

## EXAMINING THE RELEVANCE AND VALIDITY OF SHARECROPPING UNDER ISLAMIC LAND LAW

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### 1. Introduction

Islam, a complete code of life as perceived and believed by the Muslims, provides detailed guidelines to human being from the very beginning of his life to death. It embraces each and every sphere of one's life namely individual, familial, social, national and international. Though Prophet Muhammad (PBUH) was sent in a desert Islam infallibly depicts a coherent picture which offers the principles and rulings regarding agriculture in a vivid manner. The scheme of Islamic Land Law is so practical in its approach that it supports different forms of cultivation. However, different juristic views exist in this field which necessitates a consolidated picture of agricultural policy based on the true spirit of the Qur'an and Sunnah. Different parts of the current world especially Muslim countries are facing a crucial problem as to their land management. For this, the most serious obstacle, as one eminent author observes, to the realization of *maqasid*<sup>1</sup> is the existing concentration in ownership of means of production in Muslim countries, as it is in all market-economy countries and he continues to say that unless this situation is corrected through the adoption of certain radical measures permissible within the framework of the *Shariah*<sup>2</sup>, it will not be

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- 1 The Arabic word *maqasid* (sing. *Maqsid*) literally implies the higher purposes or objectives or intents. This term is commonly & recurrently used alone to refer to the higher objectives or end goals of Islamic Law in general, that is, *maqasid al-Shariah*. It may also be referred to as the spirit of the law and its guiding principles. The terms *maqasid alShari* (the higher objectives of the Lawgiver), *maqasid al-Shariah* (the higher objectives of Islamic Law), and *al-maqasid al-shariyyah* (legal objectives) are all terms which are used interchangeably. See Author's Preface on the Meaning of Maqasid and the Theory of Higher Objectives, Raysuni, Dr. Ahmad Al, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, The International Institute of Islamic Thought, Herndon, 1<sup>st</sup> edition 2005. Though Abu Ishaq al- Shatibi, the father of the discipline '*Maqasid al Shariah*' didn't define the term in his book *al-Muwafaqat* Ibn Ashur took pain to define the same in his noted book *Maqasid al-Shariah al-Islamiyah* (p. 50) in the following way: "The general objectives of Islamic Law are the meanings and wise-purposes on the part of the Lawgiver which can be discerned in most or all of the situations to which the Law applies such that they can be seen not to apply exclusively to a particular type of ruling. Included here are the occasions for the Law's establishment, its overall aim, and the meanings can be discerned throughout the Law. It otherwise includes objectives which are not observable in all types of rulings, although they are observable in many of them."
- 2 The very term '*Sharia*' means way, road or path to the watering place. *The Concise Encyclopedia of Islam* (Glasse 1989, p. 361) defines the term *Shariah* as follows:

possible to make the perceptible progress in realising the egalitarian goals of Islam.<sup>3</sup> In order to ensure 'adl'<sup>4</sup> in all the Muslim countries eradication of poverty through proper land management especially reforming the existing land management in the light of Islamic *Shariah* is one of the most crucial issues faced by the current *ummah*. Considering this issue M. Umer Chapra<sup>5</sup> has rightly observed:

Given the flagrant inequities that now exist, land reform is not an option which the government may or may not consider seriously. If a meaningful land reform is not implemented, it will come ultimately through a violent revolution. Historical experience shows that when such revolutions take place, all ethical values get trampled. Landlords may in this case lose not only their lands through expropriation but also other belongings and indeed their lives. It would hence be in their own larger, long-term interest to strive voluntarily for just land reform.<sup>6</sup>

In the arena of land reform, terms of tenancy as a factor is worthy of great consideration for the existence of different juristic views regarding its nature. One renowned author has rightly observed:

While the objectives of establishing justice between the landlord and the tenant remains undisputed by the *fuqaha* of all schools of Muslim jurisprudence, the

“Revealed Law, also called al *Shariah*. The canonical law of Islam as put forth in the Koran and the Sunna and elaborated by the analytical principles of the four orthodox schools (*madhhab*=pl. *madhahib*), the Shafii, Hanbali, Hanafi, and Maliki, together with that of the Shiites and the Jafari. See for details Abdelkader, Deina, *Social Justice in Islam*, The International Institute of Islamic Thought, Herndon, 1<sup>st</sup> edition 2000, pp. 44-45.

- 3 Chapra, M. Umer, '*Islam and the Economic Challenge*' The International Institute of Islamic Thought, Herndon and The Islamic Foundation, Nairobi, Kenya and Kano, Nigeria, 1<sup>st</sup> edition, 1992, p.263. See also Chapra, M. Umer, *Islam and the Economic Development*, The International Institute of Islamic Thought and Islamic Research Institute Islamabad, Translated into Bangla as *Islam O Arthanaitik Unnayan* by Ahmed, Dr. Mahmood, The Bangladesh Institute of Islamic Thought, Dhaka, 1<sup>st</sup> edition 2000, p.99.
- 4 The very word 'adl' is used to place something in its rightful place; it also means according equal treatment to others or reaching a state of equilibrium in transactions with them (*al-taswiyah fil-muamalah*). 'Adl' (also '*adalah*') thus signifies moral rectitude and fairness since it means that things should be where they belong. See Kamali, Mohammad Hashim, *Freedom, Equality and Justice in Islam*, Ilmiah Publishers, Kuala Lumpur, reprint of the revised edition 2002, p.103.
- 5 Dr. Muhammad Umer Chapra is Economic Advisor to the Saudi Arabian Monetary Agency, Riyadh. He has published widely on Islamic economics and finance. His most outstanding and widely acclaimed work is *Towards a Just Monetary System*, published by the Islamic Foundation in 1985. For his various contributions to Islamic economics and finance he received in 1990 the Islamic Development Bank award in Islamic Economics and the King Faisal International Award in Islamic Studies.
- 6 See n. 3, '*Islam and the Economic Challenge*' p. 268 and '*Islam and the Economic Development*' p.103.

nature of land tenancy has been one of the most controversial issues in *fiqh* literature.<sup>7</sup>

In this study, we, with a view to building up a strong land management system, will discuss one of the most significant but controversial issue i.e. sharecropping as we feel it very necessary in this complex era of time to reach into a concrete solution regarding the sharecropping and for this reason we have to follow a special methodology. The main objective of this article is to shed light on few issues namely (i) whether sharecropping is allowed under Islamic Land Law or not? (ii) if allowed, which type of sharecropping is permitted? (iii) whether the practice of sharecropping was prohibited by Prophet (PBUH) or not? (iv) if not prohibited by the Prophet (PBUH) which traditions can be cited in favour of the permissibility of the sharecropping? (v) if permissibility of sharecropping is proved from those *ahadith* how those traditions mentioning the prohibition of sharecropping would be interpreted? (vi) how the jurists analyzed the traditions relating to sharecropping? (vii) lastly, on the basis of the above discussion and analysis we would make an attempt to reach a conclusion regarding sharecropping. For this purpose, we have focused on the various provisions of the Holy Qur'an, the Sunnah of the Prophet (PBUH) the practices of His Companions and the juristic principles and last but not least our reasoning.

## 2. Land Ownership and Land Policy in Islam

The Qur'an does not mention anywhere man's ownership of land as being part of one's wealth.<sup>8</sup> However, the Qur'an does not prohibit individual ownership of land which was subsisting from time immemorial and at the same time it does not promulgate any particular ruling regarding this matter specifically even not with any single implication.<sup>9</sup> Maududi reasserts that Islam didn't modify the existing *urf*<sup>10</sup> regarding ownership i.e. the

7 See n.3, 'Islam and the Economic Challenge' p.266 and 'Islam and the Economic Development', p.101.

8 Haq, Irfan Ul, *Economic Doctrines of Islam, A Study in the Doctrines of Islam and Their Implications for Poverty, Employment and Economic Growth*, The International Institute of Islamic Thought, Herndon, 1<sup>st</sup> edition 1996, p. 162.

9 Maududi, Sayyid Abul A'la, *Mas'alah Milkiyyat-e-Zamin (Rules regarding the Ownership of Land)* translated from Urdu into Bangla as *Bhomer Malikana Bedhan*, by Majumder, A. B. M. A. Khaleque, Adhunik Prokashani, Dhaka, 2<sup>nd</sup> edition, 1996, p. 19.

10 The very Arabic word '*urf*' has been derived from the root word '*arafa*' which means to know. In literal sense, '*urf*' means 'that which is known'. In its primary sense, it is the

individual ownership was in vogue from time immemorial.<sup>11</sup> Moreover, he based his logic on the principle that tacit approval in favour of a custom establishes its continual validity.<sup>12</sup> It is one of the well established rules of '*usul al-fiqh*'<sup>13</sup> that custom which is not contrary to the principles of *Shariah* is valid and authoritative; it must be observed and upheld by a court of law.<sup>14</sup> Al-Suyuti, the eminent Shafii jurist mentioned a legal maxim in his reputed work *al-Ashbah wa al-Nazair*, in the following way: 'What is proven by *urf* is like that which is proven by a *shari* proof.'<sup>15</sup> The prominent Hanafi jurist al-Sarakhsi also recorded this and subsequently this ruling was adopted in the Ottoman *Majallah*<sup>16</sup> which provides that custom, whether general or specific, is enforceable and constitutes a basis of judicial decisions.<sup>17</sup>

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known as opposed to the unknown, the familiar and customary as opposed to the unfamiliar and strange. To the majority scholars, usually the words '*urf*' and '*adah*' are synonymous though some draws distinction between them. Dr. Mohammad Hashim Kamali defined '*urf*' as 'recurring practices which are acceptable to people of sound nature.' For details see Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*, The Islamic Text Society, Cambridge, Revised edition, 1991, pp.283-296.

11 See n. 9.

12 Ibid, p.18. Maududi in his another book shows the evidences of recognition of private ownership within the bounds determined by Allah (SWT) and in this respect he cites the following Quranic verses Al-Baqara 2:261,275,279,282,283 An-Nisa 4:2,4,7,20,24,29, Al-Maeda 5:38, Al-Anaam 6:141, Al-Tawba 9:103, Al-Noor 24:27, Ya-Seen 36:71, Adh-Dhariyat 51:19, As-Saff 61:11. For details see, Maududi, Sayyid Abul A'la, *Qur'an Qi Ma'ashi Ta'limat* translated from urdu into Bangla as *Al Quraner Orthonaitic Nitimata(Fundamentals of Economics in the Qura'n)* by Naseem, Abdus Shaheed , Shotabdi Prokashoni, Dhaka, 1<sup>st</sup> edition, October, 2000, pp. 8-13.

13 '*Usul al-fiqh*' ('*Asl*' is singular whereas '*usul*' is plural; it denotes origin, source, foundations, basis, fundamental, or principle) or the bases or the roots of Islamic law, expound the indications and methods by which the rules of *fiqh* (the detailed Islamic Law) are derived or deduced from their sources. Thus, in this sense *usul* is the methodology and *fiqh* is the product. For details see Hannan, Shah Abdul, *Law, Economics and History*, The Printmaster, Dhaka, 1<sup>st</sup> edition, June, 2003, p. 10. See also n. 10, p. 1.

14 See n.10, p. 284.

15 Ibid.

16 Al Majallah, the Ottoman Civil Code was prepared between 1868 and 1876. It was prepared on the perspective of the Hanafi School of Jurisprudence but it followed a Napoleonic form. Its full title is *Majallat-I Ahkami Adliye*, the Book of Rules of Justice. It is treated as the first and last Civil Code of the Islamic Legal History. It had been enforced until the destruction of the Ottoman Caliphate. See Sait, Siraj, and Lim, Hilary

Another author expresses the same thing in the following manner:

Since the Quran is silent on the ownership of land *per se* (as opposed to *amwal*<sup>18</sup> which man owns) it can be argued that the matter has been left to the historical tradition of legality of owning, buying and selling land as well as to the discretion of society and its government. At the time the Prophet came to Madinah, land was held individually as well as communally. For instance, pastures for grazing livestock were generally considered community property.<sup>19</sup>

He goes on saying that as head of the state, the Prophet did not interfere with the existing land holding structure because there was no reason to do so.<sup>20</sup> Nonetheless, he declared goods like inland water resources, forests and soil resources, wildlife, and sub-soil resources like mines minerals and fossil fuels as public property and prescribed rules for their proper administration and management.<sup>21</sup> He also promulgated the principle that the first right of ownership of land was to lie with the Islamic state and then with the individual.<sup>22</sup> For this reason, one author concluded that the Islamic State has overall proprietary rights in land and can grant ownership rights as well as prescribe the highest tenure in the greatest interests of the society.<sup>23</sup> It is evident from the practices of the Prophet (PBUH) and His Rightly Guided Caliphs.<sup>24</sup>

Thus, under Islamic theory, land is seen as a sacred trust for human beings and should be put to continuous productive use.<sup>25</sup> However, excessive exploitation and hoarding of land are prohibited.<sup>26</sup> Islamic property rights are conditional on the requirement that property not be used wastefully or exploitatively, or in a way that will deprive others of their justly acquired property.<sup>27</sup> Islam is against those who accumulate property for the purpose of greed or oppression as well as those who gain through unlawful business

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*Land, Law and Islam Property and Human Rights in the Muslim World*, Zed Books Limited, 1<sup>st</sup> edition, London, 2006, p. 229.

17 See n.10, p.284.

18 This Arabic word implies wealth, property or possession.

19 See n. 8.

20 Ibid.

21 See n. 8, pp.135 & 162.

22 See n. 8.

23 Ibid.

24 Ibid.

25 See n.16, p. 11.

26 Ibid.

27 Ibid.

practices.<sup>28</sup> These Islamic principles contribute to a distinct framework shaping categories of land tenure and usufruct rights that are capable of giving rise to flexible and creative arrangements for access to land.<sup>29</sup>

### 3. Cultivable Land and its Use

Islamic Law of Land enjoins Muslims to ensure the optimum utilization of land. If the Muslim owns a piece of cultivable land, as Qaradawi puts, he must make use of it by planting crops or trees.<sup>30</sup> Anas bin Malik narrated that Allah's Apostle said, "There is none amongst the Muslims who plants a tree or sows seeds, and then a bird, or a person or an animal eats from it, but is regarded as a charitable gift for him."<sup>31</sup>

It is not consonant with Islam, Qaradawi continues, that such lands not be used for cultivation, as this is tantamount to rejecting the bounty of Allah and wasting wealth, which the Prophet (peace be on him) prohibited.<sup>32</sup> To Qaradawi, there are few approved methods of cultivation of land which are available to its owner under the *Sharia* namely a) cultivating the land himself, b) lending the land to others for cultivation, c) taking a proportion of the crop and d) renting the land for gold or silver.<sup>33</sup> In order to eliminate feudalism and consequently absentee landlordism the Prophet (PBUH) prescribed certain methods of cultivation i.e. to cultivate the land himself; to lend to others for cultivation on the basis of prefixed percentage share of the total produce; or to lend the land free of charge to someone who wants to cultivate it.<sup>34</sup>

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28 Guner, O. 'Poverty in Traditional Islamic Thought: Is it Virtue or Captivity?', Studies in Islam and the Middle East, Vol 2 (1) 2005, p.4

29 See n. 16.

30 Qaradawi, Yusuf al, The Lawful and Prohibited in Islam. Chapter 4: The Halal and the Haram in the Daily Life of the Muslim, Section 2: Business Transactions, The Use of Cultivable Land. Retrieved from [http://www.witness-pioneer.org/vil/Books/Q\\_LP/ch4s2pre.htm#The%20Use%20of%20Cultivable%20Land](http://www.witness-pioneer.org/vil/Books/Q_LP/ch4s2pre.htm#The%20Use%20of%20Cultivable%20Land). accessed on April 24, 2010.

31 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 513. The English translation of all the ahadith of *Sahih Bukhari* mentioned in this write up are adopted from the *Sahih Bukhari*, English Translation, Khan, M. Muhsin, retrieved from <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/bukhari/> accessed on May 20, 2009.

32 See n.30.

33 Ibid.

34 See n. 8, pp. 162-163.

The first and last methods of cultivation find its authority in the tradition narrated by Jabir. He mentioned that the people used to rent their land for cultivation for one-third, one-fourth or half its yield. The Prophet said, "Whoever has land should cultivate it himself or give it to his (Muslim) brother gratis; otherwise keep it uncultivated." Abu Huraira also narrated that Allah's Apostle said, "Whoever has land should cultivate it himself or give it to his (Muslim) brother gratis; otherwise he should keep it uncultivated."<sup>35</sup>

The second method of cultivation is established "firstly by a contract made by the Prophet with the people of Khaibar<sup>36</sup> and secondly by his permitting of temporary share-cropping arrangements that were made between the numerous emigrants and the landed Helpers in Madinah".<sup>37</sup>

Before going into the deep analysis of the above-mentioned issues we would like to clarify the definition of sharecropping.

#### 4. Towards Defining Sharecropping

Before the advent of Islam the people of Arabs used to practise five types of sharecropping.<sup>38</sup> These forms of sharecropping are: a) *al-muhaqalah*<sup>39</sup> (lease of land for food); b) *al-mukhabarah*<sup>40</sup> (lease of land against a certain part of

35 *Sahih Bukhari* Vol. 3, Book: 39 Agriculture, Hadith No: 533.

36 Khaibar (sometimes spelt as Khayber) was a spacious strongly fortified territory, studded with castles and farms, lying at a distance of 60-80 miles north of Madinah. Now a day, it is a village which is known for its uncongenial climate. See Mubarakpuri, Safiur Rahman al, *Ar Raheeq Al-Maktoom* (The Sealed Nectar) translated from Urdu into English by Diab, Issam, Maktaba Dar-us-salam, Saudi Arabia, retrieved from [http://www.witness-pioneer.org/vil/Books/SM\\_tsn/ch6s2.html](http://www.witness-pioneer.org/vil/Books/SM_tsn/ch6s2.html) accessed on December 07, 2010.

37 See n. 8, p. 163.

38 Hassan, Abdullah Alwi Haji, *Sales and Contracts in Early Islamic Commercial Law*, Kitab Bhavan, New Delhi, 1<sup>st</sup> Indian edition 1997, Reprinted 2006, p.98.

39 It was a form of landholding (*metayage*) of the Arabs in pre-Islamic times. In this contract, landless tillers or cultivators (*metayers*) took arable lands from individual landlords, tribes or religious institutions, on the basis of lease against food, grain or corn, in kind or against certain parts of the produce of land. This form of sharecropping was in vogue among the people of the northern and southern parts of the Arabian Peninsula. This contact of tenure was known as *al-qarah* or *al-muzara'ah* among the ancient Iraqis. The Prophet (PBUH) is reported to have prohibited this type of transaction. Adapted with slight modifications from note n. 37, p.99. The same author also mentioned (p. 216) that the term *al-muhaqalah* applies to exchange the grain still in the ear which was prohibited by the Prophet (PBUH), because of *gharar* or deception in it.

40 This term is derived from *Khubrah*, meaning a knowledge of wells or agriculture which implies cultivation. Usually it is used to denote a lease of land for a share of its

its produce); c) *al-muzara'ah* (lease of "white" or bare land for a certain part of its produce; *metayage*, sharecropping); d) *Kira' al-ard*<sup>41</sup> (lease or rent of land, against its produce, a fixed sum of money, or in kind); and e) *Al-musaqat*<sup>42</sup> (lease of a fruit tree, or an orchard for irrigating, fecundating and protecting fruit trees for a certain share of the fruit).<sup>43</sup>

The jurists begin with an analysis of the term *muzara'ah* and discuss whether its grammatical form implies work by both partners, when in practice only one person does the work.<sup>44</sup> Al Kasani, an eminent Islamic scholar has verified the use of the term and quoted a number of other terms that have similar grammatical forms, but involve work from one side. One of the such words is *mu'alajah*(treatment), where it is the physician alone who

produce. To Imran Ahsan Khan Nyazee, this is another name for the contract of *musaqah* derived from the transaction with the Jews of Khayber. *Musaqah* has been interpreted by him to mean a contract for the watering of tress between the owner of land and a worker on the condition of sharing the produce. This form of contract was in vogue in pre-islamic Arabia. To support the derivative meaning, Ibn Hazm and al-Zurqani do not agree with other scholars who interpret that the meaning of *al-mukhabarah* originates from Khayber. The Prophet (PBUH) is reported to have banned such practices. See Nyazee, Imran Ahsan, *Islamic Law of Business Organisation Partnerships*, Kitab Bhavan , New Delhi, 1<sup>st</sup> Indian edition 1999, reprinted 2006, p. 337.

- 41 The term has been defined by Imam Malik as lease of land against wheat from the produce or others. People of pre-islamic Arabia used to practise such kind of contract. There were several disagreements which arose out of such tenure because it amounted to an agreement which resulted in an unknown share of produce. The Prophet (PBUH) is reported to have prohibited renting out fields, and he prohibited the contract of *kira' al-mazari* or *kira al-ard*. In another tradition, The Prophet (PBUH) is reported to have prohibited such a contract of leasing land against some of its produce but allowed it if it was against gold or silver. Extracted from note 38, pp. 99-100.
- 42 The very word *al musaqat* is a verbal noun derived from *saqa* (*s.q.y.*), to water, or irrigate a land. It implies that the essential element of the total process of production was constituted by the method of agriculture irrigation. It is said to form the major part of the investment and expenditure. This form of cultivation is valid, even in the case of rain-water being available, inspite of having no need for artificial irrigation. In this case, other expenses take the place of watering (*saqy*). Iraqis called it *al-muamalah*. This contract concentrates on sharecropping of fruit (fruit *metayage*) only. This type of land tenure was widely practised in the former provinces of the Byzantine and Sassanian Empires. The Prophet (PBUH) entered into the contract of *al-musaqat* at Khayber, with half share of the produce. See n. 38, p.100.
- 43 Ibid.
- 44 Al-Kasani, Abu Bakr ibn Mas'ud, *Bada'i al-Sana'i fi Tartib al-Shara'I*, vol. 8, Cairo, 1968, p. 3807; al-Marghinani al-Rushdani Burhan al-Din, Ali ibn Abu Bakr ibn 'Abd al-Jalil al-Farghani, *al-Hidayah Sharh Bidayat al-Mubtadi*, vol. 4, Cairo, 1948, p. 53; al-Zaylai, *tabyin al-Haqaiq*, vol. 5, p. 278, mentioned in n. 40, p. 277.



is doing the work.<sup>45</sup> Some scholars also made recourse to compare the term *muzara'ah* with the term *mukhabarah* with some considering them similar, while others maintained a distinction on the basis of who supplies the seed needed for sowing.<sup>46</sup> Few Jurists advanced their argument by saying that *mukhabarah* was the name of the arrangement undertaken with the people of Khaibar.<sup>47</sup>

In technical sense, it implies a contract for cultivation of land in return for part of the produce in accordance with the conditions stipulated by law.<sup>48</sup> The *Majallah*, in section 1413, defines that *Muzara'ah* 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.<sup>49</sup> *Muzaria*, as an eminent author says, implies a sort of collective farming, i.e. leasing a land to a cultivator on the basis of partnership in the yield.<sup>50</sup>

Thus, sharecropping may be defined as a system of agriculture or agricultural production in which a landowner allows the agricultural labour to utilize the land in return for a share of the produce produced on the land. In *muzara'a* owner of the land provides his land and the agricultural labour (ajir or aamil or tenant or cultivator) worked on it and the agricultural production is divided between them in a pre decided ratio.<sup>51</sup> This partnership agreement may be in different forms, depending upon the terms and conditions set by *Fuqahas*.<sup>52, 53</sup> The common point in all of its form is that,

45 Ibid.

46 See n. 40, pp. 277-278.

47 Ibn Qudamah, Muwaffaq al-Din Abu Muhammad 'Abd Allah ibn Ahmad ibn Muhammad, *al-Mughni fi Fiqh Imam al-Sunnah Ahmad ibn Hanbal al-Shaybani*, Al-Matba'ah al-Salafiyah wa-Maktubatuha, Cairo, 1962, vol. 5, p. 417. See n. 40, p. 278.

48 Al-Zayla'i, *Tabyin al-Haqaid*, vol. 5, p. 278; Al-Kasani, *Bada'i al-Sana'i*, vol. 8, p. 3807; al-Marghinani, *al-Hidayah*, vol. 4, p. 53; Ibn Qudamah, *al-Mughni*, vol. 5, p. 417. See n. 40, p. 278.

49 *Majallat al-Ahkam al-Adliyah*, § 1431, see n. 40, p.278.

50 Amini, Prof. Maulana Mohd. Taqi, *The Agrarian System of Islam*, Translated by Ali, Syed Ahmad, Idarah-i-Adabiyat-I Delhi, 1<sup>st</sup> edition, p. 160.

51 Malik, B. Uns, *Al Mudavanant-ul-Kubra*, Khairia, Egypt, 1935, p. 26.

52 The very word *Fuqaha* is the plural form of the word *Faqih*. The person who is well versed in *Fiqh* or Islamic Jurisprudence is termed as *Faqih*. In English, it can be translated as jurist. The *Faqih* or *Mujtahid* must be a Muslim and a competent person of sound mind who has attained a level of intellectual competence which enables him to form an independent judgment or *ijtihad*. The earliest complete account of the qualifications of a *mujtahid* is given in Abul-Husayn al-Basri's *al-Mutamad fi Usulal-Fiqh* which was accepted by al-Shirazi (d. 467/1083), al-Ghazali (d. 505/1111) and al-

landlord must have a share in agricultural production. This share may be different in different types of agreements.<sup>54</sup> It is noteworthy to mention that Malikis do not assign the same connotation to *muzara'ah* as is done by the Hanafis and Hanbalis.<sup>55</sup>

Sharecropping is broadly classified into two categories namely i) Fixed Sharecropping and ii) Variable Sharecropping.<sup>56</sup> In fixed sharecropping, the amount of the crop to be paid to the holder of right on the land is fixed. This is almost like lease. The distinction is one of time and kind. The fixed sharecropping ensures the owner of the land of the loss arising out of the failure of the crop for various reasons like bad weather, ravages of nature, irregularity of plantation, under-cultivation etc.<sup>57</sup> In variable sharecropping, the proprietor does get a fixed proportion rather than a fixed quantum of the crop raised. The earning of the proprietor would vary according to the variation of the yield.<sup>58</sup>

## 5. Testing the Validity of Sharecropping

In order to determine the validity of sharecropping either fixed or variable or both we have to focus on the Sunnah of the Prophet (PBUH) in the absence of any explicit provision in the Qur'an relating to sharecropping.

### 5.1 *Ahadith* Prohibiting the Sharecropping

Firstly we will focus on those *ahadith* of which thorough readings reveal the idea that *Shariah* allows a person to own such amount of land which he can

Amidi (d. 632/1234). These requirements are: a) He must have a good knowledge of the Arabic language. b) He must be knowledgeable of the Qur'an and the Sunnah and related subjects. c) He must be generally knowledgeable of the *Ijtihad* carried out by previous scholars. d) He must know the *Maqasid* of *Shariah*. And e) He must be an upright person and capable of distinguishing between a strong and a weak evidence. We think it will be exaggeration to classify jurists here. For details see, n. 10, pp. 374-377. See also, n.13, p. 68.

53 Siddiqi, M.N. *Islam Ka Nazria-e-Milkiat*, Islamic publications Ltd. Lahore, 1968, Vol. 1, pp.185-186.

54 Haque, Zia-Ul *Landlord and Peasant in Early Islam*, Islamic Research Institute, 1977, p.9.

55 Muhammad 'Ulaysh, *Taqirrat ala al-sharh al-Kabir* on the margin of al Dasuqi, *Hashiyah*, vol. 3, p. 372. See n.39, p. 278.

56 Alam, Shamsul *Islamic Thoughts*, Islamic Foundation Bangladesh, Dhaka, 1<sup>st</sup> edition, August, 1986, p. 834.

57 Ibid.

58 Ibid.

cultivate himself and in order to execute this *Shariah* has prohibited sharecropping.<sup>59</sup>

Maududi asserts that only six companions of the Prophet (PBUH) transmitted the *hadith* relating to the prohibition of sharecropping. They are: (i) Rafi bin Khadij (Allah be pleased with him) (ii) Jabir bin 'Abdullah (Allah be pleased with him) (iii) Abu Huraira (Allah be pleased with him) (iv) Abu Sa'id al-Khudri (Allah be pleased with him) (v) Zayd bin Thabit (Allah be pleased with him) and (vi) Thabit bin. Dahhak (Allah be pleased with him).<sup>60</sup>

Now we shall examine the *ahadith* (plural of *hadith*) transmitted by the above companions in details. Most of the *ahadith* relating to the prohibition of sharecropping has been narrated by him. Among them, we will discuss few *ahadith*.

Firstly, Rafi bin Khadij (Allah be pleased with him) reported that they used to give on rent land during the lifetime of Allah's Messenger (may peace be upon him). They rented it on the share of one-third or one-fourth of the (produce) along with a definite quantity of corn. One day a person from among his uncles came to them and said that Allah's Messenger (May peace be upon him) forbade them this act which was a source of benefit to them, but the obedience to Allah and to His Messenger (may peace be upon him) is more beneficial to them. He forbade them that they should rent land with one-third or one-fourth of (the produce) and the corn of a measure, and he commanded the owner of land that he should cultivate it or let it be cultivated by other (persons) but he showed disapproval of renting it or anything besides it.<sup>61</sup>

The other *hadith* narrated by Rafi bin Khadij in a more explicit manner clarifies the fact of prohibition. He narrated that his uncle Zuhair said that

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<sup>59</sup> See n. 9, p. 45.

<sup>60</sup> Ibid.

<sup>61</sup> *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu ), Chapter 18: Renting of Land for Food, Hadith no. 3742. See also Hadith nos. 3743 and 3744. The English translation of all the ahadith of *Sahih Muslim* mentioned in this write up are adopted from the *Sahih Muslim*, English Translation, Siddiqui, Abdul Hamid , retrieved from [http:// www.usc.edu/schools/ college/crcc/ engagement/resources/texts/ muslim /hadith/ muslim/](http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/muslim/) accessed on May 20, 2009. See also *Sunan Ibn-i-Majah*, Imam Abu Abdullah Muhammad B. Yazid Ibn-i-Maja Al-Qazwini, English version by Muhammad Tufail Ansari, Published by Kitab Bhavan, New Delhi, Third Edition: 2005, Vol. III, Book 16: The Book of Mortgages (Security Deposits) (Kitab-ur-ruhun), Chapter No. X: Muzara'a That is Undesirable, Hadith No. 2460, p. 456.

Allah's Apostle forbade them to do a thing which was a source of help to them. He [Rafi] said that Whatever Allah's Apostle said was right. He said that Allah's Apostle sent for him and asked, 'What is he doing with his farms?' He replied that they give their farms on rent on the basis that they get the yield produced at the banks of the water streams (rivers) for the rent, or rent it for some Wasqs<sup>62</sup> of barley and dates. Allah's Apostle said, 'Do not do so, but cultivate (the land) yourselves or let it be cultivated by others gratis, or keep it uncultivated.' He said, 'We hear and obey.'<sup>63</sup>

He further narrated that they worked on farms more than anybody else in Medina. They used to rent the land and say to the owner, "The yield of this portion is for us and the yield of that portion is for you (as the rent)." One of those portions might yield something and the other might not. So, the Prophet forbade them to do so.<sup>64</sup>

Jabir bin Abdullah (Allah be pleased with them) is also vocal regarding the prohibition of sharecropping. He reported that Allah's Messenger (may peace be upon him) have forbidden Muhaqala, and Muzabana, and Mukhabara,

62 Wasaq was a volumetric measure. A Wasaq was equal to 60 measures of a Sa'. See <http://www.baitulmaal.org/us/about/-zakat> accessed on December 08, 2010. Sa' mentioned in different *ahadith* is a dry measure that is equal to about 3260 gram according to the scholars of Hanafi school of thought, and 2172 gram in the opinion of scholars of other schools of thought. The very reason of differences of opinion among the scholars lies in the very fact that people of different regions who sold dry substances used measuring vessels different in their volume. See <http://umma.ws/questions/zakiatul> accessed on December 9, 2010.

63 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 532. See *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al-Buyu), Chapter 18: Renting of Land for Food, Hadith no. 3745 & 3746. See also *Sunan Ibn-i-Majah*, Vol. III, Book 16: The Book of Mortgages (Security Deposits) (*Kitab-ur-ruhun*), Chapter No. X: Muzara'a That is Undesirable, Hadith No. 2459, p. 455. See also *Sunan Abu Dawud*, Vol.3, Book: 22 Commercial Transactions (Kitab Al-Buyu), Hadith no. 3385. The English translation of all the ahadith of *Sunan Abu-Dawud* mentioned in this write up are adopted from the *Sunan Abu-Dawud*, Partial English Translation, Hassan, Prof. Ahmad, retrieved from <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/hadith/abudawud/> accessed on May 20, 2009.

64 *Sahih Bukhari*, Hadith no. 525. See also *Sunan Abu Dawud*, Vol.3, Book: 22 Commercial Transactions (Kitab Al-Buyu), Hadith no. 3395. See also *Sunan Ibn-i-Majah*, Hadith no: 2449, pp. 450-451. *Sahih al Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al-Buyu), Chapter 17: Leasing Out Land, Hadith no.3736. See also Hadith nos. 3733, 3734, 3735, 3737, 3738, 3739, 3740 and 3741. See also *Sunan Ibn-i-Majah*, Vol. III, Book 16: The Book of Mortgages (Security Deposits) (*Kitab-ur-ruhun*), Chapter No. VII: Letting Out Land (for Cultivation ON (the payment of) One Third or One Fourth (Share of Produce), Hadith no: 2450, p. 451.

and the buying of date-palm until its fruit is ripened (ripening means that its colour becomes red or yellow, or it is fit for being eaten). And *Muhaqala* implies that crops in the field are bought for grains according to a customary measure. *Muzabana* implies that date-palm should be sold for dry dates by measuring them with *wasqs*, and *al-Mukhabara* is (a share), maybe one-third or one-fourth (in produce) or something like it. Zaid (one of the narrators) asked Ata' b. Abu Rabah (the other narrator): Did You bear Jabir b. Abdullah (Allah be pleased with them) making a mention of it that he had heard it directly from Allah's Messenger (may peace be upon him)? He said: Yes.<sup>65</sup>

In another *hadith* he reported that Allah's Messenger (may peace be upon him) had forbidden renting of land.<sup>66</sup>

Abu Huraira reported that Allah's Apostle said, "Whoever has land should cultivate it himself or give it to his (Muslim) brother gratis; otherwise he should keep it uncultivated."<sup>67</sup> In another *hadith* he reported that Allah's Messenger (may peace be upon him) has forbidding *Muhaqala* and *Muzabana*.<sup>68</sup>

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65 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 16: Forbiddence of Al-Muhaqala, and Al-Muzabana, and Al-Mukhabara, and the Sale of Fruits Before Their Good Condition is Clear, and Al-Mu'awama. i.e. The Sale for Some Years, Hadith no. 3710. See also Hadith nos. 3709, 3711, 3712, 3713 & 3714. See also Chapter 17: Leasing Out Land, Hadith nos. 3721 & 3730. See also *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3715. See also Hadith no. 3718. See also *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3716. See also Hadith nos. 3717, 3722, 3723, 3724, 3725. See also *Sunan Ibn-i-Majah*, Vol. III, Book 16: The Book of Mortgages (Security Deposits) (*Kitab-ur-ruhun*), Chapter No. VIII: Leasing Out Land, Hadith no: 2454, pp. 453. See also *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 533(A).

66 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3726.

67 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 533(B). See also *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3729. *Sunan Ibn-i-Majah*, Vol. III, Book 16: The Book of Mortgages (Security Deposits) (*Kitab-ur-ruhun*), Chapter No. VII: Letting Out Land (for Cultivation on (the payment of) One Third or One Fourth (Share of Produce), Hadith no: 2452, pp. 452.

68 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3731.

Abu Sa'id al-Khudri (Allah be pleased with him) reported that Allah's Messenger (may peace be upon him) has forbidden Mazabana and Muhaqala. Muzibana means the buying of fruits on the trees and Muhaqala is the renting of land.<sup>69</sup>

## 5.2 Exploring the Real Ruling of *Sharia* Regarding Sharecropping

Now we would explore the real ruling of the *Sharia* regarding this matter. Maududi has asserted several interpretations<sup>70</sup>. Firstly, the Prophet (PBUH) was not only a jurist and teacher but also a ruler and administrator. In fact, the whole administration was in His hands and it was impossible to think that the person like Him would allow such kind of prohibited method of cultivation to exist. So it becomes incumbent on the jurists to explore the real *hukm* of *Sharia* regarding sharecropping. Secondly, it is inconceivable that this matter relating to land which is inseparably related with the administration were known to only few people. Rather this should be turned into a common practice during the regime of the Prophet (PBUH) and the rightly guided Caliphs. Thirdly, it is beyond imagination that i) the Prophet (PBUH) himself didn't take steps to establish an approved form of cultivation rather allowed to continue a prohibited form or ii) the Prophet (PBUH) yearned for implementing an approved method of cultivation but the Companions disobeyed Him or iii) the Companions especially the rightly guided Caliphs didn't take any bold step to put into practice the desired method of Prophet (PBUH) during their Caliphate notwithstanding the very fact that they were aware of the command of the Prophet (PBUH).

So, no intelligent, wise and farsighted people could perceive that the prohibition on sharecropping was obscure to all people except few companions up to the primary or middle stage of the regime of Muwabia. It is surprising to note that the Prophet (PBUH) himself and other senior Companions used to practise sharecropping and this practice was in vogue during the Caliphate of the Rightly Guided Caliphs. Nafi narrated that Ibn 'Umar used to rent his farms in the time of Abu Bakr, 'Umar, 'Uthman, and in the early days of Muawiya. Then he was told the narration of Rafi 'bin Khadij that the Prophet had forbidden the renting of farms. Ibn 'Umar went to Rafi' and he [Nafi] accompanied him. He asked Rafi who replied that the Prophet had forbidden the renting of farms. Ibn 'Umar said, "You know that we used to rent our farms in the life-time of Allah's Apostle for the yield of

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<sup>69</sup> *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 17: Leasing Out Land, Hadith no. 3732.

<sup>70</sup> See n. 9. pp. 53-54.

the banks of the water streams (rivers) and for certain amount of figs.<sup>71</sup> Salim also clarified this incident when he mentioned that Abdullah bin 'Umar said, "I knew that the land was rented for cultivation in the life-time of Allah's Apostle." Later on Ibn 'Umar was afraid that the Prophet had forbidden it, and he had no knowledge of it, so he gave up renting his land.<sup>72</sup>

A question may naturally arise if Ibn Umar were certain regarding the sharecropping and renting of land why he had abandoned this practice after hearing the hadith of Rafi Bin Khadij.<sup>73</sup> The answer lies in the very fact, as Maududi affirms, that Ibn Umar had reached the last stage of circumspection.<sup>74</sup> If Ibn Umar had a bit confusion regarding the validity of sharecropping he would not pronounce the following statement: "Rafi forbade us from benefitting from our land (in the form of rent)."<sup>75</sup>

Abdullah bin Umar reported that the Prophet (PBUH) concluded a contract with the people of Khayber to utilize the land on the condition that half the products of fruits or vegetation would be their share. The Prophet used to give his wives one hundred Wasqs each, eighty Wasqs of dates and twenty Wasqs of barley. (When 'Umar became the Caliph) he gave the wives of the Prophet the option of either having the land and water as their shares, or carrying on the previous practice. Some of them chose the land and some chose the Wasqs, and 'Aisha chose the land.<sup>76</sup> Ibn Qudamah has rightly observed:

This practice cannot be considered to be abrogated because an abrogation is valid only if it was implemented by the Prophet himself (peace be on him) during his own lifetime. Now, if he practiced a thing until his death, and thereafter his successors and all the Companions (may Allah be pleased with them) acted on it and none of them opposed it, how then is anyone else entitled to invalidate it? And if it was (actually) abrogated during the lifetime of the Prophet (peace be on him), why then did he continue to practice it after abrogating it? And how was it possible that his closest Companions and successors should remain ignorant of its abrogation while the story of Khayber was circulating widely and they were (themselves) acting according

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71 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 535.

72 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 536.

73 See n. 9, p.56.

74 *Ibid.* See also Qayyim, Ibn, *Ja'adul Mayad*, p.226.

75 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu), Chapter 17: Leasing Out Land, Hadith no. 3735.

76 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 521. See also n. 30.

to it? And where was the narrator of (the report on this abrogation, that none of them knew him or had heard about him)?<sup>77</sup>

Ibn Umar further narrated that Umar expelled the Jews and the Christians from Hijaz<sup>78</sup>. When Allah's Apostle had conquered Khaibar, he wanted to expel the Jews from it as its land became the property of Allah, His Apostle, and the Muslims. Allah's Apostle intended to expel the Jews but they requested him to let them stay there on the condition that they would do the labor and get half of the fruits. Allah's Apostle told them, "We will let you stay on this condition, as long as we wish." So, they (i.e. Jews) kept on living there until 'Umar forced them to go towards Taima' and Ariha'<sup>79 80</sup>.

Last two traditions confirm the validity of sharecropping. In response to this view, some jurists claim that the contract of Khayber is not the evidence of sharecropping rather that was *Jizya*<sup>81</sup>. Their juristic view, Maududi insists

77 Qudamah, Ibn, *Al-Mughni*, vol. 5, p.384, mentioned in n. 30.

78 The very word Hijaz (sometimes spelt as al-Hejaz) literally connotes barrier. It's a region in the west of present-day Saudi Arabia. This area is primarily defined by its western border on the Red Sea, it extends from Haql on the Gulf of Aqaba to Jizan. Though its main city is Jeddah it is probably better known for the Islamic holy cities of Makkah and Madinah. Hijaz occupies a very special place in the Arab and the Islamic historical and political landscape for being the site of Islam's holy places. This nomenclature is given since it separates the land of Najd in the east from the land of Tihamah in the west. Retrieved from <http://en.wikipedia.org/wiki/Hejaz>, accessed on December 07, 2010.

79 Taima and Ariha are basically two villages in Arabia. But these are situated outside of Hijaz.

80 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 531.

81 As regards the derivation of the word *Jizya* (sometimes spelt as *jizyah*) jurists differ in their opinions. To Monqiz-As-Saqqar, this term is derived from the root word *jaza* meaning compensate. He further adds that "Jizya" is a derived term in the form of "fi'la" from "Mujazā" which is the noun "compensation", meaning "a sum of money given in return for protection". On the other hand, Ibn Al-Mutaraz opined that it is derived from "'idjzā" or "substitute" or "sufficiency" because it suffices as a substitute for the "dhimmi's embracement of Islam". See Saqqar, Moqiz-As, *Jizya in Islam*, translated from Arabic to English by Elisawy, Hayem retrieved from See [http://www.loadislam.com/artical\\_det.php?artical\\_id=481&section=wel\\_islam&subsection=Misconceptions](http://www.loadislam.com/artical_det.php?artical_id=481&section=wel_islam&subsection=Misconceptions) accessed on December 09, 2010. Yusuf al Qaradawi mentions that the word *jizya* is derived from the *jazaa'*, meaning "reward", "return", or "compensation", and defines it as "a payment by the non-Muslim according to an agreement signed with the Muslim state". See <http://en.wikipedia.org/wiki/Jizya> accessed on December 9, 2010. Qaradawi opines that Jizya is an annual tax charged on per capita and every major, sane and capable non-Muslim male are bound to pay it. See Qaradawi, Dr. Yusuf al "*Ghayr al-Muslimeen fil-Mujtama' al-Islami*" , "Generosity Towards Non-Muslims In Islam"



on, is applicable only to the half of the land of Khayber which belonged to the State but that is quite inapplicable for the remaining half of the lands divided among the *Mujahids*<sup>82, 83</sup>. Other group of jurist claims that the Jews of Khayber was not *Dhimmi*<sup>84</sup> as poll tax or *Jizya* was not imposed on them

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originally written in Arabic, translated into Bengali by Hasan, Mahmudul as "O-Muslimer Proti Islamer Udarata published by Sarwar Kamal, 1<sup>st</sup> edition, Chittagong, 1994, p. 44. Women, children, old, insane and the poor persons are exempted from paying jizyah. If the Islamic State is unable to give protection, it will not collect jizyah from the Non-Muslims. If after collecting Jizyah, the State becomes unable to render protection it is bound to return the jizyah to the respective persons. See Ibid, p. 48. The amount of the jizya is fixed by the head of the state with due consideration of the capability of payers. It is noteworthy to mention that if the term jizya is too offensive to non-Muslims it is liable to be changed. Umar bin Khattab, the second Caliph of Islam levied the jizya upon the Christians of Banu Taglibh and named it sadaqah (alms) out of consideration for their feelings. The jizyah was also imposed on Muslim men who could afford to buy their way out of military service. For instance, during the Ottoman Empire Egyptian Muslim peasants exempted from military service was required to pay the jizyah. Conversely, if a Christian group elected to serve in the state's military forces, it was exempted from the jizyah. Historical examples of this abound: the Jarajima, a Christian tribe living near Antioch (now in Turkey), by undertaking to support Muslims and to fight on the battle front, did not have to pay the jizyah and were entitled to a share of the captured booty. See [http://www.islamonline.net/servlet/Satellite?cid=1119503544994&pagename=IslamOnline-English-Ask\\_Scholar%2FFatwa\\_E%2FFatwaEAsk\\_The\\_Scholar](http://www.islamonline.net/servlet/Satellite?cid=1119503544994&pagename=IslamOnline-English-Ask_Scholar%2FFatwa_E%2FFatwaEAsk_The_Scholar) accessed on December 09, 2010.

82 The very term *mujahid* is glossed as a person engaged in jihad or who strives in the cause of Allah and exerts efforts which make him feel fatigued. In fact, A *mujahid* is that person who is sincerely devoted to his or her cause; who use all physical, intellectual, and spiritual recourse to serve it; who confront any power that stands in its way; and when necessary, dies for this cause. See, Gulen, M. Fethullah, *Sonsuz Nur: İnsanlığın İftihar Tablosu (Muhammad The Messenger of God An Analysis of the Prophet's Life)*, translated from Turkish to English by Unal, Ali, Tughra Books, New Jersey, 2010, p. 202. Linguistically, the very word jihad is derived from the Arabic word '*Jahd*' which connotes fatigue or the word '*juhd*' which means effort. Thus, the word jihad implies exerting effort to achieve a desired thing or prevent an undesired one. In other words, it aspires to bring about benefit or prevent harm. In the Qur'an this word is used in its different connotations 33 times. Jihad can be observed through any lawful means permitted under *Sharia* and in any field whether material or moral. For instance, struggling against one's desires, the accursed Satan, poverty, illiteracy, disease and fighting all evil forces in the world. See [http://www.islamonline.net/servlet/Satellite?cid=1119503544994&pagename=IslamOnline-English-Ask\\_Scholar%2FFatwaE%2FFatwaEAskThe\\_Scholar](http://www.islamonline.net/servlet/Satellite?cid=1119503544994&pagename=IslamOnline-English-Ask_Scholar%2FFatwaE%2FFatwaEAskThe_Scholar) accessed on December 11, 2010. For a comprehensive discussion on Jihad see Qaradawi, Dr. Yusuf Al, *Fiqh of Jihad*, Wahba Bookshop, Egypt, 1<sup>st</sup> edition 2009.

83 See n. p.58.

84 The very term '*dhimmi*' is used to refer permanent residents of Muslim dominated territory. See n. 4, p.78. They are referred to as the 'protected people' (*ahl-al-dhimmah* or *dhimmi*s), implying that Allah (SWT), His Prophet (PBUH) and the community of

and Muslims had all the right to recover anything from them. Maududi affirmed that the ruling of *Jizya* was revealed after the battle of Khayber and it is illusory to base their claim on the standard of *Jizya* in the absence of the ruling of *Jizya*.<sup>85</sup> The Jews were *dhimmi* and they settled down their residence in *Khayber* under a treaty and the laws were indiscriminately applicable both to the Muslims and Jews.<sup>86</sup> The principle of *qasamat*<sup>87</sup> originated from the incidence of murder of a Muslim by an assassin in *Khayber*.<sup>88</sup> The very reason of not imposing *Jizya* even after the revelation of the verse of *Jizya* is the existence of a treaty.<sup>89</sup> Few jurists made an attempt to contradict their identity as *dhimmi*. In response to this point, Maududi opined that they were ousted in accordance with the provision of the treaty entered into between the Islamic State and the Jews.<sup>90</sup> Few others argue that this contract is not the evidence of sharecropping as it didn't fix up the period of the contract. This argument is also invalid as one of the stipulations of that treaty is that "We will let you stay on this condition, as long as we wish." For this, Maududi vehemently argued that the determination of time was entirely left to the discretion of the owner i.e. Islamic State.<sup>91</sup> In a *hadith* Abu Huraira narrated that the Ansar said to the Prophet "Distribute the date palm trees between us and our emigrant brothers." He replied, "No." The Ansar said (to the emigrants), "Look after

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Muslims have made a covenant with them that they may live in safety and security under the Islamic Government. In modern parlance, *dhimmi*s are citizens of Islamic state. From the earliest times to the present day Muslims unanimously agree that they are entitled to enjoy the same rights and carry the same responsibilities as Muslims themselves, while being free to practice their own faiths. Usually their rights, duties and status are determined by a kind of socio-political contract known as *aqd al-dimmah*. See Qaradawi, Yusuf al, *The Lawful and Prohibited in Islam*, Chapter 4: The Halal and the Haram in the Daily Life of the Muslim, Section 4: Social Relationships, Non-Muslim Residents of an Islamic State. Retrieved from [http://www.witnesspioneer.org/vil/Books/Q\\_LP/ch4s5pre.htm#NonMuslim%20Residents%20of%20an%20Islamic%20State](http://www.witnesspioneer.org/vil/Books/Q_LP/ch4s5pre.htm#NonMuslim%20Residents%20of%20an%20Islamic%20State) accessed on December 11, 2010. See also Ramadan, Said, *Islamic Law Its Scope and Equity*, P.R. Macmillan Limited, London, 1<sup>st</sup> edition 1961, p.109.

85 See n.9, p.59.

86 Ibid.

87 This is a principle of Islamic Criminal Jurisprudence. If the murderer of a person cannot be identified and the death seems very abnormal but symptoms of murder is very obvious in dead person then all the inmates of that particular area need to vow before the court collectively. This is the essence of the principle of *Qasamat/Qasamah*.

88 See n. 9, p.59.

89 Ibid.

90 See n. 9, p. 60.

91 Ibid.

the trees (water and watch them) and share the fruits with us." The emigrants said, "We listen and obey."<sup>92</sup>

The above description makes it crystal clear that the sharecropping was widely practised during the era of the Prophet (PBUH) and the Rightly Guided Caliphs. None could perceive any prohibition regarding this mode of cultivation before the tradition narrated by Rafi bin Khadij. The aforesaid discussion repels the cloud of doubt cast by the narration of Rafi bin Khadij and make out the real meaning.

### 5.3 Evaluation of the Traditions in the Light of "Conscience"

It is one of the common features of the *Sharia* that the rulings of *Sharia* are not contradictory to one another. Though it is possible that there may be apparent contradictions between different rulings but an in-depth analysis would reveal the truth that they are not inconsistent with each other rather harmonious. It is generally recognized as one of the intrinsic aesthetical aspect of the *Sharia*. The same argument is liable to be applicable regarding *muzara'a* or sharecropping. If the prohibitions relating to sharecropping are allowed to subsist this would hit the basic spirit of *Sharia* and of course would be contrary to the *maqasid al sharia*. Sayyid Abul A'la Maududi puts forward the following contradictions<sup>93</sup> which would be the ultimate consequences if the traditions relating to sharecropping are construed to subsist.

Primarily, if sharecropping is not recognized as a permissible means of cultivation the concept of ownership would be very much alien and meaningless for the women, child, aged persons, sick and disabled persons. Secondly, under Islamic scheme of inheritance it is not likely to be a very outlandish situation that a person whether male or female may become the owner of many acres of land. If cultivation through others becomes impermissible he or she has to abandon a lot of lands for the impossibility of cultivating all the lands by him or her. Thirdly, prohibition regarding sharecropping would also violate the principles of buying and selling as under the tenet of latter an individual has the right to sell and buy any lawful thing without any limitation.<sup>94</sup> So it seems very paradoxical that under the Civil Law of Islam a person would be allowed to purchase lands according to his yearning but would be debarred from receiving the benefits beyond a

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92 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 518.

93 See n. 9, pp.64-67.

94 Of course, the govt. can impose any lawful restraint upon the selling and buying in a given time and society.

certain limit under the Islamic Land Law. Fourthly, Islam is unwilling to impose any restriction upon the ownership of any thing in terms of quantity and quality. The same principle is equally applicable regarding agricultural land. If the practice of sharecropping is discarded the above principle of ownership becomes an irony.<sup>95</sup> Fifthly, Islam encourages charity in all spheres of life- this principle cannot be construed to mean that a person is obliged to do more even but after the fulfillment of his indispensable duties e.g. Islam encourages a person to give charity who pays *Zakat* but does not compel him to do so. So it seems very illogical to compel a person to lend his extra lands to another free of charge even after the payment of *Ushr*<sup>96</sup> instead of making recourse to the sharecropping. Lastly, the proscription on sharecropping negates the spirit of *musharaka* or partnership.

Thus, impermissibility of the sharecropping is inconceivable within the overall framework of Islam.<sup>97</sup>

#### **5.4 Examining the Traditions Prohibiting *Muzara'a***

This would be very much unwise to conclude that the traditions transmitted by the aforesaid Companions are erroneous i.e. *daif* (weak) or *mauduat* (fabricated). The real significance, as per Maududi's observation is concerned, lies in the fact of misapprehension of the words of the Prophet (PBUH). A thorough investigation of all the traditions supporting and negating the prohibition reveals the fact that the transmitters erred in apprehending the real message of the Prophet (PBUH). Even as Maududi asserts, if the statements of Rafi bin Khadij, Jabir bin Abdullah are considered in the light of interpretations given by other elder Companions, this would become very much crystal clear.<sup>98</sup>

Up to the primitive stage of the regime of Hazrat Muwabia sharecropping and renting of land were practised by common people of the Islamic State

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95 Maududi vehemently mentioned that the govt. reserves the right to limit the maximum ceiling of land under a special circumstance until the cause of restriction is abolished.

96 In its literal sense, *ushr* means one-tenth. It is generally defined as "land on which a tithe is paid, belonging to a Muslim at the time of his conversion or distribution to a Muslim soldier as his share of the spoils of war; *ushr* describes both the land itself and the tithe. It is also known as '*Zakat-ul-Ard*' or the Zakat of land. See n. 16, p.233. See also Shafi, Mufti Mohammad, *Islamey Bhumy Babostha*(*The Law of Land in Islam*);in Urdu and translated by Nijamee, Maulana Karamat Ali into Bangla, Islamic Foundation Bangladesh, 2<sup>nd</sup> edition, Dhaka, June 1995, p.165.

97 See n. 9, p.67.

98 Ibid.

and none perceived any prohibition regarding this matter.<sup>99</sup> This news was transmitted approximately at 50 Hijri all of a sudden and this created a chaotic situation.<sup>100</sup> In order to quench their thirst relating to sharecropping they asked the Companions of the Prophet (PBUH). Among the companions those are also included who transmitted the prohibitory traditions on sharecropping.<sup>101</sup> The inner and actual meanings of those prohibitory traditions are analyzed in the words of narrators.

Firstly, we would like to analyze the *ahadith* narrated by Rafi bin Khadij.

Hanzala bin Qais al-Ansri reported that he asked Rafi' b. Khadij about the renting of land for gold and silver, whereupon he said: There is no harm in it for the people to let out land situated near canals and at the ends of the streamlets or portion of fields. (But it so happened) that at times this was destroyed and that was saved. Whereas (on other occasions) this portion was saved and the other was destroyed and thus no rent was payable to the people (who let out lands) but for this one (which was saved). It was due to this that he (the Holy Prophet) prohibited it. But if there is something definite and reliable (e. g. money). there is no harm in it.<sup>102</sup>

Even from another *hadith* narrated by Rafi' bin Khadij himself the underlying cause of the prohibition regarding sharecropping becomes clear. He mentioned that they worked on farms more than anybody else in Medina. They used to rent the land at the yield of specific delimited portion of it to be given to the landlord. Sometimes the vegetation of that portion was affected by blights etc., while the rest remained safe and vice versa, so the Prophet forbade this practice. At that time gold or silver were not used (for renting the land). If they provided the seeds, they would get so-and-so much. Al-Hasan said, "There is no harm if the land belongs to one but both spend on it and the yield is divided between them." Az-Zuhri had the same opinion. Al-Hasan said, "There is no harm if cotton is picked on the condition of having half the yield." Ibrahim, Ibn Siain, 'Ata', Al-Hakam, Az-Zuhri and Qatada said, "There is no harm in giving the yarn to the weaver to weave into cloth on the basis that one-third or one-fourth (or any other portion) of the cloth is given to the weaver for his labor." Ma'am said, "There is no harm in hiring animals for a definite (fixed) period on the basis that one-third or one-fourth

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99 Ibid.

100 See n. 9, pp.67-8.

101 See n. 9, p.68.

102 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 19: Renting of Land by Gold and Silver, Hadith no. 3748.

of the products carried by the animals is given to the owner of the animals."<sup>103</sup>

In another report, Hanzla bin Qais narrates that Rafi bin Khadij said that his two uncles told him that they (i.e. the companions of the Prophet) used to rent the land in the life-time of the Prophet for the yield on the banks of water streams (rivers) or for a portion of the yield stipulated by the owner of the land. The Prophet forbade it.<sup>104</sup>

Now, we, to comprehend the real stance of the Prophetic traditions on the prohibition of sharecropping, should consider the traditions narrated by Zayd bin Thabit critically. As for instance

Zayd ibn Thabit: Zayd ibn Thabit said: May Allah forgive Rafi' ibn Khadij. I swear by Allah, I have more knowledge of Hadith than him. Two persons of the Ansar (according to the version of Musaddad) came to him who were disputing with each other. The Apostle of Allah (peace\_be\_upon\_him) said: If this is your position, then do not lease the agricultural land. The version of Musaddad has: So he (Rafi' ibn Khadij) heard his statement: Do not lease agricultural lands.<sup>105</sup>

From the *ahadith* reported by Ibn Abbas the real meaning of the prohibition relating to sharecropping becomes obvious. 'Amr narrated: I said to Tawus, "I wish you would give up Mukhabara (Share-cropping), for the people say that the Prophet forbade it." On that Tawus replied, "O 'Amr! I give the land to share-croppers and help them. No doubt; the most learned man, namely Ibn 'Abbas told me that the Prophet had not forbidden it but said, 'It is more beneficial for one to give his land free to one's brother than to charge him a fixed rental."<sup>106</sup> In another place, Ibn Abbas narrated: Amr ibn Dinar said: I heard Ibn Umar say: We did not see any harm in sharecropping till I heard Rafi' ibn Khadij say: The Apostle of Allah (peace\_be\_upon\_him) has forbidden it. So I mentioned it to Tawus. He said: Ibn Abbas told me that the Apostle of Allah (peace\_be\_upon\_him) had not forbidden it, but said: It is better for one of you to lend to his brother than to take a prescribed sum from him.<sup>107</sup>

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103 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 520.

104 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 537.

105 *Sunan Abu Dawud*, Vol.3, Book: 22 Commercial Transactions (Kitab Al-Buyu), Hadith no. 3384.

106 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 523.

107 *Sunan Abu Dawud*, Vol.3, Book: 22 Commercial Transactions (Kitab Al-Buyu), Hadith no. 3383.

## 5.5 Legal Justification of *muzara'ah* – Views of Different Schools of Jurisprudence and Scholars

### 5.5.1 The Hanafi View:

The Hanafi Jurists disagreed about the contract of *muzara'a* with Abu Hanifah maintaining that it is not legally justifiable.<sup>108</sup> Abu Yusuf and Muhammad al-Shaybani, two prominent companions of Abu Hanifah held that it is legally maintainable.<sup>109</sup>

One renowned author mentions: “it has gained publicity somehow that Imam Abu Hanifa holds all forms of *muzaria* to be impermissible”<sup>110</sup>. Imam Abu Hanifah made recourse to the following arguments to prove the invalidity of *muzara'a*. At the very outset, he mentions that reliable traditions of the Prophet (PBUH) declare the invalidity of *muzara'a*. On the other hand, the traditions which contract the invalidity of *muzara'a* and prove the validity of the same are not reliable.<sup>111</sup> Secondly, the transaction of the Prophet (PBUH) with the people of *Khayber* was a type of *kharaj*<sup>112</sup> imposed on them due to their submission and not a type of *muzara'ah*.<sup>113</sup> To him, *kharaj* is divided into two classes, the first type is one in which the *imam* imposes a fixed levy in accordance with what the land is able to bear and the second type denotes the taking of a portion of the produce as *kharaj* and both have got validity under the *Shariah*.<sup>114</sup> Imam Abu Hanifah strictly stresses that the people of Khaibar were subjected to the second type. He substantiates his argument by saying that the Prophet (PBUH) did not stipulate a fixed period for them.<sup>115</sup>

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108 See n. 40, p. 278; n. 9, p. 81; *Islamic Bishwakosh*, The Encyclopaedia of Islam in Bengali, compiled and edited by the Board of editors, The Islamic Foundation Bangladesh, 20<sup>th</sup> vol. p. 210.

109 Ibid.

110 See n. 50, p. 174.

111 Rahman, Ghazi Shamsur, 'Muzara'a', *The Islamic Foundation Patrika*, 24th year: vol. 1 July-September, 1984, p.30, The Islamic Foundation Bangladesh, Dhaka.

112 The very word *Kharaj*, in literal sense, means the revenue derived from a piece of land or a slave. In technical connotation, it implies the tax imposed on land. Basically, it is a tax levied on the producer of the landed property owned by the non-Muslims in an Islamic State. For details see, Aghnides, Nicolas P. *Mohammedan Theories of Finance with an Introduction to Mohammedan Law and a Bibliography*, Premier Book House, Lahore, 2<sup>nd</sup> Impression, 1961, pp.376-396; See also Doi, Abdur Rahman, I, *Shariah: The Islamic Law*, TaHa Publishers Ltd. London, 1<sup>st</sup> edition 1984, Reprint 1997, pp. 389-390.

113 See n. 40, p. 279.

114 Ibid.

115 Ibid, pp. 279-280.

Had it been *muzara'ah*, he would have done so.<sup>116</sup> The reason is that, according to the supporters of *muzara'ah*, it is not valid without stipulation of a period.<sup>117</sup> Thirdly, the Jewish cultivators of *Khaibar* were landless labour. No question of *muzara'a* can be raised here. They were used to cultivate lands and get half of the produce. In true sense this is not an instance of *muzara'a*.<sup>118</sup> Fourthly, all sort of fraudulent activities are forbidden in Islam. Half of the produce cannot be identified by an amount. There exists uncertainty as regards whether there will be any produce at all or not, and if grows how much. In Islamic terminology this is known as *gharar*<sup>119</sup> and the same is not supported by Islamic Law.<sup>120</sup>

Lastly, to Imam Abu Hanifah, the traditions which are quoted in favour of *muzara'a* are not acceptable under three grounds. These are a) As per legal principles are concerned, *gharar* is not acceptable. He further reiterates that if any tradition contradicts the established rule of *fiqh* the tradition is not acceptable.<sup>121</sup> b) Imam Abu Hanifah opined that permitting *muzara'a* amounts to getting a rent for what is produced by the (personal) labour of the workers, and is similar to asking the miller to share the profit generated through milling, that is purely his labour. Moreover, the wages for such hiring of services are unknown or non-existent. All this makes it void. This amounts to strict analogy from the general principle that no compensation for personal labour can be shared, as in begging; there can be no partnership in begging. It also opposes the principle that wages for labour must be known.<sup>122</sup> c) The fruits which are not ripened may also be divided in this system. But according to the Islamic legal principles such kind of settlement is not permissible.<sup>123</sup>

It is pertinent to mention here that Imam Abu Hanifah fails to appreciate the real spirit of those traditions supporting *muzara'a*. He questioned the reliability of these traditions which is incompatible with the actual status of

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116 Ibid, p.280.

117 Ibid.

118 See n.111.

119 Literally, it implies uncertainty, hazard, risk or chance. "*Taghreer*" being the verbal noun of *gharar* is to unknowingly expose oneself or one's property to jeopardy. Jurisprudentially, *gharar* embodies many definitions. It implies that sort of hazard which is likely to lead to a dispute in a contract. It does not imply speculation in goods or currencies or the acquisition of huge profits.

120 See n. 111, pp. 30-31.

121 Ibid, p. 31.

122 See n. 40, p.279.

123 See n.111, p.31.



the *ahadith*. We are also in view that his negation of resemblance of *muzara'a* with *mudaraba* or partnership is also erroneous. The treaty of the Prophet (PBUH) with the people of *Khayber* is the glaring example of *muzara'a* treaty which Abu Hanifah denied.

On the other hand, two renowned disciples of Imam Abu Hanifah differed from their teacher regarding the issue of sharecropping. They based their arguments on several grounds. Primarily, they mentioned that the Prophet (PBUH) entered into a contract with the people of the *Khaybar* for half of the produce, and this provides a strong precedent.<sup>124</sup> Secondly, they opine that it resembles a contract of partnership with wealth from one party and labour by the other, which is the same thing as *mudaraba*<sup>125</sup> on the basis of analogy (*qiyas*<sup>126</sup>).<sup>127</sup> Imam Abu Yusuf specifically mentions: “.....In my opinion *muzaria* is permissible because it comprises both, contract and partnership.”<sup>128</sup> He also remarks: “To me *muzaria* is like *mudhariba* (limited partnership conditional with sharing the profit together).”<sup>129</sup> He further opines: “I hold *muzaria* permissible if it is under conditions approved in the traditions.”<sup>130</sup> Thirdly, to them *muzara'a* also finds its validity on practical

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124 See n. 40, p.278.

125 The term *mudaraba* is derived from the root word *darb fi al-ard*, which means journeying through the land seeking the bounty of Allah. See Nyazee p. 243 as he quoted it from al-Kasani, *Badai-al-Sanai*, vol. 8, p. 3588. The word *al-mudaraba* is synonymous with two other Arabic terms which are used to designate this contract: *al-qirad* and *al-muqarada*. These three terms are interchangeable as no significant distinction is absent in their connotation. This type of divergence is basically the contribution of geographical factors. The terms *al-qirad* and *al-muqarada* apparently originated in the Arabian peninsula, especially al Hijaz, while the term *al-mudaraba* was of Iraqi provenance. See n. 38, pp. 86-87. See also n. 40, p. 243. This is an agreement between two parties: one known as *Sahib-al-maal* provides hundred percent of the capital for the project and another party named *Mudarib* invests his entrepreneurial skills, labour and time in managing the venture. Profits arising from the project are shared between them at a pre-agreed ratio and the loss, not arising from the negligence of the *Mudarib* is borne by the *Shahib-al-maal* though he has no control over the management of the venture.

126 *Qiyas*, in literal sense, denotes measuring or ascertaining the length, weight or quality of something. It also implies comparison to suggest equality or similarity between two things. Generally it means analogical deduction. In *usul-al-fqh* this terminology is used to refer the extension of a Sharia ruling from *Asl*, original case to a *Far*, new case, because the new case has the same *Illah*, effective cause as the original case. See n. 13, p. 39. See also n. 10, p.197.

127 See n. 40, p.279.

128 Yusuf, Imam Abu, *Al-Kharaj*, p. 91 as mentioned in n. 50, p. 169.

129 Ibid, p. 175.

130 Ibid.

necessity. It is very usual that the owner of a land may not be in a position to cultivate the same himself, while one who is able to invest his labour may be landless. Necessity, therefore, demands that both of them come to such an arrangement and conclude the contract. They reiterate that this is different from giving animals or birds to another on the basis of *muzara'a*, because the labour of the worker is not effective in generating yield.<sup>131</sup> Fourthly, the practice of the Companions and their followers till this day has set up precedents on which we may rely.<sup>132</sup>

Furthermore, Imam Abu Yusuf said that the opinions of Imam Abu Hanifah are not acceptable as he treated the Jewish cultivators of *Khayber* as slaves which is unjustified. If the Prophet (PBUH) himself prohibited *muzara'a* or treated it as a fraudulent act, Caliphs like Hazrat Abu Bakr (Allah be pleased with him) and Hazrat Umar (Allah be pleased with him) would not maintain this method of cultivation.<sup>133</sup> One eminent Islamic scholar points out that the few forms of *muzara'a* are held valid by Imam Abu Yusuf and Imam Moahammad Shaybani and the same author concludes that the verdict of *Hanafi* School is based on their opinions.<sup>134</sup> One valid form is that the land, seeds and agricultural implements shall be provided by the owner and only labour is of the cultivator. In this case it would be pre-determined that a particular portion of yield is to be given to the cultivator.<sup>135</sup> Other valid form is when both share the land, tools, seeds and labour and mutually decide their ratio in the yield.<sup>136</sup> On the other hand, impermissible form is that when the seeds and implements are of one person and the labour and land of another.<sup>137</sup> If certain quantity of the produce is fixed for one person and the remaining portion for another e.g. 10 quintals reserved for one and whatever remains shall go to the other this is also an illustration of impermissible form of sharecropping.<sup>138</sup>

### 5.5.2 Views of the Maliki School

The valid form of *muzara'a*, according to Maliki School, is that one person shall provide land and the other shall provide seeds, implements and labour

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131 See n.40, p.279.

132 Ibid.

133 See n.111, p.31.

134 See n. 9, p. 81.

135 Ibid, p. 82. See also n. 50, p. 180.

136 Ibid. quoted from *Fatwa-i- Alamgiri*, vol. V, p. 59.

137 Ibid.

138 Ibid.

and the yield shall be divided in accordance with the pre-agreed ratio.<sup>139</sup> The proposed form of *muzara'a*, to them, is to determine the cost of land, labour and agricultural implements in terms of money through measurement or in case of the materials of the trade, to decide the exact amount of the product (except yield).<sup>140</sup> As for instance, the charge for utilizing the land for a particular period is 50 tk. or a certain feet of cloth. And the utilization charge of the implements of cultivation would be a certain sum of money. If a party, afterwards, provides something it has to be determined as regards that thing that he is going to be a partner in this partnership with such amount of capital. But both parties must provide seeds in an equal ratio. The profits shall be divided in accordance with the ratio of the capital of the parties.<sup>141</sup>

Ibn Rushd delineates that the Maliki opinion permits the renting of land for everything except for food.<sup>142</sup> He further points out that Imam Malik basically relied upon the same tradition of *mukhabarah* that is relied upon by Imam Abu Hanifah. The tradition prohibits the renting of land with its yield.<sup>143</sup> The Maliki jurists made recourse to go into the details different types of *kira*<sup>144</sup> of land.<sup>145</sup> Most of these are in the nature of partnerships in tools, agricultural implements and land. However, the *muzara'a* proper that is permitted by the Hanafi School is not allowed by the Malikis.<sup>146</sup>

### 5.5.3 Views of the Shafi'i School

The Shafii jurists held all forms of *muzara'a* invalid<sup>147</sup> even though the seeds and land are provided by the owner.<sup>148</sup> To them, the cultivators invest their labour without knowing how much yield would go to them.<sup>149</sup> For this,

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139 Ibid, p.83.

140 Ibid.

141 Ibid.

142 Ibn Rushd, Abu al-Walid Muhammad ibn Ahmad ibn Muhammad (al-Hafid) *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, Cairo, undated, vol. 2, p. 221; mentioned in n. 40, p. 281.

143 Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2, p.222. See n. 40, p. 281.

144 The very term *kira* is used to denote rent for land. This is permitted by Imam Malik.

145 Al-Dasuqi, Muhammad ibn Ahmad ibn 'Arafah, *Hashiyah 'ala Mukhtasar al-Khalil*, Isa al-Babi al-Halabi wa Shurakah, Cairo, 1931-34, vol. 3, p. 372; Sahnun, 'Abd al-Salam ibn sa'id ibn Habib al-Tanukhi, *al-Mudawwanah al-kubra*, Matba'at al-Sa'adah, Cairo, 1905, vol. 5, p.52; see n.40, p. 281.

146 Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2, p.222. See n. 40, p. 281.

147 See n. 9, p. 84. See also n. 108, p. 210, and n.111, p. 32.

148 See n. 9, p. 84.

149 Ibid.

it is a trade of deception.<sup>150</sup> The Shafii's maintain that *mukhabarah* is not permitted as it is a contract in which the seed is provided by the worker and all the four schools consider it void.<sup>151</sup> They further opine that in such kind of arrangement the landowner only invests land which is not a basis for entitlement to revenue or profit.<sup>152</sup> To this school, there are certain proper forms of sharecropping namely, the land owner shall purchase the labour of the cultivator at a certain price and the yield shall go to him<sup>153</sup>; or the cultivator shall hire the land from the owner at a certain price and the yield shall go to him.<sup>154</sup> One reputed author describes that the Shafiis permit *muzara'a* only when it is subservient to *musaqah*. In this case, there must be some fruit bearing trees on the land or land should be between two groves that are part of the contract of *musaqah*.<sup>155</sup> The agreement with the people of the *Khayber* is presented in support of their justification.

#### 5.5.4 Views of the Hanbali School

The views of Hanbali School are similar to those of Imam Abu Yusuf and Imam Muhammad.<sup>156</sup> To one author, they provide identical arguments.<sup>157</sup> The only distinction is that Hanbali School made it compulsory or obligatory for the land owner to provide seeds.<sup>158</sup> However, it seems to Maududi that the Hanbali jurists probably changed this stipulation to a certain extent afterwards.<sup>159</sup> In order to reaffirm his statement he quoted the following lines from a renowned book entitled '*Al Fiqhu Majahibil Arba'a*':

It is correct not to provide seeds by the land owner. In fact, the real stipulation is that both the parties must provide some basic materials. One person shall provide only land and other shall provide seeds, labour and implements- this method is also valid. And it is also valid that seeds or implements or both shall

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<sup>150</sup> Ibid.

<sup>151</sup> Al-Ramli, Shams al-Din Muhammad ibn Abu al-Abbas Shihab al-Din Ahmad ibn Ahmad ibn Hamzah, *Nihayat-al-Muhtaj li Sharh al-Minhaj*, Cairo, 1967, vol. 5, pp. 245-46; See n. 40, p. 281.

<sup>152</sup> See n. 40, p. 281.

<sup>153</sup> See n. 9, p.84.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> See n. 40, p. 282, n. 9, p. 83.

<sup>157</sup> Ibn Qudamah, *al-Mughni*, vol. 5, 418, 421 as mentioned in n. 40, p. 282.

<sup>158</sup> See n. 9, p. 83.

<sup>159</sup> Ibid.

be provided by the landowner and in this case it is the duty of the other person to provide labour and seeds or labour and implements.<sup>160</sup>

On the other hand, another eminent author feels doubt as regards what principles are being invoked by the Hanbali jurists.<sup>161</sup> Rather he points out that their reliance on necessity creates a methodological problem. Because, he continues, the Hanafi jurists could invoke *darurah* on the basis of the principle of *istihsan*<sup>162</sup> but the Hanbali jurists do not believe in this principle. Therefore, Nyazee, the prominent scholar poses the question how then are they invoking necessity and *darurah*?<sup>163</sup>

### 5.5.5 Views of other Classical and Modern Scholars

Ibn Hazm, the great scholar of Zahiri School points out that the Prophet (PBUH) had prohibited all forms of customary *raiyati* and *muzara'a* prevalent at that time.<sup>164</sup> In a subsequent stage, he entered into an agreement with the cultivators of *Khayber* in exchange of labour.<sup>165</sup> To him, the agreement of *Khayber*, in the eyes of law, is an exceptional illustration.<sup>166</sup> The cultivation of land in exchange of money should not be supported for the very reason that in this form the cultivator has to suffer a lot; if no yield grows in any season and the tiller has to pay money to the landowner it would affect the farmer.<sup>167</sup> Such kind of harm is not permissible and should not be supported. But if the land is cultivated in exchange of yield neither the landowner nor the cultivator would suffer any harm. Rather the interest of both the parties is protected here. To Ibn Hazm, cultivation of land in exchange of rent is prohibited; but cultivation for yield is permissible. The practices of the Prophet (PBUH) and the first Caliph Abu Bakr in *Khayber*

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<sup>160</sup> Ibid.

<sup>161</sup> See n. 40, p. 282.

<sup>162</sup> In literal sense, *istihsan* means to deem something preferable. The very word *istihsan* is derived from *hasuna*, which means being good or beautiful. In its juristic sense, *istihsan* is a method of exercising *ra'y*, personal opinion, in order to avoid any rigidity and unfairness that might ensue from strict or literal application of the law. *Istihsan* as a concept is close to equity in western law though there exist an obvious distinction between them i.e. *istihsan* is essentially based on divine law whereas equity is based on natural law. See n. 13, p. 47. See also n. 10, p.246.

<sup>163</sup> See n. 40, p.282.

<sup>164</sup> See n. 111, p. 32.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

reveal so. Umar, the second Caliph practised this for a certain period.<sup>168</sup> He summarized the issue in the following words:

When the Prophet (peace be on him) arrived (in Madinah), the people used to lease their farms, as is reported by Raf'i and others. This practice had undoubtedly been common among them before the time of the Prophet (peace be on him), and it continued after he became the Messenger; it is not permissible for any sane person to doubt this fact. Then, as is authentically transmitted by Jabir, Abu Hurairah, Abu Sa'id, Zahir al-Badri, and Ibn 'Umar, the Prophet (peace be on him) totally prohibited the leasing of land, thus nullifying this practice; this is certainly correct and there is no doubt concerning the matter. He who asserts that what was nullified (i.e., the leasing of land) has been restored and that the certainty of nullification is not established is a liar and denies the veracity of others saying what he does not know. According to the Qur'an, making such an assertion is *haram* unless one brings proof for it. And he can never find a proof for it except in the instance in which the land is let for a given proportion (such as one third or one-fourth) of the total yield, as it is authentically reported that the Prophet (peace be on him) did this with the people of Khayber after prohibiting it for several years, and he continued to give them land on a share-cropping basis until his death.<sup>169</sup>

Another noted author has splendidly interpreted the philosophy of the stance of the jurists like Ibn Hazm in the following words:

Their contention is that although initially the Prophet, may the peace and blessings of God be on him, discouraged both sharecropping both sharecropping and fixed-rent tenancy, he later on allowed share-cropping, and this became a widespread practice among the Prophet's companions and their successors.<sup>170</sup>

Ibn Taymiyyah, one of the greatest scholars of Islam also supports sharecropping. In his renowned treatise *Al-hasbah fi al-Islam*, he appositely remarked:

Share-cropping is preferable to renting and closer to justice and to the principles of the *Shari'ah*, since in this case both parties share in the profit or loss, in contrast to leasing for rent, under which the land owner takes his rent, while the lessee may or may not receive the harvest.<sup>171</sup>

Another eminent scholar, Ibn al-Qayyim, also speaks in support of the equitable form of sharecropping. He says:

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<sup>168</sup> Ibid.

<sup>169</sup> Hazm, Ibn, *Al- Muhallah*, vol. 8, p.224, mentioned in n. 30.

<sup>170</sup> See n. 3, '*Islam and Economic Challenge*' p.266, and '*Islam and Economic Development*', p.101.

<sup>171</sup> Taymiyyah, Ibn, *Al-hasbah fi al-islam*, p.21 mentioned in n. 30

...The equitable form of share-cropping is that in which both the landowner and the cultivator are on equal footing, neither of them enjoying any of those privileges for which Allah has sent down no authority. These customs which they (the soldiers and rulers) have introduced are ruining the country, corrupting the people, and have kept away Allah's help and blessings. Many of the rulers and soldiers are consuming what is *haram*, and if the body is nourished by what is *haram*, the Fire is its fitting abode. Such equitable share-cropping was the practice of the Muslims during the time of the Prophet (peace be on him) and during the time of the rightly-guided Caliphs. Such was the practice of the families and descendants of Abu Bakr, 'Umar, 'Uthman, 'Ali and of the families of other emigrants (*muhajireen*). Great Companions of the Prophet (peace be on him) such as Ibn Mas'ood, Ubay bin K'ab, Zaid bin Thabit, and others expressed their opinions favorably concerning it, and this was also the opinion of the jurists who rely on the *hadith*, such as Ahmad bin Hanbal, Ishaq bin Rahawait, Muhammad ibn Isma'il al-Bukhari, Daoud bin 'Ali, Muhammad bin Ishaq bin Khazimah, and Abu Bakr bin Nasr al-Maruzi. Other great Muslim scholars, such as al-Laith bin Sa'd, Ibn Abu Laila, Abu Yusuf, Muhammad bin al-Hasan and others, have all expressed the same opinion.<sup>172</sup>

Shah Wali-Allah, a leading Islamic Scholar in his well-known treatise *Al-Budur-al-Bazigha*, observed that the nature, physical features, mental faculties and qualities of human beings are different and distinct from each other and thus inter-dependent which requires mutual help, co-operation and sympathy. He then focused on the justification of sharecropping and partnership in other movable and immovable property. He says:

...one person possesses cultivate land, but is short of agricultural accessories, or even if he has the implements he lacks in energy and courage to carry on cultivation himself. The same is the case with all movable properties. One has the capital but has neither time nor courage to take up a trade, or he is engaged in some more important work so he requires a partner to invest his capital on partnership basis.<sup>173</sup>

In his book *Musaffa, Sharh Muatta*, his verdict about *muzara'a* is:

Whereas, the written information (about *muzaria* is working on land on the condition that a portion of the land yield will be for landowner, while seeds and labour for others. When asked for his formal opinion whether *muzaria* (tilling a land on share-cropping contract) on condition of supplying the seeds by the owner and labour by the cultivator, is permissible under law or not? He replied: "In this matter, I tend to the school of thought of Imam Ahmad i.e. permissibility of both."<sup>174</sup>

172 Qayyim, Ibn, *Al-turuq al-hikmiyyah fil- Islam*, pp.248-250, quoted in n. 30.

173 *Al-Budur-al-Bazigha*, p. 70 as mentioned in n. 50, p. 177.

174 *Musaffa, Sharh Muatta*, mentioned in n. 50, p. 177.

Maududi, an eminent Islamic scholar points out that the renowned scholars of the whole *ummah* except Zahiri School opine that it is not mandatory to keep the ownership of agrarian property only within self cultivation.<sup>175</sup> He also asserts that man can give his uncultivated land to his (Muslim) brother gratis or otherwise keep it uncultivated and the Sharia does not support any other method of cultivation.<sup>176</sup> He reasserts that though different schools of jurisprudence differ as regards the mode of sharecropping each school, at least in its *fiqhi* domain has supported it in any form.<sup>177</sup> Moreover, he emphasized on the point of ensuring justice in order that the interest of the cultivator would not be infringed.<sup>178</sup> For determination of the proportion of crop prime stress, according to him, would be on justice not on existing prevailing custom of the society.<sup>179</sup> He also opined that the supervisory authority of the landlord should not be used in such a manner which in its ultimate sense would lower the status of the cultivator to a mere employee or labourer as the latter is not so rather the partner of the former in cultivation.<sup>180</sup>

While speaking on the land reforms Dr. Umer Chapra devoted few words on terms of tenancy specially sharecropping and fixed-rent tenancy.<sup>181</sup> He mentioned that a small minority of jurists permit neither sharecropping nor fixed rent tenancy while others (a great minority) allow sharecropping only. Apart from that a predominant majority of jurists, however, allow both sharecropping and fixed-rent tenancy.<sup>182</sup> Then he explicitly opined that:

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175 See n. 9, p.84.

176 Ibid, pp. 84-85.

177 Ibid, p. 85.

178 Maududi, Sayyid Abul A'la, *Islami Orthoniti (Islamic Economics)*, compiled by Ahmad, Prof. Dr. Khurshid. Translated into Bengali by Khan, Abbas Ali, Naseem, Abdus Shaheed and Talib, Abdul Mannan, Shotabdi Prokashoni, Dhaka, 1<sup>st</sup> edition Oct, 1994, 3rd print May, 2002, p.171.

179 Ibid.

180 Ibid.

181 See n. 3, '*Islam and the Economic Challenge*' pp.266-8, and '*Islam and the Economic Development*' pp.101-3.

182 See n. 3, '*Islam and the Economic Challenge*' p.266 and '*Islam and Economic Development*', pp.101-2. The last group based their argument on the permissibility of both *mudarabah* and leasing in the *Shariah*. M. Umer Chapra has summarized their philosophy in the following manner: "their rationale is that poverty of most Muslims in the early Madinan period had led the Prophet, may the peace and blessings of God on him, to be more-demanding on the rich. He hence discouraged both sharecropping and fixed-rent tenancy, and encouraged landlords to allow the peasants to cultivate, without paying any compensation, whatever lands the landlords could not cultivate themselves.



Since tenants and landless farmers are weak and powerless are likely to remain so for some time, in spite of the enforcement of a higher limit on the size of landholdings, fixed-rent leasing of land may continue to be a source of injustice and poverty when rents are high and output continues to be uncertain. It would hence be desirable for Muslim governments to make share-cropping the general basis of land lease and to strive for a just sharing of the output between the landlord and the tenant. This should continue at least until the power base in rural areas has become sufficiently broadened and the exploitative edge of land-holding families has been effectively blunted. The radical practice instituted by the Prophet, peace and blessings of God be on him, in the early Madinan period indicates that the Islamic state has the authority to undertake all measures considered necessary for improving the well-being of the peasants and landless farmers and for reducing concentration of wealth in Muslim societies.<sup>183</sup>

Justice Taqi Usmani opined that the root cause of injustice upon the cultivators by the landlord does not lie on the very fact of the validity of sharecropping rather those illegal stipulations which are imposed by the latter group on the former group through written or oral agreement especially by taking the chance of helplessness of landless cultivators.<sup>184</sup> To him, these imposed conditions are completely unlawful for being contrary to Islam.<sup>185</sup> He is in the line of introducing such method of sharecropping which has the end of upsetting the gradual accumulation of wealth and alleviating the distribution system of same.<sup>186</sup> He opines that imposition of unlawful stipulation on sharecropping must be declared punishable offence and uplift the status of cultivators so that they can get the equal status as a party to the agreement of sharecropping.<sup>187</sup> Apart from these measures, he vehemently asserts that Islamic state preserves the right to fix the minimum amount of yield produced by the cultivators under a *muzara'a* contract so that they can get the appropriate price of their sweat and would be sufficient for their livelihood.<sup>188</sup> In order to accomplish this objective he suggests forming a board consisting of cultivator, landlord and the representatives of

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However, later on when the economic condition of Muslims improved, he allowed both and not just sharecropping.”

183 See n. 3, ‘Islam and the Economic Challenge’ p. 267, and ‘Islam and Economic Development’, pp.102-3.

184 Usmani. Allama Mufti Muhammad Taqi, *Economic Philosophy of Islam* (Islamier Arthanaithik Darsan in Bangla or Hamara Ma’ashi Nizam in Urdu) translated into Bangla by Alam, Maulana Shamsul, Madina Publications, Dhaka, 1<sup>st</sup> edition December 2007, p. 29.

185 Ibid.

186 Ibid, p.123.

187 Ibid.

188 Ibid, pp.28-29.

the government. Even he also goes on to say that Islamic state has the authority to take any temporary alternative lawful measures (e.g. employment of cultivator under the landlord as labourer for a fixed wage prescribed by the government) instead of sharecropping with a view to uproot the oppressive conditions imposed on the cultivators.<sup>189</sup>

### **6. Illegal (*haram*) Forms of Sharecropping**

The aforesaid discussion offers a very significant notion that all types of sharecropping are not valid. The picture which is depicted in the *ahadith* of the Prophet (PBUH) sheds light on the prohibited form of sharecropping which was in vogue during His lifetime. The common form was that the landowner would give out his land on the condition of getting the yield of one part of it and the cultivator the produce of the remaining part. It also assumed the form that the landlord would get a specified weight or measure of the crop produced and the cultivator the rest. Occasionally due to inclement weather, ravages of nature, irregularity of plantation, under-cultivation it happened that yield was produced in one part while the other part bore the pain of tolerating the absence of the smile of produce. Consequently, one of the two would receive everything, while the other took nothing or very meager. In the same vein, if the total produce did not exceed the specified weight or measure, the owner would get everything while the cultivator would receive nothing. Undoubtedly, this transaction incorporates the element of *gharar* which goes against the spirit of *adl* in Islam. After noticing this type of flagrant injustice in the society He vehemently observed and declared that justice demands that both should share of the total produce according to the agreed-upon ratio. Proportion of the total yield must be specified so that if the crop is bountiful, it is bountiful for both; if it is meager it is meager for both, and if nothing is produced, neither of them receives anything. This ensures the proper distribution for both parties. Thus, it is fixed sharecropping which is repugnant with the spirit of the *Sharia* and thus null and void. On the other hand, variable sharecropping is valid.

The above fact of prohibition on fixed sharecropping becomes obvious from the *hadith* narrated by Rafi' bin Khadij. He narrated that they worked on farms more than anybody else in Medina. They used to rent the land at the yield of specific delimited portion of it to be given to the landlord.

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<sup>189</sup> Ibid, p.29.

Sometimes the vegetation of that portion was affected by blights etc., while the rest remained safe and vice versa, so the Prophet forbade this practice.<sup>190</sup>

In another tradition, Hanzala b. Qais al-Ansri reported that he asked Rafi' b. Khadij about the renting of land for gold and silver, whereupon he said: There is no harm in it for the people to let out land situated near canals and at the ends of the streamlets or portion of fields. (But it so happened) that at times this was destroyed and that was saved whereas (on other occasions) this portion was saved and the other was destroyed and thus no rent was payable to the people (who let out lands) but for this one (which was saved). It was due to this that he (the Holy Prophet) prohibited it.<sup>191</sup>

To clarify which type of sharecropping is allowed under the Land Law of Islam Hanzala reported that he heard Rafi' b. Khadij (Allah be pleased with him) say: We were the major agriculturists of the Ansar and so we let out land (saying): The produce of this (part of land) would be ours and (the produce) of that would be theirs. But it so happened that at times this (land) gave harvest, but the other one produced nothing. So he (the Holy Prophet) forbade this. But so far as the payment in silver (dirham, a coin) is concerned, he did not forbid.<sup>192</sup>

Even from a tradition reported by Rafi bin Khadij the ruling regarding the prohibition of sharecropping specifically about which type of sharecropping would fall within the circle of prohibition and why this kind of sharecropping is disallowed under *Sharia* becomes very clear. Rafi bin Khadij reported that his uncle Zuhair said that Allah's Apostle forbade them to do a thing which was a source of help to them. He [Rafi] said that Whatever Allah's Apostle said was right. He said that Allah's Apostle sent for him and asked, 'What is he doing with his farms?' He replied that they give their farms on rent on the basis that they get the yield produced at the banks of the water streams (rivers) for the rent, or rent it for some Wasqs of barley and dates.' Allah's Apostle said, 'Do not do so'.<sup>193</sup>

Yusuf al Qaradawi stated that what is meant here is that the land owner would take this fixed quantity as "overhead" and would also share in some proportion of the remainder, for example, the entire produce of the specified

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190 *Sahih Bukhari*, Vol. 3 Book 39: Agriculture, Hadith no. 520.

191 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 19 Renting of Land by Gold and Silver, Hadith no. 3748.

192 *Sahih Muslim*, vol. 3, Book: 10 The Book of Transactions (Kitab Al- Buyu) , Chapter 19 Renting of Land by Gold and Silver, Hadith no. 3749. See also Hadith no. 3750.

193 *Sahih Bukhari*, Vol. 3 Book 39: Agriculture, Hadith no. 532.

one-fourth of the area, plus one-half of the produce of the remaining three-fourths of the area.<sup>194</sup>

He aptly observed that the Prophet (peace be on him) was eager to establish perfect justice in his society and to remove every source of conflict and discord from the community of Believers.<sup>195</sup>

However, in another *hadith*, Zayd ibn Thabit emphatically pointed out the misconceived idea which Rafi bin Khadij had and which fact really misled him. Zayd ibn Thabit said: May Allah forgive Rafi' ibn Khadij. I swear by Allah, I have more knowledge of Hadith than him. Two persons of the Ansar (according to the version of Musaddad) came to him who were disputing with each other. The Apostle of Allah (peace be upon him) said: If this is your position, then do not lease the agricultural land. The version of Musaddad has: So he (Rafi' ibn Khadij) heard his statement: Do not lease agricultural lands.<sup>196</sup>

For this Qaradawi stated that the landowner and the cultivator must therefore be generous to one another; the landowner should not demand too high a share of the yield and the worker should take proper care of the land.<sup>197</sup> He quoted a *hadith* in which Ibn 'Abbas said that the Prophet (peace be on him) did not prohibit share-cropping but advised the owner and the cultivator to be considerate of each other.<sup>198</sup> Another *hadith* really depicted the true picture relating to the sharecropping. 'Amr narrated: I said to Tawus, "I wish you would give up Mukhabara (Share-cropping), for the people say that the Prophet forbade it." On that Tawus replied, "O 'Amr! I give the land to share-croppers and help them. No doubt; the most learned man, namely Ibn 'Abbas told me that the Prophet had not forbidden it but said, 'It is more beneficial for one to give his land free to one's brother than to charge him a fixed rental."<sup>199</sup>

Qaradawi tartly remarked that his concern was not simply that he should earn something from his land regardless of whether those who were employed on it got something or suffered hunger; rather, he helped them and

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194 See n. 30.

195 Ibid.

196 *Sunan Abu Dawud*, Vol.3, Book: 22 Commercial Transactions (Kitab Al-Buyu), Hadith no. 3384.

197 See n. 30.

198 Reported by Tirmidhi, who calls it sound.

199 *Sahih Bukhari*, Vol. 3, Book 39: Agriculture, Hadith no. 523. Qaradawi gives the reference of *Ibn Majah*.

took care of them. That was the true Muslim society.<sup>200</sup> Qaradawi makes an attempt to consider another case where there may be a landowner who prefers to keep his land idle, not planting any crops or fruit trees on it, rather than renting it to a farmer for a small proportion of the yield, since he may consider the return too little. For resolving this problem he mentioned an example from the glorious regime of the Caliph 'Umar bin 'Abdul-Aziz who issued a decree to all concerned saying, "Let out your land for one-third, one-fourth, one-fifth and up to one-tenth of the yield, but do not leave the land uncultivated."<sup>201</sup>

## 7. Conclusion

Islam does not distinguish between the ownership of land and the ownership of other things. Islamic Sharia does not prescribe any particular ruling as regards the ownership of land for which it would become, in real sense, meaningless. No limitation as regards the size of holding should be imposed as a permanent rule though it is within the capacity of the ruler of the state to impose any reasonable restriction on land or other things in a given circumstance after taking into consideration public interest or welfare or *muslahah*<sup>202</sup>. The above-mentioned discussion also clarified that Islamic Sharia permits a person to cultivate the land himself, lend the land to others for cultivation, take a proportion of the crop and rent the land for gold or silver. Concerning sharecropping it is also clear that only variable sharecropping i.e. sharecropping on the basis of prefixed percentage share of the total produce is valid and treated as an approved mode of cultivation of land. The rationale is centered on the focal point that *muzara'a* is valid regarding land as because *mudaraba* and *musharaka* are extensively used in case of trade and business as lawful mechanism of investment. But the terms and conditions of the agreement of *muzara'a* must be based on the spirit of justice and mutual co-operation. It is needless to say that both parties must stand on an equal footing. The state also reserves the authority to put any reasonable restriction on the sharecropping to bring an end to the blatant injustice and oppression on the cultivators, if any. Apart from that, the state can, within the purview of its *Siyasa al Sharia*, legislate to declare any imposition of unlawful stipulation on sharecropping as punishable offence

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200 See n. 30.

201 Ibid.

202 In literal sense, *maslahah* implies 'benefit' or 'interest'. To Imam Ghazali, *maslahah* consists of considerations which secure benefit or prevent a harm but which are, simultaneously, harmonious with the ultimate objectives (*maqasid*) of the *Shariah*. It is synonymous with *istislah*. Generally, it is of three types, namely, the 'essentials' (*daruriyyat*), the 'complimentary' (*hajiyyat*), and the 'embellishments' (*tahsiniyyat*).

and to boost up the standard of their lifestyle so that they can get the equal status as a party to the agreement of sharecropping. Apart from these measures, an Islamic state preserves the right to fix the minimum amount of yield produced by the cultivators under a *muzara'a* contract so that they can get the appropriate price of their sweat and which would also be sufficient for their livelihood.

The *ahadith* of the Prophet (PBUH), juristic writings of the many reputed scholars spoke in the same tone though few jurists erred in their *ijtihad* regarding sharecropping. This discussion also focuses on the different types of permissible and impermissible forms of *muzara'a*. Keeping in view this matter, we can infer that Islamic Land Law is so practical in its attitude and spirit that it permits few forms of sharecropping but not all. But in all cases, justice must be ensured between the landowner and the cultivator.