

**THE ISLAMIC COMMUNAL LANDS *IJMA*:
IN THE CASE OF MEDIEVAL AND EARLY MODERN AZERBAIJAN**

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Abstract: Land properties and the legal regimes that they are subject, provide important data on the legal, social, economic and military aspects of a given country and characterize its economic features. In the countries of the Middle East, the system of land tenure, based on Sharia Law, was formed during the period of the Arab Caliphate and, with minor changes, lasted for centuries.

The aim of this paper is to examine the main essence of the Islamic communal land property- *arazî-i ijma* or *arazî-i āmma* in the medieval and early modern Azerbaijan, based on the several documents of the title-deed - *qabale*. This research proposes a concept that being land in the public benefits, *arazî-i ijma* was one of the forms of private ownership- *mulk* lands.

Keywords: *Islamic land properties, ownership, communal lands, ijma, qabale*

Introduction: Historical Background of the Ijma Lands

The proprietary rights on the means of production were all times the most important factors that affect the formation and regulation of the social relations in the historical process. In the medieval and subsequent early modern period the proprietary rights on the lands, the main means of production for that period, had a decisive influence on the dynamic of all aspects of society: the nature of production function, relationship between authorities and subjects, interaction between different social groups and etc.

Islamic property rights and land ownership in the Muslim Caucasus and Azerbaijan during Middle Ages and early modern period is widely studied in the historiography. Namely such historians and orientalist as V. Zakhoder, I.P. Petrushebskiy, A.K. Lambton, V. Minorsky, Z.M. Bunyadov, A.D. Papazyan and other scholars devoted a large number of works to this issue, where authors explore the land ownerships in the Muslim counties, including Azerbaijan. Even so, it is impossible to assert about solution of the issue. Diverse terminology concerning the Islamic land ownership and their use for different meanings, moreover, lack of concrete definition in some cases and transformation of land properties in length of time led to the formation of contradictory claims among scholars.

There is no doubt that the land ownership forms of Middle Eastern countries, including Azerbaijan, started their formation during the Sassanid Empire and were evolved during the Arab Caliphate in the 7th to 9th centuries AD. These forms of land property, formation of which were completed during the Caliphate, existed in Azerbaijan, as well as in the Muslim Caucasus until the Tsarist Russian conquest of the region in the first half of the 19th century.

According to the most of researchers, who works on the issue, forms of land tenure and land rights in the Muslim societies derived from the Islamic doctrine of dual ownership [Папазян (1972): 81; Петрушевский (1949): 78; Рахмани (1981): 124; Эфендиев (1981): 207]. According to the Islamic concept of land and legal basis, the whole universe, including lands, was created by Allah and belong him. Leaders of the Muslim communities, imams, caliphs and rulers claim themselves as shadows of Allah on the Earth and must carry out the mission of his vice-regents and under Islamic Law they have higher right on property [Папазян (1972): 81-82; Рахмани (1981): 124].

It is obvious that in the Muslim societies this doctrine defined all property rights during the medieval and early modern periods. But it is unacceptable to link land ownership only with the Islamic law. For example, in ancient Egypt, long before existents of Islam, pharaohs associated themselves as sons of god (the Sun God- Ra- B.S.) and preserved all rights on property on their hands. The same situation could be observed in the European countries. In the Carolingian Empire and after its collapse in France, in Germany and partly in Italy, observing lord-vassal relations (feudalism pyramid- B.S.), we see that higher property rights owned by the king [Rutger Kramer (2019)]. That is why the assertion that the ownership of land in the Muslim countries was formed on the basis of Islam, vice-versa, in Europe on a secular bases, has no foundation.

Communal Ijma Lands in Azerbaijan During the Rule of Safavid Dynasty

Historiography consists of various points of view on the land tenures during the reign of Safavid dynasty. According to B.N. Zakhoder, I.P. Petrushevski, O. Efendiyev and other authors during the mentioned period there were five forms of land tenure in Azerbaijan- *dīvān* lands, *khasseh* (*kāṣṣa*) or *khaliseh* (*kāleṣa*)- crown property, *waqf* lands, *mulk* and communal lands. [Заходер (1944): 75-76; Петрушевский (1949): 78; Эфендиев (1981): 207]. In addition to these tenures A. Alizade and A. Rahmani considers *tiyul*, the state granted lands as a 6th form of land tenures [Ализаде (1956): 167; Рахмани (1981): 125]. Although these land tenures were indicated as the main forms in the Soviet and Azerbaijani historiography for a long time, lately we consider a new attitude to the issues. In his book “Economic life of Safavid Empire” Nizami Suleymanov divides forms of land ownership into two groups being main and derivative on the basis of the three requirements of property rights - the possession, use and disposal rights [Suleymanov (2006): 55]. The author includes *divan*, *khasseh* and *mulk* to the main group of lands; *waqf*, *ijma* lands and *tiyul* were included to the derivative group [Suleymanov (2006): 55-56]. He considers owner’s possession, utilization and disposal rights on the *divan* lands, *khasseh* and *mulk* lands as a complete form, in contrast to them, *waqf*, *ijma* and *tiyul* lands as an incomplete one. In my point of view N. Suleymanov’s suggested groups of lands are more acceptable with some corrections than suggestion of the conservative historiography.

The communal lands- *arazî-i ijma* or *arazî-i āmma* were one of the land tenures recorded in the XVI-XVII centuries Safavid Empire, including Chukhur-Saad, one of its administrative units. There are different opinions on these lands in the historiography. In second volume of "History of Azerbaijan" indicates that the communal lands *ijam* had a status of state lands and owned by peasants, these lands covered pastures, oil-bearing lands, cemeteries and etc. [Azerbaijan Tarixi (1998): 217]. Prominent Azerbaijani historian Z.M. Bunyadov, who worked on the Caliphate period, indicated hayfields, fuel

collected places, cemeteries and others as the communal lands, but he didn't specify their status [Bunyadov (2007): 152]. I.P. Petrushevsky who studied medieval agrarian system of Azerbaijan had conflicting views on communal lands. Classifying land tenures, the author specified communal lands as separate form of lands [Петрушевский (1949): 78], but describing mulk land, which is freehold land, he indicated communal land- *arazî-i ijma* or *arazî-i āmma* as a type of mulk [Петрушевский (1949): 229-233]. O. Efendiyeu characterizes *jamaat-i dehi* as property lands of certain village's community, but he didn't specify the legal basis of this property [Эфендиев (1981): 207]. A. Rahmani also indicates communal lands under term '*jamaat*' and specifies this land as a community property, but he didn't explain the property rights of community [Рахмани (1981): 129]. B.M. Arutyunyan and M.K. Zulalyan both separated communal lands as a specific form of landownership and underlined that village communities had autonomy in some issues [Арутюнян (1940): 34-35; Зулалян (1971): 20-22]. Unlike them A.D. Papazyan supposed that such lands belonged to the village community on the legal basis and to each member of community, moreover they managed these lands as private property [Папазян (1972): 181-188]. N. Suleymanov considering communal lands as type of derivative land tenures writes that *ijma* lands actually being the state lands were on the possession and disposal of the state and they were under the joint utilization of peasants [Suleymanov (2006): 56]. In other words, the author tried to stress that village community has only the right for the utilization of the land.

As we see there is not a unanimous opinion on the common *ijma* land property in the historiography. It is undeniable that all property rights on land belonged to the state in the Safavid Empire, including Azerbaijan. Simultaneously, the state was a guarantor of the possession, utilization and disposal rights on lands. Both I.P. Petrushevsky's and A.D. Papazyan's points of views on the communal property *ijma* lands much closer to the truth than other scholars.

In my opinion, communal *ijma* land was a form of *mulk* and it could be called a *collective mulk*, in other words collective property. Some extent documents prove that village community had all right for the possession, utilization and disposal of lands were provided. In this case, *qabale*- the title deed, constituted in 1506 by the Nakhchivan Sharia court, is crucial. This document states that it is determined on the basis of the decrees of previous rulers and the documents, compiled by the *qadi*, as well as the testimony of authoritative people of Nakhchivan, *tumen* of the province Azerbaijan that village Dibkend of Deresham *mahal* belongs to the *icma*, community of mentioned village based on the *mulk* property [Персидские документы (1968): document N13, 292-296]. The borders of the village indicated in details, moreover this *qabale* stresses that no one has the right to raise a lawsuit against the village. As we see this *qabale* clearly reflects that the village Dibkend is a property of its community. Interestingly, not only land, but also all substance on this land, its irrigation system, mills, the butter production enterprise, pastures and etc. are indicated as a mulk of the village community [Персидские документы (1968): document N13, 294]. The court decision in H. Ramadan, 964 (28 June - 27 July 1557), which is pointed out in this *qabale*, underlines that this village Dibkend didn't belong to the crown lands *khaliseh* and one more time prescribes villagers as its owner [Персидские документы (1968): document N13, 296]. As we know, after the end of Ottoman-Safavid war in 1555 a special committee was sent to the region to check the state's land fund and for re-registration of the public lands.

Namely this committee has identified property right of Dibkend village to its community, moreover it defined main property tax of the village and its additional part for that year. It should be noted that alongside with Dibkend, the other two villages of Deresham mahal – Bashkend and Ortakend were properties of their community.

In order to determine the legal basis of communal lands in Azerbaijan during the Safavid dynasty we analyzed also *qabale* of 1576. According to this document Murad Bey sold his property Mehri village to its community- *ijma* for 316 tuman [Персидские документы (1968): document N24, 325-331]. Purchased land was declared the property of the village community and each *reaya* – taxpayer of the village in the document of sale. It is an undeniable fact that all possessions purchased on the basis of *qabale*, which is a legal document of Sharia court became private property. This proves once again that Mehri village was transferred into private property. It is necessary to note that Mehri village, which was previously belonged to the *khasseh* – crown lands and was purchased by the village community in 1576, mentions as a crown land in the sources on the XVII century [Персидские документы (1968): 380].

Another valuable document, which proves mulk status of communal lands is *qabale* dated back to 1587. It becomes clear from the text of this *qabale* that the community of the village Savadan sold their pasture Kilavakishi to the community of the village Mehri for 7500 dinars [Персидские документы (1968): document N 26, 333-335]. In this document the borders of the pasture were pointed out in details and transition of its ownership was marked with accuracy. The *qabale* of 1587 certifies possession and disposal rights of the village community on the communal property.

B.M. Arutyunyan also pays attention on the facts about the sale of property belonging to the community by the community itself. According to the author, in 1722 the community of the village Oshakan sold one third of the irrigation water of their property to Catholicos Astavasatur and in 1740 the community of the village Kanakir sold 200 somars (50 hectares - B.S.) of sown area to the monastery Gegard [Арутюнян (1940): 34-35].

Some decrees of the 17th century that have come down to our time are of great scientific importance in terms of revealing the essence of the form of *ijma* land. One of these decrees was signed by Shah Safi I in Rabi'ul-Sani 1043 AH (October 1633) and refers to the Sheki province. It is clear from the text of the decree that the governor of Sheki, Aslan Sultan, forcibly took half of the properties belonging to the subjects of Sheki and began to use them for cultivation, but not content with that, he continued to collect property tax from the subjects for those properties he occupied. The subjects who gathered in front of the palace complained about the arbitrariness of the Sheki governor to the Shah [Т.М. Musəvi. (1977): documents N-3, 66-67]. The *Ijma* lands, mentioned as "Properties belonging to the Sheki subjects" in the decree, undoubtedly belong to the village community. This fact is also confirmed by the fact that the complaint was signed collectively, not individually. Examination of the decree shows that it was considered necessary to pay the property tax *maljahat* to the state treasury for community lands belonging to rural communities. At the same time, the illegal occupation of community lands was considered unacceptable. Shah Safi I entrusted the objective investigation of the complaints of the subjects to the lawyers of Shirvan beylarbeyi and gave instructions: if it is seized contrary to the law and still accumulates wealth at the expense of those properties, they should decide that the refuge of that emirate should put the subjects'

properties at their disposal and take back as much wealth as those properties have according to the rules [T.M. Musəvi (1977): document N-3, 67]. The decree of Shah Safi I shows that the inviolability of the community lands at the disposal of the subject, like any property, was protected at the state level, and individual officials ensured the protection of the rights and powers of the community properties and property owners.

It is necessary to add that making comparison the Safavid land property system with the Ottomans one, one can conclude that the lands of the Ijma resemble the lands of the *Miri Arazi* in the Ottoman Empire. Moreover, in both states, this form of land ownership was subject to the intervention of the authorities and both state system and Sharia law regulated these lands. An important point between the two systems, the state system and the Islamic Sharia, is that the provisions on inheritance are final and unchangeable. The fact that the provisions of the land of the miri arazi and the laws of transfer to which it is subject, may change over time depending on the land policy of the state or the conditions of the time. [Abdurrahman Yazici (2014): 469]

Conclusion

Scrutiny on the historical literature, particularly special documents *qabale*, the title deeds, prove that communal *ijma* lands were in fact a form of *mulk*, more precisely they have been a form of collective *mulk*. The fact that the rural community was free to buy, sell and lease property belonging to it, including land plots, pastures, kishlaks, irrigation system, as well as all other property on these lands, indicates that the rural community had the property right to use, as well as to manage this property. In ensuring these rights, the legal documents of the Sharia court and the decrees of the ruler acted as guarantors. In cases when local officials have exceeded their powers and interfered with community lands, their prevention at the state level and the restoration of the rights of the village community on that property also document the inviolability of collective property.

Although the documents, considered in the research, relate to the Sheki region and Chukhur-Saad Beylarbeklik, a similar situation could be observed in the other administrative-territorial units of the Safavid state. But still, it is important to find additional evidence that would prove existence of such collective form of *mulk* in other territories of the Safavid Empire, including Azerbaijan.

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