

A Common Impermissible Agreement Between Steel Mills and Contractors Regarding Buying Steel Rods

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(Dawateislami)

Question

What do the scholars of Islam say about the following Issue: If a big contractor needs steel rods after a few months or a specific period of time, they will usually make an agreement with the steel mill beforehand so that they will have the rods ready by that time and this way they can avoid the daily rising costs of material. The agreement between the contractor and the steel mill outlines the following details: Quality of the steel rods, thickness, weight, delivery timeframe, and location. Everything is defined in such a way that there is no ambiguity. As for the cost of the rods, it is temporarily decided that the current rate be given, but the final price is decided at the time of delivery. That is, if the rate is the same or has gone up at the time of delivery, the previously paid amount is sufficient, but if the rate of the rods has gone down, then the lower rate will be chosen, and the difference will be returned to the contractor. Many steel mills form contracts like this. Is this method of contract permissible according to the laws of The Shari'ah?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

Commerce is a major part of human life, and Islam, in its perfection and completeness, guides us in every facet of life. There are also Islamic principles regarding commerce. Therefore, one should seek the advice of reputable Islamic scholars and muftis before doing any sort of trade or business in order to avoid anything that is against the rules of Shari'ah. Allah عزوجل stated the following regarding seeking guidance from knowledgeable people:

﴿فَسْئَلُوا أَهْلَ الدِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾

Translation of Kanz-ul-Iman: So ask the people of knowledge if you do not know. (Part 14, Surah Al-Nahl, Verse 43)

While cautioning against contracts that are against the Islamic principles, The Prophet صلى الله عليه وسلم has said:

ما بال رجال يشترطون شروطاً ليست في كتاب الله، ما كان من شرط ليس في كتاب الله فهو باطل،
وان كان مائة شرط، فقضاء الله احق وشرط الله اوثق

Translation: What is the matter with the people that they stipulate conditions that are not from the book of Allah? Whatever conditions are not from the book of Allah, they are void, even if they are a hundred conditions. The decree of Allah is authentic, and the conditions allowed by Allah are strong. (Sahih Al-Bukhari, Vol. 1, p. 290, Publ. Karachi)

As for the question: A contract formed, according to the above-mentioned method, between the steel mill and the contractor is Haram and is a sin. Therefore, such a contract/ agreement will become invalid, and both parties must terminate it. The detailed explanation is as follows: The contract between a steel mill and a contractor is regarded as one of Istisnaa' by the Shariah.

Istisnaa' (استصناع) is a type of contract where an order is placed to have a product made. In this situation, the contractors' purpose is to have the steel mill prepare and deliver steel rods within a certain time, therefore it will be considered Istisnaa'. Furthermore, Istisnaa' is a type of transaction and one of the basic requirements for a transaction to be valid is that a specific price is agreed upon.

If an agreement is made, but there is ambiguity or confusion regarding the price such that it could later become the cause of conflict, this agreement becomes null and impermissible. Anyone who enters such an agreement will be sinful. Along with repenting, it will be Wajib upon them to dissolve the contract. Now looking at the above-mentioned situation, even if the current market price is given, but ambiguity is introduced with the wording 'The final price will be decided at the time of delivery', as it is not known how much the rate will be at that time. Due to a price not being fixed, such an agreement will be Haram and a sin.

For a transaction to be valid, along with fulfilling all other requirements, it is necessary for a price to be fixed in clear words

and the item should be delivered at this agreed-upon price, regardless of the market rate at that time.

Regarding Istisnaa', it is written in *Fatawa Al-Hindiyya*:

الاستصناع جائز في كل ما جرى التعامل فيه، كالقطنسوة والخف والوانى المتخذة من الصفر والنحاس وما اشبه ذلك استحساناً، كذا في المحيط، ثم ان جاز الاستصناع فيما للناس فيه تعامل اذا بين وصف اعلى وجه يحصل التعريف، اما فيما لا تعامل فيه -- لم يجز، كذا في الجامع الصغير وصورته: ان يقول للخفاف: اصنع لي خفا من اديمك يوافق رجلي ويريه رجله بكذا او يقول للصائغ صغ لي خاتما من فضتك وبين وزنه وصفته بكذا

(Fatawa Al-Hindiyya, Vol. 3, p. 207, Publ. Dar Al-Fikr, Beirut)

According to the Sahih (authentic) opinion, Istisnaa' is a transaction. It is written in *Tanweer Al-Absar*:

صح الاستصناع بيعا، لا عدة على الصحيح

(Tanweer Al-Absar Ma'a Durr Al-Mukhtar, Vol. 7, p. 502, Publ. Quetta)

And the ambiguity of the price in a transaction nullifies the permissibility of the agreement. It is written in *Fatawa Al-Hindiyya*:

المبيع او الثمن مانعة جواز البيع اذا كان يتعذر معها التسليم

(Fatawa Al-Hindiyya, Vol. 3, p. 122, Publ. Dar Al-Fikr, Beirut)

Mufti Amjad Ali A'zami رحة الله عليه، while stating the conditions of the validity of transactions, mentions the following condition:

مبيع و ثمن دونوں اس طرح معلوم ہوں کہ نزاع (جھگڑا) پیدا نہ ہو سکے، اگر مجهول ہوں کہ نزاع ہو سکتی ہو، تو بیع صحیح نہیں، مثلاً: اس ریوڑ میں سے ایک بکری بیچی یا اس چیز کو واجبی دام پر بیچا یا اس قیمت پر بیچا جو فلاں شخص بتائے۔

Translation: The item and price both must be known well enough that it does not lead to conflict. If they are so unclear that it could lead to a dispute, the transaction is not valid. For example: "I sell one sheep from this flock" or "I sell this at the normal value" or "I sell this item at the price that x person decides" (Bahar-e-Shariat, Vol. 2, p. 617, Publ. Maktaba-Tul-Madina, Karachi)

It is also necessary to finalize a price in Istisnaa' contracts as well.

A'la Hazrat رحة الله عليه states:

کسی سے کوئی چیز اس طرح بنوانا کہ وہ اپنے پاس سے، اتنی قیمت کو بنادے، یہ صورت استصناع کہلاتی ہے کہ اگر اس چیز کے یوں بنوانے کا عرف جاری ہے اور اس کی قسم و صفت و حال و پیمانہ و قیمت و غیرہا کی ایسی صاف تصریح ہو گئی ہے کہ کوئی جہالت آئندہ منازعت کے قابل نہ رہے۔۔ تو یہ عقد شرعاً جائز ہوتا ہے۔

Translation: Having someone make something with his own materials for a specific price is called Istisnaa'. If having this thing made is a prevalent practice and the type, specifications, condition, measurements, price etc. are so clearly declared that there is no ambiguity that may later lead to conflict, then this agreement is permissible according to Sharia. (Fatawa Razawiyah, Vol. 17, p. 597-598, Publ. Raza Foundation, Lahore)

In another place, while discussing having an ambiguous price in Istisnaa' in detail, he states:

عند التحقيق استصناع ہر حال میں بیع ہی ہے۔ کمانص علیہ فی المتون و صححہ المحققون من الشراح ففی النقایة: الاستصناع باجل سلم تعاملو افیہ اولاً و بلا اجل فیما یعامل فیہ بیع والمبیع العین لا العمل اہ، ومثلہ فی الاصلاح والملتی والتنویر وغیرہا فی الہدایة: الصحیح انہ یجوز بیع الاعدہ والمعدوم قد یعتبر موجوداً حکماً والمعقود علیہ العین دون العمل هو الصحیح اہ ملخصاً ونحوہ فی الايضاح والدر وغیرہما من الاسفار الغرودا وضحنا المقام مع ازالة الاوہام بتوفیق الملک العلام فیما علقناہ علی رد المحتار

فی الخلاصہ: ”رجل باع شیئاً علی انہ بالنقد بكذا وبالنسیئة بكذا والی شهر بكذا والی شهرین بكذا، لم یجز

(Fatawa Razawiyah, Vol. 17, p. 599-600, Publ. Raza Foundation, Lahore)

In *Al-Maa'ayeer Al-Shar'iyyah*, a book that is published by the AAOIFI institution of Bahrain and holds repute in the Islamic world, the following is written regarding agreements of Istisnaa':

عقد الاستصناع ملزم للطرفین اذا توافرت فیہ شروطہ وهی: بیان جنس الشیء المستصنع ونوعہ وقدرہ واوصافہ المطلوبة ومعلومیة الثمن وتحديد الاجل ان وجد

(Al-Maa'ayeer Al-Shar'iyyah, Mi'yaar No. 11, p. 298, Publ. Bahrain)

In the same book, it is further written regarding the conditions for the permissibility of Istisnaa':

ان یکون ثمن الاستصناع معلوماً هونفی الجهالة والغرر المفضیین الی المنازعة

(Al-Ma'aayeer Al- Shar'iyya, Mi'yaar No. 11, p. 314, Publ. Bahrain)

Both parties will be sinners due to entering into an invalid contract. Therefore, it is necessary for them to terminate it. It is written in *Al-'Uqood Al-Durriyyah*:

ويجب على كل واحد منهما اي من البائع والمشتري فسخه قبل القبض او بعده مادام في يد المشتري اعدا ما للفساد، لانه معصية، فيجب رفعها

(Al-'Uqood Al-Durriyyah, Vol. 2, p. 120, Publ. Dar Al-Marifa, Beirut)

The length of the transaction of steel rods can often be more than one month but it is still considered Istisnaa'. This is because deciding on a timeframe of more than one month for Istisnaa', even though the opinion of Imam A'zam is that it will become a transaction of 'Salam' (سلم) and will have to have all the

requirements of Salam, is still Istisnaa' (استصناع) according to the opinion of the Sahibayn. The reputable scholars of our era have chosen the opinion of the Sahibayn. The Shara'i Council of Bareli India, during its 6th Fiqhi Seminar, chose the Sahibayn's opinion in the interest of removing Haraj Shadeed (extreme difficulty)

Similarly, the Shara'i council of Jamia Ashrafiyya Mubarakpur, in the case of Istisnaa in flats, also ruled according to the opinion of the Sahibayn due to Shara'i Hajat (need) and Ta'amul (prevalence). Therefore, according to Sahibayn's Mufta Bihi opinion, if a period of one month or more is decided in the booking of the steel rods, it will still be considered Istisnaa'.

It is written in *Majlis Shara'i Ke Faisle*:

مذہبِ امامِ اعظمِ رضی اللہ تعالیٰ عنہ جو ماخوذ و مفتی بہ ہے، اس کی رو سے اس وقت ”بیعِ استصناع“ نہیں ہو سکتی جب کہ ایک ماہ یا زیادہ دنوں کی مدت بیع میں مذکور ہو، لیکن صاحبین رحمہم اللہ کا مذہب یہ ہے کہ تعامل کی صورت میں ذکرِ مدت کے ساتھ بھی استصناع جائز ہے اور مدت کا ذکر تعجیل پر محمول ہو گا۔ مذہبِ امامِ اعظم سے عدول کے لیے حاجتِ شرعیہ متحقق ہے اور یہ بھی معلوم ہے کہ بہت سے شہروں میں اس طریقہ خرید و فروخت پر عوام و خواص کا عمل درآمد ہے۔ ایسی صورت میں صاحبین علیہم الرحمۃ کے نزدیک ایک ماہ یا زیادہ مدت ذکر ہونے کے باوجود استصناع جائز ہے اور قولِ صاحبین بھی باقوت ہے، اس لیے اس صورت کو استصناع کے دائرے میں رکھتے ہوئے قولِ صاحبین پر جائز ہونے کا حکم دیا جاتا ہے۔

Translation: According to the Madhab of Imam A'zam رحمه الله عليه, which is the chosen and Mufta bihi opinion, Istisnaa' cannot be done if a period of one month or more is mentioned in the contract. But, according to the Madhab of Sahibayn, in the case of Ta'amul (prevalence) Istisnaa' will be valid even with the mention of a period and this mentioning of a period will be taken in the meaning of hastening to completion. There is a Shara'i Requirement present which justifies relinquishing the Madhab of Imam Azam and it is also known that in many places, laymen and scholars alike take part in these transactions. In such a situation, according to the Sahibayn, Istisnaa' is permissible despite mentioning a period of more than one month, and their opinion is also a strong one. Therefore, this situation is considered to be within the definition of Istisnaa' and is declared to be permissible according to the opinion of the Sahibayn. (Majlis Shara'i Ke Faisle, Vol. 1, p. 238-239, Publ. Wadduha Publications)

وَاللَّهُ أَعْلَمُ عَزَّوَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

(Allah Almighty knows best and His Messenger صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ knows best.)

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