بسم الله الرحمن الرحيم

Series of Questions Addressed to the Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,

Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question:

The Difference between the Land Title (*Raqabah*) when it is for the State and when it is for the Individual

To: Suad Abed

(Translated)

Question:

Assalamu Alaikum Wa Ramatullah Wa Barakaatuhu,

Pardon me, in the book of the *Economic System in Islam* by the honorable scholar Taqiuddin an-Nabhani, may Allah have mercy on him, he talked about the Kharaji land and the 'Ushri land.

My question: What is the difference between the land title (raqabah) and its benefit when they are for the individual and when the land title (raqabah) belongs to the state and its benefit to the individual?

Thanks for the clarification.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

Land according to the Ahkam Shariah (Islamic rulings) is of two types: Kharaji land and 'Ushri land. Both types can be exchanged through sale, purchase or granted as gift, and are inherited from their owners because they are a real property of the owner and it applies on them all the Ahkam of ownership. And there is no difference between them except in two things, the first one is the owned property itself, and the second is the right due on the land:

1- As for the owned property, the owner of the 'Ushri land owns its land title (raqabah) and its benefit, and the owner of the Kharaji land he owns its benefit only without owning its land title (raqabah). This means the owner of the Kharaji land cannot carry out any Hukm Shar'i which one of its conditions for validity is the ownership of the property, but the owner of the 'Ushri land can do it. For example, endowment (Waqf) requires the ownership of the property to be endowed; therefore, if the owner of the 'Ushri land wants to endow the land he owns, he can do it any time he wants, because he owns its property that is its land title (raqabah). But if the owner of the Kharaji land wants to endow the land that he owns, it. However, the owner of the Kharaji land does not own the property (i.e. the title) but owns its benefits because its title belongs to Bait ul-Mal (State Treasury).

2- As for the right due on the land, there is 'Ushr (one tenth) upon the 'Ushri land, and Kharaj upon the Kharaji land, and the difference between 'Ushr and Kharaj is as follows:

- 'Ushr is taken from the harvest of the land. This means that the State takes from the land's farmers one tenth of the actual production of the land if it is irrigated naturally by rain water, but it takes half of the tenth of the real production if the land was irrigated artificially by a waterwheel or other similar means. Muslim has narrated from Jabir that the Messenger of

Allah (saw) said: «فِيمَا سَقَتْ الْأَنْهَارُ وَالْغَيْمُ الْعُسُورُ وَفِيمَا سَقِيَ بِالسَّائِيَةِ نِصْفُ الْعُسْرِ» "One tenth is put on what is irrigated by the rivers and rain and half of the tenth is put on what is irrigated by the waterwheel." This tenth is considered a Zakat and is placed in the Bait ul-Mal, and it is not paid except to one of the eight categories mentioned in the Qur'anic verse: ﴿إِنَّمَا الصَّدَقَاتُ اللَّهُوَالِمُعَافِينَ عَلَيْهَا وَالْمُوَلَقَةِ قُلُوبُهُمْ وَفِي الرَقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَّهُ عَلِيمَ كَلِيمَ الصَّدَقَاتُ (المُعَافِينَ عَلَيْهَا وَالْمُوَلَقَةِ قُلُوبُهُمْ وَفِي الرَقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَّهُ عَلِيمَ كَلِيمَ الصَّدَقَاتُ (المُعَافِينَ عَلَيْهَا وَالْمُوَلَقَةِ قُلُوبُهُمْ وَفِي الرَقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَاللَّهُ عَلِيمَ (اللَّهُ عَلِيمَ اللَّهُ وَابْنِ السَّبِيلِ اللَّهُ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَهُ عَلِيمَ عَلَيْ عَلَيْهَا وَالْمُوَلَقَةِ فَلُوبُهُمْ وَفِي الرَقَابِ وَالْغَارِمِينَ وَالْعُامِلِينَ عَلَيْهِ اللَّعَامِ وَاللَّهُ عَلَيْهُ وَاللَّهُ عَلَيْهُمُ وَفِي الرَّقَابِ وَالْغَارِمِينَ وَالْعَامِلِينَ عَلَيْهُ مَن الللَّهُ وَاللَّهُ عَلَيْ مَنْ اللَّعَامِ وَاللَّهُ عَلَيْهُ وَاللَّهُ عَلِيمَ اللهُ وَالْمُوالَيْ السَعَدِينَ عَلَيْهُ مَن اللَّهُ وَاللَّهُ عَلَيْهُ وَاللَّهُ وَاللَّهُ عَلَيْ مَنْ اللَّهُ وَالْعُنْ عَلَيْ مَنْ الللَّهُ وَاللَّهُ عَلَيْ مَنْ اللَّعُولَ وَاللَّهُ وَالْعُامِ مِنْ اللَّعُامِ مَنْ اللَّهُ وَاللَّهُ مَن اللَّعَانِ مَنْ الْعُنْ مَنْ اللَّهُ وَاللَّهُ عَلَيْهُ الْعُنْوَالَةُ وَالْمُ مَالِعُونَ وَاللَهُ وَاللَهُ مُعَامِ مُعَامِ مَالَعُونَ وَاللَّهُ مَن اللَّعُونَ وَاللَّهُ وَاللَّهُ وَاللَّهُ مَنْ وَاللَّهُ وَاللَّعَامِ مُعَامِ وَاللَّهُ وَاللَّهُ وَالْعُامِ مُ

It is not taken except from the four food categories as Al-Hakim, Al-Baihaqi and At-Tabarani reported through the Hadith of Abu Musa al-Ash'ari and Mu'adh that when the Messenger of Allah (saw) sent them to Yemen to teach people the Deen, he (saw) said: «لَا يَعْذِهِ الْأَرْبَعَةِ: الشَّعِيرِ، وَالْحِنْطَةِ، وَالتَّمْرِ». (bon't take the zakat or charity except from these four things: Barley, wheat, raisins and dates."

- However, Kharaj is that which the State takes from the landlord; a certain quantity that it estimates and defines according to the usual estimated production of the land, rather than its actual production. Kharaj is estimated on the land by as much as can be afforded from it without bringing injustice neither to the landlord nor to the Bait ul-Mal. It is collected every year from the landlord whether it was planted upon or not and whether it was fertile or barren. Abu Yusuf narrated in Al-Kharaj from Amru bin Maymun and Haritha bin Mudhrab: (بَعْتُ عُمَرُ بُنُ الْخُطَّابِ رَضِيَ اللَّهُ تَعَالَى عَنْهُ عُثْمَانَ بْنَ حَذِيفٍ عَلَى السَوَادِ وَأَمَرَهُ أَنْ يَمْسَحَهُ، فَوَضَعَ عَلَى جَرِيب عَامِر، أَوْ عَامِر، اَقْ عَمْرُ بْنُ الْخُطَّابِ رَضِيَ اللَّهُ يَعْمَلُ مَثْلُهُ بُنْهُ عُثْمَانَ بْنَ حَذِيفٍ عَلَى السَوَادِ وَأَمَرَهُ أَنْ يَمْسَحَهُ، فَوَضَعَ عَلَى جَرِيب عَامِر، أَوْ عَامِر، (بَعْتَ عُمَرُ بْنُ الْخُطَّابِ رَضِيَ اللَّهُ تَعَالَى عَنْهُ عُثْمَانَ بْنَ حَذِيفٍ عَلَى السَوَادِ وَأَمَرَهُ أَنْ يَمْسَحَهُ، فَوَضَعَ عَلَى جَرِيب عَامِر، أَوْ عَامِر، (بَعْتَ عُمَرُ بُنُ الْخُطَابِ رَضِيَ اللَّهُ يَعْمَلُ مَثْلُ الْعَلَيْ الْعَابِ اللَّعْمَابِ اللَّهُ اللَّهُ عَمَرُ مُنْ الْحُطَابِ رَضِي اللَّهُ عَلَى عَلَى عَلَى السَوَادِ وَأَمَرَهُ أَنْ يَمْسَحَهُ، فَوْصَعَ عَلَى مِثَا يَعْمَلُ مَثْلُهُ الْعَابِ اللَّهُ عَمَرُ بْنُ الْخُطَابِ رَضِي اللَّهُ عَالَ الللَّهُ الْعَابِ الْعَابِ اللَّهُ الْعَابِ اللَّهُ الْعَلَى عَلَى الْعَابِ اللَّهُ عَمْرَ الْعُنْ الْحُلُهُ الْحُلُولُ الْعَابِ اللَّهُ عَمْلُ الْعَلَيْ الْعَابِ الْعَنْ الْعَنْ الْنُ الْعَلَيْ الْعَنْ الْعُنْ الْعَابُ الْعُنْ الْمُعْلَى عَالَيْ الْعَلَى الْعَلَى الْمُعْلَى الْعُنْهُ مَنْ الْعُوْصَ الْعَنْ الْعَابِ وَعَابِ الْعَلَى عَلَى مَعْنَ مَنْ الْعُنْقَابِ وَضَ الْعَلَى الْعُنْ الْعُنْهُ الْعَلَى الْعَابِ الْعَابِ الْعَلَى الْعَابُ الْعَابِ الْعَابِ الْعَابِ الْعَلَى الْعَلَى الْعَلَى الْعَلَى الْعَابِ الْعَابِ الْعَابِ الْعَابُ الْعَابِ الْعَابِ الْعَابِ الْعَابِ الْعَابُ الْعَابُ الْعَابِ الْعَابِ الْعَابِ الْعَابُ الْعَابِ الْعَابِ الْعَابِ الْعَابِ ع

I hope this is sufficient.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

8th Jumada II 1440 AH

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The link to the answer from the Ameer's Facebook page:

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