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Comparative Analysis of Pakistani Laws and “Majalla Al-ahkam Al-adliyyah” Regarding Buying and Selling of the Properties in the Real Estate Business.

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Abstract

This research paper conducts a comparative analysis of Pakistani Laws governing the buying and selling of properties in the real estate business, juxtaposed with issues addressed in “Majalla Al-ahkam Al-adliyyah”—a comprehensive book on Hanafi jurisprudence written in the 19th century Ottoman Caliphate. Despite seventy-five years of independence, Pakistan still relies on modified laws from British India, especially the Transfer of Property Act 1882, for land transactions. The Majalla provides a unique perspective rooted in Islamic tradition. The study delves into the definitions of sale, categorizes types of sales, and explores the essence of sale in both legal frameworks. Additionally, it differentiates buyer's rights and obligations, emphasizing the duty to disclose defects. The analysis covers the authenticity of official documents and the importance of granting possession of the land to the buyer. It also addresses the non-privilege in the land and the obligation to clear public charges, rent, and incumbrances. The findings highlight the need for a more nuanced legal structure aligned with Islamic jurisprudence to regulate real estate transactions in Pakistan.

Keywords: Majalla Al-ahkam Al-adliyyah, Pakistan, Laws, Properties, Buying

Introduction

It is an undeniable fact that unless the economic affairs of a country or society are bound by proper rules and regulations, the fair and just formation of that country or society is not possible. Every country has rules and regulations for financial matters. Similarly, in Pakistan, there are the rules and regulations for financial matters, but unfortunately, even after seventy-five years of independence, these laws and regulations are made by British India and are still operating in our country with some modifications and following the Quran. No permanent legal structure could come into being in the light of Islamic tradition and jurisprudence.

The laws of the British India period regarding the purchase and sale of land are still in use in Pakistan in the form of the Transfer Act 1882, so there is a need for a comparative review of the Pakistani laws in the light of the reliable book of Hanafi jurisprudence, *Majal Al-Ahkam al-Adliyyah*. was written in the Ottoman Caliphate of Turkey in the 19th century by a committee consisting of seven members who, after years of hard work, compiled it completely from the vast collection of Islamic jurisprudence and thus the civil law of Turkey. After the editing was completed, this collection was published by the order of the Sultan of Turkey under the name of "“Majalla Al-ahkam Al-adliyyah” of Judgments". The laws of Majla remained in use in the courts of the Ottoman Empire until 1918 and decisions were made according to them in Hijaz, East Jordan, Syria, Iraq, Egypt and Sudan.¹

Sale and its terms

Sale is defined in the Deceased Property Act 1882 as follows:

“Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”²

While in the “Majalla Al-ahkam Al-adliyyah” the definition of Bay' is given in the following words:

” الْبَيْعُ: مُبَادَلَةٌ مَالٍ بِمَالٍ “³

“Sale consists of exchanging property for property.”

Both definitions highlight the basic concept of mutual exchange of goods, but the first definition provides a deeper and more comprehensive explanation, suitable for legal contexts and formal transactions. It addresses the legal consequences of a sale by highlighting the transfer of ownership, an important aspect in contract and property law.

The second definition is short but more comprehensive which is usually mentioned in *Umhat al-Kitab* of Fiqh and this definition is not only related to the purchase and sale of land, but it includes all types of purchase and sale. It has more room for interpretation and is more suitable for informal or general buying and selling.

In these two definitions, the constraint of compromise does not exist, although generally the jurists add the constraint of mutual consent to the definition of pledge. The answer to this is that since buying and selling without consent is also one of the types of goods, therefore the prison of mutual consent is not imposed so that buying and selling without consent also enters into it.⁴

Types of Sale

In the Transfer Act 1882, there are no more types of sale, while in the *Majalla Al-Ahkam-Al-Adliyyah*, sale and purchase are divided into two types: held sale and non-held sale, then made four types of held sale. This division of buying and selling is based on caste. The details are as follows:

It may be concluded or non-concluded.

(1) A concluded sale is a sale in which there is a concluded contract. Such sales are divided into valid, voidable, executory, and conditional.

(i) A valid sale, or a sale which is permitted, is a sale which is lawful both in itself and as regards matters incidental thereto.

(ii) A voidable sale is a sale which, while valid in itself, is

invalid as regards matters incidental thereto. That is to say, it is a concluded sale in itself, but is illegal as regards certain external particulars.(See chapter VII)

(iii) An executory sale is a sale not dependent upon the right of any third person. Such sales are divided into irrevocable and revocable sales.

(iv) A conditional sale is a sale which is dependent upon the rights of some third party, such as a sale by an unauthorised person. An unauthorised person is a person who, without any legal permission, deals with the property of some other person.

(2) A non-concluded sale is a:

(i) It is a thing the benefit of which is lawful to enjoy;

(ii) The other is acquired property. A void sale is a sale which is invalid in itself.⁵

Apart from these types, there is another type of sale which is called installment sale. This is mostly prevalent in real estate business nowadays as most people in Pakistan buy plots or houses in installments. In the Majalla Al-Ahkam-ul-Adliyyah, installment sale is defined as follows:

“Payment by instalments consists of a postponement of payment of a debt in order that it may be paid at deferent and definite periods.”⁶

Types of property

Since property are exchanged for property in sale, it is imperative to describe the goods and their types. On the same basis, the definitions of property, real property, movable property and immovable property have been mentioned in the Majalla Al-Ahkam-ul-Adliyyah, which are as follows:

“Property consists of something desired by human nature and which can be put aside against time of necessity. It comprises movable and immovable property.”⁷

Property of some specific value is spoken of in two senses.

(1)It is a thing the benefit of which is lawful to enjoy;

(2)The other is acquired property.

Example: A fish while in the sea is not of any specific value. When it is caught and taken, it becomes property of some specific value.⁸

Movable property consists of property which can be transferred from one place to another.This includes cash, merchandise, animals, things estimated by measure of capacity and things estimated by weight.⁹

Immovable property consists of property such as houses and land which are called real property and which cannot be transferred to another place.”¹⁰

fundamental basis of sale

There are two fundamental basis of the sale and purchase which are not mentioned in the Transfer Act 1882, however, the definition of these essences is mentioned in the applicable laws of Pakistan "Contract Act 1872" which are as follows:

“When one person signifies to another his willingness to do or to abstain

from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

The person making the proposal is called the “promisor,” and the person accepting the proposal is called the “promisee”¹¹

Legal Dictionary English Urdu and "The Sale of Goods ACT, 1930" have added a further limitation that acceptance can be by gestures and silence besides words.

“Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly be word of mouth or may be implied from the conduct of the parties.”¹²

In contrast to this, in the “Majalla Al-ahkam Al-adliyyah”^h, essence of sale is defined in the journal as follows:

The fundamental basis or essence of sale consists of one piece of property being exchanged for another. Offer and acceptance are also referred to as the fundamental basis of sale, since they imply exchange¹³

Then he made two types of it, one is called offer while the other is called acceptance and defined both of them.

Offer is the statement made in the first place with a view to making a disposition of property and such disposition is proved thereby.

Acceptance is the statement made in the second place with a view to making a disposition of property. The contract becomes completed thereby¹⁴

After that, there is a detailed discussion on acceptance and acceptance in the “Majalla Al-ahkam Al-adliyyah”, in which there are three forms of acceptance and acceptance (through oral words, through writing, through action), valid expressions in oral acceptance and acceptance, conditions for the validity of acceptance. etc. are described in detail in the form of various provisions.¹⁵

The four components of sale

There are four things in every type of sale: the buyer or vendor, the purchaser, the thing sold and the price. Each is defined as follows:

“The vendor is a person who sells property. The purchaser is a person who buys.¹⁶ The thing sold is the property disposed of, that is, the specific object specified at the sale and which constitutes the original object thereof, because enjoyment can only be had of specific objects, price being the means of exchanging property. The price is the amount to be paid for the article sold, and entails liability to make payment.”¹⁷

Buyer's Rights and Obligations

Section No. 55 of the “Transfer of Property Act, 1882” lays down the rights and duties of the seller of immovable property and this section is further divided into six sub-sections and then these six sub-sections are further divided into sections. Sub-section No. 1 (A) The obligations and duties of the buyer are as follows:

“To disclose to the buyer any material defect in the property”¹⁸

As far as the problem of defect and defect in the goods being sold is concerned, it is legally obligatory for the seller to disclose the defect and defect to the buyer at the time of sale because concealing the defect and defect is fraud which is It is illegal. In Hadith Sharif, a strict promise has been made for such a person:

”عَنْ وَائِلَةَ بْنِ الْأَسْقَعِ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: "مَنْ بَاعَ عَيْبًا لَمْ يُبَيِّنْهُ، لَمْ يَزَلْ فِي مَقْتِ اللَّهِ، وَلَمْ تَزَلِ الْمَلَائِكَةُ تَلْعَنُهُ“

“The Messenger of Allah (ﷺ) say: 'Whoever sells defective goods without pointing it out, he will remain subject to the wrath of Allah, and the angels will continue to curse him.’”¹⁹

There is a permanent section in "MaJalla Al-ahkam-Al-adliyyah" related to defects and defects in the goods sold, in which all the rules and regulations related to defects and defects are described. First the defect is defined:

“A defect consists of any faults which, in the opinion of persons competent to judge, cause a depreciation in the price of the property”.²⁰

After that, the various forms and rulings of defects found in the goods sold are explained in detail. Among these defects which may be related to the purchase and sale of land are the following:

- i. In an unconditional sale, the thing sold must be free from any defect. that is to say, although property is sold without stipulating that it shall be free from faults, and without stating whether it is sound, or bad, or defective, or free from fault, such property nevertheless must be sound and free from defect.²¹
- ii. If some defect of long standing is revealed upon the unconditional sale of any piece of property, the purchaser has the option of rejecting it or accepting it for the fixed price. He cannot keep the property and reduce the price on account of the defect. This is called the option of defect.²²
- iii. A defect of long standing is a fault which existed while the thing sold was in the possession of the vendor.
- iv. Any defect which occurs in the thing sold after sale and before delivery, while in the possession of the vendor, is considered a defect of long standing and justifies rejection.²³
- v. If the purchaser after becoming aware of a defect in the thing sold performs any act indicative of the exercise of a right of ownership, he loses his option of defect.
- vi. Example:- The purchaser, after becoming aware of the existence of a defect of long standing in the thing sold, offers such thing for sale. He is taken to have acquiesced therein and cannot reject the thing sold.²⁴

Authenticity of official documents

Sub-section No. 1 (b, c) of the "Transfer of Property Act, 1882" defines the second and third duties of the seller as follows:

“To produce to the buyer on his request for examination all documents of title relating to the property which are in the seller’s possession or power; To answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.”²⁵

As far as the issue of land or its official documents is concerned, the details regarding it are that these documents are of two types according to Shari'ah:

i. Such documents and official papers which are based on the facts and are protected from any kind of change and alteration and all the legal requirements have been fulfilled, then such documents are evidence. Such documents are proved to be true after examination in court. So the court can decide accordingly.

ii. Those papers and documents whose legal requirements have not been fulfilled and they are not protected from alteration and forgery, then such documents are not valid in the eyes of the jurists. Can't give

A permanent section on official documents has been created in "Judicial Journal" in which a detailed discussion has been made on whether such documents are valid or not.

The details are as follows:

- i. No action may be taken on writing or a seal alone. If such writing or seal is free from any taint of fraud or forgery, however, it becomes a valid ground for action, that is to say, judgement may be given thereon. No proof is required in any other way.²⁶
- ii. The Sultan's rescript, and entries in the land registers are considered to be conclusive, since they are not tainted by fraud.²⁷
- iii. As is set forth hereinafter in the Book relating to the Administration of justice by the Courts, registers kept by the Courts in such a way as to be free from any irregular practice or deception are considered to be conclusive.²⁸
- iv. Documents instituting a pious foundation are not in themselves considered to be conclusive. If registered, however, in Court registers which are reliable as stated above, they are then considered to be conclusive.²⁹

As for the issue of presenting to the buyer for inspection or questioning and questioning, then it is the responsibility of the seller to show him the land being sold and its documents at the request of the buyer. In Islamic jurisprudence. For this, the laws and regulations of choice of vision have been compiled, regarding which a permanent chapter has been drawn up in "Majalla Al-ahkam Al-adliyyah" and in it the laws and regulations related to choice of vision have been presented in the form of provisions. The details of which are as follows:

- i. The object of the option of inspection is to ascertain the nature of the thing sold and the whereabouts thereof. Example:- A person who examines the outside of a plain piece of cloth which is the same on both sides; or a piece of cloth marked with stripes or flowers; or the teat of a sheep bought for breeding; or the back of a sheep bought for killing; or who tries the taste of things for eating and drinking and who later makes a purchase, has no option of inspection.³⁰
- ii. It is sufficient to see a sample produced of things sold by sample.³¹
- iii. If the thing sold proves to be inferior to the sample, the purchaser has an option of taking or rejecting it. Example:- If such things as corn or oil, and linen or wool manufactured so as to conform to a set standard of excellence are bought after inspecting a sample thereof, and are later found not to come up to sample, the purchaser has an option.³²
- iv. In the purchase of real property such as an inn or a house, every room must be inspected. If the rooms are all of one type, however, it is sufficient to inspect one of the rooms.³³

- v. When things which are dissimilar to each other are purchased en bloc, each one must be inspected separately.³⁴
- vi. If the purchaser buys things which are dissimilar from each other en bloc and inspects some of them and fails to inspect the rest, and, upon inspection of the latter, is dissatisfied therewith, he has the option of accepting or rejecting the whole lot. He may not take those with which he is satisfied and reject the rest.³⁵
- vii. A blind person may validly buy and sell, but if he buys property the description of which is unknown to him, he has an option.³⁶
- viii. Example:- If he buys a house the description of which is unknown to him, he has an option, upon learning the description thereof, of accepting or rejecting.
- ix. A blind person has no option if he purchases a thing which has been described to him beforehand.³⁷
- x. If a blind person touches anything the nature of which can be ascertained by means of the sense of touch, and smells things the nature of which can be ascertained by means of the sense of smell, and tastes things the nature of which can be ascertained by means of the sense of taste, his right of option is destroyed. That is to say, if he touches or smells such things and afterwards purchases them, the sale is valid and irrevocable.³⁸
- xi. If a person who has inspected a piece of property with a view to purchase later buys such property knowing it is the property in question, such person has no option of inspection. Should any change have been made in such property, however such person has an option.³⁹
- xii. Inspection by an agent authorised to buy or receive the thing sold, is equivalent to inspection by the principal.⁴⁰
- xiii. Inspection by a messenger, that is to say, a person sent, who merely has the power of collecting and dispatching the thing sold, does not destroy the purchaser's option of inspection.⁴¹
- xiv. If the purchaser deals with the thing sold in any way indicative of a right of ownership, his option of inspection is destroyed.⁴²

Giving possession of the land to the buyer

Sub-section No. 1 (D, E, F) of the "Transfer of Property Act, 1882" defines the fifth, sixth and seventh obligations of sale as follows:

“On payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

Between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

To give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits.”⁴³

After the buyer has paid the price, it is the responsibility of the seller to fulfill the official documents and documents and all the requirements according to the death registry law, because these things are considered possession. In “Majalla Al-ahkam Al-

adliyyah”, the following rules and regulations regarding the delivery of goods are written:

- i. Taking delivery is not an essential condition of sale. After the conclusion of the contract, however, the purchaser must first deliver the price to the vendor, and the vendor is then bound to deliver the thing sold
- ii. to the purchaser.⁴⁴
- iii. The thing sold must be delivered in such a way that the purchaser may take delivery thereof without hindrance. The vendor must give permission for such delivery.⁴⁵
- iv. As soon as the thing sold has been delivered, the purchaser is considered to have taken delivery thereof.⁴⁶
- v. The method of delivery differs, according to the nature of the thing sold.⁴⁷
- vi. If the purchaser in on a piece of land, or in any field, or if the purchaser sees such land or fields from near by, any permission given by the vendor to take delivery thereof, is considered to be delivery.⁴⁸
- vii. If the purchaser is within any real property, such as a house or an orchard, which can be closed by locking, and is informed by the vendor that the latter has delivered such real property to him, delivery thereof has been effected. If he is outside such property, and the purchaser is so near
- viii. thereto that he could immediately lock the same, delivery thereof is effected by the vendor merely stating that he has made delivery. If he is not in such close proximity to such property, however, delivery is effected after the expiration of such time as is necessary for him to arrive and enter
- ix. therein.⁴⁹
- x. 271. Delivery of real property which can be locked is effected by handing over the key.⁵⁰
- xi. If the purchaser takes delivery of the things sold and the vendor, seeing this, makes no objection, permission to take delivery is given.⁵¹

Non-privilege in the land

Sub-section No. 1 (g) of the "Transfer of Property Act, 1882" states the eighth duty of sale as follows:

“To pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.”⁵²

In the same way, it is necessary from the Shariah point of view that the seller should take full possession and handover of the goods and that no one has any rights related to the goods and there are no government obligations, no rent, no electricity bills, etc:

The thing sold must be delivered in such a way that the purchaser may take delivery thereof without hindrance. The vendor must give permission for such delivery.⁵³

If land is sold upon which crops are growing, the vendor must clear the land of such crops by reaping them or by pasturing animals thereon.⁵⁴

The authoritative book of Hanafi jurisprudence is Fatawi in Hindi:

”وأما شرائط النفاذ فنوعان أحدهما الملك أو الولاية والثاني أن لا يكون

في المبيع حق لغير البائع فإن كان لا ينفذ كالمرهون والمستأجر⁵⁵،

“As for the conditions for enforcement, they are of two types, one of which is ownership or guardianship, and the second is that there is no right in the sold item other than the seller. If it is not enforceable, such as the mortgaged property or the lessee .”

The seller is able to surrender

"Transfer of Property Act, 1882" Section No. 55 sub-section: 2 states the ninth liability of the seller as follows:

“The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it. The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.”⁵⁶

In this sub-section, it is stated that the seller is in possession of the thing to be sold and he is able to deliver it, i.e. the seller is capable of delivery, which is also required by Shari'ah.

While describing the conditions and characteristics of the thing sold, it is written in “Majalla Al-ahkam Al-adliyyah” that:

- i. The thing sold must be in existence
- ii. The thing sold must be capable of delivery.
- iii. The thing sold must be property of some specific value.
- iv. The thing sold must be known to the purchaser.
- v. The fact that the thing sold is known is ascertained by referring to its state and description
- vi. which distinguish it from other things.

Example:- A specific quantity of red corn, or a piece of land bounded by specific boundaries. If these are sold, the nature thereof is known and the sale is valid.⁵⁷

Handing over the title documents to the buyer

"Transfer of Property Act, 1882" Section No. 55 Sub-Section: 3 states the tenth liability of the seller as follows:

“ Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller’s possession or power.”⁵⁸

It has already been discussed that the official document is a sign of ownership of the land, the sale does not stop there, because as it is already known, the sale is the name of mutual exchange of property with property and when it is agreed and accepted, the sale is complete. Therefore, when the sale is completed and the seller has received the money from the buyer, it is now his responsibility to hand over the ownership of the land and its documents to the buyer.

Entitled to the profits and rents etc. of the land

“Transfer of Property Act, 1882” Section No. 55, sub-section: 4 contains two more sub-sections (A and B). In the first of these sections, it is stated that the land so long as the land sold is in the possession of the seller. He shall also be entitled to the profits derived from it. According to the second section, after the transfer of ownership, the purchaser shall be entitled to the profits thereof.

“The seller is entitled—

to the rents and profits of the property till the ownership thereof passes to the buyer;

where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.”⁵⁹

Sharia-wise, the problem is the same, as long as the land is owned by the seller, its profits will also go to the seller, and after the transfer of ownership, the buyer is entitled to its profits, because it is a Sharia rule, as stated in the hadith. nor to profit from what is not possessed.⁶⁰ It is in a hadith that: Narrated 'Aishah: That the Messenger of Allah (ﷺ) judged: “The produce is for the responsible one.”⁶¹ It means that whoever owns the thing and suffers any loss, then he bears the loss, so he will also be entitled to its profit. This rule is mentioned in the following words in “Majalla Al-ahkam Al-adliyyah”h:

“Disadvantage is an obligation accompanying enjoyment. That is to say, a person who enjoys a thing must submit to the disadvantages attaching thereto.”⁶²

Duties and rights of the buyer

Section No. 55 of the "Transfer of Property Act, 1882" contains four more sub-sections (A, B, C, D)

“ to disclose to the seller any fact as to the nature or extent of the seller’s interest in the property of which the buyer is aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;”⁶³

Here, the moral responsibility of the buyer is being described that when he is buying a land, he should clarify his interests and the purpose of buying it in front of the sale, and in addition, he should see such interests in this land that are his own. If the seller does not know about it according to belief, then he should put it before the seller as in the hadith:

”فَإِنْ صَدَقَا وَبَيَّنَّا بُورِكَ لَهُمَا فِي بَيْعِهِمَا، وَإِنْ كَذَبَا وَكَتَمَا مُحِقَّتْ بَرَكَتُهُ
بَيْعِهِمَا“⁶⁴

“The Prophet (ﷺ) said, "The buyer and the seller have the option of canceling or confirming the bargain unless they separate, and if they spoke the truth and made clear the defects of the goods, then they would be blessed in their bargain, and if they told lies and hid some facts, their

bargain would be deprived of Allah's blessings. ”

Price to seller

In the transfer property act 1882:

“to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: Provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto.”⁶⁵

In Islamic buying and selling, the selling price is sometimes given in cash and sometimes borrowed. If the purchase price is in cash, it has to be paid in Majlis-i-Bay at the same time as in Majla:

“Taking delivery is not an essential condition of sale. After the conclusion of the contract ,however, the purchaser must first deliver the price to the vendor, and the vendor is then bound to deliver the thing sold to the purchaser.”⁶⁶

And if the price is through borrowed installments, then buying and selling is valid, but it is necessary to determine the time, as it is in the Majalla Al-alahkam Al-adliyyah:

“A valid sale may be concluded in which payment of the price is deferred and is made by instalments.

In the event of deferment and payment of the price by instalments, the period thereof must be definitely ascertained and fixed.

if a bargain is concluded with a promise for payment at some definite future date which is fixed by two contracting parties, such as in so many days, or months, or years time, or the 26th October next, the sale is valid.

If a bargain is concluded stipulating for payment at a time which is not clearly fixed, such as “ when it rains” the sale is voidable.”⁶⁷

Statement of defect in the item sold

Sub-section No. 5 (c) of the Transfer of Property Act, 1882 deals with defects and damages arising after the sale of property which is detailed as follows:

“where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller.”⁶⁸

Compared to this, in the “Majalla Al-ahkam Al-adliyyah”h, the Shariah rulings related to defects have been described in the form of 19 provisions, in which the definition, types and rulings of defects have been discussed. First of all, defects have been defined:

- i. A defect consists of any faults which, in the opinion of persons competent to judge, cause a depreciation in the price of the property.
- ii. Two types of defects are then made: A defect of long standing is a fault which existed while the thing sold was in the possession of the vendor. Any defect which occurs in the thing sold after sale and before delivery, while in the possession of the vendor, is considered a defect of long standing and justifies rejection.
- iii. In an unconditional sale, the thing sold must be free from any defect. that is to say, although property is sold without stipulating that it shall be free from faults, and

without stating whether it is sound, or bad, or defective, or free from fault, such property nevertheless must be sound and free from defect.

- iv. If some defect of long standing is revealed upon the unconditional sale of any piece of property, the purchaser has the option of rejecting it or accepting it for the fixed price. He cannot keep the property and reduce the price on account of the defect. This is called the option of defect.
- v. If a defect appears in the thing sold while in the possession of the purchaser, and it proves to be a defect of long standing, the purchaser has no right to return the thing sold to the vendor, but has a right to claim a reduction in the price.⁶⁹

Summary:

This research paper underscores the imperative need for a comprehensive reevaluation of Pakistani legal regulations governing real estate transactions, comparing them with the principles outlined in “Majalla Al-ahkam Al-adliyyah”. The findings indicate significant differences in the definitions, classifications, and treatment of various aspects of buying and selling property. While Pakistan relies on British-era laws, the Majalla offers a unique Islamic perspective, particularly relevant given the country's predominantly Muslim population. The study emphasizes the need for a legal framework that aligns more closely with Islamic jurisprudence and addresses contemporary real estate practices, including installment sales. The Majalla's detailed insights into defects, official documents, and possession provide valuable perspectives for enhancing the fairness, transparency, and justice in real estate transactions within the Pakistani legal system.

¹ Suhbii makhmasani, *alfalsafat altashrieiat fi al'iislam* (birut: dar aleilm, third edition: 1961) p. 86.

² The Transfer of Property act, 1882 (act no. IV of 1882) Chapter: III Sales of Immoveable Property, act 54

³ Majalla Al Ahkam Al Adaliyyah(Karachi: Karkhana Tijarat Kutub, Aaram Bagh), Book 1. Sale, Intoduction: Term of Islamic Jurisprudence Relating to Sale, Article: 105. p. 29

⁴ Muhammad Khaled Atassi, *Durar al-Ahkam, Sharh of Majalla al Ahkam Adadliyyah*, Introduction: Term of Islamic Jurisprudence Relating to Sale, Article: 105, p. 106

⁵ Majalla Al Ahkam Al Adaliyyah, Book 1. Sale, Intoduction: Term of Islamic Jurisprudence Relating to Sale, Article: 106-113. p. 29-30

⁶ Ibid, Article: 157. p. 33

⁷ Ibid, Article: 126. p. 31

⁸ Ibid, Article: 126. p. 32

⁹ Ibid, Article: 128.

¹⁰ Ibid, Article: 122.

¹¹ The Contract act,1872, Preliminary, Section 2 (A B C)

¹² Tanzeelur Rahman, *Legal Dictionary English Urdu* (Lahore: Modern Urdu Type Press, Third Edition, 1976), p: 25-26-The Sale of Goods ACT, 1930, Chapter II: Formation of the contract, Section 5 (2) Page: 6

¹³ Majalla Al Ahkam Al Adaliyyah, Book 1, Sale. Article. 149, Page: 33

¹⁴ Ibid Artical: 101-102, Page: 29

¹⁵ Ibid. Article. 168-180. 37-35

¹⁶ Majalla Al Ahkam Al Adaliyyah, Book 1, Sale. Section: 160-161, Page: 34

¹⁷ Ibid. Section: 151-152, Page: 33

¹⁸ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section 55, Sub-section: 1 (A)

¹⁹ Sunan Ibn Majah, Chapter 14 The Chapters On Business Transactions, Hadith No.2247

²⁰ Majalla Al Ahkam Al Adaliyyah, Book 1, Sale, Section vi. Option for Defect. 338 Page: 67

²¹ Ibid. 336 Page: 66

²² Ibid, 337

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- ²³ Ibid. 339-340 Page: 667
- ²⁴ Ibid, 344
- ²⁵ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section 55 , Sub-section: 1 (B,C)
- ²⁶ Majalla Al Ahkam Al Adaliyyah, Book XV, Chapter II. Documentary Evidence and Presumptive Evidence. Section I. Documentary Evidence. 1736Page: 352
- ²⁷ Ibid. Article. 1737
- ²⁸ Ibid. Article. 1738
- ²⁹ Ibid. Article.1739 Page: 353
- ³⁰ Ibid, Chapter VI. Option. Section V. Option as to Insreccion. 323 Page: 64
- ³¹ Ibid. 324 Page: 65
- ³² Ibid. 325
- ³³ Ibid. 326
- ³⁴ Ibid. 327
- ³⁵ Ibid. 328
- ³⁶ Ibid. 329
- ³⁷ Ibid. 330
- ³⁸ Ibid. 331 Page: 66
- ³⁹ Ibid. 332
- ⁴⁰ Ibid. 333
- ⁴¹ Ibid. 334
- ⁴² Ibid. 335
- ⁴³ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section 55, Sub-section: 1 (D,E,F)
- ⁴⁴ Majalla Al Ahkam Al Adaliyyah, Book I, Chapter V. Giving and Taking Delivery. Section I. Proceure of Giving and Taking Delivery. Article 262. Page: 54
- ⁴⁵ Ibid. Article 263. Page: 54-55
- ⁴⁶ Ibid. Article 264. Page: 55
- ⁴⁷ Ibid. Article 265.
- ⁴⁸ Ibid. Article 266.
- ⁴⁹ Ibid. Article 270.
- ⁵⁰ Ibid. Article 271.
- ⁵¹ Ibid. Article 276. P. 56
- ⁵² The Transfer of Property act, 1882 · Chapter: III Sales of Immoveable Property, Section 55, Sub-section: 1(G)
- ⁵³ Majalla Al Ahkam Al Adaliyyah, Book I, Chapter V. Giving and Taking Delivery. Section I. Proceure of Giving and Taking Delivery. Article 263. Page: 54-55
- ⁵⁴ Ibid. Article 267. Page: 55
- ⁵⁵ Committee of Scholars headed by Nizam al-Din al-Balkhi, Fatawa al-Hindiyya (Beirut: Dar al-Fikr, second edition, 1310 AH), vol. 3, p. 3.
- ⁵⁶ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 2
- ⁵⁷ Majalla al Ahkam Aladliyyah. Chaper II. The Subject Matter of the Sale. Section I. Conditions affecting the Subject matter of the sale and description. Article 197-201. P. 41
- ⁵⁸ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 3
- ⁵⁹ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 4(A,B)
- ⁶⁰ Jami At Tirmidhi, Chapters on Sales, Chapter on Dislike Selling What You Do Not Have Hadith No: 1234
- ⁶¹ Jami At Tirmidhi. The Chapters On Judgements From The Messenger of Allah, Hadith No: 1285
- ⁶² Majalla Al Ahkam Al Adaliyyah, Part II. Maxims of Islamic Jurisprudence. 87. Page: 26

⁶³ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 5(A)

⁶⁴ Sahih Bukhari, 34 Sales and Trade, (44)Chapter: To cancel or confirm the bargain. Hadith No: 2110

⁶⁵ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 5(B)

⁶⁶ Majalla Al Ahkam Al Adaliyyah, Book I, Chapter V. Giving and Taking Delivery. Section I. Proceure of Giving and Taking Delivery. Article 263. Page: 54-55

⁶⁷ Ibid. Section II.Sale subject to payment at a future date. Article 245-248. Page: 50

⁶⁸ The Transfer of Property act, 1882 (act no. IV of 1882· Chapter: III Sales of Immoveable Property, Section:55, Sub-section: 5(C)

⁶⁹ Majalla Al Ahkam Al Adaliyyah, Book I, Chapter V. Giving and Taking Delivery. Section VI. Option for defect. Article 338-345. Page: 67