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

إن الله هو السماحة القاضي بالواسطة وإلي لارجو أن يقي الله وليس أحد يحكم على تكلفة بخصوصة تقاسيمها إياه في ذم ولا ملك.

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–Hanifieh 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 Mavardi, in “Alahkam Soltaniyeh” have prohibited pricing policies. Nevertheless Malek, has advocated pricing if prices increase.

Ibn–Al–Ghayem, in his book titled Al–Torog Al–Hokamiyeh, has devoted a full chapter to “pricing”, a concise summary of which is as follows: pricing policies are of two kids, the Policy of forbidden injustice and the policy of permissible justice. The forbidden injustice policy is exercised when the people are forced unfairly 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 Sonnites 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 Sonnites 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”.

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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:

\[\text{"\text{فَمَالُ أَوَّلْ عَقِبَةَ مَالَ مَالٍ وَبَعَضُهَا بَعْضًا.\text{"}}\]

The said tradition is considered as the basic principle among the "Sonnite" jurisprudents who have stated:

\[\text{"مَالُ أَوَّلْ عَقِبَةٍ فَمَالٍ وَبَعَضُهَا بَعْضًا.\text{"}}\]

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 advise 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–Tayammiyah" 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

\[\text{"مَالُ أَوَّلْ عَقِبَةٍ فَمَالٍ وَبَعَضُهَا بَعْضًا.\text{"}}\]

In the second case the Guardian will force the hoarders to sell whatever they have hoarded at a fair price. To this regard "Abo–Hanifieh" believes in "Heji" (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:

\[\text{"غَيْرُ الْبَكْرَةِ يَجِلْضُهَا عَلِىّ بَعْضٍ بَعْضًا وَالتَّأْنِيذُ وَالْبَنَاءُ.\text{"}}\]

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

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 jurisprudents have categorized the religious obligations, which constitute part of God's right, into three categories:\(^17\)

1. Servitudes
2. Religious atonements
3. Requitals

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-
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 jurisprudents 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:

تصَرَّفُ الإمام على الزعِمَة مَنْ تَعَزَّبُ بالصلحة...

Based on the basis of Sonnite jurisprudents’ views and also on the Islamic religious principle

نَفْعَيْنَ من الصلحة، الحافطة على مقصور الشرع، ومقصور الشرع من الحق إلى خمسة: هو أن يحفظ عليه دينهم، وتنفسهم، وعطائهم، ونسلهم، ومالهم، فكل مايتضمن حفظ هذه الأصول الخمسة فهو مضحة، وكل ماليوم هذه الأصول فهو مفسدة.

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 jurisprudents are of the opinion that all lands released by the Moslem warriors in wars, which according to Islamic jurisprudents are titled “Maftoh–Al–annah”, 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 jurisprudents 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 immorable 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)
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