

Reforms in some agricultural contracts: An analysis based on Islamic *Sharia* and practices before Islam

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Abstract: Agriculture has been a blessing for the people from pre historic period and for his survival man has been needy to adopt this profession. People used to practice many contracts of agriculture, before the emergence of Islam. Some forms of these contracts were legal and some were illegal. Some agricultural matters of early Islamic era which were directly or indirectly linked with *Muhaqala*, *Muzariat* and *Musaqah* and so on are analyzed in this paper because these are still practiced with different names. However, people who practice it are mainly unaware of their legality or reforms in these matters by Islamic *Sharia*. Therefore, it is an attempt to reveal the legal position of such issues in the light of *Ahadith* and Islamic jurisprudence.

Keywords: Ijara, *Muhaqala*, *Musaqah*, *Muzariat*, validity

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I. INTRODUCTION

One of the basic needs of man is economy. In order to fulfill this need, Allah almighty created agricultural lands and said, "And We have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful."¹ Also said, "And We have made for you therein means of living and [for] those for whom you are not providers."² Among the sources of economy, agriculture is a source available for the people from their beginning. Even in this era of industrialization, the importance of agriculture is still prominent. There was no any restriction in agricultural matters in the religions before Islam because of its importance and the mean of foremost preference for economy. Similarly, Islam being an absolute religion has allowed cultivation. While at the time of advent of Islam Arabian people were facing several issues regarding agriculture. Among these, some forms of agriculture somehow became the peace spoiler and some were deviated from the rules mentioned in Islam. Therefore, Prophet Muhammad (peace be upon him) prohibited some forms of agriculture and made amendments in the forms where it was necessary. This is how Prophet Muhammad (peace be upon him) prohibited all those forms which could be misused in the future.

Muhaqala

The Arabic word '*Muhaqala*' is derived from the word *Haqal* which means fertile land that can be cultivated. Another view is, it refers to the land which has never been cultivated. *Haqal* is also used as 'green fields'.³ Imam *Tirmazi* (may Allah be pleased with him) defines '*Muhaqala*' as: the transaction in which one give crops in return of wheat or grains.⁴ Means, one can receive a particular share from other's crop without his in field work. Hafiz ibn Hajar has explained *Muhaqala* in detail, he said: '*Muhaqala* is derived from *Haqal*, which means the exchange of crop which is in the field with the harvested crop. While there are different views regarding *Muhaqala*. One opinion is, *Muhaqala* is to sell the crops which are not reaped. Another view is, to sell it before fruits become eatable / usable. Some said, to sell the harvested dates in exchange with the dates hanging on trees. While in Imam Malik's (may Allah be pleased with him) view, *Muhaqala* is to give the land on rent in return of some particular share from the grains. After mentioning all these views, ibn Hajar summarizes the debate and said: the most acceptable opinion is to give land on rent in favor of some share from the crop.'⁵

Among the four schools of thought in Islamic jurisprudence, the definition of *Muhaqala* is same in *Hanfi*, *Malki* & *Shafa'e* i.e. *Muhaqala* is a transaction in which 'crops in the fields' are exchanged estimatedly with the 'harvested crops' of same things (means dates for dates). While there is a minute difference the view of *Hinabla*'s definition i.e. *Muhaqala* is a transaction in which 'grains in the spike' are exchanged with the grains of same things (means dates for dates). In short one first definition mentions *Muhaqala* as the exchange of grains in the field with the harvested grains while *Hinabla* just mention grain in spike either it is harvested or not.⁶

Instructions regarding *Muhaqala*

All of the four Imams (i.e. Imam Abu Hanifa, Imam Malik, Imam Shafa'e & Imam Hanbal) are agreed on the invalidity of *Muhaqala*. Ehnaf consider *Muhaqala* is dishonest (*fasid*) while the other three Imams consider

it fasle (*Batil*). Jabir (may Allah be pleased with him) said: "Prophet Muhammad (peace be upon him) has prohibited us from *Muzabina* and *Muhaqla*."⁷ The question may arise why *Muhaqla* is invalid in Islam, actually the exchange of grains is based on estimation and can't be measured exactly and hence there is a doubt of Riba⁸ because of the possibility of increase and decrease in quantity.

On the other hand, Imam Mosuli (may Allah be pleased with him) says: *Muhaqla* is valid in view of Imam Abu Yousuf and Imam Muhammad. But it is because Imam Mosuli doesn't differentiate between *Muzariat* and *Muhaqla*. This is clear by his stated definition i.e. 'Farming in return of some share in the production is called *Muhaqla*.'⁹ This one is the same definition as discussed in Fiqah Ehnaf for describing *Mazariat*. Such as, 'Farming in return of some share in production is called *Muzariat*.'¹⁰ Moreover, Imam Mosuli has presented similar justification for the legality of *Muhaqla* as presented by jurists for the validity of *Muzariat*. Thus said: '*Muhaqla* is valid because the Prophet Muhammad (peace be upon him) made an agricultural deal with the people of Khyber in return of half production of dates and grains. Secondly, due to its importance for people because not all landlords can cultivate their fields similarly not all farmers can be the landlord, therefore, its legality is important in order to fulfill the need of people.'¹¹ However, these justifications are same as jurists has presented for the legality of *Muzariat*¹².

In short, majority of the jurists consider *Muhaqla* and *Muzariatas* two different terms and all of them are agreed upon the invalidity of *Muhaqla* whereas difference is in the legality or illegality of *Muzariat*. According to Imam Mosuli's (may Allah be pleased with him) view, where *Muhaqla* and *Muzariat* are same terms, both are valid.

Muzariat

Word '*Muzariat*' is derived from the word 'zara' which literally means to do farming. It is also called as Mukhabrah which is derived from word 'Khabar' which means soft land. People of Iraq used to call this as 'Qarah'. The word 'Qarah' refers to a land without any grain or water on it¹³. *Muzariat* is defined by Ehnaf as, 'farming in return of some share in the production.'¹⁴ According to Fiqah Maliki, Partnership is the production of agriculture is called *Muzariat*. In Hinabla's concept, sharing of land for agriculture and cultivation is called *Muzariat*. Shafa'e has stated the difference between Makhbrah and *Muzariat*. According to this school of thought, *Muzariat* is to give land for farming in return of some share from cultivated crops, if the seed was from owner of the land. If the seed was owned and given by the cultivator then it is called as Makhbrah¹⁵.

Instructions regarding Muzariat

Majority of jurists such as Ehnaf¹⁶, Maliki¹⁷ and Hinabla¹⁸ are agreed upon the validity of *Muzariat*. Imam Shafa'e (may Allah be pleased with him) isn't convinced by the partnership only in the field without trees and along with trees it is acceptable. About the illegality of *Muzariat*, Imam Abu Hanifa (may Allah be pleased with him) has quoted that, Prophet Muhammad (peace be upon him) has prohibited from Mukhabrah means *Muzariat*¹⁹. He further give its logical reason that *Muzariat* is an earning based on the product of one's own struggle and is similar with qafiz-ul-tahan, which is prohibited by the Prophet Muhammad (peace be upon him). Similarly, labor is unknown or extinct in it²⁰, because it has probability of increase or decrease in the outcome.

The case of *Muzariat* of Prophet Muhammad (peace be upon him) with the people of khybar is an example for the masses of people. In this case Prophet Muhammad (peace be upon him) returned the fields of khybar's people on the condition that Muslims will own the half outcome of the fields²¹. Similarly, the companions of the Prophet (peace be upon him) were agree upon the legality of the *Muzariat* in their quotes and deeds²². In fact, its justification is just like in *Mazarbat*, where one contributes the money and the other serves in terms of labor, similarly is in *Muzariat* where one give its land and the other person cultivate it. Since many owners do not know how to cultivate land and many farmers do not have the land, therefore, the necessity was to give the statement of justification of *Muzariat* in order to fulfill the need of people collectively²³. In the Fiqah Ehnaf due to the need of *Muzariat* and cooperation of people, the judicial verdict is according to *Sahibeen* (Imam Youfus and Imam Muhammad)²⁴. Similarly, Fiqah Shafa'e is also convinced by the justification of *Muzariat* without *Musaqah*²⁵, but there is a need to fulfill some terms and conditions of *Muzariat* which are explained in the books of Fiqah.

Musaqah

The word *Musaqah* is derived from the word '*saqi*' which means 'to satisfy'. Literally this means to assign a person to take care of the date trees and grapes and in return give him the outcome of the trees²⁶. In this deal the labor or worker is also responsible for watering the trees; therefore, it is called *Musaqah*. The people of Iraq believe that *Musaqah* is a deal²⁷. Imam Jurjani (may Allah be pleased with him) defined *Musaqah* as: 'to make a person responsible for the care of a garden or tree in favor of giving its outcome to him.'²⁸ Muhammad Ali Thanvi presents a broader sense of *Musaqah* by saying: '*Musaqah* does not necessarily represent dates or grapes but it includes all kinds of trees, plants and vegetables. Also says, this responsibility includes, look after of trees, watering and care of fruits.'²⁹

Instructions regarding *Musaqah*

Legality or illegality of *Musaqah* is like *Muzariat*. Majority of Imams accepts its legality while Imam Abu Hanifa consider it illegal. But based on the statement of *Sahibeen*, it is acceptable because like *Muzariat* it (*Musaqah*) is also the need of people. Similarly, the practice of Prophet Muhammad (peace be upon him), rightly guided caliphs, people of Madina city and consensus of the companions (*Sahaba e Karam*) is based on its validity³⁰.

Kirail Arz or Ijarah

Kira il Arz means to give land on rent. This one is a kind of *Ijarah*³¹, which means to return or compensation. Some of the lexicographers believe that 'ajar' and 'sawab' have same meanings while some believe that *sawab* is a return of any prayer or Almighty's commandment while *Araj* is in favor of their completion because *sawab* is provided as a return of anything while *ajar* is the compensation for a profit³². By definition *Ijarah* is a bond in which compensation is fixed in return of a profit. According to *Malkiaschool* of thought, fixing compensation for the benefit of a person is called *Ijarah* while compensation in return of land, house, ship or animals is *Kira*.³³

Instructions regarding *Ijarah*

Legality of *Ijarah* is reported without any conflict. Holy Quran states, if the (woman) breastfeed (the child) for you then give her its payment (*Ujrat*).³⁴ The Prophet Muhammad (peace be upon him) ordered people to give the wages to their labors before their sweat is dried³⁵. Since the time of companions of Prophet till today this one is the common practice to hire a labor on wages. Because every poor need some money and rich need a worker that's why considering these requirements Islamic *Sharia* permits *Ijarah*³⁶.

It is mentioned above that *kira il Arz* is one form of *Ijarah* and *Ijarah* is legal in the light of Quranic instruction and saying of the Prophet (peace be upon him). Now there is a complexity that *kira il Arz* is prohibited according to some *Ahadith*, therefore, Jabir and Raf'e (may Allah be pleased with them) states that Prophet Muhammad (peace be upon him) has forbidden from *kira il Arz*³⁷. Thus, if *kira il Arz* is type of *Ijarah* then why it is prohibited? Hafiz ibn Hajar in his explanation of these complications says, many of the jurists legalize *kira il Arz*. And the *Ahadith* where it is mentioned as illegal is based on two reasons. Firstly, due to the condition in which rent is known or unknown but is fixed according to the outcome of the field (that is similar to *Qafiz ul Tahan*). Secondly, in the early Islamic era people used to give land near irrigation channels on rent (its outcome is unknown), and when people started fighting over its outcome, Prophet Muhammad (peace be upon him) prohibited it.³⁸ Therefore, it was not the prohibition of *kira il Arz* but on the conditions associated with it. For its biggest justification, there is a saying of Prophet Muhammad (peace be upon him) which is even narrated by Raf'e bin Khadej (may Allah be pleased with him): 'there is no issue in giving the land on rent in return of gold or silver'³⁹. Similarly, Ibn Abbas (may Allah be pleased with him) said to hire uncultivated land for a year⁴⁰.

Al-Muawamah or Saneen

The word *Muawamah* is the plural of 'Aam' and the word *Saneen* is the plural of 'San', both words are used for 'year'. The transaction based on *Muawamah* means a bond in which a person sells the grain of a field or fruit of a tree for many years. Such transactions are prohibited in *Ahadith*. Jabir (may Allah be pleased with him) said that Prophet Muhammad (peace be upon him) has prohibited *Muhaqla*, *Muzabna*, *Muawamah* and *Mukhabra*. The narrator has interpreted the transaction *Al Muawamah* as *Saneen*.⁴¹ This transaction is prohibited due to several reasons. Firstly, the thing to be sold doesn't exist and it is forbidden to sell such things. Secondly, there is a possibility of getting and losing of crop. Thus, there is *gharar*, means the thing is in between the situation of 'may be' or 'may not be' and its result or consequences are also uncertain.⁴² Finally, in case of production or outcome, quantity is also unknown, therefore, such transactions are also forbidden.⁴³

II. CONCLUSION

The dealings in transaction which are forbidden in Islamic *Sharia* are for nothing else but for the benefit of mankind. In fact, there were one sided dealings or issues regarding agriculture in the early era of Islam which were causing conflicts among people. Moreover, there was exploitation of poor man. That's why in order to create peace and prosperity in the society and to avoid any issue of conflict among the people Islamic *Sharia* declared all such issues as forbidden. Similarly, those of the issues where the conditions were uncertain, were also made prohibited. By following and practicing these guiding instructions not only farmer and owner can live a peaceful & wealthy life but the society will also flourish with these agricultural contracts.

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