

THE GOVERNMENT POWER AND THE EXTENT OF ITS INTERVENTION IN THE ECONOMIC AFFAIRS OF THE PEOPLE: “SONNITE” JURISPRUDENCE

Dr. Sadegh Aiynhvand
Faculty member of Theology

Abstract

The present article deals with the views of Sonnite Jurisprudents on the power of government in the economic affairs and the extent of its intervention in such affairs. Having quoted a few opposed view points the article also deals with subjects such as pricing the goods, confiscating the wastlands, and the lands Moslems took possession of in wars, each of which indicates the background, and the scope of the government and the Islamic Ruler's power for such an intervention.

FIXING THE PRICE UPON COMMODITIES

The results of studies and researches conducted on “Sonnite” Jurisprudence resources can be summarized in three views as they have been developed in Ibn-Teimiyeh’s book titled *Al-Hasaba*.⁽¹⁾

1. The government should be forbidden to price commodities and provisions.
2. The government should be authorized to price commodities.
3. The government should be authorized to price certain commodities.

The first view is based on the prophet’s tradition as follows:

«إِنَّ اللَّهَ هُوَ الْمُسَعِّرُ الْقَابِضُ الْبَاسِطُ وَإِنِّي لأرجو أن ألقى الله
وليس أحد منكم يطلبني بمظلمة ظلمتها إياه في دم ولا مال»⁽²⁾

The followers of the second view, namely the one that emphasizes on the government authorization for pricing commodities, argue that people can not be forced to sell commodities, but they can be prohibited from buying those

commodities which have not been priced by Moslems’ Ruler (Superintendent).

In fact their argument is based on two principles namely that neither the dealers should be prevented from making profits, nor should they be given the opportunity to incur losses to people. The third view which is in fact the moderate one has been expressed by Ibn-Teimiyeh and the masses of jurisprudents. As understood from the statements made by Ibn-Teimiyeh the Malekis are more inclined to restrictions in trading and the governments’ supervision and intervention in pricing commodities government’s supervision and intervention than Shafeis and Hanafies. Although, as a general principle, Shafei has accepted the free trade, nevertheless, he has rendered the legal opinion that he who hoards the people’s food and commodities and the said food and commodities at the disposal of the same people at a fair price.

Shafeis followers have expressed two views regarding the pricing of the goods and merchandise for which there is a public demand. The followers of Abu-Haniefeh are of the

opinion that the Moslems' Ruler should not proceed with the pricing of goods and merchandise unless government's negligence in pricing goods would cause a loss to people.⁽³⁾

Abu-Yala and Maverdi, in "Alahkam Soltaniyeh" have prohibited pricing policies. Nevertheless Malek, has advocated pricing if prices increase.

Ibn-Al-Ghayem, in his book titled Al-Torogh Al-Hokamiyeh, has devoted a full chapter to "pricing", a concise summary of which is as follows: pricing policies are of two kinds, the Policy of forbidden injustice and the policy of permissible justice. The forbidden injustice policy is exercised when the people are forced unrightfully to sell a merchandise at a rate not to their satisfaction, or when they are prevented from demanding something that God has considered permissible.

On the other hand, the policy of permissible justice is exercised when people need to be forced to exchange their goods and commodities at a fair price, or when people are prevented from demanding more than "fair consideration", which they are forbidden of.⁽⁵⁾

There is no doubt that all Sonnite learned scholars have the idea that no one is entitled to impose a certain price and force sellers to sell their commodities at the imposed price. The Sonnite scholars unanimously believe that no one can tell buyers not to buy commodities unless they are at a fair price or less than that.

As for the sellers who sell their merchandise at a lower price than what has been fixed in the market and who try to create changes to make corruptions and create pricing fluctuations in the Moslems' market. Malek and Shafei express different views. The dispute arises from the second "Calif's" (khalif) treatment towards Ibn-Baltaa.

Malek, in his "Movatta", quotes "Yousef-Ibn-Seyf" and "Saied-Ibn-Mosayyab", who reported that "Omar-Ibn-Khatab" addressed "Ibn-Abi-Baltaa", who was selling raising in the market at a low price and said to him: "Either increase the price of your goods or take your goods with you and leave this market".

Basing his argument on the way the second "Calif" (Khalife) treated "Ibn-Baltaa" Malek concludes that any one who intends to create fluctuation of prices and to cause instability in the market should be treated to cause reversely.⁽⁶⁾

"Shafei" disagrees with "Malek" regarding the interpretation of the deed and gives an account of the story as follows:

"I heard from "Al-Deravardi" who quoted "Davood-Ibn-Saleh" who had quoted "Ghasem-Ibn-Mohammad" that one day 'Omar' came across Hateb-Ibn-Abi-Baltaa" at

"Mosala" market and who had two full bags of raisins in front of him. Omar asked about the prices and Ibn-Abi-Baltaa responded that both bags would cost one 'Derham'. Omar said that he had been informed that a commercial caravan had just arrived from "Taef" and the merchandise was raisins. "Omar" added that the caravan would be misled by that price and then asked "Ibn-Abi-Baltaa" either to increase the price of the good or take the raisins back home and sell it at any price he liked. When "Omar" reached his house, he began to evaluate his own deed and later on went to "Hateb's" home and said "What I told you was not as an intention and an apply for the accomplishment of the matter. What I really intended to get was the people's welfare. You can sell your goods at any place and at any price".

Shafei believes that people should have the liberty to sell their goods to the extent that the transactions, sellings and buyings would not cause any disturbance in regulations and common law. Moreover, no one can induce them to sell their commodities at a certain fixed price, whereas Malek is of the opinion that one of the Moslems Ruler's duties is to safeguard the sound economy of the Islamic society. Therefore, the Moslems Guardian is required to be alert enough to predict and to prevent the false fluctuations which will cause the instability of the market. This is exactly the same as "Omar" viewed the case.⁽⁷⁾

"Malek" quotes "Ash-hab" and states, "If the Guardian of the Islamic community fixes the market prices for, the community needs to observe them. The supporters of this view argue that the Guardian's intervention in fixing prices will be the benefit of the whole community and furthermore will frustrate the increase of the prices. Moreover, not only the people would not be induced to sell their goods, but they would also be prevented to purchase goods at any price other than the price fixed by the Moslems Guardian.⁽⁸⁾

The supporters of this view believe that the Guardian of Islamic community should make the merchants aware of the economic policies and seek the experts' approval and their ratification of the policies. It is recommended that the Guardian consult them as far as the dominant trends of purchasing, selling and pricing are concerned. The Guardian is expected to encourage the merchants to reduce their prices as down as possible to the extent it satisfies the whole Islamic community. Nevertheless, there has to be no coercion in decreasing the prices. Having followed this strategy, if any of the market-men refuses to sell his commodities for which there is public demand, the Guardian is authorized to force them to sell the goods. This will discourage hoarding or as it is nowadays commonly used "the black market".

[Downloaded from eijh.modares.ac.ir on 2024-04-23]
[DOR: 20.1001.1.25382640.1991.2.3.3.2]

The sellers are duty-bound to submit to the above policies and if they refuse to do so they are subject to punishments. To this regard even those who are required to sell their commodities at a fair price are also subject to the same regulations.⁽⁹⁾

“Moslem” and “Bokhari” in “Sahihayen” have quoted the Holy prophet (PBUH), who has prohibited the increase of fair price in “Etgh–Al–Hessah”. The quotation runs as follows:

«مَنْ أَعْتَقَ شَرِكًا لَهُ فِي عَبْدٍ فَكَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَ الْعَبْدِ قَوْمِ الْعَبْدِ قِيَمَةَ عَدْلٍ».⁽¹⁰⁾

The said tradition is considered as the basic principle among the “Sonnite” jurists who have stated:

«مَالِ الْمَلِكِ قِسْمَةٌ عَيْنُهُ فَإِنَّهُ يُبَاعُ وَيُقَسَّمُ ثَمَنُهُ».

This principle, namely the principle of fixing prices, has thus been defined. Based on this principle the Ruler of the Islamic community can fix the prices to satisfy the welfare of the Islamic community. The price must, of course, be proportionate with cost of production and to this regard the advice of the experts must also be sought. He can compel the owner of the commodity to sell it at a fair price.⁽¹¹⁾

The conditions governing the people’s transactions which will ultimately lead to the government’s control over the prices and will eventually set restrictions on general trade are, from “Ibn–Tayammiah” view as follows:

1. People’s need to the commodity and provisions.
2. Hoarding.
3. Preventing the brokerage and dealership.

In the first case the Guardian of Islamic community will force the hoarders to sell their commodities for which there is a public demand at a fair price. This is based on the principle that

«ما احتاج إليه الناس حاجة عامة فالحق فيه لله».

In the second case the Guardian will force the hoarders to sell whatever they have hoarded at a fair price. To this regard “Abo–Hanifeh” believes in “Hejr” (interdiction), because benefitting from this principle, the owner is disposed of his ownership and thus the incurring of losses on Moslems’ community would be prevented.⁽¹²⁾ In the third case, brokerage and dealership of second–hand goods are dealt with. These policies were prevailing during the time of the Holy Prophet. The Prophet himself prohibited these actions as the following “hadith” testifies:

«لا تَلْقُوا الرَّجُلَانَ بَعْضُكُمْ عَلَى بَعْضٍ وَلَا تَنَاجَشُوا وَلَا يَبِيعُ حَاضِرٌ لِبَادٍ».⁽¹³⁾

It has been reported that Ibn–Abbas was asked to make interpretation of what the Holy Prophet meant by the state-

ment:

«ولا يبيع حاضر لباد».

He said that, according to that statement, no dealer should be involved in selling or buying commodities since this will incur losses to the community.⁽¹⁴⁾

“Shafei” believes that the Prophet prohibited and discouraged selling commodities before they were imported to the city–market and before the owner had become aware of the market rate.⁽¹⁵⁾ Otherwise, it will incur losses on the buyers and will secure great unrightful amount of interests to the sellers. One should notice that the Holy Prophet has prohibited dealership and any kind of action which will inevitably make drastic changes in prices and consequently, will increase unpredictable and sudden increase in price fluctuation. The direct relation between the owner and the middle–man is itself unjust and unfair. The reason is that the owner, before being aware of the market rate and situations, will sell his commodities to the middle–man who is fully aware of the market rate. Thus the commodities for which there is a great public demand will be at disposal of the broker as a result of which prices will increase and losses will be incurred on the public. The Prophet has prohibited “Al–Najash” a person who is not in need of commodity to increase the price thereof and to proceed with such a business.⁽¹⁶⁾

CONFISCATION

Confiscation is one of the obligations that the Islamic government considers for the trading in order to secure the interests of Islamic community. Confiscation is the government’s dominance on certain properties without any replacement or repatriation. In fact it is to be considered as a kind of punishment in some cases for the restitution of a right.

The Sonnite jurists have categorized the religious obligations, which constitute part of God’s right, into three categories:⁽¹⁷⁾

1. Servitudes
2. Religious atonements
3. Requisites

It has already been argued that confiscation is carried out if certain necessities required and also in such cases here an unlimited part of the one’s, properties is confiscated in favour of the Islamic public treasury (Beytolmal).

Confiscation is operationalized in the following circumstances:

1. In cases where the government treasury is incapable of solving its problems and it is not in a state to meet its obli-

gations (such as war, famine, etc.).

2. In cases where a person exercises controlling influence over part of the government's property, or misuses the government properties or discourages governmental development and production.

The Sonnite jurists have based their views on the inspirations they get from the Holy Prophet's deed in case of "Ibn-Al-Ltabyyah" when his Reverence dispatched him to collect "Bani-Solayem's" alms⁽¹⁸⁾ and also the second Calif's (Khalif's) deed in dealing with "Abo-Horayreh", "Saade-Ibn-Abivaghas", and "Amro-Ibne-Aas".⁽¹⁹⁾

From the foregoing points, it becomes clear that the Moslems' Ruler can benefit from confiscation as a punishment for prohibitions, dissimulations, tricking and hoarding in transaction. The Ruler can also proceed with the act of confiscation if it is to the benefit of the public, or when some unprecedented circumstances are required.

BARREN-LANDS

The barren lands are the lands that are not possessed by anyone. According to the Holy Prophet, these lands are part of public ownership as implied from his statement:⁽²⁰⁾

«لِلَّهِ وَلِلرَّسُولِ ثُمَّ لَكُمْ مِنْ بَعْدِ»

The Sonnite jurists have presented a number of definitions to characterize "waste-lands", some of which are as follows:

According to "Shafei" "a barren land is an undeveloped land not within the developed land though, it may be joined to it".

Abo-Hanife defines the barren lands as "undeveloped lands beyond the developed ones which can not be irrigated".

According to "Abo-Yousof" "barren lands are lands which are located so apart from the developed lands that if one shouts loudly, the other person who is in the nearest developed land can not hear him".⁽²¹⁾

In order to make a distinction between the barren lands and spoiled lands, "Kashani" has mentioned a number of conditions in his book titled (Badaeo-Sanaea)⁽²²⁾

1. Not to be situated within the city limits,
2. Not to be a place for gathering livewood, or for pasturing cattles.
3. Not to be a mine, or a place for exploration of tar, salt, oil and the like.⁽²³⁾

As far as land development and land ownership by the people are concerned, the Sonnite jurists can be categorized into two groups:

1. Some of them do not consider the Islamic Ruler Permission as an essential condition.

2. Others, on the other hand, consider the Ruler's Permission as an essential condition for ownership.

Nevertheless, both groups are, unanimously of the opinion that the Islamic Ruler is entitled to supervise and control the manner of land re-cultivation, development and exploitation. The religious jurists unanimously argue that if an owner leaves the lands barren for three years and fails to develop them, the Ruler and the Islamic Guardian are authorized to confiscate the lands and assign them to another person. The justification for this view resides in second calif's (khalif's) treatment of the issue:

«تصرف الإمام على الرعية منوطاً بالمصلحة»

Based on the basis of Sonnite jurists' views and also on the Islamic religious' principle

«نُعْنِي مِنَ الْمصلحةِ، المحافظة على مقصود الشرع، ومقصود الشرع من الخلق خمسة: هو أن يحفظ دينهم، ونفسهم، وعقلهم، وشرائعهم، ومالههم، فكل ما يتضمن حفظ هذه الأصول الخمسة فهو مصلحة، وكل ما يفوت هذه الأصول فهو مفسدة، ودفعها مصلحة».

restoration of barren lands or their confiscation is definitely the right of the Islamic Ruler. This was being done to have them (the Islamic groups) developed; according to Ghazali:⁽²⁴⁾

LANDS OCCUPIED BY MOSLEMS IN WARS

The Sonnite jurists are of the opinion that all lands released by the Moslem warriors in wars, which according to Islamic jurists are titled "Maftoh-Al-anvah", belong to the government. This type of government ownership is known as "the ownership of the authority". In terminology these lands are called "Moslems' Mamlokeh".

The contemporary Sonnite jurists considered the proceeds that are gained through these released lands as a type of remuneration.⁽²⁵⁾

SAVAD'S LANDS

Omar opposed Savad's land reforms and argued that if these lands were distributed among the Moslems, there would be nothing left for the future generations and for the widowed. He also believed that war gains could not be generalized to land properties, but only to immovable properties. Lands are not gains, but they are occupied. This is contrary to what the Holy Prophet's, the apostle had argued that the occupied lands should be owned by the conquerors and those their successives should serve the Moslems thereof⁽²⁶⁾

References:

- ١- الحسبة/ لابن تيمية، ص ٣٤.
- ٢- نظام الادارة في الاسلام، دراسة مقارنة بالنظم المعاصرة/ دكتور القطب محمد القطب طيله، ص ٢٨٧.
- ٣- الحسبة/ لابن تيمية ص ٤١. الدولة ونظام الحسبة/ لمحمد مبارك، ص ١٢٤ - ١٢٥. الأحكام السلطانية/ لأبي يعلى، ص ٣٠٣.
- ٤- الأحكام السلطانية/ للماوردي، ص ٢٥٦.
- ٥- الطُّرُق الحُكْمِيَّة/ لابن القَيْم، ص ٢٤٤ وما بعد آن.
- ٦- الحريات العامة في الفكر والنظام السياسي في الاسلام/ دكتور عبدالحكيم حسين العلي ص ٥٥٦.
- ٧- الحسبة/ لابن تيمية، ص ٥٥٧.
- ٨- الحريات العامة، ص ٥٥٧.
- ٩- الحريات العامة، ص ٥٥٧.
- ١٠- البخاري، ج ٣، كتاب العتق ص ١٨٩.
- ١١- الحريات العامة، ص ٥٥٨.
- ١٢- الحسبة، ص ١٧ - ٤١.
- ١٣- البخاري بشرح الكرمانلي، ج ١٠، ص ٣٢.
- ١٤- الحق ومدى سلطان الدولة في تقييده/ د. فتحي الدريني، ص ٣٦٨.
- ١٥- الآم/ للشافعي، ج ٣، ص ٨١.
- ١٦- الحسبة، ص ١٦ و ١٧.
- ١٧- الطرق الحكومية/ لابن القِيم الجوزية، ص ٢٧٠.
- ١٨- الخراج/ لأبي يوسف ص ٨٢ والأموال/ لأبي عُبَيْد، ص ٣٧٧.
- ١٩- عمر بن الخطاب / للدكتور الطَّاهري، ص ٧٨ و ٧٩.
- ٢٠- الفكر السياسي عند الماوردي/ للدكتور صلاح الدين بسبوني رسلان، ص ٤٦١.
- ٢١- الأحكام السلطانية/ للماوردي، ص ١٥٨.
- ٢٢- بدائع الصنائع/ للكاشاني، ص ١٩٣.
- ٢٣- الفكر السياسي عند الماوردي/ ص ٤٦٤.
- ٢٤- المستصفي/ للغزالي، ج ١، ص ٢٨٧.
- ٢٥- في المجتمع الاسلامي/ لمحمد ابو زهره، ص ٣٤.
- ٢٦- عمر بن الخطاب / للدكتور الطَّاهري، ص ١٧٤.