
Study Shariah background of Hawala and its modern shapes

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ABSTRACT

It is a fact that a human being cannot complete all his need himself but he becomes indigent to other to fulfil his needs. Islam is the only complete, flexible, elastic religion. It is not only a collection of beliefs and worships but also has full guidance in every aspect of life. In modern societies, transferring cash or debt has many forms like those that travel cheque, bill of exchange, bonds, digital cards, easy paisa and jazz cash etc. Islam also provides him the specific guidance in all the above modern systems. Hawala and hundi (bill of exchange) are allowed in Islam with some restrictions, regulation and condition. This article focuses only on modern hawala and its sharia status. The research methodology adopted in this article is qualitative.

INTRODUCTION

Hawala is the transformation of money in an abstract way without using any physical aspect and it is non-formal transfer system accepted in most part of the world. It operates outside the conventional banking system and is based on trust and personal relationships. The shariah background of Hawala is essential to understanding its historical development and contemporary practices.

Literal meaning of Hawala:

الْحَوَالَةُ مُشْتَقَّةٌ مِنَ التَّحْوِيلِ وَهُوَ النَّقْلُ
(Abu Bakr ibn Mas'ud Kasani, 1986)

The word hawala is derived from Tahweel that means transfer (Ibn Abdeen, 2000)

Definition of Hawala:

“Hawala of debt is the transfer of debt loan or Daen from the transferor Muheel to the payer Muhal Alaihi”. We can define it that it is the transfer of right (Muhammad ibn Shirbini, 1415). “On the other hand it is the replacement of a creditor with another creditor” (Abdullah ibn Ahmad, 1432/2011).

Element (Rukin) of Hawala

أَمَّا رُكْنُ الْحَوَالَةِ فَهُوَ الْإِجَابُ وَالْقَبُولُ الْإِجَابُ مِنَ الْمُحْبِلِ وَالْقَبُولُ مِنَ الْمَخَالِ عَلَيْهِ وَالْمَخَالُ جَمِيعًا
(Alaudeen Kasani, n.d.)

The element of Hawala is offer and acceptance. The offer from Muheel and the acceptance from muhall alih and muhal both.

Condition of Hawala:

There are three types of conditions for hawala. Some of the conditions are related to muheel (transferor) (Ibn Abdeen, 2000), like the transferor should be

Aqil (sensible), baligh(Adult) (Zain u Aldeen Ibn Nujaim, n.d.) and consent on this agreement (An Nisafi et al., 1432/2011), and some of the condition are related to muhal alaihi (payer) like Aqil (intelligent) Baligh (Adult) and has the consent about this agreement (Ibn Rushd et al., 1395/1975). The above condition is necessary for the muhal(transferee) too (Alaudeen Kasani, n.d.). There are two conditions related to muhal bihi, the first condition is that the muhal bihi is debt and the second condition is that it should be a necessary payment (of debt) (Alaudeen Kasani, n.d.).

METHODOLOGY

This paper explains the definition of hawala and its types and Shari'ah arguments about it and explains the orders about Easy Money, Jazz Cash in the current situation. And it's positive and negative effects about Handi have been described. Hawala contract is binding or not? The hawala contract becomes a binding contract when all its conditions are fulfilled.

CRITICAL REVIEW OF LITERATURE

This literature review provides a comprehensive analysis of the Shariah background of Hawala and its modern shapes. By exploring the historical development, Shariah principles, compliance with Islamic finance, and contemporary challenges, this review aims to deepen understanding and foster dialogue on the topic. It also underscores the importance of striking a balance between regulating Hawala to prevent illicit activities while recognizing

its legitimate role as a convenient and cost-effective remittance system within the Islamic financial framework.

Modern Shapes of Hawala

In recent years, Hawala has evolved to adapt to modern financial systems and technologies. Several variations of Hawala have emerged, including electronic Hawala (e-Hawala) and mobile-based Hawala (m-Hawala). These modern shapes leverage advancements in communication technology and allow for faster and more convenient transactions while still maintaining the fundamental principles of trust and confidentiality.

Types of Hawala:

Hawala can be divided into two types, restricted hawala and unrestricted hawala.

1-Restricted Hawala: This type of transaction involves the transaction where the payer is restricted from setting the amount of the transferred debt against the amount of a financial or tangible asset that belongs to the transferor and is in the possession of the payee.

2-unrestricted Hawala: “In this variant of Hawala, the person initiating the transfer and the transferee is not a creditor of the payee undertakes to pay the amount owed to the transferor put of his own money” (Usman ibn Ali Alzalai, 1313).

Legitimacy of Hawala:

Referring to sharia rules, it is allowed to facilitate payments and recovery.

Termination of a hawala liability:

The Hawala agreement is derived from the saying of the holy prophet (PBUH) and it concludes through either debt resolution, a joint decision to end it, or the debt being invalidated through a transfer” (Sharia’s Standards, n.d.).

Sharia Basis of Hawala:

The legal status of hawala is derived from hadith nabavi (PBUH) and Ijma (Ibn Qudamah, 1405) (the consensus of scholar).

Hawala in Hadith:

“عَنْ أَبِي الزِّنَادِ عَنِ الْأَعْرَجِ " حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَخْبَرَنَا مَالِكٌ عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَطَّلُ الْغَنِيِّ ظَلْمٌ فَإِذَا أَتَيْتُمْ أَحَدَكُمْ عَلَى مَلِيٍّ فَلْيَبْتَعْ " (Al-Bukhari, n.d., 3:94, Hadith No. 2287)

“The prophet pbuh said Default on payment by a solvent debtor is not just and if any one of you is transferred to a solvent person he must accede to the transfer” (Muslim ibn al-Hajjaj, n.d., 3:1197, Hadith No. 1564)

Hawala in Ijma:

Not a single Muslim scholar rejected the Hawala contract till today. Hence it is proved by silent ijma.

Shape or kind of Hawala in old era:

One can find two simple shapes of Hundi or hawala in old times. The first shape is that B was the debtor of A and C was the debtor of B. When A demanded of his debated amount from B and B has nothing to pay him, so he transferred his debated amount to C. A, B and C were agreed on this transfer of debt. The second shape was that C was not the debtor of B but he agreed to pay the debt of B to A, hence C becomes the payer.

There existed no system of systematic transferring or sending of money.

Modern applications of Hawala

1- According to the AAOIFI standards, “an issuance of a cheque against a current account is a form of Hawala if the beneficiary is a creditor of the issuer or the account holder for the amount of the cheque”. “If the beneficiary is not the creditor to the issuer of the cheque then this is not a Hawala transaction because there can be no Hawala transaction without an existing debt” (Sharia’s Standards, 2007).

2- Overdrawing from an account or overdraft

The Second application of modern Hawala is overdraft. “The standard defines it in the following words if the beneficiary of the amounting cheque is a creditor to the issuer then issuing a cheque against the account of the issuer without a balance is unrestricted transfer of debt if the bank accept the overdraft If the bank does not accept the overdraft then it is not considered a transfer of debt” (AAOIFI, n.d.).

3-Travellers’ cheque

AAOIFI standards define it in the following words: “If the holder of traveller s cheque endorses the cheque in favour of his creditor it becomes a transfer of debt in favour of a third party against the issuing institution that is debtor to the holder of the cheque”(AAOIFI, n.d.).

4-Bill of exchange

“A bill of exchange is a shape of Hawala if the beneficiary is a creditor to the drawer In this case the drawer is the transferor who gives order to the paying bank to pay a certain amount of money at a specific date to the defined beneficiary The party executing payment of such amount of money is the payer whereas the beneficiary i e the holder of the bill is the transferee If the beneficiary is not a creditor to the drawer then the bill of exchange becomes an agency contract to recover or collect the amount of bill of exchange on behalf of the drawer”(AAOIFI, n.d.).

5-Cards

Cards can be used too in hawala.

In this case, a person A pays some amount to the bank and opens an account. The bank issues a card to him, now when the bank receives this amount from A it becomes the creditor of A. When A purchases something from C and does not pay to him on the spot, it becomes the creditor to C. A gives card to C to receive his debt from bank. It means that A transferred his debt to the bank. The bank is the payer, A is transferor, and the company becomes transferee.

Cards are used as hawala in another form as well. In this case a person A gives request to the bank to issue credit card for him. The bank issues this card. Then A purchases something from a company and does not pay to him on the spot, and become debtor of the company. Then he gives this card to the company to receive its debt or amount from bank saying that I will pay this amount to the bank later. The company uses this card. It means that the company sends request to the bank to pay him on behalf of A. When the bank pays to the company, A becomes the debtor of bank. This method is not called Hawala in business society commonly, although it is considered hawala in shariah perspectives.

6-Easypaisa, Jazz cash, Western union, money Gram etc.

A person wants to send his money to another person or company which is situated at another. He gives money to the company to send it and the company receives it not in the name of trust but as debt. The company takes responsibility of this amount. The company becomes the debtor. Now this person purchases some something and instead of cash, he requests the jazz cash or western union to pay on the behalf of him. It means that a person has transferred his debt to jazz cash or western union.

7-Money order and Hawala

The method of this hawala is as follow:

A is the creditor of C before the contract of Hawala. A wants to send his debt or money to C and here is "B" a company. A pays some money to the sender company B and sender company receives this money as debt. A requests the company to pay his debt to C. Here it is also the transferring of debt from one person to another, that is called hawala.

8-Bonds and Hawala

Sometime Government needs to collect money as loan from people for a specific project. For which the government issues bonds. The people purchase these bonds and give money to the government. The government becomes the creditor of the people. Sometime the owner of the bonds needs money for something, so he sells this bond to another. It means that he transfers his loan or debt to someone else.

Hundi (Bill of Exchange) and Hawala

The word Hundi in our society is used with the concept of money transferring from one place or person to another place or person.

Types of Hundi

There are two types of Hundi: legal and illegal

There are some companies, which are registered with government for the purpose of sending or transferring money however there are many people involved in this business without any permission or registration. When a company receives the money from the sender as loan, the company becomes the creditor. Then the company gives the sender a receipt. The sender sends this receipt to the receiver. It means that the company has transferred his debt to another person.

The illegal hundi is invalid due to the restriction of government.

Effects of Hundi

Positive

- 1- The debtor receives his debt easily, and quickly.
- 2-The sender is safe from the risk of loss.

Negative

- 1-Unregistered company is the main cause of tax losing.
- 2-It creates destabilize the financial market.
- 3-In the modern aspects of this business there are too many issues related to sharia.

CONCLUSION

Hawala is the system of the transferring of debt from one person to another. Sharia not only allows this system with some conditions but also provides many useful methods for this purpose. If the society becomes more modern and comes up with various modern aspects of this business, it becomes the responsibility of shariah scholars to do proper research on each aspect and come up with shariah guidelines regarding that.

REFERENCES

- "Accounting and Auditing Organization for Islamic Financial Institutions" (AAOIFI). (n.d.). AAOIFI Shariah Standard Number Seven: Hawala, clause B.
- "Accounting and Auditing Organization for Islamic Financial Institutions" (AAOIFI). (n.d.). AAOIFI Shariah Standard Number Seven: Hawala, clause C.
- "Accounting and Auditing Organization for Islamic Financial Institutions" (AAOIFI). (n.d.). AAOIFI Shariah Standard Number Seven: Hawala, clause D.
- Abdeen Ibn, 1421/2000 Hashiyat radul mukhtar ala durrimukhtar sharh tanwenl absar, 5/341,dar ul fikar,Biroot.

- Abdeen,Ibn 1421/2000 Hashiyat radul mukhtar ala durrimumkhtar sharh tanwenl absar, 5/340, dar ul fikar,Biroot.
- Alzalai Ali U, 1313 , Tabeenul Haqaiq, 4/173,kitabul Hawalah,almatbah alkubra Alameria,Qahira,
- Alaudeen Kasani. (n.d.). Badia Snaia fi Tarteib Sharaia (Vol. 6, p. 15). Darul Kutubul Arabi.:Albiroot.
- Alaudeen Kasani.. (n.d.). Badia Sanaia fi Tarteib Sharaia (Vol. 6, p. 16). Darul Kutubularabi: Albiroot.
- Al-Bukhari, M. b. I. (n.d.). Sahih Al Bukhari (Vol. 3, p. 94, Hadith No. 2287). Dar Tuq Annijat.
- Ibn Ahmad, A.(abulbaraka) (2011). Kanzudqaiq, kitabul Hawala (Vol. 1, p. 458). Maktabah Shamila. (Original work published 1432).
- Ibn Rushd, Abul Waleed Muhammad ibn Ahmad. (1975). Bidayatul Mujtahid (Vol. 2, p. 299). Misar: Matbah Mustafa Albabi. (Original work published 1395).
- Ibn Qudamah. (1405). Al Mughni (Vol. 5, p. 54). Biroot: Darul Fikar.
- Ibn shirbini, M 1415, Aliqnaa, kitabul Hawalah, 2/310, Darul fikar,Biroot,
- Muslim ibn al-Hajjaj. (n.d.). Sahih Al-Muslim (Vol. 3, p. 1197, Hadith No. 1564). Beirut: Daru Ahya at Turass..
- Sharia's Standards. (aaoifi). (n.d.). (Vol. 1, p. 101). Manama, Bahrain: AAOIFI. Retrieved from www.aaoifi.com
- Sharia's Standards. (2007). (Vol. 1, p. 102). Manama, State of Bahrain: AAOIFI. Retrieved from www.aaoifi.com.
- Zain u Aldeen Ibn Nujaim. (n.d.). Al-bahruriaq, kitabul hawala (Vol. 6, p. 268). Biroot: Darul Maarifa.