

Right of Customers in Their transaction If They are Deceived (*Khiyār al-Tadlīs*) as Proposed by Islām

By Dr mohd Afandi Awang Hamat¹ and Assoc. Prof. Dr Ammar Fadzil²

Abstract

Khiyār al-Tadlīs basically promotes the concept of justice and fairness, it also provided a practical solution for both parties that involve in any contractual agreement namely the right to revoke or continue with the contract, basically it is called as '*ḥaqq al-khiyār*'. Therefore, this paper attempts to discuss in detail the right of *al-khiyār* in business transaction as proposed by Islām. Therefore, in Islamic Law, Based on the doctrine of *al-khiyār*, any party who is dissatisfied with his or her contractual agreement, having the right to reconsider his or her decision in buying or selling something either to continue with such contract or to revoke it. The act of *al-tadlīs* could occur when the seller deliberately deceives or exploits a potential buyer by any means of trickery, either by word or deed, that consequently influences the ignorant buyer to enter into the sale and purchase agreement, which finally leads him or her to purchase something what he or she would not have purchased it otherwise. It is pertinent to note that all four Muslim schools of law, in principal reject the notion of *al-tadlīs* or concealing the defect of the commodity in any business transaction from the knowledge of the buyer. Ḥanafī jurists consider such act of hiding the defect as a forbidden act, Mālikī jurists explicitly describe it as the act of *tadlīs*. Whilst Shāfi'ī and Ḥanbalī jurists label it as the act of *ghishsh* (cheating). This paper will discuss in details various issues in khiyār al-Tadlis according to Four Sunnī *Madhāhib*.

Keywords : *Tadlīs*, revoke, *Khiyār*, *ghishsh*, *Madhhab*, and Jurist.

Introduction

In Islām, the theory of economy is comprehensive and inclusive. Islām considers human activities as a deed ('amal), therefore, he or she shall be responsible and accountable in the Hereafter (*ākhirat*). Islām offers a system which enable to establish a stable and balance economy and balance society. Therefore, Islām prohibits lies, insincerity, dishonest, falsehood, fabrication, deception, and distortion in any business transaction. Islām has considered these behaviors similar to gaining other properties by illicit means (*akl al-māl bi al-bāṭil*), Allāh says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا [النساء : 29]³

O ye who believe! Eat not up your property among yourselves in vanities, But let there be amongst you traffic and trade by mutual good will.

In Islamic law, the seller and the buyer should explain the good and bad points of his or her transaction. Lies and dishonesty in a business deal for instance, will cause the loss of the God's blessing. In this regard, the Prophet (SAW) is reported to have stated:

¹ Dr Mohd Afandi Is an Asst. Prof. at the Department of Fiqh and Usul al-Fiqh, Kuliyyah IRKHS, UIA, Gombak Selangor

² Dr Ammar Fadzil is an assoc. Prof at the Department of Quran and Sunnah Kuliyyah IRKHS, UIA Gombak Selangor

³ Al-Qur'ān, *Sūrat al-Nisā'*, [4 : 29].

“.....and if both parties (the buyer and the seller) spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction, and if they told lies and hid some facts, their transaction would be deprived from Allāh’s blessing”.⁴

Islām, as religion that promotes justice and fairness, has provided a practical solution for both parties that involve in any contractual agreement namely the right to revoke or continue with the contract, basically it is called as ‘*ḥaqq al-khiyār*’. Therefore, this paper attempts to discuss in detail the right of *al-khiyār* in business transaction as proposed by Islām. Therefore, in Islamic Law, Based on the doctrine of *al-khiyār*, any party who is dissatisfied with his or her contractual agreement, having the right to reconsider his or her decision in buying or selling something either to continue with such contract or to revoke it.

Basically, the theory of *Khiyār* in Islamic transaction aimed at getting rid of, as much risk as possible, and realizing the fundamental aspiration of Islamic justice to the parties of the contract. This is to ensure that both the seller and buyer are saved and freed from any form of exploitation and misrepresentation in their business transactions. At the same time, the theory of option also provides more time for both parties of the contract to reconsider their deal after the transaction has taken place whether to confirm or to annual such contract, within a specified given time if they are not satisfied with their transactions. The theory of option is considered as a useful mechanism for the seller to observe the basic guidelines in his or her business transaction. Thus, the seller should be ready to face the buyer’s revocation in the event if the sold item does not fulfill the basic requirements of satisfactory merchandise.

It is important to note that the theory of option apparently violates the well-established Islamic law principle of sanctity of contract that states all contractual obligations are binding, particularly, when the contracts are concluded on the basis of mutual voluntary accepted by both parties of the contract. Permissibility of option, however, justified on the ground of several larger benefits for both contracting parties. Through the privilege of *khiyār*, the parties to the contract are granted a ‘reassessment’ or ‘cooling off’ period over which they can rationalize their decisions or reverse their decision. Thus, the possibility of conflicts between the parties because of their abrupt, irrational and wrong decisions are therefore minimized. In addition to this, the theory of option is provided to reduce *gharar*⁵ or uncertainty, especially under condition of excessive *gharar* (*ghabn fāḥish*) regarding the article of exchange, and bring it within Islamically acceptable limits.

Basically speaking, in Islamic commercial law, the seller in a sale and purchase agreement is under the obligation to allow the buyer to inspect or to examine the quality and fitness of the goods to be purchased. This privilege is given to the buyer, not only before he or she enters into such contractual agreement, but also after the conclusion of the contract. In Islamic law, the seller is also obliged to ensure that the commodities to be sold are free from any defects or imperfections. Thus, if there are defects or imperfections found on those commodities, regardless of whether such defects are discovered before or after the conclusion of the agreement, Islām then grants the privilege of option to the buyer, either to continue with such agreement or to revoke it, provided such defect or imperfection is originally rooted in the goods, prior to the contract taking place. In this regard, the Prophet (SAW) is reported to have mentioned as follows:

المسلم أخو المسلم، لا يحل لمسلم باع من أخيه بيعا وفيه عيب إلا بينه له وفي رواية إلا أخيره.

“A Muslim is a brother to another Muslim. It is illegal for a Muslim to sell his brother a defective thing unless he makes it clear to him” and in other report “unless he informed him”.⁶

Hence, in Islamic law, great emphasis is laid on fairness and good faith in contractual obligations, both at the stage of formation and performance of the contract. Islām offers a unique and ideal perspective of

⁴ Al-Bukhāri, *Ṣaḥīḥ al-Bukhārī*, p. 368, [*ḥadīth* no. 2110], Muslim, *Ṣaḥīḥ Muslim*, p. 674, [*ḥadīth* no. 1532], Abū Dā’ūd, *Sunan Abū Dā’ūd*, p. 500, [*ḥadīth* no. 3459], al-Tirmidhī, *al-Jāmi’ al-Ṣaḥīḥ*, vol. 3, pp. 548-9, [*ḥadīth* no. 1249].

⁵ It worth mentioning that *gharar* in transactions of sale causes the buyer to suffer a loss and is the result of lack of knowledge concerning either the price or the subject matter of the goods. *Gharar* is averted if both the price and the subject matter of the sale are proved to be in existence at the time the transaction is concluded, if their qualities are known and their quantities are determined.

⁶ Al-Shawkāni, *Nayl al-Awtār*, vol. 6, p. 303.

business ethic to ensure the existence of fair business trading. Islām has considered transaction activities as a part of worship or *'ibādah*, if it is exercised in accordance with the spirit of *sharī'ah*. Thus, a Muslim trader is rewarded in his or her business activities, provided he or she observes the guidelines of religion. In Islamic law, the theory of option is regarded as one of the most important remedies available to a victim of unfair contract in any business transaction. It serves the purpose of relieving the buyer from a binding transaction. In this regard, Ibn Qudāmah (d. 620 A.H.) maintains that in order to protect a buyer from any unfair loss, it is obligatory to allow him the right of option in his or her transaction irrespective of the fact whether the loss was caused by an intentional (بالنية) or unintentional act (بغير النية), so long the buyer does not realize such loss or defect in the merchandise, prior to the contract taking place.

The buyer in Islamic law is not supposed to be cheated in his or her sale or purchase contract and the seller must ensure the commodities to be sold shall be free from any unknown defect and meet the buyer expectations and specifications, otherwise the seller will be under God's anger and His angels will continue to curse him. In this context, the Prophet (SAW) is reported to have declared as follows:

من باع عيباً ولم ينبه لم يزل في مقت الله أو لم تزل الملائكة تلعنه.

“Anyone who sells a defective article without drawing attention to it, he will remain under God's anger, or the angels will continue to curse him”.⁷

Definition of *Khiyār* In Islamic Law

Option or *'khiyār* is one of the most significant concepts which is widely practiced in Islamic economy. As 'Ubayd Allāh observes, the option or *khiyār* is an important tool of financial engineering. Financial engineers often use options in the design of new financial contracts or in developing innovative strategies and solutions for the financial problems such as management of risk⁸. The origin of *khiyār* is clearly traceable in the *sunnah* of the Prophet (SAW), but the elaborate details and subdivisions of *'khiyār* into various types have all been developed, as a matter of initiative and *ijtihād*, in the juristic writings of our *'ulamā'*⁹.

The word option or *khiyār* could be easily traced in Islamic *fiqh* and normally covered under the discussion of sales and contracts (*al-buyū' wa al-'uqūd*). The majority of Muslim jurists from different schools of law have discussed the theory of option, including its concept, implementation, types and other related issues, in their juristic writings.

The word option, or in Arabic term, *al-khiyār* is a singular of *al-khiyārāt*. Literally, it refers to a choice, alternative or preference¹⁰. Technically, there are various definitions given by Muslim jurists. All of these definitions of *khiyār* are basically referred to the right of option either by the seller or the buyer, to decide whether to ratify their contractual agreement or to revoke it within a specified given time¹¹. This optional privilege (*ḥaqq al-khiyār*) is of two categories, either it is due to the legal rights or agreed upon by contracting parties. In this regard, it is of note worthy to mention some of these definitions as expressed by both classical and contemporary jurists on the definition of *khiyār*.

The *Mejelle* for example, mentions that *khiyār* refers to the right of option either to annul the contract or to allow it¹². Ibn 'Ābidīn (d. 1252 A.H.) holds that *khiyār* refers to the right of either party of the contract, either to ratify such contractual agreement or to revoke it¹³. Ibn 'Abd al-Barr (d. 463 A.H.) while discussing the optional sale states that when the buyer, for instance, chooses to confirm the contractual agreement, then his contract is binding, but if he chooses to revoke it, such contract is void. This means that *khiyār*

⁷ Tibrīzī, *Mishkāt al-Maṣābīh*, vol. 2, no. 55, p. 284.

⁸ See 'Ubayd Allāh, Muḥammad, *Islamic Financial Options*, p. 1.

⁹ Kamali, *An Analysis of Options*, The American Journal of Islamic Social Sciences, vol.14, p. 25.

¹⁰ Rūḥī al-Ba'labakī, *al-Mawrid: A Modern Arabic-English Dictionary*, p. 527, Ibn Fāris, (d. 395 A.H.), *Mu'jam Maqāyīs fī al-Lughah*, p. 337, al-Zamakhsharī, (d. 538 A.H.), *Asās al-Balāghah*, vol. 1, p. 72, al-Farāhīdī, (d. 175 A.H.), *Kitāb al-'Ayn*, vol. 4, p. 301, *al-Munjid fī al-Lughah wa al-'Alām*, p. 8, *Hans Wehr: A Dictionary of Modern Written Arabic*, p. 266.

¹¹ Al-Sharbāshī, *al-Mu'jam al-Iqtisādī al-Islāmī*, p. 144, Fāṭimah Māhājūb, *al-Mawsū'ah al-Dhahabiyah li al-'Ulūm al-Islāmiyyah*, vol. 16, p. 502, al-Bijirmī, *al-Bijirmī 'alā al-Khaṭīb*, vol. 3, p. 314.

¹² Tyser, *The Mejelle* article 301.

¹³ Ibn 'Ābidīn, *Radd al-Muḥtār*, vol. 7, p. 101, al-Marghīnānī, *al-Hidāyah*, vol. 3, p. 23.

refers to the right of parties of the contract, to determine either to proceed or revoke such contractual agreement¹⁴. Al-Shirbīnī (d. 977 A.H.) says that the *khiyār* implies the right choosing the better of two things, between confirming the contractual agreement of rejecting it¹⁵. Al-Ṣan‘ānī (d. 1182 A.H.) mentions that *khiyār* means choosing the better of two things, either confirming a particular sale and purchase agreement or canceling it¹⁶. Al-Zarkashī (d. 772 A.H.), al-Shaybānī (d. 1135 A.H.) and Ibn Ḍiwayyān (d. 1352 A.H.) are of the opinion that *khiyār* means the right of contracting parties to opt between two preferences, either to confirm the contract or cancel it¹⁷.

Maḥmaṣṣānī (1980) and Madkūr (1955) hold that *khiyār* is a right of buyer or seller to choose either to confirm the contract or to cancel it due to the legal rights or agreed upon by contracting parties¹⁸. Sayyid Sābiq (1990) and ‘Alī al-Khafīf (1996) mention that *khiyār* refers to a choice on the part of the holder of the right of option, who may either confirm the act or render it void¹⁹. Niazi (1990) states *khiyār* means choice, option or exercise of the power of choice, refusal or right of withdrawal²⁰.

Howard (1995) says that *khiyār* means a period of grace in a transaction when revocation is possible according to the condition of the original arrangement²¹. Hughes (1885) is of the opinion that *khiyār* refers to a term used to express a certain period after the conclusion of a bargain, during which either of the parties may cancel it²². Coulson (1984) draws that option means right of a party unilaterally to cancel a contract validly concluded. Therefore, according to him, when a party exercises this right he is said to be exercising an option or *al-khiyār*²³. Rayner (1991) mentions that the right of Option is accorded by the *fiqh* as a unilateral “choice” to cancel (*faskh*) or to ratify (*imḍā’*) in a contract of sale. In the event if the option is to cancel, the effect is to render the situation as if the contract had never existed²⁴. Gibb and Kramers (1974) hold that the *khiyār* in general means right of withdrawal a declaration (e.g., one made under compulsion), and in particular the right to the unilateral cancellation or ratification of a contract, this right can be conferred by law automatically or agreed upon by the contracting parties²⁵. Delcambre mentions that the word *khiyār* implies a choice on the part of the holder of the right of the option, who may either confirm the act or render it void. The legal act containing an option is not void in origin, but its validity is nevertheless precarious and subject to confirmation²⁶.

Summarizing all the above definitions could be shortly concluded that the right of option is a special privilege or right given by the Islamic law to both parties of the contract or to one of them, either to continue with such contract or to cancel it within a certain period of time. This exclusive privilege of option is granted in two ways; either it is automatically conferred by the *sharī‘ah* and it is called as ‘legal option’, or by the mutual agreement of both contracting parties and it is called ‘conventional option’. Thus, the sale and purchase agreement with an option is classified in Islamic law as a valid contractual agreement, but its validity is subject to confirmation. This implies that if the right of option is possessed by both parties, the contract is valid but it is not yet binding upon both of them until they have decided to continue with such contract. However, if the right of option is possessed only by one party of the contract, then such contract is not binding upon the beneficial of option, but it is absolutely binding upon another.

¹⁴ Ibn ‘Abd al-Barr, *al-Kāfī*, p. 343, see also Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 2, p. 157, al-Khirshī, *Hāshiyat al-Khirshī*, vol. 5, p. 453.

¹⁵ Al-Shirbīnī, *Mughnī al-Muhtāj*, vol. 2, p. 43, see also al-Shirāzī, *al-Muhadhdhab*, vol. 1, p. 343, al-Anṣārī, *Hāshiyat al-Jamal*, vol. 3, p. 101.

¹⁶ Al-Ṣan‘ānī, *Subul al-Salām*, vol. 3, p. 63, Ibn Hajar al-‘Asqalānī, *Bulūgh al-Marām*, p. 241.

¹⁷ See al-Zirkashī, *Sharḥ al-Zirkashī*, vol. 3, p. 383, al-Shaybānī wa Ibn Ḍiwayyān, *al-Mu‘tamad fī Fiqh al-Imām Ahmad*, vol.1, p. 412, al-Khalīfī, *Irshād al-Mustarshid*, p. 163.

¹⁸ Maḥmaṣṣānī, Ṣubḥī, *Pioneers of Justice in Islam*, p. 198, Madkūr, *al-Fiqh al-Islāmī*, pp. 528-9, see also Wizārat al-Awqāf wa al-Sh‘ūn al-Islāmiyyah, *al-Mawsū‘ah al-Fiqhiyyah*, vol. 20, p. 41.

¹⁹ Sābiq, Sayyid, *Fiqh al-Sunnah*, (trans), vol. 12, p. 100, al-Khafīf, *Aḥkām al-Mu‘āmalāt al-Shar‘iyyat*, p. 361, Delcambre s. v. ‘*khiyār*’ in *EF*, vol. 5, p. 25, see also Ala’ Eddin Kharofa, *Transactions in Islamic Law*, p. 91.

²⁰ Niazi, *Islamic Law of Contract*, p. 184.

²¹ Howard, *A Dictionary of Indonesian Islam*, p. 131.

²² Hughes, *Dictionary of Islam*, p. 272.

²³ Coulson, *Gulf States*, p. 57.

²⁴ Rayner, *Theory of Contract*, p. 305.

²⁵ Gibb and Kramers, *Shorter Encyclopaedia of Islam*, p. 255.

²⁶ Delcambre s. v. ‘*khiyār*’ in *EF*, vol. 5, p. 25.

There are many categories of *Khiyārāt* as mentioned by Muslim jurists in their books based on various evidences found in the *aḥādīth* of the Prophet (SAW). Here I am going to discuss one category of *khiyār* namely *khiyār al-Tadlīs*. This category of *khiyār* is considered as one of the most essential type of *khiyār* that could be found in Islamic Law.

***Khiyār al-Tadlīs* in Islamic Law**

Al-Tadlīs or sometimes known as *al-taghrīr* in Islamic *fiqh* basically means an act of the seller to conceal any defect or imperfection of the commodity from the knowledge of the buyer, whilst the seller realizes about such defect prior to the contract taking place²⁷. Ibn Manẓūr for example clearly maintains the meaning of *al-tadlīs* in business transaction as follows:

التدليس في البيع هو كتمان عيب السلعة عن المشتري

“*Al-tadlīs* in business transaction means concealing the defect of the merchandise from the buyer’s knowledge²⁸”

Al-Bahūtī and al-Mardāwī²⁹ whilst discussing the theory of *al-tadlīs* have extended its meaning to include both act of concealing the defects in the commodity and pretending to display the poor commodity as artificially an excellent ones, so that the seller could demand a good price of his or her commodity³⁰.

Some contemporary writers including Muḥammad Wafā, Kāmil Mūsā and Wahbah al-Zuḥaylī have attempted to define the meaning of *al-tadlīs*. However, their definitions are approximately the same as proposed by classical Muslim jurists³¹. Al-Qarḍāwī in his book of *Fatāwā Mu’āṣirah* has enhanced the meaning of *al-tadlīs* in business transaction to include any act of concealing the defect of the goods, or display the goods by the false illustration, or excessive propaganda in advertising the goods, which makes people purchase some articles without knowing the actual qualities or fitness of them. Al-Qarḍāwī holds as follows :

التدليس التجاري هو بإخفاء عيوب السلعة، أو إظهارها بصورة خادعة، تغاير حقيقتها، تلبيسا على المشتري، وقد يدخل في ذلك الدعاية المبالغ فيها، التي تضلل المشتري عن واقع السلعة.

“ Fraud (*al-tadlīs*) in business transaction occurs when the seller conceals the defect of the goods, or he displays the goods by the false illustration, in order to magnetize the potential buyers to buy the goods. *Al-tadlīs* in business transaction sometimes includes any act of excessive propaganda in advertising the goods, which blinds the buyer from the actual qualities of the goods”³².

Having examined the discussion of classical and contemporary writers in Islamic law regarding the definition of *al-tadlīs*, it shows that the act of *al-tadlīs* could occur when the seller deliberately deceives or exploits a potential buyer by any means of trickery, either by word or deed, that consequently influences the ignorant buyer to enter into the sale and purchase agreement, which finally leads him or her to purchase something what he or she would not have purchased it otherwise. It is pertinent to note that all four Muslim schools of law, in principal reject the notion of *al-tadlīs* or concealing the defect of the commodity in any business transaction from the knowledge of the buyer. Ḥanafī jurists consider such act of hiding the defect

²⁷ Ibn ‘Abd al-Barr, *al-Kāfī*, p. 348, Ibn Qudāmah, *al-Mughnī*, vol. 4, p. 167.

²⁸ Ibn Manẓūr, *Lisān al-‘Arab*, vol. 6, p. 86, Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, p. 569, al-Shaybānī wa Ibn Dīwayyān, *al-Mu’tamad fi Fiqh al-Imām Aḥmad*, vol. 1, p. 416, al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, p. 63, Coulson, *Gulf States*, p. 69.

²⁹ Two prominent jurists in Ḥanbalī school of law.

³⁰ Al-Bahūtī, *Kashshāf al-Qinā’*, vol. 3, p. 213, al-Mardāwī, *al-Inṣāf*, vol. 4, p. 398.

³¹ Contemporary scholars like Muḥammad wafā, Kāmil Mūsā and Wahbah al-Zuḥaylī sum up their definition of *khiyār al-tadlīs* that they have concluded from various sources of the classical books of Islamic law of transaction. Muḥammad Wafā for instance writes: “The meaning of *al-tadlīs* in jurists’ opinion is hiding the defect of an article from the knowledge of the buyer, despite of seller’s knowledge about such defect, prior to the contract taking place”. [See Wafā, *Buyū’ al-Taghrīr wa al-Tadlīs*, p. 5.] Kāmil Mūsā further mentions in his book the definition of *al-tadlīs* as follows: “*Khiyār al-tadlīs* or *al-taghrīr* is an option caused by certain act or utterance of the seller, and it is aimed at deceiving the buyer or consumer, so that the buyer or consumer may regard the article to be purchased is an excellent article, whereas, the article is only artificially excellence, like the act of *al-tasriyyah*”. [See Mūsā, *Aḥkām al-Mu’āmalāt*, p. 177.] Wahbah al-Zuḥaylī also highlights the definition of *al-tadlīs* as follows : “*Al-tadlīs* or *al-taghrīr* is cheating and exploiting the buyer to buy something for his or her beneficial, but actually it is otherwise”. [See al-Zuḥaylī, *al-Fiqh al-Islāmī*, vol. 4, p. 3069.]

³² Al-Qarḍāwī, *Fatāwā Mu’āṣirah*, vol. 2, p. 435.

as a forbidden act, Mālikī jurists explicitly describe it as the act of *tadlīs*. Whilst Shāfi‘ī and Ḥanbalī jurists label it as the act of *ghishsh* (cheating)³³.

Based on above survey, *khiyār al-tadlīs* technically means the right of buyer or consumer to ratify or revoke the contract, when he or she discovers that the seller has involved in any of the following acts:

- (i) The act of concealing the defects of the goods from the knowledge of the buyer.
- (ii) The act of cheating the buyer about the reality of the commodities. This includes adulteration³⁴, imitation³⁵ and assimilation³⁶ of the goods.
- (iii) Pretending the item to be considered as artificially an excellence article, but it is otherwise like in the case of *al-taṣriyyah* of camel, goat or sheep³⁷.
- (iv) Exploiting the buyer to purchase the commodities. There are many ways used by sellers, traders and manufacturers to exploit the buyers or consumers. One of the most common practices in modern business transaction is by launching misleading and excessive advertisements and publicity campaigns aimed at deceiving the buyers or consumers in their purchase³⁸.

It is essential to highlight that in Islamic law of transaction, all of above types of *tadlīs* (*i.e.*, concealing the defect, or cheating the buyer, or pretending poor commodity as artificial excellence, and exploiting the buyer to purchase the inferior commodities) are legally disallowed. This is because such fraudulent acts would direct the seller to obtain an unlawful income –which is prohibited in Islam– and at the same bringing injustice against the other party of the contract³⁹. Hence, the buyer or consumer upon discovery of such fraudulent acts, whether it is in the form of deed or utterance, is immediately given privilege to the right of option by the virtue of *khiyār al-tadlīs*, either to accept the goods and continue with such sale and purchase agreement, or to reject the goods and revoke the contract entirely, and ask the seller to refund his or her previous payment⁴⁰.

Wisdom Behind The Legality Of *Khiyār Al-Tadlīs*

There are a lot of advantages while *khiyār al-tadlīs* is regarded as legal in Islamic transaction. According to the majority of Muslim jurists, the wisdom behind the legality of *khiyār al-tadlīs* is to ensure that the buyer does not become a victim of a greedy and unethical seller. In this context, Islamic law permits the buyer, upon discovery of defect or any other fraudulent acts, to exercise his or her right of option, in order to eliminate his or her possible loss caused by any act of *al-tadlīs*.

According to Islamic law, the seller is supposed to consider the buyer as his fellow Muslim or his fellow human being, and thus, he should not cheat him or exploit his ignorance of the purchased commodity. It clearly stated in *Ṣaḥīḥ Muslim* as follows:

“A careful study of business transaction in Islamic law, will reveal the fact that the Holy Prophet (ﷺ) based business transaction dealings strictly on truth and justice. He strongly disapproved all transactions which involve any kind of injustice or hardship to the buyer or the seller. He wanted

³³ Al-Sanhūrī, *Maṣādir al-Ḥaqq*, vol. 2, p. 119.

³⁴ Adulteration of the goods is an act which the seller would add something which is not part of the original goods, like adding some water to the honey.

³⁵ Imitation of the goods is an act which the seller would imitate something which it is not the original ones. The market today is flooded with imitation goods, some of them so closely resemble the original products that it is difficult to distinguish one from the other. The quality and value of imitation products are lower than the original products. Some unethical traders cheat the buyers or consumers by selling them as expensive as the price of original products.

³⁶ Assimilation of the goods is an act which the seller will mix the bad articles with the good articles, or mix the low quality with the goods quality of the articles, like mixing the poor wheat with the good wheat. In today’s business, many sellers or manufacturers are cheating consumer by maxing their products with cheaper ingredients, in order to increase their profit makings. For example, an unscrupulous rice trader may mix different grades of rice and sell them for the price of higher grade.

³⁷ In this case, the seller will leave these animals for few days by strapping the teat of those animals, in order to pretend to the potential buyer that those animals are dairy cattle.

³⁸ Al-Qardāwī, *Fatāwā Mu‘āṣirah*, vol. 2, p. 435.

³⁹ Al-Sanhūrī, *Maṣādir al-Ḥaqq*, vol. 2, p. 109.

⁴⁰ Al-Subkī, *Takmilat al-Majmū‘*, vol. 12, p. 25, al-Dusūqī, *Hāshiyat al-Dusūqī*, vol. 3, p. 116, Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, p. 569, al-Shaybānī wa Ibn Dīwayyān, *al-Mu‘tamad fi Fiqh al-Imām Aḥmad*, vol. 1, p. 416, al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, p. 63.

that both, the buyer and the seller should be truly sympathetic and considerate towards each other. One should not take undue advantage of the simplicity or ignorance of the other. The seller should not think that he has unrestricted liberty to extort as much as possible from the buyer. He has to be just, he should take his own due and give the buyer what is his. Islām, which condemns every kind of injustice and exploitation in human relations, wants its followers to conduct business in a sublime spirit of justice, tempered with human kindness. The conduct of the seller in a transaction should be characterized not only by *inṣāf* (justice), but also by *iḥsān* (magnanimity)⁴¹.

Hence, the rationale behind the legality of *khiyār al-tadlīs* highlights that the concept of justice, fairness, trustworthy and sincerity in business transaction is the essence of the contractual obligation in Islamic point of view. Further in this context, it was reported in one *ḥadīth* that the Prophet (SAW) once passed a heap of grain, and he put his hand inside its midst and felt moisture, he asked the owner of the grain “ O owner of the grain what is this?” He replied: “Rain had fallen on it, O Allāh’s Messenger”. The Prophet (ﷺ) then said: “ if this is the case, why did you not put it (the damp part) on the top of the foodstuff, so that people might see it? The Prophet (SAW) concluded by making a clear remark: “Whoever practices fraud is not one of us”⁴².

The Muslim jurists have put forward many *āḥādīth* which indicate that trustfulness and sincerity are encouraged in business transaction. The Prophet (ﷺ) is reported to have praised truthful traders, the Prophet said:

“The truthful merchant is rewarded by being ranked, on the day of Resurrection together with the Prophet, the truthful ones, the martyrs and the pious people”⁴³.

In another *ḥadīth*, the Prophet (SAW) is reported to have denounced against the insincere traders by saying: “O traders (three times)! Surely you will be resurrected on the day of judgement as transgressors (*fujjār*), except him who is dutiful and honest”⁴⁴.

Imām al-Ghazālī in this context mentions that the pious generation of companions and their followers (*al-ṣahābah wa al-tābi‘ūn*), have not understood the message of these *āḥādīth* (i.e., truthfulness, honesty, establishing justice, disclosing defects and etc), as merely good virtues or moral qualities or moral excellences (*al-faḍā’il wa ziyādat al-maḳāmāt*) in business transaction. Nevertheless, they have understood the message of these *āḥādīth* as being an obligation and religious duties that should be practically translated in their daily business transaction⁴⁵.

The Act Of *Al-Tadlīs* In Islamic Perspective

In Islamic law, any act of *al-tadlīs* that fraudulently exploits or manipulates the buyer to enter into a contractual agreement is strictly forbidden⁴⁶. Muslim jurists justify that there are many *āḥādīth* which the Prophet (ﷺ) explicitly interdicted such conduct of *al-tadlīs* which caused by deliberately concealing the defect of the commodities from the purchaser’s knowledge. Some of these *āḥādīth* are as follows :

⁴¹ Ṣiddiqī, *Ṣaḥīḥ Muslim* (trans), vol. 3, p. 792.

⁴² Abū Dā‘ūd, *Sunan Abū Dā‘ūd*, vol. 3, p. 272. Ibn Ḥajar al-‘Asqalānī points out that cheating in business transaction is prohibited. He further clarifies that the Prophet, as mentioned in this *ḥadīth*, considered the act of cheating is not worthy of his people (*ummah*), as he behaved the way of infidels. However, it does not mean that he is really infidel. [See Ibn Ḥajar al-‘Asqalānī, *Bulūgh al-Marām* (trans), p. 286.] The same conclusion is also made by Ibn Naqīb al-Miṣrī when he said that whoever knows of a defect in the article he is selling, then he is obliged to disclose it, if he does not, he has cheated the buyer in which the act regarded as prohibited in *sharī‘ah*. [See Ibn Naqīb al-Miṣrī, *Umdat al-Sālik*, (trans), p. 540.] Ibn Rushd has taken another approach while commenting this *ḥadīth*. He maintains that one who sells the defective articles to his fellow Muslim and believes that his act of cheating in such business is lawful, then he is considered as really *al-kāfir* (infidel). Consequently, his blood is lawful, unless he declares his repentance. [See Ibn Rushd, *al-Muḳaddimāt al-Mumahhidāt*, p. 570.]

⁴³ Al-Khawārizmī, *Jāmi‘ al-Masānīd*, vol. 2, pp. 2-3.

⁴⁴ *Ibid.*, p. 3.

⁴⁵ Imām al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, vol. 2, p. 142.

⁴⁶ Al-Khalīfī, *Irshād al-Mustarshid*, p. 166.

(i) “One Muslim is brother to another fellow Muslim, Thus, it is illegal for him to sell an article to his brother, if he knows that it has a defect, unless he informs his brother of that defect”⁴⁷.

(ii) “...If both the parties spoke the truth and described the defects and qualities of the goods, then they would be blessed in their transaction, and if they told lies and concealed something, then the blessing of their transaction would be lost”⁴⁸.

(iii) “It is illegal for one Muslim who sells a slave, or a goods, or a house, or a gold, or a silver, or any other articles, and he knows that it has a defect, unless he informs the buyer about such defect. However, if he does not inform the buyer, and conceal about such defective article, he will remain under God’s anger, and angels continue cursing him”⁴⁹.

Ibn Rushd and al-Shirbīnī concisely mention in their books pertaining the prohibition of concealing the defects of the goods. Ibn Rushd for example maintains as follows:

“Prohibition of concealing the defects of the goods is rooted in the *Qur’ān* and in the *Sunnah* of the Prophet. This has been clearly stated in the *Qur’ān* that misappropriating other people properties is prohibited. The Prophet also mentioned during the *ḥajj al-wadā’* (farewell pilgrimage) that misappropriating other properties is unlawful act, and therefore it should be avoided by all Muslims. In this regard, concealing the defects is considered as a kind of misappropriating other properties through unlawful means that has been prohibited by the Islamic law”⁵⁰.

Al-Shirbīnī holds in his book as follows:

“It is illegal for a Muslim trader to sell an article, if he knows about the defect in the article, unless he discloses all the defects to the buyer, so that the buyer will not be a victim of sale contract, by buying a defective article. This is a religious responsibility that is rooted in the *ḥadīth* of the Prophet (SAW) as narrated by both *Bukhārī* and *Muslim*. The Prophet (SAW) remarks that whoever deceives in business transaction is not one of his people. The Prophet (ﷺ) also remarks in another *ḥadīth* that it is illegal for a Muslim to conceal any defect in the goods from the knowledge of the buyer. Therefore, it is a religious duty for a seller or any other people, who knows about the defects of the goods, to disclose them from the buyer’s knowledge, and give the buyer a sincere advice”⁵¹.

Imām al-Ghazālī mentions in his book of *Iḥyā’ ‘Ulūm al-Dīn*, the companions (*ṣaḥābah*) of the Prophet (SAW) and the pious ancestors (*al-salaf al-ṣāliḥ*) were of the opinion that disclosing the defects of the goods is regarded as a sincere advice, and it is a religious obligation towards his fellow Muslim, or his fellow human being. In relation to this, one companion namely Jarīr Ibn ‘Abd Allāh (d. 52 A.H.) reported that when he sold something to the buyer, he would disclose all the defects of the goods, then said to the buyer: “If you please you may take it together with all the defects, if you displease you may leave it”. Then somebody came and said to him: “If you continue to sell your goods in this manner, surely you shall not be able to sell any of them”. Jarīr Ibn ‘Abd Allāh then responded to him by saying: “This is the way how we were taught by the Prophet (SAW) during his days. The Prophet (SAW) advised us to disclose all the defects of the goods to the buyer”⁵².

⁴⁷ Al-Shawkānī, *Nayl al-Awtār*, vol. 6, p. 303.

⁴⁸ Khān, *Ṣaḥīḥ al-Bukhārī* (trans), vol. 3, p. 166.

⁴⁹ Tibrīzī, *Mishkāt al-Maṣābīh*, vol. 2, no. 55, p. 284, see also Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, p. 569.

⁵⁰ Ibn Rushd, *al-Muqaddimāt al-Mumahhidāt*, p. 569.

⁵¹ Al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, p. 63.

⁵² Imām al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, vol. 2, p. 142.

Legality Of *Khiyār Al-Tadlīs*

As far as the legality of *khiyār al-tadlīs* is concerned, majority of Muslim jurists from different school of law are of the opinion that *khiyār al-tadlīs* is valid. According to them, the basic validity of *khiyār al-tadlīs* is based on the *ḥadīth* of *al-muṣarrah*⁵³.

In this regard, Abū Hurayrah has narrated the *ḥadīth*, which the Prophet (SAW) is reported to have mentioned:

لا تصروا الاءبل والغنم، فمن ابتاعها بعد فإنه بخير النظرين بعد أن يحلبها، إن شاء أمسك، وأن شاء ردها وصاع تمر

“Do not keep camels and sheep un milked for a long time, for whoever buys them after that has two options after he milks them. If he pleases with them, he keeps them and if he is displeased with them, he can return them to the owner along with one *ṣā'* of dates”⁵⁴.

In another *ḥadīth*, the Prophet (SAW) has stated as follows:

“Whoever buys a sheep un milked for a long time, has the right of option for three days”⁵⁵.

‘Abd Allāh Ibn Mas‘ūd in this regard has said:

“Beware of keeping animals un milked for a long time (*al-muḥaffalāt*), so as to get a higher price when selling them. Surely, it is deception or cheating (*al-khilābah*), and for a Muslim it is not permissible to cheat”⁵⁶.

In principal, the above-mentioned *ahādīth* indicate that the Prophet (SAW) forbade any act of manipulation and exploitation the buyer. The Prophet (SAW) warned the vendors against cheating in business transaction of animals, especially by keeping them un milked for few days, in order to have greater benefit from the transaction⁵⁷. In this case, the seller normally would leave these animals for a few days by strapping the teat of the animals (*i.e.*, a camel, or goat, or sheep), in order to manipulate the buyer that the camel, goat or sheep is from a dairy cattle, so that the seller may sell those un milked animals with good prices⁵⁸. Al-Subkī, Ibn Naqīb al-Miṣrī, Ibn ‘Ābidīn, al-Shirbīnī and other Muslim jurists arrive at the conclusion that the act of *al-taṣriyyah*, with the intention of increasing the amount of animal’s milk at the moment of sale, so that the seller may increase its price, is a fraudulent act and it is entirely forbidden because it creates a false impression in the mind of the potential buyer pertaining such *muṣarrah* which finally drive them to purchase such animals⁵⁹.

In the light of the above-mentioned *ahādīth* relates to *al-taṣriyyah*, Mālikī, Shāfi‘ī and Ḥanbalī jurists are of the opinion that the buyer is entitled to the right of option in respect to *khiyār al-tadlīs*, when he discovers that there is an act of *al-taṣriyyah* of the camel, goat, sheep and other animals. According to them, upon discovery of such defect, the buyer is immediately entitled to have two choices: i)- The buyer may accept the commodities together with the defect and pay the full price⁶⁰. ii) - The buyer may reject the goods and ask the seller to refund his previous payment⁶¹. In this context, Ibn ‘Abd al-Barr clearly writes as follows:

⁵³ A *muṣarrah* is any female animal (*i.e.*, camel, goat, cow, sheep and others), whose teats have been tied up for some time, in order to give the potential buyer an unduly optimistic impression that these animals are from the type of dairy cattle (*kathīrat al-laban*), and the practice is known as *taṣriyyah*. The defrauded purchaser may opt to rescind the sale, paying the seller appropriate compensation of *ṣā'* of dried dates for the milk he has taken from the animal. From this precedent, the law built up by analogy to cover all fraudulent acts deliberately contrived to create a false impression in the mind of the purchaser. [See Ibn Ḥajar al-Haythamī, *Tuḥfat al-Muḥtāj*, vol. 2, p. 148, al-Ḥaṭṭāb, *Mawāhib al-Jalīl*, vol. 4, p. 438, al-Subkī, *Takmilat al-Majmū'*, vol. 12, p. 3, al-Dusūqī, *Ḥāshiyat al-Dusūqī*, vol. 3, p. 116, Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 2, 132, al-Khalīfī, *Irshād al-Mustarshid*, p. 177, al-Miṣrī, *‘Umdat al-Sālik* (trans), p. 545, Ibn ‘Ābidīn, *Radd al-Muḥtār*, vol. 7, p. 222, Coulson, *Gulf States*, p. 70.]

⁵⁴ Khān, *Ṣaḥīḥ al-Bukhārī* (trans), vol. 3, pp. 201-2, Ṣiddīqī, *Ṣaḥīḥ Muslim*, (trans.), vol. 3, p. 801.

⁵⁵ *Ibid.*, vol. 3, p. 202, Ṣiddīqī, *Ṣaḥīḥ Muslim*, (trans.), vol. 3, p. 801.

⁵⁶ Al-Ṣan‘ānī, *al-Muṣannaḥ*, vol. 8, p. 198, Ibn Ḥajar al-‘Asqalānī, *Bulūgh al-Marām*, p. 285.

⁵⁷ Alwī, *Sales and Contracts*, p. 45.

⁵⁸ Ibn Ḥajar al-Haythamī, *Tuḥfat al-Muḥtāj*, vol. 2, p. 150, al-Subkī, *Takmilat al-Majmū'*, vol. 12, p. 12, Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 2, p. 132.

⁵⁹ Al-Subkī, *Takmilat al-Majmū'*, vol. 12, p. 31, Ibn Naqīb al-Miṣrī, *‘Umdat al-Sālik* (trans), p. 545, al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, p. 63, Ibn ‘Ābidīn, *Radd al-Muḥtār*, vol. 7, p. 223.

⁶⁰ Al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 213.

⁶¹ Ibn Rushd, *Bidāyat al-Mujtahid*, vol. 2, p. 132, al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 213, al-Subkī, *Takmilat al-Majmū'*, vol. 12, p. 85, Ibn Najjār, *Muntahā al-Irādāt*, p. 308, al-Shaybānī wa Ibn Dīwayyān, *al-Mu'tamad fī Fiqh al-Imām Ahmad*, vol. 1, p. 416, al-Zuhaylī, *al-Fiqh al-Islāmī*, vol. 4, p. 3070.

“Anyone who purchased *muṣarrah* camel or goat or sheep, provided the buyer does not know about such act of *taṣriyyah*, thus, the buyer is entitled to the right of option, either to accept such *muṣarrah* or to revoke it. If the buyer decided to revoke such contract, he or she has to return it along with one *ṣā'* of dates”⁶².

It is worth mentioning that one *ṣā'* of dates as mentioned in the *ḥadīth* is a compensation amount of the quantity of used milk that the buyer needs to refund to the seller before he is entitled to revoke the contract. Nevertheless, if the milk remains in a good quality, then the buyer may bring it to the vendor and the seller is bound to accept it⁶³.

Ḥanafī jurists, despite their acceptance of the general doctrine of *al-tadlīs* in business transaction, however, do not allow the buyer to revoke the contract in respect to *khiyār al-tadlīs* which relates to *al-taṣriyyah* are of the opinion that according to the theory of surety (*al-ḍamān*) in Islamic point of view, compensation must resemble either the same article of the damaged or used commodity, or the same value of it. Nonetheless, as explicitly stated in the *ḥadīth* of *al-taṣriyyah*, if the buyer is not satisfied with the newly purchased *muṣarrah*, he or she may return it to the vendor along with one *ṣā'* of dates, which contradicts to the theory of *al-ḍamān* in Islamic law.

In addition, Ḥanafī jurists claim that one *ṣā'* of dates is neither similar with the amount of milk used, nor to its value. Thus, in the Ḥanafī school of law when the buyer has purchased the animals and later discovers that such animals are of *taṣriyyah* in nature, then the buyer is entitled to ask the seller to compensate the actual value of defect⁶⁴.

It is important to bear in mind that this *ḥadīth* of *al-muṣarrah* is originally considered to be the basis validity of *khiyār al-tadlīs* in Islamic law. Hence, majority of Muslim jurists have discussed the issue of *al-tadlīs* on the ground of this *ḥadīth*. Nonetheless, through analogical reasoning, other than this *taṣriyyah* type, there are other types of *al-tadlīs*, especially in our modern commercial activities which produce the same effect of *al-taṣriyyah*. Abandoning its types and categories, Islamic law grants the buyer with the privilege of option in respect to *khiyār al-tadlīs*, either to continue with such contract or to revoke it, provided the buyer has entered into such *tadlīs* contract unknowingly and unintentionally.

The Condition Of Valid Option In Respect To *Khiyār Al-Tadlīs*

In Islamic law, there are several conditions for the corroboration of *tadlīs* or *taghrīr* in any business transaction. Thus, upon fulfillment of the following conditions, the buyer is allowed to exercise his or her right of option in respect to *khiyār al-tadlīs*. These essential conditions are as follows:

(a) The buyer is in ignorance of such act of *tadlīs*

According to Muslim jurists, the buyer or consumer is allowed to exercise the right of option in respect to *khiyār al-tadlīs*, if he or she has been unaware of fraudulent act (*tadlīs*), prior to the contract taking place. This means that if the buyer or consumer notices about the fraudulent act (*tadlīs*), before both parties enter into contractual agreement, but the buyer deliberately continues with such contract and agrees to purchase such commodity, then the buyer should bear the consequence of *tadlīs* on his or her own. Thus, the buyer is not entitled to the right of option in the light of *khiyār al-tadlīs*⁶⁵.

(b) *Tadlīs* which is authentic or real

The Muslim jurists hold that *tadlīs* or fraudulent act that occurs in the goods must be authentic and real. In this context, the option of *tadlīs* act is invalid if the buyer or consumer only assumes about the fraudulent

⁶² Ibn ‘Abd al-Barr, *al-Kāfī*, p. 346.

⁶³ Al-Khalīfī, *Irshād al-Mustarshid*, p. 166.

⁶⁴ Ibn ‘Ābidīn, *Radd al-Muhtār*, vol. 7, p. 223, al-Shawkānī, *Nayl al-Awtār*, vol. 6, pp. 307-8, Ibn Qudāmah, *al-Mughnī*, vol. 4, p. 150, al-Zuhaylī, *al-Fiqh al-Islāmī*, vol. 4, p. 3070.

⁶⁵ Ibn ‘Abd al-Barr, *al-Kāfī*, p. 347, al-Shawkānī, *Nayl al-Awtār*, vol. 6, p. 311, al-Bahūfī, *Kashshāf al-Qimā*, vol. 3, p. 214, Ibn Qudāmah, *al-Mughnī*, vol. 4, p. 150, al-Dusūqī, *Hāshiyat al-Dusūqī*, vol. 3, p. 117, al-Shirbīnī, *Mughnī al-Muhtāj*, vol. 2, p. 63, al-Shaybānī wa Ibn Ḍiwayyān, *al-Mu’tamad fī Fiqh al-Imām Ahmad*, vol. 1, p. 416, al-Khirshī, *Hāshiyat al-Khirshī*, vol. 5, p. 500.

act or defect in the goods. However, after checking the goods, there is no such actual defect, or genuine fraudulent act found in the goods, then the seller or consumer is not entitled to exercise his or her right of option in respect to *khiyār al-tadlīs*⁶⁶.

(c) *Tadlīs* that impairs the value of the commodity

The Muslim jurists stress that the buyer is allowed to exercise the right of option if he or she discovers *tadlīs* that occurs in the purchased commodity affects the actual value of such commodity. Nevertheless, if such act of *tadlīs* does not reduce the price of the commodity or its value, then the buyer is not entitled to revoke the contract. This is because, there is no harm or loss on buyer's side⁶⁷. Some Shāfi'ī jurists including al-Subkī, however, is of the opinion that the act of fraud (*tadlīs*) itself is considered as a kind of the defect ('*ayb*) that entitles the buyer to revoke the contract⁶⁸.

(d) Irremovable *tadlīs* or defect

According to the Islamic law of transaction the buyer is also entitled to the right of option in the case of *tadlīs* if the defect which occurs as a result of *tadlīs* has permanently remained together with the goods. This implies that if the seller, after realizing about the defect or fraudulent act in the goods, could remove it from the goods, then the buyer is not entitled to exercise his right of option on the ground of *khiyār al-tadlīs*. There is no point to revoke the contract if the purchased commodity no longer has the defect⁶⁹.

(e) The buyer does not consent with such defect that resulted from the act of *tadlīs*.

It is clearly stated by the Islamic transaction, in the case if the buyer discovers the defect of the commodity that is originally rooted from the act of *tadlīs* and he or she does not consent with such defect, then the buyer is entitled to exercise the right of option. However, if he consents with such defect then he is not entitled to the right of option in respect to *khiyār al-tadlīs*⁷⁰.

It is worth mentioning that majority of Muslim jurists are of the opinion that the buyer in respect to *khiyār al-tadlīs* is entitled to the right of option, either such act of *tadlīs* is deliberately intended by the seller or otherwise. This is because the consequence of the *tadlīs* in both circumstances are equally bear the same result⁷¹.

Duration Of Option In *Khiyār Al-Tadlīs*

As far as the duration of option of *Khiyār Al-Tadlīs* is considered, the jurists from the different school of laws are of different opinions as follows:

(a) The maximum duration of three days

Mālikī, some Shāfi'ī and Ḥanbalī jurists maintain that the right of option in relation the *khiyār al-tadlīs* is extended to the maximum duration of three days. This implies that when the buyer discovers the defect in the merchandise, the buyer or consumer should return it to the seller within three days. In contrast, if the buyer fails to return the goods within three days, without valid excuses, the right of option in *khiyār al-tadlīs* is no longer valid⁷². Ibn Ḥajar al-'Asqalānī for example mentioned in his book of *Bulūgh al-Marām*

⁶⁶ Al-Nawawī, *Rawḍat al-Ṭālibīn*, vol. 3, p. 471, al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 214.

⁶⁷ Al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 214, Ibn Qudāmah, *al-Mughnī*, vol. 4, p. 157.

⁶⁸ Al-Subkī, *Takmilat al-Majmū'*, vol. 12, p. 25.

⁶⁹ Al-Shirbīnī, *Mughnī al-Muhtāj*, vol. 2, p. 63, Ibn Najjār, *Muntahā al-Ṭirādāt*, p. 309.

⁷⁰ Al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 214.

⁷¹ *Ibid.*, vol. 3, p. 214, Ibn Najjār, *Muntahā al-Ṭirādāt*, p. 308, al-Shirbīnī, *Mughnī al-Muhtāj*, vol. 2, p. 63, al-Nawawī, *Rawḍat al-Ṭālibīn*, vol. 3, p. 470, al-Shawkānī, *Nayl al-Awṭār*, vol. 6, p. 311, Abū Ghuddah, *al-Khiyār*, p. 607, al-Shaybānī wa Ibn Ḍiwayyān, *al-Mu'tamad fī Fiqh al-Imām Ahmad*, vol. 1, p. 416.

⁷² See Ibn Najjār, *Muntahā al-Ṭirādāt*, p. 308, al-Dusūqī, *Hāshiyat al-Dusūqī*, vol. 3, p. 117, al-Shirbīnī, *Mughnī al-Muhtāj*, vol. 2, p. 63, al-Nawawī, *Rawḍat al-Ṭālibīn*, vol. 3, p. 468, al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 215, al-Najdī, *Hidāyat al-Rāghib*, p. 321, al-Nawawī, *al-Sirāj al-Wahhāj*, p. 190.

that there is *ḥadīth* which clearly states three days as the maximum duration of option⁷³, because normally it would take three days to prove the real fact to access the actual quantity of the milk in the udder⁷⁴.

(b) Instantaneous or immediate without any delay (*'alā al-fawr*)

Eventhough this issue is not being discussed by the majority of jurists, this issue is mentioned as the second opinion of Shāfi'ī jurists as explicitly stated in *Mughnī al-Muḥtāj* and *Rawḍat al-Ṭālibīn* that the right of option in *khiyār al-tadlīs* must be exercised immediately without delay (*'alā al-fawr*)⁷⁵.

(c) Gradual (*'alā al-tarākhī*)

While the other jurists have not discussed this, however, it is of noteworthy to point out that this is the second opinion of jurists from Ḥanbalī school of law. According to them, the duration of option in *khiyār al-tadlīs*, for the fraudulent act cases, other than the case of *al-taṣriyyah*, could be exercised in gradual within the reasonable period of time⁷⁶.

Based on above survey on the issue of the duration of option, it is submitted here that the second opinion of the Shāfi'ī jurists is preferred. Thus, upon discovery of the fraudulent act (*tadlīs*) or defect in any commodity, the buyer is immediately obliged to inform the seller about his or her intention to revoke the contract. This is because, by immediate revocation, the purchaser of the defective product as a result of fraudulent act has strong evidence to convince the vendor that the defect discovered in the subject-matter of the goods was an old latent defect that originally incorporated together with the commodity as a result of *tadlīs* or fraudulent act, prior to the contract taking place. On contrary, if the buyer is allowed to postpone the revocation at any length, such assurance consequently would affect both the seller and the buyer. The seller may for instance, has used the price paid by the buyer for some other reasons, thus, he or she is perhaps reluctant to reimburse the buyer his previous payment. Similarly, the buyer may be questioned by the seller the reason why such revocation has taken place after long time. Thus, it could be hard to prove to the seller that the defect that occurred in the commodity was an old defect as a result of fraudulent act and not otherwise. There is no point for buyer to postpone such contractual revocation, unless for valid and legal excuses.

Relation Between *Khiyār Al-Tadlīs* And *Khiyār Al-'Ayb*

Before concluding the discussion of *khiyār al-tadlīs*, it is important to bear in mind that the doctrine of *khiyār al-tadlīs* is to be held that there are similarities with the doctrine of *khiyār al-'ayb*. Both options offer the buyer the right of accepting or rejecting the articles, upon discovery of certain defects in the goods. Therefore, Muslim jurists who discuss the issue of *khiyār al-tadlīs* or *khiyār al-taghrīr* would normally relate it in the discussion of *khiyār al-'ayb*. However, the essence of difference between these two options is that the seller in relation to *khiyār al-tadlīs* is normally, at full knowledge about the defect of the goods. Thus, the seller in the light of *khiyār al-tadlīs*, deliberately conceals the defect of the goods from the knowledge of the buyer, prior to the contract taking place. In addition, the seller also completely realizes that his or her article to be sold is not up to the standard of satisfaction of the buyer (*i.e.*, in the case of *al-muṣarrah*), then he or she manipulates the article and demonstrates to the buyer that the article to be purchased is artificially an excellent one. In contrast, the seller in the light of *khiyār al-'ayb*, may or may not realize about the defect of the goods, prior to the contract taking place. This implies that *khiyār al-'ayb* is more general than *khiyār al-tadlīs*. The defect in *khiyār al-'ayb* could be or could not be realized by the seller, prior to the contract taking place. Nevertheless, the defect of the goods, in relation to *khiyār al-tadlīs*

⁷³ *Ḥadīth* which says that whoever buys a sheep un milked (*al-taṣriyyah*), he or she has the right of option for three days. We have mentioned this *ḥadīth* earlier.

⁷⁴ Ibn Hajar al-'Asqalāni, *Bulūgh al-Marām* (trans), p. 285.

⁷⁵ Al-Shirbīnī, *Mughnī al-Muḥtāj*, vol. 2, p. 63, al-Nawawī, *al-Sirāj al-Wahhāj*, p. 190.

⁷⁶ See Ibn Najjār, *Muntahā al-Irādāt*, p. 309, al-Bahūtī, *Kashshāf al-Qinā'*, vol. 3, p. 215, al-Najdī, *Hidāyat al-Rāghib*, p. 321.

is explicitly noticed by the seller, prior to the agreement taking place. Hence, there is no issue of unknown defect in respect to *khiyār al-tadlīs*⁷⁷.

Coulson mentions in his book that *khiyār al-tadlīs* is normally exercised by the buyer where the options of defect (*khiyār al-‘ayb*), option at sight (*khiyār al-ru‘yah*), and option of description (*khiyār al-waṣf*) cannot properly be invoked. Coulson also adds that fraud in business transaction according to Islamic law is a serious moral wrong. He writes as follows:

“ Where the options of defect, sight and description cannot properly be invoked, a final option to rescind the contract exists in some cases where the disappointed party can establish that his agreement was obtained by the deceit or willful misrepresentation (*tadlīs*) of the other party. Fraud is most certainly a serious moral wrong in the contemplation of Islamic jurisprudence. Exhortations towards honesty and good faith in commercial dealings abound in the *Qur‘ān*”⁷⁸.

It is worth mentioning that the act of embellishing or beautifying (*taḥsīn*) the subject-matter of the sale is not regarded as *al-tadlīs*, unless if it is associated by hiding the defect, or promoting artificially quality goods. Abū Ghuddah in this regard maintains as follows:

“It is not considered as *al-tadlīs*, if the seller embellishes (*taḥsīn*) the article in order to improve its appearance. Beautification of an article could be, by making it to be in order, or placing it in certain position to be nicely seen, or decorating it in order to attract the people to buy it. These all acts are permissible, so long as there is no act of concealing the defect of the goods, or manipulating the bad articles to be artificially an excellence ones”⁷⁹.

It is also pertinent to be noted that both *khiyār al-tadlīs* and *khiyār al-‘ayb* are regarded as legal right, where the buyer is immediately granted the right of option, upon discovery of fraudulent acts or defect of the goods, after the contract taking place. Legal right in this context, implies that the buyer does not require to stipulate during the contractual agreement about the buyer’s right of option *khiyār al-tadlīs* and *khiyār al-‘ayb* during the *majlis al-‘aqd*⁸⁰.

Conclusion

As far as the doctrine of *khiyār al-tadlīs* or *al-taghrīr* is concerned, majority of jurists are of the opinion that it is valid. The legitimacy of *khiyār al-tadlīs* is basically proven on the ground of the Prophet *ḥadīth* of *al-muṣarrah*. In relation to the theory of *al-tadlīs* or *al-taghrīr*, it is unanimously accepted by all Muslim jurists that any deed or utterance that aims at exploiting or manipulating the innocent party of the contract is considered as fraudulent act and it is forbidden. In Islamic law of transaction, it is not permitted for example, a seller conceals the defect of the goods from the knowledge of the buyer, or adulterates the goods, or imitates the goods, or mixes the goods or any other fraudulent acts aim at cheating or deceiving the buyer in his or her business transaction.

The sellers, traders and manufacturers in Islamic point of view, are morally and religiously responsible in their business transaction, to convey the truth and disclose all the defects of the goods to the buyer, prior to the contract taking place. This is the way of business practices as conducted by the noble companions of the Prophet and their followers in the history of Islām. It is worth mentioning that the sellers, traders and manufacturers are free to enhance their marketing strategies or plans, but it should be operated within the framework of *sharī‘ah*.

In Islamic point of view, all fraudulent acts in business transaction, are considered as cheating people and misappropriating their properties by illicit means. It is agreed by all jurists that, a true Muslim businessman, is he who avoids himself from adopting such deceptive tricks and practices in his or her business transaction. Even the Prophet (ﷺ) does not recognize whoever deceives in business transaction to be considered as one

⁷⁷ Al-Subkī, *Takmilat al-Majmū‘*, vol. 12, p. 30, al-Khirshī, *Hāshiyat al-Khirshī*, vol. 5, p. 516.

⁷⁸ Coulson, *Gulf States*, pp. 69-70.

⁷⁹ Abū Ghuddah, *al-Khiyār*, p. 598.

⁸⁰ Al-Subkī, *Takmilat al-Majmū‘*, vol. 12, p. 25.

of his people⁸¹. Thus, Islām as a religion that propagates the absolute honesty in business and truthfulness in trade, expects the buyer and the seller to look upon each other as Muslim brethren or fellow human beings. This means each tries to the utmost of his capacity and sincerity in helping and serving the other.

In this regard, Imām al-Ghazālī advises any Muslim people who wishes to involve in business transaction, should, at first, acquire a thorough understanding of the rules and responsibilities in business transactions as codified in Islamic law. He further points out that without such comprehensive understanding of rules and ethics in business transaction, a particular Muslim who adopts trade as his profession, will go astray and fall into serious lapses making his earning unlawful⁸². It is essential to bear in mind that the ultimate purpose of business transaction in Islamic law is to devote Allāh, by safeguarding the public interest and avoiding all kinds of evil motives prohibited by the Islamic law.

There are number of fraudulent acts occur in our business transaction today, which aim at cheating and exploiting the buyers or consumers to enter into such contracts. One of the most common unethical practices in modern business transaction, is deceiving the buyers or consumers by launching misleading advertisements and publicity campaigns. This includes free gifts offers, discount vouchers, special offers, cheap sales and discounts, clearance stocks or sales, one day sale, warehouse sales, weekend sales and attractive packaging sales. Sellers, or in some cases, giant business firms are spending enormous amount of money on these type of commercial advertisements. The actual products rarely match the standard and specification mentioned in the advertising messages and offers. It is important to remember that there are many cases, where the `cheap sales` may actually be `cheat sales` and the `free gifts sale` may turn out to be `expensive sale`.

Furthermore, salesmen and business traders generally have a tendency to motivate their consumers by false eulogy, concealment of defects, fraudulent swearing, adulteration and misrepresentation. All of these fraudulent acts, either by deed or utterance, are strongly condemned by Islamic law and considered as unlawful acts and they are prohibited, similar to the case of *al-taṣriyyah*. Therefore, In Islamic transaction, there is no scope for concealment of defects, false advertising, adulteration, fraudulent swearing, unethical exploitation and fraudulent misrepresentation.

In this circumstance, Islamic law draws a very practical and realistic solution to protect the buyers or consumers from such fraudulent acts. The buyers or consumers, on account of such fraudulent acts, are given special right of option by the virtue of *khiyār al-tadlīs*, either to continue with such contract or revoke it and ask the seller to refund their previous payment.

Wassalamuakum warahmatullahi wabarakatuh

⁸¹ We have mentioned this *hadīth* earlier.

⁸² Ṣiddiqī, *Ṣaḥīḥ Muslim*, (trans.), vol. 3, p. 791.

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