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KHARAJ AND LAND PROPRIETARY RIGHT IN THE SIXTEENTH CENTURY: AN EXAMPLE OF LAW AND ECONOMICS

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Abstract

Kharaj (land-tax) has been a controversial subject since the formative period of Islamic jurisprudence. It is said that Muslim jurists have been very conservative while dealing with the subject of *kharaj*. But this is wrong perception or opinion. The Controversy have mainly been revolved around the *kharaj*-payer's relationship with the land he owned or cultivated. This nature of relationship was necessary, for in circumstances it alone determined what to do with the *kharaji* land. A host of problems surfaced over the centuries and the Muslim jurists dealt with them differently. The later jurists, specially during the Ottoman period, face situations which did not exist in early period. So they were compelled to develop their own thoughts over a number of issues and in so doing they had to differ from their predecessors. It may, therefore, be argued that the Islamic law on *kharaj* has never been rigid and static.

Introduction

Since the early period of the formation of Islamic jurisprudence, controversy existed over the status of *kharaj* (land-tax) payers and their relations with the land. With the passage of time this controversy further deepened.

It is generally held that in the later centuries succeeding *ulama* strictly followed scholars of the first four centuries of Islam when the door of *ijtihad* was not closed. There is also widely accepted paradigm that 'no thoroughgoing changes occurred in Islamic law after the tenth century' (Johansen, 1988, p. 1). But Baber Johansen in his work *The Islamic Law on Land Tax and Rent* demonstrates with special reference to the development of Hanafite law in Mamluk¹ and Ottoman periods that changes in the legal doctrine were not restricted to civil transactions', as generally it is understood, 'but also concerned the public law.' (ibid. p. 2) To him, 'interrelated key concepts of the Hanafite law such as property, rent, and the taxation of arable lands underwent thoroughgoing changes in the Mamluk and Ottoman periods' (ibid).

The word *kharaj* in its current usage denotes tax collected on proprietorship of land in its various forms. 'Kharaj lands were the full property of their owners, and therefore they had right to sell them as they liked; when the owner of the land died, it was divided between his heirs. If the non-Muslim owner of *kharaji* land abandoned his land and fled, then his land was rented out and its *kharaj* was taken from its produce' (Orhanlu, 1990, E I, 4:1054)

Kharaj has two main forms: *muqasamah* and *muwazzaf* or *wazifah*. *Kharaj muqasamah* is defined as an impost levied in a certain proportion of the produce, such as one-fifth, one-fourth, one-third etc. It was leviable only when the land was cultivated. *Kharaj muwazzaf* was fixed on land according to producing capability of land and was due whether the land was cultivated or not.

As the frontiers of Islamic state expanded from Arabia, the laws of land taxation, land holding and cultivation, the legal position of non-Muslim citizens of Islamic state and related matters attracted the attention. The major portions of the heartland of Islam being always a region of agricultural economy, these issues have always been of special interest. By comparing the legal doctrine of the pre-classical and classical periods with the legal opinions of the Ottoman jurists Johansen shows what structural changes have occurred between the tenth and sixteenth centuries (Johansen, 1988, p. 1). In his opinion, 'Tax and rent are interrelated key concepts of the Hanafite law that cannot be studied independently of each other. The system of taxation largely determines the margin that is left for the appropriation of rent. The doctrine on tax and rent largely determines the conception of landed property. In the Hanafite doctrine on tax and rent, changes of individual legal ordinances and structural changes in the relationship between the tax and rent occurred in the period between the tenth and sixteenth centuries. These changes led to a redefinition of the concept of landed property' (ibid. p. 3). Johansen argues that 'in its early classical periods, Hanafite law was a factor that protected peasant ownership of landed property against the state's claim to ownership of the peasants' landed

property – but not against exploitation through tax and rent’ (p. 4). Legal Ordinances developed under the early Hanafite law were equally applicable to all forms of landed property. ‘It is only after the tenth century that new conceptions of tax and rent were developed that clearly differentiated between peasant holdings on the one hand and the landed property of the wealthy and powerful class of rentiers on the other hand’ (p. 4). Johansen thinks that in order to protect the economic interest of this class of rentiers, new forms of law were developed and that of the ‘old jurist’ (*al-mutaqaddimun*) was dismissed in favour of the ‘choice of the modern jurists’ (*ikhtiyar al-muta’akh-khirin*) (ibid).

1. Lands subject to *kharaj*.

In principle ‘all lands that are conquered by force (*‘anwah*) and not divided among the victorious army but left to the original owners are subject to imposition of *kharaj*. Exception is provided in the case of Makkah. According to the Malikites (al-Khurashi, vol. 3, p. 129) lands conquered by force of arms by that very fact become *waqf* but are nevertheless left in the hands of their former owners in order that they may better be able to pay the *jizyah*. These lands are subject to *kharaj*, which in reality is a rental, and being *waqf* lands, they may revert to the state, upon the death of their holders.

The Shafi’ite view is that the ownership lands conquered by force returns to all Muslims. These lands become immobilized (*waqf*) in the general interest of Muslims and are subject to *kharaj* which is really a rental collected from them perpetually (al-Shafi’i, n.d., Vol. IV, pp. 103-193).

The most clear report of Hanbalites is that the ruler is left to do whatever better he thinks in the interest of Muslims – to distribute or to retain in the hands of their previous owners at a rental in the form of permanent *kharaj*. The land will be *ushri-kharaji* land (Ibn al-Qayyim, n.d., 2: 173).

The Hanafites' stand is that the ruler is authorized to distribute the land among the fighters or retain them (the previous infidel land owners) and impose *jizyah* on their heads and *kharaj* on the lands (al-Sarakhsi, 1978, 10: 15, 37; Ibn al-Humam, 1316 AH, 4: 303). There had been divergence of legal opinions on the question of the status of such lands subjected to *kharaj* payment. The same is also stated in the Hanafite School. But a survey of works on Hanafite jurisprudence would show that *kharaj* payment on a land refers to ownership right to such a land (Johansen, 1988, pp. 8-11). The most prominent Hanafite scholar of Ottoman period Ibn Nujaym writes ‘The Hanafite *imams* are unanimous that when the leader conquers a country and retains its people on it and imposes *kharaj* on their lands, in this case the inhabitants enjoy property right over those lands. All forms by which they dispose of them such as sale, gift, bequest, leasing, lending, transformation into endowment are valid, regardless of whether the disposing person remains an infidel or embraces Islam (Ibn Nujaym 1980, pp. 52-53). However, lands granted as *iqta*’ do not represent ownership. Similar is the case of *ard al-hawz* (the sequestered land). *Ard al-hawz* refers to the land that is taken over by the ruler either because the *kharaj* paying owner of the land has fled away from the village, from paying taxes, from his inability to cultivate the land or he is dead without legal heirs. Thus the *imam* (ruler) will take care of the cultivation of *ard al-hawz* by an arrangement of share-cropping, tenancy or wage-earning cultivators. In all four cases of *ard al-hawz*, the former proprietors retain property rights except the last case when no survivor is left. In this case state takes the full ownership of the land (ibid. p. 53).

The basic legal principle that governs the Hanafite position on taxation is summarized in the following sentence ascribed to Abu Hanifah: “In contrast to all other commodities the productive lands in our territory are never exempted from taxation. This taxation consists either of *kharaj* or of ‘*ushr*” (al-Sarakhsi (1978), Vol. 3. p. 6, quoted by Johansen, 1988, p. 7).

Developments of Hanafite rule and reasoning on agrarian relations are best summarized by Johansen (1988, pp. 122-124) in his work “*the Islamic law and land Tax and Rent*”. The knowledge of those developments will be helpful to understand Ibn Nujaym’s idea who took stock of problems connected with the changes in land tenure, tax and rent in the middle of 10th/16th century. Here is the gist: During the formation period of Hanafite system of legal reasoning the payment of land taxes was considered ‘as a proof of proprietary rights with regards to arable lands’. Later on, to facilitate the land owners’ appropriation of rent from their tenants, Hanafite jurists developed the idea that through contract of tenancy or share-cropping the productive use of land is transformed into a commodity. This commodity may be rented out through a contract – something that differentiates between tax and rent. The payment of the land tax became a privilege that proved the rentier classe’s proprietary rights to their lands and guaranteed their right to collect rent from

the peasants who tilled those lands. In further development, 'the legal status of rent yielding landed property is assimilated to that of state lands in that the rent paid for its use falls due in the way of taxes. With regard to rent-yielding landed property, the contract is no longer considered to be necessary condition for the obligation to pay rent'. In other words, 'the relationship between the rentier and his peasants is no longer based mainly on contract and consent.'

2. How Egypt Transforms from *Kharaj* paying Country to Rent paying

During 9th/15th century frequent epidemic caused heavy toll of Egyptian population especially in rural areas. Due to the death of peasant proprietors with no heirs, their lands fell to the government, that was generally granted as *iqta'* or directly cultivated by farmers who paid rent to the *iqta'* holders or to the government. Historically Egypt has been a *kharaj*-paying country (*ard al-kharaj*). But the fifteenth century existing conditions showed just opposite. At this the famous Hanafite scholar of the period Ibn al-Humam remarked: "What is collected now-a-days is payment of rent and not *kharaj*. Can't you see that the land is not the property of the cultivators? This is so in spite of what we said about the land of Egypt being *kharaji* lands. Allah knows best, it is as if the proprietors died one after another without heirs so that the land fell to the public treasury (Ibn al-Humam (n.d.), 4:362; Ibn Nujaym 1980, p. 52). In this way Ibn al-Humam explains and legalizes the tenant status of peasants and the fact that they no longer enjoyed property rights with regard to their lands in spite of their paying levies to the *iqta'* holder or the ruler (Johansen, p. 85).

3. Ibn Nujaym's Treatise on Land Tenure in Egypt²

In 959/1552 Ibn Nujaym wrote his important treatise on land tenure in Egypt, entitled *al-Tuhfah al-Mardiyah fi'l-Araddi al-Misriyah*.³ This was in response to a controversy arose at that time about the legal validity of *Bayt al-mal's* sale of state lands to private persons (Ibn Nujaym, 1980, p. 50; (n.d.), 5:115). 'It is a jurist's defence of the fiscal and legal privileges of the land owning rentier class against the Ottoman attempt to turn their lands back into state property' (Johansen 1988, p. 87) Ibn Nujaym answers three questions in this treatise: Why is it legal that no *kharaj* is paid as many *awqaf* and much private landed property that was bought from the *Bayt al-mal*? Why is it legitimate to constitute *waqf* from private landed property that had formerly belonged to the public domain? And how can the *Bayt al-mal's* documents be used as proof for the claim that lands bought from the *Bayt al-mal* are tax exempt?

After reiterating that basically Egypt is a *kharaj*-paying country, Ibn Nujaym discusses the way how *Bayt al-mal* will react in case the *kharaj* payer is unable to cultivate the land and pay the *kharaj* or absconds. In this case the *sultan* (ruler) shall sequesterate the land and act as the proxy of the peasant proprietors. After that he can get it cultivated on payment of the cost from *Bayt al-mal* or farm it out or sell it on their behalf. 'The *kharaj* owed to the public treasury should then be deducted from the yield of the crop or from the rent or the price of the land and the surplus should be given to the former owners'. This has been the opinion of Imam al-Walwaliji (d. after 540/1145) and authors of *al-Nihayah*, *al-Muhit* and others (Ibn Nujaym, 1980, p. 53). 'It is obvious that in the first two cases (that is, cultivated by the *Bayt al-mal* or farmed out) a vague and precarious right of ownership is retained by the former *kharaj* payers. If the ruler sells the land, *kharaj* is deducted from the price and handed over to the public treasury. The surplus of the price will be given to the former owners. The public treasury does not lose its claim to *kharaj*, because the ruler acts only as a proxy of the former owners and the land does not change its status through the sale'.

On the other hand when the peasant proprietor dies with no heirs, the land reverts to *Bayt al-mal* and 'the ruler is entitled to lease it and have its rent paid to the public treasury. He may also buy it himself, in which case he must first have it sold to a third person from whom he then buys it'. This is to avoid blame of taking any undue concession (ibid, p. 54). 'The ruler is entitled to sell these lands to private proprietors on the grounds that public interest requires it, that the public treasury is in need of money or simply because he wants to exercise his absolute or unquestionable rights to sell state lands' (ibid, p. 51). Land bought by private proprietors in this way is a privileged property and exempt from taxation'. The reason for this fiscal privilege is that *kharaj* is considered a personal obligation. Once the *kharaj* paying proprietor dies, the obligation ceases to exist. There is another technical reason. 'The ruler is entitled to sell either a thing itself or its use. If he receives a price for the land itself and hands that price over to the public treasury, he is no longer entitled to require an extra payment for the use of the land' (ibid, p. 54). Consequently, the land ceases

to be subject to *kharaj*. According to Johansen (1988, p. 89): ‘This reasoning clearly contradicts the classical Hanafite position on taxation according to which the payment of taxes proves the existence and continuity of proprietary rights. But both ways of reasoning were accepted by the Hanafite jurists of the Ottoman period and are quoted in legal compendia of the seventeenth century’. Johansen considers it ‘a legal basis for the fiscal privileges of the landed property of the rentier’ (ibid).

To Johansen, Ibn Nujaym’s definition of the legal consequences of “the death of the *kharaj* payer” makes the ruler the most important seller of arable lands and fiscal privileges, because it entitles him to sequester peasant property, to inherit the lands of those proprietors who die without heirs and to dispose of lands so acquired at his own discretion. Buying lands from the public treasury apparently was in many cases a means of acquiring fiscal privileges. Ibn Nujaym says that when the ruler sells arable lands he may either accord the buyer the fiscal privileges of exemption from taxes, an arrangement legitimized through the notion of the “death of the *kharaj* payer,” or he may treat the lands sold as taxable landed property on the basis that they were derived through the sequestration of the land of bankrupt peasant proprietors’ (ibid, pp. 89-90).

As for the question how to distinguish these two types of sale, Ibn Nujaym answers: “If the price is low this indicates that [the sale was effected] because of the proprietor’s inability [to till the soil or pay the *kharaj*] and if the price is high, this indicates that [the sale resulted] from the death of the proprietors. Because in this case, the buyer becomes an exclusive proprietor of the land and he is not a share-cropper or a peasant. Therefore, he desires to purchase it at a higher price. This is obvious and an established fact. It is generally known that the *emirs* in the past used to be glad and proud if they bought land from the public treasury. No body reports that the sultan ever asked them to pay *kharaj* after the sale or that the religious scholars demanded the payment of the *kharaj* from them or on the lands that were transformed into waqf” (Ibn Nujaym, 1980, p. 60).

After analysing Ibn Nujaym’s writings on the sixteenth century controversy over the *kharaj* and proprietary rights relationship, Johansen (1988, p. 98) remarks: ‘Ibn Nujaym’s writing constitute an important attempt to take stock of the problems connected with the changes in land tenure, tax and rent in the middle of the sixteenth century. He knew that he could not solve the problems he faced merely by continuing the old Hanafite legal tradition in dealing with them. The immense authority which his writings enjoyed in later centuries not only in Egypt but also in Syria and Palestine shows that his solutions were widely accepted. He was certainly not always the author of the legal opinions which he integrated into his solutions. In many aspects his writings reflect the cumulative effects of a process of slow and cautious reformation of the Hanafite legal tradition that had been going on since the tenth century and that had worked its way from Central Asia to Egypt and Syria during the Mumluk period.’ The skill with which he tackled the problem is a proof that ‘Ibn Nujaym was a capable synthesizer who could integrate new notions and ordinances serving the interest of the rentier class. He shares with other Hanafite jurists of the Ottoman period the practical insights and economic and social interest that made the workable solution of new problems possible’ (ibid).

In the preceding pages it has been seen that substantial changes took place in Hanafite law regarding land possession and payment for it. As against the early Hanafite jurists, ‘the productive use of the land was commodified’ through the contract of tenancy or *ijarah*. However, only contract is not enough to make it liable to pay rent. The contracted person has to given time to use the land. It is the time during which it is possible to the tenant to use the land that determines the size of the commodity for which the tenant has to pay rent (Johansen, p. 31). According to Johansen (ibid, p. 32), ‘The calculation of time as an economic factor which determines the amount of the salary and the rent enters into the political economy of Islamic law through the contract of *ijarah*’. He further says: ‘the concept of rent as developed in the pre-classical and classical period of Hanafite law clearly works in favour of the emancipation of the peasants and against all attempts to view them as serf and to regards their rent as a kind of menial due. In addition, the Hanafite jurists clearly view the contract of tenancy as an instrument for the furthering of social and economic integration of various states of the rural society. The tenant obtains the right to use the rented property, a right which is constructed as being a form of a property (ibid, p. 38). This makes the tenant entitled to sublease and further subleasing - a kind of social and economic integration. Tenants and lessors are thought of as proprietors and for that reason both of them may become lessors and rentiers (ibid).

The early Hanafite jurists are almost unanimous that the unauthorized use (*ghasb*) of arable lands does not engender the obligation to pay rent because a contract is obligatory to pay any rent. However, unauthorized user of landed property has to make compensation for the diminution of the value of the land

arising from his cultivation of it.

Following his teacher, the twelfth century trasoxanian Hanafite scholar Qadi Khan (d. 592/1196) classified lands as those which are held by their ownership for the sole purpose of cultivating them through a share-cropping relationships and other lands that are not held for this purpose'. For the first kind of land contract is not obligatory if a custom exists regarding the shares of the two parties. This is not applicable to the other kind of land (Qadi Khan, 1282 AH, 3: 168-69). This differentiation has far reaching consequences on rentier and tenant relationship. It gives rentier class a privileged position. This was exploited by the jurists of the following centuries. Especially it was done by propounding the notion of the death of *kharaj* payer proprietors without heirs. As we have seen above, Ibn al-Humam gave an explanation how Egypt, a historically *kharaj* paying country, turned into a majority of rent paying population. His notion of the "death of the *kharaj* payer" was most skilfully and systematically used by the sixteenth century famous Hanafite scholar Ibn Nujaym. ⁴

4. Law and Economics

Ibn Nujaym, in spite of being a great scholar, is not an original thinker (*mujtahid*). Nor would he like, perhaps, to be associated with *ijtihad* as he himself declares that the door of analogical reasoning (*al-qiyas*), the basic of *ijtihad*, is closed in his time (Ibn Nujaym, 1980, p. 87). However, he examines the development on the subject of rent, *kharaj* and land proprietary rights in the Hanafite tradition of Islamic jurisprudence and analyses them. Finally he uses them as the building blocks for presenting a case that protects the rentier class in general and *awqaf* in particular. Those two institutions were at the risk of annihilation in the wake of Ottomans' efforts to increase the area under *miri* (the government owned) land to enhance the revenue of government. They already succeeded in this effort. ⁵ Shaw writes: 'The end result of the land law of 1553 was to restore to the Treasury some 300 tax producing *Muqata'as* which had been alienated for various purpose in the late Mumluk and the early Ottoman times and to increase Treasury revenues by over 80 per cent during the last years of the century, with the result that it was able to send over twenty million *paras* to the Porte each year' (Shaw, 1962, Vol. 38, Nos. 1-2, p. 116).

In his analysis of various provisions in Hanfite *fiqh* Ibn Nujaym visualized the economic repercussion on the rentier class, waqf administrators, tenants, and subtenants. Ibn Nujaym's effort is an excellent example of relation between *fiqh* and economics. It presents a strong case for study of law and economics and their interplay – more precisely the economic analysis of law. It may be noted that such a discipline originated in the United States in 1950s and found acceptance amongst the legal community from the 1970s onward. At present, while Law and Economics is a well-established and distinct discipline in the West, it is rarely heard in Islamic system. There is need to examine the Islamic heritage of *fiqh* and principles of *fiqh* to investigate the efficiency of those rules in achieving the economic objectives cherished by Islam. A discipline of *fiqh* and economics would attempt to perform an integrative treatment of *fiqh* and economics. Ibn Nujaym's analysis of the rules related to *kharaj* and land proprietary rights shall provide a sample of such an exercise. ⁶

5. *Risalah dar Bay`-i Aradi*: A Sixteenth Century Treatise from the Mughal India

Shaykh Jalal al-Din Thanasari (d. 991/1582), a noted scholar of Emperor Akbar's time, wrote a tract entitled *Risalah dar Bay`-i Aradi*⁷ (the title is in Persian but the text is in Arabic⁸ meaning a treatise on sale of lands)⁹. This is another example of Law and Economics. In the 16th century, not only in Egypt, but in India also controversy ranged over the grant of land and the nature of right of grantee over it. The author takes up 'the issue of land ownership in Mughal India with special reference to the right of holder of revenue grant' called *madad-i-ma`ash* (Zafarul-Islam, 1990, p. 87). 'What was granted by the state to the holder of *madad-i-ma`ash* was the right to collect and appropriate land revenue. The grant was neither transferable nor saleable; on the death of the grantee, it normally required the king's sanction before it could pass on to heirs. Thus according to the official view, the grant was devoid of property rights' (Habib, 1963, pp. 299-304, cited by Zafarul-Islam, 1990, p. 87). Most of scholars opposed this official view and pleaded for grantees' full property rights over their holdings. They considered the steps taken by the State to regulate the grants as interference with their established rights.

Being himself a grant-holder, Thanesari strongly presented this case in his *Risalah dar Bay`-i Aradi*. At the outset of his treatise, he criticises opinions of pro-establishment `ulama who argued that 'the conquerors had restored the lands to the former owners, so the latter or their descendants remained lawful owners in post-conquest period and no piece of land granted out of it to a deserving person would become the property of the grantee'. To Thanesari, 'major part of the lands in India comes under the category of waste-land or ownerless property belonging to *bayt al-mal*. Such land, if granted by the ruler to a deserving person and cultivated by him, becomes his property. He can sell or alienate it in any way likes. He argues that there is no evidence that the conquered land in India was ever distributed among the fighters (*ghanimin*) or was ever restored by the Muslim conquerors to the original owners after the initial conquest. In his opinion such lands would have been occupied by some other people because of the flight or death of their original occupants without the permission of the ruler. These new occupants cannot be considered the owners of the land. The land remained in the ownership of the state¹⁰ (Thanesari, MS, ff.2b, 10a. cited by Zafarul-Islam, 1990, p.90).

Thanesari does not discuss the nature of the land grant: usufruct grant (*iqta` istighlal*) or ownership grant (*iqta tamlik*) – the two provisions of land grants in Islamic tradition – because this would have defeated his purpose. It appears from the history of the period that the ruler in India generally granted land as usufruct (*istighlal*). The term '*madad-i-ma`ash*' also indicated that it was just a temporary help. But Thanesari and some other *ulama* insisted to treat it as permanent grant (*tamlik*) because their own stake was involved (Zafarul-Islam, 1990, pp.87-88). Some of them went to the extent to demand even exemption from payment of `ushr over the produce of their self-cultivated land (ibid. 98).

Endnotes:

1. Mamluk or slave dynasty of Egypt that ruled heartland of Islam from 1250 to 1517 before Ottomans abolished their rule in 1517.
2. The author thankfully acknowledges his indebtedness to Baber Johansen in dealing with this section.
3. Historical background: Ibn Nujaym wrote his *Tuhfah* in order to defend waqf and private landed property against the imminent Ottoman *Qanunname* of 960/1553. In 957/1550 Ali Pasha (d. 972/1565) the then Ottoman governor of Egypt carried an investigation of the legal states of Egyptian lands that yielded rent for the upkeep of religious institutions and the salary of the religious scholars and military officers, 'It is in defence of these groups that Ibn Nujaym wrote his *Tuhfah*. (Johansen 1988, pp. 86, 87).
4. 'The notions and concepts of the new doctrine on rent were first developed in Balkh and Bukhara during the classical period. How and when the new doctrine became the prevalent legal doctrine in Mamluk and Ottoman Syria and Egypt remains a matter of investigation' (Johansen, 1988, p. 124)
5. For more details refer to Johansen, 1988, pp. 99, 100, 104, 109.
6. It is said that Umar's decision to retain conquered lands in the hands of its previous owners was also guided by many economic objectives, such as equitable distribution of land, its efficient use, a permanent source for *Bayt al-mal*, interest of coming generations, etc.
7. The only known manuscript of the treatise is preserved in Mawlana Azad Library of the Aligarh Muslim University, Aligarh, India. For details, refer to Zafarul-Islam, 1990, pp. 85-86.
8. In the Non-Arab Muslim world it has been common practice to write a title in Arabic while text is in the local language. Sometimes the title is in Persian or Turkish while text is in Arabic. The present treatise is such an example.
9. Although the title of the treatise is about sale of lands, the thrust is to prove the permanent ownership of the land granted by the ruler to a person. This proof will entitle the owner of land to transfer or sell the land. In the title the word sale has been highlighted because that denotes ownership.
10. It is interesting to note that in addition to his argument that conquered land was never restored to their previous owners, Jalal al-Din Thanesari also tries, like his contemporary Egyptian Hanafi scholar Ibn Nujaym, to protect the interest and ownership of land grantees on the basis of the flight and death of the land owners provided the restoration is proved. However, there is basic difference between the two. In Egypt the

question was about the nature of payment by the landholder to the state – whether it was to be considered *kharaj* or rent because this would have determined their status as landowner or cultivator.

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