



Application of Qa'ida Al-Kharaj Bal Daman (the Warranty Rule) in the Chapters of Islamic Jurisprudence and Law

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Abstract

One of the most important and practical rules in the field of fiqh and Islamic law is the rule of "Al-Kharaj Bal Daman". It means that any person who loses property belongs to him, the benefits of that property also belong to him. Narratives, fatwa fame, induction, and the concentration of rational people is one of the reasons for the validity of this rule. There are different opinions about the meaning and scope of this rule. It has been stated by the jurists of different religions that the consensus of opinion in their opinions leads to the conclusion that any person. The guarantee with the property is under his responsibility, provided that it is accompanied by the approval of Shari'ah, the benefits of that property belong to him. In this case, the scope of the rule includes correct contracts and even incidents, but It does not include usurpation and corrupt contracts. In this article, in a descriptive and analytical way, the issues of comparative study between the views of Islamic religions were studied. This article briefly showed us what opinions are around the rule in each religion. Al-Kharaj Bal Daman has existed and definitely, such comparative studies have a great impact on the unity of religions.

Keywords: *Abscess; Guarantee; Jurisprudence; Connected Benefits; Separate Benefits*

Introduction

Al-Kharaj Bal Daman rule is definitely one of the practical rules in the field of jurisprudence and law, and since Daman (guarantee), acceptance of responsibility and obligation to compensate damages are important jurisprudential and legal issues, the examination of this rule becomes more important.

We will find This rule is based on Shariya's narrative, which is quoted in Amma (popular) narrative sources. in Imamiyah narration sources, this narration is not only narrated in book of Awali Al-Laali Al-Azizia in Religious Hadiths and Mustadrak Al-Wasail.

The rule of Al-Kharaj has mentioned in many books of Imamiyyah jurisprudence, such as: al-Mubasut fi fiqh al-Imamiyyah, al-Khilaf. And the Tazkaratol alfoghaha, are fatwa documents. In addition, this rule is a rational rule and one of the basics Its validity is the concentration of rational people. Without hesitation, rational people consider profit and benefit in exchange of accepting risk.

There is a difference of opinion among the jurists of different schools of thought regarding the scope of the implementation of Al-Kharaj **Bal Daman** rule. In general, there are several basic possibilities regarding the implication and scope of the rule's implementation; Some jurists of customary interpretation and others.

Others have provided a governmental interpretation of the meaning of the narrative.

Some other jurists consider the meaning of narration to be general and absolute, and in this case, the scope of the rule includes all valid and corrupt contracts and even usurpation. And some others consider the implication of the narration to be special, in which case, the scope of the rule only includes cases It can be approved by the Sharia. This rule refers to the correlation between benefits derived from objects and guarantees. And one of the important pillars of this rule is the guarantee.

The First Speech: Examining the Meaning and Concept of Qa'ida Al-Kharaj Bal Daman (the Warranty Rule)

For a better understanding, it is necessary to carefully examine the words used in the rule of al-kharaj under guarantee. Therefore, in this chapter, the key and practical concepts of Al- **Qa'ida al-Kharaj Bal Daman** are explained.

A: Al-Kharaj

1_ Terminology of Kharaj

For the phrase kharaj, various meanings have been stated in the dictionaries, which is this speech we will mention these meanings.

The word kharaj originally consists of "kh, r, j" and its plural is akhraj, akharij and akhrajeh¹. Ibn Manzoor According to Ibn Athira, kharaj (abscess) is defined as follows: " abscess is what is meant by "grain" 2 Something that has external existence and be obtained from the sold³

Zubaydi and Ibn Fars equate the meaning of the word "Kharaj" or "Kharj" with the meaning of "Ettawah"⁴

Zabidi in the definition of Kharaj says: "The benefits that are obtained from people's property in a certain amount and during one year, they say Kharaj or Atawa." In addition to this, he quotes zoJajj as saying:

"Kharj is an infinitive and kharaj is an infinitive noun,

Abscess to Fai⁵ and Expenditure on the Tax (zariba)⁶ and Jeziya⁷, it is called.

¹ Ibn Manzoor, *Lasan al-Arab*, vol. 2, p. 253.

² Grain: the income that is obtained from cultivating the land, harvesting the fruits of trees, to milk, breeding animals, and rent, is called grain and the sum of it is grains; (Zubaidi, *Taj al-Arus fi Jawaher al-Qamoos*, vol. 15, p. 552).

³ Ibn Manzoor Previous, p. 2.

⁴ Etawa: The product of the land is called Etawa and is equivalent to the word abscess and grain; (Zubaidi, previous, vol. 19, p. 126).

⁵ Fay: the wealth that is earned by the Muslims from the infidels without bloodshed and killing; Sarwar, *al-Mu'jam al-Shamal al-Mustalahat al-Ulamiyyah Waladiniyyah*, vol. 1, p.

⁶ Literally, it means tax on land; (Ragheb Esfahani, *Mufardat fi Gharib al-Qur'an*, vol. 1, p. 278.).

⁷ Jizya: It is money that the Islamic government takes from the people of Dhimma so that in return, their lives, property and honor are under the protection of the Islamic government. (Kalantari, *al-Jiziya and rulings in Islamic jurisprudence*, vol. 1, p. 1).

Ragheb Esfahani says about the meaning of kharaj: "Kharaj is usually appropriation to tax on the ground and according to a theory, it is equivalent to grain.

2. Terminology of Kharaj

Considering the lexical meanings of kharaj and its use in the language of jurists, as well as the content of the narrations in Narrative books have been issued about this topic, the meaning of the term kharaj is the benefit derived from the object, benefit and profit.⁸

Therefore, in order to understand the exact concept of kharaj, it is necessary to explain the concept and types of benefits.

«The meaning of the benefit is the resulting fruit that is gradually obtained from the nobles, without significantly reducing the same property; Whether this fruitage, like the fruit of the trees, is a material thing or a description that can be used for that purpose: like the ability of animals to ride and carry, and a house to live in⁹»

Interests are divided into two types: connected and disconnected: 1. Connected benefits, which are attributes or quality which adds to the value of the object, but it never existed apart from it: such as the increase in the price of goods or land or Sheep fattening

2. Separate interests are fruitage or results that can be separated materially or legally from the object and can belong to another person such as the fruit of a tree, the baby of an animal, the product of the earth or ability of living at home."¹⁰In this research, both types of benefits are discussed

b_ Daman (Guarantee)

1_ Vocabulary of Daman

The lexicographers disagree on the root of the word Daman (guarantee). Some scholars consider the root of Daman to be "zam" which means attaching something to another thing, but according to the correct opinion, most of the lexicographers call its root as "Zaman". They know that in this case, "Nun" is one of the main letters. Therefore, the word Daman (to Fatah Zad) is infinitive. It is from the root of "Zamen"¹¹.

Daman in the word means commitment¹² bail¹³ Content and inclusion,¹⁴

Commitment and acceptance of responsibility¹⁵, Preservation and observance¹⁶

It is stated in the book "Mogam maghaeis al-Lagheh: « **Daman** means to put one thing into another thing in such a way as to contain it, like putting something into a container¹⁷ » The result can be obtained from the sum of these meanings. It is understood that **Daman** in the word has the meaning of commitment and acceptance of responsibility.

⁸- Bektash, income generation of risk and risk in financial markets from the perspective of Imami jurisprudence, p. 141-1

⁹ Katouzian, Property and ownership, p. 39.

¹⁰ Ibid., p. 41.

¹¹ Fayoumi, Misbah Al-Munir Fi Gharib Sharh Al-Kabeer, Part 2, p. 3.

¹² Firouzabadi, Al-Muhait Dictionary, vol. 1, p. 1212; Tareehi, Majma Al-Bahrin, vol. 6, p. 275; Fiumi, Pishtettin, vol. 2, p. 364; Zabidi, Taj Al-Arus Man Jawahar Al-Qamoos, vol. 35, p. 333.

¹³ Ibn Manzoor, Sun Al-Arab, vol. 13, p. 257; Ibn Faris, Mujam Maqais al-Lagheh, vol. 3, p. 372; Firouzabadi, P. Shin, vol. 1, p. 1212, Zubeidi, Previous, vol. 35, p. 33.

¹⁴ Fiumi, previous, vol. 2, p. 364; Zabeidi, previous, vol. 35, p. 3.

¹⁵ -Maalouf, Al-Munjad fi-al-Lagheh Al-Arabiya Al-Mudamadaeh, vol. 1, p. 1240.

¹⁶ -Zabeidi, previous, vol. 35, p. 333.

¹⁷ Ibn Faris, previous, vol. 3, p. 372.

2- Terminology of Daman in Jurisprudence

Some Imami jurists have used the word *daman* to mean provision, bearing and compensation for damages¹⁸. Some other Imami jurists have interpreted the word "**Daman**" to mean the occupation of duty and responsibility¹⁹.

Mohaghegh Al-Thani in the definition of **Daman** states: "**Daman** is the same as commitment²⁰."

But Mirzai Naini has given a comprehensive picture of the definition of *Daman* and says: "In general, *Daman* means Placing the property under the liability of the guarantor, and one of the effects of proving the property under liability is compensation and damages, not that the real meaning of "**Daman**" is the payment of compensation and damages²¹

3_ Terminology of Daman in Law

In the civil law, the term "civil responsibility" does not appear. But the writers of the law, following jurisprudence, the word *Daman* is used for this legal requirement. The term civil liability in legal language represents the set of rules that obliges the causer of damage to compensate the injured party²²

C- The Concept of Al-Kharaj Bal Daman (Rule with Guarantee)

When a person is a financial guarantor according to Sharia law, in such a way that if the property is lost, it is lost from his own property.

In case of profiting from the benefits of the property, when returning the original property to its owner, it is not required to refuse the benefits; because of A person is the guarantor of original property and benefits and tribute belong to him, in exchange for the guarantee he is responsible for²³. In other words, the person who is responsible for the loss of wealth, interests and benefits (tribute, grain) belong to him/her²⁴.

The Second Speech: Evidences about the Rule of Al-Kharaj Bal Daman

A- Narrative Evidence

1_ Famous Prophetic Narration

The rule of *al-Kharaj Bal Daman*, used from the prophet. It is famous and therefore it is necessary that in this speech, the text of the narration and dignity, its issuance and then the document and the meaning of the narration should be examined.

According to Fakhr al-Islam, the narration of "*Al-Kharaj Bal Daman*" is considered one of the Islamic (Speech collectors) of the Holy Prophet (PBUH).

¹⁸ Kashif al-Ghita Jafar, Tahrir al-Majlah, vol. 1, p. 277; Hakim, Mustamsk al-Arwa al-Wathqa, vol. 3, p. 430.

¹⁹ Kashif al-Ghita Jafar, Tahrir al-Majlah, vol. 1, p. 277; Hakim, Mustamsk al-Arwa al-Wathqa, vol. 3, p. 430

²⁰ Mohagheq Karki, Jami Al-Maqasid, vol. 5, p. 308.

²¹ In general, the meaning of the guarantee is that the wealth is in the custody, and among the effects of proving the wealth in the debt is the fine and the loss, but the fine is its real meaning. Naeeni, Minya altaleb, Part 1, p. 118.

²² Katouzian, requirements outside the contract (general rules), vol. 1, pp. 34 and 3.

²³ Makarem Shirazi, al-Qasas al-Fiqhiyyah, vol. 2, 305.

²⁴ Langroudi, General Encyclopaedia of Law (Al Faraq), vol. 1, p. 3.

Also, it is stated in the description of the dictionary that the above narration is the same as the narration of "Al-Ghoram Bal-Ghanim" from the Prophet's (PBUH) Javame Al-Kalam²⁵.

According to the analysis, this prophetic narration was not found in Imami narrative Javame except in *Awali al-Laali al-Aziziyya fi al-Haadith al-Diniyah* and *Mustadark al-Wasail*.

But this narrative has been narrated in different ways in popular (Amah) narrative sources. In the book *Awali al-Aali* and *Mustadr al-Wasail*, this hadith is stated as follows: On the authority of the Prophet, may God's prayers and peace be upon him and his family, "It was decided that the Kharaj is liable."

In these two books, the chain of transmission of this narration is not mentioned because the proven narrations of the rule have been narrated in different ways in Amah (popular) narrative sources and the chain of transmission is also there. And has been stated, therefore the documentation of this narrative in popular narrative sources should be examined.

The narrations that have been narrated in popular sources all end with Aisha. Some of these hadiths have been narrated from the Holy Prophet (PBUH) without mentioning the reason and in an absolute form, such as the following two hadiths which are stated in two ways and in an absolute form: Umar ibn Ali narrates from Hisham ibn Urwa, he from his father, and he from Aisha: Hazrat Rasool (PBUH) says: *Al-Kharaj Bal Daman*.

In another chain, Ibn Abi Zaib narrates from Makhliid Ibn Khafaf, he from his father, and he from Aisha: "The Holy Prophet (PBUH): *Al-Kharaj Bal Daman*. Someone said to Imam Sadaq (AS): A Muslim man wants to sell his house and sell it to his brother.

He says: I will sell my house to you, it is better for me that my house is for you than for someone else, on the condition that if I return the transaction price by next year, the house will be for me. Majesty he said: There is no problem, if he returns the price by next year, the house will be his. I said: This is the house of interest It is abundant and the customer has claimed it, who owns these benefits? They said: The benefits are for the customer, right?

*Don't you see, if the house caught fire, it would be considered the customer's*²⁶

The document of this narration is mentioned in Imamiya books in several ways; Sheikh Kilini narrated the narration from Muhammad bin Yahya from Muhammad bin Hussain from Safwan from Ishaq bin Ammar from Imam Sadiq (a.s.).

Har Amoli in the Book of Wasal al-Shi'ah narrates the chain of narration from Muhammad Hasan to the chains of Husayn bin Saeed from Safwan from Ishaq bin Ammar from Imam Sadiq (a.s.). Sheikh Tusi and Sheikh Saduq narrated it from Safwan on the authority of Ishaq bin Ammar on the authority of the Imam. It has been narrated by Sadiq (AS).

²⁵ Bojnordi Mohammad, Rules of jurisprudence, vol. 2, p. 275.

²⁶ - Muhammad bin Al-Hassan, with his chain of transmission, on the authority of Al-Hussein bin Saeed, on the authority of Safwan, on the authority of Ishaq bin Ammar, who said: He who heard Abu Abdullah, peace be upon him, told: a man, who is in need of his house, so he came to his brother, so he said: He said, "I will sell this house of mine to you, and it would be dearer to me than to someone else's."

On the condition that you stipulate that if I bring you the money within a year, you will return to me. and He said: There is nothing wrong with that if he brings his money within a year of his return to him. I said:

Because there was a lot of yield in it, so he took the yield. To whom is the yield? He said the yield to the purchaser: Don't you see that if it was burned, it would have been from his wealth? sadouq, *Man La Yahdrah al-Faqih*, p. 205; Kilini, *Al-Kafi*, vol. 5, p. 171; Tu Si, *Tahhib al-Ahkam*, vol. 7, p. 23; Haramili, *Tafsil wa Sa'il al-Shi'a to Tahsil Mas'il Al-Sharia*, vol. 18, p. 19.) (the description of the means of the Shia to the study of the issues of the Shariah, vol. 18, p. 19.).

This narration is in authentic Imamiya books such as; *Al-Faroo Men Al-Kafi*, *Man Laihdara Al-Faqih*, *Tahhib Al-Hakam* and *wasaelo shia*.

Mohammad Baqer Majlisi says about the document of this narration: This narration is either authentic or transmitted. But Mohammad Taqi Majlistati says: He understood from the narration that was mentioned in *man La yhzara hol-Faqih* book. It is possible that Ishaq bin Ammar heard it directly from Imam (a.s.)

It is stated in the book of *Faroo Kafi*, it is understood that Ishaq bin Ammar did not hear directly from the Imam (a.s.) but from the path of "Whoever hears Abu Abdullah" that he said: A person asked the Imam (AS) and he was present there, and Ishaq bin Ammar was not present; Hereby, this narration is Morsal.

But from the appearance of the narration in the book *Tahzeeb al-Hakam*, it appears that Ishaq bin Ammar himself heard it directly from the Prophet (PBUH). As a result, this narration has been accepted by the Imami jurists and there is no problem with its authenticity.

2- Narrated by Muawiya Ibn Misra

Mu'awiya Ibn Misra says: I heard that Abul Jaroud asked Imam Sadiq (AS) that a person sold his house to another and there was a wall between his house and the buyer's house. The seller stipulated that it is mine for up to three years if You returned (the price of the house), the house is for you and that person brought the money. Hazrat (AS) said: His condition is reserved for him [and the buyer must fulfill his condition].

Abul Jaroud said: That man (the seller) used that property for three years [Shouldn't he pay something in exchange for that?!]. Hazrat said: That house belonged to him, don't you know whose property it would be if the house caught fire? House, customer's house²⁷

The chain of transmission of this narration in both ways in the Imamiya books has been clarified. Sheikh Tusi, the way of the chain of transmission, is a statement: Ahmad Ibn Abi Bishr from Muawiyah Ibn Maysara²⁸ from Imam Sadiq (PBUH)²⁹. But in *Wasa'il Al-Shi'ah*, a narration document. In this way, he mentioned the: Hasan bin Muhammad bin Sama'ah from Ahmad bin Abi Bishr from Muawiyah bin May Surah from Imam Sadiq (PBUH)³⁰.

This narration is incomplete due to the non-verification of Mu'awiyah bin Maysereh. Of course, in the trustworthiness of Abu al-Jaroud, the word is also

²⁷ Muhammad ibn al -Husan with his chain on the authority of Al -Hassan ibn Muhammad ibn Sama'a on the authority of Ahmad ibn Abi Bashir on the authority of Mu'awiya ibn al -Masar al -Masar:

Abu Abd Allah, peace be upon him, on the authority of a man who sold a house to him from another man, and there was a strife between him and the man from whom he bought the house, The seller stipulated that it is mine for up to three years if You returned (the price of the house), the house is for you and that person brought the money, so he gave him his money and said: He has his condition.

He said: It is his property. Abu Abdullah, peace be upon him, said: Do you think that if the house burned down from the wealth of who, then would be the house of the buyer. Haral Aamili, *Al-Tafseel al-Wasail al-Shia*, *Tahsil al-Masal al-Sharia*, vol. 18, p. 20. Tusi, *Tahzeeb al-Hakam*, vol. 7, p. 177.

²⁸ This title is found in several chains of narrations, amounting to twenty-seven sources. He narrated on the authority of Abu Abdullah (PBUH), and on the authority of Al-Hakam bin Otaiba.

It was narrated from Ahmad ibn Abi Bashir, Ahmad ibn Muhammad ibn Abi Nasr, and Asmail ibn Sahl, and the son of the son, al-Mughira, Ali ibn al-Hakam, and Fadalal; (Khoei Abu Al-Qasim, *Lexicon of Rijal Al-Hadith*, vol. 19, p. 229.

²⁹Tusi, *Tahzeeb al-Ahkam*, vol. 7, pg. 177.

³⁰ Har Amily, *Al-Tafsil Al-Wasal al-Shi'ah ala Tahsil masael al-Sharia'*, vol. 18, p. 20.

It is, but since the narrator himself was present in the assembly, the lack of reliability of Abul Jaroud does not affect the document.

Alama Majlisi has classified this narration as an unknown narration, hence it is considered among the weak narrations.

But there are other authentic narrations with the same concept and implication that can compensate for the weakness of the document of this narration.

3_ The Narration of Ishaq Ibn Ammar from Imam Kazem (A.S.).

Ishaq Ibn Ammar says: I told Imam Kazim (AS) that a person mortgages a house and a slave and it will be damaged, who is responsible for this damage? The Prophet (PBUH) said: It is under the responsibility of his/her master, and then he said: Do you not know that If a slave kills someone, who is responsible?

I said: [It is clear that] it is under the responsibility of the slave [that it goes from the property of the slave's [owner]. Hazrat said: Do you know why it goes from the property of the slave owner?

Then they said: If the price of Abd (slave) was one hundred dinars and the price increased to two hundred dinars, whose property was this price increase? I said: It was for his master. Hazrat said: So just as benefit is for him, harm is also for him.

The late Kalini, Sheikh Tusi and Har Amlī express the way of the chain of narration as follows: Some of the Companions of Ahmad Ibn Muhammad and he from Settahl Ibn Ziyad and he from Ahmad Ibn Muhammad Ibn Abi Nasr and he from Hammad Ibn Uthman and he from Ishaq Ibn Ammar and he have narrated from Imam Kazim (AS).

The endorsement of Ishaq Ibn Ammar was stated in previous discussions. However, in the narration, there is a person named Hammad Ibn Othman, who is interpreted as "Thaqa (trust) Jalil al-Qadr" in the books of Rajali. In addition, he was one of the companions of the Imams (peace be upon them)³¹.

Therefore, this narration is among the reliable narrations and its document is complete.³²

B_ Basic arguments

1 _ The Fame of Fatwai

The second reason for the validity of Al-Kharaj rule is the fame of Fatwa. This rule is in many books of Imamiya jurisprudence and there are four religions and the fatwa documents of many jurists of the religions have been placed in different chapters of jurisprudence.

Therefore, it can be said that Al-Kharaj **Bal Daman** has a fatwa reputation. The jurists of the Imamiyyah, despite believing in the weakness of the narration of al-Kharaj **Bal Daman** and its transmission, have accepted the content of this narration, and many of the predecessors and the latest Imami jurists have issued fatwas according to it.

³¹ Hammad bin Othman Al-Nab is trustworthy, of great value, he has a book, and a number of our companions told us about it, on the authority of Abi Jaafar Muhammad bin Ali bin Ali bin Al-Hassian. Saad Bin Abdullah, and Al-Himyari, on the authority of Muhammad Bin Al-Walid Al-Khazzaz, on the authority of Hammad Bin Othman And Ibn Abi Ja'id informed us of it, on the authority of Muhammad bin Al-Hassan bin Al-Walid on the authority of Muhammad ibn al-Hassan al-Saffar on the authority of Ya'qub ibn Yazid on the authority of Ibn Abi Umayr, al-Hasan ibn Ali al-Washsha', and al-Hasan ibn al-Bin On the authority of Hammad bin Othman; (Tusi, Al-Fihrist, Part 1, p. 115.).

³² - Majlisi Mohammad Baqer, Malaz al-Khiyar fi Fahm Tahdhib al-Khabar, vol. 11, p. 299.

The cases that the Imamiyya jurists have given binding fatwa according to the al-Kharaj Bal Daman are as follows: Sheikh Tusi in *Al-Massut Fi Fiqh Al-Amamiyyah* book has dedicated a chapter of the book to the rule of Al-Kharaj **Bal Daman**, and has cited this rule regarding the sale of al-Masrah (Chapter on the sale of money) and the issue of defecting choice.

Sheikh Tusi in the book *Al-Khilaf Fi Al-Ahkam* and Ibn Zahra has cited this rule in the book of *Ghaniya al-Nazwa al-Ilmi al-Sul wa al-Faro'* in the discussion of guarantees and benefits of the same mortgage and in the issue of the choice of defects³³.

Ibn Idris Hali referred to this rule in the book of *Al-Sara'er* on the subject of guarantee of mortgaged defect of its interests³⁴, and Allameh Hali in his book *Tazkira al-Fiqaha* on the subject of the choice of the defect³⁵ of its interests have cited this rule. And about the jurisprudence of *Laqta*³⁶ and *Hajar*³⁷ is He cited this rule.

Popular jurists have cited this rule in their fatwas, and the cases in which they refer to the rule are as follows:

- 1- In *Al-Ishbah wa Al-Nazair*, Siyuti has mentioned Al-Kharaj Bal Daman as a jurisprudential rule³⁸.
- 2- Ibn Rushd in his book *Badayah al-Mujtahid* and *Nahayeh al-Maqtasad* mentions Al-Kharaj *Qa'ida Bal Daman* as the principle of consensus³⁹.
- 3- Muzni has cited this rule in the book of al-Muzni's short book about the sale of Al-Masrah and the problem of *khiyar al-ebab*⁴⁰.
- 4- Ibn Qudama refers to this rule in many jurisprudential chapters in *Al-Mughni's* book.⁴¹
- 5- Moghdisi argues for this rule in the Book of *Al-Ada Shar al-Amda* in chapter *Hajar*⁴².
6. Tanukhi argues this rule in the book *Al-Mumta fi Shar al-Maqna* regarding the jurisprudence of *shofa*⁴³.

3-Induction

The third reason for the validity of the rule of "al-kharaj Bal Daman" is induction. Induction in logic, jurisprudence and principles of jurisprudence, it has different definitions. But what the writer is considering is the definition of induction in jurisprudence and principles. Martyr Sadr in definition Induction states as follows: In the jurisprudence of induction, it means: A large number of rulings that have a common issue in which the manat and criteria in those rulings are a common issue through which a general rule is created in Islamic legislation. For example, a jurist examines many of the rulings of Sharia and sees that ignorance and not knowing the ruling has caused one to be excused from that ruling; From this investigation, the jurist concludes that ignorance of the ruling was the reason for the disqualification, and he spreads that reason to another place⁴⁴.

There are two types of induction: 1. Definitive induction:

³³Hamo, *Al-Khalaf fi Al-Ahkam*, Part 3, pp. 107, 108, and 257; Ibn Zahra, *Ghaniyyah Al-Nawa'a to the Sciences of Principles and Branches*, Vol. 1, pg. 223 and 245.

³⁴ Ibn Idris Hali, *Al-Saraer*, vol. 2, p. 4.

³⁵ Allameh Hali, *Tazkire al-Fiqha*, vol. 11, p. 141.

³⁶ *Ibid*, vol. 17, pp. 252 and 253.

³⁷ *Ibid*, vol. 14, p. 124.

³⁸ Siyuti, *Al-Ishbah and Al-Nazar*, p. 13

³⁹ Ibn Rushd *Al-Badayah Al-Mujtahid* and *Al-Nahiyah Al-Maqtasad*, vol. 3, p. 192

⁴⁰ Al-Muzani, *Mukhtasar Al-Muzani*, vol. 7, p. 180.

⁴¹ Ibn Qudama, *al-Mughani*, vol. 6, p. 22.

⁴² Moghadisi, *Al-Ada Shahrah al-Umadah*, p. 269.

⁴³ Tanukhi, *Al-Mumta fi Sharh al-Maqna*, vol. 3, p. 79.

⁴⁴ Sadr, *al-Maalem Al-Jadeedah Lal al-Sul*, vol. 1, pp. 162 and 163.

If the induction is conclusive, that is, it is done in such a way that the decision is made according to the Shari'i ruling, then it is the induction of proof; Because it is among the definite reasons And its authority is taken from the authority of Qat.2-Uncertain induction: If the induction is not certain, it is not proof; This is because any inconclusive reason, as long as the Shariah has not ruled on its validity, is not proof, and the Shariah does not consider inductive proof that does not provide knowledge as proof⁴⁵.

Sheikh Ansari says about obtaining induction about the combination of appearance and perception: The connection between appearance and dark (responsibility) is based on text and induction.

That is, from following and examining the Shariah rulings of the jurisprudential chapters, especially the meaningful transactions section. In general, a common denominator is obtained. This common denominator is the combination of benefits and damages; that's mean Whoever benefits from the property benefits, the damage and the guarantee of it belong to him and this is the concept of the rule of al-Kharaj **Bal Daman**.

3 Concentration of the Wise

The fourth reason for the validity of Al-Kharaj's rule is its concentration and rationality. Concentration is the confirmation of a specific concept in the mind of a specific group or group of people or all people.

But what is meant by the concentration of the rational is the proof of some concepts in the mind of the rational, including the rational, regardless of their religion⁴⁶.

Naini, one of the Imami jurists, says: Al-kharaj rule is a rational rule and it is one of the bases of its validity The rule of concentration is rational. Undoubtedly, wise men Instead of accepting risk, they consider profit and benefit and narrations also confirm this matter;

Therefore, the provisions of this rule are signature rules and is not from the founding decrees⁴⁷. Seyyed Khoi says about this: The provisions of the rule of al-kharaj **Bal Daman** (with guarantee) is a fixed matter among the scholars. And there is no way to deny it, and this rule is in accordance with the primary rule⁴⁸.

P- Sayings of the Jurists

1 Statement of Sayyid Khoei's Theory

Sayyid Khoei has a traditional interpretation of the narration and he says about the meaning of the narration as follows: The meaning of the word Kharaj in Narrative is the same as the well-known and adopted meaning of kharaj and maqasmeh (division). And the meaning of the word guarantee is the guarantee of the explanation of his words, it should be said that tribute is the responsibility of the guarantor and acceptor of tribute lands.

Kharaj in the word means products that are obtained from agricultural land and the lands that are taxed in the Islamic state are called kharaj lands;

Therefore, the scope of application of the rule is limited to the tax that the government collects from kharajiya lands⁴⁹. In the interpretations of Imamiyyah jurists, this semantic possibility is stated, but

⁴⁵ Ibid., p. 164.

⁴⁶ Ansari Muhammad Ali, Al-Musawaa al-Fiqhiyyah Al-Misarah, Vol. 2, pp. 389 and 391

⁴⁷ Naini, Maniyah al-Talib fi Hashiya al-Makasab, vol. 1, p. 101.

⁴⁸ Khoi Abulqasem, Musouah al-Imam al-Khoi, vol. 38, p. 2.

⁴⁹ Khoi Abulqasem, Misbah al-Faqaha, vol. 3, p. 133.

according to Seyyed Khoei, this possibility is the closest semantic possibility to express the meaning of the narration compared to other possibilities.

2_ The opinion of Hanafi and Maliki jurists

Hanafi and Maliki jurists, following Abu Hanifa and Malik, believe that if a person usurps a asset and to benefit from its benefits, he is only the guarantor of the property, and he is not the guarantor for the benefits of the property, and their fatwa document, The narration of al-Kharaj **Bal Daman**; Since the usurper is the guarantee of the same property, the benefits of the same are free and gratuitous for him.

The details of their opinion are as follows: Most of the Hanafi jurists such as Sarkhsi and Kasani and most of the Maliki jurists such as Baghdadi and Siqili say about the significance of the narration: What is meant by the word kharaj is the absolute benefit of the beneficiaries and the non-eligible beneficiaries.

And the meaning of the word **Daman** (guarantee) is its literal meaning and its infinitive noun; Regardless of whether it is a guarantee or a result

It is due to discretion, which in this case is due to valid contracts or corrupt contracts; Or because of the cause It should be optional, in which case it is usurpation Regardless of whether the guarantee is due to a legitimate reason or not⁵⁰ According to the Maliki jurists, the meaning of guarantee in the phrase "Al-Kharaj Bal Daman" is a conditional guarantee, which means that the usurper is entitled. Because, if the same property is lost, the guarantee is his responsibility⁵¹ Jazayari, one of the Imami jurists, explains their opinion as follows: Any person who is a guarantor of a asset (object) is also the owner of its benefits.

On other words, **Daman** Al-Ain is the reason for the ownership of the benefits, and the requirement of the **Daman** Al-Ain is the non-guarantee of the benefits, and therefore the benefits of the property obtained through a valid contract or a corrupt contract or usurpation, due to the guarantor's commitment to the same property for the guarantor.

Therefore, if their opinion is accepted, the territory of the rule, it includes all cases of optional guarantee of valid or corrupt contracts and non-optional usurpation. As a result, the range

The implementation of the rule includes all cases of valid and corrupt and usurped contracts.

According to this opinion, the implication and the scope of the implementation of the rule is as follows: the meaning of tribute is the benefit of the beneficiaries and the meaning of guarantee, the infinitive meaning (establishment of guarantee) is that which is caused by the optional reason of contracts It is bound by action clause.

This means that the benefits are for the person who has made a guarantee, whether the Shariah has approved it, such as valid contracts, or has not approved it, such as corrupt contracts.

In this case, the scope of the implementation of the rule is exchange contracts, regardless of whether the contracts are correct or corrupt, and it does not include cases where the person did not guarantee⁵² Should be mentioned that according to this opinion, the scope of implementation of the rule does not include usurpation.

⁵⁰ Kasani, Bada'e al-Sana'i in the Order of the Laws, vol. 6, p. 62; Sarkhsi, Al-Mabusut, vol. 11, p. 77; Thaalbi Baghdadi, Al-Maouna Ali Madhhab AlamAl-Madinah, p. 1218; Tamimi Saqli, Al-Jamae Lamsail al-Maduna, vol. 18, p. 312

⁵¹ Qarafi, Al-Dakhirah, vol. 9, p. 61.

⁵² Rouhani, Minhaj al-Faqaha, vol. 3, p. 291.

The Third Speech: Applying the Al-Kharaj Bal Daman Rule to the Guarantee

In Jurisprudential Chapters

Many Imamiyyah and Amma jurists in various jurisprudence chapters such as Khayar Eb, Tasriyyah, Rahn, Shafaa, Hajar, Qarz, Laqta, Ghasb and Wasit have always relied on the rule of Al-Kharaj **Bal Daman**.

Therefore, this section in the format We have compiled nine chapters so that each chapter is dedicated to a jurisprudential chapter. In each chapter of this section, we have collected the opinions and documents of the jurists of different religions and then subjected them to criticism and evaluation, to determine whether they are correct or not. The correctness of their citation should be clarified.

A- The Meaning of Khayar Eb (Defective Choice)

Khiyar (choice) in jurisprudential terms means a person's control over the termination and signing of a contract. The reasons for proof of Khiyar are stated in the works of jurists.

One of the reasons is the defectiveness of the product, which the customer has the right to choose due to its appearance.

The nature of the option of defect is the control of the owner of the option to terminate the transaction or the signing of the contract by taking the Arsh (money paid to compensate for financial or physical damage). This matter is the case of most religious jurists⁵³. But Hanafi jurists.

They do not consider it permissible to take the Arsh⁵⁴. Jurists have given different definitions of defects. From the point of view of Imami jurists, what is meant by a defect in an animal is the presence of something additional to the original creation, such as having an extra finger on the hand or foot, or a deficiency from the original creation, such as blindness.

But what is meant by a defect in a non-animal is being out of the natural and normal channel.

Of course, in the words of the jurists about the concept of defect and There are many examples of it; Therefore, some of the jurists have considered custom as a criterion for determining the examples of defects⁵⁵. But from the point of view of Hanafi jurists, its defect is that Due to its appearance, the customer cannot fully benefit from the item sold and take what he expected, or it is something that causes the selling price to decrease⁵⁶.

According to Maliki jurists, the rule of defect is the existence of a defect in the product, which according to custom must be free from that defect⁵⁷. But Hanbali jurists They have said the definition of defect: there is a defect in the product, even if the price of the product increases, or it is something that causes the price of the product to decrease in the custom of merchants⁵⁸.

B- Applying the Rule of al-Kharaj Bal Daman. in the Mortgage Contract

This chapter is compiled in three speeches; In the first speech, the literal and terminological meaning of mortgage is examined and in the second discussion, we will address the issue of whether the rule of "Al-Kharaj Balzaman" applies to mortgages or not?

⁵³ Sobhani, Al-Mukhtar Fi Ahkam al-Khiyar, pp. 327 and 8.

⁵⁴ Qaduri, Mukhtasar al-Qaduri fi fiqh al-Hanafi, p. 81.

⁵⁵ Najafi, Javaher al-Kalam, vol. 12, p. 220.

⁵⁶ Baladhi, Al-Akhtiyar Latalil Al-Mukhtar, vol. 2, p. 18.

⁵⁷ Dasuqi, Marjih al-Dasuqi Ali al-Sharh al-Kabir, vol. 3, p. 108.

⁵⁸ Bhuti, Al-Daqeeq Awali al-Nahi, lesharh almontaha, Vol. 2, p. 44.

Therefore, the opinions and documents of the jurists in the field of guarantee or non-guarantee of Ain Marhoon in this speech, carefully is evaluated. At the end of this chapter, the point of view of the civil law on this issue is expressed

1 The Literal and Idiomatic Meaning of Mortgage

Mortgage in the word means proof, continuity and imprisonment.⁵⁹

The literal meaning of mortgage is not alien to its idiomatic meaning. Some jurists have considered mortgage as the meaning of confiscation of property against the right, in such a way that it is possible to claim the right from that property⁶⁰.

But some other jurists said in the definition of mortgage: A mortgage is a contract due to which the debtor places financial assets with the creditor as collateral, so that in case of non-payment of the debt, the creditor can recover the debt from the collateral⁶¹.

The person who gives the pledge is called the mortgagor and the person who accepts the pledge is called the mortgagee.

In the terminology of the jurists, collateral or pledged property is interpreted as a debtor, and debt is interpreted as owe to (mortgaged).

2-Guarantee or Non-Guarantee of the Deb (Mortgaged)

The issue that can be raised is that if the mortgaged property is destroyed by the mortgagor, whose pocket will the loss come from? And for whom are the benefits of the mortgage? Do the jurists consider the rule of "Al-Kharaj Balzaman" valid here?

In the event that the mortgagor If he commits excesses or omissions in maintaining the loan, he is the guarantor of the loss according to the rulings of all religious jurists.

However, if the mortgagor has not violated or transgressed, the jurists of schools of thought disagree with each other on whether the mortgagor is the guarantor or the mortgagee.

Therefore, the statements and documents of religious jurists are examined in the form of four paragraphs:

3 _Opinions and Arguments of the Supporters of the Mortgage Guarantee

The Imamiyyah, Shafi'i and Hanbali jurists are of the opinion that the mortgagor does not have a guarantee in case of the loss of the mortgaged property.

And they consider the mortgagor as the guarantor of the loss and the owner of the benefits. Consequently, the mortgagor is obliged to pay the debt to the mortgagee. The documentation of their statement is as follows:

The first reason: It is based on a famous narration that says:

“The mortgage is not closed; the mortgage is from its owner who mortgaged it. He has his benefits and he is responsible for his fines.⁶²”

⁵⁹ Ibn Manzoor, *Lasan al-Arab*, vol. 13, p. 189.

⁶⁰ Marghinani, *al-Hadaye fi Sharh Badayeh al-Mubatdi*, vol. 4, p. 412.

⁶¹ Allameh Hali, *Tazkire al-Fiqaha*, vol. 13, p. 87; Tusi, *al-Mabusut fi fiqh al-Umamiyyah*, vol. 2, p. 196.

⁶² Bayhaqi, *Sunan Al-Kubra*, vol. 6, pg. 65; Qadi al-Nu'man, *Daa'im al-Islam*, vol. 1, pg.

The first paragraph of the narration of "Layughlaq Al-Rehan" refers to the fact that the mortgagor does not become the owner of the mortgaged property due to the mortgage. and mortgage ownership remains on mortgage.

Shafi'i says about the second part of the narration: "The mortgage is from its owner..." means "the mortgage is from the guarantee of its owner";

In other words, the mortgagor is responsible for the loss of the same mortgage, and the loss goes out of his pocket. His benefits and his fines.

It means this as the interest of the mortgage belongs to the mortgagor, the loss and damage of that property is also his responsibility⁶³. Overall, this narrative aims to prove the ownership and guarantee of the mortgage and its benefits for the mortgagor.

The second reason: Sheikh Tusi, referring to the hadiths issued by Masoomin (infallibles) (AS), which clearly refers to the security of the mortgagee, as well as the consensus of the Imamiyyah jurists, puts the security of the mortgage in the charge of the mortgagor⁶⁴.

The third reason: the wisdom of legislating a mortgage contract is to take authentication, collateral, to establish; If the mortgagee is in the charge of the mortgagor, and due to the loss of the mortgagee, the mortgagor's debt to the mortgagor is lost, the wisdom of the mortgagor becomes meaningless⁶⁵.

Therefore, the mortgagor must guarantee the mortgage so that the wisdom of mortgage legislation does not become meaningless.

The fourth reason: Sheikh Tusi, Ibn Zahra and Ibn Idris from the Imamiyyah jurists to prove the guarantee of the mortgage according to the rule.

"Al-Kharaj Bal zaman" has been cited; Just as the interests of the mortgage are the same for the mortgagor, the loss guarantee is also for the mortgagor".

It is his responsibility⁶⁶In other words, the mortgaged is the mortgagor property and according to the basic rules, as should be the waste of wealth If it is considered the property of the owner, the benefits of that property should belong to the owner.

The Fourth Speech: Examining the Issue from the Point of View of Civil Law

Dr. Katouzian says about the guarantee and benefits of Ain Marhoon:

The mortgage contract reduces the owner's right to take possession of the mortgage, but it does not destroy his ownership right.

The mortgagor is still the owner of the mortgaged object and according to this right, the mortgaged interests belong to him. The mortgagor does not have the right to use or benefit from this property. His right can be interpreted as the right of retention and the right of petitioner.

⁶³ Shafi'i, Al-Alam, vol. 3, p. 170; Khattabi, Ma'alim al-Sunan, vol. 3, p. 163; Tusi, al-Khalif, vol. 3, p. 257; Ibn Qudama, al-Mughani, vol. 4, p. 292.

⁶⁴ Tusi, previous, vol. 3, p. 257.

⁶⁵ Bhuti, Shahrah Mentehi al-Aradat, Vol. 2, pp. 123 and 112.

⁶⁶ Tusi, al-Khalif, vol. 3, p. 257; Ibn Zohra, Ghaniyyah al-Nuzwa al-Ilmi al-Asul wa al-Faroo, vol. 1, p. 245; Ibn Idris Hali, al-Saraer al-Hawi for Tahrir al-Fatawi, vol. 2, p. 420.

Therefore, no branch of the property of the debtor is transferred to the mortgagor. Article 786 of the Civil Code clearly declares that the connected and separate interests of the debtor belong to the mortgagor.

In addition, according to Article 789 of the Civil Code, mortgaged hand. Honesty on mortgage (Ain Marhoon). And the mortgagor is responsible for the loss or damage of the property who failed to maintain it⁶⁷. As a result, the loss of the mortgage is considered as the owner's pledge. And according to that, the interest of the mortgage is for the mortgagor

Conclusion

In this research, we decided that by examining the strengths and weaknesses of jurisprudence opinions and their foundations in the field of rules

"Al-Kharaj Balzaman" to achieve the good word. The main results obtained from this research are as follows:

1. What is meant by the rule of Al-Kharaj is that any person who has lost property, interests and benefits (Kharaj, grain) It belongs to him.
2. The rule of al-Kharaj Bal Daman to be used by the famous prophet. According to popular (Amma) jurists, the chain of transmission is valid and accepted by them, but most of the Imami jurists consider this chain of transmission to be weak.

However, the provisions of the rule have been accepted according to the traditions found in the sources of Imamia, and the jurists of different religions have cited this rule in various jurisprudence chapters. In addition, the provisions of the rule are approved by the wise.

The only point of difference between Al-Kharaj Bal-Damaan narrations and Sahih Al-Sanad narrations found in the Imamiyyah sources is in the issue of the narrations. It means the dignity of issuing. It means the dignity of issuing the narration of al-Kharaj with Bal Daman is a choice of defect (-Khiyar Al-Aib), but the authority of issuing other narrations is a choice of condition or mortgage.

- 3- If in the time interval between the conclusion of the contract and the termination of the contract due to the defect and after the customer receives the goods, a separate profit is obtained from the sold goods., all religious jurists consider the customer to be the owner of the benefits based on the rule of Al-Kharaj Bal Daman. However, in case the connected benefits are derived from the sold property, according to the accepted opinion, it belongs to the seller.
- 4- According to the opinions and documents of the jurists in the field of guaranteeing the loss of the mortgaged property, we came to the conclusion that the guarantee of the mortgaged property is the responsibility of the mortgagor and the mortgagee is the trustee.

Some Imamiyyah and popular jurists have referred to the rule of Al-Kharaj Bal Daman (with guarantee) to prove this ruling; By stating that as the interests of the mortgagee are for the mortgagor, the guarantee of the loss is his responsibility.

But it seems to prove the collateral owed, it is necessary to refer to the reverse of the Al-Kharaj Bal Daman rule, not the principle of the rule.

⁶⁷ Katoozian, lessons from certain contracts, vol. 2, pp. 292, 293 and 2.

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