

The authority in this maxim includes, power vested in government functionaries, trustees and guardians. The meaning of the maxim is that; while exercising authority, the welfare of subjects should be the prime consideration, underlying the exercise of authority. The action taken by the state, in respect of its subjects, or a guardian, in respect of his ward, is considered valid, only if it promotes the interest of subjects, and wards, respectively. Following are some rulings, based on the maxim:

- The disposal of the property of an orphan by a *qadī* (judge), is lawful only when it is in the former's interest. If the *qadī* (judge)'s action is in conflict with the interests of an orphan, it can not be enforced.
- A guardian may not use the property of his ward, for granting loans, and giving gift(s) to the people.
- A guardian can sell the property of his ward, if it has been usurped, and the guardian has reason to fear, that there is no chance of fair restitution.

واعلم ایسا اللہ

☆ کل ما اصابک فاجره علی اللہ، من الغم
والغم، والحزن والجوع والفقروالمرض والدين
والمصائب. ☆

ترجو الولید و قد اعیاک والده ☆ و مار جاوک بعد الوالد الولدا

Maxim: لا يجوز لأحد أن يأخذ مال أحد بلا سبب شرعي⁹

No one may take the property of another, except with a legal cause

The maxim refers to lawful, and unlawful, modes of acquiring property. The unlawful modes include; modes such as theft, usurpation, *ribā*, gambling, bribery, fraudulent transactions etc. Approved modes of acquiring property include; contracts such as sale, hiring, leasing, gift, donation, pledge, assignment of debt etc. "Legal Cause" also includes, the situation where a person takes property of another, under compelling need, such as under starvation, or he is coerced to take property of another person.

The maxim provides that nobody is allowed to acquire property of another through unlawful modes. He is also not allowed to force and coerce another person, to sell or rent out his property. A non-owner, however, can dispose off the property of an owner under the following situations:

- Islamic law allows the creditor to take an amount equal to the value of his debt, from the property of a defaulter.
- It is allowed for a poor guardian, to take an amount from the property of his ward, which is sufficient to meet the guardians' imperative needs only. This is a genuine reason, which is approved by the *Shari'ah*.

Maxim: التصرف على الرعية منوط بالمصلحة¹⁰

Authority in respect of people's affairs, must be exercised for their welfare

⁹ Ibid. p. 397.

¹⁰ Ibid. p. 247.

This maxim prevents violation of the properties of other people. It provides that nobody is allowed to make an agreement or authorize the other to sell, gift, mortgage, hire, deposit or lend another's property, without the owner's consent. A person can use other's property, only when he has acquired it through an agreement, such as, he has either purchased it or hired or borrowed it for use. The maxim also covers unlawful modes used for acquiring others property, such as, through theft, usurpation, coercion etc.

Meaning of Permission

The word "permission", contained in the maxim, refers to two situations:

- Where the owner, by his free consent, sold, lent or rented a property to a party.
- Where he authorized a party to dispose off former's property, as his agent. Thus, an agent is allowed to dispose off property of the principal, according to his instructions.

Exceptions

The maxim allows the government, under compelling circumstances, to use, or dispose off property of a person, against his will. The exceptions to the maxim, admitted by the Islamic law, are as under:

- The court can sell the property of debtor, against his will, to satisfy claims of the creditors.
- The government can acquire property for some public cause.

In the light of these injunctions, the disposing of somebody's property, without his consent, is unlawful in Islam. A person, who uses it without permission, or destroys it, is liable to compensate the loss of owner.

The Muslim jurists have formulated a number of rules which emphasise the respect of Islamic law for the right of ownership of property, and to safeguard the owner against any violation of this right. They also lay down conditions to be observed, while disposing of others' property. These rules are:

لا يجوز لأحد أن يتصرف في ملك الغير بلا إذنه^۴

- *No person may deal with the property of another, without the latter's permission.*

الأمر بالتصرف في ملك الغير باطل^۵

- *Any order given to dispose off the property of another is void.*

لا يجوز لأحد أن يأخذ مال أحد بلا سبب شرعي^۶

- *No one may take the property of another, except with a legal cause.*

التصرف على الرعية متوط بالصلحة^۷

- *Authority in respect of people's affairs should be exercised for their welfare only.*

Maxim: لا يجوز لأحد أن يتصرف في مطلب الغير بلا إذنه^۸

No person may deal with the property of another, without latter's permission.

^۴ *Sharh al-Qawā'id al-Fiqhiyyah*, op.cit. p. 393.

^۵ *Ibid.* p. 391.

^۶ *Ibid.* p. 397.

^۷ *Ibid.* p. 247.

^۸ *Ibid.* p. 393.

Maxims on Disposition of Others' Property

Dr. Muhammad Tahir Mansoori

Preservation and protection of property, earned by a person through lawful means, is one of the objectives of Islamic law. Islam regards the property of a person, as sacred, and inviolable, as his life and honour. The Qur'an forbids the unlawful devouring of a property. It says:

"O You who believe: Devour not your property among yourselves in vanities" (4: 29).

In a *hadith* Holy Prophet (s.a.w.s) has said:

"Allah has made the life, property and honour of each one of you, unto the other, sacred and inviolable, like this day, of this month, in this territory".¹

He also said:

"The property of a Muslim is not lawful, for anyone, except with his free will".²

He also said:

"It is not permissible for a man, to take away the stick of his brother, without the latter's will".³

¹ *Al-Ihsan bi Tartib Sahih Ibn Hibban*, op.cit. vol. 7, p. 585, Hadith No. 5942.

² *Al-Bayhaqi*, op.cit. vol. 6, p. 160, Hadith No. 11740.

³ *Ibid.* vol. 6, p. 159, Hadith No. 11737.