

# INCLUSION OF ASSETS AS CAPITAL IN MODARABAH CONTRACT IN PERSPECTIVE OF CLASSICAL MUSLIM JURISTS

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**Abstract:** During the mediaeval period gold and silver coins were used as a medium of exchange. There was no question of fluctuation in the value of currencies at that time as the intrinsic value of draham and dnanir remains consistent in all places being that they are based on gold and silver metal. The expansion of economic activities and growing business needs not only resulted towards expansion of Modarabah rulings but also expand the nature of capital to be invested as form of investment in Modarabah. The study aims to discuss the nature of capital acceptable to be invested as a form of investment in Modarabah business. Thus it includes the analysis of medieval period of gold and silver coins as well as currency notes, fixed assets/finished consumer products, Debt and deposit and Hawalla (transfer of debt contract) as a form of Modarabah capital.

**Keywords:** urud (tangible property), draham (silver coins), dananir(gold coins), Modarabah, Abd ar-Rahman bin al Qasim, Fixed assets, Debt and deposit, Hawala.

## **Introduction**

Wealth/Capital is a basic matter of Modarabah contract which must be handed over to the work manager by the owner. The capital may be in form of goods or money. The business manager will not provide any capital in form of money or goods, his contribution will be in form of non-money capital i.e. management skills or expertise to run the venture. In accordance to the conditions, there could be several types of Modarabah. It may be multipurpose or specific purpose, perpetual or for a fixed period, restricted or unrestricted Modarabah. All these classifications are extracted from the traditional text of Fiqh literature. The basic forms of Modarabah are two

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- <sup>29</sup> Ibn Al-Nadīm, *Al-Fabrist*, p.48
- <sup>30</sup> *Ghāyah al-Nihāyah*, Vol: 2, p.55
- <sup>31</sup> Al-Qari’ah, 101: 5.
- <sup>32</sup> Lahab, 111:1
- <sup>33</sup> Al-Lail, 92: 3.
- <sup>34</sup> Al-Anfal, 08:73.
- <sup>35</sup> Abubakar b. Ahmad b, Mūsā b. ‘Abbās b. Mujāhid Al-Tamimī al-Baghdādī who first time collected seven readings of reliable Qurra in his famous book “*kitab al-sabah fi al-Qira’at*” edited by Dr Shauqi Zaif, Dar al-Ma’arif, Cairo, Egypt, 1971. Its preface is very comprehensive and full of precious information on particular topic.
- <sup>36</sup> Abū ‘Ali Muḥammad b. ‘Ali b. al-Hasan b. Muḥlah, better known as Ibn Muḥlah, was born in Baghdad in A.H. 272. (Ibn Khallikān, *Wafayātu'l-'A'yān*, ed. Wustefeld, No. 708). He is best known to fame as the inventor of a style of writing called *Naskhī*, derived it is said from the stately and ornate *Kūfī* script, which originated in Kūfah in the time of the early *khalifabs*, and which it supplanted by reason of its being more cursive... *Ibnu'l-'Athīr* (viii, 260) contributes one more, that he had three servitors specially attached to his person, while the *Haft Iqlim* states that he thrice copied the Qur’ān, and attributes to him the invention of the *Khatt-i thulth*, or *naskhī* in large hand, from the *Kūfī*. See A. H. Harley, *Ibn Muḥlah*, Bulletin of the School of Oriental Studies, University of London, Published by: Cambridge University Press on behalf of the School of Oriental and African Studies, Vol. 3, No. 2 (1924), p.229
- <sup>37</sup> Dhahabī, Abū ‘Abd Allah Muḥammad bin Aḥmad, *M’arifah al-Qurrā’ al-Kibār*, Mu’assasah al-Risālah, Beirut, 1404, Vol:1, pp 278-279
- <sup>38</sup> Qadhi Eyadh (d,544 A.H.), *Al-Shifa bi-Tarif Huqooq al-Muṣṭafā*, Vol:2, p.266
- <sup>39</sup> *M’arifah al-Qurrā’ al-Kibār*, Vol: 1. Pp.224-225
- <sup>40</sup> Taqi Usmani, Mufti, *An Approach to the Qur’ānic Sciences*, Translated by Dr Muḥammad Swaleh Siddiqui, Darul Isha’at, Karachi, 2007, p.222.



- <sup>9</sup> Al-Nashr Vol. 1, p 9. As Jalāl al-Dīn Suyūṭī (d.911 A.H.) has written about Ibn al-Jazrī that he is the first who spoke in the best way among all scholars "واحسن من" "واحسن من هذا النوع امام القراء فى زمانه شيخ شيوخنا ابو الخير الجزرى" see *Al-Itqān* Vol. 1, p 210.
- <sup>10</sup> Ibn al-Jazrī, *Al-Nashr fi Qira'āt al-'Ashr*, Vol. 1, p 16, *Al-Itqān*, Vol. 1, pp78-79.
- <sup>11</sup> *Ibid.*, Vol. 1, p16.
- <sup>12</sup> Ibn al-Jazrī, *Al-Nashr fi al-Qira'āt al-'Ashr*, Vol. 1, pp31-32; *Al-Itqān* Vol. 1, p79, 22, 23. Also see *Sharh al-Muwatta'a*. Zarqānī, Vol. 1, p 225
- <sup>13</sup> 'Alī AL-Muttaqī, *Kanaz al-'Ummāl*, Vol. 1, p286.
- <sup>14</sup> *Fadā'il al-Qur'ān*, p. 26.
- <sup>15</sup> *Mushkil-ul-Āthār* at Ṭahāvī, Vol.4, pp 196-202
- <sup>16</sup> Ibn-ul-Jazari, *Al-Nashr*, Vol.1, p16 and *Al-Ma'ani Fin-Nazmul Ma'sni Muqad-damat fi Ulum ul Qur'an*, Al-Khanji Press, p170
- <sup>17</sup> See for more details; Mufti Muḥammad Taqī Usmani, *An Approach to the Qur'anic Sciences*, pp249-251.
- <sup>18</sup> Ibn Nadim has presented a list of famous describers of *Shāz Qira'āt* at various cities; see *Al-Fahrist*, pp 30-33.
- <sup>19</sup> Muḥammad bin Muḥammad bin Ḥassan, *Ṭabaqāt al-Ḥanābilah*, Dar al-Kitab al-Ilmiyyah, Beirut, 1324 A.H, Vol.1, p.44.
- <sup>20</sup> Dr. Muḥammad Akram Chaudhry, *Orientalism on Variant Readings of Qur'an...The Case of Arthur Jeffery*, American Journal of Islamic Social Sciences, 1995, p180
- <sup>21</sup> Al-Dhahabi, Shamsud-Din, Muḥammad bin Ahmad, *Mizān al-'Itidāl fi Naqd al-Rijāl*, Dār al-Kutub al-'Ilmiyyah, Beriut, 1990, Vol: 5, p. 274.
- <sup>22</sup> *Kitab al-Masabif*, Vol:1, p.241
- <sup>23</sup> *Ibid*, Vol:1,p.279
- <sup>24</sup> *Materials*, pp.12-13
- <sup>25</sup> Al-Dhahabi, Shamsud-Din, Muḥammad bin Ahmad, *Siyar Alam al-Nubala*, Muassisat al-Risalah, Beirut, 1990, Vol:5, p.274.
- <sup>26</sup> Jeffery, *Materials*, p.11.
- <sup>27</sup> M. A.Chaudhry, *Orientalism on Variant Readings of Qur'an...The Case of Arthur Jeffery*, p180
- <sup>28</sup> Al-Ḥamavī, Yāqūt, *Mujam al-Udaba*, Dar al-Mamun, Egypt, Vol: 17, p.172.

Transcription, (b) that it must correspond to the rules of Arabic grammar (c), that its uninterrupted transmission from the Holy Prophet (ﷺ) must be authentically proved, and that it be popularly known to the *Imams* of *Qira'at*. Any recital that fulfills these conditions shall be acceptable whether it is included in the Seven recitals or not, and if even a single condition is not met, it will be not reliable even though it may be included in the Seven recitals or not, and if even a single condition is not met, it will be not reliable even though it may be included in these seven recitals. But *Ibn Miqsam* and *Ibn Shambuz* had violated this established rule. *Ibn Miqsam* held that only the first two conditions were sufficient for the “Recital” to be correct. A recital would therefore be acceptable if it is in accordance with the ‘*Uthmani*’ Transcription and happens to correspond to Arabic grammar, even if it is lacking in a proper line of transmission. As against this, *Ibn Shambuz* stated that a “Recital” reported through uninterrupted authentic narrations shall be acceptable even if it does not conform to the “*Uthmani Script*”. On this basis all the scholars refuted them collectively and ultimately both of them came round to the opinion of the majority.<sup>40</sup>

#### Notes and References

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- <sup>1</sup> Goldziher, *Madāhib al-Tafsīr-al-Islāmī*, Arabic translation rendered by Dr. ‘Abdul Ḥalīm al-Najjār, P. 6.; and Arthur Jeffery, *Materials for the History of the text of the Qur’ān*, Leiden 1936
- <sup>2</sup> ‘Abdul Ḥalīm al-Najjār has provided marginal notes in his translation of *Madāhib al-Tafsīr-al-Islāmī* by Goldziher.
- <sup>3</sup> *Fadā’il al-Qur’ān*, p. 217.
- <sup>4</sup> Ibn Mujāhid, *Kitāb al-Sab’ah fi al-Qirā’āt*, p. 19
- <sup>5</sup> *Al-Qira’āt al-Qur’āniyya*, pp.109-110.
- <sup>6</sup> Al-Qaisī, *Al-Ibānah ‘an Ma’ānī al-Qira’āt*, p. 51.
- <sup>7</sup> Abū Shamma, *Al-Murshid al-Wajīz*, p.146-153.
- <sup>8</sup> Zarkashī, *Al-Burhān*, Vol. 1, p 479

observed that this book contain inconsistent reporters and unreliable *Isnads*.<sup>27</sup>

***Ibn Shanbūdh (d.328 A.H.)***

Muḥammad bin Aḥmad bin Ayyūb bin al-Ṣalt Ibn Shanbūdh a very eminent scholar of *Qira'āt* in fourth century.<sup>28</sup> He ignored to follow the recitation mode of the Qur'ān according to the wholly agreed upon 'Uthmānic text. He developed a theory that if a recitation style is correct by the principles of Arabic grammar and reported through reliable channels, it is to be accepted and retained the validity as true Qur'ānic recitation despite if it not follows the orthographical style of Uthman's *Masahif*. He also used to claim to have his āt reports by 'Abd Allah Ibn Mas'ūd and Ubai Ibn Ka'b (May Allah be pleased with both of them).<sup>29</sup> Some examples of *Shaz* recitations that have been attributed to him are as under:

فا مضوا الى ذكر الله<sup>٣٠</sup>  
 كالصوف المنفوش<sup>٣١</sup>  
 تبت يدا ابي لهب وقد تب<sup>٣٢</sup>  
 والذكر والانثى<sup>٣٣</sup>  
 الا تفعلوه تكن فتنة وفساد عريض<sup>٣٤</sup>

The scholars like Ibn al-Anbārī (d.328 A.H.) and others wrote books to refute his theory. But he insisted to propagate these recitations publically and hence the matter acceded towards a contention among the Muslim. Ibn Mujāhid (d.324 A.H.)<sup>35</sup> proceeded this matter to the ruler of that time who delegated the responsibility of the solution of this probe to his minister known as Muḥammad Ibn Muqlah<sup>36</sup>. Ibn Shanbūdh was arrested in 323 A.H. and presented before a board of learned Ulema of Baghdad.<sup>37</sup> The most revered scholars and *Qurra'* like Mufti Abūbakar al-Abharī<sup>38</sup>, 'Umar b. Muḥammad b. Yousuf al-Qaḍī and Imām Ibn Mujāhid in this board.<sup>39</sup>

Muftī Taqī 'Usmānī comprehensively explains the entire matter of those Muslim *Qurra'* who were involved in reciting disagreed recitations, He comments:

... As for the story of *Ibn Miqsam* and *Ibn Shambuz*, the scholars had not criticized them why they considered recitals other than these seven as correct. But the reason was, that three conditions must be fulfilled before calling a recital as correct (a) that it must be compatible with the *'Uthmān*

*Qira'āt*, Collection of Qur'ān, order of Suras and verses, differences of *Maṣāḥif* of *Ṣaḥāba*, *Rasm al-Uthmānī* and other. However, the following two debates considered to be very important.

1. Differences of in the *Rasm of Maṣāḥif* which were sent to various cities after copying from Mushaf Imam.<sup>22</sup>
2. Differences in text of *Maṣāḥif* of *Ṣaḥāba* and *Tabi'īn*.<sup>23</sup>

In the above mentioned two chapters most of those *Shaz* recitations have been discussed that are apposing to the Uthmanic peculiar orthography.

Arthur Jeffery applauds and appreciates this book. In the modern age, Arthur Jeffery has been appeared as a predecessor of establishing new objections on the text of the Qur'ān. He in his famous book “*Material for the History of the Text of the Qur'ān*” mostly relied upon this book and deduced thousands of divergences in the textual history of the Qur'ān. He has also endeavoured his utmost to portray *Ibn Abi Dāwūd* as a great *Muḥaddith*. However, Jeffery describes the status of Ibn Abi Dāwūd in the eye of his father:

There are a number of traditions going back to him that are not pleasing to orthodoxy and so there was put into circulation the legend that his father had branded him as a liar, and therefore no attention is to be paid to material that is dependent on his authority. This, of course, is tendential, and the biographers usually regard him as trustworthy (ثقة), the *Mughnī* even nothing that his father's branding him as a liar was over something other than Ḥadīth.<sup>24</sup>

If we accept, for instance, his reported transmissions true, even than these traditions, infect, were concerning to the period before the region of Uthmanic compilation of codices.

#### ***Ibn Al-Anbārī (d. 328 A.H.)***

Muḥammad bin Abī al-Qāsim bin Muḥammad bin al-Anbārī (d. 328 A.H) wrote a book titled “*Kitāb al-Maṣāḥif*” with a detailed discussion on the history of Qur'ān, variant readings and *Maṣāḥif* of *Ṣaḥāba*.<sup>25</sup> This book is not available; however, its references are seen in other ancient literature. For example, *Suyūṭī* (d. 911 A.H) has incorporated some references of it in his *Al-itqan fi Uloom al-Qur'ān* and in *Al-durr al-Manthur*. Jeffery has praised this book in a much exaggerated way.<sup>26</sup> However, it has been scholarly

- did not recite it nor did they consider it to be a correct recital any more.
5. It appears from some of the Rare Recitals that probably some followers of Companions made a mistake in the recitation of the Qur'ān quite unintentionally (as sometimes happens even with eminent *Huffāz*) and a listener reported it as he had heard.<sup>16</sup>

Whatever *Rare Recitals* or the Qur'ān have been reported mostly come under one of the above five situations. Obviously, no question arises for accepting these recitals as reliable. Consequently, the *Ummah* never relied on them in any age. That is why these recitals could not even become popular, noting to say of their being uninterrupted. Hence the inferences drawn by the Orientalists on the basis of *Rare Recitals* that differences exist in the text of the Qur'ān, is such an unfounded and absurd idea that it deserves no consideration at all from scientific and research point of view.<sup>17</sup>

It is worthwhile to mention that most commonly Orientalists looks busy in pursuing these sort of various readings particularly. In this respect, they applaud the work of *Ibn Shanbudh* (d.328 A.H. /939 C.E.) and *Ibn Miqsam* (d.354A.H. /965C.E.) who were barred to recite prohibited readings. Making detailed discussions on such readings, Orientalists declared once again that the scholars of *Qira'āt* selected these readings on the base of their linguistic taste not on the *Isnād* and transmission. In this continuation, a great importance has been given to those Muslim scholars who have described *Shaz Qira'āt*.<sup>18</sup> A brief introduction to these Muslim Scholars is given below:

***Ibn Abī Dāwūd (d.316 A.H.)***

The author of *Kitāb al-Masāḥif*,<sup>19</sup> named 'Abdullah bin Sulaimān bin al-Ash'ath Al-Sijistānī Al-Azdī (d. 316 A.H). In this book various codices of companions of the Prophet have been presented. This is the only book that has reached to us and no other book is available on this particular topic. It is significant to mention that the reports and transmissions of this book are not continuous (*Muttaṣil*) and there is a huge number of *Ḍa'īf* narrations found in this book.<sup>20</sup> Moreover, father of *Ibn Abī Dāwūd* has witnessed against him as liar (*Kadhāb*).<sup>21</sup> This affects the authenticity of this book in the popular Muslim academic circles. The major contents of this book are

recitals which *Abū Dawūd* has attributed to different Companions and their followers in his *Kitāb-al-Maṣāḥif*.<sup>11</sup>

3. Sometimes the precedent is correct but in fact it is not the recital of the Qur'ān, but a companion or his follower added one or more words during ordinary discourse as an explanation to some word of the Qur'ān. Since the Qur'ān in its entire substance was uninterrupted and thousands of *Huffāz* were present in every period of time, there was no danger of actual addition in the original text due to the addition of explanatory words.<sup>12</sup> Hence, such explanations were not considered objectionable. For example, it is reported that *Sa'ad bin Waqāṣ* read وله اخ او اخت من أم in this the underlined words (من أم) were an explanatory addition. Similarly, it is reported that *Sayyidinā 'Uthmān* (R.A) read a verse like this. ولتكن منكم امة يدعون الى الخير ويامرؤن بالمعروف وينهون عن المنكر. In this the underlined phrase ويستعينون الله على ما اصابهم is indeed exegetic addition, because if it has been part of the Qur'ān in his recital, it must have been present in the transcriptions compiled by him. But this phrase does not occur in any of his seven transcriptions.<sup>13</sup> *Abū 'Ubaid al-Qāism bin Sallām* (d.224 A.H.) has expressed the benefits of rare recitals in the explanation and commentary of the Qur'ān. His comments are as followed:

"فهذه الحروف و اشباه لها كثيرة. قد صارت مفسرة للقرآن، وقد كان يروى مثل هذا عن بعض التابعين في التفسير فيستحسن ذلك"<sup>14</sup>

These sorts of readings have been abundantly used in *Tafsīr* literature and these have also been reported by *Tābi'in* while making explanation to the Qur'ānic verses. There are many such examples found in *Rare Recitals*.

4. Sometimes it happened that certain recitals were abrogated in the last days of the Prophet's life but the Companion who had already memorized it remained unaware of this fact, hence he continued to recite it as he had learnt.<sup>15</sup> Because the other Companions knew that this had been abrogated they



"الاصل الاول ان تكون مطابقة لخط المصحف العثماني، والاصل الثاني ان تكون صحيحة السند، حملها رواة موثقون حتى زمن القارى-----والاصل الثالث لقبول ائ قراءة وهو موافقتها للعربية ولو بوجه أى وجه"<sup>4</sup>

Ibn Khālwayh (d.370 A.H.) has also mentioned the criteria identical to that of Ibn Mujāhid.<sup>5</sup> Makkī bin Abī Ṭālib al-Qaisī (d. 437 A.H.) has declared this criterion as fundamental principle in accepting any Qira'at as Qur'ān, he writes:

"وانما الاصل الذى يعتمدعليه فى هذا ان ما صح سنده واستقام وجهه العربية، ووافق لفظه خط المصحف فهو من السبعة المنصوص عليها"<sup>6</sup>

Abū Shāmah al-Maqdasī (d. 665 A.H.) has penned down a very detailed account regarding the authenticity of this criterion.<sup>7</sup> Muwaffiq al-Dīn al-Kiwāshī (d.680 A.H.) also followed al-Qaisī's criteria.<sup>8</sup> However, the best description on this topic is of Ibn al-Jazrī (d.833 A.H.), it runs as:

"كل قراءة وافقت العربية ولو بوجه، ووافقت احد المصاحف العثمانية ولو احتمالا، وصح سنده فهى القراءة الصحيحة، التى لا يجوز ردّها ولا يحل انكارها من الاحرف السبعة التى نزل بها القرآن ووجب الناس على قبولها"<sup>9</sup>

It is evident that all the Muslims have their consensus and united on their understanding that only such recitals of the Qur'ān are reliable that fulfill three conditions, namely:

1. The particular recital can be incorporated in 'Uthmānī script.
2. It should conform to the rules of Arabic grammar.
3. It must have proof of authentic uninterrupted transmission from the Holy Prophet (PBUH), or at least it must be popular among the scholars of Recitals.

Any recital lacking even one of these three conditions is termed as "Rare Recital" and no one in entire *Ummah* took it as reliable. A close look on "Rare Recitals" reveals that one or more of the following defects are present in them.

1. Sometimes that recital is totally innovated, just as the recitals of Abul Faḍl Muḥammad bin Ja'far Khuzā'ī that he has attributed to Abū Ḥanīfah. *Dar Quṭnī* and all other scholars have exposed them and declared that they are all innovated.<sup>10</sup>
2. Sometimes they have very weak precedents, just as the recitals of Ibn al-Samīfa and Abu al-samāī or many of those

performed and consequently various additions and deletions orally known gradually as *Shāz Qira'āt*.

Particularly Goldziher and Jeffery have quoted several examples of these recitals and have drawn self-conceived inferences from them.<sup>1</sup> In these pages it is not possible to present all those examples and expose the reality about them. For this task a whole book will be required.<sup>2</sup> Also we feel that this would be unnecessary. However, we wish to mention some fundamental facts about the rare recitals, and we do hope that with these in view the readers will understand the rejection of the false assumptions of these Orientalists that they have made on the basis of rare recitals.

### ***Qira'āt Shāzzah: Meaning and Dimensions***

*Qira'āt Shāzzah* have been defined under a certain criteria which consists of three major tenets that must insure to be fulfilled before its acceptance as Qur'ānic text:

1. The *qira'at* must be reported through multitude reliable channels and reaches back to the Holy Prophet (PBUH) and it must be containing the status of "*al-Khabr al-Mashhūr*".
2. Its text must be written as it has been inscribed in *Uthmānic Maṣāḥif* according to the rules and principles of 'Uthmānic Orthography.
3. The recitation and its pronunciation must be in accordance with the rules of Arabic grammar and morphology.

The above mentioned criterion is a standard to examine the veracity of Qur'ānic text. If only one tenet of the above three is lacking in any recitation, it would not be regarded as Qur'ān rather known as a *Shāz Qira'at*. It should be remembered that this criteria has always been in application since the very reign of Holy Prophet (PBUH), however, its formal articulation started in the beginning of third century when Abū 'Ubaid al-Qāsim bin Sallām (d. 224 A.H.)

"وانما نرى القراء عرضوا القراءة على اهل المعرفة بها ثم تمسكوا بما علموا منها مخافة ان يزيغوا عن ما بين اللوحين بزيادة او نقصان، ولهذا تركوا سائر القراءات التي تخالف الكتاب"<sup>3</sup>

After discussing the criteria of Abū 'Ubaid al-Qāsim bin Sallām (d. 224 A.H.), Ibn Mujāhid (d.324 A.H.) has stated it in his book in a detailed way, he explains: