

THE TRADE OF SALAM IN THE TREATISE OF MABSUT OF SHAMS-AL-A IMMMA SARAKHSI AND THE DECISIONS REGARDING IT

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Abstract:

In the article the discussions on the trade of salam as it appears in the treatise of "Mabsut" of one of the greatest scholars of the Hanafi mazhab, Abu Bakr Muhammad ibn Ahmad Abu Sahl Sarakhsi who was famous under the penname Shams-al-a'imma (Sun of Imams) living in the 11th century is analysed. Also, the terminological meanings of the Salam in vocabulary and shariat are revealed based on the examples and are substantiated by the shariat proofs. Several samples on the trade of salam in the chapter of trade which is the part of the book 12 of the "Mabsut" treatise were selected and are revealed based on the methodical rules. The obliteration of the agreement based on the quality of means, money being accumulated for the trade of salam are studied and the conclusions are drawn based on the data. The modern applications of the norm is also reconsidered in the article.

Keywords: Sarakhsi, "Mabsut", salam, Islam, fiqh, trade of salam, rules of skills, Qur'an, hadis, nass.

Introduction

Although Shams al-a'imma Sarakhsi lived and worked in the 11th century AD, his work "Mabsut" is still widely studied in the field of dissemination of knowledge in Islamic jurisprudence. It is well established fact that the most important part of the circulation of jurisprudence is the trading part, that is, the book of bay', and in this article the issues related to the sale of this book "salam" are mentioned.

Salam in the dictionary means "to surrender", "to give". In Sharia, however, it is said to pre-give the value of the alleged property which is under the consideration in the charge.

This attribute is also called the salaf, which means that the value is given in advance.

This case is applicable when it is conditioned with the non use of the interest rate.

That is, what is being bought and sold should not be the same.

In Salam, the buyer says to the seller, "I have given you this dinar so that you can sell me something and give it to me at a certain time and place".

The Salam Agreement also provides significant assistance in promoting agricultural, manufacturing and commercial benefits, and serves the interests of both parties on the basis of mutual partnership. It is traditionally considered as an investment made by the buyer to the seller.

Results

Islamic jurisprudence has previously developed a rule that it is not possible to trade in something that does not exist from the beginning. However, it excluded the sale of salam with the union of ijthad. Because it has a general economic benefit. As evidence of this, the 282 verse of Surat al-Baqara, the longest verse of the Qur'an and the verse that summarizes the issues of debt, is to be proved. And in the Hadith Sharif it is mentioned about salam as follows: "The Prophet (peace and blessings of Allaah be upon him) forbade man from trading what he did not have, allowed Salam, and said following: "When somebody makes the trade in slam, he has to make agreements with the aniqkayl and and definite weight until certain time for the salam trade".

If we consider some of the judgments on the Salam trade, which are presented in the work "Mabsut", based on the rules of kulli.

In the 12th book of his work, it is permissible to measure and weigh the molasses during the season, to carry out the salami trade. The reason molasses are also measured either as milk or weighed. It is permissible to salam only if the weight is known by measuring or weighing the liquids. The amount is precise in size and weight.

The rule in this regard is as follows: In the time of the Prophet (May peace and blessings of Allah be upon him), anything whose quantity is measured, even if it is customary to weigh it on the scales, is considered to have been measured to the end, during the times of our prophet sallallahu alaihi wasallam the items which were weighed in the scales, are always considered as being weighed(measured).

In cases where it is not specified how it will be sold, it will be sold as is the local custom. All of the trade settlement s are reglamented by the means of initial economic relations.

According to a narration from Abu Yusuf, any custom is important. In the time of the Prophet (peace and blessings of Allah be upon him), what was sold by measure was recorded according to custom, not by nass who came from the Messenger of Allah (peace and blessings of Allah be upon him). But most of the Hanafis say that the Prophet's acceptance of the custom of people is equal to that of the open nass. Moreover, this does not change with the habit. Where there is Nass, the custom is due to be ignored. Here Abu Yusuf took the initiative in relation to the essence of customs, and considered the customs of the city with others.

Here the rule of "as is determined by habit, as determined by nass" is applied.

If a person sells a thousand dirhams of wheat on the basis of salam, it is permissible to sell salam for five hundred of that thousand dirhams in debt and five hundred dirhams in advance. According to Imam Zufar, the sale of salam to all of the thousand dirhams is considered a fake. This is evidenced by the fact that Muhammad (peace and blessings of Allaah be upon him) forbade the sale of debt for debt. The fact that the mistake is part of the contract, cancels its whole. Here it is as if the seller has taken the salami property for which

payment has been made, on condition that the rest be lent. This mistake is a must. Most of the Hanafis' opinion on this subject is based on the narrations of Abdullah ibn Abbas (r.a.).

Moreover, in both debt and meaning, a portion of money has the power of the whole. Despite the trade in which all of the money at the time of the contract is given, the contract is considered trustworthy (sahih). In the above case the contract is also authentic, the reason is concluded based on the amount of money given, the contract is not based on the remaining debt. If the customer takes the property in borrowing from the person who lends, if afterwards he returns the borrowed, in this case the agreement is considered honest. Only the wheat costing five hundred dirhams is considered spoilt in the salam property due to its non delivery during the time of the agreement.

That, too, is a mistake that appeared later. Only applies to the defective part. The judgment does not change even if half of the property in the contract does not exist before the transfer.

This is where according to the Abu Hanifa's rule, "If a part of a contract is broken, the whole is broken".

When the trader withdraws the money during the agreement, if he sees that the money were broken (useless), if he wants he may return the money, if he wants may receive the money as it appears.

In this case, the contract is permissible. Because even broken coins are money, only defective. The presence of a defect in something does not make it from the opposite sex. On the other hand, broken money is money that is not accepted into the treasury, but is in circulation among traders. Nabahroja money, on the other hand, is a variety of money accepted among traders, which they do not accept because it contains a foreign substance (gash). Only in this way can it be considered a dirham (money). For this reason, the person who receives it is considered to have received the right, and the contract is considered permissible with his consent. But if the money received includes sittuka (copper money with silver water) or lead, the money is not counted. The Sittuka is made of silver water, and the lead is not already of the type of dirham. You can't trade with them. The seller's receipt of this money means that he has exchanged them, and it is not permissible to exchange the money without transferring it to the disposal of the Property.

Conclusion:

The sale of "Salam" is permissible in Islamic law. Scholars have agreed on the possibility of this type of trade, and evidence from the Qur'an and hadith has also been cited as its proof. The salam is traded in specific goods such as weighed or measured in volume. When it is not possible to weigh in any way, the tradition of the people is addressed.

The money given for the sale of salam is considered a loan. Also, most of the religious scholars maintain that the trade of salam is possible by means of giving the certain part of the agreed money

If the coins given for the sale of salami are broken, it is also permissible to accept them as money, and the contract may remain in force. If the merchant returns the money by his desire of not making such an agreement it is considered his will. If the money presented for the trade of salam are from other origins or the dirhams have other substances in their alloys this agreement is not just one

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