

Sharī'ah Perspectives on Harmful Practices in Stock Markets: From Classical Fiqh to Modern Finance

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Abstract

This paper examines the jurisprudential framework (fiqh al-mu'āmalāt) governing modern stock markets, focusing on the distinction between legitimate trade and speculative practices. Drawing on classical sources such as Badā'i' al-Ṣanā'i' of al-Kāsānī and Radd al-Muhtār of Ibn 'Ābidīn, as well as contemporary analyses by Muftī Muḥammad Taqī 'Uthmānī, Abū 'Umar al-Dibyan, and Dr. Muḥammad Tawfīq Ramaḍān, the paper highlights persistent challenges in aligning modern financial instruments, such as shares, bonds, and derivatives, with Sharī'ah requirements. Particular attention is given to the harmful market practices that undermine genuine trade: absence of possession (qabd) at the time of contract, speculative re-selling of non-possessed goods, artificial price manipulation through hoarding, and the distortion of supply-demand dynamics by fabricated rumours. These factors introduce gharar (excessive uncertainty) and maysir (gambling-like risk), which render such transactions impermissible. The study argues that effective Sharī'ah-compliant market regulation requires a return to authentic principles of trade, possession, transparency, and real economic activity, while resisting the lure of profit from mere price differentials.

Keywords: Market, Islamic Finance, Fiqh, Banking

Types of Debt Trading in the Contemporary Period and their Islamic Legal Status

I. Hundee (Bill of Exchange)

قال جمهور الفقهاء من الحنفية والمالكية والشافعية ورواية عن أحمد:
"إن السفتجة لا يجوز العمل بها لكونها قرضاً جرّ نفعاً، فهي عندهم من باب القرض الذي جرّ نفعاً، فكأنه أقرض المال واستفاد أمن خطر الطريق، فلا يجوز."¹

Translation:

According to the majority of jurists, the Ḥanafīs, Mālikīs, Shāfi'īs, and one narration from Aḥmad ibn Ḥanbal, sarf al-siftaja (i.e. the classical form of hundee) is not permissible because it falls under the principle of *qard jarr naf'an* (a loan that brings benefit). In their view, it is as though a person lent money and thereby gained the benefit of being secure from the risks of the journey, and this type of gain from a loan is not permitted.

قال بعض أهل العلم:

"نرى أن الراجح من ذلك هو جواز هذا العمل، لأنه من باب الحوالة وليس من باب القرض... وقد أجاز ذلك مجلس المجمع الفقهي التابع لرابطة العالم الإسلامي في قراره الصادر في دورته الحادية عشرة برئاسة سماحة الشيخ عبد العزيز بن باز رحمه الله."²

Translation:

Other jurists held that the stronger opinion is that this practice is permissible because it is a form of *hawāla* (transfer of debt), not a loan. This position was adopted by the Majma' al-Fiqh al-Islāmī of the Muslim World League in its 11th session, chaired by Shaykh 'Abd al-'Azīz ibn Bāz (رحمه الله), and it advised banks to follow this ruling.

ذكر الحنفية:

أن بيع الأوراق المعروفة في زماننا إلى غير الغريم المدين أو لمن عليه أمانة أميرية بأنقص من الحق لا يجوز."³

Translation:

The Ḥanafī jurists stated that selling modern hundee-type bills at a discounted price either to a third party other than the original debtor or to someone under government obligation is not permissible.

This in effect means that the holder of a bill, instead of waiting until maturity, sells it to a third party at a lower cash price. Banks commonly “discount” such bills and treat them as short-term loans. The usual maturity period for these bills is around six months.

If this sale is done in exchange for cash in the same currency, it is impermissible because it comes under the ruling of *bay' qabl al-qabḍ* (sale before taking possession). But if the transaction is structured as a loan and there is no legal restriction, then, according to many jurists, there is no shar'ī objection.

2. Cheque (Shabaka)

Mufti Muḥammad Taqī 'Uthmānī defines a cheque as:

“وقد يقع تسليم النقود عن طريق الشبكات (cheques)، والشبكات جمع شبك، وهو ورق يصدره من له حساب في بنك، فيريد أن يسحب به مبلغًا من رصيده عند البنك، إمّا ليأخذ ذلك المبلغ نفسه، أو ليأخذ منه شخص آخر مكتوب عليه اسمه، أو ليأخذه من ذلك الحساب من يعرضه على البنك بدون تسميته، وفي هذه الحالة الأخيرة يسمى الشيك⁴.” (cheque bearer).

Translation:

A cheque is a written instrument that can be issued only by someone who has an account in a bank. By issuing it, the account holder in effect instructs the bank to pay a specified sum to the bearer of the cheque. The person who accepts and encashes the cheque is called in Arabic *muṣrif*, in Urdu usually simply “bank.” The person in whose favor the cheque is drawn is the *payee*, and the one who issues it is called the *cheque issuer*. Sometimes the cheque is made out to a named individual, and sometimes it is issued without a name, in which case it is called a “bearer cheque.”

‘Allāma al-‘Arabiyān defines a cheque as:

“عرف الشيك بأنه ورقة تجارية تتضمن أمرًا صادرًا من شخص يسمى الساحب إلى أحد البنوك بأن يدفع لإذن شخص ثالث، وهو المستفيد، مبلغًا معينًا من النقود بمجرد الاطلاع⁵.”

Translation:

A cheque is a commercial instrument that contains an order by the *sāhib* (issuer) to a bank to pay, on sight, a specified sum of money to a third party, the *mustafid* (payee).

Types of cheques**1. Ḥāmīl Cheque (Bearer Cheque)**

A cheque issued to a named individual but without the word “Bearer” crossed or restricted is called a *ḥāmīl cheque*. The bank has no obligation to verify the identity of the holder; whoever physically presents it may receive the payment. Because of this, classical jurists often warned about the risks involved.

2. Hidāyati Cheque (Order Cheque)

When a cheque is issued in favour of a specified person (*ḥāmīl ḥādhā*), the bank is obliged to make the payment only after verifying the recipient's identity. This provides an additional layer of security.

3. Muḥīṭ Kashīd (Crossed Cheque)

In this type, the holder cannot receive cash directly. The cheque must first be deposited into the holder's own bank account. This restriction is meant to enhance security because the cheque is tied to a specific individual.

4. Post-Dated Cheque

A cheque issued for payment on a future date. Its negotiability and the ruling on *qabḍ* (constructive possession) differ because it is not immediately payable⁶.

Shar'ī Ruling on Cheques

Mufti Taqi Usmani, in *Fiqh al-Buyū*⁷, writes:

“A large number of contemporary scholars hold that receiving a bank cheque is tantamount to taking possession (*qabḍ*) of the actual amount. The remote possibility that the cheque may bounce is not considered significant because the law imposes severe penalties on issuing cheques without balance. A similar risk exists in physical cash, which could be counterfeit; such a risk does not negate *qabḍ*. Therefore, the cheque functions like constructive possession. Some jurists have likened a cheque to a *hawālah* (transfer of debt).”

Contemporary scholars generally treat possession of a valid, certified, or at least bank-issued cheque as *qabḍ* of the underlying sum. However, the sale or discounting of cheques at more or less than their face value is unanimously prohibited by the jurists because it amounts to *riba* (interest). The bearer of the cheque is essentially borrowing and paying an additional amount as interest.

Promissory Note (*Sund / Sanad*)

A *sanad idhniyyah* (promissory note) is:

“A written undertaking by the debtor (*madīn*) to pay a specified sum of money to another person (*mustafīd*) at a fixed future date.”

Unlike a *kambiyālah* (bill of exchange), which involves a third party (*mashhūb ‘alayh*) and an order to pay, the promissory note is a direct promise by the debtor⁸.

Sharī' ruling:

Since both involve a debt reference, the legal treatment is similar. All jurists agree that selling or discounting such debt-based instruments for less or more than their face value is not permissible, because the buyer in effect lends cash to the note-holder and collects extra money as interest.

(Historic Salary Certificates)

In the past, governments issued *jāmakīyyah*, certificates for fixed salaries due to their employees. Sometimes employees in urgent need sold their certificates to others at a lower price.

Classical discussion (cited by Mufti Taqi Usmani in *Fiqh al-Buyū* ⁹):

“Later jurists mentioned a form known as *imāmkīyyah*, papers issued by the public treasury or the superintendent of *awqāf*.

‘Allāmah Shāmī defined it as the allowance or stipend allocated annually or monthly to officials. Selling such claims in advance at a discount was deemed invalid because it was effectively the sale of a debt to someone other than the original debtor.”

Fiqh positions:

- Ḥanafī and Ḥanbalī jurists generally ruled it impermissible as it was *bay‘ al-dayn li-ghayr man ‘alayhi al-dayn* (sale of debt to a third party).
- Some Mālikī jurists, such as al-Khaṭṭāb, permitted it.
- Shāfi‘ī jurists held diverse opinions.

Sale of Other Rights

Mufti Taqi Usmani writes in *Huqūq al-Muslim*¹⁰:

“All rights that arise for a person through a transaction, such as the right to claim the price after selling a good, the right to recover a loan, or the right to receive a government-announced prize, are not themselves *māl* (tangible property) but rather claims. Selling such claims for cash is in fact the sale of debt, which Ḥanafī jurists do not allow, as it amounts to selling what one does not yet possess (*mā laysa ‘inda al-insān*). This category includes the sale of stipends, allowances, gifts with stipulations, and *jāmakīyyah* certificates.”

Bank Accounts and Their Sharī' Status

1. Current Account

Funds deposited by companies or individuals with the bank's right to utilize them, and repayable on demand without profit-sharing. Jurists classify this as *qard ḥasanah*, an interest-free loan from the depositor to the bank.

2. Saving Account

Money deposited mainly for safekeeping, not for profit. If the bank merely acts as a custodian and guarantees repayment, it is treated as *wadī‘ah bi'l-ḍamān*, a guaranteed deposit.

3. Fixed-Deposit Account

Money placed for a fixed period with the aim of earning higher returns. Its legal nature depends on whether the arrangement is based on *mudarabah*, *sharikah*, or *wakālah bi'l-istithmār* (investment agency). Conventional interest-bearing deposits, however, remain impermissible.

Stock Exchange (Bourse)

The stock exchange is a marketplace where bankers and brokers trade shares, bonds, and other financial instruments. Prices are determined by supply and demand.

Two main categories of traded instruments:

1. Government Securities (*sanadāt mawḍū‘iyyah*)

Instruments issued by the state to borrow funds on an interest-based repayment schedule short-term, medium-term, or long-term. Because of the fixed interest, they fall under *riba*.

2. Corporate Shares (*ḥiṣṣ*)

Issued by companies. Shareholders have proportional rights in the company's policies and profits. When the company earns profits, a portion is distributed among shareholders as dividends, and the rest is reinvested.

In addition, the stock market also facilitates trade in commodities, sometimes involving goods that are:¹¹

- in the seller's possession,
- owned but not yet possessed, or
- not yet in existence at the time of contract.

Types of Transactions in the Stock Exchange

1. Spot (Cash) Transactions

Immediate delivery and payment legally valid.

2. Deferred (Futures) Transactions

Both payment and delivery are deferred to a future date (e.g., 3, 6, or 12 months). Their permissibility depends on whether Shar'ī conditions for *bay' al-salam* or *bay' al-mu'ajjal* are met.

3. Option-Based Conditional Deals

Certain contracts grant either party the right to withdraw from the deal by paying a fixed premium. The Shar'ī ruling depends on the structure; many forms resemble *gharar* (excessive uncertainty) and are therefore problematic.¹²

Positive aspects of the stock Market

- 1) It provides a continuous and organized marketplace that connects buyers and sellers of shares, bonds, and commodities.
- 2) It facilitates financing for industrial, commercial, and governmental sectors by enabling them to issue and sell shares or bonds to raise capital.
- 3) It gives investors liquidity by allowing them to resell shares and bonds in the secondary market¹³

Negative and Harmful Aspects of the Stock Market

While the stock exchange provides a structured marketplace for trading *ḥiṣṣ* (shares), *bonds*, and other commodities, classical jurists and many contemporary scholars have pointed out serious Shar'ī and economic concerns.

1) Absence of Real *Qabḍ* (Possession)

In most speculative trades at the stock exchange, neither party takes actual or constructive possession (*qabḍ*) of the subject matter at the time of contract.

Yet the Shar'ī requires that at least one of the two counter-values (*'iwadāyn*) be possessed in the *majlis al-'aqd* (session of contract) for the sale to be valid¹⁴.

2) Sale of Non-Owned Assets

Commonly, a seller disposes of unowned shares, bonds, foreign currencies, or commodities, hoping to purchase them later from the market before the settlement date to deliver to the buyer.

This practice violates the Shar'ī principle *lā bay' illā fīmā yamlik* "no sale except of what one owns" and renders such forward sales invalid¹⁵.

3) Chain of Resales Before Possession

It is also typical for the first buyer to resell the item before taking possession, and the second buyer to do the same passing the claim along a chain of traders.

Ultimately, only the last buyer either receives delivery from the original seller or settles by paying or receiving the difference in price on the day of clearance (*taswiyah*).

Intermediary traders merely speculate on price differences, taking profit if the market moves in their favour and paying the loss otherwise.

This pattern closely resembles futures speculation in modern commodity markets, which jurists describe as invalid because of the absence of *qabḍ* and the predominance of *gharar* (excessive uncertainty)¹⁶.

4) Hoarding and Price Manipulation

Wealthy speculators often hoard large quantities of shares, bonds, or essential commodities to manipulate prices. Those who had sold without owning the asset expecting to buy them later at lower prices find themselves trapped, forced to buy at artificially high rates at the time of delivery.

Such *ihṭikār* (hoarding) is condemned in Shar'ī because it harms the market and the public interest¹⁷.

5) Artificial Price Fluctuations

A major defect of the stock exchange is that prices are often determined not by genuine supply and demand of real goods but by rumours, speculative sentiment, or deliberate manipulation by dominant traders.

At times, false news is spread to influence prices.

Such practices introduce unjustifiable risk (*gharar*, *risk mā lā yuḥtamal*)¹⁸ into the market, causing abnormal fluctuations that disrupt the economy and harm society¹⁹

Summary

The article explores how Islamic jurisprudence evaluates modern stock-market practices.

Key points include:

1. Foundational Principle:

Islamic trade law requires that one party must have actual possession (*qabd*) of the goods or financial instruments before selling them. Any sale that occurs without such possession violates classical jurisprudence.²⁰

2. Speculative Practices:

Much of the trading in stock markets involves selling shares or commodities that the seller does not yet own. This “sale of what is not in one’s possession” has been declared impermissible by both classical jurists and modern scholars such as Muftī Taqī ‘Uthmānī.

3. Chain Transactions:

A single asset often changes hands multiple times before anyone takes actual delivery. Profit or loss is settled only as a difference in price at the time of contract settlement. This disconnect between trade and real goods turns the market into a speculative arena rather than a legitimate trading platform.

4. Market Manipulation:

Wealthy players hoard shares and commodities to create artificial scarcity, raising prices and disadvantaging smaller traders. Rumour-driven speculation further distorts market prices and introduces impermissible levels of *gharar* (uncertainty).²¹

5. Broader Economic Impact:

Such speculative activity not only undermines Sharī‘ah principles but also harms real economic stability by disconnecting prices from actual supply and demand.

The article concludes that a Sharī‘ah-compliant stock market must re-centre genuine ownership, enforce transparent practices, and prevent price manipulation in order to foster ethical and stable economic growth.

¹ Abd Allāh ibn Muḥammad al-‘Ulyān, ‘Abd Allāh ibn Muḥammad al-Muṭṭlaq, and Muḥammad ibn Ibrāhīm al-Mūsā, al-Fiqh al-Muyassar, vol. 6, p. 122, Madār al-Waṭan, Riyadh, Saudi Arabia.

² Abd Allāh ibn Muḥammad al-Ṭayyār, ‘Abd Allāh ibn Muḥammad al-Muṭṭlaq, and Muḥammad ibn Ibrāhīm al-Mūsā, al-Fiqh al-Muyassar, vol. 6, p. 122, Madār al-Waṭan, Riyadh, Saudi Arabia.

³ al-Zuhaylī, Dr. Wahbah, al-Fiqh al-Islāmī wa-Adillatuh, vol. 5, p. 3408, Dār al-Fikr, Damascus.

⁴ Uthmānī, Muftī Muḥammad Taqī, Fiqh al-Buyū‘, vol. I, pp. 441–442, Maktabat Ma‘ārif al-Qur’ān, Karachi, Pakistan.

⁵ Abū ‘Umar Wa-Dibyān ibn Muḥammad al-Dibyān, al-Mu‘āmalāt al-Māliyya Aṣālātān wa-Mu‘āṣirātān, p. 593, Maktabat al-Malik Fahd al-Waṭaniyya, Riyadh.

⁶ Muftī Muḥammad Taqī ‘Uthmānī, Fiqh al-Mūsūn (Karachi: Maktabat Ma‘ārif al-Qur’ān), vol. I, pp. 445–446, 442.

⁷ Muftī Muḥammad Taqī ‘Uthmānī, Fiqh al-Mūsūn (Karachi: Maktabat Ma‘ārif al-Qur’ān), vol. I, pp. 445–446, 442.

⁸ Abū ‘Umar al-Dibyān ibn Muḥammad, al-Mu‘āmalāt al-Māliyya Aṣālāh wa Mu‘āṣarah (Riyadh: Maktabat al-Malik Fahd al-Waṭaniyyah), p. 589.

⁹ Muftī Muḥammad Taqī ‘Uthmānī, Faḥḥ al-Amīn (Karachi: Maktabat Ma‘ārif al-Qur’ān), vol. I, p. 370–372.

- ¹⁰ Ibn ‘Ābidīn, Muḥammad Amīn ibn ‘Umar ibn ‘Abd al-‘Azīz al-Dimašqī al-Ḥanafī (d. 1252 AH), Radd al-Muḥtār ‘alā al-Durr al-Mukhtār (Beirut: Dār al-Fikr, 2nd ed., 1412 AH / 1992 CE).
- ¹¹ Muftī Muḥammad Taqī ‘Uthmānī, Fiqh al-Buyū‘, vol. 1, p. 354 (Karachi: Maktabat Ma‘ārif al-Qur‘ān).
- ¹² Muftī Muḥammad Taqī ‘Uthmānī, Fath al-Salām (Beirut: Dār Ihya‘ al-Turāth al-‘Arabī), vol. 1, p. 362.
- ¹³ Mawlānā Khālīd Sayyidullāh Raḥmānī, Jadīd Māliyyātī Masā’il (Deoband, Sahāranpūr, U.P.), pp. 26–270.
- ¹⁴ ‘Alā’ al-Dīn Abū Bakr ibn Mas‘ūd ibn Aḥmad al-Kāsānī al-Ḥanafī (d. 587 AH), Badā’i‘ al-Ṣanā’i‘ fī Tartīb al-Sharā’i‘ (Beirut: al-Maktab al-‘Ilmī al-Ḥadīth, 1406 AH / 1986 CE), vol. 5, p. 218.
- ¹⁵ Abū al-Qāsim Muḥammad ibn Aḥmad ibn Muḥammad ibn ‘Abd Allāh ibn Juzayy al-Kalbī al-Andalusī (d. 741 AH), al-Fiqh al-Islāmī, vol. 1, p. 213 (Beirut: Dār al-Fikr).
- ¹⁶ Abū ‘Alī Dr. Muḥammad Tawfīq Ramaḍān, al-Ṣuwar al-Mu‘āṣirah lil-Bay‘ wa Aḥkāmuhā al-Shar‘iyyah, pp. 483–484.
- ¹⁷ Abū ‘Alī Dr. Muḥammad Tawfīq Ramaḍān, translated by Muḥammad Islām, al-Ṣuwar al-Mu‘āṣirah lil-Bay‘ wa Aḥkāmuhā al-Shar‘iyyah, pp. 483–487.
- ¹⁸ Abū ‘Alī Dr. Muḥammad Tawfīq Ramaḍān, translated by Muḥammad Islām, al-Ṣuwar al-Mu‘āṣirah lil-Bay‘ wa Aḥkāmuhā al-Shar‘iyyah, pp. 486–487.
- ¹⁹ Abu ‘Ali, Dr. Muhammad Tawfiq Ramadan, translated by Muhammad Islam, Kharid-o-Farokht ki Marwajah Soorten aur unki Shari‘i Hasiyat (Prevalent Forms of Buying and Selling and Their Legal Status in Shariah), p. 483, 0384.
- ²⁰ Abu ‘Ali, Dr. Muhammad Tawfiq Ramadan, translated by Muhammad Islam, Prevalent Forms of Buying and Selling and Their Legal Status in Shariah, pp. 484, 383.
- ²¹ Abu ‘Ali, Dr. Muhammad Tawfiq Ramadan, translated by Muhammad Islam, Prevalent Forms of Buying and Selling and Their Legal Status in Shariah, p. 483, 0484.