

FRAUDULENT BUSINESS PRACTICES IN EARLY ISLAM AS REPORTED IN A CLASSICAL TEXT

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ABSTRACT

The main purpose of this paper is to elucidate some fraudulent business practices in early Islam. The reference material is an edited manuscript entitled Kitab al-Nazar wa al-Ahkam fi Jami Ahwal al-Suq (Book on supervision and legal decision on matters related to the market). The book, which deals with the subject of market supervision, is considered the earliest of its kind. The book was a compilation of legal opinions of a Maliki scholar Yahya ibn Umar (d. 289H/901CE), who was asked about various matters relating to business practices during his time. The fact that these legal opinions are made based on understanding of Islamic law it should be differentiated from ordinary works of fiqh. In fact the book deals with real situation in the business during that times and describes actions taken by the officer in charge.

Key words: *Fraud, Islamic law, market supervision*

Introduction

Some prominent orientalist have carried out numerous studies to determine the origin of market supervision in Islam. Some of them maintained that the Muslims have borrowed it from the Roman's *agoranomos*. This was the opinion Gaudefroy-Demombynes (1939) as cited by Patricia Crone (1987) and was later copied by G.E. Von Grunebaum (1970). In this manner, Schacht (1964) has suggested that transformation took place during the

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Abbasid period. On contrary, Claude Cahen and Muhammad Talbi (1971) have denied the idea of continuity of Islamic market supervision from the Roman's *agoranomos*. The matter was based on the last inscriptional record of the *agoranomos* dates about three centuries before the Arab conquest. In this manner, R.P Buckley (1992) traces the roles of market supervisor back to the time of the Prophet (Pbuh). Earlier studies on the matter were carried out by Ishaq Musa al-Husaini (1966) and later by Zafir al-Qasimi (1983). In fact, early Muslim jurists have clearly indicated in their classical texts that market supervision was in practice in early Islam. Some of the writings of these jurists include *Kitab al-Nazar wa al-Ahkam fi Jami Ahwal al-Suq* by Yahya ibnu Umar (d. 289H/901CE), *Kitab al-Ihtisab* by al-Nasir li al-Haqq (d. 304H/917CE), *Kitab Ahkam al-Sultaniyyah* by al-Mawardi (d. 450H/1058CE), *Ihya Ulum al-Din* by al-Ghazali (d. 505H/1111CE) and *al-Hisbah fi al-Islam* by Ibn Taymiyyah (d. 728H/1328CE).

Market Supervision In Early Islam

It seems likely that the Prophet (Pbuh) who was involved in all aspects of the lives of the Muslims would be concerned with wrongful activities in the market. In this way, al-Tabari (1992) suggests that the reason for the revelation of *surah al-Mutaffifin* (the dealers in fraud) chapter 83 was that the Prophet (Pbuh) had visited the market and had witnessed vendors dealing fraudulently. As a result of this, according to al-Tabari (1992), their conduct improved when the verses was revealed to them. In defining the word *mutaffif*, al-Tabari refers to him as a person who gives deficient weight and measures, which would involve insufficiency in calculation and in quantity. Allah says:

“Woe to those who deal in fraud. Those who, when they have to receive by measure from men, exact full measure. But, when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account? On a Mighty Day. A Day when (all) mankind will stand before the Lord of the Worlds?”. (Al-Qur’an, 83:1-6)

In fact, verses one to six of *surat al-Mutaffifin*, which strongly condemns unfair dealing in weight and measures, should give a good reason for

responsible persons to ensure that such kind of behaviour and the like would not be happen in their market. It was reported that the Prophet (Pbuh) had visited the market and found the vendor had watered his grain so that its weight was heavier. So the Prophet (Pbuh) said:

“He who deceives us is not one of us”.
(Ibn Majah, Sunan)

Similarly, on another occasion, the Qur’an has condemned those who are hoarding their property when it says:

“Those who hoard up gold and silver and do not spend them in His way, announce to them a painful torment”. (Al-Qur’an, 9:34)

On this matter, the Qur’an also says in another verse:

“What God has bestowed on His messenger and taken away from the people of the townships, belong to God, His messenger, the kindred, the orphans, the needy and the wayfarer; so that the wealth would not be circulated among the wealthy among you”.
(Al-Qur’an, 59:7)

This seems to be related to the Prophet’s denunciation of those vendors who were hoarding in order to obtain a higher price. The Prophet (Pbuh) was reported as saying:

“No one hoards in the market but the traitors (i.e. the sinners)”.
(Ibn Majah, Sunan)

It seems likely that the Prophet (Pbuh)’s actions were not only intended to protect the purchasers from being victimized by greedy merchants, but also to preserve the rights of the vendors. Thus, in Medina, the Prophet (Pbuh) established a free trade market without any tax being charged on the traders. It is believed that the market was established soon after the arrival of the Prophet (Pbuh) in Medina as argued by M.J. Kister (1965). Accordingly Al-Baladhuri (1983) mentioned that the Prophet (Pbuh) has stamped its ground with his foot and said:

“This is your market, let it not be narrowed and let no tax (kharaj) be taken on it”.

Similarly, in the case of price-fixing, the Prophet (Pbuh) refused to fix the price for the vendors, even though the public demanded it, because such an act would be unjust to the vendors. Anas ibn Malik narrated that the price had increased in the time of the Prophet (Pbuh), so the people came to see him and said:

“O Messenger of Allah, fix the price for us”. The Prophet (Pbuh) replied: “O people, when the price is high or low it is by the Will of Allah and I hope to meet Him when no one will claim injustice against me either for property or blood”.

Above are the evidences, which have clearly indicated that the Prophet (Pbuh) and his companions had been involved in market supervision. Ibn Abd al-Barr (1328H) mentioned that the Prophet (Pbuh) was also reported to have appointed Sa'id ibn Sa'id ibn al-As to supervise the market.

The Life of Yahya ibn ʿUmar

The name Yahya ibn Umar was mentioned by Claude Cahen and Muhammad Talbi (1971) in the Encyclopedia of Islam together with his work entitled *Kitab Ahkam al-Suq* (Book on legal decisions related to the market). In fact, the work was first edited by Mahmud Ali Makki in 1956 and later was translated into Spanish by Emilio Garcia Gomez in 1957. There is in fact another version of the work, which is entitled *Kitab al-Nazar wa al-Ahkam fi Jami Ahwal al-Suq* (Book on supervision and legal decision on matters related to the market). The work was edited by Farhat al-Dashrawi in 1975.

Ahmad (1996) maintained that the author's name is Abu Zakariyya Yahya ibn Umar ibn Yusuf al-Kinani al-Andalusi. He was born in Jaen, a city in Andalusia (now in Spain). It is unclear when Yahya ibn Umar was born. According to Ibn Farhun (1351H), Yahya ibn Umar died in 289 A.H. at the age of 76. However, based on his *rihlah* (travel to pursue his study), it could be assumed that Yahya was born earlier than 213 A.H. because when his teacher Sahnun ibn Sa'id died in 240 A.H., Yahya ibn Umar would not

have been more than 27 years old. Furthermore, Yahya ibn Umar is said to have studied with his teacher Sahnun and was regarded as one of his most senior students and associates. Moreover, Ibn Farhun and Ibn al-Faradi have indicated that Yahya ibn Umar had begun his *rihlah* to the east earlier than 226 A.H. when he was not more than 13 years old. He then returned to Qayrawan before Sahnun died in 240 A.H., which concluded the duration of his *rihlah* to Egypt, Hijaz and Qayrawan for about 14 years. Thus, it could be assumed that Yahya ibn Umar was born earlier than 213 A.H. However, there seems to be no proof for that.

Ibn Farhun (1351H) claimed that Yahya ibn Umar was grown up in Cordova after his family has migrated from Jaen. Yahya ibn Umar began studying with the most celebrated Maliki scholar of his time, ‘Abd al-Malik ibn Habib. Yahya then traveled to North Africa and studied with Sahnun ibn Sa'id in Qayrawan. Yahya then continued his travel to the east with his brother Muhammad.

Ahmad (1996) believed that Yahya had traveled to Egypt before 226 A.H. when he was not more than 13 years old because amongst his teachers in Egypt was al-Dimyati, Ibn Abi al-Ghamar, Ibn Bukayr, Abu al-Thahir and al-Harith ibn Miskin who were the students of Ibn al-Qasim, Ibn Wahb and Ashhab. From the text of Yahya ibn Umar, it was found that he had referred to his teacher al-Harith ibn Miskin fourteen times, which in fact, was the most frequent type of isnad found in the text. Yahya had frequently referred to the teachings of Malik ibn Anas, Ibn al-Qasim and Ibn Wahb through his teacher al-Harith ibn Miskin. Thus, it can be assumed that Yahya had spent most of his time in Egypt in the company of his teacher al-Harith ibn Miskin. He then traveled to Hijaz to study with Abu Mu'sab al-Zuhri and others. He may have been here for a short period because he only referred to the opinions of the Medinans on one occasion. On his return, Yahya stayed at Qayrawan to continue his study with Sahnun and *qadi* Yusuf ibn Yahya. Soon after that, Yahya began to conduct public teaching before 250 A.H. since one of his students; Abu Bakr ibn al-Shibl had come from Andalus to study with him during the year.

According to Ibn Farhun (1351H) during the time of Yahya ibn Umar, Qayrawan was under the control of the dynasty of the Aghlabids who ruled North Africa, Algeria and Sicily from 184-296 A.H. (800-909 C.E.). The

emir during the time was in favour to the Hanafites school of law and he had removed the Malikites jurist from the public offices. Thus, Yahya ibn Umar had migrated to Tunis to join his brother Muhammad. Later, he had settled down in Sousse and started teaching at the great mosque of Sousse. Thus, from the text, it is mentioned that Yahya had received a written petition from the market supervisor of Qayrawan. Instead he was asked in person by the market supervisor in Sousse. It should be noted that during this period, people had made their journey from Andalus, Qayrawan and the surrounding districts to study with Yahya ibn Umar. Among his students was his brother Muhammad, Abu Bakr ibn al-Libad, Abu al-Arab and Ahmad ibn Khalid al-Andalusi. According to Ibn Farhun (1351H), Yahya ibn Umar died in 289 H at the age of 76 in Sousse.

Important Elements in the Text

Yahya ibn Umar (d. 289H/901CE) has clearly mentioned that his book is a compilation of legal opinions on matters that are concerned mainly with the supervision of the market. It consists of various chapters on matters related to weights and measures, on price-fixing, on the sale of unripe fruit, on the bakers and the butchers, on the sale of tops and dolls, on adulteration and cheating with various goods, on musical instruments, on public-baths, on crying aloud over the death of relatives and visiting their graves, on shoes that make noises, on the person who had spilled the water and caused injuries to others, on cleaning the market place, on the person who had dug a pit that had caused injuries to someone else, on door to a house, on *ahl al-dhimmah*, on persons who are suffering from serious illnesses, on cheating in weights and measures, on price fixing and on hoarding. Inquiries into these matters have been made to Yahya ibn Umar who then gave his legal opinions and the transmitter Ahmad al-Qusari to his students narrated these.

Ahmad (1996) maintained that there are three main elements that can be found in the book: One of these is concerned with the person who is regarded as responsible for carrying out the roles of supervising the market. The second is regarding the duties to be carried out and the third deals with the punishments for the offenders.

Regarding the first element, the text makes it clear that the role of supervising the market was the responsibility of the Governor. He then would entrust

this duty to a special officer known as *nazir ala al-suq* and *sahib al-suq*. Regarding these two terms, the text have used the term *sahib al-suq* when referring to the market supervisors of Qayrawan and Souse. The same term was used to refer to the market supervisor during the time of Malik ibn Anas. However, the term *nazir ala al-suq* was applied when Yahya ibn Umar was explaining the theory of the responsible person to carry out the duty of supervising the market. Thus, this term was used together with the terms *wali* (the Governor) and *qadi*. On this basis, it could be assumed that the term *nazir ala al-suq* is more general than the term *sahib al-suq*. It should be noted that at this stage, the duty of the supervision of the market and those related matters were carried out by the Governor, the *qadi*, and the market supervisor (*sahib al-suq* and *nazir ala al-suq*).

The Roles of Market Supervisor

Ahmad (1996) suggests that with regard to the roles of market supervisor, Yahya Ibn Umar (d289H/901CE) mentions various duties, which can be classified into two separate categories:

1. The duties that are concerned with unlawful sales transactions in the market.
2. The duties, which do not involves sale transactions.

Duties concerned with unlawful sales transactions

Regarding the duties that are concerned with unlawful sale transactions, they are as follows:

1. Price-fixing (*ta'sir*).
2. Administering the use of standard weights and measures and punishing those who falsify them after a warning has been given.
3. Supervising the vendors so that they can be prevented from conducting unlawful sales transactions. (This is the main discussion of the work of Yahya ibn Umar).
4. Observing the rights of the purchaser concerning the repayment, the right of option (*khiyar*) and the right of the workers to receive their wages.

Price-fixing

Yahya Ibn Umar (d. 289H/901CE) argued that the jurists have differed in their opinions. According to the Shafis and the Hanafis the Prophet (Pbuh) had refused to fix the price because it would be unjust to the vendors. However, the Malikis and the Hanbalis argue that the tradition did not mention any injustice committed by the vendors, which had inflated the price. Instead, they held that the price increased due to natural causes. Thus in this situation, the Prophet (Pbuh) refused to fix the price for them because it would be unjust to the vendors. According to Ibn Taymiyyah (d. 728H), the price had increased in the time of the Prophet (Pbuh) was due to a shortage of supply and an increase in the demand of the goods. On that basis, in a situation where the price had increased because of malpractices of the vendors, the Malikis and Hanbalis held that it is permissible to fix the price for them. Nonetheless, such an intervention by public authorities must be made after careful examination into each case. Thus, Yahya Ibn Umar (d. 289H/901CE) relates the opinion of Ibn Habib that price-fixing is, in fact, a settlement to an equivalent price (*thaman mithl*). Therefore, when the price has increased and the public has protested against it, a settlement can be achieved through a negotiation initiated by the public authorities i.e. market supervisor. The meeting would attempt to reach a settlement at an agreed price for the parties involved, which is known as equivalent price. This is also the opinion of Ibn Qayyim (d. 751H). However Yahya Ibn Umar (d. 289H/901CE) is against price-fixing in normal situations. He even disagreed with fixing the price for the vendors who were hoarding goods at a time of scarcity, but instead favoured compelling them to sell the goods in the market.

From the text, Yahya ibn Umar (d. 289H/901CE) was asked to deal with the problem of vendors who have reduced the price. Yahya held that it is wrong to allow one particular vendor selling cheaper price than the market. Yahya argues that such an action is justified for the purpose of maintaining stability in the marketplace. Presumably, this situation is similar to what has been visualized by Ibn Qayyim (d. 751H). According to him when the public have established a common price (*sir ghalib*) and some of the vendors want to sell at a higher or cheaper price, Malik holds this to be not acceptable and this should be prevented.

Duties do not concern with sales transactions

From the text, Yahya ibn Umar (d. 289H/901CE) maintained that the roles of market supervisor include not only economic activities in the marketplace, but also other social and religious functions. Yahya also regards market supervisor to be responsible to cater for health and basic administration of the city. Examples of these are in the cases when Yahya ibn Umar disapproved of the sale of unripe dates soaked in vinegar and the practice of the vendors who were blowing into the carcasses because such acts might have spoiled the food and be harmful to the person who had eaten them. With regard to basic administration of the town, Yahya did not allow the house owners who are living in a narrow lane to create a door or an entrance to their house, which would obstruct the passer-by. He also emphasised that the vendors should be responsible to ensure cleanliness in the market place, particularly in matters concerning with the cleaning the mud from it.

Above all matters relating to unlawful conduct which do not involve sales transactions are as follows:

1. Obligation to respond to an invitation of a wedding and playing with musical instruments
2. The use of public baths
3. Crying aloud over the death of relatives
4. Visiting the graves
5. Wearing shoes that make noises
6. A door to a house situated in a narrow lane
7. *Ahl al-dhimmah*
8. A person suffering from leprosy
9. Immoral behaviour.

Punishment for offenders

Yahya ibn Umar (d. 289H/901CE) maintained that punishments for offenders can be as follows:

1. Returning defected goods
2. Paying compensation

3. Destroying unlawful musical instruments
4. Confiscating the goods
5. Beating
6. Parading in the market area
7. Banning from the market
8. Detention
9. House arrest for young offenders

Fraudulent Business Practices Mentioned

The work of Yahya should be differentiated from the historical books. This work of Yahya did not directly refer to the practices occurred during his times or to the period before him. In fact, this work of Yahya is quite similar to the book of *fiqh*. However, this work of Yahya should be differentiated from ordinary works of *fiqh* for two reasons. Firstly, because the work of Yahya focused on current problems faced by the officials. Secondly, the work of Yahya did not mention legal disputes among the scholars or certain legal controversies between the jurists as were normally discussed in the ordinary book of *fiqh*.

The text has described various fraudulent business practices together with legal actions to be taken to punish the offenders, as listed by Table 1.

Table 1: Fraudulent Business Mentioned by Yahya ibn Umar (d 289H/901CE)

No.	Fraudulent Business Practices	Legal Actions to be taken
1.	Deficiency of weight and measure.	The offender be banned from the market after consultation with the Governor.
2.	Counterfeit coins mixing with copper.	The offender will be warned and punished by parading them in the market area.
3.	The usage of different standard of weight and measure.	The offender will be punished and banned from the market.
4.	The use of standard price.	The offender is banned from the market.
5.	Negligence of the miller of grain.	Liable to pay compensation.
6.	Adulterated goods and goods below the standard of the market.	The offender be warned and if continued the goods will be donated to the poor.
7.	The sale of unripe fruits.	The purchaser has an option (<i>khiyar</i>).

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8.	The sale of bread containing stone.	The purchaser has a right to collect his money back. The offender be warned and if continued he will be banned from the market and the bread will be donated to the poor.
9.	The sale of insufficient bread in weight and unleavened bread.	The offender be punished and banned from the market.
10.	The mixing of good quality of wheat with lesser ones.	Warning and if continue the offender be punished and banned from the market.
11.	Falsification of measures.	Ban from the market. Beating is not necessary.
12.	Cheating and mixing the goods such as saffron, musk, milks, figs, honey, bitter cucumbers, cow milks, butter and oils, meats, food of all kinds.	The purchaser has an option (<i>khiyar</i>). Warning and banning from the market if continue. The goods will be donated to charity.
13.	Spoiled eggs.	The purchaser has a right to compensate.
14.	Shrunken clothes.	The vendor should inform the defect, or else the sale is void and he could be banned.
15.	Missing vendor and the status of their goods left. The vendor who ran away from authority feared to be caught.	The shops will be locked and market supervisor is allowed to sell the meat or goods if feared that it would be spoiled and the money will be given to treasury.
16.	Fixing the price of goods during inflation.	The vendor should be ordered to sell out their stock of goods, except for his own use.
17.	Hoarding.	Warning will be given and if repeats he will be punished by beating and paraded in the market. The goods will be confiscated and sold in the market and the profit be donated to charity.
18.	Sales of food in jars and containers of different quality.	The purchasers need to provide proof and the vendor has a right to defend himself.
19.	Clothes infected with lice.	The sale is binding. However, if the lice are too many it is considered as cheating.
20.	Sales of ashes used to whiten thread.	Test will be carried out to determine the quality of ashes sold. The purchasers need to provide evidences and the vendor has a right to defend himself (an oath).
21.	Remnant used by the tailor to make shirts and trousers.	Belong to the shirt's owner.
22.	Improper conduct of slaughtering of animal.	The slaughterer is liable to compensate the owner with an equivalent animal.

Conclusion

In conclusion, the text of Yahya ibn Umar (d. 289H/901CE) has provided some useful information regarding fraudulent business practices during his times. With this remarks, it is clearly indicated that measures were taken

in order to prevent such bad practices by formulating laws and supervision of the market as well as by educating market supervisor. Some of these measures were seemed very strict, such as parading in the market area. Such punishments seem to be justifiable at the times in order to maintain laws and orders, especially when it involved serious cases such as counterfeit of coin and hoarding. On the other hand, with regard to some other cases such as falsification of measures, Yahya maintained that beating would not be necessary, thus, the offender would only be banned from the market. In fact, he argued that banning is more severe than the beating. It should be noted that from the legal perspective, the nature of the work Yahya seems to create a new approach in writing. In this way, the work of Yahya was, in fact, a compilation of legal opinions. The facts that these legal opinions are made on a clear understanding of the applications of Islamic law, which derived from the books of fiqh, is not a reason for it to be considered as an exclusive work of fiqh. In fact, the writing of these legal opinions should be differentiated from ordinary works of fiqh. An obvious reason for this is that the fiqh literature on many occasions deals with speculated events and theoretical cases. In contrast, the work of Yahya, discussed current phenomenon. Another aspect is that the discussion is not concentrating on the disputes between scholars of different school of laws or focusing on certain controversies between the jurists. In fact, the work of Yahya is concerned with providing a practical solution to contemporary problems faced by the public, as well as served as a guide book for the official to carry out their functions in the market more effectively. As far as fraudulent practices are concerned we can concluded that there has established an institution known as Hisbah to supervise the market with special appointed official known as muhtasib. The officer was guided with standard manual book to be applied by them.

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