

Hiazat

There is another case of human ownership which we would like to discuss here. You may come across certain gifts of nature which could be availed of without any harnessing or modification on your part.

If you feel thirsty and drink from a river you are passing by, you have only embarked on a consumption affair. And your act cannot be given the appellation of economic activity or of productive work.

At this juncture, we would like to examine man's relationship with such categories of consumption. Suppose three persons, moving together to cross a jungle, reach a coconut tree from which a coconut has fallen to the ground. Is the coconut the property of the first person who picked it up?! What would happen if the second person also puts forth a claim to the same coconut, in spite of another coconut being available and having fallen off a second tree a little farther ahead. Now let us see how innate logic deals with a situation of such nature and complexity.

In the process, however, certain likely questions such as: Is possession the origin of ownership and credibility and will it cause any priority in the society? Is innate logic always just? The process of breaking the problems in a bid to understand them has to be preceded by basic priority self-evident axioms. Such an embodiment is nothing but innate logic. It is equipped with all the requisite tools to discern just from unjust.

The above preliminaries determine that besides production there is something else called acquisition which in *fiqh* (jurisprudence) terminology has the name of *Hiazat* and in short it means taking possession of something. Man, through the medium of *Hiazat* takes possession of his share. Is *Hiazat* the origin of ownership or prior to its prevalence, man could already own things. Mankind is considered to govern nature entailing the right to harness and exploit it.

We regard the whole of humanity as governing nature with each individual human being granted his share of the cake. In other words, he is entitled to engage in the practice of *Hiazat* so as to benefit from the bounties of nature. *Hiazat* is, therefore, the act of acquiring one's share from the total asset.

Nature is the joint property of mankind, and the practice of *Hiazat* enables an individual to acquire his

due share from the cake. Therefore, it would be wrong to assume *Hiazat* as the origin of ownership. The concept of collective ownership of nature by mankind precedes it and is already a principle accepted and imbibed in our logic.

Example: You want to buy a pen. Against tendering of the price of the pen, you assume the status of the owner of the pen. The transaction has served to bring about your ownership of the same.

The conscience of humanity regards human beings as the legitimate owner of nature.

"And the earth, He has set it for living creatures; Therein is fruit and palms having sheathed clusters," (55: 10–11).

This verse indicates that the earth, with all its fruits, belongs to the whole of humanity.

Mosha, Joint Ownership: If some persons buy a house jointly, they are considered to own the house collectively, or to be the *Mosha* owners of the house. However, if based on an accord, each individual owner is allotted a part of the house for his respective use, then the practice of *Hiazat* has been duly performed. Therefore *Hiazat* means taking possession and control.

Innate logic views the whole of humanity to govern nature, and therefore the share of each individual exists in collective form along with the shares of others. Hence, the practice of *Hiazat* facilitates fixation, separation of and benefitting from the individual's share out of the entire asset. The act of a person who picks the first available apple is called *Hiazat*; and it serves to indicate to others that he has already separated his share from all the apples available on the ground. The apple represents his acquired share. He has no claim to the other available apples, and likewise the persons with him can have no claim to the apple in his possession.

Messrs. A, B, C and D collectively purchase a piece of cloth. The nature of their ownership of the cloth is *Mosha*. Now if Mr. A separates his due share of two meters from the whole piece he cannot have any claim to the rest of the cloth. Likewise Messrs. B, C, and D cannot put any claim on Mr. A's share.

In the foregoing illustration, we cannot contend that the act of cutting the piece of cloth with a scissor to separate Mr. A's share is the origin of ownership. His ownership existed even before the cloth was cut. As a matter of fact, it was realized right after the collective purchase of the cloth by him and his friends;

Summary

Summing up the above examples, the following conclusions can be arrived at:

1. In nature, certain types of items with consumption value are available which may be availed of directly and without any kind of transformation.
2. Such items are the joint property of mankind and are shared by all individuals.

3. *Hiizat* plays the role of separating the respective share of each individual from the aggregate share of mankind. The interesting and relevant question which can be raised here relates to the exact amount of such individual's share.

To provide an insight into the question, in the following paragraph, analysis of the pertinent narrations is made. One such *hadith* (narration), from both the Shia and Sunni jurisprudents is:

"People have shares in three things; fire, water and pastures. "

Another narration in this respect is from Imam Kazem (A.S.):

"Muslims are partners in the use of fire, water and pastures (those vegetations which are useful for grazing). "[1](#)

The second narration unequivocally considers Muslims as partners in the said three things, and therefore it aims to specify economic views of Islam in the wider perspective of the Muslim community with respect to ownership. Care should, however, be exercised not to be deceived by the fallacy that *Zemmi* (*Kafir* or infidel communities living in Muslim territories) are excluded from the principle of ownership.

Infidels also can have their due shares but according to the narration, priority is probably enjoyed by Muslims. *Kafirs* can partake after necessary approval by the Islamic government. This part of our assumption is, however, not based on a specific, clear-cut religious decree, and therefore we can assume that the term "Muslims" in the second narration was used to refer to the condition of an absolutely Muslim community with no *Kafirs*, and it is more of the type of a compliment. In the first narration, the term *Naas* (people) is used to preclude the possibility of a monopolistic position of an individual with regard to the bounties of nature; and at the same time, it has sanctioned collective ownership of the things.

Supposing that an individual uses some of the fuel reserves at his disposal to obviate a particular need. How much would his share from the remainder of the reserves be? Can he claim a right to the whole portion thus left? Islam has certain narrations which directly deal with such issues.

Such needs were peculiar to a society 'receding the era of Hadrat Mohammad (S.A.W.). They have relevance to a society with limited knowledge and less command over nature, apart from rudimentary economic activities confined to the primitive forms of farming and cattle breeding. Our discussion, hitherto, was wide enough to bring the available items to direct consumption without any requisite modifications under its purview. Thus the term "land" and the "hidden reserves" were excluded, and the term *Hiizat* was accordingly applied to the readily available things in nature.

A narration by Hadrat Mohammad (S.A.W.) says:

"Whosoever touches by hand something which was not touched by a Muslim previously is deemed to be

the owner of the same."

This narration embraces natural reserves in general, and the available consumer items in particular.

In this narration also the term "Muslim" is used. Necessary elaboration as to whether the term "Muslim" is applied because the situation under discussion is meant to be a homogeneous Muslim community or it aims at making a distinction between the act of a Muslim and a non-Muslim will be made later on.

Interpretations of the term *Hiazat* in Islamic jurisprudence, is not considered as something inconsistent in declaring that an individual becomes owner through *Hiazat*. In other words, *Hiazat* is to specify ownership of a thing. However, no further specifications regarding its nature are given, and therefore, if you say that the purpose of converting part of a joint property into a private one is achieved, it will not be denied. In analyzing Islamic jurisprudence, two views are maintained: One maintains that people originally own the public property and that there is no such ownership at the outset but the ownership is generated by *Hiazat*. The other one however, holds that public property does not equate to common property and the medium of *Hiazat* is used as a means to achieve this end. Some may hold that the phrase "*al-nass shuraka*" is used not to imply that "they are partners in ownership", but that "all can avail of it" without being the owners of it which is also acceptable.

Therefore, two types of production activity and "*Hiazat*" are discussed in relation to the issue of ownership. However, there are certain types of activities which do not fall into either category; such as the functions of a doctor, injection work, dressing up of wounds, etc. Can we then consider such activities as services? The term "production activity" refers to a work whose effect, in a constructive manner, is palpable and crystallizes in another object.

On the other hand certain activities like teaching are enveloped in an air of controversy as to whether they should be considered production activities or otherwise. The criterion employed in establishing teaching as a service or production activity is the nature of the task performed. If we teach to enhance the level of our students' knowledge, and thus help quench their thirst for knowledge, then such teaching is labelled as a "service". However, if we teach at the production level and with the motive of turning an unskilled laborer into a skilled one then our work can be construed as a production activity. In the same line the imparting of mathematics or professional knowledge is considered as production activity.

It would not be improper if we call the later type of activity indirect production activity because we defined "productive work" as something which directly or indirectly contributes to the production process thereby making a net addition to the amount of the necessary goods available.

Thus, there is a certain type of work whose effects exist in an object. In other words, the object is the manifestation of certain accumulated labor. On the contrary, there are certain activities which do not have such a property. They are not crystallized, but their benefits are accumulated by the person or persons involved. Once these are halted, the benefits stop being transmitted as well. The latter type is called services.

[1.](#) This narration is contained in Shaikh Tousi's book Tahzib, Vol. 7, and it is narrated by Ahmad ibn Mohammad ibn Salman quoting Abulhassan Imam Kazem (A.S.).

Source URL:

<https://www.al-islam.org/ownership-islam-sayyid-muhammad-husayni-beheshti/hiazat#comment-0>