

The Jurisprudential and Legal Status of Benevolent Sale (Bay' al-Muḥābātī) in Sales Below the Fair Market Value in Islamic Jurisprudence

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Abstract

The benevolent sale (Bay' al-Muḥābātī) is one of the forms of sale contracts recognized in Islamic jurisprudence and civil law, in which the seller transfers a commodity or property to the buyer at a price significantly lower than its real or customary market value. In such transactions, the seller's intention is often driven more by affection, personal attachment, or non-financial considerations than by commercial motives. This type of sale commonly occurs within familial or friendly relationships and may serve purposes such as support, concealed donation, or the transfer of property while avoiding taxation or formal procedures. From a legal perspective, a benevolent sale is regarded as a valid contract of sale, provided that the essential conditions of contractual validity—such as intention, consent, legal capacity, and the specification and lawfulness of the subject matter—are fulfilled. Nevertheless, in cases where the benevolent nature of the transaction results in harm to third parties or the infringement of others' rights, such as issues concerning heirs, fictitious transactions, or fraudulent conveyance to evade debts, the transaction may be subject to legal challenge. In the Iranian legal system, identifying and thoroughly analyzing benevolent sales is of great significance from legal, fiscal, and judicial perspectives.

Keywords: Benevolent sale, Islamic jurisprudence and civil law, legal implications, fictitious transactions

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1. Introduction

In the terminology of Islamic jurists, a *muḥābātī* transaction refers to a contract in which the exchange of goods or property occurs for an amount that is either significantly less or greater than its fair market value (*thaman al-mithl* or *ujrat al-mithl*)

(Ja'fari Langaroudi, 2011; Kātouziyān, 2019). Within society, some individuals—motivated by various intentions—seek to circumvent religious or legal rules through formal manipulations of contractual forms, using such altered structures to achieve economic or material gains (Bāriklo, 2013; Hosseini Modarres & Golshani, 2013).

For instance, an individual wishing to escape the prohibition of *riba al-qard* (usury in loans) may first conclude a benevolent transaction and then stipulate a loan within it, or alternatively, make the loan conditional upon executing a *muḥābātī* transaction. The purpose is to attain illicit profit in a manner that outwardly avoids *riba*. Likewise, one may sell property to a government official at a price lower than the market value to conceal bribery under the guise of a benevolent sale (Madanī, 2017; Makārem Shīrāzī, 2011). In other cases, individuals facing bankruptcy or financial ruin dispose of all their assets in the form of *muḥābātī* transactions at less than their real value, while a terminally ill person (*marad al-mawt*) might liquidate his property under similar conditions, often to favor certain heirs or associates (Kāẓem Pūr, 2013; Khomeini, 1962). Furthermore, instead of granting interest-free loans (*qard al-ḥasan*), which promote trade and social welfare, some lenders tie their loans to the performance of benevolent transactions, thus linking charity with profit-seeking behavior (Amīd Zanjānī, 2011; Muḥaqqiq Dāmād, 1985).

In jurisprudential terminology, *muḥābāt* refers to the act of exchanging property for a value that is either less or more than its equivalent, embodying an element of leniency or gratuitousness (Kātouziyān, 2019; Ne'matollahī, 2015).

2. Theoretical Foundations

2.1. Lexical Definition of Muḥābāt

Lexically, *muḥābāt* denotes an act of favor, gift, or allocation of something to a person without extending the same to others. Terminologically, jurists have defined *muḥābāt* as giving to one among equals, or granting an unwarranted reduction or privilege without valid justification—such as a father gifting one of his children without proportionally giving to the others (Namāzī, 2014; Sadegh Hosseini, 1991).

Leniency (*musāmaḥah*) in sales occurs either when a buyer increases the purchase price out of generosity or when a seller voluntarily reduces it; the diminished amount is considered an act of donation rather than a commercial adjustment. Hence, a *muḥābātī* transaction involves a deliberate imbalance in consideration without corresponding compensation (Bāriklo, 2013; Golestānī, 1972). In essence, the act of selling for less than market value or buying for more is viewed as a benevolent gesture rather than a purely economic exchange. The party benefiting from such a transaction is termed the *muḥābā*, while the one parting with property for a lower value is the *muḥīb* (Ja'fari Langaroudi, 2011).

In a *bay' muḥābātī*, the buyer may benefit when the value of the purchased item greatly exceeds the price paid, or conversely, the seller may gain when receiving consideration that exceeds the real value of the sold item. Summarily, it may be stated that a *muḥābātī* sale entails a deliberate disturbance of equivalence between the exchanged considerations (‘*iwaḍayn*) (Madanī, 2017; Ne'matollahī, 2015).

Jurists generally agree that such contracts remain valid, regardless of whether the imbalance appears in the form of sale, loan, lease, or mortgage, provided that the general principles of contract formation are respected (Amīd Zanjānī, 2011; Muḥaqqiq Dāmād, 1985). One distinct feature of benevolent transactions is that *ignorance* (*jahl*) and *uncertainty* (*gharar*) do not invalidate them, as the presumption of leniency overrides the requirement for strict equivalence (Hādī Far, 2010).

According to many scholars, disparity between price and real value is permissible when both parties are aware of the imbalance and act with full consent—unless the deviation reaches a level of *saḥāhah* (foolishness), rendering the transaction void (Ja'fari Langaroudi, 2011; Kātouziyān, 2019). Such *saḥīhī* (irrational) contracts are akin to *ghabnī* (fraudulent) ones, as both entail economic disequilibrium, though their legal bases differ. In *ghabn*, the aggrieved party is unaware of the real value, whereas in *saḥīhī* transactions, the party knowingly consents to loss out of emotional or non-rational motives (Madanī, 2017; Makārem Shīrāzī, 2011).

In a normal contract of sale, both parties attempt to maintain the balance between consideration and counter-consideration. When a substantial and non-negligible disparity arises—such that one party is unaware of the true value at the time of contract—he may rescind it based on *khiyār al-ghabn* (option due to fraud) (Kātouziyān, 2019; Ne'matollāhī, 2015). However, if the transaction is motivated by affection or moral intent rather than commercial equivalence, and if the inequality is intentional and known, it falls within the category of *bay' muḥābātī*.

In such benevolent contracts, the element of *musāmaḥah* (leniency) predominates. For example, one may wish to lend money but instead executes a *muḥābātī* sale: he sells an item worth one thousand tomans for ten thousand tomans, stipulating within the contract that he shall grant the buyer a one-year loan of one hundred thousand tomans. The price discrepancy of nine thousand tomans thus represents the concealed profit of the loan (Madanī, 2017; Makārem Shīrāzī, 2011).

Ayatollah Nasser Makārem Shīrāzī explains this with a striking example of *riba* evasion: suppose a moneylender intends to loan one million tomans and charge two hundred thousand tomans interest. To disguise the *riba*, he says, “I will lend you one million tomans for one year without condition, and I will also sell you this matchbox for two hundred thousand tomans.” Although there is an ostensible intention, such a contract lacks rational and commercial legitimacy and is, therefore, void under Islamic law (Makārem Shīrāzī, 2011).

The distinction between *ghabnī* and *safīhī* contracts is important. First, *ghabn* applies only to commutative contracts (*'uqūd mu'āwadhāt*), while *safāḥah* may also occur in gratuitous ones. Second, *ghabn* requires ignorance of value by the injured party, whereas in *safāḥah*, the individual knowingly consents to an uneconomical transaction (Ja'fari Langaroudi, 2011; Kātouziyān, 2019).

As noted by classical jurists, including Muḥaqqiq Dāmād, transactions in which uncertainty or risk (*gharar*) does not impair validity are those whose very foundation tolerates indeterminacy—such as the contract of *ṣulḥ* (amicable settlement), which is often a *muḥābātī* contract rooted in leniency and benevolence (Āmilī; Muḥaqqiq Dāmād, 1985).

In his civil law analysis, Ja'far Ja'farī Langaroudī emphasizes that determining the state of illness (*marad al-mawt*) depends on social convention: a person is deemed terminally ill only when the community recognizes his condition as such. Thus, wounds or snakebites—even if fatal—do not constitute *marad al-mawt*, as they are not socially classified as illnesses (Ja'fari Langaroudi, 2011).

2.2. The Legal Ruling on Gratuitous Dispositions by a Sick Person

The term *tabarru'* refers to the removal of ownership from a person's property that is subject to inheritance, without receiving an equivalent compensation and without any legal or religious obligation to do so. The inter vivos dispositions (*munajjaẓāt*) made by a sick person are distinct from testamentary acts (*waṣīyyah*). The main question arises when a person, during an illness leading to death (*marad al-mawt*), carries out a benevolent transaction (*muḥābātī*) by selling property below its fair market value: should such a transaction be charged to the entire estate, meaning that it is valid without the heirs' permission, or should it be limited to one-third of the estate, requiring the heirs' approval for any excess?

Before addressing the jurisprudential disagreement concerning whether such dispositions are deducted from the entire estate or only one-third, it is necessary to note that a person suffering from a terminal illness may exercise two types of control over his property:

- (a) Dispositions contingent on death, which correspond to wills; and
- (b) Immediate (definitive) dispositions, which are legal acts performed during life with final effect (Golestānī, 1972; Muḥaqqiq Dāmād, 1985).

If the act is definitive and involves a commutative exchange rather than a gratuitous or benevolent one, it is undoubtedly valid, like the acts of a healthy person. However, in cases where the act involves donation, *waqf*, or benevolence—resulting in a gratuitous outflow of assets and a reduction of the estate—jurists differ as to whether such acts should be charged to the whole estate or only to one-third (Kātouziyān, 2019; Muḥaqqiq Dāmād, 1985).

2.2.1. Complete Prohibition of Gratuitous Acts by the Sick

Some might argue that a terminally ill person should be treated as legally equivalent to a deceased person, and therefore should not be permitted to perform any gratuitous acts, rendering such transactions void. However, this view is neither equitable nor in harmony with Islamic principles, which do not deprive a person—who has spent a lifetime acquiring property through effort—of the opportunity to perform charitable or pious acts in preparation for the afterlife. Consequently, Islamic jurisprudence and the Qur’anic spirit reject a total prohibition of gratuitous acts by the sick, and no major jurist has endorsed such an opinion (Amīd Zanjānī, 2011; Muḥaqqiq Dāmād, 1985).

2.2.2. Validity of Dispositions by the Sick up to One-Third of the Estate

A number of jurists hold that an illness leading to death is legally equivalent to death itself; therefore, any disposition made during such illness falls under the legal rulings of *waṣīyyah* and is valid only up to one-third of the estate, with any excess requiring the consent of the heirs. Classical authorities such as al-‘Allāmah Ḥillī, al-Muḥaqqiq al-Karakī, and the authors of *al-Durūs*, *al-Lum‘ah*, and *Jāmi‘ al-Maqāṣid* expressed this view. It also aligns with later jurists such as the author of *Riyāḍ* and early scholars like al-Iskāfī and Shaykh al-Ṣadūq (Āmilī; Muḥaqqiq Dāmād, 1985).

Their reasoning is that the limitation of testamentary dispositions to one-third aims to prevent harm to heirs. Since this same rationale applies to *munajjaẓāt* (inter vivos acts of a dying person), these should be treated similarly to wills. Otherwise, anyone wishing to transfer more than one-third of their estate could circumvent the restriction by disguising a will as an inter vivos gift, rendering the divine limitation meaningless (Ja’fari Langaroudi, 2011; Kātouziyān, 2019).

However, some scholars, including the author of *Miftāḥ al-Karāmah*, argue that if the harm to heirs invalidates the sick person’s acts, then by the same logic, even healthy persons should be restricted from making gifts that reduce the heirs’ future inheritance—a conclusion clearly unreasonable (Āmilī).

Critics of this restrictive view contend that inter vivos dispositions (*munajjaẓāt*) are not inherently injurious to heirs, nor is every legal stratagem (*ḥīlah shar‘iyyah*) prohibited in Islamic jurisprudence. For example, parties may choose to conclude a transaction as *ṣulḥ* (settlement) rather than *bay‘* (sale) to avoid options such as *khiyār al-majlis* or *shuf‘ah*, and such a practice is not unlawful. Therefore, construing every disposition beyond one-third as harmful to heirs is unwarranted, since not all causal rationales (*‘ilal*) are explicitly sanctioned (*maṣṣūṣ*) or uniformly reliable (Madanī, 2017; Ne’matollāhī, 2015).

The opinion restricting a dying person’s gratuitous acts to one-third of the estate assumes that such acts always harm the heirs, since the property of the ill person is considered potentially due to them upon death. Scholars such as al-Shahīd al-Thānī held that heirs’ rights extend to any portion exceeding one-third. Some, including the author of *Jawāhir al-Kalām*, maintained that heirs have a general, though not specific, interest in the estate during the illness, thereby justifying limitations on the patient’s control. Yet this reasoning implies numerous inconsistencies: if illness equates entirely with death, then debts should immediately fall due, and the spouse should begin the waiting period (*‘iddah*)—an interpretation both practically and theologically problematic (Ja’fari Langaroudi, 2011; Kātouziyān, 2019).

Shaykh Murtaḍā al-Anṣārī, in his *Risālah fī Munajjaẓāt al-Marīḍ*, challenges this analogy. He argues that the narrations commonly cited concern acts *after* death rather than during life, and interpreting “at his death” (*‘inda mawtihi*) to mean “during his illness” contradicts the apparent meaning. The Prophet’s ḥadīth employing the term *taṣaddaqa* (to give in charity) applies only when ownership has already ceased—namely, in the case of wills, not inter vivos acts. Accordingly, extending such narrations to living dispositions is unwarranted (Āmilī; Muḥaqqiq Dāmād, 1985).

2.2.3. Charging Inter Vivos Acts to the Entire Estate: Full Validity of the Sick Person’s Acts

Other jurists maintain that mere illness does not affect a person’s legal capacity (*ahliyyah*) to dispose of property. If illness impairs one’s reason, any restriction arises from insanity or irrationality (*safāhah*), not from the illness itself. Therefore, as long as the mind remains sound, ownership entails full authority (*tasalluṭ*) over one’s property (Kātouziyān, 2019; Muḥaqqiq Dāmād, 1985).

Most early jurists—including Shaykh al-Mufīd in *al-Muqni‘ah* and Ayatollah al-Khu‘ī in *Minhāj al-Ṣāliḥīn*—held that inter vivos acts executed by a dying person, even those involving benevolence or gifts, are valid and enforceable, just like transactions performed in good health. Thus, manumission, remission of debt, gratuitous gifts, or sales below market value remain legitimate acts of ownership (Ja‘fari Langaroudi, 2011; Ne‘matollāhī, 2015).

Shaykh al-Anṣārī further explains that departing from the general principle of contract enforceability (*qā‘idat luzūm al-‘uqūd*) on the basis of narrations limiting *munajjaẓāt* to one-third is problematic. The sounder view, he argues, is that such dispositions should be charged to the entire estate, just as financial obligations such as debts and obligatory alms (*farā‘id māliyya*) are settled from the whole estate without restriction (Amīd Zanjānī, 2011; Madanī, 2017).

One of the primary justifications for recognizing the full validity of the sick person’s inter vivos acts is the principle of dominion (*qā‘idat al-tasalluṭ*, also called *qā‘idat al-sulṭānah*). This rule affirms that every owner enjoys full authority over his property and may exercise any material or legal control unless a specific legal prohibition exists (Hosseini Modarres & Golshani, 2013; Kātouziyān, 2019). In cases of doubt regarding the permissibility of an owner’s act, this principle mandates presuming its validity absent an explicit contrary proof. Consequently, individuals retain the right to manage and dispose of their property freely, and mere illness—without mental incapacity—does not diminish this authority.

Some scholars, however, contend that when death coincides with illness, divine law itself limits the owner’s dominion over his property from the onset of the illness. Yet this limitation arises not from incapacity but from a distinct legal consideration instituted by the Sharī‘ah to safeguard the equitable distribution of estates (Āmilī; Muḥaqqiq Dāmād, 1985).

In conclusion, the jurisprudential discourse on *munajjaẓāt al-marīḍ* reveals two dominant tendencies: one favoring restriction to one-third of the estate, based on analogical reasoning with wills, and another affirming complete validity grounded in the principle of dominion. Contemporary legal scholarship in Iran often reconciles these views by emphasizing the intention behind the act—if it manifests genuine benevolence rather than deception or harm to heirs, the transaction should be upheld as valid (Ja‘fari Langaroudi, 2011; Kātouziyān, 2019; Muḥaqqiq Dāmād, 1985).

2.2.4. The View of Iran’s Positive Law

The Civil Code, in Article 843, limits gratuitous dispositions contingent on death (wills) to one-third of the estate, but it remains silent regarding inter vivos dispositions (*munajjaẓāt*) by the sick. This legislative silence admits of two readings. First, restricting the sick person’s powers might be seen as a precaution in favor of the heirs; yet unless the law provides a clear basis for such a precaution, all legal acts of the sick should be treated like those of healthy persons (Ja‘fari Langaroudi, 2011; Kātouziyān, 2019). Second, if the *munajjaẓāt* of a sick person were to be charged to the estate’s entirety (*al-aṣl*), the legislative purpose of Article 843 would be undermined. On this analysis, because Article 843 validates only dispositions contingent on death up to one-third, the Code’s silence about inter vivos acts during the death-illness implies that their validity beyond one-third likewise depends on the heirs’ consent; absent consent, the excess would be invalid. The legislature has prohibited the disinheritance of heirs, and Article 837 declares a will that deprives one or more heirs of their share to be ineffective; if *munajjaẓāt* by the sick were fully effective from the whole estate, the law would hand the testator a tool to disinherit heirs indirectly (Ja‘fari Langaroudi, 2011; Kātouziyān, 2019).

Some jurists contend that the silence is deliberate: the legislature intended to validate the sick person’s definitive gratuitous dispositions over the entirety of his assets, thereby following the majority position in jurisprudence. On this view, confining the sick person’s acts to one-third is problematic, not least because a person who is fully sound of mind intends to dispose of his own property, and treating him otherwise unduly destabilizes transactions and hinges validity on the difficult medical determination of *marāḍ al-mawt* prior to death. If the *munajjaẓāt* are charged to the whole estate, the sick person is treated as a healthy disposer, a conclusion more consistent with such legal maxims as permissibility (*iṣālat al-jawāz*), dominion (*qā‘idat al-tasalluṭ*), and continuity (*istiṣhāb*). Given legislative silence in an explanatory context and the Code’s frequent reliance on fiqh, one may infer that the law also recognizes *munajjaẓāt al-marīḍ* from the whole (Hosseini Modarres & Golshani, 2013; Kātouziyān, 2019; Muḥaqqiq Dāmād, 1985).

2.3. Benevolent Transactions with the Intent to Evade Debt

Pursuant to the amended Article 218 of the Civil Code—addressing transactions made with the intent to evade debt—such dealings can be divided into two main categories: (1) sham transactions intended to evade debt; and (2) real (genuine) transactions intended to evade debt. In jurisprudence, sham transactions are void under the maxim “contracts follow intentions” (*al-‘uqūd taba‘atun li-l-quṣūd*) due to the absence of true intent to create legal effects; the cause of invalidity is the lack of real intent, not the motive of debt evasion.

As for genuine transactions carried out with intent to evade debt—including *muḥābātī* deals and sales below the fair price—the debtor’s purpose is to escape liability. Several views exist concerning their validity or invalidity. Later, we will assess whether *muḥābātī* transactions by an insolvent trader, which fall within real evasion, are valid or not (Hādī Far, 2010; Kātouziyān, 2019).

2.4. Doctrines of Invalidity or Validity in Such Transactions

Some jurists have invoked the No-Harm Rule (*qā‘idat lā ḍarar*) as the basis for denying effect to transactions intended to evade debt (Makārem Shīrāzī, 2011; Muḥaqqiq Dāmād, 1985). Among civil-law scholars, Nasser Kātouziyān argues that a transaction concluded with the intent to evade debt and injure creditors possesses features that remove it from the realm of legitimate transactions; the debtor’s stratagem ultimately collides with public order and morality. Nevertheless, because the primary vice lies in the injury to creditors’ rights, the more appropriate remedy is to subject the transaction’s effectiveness to the creditors’ approval (or rejection) rather than declaring it void *ab initio*—thus preserving the legal mechanism that ensures the transaction’s lawful purpose (Kātouziyān, 2019).

That said, opinions diverge. Some classical and later authorities in different schools attributed invalidity to gratuitous, *muḥābātī*, or below-value dispositions made with the intent to evade debt, while others rejected the *lā ḍarar* maxim as a universal basis for non-effect in all such cases, limiting its reach where specific evidence exists (Madanī, 2017; Ne‘matollahī, 2015).

In legislative developments dated November 05, 1991 (Gregorian), Articles 218 and 218 bis were enacted on transactions intended to evade debt. Article 218 declares sham transactions void, while Article 218 bis creates protective measures for creditors. In other statutes—for example, Article 65 of the Endowments Law—non-effect of transactions made to evade debt is mentioned, and Article 424 of the Commercial Code renders transactions carried out to evade debt or to injure creditors rescissible (Hādī Far, 2010; Kātouziyān, 2019).

By analogy with Article 665 of the Endowments law—which concerns *waqf*, a gratuitous juridical act—some scholars infer that any gratuitous, donative, or *muḥābātī* disposition intended to evade debt should be non-effective, as it certainly causes loss to creditors. On this reasoning, and without attributing any uniqueness to *waqf*, they extend non-effect to all commutative and gratuitous acts intended to evade debt (Hosseini Modarres & Golshani, 2013; Kātouziyān, 2019).

Conversely, prominent authorities (e.g., Imām Khomeinī and others) have held that gratuitous and benevolent dispositions below equivalent value, even when intended to evade debt, do not inherently contradict Sharī‘ah, particularly where legislative text does not expressly prohibit them. Some scholars ground the validity of such transactions in the Principle of Dominion (*qā‘idat al-tasalluṭ / al-sulṭānah*), maintaining that until a legal disability (*ḥajr*) is declared, every transaction of the debtor—even one that alienates all his property—remains effective (Kātouziyān, 2019; Khomeini, 1962).

After the repeal of Article 218 in the 1982 reforms and the omission of a clear rule on real evasion-of-debt transactions in the 1991 amendment, some jurists—relying on general principles (freedom of contract, permissibility, and the absence of statutory prohibition)—regarded real evasion-of-debt transactions as valid, unless a special rule provides otherwise (as it does for certain acts like *waqf* or transactions of an insolvent trader). This approach recognizes that in specific regimes (e.g., endowments, insolvency), some evasion-motivated transactions are expressly rendered non-effective or rescissible by statute, whereas no general invalidity rule governs all cases across the board (Amīd Zanjanī, 2011; Hādī Far, 2010; Kātouziyān, 2019).

2.4.1. Benevolent Transactions by the Bankrupt Merchant

Articles 412 to 575 of the Iranian Commercial Code address the bankruptcy of merchants and commercial companies. Bankruptcy arises when a trader or company becomes unable to pay debts as they fall due. The law divides the bankrupt's transactions into three periods: (a) before the date of cessation of payment, (b) between cessation and the declaration of bankruptcy, and (c) after the declaration. Transactions prior to cessation are presumed valid unless specifically prohibited by statute (Hosseini Modarres & Golshani, 2013; Kātouziyān, 2019).

Article 424 provides that if, upon suit by the liquidator or a creditor, the court finds that before the cessation date the debtor made a transaction to evade debt payment or injure creditors and that the loss exceeded one-quarter of the property's market value at the time, the transaction is rescindable—unless the other party pays the difference before rescission is decreed. Such action must be brought within two years of the transaction. Article 425 adds that once rescission is final, the property must be returned in kind to the liquidator, and the counter-value at the time of contract is refunded before distribution of the estate; if delivery is impossible, the price difference must be paid. Where loss does not exceed one-quarter, even a bad-faith transaction is not voidable. Though Article 425 primarily concerns commutative contracts, its rationale extends to non-commutative dealings—gifts, donations, and other gratuitous transfers—where the bankrupt gains no material benefit and the creditors' loss remains below the one-quarter threshold (Kātouziyān, 2019; Ne'matollahi, 2015).

Article 423 declares void any transaction made **after** the cessation date, including benevolent settlements (*ṣulḥ muḥābātī*), gifts, or any gratuitous transfer of movable or immovable property, repayment of any debt (whether matured or not) by any means, and any transaction intended to harm creditors. Likewise, Article 418 bars a bankrupt from any disposition of property, even of assets acquired during the bankruptcy. Thus, under these provisions, the merchant's *muḥābātī* dealings—sales below value, gifts, or similar acts—after bankruptcy are null and without effect (Amīd Zanjānī, 2011; Hādī Far, 2010).

2.4.2. Benevolent Transactions as Bribery

According to *Jawāhir al-Kalām*, both transmitted and reasoned consensus establishes that bribery is prohibited, and numerous authentic traditions confirm this. *Mustadrak al-Wasā'il* cites the Prophet's saying: "May God curse the briber, the bribed, and the go-between." Thus, in Shari'ah, bribery of judges and government officials is categorically unlawful (Āmilī; Muḥaqqiq Dāmād, 1985).

In Iranian law, bribery was addressed first under Articles 139 et seq. of the former Penal Code and later under the Islamic Penal Code of 1979 (Articles 588 to 595) and the Law on Aggravated Punishment for Bribery, Embezzlement, and Fraud of 1988 (Articles 3–4). Article 590 of the Islamic Penal Code explicitly governs transactions used as a means of bribery. Legal scholars note its ambiguity: for example, whether selling property for "a grossly disproportionate amount" constitutes bribery depends on judicial discretion, as what one court deems excessive another may not (Kātouziyān, 2019; Makārem Shīrāzī, 2011).

In summary, when the purpose and intent of a *muḥābātī* transaction are to give or receive a bribe, the act constitutes bribery and is prohibited. The prohibition applies to all forms and contractual guises—gift, benevolent sale, or otherwise—because the real intent is corrupt. Even when the sale price equals the market value, if the transaction is motivated by favoritism toward an official (e.g., a judge), it falls within the concept of bribery. In jurisprudential terms, *rishwah* (bribery) is not a separate contractual category but an unlawful attribute that may attach to any transfer; it may consist not only of money or property but also of any service rendered to an official in return for favor (Ja'fari Langaroudi, 2011; Kātouziyān, 2019).

3. Benevolent Sale Conditional on a Loan, or Loan Conditional on a Benevolent Sale

Islam places great emphasis on granting loans to those in need and prohibits *riba* (usury). Sometimes the structure of a loan is embedded within another contract—such as a *muḥābātī* sale conditional upon a loan or, conversely, a loan conditional upon a *muḥābātī* transaction. These arrangements, which may appear as leases or sales, risk constituting concealed usury and thus require careful scrutiny (Makārem Shīrāzī, 2011; Muḥaqqiq Dāmād, 1985).

3.1. Jurists Permitting the Benevolent Sale Conditional on a Loan

Several Imāmī jurists—including al-‘Allāmah Ḥillī, the author of *Jawāhir al-Kalām*, and Mīrzā Qummī—uphold the validity of a *muḥābātī* sale conditional on a loan. Among modern scholars, Shaykh Muḥammad Taqī Bahjat allows such an arrangement, provided that the contract remains customary and not a device for interest: for example, renting a house at a reduced rate while the tenant deposits a refundable loan or security with the owner. In this scenario, where the loan is explicitly stipulated and the transaction reflects ordinary practice, it is unobjectionable. Classical compilations of Imāmī law also note the permissibility of this type of transaction, albeit with caution (Āmilī; Muḥaqqiq Dāmād, 1985).

The author of *Jawāhir al-Kalām* distinguishes between “sale conditional upon a loan” and “loan conditional upon a sale,” affirming the validity of the first and condemning only the second, as the latter appears in the Prophetic prohibitions against *riba*.

3.2. Arguments for Permissibility

Shaykh Ḥurr ‘Āmilī, in *Wasā’il al-Shī‘ah*, cites a chapter titled “*It Is Permissible to Sell an Object at Multiple Its Value While Stipulating a Loan or Deferred Payment*,” compiling narrations supporting such arrangements. Early scholars such as Shaykh Muḥammad Bāqir Behbahānī held that it is permissible for a person to buy goods or land for cash or credit on condition that the buyer lends or borrows a specified amount for a fixed period. These authorities accepted combining sale and loan where each had independent cause and mutual consent (Āmilī; Muḥaqqiq Dāmād, 1985).

Nonetheless, jurists including al-Muḥaqqiq Qummī, Āqā Bāqir Behbahānī, and Ḥusaynī ‘Āmilī (author of *Miftāḥ al-Karāmah*), and contemporary authorities such as Imām Khomeinī, prohibit such contracts, viewing them as *ḥīlah* (legal stratagems) to disguise usury (Āmilī; Khomeini, 1962).

3.3. Arguments for Prohibition

The maxim “*Every loan that brings benefit is usury*” applies whenever the lender stipulates or expects any advantage. As Muḥammad Bāqir Behbahānī comments, “any conditional benefit is forbidden; only voluntary benefit without stipulation is lawful.” Imām Khomeinī rejected the narrations permitting *muḥābātī* sales conditional on a loan, deeming their chains of transmission weak; for instance, some include Muḥammad b. Ishāq b. ‘Ammār, identified by Shaykh Ṣadūq as a member of the Wāqifī sect. Moreover, early texts discuss *sales conditional on a loan*, not *benevolent sales conditional on a loan*, and even those indicate aversion (*karāhah*) rather than approval. Shaykh Ṭūsī, in *al-Mabsūṭ*, considered combining sale and loan in a single contract disfavored, and Imām Khomeinī maintained that such an arrangement amounts to *riba*, even without an explicit surplus, since altering wording cannot legitimize what is inherently forbidden (Āmilī; Khomeini, 1962; Muḥaqqiq Dāmād, 1985).

In summary, opposition to these contracts arises from the desire to prevent deviation in commercial dealings and avoid consuming illicit gain. As Muḥaqqiq Ardabīlī advises, legal stratagems should be avoided except in cases of necessity. Thus, although a minority view allows *muḥābātī* sales conditional on a loan under strict conditions, the prevailing jurisprudential and ethical position regards them as impermissible or at least reprehensible (Kātouziyān, 2019; Makārem Shīrāzī, 2011; Muḥaqqiq Dāmād, 1985).

4. Conclusion

The *benevolent sale* (*bay‘ muḥābātī*), as a specific form of sale contract, is jurisprudentially and legally regarded as a valid and effective contract, provided that the general conditions of transactional validity are satisfied. Although it outwardly assumes the form of a standard sale, its underlying intent is often non-commercial—motivated by affection, benevolence, support, or the transfer of property to relatives or close associates. This distinctive characteristic may produce unique legal and financial implications, such as issues of debt evasion, infringement of heirs’ rights, or tax avoidance.

Therefore, while benevolent sales are legally recognized, careful attention must be given to the parties’ intent, the transaction’s conditions, and its consequences. Where such a contract harms third-party rights or assumes a merely formal or

fictitious nature, legal grounds may exist to declare it void or ineffective. Ultimately, delineating the boundary between genuine and sham benevolent sales is essential to preserving justice, transparency, and the prevention of potential abuse in legal and economic relations.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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