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Effects Of Ownership

The First Effect: The right to own, exploit and use a share. A person, following possession of an article, has a right to use it, the sanction for which is extended (apart from Islamic provisions) by innate, natural and rightful logic.

The freedom and its degree in the use of an object owned by a person constitute the axis around which our discussion revolves. Suppose a person plants a tree, and gives it all the necessary care and attention until it reaches the stage of fruit bearing. Can he be considered to be entitled, without any limitations whatsoever, to the entire yield of the tree? Certain limitations emerge here to limit his claims. Do the limitations stem from natural needs or per capita consumption or the minimum level of consumption in the society?

The optimum intake capacity of the owner results from his natural needs with regard to the fruits of the tree. According to this criterion, he can embark upon consuming the fruits as long as the harmful effects arising out of over–consumption are precluded. The term "per capita consumption" implies the quotient obtained from the division of the prospective aggregate amount of the fruits of the tree by the number of people in his society. His share, according to this theory, can thus be calculated.

The criterion of minimum consumption level of the fruits of the tree in the society determines his share to stand at a minimum level of the same.

Here, in this context, no such limitations are however made. His sole proprietary right to the tree overshadows all the above criteria and considerations. It is only his moral obligations which intervene effectively in the matter, thereby determining his due share to be at par with the per capital consumption criterion. If the person uses the fruits of his tree for personal consumption, at a level beyond what is warranted by the per capita level, can he be adjudged to have violated the proprietary right allowed to him? The answer is no. He has not committed any property usurpation. However, he has transgressed the bounds of his moral "principles" in this context. Likewise, if he has a surplus of the fruits of his tree, in defiance of the conditions prevalent in his society, his act is tantamount to breach of his moral duty in economic terms. In the same manner, if you observe that a person standing beside you is naked due to his acute economic condition, while you are wearing fancy clothes over and above your requirements,

then you are bound to be moved by your moral obligations to offer your rather redundant clothes to him. However, failure to comply with such an obligation does not entail any prosecution against you.

The delicate point to remember here, is that Islam and the current jurisprudence have assigned watertight compartments to violation of religious and moral obligations on one hand, and "legal and canonical" violations on the other hand.

To elucidate the above difference between the two kinds of violations consider; a person with surplus accumulated wealth and property and another person in his vicinity needing some of what he has in surplus. It is one thing to say that the needy man is legally a partner of the wealthy in his wealth, and if the latter takes any kind of possession in the property he has legally committed usurpation; while it is another thing to say that the property legally belongs to its previous owner; nevertheless, if he neglects the needy man, he has ignored his social duty and is liable to ethical penalties.

Legislation enacted in the Soviet Union in 1977, has explicitly recognized an individual's right to possess a house commensurate with his and his family's needs, and treated the same with all the valuables in it as his personal property. Now supposing that in the U.S.S.R., Mr. A and his family own, according to the Soviet standards, a decent three–room house. In the meantime, a Soviet citizen, along with his family, shifts to the new city from some other part of the Soviet Union. Should Mr. A and his family occupy only two rooms and therefore allow temporary use of the third room to tis countryman and his family until they manage to construct their own house? No doubt the Soviet rules and regulations have failed to accommodate such cases, but under such circumstances, Islam considers it a moral duty of Mr. A and his family to allow use of the third room by the second family. Nevertheless the ownership of Mr. A on his third room is not disputable in any case. This forms an integral part of innate, natural logic.

Suppose, under identical conditions, with regard to the construction of a house, out of Mr. A and Mr. B, the former quickly builds his house, whereas, the latter, due to indolence and Jack of personal enthusiasm, fails to do the same. Now, is Mr. A, under a moral obligation, required to accommodate Mr. B in his house or is he basically faced with a limitation in his ownership rights?

In the discussion of *Infagh* (donation) two interpretations can be made:

1. Even though a person has acquired his property through legitimate Islamic means, with an indisputable claim to it, the practice of *infagh* is incumbent upon him. This is the current interpretation of the term by both Shia and Sunni sects.

The property belongs to him. However, he performs *infagh* in God's way and the very act does not release the property or object from his possession. *Infagh*, in spite of being an obligation, does not alter the nature of ownership. If he abrogates this obligatory *infagh*, his relationship with the thing will not cease, rather he will be judged to have violated a religious duty.

2. The second interpretation, however, states that where the act of *infagh* becomes incumbent upon an

individual, his ownership link with the object of *infagh* undergoes instability and alteration. For example, if, through a productive activity, I produce, and therefore own an object, I am to be treated as the rightful and sole owner so long as the necessity for an obligatory *infagh*, with respect to the kind of property owned by me, has not arisen. However, once such necessity emerges in the society, I am to be adjudged as the owner of the portion not required to be dispensed with through *infagh*.

In the case if *Khums* and *Zakat* too, the abovementioned views hold true. One view holds that the amount, equivalent to *Khums* and *Zakat*, cannot at all be treated as personal property, and it is meant to be irretrievably channeled into the usages prescribed by the principles governing *Khums* and *Zakat*. The other view, on the contrary, admits the indisputable position of the owner with respect to his entire earnings, and interprets the failure to dispense *Khums* and *Zakat* as an offense against an obligation. (In Islamic jurisprudence, we have the two explicit terms of legal and prescriptive decrees respectively for the above mentioned concepts.)

The noteworthy point here is that our jurists hold divergent views with regard to *Khums* and *Zakat*. A majority of our jurists hold that with regard to the category of properties with a proportion of taxes levied on them by *sharia* (Islamic law), the person cannot treat that portion as his personal property from the beginning, and it is channeled into *Khums* and *Zakat* automatically. While in the case of donations other than *Khums* and *Zakat*, which do not have a fixed proportion in a person's property, the situation is not the same, and the person owns, defacto, what he has to give away.

Hence, in the case of properties subjected to *Khums* and *Zakat*, the person at the outset of attaining the property (crystallized result of his labor) is assigned only 4/5 of the total asset. And if he ventures into an investment employing the entire asset, the profit and augmentations accrued to the remaining 1/5 part do not belong to him and he cannot have any claim to it.

However in the case of donations with no fixed proportion, none of our jurists has expressed a conditional ownership status for the owner. In other words, a non-fixed proportion donation, despite being obligatory, does not act to break the ownership link of the person with his property, as soon as the conditions for donation have emerged.

Or, if you like, a person can exercise discretion despite a prescriptive decree, i.e. he can, by defying the decree, commit a sin and disobedience, and at the same time has his legal links with his property assured. More clearly, his defiance of the prescriptive obligation does not sever his legal connection with his property.

Of course, he may be penalized for his wrong performance, but having punishment is one thing and denial of a legal right on a property is another. He may be told that he will be imprisoned if he does not surrender his property. However, that will not act to deter him from the ownership of the same property.

It is most important to see which one of these concepts is more logical and plausible since it plays an important role in the economic arena. It may be deemed fit to have a glimpse of the legal, moral or

prescriptive decrees, and establish a difference among them if any. In other words, an attempt is made to determine whether a moral financial obligation is accompanied by relevant legal decrees or not.

Is defying an ethical "must", in a financial decree, tantamount to losing legal ownership or is there no relationship between the two and a person performing his moral obligations through observance of, for example, *Khums, Zakat* and *infagh*, is invariably adjudged as a pious person? However, there is no legal legislation to detract from his property values if he fails to adhere to his religious obligations.

Both the science of economics, as well as the schools of economic thought, discuss legal rights and duties with all their respective dimensions. The only difference is that the economic schools of thought discuss what ought to be there, and their general principles. While the science of economics carries out the task of analyzing the persisting economic norms and the methods to be deployed in bringing about appropriate modifications.

The following examples are furnished in order to provide further insight into the concepts. Suppose the schools of thought advocate provision of equal opportunities to everything which would, in turn, be conducive to at least a minimum living standard and spiritual attainment.

The ideal has not materialized yet. Therefore, at this juncture, science can effectively intercede by prescribing certain guidelines to render our ideals feasible. Thus, the science of economics furnishes us with the necessary tools to achieve the ideal propounded by the relevant schools of thought.

If you say, 'I want my child to become active and moving', it has to do with the school side of the issue. However, the methodologies adopted by you in rendering your child active, have to do with the science side of the issue. In the process you may apply directly and thus be benefitted by the methods in vogue or used by your predecessors. For example, would it be appropriate to tell your child to get up and move, or instead create in him the motive to move and therefore get him motivated to move? Can school or science respond to such a necessity?

On the whole, we can say that in the economic context, legal and moral rights and duties may have their respective distinct domains. Many regard moderation oriented economic measures as moral obligations only without any legal repercussions.

Therefore, the scope and limits of consumption, as an indication of ownership, constitute an important part of our discussion here. Is the effect of owning an object, the right to its unconditional consumption or are there some limits to this right; and if the second holds good, should it be according to the natural needs of the owner, or the society's per capita consumption level or the does the right persist even if its wastage and destruction are brought about?

A person plants a pear sapling. After intensive care, it comes to the yielding stage and automatically the planter of the tree becomes the rightful owner of its fruits. Will his probable action of leaving the fruits to decay have any justification while his ownership continues? Surely, from an ethical point of view, he is

not liable for such a misdeed, but the question here is: Does this moral obligation entail any legal limitation concerning his ownership rights; and generally, to what extent, should moral obligations be enforced by legal sanctions?

The approach to such a delicate issue is two-pronged:

- 1. The pears belong to the person who has planted the tree and it, therefore, falls within his discretion to let the fruits decay without being used. Such an attitude, though considered to be a sin of extravagance, does not provide the ground for a trespass into the orchard to avail of the fruits, because his ownership link with the pears persists indisputably.
- 2. Ownership of the pears does not bestow upon the owner the right to let the fruits decay, and therefore if people learn about his intentions, they can effectively intervene and consume the yield. In other words, his ownership right is annulled.

The patronage, extended by innate logic, to consumption as an effect and reflection of ownership, explicitly precludes the concept of wastage and destruction. No tolerance is displayed towards a prospective owner who may resort to squander his procreated produce, and his ownership would accordingly cease.

In the meantime, if his intention become manifest to others, they are granted every justification to effectively intervene and consume the yield to their advantage. The right bestowed upon him by God to benefit from the fruits does not stretch to the extent of effecting any abuse or their destruction.

As another example, suppose that a person deliberately dropped a glass from the top floor of a building, another person on the floor below makes an effort and catches the glass in the air. This offence is dealt with in the domains of both legal legislations and moral obligations. The link of the person with his property stands broken. At the same time, the person on the floor below, who was caught the glass in the air emerges as the rightful owner of the object. The offence is dichotomous. He violated his legal and moral duties: innate logic clearly states that remorsefulness does not alter his new position, and the expropriated commodity cannot be returned to him.

Sometimes, countries, with a strong production mechanism, may find it an economic experience to destroy a large quantity of an agricultural product in a bid to prevent a market glut, and therefore maintain price equilibrium. In America, for instance, in one year peach trees yielded fruits in excess of the optimum quantity. The farmers, in an attempt to prevent a market surplus and a consequent price fall, reached consensus to partially pick the fruits and allow the rest to decay and to be turned into fertilizer.

It was also determined that any departure from the consensus would amount to an aggression against the farmers' moral conscience. So the problem could acquire such far–stretched dimensions owing to the entirely different attitude held in this field. Exploitation of one's products through the enumerated

approved methods, i.e., the capital, constitutes a fundamental issue which has to be treated with utmost care and precision.

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