



**PRE-EMPTION AND WAQF:  
THROUGH THE EYES OF AYN RAND  
AND HER THEORY OF  
OBJECTIVISM**

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This paper talks about the topics of pre-emption and waqf in Muslim family law and how they would or would not relate to the philosophy of Objectivism developed by Ayn Rand. Pre-emption and waqf are very important topics in contemporary times because they have the ability to play a role in today's economic atmosphere as these two concepts decide where and to whom the property of a Muslim gets transferred to. These topics also have a historical significance because they are being carried on from a long time and are ancient in nature. This paper explores the topics of pre-emption and waqf through the perspective of a philosopher named Ayn Rand. The aim of the paper is to realize how relevant and applicable the concepts of pre-emption and waqf are when they are looked at through the eyes of a philosopher of Objectivism. The linkage of this specific topic with the theory of objectivism reveals how un-important the institutions of pre-emption and waqf are. The crux of this paper will be towards providing analysis as to how the institutions of waqf and pre-emption are irrelevant.

Pre-emption can basically be defined as a right of substitution. It is given by a custom, statute or a contract. This topic is relevant to Muslim law of succession. A pre-

emption right, right of pre-emption, or first option to buy is a contractual right to acquire certain property newly coming into existence before it can be offered to any other person or entity<sup>1</sup>. The main concept of this right is that when a Muslim owner of an immovable property dies, then the property is divided among successors. If they sell to outsiders without first offering the property to other successors, it would lead to the entry of strangers into a part of joint family estate. This may result in inconvenience and difficulties. This right basically imposes a limitation on the owner of the property in regard to the fact that he cannot transfer the property to the person of his own choice because he has an obligation to sell to others.

The literal meaning of the word waqf is 'detention'. In terms of Muslim law, it means detention in the sense that a property is donated for religious and charitable purposes. A waqf, is an inalienable charitable endowment under Islamic law, which typically involves donating a building, plot of land or other assets for Muslim religious or charitable purposes with no intention of reclaiming the assets<sup>2</sup>. When the waqf comes to effect, the property is tied up in the name of god and then cannot be transferred to anyone. The institution of waqf is legally enforceable. A waqf is created when a Muslim person donates property in the name of Allah for charitable purposes. The ownership of the property is given to god till time immemorial and once the property has been transferred, it becomes inalienable. All the proceeds/income received from the property

<sup>1</sup> Garner, Bryan A., Editor-in-Chief (2009). *Black's Law Dictionary*. St. Paul, Minnesota, USA: Thomson Reuters. ISBN 978-0-314-19949-2.

<sup>2</sup> "What is Waqf - Awqaf SA". [awqafsa.org.za](http://awqafsa.org.za). Retrieved 29 March 2018.



are used for religious and charitable purposes. The donor has no return investment or incentive; the donor is just supposed to do this act on behalf of his goodwill with the hopes of becoming a 'good' Muslim.

The topics explained above are going to be analyzed with the theory of objectivism. Objectivism is a philosophical school of thought created by the writer and philosopher, Ayn Rand. Ayn Rand was a Russian-American philosopher and writer. She is most well-known for developing the system named objectivism and her two best-selling novels, *The Fountainhead* and *Atlas Shrugged*. Leonard Peikoff, a professional philosopher and Rand's designated intellectual heir,<sup>3</sup> later gave it a more formal structure. Peikoff characterizes Objectivism as a "closed system" that is not subject to change<sup>4</sup>. Ayn Rand introduced the concept of objectivism in her book, *The Fountainhead* and gave it an organized structure in *Atlas Shrugged*. Rand advocated reason as the only means of acquiring knowledge and rejected faith and religion. She supported rational and ethical egoism and rejected altruism. In politics, she condemned the initiation of force as immoral<sup>5</sup> and opposed collectivism and statism as well as anarchism, instead supporting *laissez-faire* capitalism, which she defined as the system based on recognizing individual rights, including property rights<sup>6</sup>.

Rand described Objectivism as "the concept of man as a heroic being, with his own happiness as the moral purpose of his life, with productive achievement as his noblest activity, and reason as his only absolute"<sup>7</sup>. She believes in the idea that human values and knowledge are objective. Rand characterized Objectivism as "a philosophy for living on earth", grounded in reality, and aimed at defining human nature and the nature of the world in which we live<sup>8</sup>. The main concept behind this school of thought is that every person should work for his own interests. A person's only moral goal should be his/her own happiness. Rand also argues that all of this can only be achieved through a full sense of individual rights which can only be brought about by a system of *laissez-faire* capitalism. She believes that individual freedom can only be completely achieved in a free market economy. This theory also rejects the concepts of faith and religion. One of the most major principles of this school of thought is that of rational egoism. This concept states that it is completely rational for a person to maximise his own self-interests and not work for the benefit of anyone else. The view is a normative form of egoism<sup>9</sup>. According to Rand, it is irrational to act against one's self-interests. A person's own happiness should be the final goal of his/her life. She believes that an ideal person can only function in a system which is free, rational and productive.

<sup>3</sup> McLemee, Scott (September 1999). "The Heirs Of Ayn Rand: Has Objectivism Gone Subjective?". *Lingua Franca*. 9 (6): 45–55.

<sup>4</sup> Peikoff, Leonard (May 18, 1989). "Fact and Value". *The Intellectual Activist*. 5 (1).

<sup>5</sup> Barry 1987, p. 122; Peikoff 1991, pp. 309–314; Sciabarra 1995, p. 298; Gotthelf 2000, p. 91; Gladstein 2009, p. 46.

<sup>6</sup> Gotthelf 2000, pp. 91–92; Peikoff 1991, pp. 379–380

<sup>7</sup> "About the Author" in Rand 1992, pp. 1170–71

<sup>8</sup> Rubin, Harriet (September 15, 2007). "Ayn Rand's Literature of Capitalism". *The New York Times*. Retrieved September 18, 2007.

<sup>9</sup> Baier (1990), p. 201



Rand believes that human beings possess a unique ability of consciousness which enables them to choose and think for themselves. Therefore, an individual's reasoning power is directed by the basic means of survival. Each individual should find out what is good for them and must maintain a right course of action to continue existing. All of a person's actions should be directed towards his/her final goal.

Having deeply explained the relevant concepts, the paper will now analyse the institutions of pre-emption and waqf through the eyes of Ayn Rand and her theory of objectivism. The first topic that will be taken into consideration will be that of waqf. Rand and her school of thought of objectivism clearly negate religion and therefore, the concept of donating land in the name of religion and god is completely rejected by her theory. Rand has also advocated a full sense of individual rights and laissez faire capitalism. This means that the ownership of property should be private to achieve the most efficient and beneficial results from the property. The concept of efficient use of land is largely based on return investments which the owner might receive through proper use of the land. If this is looked at through the lens of objectivism, then donating land in the name of god and expecting nothing in return would lead to inefficient and ineffective use of the land. Rand's theory also states that people would not seek to improve the condition of the land/property unless they themselves have a stake involved in it. This can also be used to tackle the institution of waqf in the sense that no one person privately owns the property and hence no one has an obligation to maintain the property in its entirety or make improvements to the

property for better incentives and return investments.

One of the theories most relevant to waqf is the theory of rational egoism used by Rand in explaining objectivism. The principles of rational egoism are completely against the institution of waqf because rational egoism pushes a person to work only for his self-interests, whereas, all the principles of waqf revolve around a person wilfully and voluntarily transferring his/her property in the name of god, to be used for religious and charitable purposes only. This way, donation for religious purposes does not give any signal about a person working for his/her self-interests. The institution of waqf can also be critiqued by comparing it to the morals and principles of the protagonist of the novel *The Fountainhead* written by Ayn Rand. The name of the protagonist is Howard Roarke. According to Rand, he is the portrayal of an 'ideal' man. He had egoistic moral values, especially when it came to the topic of integrity and independence. An 'ideal' person like Howard Roarke would never give his property for charitable purposes because there is no personal benefit involved in that process. Another aspect of objectivism which can be used to tackle the institution of waqf is individualism. Rand considered individualism to be better than collectivism and the theory of waqf is completely related to collectivism i.e. everyone working for each other. The creation of waqf results in one person donating their property in the name of religion, so that the property or the proceeds from the property can be used for charitable purposes. The theory of individualism completely rejects this idea and propagates the principles of rational egoism which state



that individuals should always maximise their self-interests and prioritise themselves over others. Rand indicated that the primary theme of *The Fountainhead* was "individualism versus collectivism, not in politics but within a man's soul"<sup>10</sup>.

The theory of objectivism can also be used to show how the right of pre-emption is violative of individual rights. If an owner of an immovable property wants to alienate the property, then the right of pre-emption forces the owner to first offer the property for sale to his co-heirs or neighbours for example. This whole concept goes against Ayn Rand's philosophy of objectivism. The right of pre-emption takes away the owner's individual choice of selling the property to whomsoever he/she wants. This restricts the personal liberty of a person and hence it is detrimental to his/her interests. The theory of rational egoism also applies here; if a person is forced to sell to a specific person then that person will not be able to sell according to his/her own choice and interests. If the person is not selling according to his interests, then it will not be for his best-interests. This also does not sit well with the principle of individual rights.

A person should always be looking out for his/her own interests and their priority should be their own happiness and this cannot be achieved through a system which forces people to sell property only to specific people. The idea behind pre-emption is to restrict the entry of strangers but this is against the principles of capitalism which requires free movement of property. Another aspect that can be considered is the non-monetary favours that owners might receive

by alienating property to buyers of their choice. For example, a seller may receive some extra benefits and incentives by selling a property to a very rich and famous person, compared to selling the property to a farmer. If a person is forcefully restricted from receiving those benefits by way of the right of pre-emption, then that person would not be able to maximise his self-interests and this would also harm his/her individual rights. This, according to objectivism would not result in proper functioning of a person or the society. If the right of pre-emption is forced on the protagonist of the novel *The Fountainhead*, then he would not be able to function properly and his identity of an 'ideal' man would be lost. All these above mentioned reasons show how pre-emption would not be a good institution if looked at with the theory of Objectivism.

Therefore, this paper has proved how the institutions of pre-emption and waqf are un-important and can bring deterioration and ruin to the economic atmosphere and also to the overall lives of people because they are restricted from exercising their individual choices. Individual choices are very important if a society has to function properly. Although it is true that the issues in contention might have some advantages, but the theory of objectivism will critique these issues because they go against the basic principle and the core values of that doctrine.

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<sup>10</sup> Rand 1997, p. 223