

SOCIAL JUSTICE AND CHARITABLE-TRUST IN ISLAMIC FINANCIAL TRANSACTIONS

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ABSTRACT

The Islamic model of Social Justice and Charitable-Trust are the most important concepts which made the Islamic Banking and Finance a unique system with moral, honesty and fair economic setting. The Islamic economic system has recognized individual and public ownerships. It provides certain rules and regulations that restored justice in maintaining the two different types of ownerships without any one's trespass on another. The paper highlights issues and contracts which are based on trust and charity wise arrangement. *MurĒbaĀlah* transaction has been the forefront of trust contracts in promoting charitable financial transactions. The paper highlights different types of *MurĒbaĀlah* transactions. It also highlights Issues related to benevolent debt (*Qardh Al-lāsan*) and its role in balancing the economic system of the Muslim society. The paper concluded that the Islamic economic policies are the most just and moderate policies which protected both the rights of poor and the wealthy individuals. It also minimizes the huge gaps between prosperous and low income individuals.

Introduction

The concept of Justice and charitable-trust are among the Islamic objectives toward banking and financial transactions. Allah the Almighty made it clear that one of the most vital objectives of the public wealth is to be justly shared among the general public of the society. Allah the Almighty said: "And what Allah restored to His messenger from the people of the towns it is for Allah and for the messenger and for his near relatives and orphans and the stranded travelers so that it will not be a perpetual distribution among the rich from among you." (Qur'an 29:7). The Islamic economic and financial system has stipulated the most fair and just principles for the well being of the general public. The principles of trust, fairness and justice were the most important principles that differentiate Islamic economic system from the conventional economy. The Islamic economic system did not abolish personal ownership and did not favored absolute public ownership. The Islamic economic system is also against the opportunists and capitalists system that maintained the absolute individual ownership that favored few individuals in the society. Islam has encouraged personal ownership but with certain limitations and brings rules to make sure that the personal ownership did not molest on the public and collective importance of the society. And also to insure that the whole society is benefiting from the economic system which is based on trust, fairness, justice and integrity. Therefore, the paper discusses issues related to justice in Islamic Financial transactions; it also discusses contracts that are originally based on charity and donations such as *Bay murĒbahah* (cost and profit disclosure) and likewise, *Bay al-Tawliyah*, *Bay al-IshtirĒk* and *Bay al-wadb 'iyyah*. *Bay Al-Tawliyah* is to sell an item based on the original price without an increase or decrease, this intended to help other people get access to the market's commodity. *Bay al-wadb 'iyyah* is even more charitable by selling an item below its original value. The paper has also deliberated on circulation of wealth based on Islamic principles. It also covers issues related to benevolent loan in Islamic financial transactions.

Justice in Islamic Financial system

The principle of Justice in Islam is one of the most important principles which made the Islamic finance more sustainable and trust worthy. Allah the Almighty has called upon Muslims to embarrass justice towards everyone in all dealings disregard his religion, color or background. Allah the Almighty said: "O you who believed, be persistently standing firm for Allah witness in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do." (Qur'an 5:8). The verse commands: Do not be carried away by your hatred for some people to avoid observing justice with them. Rather, be just with everyone, whether a friend or an enemy. (Tafsir Ibn Kathir, 5:8 at 122)

This concept of justice has also been recorded in the two Sahihs, An Numan bin Bashir (may Allah be pleased with him) said, "My father gave me a gift, but Amrah bint Rawahah, my mother, said that she will not agree to it unless he made Allah's Messenger a witness, So, my father went to Allah's messenger to ask him to be a witness to his giving me the gift. Allah's messenger asked, "Have you given the like of it to everyone of your offspring?" He replied in the negative. The Prophet of Allah said, "Have taqwa of Allah and treat your children equally, I shall not be a witness to injustice" (Fathul Bari 5:250, Muslim 5:1242). Allah the Almighty created the scale in order to provide justice in various transactions. This is because scale will prevent disputes and will actualize harmony and devotion in the Muslim society. That is why the Almighty Allah prohibits any increment or decrement out of the scale, and asks for the justice and equality in all measurement and scaling systems. Allah the

Almighty said: “Woe to those who give less {than due}” “Who when they take a measure from people, take in full” “But if they give by measure or by weight to them, they cause loss” (The holy Qur’an 83/1-3) Allah the Almighty also said: “And do not decrease from the measure and the scale” (The Holy Qur’an 11/84)

Justice has to be observed in all types of transactions, especially during the contracts of buying or selling and other exchange contracts. The buyer or seller should receive or deliver the complete subject-matter without oppressing his partner or defrauding him, thus exercising justice here is compulsory. Justice in contractual transactions is projected to actualize equality of the exchanged items. And when there is difficulty in insuring equality of many different items by scale or measurement, the Almighty Allah provided a legal-tender as medium of exchange in order to insure the equal proportion of the two different items which could not be measured or scaled. (*Al-QarĒfĒ, KitĒb al-FurĒk 3/421*)

Trust in Islamic Financial Transactions

Scholars of Islamic Jurisprudence have divided the sale contract into two different types. The first type is called *musĒwamah* (bargaining). This is the conventional contract of sale where the seller can sell his item in a market place without revealing his original cost and services related to the item. The second type is *Bay murĒbahah* (cost and profit disclosure). This is the contract of sale in which a seller would reveal his actual cost and add his profit proportion. *MurĒbahah* transaction is the icon of trust among the Islamic financial contracts. There are three types of sales contracts related to *MurĒbahah* transaction, *Bay al-Tawliyah*, *Bay al-IshtirĒk* and *Bay al-wadb’iyyah*. *Bay Al-Tawliyah* is to sell an item based on the original price without an increase or decrease.¹ *Bay al-wadb’iyyah* is where the seller sells the subject matter for less than his cost, thereby selling it for a loss. *Bay al-ishtirĒk* is where the seller sells part of the subject matter at half or one third of the original price.²

Scholars of Islamic Jurisprudence have reached a consensus that *Bay Tawliyah* is an acceptable contract of sale under Shari’ah law because all the prescribed rules of Islamic contracts of sale are fulfilled by the principle of *al-Tawliyah*. When the Prophet (peace be upon him) wanted to travel for *hijrah*, Abu Bakar (May Allah pleased with him) bought two horses, one for him and the other one for the Prophet. The Prophet (Peace be upon him) said: “I will take one of them as *Tawliyah*” Abu Bakar (may Allah be pleased with him) replied: “It is for you without anything.” Then the Prophet said: “But without anything is unacceptable.”³

However, there are some exceptions where by *Tawliyah* transaction could not be accepted. The majority of Islamic scholars from the *HanafĒ, Shafi’Ē* and some *MalikĒ* Schools of thought are of the opinion that a *Tawliyah* contract is not permissible for a movable asset which has yet to be taken into possession.⁴ The *MalikĒ* School of the opinion that *Tawliyah* transactions are acceptable even on the food which has yet to be possessed, relying on a *hadith* reporting that the Prophet (peace be upon him) said: “Whoever bought food should not sell it before taking possession unless if he sells it through *IshtirĒk, Tawliyah* or *IqĒlah* transactions. (Hadith Reported by Abdul-razak in his *Musannaf*, vol.8 p.49)

Since *Bay Tawliyah* is a trust contract, trust must be maintained in executing the contract. However, if there is a breach of trust where the seller did not disclose the real price of the subject matter, the scholars of Islamic jurisprudence from the *HanafĒ, Shafi’Ē* and *HanbalĒ* Schools of thought are of the opinion that the increased amount should be paid back to the buyer and that the buyer has no choice but to reject the contract because any cheating in a *Tawliyah* transaction will change its name to another contract. (*AlkĒsĒni, AlbadĒĒni al-sanĒĒni* vol.5 p.226). The *MalikĒ* School of the opinion that if the seller lied to the buyer and increased the actual price of the subject matter, the seller will be forced to pay back the increased amount to the buyer, but if the seller refuses then the buyer has the choice to return the subject matter or uphold and continue with the contract.

Islam has provided freedom of contract to the people in order to engage in any contract that they wish to fulfill. However, the only condition to this is that it should not include the things that are prohibited by Shari’ah such as *riba*. Therefore as well as the contract did not include *riba* or any other prohibition learned from Shari’ah, then it is legal and must be fulfilled. The issue of contractual freedom in this content is a disputed issue in Islamic law. Some scholars regarded this freedom as an absolute freedom; therefore it is free to contract any transaction if it is not against the Shari’ah. However, other scholars look at it differently; they only regarded the contracts that are primarily legalized by Shari’ah as the only legal contracts. Therefore, originally all contracts are forbidden unless when they are legalized by Shari’ah. (*Muhammad Abu Zahrah (1996) Al-Mulkiyyah wanathariyyat al-aqd p.224*)

The first opinion relied on the reason that Shari’ah has stipulated rules and regulations which regulate the contracts so as to actualize fairness and justice between the people. It is also there to prevent oppression, excessive risk and disputes. The second opinion has relied on the *Hadith* of the Prophet Muhammad Peace be upon him said “Whoever create something in the religion without our orders will be rejected” in order to understand the fairness and justice of the Islamic financial system, we should trace back to the period of Umar (May Allah be pleased with him) when his two children were sent to Iraq for a battle together with the Muslim army, Abu Musa Al-Ash’ary who was the Governor of Iraq at that time gives some money to the two companions who are the Umar sons and said, this money is for the public treasury I would like to send it to Umar in Madina through you, but you can use the money and buy some profitable goods in Iraq and when you arrive in Madina you can sell the goods retain the profit and pass the capital to the Khalifah Umar, when they do that Umar refused to collect the capital alone and insist in collecting both the capital and the profit. He said why Abu Musa did not give the same amount of capital to other members of the

¹ Ala’dĒn Samarqandi “*Tuhfat al-fuqahĒ*”) DĒr al-kutub al-ilmiyyah Beruth Lebanon, vol.2. 1984), p.105

² Ibid.

³ “*MawsĒĒnat al-fiqhiyyah al-kuwaitiyyah*” vol.14 p.198

⁴ Ibid.

army? He gave you because you are the sons of the Khalifah. Ubaidullah replied that we were accountable for the lost of the money. Khalifah Umar said you must pay the capital and the profit together. One of the companions suggested that it should be regarded as Mudharabah transaction, therefore half of the profit will be given to the Abdullah and Ubaid and the half of it should be given back to the treasury, Khalifah Umar accept the decision. In this occasion Khalifah Umar emphasizes on the issue of justice and make sure that no one is favored because of his relation even if he is a son of the ruler.

Circulation of wealth in Islam

Islam stands for circulation of wealth within the Muslim society. This is a basic principle based on which Islamic approach towards wealth may be understood. Principles of Shari'ah law have showed the Islamic moral teachings and provisions with the objective of circulation of wealth in an Islamic economy. Let us go through some of these moral teachings and legal provisions of Islam which geared towards wealth circulation and public charity oriented principles. Payments of *ushr* and *zakat* are obligatory on agricultural products and non-agricultural savings respectively and the system takes care that the beneficiaries are the destitute members of the society. This is done by taking wealth from the rich and distributing the same to the poor and the disadvantaged people. This is a spirit, conscious and well designed effort for circulation of wealth.

Prophet Muhammad (peace be upon him) while sending his companion Mu'az bin Jabal (may Allah be pleased with him) to Yemen trained him to present the teachings of Islam to the people of Yemen in a systematic and gradual manner. That is a very important tradition of the Prophet and therein he mentioned the rationale of *zakat* in these words, "Tell them that Allah has made *zakat* obligatory for them that will be collected from their wealthy individuals and distributed to their poor." [Bukhari and Muslim, related by Abdullah ibn Abbas (may Allah be pleased with both of them)].

Similarly, non-obligatory charity (*sadaqah*) is encouraged, and turns the flow of wealth from those who have to the needy. The Prophet peace be upon him has taught that whenever a person does something wrong he should give *sadaqah* to please Allah. This concept of reparation for sins and wrongs done in the form of relief to the poor and the needy may be noticed in the case of several commandments of the Qur'an. A person who misses the obligatory fasting the atonement is a ransom: "the feeding of a man in need." [The Holy Qur'an 2:184] For killing wild game while on pilgrimage to Ka'aba the atonement is to feed poor persons. [The Holy Qur'an 5:95] For putting away wives (by saying that they are their mothers) the atonement is to feed sixty needy persons. [The Holy Qur'an 58:4] These are some examples. In fact, the Islamic teaching is that wealth of a person has definite share of poor people.

Qard Al-Hasan

Qard Al-Hasan or benevolent debt is a well known mechanism of free interest loan, given by the wealthy individuals to the poor people in order to help them overcome a specific financial difficulty or to grow a small business for their families well being. Qard Al-Hasan is meant to help out the needy so as to leave together in peace and harmony. Qard al-Hasan is regulated by the law giver and stipulated boundaries in its application. Qard al-Hasan should not include interest in any circumstance, and the loan-giver should not benefit from the loan given in any way or the other. The amount collected for Qard al-Hasan should be written and the date of repayment should also be written. Writing the debt is mandatory so as to protect people's right and to strengthen the contract, and to make it impossible for those who may intend to play with people's wealth and property. (*Ayat al-dayn p.119*). Islamic Banks may use *Qard Hasan* as a charitable financing facility which will allow the customer to finance his needs at the varying amount of financing, which can be obtained from Islamic banks. However, the minimum financing amount of Qard Hassan in Malaysia is approximately at RM1000, while the maximum amount is estimated as RM100, 000. However, the amount varies according to the Islamic bank policies. (*Hanudin Amin, Mohd Fahmi Ghazali and Rostinah Supinah 2010, p.2*) Qard al-Hasan is a recommended instrument in Islamic law, it was reported by ibn Shihab that Salim told him that Abdullahi Ibn Umar (May Allah be pleased with him) told him that the Prophet (Peace be upon him) said "Muslim is a brother to a Muslim, he should not oppress against him, he should not surrender him and whoever helped his brother Allah will be in his rescue, and whoever solved a difficulty of a Muslim, Allah will solve some of his difficulties of the day of judgment. And whoever protects a Muslim; Allah will protect him on the Day of Judgment" (*Sahih al-BukhÉry Kitb Al-Mazhalim*). In a case of default, *al-Muqritd* or the debt owner should exercise patience to give more chance for the debtor to make the payment. If the ruler decided to declare the debtor bankrupt the debt owner will only collect the available wealth of the debtor. However, if he did not make it, and the debtor died before the payment, the Muslim ruler should pay for him from the treasury. This is based on the *Hadith* reported that the Prophet (peace be upon him) said: "whoever died and leaved a property it should be given to his heirs, but if he leaves a debt, I will pay for him" (*Hadith narrated by Imam al-Bukhari No. 2398, Fathul bari 3/155*)

Conclusion

Justice and fair economic dealings are the forefront principles of Islamic law which made the Islamic economic system a unique system that protects the people's right. Islam has legalized *MurÉbahah* transactions in order to give chance to the clemency dealing and compassion within the Islamic markets and financial transactions, where a seller will forfeit his profit or part of it in order to make it easier for the buyer and for the benefit of the Islamic market place. The system has also becomes a helping hand to the poor and low income individuals of the Islamic society, by providing different incentives to the needy and grant softer policies towards the principle of benevolent debt, and allowing the contracts of *Murabahah*, *Bay al-Tawliyah*, *Bay al-IshirÉk* and *Bay al-wadb'iyah*, so that the Muslim society breathes in a merciful and sustainable social economic development. It is suggested that Islamic Banks should adopt these concept along with their banking and financing products. Besides profit generating contracts, the Islamic banks should thing of benefiting their societies through charitable banking and financial

contracts. This will let the Islamic banks build up trust and confidence with the general public in the Islamic banking and financial sector.

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