

**Using Zakat Proceedings as an Investment Portfolio  
Comparative Study of the Classic and Contemporary Views**

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**ABSTRACT:**

Zakat is one of the five key pillars of Islam and in Quran it has been discussed with *Salat* 26 times implying the significance of this pillar. Moreover, the first Caliph Sayyidina Abu Bakr (R.A) enforced it strictly after some tribes refused to pay it after death of the Prophet Muhammad. He even termed them apostate and called for a military campaign against them. From an economic standpoint, Zakat is the key element of Islamic monetary system that aims to alleviate poverty by levying a certain percentage from the wealthier segment of a society to be distributed among the deprived ones. The main objective is to strive for a monetary equilibrium within the economy and reduce the social inequality. In this regard, eight types of Zakat recipients are identified in *Surah Tawba (Ayah 60)*.

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَدِّقَةِ قُدُوبِهِمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ  
السَّبِيلِ قَرِيبَةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

“*As-Sadaqat* (here it means Zakat) are only for the *Fuqara'* (poor), and *Al-Masakin* (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for *Mujahidun* - those fighting in the holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.”

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According to this verse (inferred through Arabic grammar rulings), these recipients are to be entrusted with the ownership of the Zakat they receive therefore their ownership is a critical part of Zakat payments. However, the Islamic Finance expert practitioners have advised against direct distribution of Zakat proceedings to the needy and instead deploy those assets to profitable avenues. The profits from these investments are then distributed to the poor ensuring capital preservation and sustainable profits allowing long-term benefits for the society from the same asset pool. Shari'ah scholars have different opinions about this practice as some believe it fulfills the asset ownership requirement and hence should be practiced while others argue against it. The General Presidency of Scholarly Research and Ifta, Kingdom of Saudi Arabia advises against this practice to use Zakat proceedings as an investment pool while the Fatwa Board of Ministry of Awqaf and Islamic Affairs, State of Kuwait is in favor. In this paper, we have reviewed the merits of each opinion and outlined the key Shari'ah rulings behind each in order to facilitate a comprehensive study on the subject for Islamic Finance industry professionals.

***Keywords: Zakat, Waqf, Trust, Philanthropy, Shari'ah-compliant Investment, Inclusive Economic System***

### 1.1 Definition of Zakat

Zakat is one of the five key pillars of Islam whose mandatory status is agreed upon by all the Shari'ah interpretations and refuting its necessity is equivalent to refuting Islam on account of refuting a basic element of Shari'ah. Zakat was prescribed and given a mandatory status in 2<sup>nd</sup> A.H. Word "Zakat" is an Arabic word which is composed of "زا (Za)" "كاف (Kaf)" and "واو (Waw)". Comprising of these letters, the word can be

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interpreted in two ways; one: to cleanse/purify, two: to grow (increase, exceed and nurture). The former transliteration can be attributed in Quran more than once while the latter is based on the word's use by Arabs, زكا الزرع Zara'a (means crop is developed and ready to harvest). In Shari'ah context, Zakat is a specific requirement of Islam which has been described by Shari'ah Legal and Jurisprudence experts in Arabic as follows

تمليك مال مخصوص لمستحقه بشرائط مخصوصة

This means to make an underprivileged person the owner of a certain percentage of wealth once specific conditions are satisfied for donor as well as the recipient. This definition of Zakat has been adopted by a majority of Shari'ah scholars; while the Hanbali scholars have agreed upon a slightly different definition of Zakat which is "Zakat is a mandatory right of a certain (impoverished) section of a society in a specified amount of wealth, which is due to be paid at a certain time".

The first definition clearly includes the word "ownership" while the latter doesn't because it considers amount becoming due, while not necessitating an ownership transfer. However, in the context of jurisprudence based detailed analysis, it is imminent that this difference of opinion is only about the choice of words otherwise and the transfer is a prerequisite of discharging Zakat obligation according to all Shari'ah scholars. (1)

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1.2. Definition of Investment

Literally, deployment of time, effort or assets into a profitable activity that results in profits over a certain time period is defined as investment.(2) In economics, investment is described in different forms but all such definitions share a common view that it is the “Money committed or property acquired for future income” or “In economics, investment means creation of capital or goods capable of producing other goods or services”.(3) One particular type of investment is called capital investment which requires capital deployment into fixed assets over a long term.(4) It is a well-established fact that any economic decisions that results in generating economic profits and financial stability to the investor is also indirectly responsible for the benefit of society as a whole. Therefore investing any excess capital in a profit generating activity is not only an individual but also a social necessity. A rational investor would commit any excess cash into a profitable trade and investment activity because due to inflation the idle capital only deteriorates in value. Similar to all other economic schools of thought, Islamic injunctions also forbid leaving capital idle and encourage investing it into profit generating activities. Therefore, a *hadith* says; “Beware, whoever is the guardian of an orphan should trade in the wealth inherited by the orphan and it should not be left idle such that *Zakat* (or charitable spending)entirely consumes the underlying wealth.” (5)

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Similarly Hazrat Umar (R.A.) is quoted in agreement of the above *hadith*.(6) It means that it should not be allowed that no productive activity took place with the wealth of an orphan and Zakat paid on that capital reduced it on annual basis causing difficulties for the orphan in future when he became eligible to receive his inheritance.

**2. Investing Zakat Capital**

Investing the capital accumulated from Zakat donations would suggest that instead of instant handouts to rightful recipients, it is invested in a profitable activity aimed at protecting the principal and continuation of profits in order to serve the underprivileged section of a society on long term basis. There are two main reasons behind this suggestion;

1. Not only the principal is protected but this will be also a source of consistent income for years to come.
2. A national economy is made to benefit collectively as the capital is invested in employment generating business positively affecting a larger section.

This might be considered as an opinion that is radically different from current views on spending the Zakat capital. The classic literature of *Fiqh* treats the matter with clear and strong advocacy in favor of complete ownership transfer of all *Zakat* related assets.(7) For example, instead of directly donating Zakat to poor, if a person builds a charitable hospital, school, orphanage, shelter, or provide burial/funeral for poor or

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needy, his *Zakat* obligation is not considered as discharged by classic Shari'ah rulings as this spending does not make the recipient an owner of this money.(8)

Based on this ownership transfer detail available in Shari'ah rulings, it is pertinent to raise a question on permissibility of investing the *Zakat* capital without moving the ownership rights to a specific recipient. However one might argue based on the following exception that, though the investment is not permitted if ownership condition is not satisfied in all its details, but if it is satisfied along with all the relevant clauses, then the investment could be permitted. The Shari'ah scholars have different opinion on the subject and each have Quran, Sunnah and Fiqh as the supporting evidence. We focused on critically evaluating the arguments from both sides to find out the more plausible scenario. In this paper, first the basics of ownership transfer condition are discussed and then a comparison is made between two views on the subject of investment permissibility.

**3. Ownership – basic tenet of Zakat: Review of Quran and Sunnah rulings on the subject**

3.1 Difference between the terms: *tamlīk* (تمليك) and *ibahah* (إباحة)

*Tamlīk* is an Arabic word and its defined as “to transfer ownership”. The real owner of any asset is only the person who has complete discretion over its consumption and there are no binding restrictions for him on that.(9) Imam Sarakhsi has elaborated upon the word as follows in *Al-Mabsoot*.

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خروج المال عن ملكه بالوصول إلى كف الفقير

“Transfer of wealth to the poor by handing it over to him from the hands of donor.”(10)

Based on this, the scholars discuss another term “*ibahah*” in which the donated asset is still owned by the donor, but the recipient is allowed to fully benefit from it. Since there is no concept of ownership transfer in “*ibahah*”, the scholars argue that ownership transfer is necessary in *Zakat* and *Ibahah* of the due asset in *Zakat* is not enough to satisfy the obligation. Therefore if someone has arranged a meal for the poor deserving of *Zakat*, then this is not considered as satisfying the *Zakat* obligation. This is because the poor benefited from the gift, but did not become the owner of *Zakat* donation. (11)

### 3.2 Quran Rulings

The obligation of *Zakat* has been emphasized a number of times in Quran, however the verses that have been used by scholars as foundations for its regulatory framework are listed below.

● وأقيموا الصلوة وآتوا الزكوة

And be steadfast in Salah (prayer), and pay Zakat. (12)

● وآتوا حقه يوم حصاده

....and pay its due on the day of harvest. (13)

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●خذ من أموالهم صدقة تطهرهم بها وتزكّيهم

Take Sadaqah (obligatory alms) out of their wealth through which you may cleanse and purify them. (14)

●وفي أموالهم حق للسائل والمحروم

and in their wealth, there was a right for one who asks and for one who is deprived. (15)

●إنما الصدقات للفقراء والمساكين والعاملين عليها والمؤلفة قلوبهم وفي الرقاب والغارمين وفي سبيل الله وابن السبيل

فريضة من الله والله عليم حكيم

The Sadaqat (prescribed alms) are (meant) only to be given to the poor, the needy, to those employed to collect them, to those whose hearts are to be won, in the cause of the slaves and those encumbered with debt, in the way of Allah and to a wayfarer. This is an obligation prescribed by Allah. Allah is All-Knowing, Wise. (16)

### 3.3 Hadith Rulings

*Zakat* has also been commanded in many Ahadith discussing in detail the rationale behind its obligation, the benefits and incentives on the payment, avenues to spend the proceeds and threshold on donor eligibility. The Ahadith that have been mostly referred by the scholars to determine the *Zakat* obligation and distribution channels are listed below.



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• عن ابن عمر رضي الله عنهما أن رسول الله صلى الله عليه وسلم قال: بني الإسلام على خمس: شهادة أن لا إله إلا الله وأن محمدًا رسول الله، وإقام الصلاة، وإيتاء الزكاة، وحج البيت، وصوم رمضان" (متفق عليه)

Ibn 'Umar (May Allah be pleased with them) reported: The Messenger of Allah, ﷺ, said, "(The superstructure of) Islam is based on five (pillars), testifying the fact that La ilaha illallah wa anna Muhammad-ar-Rasul-ullah [there is no true god except Allah, and Muhammad ﷺ is the Messenger of Allah], establishing As- Salat (the prayers), paying Zakat (poor due), the pilgrimage to the House [of Allah (Ka'bah)], and the *Saum* (fasting) during the month of Ramadan."(17)

• عن ابن عباس، قال قال رسول الله صلى الله عليه وسلم لمعاذ حين بعثه إلى اليمن: إنك تأتي قومًا أهل كتاب فإذا جنبتهم فادعهم إلى أن يشهدوا أن لا إله إلا الله وأن محمدًا رسول الله، فإن هم أطاعوك بذلك فأخبرهم أن الله عز وجل فرض عليهم خمس صلوات في يوم وليلة فإن هم (يعني أطاعوك بذلك) فأخبرهم أن الله عز وجل فرض عليهم صدقة تؤخذ من أغنيائهم فترد على فقرائهم فإن هم أطاعوك بذلك فاتق دعوة المظلوم

It was narrated that Ibn 'Abbas said: "The Messenger of Allah, ﷺ, said to Mu'adh when he sent him to Yemen: 'You are going to some of the People of the Book. When you come to them, call them to testify that there is none worthy of worship except Allah and that Muhammad is the Messenger of Allah. If they obey you in that, then tell them that Allah, the Mighty and Sublime, has enjoined on them a charity (Zakat) to be taken from their rich and given to their poor. If they obey you in that, then beware of the supplication of the oppressed person. (18)

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3.4 Transliteration Review of Ayah and Ahadith

The main reason to select these rulings from Quran and Ahadith is because all these emphasize upon the condition of ownership transfer.

- The first two ayahs and first hadith mention the word “إيتاء” (*eetaa*) and the scholars have agreed upon the definition of this term as “giving ownership to the recipient”.

(19)

- The third verse mentions “خذ” (*khudh*) and second hadith mentions “تؤخذ” (means take it) which means to take the *Zakat* from the wealthy, ruling out their continuation of ownership or to seek their permission before spending that money. Instead this requires complete transfer of those assets from the donors. The same hadith also mentions the words “ترد” which means to return, hence taking the complete ownership from the wealthy and return it to the poor with total authority to spend it upon discretion.

- Third and fourth ayah mentions the term “صدقة” and “تصدق” in the terms of donation requires the recipient to become the new owner. (20)

- The “لام” (*laam*) before discussing distribution channels in the fourth and fifth ayahs, is “لام تملك” (*laam* meant for the meaning of transferring ownership), which establishes the recipient’s ownership of assets under consideration. (21)

**4. Investing Zakat Proceeds**

4.1 Avenues of investment

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There are four different ways in which *Zakat* money may be invested:

1. This investment is made directly by the *Zakat* recipient after he has been made the owner.
2. Instead of handing over the asset to a recipient, the *Zakat* donor invests the assets and then handover profits to the poor.
3. The welfare institutions may collect *Zakat* on behalf of poor, invest those in various legitimate avenues and then distribute profits to the poor.
4. Government may collect *Zakat* on behalf of poor and invests it in various legitimate avenues.

4.2 Identifying the key difference in opinion

Since in first case, the recipient was granted ownership of *Zakat* and allowed to spend it as per requirement, it is considered valid and legally permissible because the ownership condition is satisfied. Scholars agree that once the ownership transfer is made, the *Zakat* obligation is satisfied as the recipient is fully authorized to spend that asset. (22)

In the second alternative, it is very clear that since the donor has neither transferred ownership to the recipient, nor that asset has left his usage, the *Zakat* obligation is not satisfied and is yet to be paid. This option is not to be preferred because in this case there is a certain inexcusable and unnecessary delay in *Zakat* payment and like all other *fard* (prescribed actions and duties of Shari'ah), it is emphasized that a Shari'ah

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obligation is retired as soon as possible. (23) Also such a *Zakat* asset will stay mixed with the personal capital which is completely against the Shari'ah standpoint as suggested by Hadith that when the Zakat mixes with any capital (being not paid as prescribed) it is devastating for that capital. (24)

The question arises in the third and fourth alternatives, when the donor pays Zakat and that asset is managed by a welfare institution and government; is it mandatory to directly distribute that donation to poor or can it be invested in a profitable avenue? This is where the contemporary Shari'ah scholars disagree.

**5. Pro-Investment Shari'ah Scholars and Their Argument**

5.1 Mujamma al-Fiqh al-Islami Kuwait and Other Renowned Scholars

A number of highly reputable Shari'ah scholars have argued in favor of investing the Zakat money. Some of the renowned Scholars are listed below:

- Sheikh Mustafa Zarqa
- Dr. Yusuf Qardawi
- Sheikh Abdul Fattah Abu Ghudda
- Dr. 'Abdul 'Aziz Khayyat
- Dr. 'Abdus Salam Ibadi
- Dr. Muhammad Saleh al-Farfur
- Dr. Hasan 'Abdullah Amin
- Dr. Muhammad Faruq Nabhan (25)

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- Dr. Muhammad Habeeb Tajkani
- Dr. Muhammad Ashqar
- Dr. ‘Abdul Lateef al-Farfur (26)
- Dr. ‘Ali Awzak (27)

Mujamma’ al-Fiqh al-Islami al-‘Alami Kuwait in its third conference held in Oman year 1986 has passed the resolution (no. 15) on allowing investment of *Zakat*, (28) however according to some scholars this permission is granted with certain conditions (29) which are as follow:

- This investment is permissible only if the beneficiaries’ basic as well as immediate needs are met without any loss of capital due to liquidity constraints.
- The proceeds to be invested only in Shari’ah-compliant business activities.
- A detailed feasibility analysis is to be done before and investment is made only if the viability is established beyond reasonable doubts.
- There must be a competent and credible team managing the investments and ensuring a timely profit distribution to the recipients.
- This investment must be only for the benefit of poor who are eligible to receive *Zakat*. (30) (31)
- An agreement should be signed prior to any investment, specifically covering two conditions. a) The capital is owned by the poor, though not individually but as a collective asset, and it is being invested for their benefit only.

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b) this investment which is being made and any profits generated from this investment are meant for the poor only. Also the said agreement will be signed by the investment managers and this document will be saved for record. If needed, conditions on guardianship, guarantees and mortgage may also be included to ensure complete protection of the recipient rights.

- The assets resulting from such an investment are not allowed to be sold/bought by any collective recipient entity or the investment managers. (32)

5.2 Evidence from Quran, Sunnah and Supporting Incidents

The proponents have presented the following literary and logical arguments.

1. According to Sahih Bukhari, a hadith, named “hadith of the people of ‘Uraina’, narrated by Sayyidina Anas (R.A.), few people from an area called ‘Urainah’ came to Madina but couldn’t adjust to the new climate and fell sick. They complained to the Prophet about this and He told them to go to pastures dedicated for donated camels and treat themselves with the camel milk. (33)

The scholars made the following observations from this incident:

- *Sadqah* camels had a dedicated pasture.
- Shepherds were assigned to supervise the animals and pasture.
- These animals were well taken care of so that their milk and offspring could be obtained as a benefit.

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- These gains will also be distributed to poor as these were derived from donated assets.

Based on these, they argued that instead of being directly distributed, such donated assets were cultivated for the purpose of generating a consistent income stream benefiting the poor even more.

2. Sayyidina Umar (R.A.) was once presented with milk which he drank and liked. Upon inquiry about the source, he was told that it came from the animals of *sadaqa*, milked by their shepherds. Upon hearing this, he threw out whatever milk he had drunk. (34)

Based on this incident, the scholars conclude about presence of a dedicated place for *sadqa* animals and prohibition on it benefiting anyone else than the poor. It is also concluded that the practice was continued even after Prophet Muhammad passed away as Sayyidina Umar (R.A.) also allocated *sadqa* animals as investment so that the poor could get more benefits.

3. Narrated by Sayyidina Anas ibn Malik (R.A.) that a person came to ask for charity, and the Prophet Muhammad asked him what extra things he had in his house, to which the man replied that he had some cloth piece partly that they used to cover themselves and also as a sheet to sleep on. The Prophet Muhammad helped him sell the cloth for two dirhams, one of which was used for food and the other of which was used to purchase an ax. He was then advised to become a woodcutter and was subsequently able to provide for his family thereafter. (35)

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The scholars concluded that since a poor man's basic needs were encouraged to be met with a capital investment rather than charity, it was an implicit permission to invest the donations in a similar fashion for the benefit of poor.

4. According to a hadith, the guardians of orphans were instructed to trade with their inheritance under their guardianship so that the wealth pool is not completely consumed in compulsory donations. (36) This was to ensure the capital preservation before the orphans are entrusted with the wealth as they come of age. This implied that since the orphans' wealth should be invested to protect and grow the capital base, the guardians of Zakat donations are also authorized to pursue a similar strategy.

5. Narrated in Muwatta Imam Malik (R.A) is an incident about Sayyidina 'Abdullah and Sayyidina Ubaidullah (R.A.), sons of Sayyidina Umar (R.A.). Upon return from a voyage, they passed by Sayyidina Abu Musa Ash'ari (R.A.) who was then the Governor of Basra. He received them warmly and suggested a beneficial monetary arrangement for them. He gave them some of the proceeds from bait-ul-maal to be handed over to Sayyidina Umar (R.A.). He extended it to them as loan which they could use to buy tradable items from local market, sell those in Madina, retaining the profits and handing over the principal to Sayyidina Umar. Sayyidina Abu Musa wrote a letter to the Caliph outlining the details on principal to be received from his sons. As the sons reached Madina, they handed over the actual principal to Sayyidina Umar who asked if Sayyidina Abu Musa arranged anything similar for their fellow travelers



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as well. Since it was only for them, the Caliph ruled that this favor was extended only because of their lineage therefore all profits must be returned to the treasury. Upon insistence from Sayyidina‘Ubaidullah (R.A.) and advice from a companion, the profits were half distributed to treasury and the sons while entire principal was submitted to treasury. (37)

This incident implied that in order to protect and handover the capital to treasury, Sayyidina Abu Musa entrusted the sons with an increased responsibility of loan. Afterwards Sayyidina‘Umar treated the whole arrangement as Mudarbat which supported the investment of Zakat proceeds so that the recipients can benefit the most out of it (capital protection and additional economic profits).

6. During the times of Sayyidina Umar ibn ‘Abdul ‘Aziz (R.A.), the *Zakat* proceeds were in considerable excess even after having been distributed to the impoverished, upon which he ordered the pool to be used to support weddings. (38) This implied that after having fulfilled the immediate and basic needs of the poor, the excess could also be used for other purposes in the long-term interests of the beneficiaries.

7. From the *masarif* (recipients) of *Zakat*, the Shari’ah scholars have interpreted the words *“في سبيل الله”* “in the way of ALLAH” as “those people who are fighting the enemies for the Islamic cause and the benefit of Ummah”. (39) However, some scholars have interpreted it in generic terms as any avenue that is for the benefit of Muslims for example, they consider road/bridges, burial/funeral, mosques, hospitals,

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8. priests/preachers, academics/students and other welfare based uses. (40) In the context of contemporary issues, investment of *Zakat* proceeds might be made “in the way of ALLAH” as this is also considered for the welfare purpose.

9. The main objective of *Zakat* is to help the needy therefore all the scholars, especially from Hanafi school of thought, have ensured that every step will be taken to enhance the benefit structure for the deserving. Many rulings have been given based on this key principle and since investing *Zakat* proceedings mainly benefits poor, it underpins the argument in favor of investing.

**6. Counter Narrative on Investment of Zakat Proceeds**

6.1 Majlis Mujamma’ al-Fiqh al-Islami and other renowned Islamic Scholars

In its 15<sup>th</sup> conference held on Rajab 11, 1419H in Makkah, the congress resolved that the timely payment of *Zakat* is mandatory and this obligation will be retired by formally transferring the ownership to the destitute. Therefore it is not appropriate to invest those proceeds due to a number of conditions that remain unfulfilled as a result of this decision. These conditions are; non-payment of *Zakat* on time, no ownership transfer and hence lack of control on such proceeds by the recipient which could result in losses or no benefit to the poor, lapsing the key objective behind *Zakat* ruling.

(41) The scholars who have argued against investment are as follows;

- Dr. ‘Abdullah ibn Saleh al-‘Ubayd
- Shiekh ‘Abdullah ibn Baaz

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- Dr. Saeh ibn Fawzan
- Dr. Bakr ‘Abdullah Abu Zayd
- Dr. Ahmad Fahmi Abu Sanah
- Abul Hasan ‘Ali an-Nadwi (42)
- Dr. Wahba Zuhaili
- Dr. ‘Abdullah Naseh Alawan
- Dr. Muhammad ‘Ata as-Sayyid
- Mufti Muhammad Taqi Uthmani (43)
- Sheikh Abdur Rahman Aal Mahmud
- Sheikh ‘Abdur Razzaq al-‘Afifi (44)
- Sheikh Saleh ibn Uthaimen (45)
- Sheikh Aadam Sheikh ‘Abdullah ‘Ali (46)

6.2 Evidence from Quran, Sunnah and Supporting Incidents

Those advocating against investment of *Zakat* proceeds have also based their argument on literal and logical interpretations of Quran and Ahadith as listed below;

1. In Surah Tauba, the word used in *masarif-e-Zakat* is “إنما” (*innama*) which is basically used to express the meaning of “*hasr*” which is a binding statement restricting the *Zakat* spending among the listed recipients only. (47) Based on this detail, the ayah

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rules out any other use of *Zakat* proceeds as long as there is even one permitted use possible and a formal ownership transfer can take place. (48)

2. The scholars argued that in the same ayah, the letter “laam” is used to describe payment of *Zakat* to the permissible list of use. Majority of the scholars have considered the use of this letter as a command mandating the ownership transfer of *Zakat* donations. (49) Since investment of proceeds does not translate into individual ownership, the investment might not be permitted.
3. ‘Abdullah Nasih Alawan writes: Majority of the scholars agreed that once *Zakat* is obligated on a person, its immediate payment is mandated simultaneously. Similarly, based on *ayat-e-masarif*, as long as there are deserving people present in society, immediate payment of *Zakat* is mandatory. This also implied that investment of *Zakat* proceeds constituted a delay in its payment to the needy. (50)
4. The scholars argued that there was a strong chance that in case the investment is not profitable, the entire *Zakat* capital might be lost. Sheikh Adam ‘Abdullah Ali writes that since a business might experience both profit and loss, it is quite possible that the benefits of *Zakat* might not reach an individual at all if the losses were large enough. (51) Mufti Taqi Uthmani has also raised similar concerns. (52) Also given the relative lack of moral values in current times, intentional embezzlement of *Zakat* capital could not be ruled out.

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5. The pro-investment scholars argued that in the absence of an individual ownership transfer, it appears that the protection of Zakat principal ensures continuation of benefits for the future recipients of Zakat. However, the group of scholars advocating against investment of Zakat argued that this assumption is invalid based on the fact that Shari'ah does not stipulate any such planning and the needy are to be made owner of their Zakat receipts. It would not be appropriate if they didn't have any discretion over consumption of those receipts.
6. Investment of Zakat proceeds is an entirely new approach which has not been followed by any of the earlier Shari'ah scholars, hence adoption of this narrative would be against the agreed upon rulings of earlier Shari'ah scholars which in itself made the pro-investment rulings as rather weak.
7. Institutionalizing the Zakat proceeds is closer to establishment of a "*waqf*" which is treated by Shari'ah differently from Zakat. It is important that each subject in Shari'ah is treated according to its respective rulings. In this case, the rulings on Zakat and *Waqf* are mixed which is strongly advised against by the Shari'ah scholars.
8. The government and welfare institutions receive Zakat as custodians only and the right approach would be to transfer those assets to the needy. However, investing those assets converts the custodian relationship to principal-agency relationship which is not allowed hence arguing against investment. (53)

**7. Critical Evaluation of the Two Narratives**

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7.1: Review of Pro-Investment Evidence

• **Hadith of Uraina People and Hadith of Sayyidina ‘Umar (R.A.)**

Arguments based on the incidents of ‘Uraina and Sayyidina Umar is not conclusive enough because establishing dedicated areas for *sadaqa* animals cannot be considered as an investment of such proceeds. These two incidents only support the idea of preserving the excess capital while it awaited distribution. In such cases, the profits might be taken as an additional benefit but there is no supporting evidence that these animals were kept as an investment. Also there is a strong possibility that these were merely *sadqa* animals and not exactly Zakat proceeds which has its special rulings. For example, Sayyidina Khalid dedicated his horses for jihad which supports the argument to donate animals as Waqf for a particular cause. (54) However, these incidents are not strong enough supporting evidence for the *pro*-investment argument.

• **Hadith of Sayyidina Anas (R.A.)**

The third argument points to an incident when Prophet Muhammad, ﷺ, sold a poor companion’s belongings to invest in an ax. It was argued that Zakat proceeds belonging to poor could be consumed for their own benefit. However this is not conclusive as well because the investment is made from proceeds that are still not under any individual ownership. Also Prophet Muhammad, ﷺ, took decisions about the companion’s belongings right in front of him without any objections raised which

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means he implicitly approved Prophet Muhammad making such decisions on his behalf. The two Zakat conditions of individual ownership and implicit/explicit individual permission to invest are absent in the case of investing Zakat proceeds.

• **Investing orphan's wealth**

The permission to profitably invest an orphan's wealth in order to preserve and grow it cannot be extended to invest the Zakat proceeds because an orphan's guardian is explicitly instructed by Shari'ah to do so, while the trustees of Zakat proceeds are only custodians and are not permitted to spend from or take decisions about other than what is prescribed as distributing the Zakat proceeds to *masarif-e-Zakat*.

• **Sayyidina Abu Musa Ash'ari Incident**

The main purpose of the capital extended to the sons of Sayyidina Umar (R.A.) was not to invest but to protect. The sons were no longer custodians or investment managers but were liable for the loan extended to them ensuring return of principal to bait-al-mal in Madina. Also Sayyidina Umar (R.A.) didn't object to the arrangement but he objected the unfair treatment of other travelers by Sayyidina Abu Musa (R.A.). He questioned, "Did Abu Musa make this arrangement only for you two or for other travelers as well?" Since in this case a question on nepotism arose, he treated the capital extended to them as *Mudarabat* and kept half the profits for treasury.

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Moreover if this was considered acceptable, it would have been a regular practice but we see no evidence of a similar arrangement afterwards.

• **Sayyidina ‘Umar ibn ‘Abdul ‘Aziz:**

There is little supporting evidence to permit investing the Zakat proceeds as that incident only highlighted the fact that such proceeds could be used to arrange weddings for the needy, however there are no details on other aspects of this spending. In contemporary arrangements, this need can also be fulfilled by directly transferring the asset ownership to poor with a desire to wed, hence satisfying the agreed upon ruling. The difference of opinion is to do the same without ownership transfer which still does not translate as a permission to invest Zakat assets.

• **“نفى سبيل الله” (In the way of ALLAH)”**

Since majority scholars from earlier days of Islam have agreed upon a specific definition for this term, it is inappropriate to deviate unless there is an exception. Mixing two different Shari’ah arrangements for the same subject stipulates a desire to circumvent the boundaries significantly weakens the argument.

• **More beneficial for poor**

There is no doubt that making the philanthropic contributions more effective, efficient and consistent is an agreed upon ruling but this rule may be allowed only if it is in compliance with other key rulings. Using this argument in contradiction to the key



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requirements set for the *Zakat* system is not justified. Whenever such a situation has arisen in the past, the scholars preferred caution over being aggressive for the benefit of the poor, with many examples available for reference.

7.2 Review of Counter-Narrative on Investment of Zakat Proceeds

• **The word انما (Innma) and the letter لام (laam of tamlik)**

Using the word “انما” (*Innma*) which bears the meaning of “*hasr*” and *laam of tamlik* does not explicitly constitute a restriction on investment of Zakat proceeds. The required permission to invest does not ask for any exceptions to the permitted use of Zakat proceeds nor does it require the ownership condition to be relaxed. It merely seeks permission for institutional ownership instead of individual ownership which is not forbidden in the *Ayah*.

• **Timely Zakat payment**

It is obligatory for the donor to immediately pay Zakat as soon as it is due. When it is donated as Zakat to a trustee or Government Zakat funds, it discharges the donor of any further obligations and he is free from any further dues. After that the payment delay could be due to a trustee decision which is permitted by Ahadith and subsequently scholars recognized that as well. Narrated by Sayyidina Anas (R.A.), once I saw Prophet Muhammad ﷺ, marking the charity animals for identification later on. (55) Maliki and Hanbali schools of jurisprudence also clearly mention that if

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necessary, the Imam/Governor or Manager of Zakat spending could delay the spending the Zakat proceeds. (56)

• **Loss of capital**

The loss of capital is only a probability and a real need cannot be overlooked based on this reason alone. If losses are considered to be the only criteria then any investment or trade decision would be non-compliant because from Shari'ah standpoint, wasting a resource is not permitted under any circumstances. Also as per the guidelines discussed earlier, an investment decision is subject to a thorough due diligence exercise and the option with higher probability of gains is encouraged. Therefore if the investment is made based on sound economic principles, profits are more likely supporting the argument to invest the Zakat proceeds.

• **Depriving current needy**

There is no argument about timely payment and ownership transfer in order to alleviate the sufferings faced by recipients. The investment permission is sought for the excess proceeds available after satisfying the immediate requirements. There is no specific instruction to essentially distribute all the proceeds upon collection, hence the excess can be set aside or invested to meet the future needs.

• **New concept**

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It is understood and agreed upon fact that investing the Zakat proceeds is a relatively new proposal and there is no comparable incident discussed in the classic jurisprudence literature. However the contemporary requirements are significantly different from those in earlier period. The current economic system and its challenges (especially capital erosion, growing number of destitute, availability of sophisticated financial planning tools) were different from what the classic scholars faced in their times, hence the absence of any discussion on the subject. But logically, ignoring a new proposal only for the sake of its innovative designs is not recommended and is against the progressive nature of Islamic system which encourages finding albeit radical solutions while complying with Shari'ah guidelines.

**8. Conclusion**

Based on the evaluation of two viewpoints, we find it more reasonable to agree with the scholars arguing against investing the proceeds. This is based on the following reasons;

1. Zakat is an *ibadah* (act of worship) and it is critical to be more careful with regards to interpretation and extending the guidelines on *ibadah*. (57) It is more prudent to transfer the ownership to individual recipients and the assets should not be subjected to any investment or trade related decisions before the transfer of ownership.
2. Zakat is the right of only deserving recipients who are rightfully entitled to its ownership. Unless they don't have the possession of those proceeds, the ownership

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transfer is not complete. Therefore investing that capital before handing it over is an intrusion into their rights. Shari'ah doesnot allow anyone to invest someone else's capital without explicit permission from them which can be obtained only after they formally receive the ownership. (58)

- 3.The requirement to insure the Zakat proceeds through investment and to generate more economic benefits can also be met through alternative sources such as *NaflSadaqah*(optional charity) and *Waqf*/trust. The concept of *Waqf* has been practiced since the early days of Islam and is necessarily an arrangement to establish a permanent infrastructure for the benefit of poor and needy. In our opinion, converting Zakat system into a *Waqf* system is only redundant and is not necessarily required.
- 4.In corrupt and non-inclusive societies, it is more likely that a *Mudarabat* arrangement will be exploited by the unscrupulous elements bringing bad name to the *Zakat* system. It is quite possible that the deserving will not benefit from the donations and the capital will be permanently destroyed or embezzled. *Zakat* is an obligation and it is critical that it reaches the desired recipients before it is wasted through the inefficient distribution channels.
- 5.The government and philanthropic institutions are only authorized to act as a distribution channel between the donors and recipients. From Shari'ah standpoint they are not allowed to take any investment decisions for that capital on behalf of

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recipients before the ownership is formally transferred. There is currently no credible argument against this Shari'ah restriction.

6. The pro-investment scholars argue that the investment is to be made only from the excess capital. However, given the economic inequality prevalent globally, it is a weak argument that all needy and deserving have been served across the Muslim world. Even if a country has managed to fill the poverty gap, the global nature of Muslim Ummah stipulates taking care of the needy without any regards to national or geographic boundaries. It cannot be argued that there is excess capital available in the presence of poverty in any corner of Muslim Ummah. Therefore, as put forward by the scholars, meeting the condition to invest only excess capital is highly improbable.

**Key Suggestions and Work Forward**

After presenting our opinion against investment of *Zakat* proceeds, we briefly present a few ideas to benefit more from the donations without having to invest those before ownership transfer.

*Establishment of Collective Waqf Fund Schemes for Zakat Recipients*

The government and philanthropic institutions should establish *Waqf* trusts to attract *Zakat* proceeds from the recipients once they receive the ownership. They should be encouraged to be part of such *Waqf* arrangements that may take work like open-end investment schemes open only to the eligible *Zakat* recipients for their excess receipts. Donors could be encouraged to contribute their *nafli sadaqat* to the fund as well

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without being considered as the beneficiaries of such schemes. Details on a Shari'ah compliant framework is a key area of interest that should be explored further for the benefit of Muslim ummah.

*Cross-border Institutional Philanthropy*

The current economic environment in a number of Muslim countries is highly deplorable warranting our immediate attention. Majority of the Muslim population is in severe economic distress and it is our religious and moral responsibility to ensure their needs are immediately addressed. Instead of considering investment alternatives, the designated guardians should send any excess Zakat proceeds to such countries where managing even basic necessities of daily life have been highly challenging.

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- (28) The Words of the resolution are as follow:  
إن مجلس مجمع الفقه الإسلامي الدولي المنعقد في دورة مؤتمره الثالث بعمان عاصمة المملكة الأردنية الهاشمية من ٨-١٣ صفر ١٤٠٧ هـ، الموافق ١١ - ١٦ تشرين الأول ( أكتوبر ) ١٩٨٦ م، بعد اطلاعه على البحوث المقدمة

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في موضوع توظيف الزكاة في مشاريع ذات ريع بلا تملك فردي للمستحق، وبعد استماعه لآراء الأعضاء والخبراء فيه،

**قرر ما يلي:**

يجوز من حيث المبدأ توظيف أموال الزكاة في مشاريع استثمارية تنتهي بتمليك أصحاب الاستحقاق للزكاة، أو تكون تابعة للجهة الشرعية المسؤولة عن جمع الزكاة وتوزيعها، على أن يكون بعد تلبية الحاجة الماسة الفورية للمستحقين وتوافر الضمانات الكافية للبعد عن الخسائر.

Majallah Mujamma' al-Fiqh al-Islami 1:421. All the resolutions passed by Mujamma' are found on its website <http://www.fiqhacademy.org.sa/>.

(29) Dr. 'AjeelNashami and Yusuf al-Qrdawi are on the top of the list regarding the issue.

(30) Muhammad Sulaiman al-Ashqar, Muhammad Na'eem Yaseen Muhammad UthmanShabbir, Umar Sulaiman al-Ashqar, *Abhath fi Qadaya az-Zakat al-Mu'asirah* 2:516

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