

OPEN ACCESS

Name

pISSN: 2617-3336

eISSN: 2617-3700

www.iqan.com.pk

IQĀN -Vol: 04, Issue: 01, Dec-2021
DOI-10.36755/iqan147.2021,PP: 91-101



***Islamic Banking in the Context of Shariah objectives
and Islamic Legal Maxims***

*** Muhammad Aqib Ali**

< email_aqib@yahoo.com >

PhD Scholar, University of Management and Technology (UMT), Lahore, Pakistan.

**** Dr. Talat Hussain**

Assistant Professor, University of Management and Technology (UMT), Lahore, Pakistan.

Version of Record**Received:** 19-July-21; **Accepted:** 01-Nov-21, **Online/Print:** 31-Dec-21**ABSTRACT**

Islamic system of banking also termed Shariah compliant banking and finance is actually a sub-component of Islamic economic system and is now a reckoned force in the global financial system. In comparison to the conventional economic ideals, Islamic economic system deals with not only the economic issues and problems, but also takes into consideration, the ethical aspects of society in order to ensure social and collective well being and economic prosperity. The aspect of just and fair allocation of economic resources is the focal agenda and the central economic approach of Islam and Islamic economy's core principle is to ensure that every strata of society including the rich, middle class and the poor all get the opportunity to live their lives in a functional and productive manner. The philosophy of Islamic banking is primarily pinned upon the Shariah fundamental and primary sources of Quran and Sunnah as well as on the secondary sources, from which Ijtihad is the main secondary source. Islamic banking paradigm endeavors to fulfill Shariah objectives by complying with the tenets of Shariah and operates in the light of Shariah principles and Islamic legal maxims to eventually meet the ultimate objective of falah (success and well-being) both in this mortal world as well as in the world hereafter.

Keywords: Shariah, Objectives of Shariah, Islamic Banking, Islamic Legal Maxims, Fiqh, Maqasid-e-Shariah.



Introduction

Islamic banking is a subsystem of a comprehensive Islamic economic framework¹ and although the Shariah-compliant banking system per se is a relatively young discipline but the theoretical background and basis of Islamic or Shariah-complaint banking and financial system is strongly pinned upon Islamic economic framework which is as old as the religion of Islam itself. The Islamic faith, being a code of life² is based on the holy texts as revealed to humankind through the fundamental and primary sources of Shariah comprising of The Divine Quran as well as the blessed Sunnah of the Final Prophet Muhammad (peace of blessings of Allah be upon him and his companions). The basis of Islamic banking rests upon the framework of Islamic economics and therefore the foundations and principles of Islamic economics illustrates the schema of Islamic financial system, as it is practiced in contemporary times. All the principles, rules, and guidelines for Islamic banking and finance (IBF) are derived from the Islamic Shariah. In Islam, Shariah has two primary sources that are the major and basic foundation of all Islamic laws and besides these two primary and cardinal sources, there are also other secondary sources to deduce Islamic principles and guidelines. The two primary sources of Shariah are the Holy Quran and the Sunnah of the Holy Messenger Muhammad (peace and blessings be upon him). The fundamental source of Shariah i.e. Al-Quran is the verbatim word of Allah; and Sunnah – the sayings and accounts of deeds of the Holy Prophet Messsenger (pbuh), which serves as the complementary source to Quran, provides the explanation of Quranic teachings and delivers the supplementary guidance for the matters mentioned in the Holy Quran. This is vital to note that all the major rulings regarding all religious and worldly matters including the tenets of faith, beliefs, acts of worship, morality, daily life practices and activities and also the laws and rules pertaining to financial and economic issues are contained in these two sources. In terms of significance and legal value, primary sources of Shariah are the revelation based sources of Al-Quran and the blessed Sunnah of Muhammad (peace be upon him).

Notwithstanding the primary sources, the secondary sources of Shariah are also utilized to derive, interpret, deduce and develop the legal framework of Islam. These secondary sources, in degree of vitality are nowhere near the primary sources and are only resorted to when the original or primary sources do not provide guidance about any matter in an explicit and clear manner. Apart from the Holy Prophet's (PBUH) traditions (Sunnah), the traditions of the companions of the Holy Prophet (PBUH) are also accepted as a secondary source of guidance in Shariah. And besides this, the other secondary sources of Shariah include *Ijma*, *Qiyas*, *Istihsan*, *Maslaha*, *Urf*, *Istishab*, *Sadd al-Zara'i*, and *Ijtihad*. Before having a brief discussion regarding these secondary sources, this must be clearly noted that these sources are always treated as subservient to the

¹ Widigdo, Aslam, Idqan Fahmi, and Irfan Beik. "How Islamic is Islamic Banking in Indonesia?." *Journal of King Abdulaziz University: Islamic Economics* 29, no. 2 (2016).

² Muhammad Aqib Ali, Economy – The Islamic Paradigm, Business Islamica, Volume Eight, Issue No. II, (2012).

primary sources and are, in no way acceptable in case of any matter, where there is a conflict or contradiction in the rulings derived from these secondary sources in comparison to the content and texts of primary sources. Now let's discuss the secondary sources of Islamic law to fortify the understanding of Islamic legal framework. Ijma in its literal meaning refers to a collection of something, and in the Shariah context, it implies the scholarly agreement regarding an issue or any matters in the light of Ijma is defined as the unanimous agreement of Islamic jurists. The most relevant and pertinent example of *Riba* can be noted in the case of IBF, because at the time of Prophet Muhammad (PBUH), banking interest was non-existent, and it was only decided only after Ijma of the Muslim scholars and jurists that bank interest could be labeled as *riba*.¹ Some scholars still think otherwise and contend that all bank interest does not fall under *riba*, but these are in minority. So, based on the consensus of a majority referred to as Ijma of qualified Muslim scholars, bank interest stood prohibited that gave birth to the doctrine of Islamic banking. Along with Ijma, another significant secondary source of Islamic legal methodology is Qiyas. Qiyas in its literal meaning implies measuring or comparing a thing. In the Shariah legal methodology context, it refers to application of the principles of Quran and Sunnah to a matter that is not clearly mentioned or discussed in these primary sources. The process involves the deduction of a Shariah ruling based on Quran and Sunnah for an issue which is new in nature and is not covered in the texts of original/primary Shariah sources through analogical reasoning.

Islamic banking and finance – now a reckoned force in the global financial system is actually a sub-component of Islamic economic system¹ and in comparison to conventional economic ideals,² the Islamic economic system is a system which deals with not only the economic issues and problems, but also at the same time takes into consideration, the ethical aspects of society in order to ensure social and collective well being and economic prosperity of all living in a society.³ This feature of blending ethics with principles of economic development thus renders Islamic economic system, an interdisciplinary touch.⁴ The idea of collectiveness instead of individualistic interest is the main element that distinguishes the Islamic economic philosophy from that of other economic systems.⁵ The aspect of just and fair allocation of economic resources lies at the heart of economic approach of Islam and Islamic economy's core principle is to ensure that every strata of society including the rich, middle class and the poor all get the opportunity to live their lives in a functional and productive manner within the society by auguring that their right to basic

¹ Ghazi, M. A. (2005), *Mahaazraat-e-Fiqha*. Al-Faisal Naashiraan, Ghazni Street, Urdu Bazaar, Lahore.

² Mehmet Asutay, A political economy approach to Islamic economics: Systemic understanding for an alternative economic system. *Kyoto bulletin of Islamic area studies*, 1(2), 3-18, (2007).

³ Khan, M. A. (1994). *An introduction to Islamic economics* (Vol. 15). International Institute of Islamic Thought (IIIT).

⁴ Muhammad Akram Khan, Islamic economics: Nature and need. *Journal of King Abdulaziz University: Islamic Economics*, Volume 1, Issue:2 (1984).

⁵ Asad Zaman, Islamic Economics: A survey of the literature: II. *Islamic Studies*, Volume and Issue: 48(4), pages 525-566, (2009).

amenities like food and shelter is not compromised. The element of social justice is essentially the single greatest aspect that warrants the social integration among the members of a society.¹ Some other aspects which differentiate the Islamic economic ideology from other economic doctrines like Capitalism and Communism is the right of owning property which is not unbridled and absolute² but regulated to an extent which provides the Islamic system of economy a perfect balance to ensure socio-economic justice for all. The two aspects that are sufficient to understand the contrast between economic systems of Islam at one hand and conventional economic system on the other; are firstly the concept of well being in Islamic system is based on the concept of *falah*³ which is the state of wellbeing that goes beyond this life to the life after death, this also leads us to comprehend the second distinguishing aspect of satisfaction which is drastically different in Islamic economics as compared to conventional economic philosophy which entails satisfaction through maximization of utility or wealth but on the contrary⁴ Islamic economic system supports satisfaction within certain boundaries to avoid element of selfishness and supremacy of material interest, rather Islamic system encourages the concepts of collectiveness and togetherness in enjoying the material and economic benefits and hence the Islamic concept of economics, not only seeks satisfaction of material interests but also the satisfaction of spiritual interests by acquiring the pleasure of Allah – the Creator of all mankind.⁵

The foundations and framework of Islamic banking system is firmly placed on the primary sources of Shariah including the Sacred Quran and the Traditions i.e. Sunnah of the Holy Prophet (peace and blessings be upon him and his companions). Supplementary to the primary sources, secondary sources which provide the legal guidelines to the Islamic banking paradigm include the sources like *Qiyas* and *Ijma* as discussed briefly earlier, are largely based on the concept of *Ijtihad*. The term *Ijtihad* is deduced from the root word *jahada* which refers to exert and to strive. The concept of *Ijtihad* is considered as the most significant secondary source of Islamic Shariah followed by the primary sources of Quran and Sunnah.⁶ Technically all secondary Islamic law

¹Muhammad Umar Chapra, "Islamic Economic Thought and the New Global Economy", Islamic Economic Studies, Vol.9, No.1, September.(2001)

²Salman Ahmad Shaikh, Thesis of Religion: Normative Basis of Islamic Economics. Journal of Islamic Banking and Finance, 23.(2011)

³Muhammad Umar Chapra, Morality and justice in Islamic economics and finance. Edward Elgar Publishing.(2014)

⁴Muhammad Akram Khan, Methodology of Islamic economics. International Journal of Economics, Management and Accounting, 1(1).(1987).

⁵International Islamic Finance and Insurance Institute (IIFII) – Certified Professional of Islamic Banking – CPIB® Curriculum: Module B: Lesson 3: "Islamic Finance Fundamentals", Available at: http://www.iifii.org/cpib_outlineCourses.aspx#2.(2020),

⁶Abdul-Hannan, Shah. Usul Al-Fiqh – Islamic Jurisprudence, Witness-Pioneer Movement.(1999),

sources are essentially the different facets of *Ijtihad* which is an intellectual endeavor by a qualified and competent Islamic jurist called a *mujtahid* who exerts himself by utilizing his academic faculties to reach an opinion regarding a legal issue in the light of Shariah's primary sources of Holy Quran and Prophet's (PBUH) Sunnah.¹ *Ijtihad* as an instrument of Islamic legal framework is even more relevant in the field of Islamic banking and finance because of its nature of tackling the contemporary issues.² *Ijtihad* has its roots in both the primary sources, a verse in the Holy Quran mentions those who strive in the verse of Surah Al-Ankabut as: "And those who strive in Our way, We will surely guide them to Our ways" (29:69).³ *Ijtihad* evolved at the time of Prophet (PBUH) to tackle problems of administration and in relation to the concept, a well known conversation between the Messenger (PBUH) and one of his companions named Muaz bin Jabal (RA), when he was appointed as governor of Yemen, clearly highlights the significance of *Ijtihad* to reach legal decisions and matters which are not explicitly covered in the texts of Quran and Sunnah.⁴ In the perspective of Islamic system of banking and finance, *Ijtihad* has a particularly important role to address contemporary banking and financial issues in the light of Shariah, some of the examples may include the trading of investment certificates and shares, electronic and online transactions, digital and crypto currencies etc.

Now that we have covered the discussion of Shariah sources, let us now elucidate the Shariah objectives in relation to the Islamic banking paradigm. The objectives of Shariah are especially relevant in connection with the concept of *Ijtihad* that we have just discussed above as the Shariah objectives require the Islamic scholars and jurisprudential experts to offer legal verdicts and decrees (fatwa) regarding novel and modern day matters in the light of Holy Quran and Prophet Muhammad's PBUH traditions which are evolving as the times and technologies continuously transform and so does the process of *Ijtihad* which is continuous in the sense that dynamism of Islamic societies calls for resolution of issues in the perspective of Shariah which is only possible by application of the tool of *Ijtihad*.⁵

Objectives of Shariah and Islamic Banking

The objectives of Shariah termed *Maqasid al-Shariah* have been developed and evolved in the golden Islamic era and the roots of these are traced back to the era of the Holy Prophet (PBUH) and his companions (RAA). The fundamental and basic purpose or objective of Shariah is to

¹Qadri, M. T. *Ijtihad: Meaning, Application and Scope*. Minhaj-ul-Quran Publications, Lahore, Pakistan, (2007)

²Mohamad Akram Laldin, and Hafas Furqani,. *Sharī 'ah Scholars, Ijtihād and Decision Making in Islāmic Finance*. Journal of Islamic Business and Management, 219(3425), 1-14.(2015),

³Al-Ankabut: 69.

⁴Faruqi, M. Y. (1995), *Development of Usul Al-Fiqh: An Early Historical Perspective*. Shariah Academy, International Islamic University, Islamabad.

⁵ Ghazi, M. A. (2005), *Mahaazraat-e-Fiqha*. Al-Faisal Naashiraan, Ghazni Street, Urdu Bazaar, Lahore.

establish justice¹ in all the individual as well as collective affairs of human life to achieve welfare of all.² A famous Islamic scholar Ibn-al-Qayyim's statement about Shariah is pertinent to mention in this regard: "All of it is justice, all of that is a benefit, and all of that is wisdom".³ In his famous book *Al-Mustasfah*, Imam Al-Ghazali (1413)⁴ was the one who expounded the theory of *Maqasid* into five levels of necessities that must be the baseline and the underlying principles for an Islamic society and urges that it is imperative for the Islamic welfare state to govern its affairs in such a manner to ensure the achievement of these five fundamental purposes. The Shariah objectives (*Maqasid*), in the context of Islamic finance and banking, have a close association with the concept of public interest (*Maslaha*). *Maqasid al Shariah* are the essence and ultimate objectives of Islamic law and all the Shariah sources directly or indirectly contribute and synergize to maintain a state of well being and prosperity for the people,⁵ aiming at achieving the five goals of Shariah⁶ as elucidated by Al-Ghazali⁷ and illustrated in the Figure 1 hereunder:

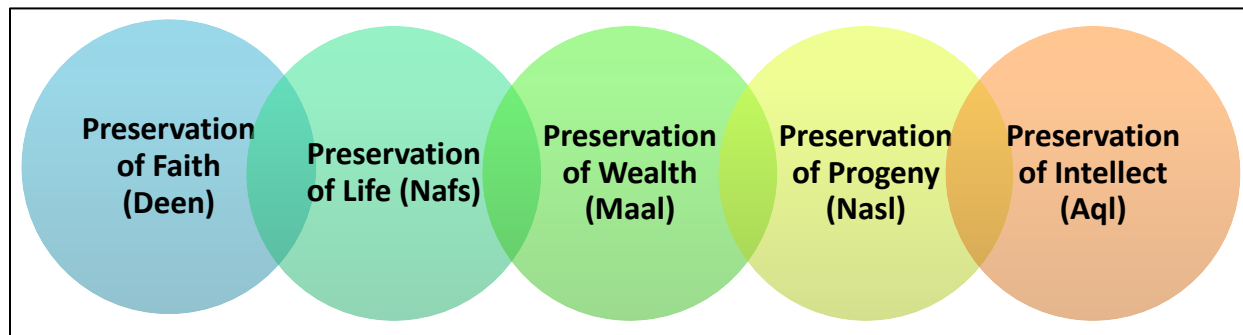


Figure 1: The Shariah Objectives (Maqasid-e-Shariah)

Shariah objectives are fully existent in the overall objectives of Islamic banks⁸ but it is not the

¹ Ahmad, S M (1952), "Economics of Islam – A Comparative Study", Shaikh Muhammad Ashraf Publishers, Lahore.

² Chapra, M. U. (1985). *Towards a just monetary system* (Vol. 8). International Institute of Islamic Thought (IIIT).

³ Amini, Taqi, M.M. (1980). *Ijtihad (Ijtihad Ka Tareekhi Pas Manzar Aur Masla Ijtihad Per Tehqeeqi Nazar*, Qadeemi Kutab Khana, Aaraam Bagh, Karachi.

⁴ Al-Ghazali. (1413). *Al-Mustasfah*. Beirut: Dar al-Kutub al-`Ilmiyyah.

⁵ Kamali, M. H. (1999). "Maqāṣid Al-Sharī'ah": The Objectives Of Islamic Law. *Islamic studies*, 38(2), 193-208.

⁶ IBA. (2020). *Shari'ah-compliant Banking Products*. Retrieved August 10, 2020, from <https://www.ibagroup.com.au/shariah-compliant-banking-products/>

⁷ Imam Al-Ghazali, A. H. M. (1356/1937). *Al-Mustasfā min cilm al-Usūl* (Vol. 1). Cairo: Al-Maktabah al-Tijariyyah.

⁸ M Usmani, M. T. (2009). *Ghair Soodi Bankaari (Interest-Free Banking)*, Maktaba Maarif-ul-Quran. Karachi, Pakistan.

objectives per se, rather what actually matters are the Islamic banks' honest will and field practices which are measured to assess their true achievement in fulfilling these Shariah objectives. In the context of Islamic banking, Vejzagic and Smolo¹ highlighted the issue of Shariah compliance versus Shariah substance in relation to the issue of over reliance of the Islamic banking institutions on debt-based product structures, both these issues are elaborated in the later section of this chapter as well. To sum-up our discussion, we can say that *Maqasid* is a holistic framework that entails all the components of human well being² and hence serves as a concrete guideline for Islamic banking entities to structure their offerings, plan and execute their interaction with clients and implement, operate and execute their plans and strategies in such a manner that best serves the interests of all stakeholders in a Shariah compliant way.

Now we will shift our discussion from Shariah objectives to Shariah legal maxims in relation to the Islamic banking and would limit our elucidation of these Shariah maxims to only those maxims which are directly applicable to the Islamic banking paradigm.

Islamic Banking in the Context of Shariah Maxims

Islamic law can be broadly divided into two categories in terms of schools of thought – Shia and Sunni schools of law; and the Sunni school is further subdivided into four schools established by the four of the most prominent Muslim jurists from 9th to 11th centuries. Hanafi [by Imam Abu Hanifa, 702-767 C.E.], Shaafi [by Imam Al-Shafi, 767-820 C.E.], Maliki [by Imam Malik, 717-801 C.E.] and Hanbili schools [by Imam Ahmad bin Hanbal, 778-855 C.E.].³ These schools designed and developed the broad body of Islamic legal and jurisprudential principles termed as *Fiqh* which has two broad categories called *Fiqh Al Ibadaat* (deals with acts of worship) and *Fiqh Al Muamalaat* (deals with daily life activities like social, economic and political affairs). The discipline of Islamic banking and finance falls under the purview of *Fiqh of Muamalat* which is that branch of *Fiqh* which deals with the daily life aspects and activities of individuals including all business, commercial and financial activities.⁴ Islamic financial system emphasizes the idea of social justice and focuses on the collective welfare of the society as a whole and unlike conventional system of finance that hinges individual interests above all, the idea of social justice is largely compromised in the scenario of focusing the individuals and not taking into consideration the well being of the society at collective level. The Shariah or the Islamic legal maxims or as they are termed in Arabic as *Qawaid al-Fiqhiyyah* are the general rules of *Fiqh* that are applied to different scenarios and

¹Attia, G.E. (2008). *Nahwa Taf'il Maqasid al-Shari'ah*. Virginia: The International Institute of Islamic Thought (IIIT).

²Laldin, M. A., & Furqani, H. (2013). *Developing Islamic finance in the framework of maqasid al-Shari'ah*. International Journal of Islamic and Middle Eastern Finance and Management.

³Ahmad, A. U. F. (2007), *Law and Practice of Modern Islamic Finance in Australia*, (Doctoral Thesis), School of Law, University of Western Sydney.

⁴Hasan, Z. (2016). *Evolution of Islamic Economics: Definition, nature, methodology, problems and challenges*. University Library of Munich, Germany.

situations which come under common or same rulings.¹ A maxim may be described as “a dictum or a general rule of *Fiqh* which is applicable to all of the related or incidental matters and particulars”.² Islamic legal maxims are the short statements which are expressive of the objectives and of goals Shariah.³ Islamic legal and general maxims perform a significant role in the context of Islamic law because they are employed as tools to infer and deduce rulings in the light of fundamental sources of *Fiqh*.⁴

The Shariah legal maxims serve as *Fiqh* instrumentations to look for solutions to various issues in the perspective of Shariah, which occur in daily life matters including commercial transactions. Although, there are several legal maxims pertaining to various issues including devotional, civil and other matters, but hereunder only few of the most pertinent maxims will be discussed especially in the perspective of Islamic banking and finance. These Shariah maxims in the context of Islamic banking are also relevant in the aspect of ascertaining validity of transactions⁵ as well as to determine the permissibility of various business and banking transactions and to identify anything that is in contravention to the Shariah principles.⁶ The general principle of Shariah about *muamlaat* i.e. matters of daily human life including all matters of business and commercial aspects etc. (excluding matters of worship); is that everything is permissible unless expressly prohibited in the Shariah sources.⁷ Following is a brief elaboration of the maxims pertinent to the Islamic banking paradigm:

Determining Acts by Intentions

The maxim is applied for judging acts by their underlying intentions (*al-umur bi maqasidiha*) is directly derived from a well known Hadith of the Holy Messenger Muhammad (PBUH): “Actions

¹Saiti, B., & Abdullah, A. (2016). The legal maxims of Islamic law (excluding five leading legal maxims) and their applications in Islamic finance. *Journal of King Abdulaziz University: Islamic Economics*, 29.(2)

²Mahmassani, S. (1961) *Falasafat at-Tashri' fil-Islam: The Philosophy of Jurisprudence in Islam*, Eng. trans. Farhat I. Ziadeh, Lieden: E.J. Brill.

³Kamali, M.H. (2008). *Qawa'id Al-Fiqh: The Legal Maxims of Islamic Law*. The Association of Muslim Layers., UK.

⁴Laldin, M. A. (2014). *Objectives of Islamic banking: a theoretical discussion*. In *Risk and Regulation of Islamic Banking*. Edward Elgar Publishing.

⁵Muhammad Tahir Mansoori, *Shari'ah Maxims: Modern Applications in Islamic Finance*. Shari'ah Academy, International Islamic University. Islamabad, Pakistan.(2012),

⁶Muhammad Tahir Mansoori, *Shariah maxims on financial matters*. Islamabad, Pakistan: International Islamic University Pakistan.(2007),

⁷Asyraf Wajid Dusuki, and Abdulazeem Abozaid, *A critical appraisal on the challenges of realizing maqasid Al-Shariaah in Islamic banking and finance*. *International Journal of Economics and Management* 15(2).(2007),

are valued according to their intentions" (*innamal-'a`amaalu bin-niyyaat*).¹ From the perspective of Islamic banking, this is one of the most relevant principles as we know there is much of a criticism on Islamic banking products and processes being similar or an imitation of conventional banking offerings but the greatest difference is the intention wherein the products are intended to avoid *riba* or interest in transactions besides all the similarities, this is the main reason of why Islamic banking offerings are to be accepted as permissible. Although there are lacunae and weaknesses in Islamic banking offerings and services but intentions must not be suspected and there should be an element of will and trust from the stakeholders to promote the Islamic banking and finance paradigm. This is appropriate here to mention that in formalizing the Islamic legal contracts, effect would be assigned to the aims, meanings and objectives and merely not to the words or phrases in intentional issues of Shariah framework. This Shariah maxim is also pertinent in the context of debate of "substance over form" with regards to the structuring and execution of Islamic banking and financial contracts and agreements.

Certainty Versus Doubt

The basic principle in this maxim is the Islamic norm stating certainty is not to be dispelled by doubt or suspicions (*al-yaqeenu la yaazulu bish-shaqq*).² The pertinent example in business and financial context can be that of a *Mudaraba* wherein the working partner cannot be held liable for suspected negligence to indemnify or to make good any losses to the investor unless proved otherwise and if the investor fails to prove the willful neglect on the part of the working partner, the loss shall be borne solely by the investor and not by the working partner as per the fundamental principle of loss bearing by the investor of funds under a *Mudaraba* venture.

Removal of Harm

The maxim is deduced from the famous hadith of the Holy Prophet (PBUH) – "*laa zarar wa laa ziraar* implying that harm can neither be inflicted and can also nor to be reciprocated". The maxim is directly relatable to business and financial affairs e.g. it shall be prohibited for any individual or entity to inflict an injury or grief to others while undertaking their activities. Another related maxim regarding harm is to eliminate harm (*az-zararu yuzaal*) implying that the harm should have to be eliminated and should not be inflicted in retaliation e.g. if an individual has caused any sort of damage to the property of another person then the affected person shall not damage the property in retaliation that may aggravate the harm, rather the person whose property has been damaged must be compensated with the value of damaged property. One other ancillary maxim is that harm is not to be removed by inflicting further harm to anyone (*az-zararu la yuzalu biz-zarar*). The pertinent example may be that of a buyer who found some defective goods after purchase then he may not sell the same by concealing the defect to another, rather he may return the defective goods to the seller. Finally this is also pertinent to state here some prohibitions of

¹Muhammad Hashim Kamali, *Qawa'id Al-Fiqh: The Legal Maxims of Islamic Law*. The Association of Muslim Lawyers., UK.(2008),

²Ibid

exchanging *haram* (forbidden) subject matter to alleviate harm; the relevant principle is that what is *haram* to take is *haram* to give and (that which is *haram* like pork or liquor etc.) the receiving of the price of these shall also be prohibited or *haram*.¹ The receiving and paying of anything from illegal and corrupt activities including bribes, smuggling, criminal practices etc.; and any revenues from any undertakings that are prohibited by the law of the land may also be considered in this regard.

Risk Versus Reward

The maxim, related to benefits only against risks borne, is directly relevant in Islamic banking perspective which states that there is no entitlement to any reward without any underlying risk i.e. *al-ghunm bil-ghurmu*. The maxim had been derived from the Prophet (PBUH)'s saying: "For accruing any benefit exists a corresponding liability" i.e. *al kharaaju biz-zaman*.² This is the one of the very fundamental points of distinction between Islamic and conventional financial framework. The Islamic banking model is and ought to be based on this very principle.

Principle of Necessity

The principle of necessity is a maxim which may be subjected to misuse with mala fide and negative intentions,³ but still it is a valid principle stating that necessity renders what is prohibited as permissible (*ad-daruratu tubihul-mahzurah*). The maxim is discussed in relation to another maxim: hardship begets ease (*al mushaqqah tajlib at taysir*). The maxim is supported with evidence from the primary Shariah sources but the problems arise where compulsion or necessity (*darurah*) is misstated or misconceived to apply this maxim. The transactions of *bay-al salam* and *bay istisna* (both forms of forward sales, being exceptions to the usual rules of sale from Islamic contractual viewpoint) are relevant examples in this regard.

Significance of Custom

The role of custom is vital in Shariah legal framework. The relevant maxim in this regard is that the custom may act as a foundation for making judgment (*al `adatu muhkamah*). The acceptability of customs and usages of people is subject to some conditions mainly that including the stipulation that the customs must be compliant with the rulings of Shariah and customs which are not in conformity with the Shariah rules shall not be acceptable.⁴ Another condition is that the customary practices which are rare will not be considered in comparison to what is generally prevalent and relied upon by the general people provided the first condition i.e. of Shariah

¹ Muhammad Tahir Mansoori (2007), "Shariah maxims on financial matters. Islamabad, Pakistan: International Islamic University Pakistan."

² Ahmad, A. U. F. (2007), "Law and Practice of Modern Islamic Finance in Australia", (Doctoral Thesis), School of Law, University of Western Sydney.

³ Hashmi, S. H., & Lee, S. P. (Eds.). (2004). "Ethics and Weapons of Mass Destruction: Religious and Secular Perspectives". Cambridge University Press.

⁴ Kamali, M. H. (1991). Principles of Islamic jurisprudence (pp. 283-296). Cambridge: Islamic Texts Society.

compliance is not compromised. There are many examples which may be quoted here including the contemporary customs and instances occurring in various trading and commercial activities, involving agency ventures and arrangements, various practices and norms in deferred sale and spot sale transactions etc like taking goods without asking for price and getting a bill at the end, choosing any item from the available items without asking the permission and other forms of non-formal and non-written contracts etc.

The summary of the maxims discussion highlights that the Islamic legislative structure does not adjudicate matters only on its external appearance and dimensions; rather the inner or intrinsic aspects like logic, reasoning, meaning, and underlying wisdom etc., also are taken into consideration in judging the particular matters and issues in the light of Shariah sources and methodologies.¹ The central motive of Islamic legal maxims is to attain the Shariah objectives mentioned earlier in the chapter and these maxims are used as a thematic guide of *Fiqh* and Shariah to achieve the Shariah objectives by application and exertion of intellectual efforts by Muslim jurists and Islamic jurisprudential experts.

Conclusion

The philosophy of Islamic banking entails a system based on risk sharing, goods and services exchange and avoidance from the abhorrent element of *riba* (interest). The framework of Islamic banking system is laid upon the foundations of Islamic Shariah from where the Islamic banking model derives all its guidelines mainly based upon the primary and two fundamental sources of Quran and Sunnah along with some of the secondary sources including the chief secondary source of *Ijtihad*. The goal of Islamic banking setup is to provide an alternative banking structure that is not only Shariah compliant but is also an ideal system of financial dealings which would eventually help the stakeholders to attain Shariah objectives which would warrant ultimate success and well-being (*falah*). The challenge of rising above the commercial goals and to contemplate Shariah objectives as a top priority is yet to be achieved by the Islamic banking industry, both at national level as well as globally. Notwithstanding, the success of Islamic banking at international level, true success can only be accomplished when Shariah objectives become supreme concern of all Islamic banking stakeholders and that can be measured by compliance of Shariah tenets and principles in letter and in spirit.



@ 2021 by the author, this article is an open access article distributed Under the terms and conditions of the Creative Commons Attribution (CC-BY) (<http://creativecommons.org/licenses/by/4.0/>)

¹Anas, P. A. (N.D). The Applications Of Islamic Banking In The Light Of Maqasid Al Sharia'h (Objectives Of Shariah). Accessed/Retrieved On January 13, 2020, From: https://www.academia.edu/3527717/the_applications_of_islamic_banking_in_the_light_of_maqasid_al_sharia_h.