
Banking Mūrabāḥah: in the light of Qur'anic teachings

Dr. Hafsa Abbasi

Lecturer, Allama Iqbal Open University Islamabad

Email: Hafsa.abbasi@aiou.edu.pk

Dr Khadija Aziz

Associate Professor at Benazir Bhutto Women University, Peshawar, Pakistan

Email: khadijaaziz@sbbwu.edu.pk

Haleema Sadia

Lecturer, Department of Law, Mirpur University of Science and

Technology(MUST), Mirpur (Azad Jammun & Kashmir)

Email: haleemasadia.law@must.edu.pk

Abstract

Mūrabāḥah lil-'Amir bi al-shira'i (Mūrabāḥah to the purchase orderer) is one of the most important mode of finance in Islamic Banking. It is serving as most extensively used tool in that industry. Its permissibility is being approved by AAI OFI and Majma' al-*fiqh* al-Islāmī. Yet it is being highly criticized by the majority of the scholars for having many doubtful elements in it. Mūrabāḥah is named as Mūrabāḥah to the purchase orderer because it is different from original and classical Mūrabāḥah sale. This new type of *Mūrabāḥah* sale includes prior agreement between client and the bank. This agreement is binding between the parties. Secondly, payment in *Mūrabāḥah* to the purchase orderer is deferred. It is called as bay' *al-mū'ajal* (deferred sale) in Islamic Finance. Thirdly, the bank appoints the client as its agent for purchasing commodities. Above mentioned elements and many more are not present in classical *Mūrabāḥah* sale. Thus, these issues need to be scrutinized from the *Sharī'ah* perspective. This article revolves around these issues and debate of advocates and opponents of *Mūrabāḥah* to the purchase orderer. It also discusses the method being followed by Islamic Banks for practicing *Mūrabāḥah*. It further covers the origin and expansion of *Mūrabāḥah* to the purchase orderer. Who gave the idea of Banking *Mūrabāḥah* first time and on the base of what arguments?

Banking *Mūrabāḥah* which is named as *Mūrabāḥah lil-'Amir bi al-shira'i* (*Mūrabāḥah* to the Purchase Orderer) is one of the most important mode of Finance in Islamic Banking. It is serving as the back bone of this industry. It would not be untrue if said that Islamic Banking would not be able to survive without *Mūrabāḥah* to the Purchase Orderer (MPO) and *Ijārah*. MPO is permitted by AAI OFI and Majma' al-*Fiqh* al-Islamī. This type of transaction has gained a very high rate of popularity. Therefore, it is very important to scrutinize the details of *Mūrabāḥah* Mode of Finance.

MPO is stated to be a lawful and legitimate contract in Sharī'ah by the institutions who have legalized it. But there are certain issues in it, which need to be pondered over. For example it was stated by Mufti Taqī Usmani and his co-workers to be the transitory step for Islamic Banking and never to serve as a permanent mode of Finance.

Mufti Taqī Usmani states in his book about *Mūrabāḥah*:

“In Islamic Banks this Mode (*Mūrabāḥah*) is being practiced excessively, but it is a very sensitive mode. Little carelessness can mix it up with *Ribā* based system. Nowadays, it is practiced in Banks without understanding its reality and without giving due care to its conditions. As a result lots problems are being created in this mode”.¹

Still *Mūrabāḥah* is serving to be the most excessively used product of Islamic Banks. This article serves the purpose of highlighting the due care and diligence that has been maintained while practicing MPO. It revolves around regularities and irregularities of Banking *Mūrabāḥah*.

First of all this article introduces the concept of *Mūrabāḥah*. Then its legality from Qur'an is given. Then this article covers the issues regarding *Mūrabāḥah* one after the other. Afterwards the method employed in Islamic Banking for the execution of *Mūrabāḥah* mode of Finance is covered. In the end it has been discussed that from where and how the idea of Banking *Mūrabāḥah* started.

Introduction:

Mūrabāḥah in its literal sense derived from the word *Ribḥ*, which means nourishment and increase.² It is a sale in which a seller has to disclose the cost. The contract of *Mūrabāḥah* takes place at an agreed sum of profit. It is the sale of anything for the exact cost, at which it was purchased by the seller plus an addition of a fixed sum by way of profit.³ *Bay' al-Mūrabāḥah* can also be defined as “It is the sale of goods for a stated cost price plus a stated profit that together form the price. The profit has to be stated with sufficient clarity so that the cost and profit are clearly determined.”⁴

Badā'i' Al-Ṣanā'i' defines *Mūrabāḥah* as “is the sale for a price (exactly) similar to the first price along with an excess as profit”⁵.

Mūrabāḥah is legitimized from *Qur'an* through the following verses

a) *Al-Qur'an*:

Allah, the Majestic and Glorious, has said,

فَانتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِن فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَّعَلَّكُمْ تُفْلِحُونَ

“Then may ye disperse through the land, and seek of the Bounty of God”⁶

Murābahah is expressed here as seeking of the bounty of Allah, through sale. There are many other verses in the *Al-Qur'an* that explicitly permit sales in general, e.g.

“وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا”

“And Allah has permitted trade and prohibited *Ribā*.”⁷

إِلَّا أَنْ تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ

“But let there be among you trade by mutual good will”.⁸

In this regard, cost-plus sales like *Murābaḥa* are clearly concluded by mutual consent of both the parties. *Mūrabāḥah* is a sale of goods in which the exact cost price is disclosed, plus an amount of profit agreed upon between the contracting parties. In *Mūrabāḥah*, the seller reveals the cost of the sold commodity. He acknowledges the purchaser that he has purchased commodity, for so and so amount and he wants so and so profit over it. For example he sold the commodity for hundred pounds and that he will charge ten pounds as profit over and above the original price. It is also not objectionable to fix the profit in percentage i.e. 5 %, 10 % of the cost. The speciality of *Mūrabāḥah* is that it is a trust sale (*bay' al-'Amānah*) in which the consumer is dependent upon the integrity of the purchaser.⁹ Thus it is morally and legally binding on the seller to be truthful and honest with regards to the facts about the price of the goods. If the seller succeeded in obtaining a discount or rebate, he should disclose it for the benefit of the purchaser.¹⁰

The objective of *Mūrabāḥah* in the classic time period was to secure the consumers usually residing in villages and towns. Those consumers being unaware of the market prices in cities and lacking expertise in trade had to be saved, from the tricks and stratagems of cunning traders.¹¹

“*Mūrabāḥah*” is, basically a term of classical Islamic *Fiqh* it refers to a contract of sale have no contact with financing originally. If a purchaser agrees to buy certain commodities at a known profit and cost, from the seller it is a *Mūrabāḥah* sale. The basic ingredient of *Mūrabāḥah* sale is that the cost price must be disclosed to the purchaser.¹²

Banking *Mūrabāḥah* is practiced in Islamic Banks with a special procedure. That procedure is quite different from the classical sale of

Murabaha. It includes many contracts in it. First the customer and the client comes in to an agreement which includes binding promise. Details of the procedure being followed in Islamic Banks are coming later on. But now the issues regarding Banking *Mūrabāḥah* are discussed. These are those issues which are a threat to the flawlessness of Banking Murabaha. Banking Murabaha is based on binding promise made by the client and bank. The reason why can the promise not be binding is explained in detail in the end. First of all the stance of Shariah standards and other scholars will be analyzed.

Binding Promise:

Shari'ah standards by AAI OFI clearly stipulate that Murabaha in Islamic Banks cannot be based on binding promise.

Shari'ah standards states:

“It is not permissible that the document of promise to buy (signed by the customer) should include a bilateral promise which is binding on both parties (the institution and the customer)”¹³

This standard clearly mentions that the client cannot make a binding promise with the bank.

It is also stated at another place: “It is permissible for the institution to purchase the item from a supplier on a “sale or return” basis, i.e., with the option to return it within a specified period. If he customer then does not purchase the item, the institution is able to return it to the supplier within the specified period on the basis of the conditional option that is established in shari'a”.¹⁴

Here, it is clearly mentioned that MPO is made merely on non-binding promise and if the promises are made binding on both the parties then it is impermissible. Standard says that the contract would be made merely on options. The bank can return the goods anytime the promise is not fulfilled.

But in reality the bank asks the customer to sign an undertaking before the bank enters in to any contract of *Mūrabāḥah* with the customer.

The following document is the sample of the undertaking (binding promise) is being taken by the bank from the client:

“Appendix BN to Master *Mūrabāḥah* Agreement

To Meezan bank

Dear sir,

.....we request you to acquire the asset.... Under the following terms and conditions: we shall immediately acquire the assets from you... failing which we undertake to compensate you for any actual loss suffered.....[etc]”¹⁵

This is the sample of the agreement that the banks asks the clients to sign. This agreement clearly stipulates that the promise made by the customer is binding.

Wahbah zuhāilī in his book financial transaction in Islamic Jurisprudence quotes Dr. Yousaf Qardwi and states

The transaction of Banking *Mūrabāḥah* is basically composed of two promises:

- a) A promise by the customer to purchase the object.
- b) A promise made by the financial institution (bank) to sell him

the commodities by a *Mūrabāḥah* contract.¹⁶

Hence, it is proved by the above arguments that Banking *Mūrabāḥah* is not at all possible without binding promises. It cannot work without binding promises. Although in theory it has been time and again emphasized that it is not permissible to make binding promise from both the parties. The question here arises that what is the reason for not making the promise binding? The reason here is that in Banking *Mūrabāḥah* the payment is made to the client on deferred payment basis. This deferred payment is called as *Bay' al-mū'ajal* in Islamic Jurisprudence. This deferred sale is permitted by *Imām al-Shāfi'ī* on the condition that the promise should never be binding. Otherwise, it is converted to buy back sale which is impermissible according to majority of the scholars due to the reason that it carries *Ribā*. First of all, the deferred sale, which a separate type of sale, is blended with *mūrabāḥah* without any legal validity. Secondly, these sales are unable to fulfill the very essential condition of both the sales. For example the deferred sale must be unconditional and the promise must be non binding. In *mūrabāḥah* the first price must be known and certain and it does not carry any delayed payment feature. Appointment of the buyer as agent by the seller is also very critical. The details are coming forward. Consequently, another type of contract has taken place which is not acceptable in any school of law.

In fact majority of Islamic Banking transactions including *murābahah*, are designed on the employment of legal devices (*HIYAL*). *Hiyal* are used only and only in rare cases. Where there is a dire need. The purpose of serving must be legal. But here permanent banking practices are standing on the pillars of *Hiyal*. General principle regarding *hiyal* is that they are used in dire need. How far investment on this much large scale is justifiable?

Deferred payment:

In the original and classical *mūrabāḥah* sale, the delay is never discussed. Not even a single Jurist discussed the idea of delay in payment of *mūrabāḥah* sale.

Imām Kāsānī defines *Mūrabāḥah* as

“It is the sale for a price exactly similar to the first price along with an excess as profit”

Now if the deferred payment is permitted how come the sale of the price would be similar to first price? The reason of it is that delay changes the value and certainty of the first price.

Imām Kāsānī further states that,

One of the most important conditions of *mūrabāḥah* sale is that the first price be known to the second buyer, the reason of this condition is that *mūrabāḥah* is a sale at the first price along with an excess as profit. Disclosure of the first price is a necessary condition of validity in all trust sales i.e tawliya and *mūrabāḥah*. If it is not revealed, the sale is stated as *fāsīd* (voidable), until it revealed to the second buyer within the session. When it becomes known to the buyer, he has the choice to opt it if he like¹⁷

On the other hand Mufti Taqī Usmani states regarding the payment to be made in *Mūrabāḥah lil- 'Amir bi al-shira' i* that:

“The payments in the case of *Mūrabāḥah* may be at spot, and may be on subsequent date not necessarily imply the concept of deferred payment¹⁸

Sharī'ah standard of AAI OFI states that,

“It is not permitted to carry out *Mūrabāḥah* on deferred payment terms where the asset involved is gold or silver or currencies. It is also impermissible to issue negotiable instruments where the underlying asset consists of *Mūrabāḥah* receivables or other receivables.”

It can be observed that the Sharī'ah standard is silently approving deferred payments. In other words it can be stated as that deferred payment is not allowed in gold and silver but it is permitted in case of other commodities. Though it has not been boldly stipulated but current practice of *Mūrabāḥah* is delay in payments i.e. deferred payments.

A question arises here that why the classical jurists did not discuss the idea of delay in payments? Classical jurists did not give the idea of delay in *Mūrabāḥah* the reason of it is that the delay causes changes in the first price. The first price must be known and certain. It is the essential characteristic of *Mūrabāḥah* sale. This essential characteristic is not fulfilled if the deferred payment is made in *Mūrabāḥah* contract. Secondly, the change in the first price creates Gharar in the contract, which is impermissible from Sharī'ah perspective. Thirdly, delay and the change of price amounts to the presence of Ribā in the contract.

Agency in Banking *Mūrabāḥah*:

The client when peruses Islamic Bank, for the approval of *Mūrabāḥah* contract. First of all, agreement takes place between both the

parties. In that agreement the bank appoints the same customer as its agent. The customer then, on behalf of the bank buys the commodities for himself on which the contract of *Mūrabāḥah* has taken place. Sharī'ah standards by AAIOFI states in Appendix A of Standard no 8:

From: (the institution's customer as agent)

To: (The institution)

In the performance of my contract of agency with you, I hereby inform you that I have purchased the item described below on your behalf and for your benefit. This item is in my possession on your behalf.

In accordance with my promise to you, I hereby agree to purchase this item from you for a total price of..... namely the cost price..... till the end.

19

This form shows that the Islamic Bank with the permissibility of Sharī'ah Standards, allows the customer to be appointed as their agent. The customer is purchasing the goods for selling to his own self. He is the buyer and he is the seller. The classical books of Islamic law clearly stipulate that one and the same person cannot be the seller and buyer at the same time.

It is stated in hidāyah that:

والواحد يتولى طرفي النكاح، وقال في الهامش: بخلاف البيع، ووجه الفرق ان الحقوق في البيع الى

الوكيل، فلو تولى طرفيه مطالباً ومطالباً وفيه تعطيل الحقوق²⁰

Translation: and One person being the guardian (agent) of both the sides and said in Hamish: contrary to the contract of sale because the difference between both is that rights in sale are with agent and if he is given the guardianship of both side then he becomes the demander from both the sides and in it there is infringement of rights.

وفيه الوكيل بالبيع لا يملك شراءه لنفسه لأن الواحد لا يكون مشترياً وبيعاً فيبيعه من غيره ثم يشتريه

منه²¹

Translation: Agent of sale cannot make a sale for himself because one person cannot be the buyer and seller, then he buy from someone else and then to sell from him.

It can be observed from the above text that it is not permissible for the buyer to be the agent of the seller. The buyer cannot appoint the same person as agent. One person cannot work from the both sides. It infringes the rights of the buyer. In classical *fiqh* the person who is the seller is called "Aseel". From the point of view of Islamic Jurisprudence one person can not be the aseel and buyer at the same time. It means that a person is buying for himself. It is also contrary to the rational and the basic purpose of sale. The purchaser might buy things expensive. Or the purchaser would take care of

his own benefit, ignoring the interest of the seller. But here the situation is different. The seller is only interested in lending the money on which they can get mark up which is already fixed according to the agreement. So how far this *Mūrabāḥah* contract can be called as a Sale where one and the same person is acting on both sides. Offer and acceptance in the end is just fulfillment of the formality.

Sharī'ah standard states that:

“It is obligatory to separate the two liabilities of risk attaching to the purchased item, namely the liability of the institution and the liability of the customer as agent of the institution. This is achieved by having an interval in time between the performance of the agency contract and the execution of the contract of *Mūrabāḥah* to the purchase orderer, as indicated in the customer's notice of performance of the agency contract to acquire the item and offer to purchase the item by means of *Mūrabāḥah* (Appendix A).....”.

Both the contracts are completing each other. If the Islamic Banks are trying to satisfy the separation of liability then who will satisfy the very important condition that there should not be two contracts in one contract?

Merger of many contracts in one contract:

It is stated in the text of Islamic Bankers that:

In Islamic banks the transaction of *Mūrabāḥah* does not only include *Mūrabāḥah* transaction. But there are many more contracts that take place within that transaction. Other contracts are aimed at completion of the *Mūrabāḥah* contract. That is why the whole process is called as “*Mūrabāḥah*”. Or probably that is why the whole transaction is named as *Mūrabāḥah* to the Purchase Orderer (MPO).²²

Therefore, it can be observed from the above text that *Mūrabāḥah* to the Purchase Orderer is a blend of many contracts at a time. For example at first bank and the customer undertake to enter in to contract of *Mūrabāḥah*. Then with in that contract they enter in the agreement of agency as mentioned above. Agency and *Mūrabāḥah* are two different types of contracts which are blended in one. Along with that deferrment of payment doesnot originally have a link to the original *Mūrabāḥah*. That is actually called as **Bay muajall** (deferred sale) in classical *Fiqh*. So it is third type of contract which takes place under *Mūrabāḥah* to the purchase orderer.

It has been narrated by the Prophet (PBUH)

حَدَّثَنَا عَمْرُو بْنُ شُعَيْبٍ قَالَ: حَدَّثَنِي أَبِي، عَنْ أَبِيهِ، حَتَّى ذَكَرَ عَبْدَ اللَّهِ بْنَ عَمْرٍو، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: "لَا يَحِلَّ سَلْفٌ وَبَيْعٌ. وَلَا شَرْطَانِ فِي بَيْعٍ. وَلَا رَيْحٌ مَا لَمْ يُضْمَنْ.

The third narration is reported by chain of Amar Ibn-e-Shoaib from Abdullah Ibn-e-Amar from the Holy Prophet (S.A.W) He said: “A loan with a sale is not permitted, nor two conditions in a sale, nor a profit of a thing allowed which is not in one’s liability, nor the sale of what you don’t have.”

This Hādīth can be found in Abū Dāwūd²³, Al Tirmadhi²⁴, Nasā’ī²⁵, Ahmad²⁶, Bahiqi²⁷ and Haythamī²⁸ etc.²⁹

Mūrabāḥah to the purchase orderer is impermissible according to this narration of Prophet (PBUH) because it includes many sales in one sale. The above mentioned narration of Prophet (PBUH) clearly states that two sales in one sale are not allowed. It is permissible to conclude contracts for the completion of the original sale. For example if a person purchases a commodity. Then he makes an agreement with another party to send the goods to the relevant party. This is allowed because the actual offer and acceptance is free from the second agreement. But it is not allowed to merge two sales or contracts in one.

***Mūrabāḥah* to the Purchase Orderer is a contract in which Bank sells what they do not have:**

When the customer goes to the Islamic Bank an agreement takes place between the bank and the customer. That agreement is called as Master *Mūrabāḥah* Agreement. On the base of Master *Mūrabāḥah* Agreement the whole contract is almost executed. Nature of that *Mūrabāḥah* Agreement is binding. After the completion of this Agreement the Bank appoints the client as his agent. Then the commodities are bought. In other words Bank and the customer comes in to the contract when the commodities are in the market and not in the possession of any one of the party. Though this is a principle set by the Prophet (PBUH) that it is not permissible to sale the thing which is not in the possession of the seller. And here instead of having in possession the commodities are not in the ownership of the seller. This is contrary to the tradition of Prophet (PBUH).

عَنْ حَكِيمِ بْنِ حِزَامٍ قَالَ سَأَلْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ يَا رَسُولَ اللَّهِ يَأْتِيَنِي الرَّجُلُ فَيَسْأَلُنِي

الْبَيْعَ لَيْسَ عِنْدِي أَبِيعُهُ مِنْهُ ثُمَّ أُبْتَاغَهُ لَهُ مِنَ السُّوقِ قَالَ لَا تَبِيعَ مَا لَيْسَ عِنْدَكَ

Hakim bin Hizam said: O Messenger of Allah! A man came to me and wants me to sell him something which is not in my possession. Should I buy it for him from the market? He (P.B.U.H) replied: “Do not sell that you do not have.”

This has been reported in Abū Dāwūd³⁰, Al Tirmadhi³¹, Nisa³²i, Ibn-e-Mājah³³, Ahmad³⁴, Bahiqi³⁵ and etc.

This tradition clearly stipulates the impermissibility of those types of sales in which the object is not in the ownership of the seller.

Another tradition of Prophet (PBUH) serves as the source of Ijma for not selling of food prior to possession by the buyer. The tradition is

وَقَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِحَكِيمِ بْنِ جَزَامٍ "مَنْ اشْتَرَى طَعَامًا فَلَا يَبِيعُهُ بِكَيْلٍ حَتَّى يَسْتَوْفِيَهُ

The final version is also narration of Hakim: According to him, Prophet (P.B.U.H) said, "Don't sell food unless you buy it and taken in yours possession."

Ahmed³⁶, Haythamī³⁷ and Bhaiqi³⁸ have narrated this Hādīth.

But the situation is different in Islamic Banks, in it bank and the customer sign the agreement when the commodities are nowhere. It is practically impossible for the bank to keep the goods in their ownership because the bank is professionally a bank. Not a retailer or the showroom owner. When the customer and the bank sign the agreement then the Islamic Bank sends the customer to the concerned showroom or concerned market.

So I conclude on this that Banking *Mūrabāḥah* is not permissible because they sell what they don't have.

After discussion of the above mentioned issues above it is appropriate to have a look at the process which is being followed by the Islamic Banks in order to execute *Mūrabāḥah* to the Purchase Orderer. This will further be helpful for the reader to critically analyze the soundness of the issues pertaining to the Banking *Mūrabāḥah* that has been discussed above.

Before purchasing the commodity, the bank obtains an undertaking from the customer whereby the customer promises that the commodity will be purchased by the customer from the bank. Under this arrangement the bank discloses its cost and profit margin to the customer. In other words rather than advancing money to a borrower, which is how the system would work in a conventional banking agreement, the bank will buy the commodity from a third party (seller) and sell those commodity on to the customer for a pre-agreed price. The bank in fact would not buy the commodities, but they would appoint the client as their agent. Agent would buy for himself. The way a client of the conventional bank would buy for himself. The difference in the procedure of both the banks is only with the name. one bank call it Interest based loan allotment. The other calls it Murabaha Mode of Finance.

First stage: : **Application of client and its acceptance:**

At this stage, the client who is in need of the goods gives an application to the bank, in order to get benefited from the *Mūrabāḥah* Mode of Finance. The customer along with application provides with the required information.

2.2 Second Stage: Fixation of the Limit and Preliminary

Agreement

When the above mentioned study of Islamic Banks is complete and the bank is satisfied with the credit assessment and good will of the customer. Application of the customer is accepted. Then the stage of fixation of 'limit'³⁹ is countered i.e limit of financing the customer. There are two types of limits accepted by banks

- 1) Comprehensive limit.
- 2) Limit for one transaction only.

Sometimes a bigger limit is granted to the client such as rupees one million, which means a bank has agreed to buy up to this limit and to sell it on *Mūrabāḥah*. But the client does not need to buy all the goods in one single transaction. He has to buy the goods at different timings with different amounts. Therefore, he requests the bank to issue him a comprehensive limit and he may be allowed to buy the commodities within that limit.

The second situation is when the client prefers a certain limit of amount he actually needs. In this case he applies for the transaction he actually needs.⁴⁰

Third Stage: Buying of Goods

At this stage Islamic banks are recommended to buy the goods from the market at their own, or banks can appoint agent other than client to buy goods.

2.3 Fourth Stage: Contract of *Mūrabāḥah*

- a) Taking the Possession of the goods and telling the bank:

If the client is appointed as an agent for buying the required goods, than the client after buying the commodities, takes the possession of the goods. After taking the possession client acknowledges the bank about it.

- b) Execution of *Mūrabāḥah*.

After this the client offers the bank to sell the goods on specified amount in which the profit of the bank is included. Client will return the amount at once or after a specified time. When the bank accepts the offer the contract of *Mūrabāḥah* take place. The payment becomes due on the client. Bank in return of the amount due on client takes some collateral. The above procedure is summarized as the contract of *Mūrabāḥah*.⁴¹

It seems a bit funny that the goods are purchased by the customer, stay in his possession. Then the client tells the bank to sell these commodities to me which are bought by me and in my possession.

Fifth Stage: Payments:

Client wants finance from the bank so mostly the client buys those goods from bank on deferred payment basis and pays back the price to the

bank in installments or at once in the end along with markup. That is how *Murabaha* is executed by the Islamic banks. The difference is only of the name. while rest of the procedure is same. In conventional bank and Islamic Bank lends money to the customer for their own needs. Both of them later on get the payments in installment along with an excess. Conventional bank calls it interest. While, Islamic Bank calls it as *Murabaha* to the purchase orderer. They call it Mark up.

Origin of Banking *Mūrabāḥah* and its expansion from classical *Mūrabāḥah*:

Modern Jurists using their juristic skill have inferred certain examples from classical *fiqh*, and tried to expand the concept of *Mūrabāḥah*, to make a beneficial alternative for banking purpose. Scholar Dr. *Samī Homoūd* gave the idea of *Mūrabāḥah lil-'Amir bi al-shira'i* for the first time in 1979. He inferred the idea by relying on the text of *Imām Shafa'ī* in forming the basis of modern banking *Mūrabāḥah*.⁴²

This transaction is validated by the Dr. Sami Hamoud, for argument they rely on the following text of *Imām Al-Shaf'ī* in *Al-Umm*:

“If a person shows another person a commodity telling him: purchase this (for me) and I shall give you such and such profit margin. This deal is lawful. The person who offered the profit margin enjoys the option of either completing the deal or leaving it incomplete. Similarly, if he tells: purchase for me a commodity which he specifies or any commodity you choose and I shall give you such and such profit margin, this is all the same and the first deal is lawful.

He, in what he gives from his free will, shall enjoy option (to complete the deal or not)... If they conclude the deal on the condition that both commit themselves to the first deal, it shall be null and void for two reasons. First because they conclude the deal before the seller obtained the ownership (of the goods in question). Secondly because he (the would-be seller) is exposed to risk (in view of your condition): if you purchase at such and such a price I shall let you have such and such a profit margin”.⁴³

Here it is judged from the above mentioned text of *Imam Shafai* that the *Mūrabāḥah lil-'Amir bi al-shira'i* is valid. It is strictly based on two promises by the customer and the financial institution. Dr Sami Hamoud states in this regard: “...Therefore, when we look at a solution to this problem, we find that it opens doors for the interest free bank for assisting a person in obtaining the commodity he is in need of on the basis of monthly installments or some similar arrangement; but the initiative must come from the consumer and not from the businessman”.

Here Mr. *Samī Hamoūd* very boldly opens the door of Banking *Mūrabāḥah* on the statement of *Imām Al-Shaf'ī* which is discussing mere general rule of credit sale on the base of buy back sale. The text of Imam Shafae quoted above mentions nowhere that contract of *Mūrabāḥah* can be dragged under this concept⁴⁴.

But the text of Imam Shafai is strictly against the idea of binding promise, which is the base of *Mūrabāḥah lil-Āmir bish-Shirā'*.

For making the option (*khīyār*) given by *Imām Shāfa'ī* in deferred sale, which makes it a non-binding, another ruling of Ibne Shabramah from the Mālikī school is taken i.e any promise made which does not result in permission of a forbidden act is binding. Or if further clarified it can be better stated as any promise that does not result in permitting some act which is forbidden or forbidding and which is permitted is binding. The Mālikī use this principle to make promise binding, especially if the promise leads the other party to undertake a financial obligation. So it is basically talfiq done on *Mūrabāḥah lil-Āmir bish-Shirā'*. Two opinions of different school of thoughts are adopted which are stated entirely in different context.⁴⁵

It can be clearly observed from the text of *Imām Shāfa'ī* that he gives permission of a general credit sale. The strict condition for the permissibility of credit sale according to *Imām* is that the promise must not be binding. He used the word *Khiyār* (option) again and again. But Banking *Mūrabāḥah* is never possible without binding promise.

Illustration of *Imām* is concerned with the permissibility of buy back sale in this text. If a person buys some goods on credit then purchases the same goods at a lower price on spot payment, it is permissible. There are three inferences coming out of the above mentioned text and juristic approach applied on it. First the delayed sale mentioned here is not *Mūrabāḥah* but it is an ordinary *bay' M'ujal* in which additional profit is permissible.⁴⁶ Showing through this passage that deferred *Mūrabāḥah* is permissible is not justified. Second issue is that *Imām Shāfa'ī* is saying that this is permissible at the option of the both parties. i.e it cannot be made binding on both parties. If made binding will be void according to *Imām*. This is a deadly concept for *Mūrabāḥah lil-Āmir bish-Shirā'* because it lies on the base of promises. Third point is that according to *Imām Shāfa'ī* this is all permissible if the combination of two transactions is not interdependent to each other and pre-arranged.⁴⁷ Thus the above mentioned text is not at all relevant to *Mūrabāḥah* and delay in *Mūrabāḥah*. The delay here only pertains to ordinary *bay' M'ujal*, based on *Musāwamah*. Additional profit may be given on credit sale. This is not profit or mark-up of *Mūrabāḥah*. The concept of binding promise is rejected strictly by *Imām Shāfa'ī*.⁴⁸

Conclusions:

It is being claimed by the Islamic Bank that they are different from the conventional banks. When the client needs financing, he or she pursues Islamic Bank. The Islamic bank unlike conventional banks would assist the customer in purchasing the goods. The bank will give the authority to the customer who is in need to buy the goods as an agent of the bank. After taking the possession of the goods being purchased by the customer, the bank will sell those goods to the customer on the base of *Mūrabāḥah* sale: cost + profit basis. The sale can be deferred or spot.⁴⁹

Islamic Bank unlike other banks helps the customer to buy the commodities. Other Banks lend money to the client and take interest over it. Whereas, Islamic Banks lends money to the customer and gives the client title of an agent. Rest of the process is the same. Conventional banks earn interest while Islamic Banks earn Mark up. Can any one tell what is the difference between mark up and interest? When the underlying process is the same.

References:

1. Mufti Taqī Usmani, *Jadīd Ma'īshat aur Tijarat* (Karachi: Maktaba Idārat al-Ma'arif, n.d), 39.
- 2 Muḥammad bin Makram, *Lisān al-'Arab* (Berut: Dār Sadīr, n.d), vol. 4, 42.
- 3 Abu Hassan Ali bin Abī Bakar Bin 'Abd al-Jalīl Al-Marghīnānī, *al-Ḥidayah Sharḥ Bidāyat al-Mubtaday* (Maktabat al-Islāmīyah, n.d), vol. 3, 56.
- 4 Imran Ahsan Khan Nayazee, *Mūrabāḥah and Credit Sale* (Islamabad: Federal Law House, 2009), 9.
- 5 Abū Bakar Bīn Mas'ūd Al-Kāsānī, *Badāyeh Al-Ṣanā'ī 'ft Tartīb al-Sharā'ī'* (Berut: Dar Kitāb al-Arabi, 1982), 5/135
- 6 *Al-Qur'an* 62;10.
- 7 *Al-Qur'an* 2;275.
- 8 *Al-Qur'an* 4;29
- 9 Al-Imam Abu Bakar Muḥammad al-Sarakhsī, *Al-Mabsut* (Berut: Dar al-fikr, 2000), vol. 13, 143.
- 10 Muḥammad Tahir Mansoori, *Islamic law of contracts and business transactions* (Islamabad: Sharī'ah Academy, 2008), 214.
- 11 Marghīnānī, *al-Ḥidayah*, vol. 3, 56.
- 12 Muḥammad Taqī Usmani, *An Introduction to Islamic Finance* (Netherlands: Kluwer Law International, 2002), 38.
- 13 Accounting and Auditing Organization for Islamic Financial Institution, *Sharī'ah standards*, Sharī'ah standards no. 2/3/1
Sharī'ah Board, compilers (Bahrain, Public library: 2002)
- 14 AAI OFI, *Shariah standard*, 2/3/5

- 15 Dār al-Iftah, Jamīatal-Uloom al-Islamia, Allama *Muḥammad* Yousaf Banori Town, *Murawija Islamic Bankari* (Karachi: Maktaba Bayenaat Jamia Uloom Islamia, 2008), 241.
- 16 Wahbah al-Zuhāilī, *Financial Transactions in Islamic Jurisprudence* (Damascus: Dār al-Fikr, 2001), vol. 1, 360.
- 17 Kāsānī, *Badā'i' al-Sanā'i'* vol. 5, 220.
- 18 Ibid.
- 19 AAIOfI, *Sharī'ah standard*, 126.
- 20 Al-Marghīnānī, *al-Hidayah* (Multan: Sharikat 'Ilmīa, n.d), vol. 2, 205.
- 21 Wahbah al-Zuhāilī, *Al-fiqh al-Islamī wa Adilatuhu* ((Damascus: Dār al-Fikr, 2001), vol. 4, 87.
- 22 I'jaz Aḥmad Samdānī, *Islamic Banking and Mūrabāḥa* (Karachi: Darul-Ishaat, 2008), 15.
- 23 Abū Dāwūd Sulaymān ibn al-Ashas al- Sijistani, *Sunan*, trans. Ahmed Hassan, vol.2 (Lahore, Sh. *Muḥammad* Ashraf, 1984), 995. Hadith # 3497.
- 24 Abū al- Aala *Muḥammad* 'Abd ur-Rahman bin 'Abd ur- Rahim al- Mubarakafori, *Tohfa al- Ahwazi bi Sharh Jamih Tirmidhi*, vol. 4 (Dār al- fikr, 1979), 430. Hadith # 1250.
- 25 Abū 'Abd al-Rehmān bin shu'āb Nasā'i, *Sunan*, Kitāb al- Buyū, Bāb ma laisa īndāl bāi, vol.4 (Beirut, Dār al-kutub al ilmia, 1991) 39, Hadith 6204.
- 26 Abū 'Abd ullah Ahmed Bin *Muḥammad* Bin Hanbal, *Musnad Ahmed Bin Hanbal*, vol. 3 (Beirut: Alam al- Kutab, 1998), 402. Hadith# 6628..
- 27 Ahmad ibn al- hussain ibn Ali al- Bhaiqi, *Sunan Al- Kubra*, vol. 5 (Beirut: Dār al- Ma'ārifah, 1992), 267. .
- 28 Nūr al- Dīn, Alī Haythamī, *Majam' al- Zawā'id*. Vol.4 (Beirut: Dār al-Kitāb al- 'Arabī, 1982), 85.
- 29
- 30 Abū Dāwūd Sulaymān ibn al-Ashas al- Sijistani, *Sunan*, trans. Ahmed Hassan, vol.2 (Lahore, Sh. *Muḥammad* Ashraf, 1984), 995. Hadith # 3496.
- 31 Abū al- Aala *Muḥammad* 'Abd ur-Rahman bin 'Abd ur- Rahim al- Mubarakafori, *Tohfa al- Ahwazi bi Sharh Jamih Tirmidhi*, vol. 4 (Dār al- fikr, 1979), 430. Hadith # 1250.
- 32 Abū 'Abd al-Rahmān bin shu'ayb Nasā'i, *Sunan*, Kitāb al- Buyū, Bāb ma laisa īndāl bāi, vol.4 (Beirut, Dār al-kutub al ilmia, 1991) 39, Hadith 6202.
- 33 *Muḥammad* ibn Yazīd ibn Mājah, *Sunan*, Vol. 3 trans. Nasruddin al- Khattab (Riyadh, Dār al- Salām, 2007), 250. Hadith# 2187
- 34 Abū 'Abd ullah Ahmed Bin *Muḥammad* Bin Hanbal, *Musnad Ahmed Bin Hanbal*, vol. 3 (Beirut: 'Alam al- Kutab, 1998), 402. Hadith# 15311.
- 35 Ahmad ibn al- hussain ibn Ali al-Bayhaqī, *Sunan Al- Kubra*, vol. 5 (Beirut: Dār-al mārafah, 1992) 267.
- 36 Abū 'Abd ullah Ahmed Bin *Muḥammad* Bin Hanbal, *Musnad Ahmed Bin Hanbal*, vol. 3 (Beirut: Alam al- Kutab, 1998), 403. Hadith No. 15403.
- 37 Nūr al- Dīn, Alī Haythamī, *Majama' al- Zawā'id*. vol.4 (Beirut: Dār al-Kitāb al- 'Arabī, 1982), 98.

- 38 Ahmad ibn al-hussain ibn Ali al-Bhaiqi, *Sunan Al-Kubra*, vol. 5(Beirut: Dār-al Ma'ārifah, 1992), 312.
- 39 Limitation: This limit is granted through a general agreement. The agreement of the limit shows the prescribed 'limit' of financing the customer with certain terms and conditions.
- 40 Samdānī, *Islamic Banking and Mūrabāḥa* ,16.
- 41 Ibid
- 42 Sayīd Hāmid Ābdul-Rehmān Al-Kāff, *Al-Murābahah in theory and practice* (Karachi: Islamic Research academy, n.d), 8.
- 43 Al-Imām Abū 'Abdullah Muḥammad Idrīs Shafa'ī, *Al-Umm* (Berut: Dar al-Fikr li-Ta'abawanasharwa-Tauwzee, 1983) vol. 3, 39.
- 44 Nyazee, *Mūrabāḥah and the credit sale*, 55-58
- 45 Zuhāīlī, *Financial Transactions in Islamic Jurisprudence*, vol. 1, 361.
- 46 Nyazee, *Mūrabāḥah and the credit sale*, 60.
- 47 Ibid, 57.
- 48Ibid.
- 49 Samdani, *Islamic Banking and Mūrabāḥah*, 15.

Bibliography

- 1.Al-Quran.
2. Al-Bukhari, Abu Abdullah Mohammad bin-Ismail, Dar Tauq al-Najat 1422H.
3. Ahmed, Umar Farooq Ahmed. Theory and Practice of Modern Islamic Finance: The Case analysis from Austrailia. Florida: Universal Publisher, 2010.
4. Al-Kaff, Syed Hamed Abdul Rehman. Al- *Murābahah* in Theory and Practice. Karachi:Islamic research academy Karachi year.
5. Al-Kasani, Abu Bakar Bin Masood. *Badā'i' al-Sanā'i'* fi Tarteeb al-Sharai. Berut: Dar Kitab al-Arabi,1982.
6. Al-Marghīnānī, Abu Hassan Ali bin Abi Bakar Bin Abd-ul-Jalil. Al-Hidaya Sharh Bidayat-ul-Mubtadi. Maktaba al-Islamia year and place not mentioned.
- 7.Al-Masheeqi, Khalid bin Ali, *Al- Tawaruq aann Tareeq-al-Bay al-Ma'adin*. Majallah Jamia Umul Qura Li-Ulum Al-Sharia wa lughat-ul-Arabia wa adaabiha, vol 18, ain 30, 1425Hijri.
- 8.Al-*Sarakhsī*, Al-Imam Abu Bakar Muhammad. *Al-Al-Mabsūt*. Berut: *Dār al-Fīkr'*, 2000.
- 9.Al-Suwaidi, Ahmed. Finance of International Trade in the Gulf. London: Graham and Tortman, 1994.
- 10.Al-Qurtubi ,Ibn Rushd. Bidayat al-Mujtahid wa nihayat al-Muqtasid. Berut: *Dār al-Fīkr'*, year not mentioned.

11. Al-Tirmidhi, Abu Eesa. Sunan Al-Tirmidhi. Mauka'a Al-Islam date and city not mentioned.
12. Archer, Simon and Rifaat Ahmed Abdel Karim. Islamic Finance: the regulatory Challenge. Singapore: John Wiley & Sons, 2007.
13. Ayub, Muhammad. Understanding Islamic finance. West Sussex :John Wiley and Sons, 2007.
14. Chancellor's Guide to Legal Sharia Aspect to Islamic Finance. Various. London: Chancellors Publications, 2009.
15. El-Gamal, Mahmoud Ahmed. Islamic Finance: Law, Economics, and Practice. New York: Cambridge University Press, 2006.
16. Hassan, Kabir and Mervyn Lewis. Handbook of Islamic Banking. Cheltenham: Edward Elgar Publishing, 2007.
17. Henry, Clement M. and Rodney Wilson. The Politics of Islamic Finance. Edinburgh: Edinburgh University Press, 2004.
18. Juzi, Abu Qasim Muhammad bin Ahmed bin. Al-Qawaneen al-Fiqhia. publisher and date not mentioned.
19. Kettell, Brian. Islamic Finance in a Nutshell: A Guide for Non-Specialists. West Sussex: John Wiley and sons, 2010
20. Khan, M. Fahim. Islamic Banking and Finance in the European Union: A Challenge. Cheltenham: Edward Elgar Publishing, 2010.
21. Khan, Salman H. "Organised Tawarruq in Practice: A Shari'ah Non-Complaint and Unjustified Transaction", NewHorizon, (October-December 2010)
22. Khirashi Mohammad Abdullah, Sharh al-Khirashi. Bairut: Dar al-Fikr wa-Taba'a wa-Tauzi', n.d.
23. Makram, Muhammad bin. Lisan al-Arab. Berut: Dar Sadir, year not mentioned.
24. Mansoori, Muhammad Tahir. Islamic law of contracts and business transactions. Islamabad: *Shari'ah* Academy, 2008.
25. Nyazee, Imran Ahsan Khan. *Murābahah* and Credit Sale. Islamabad: Federal Law House, 2009.
26. Ibne- Qudama, Shams-u-din Abu Faraj Bin. Al-Sharh al-Kabeer ala Matan al-Muqney. Dar al Kitaab al-Arabi Li-Nashar wa Tawzee, year and place of publication not mentioned.
27. Rehman, Yahya Abdul. The Art of Islamic Banking and Finance. New Jersey: John Wiley & Sons, 2010.
28. Saeed, Abdullah. Islamic Banking and *Ribā*: a Study of the Prohibition of Ribā and its interpretation in contemporary application. Netherlands: Brill Publications, 1996.
29. Samdanni, Ijaz Ahmed. Islamic Banking and *Murābahah*. Karachi: Dar-ul-Ishaat, 2008.
30. Schoon, Natalie. Islamic Banking and Finance. London: Spiramus press limited, 2009.
31. Shafai, Al-Imam Abu Abdullah Muhammad Idris. Al-Umm. Berut: *Dār al-Fikr* li-Ta'aba wa nashar wa-Tauwzee, 1983.

32. Thomas, Abdulkader S., Stella Cox and Bryan Kraty. Structuring Islamic Finance Transaction. London: Euromoney Books, 2005.
33. Usmani, Muhammad Taqi. An Introduction to Islamic Finance. Idaratul M'arif, Karachi Pakistan, 1998.
34. Various. HSBC's Guide to Cash and Treasury Management in Asia Pacific 2008. Hong Kong: PPP Company Limited, 2007.
35. Vogel, Frank E. and Samuel L. Hayes. Islamic Law and Finance: religion, risk and return. Netherlands: Kluwer Law International, 1998.
36. Zuhāīlī, Wahba AL-. Financial Transaction in Islamic Jurisprudence. Damascus: *Dār al-Fīkr*, 2001.