

THE SURVEY OF THE USURPATION STATUTORY DECREES IN THE FIVEFOLD RELIGION JURISPRUDENCE AND THE IRANIAN CIVIL LAW

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Abstract:

In the present study, various definitions provided for the term “usurpation” and the most comprehensive and all-inclusive interpretation that can be encompassing the entire consequences and effects and the mandates have been determined which seemingly include “forcibly taking control of another one’s right”. Also, among the topics investigated by the present study are “the unlawful nature of the usurpation and the necessity to return what has been taken by force back to the usurped person or his or her protector of the rights and also the proofs regarding the forbiddance and illegality of usurpation and the decrees and ordinances concerning the obligation to return the exact usurped property and the states and manners in which the property which has been usurped should be returned back to the usurped individual and the situations in which the usurper shall be found acquitted of the usurpation guilt and the exceptions thereof in respect to the immediacy of returning back the exact property being usurped and the excuses and the substitutes contemplated in return for the exact property being usurped have all been provided for with explanations and expositions from the perspectives of the fivefold religion and the Iranian civil law in the presentation of all of which there has been accentuated emphasis on the

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Holy Quran Ayas and narratives. It is worth mentioning that usurpation has been recognized as forbidden and considered as illegal by the jurists and they all in a general consensus have come to this realization that the exact thing being usurped should be returned back to the usurped individual.

Keywords: usurpation, obligatory mandates, fivefold religion, civil law

Introduction:

Usurpation is considered as an improper act which tramples the principle of ownership and allocation and to the same extent that the principle of allocation and ownership is effective in keeping vital and self-standing of the society usurpation undermines the society and makes it cease its development. If the powerful ones and the owners of influence in a society forcibly and without legal permit take possession of their subordinates and the weak ones' earnings, allocation and possession lose their credit and validity.

And everyone with regard to proprietary rights than those who are unable to see themselves this way of thinking will be and subordinates and to have disabilities as a result of Suffering and their efforts to sell any deference and dignity and his honor. As a result, human society will become a market slavery and slave trade. And rules and regulations of the credit collapse and be replaced by force and oppression. That Islam has set rules and usurp usurper of extreme hardship for one of the major sins counts. The text of the Quran and Sunnah any possibility of forgiveness of sin as idolatry by God and repent of any sin even by the forgiveness is polytheism But in the case of life who usurp and violate the rights of others is never open unforgiving god and punishment rightful owners of their operation no hope of escape.

Exactly defined idiomatic usurped

Usurped the word means "to wring something, getting the oppression, the oppression taking the thing is." Quote longer observed among Sunni jurists constraint "openly" as well add definition and have said: Usurped the "something wrong and just plain getting the" definition (quote), if taken in secret object (such as theft) is not usurped [1]. Masdar is usurped and the usurper name Ast.jmshGhsab and female subjects it is Ghasbh[2]

In defining the term usurped there is no consensus among Shia and Sunni scholars. The researcher solution Ja'fari said: "usurpation means independent lay hands on another person's property is being fixed Adwan" (from the oppression and aggression) [3]. The second martyr said: "usurp the right to dominate the other on Adwan." In Hanafite Cassani says usurped namely: the elimination of iodine scrub the owner of the property price and value that can be overcome by force and by doing in the mine [4]. In the Shafi'i school, Ramli said: "usurpation, legally non-domination right from the oppression, and domination custom circuit, so prohibiting the owner of the dos and irrigation water, so that the waste they lead, no guarantee, because it can not be said to dominate."

Regulations

The word 'regulations' is the plural of regulation, which means command and rule. And according to the definition of jurisprudence, which is the science of religious and ancillary regulations from their detailed reasons, the meaning of regulation is religious regulation, which consists of law from God for regulating the material and spiritual life of human beings. And it doesn't matter if the forging of regulation directly belongs to the act of charged to him, or to other things related to him. And religious regulation is divided into two parts of withholding and restraining regulation, which only withholding regulation will be discussed in this article.

Withholding regulation: is a religious regulation that directly belongs to act of human beings and regulates the human behavior in different aspect of personal life. And withholding regulation is divided into five types: incumbency, sanctity, acceptance, abomination and allowance. And we want to know confiscation regulation is of which type.

1- Incumbency: is a withholding religious regulation, in which the legislator necessarily had wanted its belonging performance, such as the incumbency of Prayer. And in short, obligatory is something that is not allowed to leave.

2- Sanctity: and that's another type of withholding religious regulation which the legislator necessarily had wanted its absence of act and leaving its belongings And in short, the act of it is not allowed.

3- Recommendation (Delegation): is a type of withholding religious regulation that encourages the charged to do the act of belonging, without having force in it. And in short, recommended is something that doing the act is superior.

4- Abomination: is a type of withholding religious regulation that unnecessarily prevents the charged from doing the act. And in short, abomination is something that not doing the act is superior.

5- Allowance: is a type of withholding religious regulation that the way for charged is open and he's given the free will to do whatever he selects. And choosing either of doing and not doing the act, is equal from the perspective of sire. And in short, permissible is something doing and not doing the act is equal and allowed [5].

Type of used regulation in confiscation

The majesty Imam Khomeini said: confiscation has two withholding regulation that consists of:

- 1- Acceptance
- 2- The necessity of restoring it to his overseer or his caretaker [6].

From the lawyers, Dr. Sayyid Hassan Imami says: withholding regulation in confiscation is restoring the same to the owner. It means that when someone confiscates other's property, he shall restore it to the owner immediately, even when after confiscation it no longer belongs to the owner or trading it has been banned by law. Because the right of owning still belongs to the owner and the release of the article 311 of Civil law says: "Usurper must identically restore the property to the owner", is supervisor to the mentioned case.

In case the owner doesn't have the legal qualification, if he is underage or insane, usurper must restore the property to their caretaker or their guardian. And if the usurper restores it to the insane, his responsibility will not be eliminated.

In other division, withholding confiscating regulation is divided into two parts, which are:

- a) Sanctity in property of other (owner)
- b) Necessity and essential in restoring the owner's property

Withholding confiscating regulations is running in all of its parts and even though the usurper is guilty, he shall restore the property to its owner [7].

Confiscating sanctity reasons

In confiscating sanctity, there are different and important reasons, which the jurists have found in book and tradition and consensus and some of legal rules. And some has said that the mason of intellectuals can also be used.

ShaykhTusi says in details: “Confiscating boycott is obvious and clear with rational reasons and book and tradition and consensus.”

First martyr says in lessons: “Confiscating boycott is social, literary and traditional.”

Imam Khomeini (pbuh) says in Tahrir al-Wasilah: “Wisdom and story including book and tradition and consensus corresponds with its sanctity.”

1- The Book: among the signs that can be cited in confiscating boycott, there are:

a) God says: “Believers! Don’t seize each other’s property, unless it is a business from consent and satisfaction (And so that you profit). And do not kill each other, however God is very kind with you and He is not happy with murder and injustice of you to each other. (SuraNisa, Verse 29th).

b) God says: “Those who seize the property of orphans with tyranny, in fact, they put fire of hell in their stomach and soon they will be thrown into the blazing fire of God’s wrath in Hell.” (SuraNisa, verse 10th) says in explanation: “Who seize an orphan’s property; undoubtedly he has wronged him [8].”

c) God says: “Don’t seize each other’s property with tyranny and don’t concede the work to judges’ trial so that you can seize portion of mankind’s property with bribery and force, even though you know the invalidity of your quarrel.” (Surat al-Baqara, Verse 188)

Scholars translated the citation, which this sign implies the sanctity of confiscating other’s property with tyranny, which means without any rights and is the most clear evidence that eating usurped property is void.

2. Tradition: in the words of the Prophet (PBUH) and Holy Imams (AS) there are words that conceptually imply the prohibition of confiscation. That some of them are mentioned here. The Prophet (PBUH) says: None of you should take goods of your brothers by force or and in serious way or as joking and whoever does this must return the goods to the owner. [9]Imam Khomeini

in Tahrirul-Vassileh says: He who has usurped an inch of land, God in the Day of Judgment in seven Earth, puts a collar around his neck. "

3. The consensus: regarding the prohibition of confiscation claim of consensus has been raised and Islamic scholars of different religions consider the violation of the sanctity of property and acquiring it without the permission of the owner as consensus and it leads to sin and punishment in the hereafter. In the Ja'fari school Imam Khomeini (RA) said, reason and Tradition of the Book and the Sunnah and the consensus profane usurped are consistent and it is the most egregious folly that the wisdom independently confirms it.

4. The wisdom: all Islamic sects regardless of differences of opinions agree about involvement of wisdom in Islamic law, and unlawfulness confiscation and confiscation of the human being, and intellect understand the folly of confiscation and the oppression in it consider it as the more striking evidence of cruelty, it is current reprehensible and subject to liability and punishment.

5. Basis of the wise: By studying about life of wise people we understand that they know a person who conquer other's property or other's right as responsible for the consequence, it means while they consider him as obliged to pay back, if incorporating losses take place he also has Civil liability. If the owner of such claim for damages for lost profits refers to the holders, this practice is not blamed. Islam does not reject and condemn this approach, but confirmed it due to pursuant to incoming provisions. [10]

6. Rules of Fiqh: In addition to the above mentioned reasons, many Fiqh rules on the prohibition of confiscation can be used that we offer few examples.

a) Rule of no loss and no harm in Islam: This rule is one of the important rules that Islamic jurists have based their legal issues on it. Among them is confiscation topic and purpose of this rule is Give back of the legitimacy of "harm" to others.

Because it is injustice and cruelty, and it is not permitted in the holy law. And because confiscation of right of other unless with the owner's permission is considered violence and assault, with regard to this rule, it is not permitted and confiscation dignity is fixed.

B) Rule of liability of Hand (Yad): whoever achieves another's property, is the guarantor of the waste and shortage of it. The rule evidence is the known Hadith of the Prophet (PBUH) which says: " it is on his hands what he has taken until he gives it back" [11]. in provisions of this Hadith is the controversy that weather the purpose of the sentence imposed is obligated and lawyer wanted to notify the owner of the punishment of domination on someone else's property [12], or the point was that the liability and the responsibility was for the handler and puts him in charge knows [13]

But what is famous is that context clearly indicates that legislative has asked liability of such finance until return to the owner is responsibility of possessor [14].

So "Ala" in this sentence means commitment and promise and purpose of "Yad" is domination of one who dominates the property. (So, if the owner is prohibited from disposing of his property, without the intruder dominating the property or not complete domination, like handing a clothing of another person the confiscation is not true.

C) No one is allowed to seize a property without the permission of the owner. As it is not permissible for any person without lawful reason, to take another person's property and seize the property. This means that if someone takes over a property without the permission of the owner or by the valid ways of lawmaker such as guardianship and power of attorney, his occupation is not valid and he is considered abuser and aggressor and the liability is on him. And the reason of this rule is the Hadith of the Prophet (pbuh), which stated: "The blood and land and wealth of every Muslim are forbidden to another Muslim". This hadith is for the Muslims and people of other religions, because of words of the Prophet (PBUH) who said: "what is for us is for them and what is against us is against them".

D) Rule of respect: The purpose of this rule is that property of human is respected and everyone is owner of his property and no one is allowed to freely and without permission of the owner seize his property or detrimental to the property of others [15].

The necessity and the need to give back the captured property and its Rules

A) the necessity and the need to give back the same: Considering that the seize of the property of another without permission is forbidden based on Islam and provides grounds for the punishment of the usurper in Hereafter, Jurists believe that the usurper must give back the same property to the real owner.

In Ja'fari school, Helli says: "As long as the same usurped person remains, the pay back is necessary even though it requires stiffness and difficulty, such as wood or boards of the ship and the owner was not required to take the price"

In Hanbalism Ibn Qudama believes that whenever usurper usurped something, he must return it to the owner. And if it is lost, it is obligatory on him to give the substitute. As Allah promised if someone violated you, you can violate him the same way [16] And this (obligatory and necessary of the same) is agreed by Public scholars and jurists.

Article 311 of the Civil Code provided that "usurper must give back the same property to the owner"

B) The arguments of the necessity of giving back the usurped property: surely the tradition and the consensus and reason for the necessity to give back the usurped can be invoked.

1. Tradition: there are a lot of hadiths of the Prophet and the Infallible Imams (AS) is in this context that some of them are mentioned: The Messenger of Allah (pbuh) said: who keeps the land of the dead, alive it is for him and there is no right for the sweat the oppressor [17]

2. Consensus: All Islamic religious scholars have agreed on necessity of giving back the usurped property and we mention some examples. Helli in religions, the First Martyr in lessons, the owner Note Almotalemyn, owner of Guidance Alazahan, believes in the necessity of giving back the usurped property. Imam Khomeini in 'Tahrir al-Wasilah' emphasized on the necessity of returning. Ibn Rushd says: Violator is obliged to give back the property if it remains with him without any shortage and change and no one disagrees with this issue. Ibn Murtaza quoted saying: returning the same property if not destroyed is necessary.

3. Wisdom: Wisdom orders to return the property to owner. Because by returning the property the right is back to being complete and the usurper's hand is cut from using it, and justice for Allah's divine legislator in the implementation process will be accomplished.

C) The requirements of returning the property

For the obligation of the violator from liability regardless of the outcome of innocence, the exact usurped property must be returned to the owner which has some types:

1. Return to owner
2. Return to owner in the place of usurped
3. Immediate Return

D) Exception of emergency to return the usurped: while destruction and loss of venerable soul occurs, the necessity of immediate return of the usurped has an exception, to illustrate; here are some of the comments by jurists:

ShahidThani in Ja'fari says: Yes, if someone fears for the respected animal or himself in a ship and that the ship may sink with taking away the usurped wood that is in the ship, then the wood should not be taken from the ship until the ship arrives to the shore.

E) (Avaz and Taazor) Difficulty and poverty to return the usurped: the interpretation of jurists is different, some have pointed to difficulty and some pointed to poverty. Avaz means "rare" Taazor means impossibility, and some have interpreted both. Taazor does not mean intellectual impossibility, since in the religious issues intellectual accuracy is not important but rather Taazor means inability of common sense and rarity.

In Religion JafarShahidi Sani (RA) said: "If there is no possibility to restore usurped same for the same loss or something like that if reproduction is also a sponsor like it would be a usurper, and if the reproduction is not usurping its sponsor Highest price time is taken to extra time, such as barley, wheat, and other grains and oil" The Iranian Civil Code in the article "311", we read: "... if it is not possible for another reason Must pay for it, "the assumption is that the same property related to the case of the captured person is not dead but it is not possible to restore

common: Like the pot of gold that was in the sea, and drawing it out in practice may not see Or so difficult that it remains impossible. " In this case, the illegitimate usurper because he was a buffer between landlords and property "Toggle intervenient exchange" and must give to the owner's property captured person. Captured person's property or the price is the same as that for the compensation to be given to her owner. What makes this property special title (intervenient exchange) finds belong to the owner's rulings and quality and description of the rights is not the sort of thing that will be exchanged [18]

Dr. Syed Hasan Emami said: "If the money is not wasted by usurping but while the owner is not possible to rule out the direction of the directions would be tantamount to waste. If you fall in the river or a deep well that it is not possible gouging or thief steals it and can access it, and the last part of the article "311" Civil law concerning the above it is. "

Order the violator to the captured person is charity and expenses.

Sometimes to grow usurper, usurped property or financial protections consume it in this case if the property owner has usurped refunded, whether the violator could require expenditures that have or do not have the right to demand it?

Jurists on the ballot in the field have been argued as follows:

- A) Usurper ruthless, ruthless right not to root.
- B) Give support to the usurper has no object that is perpendicular to the body, like clothes, but also single color effect.
- C) Support the charity has a usurper like grain that has earned the captured person. If the maintenance of grain size was higher, excessive consumption of usurping the right of recourse does, and if the captured person had no grain, as well as rights to the usurper, for he is ruthless [19].

D) For financial usurper and vertical value in the captured person there

It is the words of jurists in this position, usurping the right to require that the consumer has spent huge money. But however, Maliki jurist Ibn Qasim rejected the verdict [20]. In the Hanafi school who has said that if the land is usurped With agriculture and tree and watered it and to grow The costs incurred also captured person if yours is a palm that flowers, and it usurps the pollination

and fertilization (grafted) and worked for it, It is my abundance of the captured person, and usurping what the charity has something for them. In the Shafi'i school states: what creates usurping the property usurped, two things... But the latter is not yet in effect, like a small animal and a slave who usurped it and the high costs of treatment and as much as several times the price of them, Its owner can be captured person to obtain wealth and usurping nothing [21]. Maliki has said Syed Ahmad in religion: what the usurper to the captured person is like grass, animal charity, Monet and clothing Abdul, irrigation and land reform and trees and so on, Of things that need to maintain or grow them, so in grain and fruit that is earned, if the cost of grain size is large, the violator can refer to it If no grain and fruit if yours does not captured person, the violator can not require the consumer who, for the work he has been cruel [22]. Article 314 of the Civil Code provides that if the result of the usurper, price increases captured person occupying the property, will have the right to demand high prices Unless the same is it exceeding that in this case, is the same waste of the usurper.

Discussion and conclusion:

According to the literal meaning of the term confiscation and suspension provisions of the religious views became clear Khamse The most comprehensive and most complete definition of expropriation is: ((hegemony on the right than on aggression)) and other property legally seized without the permission of the owner is prohibited. And cause disruption and chaos in the society and injustice among human individuals. so the Holy Sharia of Islam to avoid the chaos and injustice and allergic reactions Who have a great responsibility towards the question of the rights of people and property in case of iodine typical worldly and otherworldly carried on it. And religious scholars Khamse and civil rights on the basis of the evidence (Quran, Sunnah, ijma, intellect, so wise and some of the rules Fqhyh) ruled unanimously rejected the sanctity of property seized and captured person to have captured person must have known me so that if the same captured person is Reject it and in case of any rejection of the usurper into the seminary will be the guarantor, if it is like the proverbial it and if the price is Guardian it is obligatory to pay if that reproduction and waste Captured person to be like it, and if the Guardians should pay its price, and some say Usurper guarantee the highest price since the dead time is taken up and promised Mokhtar Sheikh in detail the criteria that price is also taken per day. Ibn Hamza ibn

Idris ibn Barraji and she suggests that the object has been usurped usurper is obligatory price on the phone back to the owner and all scholars agree that the rule should be taken in place.

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