

## Ruling On A Partnership With Disparity In Capital But Equality In Profit And Loss

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What do the honorable scholars say regarding the following issue: We are two individuals wishing to enter into a partnership in a vegetable business. Both of us will invest money: one partner will contribute 30%, and the other 70%. The partner contributing 30% will be the one doing all the work. We wish to divide profit and loss equally. Is it permissible for us to do so?

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In the described scenario, the partnership is valid. It is not impermissible according to Shariah for the working partner, despite contributing only 30% of the capital, to be given 50% of the total profit, since he is performing the work. Therefore, with the consent of the other partner, he can be assigned a profit ratio greater than his capital proportion.

However, it is not correct to stipulate that the partner with 30% capital will bear 50% of the loss. But this condition will not make the partnership fasid (invalid); rather, the condition itself will be null and void. If a loss occurs, it will be distributed between both partners in proportion to their invested capital.

Stipulating a condition that a partner will bear more loss

than his investment proportion does not invalidate the partnership — the condition itself becomes void. Concerning this, Imam Ruzi-ud-Din Muhammad bin Muhammad al-Hanafi al-Sarakhsi (رحمة الله عليه), who passed away in 571 AH, states:

"اشترى كافجاء احدهما بالف والاخر بالفين على ان الربح والوضيعة نصفان، فالعقد جائز، والشرط في حق الوضيعة باطل، فان عملا وربحا، فالربح على ما شرط، وان خسر افا لخسران على قدر راس في مالهما-- وهذا الشرط لا يكون مفسدا للعقد"

Translation: Two persons formed a partnership wherein one contributed one thousand and the other two thousand [in capital], under the condition that profit and loss will be shared equally. The partnership contract is valid, but the condition regarding loss is void. If they engage in business and earn a profit, it will be divided as per their agreed-upon condition. However, if a loss occurs, it will be distributed according to their capital contribution. This loss-related condition does not invalidate the partnership.

(Al-Muheet Razawi, Volume 6, Page 84, Dar Al-Kutub Al-Ilmiyyah, Beirut)

In a Shirkah-tul-Inan (limited partnership), it is permissible for the working partner to receive more profit than his share of capital, while the loss will always be proportionate to capital investment. Regarding this, it is stated in Fatawa Alamgiri:

"لو كان المال منهما في شركة العنان والعمل على احدهما-- وان شرط الربح للعامل اكثر من راس ماله جاز على الشرط-- والوضيعة ابداء على قدر رؤوس اموالهما"

Translation: If in a Shirkah Inan, the capital is from both partners but the work is made conditional upon one of them, and it is stipulated that the working partner will receive more profit than his capital proportion, such a condition is permissible.

However, loss must always be distributed according to the proportion of their capital.

(Fatawa Alamgiri, Volume 2, Page 336, Dar Al-Kutub Al-Ilmiyyah, Beirut)

Sadrush-Shariah Mufti Amjad Ali Azami (رحمة الله عليه) states:

”اگر دونوں نے اس طرح شرکت کی کہ مال دونوں کا ہوگا مگر کام فقط ایک ہی کریگا اور نفع دونوں۔۔ برابر لیں گے یا کام کرنے والے کو زیادہ ملے گا تو جائز ہے

Translation: If both entered a partnership in such a way that the capital is from both but only one will do the work, and both will take equal profit or the one doing the work will receive more — then this is permissible.

(Bahar-e-Shariat, Volume 2, Page 499, Maktaba-tul-Madina)

Regarding loss, it is stated in Bahar-e-Shariat:

”نقصان جو کچھ ہوگا وہ اس المال کے حساب سے ہوگا، اس کے خلاف شرط کرنا باطل ہے۔

Translation: "Loss, whatever it may be, shall be according to proportion of the capital; any condition contrary to this is void."

(Bahar-e-Shariat, Volume 2, Page 491, Maktaba-tul-Madina)

واللہ اعلم عزوجل ورسولہ اعلم صلی اللہ تعالیٰ علیہ وآلہ وسلم

Written by

Abu Muhammad Mufti Ali Asghar Attari Madani

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Translated By Maulana Abdul Wajid Madani