

A Survey about the Contemporary Practice of Muzārah(crop sharing) Contract in Pakistan & its Shariah Evaluation

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Abstract

This paper deals with an important aspect of contemporary Islamic Law which is being increasingly practiced due to the advent of modern application of Islamic Finance. *Muzār‘ah(crop sharing)* agreements have evolved as an important tool to address the need of creative and innovation applications of Islamic Law. Hence such agreements provide a wide scale application on the one hand while posing serious challenges on the other hand. These challenges exist in various forms which require a detailed comprehensive study. Moreover the legitimacy of these contracts are needed to be discussed thoroughly. The study aims to show that crop sharing contract has a great economic potential which not only establishes the economic wealth of the country but it also enables it to earn livelihood by exporting agricultural production. In addition to this it also serves the society at micro and macro levels.

key words: Muzarah contract in Pakistan, Shariah evaluation, Agriculture

Introduction

Islamic Economics is an ideological discipline that primarily aims at fostering equality, justice, fairness, brotherhood, mercy, compassion, solidarity and freedom of choice in human society. The guidance principles of Islamic economic only provide a framework for undertaking economic activities; they do not ordain rigid patterns which might become irrelevant with the passage of time. The origin of Islamic Economics can be traced back to seventh century when the Holy Prophet Muhammad (PBUH) laid the foundation of the first Islamic state in Madīnah, in the Arabian Peninsula. He personally undertook the responsibility to monitor market and business activities in the nascent Islamic state.

Since it is necessary to earn livelihood in order to survive in this world. He (PBUH) relying upon revelation made all the goods and subject matters of the business lawful which are beneficial for the entire humanity and He also

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made all the methodologies of transactions lawful which are beneficial without any harm to any party. For all this He made sources out of them are water, land, animals and others. The natural source land can be utilized in various ways i.e. By renting it, by cultivation it and by participating it with another party in return of a specified portion called Muzār‘ah’ – crop sharing – contract. Back to seventh century land was utilized by all these methodologies mentioned above, and people used to adopt the mechanism of what the land lord wished and finally both the parties agreed upon. Due to lack of knowledge and experience in this regard they sometime followed the way that which harmed one of the party, while monitoring the market the Holy Prophet (PBUH) came across all those strategies which would harm the contractual parties. He forbade them from doing this vary contract and as soon as people got awareness and became well aware about Islamic business ethics. He Himself did this contract and His companions also remained practicing this contract even after His life time and this was the time when His pious successors and jurists administered the state’s economic affairs on the basis of Islamic principles. So, the same contract remained in practice up to contemporary age in which Islamic Economics has emerged over the past few decades as a result of the efforts of the Muslim Economists and scholars who are keen to bring the economic and financial affairs of the Muslim world into compliance with the teaching of Islam. The worldwide growing Islamic banking and finance movement is the hallmark of Islamic economic in contemporary times. The Islamic banks in agricultural states like Sudan have a great experience of financing especially in agricultural sector where they removed the hurdles of the small farmers regarding financial assistance in crop sharing contract through an Islamic trade mode namely Salam and provided for them a strong and huge platform to explore the potential and feasibility of crop sharing contract so the experience succeeded¹.

Pakistan is an agricultural country where 40% population directly and 60% of its population indirectly involved in agricultural sector. Though the small farmers (muzārī‘īn) are uneducated and illiterate but we should be very grateful to them because they have transferred this country of 140 million population from a deficit to a surplus country. Very few developing countries have been able to achieve sustained growth rate of 4 percent for agricultural sector Pakistan is one of them.

No doubt we have to further improve and enhance our productivity in this sector but we should be proud of the contribution of farming community

has made to country's economy². In Pakistan where Islamic banks already have been working in all the sectors including agricultural here is a great feasibility and potential of crop sharing contract taking into account the experience of what Islamic banks have completed their projects in Sudan.

The main objective of this paper is to check the awareness of farmers regarding this contract. Two questionnaires were designed for small farmers and land lords of District Kasur keeping in view the objectives of this research. Hence, it is based on qualitative and quantitative method.

1. Muzār'ah Contract

The arabic word *Muzār'ah* is used for crop sharing contract, which has been derived from the root word "zar'" which means to sow³, to increase the production of land⁴, to grow the production⁵ as Allah Almighty says :

أَفَرَأَيْتُمْ مَا تَحْرُثُونَ أَأَنْتُمْ تَزْرَعُونَهُ أَمْ نَحْنُ الذَّارِعُونَ⁶

"Have you considered what you sow? Is it you that cause it to grow, or are we the causers of growth?"⁷

But it is mostly used for wheat and barley⁸. its plural is zurū' and the land in which the production is cultivated is known as Mazr'ah. Al *Muzār'ah* means a contract for cultivation of land in return for part of the produce in accordance with the conditions stipulated by law⁹ where the seed must be from the owner¹⁰.

In other words it means to crop the land on the basis of partnership between owner of the land and the worker on the condition that the production will be divided between them according to the specified portion at the time of formation the contract or according to the custom¹¹.

Technical definition of Muzār'ah

The Muslim jurists have offered various definitions of *Muzār'ah* (crop sharing contract) with regard to its important features. Though their statements explaining the very contract are different but all are agreed upon the nature of this. So, they define it as:

"It is a type of partnership with land contributed by one party and work by another, that is, the land is cultivated and yield is shared by them"¹².

In other words we can say "that *Muzār'ah* is a contact between two or more persons to cultivate the agricultural land, contributed by one party and the work by another party and the production will be divided between both the parties according to the specified percentage stipulated at the time of making the contract.

Shari'ah Legitimacy of Muzār'ah (crop sharing) contract

The legitimacy of *Muzār'ah* contract as a valid mode of business is a controversial issue amongst the Muslim jurists as majority of them opposes this contract and have said that it is a prohibited contract supporting their view by quoting various traditions of the Holy Prophet (PBUH) whoever, some jurists support the validation of this contract establishing their view by the *Sunnah*, custom and necessity. Some of the relevant traditions along with a brief discussion about the arguments from both sides by stating the preferred opinion and its reasons are cited in the following lines.

View of the Opponents

There are jurists who do not accept the legality of *Muzār'ah* contract like Imām Abu Hanīfah¹³ in all the situation, Imam Shāf'ī and Imām Mālik who says: that it is prohibited unless and until it is subservient to Musāqāh^{14,15}.

Arguments of Opponent

These jurists have supported their opinion by following Ahādīths:

"عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنِ الْمُحَاقَلَةِ¹⁶، وَالْمُزَابَنَةِ¹⁷،
وَالْمُخَابَرَةِ،....."¹⁸

"Companion Jabir bin Abdullah says that The Prophet (PBUH) forbade from Muhāqlah, Muzābnah and Mukhābrah"

This hadith clearly proves that the *Muzār'ah* contract is forbidden. As *Muhaqla* has three meanings and one of its meanings is to give land on rent in exchange of wheat¹⁹. And *Mukhabra* also means to give land to someone on the condition that they will divide the production according to the percentage on which they agreed at the time of making the contract.

"عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: مَنْ لَمْ يَدْرُ الْمُخَابَرَةَ فَلْيَأْذَنْ بِحَرْبٍ
مِنَ اللَّهِ وَرَسُولِهِ"²⁰

"The same companion narrates a hadith, he says that he heard the Prophet (PBUH) saying that "whosoever will not leave the Mukhabra contract he should get ready to have fight with Allah Almighty"

Again this hadith clearly shows that whosoever does mukhābra is as he wages war against Allah Almighty. And waging war against Allah Almighty exists where there is a violation of any basic principle of sharia'h.

"عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ كَانَتْ لَهُ أَرْضٌ، فَلْيَبِزْ عَهَا أَوْ
لِيَمْتَحِنَهَا أَخَاهُ، فَإِنْ أَتَى، فَلْيَمْسِكْ أَرْضَهُ"²¹

"Abu Huraira narrates that The Prophet (PBUH) said "whosoever has land he himself should implant it either he give it to his brother and in case if his brother refuse to take it than that person should hold his land"

So, in this hadith we see that to give land to a Muslim brother is allowed but on rent in exchange of wheat is not mentioned. If that kind of transaction would be allowed He would have given its permission.

"عَنْ جَابِرٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرِعْهَا، فَإِنْ لَمْ يَسْتَطِعْ أَنْ يَزْرِعَهَا وَعَجَزَ عَنْهَا، فَلْيَمْنَحْهَا أَخَاهُ الْمُسْلِمَ، وَلَا يُؤَاجِرْهَا إِنَاءً" ²²

These both *Ahādīths* show the manner of a person who have land that first he should use his land by himself and if he becomes unable then should give his land to his Muslim brother voluntarily and does not get rent on that gift. And in *Muzār'ah contract* we saw that the person who has land he gives his land on rent which is clearly violation of this hadīth. So these ahadiths invalidate the status of this very contract.

View of the proponents

According to Imam Muhammad, Imam Abu yousuf²³ and the fatwā is also on this opinion in Hanfī school of thought and Imam Ahmad²⁴, and Imam Shafi²⁵ in one of his opinion *Muzār'ah* is a legal transaction and they support their opinions by the following arguments.

They established their statement on the followings *Ahādīths*:

"عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: أُعْطِيَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خَيْبَرَ الْيَهُودَ أَنْ يَعْمَلُوهَا وَيَزْرَعُوهَا، وَهُمْ شَطْرُ مَا يَخْرُجُ مِنْهَا" ²⁶.

"Abdullah bin Umar narrates that the Prophet (PBUH) gave the land of Khaibar to Jews of Khaibar on the condition that they will look after the land and implant it and they will get half of what would be the outcome"

Now, if we see this *hadīth* it clearly proves the permissibility of this contract. This contract totally means what the *Muzār'ah* contract means. As soon He (PBUH) conquered the land of *Khaibar* He (PBUH) started this contract with the people of *Khaibar*. Another hadīth narrates like this:

"عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: لِيَهُودِ خَيْبَرَ يَوْمَ افْتَتَحَ خَيْبَرَ: (أُرِيكُمْ فِيهَا، مَا أَقْرَبُكُمْ اللَّهُ عَزَّ وَجَلَّ عَلَيَّ أَنْ التَّمَرِ بَيْنَنَا وَبَيْنَكُمْ" ²⁷

" A companion Saeed bin Mosayyab narrates that the Prophet (PBUH) said to the people of Khaibar on the day He (PBUH) conquered the Khaibar: "we will keep you in this contract as long as Almighty Allah intends to keep you and the fruits will be between us and you"

In another hadīth the legality of this contract appears like this:

"عَنْ سَعْدٍ، قَالَ: «كُنَّا نُكْرِي الْأَرْضَ بِمَا عَلَى السَّوَابِي مِنَ الرَّزْعِ وَمَا سَعِدَ بِالْمَاءِ مِنْهَا، فَتَهَانَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ ذَلِكَ، وَأَمَرَنَا أَنْ نُكْرِيَهَا بِذَهَبٍ أَوْ فِضَّةٍ»²⁸

"Saad narrates that we used to give land in exchange of what generate on the edge of the field and of that where the water went , so, The Prophet (PBUH) forbade us from this contract and ordered us to rent land in exchange of gold and silver".

In this hadīth if we analyze the status of this contract as the companions used to do this contract we will come to now that The Prophet (PBUH) did not forbade them from this contract except they used to give land and they specified the place of that land of which they would get the crop and that place usually produced more production as compare to rest of the land. So, this goes against the equality and in this condition there is an ingredient of harming one party and when The Prophet (PBUH) noticed this dealing between them He (PBUH) forbade them. It definitely means if they did not specify the place of which they would get production The Prophet (PBUH) would have not forbidden them. As appeared before us that as He (PBUH) did this contract without specifying the place. Let us see another hadīth which shows the reality of this contract.

"عَنْ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ يُحْرِمِ الْمَرَاعَةَ، وَلَكِنْ أَمَرَ أَنْ يُرْفَقَ بَعْضُهُمْ بِبَعْضٍ. هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ"²⁹

"Abdullah bin Abbas narrates that The Holy Prophet did not make this contract haram rather He meant by forbidding from this contract kindness and helping each other."

In early period of Islam people were very poor they did not have sources to earn livelihood and people who had land they used to give land in exchange of an agreed portion out of the production which generated by the hardworking of this poor man and when they got this portion the poor man did not get enough portion by which he could nourish his family by noticing this situation the Holy Prophet (PBUH) forbade them from doing so and ordered them to give land without any profit so that those poor men could earn more and more and nourish their families.

The Holy Prophet did this contract and after His life time His companions used to do this contract which shows that this contract remained unanimous³⁰.

Preferred opinion

After providing both the opinions along with their arguments the result comes out – Allah knows best- that this contract is permissible in *Sharī'ah* due to following reasons:

- 1) The power of the arguments of those who legitimated this contract as their arguments followed the way of The Prophet Himself as He did this contract with the people of Khaibar.
- 2) This contract remained to be practiced by the companions of The Holy Prophet (PBUH) and no one found who rejected this.
- 3) The majority of the scholar responded to those ahādīths which contain invalidity of this contract saying that this refusal of this contract is considered in those situations which lead to quarrel between the parties , and The Holy Prophet did not forbid them from this contract except when they used to specify the production of a specified area of the land which usually led them into quarrel because some time only that specified area generated production or some time that area generated more production than other land and the owner were familiar with that at that time. The Holy Prophet forbade them from doing this contract otherwise this contract was and remained in practice even after His life time. As this hadith shows:

"عَنْ زَائِعِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كُنَّا أَكْثَرَ أَهْلِ الْمَدِينَةِ حَقْلًا، وَكَانَ أَحَدُنَا يُكْرِي أَرْضَهُ، فَيَقُولُ: هَذِهِ الْقِطْعَةُ لِي وَهَذِهِ لَكَ، فَرُبَّمَا أُخْرِجَتْ ذُوهُ وَمُتَخَرِّجٌ ذُوهُ، فَتَنَاهَاهُمُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ³¹ "

- 4) The companion clearly says that The Holy Prophet did not forbid us from this contract but He actually wanted us to cooperate each other. As this hadith shows:

"عَنْ ابْنِ عَبَّاسٍ ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " لَمْ يُحَرِّمِ الْمُرَارَعَةَ، وَلَكِنْ أَمَرَ أَنْ يَرْتَفِقَ النَّاسُ بَعْضُهُمْ مِنْ بَعْضِهِمْ³² "

- 5) The jurists from both sides have provided their proofs in order to establish their respective opinions, it shows that there is a conflict between these ahādīths then the solution of this is that the prohibited situation of this contract which leads to quarrel and uncertainty between the parties, and the contract which is not in this nature is permissible.
- 6) To claim that there is uncertainty in the portion which goes to the worker is not a powerful plea because it is necessary to specify the percentage of his portion at the time of making the contract which remove the confusion of uncertainty and when the land generates nothing then both the parties stand on equal footing remained without benefit.
- 7) As we know that the purpose of Sharī'ah is to bring benefit and to avoid loss as well as there are five famous purposes of Sharī'ah and one of them is to protect the property and this contract protects the property by its nature.

- 8) Finally, we conclude that *Muzār‘ah* is permissible contract due to necessity and practice of the people³³ which enable the owner to generate more and more production and then to serve the society, furthermore it is a good tool to utilize the agricultural land which creates a good relation between the parties and give a golden chance to the worker to invest his skill in generating the production of the land.

2. A survey of Muzār‘ah contract

Discussion on the basis of the survey

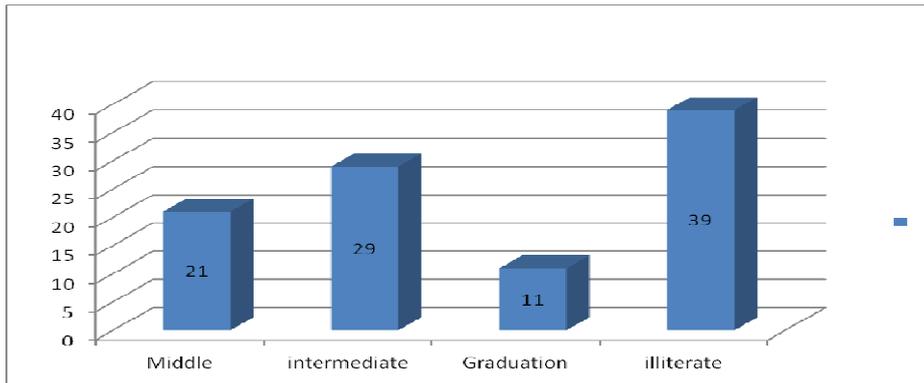
The results of this study are comprised on farmer’s opinion and their perception about *Muzār‘ah* (crop sharing) contract. Pakistan is an agricultural country 65% of its local population is either directly or indirectly linked with this profession. This main sector affects economy’s GDP about 20.9 percent³⁴, however it also faces a lot of problems like, literacy, unavailability of water, fertilization, seeds, credit constraints and lack of technology etc. For exploring the potential of *Muzār‘ah* (crop sharing) contract different questions come into mind that what are the crops that the small farmers (*Muzāri‘*) cultivate more especially by *Muzār‘ah* contract? Is the target community aware of its governing rules? Do they need finance? If yes, then which institutions finance them? Do the small farmers have easy access to those institutions? Does the crop sharing contract in contemporary practice consistent and repugnant to Islamic commercial law? In following section we will try to answer similar questions.

Beside the answers of above mentioned questions the main contribute of this study is to survey what is the feasibility and potential of this contract moreover what the efficiency status of this contract is in contemporary time. The opinion and perception of small farmers (*Muzāri‘*) and landlord were collected through a structured questionnaire, the results of this survey are analyzed as under. In the surveyed area the literacy level of the small farmers is as follows:

Literacy Level

In this section we tried to explore the educational background by posing different questions. In surveyed area however, overall literacy level is good but in agricultural sector mostly people who directly linked with agricultural sector as small farmers are illiterate as figure 1 indicates that 39% small farmers are illiterate 11% only graduated and 29 % respondents are those who did intermediate and 21% have completed matriculation and joined the profession of farming.

Figure 1: EDUCATIONAL BACKGROUND OF THE SMALL FARMERS



In rural areas most of the people, who belong directly agricultural sector, are illiterate because of staying away from educational institutions and unaffordability of the expenses and when they grow old the ultimate job available for them is to join the profession of their four father which is agricultural sector, if they are lucky enough that they have land then they either rent that land or cultivate it by themselves otherwise they have to transact crop sharing contract in order to earn livelihood.

In response of a question that since when have you been doing this contract so, 15% respondents are those who have been doing this contract for 25 and 20 years respectively so it is time immemorial, 35.5 % respondents have been doing this contract for a period of 15 years, 24.5% respondents have been doing the same contract for 10 years and only 10% respondents have been doing this contract for 5 years. So, figure 2 confirms that the small farmers are doing crop sharing contract as a profession of their four fathers since a long time. Respondents also said that they were well aware about crop sharing contract.

Figure 2: SMALL FARMERS’S EXPERIENCE IN AGRICULTURE SECTOR

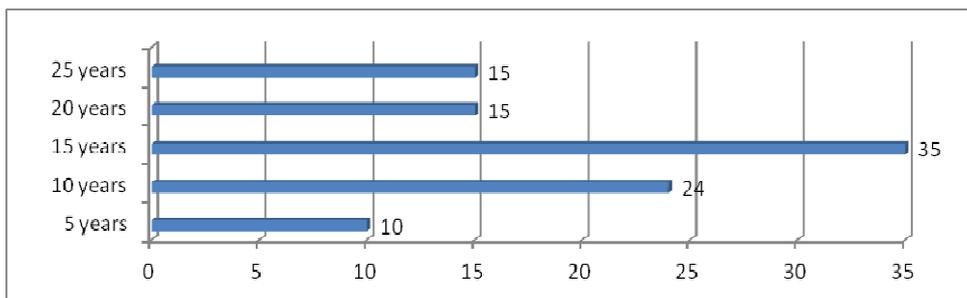
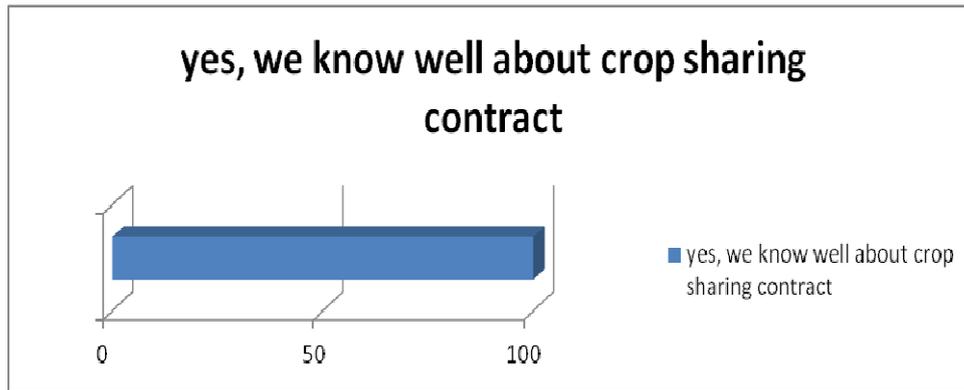


Figure 3: AWARENESS OF SMALL FARMERS ABOUT THIS CONTRACT

Sources

In this section we tried to know the sources of small farmers which he usually uses in order to utilize the land.

Irrigation and Income

Sources of investment and skills are very much important in every business likewise crop sharing contract also needs them but by its nature irrigation source is foremost important which is of three kinds i.e. Raining, tube well and canal. In response of question about the irrigation sources 60% respondents irrigate land through tube well and canal on the other hand 40% respondents irrigate it through tube well. The surveyed area is located adjacent to River Satluj. Moreover various canals also flow through that area but unfortunately farmers are facing irrigation problem at national level, in addition to that high prices of the power and loadshedding thereof also vanish the prosperity in agricultural sector. So, the cheapest irrigation source is raining which is divinely sources which is out of control of the farmers. Yes when the Rivers flow in that seasons it is consider being a gifted source of irrigation but as irrigation problems stated earlier so it is very rare to irrigate land through canal, yes lastly the tube well is the useful irrigation source but power problem makes it useless unless and until the farmers use power generator but they don't have an easy access to that being poor as the figure 5 shows their financial status in response of a question that what are your sources of income that 69.5% farmers invest income in this contract generated from agricultural land and 30.5% farmers invest from private employment and both the jobs have a small value in financial world.

Figure 4: IRRIGATION SOURCES

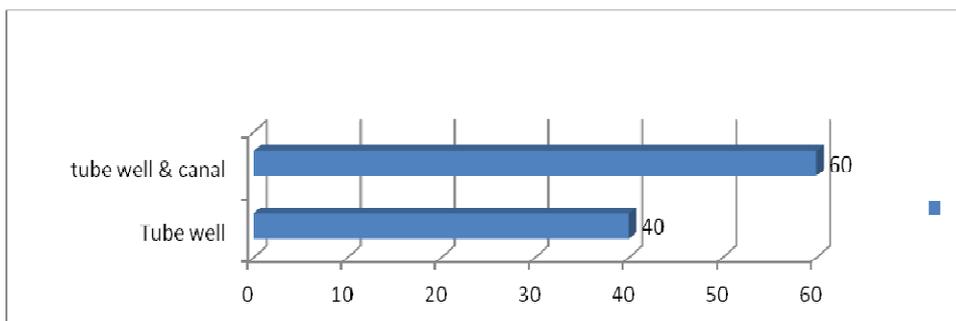
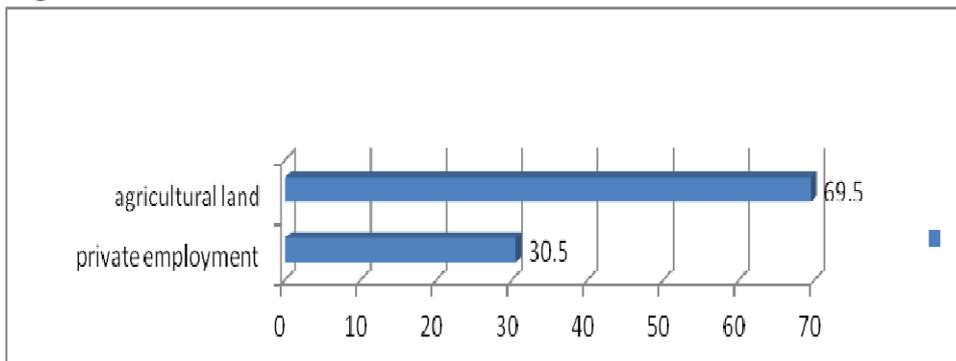


Figure 5: SOURCES OF INCOME

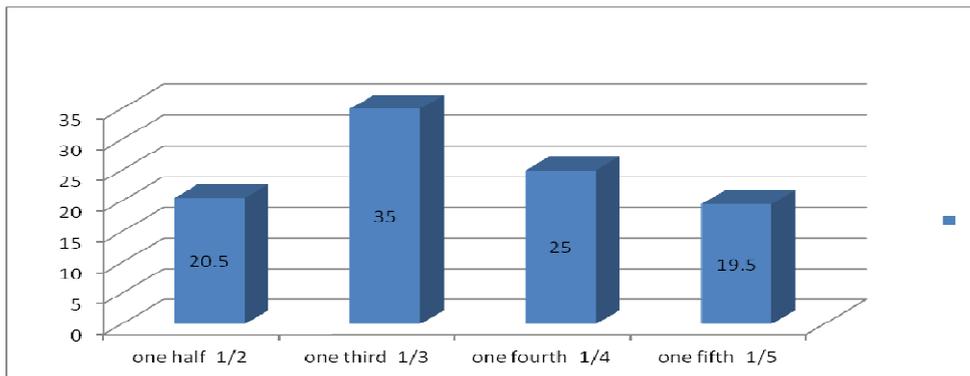


Mechanism of Crop Sharing Contract

In this section we tried to express the mechanism of crop sharing contract being practiced in the surveyed area by posing various questions

Return of The samll Farmers

The small farmer invests his skills in order of have a part in return of the contract and that must be specified at the time of signing the contract because accordingly the expenses thereof distributed between the parties. So, figure 6 shows that in contemporary practiced crop sharing contract 20.5% respondents sign crop sharing contract in return of one half ½ % portion of the outcome production, 35% respondents do this contract in return of 1/3% portion of the outcome, 25% respondents contract @ of ¼ % portion and 19.5% respondents contract @ 1/5% portion of the total outcome generated by this contract.

Figure 6: RETURN OF SMALL FARMERS

In response of a question that whose opinion is dominant in specifying the return so majority of the respondents said that land lord's domains in this sector because all the portions mentioned above have their own specified expenses and in which portion the land lord gets more benefits he signs accordingly. So, figure 6 shows mostly time the land lord agrees upon 1/3 portion in return of this contract for the small farmer. Figure 7 reflects upon that how the expenses in this contract between the parties distributed.

Expenses, Rights and Duties Distribution

As figure 6 has shown that this contract takes place in return of four different portions the expenses of each portion vary from others. So, figure 7 shows that if both the parties have agreed upon at 1/2 production returns for each then the land lord specially contributes land and water and in general both of them contribute all other expenses equally and 20.5% respondents do in this way, 35% respondents contribute all the expenses and land lord contributes land and water and gets in return 1/3 portion of total outcome, 25% respondents do this contract @ of 1/4 and expenses distributed same as in 1/3 portion but here the land is sandy because of this the land lord agrees upon a small portion because this such type of land produces a small quantity of the production. And where all the expenses contributed by land lord along with land and water and the small farmer only participates 1/5 of the expenses he gets 1/5 portion of the total outcome and they are 19.5%.

In response of a question from small farmers why do you like to transact this contract @ of 1/2 portion in return of this contract? They replied that we can't afford all the expenses to initiate this contract due to being poor having not any other source of income except agricultural land by doing this contract and by this portion when land lord contributes half of the expenses

this cooperates us and makes the process easy yes the respondents who any other source of income they do this contract @ of 1/3 portion in return of this contract. At the same time if we question the land lords why do you like to transact crop sharing contract @ of 1/3 portion? They replied that if we transact this contract @ of ½ portion we contribute equally expenses and the farmers after getting expenses from us they use only the expenses contributed by us and they utilize their own expenses for their personal necessities. And if we give them all required material they use half thereof and rest of the half they sell. And if we hire some of the agents in order to make them to supervise the farmers then their wages are upon us. So, in the entire said situation the expenses of the land lord increased.

And when we questioned the small farmers why do you deal fraudulently? So, majority of the respondents did not response but the answer gathered from their talking was that in this contract we become the labor of the land lords and all of their personal deeds other than this contract we are supposed to do due to that we can't find time so that we can do any other job and earn livelihood. So, figure 8 that all the respondents do the personal work of the land lords other than this contract due to this contract. Furthermore in response of a question that do you distribute the production in percentage or a fixed quantity of the production? So, all the respondents said that in percentage as figure 9 shows it but when the time of distribution comes it depends upon the will of landlord either he will give the production from the outcome or the value of that portion said by some of the small farmers.

Figure 7: Distribution of Expenses in This Contract

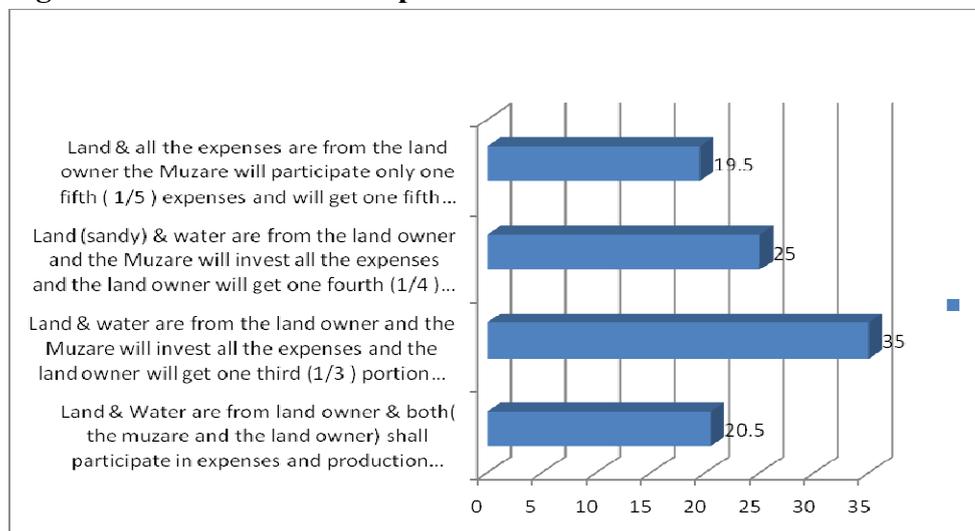


Figure 8: LAND LORD’S PERSONAL WORK

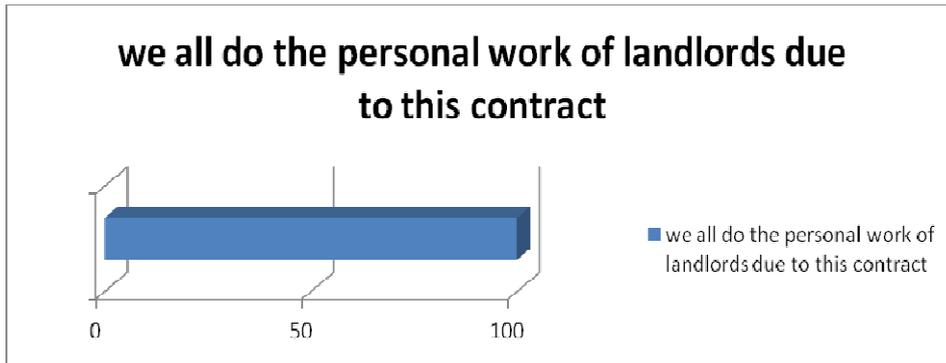
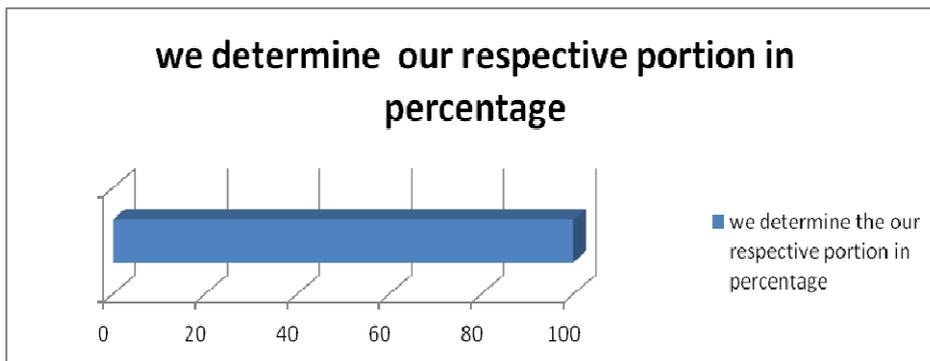


Figure 9: DISTRIBUTION OF PRODUCTION



Financing Need of the formers

Financing in crop sharing contract is much important as we have seen the income sources of a small farmer’s earlier. So in this section we tried to know the financial need of the farmers, including small farmers and land lords, and their awareness about formal and informal institutions with adding their awareness about Islamic tools of finance.

Financing the farmers not only helps to get better the overall productivity of the farmers but also improves social indication in the long run. Easy access to credit is considered pivotal to reduce poverty in any agrarian society that is why it is considered as a backbone of modern day economy. Majority of the small farmers need financing assistance for this contract because of lacking affordability of the expenses as the earlier figures have shown the efficiency status of the small farmers in the society. Figure 10 shows that 65% small farmers need financial assistance and rest of the 35% respondents are not in need of that assistance due to having their own sources.

Figure 10: Financial Need of the Farmer

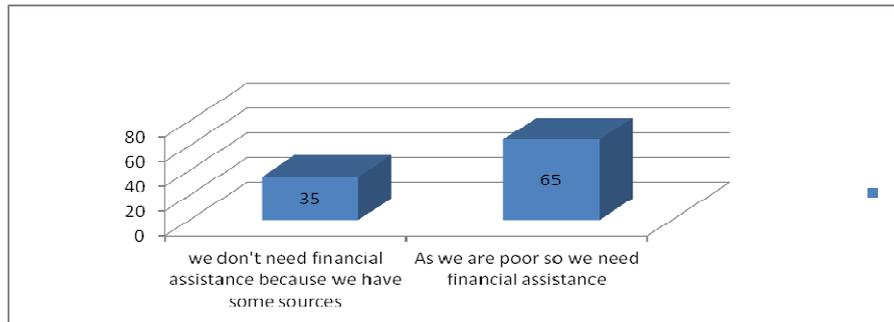
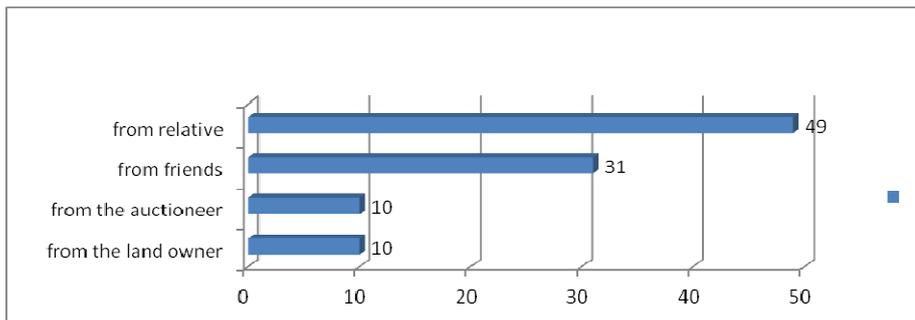
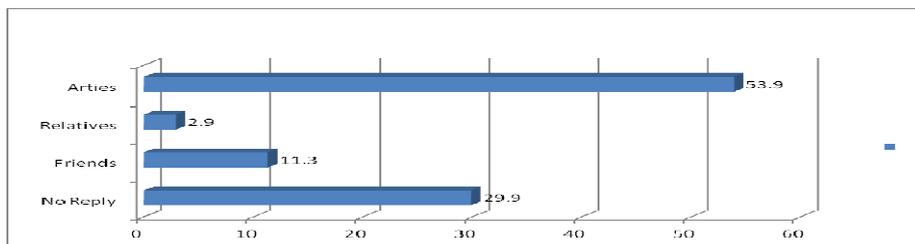


Figure 11: Financial Institutions



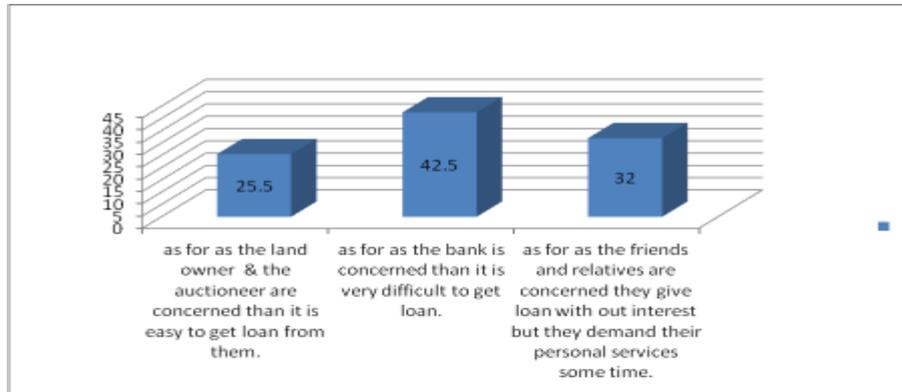
From these four persons the small farmers can get finance because of the easy access and procedure, in addition to that there is no demand of any collaterals. So, figure 16 shows that 32% respondents said that to get financing assistance from friends and relatives easy and 25.5% respondents also said that financial assistance from land lords and arties easy majority of the respondents said to get financial assistance from banks is difficult because of the hardship in the process as well as in the collaterals. Moreover in response of a question who exploits the farmers more? So, Figure 11 shows that 29.9% respondents were those who did not know about it exactly, 11.3% respondents are those who said friends, only 2.9% respondents were those who said relatives and 53.9% respondents were those who said arties/ commission agent.

Figure 12: Who Exploit More?



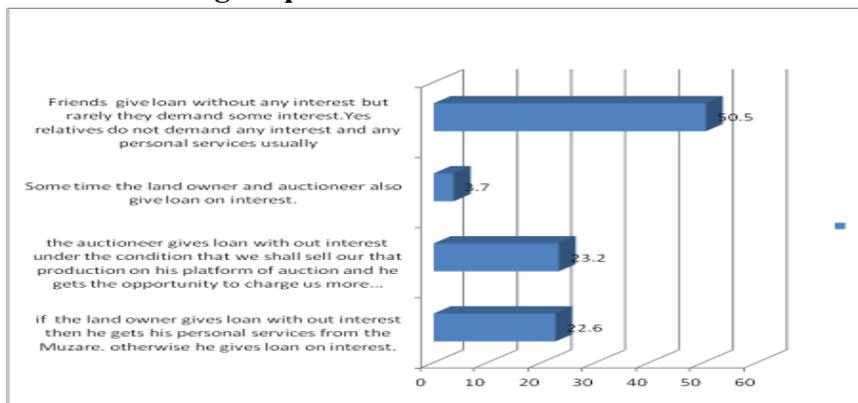
So, arties give loan to the small farmers and set off their credit at the time of harvesting the crop and some time these arties stipulate on farmers a condition at the time of formation the contract that we will take your production from your home against this loan and you don't need to bring the production at our shop. So, by these way arties exploit the small farmers.

Figure 13: Financial Assistance Process



In response of a question that do they finance as a toll of cooperation or do they finance against any condition? So, figure 14 shows that 50.5% respondents said that friends give loan without interest and it is very rare that they charge interest but relatives give loan neither they demand interest nor do they demand any personal services, 22.6% respondents said that if the land lord give loan without interest then he demands personal services from the small farmers due to this contract, 23.2% respondents said that arties give loan without interest but demand from the small farmers to sell their production at the platform of the arties where he exploits by either way otherwise the land lords and arties demand interest as said by 3.7% respondents.

Figure 14: Financing Requirements



Efficiency Status of Crop Sharing Contract

In this section we tried to know the efficiency status of the small farmers after signing crop sharing contract by posing different questions, so in response of a question that do you meet you personal needs by the virtue of this contract? So, figure 15 shows that 30% respondents said that we meet our personal needs on the other hand 70% respondents said that we do not meet our all needs only from this contract.

Figure 15: Economical Ststus of Small Farmers

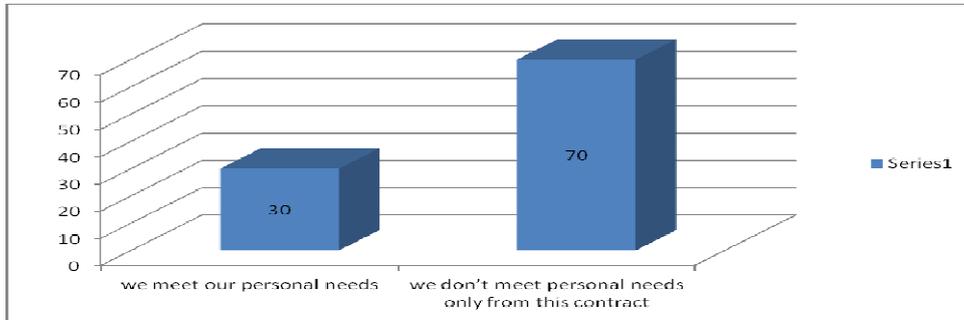
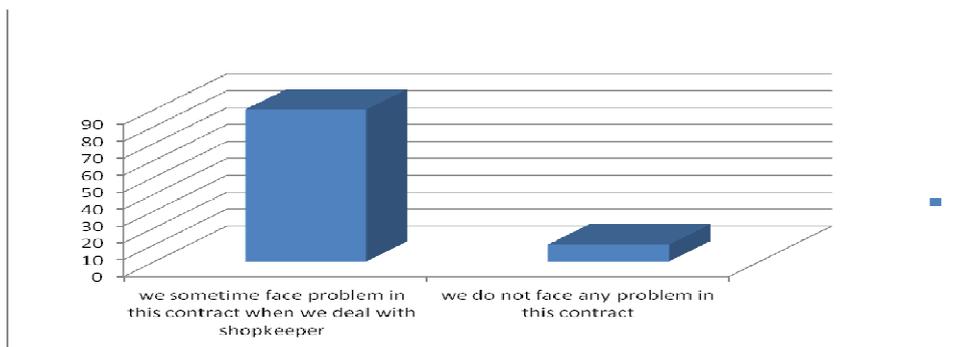


Figure 16: Problem Faced by the Farmers



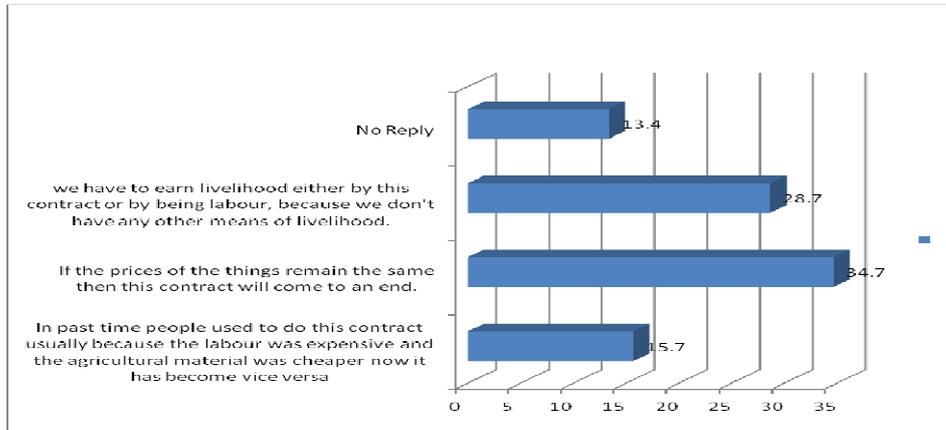
In response of this question that do you face any problem in this contract, majority replied that we face problem as when we deal with shopkeeper regarding helping material for the contract they impose some conditions which cannot afford, as increasing the price etc.

Prediction about Crop Sharing Contract

After all these questions if we ask the small farmer what do you think about the future of this contract? In response of this question they predict as figure 25 shows that 13.4% respondents were those who did not reply to this question, 15.7% respondents compared this contract in contemporary and old

time and said that in past agricultural material was cheaper and labor was expensive so people used to do this contract frequently but now it has become vice versa so now land lords avoid to do crop sharing contract and hire laborers for this contract, 34.7% respondents were those who linked this contract with prices and if it remains same then this contract may disappear.

Figure 17: Future of This Contract



So, majority of the small farmers have linked this contract with the prices and this is a big issue in agricultural department and the government should take control of this so that the small farmers who do not have affordability can also ply their role in this sector positively.

3. Shariah Evaluation of the Muzarah contract as being practiced

As it has been discussed earlier that crop sharing contract is a contract in which two parties get agree to divide the outcome of the land due to one of them will provide the land and the other one will do work. It is an old contract that people did it prior to the advent of Islam and also after the Islam has become the final message of Almighty Allah. Due to not having rules and regulation people started practicing some illegal means in this contract then as soon as the Holy Prophet peace be upon Him was informed about these He forbade people from this contract. And when people got awareness about the validity of this contract He did not only allow them to do but He Himself did this contract.

The relation of both parties in this contract is that they partners to each other. As we have seen that the farmers are very poor and they do not have enough expenses to meet all the need regarding this contract as well as their own personal needs. So, they need some help to meet these needs in order to

regulate this contract. The institutions which give some assistance we have seen that the farmers cannot access to banks as the procedure of the banks is very tough. Yes, the authorities to whom they can access to get assistance they give loan but some of them give on interest and some of them give without interest, especially some of the land lords (one of the parties in this contract) also give loan on interest. Here we have to know the status of loan and its policy in Shariah.

Loan in Islam

The Arabic word Qard is used for loan which means a portion³⁵ of anything. So, as the lender lends a portion of all of his property so that is why it is called Qard. And in technical sense "An amount which a lender lends to a borrower in order to make him meet all of his needs".³⁶ And also "Qard is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it"³⁷.

Its legitimacy

The jurists are agreed upon the permissibility of the loan as it is proved by Quran as, Almighty Allah says:

"إِذَا تَدَانَيْتُمْ بَدَيْنَ إِلَى أَجَلٍ مُّسَمًّى فَآكْتُبُوهُ"³⁸

"It says "Oh you who believe! When you deal with each other in contracting a debt for a fixed time then write it down."

So, Allah is ordering to write down this transaction because it is permissible otherwise He would not order to write it down. The saying of Prophet Muhammad (P.B.U.H) also proves its validity as He said:

"عَنْ أَبِي رَافِعٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَسَلَفَ مِنْ رَجُلٍ بَكْرًا، فَقَدِمَتْ عَلَيْهِ إِبِلٌ مِنْ إِبِلِ الصَّدَقَةِ، فَأَمَرَ أَبَا رَافِعٍ أَنْ يَقْضِيَ الرَّجُلَ بَكْرَهُ، فَرَجَعَ إِلَيْهِ أَبُو رَافِعٍ، فَقَالَ: لَمْ أَجِدْ فِيهَا إِلَّا خِيَارًا رَتَاعِيًا، فَقَالَ: (أَعْطِهِ إِيَّاهُ، إِنَّ خِيَارَ النَّاسِ أَحْسَنُهُمْ قَضَاءً)"³⁹

"Abu rafe says that He the Holy Prophet Peace be upon Him took camel from a person as loan, then some of the camels came to Him and He ordered to abu rafe to pay the camel back to that person, abu rafe came back to Him after looking the camels and said I did not find in them but the better one, He said pay back that one because the best of the people is the person who pays back in good way."

So, this hadith shows that He Himself did this contract because it was permissible.

But the borrower some time does not want to repay the loan and some time he pays back the principle amount and interest along with it. It has very dangerous effect on the borrower so that is why there are some rules for the transaction of loan which are following:

- 1- It must be for necessary things.
- 2- The borrower must possess it. It means the borrower should take loan in the place (Majlis) where he talks with lender as it is necessary to prove possession on it⁴⁰.
- 3- The loan must be without any charge. The amount of loan must be given without any charge over it as it leads to Riba⁴¹, which is Haram. As the Prophet Peace be upon Him said:

"كُلُّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبَا"⁴²

"Every loan which carries any profit it amounts to Riba."

- 4- The borrower must have intention to return the loan. The borrower must take loan in order to repay it as well. As it is mentioned in the following hadith.

"عن أبي هريرة، أن رسول الله صلى الله عليه وسلم قال: " من أخذ أموال الناس يريد أداءها، أدى الله عنه، ومن أخذها يريد - يعني - تلفها، أتلفه الله عز وجل"⁴³

"Abu Huraira says that the Holy Prophet Peace be upon Him said whosoever takes loan from people and intend to repay it Allah will enable him to do so, and the person who takes it and wants not to repay it Allah will cause him to be destroyed."

So, if we analyze this loan which the farmers take from all the borrowers and especially when the borrower is the land lord and he demands charge over the principle amount then it leads to violate the rule mentioned above that the principle amount must be given without any charge otherwise it would amount to Riba which is Haram and in consequence the transaction would also be Haram.

Hoarding in Islam

The behavior of the land lord with the farmers when the time of sharing the crop comes and they expect that the price of the cultivated crop is going to be high then they do not give portion of the crop but they give amount in cash. So, we need to explain here a general idea about Hoarding. It means to store something⁴⁴ and in Technical sense "to store something in order to sell them in future when their prices would increase"⁴⁵. The jurists have defined hoarding in different ways but they agreed that it means:

"To store eatable some things in order to sell them in future when their prices would be high and to avoid from selling them at a time when people need them in order to harm them."

Ruling of Hoarding

According to the situation as mentioned above it is Haram when it is done

to harm the people and to intend to sell them when their prices would increase. Following are some of the hadiths which show the same:

1. "عن أبي أمامة قال: "نهى رسول الله أن يحتكر الطعام"⁴⁶

"Abu umama says that "the Holy Prophet peace be upon Him forbade from monopolizing the food"

And another hadith says:

2. "عن معمر بن عبد الله، عن رسول الله صلى الله عليه وسلم، قال: (لا يحتكر إلا خاطئ)"⁴⁷

3. *"Mamar bin Abdullah says that the Holy Prophet peace be upon Him said : "none monopolizes except a sinner"*

And another hadith says:

4. "عن أبي هريرة، قال: قال رسول الله صلى الله عليه وسلم: (من احتكر حكرة، يريد أن يُعْلِي بها على المسلمين، فهو خاطئ)"⁴⁸

"Abu Huraira says that the Holy Prophet peace be upon Him said: " whoever monopolizes anything in order to make its price high on Muslims he is a sinner. "

So, having a view on these ahadiths we can say that if a person does monopolize in order to harm the people and to make the prices high he is sinner and his action is Haram.

As we have seen the land lords who give their land for crop sharing contract when they expect that the prices of the cultivated crop will increase then they do not give the crop but they give amount in cash at calculating at the time of cultivating the crop and then they keep the crop stored up to that time that the price of that crop would go high.

So, this is not fair as we have seen in hadiths and in this time when the poor people are dying due to hungry and especially the farmer who is poor and unable to buy crop as much as he needs in exchange of that amount which he takes from the land lord. So, in this to store alike things amounts hoarding (monopolizing) which is according to this situation is Haram.

Exploiting

As we have seen that the farmer when gets loan from Owner of the auction place, he sometime gives loan but on the condition that the farmer will sell his portion on the platform of the commission agent from whom the farmer gets loan.

So, in this scene there are two drawbacks found, the first one the commission agent causes to purchase the product @ less than the market rate and second is that he sometime says to the farmer why you bring your product in the market? It is we who will bring your product in the market, so, the commission agent comes to the farmer and gets his production and sells it in the market.

The action of the commission agent to compel the farmer to sell his production on his platform in exchange of giving loan. If we see this transaction we find that it resembles to النجش Najash , though it is not najash but it is opposite to najash, so as najash is unlawful due to harming one party likewise the opposite transaction is unlawful because it is also harming one party.

Najash (To deceive someone)

It means to extract a hidden thing⁴⁹, and in technical sense it includes to increase the rate of one thing without intention of buying it⁵⁰.

Ruling of this contract

The Holy Prophet Peace be upon Him Peace be upon Him forbade from doing like so as in the following hadith.

"عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: «نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنْ يَبِيعَ حَاضِرٌ لِبَادٍ، وَلَا تَنَاجَشُوا، الْحَدِيثُ...»⁵¹

"Abu Huraira says that the Holy Prophet peace be upon Him forbade a person who lives in the city to buy something for a person who lives in the village and from giving over rate. "

So giving over rate without having the intention of purchasing the product is clearly unlawful. Because it harms the person who gives over rate having the intention of buying it on the over rate given by a person who does not intend.

So in the same way when the commission agent causes a person to decrease the price of that product brought by the borrower farmer it harms that farmer so it is also unlawful.

Talaqqī Al-Ruknān (To meet horsemen)

It means to meet those people who live in the village and they are coming to the market to sell their production but a person who knows about the market rate he meets them when they are on the way to come the market in order to sell their production and he purchases from them the production at a low price and then he sells it on a high price.

Ruling of this contract

Majority of the jurists say that it is unlawful due to this hadith:

"عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ: "لَا تَلَقُّوا الرُّكْبَانَ" الْحَدِيثُ⁵²

"Abu Huraira says that the Holy Prophet peace be upon Him said that " do not meet horsemen"⁵³ "

It means do not meet them in order to purchase from them their production. But let them come in the market and sell their production on their own.

After having a view on this hadith we can say that this transaction is unlawful and the person .i.e. farmer has the option to get that production back when he comes to market and sees the rate and knows that he has been harmed by that transaction.

Demanding of personal services

As we have seen in the charts that when this contract takes place the farmers have to perform the personal services of the landlords. Now we shall check this matter that what the opinion of the jurists about this is.

Hanfi jurists are of the view that if the land lord stipulate on the farmer any condition which remain affective even after the time period of the contract has been over or that condition will not have any relation with the contract the contract will become invalid⁵⁴.

So, from this we can say that this makes the contract invalid.

Compulsion

As we have seen that the farmers sometimes go to buy the best kind of seed but the shopkeeper compel him to buy other material from otherwise he will not sell to him. So, the seller coerces the buyer to be his regular customer. So, what is the status of this coercion in shariah?

It means “to induce someone to do something without willing”⁵⁵. And in technical sense it donates “to induce someone to do something which he will not do if he has not been induced.

Rulling about compulsion

All transactions divided into two kinds:

1- The which cannot be revoked. I.e. family matters. Hanfi jurists say that they cannot be revoked due to compulsion⁵⁶.

2- The one can be revoked. i.e. all business transactions. Hanfi jurists say that it is invalid (fasid). Shafi jurists say that they are void, and the contract will not take place. Imam Zufar is of the view that it depends upon the permission of the person who had been compelled⁵⁷.

Conclusion

After having a detail discussion on the topic the paper concludes that:

1. Initially crop sharing contract is one of the partnership contracts in which one party so called land lord contributes land on the other hand second

- party does work in it in return of a specified portion in term of percentage from the outcome of that contract.
2. It is a lawful contract by its nature extracting support from the primary and secondary sources.
 3. It is a lawful contract but it becomes voidable when some illegal means mixes up with this contract i.e. interest, coercion, visiting the horsemen before they come to market and other illegal means as discussed in the shariah analysis report. The same was done by the Holy Prophet Peace be upon Him when people started to exploit farmers (muzāri‘īn) through some illegal means i.e. to specify the area of which the crop will go to the landlord. Now a days the same situation is found in the practice of this contract that people though do not use those old tricks to exploit the farmers but they use some other illegal tools to exploit them and these tools make us to say that this contract in this format is voidable contract which can be made valid if those illegal means be removed.
 4. In early period of Islam it was though forbidden to do crop sharing contract due to some reasons, like inequality in distributing the production, exploiting the small farmers due lack of awareness and inadequate methodology for crop sharing contract, but as the Muslims got stabled in term of knowledge and economic then it was allowed as the Holy Prophet Peace be upon Him Himself did it, lack of cooperation with poor people was also one of the major reason behind the prohibition of this contract.
 5. Crop sharing contract has a great economic potential which not only establish the economic wealth of the country but it also enable it to earn livelihood by exporting agricultural production in addition to this it also serves the society at micro and macro levels.
 6. Now the practice of this contract says that both the parties are trying to exploit each other but it is the farmer (Muzāri‘) who is being exploited more and more due to his being poor and an illiterate.
 7. It also helps the small farmers to generate a great bulk of production for their own use as well as to make the society prosper because it has feasibility and potential to serve the society.

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- 48 *Musnad Ahmad, hadith no.8617*
- 49 *Ibne duraid, jamharah al-lughah1:478, Dar ehyā' al-Turath, Beirut, 1422h*
- 50 *Mqāyīs al- lughah 5:394*
- 51 *Sahīh ul Bukhāri, hadith no: 2140*
- 52 *Sahīh ul Bukhāri, hadith no: 2150*
- 53 *Horsemen means people who loads their production over the camels, horse and donkey and come to market to sell that production.*
- 54 *Bdā'Al-sanā'6:181*
- 55 *Al misbāh al munīr, 2:532*
- 56 *Bdā' Al-sanā'7:182*
- 57 *Ibid v.7, p.186*