

# The Causes of Establishing Easement in Islamic Religions

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### Abstract

Easement right is one of the vital/essential life issues which are used in human exchange and livelihood affairs. So, sometimes people notice of others requires and helps them to so soft their roughness. There for what are the causes of easement in Islamic religions jurisprudence? In an article such present one tried to have a word talking about causes of easement which refer to these opinions of five great Islamic jurisprudent that will indicate sameness or difference of their religion. One can imply refer to public participation 'deal 'free easement 'legacy' heritage or other tools to create easement' an article like this can help jurisprudents and lawyers to make a law condition and pave a way to solve their problems or problems like these.

**Key words:** right, easement, causes of creation, Imamieh, Sunnite.

### Introduction

What more than all lead to vitality of this research 'it is obtaining the basis and aware of causes of easement right that regarding it one can easily decide or deduct about mentioned topics and more than all application of this right in Islamic community and equivalency of issue will pay to importance of such activity and will give a main help to lawyers and law makers to apply this issue and there isn't any same quarrelling in Islamic books .

### The causes of establishing easement in Islamic religions

The easement right creates with an element which is different in Islamic religion jurisprudence but the main elements are mentioned in this research.

### **First cause: public participation**

The aim of public participating in easemental right is benefiting that all the people totally–balance benefit of it. Like seas, rivers, high ways, channels, and Channel Rivers and something like this that end to public use and every one and according to the nature has the right of benefiting of theme. Water at huge rivers like Forat and Nill that nobody interfere on streaming it and it is belong to all of the people (Almosavi Khomainie, 2006; Alhaly, 2006). All of the Sunnite jurisprudent as the same as the imameie jurisprudents are the same opinion (Alkesani, Alaedin, 1988; Alsharbini Alkhatib, 1958; Ebne Ghodame, Movafagh Adin, 1958), so easily can say this is one of the public participation for all of the people.

Imamie says: general way is a way which ended to permit and all of the people have the right of passing from it. And all of the people have the equal right and no one has the right of specializing and of it (Almosavi Khomainie, 2006; Alkhoei, 1989; Alnajafee, 1990). Ahl Sunnite as Imamie is on the same idea. So passing animals, car or establishing shopping mall in such ways is acceptable (Al-Zoheili, 1988; Alsharbini Alkhatib, 1958) so farming land which is connected to a public way the landlord has the easement right or the light of easement and also all of the farming lard which are connected to public way (Al-Dameshghi, Al-Navi, Abizakaria, 2008).

### **Second cause: exchange**

The easement right can occur as the same as exchanging contract. So exchange of easement right for people existence which is mentioned beneath:

#### **First: watering right**

Jurisprudents have the comments about establishing the easement of watering right according to exchange which is mentioned blow: based on Imameie when a man has a partner or partness and about using water one can sell or rent and painters cannot prevent of that (Al-Ghomi, 2008; Almosavi Khomainie, 2006; Alhaly, 2006). So in Imameie Jurisprudence it look as if that person can transfer or give his easement right to another one based on conditions which are mentioned in contract. Hanafite accepted selling the watering right according to condition of the land and expect the watering right it accept the savage or animal watering and it isn't accepted singularly and it should be based on land (Alkesani, 1988). Maleki and shafiite and hanbalyes accepted the buying watering right independently and they account human free and authored about selling his possession and giving it is praiseworthy for 8 people (Altanukhi, 1902; Alsharbini Alkhatib, 1958; Al-Zoheili, 1988; Almordavi 1934; Al-Gharnati, 2008).

**Second:** executive administrator

Some of the Imameie jurists estimate executive buying right (Alnajafee, 1990; Alhaly, 2008). And some of them don't estimate it right. And they don't estimate right compromise and renting it but should clear the item of water stream and long and width and the period of execution and administrative (Alhaly, 2008; Alhaly, 2008; Alnajafee, 1990). This is the Shafiite idea too (Alsharbini Alkhatib, 1958). The executor easement based on exchange contract and renting is accepted according to Hanbalyes (about buying of executor right there is no exact in Hanafite religion. But if executor sells the clarification of executor depth is not the keystone (Ebne Ghodame, 2008). So it looks as if that executor easement right will be correct and meaningful by exchanging contract.

**Third: aquae immittendae**

Jurists have different ideas about establishing the easement of flood way with exchange contract. Imamie account invalid the buying of flood way. Because it's a public topic but compromise and renting this is accepted by mentioning the period and length –width and depth of flood way (Alnajafee, 1990; Alhaly, 2008).

There are two speeches among Sunnite jurists:

**First speech:** non-certified the buying right of flood way whether ground of flood way be roof or on the ground and this is the speech of Hanafite (Ebne Abedin, 1272).

**Second speech:** Shafiite and Hanbalyes are absolutely accepted the buying or rent of flood way right (Al-Dameshghi, Al-Navi, 2008; Alsharbini Alkhatib, 1958; Ebne Ghodame, 2008).

**Fourth: passing right**

The establishing easement in passing in the others land verifies with exchange contract freely and this is the idea of the majority of jurists (Al-Dameshghi, Al-Navi, 2008; Alsharbini Alkhatib 1958; Altanukhi, 1902; Al-Amoli, 1414).

**Fifth cause: vicinity right**

A: neighborhood side: Imamie estimate accepted laying end of beam on the other wall with contract or compromise or borrowing and the condition this is that both sides should satisfy each other but some estimate it right based on of during contract buying (Almosavi Khomainie, Rouhola, 2006; Alhaly, 2008; Al-Ghomi, 2008; Alhaly 1968). Shafiite and Hanbalyes accepted of neighbor's wall by contracting or exchange. Whether easement to hold building on wall or lying beam on neighbors wall (Alsharbini Alkhatib 1958; Ebne Ghodame, 2008).

B: upper side apex: about establishing easement right of apex side of others land with contract or exchange we express other jurisprudent's ideas:

In the Imamie jurisprudent easement of buying is a certain part of apex side which is accepted (Alhaly, 2008).

In the Sunnite jurisprudent there is different speech:

**First speech:** buying the apex side is absolutely accepted in Hanbalys religion human can sell upper and down floor of his house by describing structure and easement rate and what has used in structure (Almordavi, 1934h.gh.); and this Malekie idea too (Altanukhi, 1902).

Shafiite says: if upper floor with down floor which is not basic it's buying is not accepted (Alsharbini Alkhatib, 1958).

**Second word:** Hanifite and Mazani of shafiite absolutely restraint the apex side (Al-Mozany, 2008; Al-Kasani Al-Honfi, 1897). So one can say apex side is from elements of establishing the easement right.

### **Third cause: free of charge (Tabaroe)**

There's difference among jurisprudent's about certificated easement right of free charge (Tabaroe); so when a person gives the right permission of easement right to else one, for example as a borrowing. He established the easement right which is charge less (Tabaroei). For example in an Imameie religion laying a beam on the else wall as a borrowing or compromised out of /free from spend is accepted. This is emphatically praiseworthy by Imamie .so by this way one can establish the easement right of his self- wall. The different of ideas of jurisprudent's is about referring to borrowed item which mostayer broke of this referring (Almosavi Khomainie, 2006; Alhaly 1968; Al-Ghomi, Ali Ebne, 2008). Hanbalys and Shafiites are in the same idea (Alsharbini Alkhatib, 1958; Almordavi, Alaedin, 1934; Ebne Ghodame, 2008). So it looks as if lender by lending that it's itself a kind of buying Tabaroe give easement right of his land to other and this is one of the establishing easement rights.

### **Fourth cause: inheritance (legacy)**

Easement right unify by heritage .so when someone died his possession will back to his heritage it is easement right in casual /surface look. In the Imamie jurisprudence the right of executor and floodway and watering is transferable by heritage and it is from elements of easement right. So when a person in the dead landlord dig a well or make a spring or water way it's land lords can transfer/move it to other as an in her it or as a forcible or as a possessing as buying compromise and else kind (Almosavi khomainie, 2006; Al-Toosi, 1972). Hanife and Malekie are the same idea (Altanukhi, 1902; Al-Zoheili, 1988). According to Hanife easement right which is separately to heirs or inheritocs will prevent /restraint of this easement right (Al-Kasani Al-Honfi, 1988).

### **Fifth cause: bequest (testament)**

Human can bequest to easement right and after die pass away transfer or move it to bequernted persons as imply to Imamie jurisprudence bequest of possession is correct as an one 3th of what remained which is kind of easement right such as watering or executor right (Al-Toosi, 1972). Zahili says: bequest to benefiting of easement right is correct in religions of Sunnite like bequest of a man about passing water of his land for having the watering right (Al-Zoheili, 1988). So one can say one of the elements of establishing the easement right is bequest to this wills.

### **Discussion**

According to researches and surreys which had been occurred during an article such this after derive and easement of all of the religion jurisprudent their summary of their speech below dwindle the question which lead to writing this article what is the establishment of easement right which ended to dwindle of such right? In this article merely paid to elements of easement right and possible deduct is easement right will establish with elements and people that this ground established for him and benefit of it and in public participation such as exchange. Tabaroe heritage bequest land possession of land mentioned which are included of easement right.

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