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Investigating the nature of Kali to Kali contract in the legal system of Iran and Afghanistan

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Abstract

The term Kali to Kali refers to transactions in which the exchange is temporary and fixed. But does its exact meaning boil down to this or not? And whether its nature is a sale or an indefinite contract? It has always been disputed by jurists and jurists. The difference in the concept and nature of Kali has caused differences in its validity among jurists and jurists. Therefore, the basic question that we seek to answer in this research is what is the concept and nature of Kali to Kali? In order to answer this question, the library method has been used to collect information, and the descriptive, analytical, and sometimes comparative approach has been used to process information.The research findings show that; the nature of goods is the sale of goods and its application is valid only in transactions in which the price and the appraiser are deferred and fixed.

Keywords: Kalito Kali; Nature; Postponed to postponed; Overall propert; Urgency.

1. Introduction

According to the time of delivery of the goods and the price, the sale contract is divided into cash sale, credit sale, Salam or Salaf and deferred sale to deferred sale or Kali to Kali. Despite its long jurisprudential history, the issue of Kali to Kali was not discussed independently in jurisprudence and legal books until the first half of the 14th century, and the related issues were discussed in the context of the validity of the pledge of allegiance and the allegiance of debt to debt. Even after the second half of the 14th century, which has been independently debated in the field of comparative jurisprudence, there is still a difference in its concept and nature, which has led to a plurality of views on the validity of Kali to Kali transactions. For this reason, the fundamental problem of this research is the juridical-legal analysis of the concept and nature of commodity to commodity transaction. Our goal is to explain the exact meaning of Kali to Kali and to specify its nature.To achieve this goal, the library method was used and the information was processed with a descriptive-analytical approach. The necessity of this research comes from the fact that in the era of communication, most of the transactions are carried out remotely, the parties to the contract do not see each other, and during the conclusion of the transaction, only the agreement on the amount and time of delivery of the exchange takes place without any One of the parties surrender it. This is common in international trade and has many examples in domestic trade as well. For example, nowadays the use of commercial documents is very much, if a person gives a check to the transaction party for the purchase of a product that will be delivered within the next 10 days, it is an example of a call for a call.Because both the product, which is supposed to be delivered 10 days after the contract, and the price of the transaction, which is a check, due to the lack of acquittal of the customer's liability and the responsibility of having it in front of the check holder, are not considered cash until it is received, and therefore the price The transaction is also postponed. The structure of this research is such that first the term Kali to Kali and debt to debt are conceptualized and compared, then the theories about the nature of Kali to Kali are proposed and analyzed, and finally the theory of Chosen By mentioning the reasons for its acceptability, it is stated and concluded.

2- Concept ology

1-2 The concept of Kali to Kali

For the word Kali, the lexicographers have mentioned two meanings. One of them means guarding, protecting, maintaining and looking after, which has the same meaning in the Holy Qur'an, where God says, "قُل مَن يَكلَؤُكُم باللَّيلِ وَ النَّهار", say who protects and protects you day and night, Surah Anbiya, verse 42). The second meaning of Kali is delayed, and when it is said that Kalaa al-Din means debt is delayed, or if it is said, Balgha Allahu Bek Akla Al-Umar[1], it means that God may prolong your life and delay it a lot. Most of the lexicographers agree that the meaning of kali is about loan and delayed transactions (Ibn Manzoor, 1414: 1/242; Fayumi, 1342: 2/540).

There is no definition of the term Kali to Kali in the law of Iran and Afghanistan, but what contemporary jurists and jurists accept in the concept of Kali to Kali is: "Kali to Kali is a transaction in which the exchange is deferred.". But it is not the only definition, but the advanced jurists have presented different definitions of Kali to Kali, some of which are given and analyzed below.

A: Some have said that selling Kali to Kali is the same as selling debt to debt, like when someone sells something to a predecessor, but when the time comes he does not have it and buys it from the creditor in exchange for another debt (Bahrani, 1405: 19/118).

B: The owner of the jewel is of the opinion that the term "Kali to Kali" was imported from Sunni jurisprudence and is synonymous with debt to debt (Najafi, 1374: 294/24). Sahib Miftah al-Karamah, although he considers Kali to Kali as a separate concept from debt to debt, he quoted the \ saying of Maqdes Ardabili that according to the popular belief, selling Kali to Kali is the same as selling debt to debt (Hosseini Ameli, 1409: 28).

C: Kali to Kali means credit to credit, like when someone buys something for a fixed and long-term price, and when the time to pay it comes, the debtor does not have it, and the creditor tells his creditor to buy it for another time and at a higher price. (Mahmoud, 1919: 3/133).

D: Sale of goods for goods is when a person sells something on a fixed term basis and receives the money after a period of time, or in other words, sale of goods for goods is that during the contract, a condition of postponement and delay is placed for the price and the price. (Allameh Hali, 1390: 2/393).

E: Sheikh Ansari, in his book Al-Makasib, has defined Kali to Kali as a deferred sale, that is, a sale in which both the seller and the price are deferred (Ansari, 1415: 80). After that, contemporary Imamiyya jurists such as Ayatollah Khoei and Ayatollah Araki have confirmed the definition of Sheikh Ansari.

Sunni jurists do not agree on the definition of kali to kali, and they consider the following five cases to include its meaning.

1- Selling fixed debt to the debtor in a deferred form in a non-debt form (Hamad, 1406: 1/19).

2- Selling fixed debt to the debtor as credit with an increase in the amount of the debt (Rukabi, 1379: 1 /278). The second and third parts are given by Maliki jurists under the title "Faskh al-Dain fi al-Dain" (Alish, 1294:2/562).

3- Selling a fixed debt to a non-debtor at a deferred price (Al-Asbahi, 1951: 2 /660).

4- Selling fixed debt against another debt to a non-debtor (Sharini, 1415: 2 /71). The fourth and fifth sections are considered by the Maliki jurists as "Bay al-Dain in dain".

5- Contemporary jurists are of the opinion that; the financial sale described in the obligation at a deferred price is called Kali for Kali (Rafei, 1347: 9 /209). This type of transaction has been mentioned by the Maliki jurists, beginning with Din in din.

2-2 The concept of selling debt to debt

[1] بَلَّغَ اللهُ بک اکلأ العُمرَ.

Two introductions are necessary for a precise understanding of debt. And understand the nature of selling debt to debt correctly. Then we will be able to separate the nature of the sale of debt to debt from the transaction of commodity to commodity and compare the two. For this purpose, the topics of this article are examined in two parts.

1-2-2 The concept of debt

In the terminological definition of debt, jurists and jurists give it a general and special meaning (Hamad, 1421: 110), debt in the general sense includes any fixed right in the obligation, whether this right is financial or non-financial or from Be it the rights of the servants or the rights of God, it includes everyone. However, debt in a special sense is defined as property fixed in liability that has been fixed in the liability of a person for the benefit of another for some reason (Ibn Najim, 1405: 4/5). Although the practical concept of debt in jurisprudence and law is its specific concept. However, in both cases, debt refers to a (right or property) established in the obligation, not to a (right or property) that is to be established later.

2-2-2 The concept of selling debt

The jurists have mentioned two cases for selling debt; the first case: a fixed debt is sold as a liability, in this case, the proof of the debt prior to the contract of sale applies to it. This state of selling one's debt is known as fixed selling one's debt (al-Muwfeq, 232/6:1329). The second case: In this case, the debt does not already exist, but the contract of sale itself becomes the origin of the creation of debt, that is, the proof of debt is parallel to the contract of sale. For example, baiySalam or debt, which occurs after the contract of dain. This state of selling one's debt is known as "Bay al-Dain al-Mubatada" (Ibn Qadamah, 1401: 4/95). What needs to be mentioned in the explanation of these two situations is that:

1- Each of the mentioned states has different forms, the validity or invalidity of the first state forms is disputed. However, there is no difference in the second type of documents (Salam sale and loan sale).

2- In the first case, the term Bay al-dain is used in its true meaning, but in the second case, Bay al-dain is used in the permitted form. Because in the second case, there is no debt at first that is subject to change so that the term "selling debt" is true for it (Al-Lahem, 1433: 1/98). The fact that the jurists have included the second state under the pledge of debt is probably because, firstly; in the second case, sale is indefinite, and debt is used in front of. Secondly;with the belief that this sale will lead to debt in the future (Al-Sabaki, without date: 10/106).

According to these explanations that were presented, the term (faith) has three meanings according to jurists. First: Exchange of fixed debt owed to other assets. Second: exchange of a general property that belongs to the Zima for another property. Third: The third meaning is absolute, which includes all the previous two meanings.

By analyzing and examining the above-mentioned materials, we come to the conclusion that what is meant by debt is the same general fixed financial debt. The truth of the debt is also true in the first sense, because according to a basic rule, "all words appear in the actuality of their titles" (Mozaffar, 1389: 286/2). For example, it is often said to honor the world; the meaning of this is "honor the one who is actually and now a scholar", not the one who will become a scholar in the future. Therefore, when it is said that the debt is sold, it means that a fixed and actual debt exists now and is being sold, not a debt that is supposed to arise in the future. Now that the concept of debt and selling debt is clear, we can define the term selling debt to debt.

Sale of debt for debt means that the exchange is liable before the fixed contract and becomes the subject of the transaction. That is, for the term "debt-to-debt sale" to be true, the object of the transaction must have been a fixed debt. While the concept of Kali to Kali is that in which the parties agree that the exchange will be paid at a certain time in the future after the contract.

3- Comparison of Kali to Kali transaction with the sale of religion to religion

In jurisprudence and legal books, there are many theories about the relationship between Kali to Kali and religion to religion, and these theories can be divided into three categories. 1- The first category considers the relationship between religion to religion and Kali to Kali as equality. 2- The second category

considers the relationship between religion to religion and Kali to Kali as absolute. 3- The third group considers the relationship between religion to religion and Kali to Kali to be different.

1-3 First view

This view, which is attributed to the majority of Sunni jurists and the majority of Imami jurists, believes that Kali to Kali is synonymous with religion to religion, and in a way these two terms overlap and include examples of each other. According to this point of view, the relationship between Kali to Kali and religion to religion is equal (Hamad, 1406: 1/1; Mustafavi, 1423: 1/145).

2-3 Second view

This view is attributed to some Imami jurists and they are of the opinion that Kali is one of the examples of religion to religion and the relationship between them is absolute (Langroudi, 1388: 1/555; Saidi, 1377: 20). That is, every transaction of goods for goods can be considered as religion for religion, but every sale of religion for religion cannot be considered as religion for religion. Contrary to this opinion, some Sunni jurists consider Kali to Kali as general and religion to religion as one of its examples (Zilai, 1314: 4/83; Siyuti, 1378: 331). The reason for this difference of opinion is that in the Sunni sources, only goods for goods are prohibited, and the jurists have generalized its meaning and considered religion to religion and credit to credit as included. However, in Imamiyyah narrative sources, it is only prohibited to sell religion to religion, and most of the advanced jurists of Imamiyyah consider the concept of religion to religion as including Kali to Kali and have called it one of the examples of religion to religion.

3-3 The third view

This view is attributed to some Sunni jurisprudents and later Imamiyyah jurisprudents, they believe in the comparison between the concept of Kali to Kali and religion to religion (Ibn Qayyim, 1973: 9/2; Al-zarir, 1422: 115). According to the author, although the followers of this theory are in the minority, it is close to reality. Because we previously examined the concept of Kali to Kali and religion to religion and we came to the conclusion that their exact meaning is that; in the sale of a debt to a convertible debt, before the contract, the fixed debt is liable and becomes the subject of the transaction. That is, for the term "debt-to-debt sale" to be true, the object of the transaction must have been a fixed debt. And Kali is the one in which the spouses agree that the change will be paid after the marriage at a certain time in the future, which Maliki jurists have named as Abteda al dain be dain. It means that before the marriage there is no religion that can be traded, the time to establish the religion is after the marriage. It is not correct to use the term selling religion to religion in this type of transaction. According to this basic rule that all the words appear in the actuality of their titles, we cannot put the concept of goods-to-goods transaction under the term of selling religion to religion. Because in the transaction of money for money before the contract, there is no religion to which the term religion to religion is true. For example, it is often said to honor the world; the meaning of this is "honor the one who is actually and now a scholar", not the one who will become a scholar in the future. In the same way, when I say selling religion to religion, there must be a religion that can be traded, and this term cannot be used otherwise. For this reason, we distinguish between the trade of goods for goods and the sale of religion for religion.

4- Opinions about the nature of Kali to Kali transaction

Regarding the nature of Kali to Kali, there are two points of view. The first point of view: Kali to Kali transaction is a promise to sell or a contract for sale, not the sale itself. The second point of view: They consider Kali to Kali as sale and they consider the concept of sale as including it.

1-4 First view

According to this view, the nature of kali to kali is the "contract for sale or promise to sell", not the sale itself. In this case, Kali to Kali will be a contractual and indefinite contract. According to the Kali contract, the parties undertake to deliver a product in the future and to find it in exchange. Now, if the time of delivery of the goods and receiving the exchange for it is the same, it is a cash sale, if the exchange or price is received before the delivery of the goods, it is a salam sale, and if the exchange is received some time after the delivery of the goods, it will be a credit sale. In any case, the initial contract is a promise or

contract for future sale (Sadeqi Neshat, 1379: 47-57; Shah Bagh, 1376: 1/334). The above article can be further explained with an example. The buyer (importer of goods) concludes a contract with a seller (exporter of goods) based on CIF or FOB or other forms of Incoterms of the International Chamber of Commerce In this way, the buyer opens a letter of credit equivalent to the transaction price in favor of the seller within one month, which will be communicated to him by the seller's bank. The seller also delivers the goods to the carrier within ten days, then submits the shipping documents to the aforementioned bank and receives the transaction price. In this example, what is initially agreed upon is the "contract for sale" and what happens later in practice is the "sale" itself.

2-4 Second view

According to this point of view, the nature of Kali is to sell to Kali, that is, the conventional concept of sale includes Kali to Kali. The proponents of this point of view are all Sunni jurists, Imamiyyah jurists and most jurists. In Sunni jurisprudence, there is a claim of consensus that Kali is sold to Kali, because in the text of the narration it is referred to as sale, "The Messenger of God (PBUH) forbade the sale of Al-Kali with Kali" (Hamad, 1406: 19). In Imamiyyah jurisprudence, some have mentioned it as one of the examples of selling religion to religion (Mahmoud, 1999: 133/3), and others have considered it a type of sale independent of the four types of sale (Najafi, 1374: 23/98). In the division of sale in terms of the time of payment of change, which is divided into cash, credit, salam, and goods to goods, goods to goods is an independent type of sale (Bayat, 1396: 267).

3-4 The origin of differences in the nature of Kali from Kali

In a general division of the contract in terms of effects, it is divided into contractual and possessive. In which category of this division a particular contract is placed is directly related to the effects that the said contract leaves behind. It is stated in the definition of an acquisition contract; a contract that causes the transfer of financial ownership from one party to another is a clear example of this type of sale contract. However, a covenantal contract is a contract that only creates a legal obligation and obligation on the party to the contract; like a contract in which one of the two parties undertakes to build a house according to a certain plan for a certain salary (Shahidi, 1396: 85; Emami, 1366: 1/ 172).

The basis of this division is the transfer of ownership and the establishment of concrete rights. Possession contract is an objective right and covenantal contract is a religious right. With the explanation that the ownership contract creates an objective right for the obligor, which is valid in front of everyone, and one of its accessories is the right to sue; This means that the owner of the right can pursue the object of his right everywhere and remove it from the hands of any possessor. However, a covenant contract is only a daini right, and the owner of the right can only ask the oblige to do or refrain from doing something (Katouzian, 2010: 75/1, Safaei, 2015: 2/40). This basis is also accepted by jurisprudence, because in jurisprudence, the effect of some contracts is the transfer of ownership and the effect of others is the creation of an obligation for one party or parties to the contract (Najafi, 1374: 26/114).

The source of the differences and differences of opinion regarding the nature of property to property is this division, which some consider property to property as a covenant contract, and some consider it as a sale and consider it as one of ownership contracts. Although some jurists believe that ownership is true only in the sale of specific objects and does not apply in the sale of a general object. But the truth is that possession is the result of the first contract and depends on the choice of the general example by the oblige. This choice is usually done or confirmed by submission; however, its submission and acceptance is not a transaction and is not considered a new transaction, therefore, submission in this assumption is the general submission of the transfer (Katouzian, 1379: 1/37). This analysis is in favor of the above division, which in any case considers the contract of sale as possession, that is, by executing the contract, the entire object has been transferred, and delivery is not an independent legal act, but a secondary and consequential obligation resulting from the contract of sale. \

4-4 Selected theory

In comparing the first and second views in terms of the strength of the reason and their closeness to reality,it can be seen that the second view has more strength and is closer to reality. However, by accepting the first theory and citing the principle of freedom of contract, we will be spared from the

reputation of the invalidity of Kali to Kali transactions in jurisprudence. But by examining the concept of sale and the truth of Kali to Kali, we will find that Kali to Kali falls under the concept of sale.

The acceptability and acceptance of the opinion that Kali is for Kali in the concept of internal sale, will depend on the proof of the following two points. First, prove that; the semantic analysis of the accepted concept of sale and Kali to Kali puts Kali to Kali under the concept of sale. Second, prove that; the generality of the transaction in Kali to Kali has no contradiction with the ownership of the contract of sale. Proving the mentioned hypotheses as a document of accepting this point of view and finally clarifying the nature of Kali to Kali is one of the important issues of this discussion, which will be examined in the following two numbers "A and B".

1-4-4 Semantic analysis of the concept of sale and Kali to Kali

Although there is a slight difference of opinion between jurists and jurists in the terminological concept of sale, but the single truth of sale is reflected in their definitions. Due to the fact that selling is not a Shariah truth like prayer and fasting, whose meaning has been determined by Islam, nor is it a Shariah truth that was legislated by the elders or religious rulers after Islam. Rather, sale is a customary concept that is defined according to the historical course and its role and function in the society. In the custom of sale, it is defined as the acquisition of property in exchange for a settlement. That is, in order for a legal entity called sale to arise in the world of credit, there must be contract (seller and customer), contract (request and acceptance, the result of which is agreement) and exchange (sale and price). Each of the parties has requirements, acceptance, sale and price, which are beyond the scope of detail. But as soon as they exist, the sale is concluded. With this explanation, we will go to the concept of Kali to Kali and analyze whether it is related to the concept of sale or not.

There were many theories about the concept of Kali to Kali, which after discussion and investigation, we found that the exact meaning of Kali to Kali is "a financial sale described as a liability for a deferred price" or, in other words, a transaction in which the price and the price are paid. The condition of postponement and delay should be called Kali to Kali. Now, by analyzing this definition, we want to know whether the components and elements of the contract of sale come from its heart or not? If we can extract the elements (Words of contract, parties to contract, and object of contract) from this definition of do, we have proved our claim that (sale of Kali to Kali).

"Financial sale described in a liability at a deferred price is called goods for goods" the word sale evokes the fact that there is a seller and at the same time it also requires the presence of a buyer in order for the sale to be realized, because (buying and selling) From the opposites, each of them alone means buying and selling, it is proved by this explanation from the above definition of parties to the contractthe deferred price. The mechanism that the scholars use to agree on the described property and the deferred price is in the form of demand and acceptance, from this, the existence of the dispute is proven in the form of demand and acceptance, or the same compromise. The above analysis proves that all the elements of the contract of sale exist in the concept of Kali to Kali, so we conclude that the truth and nature of Kali to Kali is the same as sale.

2-4-4 The general nature of the transaction has nothing to do with the ownership of the sale contract

In Hanafi jurisprudence and civil law of Afghanistan, as well as in Imamiyyah jurisprudence and Iranian civil law, the contract of sale is considered to be a possession contract, the direct effect of which is the transfer of the sold property from the seller to the customer and the transfer of ownership of the price from the customer to the seller. Article 167 of Mojalat al-Ahkam, which is taken from Hanaf jurisprudence, stipulates: "Sale is concluded with demand and acceptance." Article 369 of it states that "a properly concluded sales order makes the customer the owner of the seller and the seller." The owner pays the price. The same sentence with a different wording is found in the Civil Code of Afghanistan.Article 1035 of the Civil Code of Afghanistan provides for the definition of the contract of sale: "The contract of sale is the acquisition of property by the seller to the customer in exchange for the price of the sale." Article 1037 also stipulates: "Sale by consent, which means acquisition and possession." It is concluded by determining the sale and price. Considering that it is mentioned in other articles of the civil law that; the seller and the customer can take possession of it before the receipt of the price or sale, it is well known

that the property is transferred at the same time as the contract takes place. In the Civil Code of Iran, Article 338 of the contract of sale defines possession in kind in exchange. And in Article 362, which deals with the effects of sale, it stipulates in its first paragraph: "As soon as the sale takes place, the customer becomes the owner of the seller and the seller becomes the owner of the price." This position of Iran's civil law is derived from Imamiyyah jurisprudence, where ownership of the contract of sale is considered a matter of debt among jurists (Najafi, 1374: 23/78). Some consider this to be a general rule in Islamic law that in all types of sales, ownership is transferred from the time of marriage (Qanawati, 1382: 5). The position of Iran's jurisprudence and civil law is to accept the ownership of mafi-al-Zema and considers sale in the case of a general sale as one of the ownership contracts (Katouzian, 1378: 33; Kiaei, 1376: 329).

However, the position of jurists in Iran's legal system, contrary to the opinion of jurists, they do not consider the sale contract in which the seller is general as ownership and consider it as a contractual contract (Shahidi, 1382: 20). The problems that jurists have made regarding the ownership of the general sales contract can be summarized in three cases. First of all, in the contract of general sale, the seller does not exist, and something that does not exist has no value to be traded. Second, the thing sold before the contract is not the property of the seller, because a person does not own anything on his own responsibility, while in the contract of exchange, it must be owned by the parties to the contract. The third is that the seller must be able to acquire; Property is one of symptoms and width requires an existing place, while the whole does not have an external existence for property to apply to it, that is, property is not true for the non-existent.

The answer to the first problem: The answer to this problem is presented in two parts, because the problem itself refers to two parts, the first is the non-existence of the seller and the second is the lack of property of the seller. The presence of the seller is the condition of sale, which is used against the dead, in Islamic jurisprudence, the sale of the dead is also prohibited, and the sale of fruit before it is born and the sale of fetuses in the stomach of animals are not allowed. The reason for this is the hadith of Ibn Abbas from the Prophet (pbuh) who said: "The Messenger of God (pbuh) forbade the sale of al-Muzamin, al-Malaqih and habal al-habla"[1] for the inauthenticity of the sale of the dead due to the existence of greed and ignorance, and the hadith "prohibition of the sale of al-gharar". Have also mentioned the main reason for prohibiting the sale of the dead is the existence of pride and ignorance, if it is ensured that there is no pride and ignorance in a case, then it can be sold without hindrance. A clear example that all jurists agree on is the pledge of allegiance. Although there is no sale in sale of Salam at the time of marriage, but the Prophet (pbuh) allowed it in such things as it is possible to record the amount, quality and duration of it. Because arrogance and ignorance are eliminated by specifying its description, quantity and type. In this matter, the power of the seller is limited to the submission of the seller in the receipt. For this reason, Salam is not permissible in a more specific case where there is a possibility of gharar, such as the fruit of this tree, or the wool spun by this woman. Because there is a possibility that that tree will not bear fruit due to pest, or that woman will not be able to spin wool due to illness. But when the subject of the transaction is a whole, and the seller has the ability to deliver it at the appointed time, the confusion and ignorance are removed and the transaction is valid.

The meaning of possessing the property of the seller is that there is a rational desire for it; So that people compete to get it. In this case, the tax does not cease to exist; Rather, it is possible that something has property in itself but does not exist (Tabatabaei Hakim, No date: 5/1; Khoei, 1412: 2/327), although in the past the word property was only reserved for material goods; But today it has lost its limited meaning and all objects and rights that have economic value are called property (Katouzian, 1384: 10; Ra Payak, 1388: 84). In the contract of sale and other ownership contracts, it is a condition that the subject of the transaction is property, although the customs do not consider the possessor as the owner, and there is no doubt that a thousand kilos of wheat can be compared to property, and customs pay money for it. This

[1]. «نهی رسول الله (ص) عن بیع المضامین و الملاقیح و حبل الحبلة»

amount of property is sufficient for the sale to be valid and it is not necessary that it be customary property before the transaction (Tabatabaei Yazdi, 1370: 54).

Answer to the second problem: In response to the form of non-ownership of the seller before the sale, it should be said; The property required in the sale is nothing more than the sovereignty over the execution of the sale contract, and for this reason, the guardian is able to sell the property of the owner, and the meaning of property in the hadith "la bayh ela fe milki" is only the sovereignty over the execution of the sale contract, and the property is in many cases It is used in the sense of royalty. For example, in this verse of the Holy Qur'an, "رب انی لا املک الا نفسی و اخی" Milk has the same meaning. There is no doubt that a person has the right to credit something of his own responsibility to another and this right is sufficient for the validity of the act of sale (Hakimian, 2016: 85).

Answer of the third problem: The third form refers to two parts, one is the concept of the object and the second is the concept of ownership, which results in the ownership of the singular. If we assign the concept of the same thing to the property that has an external existence and can be understood by the sense of touch, then a number of jurists have assigned the concept of the same thing to the same meaning (Katouzian, 1384: 35) and ownership is also the relationship between a person and let's say The above form is correct because it is not available in the general sale of property. While the jurists have not assigned the word ``Ain" only to material that has a tangible and external existence and can be understood with the sense of touch, but in its definition, they have said; the meaning of ``Ain" is an external determinate entity and that which, if it exists, is one of the external entities. That is, the jurists have considered Ain to include personal Ain, common property, general in Mohain and general in zimma (Khomeini, 1404: 143).

Some have considered the concept of ownership as a credit relationship between a person and property (Safar: 1373: 44), but most of the jurists consider ownership as legal dominion and do not consider it to be related to a specific foreign object; Rather, they have defined it as the royalty of credit which is established by law and reason, and they have not even considered the existence of ownership in the outside world as necessary (Mohaqeq Damad, 1380: 29).

According to the concept of object and ownership in jurisprudence, the answer to the forms of intangible ownership can be presented as follows: Property is not a foreign property, but it is a matter of credit that has been credited rationally, and therefore there is no obstacle to crediting it in another credit issue. In zimma and religion, the whole is not an absolute annihilation, but it exists as a credit entity, and this credit entity sometimes becomes creditable in zimma and sometimes outside of zimma, and with this description, it is considered as property and mamluk (qaboii Darafshan, 1394: 96). Although other theories have been presented by the jurists in response to these forms, some have said that although there is no external entity at the time of the contract, custom considers it as an existing asset that can be bought and sold and the subject of ownership rights. Just as the future benefit is also in terms of existing wealth. Some others have considered Kelli to be possessable because of its examples abroad and group because of its ability and talent (Yazdi, 1370: 1/274). Some have considered general possession as a decree or assumption (Sangalji, 1347: 89). But the first statement is enough to solve the problem and the following statements can be used as confirmation of the first answer.

5. Conclusion

As a result of the investigation about the concept and nature of the Kali-to-kali transaction, the following results have been obtained:

1- Conceptually, Kali to Kali is a sale in which the price and the price are deferred. Or, in other words, the sale of the property described in the obligation is called the deferred price of Kali for Kali.
2- The nature and truth of the property is the sale, and the general terms and conditions of the sale contract are true.
3- The sale contract is a property in any case, even if it is a general sale or a debt, in all types of sale, the transfer of ownership takes place from the time of the contract, except in exceptional cases

where a special condition has been established for the validity of the sale contract, in which case The transfer of ownership will be from the time of fulfillment of the condition.

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