



## Is Mudaraba'a Lawful?

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### ABSTRACT

Mudaraba'a is a special type of partnership in Islamic Shari'a, between at least two partners for any trading purpose. Out of them one is financier, and the other in worker. The role of financier is as a sleeping partner, and worker run's the business by using his labour and expertise. By keeping the same division number of partners may be increased. Profit is divided among the partners in a pre-decided ratio, but the entire loss should be faced by financier only.

This type of Partnership is common in business and have significant importance in so-called Islamic banking or interest free banking.

Whereas the question of its legality is concerned, there is a consensus about it, and different arguments are given from Qur'an and Hadith for its validity. But unfortunately non-of them have any logical or intellectual base. Any solid proof from Qur'an & Hadith is not available in this regard. The events which are presented in this context from the life of holy prophet Muhammad (ﷺ) & Sahaba-e-karam do not have any concern with fikhi term mudaraba'a. The same situation is with other reasons which are given in this regard. On the other hand this act has a deep resemblance with riba (interest). Since no evidence can be provided to prove its validity, hence mudaraba'a is completely unlawful from Islamic point of view.

**Keywords :** Mudaraba'a, Qur'an, Hadith, Verse

### 1. INTRODUCTION

Mudaraba'a as an Islamic mode of financing in the form of investment, is a special form of partnership<sup>1</sup>. It can be formed with at least two partners. One of them provides finance and he is called as *Rab-ul-Mal*, and the other uses his labour and expertise is termed as *aamil* or *mudarib*. Number of partners may be more than two, but the main condition will remain same, that any financier cannot involve in the business. The whole business will be run by *aamil*. (Chapara 2005). Profit will be divided among the partners in a pre-decided ratio, and the entire loss will be faced by financier only. In any case loss cannot be bare by *mudarib*. (Siddiqui 1969). Moreover this partnership agreement should be on a fixed and pre-decided cash amount. Financier cannot provide merchandise to *aamil* to start the business, and in the same way financier cannot appoint his agent in the business, (Ghazi 1993).

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It is a common way of partnership in ordinary business, and with the concept of *ijara* (rent/leasing) is the base of so-called interest free banking.

Normally different arguments are given to justify it from Qur'an, Hadith and from some other sources.

The main objective of this paper is to analyse the validity of these reasons. For this purpose, this paper is divided into five parts. In the second part the arguments which are given to justify *mudaraba'a* are given. Third part consists of their rebuttal. Resemblance between *mudaraba'a* and *riba* (Interest) is given in the fourth part. Fifth and last part has its conclusion.

## 2. JUSTIFICATION OF MUDARABA 'A

Basically three types of arguments are given for this purpose. First from Qur'an, second from Hadith and third from other sources. A brief description of them is given in the following lines.

### 2.1 Reasons to Support Mudaraba'a from Qur'an.

In this context three verses of Qur'an are being presented.

**First verse**

واخرون يضربون في الارض يتبعون من فضل الله

**Translation:**

While others travel in the land in search of Allah's bounty (Chapter 73, Verse 20)

**Second Verse**

فاذا قضيت الصلاة فانتشروا في الارض واتبعوا من فضل الله

**Translation:**

And when the prayer is ended, then disperse in the land and seek of Allah's bounty. (Chapter 62, Verse 10)

**Third verse**

ليس عليكم جناح ان تبتغوا فضلا من ربكم

**Translation:**

It is no sin for you that you seek the bounty of Allah (by trading) (Chapter 2, Verse 198)

It is argued that, in the first verse the words (يضربون في الارض) provide justification of *mudaraba'a*. *Mudaraba'a* is derived from the word *zarab* and its meaning are, 'to beat', or 'to hurt' and the other meaning are 'to struggle' or 'walking on the earth'. Since in *mudaraba'a* partners struggle for wealth and these verses are inviting for the same. Hence it is Qur'anic evidence of *mudaraba'a* (Taseen 2002).

### 2.2 Hadith in justification of Mudaraba'a

Out of six famous and authentic books of *Hadith*, four books do not have any chapter on *mudaraba'a*. Only one *Hadith* in *Sanun Abu Da'ud* and *Sanun Ibn-e-Maja* is presented in this regard. According to it, Prophet Muhammed (ﷺ) has given one *denar* to a *Sahabi Urva b. Abi Ja'ad Al-barti*, to purchase a goat for the purpose of *qurbani*. He has bought two goats from it, and sold one of them against one *denar*. And bring one goat and a *denar* to Prophet Muhammad (ﷺ) and describe him the whole proceeding. Prophet was happy and gave him blessings, with that donated that *denar*. Due to these compliments he became a successful businessman<sup>2</sup>.

2.2.1 Moreover some impressions of Companions of the Prophet (*Sahaba-e-Karam*) about

the behaviour of Prophet Muhammad (ﷺ) as a businessman are also quoted from different books of *Hadith* in this context<sup>3</sup>.

**2.2.2** In the same line, one event which is given in *Sanun-al-Kubra Al-Bay'haki* is also presented for its justification. According to text, two sons of second Caliph Umar Farooq were went to Iraq, with army. At there, their stay was at the Governor of Basra province, *Abu Musa Asha'ri*, who gave them warm reception. At the time of return, he handed over them some *mal* (cash / assets) and said that, it is the *mal* of Allah, which I want to deliver to caliph with that, he suggested to them, that, you can take it as a loan, purchase some commodities from here and will sold them in Madina city. By keeping the profit, that you will earned, returned the principal to caliph. They have liked this suggestion, and acted accordingly. But when this news reached to caliph, he ordered them to return the whole profit to government exchequer also. According to him it was a discriminatory action, because this facility was not provided to all soldiers. On this decision one of them had tried to defend themselves, and raised the point that, we were collateral of that mal. If it was lost, then we were responsible for that. But the caliph did not accept this reasoning, and kept his decision intact. At this time, one of the person, who was there, argued to caliph that, please consider it as the case of *mudaraba'a*. This argument has appealed to caliph, and he has allowed his sons to keep half of profit, and ordered that, the other half was returned to government exchequer<sup>4</sup>. According to the supporters of *mudaraba'a* it is an example of it.

### 2.3 Mudaraba'a as a Matter of Consensus

Another argument is that, in the life of Prophet Muhammad (ﷺ) *mudaraba'a* was a common practice. Even Companions of the Prophet (*Sahaba-e-Karam*) were involved in such type of transactions. But the Prophet Muhammad (ﷺ) never prohibited it, but allowed to do so, hence on the basis of *Hadith-e-Takrere* (a common practice which was not prohibited by Prophet) it is lawful.

### 2.4 On the Basis of Economic Transaction Between Prophet Muhammad and Hazrat Bibi Khadija Before Prophecy.

It is reasoned that, economic transaction between Prophet Muhammad (ﷺ) and Hazrat Bibi Khadija, before prophecy is another example of *mudaraba'a*.

### 2.5 Analogous Arguments

To prove the validity of *mudaraba'a* some presumptive reasons are also given, which are as follows:

**2.5.1** It is said that, this method is particularly beneficial for those people who have money but due to any reason e.g. illness, old age, lack of experience and knowledge; they are unable to do any business. *Mudaraba'a* provides a chance to them for the productive utilization of their idle capital. It is also fruitful for the economy also.

**2.5.2** The second reason is given on the basis of its resemblance with *Muzara'a*, since *Muzara'a* is considered as a lawful activity, hence on this basis, it will also be a permissible transaction.

**2.5.3** According to a principal of *Shari'a* risk is the base of profit. It means that a person who bears the risk of destruction of an item, will deserve for the profit from that thing. Since in *mudaraba'a* financier take's the risk of loss of his capital, hence he has the right to get income from his capital.

**2.5.4** It is said that, in case of *mudaraba'a* revenue is the result of both capital and labour. Since the worker get's the reward of his labour. On the same basis capitalist has the right

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to get remuneration of his capital, which is according to the principal of justice is lawful.

### **3. REBUTTAL OF REASONS GIVEN IN FAVOUR OF MUDARABA 'A**

Unfortunately all reasons which are given to prove the validity of *mudaraba'a* are just based on deception and fallacies. In the following lines their critical analysis can prove this fact<sup>5</sup>.

#### **3.1 Deny Of Arguments Given From Qur'an**

The above mentioned three verses of Qur'an which are presented in favour of *mudaraba'a*, do not have any link with this juridical (*Fikhi*) term.

The words (يُجْرُونَ فِي الْأَرْضِ) are not just restricted to trading journey. These words are not used in Qur'an for this purpose only. Qur'an has used them for *Jayhad* also e.g. chapter 4 verse 94 & 101, in which these words are used for the meaning of struggle in the way of Allah. Hence it will not be right to say that, these words are just restricted to trade, and in trade particularly for *mudaraba'a*. It is completely against the principals of deduction, logic and just common sense. The other two verses are concerned with common economic struggle in any form. The real fact is that, these verses do not have any direct or indirect relation with *mudaraba'a*. Hence Qur'an doesn't acknowledged this concept in any way.

#### **3.2 Refutation of Proofs Given From Hadith.**

The position of *mudaraba'a* in this context is very poor, because any *sahih* and *murfu Hadith* is not available to support the claim of its legality. The above quoted *Hadith* from *Sanun Abu Da'ud* is very poor from its source, and do not have any connection with juridical (*fikhi*) term *mudaraba 'a*, because any condition set by *fukahas* for *mudaraba'a* is not fulfilling here. Prophet Muhammad (ﷺ) has given one *denar* to purchase the goat for the purpose of *qurbani*. These was not any business motive, neither there was any agreement of *mudaraba'a*. Moreover act of donation by Prophet for that particular *denar* saved by *Barti*, clearly shows that, he was not ready to keep any income which was not the result of his dint of labour, or anyone else has earned for him. This simple fact clearly negates the basic concept of *mudaraba'a*, in which one person work for the other or a person received that income, which is earned by the other for him. Hence this event which is presented to justify the *mudarab'a*, itself is a negation of this act.

**3.2.1** The opinions of different Companions of the Prophet (*Sahaba-e-Karam*) about the behaviour of Prophet Muhammad (ﷺ) as businessman simply tell us about the excellent and nice attitude of Prophet as business partner. Those remarks again do not have any connection with *mudarba'a*, because there are general comments and do not indicating any particular form of business adopted by Prophet Muhammad (ﷺ) like *mudaraba'a* etc.

**3.2.2** On the same line, event of sons of second caliph Ummar Farooq is an example of forced reasoning. The deficiency or baselessness of the event is clear from the fact that, the persons who are involved in this transaction were not aware of the fact that, they were doing a *muddaraba'a* business. A person who was there inform the caliph that, it is a *mudaraba'a* transaction. And the caliph who was not ready to accept this discriminatory action, all of a sudden becomes ready to accept that, it is a *mudaraba'a* transaction. Whereas any condition of *mudaraba's* is not fulfilling there. Definitely no one can expect such type of behaviour from a great personality like Hazrat Ummar. It clearly shows that, it is a completely false story and just fabricated to provide base for *mudaraba'a*.

#### **3.3 Is Mudaraba'a a matter of consensus?**

It is claimed that, tradition of this transaction was very strong in Arab, and the Prophet

Muhammad (ﷺ) did not prohibited it. On the other hand he had provided support to it, and some of Companions of the Prophet (*Sahaba-e-Karam*) were involved in it.

But supporters of this claim do not provide any evidence of it. Definitely some events from the life of Prophet and Companions of the Prophet (*Sahaba-e-Karam*) should be presented with the details of such type of agreements, so that affirmation of claim will be possible. But it is not so. At most three events are available in all *Hadith* material, in which Companions of the Prophet (*Sahaba-e-Karam*) has given the mal of orphans on *mudaraba'a*. These Companions of the Prophet (*Sahaba-e-Karam*) were the guardians of these orphans and the basic purpose was the promotion of wealth of those orphans and there was not any personal interest of those Companions of the Prophet (*Sahaba-e-Karam*). On this basis at most this claim could be valid only for orphans not more than that. Hence this claim that, there is a consensus on *mudaraba'a* is completely wrong.

### **3.4 The Economic Transaction between Prophet & Hazrat Bibi Khadija Before Prophecy Could Be Treated as Mudaraba'a?**

It is an open fact that, economic transaction between Prophet Muhammad (ﷺ) & Hazrat Bibi Khadija before prophecy was not a case of *mudaraba'a*. In almost all the books in which this event is reported it is categorically admitted that, Prophet Muhammad (ﷺ) has provided his services against a fixed amount of remuneration, and in any case it was not a matter of profit sharing. Moreover there are some other aspects of this transaction which left no stone unturned that it was not the case of *mudaraba'a* e.g. in this trade journey a slave of Hazrat Bibi Khadija, *Maysara* was with the prophet. It is against the rules of *mudaraba'a* that, financier or his agent will take part in business with his worker. Second Hazrat Bibi Khadija has sent the Prophet to *Syria* with her merchandise. Prophet has first sold that merchandise, and then purchases other merchandise to sale it in *Madina*, which he delivered to her and she has sold it personally, which is another violation of the rules of *mudaraba'a*. It is unlawful in this type of agreement that, financier provides merchandise to worker, it should be in the form of cash, and the whole responsibility should be given to him for sale & purchase of merchandise. But in this case this principal is totally violated; hence in any case it was not the case of *mudaraba'a*.

### **3.5 Rebuttal of Analogous Arguments.**

The Situation is still same in case of analogous arguments.

**3.5.1** If the first argument is being acknowledged, then in this case *mudaraba'a* will be lawful to only those persons which are unable due to any reason, and will not be valid for those who are fit and able to do the business. In the other words it will be valid only for those persons who have any excuse, not more then that. Moreover, it is the responsibility of government to care them, rather then that they are allowed to take part in a highly doubtful activity.

**3.5.2** Whereas the question of resemblance is concerned between *mudaraba'a* & *muzara'a*. *Mudaraba'a* cannot be considered valid on the basis of its resemblance with *muzara'a*, because *muzara'a* itself is a very controversial issue among the Muslim thinkers, some consider it as lawful and the others do not. Hence its deduction on a controversial issue is not possible.

**3.5.3** Third argument, in which it is claimed that, on the basis of risk, profit becomes lawful, cannot be accepted, because if the risk element is considered as the base of business transactions then on this basis gambling will automatically get validity. Because the highest degree of risk is involved in it. But definitely it can not be possible, because Qur'an has categorically prohibited it. Hence element of risk can not provide any base to *mudaraba'a*.

**3.5.4** Last argument in this context is also fast to provide conformity to *mudaraba'a*. Under

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this argument it is said that, Profit is the reward of capital and it should be returned to financier like return of worker for his labour. But this claim is not true. Actually capital itself is a dead item, it cannot produce any item, until and upto will not use by human labour. Hence an item which is completely unable to produce any thing, on what grounds it can claim any reward? On this basis it can be said that, all reasoning behind *mudaraba'a* is just baseless and do not have any base.

#### **4. RESEMBLANCE OF MUDARABA'A WITH RIBA (INTEREST)**

It is an important point that, *mudaraba'a* has an extra ordinary resemblance with *riba* (interest) which is strictly prohibited by Qur'an, e.g.

- 4.1. In both cases debtor & financier both received an predecied amount on their capitals, from creditor & worker respectively.
- 4.2. In both cases debtor & financier do not take part in business.
- 4.3. Both debtor & financier do not work and get reward of their capital.
- 4.4. Both debtor & financier received excess amount on their capital on the basis of time.
- 4.5. Both debtor & financier provide cash to creditor & worker respectively for specific purpose.
- 4.6. In both cases debtor & financier lost the right to utilize their money temporarily. On the basis of these resemblances, it can be said that there is not any difference between these two. Both are two shades of one coin.

#### **5.CONCLUSION**

*Mudaraba'a* as a special form of partnership is quite common, but unfortunately do not have any legal base. Different types of arguments are given for its validity but non of them do not have any logical or intectual base, not a single argument from Qur'an can be given for its validity. Same situation is with *Hadith*, any *sahih & marfu Hadith* is not available in its favour. It is tried to get its validity from such type of events which do not have any type of any relationship with it. An impression is given that, *Ummah* has consensus on it, and it was a common practice in the age of Prophet Muhammad (ﷺ) but no evidence is available in this regard. Analogus arguments also cannot save its position. It is a transaction which has a deep resemblance with *riba* (interest). Hence no evidence can be provided for its justification and it has not any base.

#### **ENDNOTES**

1. In this paper, *mudaraba'a* means that type of partnership which is called *Shirkat-e Anan* in *Hanfi, Shafai* and *Hanbali fikah* and termed as *Shirakat e-Mufavida* in *Maliki, fikah* see M.N. Siddiquie (1969) pp 18-29.
2. For detail see Abu-da 'ud (1984) P. 229 and Al-Bay 'haki (458H) P. 112.
3. In different books these impressions are given e.g. B. Abi bakar Al-Marginai (1417) P. 257, Abu da 'ud(1984) P. 229, Bukhari (1990) P. 596.
4. For further detail see Al-Bay 'haki (458 H) P 1
5. Criticism on *mudaraba'a* is based on Farooq Aziz (2004)
6. Qur'an, Chapter 5 Verse 90.

## **REFERENCES**

- ABU-DA'UD, SULAYMAN B. AL-ASH'ATH (1950), Sunan, Cairo, P.229.
- A1-BAY'HAKI, Al-Jalil Abi Baker Ahmed b.Ali Hussain (458 H) Sunan Al-Kubra Lal bay'haki, Multan, pp 221-222.
- AL-BUKHARI, MUHAMMAD B. ISMA'IL (1990) Sahih, Lahore, P.220.
- AL-MUR'GHINAYNI, Burhan-ud-din Abi Al-Hassan Ali b.Abi Bakar (1417H), Hidayah, Karachi, P.257.
- AL-SARKASI, SHAMS-UD-DIN (1992) Al-Mabsoot Ial Sarkasi, Egypt, vol.11, P.151, and Vol, 22,P.19.
- AZIZ, FAROOQ (2004) Murvija Islami Mu'ashi Taswant Qur'ani Tanzaur Main. Karachi, pp 141-150.
- AZIZ, FAROOQ. (2007) . Qur'anic Concept of Riba. Journal of Management & Social Sciences 3 (2) pp 70-76
- CHAPRA, MUHAMMAD UMAR (2005) Towards New Monetary Policy, Urdu Trans. Faroqui, Aijaz Ahmed, Aik Munsifana Zari Nizam, Karachi, pp 242-243.
- GHAZI, MUHAMMAD AHMED, (1993) Hurmat-e-Riba Aur Ghair Sudi Malyati Nizam, Islamabad, pp 74-76.
- SIDDIQUI, M.N. (1 969), Shirkat-o-Mudarabat Kay Shar'ai Asool, Lahore, pp 18-21.
- TASEEN, MUHAMMAD, (2002) Islami Iktisad Kay Chand Posheeda Goshay, Karachi. pp 194-197.