ABSTRACT

Property and ownership are some important conceptual ingredients of economic system. They play central role in the structure and function of any economic system. Capitalism as an economic system advocating unconstrained individual ownership right, led to the concentration of wealth in the hands of few. On the contrary, socialism as an alternative economic system stressing more on the social ownership right failed to provide a balanced economic system. Islam as a divinely ordained system provides humanity with a comprehensive economic system where both individual and social ownership rights are addressed equally. This article, therefore, attempts to elaborate on the concept of property and ownership rights from Islamic perspective. It also highlights some of the constraints that can be imposed on individual ownership right for the safeguard of the societal rights. The study use both descriptive and analytical methods and concludes that individual ownership right is not absolute it can be limited and regulated if the social good dictate so, based on the principle of ‘toleration of individual harm for the aversion of social harm.

Key words: public property, private ownership, absolute right, maslahah and Islam.

Introduction

Socialist and capitalist economics systems are the two contending systems that dominated the world through the past and the present century respectively. The former acknowledges private property rights as well as public property, both for consumer goods and productive properties. On the other hand, the latter, favors individual freedom in the economic activities, to the highest level. Capitalist system due to its emphasis on private property rights and individual freedom has led to a high degree of wealth inequality between the richer group of the society and the poorer one, due to the concentration of wealth in few hands, and the monopoly of market by financially powerful group. It has been criticized for its failure to provide for all of humanity. On the other hands, the socialist system gives the state or community association’s ownership of most productive resources, and limit individual ownership and economic freedoms. Even though it does not abolish ownership outright, it limits the private ownership to a small set of consumer products and limits the rights of private agents in making economic decisions. Its sole aim is to maximize social equity and meet the minimum needs of all individuals of society in order of importance (Al-Zuhaily, 2003:441-442). This system due to its repression of individual right of ownership and economic decision making, could not last long hence ended with the disintegration of the Soviet Union in the last century, thus, paving the way for the hegemony of the capitalist system which emphasizes more on individual rights and freedom.

The Islamic socio-economic systems as a divinely ordained system provides a flawless socio-economic system. Being an independent system with its own social vision, it strikes a balance between individual rights and the social right. It therefore, recognizes individual private ownership rights. It grants individuals a high degree of freedom in dealing with property and its use in a proper manner. In addition, it gives individuals many more economic rights and freedom than that of the socialist system. It forbids riba’ and other forms of monopolistic and exploitative nature to ensure a higher degree of socio-economic equity. Hence, it can be said...
Property and Ownership in Islam:

Property al-mal, is defined by Hanafis as any good that individual like naturally, and can save for some time. (Zaidan, 2002:183) Whereas non-Hanafis defines it as anything with a value according to which it may be sold, and for which a transgressor should compensate the owner. (Al-Suyuti, 1971:258) The Hanafis definition of property renders rights and usufruct non-properties. Contrary to Hanafis, definition the non-Hanafis definition renders usufruct a valued property that may be inherited. On the other hand, ownership (al-milikyyah) also signifies an exclusive association of an item with an owner who has the right to deal in it in all manners provided that there is no legal impediment to it. In other words, ownership(al-milikyyah) is an Islamic legal term which signifies the relationship between a human being and property which renders the property specifically attached to him, hence, giving the owner the right to deal in that property unless there is a legal impediment preventing him from such dealing. (Al-Zuhaily, 2003:417) Al-Majallah (item 125) defines owned property as “anything owned by a human being, be it a specified property, or usufruct of a property” (Yunus, n.d. :79) in the light of this definition the Hanafis consider usufruct and legal right as owned item and not as property hence rendering ownership a more general concept than property.

Jurists have defined ownership in similar ways perhaps the most appropriate definition is: “an exclusive association of the owned item with its owner, which gives the owner the right to deal in what he owns in any way that is not legally forbidden.” (Ibn Al-Humann, n.d : 74) Based on this definition, the acquisition of a property by an individual, in legal way, entitles him to exclusive association with that property hence, using or dealing in it as long as there is no legal impediment to such dealing. Furthermore, the exclusiveness of the ownership prevents others from using the property or dealing in it without a legal authorization such as guardianship, agency etcetera. However, it is imperative to bear in mind that, ownership is not confined to social and legal aspects, it also gains political significance as, it relate to a number of claims, liberties, powers, and immunities in relation to the things or property a person owns. Therefore, ownership has broader implications, for it stands for a multitude of claims which refer more to the content rather the ownership. For instance, a man may discard his property but still retain ownership. (Siti Marian, 1989: 285-304)

Consequently, the rights to exploit and utilize the wealth and the resources that Allah s.w.t. has provided for human being are the necessary significations of ownership. Ownership right can be transferred only through legitimate methods. The right of ownership remains as the exclusive domain of owner as long as he uses it properly, using it in a manner that does not harm others. In case of not using his wealth or putting it into proper and productive utilization, he will be induced or even forced to give up the right of possession. (D.S.M. Yusuf, 1977: 19) From Islamic point of view, the right of man over things is limited and qualified. This is due to the fact of everything being subservient to the Allah law and will, and the human being as the vicegerent of Allah. This requires him to deliver and fulfill his trust with utmost care and in a manner that is in accordance with the shari’ah.

Ownership is an important element of the fabric of the society, it can be considered as a social institution. Thus, the right of ownership comprises both benefits and burden, the former being represented by enjoyment of the profits, freedom of user, the right to lay legal claims to his property, and the right not to be interfered with. However, the benefits derived from ownership are tied with duties, liabilities and disabilities. Apart from its social function ownership also contain claims, power and immunities that may be vested in several persons other than the owner. Assumption of the absolute rights cause harm to humanity as it lead to the arrogant behavior and claim of absolute rights in discharging of property hence, forgetting and transgressing the limit set for by Allah. Moreover, to claim absolute authority and ownership as well as rights with one property is tantamount to claiming equal status with the Creator. This is something which is completely shunned in Islam. Islam also prohibits monopoly of the gift Allah has bestowed upon everyone. As such, property being as a divine gift of Allah to everyone should not be concentrated in the hands of the few. Islam neither tolerates nor approve of any property the generate poverty, for it would violate the very core of the principle of brotherhood and philanthropy. (D.S.M. Yusuf, 1977: 19)

Certainly, all property is ultimately owned by Allah (swt) as stated in the Holy Quran: “To Allah does belong the dominion of the heaven and the earth and all that is there in. (Qur’an, 5:20) Thus, human being ownership of the property is a metaphorical one, for he is a trustee and vice-gerent in charge of the property. ‘Urwa al (a companion of the prophet) said: “ I bear witness that I heard the Messenger of Allah (pbuh) saying that all land belongs to Allah and all humans are slaves of Allah, and that whoever, reclaims wasteland is most worthy of owning it.” Therefore, one must obey the order of Allah (swt) in all dealing related to his property,
since Allah (swt) is the ultimate Owner of all property that is made available for human utilization. Hence, all humans are equally given the divine gift of the right to hold private property. However, one must bear in mind that property does not constitute the end itself but it is the means of satisfying the needs and wants of humans (D.S.M. Yusuf, 1977: 19)

**Limitation of Ownership:**

It is argued that since, all property belongs to Allah and all mankind are His slaves and even the life itself belong to Allah, all property- even associated by name to one person, must in fact belong to all mankind and be available for their benefit. This implies that property as an institution has a social task hence, private ownership should be subordinated to the social objectives of property. Ownership has a social function as well as private function, for, individual in Islam cares both for his individual benefits as well as social benefits. Islam protect individuals natural urge for owning property for their own good and regulate their ownership and dealings to protect social benefit while satisfying the natural individuals urges. In other words, Islam neither forbids private ownership, nor allows it to exist unconstrained. It is stated in the Holy Quran: “O you who believe: Eat not up your property among yourselves in vanities, but let there be among you traffic and trade in good will”(Qur’an, 4: 29) It also states: “ and in their wealth and possessions are rights of the needy” (Qur’an, 51:19) The prophet (pbuh) also said: “A Muslim is forbidden from shedding another Muslim blood, taking his property, or honor.”(Muslim, n.d.: 609) Therefore, from the preceding Quranic verses and the tradition, it can be concluded that it is forbidden to infringe upon private property that is acquired through legal means. The transgressor of private property is warned of severe consequences.

However, the state has the right to intervene, confiscate and return illegally acquired properties to their rightful owners regardless of whether they are mobile or immobile properties.( Al-Zuhaily, 2003: 444) When someone of ‘Umar Ibn al-Khatab (mAbpwh) governors gave him some property which did not belong to them, he returned those properties to protect society and to prevent his governors from acquiring riches in this manner.( Al-Zuhaily, 2003: 444) The state can also limit or eliminate legally acquired private ownership rights of owner if equity and public interest dictate so. The state is allowed to impose certain limits on the rights of owners for example, those acquiring property through land reclamation, at the inception of ownership. It also can confiscate legally acquired private property to meet social needs of the Muslim community as a whole with the stipulation of paying a fair compensation to the owner. Jurists are agreed on the fact that political rulers may limit ownership rights if the find that beneficial to the society.

**Ownership Constraints:**

Ownership in Islamic law is not devoid of constraints and conditions. The very moment an individual acquire the possession of property it is accompanied with certain conditions and constrains. The attached constraints and conditions of private ownership can be categorized into three major categories:

**Conditions Related to Means of Ownership:**

*Shari’ah* specified the causes by means of which property’s permissibility and legality can be justified. The causes by means of which property can legally be acquired comprise hunting, putting into use a neglected land, mining inheritance and transactional contracts. Other than these means, such as theft looting, gambling and acquiring property by illegal and unjust means are not conceded as permissible causes of acquisition of property. These causes as delineated by Islamic law are characterized as prohibitory causes therefore, of no effectas far as the acquisition of property is concerned. (Zaidan, 2002: 183) In deed, all the means that directly or indirectly turn the ownership of property into a means of exploitation, injustice and harm to others is forbiddenas stated in the Holy Qur’an:

“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that you may eat up wrongfully and knowingly a little of (other) people's property” (Qur’an:188)

**Conditions Related to Use of property:**

Obviously the purposeof possessing property is to utilizeand derive benefits from it. Islam provides an adequate guideline for the beneficial use of property so as to derive the optimum advantages from one’s possession. This could be realized through wise conduct and dealing of the owner of the property and the aversion of negative behavioral element such as extravagance, depletion, avarice and stinginess.Islam encourages investment of property and its development and growth in permissible ways and discourage hoarding. It provideslegal provisions for the transfer and the development of property during one life time even after the death of the owner, as is clear from the legal rulings pertaining to the inheritance. It defines the limit of
private ownership in a manner that does not harm others interest. It also clarifies the limit and boundaries of ownership and facilitates agreement and discussion on orderly transfer of ownership (Abu farhah, 9 july 2012).

Exceptional Conditions Imposed by Authority:

Even though shari‘ah, Islamic, law protects and respects individual ownership right, in some circumstances allow the state to take possession of privately owned property to meet a need or public benefit such as building a public road, or enlarging a mosque. However, the state has to provide an appropriate compensation for confiscation of private property.(Zaidan, 2002: 206) Such measures can be justified on the ground of preservation of broader interest of the society. The objective of, shari‘ah, Islamic law, behind the imposition of certain conditions and limitation on private ownership is to eliminate injustice and establish justice in the society. Therefore, it could be concluded that state authority can adopt any measure, in dealing with private property that enhance public welfare and larger benefit of the society. These measures include imposition of financial penalty (fine) and confiscations and imposition of tax in accordance with the criterion set by law.

Constraints of Warding off Harm:

Such constraints are justified and imposed by two injunctions:

a- Avoidance of harming others. In fact all rights in Islam are constrained to avoid harming others.

b- Provision of benefits to others if that does not cause the owner any harm

Muslim jurists have differentiated between four types of potential harm to others that can be caused by the use of private property. They comprise:

1-Certain harm:

If some of the private owner’s uses of his property are known to be harmful to others, if the owner is capable of using it in a way that is not harmful to others, then he is forbidden to use his property in the harmful way. This can be justified on the base of legal maxim of: an individual harm may be tolerated to avoid a more general social harm. However, if the use of an individual private property harms only one other person, then the owner rights have precedence?

2-Likely harm:

The exercise of private ownership that either result in certain harm or likely harm to other is subject to the same ruling which is prohibition. For, the most likely circumstances inherit the legal rulings of certain ones in practical matters.

3-Unlikely but significant harm:

Jurists have differed as regard to this type of harm. Malikis and Hanbalis are of the view that the very probability of significant harm is sufficient for the prohibition of the action that can cause it. They base their ruling on the legal maxim: avoidance of harm takes precedence over securing benefits. On the contrary, the Hanafis and Shafi‘is are of the view that suggests the permissibility of the use of private property by default, hence, holding the mere probability of causing harm as not sufficient proof that harm will be done.

4-Insignificant harm:

In case the probability of harm is very weak, or the potential harm is minimal, then the default permissibility of using one’s private property prevails and would not be affected by the potential of causing harm to others.

Ineligibility for Private Ownership:

There are certain properties that cannot be owned privately and they are categorized as social properties. Social property consists of three types which are:

1-public property providing social service, the example for which are, mosques, schools, roads, rivers, charitable mortmain waqf and other related things if not made public would not serve their purpose.

2-property that exist naturally and without human intervention. It consist of things such as mineral, crude oil, rock, water, grass and fire. This type of property is created by Allah solely. According to Malikis all
mineral should be considered as state property and should be used for public purposes, whereas, Hanbalis, hold only the easily accessible minerals, as state property. On the other hands, they considered solid minerals that require mining, as private property owned by the owner of the land within which they are found. The Hanafists give a big share to the state in most types of minerals.

3-property under state control/supervision. Lost and found property that reach the Muslim treasury, and for which no heir can be found, is the first category of this sort of public property. This is based on the ruling that “the Muslim treasury is the inheritor of every one who has no heir” the second category includes agricultural lands captured in Islamic conquest, which are state-owned like minerals. Whoever, control such land is not considered to own it completely, but only to own its usufruct. As most of the land owned by Muslim resemble to this category the state can be justified in confiscating it when necessary. However, the state in doing so should fairly compensate the land owners.

Conclusion:

In sum, the legal maxim of necessities override prohibition, the rule of maximizing social benefit and the rule of preventing means of circumventing the law, constitute a firm ground on the basis of which the boundary and limits of private ownership can determined. However, the latter; rule of preventing means of circumventing the law, can be resorted to prevent property owners from preventing the rights of Allah (swt), spending unwisely, causing dispute among people or to exploiting other through monopolies and the like, depriving the society of its output by smuggling it abroad. Thus these rules should also be used to eliminate extreme poverty and confiscate monies collected by means of riba. However, one must bear in mind that confiscation and other limitations on property rights should only be resorted to as temporary measures. They should not be written into permanent law, and should not be allowed to destroy the principle of ownership of capital.

Reference


