

## The juridical-legal investigation of the right of property, creditor, plaintiff and defendant in Imam Sajjad Treatise of Rights

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### ABSTRACT

The present treatise, entitles "the juridical-legal investigation of the right of property, creditor, plaintiff and defendant in Imam Sajjad Treatise of Rights", has investigated the seeking of wealth, moderation in financial expenses, Khums position, the revival of zakat, the role of Zakat in Islam, the right of creditor, the payment of individual rights, judicial independency in Islam and the rights of litigants in Islam according to Imam Sajjad from the juridical and legal perspectives. In this study, Imam Jurisprudence and Iranian statute law is intended. The right of property, as an important issue affecting people's material and spiritual life, individuals' relationship in transactions and human rights in dealing with each other, can be also effective in individual's lifestyles and interaction with each other in case of dispute and fighting. Therefore, investigation of these issues from the perspective of one of the infallible Imams can guide the life practical movement of every Muslims. Addressing the issues mentioned above, from the juridical and legal perspectives, is useful for different classes, especially the judges and country executive officials. It is hoped that these efforts can express a part of Imam Sajjad Treatise of Rights written in critical situations of his time. The subject is original and this fine book was not ever seen from this perspective.

**KEYWORDS:** The right of property, the creditor, the plaintiff and the defendant

### 1. INTRODUCTION

Due to the judging disagreements in different communities, the different laws in jurisdictions around the world, the different dealing with human rights and the spiritual emptiness of divine laws in the courts of the world, the human legislation according to non-divine views has created many problems for the people of the world. In tyrannical reign, people are eager to achieve the rules emanating from the sources of revelation and the views emanating from the infallible people. Therefore, it is tried to water the thirsty spiritual soul of people with the pure words of Imam Zain al Abedin.

It is tried to answer the following questions at the end of this research.

1- What are the reciprocal rights of property and property owner according to Imam Sajjad and Islamic original sources?

2- What are the reciprocal rights of debtor and creditor according to Imam Sajjad?

3- Do plaintiff and defendant have special rights according to Imam Sajjad?

This research is a kind of analytical-descriptive research. In addition to library resources, it is tried to use scientific and research centers. In addition to these resources, sites and articles in cyberspace are also used.

The use of this research is essential for judges, court officials, courts and administrative authorities to deal better with people's rights.

It has great importance role in the realization of people legitimate rights and in informing different people with their legal rights

The most important resources used in this study include Quran, authentic interpretation, Nahjolbalagheh, description of Nahjolbalaghe, Imam Sajjad Treatise of Rights, different written description on Imam Sajjad Treatise of Rights and authentic juridical and legal books.

In discussing the right of property, wealth seeking, its positive and negative dimensions, moderation in financial expenses, Khums and zakat position, its role in removal of poverty from the Muslim community and the side issues will be investigated. The rights of the creditor, the people's rights and financial liabilities will be mentioned. The judicial independency in Islam, judges' independency as a developed principle in the world, careful inspection of judges' actions and avoidance of disputes and fights will be discussed.

### RESEARCH LITERATURE

Property and its types from the perspective of jurists and Iran rights

The term "property" has two meaning in the current convention.

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1. Limited material meaning: The object is said to be property which is the subject of trade.
2. Legal single meaning: It is the financial rights to use the material objects such as the ownership and demanding right [10].

### **The timely and proper use of wealth**

Obtaining the provision should not occupy all dates and hours of human life. It means that it is not suitable for people to spend their time to acquire wealth and to have the argument of "I'm trying hard for financial acquisition". Man has other duties, task and obligations in life. Spiritual needs must be met as well as physical needs. Therefore, the property right is that man should not spend all his time to acquire it.

Zakat and charity as two timely and proper uses of wealth will be investigated:

### **Zakat**

Avoiding the Zakat payment prevents the divine blessings and its payment and paying the obligatory financial rights leads to prosperity, blessings and mercy of God. Seventh Imam, Musa ibnJa'far has said that keep your property far from destruction by paying Zakat[12].

In another speech, Imam Ali, peace be upon him, has said that prayer and charity together cause the spiritual closeness and promotion. Those who grant charity with purity pay the atonement of his sins and actions as well as protect himself from punishment [12].

God has introduced the Zakat to reduce the man eagerness toward the material world and events. It is noteworthy that, in Repentance Surah, God has said that if your fathers, sons, brothers, wives, tribe as well as your earned property, your trade which you are afraid of its sluggish and your beloved houses are more favorite compared to God, His messenger and striving in His way, you should expect the God torment. Allah does not guide the disobedient population [1].

### **Infaq**

It is quoted from Amir Al-muminin, peace be upon him, that he says: If somebody spends his /her wealth in the way of Allah, Allah will replace it soon. [1].

Another important point is that if a person possesses a lot and does not spend them in the way of god, that person will not attain any goodness in this world and hereafter. The person, who collects his / her properties and does not spend it in the way of Allah or even for his /her personal gains, will not attain anything from that property.

Imam Hossein said : The best property is the one that human keeps his/her dignity by that [6].

If a person becomes materialistic and money-oriented, naturally he/she assigns the control of his/her idea, thought, movement and behavior to money and normally he/she will go out of moderation. The result is that when a person makes a mistake in discerning, he/she will give the control of his idea and thought to his/her instincts and tendencies instead of the real controller, and materialism, power, the instinct of desire and anger will rule the person and will get the person out of natural or routine way. This ruler will guide the person in a way that it wants. After that it is not important in which way the person goes, because the right humanity way is just one way and all other ways are wrong[13].

### **The effect of redeeming debt in law (contractual liability) by every debtor**

Every liable debtor has to pay all of the debt and cannot pay part of it. Or ask the creditor to split the debt. Because every debtor has to pay all of the debt and splitting the debt is not allowed. Paying all of the debt from each debtor causes acquittal of the other debtors. In fact, liability between debtors will be based on two fundamental bases:

A-First basis: creditor can ask from all of the debtors or one of them for part of the debt until he/she receives all of his/her debt. Nonetheless, he/she cannot ask something more than his debt because this issue is unfair and causes the creditor to own unduly[8].

B-Second basis: paying the debt, from each debtor causes acquittal of all the debtors against the creditor. Because there is just one debt and when paid, there is no cause for indebtedness. Even if each debtor pays part of the debt, it is acquitted from the others. So because liability has just one issue (location) so each debtor can pay the debt and acquit his/her self and others. Also we have to admit this issue in Iran's law because there is one debt that is obligated to two or several debtors, whether it is substituted or genuinely established. So paying from one of the debtors should cause acquittal of others[8].

### **Discharge of an obligation without redemption in order to acquit the right of creditor**

A-Substitution of an obligation: Substitution of an obligation is that one obligation is substituted with another obligation. With this act, the last obligation will be removed and the new obligation will substitute it. For instance, the last obligation that was paying cash could be substituted by something else like a few meters of cloth with the agreement between obligor and oblige. Hence the last obligation that was paying cash will be removed and the new obligation which is giving a few meters of cloth will be substitute it. Every one of the liable debtors can substitute the obligation through a contract and substitute another obligation .It is clear that a debtor, who wants to substitute his /her obligation, cannot obligate the other debtors without their permission. If the creditor does not gain other debtors permission for the new obligation, it is imagined that he/she has accepted a new obligation that is attained only by one of the debtors. In addition, the aforesaid debtor can just ask for the property of liable obligation and not the property of obligation substitution, unless they agree later with the debtors[14].

B-Set-off: set-off is paying the debt, the debt which is set-off, is performed and it should have the acquaintance of all the liable people. Hence, if one of the obligors acts as a libellee for reception of the entire obligation and to its set off adduces to the credit he/she wants from the claimant, the value of this defense will be adducible and useful for the others because it is as that one of the libellees has paid the debt [5].

C-Acquitting: The creditor will waive his/her debt with his/her authority. Or in other words, the debt waives by the creditor. If the creditor acquits one of the debtors for the entire debt, all of the liable debtors will be acquitted and the creditor does not have the right to ask them for the debt, because acquitting of one of the debtors is debt waiver. It should be noted that if the creditor waives the right to ask about one of the debtors, he/she does not lose the right to ask other debtors [15].

D-Prescription: In Iran's law in the rights of the civil procedures, in articles 731-769, the laws for prescription is mentioned, But prescription and waiver debt does not cause un-hearing but its essence depends on the basis which is regarded for prescription. Basically, they regard general system and presumption of waiver as two bases for prescription. On the basis of waiver, the debt waived and any one can be the owner of it after that. And on the basis of the general peace, judicatory and public forces does not support it. so on the basis of general peace, the right will not be waived [15].

### **The issues debtors should be aware of**

#### **1. Have the intention to pay the debt**

Imam Sadegh, peace be upon him, says: If a person borrows money from some body and does not have the intention to return it, he/she is like a thief [11].

#### **2. Being pauper, does not release the debt from him/her**

The debtor should be aware that debt will be never waived, it means that albeit he/she is pauper and not able and be a good and religious person, none of these are the criterion for waiving the debt. Even in the remarks about Shahid it is said that debt and financial right will not be waived upon him, because it is the right of people [9].

#### **In the state of being able, pays his/her debt**

In the adjudication of the scholars it is said that if a creditor asks his/her debt in the middle of the prayer of the debtor, the debtor has to break the prayer and pay his/her debt [19].

#### **The financial pauper should own public morals**

If the debtor is not able to pay his/her debt and is a financial pauper, he/she should not be a moral pauper too. It means that from the moral perspective, he/she should own public morals and askd for deadline with wit [6].

#### **Complainant and defendant in law**

On the basis of some definitions complainant is a person who waives from his/her claim, and the demand will be invalid. Against this is the denier. it means the person who his/her partner is silent and did not stop animosity, silence will be accepted otherwise silence is not accepted and should be responsible against complainant [4].

#### **Complainant's tasks**

Among the agreed rules in the issue of judgship is that evidence is upon the complainant and oath is upon the denier. Hence, it is necessary for the person who claims for debt or crime, to acknowledge his/her claim, because the basis is acquitting of the other party unless the reverse will be proved. Of course this doesn't mean that acknowledgment is not accepted from the denier; because in some of the cases it is accepted from the denier and it is on the cases that denying of the claim does not lead into other things. For instance, a woman might claim that a person is his legal husband, but the man denies and acknowledges that somebody else is her legal husband [2].

#### **The conditions of the defendant**

1. Maturity or sanity of the defendant. Hence, if the defendant is not mature or is insane, complainant can bring a suit against his/her avenger.

#### **2. The defendant should be distinguishable**

Hence, if the complainant brings a suit with doubt among two people for example if he/she says that: I want this amount of money from Hassan or Hussein, his/her claim is not accepted.

The presence of defendant is not a need for hearing the claim and claim can be heard with the absent defendant [3].

#### **Defendant's reactions:**

##### **1. Silence**

If the silence of defendant against the claim of complainant is of excuse, as that he/she be dumb or frightened, the judge will clear that excuse regarding the conditions; but if the silence will not be because of excuse, the judge will encourage the defendant to response.

If the silence continues, it is disagreement regarding whether he/she should be arrested or if the judge for enjoying good and forbidding wrong, imposes strictness upon him/her or the judge threatens he/she for returning the oath to the complainant. in this means that the judge says: answer otherwise I will consider you as denier of the oath and return the oath to the complainant and in this way with the resistance of the defendant and continuation of the silence, the judge makes the threat practical and after the swearing of the complainant, judges in favor of complainant or after the strictness on defendant and resistance of silence, the judge threatens him/her.

2. Denying the knowledge: if the response of the defendant is of denying awareness and that I don't know whether this claim is right or wrong, the judge asks from the complainant whether he/she acknowledges or denies the defendant on the basis of the non-awareness of the claim?

If he/she acknowledges, the claim will be accepted with the evidence, and also if the complainant says that I don't know whether defendant really knows or doesn't.

But if the complainant says that he/she pretends that he/she does not know otherwise he/she knows the reality, the complainant can swear the defendant on denying of the knowledge. In this case, if the defendant denies to swear and returning swear to the complainant, the command will be performed against the defendant and if swears, the command will not be against him/her. But with his swear, the claim will not be waived but the case will be temporarily canceled until the complainant can bring evidence for his/her claim.

3. Rejection: if the response of the defendant against the complainant would be rejection of the claim, the complainant should bring evidence and on the basis of the evidence, the command will be in his/her favor, and if he/she does not bring evidence the defendant will swear and at the end the claim will be waived and the complainant cannot ask for his right again or even avenge from the defendant. Actually in the case of the false swear of the defendant, the obligation will not be acquitted. And if the defendant dishonors swearing with judge ask, the complainant will swear and the claim will be recorded. And if the complainant dishonors swearing, the claim will be waived.

4. Confession: with the confession of the defendant regarding the complainants demand, and if the conditions of accuracy of the confession will be available, the defendant will be recognized liable and the case will be dismissed [4].

The right of plaintiff and defendant from Imam Sajjad's point of view

The right of your plaintiff is to believe his reasons and complains and you by yourself act as a judge and consider his/her right, because its Allah's right on you. Try to talk compassionately and gently with him rather than swearing him loudly, since inadmissible talk makes him/her your enemy.

Indeed you should listen carefully to his/her claims. In spite of talking softly, give your reasons to him/her. There is no power, except Allah [13].

### **The right of one claimed a right**

#### **1. Speaking good words**

Imam said that there is violence in claim, thus the quarrel will never finish if you show virulence in return. Although you gain your right, but hatred continues. So the best way is to speak calmly and kindly with each other and do not forget good words [7].

#### **2. Preventing violence and extremism**

Imam Ali said that the right owner has superiority and should not lose his/her proof with anger, so that would not be able to compensate.

He also has another beautiful quote:

Set aside anger, think about your proofs, keep yourself away from futile affairs, and avoid small talk, because if you keep your calmness you will not piffle and finally get a good result [1].

Maybe the plaintiff is an able person and wins the tribunal, nevertheless the property should not be angry and tries to be calm and think about his/her reasons. The power is inconstant, but the proof and reason are constant.

#### **3. Absence of false claims**

Imam Ali says:" Fear from Allah because of your false claims, so repent and release yourself from quarrel and conflict, because it hurts your faith and your life" If plaintiff's claims are false because of his/her benefit [16].

#### **4. Avoiding dispute and its effects**

The late Majlesi quote from Khesal that Imam Ali says:

Avoid from enmity with others, since they are two groups: ever they are wise people and in their enmity act intelligently and involve you, or they are unwise and trap you hastily. Animosity begins with mutual dispute. Your speech is male and your respondent' is female. The born named animosity. Thus try to keep away from ugly words [17].

It is obvious in today's tribunals that the root of some animosities is the premium speeches which end with major quarrels. If one wants others benefit, he/she will never begin a dispute. As Imam Sadegh says:" if a believer has a bad intention toward another believer, although doesn't show apparently, Allah will not accept his prayers [11].

### **Reformation in Islamic community**

Reminder is an important issue and it's a right that two sides of the quarrel have on have on others. The point is that when a quarrel occurs others are responsible to make peace between two sides, and if one side reject, so they must establish justice by force.

If two tribes of Muslims make war against each other, then you have to make peace between them. If one rebelled and ignored peace, then fight with him and establish the right and behave fairly with them.

Its Allah's command that charge Muslims to be not indifferent in quarrels, and help each other in resolving conflicts, overcoming hostilities and establishment of right. Thus do not rely on resolving the animosity between two sides and attempt for establishing the right [18].

Allah says:" Muslims are brother with each other, so if there is a gap between you, rebuild it and fear from Allah to be loved by Him [18].

Disregarding the order of improving the interpersonal is against virtue. Both verses remind the necessity of peace and brotherhood. It means that He knows brotherhood as a base for peace, because it's unlikely that two brothers behave with animosity with each other. Naturally two brothers share their benefits and loss. Muslims are brother and should not quarrel against each other.

Importance of social reformation in narrations

In addition to Quran's verses, there are valuable narrations from prophet's households that emphasize the importance of interpersonal. Infallible Imams in their words obliged and encouraged Muslims to reform interpersonal.

Late Koleini quote a narration from Imam Sadigh in OsoulKafi:" making peace between people is a charitable act that Allah likes" [11].

He quotes another significant narration:” the husband of my sister and I had a disagreement about heritage, and Afzal ibn Omar came to us and said to go with him to his house. He made peace between us with 400 dirham, and reminded that it’s not mine, but Imam Sadigh ordered me to make peace between Muslims and Shiaayan with this ransom if there was a quarrel between them [11].

The interpretation of ransom in here is noteworthy. It means that you buy Muslims and Shiaas and make them free. Ransom is used for buying slaves and making them free, but here means that you make free a person who is a slave of quarrel.

Therefore the reformation of interpersonal is emphasized by sacred law. The important point which exist in Imam Sajad’s point is that he states the rights of two sides of quarrel in a moral way that do not occur any dispute. If dispute occurs they instruct two sides in a way that put an end to their quarrel. Speaking in a gentle mood is the best solution for two sides of quarrel in order to resolve their problems and making peace between them.

#### **Hypothesizes**

1. It seems that gaining Halal financial and paying the determined lawful right of finance is most important point from Imam Sajjad’s point of view.

2. Payment of creditor’s right and no delay in payment is an important right of creditor from Imam Sajjad’s point of view.

3. The right of anger on you is to do not break your convenient and do not witness against him.

#### **Research methodologies**

This research is a kind of analytical-descriptive research. In addition to library resources, it is tried to use scientific and research centers. In addition to these resources, sites and articles in cyberspace are also used.

## **CONCLUSION**

#### **Property and its rights**

Man should use Halal (legit) and proper ways to make money and spend it. Payment of the divine rights such as Khoms, Zakat, lending and charity, payment of the material rights such as helping the oppressed and poor people to meet their needs, spending the property in the direction of public affairs (especially in disadvantaged areas) and using the property in a way that is pleasing to God will fulfill the right of the property which is the simple interpretation of acquisition and use of it. The property must not be a mean to commit a sin. The result brings goodness in this world and happiness in the hereafter. It doesn’t bring any regret after death or inheritance for ungrateful people.

#### **Creditor and his rights**

The creditor has some tasks and rights which are interdependent to each other. It means that performing the duty accelerates the right fulfillment and vice versa.

According to the original sources of Islam, if we are in the place of debtor, we should fulfill the rights of creditor since it is the people right. According to narrations, God does not forgive the deprivation of people right. It should not be delayed in paying his right. If possible, we should pay the debts on time not to make the creditor waiting. We should speak with creditor in a proper manner. In case of inability to pay, we should ask the creditor more time. We should not behave badly if we take his property. These behaviors indicate the miscreant of debtor. We should know that the power belongs to God. We should pay all our attention to God.

#### **Plaintiff and his rights**

In terms of plaintiff, his rights and the way to achieve it, we reached the conclusion that the defendant must not break the reason if the plaintiff tells the truth. He should not try to show his/ his client false claim as being true. The heavier task of defendant is that, if the other side has the right, he should testify against himself in plaintiff favor. The plaintiff and the defendant should avoid chattiness and insulting which brings more hatred and evil. They should have good words.

#### **The defendant and his rights**

Among the agreed rules in the issue of judgship is that evidence is upon the complainant and oath is upon the denier. Hence, it is necessary for the person who claims for debt or crime, to acknowledge his/her claim, because the basis is acquitting of the other party unless the reverse will be proved. The reaction of the defendant in the statement of claim has four modes: (Silence - knowledge rejection - denial - confession). These reactions bring some duties as follows.

a. When the defendant is silent despite the judge threatening, the plaintiff should swear and the sentence is to be given in accordance to this.

b. In case of knowledge rejection by defendant, the plaintiff is asked about accepting the unawareness of defendant or not. In case of authentication, the plaintiff claim is accepted. In the absence of authentication, defendant swears to prove his knowledge rejection.

c. In case of claim denial by the defendant, the claimant must bring reason about his demands. The judge rules in his favor on the basis of reasons.

d. In case of the confession of the defendant towards the plaintiff demand and the accuracy of confession situation of the defendant, the case is closed.

Finally, it is concluded that the defendant should answer or defend his rights by good words. He should avoid violence. He should present his reason smoothly and quietly without screaming and fighting. He should be modest in front of the great God and avoid the lie. He should rely on God to solve his problem and to resolve the claims.

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