

Diminishing Musharaka may be based on the unit by unit purchases by the farmers whereas the benefits as land owner shall be shared between the government and themselves in the respective proportion of ownership of land. Such benefits may be termed in form of fixed rent for land (as allowed by a number of jurist) or on a Muzara'a basis. After unit by unit purchases, such land will eventually be transferred to the farmers.

عرف

’عرف‘ سے مراد وہ چیز ہے جس کے لوگ عادی ہو جائیں اور اس کو اختیار کر لیں، چاہے وہ کوئی قول ہو، یا کسی چیز کا ترک کرنا ہو۔ شرعاً وہ کبھی معتبر ہوتا ہے اور کبھی معتبر نہیں ہوتا۔

..... ’عرف‘ اگر کسی علاقے کے ساتھ مخصوص ہو تو وہ صرف اسی علاقے کے لوگوں کے لیے معتبر ہوگا اور اگر وہ عام ہو تو سب کے حق میں معتبر ہوگا۔

شرعاً وہ ’عرف‘ معتبر ہے جس میں مندرجہ ذیل شرائط پائی جائیں:

(الف) وہ شریعت کے خلاف نہ ہو، لہذا اگر کوئی ’عرف‘ کسی

نص شرعی یا قواعد شرعیہ میں سے کسی قاعدے کے خلاف ہوگا، تو وہ ’عرف‘ فاسد ہے

(ب) وہ ’عرف‘ مسلسل یا غالب اوقات میں رہا ہو۔

(ج) تصرف کے وقت وہ عرف برقرار ہو۔

(د) دونوں معاملہ کرنے والوں نے اس کے خلاف کی صراحت نہ

کی ہو، اگر انھوں نے خلاف کی صراحت کی ہو تو اس عرف کا اعتبار نہ ہوگا۔

..... کسی فقیہ کے لیے — چاہے وہ مفتی ہو یا قاضی — مناسب نہیں کہ وہ

صرف فقہاء کی کتابوں میں منقول مسائل پر جمار ہے اور تبدیلی عرف کی

رعایت نہ کرے۔

تفصیلات کے لئے ملاحظہ فرمائیں: جدید فقہی مسائل اور ان کا مجوزہ حل

ناشر اسلامک فقہ اکیڈمی پوسٹ بکس نمبر 17777 گلشن اقبال کراچی

plantation. This mode of agricultural financing is not yet practically by Banks in both conventional and Islamic facilitated financial sector neither this is in application in Pakistan in any practical manner.

Normal Modes of Islamic Financing Applicable to Agriculture Sector

In addition to the above, the following modes of Islamic finance may also be used to finance certain financing needs of the agricultural industry:

1. Murabaha;
2. Ijara and Ijara Muntahia Bittamleek; and
3. Diminishing Musharaka.

Murabaha may be used by the self-employed farmers, landowners and farmers working on Muzara'a basic, for financing of their supplies, including seeds, pesticides, fertilizers, machinery and livestock, wherever required. Such facility may be obtained from the source suppliers, as well as from any Islamic financial institution or any other party willing to provide such arrangement.

Ijara may be used, and is practically used, to arrange for the requirement of heavy machinery for the purpose, particularly including the tractors, bulldozers, and threshers etc.. Generally these equipments are and may be provided by their respective owners to the farmers and landowners in their neighborhood on hourly or daily charge out rates. Similarly, Ijara Muntahia Bittamleek may be used by the Islamic financial institutions to finance the agriculturists for machinery if they are not in a position to make lump sum payments for purchase of the same.

Diminishing Musharaka may be used in financing of major projects, including but not limited to the purchase of land and machinery. It may also be used by the government to provide land to small farmers in a manner similar to the house building loans. Such

plants should be such as have gone into the ground as a fixed part of it and are capable of staying in the ground for more than one year.

Do's and Don'ts for Musaq'a

Following are the basic Do's and Don'ts in case of Musaq'a transactions and arrangements:

- ★ The period of the agreement for irrigation shall be known. The period is generally fixed in such a manner as to result in the yield of the trees;
- ★ Specifications, boundaries, type and number of trees that are subject of Musaq'a shall be specified;
- ★ The framework of duties and the commitments of each of the parties, ratio of separate share of the yield, mode of procurement and other necessary factors for the performance of the subject shall be known and specified; and
- ★ In a Musaq'a arrangement, the farmer is a trustee for the purpose of a Musaq'a agreement, duly entrusted with the trees and the land on which these are cultivated and is accordingly, is not allowed to use such land or trees for any purpose whatsoever, other than the purpose for which he has been entrusted with the same or to transfer the transaction to a third party or take another partner, without prior consent of the landowner. In this regard it is also worth noting that he cannot take any part of yield for his personal use save with prior approval of the owner, with eventual adjustment with his share in yield.

Mugharasa

Mugharasa is a transaction or agreement between the owner of the land and those, in respect of agriculture, who assume the agricultural or horticultural against a clear cut share in the land and the

The preferred proportion of distribution of produce is 50:50 in case whereby only land is provided by the landowner and all the other responsibilities rest with the farmer. In this respect, most known and quoted example is that of the arrangement between the Holy Prophet (SAWS) and the Jews of Khyber. However, if the seed and other supplies are provided by the landowner, this proportion may be altered in favour of the landowner, subject to the basic condition that any such proposition should not be against the principles of social justice of Islam. Some jurists have the opinion that such proportion should not be less than 1/3rd of the produce even if all the supplies are provided by the Landowner. However, it is a matter within the jurisdiction of the government to set norms in this respect in order to ensure compliance of Shariah rulings as well as the principles of social justice.

Musaq'a

It is a transaction or agreement between the owner of a tree or a cluster of trees and an agent (hereinafter referred to as the farmer for ease of reference), against an agreed share from the yield of such trees including fruits, flowers, leaves and other produce e.g. chemicals, rubber, gum etc. as agreed. Nevertheless, non-yielding trees shall not be the subject of Musaq'a agreement and in such case the alternate arrangement may be a service contract or employment.

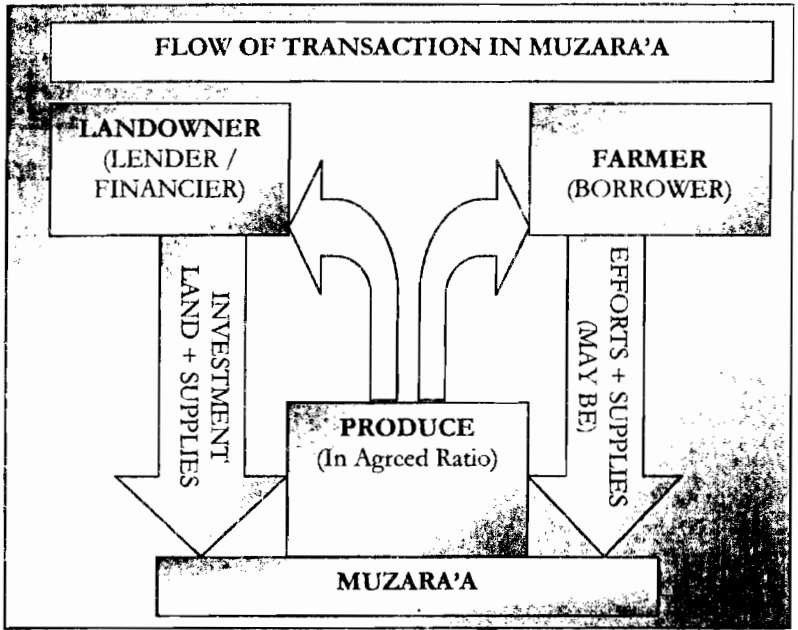
Difference between Muzara'a and Musaq'a

The basic difference between the Muzara'a and Musaq'a is that in the former one is applicable on plants having smaller life cycle, generally only one season, whereas in the latter one the trees and

- ★ The crop to be cultivated must be specified and in this respect the kind of seeds to be sown should also be specified. The seeds may be provided by the owner or brought by the farmer according to the prevailing norms;
- ★ The farmer may hire someone and / or take a partner for farming the land, but he is not permitted to transfer the land to a third party without obtaining the permission of the owner of the land;
- ★ Muzara'a contract is an obligatory contract, and is therefore, binding on both the parties. It cannot be annulled by one of the parties abrogating it unilaterally. Moreover, the death of one or both parties to a Muzara'a contract does not nullify the agreement and their respective successors should honor the contract;
- ★ It is a judicial ruling that if the Muzara'a is cancelled, for any reason whatsoever, the entire yield, if any, shall belong to the supplier of the seed, and the other party, who may be the owner of the land, water and / or work, will deserve equivalent wages proportionate with what he has owned;
- ★ It is possible that a number of persons may enter into one Muzara'a agreement in which one may be responsible for land, another one for tilling, another one for seed, and another one for other jobs or supplies;
- ★ The manner of sharing the yield or produce should be determined separately for each party, taking into consideration the factors supplied by each one of the parties. The produce, irrespective of quantity thereof, is divided according to the ratios as already agreed between the two parties at the time of establishment of the contract. In case of complete destruction of crop, farmer loses his efforts and the landowner loses the utility of the land; and

- ★ In a Muzara'a transaction, it is a basic requirement that the party providing the subject land should have the legal right to enjoy usufruct thereof. Accordingly, he should either own the land or enjoy the benefits thereof and authorized to use and work on it under any other legal right including, but not limited to, lease of land from the government or the principal owner;
- ★ It is better to always document any sort of agreement under the teachings of Islamic Shariah. Nevertheless, the culture we have in vogue in our country do not allow to even consider to fulfill the same basically on account of illiteracy and the behavior of the landowners who always desire to have most of the produce for themselves, and to allow only such a minimal portion of produce to the farmers that is never sufficient to them even to fulfill their basic human needs, in order to retain them slaves for their lives;
- ★ It is a basic requirement of Muzara'a transaction that specifications, boundaries and area of the land should be clearly fixed and known. The framework of duties, responsibilities and obligations of the farmer must also be specified in the Muzara'a agreement. It is also imperative to ensure that the Muzara'a land is capable of cultivation and yield the produce expected;
- ★ The Muzara'a period must be known and sufficient for the cultivation of the land and harvesting the crop;
- ★ The owner must move out of the land subject to Muzara'a transaction, for the period of cultivation in order to make the land available to the farmer;
- ★ The responsibility of the farmer with regard to the Muzara'a property is like that of a trustee. Accordingly, it is his responsibility to use the land only for the agreed purpose, except with prior approval of the landowner;

- becomes the employer of the farmer who works on the land in exchange of a fixed proportion of the produce. This type of Muzara'a is very much similar to an employment contract; and
2. In the second type of Muzara'a, the farmer brings the seeds, fertilizers, pesticides and the required machinery and becomes a tenant in exchange of some of the produce. This type of Muzara'a may also be termed as taking the land on rent.



Do's and Don'ts for Muzara'a

Following are the basic rules that need to be followed for Muzara'a transactions and arrangements:

personalities and also depending on the basic knowledge of Islamic teaching regarding this mode.

By definition, Muzara'a is arrangement between the owner of land and the farmer, according to which the farmer cultivates the land and the produce is divided amongst the parties in a fixed ratio which has been agreed upon by them at the inception of the transaction.

Needless to mention, the overall Islamic financial system, as a part of overall Islamic way of living, is based on the principle of mutual respect and justice. Accordingly, there is a massive misuse of the Muzara'a system in our society which is basically caused by the ignorance of Islamic teachings, basically on the part of the land owners, as well as, lack of monitoring by the respective governments over various dynasties and even in the recent reign of so-called civilized democratic society.

It is worthwhile to be noted that a number of Muslim jurists including most respectable jurists i.e. Imam Abu Hanifa and Imam Malik have raised certain questions on the permissibility of Muzara'a or, more rightly said, have categorically disallowed it. This view is based on certain Ahadith whereby the Holy Prophet SAAWS had prohibited the application of Mukharaba (مخاربه) which was a form of Muzara'a. On the contrary, the majority of jurists have consensus regarding its permissibility under various modes, although they impose a number of restrictions on both the parties, in order to ensure strict compliance of the requirements of Islamic Shariah and to ensure compliance of the basic Islamic principle of social justice.

There are two basic forms of Muzara'a:

1. In the first type of Muzara'a, the landowner provides the land for cultivation, and all the necessary supplies required for cultivation mainly comprising the seeds, water, fertilizers, pesticides and the necessary machinery. In this case, the landowner practically

Over the centuries of illiteracy and lack of knowledge, the original shape of the transaction has been acutely damaged and a number of conditions that are required to be implicit in a Salam sale in order to make it Shariah compliant are not fulfilled in the general Salam transactions (by whatever name called) as being transacted in the country. In addition, such form of sale as being practically applied is also being used as an instrument of exploitation of the needs of poor farmers by applying the exorbitantly high margins by such brokers. Moreover, this form of transaction is mixed up by most of the people with other similar transactions which are very much questionable from Shariah perspective e.g. purchase of whole produce of a garden, even before the fruits are ripen.

The concept of commodity exchange is also being introduced in Pakistan. Although a number of transactions generally executed on a commodity exchange are not in compliance with the Shariah principles, using the commodity exchange for the purpose of providing benefit to the farmer through Salam transactions may not only provide benefits to the needy farmers, but will also result in improvement in the agricultural sector. Now it is a matter requiring attention of the decision makers to devise the options of Salam that may be provided directly to the farmers or through the banks to the farmers, by using the commodity exchange as a tool. Islamic banks may also use the same as an option for financing to the farmers under Salam contracts and selling the produce on the commodity exchanges.

Since, the principles and rules for Salam transaction have already been discussed in detail in the previous chapters; we may proceed further to other forms of agricultural financing options available under Shariah principles.

Muzara'a

Muzara'a (مزارعہ یا مزارعت) is the most common form of agriculture finance in operation all over the Muslim world with slight variations in schemes according to the customs, depending on the

AGRICULTURAL FINANCING

In Pakistan, agriculture is the sector that not only contributes a very significant portion to the GDP but also provides the livelihood to the maximum number of individuals and families either through self employment or through employment in any form. Accordingly, it is not possible for us to ignore such an important area.

The financing to the agriculture sector has much more options as compared to any other industry because of its very nature. Accordingly, in addition to the normal options available to every businessman and every industry, there are a few options specific with agriculture that are available only for agriculture financing.

Following are the basic agricultural based Islamic modes of financing:

1. Salam;
2. Muzara'a;
3. Musaq'a; and
4. Mugharasa.

Salam

Salam is a very common form of financing for agriculture sector. Besides being available as a financing option with the Islamic financial institutions, it is still in practice in various forms in the country. In this case, generally the commodity brokers called "Arhteets" purchase fixed quantities of expected produce in advance from the farmers.