

CRITICAL REVIEW WITH META-ANALYSIS

Agricultural and Urban Land Rent, Sharecropping, and Land Reforms: A Suggested Islamic Economic Agenda

Shamim Ahmad Siddiqui *

Associate Professor at eSchool of Business & Quality Management,
Hamdan Bin Mohammed eUniversity, Dubai

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Abstract. As the distribution of income is the central focus of Islamic economics, the nature and contribution made by different factors of production, their ownership, and rewards must be revisited in light of the guiding principles of Islam. This paper attempts to set a land reform agenda for an Islamic economy while discussing a case study of land reform in Pakistan. It is observed that whatever steps were taken towards the land reform in Pakistan have remained largely unimplemented. Moreover, the ensuing debate about their *Islamicity* failed to consider the fundamental goals of an Islamic economy. It is argued that in the presence of conflicting *ahādīth* on land, land rent, and sharecropping, it is imperative to formulate judicious principles for a possible agenda for the reforms that transcends beyond the agricultural sector to the residential and commercial land.

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INTRODUCTION

An important aspect of any economic system is its classification, definition, and nature of different factors of production. More importantly, the way the total output of the economy is distributed among these factors is crucial. Islamic economics, like other heterodox economics, places relatively higher emphasis on the distribution of income than its conventional counterpart. Furthermore, while it appreciates the power of markets to determine the prices of different goods and services, it treats economics primarily as a normative discipline.¹ Under an Islamic economic system, it would be natural to make continuous and rigorous efforts to find and remove the avenues of injustice and devise mechanisms for justifiably enhancing

*Corresponding author: Shamim Ahmad Siddiqui

†Email: siddiqui51@yahoo.com

¹Please see Siddiqui (2014) for a discussion of role of markets in Islamic economics.

the rewards to relatively lower income groups of people who often find themselves carrying limited bargaining powers in a freer market economy.

This paper is an attempt to look at the issues related to land, its ownership, and rent for usage. The subjects of land ownership, its contribution to the market value of the output produced, and whether a justifiable remuneration for its contribution is paid to the rightful recipient(s)-are quite ancient. The increasing scarcity of this factor of production compared to others makes it the most significant factor from a distributional point of view. Unlike labor, capital, and entrepreneurship, the supply of land is not flexible. As a result, the increase in its value is most often not due to any human efforts but a result of an increase in population and/or human energies made in productive economic activities in its surroundings. It is not difficult to understand why so much speculative investment is made in the land and properties that are built or exist on land; indeed, they are considered less risky than other forms of wealth.

However, this increase in the land values has a significant impact on the distribution of income and wealth and must be thoroughly and continuously investigated. The issue of “un-earned income” from land has to be tackled through every possible means; limits on land possession, land tax, land rent tax, and capital gains tax. However, this does not mean that the question of an efficient use of resources should be overlooked. What is required is the creation of a justifiable and humane balance between efficiency and equity-something may not be a top priority for positive economics, but central to Islamic economics.

The main objective of this paper is to elaborate the nature of land in an Islamic perspective. The discussion starts with the issues related to the agricultural land and the primary teachings and principles of Islam in this regard as the matters related to land could be only found in that context. Based on our understanding of the Islamic principles on land, land rent, and sharecropping, suggestions are made for land-related policies in the Muslim countries.

The Issue of Land and Land Rent in Islam: Agricultural Land

To begin our discussion of land and land rent in Islam, we go back to the teachings of the Qur’ān and the Sunnah of the Prophet (PBUH). As far as the Qur’ān is concerned, there is no detail given about managing and allocating land in a Muslim society. However, Islamic economists have derived two main principles from the following verses of the Qur’ān: (a) “Unto Allah (belongeth) whatsoever is in heavens and whatsoever is in earth” (2:284), (b) “Hast thou not seen how Allah hath made all that is in the earth subservient unto you?” (22:65), and (c) “Believe in Allah and his messenger, and spend of that whereof He had made you trustee” (57:7) (Behdad, 1992). According to Behdad (1992), there is an agreement among the Muslim economists about the ultimate ownership of property by Allah. The other two verses provide the notion of trusteeship of man and man’s accountability to God which reconciles the dichotomy of God-Man ownership (Behdad, 1992).

Behdad (1992) quotes the following verse of the Qur’ān to emphasize that plain land (land in its natural form) cannot be owned by individuals. “Lo! The earth is Allah’s. He giveth it for an inheritance to whom He will” (7:128). If we look at the Sunnah of the

Prophet (PBUH), we observe the same underlying principles. There are many *aḥādīth* on this subject discussed by the scholars. We quote below only two of them (for other *aḥādīth*, see Mawdudi, 1969):

- 1) Aisha (RA) reported that the Holy Prophet (PBUH) said: “Whoever colonizes a land which does not belong to another, has the better right to keep it. Urwa bin Zubair states that Caliph Umar (RA) acted upon the same rule during his reign” (Sahih al-Bukhari).
- 2) Tawus (*tābi‘ī*) reported that the Holy Prophet (PBUH) had said: “Ownerless land which has no trustee or heir belongs to God and His Apostle and then it is open to use by you. Hence anyone who reclaims dead land shall keep it; and he who occupies it without using it shall lose his ownership right over it at the expiry of three years” (Yusuf, 1979).

These *aḥādīth* establish the principles laid down by the Prophet (PBUH) about the priority of use or/and ownership of wasteland that is not used by anybody else as long as someone or his offspring continue to use the land. On the other hand, the following *aḥādīth* show that the Prophet (PBUH) and then Caliph Umar (RA) allocated land under their (state) control to different people.

- 1) Alqama bin Wail reports that his father (Wail bin Hajr) stated that the Holy Prophet (PBUH) had granted him a tract of land in Hadramut (Abu Dawud, Tirmidhi).
- 2) Asma, the daughter of Caliph Abu Bakr (RA), states that the Holy Prophet (PBUH) had granted her husband Zubair a tract of land in Khyber which contained date palms and other trees. Apart from this, Urwa b. Zubair reports that the Holy Prophet (PBUH) had granted him an Oasis situated in the lands formerly belonging to Banu Naḍīr. Furthermore, Abdullah b. Umar relates that the Holy Prophet (PBUH) had granted another large tract of land to Zubair in the following manner. The Holy Prophet (PBUH) told Zubair:
 - a. “Race your horse, and the point where it stops shall be the boundary of your estate”. Zubair raced his horse and when it stopped at a spot, he cast forward his lash. The Holy Prophet (PBUH) then said: “All right, give him the land up to where his lash has fallen” (Sahih al-Bukhari).
- 3) Amr bin Dinar reported that when the Holy Prophet (PBUH) arrived in Madinah, he granted lands both to Abu Bakr and Umar (RA) (cf. Mawdudi, 1969, p. 209).
- 4) Bilal bin Harith Muzni related that the Holy Prophet (PBUH) had granted to him the entire land of Aqiq. *Kitāb al-Amwāl*, (as cited by Mawdudi, 1969, p. 209).
- 5) Nafa, the son of the famous physician in Arabia Harith bin Kaalda, represented to Caliph Umar (RA) that a certain estate in Basra was neither a tribute-paying tract, nor was the interest of any Muslim involved in it, so it should be granted to him, and he would grow on it fodder for his horses. Umar (RA) issued a decree to his Governor Abu Musa al-Ashari that if the facts stated by Nafa were true, the estate should be granted to him. *Kitāb al-Amwāl*, (as cited by Mawdudi, 1969, pp. 209-210).
- 6) Musa bin Talha reported that Caliph Uthman (Allah be pleased with him) during his reign had granted lands to Zubair b. Awam, Saad b. Abi Waqqas, Abdullah b. Masud, Usama b. Zaid, Khubab b. Art, Ammar b. Yasar, and Saad b. Malik (Allah be pleased with them) (Yousuf, 1979).
- 7) Abdullah b. Hasan related that on Ali’s application, Umar had granted to him the estate

of Uniey. Kanz al-Ammal, (as cited by Mawdudi, 1969, p. 210).

The above *ahādīth* establish the fact that the Prophet (PBUH) and the rightful caliphs granted land to whomever they judged deserving. These *ahādīth* also provide the rationale for Behdad's observation that there is little disagreement among Islamic economists on claiming the priority in use of plain land by improving it with one's labor and capital (Behdad, 1992, p. 87). However, beyond this, there are a number of issues on which the agreement among Islamic scholars as well as Islamic economists is lacking.

To tackle the issues related to land, one has to answer the following questions, as there are controversies over these areas:

- a) Is the claim of the priority of use unconditional?
- b) Can this claim be sold or bequeathed, i.e., can someone become the owner of the land?
- c) If a person does not or cannot cultivate the land himself, can he give the land to someone else on rent or based on sharecropping? i.e., is absentee landlordism permissible?
- d) What about the use of wage labour?
- e) Is it possible for an Islamic government to put a ceiling on land holding? If the answer is in affirmative, under what circumstances such ceilings should be enacted?

Let us take each of these questions in turn:

Is the claim of the priority of use unconditional?: According to Behdad (1992), the priority in use may be conditional to the continued use of land. According to a *ḥadīth* of the Prophet (PBUH):

“Land belongs to God, whoever leaves it uncultivated for three consecutive years will have it taken away and given to someone else”.²

Similarly, a famous decision of Caliph Umar in this regard is also extremely reminiscent and shows that free allocation of land was conditional on its proper utilization. In discussing the basic rules of land allocation, Mawdudi (2013) refers to *Kitāb al-Amwāl* of Abu Obaid and Yahya bin Adam's *al-Kharāj* (both prominent *ḥadīth* scholars of the second century of Islam). According to them, the Holy Prophet (PBUH) had granted the whole valley of Aqiq to Bilal b. Harith Muzni but he could not bring a major part of it under cultivation. Caliph Umar, therefore, in his reign said to him that the Holy Prophet (PBUH) had not granted this land to keep it fallow and withhold it from use by others. He told him to retain as much of it as he could use and return the remainder so that he might distribute it among the Muslims. Bilal b. Harith refused to comply with this advice, but Umar (RA) persisted in his demand. Finally, except the land, which was actually under his (Bilal's) use, Umar (RA) took away all the land from him and divided it into plots, which were distributed among the Muslims (Mawdudi, 2013, p. 135).

The above *ḥadīth* and Caliph Umar's decision, most likely based on their application, are important. They unambiguously state that for a piece of land allocated by the state free of cost, or a wasteland inhabited by a person on his own initiative, or a cultivable land left abundant-getting the land free of cost being the common feature in all three cases, the priority in use must be conditional to its continuous utilization. The person having the priority

²See Behdad (1991, p. 87).

in use (but not utilizing it) may be allowed to hold the land if nobody else is in need and/or ready to cultivate. In case the land was purchased from the state or another person, the condition of continuous use could still apply if other people are ready to cultivate. The holder of the land, in this case, must sell the land to another person or the state. Alternatively, the land can be given on rent or sharecropping if a case for their permissibility is established.

Can the 'priority in use' be sold or bequeathed, i.e., is it synonymous to ownership?: The majority of Muslim economists also believe that the priority of use is synonymous to ownership of land, which can be sold or bequeathed (Nomani & Rahnema, 1994, p. 74). They, however, insist that there is no absolute ownership in Islam. Whenever and wherever necessary, land could be acquired by the state for the benefit of the society as a whole. Those who believe that the Islamic right of ownership is one of utilization and not of possession, argue that as soon as a worker ceases the activity on his land, the right of utilization could be transferred to the one who is ready to cultivate the land. By this logic, an extreme argument is made against the right to sell or bequeath Sadr, Kahf, and Taleqani (as cited in Noman and Rahnema, 1994, p. 74).

Let us take up this issue in detail. First of all, it must be kept in mind that we are discussing land for which the priority in use was given by the state or acquired (by reclaiming a dead land or by inhibiting wasteland) free of cost. Second, we should make a distinction between selling such land and bequeathing. Bequeathing could be treated as transferring the priority of use with all the relevant conditions attached. If the children of a person are in need and ready to cultivate the land, they should be the natural new holder of the priority in use.

The issue of selling a piece of land for which a person had been awarded the priority in use free of cost is, however, different, although we do observe a case when an allocated land could not be utilized and was sold to somebody else:

Abu Rafia states that the Holy Prophet (PBUH) had granted a tract of land to his (Rafia's) family, but they could not colonize it. (Abu Rafia) sold it for 8,000 Dinars in the reign of Caliph Umar (RA) Yousuf (as cited by Chaudhry, 1999).

We are not sure if Caliph Umar (RA) approved or condoned this act or it was never brought to his notice. However, if he did approve that act, we can then argue that he used contradictory principles in two apparently similar cases narrated above (the other one related to Bilal (RA)). Did he treat the two cases differently because in the case of Bilal (RA), the allotted land was big in size and he was unable to utilize all of the land allotted whereas, in the case of Abu Rafia (RA), the land was small? Alternatively, did he allow selling the land because the family was poor and physically unable to till the land? Only by looking into the detail of circumstances, one can come up with the working principles for later periods. However, general permissibility to sell the land for which the priority of use was given free of cost cannot be warranted if the spirit of Islamic justice and fairness is invoked.

As a basic principle, we must ask the question whether a particular decision taken during the time of the caliphs (for which no clear, binding and lasting guidelines are available in the Qur'an or the Sunnah) must be followed for all times to come and anywhere in any cir-

cumstances. The economic, social, and technical environment prevailing at the time of the Prophet (PBUH) could have been somewhat different from the situation arising during the reigns of the four caliphs. Moreover, each of them might also have faced some new issues as more lands were annexed to the Muslim territories under a diverse course of events. In addition, after the rules of the four caliphs, the Muslim states largely evolved into dynasties even if they followed the Islamic injunctions into their legal affairs.

Actions taken during different periods of Islamic history need to be scrutinized by (i) applying the basic principles derived from the Qur'ānic injunctions, *aḥādīth*, and Sunnah, and (ii) looking into the circumstances prevailing during different periods. Therefore, while we can deduce some lessons from the actions of the four caliphs, as the social and economic conditions have kept changing, new concerns must be addressed and land policies updated accordingly.

It would be pertinent at this point to refer here the *ayāt* from *sūrah al-Ḥashr*: “Whatever [spoils taken] from the people of those villages God has turned over to his Apostle – [all of it] belongs to God and the Apostle, and the near of kin [of deceased believers], and the orphans, and the needy, and the wayfarer, so that it may not be [a benefit] going round and round among such of you as may [already] be rich. Hence, accept [willingly] whatever the Apostle gives you [thereof], and refrain from [demanding] anything that he withholds from you; and remain conscious of God: for, verily, God is severe in retribution.” (59:7; my Italic)³

Avoiding concentration of wealth and helping those who are in need are the overwhelming *maqāṣid* (objectives) of Shari‘ah. The state must make every effort to achieve these objectives through its laws and policies. If this principle is applied, one cannot accept the idea that the priority in use, given for a piece of land free of cost, automatically entitles the holder to sell the land as his property.

If a person does not or cannot cultivate the land himself, can he give the land to someone else on rent or sharecropping? Is absentee landlordism permissible in Islam?: Land rent on agricultural land and sharecropping are other two controversial issues, which have divided Muslim economists into different camps. Moreover, all of them can find their respective position validated by different *aḥādīth*. In the books of *aḥādīth*, we find apparently contradicting sayings of the Prophet (PBUH) on the permissibility of agricultural land rent and sharecropping. The Prophet (PBUH) at times prohibited renting land, sometimes allowed it if paid in cash rather than kind as a share of output, and in yet other cases, allowed rent and sharecropping without any condition.⁴ It is, therefore, important to adopt a methodology to resolve the apparent controversies generated by these reported (and apparently conflicting) sayings of the Prophet (PBUH).

A reasonable way to solve the controversies emanating from these *aḥādīth* is to consider their relative strength determined through the tools developed in the *fiqh* literature. While

³(59:7), as translated by Muhammad Asad in the Message of the Qur’ān.

⁴Please see a very good collection of *aḥādīth* on all four different categories in Chaudhry (1999), Chapter 7; also available at http://www.muslimtents.com/shaafi/b16/b16_7.htm

there might be some merit in this approach, an alternative is to invoke the Qur'ānic injunctions, and objectives of the Sharī'ah derived through analogy and reasoning (*'illah*) of these injunctions. For our current purpose, the verse from *sūrah al-Ḥashr* referred to earlier, is the primary source of rationale and reasoning in preferring some *aḥādīth* to others in devising appropriate policies.

Once again, let us keep in mind, here we are considering the issue of giving agricultural land on rent or the basis of sharecropping, the land itself being acquired as gratis from the state or sanctioned by the state (free of cost) because the person has claimed a wasteland or reclaimed a dead land.

It is reasonable to assume that when the Prophet (PBUH) started to put foundations of an Islamic state in Madinah, people who had lived there before his arrival were already cultivating and in a sense owning the land for a long period. Some land might have been purchased in the past. It is also reasonable to conceive that the waste or dead land at some distance from Madinah was available if someone wanted to reclaim. In such a situation, it was possible that a person with no land would have preferred to rent a land or work as sharecropper rather than spending some time in claiming a wasteland. This preference could also be a result of the non-availability of capital needed for claiming a land or necessary provisions needed for the survival before claiming a land.

We must also understand that there was no provision of organized state funds to help the poor farmers in advancing necessary loans to facilitate claiming or reclaiming of land and make provision of irrigation. Another situation could be that a family (not so rich) was temporarily unable to cultivate a piece of land due to the unavailability of male members and would prefer to rent the land rather than sell it or leave it for someone else.

The situation at the time, therefore, could have been somewhat complex but also that a new socio-economic environment was evolving. We must see the Prophet's (PBUH) sayings and decisions against this background. The bottom line for him has always been the welfare of the people in general and utmost concern for the poor.

The most restrictive command of the Prophet (PBUH) was that if land remained unutilized for three consecutive years, it should be given to someone else as a gratis. This rule is justified for the land allocated by the state or wasteland open to all. In both the cases, the land was acquired free of cost. This rule should apply at all times in all places.

We then find *aḥādīth* that show that the Prophet (PBUH) allowed people to rent the land. As there are no reasons given in these *aḥādīth*, one can only contemplate on the issue.⁵ One possibility was that the people who owned land but could not cultivate for some reasons had not decided to quit cultivation, but planned to resume cultivation in future. It was thus not a case of absentee landlordism, but a temporary renting of land.

Another logical explanation of allowing renting of agricultural land could be that a person had to spend his labour and capital to make a land cultivable. In case he felt reluctant to give away the land free of cost (which could have been preferable), he had been allowed to charge a fee or land rent rather than leaving it uncultivated.

A related argument to above can be that the rent of land was very low at the time of the

⁵Please see a number of these *aḥādīth* in Chaudhry (1999), Chapter 7.

Prophet (PBUH) and many landless people interested in cultivation at that time (but did not possess any land or enough land) might have found cultivating on rented land much more attractive than looking for wasteland and inhabiting them.⁶ Thus, it was quite possible that the renting of land, especially at low rents, suited both the landowners and the prospective tenants.

Siddiqi (1981, p. 16) points out that those who allow sharecropping on a pure economic ground, compare it to profit-sharing. They argue that the owner of a piece of land is entitled to the whole of the net produce of his land when he is the cultivator (on the part of both the net produce that is due to his labour and the part that is due to land). Why then can the same landowner not opt to hire a sharecropper and receive that part of the produce, which is due to the land? This argument opens the question of an appropriate share of land in the produce. It would be quite revealing to note that in the Prophet's (PBUH) era, the rate of *zakāh* on land produce was only 1/10 of the produce.⁷ If we consider *zakāh* on land as payment for using the indestructible quality of land created by Allah (S.W.T), it is easy to understand the rationale of the following *ḥadīth*:

Abu Dawud quoted Zaid Ibn Thabit as saying: "The Prophet (PBUH) prohibited sharecropping. What is share-cropping? He said: That you rent a land (for cultivation) for half or a third or quarter of the produce thereof."⁸

For the Prophet (PBUH), the payment of even 1/4th of the total produce to the landowner was exploitative who just put some labour or capital to make a piece of land cultivable. Indeed, there are also *ahādīth* that vindicate the view held by many that sharecropping was allowed by the Prophet (PBUH).⁹ One can only speculate that the Prophet (PBUH) had first allowed sharecropping but later disallowed it because it appeared exploitative.

On the economic ground, sharecropping could be more efficient or desirable than renting of land in an uncertain world. It could then be argued that if rent is permitted so should be sharecropping. However, as we have mentioned above, whether it is the land rent or sharecropping, it should be discouraged or regulated if it becomes exploitative. It looks more plausible that to the Prophet (PBUH), it was preferable to give up the land free of charge if one could not use it on his own and sacrifice the labour or capital he may have spent on making the land cultivable. As a second best solution, he might have allowed renting of land instead of keeping it idle and recovering the cost of labour and capital. His classification of sharecropping as *ribā* in some of the *ahādīth* is an indication that he may have allowed land rent in his time because it was low and did not seem exploitative. Furthermore, as mentioned earlier, people might have preferred to rent the land than to claim the wasteland available at a distance, if rents were low, close to the settled areas and relatively more fertile.

If we conclude from the above discussion that the rent on agricultural land was permitted by the Prophet (PBUH) because it created a situation that helped both the tenant and

⁶Interestingly, one can also apply Ricardian theory of rent here; landless people may have been indifferent or even preferred to rent the settled land rather going to the marginal lands (possibly with a zero cost) which were relatively less productive.

⁷In case no artificial source of water was used, the rate of *zakāh* was 1/20th of the produce.

⁸Abu Sulaiman as quoted by Mustafa and Askari (1988), p. 145.

⁹Please see several *ahādīth* to this effect in Chaudhry (1999), Chapter 7.

the land possessor, what the governments would do when the rent increases over time? If more wastelands are available, governments should invest in developing the required infrastructure (such as transport and irrigation facilities) as well as provide financial help to the landless people who can claim the priority in use by making the allotted piece of land cultivable. This measure would keep the land rent at reasonable levels. However, if such wastelands are not available and rent of the settled land increases, the government must have a policy of adequately taxing the rent incomes for the benefit of the entire society rather than leaving it to the land owners as 'unearned income'.

What about the use of wage labour?: While discussing earlier the issue of acquisition of the priority in use through applying wage labour rather than one's physical efforts, it was argued that this could only happen when the hired labourer was financially impoverished. However, this situation should be avoided to comply with the Qur'ānic command that emphasizes discouraging concentration of wealth into few hands.

A somewhat similar argument could be advanced for the use of wage labour on agricultural land for which the priority in use was acquired without any financial cost. However, one may have to consider the situation of the person or the family possessing the priority in use. The family could be poor with no one physically fit to till the land or only temporarily unable to cultivate. The bottom line would remain the same; as much as it is possible, the state should follow an agenda of providing everyone, who is ready to cultivate, a piece of land of his own so that he enjoys the maximum benefit of his labour.

Is it possible for an Islamic government to put a ceiling on land holding? If the answer is in affirmative, under what circumstances?: The issue of a ceiling on agricultural (and urban land) is controversial among the Muslim jurists and economists. Their opinion ranges from allowing limitless land holdings to making private ownership of land illegal (Nomani & Rahnema, 1994; Siddiqui, 1981). Although this topic is somewhat extraneous to the current debate, disallowing sharecropping and putting a heavy tax on land rent would not make any sense if limitless land holding and wage labor are permitted. On the other hand, disallowing wage labor will be difficult, as it may be needed even in those economies where land holdings are small, and further reduction in farm size may make it economically infeasible. To attain Islamic social justice, a limit on landholding would be unavoidable in many Muslim economies. There could be hardly any argument against the contention that if necessary for the general well-being of the society, an Islamic state has the right to put a ceiling on land ownership if the land was allotted free of cost. The exact limit should, however, depend on the general condition of an economy. In a country that has abundant agricultural land for potential cultivators, there may not be any need to impose a ceiling. On the other hand, if there are immense pressure and tension around the prevailing land ownership structure, a limit could be enacted. This limit could be stretched only to the point beyond which further reducing of the farm size would make it infeasible.

Once again, it should be made clear that the above discussion was based on the assumption that lands were acquired without making any payments to the state or previous owners.

In case a person purchases land and then wants to rent it or give it to a sharecropper or use wage labour or sell it the issues become different. Apart from ensuring a reasonable remuneration for wage labour and sharecropper (a topic related to labour and wage), an important matter would be to determine the rightful recipient(s) of increases in land prices and land rent. A proper policy of taxing the rental income and capital gains tax would be required as discussed in the previous section.

Whether the land should be acquired after paying any compensation to the landowners should again depend on the history of land holdings. In a country like Pakistan where huge chunks of land were given by the colonial power as a reward for their support for the British Raj in the subcontinent, a significant part of land holdings could be acquired without making any compensation. In fact, the land reforms enacted by the regimes of Ayub Khan, 1959 and Zulfikar Ali Bhutto, 1972 did not have any provision for compensation. Only in the second land reform bill of 1977 by the later that further reduced the higher limit of land holding from 150 acres to 100, a provision of compensation was made.¹⁰

LAND REFORM IN PAKISTAN

It is ironical that the provision of giving the priority of acquiring the land (right of pre-emption) to the tenants under Bhutto's 1972 bill was challenged in one of the four Shari'at Benches grafted on Pakistan's four high courts (Kennedy, 1993, p. 73) The Peshawar Bench under the chief justice of Peshawar High Court ruled against the provision sighting the non-existence of any such notion in the Qur'an or the Sunnah.¹¹ The benches were subsequently dissolved and instead Federal Shari'at Court (FSC) was established in 1980 where all the cases considered and decided were transferred (Kennedy, 1993).¹²

The FSC, with a majority decision of 3 to 2, decided that it lacked authority to question the judgment of the Shari'at Bench of Peshawar High Court. It also ruled that FSC did not have the authority to touch the constitutional matters. However, Kennedy (1993) notes that: "Nevertheless, in a carefully crafted argument, Justice Aftab Hussain, for the majority, asserted that laws providing for the state's regulation of land, including pre-emption rights for tenants, ceilings on landownership, and the resumption of lands by the state for public use, were not wholly prohibited by Islam. Justice Hussain argued that, despite Islam's presumption in favour of the sanctity of personal wealth and property, Islam also recognizes the validity of state-imposed limits on wealth for the purpose of alleviating poverty or provid-

¹⁰However, even this looks too liberal a reform proposal compared to India where the land limit in different states were, on average, set at 25 acres per family rather than per person as in case of Pakistan. For a quick reading on Indian land reform, please see, K. Venkatasubramanian (Undated) 'Land Reforms Remain an Unfinished Business' available at Planning Commission of India's website: <http://planningcommission.nic.in/reports/articles/venka/index.php?repts=m-land.htm> (accessed on November 22, 2016).

¹¹This argument is fundamentally very problematic; the non-existence of something in the primary sources of Shari'ah is not a necessary and sufficient reason for rejecting a legislation related to re-distribution or reallocation of land that were originally provided by the state free of cost.

¹²In contrary, it accepted petitioner's reference to *ahādīth* that awarded such right according to the following order of priority: co-sharer, participants in immunities, and contiguous owners. *ibid*.

ing for the public good. Therefore, without a specific prohibition in the Holy Qur'ān or the Sunnah, it follows that the state can impose specific limits on the rights of private property including land reforms and it may establish pre-emption rights for tenants.”

The Council of Islamic Ideology later took up the issue in 1980, which fully endorsed the Peshawar High Court's decision. FSC's decision was later challenged in Sharī'at Appellate Bench, which decided to take the issues of pre-emption and land reform separately. In 1986, it also endorsed the decision of Peshawar High Court by 3 to 2 majority vote. Disagreeing with the majority, the two dissenting judges echoed the sentiments of Justice Aftab Hus-sain by noting that: (1) since a tenant's right of pre-emption is not expressly prohibited in the Holy Qur'ān and Sunnah, therefore it is not 'repugnant' to Islam; (2) granting rights of pre-emption to tenants is in the public interest; and (3) 'only the Ḥanafī *fiqh*' is insistent on denying the right of pre-emption to a tenant (Kennedy, 1993).

In 1989, Sharī'at Appellate Bench took the issue of land reform in the case where *waqf* land was taken over under Bhutto's land reforms. The five-member bench unanimously decided that the government could not confiscate land without compensation. However, their views differed on other provisions of the land reform.

The majority (...) ruled that several provisions of the Act were un-Islamic because:

- (1) *waqf* properties should be exempt from any provision of land reform or state interference;
- (2) land ceilings of any type place an undue restriction on the rights of property holders;
- (3) provisions for resumption of lands for livestock, orchards, and stud-farms are not a valid exercise of state power; and
- (4) provisions prohibiting property owners from evicting tenants are an invalid intrusion upon property rights.

The minority (...) dissented on all four points. The main difference between the two views was the reading of the trade-off between the conflicting rights of property owners versus the state's right to regulate such property for the purposes of promoting the public welfare. The majority view was that Islam does not countenance compulsory redistribution of wealth or land for the purpose of alleviating poverty, however laudable the latter goal. Or, as Justice Afzal Zullah succinctly states, Islam requires 'mandatory leveling up with no mandatory leveling down'. The minority was of the view, rather, that the rights of property holders must be balanced by the needs of the community. That is, as Justice Nasim Hasan Shah argues, the state has the responsibility to alleviate poverty even if it means reducing the holdings of the wealthy (Kennedy, 1993, pp. 81-82).

It is interesting to note that, though in the minority, some judges took positions that were in line with the arguments made earlier in this paper. In particular, when there is no clear evidence available in the primary sources, the interests of the poor and those who worked on land as tenants or sharecropper must be given priority. One can also observe that the learned judges missed the significant point earlier raised in the paper; the way land was acquired in the first place and how it was being used thereafter. It is obvious that most of the big chunks of land were not purchased from some individuals or the state but were given free of cost by the rulers. Similarly, they were largely cultivated by the serfs, sharecroppers or tenants-not

by the property owners and their offspring.

Another point in this regard is even more important. The argument against land reforms normally hinges on the fact that when the Prophet (PBUH) started to establish an Islamic state in Madinah, he allowed people to continue to hold their land and did not take away land from anyone. Muslim rulers, later on, followed the same practice. However, as we discussed earlier, the population at that time was limited, and there were plenty of wastelands available. Furthermore, the size of land holding was also not too big. It is quite possible that lands close to settled areas were more fertile, close to the source of water, and carried a locational advantage. Thus, leaving the land to their owners /users was just and natural. The same rule could not be applied to later days especially after the arrival of feudalism when big chunks of land were allocated by conquerors and rulers to so-called noblemen, and in turn, themselves ruled over the serfs! The Mughals in India established the institutions of *jagirdari*, and *mansabdari*, which continued as *zamindari* system in the British colonial era. There was every reason to do a holistic review of this feudal system in favour of the poor peasants.

It is important that the issue of agricultural land reforms is again made one of the central items on economic reform agenda of different political parties in Pakistan especially those who claim to be Islamic, justice-seeking, pro-poor, and anti-status quo. More importantly, it is the job of Muslim social philosophers to come up with convincing Islamic arguments in favour of land reforms by adopting an appropriate methodology for interpreting Shari'ah; the issue cannot be left to traditional religious scholars who are not ready to look beyond the old *fiqh* literature.

MANAGEMENT AND CONTROL OF COMMERCIAL AND RESIDENTIAL LAND; RENT, CAPITAL GAINS, & APPLICATION OF ZAKĀH

This may be a more complex subject for an Islamic economic reform agenda. People own commercial and residential land, buildings, and they use them, themselves and/or rent to others. Apparently, there does not seem to be anything wrong about this practice as long as they purchased the land themselves or inherited a land earlier purchased by their parents or ancestors. Even if the government originally allotted the land free of cost, if its current occupiers/owners properly use the land for the intended purpose of allocation, the ownership status can continue. However, if the piece of land is in commercial or industrial use by the owner, a part of the imputed rent could be collected by the government and utilized for the benefit of the society as a whole. The reason is simple; a significant or dominant part of the current rent is a result of general economic activities in the adjacent surroundings and not due to any efforts made by the owners.

This proposal could be realized through property tax if the tax is based on market values of the properties. It is possible to argue that if a commercial or industrial unit has any locational advantage, it should be reflected in the financial performance of the business carried out there, and accordingly, would be subjected to relatively higher business taxes. However, the advantages of imposing a tax on its imputed rent may ensure an efficient use of the landed property. In addition, the income tax rate on business may not be a proper rate that

should be imposed on the accumulated increase in the price/rent of the property. The same principle should be applied when the property is rented or sold.¹³

In the Western capitalist system, the above issue is by and large neglected in favor of the property owners. The tax rate on real capital gains (removing the influence of inflation) remains quite low. Furthermore, as an important reason for the imposition of capital gains tax is to discourage speculative investment, this tax is not levied, or the rate is lowered, if the financial or physical asset remains under possession for more than a specified period. While this reasoning is justified, it does not address a much more fundamental issue of distributive justice originally raised by Henry George.

During the late 19th century, Henry George of the United States wrote in his book “*Progress and Poverty*” and proposed that a single tax on land had the potential to meet all the necessary expenditure by the government (George, 1935). He wanted every user of any land to pay full rent of land as a tax to the government. The total amount of this tax would increase with the passage of time to meet the increasing levels of expenditures by the government. No tax would then be needed to be imposed on labourers and capital owners (the main source of capital being savings of the workers) who would enjoy the benefits of their hard work and genuinely earned income. George regarded most of the rental income as unearned income. The value of land and the structures built on land increases due to an increase in population and increasing economic activities and not due to any efforts made by the property owners.

Many of George’s initial admirers were dismayed by his exclusive emphasis on land. Furthermore, his proposal to impose rent tax on all house owners alienated a huge segment of the society. Eventually, Henry George and his followers failed in their mission. However, the basic idea of George that most of the increase in the price and rent of real estate is unearned and belongs to the society as a whole is essential and should get a favorable consideration from Islamic economists. If one admits that the most important goal of the political economy of Islam is social justice, then this issue cannot be overlooked. If people buy or build their homes, they or their offspring should be able to live there in perpetuity. However, if they sell their homes, they must pay a proper capital gains tax, which could be drastically reduced or exempted from tax if the proceeds are used for buying another home for living.

In case the houses are rented, an appropriate arrangement should be made about taxing the rent. For example, if a person owns and lives in a house in Karachi, but has to move to Lahore, he may rent his house in Karachi without requiring to pay any tax on the rent received from his house. However, if he wants to rent his previous house after purchasing another house, he must pay an appropriate tax on the rent depending upon his year of purchase (after estimating the capital gains made on the house and the resulting effect on the rent). Alternatively, (or in addition to the tax on rent) the first house should be treated as part of his wealth on which a *zakāh* or wealth tax could be levied. Apparently, the proposals made here may look somewhat burdensome or excessive. However, we must be aware of

¹³It is important to determine what part of rent or sale proceed should go to the owner of the land, and what goes to the community. This is because a major part of the rent or capital gain is unearned and depends on the relative scarcity of land, which in turn, largely hinges on the rate of population growth and commercial and economic activities in the surrounding areas.

what is going on in the housing and property markets all over the world. If we do not want the concentration of wealth in fewer hands and plan to help the less fortunate people in our societies, we must reflect on some basic issues in home ownership.

It would be hard to disagree that all people in the society without their own homes should be able to own one. The reason why people continue to rent rather than own a house is the lack of financial resources; the gap between what they can afford to pay on their own (or by taking a loan) and the price of a suitable residential unit. For solving this problem, efforts are needed on two fronts:

- (1) provision of financial resources at reasonable or no cost and
- (2) keeping the home prices in check through such means that are just and fair.

Take the examples of London after Brexit or Toronto after the fall in energy prices. Rich people from all over the world are investing in the housing and properties especially with a lower value of their currencies. On the other hand, working people of London and Toronto are finding it harder to own a place and continue to pay a major part of their disposable income on rent. The same situation prevails in the UAE where a large number of new residential units are purchased by foreign investors who do not intend to live in the UAE but are interested in getting a higher amount of rent or realizing large capital gains. The people who end up paying a very high amount of rent are the expatriates; many of them would have preferred to own property if the prices remained reasonable.

The situation in the countries like Pakistan, India, and Bangladesh is different where foreign investment in the housing sector may not be possible. However, the existing rules and/or practices are not conducive for the people not owning homes. For all new housing schemes in any region of the country, exclusive rights to buy a plot or built structure should be given to the people in the area who do not own any house. This initiative would keep the demand, and hence the price at a reasonable level. For facilitating the purchase by the people not owning a house, resources should be available from the government sources at a minimum possible cost (covering only service charges for handling mortgage loans) and no charges for the impoverished sections of the society.

While ownership of multiple houses and investment in residential and commercial structures should be allowed for the benefit of people currently not owning a place to live or do business, the tax on rent must take away the portion of rent attributable to capital gains. Furthermore, owning more than one house or commercial buildings not utilized by oneself must also form part of wealth on which *zakāh* should be due. All these suggestions are not intended to create disincentives and discourage required investments but to benefit the society.

The management of taxing rent, imposing *zakāh* or wealth tax on more than one house and collecting capital gains taxes will be a complex matter. One should also consider the existence of widespread corruption in many Muslim countries, especially in tax collecting agencies. However, the problem discussed here is quite basic and relevant to all the countries of the world. It is more significant for the countries that inspire to achieve social and economic justice.

CONCLUSION

For distributive justice being the most important aspect of an Islamic economic system, continuous efforts are required to find means and ways to help the poorer sections of the economy and restrict the concentration of wealth among a few. Determination of prices through freely functioning markets and privately owned means of production are the desirable and common features of both capitalist and Islamic economies. However, when it comes to the issue of returns to different factors of production, the government in an Islamic system has to ensure a fair deal for those having less bargaining power. Siddiqui (1998) discussed the working of the labour market and possible role of the government in pushing wages to justifiable levels.

The present paper addresses the issue of land ownership and returns to landowners in different sectors of the economy from an Islamic perspective. The nature of the land, its ownership, and increases in its value are different from other factors of production. Moreover, land acquired or allocated free of cost necessitates special consideration. The books of *ahādīth* contain numerous sayings of the Prophet (PBUH) related to agricultural land from which we can derive fundamental policies for contemporary economies. However, conflicting *ahādīth* on land ownership, land rent, and sharecropping demand a reasonable methodology to deduce policy resolutions in changing circumstances. The conflicting sayings and rulings of the Prophet (PBUH) might be due to different situations and changing conditions in Madinah. It is safe to claim that his overwhelming concern in every case was to uphold the Qur'ānic injunctions against the concentration of wealth in a few hands.

We have argued that, in principle, the government can take back the land given by the state free of cost, if not utilized by the original beneficiaries or their offspring. She can then reallocate it to those in need or already working as tenants or sharecroppers on such land. In this regard, the judgment made by the apex Sharī'ah courts in Pakistan against reforms brought in by the Bhutto government could be questioned. The prevailing argument of traditional religious scholars that the Prophet (PBUH) initially did not take over any land from the original users is not always relevant. It is not applicable to huge sizes of land allocated free of cost by the Mughal and British rulers to their political supporters in the subcontinent.

The government and political parties in Pakistan, particularly those advocating economic justice and fairness, should reconsider their position on land reforms in the agricultural sector notwithstanding the expected opposition from the forces of status-quo. In addition, they should also consider the suggestions of taxing agricultural land rent and regulating wages and sharecropping regimes to ensure fair returns to farm workers. Realizing the fact that increases in rent and the value of land is primarily "unearned" income, the government should also introduce a scheme of capital gains tax.

The paper recommends an extension of similar principles to urban land for residential and commercial use. Free for all investment in urban land and structures is making housing and small enterprises out of reach of the common person. The stock of properties does not come under the net of wealth tax nor is included for *zakāh* payments. As the increase in land values and land properties are unearned, the governments should introduce substantial rates of capital gains tax on speculative investments on land and landed properties. On the other

hand, in all new plans for land development schemes, the government must give priority to those who do not own a house or are looking for establishing their businesses.

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