

## A Comparative Study of the Nature of Ransom and Wise from the Perspective of Feyz Kashani and Imam Khomeini

### Un estudio comparativo de la naturaleza del rescate y el sabio desde la perspectiva de Feyz Kashani y el Imam Khomeini

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## Summary

The nature of ransom and the issue of guaranteeing wisdom is one of the important issues in jurisprudence and law; various views have been expressed about it so far. The connection between the two goes back to the nature of ransom; if we consider ransom as a mere punishment, it is in conflict with the principle of personal punishment but if we consider the ransom as compensation, or consider it dual in nature, there will be no conflict between this rule and the principle. In this article, an attempt has been made to the nature of ransom and wisdom should be examined from the perspective of Feyz Kashani and Imam Khomeini, the basic question that arises in this regard is that; how can the views of Feyz Kashani and Imam Khomeini regarding the nature of ransom and wisdom be evaluated? The present article is an analytical description and has used the library method to examine the question. The results of the article indicate that; from the point of view of Feyz Kashani and also Imam Khomeini, ransom has a dual nature; because ransom, as an independent legal entity, has a civil aspect and compensates the damages and losses inflicted on the victim or his parents, on the other hand, it has a criminal aspect and provides the means of punishment and learning lessons for the perpetrator. Also, the payment made by the wise has been accepted from the point of view of Feyz Kashani and Imam Khomeini. Accordingly, whenever a non-Muslim citizen from Dhimmia commits a pure mistake and is unable to pay the ransom, whenever a murderer commits premeditated murder and then escapes and he and his relatives have no money, whenever the person who committed the murder of a pure mistake does not have the wisdom of paying the wise ransom, or if his wisdom is incapable, the payment of ransom will be the responsibility of the treasury. From Imam Khomeini's point of view, the most important basis of the government's responsibility as a wise man is the rule of "Al-Kharaj bi Al-Dhiman" but Feyz Kashani has not discussed this issue.

**Keywords:** Ransom, Wise, Feyz Kashani, Imam Khomeini.

## Resumen

La naturaleza del rescate y la cuestión de garantizar la sabiduría es una de las cuestiones importantes en la jurisprudencia y el derecho; hasta ahora se han expresado varias opiniones al respecto. La conexión entre los dos se remonta a la naturaleza del rescate; si consideramos el rescate como un mero castigo, está en conflicto con el principio del castigo personal, pero si consideramos el rescate como una compensación, o lo consideramos de naturaleza dual, no habrá conflicto entre esta regla y el principio. En este artículo, se ha hecho un intento de la naturaleza del rescate y la sabiduría debe ser examinada desde la perspectiva de Feyz Kashani y el Imam Khomeini, la pregunta básica que surge al respecto es que; ¿Cómo se pueden evaluar las opiniones de Feyz Kashani y el Imam Jomeini sobre la naturaleza del rescate y la sabiduría? El presente artículo es una descripción analítica y ha utilizado el método de la biblioteca para examinar la pregunta. Los resultados del artículo indican que; desde el punto de vista de Feyz Kashani y también del Imam Jomeini, el rescate tiene una naturaleza dual; porque el rescate, como entidad jurídica independiente, tiene un aspecto civil y compensa los daños y perjuicios infligidos a la víctima o sus padres, por otro lado, tiene un aspecto penal y proporciona los medios de castigo y aprendizaje de lecciones para el perpetrador. Además, el pago realizado por los sabios ha sido aceptado desde el punto de vista de Feyz Kashani y el Imam Khomeini. En consecuencia, siempre que un ciudadano no musulmán de Dhimmia comete un error puro y no puede pagar el rescate, siempre que un asesino comete un asesinato premeditado y luego escapa y él y sus familiares no tienen dinero, siempre que la persona que cometió el asesinato de un puro El error no tiene la sabiduría de pagar el rescate del sabio, o si su sabiduría es incapaz, el pago del rescate será responsabilidad del tesoro. Desde el punto de vista del Imam Jomeini, la base más importante de la responsabilidad del gobierno como hombre sabio es el gobierno de "Al-Kharaj bi Al-Dhiman", pero Feyz Kashani no ha discutido este tema.

**Palabras clave:** rescate, sabio, Feyz Kashani, Imam Khomeini

## Introduction

Financial compensation that a person has to pay for unintentional crimes is called "ransom". Likewise, in intentional crimes, if the victim or his parents make peace in exchange for financial compensation instead of retribution, the amount of compensation is often determined in Islamic law but the victim or his parents can make peace with the killer in terms of quantity." (Qiblah of Khoi, 2013, Volume 2: 592). Imam Khomeini states about ransom: "Ransom is money that becomes obligatory due to a crime against a person or a member, and it does not matter whether the amount has been determined by the Shari'a or not and sometimes the ransom refers only to what is determined and what is not determined is called the fixed atonement (Arsh) or the government ... » (Mousavi Khomeini, 1994, Volume 2: 498; Arefi Maskoni, 2003: 25). The principle of accountability of each person for his action and the impermissibility of blaming third parties for the act committed by another, which is called the principle of personal responsibility; The original is known and accepted that is, each person is responsible to others for the bodily and personal damage caused but there are exceptions such as the system of wise in this regard. The wise system is mostly derived from tribal life, its historical background dates back to pre-Islamic times; wise liability is an institution similar to insurance. In this way, the murder or some other crimes that a person commits by mistake, the ransom of which is a civil responsibility on the shoulders of some relatives who are called wise (Tusi, 1999, Volume 7: 1; also: Ibn Manzoor, 401405, vol. 11: 460). This family insurance divides the responsibility between individuals. According to Article 1 of the Constitution "Wisdom is; Relatives of male relatives, parents or paternal grandparents, respectively, in the order of inheritance classes, so that all those who can inherit at the time of death will be equally responsible for paying the ransom." From the point of view of Imami jurisprudence, there are four wise groups and they include Asbeh, Mottaq, Zaman Jarireh and Imam (AS) (Mousavi Khomeini, 1994, 1/4). According to Feyz Kashani, the killer's wise men are his father, mature, wise and rich men from his paternal relatives who must pay the ransom for the murder committed by the murderer and the ransom for some injuries, according to the conditions stated in the jurisprudential books (Feyz Kashani, 1401, Volume 2: 156). In the past, in order to meet the needs of life and to be safe from the existing dangers, human beings resorted to the collective life of the tribe. However there is a view that by attaching the institution of wise to tribal and tribal life, they have acknowledged the absence of this institution in modern urban life on the other hand, in the absence of tribal life, it would not be wise. However, the wise consider the abrogation of the ruling of the wise as the wise for the non-implementation of the guarantee of the wise; It should be said that: Assuming that even if tribal life is common, now that life is seen in the form of family, the wise killers are still the same (Asabeh) (Safari, 2015: 88). What is the nature of ransom and what are the views of Imam Khomeini and Feyz Kashani in this regard? What is the responsibility of a wise person in paying ransom? Can it not be said that with the end of the traditional tribal life between the pre-Islamic Arabs and many other nations, the rule of wise has become obsolete? When can the government, in the role of the wise, take responsibility for paying the ransom? What is the basis of the responsibility of the government as wise? In this article, we have tried to evaluate the principles and causes of this responsibility by researching the views of Imam Khomeini and Feyz Kashani.

## The nature of ransom from the perspective of Imam Khomeini and Feyz Kashani

Man's ransom is not his blood price and man's real blood price is not included in the calculation; Because according to the Holy Qur'an, killing one person is equal to killing all human beings (Maida / 32) and the price of the blood of all the people of the world cannot be measured. Now the question arises that if we do not value ransom, then what is the nature and position of

ransom in the field of Islamic jurisprudence and law? According to research, Shiite jurists, except for some of his contemporaries, have not explicitly spoken about the nature of ransom. However, many jurists of the four Sunni religions have expressed their views on this issue. However, it should be noted that: Islamic jurists and jurists do not agree on the nature of ransom and whether this nature is punitive or compensatory; And in total, there are three statements about this.

- a) Punishment Nature: According to this promise, which has been largely supported in modern times, ransom is a kind of punishment for a murderer that has emerged as a financial fine. Ayatollah Martyr Morteza Motahari, without distinguishing between ransoms in the case of murder by mistake, quasi-premeditated murder and premeditated murder - in the event of a compromise on the ransom's right - defended the criminal nature of ransom. In its statement, it says: "Ransom, like Retribution, is about crimes, and like Retribution, it is a right for the victim or his heir over the murderer, with the difference that Retribution is a kind of retaliatory transaction; but ransom is a financial penalty." (Motahari, 2000, Vol20: 118).
- b) Compensatory Nature: Some contemporary Shiite scholars also explicitly believe in the compensatory nature of ransom. Ayatollah Montazeri writes in expressing this theory: "Ransom has several purposes; Such as compensating for damage and preventing behaviors that lead to harm to others; and in all cases, it has no criminal aspect, but typically has a compensatory aspect; because the punishment in the case of committing a sin is a deliberate crime, while in a purely erroneous crime, in which no sin has been committed, the spear of ransom is fixed." (Montazeri Najafabadi, 2008: 37). Ayatollah Marashi Shoushtari also says about this: "In the narrations in ransom, there is no mention of ransom as a punishment. Rather, they are used that the ransom is determined to compensate for bodily injuries"(Marashi Shoushtari, 2006, Vol1: 189).
- c) The dual nature of this promise is that ransom is both a punishment and a compensation for economic damage. Ayatollah Makarem Shirazi writes the following statement: "Indeed, ransom is a punishment and at the same times a compensation for financial damage that results from the loss of a person. Ransom is therefore a punishment for preventing people from committing murder and for man to be careful in his behavior so that he does not commit such a gross mistake; and this ransom is financial compensation. Because the loss of the victim creates an economic vacuum for his family, and ransom fills this gap." (Al-Makarem Al-Shirazi, 2001: 148).

The views of Imam Khomeini and Feyz Kashani are close to the third view, which considers ransom to be dual in nature. In Iran, after the victory of the Islamic Revolution and the approach of Islamic of laws, the punishment of ransom were predicted in the law related to ransom in 1982, influenced by Imam Khomeini's jurisprudential views and was repeated in the penal laws of 1991 and 2013. The recent law defines ransom in Article 17 as follows "Ransom, whether predestined or not, is money that is prescribed by law in the Holy Shari'a for committing unintentional crime against the soul, limbs and interests, or intentional crime in cases where there is no retribution in any way." Therefore, ransom is not limited to unintentional crimes and extends to the matters specified in the law.

The dual nature has been confirmed in the advisory theory of 7/2991 dated 5/21/65 of the Legal Department of the Judiciary. According to this theory, however, ransom is like a fine but at the same time it is a financial right for the parents of the killer and the killer. (Mir Mohammad Sadeghi, 2002: 197) The letter section of the head of the judiciary also mentions both the criminal and damaging aspects of the ransom and it is specified that: Considering that the ransom for the crime of murder or on its members and interests, while it is considered as a punishment according to paragraph 3 of Article 12 of the Penal Code. According to the definition of Article 294 of the same law and in terms of valid jurisprudential fatwas, including issue 2, page 424, the second volume of Tahrir al-Waseela by Imam Khomeini is one of the examples of religion (Section of letter No. 12941/78/1 dated 26/2/2001 of the Head of the

Judiciary, Collection of the Islamic Penal Code, *ibid.*, P. 294).

### **Wise Responsibility**

According to Islamic sources, in pure crimes, the payment of ransom is the responsibility of the wise (Imam Khomeini, 1988, Volume 2: 558.) Wisdom is a jurisprudential term that refers to these people: Men are from paternal relatives such as their brothers, uncles and children, who are called clique (Asabeh) in jurisprudential terms. Liberator: He is the one who freed a slave. A freed servant if he has no paternal relative; It is considered his wise liberator. Guarantor of Algeria: A person who, under a contract, undertakes to pay compensation for his crimes in exchange for inheriting from the other party to the contract (Imam Khomeini, 1409, vol. 2: 599) Feyz Kashani also believes that; The wise man is the one who has the right to inherit, and the freedmen and the guarantor of Al-Jarirah (the guarantor of the payment of ransom by the wise man) and the Imam and the relatives of the father, who are their brothers, uncles and children (Feyz Kashani, *Mafatih of Sharia*, vol. 2, p. 156).

### **Killer clique**

The wise killers are: The father, the mature, wise and wealthy men from his paternal relatives who have to pay the ransom for the murder committed by the murderer and the ransom for some injuries, according to the conditions stated in the jurisprudential books. This view, which is the most famous saying, is one of the three theories among jurists about wise. According to this theory, the wise is the killer clique. (Fayz, 2003: 351) This view is supported by a narration from Muhammad ibn Qays as follows: *قال: امير المؤمنين (عليه السلام) عن ابى جعفر (عليه السلام) على امرأة اعتقت رجلاً واشترط ولاء ولها ابن فالحق ولاء بعصبتها الذين يعقلون عنه دون ولدها.* (Hurr Ameli, 1993, vol. 19: 44). In this narration, Imam Ali (as) has said about a woman who freed a slave man and conditioned his guardianship while he had a son: The guardianship of the freed man belongs to the clique of the woman, that is, to those who pay her ransom, not to her child. In the above-mentioned narration, clique means *الذين يعقلون عنه*; those who pay ransom on behalf of a woman). Another view says: The wise are those who inherit from the killer in the event of his death, from whatever class and rank they may be. Feyz Kashani also considers the heirs of the murderer to be wise (Feyz Kashani, 1401, vol. 2: 156). Sheikh Tusi has the same view. (Sheikh Tusi, *Bitā*: 737) The third view is that; Wise people are said to be heirs for whom a share of the inheritance is specified in the Holy Qur'an, and if they were not, the paternal relatives pay two-thirds and the maternal relatives pay one-third of the ransom (Kolini, 1988, vol. 7: 364).

### **The financial inability of the killer**

In the narration of Abi Basir from Imam Sadegh (AS) it is stated: "... Ransom is taken from the property of the killer, if the killer did not have money from his relatives, and if he has no relatives, the ransom is paid by the Imam" (Feyz Kashani, 1401, vol. 2: 156; Hur Ameli, 1414; vol. 29: 395) Evidence of the argument is the phrase "Adah al-Imam". That is, the same ransom that was built to be taken from the property of the murderer is paid by the Imam. Now, considering that if the killer has committed murder in the holy month, the ransom that is taken from his property is, in principle, expensive ransom, therefore, the Imam must pay the same ransom.

### **Muadiha Injury and above**

We can refer to the authority of Abi Maryam from Imam Sadegh (AS) where it says: "Imam Ali (AS) ruled that the wise are not guarantors except the Muadiha and above it." (Kolini, 1989, vol 7: 365; Tusi, 1986, vol10: 170) According to the above-mentioned narration, which has been practiced by Imami jurists and they have issued fatwas based on it, the wise man is responsible for the injury of the subject and above.

According to Feyz Kashani, the ransom of the victim with the unknown killer, according to the texts, must be paid from the treasury, unless someone or persons are accused of killing him. (Feyz Kashani, 1981, vol 2: 157)

### **Responsibility of the government as wise**

Imam is one of the wise people and is in the last rank of it (Feyz Kashani, 1981, vol. 2: 156; Mohaghegh Hali, 1988; vol. 4: 1052; Imam Khomeini, 1988, vol. 2: 599) Therefore; the treasury will be responsible for injuries and above. Imam Khomeini has the same view. According to Imam Khomeini, if they are not wise or are not able to pay the ransom, or if they refuse to pay the ransom, it is not possible to take it from them, should the ransom be taken from the killer or from the treasury? According to some jurists, the payment of ransom is done from the treasury (Mousavi Khomeini, 1994, 437/4) there is no doubt that from the point of view of jurisprudence; the basic basis of the guarantee of wisdom should be sought in a kind of cooperation and social cooperation (Kashani 256/7). According to this basis, the members of a family are obliged to donate and help each other; therefore, those who cannot bear the burden of the task are not responsible (Kashani, 2003, vol. 7: 256). In fact, the institution of the family and relatives are responsible only as a wise person to be paid in a situation where they can afford it.

Whenever the Imam is recognized as responsible for paying ransom, in fact, Bait al-Mal is responsible for paying ransom. If the payment of the ransom of the slain is sometimes entrusted to the Imam, it is because the treasury of the Muslims is at his disposal. Numerous narrations testify to the claim that; The Imam pays the ransom of the victims from the treasury, not from his personal property (Feyz Kashani, 1401, vol. 2: 157).

Imam Khomeini has said in this regard "Time and place are the two determining elements in ijihad (to practice religious jurisprudence). An issue that has had a ruling in the past, apparently the same issue in the relations governing the politics and society of a system may find a new ruling." (Mousavi Khomeini, 1379: 98) According to what was stated, we must admit that in such matters, the building of reason is one of the most important reasons for obtaining a verdict; Rational, which is considered to be the most important reason for the authority of single news (Muzaffar, 1994: 91). Therefore, it can be said: The responsibility of the wise has been based on a kind of commitment before the crime took place, which was about accepting the customs and wisdom of the past in the previous societies, which has also been approved by the Shari'a, but now there is no such commitment among those special people. In these cases, the mujtahid (clergyman), in order to understand a hadith, must have touched social life along with other intellectuals of the same kind in various social scenes. In addition to being aware of the points of view that differentiate people from each other, they have also gained a common awareness and a general mental background. This basis for public perceptions and common perceptions in the legislative arena is also one of them that mujtahids examine it under the title of occasions of ruling and subject (ruling and belonging to it) (Feyz, 2003: 152). It has been said that understanding the religion of Islam has never been possible without reason and narration, and it is the same today. Those who propose that reason precedes quotation or quotation over reason? They have not realized the depth of the problem. It is not a question of the precedence of this or that; rather, the problem is that understanding comprehension without a set of preconceptions accepted by reason is not fundamentally acceptable. Each group has its own special rational beliefs that are different from the foundations of the other group (Mujtahid Shabestari, 2005: 247). Therefore, just as the custom of that time was approved by the intellectuals of that time and was also approved by the Shari'a, why should the rational be not approved by the Shari'a at this time if it conforms to the basic principles of Islam such as justice? Therefore, in the present time when there is no obligation between the individual and his close relatives in this regard, the wise do not accept that he is the guarantor, however, the government can be held responsible for the assistance and cooperation mentioned above, which is a necessary part of human affairs and social life.

## No change in the ransom paid by the treasury

The accuracy of the narrations that have made the payment of ransom the responsibility of the wise and the Imam shows that; the soul of the ransom that is the responsibility of the killer is on the wise and the treasury. In other words in cases where the treasury is responsible for paying the ransom, there is no change in the quality and amount of the ransom. The only thing that happens is that the treasury replaces the killer (Feyz Kashani, 1981, vol. 2: 156) The phrase "لنا ولية و المودى عنه" appears in the fact that; The Imam, on behalf of the killer, pays the ransom. Therefore, the Imam pays the same amount that the killer has to pay from him, whether the amount of ransom is only one full ransom or ransom and one third of it.

A number of narrations indicate that; wherever the guardianship is proved for the Imam - the government -, the ration is also proved for the Imam, in other words whenever the Imam and the governor of the Muslims are considered personal heirs, he will also be considered as his wise man. In the narration of Muhammad Ibn Muslim from Imam Sadegh (AS) it is stated: "Whoever at taxes himself to an ethnic group and they also acknowledge that they are his guardians, in that case they will both inherit from him and be considered his wise man." (Feyz Kashani, 1981, vol 2: 158).

Numerous other narrations emphasize the meaning that; there is a reciprocal relationship between the Imam's inheritance from the ransom - the transfer of the ransom of the victim who has no heir to the treasury - and the acceptance of responsibility for the crime of the said person, as stated in the narrations of Abi Walad Hanat: Imam Sadegh (AS) said about a man who was killed and has no guardian other than Imam: Indeed, the Imam cannot forgive the murderer, or he must retaliate against the murderer, or he must take the ransom of the murdered person and place it in the treasury. Because the crime of such a victim is the responsibility of the treasury, therefore, his ransom will be for the Imam of the Muslims (Tusi, 1986, vol 10: 178).

## The jurisprudential basis of the responsibility of the state as wise

### Rule of "Al-Kharaj bi Al-Dhiman"

The rule of "Al-Kharaj bi Al-Dhiman" is a very famous rule, although it is a very famous rule in Sunni jurisprudential books and legal books based on Sunni jurisprudence. However, in jurisprudence, the rule of "al-ghanm balgharm" has been given more attention, and in our law books, only this rule has been considered. The term "Kharaj (TAX)" refers to taxes levied by the government on lands that are open to the public, that is, lands that have been taken over by the Islamic State through war and militarization, or lands that have been compromised by the Islamic State. Tax, in this rule, according to many jurists, has a broader meaning according to the literal meaning and expresses the relationship between guarantee and risk with profit and benefit. Therefore, if a person is the guarantor of financial loss according to the Shari'a, if he exploits its benefits, he is not obliged to reject the benefits by rejecting the property to its owner; because it is the guarantor of property, and the interest and tax are in return for this guarantee. (Makarem Shirazi, 1990, 2/305) The Sheikh of the tribe says in Beieh Misra: "ولا يرد اللبن الحادث و لا يرد اللبن بالضمآن" (لان النبي (ص) قضى ان الخراج بالضمآن) (Sheikh Tusi, 1980, vol 2: 125) and he quotes the same narration in the book Khalaf (Sheikh Tusi 1990 vol 3: 107). Ibn Hamzah also considers non-guarantee in the issue of proving the guarantee in the interests of the beneficiaries and says: "Al-Kharaj bi Al-Dhiman" (Tusi 1987: 249). The meaning of this rule in terms of the direction of narration is that; Interest is due to or against the guarantee and civil liability of that thing. In other words whoever is responsible for something will also be entitled to the benefits and income of that thing. If we omit the narration, and consider the literal meanings of tax and guarantee, tax means what the governor of the Muslims receives from the people as zakat, khums, jizyah and others as taxes. In return for receiving taxes, it has guarantees and obligations towards Muslims (Mousavi Khomeini 2000 vol 4: 617; vol 1: 469- 468) Such as governing the country, creating security in society, measures to protect the right to life of human beings, providing cultural services, welfare and .... Another point to note is that; whoever is the

guarantor, the interests are his, and whoever has the interests is also the guarantor. The appearance of the narration is that; Interest is only against the guarantee, that is, whoever is the guarantor, the interest of the property also belongs to him; On the contrary, this hadith is not used, that is, whoever are interests are the guarantor (Mousavi Khomeini 2000 vol 4: 618).

Perhaps an important question arises in this part of the discussion, and that is why many books of Shiite jurisprudential rules have not addressed this rule or have mentioned it very little? In response to this we can mention that; the jurists have raised several possibilities in terms of issuing the direction of narration, and these possibilities themselves have been the subject of problems and doubts but it is finally stated that; the hadith in question may refer to exchange transactions, not to usurpation or quasi-usurpation. Therefore, if its scope of application is limited in this regard, there is practically no need for such a jurisprudential rule. Because better jurisprudential rules support this need. Perhaps this is because the books of Shiite jurisprudential rules have paid less attention to it.

The possibility that Imam Khomeini raised in the concept of the rule of "Al-Kharaj bi Al-Dhiman", regardless of the direction of issuing the hadith, is a way to explain the jurisprudential reasons for paying ransom from the treasury. Because it has been expressed from the rulings of Soltanieh, in other words, in line with government jurisprudence, the word "judge" has been mentioned in some narration documents to confirm this possibility (Shafi'i Bitā: 43; Nisa'i 1969 vol 7: 255; Bayhaqi Bitā vol.5: 321). That the word "judge" refers to the ruling and royal rule of that Imam, not the expression of the divine Shari'a ruling, therefore, the interpretation of "judge" has been stated in the narrations of the Prophet of Islam (PBUH) and the Commander of the Faithful (AS) and not of other pure Imams (AS) who did not have leadership and government (Mousavi Bojnourdi 2006 Vol 2: 255). Thus, the Muslim governor has obligations to Muslims in return for the tax he receives in the form of zakat, khums, jizyah, and so on: Such as managing the public affairs of the people, managing their affairs, meeting their needs and everything that is the responsibility of the governor in the public interest of the Islamic State and the situation of Muslims (Imam Khomeini 2000 vol 1: 469) In other words, On the one hand, the Islamic ruler is obliged to fulfill his obligations, on the other hand, people have the right to demand that he fulfill his obligations (Imam Khomeini 2000 Vol 4: 617). The appearance of Imam Khomeini's (as) words is used that the payment of taxes by the people is not a donation and the government is obliged to meet the needs of the people in order to provide the interests of the Islamic State and Muslims; That is, by paying taxes from the people, the government also assumes obligations. The question now is whether the commitment of the government to compensate for the losses incurred by the people through its actions can be included in those commitments? In other words, according to this rule, one of the justifications for paying taxes is the government's obligation to pay the damages? It can be deduced from the practical and theoretical life of Imam Khomeini as well as narrative and jurisprudential sources that the government is obliged to compensate the damages caused by its actions;

### **Government, public taxpayer**

That Imam Khomeini in the description of the rule "La Alzarar" expresses their opinion with a preliminary plan. He says in the first introduction: The Holy Prophet (PBUH) has positions and authorities: 1) The position of prophecy and mission, 2) The position of monarchy, presidency and politics, 3) The position of the judiciary and the sharia government (Mousavi Khomeini, 1994: 105) In the second introduction, they say: What has been narrated from the Holy Prophet (PBUH) and Amir al-Mu'minin (AS) with the word "judgment" or "ruling" or "command" and the like, is not about expressing a religious ruling and the appearance of those words is that they all refer to their governmental and royal decree and this meaning is confirmed by the non-arrival of these words from other Imams (AS) who lacked leadership and government (Mousavi Khomeini, the former, p. 107) Although some government narrations can be identified by the above criteria, but how many narrations express the rulings of the government and the judiciary? But they do not appear with this word in narrative texts; rather, it has been used with expressions such as "قال", in which such rulings can be distinguished according to the current



and official evidences. (Mousavi Khomeini, the former, p. 109)

According to this view, the term "judge" used before the rule of "Al-Kharaj bi Al-Dhiman" is used. This rule is one of the rulings of the Sultanate and the government (Mousavi Khomeini, Al-Bayy, the former, vol. 4, p. 117) so tax is the same as conventional tax in governments (Mousavi Khomeini, the former, vol. 5, p. 457) But Muslims receive zakat, khums, jizyah, etc. Receiving this tax is not free and cruel, rather, it is in return for the guarantees that are the responsibility of the government and those guarantees and obligations, meeting the needs and requirements of Muslims and managing public affairs (Mousavi Khomeini, the former, vol. 4, p. 117 and vol. 5, p. 457) and everything that governs It is necessary to provide the interests of the Islamic State and the situation of Muslims (Mousavi Khomeini, the former, vol. 1, p. 318) According to Imam Khomeini, such an interpretation of the concept of rule is "Aghrab al-ghaedeh".(Mousavi Khomeini, the former, vol. 4, p. 617).

Therefore, from Imam Khomeini's point of view, this rule is a rule of government that includes the obligations that the government is obliged to collect taxes from the people in different ways and the government was obliged to fulfill its obligations and the people can demand that the government do the things promised by the government: "و أن الوالي موظف بذلك و الشعب مطالبون منه" (Mousavi Khomeini, the former, vol. 4, p. 617).

From Imam Khomeini's analysis of this rule, it is understood that; According to him, this rule is one of the rules of government and the Islamic State is obliged to meet the needs of Muslims in return for taxes in the form of zakat, khums, jizyah, etc and to take care of the affairs in the public interest. He has also given the people the right to demand sovereignty in these matters. Thus, the rule of "Al-Kharaj bi Al-Dhiman" on the one hand obliges the government to fulfill its obligations and on the other hand, makes the people worthy of the obligation of the government to fulfill its obligations to demand their rights.

Specifically with this interpretation, the rule of "Al-Kharaj bi Al-Dhiman" its general responsibility by proving the "responsibility of the state"; But if the government's actions cause harm to the people, does that rule include the need to provide for such damages? In other words, can the "Al-Kharaj bi Al-Dhiman" rule be used as the basis for government liability for damages?

### **It is the duty of the government to preserve life**

The first principle is that; No one has the right to encroach on the property, life, breadth and personal and social affairs of others (Mousavi Khomeini, 2006, Vol. 1: 98-28) The same principle has appeared in the constitution (Constitution, Article 22) and sovereignty is no exception to this rule; Even the protection of people's lives, property and breadth is one of the inherent duties of the government (Mousavi Khomeini, 2006, vol. 15: 101) Compensation for the loss of life, property and width of its accessories is a duty. Accordingly, Imam Khomeini obligated the government to compensate the damages caused by the war (Mousavi Khomeini, the former, vol. 5, p. 159) natural disasters (Mousavi Khomeini, the former, vol. 11, p. 268) and repair the damage during the revolution through the establishment The National Fund (Mousavi Khomeini, the former, vol. 11, p. 228) The mentioned damages are provided from public sources.

One of the most important tasks of the Islamic government is to create measures to protect the right to life of human beings. This is one of the most important human rights issues in Islam, and this right is known to all human beings, both Muslim and non-Muslim, in such a way that the infidel also creates such an obligation for the Islamic government by paying jizyah and taxes. Therefore, in cases where citizens are harmed due to lack of security and public order and lack of appropriate measures to protect the right to life, including suicide and injuries, if the killer or injured person is not identified or escapes and is inaccessible, the payment of ransom is the responsibility of the treasury: Such as being killed or injured due to crowds in non-forbidden

ceremonies such as Friday prayers, religious ceremonies, or injuring ordinary people during street riots in the streets and markets.

### **Justice and the realization of the rights of the people and fairness**

Establishing justice and realizing the rights of the people and observing justice is one of the basic duties of the Islamic government and basically Islam has come to establish a government of justice and all the financial and penal laws of Islam are based on justice and ease. (Mousavi Khomeini, 1991, vol. 2: 460) Therefore, since the actions of the government have caused losses, it must compensate it with good will; Otherwise, he has not walked the path of justice and fairness with the people; Because according to what is common between jurists and scholars, harm means "defect" and therefore has a semantic affinity with "oppression"; because oppression is referred to as "retribution of truth". (Majlisi, 1999, vol. 11: 202).

In this sense, any defect in relation to property, width, life and honor is oppression, and the ugliness of oppression is a natural law (Sistani, 1993: 186) Furthermore, from the perspective of Imam Khomeini: "All the efforts of the prophets were to create a social justice for human beings in society." (Mousavi Khomeini, 2006, vol. 11: 386) and the requirement of social justice is that; Citizens should enjoy the benefits and harms of society equally and imposing damages resulting from the actions that the government takes in the public interest and interests of certain persons and not compensating it from public sources, is oppression of those persons and the government must avoid oppression and not encroach on their property, lives and honor (Mousavi Khomeini, Bita: 1855).

The government must avoid oppression and not encroach on the property, lives and honor of the people. However, just as the benefits of government action are in the public interest and in the public interest, so whenever there is a loss in terms of government action, society must also bear the loss and the tolerance of the society appears in the face of the payment of compensation from the place of taxation. Therefore, Imam Khomeini's interpretation of the rule of "Al-Kharaj bi Al-Dhiman" can be considered as the basis of civil liability of the government.

### **Conclusion**

According to the views of Imam Khomeini and Feyz Kashani, although human life cannot be valued with property, but because of the compensation of the damage to the victim and the parents and because of their peace of mind, the holy shari'ah has considered it necessary to pay ransom. If we consider the nature of the ransom as damages and religion, according to the general rules and legal principles, we should consider only the person who caused the damage responsible and the guarantor of the coercive liability, because the damage is documented in his action. While in cases such as pure murder according to Imami jurisprudence and the Islamic Penal Code, the wise man is known to be responsible for paying ransom. According to the principle, the responsibility for paying ransom lies with the killer, but in some cases this responsibility rests with someone other than the killer.

In cases where the payment of ransom by the killer or his wise man is difficult, in order not to trample the blood of the believer, the treasury is responsible for paying ransom. From the analysis of Imam Khomeini's view on the rule of " Al-Kharaj bi Al-Dhiman " it is understood that; According to him, this rule is one of the rules of government and the Islamic State, in return for the taxes it receives in various forms, has an obligation to meet the needs of Muslims and to take care of public affairs. Also, in these matters, he gives the people the right to demand sovereignty, on the other hand, obliges the government to fulfill its obligations, and they have been "Al-Kharaj bi Al-Dhiman. On the other hand, considers the people to be entitled to the obligation of the government to fulfill its obligations (demand their rights). Compensation for the actions of the government in the public interest is the duty of the government ( و أن الوالى ) و الشَّعبُ ) (موظف بذلك ) and the people have the right to demand compensation from the government ( «الخراج بالضمنان» مطالبون منه ). Therefore, it can be said that according to Imam Khomeini, this rule

can be one of the specific principles of government civil liability. Feyz Kashani has not discussed the principles of government civil liability.

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