CHAPTER IV

IBN TAIMIYAH AND PROPERTY RIGHT.

Property right has been one of the basic problems of man. Diversity of economic systems can be traced back to the variety of approaches to the right to property. Whether there should be absolute private ownership, or absolute state ownership, or in between as in the mixed economy, or some other type of ownership, these questions cannot be neglected by an economist.

Property is not peculiar to human being. In the words of Ernest Beaglehole "In an unqualified usage of the term, property appears to be characteristic of many forms of animal life, with the important distinction, however, that one should only talk of property rights when the control of scarce object can be related to a unique normative system of values; such a system is found only in human groups." Only in man we can postulate the emergence of a sense of selfhood that gives psychological underpinning for the concept of rights, duties, responsibilities, and obligations. Only in man we can postulate the emergence of a sense of selfhood that gives psychological underpinning for the concept of rights, duties, responsibilities, and obligations. Due to this, we confront a number of conflicts and divergences among individuals and groups. To resolve this problem is a delicate task that has been tried by the thinkers of every age.

A. CONCEPT OF PROPERTY IN DIFFERENT SYSTEMS

1. PROPERTY RIGHT IN ROMAN LAW

To examine a few ancient concepts relating to the institution of property we come across Roman Law. Its influence was "in the direction of a rigid and indeed in somewhat harsh individualism."

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The Roman jurists had the prevailing tendency to consider that each one had right to do what he liked with his own property, that the conception of private property necessarily included the right not merely to enjoy, but also arbitrarily to abuse and destroy, and logically likewise an untrammeled right of bequest. Here, in the two great principles of private property and complete freedom of contract, Romans left a bias towards unfettered and irresponsible individualism as against the possible claim of the family, the sect, or the nation.¹ Even in the present age the scholars have generally defined property on the pattern of Roman Law. For example, defining the property or dominion John Austin says, "Taken with its strict sense it denotes a right — indefinite in point of uses — unrestricted in point of disposition — and unlimited in point of duration — over a determinate thing."²

According to this definition, property right is an unrestricted and unlimited right on an object to use or destroy it in whatever way the proprietor likes. But none can insist to-day that the two conditions mentioned above must be fulfilled for ownership. Austin himself admits that restriction might be imposed by customs or government.

2. PROPERTY RIGHT IN GREEK PHILOSOPHY

The institution of property was a great controversial subject in Greece. According to Plato (430-347 BC) warrior class should not have property beyond what is necessary; they are to receive a fixed rate of pay, sufficient to meet expenses and no more: "Should they ever acquire homes or lands or moneys of their own, they will become housekeepers and husbandmen instead of guardians, 

¹Gray, A. op. cit. p. 28.
enemies and tyrants instead of allies of the other citizens."\(^1\)

One Democritus (460-370 B.C) says that society organized in terms of private ownership of resources will enjoy economic superiority over one where communal ownership prevails. The possibility of private ownership lends the stronger incentive for productive activity. He states that "Toil is sweeter than idleness when men gain what they toil for or know that they will use it. Privately owned resources are likely to be handled with greater diligence than those which are public, since income from communally held property gives less pleasure and expenditure less pain."\(^2\) His views are echoed a little later by Aristotle (384-322 B.C.) and eventually became central in the writings of the medieval schoolmen.

Aristotle criticises Plato's communism in second book of the Politics, and argues that a system of communism would not work, and that it violates natural human instincts. He says, "If they do not share equally in enjoyment and toils, those who labour much and get little, will necessarily complain of those who labour little and receive or consume much."\(^3\) Again in an argument which is still common he urges that community of property would destroy the virtue of liberty. According to him "the present arrangement, if improved as it might be by good customs and laws, would be far better, and would have the advantages of both systems. Property should be in certain sense common, but,

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The author does not give reference to any original source, he simply says 'No systematic treatise by Democritus survives. Yet a variety of short political and social observation on his part, like the above have been transmitted by other authors.'

as a general rule, private."\(^1\) The ideal which Aristotle suggests is that "property should be private, but the use of it common."\(^2\)

"3. CHRISTIANITY AND SCHOLASTIC PHILOSOPHERS"

As far as the Christian world of the Middle Ages is concerned, the traditional view of private property, which was still accepted, ascribed its origin to human sin. Tawney says about Christian ideology as "to seek more is not enterprise, but avarice, and avarice is a deadly sin."\(^3\) And Gray writes: "Gospels had underlined the truth that wealth might be a snare, for it is not easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of God."\(^4\) The ideal community was one in which 'no-one' called anything his own, but they had all things common.

Elements of Plato's thought had been absorbed within the Christian tradition in its early stages, but Aristotle had been 'rediscovered' only recently by medieval Europe through the medium of Jewish scholars and Arabian commentators like Averroes (Ibn Rushd) and Avicenna (Ibn Sīna).\(^5\) It was the influence of Plato's teachings that the early Christian church and the Christian Fathers were more prone to a communistic mode of life.

Aristotle's Politics, which was translated into Latin about 1250, introduced the medieval West to the view that private property is a necessary instrument of good life. This view brought with

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\(^{1}\text{ibid. p. 24.}\)
\(^{2}\text{ibid. p. 25.}\)
\(^{4}\text{Gray. op. cit. pp. 35-36.}\)
\(^{5}\text{Gordon. op. cit. p. 154.}\)
it a radical transformation of the theory of property, and Aquinas was the first who combined a defence of the Aristotelian view of private property with a full discussion and criticism of traditional text.\textsuperscript{1} Private ownership of resources coupled with communal use of surplus produce is Aquinas' programme for the maximization of total social product and the optimisation of its distribution from the viewpoint of economic welfare. The advocacy of private ownership is based mainly on grounds of superior economic efficiency. The policy of communal use is given by moral imperative. He writes 'Feed him that is perishing of hunger, if you fail to do so you are guilty of his death.'\textsuperscript{2}

In short, on all important points Aquinas was decisively on the side of Aristotle. And this provided the major rationale for their acceptance of a free market economy as the framework for economic analysis.

These are some of the earlier views on property. Let us now turn very briefly to the nature and scope of property right in Islam, which Ibn Taimiyah elaborates and advocates.

\section*{B. ISLAMIC APPROACH}

According to the teaching of Islam, Allah is the real and absolute owner of the Universe and whatever is in it. He is the nourisher and the master of man. Only He can bestow upon men any rights of ownership, He can impose limitations and restrictions on his ownership. Man's disposal over worldly goods is in the capacity of being the viceroy and the trustee. Wealth is a means to the life's end. It should be instrumental in the effective discharge of man's responsibilities as the viceroy of Allah. The

\begin{itemize}
\item[\textsuperscript{1}] cf., Aquinas, \textit{T. op. cit. II: 2 question, LXVI, art. 2.}
\item[\textsuperscript{2}] \textit{Ibid. II: 2 question, XXXII, art. 5.}
\end{itemize}
Quran says:

"And (remember) when your Lord said to the angels verily I am going-to make a vicegerent on the Earth."\(^1\)

"Eat of the provisions of your Lord and render thanks to him."\(^2\)

"And strive with your wealth and your lives in the way of Allah."\(^3\)

Since property right is of a purposive nature and whole mankind belongs to the one God therefore the bounties of nature and the worldly goods should be accessible to all men. The Prophet is reported to have said:

"Mankind are God's children, all of them, so the most beloved of them in the sight of Allah are those who are most beneficent to His people."\(^4\)

Property is a trust or trial and therefore the individuals have been given sole discretion in the ownership and disposal of wealth, the Quran says:

"Your riches and your children may be but a trial."\(^5\) Any compulsion or coercion would have been against this trial. Nevertheless, social interest and the collective aspect of humanity requires keeping individual freedom within certain limits. The individual success in the test depends not only on his efforts but also on collective efforts through the media of society and state.

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1 The Qurān II:30.
2 ibid. XXXIV:15.
3 ibid. IX:15.
5 The Qurān LXIV:15.
1. SALIENT FEATURES OF THE ISLAMIC CONCEPT OF PROPERTY

In Islam duties come first and then the rights. Each one of the three - individual, society and the state - has some duties to perform. They have been given some rights as being necessary for the effective discharge of the duties. No doubt the focus of attention is the individual, who is responsible for his actions and accountable directly to God for his conduct. But he is necessarily a social being. All the material and spiritual interest of men require collective efforts for their realization. Material progress, social reform, political stability and peace, as well as education, moral regeneration and spiritual growth, all require a joint approach on the part of the individuals concerned.

Society in Islam is for the individuals. It emerges out of the natural urges of the individuals and grows on their initiative. Society performs its functions through the state and other social institutions. To protect the life, honour, and property of the members of society, to ensure a degree of freedom to all and to do justice if disputes arise, are functions and duties of the state.

Thus the individual, the society and the State each have claim on property rights in view of the roles assigned to them. The property rights of these three agencies should not come in conflicts with one another, nor should its exercise by any one of them jeopardise similar rights of the others. Islamic state has a jurisdiction over individual rights, being the embodiment of God's vicegerency on earth and representative of the people. Individuals should not grudge reasonable state intervention necessitated by Islamic considerations and directed towards the achievement of the collective ends laid down by the Sharī'ah.
C. IBN TAIMIYAH'S VIEWS

Having described the basic and fundamental concept of property rights in Islam we proceed to examine Ibn Taimiyah's view in this regard. At the outset it should be noted that he does not say anything which is contradictory to the Islamic concept of property and his ideas and analysis always remain within the Islamic framework.

According to him disposal of property is permissible only up to the extent there is no violation of any principle of Sharī'ah. Describing his views, Prof. Laoust writes "One does not find in his works any of the arguments which Aristotle has brought against Plato's Communism. He never says that property increases the urge for work in the mind of the owner, that communism is no guarantee for the social order, and that the joint possession and community of goods really end in the usurpation of power by the strongest. Not one of these considerations is found in any of his books, for he takes the institution of property for granted at the very outset."  

According to Ibn Taimiyah property is a power granted by the Sharī'ah over utilization of an object. It is of different types and degrees. For example, sometimes it is complete so that he can sell, give away, present as a gift or lend it; it is inherited and can be used for productive purposes, but sometime it is incomplete and the owner's right is limited. He has not focussed attention only on private ownership, but society and state have also attracted his attention. It is one of the distinguishing features of his economic views not found in any scholastic doctor.

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2 Laoust, H. Essai sur les doctrines Sociale et politiques de Takī-d-Din Ahmad bin Taimiya (Cairo: L'Institut français, 1939), p. 434.
3 cf., Ibn Taimiyah. MFS. Vol. XXIX, p. 179.
1. INDIVIDUAL PROPERTY RIGHTS

As far as the means of acquiring property by an individual are concerned, Ibn Taimiyah simply enumerates the means recognized by the Shari'ah, such as getting possession of unowned uncultivated land (while making it cultivable), inheritance and purchase, etc. An individual has the right to enjoy his property, use it productively, transfer it, and protect it from wastage. But his property right is not absolute and unlimited. It is subject to a number of limitations. He cannot spend extravagantly. He should not spend on the objects of vice and forbidden luxuries. In regard to transactions he should not use forbidden means e.g. adulteration, cheating and unfulfillment of weights and measures. He is prohibited to exploit the needy persons, and hoarding at the time of drought. According to Ibn Taimiyah one whose aim is to amass wealth is like Korah. A person cannot make any alteration in his property that may harm his neighbour.

a. Obligations. Apart from these limitations on the property right some obligations are also imposed on a proprietor. He says, "On every person there are certain obligations, for example, to support himself and his relatives and to pay their dues etc."

2 cf., idem. al Ḥisbah. p. 22.

*Korah (Qārūn): An unbelieving minister of Pharaoh (Firāūn), he behaved proudly towards the Israelites because of his immense wealth. He made a great public show of his wealth and was swallowed up by the earth with his palace (The Qur'ān, XXVIII:76-82). He is an example of those who prefer the fleeting wealth of this world to gaining by alms and humility and righteousness the abiding riches given by Allah in the life hereafter.

5 cf., idem. MFS. Vol. XXX, pp. 6,8,11.

He expresses the view that "It is perfectly obligatory (Fard `ain) on a person to spend in support of himself and his household. As far as the expenditure on the poor and contribution in war is concerned it is basically a socially obligatory duty (Fard kifayah) or desirable deed (mustahabb). But it becomes individually obligatory if no other person comes forward to do it. To feed a hungry person is obligatory (wajib)."¹

Zakāh is people's right in the property of man.² Ibn Taimiyah says that the people's right to a person's property are determined by two factors. First factor is internal, and relates to the property reaching to a certain minimum (i.e. the niṣāb) at which he becomes liable to Zakāh. The second factor is external. Expenditure on wife and children and other dependent relatives, helping the poors and persons in troubles, etc. are not subject to the minimum mentioned above. Every person has to make these expenditure on others according to the level of his income and extent of his property. In the former case existence of wealth in a certain quantity is a cause of obligation while in the latter case existence of money is not a cause but a condition.³

If we probe into Ibn Taimiyah's doctrines we would find that he is inclined to consider the ownership of property to be merely a social function. When an owner fails in his duty this does not merely react on his personal conscience. The matter is not regarded as simply one between God and himself for it comes definitely within the scope of society to call him to order. The function of the State to order what is good and to forbid what is

¹ idem. al Siyāsah al Sharī`ah. p. 160.
evil leads on, for instance, to the right to fix the market price of merchandise and to harmonise the mutual interests of the producer and the consumer. This is one of the many cases of state intervention in private property. The functional nature of ownership is further substantiated by Ibn Taimiyah's treatment of the Islamic legal provision relating to ḥajr*(interdiction); the right of the state to impose taxes beyond Zakat, and to impose fines and even confiscate properties in certain situations. The state derives this power from its duty to establish peace and justice and to ensure the good working of the economy. The state will impose the amount to be spent on one's dependents if there is a controversy in the matter.\(^1\) Ibn Taimiyah recommends different punishment for a person who denies a right inspite of having power to fulfil it.\(^2\) According to him"it is people's duty to help others in their need of bread, clothing and shelter and if they refrain from doing so, the state will step in to compel them to do so."\(^3\) If a person has spare goods and does not lend it to the needy one and this denial causes the death of the latter, the former will be held responsible for his death.\(^4\)

Ibn Taimiyah discusses in some details the property or the services (al manāfī' al amwāl) the owner owes to others, and whether this expenditure is voluntary (bi Ṭarīq al Tabarrū) or remuneratory (bi Ṭarīq al Ṭawāqū). It is divided into compulsory and the optional.\(^5\) The compulsory expenditure is either individually obligatory duty or socially obligatory duty. Financial obligation without remuneration are of four types. Payment of Zakah, services extended to guests, expenditure on relatives and help in contingencies. He inferred all these four obligations from a

\(^{1}\text{cf., idem. MFS Vol. XXX, p. 83.}\)
\(^{2}\text{cf., ibid. pp. 37-39.}\)
\(^{3}\text{cf.,ibid. Vol. XXIX, p. 194.}\)
\(^{4}\text{cf.,ibid. p. 191.}\)
\(^{5}\text{cf.,ibid. p. 185.}\)
saying of the Prophet.¹

As far as the obligatory services without remuneration are concerned they are teaching, enjoining the good and forbiding the evil and help of the suppressed.²

There is controversy whether the benefits of trivial goods should be provided with remuneration or without it. Ibn Taimiyah is of the view that they should be provided free of charge.³ He further holds that if a number of goods should be provided without any charge, just an act of benevolence, some other goods may be required to provide on the payment of charges.⁴ Exchange of goods on remuneration is of four types, to provide goods in exchange of goods as happens in trade, to spend money on services, to provide services against money and to exchange benefits for benefits as it happens in partnership - the first man spends the labour and the other spends money.⁵ All these exchange are necessary in religion and for worldly purposes, as man can not get on by himself; he is bound to seek help from others.⁶

Since man is inclined to make exchange for his necessities by instinct, the Shari'ah did not favour any coercion as long as he is doing it voluntarily and left the problem to be decided by mutual consent. But when voluntary action is not forthcoming, the Shari'ah makes it obligatory and entitles one to remuneration. For example, if a person is indebted to a person and he has some

¹ cf., ibid. p. 185. "There are four things. If a person does them he cannot be blamed of miserliness, one who pays Zakāt and hosts guest, supports relatives and helps the needies in contingencies."
² ibid. p. 186.
³ ibid. p. 186
⁴ cf., ibid. p. 189.
⁵ ibid. pp. 185-89.
property from whose proceeds the debt can be paid, the government can oblige him to sell the property and pay the debt. This is because the payment of debt is obligatory and this is not possible without the sale of the property and when the "fulfilment of an obligation depends on some other things, both become obligatory." In the same way the government can oblige a person to sell food at a just price when another person is in dire need and the owner of food refuses to sell it except at a higher price. Thus it may be said that justice and charity join hands to limit morally as well as juridically the right of free disposition which property seems to confer on the owner of an object.

2. SOCIAL OR COLLECTIVE PROPERTY

The second type of property is collective ownership of property or social property. This may take different forms. For example an object may be owned by two or few persons, or an organization or association may be the owner. There are a few objects that are owned by a community living in a certain area or by the society as a whole. Such property right is necessitated sometimes by the social requirements.

If the property is owned by two or more persons they will use it according to the rule adopted by them. No one will be permitted to harm the other. On the other hand if one of them tries to make some addition which is beneficial for both, in this case the other will also be pressed to contribute his share and cooperate with his partner. Once his fatwā was sought in case of a garden owned by two persons which was divided between them and one of them wanted to erect a wall in the middle while the other objected to it. Ibn Taimiyah answered that the other person would be compelled to concede.  

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The example of the special collective property is the trust (Waqf). When a property has been dedicated to specific purposes or for certain persons, it is obligatory that it must be spent for the sake of that purpose. Ibn Taimiyah holds that a trust property can be replaced by another if the latter is more beneficial and fruitful for the persons to whom it is dedicated — a view not adopted generally by the doctors of Islamic jurisprudence. He permits the sale of dedicated trees whose output is reduced and to purchase others whose output is greater. Trees are like buildings the care-taker has right to change the shape of a trust to a form more beneficial than the existing one.\(^1\)

An important case of collective and social property is the gifts of nature e.g. water, grass and fire — these three objects have been mentioned specifically in a Hadîth. The reason for their being collective social property may be that these are the free gifts of nature, man has no trouble in acquiring them and make them useful. The other reason may be that these are objects of necessities, the individual occupation and ownership might create hardship and trouble to the society. According to Ibn Taimiyah these three objects have been mentioned as examples; other things having the same characteristics may also be included in this list. He regards all minerals coming out of earth as collective property, e.g. petrol, naptha, gold, silver, salt etc.\(^2\)

3. STATE PROPERTY

The third category of property right relates to the state. The state requires and has a right to acquire the resources and power needed for the effective discharge of the functions like education, moral regeneration, dispensation of justice, maintenance of

\(^1\)cf., ibid. Vol. XXIX, p. 229.
law and order and, in general, protection of all the material and spiritual interest of the people. A detailed study of the means of public property and the relevant obligations as Ibn Taimiyah sees them, will be discussed in the chapter of Public Finance below, but a brief mention may be made here also. According to him, the main sources of state property are Zakāh, booty and spoils of war (Maghānim and faʿī). Apart from this the State can also increase its resources by imposing other taxes when needed urgently. Lost and found whose owner is not known is state property and similar is the case of the property having no inheritant; trust, gifts and fines are also included as a source for state property.

State property is actually public property, the head of the state is only a caretaker of it. It is the duty of the state to disburse it in the way most beneficial to the public. It should avoid extravagance and wastage. Zakāt should be distributed among its beneficaries as prescribed by the Qurān. It is the duty of state to strive for the economic progress of the people, provide social security and reduce disparity in distribution of income. All these matters will be discussed in details below in the chapter on 'role of the state in economic life' and chapter on 'public finance'.

4. IBN TAIMIYAH'S VIEWS COMPARED WITH THOSE OF OTHERS

From the foregoing analysis it is clear that to Ibn Taimiyah

1 ibid. MFS. XXVIII, p. 562.
3 ibid. Vol. XXX, p. 413; Vol. XXIX, p. 263.
4 idem. al Siyāsah al Sharī'ah, p. 54.
5 ibid. p. 54.
6 idem. al Hisbah. p. 61.
7 idem. al Siyāsah al Sharī'ah. pp. 23,64.
right to property is not absolute but limited and qualified. In this way his theory is totally unlike that of the Romans. His elaboration of property right into three categories of private, social and state is also unique.¹ No doubt it is the direct influence of Islam that has given every aspect of life its due importance.

Ibn Taimiyah's view on property right is completely different from the absolute individual capitalistic view of property right. The individual is free to acquire property subject to moral constraints but this right has been given to fulfil certain duties. As soon as he goes against the Sharī'ah his rights will be subject to intervention by the State. But he accepts private property as a basic institution and it would be incorrect to think that the State is all supreme in this regard, as individual rights are inviolable as long as he is within the bounds set by the Sharī'ah. In this way Ibn Taimiyah's views on property are different from the socialist or communist approach to ownership.

Ibn Taimiyah has built all possible safeguards against individual ownership becoming a tool of exploitation. This is demonstrated by the meticulous care with which he discuss the limits and constraints on these rights. Exploitation by an individual or a class is a tyranny and it is the duty of the State to striving to eliminate it.

5. HIS TREATMENT OF WEALTH AND POVERTY

Contrary to the view of sufis, Ibn Taimiyah prefer wealth to

¹It should be noted here that about 500 years after him, one Adam Müller (1779-1829) a German thinker divided the property right on the pattern of Ibn Taimiyah. According to him property is of three kinds, a) pure private property; b) coroporative property; c) state property. However details are not the same. See Gray, A. op. cit. p. 205.
poverty. He regards wealth to be a means to good moral life. There are many religious duties which cannot be performed without means. One's obligation to support himself and his dependents also requires worldly means, hence their acquisition is imperative. Ibn Taimiyah strengthens his opinion by quoting one of the earliest jurists - Sa'îd bin al Musayyib who says that there is no good in a person who dislikes wealth — as a person can serve his Lord with it, repay the dues, protect himself and become independent of others.

Ibn Taimiyah is against the priestly way of life. To him goodness and virtue lies in fulfilling one's duties and avoiding the things prohibited. He considers those people wrong who leave some incomes thinking it dubious while they do not bother to fulfil their positive duties. He has a natural dislike for such monastic institutions as the Zâwiyyah and the Khânqâh.

As a matter of fact, Ibn Taimiyah says that wealth is superior to poverty even in the moral sense, for while poverty gives rise to rights, wealth imposes obligations. He is definite that most of the obligations which devolve upon a person through the possession of wealth are such as lead to joint interest or to mutual help. The rich are not considered by him as enemies of the poor but their friends. Henry Laoust has rightly said, "His doctrines are favourable to the organization of an active economic society for the reason that in the absence of organization wealth which is static will soon tend to diminish and finally disappear altogether."

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2 ibid. p. 280.
4 cf., idem. al Qiyās fi'l Shara' al Islāmī (Cairo: al Salfīyah wa Maktabataha, 1385 A.H.), p. 35.