common knowledge that the famous jurists have said that the lands full of water will be of Anfal cases and will be dedicated to Imam (as), and the Anfal sentences will be in relation to them. (Helli, Hassan ibn Yusuf, The Rules of Allah, p. 267; Mekaseb, p. 2, p. 57)

According to the statement that is in their words, any land that has not come to a Muslim property is the property of Imam (as) and it is not a difference between being lifeless and inhabited.

The late Naini, Akhund Khorasani, Mohaghegh Irvani, Mohaghegh Khoyi and Imam Khomeini, have also taken this view according to the narratives. (Naini, Manih Taleb, V(1), p. 341; Akhund Khorasani, Hahshiye al-Mekasb,

p. 105; Iravani, Ali, *Hahshiye al-Mekasb*, vol. 1, p. 166; Khoyi, *Mesbah al-Bukhayeh*, vol. 5, p. 134; Khomeini, *Albie book*, V3, P41)

2. Permissible lands full of water

In contrast to the first view that considered the inhabited lands as the property of Imam (as), the second view considers these lands permissible. Like the sea fish and the birds of the sky.

Mohaghegh Najafi has said: "But apart from the lifeless, whatsoever hand is not upon it, there is no sign in their words, which is set forth in *Anfal*, but the appearance is not being in *anfals*, then the basics inhabited lands, like rivers and forests are from the original permit." (Najafi, *Ja'ahar al-khamal*, p. 16, p. 120)

It seems that the inhabited lands, because they are from the *Anfal*, are the same details that exist in the lifeless lands, is true in this case, in such a way that the inhabited lands during the presence, belong to the infallible Imam (as), and at the time of absence, the Shiites have been given permission to seize them, and they can own it with possession.

However, this issue is the subject of dispute between the jurisprudence that the inhabited lands are the main property of the Imam, or it is part of the original beliefs that can be owned with possession and the jurisprudence believes that the inhabited lands are the main property of Imam (as). But, it seems, the detail on the issue is the combination of traditions, in this regard.

As Sheikh Ansari says, the lands full of water are also apparently the property of Imam (peace is upon him) (*Makāsb*, p. 1, p. 161). The late *Naraqī* accepted the same theory. (*Naraghi, Al-Shi'a, Al-Khams, Anfal*), and the main reason why it is possible to regard these lands as the property of Imam (as), is that these lands are *anfals*, and *Anfal* is also the property of Imam (as). As *Isaac Ibn Ammar* states: "I asked Imam *Sadiq* (peace be upon him) about *Anfal* and he said: *Anfal* is the villages that were destroyed and their owners were emigrated that belong to God and the Messenger of Allah (swt), and whatever it was from the kings, it is also for the Imam (as) ... and every land without ownership and inheritance is an *anfals*. (*Hari Amali, Wasej al-Shi'a*, vol. 9, p. 531)

In the narration of *Abu Basir* from Imam *Baqir* (peace be upon him) also said: *Abu Basir* narrates Imam *Baqir* (peace be upon him), that the Prophet said: *Anfal* is ours, *Abu Basir* asked: What is *Anfal*? The Imam said: the mines and spoils and any land without landlord and any land whose owners have been destroyed are *anfals*, and it is ours. (*Haram Amli, Wasej al-Shi'a*, vol. 9, p. 533)

The explicitness of these two narratives is that any land without owner is from Anfal, and, in general, the “Every land has no owner” includes the lands full of water. Therefore, it belongs to the Imam (peace be upon him).

The second topic: the sentence of possession and seizure in the inhabited lands

After it has been proven that the main inhabited lands are from the cases of the Anfal and belong to Imam (as), and since the seizure of non-possession is not permitted without permission, therefore, seizure in the lands must also be authorized by the permission of the Imam (as). The same statement that came there is also going on here, that at the time of the presence, we must ask for permission and, during the absence, according to the rule “I am the owner of the property”, possession of them is permitted for the Shiites.

But the narrations that refer to the analysis of the inhabited lands for Shiites, Such as: “Our whole body is the essence of the world,” (al-Amali, Wasa al-Shi’a, vol. 3, p. 773), and the narration of Younus bin Zabian, and all the traditions that exist in this context. In short, the permission to use the inhabited lands has been issued to the Shiites by the Imams, as a matter of urgency.

As it is stated, the lands full of water are anfal, which is the property of the Imam, so it is not permissible to capture it in the rational and the religious, without its general or special permission, and if anyone who is entangled in these lands without his permission, will be the usurper and sinner. However, the jurists, because of the hadiths of analysis, have considered the capture of Anfal, for the Shiites permissible (as).

Sheikh Toosi says that it is not permissible for anyone to take possession of Khums and Anfal and whatever the Imam deserves without his permission, then he continues: “In the time of the absence of the Imams (as), they allowed their Shiites to capture in khums and their other rights.”(Tusi, al-Nahyah, 200), which also includes Anfal.

Also, in Tazkereh’s book, the following is said: the lifeless lands and ruins and the peaks of the mountains, deserts and ravines are of the Anfal, which are specific to the Imam, and no one can capture it at the time of the presence without his permission, but at the time of the absence, It is permissible for the Shiites to seize them because the Imams (as) have considered the capture of the Shi’ites “permissible”. (Helli, Tazkera al-Fuchha, vol. 1, p. 428)

The most important reason for this is the analysis narratives, some of which are:

First narrative: From Imam Baqir (as), the following is said with the correct document: “People will perish because of their stomachs and their land, because they did not give us their right, and that our Shiites and their fathers have been denied this right.” (Har al-Amli, Muhammad, Wawa al-Shi’a, vol. 9, p. 543)

The second narrative: In the correct narration, it says: “Oh, Abu Sayar! The whole earth is ours, and whatever it is that Allah is taking out of the earth is ours. Abu Sayar says: I said: Should I bring all the property? He replied: “Oh, Abu Sayar!” We have cleansed it for you ... and whatever is in the hands of our Shiites from the earth is lawful for them.” (Har al-Amli, Wasejal al-Shi’a, v. 9, p. 537)

The third narrative: In another narrative, which Wasejal narrated, it is stated: “What is in the hands of our Shiites is lawful from our right.” (Har al-Amli, Wasejal al-Shi’a, v. 9, p. 537)

Briefly, from these narratives, it can be understood that some aspects of charity, such as land and mines, are lawful for Shiites. Of course, some jurisprudence does not accept this analysis in absolute terms during the time of their absence, and they say: “As mentioned before, the establishment of the right government is obligatory in the absence of time, and this government, inevitably, needs taxes and funds. Therefore, zakat, khums, and anfal and other public property should be dominated, because the same criterion which causes the property to be in the possession of Imam at the time of the emergence, the same criterion makes this Property, in the absence of time, is under the authority of the state of justice, and otherwise, the realization of justice and the elimination of disputes over the acquisition of public property is impossible. Therefore, we consider the absolute validity of the evidence of the analysis, in the presence of the rule of law prohibited, and we consider the permission to seize the Anfal depending on a state that the government is not just and, with such a government, seizing it is not permissible except in accordance with the Islamic law.” (Al-Hakam Fi-al-Islam system, pp. 506-519)

Somewhere else, he points out: “The meaning of the term” Imam” is not related to the political and economic issues of the Imam, but with Imam Ali (as), Imamate is not for non-consensual, therefore, in time of Absence, the possession of anfal and public property are in the hands of the just and righteous ruler of Islam, and the absolute analysis of the Anfal, for the Shiites, by the Imams (as), is not permitted by the interference of the ruling of Islam, because the intention of the Imams apparent from the analysis is developing the life of the Shiites, under the rule of the caliphate, in line with the lack of a righteous government. But one should not forget that the government is necessary at all ages, and the government also needs financial resources and public property.” (Al-Hakam FiiIslam, pp. 506-519)

Imam Khomeini, in a letter to one of the clerics, says about Anfal and other affairs: “It is necessary for me to regret the misrepresentation of some of my news and divine judgments, according to you; zakat is only for the needs of the poor and other things that are mentioned and now, the cost has reached hundreds, it is not a way, and the rainders in the foreground and ramifications are specific to the beam and the arrows, and the horses and the like were used in the former wars, and Today, only in the same cases, and Anfal, which has been analyzed on the Shiites,

today, the Shiites can, without any hindrance, use the cartels, and destroy the forest and ruin what protect the environment and endanger the lives of millions of people, and nobody has the right to prevent them, homes and mosques that are needed on the streets to solve the traffic problem and save the lives of thousands of people, should not be destroyed, and, as you have taken from the news and narrations, the new civilization should be completely eliminated, and the people live in a palace or live in the desert for Always. “(Khomeini, Sahifeh Imam, p. 21, p. 251)

The appearance of the words of the Imam is also that the Anfal, under the time of absence, was under Islamic rule, although it has been analyzed in the traditions of the Imams (as).

The third topic: The rule for inhabited lands

It is a land that is inhabited by human effort, such as houses, fields and gardens ... Sheikh Ansari says on such lands: “Such lands are a local property and In accordance with the above conditions, it is about the owner’s revival, and there is a consensus of the Shi’a, quoted from the Imams and according to the book of Al-Tengyah, the consensus of the Muslims is based on it, and according to the word of the jurisprudents, There is a consensus, but the word that comes from my mind is that the owner is seized in the land, not the owner of the platform. “(Ansari, Macbius, p. 4, p. 17)

Saheb Jawaher says: “Whenever he sells the land, its sale is not correct, and some people believe it is true, but this is a promise, and it is not true to us, Because a person, with the restitution of the owner, does not become a landlord, but he is the owner of the possession, provided that he pays the right of the Imam and is not permissible for the opposition, because he does not possess it before the restitution, so how Sell something that does not belong to him? “(Najafi, Jawahar al-Kahlam, vol. 38, p. 75)

It seems that the word of Sa’eb Jawaher is true, and it does not take ownership of the restoration.

The evidence of the influence of the ruler’s ruling of the inhabited land

Since the lifeless lands are one of the cases of Anfal, therefore, by proving the proof of the jurisprudential ruler’s position on the lifeless lands cannot be claimed that the same sentence would include the entire Anfal, but on the contrary it would be correct. It means that by proving the jurisprudence on Anfal, it covers the lifeless lands.

Because, firstly, Anfal is not the property of the Prophet (pbuh), and they are not the Imams (as), but they are the provinces.

Second: Supreme leader is the naib of Imam (as).

And for the first case, there was also an argument, including the first verse of Surah Anfal and narratives of Imam Baqir and Imam Sadiq (as), as well as the consensus of the jurists, and ultimately the construction of the intellect, and for the second case, the General Assembly of the Supreme Leader of the Faith Imam (as), some jurisprudence considers all the elements of Imam (as), firm for the jurisprudent.

CONCLUSION

Ownership is a monarchy of credits that has been credited to the same or passive, or right by virtue of reason, so that the owner of this monarchy can take possession at the same, or the benefit or the right, or exchanges it. And this property is different from the right of property and right of ownership.

If destruction happens to the land, that is, it is said to be “destroyed land”, in this case, in the event of destruction and ruin, the land comes out of one’s own or not, there is a difference between the jurisprudence, that the famous promise says: “If the property is obtained from the path of restoration, it will diminish with the destruction of property.” If the property is obtained through purchase or other religious processions, the property will not be lost, although the author does not consider this promise to be acceptable, and believes that if the charges for destruction are in the surroundings and, consequently, his negligence, the land will be out of his property, and if the plosives of destruction are not documented to him, the land will not leave his property.

The destroyed lands are the property of the Imam, and the reason for such a decree is that the lands are placed in Anfal, and since the Anfal belongs to Imam (peace be upon him), we judge that the lands are also the property of the Imam, and in the presence of that Prophet, it should be seized by the permission of the Imam, and at the time of their absence, the Shiites were authorized. However, under the rule of the Islamic state, it is under the authority of the Islamic government.

The famous promise of the Faqih, in the time of absence, is the destroyed land over the property.

One of the bases for the ownership of land by the state is the province of seizing property and population for the jurisprudence, and the province of seizure, is used in two ways; A: the province of seizing property and population

B. Provinces in social and political affairs.

Since, according to Islamic law, the lifeless land is the property of the Imam and is at the disposal of the Islamic state during the time of absence, therefore, the expropriation of the property from individuals and the cancellation of the documents

of ownership, in accordance with the law on the abolition of urban land ownership and its quality construction, indeed, in its own right, it is sometimes seen as unlawful.

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