

Protection and Distribution of Wealth, Commercial and Financial Transactions: Maqasid al-Shariah perspective

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Abstract--This research discusses briefly about the Maqasid al-Shari'ah, in the reference to protection and distribution of wealth in society as well as its relevance in commercial and financial transactions in Islamic Finance and on society. The paper will cover specifically the major facets of Maqasid that are essential in the preservation and distribution of wealth for Islamic financial practices and as well as transactions. Maqasid al-Sharia's role in consonance to Islamic financial services industry will also be discussed in brief to undermine the importance and to enlighten the relevance where Maqasid play a vital role in harmonizing Shari'ah rulings for a just and fair distribution of wealth in the society and to involve it under strategical behaviour of businesses, firms and banks, commercially and financially.

Keywords--Maqasid Al-Shari'ah; Wealth; Islamic Finance; Commercial and Financial Transactions; Implications of Maqasid al-Shariah

Methodology/Design—This paper is a discussion on different aspects of how we can achieve the protection and distribution of wealth in commercial and Financial transactions following Objectives of Shariah.

I. INTRODUCTION

The objectives of Shari'ah or *Maqasid al-Shari'ah* nurture benefits and avoid harms. Imam Shatibi's view mentioned by Nyazee on the objectives as "to free man from the grip of his own whims and fancy, so that he may be the servant of Allah by choice, as he is one without it" [1]. Though these objectives are not conveyed comprehensively, but are mentioned in almost every law in *Shari'ah*. The importance of these objectives is noteworthy in development of the Islamic Finance industry as it has been mentioned in Maqasid, the preservation of wealth along with other important factors. While some of the basic doctrines of *Usul al-Fiqh* like 'General Consensus' (*Ijma*), 'Analogical Reasoning' (*Qiyas*) and *Ijtihad* seem not to be in practice, which might disturb the state of harmony in current socio-political environment of today's Muslim states. Since these objectives offer a ready and convenient access to the Shari'ah in emerging field of Islamic finance, these objectives have become the point of attention around the globe. There are many important reasons to encourage the realization of these objectives in Islamic Finance industry.

II. PROTECTION AND DISTRIBUTION OF WEALTH FROM MAQASID AL-SHARIAH

the preservation and growth of wealth is also one of the main objectives of Shari'ah which falls in Daruriyah category. Protection of individual's wealth and private property are of a vital importance to have a just society.

Here, we address the penultimate *daroori*. *Al-Maal* is often interpreted as *possessions, property, and wealth*. The term *Maal* come from a verb *maala* that means 'to digress/to turn away' as "*maala bihi al-Qalb*" that means "heart is turned away or deviated by it". This leads us to the saying that "money is a necessary evil." The recent financial crises is a clear example of this saying because it is so deep rooted and connected to society's problems, however, it is also necessary for us today, and that's what makes it *darooriyat*, the protection of which is one of the objectives of shari'ah.

The preservation of wealth and assets refer to the sanctity of the wealth of the society members, with an emphasis on earning through *Halal* means. Concentration of wealth in few hands lead to increase the gap between rich and poor and makes the poor unable to meet the basic needs like food and health. Islam, For this purpose, provides a detailed law governing *Mu'amalat* and transactions in a society. Protecting the wealth is one of the main objectives of *Shari'ah*. Allah says in Holy Quran: "And give not unto the foolish your property which Allah has made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice".(4:5). This also applies to the financial industry. Islam recommends efficiency and stability in financial sector.

Preservation of wealth

Shari'ah highly encourages the steps towards preservation of wealth. Some ways to achieve the objective is as follows:

Encouragement of Trade and Investment

To keep an economy flourishing and developing, money should be kept in motion, going from the hands of those who have money in surplus to those who need it for their basic needs. That should be done in exchange for goods, services or profit while storing and monopolisation of wealth is strictly prohibited in Shari'ah [2]. With the passage of time, Paper money has replaced Gold, silver along with other commodities. In the beginning paper money was thought to be

very convenient as a replacement for having carry around gold and silver and it used to be backed by gold or silver. However, today, this is not a requirement while printing more currency notes which makes it “just a paper”. This paper money is called Fiat money. Some scholars argue that too much reliance on paper money is one of the main causes of the current crisis and turbulence in the economy.

Shari’ah encourages trade and investment, this encouragement is not absolute and there are clear guidelines governing the nature of the investments like the formation of financial contracts etc. Trade and Investment are two ways to keep wealth in motion, however, there is also a clear line between “lending” of money for a share in a business to make profit and the lending of money to earn interest. The lending money on interest is explicitly forbidden by the *Shari’ah*.

Permissibility of Private Ownership

The very human nature of having a desire to enjoy the pearls of hardwork is acknowledged, respected and appreciated by Shari’ah. Thus, acquiring and owning private property is not forbidden in principles of Islamic Economic System. The principles of capitalism and communism are not in line with shariah. Private ownership in the Islamic worldview is radically different since the ownership is deemed to be temporary and ultimately a trust from Allah for the duration of our lives. Where investment and trade is encouraged, it is also necessary to have regulations to ensure that wealth is not hoarded and not concentrated, and the means of production are not monopolised. There are guidelines in Qur’an and Sunnah which serve the overall objective of *promoting justice and equality in the society* and protecting wealth of its members. In communism and capitalism, some guidelines are clearly opposed to Shari’ah. Any such system that adheres to the principles given by in Islamic Law can be considered Islamic.

Protect the Wealth of Certain Categories of People

It may be necessary to withhold wealth and assets to preserve it from squandering, even from the rightful owners, especially from those who are not expert in managing their financial affairs.

Sufahaa that means ‘foolish’ or ‘incompetent’. It applies to those who are not deemed legally responsible. Extending this logic, this can be applied to children and minors, those below the certain age (which is different in different school of thoughts). Their wealth can be held until they reach a certain age where they are capable of managing their financials. Their wealth is managed and held by a trust fund until they are able to take full charge of it.

Charity

Zakat is the fourth pillar in Islam, which makes it an essential part of Islamic economic system. Every muslim who has a predetermined threshold level of wealth called the *nisab*, is

obliged to give zakat. Besides zakat, charity is also greatly emphasized to help the less fortunate and keep wealth in circulation when it changes hands, from rich to poor. In Shari’ah, we are giving away from what He has bestowed upon us and everything that is entrusted to us from Allah. Therefore, Charity is also one of the best way to keep money in circulation, giving to those deserving and need it the most. Best evidence of this circulation is the annual collection and transfer of the 2.5% Zakat. Poor are with the highest propensity to spend in any society, for example if we give £2 to a wealthy person, he will just put it in his pocket for later use, whereas if we give the same £2 to a less fortunate, they will spend it shortly, as they have more immediate and pressing needs.

Hinderance of growth of wealth – An overview

From the perspective of protection of wealth, below are the issues that threaten the preservation and permissible growth/development of wealth.

Prohibition of Hoarding and Miserliness

Hoarding doesn’t realize the intended use of wealth, the circulation to benefit as many people as it can, though one might think that hoarding can protect and increase the wealth. The difference between miserliness and hoarding should be noted here. An attribute where one simply does not want to spend his wealth is called miserliness where as hoarding is trying to literally concentrating wealth in hands. That makes the rich more richer and hence increases the gap between the rich and the poor. Concentration of resources, industries and wealth, giving the power to few individuals in a society, leading to monopolies, can also be a kind of hoarding, something undesirable in shariah.

Prohibition of being Extravagant

Extravagance is discouraged in Islam. Muslims are not allowed to do wasteful consumption and asked to be moderate in everything in their life. There is no monetary limit to separate moderation from excess. However, there are some obvious factors we should keep in mind while spending. The main reason behind this discouragement is to minimize the income gap between rich and poor. Something that can lead the society to envy and unhealthy differences.

Prohibition of Interest

Ribaa comes from the verb *ra’baa* that means ‘to grow’ or ‘to increase’. Today, the entire global financial system is based on the lending money on interest, for example, a return on a loan, and that implies earning at no risk or zero effort. Hence, keeping oneself away from such a serious transgression is never easy. Rich people earn Interest is from the less fortunate society members. And that’s how wealth become concentrated in hands of rich people. Interest undermines the risk based nature of trade and investment whereas, real profit is a result of effort and risk both.

Prohibition of Theft

Stealing someone's assets or wealth is always considered a crime. In Islam, stealing is a crime by consensus a major crime and the punishment is severe. Act of taking someone's belongings without consent of the owner is categorised as theft. The main objective of this prohibition is to protect the rights of the owners and to protect their property, possessions or wealth.

Maqasid al Shariah in Wealth Circulation

Islam encourages wealth circulation and highly discourages wealth concentration to few hands. That is why it also serves the objective of protecting the financial transactions and encourages circulation so that a large number of people can have access to finances. *Shari'ah* does not deem the accumulation of wealth impermissible as long as one is fulfilling its obligations to Allah, Mankind and to the society through philanthropic activities and *Zakat*. *Ibn-e-Ashur* quoted that legitimate circulation of wealth among the bigger portion of the society will bring prosperity and happiness. To further enlighten this concept of wealth, *Shari'ah* has made the permissibility in all the financial contracts and activities unless stated otherwise to empower the people and to help the society to flourish and prosper.

All excessive wealth held beyond one's legitimate needs should be held as a trust (*Amanah*) and surrendered to the members of the society. The *Shari'ah* has provided

several measures for spending wealth on the society. These include

- *Zakat*, endowment (*Waqf*)
- Voluntary charity (*Sadaqat*),
- Inheritance (*Faraid*),
- Will (*Wasiyyah*),
- Donations and grants, and
- Social security (*al- Takaful al-Ijtima'i*).

Investments can be carried out by firms, governments or even by individuals. In Islamic banks, deposits are public money thus they must be directed for public or social interest as a whole for real needs of economy. Circulation of wealth by right approach is obligatory and not just a choice by itself. For example, Islamic Banks in Sudan are required by law to contribute to community development projects. So indeed, state or governments in Islamic state plays vast a crucial role in regard to usage of wealth. Such roles of provision of basic needs arrange provisions for social security, foster equitable distribution of income, wealth and fulfilment of social obligations.

Investment – Sukuk

Investing as an entrepreneur or being supplier of capital enjoins spending investing behaviour among economies as truly encouraged by *Shari'ah*. Savings in modern time goes through financial markets to different channels. Through capital markets, investors can be a small or large part of this circulation process through proper regulated channel.

Securities in Islamic capital markets should represent ownership preferably. *Sukuk* which is a modern and relatively new innovation in *Shari'ah* literature. Islamic finance industry which is lacking the link of real economy development can effectively serve the goals of wealth circulation, leading to infrastructure building, more employment and thus more income earning opportunities. *Sukuk* structuring with the suitable embedded Islamic Finance contract can mobilize capital to the necessary resources or sectors of economy

- a) Deposit in banks through *Sukuk* by those who have accumulated wealth, through channelled markets would allow surplus to be invested to deficit portions and also small investors can participate through mutual funds and other pooled instruments.
- b) For private and public-sector projects, *Sukuk* can be used with the support of mature secondary markets for increasing liquidity and dynamism in the economy. Investments in major and in fact needed sectors like infrastructure, education, developments projects public and private both can be induced through *Sukuk* which in turns channels the surplus funds to these sectors in a formalized way.
- c) Cost of intermediation can be reduced and economies of scale in financing can be enjoyed through efficient capital markets to provide vital link for the allocation of wealth and facilitating surplus to the right place. But *Sukuk* in order to fulfil the above plans should be asset backed not asset based with an ownership style and equity based structure.

Awareness about *Maqasid of Shari'ah* in terms of wealth circulation and its protection can be utilized not only by proper allocation and preservation of them but also by avoiding unhealthy concentration of it and thus ushering in to the new level of prosperity. The economic system of Islam demands clearly equitable mobilization and distribution of resources. Funds should never be misused or even managed unprofessionally. Basically, any fund or accumulated wealth should be circulated through *Zakat and charity* channels which ultimately reduces the size of the idle money in the society for the wellbeing society members. So, *Zakat* is an institutional mechanism which provides the continuous circulation of wealth

Micro and Macro dimensions in wealth circulation

Shari'ah has macro aspect of it's as wealth circulation while transparency in dealings and justice in the system are its micro goals.

Marketability as fair circulation of wealth

According to *Ibn e Ashur*, the *Maqasid* of wealth have five broad headings including marketability, transparency, preservation, durability and equity. Marketability requires fair contribution of wealth in society. *Quran* mentions 'the *Qur'an* says: "He knows that in time there will be among you sick people, and others who will go about the land in search

of God's bounty" (73:20). It means transferring wealth to as many hands as possible by means of trade and in exchange of compensation 'lawfully' through financial contracts recognized by Islam. By giving rights to people to use their wealth efficiently, set of rules covering deceased estate, maintaining women in part of Will and recipient of wealth. In contemporary time, link of domestic and international trade is vital due to the fiat money system of economy.

Promoting Maqasid al-Shari'ah in New Products Development

A *Maqasid* driven product or approach indeed should be wholly observant to *Shari'ah* requirements and other than this, customer satisfaction or society advantage broadly should be the main concern in the product development process. Customer oriented products benefits the society individuals as a whole and thus comes under umbrella of *Maqasid* of *Shari'ah*. Doctrine of *Maslahah* can be embedded within *Maqasid* to take care of society's interest in banks or firms operations as well as stakeholders. Many literatures have related the issue of *Maqasid* observation in Product Development process [3].

III.COMMERCIAL AND FINANCIAL TRANSACTIONS

To institute the objectives of *Shari'ah* in a society, Muslims are strongly encouraged and facilitated to participate in different types of commercial and transactional activities. In commercial activities, the underlying principle is *Ibadah*. And Quran and Sunnah don't invalidate any new transactions unless they are contradicting *Shari'ah*. If fairness of *Maqasid Al Shari'ah* is not annihilated, freedom of contract is allowed [4].

A. Legality vs Permissibility

There are contradicting views on the legality and permissibility of a contract, some of the shariah scholars urge the permissibility of the structure of the product while some emphasize on the objectives and intentions of the contracting parties. The base of difference in the views of shariah scholars is the hadith, "**matters are determined by intention.**" Intention should be the base when determining the legality of a contract, not merely looking at the structure of the product alone. However, Imam shafi'i is of the view that it is never reasonable to decide whether a contract is legal or not, on the intentions of the parties because it very complex to tell about the intentions of a party. Besides that, some *Shari'ah* indications show that assessing such things should be based on their design and manifestation. *Shari'ah* scholars look into this and bring together the two conflicting views by introducing the two types of *ruling*, namely, *Hukm-Qada'i* and *Hukm-Diani*.

Hukm-Qada'i

This *hukm* is to analyse whether the contract is complying with all the *Shari'ah* requirements relating to its form and structure. This is mainly concerned with form and structure of the product, if the form and structure of the contract is shariah

complaint, it is not conflicting with *Shari'ah* law and there is no element that can deem a contract invalid then it is declared as *Shariah-compliant* and valid.

Hukm-Diani

On the other hand, this *hukm* analyses if the objectives of a contract are shariah compliant, only then a contract is permissible.

Thus, if a contract meets all the legal and contractual conditions and requirements then the transaction is valid. However, the validity of a contract doesn't necessarily make a contract *halal/permissible*. It is noteworthy to mention that shariah scholars are not indifferent on the permissibility of a contract over the matter and the intentions of the contracting parties and the conflicting views are only on the validity of a contract. *Shafi'i* scholars expressed the examples where the intention of the contracting parties actually nullify the contract, for example, selling of grapes or other fruit products to the parties making alcohol or selling arms to murderers. This tells us that when the intentions are hard to establish, the form and structure is more alid important. The contract must be valid and permissible to be classified as shariah compliant by the shariah scholars.

Today the question is, Is contemporary islamic finance following the same principles? One of the most controversial product in islamic finance is *bai-al-inah* which is widely used in Malaysia. The product where bank provides financing without exposing itself to any risks. Some have mentioned it as "playing with the documents." *Bai-al-inah* is also criticized being a legal device to avoid *riba* based loans, however, although they are different in form, the nature of this *bai-al-inah* is not different from conventional loan.

B. Facilitating benefits over minor harms

Shari'ah has facilitated the transactions as much as possible to provide more benefits over minor harms. For example, for the validity of the sale contract, the two items of exchange (*iwadayn*) should not necessarily be available at the time of contract, to avoid harms on the transaction.

C. Facilitating financial contracts

Shari'ah facilitates and strongly encourage participation in commercial and financial contracts and undertaken various kind of activities and investments for that. The underlying principle of 'Permissibility' is used normally for commercial activities in IF. The approach in Islamic commercial dealings is not only formal but substantial. Freedom of contract is allowed as long as it doesn't invalidate or conflict with *Maqasid* principles. Contracts are mainly classified into subsets according to their nature including partnership, exchange or sale, voluntary, reward based etc. Not only facilitation of contracts whether commercially or financially is vital for *Maqasid* but also fair and transparent dealings along with reciprocal objectives and equality is important. Therefore, In the *maqasid* approach, values and practices,

form and substance should integrate and not contradict one another. In commercial and finance activities, for example, the Shari'ah injunctions should be integrated in the operational activities with genuine concern for fair and transparent practices that contribute to the development of society and human wellbeing along with facilitation which is the true example in practical cases like Sukuk, microfinance and even the new emerging concept of crowdfunding in context of Islamic finance.

D. Social Responsibility in IF and Maqasid al Shariah

Many prominent scholars like Muhammad Chapra and Naqvi have urged commercial and financial transactions of IF industry to be embedded in fair, just environment and overall society to be envisioned deeply in Maqasid Al Shari'ah, as they asserted IF to be a subset of Islamic economics. Lack of ethics and low morality not only damage industries but overall societies as consequences of total greed and misbalance in ethical practices can be referred from recent financial crisis. It brought into limelight the IF industry and its commercial and financial practices as IF industry was less affected by crisis, though not unscratched. The distinguishing factor of IF industry is indeed the underlying principles and robust foundations of Maqasid, without which the means and ends will not be achieved [5]. Institutionalizing social values in commercial and financial contracts and also adopting Maqasid al Shari'ah as an indispensable framework or corporate strategies will provide directional guidelines for this industry for meaningful future along with not just focusing on minimum Shari'ah compliance in product and research development. The more a company leads to social improvement, the more it has economic benefits [6]. Some practical examples like FTSE and Dow Jones Islamic Index offering volunteering and involving in charities schemes, cause related marketing strategies linking contribution to charity sales, Bank Brunei Berhad's computers for educational institutions or Banks dealing with welfare issues etc. but not limited to. These socially responsible are not conflicting to corporate objectives but rather connected. And according to *Shari'ah* there is no harm in improving competitive market or business along with making sincere commitments to a better society (which is the jest of *Maqasid Al Shari'ah*). IF can contribute towards society through its commercial and also financial activates to overall society and particularly by specializing in environment friendly product development, empowering SME's, support from large known firms etc.

E. Maslahah (Public Interest)

A basis of law, ruled according to a certain necessity and/or a particular circumstance, it can be of either prohibiting or permitting nature. Shariah scholars declare something permissible or prohibited on the above-mentioned basis only if it serves the public interest and it does not contradict with Islamic teachings. It is used to promote public benefit and avoid social evils from a society. *Maslaha* is from the word '*Masalih*' which means welfare or interest/benefit. It can be

defined as seeking the benefit and avoiding harm [7]. Hence, the activities of ensuring economic justice with wealth circulation are encouraged. Wealth should not be limited to the rich, fair share of returns and profits should be distributed among the contracting parties and fair pricing should prevail while avoiding benefits that burdens the public [8].

The wealth in the hands of individuals and the governments are trust from the Allah and it should be used for common societal goals. Distribution and redistribution of wealth is not a favour by the rich to the poor but it is a right of the poor. There is a due right for deprived and less fortunate. Thus, not every product in Islamic finance is fully embracing objectives of shariah. If the Islamic financial institutions (IFIs) are focusing on the structure of the product instead of focusing on the underlying objective of the contract or product, IFIs are not really striving to achieve the objectives of shariah. Objectives of shariah are used as rationalized for the application in bai-al-inah. It is questionable transaction even though observing objectives of shari'ah should be the first factor to allow the transaction. The harms that are resulted by practicing bai'al'inah are more worse than public interest (*Maslaha*). Firstly, the bank is literally creating a debt in the economy, that will eventually lead to higher speculation which will result in uncertainty and an unfair risk-bearing conditions. Secondly, it is only paper work, there is no sale or purchase in real terms, which allows the parties to have financing without any real trade. This activity hinders the objective of equal distribution of wealth and income. Thirdly, as discussed before, bai-al-inah is a form of validation of interest using legal device or channels. Fourthly, this contract does not need the bank to hold the asset for a long time to sale it as the bank normally holds it for few minutes. Holding the asset will imply that bank is liable for the asset held. The benefit and income, the bank is gaining out of this transaction, is opposed to the rights of profit and the principle, '*Al-Kharaj bil-Dhaman*', a shari'ah legal maxim which bases the entitlement to revenue on corresponding liability for bearing losses. This implies profiting from the transaction without taking any liability. Since bank is not the owner, bank cannot claim the asset in case of default. Lastly, only because the asset brought to be sold to get some case, the price of the asset offered by the bank for purchase is never same as the market price, which is not fair to the customer. Majority among the shariah scholars are of the view that bai-al-inah is not valid and permissible and it is a way to legalise riba. The harms of such debt based-financing transactions at include:

- It results in creation of debt
- Leads to a chain where money will be exchange for more money in future, which is unjust, risky and uncertain
- This debt proliferation will result in gambling and speculative transitions
- Debt-based transactions result in greater instability

- Leads to inequitable distribution of income and wealth
- Inefficient allocation of resources
- It raises the anxiety level of the society

Concluding the above discussion, it is suggested that debt-based financing like *bai-inah* and *tawaruq*, both should be thought over once more before sanctioning it for the public. Moreover, getting funded from IFIs for developing huge structure does not comply with shari'ah if there is no proper care of the environment and not proper care of stakeholders. It is the need of time to incorporate the socio-economic developments as necessary factors while financing such projects. Shari'ah does not encourage the developments on the cost of human lives and that makes their life more difficult and hard.

IV. Conclusion

Maqasid Al Shariah plays a very important role for a society in achieving prosperity. The Shariah teachings strongly emphasise on preserving one's wealth. One of the main objectives of shariah is the Protection of wealth. The jurists argue that the concept of protection of wealth is beyond its literal meaning, it encourages to generate, accumulate, preserve, protect as well as distribute the wealth with justice. In financial Industry, Maqasid have also a very important part. Since it has a major role in Islamic Finance, discussing protection and distribution of wealth, it is obvious that we can see a greater change in the results and goals if we aim to achieve objective of Shariah. Islamic Financial Institutions are recommended to integrate policies that also achieve Maqasid al- Shari'ah.

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