

An Analysis of Contract of Ji'ālah and its status in Sharī'ah: In the Light of Muāqārin's Jurisprudence

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Abstract: Islam is a complete code of life that guides human in all spheres of life and provide the best solution for all human needs , especially in the modern era , where financial sector is on the rise and new forms of commercial contracts and transaction are being emerged.in order to overcome with the financial problems, Islam has declared so many financial transactions permissible such as lease, Murabahah, Musharakah, Mudarabah etc. the contract of Ji'ālah is also one of these Islamic financial contract that is more common and extensive than any other contract ,due to lack of strict conditions for its execution. Although Ji'ālah is an important financial contract but neither has it been discussed in much details in Islamic jurisprudence, especially in Hanafifiqh, nor major efforts have been carried out regarding its practical implementation. Therefore, this study is carried out to understand the Ji'ālah contract from hanafi's perspective along with its contemporary practicality.This research clarifies the real meaning of Ji'ālah contract in Hanafi school, as well as provides practical solution to commercial and financial contracts.

Keywords: Ji'ālah , Islamic law, jurisprudence, Hanafi school of thought.

Introduction:

Prophet Muhammad Sallallahu Alyhi Wasallam initiated the growth and establishment of Islamic law in accordance with Islamic principles and divine writings. A large portion of this's evolutionary process was finished in the first three centuries. In business-related topics, the Prophet Sallallahu Alyhi Wasallam deemed Uqud, business contracts, and annulled them. After purifying them in the mould of rectification, The Sallallahu Alyhi Wasallam also retained some of the 'Uqud and commercial contracts there. The rights listed in the previous sentence are related to 'Aqd e Ji'alah. Where Islamic law was in place, it was kept within the bounds of Sharia to prevent the expansion of prohibited gain, non-Sharia practices, and other non-sharia behavior. Despite being an old idea, Surah Yousuf of the Quran is where it is first referenced.

In addition, the Hadith Ladigh has the Ji'alah idea. As a result, even if the concept and facts of Ji'alah are mentioned in the Quran and Sunnah, highlighting their significance, its value has also grown as a result of people's economic dealings. People maintain contact with one another in order to fulfil their daily requirements, which change on a regular basis. And in order to handle it better, Islam has recognized the validity of several 'Uqud, including 'Aqde Ijarah, 'Aqd eMurabaha, 'Aqd eJi'alah, and 'Aqd eShirkat, among others. 'Aqd eJi'alah is significant since it is the most extensive of the others, for this reason. As a result of which much of the matter can be made under Islamic principles which are impossible with the Uqud such as Ijarah, Shirkat, etc.

Despite being briefly mentioned in ancient law, particularly in Hanfi law, the topic has not received adequate attention. If there is something, it should not be put into practice based on the demands of the moment. It was thought necessary to look for the truth as a result. It must be honestly and clearly stated in order to discover the facts that can help the modern man and match the modern world.

Ji'alah is an Arabic word, which means wages, labor, reward, and commission.

In Alqamos al Waheed:

الجمالة: الجمال: جَعَائِلُ الْجَعْلِ⁽¹⁾

In the meaning of wages, labor, Fee, reward, commission, right ordeal:

Ibn Manzoor did the meaning of Ji'alah in such a way:

Al Je Ala "الجمالة" are basics. Which can be related to **يفعل، فعل** so can be **فتح تفتح**. And Ji'alah is the source. IbnManzoor says that Ji'alah means rewarding someone for his work or effort. ⁽²⁾

Terminological definition:

'Aqd eJi'alah is a 'Aqd in which a person declares that if they do this or that, they will receive this amount of reward. For instance, if he states that the person who discovers his missing son would receive a prize of 10,000 rupees, this award will only be granted to that person. Therefore, he would not be eligible for this award if someone assisted in finding his son but was unsuccessful.

'AllamahhShami has mentioned the definition of 'Aqde Ji'alah as follows:

"هو ما يجعل للانسان في مقابلة شيء يفعله"⁽³⁾

Translation: Ji'alah refers to the predetermined recompense that is given to someone in return for something.

It is defined in Al-Qamoos Al-Fiqhi as follows:

"الجعالة التزام عوض معلوم على عملٍ معين."⁽⁴⁾

Translation: Ji'alah refers to the requirement of a certain recompense for a specific activity.

'Allamah Qurtabi has defined "Ji'alah" in a little more detail. He writes this:

"الجعل فهو أن يجعل الرجل جعلاً على عملٍ يعملُ له إن كان أكمل العمل وإن لم يكمله لم يكن له وذهب عناءه باطلاً."⁽⁵⁾

Translation: When someone announces a reward for another person with the caveat that he will only receive the reward if he completes the task; else, his efforts will be for naught. This is known as Ji'alah.

Jurisprudential Takīf: (Deference between Ji'alah contract and Ijarah)

Some jurists have described Ji'alah as a type of contract. Thus, 'Allamah Ibn Rushd al-Hafid says while defining Ji'alah:

"الجعل هو الاجارة على منفعةٍ مظنون حصولها."⁽⁶⁾

Translation: Ji'alah is the name of Ijarah on such an action, which is expected to be achieved but not certain.

'Allamah Ibn al-Arabi writes about Ji'alah:

"هي نوع من الاجارة."⁽⁷⁾

Translation: Ji'alah is a type of Ijarah.

However, there are some circumstances that make "Ji'alah" differ slightly from a leasing agreement (Ijarah). Ji'alah and Ijara are comparable in four ways, according to 'Allamah Ibn Qudama, who has discussed both of these topics in considerable length.

1. Wages in Ji'alah shall be decided in the same manner as in Ijarah, including the determination of the consideration (wages).
2. What may be exchanged in Ji'alah for Ijarah wages and what cannot be exchanged in Ji'alah for Ijarah wages can both be deemed to be wages in Ijarah.
3. Deeds and actions that are acceptable during the lease agreement (ijarah) are also acceptable and proper during the Ji'alah process, such as permissible (Mubah) acts, and actions that are not acceptable during the lease agreement are also not acceptable during the Ji'alah process, such as prohibited acts.
4. Taking actions that only benefit the spender. It's Ji'alah and Ijarah, such as the mandatory prayers, fasting, and Hajj, are all valid. There are two hadiths according to Hanbilah, some are justified and some are not, because the benefits of acts of worship can be passed on to others, such as post-nafal acts of worship (Nafal).

And Ji'alah differs from the Ijarah contract in three respects:

1. Ji'alah contract is not obligated, but the person who works under it may terminate it without notifying the other party if they become a Jā'il (Ji'alah doer) after a certain amount of time has passed since the contract began. Ijarah contracts are obligated, meaning that neither party may end them without the other's consent.

2. While in the lease Ijarah contract, where the "duration" is known, it is crucial, it is not required to specify the time (in fact, some jurists argue that it is not even permissible).
3. It is required to ascertain what will happen within the Ji'alah contract (rather, it cannot be defined under normal conditions, but the activity will occur within the lease contract). The period need not be known or established.

Ji'alah, in the view of Four Imams:

The Ji'alah is valid, according to Malikiyyah⁸, Shafi'iyah⁹ and Hanbilah¹⁰, whereas Imam Abu Hanifah narrated two sayings. One of which proclaims the contract of Ji'alah to be lawful¹¹, while the other declares it to be void.¹² However, some jurists of Ahnaf do not think this is acceptable and instead think it is only legitimate under specific circumstances.¹³

The Hanaf jurists who have approved of Ji'alah make the following claims:

The first Argument:

The narrative of Hazrat Yusuf (peace be upon him) and his brothers is mentioned in the Holy Qur'an. When Yusuf's brothers returned from Egypt with grain, a herald declared that the king's *Ṣā'*, or vessel, was missing. I am accountable for it, and if someone finds out, he will receive a prize of a camel's worth of grain.

تَفْقَدُ صُوعَ الْمَلِكِ وَلَمَنْ جَاءَ بِهِ جُمْلٌ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ (14)

Translation: We cannot locate the king's measure, and whoever brings it will receive a camel's burden, and I will stand as his surety.

In the case of 'Aqd e Ji'alah, it has been declared that the finder and carrier of the lost vessel shall each receive a camel's worth of grain as payment. Even if this is an instance from the previous Ummah, the contract of Ji'alah might be justified by it because our Sharī'ah does not explicitly forbid it and because it has been replicated without any justification.

After citing the previously mentioned contention, 'Allamah Zakaria Al-Ansari writes:

"وشرع من قبلنا شرع لنا إذا ورد ما يؤيده وهو الخبر الذي رآه الصحابي بالفاتحة على
قطيع من الغنم." (15)

Since it is corroborated by the hadith that a companion of the prophet read a piece of paper in return for a herd of goats, the episode of the former Ummah serves as further evidence for us.

And the laws of the Prophets who came before us are established for us until they are repealed, 'Allamah Abu Bakr al-Jassas writes:

"وشرائع من قبلنا من الانبياء حكمها ثابت عندنا ما لم تنسخ." (16)

The Second Argument:

On the occasion of the Battle of Hunain, Allah's Messenger (peace be Upon Him) said:

"من قتل قتيلاً فسلبه له." (17)

The person who murders someone (a nonbeliever) will receive his military supplies.

According to 'AllamahNawi, this incident also shows the justification of Ji'alah. (18)

The Third Argument:

When several Companions of the Prophet once stopped at a tribe while travelling, the tribesmen refused to give them any food. Then, when the tribe's chief unexpectedly got bitten by a snake, the tribesmen asked them if they knew anyone who could read the Qur'an. They responded by saying, we will recite Ruqyah if you provide a payment for us. The flock was presented by the tribesmen. When the person was healed after one of the companions recited Surah Fatihah for him, they declared that they would inquire of the Prophet of Allah (peace and blessings of Allah be upon him) on this recompense (whether it is permissible to take it or not). Prophet Sallallahu Alyhi Wasallam grinned when it was brought up in front of him. The prophet asked the Sahabi how did you know that Surah Fatiha is a ruqyah? Take this flock and put my share in it as well.

"فلا نفعل أو تجعلوا لنا جعلاً." (19)

Translation: We will not perform Ruqyah until you fix a reward for us.

The prize was to be provided with the condition that as a result of the ruqyah, the patient would be cured as if it were in exchange for a healthy patient. The word Jaal is utilized in it, which is used for Ji'alah. Even though it took a lot of ruqyah or little ruqyah, the reward was fixed. The name for this kind of Ji'alah is Musharatah al Tabīb.

Al Majmū' Sharh alMuhazzab mentions:

"قال الزركشى: ويستتبط منه جواز الجعالة على ما ينتفع به المريض من دواء أو رقية وأن لم يذكره." (20)

The Fourth Argument:

The fourth argument is that although the Prophet knew that the Ji'alah was one of the practices that were common in the Jahiliyyah era, he did not declare it to be unlawful. Your behavior also demonstrates its justification. According to 'Allamah Ibn al-Rushd al-Hafid:

"إن الجعل مما كان موجوداً في معاملات الناس جاهلية وإسلاماً. فأقر النبي ﷺ فعله ولم يتعرض لإبطاله مع علمه بذلك، ولا فرق بين ما يبتدى اجازته شرعاً أو بين ما يقر على اجازته." (21)

Translation: Ji'alah is one of the matters that was prevalent in both the era of Jahiliyyah and the era of Islam. The Messenger of Allah (peace and blessings of Allah be upon him) maintained it and did not invalidate it, although he (peace be upon him) knew about it and (for a contract to be valid) it is equal that Rasoolullah Sallallahu alayhi wasallam initially allowed it or maintained the existing practice.

The Fifth Argument:

The need for this contract (Ji'alah), according to the fifth argument, is great in society, and as a result, it ought to be legal. By 'Allamah Ibn Qudama

"إن الحاجة تدعو إلى ذلك، فإن العمل قد يكون مجهولاً كردد الأبق والضالة ونحو ذلك ولا تتعد الإجارة والحاجة داعية إلى ردهما وقد لا يجد من يتبرع به، فدعت الحاجة إلى إباحتها بذل الجعل فيه." (22)

Translation: There is also a need to perform Ji'alah because sometimes the act is unknown. Such as runaway or lost animals, return of slaves, etc. and this process cannot be monopolized, (because the process is unknown) when these things need to be returned and sometimes there

is no person available who can do this work without compensation. Therefore, there is a need to declare the marriage with Ji'alah legitimate.

According to 'Allamah Ibn Rushd, the Islamic Shari'ah has approved the contract of Ji'alah because it meets the needs of the populace, despite the fact that it obviously bears the fault of deception because the method and duration are unknown in it. He then says:

"وهو في القياس غرر إلا أن الشرع قد جوزوه" (23)

From the point of view of speculation, there is gharr in it, but (due to necessity) the Shari'ah has declared it permissible.

'Allamah Dardeer says:

"ان الاصل فيها الغرر، وإنما اجبرت لان الشرع بها" (24)

From the point of view of the original, there is a gharr in it, but it has been declared permissible due to its permission by the Shari'ah.

Hanafiyyah's school of thought regarding Ji'alah:

The works of Imam Abu Hanifah's legal reasoning don't contain any hadiths about 'Aqd e Ji'alah that I've been able to locate. Imam Sahib is credited with both the assertion of non-justification and the opinion of justification in some other books of law, albeit not in all. The following is what 'Allamah Ibn Qudama says, attributing the word of justification to Imam Sahib:

"ان الجعالة في رد الضالة والابق وغيرهما جائزة وهذا قول ابي حنيفة ومالك والشافعي ولا نعلم فيه خلافاً" (25)

It is legal to make a contract with a lost animal, bring back a runaway slave, and deal with other things than them. There is no controversy among Imams Abu Hanifa, Malik, and Shafi'i regarding this point of view.

While 'Allamah Ibn al-Rushd al-Hafid, referring to Imam Sahib's illegitimacy, writes:

"وقد اختلف العلماء في جوازه فقال مالك يجوز... وقال ابو حنيفة لا يجوز وللشافعي القولان" (26)

There is a difference of opinion among scholars regarding the beginning of Ji'alah. Imam Malik declares it permissible while Imam Abu Hanifah says that it is impermissible and both views are narrated by Imam Shafi'i.

"فهذا أجازة مالك واصحابه... خلافاً لأبي حنيفة والشافعي في احد قوليه" (27)

Imam Malik and his companions have declared this 'Aqd e Ji'alah permissible, while Imam Abu Hanifah has declared it illegitimate and Imam Shafi'i has also said that it is not permissible.

Perhaps, on the basis of these illegitimate statements, some contemporary scholars have said that "Aqd e Ji'alah" is illegitimate among the Hanafis. So Dr. Wahibat al-Zahili writes:

"لا تجوز الجعالة عند الحنفية لما فيها من الغرر اي جهالة العمل والمدة" (28)

According to the Hanafis, Ji'alah is not permissible because there is a defect of deception in it, i.e., the action and period are unknown.

However, the renowned work of Hanafi jurisprudence "Al-Lubab fi Sharh al-Kitab" quotes Imam Abu Hanifah's viewpoint on the particular period of Ji'alah. In which it has been ruled that a

marriage contract based on the capture of a fugitive slave is legal. ⁽²⁹⁾ In "Rad al-Mukhtar," 'AllamahShafi'i also made reference to this problem. ⁽³⁰⁾ However, some of its conditions are also described in these two books, for instance, that the person who brings back the runaway slave will get this reward only when he captures the slave from such a distance that he is at a legal distance from the owner's house and The amount of the reward will be forty dirhams, but if the value of the slave is forty dirhams or less, then the reward will be reduced by one dirham from its value so that the owner gets some benefit. Reads as follows:

"إذا أبق مملوك فرده رجل على مولاه من مسيرة ثلاثة أيام فساعدًا فله عليه الجعل
اربعون درهما، وان رده اقل من ذلك فبحسابه وان كانت قيمته اقل من اربعين درهماً
قضى له بقيمته إه درهماً"⁽³¹⁾

On the contrary, 'AllamahHaskafi has mentioned a case of Ji'alah and declared it illegitimate. You write:

"من دلتني على كذا فله كذا فهو باطل ولا اجر لمن دله الا اذاعين الموضع"⁽³²⁾

(If a person said) He who guided to such and such (thing or place), there is so much reward for him, then this case is invalid and the guide will not get any reward. If you do, then this situation is permissible.

However, 'AllamahShami, after discussing this issue in detail, said that if the marriage contract is between two specified persons and the act is also specified, then this contract is permissible, otherwise, it is not.

'AllamahShami writes:

"فيجب المسمى لتحقق العقد بين شخصين معينين لفعل معلوم، وأما اذا لم يكن الفعل
معلومًا كمسألة الضالة فلا يجب شيء"⁽³³⁾

Therefore, the specified wage will be required when the contract is between two specified persons for a specified action, such as in the case of returning a lost thing (which is not known), then there will be no obligation in it.

This information reveals that the marriage of Ji'alah is prohibited under Hanafiyyah law since it does not identify the deed, which necessitates the inclusion of the Gharr fault. Additionally, according to 'AllamahJassas, the Qur'anic passage in "Ahkam al-Qur'an" states under the heading. " وَلَمَنْ جَاءَ بِهِ جُمْلٌ " بَعِيرٌ وَأَنَا بِهِ زَعِيمٌ "

"وهذا اصل في جواز قول القائل من حمل هذا المتاع الى موضع كذا فله درهم وإن هذه
اجارة جائزة وأن لم يكن يشارط على ذلك رجل بعينه، قال محمد بن الحسن في السير
الكبير إذا قال امير الجيش من ساق هذا الدواب الى موضع كذا، او قال من حمل هذا
المتاع الى موضع كذا إن هذا جائز ومن حمله استحق الأجر وهذا معنى ما ذكره في هذه
الآية"⁽³⁴⁾

This verse was originally intended to address the issue of the reward of one dirham for delivering certain products to a particular location. Imam Muhammad bin Al-Hasan explains in Sir Kabir that this Ijarah is permissible even though he hasn't made a condition with a specific person: "If the Amir of the army says that the person who takes these goods to such and such a place will receive such a reward, then it is permissible and if he does so, he will become worthy of this reward.

Priority:

After examining the arguments raised on both sides of the debate, it is clear that three experts have the same viewpoint, which makes the theory permissible for the following reasons:

1. Those who have defended this idea have cited evidence from the Qur'an and Hadith. This almost immediately makes Ji'alah's validity evident. The Holy Qur'anic verse that states that a Sharī'ah-compliant occurrence is currently taking place could be disputed.

Therefore, the 'Allamah Jassas text that he cited in the exegesis of the same verse serves as an adequate reply. He documents

" شرائع من قبلنا من الانبياء حكمها ثابت عندنا ما لم تنسخ" (35)

Since the abrogation of the order of the Sharī'ah before us is not demonstrated in our Sharī'at and since it is legitimate for us as long as it is not, this verse can be used as evidence to support Ji'alah.

2. Some instances of 'Aqde Ji'alah are also permitted among Hanafis, such as "Tanfil," in which the leader of the Islamic Army states, in an effort to enlist the Mujahideen, that the Mujahideen who kills an enemy soldier will receive his weaponry. Yes, the explanation for it is supported by the identical rationale that is mentioned in the proponents' second-place argument. (36)

The famous Hanafi jurist 'Allamah Tamar Tashi says:

"ونذب للامام ان ينفل وقت القتال حثاً" (37)

And 'Allamah Shami has also cited its justification regarding various books. (38)

3. Giving a reward to someone who looks after a runaway slave is likewise considered to be treason and is permitted by the Hanafis, although the Companions agree that it is justified in this case. 'Allamah Sarakhsi explains the rationale behind this circumstance as follows.

"فقد اتفقوا على وجود اصل الجعل وكفى باجماعهم حجة" (39)

4. In addition to this, various more cases have been approved by Hanafiyahjurists. They were deemed acceptable given the needs of the populace, despite the fact that they do not specify the time of "activity". According to Sahib Fatawi Bazaziyah 'Allamah Kurdi;

" ان عمل اجارة السمسار والمنادى والحمامي ومالا يقدر فيه الوقت ولا مقدر العمل لما كان للناس به حاجة جاز" (40)
It is acceptable for persons to engage in pimping, preaching, bathing, and other comparable activities that do not have a set time restriction but that people nevertheless require.

When Ji'alah has been deemed legal in these situations, there is no reason to oppose to declaring other situations that are comparable to be permissible, especially when "Ji'alah" needs to be recognized as valid in the modern period. Samsara (brokerage contract) is another excellent illustration of this.

5. In his book "Al-Tafsirat al-Ahmadiyyah" under the passage, Mulla Jiyun, the famed "Nur al-Anwar" of Hanafi principles of jurisprudence, offers its reasoning. " وَ لِمَنْ جَاءَ بِهِ جَمْلٌ بَعِيرٌ وَ اَنَا بِهِ " (41). "رَ عِنَّمْ"

Examples of some modern forms of Contract of Ji'alah:

Although 'Aqde Ji'alah is a very old notion. Due to the fact that the concept of law in ancient times was relatively simple, there is a full description of legal orders in the ancient books of jurisprudence. As a result, examples given in these books tend to be quite straightforward and typical. For instance, if someone lost something or a slave escaped, he would declare that whomever found the lost item or apprehended the slave would receive a certain prize. However, many of his modern variants

have since appeared. The cases that are acceptable in accordance with Sharia are some of those that are listed below.

Ji'ālah on taking out minerals:

Today, mineral exploration—particularly oil exploration—continues in new locations on Earth because of the continuous scientific advancement. Governments support this activity as well, and permanent businesses have been established for it. Therefore, the government declares that the firm that finds oil in a particular area will receive a large prize; often, the incentive is that the company receives a certain percentage of the proceeds from the oil found in addition to the remaining proceeds. The federal treasury receives it.

If a corporation is successful in extracting oil in this situation, it will be the owner of a sizeable production, which will allow it to make a sizable profit.

Ji'ālah on digging out water:

Similar to this, it is occasionally advertised that the firm that would extract water from this location will receive this much reward in some regions where the water is very low, very deep or the odds of getting water are minimal.

Ji'ālah on loan recovery:

In a similar vein, Ji'ālah is currently employed for debt collection. For instance, when an organization's debts are largely the responsibility of third parties and recovery is difficult, the organization may partner with another entity to recover the debt. The specialist creates an agreement that we will reward you greatly if we collect these loans; occasionally, it is an arrangement that we will pay you a portion of these loans as a reward if we collect these loans.

Estate Agency Business:

A person or organization performs the functions of a broker in the estate agency industry, which is currently very popular and flourishing. For instance, if a person wants to sell his house, he agrees with the broker that if the broker is successful in selling the house, for instance, 2% of the price of the house will be given to him. Similar to this, the contract with the broker governs when someone wants to buy a house and does so through the broker. He may receive, for example, 2% of the total price if he obtains the desired home from the broker. The broker will be eligible for the pay even in this scenario if he prevails.

Ji'ālah for the arrest of Culprit:

Today, the government will occasionally provide a reward to anyone who helps them catch dangerous offenders. This cooperation could take the shape of providing information on the criminal's covert location, for example. When the government is successful in apprehending the accused in question through the informer in this case, the informer is entitled to a prize.

Ji'ālah on the preparation of good design or monogram:

Sometimes a certain company, factory, etc. declares that the person who brings a nice sample of a particular product will receive such a reward. Other times, organizations proclaim to develop a good monogram for our company. He will receive a lot of rewards if he succeeds. Both of these situations are

covered by Ji'alah, and the person involved deserves a reward if they are successful in producing a design, pattern, or monogram of the desired caliber.

It is evident from the facts provided regarding Ji'alah that the contemporary forms of Ji'alah are permitted by Sharia.

An Objection to Modern Forms of 'Aqd e Ji'alah and its Answer:

Objection:

The reward for the "agent" in some of the listed contemporary situations of contract Ji'alah has been established as a component of the outcome of the activity for which he earns the reward, such as the recovery of debts. If the agent receives a payment in the form of a percentage of the debts collected or, in the instance of oil extraction, a fixed sum equal to what is typically recovered, the question then arises: Are these cases "Not invalid" as a result of entering "Qafiz alTahhān" (42)?

His argument could be that 'Aqde Ijarah is connected to the aforementioned ban, but Ji'alah is more comparable to Ijarah. Nevertheless, it differs significantly from Ijarah in that Ji'alah focuses on the "act of the act" rather than the "site of contract," whereas Ijarah deals with the "location of the act."

This can be demonstrated by the example that, in Ijarah, if a person hires a watchman to guard his home, the watchman will still be paid for his work even if the home is robbed while he is keeping watch. And in the instance of Ji'alah, Zayd claims that his horse is missing and that whomever discovers it would be rewarded handsomely up until someone locates the horse and gives it to him. No of how long he spends looking for the horse, he is no longer eligible for the award. Therefore, it is incorrect to apply the rule of Ijarah to Ji'alah since it is not fully included in Ijarah according to its reality.

The second thing is that fixing wages for a part of the work of the agent within Ijarah creates a problem of gharar. For example, a miller grinds wheat on the condition that he will receive a part of the milled wheat as wages. Now if the wheat (flour) is lost for some reason after grinding, then the worker will lose his wages because the milled wheat he was supposed to get his wages from is no longer there if in such a case the wage is "غير مقدور التسليم" "unable to surrender." (43) And in deception example, while calculating a wage for a portion of the agent's actions within Ji'alah, an error is made since in Ji'alah, the wage is determined based on the "outcome of the action" rather than the actual actions. The owner will be obligated to accept the announced incentive if the deed is turned over to him. There is therefore no prohibition in this instance.

The third thing is that if it is accepted for a while, then in the above case of Ji'alah marriage, it is like "قفيز الطحان" "Qafiz alTahhān", even if its alias is found, it can be called permissible. As the scholars of Balkh have said cases similar to "قفيز الطحان" "Qafiz alTahhān" are permissible based on aliases, even though the hadith cannot be abrogated due to the aliases, it can be appropriated and said that the case about which the hadith is mentioned is It is illegitimate, but other cases are permissible due to aliases. 'Allamah Ibn'Ābidin writes:

"لو دفع الى حايك غزلاً ينسجه بالثلث فمشايخ بلخ كنصير بن يحيى و محمد بن سملة وغيرهما كانوا يجيزون هذه الاجارة في الثياب لتعامل اهل بلدهم في الثياب والتعامل حجة يترك به القياس ويخص به الاثر وتجوز هذه الاجارة في الثياب للتعامل بمعنى تخصيص النص الذي ورد في قفيز الطحان لأن النص ورد في قفيز الطحان لا في الحايك الا أن الحايك نظيره فيكون واردا فيه دلالة فمتى تركنا العمل بدلالة هذا لنص

في الحايك عملنا بالنص في قفيز الطحان كان تخصيصاً لا تركاً أصلاً وتخصيص
النص باتعامل جائز" (44)

Translation: The Mashaikh of Balkh, such as Nazir bin Yahya, Muhammad bin Salama, etc., have approved this circumstance. If someone delivers cloth to a tailor with the understanding that he will turn it into cloth in exchange for one-third of its quantity, then this situation is acceptable. Because dealing in this manner was standard procedure in his city, this justification might be used to abandon speculation and establish customized interpretations of the hadith. As a result of this interaction, defending this circumstance in the context of renting garments would entail appropriating a hadith connected to "Qafiz alTahhan" from another hadith, as the hadith is not related to "Qafiz alTahhan" but to the person who manufactures the clothing. Not pertinent. But since the production of fabric serves as both a precedent and an example, if proof also entered in this context, we departed because of interaction, which only resulted in an appropriation within the "Qafiz alTahhan" tradition. It was already mentioned that the hadith can be taken from the text as a result of interaction, so this does not mean that we have completely ignored it.

It is also important to note that while Malikiyyah and Hanbilah declare these forms to be legitimate, Hanafi and Shafi'i books of jurisprudence mention the propriety of "Qafiz alTahhan" and its related forms as legitimate. (45) Therefore, their religions can also be adopted on occasions of need.

Result and Conclusion

From this study, the following significant conclusions were drawn:

1. Although this matter was not entirely clear before, Imam Abu Hanifa's declaration of impermissibility has been attributed to Ji'alah marriage in most books of other jurisprudence Masalik and in some books of Hanafi jurisprudence due to the Hanafi position, particularly Imam A'zam Abu Hanifa, that this 'Aqd is a valid 'Aqd even among Hanafis.
2. With regard to the contemporary versions of 'Aqd e Ji'alah, numerous real-world examples have emerged where 'Aqd e Ji'alah can be used to conclude significant financial and business transactions.
3. In addition to the employment of 'Aqd e Ji'alah in financial institutions, its practical forms have also been made available to individuals and non-financial entities.
4. This research has also shown that the subject is highly broad, allowing for additional study and the advancement of more complex concerns.

References

- ¹Mawlana Wahid al Zaman Qasmi Kiranwi, Al Qamos Al Wahid, (Nashir: Idarah Islamiyat, Karachi, 2001), Vol:1, p:65
- ²Ibn Manzor Al Afriqi, Muhammad Bin Mukarram, Lisan al Arab, (Nashir: Bayrot)
- ³Rad al Mukhtar, Vol:4, P;127
- ⁴Al Qamos al Fiqhi, P:63
- ⁵Ibn Rushd, Muhammad bin Ahmad, Al Muqaddimat al Mumahhidat, (Nashir: Dar al Arab al Islami, 1418ah), Vol:2, P:175
- ⁶Bidayatyil Mujtahid, Vol:2, P:194
- ⁷Ibn al Arabi, Ahkam al Quran, Vol:3, P:1093
- ⁸Al Muqaddimat al Mumahhidat, Vol:2, P:175

- ⁹Al Mughna, Vol:8, P:323
¹⁰Al Bahr Zukhar, Vol:4, P:62
¹¹Al Mughna, Vol:8, P:323
¹²Al Muqaddimat al Mumahhidat, Vol:2, P:175
¹³Rad al Mukhtar, Vol:4, P:288, Vol:6. PP:95, 402, 752
¹⁴Al Quran, Surah Yousuf, Aayat: 72
¹⁵Zakriyya al Ansari, Asna al Matalib, (Nashir: Dar al Kutub al 'Ilmiyyah, Bayrot, Labnan, 1422ah), Vol:5, P:467
¹⁶Ahkam al Quran, Vol:2, P:175
¹⁷Musnad Ahmad bin Hambal, Vol:5, P:306
¹⁸Al Muhazzab, Vol:1, P:411
¹⁹Sahih al Bukhari, Hadith No: 2276
²⁰Al Majmo' Sharh al Muhazzab, Vol:15, P:111
²¹Al Muqaddimat al Mumahhidat, Vol:2, P:176
²²Al Mughna, Vol:8, P:323
²³Al Muqaddimat al Mumahhidat, Vol:2, P:175
²⁴Al Sharh al Saghir, Vol:4, P:81
²⁵Al Mughna, Vol:8, P:323
²⁶Bidayatul Mujtahid, Vol:2, P:194
²⁷Al Muqaddimat al Mumahhidat, Vol:2, P:175
²⁸Al Fiqh al Islami wa Adillatho, Vol:4, P:748
²⁹Al Dimashqi, Al Shaykh Abd al Ghani, Al Lubab Fi Sharh al Kitab, (Nashir: Dar Ihya' al Turath al 'Arabi, 1991), Vol:2, P:217
³⁰Rad al Mukhtar, Vol:4, P:290
³¹Ibid
³²Al Dur al Mukhtar, Vol:6, P:95
³³Rad al Mukhtar, Vol:6, P:95
³⁴Jassas, Ah kam al Quran, Vol:2, P:175
³⁵Ibid
³⁶I mean the saying of The Prophet Sallallahu Alyhi Wasallam من قتل قتيلا فله سلبه
³⁷Tanwir al Absar, Vol:4, P:152
³⁸Rad al Mukhtar, Vol:6, P:152
³⁹Al Mabsot lil Sarakhsi, Vol:11, P:17
⁴⁰Al Kurdari, Al Imam Muhammad bin Muhammad Shahab, Fatawa Bazaziyah, (Nashir: Maktabah Majidiyah, 1506ah), Vol:5, P:40
⁴¹Mulla Jiwan, Al Shaykh Ahmad, Al Tafsirat al Ahmadiyyah Fi Bayan Al Aayat al Shar'iyah, (Nashir: Al Matba' Al Karimi, Mumbai), P:487
⁴²Rad al Mukhtar, Vol:6, P:57
⁴³Ibid
⁴⁴Al Shami, Usaid Muhammad Amin, Sharh Uqod Rasm al Mufti, (Nashir: Qadimi Kutub Khanah, Karachi), P:14
⁴⁵Sharh al Kabir, Vol:4, P:9 / Al Mughna, Vol:6, P:72