

**A PROFILE OF PARTNERSHIP
IN ISLAMIC JURISPRUDENCE
WITH
A PARTICULAR REFERENCE TO
HANAFITE SCHOOL OF THOUGHTS**

By

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I. INTRODUCTION:

1. In Islam Trade and Commerce occupy a very prominent place. The Quran and the Prophetic traditions encourage Muslims to engage in trade, praising the honest Muslim businessmen.

2. Trade is an important sector in the economic life of human society. Since the dawn of human existence on earth, trade has existed in some form or other with varying importance.

3. Since the Islamic banking system has become a reality in the world of the twentieth century which develops the partnership business in conformity with Islamic jurisprudence it is essential to highlight the partnership contract of business from Islamic Law perspective.

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II. LEGITIMACY:

I would like to substantiate the legitimacy of the partnership from Fiqh (i.e. Islamic Jurisprudence) point of view and also try to trace its basis in the Quran and Sunnah.

A) Quran:

Firstly the following verses are quoted from the Holy Quran about legitimacy of commercial actions:

1. «The share in a third...» (Nisaa, 12) *
2. «O ye who believe Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will...» (Al-Nissa, 29) *
3. «This man is my brother: He has nine and ninety ewes, and I have (but) one: Yet he says, 'commit her to my care, and is (Moreover) harsh to me in speech. (David) said: he has undoubtedly wronged thee in demanding thy (single) ewe to be added to his (flock of) ewes: truly many are the partners (in business) who wrong each other: Not so do those who believe and work deeds of righteousness, and how few are they?...'» (Sad, 23, 24) *

B) The Prophetic sayings:

Secondly, we can find some basic incentives as well as praises to partnership in prophetic sayings. Prophet Mohammed said:

1. «Allah said, I'm third partner (shareholder) of two partners, unless one of both doesn't disloyal his partner. If he disloyals the other so I'll emerge from them».¹
2. Prophet Mohammed (Peace be upon him) observed the commercial ventures of his companions and approved

*) Quranic translation by A. Yusuf Ali is followed here in all cases.

1) Narrated by Abu Dauud, Buyu, 26.

them. This is called in hadith jargon as the Al-Sunnah Al-Taqrereyah (Approving sunnah).

3. Praising the honest businessmen the prophet said an honest businessman would be with martyrs on the day of judgement².

C) Consensus of scholars:

Muslim scholars have a consensus on the legitimacy of partnership contract. No dissenting voice is known against its legitimacy.

D) Necessity (Al Darurah):

Muslim scholars hold the view that partnership is a social necessity for carrying out social interactions. It, therefore, reflects a social dimension of an Islamic life. This element will be elaborated under the title «the wisdom and philosophies of partnership».

III. WISDOM AND PHILOSOPHIES OF PARTNERSHIP (AL-HIKMAH):

The following is the outline of the underlying philosophies or rationales of partnership business contract:

1. It serves as a powerful instrument whereby human needs are easily satisfied.

2. It facilitates more profit and helps achieve positive results from trade operations.

3. It generates solidarity and mutual concern among the people. The holy Quran insists on their cooperation in good deeds:

«O ye who believe!... help ye one another in righteousness and piety...» (Maida, 2).

2) Narrated by Ibn Mage, Tigarah, 1.

4. The Prophet (peace be upon him) said:
«The hand of Allah is with the community».³

IV. DEFINITION:

Etymologically it refers to amalgamation of one element into another in such a manner as separation from each other is very difficult. As for the terminological meaning, there is no identical definition given to it by the Islamic scholars as there exist different kinds of partnership depending on various schools of thought. In spite of that a similarity in view points is observed among the Hanafite, Hanbalite and Malikite schools of thought. In this regard Shafiite school differs from the other three schools.

V. KINDS OF PARTNERSHIP:

There are three types of partnership according to the nature of its formation in the Hanafite school of thought:

1. Private partnership (**Shirkat al-Milk**),
2. Open partnership (**Shirkat al-Ibaha**), and
3. Contract partnership (**Shirkat al-aqd**).

According to Malikite school of thought partnership is divided into following types:

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|----------------------------|-------------------------------|
| 1. Inheritance partnership | (Shirkat al-Irth). |
| 2. Booty | » (» al-ganimah). |
| 3. Shopping | » (» al-mubayaa'). |
| 4. Negotiated | » (» al-mufawadha). |
| 5. Prorated | » (» al-I'nan). |
| 6. Mandatory | » (» al-Jabar). |
| 7. Work | » (» al-A'mal). |
| 8. Debt | » (» al-Dhimah). |
| 9. Al-Mudharabah | » (» al-Mudharabah). |

3) Narrated by Thirmidhi, Fetan, 7 and Al-Nasal, Tahrem, 6.

The Hanbalite school of thought divides the partnership firstly into two parts:

1. Partnership in commodities (**Shirkat fi'l-Mal**)
2. » in contract (**Shirkat fi'l Ukud**).

And each group has been subdivided into other types which are similar to those subscribed to by Hanafite school of thought.

To Shafiite thought there is one partnership only and it is prorated partnership (**Shirkat al-I'nan**). It means, it recognizes contract partnership, and distribution of profit among partners and their sharing the capital should be unequal. Its meaning will be explained later when partnership will be discussed from the view points of Hanafite school.

It is worth mentioning that despite the differences among schools of thought in classification of partnership concept, all of them are displaying same items under different title. For instance: Inheritance is not a type of partnership according to Shafiites, but it is a kind of partnership in Hanafite thought (**Shirkat al-milk**). It is partnership with the name of **Shirkat al-Irth** in the Malikite school of thought.

Secondly, since I subscribe to Hanafite school, I would, therefore, focus on the subject according to Hanafite school of thought.

VI. THE PARTNERSHIP KINDS IN HANAFITE SCHOOLS OF THOUGHT:

A) Type of formation:

In the view of Hanafite school, there are three kinds of partnership as per formation:

1. Private partnership (**Shirkat al-milk**):

Private partnership consists of property owned by two or more persons without having a contract. This type of partnership falls into two further types according to its formation:

- a) **Mandatory (Al-Shirkat Al-Jabriyya)**: When two more persons share the ownership of a property without having any freedom of choice. For instance, when they inherit property or when their possessions are too arbitrarily implied to be distinguished at all as in the case of mixing wheat with wheat, or they can be distinguished but with difficulty, such as mixing barley with wheat or mixing rice with barley.
- b) **Intentionally (voluntarily or jointly) (Al-Shirkat Al-Ekhteyariyya)**: In that type the parties share the ownership of a property voluntarily. For instance, when they mix their possessions voluntarily, or buy a property jointly, or accept inheritance under a will.

In the private partnership each partner is alien to the other partner's share. Neither of them can act on behalf of the other partners, nor can either one of them do anything with the other partner's share unless he gets permission from him.

2. Open partnership (**Shirkat al-Ibaha**):

The second type is called as «the open partnership». It is derived from a Prophetic saying: Muslims are partners in three things: water, pasture (plants) and fire.

I feel it necessary to point out that Muslims are partners in water, pasture and fire only when they are not owned by anybody. For example, water of sea, river and lakes. As for fire, partnership is confined to the light, getting a flame

and getting its heat, whereas burning coal and burning dung are excluded.

3. The contract partnership (**Shirkat al-aqd**):

The genuine kind of partnership in «terminus technicus» is the contract partnership. It refers to a partnership of more than one person through a deal among them, while the first two kinds of partnership need not have a deal.

What is the capital of the contract partnership, and how is its profit distribution? The answers are explained as below:

B) Type of capital:

The contract partnership is divided into three kinds according to type of the capital, i.e. the capital can be money (**nagd**), or work (**amal**), or influence (**wujuh**).

Money based partnership (**Shirkat al-amwal**) is the agreement of two or more persons by investing a certain amount of money jointly. This is the most practiced kind among all the contract partnerships. Work based partnership (**Shirkat amal** or **abdan**) means an agreement of two or more workers to form a partnership by putting their energy, i.e. agreeing together to accept work from outside. It indicates, that it is not based on money, rather its capital is the work of partners. As far as influence based partnership (**Shirkat al wujuh**) is concerned, it is an agreement of two or more persons to form a partnership by putting their influence as its capital, i.e. they don't put money, but give their social status (trustworthiness) as the capital.

C) Type of profit distribution:

How should the profit be distributed among the part-

ners? Answering this question involves other types of contract partnership.

With regard to profit distribution in the contract partnership, we will find two kinds of modes. The first kind is called «The negotiated partnership» (**Shirkat al-Mufawada**). In this kind, two or more persons so contract that they participate in a business on condition that they are equal in capital, work and share of profit. The second type is called «The prorated partnership» (**Shirkat al-I'nan**). The partners of it get together into a partnership regardless of the inequality of partners in their share of capital and profits.

Here I feel it worthwhile to point out that each type of the contract partnership is able to combine each other. For instance: Money based partnership can be negotiated partnership, and also prorated partnership. Also work based partnership can combine negotiated and prorated categories. This holds good for influence based partnership too. Secondly, each one has special characteristics, and all these are explained in a greater detail in jurisprudence literature.

D) **Other special types of partnerships in Islamic jurisprudence:**

There are also other special types of partnership explained in separate sections in Islamic jurisprudence literature. These are:

1) **Mudharaba**: It is a form of partnership where capital is provided by one party and work is provided by the other. The first is called as **Rabb' al-Mal**, and the second is called as **Al-Mudareb** or **Al-Aamel**. In other words: It is a kind of commercial cooperation in which one of the partners supplies the capital while the other does the actual work-sleeping partner. The Mudharaba is the most practiced kind of this category in Islamic history. On the other hand it is a suitable

instrument which Islamic banks have been using now-a-days. Some of its characteristics are described as below:

- i) The partners can make an agreement to distribute profit between them in a proportion as agreed upon by them. If the whole profit is devoted to **Al-Mudareb (Al-Amel)**, it will mean loan contract.
- ii) But in case of loss, the **Rabb Al-Mal** only will be responsible for loss, even if they had agreed beforehand to distribute the loss between them.
- iii) The capital given by **Rabb Al-Mal** is a deposit in the hands of **Al-Mudareb**. So the deposit rules (**Al-Amanah**) are applied on it and not the guarantee rules (**Al-Dhaman**).

2) **Muzara'a**: Also in Muzara'a there are two parts of the contract, land is provided by one party, and work in it provided by the other, i.e. the land is cultivated. The crops (production) are divided between the two partners. It can be translated into English as: «A letting or taking land for a share of the harvest; share cropping.»

3) **Musaqah**: It is also a kind of commercial cooperation and partnership in which trees and vines are provided by one party and water and work are provided by the other for a share of the product i.e. the fruits produced are divided between the two partners.

Each type of partnership has its requirements, specifications and restrictions. Schools of thought (**Mezaheb**) are also different as to the definition of partnership and its types.

VII. CONCLUSION AND SOME REMARKS:

1. In Islam it is trade and commerce which is more important. Quran and Hadith attached a great importance to it.

2. The Islamic jurisprudence elaborates rules for commercial operation.

3. The concept of partnership is wide and comprehensive. For instance, **Shirkat al-Milk** and **Shirkat al-ebaha** are subdivided in Islamic law to the scope of the partnership, while in secular systems and law they are a part of real rights or administrative law.

4. The kinds of partnership are so many that they cover all social needs.

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