

Sharia (Islamic Law) Intentions in maintaining public property

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Introduction

The Islamic Sharia is a comprehensive religion that came to achieve the interests of the people in this world and the hereafter, which is the conclusion of the all messages from Allah (swt), therefore its provisions and rules including justice and mercy in all its details for the individual and the community.

So the Islamic Law came to maintain the most important pillars of Islam, which are the five totalities: religion, life, mind, descendants and property, came to keep them from being wasted and neglected.

Since property is the lifeblood and the main engine of people lifes the Islamic Law issued factors and elements that preserved this property, in the Islamic law trade and all what develops properties is permissible, whereas on the other hand, theft banditry, bribery are offense.

Islamic law gives more attention and care to prevent seduction and weak-willed people not to transgress properties.

The early Muslims rose up this role since the State of the Prophet Muhammad, peace be upon him and later came the Caliphs who extended the Treasury House, particularly in the era of the Caliph Omar bin AL Khattab, may Allah be pleased with him who had an influential role in this area, and through all the stages of the Islamic State until the end of the Islamic caliphate in the Ottoman State.

I studied the subject of the legitimacy with return to some of the legal and economic sources of modern overlapping subject between these sciences. And it was divided into three sections:

First theme: the definition of the Sharia intentions and the law of public property.

The second theme: financial resources in past and present.

The third theme: the protection of public property from corruption.

Each theme contains a number of topics.

First theme: the definition of the Islamic law and public property.

First requirement: the definition of the intentions of Islamic law:

Imam Dahlawi¹ defined it as: (the science of the secrets of religion searching

1- Dehlawi: Ahmed bin Abdul Rahim bin Wajihuddin– Rijal AL Fikrwa AL Da`wafii AL Islam - p.83..

Dr. Ali Mohammed Ali al-Sadig ————— Sharia (Islamic Law) Intentions in maintaining public property for rules and provisions, and the secrets of activity of properties)¹.

Allal El Fassi² defined it as : (the intentions of Sharia (Islamic Law), and the secrets that issued at each of its provisions)³.

Ben Ashour: The overall purpose of the legislation is to preserve the nation`s system and the sustainability of the goodness , including goodness of mind⁴.

Dr. Yusuf Hamid AL A`alim⁵: (by purposes of the legislation, we mean the ends that legislation intended and the secrets that were put at each of the provisions)⁶.

Imam Ghazali defined as: (intentions of legislation are five: that saves their religion , themselves , their mind and their property, all what included in these five intentions is an interest, and all what excluded these five intention is evil and interest paid)⁷.

The second requirement

The status of property and its importance in Islam

Money is important in Islam unlike other religions AlQaradawi says: (property in Islam has an important place in the life of the individual and the group, and has a huge influence in the world and the Hereafter. This is illustrated when comparing Christianity and Islam in this aspect: Christ says in Gospels : (the kingdom of God is so difficult to get on well with rich people, it is easier for the camel to enter into a needle than the rich enter the kingdom of God)⁸. the man who wants to follow Christ and walk with him, must sell his properties then he can come to go with the Christ⁹.

In Islam the situation of property is different, it is considered as an important means of achieving the legitimate intentions of the present life and the hereafter life. Life has been kept on with money, money is needed for

1- Hojjatollah AL Baligha, Shah Waliallah al Dahlawi 1/ 45, Kawthar Library, First Edition, 1420, 1999.

2- Allal El Fassi: Allal bin Abdul Wahid bin Abdul Salam bin Abdullah bin Majzoub Fassi Fihri, was born in 1326 h/1908 m, he was appointed as Minister of State for Islamic Affairs some of his books are (Difa` an AL Sharia) and (Maqasid AL Sharia AL Islamiya Islamic Mkarma) he died in 1394h.

3- Maqasid AL Sharia AL Islamia, Allal El Fassi, p. 30.

4- Maqasid AL Sharia AL Islamia Mohammad Tahar Ben Achour, p 273, Dar AL Nafais, Jordan, Second Edition, 1421, 2001.

5- Yusuf Hamid AL Alim: born in 1356, Dar Ibn Hazm, 1418h- 1997, Beirut, Lebanon, First edition.

6- AL Maqasid AL Ama p. 83.

7- Almustasfi Lil Ghazali 1286/, Second Edition, Dar AL Kutub AL Ilmiya Beirut.

8- See: Gospel (Luke 18 / 24- 25), and (Matthew 19: 23 -24).

9- See the Gospel of Matthew (1921/).

food and drinks, clothing and housing , and as well money helps in making weapons, which in turn helps in defending himself and his family¹.

Third requirement

The definition of property:

In language, property means all things that human owns².

In the terminology, scholars differed in the definition of property as follows: According to Hanafiya, IbnAbidin said: what is meant by property is all what human behavior likes , and can be saved away for the time of need³.

Maalikis stated different definitions of property , Shatibisaid: It is all what is ruled by the owner⁴.

Zarkashifrom Shaafa`isdefined propertyas what is to benefit from , or is ready to benefit from it⁵.

Hanbalis said: property is what legitimately, absolutely benefit from, in any case, or it is permissible or acquired without need⁶.

Some researchers state definitions of public property as follows :

Dr. Abdullah defined the term public property as (public funds that the owner has to be the whole nation without considering the individuals so that the use of it for the benefit of all of them, without regard to one of them)⁷.

Dr. Abdullah Younisdefined the term as (what is owned by the nation or all people which include the funds of the state, but the state does not allow to act freely in the public property because it is general right of a nation and all people have the right to benefit from it⁸.

Dr. Abdul Rahman Al Sabounidefined it as (those funds that will be accompanied by a group of the nation or a group of them do not belong to certain individuals because the property used is related to all of them.)⁹.

1- Maqasid AL Sharia AL Islamia, p 5-Qaradawi, the European Council for Fatwa and Research, research presented for the eighteenth session of the Council - Dublin Jumada II / July 1429 / July 2008.

2- AL Maghribwa AL Misbahwa AL MughniFii AL Anba`a an Ghareeb AL Muhadhabwa AL Anba`a, IbniBatish 1/ 447.

3- RaddAl Muhtar4/ 3.

4- AL MuwafagatChatby 2 /14.

5- Mughni AL MuhtajSherbini 2 /342.

6- Kashaf AL Qina`a Lil Bahoti 2 /464.

7- Dr. Abdullah AL Muslih, private property in Islamic law from the publications of International Association of Islamic Banks, p m 57.1982.

8- Dr. Abdullah Younis, property in Islamic law, p. 183.

9-Dr. Abdul Rahman Al Sabouni, property and contract theory in Islamic law (146)(all previous definitions of the PhD thesis at the University of Omdurman Islamic measures to protect public property Comparative Study Setup / Mohamed Mahmoud Hassan Matari, supervision Dr. Musa Mohamed Osman.

The Civil Transactions Act of 1984 defined public property in Article 27:

- 1- Public funds are considered all real and personal property by the State or public legal persons and which are intended for public benefit or already under the law or public order.
- 2- The disposition of public funds is not permitted in all cases, except in accordance with the provisions of the law.

Public property includes : The state budget in any manner, craftsmen or union, buildings, vehicles and public transport and the focus of power in all these cases is that their owners are not determined¹.

Also public property is defined as all what is specially for the interests and benefit of the general public , such as mosques and the assets treasury . Scholars mention it in the chapters of : mortgage, leasing, selling, transactions, and theft².

The property and funds cannot be public unless of two conditions:

- 1- To be special for the nation and the state.
- 2- To be allocated for the public benefit.

The amount of public property spent on educational institutions is increasing, and this applies to other areas such as roads, hospitals, multiplicity of state function and growth led to a widening audience treated people with public property.

Whatever the philosophy of the type or creed the state believes in , it is no alternative the state must enact legislation to ensure proper use of individuals of public property, the freedom of individuals to use public property is not absolutely free³.

The owner of public property:

Scholars agreed that the owner of public property are the Muslims- Muslims in the Islamic state, and that no one owns this fund specifically, and the responsible in charge is not the owner of the public property⁴.

Fourth requirement

The importance of maintaining public money:

The importance of the preservation of public property is that , state funds closely provides the state economic progress which effectively guide its activities towards the appropriate economic development, it also contributes

1- QadayaFiqhyaMua`asira Dr. Albouti 2/ 62.

2- Mafhoom AL Ma`al AL a`amfii AL Islam, al Dawodi p.16, Kuwaiti 719/.

3- Ahmiyat AL Tarbiya`a AL Islamiyafii AL MuhafadhaAlaALMal AL A`am, Abdul RahmanSaleh p.6.

4- SultatWali AL Amar, , Khalid bin Mohammed Al-Majed, p 1.

to the protection of the economic entity of the state and the preservation of their financial resources, and therefore in Islam the duties of the Caliph is to appoint the governors, and to ensure the availability of high moral level of the governors and those responsible for public property, as well as urging faith, with the prohibition of bribery, and that Islam is maintaining public property by seeking to regulate the public property and activation of control over spending¹.

The development of standards of public property :

There is no doubt that the standard of what is public property and what is not is different from community to another according to the prevailing political system of the state, sometimes it is a property that has monetary value under the ownership of the state that is an organizer and distributor of the wealth of society which specifies how it is used for the public interest and to provide protection as well as the state issues necessary laws in concern to this public property².

The Fifth Requirement

Derivatives of public property :

1- Joint property:

Which is defined as money that is mixed of private and public and the state has share in it, and the individual or individuals as well have share of each according to their contributions.

2- Reserved property:

It is the property that reserved according to a rule that issued in a court by the judge till another rule is declared. Article 99 c 1991 BC and 96 criminal procedures 102 Sudanese Article 3.

3- Stolen and suspected property (Article 96 (c) and 102 procedures).

4- Neglected property, unless someone appears and claims of ownership and shows proof of ownership.

5- Cash public property:

Cash public property that exist in the public treasury or any other branch of treasury such as units administrative, foreign diplomatic missions or institutions that the state shares in the capital or funds which contribute to the state and includes the salaries of workers, or any public funds or funds of projects deposited in the Bank of Sudan or other government banks .

1- Search Islamic Bank, D.Fua`ad AL Omr p 175 . Rafat Mohammed Saeed.

2- AL Mal AL A`am Infaghiwa Istithmarihi p. 46.

6- Funds under the custody of someone because of his occupation including all kinds of property such as governmental cars and houses and work materials including weapons, ammunition during wars, or any other equipment that the government purchase to help governmental officers to perform their jobs¹.

The second topic

Past and present financial resources

First requirement

The financial resources of the state in Islam

(It was argued that who was the first arranging and organizing Beit AL Ma'al (the treasury) was he Caliph Abu Bakr or Caliph Omar ibn al-Khattab _ God bless them both, it seems that the first who arranged Beit AL Ma'al was the Caliph Abu Bakr may Allah be pleased with him _ but there was no need to keep books at that time he did not write down the bureaucracy for not needed at the time, but Caliph Omar may Allah be pleased with him, was keeping books for financial affairs in 20 AH, Ibn al-Athir², and he appointed Abdul bin Arqam Azhari³ this is supported by what AL Kittani said (and it can be said that Abu Bakr, the first who arranged Beit AL Ma'al and Omar was the first who kept books and statistical figures)⁴.

The reason for arranging properties is the increasing of the number of people and property comparing with dishonest and lack of faithfulness among people, this change calling the need for statistics and book keeping which helps in Financial Accounting⁵.

Kinds of public property in Islam such as the charity, land tax, voluntary payments and Gizya (money paid by Christians and Jews living under Muslim rule) and all other funds imposed by God Almighty to be paid by Muslims and the Prophet Muhammad, peace be upon him, and the Caliphs who came after had taken care of these public properties as the basics of governance in the country⁶.

Omar Ibn al-Khattab's Role in the expansion of the financial resources of the state:

1- Himayat AL Ma'al AL Aam.

2- Ibn al-Athir 2/ 31.

3- AL Dhahabi 491 /2.

4- AL Kittani 121 /1.

5- Ibn al-Athir 95 /2.

6- Mugadimafii Tareekh AL Igtisad AL Islami 167.

(Zakat, Alms) (Ghanima, booty) and (Gizyah, money paid by Christians and Jews living under Muslim rule) were resources of public property since the time of the Messenger of Allah, peace be upon him, and the era of Abu Bakr, but land tax and Oshoor (crops money) are considered new resources and they existed only in the days of Omar may Allah be pleased with him) Even that existed resources, Omar ibn al-Khattab expanded them and took into account the interests of Muslims as follows:

Zakat:

Zakat should be in honey, one tenth if grows in land half tenth when it grows mountain)¹, the Zakat of crops should be on the same way, if crops are watered by the rain it is subject to one tenth, if watering is mechanical the amount of Zakat should be half tenth.

Zakat was being delayed by Omar Ibn AL Khattab during the years of Alrmadhin the case of disasters)².

Booty and Grant:

As Iraq, Egypt and Sham were opened this situation was increasing the financial resources of the state than it was before, and Muslims in these countries, seized many of countless weapons, horses and ammunition and others (when all these were put in front of Omar, he felt sad, Abdul Rahman bin Auf said : Oh Ameer AL Munineen why are you sad where this is a situation of happiness, Omar said : I am afraid if all these were given to Muslims, they may be jealous of each others)³.

The wealth of Muslims and their resources were increased after the Islamic conquests because of what had been left by presidents such as money, property and land. The leaders of armies wrote to Omar bin al-Khattab, may God bless him, and asked him to divide the lands among them, but Omar bin al-Khattab, may Allah be pleased with him, agreed to divide the property but not lands. the Islamic state should make use of the crops for public utilities and state protection from the enemy, and to provide social, economic and political requirements⁴.

The God helps Omar and gave him the idea of keeping lands as public property, and general welfare of the community, because unless there is power, army, and authority on the boundaries of the Islamic state, the enemies may return back and God knows where the good is to be)⁵.

1- Kitab AL Amwal 497.

2- AL Amwal 383, wa AL Tabagat Ibn Saad.

3- AL Tareekh Lil Tabari 182 /2.

4- AL Khiraj Li Abi Tosuf p24.

5- AL Khiraj Li Abi Tosuf p27.

AL Gizya (money paid by Christians and Jews living under Muslim rule).

It was the Islamic state to organize the performance of Gizyato put a new system in line with the conditions of the community, so Gizya was began to be developed in terms of its organization.

The development of a unified system of categories applicable to all Dhimyeen(Christians and Jews), and these categories were ranging according to the financial cases, cases of exemptions . It was narrated that al-Nu`man Bin Zarah : (he asked Omar bin al-Khattab, and told him about BaniTaghlib AL Ansari , who were separated in the country because of AL Gizya payments, he said to Omar : they are Arabs and they do not have money to be paid their money , but the enemy may help them against us, so Omar accepted the idea and asked them not to support the enemy)¹.

Land Tax : the origin of Land Tax was that Muslims in the days of Omar bin al-Khattab may Allah be pleased with him , captured many agricultural lands in Iraq, and Muslim fighters thought that they should be divide four fifths between them , and the other one fifth according to what in the Holy Quran (And know that out of all the booty that ye may acquire [in war], a fifth share is assigned to Allah,- and to the Messenger, and to near relatives, orphans, the needy, and the wayfarer,- if ye do believe in Allah and in the revelation We sent down to Our servant on the Day of Testing, - the Day of the meeting of the two forces. For Allah hath power over all things².

The Caliph Omar ibn al-Khattab may Allah be pleased with him, had another opinion of the case , to keep these fixed funds such as land in the hands of the owners as a property of the state and it imposes Gizya upon them, and they live freely)³.

This is the policy of Omar bin al-Khattab, may God bless him and his theory of the resources of the state, until they was one hundred and twenty million dirhams from Iraq , and million dinars from Egypt⁴.

Taxes of Commerce:

Taxes of Commerce is one of the financial resources of the state in the days of Omar bin al-Khattab may Allah be pleased with him, a tax on import and export goods to and from the Islamic country .

1- Kitab AL Amwal 539,538,34,33

2- Surat AL Anfal verse no 41.

3- AL TareekhLiltabari.

4- AL TabagatIbn Sa`ad214/ 3.

This system existed since the era of Caliph Omar ibn al-Khattab may Allah be pleased with him, and it was on the principle of reciprocity, Abu Musa Ash'ari has written to the faithful Omar bin al-Khattab saying: (The non-Muslim traders imposed taxes on Muslim traders so why we impose taxes on them on the same way they do? Omar, Allah pleased with him, support Abu Musa's idea, he said: (Impose taxes on them as they do on Muslim traders)¹.

And taxes imposed on non-Muslim traders were not from the Holy Quran and Sunnah of the Messenger of Allah, peace be upon him, but rather the source of (Ijtihad) by the Caliph Omar bin al-Khattab, who consulted his companions about it, and agreed them, according to economic principles and market equilibrium².

And the conclusion which improves that the Caliph Omar, God bless him, looked carefully after the public property is this story: when he went to pilgrimage said: how much we spent on this trip? they said: eighteen dinars, he said: Too much money to be taken from (Beit AL Ma'al)³. That was a good lesson to many officials in Islamic countries.

The second requirement

The components of modern public money

The components of modern resources of public property are the following:

- 1- Private property
- 2- General property
- 3- Nature and other things

The intervention was represented by nature such as forests, land and animals that existed by nature, which were considered permissible⁴.

This seizure of the state gains a new public property resulted in the seizure of a huge forest wealth and in the seizure of wildlife animals stock which considered as a huge resource of the public treasury.

The croplands and independence for agriculture, industry, mining or drilling for oil and minerals, archeology or sell an investment, industrial or residential in recent periods to bring huge resources to the public treasury and the tourism on land the forests and beaches, islands and wildlife watching in some reserves created by the state of the public treasury revenues of hard

1- AL Khiraj Li AbiYosuf 135.

2- AL Ahkam AL Sultaniya 320.

3- Siraj AL Mulook, Abu Bakr AL Tartooshi 52/ 1.

4- Ahkam AL Mua'amalat AL Maliya Mohammad Zaki ABD al Gadirp 93.

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currency, and the direct and indirect taxes imposed by the state on many of the means of production, business and industries increased from the state treasury revenues and tariffs¹.

Trade was among people and the process of trade exchange between the world's population in modern times as the state entered as an investor in all economic, banking, agricultural and industrial activities in the area of the provision of services by the State to citizens entered in the current era, the citizens should pay part of the cost of services to the public as well as the value of certifications that granted by the State to the citizens and this system, of course, varies from state to another, according to the rich or the poor state and the ruling political system and this aspect is seen in the state budget that aspect of spending on citizens without return)².

Function of public property:

Scholars agreed that the function of the responsible official of public money is the function of representation of the Muslim Affairs, said Ibn al-Arabi said: representative for everyone to bring the benefits and to protect from hurts³.

Third requirement

Kinds of aggression of public property

One of the most serious contemporary issues that threaten the social, economic and political security, is aggression of public property, these activities are many, such as theft, embezzlement, bribery, luxury and extravagance, dealing in Riba, and dishonesty, low quality, poor service delivery, exploitation, general property for personal interests, appointment in terms of favoritism, courtesy, hypocrisy, and the fear of people not of Allah, and no Promotion of Virtue and Prevention of Vice and not performing the legitimate rights of the state's, and collecting profit from the job, and the use of public property for purposes and political purposes)⁴.

1- There is disagreement among scientists about the rule of tariffs some say it is inviolable, others say it is permissible if it matches the services that carried out by the state.

2- Himayat AL Maal al Aamfi AL Sharia wa AL Ganoon. Dr. Hassan Mohammad AL Ameen 1426 - 2005.

3- Ahkam AL Quraan 903/ 2.

4- Hurmaat AL Maal AL Aamfiidaw AL Sharia AL Islamiya). Dr Hussein Shahata 130.

Fourth requirement

The fight against abuse of public property:

Previous procedures before the occurrence of the crime:

- 1- Self politeness through worship.
- 2- Preaching and guidance.
- 3- Intimidation of punishment in the hereafter life.
- 4- well-chosen of public official :

One of the preventive procedures for the conservation and protection of public property, we find that Islam is keen on the well-chosen of the public official as the honest of the public property , and so we find that Islam always keen to appoint the best and faithful person to keep the public property¹.

The Muslim Caliph choses the most qualified, compatible and faithful public officials to help him in protecting, controlling and keeping the public property of the State².

This is why Abu Yusuf advised Haroon El-Rasheed in the appointment of public official: (that must be a confidential, faithful and official man who gives advice and be entrusted to public property)³.

The third topic

The protection of public property from corruption.

The first requirement

Preventive procedures subsequent to the committing of the crime

1- exile:

This measure is taken to confront the gravity of a person, whether before he commits the crime, such as exiling a warrior or after committing the crime to prevent him of committing a crime in the future, Allah, (swt) said, (The punishment of those who wage war against Allah and His Apostle, and strive with might and main for mischief through the land is: Execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: That is their disgrace in this world, and a heavy punishment is theirs in the Hereafter;)⁴.

2- Dismissal from taking charge of civilian and military jobs:

The Islamic Law decided this procedure to refine and evaluate the behavior of the offender and that he feels how much dismissal is bitter in

1- Himayat AL Maal al Aamfi AL Sharia wa AL Ganoon. Dr. Abdalla Furdan p 25.

2- AL Imam AL Mawrdi p 163.

3- Shawgi AL Sahi , Muragabat AL Muwazana AL Aamafi idaw AL Islam p 150.

4- Surat AL Maida verse no 33.

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an attempt to reform his behavior. The prophet Mohammad, pray and peace be upon him, and his companions, Allah pleased with them, dismissed the warrior who withdraw away during fighting and the Ameer who did so as well dismissed¹.

The second requirement

The ways of corruption in public property

Corruption: corruption is the opposite of benefit². Corruption in public property has several ways exploited by the public employee to gain interest or benefit return from this exploitation, which vary depending on the circumstances and the people, some of them associated with the character of the public official himself and the factors affect his personality, including the associated social surrounding relations, the associated environment . The following are some examples.

1- kinship:

It is known that the public employee family and family links may be the cause of corruption in public property and through his behavior towards them, he gives his relatives special position that enables them to exploit the public property.

2- Bad people who incite public employee on corruption:

They are the followers who surround him and encourage him to do the evils , they are different in their position they may be friends who have nothing to do with his job, and may be administrative staff in the field of work or advisers, who participate in the corruption, according to its degree, power, and effect on the employee.

The Prophet Muhammad, peace be upon him says (When the God sends a prophet , or chooses Khalifa, there are always to kinds of people around him: one group advises him to do the goods, and the other advises him to do the opposites)³.

3- Absence of the control bodies that control and prevent the public employee from corruption:

The absence of control over public employee encourages him to exploit his authority against people's interests and property.

5- Self-interests of the employee:

Some of its forms are : to take advantage of influence and power, the

1- Ibn Teimiya , AL Siyasa al shariya p 134.

2- Lisanu AL Arab 3353/ Beirut, Da Sadir.

3- Saheeh AL Bukhari Hadith no 6773.

employee gives himself a right without legal or legitimate justification as to invest his money in businesses related to his job.

The article (92) of the Sudanese Criminal Act of 1991, dealt with this case stipulating the prohibition of the case: Every employee buys himself property under his authority or through other relatives, or participate in a tender to perform the work related to his job, shall be punished by imprisonment for a term not exceeding two years or a fine or both.

6- lack of experience and knowledge requirements of responsibility in public office:

This element is respect to the employee himself and so that it may be in terms of the general qualifications valid to assume a particular job, but lacks of personal necessary qualities for the job prevents him from assuming this is usually in the positions and movements of funds security, political and administrative bodies Supreme Perhaps it is the best evidence is that the prophet, peace be upon him, said to Abu Dhar al-Ghafari, may Allah be pleased with him, when he asked him to appoint him (Oh AbaDhar you are weak and it is a great responsibility in the day of Resurrection)¹.

It is not a secret that some corrupted individuals in the community benefit from the public authority that is in their hands, and not to be naive and wasted opportunities of wealth and social prestige in their hands².

Third requirement

Types of corruption in public property:

Bribery:

It is the illegally making use and being benefit from the job such as to provide a service to someone who doesn't deserve it or to prevent someone of a service that he deserves it³.

It is also: Maaattiyyh person ruling or for others to judge him or him to Mairead⁴.

From the above it is clear that it can take a variety of forms of giving, but - whatever the form –it is to give the employee some money or benefit to get illegal benefit or accelerate a service, may be give to disrupt the interests of others, and the Messenger of Allah said, peace be upon him (God damn the briber and the bribed in the rule)⁵.

1- Saheeh Muslim, Kitab AL ImaraHadith no 1825.

2- MajalatDirasatDa'awitJamiatAfriqua AL A`alamiya

3- AL Mustashar, Mustafa Majdi AL Jamia AL Iskandariya.

4- IbnAabdeen, Rad AL Muhtarala al Durar AL Mukhtar.

5- Rawahu AL Imam Ahmad,8662.

It is forbidden¹ because of two reasons²:

First: because it is included in exploiting, unlawfully, of people's property which is absolutely forbidden .

Second: because they are the factors that affect the course of justice between people, and giving rights to those who don't deserve them. the Prophet Muhammad, peace be upon him said (A Muslim never tells a lie or commit a treasury)³.

The Sudanese Criminal Act of 1991 in Article 88⁴ stated that bribery is forbidden.

And bribery is widespread in Muslim countries and in African countries where the (Daily Telegraph) published a letter from John Hmira about his experiences in Africa and the Middle East ... in his letter he stated that bribery has been provided to government ministers and officials as of all levels in the form of cash payments, commissions, fees, new vehicles and treatment in hospitals and others over forty years⁵.

Gifts:

Give him a gift money to the other person does not have his condition, which is the difference between them and bribery, which gives the purpose of showing affection and intimacy and the reward for relatives and friends, or scholars, sheikhs and Asalh who improves their conjecture⁶.

One of the actions called for by the Prophet peace be Aliu him and I loved them as prayed God told him (Give gifts to the gift go and free⁷ chest)⁸ and the gift of the reasons that solidified the pillars of relations between people and instilling in them the spirit of affection and serenity brotherly sincere, but all that is confined within the framework of the special and regular transactions between the general public.

It is forbidden if because of the function, was seen taking a gift - this Sbb- as taking money from the booty which prohibited the age of puberty for Prophet Muhammad, peace be upon him saying (gifts to workers malignant)⁹. The correct, he prayed God used him a man of Alozd said a son Alltibh the charity came and said: this is for you and this was given to me, so the Messenger

1- AL shawkani, Neil AL Awtar min AhadeethSeid AL Akhyar.

2- Yosuf AL Aalim, ALMaqasid al Aama Lil Sharia AL Islamiya p564.

3- Imam Ahmad Hadith No 21149.

4- MajalatDirasatDa'awitJamiatAfriqua AL A`alamiya,2005, pp129 -130.

5- Dr. Ibrahim AL Ameen, MajalatAfkar Jadeeda,2004.

6- Dr. Abdallh AL Treifi, Jareemat AL Rashwafii AL Sharia AL Islamiya p 68.

7- IbnManthoor 281/ 5.

8- AL Tirmidhi , Kitab AL Wal`a Hadith No 2056.

9- Imam Ahmad Hadith No22495.

of Allah peace be upon him on the pulpit and said: Mapal agent whom I send comes and says this to you and this was given to me, do you not sat in the house of his father and mother are seen Oahda him or not, which is the same Mohammed his hand is not one of them you come up with something Alajae the day of Resurrection on his neck that was a camel Rghae him or her cow mooing or a sheep Taar, then raised his hands until we saw Ofra his hands and then said: O Is amounted to three¹.

Some pictures of corruption on public money:

Direct corruption on public money:

It has different ways such as theft, falsification and breach of trust, and these examples can be detailed individually as follows:

First: The theft:

Theft is taking movable and owned property without its owner satisfaction, each person moves movable property from the possession of someone without consent, is considered guilty of a crime of theft.

Second: Forgery:

Forgery is a preparation of false report with the intention of receiving money for nothing or illegal benefit. Forgery kinds are many, such as false signature on behalf of someone.

Third : Dishonesty or (AlGhuloo):

It takes place when an employee benefits from money under his control...

The Messenger of Allah, peace be upon him said (there is no cutting off hands or legs concerning on the processes of falsification and forgery)² and therefore in Article 77 of the Penal Code of 1991 all of the money entrusted under someone control as a public official, an agent or broker, commits a crime and dishonesty for that money shall be punished by flogging, fines and imprisonment³.

Violation on direct public property:

There are many pictures of the violation on direct public money and this kind is more dangerous than the direct violation, including:

1- Authority exploitation:

Authority exploitation or job selling is considered the most dangerous types of violation on public money because the employee makes effort to achieve personal benefits for himself.

1- AL Sheikhan , Bukhari 6639, and Muslim 3413.

2- Imam Malik , AL Muwata'a p591 Hadith No.1322.

3- Imam Malik p 590 Hadith No.1323.

2- Neglecting and Wasting:

The Article 351 of the Penal Code of 1983 provides that (everyone who is trusted to be honest and keep money or any money the state owns a part of it, and he does any activities leading to its loss or wasted or allowed is doing (73) something which male punishable by flogging, fines and imprisonment)¹ and more crimes of public money in the present era of this kind must therefore be the age of deterrent penalties for such cases Unfortunately, the 1991 Penal Code m such did not want it Subject .

3- Wrong Decisions:

One wrong decision concerning public property causes more than it is of the total of other crimes, and because the damage of such decisions are indirect, the person may not feel it at the time of the decision, therefore the public official who makes such a decision is considered violated public property, unfortunately, Penal Code did not punish such an employee while it punishes the person who steals a little public money.

4- Pictures of improper use of public money:

The pictures of improper use of public money are many, the public official who uses the government vehicle for personal purposes is considered a way of corruption on public property, as well as the person who uses a telephone office in personal purposes and those who leave the lights and fans of their offices on is a way of corruption on public property.

Privatization and its impact on public money:

Dr Ahmed Munir Najjar², tries to summarize the importance of the concepts of multi-privatization, he said (It is the gradual expansion of the private property, or to get rid of institutions that make loss in the state, or permanent transfer of the activities of public service to the private sector)³, which seems to me that this overall conclusion can be the most correct definition included all the details of the privatization process in accordance with the following:

- 1- Gradual expansion of private ownerships, on the account of state ownerships.
- 2- Disposal of the loss-making government institutions.
- 3- Or permanent transfer of the activities of public service production to the private sector.
- 4- Transfer and management of economic activity from the public to the private sector.

1- AL MustasharAwadIdris, Majalat AL Adl.

2- Wajeih Shams AL Deen, AL khaskhasa, 1413 – 1993 p38.

3- Ahmad AL Najjar, MajalatDirasat AL khaleej.

5- Integrated policies based on market mechanisms and competition¹.

This is the privatization, defined as when the specialists have resorted to by many countries to improve the economy and get rid of some loss-making state institutions, some officials are trying to turn some government institutions for his personal benefit under the name of privatization or to provide some of his relatives or friends with facilities.

Fifth Theme

Sentence of a thief who steals public property

Severe disagreement took place among scholars about cutting the hands of thieves who steal money from (Beit AL Ma`al) - the house of Finance in Islam. and there are two different ways of this:

1- First:

AL Hanafiya support the opinion that the thief's hand should not be cut off, Ibn AL Hammam in his book (Fath al-Qadeer), as well as Shafei, Ahmed Nakha'i, and Sha'abimentioned this opinion².

Shaafa'is: AL Mahali in his book (Sharh AL Minhaj) said that if the thief is not a member of the group who own the money, his hand should be cut off, and the exceptional case is that if he is poor he shouldn't be cut off³.

The doctrine of the Hanbali Ibn Qudamah said in his book (al-Mughni) : (if the thief is a Muslim and he stole from (Beit AL Ma`al) he shouldn't be cut off. Omar, God pleased with him, asked Ibn Masoud about a person who stole from (Beit AL Ma`al) Ibn Masoud said that he should be free because he has a right in this property⁴.

2- The second opinion :

Malikis said that a person who steals from (Beit AL Ma`al) should be cut off. (his hand) and they mentioned the verse 38 Surat AL Maida. They believe that the property is public and it includes all kind of money whether it is stolen from (Beit AL Ma`al) or from any other places⁵.

AL Hanafya, AL Shafiya and AL Hanabila said there is a suspicion prove which stands against cutting off the thief's hand , whereas on the other hand AL Malikiya do not agree with this opinion because they think that the evidence which was mentioned by AL Hanafya, AL Shafiya and AL Hanabila is not very strong⁶.

1- Dr. Ibrahim AL Obeidi, al Khaskhsa, first edition, 1422- 2011.

Sharh Fath AL Gadeer Ala AL Hidayah.

3- Sharh AL Muhalla Ala AL Minhaj.

4- AL Mughni, Ibn Qadama 135/ 9.

5- Hashiyat AL Dusuqi Ala al Sharh AL Kabeer, 366/ 4.

6- Majalat Jamiat Dimashg, Mansoor AL Hamwi p 346.

The result:

After viewing the sayings of scholars and their evidence on the issue of theft of public property, I tend to agree with the opinion of Maalikis, that punishment on theft should take place depending on the Quranic texts which doesn't distinguish between theft from public or private property.

This is because the verse covered by the general meaning of the text.

The nature of property in the early Islamic period is different from what it is today, in the past every Muslim has right in (Beit AL Ma'al) but these days it is very rare to find such right, as well as public property is not of one nature¹.

The sixth theme

Ways to protect public property:

Moral protection of public property:

Means of protecting public property begin at home, school, mosques each of these means has an active role in preventing corruption concerning public property and we are talking about these means separately:

- 1- Home: the family plays the main role in forming the personality of the individual in society, and it teaches the child the virtues of work and warns him of what is forbidden as well as the family trains him/her to receive instruction from his parents and from others.
- 2- School: school is an educational institution which service the community and achieve its objectives and its role is a complementary role of the home.
- 3- Promotion of virtue and prevention of vice: Promotion of virtue and prevention of vice, the principle of essential, educational a school teaching general provides the largest base in the nation to know what is permissible and what is forbidden. system up to the idea of the Promotion of Virtue and Prevention of Vice.

And the methodology of the Promotion of Virtue and Prevention of Vice, makes it imperative for every Muslim to be responsible for his own work. Promotion of virtue and prevention of vice helps a lot in protecting the public property. AL Imam AL Ghazali supported this idea and he believed strongly in the role of Promotion of virtue and prevention of vice in keeping the public property away from corruption and thieves' hands, and without it corruption is expected to be widened and ruins the country and its people)².

1- Majalat Jamiat Dimashg, Mansoor AL Hamwi p 351.

2- Ihya' a Oloom AL Deen, AL Ghazali, 142/ 2.

Judicial protection of public property:

The Sudanese judicial system considered that the government regarded as a member of the community and on this basis the Sudanese courts consider issues that the government is a party of, as the same rules applied against personnel issues, therefore a difference between the people's issues and the government's issue, is that the government is based on the public employees in claiming or defending in front of courts and they may not give public property, the same individual attention to his wealth, in addition to that cases may be considered after the employee giving up his governmental job for any reasons, and this leads to the loss of public property.

Legislative protection of public property:

Legislative protection of public property requires the enactment of a clear deal with public property in various fields, especially in the present day in which the moral protection has failed, and criminal law is considered as the basic law¹.

As well as the policies included in the seminar (financial planning and control of public property) in collaboration between the Institute of Public Administration and the Statistical, Economic and Social Research of the Organization of the Islamic Conference, held from 12 to 14 November 2000, which ended in certain suggestions and some points of view which emphasize the following:

First: the role of educational and training institutions in the sense of developing the responsibility towards the public property.

- 1- Lack of contemporary Arab studies on the phenomenon of abuse of public property and the need for such studies, to set the topic in additional seminars and meetings.
- 2- The abuse of public property is a widespread phenomenon in many communities among different age groups and takes a variety of forms.
- 3- Emphasize the importance of instilling values and educational trends among young people and developing the sense of responsibility of public property through targeted approaches and the role of teachers.
- 4- Focusing on the Islamic educational theory and the introduction of various educational methods to achieve this goal.

Second: control over public property between the laws, regulations, and the Islamic Sharia.

The participants agreed that the Islamic Sharia and the Islamic heritage inherited the work and the ancestors stated principles and rules for the protection of public property.

1- Dr. Awad Idris, *Majalat al Adl*, pp 20/ 21.

As stated that public property is a property owned by God, and the human being is trusted this property, and corruption of this property is considered to be a betraying of all human beings.

Legally it was emphasized the concept of public property in overall framework and it should be controlled as the principal means of protecting public property and the need for a civil protection tool (the invalidity of any conduct which is located on public money) and criminal protection represented in the stated punishments.

The participants concluded the following:

- 1- Legislation includes special integrated ways to protection public property.
- 2- Continuation of the development of supervisory work in the state.

Third: planning on Islamic perspective:

The seminar has concluded that the foundations of planning are found in the principle of Islam including the oneness of God and commitment to his commands and prohibitions, and the lack of separation between the spiritual faith of Muslims and their physical movement and that the responsibility in the community is solid and integrated.

In the preparation of planning cadres it was emphasized that careful selection of members should take place, and putting them under training to ensure suitability, and give them a chance to prove themselves¹.

Conclusion of the research

At the conclusion of this research I hope that I have been able to shed light and clarify the legitimate objectives concerning the maintenance of public property, because of the importance of this subject in our modern life, so that a Muslim knows his limits in the use of public property.

I recommend the need to learn the (Figh) of public service for all employees in the public sector, so as to keep this property from being lost, neglect and illegal spending.

These values must be included in education system in the state and taught to generation, to develop the nation .

1- Majalat AL Idari, December, 2000.

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