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 prehistoric 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 Muhaqla, Muzariat and Musaqahand 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, Muhaqa, Musaqa, Muzariat, validity

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 means of living and [for] those for whom you are not providers."

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.

Muhaqa

The Arabic word ‘Muhaqa’ 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’.

Imam Tirmazi (may Allah be pleased with him) defines ‘Muhaqa’ as: the transaction in which one give crops in return of wheat or grains. One can receive a particular share from other’s crop without his in field work. Hafiz ibn Hajar has explained Muhaqa in detail, he said: ‘Muhaqa’ 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 Muhaqa. One opinion is, Muhaqa 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, Muhaqa 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.

Among the four schools of thought in Islamic jurisprudence, the definition of Muhaqa is same in Hanafi, Maliki & Shafie’s i.e. Muhaqa 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 Hinaula’s definition i.e. Muhaqa 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 Muhaqa as the exchange of grains in the field with the harvested grains while Hinaula just mention grain in spike either it is harvested or not.

Instructions regarding Muhaqa

All of the four Imams (i.e. Imam Abu Hanifa, Imam Malik, Imam Shafa’i & Imam Hanbal) are agreed on the invalidity of Muhaqa. Ehnaf consider Muhaqa is dishonest (fasid) while the other three Imams consider
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it fasle (Batil). Jabir (may Allah be pleased with him) said: “Prophet Muhammad (peace be upon him) has prohibited us from Musabina and Muhagla.” The question may arise why Muhagla 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 Riba because of the possibility of increase and decrease in quantity.

On the other hand, Imam Mosuli (may Allah be pleased with him) says: Muhagla is valid in view of Imam Abu Yousuf and Imam Muhammad. But it is because Imam Mosuli doesn’t differentiate between Muzariat and Muhagla. This is clear by his stated definition i.e. ‘Farming in return of some share in the production is called Muhagla.’ This one is the same definition as discussed in Fiqah Ehnaf for describing Muzariat. Such as, ‘Farming in return of some share in production is called Muzariat.’ Moreover, Imam Mosuli has presented similar justification for the legality of Muhagla as presented by jurists for the validity of Muzariat. Thus said: ‘Muhagla 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. However, these justifications are same as jurists has presented for the legality of Muzariat.

In short, majority of the jurists consider Muhagla and Muzariatas two different terms and all of them are agreed upon the invalidity of Muhagla whereas difference is in the legality or illegality of Muzariat. According to Imam Mosuli’s (may Allah be pleased with him) view, where Muhagla 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 it. Muzariat is defined by Ehnaf as, ‘farming in return of some share in the production.’ According to Fiqah Maliki, Partnership is the production of agricultureis called Muzariat. In Hinabla’s concept, sharing of land for agriculture and cultivation is called Muzariat. Shafâ’e has stated the difference between Makhabrah 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 Makhabrah.

Instructions regarding Muzariat

Majority of jurists such as Ehnaf, Maliki and Hinabla 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 Mukanahrah means Muzariat. 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 Muzariat. Partnership is defined in the book of Fiqah, 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 collectively. 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). Similarly, Fiqah Shafâ’e is also convinced by the justification of Muzariat without Musaqah, 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 trees. 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 deal. 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.’ 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.'
Instructions regarding Musaqaq

Legality or illegality of Musaqaq 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 (Musaqaq) 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 validity.

Kirail Arz or Ijarah

Kira il Arz means to give land on rent. This one is a kind of Ijarah, which means to return or compensation. Some of the lexicographers believet that ‘ajan’ and ‘sawab’ have same meanings while some believet 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 profit. By definition Ijarah is a bond in which compensation is fixed in return of a profit. According to Malikischool of thought, fixing compensation for the benefit of a person is called Ijarah while compensation in return of land, house, ship or animals is Kirai.

Instructions regarding Ijarah

Legality of Ijarah is reported without any conflict. Holy Quran states, if the (woman) breastfeed (the child) for youthen give her its payment (Ujrat). The Prophet Muhammad (peace be upon him) ordered people to give the wages to their labors before their sweat is dried. Since the time of companions of Prophet till todaythis 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 ShariaparmitisIjarah.

It is mentioned above that kira il Arz is one form of Ijarahand 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. Thus, if kira il Arz is type of Ijarah then why it is prohibited? Hafiz ibn Hajir in his explanation of these complications says, many of the jurists legalize kira il Arz. And the Hadith 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 u1 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. 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’. Similarly, Ibn Abbas (may Allah be pleased with him) said to hire uncultivated land for a year.

Al-Muawamah or Saneen

The word Muawamah is the plural of ‘Aam’ and the word Saneenis the plural of ‘San’, both word are used for ‘year’. The transaction based on Muawamah means a bond in which a person sells the grain of a field or fruit or a tree for many years. Such transactions are prohibited inAhadith. Jabir (may Allah be pleased with him) said that Prophet Muhammad (peace be upon him) has prohibited Muhaqqa, Muzubna, Muawamah and Mukhabra. The narrator has interpreted the transaction Al Muawamah as Saneen. 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. Finally, in case of production or outcome, quantity is also unknown, therefore, such transactions are also forbidden.

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 were 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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References

*Associate Professor NED University of Engineering and Technology Karachi
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*Assistant Professor Sindh Madressatul Islam University Karachi

1. Surah Araf 7, Verse 10
2. Surah Hijr 15, Verse 20
3. Zubaidi, Muhammad bin Muhammad “Taj ul Uroos min Jawahir al Qamoos” 28:313. Darul hidayah
8. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah
11. Ibid
12. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah
13. Taj ul Uroos min Jawahir al Qamoos. 7:48
14. Al Hidayah. 4:53
16. Al Hidayah. 4:53
17. Al-Fiqh al-Islami wa Adilataha. 6:468
18. Abdullah bin Ahmad, ibn Qudamah. “Al Mughni fi Fiqhul Imam Ahmad bin Hanbl” 5:58 (1405h) Beirut: Darul Fikr
19. Al Qushayri, Imam Muslim bin Hajjaj. “Sahih Muslim” Book of Transactions. Hadith No. 3994 & 4003 Beirut: Darul Jeel
20. Al Hidayah. 4:53
22. Al Mughni fi Fiqhul Imam Ahmad bin Hanbl. 5:158
23. Al Hidayah. 4:53
24. Al Hidayah. 4:54
25. Al-Fiqh al-Islami wa Adilataha. 6:468
27. Taj ul Uroos min Jawahir al Qamoos. 30:62
29. Kashaf Istimahat al-funun wa-al-’ulum. 2:871
30. Al Mughni fi Fiqhul Imam Ahmad bin Hanbl. 5:54
31. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah 1:252
32. Taj ul Uroos min Jawahir al Qamoos. 10:25
33. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah 1:253
34. Surah Al Talag 65 Verse 6
35. Al Qazwini, Muhammad bin Yazid ibn Majah “Sunnan ibn Majah” Book of Pawnning. Hadith No. 2443 Beirut: Darul Fikr
36. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah 1:254
37. Al Qushayri, Muslim bin Hajjaj. “Sahih Muslim” Book of Transactions. Hadith No. 3997 & 4024
38. Fathul Bari. 5:25
39. Sahih Muslim. Hadith No. 4033
40. Fathul Bari. 5:25
41. Sahih Muslim. Hadith No. 3994
42. Al-Mausu’ah Al-Fiqhiyah Al-Kuwaitiyah 31:49
43. Al-Fiqh al-Islami wa Adilataha. 5:161

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