

The Concept of Murabaha in Islamic Law and its Modern Applications

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Abstract

Murabaha is an important contract in Islamic finance, in which goods are sold with a clear price and profit margin. This contract ensures that the buyer knows the price of the item and the profit of seller, making it akin to a trust-based sale, it is also known as Bai' al-Amanah.

In the contemporary era, Murabaha has been established on modern principles. Islamic banks are utilizing Murabaha extensively to fulfill the needs of their customers. When a customer requires an item, he approaches an Islamic bank. Instead of providing loans with interest, Islamic banks facilitate the purchase of the desired item based on the Murabaha contract. This article aims to explore the concept of Murabaha in Islamic Law and its contemporary applications.

In contemporary Murabaha contract, several stages are involved. Initially, there is an understanding between the Islamic bank and the customer regarding the basic information of the item to be purchased. Subsequently, the purchase of the item takes place, and in the final stage, the item is handed over to the customer. Islamic scholars have raised some concerns about prevalent Murabaha contracts, but they have also provided answers to these concerns.

This article provides a comprehensive examination of these concerns from a legal perspective. Qualitative research has been employed in this article. Researcher concluded that Murabaha is a beneficial contract that can be used to derive significant benefits. However, it is necessary to strictly adhere to the rules and regulation of Murabaha as well. Islamic banks to some extent also consider these restrictions, but there is a need to further improve them.

Keywords: Murabaha, Islamic Banks, Cost plus profit sale

Introduction

Every businessperson consistently requires funds for their enterprise. They often seek assistance from financial institutions to secure capital. These institutions and banks provide the necessary funds for business undertakings while imposing interest charges at fixed rates. However, a Muslim trader avoids from interest-based financing methods, aiming to maintain their business activities within the boundaries of shariah.

But question is that how financial entity can offer funds in a permissible manner? The solution resides in the concept of 'Murabha.' This framework enables Islamic banks and financial institutions to cater to business needs while aligning with Islamic principles. What is Murabha? How can financial support be channeled through it? How is Murabha practically implemented within Islamic banks? We will investigate into these matters in the subsequent discussion.

Murabha Definition:

Murabha is an Islamic transactional approach involving the purchase and sale of goods. In this method, the seller transparently communicates the item's cost to the buyer and also mentions the profit generated from the transaction. The buyer acknowledges the profit gained from the transaction as well. *Maliki scholar Ibn e Rush* explains:

وأن المراجعة هي أن يذكر البائع للمشتري الثمن الذي اشترى به السلعة ويشترط عليه ربحاً مالدینار أو للدراهم⁽¹⁾

"And murabha is that the seller informs the buyer about the price at which he purchased the item, and then keeps a profit on it in term of dinar or dirham."

In the prevalent practices of Murabha within Islamic banks, a commodity is sold at its original cost alongside specified profits, ensuring clarity. However, in this process, the customer request to the bank to purchase specific asset. *Ameer Mashoor* writes:

أما المراجعة للأمر بالشراء: فهي طلب الفرد أو المشتري من شخص آخر أو المصرف أن يشتري سلعة معينة بمواصفات محددة، وذلك على أساس وعد منه بشراء تلك السلعة اللازمة له مراجعة، وذلك بالنسبة أو الربح المتفق عليه ويدفع الثمن على دفعات أو أقساط تبعاً لإمكانياته وقدرته المالية⁽²⁾

"As for Murabah for the purpose of purchase, it involves an individual or buyer requesting another person or a financial institution to purchase a specific commodity with defined specifications. This is based on a promise from the individual or institution to purchase that necessary commodity for the purpose of Murabah, with a predetermined ratio or profit agreed upon. The price is paid in installments or portions according to their capabilities and financial capacity."

Difference between Regular Sale and Murabha:

In a regular sale transaction, even though the seller sells with the intention of making a profit, the key distinction between it and Murabha lies in the explicit mention of that profit. In Murabha, the seller specifies both the original cost of the item and their profit. The need for Murabha emerged from the buyer's concern that the seller might receive more than permissible profit. Therefore, when the seller states the accurate value of the item and his profit, the buyer becomes reassured. This is why scholars have categorized 'Bai' al-Murabahah' as a form of "Bai' al-Amanah" (sale of trust), as it emphasizes a higher degree of trustworthiness compared to a regular sale.

Differences between Modern and Classical Murabha:

There are notable differences between contemporary Murabha (profit-sharing sale) and classical Murabha, with three fundamental differences being:

Presence of Goods: In classical Murabha, the seller typically possesses the goods beforehand, which they sell based on known profits. In contrast, prevalent Murabha practices in Islamic banks do not involve the bank possessing goods; rather, the bank purchases the required goods upon the customer's request and then sells them.

Payment Method: Classical Murabha usually involves cash payments, while in modern Murabha practiced by Islamic banks, deferred payments are more common. However, cash payments are not prohibited in this context.

Transaction Nature: Classical Murabha is essentially a sale transaction, involving buying and selling. On the other hand, in Islamic banking practices, Murabha serves as a mode of financing.³

A Critical Analysis of the Points Raised Above:

The discussion regarding the legality and legitimacy of financial transactions in Islamic banking is important, and it is essential to analyze it objectively. Whether the financial transactions conducted in earlier times by classical jurists differ from the Islamic banks today, should not be a determining factor in their permissibility. The key issue is whether these transactions adhere to the established Islamic principles.

In the past, buyers typically had the goods in their possession before selling them, while in Islamic banking, goods are not physically present but are acquired and delivered to the customer upon request. Therefore, the focus should be on whether these transactions conform to the principles of Islamic finance rather than their historical precedents.

If the transactions adhere to the established principles of Islamic finance, including ownership, possession of asset, prohibition of interest (riba) and adherence to the principles of fairness and transparency, then they are

considered valid. Conversely, if they do not meet these criteria, they would be considered non-compliant with Islamic finance principles.

When we look at the principles of Shariah (Islamic law), it becomes apparent that when something is sold, it should be owned by the seller. Islamic banks also adhere to this principle, where a customer request is to take an asset from bank, then bank first purchases it and transfers to the customer. Therefore, this principle is ensured.

Similarly, whether payments are made in cash or through deferred payments does not intrinsically make a transaction impermissible. Both cash and deferred payments can be valid methods of completing a transaction, and they are not prohibited by the Quran or Sunnah. In fact, buying and selling with deferred payments have their roots in the practices of the Prophet Muhammad (peace be upon him).

Furthermore, adapting traditional practices to modern financial techniques does not inherently make them impermissible. Islamic finance can evolve to meet the needs of contemporary society while adhering to its core principles. The adaptability of Islamic principles is a strength, as it allows these principles to be applied effectively in different eras.

In conclusion, the beauty of Islam lies in its timeless applicability. Islamic principles are not limited to a specific time period but can be adapted to suit the needs of each era. Therefore, it is essential to focus on whether contemporary financial transactions in Islamic banking adhere to the principles of Islamic finance rather than comparing them to historical practices. If they meet the criteria of Islamic finance, they are permissible, and if not, they should be reconsidered.

Murabaha legality and Scholars View

The classical Murabaha that prevailed during the times of jurists involves two parties: the seller and the buyer. This practice is permissible by their mutual agreement. Al-Kasani said,

الناس توارثوا هذه البيوعات المربحة وغيرها في سائر الأعصار من غير نكير (4)

"People have inherited these Murabaha sales and others throughout various eras without objection. "

Imam Shafi'i states: If one person says to another, "Buy this item and I will give you this much profit," and the person buys the item, this is permissible. However, if the person says, "After your purchase, I will buy it from you at a profit," it's up to him whether he buys it or not.

If one person specifies the item to be purchased, gives all the details, or says, "I will buy whatever item you want to buy; I will purchase it from you at profit." This kind of sale is permissible, but the person giving the offer has the choice to buy or not. If he says, "Buy the item, and I will buy it from you in cash or on credit," the ruling is the same as before. When a subsequent

purchase is made after the initial one, a new contract is required. However, if a previous contract is used as a basis for the sale, it becomes impermissible. Therefore, until ownership is not transferred, it cannot be sold again.⁵

Imam Muhammad bin Hasan Shaybani was asked about a situation where one person told another, "Buy a house for one thousand dirhams, and I will buy the same house from you for eleven hundred dirhams." The person intended to buy the house, but then he thought that if he buys the house, the first person might not purchase it from him. In this scenario, what can he do to avoid any loss? Imam Muhammad advised that he should get option of two or three days. If the person who initially proposed the deal agrees to buy the house, then it's fine. Otherwise, he should return the house to him. This way, he won't incur any loss.

The Operational Process of Standard Murabha in Islamic Banks:

The prevailing approach to Murabha in Islamic banks involves a two-stage procedure, outlined as follows:

First Stage: During the initial phase, the customer engages the bank, specifying his desired merchandise. The customer furnishes details about the preferred items and occasionally provides information regarding the acquisition source. The bank undertakes the procurement of the requested goods on the customer's behalf, while the customer commits to procuring the items from the bank. In this preliminary phase, the fundamental aspects under negotiation between the bank and the customer encompass the following:

Cost of goods and Bank's Profit: The mutually agreed-upon cost of the goods and the profit share to be accrued by the bank.

Goods Payment Mechanism: How shall the payment for the goods be structured? Will the customer opt for an immediate cash settlement or opt for deferred payments? Typically, deferred payments are the chosen route.

Advance Payment: Occasionally, the bank may seek an advance payment in respect of security. This practice is advised to secure himself against possible losses if the customer decides not to proceed with the transaction.⁶

Second Stage: The sale contract comes into effect when the bank completes the purchase of the goods. There are two scenarios for the purchase of goods:⁷

The bank independently procures the goods.

The bank appoints the customer as its agent for the purchase of goods.

According to the Meezan bank's procedures, it is permissible for the bank to appoint the customer as its agent for purchasing the goods.⁸

The process of purchasing through the agent unfolds as follows:

An Agency Agreement is established between the bank and the customer, wherein the customer is appointed as the bank's agent to purchase the goods.

When a customer purchases asset, then after that, a transaction of sale is established between the customer and the bank. This is done in a way that the customer makes an offer to purchase the asset, and the bank accepts his 'offer.' As a result, the sale is concluded between the bank and the customer."

Third Stage: The third stage of Murabaha revolves around the payment of the value of the acquired goods, which is mostly structured as a deferred payment arrangement. In this phase, the payment is generally based on installment plans. The customer gradually pays the value of the goods through gradual installments.

The legal ruling on the sale of Murabaha for the order to purchase involves the following elements:

- The first stage exhibits the initial phase of Murabaha or understanding of murabaha contract between bank and customer but it doesn't entail a finalized contract of sale.
- The first stage, as the understanding is solely between the customer and the bank, there is no contractual agreement for buying and selling, so there is no objection from a Shariah perspective. Such understanding is found in various types of buying and selling transactions.
- A binding promise from the buyer to the bank to purchase the commodity.
- A sales contract between the bank and the seller, who is the owner of the commodity.
- Appointment of customer as an agent to purchase the asset.

Binding promise from the buyer to the bank to purchase the commodity

The debate over the legal implications of the customer's promise in the aforementioned discussion regarding the purchase of asset is of significant importance. The question is whether this promise can be enforced or not. Scholars hold differing opinions on this matter. Supporters of Islamic banking state that this commitment is obligatory, and the bank can compel the customer to fulfill it once the bank has purchased the asset. On the other hand, many scholars hold opposing views. Details are given in the following: The first opinion: The majority of scholars from the Hanafi, Shafi'i, Hanbali, and Maliki schools of thought hold that the promise is binding morally but not legally. This is because a promise is a contract of Tabarru and Tabarruat are not legally binding.⁹

The second opinion: Some scholars, including Ibn Shubruma (144 AH), Ishaq ibn Rahawayh (238 AH), and Al-Hasan al-Basri (110 AH), and according to the Maliki school of thought, assert that the promise is legally binding.¹⁰

They base this on the verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا لِمَ تَقُولُونَ مَا لَا تَفْعَلُونَ كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ¹¹

"Why do you say that which you do not do?"

The third opinion: Some Maliki jurists hold that the promise is legally binding if it is related to a reason (cause), even if the promisee doesn't involve or enter to a contract if promisor does not give assurance. For example, when someone says, "I intend to get married," or "I intend to buy this," or "I intend to settle my debt, so lend me this amount," or "I intend to travel tomorrow to a certain place, so lend me your riding animal." If a person assures that he will give him money or animal and then the person decides to marry, buy, or travel. In such cases, the person is bound by his promise, and he must fulfill it.¹²

Ibn al-Qasim, a famous Maliki scholar, holds that the promise is legally binding if it is related to a reason (cause), and the promisee involves or enters into a contract due to the promise. An example is given that if a person wanted to buy a slave from someone with the intention that certain individual will help him in respect of finance and he promised that I will give you 1000 Dirham. So he purchased the slave then the promiser is legally bound by this promise.

Many contemporary scholars lean towards the opinion, which states that the promise is legally binding if it is related to a reason (cause) and the intended matter involves that reason (cause). This view was also adopted by the Islamic Fiqh Academy in its fifth session held in Kuwait from 1-6 Jumada al-Ula, 1409 AH.

Purchase of Asset

The bank purchases asset at the request of the customer. If the bank independently makes this purchase and then after taking possession, sells the asset to the customer, this deal is completely valid because the bank not only purchases the asset itself but also bears all associated risks. However, if the bank appoints the customer to purchase the asset on their behalf, the opinions of scholars vary regarding this. Below, we will outline scholars' opinions on this matter.

Appointment of customer as an agent

A group of scholars asserts that designating a customer as an agent for the purchase of assets is impermissible because in this case bank does not take the responsibility of risks associated with the bank's assets. However, in the Hadith such benefits are deemed unlawful if the related risks are not borne by the owner. It is narrated from Hazrat Ayesha (may Allah be pleased with her) that the Noble Prophet ﷺ said:

الخارج بالضمن¹³

Profit follows responsibility.

The response to this from those who support the above mentioned mechanism is that when a customer purchases assets, he effectively takes possession on behalf of the bank. Subsequently, the customer informs the

bank that the assets are in his possession, and up to that point, the assets have neither been used nor sold. The customer, in this case, requests the bank to sell his asset to the customer. Following this, the bank responds by accepting the customer's offer and proceeds to sell the assets to the customer. In this scenario, the assets come into the customer's possession. In this situation, any loss incurred is borne by the bank before selling his asset, so the bank is willing to bear the risks associated with the assets.¹⁴

Our opinion is that the bank should not have a general permission to appoint the customer as its agent in every transaction, and this permission should only be allowed in exceptional circumstances when there is no other way, and there should also be a mechanism in place to clearly indicate that the bank has assumed the risks of the asset.

For example, it can be agreed that when the asset arrives at the port after being exported from abroad, the customer can make an offer to the bank if he wishes to purchase the asset and if the asset is being purchased from the domestic market, it should be decided that the customer can make an offer when he brings the asset to the bank's warehouse, location, or his own location. By doing this, it will be evident that the bank has assumed the risks of the asset until it reaches the bank's or the customer's location. This is also the objection of critics of Islamic banking that when a bank initially enters into an agreement with a customer, it is considered a deal or contract of sale and purchase. Later, appointing the customer as an agent and making the purchase through them is merely a paperwork process. The primary contract has already been established.¹⁵

Scholars who support Islamic banking response that, when an Islamic bank enters into an agreement with a customer that contains all the details of the expected transaction, it encompasses the procedures related to future transactions between the bank and the customer. If, after this agreement, the customer refuses to proceed with the purchase based on the contract and does not buy anything on the basis of that agreement, he is entirely within his rights to do so, and the bank cannot compel him.

However, if the bank purchases the asset on the customer's demand, and customer refuses to take the asset, then if the bank incurs any loss from the sale of this asset, it can be recovered from the customer's security deposit.

Furthermore, after this mutual understanding, the bank acquires the assets and then either sells them to the customer or appoints the customer as its authorized agent to purchase the assets on behalf of the bank. Subsequently, the customer presents an offer to the bank expressing his desire to purchase the assets, and the bank, upon accepting it formally, sells the assets to the customer. Therefore, each contract has its own distinct conclusion. It is not

accurate to claim that the Islamic bank, from the beginning, has the authority to enforce a deal called "understanding".¹⁶

Delay in instalments

In a Murabaha agreement, a commitment or promise is often signed that the customer will make timely installment payments. If the customer fails to make the payments on time, they may be obligated to give a specific amount in charity (*sadaqah*). There is some disagreement among scholars on the bank's stance regarding this commitment.

Some scholars argue that if the debtor is genuinely in financial hardship, the Quranic injunction suggests that they should be granted an extension. Allah Almighty says

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ، وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

" If there is one in misery, then (the creditor should allow) deferment till (his) ease, and that you forgo it as alms is much better for you, if you really know." ¹⁷

If the debtor is financially capable but avoids payment, it is considered unjust. However, this leniency is not extended to individuals engaging in fraudulent activities or intentionally avoiding payments. In such cases, additional penalties or legal actions may be taken against them. Nevertheless, no financial penalties are imposed in such situations in Islamic jurisprudence.

The jurists never imposed a financial penalty on a debtor, but instead, they decided to imprison the debtor, and even in that case, the debtor should not be subjected to physical punishment or beating.¹⁸

Regarding the concept of charity (*sadaqah*) as a consequence of delayed payments, some scholars who support this practice argue that in conventional interest-based banks, the risk of increased interest due to late payments may compel customers to make timely payments. However, Islamic banks enforce the commitment of charity to ensure that customers fulfill their payment obligations on time. This charitable contribution is not considered part of the bank's income but is donated towards charitable purposes.

In this regard, special attention was also given to ensuring that this charity and donation should not be given to any relatives of the members of the Sharia Board. Rather, practical measures were also taken to ensure that this amount is not donated even within the charitable institutions of the members of the Sharia Board and if a bank establishes a trust in its own way, the bank's name should not be used in it either.

Secondly, The question is that if someone fails to fulfill his obligations, it constitutes an offense, and this offense increases when his failures affect not only one individual but potentially hundreds or even thousands of people.

To prevent such losses and ensure the protection of the customers and depositors of Islamic banks, it is necessary to impose mandatory charitable contributions.

Furthermore, it is worth noting that if a person is genuinely facing financial difficulties and is unable to make timely payments, he should be granted an extension, in accordance with the Quranic guidance.

In Islamic finance, scholars have relied on the opinions of other religious schools when needed, and the Hanafi school of thought has followed the opinions of other schools in various matters. In the above mentioned discussion of enforceable charity, opinion of malki jurist has been taken. Ibn ul Khataab states:

أما إذا التزم المدعى عليه للمدعى أنه إن لم يوفه حقه في وقت كذا وكذا فله عليه كذا وكذا، فهذا لا يختلف في بطلانه لأنه صريح الربا وأما إذا التزم أنه إن لم يوفه حقه في وقت كذا فعليه كذا لفلان أو صدقة للمساكين فهذا هو محل الخلاف المعقود له هذا الباب، فالمشهور أنه لا يقضى به كما تقدم وقال ابن دينار يقضى به¹⁹

So when the defendant makes a commitment on behalf of the plaintiff that if he fails to fulfill the plaintiff's right within such and such a period, then the defendant is obligated to pay such and such (money) for the plaintiff, there is no dispute about its invalidity because it is clearly a form of interest... However, if the defendant commits that if he cannot fulfill the right of the plaintiff within such a time, then he is obligated to pay such and such (money) for a certain person (other than the plaintiff) or for charity, this is a matter of dispute, and therefore, this chapter is dedicated to it. So the famous saying is that a decision should not be made on it, and Ibn Dinar's opinion is that a decision should be made on it, meaning that the charity is obligatory. In current circumstances, our opinion is that if a person genuinely cannot pay the installment of an Islamic bank based on reasonable hardship, he should be given an extension. However, if someone intentionally avoids paying the bank's installment, it is appropriate for him to give a specific amount in charity.

Services on the basis of Murabha

Above mentioned discussion has revolved around what is prevalent murabha in Islamic banks and we will now explain what Islamic banks are actually serving on the basis of Murabaha."

The Bank of Khyber

Khayber Bank is providing various items on a Murabaha basis. The bank's introduction and the details of the items provided by the bank are as follows: "The Bank of Khyber was established in 1991 through an Act passed by the Provincial Legislative Assembly of Khyber Pakhtunkhwa, Pakistan. It was awarded status of a scheduled bank in September 1994. Today, BOK is an

“A-1” rated commercial bank, operating across the country with a network of 258 branches and still expanding."BOK is serving following items on the basis of Murabaha:

- Purchase of Agri.in puts (Seeds, Fertilizer, pesticides etc) for crops/Vegetables/Orchards with finance tenure up to three years.
- Purchase of Farm Machinery (Tractor implements/ attachments and tube well etc) with finance tenure up to four years with recovery in quarterly/half yearly installments.
- Purchase of dairy animals (Buffaloes & Cows) with finance tenure up to 05 years with recovery in monthly installments.
- Purchase of fattening animals with finance tenure up to 01 year with recovery in quarterly/half yearly installments.
- Short term working capital requirements of agribusiness for purchase of raw material, Feed and Medicine for Dairy/Poultry/ Fish Farm etc with finance tenure up to 01 year with recovery in quarterly/half yearly installments.
- Takaful coverage of the financed items".²⁰

Meezan Bank

“Meezan Bank Pakistan’s best bank and the first and largest Islamic bank, is a publicly listed company with a paid-up capital of Rs. 17.91 billion...The First Islamic Bank commenced operations in 2002, after being issued the first-ever Islamic commercial banking licence by the State Bank of Pakistan.The Bank provides a comprehensive range of Islamic banking products and services through a retail banking network of more than 900 branches in more than 300 cities of the country(Pakistan)”²¹

“Meezan Bank offers a convenient and easy to use solution for financing raw material and inventory requirements of the customer through Islamic mode of Murabaha”²²

Bank Islami

“Bank Islami is famous Islamic bank of Pakistan which offers different Shariah Compliant financing facilities that best suit the farmers i.e. Murabahah / Musawamah, Istisna, Sale etc. based on business requirement, conditions and payment capacity of the customer.

- Purchase of Milking Animals, Calves, Birds, Eggs, Raw Material for making Feed for Livestock Industry, Purchase of machinery / asset for the business, construction of Shed, purchase of Commercial Vehicle for Livestock Business, Working Capital requirement of the business, etc.
- Tenure of Finance from 6 Months to 5 Years based on need, financing type, useful life of asset / machinery.
- Financing up to actual requirement under Working Capital.

- Financing up to 70% of the cost of animals, chicks, birds, eggs, asset / machinery, Commercial Vehicle, etc.
- Payment in lump sum and / or easy installments on Monthly, Quarterly, Half Yearly or Annually based on Business cycle and cashflow of the business.
- Takaful cover for unforeseen losses like death of animals, snake bite, loss / death due to natural calamities & disease, Fire, etc. for animals, asset / machinery, shed, etc. financed by the bank under Development finance”.²³

Results and recommendations

1. In Islamic banks, a regulatory framework or understanding of contract is established in the first phase regarding future Murabaha contract, which should not be referred to as a contract.
2. Islamic Bank purchases asset from the market based on the request of customer, with clear details of price and profit. In this purchase, the bank usually appoints the customer as an agent (although in some cases, the bank itself handles this). The customer, acting as the bank's agent, acquires the assets and then requests the bank to sell these assets to him. The bank accepts the customer's request and sells the assets to the customer. In our humble opinion, it is preferable for the bank to purchase the assets itself and then transfer them to the customers. However, in extreme cases, the customer can be allowed to appoint as agent.
3. If the bank acquires assets and the customer refuses to accept them, the bank can only claim compensation for actual losses from the customer, and not more than that.
4. The price of assets is usually received in installments, and in case of delayed payments, the bank requires the customer to deposit a specific amount into a charity account. In our humble opinion, it is appropriate to have customer who delays payments to contribute to a charity account because if delayed payments are allowed it will result in delayed profit on deposits and in this situation depositors will not remain silent but will withdraw their funds from the bank, and the mobilization of funds will also come to end. Furthermore, people's trust in Islamic banks will decrease, and the efforts to establish an alternative system to interest-based banking, which has been going on for a long time, will also be in vain.

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