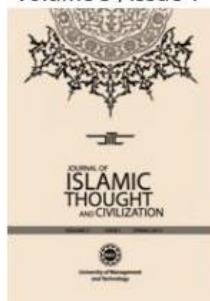


Volume 5, Issue 1



Journal of Islamic Thought and Civilization (JITC)

Volume 5, Issue 1, Spring 2015

ISSN: 2075-0943, eISSN: 2520-0313

Journal DOI: <https://doi.org/10.32350/jitc>

Issue DOI: <https://doi.org/10.32350/jitc.51>

Homepage: <https://www.umat.edu.pk/jitc/home.aspx>

Journal QR Code:



Article:

Land Management in Early Islam

Author(s):

Rummana Khan Sherwani
Dr. Muhammad Asim

Online Pub:

Spring 2015

Article DOI:

<https://doi.org/10.32350/jitc.51.05>

Article QR
Code:



Rummana K Sherwani

To cite this
article:

Sherwani, Rummana Khan, and Muhammad Asim. "Land management in early Islam." *Journal of Islamic Thought and Civilization* 5, no. 1 (2015): 57–65.

[Crossref](#)

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A publication of the
Department of Islamic Thought and Civilization
School of Social Science and Humanities
University of Management and Technology
Lahore

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Land Management in Early Islam

Abstract

Islamic Principles and practices influence almost 20% of the world population. Islamic codes are impacting on Land and Property in almost 30 to 50 countries. These principles are being used with formal or informal legislative documentation in spite of wide geographical range and importance which impact land management and security of Tenure throughout the Muslim world. The fact that Islamic Tenure Laws Provide social security and impartiality is admitted across the world. This is partially because, in a Muslim society, a person owns property with the trust that he is accountable to Allah for all the blessings he possesses. Just as with habitual and informal land rights, there is a need to better understand these methodologies in order to provide a more comprehensive picture on how land was managed in different periods of time in the Islamic world.

Key Words: Land Management, Entitlement of Land in the Quran, Land Types in Prophet Time Period, Fay land, Ghanimah Land, Hazrat Umar (RA) Model of Administration

Introduction

There are a lot of Islamic principles related to land tenure, security and land administration which are relevant and accepted ways to improve land laws. Islamic principles and practices have been implemented and used as an instrument for interventions and durable land laws. Muslims believe that true and ultimate ownership goes to Almighty Allah, as it is ordained in Islam. Thus, basic principles and ownership laws generate the sense of ownership and belongings, which ultimately determines the rights and duties with the sprawl and growth of the *ummah* not only at an individual level but collectively at a state level also. The legal theory of economics regarding ownership and implicative infrastructure results in building social welfare institutes in an Islamic society. Islamic Law (*sharia*) as a state policy stands by protecting property rights and hence this is an important influencing factor in Muslim societies.

1. Early Practices

Until the advent of Islam, there was no set model of land ownership or individual property rights in Arab tribes. The concept of *Hima* was present at the time for the collective welfare of the communities through an agreement between inferior and superior tribes of Arab society. Although a sense of possession may possibly have developed in this regard, the land ownership



system was truly guided by the Islamic teachings. Arab Bedouins turned into city dwellers and ultimately became a civilized nation due to the transformation in this field. The Holy Prophet (SAW) turned the land into the *Iqta*¹ form of administration and gave ownership rights to individuals for transforming useless barren lands into fruitful ones that produced crops and caused the land to become saleable, the Caliphs and even various Muslim regions practiced the same afterward. *Fuqha* related the land concepts and its legal theories on the basis of executive practices of the Umayyad Caliphs in 2nd and 8th century.

In the early conquests and takeovers of lands of tribes (like *Banu Nuzair*, *Banu Qurayza* and *Khyber*), issues arose regarding how to equally distribute these lands among the Muslim warriors as per the teachings of Islam. Due to the fact that all Muslims were considered as equal members of the *ummah*, this entitled them equally to wealth and honours. Although the net socio-political or economic-political framework and institutions were not mature, strong concepts of moral values and ties of obligations were present at that time. The concepts of public and private property were also developed and bore fruition.

2. Entitlement of Land in Quran

The Islamic stance on the entitlement of land is outlined in the Holy Quran and describes with references the importance of respecting the private property rights and makes it clear that Allah is the owner of the whole world and every Muslim can enjoy the land whilst serving Allah's limits.² The basic concepts of economic growth and poverty alleviation, social justice, economic balance growth and safety of human labour, all school of *fiqh* unanimously agree that land ownership is not an absolute one nor unconditional in Islam. Land belongs to Allah only who has no legacy and no heirs; He is the One and the ultimate true owner of the land and everything in it.³

3. Land Types in Prophet (SAW) Time Period

The rules of the battlefield were well explained in Quran. *Jihad* results in prosperity, harmony and success in a true sense and is the outcome of Allah's blessings.⁴ Victory of the city of Makkah and the Prophet's treatment towards the non-Muslim community and his enemies was characteristic of his dealings. Public interest was the first and foremost priority of the Holy prophet while land distribution and Allah's happiness was considered while distributing *Ghanimah*.^{5,6} The obligatory duty of the prophet was to distribute *Ghanimah* land for the sake of Allah according to the Islamic principles.

In the early caliphate period, land could be classified into two types, Claimed Land (owned) and Unclaimed Land (Unowned) Or Live Land/Useful and Dead Land/Useless. It is easy to distinguish between owned and un-owned or (Unclaimed) land:

1. Land, which is used for the common benefits of the community and is rich in minerals like salt, petroleum etc. can be extracted shall always remain the state property as *Waqf* in Islamic government and can be categorize as un-owned or unclaimed land.



2. The un-productive or uncultivable land, which is of not in use can be categorized as dead or useless. With the approval of the state this can be turned into useful or cultivable land, as a result of success, the person may become the owner of that particular land irrespective of the religion either a Muslim or a Non-Muslim. The land has been categorized in two, during Prophet time periods *Ghanimah* or conquered land and Fay land, *verse of Ghanimah*,⁷ *Fay land (the conquered land achieved without battle)*.⁸

The *Ghanimah* land was distributed among warriors (Conquest of Khyber) or reserved for public interest and remained entitled with the same owners as *Ahsan* (Conquest of Khyber) or given to other non-Muslims resettles. The Prophet (*SAW*) distributed 1/5th of *Ghanimmah* share to deserving, needy, orphans and passengers or said that the amount may be deposited in *Baytul-Maal* and could be used in welfare projects like constructing inns or new wells.

At the time of migration to the city of Madinah, Holy Prophet (*SAW*) distributed whole properties of *Banu Nuzair* among the Muslims of Makkah and Madina (*muhajreen* and *Ansaar*). Results in making foundations of *khalsa* lands (all rights of land were reserved with the attorney of the prophet).⁹

There are four main types of land entitlement in the early Islamic time period. Land owned by those who embraced Islam, Land owned by those who did not embrace Islam yet remained bound via an agreement with the Islamic government. Land owned by those who got defeated in wars; and finally, vacant land having no titlement.¹⁰

4. Types of Land Ownership

During the glorious time period of the Holy Prophet, an improved land entitlement system evolved into different categories, which are following:

1. **Fay' Lands:** Agricultural fields conquered in battlefields.
 - a. **Khassa** There are three types of *khassa* Lands:
 - (i) **Fadak**- the *Banu Nuzair* acquired land without a battle and was used for deprived travellers used as a stopover for Muslims.
 - (ii) **Safiya**-land that was divided among Muslim warrior as war booty by the Holy Prophet (*SAW*).
 - (iii) **Khums**- 1/5th of the war booty divided among the needy for their welfare.
2. **Hima** has been considered as common land in the pre Islamic period, a privileged land holding
3. **al-Iqtā**
In order to enhance to agricultural production, the ruler in the beginning of Islam used to allocate uncultivated land and divided it into two categories i.e. *Iqta Tamlik* and *Iqta Irfaq*.



- (i) *Iqta Tamlik*: Holy Prophet (SAW) granted land to sole proprietors as a private property according to Quran
 - (ii) *Iqta Irfaq*: Holy Prophet (SAW) granted land only to get benefits out of it, it is inalienable as long as it retains.
4. ***Ihya al-Mawat***: The concept of it is to bring life to dead and un-cultivable land irrespective of the religion of the landholder.
5. ***Bay Lands***: The literary meaning of bay is the saleable land both in the form of sale and purchase. The teaching of Islam authorizes five different types of land tenancy and those
 - (i) Free hold Tenure
 - (ii) Shared Tenure
 - (iii) Lease of bare land
 - (iv) Muzara Tenancy
 - (v) Labour Tenancy

Islamic law property rights are categorized into three further categories i.e a) Public, b) State and c) private. All Forests, pastures, rivers mines, minerals, oil and everything under the sea belong to public property. We can change the land entitlement from public or state land to private or public interest. Ultimately, unused land can be reverted back to the public in this regard; this proves that land usage and ownership of the land is interconnected. Private ownership of land rights are fully defined, this is especially so that Muslim minorities can also enjoy the same rulings. Islamic teachings have elaborated further the distinctive Islamic land tenure arrangements like *Milk* (private ownership of land), *Miri* (this type of land is state owned), *Waqaf* land (endowment land) and *Matruk* (land for common use). Some other categorization such as *Mehlul*, which is unused state land liable to be seized and *Mewat* land. Other communal types of land are *Musha*, which is based on collective ownership on custom and surroundings of the area.

5. Security of Tenure

Tenure can be comprehended in a variety of ways, depending upon the social norms cultural values and legitimate legal systems. Private property rights are well explained in Islamic laws to avoid any unrest due to property issues. Islamic values are further explained in the context of property transactions like *Wajib* (mandatory), *Mandub* (suggested), *Mubah* (allowable), *Haram* (forbidden) or *Makruh* (repugnant). In *Sharia*, the protection of assets are well defined in order to avoid unrest in the society e.g. codes of protecting life, private assets, mind, religion and offspring. Undisputedly, Muslim scholars agreed upon the five vital values of laws of Islam. The principles, rules and processes had shaped the Islamic laws in their true sense during the early centuries of the rise of Islam.



6. Factors Influencing Islamic Land Doctrines

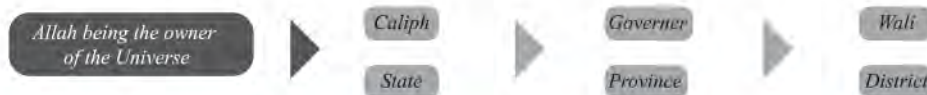
During the prophet’s lifetime (570–632) the morality surrounding property was largely made clear and affirmed, this was particularly because the Prophet (*SAW*) and his companions belonged to the traders and business class.¹¹ Holy Prophet (*SAW*), endorsed the right to property.

Land considered a valuable asset to the Arabs and it considered as a vital component of their personal esteem and honour. It is a status symbol as well as a sign of ancestral inheritance, tribal, national and religious identities. In many societies, Muslims take their name from the land they come from and considered. Life and asset of every Muslim is sacred.

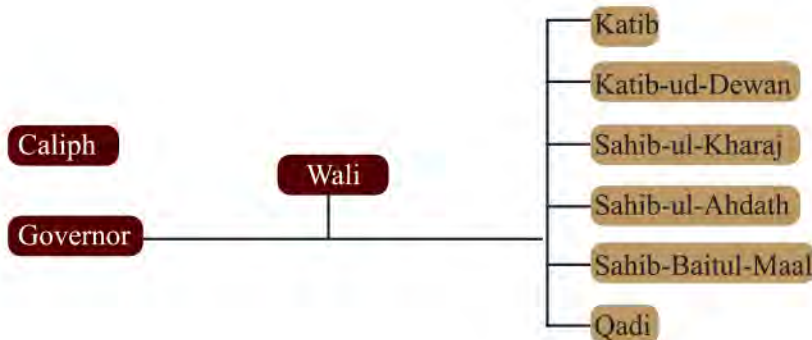
The next important era of Islamic History composed of the ‘rightly guided Caliphs’ i.e. Hazrat Abu Bakr, Hazrat Umar, Hazrat Usman and Hazrat Ali (632–61) and created a reasonable land tax organizations, Land as war booty was prohibited, land survey were developed and finally consolidated with Islamic principles and practices.

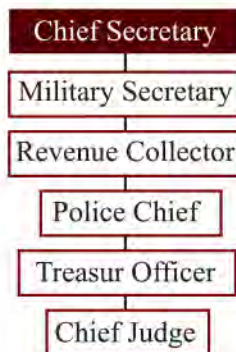
7. Expansion of Islamic Empire During the Reign of Hazrat Umar (*RA*)

The vast Horizon of Islamic state expanded and encompassed the Conquest of Damascus, Sidah, Irqah and, Beirut, Iraq, the 2/3rd defeat of Byzantine, the *Qadsiyah* battle, Persian conquest, Jerusalem and Egypt. A number of land reforms were made based upon *Quran*, *sunnah* and teachings of the Holy Prophet (*SAW*), and Islamic principles laid out by Hazrat Umar. Awliat-e-Umar was revolutionary step by the Caliph in the context of land reforms; tax reforms were imposed on Muslim and non-Muslim communities. Hazrat Umar (*RA*) formulated a number of reforms for the betterment of the common public, irrespective of their religion, in the field of agriculture, trade and commerce and *Baitul Maal*. He also established the administrative hierarchy within a short 10 years period.



8. Model of Administration





Military Department
Different Ranks
Cantt Areas
Fixed Salaries
Checkpoint
Appointment of Military Head
Military in Different Cities

Hazart Umar (RA) had placed Islamic Laws according to the teachings of Prophet (SAW) and his period is quite famous for land management in Islam. Later rules by Ummayyads (661-750) Abbasids (750-1258), Ayyubids (1171-1250), Mamluk (1250-1517) and Safavids (1501-1722) were unquestionable.¹² In the Islamic system private land rights were understood and promoted from Caliphate period. During the Ottoman period (1281-1918), highly developed land record methods, a particularly vibrant and extensive land market and land management system was developed.¹³

9. Role of Taxation

The Islamic theory of taxation¹⁴ defines the matters of land entitlement. The importance and procedures of taxation are well defined in Quran:¹⁵

1. Land owners converted as Muslims at the time of conquest remained owners and pay property tax named as *Ushar* in case of agricultural lands or The Muslims of Makkah, Madina, Taif, Yemen and Bahrain were permitted to hold their properties with them and paid Tax in the form of '*Ushar*'.
2. Landowners did not convert into Muslims remained owner of the particular land and pay tax to the state as *Kharaj*.¹⁶
3. Land could be taken away from the original owner and will be given to any other person on the basis of lease or rent at the time of conquest.

Furthermore, Muslim rulers and owners were authorized to deal with the land in the above three ways.¹⁷ Land in this way ceased being private property, which ultimately become part of the *Baitulmaal*. Thus creating land entitlement as a private and public, vesting the whole right to the Almighty Allah. Holy Prophet (SAW) however, sometimes exercised his authority to make *Hima* (exclusive enclosures) of lands in the collective interest of the community. For example, Holy Prophet (SAW) declared the land of *Naqi* as *Hima* for raising the gears of *Zakat*. Similarly, in the neighbourhood of Madina, Hazrat Umar made *Hima* of *Rabadhah* and *Sharaf*, i.e. common pasture grounds for the use of all.





Prophet (*SAW*) extended his control on the arable lands when Muslims conquered the agricultural land from Arab Jewish tribe. Moreover, Holy Prophet (*SAW*) set up the organization in Khyber and Banu Nuzair as well as in other conquered Jewish villages. With the above-mentioned action of Prophet, the jurists draw different viewpoint. Some of jurists are in of the view that Muslim can hold the conquered land. While the other school of thought is taking it as lands are the property of the state and that individuals can only have the right of working on them. Later jurists tried to ascribe to 'Hazrat Umar, the system of taxation and the body of land ownership. Many explanations suggest themselves for this policy. The available evidence points to the fact that this was done for two basic reasons:

- (1) To check and prevent Muslim conquerors from becoming absentee land lords.
- (2) To ensure main returns and rents for the state and the armed forces.¹⁸

There were different taxes in Hazrat Umar's Administration:¹⁹ *Jizya* (Indemnity or Defence Tax) *Diwan-al-Kharaj*, *Zakat* (Poor Tax) *Diwan-al-Zakah*, *Kharaj* (Land Tax) *Diwan-al-Kharaj*, *Ushar* (Special Land Tax), *Ghanima* (War booty), Income from the conquered places *Diwan-al-Jund*, *Ushoor* 10%, Residential Tax on non-Muslims and 5% on Muslim, *Reekaz*, Tax on land mines and treasure troves (*Kitab-al-Bareed and Diwan-al-Khathm*)

10. Islam and Land Cadastre, Registration and Titling

Development of appropriate cadastre system is one of the important challenges for the land administration system, which is the significant source of information, land entitlement and determination of land rights.²⁰ The cadastral measures in 30 to 50 Muslim countries exhibit some sort of dissimilarities but turning towards the development of new and improved modern cadastre system. The cadastre system is considered as a western concept but its example can be traced from Prophet Mohamed (*SAW*), when he suggested marking the collective lands with stone around the City of Makkah,²¹ Another example is fencing of the *Mewat* land to mark the land of individuals was common practice at that time. At the later stages, the land management system became important for resolving disputes of private property and state land for the collection of revenue for the running of state affairs.

The Ottoman rulers realized the importance of land information and management, with periodic surveys and reviews of expected tax revenues. During the Ottoman period, a land registration system was developed in the period of 1534–1634, extensive land information records (*Kuyud-u Hakani*) that has all the land related information. These land records system marked the names of villages and farms, landholders' names, an annual income of lands, land classifications, boundaries of public-use areas, the natural resources on the land, population and paid tax. Such guide of land registration is still existed in Ottoman archives. Besides this, other books are also available that provide more details on land holdings in a province e.g. marked boundary on the basis of certificates were issued to land owners having information of land tenure and crops.

The registration was not completed for the whole of the Ottoman territories, irrespective of its aspirations. Advantages of the Ottoman cadastre system are long lasting and proved to be the basis for the establishment of statistical data base record, accurate assembling techniques along with land entitlement in Egypt since the year 1907. In most of the Muslim counties such as Jordan, Algeria and Morocco after colonization, experimenting Torren system for land entitlement.



Several countries with Muslim minorities like Philippines received support worldwide and attained mixed success. In Muslim countries approaches towards cadastre or tiling vary, but there is nothing in Islam that goes against these attempts; indeed, the actual case is contrary to wider perceptions regarding this matter.²²

The original concept of the land being taken as a sacred trust indicates that division and protection of land rights must be distributed fairly. The number of beneficiaries as a result of Islamic land doctrine involve with land entitlement and ownership rights are irrespective of religion, cast, age and gender. In Islam, land ownership is established on the fruitful use of land, which is evident from the principles of *mewat* through reclamations. Though the system is well defined through the foundation of Islamic principles, different countries have adopted the application of these sophisticated land tenure system in different ways. For instance, in some countries like Pakistan, the Islamic land management system is not fully followed as the laws are taken from the British system.

Conclusion

Islamic contemporary elements of land entitlement and conceptions of land tenure have been discussed in this paper. The concepts of land entitlement and the development of property rights are undisputedly well established and considered important as basic elements of *shariah*. Land tenure rights are well defined and given protection on priority. All property rights are vested in Allah according to religious terms, it has never been doubtful that humans as owners (land created by Allah) assert the rights on specific land, according to the democratic concept of “*Sharia’s* laws.” Islam has shown the way to manage the land (management, disposal etc.) policies related to water and urban planning, Environmental protection and Land rights framework according to the Holy *sunnah* of the Prophet Muhammad (*SAW*). *Bayt-ul-maal* (state treasury in Islamic Society) has a specific obligation for provision of land to the landless individual. *Zakat* and other donations along with the taxes increased the state funds in Muslim *Ummah*.

The land management system in Islamic history can easily be traced and evidence of Islamic land management during the Ottoman period of land administration exists. Although, practically, there is no Islamic state where Islamic principles of land administration are implemented in their entirety as every country adopted the system according to their particular interpretation. There is no distinctive Arab or Muslim model of governance, but the concepts of *shura* and *adl* are however influential. Traditional Islamic practice may not have anticipated the nature of present day problems and purely Islamic solution of these problems may be an idealistic model. Legitimate and durable solutions can be provided through considering authentic Islamic contribution in various aspects of Islamic principles, mechanisms and processes.

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Rummana Khan Sherwani
University of Management and Technology, Lahore, Pakistan


Dr. Muhammad Asim
University of Eng and Technology, Lahore, Pakistan