

# **An Islamic alternative to Capitalism: A study of Sharī‘ah-compliant Finance with special reference to Muftī Taqī Usmānī**

**Zain Razzaq**

PhD Scholar, Department of Islamic Studies, HITEC University, Taxila, Pakistan.

Email: [zainrazzaq@yahoo.com](mailto:zainrazzaq@yahoo.com)

**Dr. Rab Nawaz**

Associate Professor/Chairperson, Department of Islamic Studies, HITEC University, Taxila, Pakistan.

Email: [rab.nawaz@hitecuni.edu.pk](mailto:rab.nawaz@hitecuni.edu.pk)

ISSN (P): 2708-6577  
ISSN (E): 2709-6157

## **Abstract**

Two streams of Muslim scholars from the Indian subcontinent proposed an Islamic alternative to capitalism. The majority of scholars viewed capitalism as just an economic system and attempted to replace it gradually through Islamic reforms. However, a microscopic minority of Muslim scholars conceptualized capitalism as a totalizing, all-encompassing system and lifeworld that is the polar opposite of Islam and believes that the only way to overthrow capitalism is the Islamic revolution. Muhammad Taqī ‘Usmānī is a leading *Sharī‘ah* expert who belongs to the former group of Muslim scholars. He not only strongly criticized capitalism but also proposed an alternative to the capitalist economy. This paper is divided into three sections, the first section of which deals with ‘Usmānī’s conception of capitalism. The second section of the paper examines the ‘Usmānī’s critique of capitalism to identify the flaws of an interest-based economy. The final section consists of identifying the modes of Islamic finance that ‘Usmānī proposed as an ideal, fair, and workable alternative to capitalism.

**Keywords:** Capitalism, Islamic economy, Islamic finance, Alternative, Economics

## **Introduction**

After the end of the colonial period, the Pakistani economy was built on the same capitalist foundations inherited from colonialism instead of Islamic foundations. Muslims of Pakistan have always felt the need to replace the capitalist economic system imposed on the Islamic world with an economic system that fully supports the Islamic way of life. To propose an Islamic financial system in this modern age, which has not yet been experienced, in a situation where Muslim countries are economically weak and poor and capitalist countries are strong and rich, is very daring. Muftī Taqī ‘Usmānī is one of the leading figures who proposed a separate and independent financial system as an alternative to the capitalist economy. ‘Usmānī is a well-known expert in *Tafsīr*, *Hadith*, *Fiqh* which is considered an authority within the Deobandi school and a representative of its intellectual tradition. He is the son of Muhammad Shafī, the former Grand Muftī of Pakistan who founded *Jāmi‘a Dārul‘ulūm* in Karachi. From 1982 to 2002, he served as a Judge of the ‘Shariat Appellate Bench’ of the Supreme Court of Pakistan. ‘Usmānī’s position as a leading figure in Islamic finance gave him an additional influence. More than a dozen Islamic banks and financial institutions have appointed him as chairman and on their boards.<sup>1</sup>

According to ‘Usmānī, economics is not the field of his personal interest and passion, but he has opted for it only out of necessity.<sup>2</sup> There is a common misconception that ‘Usmānī is the pioneer of Islamic banking and finance, but he refuted this claim, saying that the debate on an Islamic alternative to capitalism began

in the late twentieth century when it was claimed that bank interest does not fall under the concept of *ribā*, which is prohibited by the Quran.<sup>3</sup> Several articles were written against it by many Muslim scholars including ‘Usmānī. The matter then came to the Supreme Court where it was debated for months. ‘Usmānī was then a judge of the “Shariat Appellate Bench” of the Supreme Court of Pakistan. On December 23, 1990, the Supreme Court issued a decision that bank interest is also included in the definition of *ribā*. The entire judgment of the Supreme Court covers about 100 pages, of which ‘Usmānī’s judgment has been published in book form.<sup>4</sup> Moreover, ‘Usmānī emphasizes that the duty of Islamic scholars is not only limited to determining legal value, i.e. *halāl* or *harām*, of any matter, but he is also responsible for presenting a *Sharī‘ah*-constrained and workable alternative.<sup>5</sup> In view of this responsibility, *Markaz al-Iqtisād al-Islāmī* (The Center of Islamic Economics) in collaboration with *Jāmi‘a Dārul ‘ulūm* Karachi started a series of lectures by ‘Usmānī on Islamic Banking and Finance in which he attempted to propose an Islamic alternative to the capitalist economy. These lectures were attended by many Islamic scholars as well as leading economists of Pakistan. This series was later compiled in book form by Muhammad Mujāhid under the title “*Islām aur Jadīd Ma‘īshat-o-Tijārat*”.<sup>6</sup> According to Zāhid Siddique Mughal, due to the great personality of ‘Usmānī and the presentation of the lectures in front of the ‘*Ulamā*, the academic importance and authenticity of this book is much higher than other books on Islamic economics. This is the reason why this book has been included as a basic textbook in *madrasahs*.<sup>7</sup> For Javed Akbar Ansārī, ‘Usmānī’s book possesses a high Islamic authenticity compared to the Islamic economists literature authored by Najātullāh Siddīqūī, Umar Chāpra, and Khurshīd Ahmad. While these texts gather dust on the bookshelves, ‘Usmānī’s concise volume has become a mandatory read for advanced-level students in numerous *madāris* across Pakistan and India.<sup>8</sup> He also wrote a book in English titled “An Introduction to Islamic Finance” on the modes of Islamic finance, which was later translated into Urdu by Muhammad Zāhid as “*Islāmī Bankārī kī Bunyādain*”.<sup>9</sup>

### **Conceptualizing Capitalism**

This section of the paper attempts to describe ‘Usmānī’s conception of capitalism including the definition and principles of capitalist economy and capitalist solution to fundamental economic issues. All economic ideologies, according to ‘Usmānī’s claim, recognize that resources are limited while human needs are unlimited and the problem is how to satisfy unlimited needs with limited resources. Economics as a science deals with the problem of using limited resources in such a way that maximum needs can be satisfied.<sup>10</sup> ‘Usmānī further says that all economic systems have some fundamental issues without addressing that the economy cannot function, which are as follows; determination of priorities, allocation of resources, distribution of wealth, and development.<sup>11</sup>

Capitalism, according to ‘Usmānī is one of the dominant economic theories that offers solutions to these four basic economic issues. Capitalism offers the only solution to these four basic economic problems is to leave every human being completely free to engage in commercial activities. As a result, these economic issues will be resolved automatically due to the natural law of supply and demand<sup>12</sup> operating in the universe. This law determines priorities in such a way that when everyone is left free to maximize profit, each person will prefer to bring to market the product that is most demanded by society so that he can get more profit through it. If something is brought to the market which has low demand in the market, it will not make much profit. Although everyone is producing for his own profit, the natural law of supply and demand compels him to meet the demands of society. Even when the production and the demand of the society become equal, since the further production of that product is no longer profitable for the producer, its production will be stopped. In this way, only those products will be produced in the society that the society needs and will be

produced only in such quantity as is required to meet the needs of the society.<sup>13</sup> The second economic issue - allocation of resources - is associated with the issue of determining priorities. When a person determines priorities, he utilizes the available resources i.e. land, labor, and capital in various economic activities accordingly. In this way, resources are automatically allocated by the natural law of supply and demand.<sup>14</sup> The third economic issue i.e. distribution of wealth refers to how production or capital generated through production should be distributed in society. Capitalism relies on four factors: land, labor, capital, and entrepreneurship to initiate the production process, which is called factors of production.<sup>15</sup> Land refers to the natural factor of production, which is directly created by God, and no human action is involved in its creation. The human action through which a new product is produced is referred to as labor. In capitalism, capital is referred to be a “produced factor of production”. In short, capital may be defined as a factor of production that is artificially produced as a result of a production process and then utilized in a consequent production process. An individual or corporation who sets up a business takes financial risks in the hope of profit, and brings together the other three factors for a business, is called an entrepreneur.<sup>16</sup> In capitalism, wealth is allocated among these factors such that land receives rent, labor is entitled to wages, capital receives interest, and the entrepreneur takes a profit. Interest is a fixed return on capital while the profit can only be made when there is a surplus after allocating the fixed return to land, labour, and capital.<sup>17</sup> The first three factors of production have a fixed return, while the fourth factor i.e. profit is not determined at the start of the business but after the business becomes profitable.<sup>18</sup> The fourth and last economic issue is development. Every economy needs to develop and increase its production. In capitalism, the issue of development is also resolved on the basis that when each individual is left free to maximize profit, the natural laws of supply and demand will automatically induce him to bring new and better products to the market. So that their demand increases and the individual can get more profit.<sup>19</sup>

After the brief description of the capitalist system, ‘Usmānī also explains the basic principles of the capitalist economy which are as follows:

1. Private property: It refers to the ownership of property. In the capitalist system, everyone has the right to keep assets as well as the means of production in his personal ownership. In communism, although personal use assets can be privately owned, the means of production, such as land or factories, are generally not privately owned. However, in the capitalist system, any of these assets can be privately owned.
2. Profit motive: The second principle of the capitalist economy is the motive to make a profit.
3. Laissez-faire: It is the capitalist economic principle of minimum state interference in the economic affairs of individuals and society.<sup>20</sup>

### **Criticising Capitalism**

This section of the paper focuses on the study of the ‘Usmānī’s critique of capitalism in order to explore the flaws of the capitalist economy. ‘Usmānī endorses some principles of capitalism to such an extent that solving economic issues requires the profit motive and the use of market forces i.e. the law of supply and demand, because it is a requirement of human nature. Private ownership is not absolutely negated in Islam.<sup>21</sup> In the capitalist system, the profit motive was left completely unchecked, leading to distortions in society.<sup>22</sup> In his view, the actual issue and flaw in capitalism is the freedom to make more profit without any restrictions and constraints.<sup>23</sup> No divine directive restricts the freedom to maximize profits. If there are limits, they are humanly imposed and subject to democratic legislation.<sup>24</sup> ‘Usmānī further elaborates that although the actual principle of capitalist economy was that there should be no interference in business and trade, after gradual trials this principle could not be fully maintained in practice. Almost all capitalist countries have had some form of state intervention. Therefore, no country in the world properly follows the principle of

“Laissez-faire”. However, these state interventions are usually the result of a bureaucratic and capitalist nexus that only serves the interests of capitalists and fails to contribute to collective welfare.<sup>25</sup> At times, it is evident that a certain economic activity is not in the best interests of society as a whole. However, it is permitted to persist only because it opposes the interests of a powerful group that dominates the legislature with the support of the majority.<sup>26</sup> Even if there is no malice involved, such limits cannot adequately address social inequalities since they are based only on secular ideals.<sup>27</sup>

Islam, on the contrary, has imposed several restrictions on business and economic activity to prevent moral or societal disorder in the economy:

1. ‘Usmānī asserts that Islam has imposed certain eternal restrictions of *halāl* and *harām* on economic activities which are valid at all times and in every space. For example, interest, gambling, betting, hoarding, etc. are completely prohibited. This is because these activities often lead to the creation of monopolies and economic inequality. Similarly, it prohibited the production and sale of all things that could lead to immorality in society and stimulate negative feelings of individuals. These divine restrictions are imposed by the Quran and the Sunnah and are binding regardless of whether or not the human mind appreciates these restrictions.<sup>28</sup>
2. ‘Usmānī claims, that Islam has given the authority to the ruler of the Islamic state that he can ban certain things or acts under general expediency, which is not forbidden by itself but falls within the scope of permissible. This restriction is a temporary directive rather than an eternal one which does not apply everywhere and at all times.<sup>29</sup> ‘Usmānī further adds that the authority of the ruler to ban permissible is not unlimited, but it also has some conditions, two of which are very important; the first is that the ruler should be followed only in those matters that do not conflict with any command of the Quran & Sunnah, and the second is that the ruler has the authority to impose restrictions only when collective expediency demands it.
3. For ‘Usmānī, Islam is not an economic system, but a *dīn*, whose principles and teachings are as applicable to economics as they are to other areas of life. However, the ultimate goals of human life are neither these commercial enterprises nor their material benefits. The entire focus of the Qur'an and Sunnah is on the concept that this life is limited and only for a few days, and beyond that there will be an endless, immortal life. The success of an individual is not that he earns more money than others, but the real success is the success in the hereafter, the way of which is to act in this world which leads to maximum reward in the hereafter. According to ‘Usmānī, when individuals adopt this mindset, their economic decisions will not always be focused on how to maximize profit, but sometimes they will prefer an action that will be more beneficial to them in the hereafter than in this world. In many cases, Islam has never given mandatory commandments, rather it has described the virtues of the Hereafter that are appealing to the believer, and through them, he imposes some restrictions on himself, which can be called moral restrictions.<sup>30</sup> ‘Usmānī endorses that non-Islamic societies also have moral values, and sometimes they influence economic decisions, but since there is no belief in the hereafter behind these moral concepts, they do not have any significant impact on economic affairs.<sup>31</sup>

‘Usmānī emphasizes that supply and demand forces can only function properly in an environment of open competition. Giving anyone unrestricted freedom to maximize profit allows him to adopt illegal ways to become wealthy and monopolize the market<sup>32</sup> paralyze market forces or at least disrupt their natural process.<sup>33</sup> These monopolies create an artificial environment in which the decisions made regarding the four basic problems of the economy do not reflect the real needs and demands of society. As a



result, an economic crisis arises which disturbs the balance of the economy. Thus, the natural law of supply and demand is disrupted by the capitalist system which claims to be based on market forces.<sup>34</sup>

Usmānī further claims that there are four factors in the capitalist system: gambling, speculation, and interest, which lead to the flow of capital to the rich instead of the poor and unfair distribution of wealth.<sup>35</sup> It is evident in gambling and betting, but the inequity caused by interest is usually not noticed, although the fact is that interest in any case distorts the balance of wealth distribution. For example, an entrepreneur starts a business by taking a loan from a financier and if he makes a loss in the business, the financier still continues to demand interest from him. If the interest is not returned, the amount owed increases further, thus the “entrepreneur” remains in the loss while the “capital” is in benefit. On the other hand, if some entrepreneurs take huge loans from banks and start a large-scale business, that makes a lot of profit in that business, they transfer only a small part of it to the public through the bank in the form of interest and keep all the profit. In both these cases, the distribution of wealth becomes unbalanced.<sup>36</sup> If the entrepreneurs suffer a huge loss in a business, the bank will go bankrupt if they do not return the loan. This will result in a minor loss to the entrepreneurs, while the account holders of the respective bank will suffer huge losses. In short, because of the interest-based system, certain entrepreneurs use the entire nation’s wealth for their own benefit. In return, the nation receives a very small share in the form of interest, which is again recovered from consumers by raising the cost of production. Thus the flow of capital remains upward.<sup>37</sup> Unlike the capitalist economy, the Islamic economy does not treat capital and industrialization as two separate factors of production. Everyone who contributes capital (money) to a business is entitled to a share of the profits by virtue of assuming the risk of loss. In this sense, “capital” has an intrinsic aspect of “entrepreneurship”. Therefore, it makes a profit as opposed to a fixed return in the form of interest. Thus the profits are distributed equally among all those who have invested capital in the business.<sup>38</sup> In other words, Islam prescribes an equitable alternative, so that both the entrepreneur and the capital suffer in case of loss and profit.<sup>39</sup>

‘Usmānī believes that unrestricted freedom to maximize profit and the lack of distinction between *halāl* (permissible) and *harām* (forbidden) also lead to moral crises in society such as nudity and vulgarity. The profit maximization motive often provides the means to satisfy the wrong desires of some individuals by stimulating their negative emotions which corrupts the society morally.<sup>40</sup>

### **An Alternative to Capitalism**

Islamic economics lies between the two extremes of capitalism and socialism. The issue of Islam is that the real owner of everything in the universe is its creator and everything can be used according to His will. Furthermore, although God has allocated ownership of things to individuals, it is neither absolute nor for anyone’s personal interest.<sup>41</sup> The attitude that Islam as a whole wants to build by imposing all these restrictions is based on compassion, sympathy, and above all, fear of God, instead of heartlessness, miserliness, and selfishness.<sup>42</sup> ‘Usmānī invites an independent understanding of Islam instead of pasting it on a non-Islamic fabric.<sup>43</sup> He strongly believes that Islam is a complete system of life for all time and it does not need to be changed, moulded, or modified according to the requirements of the times. It has enough flexibility to support the real needs of every time. On the one hand, it has given definite commands which are applicable for all times and the change of time does not affect them. On the other hand, to deal with the problems that may be affected by the change of time, instead of giving specific and definite orders, he has laid down some principles.<sup>44</sup>

Is it necessary or at least commendable to find an alternative to capitalist banking? In ‘Usmānī’s opinion, *Shari’ah* experts do not need to find alternatives to practices that do not arise from genuine human needs. Therefore, for example, an Islamic alternative to gambling will not be sought because it is not a real human need.<sup>45</sup> However, the case

of banks is different because banks have become the most important need of modern times due to the following reasons:

1. Anyone who has cash is almost bound to keep it in the bank.
2. In international trade, no trader can avoid banks, there is no safe way to transfer money from one place to another except through banks.
3. The bank is achieving a legitimate objective by gathering citizen savings at a single point and utilizing them to support the nation's economy and trade.

However, the way adopted for all of these legitimate objectives is illegal and harmful. Therefore, scholars should find an Islamic alternative through which these legitimate objectives can be fulfilled.<sup>46</sup> Usmānī emphasized that the duty of Islamic scholars is not only limited to determining legal value, i.e. *halāl* or *harām*, of any matter, but he is also responsible for presenting a *Shari'ah*-constrained and workable alternative.<sup>47</sup> He stressed that it is the way of the Prophet Muhammad (PBUH) to present an Islamic alternative.<sup>48</sup> So, it is not permissible for the scholars to completely withdraw from this responsibility, but they can only derive alternative principles from the Quran and Sunnah. It is the responsibility of the experts in every field of life to suggest practical structures in light of the principles proposed by Islamic scholars. Scholars should monitor them to ensure that the proposed structure does not violate any *Shari'ah* injunctions.<sup>49</sup>

Finding an Islamic alternative to the capitalist economy does not mean that all financial affairs continue to follow capitalist practices and objectives. Rather, the alternative means that all financial matters must be settled within the limits of the Quran and the Sunnah so that the economic objectives of the *Shari'ah* can be fulfilled. Those matters which are unnecessary or useless according to *Shari'ah* and which cannot be reformed according to Islamic principles must be ignored.<sup>50</sup> This aspect of the capitalist bank's services is useful but necessary in view of the present economic conditions, that the bank becomes a means of pooling the individual savings of the people and using them in industry and business. If everyone preserved their savings in their personal locker, it would be impossible for the trade and industry to flourish. The circulation of wealth in society is neither required from the *Shari'ah* perspective nor useful from the rational and economic point of view. Capitalist banks lend out of these savings to industrialists regardless of how profitable the business is, and who is benefiting and who is suffering from it? While Islam's position is that a bank cannot remain an institution that only deals in cash. Instead, it has to be a commercial enterprise that collects people's savings and invests them in business.<sup>51</sup> 'Usmānī's writings on finding an alternative to capitalist banking have a theoretical aspect, discussing which of the legitimate methods can be adopted.<sup>52</sup> He advises no one to deal with financial institutions unless it is supervised by a trustworthy Islamic scholar. He believes the best approach is to avoid banks as much as possible. However, Islamic banking is an attempt to find a legitimate way for those who are compelled to deal with banks.<sup>53</sup>

### **Islamic Modes of Finance**

Islam has a higher objective through which economic welfare can be promoted in the society as well as the unjust capitalist system can be overthrown and a just system can prevail. For this, according to 'Usmānī, the entire system of the existing capitalist banks with all their financial matters must be established on the basis of *mushārakah* and *mudārabah*.<sup>54</sup> He further claims that an ideal economic system can only be implemented when the state uses all its resources to implement this Islamic economic policy. But if the state is not doing this, and some individuals or institutions want to save themselves and other Muslims from the interest in order to establish such a financial institution that may not be ideal but falls within the limits of *Shari'ah*, then every Muslim should support them.<sup>55</sup> In this regard, He suggests some secondary modes, such as *murābahah*, *ijārah*, *salam*, or *istisnā'*, etc. that can be adopted with

*Shari'ah* conditions.<sup>56</sup> However, these modes of Islamic finance are inconsistent with major Islamic economic objectives, but the matter becomes permissible<sup>57</sup> and from an economic point of view, the results seem more effective, at least in comparison to interest-based financial matters.<sup>58</sup> For 'Usmānī although these secondary modes of finance are legitimate, they are neither the final destination nor can the full benefits of the Islamic economic system be obtained from them.<sup>59</sup>

### 1. *Mushārah*

*Mushārah* is an Arabic term that literally means sharing. In the context of Islamic financing, the term *mushārah* refers to a joint enterprise in which all members of the enterprise share its profits and losses jointly.<sup>60</sup> 'Usmānī claims that there is no mention of the term *mushārah* in Islamic jurisprudence books. It is a contemporary term used by those who have written on Islamic finance. He emphasized that this term is usually used for a special type of partnership called "*Shirkat-ul-Amwāl*", in which two or more people invest their money in a joint enterprise. However, sometimes it includes *shirkat-ul-'amal* also.<sup>61</sup> In *mushārah*, while executing the contract, if the profit ratio to be shared among the partners is not agreed upon then according to 'Usmānī, this partnership will be considered invalid. He further states that the rate of profit of each partner in the *mushārah* must be determined with respect to the actual profit of the business and not on the basis of his investment in the business. It is not permitted to fix a lump sum profit for any one of the partners or a certain profit percentage<sup>62</sup> associated with his investments.<sup>63</sup> For 'Usmānī, any ratio of profit may be decided by mutual consent, it is not necessary to distribute the profits in proportion to the investment.<sup>64</sup> There is a difference of opinion among the scholars on this issue:

1. For Imām Mālik and Shāf'ī, for *mushārah* to be valid, it is necessary that each partner must receive a profit in proportion to his investment.
2. On the contrary, for Imām Ahmad, the profit may vary in proportion to the investment, if it is freely agreed between the partners.
3. For Imām Abū Hanīfa, under normal conditions, profit may deviate from the ratio of investment. However, if a partner specifies in the *mushārah* agreement that he will continue to be a sleeping partner throughout the partnership. In this case, he cannot get more profit than the proportion of his investment.<sup>65</sup> Different proportions of profit may be determined, but there is a consensus on this matter that the loss will be shared in proportion to the investment.<sup>66</sup>

In 'Usmānī's opinion, the majority of jurists contend that each partner must invest capital in liquid form, which necessitates that the *mushārah* be only based on money and not on other commodities. However, there is disagreement on this matter among Muslim scholars; For Imām Mālik, capital in liquid form is not a condition for *mushārah* to be valid. Therefore, it is allowed for a partner to invest in the *mushārah* in the form of commodities, but the value of his share will be determined according to the market price on the day of the agreement. Some Hanbalī jurists have also adopted the same view.<sup>67</sup> In contrast, Imām Abū Hanīfa and Mālik did not accept investment in the form of a commodity for two reasons; Firstly, when a partner invests a commodity in *mushārah* that he personally owns, rather than money. If the commodity is sold after some time for any reason, the proceeds from the sale go to the only partner who owns it. Since the ownership of each partner is distinguished from the other, no *mushārah* can occur. On the contrary, if the capital invested by each partner is in the form of money, the share of one partner will not be distinguished from that of the others. This money is a common pool that can make *mushārah* agreement possible.<sup>68</sup> Secondly, in a *mushārah* agreement, sometimes the invested capital has to be redistributed among all the partners. If the invested capital is in the form of a commodity, redistribution will not be possible. Because if the capital is returned based on the cost of these commodities, the prices of some items may have increased. Due to

this one partner takes the entire profit of the business and nothing is left for the other partner. Similarly, if the prices of these commodities decrease, there is a possibility that one partner secures some of the actual value of the commodity of the other partners in addition to his own investment.<sup>69</sup> Imām Shāf‘ī has adopted a central view between the above two views. He said that commodities are of two types:

- *Dhawāt-ul-amthāl* i.e. the commodities that can be compensated by other similar commodities in terms of quality and quantity, such as wheat, rice, etc. If 100 kg of wheat is wasted, then 100 kg of wheat of the same quantity and quality can be given easily.<sup>70</sup>
- *Dhawāt-ul-qīmāh* i.e. the commodities that can not be compensated by other similar commodities, like cattle. For example, each sheep has its own characteristics that other sheep do not have, so if a person kills someone’s sheep, it is not possible to compensate him by giving him a similar sheep, but he has to pay the price of that sheep. For Imām Shāf‘ī, the first type of commodities can be invested in *mushārah*, while the second type of commodities cannot be invested.<sup>71</sup>

The general principle of a *mushārah*, according to ‘Usmānī is that each partner has the right to participate in its management and to work for it. However, the partners may agree that one of them will manage the *mushārah* and no other partner will work for it. But in this case, the sleeping partner will receive profit only to the extent of his investment, and as stated earlier the proportion of profit allocated to him must not exceed the ratio of his investment.<sup>72</sup> Each partner is allowed to withdraw *mushārah* at any time with prior notice. If all the assets are liquid in this situation, they will be distributed among the partners in proportion to their shares. However, if some assets are not liquid, the partners can either distribute them as they are or convert them into cash. If there is a disagreement between the partners on the matter that one seeks liquidation of assets while the other wants to distribute as they are, then the latter will be preferred. The reason for this is that with the termination of the *mushārah*, all the assets become jointly owned by the partners. Each owner of the assets has the right to separate his share, and no one can force him into liquidation.<sup>73</sup> If one of the partners dies during *mushārah*, the agreement with the deceased will be terminated. In this case, his inheritors will have the option to withdraw his share or continue the agreement. If one of the partners becomes insane or is no longer capable of the business partnership for other reasons, the *mushārah* will be terminated.<sup>74</sup> If one of the partners wants to end the partnership while the other partners want to continue the business, these partners can buy the share of the partner who wants to end his partnership. Terminating *mushārah* by one participant does not mean that *mushārah* with other participants also terminates.<sup>75</sup> In this case, the cost of the share of the partner leaving the *mushārah* must be determined by mutual consent. If there is a dispute over the value of the leaving partner's share and no agreed amount can be settled between the participants, the leaving partner can force the other partners into liquidation or the distribution of assets themselves.<sup>76</sup>

Can a condition be agreed that the *mushārah* can not be terminated unless all the participants or a majority of them agree to do so? Furthermore, a partner who wants to separate from the *mushārah* will have to sell his share to others and will not compel them to liquidation or separation. According to ‘Usmānī, Islamic jurisprudence is silent on this issue.<sup>77</sup>

## **2. Mudārah**

Bank participates in business in two ways. On the one hand, it collects money from the common people, and on the other hand, it invests the money in profitable activities. In capitalist or interest-based banks both these functions are performed on the basis of interest. It collects money from people on interest and offers it to others on the basis of interest. On the contrary, Islamic banks take money from people and collect it on the



basis of *Mudārabah*, however, all the modes that are permissible in *Shariah* can be adopted to invest this collected money in profitable activities.<sup>78</sup>

For ‘*Usmānī*, *mudārabah* is a specific form of partnership in which one partner provides capital to another in order to invest in a business. The investor is called “*rabb-ul-māl*” while the other partner called “*mudārib*” is responsible for the management and execution of the business.<sup>79</sup> *Rabb-ul-māl* may also specify a business for the *mudārib*, in which case he will be bound to invest only in a particular business. This type is called “*al-mudārib al-muqayyadah*” (restricted *mudārabah*), but if he allows the *mudārib* to invest in a business as he wishes, he will have the option to invest the money in any business he deems appropriate. It is known as “*al-mudārib al-mutlaqah*” (unrestricted *mudārabah*).<sup>80</sup> According to ‘*Usmānī*, in a single transaction, *rabb-ul-māl* can contract *mudārabah* with multiple *mudārib*. The *mudārabah* capital will be used jointly by all the *mudārabāin* and the share of the *mudārabah* will be divided among them in an agreed proportion. In this case, all *mudārabāin* will run the business as partners. *Sharī‘ah* has not prescribed any specific proportion of actual profit but has left it to the mutual consent of the partners. They may share profits in equal proportions and different proportions may also be allocated to *rabb-ul-māl* and *mudārib*. However, according to ‘*Usmānī*, neither is it permissible to determine a lump sum amount of actual profits to anyone nor can one’s share be allocated on the basis of a specific rate tied up to the invested capital. It is also permissible to agree on different proportions of profit in different situations and businesses. Moreover, Scholars agree on this matter that *mudārib* cannot claim any kind of salary or fee for his work done for *mudārabah* other than the agreed proportion of profit. However, Imām Ahmad allows *mudārib* to charge only the daily food expenses from the *mudārabah* account and according to the Hanafī jurists, the *mudārib* will have this right only if he is on a business tour outside his city, in which case he can charge the expenses of personal accommodation and food, etc. ‘*Usmānī* claims that if the business suffers a loss in some financial matters and profit in others, first the loss will be compensated from this profit, then if any amount is left over, it will be distributed among the partners in a decided proportion.<sup>81</sup> ‘*Usmānī* claims that any party can terminate the *mudārabah* contract at any time by notifying the other partners. At the time of termination, if all the assets of *mudārabah* are in liquid form and some profit has been earned on the principal amount, then it shall be distributed among the parties according to the agreed proportions of profit. However, if the assets are not in the form of cash, *mudārib* will be allowed to sell the assets to determine the actual profit by liquidating them.<sup>82</sup> ‘*Usmānī* also addresses the question of whether the parties can determine a minimum period of *mudārabah* before which it cannot be terminated. No such period, according to him, can be fixed and each party has the right to terminate the contract whenever it wants. However, in ‘*Usmānī*’s opinion, this unrestricted option to terminate *mudārabah* contract may cause some problems, because most businesses nowadays need some time to show their outcomes. They require complex and consistent efforts, so if *rabb-ul-māl* terminates *mudārabah* at the very beginning of the business type, it will cause great difficulty for the project. There will be a severe setback also for the *mudārib* who will get nothing in return despite his best efforts. Therefore, if the parties agree at the time of contracting *mudārabah* that neither party shall terminate the *mudārabah* within a specified period except in certain circumstances, then this does not seem to be against the *Sharī‘ah*.<sup>83</sup> Generally, it is considered that all the investment in *mudārabah* is made by *rabb-ul-māl* and the *mudārib* does not invest anything but is only responsible for managing the business. However, there may be a situation where a *mudārib* also wants to invest in a *mudārabah* enterprise. In this case, *mushārah* and *mudārabah* are combined. As a partner, in addition to determining a certain percentage of profit for himself, he would also be entitled to a certain proportion due to the *mudārabah* management.<sup>84</sup>

### ***Mushārah and Mudārah as a Mode of Islamic Finance***

In classical Islamic *fiqh*, *mushārah* and *mudārah* are joint ventures where all partners participate in the business from the beginning and continue to be partners till the end. The concept of a continuous business where partners join and leave without affecting the business’s continuity is hardly found in traditional Islamic jurisprudential texts. ‘Usmānī argues that this is because these books were written in a time and place where complex business and large-scale trade were not practised. However, this does not mean that *mushārah* and *mudārah* cannot be used to finance ongoing business. The concept of these contracts is based on a few basic principles and while fully complying with these principles, the implementation details may also change from time to time. These basic principles are as follows:

1. Financing through *mushārah* and *mudārah* is not the same as advancing money but, in a *mushārah*, financing means sharing in the company in proportion to investment.
2. The investor or financier also shares in the loss of the business to the extent of his financing.
3. The partners are free to allocate the profit proportion agreed upon by mutual consent. However, a partner who formally refuses to work for the company cannot claim a ratio of profit over the proportion of his investment. However, a partner who refuses to work officially for the company cannot claim a profit ratio in excess of the ratio of his investment.
4. Everyone has to bear the loss in proportion to their investment.<sup>85</sup>

With these general principles in mind, these modes of Islamic financing can be used in different areas of financing in the modern age.

### **Conclusion**

- Islamic economics lies between the two extremes of capitalism and socialism
- In Islam, the real ownership of everything in the universe belongs to God and everything can be used according to His will. Although God has allocated ownership of things to individuals, it is neither absolute nor for anyone’s personal interest.
- Islam as a whole wants to build an attitude based on compassion, sympathy, and above all, fear of God, instead of heartlessness, miserliness, and selfishness.
- Islam is a complete system of life for all time and it does not need to be changed, moulded, or modified according to the requirements of the times. It has enough flexibility to support the real needs of every time. Therefore, an independent understanding of Islam is required instead of pasting it on a non-Islamic fabric.
- *Shari‘ah* experts do not need to find alternatives to practices that do not arise from genuine human needs. Banks have become the most important need in modern times.
- The duty of Islamic scholars is not only limited to determining legal value, i.e. *halāl* or *harām*, of any matter, but he is also responsible for presenting a *Shari‘ah*-constrained and workable alternative.
- “Islamic alternative” means that all financial matters must be settled within the limits of the Quran and the Sunnah so that the economic objectives of the *Shari‘ah* can be fulfilled.
- *Mushārah* and *Mudārah* are ideal and workable Islamic alternatives.
- *Mushārah* refers to a joint enterprise in which all members of the enterprise share its profits and losses jointly. It is a contemporary term used by those who have written on Islamic finance.
- Although *mushārah* and *mudārah* are classical methods of Islamic finance, there are some basic principles which are actually the basis of *mushārah* and *mudārah*, which can be used in various fields of financing in modern times.



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

## References

- <sup>1</sup> For more detail see the introductory page of *Jāmi'a Dārul'Ulūm* Karachi.  
[https://darululoomkarachi.edu.pk/?page\\_id=5740](https://darululoomkarachi.edu.pk/?page_id=5740)
- <sup>2</sup> Muhammad Taqi Usmani, *Islami Bankari: Tarikh-o-Pasmanzar* (Karachi: Al-afnan, 2009), p 31.
- <sup>3</sup> Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 16.
- <sup>4</sup> See, Muhammad Taqi Usmani, *Sood Par Tarekhi Fesla* (Karachi: Quranic Studies Publishers, 2008).
- <sup>5</sup> Muhammad Taqi Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat* (Karachi: Quranic Studies Publishers, 2010), [www.quranicpublishers.com](http://www.quranicpublishers.com), p 18.
- <sup>6</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 7.
- <sup>7</sup> Zahid Siddique Mughal, "Islami Muashiaat Ya Sarmayadari Ka Islami Jawaz," *Monthly Al-Shariah* 19, no. 8 (2008): 17–27, <https://alsharia.org/2008/aug/islami-muashiaat-sarmayadari-jawaz-1-muhammad-zahid-mughal>.
- <sup>8</sup> Javed Akbar Ansari, *Rejecting Freedom and Progress: The Islamic Case against Capitalism* (Lahore: Kitab Mehal, 2016), p 79.
- <sup>9</sup> Muhammad Taqi Usmani, *Ghair Soodi Bankari* (Karachi: Quranic Studies Publishers, 2009), p 53.
- <sup>10</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 22.
- <sup>11</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 21-23.
- <sup>12</sup> Supply is the total quantity of any production that is brought to the market for sale and demand is the willingness of buyers to buy the commodity at the market price. If the supply of the commodity in the market increases as compared to the demand, the price of the commodity decreases. Similarly, if the demand for a commodity increases compared to its supply, the price of that commodity increases. This is a natural law, which is called the Law of Demand and Supply. See, Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 25.
- <sup>13</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 25.
- <sup>14</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 26.
- <sup>15</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*.
- <sup>16</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 53-54.
- <sup>17</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 27.
- <sup>18</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 54.
- <sup>19</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 28.
- <sup>20</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 29.
- <sup>21</sup> Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Quranic Studies Publishers, 2008), p 17.
- <sup>22</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 46.
- <sup>23</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 40.
- <sup>24</sup> Usmani, *An Introduction to Islamic Finance*, p 17.
- <sup>25</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 43.
- <sup>26</sup> Usmani, *An Introduction to Islamic Finance*, pp 17-18.
- <sup>27</sup> Usmani, *An Introduction to Islamic Finance*, p 43.
- <sup>28</sup> Usmani, *An Introduction to Islamic Finance*, p 46.
- <sup>29</sup> Usmani, *An Introduction to Islamic Finance*, p 47.
- <sup>30</sup> Usmani, *An Introduction to Islamic Finance*, p 50.
- <sup>31</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>32</sup> Monopoly means that the supply of a particular product depends on only one person or group in such a way that no one else can produce it. (Usmani, 2010 p. 40)
- <sup>33</sup> Muhammad Taqi Usmani, "Islami Bankari Ki Buyadayn" (Faisalabad: Maktabah Al-arfi, 2007), p 16.
- <sup>34</sup> Usmani, *An Introduction to Islamic Finance*, p 42.
- <sup>35</sup> See, Muhammad Taqi Usmani, *Hamara Muashi Nizam* (Karachi: Maktabah Dar-ul-Uloom, 2002), p 43. See also, Usmani, *An Introduction to Islamic Finance*, p 14.
- <sup>36</sup> See, Usmani, *Hamara Muashi Nizam*, p 15, and Usmani, *An Introduction to Islamic Finance*, p 61.
- <sup>37</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 63.
- <sup>38</sup> Usmani, *An Introduction to Islamic Finance*, p 22.
- <sup>39</sup> Muhammad Taqi Usmani, *Our Socio-Economic Order* (Karachi: Idara-e-Islamiyat, 2001), p 14.
- <sup>40</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 40.
- <sup>41</sup> Usmani, *Our Socio-Economic Order*, p 13.
- <sup>42</sup> Usmani, *Our Socio-Economic Order*, p 14.
- <sup>43</sup> Usmani, *Our Socio-Economic Order*, p 17.
- <sup>44</sup> Usmani, *Our Socio-Economic Order*, p 33.
- <sup>45</sup> Usmani, *Ghair Soodi Bankari*, p 15.

- <sup>46</sup> Usmani, *Ghair Soodi Bankari*, p 16.
- <sup>47</sup> See, Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 52, and Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 18.
- <sup>48</sup> Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 52, and Usmani, *Ghair Soodi Bankari*, p 29.
- <sup>49</sup> Usmani, *Ghair Soodi Bankari*, p 22.
- <sup>50</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 162.
- <sup>51</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 163.
- <sup>52</sup> Usmani, *Ghair Soodi Bankari*, p 51.
- <sup>53</sup> Usmani, *Ghair Soodi Bankari*, p 52.
- <sup>54</sup> Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 36.
- <sup>55</sup> Usmani, *Ghair Soodi Bankari*, p 40.
- <sup>56</sup> Usmani, *Ghair Soodi Bankari*, p 34.
- <sup>57</sup> Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 36.
- <sup>58</sup> Usmani, *Ghair Soodi Bankari*, p 34.
- <sup>59</sup> Usmani, *Islami Bankari: Tarikh-o-Pasmanzar*, p 36.
- <sup>60</sup> Usmani, *An Introduction to Islamic Finance*, p 27.
- <sup>61</sup> Usmani, *An Introduction to Islamic Finance*, p 31.
- <sup>62</sup> Fixing a certain proportion of the investment amount instead of a certain percentage of the actual profit.
- <sup>63</sup> Usmani, *An Introduction to Islamic Finance*, p 35.
- <sup>64</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*. Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 167.
- <sup>65</sup> Usmani, *Islam Aur Jadid Maeeshat-o-Tijarat*, p 168.
- <sup>66</sup> Usmani, *An Introduction to Islamic Finance*, p 37.
- <sup>67</sup> Usmani, *An Introduction to Islamic Finance*, p 38.
- <sup>68</sup> Usmani, *An Introduction to Islamic Finance*, p 39.
- <sup>69</sup> Usmani, *An Introduction to Islamic Finance*, p 53.
- <sup>70</sup> Usmani, *An Introduction to Islamic Finance*, p 40.
- <sup>71</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>72</sup> Usmani, *An Introduction to Islamic Finance*, p 42.
- <sup>73</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>74</sup> Usmani, *An Introduction to Islamic Finance*, p 43.
- <sup>75</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>76</sup> Usmani, *An Introduction to Islamic Finance*, p 44.
- <sup>77</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>78</sup> Usmani, *An Introduction to Islamic Finance*, p 31.
- <sup>79</sup> Usmani, *An Introduction to Islamic Finance*, p 47.
- <sup>80</sup> Usmani, *An Introduction to Islamic Finance*, p 49.
- <sup>81</sup> Usmani, *An Introduction to Islamic Finance*, p 51.
- <sup>82</sup> Usmani, *An Introduction to Islamic Finance*, p 52.
- <sup>83</sup> Usmani, *An Introduction to Islamic Finance*, p 53.
- <sup>84</sup> Usmani, *An Introduction to Islamic Finance*.
- <sup>85</sup> Usmani, *An Introduction to Islamic Finance*, p 54.