

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

# Shares and Company

*Being an English rendering of the select papers from among the ones contributed to the Sixth and the Ninth Seminars of the Islamic Fiqh Academy of India, which, a couple of years back, were organized by the Academy to discuss the contiguous themes of SHARES and the COMPANY AND SHARES.*

*Translated from the Urdu*

By

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

## Preface

Islam is the perfect and complete system of life. It suggests excellent ways and sets balanced standards for the financial endeavors, commercial and industrial development, and for the sale and purchase in the light of its just economic system and strong principles.

As a perfect system of life, Islam offers a clear guidance to men regarding the money, investment of money, spending it, saving it, financial exchanges, selling and sending goods, saving the asset and how to spend it, reasonable limits of taking profit, the rise and fall of prices, industry and craftsmanships, sale and purchase of skills and abstract rights, the labour and wages, indeed all the things and affairs relating to the material dealings of human life. Islam regulates all such things and affairs.

In the aftermath of the Industrial Revolution the world has made a remarkable progress in terms of Science and Technology. As a result of this all-round progress, today we have so many forms and modes of business and trade, sale, purchase and investment which have no precedence in the past, the banking system, currency system, marketing system, sale-before-taking possession of the object of sale, quick system of profit earning, company system and the sale and purchase of company's shares, the system of international trade and commerce, indexation and system of cards as a substitute of currency, to mention only a few. And then, there have been established numerous multifarious institutions and a well-knit company system to run, control and oversee the said systems. In today's age all such things have become the need of the day as innumerable issues and propositions stand associated with them.

Unfortunately, it is an undoubted fact of the existing economic and commercial activism that it is primarily based on interest which, mostly, protects the economic and commercial interests of the capitalistics and the blood of the poor is drained off his body through his day-night sweating and toiling for cheaper wages.

Islam, contrariwise, is the only flag-bearer of economic justice. It wants to establish an economic system completely free from injustices, wrongs and unnatural inequalities on the economic front. To revive and re-establish its completely interest-free system, the Islamic Shariah, based on its comprehensive and firm principles, aims at blessing the undivided human society with welfare



and the religious, spiritual and material prosperity in all ages and all regions.

Talking in the Indian context, the economic system here, like most other systems in force throughout the world, is premised on *interest*. In order to remain faithful to Islam and its sacred law, the Shariat, billions of Muslims here have always been deeply concerned. To this end of paramount religious import, driven by purely positive and constructive faith-based impulses, the Indian Muslims are making their best endeavours to introduce and establish, within the limits and the scope of possibilities that exist within the parameters of the secular constitutional structure of the land, their own interest free banking and financial institutions. Towards this end their efforts are commendably gratifying. Notably, the Islamic Fiqh Academy of India had started working on the problems arising out, from the Islamic view point, of the principles along which the business and all other commercial activities are running in India. Along the same principles have been structured the Indian investment system and banking institutions and the depositors are paid their due profits. It is very gratifying that throughout its endeavours the Academy received very active help of a number of the expert economists who, fortunately, happen to be observant Muslims as well. May Allah reward them better for their kind help.

In this connection a high level committee, which comprised a number of expert economists was instituted. It held more than one meetings. The ulama too took part in those meetings. The experts included Prof. K.G. Munshi,

who has a good and appreciable written work on Islamic economics; my dear friend Mr. Kamal Faruqi, a known Chartered Accountant by profession, Mr. Rahman Khan, the Founder Manager of the Al-Amin Islamic Bank, which is an investment and financing institution and about which its founder, Mr. Rahman Khan, is determined to run it in lines with the Islamic Shariat and which has for years been working successfully; Mr. Sayyid Aminul Hasan Rizwi, who has a close observant eye on the Shariat as well as on the modern law and through his constant study keeps abreast of the time, Dr. Fazlur Rahman Faridi, who is an outstanding scholar of Islamic economics; Mr. Ihsanul Haq, who is deeply interested in the administrative affairs of the banks and the financial institutions and is well-conversant with the Islamic economics; Abdul Wahab Welori Sb., who possess a special experience in the field of banking; and, to top them all, Dr. Abdul Hasib, who is in possession of unique ability and long experience, has, ever since the first day, been a fellow of the Academy and took active part in all meetings of the Academy. Besides the ones above mentioned, the Committee received valuable assistance from numerous experts. Maulana Shams Pirzada deserves special mention. Besides being a renowned *alim*, he is specially interested in economic studies and is never prepared to compromise on the Shariah.

It is a matter of great gratification that all the mentioned scholars and experts attended all the sessions of the Committee. Since it is a matter of the past, it seems in order to put here the related story in brief.

As far as the establishment of an interest-free bank along with all of its terminological meaning and connotations, and which is governed under the International Banking Law, or under the Indian Banking Law in the Indian context, is concerned, after a prolonged discussion and the legal analysis of all the outstanding aspects of the proposition the committee arrived at the conclusion that it was quite impossible to establish and run an interest-free bank in India. The present banking system is diametrically opposed to Islamic commercial legal structure. While the FINAL DIVINE SCRIPTURE, the primary source of the Islamic Shariat, clearly says :

وأحلّ الله البيع وحرم الربا

“And Allah has permitted trade and forbidden  
*usury.*”<sup>1</sup>

the banking law has reversed the order of things completely as it refuses to accord validity to any interest free banking system. It precludes the banks to take direct part in any business activities. The only function of the bank, according to the existing laws, is to lend money. By so doing the bank not just secures its capital but its already fixed profit as well. It never risks its capital, this being the major difference between the modern banking and the Islamic commercial activism. According to the modern commercial terminology, the bank stands for an organized and institutionalized interest bound commercial institution which never risks its

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<sup>1</sup> 275-2.

capital to gain profit. The Shariat, by contrast declares that the sale-purchase and business activities are lawful and all interest-bound business and commercial activities are unlawful. Should a legislation accommodating the Shariah principles of interest-free business and commercial activities is passed here, it will facilitate us to establish banks which to the best of its knowledge will invest its capital in trustable business and earn profit. By the profit not just the bank may meet its expenses, it will be in a better position to give lawful profit to its investors as well.

Of late, there have emerged some new trends like various modes of mutual fund etc. The mutual funds have potential of business opportunities and the law, too, permits it. The problem of the nature and modes of business are to be discussed later. These new trends of investment have nothing in common with the spirit of the traditional and existing of the system of banking.

As regards the characteristics of the banking, there are two important things to be taken into account in this connection. The first is the *trust* and *goodwill*. The *trust*, semantically speaking, is from among the very primary connotations of *banking*. In other words, in the very concept of *banking* the meaning of TRUST is inherently included. The investor and depositor in *bank* is confident that if he invested in it, not just his capital would be back to him, but the due proportional profit as well. In short, the *trustability* is an outstanding speciality which underlies the concept of banking as an institutionalized system. The other speciality of banking is to keep the capital in constant motion. Stagnation of the capital is not approved by Islamic Shariat.

Amassing the *gold* and *silver* has been declared a sin and condemned as a characteristic of the greedy people. The *ratio legis* of the distribution of wealth has been pointed out by the Qur'an in the following words:

كُنَى لَا يَكُونُ دَوْلَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“In order that it may not make a circuit between the wealthy among you.”<sup>1</sup>

The quoted Qur'anic words determine the spirit of the Islamic Shariah in relation to the wealth. The wealth must remain always in circulation, yet this should aim at production of wealth, not to a mass the wealth and augment one's bank deposits but to bring prosperity and felicity to the country, nation and human society. In order to use the wealth for the production of wealth for the welfare of the human society at large and in acknowledgement of the fact that all men are not gifted with the surplus wealth and the skills needed for its beneficial and productive investment, the shariat accords due importance to the principles of *mudharabah* and partnership. The principles of *mudharabah* and partnership bring together the capital of the skillless partner and the skills of the one without wealth. The combination of the wealth and skills yields the desired results which not just are useful for the partners but for the whole human society as well. In a joint partnership there may be two or more partners who invest their wealth, but it is not always necessary that each partner takes part in

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<sup>1</sup> 7-59.

labour and skill work on an equal footing with his other partner(s). Besides the *working partner* there might be a *silent partners*, in a joint business venture. The presence of such things in the legal structure of the economic teachings of Islam establishes it beyond doubt that the stagnation of wealth is a stable which Islam never approves; it holds no good, neither for the owner nor for the rest of the human society. Worse still, a stagnant and static wealth may fall into wrong hand and miscreants, thus bringing harm to its utility for the society.

On the other hand, the use of wealth for the further production of wealth and the amassing it and not using it for the larger benefit and welfare of human society is equally disapproved of by the Shariat. Today not only in India and the countries under secular rule, but also in countries which are under the Muslim rule and where Muslims constitute a near-total majority of their populations, the prevailing economic systems and policies are those of un-Islamic character, almost totally based on the concept and practice of interest. The non-Muslim countries apart, it is the apathetic attitude of Muslim ruling elites in the Muslim world which is chiefly responsible for the prevailing supremacy of the interest-based un-Islamic economic systems there. There exists a sizeable number of those who believe the Islamic economic system to be obsolete, unable to meet the complex challenges of the modern 'advanced' world. As far as I think, it is a sheer inferiority complex which has persuaded them to believe good which comes from the West and America and the ideology not endorsed by West and America can yield no good. The unfortunate

result of this phenomenal atrophy of faith is that the western economic system is working and thriving in the Muslim countries be it the Saudi Arabia, Arab Emirates or any other Muslim country.

It is indeed gratifying that of late some developments and changes in the economic sphere have taken place in the some Muslim countries. To practically introduce the Islamic economic system some positive and constructive decisions have been taken in some Muslim countries. Iran and Sudan may particularly be mentioned in this respect. The Muslim countries are indubitably abler to restructure their economic system in lines with the Islamic teachings. If they fail to do their best in this regard in spite of authority and ability, they can never evade its will be responsibility before Allah.

Our position is diametrically different from theirs. We in India lack capacity. Our sincere gratitude is due to Allah, Who has blessed us with a good amount of deep concern for building our economic edifice along the lines of Islamic teachings. This concern is highly appreciable and valuable. We are certain that if we are prepared to do what we could within the range of our capacity and bring to our lives the changes according to the demands and teachings of the Shariat, Allah ta'ala opens the way, and He has power to bring the day when we will be able to fashion our life completely according to the Islamic teachings. But if we failed to do what we can now to the best of our capacity, ignoring it under the belief that 'if the whole of a thing could not be got the part of it too is of no avail and continued to be inactive, never we will be able to do anything in this regard.

We instead, are destined to lose whatever concern we have today.

This unfortunate state of affairs, in the recent past, developed in the central Asian Muslim countries. Under the yoke of the despotic Communist Russian rule, on one hand they lost their traditional unity and their lives were detached from Islam, both in faith and practice. The first ever stage of an Ummah's extinction is its getting dissociated from the religion. Unfortunately, the same thing happened in the central Asian Muslim countries. Ruthlessly detached from all spheres of the lives of Muslims, the religion had to seek refuge there with *masjids* and monasteries. Within a shorter period time Islam was estranged. Of late, during a foreign trip I saw some children learning the Holy Qur'an: I took great delight in seeing those children and their teachers. Upon being asked how did they manage to protect the Qur'an and their attachment with it their reply was: 'Inside the basements and in the recesses of our homes we could manage to protect this small part of our religion.' In those unfortunate lands which remained closely associated with Islam for centuries the religion of Islam was ruthlessly ousted from the activities of human life so much so that it was confined to a narrower totally private sphere of human life, and for a complete period of seventy years it had to live in the inmost parts of the Muslim households there. Are we prepared to meet the same fate here in India and reduced to a position of our nominal association with Islam and its enlivening teachings? I'm sure the Indian Muslims will never be prepared to compromise on their religion, will never



allow their bond of close association with Islam and the Shariat of Allah to weaken.

Getting back to my point, after a prolonged discussion our Ulama and the experts arrived at the final conclusion that under the existing secular and a pro-interest, legal system and the constitutional obstructions the Muslims are not able to establish banks here, using the term in its full meaning. However, even under the existing secular law, we can establish Islamic financial company; Indian Companies Act permits us to do so. By so doing we can invest our capital and savings in business and other commercial activities. It means that in this secular land there exist possibilities for abiding Muslims to adopt an alternate of banking system. During the Fiqhi Seminar held at Hyderabad (India) a project scheme of the proposed bank alternate Islamic financial institution was put before the Ulama and experts drawn from India and the overseas. The expert economists from the overseas countries Dr. Anas Zarqa, Dr. Ali Jum'a immensely admired the project scheme and the underlying idea. At this stage the project is mere an outline but when it comes to colour this scheme problems do arise. For bringing this idea into action the committee faced a number of questions; a number of special meetings of the experts' panel was called to discuss those questions and practical problems. At this stage there are more than one difficult questions which need viable solutions in the light of the Islamic Shariat. Should the ulama answer those questions in the affirmative, i.e., in lines with the scheme itself, so far so good. If their responses are in the negative,

the experts will continue their struggle to find the alternates. What is held *haram* by the Shariah will remain so for ever; and nobody whosoever has authority to revert the order and system of the shariah. What the experts' committee actually needs is a proper guidance of the Shariah experts for the continuation of their efforts. To explain the basic nature of the questions and problems, the *bank*, as a financial institution, engages itself in the business of money-lending on interest. It gives money to the needy people and charges interest on it according to a predetermined rate of percentage. This business is substantially similar to that of the traditional *mahajan*; the only difference being the bank carries out this business in a systematic, more sophisticated and institutionalized way. In addition to the traditional business of money-lending on interest, the bank offers a number of other services, 'termed as '*non-banking services*'. More precisely, as by lending money the bank creates the relationship of creditor and borrower, so, in the case of offering non-banking services the bank becomes an employee. For instance, we want to send Rs. 10,000 to a friend staying at a distant place, we go to bank and submit the sum of money to it along with the required particulars. According to our request it may serve us a *draft* of the same amount and we send the same draft to our friend, who after the receipt of the *draft*, may move to any branch of the same bank and cash it. By so doing the bank rendered a trustable service for which it charges a specified amount of money. This is a service which is altogether different from the bank's traditional work, the money-lending. On similar lines, the bank works as *guarantor* and creates an environment of TRUST between the purchasing party and the supplier of

the goods by assuming the responsibility of payment on behalf of the purchaser. The bank offers some non-banking technical services as well. For instance, you want to establish a business institution, the bank is in possession of technical capabilities needed for making the outline scheme and the practical project. The preparation of the scheme takes time and labour, for which the bank charges the party on amount of money. Indeed there are tens of works and services which the contemporary banks offer. The primary question is: Will the Shariat permit our Islamic financial institution to offer such non-banking technical services under the contract of *ijarah*, and hire services of other technical experts in exchange of financial consideration? As far as I think, no *alim* will oppose the lawfulness of bank's charging a fee for rendering such services as mentioned above. The problem arises when we go into details like, 'Is the Islamic financial institution permitted to offer any type of technical services under the *contract of hiring* or there might be exceptions to this general rule in connection with the some services which a committed Islamic financial institution can not offer on Shariat grounds? To explain the point, any person, wishing to launch an institution, company or factory, for the purpose hires the services of an expert to draft a scheme of the venture in mind faces the question how to raise the required funds. There might be more ways than one to collect the needed funds. The problem a Muslim expert may face in drawing up a scheme comes into existence if the proposed institution's financial resources include which involve taking or receiving interest in any mode and at any stage of its business. This state of affairs will give rise to the question

if a Muslim expert is permitted by the *shariat* to lend his professional services for the preparation of the scheme for a business institution partly involved in interest-based business transactions. Will it not constitute a mode of lending assistance to a sinful way of business?

Another important proposition is, 'Where an Islamic Financial institution is to make the investment of its funds so that it might earn good profits with a greater amount of trust and confidence? Shares offer a comparatively more promising and trustable option for the investors. The companies which issue their shares are roughly of three types:

- (1) Those whose total business is interest-based, the most conspicuous example of such financial bodies being the banks. Quite obviously, a Muslim financial institution can never be permitted to invest its funds in banks and similar financial bodies.
- (2) The companies the business of which is totally interest-free. Such companies, of course may offer a best solution to the problem investment. But, unfortunately, such companies, to the best of our knowledge, exist nowhere throughout the world.
- (3) Those companies whose prime business is lawful, yet under present law and constitutional problems, they have no option other than entering into various interest-based modes of business. This is an option which is comparatively less harmful to the interests of

the Islamic shariat. Is an Islamic financial institution permitted to utilize its funds by investing them in the companies of the last category? This is indeed a difficult question which requires a proper answer. This question has also been discussed in the Jaddah Islamic Fiqh Academy and even after undergoing a repeated discussion the question continues unsolved. In India the efforts to find proper answers to the questions posed by the newer developments and hitherto unknown problems and challenges will, *Insha Allah*, remain uninterrupted under the aegis of the New Delhi-based Islamic Fiqh Academy of India with the valuable intellectual and practical cooperation of the distinguished men of Islamic learning and the expert economists.

The first part of the present anthology discusses the shares. The topic 'SHARES' was actually discussed by the Ninth Seminar of the Academy, held in Jamia Al-Hidayah, Jaipur, Rajasthan, and the discussants arrived at conclusions and endorsed a number of detailed resolutions. The second part of the book relates to the 'Company and the Shares of Company', which the discussants discussed in the Sixth Seminar of the Academy, held at Jamia Darul Salam, Umarabad, Tamil Nadu. Having discussed a number of questions concerning the shares, company and banking, about some questions the decisions were taken with almost a complete unanimity of the discussants. An important

question about *murabaha* and answers has also been appended towards the end of the book. In view of a similarity running through all these subjects and topics these issues have been collected in a single volume and being offered to the interested readership.

May Allah make all these papers beneficial for the Ummah.

**Qazi Mujahidul Islam Qasmi**

17 January 2000

9<sup>th</sup> Shawwal 1420 A.H.

## The Questionnaire

The *questionnaire* comprises seventeen questions about different aspects of the shares, sale and purchase of the shares and other related propositions.

Q. (1) Does a purchased share of a company represent the shareholder's proportional ownership in the company's assets and properties?

Or

Is merely a documental proof showing that the shareholder has given the amount such and such to the company?

Some scholars are of the opinion that the shares certificate is not more than a document showing that the certificate-holder has paid the amount shown by the certificate to the company. It is by no way a proof to establish the certificate-holder's ownership to the company proportionate to the sum he has invested. The determination of the actual status of the shares will have a very much effect vis-à-vis finding out the true position of the shariat on related issues. Considering the shares as part of the total assets and properties of the company, the shares assume the status of the combination of the cashes and assets. For the company's total ownership consists of its immoveable properties, pieces of land, building structures, machines,

ready to deliver products, collection of funds and its dues on others. All the things just mentioned enhance the value of the shares. According to this opinion the sale and purchase of the shares will constitute no form of the *bay' sarf*; it is, rather, the sale of the combination of the funds and assets for the cash.

But if the shares are regarded to be a document of the sum of money invested in the company, the sale and purchase of the shares will obviously constitute a form of the sale of money in exchange of the money itself, hence subject to all the rulings associated with the *bay' sarf*. For the support of the latter opinion may be said that in the event of the shareholder's turning bankrupt, the existing law confiscates all his properties to pay of his loans but touches not the company's assets proportional to his shares.

As to the former viewpoint, it is supported by the argument that in the event of company's liquidation through the mutual consent of the shareholders, every share-holder is given the part of the total assets in due proportion to his share. On similar lines, he receives due portion of the profits earned, and suffers the losses incurred, contrary to the bonds, etc., the documents of credit, which fetch the amount of sums invested along with the interest, and nothing from the assets. To arrive at the *sharai* solution of the problems associated with the business of the shares it is therefore quite indispensable to determine the position of the shares.

**Q. (2) Sometimes, at launching a company, the shares are notified while the company possesses nothing at the moment. If the purchased shares of such a company are sold to any one, such a sale is of course a sale of a cash for**



cash. What will be the position of the shariat on such a sale transaction?

Q. (3) After the company has come into existence its total assets become a composite of the cashes and properties. Under such condition the total of the assets of the company consists of both the interest-free and interest-involving assets. What will be the position of the shariat on the sale of the shares in exchange of cash?

Q. (4) The companies whose prime business revolves round impermissible things, such as the export and import of liquor and similar other intoxicating products and items, or making investments in banks or other interest-generating schemes. What about the sale and purchase of the shares of such companies?

Q. (5) The companies whose prime business is limited to the products permissible by the Islamic Shariat, such as the engineering products, and the goods of the common use, but these companies have to seek loans on interest from the banks, chiefly to avoid the income taxes. What is the position of the Islamic Shariat on the sale-purchase of the shares of such companies?

Q. (6) In order to meet some legal requirements even the companies whose prime business is the dealing in the permissible products are required to deposit a part of their total assets with the Reserve Bank of India, or have to purchase the security bonds which fetch interest, according to the interest-based norms prevalent in the land. What about the sale-purchase of the shares of such companies and business establishments?

**Q. (7) In case the loan is sought on interest, what would be the position of the Shariat on the profits and earnings made through the interest-based loan? Does such loan forms part of such loanees' total ownership? And, what about the profits earned through such interest-based loan transactions? In other words, shall the earnings made through the investment of the interest-involving loans be regarded by the Shariat as lawful?**

**Q. (8) Is the Board of Directors the representative of the shareholders, and shall its activities be attributed to the shareholders?**

**Q. (9) In taking decisions the Board of Directors follows the majority opinion. Will a shareholder's expression of his disagreement with the Board's decision of seeking interest-based loans absolve him of the responsibility of the Board's this act?**

**Q. (10) If the profits earned by a company include an element of interest with a known quantity will it be sufficient on his part for the purification of his earning to give in charity the amount of interest?**

**Q. (11) And, in case the profits of a company include the elements of interest, and the interest-included earning has, again, been invested in business to earn further profits. Will it suffice for the purification of one's earnings to give away in charity the part of his income proportionate to the amount of interest?**

**Q. (12) What is the position of the Shariat on trading in the Shares? In other words, buying the shares of a company with an intention to sell them later for a higher price, as is generally expected. What is the ruling of the Shariat on doing the business of the shares of the**

companies? The question assumes even greater significance considering the fact that business of the shares involves, almost invariably, a sort of conjecturing. That is, only those shares are bought which are thought to fetch greater amount of profit. And this last thing is decided after a careful study of the share market. Are all sorts of conjecturing unacceptable to the nature of the Islamic Shariat or there exists some detail in this connection?

Q. (13) In the share-market the 'future sale' is a common mode of transaction. This transaction is never meant to actually buy and sell the shares; rather, it is intended only to offset the losses and gains obtained through the fluctuations of the prices of the shares. To illustrate the point by an example, Mr. A entered into business transaction with Mr. B to purchase one hundred shares, each share pricing at Rs. 100/-. A specified day was fixed for the payment of the price reached at. On coming of the day fixed the price of the shares soared, say for instance by 50%. Now Mr. A will get five thousand rupees as his profit. In case the price got downed, say, for example, by 50%, that is, every share lost 50% of its value, the buyer will have to pay the amount of Rs. 5000/- to offset the loss the purchaser has incurred as a result of the fluctuation of the prices of shares in the share market. Such transactions, which are technically termed as 'future sale', involve no actual sale-purchase of the shares. Neither the buyer makes payment, nor the seller parts with the shares, what actually takes place is that on coming of the day fixed by the selling and buying parties the gains and

the losses are offset by them by making the payment to other party as profit of the amount of money earned in the event of the soaring of the price, or to undo the losses incurred in the event of the downing of the prices. What does the Islamic Shariat say about the future sales according to the detail furnished above?

**Q. (14)** What does the Shariat say about the 'forward sale' in which the business transaction is attributed to the future time?

**Q. (15)** Even in the cash sale-purchase of the shares it takes from one to three weeks to complete the possession of the buyer on the share certificates. Actually, this happens owing to some practical compulsions. This gives rise to a question about the meaning of the possession of the buyer on the shares. As a matter of reality, the purchased shares technically fall to the ownership of the buyer, with the transfer of their rights and liabilities to him, even though he has not received the official documents called 'certificates'. Under such condition will the buyer be regarded the owner of the shares without being yet in receipt of the certificates which legally express the ownership of the buyer? Another related question is : Is it necessary for the realization of the buyer's possession on an object to possess it physically, or the forms of possession may differ from object to object, based on the custom and usage?

**Q.(16)** What is the ruling of the Shariat about reselling of the purchased shares to a chain of subsequent buyers while even the first buyer has not yet got the certificates, but the security of the shares as well as the

**gains thereof turn to the buyer, to the complete exclusion of the selling party?**

**Q.(17) In the stock exchange market there are some people work as middlemen between the buying and the selling parties, technically called brokers. They possess the knowledge about the fluctuations of the share market and commit to writing the sale and purchase of the shares. To be more precise, they hold the status of the agents. What does the Shariat say about taking up the profession of brokerage in the share market?**

**2****Decisions the discussants arrived at and which finally were adopted by the Academy in connection with the Shares and their Sale and Purchase**

One modern technique of capital generation for huge business ventures is the mobilization of funds from common men by way of offering them share in the promoting company. The shareholder of such a company has an option of selling their shares at any time directly to the company or to any person or business concerns at an appropriate price. The liberty to sell and purchase the share of a company has led to another aspect of the share market that is some people manipulate the prices of the upward or downward share market and almost turn the otherwise a simple business activity into gambling. The complexity of the share market and the involved Islamic issues prompted to take the concerning matters in the Ninth Seminar of the IFA, which provided the following guidelines in this regard.

1. Equity share in a company is a proof of limited ownership of the shareholder in the company and not mere an indication of that he has invested that much amount in it.
2. The buying of shares of the companies in their initial stages, which are in the process of collecting their capital, is not buying; rather it is participating or

having a share in the company, from the Shariah point of view.

3. Generally, the other properties of the company have more value than its capital. That's precisely why it is sound to purchase the share of a company. Nevertheless, if it is known that the amount to be paid is either less than or equal to the face value of shares, then under these circumstances it would not be correct to buy these shares at a price less than or more than its fixed amount.
4. The buying and selling of shares of the companies, which indulge in impermissible businesses, like that of liquor, *pork* or *interest-bearing loans* are strictly invalid and impermissible.
5. It has been observed that the establishment of companies, which would conduct business purely on Islamic lines, is feasible in India. The seminar urges the Muslim traders and prominent economists to feel their religious responsibilities and strive to set up such business houses, which would work solely on Islamic lines. Nevertheless, since such companies have not been established in India that work strictly on Islamic lines as yet or even if present they are still negligibly small in number, therefore, those Muslims who have capital and are unable to invest in valid and permissible business ventures owing to certain circumstances, can purchase the shares of the companies carrying permissible businesses (for example, manufacturing of engineering instruments

or items of general use) even if they have to indulge in interest transactions owing to legal liabilities and constraints.

6. Muslims holding shares in such companies whose prime business is permissible, although they are incidentally involved in certain impermissible practices, should try and forbid the company from such impermissible practices in future at the annual general meetings of shareholders. Furthermore, they should convince other shareholders through mutual discussions and other means to garner their support during the meeting for the purpose.
7. In case, interest is a part of the profits earned by the company in a fiscal year and it's quantity is known, then it should be deducted from the profits earned by the shareholders and should be given away in charity (*sadqah*) without expecting any recompense for it.
8. In case, interest is a part of the profits reaped by the company, thereafter the interest-included income is invested in a business venture, and profits, thus, earned out of it, then the interest shall be excluded from the profit earned proportionately and it should be given away as charity without expecting any recompense.
9. A company is a legal entity, which represents the collective status of the shareholders. The Board of Directors is a group of people elected by the company, which expends on behalf of the company and in this way enjoys the status of an authorized



representative of the shareholders.<sup>1</sup> Moreover, it is incumbent upon all the shareholders to share the liabilities of expenditure of the Board of Directors; provided they are in conformity with the rules and regulations, laid down by the company.

10. It is quite right to trade in the shares of those companies which undertake solely the permissible business.
11. The FUTURE SALE, the prime objective of which is not to buy shares but to neutralize their losses and gains with fluctuating values of shares is actually an interest-bearing business. It is quite invalid in the eyes of Islamic Shariah because it is an explicit and apparent form of gambling.
12. The forward sale in which the sale does take place in the present, rather the actual implementation of the transaction is different to the future time, is not a sale it is rather agreement to sell. The actual sale would take place only after the offer and its acceptance on the scheduled date take place.
13. It would not be valid to sell off the shares before getting the share certificates in a cash/spot sale.
14. The shareholder becomes the legal and authorized holder of the shares once he gets the share certificates. He can sell off his shares even if his name has not yet been endorsed with the company due to certain official impediments.

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<sup>1</sup> As to the clauses 7 & 8 mentioned above, MI. Rais-ul-Ahrar Nadvi is of the opinion that such interest should be shelled out to non-Muslims alone.

15. It is obviously proper to act as a broker in those transactions in which the buying and selling of shares is permitted. On the contrary, it is not permissible for a person to act as a broker in the transactions of those companies which undertake any impermissible business.
16. An Islamic financial institution or the Muslims in general, can purchase equity shares of such companies which undertake purely *Halal* businesses.
17. Investing in shares of such companies as undertake solely *Haram* business is totally impermissible.

**3**

**A capsule summary of the papers the Academy received in response to the *Questionnaire* on the theme 'determining the status of the shares in the light of the Shariat'.**

**1. Position of the Shariat on shares :**

All the discussants share the opinion with a complete unanimity that the equity shares of a company purchased by one represent the ownership of the buyer in proportion to the value of the shares he has purchased. This opinion is further strengthened by the fact that in the event of the liquidation of the company with the consent of the shareholders each shareholder receives his due share in proportion to the value of his shares. Likewise, if the company earns profits by its business or manufacturing, or suffers loss, the shareholders, too, get their proportionate share in profits the company has made; and, likewise, bears the part of losses incurred in proportion to one's share in the company. Unlike the bonds or similar other documents of credits, where the investor is entitled only to have his invested money with a rate of interest specified. In latter sorts of investment the investor finds no share in the assets of the company. The argument of the opposite opinion, that the assets of the company cannot be confiscated by law, has

utterly been rejected by those holding the opinion expressed.

### **1. Sale purchase of the equity shares of the company at a stage when it owns no assets at all.**

About this question the opinions of the discussants are considerably different. Following is an arranged presentation of a capsule summary of the opinions:

(a) The question is not correct, and does not represent the actual condition. For the company must have its assets, more or less. All companies are compelled by law to get themselves registered and no company is illegible for registration unless it possesses an amount of assets. So have responded the following scholars:

    Ml. Shams Pir Zada

    Ml. Dr. Abdul Azim Islahi

    Ml. Hakim Zillur Rahman

(b) The purchase of the shares for the currency notes constitutes no mode of the *bay sarf*; it is not a sale contract at all, it is the on contract the of partnership instead. So has responded Mufti Shakil Ahmad.

(c) This type of transaction makes the object of sale a thing which is not in the ownership of the seller, and this type of sale is an unlawful mode of transaction. To put it differently, the sale of the shares in fact is the sale of the assets and properties of a company. As for the case in question, the company possesses no assets at all, hence the transaction invalid. This is the response of the following two scholars:

    Ml. Mufti Md. Jaafar Milli

MI. Abu Bakr Al-Qasmi

Note : In his detailed paper the latter scholar, MI. Abu Bakr al Qami, has termed this transaction to be the *bay'sarf*.

(d) This is a valid transaction, in spite of the fact that neither party takes possession of the object of sale and purchase.

This is the opinion of the following scholars :

MI. Abu Sufyan Miftahi

Mufti Muhammad Zaid

Note : These two scholars do not make the condition of equality. According to their opinion, however, it is the *naqd* which is versus another *naqd*. In other words, it is the transaction of the *bay sarf*.

(e) This is not the *sarf* contract. For the *sarf* contract is limited only to the forms of the cash money. The shares lack this qualification; they bear only partial resemblance to the hard money, while partly they resemble the currency notes (flus-e-Nafiqa). Still the *tafazul* would not be lawful because of their partial resemblance to the *innatelyabsolute value*. But another aspect of this sale contract is that the hand-to-hand possession of the *badalain* would not be a condition for the validity of this sale deal; it is because of that the object of sale partly resemble the currency notes. This opinion is based on the following ruling :

﴿رجل﴾ باع فضة بفلوس، فإنه يُشترط قبض أحد البدلين قبل الافتراق، لا قبضهما، كما في البحر عن الذخيرة.

A person bought (an amount of) silver for the currency money. Now the possession of either one exchange must be taken before the parties of the sale contract depart each

other. But possession of both the exchanges (before the separation) is not necessarily required, as has been expressed in al-Bahr al-Raiq from al-Zakhira"<sup>1</sup>. This opinion has been expressed by Ml. Badr Ahmad Mujtaba and Ml. Abdul Qayyum of Palanpur.

(f) This is a sale of money in exchange of money itself. Hence the *tafadul* is not permissible. It could be bought and sold in exchange of an equal amount of the other exchange. This opinion has been expressed by the following *ulama*:

Ml. Samiullah Qasmi,  
 Ml. Akhtar Imam Adil,  
 Ml. Shamshad Ahmad Nadir Al-Qami,  
 Ml. Zubair Ahmad (of Sitamarhi)  
 Ml. Nasimuddin Qasmi  
 Ml. Anwar Ali Azami  
 Ml. Tanwir Ahmad Qami  
 Ml. Atiq Ahmad Qasmi  
 Ml. Ijaz Ahmad Qasmi  
 Ml. Zafarul Islam Sb  
 Ml. Qamer Alam Sabili  
 Ml. Mufti Abdur Rahman Palanpuri  
 Ml. Abdul Latif (of Gujarat)  
 Ml. Ibrahim Sb.  
 Ml. S. Muhammad Ayub Sabili  
 Ml. Md. Abrar Khan Nadwi  
 Ml. Akhlaqur Rahman Qasmi  
 Ml. Abu Bakr (of Shakarpur)

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<sup>1</sup> Raddul Muhtar 4/262.

Note : Many out of the above-named Ulama have also described this sale contract to be 'bay ghair mamluk' (the sale of an item not in possession of the seller).

(g) This is the *sarf* contract; it could be valid only if an equal amount of money is paid in exchange. Thus this opinion disregards the condition of the hand-to-hand exchange and taking possession of the sold and purchased items. So have opined the following *ulama*.

Ml. Abul Hasan Ali (of Gujrat)

Ml. Mufti Ubaidul Allah As'adi

Ml. Mujahidul Islam (Hyderabad)

Ml. Muhammad Qamarul Zaman

Ml. Md. Noor Al-Qasmi

Mufti Mahboob Ali Wajihi

Ml. Naeem Rashidi

Mufti Abdur Rahim

Ml. Manzur Ahmad Qasmi

Ml. Sultan Ahmad Islahi

Ml. Naeem Akhtar Qami

(h) This sale transaction is totally invalid, even if the complete quantitative parity is maintained between the *badalain*. It is so because this transaction is a contract of *sarf*, which essentially requires both the quantitative parity between the *badalain* and a hand-to-hand possession of both the parties. Quantitative disparity and the referment of possession will render the transaction as invalid. The case in question lacks the second qualification. That is, both the parties fail to make the payment hand-to-hand. A party makes the payment in terms of species, cash, coins and the

other party offers in exchange only the documents of cash in the stead of the cash itself. This opinion is shared by the following ulama :

Ml. Md. Rizwan Al Qasmi

Ml. Khalid Saifullah Rahmani

Ml. Tahir Mazahiri

Ml. Md. Arshad Qasmi

Ml. Md. Shahid Qasmi

Ml. Nasim Ahmad Qasmi

Note : Some scholars ignored this question. They include the following :

Ml. Ahmad Dewlavi

Mufti Nizamuddin (of Darul Uloom Deoband)

Ml. Hifzur Rab Sb. (of Allahabad)

### **3. Of the blend of hard cash and the properties:**

Like the questions put above, this question too has variously been met by the scholars. These differing opinions are being put below:

(a) Most scholars share the opinion that the question is very much like the sword plated with gold or silver. To the Hanafites, it will be a valid transaction provided that the value of the shares exceeds the value of the *naqd*. Failing this condition, the transaction will not be valid. This opinion is held by the following men of learning :

Ml. Khalid Safiullah Rahmani

Ml. S.Md. Ayub Sabili,

Ml. Abu Sufyan Miftahi

Ml. Qamar Alam Sabili

Ml. Md. Hanif Sb.



Mr. Abdul Latif (Gujrat)  
Mr. Nasim Ahmad Qasmi  
Mr. Abu Bakr Shakarpuri  
Mr. Badr Ahmad Mujibi  
Mr. Atiq Ahmad Qasmi  
Mr. Nasimuddin Qasmi  
Mr. Tahir Mazahiri  
Mr. Naeem Akhtar Qasmi  
Mr. Naeem Rashidi  
Mr. Ubaidullah As'adi  
Mr. Shamshad Ahmad Nadir al Qasmi  
Mr. Iqbal Ahmad Qasmi  
Mr. Abdul Qayyum Palanpuri  
Mr. Ibrahim Muhammad  
Mr. Md. Abrar Khan  
Mr. Mujahidul Islam (of Hyderabad)  
Mr. Mufti Abdur Rahman Palanpuri  
Mr. Noor al Qasmi  
Mr. Md. Rizwan al Qasmi  
Mr. Mufti Abdul Rahim Sb.  
Mr. Ijaz Ahmad Qasmi  
Mr. Md. Shahid al Qasmi  
Mr. Mufti Akhtar Imam Adil Qasmi  
Mr. Anwar Ali Azami  
Mr. Md. Arshad Qasmi  
Mr. Muhammad Qamaruz Zaman  
Mr. Zafarul Islam  
Mr. Abdul Jalil Al Qasmi  
Mr. Akhlaqur Rahman Qasmi

MI. Abul Hasan Ali (of Bharoch, Gujarat)

MI. Samiullah Qasmi

Note : MI. Md. Qamarul Zaman has further said that in this case the inspection of the goods/properties is not necessary. MI. Samiul Haq and Mufti Md. Zaid are of the opinion that this sale contract must be concluded with the payment be given hand to hand. MI. Akhlaq Ahmad al-Qasmi has put two more conditions for the validity of such a transaction. That is, he must raise his voice time and again against the interest involving business activities and must part with the amount of interest procured.

MI. Abul Hasan Ali, MI Zafarul Islam and MI. Zubair Ahmad Qasmi base their opinion on the following text passage from Al-Hidayah.

ولو قال أعطني نصف درهم فلوساً ونصفاً إلا حبة جاز لأنه قابل الدرهم بما يباع من الفلوس بنصف درهم ونصف درهم إلا حبة بمثله وما وراءه بإزاء الفلوس (هداية كتاب الصرف ، 3/111)

(b) Such a business transaction is valid, provided that the following two conditions are properly met :

- (a) Voice should continually be raised against the interest involving interest bound dealings.
- (b) The amount earned as interest be given away in charity (MI. Manzur Ahmad Qasmi)
- (c) If other assets and properties of the company are considerably more than its cash (Naqd), the shares of such a company may be bought : This being in accordance with the juristic norm

للاكثر حكم الكل.

(the 'majority' shall be treated as 'total').

(This opinion has been expressed by Mufti Mahboob Ali Wajihi Sb.)

- (d) This is a valid form of business. For the element of interest constitutes no more than an inconsiderable part of the total business. (Ml. Shams Pirzadah)
- (e) This business is totally lawful (Mufti Md. Ja'afar, Ml. Tanwir Ahmad Qasmi, Ml. Ahmad Dewalvi).

Ml. Tanwir Ahmad and Ml. Ahmad Dewalvi both share the opinion that in the event of a lawful thing getting blended with the unlawful, the preference shall be given to the lawful.

Ml. Ahmad Dewalvi, however, has further opined that since this business involves interest, it should better be avoided.

- (f) Such a type of business should be valid and lawful (to this extent Ml. Sultan Ahmad Islahi and Dr. Abdul Azim Islahi share the same opinion without any difference). Their reasons of agreement, however, are different.

So far as Ml. Dr. Abdul Azim Islahi is concerned, he holds that since the cash amount of the mixed assets of the company always fluctuates in terms of its numbers and quantity and its actual fixation is almost impossible for the general stockholders of the company, the total of the mixed assets which the company represents should be regarded different from the cash amount. The exchange of the shares for the cash should be regarded valid and lawful. As it is an *ijtihadi* proposition and not an EXPRESSED one; so the people should be given the possible maximum latitude.

MI. Sultan Ahmad Islahi's opinion, on the other hand, is that India is *Darul Harb*, even if not absolutely; it should be treated as such at least in matters of business and trade involving interest.

Note : In response to another question MI. Islahi himself has said that the exchange of the *naqd* for *naqd* will be valid only if the complete parity and equivalence is maintained. Disparity is bound to invalidate the whole transaction. So because it is the *sarf contract*.

- (g) The shares, which stand for the blend of the cashes and properties might be bought for a property and *mal* owned by more persons than one'. This is the gist of the response offered by Mufti Nizamuddin of the Darul Uloom Deoband.
- (h) 'This type of business is not consistent with the nature of the Islamic Shariat, hence to be eschewed as far as possible'. So has opined Mufti Azizur Rahman of Bijnor U.P.

#### **4. Sale-purchase of the shares of companies whose prime business revolves round the impermissible things and products.**

Vis-à-vis the question put above all the discussants excepting one, share a single opinion. That is, of impermissibility of Undertaking the business in the shares of such companies whose business is primarily impermissible. The only exception to this unanimous opinion being MI. Ahmad Dewalvi. He holds the view of permissibility. To him too this business is a good option to be adopted. His argument is that the contracts, as a general rule, return to the contractor. In the present case the contractor (*aqid*) is the

company which holds the status of an agent (*wakil*) and the chief responsibility will return to it and not to the clients (buyers of the shares). Hence the trade will be permissible. Still, it is not fully consistent with the temperament of the *Shariat* as the element of interest runs through it.

**Note** : Mufti Azizur Rahman Sb. left this question unanswered. The scholars holding the view of impermissibility are the following:

Ml. Md. Hanif

Ml. Sayyid Md. Ayub

Ml. Shams Pir Zada

Ml. Hifzur Rabb Sb.

Ml. Md. Tahir

Ml. Badr Ahmad Mujibi

Ml. Mufti Md. Zaid

Ml. Ubaidullah Asadi

Ml. Khalid Saifullah Rahmani

Ml. Mufti Akhtar Imam Adi;

Ml. Zafarul Islam

Ml. Dr. Abdul Azim Islahi

Ml. Sultan Ahmad Islahi

Ml. Md. Qamaruz Zaman Nadwi

Ml. Mufti Nizamuddin (Darul Uloom Deoband)

Ml. Abdul Jalil Qasmi

Ml. Abul Hasan Gujrati

Ml. Manzur Ahmad Qasmi

Ml. Md. Rizwan Qasmi

Mi Ijaz Ahmad Qasmi

Ml. Shamshad Ahmad Nadir Qasmi

Ml. Mufti Shakil Ahmad Sitapuri  
 Ml. Mujahidul Islam  
 Ml. Md. Abrar Khan Nadwi  
 Ml. Md. Jafar Milli Rahmani  
 Ml. Tanwir Ahmad Qasmi  
 Ml. Noor Al-Qasmi  
 Ml. Mufti Abdul Qayyum Palanpuri  
 Ml. Ibrahim Muhammad Sb.  
 Ml. Atiq Ahmad Qasmi  
 Ml. Abu Sufyan Miftahi  
 Ml. Qamar Alam Sabili  
 Ml. Mufti Nasim Ahmad Qasmi  
 Ml. Mufti Abdur Rahim (Bhopal)  
 Ml. Naeem Akhtar Qasmi  
 Ml. Samiullah Qasmi  
 Ml. Abdur Rahman Palanpur  
 Ml. Zubair Ahmad Qasmi  
 Ml. Iqbal Ahmad Qasmi  
 Ml. Nasimuddin Qasmi  
 Ml. Mahboob Ali  
 Ml. Abu Bakr Sharkarpur (Darbhanga)

**5. Buying the shares of such companies whose prime business is permissible but they may have to seek interest bound-loans**

About this question all the discussants are unanimously agreed to the point that the earning of such companies would be undoubtedly lawful. The discussants, however, are different *vis-à-vis* the permissibility or otherwise of the sale and purchase of the shares of such companies.

(a) The majority of the discussants holds that trading in the shares of such companies is permissible, chiefly because of the non-existence of the options for making investment. Some out of the majority of the discussants mention a condition for the permissibility that the voices must be raised from time to time against the interest-involving activities of the company. The subscribers to this opinion are the following *ulama*.

Ml. Iqbal Ahmad Qasmi

Ml. Mufti Akhtar Imam Adil

Ml. Abdur Rahim

Ml. Nasimuddin Qasmi

Ml. Md. Hanif Milli

Ml. Abu Sufyan Miftahi

Ml. Ijaz Ahmad Qasmi

Ml. Dr. Abdul Azim Islahi

Ml. Md. Ja'afar Milli Rahmani

Ml. Akhlaqur Rahman Qasmi

Ml. Md. Qamaruz Zaman Nadwi

Ml. Mufti Shakil Ahmad Sitapuri

Ml. Samiullah Qasmi

Ml. Abdul Latif Gujrat

Ml. Mufti Nizamuddin Sb.

Ml. Mufti Abdur Rahman Palanpur

Ml. Abdul Qayyum Palanpuri

Mufti Nizamuddin Sb. is of the view that the stockholder of such companies should make an agreement with the companies not to invest his money in impermissible modes of businesses. The following

are the ulama who hold this business as lawful under restraining conditions, without binding it with any provision:-

Mr. Khalid Saifullah Rahmani

Mr. Mufti Md. Zaid

Mr. Shams Pir Zadah

Mr. Ahmad Nadir Al-Qasmi

Mr. Md. Naim Rashidi

Mr. Abu Sufyan Miftahi

Mr. Abrar Khan Nadwi

Mr. Qamar Alam Sabili

Mr. S. Md. Ayub

Mr. Atiq Ahmad Qasmi

Mr. Md. Arshad Qasmi

Mr. Ahmad Devalwi

Mr. Nasim Ahmad Qasmi

Mr. Hifzur Rab

Mr. Zafarul Islam

Mr. Tanwir Ahmad Qasmi

Mufti Mahboob Ali Wajihi

Mr. Badr Ahmad Mujibi

Mr. Md. Rizwan Al-Qasmi

Mr. Md. Shahid Qasmi

Mr. Sultan Ahmad Islahi

- (b) The second opinion is of impermissibility. The argument of the ulama adhering to this opinion goes that the sale-purchase of such companies amounts to authorizing the company to do interest-involving business which indubitably is a *haram* act, even though the *haram* constitutes only an insignificant part of the total business. This opinion has been expressed by



MI. Abu Bakr Shakarpur, and

MI. Mufti Azizur Rahman (of Bijnor)

Note : Some scholars left the question unanswered altogether. Such scholars include MI. Manzur Ahmad QasMI. MI. Md. Noor Al-Qasmi has mentioned both the opinions of permissibility and otherwise, but did not specify to which opinion he subscribed.

**6. Even the companies doing only permissible business have to deposit a part of their assets with the Reserve Bank of India, or have to purchase a number of the security bonds, thus inevitably earning some interest. What about this interest-involving earning?**

In response to this question all the discussants are unanimously agreed to that since there exist little options to make investments the shares of such companies may permissibly be sold and bought, provided that the earning accrued through interest is done away with in charity.

The ulama adhering to this opinion are the following:

MI. Qamar Alam Sabili

MI. Abu Sufyan Miftahi

MI. Khalid Saifullah Rahmani

Mufti Mahboob Ali Wajihi

MI. Samiullah Qasmi

MI. Shams Pirzadah

MI. Shakil Ahmad

MI. Tanwir Ahmad Qasmi

MI. Ja'afar Milli Rahmani

Ml. Akhlaqur Rahman Qasmi  
 Ml. Md. Qamaruz Zaman Nadwi  
 Ml. Mufti Azizur Rahman  
 Ml. Ijaz Ahmad Qasmi  
 Ml. Mufti Nizamuddin (Darul Uloom, Deoband)  
 Ml. Ubaidullah Al-As'adi  
 Ml. Abdul Jalil Qasmi  
 Ml. Md. Naeem Rashidi  
 Ml. Abdur Rahim (Bhopal)  
 Ml. Md. Arshad Qasmi  
 Ml. Ahmad Nadir Qasmi  
 Ml. Abdur Rahman Palanpuri  
 Ml. Md. Shahid Qasmi  
 Ml. Abrar Khan  
 Ml. Ibrahim Muhammad  
 Ml. Md. Rizwan Al-Qasmi  
 Ml. Atiq Ahmad Qasmi  
 Ml. Abu Bakr Shakarpur  
 Ml. Nasimuddin Qasmi  
 Ml. Md. Noor al Qasmi  
 Ml. Md. Hanif  
 Ml. Iqbal Ahmad Qasmi  
 Ml. Mufti Anwar Ali Azami  
 Ml. S. Tahir Mazahiri  
 Ml. Mufti Akhtar Imam Adil  
 Ml. Mufti Md. Zaid  
 Ml. Sultan Ahmad Islahi  
 Ml. Abul Hasan Ali (Gujrat)  
 Ml. Badr Ahmad Mujeebi  
 Ml. Ahmad Dewalvi  
 Ml. Zafarul Islam

Mr. Mujahidul Islam (Hyderabad)

Mr. Abdul Qayyum Palanpuri

From among the *ulama* listed above the following hold that dispersing with the earning made by the sums of interest is not obligatory, it is only a recommended act.

Mr. Md. Naeem Rashidi

Mr. Md. Noor Al-Qasmi

Mr. Tanwir Ahmad Qasmi

Mr. Ijaz Ahmad Qasmi

Note :

- (a) Mufti Nizamuddin (of Darul Uloom Deoband) holds that an agreement between the company and the clients be negotiated, whether orally or in writing, not to mix the interest with the sums of their profit.
- (b) According to a discussant, Hakim Zillur Rahman, the very question has actually sprung from a misunderstanding of the facts, or the lack of proper knowledge. For no company is required by law to deposit a part of its assets with any bank. What it has to do is to keep under an official security the undivided amounts of its profits.
- (c) Some scholars gave no response to the question under discussion. They include Mr. Manzur Ahmad Qasmi, and Mr. Hifzur Rab.

## **7. Interest-bound loans and the ensuing/resultant gains**

Different opinions have been expressed by the discussants in response to this question. To sum up them :

(a) The loan sought on interest under compulsive circumstances will form part of the ownership of the loanee. For, as a matter of principle borrowing the money on interest is not unlawful in itself, the reason of unlawfulness rests outside this act. The ulama subscribing to this opinion are the following :

- MI. Atiq Ahmad Qasmi
- MI. Khalid Saifullah Rahmani
- MI. Mufti Anwar Ali Azami
- MI. Ahmad Nadir al-Qasmi
- MI. Md. Tahir Mazahiri
- MI. Abrar Khan Nadvi
- MI. Md. Naeem Rashidi
- MI. S. Md. Ayub
- MI. Abdul Latif (Gujrat)
- MI. Md. Qamaruz Zaman Nadwi
- MI. Md. Hanif Milli
- MI. Mujahidul Islam (Hyderabad)
- MI. Abu Bakr Shakarur
- MI. Mufti Md. Jafar Milli Rahmani
- MI. Naseemuddin Qasmi
- MI. Md. Arshad Qasmi
- MI. Shams Pirzada
- MI. Naeem Akhtar Qasmi
- MI. Md. Rizwan Al-Qasmi
- MI. Iqbal Ahmad Qasmi
- MI. Abul Hasan Ali
- MI. Shahid Qasmi
- Mufti Abdur Rahman Palanpuri
- MI. Badr Ahmad Mujeebi Qasmi
- MI. Mufti Naseem Ahmad

Ml. Abdur Rahim  
    Ml. Sultan Ahmad Islahi  
    Ml. Abu Sufyan Miftahi  
    Ml. Mufti Akhtar Imam Adil Qasmi  
    Ml. Abdul Qayyum Palanpuri  
    Ml. Samiullah Qasmi  
    Ml. Qamar Alam Sabili  
    Ml. Noor Al-Qasmi  
    Ml. Tanwir Ahmad Qasmi  
    Ml. Manzur Ahmad Qasmi  
    Ml. Zubair Ahmad Qasmi  
    Ml. Mufti Md. Zaid

- (b) The borrower may validly own it provided that the borrower belongs to the general category of people. It will not be lawful for those holding responsible positions in the administrative structure of the company. (Iqbal Ahmad Qasmi).
- (c) 'If the total amount is interest-based, the resultant gains too will obviously be regarded as interest. Such an interest based loan will not be a lawful property of the borrower.' This view has been expressed by Ml. Zafarul Islam and Mufti Mahboob Ali Wajihi.
- (d) 'The gains proportionate to the interest-based loan should be spent in the acts of general welfare' (Dr. Abdul Azim Islahi).

**Q. (8) Does the Board of the Directors represent the stockholders?**

Concerning this question all the discussants unanimously share the view that the Board of Directors shall be regarded the representative of the stockholders.

Barring Ml. Abu Bakr (Shakarpuri), all the discussants are agreed to that the actions undertaken by the Board shall be regarded as of the clients and stockholders. To Maulana Abu Bakr Shakarpuri, however, it is not necessary for the clients (stockholders) to account for all acts of the Board of Directors.

Then, most of the discussants describe this relationship between the stockholders and the Board of Directors to be the *Sharikat-e-Anan*. Others, however, attribute it to be the contract of *mudharabah*. This opinion has been expressed by:

Ml. Zubair Ahmad Qasmi

Ml. Tanweer Ahmad Qasmi

Ml. Mufti Ubaidullah Sb.

**Note :** There are some ulama who did not bother themselves to responded this question. They are :

Ml. Zafarul Islam, and

Ml. Mufti Azizur Rahman.

**Q. (9) Will the stockholder stand absolved of the responsibility of seeking interest-based loans if he disowned the Board's decision of seeking the interest-based loans and communicated his note of disagreement to the Board to this effect?**

Papers submitted in response to this question represent a variety of opinions. They may be summed up as follows:

- (i) Expressing openly one's difference from and displeasure at the Board of Director's decision of seeking interest-bound loans will be regarded enough to absolve one of the sin of the interest-based loans. This opinion is held by the following men of Islamic learning :

Mr. Khalid Saifullah Rahmani

Mr. Abdul Latif (Gujrat)

Mr. Abu Sufyan Miftahi

Mr. Mufti Akhtar Imam Adil

Mr. Mufti Nizamuddin (Darul Uloom Deoband)

Mr. Naseemuddin Qasmi

Mr. Ibrahim Muhammad

Mr. Qamar Alam Sabili

Mr. Samiullah Qasmi

Mr. Md. Qamaruz Zaman Nadwi

Mr. Tanweer Ahmad Qasmi

Mr. Abdul Qayyum Palanpuri

Mr. Dr. Abdul Azim Islahi

Mr. Mufti Muhammad Zaid

Mr. Mufti Anwar Ali Azami

Ml. Muhammad Tahir Mazahiri  
 Ml. Mufti Mahboob Ali Wajih  
 Ml. Md. Rizwan Al-Qasmi  
 Ml. Iqbal Ahmad Qasmi  
 Ml. Abu Bakr (Shakarpur)  
 Ml. Md. Arshad Qasmi  
 Ml. Abdur Rahim  
 Ml. Md. Jafar Milli  
 Ml. Md. Noor Al-Qasmi  
 Ml. Md. Hanif  
 Ml. Abrar Ahmad Qasmi  
 Ml. Md. Naeem Rashidi  
 Ml. Nasim Ahmad Qasmi  
 Ml. Ijaz Ahmad Qasmi  
 Ml. Badr Ahmad Mujibi  
 Ml. Abdur Rahman Palanpuri

- (ii) Expressing one's displeasure and forwarding one's note of difference to the Board of Directors will not be sufficient to absolve one of the Board's impermissible acts, except that the stockholder has no other option before him than to invest his capital in the companies of the same character. Knowing that his note of protest may not dissuade the company from indulging in impermissible acts and still sharing the business with it is in fact a sort of violation of the Shariat. Sharing business with the same company will amount to bypassing the shariat; if his protest is ruthlessly disregarded, he had better detach himself from such company. Only under compulsive circumstances, like the non-availability of other options, one may be



permitted to share business with such a company. This view has been adopted by the following ulama:

Ml. Atiq Ahmad Qasmi  
 Ml. Ahmad Al-Qasmi  
 Ml. Md. Abrar Khan Nadwi  
 Mufti Ubaidullah Al-Asadi  
 Ml. Mujahidul Islam (Hyderabad)  
 Ml. Shahid Al-Qasmi  
 Ml. Abul Hasan Ali Gujrati  
 Ml. Abdul Jalil Qasmi  
 Ml. Akhlaqur Rahman Qasmi  
 Ml. Manzur Ahmad Qasmi

- (iii) Maulana Shams Peerzada is of the view that the shareholder is not necessarily required to express his disapproval of the Board's impermissible acts. For it is of no avail at all.
- (iv) According to Maulana Sultan Ahmad Islahi the impermissibility of seeking interest-based loans is a point of contention let alone the necessity of expressing disapproval of the Board's such acts.
- (v) 'The Board of Directors is in fact the representative of the shareholders. The question, therefore, needs not be answered. This opinion has been expressed by Ml. Hifzur Rab Sb.

Note : Some *ulama* left the question unanswered. They include the following:

Ml. Naeem Akhtar Qasmi  
 Ml. Mufti Azizur Rahman  
 Mufti Shakil Ahmad Sitapuri

Mr. Ahmad Dewalvi

**Q. (10) Will it be regarded enough for the purification of the returns from a company if its known amount of interest is given away in charity?**

In answer to this question all the discussants, barring Maulana Sultan Ahmad Islahi, share unanimously the opinion that the amount of interest must be dispensed with by spending it in acts of charity and it will purify the rest amount of the returns. These discussants are as follows:

Mr. Akhlaqur Rahman Qasmi

Mr. Abu Sufyan Miftahi

Mr. Zafarul Islam

Mufti Mahboob Ali Wajih

Mr. Iqbal Ahmad Qasmi

Mr. Shams Peerzada

Mr. Mufti Akhtar Imam Adil

Mr. Khalid Saifullah Rahmani

Mr. Abul Hasan Ali

Mr. Badr Ahmad Mujeebi

Mr. Dr. Abdul Azim Islahi

Mr. Qamarul Zaman Nadwi

Mr. Abdul Jalil Qasmi

Mr. Mufti Mohd. Zaid

Mr. Ijaz Ahmad Qasmi

Mr. Md. Arshad Qasmi

Mr. Abdul Latif (Gujrat)

Mr. Ibrahim Muhammad

Mr. Md. Shahid Al-Qasmi

Ml. Naeem Rashidi  
 Ml. Md. Rizwan Al-Qasmi  
 Ml. Manzur Ahmad Qasmi  
 Ml. Abu Bakr (Shakarpur)  
 Ml. Mujahidul Islam (Hyderabad)  
 Ml. Ahmad Nadir Al-Qasmi  
 Ml. Zubair Ahmad Qasmi  
 Ml. Abdul Qayyum Palanpuri  
 Ml. Abrar Khan Nadwi  
 Ml. Md. Hanif Milli  
 Ml. Ubaidullah Al As'adi  
 Ml. Md. Noor Al-Qasmi  
 Ml. Tanwir Ahmad Qasmi  
 Ml. Abdur Rahim (Bhopal)  
 Ml. Atiq Ahmad Qasmi  
 Ml. Md. Ayub Sabili  
 Ml. Abdur Rahman Palanpuri  
 Ml. Nasim Ahmad Qasmi  
 Ml. Naeem Akhtar Qasmi  
 Ml. Anwar Ali Azami  
 Ml. Md. Tahir Mazahiri  
 Ml. Naseemuddin Qasmi  
 Ml. Samiullah Qasmi  
 Ml. Qamar Alam Sabili

Note : The replies of the following ulama are not legible:

Ml. Mufti Shakil Ahmad Sitapuri  
 Ml. Mufti Azizur Rahman (Bijnor)  
 Ml. Ahmad Dewalvi  
 Ml. Mufti Nizamuddin (Darul Uloom Deoband)

As it has already been pointed out, to Ml. Sultan Ahmad Islahi the interest-earned thus needs not to be given away in charity. Such an earning is undoubtedly lawful. He himself can use it without feeling scruples.

**Q. (11) What about the gains reaped by interest based income?**

The original phraseology of the question is :

*“If the income of the company includes interest, and the interest-based income is invested in a business to gain more profits, will it be regarded enough to give in charity the proportionate amount of the interest to make the total income pure from malignity”?*

In response to this question the near-total majority of the discussants is agreed to that if the amount of interest is known, or could be known, it must be given in charity. But not if it is not known, or could hardly be known. For as a matter of principle, the lawful mixed up with the unlawful shall be regarded lawful.

Note : The following ulama did not attempt this question, leaving it untouched altogether.

Mufti Azizur Rahman

Ml. Ahmad Dewalvi

Ml. Mufti Shakil Ahmad Sitapuri

Ml. Md. Rizwan Al Qasmi

Mufti Nizamuddin Sb. (Darul Uloom Deoband)

**Q. (12) Sale-purchase of the shares**

About this question the opinions of the discussants differ; they are classifiable into four groups according to the following detail:

- (i) Trading in the shares is permissible, provided that the prime business of the company is lawful and the company owns some assets. As regards the speculation, it is not absolutely outlawed. The outlawed speculation being the one which involves uncertainty and risk. Speculation is the part of every business activity. This opinion is shared by the following Ulama;

Mr. Abu Sufyan Miftahi

Mr. Khalid Saif Allah Rahmani (Hyderabad)

Mr. Shams Pirzada (Mumbai)

Mr. Mufti Abdur Rahman Palanuri

Mr. Nasimud Din Qasmi

Mr. Mufti Nizamuddin [Darul Uloom,  
Deoband]

Mr. Mufti Anwar Ali

Mr. Abu Bakar Qasmi [Shakarpur]

Mr. Sami Allah Qasmi

Mr. Muhammad Hanif

Mr. Zubair Ahamad Qasmi

Mr. Tahir Mazahiri

Mr. Md. Shahid al-Qasmi

Mr. Md. Rizwan al-Qasmi

Mr. Mufti Ahmad Nadir al-Qasmi

Mr. Manzur Ahamad Qasmi

Ml. Mujahidul Islam  
Ml. Dr. Abdul Azim Islahi  
Ml. Naim Akhtar Qasmi  
Ml. Qamaruz Zaman Nadwi  
Ml. Abul Hasan Ali  
Ml. Ibrahim Muhammad  
Ml. Ijaz Ahamad Qasmi  
Ml. Abdul Latif Gujrat  
Ml. Abdul Jalil Qasmi  
Ml. Mufti Muhammad Zaid  
Ml. Muhammad Arshad Qasmi  
Ml. Sayyid Muhammad Ayub Sabili  
Ml. Qamar Alam Sabili  
Ml. Mufti Ahmad Dewalwi  
Ml. Mufti Md. Jafar  
Ml. Md. Abrar khan Nadwi  
Ml. Mufti Azizur Rahman  
Ml. Sultan Ahmad Islahi  
Ml. Muhammad Noor al-Qasmi  
Ml. Abduul Qayyum Palanpuri  
Ml. Badr Ahmad Mujibi  
Ml. Md. Ubaid Allah al-As'adi  
Ml. Zafarul Islam  
Ml. Abdul Rahim

Mr. Tanwir Ahmad

Mr. Akhlaqur Rahman

Mr. Mufti Mahbub Ali Wajih [Rampur]

Mr. Mufti Akhtar Imam Adil

Mr. Atiq Ahmad Qasmi

Mr. Nasim Ahmad Qasmi

- (ii) "Trading in shares is impermissible. This is indeed an institutionalized mode of gambling. Shares may only be sold if the selling party has taken them into his possession. Without completing the process of the transfer of ownership, the sale will carry no legal bearing in the eye of the shariat." This is the viewpoint of Mufti Shakil Ahmad of Sitapur.
- (iii) "Trading in the shares is neither permissible nor needed. The masses had better keep away from this business. By this all the resources pass to a few hands only. The masses are drained of wealth and resources, with the result that the rich turns richer." So has opined Mr. Hifzur Rab.
- (iv) Shares are neither the price nor the goods. Hence unfit to be sold and purchased. The capital or price being the exchange which is paid by the shareholder, while the object of sale is the goods which will be produced by the factory. Shares fall to neither of the two things. This is the viewpoint of Mufti Shakil Ahmad Sitapuri.

**Q.(13) All the participating scholars unanimously hold that the FUTURE SALE is impermissible altogether. The conspicuous reason of its being a credit contract on both sides. Worse still, it involves gambling which includes the things strictly prohibited. To name the responding scholars:**

Ml. Md. Naim Rashidi

Ml. Khalid Saif Allah Rahmani

Ml. Md. Noor al-Qasim

Ml. Md. Tahir Mazahiri

Ml. Mufti Md. Zaid

Ml. Mujahidul Islam

Ml. Sulatan Ahmad Islahi

Ml. Abu Bakr [Shakarpur]

Ml. Abul Hasan Ali

Ml. Abdul latif [Gujrat]

Ml. Mufti Akhtar Imam Adil

Ml. Ibrahim Muhammad

Ml. Mufti Abdul Qayyum [Palanpuri]

Ml. Mufti Mahboob Ali Wajihi

Ml. Sayyid Muhammad Ayyub Sabihi

Ml. Zafarul Islam

Ml. Akrrar Khan Nadwi

Ml. Muhammad Hanif



Ml. Akhlaqur Rahman Qasmi  
Ml. Mufti Abdul Rahim  
Ml. Ahmad Nadir al-Qasmi  
Ml. Qamaruz Zaman Nadvi  
Ml. Qamar Alam Sabili  
Ml. Muhammad Ubaidul Allah As'adi  
Ml. Abdul Rahman [Palanpur]  
Ml. Badr Ahmad Mujibi  
Ml. Zubair Ahmad Qasmi  
Ml. Naim Akhtar Qasmi  
Ml. Manzur Ahmad Qasmi  
Ml. Shams Pirzada [Mumbai]  
Ml. Sami-u-Allah Qasmi  
Ml. Ahmad Dewalwi  
Ml. Nasimud Din Qasmi  
Ml. Dr Abdul Azim Islahi  
Ml. Md. Rizwan al-Qasmi  
Ml. Mufti Anwar Ali Azami  
Ml. Mufti Shakil Ahmad [Sitapur U.P.]  
Ml. Abdul Jalil Qasmi  
Ml. Iqbal Ahmad Qasmi  
Ml. Nasim Ahmad Qasmi  
Ml. Muhammad Shahid Qasmi

Mr. Abu Sufyan Miftahi

I. Atiq Ahmad Qasmi

Mr. Md. Arshad Qasmi

Mr. Muhammad Jafar Milli.

Mr. Ijaz Ahmad Qasmi

**Note :** There are the scholars who said nothing vis-à-vis this question. They include the following:

Mr. Mufti Azizur Rahman [Darul Ullom, Deoband]

Mr. Hifzur Rab

Mr. Tanwir Ahmad Qasmi

**Q.(14) FORWARD SALE i.e in which the sale contract is referred to future.**

Concerning this question the views of the scholars are different. Actually, other reasons apart, the main one leading to this difference of opinion being the ambiguity of the question itself. As a result, the answer is according to every one's understanding of the question. This is why some scholars refused to attempt this question and deferred the answering until the question is furnished to them with a reworded phraseology.

The majority of the scholars hold that the FORWARD SALE in which the sale is described in the future tense, is impermissible. It is not a sale; it is no more than a promise of sale. Those holding this viewpoint are the following scholars:

Mr. Abdul Qayyum Palanpuri

Mr. Mahammad Nur al-Qasmi  
Mr. Abdul Rahman Palanpuri  
Mr. Atiq Ahmad Qasmi  
Mr. Anwar Ali Azami  
Mr. Mufti Muhammad Jafar  
Mr. Khalid Saif Allah Rahmani  
Mr. Qamar Alam Sabili  
Mr. Mufti Muhammad Zaid  
Mr. Abu Sufyan Miftahi  
Mr. Akhlaqur Rahman Qasmi  
Mr. Abdul Rahim  
Mr. Mujahidul Islam  
Mr. Mufti Akhtar Imam Adil  
Mr. Nasimud Din Qasmi  
Mr. Mufti Nasim Ahmad Qasmi  
Mr. Badr Ahmad Mujibi  
Mr. Muhammad Naim Rashidi  
Mr. Iqbal Ahmad Qasmi  
Mr. Ijaz Ahmad Qasmi  
Mr. Shams Pirzada  
Mr. Muhammad Arshad Qasmi  
Mr. Mufti Ahmad Nadir al-Qasmi  
Mr. Muhammad Tahir  
Mr. Mufti Abdul Latif [Gujrat]

Mr. Md. Abrar Khan Nadwi

Mr. Md. Qamaruz Zaman Nadwi

Mr. S. Muhammad Ayub Sabili

Mr. Muhammad Shahid Qasmi

The following scholars regard the FORWARD SALE as permissible; provided the last decision is left to the purchasers OPTION OF SEEING.

Mr. Ibrahim Muhammad

Muhammad Zafarul Islam

Sami Allah Qasmi

(v) This is the BAY SALAM, hence subject to the respective rulings. This is the opinion of the following;

Mr. Tanvir Alam Qasmi

Mr. Zubair Ahmad Qasmi

Mr. Mufti Mahboob Ali Wajih

(vi) The fourth viewpoint about the FORWARD SALE is that it is a mode of the bay al-Ajil bi al-Ajil, which is forbidden by the Holy Prophet (Peace and blessings of Allah be upon him). So has opined Maulana Md. Hanif Milli.

(vii) Some scholars refused to answer the question under the pretext that the question was ambiguously worded, unintelligible to them. They include

Mr. Dr Abdul Azim Islahi

Mr. Ubaidu Allah Asadi

Mr. Ahmad Dewalwi

Mr. Zubair Ahmad Qasmi

Mr. Abul Hasan Ali

Mr. Abdul Jalil Sb.

**Note:-**The following Ulama did not attempt this question at all:

Mr. Mufti Nizarnud Din of Darul Uloom Deoband

Mr. Manzur Ahmad Qasmi

Mr. Mufti Azizur Rahman Bijnori

Mr. Mufti Shakil Ahmad Sitapuri

Mr. Hifzur Rabb Sb.

**Q.(15) With the completion of the sale/purchase transaction, will the purchaser's possession be admissible while the certificates have not yet been issued to him with this effect?**

Concerning this question the views of the scholars and ulama considerably vary. The detail follows.

(a) With the completion of the sale purchase activity the purchasing party becomes the owner of the shares and subsequently of the proportional shares in the assets and the properties of the company. According to the established normative principles of the shariat, the takhliyah by the selling party amounts to virtual possession of the purchaser as it clearly exists in al Durr al-Mukhtar [4/47]. The certificate is a written proof of this. This opinion is shared by the following ulama:

Mr. Ubaidu Allah al-Asadi  
Mr. S. Md. Ayyub Sabili  
Mr. Mufti Abd al- Rahim  
Mr. Abdul Jalil Qasmi  
Mr. Manzur Ahmad Qasmi  
Mr. Naim Akhtar Qasmi  
Mr. Md. Nain Rashidi  
Mr. Sultan Ahmad Islahi  
Mr. Jafar Milli Rahmani  
Mr. Ibrahim Muhammad  
Mr. Mufti Mahboob Ali Wajihi  
Mr. Mujahid al-Islam  
Mr. Akhlaqur Rahman Qasmi  
Mr. Ahmad Nadir al-Qasmi  
Mr. Ahmad Devalwi  
Mr. Muhammad Abrar Khan Nadwi  
Mr. Tahir Mazahiri  
Mr. Muhammad Rizwan al-Qasmi  
Mr. Muhammad Shahid  
Mr. Muhammad Hanif  
Mr. Zubair Ahmad Qasmi

(b) The virtual possession will take place after the completion of the sale transaction. The better option, however, will be to resell those shares after the receipt of

the modified and re-issued certificates. This is the opinion of the following discussants:

Ml. Abdul Latif

Ml. Sami Allah Qasmi

Ml. Abu Sufyan Miftahi

Ml. Anwar Ali Azami

Ml. Abdul Rahman Palanpuri

Ml. Arshad Qasmi

Ml. Nasim al- Din al- Qasmi

Ml. Mufti Akhtar Imam Adil Qasmi

(c) The sale of those shares before receiving the certificates is not correct. Because by the custom and usage the possession does not duly establish without the receipt of the certificates. The Qur'an, too, accords due importance to the usage and custom. This view is shared by the following scholars:

Ml. Khalid Saif Allah Rehmani

Ml. Nasim Ahmad Qasmi

Ml. Zafarul Islam

Ml. Tanwir Ahmad Qasmi

Ml. Noor Ahmad Qasmi

Ml. Shams PirZada

Ml. Qamar Allah Sabili

Ml. Atiq Ahmad Qasmi

Ml. Muhammad Qamaruz Zaman Nadwi

Ml. Badr Ahmad Mujibi

- (d) Ziman (Surety) and possession are two different things. Falling of a thing to one's ziman does not necessitate one's possession of that thing unless the possession, physical or abstract, is established. In the present case the possession does not take place until the certificates are obtained. This is the opinion of Mufti Md. Zaid [of Hathora, Banda,U.P].
- (e) Much as the possession of the purchaser takes place only after the transfer of the shares certificates to his name, yet a 98% purchase is taking place without the receipt of the modified certificates. It will, therefore, be in order to admit this practice as a practical mode of abstract possession. This view has been expressed by Hakim Zillur Rahman.

**Note :** The following scholars did not attempt this question at all.

Mufti Nizamud Din of Darul Uloom Deoband

Ml. Mufti Shakil Ahmad Sitapuri

Ml. Azizur Rahman

Janab Hifzur Rabb

**Q. (16) Selling the shares (to a third party) while the selling party has not yet received the certificates.**

Vis-a-vis this question the discussants have arrived at three varying views. The statement following.



- (i) The purchasing party cannot sell the shares to a next purchaser unless he establishes his possession of the shares by receiving the certificates transferred to his name. So because according to the normal usage and custom the possession of the shares is actually realized only after the receipt of the modified certificates. The Holy Qur'an too, accords due importance to the custom (urf). This opinion is shared by the following scholars:

Ml. Khalid Saif Allah Rahman

Ml. Tanwir Ahmad Qasmi

Ml. Zafarul Islam (Mau)

Ml. Mufti Muhammad Zaid Mazahiri

Ml. Qamar Alam Sabili

Ml. Atiq Ahmad Qasmi

Ml. Shams Pirzada

Ml. Muhammad Qamaruz Zaman Nadwi

Ml. Nasim Ahmad Qasmi

Ml. Abu Bakar Qasmi (Shakarpur)

Ml. Badr Ahmad Mujibi

- (ii) The realization of possession is doubtful until the certificates are received. Therefore, it sounds imprudent to enter into sale, purchase of such a thing. Worse still, this practice encourages to unfounded speculation. This opinion has been expressed by the following scholars:

Ml. Abdul Latif  
 Ml. Abdul Qayyum  
 Ml. Abdul Rahman  
 Ml. Nasim al din Qasmi  
 Ml. Abu Sufyan Miftahi  
 Ml. Mufti Anwar Ali Azami  
 Ml. Abdul Azim Islahi  
 Ml. Sami Allah Qasmi  
 Ml. Mufti Akhtar Imam Adil  
 Ml. Ijaz Ahmad Qasmi  
 Ml. Abul Hasan Ali  
 Ml. Md. Arshad Qasmi

The seller may sell those shares even without receiving the certificates transferred to his name. For the completion of the sale transaction brings into existence the virtual possession of the purchaser.

- (iii) The certificates constitute no more than of a material evidence. Relinquishment of the selling party amounts to virtual possession.

This view has been adopted by the following luminaries:

Ml. Ubaid Allah al-Asadi  
 Ml. Manzur Ahmad Qasmi  
 Ml. Noor al-Qasmi  
 Ml. Abdul Rahim  
 Ml. Mufti Md. Jafar Milli

Mr. Mufti Mahboob Ali Wajih  
Mr. Ibrahim Muhammad  
Mr. Md. Rizwan al-Qasmi  
Mr. Akhlaqur Rahman Qasmi  
Mr. Ahmad Devalwi  
Mr. Sayyid Md. Ayyub Sabili  
Mr. Naim Akhtar Qasmi  
Mr. Sultan Ahmad Islahi  
Mr. Md. Tahir Mazahiri  
Mr. Hanif  
Mr. Naim Rashidi  
Mr. Md. Abrar Khan  
Mr. Shahid al-Qasmi  
Mr. Zubair Ahmad Qasmi  
Mr. Mufti Ahmad Nadir al-Qasmi  
Mr. Abdul Jalil al-Qasmi

Note- the following scholars did not attempt this question:

Mufti Nizamud Din, Darul Uloom Deoband  
Mr. Mufti Shakil Ahmad Sitapuri  
Mr. Mufti Azizur Rahman

### **Q. (17) Concerning the Brokerage**

Concerning this question all the discussants unanimously hold that the share broker's job is in fact of the agentship, which is a point of unanimous agreement

amongst all the schools of Islamic Fiqh. The shares whose sale-purchase is lawful are fit to be worked out as agent.<sup>1</sup>

**Note-** Following Ulama did not answer this question:

Mufti Nizamud Din, Darul Uloom Deoband

Ml. Mufti Azizur Rahman

Ml. Mufti Anwar Ali Azami.

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<sup>1</sup> Durre-Mukhtar 5/29-35 Shami/5/44

**4(a)****Critical Review of the Answers to the  
questions 1,2,3 :  
Determining the Shariah position on the  
status of shares**

Reviewer : Ml. Abdul Qayyum Palanpuri

**Q. (1) Does a purchased share of a company represent the shareholder's proportional ownership in the company's assets and properties?**

**Or**

**Is merely a documental proof showing that the shareholder has given the amount such and such to the company?**

I am in receipt of a total of 41 papers and answers in respect of the shares. All the discussants are unanimously agreed to that the purchased equity shares of a company in possession of some valuable assets constitute a proof of limited ownership of the shareholder in the company and not mere an indication of that he has invested that much amount in the company. Since this opinion is well founded on more than one cogent arguments to support it, more

discussants have contended themselves only with undetailed answers.

In their papers Maulana Ubaidullah al-As'adi, Mufti Akhtar Imam Adil, Maulana Abdul Jalil Qasmi and Maulana Shams Pirzada have contended that since the stockholder shares both the profit and loss with the company, and in the event of the company's liquidation he shares the company's assets in proportion to his stocks is a clear demonstration of the fact that the share represents the shareholder's proportionate ownership in the company.

As regards the legal point that in the event of the company's liquidation he shares the company's assets in proportion to his stocks is a clear demonstration of the fact that the share represents the proportionate ownership of the company.

As regards the legal point that in the event of the stockholder's going bankrupt, his debts and liabilities are paid up, as per the existing law, by confiscating his properties but not his stocks and shares he holds in a company, this legal point makes no difference to the factual status of the equity shares. The stocks he owns in a company will continue to represent his proportionate ownership and partnership in the company. Maulana Khalid Saifullah Rahmani writes that the amount of money mentioned in the share certificates is indicative of only that initially those assets (shares) held the same value and the power of purchase. As for the point that the assets of the company (owned by a bankrupt person) are not legally subject to confiscation, it holds no importance from the Shariat viewpoint. Rather, it not necessary to treat the shares as an asset; may be such a law might have been introduced in view of that the shares-based assets offer a better type of partnership as well as in view of its popularity

among people and investors. The argument of Maulana Abdul Jalil Qasmi of Patna goes as follows:

“According to the *Sahibain* (Imam Abu Yusuf and Imam Muhammad), the bankrupt debtor’s debts shall be paid off by selling out even his immoveable properties excepting his residential home, which could not be put to sell to pay off the debts of a bankrupt debtor. This does not negate *madyun’s* ownership of his residential house. In the same manner, if the government has made such a law, not to confiscate the shares of a bankrupt’s stocks in a company, it does not necessitate that this bankrupt shares not the ownership of the company in proportion to his stocks. Hakim Zillur Rahman and Dr. Abdul Azim Islahi share the view that even in presence of the law against confiscation it is quite possible to transfer the shares of the bankrupt to the name of the creditor. This way the latter will become the owner of the bankrupt’s stocks in the company, and the law will be in no need to resort to the confiscation of the farmer’s stocks to cover his liabilities.

To sum up, all the discussants and the responders to the question hold unanimously that the purchased equity shares in a company in possession of some assets represent the proportionate ownership of the shareholder in it, and not mere the documents showing that the purchaser has lent a specific amount of money to it. To the name the discussants :

Ml. Ubaidullah al As’adi

Ml. Khalid Saifullah Rahmani

Ml. Zubair Ahmad Qasmi

Ml. Mufti Nizamuddin Sb. (Darul Uloom, Deoband)  
 Ml. Mufti Azizur Rahman Bijnori  
 Ml. Abul Hasan Ali  
 Ml. Mufti Ahmad Dewalvi (Bharoch)  
 Ml. Abdul Jalil Qasmi (Patna)  
 Ml. Ja'afar Milli Rahmani  
 Ml. Shams Pirzada  
 Ml. Tanwir Ahmad Qasmi  
 Ml. Ibrahim (Baroda)  
 Ml. Mufti Abdur Rahman Palanpuri  
 Ml. Abdul Latif Mazahiri  
 Ml. Samiullah Qasmi  
 Ml. Dr. Abdul Azim Islahi  
 Ml. Sultan Ahmad Islahi  
 Ml. Mufti Mahboob Ali Wajihi  
 Ml. Iqbal Ahmad Qasmi  
 Ml. Mufti Akhtar Imam Adil Qasmi  
 Ml. Mufti Shakil Ahmad Sitapuri  
 Ml. Akhlaqur Rahman Qasmi  
 Ml. Manzur Ahmad Qasmi  
 Ml. Abdur Rahim (Bhopal)  
 Ml. Zafarul Islam (Mau)  
 Ml. Abu Sufyan Miftahi  
 Ml. Mufti Anwar Ali  
 Ml. Abdul Qayyum Palanpuri  
 Ml. Naeem Rashidi  
 Ml. Shamshad Ahmad Nadir Al-Qasmi  
 Ml. Qamar-uz-Zaman Nadwi  
 Ml. Abrar Khan Nadwi  
 Ml. Mujahidul Islam  
 Ml. Qamar Alam Sabili



Ml. Md. Noor Al Qasmi

Ml. Arshad Qasmi

Ml. Tahir Mazahiri

Ml. Md. Rizwan Al-Qasmi

Ml. S. Ayub Sabili

**Q. (2) Sometimes, at launching a company, the shares are notified while the company still possesses nothing, if purchased shares of such a company are sold to any one, such a sale is of course a sale of a cash for cash. What will be the position of the shariat on such a sale contract?**

This question has been addressed by thirty seven ulama. To the view of Maulana Shams Pirzada this question is entirely inconsistent with the ground realities. Every company by law is bound to have some assets, some moveable and immoveable things and only after fulfilling this condition a company may be permitted to announce its public issues of the shares. Hence the thinking that a company may issue its shares without having in its possession a good amount of assets is purely an assumption, based on nothing.

Apart from the company law, as pointed out by Maulana Shams Pirzada, my observation is that the question is not irrelevant altogether, especially in the context of countries like India. The question may not hold good only if this company law is strictly followed. In India we can not discount the possibility that a company may issue its equity shares without having any tangible assets merely through

the channel of bribing the concerned government officials. The question therefore is not without relevance.

Dr. Abdul Azim Islahi says that before coming into existence the company prepares its project and draft. This undeniably involves a good deal of money and time. This project itself is costly like the manuscript of an author and writer. The sale-purchase of the shares of such a company is permissible, for this business does not involve the exchange of the cash, *naqd*, for the cash.

About the said opinion I would like to submit that this could be acceptable only if the draft project is admitted to be a property; but, apparently it is hard to treat it in terms of a property.

According to the opinion of Ml. Ubaidullah al As'adi the sale purchase of the shares will constitute a case of *hawala* (assignment of debt). He further writes that this contract will be valid only if both exchanges are strictly equal in respect of amount and value. To my opinion, however, Maulana As'adi's view is apparently incorrect. For in the case of the *hawala* contract the debt passes from the assigner to the assignee and the *muhtal lahu* recovers the debt from the assignee. So far as the question in hand is concerned, the company will be the assignee, and there exists no possibility to recover the debt from the company by returning its shares to it. This is indeed a sale contract and not of the *hawala*.

The study of the rest discussants' answers and papers brings two points of view before us.

First, the shares cannot be sold and purchased with more and less amount in either exchange, nor at its face value (mentioned on it). For it is a sort of the sale of cash for

cash, which forms the case of *saraf sale*, for the validity of such a sale deal a complete equality between the two exchanges and hand-to-hand possession of the exchanges constitute the necessary conditions. In the case mentioned in the question neither condition is met; both the exchanges are not equal in terms of value and amount, nor the *taqabuz ala al-badalain* is found. Hence the sale-purchase of the shares, as mentioned in the question, is not consistent with the norms of the Islamic Shariat.

This view is shared by the following scholars :

Mr. Khalid Saifullah Rahmani

Mr. Mufti Mahboob Ali Wajihi

Mr. Iqbal Ahmad Qasmi

Mr. Shahid Qasmi

Mr. Md. Rizwan Al-Qasmi

Mr. Tahir Mazahiri

Mr. Md. Noor-Al-Qasmi

Mr. Arshad Qasmi

Mr. S. Ayub Sabili

Mr. Qamaruz Zaman Nadwi

Mr. Abrar Khan Nadwi

To Maulana Ja'afar Milli Rahmani the reason for the impermissibility of the trade in shares is that the company yet possesses nothing, and the sale-purchase of the shares of such a company forms the case of the sale of an object not yet in possession of the seller, hence invalid.

But, to my opinion, the case is not so as understood by Maulana Rahmani. For the *naqd* is being taken for another form of *naqd*. This way it is a contract of sale of a *naqd* for the

*naqd* itself. In the same manner, the question under debate, as far as I think, is not a case of the *bay saraf*, because in the *bay saraf* the counter values must belong to the genus of the innate money. To reproduce here the definition of the *sarf* sale contract,

”وهو..... شرعاً بيع الثمن بالثمن، أى ما خلق للثمنية..... جنساً بجنس أو بغير جنس كذهب بفضة“

“The *bay saraf*, according to the rules of the Shariat is a contract of sale of an innate value for another innate value, both the values belonging to the same genus or one value belonging to a different genus.”<sup>1</sup>

The present cash, quite obviously, is not the innate money, rather the cash (*naqd, thaman*) by usage and currency. This establishes that it does not form a case of the *sarf* contract. In relation to the exchange or the sale-purchase of the currency notes of the same country, opinions of the jurists differ on whether the simultaneous possession of both the exchanges is required, or taking possession of either one exchange will fulfill the condition for the validity of the sale transaction. The case in question is the same. According to the majority of the discussants the sounder opinion is the latter one, taking possession of either one exchange.

As regard those who hold the sale-purchase of shares of the companies as impermissible, their opinion necessitates the impermissibility of almost the same sale contract mentioned under the third question (of the questionnaire),

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<sup>1</sup> Al-Durrul Mukhtar with Al-Shami 4/325.

in which the cash (*naqd*) is against the blend of cash and the property. This opinion entails that the sale of the *naqd* for *naqd* be impermissible in proportion to the cash for cash. But most of the discussants hold such a sale contract as permissible and valid.

The other viewpoint is that the sale-purchase of the shares at less or more than the price mentioned on it is impermissible as any addition to or diminution from its face value will turn it into a case of interest. The sale-purchase of the shares will be valid if a complete equality is maintained between the shares and their face value. The sale/purchase of the shares does not make the case of the sale of *sarf*. The current cash and the currency notes are like the coins. As the sale/purchase of the coins is not lawful according to the opinion of Imam Muhammad bin al-Hasan al-Shibani with any addition or diminution in respect of amount and value, so being the case with the rupees and currency notes. The reason behind this impermissibility is to close the door of interest. Imam Karkhi is of the opinion that if the coins are sold for coins, either one exchange must be taken into possession in the same sitting. This way if the currency notes are sold for the currency notes, the possession of either one exchange will constitute a condition for its validity, taking into account the view of Imam Karkhi, and not on both the exchanges. In the case under debate the cash is against the cash, hence no diminution or addition is permissible. The only permissible mode of the sale-purchase of shares is to maintain a complete equality in terms of amount and price between the shares and the counter value. This facilitates the

possession, at least, of one exchange in the session of the sale contract. To substantiate it from an authoritative jurist,

”.....تبايعا فلساً بعيته بفلس بعيته فالفلسان لا يتعيثان وإن عُيِّنا، إلا أن القَبْضَ في المجلس شرط، حتى يبطل بترك التقابض في المجلس، لكونه افتراقاً عن دين بدين، ولو قبض أحد البديلين في المجلس فافتراقاً قبل قبض الآخر، ذكر الكرخي أنه لا يبطل العقد، لأن اشتراط القبض من الجانبين من خصائص الصرف، وهذا ليس بصرف، فيكتفي فيه لقبض من أحد الجانبين لأنه به يخرج عن كونه إفتراقاً عن دين بدين، وذكّر في بعض شروور مختصر اسطحاوي أنه يبطل، لا لكونه صرفاً بل لتمكّن ربا النساء فيه لوجود أحد وصفي علة الربا الفضل، وهو الجنس“

“Two persons entered into the contract of sale of a coin belonging to a genus for another coin of the same genus, the two coins are not required to belong to a single genus, even if they so stand. The only condition for the validity of such a sale deal is that both the exchanges be taken the possession of (by the respective parties of the contract) in the very sitting (in which the contract was concluded). Failing this condition, the contract will stand automatically null and void. For without taking possession in the same session both the parties will depart each other with a sale of debt for debt. According to Imam Karkhi (may Allah deal him with mercy) the sale deal will stand valid if either one party took possession of his respective countervalue in the same *majlis*. Mutual possession of the respective exchanges by the parties is from among the conditions of the *sarf* contract, and this sale contract is not of the *sarf*. So, for the validity of such a sale deal either one party's taking possession of his

countervalue in the very *majlis* (session, sitting) will be regarded sufficient. By so doing the contractors will let each other not to leave the *majlis* while owing debt to each other. In some commentaries on Mukhtasar-al-Tahavi it has been mentioned that such a sale contract will stand invalid not because of that it makes a case of the *sarf* contract, rather because of that the *riba-al-Nisa* has crept into it. For in the deal there exists one reason of the two ones the *riba-al-Fadl* involves. That is the genus (that is to say, both the exchanges belong to the same genus).<sup>1</sup> Bahrul Uloom Ml. Fatah Muhammad Taib Writes:-

“In the exchange of the currency notes for the currency notes parity, in terms of quantity and value, constitutes a condition for the validity of the contract, and not the mutual possession. So, the rupees and currency notes may be sold in cash on credit.”<sup>2</sup>

Maulana Mufti Md. Taqi Usmani<sup>3</sup> (of Pakistan) writes:-

“In all matters of business transactions) the currency notes are like the coins. As the coins may be exchanged if the condition of equality is properly

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<sup>1</sup> Badai al-Sanai 5/237, quoted from Ahsanul Fatawa 7/87).

<sup>2</sup> Itrul Hidayah p. 72.

<sup>3</sup> Taqi Usmani, a celebrated Pakistani alim and scholar of this age. The younger son of the late Mufti Md. Shafie, once the grand Mufti of Pakistan, Taqi Usmani studied with many eminent men of Islamic learning and scholarship in Pakistan, they include his great father, Ml. Md. Yusuf Binnori, Ml. Md. Idris Khandawi, his elder brother Mufti Md. Rafie Usmani and Ml. Zafar Ahmad Usmani, to name here only a few.

met, so is permissible the exchange of the currency notes of the same country, if the condition of equality between both the exchanges is met, provided that either one party takes possession of his (respective) exchange in the *majlis* of transaction.”<sup>1</sup>

To summarize the whole discussion, the case under debate is neither of *hawala*, nor of the sale of the object still out of the seller’s possession nor of *sarf*. It is of course a case of the currency notes in the exchange of the currency notes. Going by the reasons and arguments mentioned above, the sale-purchase of the shares suggested under question three of the questionnaire will not be permissible if a complete equality and parity between both the exchanges is not maintained. The other condition is that at least one exchange be possessed by the respective party in the *majlis* of concluding the sale contract. This opinion is shared by the following men of Islamic learning :

Ml. Samiullah Qasmi

Ml. Abdul Jalil Qasmi

Ml. Zafarul Islam (of Mau, U.P.)

Ml. Abul Hasan Ali

Ml. Abdur Rahim (Bhopal)

Ml. Zubair Ahmad Qasmi

Ml. Mufti Anwar Ali

Ml. Abdur Rahman (Palanpuri)

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<sup>1</sup> Fiqhi Maqalat 1/31.



MI. Abdul Latif (Palanpuri)  
MI. Sultan Ahmad Islahi  
MI. Dr. Abdul Azim Islahi  
MI. Mufti Akhtar Imam Adil  
MI. Ibrahim (of Baroda)  
MI. Abu Sufyan Miftahi  
MI. Akhlaqur Rahman Qasmi  
MI. Manzur Ahmad Qasmi  
MI. Tanwir Ahmad Qasmi  
MI. Abdul Qayyum (of Palanpur)  
MI. Shamshad Ahmad Qasmi  
MI. Mujahidul Islam (of Hyderabad)  
MI. Naeem Rashidi  
MI. Qamar Alam Sabili

**Q. (3) After the company has come into existence its total assets become a composite of the cashes and properties. Under such condition the total of the assets of the company consists of both the interest-free and interest-involving ones. What will be the position of the shariat on the sale of the shares in exchange of the cash?**

This question has been addressed by 38 scholars from among those seven scholars : MI. Ahmad Dewalwi, MI. Shams Pirzada, MI. Tanwir Ahmad Qasmi, MI. Manzur Ahmad Qasmi, MI. Mufti Mahboob Ali Wajihi, MI. Sultan Ahmad Islahi and MI. Hakim Zillur Rahman have erred in

understanding the question. The point of mistake are the terms *mal-e-ribwi* and the *ghair ribwi*. The purpose of the question, to their understanding is that “when the shares are a blend of the lawful and unlawful *mal* (that is, acquired through interest-bearing mechanisms), will it be permissible to buy such shares for the cash money? They, naturally, discussed the question in accordance with their understanding of the question. To sum up their responses.

“Such shares may permissibly be bought and sold. For the blend of the *mal* has the lawful portion as the major part of the total, and, on the other hand, the interest bearing activities are tolerated only under legally compulsive circumstances. It is the major part which shall be accounted for the determination of the status of the total.”

Maulana Iqbal Ahmad Qasmi is of the view that the case under debate is of the *sarf* contract which stipulates that both the counter-values be taken possession in the very session of the contract by the contracting parties. So, the shares in question cannot be sold or purchased without resorting to a trick. But it is a mistaken view to describe this sale contract as of the *sarf*. For the cash here is not the absolute money; and a part of the cash is against the cash for the validity of which the only provision is to take the possession of either one exchange by one contracting party, which is found in this case. Hence, the sale contract of shares is permissible and valid without doubt.

As for the rest thirty scholars, they are of the view that according to the Hanafi standpoint the *ribwi* commodities<sup>1</sup>, that is, cash and indeterminate *mal* (*duyun*), and the *non-ribwi*, that is, assets could permissibly be sold for cash, provided that the cash amount is more than the mixed cash in the blend of the cash and properties, so that the cash is against the cash and the excess cash is against the assets. To exemplify the point, a share, for instance, values ten rupees. Now if eight rupees are against the cash and indeterminate *mal*, while the two against the immovable assets, it will not be permissible to sell that share at eight or even less rupees. It, however, may be sold for nine or more rupees. To quote an authority here :

لو اشترى سيفاً محلى بالفضة أو لجاماً مفضضاً بالفضة الخالصة ووزنها أكثر، جاز، وإن كان وزنها أقل من الحلية أو مثلها، أو لا يُدرى، لا يجوز،  
(عالمگیریة جلد ۳ ص ۱۸۷)

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<sup>1</sup> The six types in question are gold, silver, wheat, barley, barley, dates, and salt. They have been mentioned together in a tradition narrated by 'Ubadah ibn al-Samit in which the Prophet said:

“Gold is to be paid for with gold, raw and coined, silver with silver raw and coined (in equal weight), wheat in equal measure, salt with salt in equal measure; if anyone gives more or asks more, he has dealt in usury. However, there is no harm in selling gold for silver (for gold), in unequal weight, payment being made on the spot. Do not sell them if they are to be paid for later. There is no harm in selling wheat for barley and barley (for wheat) in unequal measure, payment being made on the spot. If the payment is to be made later, then do not sell them.”

Abu Dawud, Sunan, ed. Muhammad Muhyi al-Din 'Ad al-Hamid (Beirut: al-Maktabah al-Asriyyah, 1416/1995), Buyu, hadith, 3349, vol. 3, p. 248; Ibn Majah, Sunan Tjariat hadiths 2272-2275, vol. 2, p. 25. For a detailed discussion of the jurists views on the underlying cause (s) of the prohibition of excess and delay in these species see Ibn Rushdd, the Distinguished Jurist's Primer, vol.2, pp.158-163.

“If a person bought a sword coated with silver, or purchased a bridle with a pure silver coating, and the weight of silver coating is more than the bridle, the sale contract will stand be valid. But, contrariwise, if it weighs less than the jewellery, or of a thing similar to it or the (actual) weight is not known, the sale contract will stand (invalid).”<sup>1</sup>

This opinion is shared by the following ulama :

Ml. Ubaidullah al-Asadi  
 Mufti Anwar Ali  
 Ml. Samiullah Qasmi  
 Ml. Mufti Akhter Imam Adil  
 Ml. Abul Hasan Ali  
 Ml. Abdur Rahman Palanpuri  
 Ml. Abdul Latif Palanpuri  
 Ml. Abdul Jalil Qasmi  
 Ml. Ibrahim (of Baroda)  
 Ml. Zafarul Islam (of Mau, U.P.)  
 Ml. Akhlaqur Rahman Qasmi  
 Ml. Zubair Ahmad Qasmi  
 Ml. Abdur Rahim (of Bhopal)  
 Ml. Abu Sufyan Miftahi  
 Ml. Khalid Saifullah Rahmani  
 Ml. Ja’afar Milli Rahmani  
 Ml. Abrar Khan Nadwi  
 Ml. Abdul Qayyum Palanpuri  
 Ml. Dr. Abdul Azim Islahi

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<sup>1</sup> Fatawa Alamgiri 3/187.

Mr. Arshad Qasmi  
Mr. Shahid Qasmi  
Mr. Mohd. Rizwan Qasmi  
Mr. Anwar Qasmi  
Mr. Tahir Mazahiri  
Mr. Qamaruz Zaman Nadwi  
Mr. Ahmad Nadir al-Qasmi  
Mr. Qamar Alam Sabili  
Mr. Mujahidul Islam  
Mr. Noor Qasmi  
Mr. Naeem Rashidi  
Mr. Ayyub Sabili

The gist of the whole discussion is that in the case mentioned in the question the shares may be purchased and sold, provided that cashes are more in amount in the blend of the total than the mixed cash.

## 4(b)

### **Critical Assessment of the Responses to Questions No. 4, 5, 6**

**Reviewer : Maulana Abdul Jalil Qasmi (Imarat-e-Shariat, Patna, Bihar)**

Venerable Ulama! I have been given the responsibility of reviewing the responses the Academy has received in response to its questionnaire. I'm in receipt of forty one papers from the Academy. One paper I received at Phulwari Sharif (Patna, Bihar). To name the discussants here :

Ml. Mufti Nizamuddin Sb. (Darul Uloom, Deoband)

Ml. Mufti Azizur Rahman Bijnori

Ml. Shams Pirzada

Ml. Zubair Ahmad Qasmi

Ml. Ubaidullah al-As'adi

Ml. Md. Rizwan al-Qasmi

Ml. Khalid Saifullah Rahmani

Ml. Mufti Anwar Ali Azami

Ml. Ahmad Dewalvi

Ml. Ibrahim (of Baroda)

Ml. Abul Hasan Ali

Mufti Abdur Rahim (Bhopal)

Ml. Mufti Akhtar Imam Adil

Ml. Zafarul Shakil Ahmad Sitapuri

Ml. Akhlaqur Rahman Qasmi

Ml. Mufti Mahboob Ali Wajihi  
Ml. Dr. Abdul Azim Islahi  
Ml. Abdul Qayyum Palanpuri  
Ml. Abu Sufyan Miftahi  
Ml. Sultan Ahmad Islahi  
Ml. Abdul Latif  
Ml. Manzur Ahmad Qasmi  
Ml. Mufti Abdur Rahman Palanpuri  
Ml. Iqbal Ahmad Qasmi  
Ml. Md. Tahir Mazahiri  
Ml. Arshad Qasmi  
Ml. Md. Shahid Qasmi  
Ml. Qamar Alam Sabili  
Ml. Mufti Ja'afar Milli Rahmani  
Ml. Tanwir Ahmad Qasmi  
Ml. Samiullah Qasmi  
Mufti Nasim Ahmad Qasmi  
Ml. Mohd. Noor Al-Qasmi  
Ml. Mohd. Naeem Rashidi  
Ml. Mujahidul Islam (Hyderabad)  
Ml. Abrar Khan Nadwi  
Ml. Qamaruz Zaman Nadwi  
Ml. Ahmad Nadir al-Qasmi  
Ml. S. Mohd. Ayub Sabili  
Mufti Nasim Ahmad Qasmi  
Ml. Md. Noor Al Qasmi  
Ml. Md. Naeem Rashidi  
Ml. Mujahidul Islam (Hyderabad)  
Ml. Abrar Khan Nadwi

Ml. Qamaruz Zaman Nadwi  
 Ml. Ahmad Nadir al-Qasmi  
 Ml. S. Md. Ayub Sabili  
 Ml. Hakim Zillur Rahman,  
 Ml. Abdul Jalil Qasmi

**Q. 4. The companies whose prime business activities, revolves round impermissible things, such as the export and import of liquor and similar other intoxicating products and items, or making investments in banks or other interest generating schemes. What about the sale and purchase of the shares of such companies?**

In response to this question there exists a complete unanimity among all the discussants on the point that it would constitute a sin to purchase the shares of a company whose prime business is to produce, export or import unlawful things. This is indeed a sort of *ta'awun ala-alithm* (extending cooperation on the commission of the acts of sin). The *ta'awun ala-al-ithm* is expressly prohibited by the Qur'an; to quote the actual words of the Holy Scripture.

**ولا تعاونوا على الإثم والعدوان-**

“And render no assistance to each other in sin and transgression.”<sup>1</sup>

Further, the unlawful objects are not legally fit to be a possession of a Muslim, and a thing not legally possessed is unfit to be the subject matter of the sale contract. Hence such things can not be sold or purchased by a Muslim. Such a

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<sup>1</sup> Al-Maidah V. 2.



thing which impermissible to do cannot be recommended nor is fit to be the subject matter of the contract of *wakalah*. This is based on the juristic doctrine :

### ما حرم فعله حرم طلبه

“A thing outlawed to be done also outlawed is its pursuance.”

.....ولأن ما ثبت للوكيل ينتقل إلى مؤكل، فصار كأنه باشر بنفسه، ولو باشر بنفسه لم يجز، فكذا التوكيل به (عناية مع فتح القدير ٢/٣٣٠)

“...And also because of that whatever is established for the representative passes to the principal. This way it becomes as if one did it by oneself and one had done it by oneself, it would have been impermissible. So impermissible would be to appoint somebody as one’s representative to do it.”<sup>1</sup>

**Q. 5. The companies whose prime business is limited to the products permissible by the Islamic Shariat, such as the engineering product, and the goods of the common use, but they have to seek loans on interest from the banks chiefly to avoid the income taxes. What is the position of the Islamic Shariat on the sale-purchase of the shares of such companies?**

Discussing the questions 5, 6 Maulana Mufti Azizur Rahman Bijnori has declared the purchase of the shares of such companies to be impermissible on account of that it

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<sup>1</sup> Inayah with Fathul Quadir 6/440.

involves the giving and taking of interest, which is entirely outlawed. The Muslim is committed to remove the things held outlawed by the Shariat. Only the expression of one's disapproval and displeasure is not just enough and can hardly absolve one of the sin of indulging in interest-involved activities.

Dr. Abdul Azim Islahi is of the view that the sale-purchase of the shares of such companies is permissible, though with a degree of reprehensibility. As for the rest discussants, to them the shares of such companies may be purchased. In the case of the company's borrowing money on interest, the company has to pay interest to the creditor. This does not vitiate the *mal* and the ensuing gains; they are free from malignity, hence indubitably lawful.

But, since the company is obliged to pay interest, a *haram* act indeed, some discussants have come up with a solution to this problem. That is, such a God-fearing investor should express his displeasure with his note of protest in the general meeting of the shareholders at such impermissible acts of the company.

Some other discussants have opined that the company is obliged to borrow money on interest mainly to evade the unjust income tax laws of the government and under straightened circumstances it is permissible to borrow money on interest, as clearly suggests the following juristic expression :

يجوز للمحتاج الاستراض بالربح

“For a straightened person it is permissible to borrow money on interest.”

Summing up his discussion of the questions 5 and 6, Maulana Abul Hasan Ali (of Gujarat) has opined that avoiding such practices is preferable.

As a matter of rule, the things held prohibited by the shariat can be tolerably permissible only under constraining circumstances. Under normal conditions they by no way are permissible. If a person, has no other option to invest his capital than the companies of the type, or is without a means of his livelihood without doing business with such companies, he may be allowed to invest his money in the purchase of the shares of such companies. As regards those having other means of livelihood, and wish only to earn more gains by investing their savings in such companies, as well they had better not to do so. To my personal opinion, which I have enunciated in my paper, the eschewal is a better option.

**Q. 6. In order to meet some legal requirements even the companies whose prime business is the dealing in the permissible products are required to deposit, a part of their total assets with the Reserve Bank of India, or have to purchase the security bonds which fetch interest for them, according to the interest-based norms prevalent in the land. What about the sale-purchase of the shares of such companies and business establishments?**

In his combined reply to questions 5 and 6 Maulana Zubair Ahmad Qasmi permits the borrowing of money on

interest under constraining circumstances. Towards the end of his reply he concludes that if the company makes impermissible gains by indulging in interest-bearing financial activities, the purchase of the shares of such a company will be impermissible.

About the opinion of the Maulana I would like to say that our great Ulama since long hold that for the purpose of protection (against wastage, theft, etc.) the money might be deposited in the banks. Now if it is permissible to deposit one's *mal* in the banks out of one's volition with an intention of its protection, then it will be strange to think of the Maulana's view to be against the permissibility of depositing the company's assets with the banks without volition merely to fulfill the government's compulsive laws. Given the fact as above, my realization is that Maulana's this viewpoint is in the context of the company's depositing its assets with the banks merely with its intention to earn more gains by indulging in impermissible modes of business. This is a *haram* act without doubt. This is my realization. If my assessment of the Maulana's response to the question under debate is not correct, then the Maulana himself is better to explain himself. Maulana Md. Arshad Qasmi writes that in case the gains include elements of interest-bred income, the purchase of such company's shares will be impermissible, but permissible otherwise. But whether the company's income is free from the interest-bred earning or not, what is the actual proportion of such income in the total amount of gains could only be ascertained when the company will render the accounts of the profit and loss.

As far as the rest discussants are concerned, they are of the view that the shares of such companies may permissibly be purchased even if the company's gains have elements of interest-bred income. But since the company is involved in taking interest, even though only to comply with the unjust norms of the government, which bring malignity to the total gains, the investors shall be required to register their protest with the company's management in the meetings organized annually by the company, or express his displeasure in writing and address it to the Board of Directors. Furthermore, to free the gains from impermissible income, the investor shall be required to part with the amount proportionate to that of interest from his income by giving it in charity, cherishing no wish to earn the reward of the hereafter.

To dispense with the problem of interest-bred earning I have come up with a suggestion in my paper. I would like to put it before this select gathering of the scholars here. The study of the questions 5 and 6 reveals that on one hand the company is obliged by law to deposit a part of its funds with the Reserve Bank of India, or to purchase bonds on which the Bank pays interest to the company, but, on the other to evade the unjust income tax laws of the Government, the same company is constrained on showing itself under debts and on borrowing funds from the banks and pays interest to the banks. My suggestion is that if the company is owned by the Muslims, or, at least, the Muslims have a say in its management, the company should borrow as much money from the bank as it is to receive as interest from the Reserve

Bank on its funds and assets deposited with it, and then return the same amount to the banks as interest due to be paid on the funds it had to borrow from them. Thus the amount received as interest on its deposits from the Reserve Bank of India shall be returned to the banks as interest on the debts it had to incur to evade the unjust income tax laws. By so doing the company in fact will neither be guilty of taking interest on its deposits nor of perpetrating the sin of giving interest on its borrowings to the banks. If so happens, those scholars, too, will withdraw their objections who do not permit the purchase of the shares of such companies mainly due to their involvement in giving and taking interest.

**4(c)****Short Review of the papers received in response to the questions 7, 8, 9, 10, 11**

**Reviewer : Mufti Akhtar Imam Adil (Samastipur, Bihar)**

From the *questionnaire* the review of the questions 7, 8, 9, 10 and 11 has been made my responsibility. Although from the seven to eleven the questions number five, yet they may fairly be summed up in three points of discussion. Those three points are as under:

- (1) Is the money borrowed on interest a lawful part of one's ownership? And what about the gains and profits earned through money thus borrowed?
- (2) Is the Board of Directors the representative of the shareholders?  
In other words, will the shareholders share the responsibility of the acts of the Board of Directors? If the shareholder is displeased with an act of the Board and communicated his note of difference to it, will he be regarded absolved of the Board's impermissible acts?
- (3) If the company's gains and income include interest-bred elements with a known amount, will the giving out of the amount proportionate to the interest-bred earning from his gains in

charity be regarded sufficient for the purification of the rest of his gains?

From among the total forty papers the Academy received on the topic of *shares* the thirty seven discussants have given their opinions, expressly or impliedly, on the three propositions put above. The rest three scholars, however, left them untouched. Those thirty seven discussants are the following :

- MI. Khalid Saifullah Rahmani
- MI. Abul Hasan Ali
- MI. Shams Pirzada
- MI. Sultan Ahmad Islahi
- MI. Abdul Jalil Qasmi
- MI. Ja'afar Milli Rahmani
- MI. Akhlaqur Rahman Qasmi
- MI. Mufti Abdul Rahim (of Bhopal)
- MI. Tanwir Ahmad Qasmi
- MI. Mufti Anwar Ali
- MI. Abu Sufyan Miftahi
- MI. Ibrahim Muhammad (of Baroda)
- MI. Ubaidullah al-As'adi
- MI. Mufti Abdur Rahman Palanpuri
- MI. Abdul Qayyum Palanpuri
- MI. Abdul Latif
- MI. Md. Rizwan al-Qasmi
- MI. Mufti Nizamuddin (of Darul Uloom Deoband)
- MI. Zubair Ahmad Qasmi
- MI. Iqbal Ahmad Qasmi
- MI. Manzur Ahmad Qasmi
- MI. Samiullah Qasmi
- MI. Md. Noor al-Qasmi



Ml. Md. Naeem Rashidi  
Ml. Md. Mujahidul Islam (Hyderabad)  
Ml. Md. Tahir Mazahiri  
Ml. Md. Qamar Alam Sabili  
Ml. Md. Arshad Qasmi  
Ml. S. Mohd. Ayub Sabili  
Ml. Ahmad Nadir-al-Qasmi  
Ml. Qamaruz Zaman Nadwi  
Ml. Mufti Mahboob Ali Wajihi  
Ml. Dr. Abdul Azim Islahi  
Ml. Zafarul Islam  
Ml. Shahid Al Qasmi  
Ml. Hakim Zillur Rahman  
Ml. Mufti Akhtar Imam Adil Qasmi

**Q. 7. In case the loan is sought on interest, what would be the position of the Shariat on the profits and earnings made through the interest-based loan? Does such loan forms part of the loanees' total ownership? And what about the profits earned through such interest based loans? In other words, shall the earnings made through the investment of the interest-involving loans be regarded by the Shariat as lawful?**

Out of the three propositions pointed out above, the first one (actually seventh in the order of the questionnaire) is to determine the position of the Shariat on the money borrowed on interest and the profits and gains secured

through it. A study of the replies, contained by the papers received, reveals that all the discussants have basically arrived at three different opinions. A short review follows:-

- (i) One opinion, held by only three ulama: Mufti Mahboob Ali Wajihi, Dr. Abdul Azim Islahi and Ml. Zafarul Islam, is that the loan arranged on interest, though arranged under constraining circumstances, is not useful to be part of one's ownership, and, quite naturally, so being the case of the resultant profits and gains. This viewpoint differentiates between the two acts of the company, that is, arranging loans on interest from banks and similar financial institutions. There might develop such constraining circumstances under which the company may have no option other than seeking loans on interest. The other act is to put such loans into use in order to earn further profits. While the first act might be rendered involuntary by constraining circumstances, the second one is purely voluntary. Benefitting from unlawful *mal* is not permissible. But, to my assessment, this argumentation is extremely fallible. The reasons follow:
  - (a) If benefitting from an interest-bound loan is unlawful and impermissible, then what is the benefit from such a loan, and what is the benefit from such a permission of arranging loan on interest? The Fuqaha have laid down the principle in this connection in the following words:

### يجوز للمحتاج الاستراض بالربح

“It is permissible for a needy to get a loan on interest.”<sup>1</sup>

This permission is normally unconditional. Impermissibility of benefitting from a loan got on interest renders the permission quite meaningless.

(b) The holders of this opinion have ignored the following unanimous juristic principle.

### حرمة العقد لا يستلزم حرمة المال

“The unlawfulness of a contract does not necessitate the unlawfulness of the *mal* involved.”

If got without compulsion, the interest-bound loan shall be regarded an act of sin, but this will not bring malignity to the *mal* involved. It is because the *mal* includes nothing from the interest-bred amount.

Actually, it is a case of paying interest and not of charging and receiving the interest. In his *fatawa*, the Imdadul Fatawa (3/170) the late Maulana Thanawi has issued the *fatwa* of the lawfulness of the interest-bound loan and the resultant gains and earnings.

- (ii) The second viewpoint, expounded by only Maulana Md. Shahid al-Qasmi, is that if the interest-bound loan has been raised with a pressing need, it, along with all the resultant benefits and gains, shall be regarded purely lawful. But on the contrary, if the interest-bound loan has been taken out without a

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<sup>1</sup> Al-Ashbah Wal Nazair.

really pressing need, both the loan and the ensuing gains shall be regarded unlawful, and will have to be given away in charity.

It seems that to the view of Maulana Md. Shahid al-Qasmi the problem under discussion is analogous with the irregular sale contract (*bay'fasid*). That is, if something has been purchased through an irregular sale contract, the contract must be dissolved. If the buyer did not dissolve the contract and sold the same thing to a third party, the first purchaser shall be required to part with the gains and benefits he drew through the irregular sale deal by giving out them in charity.

This argumentation, however, is flawed on the following counts:-

- (a) The first point is that the contract of loan is very much different from the contract of sale in terms of both genus and the rulings, details of one can not serve as precedent for another. Therefore, the analogy between the two is false.
- (b) The analogy is not fully applicable even to the problem of the loan contract. Regarding the contract of loan the Maulana provides the detail of actual or fake need, whereas the Fiqhi literature offers no such a detail *vis-à-vis* irregular contract of sale.
- (c) As far as the *bay'fasid* is concerned, in it the point of debate is to determine where the malignity is effective. Is it effective only in the particular *mal* or affects the whole of it, the subject-mater of the irregular sale contract? To the viewpoint of Imam

Abu Hanifa, if the malignity is brought to the *mal* owing to an irregular ownership, malignity shall remain limited only to the specific portion of *mal* transmitting not to non-specific one. But, on the other hand, if the malignity is brought to it by the lack of ownership, the malignity is bound to affect the total *mal*, that is the subject-matter of the contract as well as the resultant gains and benefits. Precisely speaking, an irregular sale contract creates only a defective ownership. If the subject-matter of a sale contract is specific, say a slave-woman or an animal, etc., the gains resulting from its sale will not be free from malignity, and hence to be given in charity. But the *fuqaha* have simultaneously said that the gains that the first seller secured through the price of the subject-matter shall be regarded lawful for him as the coins and the *naqad* do not stand specifically determined.<sup>1</sup>

In the Fiqhi literature we find more precedents than one to establish that unspecified things are not affected by the irregularity of the contract or by the irregularity of ownership. The case of the loan on interest is also much the same. The money obtained as loan with the payment of interest on it is undoubtedly unspecific, and hence the amount of loan and the resultant gains will

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<sup>1</sup> Hidayah 3/66, Raddul Muhtar 4/145.

remain unaffected by the irregularity of the contract going by this very particular item. Thus this item in fact is against the view the Maulana has arrived at.

- (iii) The third opinion, unanimously adopted by all the rest discussants, is that taking out a loan on interest without an actually pressing need will constitute a sin; only under constraining circumstances such a loan is permissible. But the loan sought on interest with or without necessitating circumstances, will indubitably form the lawful part of the loanee's ownership, and the ensuing benefits and gains shall be lawful for the borrower. Taking out the loan on interest without an actual need will not bring malignity to the *mal* involved. This viewpoint seems comparatively stronger and preferable. The supporting reasons follow:

- (a) About the money earned as interest the Fuqaha are of the view that the possession of it is legally useful to form part of one's ownership. The following citation is supportive to it:

وظاهر مافى 'جمع العلوم' وغيره إن المشتري يملك الدرهم الزائد إذا قبضه فى ما إذا اشترى درهمين بدرهم، فإنهم جعلوه من قبيل الفاسد، وهكذا صرح به الأصوليون فى بعث النهى، (الجرالرائق ١٢٥/١)

"What is obviously gathered from 'Jamul Uloom' and other books in this regard is that the buyer

will own the extra *dirham* by taking it into his possession if he purchased two *dirhams* for one.

According to the *fuqaha* this problem belongs to the genus of the irregular contracts. The same has expressly been said by the Jurisprudets while discussing the prohibition (*nahy*).<sup>1</sup>

If the pure interest may form part of one's ownership after coming into one's possession, then the loan sought on interest may be one's ownership even more befittingly.

Jamiur Rumuz, too, puts it expressly. To quote its wording:

كل عقد فيه فضل والتبض فيه مفيد للملك

"Every contract involving an excess and possession of it is useful for the ownership."<sup>2</sup>

(b) There is a well-known juristic principle :

ويجوز للمحتاج الاستقراض بالربح

"The needy person may lawfully take out loan on interest."<sup>3</sup>

This principle establishes that the loan sought on interest constitutes a lawful ownership and so is the gains drawn from it.

(c) Taking out the loan on interest may be an act of sin, extremely disapproved of by the Shariat, yet the financial

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<sup>1</sup> Al-Bahrur Raiq 6/125.

<sup>2</sup> Jamiur Rumuz 3/327.

<sup>3</sup> Al-Ashbah Wal-Nazair.

profits and gains earned through this interest involving contract shall be free from malignity as they have no element of interest. This is based on the following established juristic principle :

### حُرْمَةُ الْعَقْدِ لَا يَسْتَلْزِمُ حُرْمَةَ الْمَالِ

“The unlawfulness of a (business) contract does not necessarily lead to the unlawfulness of the resulting financial gains.”<sup>1</sup>

(d) Seeing this problem in the Indian perspective, here all such contracts are concluded directly by the companies and not by the stockholders. It is the companies themselves which take out loans on interest, invest those sums and earn profits, then divide those profits among their stockholders. Here we may avail of a well-known principle of the Hanafi school of jurisprudence which reads that in the sale contract the involved rights turn to the representative and not to the client. In addition, we may benefit from a yet another juristic principle which reads that the change of ownership removes malignity.

وفي صورة إرباء الوكيل كان البيع فاسداً لا يضراً، فإن الوكيل بالبيع كالعاقِدِ لِنَفْسِهِ، وفساد البيع في حق الذمى لا يستلزم حُرْمَةَ الرِبْحِ عَلَى الْمُسْلِمِ، فَإِنَّ تَبَدُّلَ الْمَلِكِ يَدْفَعُ خَبْثَ الْفَسَادِ، وَأَمَّا عَلَى قَوْلِ مَنْ جَوَّزَ الرِّبَا بَيْنَ الْمُسْلِمِ وَالْكَافِرِ فِي دَارِ الْحَرْبِ فَالْأَمْرُ أَوْسَعُ.

“The ruling that the representative’s taking interest is bound to render the contract – irregular will not harm us, for the sale representative is like the one concluding the contract for himself. As

<sup>1</sup> Op. Cit.



regards the irregularity of a sale contract with regards to a *dhimmi*, it does not necessitate the impermissibility of the interest for the Muslim. It is because of that change of ownership removes malignity. And if adopted the viewpoint of those who permit the giving and taking of interest between the Muslim and non-Muslim in the *darul harb* (territory of war), the problem will turn easier still."<sup>1</sup>

Based on these grounds it seems safe to say that the Muslim stock-holders will share no responsibility of the company's entering into impermissible financial contracts and the change of ownership will render the gains lawful. Therefore, the viewpoint shared by the majority of the discussants seems stronger.

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<sup>1</sup> Imdadul Fatawa 3/497, Nizamul Fatawa 1/200.

**Q. 8. Is the Board of Directors the representative of the shareholders and shall its activities be attributed to the shareholders as well?**

**Q. 9. In taking decisions the Board of Directors follows the majority opinion. Will a shareholder's expression of his disagreement with the Boards over its decision of seeking interest based loans absolve him of the responsibility of the Board's act?**

The second proposition (the eight and ninth in the order of the questionnaire) is meant to determine the nature of relationship between the company's Board of Directors and the stockholders. To put the questions more precisely.

- (i) Is the Board of Directors the representative of the company's total stockholders? If so, will every act of the Board be attributed to the stockholders too?
- (ii) If a shareholder expresses his disagreement over an act of the Board, even though his disagreement is of no avail to desist the Board from the act, will his note of difference absolve him of the responsibility of the act? So far as the first aspect of the question is concerned, on it there exists a complete unanimity among all the discussants. They share the view that the Board of Directors is the representative of all the stockholders, and the acts of the Board shall be attributed to them. For if the stockholding is regarded closer to the *shirkatul inan*, as Hadhrat Ml. Thanawi and many others hold, the *shirkatul inan* is based on

the contract of *wikalah* (representation), as has expressly been put by the *Fuqaha*.

وأما شركة العنان فتنعقد على الوكالة دون الكفالة  
(هداية مع فتح القدير ٦/١٤٢)

As regards the *shirkatul inan* (a type of partnership in which services and the capital are shared on proportional basis), it is concluded on the basis of *wikalah* (representation) instead of surtyship (*kafalah*)".<sup>1</sup>

If the shareholding is *mudharabah*, as many ulama hold, the *mudharabah*, too, is regarded a sort of *wikalah* by the *Fuqaha*.

المضاربة توكيل بالعمل لتصرفه بأمره (در مختار ٣/٣٨٢)

*Mudharabah* is a type of *tawkil* (representation) allowing the *mudharib* (contractual partner) undertake the action in the *mal* according to his direction."<sup>2</sup>

Even, if we designate the shareholding as a new type of partnership, the Board of Directors shall invariably continue to be the representative of the stockholders as they themselves have appointed it to be their representative to carry out all the management affairs, hence the shareholders can by no way escape to share the responsibility of the acts of the Board. Maulana Abul Hasan Ali, however, discusses the point in rather detail. He maintains difference between the things purchased before and after the concluding of the shareholding contract in the company. In the things purchased before, that is what exists already in the

<sup>1</sup> Hidayah with Fathul Qadir 6/176.

<sup>2</sup> Durre Mukhtar 4/484.

company's ownership, the Board of Directors shall be regarded the seller and the shareholder as purchaser. In goods purchased after the shareholding, the Board and the Company's management staff shall be regarded the shareholder's representative. This is actually a case of the *ta'ati* sale contract in which the seller himself possesses the price, and the purchased item goes into the possession of the purchaser through the intermediary of the seller who simultaneously happens to be the purchaser's representative as well.<sup>1</sup>

Opinions of the discussants, however, differ on the second aspect of the question. That is, will the shareholder's expression of his disagreement over the Board's acts and decisions held impermissible by the Shariat absolve him of the responsibility of such acts and decisions? Basically, there are two opinions regarding this aspect of the question. According to one opinion the shareholder's expression of his disagreement over impermissible acts of the Board will absolve him of those acts' responsibility. The other opinion is just opposed to the first one. Besides these two central opinions, two sub-opinions have also been expressed by some discussants.

- (a) Maulana Shams Pirzada is of the view that since the disagreement of an individual shareholder holds no good to persuade the decision-maker majority of the Board's constituents, a formal expression of the disagreement is not needed at all. The individual shareholder has no option other than following the

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<sup>1</sup> Imdadul Fatawa 3/490.

decision of the Board, willingly or otherwise. Hence permissible.

- (b) The other opinion has been expounded by Maulana Sultan Ahmad Islahi. According to his opinion, in the event of the company's involvement in matters of interest-breeding activities the shareholder needs not at all show his disagreement with the Board as the interest drawn from banks is not the forbidden interest at all; it is a type of lawful interest. But both these opinions are out of our present review as in the last seminars it has finally been decided that the bank interest too is included in the unlawful forms of it, the change of nomenclature could make no difference. Likewise, the opinion of Maulana Pirzada needs not to be discussed. The point under discussion is not to predict the efficiency of the shareholder's disagreement; the moot point is if the expression of his disagreement will absolve him of the responsibility of the sin.

Out of the forty discussants thirty five share the view that the shareholder's expression of disagreement with the Board over its impermissible financial activities will absolve him of the responsibility. The rest five discussants, however, hold the otherwise opinion. The names follow:

Ml. Ubaidullah al Asa'adi

Ml. Mufti Azizur Rahman Bijnori

Ml. Mujahidul Islam (of Hyderabad)

Ml. Shahid al Qasmi

The argument of the above five discussants is based on the point that when a company is running according to a system which essentially involves impermissible acts, or concludes the interest bearing financial matters, the purchase of the shares of such a company, and then expressing disagreement with the representative, retaining the Board's representation as it is quite meaningless. In Imdadul Fatawa, Maulana Thanawi has also favoured this view.<sup>1</sup>

But this argument is not strong enough. It is based on the assumption that the agent and representative in no case can go against the will of his client. This is an assumption which is not always true when an institution or individual performs the duty of representation on behalf of a person. In connection with a larger work, the agent may possibly commit some acts which are not essentially upto the liking of the client. If such happens, the reasonable course of action is not to terminate the contract of representation, but to disown the responsibility of such acts; it is the representative himself who will bear the responsibility of such acts and not the client. The same thing has expressly been stated by Mufti Nizamuddin Sb. (of Darul Uloom Deoband). In the Fiqhi literature the chapter on *al wikalah* (contract of representation) it has expressly been said that if a representative and agent does a thing against the express will of the client the act shall not be attributed to the client; it is the agent alone who shall solely be held responsible for such an act. To quote an authority here :

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<sup>1</sup> Imdadul Fatawa 3/130.

الأصل أن المؤكل إذا قيد على وكيله فإن كان مقيداً اعتبر مطلباً وإلا لا

As regards the edict of Maulana Ashraf Ali Thanawi, in Imdadul Fatawa itself there exists an edict which is opposed to the former one. In the latter edict the Maulana offers the suggestion to the shareholder to express his disagreement with the Board over its unlawful acts. Having done so, the shareholder will be disowning the representative's act. Probably, this is the latter opinion of the learned Maulana which he adopted as his preferential viewpoint.

Excepting the five discussants named above, all the rest ones share unanimously the view that the shareholder's expression of his displeasure at the Board's interest-bearing financial activities will absolve him of the responsibility of the act. Some supportive arguments have already been offered; some more ones are as follows:

- (a) The shareholder has made the company's Board of Directors his representative only in matters of trade and business and never to enter into interest-involving financial contracts. Even if so, the representation shall be regarded implicational in nature. The clear expression of his disagreement will be taken as an enough reason to disown the responsibility of the Board's acts.
- (b) The Fuqaha have clearly put that the representation of the Wakil shall remain limited to the things according to the *will* of the client. As regards the things opposed to his will, the responsibility shall turn to the agent and representative, with no share of the client. Precisely speaking, vis-à-vis such

things the representative shall stand dismissed. To substantiate this opinion :

‘فإن اشتراه بغير التقود، أو بخلاف ما سئى الموكل له من الثمن وقع الشراء للوكيل لمخالفة أمره، وينعزل فى ضمن المخالفة’

‘If the representative bought the thing without paying the price or for a price against what the client had already specified, the purchase by the representative shall take place in spite of his going against the direction of the client. But in such things the agent shall stand dismissed from the job of representation.’<sup>1</sup>

- (c) If the representative happens to be a non-Muslim vis-à-vis the contract of partnership or *mudharabah*, the responsibility of the things he undertook in contravention of the directives of the shariat (and opposed to the will of the client) shall turn to the representative, to the exclusion of the client. For according to the clear statements of the *fuqaha*, in contracts of the sale-purchase the rights turn to the contracting party, instead of the client. The change of ownership removes malignity from the *mal*. The same thing is gathered from the following lines of a great jurisprudent:

إذا دفع المسلم النصرانى مالاً مضاربةً بالانصف فهو جائز إلا إنه مكروه،  
فإن اتجر فى الخمر أو الخنزير فريح جاز على المضاربة فى قول ابى حنيفة  
وينبى للمسلم أن يتصدق بحصته من الربح.

<sup>1</sup> Durre Mukhtar on Raddul Muhtar 4/450.



“It is permissible for a Muslim to conclude the contract of *mudharabah* with a Christian. It will be a lawful sort of partnership for a Muslim to give his *mal* to a Christian on the basis of *mudharabah* at a 50% profit sharing. This is not desirable, however, if the Christian partner invested the Muslim’s money in the business of wine and swine (or in other unlawful things) and earned profits, it, according to Abu Hanifa, will be a permissible sort of business. The Muslim, however, had better give in charity his lot from the profit.”<sup>1</sup>

In view of such moving arguments the majority opinion seems comparatively more correct.

**Q. 10. If the profits earned by a company include an element of interest with a known quantity, for the purification of his earning will it be sufficient on his part to give in charity the amount of interest?**

**Q. 11. And, in case the profits of a company include the elements of interest, and the interest- included earning has again been invested in business to earn further profits. Will it suffice for the purification of one’s**

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<sup>1</sup> Fatawa Alamgiri, with reference to Imdadul Fatawa 3/497.

## **earnings to give away in charity the income proportionate to the amount of interest?**

There are two issues to be discussed here :

- (i) In case the company's profits include interest, with a known amount, will the shareholder's disposing of the amount of interest in acts of charity purge the rest amount of profits of malignity?
- (ii) The second question stems from the interest-bred income. To be precise, what is the position of the shariat on the profits earned by the company through the investment of the amount of money generated through the interest? Will the amount of interest and the resultant profit both be required to be given away in charity, or it is only the amount of interest the disposal of which shall be regarded sufficient for the purification of the amount of the profits earned?

Regarding the first point of the problem all the participants and discussants (with the sole exception of Ml. Sultan Ahmad Islahi, whose viewpoint is that the interest a depositor earns from the bank and other financial institutions of the nature is lawful for him, hence no question of disposing of such money by giving it away in charity) are unanimously agreed to that the exclusion of the amount proportionate to that of the interest from the one of the profits will be regarded sufficient for the purification of the total amount of the profits.

This opinion is based on some juristic precedences, scattered about in the *fiqhi* literature, which prove that in

case the unlawful money gets mixed with the lawful money and the lawful one is greater in amount than the unlawful and latter one is too hard to be recognized the exclusion of a certain amount of money from the total shall be regarded sufficient for the purification of the rest money. It is very much like the case of the heap of wheat on which the animal passes water while thrashing it. If the impure portion is not recognizable, the exclusion of some amount from the heap will purify the total amount of wheat. Similarly, if an agent employed the money of a number of people for the purpose of trade and in the process the amounts of money of those people got mixed with each other, or included in the total the amount of interest, the distribution of the total amount among the partners will be regarded sufficient to purify the shares of each partner.<sup>1</sup>

In the same way, about the gift the Fuqaha have clearly put that the gift from a person whose wealth is a mixture of the lawful and unlawful may be accepted, provided that the amount of the lawful outweighs the unlawful one.<sup>2</sup>

The following excerpts from Hafiz Ibn Qayyum prove the above mentioned ruling :

إذا خالطه درهم حرام أو أكثر أخرج مقدار الحرام وحل له الباقي بلا كراهة، سواء كان المخرج عين الحرام أو نظيره، لأن التحريم لم يتعلق بذات الدرهم وجوهه، وأما تعلق بجهة الكسب فيه، فإذا خرج نظيره من كل وجه لم يبق لتحريم ما عده معنى (بدائع الفوائد لابن القيم 2/157).

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<sup>1</sup> Imdadul Fatawa 3/497.

<sup>2</sup> Fatawa Khaniya on the Margins of the Fatawa Hindiya 3/400.

In case one or more *dirhams* of unlawful wealth got mixed up with the lawful one the removal of the amount of the unlawful wealth will render the rest completely lawful, apart from that the removed *dirham* was the very unlawful one or the like thereof. So because the unlawfulness is never associated with the entity of the currency *dirham* itself, it is in fact the nature of its earning which attracts the unlawfulness. When the similar thereof is excluded, there will remain no meaning of unlawfulness in the rest.<sup>1</sup>

The purport of the above-mentioned extract is nothing but that the currency items of money (*dirhams, dinars* etc.) are not determined and fixed. In the event of getting a small amount of unlawful mixed up with the lawful one the exclusion of the currency items equal in respect of amount to the unlawful one shall be regarded sufficient to render the rest amount perfectly lawful. It will make no difference to the matter whether the currency items excluded are the very unlawful ones or similar to them. For no item of the currency money as such could be termed as unlawful; it is the unlawful nature of earning which renders it unlawful.

In the previous lines (of the excerpt) the point mentioned is the appointing of a Christian an agent to utilize the *mal* on the basis of *mudharbat* or partnership. This too establishes it well that if an agent, especially a non-Muslim one, receives interest as the profits procured and mixes it up in the lawful amount of money, whatever the capital-owner

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<sup>1</sup> Ibn-al-Qayyim : Badai ul Fawaid 2/157.

gets after the distribution shall be regarded lawful and pure, though the cautious course of action for a Muslim will, still, be to exclude the amount of interest from his profits. According to the Hanafi principles of jurisprudence getting mixed amounts to consumption and the distribution of the total between the partners, or exclusion of a part of the total is regarded as purgatory and purifier.<sup>1</sup>

In the Fiqhi literature we come across various precedences of the type. These ones are strong enough to establish that the amount of interest mixed up by the company in the amount of the business profits does not defile the total amount of profits. For the process of distribution of the profits amongst the shareholders is a purifying agent in itself. More so, if the amount of interest is given away in charity, the amount of profits will turn pure without doubt.

With most of the discussants we fail to find whether it is binding and imperative or optional to dispose of the money of interest in charity. Only Maulana Abul Hasan Ali, Ml. Ahmad Devalwi and Ml. Zubair Ahmad Qasmi have clearly put it that the disposal of the interest is only optional demand of piety. To the view of Ml. Ubaidullah As'adi, Ml. Abdul Qayyum Palanpuri, Ml. Tanweer Ahmad Qasmi and Ml. Qamar Alam Sabili, however, giving it away in charity is imperative. A close study of the related facts makes it clear that the first viewpoint is more correct. So because the precedences and arguments establish it well that with

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<sup>1</sup> Imdadul Fatawa 3/497.

regard to the unspecified amounts of money the blending of the unlawful amounts of money with the lawful ones, leaving no trace to recognize the former one, (56 of the original). And in the event of the commonly shared *mal* its distribution amongst the sharers and in the case of the uncommon *mal* the exclusion of the *mal* in proportion to the unlawful one is a purifying agent. The case of the company is very much like the ones furnished in the precedences. The capital of the company and its profits are common, shared by a number of people. The amounts of profits to be given to the shareholders are bound to the process of distribution which is proved as a purifying agent. This renders the disposal of the profits blended with interest in charity as not binding. It remains now only a matter of high standard of piety to part with the amount of interest from the profits in charity if that amount as is known.

To be more precise, in the interest-related matters the practices of the agent, as it has already been set out in relation to the non-Muslim agent appointed to undertake the *mudharabat*, are not attributed to his client unless he utilizes his client's money in the trade of the things held purely unlawful by the shariat such as wine and swines. In case the agent did so, it will turn binding for him to give away his share of the profits in charity. The same point has been made by Hazrat Maulana Zafar Ahmad Thanawi with reference to the Fatawa Alamgiri.<sup>1</sup>

Contrary to the view almost unanimously adopted by the discussants, two out of them, Mr. Shams Pirzada and

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<sup>1</sup> Imdadul Fatawa 3/497.

Hakim Zillur Rahman, are of the view that it is absolutely hypothetical that the company distributes the amount of interest among its shareholders, or earns profits by those amounts. For the amount a company procures as interest is definitely much less than what it has to pay as interest.

**Q.11. And in case the profits of a company include the elements of interest, and the interest included earning has again been invested in business to earn further profits. Will it suffice for the purification of one's earnings to give away in charity the income proportionate to the amount of interest?**

Next issue, subtly different from the previous one, is of the profits made through the amounts of interest. Regarding the lawfulness and unlawfulness of such profits there are, primarily, two views in the papers submitted by the discussants:

(i) Ml. Ubaidullah As'adi Mufti Abdur Rahman Palanpuri, Ml. Abdul Qayyum Palanpuri, Ml. Tanwir Ahmad Qasmi and Ml. Qamar Alam Sabili are of the view that the interest and the profits made through it are absolutely unlawful. The disposal of such amounts of money in charity is binding. This view is based on the following arguments:

(a) "الحُرْمَةُ تَتَعَدَى"

(the unlawfulness is transitive, that is, it transmits to other things as well.)<sup>1</sup> This obviously necessitates the unlawfulness of the profits gained by dint of the unlawful money.

- (c) That the malignity is transitive is established by more an expression of the same juristic authority. This is as follows:

الخبث لفساد الملك إنما يعمل فيما يتعين، لا فيما لا يتعين، وأما الخبث لعدم الملك كالغضب فيعمل فيهما، كما بسطه خسروا بن كمال.

“The malignity entering into a transaction owing to the irregularity of ownership works in those *amwal* which are specified. Those unspecified remain unaffected. The malignity entering into a transaction due to absence of ownership, such as usurpation, will work in both the specified and unspecified ones as it has been explained by Khusru and Ibn Kamal.<sup>2</sup>

The citation furnished above tells, among other things, that the malignity (of the latter type) is not confined to its limits; it goes beyond as well.

- (c) To support the view of unlawfulness an argument is extracted from what has been mentioned in al-Hidayah (of Marghinani) etc. regarding the case of usurpation. To put it here:

A person usurped an amount of one thousand, for example, and for this usurped money purchased a slave-girl. Then he

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<sup>1</sup> Shami : 5/98.

<sup>2</sup> Shami 5/97.



sold her with a profit of one thousand. For the two thousand he purchased a second slave-girl and then sold her for three thousand. This gives rise to the question will the profit he has made be lawful for him? To the view of Imam Abu Hanifa and Imam Muhammad, it is absolutely unlawful. The profit has to be given away in charity. To the view of Imam Abu Yusuf, however, it will be lawful. According to the author of the *Hidayah* the former opinion is the agreed one. He further says that nobody out of our *mashaikh* holds such profits as lawful under any condition.<sup>1</sup>

But, no argument out of those furnished by the supporters of the unlawfulness could properly be applied to the case of the *company*. Whatever has been cited regarding the transitivity of the unlawfulness and malignity in the financial and business matters is applicable only to those where the amounts of money are specified; the unspecified ones are never subject to the transitivity of malignity and unlawfulness. The profits and gains from the company are received in the form of the currency money, even the gains earned through the amount of interest are paid by the company to the investors in the same form. And it is established that the currency items (dirhams, dinars, rupees, etc.) form only the unspecified form of money. The malignity entering into a financial transaction owing to the absence of ownership, however, shall be transitive to the *amwale ghair mutaayyana* (unspecified sorts of *mal*). But, according to the juristic expressions, the interest-involving

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<sup>1</sup> *Hidayah* : 3/456.

financial transactions are included in the *uqud-e-fasida* (irregular transactions), which are legally useful and constitute the ownership.<sup>1</sup>

What may be said at the most is that such type of transaction forms an irregular ownership; and this type of ownership affects the specified forms of *mal* and not the unspecified ones, as it has already been explained. It needs not mention that the properties and wealth of the companies fall to the category of the unspecified ones. Hence no question of malignity going beyond its own specific limits.

(ii) The other standpoint, adopted by all other discussants, is that the investor is not obliged by the shariat to remit in charity the profits and gains earned through the investment of the amounts of interest given to him by the company. Remitting it by way of charity shall only be a gesture of piety. This view is based on the following:

- (a) The possession of the amount of interest establishes the ownership; the gains generated by it will even more obviously form the ownership, unaffected by the malignity because of that fall under the non-specified category of *mal*. The malignity entering into a transaction owing to the irregularity of ownership affects only the specified specie of *mal*.
- (b) The following extract from the *Shami* sheds sufficient light on this :

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<sup>1</sup> Al-Bahrur Raiq 6/125.

رجل اكتسب مالاً من حرام ثم اشترى به فهذا على خمسة أوجه إما ان دفع تلك الدراهم، إلى البائع أولاً ثم اشترى قبل الدفع بها ودفعها، أو اشترى قبل الدفع بها ودفع غيرها أو اشترى مطلقاً ودفع تلك الدراهم أو اشترى بدراهم آخر ودفع تلك الدراهم، قال الكرخي في الوجه الأول والثاني: لا يطيب، وفي الثالث الأخيرة بطيب، وقال أبو بكر: لا يطيب في الكل، لكن الفتوى على قول الكرخي، دفعاً للحرص عن الناس (رد المختار ٣/٢٢).

A person earned money through unlawful means and then made purchasing through it. Such an activity may possibly have five cases in all.

(i) He first gave the money to the seller and then purchased the item from him: (ii) first he made the purchasing and paid the money to the seller later. (iii) made purchasing in exchange of certain currency items, say *dirhams*, but paid to the seller other items (of the same type and value). (iv) The purchase was made without specifying the *dirhams* but were paid to him the same (unlawfully earned) *dirhams*. (v) The purchase was made with the promise to pay the selling party other specified *dirhams* but the payment was finally made with the unlawfully earned *dirhams* instead. According to the view of Imam Karkhi, in the first and second cases the purchased item is not properly lawful for him; in other three cases, however, the purchased item shall be lawful. To the view of Imam Abu Bakar, contrariwise, in no condition out of the five ones the purchased item is lawful for him. In order to remove the hardship and difficulty from the general people the *fatwa*, however, is issued according to the former view.<sup>1</sup>

<sup>1</sup> Raddul Muhtar 2/44.

The citation put above makes it clear that out of the five modes of business dealings the first two ones are affected by malignity, rendering the item purchased as unlawful definitely because of that the *dirhams*, the price of the purchased item, are specified. But, on the other hand, the use of the item purchased, according to the detail furnished, is regarded to be lawful as the price money is not specified. Still, if he eschews the item thus purchased, so much the better.

- (c) Mixing up of unlawful with the lawful is a proof of *istihlak*, as the point has already been explained. Moreover, the process of distribution is regarded as *purifier*. It is admitted that the company, in most cases, mixes its interest-involving earning with the capital money to reap further gains. The lot of each shareholder to reach him shall have to pass through the process of distribution, hence undoubtedly pure and lawful. Giving it away by way of charity for the sake of a greater degree of piety and God-fearing will still be a welcome gesture. The same view is supported by the following expression of the Shami:

وإن كان مالا مختلطاً مجتمعاً من الحرام ولا يعلم أربابه ولا شيئاً منه يعينه  
حل له حكماً، والأحسن ديانة التنزه عنه. (رد المحتار 235/5)

If there is an amount of lawful blended *mal* with the unlawful in a way as the owners of the latter one stand unknown and there is nothing whereby to determine its

ownership, it will be regarded lawful for him. The better course for him, however, is to stay away from it.<sup>1</sup>

Based on the arguments and the discussion furnished above, the viewpoint adopted by the majority of the discussants seems relatively stronger and preferable.

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<sup>1</sup> Raddul Muhtar 5/235.

## 4(d)

### Short Critical Review of the Answers to questions Nos. 12, 13, 14, 15, 16, 17

By Maulana Atiq Ahmad Qasmi Bastwai  
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Darul Uloom Nadwatul Ulama, Lucknow.

I have been asked to critically review the answers to the questions No. 12, 13, 14, 15, 16 and 17 of the Academy's Questionnaire served to the Ulama across the country. The papers and the answers I have received from the Islamic Fiqh Academy about the shares and company are 42 in total. Out of this number 29 papers and answers are of the great men of Islamic learning and the *men of Ifta*; eleven papers are the good results of our those young and fresher graduates of the noted Islamic seminaries who still are under training in Islamic Fiqh, jurisprudence and *fatwa* in the departments of Fiqh and *Ifta* of the Darul Uloom Sabilus Salam or the Darul Uloom Hyderabad (A.P.) One paper is penned by Hakim Zilur Rahman of Delhi.

Following are the respectable names of the noted ulama and the *men of fatwa* who have kindly favoured the Academy with their papers and answered the questionnaire the Academy served to them regarding the problems of shares and company.

- Hazrat Maulana Mufti Nizamuddin Sb. of the Grand Darul Uloom, Deoband
- Maulana Mufti Azizur Rahman of Bijnor, U.P.

- Maulana Ubaidullah As'adi
- Maulana Khalid Saifullah Rahmani
- Maulana Muhammad Rizwan al-Qasmi
- Maulana Mufti Akhtar Imam Adil Qasmi
- Maulana Abul Hasan Ali (Gujarat)
- Maulana Ahmad Devalwi
- Maulana Mufti Abdul Qayyum Palanpuri
- Maulana Abdul Jalil Qasmi
- Maulana Mufti Mahboob Ali Wajih
- Maulana Sultan Ahmad Islahi
- Mufti Shakil Ahmad Sitapuri
- Maulana Dr. Abdul Azim Islahi
- Maulana Mufti Anwar Ali Azami
- Mufti Abdur Rahman Palanpuri
- Maulana Abdul Latif
- Maulana Abdur Rahim
- Maulana Ibrahim Mhammad Barodawi
- Maulana Shams Pirzada (Mumbai)
- Maulana Manzur Ahmad Qasmi
- Maulana Abu Sufyan Miftahi
- Maulana Akhlaqur Rahman Qasmi
- Maulana Zubair Ahmad Qasmi
- Maulana Iqbal Ahmad Qasmi
- Maulana Md. Jafar Milli Rahmani
- Maulana Tanwir Ahmad Qasmi
- Maulana Samiullah Qasmi
- Maulana Atiq Ahmad Qasmi

The promising graduates of the noted Islamic seminaris under training in fiqh at the Darul Uloom Hyderabad who

diligently wrote papers in response to the Academy's questionnaire on the issue of shares and company are the following:

- Maulana Naeem Ahmad Rashidi
- Maulana Md. Noor Al-Qasmi
- Maulana Mujahidul Islam Qasmi
- Maulana Md. Tahir Mazahiri
- Maulana Md. Abrar Khan Nadwi
- Maulana Md. Qamaruz Zaman Nadwi
- Maulana Ahmad Nadir al-Qasmi
- Maulana S. Muhammad Ayub Sabili
- Maulana Md. Arshad Qasmi
- Maulana Md. Shahid Qasmi, and
- Maulana Md. Alam Sabili

**Q.12. What is the position of the Shariat on trading in the shares? In other words, buying the shares of a company with an intention to sell them later for a higher price as is generally expected? What is the ruling of the Shariat on doing the business of the shares of the companies? The question assumes even greater significance considering the fact that the business of the shares involve almost invariably, a sort of conjecturing. That is, only those shares are bought which are thought to fetch greater amount of profit. And this last thing is decided after an obvious study of the share market. Are all sorts of conjecturing unacceptable to the nature of the Islamic**



**Shariat, or there exists some detail in this regard?**

The papers submitted by Hazrat Maulana Mufti Nizamuddin of Darul Uloom, Deoband and Mufti Azizur Rahman of Bijnor do not touch the questions from 12 to 17. With the exception of Mufti Shakil Ahmad of Sitapur (U.P.) all other discussants are unanimously agreed to the point that trading in the shares is lawful. Once it is admitted that the shares are legally an object to sale-purchase activity and the sale of shares in fact is the sale of one's proportionate share in the company, the sale-purchase of the shares will indubitably be lawful without raising the question of intention of one's move of selling one's shares and stocks. Now it would be quite improper to differentiate between the lawfulness and unlawfulness of the sale-purchase of the shares on the basis of mere intent, particularly when the sale is not intended for an evil object. Intent of business is good and lawful. Speculation and conjecturing constitutes no wrong in itself. Speculation and conjecturing is a strong factor: in most stages of business activities the business people need it. The presence of any element of speculation in the business of the shares can not render it to be unlawful.

It is Maulana Mufti Shakil Ahmad of Sitapur alone who has declared the business of shares as unlawful. To quote his actual words:

“Since the shares neither are the *thaman* nor fall into the category of the *mabi'e*, they are not legally fit to be an object of a sale-purchase transaction. So far as the *thaman* is concerned, it is the capital

or exchange money which the share-holder pays to the company. The *mabie*, on the other hand, being the product which shall be produced by the factory. The shares, according to the aforesaid definitions, fall into neither category, hence incapable of being an object of a sale-purchase. In addition, the case of shares is a partnership contract. One partner cannot decide to sell his shares unilaterally:

The opinion of Mufti Shakil Ahmad and his way of argumentation hardly need any comment. For, in the beginning of his paper, he has clearly admitted that the real position of the company and the share system is not fully clear to him, and that he needs more material to gather actual information *vis-à-vis* the company and the share system. He writes :

“What is the share system and its definition? Were it that the questionnaire, contained a primary information regarding the company and shares, it would have rendered it easy for us in developing a proper understanding of *shares*. Perhaps this is a financial system like the system of banking. For the introduction of a system its managing institution publishes introductory literature whereby to introduce it to the people. Only after having a proper understanding of a system the position of the shariat on it could be determined.

It is by no way surprising. To make a mistake in explaining the position of the Islamic Shariat towards a problem before one gathers essential knowledge about the nature of the problem and its various dimensions. It is really

surprising not to make mistakes while giving one's opinion on such a complex matter prior to collecting proper knowledge of its real nature. If Mufti Shakil Ahmad is regarded correct in his saying that in the contract of partnership neither one partner is permitted to sell his share to somebody else unilaterally without the consent of his partner, the debate over the sale-purchase of the *shares* will collapse. But all the *fuqaha* belonging to different schools of Islamic jurisprudence are against the standpoint of Mufti Shakil Ahmad; all the jurists are unanimously agreed to the point that the partners in the *shirkatul inan* are permitted by the Shariat to sell off their shares to somebody else and no partner has a right to prevent him from so doing.

**Q. 13 What about the future sale? In the share-market the 'future sale' is a common mode of transaction. This transaction is never meant to actually buy and sell the shares; rather, it is intended only to offset the losses and gains obtained through the fluctuation of the prices of the shares. To illustrate the point by an example, Mr. A entered into business transaction with Mr. B to purchase one hundred shares, each share pricing at Rs. 100/-. A specified day is fixed for the payment of the price reached at. On the arrival of the day fixed the price of the shares soared, say for instance, by 50%. Now Mr. A will get five thousand**

rupees as his profit. In case the price got downed, say, for example, by 50%, that is, every share lost 50% of its value, the buyer will have to pay the amount of Rs. 5000/- to offset the loss the purchaser has incurred as a result of the fluctuation of the prices of the shares in the share market. Such transactions, which are technically termed as 'future sale', involve no actual sale-purchase of the shares. Neither the buyer makes the payment, nor the seller parts with the shares, the subject-matter of the whole transaction. On the arrival of the day fixed by the selling and buying parties the gains and the losses are offset by the parties by making the payment to other party as profit of the amount of money earned in the event of the soaring of the price, or to undo the losses incurred in the event of the downing of the shares prices. What does the Islamic Shariat say about the future sales according to the detail furnished above?

In the answer to this question there exists a complete unanimity among all the discussants that the future sale is unlawful; for it is a type of gambling instead of being a serious mode of business.

**Q. 14. What does the Shariat say about the 'forward sale' in which the business transaction is attributed to the future time?**

Answering this question most discussants are of the view that since in the *forward sale* the sale transaction is ascribed to the future, this is not binding; it is merely a promise of sale, rather than being a sale-transaction. A number of discussants have avoided either answering at all, or they have split the question into different parts and have answered accordingly. In fact, to them the question is too ambiguous; they have expressed their wish for further clarification of the questions. Such discussants include the following :

- Maulana Ahmad Devalwi
- Maulana Ubaidullah As'adi
- Maulana Abdul Jalil Qasmi
- Maulana Zubair Ahmad Qasmi
- Maulana Abdul Azim Islahi
- Maulana Abul Hasan Ali

Mufti Mahboob Ali Wajihi (Rampur) and Maulana Tanwir Ahmad Qasmi of Sita Marhi (Bihar) regard the case under question No. 14 to be of the *Salam Transaction of Sale (bay Salam)* and holds it lawfully binding if the related conditions are properly met. According to Maulana Ibrahim (of Baroda) the *forward sale* is lawful provided that the sale is finalized only after the purchaser sees the object of sale and the last decision is left to him.

Admittedly, the question under discussion is too brief and vaguely worded. That is why some Ulama and

discussants failed to get the meaning and nature of the question. Even a number of the discussants has mistakenly treated the question under discussion in terms of the *bay' salam*. I think it convenient here to briefly explain the real nature of the *forward sale*. Explaining the case under question Maulana Md. Taqi Usmani (of Pakistan) writes:

“There are two modes of the sale-purchase of the *shares*; one is termed the *spot sale*, while the other one as *forward sale*. So far as the *spot sale* is concerned, it is the mode of the sale of shares in which the sale transaction of the shares and transfer of the related rights to the purchaser is finalized with immediate effect. The purchaser is entitled to have the possession of the shares without delay. But due to some operational difficulties the delivery of the shares certificates is delayed. In the *forward sale*, on the other hand, the sale is completed now but is ascribed to the future and the possession of the shares and other related rights takes effect from a future date.”<sup>1</sup>

It is to be noted that while concluding the *forward sale* transaction the time and tense used for offer and acceptance is of course past and not of future; the only difference is that for the transfer of the *mabi* (object of sale; the shares in the present context) and the payment (*thaman*) a future date is fixed. Before this date the associated rights and duties are not transferred to the buyer and purchaser. In other words, neither the buyer has a right to demand the purchaser the

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<sup>1</sup> Islam and Jadid Maishat-o-Tijarat P. 73, 74.

price of the object of sale nor the purchaser can ask the buyer before the fixed date to let him take possession of the shares he has purchased.

The case under discussion can not be put under the category of the *bay' Salam*. It is because of that in the *bay' salam* the *thaman* (price) is rendered in advance while in the case of the *forward sale* of shares the payment of the price too is deferred for a future date. Another worth considering point is : Are the companies' shares legally fit to be placed under the category of those *amwal* which might be the proper object of sale of the *salam* transactions?

Since the questions No. 15 and 16 are closely interconnected, their review is being presented together.

**Q. 15 Even in the cash sale-purchase of the shares it takes from one to three weeks to complete the possession of the buyer on the share certificates; this is purely owing to some practical compulsions. This gives rise to a question about the meaning of the possession of the buyer on the shares. As a mater of reality the purchased shares technically fall to the ownership of the buyer with the transfer of their rights and liabilities to him, even though he has not yet received the official documents called 'certificates', under such condition will the buyer be regarded the owner of the shares without being yet in receipt of the certificates which legally express the ownership of the**

**buyer? Another related question is : Is it necessary for the realization of the buyer's possession on an object to possess it physically, or the forms of possession may differ from object to object, based on the custom and usage?**

**Q.16 What is the ruling of the Shariat about reselling of the purchased shares to a chain of subsequent buyers while even the first buyer has not yet got the certificates, but the security of the shares as well as the gains thereof turn to the buyer, to the complete exclusion of the selling party?**

Answering the Kernal part of the question No. 15, that is, 'does the nature of taking possession of things differ from thing to thing going by the custom and usage established in this regard or it is the physical possession of things which the shariat regards the only valid mode for the purpose', most of the discussants have hit the nail on the head by saying that it was not necessary for the realization of possession to invariably take the physical procession of each and everything. In other words, it is not always a legal requirement even to the Islamic Shariat that the possession of each and everything should be taken in physical terms. The establishment of the possession is largely determined according to the custom and usage. Some discussants wrote that the query had been answered under the question *ba'y qablal qabz* (sale before taking possession of the object of sale). To my opinion, *bay' qablal qabz* is relatively more



appropriate place to deal with the question under discussion.

The point raised under the question No. 15 regarding the possession in the case of the SPOT SALE of the shares is not meant to discuss whether the validity of the spot sale is dependent upon taking possession of the object of sale, read shares here, or not. It is because of that if the company owns immovable assets and other properties besides the cash amounts and the credits and the price of the shares was paid, in the case of spot sale, without taking possession in the very session of the sale-purchase, the validity of the sale transaction will not get affected. If a company, on the other hand, stands for mere cashes and credits, the sale of the shares of such a company will be valid only if the possession of the object of sale is taken in the very session of the concluding sale-purchase contract. In other words, the issue of possession will directly affect the validity of the sale transaction.

The questions Nos. 15 and 16 involve a complicated problem. That is, in the case of the spot sale once the sale-purchase deal is complete, the ownership of the purchaser covers the assets and properties in proportion to the amount he has invested, and the purchased shares, alongwith all the entailing rights and liabilities, fall to his responsibility. The question now is : shall the act of purchasing, in the case of spot sale, be regarded as the taking of possession, and shall it be permissible for the purchaser to sell off those shares to a third party while he himself has still not taken the possession of the certificates?

In other words, is it the receipt of the shares' certificates which shall be regarded the only determinant indication of the purchaser's taking possession of the shares having legal validity to sell those shares to a third party? In response to this question of primal import the discussants have differed into more than one groups.

(i) A group which consists of the majority of the discussants premises its answer on the case mentioned in the very question. To this the completion of the sale-purchase deal in the case of the spot sale amounts to virtual possession of the purchaser over the shares. For in the case of the cash/spot sale once the sale deal is finalized, the ownership of the purchased shares fall to the ambit of authority and surety of the purchaser, it by no way depends on the immediate transfer of the ownership documents to the name of the purchaser. And once this activity is admitted as amounting to possession-taking, he may lawfully sell those stocks to a second person, and his latter one to a third person without delay. This opinion is shared by the following Ulama:

- Maulana Ubaidullah Asadi
- Maulana Zubair Ahmad Qasmi
- Maulana Md. Rizwan at Qasmi
- Maulana Abul Hasac Ali
- Maulana Sultan Ahmad Islahi
- Maulana Mahbood Ali Wajihi
- Maulana Abdul Jalil Qasmi
- Maulana Akhlaqur Rehman Qasmi
- Maulana Manzur Ahmad Qasmi

- Maulana Jafar milhi
- Maulana Ibrahim Barodawi
- Maulana Ahmad Dewalwi
- Maulana Abdur Rahim
- Maulana Iqbal Ahmad Qasmi

(ii) The second group is of the view that mere a sale-purchase deal is not sufficient to amount to the possession of the shares even in the case of the spot sale. It is the certificates of the purchase the securing of which shall be regarded the only determinant of taking the shares into one's possession. Before getting the certificates of purchase he is not permitted to sell those shares to a next person. For his so doing is doubtlessly the *bay qablal qabz* (selling a commodity before taking its possession). This opinion is shared by the following ulama :

- Maulana Khalid Saifullah Rahmani
- Maulana Shams Pirzada
- Dr. Abdul Azim Islahi
- Maulana Zafarul Islam
- Maulana Tanwir Alam Qasmi

Representing this opinion Maulana Khalid Saif Allah Rahman, in his answer to the question No. 15 and 16, writes:

“Actually this issue depends on the official law concerning the shares transfer on the practical usage of shares market. But what is obviously felt is that the shares certificates are a token to that the certificates holder is the real owner of the shares. Or, in other words, as the certificates, or the key of

the house, is regarded by the *fuqaha* to be the transfer of its ownership, so should be regarded the replacement of the name of the latter purchaser of the shares. Without getting the shares certificate if mere offer and acceptance is regarded as possession-taking, the possession in physical terms will lose all its significance. Based on this, the sale of the shares to next person prior to getting the certificates of purchase from the company is deemed legally incorrect.”

Maulana Shams pirzada writes:

“After the sale of the shares to a next party the company is informed of that event for the purpose of the change of the name. In case the signature of the selling party is not correct to match the company records, the certificates are returned back to the seller for the purpose of correction. In the event of such happenings the change of the name gets deferred. Considering all such problems, which are fairly common, the possession shall be regarded real only when one gets the sale certificates with proper and entries replacement of the name of the latter purchaser. If the purchaser sells those shares before the certificates undergo the essential changes, this indeed will be a sale before the seller’s having the real possession of the object he has forwarded to sell. Such sale deals are prone to disputes. Hence it will be imprudent to hold it permissible”

- (iii) The third viewpoint is that since in the spot sale of the shares once the sale transaction is complete the

shares fall to the surety of the purchaser along with all their losses and profits, advantages and disadvantages even though the certificates have not yet been transferred to his name. This demands the legality and lawfulness of the sale of those shares to a next purchaser even he himself is still not in possession of the certificates of the shares. However, an equally important aspect of this problem is that the custom and usage plays an unignorable role to determine the mode of possession of things. In this regard what is established by custom and usage is that the receipt of the certificates is the only determinant of possession. This obviously suggests the impermissibility of the sale of those shares to a next person. The latter point assumes a greater degree of significance when taken into account the apprehension that the former option may encourage the possibilities of gambling under speculations.

In view of such contrasting aspects it seems more prudent not to permit the sale of those shares. This viewpoint is held by the following scholars:

- Mufti Anwar Ali
- Maulana Abdul Qayum Palanpuri
- Maulana Abdul Rehman Palanpuri
- Maulana Mufti Akhtar Imam Adil
- Maulana Abdul Latif of Gujrat

As far as I think, the difference of opinions we come across in the answers to the questions No. 15-16 is largely due to the difference of approaches towards the case. The

case mentioned in the questionnaire is also a conditional one suggesting indetermination. Before arriving at a conclusive opinion in this regard it seems necessary that a few points be clarified by the experts in the company affairs. These points may be the following ones:

- (a) What is the legal position of the shares in the case of the spot sale? Is it a reality that once the sale deal, in the spot sale, is complete, the sold shares' risk gets transferred to the buyer even though his name has yet not been endorsed by the company and the certificates of purchase have not yet been issued to him?
- (b) In this condition if the company suffers destruction, who is to suffer the losses the buyer or the seller? In such a condition does the law allow the buyer to recover the amount of price he had paid to the selling party for the shares of the destructed company?
- (c) After the purchase, but before the endorsement of the company and the issuance of the purchase certificates, if the company distributes the shares and benefits, who is to receive those dividends? The selling party or the purchasing one? If the company paid the dividends to the selling party, will the purchasing party be allowed, according to the company and the Stock Exchange law, to reclaim those dividends from the selling party?
- (d) In the custom and usage of the share market when does the possession of the shares become legally complete, either just after the completion of the sale deal or after the registration of the purchaser as such and the issuance of certificates to him?

The unanimity of the experts vis-à-vis such questions is expected to lead the ulama and the men of Islamic learning to adopt a unanimous viewpoint towards the questions under discussion

**Q. 17. In the stock exchange market there are some people who work as middlemen between the buying and the selling parties; technically, they are called brokers. They possess the knowledge about the fluctuations of the share market and commit to writing the sale and purchase of the shares. To be more precise, they hold the status of the agents. What does the Shariat say about adopting the profession of brokerage in the share market?**

Some discussants have not definitely attempted this question. Others are of the opinion that the legality of the brokerage shall remain restricted only to the shares of those companies which undertake the production of lawful commodities or offer Islamically lawful services. Working as a broker will be unlawful in respect of the companies indulging in unlawful activities and interest-bound modes of business.

## 5

## Introductory Paper (1)

## Shares, Company and Investment Basic concepts and forms

By Dr. Ali Muhiyudin Qura Daghi (of Qatar)

### Prefatory Lines

الحمد لله رب العالمين والصلوة والسلام على المبعوث رحمة للعالمين،  
وعلى آله وصحبه أجمعين، ومن تبع هداة إلى يوم الدين-

The fact that in the development of the modern economy and the contemporary commercial activism the joint stock companies play a very significant role could hardly be doubted. Equally true is the fact that the important assets of those companies and their means of fund- raising are *shares*. Indeed it is the share system by which larger sums of money are collected. The division of the total estimated sum into smaller shares and units facilitates the sharing of the corporate business and its profit for a larger numbers of people. This way a much larger amount of money is collected and thereby the companies become able to launch bigger projects.

In our contemporary age the business of shares does not depend merely on the founder-partners of the



companies, rather the shares have assumed the position of such *securities* which are largely acceptable amongst the business people, especially in vogue in the international Stock Exchange.

The new mode of business and partnership gives rise to the question: what is the position of the shariat on the business of the *shares* and investment in shares, particularly the shares of those international or national companies the business activities and of dealings of which are which not free from the involvement of interest. A very terrible evil which has unfortunately taken our society into its tight grip is the existence and prevalence of the un-Islamic (whether Capitalistic or Communist) economic system under whose unblessed aegis the companies have mostly been formed in the world of Islam. The result is that most of those companies do not care for abiding by the rules and commands of the Islamic Shariat; they often are openly involved in lending to and borrowing money from banks on the basis of interest.

Righteous Muslims are reluctant to have a clear stand on such companies. They are not sure of whether they should give up their economic dealings and sharing their commercial activities by boycotting them, and in others words, leave the people of weak faith and of less care for the matter of *shariat* to manage and run those companies which today have assumed the status of backbone for the commercial life of the community. These companies stand established on strong foundations, and the boycott of the sincere and faithful Muslims will do no harm to the working

of such companies. Or, come forward and share their commercial activism with the intent to reform them and effect changes into their usual mechanism according to the dictates of the Shariat of Islam.

Opposed to the reluctance of the God-fearing and pious Muslims, the contemporary men of Islamic jurisprudence too stand differed on this issue. Fearing the evils greater still resulting from the boycott of Muslims and their refusal to share the economic activities of those companies, and keeping in view the general objectives of the shariat, some of them permit the Muslims to share those companies with the observance of certain conditions. Others however, refuse to give the permission. This is in views of those companies' involvement in unlawful activities.

This writing is intended to examine this complex issue with complete neutrality and sincerity. We hope Allah *subhanahu wa taala* will give right directions to our steps; guide us to the right path and will guard us from the errors in belief, word and action.

## **The Islamic concept of Investment in the commercial schemes**

Before entering into the issue of investment it seems appropriate to discuss the meaning and relevant aspects of its Arabic equivalents. For the Arabic language in the official language of Islam and the trustee of the terms of Islamic jurisprudence.

So far as the word *istismar* is concerned, in the traditional lexicons of the Arabic language this is found as equivalent to the English *investment*, a known term of ECONOMICS. To quote an authority here:-

الاستثمار: استخدام الاموال فى الإنتاج، إما مباشرة بشراء الآلات والمواد الأولية، وإما بطريق غير مباشر كسواء الأسهم والسندات.

The meaning of *istismar* is to use the wealth in productive activities, either directly like buying the machines tools and the raw material, or indirectly like the purchase of *shares* and *bonds*<sup>1</sup>. The symbol appearing immediately after this definition is suggestive of that the word has been adopted as equivalent to investment by the Egyptian Language Board<sup>2</sup>. Much closer to *intismar* in meaning and purport we find in the Islamic *Fiqh* the word *tasmir* (from the root 'thamara'). In the juristic parlance this term occurs where the Fuqaha discuss the meaning and the related implications of the *safih* and *Rashid*. According to Fuqaha the *rashid* is the person who is capable of undertaking fruitful dispositions in his wealth and its purposeful, productive utilization. The *Safih*, on the contrary, being the one without such a capability. Imam Malik says:

الرُّشْدُ تَمْيِيرُ الْمَالِ وَإِصْلَاحُهُ فَقَطْ

"*Rushd* is the constructive and productive use of wealth."<sup>3,4</sup>

## Position of the shariat on investment

The general objective the shariat intends to achieve and the clear expression of the Qur'an and sunnah make it clear that the investment constitutes a collective duty of the Ummah. In other words, it is not lawful for the Muslim community to give up the investment altogether. The fact that the wealth holds unmatched importance for the life of

both the individual and ummah is established on the clear expressions of the Qur'an and sunnah. In most verse of the Qur'an the wealth has been given priority over the soul, Allah *subhanahu wa ta'ala* makes repeated mention of wealth as his great favour unto mankind; and the people striving after the sustenance and the *mujahidin* have been given equal weight, as we find towards the end of the al-Muzammil surah of the Qur'an. There are more *hadiths* than one which term the trade man as the *mujahid fi sabilillah*. All such things make it abundantly clear that endeavoring for the betterment of *mal* (wealth) and to strengthen it by way of investment forms a collective duty of the Muslim Community. This is in order to enable the Ummah undertake *jihad*, self-construction, attain knowledge, felicity and well-being and advance culturally. Need not say, all these things can never be achieved unless the ummah possesses a sufficient amount of wealth. In His book Allah *ta'ala* commands the Faithful.

ولا تَزُتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا  
وَاصْبِرُوا وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا.

“To those of weak understating make not over your property, which Allah has made a means of sustenance for you; and feed and clothe them therewith, and speak to them words of kindness and justice”.<sup>5</sup>

In the verse quoted above Allah *ta'ala* describes the wealth and property to be the means of survival and sustenance for the Islamic society. This may well be purported that it is the *mal* and wealth on the strength of which the human society survives and progresses and this

means plays the most substantial role in its prosperity. The phrase **وَأَرْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ** (and feed and clothe them therewith) is suggestive of the same point. The Qur'an has used here the **فيها** meaning 'therewith', and not the **منها** (from it). This clearly suggests that the investment of the wealth is mandatory. This is in order to meet the expenses of those placed under interdiction from the profits earned and not from the capital wealth. Stressing the same important point Imam Fakhruddin Razi says:

"In the Qur'anic text has occurred **فيها** and not **منها**. This in order to tell the people that they should not spend on themselves a portion of their capital wealth. They are told that they should use their wealth as their sustenance by investing it in business and then spend on themselves the profits rather than the capital itself."<sup>6</sup>

Admittedly, the obligation of Zakat in the wealth will prompt the people to invest it in business and similar other productive ways. Otherwise, the claims of obligational charity and other indispensable expenses will bring an end to it. Modern economic viewpoint also supports the same view. It imposes various types of taxes on the people of wealth so as to prevent them from amassing it. There are *ahadith*, technically good enough, which have the meaning and purport that the wealth of the underage and those under interdiction must be invested in business ventures. On the authority of Yusuf bin Malik Imam Shafie reports the Prophet (Peace and blessings of Allah be upon him) to have

said: Through the wealth and property of the orphan do search for the means of income so that it is not ended by the expenses and the obligatory charities." Imam Baihaqi and Imam Nawawi say that the *hadith* quoted is sound, technically *sahih* even though *mursal*. It receives support from the clear statement of *hadith* which say that the wealth of the orphan is not exempted from the duty of Zakat.<sup>7</sup>

Shaikh Yusuf al-Qarzawi says:

"There are *ahadith* and *athar* which call the attention of the guardians to that it is mandatory for them to invest the wealth of the orphan in fruitful ways of business so as it is not eaten up by the regular payment of Zakat. The guardians of the orphan, therefore, are as much under obligation to endeavor for the increase and augmentation of the wealth of the orphan as to pay Zakat from it. Although the *hadiths* in this regard suffer a type of technical weakness, yet there are things which support them. One important point of them being that such *hadiths* set perfectly in the economic framework of Islam the edifice of which is raised on the obligation of investment through the wealth on one hand and on the unlawfulness of amassing the surplus wealth on the other.<sup>8</sup>

That the investment of the surplus wealth in wealth productive business and other means of income is obligatory may well be seen in the light of the Qur'anic words:

كُنَى لَا يَكُونُ دَوْلَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“In order that it may not (merely) make a circuit between the wealthy among you.”<sup>9</sup>

The only way to make the wealth circulate freely amongst all the people is to spend it in charity and invest it in wealth-productive ventures in such a way that the labourer, craftsmen, business people and all others may make a maximum use of it for their benefits. Allah *subhanaha wa ta'ala* directs the Muslim community :

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ

“And make preparations of force against them as much as you can.”<sup>10</sup>

The term *quwwah* (strength), does include the economic strength. Even the economic strength in most verses of the Qur'an has been given the priority of mention to that of the souls. This establishes beyond any doubt if the strength of body and weaponry is required, the strength of economy shall be required with an even more greater degree of obligation.

In addition to what has just been put, the saving and safety of mal and wealth constitutes an important objective of the Islamic Shariat this objective could be achieved only by promoting it and investing it in fruitful business ventures. In the same way, the construction of the world in the light of the Divine scheme, also forms an objective of the shariat. To quote words of the Qur'an it self.

هُوَ أَنْشَأَكُمْ مِنَ الْأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا.

“It is he who has produced you from the earth settled you from the earth settled you therein.”<sup>11</sup>

In the explanation of this verse the exegetes say that the meaning and purport of this piece of verse is that Allah Ta'ala has ordered the human beings to prepare things of their need on the earth such as the construction of houses, planting, afforestation.<sup>12</sup>

An objective of the shariat, likewise, is *istikhlaf* (succession, succeeding). This demands that the earthly affairs be dealt with, its administration be handled in such a way as to render it useful and habitable for the creation. All such objectives, of course, can never be achieved without the investment of wealth, mobilizing the economic resources for the good of the human beings.

This long discussion may be concluded that the investment of wealth and economic resources constitutes a common obligation of the Ummah. The Muslim community therefore is under religious obligation to manipulate the affairs related to investment and the productive use of the economic resources so that the wealth may thrive and people get employment and work, thereby to easily get the material means to support their life. We have a well-established juristic principle: A thing on which depends the fulfillment and completion of a duty and obligation itself turns an obligation.

Here we face a question : if a person owns surplus wealth, is he under obligation to make its investment in wealth-generative economic programs? We may find its proper answer if we are able to properly comprehend the Islamic attitude towards *mal* and wealth. According to the Islamic teachings wealth belongs to Allah; the ownership of man in relation to the *mal* and wealth is restricted, not absolute. This brings him under obligation to engage his



wealth in ways of productive investment according to the directives of the shariat. He, however, is at liberty whether to invest directly in profitable schemes, or to adopt the ways of partnership, Mudharbah etc., for the purpose. In short, it will be unwise for him to leave his surplus wealth unengaged, thus letting his surplus wealth which may bring felicity and benefit for the society at large.

In the same way, it is also an undeniable fact that it is the society and the individuals which form the strength of the community. This fact is even more obvious in relation to the Islamic economic system which basically admits to the individual and private ownership and restricts the ownership of the state over the means of wealth production. This puts the members of the Islamic community under a great obligation to adopt all legal ways to promote the economic progress of the ummah by ploughing their surplus wealth into productive and generative investment. To quote here the words of Sheikh Md. Shaltut, a great authority of the Islamic scholarship:

“Both the reason and religion dictate that the thing on which rests the realization of an obligation itself turns an obligation. The attainment of the powerful position for the Islamic community making every lawful attempt for the purpose forms the foremost duty of every Muslim. This rests on three pillars in such a well-arranged systematic way as they may play their desired role towards the collective welfare and advancement of the Islamic Community”<sup>13</sup>

### **Investment : primary guidelines of Islamic economic system for the purpose**

It will be difficult for me to treat the topic in a detailed way in an article of this shorter scope. I, therefore, will limit my discussion to putting only salient and important guidelines here. These are the following:

First, the concept and practice of investment in Islam can never be free from the fundamental Islamic ideology, like the capitalistic ideology working behind its concept of investment like the communist ideology which remained at work in the execution of the investment policies in the defunct USSR and many other countries of the world through its specific means and objectives strictly within the philosophical limits of its thought. The Islamic economic system, its economic vision, ways of investments, means and motives and objectives all will remain subordinate to the primary creed of Islam. According to the Islamic creed, a Muslim believes in the fact that it is Allah Who alone is the owner of *mal*. With reference to it the position of man is that of the deputy and vicegerent. This belief binds a believer to work in matters of investment etc. according to the divine guidance, never infringing upon the norms and principles of the Law of Allah. Adopting all such means he is required to make a positive and just contribution to the overall construction of the world and thus be a Divine witness over others.

On the basis of the same belief differ the deeds and actions of the *believer* from those of a non-believer. A man of belief in Islam is always committed to keep the pleasure of Allah in mind in earning, spending and investing his surplus money; a non-believing man, in sharp contrast,

gives preference first to his personal interests and then to those of his community. As a matter of fact, in most cases he keeps no moral values in his view. His soul concern is always his personal and narrow communal interests. Describing the qualities of the faithful the last Divine Scripture says :<sup>14</sup>

ويطعمون الطعام على حبه مسكيناً ويتيماً وأسيراً. إنما نطعمكم لوجه الله، لا نريد منكم جزاءً ولا شكوراً.

And they feed, for the love of Allah, the indigent, the orphan, and the captive, (saying) "We feed you only for the sake of Allah alone. No reward do we desire from you, nor thanks."<sup>15</sup>

In sharp contrast, the Holy Qur'an portrays the *kafir* that he hardly takes interest in feeding the orphan and the indigent, so obviously because of that in so doing he sees no material benefit. A *kafir* can feed others when it serves any purpose of his as arranging feasts for the people of position in wealth or politics. Portraying such people the Qur'an says:

أرأيت الذي يكذب بالدين، فذلك الذي يدع اليتيم، ولا يحض على طعام المسكين.

See you one who derives the judgement (to come)? This one indeed is he who repulses the orphan (with harshness) and encourages not the feeding of the indigent.<sup>16</sup>

On the basis of the same strong belief the Believer believes in the fact that usury and interest is destructive to wealth and diminishes it, while spending it in charity, obligatory or otherwise, causes an increase to and swells it. This is a

concept which is totally opposed to that of the *Kafir*. The Qur'an puts this fact in its following eternal words:

يُمَحِّقُ اللَّهُ الرِّبَا وَيُرْبِي الصَّدَقَاتِ

“Allah removes usury and enhances the deeds of charity.”<sup>17</sup>

Moved by the same belief, a Believer desists from all the things forbidden by Allah and obeys Him and follows His commands to the best of his capacity and power. By undertaking the acts like investment, business and trade or labour activities he regards that he had acted upon the command of Allah and by so doing he entitles himself to the Divine Reward and Mercy. Having adopted all such means and ways according to the command and directives of Allah he puts his total trust in Allah, alone. As regards the results of his labour and business plant. That is why he gets not dejected or sad if he suffers loss. Nor his success and profit-making makes him arrogant and conceited and rebellious. The Qur'an says:

لَا تَكْنِي لَأَنْتُمْ عَلَىٰ مَا فَاتَكُمْ وَلَا تَفْرَحُوا بِمَا آتَاكُمْ.

“This is in order that you may not despair over whatever you missed, nor exult over what He granted you.”<sup>18</sup>

As a best result of this strong belief, a Believer is always in either one best position out of the two ones. Of praising Allah and giving thanks to Him or that of forbearing and submission to the decisions of Allah.

This way this living belief prompts the Believer to diligently obey Allah and refrain from His prohibitions. Given the faith this supreme importance in the creedal structure of Islam, the mention of creed and faith invariably

precedes the mention of Allah's command of prohibitions. To quote two verses for example here:

يا ايها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض مكن-

"O those who believe Eat not up your property among yourselves in variation but let there be amongst you traffic of trade by mutual contest."<sup>19</sup>

يا أيها الذين آمنوا اتقوا الله وذروا ما بقى من الربا إن كنتم مؤمنين-

"O those who believe! Fear Allah of give up remained of usury if you are indeed Believers."<sup>20</sup>

If a Muslim adopts economic activities and makes investment, his so doing always springs from his belief that the construction of the world in consonance with the Divine norms and the dissemination of the good of Divine mercy constitutes a part of his overall obligation towards the world he lives in.

**Second:** A very conspicuous feature of the Islamic economic system is that it always rests on accepted moral values and eternal verities. It fosters the moral values, promotes them and guards them at all cost. Tricks, fraud exploitation, etc have no place in the economic systems of Islam. The Prophet (Peace and blessings of Allah be upon him) is reported to have said :

من غش فليس منا.

"One who dupes is out of our bond."<sup>20</sup>

In the same way, the *tadlis* has also been declared forbidden in more *hadiths* than one, apart from that it is committed by word, like *Najash*<sup>21</sup> (false bidding to raise

price of a commodity), or by action such as *tasriyah*<sup>22</sup> (leaving the animal un-milked for a long time with a view to give a false impression to the prospective buyer of a very good milk yield) etc. To be more precise the law of Islam asks the Muslims that they should make investments and undertake the business and trade activities on the basis of pure justice. This necessitates that the selling party must not conceal the defects or deficiencies of the commodity by resorting to false statements, forgery of false oaths. Rather, the buying party ought to be informed of the defects (if there is any) in clear words.<sup>23</sup>

**Third:** An outstanding feature of the Islamic system of investment is that it encourages and supervises a good and constructive market competition without an undue state interference offers the opportunities to one and all. The State could interfere with the market competition only when the interests of the weak are at stake, or when the concerned Shariah principles and norms are not properly followed by the investment parties of the market competitors. For this reason keeping a vigil eye on the market forms part of the responsibility of the public authority which develops and enhances the individual and collective security and ultimately takes the form of a complete system of constant vigilance. It is for this reason that the Prophet of Allah ((Peace and blessings of Allah be upon him)S.) has declared for the person of weak understanding the right to exercise his discretion of option in matters of the sale-purchase as we see in the narration transmitted by H. Abdullah Bin Umar, which reads as:

“A person submitted to the Holy Prophet (Peace and blessings of Allah be upon him) that he often

is defrauded by the people in matters of the sale and purchase. Upon this the Prophet (Peace and blessings of Allah be upon him) told him, whenever you enter into a sale- purchase contract with anybody else say to the other party “لا غلابة” “No Coaxing” (that is, I reserve the right to undo the sale-purchase deal and withdraw unilaterally from the deal if any type of coaxing or concealing the facts on the side of the other party is discovered later).“

The same thing has been narrated by Imam Ahmad bin Hambal and the authors of al-Sunan (Abu Dawud, Ibn Majah, Nasai etc. in words which differ from the one quoted above. It is as follows:

“A person of weak understanding would often enter into sale and purchase contract in the blessed age of the Holy Prophet (Peace and blessings of Allah be upon him). His family members approached the Holy Prophet (Peace and blessings of Allah be upon him) and urged him to place that person under interdiction from selling and purchasing. The Prophet (Peace and blessings of Allah be upon him) summoned him and dissuaded him from entering into the sale-purchase contracts with the people, but the person said that he was unable to desist himself from selling and purchasing. The prophet (Peace and blessings of Allah be upon him) then ordered to say to other party. “I accept the sale- purchase

deal provided nothing is discovered later contrary to the facts stated now.”<sup>24</sup>

This hadith offers a good guidance to the effect that the people of weak understanding and those lacking in the required experience in the matters of sale and purchase, or those living under the care of others ought to be given opportunity to stipulate, while concluding business deals the discretion of weak understanding and inexperience. Even more correctly, such a right has to be admitted for such people as long as they are feared to fall victim to the misappropriatory tricks of the other party of the business deal even if they themselves fail to make such a stipulation.<sup>25</sup>

**Fourth:** The fourth moral distinction of the Islamic system of investment is that it is free from wrong and interest. The *mal* earned through unlawful means and ways, such as interest and gambling, is not acceptable to the economic system of Islam.

## Shares

In the economic parlance the term ‘share’ is used in two ways. Sometimes it is applied to the documents (showing one’s ownership in a company), other times to refer to one’s ownership in a company (proportionate to one’s amount of money one has invested in). Both the meanings are almost much the same with slight difference. So far as the first meaning is concerned, the economists regard that the *share* stands for the document which represents the investor’s proportionate ownership in the total assets of a given company. The share increases and decreases, subject to the performance of the company.



As regards the latter meaning of the *Share*, according to it, as they hold, it stands for the part of ownership of a shareholder in a company or to use more precise phraseology, is the shareholder's portion of ownership according to the price of which the total assets of the company are equally divisible and which is mentioned as the face value over the related document. This is because of that the shares represent collectively the capital assets of the company and all shares carry equal value.<sup>26, 27, 28</sup>

In other words, we may describe the essence of the shares as: shares are indivisible, carrying equal value. Apart from that the shares are general or specific, they, as a matter of principle, are always equal in so far as the ensuing rights and liabilities. In addition to the qualities mentioned, the shares are in circulation i.e. they by their very nature are circulable. So far as the last quality, i.e., the circulability, there might be some laws in force in some countries of the world, as presently is the case of the Saudi Arabia, which might have exempted some types of shares from it. The Saudi system of company, for example, declares exempted from circulability those shares which are owned by the founder- members of the company. Going by the general rule, they may be issued for the public only after passing two fiscal years at such shares, even though the budget has not yet been made public. On similar lines, in view of the security of the interests of the *management body of the company*, the issue of the security shares of any member of the management body during the span of his membership will not be right until expires the period fixed for the

settlement of the claims in respect of the associated liabilities.<sup>29</sup>

## Division of the Company's Capital

What is of vital importance for the jurist being that the division of the company's capital assets in many equity shares and parts, stipulation of some conditions in this regard and the general body of the company laws by no way contradict the general norms of Islamic shariat and the established general juristic principles. Far from having such a contradicting and negative aspect, the company system of business has such positive ones which are characteristics of the Islamic Shariat like organization (*tanzim*), facilitation (*taiseer*) and the removal of obstacles (*rafa harj*). This may be included in the *ifai uqud* (fulfilling the agreements) the Qur'an say:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوفُوا بِالْعُقُودِ.

"O those who believe! fulfill all obligations"<sup>30</sup>

The Prophet (Peace and blessings of Allah be upon him) is reported to have said in the same context:

المسلمون عند شروطهم

"Muslims Stand committed to fulfill the terms and conditions they have agreed themselves to them."<sup>31</sup>

A saying of the Holy Prophet (Peace and blessings of Allah be upon him) explains the above one in more vivid words.

المسلمون على شروطهم إلا شرطاً حرم حلالاً أو أحل حراماً.

"Muslims are bound to the conditions and terms they are agreed to fulfill them, excepting the one

seeking the prohibition of a lawful treating a prohibition as lawful.”<sup>32</sup>

According to Imam Tirmizi, this hadith is *Hasan Sahih* (considerably correct).<sup>33</sup>

The Statements quoted above and more similar ones indeed establish it beyond doubt that the nature of Islam is never opposed to reconciliation and conditions to be enunciated in respect of deals and agreement people normally conclude amongst themselves, excepting the ones against which the prohibition is established. This principle tells us further that the original rule vi-as-vis the reconciliations and conditions is the legality of lawfulness and the prohibition is proved only on the basis of an argument applicable to the case in hand. Shaikhul Islam Ibn Taimiyah says: “Both the Book of Allah and the Sunnah of His Prophet lead us to the same meaning.”<sup>34</sup>

Reiterating the same fact, the Shaikh-al-Islam further says:

“So far as the conditions and stipulations *per se* are concerned, the original rule about them being the legal validity and commitment, excepting those which are found in contravention of the established norms and principles of the Shariat.

Precisely speaking, the rules of the Shariat we have briefly studied in the preceding lines lead us to the fact that the Islamic Shariat accepts all types of dealings, agreements, financial dispositions and monetary institutionalizations as long as they are not opposed to the clear expression of the Book of Allah and the Sunnah of His Prophet (Peace and

blessings of Allah be upon him) and the general principles of the Shariat. The enlightened shariat says that every benefiting wisdom is the missing asset of the Believer apart from that where did it come into being and where from it has sprung. What the Shariat is chiefly concerned with about being its essence, its purport, contents, its means and objectives, and, finally, the ensuing results, expediencies, benefits or detriments and evils.

### **Shares : their properties and associated Liabilities**

Shares have some common properties. The important ones may be described as follows:

“As a matter of law, all shares carry equal value and the right and liabilities. The liabilities of each shareholder are determined only in proportion to the value of the shares he possesses, the capability of circulation of his shares and the legal incapability of his shares’ further divisibility. So far as the rights of the shares are concerned, they are the shareholder’s right to exist in the company, his to right to vote in the general session of the company, his right to the company’s guardianship, right to register his petition of liabilities against the executives and administrative body of the company, his right to share the reserves of the company and undertaking dispositions vis-as-vis the reserves; right to withdraw himself from the shares; right to have preference in the operations of registration; right to distribute and share the assets of the company in the event of its closure and its going into limitation etc.”<sup>35</sup>

## **Position of Shariat on Shares with respect to their issue and it effects**

We have already established that the division of the company's capital assets into equal parts technically termed, *Shares* is acceptable to the Shariat and there exists nothing which contravenes the norms and general principles of the Shariat. Here we are going to talk about the circulability of the shares in general and undertaking the sale purchase dispositions. Then will proceed the discussion to clear the position of Shariat on all aspects of shares of every type, keeping into account the special possible cases. This is possible only if the special *Taufiq* from Allah is my companion.

Here, first of all we would like to caution the readers against the imprudent practice of some scholars in the context of *Shares*. They tend to mention the difference of opinions of the contemporary men of Islamic Learning concerning the shares of the company system quite absolutely without giving any detail of their arguments or citing their standpoints. Such unfair references do not represent the actual standpoint of those contemporary ulama; this, at the most, may represent the outlook of these contemporary men of Islamic learning *vis-as-vis* the company system only in a general way. They do not exceed to be the general purport of the views their approaches to this complex problem.<sup>36</sup>

Such things related to the contemporary men of Islamic Learning deserve not any serious consideration as we have a definite principle **لازم المذهب ليس مذهب**.

Besides this point, it is quite clear that most of the discussions of the contemporary Ulama center round the companies which have been established in the Muslims countries. They are not about such companies which primarily do the business of the things absolutely unlawful like the pork, the intoxicating drinks, etc.<sup>37</sup>

Taking into account the nature of their business, the companies may be classified into two groups. Those whose prime business revolves round the things which have clearly been held forbidden by the law of Islam, such as export, import of pigs and its flesh, wine and other intoxicants and similar other unlawful things. To the same group of companies are included the companies whose business activities depend on the payment and taking of interest, for example, the interest-receiving and paying banks and similar financial institutions of the character. The launching and issuing the shares of such companies, taking part in them by any way, to promote them, selling and purchasing their shares or undertaking dispositions with respect to the shares of such companies is entirely unlawful.”

To the second group fall the companies whose business activities may be subject to discussion and detail and the difference of opinions. Citing the *hadiths* which prohibit the sellings and buying of some items, Hafiz Ibnul Qayum says:

“These compendious and comprehensive words seek to declare the prohibition of three types of things : first the things which affect the human reason and intellect negatively such as wine and all types of intoxicants; second the eatables which vitiate the nature and taste of human beings and

provide impure food elements like dead meat and pork; and thirdly the objects such as the idol and images which destroy the religion and creed and corrupt the belief of the Oneness of Godhead and push the man to polytheism. Thus, by prohibiting the first type of things the Law-giver has provided us a perfect protection from the things which destroy our intellect and reason; by declaring unlawful the second type of things and eatables the Law-giver intends to save us from impure foods and detrimental drinks; and by forbidding the objects of the third type the Law-giver has provided infallible protection to our religion and creed against corruption and destruction.<sup>38</sup>

This being the primary principle which has to be observed invariably without having second thoughts.

Apart from the unlawful shares described above, there are two types of lawful shares.

### **First type of Lawful shares**

Those are the shares of such companies as have been established according to the law of Islam, whose business and manufacturing operations are strictly within the parameters of the Islamic Shariat; whose capital assets are lawful; whose primary contract clearly expresses that their activities are lawful, which neither are involved in interest-bearing financial transactions nor provide any special type of financial security to some type of shares and leaving others unsecured. About the shares of such companies, irrespective of that their operational activities belong to the

field of business, manufacturing or agriculture, there exists a complete unanimity amongst the Fuqaha of all the schools of jurisprudents, that such shares might be sold and bought without the least hesitation. It is because of the legal fact that it is *lawfulness* only which originally is applicable to all financial transactions and monetary dispositions unless something emerged out from it to render a transaction unlawful. As regards the sale purchase of the shares of such companies, it is quite lawful as they contain no element to render it unlawful. Precisely speaking, through the issue of their shares the lawful business companies organize and collect funds from the people according to modern economic principles in such a way as there emerge nothing to violate the established norms of the Shariat of Islam.

There are scholars who have raised two serious points about the shares of the company system without any detail or making any distinction between the lawful and unlawful ones. We must cast a critical look at them so as to pave the way for a smooth discussion.

**Point First :** This point has been raised by a scholar. He says that the company system and its shares constitute a part of capitalism which is entirely inconsistent with the spirit of Islam. Modern companies, particularly the finance companies, are outright unlawful and the Islamic Shariat can never permit a Muslim to share their activities. It is because of the fact that this system represents the capitalistic viewpoint. Therefore, the Muslims must refrain themselves from taking any part in the company system or cooperating with it by any way. Nor, likewise, it will be right to discuss the modern company system in terms of the principles and



laws that exist in the Islamic Fiqh to deal with the forms of the company system available in the Islamic Shariat.<sup>39</sup>

Far from being acceptable, this point deserves not any consideration. Islam can never reject a thing merely on the ground that it belongs to a system other than that of Islam. The ground for the acceptance or rejection of a thing or practice, rather, being to what extent it is consistent with or contradicts the general foundations of the Islamic Shariat. Wisdom is the missing asset of the Believer; he is more entitled to get it wherever it is found. Since the assets-based shares of the companies obviously contain no element of *haram* or unlawful, the standpoint holding such shares unlawful is unquestionably incorrect. There is another point which is made to support the view of prohibition. To summarise the point :

“Shares are against the documents and certificates which are related to the value of the company’s assets. The shares by no way form the inseparable segments of the company, nor they represent the company’s capital assets at the time of its launching.<sup>40</sup> The shares do not exceed to represent the company’s value at the time of its assessment and evaluation.<sup>41</sup>

The scholars having the opinion of prohibition, it seems, think that the shares are similar to the currency notes whose value is a constant subject to floating. According to this opinion, after the company’s coming into existence its shares lose the status of the company’s capital assets; now

they assume the status of the *securities* which have a definite and determined value.

Factually speaking, this juristic assessment of the status of the company's shares is not a result of a serious thinking. Taking the shares as analogous with the currency notes is entirely a mistaken view. Unlike the *currency notes*, the shares are the fragments of the company which are against its capital value as well as its assets. Theirs being written as certificates makes no difference at all to their primary status.

So far as the fluctuation of the value is concerned, the responsible factors in the case of the *shares* are quite different from those operating in the case of the currency money. The change in the value of the shares is the direct result of the company's performance. Its assets augment when its profits and gains swell. This increases the trust of the people in the company and, as a result, its shares add much to their value. In the event of the company's incurring losses, on the contrary, the value of its shares decreases. The example of the company's working is very much like the person or the partners who have definite articles and commodities to sell. Should they succeed in selling their items with good profits, the amount of their wealth swells in proportion to the gains they secured. But, on the other hand, if their merchandise sold with loss, or some items of their merchandise are lost or suffered destruction, the amount of the trader's wealth shall decrease in the same proportion. The same being the fate of the shares of the companies. As regards the currency notes, the chief reason behind the fall in their value are the *inflation* and the related international system and the national policy to issue further currency notes without their real exchange in the *reserve assets* of the country. In addition, there might

be other economic factors to cause a decrease to the value of the currency notes. In sharp contrast, a *share* represents the amount of money which one has invested in the company and which now forms a fragment of the company's capital and total assets.

**Point Second** : This point, raised and discussed by a number of scholars, is related to the sale and purchase of the shares of such companies. In the following lines we shall analytically discuss all the three points one by one.<sup>42</sup>

First, *ignorance*. In the sale and purchase of the *shares* the buyer does not have a detailed knowledge of the significance and value of the shares. To dispel this misapprehension we would like to say that the ignorance rendering the transaction as invalid is the one which causes a serious dispute between the parties of the transaction. The relevant term for it is the *Jahalat-e-Fahisha* or *gross ignorance*.<sup>43</sup>

Explaining the *jahalat* or *ghurar*, Imam Qarafi says:

"*Gharar* or *Jahalah* is of three degrees. Gross or *absolute*, like the sale of birds while still in the air. This type of ignorance is described to be gross, and according to all scholars of Islamic jurisprudence is regarded from among the thing which render the transactions invalid. The second degree of ignorance is termed *scant ignorance*, *jahalat-e-qalila*, such as the foundation of house. Scant ignorance does not harm the validity of the business transactions and there is a general agreement amongst the Fuqaha on this count. The third type of ignorance being of the medium degree. About this there exists a disagreement amongst the *fuqaha*."<sup>44</sup>

Discussing the problem of the sale and purchase of the vegetables of uncertain future like turnip, carrot, arum, etc., Hafiz Ibn Taimiya writes :

“Imam Malik and Imam Ahmad bin Hambal are of the opinion that the sale and purchase of these vegetables (at their initial stage) is correct and carries full legal validity. This is indeed a more correct and prudent standpoint. It is because of the fact that by the inspection of the leaves and other things of such vegetables the experienced people are often able to assess their future prospects. The second important point in this connection is that people are always in need to undertake such sales. In view of mere existence of a type of *gharar* (uncertainty) the Law-giver has not declared the sale and purchase of such items as the vegetables, which the people in general need so earnestly, as unlawful. The Law-giver, rather holds such things as lawful chiefly in view of the need of common people. The Law-giver, for example, holds lawful the sale of fruits while still in their earlier stages of life, even a part of such an object of sale has not yet appeared. As a conspicuous example of this being that the *Araya* sale transactions concluded by way of estimation have been held lawful. Even more obviously, at the time of need the conjecturing based on surmise has been held acceptable at a par with the conjecturing based on measuring, not withstanding the fact that such doing falls under interest-fetching deals which undoubtedly are

even graver than the *gharar*-involving ones. According to an established principle of the shariat, out of the two expediencies the higher one shall be adopted, and, likewise, if one is faced with two evils, the smaller one shall have to be adopted so as to evade the greater one."<sup>45</sup>

According to Shaikh Siddiq al Zarir the *gharar* invalidating the sale deal is the one which is found directly in the object of sale. If otherwise, the deal shall remain valid and this type of *gharar* will not affect the deal.<sup>46</sup>

The fact is that the buyer of the shares of a company is able to collect sufficient knowledge about the shares and the assets against each share through the things such as the budget of the company, its activism, etc. and this amount of knowledge is sufficient for the validity of the sale transactions. The knowledge of everything available for any one could be only in the amount consistent with its particular nature.

Another point to note is that the sale-purchase of the things of the shared ownership is valid and lawful and there exists no mentionable difference of opinion amongst the *fuqaha*. To quote Shaikhul Islam Ibn Taimiyah; "There exists a perfect unanimity amongst the *Muslimin* that the sale and purchase of the things of the shared ownership is valid and lawful, and this is actually based on the sunnah of the Prophet (Peace and blessings of Allah be upon him)<sup>47</sup>

Ibn Qudama Hambali writes: 'It is right for a partner to buy the share of his partner. There is no wrong whatsoever; he is buying the share of a person who is other than his self.

The same rule shall be applicable if he sold out his share to a person other than his partner." Besides Ibn Qudama, other Ulama, too, share the same opinion.<sup>48</sup>

### **First Misapprehension**

Concerning the problem about the sale-purchase of the shares the second point, which has been raised by some scholars, is that the sale of shares means the sale of assets and cashes. This requires that such sale transactions must be governed by the rules applicable to the *bay' saraf*. That is, in the case of the objects belonging to the same kind a complete similarity and sameness shall be required to be maintained in addition to taking possession of both objects of sale in the very session when and where the transaction was concluded. In the case of the difference between the kind of the two objects of sale the sameness needs not be maintained; only the possession of both the objects in the very session has to be exchanged. So because the shares generally equate the company's assets with their own value in terms of money and cashes.

This misunderstanding may be removed by considering the fact that the monetary aspect of the shares is not the primary aspect found in the shares; it is an incidental and unintended one. The original and inherent fact of the shares is that they are against the immovable assets. In view of the same fact, we hold that prior to the commencement of the company's corporate activities and before its buying the required land and buildings the sale-purchase of its shares shall be lawfully correct only if the rules of *bay' sarf* are followed.

A share represents one fragment of the company's total assets irrespective of their detail. As long as there exists any part of the company's assets against the shares, the application of the rulings pertaining to the *sarf sale* transactions shall not a requirement of the shariat for the validity of the buying and selling of the shares. So because of the fact that only a portion of the company's total assets is in the form of cashes, to be even more precise, a thing of subordinate status may need for its legal validity what the main one does not, and, similarly, a thing may incidentally require what it normally does not. This is from among the established rules and principles of the Islamic jurisprudence. To quote here Imam Suyuti's words: 'The rulings concerning the green and unripe crops being that it can be sold only on condition of its harvest. But if the land is sold, the green crops may tacitly be sold out.'<sup>49</sup> We find the base of this type of sales in the hadith. The Prophet (Peace and blessings of Allah be upon him) has permitted the buying of the slave who owns some *mal* even though it is in the form of cashes. If the buyer stipulates that the sale deal will be acceptable to him only if the slave, the main object of the sale deal, is sold along with his *mal*, the sale deal will tacitly include the slave's *mal* and cashes, regardless of the principles governing the *bay' sarf*. Bukhari, Muslim and other great authorities, in their respective books, have cited the following narration which is reported by Hazrat Abdullah bin Umar *Razi Allahu Anhu*. He reports that he happened to hear the Prophet (Peace and blessings of Allah be upon him) to have said :

من اتباع عبداً وله مال فما له للذي باعه، إلا أن يشترط المبتاع

If a person bought a slave who owns some *mal*, the *mal* will be of the buying person, excepting that the seller stipulated otherwise.<sup>50</sup>

Explaining this hadith, Hafiz Ibn Hajar writes :

“From the meaning of the hadith it may safely be gathered that the buying of a slave owning any type of *mal* with the condition on the part of the buyer to have the *slave's mal* with the slave, the main object of sale, is legally right.” Then, referring to the difference of opinions of the ulama, he says:

“Imam Malik is of the view that such a transaction is legally correct even if the *mal* in the possession of the slave is *ribwi*. So because the hadith is absolutely free from restrictions. The point to note here is that the transaction originally is related to the slave as only he is the sole object of the sale transaction. The amount of *mal* with the slave, whatever its nature and category, can by no way affect the transaction.<sup>51</sup> To quote the actual words of Imam Malik:

“We have a well-agreed stand point that in the event of the buyer’s making the condition to have the *mal* in possession of the slave, the object of the sale, he shall have the right to take into his possession the *mal* side by side the slave, irrespective of the nature and category of *mal*, cash, debt, substance, known or otherwise.’<sup>52</sup>

**Third misapprehension** : The third misapprehension



about the lawfulness of the company and its shares system is that a certain part of each share represents the debt the company owes to other individuals and financial institutions and it is not lawful to sell it against the deferred price. In so doing, it will of course, be a case of the sale of debt for debt, which is clearly forbidden, and there exist clear words of the Holy Prophet (Peace and blessings of Allah be upon him) to outlaw it.<sup>53</sup>

This misapprehension may be cleared by more ways than one:

- The above quoted saying of the Prophet (Peace and blessings of Allah be upon him) is not sound enough, from the viewpoint transmission, Musa bin Ubaidah, who is held weak and unsound, according to the technical details of the *Usule Hadith*. Besides this fact, this hadith has been explained and interpreted in a number of ways, mostly impertinent to our point.
- The rulings pertinent to the forbidden *sale of the debt for debt* mostly are not applicable to this type of sale. For the amount of debt the company owes may be regarded against the shares only and subordinately. To clear this aspect of misapprehension will suffice whatever has been said while discussing the second misapprehension.
- So far as the claim of being a part of the share against the debt is concerned, it is not a general case. Quite obviously, the company's dealings are in cash when it owes no debts. Granted the company

is in debt, the debts, in the last analysis, will represent only a smaller proportion of its total assets. The Fiqhi principles, on the other hand, consider only the bigger one as compared to the total.<sup>53</sup>

Summing up whatever has been said in the foregoing lines, we would like to put here that the shares of those companies whose corporate activities revolve round the lawful things refraining from the unlawful and immoral ones, whose corporate, business and manufacturing activities are based on sharing both the profits and losses and which issue the shares only of equal value may be sold and bought without feeling any sense of sinfulness. This view is based on the reasons and arguments we have just offered. Such type of shares may be issued and with relation to them all types of dispositions may be undertaken. By so doing one will not be infringing upon the limits ordained by the Law-giver. Such types of dispositions, indeed, are included in the ones permitted by him in the things under one's ownership. The Qur'an announces:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“And Allah has permitted trade and forbidden the usury” (2:275).

### **Second type of shares (the ones lacking the above-mentioned provisions)**

To this category fall the shares of such companies which neither belong to the category of the companies whose prime business is totally impermissible, nor to the ones doing completely *halal* (lawful) business, as we have

mentioned in the foregoing lines. Actually, to this category fall the shares of such companies whose prime business activities are permissible but sometimes they may get involved in some impermissible activities, e.g. depositing their cashes with the bank which pays interest to them on the sums deposited, or seeking loans from banks and other financial institutions on interest, or a smaller portion of their business and corporate activities takes place through irregular transactions. Most companies in the Muslim world belong to this type of the companies. In the same category might be included the companies existing in the non-Muslim countries whose area of business is lawful such as agriculture, industry and business (excluding the sale-purchase and manufacturing of the things and objects held unlawful by the shariat, as mentioned under the first category). Before proceeding to state the position of the shariat *vis-à-vis* this type of shares, it will be prudent to explain here the related principles of the shariat. They are as follows:

- Muslims have been asked by the Shariat to seek the *mal* which is doubtlessly lawful. To quote a Divine command here:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا.

“O the people! Eat of what is on earth, lawful and pleasantly good; and do not follow the footsteps of the Evil one.” (2:168).

The same command has been reiterated in the following lasting words:

فكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا وَاشْكُرُوا نِعْمَةَ اللَّهِ، إِنَّ كُنتُمْ إِيَّاهُ تَعْبُدُونَ

“So eat of the sustenance which Allah has provided for you, lawful and good; and be grateful for the favours of Allah, if you do worship Him alone.” (16:114).

The Holy Prophet (Peace and blessings of Allah be upon him) has explained this Divine command in his following words:

الحلال بين، والحرام بين، وبينهما مشتبهات لا يعلمها كثير من الناس، فمن اتقى الشبهات فقد استبرأ لدينه وعرضه

“The lawful is clear; and the unlawful, too, is clear, between these two categories lie the things which are not clear (to what category they actually belong). The one who refrained from such doubtful things indeed saved his religion and honour.”<sup>55</sup>

As regard the doubtful things, about them Hafiz Ibn Hajar says :

“Opinions differ on determining the exact position of the Shariat vis-à-vis the *mushtabahat* (doubtful things and acts). To some men of Islamic learning the doubtful are equal to the *haram*. But this view deserves an outright rejection. According to another opinion the term implies undesirability. According to a yet another opinion, the best option is to say nothing about the *mushtabahat*, the fourth opinion, he further says, is that the *mushtabahat* are tolerably permissible. And those holding such an opinion can never be able to equate the two opposing aspects of the term on the same scale. The adherents to this view can take it for the

things and acts not regarded better. Shaikh Qubari is reported to have observed the following in this regard:

*Makruh* (reprehensible) is of course a bar between the man and the unlawful; the person often committing the *makruh* is feared to fall into the *haram* (expressly forbidden acts and things). Trying to keep the people away from the *makruh*, therefore, is commendable.”<sup>1</sup>

- From among the very fundamental principles underlying the Islamic shariah is the removal of difficulties and offering every possible facility within the parameters of its objectives. To quote the words of the Allah *subhanahu wa ta'ala*.

وما جعل عليكم في الدين من حرج

“He has imposed no difficulty on you in the matter of religion (and practice)”<sup>56</sup>.

يريد الله بكم اليسر ولا يريد بكم العسر

“Allah wants every facility for you and does not want to put you to difficulty and hardship.”<sup>57</sup>

Out of the same fundamental principle has evolved the rule of permitting the use of forbidden things for a person faced with necessitating circumstances. To quote the Qur’anic words again :

فمن اضطر غير باغ ولا عاد فلا إثم عليه

“But if one is forced by necessity, without willful disobedience, nor transgressing the limits, then he is guiltless.

This principle is so clear that needs not further arguments for its support.

As the necessity is to be met, so being the need. For, sometimes it, too, turns out as grave as necessity. Imam Suyuti, Ibn Nujaim and many other Ulama of note say :

“Need assumes the position of necessity, irrespective of the fact it is general or specific. The legalization of the contracts like *ju’ala*, *ijarah* etc. is based on the same principle.”<sup>58</sup>

Explaining the meaning and purport of *hajah* (need), Shaikh Mustafa Ahmad Al-Zarqa says :

“*Hajat* means the condition which requires easing and facilitation to achieve the objective. From this viewpoint the *hajat* is less in gravity than necessity. Notably, the ruling based on the concept of need will carry permanent value, while the necessity-based rule is only exceptional and temporal.”<sup>59</sup>

*Ba’y al-Wafa* offers a conspicuous juristic example of the use of this principle. In spite of the fact that the *bay’al-wafa* should be unlawful as it falls under the transactions involving interest, that is, benefitting from the *ain* in the exchange of the *dain* or making a matter conditional with the realization of another one. For example, a person, say, a seller, addressed the buyer :

“I bought this item from you on condition that you sell it to me when I bring to you the price thereof.” Both the selling and buying of this type is obviously unlawful. But in Bukhara the general phenomenon of abundantly loan-seeking forced

the *ulama* to have a reconsideration of the *bay'al-wafa* (conditional sale) and reassess its merits and demerits from the shariat viewpoint. Eventually, *bay'al-Wafa* was reassessed as a mode of lawful mortgage benefitting from the yields of usufructs of which is also permissible as the milk of a goat kept in mortgage."<sup>60</sup>

Similarly, the jurist of Balakh and Imam Nasafi, as mentions Ibn Abidin Shami, have declared as permissible the transportation of the foodgrain from one place to another in the exchange of a portion of it and the weaving of the garment for a portion of the same garment. So because this was an established common usage there and the people were badly accustomed to it. This practice, obviously, is opposed to analogy and the earlier Hanafites declared it clearly impermissible.<sup>61</sup> "When some earlier Hanafi Jurists", Ibn Abidin goes on saying, "Were asked about the percentage of the *brokerage*, they declared it unlawful; they are entitled only to have the *similar wage*. There are, however, the *ulama* who hold it permissible. Upon being asked about the *brokerage*, Muhammad bin Salma said, "As far as I think there seems no problem in taking the *brokerage*. This opinion is based on the general practice and the commoner usage, though originally irregular." Actually, there are many other transactions which originally are unlawful. The *Fuqaha*, however, have permitted them keeping in mind the enormity of the situations the people are faced with."<sup>62</sup>

In the hadith we find practical examples of this juristic principle. From among them one being the *bay Araya*, which the Holy Prophet (Peace and blessings of Allah be upon him) held permissible, in spite of the fact that it involves a type of interest. For example, the Prophet (Peace and blessings of Allah be upon him) originally declared unlawful the sale of fresh and juicy dates in the exchange of dried ones as both the exchanges ultimately are not equal in respect of weight and other aspects. Still, he permitted such contracts keeping in view the need of the general people. To quote the words of Ibn Taimiyah: "And the Prophet (Peace and blessings of Allah be upon him) permitted the Araya contract of sale, its being an interest-involving one notwithstanding." According to the Islamic Shariat, he goes on saying, "an evil deed deserving unlawfulness by its very nature shall be held permissible if there is a need deserving preference." By a type of uncertainty, he says further, "the Law-giver does not outlaw those sale contracts which the people often need to enter into; he, on the other hand, permits everything needed in the process."<sup>63</sup>

Thirdly, the role of the custom and usage and its effects in the Islamic Fiqh can not be denied. Islamic Fiqh, in its whole legislative process, admits to its role unless it contravenes the established norms and principles of the Islamic Shariat. Ibn Nujaim writes :

"It must be known that in dealing with many problems the Islamic Fiqh makes recourse to the established customs and usages so much so that the Fuqaha have made it a principle." Summing up the total discussion, he says further, "although the general principle is not to have any



consideration of the rampant custom and usage in the process of legislation, yet there are Fuqaha who tend to regard it and accord a role to it in the process. Treading the same line of thought, my suggestion is to declare permissible for the owner of shop, etc. to take an amount of money in advance from the aspirant tenant as *pagree*, as is common in Qahira (now Cairo, the capital city of Egypt). In return, the shop-owner will have no right to unilaterally expel the tenant from the shop. He will be entitled only to collect the rent as per the rate settled. The owner will also lose his right to allot the shop to next aspirant even though the shops are of the *waqf* property. In Gharia this rule has practically been applied. Shah Ghari constructed a number of shops and, on the payment of a sum as *pagree*, allotted them to business people and settled an amount as rent which would be realized from them and registered with *waqf* document.

“In a number of cases, Ibn Nujaim writes further, “the ulama have taken into account the custom and usage of Qahira. From among such cases being the one which has been mentioned by the author of Fathul Qadir, Ibn al-Hammam, he says that especially in Qahira the sold house will include the ladder. So because the Qahirites commonly live in multi-storied houses and without ladder it will be almost impossible to

properly benefit from the house bought. And this is an established usage there.”<sup>64</sup>

The great scholars have clearly put that the position of *Mufti* (person who guides the Muslim masses in matters of religion) must be engaged only by such scholars as are well-acquainted with the customs and usages of the people, keeping in view the established customs and common usages of each region and country. To quote the words of Hafiz Ibn al-Qayyim in this context;

“Every custom coming into, being and getting currency and usage shall have to be taken into account while explaining the position of the shariat in matters taking place, and, on the other hand, the ones turning obsolete shall have to be abandoned. For a Mufti it will be terribly unwise to remain attached with undue strictness to the books telling about only past usages and practices. In case you are visited by a person belonging to any other country and asks you religious guidance in a matter he is faced with, you had better ask him about the usages of his country and guide him accordingly rather than driving him according to the usage of your country and region.”<sup>65</sup>

(It must be noted here again that throughout the whole discussion about the usage and custom the term is strictly restricted to the ones not opposed to the rules, norms and the spirit of the Islamic Shariat. If otherwise, no custom and usage deserve any consideration at all.Tr.)

The fourth point to be made here is that we unfortunately are living in an age when the religion of Islam does not enjoy a complete superiority with reference to managing the economic, political, social and educational affairs of the contemporary world. We, rather, are living in an age when the Capitalism and Communism hold sway over the world economy. Living under such highly undesirable circumstances it is quite unfeasible to achieve what we want in a single attempt. In other words, at present, we are not able to leave the *permissions* altogether and adopt the way of resolve, leaving the things on which there exists a *difference* of juristic opinions. For we are not able to structure our affairs on the basis of the principles and juristic norms consensually agreed upon amongst the Fuqaha and found our affairs perfectly on what is purely *halal* and lawful. Instead, as long as we are faced with the situations of the type, we shall be required to find out useful and practicable solutions to our problems, especially on the economic front, even if we have to follow the opinion of a single *faqih* and this opinion is religiously useful and beneficial for the Muslim community. Even the condition that an ancient juristic opinion must support the modern views should no longer be insisted upon. In present critical situations to our problems within the parameters of the general and broad principles of the *shariat* and derive such solutions to our problems as are not in contradiction with any textual expression or the established principles of the Islamic Shariat.

Our responsibility is to make sustained efforts to bring into operation the Islamic economic system. We are under obligation to do earnestly whatever we can to save the properties of Muslims and help them retain their possession of their financial means, thus saving them from falling to the possession of the cunning non-Muslims. For the purpose we need the broad-mindedness of Shaikul Islam Izzud Din bin Abdus Salam. To quote his words relevant to our present point :

“In case the *haram* gets currency in the earth so much so that nothing *halal* is found throughout the world, the prudent course for a *mufti* would be to declare as lawful and permissible everything required and needed by the people. Then the *tahlil* of such things will no longer be dependent on the necessitating conditions. Insisting on its dependence on the necessity under such circumstances, would be bound to dissociate the people from all such professions, trades, skills, industries and economic means which fulfill the needs and expediencies of the people. And this phenomenon will inevitably lead to the weakness of Muslims and dominance of the disbelievers over the world of Islam and its means.”<sup>66</sup>

### **Determining the Shariat position on such type of shares**

Having mentioned the important principles concerning the shares of the type, we now are proceeding to mention the difference of opinions among the contemporary men of Islamic learning about these shares along with their supportive arguments. Vis-à-vis this type of shares the contemporary men of Islamic learning have gone two different ways.

*First opinion:* So far as the first opinion is concerned, according to it no type of business dispositions could be had in relation to this type of shares unless they are based on a purely lawful footing. Some of the supporters of the same view are of the opinion that the business dispositions of such shares have to be overseen by an OVERSEEING shariat board.

**The other view:** Contrary to the first opinion, the second opinion declares the business dispositions of such type of shares as entirely permissible.

This being an important aspect of the debate. On the other hand, there are many ulama that, without going into the details I have just furnished, hold that the shares of the Muslim countries based companies are absolutely lawful to be sold purchased. These Ulama included the following:

Shaikh Ali al-Khafif

Shaikh Abu Zuhra

Abdul Wahhab al-Khallaf

Abdul Rahman Hasan

Abdul Aziz al-Khayyat

Shaikh Mustafa Wahaba al-Zuhaili

Qazi Abdul Allah Sulaiman bin Manie, etc.

Their standpoint, that is, of permissibility is based on some juristic details and deductions which, to some Ulama out of those subscribing to this view, need to be revised.

The first standpoint is based on that unless the shares are absolutely free from the *haram* elements, like that the issuing companies are involved in *haram* business or deposit their funds in the interest-paying banks and similar financial institutions, the purchase of such shares will be *haram* and impermissible. This opinion is premised on the textual expressions of the Holy Qur'an and sunnah which ask the Muslim to keep himself away from *haram* and doubtful things. The principle that "if the *haram* and *halal* get mixed together, it is the *haram* which will prevail" also forms the base of this standpoint as well.

As regards the view of permissibility, it is based on the broader concept of permissibility of the shariat according to which the shares as such are not opposed to the normative principles of the Islamic Fiqh. So far as the unlawful things getting adulterated with these shares are concerned, they indeed are smaller as compared to its lawful elements. Based on this principle, as long as the most part of the capital and the dispositions are lawful, the smaller unlawful ingredients shall be ignored and their sale, purchase shall be regarded lawful. The removal of the unlawful elements from the earning of the shares of this is not possible unless the investor acquires a thorough knowledge of the company its detailed budget. This is undoubtedly an uphill task, never at the disposal of every one else.

In the light of the general temperament of the Shariat and its fundamental normative principles related to easiness the standpoint of the permitters could be supported in the following ways:

*First:* To the majority of the Fuqaha the adulteration of the smaller part of lawful does not impure the mixed total. Based on this principle, to the majority of the Fuqaha, the lawful adulterated with a smaller amount of the unlawful does not render impure the business dispositions in relation to this type of shares their ownership, their sale/purchase, etc. will therefore be permissible. The Fuqaha, however, make difference between the *haram lizatihi* the *haram li-ghairihi*. To quote Shaikhul Islam Taqiud Din Ibn Tamiyah for example:

‘Haram is of two types:

- (1) The one which is essentially *haram* such as the carrion, pork, etc. If this type of haram gets mixed with the liquid items like water, milk etc, the eatables changing their taste, color, taste or smell shall turn haram to use. However, if the color taste and smell is not changed, the case is subject to juristic difference of opinions.
- (2) The one which has turned haram as a result of unlawful human act, like a thing taken into possession by way of usurpation or through an irregular contract. Getting mixed with such haram thing will not turn the lawful into haram. To illustrate the point, if a person usurped a few dirhams, dinars a small amount of flour, wheat or bread and adulterated the usurped and ill-gotten item with his *halal mal*, his so doing will not impure the total of his *halal*. In case both the items, that is the *halal* and *haram* are equal in amount, their distribution into two proportional part and his parting with the ill-gotten part will purify the rest.

This is indeed a useful base. Contrariwise, there are many who hold that the *halal* getting adulterated with the *haram*, even if the latter is smaller in amount in comparison to the former one, is bound to impure the total. This is indeed a mistaken way. The view that an equal amount of the *haram* and ill-gotten dirhams impure the rest amount of the lawful is based on over-piety. As regards the case of *halal*'s getting mixed with *haram* while the former's forming the much greater part of the total, I do not know any difference of opinion amongst the Fuqaha.<sup>72</sup>

In the light of the detail finished above, the problem in hand falls under the second category, that is greater amount of the lawful gets adulterated with the smaller amount of *haram* and ill-gotten substance, for we are discussing the shariat position on the shares whose amount may sometimes be used for unlawful ends as mentiend above. To further illusrate the point, we are citing here some concerned juristic textual expressions:

Ibn Nujaim Hanafi writes:

If the greater part of the presenter's *mal* is *halal* and lawful, accepting a present from him and eating out of his *mal* will be lawful. The same ruling will remain applicable to his *mal* unless otherwise is categorically learnt. If it is learnt that his *mal*'s greater part is *haram*, eating out of his *mal* or accepting a present from him will turn unlawful, excepting that the presenter expresses that the presented *mal* was *halal* as he got it by way of inheritance or borrowing. Should most of the market's sale purchase,' he proceeds saying, 'is not free from *haram* and irregularities, a Muslim had better refrain from making purchases from the



market. But, in spite of this, if he makes purchase from there it will be lawful for him to use. He further says: should in the city markets the *halal* and *haram* get mixed with each other, the business transactions will remain lawful unless the haram element is recognizingly established. Mentioning some other similar cases, he writes further:

“From among such transactions is the sale purchase of the *halal* thing in which the haram gets mixed. If the object of sale forms no specie of *mal*, such as getting mixed of the slaughtered animal’s flesh with that of a dead animal, the force of forbiddenness of the *haram* will permeate into the *halal* one as well, turning the whole into a haram one. But if the haram is weak by nature, for example the getting of the *mudabbar* mixed with the general category of slaves. Due to the weakness of the reason of forbiddenness will not transit to the *halal* category.<sup>73</sup>

Kasani says:

“Every thing (halal) contaminated by haram may be a lawful subject-matter of a sale transaction, provided that the halal forms its major part.”<sup>74</sup>

The jurist Ibn Rushd has dealt this problem with an even greater detail. We think it better to cite here some appropriate lines from his writing. He writes:

“As far as the first case, that is, the person the major part of his *mal* is *halal*, is concerned, the person involved in it stands obliged to ask Allah

His forgiveness, return back the ill-gotten portion of his *mal* to its actual owner if he knows him. If the owner is not known, give it in charity on the owner's part. In case of the interest-earned *mal*, the amount of interest should be given in charity and offer sincere repentance to Allah from this grave sin"

He further writes:

"In case he knows the purchaser, the ill-gotten excess shall have to be returned to him. Having done so, he will remove the reason of hurmat (unlawfulness) from his *mal*, absolve himself of the sin he had committed and he will regain his position of being just trustworthy in matter of religious importance. The rest of his *mal* will turn lawful for him. Now his present may be accepted, his food may be eaten. But if he refuses to follow this guideline, accepting his present and eating his food is subject to the difference of the juristic opinions. Ibn al Qasim sees no wrong with sharing food with him or accepting his gift. Ibn Wahab is not pleased with such a person: - Asbah has declared it unlawful to eat.

"As regards the second case, that is the major part of the *mal* is haram, it will share the ruling which is already mentioned in connection with his self.

"As to entering into business and social dealings with the owner of such a *mal* or accepting his present, our Ulama suggest refraining from so

doing. To some, say Ibn al Qasim, this is interpreted as being reprehensible and not proscribed. According to another opinion, doing so is haram except that he purchased a halal item. If so, business transactions may be conducted with him and presents from him may be accepted.<sup>75</sup>

Izzud Din bin Abd-al-Salam says:

“If the halal’s proportion is major in a mixture, with the proportion of one dirham in thousand dirhams, business and social contracts may be established with such a person. Zarkashi, too, subscribes to a much similar view.<sup>76</sup>

Hafiz Jalaud din al Suyuti says that excepting Imam Ghazali, the Shafie jurists most correct view is that it constitutes no haram act if the business and social contracts are established with a person<sup>77</sup> whose major ownership is *haram* provided that the *haram* portion is unspecified. According to the Shafie this type of *mal* is not haram; it is reprehensible. The same ruling will be applicable to accepting the present and gifts from a king the major part of whose wealth is *haram*, as exists in al-Muhazzab. The commoner Shafie opinion is of reprehensibility rather than prohibition. In his book Ihya Uloomid Din, Imam Abu Hamid al-Gahazale says:

“In case an all-pervading haram thing gets mixed with the goods of the city market, making purchase from such market will constitute no haram act. One may take from it without any feeling, excepting that there is any indication

which establishes a particular item's unlawfulness. Under the same principle falls the *tafreeq-e-safaqah*. That is getting mixed together of the haram and halal contracts. This principle is applied to several areas of fiqh. Generally speaking, there are two opinions. Out of them the more correct I see legally valid is the transaction contracted with the observance of the regular norms. The other opinion, on the contrary, holds such contracts as invalid. In trade the example is of the person who sells both wines the vinegar"<sup>78</sup>

Ibn al-Munzir says that the sale, purchase of a *mal* mixed up with the *haram* and accepting a present from the person who owns such wealth is subject to the difference of juristic opinions. Hasan, Makhul, Zuhri prefer permissibility. Imam Shafie, contrariwise, has expressed his disapproval of it. He further says that to a group of ulama this is reprehensible<sup>79</sup>. On being asked a question, which we often face even today, Shaikhul Islam Hafiz Ibn Tamiyah explained this problem in the following words:

"Some body quoted a faqih of the earlier age as saying: Eating *halal* has now become too difficult. The existence of *halal* has now become quite rare."  
 "Why so, he was asked. So because the spoils of the war of Mansurah were not distributed. This wealth got mixed with the things," he explained his opinion. The questioning person said to him, "A person may do any work as an employee and gets his wages'. The Faqih said' "The dirham itself

is unlawful” Ibn Taimiyah has refuted this erroneous notion in the following words:

“The holder of this opinion is wrong. His so saying is quite improper. It is the people of Bidah, extremism, those indulging in unsound fiqh and incredulous people who hold such extremist opinions. The great fuqaha always opposed such abnormal notions. Even Imam Ahmad Ibn Hambal, despite his known continence, extremely disliked such notions. Reprimanding a person of the type, he once had to say in disgust: “See you this wicked person; he is declaring the *amwal* of Muslims (pl. of *mal*) as haram and unlawful”. Then he moves ahead to state the range of impact of this absurd notion on the minds of the general people. It is due to the evil impact of this that in some people did develop a thinking: as long as the unlawful continues to prevail on the surface of the earth, searching for the lawful is quite meaningless. So, they regarded lawful what they had in possession and the unlawful from which they stood denied. Many of them fabricated stories purely premising them on an irrational concept of abstinence. Thereafter, the Shaikhul Islam refutes this mistaken notion and clearly establishes that the major part of the Muslims’ properties and wealth is lawful. The Shaikhul Islam makes mention of a number of principles as follows:

“A thing declared as *haram* by a particular Faqih is not necessarily so. The unlawful is only that which has been so declared by the Book of Allah, the Sunah of his Apostle, unanimous opinion of the ummah, or at least, by a preferential analogical reasoning. The thing on which the opinions of ulama differ shall be considered in the light of this principle”. He further says: It is wrong to induce the Muslim masses into running their lives in lines with a specific juridical way. The second important principle he makes mention of which is that getting the lawful’s as mentioned earlier. In the same breath the Shaikhul Islam tells us a yet another important prished inaccessible. Based on this is the ruling that if the real owner of a foundling could not be know even after the due publicity advertising it will known, the relationship shall be based on the natural concept, the permissibility.<sup>80</sup>

Explaining his answer to a question put before him about the people the major part of whose wealth is haram such as the toll tax raisers interest-raisers, the Shakhul Islam said:

“If the lawful is the major part of his wealth, concluding social and business dealings with him shall not b e regarded a haram act. In case the unlawful forms the major part of his wealth, the jurists have differed between the lawfulness and the unlawfulness of entering into business and social affairs with such a person. As regards the

interest raising person, no doubt the lawful forms the major part of his wealth unless otherwise is established by any way. For example if one thousand dirhams are sold out for one thousands and two hundred *dirham's*, it is the additional two hundred which will be clearly *haram*. In case his wealth is adulterated with haram the adulteration will not render the lawful as unlawful. The owner may take possession of what is in proportion to the lawful. For example, if a *mal*, is separately shared by two partners and one's *mal* gets mixed with the lot of another, this *mal* shall be distributed between both the partners. In the same way, if a person's lawful *mal* got mixed with the unlawful one, the amount of *haram* will be deducted; the rest will be lawful for him without doubt.<sup>81</sup>

Once the Shaikhul Islam was asked about the person whose wealth is a mixture of the lawful and unlawful? He answered in the following words:

“By determining the weight, the amount of *haram* shall be cast aside, or will be given to its real owner. The rest will continue in his possession. If the actual owner of the former portion is not known to him and it is difficult for him to trace him out, it shall have to be given in charity on his behalf.”<sup>82</sup>

Explaining a similar point, Hafiz Ibn al-Qayyim says:

“The unlawfulness is not inherently associated with the being of *dirham* or *dinar*; the unlawfulness comes to it by way of its acquisition. If the *haram* aspect is removed from it, the unlawfulness will lose all of its meaning in its case. This being the proper and correct standpoint in connection with such cases, and it is the only way which serves the public expediencies in a better way.”<sup>83</sup>

In the light of the principles just mentioned we see that many Ulama see no wrong with the person entering into social and business contracts with a whose wealth and the unlawful has got mixed but the major part of his wealth is lawful. Based on this, the sale and purchase of the shares under discussion may be regarded as permissible. However, its owner shall be required by law to do away with the proportionate amount of *haram* in the works of charity, taking into account the principles which we shall mention towards the end.”<sup>84</sup>

## The Second Principle

This is based on the principle: Sometimes a thing as such is not lawful, but it could be lawful subordinately. This principle is based on an argument derived from a correct and agreed upon hadith, as we have already said.<sup>85</sup>

In the light of this principles it may be said that even though the shares of the type under discussion contain a certain proportion of *haram*, get it is obviously subordinate.



It is never the *haram* element which is primarily meant as a business and ownership dispositions. Therefore, as long as the company is meant to undertake lawful business, its assets shall be regarded lawful. As regards the company's marginal activities that involve interest such as it sometimes finds itself constrained to deposit a portion of its assets in interest-bound banks and other financial institutions in order to evade the harmful impacts of INFLATION, or borrows funds from them under constraining situations, no doubt such transactions constitute the *haram* acts and the doing party (the Board of Directors) commits a grave sin, still but this can never render all other of its dispositions as unlawful. For it is a subordinate and tacit disposition, and never the one for which the company has come into existence.

### The Third Principle

لِلْأَكْثَرِ حَكْمُ الْكُلِّ- (Majority shall be counted for totality) is an established principle. In the foregoing lines we have cited a number of juristic expressions to the effect that according to the majority of the Fuqaha in the mixture of the lawful and unlawful it is the major one which will work as the determinant of the status of the total.<sup>86</sup> Countless cases of the purity, worship and devotional acts, social relationship, clothing such as of the silk, hunting, eatables, oaths and indeed many other areas of the Fiqh have been based by the Fuqaha on this principle.

There is a yet another principle of almost the same meaning:

## الحاجة العامة تنزل منزلة الضرورة

“a commonly felt need assumes the status of NECESSITY”.

This principle has already been discussed. Shaikhul Islam Ibn Taimiya says that in case of need purchase may be made from the person whose wealth is dubious.

This principle is applicable to our case in hand in that in the world of Islam the Muslims stand in earnest need of the shares companies. For the people can never ignore to make a productive use of all-reaching public good. The Muslim governments too are always in need to invest the public and private funds in profitable and productive projects. Should the Muslims refrain themselves from purchasing the share of the companies, one condition out of the tow possible ones will inevitably emerge out:

- The development of the profitable programs and the productive schemes, which indubitably are a source of life of the Muslim communities living there and the collective interests of the Muslim Ummah, are bound to suffer a serious setback. Or,
- These companies and their management will fall to the control of the non-Muslims, or, at least, of impious and not-God-fearing Muslims. But if the sincere Muslims show their interest in the purchase of the shares of such companies, in future they may become able and gain power required to stop them from entering into interest-bound transactions with the interest-based banks and other financial institutions. Such abiding Muslim shareholders

change even the goals of those companies towards the collective interest of Islam and the Muslim Ummah.

What we have said above is not to suggest that men at the helm of the companies enjoying a fuller authority and power to change the course of the companies stand absolved of the sin and wrong doing. Such people are indeed accountable according to the range of their authority and power. But the general people have a right to purchase the shares of those companies keeping in view the principles and the detail we have furnished above. Still, if a shareholder has any power to prevent the company from felling in the interest-based business activities, he is required to do so.

### **Critical review of the first opinion, that is restraining from issuing the shares of the type**

When critically examined, the first opinion which seeks to restrain the companies from issuing such shares is found arguably weak on two grounds:-

FIRST, a *haram* element, little in amount, if got mixed with the lawful and *halal mal* cannot render the latter as *haram*. It is the only unlawful which shall have to be removed from the mixture, as has already been discussed in a fair detail.

SECOND, A number of ulama stipulate, for the permissibility of the shares business or interacting with the

shares companies, the overseeing of the business activities by a SHARIAT board. Such a condition is nowhere found in the Book of Allah, the Sunnah of His Prophet, consensual opinion of the Ummah, or by analogy. So because the Muslims are trustworthy in matters of their religion and their conditions are covert. Shaikhul Islam Hafiz Ibn Taimiyah says:-

‘If a Muslim falls into affairs and does such things which he believes to be right and permissible, such as some evasive tricks which have been declared as permissible by some Ulama, the Muslims are permitted to enter into business contracts regarding the *mal* so acquired.’

As regards the Muslims’, he further says,;

“whose condition is covert, he is beyond doubt. And if any body held back from contracting dealings with him, he brought to the religion an innovation which has no revealed support to stand on.”

Even more obviously, in the things held lawful by the shariat doing business with the UNBELIEVERS is held lawful by the consensual opinion of the Ulama. To quote the Shaikhul Islam again:-

About all the properties and wealth which now is in the hands of Muslims, Jews, Christians and MUSHRIKEEN about which it is not categorically known on the strength of any indication or argument, that it is ill-gotten or usurped, business and all other social contracts might be concluded with their owners; treating the owners of those properties as

usurpers will be unjustifiably wrong. *Vis-à-vis* this point I do not know any difference of opinion amongst the Ulama”90

Yes, the person wishing to enter the market is importantly required to gather a good knowledge of what is lawful and unlawful. This knowledge is a necessary provision for such a Muslim so that he might secure his religion. To have such a knowledge he is required either to apply himself to the task, or to the ask, when ever required, the men of Islamic learning and piety. In short, the permissibility of doing business of shares with company must not be associated with shariat overseeing. Instituting the provision of the type to the business of shares is of course an unjustifiable extremism and narrowing down the natural expanse of shariat. That the existence of a SHARIAT OVERSEEING board over the shares business and the public interaction with the shares companies is expected to provide almost sure safety to the shareholders’ interest is indubitably right. What is objectionable to us is to base the permissibility of the shares business on the existence of a *shariat overseeing body*.

### **Preferential opinion and the supportive arguments**

To my opinion, and it is Allah, Who knows all things better, with reference to the companies under the ownership of the Muslims the position of the shares of the type may be as follows:-

FIRST, As far as the managing body or the Board of Directors of the Muslim companies is concerned, it is never

permissible for it to undertake any *haram* business activity; it neither could lend money on interest nor borrow it on interest. If a Muslim company's management body indulges in any interest-bound transaction; it is indeed rushing in a war which Allah and His Messenger they have declared against such people:

**فإن لم تفعلوا فأذنوا بحرب من الله ورسوله**

especially under the circumstance when, at most places, Allah *subhanahu wata'ala* has created a number of good Islamic options.

*Second*, As for the Muslim masses, they are permitted to purchase the shares of the companies and seek partnership with them, as long as the major part of their assets and capitals and the associated dispositions are lawful, though a higher degree of piety dictates otherwise. The shareholders of such companies, however, had better take into account the following important points:

1. The purchase of the shares of such companies should intend to try one's best to persuade the company management and its Board of Directors against undertaking interest-bound transactions and business dispositions and using one's vote to change the company into a purely *halal* business one.
2. To the best of his capacity and care he should apply his skills and capital to seek what is purely lawful. Only under constraining circumstances a Muslim may be allowed to engage himself and invest his assets in doubtful modes of business. By purchasing the shares of the bigger companies indulging in Islamically

objectionable modes of business a Muslim should intend to promote the economic state of the Muslims community and strengthening its material condition.

3. The holder of such shares is required to be always vigil towards the amount of the interest falling to his lot in proportion to his capital asset. This interest is earned and received by the company on its funds deposited in the bank. The actual amount of interest may be ascertained by the study of the company's annual budget and the *balance sheet*, or by the company's account section. In case it is difficult, he may try his best to assess the amount and then dispose it of in acts of charity and public welfare.
4. In no set of circumstances a Muslim is ever allowed to establish a company which is primarily intended to lend money on interest. And, as long as the company continues to be so a Muslims is strictly prohibited to lend any help in strengthening it. Involving in interest bound transactions and economic activities itself is a grave sin; it is a help on a wrong doing. Yes, a person having power and influence to move the direction of the company from its current *haram* and unlawful dealings to *halal* and lawful may interact with this company.

*Third*, Beside the rules and principles just stated, the permissibility of these shares is subject to the condition that they are of general category. If *preferential*, it is not the extra payment which is to account for the *preference*.

The ruling for other types of shares beside the two mentioned ones shall be stated separately.

As regards the shares of those companies which are owned by non-Muslims and whose basic system does not specifically mention the unlawful transactions or the production of the forbidden goods, there are many Ulama who are not willing to permit any type of cooperation or participation of Muslims with such companies.<sup>91</sup> However, in the light of the principles furnished above, I see no wrong with the purchase of the shares of such companies. In the seminar held in Rabat in 20 to 25 Rabi II 1410 AH under the title *al Aswaq-al-Maliyah min al-Wijhatil Islamiya* (Financial Markets from the Islamic Perspective) it has already been decided that owning such companies and issuing their shares whose prime business is lawful but they sometimes have to involve in contracting interest-based transactions is permissible. As an established rule of the Islamic financial system, all interest-based transactions are strictly prohibited. The financial institutions of the type that is involved in interest-based transactions must be changed are interest-free modes of business. A Muslim investor may choose such company to make investment in only under restraining conditions provided that he expresses his disapproval towards its board of directors for its entering into interest-based transactions. This is when the company is meant to produce lawful goods. The shareholder of such a company shall be required to part with the part of the profit he regards proportionate to the interest-based earning falling to his lot, and spend it in things of public welfare.

In the same way, the seminar organized on the 'Islamic Financing' by *al-Barakah*, all the discussants have unanimously arrived at the conclusion that with an intent to



Islamize the working and the modes of business companies working across the Muslim countries the purchase of their shares is permissible, even commendable to some discussants. In so doing there are comparatively more possibilities to bring the Muslim investors nearer to the Islamic Shariat. The majority of the discussants, in the same seminar, has declared the purchase of the shares of the companies of non-Muslim world with their prime *halal* business companies if a better alternation is not available for the purpose of investment.

If the *prospectus* of a company does not specify its prime business as unlawful, the opinion of *permissibility* would be more compatible with the spirit of the shariat, provided that the mentioned principles are observed, for, undeniably, the removal of difficulty, easing and paying due care to the needs of the masses are the underlying principles and normative bases of the Islamic Shariat. In case their business modes, sometimes, involve the unlawful, it is only in meager quantity which will not affect the rest majority. The proportion of the interest-based income may be disposed of in the acts of charity and public welfare. More so, the subject-matter of the primarily concluded sale deal are the lawful things and taking part in this type of business is permissible. Nobody out of the Fuqaha of the earlier age of Islam declared unlawful to enter into financial dealings with the *People of Book*, notwithstanding the fact that most of their dealings and their *amwal* were not up to the conditions set by Islam. The Prophet himself and his companies contracted many business and other transactions with the Jews. In al-

Jamius Shahih of Imam Bukhari we find a chapter *Bab al-Muhzaraha ma'al Yahud* (chapter on sharing agricultural activities with the Jews). In this connection Hafiz Ibn Hajar says:

“By giving a separate title to it the Imam intends to indicate to the fact that such types of dealings are permitted to be entered by Muslims with the non-Muslim *Zhimmis*, and there exists no substantial difference with regard to non-Muslim *Zhmms*”<sup>93</sup>.

In the same way, a correct report says that the Apostle of Allah concluded a pledge contract with a Jew. He pledged his armour with him to borrow food grain. <sup>94</sup>.

After the Holy Messenger his companies too followed his example; they would conclude all types of business and work contracts with the *Zimmis*, and this was a common practice of those ages.<sup>95</sup>

## **A Nutshell Summary of the Paper**

1. In the financial system of Islam there exists its own system which is unique by virtue of having its base on belief and high moral values. This results in the following :

- While initiating a financial activity or making investment a Muslim is guided by his belief-based standpoint that by so doing he is fulfilling his commitment he has already made with Allah to do his best to play a role in the construction and progress of the world. His starting point is based on his faith that *interest* and all other forbidden things and

practices are ultimately destined to destruct and destroy the wealth. While spending the *mal* for the sake of Allah brings blessing to it and augments it beyond imagination.

- By undertaking all such activities his primary aim is to please Allah *ta'ala*. To this end he feeds the poor and indigent, orphans and the captives'. An unbeliever, by sharp contrast, is always motivated by his self-interest, and his spending in most cases, is meant for nothing except serving his narrow, apparent, material interests.
  - All tricks, modes of deception, exploitation, stockpiling, wrong doing, taking interest and all other deeds of the type have been declared *haram* by Allah and His Messenger.
2. Share stands for the document which represents a part of the company's original capital, or a part of a shareholder in a joint stock company.
  3. Making investment in companies whose prime business is *haram* and unlawful, such as the interest-based banks, or the companies which deal in or make production of unlawful things is *haram* without any difference of opinion amongst the men of Islamic learning.
  4. As regard the companies whose prime business is *halal* and lawful like Islamic banks and the Muslim companies dealing in and making production of *halal* items and consumables, making investment in them and the purchase of their shares is indisputably lawful.

5. The companies whose prime business is lawful but seldom they have to enter into interest based lending/borrowing transactions with the interest based banks and financial institutions are subject to a difference of opinion of the Ulama with reference to making investment in. However, keeping in view the general objectives of the *shariat* and the dictate of the *masalih mursala* (unrestricted interests), the better course is to permit the investment in such companies with the following two conditions:
  1. The purchase of share of such a company intends to bring a substantial positive change to its policy and Islamize it.
  2. The *haram* portion of the total income falling to one's lot is renounced and spent in the acts of public welfare. The *haram* portion might be determined by the study of the company's *budget* and the *Balance Sheet*.

As regards the company's board of directors and its managing body and the people associated entering into interest-based dealings, they will continue to be sinful unless they dissociate themselves from all interest-based transactions.

To conclude the paper, it would indeed be better to reiterate that a Muslim is always bound to seek only what is lawful and *halal*, keeping himself away from the doubts. The Muslim countries and the men at their helms stand committed to follow the shariat and emancipate their financial and economic systems of the elements of *haram*, interest and doubtful modes. *Only Allah is asked to help.*

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16. al-Qur'an : al Baqara /276
17. al-Qur'an : al Hadid / 23
18. al-Qur'an : al Nisa / 29
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20. Sahih Muslim (1/99) Abu Dawud with Awnul Mabud 9/32, Tirmizi with Tuhfatul Ahwazi 4/5 44, Ibn Majah 2 /749. Haz Abu Hurairah reported that the Holy Prophet (S.A.W) happened to pass by a heap of the food grain. Upon entering his hand in the heap, his fingers got wet. The Prophet (Peace and blessings of Allah be upon him) called him to explain what was the case and why the food grain was wet. He replied: Water befell the heap without my intention. "Why did you fail to place the dampened food grain above the normal one so as to let the people see it openly"? the Holy Prophet (S.A.W) said. Then, reprimanding him, he further said: **من غش فليس منا** (The one deceiving the people is not out of us") This is a clear hadith which outlaws all types of deception and adopting fraudulent ways to cover the unpleasant fact of things.
21. *Najash* or *tanajush* (false bidding to raise price) is to offer a high price for a commodity without any intention to buy it. The sole object being to cheat the expected buyer. The Holy Prophet (S.A.W.) has proscribed such a wrong practice. For the text of hadith see al-Bukhari with Fathul Bari 4/335, Muslim 3/1155.
22. *Tasriyah* is to tie the Udders of a she-animal in order to let the milk accumulate in her udder so as to give a false impression to the interested buyer of a high milk-yield. For the Hadith proscribing this fraudulent practice see the Sahih Bukhari with Fathul Bari (4/361) Muslim (3/1155)
23. Mabdaur Raza fil Uqud P. 673-850

24. See Bukhari with Fathul Bari (4/337), Muslim (3/1165), Musnad Ahmad (2/80,129,) Sunan Abu Dawud with Awnul Mabud (9/395,) Tirmizi with Tuhfatul Ahwazi (4/455), Nasai (7/222) Ibn Majah (2/753).
25. For further detail see Mabdaur Riza fil Uqud P. 852 and the subsequent pages.
26. al Qamusul Muhit, Lisanul Arab, al-Mujamal- wasit root *sahih*.
27. al-Mawardi: al Nukat wal-Uyun (3/426) Kuwait, the Awqaf Publications. See also Ibnal-Arabi: Ahkamul Quran (Beirut, Darul Maarifa (4/1662)
28. See Ali Hasan Yunus, *al-Sharikatul Tijariyyah* (P.539) (Cario) Shakri Hasib Shakri and Meshail Mekhail: *Sharikatul Ashkhas* and *Sharikatual Anawal Ilma wa Amla* (P. 184), Dr Salih bin Zabin al-marzuqial Biqmi (Makkah, Jamia Ummul Qura 1406 A.H. (P./332); and Dr Abu Zaid Rizwan; *al-Sharikatul Tijariya fil Qamunil Misri al Muqaran* (P. 526) (Cairo 1989 Darul Fikr al-Arabi).
29. Dr. Salih al Baqmi ((P.337-338).
30. The Salih Bukhari has reported as commentary, Book of al Ijarah.
31. Sunan Tirmizi with Tuhfatul Ahwazi, Kitatab al-Ahkam (4/584) Shaikhul Isalm Hafiz Ibn Taimiyah says: Although all these transmission channels are separately weak, yet the differing channels support each other". (Majmu Fatawa 29/147)

32. Majmu al Fatawa al Islamiyah (Riyadh 29/150). "In stipulations and *uqud* agreements, contracts) the original rule is permissibility". for a detailed discussion of this point see *Mabdaur Riza fil Uqad*, 2/1148 (Darul Bashaireal-Islamiya)
- 33, 34. Majmu al Fatawa al-Islamiya, 29/346-351.
35. See the aforementioned Fiqhil sources, and Dr Abdul Ghaffar al Sharif's and Dr Muhammad al-Habib al-Jiraya's paper, presented in the meeting of the Majmaul Fiqhil Islami P. 10-11. The paper is titled *al Adawatul Maliya al-Taqlidiyah*, also *al-Shariat* by Dr al Khayyel [print al-Risalah, also Sharikatul Musahamah P. 334 by Dr Salih bi Zabin]
36. Ibid, P. 340 (of Dr Salih bin Zabin). To quote the words of the author, "In this connection we may classify the opinions of the Ulama into three groups. First, those to whom the business of shares is absolutely unlawful; the second category of the Ulama holds that the business of shares is absolutely lawful. Some of them, however, postulate that the shares must be free from the *haram* elements. To the third group belong the Ulama who differentiate between the shares. Some are lawful and some others unlawful."
37. For detail see Shaikh Ali al-Khafif: *al Sharikat Fil-Fiqhil-Islami* P. 96-Darul Nasr lil-Jamiatil Misriyah and Dr. Abdul Aziz al-Khayyat: *al-Sharikat Fil Shariatil Islamiya wal Qamun al-Wazie* 2/1583-212, *al Matabi al-Ta'awuniyah* (1917) and *Sharikatul Musahamah fi Nizam al-Saudi* by Dr Salihbin' Zabin (The Ummul Qura University Publications (year 140 b A H). From those holding the business of the shares as absolutely



- haram* is Shaikh Taqi al-Din al-Nibhani. See his book al-Nizamul Iqtisahdi fil-Islam (1953 print, P. 141,142). Those on the other extreme, i.e. holding the business of share as absolutely lawful without any detail, include Dr. Muhammad Musa and Shaikh Shaltut. But the fact is that they, too, postulate that the shares be free from the *haram* elements. See Fatawa Shaikh Shaltut P. 355 [Darul Shuruq, Jaddah, and foregoing references.
38. Zadul Ma'ad fi Hadyi Khairil Ibad, 5/746 [al-Risala Foundation.]
  39. al-Nibhani Taqiudin: al-Nizamul Iqtisadi fil-Islam, P. 133. al-Quds, third Edition year 1372.
  40. Ibid P. 141, 142
  41. Salih bin Zabin Dr P. 344.
  42. See *Bahsun fi Hukmi Tadawul Ashum al Sharikatil Musahimah* by Shaikh Abdullah bin Sulaiman, P.3 and the *fatwa* issued by Shaik Muhammad bin Ibrahim (Mufti of Saudi Arabiya in connection with the purchase and trade of the shares of national companies. This *fatwa* declares the lawfulness of the shares of national (i.e the companies operating in Muslim countries) companies. The *fatwa* is incorporated in his *Fatawa & Rasail* (7/42,43).
  43. See al mansuatil fiqhiyah al-kuwaitiyah, term Jahadah (16/167).
  44. al- Furuq 3/265, 266 [Darul Marifah]
  45. Majmu al Fatawa 29/233 [Riyadh]
  46. al-Gharar wa Asaruhu P. 594.
  47. Majmu at Fatawa 29/233

48. See al-Mughni 5/45, al-Majmu 9/292, Sharikatul Musahamah of by Dr Salih bin Zabin P. 348 and aforementioned other references.
49. Suyuti: al Ashbah wal-Nazair P. 133 [Cairo: Isa al Halabi], also, al Ashbah wal-Nazair by Ibn Nujaim P. 121, 122 [Cairo: Mu'assasatul Halabi]
50. Sahih of al-Bukhari with Fathul Bari 5/49 [Cairo: al-Salafiyah al Musaqqat, Muslim al-Buyu 3/1173 [Cairo: Isa al Halabi, Ahmad 2/150, al-Mu'atta P. 378].
51. Fathul Bari 5/51
52. al-Mu'atta P. 378
53. al-Haithami, Majmauz Zawaid 4/80. In the transmission channel of the hadih a link, Musa bin Ubaidah, is weak.
54. Taqribul-Tahzib 2/286, Majmual Zawaid, Hafiz al-Haithami 4/80.
55. The aforementioned references.
56. Sahih al- Bukhari (with Fathul Bari, al Imam 1/126, Muslim al-Musaqqat 3/1230 Ahmad 2/267)
57. Fathul Bari 1/127.
58. al-Ashbah wal Nazair (of Suyuti) P. 97, 98. al Ashbah wal-Nazair by Ibn Nujaim P. 91, 92.
59. Shaikh Ahmad al Zarqa: Sharh al Qawaidil Fiqhiya P.155 [Darul Gharb al-Islami
60. Ibid
61. Ibn Abideen: al-Hashiyah 5/36,37 [Beirut: Dar Ihyaul Turath al-Arabi]
62. Ibid 5/39
63. Taking into account the need of the people the *Araya* sale was declared as permissible by the Messenger of Allah. See Bukhari with Fathual Bari 4/390, Muslim

- 3/1168, Ahmad 5/181. *Araya* (Pl.of *ariyyah*) are the bunches of the dates gleaned from the tree. *Bay' Araya* is the sale of the *araya by conjecture* for the dates that are still on the tree.
64. The Prophet (S.A.W) was asked about the permissibility of the the sale of the dried dates for the juicy ones. "Does the weight of the juicy dates decrease after they dried up'? the Prophet sought information from the people in this regard. Yes, of course," answered the companions. 'Then, this sale would be impermissible', replied the prophet. (S.A.W) See Musnad al Shafie P.51, Musnad Ahamd 3/312, Tirmizi 1/231, Nasai 7/269, Ibn Majah 2/721 Sunan Abu Dawud 3/251, al-Baihaqi, al Sunanul kubra 5/294, Also, see talkhisul Habir 3/9,10.
65. Majmu al-Fatawa 29/277, 49.
66. al-Ashbah wal-Nazair of Ibn Nujain P. 93,103,4, see also Nashr al-Akham 2 /159
69. al-Aswaq al-Maliya P. 7 al-Salus, Ali Dr. This is actually a paper which was written for the VI<sup>th</sup> meeting of the Organization of Islamic countries.
70. Ali al Khafif : al-Sharikat fil Fiqhil Islami P. 96. 97, also see the paper of Shaik Abu Zuhra, Published in conjugation with other papers of the second conference of Majma al Buhis al Islasmiyah. 2/184, al-Khayyat: al-Sharikafis Shariatil Islamiya wal Qanun al Wazie [Beirut: al Risalah 2/187; P. 5 of Dr Wahaba al Zuhaili's paper presented to the VI<sup>th</sup> meeting of the Majmual Fiqhil Islami, Dr Salih bin Zabin: Sharikatul

- Mushahamah P. 342, and Qazi Abdullah bin Sulaiman's paper referred to above].
71. Foregoing references, particularly the paper of Shaikh Abdullah bin Sulaiman, which has treated the problem in good detail.
  72. Majmul Fatawa, 29/320, 321 [Riyadh]
  73. Ibn Nujaim : al Ashbah wal-Nazair P.112, 13,14, see also Hashiya Ibn Abideen 4/130.
  74. al-Kasami: Badai al-Sanai 6/144.
  75. Fatawa Ibn Rush [ed Mukhtar bin al-Tahir al-Talili, Darul Gharab al Islami Vo1.1 P. 631-49, Mawahib al-Jalil 5/277]
  76. Qawaid al-Ahkam 1/72, 73.
  77. al- Manthur bi-Qawaid [Kuwait, al-Awqab] Vo1.2 P. 253.
  78. al- Suyuti: al-Ashbah wal Nazair P. 120, 21, Hashiya of al-Qilyubi with Umairah al-Minhaj 2/186
  79. Nawawi: al Majmu 9/353 [Egypt: al Muniriyah]
  80. Majmu al-Fatawa 29/311-23.
  81. Majmu al-Fatawa 29/272-273.
  82. Op. cit 29/308
  83. Badai al-Fawaid 3/257.
  84. The references aforementioned, specially Shaikh Abdullah bin Sulaimen's paper p. 16
  - 85, 86. Op. cit references
  87. al-Natiqi, Jumal al-Ahkan P. 370-381, Edited by Hamidullah Shayyid as his desertation submitted to al-Azhar University to earn his master's degree.
  88. Majmu al-Fatawa 29/241. About the person where wealth is mixed up with the ill-gotten and *haram* the

Shaikhul Islam has mentioned that the *rule of majority* would be taken as the sole determinant.

89. Majmu-al Fatawa 29/319-324
90. Op. cit 29/328
91. See p. 31 of Shaikh Abd Allah bin Sulaiman's paper. In his paper he permits the purchase of the shares of the companies under the ownership of Muslims even if their business involves interest, provided their prime business and the major part of their capital assets is lawful. He, however, has declared impermissible to purchase the shares of non-Muslim companies except that the purchaser is able to reorient them from their present interest-based business towards a positive change acceptable to the Islamic Shariat. In the same paper he has also furnished a good practical example of this reorientation. He says that Sheikh Salih Kamil informed him that by pursuing the same course of action he was able to reorient a number of fifty companies from their interest-based business towards the interest-free business and commercial activities by purchasing a considerable number of their shares with the condition that henceforward they would abide by the principles of the shariat.
92. *al-Fatawa al-Sharaiyah fil Iqtisad* [al-Barakah Collection of papers 1411 A.H.] P.17
93. Sahih al-Bukhari with Fathul Bari [al-Salafiyyah] 5/15
94. Op. cit. 5/142
95. Ibn Qudama: al-Mughni 4/245-245

# 6

## **Introductory Paper (2)**

### **Shares, Shares Market & Company – A Brief Introduction**

**Paper Contributed by Mr. Irshad Baqwi, Bangalore, India**

(This is an introductory paper, intended to explain in brief the shares and company system in the Indian context. With a view to offer the material in a systemic and arranged manner, the contents have been divided into a number of subheadings. Tr.)

#### **Indian Shares Market**

For the arrangement of capital for the completion of the corporate projects set up by the corporate people the capital market is as much a reliable source as are various other ones like banks and other financial institutions that provide term-bound loans for the purpose. Through the capital market the companies and corporate sector may access directly to the common people to collect their small savings for the purpose. From the Capital Markets the required funds are obtained through the Capital Market-instruments like debentures, shares, bonds securities, etc.

When a corporate establishment or individual approaches the people through an intermediary termed

'Merchant Banker' to raise the required funds and for the purpose it issues *shares certificates* or *debentures certificates*, known in the primary market as public issue. Following this way the common people invest their savings in the company and as a proof get shares certificates from the company. This way these investors get shares in the capital assets of the company, thereby becoming the *shareholders*. The shareholders in the company receive a share, proportional to their stakes, from the company's profits. The shareholders generally receive their profits in the form of the *dividends* and, occasionally, in the form of additional shares. The additional shares, technically termed Bonus Shares, are offered without any price. The shareholder may keep his shares and get a share in the profits and bonuses etc. as long as he/she so wishes.

However, if an investor wishes to disinvest from the company and get the invested amount back, partly or wholly, he cannot return the shares certificates the company. Instead, for the purpose he shall be required to sell out his shares to any individual interested in buying the shares of that company in the exchange of paying the price to him. Since this time this sale takes place out of the primary market. That is, the buyer does not buy the shares directly from the company, but buys the shares certificates issued by the company, from a shareholder at the down payment of the price. This bargain is termed and known as the secondary market. It is not always the case a shareholder may find the interested buyer at any time he wishes to sell. For the purpose he is, mostly, required to access a

middleman, called Broker. There are many *brokers* in the shares markets who book orders for the sale and purchase of the shares from their customers-sellers and expectant buyers, and at a given time and place exchange these *orders from* other brokers. The place where the shares brokers assemble for the purpose is termed as the Stock Exchange. *Share brokers*, more accurately, are the members of that stock exchange. Within the premises of a given stock exchange nobody except its registered members is allowed to strike bargains. Stock Exchanges have their special rules and principles and every member broker is necessarily required to abide by them. These specific rules and principles have been formulated in order to secure the proper interests of the common investors. It is not necessary that the brokers exchange the shares for the amount of money at the very day when the bargain is struck. What is essentially done at the very day is to commit to writing the details of the bargains struck in the accounts concerned and in this respect the report is submitted to the authorities of the Stock Exchange. Stock Exchange maintains a systematic record of all the bargains carried out by each and every member of it, and after the expiry of the period of the finalization of the deals, which is generally not more than a week, the shares certificates are sent out to the new buyer and the price is paid to the selling party.

## **Stock Exchange**

The first-ever stock exchange of the world started working in 1611 in Amsterdam in a roofless lawn. In India the first stock exchange was established in the second half of the eighteenth century. At that time the capital market's



activities were limited to the exchange of the loan stocks of the East India Company. In 1830, in the wake of the American Civil War, the cloth mills, suddenly developed beyond measure and expectations and the cloth export from India began to increase day by day. This resulted in the emergence of the corporate stocks leading to the establishment of the Bombay, Calcutta and Ahmadabad Stock Exchanges. In 1875, after the establishment of the Domestic Shares and Sharer Brokers Association, the Bombay Stock Exchange was established. After the World War I and the World War II the business and corporate activities witnessed swift and positive developments and changes, and as a direct result of this, new companies came into existence and the corporate share business started thriving and the regional stock exchanges at Bangalore, Madras (now Chennai), Delhi, Kanpur etc. were established.

Summing up whatever has been said in the foregoing lines about the stock exchange, the stock exchange in fact is an auction market where the brokers exchange the *shares* and *securities* in the fulfillment of the orders and requests they receive from the desiring sellers and buyers. With reference to the trade of the shares and securities the role of the Stock Exchange is of crucial import. It facilitates the sales and buyings of the corporate shares and securities and the exchange operations take place in a systematic and organized way.

The company which has collected the capital by way of the *public issue* after issuing the shares is essentially required to get its shares registered with the stock exchange. This is in

order to let the shares' business flourish and the investors get the price money for their shares without facing impediments. All companies are permitted by the Stock Exchange to get their shares recorded with it and then do its business by their sale and purchase. Before rushing into the shares' business the company and the interested business people are legally required to affirm their commitment to strictly abide by the rules and principles of the stock exchange. The investor wishing to sell or buy the shares is required to place his order for the sale/purchase with the broker who must be a member of the Stock Exchange. The broker sells/buys the shares on behalf of his clients from other members of the stock exchange. In this market the price is paid and received according to that day's market rates. The broker is entitled to receive the brokerage from his clients.

### **Various Instruments of the capital market**

As it has been mentioned earlier, in the capital market various instruments such as *debentures*, bonds, warrants, etc. are sold and bought, although the main business carried out in the stock market is of *equity shares*. For this very reason this market is commonly known as the share market and the original names of this market – the stock market and capital market, are used only rarely.

The Capital Market may roughly be divided into two sections:- Share Market and the Debt Market. The instruments sold and bought in the Debt Market are the debentures, bonds etc. They infact are the *securities* on which the interest is paid regularly by the company according to

the specified rate during the period specified. After the expiry of the term the company takes them back and returns the amount involved to the *investors*. The persons investing their money in such securities have no right whatsoever to share any amount of the profits reaped by the company, nor increases the original value of those instruments. The investor is at liberty to either receive the interest specified during the term specified, then return them back to the company and get his invested amount back, or sell them to any wishing person during the term through the medium of shares broker/stock exchange.

## Shares

*Share*, the singular form of *shares*, means '*seeking a share in the capital of the company*'. By buying a share in the company the shareholder offers his cooperation to the company's corporate and business activities. More precisely, a share basically constitutes a unit of the company's total capital by which the investor's interests in the company are determined and protected. The share is a document which authorizes the shareholder vis-à-vis a company's ownership. The shares either could be issued by the company itself or could be bought from the stock market/stock exchange. The stock exchange plays a helping of role in the business and sale-purchase of the shares.

According to the company law of 1956 a public limited company may issue two types of shares - the *Equity Shares* and the *preference* shares. A preference shareholder is entitled to receive a specified amount of profits the company

earns and get his capital back in the event of the company's closure. Such shareholders, however, have no right to have any say in the affairs of the company, nor to vote in its general meetings.

As regards the equity shares, no type of surety or guarantee is provided of the return of his capital amount to such shareholders. But no limit is set for the expected amount of profit such shareholders may receive from the company. The equity shareholders may suffer the loss as wellseeing from this angle, the Equity *shares* are comparatively more prone to risk factor than the preferential shares. The hidden financial loss the equity shares might incur being that if anytime in future the company suffers losses or the company management ever decides to close the company, due to any possible reason, the investor, too, is almost bound to suffer the loss of his invested capital either partly or wholly. But, on the other hand, if the company makes profits and its business and industrial activities mark an increase and progress, the investor, too, will share the profits proportionately. Moreover, the 'equity shareholders' enjoy the right to vote for or against the decisions and resolutions of the company's general meetings.

Being more promising and advantageous with better future prospects of profit-making, the equity shares attract the sellers and buyers more than do all other types of shares and securities. The people are more interested in the business and trade in the equity shares. Each share of the company carries a value which is commonly Rs. 15 only. Each shareholder is provided with the certificates, showing the amount of his investment in the company's ventures.

Generally, a certificate is issued for one hundred shares, termed in business parlance as the *Market Lot*. The investor may easily sell his lots in the secondary market. In case an investor wishes to secure the certificates issued for the shares numbering less than one hundred, he either may purchase such certificates from the stock market, or may get his shares divided in even smaller portions.

The company which issues the shares maintains a register of the names of the investors. If an investor sells his shares to any other person, the buyer shall be required to send the shares back to the company so that those certificates might be transferred to the name of this new investor. For now the ownership of those shares has changed. Most of the companies appoint for the purpose a number of outside agents, termed *share transfer agents*. This is in order to complete the transfer operations in a better and quick way. The buyer may sell those shares in the market forthwith, without getting the shares certificates transferred to his name.

### **Fluctuations in the prices of the shares**

In the share market the interested persons have of a fuller liberty to sell and purchase the shares of any company according to one's wish and option. If a company is making progress well and earning profits, the demand of its shares in the market rises very high. For the bright and promising future of it prompts all to make haste in the purchase of its shares. Since the supply is almost always limited, the rise in the demand naturally gives rise to the soaring up of the

prices of shares; and a constant increase in the demand will render the prices of its shares higher still. But, on the other hand, unsatisfactory performance of a company and the low-rate of its profit-making prompt the shareholders to sell its shares in bulk number. This augments the supply of shares in the capital market and, as a result, a marked fall in the prices is recorded. The interested investors may purchase the shares of a company when the prices are low and may sell them when the prices turn higher. The difference between the purchase price and the sale price shall be the capital gain if the prices soared up, or the loss, if the prices fell.

### **Tax Angle**

On the income and profits made by the business of the sale/purchase of the shares the payment of the prescribed tax is a legal obligation. If an investor keeps the shares in his ownership for a complete year and then sells out them, the earning made is termed long term capital gain, and a 20% shall have to be paid out of the profits made. In case the shares are sold and purchased within one year, the earning is termed *short-term capital gain*. In such cases the tax rate is determined according to the general income tax rates, which is comparatively higher than the long-term capital gain. The amount of the capital gains on which the tax is payable is that which is left after the losses the investor has suffered in his short-term or long-term investment. The losses are deducted from the profits.

## **Investments made by NRIs and the OCBs**

With a view to attract the funds from the Non-residential Indians (NRIs) and Overseas Corporate Bodies (OCBs) for the investment in the various corporate and business projects in the country, the national government encourages them and offers various types of facilities for making investment, thereby prompting them invest a maximum amount of funds in different companies. This facility is made available for them in both the primary and secondary capital markets by more ways than one. For example, provision of a specified number of preference shares for the NRIs, permission is granted to them to transfer to their countries of living the profits and gains reaped through making investments, and, to top it all, the income tax rates for them on the long-term and short-term capital gains are generally concessional and lower in comparison to the native Indians.

## **Global Issues**

The shares of Indian Companies are recorded by more than one national stock exchanges. The introduction of the doctrine of liberalization to the country's economic policies has broadened the views of the national companies. Now they are trying to introduce their endeavours at global level and attract the global funds and investors. Noteably, from the interest viewpoint, the global funds are cheaper than the domestic and national funds. The Indian government has granted permission to the Foreign Institutional Investors to make investment in the Indian Capital Market. Side by side

this permission, the Indian companies, too, are permitted to issue the *global deposit receipts* and try to sell their shares through the intermediary of the global capital market. The GDRs have been recorded in the London, Luxembourg and the New York Stock Exchanges, where they are sold and purchased.

### **Recent Changes Taking Place in the Share Market**

India's capital market now is getting mature. The share business is being carried out through the latest technologies which ensures more transparency for the benefit of the investors. The business of the shares and the preparation and delivery of the shares' certificates might be done in a more refined way. The Mumbai Stock Exchange is fully computerized and the sale and purchase of the shares is carried out through numerous computers installed inside the large premises of the stock exchange. Country's other stock exchanges, too, are fully computerized and the total work there is carried out through the computer sets. Still, endeavours are on for further development of the stock exchanges by equipping them with the latest technologies. Besides the regional stock exchanges, the National Stock Exchange, too, has reached to almost all the important and major cities of the country. Since the adoption of the latest technologies at the stock exchanges has brought transparency to the working of the stock exchanges, this phenomenon has increased the faith of the investors and their baseless fears and doubts have been removed. For all sales and purchases are being done in an organized and systematic way. The Mumbai Stock Exchange is planning to extend its national Computer Trading System to other cities,



thereby to take the information about the share's trading and the shares' business to those regions where do not exist the facilities of the recognized stock exchange. The share trading and the whole related work is directly monitored and supervised by a national institution named 'Securities & Exchange Board of India'. This aspect too is engendering an atmosphere of faith and trust amongst the investors and giving a much-needed boost to the Indian Capital Market. The Depository's Bill, which has recently been endorsed, is indeed a milestone in this regard, This Bill is strongly expected to root out all the loopholes that are regarded characteristic to the old system of the stock exchange and the capital market.

### **Is the Interest an essential aspect of the overall share trading system?**

In the share trading system the *interest* has no essential and direct role; the give or take of the *interest* is not a part of the shares' business at any level. Therefore, the share business is a lawful mode of business open to those companies and individuals who wish to invest in the shares business and share the lawful profits. Simply speaking, a company wants to realize a plan of it and complete a project and for the purpose it is never asked by law to manage the required funds as loans raised on interest. The company may raise the required funds from the investors on the provision that they would share the profits. From among the lawful modes of the profit-sharing the Dividends, Bonus Shares etc. are the commoner ones. The investor receives no interest on the amounts of investment he shares the

company's profits instead. If he sells his shares, the result is either capital profit or the capital loss, interest nowhere is found. The business of the shares in the secondary market, too, involves no aspect of interest. The shares are sold and purchased according to the latest rates, and it is the difference between the purchase price and the sale price which is the only determinant of the profit or loss in the shares' business one has undertaken.

The investor is always free to choose for his investment purposes the companies of his choice. He may choose only the ones the business and manufacturing of which is not against the lines laid down by the Shariat for business and trade, leaving aside all such companies doing contrariwise.

# 7

## Trading in the Shares

**Paper contributed to the seminar by Maulana Khalid Saifullah Rahmani, Hyderabad, India.**

### 1. The Status of the Share Certificate

What seems more correct and sound is that shares represent the aggregate of both the *cash*es and *assets*. The price amount shown on it is no more than an indication of that the share initially valued the same as the purchase value. The point that the shares of a bankrupt person in a company cannot be legally confiscated holds no importance whatsoever in this regard. Even it is not necessary that the law does consider the shares as an asset. As regards the legal impermissibility of confiscating the shares of a bankrupt person, the law of impermissibility might have been made in view of that the company's assets and properties are commonly shared and owned.

### 2. Trading in Shares

The sale/purchase of the *shares* is a mode of business which is in fact the sale/purchase of money for money, terminologically called *bay'sarf*. In *sarf* deal a complete equality and parity in all aspects of both the exchanges have to be legally maintained. Neither party can take possession of his exchange on the promise to give opposite exchange to

his counterpart later. The sale/purchase of the shares with increase or decrease in the exchanges is obviously unlawful. The sale/purchase of shares in the exchange of equal value, too, seems improper as the shareholders gives the certificates and documents of the amount invested in a company and not the price of the rupees he is receiving from the purchaser. Thus the deal is not based on the cash payment from both sides. The only reason to support the trend of permissibility is nothing more than that some scholars regard the submission of the bank draft for a specific amount of money as the submission of cashes. Taking the trade of shares from this angle, the *shares certificates* may be treated like the bank draft, and the shares may be sold and purchased on equal values. To my opinion, however, the equity shares cannot be sold and bought, neither for an increased or decreased value nor for an equal value.

### 3. To the Hanafi Fuqaha

In such cases the *ribwi* commodities, given by both the sides, may be sold for *un-ribwi* ones and with increase or decrease from either one or both sides. To quote here the words of Hidayah :

من باع درهمين وديناراً بدرهم ودينارين جاز البيع، وجعل كل جنس بخلافه

“If a person bought two *dirhams* and one *dinar* for one *dirham* and two *dinars* the sale deal will be

valid, and the *dirham* shall be regarded against the *dinar* and the *dinar* against the *dirham*<sup>1</sup>.

Therefore, the aggregate of the company's cashes and assets may be sold for cashes and the Shariat has no objection to such types of deals.

#### **4. The Companies doing Unlawful Business Activities**

The companies whose prime business is to deal in unlawful things, goods and services their shares will be unlawful to sell or purchase. This act will amount to supporting rather participating, the act of gross disobedience to Allah and his Prophet (Peace and blessings of Allah be upon him). In case the company is owned by Muslims, the impermissibility is even more obvious. If the company is the ownership of the non-Muslims, as being the case with most of the Indian companies today, any type of partnership in such companies too, shall be unlawful. Although according to Imam Abu Hanifa this may be permissible with a note of strong reprehensibility, yet the Sahibain (Imam Abu Yusuf and Imam Muhammad) have declared it unlawful, and the latter view has been regarded more correct and prudent by the Fuqaha. To quote the words of an authority in support of my view :

“If a Muslim gave money to a Christian so as to do business as a *mudharib* partner and he traded in swines and wine and earned profit, the Muslim

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<sup>1</sup> Hidayah, 3/90.

may accept his share of profit according to Imam Abu Hanifa (Razi Allahu Anhu) but -

ينبغي للمسلم أن يتصدق بحصته من الربح.

The better course for Muslim, however, will be to give away his share of profit in charity.<sup>1</sup>

This view is probably based on the assumption that the money was given to the Christian *mudharib* for doing business without having prior knowledge of his such doing. With a knowledge of his such doing in no case a Muslim is allowed to give his money to a *mudharib* to trading in unlawful goods and selling unlawful services.

**5. To evade the income tax drawing loans on interest is indeed a case of need, and a needy person is permitted to manage loans on interest.**

ويجوز للمحتاج الاستفراض بالربح

“An indigent person is permitted to seek loan on interest’, based on this view, the shares of such companies may be bought.

**6. Depositing of money with the bank is also a case of legal need.**

So, without benefitting from the amount of interest accrued the purchase of the shares of such companies will be permissible.

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<sup>1</sup> Fatawa Hindiya 4/333.

## 7. Profits Accrued from Interest-bound loans

On the funds sought on interest-bound loan the ownership of the loan-seeker is established, hence the profits gained through the investment of such funds are lawful. According to the Fuqaha even the funds of pure interest constitute part of one's ownership. To quote Ibn Nujaimi's words here :

وظاهر ما فى 'جمع العلوم' وغيره إن المشتري يملك الدرهم الزائد إذا قبضه فى ما إذا اشترى درهمين بدرهم، فإنهم جعلوه من قبيل الفاسد، وهكذا صرح به الأصوليون فى بحث النهى، (الجرالرائق ١٢٥/٦)

"What is apparently gathered from 'Jamul Uloom' and other juristic sources being that the buyer will be the owner of the extra *dirham* if he has purchased to *dirhams* for a single *dirham*. In fact the Fuqaha consider this sale from the group of *irregular deals*. This point has been specifically explained under 'Negation'.<sup>1</sup>

## 8. The Board of Directors holds the status of the shareholders.

Although their selection takes place on the basis of the majority vote, yet the shareholders have expressed their consent to constitutionally abide by the majority decisions. Therefore, the Board of Directors shall be considered the representative of all the investors.

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<sup>1</sup> Al-Bahrur Raiq 6/125.

**9. As a matter of principle, the acts of the agent belong to the clients.**

However, raising the voice of dissent on the part of the a shareholder against the interest-bound loans shall be regarded an enough reason to absolve him of the accountability of interest-bearing loans. So because of that it is the main work of business for which he has made the Board of Directors his agent and representative and not for drawing the interest-bearing loans. Yes, the Board's absolute and unrestricted agentship may lead one to include the permission of seeking-interest-bearing loans in Board's main work. But raising the voice of dissent against such deeds is an expression of his view, which weighs far more than mere an indication. The client, that is, the shareholder, will not share the responsibility of the acts done by the agent.

**10. In case the company's prime business is to earn money through investing its funds exclusively in interest-breeding ventures, the shares of such a company are never lawful to purchase.**

In general cases there might arise a need to legally deposit some amount with the *bank* in order to evade some type of taxes, the interest accrued this way has to be given away in charity without expecting any reward, or spending it in a welfare work. So doing shall be enough to absolve him of the accountability of involvement in interest. This viewpoint might be argued with the juristic fact that the



feast of such a person is permissible to accept the major part of whose property is lawful and the rest unlawful.<sup>1</sup>

In the same context the following expression of Hafiz Ibn al-Qayyim is especially notable:

وإذا خالطه درهم حرام أو أكثر أخرج مقدار الحرام وحل له الباقي بلا كراهة،  
سواء كان المخرج عين الحرام أو نظيره، لأن التحريم لم يتعلق بذات الدرهم  
وجوهره، إنما تعلق بجهة الكسب فيه، فإذا خرج نظيره من كل وجه لم يبق  
للتحريم ما عداه معنى”

“In case one or more ill-earned *dirhams* got mixed with the lawful *mal*, he should take out the *haram* amount from it and the rest shall become lawful with no shade of reprehensibility, apart from that the amount taken out was the *haram* itself or similar to it. The unlawfulness actually is not associated with the person of the ill-gotten *dirham*. Rather, it got associated from the aspect of earning and acquisition. When a similar amount is thrown out from the aggregate, the unlawfulness will lose all of its meaning with reference to the *rest*.<sup>2</sup>

**11. For the purification of the profits taking out of the amount equal to that of interest and spending it in charity without expecting any reward in Akhirah will be regarded sufficient. With the Fuqaha we find even more moderation and elasticity. It has just been said that the**

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<sup>1</sup> Hindiyah : 5/342.

<sup>2</sup> Ibn al Qayyim : Badaiul Sanai 2/257.

**interest, too, forms part of the concerned person's ownership.<sup>1</sup>**

About the position of Shariat on the gains or purchases made through investing interest-earned funds and in which cases it is lawful and in which unlawful Allama Shami writes :

رجل اكتسب مالاً من حرام ثم اشترى به فهذا على خمسة أوجه إما ان دفع تلك الدراهم، إلى البائع أولاً ثم اشترى قبل الدفع بها ودفعها، أو اشترى قبل الدفع بها ودفع غيرها أو اشترى مطلقاً ودفع تلك الدراهم أو اشترى بدراهم أخرى ودفع تلك الدراهم، قال الكرخي في الوجه الأول والثاني: لا يطيب، وفي الثالث الأخيرة بطيب، وقال أبو بكر: لا يطيب في الكل، لكن الفتوى على قول الكرخي، دفعاً للحرج عن الناس (رد المختار ٣/٤٢٢).

A person earned money through unlawful means and then made purchasing through it. Such an activity may possibly have five cases in all.

(i) He first gave the money to the seller and then purchased the item from him: (ii) first he made the purchasing and paid the money to the seller later. (iii) made purchasing in exchange of certain currency items, say *dirhams*, but paid to the seller other items (of the same type and value). (iv) The purchase was made without specifying the *dirhams* but were paid to him the same (unlawfully earned) *dirhams*. (v) The purchase was made with the promise to pay the selling party other specified *dirhams* but the payment was finally made with the unlawfully earned *dirhams* instead. According to the view of Imam Karkhi, in the first and second cases the purchased item is not properly

<sup>1</sup> Al-Bahrur Raiq : 6/125.

lawful for him; in other three cases, however, the purchased item shall be lawful. To the view of Imam Abu Bakar, contrariwise, in no condition out of the five ones the purchased item is lawful for him. In order to remove the hardship and difficulty from the general people the *fatwa*, however, is issued according to the former view.<sup>1</sup>

To be even more precise, according to the principle of Imam Karkhi (.....) if a sale deal was concluded on the payment of unspecified rupees and the defrayal of the due payment was made by the ill-gotten amount of money, the commodity purchased shall be regarded lawful, and the *fatwa*, as states Allama Shami, now is according to the same view. The cautious course of action, however, is that not just the profit earned by interest but also the profit accrued from the investment of the interest-involving profit from the aggregate one be given away in charity without expecting any reward for it in the hereafter.

## 12. Trading In Shares

Trading in the shares of the companies whose business is lawful is fully permissible. Conjecturing is not unlawful altogether. No business activity could be absolutely free from conjecturing. Concerning the *mal* and substances collected in *Zakat* the Prophet (Peace and blessings of Allah be upon him) himself asked the experts to conjecture and evaluate. This is found in the hadith literature under the title *al Kharsu Fiz Zakat*. Imam Ahmad

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<sup>1</sup> Raddul Muhtar 2/44.

(Rahmatullah Alaih) regards it a trustworthy tool in determining the amount of Zakat. The prohibited conjecture contrariwise, is the one which involves *risk* and most probable uncertainty, not the conjecture in absolute.

### 13. Future Sale

In this mode of business neither the price is defrayed nor the subject of sale (*mabi*) is delivered; this is obviously a credit deal on the part of both the seller and buyer. In *Hadith* this type of sale-purchase has been termed as *Baiul Kali bil Kali* (sale of credit for credit) and declared unlawful. Moreover, this type of deal involves gambling as nothing is actually purchased and sold. It is no more than a paper work on the basis of which a party reaps profit while the other side suffers loss.

### 14. Forward Sale

The sale/purchase falls under the category of matters which cannot be carried out with reference to the future time. To substantiate this by an acclaimed authority:-

وما لا تصح إضافته إلى المستقبل عشره: البيع وإجازته، وسدخه، والقسمة والشركة والهبة والنكاح والرجع والصلح عن مال والإبراء عن الدين- لأنها تمليكات للحال، فلا تُضاف للاستقبال.

“The things and deals which cannot be contracted with future time reference are ten: the sale and its permission, its cancellation, distribution, partnership, gift, marriage, revocation of divorce, settlement on payment of some *mal* and the remission of debt. All these contracts require immediate transfer of ownership

from one side to another, and the future time reference is opposed to the concept of immediate transfer of ownership.<sup>1</sup>

The forward sale, in essence, is not a sale; it at the most is a promise of sale, hence unfit to attract the concerned rulings.

### **15/16. Sale of Shares Before taking Possession of the Certificates**

Actually, this matter largely depends on the common usage of the share market and the official law concerning the transfer of the shares. But what is felt on the face of it being that the certificate is the symbolic evidence of the shares' possession. It may be like the real key to the actual share. So, the transfer of the name should be regarded as amounting to possession, as the submission of the key of the sold house to the buyer has been taken by the Fuqaha as equal to the transfer of possession. If only the *offer* and *consent* is to be regarded as possession, the ruling of the physical possession will turn quite meaningless. Therefore, the sale-purchase of the shares before taking the actual or, at least, *hukmi* possession seems incorrect.

### **17. The Brokerage**

According to the details furnished above the *brokerage* may be taken for the sale-purchase of the shares of only those companies whose prime business is permissible and

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<sup>1</sup> Al-Durr Al-Mukhtar with Al-Raddul Muhtar 4/260.

lawful. The middlemen between the *selling* and *buying* parties are termed by the *Fuqaha* as *dallal*. Concerning the wages of the *dallal* (broker), Allama Shami writes:

**تجب الدلالة على البائع أو المشتري أو عليهما بحسب العرف.**

“The payment of brokerage shall be binding either upon the seller, or the buyer, or upon both of them, as per the normal usage.<sup>1</sup>

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<sup>1</sup> Raddul Muhtar 4/46.

# 8

## Company & Shares : New Problems and Solutions

Paper contributed by Maulana Abu Bakr Qasmi of Shakarpur, Darbhanga, Bihar, India in response to the Academy's Questionnaire on the problems of shares and the company system

### Introductory Lines

#### Types of Business

Taking from the viewpoint of proprietorship the business is of three types :-

- (i) Personal or individual.
- (ii) *Shirkat* or partnership, and
- (iii) *Sharikah* or company

So far as the first two types of business are concerned, they are in vogue ever since the man has learnt to do business. Our great Fuqaha, too, have dealt in great detail, basically with the former two types of business. In the present age too, they are not primarily different from their past modes. We, therefore, need not bother ourselves about them here. The last one, the *company*, is indeed a new mode of business, which did not exist in the ages of our great

Fuqaha. This needs an elaboration here both conceptually and practically.

## Company : An Introduction

Lexically, the company means *Sharikah*; sometimes the fellow workers, too, are called *company*. As regards the meaning of company as a term of modern *economics*, to have a proper knowledge of it one shall be required to gather at least a brief knowledge of its history. Let's write a brief historical note on the company and its development here.

In the wake of the Industrial Revolution in Europe, when the bigger factories began to be launched in the earlier decades of the seventeenth century. For the purpose, the need was felt for huge sums of money the arrangement of which was not possible for one or a few persons. For the purpose the company system, that is, collecting different people's savings to get collective benefit through their use, gained currency. Initially, the companies were semi-official coming into existence under an official *charter* for foreign trade and enjoying vast authority.

They sometimes had the authority to make laws. Mint coins, have its own police force and army. East India Company, which latter enslaved India and the imperialism of which lasted for over one and a half century, was a company of the type. The companies of this type and with such vast authority do not exist now. It is the commercial companies which are found throughout the world which are established from the permission of the governments. The governmental institution which grants permission for the establishment of the companies, controls them and oversees



their working is named in Pakistan The Corporate Law Authority (The same institution may have a different name in other countries). This institution works under the Ministry of Foreign Affairs. After completing the process of permission from this institution when the company comes into being it assumes the status of a *legal person* or *hypothetical person*, which is capable of undertaking commercial and legal dispositions such as sale/purchase etc. It, likewise, may be a *plaintiff* and *respondent*, creditor and debtor. Now, to start its commercial activities, it needs funds; for the arrangement of which the people are invited to purchase shares. According to the requirement, and also according to the decision of the management what number of people might be invited to purchase share the company, the number of its shares is determined and notified. Moved by the notification, the interested people make investment in ventures to be undertaken by the company. For the amount invested by an *investor* the company issues *certificate* which is a proof of the investor's proportional share in the company's assets and properties. The same certificate is termed as *share* in English and *Sahm* in the Arabic Language.

### **Essence of the Company**

After gathering the brief knowledge about the company furnished above, here are some points to consider. The very first question we encounter is about the determining of company's legal status from the *Shariah* viewpoint. Some Fiqhi explanations in this regard suggest that, on the face of it, the concept of company is nothing other than the *aqd-e-Shirkat* (contract of partnership)

explained by the Fuqaha in the juristic literature. To be even more precise, it is the *aqd-e-shirkat* of the Islamic Fiqh which has been given the name of company by the modern economics. A great juristic authority of the past century, Maulana Ashraf Ali Thanawi, includes the company in the second type of the *aqd-e-Shirkat*, namely the *Shirkat-e-Anan*.<sup>1</sup>

However, the Ulama and Scholars who had opportunity to deeply study the whole of the company system and its specific laws are of the view that the company and its specific laws are very much different from each other, and there is a number of features which are characteristic of the company system but is not found in the contract of partnership.

### **Features of the Company System and the points of difference between company and Shirkat (Partnership)**

- A most conspicuous difference between the company and *Shirkat* is that a group of people is termed Company and regarded a person of legal existence, terminologically called *corporation*. In the *Shirkat*, on the other hand, the proprietorship of their shares is ascribed to each of them separately.
- The second feature of company is that it is considered an independent legal being. Taking from this very aspect, the proprietorship of all of its moveable and immoveable properties and assets is ascribed to it and is treated by law as such. All the concerned rights and liabilities,

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<sup>1</sup> Imdadul Fatawa 3/494.

likewise, are ascribed to it, so much so that the company becomes plaintiff and respondent, creditor and debtor. But the *Shirkat* lacks all such characteristics, merely because it has no separate legal existence, in it every partner is a *sharing proprietor* of all of its assets and properties: each partner is regarded the agent of another and shares the liabilities of *Shirkat* on an equal footing with other partners. The company system, contrariwise, is not so.

- A third feature of the company is that its shareholders share the company's proprietorship only to the extent that in the event of the company's liquidation and closure each shareholder will get his proportional share from the company's total property and assets. But before its closure no shareholder has any right to undertake any type of disposition *vis-à-vis* the company's assets and properties. A most conspicuous example of this being that in case a shareholder in a company incurred so much debt on him that led the law to confiscate his properties and assets, his shares in the company, in the form of the certificates in his hand, too shall be confiscated but never his share in the company's virtual assets and properties, so because the law bestows no such right on him. Opposed to this, in the joint partnership each partner has the statutory power and authority to undertake all types of proprietorial dispositions in the property and assets of the joint partnership. He may terminate his partnership at any time. In the event of a partner's incurring too much debts

forcing the law to dispossess him from all of his assets and properties, his proportional share in the joint partnership too shall be confiscated.

- The fourth distinguishing feature of the company is that in the event of any business dispute it is the company itself which is plaintiff and defendant its shareholders have nothing to do with all such matters. It is again because the company has a recognized statutory existence very much like the real person. In the court of law it shall be represented by its management. In the joint partnership, in sharp contrast, it is not the *shirkat* which is a plaintiff and defendant but all of its partners.
- The fifth feature of the company is that no shareholder of it can draw his invested capital back from it; he, however, can sell his shares to anyone else interested. In *shirkat* contract, conversely, he may revoke his partnership any time and take his capital back when he so wishes.
- The sixth thing peculiar to the company system is that the company's legal liabilities are limited, normally to the assets and properties it owns. But in the *aqd-e-shirkat* the liabilities are not generally restricted to its business capital and assets. In special cases they may go beyond this limit.

The detail furnished and the features of the company shown above make it clear beyond doubt that the concept of company is immensely different from that of *shirkat* and traditional partnership. Keeping in view the company system's distinguishing features it may definitely be observed that the *company* cannot be included in either known kind of *shirkat* and partnership. The men of Islamic

knowledge know it well that the Islamic *Fiqh* makes four types of the contract of partnership, namely:

- (1) *Mufawadhah* (a type of partnership in which capital, work and liabilities are shared by the partners on an equal footing.)
- (2) *Inan*, (partnership in which services and capital are shared on proportional basis).
- (3) *Sanai* (entrepreneurs' partnership in work and the earning on an equal footing).
- (4) *Wujuh* (Credit Partnership)

With the inclusion of *mudharabah* in the contracts of partnership the *shirkat* (partnership) may go into five types. In neither type of the *aqd shirkat* the company system could be included completely as it becomes evidently clear by having a close observation of the features and characteristics of them separately.

## **Determining the position of Shariat on Company**

The second question we encounter here is that when the company system of the modern age could be included in neither kind of *shirkat*, what is the legal position of *Shariat* on it? Is it permissible to invest one's capital in company's shares? Vis-à-vis this question two different opinions have been shown by our contemporary Ulama. According to one opinion it is unlawful and impermissible, for it cannot be included in either kind of traditional contracts of partnership which is restricted to five types, as mentioned just. The second viewpoint, however, is that the company system should not be declared unlawful merely on the ground that it differs substantially from all the five types of

the traditional and age-old concepts of partnership. So because of the fact that the traditionally known five types of *partnership* mentioned by our Fuqaha are not clearly stated in the Qur'an and Sunnah. This classification is basically based on the juristic induction of the types of partnership in vogue in their ages. No clear statement in Qur'an, Sunnah and the juristic literature which clearly specifies that any type of business other than those five ones shall be impermissible and outlawed. Therefore, any type of partnership other than the five traditional ones shall be regarded lawful as long as it is not opposed to the specified principles of partnership. On a closer study of the special features of the company it is found that most of them are related to the aspect of management, not against the norms of the Shariat. However, two points about the company deserve observation.

First is that while the *aqd-e-shirkat* has no statutory existence, the company possess a full statutory personality termed '*statutory person*'. The basic question we face here now is to determine : does the concept of the statutory person holds good in the eye of the Islamic Shariat and is acceptable to it? A close study of the related detail shows that in the Islamic Fiqh there exist no such term as the *statutory person*. We, however, have more than one precedences of the statutory or 'assumed person' in the Islmiac Fiqh, such as the endowment, baitul mal, (public exchequer), estate engulfed by debt, and according to non-Hanafi three schools of Islamic jurisprudence, the *Khiltaal-Shuyu* (a mixture of the jointly-owned properties and estates). These four things offer good precedences of the *statutory personality* and *assumptive entity*. Although the term

has not been applied, yet they fall under the same category, that is, the *statutory person*. Each one out of the four things has been treated in the *Fiqh* as such, and the rulings of the factual person have been applied to it. For example, the *waqf* (endowment) becomes owner and proprietor, creditor and debtor, plaintiff and defendant. Quite obviously, all such qualities and capabilities are attributed to actual person. More evidently, the *waqf* institution has been granted the status of the statutory person, as stated above. Similarly, the *baitul mal*, too, has been treated by the *Fuqaha* like a statutory person. Although it is jointly owned by the public, yet no individual can lay a claim of ownership to its cash and properties. It is the *baitul mal* itself which is regarded the owner of all of its properties and assets, its various departments hold the status of the statutory person, and in times of need credit may be sought from one department of it for another. The creditor and the debtor departments of *baitul mal* assume the position of the statutory person. In the same way, the estate of a deceased engulfed by *debts* is regarded a debtor which has also been treated as a statutory person. In the same manner, in the *Khiltatus Shuyu* the Zakat is not payable from the individual shares of people; it is the total from which it is to be paid. This establishes well that according to three schools of Islamic Jurisprudence *Khilta al Shuyu* (a joint ownership assumes the status of the statutory person. In short, what has been stated above provides enough indication to that the concept of the statutory person is by no way an alien and unlawful concept to the Islami

Fiqh. It is the term the *statutory person*, which is a newly coined item.

## Second Considerable Aspect of Company

The next feature of the company system worth deliberation from the Shariat viewpoint is its concept of limited responsibility. That is, the responsibility of company's shareholders is limited only to the capital they invested in the company's ventures. The result of this concept obviously is that in the event of the company's incurring losses the maximum loss they may sustain would be that their capital amounts may sink, but in the event of the company's incurring debts more than its assets and properties, the shareholders' responsibility can not go beyond the capital they invested in the company. On similar lines, the company's responsibility is limited only to its assets. For the exaction of the debts what the law can do at the most is to confiscate the company's assets, and in no case can go beyond this limit. Here the ponderable point is that the concept of the limited responsibility is bound to result in the loss of its creditors as there will be no other way for the payment of the debts exceeding the company's assets and properties. This phenomenon will spoil the liability towards its creditors. The same phenomenon is termed, in the Islamic jurisprudence, as *Kharabuz zimmah* (*desolation of responsibility*) or *spoiled liability*. In view of this simple problem some Ulama regard the concept of 'limited liability to be unacceptable to the Islamic Shariat, for it adversely affects the rights of the people (read investors here). But the other angle of the problem leads us to that the concept of 'limited liability' originally emanates from the concept of the 'legal



entity.' Once the legal entity is recognized, the concept of 'limited liability' turns acceptable. To explain the point, in the event of a real person's turning bankrupt his creditors can realize their debts only from his assets. Any further demand on the part of the creditors shall not be entertained by law. The same was the way the Prophet (Peace and blessings of Allah be upon him) had said to Muaadh's creditors.

خُذُوا مَا وَجَدْتُمْ، لَيْسَ لَكُمْ إِلَّا ذَلِكَ

"Take whatever you can find; you can take no more than this."<sup>1</sup>

In the event of death of a bankrupt debtor he is regarded and treated as *Kharabuz-zimmah* (person of spoiled liability), with the legal result that there remains no way for the repayment of the debts.

The detail furnished establishes it that if a real person dies in the state of bankruptcy, his liability cannot exceed his assets; and his liability towards his creditors becomes spoiled. In the same way, once the company is regarded a *legal entity*, now in the event of its liquidation after its getting bankrupt, its liability should remain limited only to its assets. For, the liquidation of the company is its legal death.

In short, the concept of the 'limited liability' is not alien and unacceptable to the Shariat of Islam that would have resulted in the unlawfulness of joining the company system. Of 'limited liability' the slave permitted to

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<sup>1</sup> Muslim : Chap. Wadul Jawaih.

undertake business (*Abd maazun fit Tijarah*) offers an interesting example. Such a slave undertakes business under the permission of his master. His merchandise and the profits he earns all are the ownership of his master. If such a slave incurred debts on him, the claims cannot go beyond the price of the slave. Neither the slave nor his master can be asked to repay the debts exceeding the slave's price. This is a yet another example of getting spoiled the liability of the debtor towards his creditors. A close study of this case will show that the just furnished example is very much closer to the concept of the limited liability of the company system.

To cut the long discussion short, the reasons leading a number of Ulama to outlaw the company system are note without legitimate precedences in the Islamic Fiqh. That is why the majority of the men of Islamic learning has declared the current company system quite permissible with no share of reprehensibility.

Towards the end of this introductory note let's discuss a point of considerable import. It is about to determine the status of the *share*. The question we encounter is : Does the share of a company represent the shareholder's proportional proprietorship in the company's assets and properties? Concerning this question some contemporary ulama are of the opinion that the share issued by a company does not represent the ownership of the shareholder in the company's assets and properties, it is just a document and evidence of the fact that he has given a certain amount (mentioned on the certificate) to the company. The share certificate, according to this opinion, is very much like the documents of credit like that of the *bonds, securities*, etc. The only difference between the two is no more than that the

bonds etc. fetch interest according to a fixed ratio and the shareholder gets the proportional profit the company makes. Now the point worth consideration is along what basis this opinion has been adopted. The only point the supporters of this opinion make being : should the shares represent the shareholder's proportional ownership in the company's assets and properties, investor's proportional portion from the company's assets ought to be confiscated alongwith the investor's other assets in the event of his going bankrupt. But this is not the case, as everyone knows it well. This is indicative of the fact that the shareholder does not share the assets and properties of the company.

However, a deeper look at this opinion suggests that it is a mistaken one. The literature available on the introduction of the company system tells us, in clear terms, that the shareholder shares proportional ownership of the assets and properties of the company. In case the company liquidates, the shareholder not just receives his invested capital back, he will share the assets and properties of the company in due proportion as well. But, in the same case the holder of the financial interest-bearing instruments other than the shares will get back only the capital invested with due interest.

The detail furnished above makes it abundantly clear that the share certificate is not mere a document of the shareholder's credit on the company. It is representative of the shareholder's proportional proprietorship in the company's assets and properties instead. So, when a shareholder sells his shares, he in fact sells his proportional

ownership in the company's moveable and immovable assets and properties. However, if a company is still passing through the process of establishment and owns little immovable assets and properties, the sale of its shares at this stage will actually be the sale of cash in the exchange of cash itself. The rulings of the Shariat pertaining to both the modes of sale will considerably differ from one to another.

The long and short of the discussion is that the status of the share certificates is substantially different from that of the documents of loan. The certificates offer a proof of the shareholder's proportional proprietorship in the company's assets and properties. As regards the objection of non-confiscationability of the shareholder's portion in the company's assets and properties in the event of his going bankrupt alongwith his other assets and properties, it may be cleared by that a bankrupt shareholder's proportional portion in the company's assets, too, may also be confiscated. But it is the share certificates which are to be taken away from him. The confiscated shares shall be sold to any desirous person completely following the way of the normal sale/purchase of the shares.

To conclude the discussion, the reasons on the ground of which the sale/purchase of the shares is regarded unlawful are away from reality and each one of them is doubtful. The correct way, therefore, is that if the company's prime business is lawful and permissible, its shares may be sold and purchased without any shade of reprehensibility.

(The discussion and the details furnished are largely based upon Maulana Muhammad Taqi Usmani's valuable books *Fiqhi Maqalat* and *'Islam aur Jadid Mai'ashat wa Tijarat*

(Urdu). For further detail the interested readers may refer to the original book.)

## **Position of Islamic Shariat on Shares, their Sale, Purchase and Related Fiqhi Rulings**

From among the new modes and ways of trade and business which the modern age is witnessing a commoner one is the sale-purchase of the shares. Since the share system of business is not so old and the world knew it only in the last few centuries, the traditional Islamic Fiqh hardly provides any direct guidance and details. This phenomenon asks us to deliberate on the similar injunctions of the Qur'an, the Sunnah of the Holy Prophet (Peace and blessings of Allah be upon him) and the explanations furnished by our great Fuqaha so that we might find proper solutions to the problems and complex issues which the modern modes of trade and business pose to us. First of all we shall be required to know properly the fact and nature of the modern share system.

As far as the determining of the nature of share is concerned, it is perhaps known to everyone else that the modern shares system is a mode of business based on the concept of the joint proprietorship of the company's properties and assets. This is a mode of business very much similar to the traditional concept of *Shirkat* or *partnership*. The traditional mode of *shirkat* used to be the contract of *shirkat* (partnership) between a number of people. This is called now the *partnership*. But the new type of *shirkat*, which has come into existence only in the last few centuries, is termed as *joint stock company*. Along this new concept of

business partnership the stock markets are doing business throughout the world. In the worldwide network of stock markets the daily business involves million and billions of dollars and rupees. Since the working of the stock markets has various modes it will be imprudent and unwise to discuss the Islamic solutions unless the fact of the company is known to us.

### **What the Share actually is?**

A 'share', called *sahm* in Arabic, is a document which is a proof to the effect that the shareholder has a proportional ownership in the company's assets and properties. To be even more precise, the certificate given to its holder is in fact a document which represents his proportional ownership in the company's property. The person purchasing the shares of a company establishes his ownership in proportion to the capital he has invested in the purchase of its shares. However, the ownership of the shareholder can establish only when the company has some possessions and owns some assets and properties. If a company now is being established and is passing through the process of starting, at this very initial stage there is no question of sharing the ownership of such a company which itself still owns nothing. The purchase of the shares of such a company is now a partnership and not the share in the ownership. As it is generally known as soon as a company comes into legal existence, it, first of all, publishes its prospectus and memorandum and announces its issue of shares. By so doing the company starts inviting the interested people to share business with it by purchasing its shares. The interested person purchasing its shares at its

invitation is a partner in its business and commercial activities and the nature of his relationship with the company is of a 'business partner'. As the business, commercial and productive activities of the company grow and the company begins to make profits, it has to purchase properties such as pieces of land and machines for its use. After this development the shareholder's proportional ownership in those properties and assets gets established on its own. Now its share certificates turn into the documents of proportional ownership in the company's belonging, and possessions. The status of the share certificates from this aspect is entirely different from other instruments sold and purchased in the capital market such as the *bonds, securities*, etc. The latter types of instruments are the documents that show that the holder of such documents has given the amount as loan to the company. The holder of such instruments by no way shares the company's properties and assets. On his capital amount he receives the interest as per the rate already fixed. The loan contract is purely a gratuitous transaction; the creditor is entitled only to receive his loan, and in no case more than this. The shareholder, on the other hand, shares the ownership of the company's possessions and assets in proportion to the amount of his capital invested in shares and the company's profits and in the event of loss he will bear the losses in the same proportion as well.

Another major difference between the certificates of shares and other instruments of the *capital market* is that the purchase of shares in no case could be returned to the

company in order to get the invested capital back. To change his shares into cash the shareholder has no option other than selling them to an interested buyer through the medium of the *stock exchange*. Other instruments, by contrast, could be changed into cash either by way of selling them to any interested the way shares are sold, or by returning them back to the company, or other financial institutions where from he got them initially. This too establishes well that the shareholder's relationship with the company is never that of the loanee and loaner, he co-owns the company's properties and assets in proportion to the capital he has invested. This type of partnership is called the 'joint stock company' and to the *shariat* of Islam this is a lawful mode of business and trade.

It is mandatory to learn here that the shares of such a company which by now owns little assets and properties except the cash can not be sold for more than their face value. For at this stage they hold the status of cash, and the cash can be sold for cash with the provision of complete parity and equality.

### **Buying the shares of such companies as possess a mixture of cashes and other assets and properties**

After its coming into being legally, when a company assumes a tangible existence, its assets, in most cases, turn a blend of cashes and assets. Although this blend comprises the *ribwi* and *non-ribwi* types of assets, still the shares of such companies may be bought and sold in the exchange of cash amounts, with the proviso that the sale price is more than the purchase price. This is in order to place the cash from the sale price against the face value of each share and the



remnant cash against the assets and properties of the company. The case of the *saif muhalla biz-zahab* (a sword with golden coating) and of the *mintaqah mufazzazah* (a girdle with silver coating) offer an excellent argument to support the view of lawfulness. In both the cases cited, a blend of the *ribwi* and *ghair ribwi* substance is sold only for the *ribwi* substance. This is the Hanafi viewpoint. But, according to Imam Shafie, the blend of the *ribwi* and *ghair ribwi* substances cannot be sold for only the *ribwi* one unless the *ribwi* substance is set apart from the blend. Some Shafites as well as the Hambalis, however, hold that if the blend's *ribwi mal* exceeds the *ghair ribwi* one in amount, it cannot be sold for purely *ribwi mal*. The blend of the *ribwi* and *ghair ribwi mals* could be sold for the purely *ribwi* one if the *ghair ribwi* outweighs the *ribwi mal*. The detail set above makes it clear that according to Imam *Shafai* the mixture of the cash and other assets cannot be legally sold for pure cash. But according to some *Shafites* and *Hambalites* the interested purchaser shall be required before entering into the contract of the purchase of shares, to gather a knowledge about the assets of the company to find out whether it is the assets which outweigh the cashes and only then decide to buy or not the shares of a given company. On such an examination if it is found that the assets in the mix of the company's possessions outweigh its cashes, its shares will be lawful to purchase for cashes, but not if found otherwise.

## **Purchasing the shares of the companies doing an entirely unlawful business**

The companies whose prime business is unlawful such as the manufacturing of wine and other intoxicating drinks, trading, export/import of the pork, or they invest in banks in interest-earning schemes or do a business which involve interest and gambling, insurance, etc. the shares of such companies cannot be sold and purchased from the shariat standpoint. The banks and other financial institutions whose prime business is to engender money by way of interest-involving commercial activities will share the same ruling, and their shares, if they ever bring their issues, will not be lawful to purchase.

## **Buying the shares of the companies whose prime business is lawful but rarely they involve in unlawful modes of business**

In case the prime business of a company is *halal*, for example, it manufactures and produces the tools of engineering or other types of consumables, or does the business and export/import etc. of other lawful things, but sometimes it has to arrange loans for it on the payment of interest to the lenders merely to evade the unjust income tax and other types of taxes, what about the shares of such companies? About the shares of such a company there exists a difference of opinion in the Ulama and Fuqaha of the modern age. It perhaps needs not repetition that the interest-bearing transactions (paying or receiving the interest on debts and credits) the company sometimes gets involved in form no essential part of its prime business. It is in fact the

legal implications which force it to take part in such unlawful things. Still, some ulama are of the view that the share of such companies cannot be purchased even though the interest-involving transactions of the company constitute no part of its main and prime business. According to the Ulama of this view, the purchase of the shares of such companies in fact amounts to making the company one's agent to undertake interest-involving dispositions on one's behalf. Therefore, it will be completely unlawful to buy the shares even of such companies whose prime business is *halal* and lawful. But this view is not good enough to be entertained. A close study of the interest bound transactions makes us recognize the fact that the company's involvement in interest bound dealings is of two types. One is that the company arranges loans for its business purposes on interest. Much as the company commits a sin by so doing, yet the income and profits of it get not impure as nothing unlawful mixes up with it. The loans sought on interest form a legitimate part of its ownership. The profits earned through investing such loans will be held lawful by the Shariat without any doubt. This too may be assailable, at the most, by that the company is the agent of the shareholder and therefore the interest-bound transactions concluded by the company will be equally attributed to him as well, and he too shall be regarded willing to such decisions of the company. However, this objection may be dispelled by opposing such moves of the company, as the late Maulana Ashraf Ali Thanawi has suggested. If the shareholder knows it already that the company is going to undertake such

unlawful dispositions, he should oppose it and communicate his note of dissent to the Board of Directors. His so doing shall be enough to absolve him of the responsibility of the committed sin, though his note of dissent is not entertained. But if the shareholder could know nothing about the company's such impermissible dispositions, he will not share the responsibility at all, for the contract of agency cannot come into existence without the knowledge of the client.<sup>1</sup>

This note of disagreement and disapproval may be communicated to the company, by a letter. Today the best way to do so is to raise the voice of opposition in the company's annual meetings.

However, in the management of the company the decisions are taken on the basis of the majority vote; and for any dissent voice raised by an individual or minority group it is hard to attract the attention from the company's Board of Directors. By raising a dissenting voice, however, he may absolve himself of the responsibility of the interest-bearing transactions undertaken by the company with a complete disregard to the dissenting voices. The sound opinion vis-à-vis such companies, therefore, should be to permit the purchase of their shares. Every Muslim buyer of such companies' shares shall be required each year to express his disagreement with the company's such impermissible acts. The other way of the company's involvement in interest-bound dealings is that it loans out its cash to banks and other financial institutions in order to earn interest this way.

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<sup>1</sup> Imdadul Fatawa 3/491.

This now has become quite a general practice of most of the companies in our age. They deposit their surplus funds with the banks and thereby earn interest and augment their profits and incomes. Vis-à-vis such cases there might be two problems. The first is that it apparently entails the shareholder's participation in such impermissible deals. This problem may be solved by the explanation furnished just. The second complexity is that the company's *dividends* will obviously be the interest earned amounts. The earning made through interest is obviously unlawful as there exists a perfect consensus amongst all the men of Islamic learning and the schools of Islamic Jurisprudence on this count. This problem may be met according to the explanation offered by Maulana Ashraf Ali Thanawi. According to the Maulana for the investor it is very unlikely to categorically know that his company has made earnings through interest-born funds. Granted it has made such earnings, they will constitute only a smaller part of the total gains and the *dividends* will get mixed with this impure amount of *mal* only to an inconsiderable extent and it is almost an agreed upon proposition that the Shariat of Islam holds it permissible for the owner to use a mix of the pure and impure, or, in other words, legally earned and ill-earned, *mals*, provided that the pure outweighs the impure one in the mix. Gifts may also be accepted from such a mix of *mals*, but there exists a very nice point of difference between the gifts from such *mals* and the company's *dividends*; in the case of gifts there exists every possibility of its being a part of the pure substance. So, it may be accepted without hesitation. The case of the

company's profits, by contrast, profoundly differs from that of the gifts. The company has known heads of earning and income, each one constituting a proportional part of *dividends*. To purify the *dividends* from impure element, the shareholder shall be required to know how much of the *dividend* is from the *interest account*. Then the percentage thus known shall have to be partly with without expecting any Akhira-bound reward for it.

### **Buying the shares of the companies which involve in interest-bound matters under legal compulsion**

The shares of the business companies doing purely *halal* commercial activities but often under legal compulsions have to deposit a certain part of their assets and cashes with the Reserve Bank of India and receive due interest on those deposits and, likewise, they sometimes have to buy *bonds* which too attract interest may be bought. But the amount of interest shall have to be disposed of in charity without expecting my reward in the Akhirat.<sup>1</sup>

### **What about the Profits earned through the funds borrowed on interest?**

The profits earned through investing the funds borrowed on interest are the legal possessions of the owner, hence *halal* and purely lawful.

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<sup>1</sup> Fiqhi Maqalat 1/150.

## **Shall the agent's act be invariably attributed to the Client?**

The company's Board of Directors is in fact the agent of the shareholders in managing the affairs of the company. However, every act of the attorney is not to be necessarily ascribed to his client. The statements of the Fuqaha make it clear beyond ambiguity.

## **Under what conditions the client is regarded absolved of the responsibility of his attorney's act?**

If the Board of Directors, acting upon the majority vote, arranges some interest-bound loans for the company, or undertakes some interest-involving transactions while the company's prime business ventures are lawful and the shareholder communicates his note of dissent to the Board in the annual meets of the company, the communication of the note of dissent to the Board of the company will be regarded enough to absolve the shareholder of the responsibility of the sin involved.

## **What about the interest received from the company as a portion of the total profit due to him?**

In case the company's *dividends* include a known amount of *interest*, this amount shall have to be disposed of in charity to purify the dividends. To substantiate the point with an authoritative reference:

إذا دفع المسلم النصراني مالاً مضاربةً بالانصف فهو جائز إلا إنه مكروه، فإن اتجر في الخمر أو الخنزير فربح جاز على المضاربة في قول أبي حنيفة وينبغي للمسلم أن يتصدق بحصتيه من الربح.

“A Muslim’s entering into a *mudharabah* contract with a Christian on one half is lawful but not fully approved by the Shariat. Then, if he invested (the Muslim’s) *mal* in the business of wine and pork and made profit, the Muslim *mudharib* may share the profit according to the Hanafi viewpoint. However, the Muslim is better advised to dispose of his share from the profit in charity.”<sup>1</sup>

### **What about the interest coming into the earnings of a company whose business is primarily lawful and permissible?**

In case the company’s gains include some amount of interest which is further invested to earn profits while the company’s prime business is permissible, the percentage of the interest-born gains shall have to be given away in charity for the purification of the total gains. By having done so, the shareholder will be allowed to use the rest of his profits. The following words of an authority substantiate this standpoint:

”من ملك أموالاً غير طيبة أو غصب أموالاً وغلطها ملكها بالخلط ويصير ضامناً، فلذلك قلنا ينبغي للمسلم أن يتصدق بحصته من الربح.

“In case a person owned impure *mals*, or usurped some types of *mals* and blended it with his legally owned *mals*, he will become the owner

<sup>1</sup> Fatawa Alamgiri 4/333.



of those *mals* based on (the principle of) mixation. And the responsibility of those acts of sin will turn to him. For this reason we hold that the better course for a Muslim in such conditions is to give in charity his share from such gains.”<sup>1</sup>

### **Trading in shares to earn profits**

Trading in shares, that is, buying the shares of the companies with an intent to sell them later after an increase in their value is fully a legitimate business and the shariat has no objection to such type of business. However, for the permissibility of trading in the shares of companies, four conditions have to be carefully observed. That is:

- (1) The company's business and its commercial activities are basically permissible,
- (2) For the sale of its shares at more or less than their face value the company must possess a mix of cashes and assets, moveable and immoveable. If the company possesses only the cashes, its shares cannot be bought at a value more or less than their face value.
- (3) If the company indulges in interest-bearing dealings, he must raise the dissenting voice in the company's annual meetings.
- (4) If the *dividends* include an interest-born portion, given from the company's *interest* deposits, the

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<sup>1</sup> Raddul Muhtar.

due proportion from the dividends has to be given away in charity.<sup>1</sup>

To conclude, the shares of the companies may be bought and sold provided the four mentioned conditions are properly observed. As regards the question that the trade in the equity shares essentially involve speculation and surmise, it is quite clear that the trades people buy and sell the shares keeping in view the present condition and the future prospects likely to develop in the share markets. We face here a definite question with regard to position of Shariat *vis-à-vis* the speculations and surmise. Is the Shariat opposed to all types of speculation, and will a role of surmise in business render the trading in the shares as unlawful? *Vis-à-vis* this complex question the ulama, generally speaking, stand dividend into two groups, sticking to two differing standpoints. Shaikh Muhammad Siddiq-al-Zarir, a man of exceptional knowledge, and insights in the *fiqhul-mu'amalat* and many others are of the opinion that trading in the shares is not like trading in other ordinary commodities and merchandise; trading in shares is largely associated with the market speculations, most of them unreal and fictitious, forged merely with the view to earn undue profits by airing rumours, hence it is unlawful to trade in the shares. According to this view permission of the sale/purchase of the shares with a view to earning profits will amount to open the way for speculations and conjecturing. The shares of a company may be bought only as a way to invest one's money in it and share its gains and

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<sup>1</sup> Taqi Usmani, Islam aur Jadid Maeeshat-o-Tijarat

losses. However, when deliberated as a matter of principle, what emerges out as a primary question is to determine whether the share could be an object of sale/purchase there remains hardly a reason to make difference between its saleability merely on grounds of motives and intent after that the saleability of the shares of the company has been established in the light of the strong arguments and is provided that the share in fact is the sharing of the proportional ownership of the company's assets and properties. The sound opinion, therefore, is of those who regard the shares an object unconditionally saleable, except the four conditions stipulated above, and maintain no difference between the motives and intents at work behind the sale/purchase of shares. As to the fear that this permission is bound to give rise to form opinions and speculations about the market commodities without knowing facts, basing their speculations on rumours and fictitious foretelling and groundless assumptions, a proper observation of the conditions will minimize such things. But if the sale-purchase of the shares is not meant to trade but to merely neutralize the gains and losses without giving and taking possession of the shares and their prices, it is indeed nothing but a fictitious mode of business and the Shariat of Islam can never recognise it as legitimate and lawful.

### **The Future Sale**

A bargain in vogue in the share markets is called *Future Sale*. This bargain i.e., the future sale is not meant to purchase the shares; its sole objective is merely to neutralize the losses and gains by availing of the fluctuation of the

values of shares in the share market. To explain the point, A, for instance, concluded a bargain with B to purchase 100 shares at a price of rupees hundred for each share and fixed a future date, for example, August 25.

So for the payment of delivery, on the approach of the fixed date the value of the share got increased by rupees 50 each share. Now A will make a claim on B for a sum of rupees five thousand. But, in the event of a decrease in shares price on the approach of the fixed date by fifty, the A shall have to pay rupees five thousand to B. As it is clear, this bargain is no more than a paper work; neither the buyer pays price to the seller, nor the seller delivers shares to the buyer. No party is desirous to conclude actual bargain but merely to suffer losses or gain profits on the basis of pure speculations without delivering the object of sale or receiving the price. This type of future sale is a mode of pure gambling, hence categorically unlawful. Condemning the wine and gambling, the Holy Qur'an says :

يسألونك عن الخمر والميسر، قل فيهما إثم كبير ومنافع للناس، وإثمهما أكبر من نفعهما.

“They ask you concerning wine and gambling. Say; “In them is great sin and some profit for men, and the sin in both of them is greater than their sin.”<sup>1</sup>

The following verse is clearer still in decrying both devastating moral evils along with the false objects of polytheistic worship :

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<sup>1</sup> Al-Quran 2:219.

يا ايها الذين آسنوا انما الخمر والميسر والأنصاب والأزلام رجسٌ من عمل الشيطان، فاجتنبوه، لعلكم تفلحون، انما يريد الشيطان أن يوقع بينكم العداوت والبغضاء فى الزمر والميسر ويصدكم عن ذكر الله وعن الصلوة فهل أنتم متتهون-

“O you who believe! Intoxicants and gambling, the stones of worship, and (divination by) arrows, are the abomination, of Satan’s handiwork. Eschew such abomination, so that you may prosper. Satan wants to excite enmity and hatred between you with intoxicants and gambling, and hinder you from the remembrance of Allah and from prayer, will you not then abstain?<sup>1</sup>

Yet again, the future sale, in which the sale-purchase does not take place at all but is intended to neutralize the losses and gains under the guise of mere a nominal sale-purchase is purely unlawful. Similar other types of *bai’* like *munabzah* and *mulamasah*, too, have been decried as unlawful for no other reason than that they involve an element of gambling. Under the *bai mulamasah* and *munabazah* we find in at Hidayah the following words:

لأن فيه تعليقاً بالخطر، وقال فى هامش الهداية، اى للتملك بالخطر، والتملكيات لا عمله، لأدائه الى معنى القمار.

In this case the sold item is bound to risk. In the margins of Hidayah, it has been said, that is to say : The possession gets risky, whereas the matter of possession cannot

<sup>1</sup> Al-Quran 5:90-91.

withstand such risk as it may lead to the meaning of gambling.<sup>1</sup>

### **Concluding Sale-purchase with future time reference**

Forward sale, that is, sale with future time reference, and neither the buyer pays any price nor orders the company to manufacture goods for him is not a sale according to the established principles of the Islamic Shariat. This at the most might be a promise to sell. Such a type of an unrecognized sale by no way is binding on either side. That is, if either one side holds back from his promise, he cannot be forced by law to fulfill. It is no more than a break of one's promise, and the *law* has no role to play in such matters.

### **What does the taking possession of the shares mean?**

To have a correct answer to this question we first shall be required to determine what the taking of the possession of a thing actually mean according to the Shariat of Islam and whether it always means to physically take the object into one's possession to complete the meaning of the term possession. The fact of possession, as the Islamic jurisprudence specifically put it, is that the selling party detaches the object of sale from his possession in such a way as to enable the buying party take the object of sale into his custody out of his volition, and make proprietary disposition in it any time of his wish without facing any

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<sup>1</sup> Hidayah 3/38.

hindrance on the part of the selling party. Discussing the fact of possession, al-Kasani writes:

ولا يشترط القبض بالبراجم لأنّ معنى القبض هو التمكين والتخلي وارتفاع الموانع عرفاً وعادةً وحقيقةً.

“The realization of possession does not necessarily involve to capture the object by hand; the meaning of possession is in fact enabling (the other side) to own it and detaching oneself from it by removing the obstacles that might hinder him from taking the object into his possession. This is according to the normally established custom, usage and reality.”<sup>1</sup>

The gist of the detail but above is that taking possession of an object of sale, according to the Islamic Shariat, is that the selling party detaches it from his surety and letting him take it into his surety in a way as he is fully able to make any type of dispositions in it without facing any hindrance on his part. If the possession of the shares gets transferred in the same manner as pointed out above, and the buyer turns able to make proprietary dispositions in the shares he has purchased, the possession will take place to the satisfaction of the shariat demands. Buyer’s physical possession is not always required; virtual possession is just enough. Much as the possession is complete if the said things take place, yet it is the certificate with changed name which will be a written proof of the buyer’s possession of the purchased shares. Therefore, the cautious way will be for the buyer of the

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<sup>1</sup> Badai al Sanai 5/244.

shares not to sell those shares to anyone else unless he is in receipt of the certificates by his name, and the *fatwa* should be issued accordingly.

### **Sale-purchase of the shares before receiving the certificates**

In case of the spot sale of shares is the buyer allowed to sell those shares to a third party while he has not yet taken the possession of the share certificates and his possession over the shares is virtual and legal and not material and actual? Concerning this query it has already been said that while taking possession of a thing is determined by the usage and custom, the taking possession of the certificates is the only way to establish the buyer's possession of the shares. Moreover, the absence of the certificate is feared to lead to disputes and deception and without proper documents the people generally do not accept one's claim of buying. This demands that the buyer should not be allowed to sell the shares to a third party unless he himself takes possession of the certificates, clearly mentioning his name as buyer.

### **Engaging Onself as Stockbroker**

The middleman between the selling and buying parties is termed as *broker*. As an expert in the sale/purchase of the shares in the share market, the broker offers his services to both the seller and buyer. Such a person is an agent and a common employee. One may serve as broker only of those companies' share whose prime business is lawful. He may claim his labour's charges as well. As to those companies whose prime business is unlawful, a



Muslim is never permitted to engage himself as *broker* inside or outside the stock market.<sup>1</sup>

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<sup>1</sup> Bahtho Nazar, Issue 21 p. 38)

# 9

## Shares from the Islamic Perspective

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1. By buying the shares of a company the shareholder turns the co-owner of the company in proportion to the money one has invested. The share certificate represents the shareholder's proportional ownership in the company's assets and properties. It is, therefore, a mistaken view to think that the certificate is no more than a document which shows that one has invested such and such amount in the company. It is quite correct, as holds Maulana Ashraf Ali Thanawi, that the company system actually is a mode of *Shirkat-e-Inan*. Though in the concept of company there are some aspects which are not found in the conventional *Shirkat-e-Inan*, yet they are not so substantial as to change the essence of the *Inan* altogether. In short, it will be entirely incorrect to maintain that the shares certificates are only documents showing the deposit of a particular amount with the company.
2. The company whose total assets are in the form of cashes and has not yet transformed them into immoveables, the shares of such a company at this stage cannot be sold/purchased at an increased or decreased price as

compared to their face value. It must be sold/purchased only at its face value.

3. The company whose assets are an amalgam of cashes and properties, estates, pieces of land, shops, manufactured or raw material – the sale of the shares of such a company will be permissible only for a cash more than the face value of each share. Any difference in this regard will render the sale contract invalid. To illustrate the point, in the company's amalgam of cashes and other assets, a sum of ten rupees, for instance, sets against each share; each share, then, must not be sold/purchased at rupees ten or less than it; it should be sold/purchased at a price of more than ten rupees, this way making the ten rupees against the sharer's face value and the rest against other moveable and immoveable assets and properties of the company.
4. The shares of such companies whose prime business is unlawful cannot be purchased in any circumstances.
5. The companies whose prime business is lawful but at times they have to involve in interest-bearing loan transactions merely to evade the unjust rules of income taxes, it is permissible for a Muslim to buy the shares of such companies.
6. If the companies whose prime business is lawful have to deposit, under legal compulsion, a portion of their assets with the Reserve Bank of India, or have to purchase *security bonds*, at which they are paid interest, the shares of such companies may also be bought. But the shareholder shall be required to maintain a separate

account of the profits made through the *interest*. The interest born money is not lawful for the company or the investor and shareholder; it has to be given away in charitable works.

7. In case a person arranged an interest-bound loan for himself for business purposes, the profits reaped through applying the amount of loan shall form a proper ownership of the *loanee*, provided that the business itself is lawful. The person lending the money on interest commits a terribly grave sin; the amount of interest does not form part of the lender's possessions. In the same way, borrowing interest-bound loans without a constraining need will constitute a grave sin on the part of the borrower.
8. The Board of Directors is doubtlessly the representative of the total shareholders and each decision of the Board shall be ascribed to the shareholders as well.
9. Taking part in a company by buying the shares of it is an entirely voluntary act. A shareholder may retain his share in the company so long as it continues to work in lines with the Islamic teachings. When he comes to feel that the company has started deviating from its proper lines and its Board of Directors has started violating the clear commands and directions of the law of Allah, the shareholder shall be required to terminate his business association with it. Borrowing interest-bound loans, in the absence of legal compulsions, is an act of clear disobedience to Allah. The company's Board of Directors is the representative of all the shareholders, the shareholders cannot evade the responsibility of the decisions taken by the Board.

The company which arranges loans on interest for the business purposes, from banks and other financial institutions, are guilty of committing a grave disobedience to the Shariat of Islam. Its shareholders cannot absolve themselves of the sin of involvement in interest by merely sending a note of disagreement to the company's annual meetings. Having purchased the shares in a company, one becomes a partner in it and all partners, in the structure of the company, hold the attorneyship towards each other and, however weak this attorneyship might be, the client cannot be free from his representative's dispositions.

Exception to this general rule may, however, be granted to those who have no other option to invest their savings except such companies such as resourceless widows, old age persons and the likes. Such people, in most cases, are unable to engage themselves in business and trade activities. In an age of weakened moral integrity they find it unsafe to enter into *mudharabah* contract as it is feared that their capital too may get lost. If they leave their savings uninvested, their capital is bound to perish in daily expenses. The security of the savings, too, is an issue of grave concern. Such people, in most cases, have only the options either to make fixed deposit with the banking institutions, which is an open way to involve in interest even more clearly. Or, buy the shares of a company whose prime business is lawful but at times it gets involved in interest-bearing business transactions. This latter option is clearly lighter than

making fixed deposits in banks, hence may be permissible for such weaker people.

10. In case the profits distributed by the company include the elements of interest (for instance, the company, under legal compulsions, has to deposit a portion of its assets with the Reserve Banks of India and receives due interest on it), with a known amount, the shareholder shall be required by law of Islam to cast away from the total of the profits, the amount of interest and spend it charitable acts.
11. In case the company's gain includes a portion of interest which has again been invested to earn further gains, the Muslim shareholder shall be required to spend in charity the percentage of the interest born income from the total of his profits.
12. The companies whose shares are lawful to be purchased their shares may be bought both for the purpose of getting share in the company and share the benefits and losses, or with the intention to sell them later with profit if the prices soared up. So far as the speculation and conjecturing is concerned, it is a strong factor in trade activities; it cannot be a legitimate reason to render a business as unlawful.
13. The *future sale*, which by now way is a serious attempt to sell or purchase the shares, rather is intended to neutralize the profits and losses as taking possession of the shares or the realization of the prices is never in mind of the parties is nothing except a mode of gambling. Hence unacceptable to the Shariat of Islam.
14. The *forward sale*, in which the act of buying is referred to the future time, constitutes no case of sale at all. It is an

unanimously agreed upon point amongst the Fuqaha that the act of sale cannot be referred to the future time. It, at most, be termed a promise to sell. In future the act of sale shall have to be completed anew.

15. In case of the *cash* sale of the shares the documental change in the certificates, owing to some administrative compulsions, takes a time of one or two weeks. Now, if the bought shares fall virtually to the ownership of the buyer with immediate effect and the buyer turns responsible for their gains and losses, the case shall be regarded of holding possession of the shares and he may put them to sell to a third person. But if the situation is opposite, that is, the spot sale does not create a case of the transfer of legal ownership of the shares to the buyer unless the appropriate documentational change in the certificates takes place and the securing of the certificates is the only way to establish one's possession and ownership, the cash buyer will not be permitted to sell those shares to a third person and if the company owns nothing except the cashes, the total sale will stand void as it will then form a case of sale of *cash* for *credit*, which is unlawful.
16. The same as has been put in the answer to the previous question.
17. One may engage oneself in the brokerage of the shares only of such companies whose care business activities are *lawful*, a Muslim is never permitted to engage himself in the brokerage of the shares of those companies whose prime business is not lawful.

**10****Shares and the Related Problems :  
The Shariah Position**

By Late Maulana Shams Pir Zada (Mumbai)

**Q.1 Does a share represent the shareholder's proportional ownership in the company's assets and properties?**

**Ans. :** The concept of ownership actually is associated with the company which holds a separate legal existence. To quote an authority here:

“A joint stock company has separate legal status and it is absolutely separable from the owners, i.e. from the general body of members as well as separable from the Board of Directors. A company is purely a creation of *law*. It can do everything like a human being does; and like an individual it can hold property, appoint employees, incur debts, file suits and be sued upon.”<sup>1</sup>

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<sup>1</sup> Tahir V Orhani Company Secretarial Practice p. 95



“A company is an incorporated association which is an *artificial person* created by *law*, having a common seal and perpetual succession.”<sup>1</sup>

“The liability of shareholders of a Joint Stock Company is limited to the nominal value of the shares one holds. As the debts the company owes are the debts of a separate legal person, a shareholder is not personally liable for them. A company may have to be dissolved on account of its financial adversity, but its shareholders cannot be called upon to contribute more than the nominal value of the shares they hold.”<sup>2</sup>

The extracts furnished above make it abundantly clear that the company is a separate legal entity and with this legal entity stand associated with the ownership of the assets and the liabilities of debts, etc. In the event of the company's liquidation, the shareholders owe no responsibility beyond the value of the shares they hold. In the account of the company the shares, the value of which constitutes the core of the company's assets, are shown under the company's liabilities. But this is the legal aspect of the matter. As regards the practical aspect, the shareholders undoubtedly share the possession of the company to the proportion of the capital they have invested in. As regards the fluctuation in the values of the shares, the responsible factor is not the company's capital alone. Besides this, there

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<sup>1</sup> Do . 18.

<sup>2</sup> Do p. 18.

are other factors as well. Out of them of primary importance being the company's aggregate financial position and the amount of goodwill it has thus far built. In case the company went into *liquidation*, after meeting all the *liabilities* like debts, etc. the residue (which might be more or less than the original value of one's shares) shall be distributed amongst the shareholders. All such things make it clear beyond doubt that the shareholders share the possession and assets of the company to the proportion of their capital they invested in it. Based on these facts, it is therefore safe to say that the sale/purchase of the shares is really the sale/purchase of a blend of cash and assets in the exchange of the case and this type of the sale/purchase is fully acceptable to the Islamic Shariat. The Jaddah-based OIC's Islamic Fiqh Academy, in its session held in May 1992, adopted the same decision. To quote its relevant wording here:

بما أنّ المبيع في السهم لعامله هو صفة شائعة في موجودات الشركة وأن شهادة السهم وثيقة لإثبات هذا الاستحقاق في الحصة فلا مانع شرعاً من إصدار أسهم في الشركة بهذه الطريقة وتداولها.

“Since the object of sale (the share in the case of a shareholder) forms a (proportional) share in the total assets of the company and the share-certificate is a document which proves his entitlement to its assets, the shariat has no objection against issuing the shares of a company in this way.”

## **Q.2. Position of the shariat on the sale-purchase of the shares of a company in its initial stage when it owns little assets?**

**Ans. :** It must be noted that a company cannot bring its Public Issue unless its *promoters* lay foundation of the factory, workshop, etc. for the production and manufacturing of the target goods. Precisely speaking, before bringing the company's public issue its promoters are required by law to invest a fair amount of money in the purchase and arrangement of some urgently needed moveable and immoveable assets and properties. Only after this stage the company can get permission to bring the public issue of its shares. It will, therefore, be incorrect to think that a company may offer the shares for the public without having any moveable and immoveable properties and assets in its possession. After this clarification it may be observed that the company's shares are fit to be the object of sale while it is still passing through the stage of its establishment.

## **Q.3 Buying the shares of a fully existent company when it owns a mix of assets and cashes**

**Ans. :** Once the company came into existence, its assets turn a mix (of cashes and other possessions). Now when the company's assets are a blend of the *ribwi* and *ghair ribwi* assets and possessions, there is no reason, from the Shariat standpoint, to hold the sale-purchase of the company's shares at this stage for cashes as unlawful. As regards the

element of interest, it has obviously become an avoidable but tacit element of most of the businesses one is doing or wants to do. Living under the un-Islamic, rather anti-Islamic system and social set up a Muslim has no other option than to bear, willingly or otherwise, or otherwise, such tacit evils. Otherwise, the doors of economic activism and progress will be shut for Muslims.

**Q.4 Buying the Shares of such Companies whose prime business is unlawful.**

**Ans. :** The sale-purchase of the shares of such companies whose prime business is unlawful, such as the trade and export/import of wine and pork or financing the interest-bound schemes offered by banks and other institutions indulging and promoting interest-involving businesses, is completely unlawful. Since this is a unanimously agreed upon proposition, there is no need to discuss it any more.

**Q.5 Buying the shares of the companies whose prime business is lawful, yet they have to arrange loans on interest.**

**Ans.:** The shares of such companies whose prime business is lawful yet they sometimes have to raise interest-bound loans to evade unjust rates of income taxes can be bought. For under constraining conditions of the contemporary Godless age getting involved in interest-bound business transactions has become a commoner compulsion.

**Q.6 Buying the shares of the companies whose core business is lawful, but they have to deposit a portion of their cashes with the Reserve Bank.**

**Ans. :** The sale-purchase of the shares of the companies primarily doing *halla* and lawful business if are legally forced into depositing a portion of their cashes and assets with the *Reserve Bank of India* or in purchasing the security bonds which attract interest merely to satisfy the demands of the godless law could be lawfully bought. The legal compulsions of the type are too common to evade. It would be unwise to ask the people distance themselves from lawful modes of business. The cautious course of action, however, is to give out a portion of the profits in charity so as to purify one's income from the curse of *interest*.

**Q.7 Position of the Shariah on the gains from the interest-bound loans**

**Ans. :** The gains attracted by the investment of the loans raised on interest are completely lawful. The amount of the original loan is indisputably lawful, while the condition of interest is void in the eye of the shariat. The acceptance of this condition under compulsion cannot render the original amount of loan as unlawful. Hence, the incomes made shall be regarded completely lawful and *halla*.

**Q.8 Company's Board of Directors.**

**Ans. :** Company's Board of Directors is the representative of the Shareholders. Every act performed by the Board shall be ascribed to them. The *owners* of a company do not take part

in its management. The shareholders simply contribute to its capital by purchasing its shares and vest the power of management in their representative, i.e. 'Board of Directors'<sup>1</sup>

But, unfortunately, the contemporary economic system has engendered countless problems and compulsions, especially for Muslims. This type of real compulsions cannot be ignored. The investors have no other option than to unwillingly endure such decisions of the Board which are in clear contravention of the Shariat of Islam. The men of Islamic learning are required to assess the existing situations a new and apply the principles and norms of the Islamic Shariat according to new inference.

**Q.9            A shareholder's expressing his disagreement with the Board of Directors over raising the interest- bound loans**

**Ans. :** The company's Board of Directors follows the line of action approved by the majority vote of the shareholders. Under such an environment the open expression of one's disagreement towards the interest-bound loans is practically difficult and without avail. For the company it is too hard to follow the line of interest-free business and commercial activities. The investors are left with no other option than to accept the decisions of the Board even if involuntarily.

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<sup>1</sup> Company Secretarial Practice P. 18.

**Q.10 The voluntary spending of the amount of interest included in the dividends**

**Ans.:** In case the *dividends* of the company include a portion of interest with a known amount thereof, it will suffice for the shareholder to give in charity the proportional amount for the purification of the dividends.

It may be useful to note that the *dividends* of the company include only a meagre amount of interest. It, on the other hand, has to pay comparatively larger amount to banks and other financial institutions as interest on the loans it has to raise. It may be a good idea to take the portion of interest-included in the dividends into the account of the interest paid by the company. This complex problem is also awaiting a sound inference and reapplication of the principles of the Shariat.

**Q.11 What if the company's gains include interest and the interest-earned income is again invested in ventures of the company?**

**Ans. :** In case the company's gains include a portion of interest and further gains have been earned through investing income the percentage of interest from the gains shall have to be given in charity for the purification of the total gain.

**Q.12 What about trading in shares?**

**Ans. :** Trading in shares is lawful, as the shares represent the shareholder's proportional ownership in the company's

assets. So, quite obviously, the shares are as much the object of sale as are other goods.

### **Q.13 Future Sale**

**Ans. :** The future sale is not lawful; it is by no means a sale-purchase; it is just a paper work. By contrast, the Shariat takes into account only the sale-purchase which is actual rather than a fictitious event and a paper work. If the actual sale takes place, it entails the replacement of the earlier shareholder's name by that of the new purchasers. The absence of such proceedings indicates that the shares are not actually sold. Therefore, no justification is there to entitle any benefit or suffer any loss involved.

### **Q.14 Forward Sale**

**Ans. :** The Forward sale, in which the event of sale is ascribed to the future, is completely lawful. In the answer to the question No. 13 above the point has been discussed with a fair detail.

### **Q.15 Meaning of taking possession of shares**

**Ans. :** As soon as the shares are sold, the certificates are sent to the company for the transfer of the new buyer's name. In case the selling party's signature is found incorrect (not matching with his signature he made first time), the certificates are returned back to him. Under such a situation the act of transfer of ownership often gets deferred. The actual possession of the new buyer on the shares takes place only after the receipt of the share certificates with properly changed name. If the buyer sells out those shares to a third



person, this will be a sale before taking possession of the object of sale. Since this is feared to lead to disputes, declaring it absolutely lawful seems imprudent. Only under constraining situations a buyer may sell out those shares to a third person provided that he takes responsibility of the change of the name and its proper placement in the certificates.

**Q.16 Selling out the bought shares to a third person before the receipt of the certificates**

**Ans.** : Whatever is said under the answer to the question No 15 is applicable to this question as well.

**Q.17 The Brokerage (Working as Stock Broker in the Stock Exchange)**

**Ans.** : For an unhindered and organized sale-purchase of the shares the brokerage is an actual need of the people. Hence, the brokerage as such is lawful.

# 11

## Solving the problem of Shares

**Paper Contributed by Shaikh Allama Wahabah Mustafa al Zuhali, Demescus**

*Editorial Note :*

*(This is a very comprehensive paper which discusses freely all the total seventeen aspects of the problem in a fairly detailed manner. In order to keep the book in a limited scope and accommodate to it a number of other papers as well, the editor has taken the liberty to curtail the details it contains. (ed.)*

الحمد لله رب العالمين، والصلوة والسلام على أشرف المرسلين وعلى آله  
وصحبه أجمعين

### Introductory Note

Shares business in the stock companies has now gained currency with a great amount of importance in the area of the commercial activities. This type of business is basically intended to utilize the retail amounts of the small savings of different individuals and investing them in business to earn collective financial benefits. Generally, the longer business ventures involve so much bigger financial implications that are often beyond the means of the promoters of the scheme.

The total amount, therefore, is distributed into smaller units which then are put to sell, in the form of the commercial papers, available for the interested buyers, whose number may go into tens, hundreds, even thousands of people. This way the larger industrial, agricultural and business ventures and schemes may be financed through the small savings of people lying deposited with banks and other financial institutions. Cash and Credit, with or without taking them into one's possession, direct or indirect (through brokers and agents) sale/purchase of the shares and their different aspects give rise to a number of questions. The problem of sharing the companies turns even complex when a joint stock company, with a view to promote the scheme, widens the scope of the company's business and industrial activities, finds itself constrained to seek interest-bound loans from banks and other financial institutions.

### **Contents of the Paper**

The paper in hand is intended to discuss the following aspects of the problem:

- Does the share represent the shareholder's proportional ownership in the company's possessions or is merely a document showing that the shareholder has invested such and such amount of money to the company?
- Company's selling its shares before launching its business, agricultural, industrial activities.
- The sale/purchase of the shares of the company whose assets now is an amalgam of the *ribwi* and *ghair ribwi amwal*.

- The sale/purchase of the shares of the companies whose prime business is *haram*.
- Position of the Shariat on the sale/purchase of the shares of such companies whose prime business is lawful and *hallal* but they have to borrow funds from banks or other financial institutions on interest merely to evade the unjust income tax law.
- The sale/purchase of the shares of such companies whose business is lawful but they have to deposit a portion of their assets with the Reserve Bank of India or are forced by law to purchase security bonds which attract interest.
- Position of the Shariat on the benefits and profits accrued from the investment of interest-bound loans. Are those loans and profits a lawful possession of the loanees?
- Does the company's board of directors represent the collective body of the stockholders?
- Will a shareholder's dissent and expression of his disapproval of the board's decision of borrowing funds on interest be regarded enough to absolve him of the sin of getting involved in the interest-bound commercial transactions?
- Is it sufficient for a shareholder to give in charity the specified amount out of the gain acquired from the interest bred profits in order to undo the sin involved?
- Is it enough for a shareholder to give in charity the proportional amount of the income which is an amalgam of interest-free and interest-bred gain to satisfy the demands of the law of Allah?

- What is the position of the shariat on the sale/purchase of the shares with an intention to earn profits by selling them at price higher than theirs' purchase one?
- What is the position of the shariat on the forward sale, in which neither the object of sale is delivered to the buyer, nor the price is paid to the seller?
- What about the future sale of shares, in which the act of buying is ascribed to the future?
- What is the position of the Shariat on the virtual possession of the Share certificates in the event of their sale while the physical possession is deferred to a few days?
- What about the sale of the shares to a next buyer before the selling party acquires physical possession of the shares certificates?
- What about engaging oneself in the stock market as a share broker?

### **Curtailed Version of Shaikh Wahaba al Zuhaili's discussion of the Seventeen Points set out above**

1. As far as the first point, that is, does the share of a company represents the shareholder's proportional ownership in the company's assets and properties or is mere a proof of giving the specified money to the company is concerned regarding this it is to be noted that the share is a document which carries equal value, indivisible, fit to be sold and purchased, representing in the original capital of the company the proprietary rights of the shareholder. Article 505

of the Egyptian Civil Law and the Article 473 of the Syrian Civil Law define the company as follows:

“Company is a contract which brings two or more people into legal obligation that each of them will offer a part of the capital and labour involved to take part in a financial scheme and share the generated profits or losses on an equal footing (according to one’s proportion).

The definition of the company, as has just been put with reference to the experts in the financial law, makes it clear that the shares are the documents which a share company issues and which represent the common shares in the company’s core capital and the ensuing benefits and losses. The core capital of the company and the ensuing rights totally depend on the pure properties and assets of it, its income and the quality of management. The company, therefore, is a type of contract as it comes into being as a result of an unanimous agreement of its partners.

The share, which represents a portion of the company’s core capital and is owned by the shareholder, holds the following characteristics:<sup>1</sup>

- They carry equal face value, the value at which they are initially issued and which is decided by the company’s promoters at the time of the issue of shares. It is the face value which, in some countries of the world, is legally set, as in the United Arab

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<sup>1</sup> Al-Sharikatut Tijariyah : Dr. Hasnain Ghanaim p. 189 and al Sharikatu-Tijariyah Dr. Ali Yunus p. 3)

Emirates the face value of a single share is set to remain between one and a hundred *dirhams*.

- They are indivisible, that is, in the event of being more than one shareholders against a single share it cannot be converted into fractions.
- They are commercially transferrable. That is, their proprietorship may be transferred from one person to another through the common and known business ways without facing any civil order on the part of the company. If a share is issued with the permission or order of the shareholder, the act of transfer shall be required to be certified. But if the share belongs to the bearer, the change of its possession from one hand to another shall be regarded sufficient for the purpose of transfer. In order to keep the shares under the State supervision, security and responsibility, the shares are generally issued in name. *Bonds*, on the other hand, may be issued by name as well as for the bearer.

In short, the shares represent the shareholder's proportional proprietorship in the company's assets and properties. To be more precise, by their inherent nature and legal reality the shares independently stand for the company's total assets which are an amalgam of cashes and other assets such as furniture, building structures, machines, tools, products, manufactured and raw material and the liabilities the company owes to others. All the mentioned things fall under the shares. In such a situation the

sale/purchase of the shares by no means can be termed as the sale of cash for cash; it is rather an exchange of an amalgam of the cashes and other assets for the cashes.

In case a shareholder sold his shares to any other person, the buyer shall become the owner of the shares he has bought; in the event of the company's going into liquidation, he will be entitled to get the portion of the company's assets in proportion to his amount invested. If the company earns profits, the shareholder will share the profits according to his proportional amount; in the event of the company's incurring losses, he too shall have to bear the same in the proportion of his proprietorship. All these being the legal and inherent demands of the share system; anything taking place against the said procedure shall constitute an infringement on the legal requirements of the company contract. Again, the share certificate is never like the document which shows that its holder has given a certain amount of money to the company. Unlike the shares, the security bonds and debentures are the instruments of credit which attract interest at a fixed rate. The persons holding such instruments enjoy no proprietorship in the company's assets. Nor the sale of share for share is like the sale of cash for cash. The debentures and bonds, on the other hand, represent a fixed amount of money; in the event of their holder's going bankrupt, they may be confiscated, but never the company's assets and properties could be a subject to confiscation in



proportion to the amount of money of an insolvent debtor shareholder.

After determining the position of the shares now we are in a position to apply appropriate rulings of the shariat to it whether they are related to the obligation of Zakat on the shareholder, or holding the shares as an object of sale-purchase like all other market commodities, or holding the shareholder entitled to get his due share out of the profits resulting from the company's good working, or binding him with the responsibility of bearing the proportional share of the losses the company may incur.

2. The sale/purchase of the shares of the company bought before the company's starting its business and productive activities is permissible, provided that the laws governing the *bay sarf* are observed. For it of course will be a sale of cash for cash. In order to avoid the involvement in interest, both the parties must take possession of each other's sales in the very session of the contract. Moreover, a complete parity between the exchanges must be maintained. The finalization of the *bay sarf* can not be subject to any period, condition or options; only the possession taking of each other's exchanges is required.
3. The shares of such companies may be bought whose prime business is lawful, and make a good annual income but, in times of need, they borrow funds on interest from banks or other financial institutions. The

shares of such companies may be sold and purchased for the purpose of business and trade, provided that a part of the income, proportional to the interest-bearing loans and the ensuing incomes be given in charity works. Such funds cannot be spent for meeting the liabilities or the taxes the shareholder owes to others.

4. Buying the shares of those companies are absolutely unlawful whose core business is unlawful, such as the export/import/distribution of wine, intoxicants, pork, the business of the items of *lahw wa laib*, financing the interest-involving schemes or making fixed deposits in banks etc. The same rule of impermissibility will be applicable to the companies whose great and larger hotels serve pork and alcoholic drinks to their customers. To the same category will fall the companies which offer the summer packages to tourists and provide *cabins* on the beaches for the men-women mix swimming.
5. Except under conditions of pressing need, the purchase of the shares of such companies is disapproved whose prime business is lawful yet they, in order to evade the unjust income tax laws, have to borrow funds on interest from banks and other financial institutions. So because by so doing the original capital of the companies gets mixed with the unlawful elements of *mal* and because of that one type of wrong cannot be washed off with another type of wrong. The shares of such companies may be bought only under the situation when one is left with

no other option of making investment than the companies of the type.

6. In case the company is obliged by law to deposit a portion of its assets with the Reserve Bank (in other countries this bank may have other names, in Pakistan, for example, it is the State Bank of Pakistan) or is forced to buy the security bonds, which fetch interest on it, the shares of such companies may be bought provided that the sum of *interest* be disposed of as early as possible spending it in the things of public welfare. The sum of *interest* cannot form a legitimate possession either of the company's shareholders or its management committee, called *Board of Directors*.
7. According to the Hanafi standpoint, the gain acquired from the interest-bound loans although constitutes part of its owner's possession, yet this ownership is impure by nature, unlawful for use by the acquirer. This case is much like the *irregular* sale transaction, which brings an impure possession to one's ownership. Such transactions must be cancelled and reasons responsible for its irregularity (*fasad*) have to be removed as early as possible. The property acquired as a result of an irregular contract has to be given away in charity works. This being the Hanafi viewpoint. As to other Ulama and *mujtahideen*, impure benefits and gains neither form part of one's ownership nor are lawful to use.

8. The Board of Directors of the Company is the representative of the Shareholders' Collective Body. It is in fact the *trustee* of the company's assets. In the event of damage or destruction of the assets under its trust, its responsibility will remain limited only to its intentional failure in the upkeep of those assets. Every act of the Board shall be ascribed to the shareholders. So because of that the company, taking from the Fiqhi viewpoint, is a Trust partnership. According to the modern man-made law the company holds a legal existence, with its separate name, address, place and nationality, which enjoys rights and owes responsibilities and liabilities and, as it has already been put, the company's financial liabilities are separate from those of its shareholders. In the event of the company's coming under debts, a shareholder's responsibility shall remain limited to the proportion of his shares. The creditors of the shareholder have no right to confiscate his shares he has in a company; their right is limited only to the gain and profits he gets from the company.
9. It will not be enough for one's absolution of the sin of involving in interest to express one's disagreement and disapproval of the Board's decision of taking interest-bound loans from banks and other financial institutions. It is because of the fact that the Board of Directors' initiatives and dispositions shall be ascribed to the shareholders as well. A member's such doing may at its best, be regarded as an act of *Amr bil Maruf and Nahi Anil Munkar* and not more than this.

10. The evil of interest-bound transactions of the Board will affect all the shareholders and each of them will share the responsibility of the sin. As regards the shareholder's wish to evade the evil effects of the interest born benefits, for the purpose the shareholder shall be required to give in charity the fixed amount of profits generated by the interest-bound loans. Only by so doing the shareholder can save himself from the evil of falling in *haram*.
11. In the same way, the shareholder may purify his profits from the curse of *interest* if he gives out in charity a sum proportional to the interest-born profits. This proportional sum may be deducted either by way of estimation or through the help of the modern computer system with meticulousness. It is not necessary to extract the very same portion of *mal*. For it is too hard to identify the unlawful portion in the total of the amount of profits. To the same fact have pointed out two Malikite jurisprudents, namely, Ibnul-Arabi and Qurtubi (may Allah deal them with mercy).
12. Trading in shares, that is, to sale and buy the shares with an intent to earn profits like other market commodities is not a forbidden act, provided that the possession of the sold shares is transferred to the buyer, though the nature of the transferred possession is virtual and not yet material. The purchase of the shares, with an intent to sell them later with profit when the prices are expected to go

up forms no case of the prohibited stockpiling as the shares are available in the market without scarcity and the shareholder's waiting for the soaring of the prices is not harmful for the consumers.

13. FUTURE SALE, which is not intended to buy the shares as in this mode of transaction neither the certificates are delivered nor the price is paid, and only aims at neutralizing the profits and losses, is utterly unlawful; it is in fact a sale of *credit* for *credit* which the Prophet (Peace and blessings of Allah be upon him) has declared unlawful. The irregularity of this type of sale is an unanimously agreed point amongst the Ulama and Fuqaha.
14. Forward sale, the concluding of which is to take place in the future, is not correct. The fact of sale implies categoriety which could neither be associated with any condition nor could be concluded with future time reference. When the sale of the shares with deferred payment is concluded in cash with a reduced payment, such sale will stand null and void. For it is a sale of the deferred debt for the reduced cash, much the same as the Bill of Discount. *Bay' Salam* may, however, be concluded provided the object of sale in the responsibility is known and whose delivery is deferred by a specified time of the future, provided the total price is paid within the very session of the contract.
15. There is no aspect of prohibition in the virtual possession of the purchased shares. It is in view of that the new buyer takes time due to some unavoidable administrative reasons. The company

takes the responsibility of the shares in the right of the new buyer. Barring the Hanafi School, the majority of the Islamic Fuqaha clearly says that the nature of possession may differ from thing to thing and object to object, and in this regard the custom and usage of the people shall be decisively taken into account. It must be remembered that before taking possession of the certificates he is never allowed to sell those sharers to a next buyer, as is the case of the coming problem.

16. Before taking the possession of the purchased shares certificates one is not allowed to sell or transfer them to the name of the next buyer as it may possibly lead to fraud; and in the event of the price hike the selling party may deny the transfer of the shares certificates to the new buyer. That is why the Prophet (Peace and blessings of Allah be upon him) has prohibited the sale before the selling party gets possession of the object of sale.
17. Engaging oneself in the Stock Exchange as broker is very much like lending one's services as an agent provided that he is appointed in this capacity by his client. In the absence of *taukeel* (appointing somebody as one's agent) the dispositions of the *broker* and *agent* shall be deemed as of the *fudhuli*. They will be effective only if the client so permitted; otherwise, the responsibility of the transaction will rest with the agent and broker alone.





**12****Shares in the light of Islamic Fiqh**

**By Dr. Abdul Azim Islahi, Department of Economics,  
Aligarh Muslim University, Aligarh, India.**

1. The purchased share of a company represents a proportional ownership of the shareholder in the company's assets and possessions.
2. It will be naïve to assume that a company may announce a public issue of it while it is still in its initial and formation stage, without its own assets and properties. Before the announcement of establishing a company and offering a public issue of it the company's *promoters* have to make a lot of preparations, passing through various stages and spending larger amounts of money. Only after such preparations the company enters the stage to announce its existence and invite the public to take part in the company's projects by purchasing its shares. At this stage too the certificate issued, in almost all cases, is not in the exchange of cashes. There are more than one factors, like the profitability of the company's project, its possible usefulness, the experience of its promoters, future prospects, etc., which play a decisive role *vis-à-vis* the fluctuation of the shares of a company. Considering

all such factors, the market value of its shares might be more or less than their face value. In the sale of the *shares* now the cash is never against the cash (hence not subject to the rulings governing the *bay sarf*). Moreover, the *liquidity* and *acceptance* of the cash is profoundly different from those of the shares certificates. Premising this standpoint on the bases mentioned, it may safely be said that the shares of the company even at this stage are legally fit enough to be sold and bought for cash.

3. In the total of the mix possessions of the company the cashes always vary in amount from other types of its assets. Fixing it is hardly possible, especially for the general shareholders. It is therefore advisable that this mixed total of assets and cashes, represented by the certificates issued by the company, should be regarded a thing very much different from the cash, and in this purely inferential proposition the exchange of the certificates with the cashes be declared lawful.
4. Vis-à-vis this problem there exists a complete unanimity amongst the Ulama that the sale-purchase of the shares of such companies is categorically unlawful.
5. Actually, this is the corruption of our political and economic systems which lets such evils enter our incomes. Anyway, this will remain permissible, though with a degree of reprehensibility, unless there develops a better substitute thereof.
6. Answer is the same as above.
7. The gains earned through the investment of the funds arranged on interest form regular and lawful possession of the borrower. On similar lines, the incomes generated by such funds shall be regarded completely lawful. But

the amount proportional to interest included in the incomes should be given away in charity or spend in welfare works.

8. The Board of Directors of the Company is the representative of the total shareholders in the meaning as is the president of the country or the prime minister of the state. Unless each shareholder expresses his full willingness to the formation of the Board and the appointment of its members, its representation shall be regarded conditional. The shareholder's responsibility shall remain limited only to the Board's lawful acts and permissible activities and dispositions. As regards the Board's acts and decisions which are in contravention of the Shariat of Islam, the shareholder has full right to reject them by expressing his disapproval and disclamation.
9. If a Muslim is permitted to undertake business by forming contracts of partnership and *mudharbah* with the people of unbelief (*Kuffar and Mushrikeen*), this too might be regarded acceptable under optionless conditions. As to expressing a shareholder's disagreement and disapproval towards decisions of the Board pertaining to the borrowing of funds on *interest* in the meetings of the Board, it ought to be done if one finds such an opportunity. For the expression of one's disagreement and disapproval there might be adopted other ways for the purpose as well such as addressing the Board by correspondence, publication of pamphlets and articles in

newspapers and similar other means of communicating one's message to others.

10. & 11. Will be sufficient *Insha Allah*.
12. Trading in the shares is lawful as such. A Muslim trader in the shares, however, is required to keep himself away from dealing in the shares of such companies as are involved in unlawful business and manufacture the goods held unlawful by the Islamic Shariat. As far as the *speculation* is concerned, it plays an important role in all forms and modes of business and trade. So, there is hardly any doubt in the permissibility of speculation and estimation by way of conjecturing. The unlawful speculation being the one bordering on the gross misappropriation.
13. *Future sale*, which is intended only to neutralize the losses and gains rather than being a mode of thoughtful act of business and trade, seems entirely unlawful.
14. The question is not clear, hence unfit to be answered.
15. The factual possession takes place only after getting the certificates transferred to one's name. Unless it is done, the gains will be sent by the company to the person registered with the company as the holder of the shares. Before the completion of the transfer process holding the certificates means nothing. But at some places the receipt of the certificates might be an accepted usage; so, at such places taking possession of the certificates, at least, may be regarded a mode of possession.
16. Contracting the deal of only buying and after a partly defrayal of payment selling it to a third and fourth party by underhand means clearly forms a case of sale of commodity before taking it into possession. Quite

obviously, unless one takes possession of the thing one has purchased, one's actual possession, both completely and partly, does not take place. It is worth knowing that in the stock exchanges of India, namely the OTCE and NSE, the currency of giving and receiving certificates has of late begun to fade away. Now the system is fully computerized; the selling party's name is immediately replaced with the buyer's name as the new stockholder. In the same way, in world's most developed countries the sale/purchase of the shares take place without an exchange of the certificates. This new way saves both cost and time and therefore is more expedient for the buyers and sellers. This new development also calls for the attention of the men of Islamic learning to assess the position of the Shariat vis-à-vis this hitherto unknown method of the sale and purchase of the shares and the way of taking possession of the stocks.

17. A Muslim may engage himself in the share brokerage provided that he keeps himself strictly away from offering his services to the shares of the companies which are involved in interest bound business and produce and manufacture the commodities held unlawful by the Shariat of Islam.

**13****Determining the position of the Shariat on the shares of the companies**

**Paper Contributed by Maulana Sultan Ahmad Islahi Aligarh**

**Ans. to Question No. 1**

Concerning the shares of a company bought by an interesting person the more preferable viewpoint, as far as I think, is that the share certificate represents the shareholder's proportional ownership in the company's properties and assets rather than being only a document showing the amount of money one has invested in the given company. Since the shareholder shares the company's proportional ownership in its assets, properties and cashes, the sale/purchase of the shares should not be subject to the rulings pertaining to the *bay sarf*. So far as the point of not confiscating the proportional assets of an insolvent and indebted shareholder from the company to repay his debts is concerned, this may be explained that the law does not permit the confiscation of an insolvent debtor's share in the company's property and assets, taking into account the collective benefits and expediency of the company, as it is bound, in most cases, to expose other shareholders of the

company to great difficulties in restoring the confiscated portion of the company.

### **Ans. to Question No. 2**

The shares of a company purchased at the earliest period of its launch when it actually owns nothing shall be subject to the rulings of the *bay sarf*. This is actually an exchange of the cash for cash with complete impermissibility of any increase or decrease between the two. Such a share must be sold only for the amount of money at which it was bought first time from the company.

### **Ans. to Question No. 3**

Once a company assumed material existence, its properties and assets turn a mixture of the *ribwi* and *ghair ribwi* types of *mal*. Now it may be sold for cash. Since the interest is a recurring point of this paper, it seems befitting to clarify some relevant points here in order to avoid the repetition of them in the coming lines. (a) In the changed conditions of the contemporary world the problem of the *bank interest* needs to be reconsidered. The *riba* (usury) has been declared strictly unlawful by the *Qur'an*. The application of the rulings of the *Shariat* pertaining to the *interest* held strictly unlawful by the *Qur'an* and *Sunnah* in all cases seems a mistaken view and extremism. The role of the *bank* is not always of the trustee; in the present age its role is of a dual *mudharib*. In this position the bank offers a fixed percentage of profits on the deposited funds invested indirectly in different business ventures rather than the proportional profits gained through the Islamic concept of

*mudharabah*. Today when a considerable group of the Muslim Ulama regards the mentioned mode of *Mudharabah*, why, then, we are insisting on a total unlawfulness of the bank interest offered by it as a *mudharib* to its account holders. Treating the bank interest at a par with the prohibited usury, therefore, seems unreasonably imprudent.

(b) In connection with the bank interest a juristic point has been disregarded altogether. By this juristic point I mean the

### لا ربا بين المسلم والحربي في دارالحرب.

The *riba* (interest) taking place between a Muslim and a *harbi* in *Darul Harb* is not to be treated as the *riba* (prohibited by Islam).<sup>1</sup>

If the countries like India deserve not to be treated as *Darul Harb* in all respects, still in the determination and application of the rulings governing the affairs and matters of *riba*, we must show even partial resilience. The point I have just made gets support from Imam Abu Hanifa's following words which he spoke at another occasion:

وقال ابو حنيفة : لا يجرى الربا بين مسلم وحربي في دارالحرب، وعنه في مسلمين أسلما في دارالحرب لا ربا بينهما.

Imam Abu Hanifa said : No *riba* (interest) takes place between a Muslim and *harbi* in the *darul harb*. He is also reported to have said that no *riba* takes place between two Muslims entering into Islam in the *Darul Harb*.<sup>2</sup>

<sup>1</sup> Hidayah vol. 3 p. 70 and Sharh al Siyarul Kabir 3/112.

<sup>2</sup> Ibn Quadam Hambali : Al Mughni 4/45.



Imam Abu Hanifa's standpoint is premised on the narration of Hazrat Makhul (Razi Allah Anhu), according to which the Prophet of Islam (Peace and blessings of Allah be upon him) has said :

لا ربا بين المسلمين و أهل الحرب في دارالحرب.

“No *riba* takes place between Muslims and the people of the *Darul Harb* within the boundaries of *Darul Harb*.<sup>1</sup>

Keeping in view the great expediencies of the Islamic *Dawah* in the present age, the juristic permission of the Islamic Fiqh has to be taken into consideration while explaining the position of the Shariat on the problems and issues of the contemporary age. A total disregard towards the expediencies of the Islamic *Dawah* will of course be utterly unwise. However, this broadmindedness must not go beyond proper limits.

#### **Ans. to Question 4.**

Much as we find precedents in the earlier age of Islam of receiving *jizya* from the *Zimmis* from the price of his wine, yet never of the price of his pigs.<sup>2</sup> Yet the sale- purchase of the shares of such companies whose prime business is to manufacture or export/import of the things forbidden like wine and pigs, seems entirely unlawful.

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<sup>1</sup> Op. Ci. 4/45, 46.

<sup>2</sup> Sharh Al Siyaril Kabir of Al-Sarakhsi 4/227, 228.

**Ans. to Question 5**

The sale/purchase of the shares of such companies whose prime business activities are quite lawful, but as a trick to evade the unjust taxes imposed on them by the government; they have to borrow funds on interest from banks and other financial institutions is quite lawful.

**Ans. to Question 6**

There are companies whose prime business is *hallal* and lawful, but sometimes they, too, have to involve in interest bearing dealings, merely to satisfy the legal demands in a secular country. For the purpose, such companies have to deposit a portion of their assets with the Reserve Bank of India, or to purchase some *security bonds*. Both the deposit and the money engaged in the *security bonds* fetch *interest*. The shares of such companies are lawful to be purchased.

**Ans. to Question 7**

From the points furnished under the answer to question 2, the question underhand also becomes clear. The profits and gains earned through applying the interest-bound loans are quite lawful. Such loans form part of one's proper possessions. Hence shall be lawful the income generated by such loans.

**Ans. to Question 8**

The company's Board of Directors is of course the representative and attorney of the shareholders, and the acts and decisions of it shall be attributed to the shareholder as well.

**Ans. to Question 9**

Answering the question No. 2 above two points have been made with reference to the *bank interest*. According to the points made the nature of the *bank interest* profoundly differs from that of the *riba* forbidden by the Qur'an and Sunnah. Once my points are admitted, there will hardly be any need to express one's disagreement towards such decisions of the *Board*. Bank's role, as far as I think, is of a *mudharib*; as a *mudharib* it offers profits to its account holders at a fixed rate on the deposits and the funds of others it invests in business ventures. Under its same capacity, it, likewise, receives profits at a fixed percentage from the people who borrow funds from it and invest in their business ventures. Nominally termed 'loan', this money practically is nothing other than a mode of *mudharabah*.

**Ans. to Question 10**

With reference to the points made under answer No. 2 it may be said again that under the case mentioned in question, one needs not give it in charity; this is indeed one's lawful income and one is permitted to use it without questions.

**Ans. to Question 11**

The answer to this question to may be seen through the light of the points recurringly referred to above. The shareholder needs not give it in charity. The income will the remain quite lawful even after the inclusion of the so-called interest in it.

**Ans. to Question 12**

Trading in shares is quite lawful. Business is nothing more than speculating the prospective gains and losses. The person missing this acumen can never be a successful business person. Speculation and conjecturing is an essential part of every business venture. The business of shares, too, cannot be free from it. This type of speculation and conjecturing do not fall under the prohibited category of conjecturing.

### **Ans. to Question 13**

The future sale, with detail furnished in the question, is impermissible. It is a pure form of gambling. The future sale is neither the *bay sarf*, which involves the exchange of two species of cash, nor it is the sale/purchase of the shares, in which the assets and cashes are sold and bought for cashes. Failing this sale to fall into neither category renders it a mode of gambling clearly forbidden by the Islamic Shariat.

### **Ans. to Question 14**

Forward sale, in which the act of buying is attributed to the future time reference is held unlawful.<sup>1</sup>

### **Ans. to Question 15**

In the spot sale of the shares it is not required for the realization of the possession, that the buyer takes possession of the certificates of the purchase immediately after the conclusion of the sale deal. The buyer gets virtual possession of the shares certificates once the deal is completed. According to the public usage the virtual possession holds

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<sup>1</sup> Al-Mughni : 4/288.

good in the eyes of public. This type of possession is quite sufficient for the legal validity of the sale deal. Insisting on the material possession, therefore, is not needed.

**Ans. to Question 16**

Once the mode of possession of the shares certificates mentioned in the previous question is held correct and legally valid, there remains no impediment to sell those shares to a third or even fourth party. The responsibility of the purchased shares and their gains turn to the buyer as soon as the deal got complete, it became out of the *bay mala yadhmanu* on its own, leveling the way for its purchase to the prospective buyers.

**Ans. to Question 17**

There seems no legal impediment in engaging oneself in the stock exchange brokerage and agentship. The only condition is that the deals and contracts one is carrying out in the stock exchange are free from the aspects and things held unlawful by the Shariat of Islam.

# 14

## Position of the Shariat on Shares

**Paper Contributed by Mufti Shabbir Ahmad Qasmi, Jamia Qasmiya Shahi Moradabad U.P. India**

### Editorial Note

*(The paper in hand does not formally follow the Questionnaire of the Academy in replying the questions put. The approach of the author is rather objective. He has discussed the shares-related common problems in an objective, broad and straightforward way without following the questions submitted to him in the strict order of the Questionnaire. In view of its objectivity, and also the profoundness of the material it contains, the editor's choice fell upon this paper in the host of the papers the Academy received in reply to its Questionnaire on the issue of Shares and Company Ed.)*

### Buying the Shares of the Company

If a person applied for the purchase of the shares of a company directly on the prescribed application form with the intention to have a proportional share in the company's capital assets, the profits and losses, this, from the shariat

viewpoint, will be a mode of the traditional *shirkat-e-Inn*; and hence completely acceptable to the Shariat.<sup>1</sup>

The *Shirkat-e-Inan* does not essentially require all of its partners to take part in the labour work. Since it has an aspect of attorneyship and representation in it, this partnership may come into existence without asking all partners to take part in the work.<sup>2</sup>

The *investors* are the partners in the company and the executives (terminologically, the Board of Directors) are their representatives.<sup>3</sup>

The discussion furnished above establishes it that purchasing the shares of the companies to earn profit therewith is quite lawful and permissible.<sup>4</sup>

## **Purchasing Shares from the Share Market**

The general practice in India is that with an aim to sell out their shares most companies hire the services of a number of local agents in key markets of the country. At times, the agents too purchase a large number of shares from the company and sell the prescribed application forms in the open market. Is an interested person permitted to buy the company's shares through the agency of the agents? This question may have three implications clearly :

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<sup>1</sup> This opinion is basically based on Imdadul Fatawah v. 3 pp. 490-94.

<sup>2</sup> This view is based on the Fatawa Alamgiri vol. 2, p. 391.

<sup>3</sup> Imdadul Fatawa 3/491.

<sup>4</sup> Izahun-Nawadir 1/102.

- (i) That the buyer intends to have a share in the company's assets, capitals and the gains and losses and with the same thing in mind he purchases the prescribed application form from the *Agency*. In such a case if the agency has not yet made the defrayal to the company, the agency shall be regarded the representative of the company and the shareholders the company's co-sharers. But in the event of the agency's making full defrayal of those shares' price to the company it is the *agency* which is actually the co-sharer of the company. Now if the agency sold out the shares it holds to others in the market, the case of the ownership will now change; the role of the agency will stop and it is the buyers who shall assume the status of the company's co-sharers.<sup>1</sup>
- (ii) That the buyer has little interest in having a share in the company's assets, profits and losses; his sole intention is to purchase the shares as a market commodity to earn profits by trading in them. He purchases the shares when the rate is cheaper and sells out them as the prices soar up. According to Imam Abu Yusuf buying and selling the shares with this intention is permissible and *halla*.

وقال أبو يوسف (رحمه الله) لا يكره هذا البيع ..... حتى لو باع كاغذة  
بألف يجوز

Imam Abu Yusuf said : There is nothing wrong with this sale .... Even if one sold out a single

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<sup>1</sup> Based on Imdadul Fatawa 3/492.



piece of paper for one thousand, for instance, the sale will be valid.<sup>1</sup>

- (iii) A person buys the shares directly from the company and then sells his shares to another person who bought them either with the intention to co-share the company or as a market commodity to sell them later with profit. This is also a mode of business fully acceptable to the Shariat.<sup>2</sup>

### **Buying the Shares of a Muslim Company**

A Muslim company whose prime business is lawful and the buyer has no categorical knowledge about the company's involvement in interest-bound deals and activities the shares of such a company may be bought and the ensuing gains will of course be lawful. In case the company is involved in unlawful business activities and interest-bound deals, it is the company's board of directors which shall be held responsible for carrying out such unlawful activities and not the buyers of its shares. The buying of the shares of such a Muslim company will turn unlawful as soon as the buyers comes to know categorically its involvement in interest-bound business activities.<sup>3</sup>

If the shareholders of a company come to know the company's clear involvement in interest-bearing activities but he communicated his disagreement to the company, responsibility will now rest entirely with the management of

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<sup>1</sup> Shami 5/326, Fathul Qadir 7/212.

<sup>2</sup> Izahun Nawadir P. 103, Imdadul Fatawa 3/492-95.

<sup>3</sup> Imdadul Fatawa 3/491.

the company alone, and for the shareholder the gains obtained shall be lawful.<sup>1</sup>

### **Buying the shares of the Muslim company openly involved in interest-bearing business activities**

If a person bought the shares of a Muslim company which is overtly involved in interest-bearing business activities and he sent his note of disapproval to the company's management stating therein his strict unlawfulness of the interest-bearing deals and business activities, the total responsibility for unlawful activities shall be of the management of the company rather than of the buyer of its shares. If the company took part in such unlawful and improper business activities even after his warning, he shall be required to ask the management to inform him of the percentage of the profit earned through the interest bearing activities and then he should cast away the proportional amount from his profits. This is an excellently feasible way to evade the unlawful earning in matters of shares.<sup>2</sup>

### **Buying the shares of a non-Muslim Company**

If the company is of non-Muslims and its prime business is lawful, and it does not indulge in interest-bearing business activities, a Muslim is doubtlessly permitted to buy the shares of such a company. If the non-Muslim company, on the other hand, is involved in interest-bearing business activities, or its internal policy in this

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<sup>1</sup> Op. Cit. 3/497.

<sup>2</sup> Fiqhi Maqalat p. 150.

connection is not clear to the Muslim shareholder as quite obviously, the interest bound business contracts are not prohibited in their philosophy of life, by purchasing the shares of such a company a Muslim will be committing a reprehensible act.<sup>1</sup> If the companies are of the non-Muslim countries, the situation of the shares will assume three distinct possible forms :

### **First : The Company is Muslim but situated in a non-Muslim Country**

Then the case of the Muslim companies in non-Muslim countries may assume three modes :

- (i) The company is the ownership of Muslims alone, even though the working staff includes non-Muslims as well, the company shall be regarded the Muslim company. In case the core business of such a company is unlawful, with no *hallaal* business at all, the buying of the shares of such a company shall be strictly impermissible. The companies involved in fixed deposits, life insurance, production and business of wine and other intoxicants undoubtedly fall into the same category.
- (ii) The company's prime business activities are lawful. For example, it is engaged in the real estate business and undertakes constructional work, makes production of consumables such as shoes, soaps, or manufacturers/ exports/imports the vehicles. The shares of such a company may doubtlessly be bought either to co-share

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<sup>1</sup> Imdadul Fatawa 3/497, also Izahun Nawadir 1/106.

the company or trading in them to have profit. This will form a case of the partnership and *mudharabah*, hence completely acceptable to the shariat.

- (iii) The company's prime business is lawful but incidently it gets involved in *interest-bearing* transactions. The shares of such companies may be bought provided the buyer communicate his extreme disagreement at the company's such deals clearly telling the management that the interest bearing transactions are in no case acceptable to the Shariat. If the company indulges in such unlawful business activities even after the shareholder's clear warning, he shall be required to request the management to inform him, towards the close of the company's fiscal year, of the proportion of the interest in the total amount of the gain, and then spend it in the acts of charity.<sup>1</sup>

## **Second Way: The Company is co-owned by Muslims and non-Muslims**

In case the company is co-owned by Muslims and non-Muslims, the purchase of the shares of such a company shall be subject to the rulings applicable to that owned by Muslims. The lawfuls and the unlawfuls of both the types of companies will be completely alike.

## **Third Way : Shares of a non-Muslims Company**

If the company is the ownership of non-Muslims, though the management includes some Muslims, the

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<sup>1</sup> Fiqhi Maqalat p. 151.

company shall be regarded as purely of the non-Muslim ownership. With the non-Muslims the contracts of *mudharabah*, companyship of *Inan* etc. may be concluded and there is hardly any disagreement amongst the Fuqaha on this count. The *mufawadah* companyship only is a point of disagreement between the *Tarfain* (Imam Abu Hanifa and Imam Muhammad) and Imam Abu Yusuf. To the *Tarfain* the parity of religion constitutes an essential condition for the validity of the *Shirkat-e-Mufawadhah*. To Abu Yusuf, however, this condition holds no importance. The matter of the shares of the company forms no case of the *shirkat-e-mufawadhah*; it forms a case either of the *Inan* or of *Mudharabah*. The issue of the shares has to be considered in terms of *mudharabah* or *inan*, which may be concluded between Muslims and non-Muslims without facing any juridical disagreement. A Muslim, therefore, is fully permitted to buy the shares of non-Muslim business company.<sup>1</sup>

### **Non-Muslim Company with Interest-bound Business Activities**

If a Muslim bought the shares of a non-Muslim company which, beside its permissible business, gets involved in improper deals and interest-bearing activities, this will give rise to the question of determining the permissibility or otherwise of the profits a Muslim

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<sup>1</sup> For further detail the following authoritative books may be consulted : Badains Sanai 6/81, Qazi Khan on the Margins of Fatawa Alamgiri 6/313, Tabyinul Haqaiq 3/315.

shareholder gets. To reach a decisive conclusion in this connection what is to be seen first is if the Muslim shareholder has a say in the management of the company and in concluding the interest-bearing deals. If the Muslim has no say and the total authority rests with the non-Muslim management, it is the non-Muslim Management which will be totally answerable for concluding the interest-bearing business deals and irregular contracts. The profits falling to the share of the Muslim shareholder shall be regarded lawful without doubt. So because of that Shariat asks us leave them what they do in matters of business and trade. Quite obviously, they being out of the fold of Islam, are not committed to follow the commands of Islam regulating the business and commerce affairs. A Muslim may buy the shares of such a non-Muslim company and get the benefits falling to his proportional lot. But, if a Muslim has other options to invest his savings in besides such a company, he is better advised to move his funds to other lawful ways, thus to evade the places of doubt and suspicion.

**15****Group Discussion**

Of the shares and other capital market instruments with reference to the associated problems and the areas and aspects of the concept of shares and company system contravening the principles and norms of the Islamic Shariat.

*(With a view to facilitate a free exchange of views between the participating Ulama and scholars, a group discussion was arranged at the end of the seminar. Apart from its other benefits the group discussion broadens the outlooks of the discussants in an open academic environment. The discussion was headed by the (late) Haz. Qazi Mujahidul Islam Qasmi, the founder-chairman of the Islamic Fiqh Academy of India, and he, despite his suffering from more illnesses than one, actively took part in it and provided a golden opportunity to other discussants for benefitting from his exceptional knowledge and insights into the Islamic Fiqh and the principles of Islamic jurisprudence. Ed.Tr.)*

**Qazi Sb. opens the discussion**

The problem of shares and the concept of company system has just been discussed at length before you. You have gone through the questions and the answers, their abridged version and the supporting arguments. As I have repeatedly said, and would like to repeat the same once again, the task of our experts is to depict the problem and

present its all aspects; the job of our Ulama, on the other hand, is to apply the concerned rulings of the shariat to that problem. In case the problem is not depicted properly in the proper context, the *fatwa* of the *mufti* or the inferential approach of the jurisprudent can never be proper and right. To arrive at the right conclusions both the mentioned things are required to work in unison. In short, proper and accurate perception of the reality of the problem is first required. We have a very important question here to discuss first. The question is: If a company owns nothing except the cashes, and the company has been established only to do the business of money-lending (or interest,) and it seems that it owns nothing except the place and its building structure and similar other things of fundamental need and nothing else is seen there like the machines or any type of the raw material and it is only the money and cashes round which to revolve the whole business activities of the of the company, what is the position of the shariat on the sale-purchase of the shares of such a type of company? To my opinion, the first stage of the company's life, quite obviously, being that it collects money and chases in order to start its business or industrial activities. At this stage hardly there exist assets in the ownership of the company; it at this stage owns only the cashes (collected largely through the sale of its share, etc.) The point to discuss in connection with the question is to determine whether there are cases when the company owns only the cashes and no other assets. If so, the case ought to be explained and discussed now. This question assumes even greater degree of importance when it is known that there exists hardly a company which in general cases own nothing except the cash's. We have other questions are well



to discuss here. Before we deliberate on the questions, we are required to attentively hear our experts' explanations and views. This will help us determine the nature of the questions. Only then we will be in a position to determine the position of shariat on them. In the meanwhile, I would like to ask my all the three secretaries, MI Khalid Saifullah Rahmani, MI Atiq Ahmad Bastawi and MI Ubaidul Allah As'adi, to sort out, from among the answers of the Ulama we have received, the unanimously agreed upon items from the total ones. The items on which the opinions of the discussing Ulama are different should be discussed now in this group discussion so as to arrive at sounder viewpoints. The latter type of the items does not include the rare one like that adopted by MI. Sultan Ahmad Islahi *vis-à-vis* the bank interest. According to his opinion what the bank gives to its account holders is not interest but profit. Quite obviously, this is the rarest of the rare view, and the Muslims community as whole will never accept it as such.

Before embarking upon this interesting discussion we would like to attentively hear the detailed and well-argued paper of our great learned and renowned guest, Dr Wahaba Mustafa al-Zuhaou (of Syria). This is an excellent piece of argumentative writing with a copious analysis. Still, it will be of great benefit for us to hear this paper from the tongue of the guest himself. [The Dr, then, read out his paper before the audience].

## **The Qazi speaks again**

Now, as you noted it, Dr Wahaba Zuhaili has discussed one by one all the questions of the Questionnaire in the light of the Book of Allah, Sunnah of His Prophet and the opinions of our great Imams of Jurisprudence. His paper presents the questionnaire and its perspective, taking in mind the broader context. We should benefit from it as much as we can.

## **MI. Atiq Ahmad Qasmi speaks**

The questions about the shares and the answers to them, and also other explanatory papers supplied with their gist and analyses, have been put before you. I had aired a request to the audience and the discussants that if anybody had any question in mind, he had better write it down on a paper so as to get the answer easily. Before this our experts will explain the concepts and the points of some things. Without it, it is very difficult to apply the ruling of the shariat to a given concept or situation. The first question to discuss now is about the initial stage of the company. The company has been established and, quite obviously, it is selling its shares to the interested investors and it now owns no assets at all except the cashes, it is getting through the sale of its shares. In other words, the sale of the company's shares begin while it is still in. The very initial stage of its life *vis-à-vis* this question it was said by some experts that the question was not a real one; it was completely theoretical. Company, even at its very initial stage, in never without assets beside the cash. Without having sufficiently required assets no company could get itself registered with the

concerned authorities and can never be permitted to step forward and lunch the sale of its shares. Mr. Khatkhate sb. is asked to explain the fact about it.

### **Mr. Khatkhate Sb. speaks**

This question, as has also said Mr. Atiq Ahmad sb., is fully hypothetical and theoretical rather than being an actual one. There is no time for a company when it owns only the cashes to the exclusion of other types of assets. Take for example the very first stage of the company's life. First of all, before the start of work the company has to conclude a transaction for its registration, prepares a report in order to determine the possibilities of its success in future. The same report tells about its market success and technology it is to use to make production. All such preparations involve expenses. Such an expenditure although does not make the consumer assets, or, to be more precise, the tangible assets and properties, yet it requires funds. People are hired, employed to get benefits from their professional expertise. All such things have importance in forming the company's intangible structure. That is why it is often seen that a new company has just been launched and its maiden public issue is simultaneously offered, the company is selling its shares at a premium, a share of Rs. 10/- face value is being sold at a price of Rs. 30/- for instance. The company it self selling its maiden issue of Rs. 10/- per share for Rs. 30/- per share, that is with a Rs. 20/- premium. The same shares may be sold for Rs. 50/- in the share market. The price rise is primarily due to the fact that in the market there exists the demand of its share higher than the availability of the

shares. The reasons for the company's strong position in the market include the well-known promoters, good collaborators, and an overseas collaboration. The existence of all such features in a new company makes it promising a bright and successful future, company's possessing a good and reliable technology or its being in business agreement with a company possessing a well-known brand are among the features which increase and enhance the value and credibility of the company in the minds of the investors, the company's being not in possession of much larger assets notwithstanding; and despite the fact that the company is not much older in respect of age, its issue may attract huge amounts of cashes from the investors. Once the company embarked on production, in the latter stages it seems a remote possibility that the company is in possession of only the cash. The company must possess other assets as well, especially in subsequent stages. The company's good will and its proportion is also an asset of a higher value. Considering all such things the questions seems hypothetical, with no practical importance at all. As regards the things related to the Stock Exchange, it is good to be kept in mind that what we are saying today is totally in the present context of things. In the financial sector things are changing faster than expected. It is quite possible that today's things get older in the nearest future. My total talk is in the light of the existing structure of rules of the stock exchange.

Turning back to the first question put up by the Qazi sb. To rephrase the question, if a person bought share from a shareholder through an intermediary or the broker and the

share certificates were sent to company for the change of the name and to complete the process of transfer. Upon noticing a difference in the signature of the selling party, the company returned the certificates back to the shareholder, will this terminate the purchase transaction? To dispel this doubt I would like to submit that the purchaser has a right to insist on having those shares making a second time request to the shareholder, now the selling party, to make his signature correctly so as the company may complete the transfer deed normally. If the purchasing party rejects the buyer's request, refusing to correct his signature, his broker will have to exercise his option on the purchase of the share and thus he will get the shares coming to the market for sale on option from any other person to buy those shares. In short, third person (the purchaser) has a fuller right to insist on getting the share of which he has paid up the price to the shareholder. If the selling party refused to correct his signature even second time, the broker will be responsible to make those shares available for the new purchaser by any means. This buyer may, however, have to bear the pain of waiting. The first buyer may possibly sell his shares to any other person due to his incorrect signature or any other similar technical reason, the share certificates have been returned back to him those shares' option shall have to be exercised by the next purchaser and the price will have to be given to the first buyer in the order of the buyers.

### **Qazi Sb. speaks**

Actually, the point we wish to discuss here is the fear which we can not discount until the transfer deed is

completed. The shareholder who has sold his shares to us may, possibly, leave the sale transaction incomplete so as to render us unable to take possession of those shares. His so doing will bear fruit according to his wish unless the shares certificates are transferred by the company to our name. We may even lose the benefits associated with the shares; the profits will go, as usual, to the owner of those shares according to the documents of the company. The broker may engage himself in a legal warfare for our interest. This is a very good thing. But what we want to categorically determine is the point who will be entitled to get the profits or suffer the losses? The earlier owner (registered as such with the company's register) or the new purchaser whose name has not yet been recognized by the company as the stockholder?

### **Khatkhate Sb. speaks**

The question of Maulana Atiq Ahmad is also deeply connected with the same situation. That is, if you have purchased shares the transfer of the name must take place.

### **Qazi Sb.**

How the transfer of the name will take place? The responsibility rests with us or with the company?

### **Khatkhate Sb.**

Our responsibility is to send the certificates to the company by our self or through the intermediary or our broker. In case we failed to do so, the profit, or the losses, according to the position of the company's performance, will still be ours. We have purchased those shares and paid the

price to the shareholder, the selling party in the case in hand. This being our position in the eye of the law, the practical procedure, however, being that the dividends will be given only to the person whose name existed in the company's register on the date when the company declared its dividends. If the new purchaser failed to complete the transfer procedure, the dividends will not be sent to him; the company will send them to the person whose name figures in its register as shareholder. But the new purchaser may ask his broker to help him in getting the dividends issued by the company. If the former shareholder refuses, he may go to the court of justice to fight for his right. But since the sums of dividends are generally small, there is hardly a person to bother himself. Only a person of bigger holding can think of so doing. The bigger source of profit in the shares is actually the soaring of their prices. The dividends offer only a smaller amount of profit, only a 10% of the total profit or less, still. In short, the legal position does not depend on the completion of the transfer procedure.

### **Qazi Sb. speaks**

It means that in the eye of law unless the transfer of the shares' ownership is noticed by the company and the register is modified accordingly the profits and losses will be falling to the lot of the previous owner.

### **Khatkhate Sb.**

Of course, the profits and losses will be regarded the lot the previous owner. As regards the company's role, it

will absolve itself by rendering the profit (read dividends) to the previous owner.

### **Qazi Sb.**

I was telling about the company's role vis-à-vis the disputes of the type. This point assumes an importance greater still when we take into account the phenomenal fact that all people in the field of business are not fair in their business dealings. Sometimes the ratio of the profit may go up beyond expectations of the previous owner, and noticing the profit increase, he may refuse to put his signature to the sale deal and, as a result, the company will not initiate the transfer procedure. In short, it is quite clear that in the absence of a proper sign of the selling party the sale deal will not be entertained by the company and the new purchaser can get nothing from the profits of the shares he has already paid due price to the previous owner. This is a great loss indeed.

### **Khatkhate Sb.**

No, by law, it is not binding; it is the only practical procedure, much similar to the case, for example, of an ownership flat. If the owner got included with his name the name of somebody else as his nominee, and (before the completion of the nomination procedure) the owner suffered death, what will be the possible situation of the matter of ownership..... ?

### **Mr. Ihsan Sb.**

Company is no more than a company. Although the company is recognized by law as a legal entity, yet it can not



undertake all the dealings which a living person can. For example, the company can not conclude a marriage contract, for the company possesses no sense. It can enter into only the contracts which a senseless entity can undertake. Company's incorporation in fact is its birth certificate. After the completion of this stage a *public limited company* requires to have the *certificate to commence the business*. Having received the said certificate, the company turns adult, able to enter into contracts with its own name. Yes, some type of contracts may take place even before the company's receiving the said certificate. For example, the purchase of some needed assets by the name of the company is planned; and the promoters conclude the contracts on the company's behalf and pay a part of the price in advance. But the pre-incorporation deals and transactions are regarded incomplete and ineffective unless the company gets the certificate to commence the business. After getting this important certificate the company ratifies in a meeting the deals and transactions concluded on its behalf by its promoters. To this effect the company passes a resolution stating therein that the company accepts all the transactions and deals concluded on its behalf by its promoters and puts on the full liability of them on itself. It is to be noted, again, that this ratification takes place only after the company's is in possession of the certificate to commence its business. In this context the question that for a good time the company's assets generally exist in the form of the chases is largely incorrect and does not represent the fact. By the time the shareholder receives the share certificates, the company,

generally speaking, gets the certificate to commence the business and the company commences its business operations. A certain amount of assets becomes its ownership and the cashes transform into assets. Granted the cashes the company collected from its share purchasers and the company has not ratified its previous transactions, still there exist a fair amount of some important intangible assets which invariably enhance the value of its shares. Promoters for their well-known excellent past performance, company's good project, etc. include such things the combination of which in a company lends a good weight to its shares. In sharp contrast, the promoters of a company with bad reputation constitute an important reason to lower the price of its shares. The reputation of the company's promoters, the company's goodwill and its patents are of a greater significance, so much that sometimes they are shown in the company's *balance sheet*, while neither the goodwill nor the patents form an asset of tangible existence. Indeed such things may have their value even greater. Their effect may go far beyond the value shown in the balance sheet. To explain the point, the value of the land on which the company was established twenty years earlier, for instance, is shown in the assets file in terms of its past value, while its present value has become manifold as compared to its past, what it used to be in the *balance sheet* the same continues to exist unless it is revaluated anew and the same is recognized by law. In the market there exist many shares whose actual value is far more than the one shown in the value book of the company. On similar lines, there might be many shares which are sold and purchased in the capital market at a price lower than the one shown in the company's *Value Book*.

Actually, expectations and fears about a company's future performance is of course from among the factors which play a very crucial role *vis-à-vis* the prices of its shares in the market. Good expectations and the performance-based promising future may put the price of a company's shares at a high premium. Contrariwise, if there exist reasons which portend market losses of the company in the near future, the price of such a company may go down beyond expectations. In short, the definite fact is that the market value of the shares depends on more reasons than one; it has nothing to do with their actual value. Good balance between the demand and supply affects the prices of shares very much. Now-a-days the capital market is under an actual grip of liquidity crunch; shares are available in the market in plenty, but there is an acute shortage of the cashes. Thus, an imbalance between the demand and supply of shares has considerably downed the market value of shares; so much as they are being sold and purchased at a price lower than their actual one. By contrast, sometimes inflation hits the capital market. Cash overflow in the market raises the price very high. The shortage of shares in comparison to cashes is an important factor to raise the share price, as the capital market witnessed during the period of notorious Harshad Mehta, when the market had witnessed a 16% rate of inflation and the prices soared higher. At present the inflation rate is between 4 or 5%; the market is in grip of the liquidity crunch and, as a result the prices are low. Summoning up the foregoing discussion, the question that the company's assets existing in the form of cashes can not

be an object of the sale transaction because it will be a case of the sale of cashes for the cash itself (which could be sold and purchased with the condition of a perfect parity between both the exchanges) will not be proper, missing more than one important considerations adding much to the value of one exchange, positively or negatively.

### **Some one asks a question**

When are purchased the land and other properties by the company?

### **Mr. Ihsanul Haq answers**

Land and properties are generally bought in the first phase of the company's launching; but it may be purchased in later stage according to the requirement. Company's project makes mention of all such things, when the land will be purchased and when the machines and other equipments will be sought. Sometimes these purchases get delayed and this may often increase the cost of the project, and the company may be forced to collect more cashes by way of borrowing funds from the interested investors. In short, the project report gives the total information about company's future planning.

The second questions relates to taking possession of the shares. The shares of the company are generally transferable. The modifier 'generally' is being used to clear the fact that the shares are not always transferable; the company has a right to put restrictions to its shares' transferability. The company, for instance, may stipulate that it will not sell its shares to foreigners and the overseas

investors beyond a particular number. Any foreigner purchasing its shares beyond this particular number is bound to lose contract. The company may put its existing shareholders under restriction to that in case they want to sell their shares, they will be required to inform the company before entering into a sale deal with anybody else. Informed in advance, the company will be able to tell its long-standing shareholders to prompt to purchase those shares if they so wish. The selling party may move to the share market to sell the shares only if the long-standing shareholders are not interested in the purchase. Such might be the restrictions which a company may put to the sale/purchase of its shares. After this long parenthetical explanation it would be better to note again that generally the shares are transferable with no restriction at their sale/purchase. Once the purchaser purchased them and the selling party signed them off, the sale becomes complete; though the delivery has not yet taken place. Actually, the mode of delivery may differ from object to object. The sale-purchase is complete, but the ownership will change only when the delivery has taken place, for without delivery there is no question of the transference of ownership. The way of delivery, however, may differ from item to item. There are things which may be handed over to the purchaser. A *bearer check's* delivery may be valid without the sign of the giving party. An *order check's* delivery, however, will not be valid unless it is duly signed by the issuing authority. If an order check has been issued to the name of a particular person, its delivery will not be regarded valid

unless he orders that the amount mentioned be given to the second party. In the same way, the delivery of shares will not be valid unless the shares certificates are accompanied with the transfer deed, duly signed off by the shareholder, and with this the delivery of the shares will legally take place and the ownership, too, will pass, from the shareholders to the new purchaser. As regards the purchaser who has not sent the share certificates to the company for the transfer of name, procedurally, the company will not send the *dividends* to the purchaser, for the company is obviously unaware of its shareholder's latest sale transaction. The company is responsible for sending the dividends to the purchaser only if it received the signed share certificates and noted the change of ownership of those shares latest by the date it issued the dividends. The purchaser failing to do so will not be given the dividends, he, however, may claim the dividends from the selling party, that is, the shareholder directly, and the company has nothing to do in this matter. In short, the purchaser will become entitled to get the profits or loss associated with the shares as soon as he gets in possession of the shares certificates with a *transfer deed*. As to the problem of sign, if it is appended by the selling party itself, the ownership will immediately change. The problem arises when the shareholders' sign fails to match the one existing in the company's record. Naturally, the company will not be ready to modify its record; notarized sign may, however, be accepted by the company if the NOTARY officer certified that the sign had been made in his presence by the person, even if the sign (notarized) does not match the one existing in the company's register. In case the sign has been forged,

the forgery can transfer no ownership; it is invalid and the delivery unacceptable.

The question no. 5 asks the shariat position on the interest-bound to loans. In this context I would like to mention the reasons and things which force the company to borrow funds on interest from the public. This will help you the Ulama to study those things and determine the position of shariat on it. The foremost reason behind borrowing interest-bound funds that the company's promoters are often able to estimate that they may collect a certain amount of money from public as well from their own pockets. If the amount thus collected is regarded insufficient for the execution of the plan in hand, they will naturally be required to arrange the rest amount of funds by way of borrowing. The next important reason being that the PROMOTERS are always eagerly keen to retain their maximum control over the affairs of the company. Should they arrange the total required funds from the sale of shares, the shareholders, if they form a majority of the like minded people, may remove the company's Board of Directors, wresting the control of its affairs from it on the strength of their majority. For all the shareholders enjoy the right to vote to choose the management and the Board of Directors of their own choice. They bring a NO TRUST MOTION against the Board of their dislike and dislodge it, quite in the manner as does a strong OPPOSITION against the existing government, and establish a Board of their own choice. Briefly, the promoters resort to borrow funds on interest largely because to safeguard the existing management and

the Board of Directors against an effective interference in the company's affairs on the part of its shareholders.

The third motive for borrowing funds on interest is that the percentage of profit is often higher than that of the one payable as interest on the borrowings. As a commercial principle, as long as the percentage of the loan is lower than that of the profit, the company continues to borrow funds on interest. This way the company reaps more profits. The company treads the same path until both the percentages turn equal, or the percentage of loan turns higher than that of the profit.

The fourth motive for borrowing funds on interest is to get the *income tax* benefits. As a matter of rule, the amount of the company paid on the borrowings is included in the expenses and deducted from the company's profits. The DIVIDENDS, on the other hand, are not included in the expenses by the INCOME TAX authorities. They, on the other hand, are regarded part of the profit hence undue actable from the company's income, and full tax is levied on it. In our earlier meetings the difference of opinions of the discussants also came to light. Earlier, we thought that the income tax payability accounted for the company's loan-seeking policy, and to evade the high rate tax paying the company is forced to have the required funds as interest-bound loans from the interested creditors. In order to keep the pace of progress in the tough competitive market of the day we, the Muslim companies can not afford to pay more taxes. Otherwise, we are doomed to lag far behind many of our competitors in the field of business. However, when we had opportunity to properly look into this argument, we



found it largely improper, we arrived at the conclusion that the tax rate levied by the government at the companies is often payable only a 50% or even less after availing all the deductions and concessions which ultimately turn out to be less than the half of the total profit rate? Indeed, this difference is not so bigger as to adversely affect our business.

A yet another point of great significance is that in respect of the profit-making the performance of the companies may differ from one to another. There might be a company which has been incurring loss for a period of ten years. On the other hand, a newly-established company may reap great profits even in the first year of its existence. Instead of evading the income tax, we are required to improve and enhance our capabilities. Should we succeed in enhancing our capabilities by unleashing our potentials, we will cease to entertain the fears of our projects' failure. Our other country-fellows take this issue purely from a materialistic outlook; we the Muslims should see it through the eye of the shariat, the law of Allah. Through the medium of press our country-fellows are demanding the exemption of the *Dividends* from the income tax the same way as are exempted from the income taxes the amount of interest paid to the *creditors*. To support this idea I wrote letter. In this regard my first letter got published in the Business Standard. Once an editorial of the Economic Times had called the attention of the national companies to that they were in hard competition with the multinationals operating their business in India. The Editorial read: "Now the

multinational companies have entered India. They are far stronger as compared to the national ones. What lends them primary strength being that in the business enterprises their funds and assets are more than the borrowed ones. They seldom seek loans. The interest rate in those countries is 4 or 5%. In India, by sharp contrast, the interest rate is 16 or 17%; it may go up touching the percentage of 25 and 30." Advising the Indian companies, the editorial wrote: "Our Companies had better down their loan ratio and raise their capital ratio in the total assets involved in their business and industrial enterprises. This way they may enhance their ability and gain strength to sustain in the hard competition with the multinationals." The editorial moved me and I supported it by a letter to the Economic Times. The paper published it giving it a heading 'good advice'. In my letter, I wrote that it was indeed a 'good advice' that the companies should raise their equity and down their loan ratio. But how it was possible in the existence of the present taxation laws? The company having more equity has to pay more taxes, while the one using more funds of loan pays less in comparison to the former one. If the government is prepared to reconsider its TAXATION laws, it will be doing good both to itself and to the companies. By amending the taxation laws the government may equal both the fund borrowing and the equity based companies." This was a good voice raised by non-muslims. We spoke in its support. This is of course a problem, but we can get it solved by the government should we put our case before it in a systematic way.

The sixth question is about the interest the companies get at their forced savings in the Reserve Bank or at the funds they are forced by law to invest in the purchase of the government BONDS. This is true *vis-à-vis* the finance companies and the banking companies, but not true in the case of the commercial and the manufacturing companies. The principles of partnership and *mudharebat* is well-recognized by Islam. The Muslim companies are in a better position to deal with this problem.

The seventh question is about the profits and gains earned by investing the interest-bound borrowings. Actually, the company seeks loans too and earns profits on its total funds invested without making a clear distinction how much profit is made by the investment of the interest-bound borrowings and how much is made through the investment of its own assets. Although it is very hard to draw a line of distinction between the profit earned by the interest-bound borrowings and by the company's own assets, still the diary may help us in determining the amounts of the profits by each source separately. But for the company it is not always necessary to distribute the profits the company has made. The company may or may not distribute its profits among its shareholders. The company may take the decision to distribute only a part of the profits. This is actually based on the policy of the company. If the majority of shareholders decide to invest the amount of profit to further the company's business objectives, the profits will not be distributed. For individuals it is indeed will be a difficult job to minutely calculate the portion of

their profit earned by the company through investing the interest-bound borrowings. More so, the company's report mentioning the profit's distributions amongst the shareholders affects the process of its shares. Actually, there exist two types of factors affecting the price of shares- *fundamental* and *technical*s. The fundamentals depend on the company's positive and negative aspects; the *technical*s, by contrast, rest on the availability of cashes and shares in the capital market. With respect to the position of the company in the share market, there exists a yawning difference between the *fundamentals* and the *technical*s. Sometimes the company's fundamentals are very good, but due to an abundant supply of shares in the market against an acute shortage of cashes the prices go down in spite of the fact that the company is making good profits. Sometimes, by contrast, the shortage of shares against an overflow of cashes in the market might enhance the prices beyond expectations, and in spite of that the company is running in loss, its shares may attract manifold prices as compared to their face value. This occurs when the FUNDAMENTALS got superior to the TECHNICALS. To cut the long story short, every good news affects the share market positively. If the interest-bound news affected the market, enhancing the share prices, it will indeed be a very difficult job to calculate and determine which one of the profit we should spend in charity - the interest, which from the company has been received, or the profit earned by way of enhancement of prices of shares caused by the news of interest-based profit.

The questions no. eight is about to determine the nature of relationship between the Board of Directors and

the shareholders. Actually, the Board of Directors, appointed by the majority vote of the shareholders, is from among the very shareholders, quite in the manner of the assembly members. The *chief minister* and the whole *cabinet* is chosen from among the Legislative members of the Assembly. The company, as it has already been stated, is an entity recognized by law as a separate being. But this being is unable to manage its affairs by its own self. For the administration of its affairs it totally depends on others. For an effective management of its affairs, the shareholders choose a number of people from among themselves, vesting the authority to manage the daily affairs within the boundaries of the company's policy frame work. Still, the matters of great importance are generally decided in the shareholders' meetings. As regards the position of the shareholder who is not in agreement with the Board of Directors regarding a matter or a decision taken by the Board and the limits of his responsibility for a decision running counter to the principles of Islamic shariat, *vis-a-vis* this point I would like to submit that when a new company comes into existence and brings its issue to the market, it publishes its prospectus. In the prospectus is provided a full project report. By going through the contents of the prospectus every shareholder may know if the company is going to borrow funds on interest and business and manufacturing enterprises are lawful or unlawful. Besides this, in the Article of Association the company is granted power and authority to seek loans. In case of the company, at the very time of its registration, has not been granted the

authority in the Article of Association to seek loans, it cannot proceed to seek loans. According to power granted to the company in the Article of Association resolution is passed in the meeting of the Board of Directors to the effect that the company will seek loans. With all such things before him, if a shareholder accepts to invest his funds in the company completely out of his own volition, it is to be determined how far he is to share the responsibility of the sin of his company's seeking interest-bound loans, or it is his representative (the Board of Directors) which shall be held responsible for seeking interest-bound loans to his exclusion.

A question was asked about the Back Delivery. That is, a person sold his share and signed the transferred, to be sent to the company for registration. But his sign did not match the one existing in the company's record. The company returned the transfer deed to the shareholder; and on the same ground refused to note down the transfer of those shares in its register. What will be the nature of such a transaction? To this I would like to submit that the transaction will be regarded valid by law but with an incomplete delivery. For delivery cannot take place unless the selling shareholder's sign is endorsed by the company. But the selling party is morally bound to deliver the shares he had sold and received the due price. Unless the delivery takes place the sale contract will be regarded ineffective. As regards the purchaser, those shares will not pass the ownership unless the company accepts the transfer of ownership by matching the selling party's sign with the one existing in the company's record. Again, without a proper

sign of the selling shareholders recognized by the company as existing in its record, the sale contract will remain invalid in the eye of law. A changed sign of the shareholders is taken by the company as forgery which can never transfer the ownership from one to another.

### **Some one speaks**

While selling the shares the shareholder puts his sign on the blank transfer deed. Then no other man often, feels himself obliged to make his sign while forwarding to sale to next purchaser. Unlike the order check, which if is passed to a next person, the first must endorse the name of the next person, transfer deed of the share certificates is blank; this passes from one to another without any sign on it. But for the transfer of ownership from the selling shareholder registered as such with the company, the transfer deed must have his sign on it, failing which the ownership of all the subsequent purchasers shall be regarded improper and invalid.

### **Khatkhate Sb.**

In order to properly understand the system of the sale and purchase of share we had better note the different stages of the procedure, for as the Qazi sb. has just said, this involves the sale before taking possession of the object of sale, technically, Bay' Qablal Qabz. One possible stage is that we may sell the shares in the stock exchange even if we do not physically have the shares in our possession. Another stage is that you want to purchase the share and for the same purpose you have ordered the *broker*. In response, the

broker purchased the shares for you, and informed you that he had purchased shares for you of the company so-and-so and gave you the contract. This stage is followed by that of payment. In other words, first stage of the transaction is to order the *broker* to purchase the specified number of shares for his client. The broker will purchase the shares from the stock exchange. That is in the stock exchange the broker will bid at an auction there; the seller will say: "I sold my shares to you for a sum of money such and such".

**Qazi sb.**

Is it the *offer* and *acceptance*?

**Khatkhate sb.**

Yes, of course. It is the *offer* and *acceptance*.

**Qazi sb.**

It means that after the exchange of the wording of offer and acceptance the transaction takes place. After this stage what does follow?

**Khatkhate sb.**

After this you will make the payment for the shares you have purchased. Then will take place the delivery of the shares from the market accompanied by the *transfer form* signed by the selling party, and now you shall be required to put your sign on the certificate and send it to the company for the completion of the transfer procedure. If the company registered this change of ownership of the shares in its record both the transaction and the transfer will get complete. The point to be considered here now is that after



receiving the contract not from the broker what will be the legal position of the things, benefits, dividends, etc. declared by the company will respect to those shares which have been sold to somebody else, but the payment has not yet been realized? As far as I know, all the things yielded by those shares shall be required the lot of the purchaser; and it is he who will be entitled to claim the dividends, Bonus shares, Right shares, etc., not just morally but legally as well. The broker is legally obliged to give me all the things mentioned. Then if you make the payment and the delivery took place, the transaction will become complete from all respects. The transaction and the delivery could be revoked only if the purchaser defaults. In the absence of default there is no question of revocation.

### **Qazi Sb.**

In what stage of the transaction the word 'delivery' is used?

### **Khatkhate Sb.**

It is when you got the certificates and the transfer form from the market.

### **Qazi Sb.**

Is this a type of possession?

### **Khatkhate Sb.**

Yes, of course, we now are legally competent to sell those shares to a third party without getting them transferred to our name. The only problem we may face

being that unless the change of ownership is known by the company and the register records are modified accordingly, the company will naturally issue all the associated benefits to the name of the shareholder. In order to avoid any such situation the purchaser will be required to send the relevant papers to the company to get the ownership transferred. The thing to be noted here is that the purchaser has not purchased the shares from the company; he has purchased those shares from somebody else; the company sells its shares only once when it brings its issue to the market. But it is the company which is responsible to maintain all the developments taking place in respect of the change of ownership from the first shareholder to next purchasers. Again, in the SECONDARY MARKET transactions the company is neither the buyer nor the seller.

### **Some one speaks**

Is the possession established after the delivery is made and received?

### **Khatkhate Sb.**

It is you the Ulama who are to decide this; I'm just telling its characteristics.

### **Qazi Sb.**

It means the transfer of ownership from the shareholder to the purchaser in the record book of the company is almost the same as we experience while we purchase a piece of land. By mere an offer and its acceptance the sale transaction takes place. But without getting this sale registered in the official record the name of the former

owner will continue in the government record; and it is he who will have to meet the concerned official demands, revenue taxes, etc. This ownership will terminate officially when this change of ownership through the sale or other types of dispositions is reported to the government and its record book is modified accordingly.

### **Khatkhate Sb.**

In this respect I would like to make two points here. First is related to the problem of uncertainty, which we have been assessing here for a long time. After the delivery of the shares certificates takes place, even though the sale transaction is complete, yet it may involve an aspect of *gharar* (uncertainty). The purchaser has only a limited right to sell them to a next purchaser. To illustrate, if we, for example, entered into transaction with a broker to purchase a number of shares, according to the practice common in the stock exchange, there is a *settlement period*, often extending over a number of days. After the termination of that period all the transactions taking place during those days are settled at a specified date. In case we happened to purchase the shares from a broker within a settlement period and then we sold them to the same broker during the same period, we need not bother ourselves about this transaction; it is clear in all circumstances without facing any element of uncertainty. But, on the contrary; if we sold the same number of shares at the hand of the some broker after the expiry of the SETTLEMENT PERIOD, the transaction may have an element of uncertainty about the actual position of delivery in future whether we will be able to deliver or not due to

any reason. This law is presently in force. In short, we can sell those shares to the same broker during the same settlement period. This sale-purchase takes place without making any payment. But the generalization of this practice may raise the element of speculation too high. Its open permission and the subsequent practice may render the purchase of shares in the secondary market mere an insubstantial event. The speculation may be avoided by clearing one's intention on which rests the completion of the transaction. If in the same settlement period you want to square off, you will be required first to make the payment after the receipt of the contract from the broker. Only by so doing you may get an assured possession, otherwise, the speculation will be let free.

### **Abdul Qayyum Akhtar Sb.**

My learned friend has talked much of *procedure*. But, as far as think and perhaps my thinking is correct, the matter that the business and the sale-purchase of shares is lawful or unlawful perhaps remain unsettled. In the very outset of my talk I feel myself obliged to clearly express the phenomenal truth of the Indian economic system. Indian's economic system, indeed of the whole of the contemporary world, but I am keeping myself limited to our country, is interest-based. The interest is not just a part of it, it is a very primary constituent of it. While discussing any aspect of the business of shares, this business totally rests on an unrestricted practice of interest. As it is known to everybody else, people generally invest in shares in two ways; those who want to earn profit and purchase the shares as they do other market commodities. Others make investment in order

to have an ownership share in the company's assets and properties. We cannot ignore the fact that every class of people today tries its best to have a saving, be it a laborer, employee, a farmer or belonging to any other class. All they have a certain amount of surplus money. Naturally not every man is so wise as to buy gold or property for his small savings. He is keenly desirous to make a saving for his future expediencies. Keeping the same thing in mind, he tries his best to make the search of a comparatively safe place for the investment of his saving. Today, the existence of new means of information and communication has facilitated the collection of information from every where. Our sitting here is meant to primarily discuss what the share market and share system primarily is; and then to determine the position of shariat on the shares system. In this respect I have a lot of important points in mind. In presenting them here although it will be difficult for me to maintain systematic order, still I will do my best to do so.

So far as the shares, the central theme of the present discussion are concerned, there might be more types of shares than one: equity shares, preference of shares which generally is restricted to a number of percentage only, voting shares non-voting shares, bonus shares, right shares, the public undertaking shares, etc. to name only a few. As soon as the company is formed, the practice of interest begins. The *application money* is deposited with the bank for a fixed period of there months, thereby to meet a lager part of the company's expenses by it.

To bring its public issue to the market a company has to arrange by its own sources at least a 10% or 15% of the total. Granted, if the company wants to garner a sum of rupees ten million from the public, the company will have to arrange at least one million rupees from its own sources. Interest is from among its important resources. If it is more than the required application money, it will go to the income of the company. In short, the practice of interest begins from the very starting point of the company.

In the *project report* of the company the detail about the total required funds is furnished. The total funds are collected from more than one source. A portion is provided by the company's *promoters*, another portion, perhaps the largest one, is gathered from the public through the sale of the company's equity shares'. A yet another portion is borrowed from the government. A portion of the total required fund shall be provided by the government as subsidy and incentive. All these portions together will form the total funds of the company whereby to run it. The concept of the company is not like opening a shop by investing money in it and then closed it when we wished. The formation of the company involves more things than does the opening of a shop. Company makes a prospectus, comparing at least ten by-laws. I have been hearing here for long the people describing most of the company-related government laws as unjust, Income Tax, Act Contract Act, etc. The Company Act will be affected by more acts than one, Saving Act, Income tax act, Local Act etc. I'm not agree with the people describing these laws as unjust.

Many of the discussants have talked and asked repeatedly about the delivery of the purchased share certificates from the selling party to the buyer. It is to be noted here that the traditional way of delivery is just to change. The government has endorsed the Deposit Act. According to this act neither the shareholder nor the purchaser will have to bother himself to deliver and possess the share certificates. The buyer will be required to merely inform the concerned authorities and the share certificates will be transferred to his name immediately. If you insist on denouncing all such laws as unjust, you, then, had better not involve yourselves in the business of shares. But if you are aware of the fact that India is our country where we are destined to live and die and we have an equal share in the government of the country, we should not use such words as are in improper. These are the laws enacted by our democratic, welfare government brought into being by our votes. Today the economy has expanded beyond imagination and speculation and the shares market is perhaps the most sensitive sector of the contemporary economy. The formation of the government of a particular party in a state of immense political importance in the national map like Uttar Pradesh will immensely affect the shares market. Likewise, the fall of the government in the centre, or even the news of withdrawal of support of a strong political party from a coalition government may down the share market beyond expectations. Mere a good announcement of the existing finance minister will up the share market. If the Reserve Bank of India reduces the

interest rate by 1%, the shares index will go up. In short, the share market is too fragile; every political or economical development of national or international significance affects it positively or negatively. Only an actively vigilant person can exist in the share market and withstand its developments. If you are late only by a time as small as one hour, you, in most case, may suffer loss and miss the bargain. Apart from the people wishing to enter the share market to trade in the shares treating it as a market commodity and employing in this business their surplus money to earn further. This way, in India there exist no company in India which keeps itself away from interest-involving practices. Even the Tata CORE COMPANY, which initially announced that it would invest only in CORE SECTOR, involving no element of interest has incorporated a clause in its prospectus that after the completion of three years the company might diversify into a company involving itself in the interest-bound business operations as well.

The SEBI is meant to control the companies and provide security to the investors' money. For the purpose the SEBI has made the laws to regulate the country's company system. Often the companies find it difficult to follow those laws. Still, the companies are being established under the government encouragement Indian government feels it necessary for its economic development and the establishment of new companies under the government's company act plays an important role in the country's overall development.



What must concern the Muslim leadership, both religious and political, is how the Muslim community could have its due portion from an overall economic development of the country and how it could play an active role in the betterment of both the country and its own self. What is lawful and what is unlawful is to be decided by you, the men of Islam learning. For this noble purpose an active interaction between the Muslim men of Islamic learning and the Muslims having a first hand knowledge of all important aspects of modern economics and the company system and the relevant laws is a must. I feel myself obliged to call your attention to this in view of the bitter fact that the hard-earned saving of Muslims is passing to the hands of non-Muslims. We are seeing the so-called finance companies in every street and the Muslim localities are their special target. Our non-Muslim country-fellows are more expedient in the utilization of their savings and funds, than Muslims. The surplus money of Muslims, generally peaking rests with the women and the laborers. The non-Muslim and Muslim finance companies, having established their offices in the Muslim localities, are collecting funds on interest of a good percentage and the people having no other option to utilize their surplus money and savings, are depositing there happily. I entreat the Muslim Ulama that they should come up with an Islamic solution to the problem where to invest the surplus and the small savings. Unless there is an Islamic alternate, the Muslim money will remain flowing without a proper direction in the interest-bearing Muslim and non-Muslim conduits. Abiding Muslims are in wait for an

Islamic alternate which is the only solution to this long-standing problem which is being generally faced by those Muslims who are awake of the material well-being of the Ummah.

Of course there are many things which call for the attention of the Muslim religious leadership, but I do not wish to lengthen my talk any more. Deeper points may also be difficult to comprehend and follow for the present audience.

### **Qazi Sb.**

We are deeply thankful to our learned friend Mr. Abdul Qayyum Akhtar for benefiting us from his great knowledge. I am deeply moved by his sympathetic approach to analyze the bitter and fundamental facts of the Indian economy. No doubt those facts are difficult to comprehend and there are only few who could properly digest them. But about the present gathering of the select men of Islamic learning I would like to assure my learned friend that this gathering is fully able to comprehend and analyze these facts provided presentation of those facts to them is good and intelligible. I am in a total agreement with him about his valuable suggestion that *vis-à-vis* economic fact of the modern Godless economy and the position of shariat on them that an open interchange of the views and a dialogue between the Muslim economists and the God-fearing men of Islamic scholarship is the need of the hour. This dialogue and the interchange of views must include the issues related to the share market. Only then the Ulama would be in a better position to apply the rulings of shariat

to those issues and problems. To my thinking, the dialogue should be kept limited to the fundamentals, leaving aside the details which are often subject to change.

In his present talk Mr. Abdul Qayyum Akhtar has raised the point of the Tata's investment plans. In this regard I would like to put here that we were informed that the *Unit Trust of India* was agreed to launch such schemes of investment as were acceptable to the abiding Muslims. Quite naturally, we received this piece of information with great pleasure and saw this welcome development as a direct result of our deeply and sincere concerns and respect we have towards the principles and norms of our shariat. This offer of the UT I offered a ray of hope for the Muslims having surplus funds and wishing to invest them to earn the profits in a way doubtlessly acceptable to the Islamic shariat. For, generally speaking, Muslims (for instance, the retiring muslim employees) face the problem where to invest their surplus funds and capital they get by different ways to enhance their limited earning. For the time being we have no other option either to eat up the whole amount of money by spending it in one's dead expenses, or to deposit it in a bank for a fixed period and get interest on it. In the Islamic economic system the normal solution to this general problem is the business and the *mudharabah* institution. Like all other economic systems, Islam, too, recognizes the fact that in respect of skill and resources there exists great difference between people; while some possess only resources, others possess skills. The institution of *mudharabah* is the best way to combine both the important

elements of the production of wealth and to keep it in constant productive circulation. Stagnant surplus wealth could offer benefit neither for its owner nor for the society. When put into activation, it brings boom to both the individual and the society. The Unit Trust of India took notice of this our deep concern. But it failed to offer an amiable and acceptable solution and program for investment. Then the Tata group came forward and evinced its keen interest to launch its interest-free investment schemes acceptable to the abiding Muslims. The meeting held to discuss the Tata's scheme was attended by Mr. M.H. Khatkhate Sb. and many others. On examination the scheme was found acceptable as it took into account the chief concerns of us, namely; (1) our assets shall be invested only in the CORE SECTOR, completely avoiding the *haram* places of investment like lending money on interest, or other *haram* sorts of business. (2) The second point of concern was about how to divide the profit earned; the fixed amount is not acceptable to us as it, in most cases, is nothing but a sort of interest. The Tata's scheme offered that it would be proportionate and fixed. The third point of the Tata's scheme was obviously objectionable to us, that is, side by side the Equity shares, the scheme, under some legal compulsions might offer debentures. But the debentures would be short-termed and fully convertible within a couple of months. As the Tata group explained, the investors will be at liberty either to invest in interest bearing, short term debentures and securities or not in case one chooses to invest in such items besides the non-interest bearing ones, that is the equity shares, one has an option to avoid the interest by way of disposing of it in charity works. In short,

in spite of all such way outs, this was an objectionable aspect of this scheme.

The third and last point of this scheme was that after the passing of the period of three years, the period initially declared for the agreement, the company would be at freedom to make investment in other productive areas beside the CORE SECTOR, which might involve the interest-bound activities like money-lending etc. Before so doing, the company, as its scheme clearly states, would be bound to inform its investors of the change of its basic policies and its diversification to other areas of investment. This advance information will be intended to put the company's existing investors at freedom either to continue as its subscribers or discontinue their subscriptions to the company, if they so wish. We rejected this scheme on the ground that during the initial three years of its existence it built itself on our funds but thereafter diversifies to interest-bound activities, thus denying us from its ownership. Latter, as far as I know, the scheme met rejection from the SEBI as well, the country's highest body to control and oversee the country's banks and all financial institutions, As far as I know, the SEBI is vested with the authority to uphold or reject any part of the scheme's draft submitted to it. Mr. Md. Hussain Khatkhate will further clarify the point.

In short, this being the background of the Tata's Core Sector investment scheme. The discussants who have already expressed their opinion *vis-a-vis* these issues have no need to speak. From among the audience if anybody wishes to say anything about the points discussed here, he had

better tell us their name. We will hear them attentively in the short time we have.

### **Khatkhate Sb.**

The Qazi sb. has raised two points. First is about the Tata core-sector Equity Fund; the second one is about the Unit Trust of India's Mutual Fund. As far as the first points, i.e. Tata's Scheme, is concerned the Tata group promised us that our funds would be invested in the production of *halal* items falling under the *core sector*; and the scheme would primarily be based on the *equity shares* but rarely might involve the right based short term convertible debentures. The draft of this scheme was detailed enough. Should one desire to properly understand it, I am ready to tell him and explain the basic point to him. On being assured by the Tata group that our funds will be utilized in *halal* purposes on the basis of proportionate profit-sharing and not on a fixed rate of interest and even if the company, under some unavoidable legal compulsions, would have to issue the convertible debentures, it would merge then their other interest-free schemes, we thought it better to express our consent to invest our funds in the scheme. Only the third aspect of the scheme was in contravention to the Islamic principles. According to this aspect after three years the scheme might diversify into interest-bearing programs. With these contents the draft scheme was sent to the SEBI (Securities & Exchange Board of India) for approval. It takes normally one month for the SEBI to react towards a proposed scheme. But in the case of this scheme the SEBI took over four months to react. The reaction was negative. But the Tata's prospectus, which was finally issued by the group, made differently a

clause of diversification after three years. It means that either the Tata convinced the SEBI or the three years clause meant what was commonly gathered. The Qazi sb. disapproved of even this scheme under the apprehension that during the initial construction years the scheme would be built upon our funds but after assuming a full-fledged entity it will ignore us. But, to my opinion, this apprehension is almost groundless, based on weak and unsound judgment. For, the Tata group is a trustable group, it has a good history and remarkable past. The clause of diversification after three years is, according to the explanation they offered in view of the changings and modifications the government might subject the existing investment laws. More importantly, the initial three years is the best period to make investment in shares. Now the shares prices are comparatively lower due to different reasons. The future years are expected to witness a rising in the price of the shares.

The second point made by the Qazi sb. is about the Unit Trust of India's mutual fund. The UTI is not a company in the general sense of the term. It is not intended to make production of good, or offer some services in an organized way. The UTI, instead, works as an institutionalized group to work between the investors and the companies. Such companies are termed as Mutual Funds, and they offer their issues of shares as such. To be more precise, they purchase the shares of various running companies and then sell such shares to interested investors on the line of the mutual funds choosing the right time for the sale and purchase.

### **Qazi Sb.**

I'm not prepared to go into such minute details. The point I would like to stress again being that their basic scheme, according to their statement, is limited to a period of three years; and after the expiry of this period they reserve the right to diversify into interest-bearing schemes. Although they have such right leaving the investors at their *will* to either continue or withdraw, yet the Muslim investors who received benefits from the scheme for a period of three years may find it difficult to withdraw even after the company's diversification into interest-involving business fearing, the discontinuation of the profit they have been getting for a the last three year. Thus this scheme with a clause of three years offers an overwhelming temptation to endanger their faith and their respect to the shariat.

### **Md. Hussain Khatkhate Sb.**

To bring into existence a mutual fund of the equity stock we tried our best. In this connection we held talks with other *mutual funds*. But no mutual fund evinced its preparedness to accept our funds only for the equity shares. They responded that they would publish their detailed prospectus providing therein the detail of their plans and the wishing investors will decide about their options after going through the prospectus. But in order to avoid the consequences of fall in the shares prices they had no other option than to accept the funds to engage them in business on a fixed rate basis. Otherwise, the losses are bound to damage our reputes and harm the future business prospects. If a reputed non-Muslim business group is showing its



preparedness to engage our funds in business schemes, we had better accept it, welcoming this welcome change. Under existing economic conditions it will be unwise and impracticable to put the condition of an absolutely free scheme to make investment in.

### **Qazi Sb.**

This could be tolerable only within its limits. This dismal state of the economic affairs offers a great challenge to you the Muslim economists, why you are not taking initiatives to launch and establish a mutual fund of the kind approved by the teachings of Islam to be run under the guidance of trustable men of Islamic learning? You are capable of undertaking this onerous task as you are abiding Muslims besides possessing economic acumen. Instead of seeking refuge with others, you had better build your own castle and launch your own mutual fund as early as possible. Countless multinational companies are coming to India. These multinationals may include the Muslim companies, many of which despise their involvement in interest-bearing economic affairs. We are not concerned for the Muslims having no regard to the law of Allah; he may invest any where of his choice. Our sole concern is about the Muslims looking for the guidance of the shariat. Such Muslims deserve that their problem where to invest should be addressed.

### **Dr. Abdul Azim Islahi Sb.**

In the present discussion a point has been raised about the legal existence of the company recognized by the

modern law. To some Ulama the *shariat* does not recognize the company as a separate legal being, hence unlawful. This is indeed an unreasonably extremist opinion found with our jurisprudents. Answering a question about Shaikh Wahaba Zuhaili, for instance, has expressed the same view. He holds that the Islamic shariat does not recognize the company as a separate independent entity as in the principles of the Islamic Fiqh no such concept is found. As far as I think, this opinion does not represent the reality. The concept of the legal entity is found in the Islamic Fiqh and more than one examples might be cited to support it, the most one could say is no more than that the term '*separate legal entity*' is not found. The institutions of Waqf (endowment), masjid, the *baitulmal* (public exchequer or public treasury) and the *daulah* (the state), etc. offer the best examples of the existence of the concept of the separate legal entities in the Islamic Fiqh, which are very much closer, both in respect of meaning and contents to the modern concept of company. My this opinion is based on the views of Maulana Md. Taqi Usmani, formerly Judge at the Islamic Court of Justice of Pakistan.

After this brief comment I would like to draw the attention of this august gathering to the fact that some participants possess no proper knowledge about the concept of the *mutual fund*. Therefore, I would like to say something with a view to explain the basic difference between the *mutual funds* and other companies.

As far as the *company* is concerned, it directly makes production of goods like machines, cloths etc., or is meant to offer some types of services like hotel, etc. A greater part of

the papers and discussions conducted thus far revolved round such companies. As for the MUTUAL FUNDS, they are the companies which do not directly produce goods or offer services. Their primary business, on the other hand, is to act as a link between the investors and the shares companies. They collect funds from the interested investors and purchase the shares and debentures of other companies. The determination of the Shariat position on the shares of such mutual fund companies should also form part of this discussion. It gladdened me to hear from the Qazi sb. that the Unit Trust of India had also tried to launch such a mutual fund which might be acceptable to abiding Muslims. This change of thinking is indicative of the fact-the Islamic interest-free economic stand has begun to gain ground. An Ethical Unit Trust might offer a best solution to the problem the abiding and Allah-fearing Muslims are generally faced with on the economic front. The proposed Ethical Unit Trust would engage the funds only in the production of things and goods which are ethically acceptable to the Islamic teachings; broadly speaking, not harmful to the society from social or moral viewpoint. In India, too, the launching of such a unit trust is possible. In this regard the Islamic Fiqh Academy, which has already held, convened and hosted a number of programs and sessions on interest free banking, is urged to take initiatives.

The Muslim Ulama and the Muslim economists together stand confronted with two greatly serious issues. By one issue I mean finding out a viable, long-term solution how to utilize the excess funds in lines with the teachings of

Islam in collaboration with the shares companies under present economic state of affairs. This will require, among other things, a critical and analytical study of various types of shares in order to choose for investment the ones not opposed or comparatively less opposed to the Islamic teachings. The papers and discussions held so far establish that the EQUITY SHARES are almost lawful to sell and purchase and to make investment in, thereby keeping the excess wealth in motion.

The other front on which the work is being carried out, particularly in Muslim countries, is to mould and structure the share market and its functioning along the lines of the Islamic principles. This is indubitably an arduous task. Men in the field are conducting researches and expressing their constructive opinions to this effect. Efforts must remain on till the goal is achieved. Under present dismal state of affairs we are required to do our best to follow the commands of Islam as asks the Qur'anic verse :

فاتقوا الله ما استطعتم واسمعوا وأطيعوا.

“So fear Allah as much as you can; and listen and obey.”<sup>1</sup>

Under present circumstance we have hardly any interest-free alternative, as has just put Mr. Abdul Qayyum Akhtar. To realize our best ends, we, therefore, have no other option than choosing the lesser evil and investing our funds in the companies which either are interest-free or rarely indulge in interest-bearing economic activities.

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<sup>1</sup> S.LXIV : 16.

## Dr. Mustafa Wahaba Zuhaili Sb.

Thanks for the dear brother for raising the topic of the existence of the concept of LEGAL PERSONALITY in the Islamic Fiqh. Admittedly, the Islamic Fiqh maintains the meaning, principles and rulings of the legal personality in certain conditions and does not do so in others condition. It admits the legal personality of the STATE. If the Imam or head of the Islamic State appointed employees, judges, collectors, governor etc., he does so only as the head of the STATE. The workers and governors appointed by him will continue in their jobs even after the Imam's death or resignation. So because the Imam in his so doing did not represent his own individual person; he represented his headship of the Islamic State instead. This clearly establishes that Islam bestows upon the STATE the status of a legal personality. On similar lines, the BAITUL MAL (public exchange) is regarded a separate legal personality by the Islamic Fiqh. It takes possession as well as passes to other's possession. It has some rights as well as some duties. On the same fact is based the principle that the BAITUL MAL is the heir to an unclaimed property and estate. In the same way, the accords concluded by the Islamic STATE continue to be in force and the change of the head and the men at the helm makes little difference to this effect. This concept is based on a correct hadith of the Holy Prophet (Peace and blessings of Allah be upon him), which reads:

ذمة المسلمين واحدة يسعى بها أدناهم، وهم يدعى من سواهم

(Muslims' responsibility is single, even the lowest of them may exercise it. As regards those who are

opposed to them, against them each Muslim carry equal weight.)

Islamic Fiqh accords the status of the separate legal personality to more things than one, as has rightly cited my brother and friend Shaikh Taqi-al-Usmani, the institutions of *Waqf* and *Masjid* offer the most conspicuous examples of this. *Masjid* is an independent being; endowments are made to it; it own claims and faces claim. Similarly, the *Waqf* institution; too, owns, claims and claims are made against it. When the *Waqf* OVERSEER exercises his authority he never does so in his personal and individual capacity. He indeed does so as an OVERSEER of the *Waqf* regarding it as a legal personality. The concept of the legal personality is already available in the Islamic Fiqh, though not the term. The term has been coined by the modern law. However, the concept of the legal personality in the Islamic Fiqh is found only in things which need management and administration. So far as the business contracts are concerned, to the Islamic Fiqh, the contracts of this type like companies are established on the mutual consent of two or more persons. In other words, if a business system or monetary dispositions are established on the mutual consent of the parties, the Fuqaha associate no meaning of the *legal personality* to such a business company. Even the law, which grants the shares' companies the status of the legal personality, it self is a creation of the State. Here we face a question: shall we be right in drawing an analogy between the joint stock companies and the institutions like the State, *baitul mal*, *masjid*, *Waqf* and the likes? This obviously will require the discussion of the point of similarities between the stock companies and these

institutions which have been granted the status of the legal personalities. The Board of Directors is the representative, while the stockholders are the clients. Now in the light of the Fiqhi principles it would be difficult for us to grant this status to the joint stock companies. However, notwithstanding the fact that there exists no provision in the Islamic Fiqh which may bestow on the joint stock company the status of *legal personality*, if the State bestows this status on the stock company, I'm with you and there exists no legal impediment to refrain us from so doing. This will be a new development in the Islamic Fiqh. The state, *baitul mal*, *waqf*, masjid etc, are institutions which enjoy their separate legal statuses are the creations of the State, which itself is a creation of the Muslims. The mentioned institutions do not stand on the mutual *will* of the people. The joint stock companies, by sharp contrast, come into existence on the mutual *will* of both the sides, and according to the Islamic legal norms the company needs not the status of a legal person at all. What is needed for the stock company is the mutual WILL of its promoters and the shareholders. This actually is the concept of partnership, as being the case of the British Company law. The fact is that *vis-a-vis* the company system the Islamic Fiqh is closer to the British law, taking into account the point that the company is nothing other than the partnership which comes into existence on the basis of the REPRESENTATION and TRUSTEESHIP. This is at which I have arrived; and there is no overlapping between this meaning and those other than it. Thanking You.

## **Qazi Sb.**

The gist of the dialogue between Dr. Mustafa Wahabah Zuhaili and Dr. Abdul Azim Islahi is that the former held that in the Islamic Fiqh no concept of legal personality is found about the company and partnership. The latter, contrariwise, is of the opinion that the Islamic Fiqh bestows on more than institutions the status of the legal person such as the *waqf*, masjid, baitul mal, the State, to name a few. In his detailed paper submitted to the Academy, the former has explained his standpoint and his arguments to support. As far as I think, both the opinions are right. Now, much of the time has passed and this aspect of the problem has been discussed at length. If you please, a committee may be constituted. We have two important issues to discuss as they are still in need to be discussed more. The discussants will be required to arrive at conclusions in the light of the decisions held so far. The time of the NAMAZ has also entered. The discussion is being drawn to a halt.

## **Some one speaks**

I would like to request that the abridged versions of the lectures delivered by the expert economists here should be sent to all the participants and discussants.

## **Qazi Sb.**

This is indeed a good advice. Better still would be to arrange a dialogue between you the Ulama and the economists. This is expected to help us understand the issue in hand better. We will *Insha Allah* consider both the points.



We have sorted out the points of agreement of the discussants from those on which their opinions differ. All this will be given to the committee along with all the papers and discussions held. Among the papers the one submitted by Dr. Mustafa Wahaba al-Zuhaili holds special importance. All such things will be deliberated and we will be in a better position to arrive at right conclusions. The things still remaining unclear shall be deferred to next seminar in which a special session shall be arranged to further discuss those things. The Committee includes the following Ulama :-

MI Jalalud Din Ansar Umry

MI Akhtar Imam Adil

MI Atiq Ahmad Bastawi

MI Abdul Qayyum Palanpuri

MI Mufti Junaid Alam Nadwi

Mr. Md. Hussain Khatkhate

Mr. Ihsanul Haq

MI. Dr. Abdul Azim Islahi

Mufti Mahbood Ali Wajihi

MI Badr Ahmad Mujibi

Mufti Nasim Ahmad Qasmi

MI Abdul Ahad Azhari

Mufti Abdullah Hansot

MI Shafiqur Rahman Nadwi, Lucknow

MI Mufti Niyaz Ahmad, Banaras

To all the Ulama included in the committee I would like to request that they should commence their work after the *Asr Namaz*. Mr. Atiq Ahmad Bastawi is the convener of this committee. Should this committee complete a portion of its work in its after *Asr* meeting, tomorrow's work will become easier. With this I formally announce the end of this session.

## **Part II of the Book**

### **Company & the shares of the Company**

*The topic 'Company and the shares of the company' was discussed by the Sixth Fiqhi Seminar of the Islamic Fiqh Academy of India, held at Darul Salam, Umarabad (Tamil Nadu).*

**16****The Questionnaire**

**Q.No. 1: Is it permissible for a Muslim professional to charge a fee for preparing a scheme for establishing a company whose economic activities, among other things, involve the borrowing of funds on interest?**

**Q.No. 2: Is it lawful for a Muslim to render technical assistance to a company in getting interest-fetching loans from a financial institution and charge a fee for this service?**

**Q.No. 3: Is it lawful for a Muslim to hire his professional services out for the technical assistance to a company required for the issue of its interest-bearing debentures and charge a fee for this service?**

**Q.No. 4: Can a Muslim charge a fee for the services he renders to a company in connection with the issue of its debentures linked with its shares?**

**Q.No. 5: Is it permissible for a Muslim to render his professional services to a company to do the**

things required for the issue of its convertible partly or wholly, interest-bearing debentures?

Q.No. 6 : Is a Muslim permitted by the law of Islam to do what is required by law for the issuing of a company's *zero-interest-rate debentures* and charge a fee for this service?

Q.No. 7: Can a Muslim render his help in establishing a company by making investment in it while its basic scheme involves arrangement of funds through interest-bound loans?

Q.No. 8: Could a Muslim make investment in the shares of a company which is already using the loan funds drawn on interest?

Q.No. 9: Is it permissible for a Muslim to purchase from the company or market the shares-linked-debentures with an intent to sell out the debentures as early as possible after taking possession of them?

Q.No. 10: Is it permissible to buy the convertible debentures with the provision that the purchaser holds them with him till the conversion gets completed; and sell out the ones still unconverted as early as possible if some items continue as unconverted as possible even after the conversion has taken place?

**Q.No. 11:** Is it lawful to purchase the convertible interest bearing debentures with an intent to withhold them till they are converted into shares and to sell the non-convertible units at the earliest if their value increases due to an increase in the value of the shares lying hidden in those debentures, could they be put to sell before their conversion in order to earn profits this way?

**Q.No. 12:** Could the convertible debentures issued at the zero-interest-rate be purchased from the company or the market?

**Q.No. 13:** Could the offer of the debentures linked with the shares to be issued as a right acknowledged by the company of the convertible debentures or of the ones issued at the zero-interest-rate be sold in order to make profit?

**Q.No. 14:** While converting the convertible debentures into shares the company, charges some additional price. The same company on the other hand, pays interest on the debentures. Could the cost of the shares be lessened by deducting the paid amount of interest from the total of the additional value, so as to count the

**interest-bearing debentures like those debentures issued at zero-interest rate?**

**Q.No. 15: Is it lawful to reduce the cost of the shares by deducting the additional price the company has additionally charged at the sale of the non-convertible debenture units after the conversion of the partly-convertible ones into the shares?**

**Q.No. 16: Could the loss suffered at the sale of the non-convertible debentures be offset against the due interest received on them after the conversion of the partly-convertible debentures into shares?**

**Q.No. 17: In case the answers to the question Nos. 14,15,16 are in the negative, then in what heads should be spent the amount of interest received on the debentures and the profits received on the sale of those debentures?**

**Q.No. 18: Could the shares be sold and purchased for the sake of profits as a market commodity?**

**Q.No. 19: Due to the hidden shares in the convertible debentures the prices of those debentures fluctuate in proportion to the fluctuations in the shares (to which those debentures are eventually to convert). Now will**

**it be lawful to make such debentures a subject-matter of the sale-purchase without getting them transferred to one's name merely on the basis of the reality mentioned about them?**

**Note :** The term 'shares' stands everywhere for the equity shares, while the 'debentures' is used to imply the interest-bearing debentures and instruments.

# 17

## Explaining The Questions In Brief

**By Dr Ihsanul Haq Sb.**

*Punjab National Bank, New Delhi*

### Introductory Note

Investment in the company by purchasing its shares in very much similar to the way of *mudharabah* and *musharakah* recognized by the shariat of Islam. No other way for investment available for the individual investors more trustful, profitable, involving a minimum amount of fear than this one.

Unfortunately, in the field of trade and Commerce the interest has become too rampant to avoid. Even the God-fearing investors have no way to avoid the interest-free transactions if they wish to get lawful benefits of investment. They have to involve unwillingly in interest-bound transactions. Side by Side this, there exist ways of renouncing and freeing oneself from the interest-bound transactions availing of them an investors has opportunities to secure the lawful benefits of investment on one hand, and do away with the amount of interest on the other.

In today's world in most of the secular countries, indeed in most of the so called Muslims Countries as well, Muslims very often encounter the situations in their



economic and commercial endeavors where they find it too difficult to avoid the interest-bound transaction take for example the following simple instance. A person interested in signing a contract with the government to undertake some official construction work shall be legally required to submit, along with other documents and papers, the receipt of a term deposit with a bank of a specified amount of money. This receipt is intended to serve as security. This is kept by the concerned official department as pledge until the construction work is completed in order to make it sure that the contract of the construction work is carried out within the time specified. It needs not mention that the said contractor has no interest in making a term deposit with a bank and receive interest on it; his sole interest is in entering into a contract with the government. It is the present state of the business affairs which has forced the contractor too unwillingly enter in to as interest-bound transaction with a bank in order to get the benefits of as lawful an act as of contract for a construction work. After the successful completion of the work the department returns the said receipt back to the contractor. The receipt is taken back by the bank and his deposit of amount along with the due interest is repaid to the depositor. The depositor, that is the contractor, has now the opportunity to spend the excess amount in charity deeds with his capital amount. Will now it stand to reason to hold impermissible the signing of the lawful contracts merely on the ground that it requires the receipt of a term deposit issued by a bank which obviously involves an aspect of interest though without one's volition?

Take another example A Muslim scholar (alim) receives an offer from a university to teach religious Sciences there. Should this scholar now reject this valuable offer merely because the university follows the government law of providential funding by deducting a fixed percentage from the salary of its employees which attracts interest at a specified rate?

The same problem is faced in the purchase of the things and household appliances of general use whose demand in the market is bigger than their supply and production like car, scooter, fridge, washing machine etc. Those trading in such items generally sell them getting a certain amount in advance from the interested purchaser and list their names as the prospective purchasers. After the expiry of their waiting period, the required item is given to them and the received portion of price is deducted from the total price with the due interest on it. Is it now a good idea to hold as unlawful the purchase of scooter, car, etc. in lines with the system described merely on ground that the transaction involves amounts of interest? Is the purchaser permitted to conclude this transaction and making advance payment on condition to dispose of the amount of interest received on the portion of the price made in advance and give it away in the acts of charity without expecting any reward in the Akhirah?

In our age there hardly exist companies which keep themselves limited to the funds of the shares completely abstaining from interest-bound loans. Other reasons apart, one important reason in that the Muslim community evinces very little interest in making investment in shares. Should

the tendency of investing in shares grow in Muslims and they build up their majority as shareholders in a company, they may be able to amend the rules and regulations of the company to completely free its dealings from the curse of interest.

A categorical ban on interest-bound dealings in the area of investment is not just destined to deprive the investor of the lawful profits but to cause a decrease in the capital as well. Keeping the helplessness of Muslims in mind, especially in context of India and other secular countries, the Ulama are earnestly asked to find out viable solutions to the problem of investment. The viability and a maximum possible concession vis-à-vis this very real problem should reflect in the answers to the attached questionnaire, but without compromising on the normative principles of the Islamic Shariat.

# 18

## **Brief Introduction of the Company : Concept and Practice**

**By Dr Ihsanul Haq Sb., Punjab National Bank, New Delhi**

*In this paper the 'Company' denote only the public limited company; the shares stand for the Equity Shares. Since vain speculationism is un-Islamic, it has been left out.*

### **Defining the company**

The law recognizes the company as a separate being as much existing in its own as do its members. It uses a common stamp for its signature.

### **Important Features of Company**

1. The company, as put above, is of a perpetuating existence standing on its own, separate of its members called 'Share-holders'. The frequent change in its members makes no difference to its existence. Any of its member's death, bankruptcy or lunacy can not bring an end to its existence, In short, the company retains its existence in spite of all of the changes hitting it. It comes to an end when the same is formally decided.
2. Company must be got registered with the Registrar of the Companies and the Registration certificate of the company issued by the Registrar is actually much the same as the birth certificate of a human child. From this date starts its existence in the eyes of the law.

3. After its registration with the registrar when the company completes due procedure and preparation regarding the collection of the required funds through the channel of shares, the registrar issues a certificate permitting it to commence its business and commercial activities. This certificate amounts to that the company has now gained maturity. The company can commence its commercial activities only after the receipt of the maturity certificate.
4. Now the company has become a legal entity, having full legal capacity to enter into agreements with its members and other; can purchase and sell the assets, appoint workers and official to manage it. In short, now it enjoys a fuller ability to undertake all those acts which the law permits it according to its set of by-laws and the legal framework.
5. While signaturing on behalf of the company its authorized officials use its common stamp.

## **Shareholders of the Company**

The members of the company are called the 'Shareholders'. They share the company's gains and losses in due proportion to the value of their shares in the company. The company's total shareholders may be put into two classes according to the following description.

## **The Promoters**

It is the *Promoters*, who actually establish the company, complete its forma requirements of its registration with the Registrar of Companies. A sizeable number of

shares is kept reserved for them. In the legal parlance they are termed '*The Primary Shareholders*'.

## **Other Shareholders**

They are the outsider shareholders. They have no role in the formation of the company's scheme or in completion of the legal requirements needed to get it registered with the registrar. In the allotment of the shares no portion is kept reserved for them.

## **Control over the affairs of the Company**

To run the company and manage its affairs according to the system the Board of Directors is formed by the vote of majority of the shareholders. The board of Directors is committed by law to manage the affairs of the company, make policies and take important decisions according to the majority vote of the shareholders. The weight of the vote of a shareholder is proportionate to the number and value of one's shares. The right to vote is transferable.

## **Company's Share Capital**

The *Share Capital* of the company is stated having it divided into equal shares, each share having equal value mentioned on it. The Share Capital is of the following types.

### **(i) Authorised Capital**

Authorised capital is the maximum limit of the capital which a company can collect. This limit is specifically mentioned in the CONSTITUTION of the company. NO Company can acquire more capital than the specified limit without changing or amending its LAW.

**(ii) Issued Capital**

The portion of the *authorized capital* which is offered to public to share is termed the '*issued capital*'.

**(iii) Subscribed Capital**

From the issued capital the portion whose shares are bought by the investors in response to the company's offer is called the subscribed capital. Now if the 'Subscribed Capital is equal to the issued capital it is termed 'FULLY SUBSCRIBED' if less, it is 'UNDER SUBSCRIBED' if it is more than the offer, it is OVER SUBSCRIBED.

**(iv) The Paid-up Capital**

The portion of the subscribed capital paid up to the company according to its demand is called 'the paid up capital. since the company can not demand from the seekers of the shares more than the issued capital the paid up capital cannot cross the limit of the issued capital.

**The Share**

*Share* denotes the smallest individual unit of the company's capital. This unit generally values rupees ten; there are companies whose share prices at Rs. 100. There are still companies whose some share units price at Rs 10 each. Some at Rs 100. Company's issued capital, subscribed capital and the paid up capital are divided into a specified number of equity or preference shares, clearly mentioning the price of each unit of all types. Shares' this stated value is termed as the *face value*. To simplify the point the following

is the statement of ABC company's Issued subscribed the Paid up Capital totally amounting to rupees 60 millions.

Three hundred thousand preference shares, each single unit pricing at Rs 100, total amount is Rs. 30000000.

Three million equity shares, each single unit of Rs 10 face value, the total amount is 30000000. The total amount of all the shares put above turns out to be the 60000000. Then the shares are of two types:

**(i) Preference Shares**

As long as the company is in existence, the preference shareholder receives profit from the company at a specified rate; in the event of the company's closure they share its assets on preferential basis.

**(ii) Equity Shares**

As long as the company is in existence, the equity shareholders share the company's profits and losses on an equal footing. If the company is shut down, the remaining assets of it are distributed amongst them with equality. They actually are the partners of the company who share the company's assets at an equal footing. No equity shareholder is of greater importance than all others.

## **Share Certificate**

The Companies, generally, speaking issue their certificate for a fixed number of shares. The person making investment of two thousand rupees, for instance, may be issued two certificates of two hundreds, shares each pricing at rupees ten. The company may issue only two certificates



of the said amount of investment, each one for ten shares. The share certificates are transferable. They may easily be sold and purchased. They may also be kept in pledge to get a loan.

### **How to have the shares?**

Shares may be obtained by two ways:

- (i) Directly from the company at the time of its offer of the public issues;
- (ii) By purchasing from those who had purchased them from the company at its offer of the public issue.

So far as the direct purchase from the company is concerned, the company may adopt any one or more ways of the following ones:

#### **(i) Public Issues**

Having got itself registered with the registrar of Companies, the company, with the aim to collect the required funds by selling its shares may make an open offer for making investments in it and purchase its shares. An already existing company may also make an open offer of the public issue thereby to collect further funds for the promotion of its business and widen the scope of its corporate activities.

#### **(ii) Issue of Equity-Linked Debentures**

In addition to the funds collected through the channel of the sale of their shares, the companies often use the funds collected through the channel of loans for the promotion of their business and widen the scope of their production and commercial activities. To get the

loan funds, they issue the Equity linked Debenture in the manner much similar to that of the issue of shares. These debentures, generally speaking are as good transferable the capitale of sale purchase as are the share certificates. On the debentures the company pays interest to the debentures holder at a fixed rate. A company may issue its equity shares by linking them with the debentures. In such a case the person interested only in the purchase of the shares has to purchase a number of the debentures against his volition. In such a situation the share certificates and the debentures are issued separately. This makes possible for the investor to get rid of the interest-fetching debentures by disposing of them in the open market and retain only the shares. Generally, the shares are sold at a price more than their face value while the debentures attract less price as compared to that at what they were issued by the company, but their collective market value is often more than their face value. In order to pay a less price, they may be purchased directly from the company.

**(iii) Public Issue of Convertible Debentures**

Besides the share may the equity-linked debenture, the company may issue the term-bound debentures. After the specified term is over, they are converted into the *equity shares*, fully or partly according to the terms conditions stipulated at their issue. After their conversion into equity shares those debentures cease to attract the interest and the shareholder establishes his partnership in the assets of the company and henceforward will share the profits and losses of the

company. In case of the debenture's partial conversions, the unconverted part continues as his loan attracting the interest at the rate specified. This makes it clear that if a person is interested in making investment only in the equity shares, he may retain the debentures after their conversion into equity shares and may get rid of the unconverted part of the debentures by selling it in the capital market. The shares might be had at a comparatively cheaper rate if, instead of purchasing them from the capital market, the convertible debentures are purchased directly from the company and then are converted into the equity shares by the company.

**(iv) Issue of Shares and debentures at par, at a premium or at a discount**

After their establishment the companies generally issue their shares and debentures at *par*. To exemplify the point if a company issues a share of rupees ten face value at the same price, the transaction shall be the issue at *par*.

The value of the shares of the well established and financially stronger companies is generally higher in the capital market than the face value. Major reasons of this being that such that companies keep a part of their profits as reserve fund, make purchase of more assets, and simultaneously. With the passing of time the value of their assets too increases. The existing shareholders of the company rightfully deserve to have the benefits of the augmentation of its assets. It is therefore regarded unjust that the new shareholder

share the benefits of the company on an equal footing with the existing long standing shareholders while the new shareholders' subscription to the company is to late. To avoid this unjustness, the new purchases are provided the shares at a price comparatively more than their face value in order to protect the legitimate interests of the long-standing old shareholders. It is regarded in order that the new aspirants be issued the shares at a premium, thereby to share the existing shares at an enhanced price. The sale of the shares this way is called 'Issue at a premium'. Under a special set of circumstances the shares and the debentures might be issued at a price less than the face value. In the company balance this is termed 'Issue at a Discount. For the conversion of the convertible debentures into the equity shares the financially stronger companies issue their shares at a premium, that is, receive more than their face value. After the conversion of the convertible debentures into shares' the over availability of shares in the market causes a decrease in their prices as compared with normal circumstances. But this decreased value is often more than the face value plus issue at a premium. This way if the shares, instead of purchasing them from the capital market, are obtained through the purchase of the debentures from the company and then getting them converted into shares, even at the payment of a premium the purchaser may get them at a comparatively lesser price. The following example may explain the point even more clearly:

- (a) A company whose a share of rupees ten face value has rupees one hundred market value may offer the issue of the convertible debentures. At a rate of 14% per annum may make the offer, for instance, a public issue of two hundred thousand convertible debentures, each debenture pricing at Rs 150 on the provision that after the completion of one year from the date of allotment of the debentures one single unit of the debentures shall be converted in to three shares each with a ten rupees face value at the payment of Rupees 40 as additional value as compared to each share's face value, that is Rs 10, the company will take the debenture certificates back at the date specified in their exchange and will send the specified number of the share certificates accompanied with the check of the amount of interest due on the debenture to the investors within the period of one month. After one year if the overflow of the shares in the capital, due to the debentures conversion into shares, causes a decrease in the price of a single unit of share by 20% for instance, that is, to say a share pricing last year at Rs. 100 now is being sold at Rs 80, the amount of investment per single unit of share shall be determined as follows:

*A convertible single unit of debenture prices at Rs 150 only.*

The amount of interest due on the company on the said debenture after one year is Rs 21 only.

*The actual cost of one single unit of debenture is Rs 129 only*

After one year a debenture pricing now at Rs. 150 will be equal to three shares (one share of Rs. 10 face value plus Rs. 40 as additional value. That is the conversion process along with the face value will take Rs. 150 for three units of equity shares.

The actual cost of a share is Rs 43 and 3 shares' cost Rs 129, but if the share is purchased from the capital market, the purchaser has to pay Rs 80 at least. This way the purchaser may get a share of Rs. 80 market value for only Rs. 43 if he gets it by purchasing convertible debentures from the company just one year back. It is therefore safe to say that if the shares are taken from the company directly through the process of the debentures' conversion into the shares, the share may be got at a comparatively cheaper price.

Before their conversion into the equity shares the convertible debentures may be sold in the market at a premium. In the event of the investor's failure in getting the debentures of the said description directly from the company, they might be purchased from the capital market even at an enhanced price, and after their conversion into the equity shares they may be

got transferred to one's name. To illustrate the point,

- (b) In case the above described debenture of Rs 150 could not be directly purchased from the company it may be purchased from the capital market for Rs 200 per unit, that is, at an extra payment of Rs 50. The total value of a single unit of the debenture shall be determined as follows:

A single unit of the debenture was purchased from the capital market for Rs. 200.

The due amount of interest on Rs. 150 (the face value of the one unit of debentures is Rs. 21. Thus the actual cost of one unit of debenture will become Rs. 171.

After the period of one year, the debenture will become equal to three shares with the cost of one share  $59.67 \times 3 = 179$ . One share in market priced at Rs 80. This makes it clear that even if the debenture was not purchased directly from the company but from the capital market at the payment of same additional price then was converted into shares still the shares might be got at a lesser price than their purchase price from the capital market. But if the debentures contrariwise, are sold in the market without getting them converted into shares, one debenture may fetch only Rs 50 as profit. This profit may become Rs 111 if the debenture is put to sale in the market having got it converted into

shares. (the actual price of one debenture is Rs 129 (after the deduction of the due amount of interest Rs 21) which after one year is converted into 3 shares, per share  $Rs\ 80 \times 3 = 240$ ).

The detail furnished chiefly accounts for the fully convertible debentures. The details pertinent to the partly convertible debentures may be explained as follows.

The Convertible part of the partly convertible debenture is converted into shares in the specified date, while the non convertible portion remains as it is. The following example will illustrate the point.

- (c) A company whose one share of Rs 10 face value prices at Rs 100 in the share market may make the offer of a public issue of partly convertible debentures on the provision that a one third of the partly convertible debentures with gross value Rs 15 million, each unit pricing at Rs 150 attracting 14% interest per annum may be converted into the equity shares of the Rs 10 face value at the payment of Rs 40 as premium per share after the expiry of one year from the date of allotment of the debentures. Now if, assumably after one year the value of the debentures' conversion into shares brought the market price of one share from Rs 100 to Rs 90 and the two-third unconverted portion of the partly convertible debenture now is pricing at Rs. 80, the determination of the total cost involved will be as follows:



One partly convertible debenture's gross cost is Rs. 150. After one year the due amount of interest on the debentures' price, that is Rs 150 is Rs 21 at a rate of 14%. The actual gross cost will be Rs 129. After the expiry of one year from the date of issue the convertible debenture will be converted into three equity shares, each valuing Rs 50 (Rs 10 face value + Rs 40 premium.)

An unconvertible debenture of Rs 100's market value now became of Rs 80. The actual cost of one share is thus Rs 49. This calculation makes it evident that the company's share which presently prices at Rs 90 in the capital market may be acquired only for Rs 49 by purchasing a partly convertible just one year back and then getting it converted into the shares. Thus, it gets established again that the shares may be got out a cheaper cost if, instead of purchasing them from the market, are acquired through the conversion process by purchasing partly convertible debentures directly from the company just one year back.

- (d) In case such debentures could not be got directly from the company, they may be purchased from the market at the payment of an enhanced price. If they are purchased from the market at an enhanced price, the calculation of the price per share shall be done as follows:

- The market value of one partly convertible debenture with Rs. 150 face value is Rs 160.
- After one year the amount of due interest received on Rs 150 (the face value of one unit of debenture) is Rs 21.
- Thus the total actual cost of one debenture turns out to be Rs 139.
- The *return* the investor received from the company in exchange of one *debenture* of Rs 150 face value will become according to the following:
  - (i) **Non-Convertible** debenture of Rs. 100 face value – Rs. 100.
  - (ii) One share of Rs. 10 face value at the payment of Rs. 40 premium. The total became Rs. 50. One non convertible debenture was sold in the market for Rs. 80. The result being one shares total value Rs. 59. This makes it clear that a share of the company which now prices at Rs 90 in the share market could have been attained only for Rs 59 having purchased one year back one partly convertible debenture and getting it converted into the shares. Taking from the viewpoint of the sale of the debentures the investors will get only a profit of Rs. 10 per unit and the same profit may become Rs. 61 if it is got converted into shares and transferred to one's name. This fact

demands that the convertible debentures if could be got from the company at the face value should not be sold in the market without getting them converted into the shares by the company.

### **Zero-interest Convertible Debentures**

The income the investor gets as interest on the debentures is subject to the Income Tax Law. In order to make its investors evade the payment of income-tax, the company makes the offer of the *zero-interest convertible debentures*. The debentures of the type may be of special interest for those wishing to make an investment without involvement in interest. According to the conditions of the offer, the company neither promises to pay the interest at any rate, nor actually it so does. What it actually does is that it deducts an amount equal to that of the assumed due interest from the premium of its shares while converting the debenture into shares. This is merely a conceptual, rather than the actual, interest and the company does not term it as interest. It might be exemplified as follows:

A company whose one share of Rs. 10 face value is being sold in the market for Rs. 100 may issue the Zero-interest convertible debenture of Rs. 130 face value on the following provisions:

- The amount invested in the zero-interest convertible debentures will fetch no interest;
- After one year from the date of allotment of the debentures the company shall take its debentures back

after issuing two shares of Rs. 10 face value per debenture at a premium of Rs. 35 per share. The cost of the investment involved in three shares will be calculated as follows:

- The face value of one zero-interest-convertible..... Rs. 130
- After one year the interest receivable from the company  
..... Rs. 0
- The Actual cost of one Zero-interest-convertible debenture  
..... Rs. 130
- The cost of Conversion of the said debenture into shares per share is as follows :

*First share face, value Rs. 10+ a premium of Rs. 30 = Rs. 40*

*Second share, face value Rs. 10+a premium of Rs. 35 =Rs. 45*

*The Third share, face value Rs. 10+a premium of Rs. 35= Rs. 45*

*Gross total of face value Rs. 30+Rs. 100 and the company's premium=Rs. 130*

This produces the result that one share's market value is Rs. 80.

If the (e) mode of investment is compared with the (a), it becomes clearer that the company paid Rs. 21 as interest on the Rs. 150 face value debenture, and, on the other hand, it received Rs. 120 as premium to convert the described one debenture into three shares, Rs. 40 per unit. This way the company received the actual profit of Rs. 99 from the investor. In the present example, that is, the (e) the company paid no interest on the sum involved but it fixed the additional value of share Rs. 100. That is, instead of paying any interest on the amount the

company reduced the limit of its profits almost in the same proportion while converting the zero-interest convertible debenture into shares.

Thus, if the cost involved in the process of conversion of the zero-interest-convertible debentures into shares is compared with the cost involved in the purchase of the shares from the market, the result is that the first share, which according to mode I costs Rs. 40, while the same share's market price is Rs. 80.

The cost of the second and third shares is Rs. 45 each unit according to the mode I, but the same cost will turn out Rs. 80 if purchased according to the mode II. This detail produces the result that the shares may be bought at a comparatively cheaper rate than having them from the market should they are acquired through purchasing the zero-interest convertible debentures and then getting the latter into the shares.

## **Benefits of Investment in Shares**

Making investment in shares is expected to bring the benefits to the investor. The following three are the commoner modes of benefit.

### **1. Distribution of Dividends**

The profit a company earns in its fiscal year a portion of it is distributed by the company among its shareholders with a fixed rate, indeed, generally speaking, in proportion to the amounts of their investment. The rest part of the profit adds to its reserve funds to use it in further expansion of its

business and industrial activities. The profit of companies whose shares are sold and purchased in the market appears in the form of increase in the market value of their shares. The portion of the profit the company withholds causes an increase to the value of the assets of the company, which, in the ultimate analysis, is the ownership of the shareholders. The portion of the profit the company distributes among its shareholders might be 20% or 30% of the face value of its shares but hardly is 2% or 3% of the actual asset that is the market value of its shares. To illustrate the point, if a company whose one share carries Rs. 10 face value announces, for instance, a 20% profit, this will be no more than a 2% of the share's market value. In other words, the actual profit on the amount of investment will be only a 2%.

## **2. Issue of Bonus Shares**

As put above, the company withholds a portion of its profits to keep itself financially strong and also to promote and expand the scope of its business and productive activities. In the course of years this undistributed profit (technically, the Reserved Asset) turns out manifold in comparison to its shared assets. Now if the company fears not a loss in its business and industrial enterprises in the near future, it converts its Reserve Funds into the shared assets and issues a number of shares to the names of its shareholders, in due proportion to their amounts to their amounts of investment in its shares. Such shares are termed as Bonus Shares. This results in a marked increase in the number of their shares which ultimately augments the amount of their actual assets. To illustrate, a company

whose one share of Rs. 10 face value prices at Rs. 100 in the market if issued one bonus share in proportion to one actual share the result will be the doubling of the shareholder's shares in the company's assets. If a shareholder in the past owned one share, now one more share will fall to his ownership. Now if an overflow of its' shares in the market brings a fall to the price of its shares, 30% for instance, and the price of one share turns out to be Rs. 70 per share, the actual market price of its his asset will still become Rs. 140, that is just double of his share he already had in the company.

### **3. Issue of Right Shares and Convertible Debentures**

The market value of the shares and their convertible debentures of the financially strong companies is usually far more than the face value, at which they are primarily issued by them. Such companies, instead of bringing the offer of their issues of shares and convertible debentures directly to the public, sometimes offer their issues of shares and convertible debentures to their present shareholders and investors in proportion to their existing shares and debentures. Companies' this doing is termed, in the company parlance, as the *right issue of shares and convertible debentures*. Like the equity shares and debentures, the offer of the right issue, too, is transferable. If the directly entitled shareholder and investor is not prepared to accept the offer, or deems it appropriate for himself to utilize this right in terms of immediate cash, he may sell it to any other person

interested in making investment in this company at a reasonable price. But, generally, the benefit thus made is often less than what may be made by having the shares or the convertible debentures and then getting them converted into the equity shares. This fact demands that such an offer made by the company as right of the investor and existing shareholder should not be put to sale in the market. The shareholder had better accept the offer as such, and withhold the shares and the convertible debentures unless they are converted by the company into the shares.

#### **4. Preferential Offer for Issue of Shares and Debentures**

When the *promoters* of the successful companies launch a new company and offer the issue of its shares and the convertible debentures, they with a view to give benefit to the shareholders of their existing companies, give preference to them in the allotment of their new company's shares and convertible debentures to the general public. The shares of the company being established by successful promoters attract far more price in the market as compared to their face value. This type of preference, given to the shareholders and the investors, is very much beneficial to them. This preferential offer is not transferable, it can not be sold in the capital market. The only way to benefit from it is to get issued those shares and convertible debentures to one's name and retain them unless they are converted into the shares. The companies whose shares and debentures are freely sold and purchased in the capital market their past and present performance and the bright or bleak future



prospects directly affect the market value of their shares and debentures; even though sometimes the foretelling about their future is largely based on mere speculations and rumours.

No sooner the share market received the news of the benefits mentioned above with reference to a company the share market goes up in order to capture the prospective benefit and that company's shares mark a new hike. As a result, the existing shareholders and debenture holders of this company reap a rich benefit. After this development the price of the shares of that company fall down considerably. The benefits of investment in the shares and debentures put under (1) and (2) could be attained without making a demand from the company. But those put under (3) and (4) could be attained only if the company's procedure is properly followed. That is, one shall be required to submit an application for the purpose abiding by the terms and conditions of the issue. Negligence in this regard not only is bound to deprive one of this type of profit, there are possibilities that the subsequent fall in the prices of the shares may cause a decrease to the actual assets as well. This fact also demands that if the convertible debentures are offered by the company as right or preferential offer, they should be retained in one's ownership unless they are changed in to shares.

## **5. Sale & Purchase of Shares and Debentures**

Since the shares and the debentures are generally transferrable, they are sold and purchased in the capital

market as a market commodity. In order to retain the liquidity of their shares and debentures, there are companies which get them registered with the price indexes of the share markets. The prices of the shares and debentures thus indexed are published in daily and weekly newspapers. This facilitates the determination of the prices of shares and debentures for the sellers and purchasers. The sellers and purchasers of shares and debentures in the market may broadly be put into two groups:

- (1) Those who purchase the shares and debentures and get them transferred to their names with an intent to share the profit and loss the company earns or suffers in its business or industrial enterprises; or in order to receive interest from the company (on the amount invested in debentures).
- (2) Those who sell and purchase the shares and debentures like market commodities in order to take benefits of the rise and fall of prices.

### **Summary of the paper and its contents**

1. The law recognizes the company as a separate legal entity.
2. The company's shareholders are the co-sharers of the company's profits and losses in proportion to the number of their shares.
3. The company's management and the administration of its affairs is carried out by the Board of Directors elected democratically by the majority of the voters, that is, the shareholders. The right to vote is transferable.
4. Under some financial expediencies, and also to get some economic benefit, most companies, with a view to

promote their business and industrial enterprises, do not limit themselves to use only the funds collected through the sale of their shares; they use the funds acquired on interest (through the sale of their convertible, non-convertible, partly-convertible debentures) as well.

5. To collect the funds of shares the companies issue their shares; and to get loans they offer the public issue of the debentures of different types. Share certificates and the debentures certificates are usually transferable.
6. The shares may be had at comparatively cheaper prices by adopting the following ways :
  - (i) Directly from the company in response to its offer of public issue;
  - (ii) By the purchase of the company's issue of the equity shares-linked debentures;
  - (iii) Through the purchase of the issue of convertible debentures;
  - (iv) By purchasing the debenture certificates from the share market and then getting them converted by the company into the equity shares;
  - (v) By purchasing the *right issue* from the rightful investors when the company makes the offer of shares and convertible debentures as a right offer, and then getting them issued to one's name by the company.
  - (vi) By purchasing the shares from the share market.
7. The financially sound companies, generally speaking, issue their shares at a premium.

8. The market price of the shares and convertible debentures of the financially sound companies is generally higher as compared with their face value.
9. The unconverted part of the partly convertible debentures attracts less price in the share market in comparison to its face value. As to the convertibles, they attract a higher price in the capital market than their face value.
10. In the case of the issue of convertible debentures the company pays interest on the amount it receives as price, but, on the other hand, receives some addition price while converting them into shares. To put it more simply, the company in the same matter pays and receives some amount.
11. In the case of issue of the zero-interest debentures the company deducts the amount of its unexpressed interest off the additional price it claims from the investor to convert them into shares. In other words, in this deal the company only claims money from the investor and gives nothing.
12. From the company the benefits and profits could be exated by accepting its offer of the RIGHT or PREFERENTIAL, issue of the bonus shares, the shares and of the convertible debentures.
13. Negligence on the part of the investors and shareholders in getting the benefits announced by the company not just is bound to deprive one of the benefits announced, it may cause a decrease to the value of the actual assets of the investor.

14. The shares and the debentures of the companies may be sold and purchased as a market commodity, that is, without getting them transferred to one's name.

## 19

### **Answers to the Questionnaire Concerning the Company and the Shares of Company**

**A general overview of the questions by Mufti Nizamuddin Sb. Darul Uloom, Deoband, U.P.**

The Introductory writing to which this general answer is addressed mentions three modes of exchange (of money for service or goods and commodities), but neither one falls under the Riba according to the fiqhi definition. In the Shariat the riba (interest) is defined as follows:-

“Exchanging two *ribwi* items, leaving the excess of either side without exchange.”

So far as the first mode (from among the three mentioned ones) is concerned, the government takes an specified amount of money from the contractor as the SURETY MONEY until the assigned construction work is satisfactorily completed within the specified time limited. This obviously is a case of surety, of this undertaking is primarily intended to ensure the contractor finish the

assigned work within the set time limit and squander not the construction material provided. By no means this could be termed as a contract of exchange. As the surety money is returned back to the contractor accompanied with the due amount of interest as soon as the assigned construction work is finished. This is a contract of surety to ensure the safety and safe use of one's material. After the completion of the work the government is committed to return back only the actual amount of surety; the excess the government gives with it according to its rules and regulations is nothing but a VOLUNTARY GRANT and unasked gift. As regards the point that the surety money is used by the government in business, which forms a case of breach of the surety contract according to the principles of Islamic shariat, this is totally out of context here as the government is not Muslim, hence not committed to follow the teachings of Islam. According to the shariat this is a case of GIFT and GRANT.

The provident funds offer a much similar precedence to the case in hand. The amount deducted regularly from the salary of the employee by the concerned government department is collected and is given back to the employee along with the due interest which makes the original deducted amount often double even three fold, according to the rules and regulations of the government. Although the government uses the deductions of the provident funds to earn further profits, still the amount exceeding the original deducted amount has been declared by the Ulama as a gift to the retired employee who has served it and worked for its interest over the precious and energetic years of his life. The case in hand will obviously share the same ruling. That is,

the amount exceeding the actual ore will not be regarded as interest, but a gift and unasked grant and the contractor will not asked by the shariat to part with it and give it away in charity works.

Almost the same ruling will be applicable to the sale of the items like scooter, car, truck, houses, etc. The amount the company takes in advance from the nominated waiting purchasers forms the case of advance payment or the earnest money, and by no way a case of exchange between the two *ribwi* items. On the turn of the concerned purchaser the item is offered to him with the deduction of the amount received in advance. As to the extra amount, this too is not to be termed as INTEREST. The selling party (company, group, etc.) deducts it from the actual price of the item treating it as portion of the actual advance price without giving it to the purchaser. In view of this fact this also is a case of gift and grant and never of *riba* and interest which attracts the ruling mentioned in.

**اجتنبوا عن الربوا والريبة**

Abstain from *riba* (interest) and doubt.

## **Warning**

It will obviously be an incorrect analogy to regard this execs as similar to that of the bank deposits. What is offered by the bank to its account holders is indubitably interest. The differences between the excesses being that in the bank one deposits one's money purely of one's own volition, without any external obligation. Submitting the application form to the bank and its acceptance by it constitutes a type

of exchange transaction, meaning the bank will be bound to pay on the deposited amount an interest, monthly or annually, at a rate such and such. In the case in hand, however, the situation is profoundly different from that of the bank interest. This explanation leaves no room for one to draw a similarity between the two mentioned cases. If any body else persists to draw an analogy between these diametrically different cases, the shariat is not prepared to entertain an analogy unfit to its established normative framework.

**(1) Definition of the company**

- (a) With a due consideration of the terms and conditions, one may take part in the company even if it is a public limited one. The purchasers of the shares will become the partners in the company according to the rules of the Inan partnership. As regards the company's managing body, or, precisely speaking, the Board of Directors, it, according to the shariat, become sthe representative of the shareholders. The shareholders shall be regarded the partners as long the work is carried out in accordance with the principles and rules of the Inan partnership. In case there occurs a change to the situation, the ruling, too, shall accordingly differ.
- (b) According to the rules of the shariat the company holds the status of a separate entity as far as the management of its administrative affairs is concerned. The use of a common stamp for the purpose of signature, etc. is right and permissible,



for it relates to the sphere of administration and management.

### **(2) Chief features of the company**

What has been written under this heading in a sequence of five numbers relates to the administration and management of the company contains nothing wrong. Hence permissible according to the principles of shariat.

### **(3) The shareholders of company**

If the members of the company are not other than its shareholders, their membership of it is indeed a matter of fact. If the term 'member' includes the managing of authorities and the directors besides the shareholders, they could be regarded as members only if the company's shareholders so allow. Otherwise, they shall be considered only the agent and representatives of the shareholders.

### **(4) Control over the company's affairs**

Both the paragraphs occurring under this heading are correct and proper.

### **(5) Company's funds Acquired through the sale of share**

The way mentioned under this heading is also right.

### **(6) Authorized capital**

This way is also correct.

### **(7) The Issued Capital**

This way is also unobjectionable.

**(8) Subscribed capital**

This term and its meaning and contents contain nothing to attract any objection from the principles of shariat.

**(9) The paid up capital**

What has been said under this heading also attracts no objection from the shariat.

**(10) The share, that is, the smallest individual unit of company's capital**

The term and its meaning and explanation is also right and correct.

**(11) The preference share**

This is also acceptable to the shariat.

**(12) Certificates of share**

The is also fully correct.

**(13) How to get a share ?**

Under this heading two ways have been suggested to obtain the shares, that is, getting them from the company at the time of its public Issue. This is a way acceptable to the shariat. The second being the purchase of share from the shareholders who had obtained them directly from the company at its PUBLIC ISSUE.

But what has been put under item No. 2 of the way of obtaining the shares, that is, the issue of the Equity-Linked Debentures, may be a point of dissension. For the fact of debenture is not more than a paper being used as the receipt and certificate rather than the *mal* and pricy substance. Hence unfit to be the object of the sale, purchase transaction.

But if this debenture certificate gains the status by custom and usage, of wealth like the paper money, currency notes, dollars, etc., which is treated as *mal* in respect of exchange and the obligationlaity of the Zakat, this too will assume the same status. For this, then, will fall under the juristic definition of *mal*. The jurists define the *mal* in the following words:-

“*Mal* denotes to what does incline the disposition and which may by stored for the hour of need.”<sup>1</sup>

If the debentures lack this quality of *mal*, they will not be fit to be subject of the sale, purchase transaction except the *hawala* transaction. This point needs great deliberation before taking it into practice. In the same way, if there are cases which involve the giving or taking interest, a Muslim shall be required to abstain from them to the atmost of one’s capacity. With this warning no detailed discussion of the rest points of debentures has been attempted.

#### **(14) Benefits of Investment in share**

Under this heading the way mentioned under No. 1 and 2 is correct. As regards the No. 3 and the subsequent ones, the same will be applicable what has been put regarding the debenture certificates.

**Note :** After this brief but comprehensive talk perhaps no need is felt to discuss the the points raised one by one.

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<sup>1</sup> Shami 3/4.

## 20

### Answers to the Questionnaire

By Maulana Shams Pirzada (Mumbai)

As a matter of principle a Muslim is never allowed to take part in or render any type of help to prepare or promote an interest involving schemes. But side by side this we can not evade the factual difficulties. A Muslim may get concession from the *shariat* only to the extent he feels obliged to. The Qur'an asks the Muslims to stick to the way of piety within the possible limits of their capacity.

فاتقوا الله ما استطعتم

So, fear Allah as much as you can.<sup>1</sup>

The answers to the question No. 1 to 5 are in negative.

6. Zero-interest debentures, as far as I think, is nothing but a trick to interest, hence impermissible.
7. In the case of actual need assistance may be offered to establish a company whose scheme involves borrowing money. For borrowing and lending is not a common compulsion.
8. The answer is in the affirmative.

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<sup>1</sup> Al-Taghabun 16.

- 9 to 12. The answers are in the negative. Accurately speaking, if the element of interest gets into it only tacitly, and originally it is free from such curses, the transaction shall be regarded permissible. But if the transaction is originally interest-involving, it will become impermissible. The debenture involves clearly the element of interest; there is no way, therefore, to declare it as permissible.
13. The debenture offered by the company to the shareholders as an acknowledgement of his right may be sold to any interested person, thereby making no profit.
14. The purchase of the debentures itself is not permissible, let alone converting them into shares.
- 15 & 16. The answer to these questions is in the negative.
17. If the interest has to be received invariably, it must be parted with, spending it in charity acts.
18. The share may be sold to a third party before getting them transferred to one's name.
19. The purchase of the very debentures is impermissible, not to speak of selling them. If a person has some debentures in his possession, he shall be required to sell them and deduct the amount of interest from his capital money of investment.

# 21

## A Discussion of the Questionnaire containing 19 questions

**By Mufti Habibur Rahman Khairabadi, Darul Uloom Deoband**

The analysis of the questionnaire containing 19 questions may easily be put in two parts :-

- (1) A company is established for business (or industrial purposes), then its total expenditure is estimated and this total is distributed into equal shares which, then, are put to sale. The way of business this scheme adopts involves the giving and receiving the INTEREST. Then the amount of interest is further invested in business and is given to the investors and shareholders as profit. Does the shariat permit a Muslim to buy the shares of the companies of the type?
- (2) The prices of share are a subject to a constant fluctuation. In order to avail of the opportunity of the rising and falling of the prices, the shareholders sell their shares to others. Is it right, from the shariat view point, to sell and purchase the share of the company described above? These two questions are the gist of the set of 19 questions. In the following lines the answers to both the questions have been attempted.

**Answer to question No.1**

The way of the sale and purchase of shares of the company and the total scheme to promote and run the business and industrial activities form no case of partnership at all. Taking in mind the principles of Islamic jurisprudence, this type of business-sharing neither falls under the *shirkat Inan*, nor does under the *shirkat mufawadha*; nor under the partnership of *Sanai* and *taqabbul*. Of neither type of the mentioned ones all conditions and terms are available in the company's share system. Other reasons apart, the greatest problem with it being that in no case the shareholders are able to get their invested money back from the company. The only way to it is to sell the shares to any interested person. Otherwise, the invested money is destined to wastage.

### **Ans. to question No. 2**

As to the second question, that is, the sale-purchase of company's shares, this is also not permissible, it is because of two reasons :

First : The receipt the shareholder receives from the company is not itself the subject-matter of the sale deal. The *mabie*, instead, is the amount of sum of this money which is engaged in the company and it is known to all that the money can never be sold for money with an excess of either side.

Second, the sums of money engaged in the company remains not in the form of cash; it now exists in the company in the form of building, furniture, business goods, and some of it is lent out to others as credit. This makes the subject-

matters of the sale unknown and unspecified, and according to the principles of the Islamic jurisprudence the sale with an unspecified and unknown subject matter can not take place. We have just mentioned that once the purchaser of the shares invested his money in the company, he can never get it back from it, nor the company is able to return it back to him. How a sale transaction could be valid to the Islamic shariat in which the selling party is not able to handover the subject of the sale to the buyer? Moreover, while concluding the sale transaction the proportion and amount of the profit is unsettled between both the seller and buyer. Furthermore, in the company some amounts of money are lent to people and many people own the company's cash amount. This creates the case of the sale of the shares, which is not permissible in Loan and borrowed cashes, and in this case the debtor a third person other than the buyer and seller. In short, considering all such unarguable points, the sale, purchase of the company's shares is impermissible according to the rules and broad principles of the Islamic jurisprudence.



**22****Answers by Mufti Ismail Bhadkoravi  
(Gujrat)**

1. The scheme of the company which involves lending/borrowing money on interest can not be prepared, nor any fee could be charged for its preparation and forwarding; it involves the rendering of help to an interest-involving deal.
2. Rendering any help in getting loans on interest is not lawful. The hadith clearly warns the Muslims against helping any body else in getting loans on interest.
3. It is impermissible to render any help in connection with the non-convertible interest-involving debentures and charging any fee for this type of work. This ruling is primarily applicable to those having no share in the company. As regards the sitting shareholders of the company getting such debentures as right, for him charging a fee for rendering any type of help in connection with the interest-bound debentures may be permissible.
4. This case, too, will share the some ruling as explained under the answer to question no. 3 That is, only a shareholder may complete the formalities in connection with the non-convertibles and earn a wage by so doing.

5. Labour charges may be taken for rendering required help in connection with the fully convertible debentures, apart from that the help rendered is in the interest of the shareholder or the non-shareholder. In both cases one is permitted to take labour charges. It is chiefly because the nominal amount of interest may be adjusted to the decrease of the enhanced price of the shares. As to the partly-convertibles, help may be rendered only to the shareholder, to the exclusion of the non-shares holder.
6. Apparently this case does not involve interest-free debentures have no problem which might render it impermissible to be helped. Though it apparently seems that this interest-free lending is intended to take benefit of getting the equity shares for a lower price as compared to their market price, yet it may be interpreted that the money was not lent, but the advance portion of shares. This interpretation removes this doubt.
7. According to Maulana Ashraf Ali Thanavi the solution to the technical problem of investing in the company of the type is that the shareholder who, while purchasing the shares was not aware of this fact actually had not made the Directors and the Company's management his representative. This way the doing of the Board of Directors or the management will not be attributed to him. As for those who knew it, they should clearly express their disapproval even if their disapproval is of no avail. The shareholder may, thus, as solve himself of the sin involved.
9. Purchasing the shares-linked convertible or non convertible interest-bearing instruments is permissible neither for the existing shareholder nor for a new

investor. This is obviously a case of purchasing a credit lent to the company by the investor in the exchange of cash. It may be even more reprehensible if either one exchange is either less or more than the other one, as this will involve a further problem of the interest-bound enhancement (ribai fazl). But the fully-convertible interest bearing debentures may be purchased from the company by both the existing and new shareholders. In this case the sums of interest may be adjusted to the special concession on the part of the company to such debenture holders in the price of the shares. As regards the purchase of the partly-convertible interest bearing-debentures, for a non-shareholder it is impermissible as it will be engaging the part of his assets invested in the non-convertibles in a purely interest-bearing credit. The shareholder in the company may, however, purchase such bonds/ debentures.

10. The answer to this question is almost the same as put under the last answer (to question no. 9). Further in this case if these debentures are retained as long as they are converted in the shares, the law of impermissibility will turn ineffective regarding the purchase of such debentures.
11. It will be unlawful to gain profit by the sale of the convertible debentures unless they are converted into the shares. Before their conversion into shares their sale will form a case of exchange of the cash assets for the credit assets with differing amounts of both the exchanges. This obviously will become a case involving interest.

12. The purchase of the zero-interest-convertible debentures from the company is lawful both for the existing and the new investors. But neither the existing shareholder nor the new investor is permitted to purchase them from the capital market as so doing will form a case of exchange of cash and credit assets with differing amounts.
13. No shareholder is permitted to renounce the offer made to him by the company of purchasing the non-convertibles or partly-convertibles in favour of a third person and get an exchange thereof; so because the existing shareholder may accept the offer of both the types of debentures, but a non-shareholder can not purchase them. As regards the fully-convertible interest-bearing debentures, considering the reduction in price as concessionary given to such debenture purchase is primarily in consideration of the interest the company would have paid to him on the borrowed amount had it been invested in the purchase of interest-bearing instruments. But the company terms these transactions as loan it owes to the debenture holders. Renouncing one's right to have a loan for an exchange. The better course of action, therefore, is not to take advantage of renouncing one's right to accept the company's offer of such debentures in favor of a third person.
14. As put above in answer to the questions, discussed, the interest received on the amount invested in the fully-convertible interest-bearing debentures may be seen as concessionary reduction in the price of the shares into which those debentures are ultimately to convert.
15. In the same way it will be incorrect to regard the excess received on the sale of the non-convertible portions of

the debentures as deductions from the additional value of the shares. For the excess value is received by the company, while the excess on the sale of the non-convertible positions of debentures is claimed from the purchaser. According to the rules established the latter transaction involves interest.

16. The losses suffered in the sale of the non-convertible parts of the debentures cannot be compensated by the funds got as interest on those parts. So because the loss has been suffered in the interest-involving sale transaction concluded with the buyer, while the interest procured is paid by the company.
17. More accurately, the purchase of the partly convertible debentures and securities, mentioned under question no.15, 16 is unlawful. If purchased without knowledge, the interest-received should better be spent as charity on the indigents and needy people without intending any reward in the hereafter. In case the partly convertible debentures were sold with profit in ignorance to a buyer and the revocation of the transaction is now difficult the sum claimed as profit has to be returned to the buyer. For this profit he obviously is nothing but interest. So it has to be returned back to its owner who is known.
18. The sale-purchase of the shares means that the shareholder is selling the part of his ownership he owns in the assets of a given company. As regards the completion of the formalities and acquisition of the documental proof of the transference according to the law in force, for the satisfaction of the Shariat the

purchaser needs not bother himself with so doing. Once he made the payment, he becomes the owner of the purchased shares. He now has full right to sell those shares transferred to his name. The common assets of the company include both the immovables - buildings, factory, infrastructure etc. and the movables-furniture ready goods, raw material casher, etc. Sofa as the sale of the immovables is concerned, it is permissible even before establishing one's possession over them. The movables, on the contrary, could be sold only if they virtually exist in the possession of the seller. Under the present case, the directors of the company are the representative of the shareholder. There is a yet another problem. The common assets of the company may include, the cashes as well; the sale of his shares will include his share in the cashes. The sale of cashes requires the mutual possession of both the parties. The mutual possession forms a condition for the validity of the transaction, failing which the transaction will be rendered invalid. In the present sale transaction this condition remains unfulfilled. This is a problem indeed. The late Maulana Ashraf Ali Thanawi has offered a solution to this problem in the following words:

“As regards the problems of mutual possession of both the selling and purchasing parties, it may be solved the way that the purchasing party should say to the selling party: From the amount of assets you own in the company's properties and assets I credit you what is equal to the price value and you refer it to the company and I am at liberty

either to realize it from the company or engage it in any other thing there. For the excess I purchase goods for your lot.<sup>1</sup>

19. Before the conversion of the debentures into shares (irrespective of that those debentures have been transferred to the name of the owner or not) those debentures and securities cannot be purchased from other than the company; nor sold to any other person, having purchased the same from the company. This will be an exchange of the determinate property for the indeterminate one with an increase-decrease. This is indeed a sale which involves interest. Hence unlawful.

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<sup>1</sup> Imadatul Fatawa 3/492

## 23

**An abridged version of the answers to the total nineteen questions the Academy received from the learned discussants.**

**By Mufti Md. Fahim Akhtar Nadwi**

**Ans. To Ques. No. 1:** Unlawful. (Maulana Shams Pirzada, Mufti Ismail Bhadkorwi)

The question is not clear and properly worded. Hence cannot be answered. (M.I. Burhanuddin Sambhali)

Charging a fee for such a service is lawful. (Mufti Jamil Ahmad Naziri, Mufti Ubaidullah As'adi)

**Ans. To Ques. No. 2:** Not lawful. This view is shared by the following Ulama :-

Mufti Ismail Bhadkorwi, Shams Pirzadah, Ml. Ml. Burhanuddin Sambhali, Mufti Jamil Ahmad Naziri.

“If the company is being run in lines with the norms and principles of the Shariat and the company has obtained an edict mentioning clearly the lawfulness of the company’s corporate and business activities, and the services offered involve both labour and time of the professional, the fee may be charged’. This view has been adopted by Mufti Md. Ubaidullah al-As’adi.

**Ans. To Ques. No. 3:** ‘May be charged’. (Mufti Jamil Ahmad Naziri)



‘Not lawful’. To this view subscribe the following men of Islamic learning :

Mufti Ubaidullah al-As’adi,

Ml. Md. Burhanud Din Sambhali;

Ml. Shams Pirzadah (Mumbai)

“The shareholder of the same company is permitted to charge a fee for rendering such a service to the company. For a person holding no share in the company, however, is not lawful. (This view is held by Mufti Ismael Bhadkorwi).

**Ans. To Ques. No. 4:** ‘For the purpose no service could be rendered (Ml. Shams Pirzadah, Ml. Burhanuddin Sambhali, Mufti Ubaidullah-al-As’adi).

‘May be charged’ (Mufti Jamil Ahmad Naziri).

‘Not lawful for an outsider, for the shareholder, however, is considerable, so has opined Mufti Ismael Bhadkorwi.

**Ans. To Ques. No. 5:** ‘Not lawful’, (Ml. Burhanuddin Sambhali, Mi Shams Pirzadah, Mufti Ubaidullah al-As’adi.)

‘Can be charged’. (Mufti Jamil Ahmad Naziri).

‘Fee may be charged for rendering such a service concerning the debentures fully convertible. As regards the partly convertible debentures, only a non-shareholder can charge (Mufti Ismael Bhadkorwi).

**Ans. To Ques. No. 6:** ‘A fee may be charged for rendering such services.’ This opinion is shared by the following participating scholars:

Mufti Jamil Ahmad Naziri,

Mufti Ubaidullah al-As'adi,

Mr. Burhanuddin Sambhali,

Mufti Ismael Bhadkorwi

'Not lawful.' (Mr. Shams Pirzada of Mumbai)

**Ans. To Ques. No. 7:** 'Impermissible'. (Mr. Burhanuddin Sambhali).

'Permissible' (Mufti Md. Ubaidullah Al-As'adi, Mr. Shams Pirzada, Mufti Ismael Bhadkarwi).

'Is permissible, provided that the business and the corporate activities of the company are lawful.' (Mufti Jamil Ahmad Naziri).

**Ans. To Ques. No. 8:** 'No investment could be made in such companies as are already involved in interest involving transactions'. So being the opinion of the following Ulema :

Mufti Jamil Ahmad Naziri

Mufti Ismael Bhadkarwi

Mr. Shams Pirzada

Mufti Md. Ubaidullah Al-As'adi

'Investment may be permissible in such companies provided there exists a line of distinction separating the interest involving transactions from the interest-free ones. (Maulana Md. Burhanuddin Sambhali).

**Ans. To Ques. No. 9:** 'Not lawful'. This opinion has been expressed by :-

Mr. Shams Pirzada

Mufti Md. Ubaidullah Al-As'adi and;

Mufti Ismael Bhadkorwi

‘May be purchased, provided that the sale price does not increase the purchase price’. (Mufti Jamil Ahmad Naziri).

‘If the shares are interest-free, they may be bought with an intent to sell them later’ (Ml. Burhanuddin Sambhali).

**Ans. To Ques. No. 10:** ‘Can not be purchased’. (Ml. Shams Pirzada, Mufti Mohd. Ubaidulah Al As’adi).

‘If the shares are non-interest-bearing, they may be purchased with an intent to sell them later’. (Ml. Md. Burhanuddin Sambhali).

‘May be purchased’. (Mufti Jamil Ahmad Naziri)

‘May be purchased, but not from the market.’ (Mufti Ismael Sb.)

**Ans. To Ques. No. 11:** ‘Not permissible.’ This opinion has been adopted by :

Mufti Ismael Sb.

Mufti Ml. Burhanuddin Sambhali,

Ml. Shams Pirzada,

Mufti Md. Ubaidullah Al-As’adi

‘Can not be sold at an enhanced price. The debentures may be sold at their purchase price.’ (Ml. Jamil Ahmad Naziri).

**Ans. To Ques. No. 12:** ‘Not permissible’. (Ml. Shams Pir Zada, Mufti Md. Ubaidullah al-As’adi).

‘May be purchased’. (Ml. Burhanuddin Shambhali)

'The debenture certificates of the sort could be purchased directly from the company. In case of the purchase from the market this will constitute a case of *hawala*, hence the rulings of *hawala* shall have to be observed'. (Mufti Jamil Ahmad Naziri).

'Could be purchased from company and not from the market.' (Mufti Ismael Bhadkarwi Sb.)

**Ans. To Ques. No. 13:** 'Not permissible'. (Mufti Md. Ubaidullah al-As'adi, Mufti Ismael Sb.)

'Making profit this way is permissible'. (Ml. Shams Pirzada).

'This too will be a subject to *hawala* rulings'. (Mufti Jamil Ahmad Naziri).

'Mere an offer forms no case of exchange between the commodity and price. In other words, the offer is not a commodity in the eye of the Shariat. Hence impermissible'. (Ml. Burhanud Din Sambhali)

**Ans. To Ques. No. 14:** 'Not permissible'. (Ml. Shams Pirzada)

'Seems permissible'. (Mufti Jamil Ahmad Naziri, Mufti Ismael Sb.).

'The question is not clear', hence no answer could be given. (Mufti Ubaidullah Al-As'adi, Ml. Burhanuddin Sambhali).

**Ans. To Ques. No. 15:** 'No extra amount could be charged on the sale of the non-convertible debenture units. Hence this question loses its significance'. (Mufti Jamil Ahmad Naziri).

‘Not permissible’. (Ml. Shams Pir Zada, Mufti Ismael Sb.)

‘The question could not be properly understood, hence no answer is possible’. (Mufti Ubaidullah Al-As’adi, Ml. Burhanuddin Sambhali).

**Ans. To Ques. No. 16:** ‘Not permissible’. (Ml. Shams Pir Zada, Mufti Ubaidullah Al-As’adi, Mufti Jamil Ahmad Naziri, Mufti Ismael Sb.)

‘This may be permissible only if the amount of the received interest is repaid to the party from which it was taken. No other sort is permissible’. (Ml. Burhanuddin Sambhali).

**Ans. To Ques. No. 17:** ‘Such amounts should be given away in charity to the needy and resourceless persons without expecting any reward in the Akhirah’. (Ml. Shams Pirzada, Mufti Ismael, Mufti Ubaidullah As’adi Sb.)

‘Such amounts must be spent only in charity deeds.’ (Mufti Jamil Ahmad Naziri).

‘The question itself is redundant’ (Ml. Burhanuddin Sambhali)

**Ans. To Ques. No. 18:** ‘Is permissible’ (Ml. Shams Pirzada, Mufti Ismael Sb.)

‘Not lawful’. (Mufti Jamil Ahmad Naziri Sb.)

‘May be permissible, provided that the case of the ‘sale before taking possession is not obtained.’ (Ml. Burhanuddin Sambhali Sb.)

**Ans. To Ques. No. 19:** 'Since this forms a case of *hawala*, so is acceptable to the Shariat. But in no case any extra amount could be charged'. (Mufti Jamil Ahmad Naziri).

'If this forms no case of *the sale before taking possession*, it may be permissible to sale and purchase the convertible debentures like a market commodity.' (Ml. Burhanuddin Sambhali).

'The purchase and sale of the debentures is categorically unlawful and this standpoint quashes the very question.' (Ml. Shams Pir Zada).

**Note :** There are two more writings which the Academy has received in the context of 'Company and the shares of the Company'. Though they are comprehensive and satisfying, yet they do not address specifically the questionnaire. Rather they take the company and the shares of company and the related problems in a rather general and non-specific way. One of them (written by Hazrat Mufti Nizamuddin Sb. Of Darul Uloom Deoband) is an insightful comment on the contents of the introductory article, contributed by Dr. Ihsanul Haq of the Punjab National Bank, Delhi. The other being a one-page general comment on the topic. This Abridgement does not include their abridged versions.

**24****Some more questions about the business activities of the company.**

**(1) Considering the nature of the business activities the companies undertake, the companies may be classified into three distinct groups. That is:**

- i. Those ones whose business activities are lawful.
- ii. The ones whose business activities are completely unlawful;
- iii. Those companies whose prime business is lawful, but sometimes they have to involve in interest-bound business transactions. Quite obviously, in the companies defined under No. 2 in no case a Muslim is permitted to take any part, and the position of the Shariat vis-à-vis this type of companies is clear. The same is reversely true about the group of the companies pointed under No.-1. That is, a Muslim is fearlessly allowed to invest his capital in them and to co-operate with them in their business activities as he wishes. It is actually the company's steadied under No.-3 on which the position of the *shariat* is to be determined. While discussing the problems of the type it has to be kept in mind that the company in itself is regarded by law a separate legal entity. The practical way there is that all the shareholders of a company, in their collective status, are the owners of

it. Following the democratic principle of majority, the executives are elected from among its shareholders. Terminologically called the Board of Directors, this group of elected executives is committed by law to follow the policy and decisions adopted by the general body of the shareholders to run the company. The term 'general body' here denotes the assembly which is constituted by all the shareholders of the company each shareholder's ownership and his ensuing right to vote are determined in proportion to the amount of capital he/she has invested. In the general body meetings of the company each shareholder has a right to express his views and suggestions about the company's working, performance and its future programs. Any shareholder ideologically opposed to the interest-company's such practices also has a right to enlist the support of other members and make a majority of the like minded members in order to force the board of Executives to change the company's anti-shariat policies. In the company law, as it has already been said, it is the majority view which has to be followed. This fact of the company gives rise to some questions:

- a. What is the nature of relationship between the shareholder (in his individual capacity) and the board of directors? Shall each and every act and disposition of the board be ascribed to each and shareholder?

The experts in the company law hold that the board of Directors does not represent the



shareholders in their individual capacity; it represents. The company which has its own existence in the eye of the law.

- b. In case a shareholder, in the general body meetings, votes against the company's policies involving interest-bound transactions, but due to lacking the majority support his opposition bears no fruit, shall his opposition absolve him of the responsibility of the interest-bound transactions?

**(2) Financial institutions often offer many services to the people and charge due fee. Their services among other things include preparing projects for different companies financial corporations. Is it lawful for a Muslim financial institution to offer such services, while such projects and schemes, beside collecting capital from the shareholders, may be meant for seeking:**

- (a) Loans on interest,
- (b) Issuing debenture certificates (both convertible into shares and the non-convertible ones);
- (c) Issuing shares linked debentures;
- (d) Issuing the debentures which may afterwards convert into equity shares;
- (e) Issuing zero-interest debenture certificates.

Terminologically, the debenture is an interest-bound instrument. The debentures are of two types: convertible

into equity shares and those nonconvertibles into share. The former is termed as the convertible debenture. As regards the zero-interest debentures, they obviously neither fetch any interest nor a proportionate extra amount is paid to the company. But the shares into which the zero-interest-debentures convert do value in the market at relatively more than their face value. This point is decided even before their issue. The scheme of issuing the shares-linked debentures is that making investment in shares necessitates the investment in the debentures.

- (3) The question No.2(c) makes mention of the share-linked debentures. If an investor makes investment under these, scheme and sells out the debentures in the open market, the result is that the pure investment made in the shares will be proportionately less in comparison to the shares purchased from the market. Considering this benefit, shall it be lawful to make investment in this scheme?**
- (4) If the investment is made through the debentures converted into shares, as put under (c) of the question No.2, retaining the part of the debentures converted or what is bound to convert selling out the rest in the market, the pure investment shall obviously be less as compared to the market value. Could the investment be made in the mentioned scheme it order to secure the benefits of the scheme?**
- (5) What is the position of the shariat on making investment in the zero-interest debenture mentioned under (e) of the question No.2?**

- (6) The debenture mentioned under No.2, 3 sells at a rate less than its face value except that it is sold out prior to its conversion into shares. This gives rise to a question: could a loan be sold at a value less or more than its face value, and could the loss suffered in the sale of the debentures mentioned be offset by the interest accrued from debentures?
- (7) The companies, often, have to seek loans from the government, governmental financial institutions, banks or similar other agencies; to forward their loan applications with the concerned public or private financial institutions and corporations the serving institutions charge a fee. Is it lawful for Islamic financial institutions to offer such services charge a fee?
- (8) The value of the shares of the well-established financially sound and strong companies, generally speaking, much more as compared to their face value. In order to provide a benefit to their existing shareholders and the debenture-holders in proportion to their invested capitals the companies make offer to them as a right to invest in convertible debentures. This right is transferable. If a shareholders or debenture-holder is not prepared to make use of his right, he is permitted to sell his right in the market and take advantage of it, although it is lesser in terms of monetary advantage than what may be obtained through the channel of investment. Notably, after the termination of the said scheme a marked decrease is noted in the value of the shares in the share market.

What is the position of the shariat towards making investment in debentures convertible into the equity shares by way of making use of this right and by the sale of this right?

- (9) After conversion of the partly-convertible debentures into equity shares could the loss suffered in the sale of the non-convertible units be offset by the amount of interest accrued from this whole transaction?
- (10) Those purchasing the equity shares may be put into two different classes: (1) those who purchase the shares of a company by their names in order to get a share in the ownership of the company and thus to share the profits as well the losses of the company. (2) Those who purchase the shares as a market commodity to take advantage of the fluctuations of the shares market. Shall it be lawful to sell them out before getting them transferred to their names?
- (11) (a) Will it be lawful to enter into interest-free loan transactions by mortgaging the shares' certificates?
- (b) Will it be lawful to enter into interest free loan transactions with the condition that the debentures be kept in mortgage?
- (12) Generally speaking, in the event of purchasing the shares from the market the procedure of transferring those shares to the name of the new purchaser takes a period of three months. This period is too much for the value of the shares to undergo many possible fluctuations. Under such conditions it often occurs that the price of the shares increases and the shares already sold have not yet been transferred to the new buyer. In

order to evade such an unfortunate situation there exists a general practice of the FUTURE SALE. Having entered into the future sale, in spite of the fact that he yet has not taken the possession of the shares purchaser, the shareholder saves himself from the losses he might suffer in the event of the possible fall in the price of the shares. This situation, which is quite common in the share market, engenders an acute question:- shall it be lawful for a person to sell his shares in the future market while he has not yet taken the possession of those shares?

### **Answer to the preceding Questions**

*Note: We are in possession of five papers submitted in response to the additional set of twelve questions by five scholars. In order to keep the present anthology within the scope, we have to content our self with only two of them- Tr.*

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## **Answer by Ml. Shams Pirzada**

### **Answer to Question No. 1**

1- The companies whose prime business is lawful, although at times they have to enter into interest-bound transactions, under present unavoidable states of affairs, may offer an option for making investment in. So because their involvement in interest-bound transactions is never central to their business work, it is only a tacit practice; there is hardly any company which can completely refrain from falling in this sin, willingly or otherwise. Each company has to borrow money from the banks and similar other institutions on interest. The companies, similarly, issue the debenture certificates. Besides, each company receives interest on its funds lying reserved with the Reserve Bank of India. Since the amount of interest the company receives is, generally, less in amount than that it has to pay to the financial institutions on its borrowings, therefore, cannot generally be included in the company's dividends.

(a) According to the company laws the Board of Directors wields authority to run the company- manage its affairs in lines with the decisions taken by

the majority of the shareholders in their annual meetings. This fact or the company makes it plain that each every act-disposition of the Board of Directors can by no way be attributed to every shareholder each individual shareholder can by no way be forced to share the responsibility of the acts and dispositions he personally is disagreed with.

- (b) If a shareholder votes against the interest-bound transactions in the general body meetings of the company, and though his opinion is not entertained by the board practically due to lacking majority of votes, it would be utterly unjust to hold him responsible of the sin, especially under the prevailing circumstance, at an equal footing with those supporting the usurious practices.

### **Ans. to Question No. 2**

Financial institutions maybe permitted to prepare projects for different companies and charge fee for such professional services, provided that the prime business of those companies is lawful and their such services does not entail their involvement in unlawful activities.

### **Ans. to Question No. 3**

Making investment in the shares-linked is of course impermissible. For it entails a participation in the interest-bound transactions.

### **Ans. to Question No. 4**

Making investment in convertible debentures is not permissible. For involving in the sale-purchase of the non-

convertible debentures, even at temporary bases, obviously amounts to taking part in interest-bound transactions.

### **Ans. to Question No. 5**

Investment in the Zero-interest Debentures seems permissible. So because such debentures ultimately are due to convert into the equity shares; they are free from the curse of interest, therefore different in nature from the interest - fetching debentures.

### **Ans. to Question No.6**

Debenture, as it is known to all, is an interest-fetching loan instrument. If it is sold at a price higher than its face value, it will certainly mean to acquire interest on loan. However, to sell it at a price lower than its face value may be permissible with an intent to get rid of such interest-bearing debentures. As a matter of rule, nevertheless, the debentures is not salable.

### **Ans. to Question No.7**

The financial institutions lending money to companies receive interest from them. No Muslim institution is therefore permitted to offer its professional services of mediation between the interest-bound borrowings and the money-tending establishments. So doing will obviously make a case of *ta'awun alal ithmi wal udwan* (rendering assistance on doing the acts of sin and transgression).

### **Ans. to Question No.8**

Convertible debentures generally take a good period of time to convert into the equity shares and till this time one



will remain involved in a usurious transaction, therefore impermissible.

**Ans. to Question No.9**

The losses suffered in the sale of the non-convertible part of debentures cannot be compensated by the amount of interest received on it. So because the amount of interest is received from the company while the sale deal is concluded with another party.

**Ans. to Question No.10**

It will be impermissible to sell/purchase the shares without getting them transferred to the purchaser's name. Without the completion of the process of name transfer the new purchaser cannot avail of the rights and benefits associated with the shares and he is not the legal owner of those shares. Such a sale/purchase is legally proscribed.

**Ans. to Question No.11**

- (a) Since the shares are valuable things in monetary terms, they may be taken as a pledge to lend/borrow interest-free loans.
- (b) The sale/purchase of the debentures forms an interest-bound transaction, hence impermissible. This dismisses the very question of pledging the debentures.

**Ans. to Question No.12**

Forward trading, that is, selling one's shares before getting them transferred to one's name is impermissible for the same reasons as put under the answer to questions

No. 10. In the Stock Exchanges whole the speculative business runs through the same ground.

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### **Answer by Mufti Mahboob Ali Wajihi, Rampur**

Before answering the questionnaire I'm in receipt of, it deems of great import to put here that the problem of interest and the related issues are too complicate, requiring much care and caution. The concepts of company and banking are basically of the western origin, where the scope of religion is strictly limited to the private sphere of man's life. The company and the banking system very so often contravens the basic concepts and the commands of the Islamic shariat. The Muslim, contrariwise, is committed to associate his top priority to the Islamic shariat and apply its rules to all spheres of his life, always keeping fresh in mind the *Akhirah* and sake of the pleasure of Allah. After this parenthetical note, now in the light of the Qur'anic verses like:

**ولا تعاونوا على الإثم والعدوان-**

“and offer not assistance on the acts of sin and transgression.”<sup>1</sup>

وأحلّ الله البيع وحرم الربوا.

“Allah has declared the sale and purchase as lawful and has forbidden the practice of usuary and interest.”<sup>2</sup>

And the Prophet’s saying :

دعوا الربا والريبة.

“Give up the usuary and the doubt.”

and the well-known juristic principle of Hanafi School :

والشبهة في هذا ملحقة بالحقيقة.

“In such matters the doubt shall be treated as reality,” and similar other arguments the answers to the questions are as under:

1-(a) As far as I think, the company’s Board of Directors in the representative of the shareholder each every act done by it and every decision taken by it shall necessarily be attributed to all shareholders. Company in itself stands for nothing; it is the shareholders who are responsible for the establishment and existence of the company. The affairs taking place in the company have to be ascribed to the shareholders and the Board of Directors as it is they with whom the authority of the decisions rests.

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<sup>1</sup> Al-Qur’an 5. V. 2

<sup>2</sup> Al-Qur’an 2.

- (b) Being a shareholder in the company he too is associated with such unlawful transactions which the company undertakes. He cannot dissociate himself from the responsibility of helping others in doing the acts of sin and transgression. In the event of his opposition bearing no fruit, he shall be required to terminate his business relationship from such company. In no case he could be regarded absolved from sharing the responsibility of the sin merely by his oral opposition.

### **Ans.to Question No.2**

The professional Muslim financial institutions are permitted to offer only such services as are free from the curse of interest and gambling, etc. In no case it would be permissible for them to help other institutions and companies in getting:

- (a) Interest-bound loans,
- (b) Issue/sale/purchase of the debentures bearing interest. Interest free debentures may, however, be permissible.
- (c) Only the interest-free debentures may be issued. But, unfortunately, the debentures are hardly free from the curse of interest.
- (d) So far as I think, the answer put under (c) is applicable to the present question.
- (e) The answer is obviously clear. Paying and receiving the interest are unlawful, and so will be the ensuing things. The difference of value between the face value the market value of the shares does not form a case of interest. We know, as the Fuqaha generally hold, the

price of a commodity may differ from the cash sale to the credit sale. The latter mode may fetch more price than the former one. But in no case the investor could be permitted to involve in interest-bound transactions.

### **Ans. To Question No.3**

If the debentures secured as a profit of investment involved no aspect of interest, they may be purchased from the market with an intent to earn a profit.

### **Ans. To Question No.4**

This involves the purchase of the interest-bound debentures, hence unlawful.

### **Ans. To Question No.5**

This one, too, is impermissible.

### **Ans. To Question No.6**

The Prophet (Peace and blessings of Allah be upon him) is reported to have declared unlawful every type of (material) profit attracted by a credit. In the light of this Hadith this transaction, too, shall be unlawful. The amount of interest is *haram* and must be done away without delay. It cannot be used to offset the losses suffered elsewhere.

### **Ans. To Question No.7**

Service may be chargeable; the professional institutions may charge fees for their services. But such service must not be offered to level the way for the unlawful interest-bound transactions. Otherwise, it will create a case of *ta'wan alal ithmi wal udwan*, which is expressly forbidden.

**Ans. To Question No.8**

Mere right is not a salable object; it is not a *mal mutaqawwa*. The right of *ta'alli* (sale of the space in *faza*, roof, etc.) and the right of *maseel* (the things of common interests) cannot be the objects of sale unless they are associated with some thing tangible like a piece of land etc., as mentioned in Hidayah. The shares of the company, however, are saleable as they stand for a proportional ownership in the company's assets which are existing object, hence saleable.

**Ans. To Question No.9**

The amount of interest can never be used to offset the losses. It entails one's involvement in interest-bound transactions which is strictly forbidden by the shariat.

**Ans. To Question No.10**

- (1) Such type of shares is lawful to be purchased.
- (2) With the making of the payment the purchaser's ownership gets established. He may sell the shares any times to anybody else. Transfer of the name is no more than a formal requirement.

**Ans. To Question No. 11**

- (a) Pledge actually is a bond of trust. By pledging the shares one can get an interest free loan or get an interest free loan.

**Ans. To Question No. 12**

With the possibility that the company may decline to accept this sale transaction of the shares, the sale of those shares shall not be lawful unless the company gets satisfied with the sale. The sale may take immediate effect only if the company has no legal objection *vis-à-vis* this transaction. The

transfer of name is regarded only a formal act and a paper work. For the sale (*bay*) is defined as the exchange of one species of *mal* for another species of *mal*. This is found here.

## 27

### **Islamic Financial Institution and the Shares of Companies: Decisions & Propositions**

The sixth seminar of the Islamic Fiqh Academy of India discussed some problems and propositions concerning the Banking and the shares. A long, lengthened and exhaustive discussion led the discussants to the following conclusions:

1. Under the mandatory law of the land and the compulsory direction of the Reserve Bank of India the Muslim financial institutions, too, are obliged to invest the 5 % of their total assets in the governmental debentures and securities. The invested fund attracts interest from the Government. According to the discussants participating in the seminar the better way to evade the curse of interest in future would be to turn the amount of interest thus received into the compulsory Deposit Fund and to replace the original capital.<sup>1</sup>

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<sup>1</sup> This decision is about the question No. 3 of the detailed questionnaire about the topic of Islamic Banking discussed by the Sixth Fiqhi seminar, besides the questions about the Islamic financial institutions and companies. As to other questions, the discussants could not arrive at a consensual opinion.

2. The companies whose prime business is purely *halal* (lawful), their shares are fit to be purchased by Islamic financial institutions as well as by Muslim individuals and groups.
3. The companies whose business is purely *haram* (unlawful) their shares are by no way fit to be purchased by Muslim individuals or by Islamic financial institutions.
4. Regarding the problems and issues about the Banking and shares Sixth Seminar directs the Islamic Fiqh Academy of India to convene a special session of the ulama and the Muslim economists to properly analysed and discuss those issues, thereby letting them arrive at final conclusions.



**28****Third Topic of the Seminar****An Important Question About *Murabaha*  
(Cost-Plus Profit Sale Transaction)****Question:**

A person is interested in the business of cotton, but for the purchase of cotton he has no money. For the arrangement of the required funds he moves to an Islamic bank. Under the law of the land the Islamic bank cannot engage itself in any sale-purchase activity; it can lend money to him on the interest-rate specified by the country's prime bank. In order to solve the problem of the person the Islamic bank proposes to sell the cotton to him under the *murabaha* sale transaction. That is, the bank will lend him the cotton as credit for two months at a cost of Rs. 2000/- a quintal as market rate of the cotton, adding Rs. 40/- to the cost value as its profit. Notably, the profit amount is according to the interest rate fixed by the country's prime bank. This being the actual position of the transaction, however, being obliged to compulsorily follow the law of the land under the direction of the prime bank, the Islamic bank will show the *murabaha* sale in terms of an interest-bound transaction, according to the following detail:

- Rs. 2000/- as the cost value of one quintal cotton (the lent amount in terms of the prime bank)
- Rs. 40/- as its profit (the amount of interest on two thousand rupees lent for a period of two months).

Being under obligation to follow the law of the land, is the Islamic bank permitted by the Shariat to show in writing this *murabaha* transaction as an interest-bearing lending transaction?

**Answers:** In response to the question put above, the Academy received the following answers:

If this person is interested in trading in the cotton but unable to arrange the needed capital without involving in interest, he had better conclude such a transaction directly with the prime bank itself; this transaction may be tolerable to the Shariat as reads the following juristic principle:

### يجوز للمحتاج الاستقراض بالربح

“Loan may be sought on interest under necessitating circumstances.”<sup>1</sup>

- But the point which remains unclear is that, ‘why does he move to an Islamic bank to seek the loan on interest for his business leaving aside a comparatively easier option’. In order to arrive at a proper conclusion in lines with the Islamic jurisprudence this point needs to be cleared first (Mufti Nizamuddin, Darul Uloom Deoband).
- “The mode of *murabaha* mentioned in the question is nothing but a clever trick to indulge in interest earning.

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<sup>1</sup> Al-Ashbah Wal-Nazair

So, by no way it could be permissible.” (Shams Pir Zada, Mumbai).

- “Due to being unable to undertake business in any form under the law of the land, the Islamic bank may show its *murabaha* transaction in terms of an interest-bearing credit transaction. The bank, however, shall be required not to lend the money to the businessman. Instead, the bank should make the purchase of the business goods by itself and then sell them to him under the *murabaha* sale transaction.” (Mahfuzur Rahman, Jamia Miftahul Uloom, Mau)
- “According to a weak interpretation of the concerned principles of the *fiqh*, this mode of the *murabaha* sale transaction seems acceptable.” (Maulana Muhammad Burhanuddin Sambhali, Nadwatul Ulama, Lucknow.)

As far as I think, this is a lawful mode of business transaction. For the *shariat* takes into consideration the reality of the event rather than what has been committed into writing under compulsive conditions. With reference to the *Fatawa Mahadavia* (a complement to the *Raddul Muhtar* 2/459) the Fatawa Darul Uloom reads:

العبرة لما في الواقع، لا بما كتب خلاف ذلك

“What is to be taken into account is the reality of an event, rather than what has been written against the reality”<sup>1</sup>

As stated in question, present case, in reality, is not an interest-bound transaction. It is the legal compulsions which have actually led the Islamic bank to show this *murabaha* sale transaction as an interest-bearing money lending deal. This is indeed a trick employed solely to evade an open involvement in interest-bearing transaction. So this cannot be considered impermissible.

A *murabaha* sale transaction may be contracted in both cash and credit modes. The credit mode may fetch even greater amount of profit as compared to the cash transaction. The same thing has been mentioned in the following words:

ألا يرى أنه يزداد في الثمن لأجل الأجل؟

“Is it not seen that the price is enhanced on the ground of the (credit) duration?”<sup>1</sup>

To explain the reality of this transaction in even simpler words, the Islamic bank sold the cotton to the businessman on a credit of two months for Rs. 2000/- a quintal as its market-value plus Rs. 40/- as its profit. The sale transaction is indubitably valid and lawful. It is not an interest-bearing transaction even if the Islamic bank to evade the legal compulsions in a secular country, show in writing such transactions in terms of its interest-bearing dealings. (Mufti Jamil Ahmad Naziri).

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<sup>1</sup> Hidayah 3/74, Chap Murabaha and Tauliyah.

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## **BIOGRAPHICAL NOTES**

- ‘A’ishah, d. 58 A.H. /678 C.E., daughter of Abu Bakr, was a wife of the Prophet (peace be on him). She has transmitted a wealth of Traditions, especially those concerning the Prophet’s personal life. She was also regarded highly for her mature and sharp understanding of the teachings of Islam.
- ‘Abd Allah ibn ‘Abbas, d. 68 A.H. /687 C.E., a Companion of the Prophet (peace be on him). Was the most outstanding scholar of Qur’anic exegesis in his time.
- ‘Abd Allah ibn ‘Amr ibn al-As, d. 65 A.H. /684 C.H., was a Companion and son of the conqueror of Egypt who embraced Islam before his father. He was noted for his devotion and learning and prepared one of the first collections of *Hadith*.
- ‘Abd Allah ibn Jaubayr, d. 3 A.H. /625 C.E., a Companion of the Prophet (peace be on him), participated in the battles of Badr and Uhud. In the latter battle, in which he was martyred, he was the commander of the archers.
- ‘Abd Allah ibn Mas’ud, d. 32 A.H. /653 C.E., one of the most learned Companions of the Prophet (Peace be on him), was noted especially for his juristic caliber. He was held by the Iraqi school of law as one of its main authorities.

- 'Abd Allah ibn Ubayy ibn Salul, d. 9 A.H. /630 C.E., was the foremost enemy of the Prophet (peace is on him) and the ringleader of the hypocrites in Madina.
- 'Abd Allah ibn Umar, d. 73 A.H. /692 C.E., a famous Companion and son of the second Caliph. Was famous for his piety and for transmitting many traditions from the Prophet (peace is on him).
- 'Abud al-Din 'Abd al-Rahman al-Iji was born in 700/130 in the small town of Ij nearby Shiraz and died during his imprisonment in its military fortress in 756/1355. He was an outstanding legal theorist, linguist and Ash'ari theologian. After Fakhr al-Din al-Razi, Ash'arite theology is continued chiefly in a series of manuals eclectically dependent upon the great writers of the past. The most famous of these, al-Iji's *al-Mawaqif fi Usul al-Din*, has continued to serve as a textbook on theology to the present day. Among the various commentaries written on it, the most important and widely used is that of al-Shairf 'Ali ibn Muhammad al-Jurjani (d.816/1413), and together with this text the *Mawaqif* has gone through a large number of printed editions since the early nineteenth century. Besides the *Mawaqif* his works include *al-'Aqa'id al-'Adudiyah*, *Sharh al-Mukhtasar* (in *usul al-fiqh*) and a commentary on the *Qur'an*.
- 'Ali ibn abi Talib. D. 40 A.H. /661 C.E., was a cousin and also son-in-law of the Prophet (peace be on him) and the fourth Caliph of Islam. He was known for his many qualities, especially piety and juristic acumen.

- ‘Umar ibn ‘Abd al-‘Aziz, d. 101 A.H. /720 C.E., was an outstandingly pious and just Caliph of the Umayyad dynasty who was also famous for his knowledge and learning.
- ‘Umar ibn al-Khattab, d. 23 A.H. /644 C.E., was the second Caliph of Islam under whose Caliphate the Islamic state became increasingly organized and its frontiers vastly expanded.
- ‘Uqbah ibn ‘Amir, d. 58 A.H. /678 C.E., was a Companion of the Prophet (Peace be on him) who later became government of Egypt.
- ‘Uqbah ibn abi Mu‘ayt, d. 2. A.H. /624 C.E., was one of the most inveterate enemies of Islam who were responsible for the cruel persecution of Muslims in Makka.
- ‘Uthman ibn ‘Affan, d. 35 A.H. /656 C.E., was a son-in-law of the Prophet (peace be on him) and the third Caliph of Islam under whose reign vast areas were conquered and the Qur’an present codex was prepared.
- Abu al-‘Ala’ Ahmad ibn ‘Abd Allah ibn Sulayman al-Tannukhi al-Ma’arri (363/973-449/1057) was born in a small town know as Ma’arrat al-Nu‘man in Syria. He was a great poet and man of letters. Amongst his poetic work are: al-Luzumiyyat and Saqt al-Zand. His prose work consists mainly of Risalat al-Ghufron, which is an imaginative journey in the Hereafter. Al-Ma’arri used to call himself the prisoner of the two prisons (rabin al-mahbisayn): one was natural, consisting of his loss of sight, and the other was social, consisting of his seclusion in his house and isolation from people.



- Abu al-Darada. Uwaymir ibn Malik, d. 32 A.H. /652 C.E., was a distinguished Companion who contributed to the collection of the Qur'an, and was known for his bravery as well as his piety and religious devotion.
- Abu Bakr, 'Abd Allah ibn 'Uthman, d. 13 A.H. /634 C.E. was the most trusted Companion of the Prophet (peace be on him) and the first Caliph of Islam. Abu Bakr's wisdom and indomitable will ensured the survival of Islam after the death of the Prophet.
- Abu Daud Sulayman ibn al-Ash'ath, d. 275 A.H. /889 C.H. was famous traditions whose Kitab al-Sunan is one of the six most authentic collections of *Hadith*.
- Abu Hurayrah, d. 59 A.H. /679 C.E., was a Companion of the Prophet (peace be on him) who transmitted a very large number of Traditions.
- Abu Jahl, 'Amr ibn Hisham ibn al-Mughirah, d. 2 A.H. /624 C.E. was an arch-enemy of Islam throughout his life. He was killed during the Battle of Badr in which he was the leading commander on the side of the Quraysh.
- Abu Lahab, 'Abd al-Uzza ibn 'Abd al-Muttalib ibn Hashim, d. 2 A.H. /624 C.E., was an uncle of the Prophet (peace be on him). He was, however, one of the fiercest enemies of Islam and the Prophet.
- Abu Muhammad 'Abd Allah ibn Abi Zayd al-Qyrawani was born in 310 AH and died in 368 AH. He lived in the old Islamic city of Qayrawan (Kairouan), the capital of the Aghlabid dynasty (184/800-296/908) and the seat of Islamic learning in North Africa for many centuries. He was an authority on many branches of Islamic

scholarship such as Qur'an exegesis, fiqh and usul al-fiqh, and ilm al-kalam. His authority on Maliki jurisprudence was such that he was recognized as Malik junior (Malik al-Saghir). Biographers attribute to him over twenty-Five books in different disciplines.

- Abu Musa al-Ash'ari, 'Abd Allah ibn Qays, d. 44 A.H. /665 C.E. was a Companion of the Prophet (peace be on him) who embraced Islam in its early years and migrated with other Muslims to Abyssinia. He was later appointed by the Prophet (peace be on him) as governor over Zabid and 'Adab (Aden); still later he was appointed as governor of Basrah, and subsequently of Kufah. He also served as an arbitrator in the dispute between 'Ali and Mu'awiyah.
- Abu Saïd al-Khudri, Abu Sa'id Sa'd ibn Malik ibn Sinan al-Khudri al-Kharaji al-Ansari. He was born 10 years before the Hijrah in 74 AH. He narrated many of the Prophet's Traditions as well as statements and opinions of the four caliphs and other Companions as well as statements and opinions of the most knowledgeable and intelligent Companions in relation to the juristic interpretation and understanding of the Shari'ah sources. A number of the Prophet's Companions, such as 'Abd Allah ibn 'Abbas (the Prophet's cousin), 'Abd Allah ibn 'Umar ibn al-Khattab, Jabir ibn 'Abd Allah and Abu Umamah, narrated from him. Owing to his youth, the Prophet did not allow him to participate in the Battle of Uhud, in which his father was killed.
- Abu Sufyan, Sakhr ibn Harb ibn Umayyah, d. 31 A.H. /652 C.E., was one of the foremost opponents of Islam

and the Prophet (peace be on him) until the conquest of Makka, when he embraced Islam. In subsequent military encounters, Abu Sufyan fought on the Muslim side.

- Abu Talhah, Zayd ibn Sahl ibn al-Aswad, d. 34 A.H. /654 C.E., was a Companion noted for his courage and for his skill as an archer. He participated in the battles of Badr, Uhud, Khandaq, and in several military expeditions.
- Abu Yasir (ibn Akhtab), d. 5 A.H. /627 C.E., was a prominent Jewish leader in the time of the Prophet (Peace be on him). He was the brother of Huyayy ibn Akhtab, and was as inveterate an enemy of Islam as his elder brother.
- Ahmad ibn Hanbal, d.241 A.H. /855 C.E., was the founder of one of the four Sunni schools of law in Islam. He valiantly suffered persecution for the sake of his religious conviction.
- Al- Waqide, Muhammad ibn 'Umar, d. 207 A.H. /823 C.E., was one of the earliest and most famous Muslim historians, who was known especially for his Maghazi, a biography of the Prophet (peace be on him).
- Al-Alusi, Mahmud ibn 'Abd Allah al-Husayni, d. 1270 A.H. /1854 C.E., was a leading commentator of the Qur'an litterateur, jurist and Sufi of the nineteenth century. His commentary Ruh al-Ma'ani is an encyclopedic work which continues to command considerable respect.
- Al-Ash'ari, His real name was 'Abd Allah ibn Qays, but he was, and continues to be known as Abu Musa al-Ash ari. He left his native land, the Yemen, for Makkah

immediately after hearing that a Prophet had appeared there. At Makkah, he stayed in the company of the Prophet from whom he gained knowledge and guidance. He returned to his country to propagate the Word of god and spread the mission of His Apostle. We have no further news of him for more than decade. Then, just after the end of the Khaybar expedition he came to the Prophet in Madianah. His arrival there coincided with that of Ja'far ibn Abi Talib other Muslims from the Yemen, all of whom had accepted Islam. Abu Musa al-Ash'ari was of outstanding qualities that manifested themselves brilliantly in the service of Islam, both during the Prophet's time and afterwards. He excelled as faqih, military commander and judge.

- Al-Bara ibn Azib, d. 71 A.H. /690 C.E., was a Companion who embraced Islam at a tender age, participated in several military expeditions and played significant roles in them.
- Al-Bukhari, Muhammad in Ismail, d. 256 A.H. /870 C.E., is regarded as the most famous traditions of Islam, whose work is one of the six most authentic collections of Hadith, generally considered by Muslims to be the 'soundest book after the Book of Allah.
- Al-Darimi, 'Abd Allah ibn 'Abd al-Rahman, d. 255 A.H. /869 C.E., was one of the outstanding scholars of Hadith whose Musnad is highly regarded.
- Al-Hasan al-Basri, d. 110 A.H. /728 C.E., known primarily for his piety, was a major theologian of Basrah during the last decades of the first century of Hijrah/seven century C.E.

- Al-Jassas, Ahmad ibn 'Ali, d. 370 A.H. /980. C.E., was an eminent jurist of the Hanafi school of law in his time. He is celebrated for his *Qur'an- Commentary, Ahkam al-Qur'an*, which is an erudite commentary on the Qur'an from a legal perspective.
- Al-Juwaini, Imran al-Haramain Abu al Ma ali Abd al-Malik ibn Abi Muhammad 'Abd Allah ibn Yusuf al-Juwayani, known as Imam al-Haramayn, was born in 419/1028 in small village called Juwayan near Nishapur in northern Iran. A great Shafi Jurist and Ashari theologian, al-Juwayani had a lasting impact on the development of *usul al-fiqh* (Islamic legal theory) and *Ash' ari kalam* (theology). He was a close collaborator with the strong Seljuk Prime Minister Nizam al- Mulk, who appointed him Professor of Shafi'ite jurisprudence at the Nizamiyyah School established by him in Baghdad. Al-Juwayni left many outstanding works that remained unchallenged sources for the subsequent generations of students of Islamic theology and legal theory. They include, among others, *al-Shamil fi usual al-Din*, *Kitab al-Irshad ila Qawari al Adillah fi al tiqad 9in theology*) *Kitab al-Talkhis fi Usul al-Fiqh*, *al Burhan fi Usul al-Juwayni* (in legal theory). He died in 478/1085.
- Al-Mazari, His full name is Abu 'Abd Allah Muhammad ibn 'Ali ibn 'Umar ibn Muhammad al-Tamimi al-Mazari. He was born in the city of Mazarah in Sicily in 453 AH. Most probably, he migrated to Tunisia in 464 AH after the island had completely fallen under the control of Normans. In Tunisia, he studied with some of the most

authoritative Maliki scholars of his time, especially Aby al-Hasan 'Alo ibn Muhammad al-Rabi al-Lakhmi (d. 478 AH) and Abu Muhammad 'Abd al-Hamid Ibn al-Saigh (d.486 AH). Like most great scholars in the Islamic tradition, al-Mazari studied, besides tafsir, hadith, fiqh and usul al-fiqh, theology and philosophy as well as mathematics and medicine. This endowed him with breadth of vision and analytic mind in dealing with juristic issues.

- Al-Nadr ibn Harith, d. 2 A.H. /624 C.E., was among the staunchest enemies of Islam who personally caused the Prophet (peace be on him) much annoyance. Standard-bearer of the Quraysh in the Battle of Badr, he was taken prisoner and put to death.
- Al-Qadi Abu Muhammad Abu al-Haqq ibn Ghalib Abu al-Rahman Ibn Atyah was born in Gharnatah (Granada) in 481 AH and died in lurgah (Lorca) in 542/1148. He was an eminent Qur'an commentator and renowned jurist with a sound knowledge of the Traditions (Hadith).- Author.
- Al-Qarafi, Shihab al-Din Ahmad ibn Idris al-Qarafi al-Sanhaji. Born in 626/1229 in the small village of Qarafah near Cairo, al-Qarafi studied with most outstanding scholars of his time, especially Izz al-Din 'Abd al-Salam. He was the most authoritative Maliki jurist of his time in Egypt. Al-Qarafi was an energetic and prolific writer, whose writings covered many disciplines, such as theology, jurisprudence, anti-Christian polemics, Arabic language sciences, Qur'anic interpretation, etc. His voluminous book al-Dhakhirah is a major source of

Maliki juristic doctrines, in which he applied a comparative approach. His book *al-Furuq* is a pioneering work in codifying the juristic rules and maxims. In addition, he wrote many books on *usul al-Fiqh*, such as *Tanqib al-Fusul*, *Nafa'is al-Usul fi Sharb al-Mohsul*. He died in 684/1285.

- *Al-Qaysi*, Abu Muhammad Makki ibn Abi Talib al-Qaysi was born in the historic Islamic city of a-Qayrawan (Kairouan) in 355/966 at a time when it was being destabilized by the attacks of the apostate Berber tribes and the ascending Ubaydi (Fatimid) forces. He traveled many times to Egypt, the Hijaz (Makkah and Madinah), and Syria in pursuit of knowledge.
- *Al-Qurtubi*, Muhammad ibn Ahmad, d. 671 A.H. /1273 C.E., was one of the most distinguished commentators of the Qur'an. His *al-Jami li Ahkam al-Qur'an* but also one of the best tafsir works.
- *Al-Razi*, Abu 'Abu Allah Muhammad ibn 'Umar ibn al-Husayn Fakhr al-Din al-Razi was born in Rayy in 544/1149. He was known by various titles testifying to the high status he attained during his life, such as Abu al-Fadl, Abu al-Ma 'ali, Ibn al-Khatib, al-Imam, etc. His father, *Diya' al-Din*, was himself an outstanding scholar of his time. Fakhr al-Din was brought up in the Shafi'ite School of jurisprudence and belonged to the Ash'arite School of kalam-philosophy. Following the tradition of classical Islamic scholarship, al-Razi spent many years traveling to various parts of the Muslim world in search of knowledge. During his journeys, he engaged in

intellectual debates with representatives of opposing schools, especially the Mu'tazilites. His scholarship was indeed encyclopedic, as proved by the diversity and extensiveness of his extant works covering most of the traditional Islamic disciplines.

- Al-Shafi'I, Muhammad ibn Idris, d. 204 A.H. /820 C.E., was the founder of one of the four Sunni schools of law in Islam.
- Al-Shatibi, Abu Ishaq Ibrahim ibn Musa ibn Muhammad al-Lakhmi al-Shatibi grew up in Granada (or Gharnatah in Muslim Spain or al-Andalus) and acquired his entire training in this city, which was the capital of the Nasri kingdom. In his youth, al-Shatibi witnessed the reign of Sultan Muhammad V al-Ghani Bi'llah, which was a very eventful period in the history of Granada. During al-Shatibi's life, Granada became a centre of attraction for scholars from all parts of North Africa, such as the eminent Ibn Khaldun. This gave him the chance to study with the most outstanding scholars of his time, especially those with a clearly reflected interest in his special interest in the study of *usul al-fiqh* resulting in his magnum opus *al-fiqh resuling* in his magnum opus *al-Muwafaqat*, whose main focus is the methodology and philosophy of Islamic Law, in particular, the higher objective of the *Shari'ah*, (*maqasid al-Shari'ah*). In addition to this book, he left another important work entitled *Kitab al-I'tisam*. Al-Shatibi died on 8 Sha'ban 790/1388.
- Al-Tabari, Muhammad ibn Jarir, d. 310 A.H. /923 C.E., was a distinguished historian, jurist and Qur'an-



Commentator. His major extant works include his commentary *Jami 'al-Bayan fi Tafsir al-Qur'an* and his *Annals*, viz. *Ta'rikh al-Rasul wa al-Muluk*.

- Al-Tirmidhi, Muhammad ibn 'Isa, d. 279 A.H. /892 C.H., was a famous traditions whose collection of Traditions, *Kitab al-Sunan*, is considered one of the six most authentic collection of Hadith.
- Al-Zamakhshari, Abu al-Qasmi Mahmud ibn 'Umar al-Zamakhshari (467/1070-539/1144) was a Persian-born Muslim scholar, whose exegetic work *al-Kashaf*, the Discoverer of Truth stand out as one of the major works of tafsir bi al-ra'y. Based on the Mu'tazilite rationalist approach and considered to be the standard work of Mutazilite tafsir, Zamakhsari's writings place much emphasis on Arabic grammar and lexicography as a means of interpretation with less attention given to transmitted reports and traditions. This exegetic work has been the subject of many commentaries and glossaries by eminent scholars, who were mostly Ash'arites.
- Al-Zuhri, Muhammad ibn Muslim ibn Shihab al-Zuhri died in 124 AH. Ibn Shehab al-Zuhri received his first education from sa'id ibn al-Musayyib, who taught him for eight years. He was also taught by 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah, who was one of the seven leading jurists of the time. Ibn Shihab al-Zuhri was the son of Muslim ibn Shihab, who supported 'Abd Allah ibn al-Zubayr, who fought against the Umayyads for many

years. Al-Zuhri is one of the greatest authorities on Hadith.

- Al-Zuhri, Muhammad ibn Muslim ibn Shihab, d. 124 A.H. /721 C.E., was an outstanding early second Islamic century/eighth century C.E. scholar of Madina who left an indelible impression of Hadith and Sirah.
- Among his works were the following: *Mafatih al-Ghayb* (Qur'anic exegesis), *al-Mahsul fi 'Ilm al-Usul* (Islamic legal theory or *usul al-Fiqh*), *al-Matalib al-Aliyyah mina al-'Ilm al-Ilahi* and *al-Mabahith al-Mashriqiyyah* (theology and philosophy). One outstanding feature of al-Razi's intellectual legacy was an attempt to synthesize Ash'arite and Mu'tazilite doctrines as well as theology and philosophy. Al-Razi died in Heart in 606/1209. For more on his life and works see, Yasin Ceyan, *Theology and Theology and Tafsir in the Major works of Fakhr al-Din al-Razi* (Kuala Lumpur: International Institute of Islamic Thought and Civilization [ISTAC], 1996); and Roger Arnaldez, *Fakhr al-Din al-Razi: Commentator du Coran et philosophe* (Paris: Librairie Philosophique J. Vrin, 2002.)
- Anas ibn Malik, d. 93 A.H. /712 C.E., was a distinguished Companion who had the honour of serving the Prophet (peace be on him) for many years.
- Ata ibn abi Rabah, d. 93 A.H. /732 C.E., a prominent Tabi'l (Successor) of Makka, was a famous jurist.
- Bilal ibn Rabah, d. 20 A.H. /641 C.E., was very famous Companion of the Prophet (peace be on him) and mu'adhdhin (caller to Prayer).

- Bishr ibn al-Bara ibn Ma'rur, d. 7 A.H. /729 C.E., was a Companion of the Prophet (Peace be on him) and a leader of the Banu Nadlah branch of the Khaybar as a result of having taken a poisonous food which was served to the Prophet (peace be on him) and his Companions by a Jewish woman.
- By the time Ibn Sina was born, Nuh ibn Mansur was the Sultan in Bukhara although he was struggling to retain control of the empire. Ibn Sina's father was the governor of a village in one of Nuh ibn Mansur's estates. He was educated by his father whose home was a meeting place for men of learning in the area. Ibn Sina was a remarkable child, with a memory and an ability to learn which amazed the scholars who met in his father's home. By the age of 10 he had memorized the Quran and most of the Arabic poetry which he had read. When he reached the age of 13, he began to study medicine and he mastered it by the age of 16 when he began to treat patients. He also studied logic and metaphysics, receiving instruction from some of the best teachers of his day; in all areas he continued his studies on his own. In his autobiography, Ibn Sina stresses that he was more of less self-taught, although at crucial times in his life he received help.
- Hafsa, d. 45 A.H. /665 C.E., daughter of the second Caliph, Umar ibn al-Khattab, was one of the wives of the Prophet (peace be on him).
- Huyayy ibn Akhtab, d. 5 A.H. /626 C.E., was a Jewish chieftain who was intensely hostile to, and engaged in

conspiracies against, Islam. He was taken prisoner during the Battle of Qurayzah and put to death.

- Ibn 'Umar, 'Abd Allah, d. 73 A.H. /692 C.E., a son of the second Caliph, 'Umar ibn al-Khattab, was an outstanding Companion in his own right, and is renowned for his piety and knowledge.
- Ibn Abdul Salam, His full name is Abu Muhammad al-Izz of Izz al-Din 'Abu al-'Aziz ibn 'Abu al-Salam ibn Abi al-Qasim al-Sulami. He was born in Damascus in 577 or 578 AH and died in 660 AH. He studied with a number of eminent scholars such as Ibn as 'Asakir and Sayf al-Din al-Amidi. A prominent Shafi'I jurist of his time with a clear mystic inclination, Ibn 'Abd al-Salam came into conflict with the Mamluk sultans of his era in both Damascus and Cairo and was imprisoned and persecuted because of his denouncing their injustices and transgression of the shari'ah. His works cover various areas of Islamic scholarship, such as Qur'an interpretation, jurisprudence both at the methodological and substantial levels, etc. He devoted his well-known book al-Qawaid al-Kubra (also known as Qawaid al-Ahkam fi Salih al-Anam) to the study and elucidation of the different aspects of masalih considered by the Shari'ah rules and injunctions.
- Ibn al-Arabi, Abu Bakr Muhammad ibn Abd Allah ibn Muhammad ibn al-Arabi was born in 468 AH in Sevilla, died in Marrakech in 543 AH and was buried in Fez. During his journey to the Mashreq (Islamic East) in pursuit of knowledge, he met al-Ghazali while in his mystical seclusion in Jerusalem. As a prominent Maliki

jurist, he held the post of judge (qadi) in his home town. He was a multifaceted scholar and a prolific writer. His works cover many disciplines of Islamic scholarship such as Prophetic Traditions, Qur'anic exegesis, jurisprudence, theology, history, etc

- Ibn al-Shikhkhir, Abu Abd Allah Mutarrif ibn al-Shikhkhir al-Tabi was a highly respected and influential scholar and traditionalist of the second class (tabaqah) of the Successors in Basra. Among other Companions of the Prophet he narrated from his father Adb Allah Ali ibn Abi Talib, Ammar ibn Yasir, 'Imran ibn al-Husayn and 'A'ishah. He is reported to have said concerning the question of predestination, "One must not climb and throw oneself and then, say: 'God has preordained me to fall. Rather, one must act carefully and do one's level best. Then if anything befalls him, he should realize that it has been predetermined." He died in 95/713.
- Ibn Arafah, Ibn 'Arafah is Abu 'Abd Allah Muhammad ibn 'Arafah al-Wirghimi, the descendant of a family from the town of Wirghimah in Southern Tunisia. He was born in Tunis in 716 AH and died in Jumada II, 803 AH. He was buried in al-Jallaz cemetery in the city of Tunes. He was known for his mastery of all the branches of science known in his time and became an established authority. He wrote many works on Qur'anic exegesis, jurisprudence legal theory, theology and logic. He led the prayers and was the deliverer of the Friday sermon in the zaytunah-Grand Mosque for fifty years. It also seems that there was some rivalry and competition as well as

enmity between him and his contemporary and countryman, Ibn Khaldun. As for al-Ghubrini, his full name is Abu Mahdi Isa Ibn Ahmad ibn Ahmad ibn Muhammad al-Ghubrini al-Tunisi. He studied under Ibn 'Arafah and was appointed to the office of chief judge in Tunis, in addition to being the deliverer of the Friday sermon at the Zayunah mosque. He died in either 813 or 815 AH.

- Ibn Hisham, 'Abd al-Malik, d. 213 A.H. /828 C.E., was an outstanding historian who is best known for his *Sirah* (Biography) of the Prophet (peace be on him).
- Ibn Kathir, Isma'il ibn 'Umar, d. 273 A.H. /1373 C.E., was a famous traditions, historian and jurist and the author of one of the best-known commentaries on the Qur'an.
- Ibn Majah, Muhammad ibn Yazid, d. 273 A.H. /887 C.E., was a famous traditionist whose collection of Traditions (*Kitab al-Sunan*) is one of the six most authentic collections of Hadith.
- Ibn Sa'd, Muhammad, d. 230 A.H. /865 C. E., historian, traditionist and the secretary of al-Waqidi (s.v. al-Waqidi), is known for his *al-Tabaqat al-Kubra*, a major biographical dictionary of the early period of Islam.
- Ibn Sina, Abu 'Ali al-Husayn ibn 'Abd Allah ibn Sina (Avicenna) was born in 980 AC in Kharmathen (near Bkhara) Central Asia (now Uzbekistan) and died in June 1037 in Hamadan Persia (Now Iran). Ibn Sina is often known by his Latin name of Avicenna. We know many details of his life, for he wrote an autobiography that has been supplemented with material from a biography

written by one of his students, Abu Ubayd al-Juzjani. The course of Ibn Sina's life was dominated by the period of great political instability through which he lived. The Samanid dynasty, which ruled at that time, controlled Transoxania and Khorasan from about 900. Bukhara was their capital and it, together with Samarkand, was the cultural centers of the empire. However, from the middle of the 10th century, the power of the Samanids began to weaken.

- Ibn Sirin, Muhammad, d. 110 A.H. /729 C.E., was noted second generation scholar of Basrah, who was especially prominent as traditions.
- Ibn Taymiyah, Taqi al-Din Ahmad ibn 'Abd al-Halim, d. 728 A.H. /1328 C.E., was one of the most outstanding theologians and jurists of Islam. His ideas have had an immense impact on Muslims, especially during the last two centuries.
- Ibrahim al-Nakha'I, d. 96 A.H. /715 C.E., was a most prominent jurist of Kufah in the second generation of Islam and played a major role in the development of the Iraqi school of law.
- In addition to this vital task, Zayd ibn Thabit was a jurist who was highly respected for his scholarship by fellow Companions during the first century A.H. According to hadith historians, Zayd related 92 traditions. When he died in 45/665, Abu Hurayrah said: "The Scholar of this nation has died today; may God make Ibn 'Abbas his successor."

- In his juristic thinking, he combined the traditionalist approach of the Jurists of the Malikite School of Kairouan with the rationalistic and argumentative approach of the Malikites of Baghdad. In Islamic jurisprudence, both *usul* and *furu*, al-Mazari had a special penchant for issues of a greater level of Juristic differences (*khilaf ali*) in his quest for the higher objectives of the *Shar'ah*. In addition to his commentaries on al-Juwayni's *Burhan* (see note 5), he produced many valuable works in different fields of Islamic scholarship. They include, among others, *Sharh al-Talqin* (a commentary on the *Talqin*, a compendium on Maliki jurisprudence by the great Maliki jurist of Baghdad, al-Qadi Abu Muhammad 'Abd al-Wahhab who died in 422 AH), *al-Mu'lim bi-Fawa'id Muslim* (partial commentary in three volumes on the famous Hadith collection of the great traditionalist Muslim ibn al-Hajjaj (d. 261 AH). Al-Mazari died at the age of 83 in 536/1141 in the coastal city of Mahdia and was buried in the nearby town of Monastir, where his grave is still preserved as a venerated shrine for many Tunisian Muslims.
- In Kairouan, he studied jurisprudence with Muhammad ibn Abi Zayd, an authority in Maliki doctrines in the whole Maghreb, and Abu al-Hassan al-Qabusi, another authority in Qur'an readings (*qia'at*) and Hadith. In 393 he left for Cordoba where he settled for the rest of his life and became one of its foremost scholars. He died in 437/1045 at the age of eighty-two. Makkī's main focus was the Qur'an and the disciplines enabling one to read it correctly and interpret it soundly. His numerous works



include, among others, al-Tabsirah (both on Qur'anic readings) and al-Hidayah ila Bulugh al-Niayah (Qur'an commentary).

- Jabir ibn 'Abd Allah, d. 78 A.H. /697 C.E., was a Companion who is noted for having transmitted a very large number of traditions from the Prophet (peace be on him).
- Ka'b ibn al-Ashraf, d. 3 A.H. /624 C.E., was a Jewish chieftain and poet, who used his poetic skill to ridicule and insult the Prophet (peace be on him) and his Communions. He also incited various tribes to fight against the Muslims, and was put to death by the Muslims for his vile hostility.
- Khalid ibn al-Walid, d. 21 A.H. /642 C.E., was a military genius of Makka who initially opposed Islam but converted to it before the conquest of Makka. After the death of the Prophet (Peace be on him) he played a major role in suppressing the rebellion against Islam.
- Makhul ibn abi Muslim, d. 112 A.H. /730 C.E., was a scholar of Hadith and Fiqh who, after journeying through different lands. Settled in Damascus and was recognized as one of the greatest jurists of Syria in his time.
- Malik ibn Anas, d. 179 A.H. /795 C.E. a Companion, was known for his knowledge of Law; he was among those who undertook the collection of the Qur'an and was appointed by the Prophet (peace be on him) as a judge in Yaman.

- Muqatil ibn Sulayman, d. 18 A.H. /767 C.E., was one of the distinguished scholars in the field of Tafsir (Qur'an-Commentary). Who has left behind a number of works in the field of Qur'anic science.
- Muslim ibn al-Haffaf al-Nisaburi. d. 261 A.H. /875 C.E., was one of the greatest scholars of Hadithi. Whose work is one of the six most authentic collections of Hadith and ranks second in importance only to that of al-Bukhari.
- Sa'id ibn al-Musayyib ibn Hazm ibn Abi Wahb was born in 13 AH. And died in 94 AH. A notable of the tribe of Banu Makhzum, he was the foremost in traditions, jurisprudence and the Qur'an interpretation among the generation succeeding the Companions, the Tabi'um. He narrated from his father 'Uthman ibn 'Affan, 'Ali ibn Talib, and other Companions.
- Sa'id ibn al-Musayyib, d.94 A.H. /713 C.E., was a foremost scholar and jurist of the generation of Successors (Tabi'un). One of the seven recognized jurists of Madina, he was known for his knowledge of Hadith and Fiqh as well as for his piety and devotion.
- Safiyha, d. 50 A.H. /670 C.E., was the daughter of Huyayy (s.v. Huyayy ibn Akhtab) who converted to Islam from fideism where after the Prophet (peace be on him) took her in marriage.
- Salim, the mawla of Abu Hudhayfah, d. 12 A.H. /633 C.E., originally a slave of Persian origin, was liberated from slavery by the wife of Abu Hudhayfah. Salim was among the early converts to Islam and ranked among the Companions most noted for their knowledge of the Qur'an.

- Shams al-Din Abu al-Hasan 'Ali ibn Isma 'il ibn Ali 'Ali ibn 'Atiyah was born in 557 AH and died in 618 AH. He was a jurist, legat theorist (usuli) and Qur'an commentator. His works include al-Tahqib wa al-Bayan fi sharh fi Sharh al-Burhan (in usal al-fiqh) and Safinat al-Nijat (a commentary on al-Ghazali's Ihya''ULum al-Din).
- Shurayyah al-Qazi, Abu Umayyah Shurayh ibn al-Harb ibn Qays al-Kindi, known as justice Shurrayh (Shurayh al-Qadi.). A trustworthy traditionalist, an eminent jurist, and a man of vast knowledge of Arabic literature and poetry, he had the office of judge during the rule of 'Umar ibn al-Khattab, 'Uthman ibn 'Affan, 'Ali ibn Abi talib, and Mu'awiyah ibn Abi Suffan. He died in 78 AH.
- Ta'us ibn Kaysan, d. 106 A.H. /724 C.E., was Tabi'I (Successor) who is known for his knowledge of Law and Hadith, and for his boldness in admonishing the rulers.
- The Zahiris constitute a school of law in Islam which was founded by Da'ud ibn Khalaf, d. 207 A.H. /884 C.E. The characteristic of the school is that it considers legal unjunctions to consist merely of clear statements embodied in the Qur'an and Sunnah and is strongly opposed to ra'y, qiyas, istihsan, etc., which are accepted in varying degrees as valid sources of laws by the jurists of other schools of Islamic Law. This school did not attain much popularity among Muslim and hardly exists today though in the fifth Islamic century/tenth century C.E. it found a very brilliant and erudite representative in Ibn Hazm, d. 456 A.H. /994 C.E., of Spain.

- This great jurist and traditionalist of Cordova was born in 404 and died in 497 AH. His book *Aqdiyat Rasul Allah* (SAAS) (The judicial Verdicts of Goods Messenger peace and blessings of God be upon him) was published in different editions in Halab (Aleppo), Beirut, and al-Qasim. His other books include *Nawazil al-Ahkam al-Nabwiyyah*. He taught many able students such as the great Maliki jurist and judge (grandfather of the jurist-Philosoher Ibn Rushd or in Latin Averroes) Abu al-Walid ibn Rushd, author of *al-Bayan wa al-Tahsi-a* major Reference of Maliki juristic doctrines. Mmm
- Together with al-Farabi, Ibn Sina's legacy lies mainly in philosophical studies and medicine. His works include, among others, *al-Shifa*, *al-Najat*, and *al-Isharat wa al-Tnbihat* in philosophy and logic and *al-Qanun fi al-Tibb* in medicine.
- Twice rejected for military service, Zayd continued his efforts to works for the cause of Islam. Though young in age, he was academically inclined and was also gifted in languages. He could read and write more non-Arabic languages than one like Persian, Coptic, Suryani, Hebrew, etc. (a rare accomplishment at that time). He excelled in Arabic and distinguished himself in the recitation of the Qur'an. For these reasons, the Prophet selected him as his Chief Scribe of the Quran (*Katib al-nabiyy*), despite his youth. It has been reported that the Prophet requested Zayd to learn Hebrew and Syriac to assist him with diplomatic letters and correspondence, latter sent to neighboring heads of state, inviting them to Islam. Then, in his early twenties, Zayd became an

exponent of the Qur'an and one of those who had memorized the existing Revelation as taught by the Prophet himself. Hadith records also state that Zayd had the unique distinction of witnessing the Prophet's recitation before the angel Jibril during the last Ramadan.

- Ubayy ibn Ka'b, d. 21 A.H. /642 C.E., was a prominent Companion who was knowledgeable about the Scriptures and played a key role in the collection of the Qur'an.
- Umm Salamah, hind bint Umayyah, d. 62 A.H. /681 C.E., was one of the wives of the Prophet (peace be on him).
- Zayd ibn Thabit played a key role in the collection of the written Qur'an. The first Caliph, Abu Bakr, commissioned him for this task upon a suggestion by 'Umar ibn al-Khattab in the wake of the Battle of Yamamah (12AH) in which many huffaz (memorizers of the Qur'an), 70 according to some reports, was killed. 'Uthman ibn Affan the third Caliph decommissions Zayd as head of a committee entrusted with task of preparing copies of the Qur'an. The work of this committee resulted in what has come to be known as "Uthman's Mushaf" (Uthmani Codex).
- Zayid ibn Thabit ibn al-Dhahhak (Abu Kharijah) was born in Madinah eleven years before the Hijra (in 611 A) but was raised in Makkah. His father was killed when he was 6 years old, and at the age of 11 he emigrated to Madinah, at approximately the same time as the Prophet in 622 A.C. Zayd and his family were among the first Ansars (helpers) to accept Islam, when members of his clan embraced the faith and swore allegiance to the

Prophet in 1 AH. Not yet 13, Zayd personally appealed to the Prophet to let join the Muslim army, which was preparing for the Battle for Badr (2 AH) against the Makkan pagans. On account of his youth, the Prophet refused his request and set him home, much to the distress of his mother, al-Nawar bint Malik. A couple of years later, he again attempted to enlist in the Muslim army preparing for the Battle of Uhud (3 AH) with a group of other teenagers, some of whom were admitted to the ranks, but the Messenger again rejected Zayd owing to his youth and inexperience. Maybe the Prophet foresaw the heavy burden history would later place on the shoulders of this young man!

- Zayd ibn Thabit, d. 45 A.H. /665 C.E., was a prominent Companion of the Prophet (peace be on him) who played a major role in the collection of the Qur'an.

## Appendix 1

### Definition of *Mal*

*A student of the Islamic economic system notes it with a degree of perplexity that the English language, in spite of its comprehensiveness and expressiveness, lacks a single word to express the meaning and fuller connotations of the Arabic word mal. In the Arabic language the term mal, which throughout the Islamic Fiqh and the associated literature, has extensively been applied to denote various species of wealth, is perhaps the most compendious single word which amply denotes at most all the species of wealth. Here, the inconsistency of the English language renders the translator's task even more difficult. Since due to this very reason in most places of the book in hand the translator had to use in English the very Arabic term, mal, for the purpose of expression, the detailed meaning and explanations of the terms mal are being appended towards the end of the book.*

According to the Hanafi School, *mal* is that which is desired by the people and stored for use at a time of need.<sup>1</sup> It does not treat benefits and incorporeal rights as *mal*. The Shafie jurists, on the other hand, include benefits in the definition of *mal*. To them the sale contract contains both transfer of ownership in goods and transfer of ownership in

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<sup>1</sup> Ibn 'Abidin, Radd al-Muhtar vol. 4.p.3.

benefits.<sup>1</sup> The Maliki jurists, like Hanafi jurists, do not regard benefits and incorporeal rights as *mal* and consequently do not allow their sale.

Dissatisfied with the definitions of *mal* in early jurisprudence, Mustafa Zarqa, a renowned scholar of the recent post, has applied *mal* to every thing that has legal and material value among the peoples.<sup>2</sup> The property in this sense refers to any tangible or intangible thing that gives determinate capacity to a person to use it to the exclusion of whole world. It includes both abstract and unreal rights. It applies equally to the objects which have perceptible existence in the outside world as well as to intangible property such as trademarks and intellectual property.

## Classification of *Mal*

Property has been classified in different ways:

### I. Movable and Immovable:

There are two principal classes of property: movable (*manqul*) and immovable (*ghayr-manqul*). By immovable is primarily meant land and along with it all permanent fixtures, such as buildings. The characteristic of movable property is that it may be removed from one place to another. Movable property is classified as follows:

- a) *Makilat* or things, which are ordinarily sold by measurement of capacity.

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<sup>1</sup> Shirbini. Mughni al-Muhtaj vol. 2. p. 3.

<sup>2</sup> Mustafa Ahamad Zarqa, al-Madkhal al-Fiqhi al-Am, Damascus: Matba ah Tarbin. 1968 Vol. 3. P. 122.



- b) Mawzumat or things. which are sold by, weight.
- c) *Madhru* at things which are estimated by linear measurement.
- d) *Adadiyyat* or things sold through counting.

All articles of the nature of makilal. mawzunal, madhru al, and *adadiyyat* are comprehensively called *muqaddarat*.

## II. Fungible or Similar (*Mithli*) and non-Fungible or Dissimilar (*Qimi*):

An article is said to belong to the class of similar (*mithli*) if the like of it can be had in the market without there being such difference between the two as people are apt to take into account in their dealings. As things belongs to the class of dissimilar if the like of it is not available in the market or if it be available, it is with such difference between them as people are wont to take into account in fixing the price.<sup>1</sup>

## III. Determinate (*'Ayn*) and Indeterminate (*Dayn*) property.

Connected with the division of things into similar and dissimilar is the division of property into *'ayn* that is, specific or determinate and *dayn* or non-specific or indeterminate property. The chief distinguishing test is when a man is to get certain property from another who either borrowed it from him or took it by force, whether he is entitled to recover it in species or not. If he is, then it is

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<sup>1</sup> See 'Abd al-Rahim : Muhammadan Jurisprudence. p. 211.

called specific or determinate and if he is not, it is called non-specific or indeterminate.

Articles of the class of SIMILAR cannot, as a rule, be recovered specifically, and are thus regarded as *dayn* or indeterminate property. Hence, gold and silver, in the shape of coins or otherwise, grain, oil and the like are *dayn* or indeterminate property. Therefore, if a man sells an article for one hundred *dirhams* out of a bag of money pointed out to him by the buyer, he does not become entitled to be paid out of the identical bag but his claim will be satisfied on being paid an equivalent amount. Generally speaking, all INDETERMINATE property rests on the mere responsibility or obligation of the person from whom it is recoverable.<sup>1</sup>

## Definition of Money

Money has been defined as a “thing that serves as a commonly accepted medium of exchange or means of payment”.<sup>2</sup> Another famous and comprehensive definition of money is that “Money is any generally acceptable means of payment in exchange for goods and services and in settling debts”.<sup>3</sup> Money performs four main functions. It is (i) a medium of exchange or means of payment, (ii) a measure of value or a unit of account, (iii) a standing of deferred payment, and (iv) a store of value.

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<sup>1</sup> Ibid, p. 212.

<sup>2</sup> Paul A. Samuelson and William Nordhaus Economics, New York: Mc Graw Hill Book Company, 1993 p. 226.

<sup>3</sup> Fisher, Darnbusch and Schmalensee, Economics. Singapore: Me Graw Hill Book Company, 1993. p.623.

Money is classified under two categories: (1) commodity money and (2) token money. The former functions as a medium of exchange and is bought and sold as ordinary goods. Token money, however, is considered to be a means of payments whose value of purchasing power as money exceeds the cost of its productions and its value in alternative uses. Modern monies are accepted because the law requires them to be accepted. These are fiat monies of legal tender. Legal tender is the money that a government has declared acceptable in exchange and as a lawful way of paying debts.<sup>1</sup>

Historically, many commodities including precious metals have performed these functions, but only those metals were picked up for this purpose that were scarce and had a worldwide demand. The principal forms of money are now coinage, notes and credit instruments. But since coins are now very rarely made of precious metals, they perform the token function, being almost worthless in content when compared with its face value.<sup>2</sup> At the present, paper money is the most widely used form of money and is a pure token because its intrinsic price has no relevance to its face value.

### **The Position of Gold and Silver in the Sari'ah**

A study of *Fiqh* literature on the issue reveals that Muslim Jurists treated *dinar* and *dirham* as money, not

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<sup>1</sup> Ibid., pp. 626-27.

<sup>2</sup> Ziauddin Ahmad, *Currency Notes and Indexation*. Islamic Studies, 28. 1 (1980) p. 52.

because they were made of gold and silver, but because as a unit of account, a medium of exchange and measure of value. To them the *'illah* (underlying cause) in gold and silver in the context of the contract of *sarf* is currency-value or price-worthiness (*thamaniyyah*).<sup>1</sup>

Gold and silver have been *thaman* or money since early ages because they were capable of effectively functioning as a medium of exchange and a common measure of value.

### The Legal Position of Paper Money

Were we to consider the matter carefully it will be evident that there is no essential difference between the old metallic money and the paper money of our commodities. Paper money, therefore, is real money for all the practical purpose. This fact has been established and emphasized in the writings of several eminent Muslim Scholars. Yusuf al-Qardawi. For instance writes:

“We pay price of goods, wages to workers, dower to wives, Diyat in qatl al-khata in this paper money. If someone steal it, he is subjected to the punishment of theft in all codes of Criminal law. Then why should we deny it the status of Legal money?”<sup>2</sup>

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<sup>1</sup> Kasani, *Bada‘i’ Sana‘i’*, vol.5, p. 183.

<sup>2</sup> Atiq al-Zafar, *Riba aur Bank ka sud* translation of Yusuf Qardawis, *Fawa'id al-Bank hiya al-Riba alMuharam* pp. 40, 41..

Keeping all these facts in view the Fiqh Academy of Makkah in its meeting held in October, 1896 maintained that paper money has all the characteristics of gold and silver. It is *thaman* from the point of view of the Shari'ah and consequently it is subject to all the rules of the Shai'ah pertaining to *riba*, *zakat*, *salam*, and other contracts which are applicable to gold and siver.<sup>1</sup>

The workshop held under the auspice of the Islamic Development Bank in Jedah in April, 1987 on indexation also concluded that: "Paper money assumes the functions of gold and silver money from the point of view of the applicability of the rules of *riba* and *Zakat* as well as being the principle of *salam* contracts, a capital of *mudarabah* or investment in a partnership."<sup>2</sup>

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<sup>1</sup> Rabiatah al-Alam al-Islami, Qararat Majallah al-Majma', al-Fiqh al islami, pp. 96, 97.

<sup>2</sup> Recommendations of the workshop on Shariah position on Indexation. (25-26 April 1987) organized by Islamic Development Bank, Jeddah.

## Appendix 2

### SELECT GLOSSARY OF BUSINESS, ECONOMIC & STOCK MARKET TERMS

**acid test ratio** : The value of cash, notes and accounts receivable divided by the current liabilities. This measurement of corporate liquidity, known also as the quick asset ratio, should be at least 1:1 to be considered satisfactory for corporate credit requirements.

**advance-decline line** : A ratio of the number of issues advancing against the number declining.

**asked price** : Also called the offer, this is the lowest price at which a holder is willing to sell his security at a given time.

**asset allocation** : The proportion of a portfolio allotted to stocks, bonds and cash.

**assets** : All a corporation's property such as plant, equipment and cash. The fixed assets are the buildings and machinery. The intangible assets are patents, copyrights, trademarks and goodwill. Current assets are the sum of cash, notes and accounts receivable from the sale of the product.

**Associate trade member** : category of exchange membership that does not confer trading or voting rights. This membership's category is for the

underlying industry, e.g. oil on IPE or metals LME. It is likely to be significantly represented on the board of the exchange.

**Average rate option (Asian option) :** An option that gives the holder the right to deal at the average price of the underlying asset over the life of the option. Four variables have to be agreed between the buyer and seller, being the premium, strike price, exchange rate of commodity price of interest rate etc., and the sampling interval. At the expiry of the option, the average spot rate is calculated and compared with the strike price. If in-the-money, a cash payment is then made to the buyer representing the difference between the two rates times the face value of the option. The volatility of an average rate is clearly lower than the actual price of the underlying. As such, these options are cheaper than standard options. An average rate options be used to hedge regular cash flows, say a budgeted average rate for the year. These are normally European-style exercise.

**Back-pricing:** Regular customers of a metal smelter or refiner or other supplier may be permitted to price a proportion of their month's intake on the known LME settlement price quoted the day previous to the date of pricing the intake. The proportion to be so priced is laid down in the contract, and the consumers-if they wish to avail themselves of the facility-must place their order before commencement of official trading on LME on the date in question.

**Backspreads** : When the puts can be combined on a rationed basis whereby the number of calls (or puts) purchased exceeds the number of calls (or puts) written. This is achieved by reversing the call ratio spread (or put spread) thereby creating backspreads.

**Backwardation** : When the spot or nearby prices are higher than those for future delivery months. Usually caused by delays in shipment thus creating shortages in available supplies. Opposite of *contango*. There is a theory that when the market is in equilibrium as to supply and demand, a backwardation is a logical state of affairs since producers selling forward in order to hedge their own anticipated supplies to the market will expect to pay a premium in order to do so. Consumer hedging will, of course, work in the opposite direction. None the less, it is probably true that in 'ideal' conditions as to supply and demand a modest backwardation should be expected. Both backwardation and contango may show peaks or troughs for various dates within the forward trading period for which they are expressed. They do not necessarily progress in straight line form cash to three months.

**Balance of payments** : A summary of the international of a country over a period of time including commodity and service transactions of a country over a period of time including commodity and service transitions, capital transactions, and gold movements.

**Barrier option** : There are various forms of barrier option. It is a path dependent option that become cancelled, or



alternatively becomes activated, if the underlying asset reaches a certain level (out-strike). This is regardless of where the underlying is trading at maturity. It is usually presented as a European option until, or from, the time the underlying asset reaches the barrier price. The following are the four main types. Up-and-out options are puts that become cancelled if the underlying rises above a certain level. Up-and-in options are calls that become worthless unless the underlying goes above a certain price whereupon it becomes a normal call option. Down-and-out options are puts that become cancelled if the underlying falls below a certain price, while down-and-ins are calls that become activated only when the underlying asset price falls to a certain level... Knock-in options are where the holder's ability to exercise is activated if the value of the underlying reaches a specified level, and a knock-out option is where the holder's ability to exercise is cancelled if the value of the underlying reaches a specified level. In all cases, the expiry date may be fixed until, or from the time, the underlying reaches the barrier price. Because of the potential cancellation of the contract, barrier options are cheaper than standard options and attractive to buyers who do not want to pay premium. In exchange for the relative cheapness, holders must take a view on the risk they can accept should the underlying reach a certain level. A hedger could buy an up-and-out put with an exercise price of 100 and a cancellation level of

120. If the asset falls to below 100 the option is exercised, and if it goes to 120 the option is cancelled (but, of course, the holder has no need to hedge the asset anymore). The holder needs to negotiate a trigger level high enough to make subsequent falls below the exercise price unlikely. Barrier options are also known as *limit option* or *trigger options*.

**Barrier price** : The in-strike price that activates or option. Some contracts require the barrier price only to be touched, others to be breached.

**Basel Stock Exchange** : Located in Basel, Switzerland, it lists contracts on equities, equity indices, Swiss government bonds and short-term interest rates.

**beta** : A mathematic measurement of stock's sensitivity to the movement of the general market. A beta of 1 means that the stock moves in line with the market, but a beta of 1.5 means that it is 50 percent more volatile on the upside than the general market.

**bid price** : The highest price that a buyer is willing to pay for a security at a given time.

**bond** : A secured promissory note that represents the issuer's pledge to pay back the principal at face value on a specific date. Until that date, the issuer generally agrees to pay a fixed amount of interest at regular intervals, usually semi-annually. The term bond frequently is applied to other types of fixed-income instruments that technically are not bonds at all.

**book value** : Arrived at by adding all assets, then deducting all debts and other liabilities. When this sum is

divided by the number of common stock outstanding, the result is the book value per share.

**business cycle** : The alternating phases of business conditions that range from boom to bust. A typical business cycle has five phases: revival, expansion, maturation, contraction, and recession.

**call money rate** : The rate charged by banks to brokers for the use in margin buying by their customers.

**capital** : The net assets of a business.

**capitalization** : The sum of all monies invested in a corporation and how it is divided between debt and ownership.

**cash flow** : The net income of a firm plus the amounts charged off for depreciation and other extraordinary charges.

**coincident indicators** : Measurements of economic activity that reflect current economic conditions.

**constant dollar plan** : A plan whereby an investor keeps a portfolio of securities at certain fixed levels by buying or selling if the proportions move substantially.

**contrary investing** : To act against the prevailing sentiment in the stock market.

**current assets** : See assets.

**current liabilities** : The amount of income necessary to service to interest payments on the debt.

**defensive stocks** : Companies producing goods and service that are little affected by the economic environment, such as food or beverages.

**demand deposit** : Deposits in an account from which a customer can withdraw funds, either in cash or by check, upon request.

**derivative instruments** : Financial instruments that obtain their value from some underlying securities.

**discount broker** : A brokerage firm that offers order executions at rates considerably lower than full-service brokers. They may or may not provide research services.

**dividend payout** : The percentage of dividends distributed relative to what is available from current net income.

**dividend yield** : The return from the common stock dividend expressed as a percentage.

**dollar cost averaging** : An investment plan whereby an investor invests fixed dollar sums at fixed periods of time.

**Dow theory** : A stock market theory that argues that business conditions are reflected in stock prices. Moreover, the theory suggests that you can predict market performance by studying the Dow Jones Industrial Average and the Transportation index based on their confirmation of each other or their divergence.

**earnings per share** : The net income of a corporation divided by the number of shares of common stock outstanding. This is a key ratio for determining

whether the price is too high or too low in relation to other similar firms or the market as a whole.

**efficient market theory** : A theory about the operations of the stock market, which argues that stock prices reflect all available, relevant information. Prices adjust immediately to any new information.

**Forward contract** : A contract in which a seller agrees to deliver to a buyer sometime in the future. Forward contracts, in contrast to futures contracts, are privately negotiated and are not exchange traded or standardized. There is no margin paid over between the counterparties, only a settlement on the agreed data.

**Forward the agreement (FRA)** : A contract to provide a given interest rate, for a given maturity, from a date in the future. FRA s are both purchased and sold. Questions are made on the basis of bid and offer yield levels for the period of the FRA. They are labeled on the basis of the number of months to the start and end of the FRA. For example, a three-month FRA starting one month forward, would be termed a 1x4 FRA. It starts in one month and ends after four. There is no transfer of case until the date at which the FRA will commence, when a single payment is made to offset the difference between current rates and the strike rate of the FRA. It is thus a contract for a difference. FRA is more flexible than short-term interest rate futures to the extent that they allow forward rates to be fixed to cover periods not normally covered by

futures contracts. The disadvantage is that, like other forward agreements, contracts are not of a standard (or fungible) nature and, unlike futures; there is no clearing house to cover the risk introduced by the presence of the counterparty. FRA offer opportunities for risk management, cashflow matching, and forward rate speculation. An FRA can immunize itself from interest rate risk by locking-in a know forward rate. Hence, an institution with fixed liability at some future date can immunize itself cash flows exactly, for FRAs can be tailored to suit the exact dates required. FRAs can be used speculatively by locking-in a forward funding or investment rate in the expectation that rates will not achieve the levels implied by the market. FRAs are off-balance sheet, with no margin payments, and the credit risk is limited to the difference between the contracted rate and the prevailing rate.

**full-service broker** : A retail brokerage firm that offers execution of securities orders, as well as research and other services.

**fundamental analysis** : An examination of the company through its income statement and its balance sheet in order to determines its health.

**income statement** : The profit and loss statement of a business for a fixed period of time.

**index arbitrage** : A technique employment by institutional investors to profit from the small discrepancies between the stock market and the futures markets.

**index funds** : Mutual funds whose composition mirrors one of the major stock market indices.

**intrinsic value** : The price a security should sell at when properly priced in the market place. Intrinsic value is sometimes termed *investment value*.

**lagging indicators** : A series of economic measurements that trail current business conditions.

**leading indicators** : A series of economic measurements that foretell business conditions.

**leverage** : The use of borrowed funds in order to increase one's position in a security.

**liabilities** : All claims against a business, whether current or in the future.

**long** : A long position in indicates that you owe the security.

**margin call** : A demand by the brokerage house for additional funds from a customer to meet the minimum requirements set by the firm. A decline in the stock price has reduced the customer's equity value. To protect its loan, the broker demands more collateral, either in cash or marginable stocks.

**market order** : An order to buy or sell securities at a price prevailing when the market reaches the trading floor. There are different orders to ensure for the proper entry or exit, such as a sell stop order. This order is activated when a trade is done at or below the order price.

**moving average** : A mathematical technique for measuring small fluctuations to reveal a general trend.

**odd lot** : An odd lot of shares is from 1 to 99 shares. An odd lot is slightly penalized when an order is executed, compared to a round lot, usually 100 shares.

**program trading**: Computer generated trading by institutions in order to profit from the differentials between baskets of common stock and equal amounts of futures contracts.

**quick ratio** : A ratio between liabilities and current assets. It indicates a company's ability to pay off its liabilities with available cash.

**random walk theory** : A stock market theory which implies that there is no discernible pattern to stock prices. In brief, past prices do not predict future price action of securities.

**return on equity** : As business's net income, divided by the stockholder's equity.

**return on investment** : The amount earned from the capital invested. This is usually expressed as a percentage.

**round lot** : 100 shares of stock is the regular trading unit in the equity market.

**Settlement business day** : A business day on which commercial banks are open in New York City, for the settlement of international transactions in US dollars.

**Settlement price (LME)**: The official cash seller's price at the close of the second ring of official trading. Is used



as the basis for internal accounting purposes on all LME trades now prompt for settlement.

**Settlement price** : The official price for a financial of commodity derivative at which all open positions on an exchange are revalued for the purposes of profit and loss and subsequent margin calculation at the end of each business day. The settlement price, the last actual traded price and a weighted average of prices traded during the last few inures of the close of trading.

**short** : An investor who sells securities in the anticipation of repurchasing them at lower prices.

**specialist**: An exchange member who is charged with maintaining an orderly market in a security and, if necessary, to buy sell for the specialist's account to stabilize the the market.

**technical analysis** : The study of a stock's price action in order to determine its future movements.

**Terminal market** : Usually synonymous with commodity exchange of futures market, especially in the UK . Also used to signify principals' market as opposed to brokers' market.

**time deposit** : A bank account that has a future maturity date, Customers cannot withdraw funds from a time deposit without usually being penalized.

**volume** : The total number of shares traded. This is a technical indicator, which helps confirm price action of a given security.



## Glossary of Islamic Legal & Juristic Terms

- Abd*, male slave
- Abik*, runaway slave
- Ada*, custom
- Adab* al-kadi the duties of the kadi, a subject of special works
- Adl*, (pl. *udul* q.v.), of good character
- Afw*, pardon
- Al-ahkam*, al-khamsa the five legal qualifications
- Ahakm* sultaniyya, constitutional and administrative law, subject of special works,
- Ahl* al-kitab unbelievers who possess a scripture
- Ahiyya*, capacity
- Ajal*, term,
- Ajir*, hired servant,
- Ajnabi*, stranger third party
- Ajr* wage (used in wider meaning in the Koran),
- Akar* immovables,
- Akd* contract,
- Akil*, sane
- Akila*, (q.v for definition)
- Akl* 'reason', the result of systematic thought,
- Ama*, female slave
- Amal* practice, *amal* of Median F; Judicial practice *Aman*, temporary safe-conduct
- Amana*, trust deposit, fiduciary, relationship: in the Koran 12; in Islamic law,
- Amd* deliberated intent,
- Amil al-suk*, inspector of the market n.1
- Amin* , a person in position of trusty (*amana*),
- Arabun*, earnest money,
- Ariyya*, loan of non-fungible things
- Arsh*, a penalty for certain wounds,
- Arus resmi*, a tax on brides in the Ottoman Empire,
- Asaba*, (roughly) the agnates,
- Ashbah wa-nazair*, similarities the systematic structure of

- the law subject of special works 114
- Asil*, the principal 120; principal, debtor 158
- Asl*, the nature of a transaction (opp. *wasf*)
- Awl*, reduction of shares of heirs
- Ayn* thing substance
- Badal* consideration
- Balihg* of age
- Bara'a*, (q.v of definition)
- Batil* invalid, null and void
- Batin*, the inward state
- Bay* sale, exchange barter
- Bay al-araya*, a contract of barter in dates
- Bay al-dayn bil dayn* exchange of obligation for obligation
- Bay al uhda*, *bay al wafa* sale of real property with the right of redemption
- bay' atan fi baya* double sale a group of devices for evading the prohibition of interest.
- Bayt al-mal* public treasury
- Bayyina* evidence
- Bughat* rebels
- Daf* noxae diditio
- Dallas*, to conceal a fault or defect
- Daman* liability
- Damin*, liable
- Dar al-harb* enemy territory
- Dar al-Islam* the territory of the Islamic state
- Darak*, default in ownership
- Daura* necessity as a dispensing element
- Dawa* claim lawsuit
- Dayn* debt, claim, obligation,
- Devshirme* a forced levy of non-Muslim children in the ottoman Empire,
- Dhawu l-arham* (roughly) the cognates
- Dhimma*, engagement undertaking, care a duty of conscience obligation.
- Dhimmi* non-Muslims who are protected by a treaty of surrender
- Dhukr*, or *dhukr hakk*, (pl. *adhkar*, *adhkar hukuk*) written document
- Dhul-ya* possessor
- Diwan*, army, list records of the tribunal
- Diya*, blood-money

- Diyana* conscience forum  
internum
- Dhukul* consummation of  
marriage
- Fadl aml bila iwad* unjustified  
enrichment
- Fakih* (pl. *fukaha*) the specialist  
in *fikh*
- Faraid*, the portions allotted to  
the heir succession in  
general
- Fard* duty
- Fard* fixed share of an heir
- Fasad al-zaman* the corruption  
of contemporary condition
- Fasid*, defective voidable
- Fasik* siner opp. *adl*
- Faskh* cancellation
- Fatwa* the consideration legal  
opinion of a *mufti*
- Fida* for definition
- Fikh* the science of the *sharia*  
the sacred Law of Islam
- Fuduli* unauthorized agent
- Fukaha* (pl of *fakih*) the religios  
lawyers of Islam
- Furuh* the branches positive  
law as opposed to *usul*
- Furuk* legal distinction subject  
of special works.
- Ghabn* fahish grave deception  
fraud
- Gha'ib* absent
- Ghalla* proceeds
- Ghanima* booty
- Gharar* risk, hazard,  
uncertainty,
- Ghasb* usurpation
- Ghasib* usurper
- Ghayr mal'um* not known
- Ghayr mamluk* that in which  
there is no ownership
- Ghurra* indemnity for causing  
an abortion
- Habs* imprisonment
- Habs* retention of a thing in  
order to secure a claim  
lien.
- Hadan*, care of the child by the  
mother,
- hadd* (pl. *ahadith*), a fixed  
punishment  
for certain crimes,
- hadith* (p1. *ahadith*), a formal  
tradition deriving from the  
Prophet

- hadr, hadar*, not protected by criminal law,  
*hajr*, interdiction,  
*hakam*, habitrator  
*hakk adami* (private claim as opposed to a right or claim of Allah)  
*hakk Allah* right or claim of Allah opposed to a private claim  
*halal* not forbidden  
*haram*, forbidden  
*harbi hawal* transfer of debt  
*hiba*, donation  
*hirz*, custody of things  
*hisba* the office of the *mushtasib*  
*Hiyal* legal devices evasions  
*Hukm* (pl. *ahakm*) qualification see also *al-ahkam al-khamsa*  
*Hukm al-hawz hukm (ahkam) al-man* or *alman's hukm al-taught*, tribal, customary law of the Bedouins in Arabia  
*Hukuma* a penalty for certain wounds  
*Hurr* free person  
*Ibra* acquittance  
*Idda* waiting period of a woman after termination of marriage  
*Idhn*, permission extension of the capacity to dispose  
*Ifa* fulfilment of an obligation  
*Ihtiyat* religious precaution  
*Ihya al-mawat* cultivating waste land  
*Ijab*, offer as a constitutive element of a contract)  
*Iajara* hire and lease  
*Ijaza* approval *ratihabitio*  
*Ijma* consensus *ijma ahl al-Madina*, consensus of the scholar of Medina  
*Ijtihad* effort the use of individual reasoning also *ijtihad al-ra'y* later restricted to the use of *kiyas*  
*Ikala* reversal of sale  
*Ikhtilaf* disagreement  
*Ikhtilas* for definition  
*Ikhtiyar* for definition  
*Ikrah* duress  
*Ikrar*, acknowledgment confession  
*Ila*, oath of abstinence from intercourse by the husband

- Ilka bil-hajar* an aleatory transaction
- Imam* leader calip
- Imam ma'sum*, infallible *imam* title assumed by Ibn Tumart
- Imda*, ratification
- Ina* a device for evading the prohibition of interest.
- Ishara ma'huda*, gesture conclusive act
- Ishtrak* join ownership
- Iskat* relinquishment
- Isnad* the chain of transmitters of a tradition of a tradition
- Istibra* waiting period of a female slave after a change of owner
- Istifa* receiving (taking possession)
- Istighlal* acquisition of proceeds
- Istihbab* preference a synonym of *istihsan*
- Istihkak* vindication
- Istihsan* approval a discretionary opinion in breach of strict analogy
- Istila* occupancy of a *res nullius*
- Istirdad* vindication
- Istishad* a method of legal reasoning particular to the Shafi I school and to the Twelver Shiites
- Istislah* taking the public interest into account
- Istina* contract of manufacture
- Itk I'tak* manumission
- Iwad* countervalue
- Jaiz* allowed unobjectionable
- Jam* for definition
- Jariya* female slave
- Jinaya* (pl *jinayat*) tro delict
- Jizya* poll-tax
- Ju'l* reward for bringing back a fugitive slave
- Juzaf* undetermined quantity
- Kabd*, taing possession
- Kubul* acceptance (as a consecutive element of a contract)
- Kada* judgment given by the *kadi forum externum*
- Kada*, the district circumscription of a *kadi*
- Kada*, payment of a debt
- Kadhf* false accusation of unchastely (unlawful intercourse)

- Kadi* the Islamic judge
- Kadi l-jama'a* a judicial office in Islamic Spain
- Kadi l-kudat* the chief *kadi*
- Kafa'a* equality by birth
- Kafala* suretyship
- Kaffara* religious expiation
- Kafil* guarantor surety
- Kafir*, unbeliever
- Kahin* soothsayer
- Kanun* law used of secular acts the administrative law of the Ottoman Empire
- Kanun-name* a text containing one or several *kanuns*
- Kard* loan of fungible objects for consumption.
- Kasama* a kind of compurgation.
- Kasd* aim, purpose
- Kasim* divider of inheritances
- Kat al-tarik*, highway robbery
- Katib* secretary of the *kadi* clerk of the court
- Katl*, homicide
- Kawad* retaliation
- Kawaid* rule, the technical principles of positive law, subject of special works
- Khalwa* privacy, (between husband and wife)
- Kharaj* land-tax
- Kharij* stranger, third party
- Khasm*, party to a lawsuit
- Khata*, mistake
- Khiyana*, embezzlement
- Khiyar*, optio, right of rescission
- Khiyar al-shart*, stipulated right of cancellation
- Khul* A from of divorce
- Khusuma* litigation
- Kima*, value
- Kimi* non-fungible
- Kiraya* allusion, implicit declaration
- Kisas*, retaliation
- Kisma*, division
- Kiyas*, analogy, parity of reasoning
- Lakit*, foundling
- Lazim*, binding
- Lian*, for definition
- Liss*, robber
- Lukata*, found property
- Madhhab madhahib* school of religious law
- Madhun*, a slave who has been given permission to trade
- Ma'din* mine
- Maud mutakarib* things that can be conted



- Mafkud*, missing person
- Maharim*, see *mahram*
- Mahdar* minutes the written record of proceedings before the *kadi*
- Mahr*, nuptial gift fair, or average *mahr* defined
- Mahram* pl. *maharim* a person related to another within the forbidden degrees
- Majhul*, unknown
- Majlis* session, meeting of the parties
- Majnun* insane
- Makil, kayli*, things that can be measured
- Makruh*, reprehensible disapproved
- Maks*, market dues in pre-Islamic Arabia, illegal taxes in Islamic
- Makul*, reasonable the result of systematic thought
- Mal, res in commercio*
- Mal mankul, mal nakli*, movable
- Malasa* the reverse of *uhda*
- Malik* owner
- Malum* known, certain, (opp. *ghayr, malum, majhul*.)
- Maluk*, male slave
- Mandib*, recommended
- Manfa'a* pl *manafi* proceed, unfruct
- Marsum*, decree, used of modern secular acts
- Mashru*, recognized by the law
- Maslaha* the public interest
- Mastur* for definition
- Masum*, inviolable protected by criminal law,
- Matuh*, idiot
- Mawkuif* in abeyance
- Mawal* the patron, or the client
- Mawlawi*, term used in India for a Muslim scholar or religious law
- Mawzun, wazni*, things that can be weighed
- Maysir*, a game of hazard
- Mayta*, animals not ritually slaughtered
- Mazalim*, see *nazar fil-mazalim*
- Milk*, ownership (also in a wider meaning)
- Milk al-amma*, public property
- Mithl*, just mean, average fair,
- Mithli*, fungible

- Muamala*, transaction  
euphemistic term for a  
device for evading the  
prohibition interest
- Muamalat*, pecuniary,  
transactions
- Muawada maliyya*, exchange  
of monetary assets
- Mubha*, indifferent (neithr  
obligatory/ recommended  
nor reprehensible /  
forbidden)
- Mubaraa*, a from of divorce
- Mubham*, ambiguous  
declaration
- Mudabbar*, a slave who has  
been manumitted by *tadbir*
- Mudaraba* sleeping  
partnership
- Mudda, a alayah*, defendant
- Mudda'i*, claimant, plaintiff
- Mufawwada*, unlimited  
mercantile, partnership
- Muflis*, bankrupt
- Mufti*, a specialist in religious  
law who gives an  
authoritative opinion
- Muakala*, a contract of berter  
in corn
- Muhsan* (for definition)
- Mukhtakir*, speculator on  
rising prices of food,
- Muhtasib* the Islamic inspector  
of the market
- Mujtahid*, a qualified lawyer  
who uses *ijtihad*
- Mukallaf*, (fully) responsible
- Mukallid*, a lawyer who uses  
*taklid*
- Mukatab*, manumission by  
contract
- Mukatab*, the slave who has  
concluded this contract
- Mukhratara*, a device for  
evading the prohibition of  
interest
- Mulamasa*, an aleatory,  
transaction
- Mulazama*, personal  
supervision (of defendant  
by plaintiff)
- Mumayyiz*, intelligent,  
discriminating minor,
- Munabadha*, an aleatory,  
transaction
- Murabaha*, resale with a stated  
profit
- Murtadd*, apostate
- Musakat*, a contract of lease of  
agricultural land
- Musha*, joint ownership

|   |   |
|---|---|
| <i>Mustahabb</i> , recommended  | <i>nazar fil-mazalim</i> ,                                  |
| <i>Mustamin</i> , an enemy alien<br>who has been given an<br><i>aman</i>                                | 'investigation of<br>complaints                             |
| <i>Mut'a</i> , temporary marriage   | <i>nikah</i> , marriage                                     |
| <i>Mut'a</i> , indemnity payable in<br>certain cases of<br>repudiation                                  | <i>niyaba</i> , proxy in worship                            |
| <i>Muta'rif</i> , customary   | <i>niyya</i> , intent                                       |
| <i>Muwada'a</i> , understanding<br>term for a document in<br>connexion with <i>hiyal</i>                | <i>nizam</i> , <i>nizam-name</i> ,                          |
| <i>Muwakkil</i> , the principal (as<br>opposed to the agent)  | 'ordinance', used of<br>modern, secular<br>regulations      |
| <i>Muwalat</i> , contract of<br>clientship,   | <i>nukul</i> , refusal (to take the<br>oath, &c.)           |
| <i>Muzabana</i> , a contract of<br>barter in dates  | <i>rabb</i> , owner   |
| <i>Muzara'a</i> , temporary share<br>cropping contract  | <i>rabb al-mal</i> , sleeping partner                       |
| <i>Nafaka</i> , maintenance   | <i>rada</i> , fosterage                                     |
| <i>Nafidh</i> , operative   | <i>rahn</i> , pledge, pawn, security                        |
| <i>Nafy</i> , banishment  | <i>rakaba</i> , substance, also, the<br>person (of a slave) |
| <i>Nahb</i> , robbery   | <i>rakik</i> , slaves                                       |
| <i>Na'ib</i> , deputy in matters of<br>worship  | <i>ra's al-mal</i> , capital                                |
| <i>nasi'a</i> , delay   | <i>rashwa</i> , bribery                                     |
| <i>naskh</i> , repeal ( <i>nasikh</i> , the<br>repealing passage;<br><i>mansukh</i> , the repealed one) | <i>rasul</i> , messenger                                    |
|   | <i>ra'y</i> , 'opinion, individual<br>retraction            |
|   | <i>riba</i> , 'excess interest'                             |
|   | <i>rida</i> , consent                                       |
|   | <i>rikaz</i> , treasure                                     |
|   | <i>ruju</i> , withdrawal, revocation<br>retraction          |

- Rukba*, an archaic form of donation
- Rukn* (pl. *arkan*), essential element
- Sabi*, minor
- Sadak*, nuptial gift
- Sadaka*, charitable gift
- Safih*, irresponsible
- Safka* (q.v. for definition)
- Sghir*, minor
- Sahib al-suk*, inspector of the market
- Sahih*, valid, legally effective
- Sahm*, fixed share of an heir
- Sakk* (pl. *sukuk*), written document
- salam*, contract for delivery with prepayment
- sarf*, exchange (of money and precious metals)
- sarih*, explicit (declaration)
- sarika*, theft
- sa'y*, *si'aya*, 129 (q.v. for definition)
- shahada*, testimony, evidence of witnesses
- shahid* (pl. *shuhud*), witness
- shar'*, *shari'a*, the sacred Law of Islam, I, and *passin*; opposed to *siyasa*, administrative justice
- sharik*, parthner,
- sharika*, *shirka*, society, partnership
- sharikat mal*, association in property, joint ownership
- shart* (pl. *shurut*), prerequisite, condition
- shykh al-Islam*, the chief *mufti* of a country in the Ottoman Empire
- shibh*, quasi
- shira*, purchase
- shubha* definition
- shufa*, pre-emption
- shrub al-khamr*, wine-drinking
- shurta*, policy
- shurut* (pl. of *shart*), 'stipulations, legal formularies
- sijill*, written judgment of the *kadi*
- simar*, broker
- siyasa*, 'policy', administrative justice
- siyasa shariyya siyasa* within the limits assigned to it by the *sharia*
- sbashi*, chief of police in the Ottoman Empire
- shufaja*, bill of exchange
- sulh*, amicable settlement

*sultan*, authority, dominion,  
ruling power

*sunna*, precedent, normative  
legal custom: in pre-  
Islamic Arabia in early  
Islam in the ancient  
schools of law according  
to shafi, according to Ibn  
al-Mukaffa according to  
Ibn Tumart

*Sunna* of the Prophet

*Sunna* of Abu Bakr and  
'Umar,

*Sunna*, recommended

*Ta'addi*, fault, illicit act, tort.

*Tabakat*, biographies of  
lawyers arranged by  
'classes' or generations,  
subject of special works

*Tadbir*, manumission which  
takes effect at the death of  
the owner

*Tafrik* dissolution of marriage

*tafwid* (q.v. for definition)

*tahaluf* (q.v.definition).

*tahalur*, conflict of equivalent  
testimonies

*tahdid*, threat

*tahlil*, a device to remove an  
impediment to marriage

*tajir*, trader, merchant,  
euphemistic term for the  
money-lender

*takabud*, taking possession  
reciprocally,

*takiyya*, simulation

*taklid*, reference to the  
Companions of the  
Prophet (in the ancient  
schools of law), reliance on  
the teaching of a master  
adopting the doctrine of a  
school of law for a  
particular transaction

*talak*, repudiation,

*talfik*, combining the doctrines  
of more than one school

*ta'lik al-talak*, from of  
conditional repudiation

*tamluk fil-hal*, immediate  
transfer of ownership

*tamm*, complete

*ranazzuh*, religious scruple

*tapu*, an Ottoman fiscal  
institution of land law

*ta'rif*, (q.v. for definition)

*tarika*, estate

*tasallum*, taking delivery  
*tasarruf*, capacity to dispose,  
 disposition  
*tasbib, bi-sabab*, indirect  
 causation  
*taslim*, delivery  
*tawba*, repentance  
*tawliya*, resale at the stated  
 original cost  
*ta'zir*, discretionary  
 punishment awarded by  
 the *kadi*  
*thaman*, price  
*thika*, a trustworthy person  
*tift*, small child, babe-in-arms  
*'udhr*, excuse (for non-  
 fulfillment of a contract of  
*ijara*)  
*udul* (pl. of *'adl*, q.v.),  
 professional witnesses  
 notaries  
*uhda*, a guarantee against  
 specific faults in a slave or  
 an animal particular to the  
 Maliki school  
*ujra*, hire rent  
*ukr*, (for definition)  
*ukuba*, a Maliki punishment in  
 certain cases of homicide  
*ulama*, the religious scholar of  
 Islam

*umm walad*, female slave who  
 has borne a child to her  
 owner  
*umra*, donation for life  
*urf*, custom  
*usul* (sing. *Asl*) or *usul al-fikh*  
 the roots or theoretical  
 bases of Islamic law  
*wadi'a* deposit  
*wadia*, resale with a rebate  
*wajib* (1) Obligatory (2)  
 definite binding, due  
*wakala*, procuration  
*wakf* pious foundation,  
 mortmain  
*wakil*, deputy, agent, proxy,  
 attorney  
*wala*, the relationship of client  
 and patron  
*wali*, legal guardian  
*wali al-dam*, the next of kin  
 who has the right to  
 demand retaliation  
*wara*, religious scruple  
*warith*, heir  
*wasf*, the circumstances of a  
 transaction  
*wasi*, executor and/or  
 guardian appointed by  
 testament  
*wasiyya* (pl. *wasaya*) legacy

*wathika*, (pl *watha'ik*), written document

*wilaya*, competence, jurisdiction

*wukuf*, abeyance, jurisdiction

*yad*, possession (also in a wider meaning)

*yamin*, oath (understaking)

*zahir*, the literal meaning (of Koran and tradition), the outward state

*zakat*, alms-tax

*zawj*, husband, *zawja*, wife

*zihar*, (for definition)

*zina*, unchastity (unlawful intercourse)