

## **THE CLASSICAL ISLAMIC VIEW OF SADAQAH: A PRELIMINARY STUDY**

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### **ABSTRACT**

The purpose of this paper is to provide a concise and brief introduction to the classical Islamic view on *Sadaqah* (Charity). This study is based on the *Fiqh* literature of the four main Sunni schools of law. The beginning of this paper defines the meaning of *Sadaqah* and the differences between *Hibah*, *Sadaqah*, *‘Ariyyah* and, *Hadiyyah*. This paper further explores the practice of *Sadaqah* in *Rasulullah*’s time and discusses the sources of *Sadaqah* and whether it can be obtained from illegal property or not. In addition, this paper also studies the possibility of *Sadaqah* property being invested by an institution or not. The conclusion of this paper highlights the similarities in meaning between *Sadaqah*, *Hibah*, *‘Ariyyah* and, *Hadiyyah* in general terms, but in the literal sense there are differences in terms of their purposes. This study finds that the *Sadaqah* property in *Rasulullah*’s time was movable and immovable. It was also discovered that illegal property can be donated and that *Sadaqah* property can be invested by an entrusted institution according to the concept of *zakat* which is managed by a *zakat* institution.

**Keywords:** *Sadaqah* House, *Sadaqah*, *Hibah*, *Hadiyyah*, Illegal Property

### **INTRODUCTION**

*Sadaqah* (*charity*) is among the commendable practices promoted by the religion of Islam. Technically, *Sadaqah* refers to the act of providing for one in need in order to attain a reward and achieve nearness to Allah. It essentially differs from other commendable philanthropic acts prescribed in Islam, such as *Zakat* and *Waqf*, mainly as to the way it is managed. *Zakat* and *Waqf* operate in an insitutional set-up, whereas institutionalization is not a pre-requisite in the case of *Sadaqah*.

In the classical Islamic legal thought, *Sadaqah* holds more porximity in characteristics to *Hibah*, *Hadiyyah* and *Waqf*, specifically in terms of attaining Allah’s gratification. However, each term has its specificity in meaning, which the current study aims to cast light upon. As such, this paper assess the classical *Fiqh* literature on the nature and purpose of *Sadaqah* and compares it with other related terms. Elucidation on the sources of *Sadaqah*, i.e. whether arising from lawful or unlawful sources, and their acceptability in the classical legal thought has been provided.

The paper is divided into three main sections. The first section enlightens upon the nature of Sadaqh, its definition, the types and the legal requirements. The second section presents a discussion on the comparison between *Sadaqah* and different related terms and elucidates on the permissibility of giving *Sadaqah* from unlawful sources. The third section is the conclusion of the study.

## **THE NATURE OF SADAQAH**

### **Definition of Sadaqah (Charity)**

The term '*Sadaqah*' is derived from the Arabic root word "*sadq*" or "*sidq*", which literally means "to tell the truth or to be sincere" (Hans Wehr, 1980). However, in context of Islamic jurisprudence, the term '*Sadaqah*' is technically defined as a gift imparted onto the poor for the sake of God or to obtain recompenses from God (al-Ahkam al-<sup>o</sup>Adliyah, 2002).

### **Types of Sadaqah**

According to The Encyclopedia of *Fiqh*, there are five types of *Sadaqah* categorized based on the nature of obligations (al- Mawsua<sup>o</sup>ah al-Fiqhiyyah, 1998). These include:

- I. *Sadaqah Wajibah*: Compulsory charity on property.
- II. *Sadaqah Wajibah*: Compulsory charity on body (*Sadaqah fitr*).
- III. *Nazar*: Compulsory charity on a person when he makes a vow.
- IV. *Kafarah* and *Fidyah*: Compulsory charity when someone breaches a particular law of *Shariah*.
- V. *Sadaqah Tatawu'*: Voluntary charity.

### **Pillars and Requirements of Sadaqah**

In order to ascertain the nature of a philanthropic act, in this case *Sadaqah*, Islamic jurists have derived necessary conditions and pillars to categorize the charitable act as *Sadaqah*. There are three pillars of *Sadaqah*. Each pillar entails its own requirements to fulfil the criteria for being recognized as *Sadaqah*. These are as follows:

1. Donor (*al-Mutasaddaq*): The donor is the person who spends his property for *Sadaqah* (al- Mawsua<sup>o</sup>ah al-Fiqhiyyah, 1998): Following are the main requirements for the donor to qualify as the one who gives *Sadaqah*:
  - I. The donor must be mature (*Baligh*) and sane (*‘aqil*) according to the Islamic concept of *al-Bulugh* and *al-Rushd*, respectively.
  - II. The donated property must be owned by the donor or must be represented by someone's ownership.
2. Recipient (*al-Mutasadaq ‘alaih*): The recipient is the person who receives the money from the donor. The two criteria to qualify a person as a recipient, unlike the requirements for a donor (Mawsua<sup>o</sup>ah al-Fiqhiyyah al-Fiqhiyyah, 1998), are as follows:
  - I. The recipient does not necessarily have to have reached maturity, under the concept of *al-Bulugh*, and
  - II. The recipient may not be (*‘Aqil*) according to the concept of *al-Rushd*, in order to qualify as a recipient of *Sadaqah*.

3. Donated Property: The donated property can be formed of either movable or immovable properties or a combination of both. In principle, the property must be obtained from legal sources, i.e. legally recognized as a permissible source within the limits of Shariah (Mawsua<sup>c</sup>ah al-Fiqhiyyah al-Fiqhiyyah, 1998).

### **Comparable features of *Sadaqah*, *Hibah*, *Hadiyyah* and <sup>c</sup>*Ariyyah***

This section provides an elucidation of the similarities and differences between *Sadaqah*, *Hibah*, *Hadiyyah* and <sup>c</sup>*Ariyyah*, as expounded upon by Muslim jurists.

The word '*Hibah*' literally means 'a gift'. Technically, *Hibah* is a broader term which includes any form of charity, donation or present, whether imparted to the rich or the poor. It shares the characteristic of philanthropy with *Sadaqah* as both concepts entail providing without any expectation of receiving anything in return (Sharbini, 1997). On the other hand, a gift (*Hibah*) is termed a *Hadiyyah* when the intention of the giver is to gratify the receiver of the *Hadiyyah* property or object. Alternatively, <sup>c</sup>*Ariyyah* refers to a contract where the ownership of a benefit from a property is transferred to a person (as in the case of hiring a fixed asset such as car etc.) (Ali Haydar, 2003). However, *Sadaqah* differs from *Hibah*, *Hadiyyah* and <sup>c</sup>*Ariyyah* in the purpose for its use as well as the intention of the donor. In *Sadaqah*, the property is donated as a charitable object, entailing focus on the poor, with the intention of pleasing Allah (al-Ahkam al-<sup>c</sup>Adliyah, 2002).

According to the *Hanafi* school of Islamic Jurisprudence, *Sadaqah* and *Hibah* differ as to the recipients of each, i.e. if the recipients are poor people it is considered as *Sadaqah*, while in the case of *Hibah*, the recipients may include the rich people as well. *Sadaqah* and *Hibah* also differ in terms of the purpose; where the purpose of *Hibah* is to show love to the receiver, the purpose of *Sadaqah* is solely to seek Allah's pleasure (al-Zaila<sup>c</sup>i, 1895).

Correspondingly, the *Shafi'i* and *Maliki* school of Islamic Jurisprudence differentiate between *Sadaqah* and *Hadiyyah* in accordance with the intention of the giver. In *Sadaqah*, the donor aims at attaining Allah's pleasure and good reward while as in *Hadiyyah*, the giver intends to honour the recipient of the subject matter of the gift (Sharbini, 1997, al-Dasuqi, 2003). The *Shafi'i* scholars also added that *Hadiyyah* and *Hibah* are different in term of the items which can be given. In the case of *Hadiyyah* the property or object should be something that is physically transferable from hand to another hand. However in the case of *Hibah*, the scholars categorized the property or object as something that cannot be moved such as land or a house (Sharbini, 1997).

Again, as per the *Maliki* opinion, *Hibah* is something that once given, can be returned to the giver. In other words, the giver of *Hibah* may take back the object or property from the recipient. However, in the case of *Sadaqah* the property or object cannot be returned (al-<sup>c</sup>adawi, 2008).

However, on the review of classical literature deliberating upon the nature of *Sadaqah*, *Hibah* and *Hadiyyah*, it is observed that scholars of *Hanafi*, *Maliki* and *Hanbali Fiqh* schools were more involved in the discussion of *Hibah* itself rather than *Sadaqah*. In contrast, *Shafi'i* jurists concerned themselves mostly with *Sadaqah* in the light of voluntariness of the giver (Abu Bakr, 2003). Hence, they have narrowed the scope of *Sadaqah* to *Sadaqah Tatawu'* (voluntary charity) purposely to distinguish between *Sadaqah Wajibah* (*Zakat*) and *Sadaqah Tatawu'* (Sharbini, 1997).

On another note, *Waqf* and *Sadaqah* share a similarity in purpose, i.e. both are carried out for the sake of Allah SWT. However, the major difference between *Waqf* and *Sadaqah* in terms of the property or object donated is that the *Waqf* property is non-transferable to anyone, either by means of being sold or given away as a gift. While as the property or object donated under *Sadaqah* can be sold and/or inherited (al-Shirazi, 1996).

The concept of *Waqf* essentially entails that the original property should be retained. Thus *Waqf* property must be immovable items such as land and buildings to preserve the original asset donated as *Waqf* (Monzer Qahf, 2006). This is as *Waqf* is regarded as continuing charity (*Sadaqah*

*Jariah*) that requires retaining the property to derive the benefit forever (al-Shirazi, 2996). However, in *Sadaqah* there is no specific requirement for property to be movable or immovable. Apart from that, both *Waqf* and *Sadaqah* are different in terms of organization and management. *Waqf* is a form of institutionalized charity while *Sadaqah* is un-institutionalized charity. In general, *Sadaqah* property is not managed by any particular organization, as the donor can channel their money to whomever they want, while in contrast *Waqf* property must be channelled to a *Waqf* institution for the purpose of management (Monzer Qahf, 2006).

In brief, *Sadaqah* differs from the concepts of *Hibah*, *Hadiyyah*, *‘Ariyyah* and *Waqf* in numerous aspects such as organization, management and the criteria of property. However, elucidation on the qualification of a property or object as either permissible or impermissible in the eyes of Shariah is required at this juncture. This is in order to ascertain the position of classical Islamic jurisprudence on the use of illegal property or objects to be given as *Sadaqah*.

At the time of the Prophet (S.A.W.), the object of *Sadaqah* was formed of movable items such as money, food and animals or immovable properties such as land, gardens and ponds. In numerous Hadith narrations, various examples can be found on the practice of *Sadaqah* by the Prophet and his companions where the *Sadaqah* property or object comprised of both movable and immovable property, such as narrated in the following Hadith: “*Narrated by Jabir RA, after coming back to Madinah from the war of Dzat al-Riqa<sup>c</sup>, Rasulullah bought a camel owned by Jabir<sup>1</sup> with for double the original price. Then, Rasulullah saw donated the camel and the profit of the camel to Jabir for his wedding ceremony*” (al-Bukhari and Muslim).

On another occasion, the Prophet (S.A.W.) donated his immovable property such as land and gardens for the interest of the Muslim community, as described in the following Hadith:

“*Narrated by A’mrū Bin al-Harith, after the death of Rasulullah (S.A.W.) he was not to leave his decedent and Muslim with the dinar, dirham (money) and slaves but leave them with the land of al-Baydha’ and his sword for contribution*” (al-Bukhari).

Various other incidences can be found casting light upon the nature of property that was given as *Sadaqah* in the Islamic history. For example, Uthman (R.A.) once bought a pond named *Rumah* and donated the water for the public interest (al-Bukhari). Also, during the war between Muslims and Rome, Uthman (R.A.) also donated three hundred camels and one thousand *dinar* for the war preparation (al-Tirmizi). As such, Islamic jurisprudence holds its status clear with regard to the use of both movable and immovable properties to perform *Sadaqah*.

However, whether illegal property can form part or whole of the property given as *Sadaqah* needs to be clarified.

Islam, while encouraging the philanthropic act of *Sadaqah* also promotes the use of the best property or object for this purpose. This is pre-eminently explained in the Quran where Allah SWT mentions:

“*By no means shall you attain to righteousness until you spend (benevolently) out of what you love; and whatever thing you spend, Allah surely knows it*”. (Al-‘imran: 93)

Al-Qurtubi while deducing the use of ‘what you love’ as mentioned in the above verse, it was explained that it means the best property that can be donated and that which is among the valued properties belonging to a person (al-Qurtubi, 2006). This is also evident in an incident as narrated in one Hadith where the Prophet (S.A.W.) highly praised the *Sadaqah* of his companion Abu Talhah (R.A.) who was among the wealthy of the *Ansar* in *Madinah*. He had a garden named *Bairaha* located in front of the Prophet’s mosque which he highly valued and from where the Prophet would often enter to drink water from its well. After the revelation of the above quoted *Ayat* from Surah al-‘imran: V93, Abu Talhah met the Prophet and expressed his intention to donate the land for the public interest. The prophet then appreciated and praised Abu Talhah because of his

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<sup>1</sup> Jabir (R.A.) is a one of the Rasulullah’s saw companion who was poor and newly married.

action (al-Bukhari, Hadith No: 4279). This Hadith, hence, affirms that the property donated in the form of *Sadaqah* should have a pure and legal source.

However, there are discussions amongst the Islamic jurists regarding the permissibility of donating illegal property. Generally, Islamic scholars have categorized illegal property into two types based on the method of obtaining the property. The first type is illegal property owned without permission from the original owner, while the second includes illegal property owned with permission from the owner (al-Baz, 2004). In the case of illegal property owned without permission from the original owner, the obtaining of the property from the owner takes place without the owner's consent. Such type of illegal property originates from the following six sources:

- I Stealing: The property is acquired without the knowledge of the owner, through means of theft. Stolen property also includes the property stored and safe-kept by the owner.
- II Bribery: Bribery involves persuading someone to act in one's favour illegally or dishonestly, in order to acquire a gift of money or other inducement without the real consent of the owner of the property. The property may be acquired under coercion..
- III Illegal Seizure (*Ghasb*): *Ghasb* literally denotes the action of capturing someone or something by force. Illegal property can be acquired through forceful detention of the owner's property for no justifiable reason.
- IV Monopoly (*Ihtikar*): Monopoly means collecting and controlling goods as an effort to anticipate the need for price increments. Literally, it means that the process of monopolizing products to force price increments. Monopoly is a market situation where production of certain goods is in the hands of a few traders. Within such a market the trader manipulates the flow of goods in order to achieve higher prices, hence imposing a higher price charge on people which they would not be otherwise willing to pay.
- V *Riba*: *Riba* is translated in the English language as usury or interest. It often entails acquisition of property with force, by imposing a fixed amount of interest rate on the loan disbursed. The acquirer of *Riba* is not the rightful owner of the interest amount received as it is not earned with effort. *Riba* thus entails injustice to the owner of the property as his property is captured without his genuine consent due to the compulsion of making a fixed payment of interest.

With regard to the second type of illegal source of obtaining illegal property, Islamic Jurists divide it into two types' viz. property gained through gambling and property gained through the sale and purchase of goods that are illegal in the eyes of Shariah. As such the main difference between the two types of sources of illegal properties is that the person who is convicted of obtaining the illegal property without the owner's permission will be treated as sinful, as in the example of a thief who earns sin(s) from the action of stealing. As for the person obtaining property that is illegal in the eyes of Shariah with the owner's permission, both the parties involved i.e. the owner of the property and the person who acquires the property if they are Muslim will be guilty of committing a sin; for example in the case of a seller and buyer of alcohol, both will acquire the sin upon the conclusion of the sale of alcohol. Illegality of this type of ownership of property, although acquired with the consent of the original owner, arises from the disobedience towards Allah's commandment, which is counted as a sin in itself. Also, the main difference in acquisition from the two sources of illegal property is the consent of the original owner, where in the case of illegal property obtained by force without the owner's consent, the second type of illegal property is obtained with no force and willing approval of the original owner of the property. In consideration of the above, the majority of Islamic scholars do not allow illegal property to be donated as *Sadaqah* as the property does not belong to the donor. In the event where the owner of the property can be identified, the scholars opine that the property must be returned to its owner or in the case of death of the owner, to his heir. In the case of illegal property where the owner is unidentifiable,

there is a detailed deliberation on the treatment of such property of *Sadaqah*, in all the four Islamic legal schools.

In the opinion represented by Abu Yusuf from the Hanafi school of thought as well as the majority of the Shafi'i School, the property must be channelled to the *Baitulmal* in the interest of the Muslim society in general. The funds can be used for purposes such as expenditure on road construction, building mosques, hospitals etc. (Abu Yusuf, 1979, al-Ghazali, 1989). Also, according to al-Ramli, in the case where the owner of the illegal property is unidentifiable, such property must be transferred to *Baitulmal* (al-Ramli, 2003). The scholars base this argument on the following Hadith:

*“Narrated one of the Ansar: ‘Asim ibn Kulayb quoted his father’s authority for the following statement by one of the Ansar: ‘We went out with the Rasulullah to a funeral, and I saw Rasulullah at the grave giving instruction to the grave digger ‘Make it wide on the side of his feet, and make it wide on the side of his head’. When he came back, he was received by a man who conveyed an invitation from a woman. So he came to her; the food was brought, and he put his hand to take a morsel, and the people did the same and they ate. Our fathers noticed that Rasulullah was moving a morsel around his mouth. He then said: ‘I find the flesh of a sheep which has been taken without its owner’s permission’. The woman sent a message to Rasulullah saying, ‘Rasulullah, I sent someone to an-Naqic to have a sheep bought for me, but there was none, so I sent a message to my neighbour who had bought a sheep, asking him to send it to me for the price (he had paid), but he could not be found. Therefore, I sent a message to his wife and she sent it to me’. Then Rasulullah said: ‘Give this food to the prisoners’.” (Abu Dawwud, No: 3334)*

The above stated Hadith elucidates on the essentiality of purifying the illegal property in order to make it acceptable for *Sadaqah* by sending it to *Baitulmal*. This is indicated in the reason for sending the goat to the prisoners that are held under the responsibility of the *Baitulmal*, as it was acquired without the consent of the original owner. (Nazim Khalid, 2010).

Another Hadith, by Ibn Latbiyyah, makes a point about the necessity of sending illegal property to *Baitulmal*: *“Abu Hamid al-Sa’di said: Rasulullah (S.A.W) had appointed Ibn al-Latbiyyah – a man from al-Azad’s tribe to represent him as a collector of Zakah. After he carried out his responsibilities, he gave the money to Rasulullah and said: ‘This is property for you (Baitulmal) and the rest belongs to me as a gift (fee)’. Rasulullah responded: ‘Have you stayed in your parent’s house and waited to find out whether there are people who will give you a gift or not’.” (Muslim, Hadith: 1832)*

According to this Hadith, al-Nawawi understands that the person who holds an important position in a governmental institution cannot accept any gift as a consideration for governmental work, beyond the salary granted. Accepting such a gift is considered as a betrayal and the gift is presumed illegal in the eyes of Shariah. As a result the present must be directed to the *Baitulmal* (al-Ghazali, 1989).

According to the Maliki school (al-Qarafi, 1994), and the Hanbali school (Ibn Rajab, 1999), as well as contemporary jurists like Mustafa al-Zarqa’ (al-Zarqa’, 1983) and Faysal Mawlawi (Faysal, 1996), illegal property must be given to the poor people as they need it more rather than the *Baitulmal*. This is the opinion of some scholars, transferring the property to *Baitulmal* does not count as *Sadaqah* as it would in the case where the illegal property that is immediately directed to the poor (al-Baz, 2004). These scholars support this view with the following verse of Al-Quran:

*“Alms (Sadaqah Wajibah) are only for the poor and the needy” (al-Tawbah: 60)*

According to a third opinion, illegal property does not qualify to be donated and such property must be discarded due to its illegality (Ibn Rajab, 1988). This is so because charity is given in order to achieve closeness to Allah, which cannot be done with illegal property.

In yet another opinion, supported by al-Shafi'i, illegal property must be stored until the owner claims it. According to this opinion, the illegal property cannot be donated as charity does not accept illegal sources for *Sadaqah* property. The legality of property is a requirement to get reward from Allah. This opinion is based on Al-Quran and Hadith:

*“Oh you who believe! spend (benevolently) of the good things that you earn and what We have brought forth for you out of the earth, and do not aim at what is bad that you may spend (in alms) of it, while you would not take it yourselves unless you have its price lowered, and know that Allah is Self-sufficient, Praiseworthy”.*(al-Baqarah : 267)

From this verse of the Quran, Ibnu 'Abbas interpreted that Allah (S.W.T) commands to donate the best and purest property that is acquired from legal sources (Ibn Kathir, 1981). As also indicated in one Hadith:

*“Narrated by Abu Huraira: Allah's Messenger (May peace be upon him) as said: O people! Allah is Good and He therefore accepts only that which is good. And Allah commanded the believers as He commanded the Messengers by saying: "O Messengers, eat of the good things, and do good deeds; verily I am aware of what you do". And He said: O those who believe eat of the good things that we gave you" He then made a mention of a person who travels widely, his hair dishevelled and covered with dust. He lifts his hand towards the sky (and thus makes the supplication): "O Lord, O Lord," whereas his diet is unlawful, his drink is unlawful, and his clothes are unlawful and his nourishment is unlawful. How can then his supplication be accepted”?* (Muslim: 1015)

This Hadith explains that illegal property cannot form a part of *Sadaqah* as the legality of the source is the main requirement for acceptance of deeds as well as the attaining of Allah's reward.

In a nutshell, differences of opinion are observed with regard to the treatment of illegal property for *Sadaqah* among all the four opinions explained above. The staunchest opposing opinion is the view of disbarment of illegal property by disposing of it by throwing it into the sea can be found. However, in the view of al-Ghazali, channelling the property to charity is a better way than discarding the property altogether, as disbarment can cause the property to become unbeneficial or wasted. Such properties could otherwise be donated for the benefit of the poor and the owner of the property will be rewarded unintentionally (al-Ghazali, 1989).

On the other hand, the opinion of keeping illegal property until the owner claims it is also rejected by numbers of scholars like Ibn Taymiyyah who opine that such storage will render the property useless which could be used for the betterment of the people, thus making it tantamount to discarding the property altogether by such means as throwing it in the sea. Both situations may cause the property to become unbeneficial or useless and promote injustice by not providing it for useful purposes (Ibn Taymiyyah, 1987).

With regard to ascertaining whether the property should be transferred to *Baitulmal* or channelled towards the poor directly, the following Hadith casts light upon the course of action taken during the Prophet's (S.A.W.) time. The Hadith as reported by Ibn Abd al-Bar, explains:

*“During the war between Rome and the Muslim's a man took one hundred dinar from the War booty and gave it to Mu'awiyyah but the dinar was rejected by Muawiyyah. After that, the man met*

*‘Ibadah Bin Samit and told him what had happened. The man was asked by ‘Ibadah Bin Samit to give one-fifth of the dinar to Muawiyyah (Baitulmal) and the rest to charity’ (Ibn al-Bar, 2004).*

Based on this, one-fifth of the property should be directed to the *Baitulmal* and the balance distributed amongst the needy. According to the Hadith Ibn Latbiyyah the illegal property must be channelled to the *Baitulmal*, keeping in view how the *Sahabah* treated such property by channelling it to the *Baitulmal* and poor. As such, the illegal property can be disposed through donations to the poor or it can be given to *Baitulmal* for general purposes. This opinion is supported by the majority of scholars as well as the International Islamic *Fiqh* Academy in the resolution of the 9<sup>th</sup> session. The resolution states:

*“Each property entailing an element of usury is considered as unlawful property in the perspective of Shariah. Thus, the Muslims are not allowed to take the benefit from it such as to keep the property for personal purpose or any other purpose. The property must be distributed in accordance with public interest”.*

As such, it can be concluded that illegally obtained property can form permissible property or object for the purpose of *Sadaqah*. However, it should be directed towards the *Baitulmal* in order to purify its status and thus make it worthy of attaining reward for the donor. The illegal property channelled to the poor people is considered as *Sadaqah* in terms of the receiver, while it is concurrently considered as an act of repentance for the owner of the property to purify his sins for acquiring it illegally. Also, Yusuf al-Qaradhawi explains that this discussion does not fall under the topic of *Sadaqah*, rather it is about channelling unlawful property to the right place (al-Qaradhawi, 1990).

Moreover, based on the review of classical literature on Islamic jurisprudence, the discussion on whether *Sadaqah* property can be invested to generate more returns for on-going *Sadaqah* is scanty. The idea of establishment of *Sadaqah* institutions nowadays like *Sadaqah* House needs further research in order to determine whether the *Sadaqah* property is investable or not. Numerous studies suggest the use of Zakat for investment purposes that are supported by contemporary scholars such as Mustafa al-Zarqa<sup>c</sup>, Yusuf al-Qaradhawi and Abdul Fatah Abu Ghaddah that can be applied for the case of *Sadaqah*, as the two differ only in the matter of religious obligation. On this issue the International Islamic *Fiqh* Academy in the resolution of the 3<sup>rd</sup> session also deliberated that:

*“In principle it is permissible to put Zakat funds in investment....”*

This implies that the property donated for the purpose of *Sadaqah* may be invested. However, this requires further research in order to determine the stance of classical as well as contemporary scholars on the issue.

## **CONCLUSION**

In conclusion, the word *Sadaqah* is generally related to the words *Hibah*, *‘Ariyyah* and *Hadiyyah* in terms of the nature of the activity. However, these terms differ as to their literal meaning and purpose. *Hibah* in general includes *‘Ariyyah*, *Sadaqah* and *Hadiyyah*. *Hibah* involves granting of benefit or physical item as a gift, while as *‘Ariyyah* is a contract of transfer of ownership of benefit only. The purpose of *Hibah* and *Hadiyyah* is to show love and honour to the receiver while *Sadaqah* aims at seeking Allah’s pleasure. The different between *Hibah* and *Sadaqah* is that

*Hibah* is something that can be returned to the giver while *Sadaqah* is something that can't be returned back. However, they share the characteristic of philanthropy as both concepts entail providing without any expectation of receiving anything in return

Moreover, *Sadaqah* can be formed of either movable or immovable objects or a combination of both. Also, it is observed that the acceptability of illegal property, for the purpose of making *Sadaqah* varies among the scholars. This study found that the illegal property can be channelled to a charity institution and can be considered as *Sadaqah* on the part of the receiver, but as a means of expiation from sin on the part of the donor. Moreover, the *Sadaqah* property can be managed and invested by the institution as practiced under the institutionalized *Zakat* scheme, which is managed by the *Baitulmal*. By establishing a *Sadaqah* House, the unlawful property can be channelled to this institution in order to derive benefit from the property to achieve societal welfare. On the other hand, a *Sadaqah* House also can function as a *Baitulmal* institution that can manage the illegal property such as non-Shariah compliant property or income arising from non-Shariah compliant banking operations in order for it to be channelled to the right place.

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