

Revisiting the Scope of Hybrid Contracts In Islamic Finance

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Abstract

Islamic banking industry is apart from conventional banking but still it has rivalry with conventional banking as both serve the same set of customers. Islamic banks are way behind conventional competitors in terms of innovation and product development. The innovation of Islamic banking and finance sector is dependent on hybrid contracts. The customer needs have become complicated. It requires the Islamic banks to introduce new products. But, Islamic banks cannot evolve without indulging into hybrid contracts. The standing of early Islamic jurists and scholars have made hybrid contracts somewhat contradictory as they have differences of opinion. Their opinion is based on the four Hadiths prohibiting four types of hybrid contracts, but some scholars have applied it to all other hybrid contracts. It has caused a major setback to the progress and development of Islamic finance industry. The apprehension of induction of prohibited elements like riba, maysir, and gharar have virtually paralyzed this sector. Last few decades have observed a progress as contemporary fuqha have stepped forward to reinterpret the Shariah instructions to develop Islamic banking. This study has researched the scope and potential of hybrid contracts for product development. The work of famous scholars has been consulted to understand the contradiction. Prominent contemporary scholars were consulted to get their profound opinion. It is concluded that the hadiths addressing trade contracts can be reinterpreted through mutual Fiqhi consensus. New products developed through hybrid contracts should be free from clearly prohibited elements and it should not contradict with clear shariah instructions. The use of hilah (trick) to turn the haram into halal is a sin and hybrid contracts should not be used to gain riba. The focus of hybrid contract based products should be on profiting from trade rather than riba.

Key Words: Al-Murakibbah, Bay-Al-Inah, Bay-Wa-Salaf, Musharika, Ijarah, Musharika Mutanaqisa

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1. Introduction

1.1 Background

As compared to conventional banking, Islamic banking is at a pretty early stage and it requires advancement to meet the increasing needs of customers and to face the complex nature of financial market. New products can be introduced by merging two or more contracts. It is always subject to a high level of controversy as there is a tradition in Islam which forbids the merger or combination of two contracts in a single financial transaction. The development of new products assumes key significance in the Islamic Banking Sector. Experts have placed a heavy emphasis on the use of multiple contracts or Hybrid contracts. All products, transactions, and financial instruments should be an outcome of sophisticated and well-thought processes having strict adherence to Shariah to ensure its halal status (Mihajat, 2014). At any stage of product development, all the transactions, products and financial instruments should be free from i) Jahal/ignorance, ii) Gharar/undue or excessive risk, iii) Maysir/gambling, iv) Rishwah/bribe, and v) Riba/ interest. These five elements are the basic parameters to ensure that a product is Halal (Hammad, 2005). There is a dichotomy among the Islamic Jurists over the combination of two contracts in a single deal.

Islamic Fuqaha have two variations of views over the issue of combination of two contracts in a single transaction. The first group of Fuqaha subdues the attempt to join two contracts and the second group of Fuqaha permits it with certain criteria. The clear contradiction of opinion of both the groups is based on various factors, e.g. the difference of opinion towards ‘Muamlat’ whether it is initiated with haram or mubah; whether it directly collides with the prominent hadiths refraining the believers from a combination of contracts in a single deal. The hadiths clearly forbids the ‘Safqatain fi Safaqah’ which involves the merging of two contracts in a single deal, Al-Bayatayn fi Al-Bayah, which involves the holding of two sale contracts into one contract. Finally, it forbids ‘Bay Wa Salaf’ which is sale and loan in one deal. From these specific contracts related hadiths, it is evident that these classified and clearly mentioned contracts should not be practiced. This dichotomy requires further research by deeply evaluating the opinions of jurists. It provides a great opportunity to reconfigure its status according to Shariah. Thus, underlying research has extensively analyzed to discover the combination of contracts that can be used in contemporary Islamic banking (Hammad, 2005).

1.2 Problem Statement

Islamic Banking and Finance industry is lagging behind as compared to the conventional banking and finance sector. The lack of innovation and new product development is one of the most important factors behind it. There is a

strong need for developing new products to meet the challenges of the 21st century business world. New product development is always based on a combination of contracts or hybrid contracts but some early interpretations of certain Hadith are serving as a potential barrier to it. It is a major problem that is persistently hindering the innovation and progress of Shariah Compliant Banking Industry. It has served as the main research problem of this study.

1.3 Objectives of the Study

Following are the key objectives of this study

1. To illustrate the status of hybrid contracts in Shariah based on the research of various schools of thought in Islam.
2. To investigate why there is a dichotomy over the legitimacy of hybrid contracts among jurists.
3. To analyze the position of hybrid contracts based on Quran and Hadith, maqasid e Shariah perspective, and religio-rational perspectives.
4. To analyze whether hybrid contracts can be applied for the purpose of product development in Islamic banking and finance in Pakistan or not. If yes, how?
5. To evaluate whether these Hybrid Contracts are valid according to contemporary scholars.

1.4 Significance of the Study

Like the conventional banking sector, Islamic Banking and Finance is undergoing dynamic changes and is facing various competitive pressures to innovate to meet the latest challenges of business and trade. The prevailing paradigm, within which commercial activities of IBF (Islamic Banking and Finance) operate, takes the conventional banking and financial system for granted and focuses mostly on Islamizing the conventional products. Therefore, the development of new products assumes a key significance in the Islamic banking sector. For new product development, multiple contracts are inevitable. The IBF (Islamic Banking and Finance) industry has witnessed a strong double digit growth over the past two decades. By the end of 2017, its total worth across the three main sectors (banking, capital markets and Takaful) was estimated to be USD 2.05 trillion. Sukuks are typically financially engineered Islamic products. Their outstanding amount surged by a record of 25.6% to close at USD 399.9 billion at the end of 2017 (Market, 2019). If hybrid contracts were Shariah compatible, new Islamic financial products can be engineered at a quicker pace. However, if hybrid contracts were doubtful from a Shariah perspective, it would be challenging to design new Islamic banking products and the growth in IBF would suffer. Islamic investors would have fewer investment choices and financial products. Islamic banking and Finance can be benefitted by the Shariah as this paper has strived to make the boundaries and rules clearer.

1.5 Research Questions

Following are the research questions of this study:

1. What is the status of hybrid contracts in Shariah based on the research of various schools of thought in Islam?
2. Why is there a dichotomy over the legitimacy of hybrid contracts among jurists?
3. What is the status of hybrid contracts from Maqasid-e-Shariah and Religio-rational Perspective?

1.6 Scope of the Study

This study has analyzed the legitimacy of hybrid contracts or combination of contracts in the light of Shariah for new product development. Underlying research is inevitable for the innovation in the Shariah-Compliant Banking sector. This study has critically examined the three basic sources to find the possible solution for new product development. The very first source that was examined was the origin of Shariah i.e. Quran and Hadith. Secondly, the arguments derived from 'Maqasid-e-Shariah' were analyzed. Finally, the contemporary 'Ijtihad' which combines the revelation with rationality was examined. The very purpose of this study is to broaden the base for innovation and new product development for Islamic banking.

2 Literature Review

2.1 Combination of Contracts/ Hybrid Contracts

A contract legally binds the two parties and assigns duties and rights to the contracting parties. It is legally enforceable because it meets the requirements of the law. A contract typically involves the exchange of goods, services, money, or promise of any of those (Fergus, 2006). In Islamic terminology, it is called 'Aqad' which means a knot or binding. The knot of aqad holds the both parties responsible to discharge their duties mentioned at the time of contracting. The contract is a declaration of offer and acceptance. The Islamic concept of contract (Aqad) is different from that of modern English or Western law. The modern contract of law has been developed on the basis of work of judges through the ages; whereas, Islamic concept of contract is an outcome of work of Islamic Fuqaha (Arbouna, 2007). The opinions of Fuqaha have been deeply embedded in the teachings of Quran and Hadith. It strictly adheres to the true spirit of Shariah. Quran Majeed gives an account of various contracts and contractual relationship along with its application. The contracts in Shariah are not as consensual as Western law; however, consenting is central to the law of contract in Islam (Elgari, 2019). In western law, the consent of seller and buyer is mandatory for a valid contract, but in Islamic contract apart from mutual

consent, the subject matter of the contract should be approved by the Shariah. Mostly the contracts involving the trade of drugs, alcohol, and social contracts of prostitution are disapproved by Islam (Elgari, 2019).

2.2 Rules of Islamic Contracts

Islamic concept of contract also requires the free consent of both contracting parties for a contract to be effective. Apart from this, Shariah requires a few more conditions which are absent in the modern law of contract. Shariah requires the absence of *Mysir*, *Riba*, and *Gharar*. The term *Riba* means usury or interest (Haqqi, 2009) pp.123-124). Allah has clearly prohibited interest or usury in Qurʾān at several places (Al-Bakarah, 2:275-9; Ali-Imran, 3:130; Al-Nisa, 4:161; Al-Rum, 30:39). Muhammad (PBUH) has cursed the one who accepted *Riba*, the one who paid it, the one who recorded it, and the two witnesses of it, declaring that they were all alike. *Gharar* means risk or uncertainty or hazard leading to loss. Mostly it is used in a sense of risk and uncertainty. This term also refers to a sale in which the commodity does not yet exist e.g. sale of a crop which is not harvested at present or a sale of fish which is not caught yet. (Gharar, 2021). It is also used in a sense of risk and hazard. *Gharar* also occurs in the cases where ownership is obscure. In modern conventional banking, the major examples of *Gharar* are Short selling, Future, and Option contracts. Short selling is purely based on speculation and involves substantial risk.

Al-Qurʾān Says:

“Eat not your property among yourselves unjustly by falsehood and deception, except it be a trade amongst you by mutual consent (Al-Bakarah, 2:188; Al-Nisa, 4:29).

The term ‘*Maysir*’ means gambling. All forms of gambling are banned in Islam. Easy acquisition of wealth without struggle is known as *Mysir*. The uncertainty and chance of luck or loss make it prohibited. It enriches one person and ruins the other person; whereas, in trade both parties get some value or benefit. In the Holy Qurʾān, Allah (S.W.T.) has clearly prohibited gambling (Al-Bakarah, 2:219 and Al-Maidah, 5:93).

2.2 Concept of Multiple/Hybrid/Combination of Contracts

There are five main contracts in Islamic finance: *Mudarabah*, *Musharakah*, *Murabahah*, *Ijarah*, and *Salam* (Mohammed, 2019). Multiple contracts mean more than one contract and it is termed as ‘*Al-Uqud Al-Murakkabah*’ in Arabic (Al-Tahanawi, 1998). It is a combination of various contracts in a single contract and all of its obligations and rights are taken as legal consequences of the contract (Al-Imrani, 2006). There is no particular definition of multiple contracts in *Fiqha* literature (Arbouna, 2007). According to

Muslim scholar (Hammad, 2005) and (Al-Imrani, 2006), *al-Uqūd al-Murakkabah* means a single transaction between two parties consisting of two or more contracts e.g. Lease and Purchase (Wakalah or Hibah) contracts. The legal consequences of multiple/hybrid contracts are indistinguishable and undividable from that of individual contracts that have formed this hybrid contract. The multiple contract may take various forms e.g. a) (i) combining more than one contract without imposing any of them as a condition on the other, and without prior agreement (*muatah*) to do so, or (ii) combining more than one contract while imposing some of them as conditions on the other without prior agreement to do so, or (iii) combining more than one contract subject to a prior agreement (*muataah*) but without imposing any of them as a condition on the others, or (iv) agreement to conclude the deal through any of different contractual forms as will be finally decided in the future (AAOIFI, 2007/2008) .

The legal standing of these types of multiple contracts was evaluated by scholars in a seminar hosted by Kuwait Finance House (1993) and it passed a resolution. The first resolution stated that Shariah does not prohibit “Safaqa-Wahida” two contracts in one deal either it is charitable or trade related contracts. This resolution is applicable except where a combination of contract leads to clearly prohibited contracts e.g. bay wa salaf or ‘Spot payment sale combined with deferred payment sale’ (Seminar on Multiple Contracts, 1993). Another seminar organized by Kuwait Finance House declared that:

“It is permissible that a number of different contracts are combined in one contract. This is the case whether these contracts agree or differ in their rulings so long as each contract of the contracts put together fulfills its fundamental Shari’ah requirements. It also makes also no difference whether the combined contracts are binding contracts, non-binding contracts, or a hybrid of the both. However, the process of combination of contracts requires that (a) the combination was not prohibited per se by the Shari’ah and (b) the combination must not lead to prohibited transactions” (Seminar on Combination of Contracts , 1998).

2.3 Significance of Multiple Contracts for Product Development

There is a need to develop more banking and financial products to meet the needs of the customers looking for Riba-free solutions for their needs. This is addressed by the combination of contracts (Maksum, Fatwa Ekonomi Syariah di Indonesia,, 2013). The new products should be free from Shariah prohibited elements (Schoon, 2008). The conventional banks are overwhelmed with the lending and interest earning. However, Islamic banks prefer doing trade, buying and selling for profit earning e.g. *Murabahah* and credit sale (Muajjal). Islamic

banks also do not penalize the customer with time value of money (Siddiqui, 2010). In fact multiple/hybrid contracts are used as a tool of product innovation by Islamic banks (Levwis, 2008). They are also known as ‘*Uqud Muta’addidah*’ or ‘*Uqud Mujtamiah*’ (Maksum, Model-Model Kontrak Dalam Produk Ekonomi Syariah, 2014).

2.4 Types of Multiple Contract based Banking Products

Islamic banking is becoming popular but it is less innovative. However, innovation of the muamalat product continues to take place. The commonly offered multiple contracts are Musharakah-Mutanaqisa (Diminshing Musharika), Tawarruq (Reverse Murabah), Ijarah Wa Iqtina (Lease and Ownership), and Ijarah-Thuma-Al-Bai (Renting and Sale) (Nagaoka, Critical Overview Of The History Of Islamic Economics, 2012). All of these aforementioned contracts are multiple or hybrid contracts and each one contains more than one contract as it is clear by its name. Another product is Ijarah-Wa-Iqtinah which facilitates that instead of sale, the lessor gifts the leased asset to the lessee at the end of the lease period. The lease or rental agreement is independent of other contracts. The promise of gifting will be unilateral and volunteer (Usmani, 2015).

The multiple contracts have become the necessity of modern business practices (Kiong, 2014). The element of risk involved in multiple contracts has been reduced by inserting ‘*Wa’ad*’ (promise) in most of Murabaha contracts. According to the contemporary jurists, it is inevitable for the contracting parties. Mihajat (2014) has allowed it with certain conditions (Mihajat, 2014). According to Yunus (2016), multiple contracts based banking products are absolutely legitimate (yunus, 2016). However, it is still a disputed matter as advocating and opposing parties have very strong arguments. Some scholars like Mufti Taqi Usmani and Zubair Usmani allow it and some scholars like Mufti Abdul Wahab declare it totally haram. This strong difference makes the users dubious about the Shariah compliance of a banking product offered by an Islamic Bank (Ghias, 2008) (Muhammad Shaukat Malik, 2011).

2.5 Legitimacy of Multi Contracts in Shariah

Islam is a complete code of conduct and provides a comprehensive economic system to its followers. Islam always aims to create ease for its followers as well as for the mankind rather than putting it into potentially difficult situation. The Quran has given utmost significance to the fulfillment of contracts either it is with Allah or with fellow human beings. It is discussed 34 times in the Quran as there are 30 verses about the contracts. The development of new banking products through combination of contracts is not a big issue, but it is conditioned with the restriction of prohibited Verses related to contract. These verses are given below:

الَّذِينَ يُوفُونَ بِعَهْدِ اللَّهِ وَلَا يَنْفُتُونَ الْمِيثَاقَ

“Those who fulfill the covenant of Allah and do not break the contract”.

(Al-Qurʾān 13:20)

وَالَّذِينَ يَنْفُتُونَ عَهْدَ اللَّهِ مِنْ بَعْدِ مِيثَاقِهِ وَيَقْطَعُونَ مَا أَمَرَ اللَّهُ بِهِ أَنْ يُوصَلَ وَيُفْسِدُونَ فِي الْأَرْضِ ۗ أُولَٰئِكَ لَهُمُ اللَّعْنَةُ وَلَهُمْ سُوءُ الدَّارِ

“But those who break the covenant of Allah after contracting it and sever that which Allah has ordered to be joined and spread corruption on earth – for them is the curse, and they will have the worst home” (Al-Qurʾān 13:25).

The rejection of multi contract of combination of contracts by some Fuqaha (jurists) is based on five hadiths that are narrated by different Sahaba-e-Ikram (Companions of the Prophet PBUH). These Hadiths are available in slightly different versions. The very first Hadith is available in Mouta-e-Imam Malik (Malik, n.d; vol.5. p.657). The holy prophet Muhammad (PBUM) has disapproved the combination of a loan and sale contract (bay wa salaf). The second hadith is available in Masnad Ahmad Bin Hanbal (Hanbal n.d, vol.2; p.147) and it prohibits the two sales in one contract (Bay'tayn fi Bay'ah). Another hadith similar to it disapproves two contracts in one deal (Safqatayn fi safaqa). Imam Ismail At-Taymi Al-Asbahani (Al-Asbahani, 1415H) reports from Muhammad (PBUH) that a sale with conditions (Bay wa Sharat) is haram. Thus imposing of any inappropriate condition will make it void. The modern research scholars with inclination towards innovation claims that these four hadiths are wrongly interpreted and it has hindered the path of new product development in Islamic banking and finance field (Arbouna, 2007) (Hammad, 2005) (Usmani M. T., Interest Free Banking: A Review of Related Jurisprudential Issues and Objections', 2002). The Hadith clearly prohibits it e.g. 'Bai wa Salaf', *Bayatayn-fi-bayah'* and *'Isytirat-e-aqad-fi-aqad'* are clearly prohibited (Hanbal, 1414H).

Imam al-Shafi prohibits hybrid contracts because of uncertainty of benefits and price (Gharar). In case of highly uncertain transactions, the chances of gain and loss are very high and it resembles to the gambling (Maksum, 2017). Second, multi contracts which turn into *hilah ribawi* can occur in sale and purchase agreement and *riba fadhil*. According to Imam Shafi, the hybrid contracts are prohibited because its legal consequences contradict with original contracts. In the case of '*Bai wa Salaf*', Bai (sale) is a business activity whereas '*Salaf*' (Borrowing) is a social activity carried out for a social cause. Lending cannot become a source of earning money. The Fiqah-e-Malikiya forbids the multi contract composed of the individual contracts having different legal provisions e.g. Sale contract with Marriage or Sale with Qiradh or Musaqah or hiba and bai (Maksum, 2017).

Jurists of Zahiri School (Ibn-e-Hazm) took a very strict stance as they consider hybrid contracts Haram except those that are clearly allowed by Shariah. Their stance is based on Hadith narrated by Syeeda Aisha who narrates that Prophet (PBUH) said, "Whoever stipulates such conditions as are not in Allah's Laws then those conditions are invalid even if he stipulated a hundred such conditions (Al-Bukhari, 1422H)". According to this school, Islam has been completed and it is perfect (5:3) in all aspects and no amendment in it can be made (Q3: 3-4; 2:2). Any addition to religion will be considered as innovation (*Bid'at*) and beyond shariah (Q2: 229). Hence it will be *haram* and *makroh* (Al-Asbahani, 1415H).

The other school is convinced that basic law in muamalat is '*Mub'ah*' and it is based on the hadith narrated by Abu Darda, who reported that "what stays silent (not declared law) on it, then it is forgiven". There is a rule of thumb that Allah does not forget to ban something (Q19: 64), hence it will not be an innovation/addition (*Bid'ah*) to Islam (Asni, 2017). Thus for the convenience of public hybrid contracts can be formed, but it should not contradict with the Shariah. This stance is in accordance with the Spirit of relief (*Yusr*) which is the salient feature of Islam (Al-Imrani, 2006). Thus if the conditions of multi contract do not contradict with Qur'an-o-Sunnah and it does not tend to declare haram/makroh as Halal, then it is permissible (Al-Jawziyyah, 1973).

Hanabilah, Shafiiyah, and Malikiyyah hold a conditional opinion towards hybrid contract as their argument is based on following quranic verse:

"O those who believe, fulfill the contracts"

According to them, this verse orders to fulfill all the halal and *mub'ah* contracts without differentiating. Qur'an also says:

"Do not consume one another's wealth unjustly but only [in lawful] business by mutual consent".

Thus, mutual contracts that are halal and *mub'ah* are required to be fulfilled. The above-mentioned verses of Qur'an are pointing towards the combination of contracts (Al-Imrani, 2006). In multiple contracts if there is no *haram* or makroh element, then it will be *mub'ah* and can be performed (Al-Jawziyyah, 1973).

3 Research Methodology

Research methodology and methods are an integral part of any research without which a research cannot be completed. Descriptive research was most suitable for this purpose as it focuses more on characteristics of data rather than finding a pattern or strength of relationship between the variables. In this research, the focus was to evaluate the scope of hybrid contracts by analyzing the origin of Shariyah i.e. *Nusus*. The Qur'an and Hadees are the origin of the

whole Shariah; therefore, it was analyzed through content analysis. It was followed by the analysis of Maqasid-Al-Shariah (Objectives of Shariah) and *Ijtihad* (Religio-Rational Rethinking). Finally, the research work of the contemporary scholars having authority over Shariah-Compliant banking was analyzed using the qualitative content analysis technique. Content Analysis technique was selected for this study. Krippendorff (1980) defined content analysis as a research technique for making replicable and valid inferences from data to their context. As for Weber (1985) it is a research methodology that utilizes a set of procedures to make valid inferences from text. The use of qualitative content analysis for Qurʾān or Hadees was not a new idea. Previously, the Old Testament (Toraat) was analyzed by Yule, (1994) using ‘Word-Frequency Analysis’. The underlying research is more focused on evaluation of existing research and is not intended to develop theory; therefore, the sub type ‘Objective Hermeneutic’ served very well to this study as it allowed drawing inference from the text with reasonable freedom of interpretation. To ensure the validity and reliability of research outcomes, the underlying research followed a strict criterion. It ensured that content analysis must be a) Objective, b) Systematic and c) Generalizable.

As far as the research methodology is concerned, this study has used five ‘Reductive Operators’ to draw conclusion. These operators are 1) Leaving Out, 2) Generalization, 3) Construction, 4) Integration and 5) Selection. For the purpose of content analysis, the primary data was collected from the top ranking fuqha of Pakistan. The important aspect of all these fuqha is that they all belong to the Shariah compliant banking industry. An ordinary faqih not having financial background did not qualify for the criteria of our primary data. So this study has focused only on fuqha having strong banking and finance background. In depth open-ended interviews were conducted from them to develop a profound body of knowledge about the issue. One of the respondents was Dr. Muhammad Daud Bakar. Originally, he was an Associate Professor in Islamic Law and was the Deputy Rector at the International Islamic University. Our second respondent was Mufti Hassan Kaleem. He specialized in Islamic jurisprudence, issuance of Shariah edicts, and Takaful. He is affiliated with Jamia Darul Uloom Karachi. Our third respondent was Dr. Muhammad Imran Ashraf (Ph. D. in Islamic Finance). He specialized in Islamic Jurisprudence and serves as Trainer Islamic Finance (Meezan Bank), Sharia Supervisory Board Member / Sharia Advisor to the State Bank of Pakistan. Our fourth respondent was Mufti Najeeb Khan. He specialized in Shariah compliance related to execution and Murabaha Issues. He is currently serving as Shariah Advisor for Habib Metropolitan Bank. Our fifth respondent was Mufti Muhammad Zubair

(PhD Islamic Finance). He specialized in Islamic Fiqha and Fatwa and is currently serving as Shariah Advisor MCB Bank. He is also a member Transformation Commission Sub-committee, State Bank of Pakistan; Islamization of Economic Committee Chamber of Commerce, Karachi; Implementation of Supreme Court Judgment on Riba Committee.

4 Results and Analysis

Different interpretations of Hadith by the jurists of different schools of thoughts have created a dichotomy over the issue of combination of contracts. It can be resolved by mutual collaboration of contemporary jurists through extensive research. The combination of contracts is not absolutely haram especially when it maintains the protocols of original contracts forming it. The conjoining of two contradicting contracts makes it illegal from the Shariah point of view. The use of dubious practices like *Bay-Al-Inah* and *Tawarruq Munazzim* by Islamic Banks in the near past has seriously undermined the perception and reputation of the Shariah Compliant Banking industry (Asni, 2017). A product of Islamic bank having cash flow similar to that of a conventional riba based product makes it dubious. The end users take it as another riba based product with an Islamic name. Such products are merely a trick to deceive Allah, Shariah, and the Muslims. The customers are doubtful about the authenticity of the financial products of Islamic banking as they deemed it as a gimmick (trick) to turn the *haram* into *halal* (Elgari, 2019). It is important to understand that few products (Murabah, Ijarah, Sales and Istisnah) of Islamic banks have cash flow similar to that of conventional products; however, they are not Haram (Al-Bassam, 1997). The basic concept behind murabaha is cost-plus financing, where a seller sells a product to the buyer by charging some profit on it and provides the ease of payment to the buyer (Awang, 2005). Similarly, Ijarah involves a rental income and the bank gifts (hiba) the rental property at the end of the tenure. Sale is a centuries old contract experienced by mankind. It is considered halal until and unless it involves the elements prohibited by Shariah (Usmani A. , 2003). Istisnah is a long term contract where a contractor develops a real estate site for customers on the order of a bank. The contractor receives the reward of his services and material from the bank; whereas, the customers pay it back in the long term. The bank does not directly provide cash to the customers, instead it hands over a developed site to the customer (What is Istisnah, 2021).

The facility of *ijma* is always present for reinterpretation. The element of ease and convenience (*yusar*) should be sought out for the economic and financial transactions of the Muslim umah. Islamic Jurists are required to pay extensive attention to develop mechanisms for further product development as it will

create an ease for the Muslims who are in dire need of *riba* free products. In fact, it is a great virtue if considered otherwise (Kasri, 2009). The rigidity occurs due to the shallowness of knowledge and lack of Shariah literature that discusses the hybrid concept of *aqd* (Hammad, 2005).

It is hard to say that Islamic banks are working 100% in accordance with Shariah parameters. They are profit earning institutes and are in evolutionary phase. If we stop it in its juvenile stage, then it will never develop fully to provide 100% Shariah compliant banking products. Gradual development of new products and screening of already existed products is inevitable to avoid the *haram* elements from penetrating into the banking products of Islamic banks. Its clear example is Bay-Al-Ina and Tawarruq Munazzim which remained in practice for some time and it was weeded out in near past. It was found that it contained some *hilah* to earn *riba* though it was unstated (Asni, 2017). The exclusive purpose of Shariah is to stop the exploitation of fellow human beings in all aspects. *Riba* is a major instrument of exploitation where one earns money without doing trade or business. Another purpose (*maqsid*) of Shariah is to end the easy money without some tangible or observable economic activity like gambling in which one person earns the money at the cost of other. To end up the earning from speculation and hoarding is also inclusive in Maqasid-e-Shariah. If one or two products do not conform to the protocols of Shariah, one should not label all the banking products *haram*. If turning a *haram* thing into *halal* is a sin then doing quite opposite to it is also a sinful activity. There is an ample space for improving the existing Islamic banking products. As the knowledge and understanding of Islamic banking operations has been increasing, Islamic banking products are becoming more refined and authentic (Kamali, 1999).

5 Conclusion and Recommendations

5.1 Conclusion

It has been concluded that the phenomena of hybrid contracts is immensely significant, but unfortunately it is underrated issue especially in Pakistan. No remarkable efforts are made by contemporary *fuqha* to reconsider the interpretation of Hadiths restricting the formation of hybrid contracts. The present day jurists and scholars have not strived enough to reach on a mutually agreed opinion to streamline the economic and financial activities of the Muslim Ummah. Contradiction over hybrid contracts has seriously hindered innovation of Islamic banking and finance sector. Conventional finance experts are in abundance, but they lack knowledge of Shariah parameters for trade and commercial contracts. On the other hand, there are a lot of scholar who are equipped with the knowledge of Shariah but lack finance background. In fact,

they are indifferent to the needs and challenges of Islamic finance and banking industry all over the world. Personnel with a balanced blend of Shariah knowledge and practical finance background are rare in this industry. It is also concluded that the concept of *Yusar* (ease) has been deliberately concealed by the scholars from the ummah and in many cases, they become overly strict. The same happens with the new product development through combination of contracts. Based on this exhaustive research, it is concluded that hybrid contracts are inevitable for product development in modern world. Shariah has no problem with combination of contracts until it is free from clearly prohibited elements and it does not contradict with the clearly prohibited hybrid contracts.

5.2 Recommendations

Recommendations for prospective researchers and industry stakeholders are as follows:

- 1) The hadiths prohibiting the combination of contracts should be reinterpreted with mutual consensus of the scholars. Other hadiths related to the combination of contract should also be considered for reinterpretation.
- 2) Islamic banking industry should arrange an inter-sectarian dialogue to develop a mutual consensus about the commercial hybrid contracts which are not directly addressed by Quran-o-Hadith.
- 3) Islamic banking industry should select and equip its finance executives with the Islamic teachings to enable them to understand finance in the light of Quran-o-Hadith. It will reduce the dependence of Islamic financial/banking institutes on Islamic scholars with no background in finance and commercial banking.
- 4) Islamic scholars and jurists should develop a mechanism to avoid the resemblance of cash flow of Islamic banking products with that of the conventional banking products; otherwise, it will cause backlash from Muslim end-users.
- 5) Islamic banks should take steps to create awareness about its products among its existing and prospective users to eliminate any sort of doubt from their mind. It will help to end up the perception that Islamic banking products are a 'Vodka with Islamic label'.
- 6) Islamic banking industry is undergoing a developing phase; therefore, 'Trial and Error' method should not be discouraged. However, it should be coupled with immediate actions where an error (prohibited element) is diagnosed.

- 7) The practice of using tricks (*Hilah*) to gain the interest (Riba) from the customers should be dealt with high handedness. Such practices should be exposed by Shariah advisory boards at all levels.
- 8) The role of Islamic Scholars as merely Shariah advisory board members is insufficient for Shariah compliant banking. Appropriate authority should be delegated to them by the State Bank of Pakistan (or other regulatory authorities of the country) and the employing institute as it will help to eliminate tricky (*hilah-based*) products from profile at the earliest possible time.
- 9) The aim of new product development through a combination of contracts should be trading rather than earning money from lending. The prime outcome of hybrid contracts should be trading instead of loaning which is a prime business in the conventional banking sector.
- 10) While forming hybrid contracts, the features or virtues of original contracts should be preserved and be distinguishable to avoid any ambiguity.

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