

A GENERAL ANALYSIS OF MUSHARAKA IN PAKISTAN: AN ISLAMIC WAY OF DOING BUSINESS AND PROHIBITED ACTIVITIES IN BUSINESS VENTURES

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Abstract

The modern business is legitimate under the concept of Musharaka if it is not mingled with the concepts of usury, uncertainty and gambling. Musharaka is an Islamic Concept of Modern-day Partnership and a Company. It is a legal way of doing business, according to verses of the Holy Quran, Traditions of Holy Prophet Muhammad ﷺ and Practices of the Companions of Prophet Muhammad ﷺ. Islamic law unlike modern day laws does not differentiate between a modern-day partnership firm and a company or a corporation, somehow all civilized countries have separate laws for the partnership firm and a company or a corporation. All types of business ventures are allowed under the concept of Musharaka if they are pure from the rules of usury, uncertainty and gambling. The usury is an increase that has no corresponding consideration in an exchange of property for property. There must not be an uncertainty about the ultimate outcome of a venture which leads towards a dispute and litigation and the gain must be obtained on the probability of loss. No business is legitimate under the concept of Musharaka if it is purely beneficial without any possibility of loss. Musharakah is an Islamic finance partnership where parties share profits and losses aligning with Shariah principles. While considered ideal, its usage in Pakistan is limited compared to other Islamic financing modes like Murabahah due to perceived higher risks and lack of awareness. Promoting Musharakah is crucial for fostering equitable economic growth and strengthening Pakistan's Islamic financial system. Modern day business entities must not indulge in sinful activities as prohibited by the verses of the Holy Quran and the traditions of Holy Prophet Muhammad ﷺ for their benefits and for the benefit of the people at large and for that purpose, clauses should be added in the existing laws of the trade, investment, contract, partnership and a company.

Keywords: Musharaka; Partnership Firm; Company; Pakistan; Usury; Uncertainty; Gambling.

Introduction

A business venture is either a partnership firm or an incorporated company or corporation. All businesses including a trade and an investment start with a contract thus a contract plays an essential role in every business. The object of the business must be legal, existed, deliverable and determined. A contract is either valid in which all essentials and conditions are fulfilled or a void contract in which essentials and conditions are not fulfilled. A valid contract is a binding contract

which is either revocable or irrevocable. A contract either enforceable immediately when the right of the third party is not involved or deferred on the rectification of the third party whose right is involved. Musharaka is a contract between two or more persons to participate in capital, profit and loss. The capital can be in the form of a wealth or labor and skill. The modern business is legitimate; whether it is in the form of a partnership firm or a company under the unique concept of Musharaka, if the business is not mingled with sinful activities and if the business venture is pure from the usury which is an increase that has no corresponding consideration in an exchange of property for property and when the ultimate outcome of the business is certain and not ambiguous which may lead to dispute and litigation. The business must be made on the possibility of loss and no business is allowed where the outcome is only profit and there is no fear of loss. The business must not be harmful to other business entities and does not affect the general interests of the people at large otherwise it cannot be made legitimate under the concept of Musharaka.

Musharaka literally means participation as when a person mixes an entity with Allah Almighty, he is called Mushrik because he has mingled a partner with Allah Almighty as there is no one like him and he is the only one with obligatory existence, complete in all good attributes and pure from all defects. Allah Almighty has mentioned the word partner in the Holy Quran for those who have an inheritance share in the property of a deceased person. Shuraka and Khulata are words which are used for partnership in the Holy Quran. The word partner is also mentioned in the traditions of Prophet Muhammad ﷺ and the Prophet Muhammad ﷺ also participated in a business venture as a partner with one of his companions Saib bin Sharik RA. Partnerships can be broadly categorized into (i) based on wealth, and (ii) based on labor and skill. Partnerships based on wealth can be further subdivided into co-ownership and contractual partnership. Co-ownership can arise through legal means like inheriting assets from a deceased relative or through joint purchases. Contractual partnership can be classified as equal or unequal. In equal partnerships, all partners contribute the same ratio of capital and share profits and losses equally. Unequal partnership involves varying capital contributions from different partners, leading to a proportional distribution of profits and losses. A distinct type of partnership involves partners starting a business without initial capital. They borrow funds to initiate operations and subsequently share profits and losses based on agreed-upon terms. Another type of partnership combines both wealth and labor. Some partners contribute capital, while others contribute their skills and labor. Profit and loss sharing in these partnerships is typically determined proportionally based on each partner's contribution.

This research is an analysis of the Islamic concept of Musharaka and its application on modern day businesses under partnership firm, company and corporation. Modern day business laws should include provisions to prohibit usury, ambiguity and gambling to make the businesses in accordance with provisions of Holy Quran and Sunnah of Holy Prophet Muhammad ﷺ. To significantly enhance the role of Musharakah in Pakistan's Islamic finance landscape, a multi-pronged approach is recommended. This includes fostering greater awareness and education among both financial institutions and the public about Musharakah's genuine risk-sharing principles and its potential for equitable wealth distribution. Concurrently, Islamic banks must develop internal expertise in evaluating, monitoring, and managing Musharakah-based ventures, moving beyond the prevalent Murabahah and Ijarah models which are easier to administer but less aligned with the core philosophy of Islamic finance. Furthermore, regulatory bodies like the State Bank of Pakistan should continue to refine and strengthen the legal and operational frameworks for Musharakah, potentially by offering incentives for its adoption and addressing perceived higher risks through innovative risk mitigation strategies and standardized contractual agreements.

Cultivating a culture of trust, transparency, and accountability among all stakeholders is paramount for Musharakah to thrive as a preferred mode of ethical and sustainable financing for businesses and individuals across Pakistan.

1. General Analysis of Musharaka under Islamic Law

Musharaka means participation, sharing, mixing or mingling of the capital, profit and loss. Shirka means a company or a firm and Sharika means a partnership. A person is called a Mushrik when he mixes another entity with Almighty Allah in worship. When two things or persons are similar in deeds, he is called a Mushtarik. A partnership is a contract when two or more persons mix and mingle their shares and do a business upon that capital and share the profit and loss. There are four main schools of thoughts in an Islamic Law, all have their own definitions of Musharka. The Maliki school of thought is leaded by Imam Malik and according to this school of thought, the partnership means a contract which lawfully gives permission to the partners regarding their wealth to spend upon them.¹

The Shafi school of thought was established under the rulings of Imam Shafi and according to this school of thought, partnership means a contract which devolves rights of partners upon a common thing which is a capital. The Hanbali school of thought was started from Imam Ahmad bin Hanbal and according to this school of thought, partnership is a contract which devolves rights of partners upon a capital and its disposition. The fourth school of thought is Hanafi school of thought whose leader is Imam Abu Hanifa and according to this school of thought, partnership is a contract between persons for sharing a capital and its profit.²

When we combine all the above mentioned definitions we come to a conclusion that the partnership is a relation between persons, who have agreed to share profits of a business, carried on by all any of them acting for all. Musharaka includes a modern day Partnership and a Company. A partnership is called Sharika and a company is called Shirka in an Islamic Law and both comes under the ambit of Musharaka. Musharaka is either Shirkat-UI-Milk or Shirkat-UI_Aqd. Shirkat-UI-Milk is Co-Ownership and Shirkat-UI_Aqd is Contractual Partnership. Co-Ownership is either by act of parties when they collectively purchase a property with the name of more than one person or by act of the law when more than one person collectively own a property of their deceased relative.³

Contractual Partnership is divisible into Shirkat-UI-Amwal and Shirkat-UI-Aamal. Shirkat-UI-Amwal is a partnership on a capital generated from all the partners and the profit and loss will be shared proportionately. Shirkat-UI-Aamal is a partnership on labor and skills of all partners and the profit and loss will be shared proportionately. Another type of partnership is Shirkat-UI-Wuju, which is a partnership of persons on their good will when they borrow money as capital of their business venture and share profit and loss proportionately. Another type of partnership is Mudaraba, which is a partnership where one person participates with his wealth and the other partner participates with his labor and skills and the profit and loss will be shared proportionately. All of these partnerships are divided into two major types of partnerships namely: Shirkat-UI-Mufawada and Shirkat-UI-Inan. Shirkat-UI-Mufawada is an equal partnership where all partners

¹ Hasanuzzaman, S. M. "The Liability of Partners in an Islamic Shirkah." *Islamic Studies* 10, no. 4 (1971): 319-341.

² Rahim, Abdur. *The Principles of Muhammadan Jurisprudence according to the Hanafi, Maliki, Shafi'i and Hanbali Schools*. Luzac, 1911.

³ Farooq, Mohammad Omar. "Partnership, Equity-Financing and Islamic Finance: Whither Profit-Loss Sharing?" *Review of Islamic Economics (Special Issue)* 11 (2007): 67-88.

share equal capital and take equal share of profit and bear equal loss and Shirkat-ul-Inan is an unequal partnership where some partners participate with more money and others participate with less money and they take profit and bear loss differently.⁴

The word partner is used in Holy Quran and in Traditions of Prophet Muhammad ﷺ. Allah Almighty says in Holy Quran "They will be partners in one third of inheritance share".⁵ In another verse of Holy Quran Allah Almighty says "Indeed many partners defraud one another, except a person who believes in oneness of Allah and accept the prophet hood of Muhammad ﷺ and do good deeds".⁶ Prophet Muhammad ﷺ did partnership with Saib bin Sharik while he ﷺ was living in Makkah. When Saib bin Sharik came to Medina, Prophet ﷺ welcomed him and said: "welcome my brother and my partner".⁷ In another tradition, Prophet Muhammad ﷺ said: "Almighty Allah is the third partner between the two partners unless one defrauds the other".⁸ Similarly in another tradition, he ﷺ said: "The hand of Allah Almighty is upon partners unless one defrauds the other".⁹ People of Medina used to give their wealth to one of the wives of Prophet Muhammad ﷺ, Hazrat Aisha and she used to give that wealth to others for business purposes. Similarly, the second caliph Hazrat Umar used to give the wealth of Bait-ul-Mal to workers to increase the wealth of Bait-ul-Mal. The partnership contract is based upon the two important principles of Islamic Law (i) "Do not disturb others so that you will not be disturbed by others"¹⁰, and (ii) "No gain without the possibility of loss".¹¹

According to the above mentioned principles, there must be possibility of loss in the business that is why the gambling is not allowed and there must not be any uncertainty because there is a doubt about the ultimate outcome which cannot be allowed and lastly the business must be fully protected from the rules of usury which can never be acceptable in any kind of venture under an Islamic Law in an Islamic State.¹²

All transactions all permitted unless prohibited by Allah Almighty as he says in Holy Quran: "Say O Prophet Muhammad ﷺ that who has prohibited his adornment as he has made them pure food for his worshipers".¹³ In opposite, all worships are prohibited unless permitted and ordered by Allah Almighty. Prophet Muhammad ﷺ said that: "All deeds and acts which are not permitted and ordered by us are not acceptable".¹⁴

Shirkat means to participate and Milk means a wealth, shirkat-ul-milk means the participation of people in a common wealth. It is a similar concept of a modern day co-ownership. The co-ownership can be created when two or more persons under a compulsory course of law inherit a joint property of their deceased relative or the co-ownership can be created by act of parties when

⁴ Lubis, Mukhlis, Yadi Janwari, and Rahmat Syafei. "Indonesia Stock Exchange: Theoretical and Philosophical Analysis of Mudharabah and Musyarakah Contracts." *Yurisprudentia: Jurnal Hukum Ekonomi* 9, no. 2 (2023): 243-264.

⁵ Al-Nisa, 4:12.

⁶ Saad, 38:24

⁷ Bin Hanbal, Ahmad, Musnad Ahmad, Hadith 15904.

⁸ Ashas, Sulaiman bin, Abu Dawud, Sunan Abu Dawud, Hadith 3385.

⁹ Umar, Ali bin, al-Darqutni, Sunan Dar Qutni, Hadith 2974.

¹⁰ Bin Yazid, Muhammad, Ibn Majah, Sunan Ibn Majah Hadiths 2430-243.

¹¹ Sulaiman bin Ashas, Abu Dawud, Sunan Abu Dawud, Hadiths 3510-3512

¹² Jamali, Ali, Alireza Faghih, Mohammad Reza Fathi, and Fatemeh Rostami. "A Combined Fuzzy Multi-Criteria Decision Making Framework for Evaluation of Islamic Banks: A Case of MENA Region." *Fuzzy Optimization and Modeling Journal (FOMJ)* 4, no. 2 (2023): 62-80.

¹³ Al-Araf, 7:32

¹⁴ Al-Qushiri, Abu al-Husan, Muslim ibn Hajjaj, Sahih Muslim, Hadith 4590.

they jointly purchase a property. Shirkat-ul-Milk is the existence of a thing under the ownership of two or more persons because of inheritance or because of a contract or the combined claim of debt.¹⁵

When two or persons has a right in the property of the deceased person, that claim if obtained shall be transferred in the name of two or persons and that will be called the compulsory partnership under the course of law. In case of the creation of co-ownership under the course of law as an inheritance claim, some or any of the partners may relinquish their claim in favor of one or more partners. When two or more persons jointly purchase a property and that property will be transferred in favor of one or more persons, they will be collectively partners in that property and that is called an optional partnership.¹⁶

There is no disagreement among the Muslim jurists on the legitimacy of co-ownership. The co-ownership which is created by the course of law like an inheritance and the co-ownership which is created by act of the parties like the joint purchase are unanimously permitted under an Islamic Law.¹⁷

Shirkat-ulAqd is a partnership which comes into existence under a proper contract between partners of partnership contract to share profit and loss. A contract is a connection of offer and acceptance in a lawful manner which flow legal consequences with respect to subject matter. It is a voluntary agreement between equals for the purpose of regulating their particular interests. According to Hanafi School of thought, the only basic element of a contract is offer and acceptance. An offer is a statement of willingness to enter into a contract on stated terms. It must be complete, precise, clear and contains all major details. An acceptance is an expression of an assent to terms proposed by the offeror. According to the majority of Muslim Jurists, the essential elements of the lawful contract are (i) an offer and acceptance, (ii) parties to the contract, and (iii) the subject matter. Parties to the contract must possess the capacity to enter into a contract, they must be major and sane. Possess capacity to obtain a right and a capacity to execute a duty. The subject matter must be legal, in existence and transferable.¹⁸

According to Maliki and Shafi Schools of thoughts, partnership is divisible into (i) un-equal partnership, (ii) equal partnership, (iii) partnership on wealth, and (iv) partnership on borrowed money. Hanbali Jurists state that a partnership is divided into (i) un-equal partnership, (ii) equal partnership, (iii) partnership on wealth, (iv) partnership on borrowed money, and (v) partnership on wealth from one side and labor and skill from another side. Hanafi School of thought says that a partnership is divided into (i) partnership on wealth, (ii) partnership on skill, and (iii) partnership on good will. All three mentioned partnerships by Hanafi School of thought further divided into (i) equal partnership, and (ii) un-equal partnership.¹⁹

¹⁵ Waseem, Muhammad. "Shirkah in Islamic Jurisprudence: An Analytical Comparison of Shirkat-ul-Milk and Shirkat-ul-Aqd." *Tanazur* 4, no. 3 (2023): 44-58.

¹⁶ Muzaffar O'gli, Yorqulov Umidjon. "Understanding Joint Ownership as A Category of General Partnership in Islamic Finance Law and Its Implications in Practice." *инновации в науке, обществе, образовании: сборник статей* (2021): 34.

¹⁷ Usmani, Muhammad Taqi. "The Concept of Musharakah and Its Application as An Islamic Method of Financing." *Arab LQ* 14 (1999): 203.

¹⁸ Saleh, Nabil. "Definition and Formation of Contract under Islamic and Arab Laws." *Arab Law Quarterly* (1990): 101-116.

¹⁹ Sadique, Muhammad Abdurrahman. "The Concept of Complete Equality in Mufawadah Partnership: Its Recognition and Rationale in Islamic Law." *Journal of Education and Social Sciences* 5 (2016): 234-261.

Shirkat-ul-Amwal is a contractual partnership when two or more partners share wealth which is called capital and share profit and loss proportionately according to contractual terms and conditions. Wealth must be legal, inexistent and transferable. When all partners share equal wealth and equally participate with labor and skill and then equally share profit and loss that will be called Mufawada partnership. In this type of partnership all partners must be major and Muslims. Oppositely when some partners share more wealth than other partners and some partners share more labor and skill than others and when some partners are Muslims and some of them are non-Muslims, that partnership is called Inan partnership. In this type of partnership partners share profit and loss differently but proportionality and not a fix ratio of profit.²⁰

Shirkat-ul-Aamal is a partnership of persons when there is no capital as wealth but people participate in labor and skill and share profit and loss proportionately. According to majority of Muslim jurists, work partnership is a legitimate way of doing business but Imam Shafi and Imam Zufar of Hanafi School of thought think that this type of partnership is not allowed because there is no wealth as capital and when there is no capital there is no contract. Imam Malik stated that in this type of partnership, all partners must work on a same place and work in a same business. When all partners equally participate in labor and skill and equally share the profit and loss, that work partnership is called Mufawada work partnership and oppositely when partners participate in labor and skill differently as well as share profit and loss differently, that work partnership is called Inan work partnership.²¹

Shirkat-ul-Wuju is a partnership upon good will of the people, when some persons gather and buy things on credit upon their good will and start a business upon those things and share profit and loss proportionately. When all partners participate in labor and skill and share profit and loss equally, that will be called the Mufawada Wuju partnership and if they participate differently and share profit and loss differently, that will be called Inan Wuju partnership. According to majority Islamic scholars, this type of partnership is allowed but according to Imam Shafi and Imam Malik, this type of partnership is not allowed because there is no capital. Imam Shafi thinks that business is only allowed when there is an existent wealth and according to Imam Malik, business is only allowed when there is a wealth as capital or labor and skill as capital and both these things are not in existence in this type of partnership as partners start their business upon their good will and good reputation and they buy things on credit and sale on cash and share profit and loss.²²

Shirkat-ul-Mufawada is a partnership of major persons equally in capital, profit, loss, labor and skill. According to Imam Malik, equality in religion and same place as well. According to majority of Muslim jurists this type of partnership is permitted on the basis of Istihsan, but Imam Shafi said: I do not see anything which can be declared prohibited more than the partnership of Mufawada. Imam Shafi and Zahiri school of thought think that equality in a partnership between partners is not practicable.²³

²⁰ "سروسز (خدمات) کے مشارکہ میں نقصان کے اصولوں کی فقہی تحقیق، جدید مسائل کے تناظر میں Ijaz, Muhammad, and Zia ud Din *AL-Qalam*, 28 no. 1 (2023): 242-264.

²¹ Shah, Syed Abrar Hussain, Altaf Hussain Langrial, and Hafiz Muhammad Hasan Mahmood. "Islamic Banking and Microfinance Product Mechanism." *International Research Journal of Arabic and Islamic Studies* 4, no. 2 (2024): 1-18.

²² Hasanuzzaman, Syed M. "Rights and Powers of Partners in An Islamic" Shirkah." *Islamic studies* 35, no. 1 (1996): 5-23.

²³ Gerber, Haim. "The Muslim Law of Partnerships in Ottoman Court Records." *Studia Islamica* 53 (1981): 109-119.

Shirkat-ul-Inan is a partnership of persons unequally in which the capital and profit shall be distributed according to partnership agreement and loss are beard proportionately according to share of each partner. Partners in Inan partnership has right to sell or buy goods for cash and credit for the purpose of benefiting the business but cannot do so in excess of the actual capital of the business as well as to hand over the capital of the partnership to a trader to trade with the money and return back with profit. Every partner is an agent of another partner in a partnership firm and he can appoint an agent who can participate in the meetings of the business on his place as his authorized agent. No partner in the partnership firm can mortgage or pledge the assets of the partnership except with the prior permission of all other partners of the firm.²⁴

Mudaraba is a partnership for doing business when one or more partners participate with their wealth and others participate with their labor and skill. In this type of partnership only profit will be shared proportionately according to terms and conditions of the contract but in case of loss if occurred with the negligence of the worker, he will bear the loss otherwise the loss will be beard by the investor. Allah Almighty says in Holy Quran “and others journey unto the earth for seeking the blessings of Almighty Allah”.²⁵ Prophet Muhammad ﷺ participated in labor and skill and went to Syria with the wealth of his first wife Khadija RA who participated with wealth.²⁶

There are two types of Mudaraba partnership, one type of partnership is restricted partnership in which the principal and the owner of the wealth restricts actions of the worker under terms and conditions of the contract. Another type of partnership unrestricted partnership in which the principal does not restrict activities of the worker and allows him to work at any place and any work as per conditions set out by partners in the partnership contract.²⁷

A partnership can be dissolved by mutual consent of parties or by unilateral consent of the partner if the partnership is at will or by death, apostasy or insanity of one of the partners of the partnership firm or by completion of the venture if partnership is formed for a particular venture or by completion of the time if there is time mentioned in the partnership contract or by destruction of the capital of the partnership before its mingling.²⁸

2. General Analysis of Prohibited Business Activities in Islamic Law

Islamic law prohibits three primary business activities (i) usury (Riba), (ii) Gharar, and (iii) gambling. Riba refers to any increase in principal amount of loan or debt that is not justified by corresponding contribution of labor, expertise, risk, or a tangible commodity. Essentially, it's an excess charge without a justifiable exchange of value. Riba is categorized into two main types (i) Riba Al-Fadl, and (ii) Riba Al-Nasia. Riba Al-Fadl occurs when there is an unequal exchange of goods of the same kind such as exchanging a larger quantity of a commodity for a smaller quantity

²⁴ Irfani, Abdul Malik. "Musharaka and Its Modern Applications." In *Seminar on Islamic Financing Techniques*, Islamabad, December. 1984.

²⁵ Al-Muzzammil, 73:50.

²⁶ Abidin, Ibn, and Muhammad Amin. "Radd al-Muhtar ala al-Durr al-Mukhtar." *Beirut: dar al-Fikr* (1992).

²⁷ Rammal, H., G. Gulzar, and P. Graeme. "Mudaraba in Islamic Finance: Principles and Application (Doctoral Dissertation, Franklin Publishing Company)." (2003).

²⁸ Alhesain, Ishaq Bin Ibrahim. *Dissolution of Companies and Partnerships: A Comparative Study between Saudi Law and English Law in the Light of Islamic Law*. Lancaster University (United Kingdom), 2017.

of the same commodity. Riba Al-Nasia involves charging an excess amount when repaying a loan, regardless of the original terms.²⁹

Any increase or excess beyond the agreed-upon principal amount or quantity of a specific commodity is considered illegal and prohibited in Islamic law. Allah Almighty states in the Holy Quran "And that what usury you give in order to increase it, it does not increase before Almighty Allah and what you give as charity seeking mercy of Almighty Allah that surely be increased".³⁰ Allah Almighty states in another place in the Holy Quran that the Jew used to eat usury and do many other sins that is why the doom of the non-believer is bad. Allah Almighty states "We have made many lawful things prohibited for them because they do injustice and they stop many people from the right path of Almighty Allah and they take usury which was made prohibited for them and they eat wealth of the people through unlawful means and we have prepared a swear torment for disbelievers".³¹ Allah Almighty further states that "Do not eat usury in double and multiple form and fear from Almighty Allah so that you may be successful. And fear from the hell fire which is created for the disbelievers".³²

Allah Almighty further states in the Holy Quran "Those people who eat usury will not stand on the day of Judgment except as the evil has touched them, this is because they used to say that the sale is like a usury but Almighty Allah has permitted the sale and prohibited the usury. Whosoever receives a message of Almighty Allah and stops eating usury shall not be punished for the past sins and Almighty Allah will judge him but whosoever returns to eat usury, these are people of hell fire and they will remain there forever. Almighty Allah will destroy the usury and increase the charity and Almighty Allah does not like disbeliever sinners. Indeed who believes and do good deeds and offer prayers and give charity, their reward is with their lord Almighty Allah and they do not have fear of the future neither do they are sad on their past. O you who believe, fear from Almighty Allah and get rid of the remaining usury if you are true believers".³³

Gharar refers to significant uncertainty and lack of clarity regarding the outcome of a contract, potentially leading to disputes and legal challenges. This uncertainty is akin to unpredictability like a fish in water, a bird in sky, or a fetus in womb as its nature and outcome are uncertain. In Islamic business transactions, the subject matter of a contract must be clearly defined and free from ambiguity. There should be no uncertainty regarding price, delivery, quality, or quantity. The subject matter must exist, be deliverable, and be specifically identified and known.³⁴

Gharar is broadly categorized into two types (i) major Gharar, and (ii) minor Gharar. Major Gharar involves substantial uncertainty about fundamental aspects of the contract, such as the availability or deliverability of goods, specification of the subject matter, or timeframe for delivery. Major Gharar is generally considered unacceptable in Islamic law. Minor Gharar refers to minor uncertainties that are inherent in most contracts. Examples include sale of fruits before they are harvested, fixed ticket prices for transportation despite some passengers not traveling the entire

²⁹ Saeed, Abdullah. *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*. Vol. 2. Brill, 1996.

³⁰ Ar-Rum, 30:39.

³¹ Al-Nisa, 4:160-161.

³² Al-Imran, Holy Quran, 3:130.

³³ Al-Baqara, 2:275-278.

³⁴ Farikhin, Ahmad, and Heni Mulyasari. "Gharar, Fraud and Dispute in Islamic Business Transaction An Islamic Law Perspectives." *International Economic and Finance Review* 1, no. 2 (2022): 40-53.

route, or fixed hotel room charges despite varying level of service usages by guests. Minor Gharar is generally considered acceptable as it is an inherent part of many business transactions.³⁵

Maysir is a gambling where one party benefits without the fear of loss, like the game of chance. A business which is giving just benefits to a party and there is no possibility of loss then this type of business is prohibited in an Islamic Law. Allah Almighty says in the Holy Quran "They ask you about the liquor and the gambling, tell them that in them a grave sin and a few benefits and the sin is bigger than the benefits".³⁶ In another place Allah Almighty says "O you who believe, indeed liquor, gambling and game of arrows for seeking luck are abomination acts of an evil so get away from these acts so that you may be successful. The evil wants to excite the enmity and hatred through liquor, gambling and stop you from the right path of the remembrance of Almighty Allah and the prayers, so will you abstain? And obey Almighty Allah and his last messenger Muhammad ﷺ and abstain from these things and if you turn away, be aware that the duty of the messenger is just to convey the clear message of Almighty Allah".³⁷

3. General Analysis of Musharaka Application in Pakistan

Musharaka partnership is based on principle of sharing both profit and loss in proportion to their capital contributions. In modern businesses, Musharaka can be applied in various ways, such as joint ventures, equity financing, and profit-sharing agreements. One key application of Musharaka is joint venture where two or more companies collaborate to achieve common goal. This can particularly be beneficial in international business where companies from different countries can pool their resources and expertise to enter new markets or develop new products. Another application is in equity financing, where investors provide capital in exchange for a share of company's profits. Musharaka can be viable alternative to traditional debt financing, as it aligns interests of investors with success of business. Additionally, Musharaka can be used in profit-sharing agreements between employers and employees, fostering a sense of shared ownership and encouraging greater employee engagement.³⁸

There are various laws dealing with corporate entities but the Islamic concept is not added in those laws, it is therefore strongly recommended that all laws dealing with partnership and contract must include provisions dealing with Islamic concepts especially in Islamic Countries. In Pakistan, a country with a growing Islamic finance industry, Musharakah is seen as an ideal, albeit underutilized, instrument for promoting equitable economic growth and fostering genuine partnerships. As discussed earlier, Musharakah is an arabic term meaning sharing, a pivotal concept in Islamic finance, embodying a partnership or joint venture structure where partners share in profits and loss of an enterprise. Unlike conventional interest-based lending which is prohibited in Islamic Law due to usury, uncertainty and gambling. Musharakah allows financiers to earn a return by directly participating in risk and reward of a business venture. This makes it a truly

³⁵ Mohd Noh, Mohd Shahid, Suffian Haqiem Nor Azelan, and Muhammad Izzul Syahmi Zulkepli. "A Review on Gharar Dimension in Modern Islamic Finance Transactions." *Journal of Islamic Accounting and Business Research* 16, no. 5 (2025): 976-989.

³⁶ Al-Baqara, 2:219.

³⁷ Al-Maidah, 5:90-92.

³⁸ Kulmie, Dayah Abdi. "Musharakah Financing: Profitability Improvement Tool for Islamic Banks." *International Journal of Religion* 5, no. 6 (2024): 609-619.

equity-based mode of financing, aligning with principles of Shariah, justice, fairness, and risk-sharing.³⁹

Application of Musharakah in Pakistan is multifaceted, encompassing various forms such as permanent Musharakah for long-term project financing, temporary Musharakah for working capital needs and increasingly popular Diminishing Musharakah often used in real estate and home financing. In Diminishing Musharakah, a bank and a client jointly purchase an asset, and the client gradually buys out the bank's share over time through regular payments including a rental component for the bank's remaining ownership. This allows individuals and businesses to acquire assets without resorting to conventional interest-bearing loans, demonstrating Musharakah's adaptability to modern financial needs while adhering to Islamic ethical guidelines.⁴⁰

Despite its strong theoretical foundation and inherent advantages, Musharakah's widespread adoption in Pakistan faces several challenges. Research indicates that Murabahah (cost-plus financing) and Ijarah (leasing) tend to dominate Islamic banking products with Musharakah and Mudarabah (profit-loss sharing mode) having a relatively low application rate. Key reasons for this include a perceived higher risk associated with participatory financing, a lack of awareness among both bankers and customers, regulatory constraints, and potentially lower perceived returns compared to fixed-return products. The need for extensive information about entrepreneurs' capabilities and the challenges of ongoing supervision also contribute to its limited growth.⁴¹

Nevertheless, there are significant opportunities for Musharakah to play a more prominent role in Pakistan's economic landscape. Its emphasis on shared risk and reward fosters greater accountability and a communal purpose among partners, potentially leading to more sustainable business ventures. It can particularly be beneficial for small and medium-sized enterprises (SMEs) that often struggle with conventional collateral-based lending. By providing flexible contributions (capital, assets, or expertise), Musharakah can empower a wider range of individuals to participate in economic activities, contributing to wealth creation and more inclusive financial system.⁴²

The State Bank of Pakistan (SBP) has recognized the importance of Musharakah and has issued guidelines and model agreements to facilitate its implementation. These efforts aim to provide a clearer regulatory framework and encourage Islamic banks to increase their deployment of profit-and-loss sharing modes. Promoting greater awareness through education, developing standardized valuation methodologies for diverse assets, and fostering a culture of trust and transparency among partners are crucial steps.⁴³

As Pakistan continues its journey towards a fully Shariah-compliant financial system, a greater emphasis on Musharakah and other equity-based instruments will be vital for realizing the true spirit of Islamic finance and fostering a more just and equitable economy In Sha Allah.

³⁹ Berhad, Bank Rakyat M. "Musharakah as an Islamic Financial Structure for Venture Capital: its Potentials and Possible Applications for Small and Medium Enterprises (SME's) in Malaysia." (2022).

⁴⁰ Shah, Syed Abrar Hussain, Altaf Hussain Langrial, and Hafiz Muhammad Hasan Mahmood. "Differentiating Features of Islamic vs. Conventional Banks and Microfinance." *Jahan-e-Tahqeeq* 7, no. 2 (2024): 889-905.

⁴¹ Moin, Muhammad Shehzad. *Performance of Islamic Banking and Conventional Banking in Pakistan: A Comparative Study*. 2008.

⁴² Khan, Muhammad Arsalan, Dodik Siswantoro, and Abid Ur Rahman. "The Obstacle Factors of Musharakah and Mudharabah Application in Pakistan." *Jurnal Akuntansi Dan Keuangan Indonesia* 17, no. 2 (2020): 5.

⁴³ Noor, Sehla, Ahmad Talha, Tayyaba Sardar, and Osaid Ahmad Noor. "Analysis of the Adoption of Mudarabah and Musharakah in Pakistan." *International Journal of Trends and Innovations in Business & Social Sciences* 2, no. 4 (2024): 578-584.

Conclusion and Recommendations

Musharaka can be applied in modern businesses through various ways, such as joint ventures, equity financing, and profit-sharing agreements. All types of partnerships must not indulge in sinful activities especially Riba which is an increase that has no corresponding consideration in an exchange of property for property, Gharar is an uncertainty about the ultimate outcome of the contract which may lead to dispute and litigation and Maysir is gambling. No one should give hurt to others so that he may not be hurt in reply and there must be equal chance of profit and loss like the business which goes in 100% profit without the possibility of loss is unlawful and a business which goes 100% in loss without the possibility of profit is also not a lawful business. Purpose of all the business transactions must be lawful. It is therefore highly recommended that modern businesses in Muslim countries such as Pakistan must not indulge in prohibited activities as prohibited by Allah Almighty and his last Prophet Muhammad ﷺ.

Musharakah, an authentic Shariah-compliant mode of finance, represents a profit-and-loss sharing partnership crucial to Islamic banking in Pakistan. It involves two or more parties pooling capital, assets or even labor, expertise to undertake a joint venture with profits distributed according to a pre-agreed ratio and losses strictly in proportion to capital contribution. While conceptually ideal for fostering equitable economic growth and real asset-backed financing, its practical application in Pakistan remains limited compared to Murabahah and Ijarah. Challenges perceived higher risk, lack of awareness, regulatory complexities, and need for greater transparency and expertise in managing such partnerships. However, the State Bank of Pakistan continues to promote its use, particularly through structures like Diminishing Musharakah in home financing, recognizing its potential to align financial activities more closely with Islamic ethical principles and contribute to a more inclusive and stable financial system, Pakistan needs to continue its journey towards fully Shariah-compliant financial system thus Musharakah and other Shariah-compliant instruments will play vital role to foster Shariah-compliant just and equitable economy soon In Sha Allah.

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