

INVESTIGATION OF CURRENT ACCOUNTS OF ISLAMIC BANKS: AN ISLAMIC PERSPECTIVE

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Abstract: The Islamic banking was engineered to frame a financial model based on contemporary Islamic modes of business and finance. One of the products of Islamic banking is current account, whose roots and fruits, both are still controversial. Islamic Researchers hold three different opinions regarding fiqhi (jurisprudential) status of current account while the benefits offered by this account have also been the focus of research these days, being regarded by some Islamic scholars as permitted while by others as interest. This conceptual paper aims at exploring the real Islamic basis for these accounts, thus framing the guidelines for its practical applications. Both descriptive and applied research approaches are used to study the relevant literature and current banking practices as well. The general findings show that the nature of this account is that of loan, so that its specific injunctions should be applied to all services of this account.

Keywords: Current account, Islamic banking, Bank deposits.

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A. Introduction

Banks invite public to deposit their savings, which are called Wadē'ah in Arabic and Deposits in English. There are three important types of deposits:

1. Current Account

It is called *Al-Hisab Al-Jari* in Arabic. In North America it is called Checking Account and in Britain, Hong Kong and other countries it is titled as Cheque Account, while in some countries it is named as Transactional Account. The current account holders aim to secure their savings temporarily for instant expenditures and payments as withdrawals at any time and of any amount is permitted without any financial restriction, that is why it is also called Demand Deposit Account (DDA).

2. Saving Account

It is called *Alhisab Altanfear* in Arabic. The current account holders aim to secure their savings for the long run as the bank also pays interest to the holders.

3. Fixed Deposit

It is called *Wadē'ah sabitah* in Arabic. The deposited amount cannot be withdrawn before completion of the fixed period without financial liabilities. The rate of interest, however, is comparatively higher than that of the saving account.

B. Current Banking Practices

Some Britain banks were sharing profit with their current account holders, and after approval of the Consumer Protection Act on July 21, 2011, American banks started doing the same. Banks, which do not pay any additional amount on current account, even, its current account holders do enjoy the facilities of modern banking. For example, Faisal Islamic Bank of Sudan gives out gifts on current accounts. Bank Islami Pakistan ltd.offers the following facilities to every valuable Islami Current Account holder:

- Access to all ATMs linked to MNET and 1 Link throughout Pakistan
- Inter-bank funds transfer facility through ATM
- Facility of making instant payments at Orix terminals for grocery, fuel, dining and other purchases
- Free internet banking service
- Round-the-clock phone-banking through personalized service from customer relationship officers
- Free account statement facility
- Hold mail and Stop payment facility
- Safe deposit lockers (subject to availability) ¹

C. Problem Statement

Interest-based and interest-free, both types of banks collect funds through the above-mentioned accounts. However, the majority of contemporary scholars are in consensus on the point that the modern commercial interest lies in the bracket of *riba* and is hence prohibited. That is why Islamic banks carry out their both saving and fixed accounts under *Mudharabah* or other permitted financial modes and share the profit and loss of the business with account holders.

However, the mode of current account is almost similar in both types of banking, thus the benefits offered by this account have also been the focus of

research for a long time, being regarded by some Islamic scholars as permitted while by others as interest. Moreover, some Arab scholars place this account in the category of *Ijārah* agreement and advocate profit-sharing as rent. This means that the account holder has given his money to the bank on rent; the bank uses it, earns profit and pays remuneration to the account holder in the form of interest, which is not more apparently different from conventional interest.

D. Research Questions

Consequently, to answer these four questions is the need of hour:

1. What is the *shariah* (religious jurisprudential) status of current account? What is the underlying contract for the islamic current accounts; *Qard* (loan), *wadē'ah* (trusts) or *Ijārah* (lease)?
2. Is it permitted for the bank to share profit with the current account holders?
3. Which facilities can be offered to current account holders?
4. Is it permitted for the current account holder to place his current account deposit as mortgage against his outstanding debt?

Weighing up all four questions, one would reach the conclusion that the first question is the axis and center of the research. If answer to the first question becomes the result of research, the remaining will get resolved easily. This is because every agreement bears specific injunctions and rules which are applicable to all of its examples. Any modern issue cannot get harmonized with religious requirements until the fundamental status of the issue becomes clear. In matters of *Ijtihād* the importance of “investing the route” (*Tabqeeq-al- Manaat*) is thus undisputed because through it the nature of any modern issue is ascertained and then the closest sharia principle is applied on it.

E. Literature Review

Islamic scholars hold three opinions regarding shariah interpretation of current account:

1. It is **Qard** (Loan/Debt). The account holder is the creditor and the bank is their debtor. This standpoint has been adopted by Usmāni (1999).², and Islami Fiqh Academy (*Al Majma Al Fiqh Al Islami*) in March 1966 . Text of the resolution along with its reference will follow later hereunder.
2. It is a **Wadē'ah** (Trust) which the account holder hands over to the bank for safety purpose. Among contemporary Arab scholars, Dr. Hasan Abdullah Al-Ameen, Dr. Eesa Abduhu, Dr. Abdur-Razzāq Al-Heeti and Dr. Ahmad Ubaid Al-Kubaisi are advocates of this opinion ³, and Bank Dubai Al-Islami considers its current account *Wadē'ah* agreement ⁴.

3. It is *Ijārah*. This view has been mentioned by Ash-Shahrāni (2001)⁵ and As-Subaiti(1995)⁶ in their articles but they have not specified the original holder of this view.

F. Research Methodolgy

Only three possibilities have been put forward in answering to the first and most important research question, therefore in the first stage of our research we will analyze the essence and ingredients of, and the mutual difference between, these three agreements:

Ijārah (lease) is the sale of profit in which the original article remains intact and the lessee acquires the right to derive benefit from the article by paying remuneration (rent) to the owner. This is why the holy Qurān regards dowry (*mahr*) as remuneration (4:24)

If benefit cannot be derived from an article with keeping its corpus intact, there arises no question of *Ijārah* agreement in that case because islamic fiqh has devised separate agreements for each type of transactions. For utilizing the corpus of an article against compensation, the *Bai'* (sale) agreement, and without compensation, the *Hibah* (gift) agreement has been prescribed, while for utilizing the derivatives and benefit of an article against compensation, the *Ijārah* (lease) agreement, and without compensation, the *Al-'Aariyah* (lending) agreement has been devised.⁷ Hence, deriving benefit from the utility of such an article is excluded from the compass of *Ijārah* agreement in which the corpus of the article perishes with its uses. For example, rice, wheat or other edibles cannot be acquired on rent because their utility is to fulfill nutritional needs and when this utility is derived the essence of the original article will perish.

However, if the *Ijārah* agreement is made for several subjects, one of which involves a perishable article, there is margin for such agreement. For instance, the services of a breastfeeding woman may be acquired through *Ijārah* agreement because mentoring the children, nurturing them and taking care of their nutritional needs are the subjects of the agreement, one of which is breastfeeding. In spite of the perishable nature of milk, this *Ijārah* is legally executed because breastfeeding is not the sole proceed of this contract. This is why the Arab children were sent to rural suburbs leaving behind their real mothers. Therefore, regarding the “feeding” as *Ijārah* in the Quran (65:6) will not be against this principle.⁸

Consequently, keeping the original article intact is the basic condition in *Ijārah* agreement.

Wadē'ah (Trust) is a safe keeping contract in which a party entrusted his property to another party for safe keeping and to be returned upon request. Ownership remains with the actual owner even after the trustee acquires possession. Therefore, the trustee does not have the right to usage or disposal of the entrusted article. As a benevolence agreement (*Aqd-e Tabarru'*), fulfilling the responsibility of safety without compensation is generosity, if the entrusted article gets destroyed without the carelessness or transgression of the trustee, there is no penalty on him. Accordingly, there is a saying of the Holy Prophet (peace and blessings of Allah be upon him): "There is no penalty on the trustee."⁹ Another Hadith mentions: "There is no penalty on the trustee if he does not cheat."¹⁰ Al-Muqaddasi (١٩٩٦) has quoted the consensus of the four famous Imāms and most of the Islamic scholars on this matter.¹¹

Hence, *Wadē'ah* is an agreement in which:

- The trustee does not have the right to disposal
- There is no penalty if the entrusted article gets destroyed without transgression

Qard (Loan/Debt) The literal meaning of *Qard* is 'to cut'. It is so called because the property is really cut off when it is given to the borrower. Legally, *Qard* means to give anything having value in the ownership of the other by way of virtue so that the latter could avail of the same for his benefit with the condition that same or similar amount of that thing would be paid back on demand or at the settled time.

In this agreement:

- Ownership gets transferred from the debt-provider to the debtor
- The debtor is authorized to use and even consume the actual article
- The debtor is bound to return substitute of the borrowed amount, whether he consumes it in his expenditure or it gets destroyed, and whether or not their negligence was involved. Abu-Omamah (Allah be pleased with Him) reported: I heard the Messenger of Allah say (peace and blessings of Allah be upon him): "A loan must be paid back, a debt must be discharged, one who stands surety is held responsible."¹²

G. Discussion

Deliberation on the nature of current account in the light of the essence and characteristics of all three above-mentioned agreements, it becomes evident that the deposit of the said account holders is not *Ijārah* because it is necessary for a valid contract of lease that the corpus of the leased property remains in the ownership of the seller, and only its usufruct is transferred to the lessee. Thus,

anything which cannot be used without consuming cannot be leased out. Therefore, the lease cannot be affected in respect of money, because their use is not possible unless they are consumed. If currency is leased out, it will be deemed to be a loan and all the rules concerning the transaction of loan shall accordingly apply. Any rent charged on this invalid lease shall be an interest charged on a loan.

Renowned jurist and philosopher of Islamic history Imām Al-Ghazālī, (2005) writes about the essence of currency:

“Whoever makes an interest-based arrangement on dirham and dēnār commits ingratitude (to the Creator) and oppression (on the creatures) because Allah has created both of them (*dirham* and *dēnār*) for other things instead of each other. Hence the one who is trading them has made them trade goods, and that is against their purpose of creation (because they were created as medium of exchange, not for becoming commodities themselves).”¹³

Hence, current account cannot be regarded as *Ijārah* and consequently “interest” cannot be made permitted under the title of remuneration.

Similarly, current account deposit cannot be called *wadē’ab* (trust) because:

1. In trust, neither ownership is transferred nor is the right to disposal acquired. However, the norm of banks regarding the deposits is that they keep in reserve proportionate amount for instant payment and consume/invest the rest for their needs and expenditures.
2. The *Wadē’ab* is a trust in the possession of the custodian, thus if it is destroyed without such transgression or negligence, he is not liable. Contrarily if banks announce that they are not guarantors of current accounts, no one will deposit their money in this unprofitable and insecure account.

However, current account has got all characteristics of *qard* (debt), like:

1. Ownership is transferred to the debtor; similarly the bank comes to own the deposits in the current accounts and has the right to undertake transactions and to seek growth in them through investment.
2. The debtor acquires the right to disposal and consumption of the amount of debt, in the same way the bank is authorized to make disposal of the deposits in any way;
3. The debtor is the guarantor, in any case, of repayment of the amount of loan. Similarly, it is binding on the bank to return a similar amount on the demand for the current deposit and it guarantees such return even upon loss of the wealth, whether or not it was negligent.

This is the very meaning the true purpose of the contract of *qard* in fiqh terminology.

1. Points of Disagreement

However, some scholars do not agree to recognizing current account as a debt/loan. They claim that by depositing in a current account one aims to secure their money by making the bank a guarantor and not to assist the bank for its needs with their money. Hence when his objective was not to provide loan to the bank, then considering his deposit as a debt/loan is “interpretation of a view in discord with the will of the view-holder”.

This argument does not hold much weight in our viewpoint because the intent of benevolence is not the part and parcel of the *Qard*(debt/loan) agreement. In some events of loan this intent exists while in others it does not exist. Existence of only two characteristics suffices for a loan agreement:

- a. The creditor gives his asset to the debtor along with the authority to spend it in any need on the condition that whenever the creditor demands repayment, the debtor must return him the similar amount.
- b. The loan amount will be considered in the guarantee of the debtor.

Both of the above mentioned characteristics are clearly present in current account and hence from the Islamic point of view it is really a debt/loan. Instances of giving loan without the intent of assistance do exist in the islamic history. It is famous about Hazrat Zubair bin ‘Awwām (Allah be pleased with Him) that people used to approach him for entrusting their moneys with him and by doing so they did not intend to assist him in any way but their objective was security of their money. Whenever someone would come to him for entrusting their money with him, he would declare out of his kindness: “This is loan and not trust; I fear its destruction (and there is no compensation in trust).”¹⁴

The categorization of this transaction by Hazrat Zubair bin ‘Awwām (Allah be pleased with Him) as loan is a proof that giving money with the intent of ensuring its safety is not against loan agreement. Actually loan agreement has two aspects: From the aspect that the loan-provider cannot demand more than the loan-amount, it is a benevolence agreement (*Aqd-e Tabarru*), but from the other aspect that both parties have some concern in the transaction, it is a monetary agreement. Hence, the intention of the loan-provider is sometimes that they will be rewarded in the Hereafter for this act, and at other times that as a result of providing loan, his wealth will come under guarantee and hence become secured. This very is the benefit due to which people open current account today.¹⁵

Owing to current account being called *Wadāe'* (trust) in Arabic, it should not be actually confused with general trusts because this title was assigned to the deposits keeping in view their preliminary stage and nature. In the 16th century, merchants did not have suitable arrangement of safety of cash and gold plates due to which goldsmiths had offered the facility to keep their valuables in safe vaults; they would issue receipts on which people had trust. These receipts, known as "running cash notes", were made out in the name of the depositor and promised to pay him on demand. Many also carried the words "or bearer" after the name of the depositor, which allowed them to circulate in a limited way. Little by little, the merchants began to exchange among themselves these receipts rather than the gold itself, so as not to move the gold unnecessarily and risk the attacks from robbers. In short, the goldsmiths gradually took over the function of the scribes of relending on behalf of a depositor and also developed modern banking practices. Therefore, these accounts were really on the basis of trust in their initial days, and appropriate to that very characteristic, they are still called *Wadāe'*.¹⁶

2. Current Account Deposit as Mortgage

By including current account in the compass of loan/debt agreement, the issue of utilizing current account as mortgage also arises. Is it permitted for the current account holder to place his current account deposit as mortgage against debt accrued due to any cause?

In this connection we agree with the research by Usmāni (1999). His study is summarized below with additional arguments:

Majority of scholars are in consensus that for something to become a mortgage article it should be material, possessing value, and saleable. Accordingly, Hanafi scholar Kāsāni, (1997), wrote:

"Requisites for a mortgage item are that it should be saleable in trade, that is, existent at the time of the transaction, of the category of the substance goods, possessing value, specified, and capable of being handed over to the buyer."¹⁷

Al-Muqaddasi (1996) explained the rationale for these requisites:

"It is not appropriate to make such article a mortgaged item which is not saleable, like *umm-al-walad* (a slave-girl who has borne her master a child), endowed amount and something already mortgaged. This is because the objective of mortgage is to recover the loan by disposing off the mortgaged item, and something which is not saleable cannot fulfill this objective."¹⁸

Seen in this perspective, current account does not have the capability to become a mortgaged item because:

- It is necessary for the mortgaged item to exist and be “*Ain*”(substance, material), while the current account deposit is a *Dayn* (debt) on the bank and debt is not “*AIN*”

- Similarly, it is necessary for the mortgaged item to be saleable while current account is a debt and debt cannot be sold as mentioned in islamic law.

According to the four Imāms *Bai` al-dayn bi al-dayn* (Sale of debt with debt)¹⁹, and according to the majority of scholars *Bai` al-dayn li gbayr al-madin* (sale of debt to the third party), is prohibited²⁰. Since debt cannot be sold, current account deposit can also not be mortgaged.

However, according to jurists of the Māliki, mortgage can be placed with an indebted person too but with the condition that the repayment period of the debt which is being placed as mortgage should be at least equal to that of the loan for which the mortgage is brought into effect.

Accordingly, Al-Kharshi, (1896)writes:

“To place a debt/loan as mortgage with the debtor the pre-requisite is that the repayment period of the loan which is being placed as mortgage should be at least equal to that of the loan for which the mortgage is brought into effect. This is because if the debt/loan remains in possession of the mortgagee after completion of the mortgage period, it becomes similar to loan and, consequently, two agreements - loan and sale - will enter in one – sale agreement. However, if it is decided that after completion of mortgage period the loan will be placed with a trustworthy third person till completion of loan period, this arrangement will become permitted.”²¹

In light of the above-mentioned text, current accounts may be used as mortgage in the following cases:

The first case is that the current account holder is also a debtor of the bank and places his current account as mortgage with the bank for authentication of the debt/loan. According to Mālikiy research, for this case to become permitted, the period of current account should be extended till the loan repayment period in a way that the current account owner does not have the authority to withdraw an amount more than that of the bank loan before completion of the period of loan.

The second case is that the creditor is a third person other than the bank, and then the debtor places his current account with that person in a way that the latter is authorized to withdraw from the account whenever they want. Mālikiy do not add any other condition for this case, but according to the majority of jurists since mortgage of a loan is not permitted; therefore this case is also not

appropriate. However, it is possible to rectify this case on the basis of *Hawālah* Assignment (transfer of loan) in the following manner: The current account holder assigns their creditor to the bank in a way that the former may recover their loan from the latter whenever they want.

The third case is that the creditor is other than the bank and demands that the debtor freezes his current account in the bank until completion of the loan repayment period. In this case, the third party (bank) may be termed “*‘adl*” in the Islamic terminology whose possession over the mortgage is a possession for trust. In usual circumstances it is not permitted for *‘adl* to make disposal of the mortgaged article, however, if both the debtor and creditor give sanction for the same with the condition that the *‘adl* will be the guarantor, this arrangement is acceptable.

This detail relates to the situation where repayment period of the loan, for which mortgage has been placed, is specified, but if it is an open ended debt, that is, period is not specified, for example all benevolence *Qard* which, according to Hanafi and other jurists, may be demanded anytime, the current account can be freeze and then mortgaged on the basis of *Hawālah*.²²

H. Conclusion & Recommendations

1. Categorizing current account as *Qard*(debt/loan) agreement seems the preferable approach. That is why a resolution to the same extent was approved after long debate and discussion at the ninth meeting of the Islami Fiqh Academy (*Al Majma Al Fiqh Al Islami*) arranged at Abu Dhabi in March 1966. Its text is as follows:

“Accounts -on-demand (current accounts), whether of interest-based banks or Islamic banks, are *Qard*(debt/loan) from islamic jurisprudential viewpoint, because the bank maintaining the account is its guarantor and religiously responsible to return it in any case, and the opulence of the bank does not affect the loan agreement.”²³

Similarly the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) also stated in its shariah standards:

"The reality of current account is that these are loans and not deposits. Thus, the institution comes to own the amount and a liability to repay the amount is established against it"²⁴

2. Since it is proved that the nature of current account is similar to that of loan/debt agreement, therefore the very injunctions of loan/debt should be applied on current account. It is not permitted to the islamic bank to present the owners of current accounts, in lieu of such accounts, material gifts, financial incentives or mere profit share, This is nothing but *riba* and interest whose prohibition is declared clearly by the holy Prohet (sallahu alaihe wasallam).

“When one provides a loan to the other and the debtor presents something or his animal as a gift to the creditor, the creditor should not accept the thing and should not derive utility from the animal, apart from the situation where this (exchanging gifts) has been the norm between them earlier.”²⁵

Hazrat ‘Abdullah bin Salām (Allah be pleased with Him) invited Hazrat Abu Burdah (Allah be pleased with Him) on a lunch and advised:

“You live in a land where interest prevails in abundance. If there is something receivable by you from someone and they give you even a handful of straw, barley or fodder as gift, do not accept it, since that is *riba*.”²⁶

3. It is not permitted for banks to offer any kind of additional facilities, privileges or special exemptions whatsoever to current account holders. Among these are the exemptions from charges in whole or in part, like exemption from credit card charges, deposit boxes, transfer charges and letters of guarantee and credit. They can only benefit a current account holder with those facilities and services that are usually included in the basic responsibilities of a bank or the facilities given to all depositors across the board as they are not related to *Qard* and there is no suspicious about them.
4. According to Māliki jurists, it is conditionally permitted for the current account holder to place his current account deposit as mortgage against debt accrued due to any cause.

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