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Deferred Sale (*Bai' Mu'ajjal/Bai' Bi Thaman Ajil* (Bba)): Its Origin and Validity from a *Maqāṣid Sharī'ah* Perspective

Mohammed Farid Ali*

Abstract: Deferred sale (*Bai' mu'ajjal*), in the Islamic Banking and Finance world widely known as *Bai' bi thaman ajil* (BBA), is used as an extension to Profit-sale (*Bai' murabahah*); both sales complement each other. The Profit-sale sells the commodity with profit over the cost price, and BBA plays the role of receiving that payment on deferred or instalment basis. BBA has become the “premier consumer financing facility” for the Islamic financial institutions (IFIs). This paper deals with deferred sale precisely. It looks into its origin and its transition from void to valid sale. Its application as trade contract and its modern application as financing tool is analysed in the light of the *maqāṣid Sharī'ah*.

Keywords: Deferred sale (*Bai' mu'ajjal*), BBA (*bai' bi thaman ajil*), Objectives/purpose of the Sharī'ah (*Maqāṣid Sharī'ah*), specified time (*ajal ma'lum*), unspecified time (*ajal majhul*)

BBA is defined as: A sale in which the payment of the price is deferred to a specific time. The basic principle of sale in Islam is the presence of both the price (*thaman*) and the goods in the sale session. This is to ensure the realization of the primary purpose of sale which is none other but transfer of ownership. Upon conclusion of the sale, the buyer is to pay the price and the seller is to transfer the ownership of the commodity to the buyer thereafter. Transfer of ownership cannot be compromised, whereas the Sharī'ah as an exception allows deferment of the either the price or the commodity. Previously the Sharī'ah objectives (*maqāṣid*)

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of the sale in which the price is paid on spot and the commodity is delivered on a deferred basis is related to the discussion of forward sale (*Salam*) and its *Maqāṣid*. In this paper, we are discussing the *maqāṣid* of Bai' Mu'ajjal/BBA in which the commodity is delivered on the spot, but the payment of the price is made on deferred basis.

A sale of this nature is permitted, provided that the time of the payment is specified (*ma'lum*). Ibn Abidin (d. 1252/1836) in his magnum opus *Radd al-Mukhtār* (n.d., vol. 7, p. 49-50) wrote that payment of the price on spot is the primary purpose of sale (*asal*) and the only way out to allow paying the price on deferment basis is to stipulate it with condition. The condition is to specify the time of the payment. To understand the importance of this condition, one has to understand that the permissibility of this sale is a contra-product of the prohibited sale, which involves payment of the price in an unknown time (*ajal majhul*). This is why *Bai' Mu'ajjal* in *fiqh* works are discussed under a sub-topic within the void sales (*buyu' al-fasidah*). The scholars, while explaining Ibn Abbas's report on prohibition of sale with deferment of the price to an unknown time, derive the legality of the sale with specific deferred time. Imam al-Shafi'i in his *Kitāb al-Umm* reported through Sufyan Ibn 'Uyainah, Abd al-Karim al-Juzri, Ikramah from Ibn Abbas saying: "Do not sell with the deferred price to be paid upon receiving the stipend, or on the threshing of the flour, or on the cutting of the grain" (al-Zayla'i, 2002, vol. 4, p. 50; Zafar Ahmad 'Uthmani, 1427 A.H., vol. 14, p. 155).

لا تبيعوا إلى العطاء، ولا إلى الأندر، ولا إلى الدياس

The companions of the Prophet used to defer their payments till the day they would receive their stipend from the treasury (*bayt al-māl*). The time of distribution was not specified. Similarly some would defer their payments till the threshing and harvesting period. The farmers in that season obtain cash from their threshold and harvest sale. However the season was not specified. The prohibition in Ibn Abbas report is due to deferment upon undetermined time. Muhammad Ibn al-Hasan al-Shaybani (d. 189 A.H.) in his *Kitāb al-Asal*, widely known as *al-Mabsūt*, attributed the above report to Ibn Abbas and declared the sales with price deferred to an unknown time as invalid. Then he derived the legality of the deferred sale by stipulating it with specific time of deferment (al-Shaybani, 1990, vol. 5, p. 111-112). Burhan al-Din Abu al-Hasan Al-Mirghinani (d. 593) in his *al-Hidāyah* in line with the mentioned

report wrote that selling with the price deferred to uncertain times such as the ones mentioned by Ibn Abbas is not permitted. Deferred sale is only permitted when the time of the payment is ascertained. If people can determine the payment time and both contracting parties can agree with it then such sale will be declared valid (al-Zayla'I, 2002, vol. 4, p. 47; al-Sarakhsi, 2009, vol. 13, p. 33-34). This is the reason there are reports which relate that the wives of the Prophet and the companions used to buy with the price deferred to their receiving of the stipend. The scholars, who clarify the discord between these reports and the prohibiting-report mentioned above, write that the later reports relate to the time period when disbursement of the stipend was determined. The wives of the Prophet and the companions knew the exact time of receiving their stipend based on which they bought goods from the market on deferment basis (Zafar Ahmad 'Uthmani, 1427 A.H., vol. 14, p. 155).

Basing on the aforementioned, *Bai' Mu'ajjal* in general is a void type of sale. The point which makes it permissible is specific deferred payment time. The purpose of stipulating the sale with the condition of specific deferred time for the payment of price is to save the contracting parties from dispute. The unknown time of payment (*al-jahalāh*) in the chapter of sale may result in a dispute between the contracting parties (al-Kasani, n.d. vol. 4, p. 393; Ibn Abidin, n.d. vol. 7, 49-50). Furthermore, the price is the counter-value of the goods one intends to buy. The contracting parties beside the knowledge of price-amount should necessarily have the knowledge of its payment time. The purpose of legalizing *Bai' Mu'ajjal* is to show clemency to the buyer by allowing him/her to receive the commodity on spot and pay the price later (al-Zuhayli, 2010, vol. 3, 37-38). Through this clemency the seller can achieve the economization of the commodity. A commodity to have a cheaper price when sold on spot basis, and to have higher price when sold with deferment is the accepted custom of the people. A buyer who has needs but doesn't have sufficient money to buy the commodity on cash, by this clemency can fulfil his needs and pay the price on a deferred basis (al-Zuhayli, 2002, vol. 5, 3462; Ali al-Khafif, 2005, p. 417). Now that we have drawn the picture of legality and the purpose of *Bai' Mu'ajjal*, we will discuss the contemporary usage of *Bai' Mu'ajjal* by the IFI's and how far the realization of its purposes is attained.

The Deferred sale (*bai' mu'ajjal*) for the contemporary Islamic financial Institutions (IFI's) is the "Premier consumer financing facility." It is more commonly known as the sale with deferred sale (*Bai' Bi thaman Ajil* (BBA)). Norliza Mohammad in the Islamic Finance News Portal (2012) wrote:

"BBA is a contract of exchange for the sale and purchase of goods on a deferred payment basis where the agreement includes a predetermined profit margin in the purchase price. It provides the purchaser the benefit of a deferred payment scheme for long term financing and in turn the deferred price of the sale of the goods carries additional profits for the seller-bank. Widely recognized as the primary mode of Islamic consumer financing in Malaysia, the BBA facility enjoys a dominant role in Malaysian financing market. The impact of BBA to consumer financing in Malaysia is especially significant in the Islamic home financing sector where BBA has the lion's share of the market."

The quote is self-evident that the *Bai' Mu'ajjal* originally was for the purpose of sale contract, whereas the contemporary IFI's are using it as a financing tool. The IFI's reap their profits by charging higher prices because of deferred payment. Only a small group of scholars have disagreed with charging higher price for deferred payment whereas the majority scholars allow the difference of the price basing on spot and deferred payment basis (al-Shawkani, vol. 5, p. 164). The Council of the Islamic Fiqh Academy passed a resolution for such pricing as well. Contemporary scholars such as Shaykh Yusuf al-Qaradawi and Shaykh Ahmad Kutty opined that deferred payment is a necessity for the people, if not allowed it will put hardship on them in fulfilling their day to day needs (Edib Smolo, 2010, p. 64).

As far as the higher price for deferred payment is concerned, majority of scholars and Sharī'ah committees have passed resolutions for its permissibility. However the overdependence of IFI's on BBA financing is the point, which is subjected to criticisms. Are the IFI's merely using BBA because of the Qur'anic principal trade is permitted and *riba* is forbidden (al-Baqarah 2: 275) or because they can easily "charge time value of money in the name of a profit margin on their financing in place of the interest charged by the conventional banks"? (Edib Smolo, 2010) The modus operandi of BBA by IFI's has camouflaged itself with

interest-based financing. In the original BBA the seller has the right to sell the commodity with a higher price because he literally possesses the commodity and takes the liability of risks. In contemporary application of BBA the IFI's who are selling the commodity with a higher price only possess the commodity in theory. The actual transfer of ownership and possession never takes place. Here the weakness of contemporary BBA can be pinpointed which is same in the case of *Murabahah* to the Purchase orderer (MPO). The modus operandi in both of these modern contracts neglects the hadith-cum-maxim: "A profit without taking any liability is not permitted" (al-Shawkani, vol. 5, p. 192).

لا يحل ربحُ ما لم يضمن

Another criticism against BBA is their method of determining the price plus profit. IFI's use interest rate as their bench mark to calculate the profit. In Malaysian context KLIBOR (Kuala Lumpur Inter-Bank Offered Rate) is used to determine the profit margin. Since interest rate benchmark is used to determine a halal profit, it is considered undesirable to do so, but not unlawful. One cannot render the profit margin in BBA as haram because the contract itself does not contain interest. The KLIBOR here plays the role of a benchmark only (Taqi Usmani, 1998, p. 81). However because of the nature of BBA where the price plus the profit agreed for the deferred period has to be permanent in order to avoid uncertainties, the consumers end up paying more in comparison to the conventional modes of financing. In conventional financing the consumers pay their monthly loan according to the dictation of rise and fall of the interest rate. This shows that though the profit margin determined by interest rate benchmark is not haram, but it still burdens the consumers. A consumer using Islamic financing service through BBA ends up owing more to the IFI's (Edib Smolo, 2010, p. 69). The purpose of allowing deferred payment was clemency, and to ease the consumer, whereas the current application of BBA falls short in realizing these very purposes.

The current BBA has also attracted criticism with regard to the issue of default. In the event of payment defaults, the IFI terminates the BBA contract and claims the loan amount plus the profit margin thereon for the full tenure. This means the IFI claims a profit for unexpired tenure as well. If a consumer is forced to pay for the full tenure, then justice is to let him reap benefit for the full tenure. The written policies and

agreement even though gives the IFI's right to claim the profit for full tenure, but their right totally neglects justice, which is the overriding purpose of the *Sharī'ah*.

Conclusion

Looking at the bombarding criticisms out of which we could only highlight some due to the focus of this work on the utilization of BBA by the IFI's in financing mode, the IFI's should either revise their modus operandi or they should replace it with other Islamic products by which the purpose of the *Sharī'ah* can be realized. The *Sharī'ah* resolution publications should reserve special sections and chapters discussing about the *Sharī'ah* aspects of BBA rather than its applications only. Like MPO, very little attendance has been given to BBA.

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