



The Right to Property in Islamic Jurisprudence and Arab Constitutions

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Abstract:

Private property is protected in Islamic law and Arab constitutions, ensuring individuals' right to dispose of their property within legal boundaries. Property can only be expropriated for public benefit as stipulated in Sharia law and positive law, with the provision of fair compensation.

Keywords: Private Property, Expropriation, the Egyptian Constitution, the Jordanian Constitution, the Algerian constitution, Public Property, Legal Disposal of Private Property, Public Money, Private Money.

Introduction:

existence, and shall no person be deprived of this right. For man, property represents the most important element of life. If the property took the form of a building, it is not permissible to confiscate it except for the public interest, and it must be compensated fairly. Furthermore, the public authority may not deprive the individual of his property or part of it without obtaining his consent. The right to property or the right to ownership means the individual's ability to become an owner under the protection of the state. If private property is the result of individual effort, then it is reasonable to acknowledge the individual's right to enjoy the benefits, such as the freedom to earn and spend money, and to have control over everything they produce.

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The Problem Statement:

Accordingly, to what extent do Islamic jurisprudence and some Arab constitutions protect individual property?

Chapter One: Ownership and its nature in Islamic jurisprudence

Many verses and hadiths of the Prophet have shown that the universe belongs to Allah. Others have attributed ownership to Allah at times and to humans at other times, which leads to several results, the most important of which are:

- Allah is the Creator and the true Owner:

Many verses have stated that Allah Almighty is the Creator of everything. He is the King of the heavens and the earth and He is the Lord of everything. Many verses of the Qur'an have shown that the Creator of the universe and all its blessings and bounties is Allah:

“That is Allah—your Lord! There is no god ‘worthy of worship’ except Him. ‘He is’ the Creator of all things, so worship Him ‘alone’. And He is the Maintainer of everything.” Al-An'am, 102.

“Have you not seen that Allah has subjected for you whatever is in the heavens and whatever is on the earth, and has lavished His favours upon you, both seen and unseen? ‘Still’ there are some who dispute about Allah without knowledge, or guidance, or an enlightening scripture.” Luqman, verse 20.

The jurists have made it clear that all existing things belong to Allah Almighty in all cases in a true way. Many scholars believe that the ownership of the universe and everything in it belongs to Allah Almighty and not to individuals and that, the hand of individuals over it is a temporary hand since it is a succession from Allah Almighty. The Messenger of Allah, may Allah bless him and grant him peace, said: “The lands are the lands of Allah and the servants are the servants of Allah, so wherever you find good, stay.”



- Man is a trustee of Allah's wealth:

Allah Almighty is the true owner, and the exclusive right of individuals and groups to some of Allah's wealth is a different type of wealth that Allah has placed in the hands of humans.

This does not mean that there is a conflict between the ownership of Allah at one time and of man at another time, since ownership is originally Allah's and man's ownership is derived from it, and that when Allah attributes the wealth to Himself, He draws attention to guidance and good use. When Allah attributes it to man, He draws attention to his responsibility attached to that wealth which is appointed as a trustee. Thus, for the trustee to be valid, he must abide by what Allah appointed as restrictions to achieve the requirements of trusteeship and servitude to Allah the Almighty.

Chapter two: Types of ownership in Islamic jurisprudence

Islamic jurisprudence scholars divide ownership into types:

A/ Ownership in terms of the owned thing is divided into two types:

- Complete ownership: It is the ownership of the object and the ownership of its benefit for one person.

- Incomplete ownership: It is what is based on the thing itself alone or the benefit alone.

Ownership is divided in terms of its form into two types:

- Common ownership: It is what is related to a relative, unspecified part of a thing and ownership is divided in terms of the benefit of its characteristics and the function it performs into two types.



- Individual ownership: If the benefit from its effects is for a person in a special and specific manner, whether the ownership is distinct or common in the ownership of other people.
- Collective ownership: If the benefit from its effects is determined for a group.

There is no text in Quran nor Al Hadith that indicates a restriction on the individual's ownership that ends with him and does not exceed him. Rather, Islamic jurisprudence allows people to own whatever they want as long as ownership is legitimate. Many of the great companions of the prophet, such as Abd al-Rahman ibn Awf, Talha ibn Abdullah, Sa'd ibn Abi Waqqas, al-Zubayr ibn al-`Awwam, and Uthman ibn `Affan, were rich. However, the Messenger of Allah did not withdraw their wealth from them, or by his companions, nor it was a source of accusation that they had violated Islamic law. Islamic jurisprudence regarding private and collective ownership states that man is a creature with his innate drives and social instincts, and that among these drives is the instinct of ownership and the love of money, which drives man to work, earn, and love of survival. Hence, the position of Islamic law on ownership is a position that recognizes it, not denies it, a position that respects it, not wastes it.

Chapter Three: Arab Constitutions

Arab constitutions have worked to protect public money on the one hand and private money on the other hand. As for public money, the Constitution decided that public money is sacred and its protection is the duty of every citizen. They prohibited the confiscation of public money and did not allow the penalty of private confiscation except by a judicial ruling. They also prohibited individuals from owning wealth and natural resources and made their ownership public for the benefit of the national economy. If private property is protected as these constitutions stipulate, then natural wealth and its resources belong to the state, which is responsible for preserving and exploiting them well. Arab constitutions



have paid attention to the right to property as one of the rights inherent in human nature that may not be violated. In addition, they paid attention to freedom of trade and industry in its broadest sense, under the pretext that economic activity is governed by natural laws in which the state has no role and that these laws achieve common good and prosperity for all members of the community. These constitutions did not neglect the social function of property and decided on the principle of cooperation between public and private economic activity intending to achieve comprehensive economic development, increasing production, raising the standard of living, and achieving prosperity for citizens within the limits of the law.

As for private property, constitutions have decided that private property is protected and no one is prevented from disposing of his property except within the limits of the law. Also, no one is to be deprived of his property except due to public prohibition and a fair compensation is required and the right of inheritance is guaranteed.

Positive laws have organized private property and given the owner all powers over his property. The owner exercises these powers according to his discretion. However, they have restricted the right of private property with two types of restrictions:

- Legal restrictions: They are imposed by the public interest or the law. The restriction on the neighbor is set to prevent neighbors to take advantage and benefit over his neighbor. The restrictions related to construction methods and how to organize them tries to control buildings. The contractual restrictions on the right of property such as the condition of preventing disposal stipulates that the owner to be compensated for any damage incurred to the property.

The provisions of the Arab constitutions on the right to private property have given important principles that govern the exercise of this right.



- Private property is represented by unexploited capital and the law regulates its social function in serving the national economy and within the framework of the development plan without deviation or exploitation. It is not permissible for the methods of its use to conflict with the public interest of the people. Private property must maintain its social function and be rationalized according to constitutional principles and laws. All decisions and administrative actions related to private property's social function must be monitored for legitimacy within the framework of the constitution and relevant laws.

- The Arab constitutions have made private property a fundamental and essential human right, and have made the deprivation of a person from his property unjustly. In cases of taking one's property must be for the public good without oppression, and in accordance with the controls determined by the constitution and the law. The consequence of this is that a state may subject the rights of the citizen, among the most important and dangerous of which is the right to private property, to the restrictions stipulated in the law and to achieve the public good. Although some jurisprudence has raised doubts about the constitutional recognition of the right to property because it is not related to human rights on the one hand, nor national sovereignty on the other hand. This opinion cannot be accepted, as this right is a constitutional right with a social function.

- The private property is protected and must be respected, and it is not permissible in any way to intervene with private property or restrict it except under the law and within the limits stipulated by the law following the procedures designed to achieve the public good.

- The right to property is considered one of the basic rights of Algerian citizens and even foreigners residing in Algeria, as the 2020 Constitution stipulates in Article 60 that: "Private property is protected and may not be expropriated except within the framework of the law and with fair and equitable compensation." Even foreigners residing legally on the national territory enjoy the protection of the law.



Arab constitutions acknowledge the right to property, but in certain cases, they allow for the deprivation of this right as long as there is fair and prior compensation. For example, expropriation can occur within the framework of the public interest. This is an exceptional procedure that allows for the deprivation of a person's real estate property in exchange for fair compensation, provided that there is a necessity or public interest that justifies the deprivation of the right to ownership. Arab constitutions have referred to general laws to establish controls and special conditions for the expropriation of private property for the public interest, which usually occurs in two cases:

- 1- The aim is to achieve a public benefit, such as establishing a street or public facility or establishing a military zone, etc.
- 2- Expropriation for the purpose of improvement or beautification in cases where the property is linked to a project or independent of it. If it is linked to the project, its aim may be to serve the project of public benefit. Thus, the ownership of properties adjacent to the legitimate project properties is expropriated for the public benefit merely for improvement or beautification. The aim that the administration seeks to achieve through expropriation is to achieve public benefit, and this differs from one country to another. The idea of public benefit may differ from a country to another according to the country's need for economic or social projects.

Conclusion:

Islamic jurisprudence has recognized the right of man to ownership. It recognizes a phenomenon of society that is inseparable from it in any way and recognizes one of the fundamental human instincts. Islamic jurisprudence teaches people the lawful ways to earn and possess money. It outlines the permissible means that should be followed and respected. The legislator has established and enforced rules to ensure that money is obtained and possessed in a proper manner.



Severe penalties are imposed on those who attempt to tamper with people's money and property.

Arab constitutions have also worked to protect public money on the one hand and private money on the other hand. As with regard to public money, the constitutions have decided that public money has sanctity and its protection is a duty of every citizen. They have prohibited the confiscation of public money, and the penalty of private confiscation is not permitted except by a judicial ruling. Individuals are prohibited from owning wealth and natural resources and have made their ownership public and for the benefit of the national economy.

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