

ROLE OF FINANCE IN ACHIEVING *MAQĀSHID AL-SHARĪ‘AH*

ABDUL RAHMAN YOUSRI AHMAD*

1. Introduction

Searching the role of finance in achieving *Maqāshid Al-Sharī‘ah* would primarily need first to highlight its definition. This is a necessary and important task in order to explore the economic aspects that are related to *Maqāshid*. Consequently, finance would be indispensable to these economic aspects.

The projection of *Maqāshid Al-Sharī‘ah* in this article is not committed to the ideas of the two great scholars Abu Hamid Al-Ghazali and Abu Is’haq Al-Chatby although it is surely benefiting from them.

1.1. *The Order of Maqāshid Al-Sharī‘ah*

One has to distinguish, when talking about *Maqāshid Al-Sharī‘ah*, between the objectives of *Al-Shari* (the Law giver) SW and the objectives of *Sharī‘ah*, which are meant to implement the first.

Allah SW has one objective declared explicitly in the Qur’ānic verse: (Sura 51)

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ * مَا أُرِيدُ مِنْهُمْ مِنْ رِزْقٍ وَمَا أُرِيدُ أَنْ يُطْعَمُونِ * إِنَّ اللَّهَ هُوَ الرَّزَّاقُ ذُو الْقُوَّةِ الْمَتِينُ (58-56)

(I have created Jinn and humankind only that they might worship Me. I seek no Sustenance from them, nor do I ask that they should feed Me. For Allah is He Who gives Sustenance, the Lord of Might, the Strong).

* Professor of Economics, Alexandria University, Egypt, abdelrahmanyoustri@yahoo.com

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This *Maqṣad* (singular of *Maqāṣid*, i.e. objective) of *Al-Shari* SW should enlighten our souls and guide us in understanding *Maqāṣid* Al-Sharīḥ. All objectives of Sharīḥ should be originated from this exalted one, and they have to be arranged in the order that is necessary to satisfy and implement it.

1.2. *Explanation and Comparison with the Classical Conception of Maqāṣid*

Searching the role of finance in achieving *Maqāṣid* Al-Sharīḥ would primarily need from us to explore the economic aspects that are related to this *Maqāṣid*. No doubt the classical conception of Sharīḥ *Maqāṣid* would guide our work but not necessarily dominate or control our thought.

Maqāṣid as explored by Imam Abu Hamed al-Ghazali and Imam Abu Isḥaq Al-Shatby consist of three categories. These are:

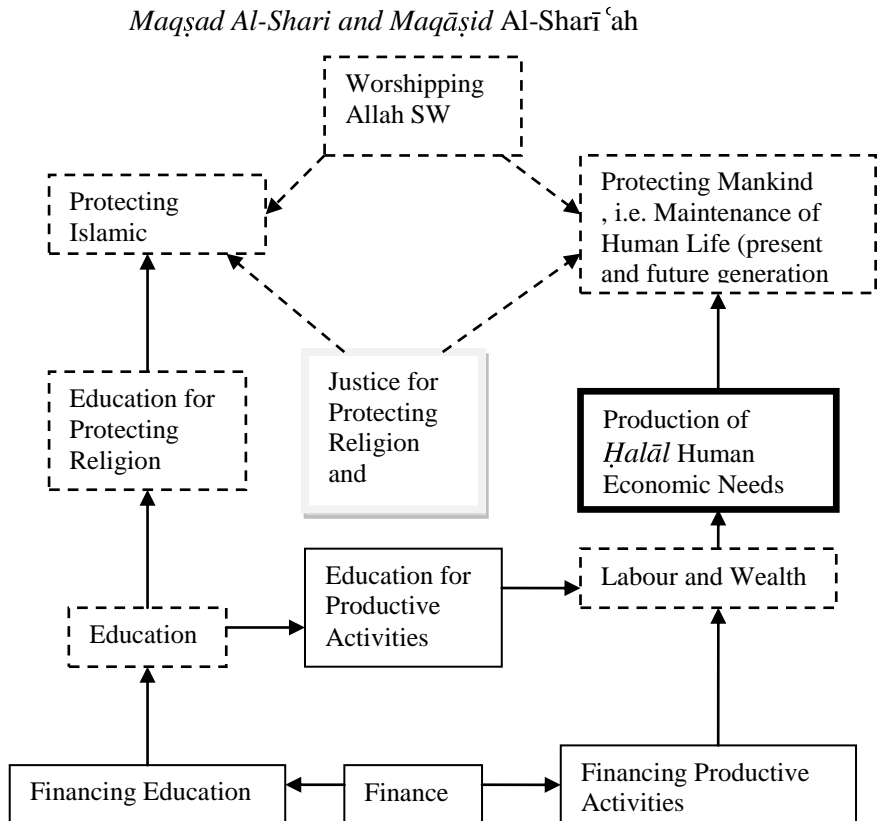
- a) *Daruriyyat*; these are defined in terms of five objects which are indispensable in themselves to the extent that people cannot live without them and that losing them pose a threat to the very survival of normal order. These are Maintenance of Religion (*Din*), Maintenance of Human Life (*Nafs*), Maintenance of Children (*Nasl*), Maintenance of Wealth (*Māl*), Maintenance of Intellect (*ʿAql*)
- b) *Hajiyyat*; these are defined as complementary to *Daruriyyat* and are meant to support, and promote them. *Hajiyyat* may also be viewed as semi-essential benefits, which are aimed at preventing hardship. They are not essential in themselves in the sense that losing them do not pose a threat to the very survival of normal order and that people can live without them if they have to.
- c) The third category of Sharīḥ objects are classified as *tahsīniyyāt*. They are benefits (*masālih*) that come beyond *Hajiyyat*. They are desirable in the sense that they offer convenience, attain betterment or refinement of human life, and allow for perfection in the order and conduct of people at all levels.

The Classical conception classifies *Maqāṣid* Al-Sharīḥ therefore in the order of three categories, namely *daruriyyat*, *hajiyyat*, and *tahsiniyyat* which come in three consequent levels in ascending order. These *Maqāṣid* whether at the level of *daruriyyat*, taken separately, or the level of the three categories, taken together, are

inter-related. Analytically we cannot, however, without getting involved in value judgement after intensive discussion determine priorities of *Maqāṣid* or talk about them in relative sense or in dynamic manner. In the following *Maqāṣid* Al-Sharīʿah are projected in different manner that would help us in our analysis.

2. Explanation Comparison with the Classical Conception of *Maqāṣid*

In our (above) projection of *Maqāṣid* by saying that worshipping of Allah SW is the highest, most exalted and final objective of the creator and law giver SW, we are able to distinguish between original *Maqāṣid* of Sharīʿah and complementary ones.



There are two original *Maqāṣid* of Sharīʿah; these which are directly related to worshipping of Allah , namely protection of human life (mankind) in our planet

through time (years and centuries) till the day of *Qiyama* (last day of the planet earth), and protection of Islamic religion.

Allah created mankind only for worshipping Him and therefore human life has to be maintained for this purpose. In terms of the classical *Maqāṣid*, this *Maqṣad* includes two of the five objectives of daruriyyat, namely protection of human life and progeny.

Allah SW wants to be worshipped in accordance to his exalted revelations to his beloved Messengers and Prophets may Peace be upon them. The noble Qur'ān is Allah's last revelation to mankind to the most beloved one of all; Mohammad may prayers and peace of Allah be upon him (PPbuh). Allah SW has also gifted Mohammad (PPbuh) with wisdom expressed in his *Sunnah* (tradition) which forms with the noble Qur'ān our Islamic religion.

Protection of religion by all means is an original *maqṣad* of sharī'ah that cannot be forgotten neglected or diluted by philosophies through years and centuries till the end of human life on this planet earth. Two supportive institutions are necessary for protection of religion, which can be viewed as complementary *maqāṣid*. These two are education and justice and their maintenance can not be attained except by preservation of Intellect.

- a) An Islamic educational system has to be established to teach children and younger generations, in particular, about their religious duties and their responsibilities towards their society and towards their greater Muslim ummah.
- b) An Islamic Judicial System has to be established to ensure and protect Sharī'ah rules in all aspects of life (religious, cultural, social, political, or economic) .This means that justice will be established and that people will be enabled to fulfil their religious duties and perform their life responsibilities in an Islamic manner and that deviated, rotten and corrupt behaviour will be prevented or restricted. Protection of sharī'ah rules through an Islamic judicial system would necessarily therefore be reflected in an atmosphere of justice and security in all aspects of life. It should be emphasized that protection of religion and protection of human life are logically and directly inter-related.

Protection of human life is an original maqṣad of sharī'ah. It neither comes second nor first to protection of religion. The two stands equal in relation to worshipping of Allah SW.

Protection of human life has to be supported by provision of “economic needs” which are essential for living. Production of these needs and all activities which are necessary to support the production sector can be viewed as complementary maqāṣid.

Complementary maqāṣid can be arranged in descending order in accordance to their supportive nature to the original one.

Allah SW is truly the sole provider of all sustenance to mankind and all living beings on earth. Yet, human beings are ordered by Allah SW (in the Qur'ān) and by His messenger PPbuh (in *Sunnah*) to work in order to find their sustenance.

Economic needs and production of these needs have to be defined both in absolute and relative terms taking the time factor always into consideration. In fact within the classical conception of daruriyyat we can not argue for more than bare necessities or the essential economic needs. Here in the present projection economic needs have to be defined firstly in abstraction or in absolute terms which constitute “Subsistence Level”. In Ḥadīth of Mohammad PPbuh, any one of the children of Adam Pbuh has no right in more than bread, water, a dress to cover his (her) private parts, and a shelter, or a hole in a cave, to take up for lodging. The Prophet PPbuh has also talked in Ḥadīth about “Sufficiency level” which includes ability to marry and get suitable housing, a servant to help in house, and a private mean for transportation. Surely in relative sense and taking into consideration the level of human civilization we can talk different levels of sufficiency and also about standards of living beyond sufficiency. We have to notice here that Allah SW does not prohibit betterment of life in terms of high quality goods or services. In the Qur'ān; sura 7, verse 32:

قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ
الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَامَةِ كَذَلِكَ نَفَصَّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ .

(Say: Who hath forbidden the adornment of Allah which He hath brought forth for His servants and the good things of His providing? Say: They are only for those who believed during the life of this world, (and) purely for them on the day of judgment. Thus do we detail our revelations for people who have knowledge.)

Allah SW only dislikes extravagant people. In same sura 7, verse 31 He says

يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِنْدَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

(O Children of Adam! wear your beautiful apparel at every time and place of prayer: eat and drink: but waste not by excess, for Allah loveth not the wasters.)

Thus we know our limits so far economic needs are defined in relative and dynamic manner. Thus economic needs that are complementary to the original *Maqāṣid* would consist of all goods and services, (including those needed for security as well as for defence against wild animals, criminals and enemies) that are wanted by people at different levels of progress or civilization. The major condition which we have to observe whether economic needs are defined in absolute or relative levels is entire avoidance of *ḥarām* products. This condition is quite important also to protection of religion which is intermixed with protection of mankind within the ultimate goal of worshipping the creator SW. The Prophet PPbuh has warned Muslims in more than one Ḥadīth that acts of worshipping (prayers, charity or pilgrimage shall not be accepted by Allah SW if *ḥarām* is involved in production or earnings.

3. Production of Economic Needs at any Level of Civilization Requires Labour and Wealth

Employment of human labour of all qualities (unskilled or skilled workers, engineers, or entrepreneurs etc) besides utilization of natural wealth (naturally gifted by Allah SW) and man-made wealth (capital assets of all types) form together an important complementary *Maqṣad*. In the classical conception of *Maqāṣid* Wealth is recognized separately as one of the Five *daruriyyat*. Here, in comparison, wealth is taken in conjunction with human labour to be complementary to the original *Maqṣad*. In fact human labour is more important in ranking than wealth whether natural or man-made.

At the end comes the role of finance, which is necessary for utilizing natural wealth, building capital assets, and for carrying all productive activities which are needed for maintaining human life. Financial activities should be carried within Shari'ah rules in order to achieve Shari'ah *Maqāṣid* as described.

Islamic Finance can be looked at as an infra-structure that is essential for the proper implementation of Complementary *Maqāṣid*. Islamic finance is not only needed in our view to productive activities which are needed for material satisfaction, but also for educational activities which are necessarily required to guarantee commitment to *ḥalāl* and efficiency in productive activities. Islamic

finance is moreover needed for educational and judicial activities that are necessarily required for Protection of Religion

According to this projection we will be able to analyse the role of finance in achieving *Maqāṣid* Al-Sharīʿah within dynamic perspective at different levels of civilization.

4. Between Pure thought and the Bitter Reality of our World

As explored above Finance has to play a role in supporting two complementary *Maqāṣid*, namely *ḥalāl* productive activities and educational and training activities that are needed to support these activities. On another front Finance has to play a role in supporting the activities of the judicial and educational institutions needed to protect another original *Maqṣad* which is religion protection. Yet, all this can not be treated more than pure thought!

The contemporary Muslim World, alas, has drifted away considerably from Sharīʿah Rules or its *Maqāṣid*. There are many factors responsible for this serious phenomenon, some of them are historical and the remaining ones, unfortunately, are playing their role at present. Most important of these factors are excessive economic dependence on the developed non-Muslim world, political pressure from western economic powers, globalization of financial markets (which are ruled by the interest (*Ribā*) system, secularism, and spread of western culture and education. Under these conditions our question in practice ought to be; what role an Islamic financial system would be able to play in reviving *Maqāṣid* Al-Sharīʿah in the Muslim World. Is such role feasible, and to what extent?

5. Principles of Islamic Finance and Maqāṣid Al-Sharīʿah

Islamic finance is subject to rules and ethical values which are directly supportive of Sharīʿah complementary *Maqāṣid*. Most important of these rules and ethics which are derived from Sharīʿah and *ʿAqīdah* (Islamic ideology):

- a. Prohibition of *Ribā* (Interest)
- b. Prohibition of trade in Debt
- c. Prohibition of *Ghabn* and *Gharar*
- d. Justice
- e. Leniency
- f. Recognition and Respect of Private Property Rights

Elimination of prohibited practices (the first three items) supports *ḥalāl* earnings, which is strictly required for productive activities needed for Muslims (a complementary Shari‘ah *Maqṣad*) Maintenance of *ḥalāl* earnings are also indispensable for acceptable worshipping practices and hence fore Protection of Religion.

Besides, elimination of these prohibited practices support justice in financial transactions which is part and parcel of Justice that is required to complement the original objective of Protection of Religion. Practice of finance while maintaining the ethical values of justice and leniency would surely improve the quality of faith to the rank of benevolence الاحسان which according to Ḥadīth of our beloved Mohammad PPbuh is highest in the order of worshipping Allah SW. Again this is related directly to Protection of Religion. Last, but not least, recognition and respect of private property rights directly supports Protection of Wealth which is one of the important complementary *Maqāṣid*.

Further explanation would highlight some important points. Dependence on equity finance because of prohibition of interest is bound to allocate available resources to activities which would yield highest returns to the society. This means that *ḥalāl* earnings would be associated with best allocation of resources and highest possible level of production or income. This effect means that more *Zakāt*, which is partially a function of real income, would be available to the poor and needy categories. Again this is complementary to the original *Maqāṣid*.

The religious value of *ḥalāl* is not only ensured by prohibition of *Ribā*, Trade in Debt, *Ghabn*, and *Gharar* but also by making sure that Funds are Mobilized from *ḥalāl* sources and made available only to individuals and firms which plan to employ them in *ḥalāl* activities, i.e. excluding any Shari‘ah impermissible activities such as alcoholic drinks, pork meat products, and gambling, etc.

The value of *ḥalāl*, which is highly important to Protection of Religion, has to be emphasized by reference to Ḥadīth of the Prophet PPbuh:

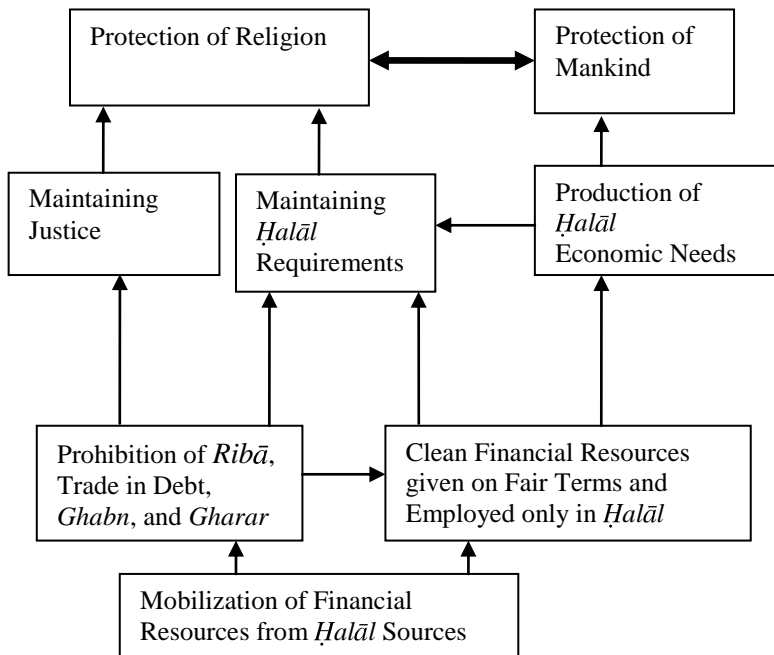
لا يدخل الجنة جسد غدى بحرام.

Which asserts that any human flesh raised by *ḥarām* will not be permitted to live in the Paradise in the hereafter.

In addition Islamic finance by recognizing and emphasizing private property rights through contracts and their fulfillment firmly ensures protection of wealth

which is complementary in the order of *Maqṣid*. In Ḥadīth, a companion asked the Prophet PPbuh if some person comes to him in order to take his possession (i.e. aggressively by force). The Prophet PPbuh said: “do not surrender your possession to him”. The companion enquired; if he fights with me? The Prophet PPbuh remarked: “then fight with him” The companion then asked suppose he killed me? And the Prophet PPbuh answered; “you will be a martyr” And the companion asked suppose I killed that person? The Prophet PPbuh answered “then this one will be in the hell fire”.

Principles of Islamic Finance and *Maqāṣid Al-Sharīʿah*



6. Targets of Islamic Finance and *Maqāṣid Al-Sharīʿah*

Whereas the principles of Islamic finance set necessary Sharīʿah and contractual conditions for using financial resources, targets of Islamic finance set principles which concern the utilization per se of these resources, i.e. which activities and priorities, for sake of realizing *Maqāṣid Al-Sharīʿah*.

A portion of financial resources in any Muslim society should target Religious Education at all levels, with special consideration for children and youth. This is very important not only for worshipping Allah SW and realizing *falah* (success) in the here after but also for maintaining all moral values that are necessary for a secure and happy social life, as well as for elimination of corruption in political and economic activities.

Protection of Religion and Maintenance of Human Life in the long run calls for extending financial facilities to support the family institution. Provision of lodging at suitable cost for new families, supporting new mothers, free vaccinations and medicine for infants etc are all very important items in the list.

The major portion of financial resources would, however, flow to production which is needed to maintain Human Life for present and future generations. This implies that finance is needed for producing current and future economic needs. We have already talked about production of current needs and we have to explore what is needed for future, i.e. development needs. Within this frame, i.e. Protection of Human Life for present and future generations, Islamic development by definition is a “sustainable human development”.

The conception of *Maqāṣid* Al-Sharīḥ as projected in this article would flexibly allow us to set targets of finance at different levels of development.

Targets of finance in a Muslim society can be set for low levels as well as for high levels of human development. Besides, targets of finance ought to go, under some conditions, beyond the borders of national interest and take into consideration the holistic interest of the Muslim Ummah (Nation).

First: Setting targets at the low levels of development

Poverty in general means inability to obtain the necessities of life while ultra poverty means standards of living that may not even cover bare necessities of human life. Under such conditions you would find; High Infant and children mortality rates, Low life expectancy age at birth, Malnutrition, which is serious among children under the age of five, Poor health conditions and in some cases prevalence of chronic diseases, Inadequate schooling, poor educational facilities and high illiteracy rates, Poor housing conditions, Shortage, which is severe in some cases of clean water, poor infra structure which is reflected in scanty electrical network and sanitation. Besides poverty and ultra poverty are commonly

linked with Social instability and high crime levels as well as with Environmental degradation (contaminated water, indoor air pollution resulting from burning wood, charcoal and dung, dust and soot in city air, soil erosion, and deforestation etc.) All these conditions are against sustainable preservation of Human Life which is an original *Maqṣad* of Sharīʿah.

Human development at this level should primarily focus on alleviation of poverty and potentially on the entire removal of poverty at the end. Financial resources should be fully mobilized and directed towards activities and projects that entirely remove all the symptoms of ultra poverty or poverty. This is quite important to *Maqāṣid* Al-Sharīʿah. Here it is useful to benefit from some conceptions raised by UNDP experts in the field of Sustainable Human Development (see for example Sustainable livelihood).

Second: Setting targets at a medium stage of development

Financial resources should be targeted for production that would attain sufficiency for all families and individuals. The conception of sufficiency would allow for gradual upgrading in the standard of living as long as “relativity” is taken into consideration.

Thus financing at this stage would for example target better health care conditions, higher levels of schooling and educational facilities, comfortable housing conditions, and suitably sufficient infra structure.

Third: Setting targets at a high stage of development

Financing projects which aim towards betterment of Human Life is permissible and not prohibited in Islam. But production of luxuries should not go beyond rational limits. Balance is essential to be established between material and spiritual satisfaction. In the Qurʿān, Sura 25, Verse 67

وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا

(Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes))

Satisfaction of some luxuries may help in worshipping of Allah, e.g. cold water in hot weather, air condition, travelling to perform hajj by air and lodging there in comfortable hotels. Yet, Satisfaction of some luxuries may also sooner or later

negatively affect Islamic moral values and religious duties, e.g. if air conditioned rooms with T.V sets and other home or hotel facilities become the main reason for not praying in the near by mosque which is not air conditioned! Thus utmost care should be taken at border lines.

Muslim societies that have production and financial possibilities to produce luxuries should however note that some Muslims living in other countries may be suffering from poverty or even ultra poverty. Financing consumption necessities needed for daily living, or financing projects that produce these necessities under such conditions should be given priority above producing some luxuries in a relatively rich Muslim society. This shall truly fulfill *Maqāṣid* Al-Sharī‘ah under the Islamic conceptions of “Altruism” and “Global Unity of the Muslim Ummah”.

7. Islamic Finance in Practice: A Wide Gap Between the Ideal and Reality

In the previous section we have outlined the ideal of Islamic finance in terms of its principles and its targets. In reality the matter is quite different.

For many centuries after the mission of Prophet Mohammad PPbuh Islamic Finance was practiced by Muslims inside their countries and at world level. No one would deny that under some conditions Sharī‘ah contractual conditions of finance or targets of finance were ignored, neglected, or misused by some Muslims. Yet, for many centuries until the Muslim world fell in the hands of the western Imperial powers, no one could dare to declare publicly that he or she is taking or giving *Ribā* in financial transactions. No one also could have used openly financial resources against Sharī‘ah rules in *ḥarām* activities.

Western Imperialism, the decay and fall of the Ottoman State (last Islamic Caliph), the infiltration of secular and western laws and culture in the Muslim world had all negatively affected the role of Sharī‘ah. During the two centuries 19th and 20th, in particular, matters in the Muslim world turned considerably against Islamic finance. Principles of Islamic finance degenerated in practice with spread of the interest-based banking system. Targets of Islamic finance were publicly ignored by producing *ḥarām* goods and services (permissible by secular legislations) and by giving secondary or minor considerations to the production of the poor people’s commodities.

It should be emphasized that spread of unfair income distribution patterns in the Muslim world led to concentration of huge financial resources in the hands of minor group of rich people, who are accepting interest (*Ribā*) in their transaction

and have no much care for the poor. These conditions show how the atmosphere of Islamic finance was polluted and no more committed to Sharīʿah, let aside its *Maqāṣid*.

By the 1970s, however, Islamic Banking was established in a number of Muslim countries to revive Islamic Finance and continued to grow since then. The question now is about Islamic Banking, how far it succeeded in doing its job? And how far finance through this new institution is serving *Maqāṣid* Al-Sharīʿah?

8. The Role of Islamic Banking in Achieving *Maqāṣid* Al-Sharīʿah

It was only in the 1960s and 1970s when first Islamic banks were established in the Islamic world; in Egypt, Pakistan, Iran, Sudan, and in the Arab Gulf- countries. Islamic banks developed in numbers and in activities afterwards. At present some non-Muslim countries, but with active Muslim minorities, such as South Africa and the United Kingdom have Islamic Banking.

However, Muslim countries are having, generally speaking, economic systems which are capitalist in essence. This in effect means protecting and maintaining secular economic institutions and financial policies which are not friendly to Islamic finance. Some of these countries have even taken a strong stand against Islamic banking which should in principle promote Islamic finance. This raises many serious questions which need urgent answers; Why ignoring Islamic finance? Why still fighting Islamic banking? Why not giving a chance to this new institution to prove it self and help in financing development, particularly human development which is ignored by commercial banking? Why unwilling to admit that most of our present economic problems are mainly due to their dependency on the capitalist system that has failed even in countries where supposed to be best applied (look at the present world financial and economic crisis? In fact most of the Muslim countries have to think seriously of launching new policies to restore their Islamic identity.

Islamic Modes of finance known and practiced since mid centuries were subject to modifications in order to qualify efficiently for modern Islamic banking. The Modes adopted by Islamic banks can be broadly divided into two main categories according to the nature of finance which they provide, i.e. direct or indirect.

- Modes that provide direct finance are mainly *Muqārabah* (partnership based on capital from one party and enterprise skill from the other),

Mushārah (partnership of capital owners), and *Muzārah* (partnership in agricultural activities).

- Others which provide indirect finance, i.e. trade credit, are almost all in form of “sale contracts” such as *Murābahah* (mark-up sale), *Bayʿ ājil* (deferred payment sale), *Bayʿ Salam* (deferred delivery sale), *Istiṣnāʿ* (manufacturing contract), and *Ijārah* (leasing)

It is not the intention in this article to evaluate Islamic banking, but we have to examine whether it is doing its job towards achieving *Maqāṣid* Al-Sharīʿah or not. On one hand no one, judging by available statistical information, no one would deny that Islamic banking has been successful in terms of funds mobilized from the public on non-interest bases. No one would deny that Islamic banks have employed their resources in *ḥalāl* activities by dependence on modes of finance which are constrained by Sharīʿah rules. No one would also deny that Islamic banking experience outside the Muslim world unless successful would not have been launched or continued.

These facts indicate that right steps have been taken by Islamic banks towards realizing complementary *Maqāṣid* of Sharīʿah. But, on the other hand till now we can not claim that Islamic banks have fulfilled more than the “necessary conditions” of a true Islamic finance that would achieve *Maqāṣid* Al-Sharīʿah. There are some critical deficiencies in the application of modes of finance that have to be removed, and we still lack initiatives and banking policies that would give priorities to projects that take us directly towards achieving *Maqāṣid* Al-Sharīʿah.

In fact, Islamic banking after 35 years is still passing through an infancy stage. This statement should not, however, be mis-interpreted by secular-mentality Muslims who are fond of attacking Islamic banking. Those should be told that inability of Islamic banking to pass yet its infancy stage is not due to deficiencies in principles or targets of Islamic finance but is largely due to them. Secular-mentality Muslim since the rise of Islamic banking has persistently given their support to the interest-based monetary system whether through their offices in government or in the central bank or through dealing with commercial banks as businessmen or bank customers. The cultural and religious atmosphere of Islamic banking has been polluted by misunderstanding and wrong *fatwā*.

However, all this should not constrain us from pinpointing deficiencies and shortages that impede Islamic banks from doing their job efficiently and carrying their financial activities properly towards achieving *Maqāṣid* Al-Sharīʿah:

- a) Islamic banks have over-dependended on *Murābaḥah* in their investment activities. It has accounted for employment of no less than 80% of the Islamic banks' financial resources. *Murābaḥah* is commonly used by most Islamic banks for financing expensive durable consumption goods (such as cars and houses, etc).

This pattern of consumption finance should not be given priority at present stage of development in the Muslim world (let aside the rich Gulf Arab countries). It obviously indicates a much higher level of consumption above prevailing average standard of living, whereas Muslim countries need to mobilize their resources for investment that would remove poverty. *Murābaḥah* in some cases has played a significant role towards achieving *Maqāṣid Al-Sharī'ah*, such as when effectively used for financing small and micro enterprises. A good example for this, which ought to be repeated, is that of Faisal Islamic Bank Branch of Um Durman in Sudan.

Yet, the excessive employment of *Murābaḥah* has another explanation. Most of the managers of Islamic banks, recruited in the early period from commercial banks, found out the *mechanism* of *Murābaḥah* finance not really far from the interest-based finance which they previously practiced. In fact some managers, out of their weak knowledge of Shari'ah, besides misunderstandings, committed gross mistakes in practicing it. Thus most of these banks have to reduce their over-dependence on *Murābaḥah* contract which is in fact based on debt. Ibn Hanabal regarded with distaste some one whose trade is based only on deferred- sale payment.

- b) In the Arab Gulf countries, Sudan, and Malaysia Islamic banks have been more active than in other Muslim countries. They have entered the fields of *Musharakah* (particularly diminishing *Musharakah*), *Ijarah* (specifically *Ijarah wa Iqtina'*, i.e. leasing ending with ownership), *Istisna'*, and *Salam*. Islamic banking finance reduced dependence on *Murābaḥah* finance and covered more and diversified activities through these contracts. Yet, still much more efforts have to be done in order to link Islamic finance with types of activities in the production sector in the manner which is favourable to (Islamic) human development.
- c) The role of Islamic banking towards financing investment projects for human development in the poor (or ultra poor) Muslim countries and communities in the World is almost entirely missing. The efforts of the Islamic Development Bank (IDB) are exceptions in this respect. These

efforts have to be strengthened by greater flow of financial resources from rich Muslim countries either directly to the poor countries or indirectly through the IDB development projects.

- d) All Islamic banks have to find some bench mark other than the interest rate to negotiate their profit margin in various financing modes. Competition with conventional banks and Islamic banks' relatively small share in the financial market should not be taken as pretexts to defend their adoption of the LIBOR(+ or -) formula in fixing or negotiating their profit rates in contracts.
- e) Islamic *Ṣukūk* can be used for development projects domestically as well as internationally. However, common practices attached with issuing of Islamic *Ṣukūk* such as guarantees of performance, collateralization, and their rating by conventional standards (Fitch or Standard & Poor have been involved) have to be changed. These practice which imply mechanisms that secure a regular known flow of income to *Ṣukūk* and redemption of their full face value shed doubts on their genuine submission to the Islamic profit / loss sharing principle. Moreover, actual securitization of debt assets such as *Murābaḥah* and *Istisna'* in proportions that reached in some cases 49% of total tangible assets is totally against *Sharī'ah*. This trend is quite serious and it means one thing, if continued, that we cannot claim that Islamic finance is adhering to *Sharī'ah* rules, let aside *Sharī'ah Maqāṣid*.
- f) Some Islamic banks have invented products of bad name such as *Tawaruk* which is not really different from interest-based loans. Such products have to be entirely abandoned for sake of *ḥalāl*.

In conclusion we have to correct our mistakes in order to claim that our Islamic financial system in practice is rightly constrained by the ethics of *ḥalāl* and geared to activities and projects that would help in achieving *Maqāṣid Al-Sharī'ah*. This should really be a source of our pride.

9. Conclusion

The role of finance in achieving *Maqāṣid Al-Sharī'ah* (*Sharī'ah* objectives) can not be analysed without highlighting the conception of *Maqāṣid* and the economic aspects that are related to them. In this article projection of *Maqāṣid Al-Sharī'ah* is surely benefiting from the ideas of the two great scholars Abu Hamid Al-Ghazali and Abu Is'haq Al-Chatby but not committed to them.

Allah created Mankind only for worshipping Him. Hence, there are two Original *Maqāṣid* of Sharīʿah; these which are directly related to worshipping of Allah, namely Protection of Human Life (present and future generations) and Protection of Islamic Religion. All other *Maqāṣid* that support the Original ones are considered complementary to them.

Protection of Religion is supported by two complementary *Maqāṣid*, namely Education and Justice whose maintenance in practice can not be attained without financing. Protection of Human Life has to be supported by production of “economic needs” which are essential for living. Production also needs to be supported by Education and Justice but would depend on Wealth, Labour, and Finance.

Therefore, the role of Islamic Finance is complementary in second order to Protect Religion and Secure sustainable Human Life. Islamic finance is subject to rules and ethical values, most important of them are derived from Sharīʿah and *ʿAqīdah*. Whereas the principles of Islamic finance set necessary Sharīʿah and contractual conditions for using financial resources, targets of Islamic finance set principles which concern utilization of these resources, for sake of realizing *Maqāṣid* Al-Sharīʿah.

The conception of *Maqāṣid* Al-Sharīʿah as projected in this article would flexibly allow us to set targets of finance at different levels of development, and to take into consideration the holistic interest of the Muslim Ummah (Nation). However, there is a wide gap between the Ideal and Reality of Islamic Finance in Practice. The actual circumstances of the Muslim World show that the atmosphere of Islamic finance was polluted and no more committed to Sharīʿah, let aside its *Maqāṣid*.

Islamic Banking in a number of Muslim countries represents a recent attempt to revive Islamic Finance. The question now is how far it succeeded in doing its job? And how far finance through this new institution is serving *Maqāṣid* Al-Sharīʿah?

Islamic banking has been successful in terms of mobilizing funds on non-interest bases, employing them in *ḥalāl* activities by dependence on modes of finance which are committed to Sharīʿah.

These facts indicate that right steps have been taken by Islamic banks towards realizing complementary *Maqāṣid* of Sharīʿah. But, on the other hand till now we can not claim that Islamic banks have fulfilled more than the “necessary

conditions” of a true Islamic finance that would achieve *Maqāṣid Al-Sharī‘ah*. There are some critical deficiencies in the application of modes of finance that have to be removed and we still lack initiatives and banking policies that would give priorities to projects that take us directly towards achieving *Maqāṣid Al-Sharī‘ah*, at the country as well as at the Ummah level.

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