

Maqāsid al-Sharī'ah in Islamic Finance: Applications and Challenges

Muhammad Abu Bakar

INCEIF, Malaysia

Abstract:

Islamic finance has shown a tremendous growth in the last two decades particularly after Global Financial Crisis (2007-2009). Islamic finance has been proposed as an alternative to the conventional financial system as it is believed to have the ability to address issues associated with the existing system. As it is based on the divine principles of *Sharī'ah*, the advocates propagate it not something just for Muslims but for the entire humanity. However, the current practices of Islamic finance, especially Islamic banks, are criticized on the grounds that the offered products merely comply with the legal requirements of Islamic law and fail to fulfill the main objectives of Islamic finance. This paper revisits the debate on the objectives of *Sharī'ah* (*Maqāsid al-Sharī'ah*). More precisely, this paper attempts to discuss the philosophical foundations of *Maqāsid al-Sharī'ah* under Islamic law and explain their potential contribution towards the equitable financial system. The paper also highlights some of the reasons behind the negligence of *Maqāsid al-Sharī'ah* in prevailing Islamic finance. The study concludes that only the fulfillment of legal requirements and reliance on replicating conventional debt-based instruments would lead to Islamic finance nowhere. More importantly, Islamic financial system would not be able to succeed unless the ethical values and objectives of *Sharī'ah* are adhered to. The paper adds value in the existing literature by presenting new insights and an integrated analysis of the current Islamic financial practices and by proposing various suggestions to take the industry towards the fulfillment of *Maqāsid al-Sharī'ah*.

Keywords: *Maqāsid al-Sharī'ah*, Protection of Wealth, Islamic Finance, Islamic Banking, Form vs Substance.

1. Introduction:

Maqāsid is the plural of *Maqṣad* which means a purpose, objective, intent and goal Auda, (2008). The earliest Scholars and Jurists of *Maqāsid* such as Abdul

Mālik al-Juwaini (d.478 AH), Abu Hamid al-Ghazālī (d.505 AH), Fakhruddin al-Razi (d.606 AH) etc. did not provide a clear and comprehensive definition of *Maqāsid*. They used the term “*Maqāsid*” as an alternative expression to public interest or *Maslaha* (Afridi, 2016). However, many contemporary *Sharī‘ah* scholars and legal theorists who contributed to the *Maqāsid* literature attempted to explain the definition of *Maqāsid*. Some definitions of *Maqāsid* are as follows:

- 1) Muhammad al-Tahir Ibn’Āshūr defined *Maqāsid al-aamah* as “The general objectives of Islamic legislation (law) consist of deeper meanings and inner aspects of wisdom considered by the Lawgiver (*Shari‘ah*) in all or most of areas and circumstances of legislation. They are not confined to a particular type of *Sharī‘ah* commands. Thus, they include the general characteristics of the *Sharī‘ah*, its general purpose and whatever notions contemplated by the legislation. They also include certain meanings and notions that are present in many, though not all, of the *Sharī‘ah* commands.” (Ashūr, 2006).
- 2) Allāl al-Fāsī explained *Maqāsid-al Sharī‘ah* as “the underlying philosophy and purposes which has been placed by Lawgiver (*Shari‘ah*) behind every ruling of *Sharī‘ah*.” (Al-Fāsī, 1993).
- 3) Ahmad al-raysūnī says that “*Maqāsid* are the objectives and means which are considered by *Sharī‘ah* for the welfare of humankind.” (Al-Raysuni, 2005).
- 4) Muhamad bin Saad Al-yūbī defines *Maqāsid al-Sharī‘ah* as “The ends and means which Lawgiver (*Shari‘ah*) considered in giving the rulings for the well being of a human.” Al-Yubī, 1998).
- 5) Wahbah al-Zuhaylī defines *Maqāsid al-Sharī‘ah* as “the purposes and means which has been embedded by Lawgiver in its every ruling.” (Al-Zuhaylī, 1989).

Taking into consideration these definitions we may say that *Maqāsid* are the objectives and wise purposes of *Sharī‘ah* which aim to protect the well-being of human kind and remove evils from the society.

2. Literature Review:

Maqāsid are classified into three broad categories with regard to their social order, importance and the level of necessity. These are *darūriyyāt* (essentials), *hājjiyyāt* (needs) and *tahsīniyyāt* (embellishments/ luxuries). This classification is explained firstly by Imam al-haramain (d. 478 AH).

2.1 Darūriyyāt (essentials):

Darūriyyāt is comprised of essential things which if neglected lead to total disruption and anarchy (Kayadibi, 2017). The prominent scholar and jurist Imam Abu Hamid al-Ghazālī (d.505AH) who was the student of Imam al-haramain, further defined *darūriyyāt* as five major objectives. He said “The very objective of the *Sharī’ah* is to promote the well-being of the people which lies in safeguarding the faith (*al-dīn*), their self (*al-nafs*), their intellect (*al-‘aql*), their posterity (*al-nasl*), and their wealth (*al-māl*). Whatever ensures the safeguard of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable” (Chapra, et al. 2008). The majority of scholars agree with Imam al-Ghazālī’s definition. These are five essential objectives which fall in the category of *darūriyyāt* that must be safeguarded and protected from any disruptions. There are clear guidelines in the Holy Qur’ān & Sunnah of the Prophet (PBHU) for protecting these five essential objectives that ensure well-being of humankind. Some verses of the Holy Qur’ān are mentioned in the following.

Allāh (swt) says in the Qur’ān:

“And I did not create the jinn and mankind except to worship me” (51: 56)

“Rather; worship (only) Allāh and be among the grateful” (39: 66)

“[We sent] messengers as bringers of good tidings and warners so that mankind will have no argument against Allāh after the messengers. And ever is Allāh Exalted in Might and Wise” (4:165)

In these verses, Allāh (swt) explained the importance of religion and its protection with different rulings and examples. Allāh (swt) emphasizes that worship is not allowed except for Him and polytheism is a severe sin. Furthermore, He mentions that he sent His messengers to the people, so they don’t have any excuse on the day of judgment.

Regarding the protection of life / self (*al-nafs*), The Qur’ān states: “And there is for you in legal retribution (saving of) life. O you (people) of understanding, that you may become righteous” (2:179).

“(And those) who do not kill the soul which Allāh has forbidden (to be killed), except by right”(25: 68).

“Whoever kills a soul for a soul or for corruption (done) in the land- it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely” (5:32)

In these verses, Allāh (swt) explained the importance of preservation of human life. It is a very heinous sin to take an innocent life and it is being equated as killing the whole humanity.

Regarding the protection of intellect (al-‘aql), Allāh (swt) says: “Indeed, in the creation of the heavens and the earth and the alternation of the night and the day are signs for those of understanding (who use their intellects)” (3:190)

“O you who have believed, indeed, intoxications, gambling, (sacrificing on) stone alters (to other than Allāh), and diving arrows are but defilement from the work of Satan, so avoid it that you may be successful”. (5:90)

These verses and many more explained the objective of preservation of intellect. Allāh (swt) made human being superior to all other creatures because of intellect. A human being can differentiate between right and wrong due to its intellect. Therefore, Allāh (swt) commands us to protect this precious wealth and He prohibited those things which may have adverse impact on intellect such as wine and intoxicants etc.

Regarding the protection of prosperity/ family (al-nasl), Qur’ān states: “then merry those that please you of (other) women, two or three or four” (4:3)

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way” (17:32)

In these verses, Allāh (swt) defined the objective of protection of family and prosperity. He made marriage lawful and prohibits fornication and other ways of unlawful sexual intercourse in order to protect the family.

Regarding the protection of wealth (al-māl), Allāh (swt) says: “And do not give the weak-minded your property, which Allāh has made a means of sustenance for you” (4: 5) “Indeed, the wasteful are brothers of the devils, and ever has Satan been to his Lord ungrateful” (17:27).

In these verses, Allāh (swt) explained the importance of preservation of wealth. As wealth is one of the essentials, therefore, Allāh (swt) asks us to spend it in the right way and forbids us from wasting it.

2.2 *Hājiyyāt* (Needs):

Hājiyyāt are things which supplement *darūriyyāt* and leads to hardship if neglected. However, the negligence of needs does not cause to total disruption or collapse. Imam Al-Shātībī (d. 790 AH) says that “*hājiyyāt* are things which are needed to enhance comfort and avoid hardship. If they are not taken into consideration, people would face harm and difficulties” (Kayadibi, 2017). The category of *hājiyyāt* includes many permissible transactions in business, such as *bay al-salam*. Based on necessity conditions for a sale contract, *bay al-salam* should not be allowed as the subject matter is sold even before its existence. However, it is allowed in case of the sale of agricultural product based on a hadith of the Holy Prophet (PBUH) to remove hardships (Lahsasna, 2013).

2.3 *Tahsīniyyāt* (Embellishments):

Tahsīniyyāt or embellishments supplement previous two types. This category refers to interest which provides refinement and perfection in the customs and conduct of people and society at large (Dusuki et al. 2011). Al-Shātībī says that “it may be summarized as the part of social and moral etiquette in the field of *ibadat*, such as eliminating dirt, considering all types of cleanliness or in the field of customary matters, such as good conduct in eating, avoiding wastefulness in consumption; in the field of transactions, such as not selling something which is impure; and in the field of *jinayat* (criminal offence), such as the prohibition on the killing of women, children, and scholars whilst on jihad” (Kayadibi, 2017).

Maqāsid al-Sharī‘ah are regarded as comprehensive analyses of *Sharī‘ah* guidelines that protect the interest of a common person in all segments of life (Dusuki and Abozaid, 2007). Antonio and Sanrego (2012) assert that *Maqāsid al-Sharī‘ah* or the objectives of Islam are considered to be the most important aspect of religion as they work as a guiding light for the people practicing Islam. Ibn Qayyim al-Jawziyyah (d. 1356) stated that safeguarding interest of people in this world and hereafter is the basic purpose of *Sharī‘ah* (Laldin&Furqani, 2013).

Another term which is often used in *fiqh* literature is *Maslahah*. *Maslahah* is an Arabic word which is defined literally as to seek benefit and repel harm. According to *fuqaha* and Muslim jurists, *Maslaha* is explained as a device to promote social welfare and prevent evils from the society (Hurayra, 2015). *Maqāsid* and *Maslaha* are often used interchangeably by the traditional scholars.

There are several studies which discuss the topic of Maqasid al-Shariah and their role in Islamic banking and finance. However, according to the limited knowledge of the author, the existing literature does not explain precisely the reasons behind the negligence of *Maqāsid al-Sharī‘ah* in prevailing Islamic

finance. The objective of this study is to investigate the challenges of the existing Islamic finance industry while implementing the *Maqāsid al-Sharī'ah*. Besides, the study also presents a comprehensive framework of *Maqāsid al-Sharī'ah* and their potential contribution towards the equitable financial system.

2.4 *Maqāsid al-Sharī'ah* in Islamic Banking & Finance:

Islamic banking and finance is considered as an important part of Islamic economic system which is based on social orientation of *Maqāsid al-Sharī'ah*. An Islamic economic system not only applies legal requirements but also considers social needs of society and the objectives of *Sharī'ah* for the well being of human kind (Ahmed, 2011). Islamic financial institutions (IFI) are based on the divine rules of *Sharī'ah*. Therefore, there are two obvious reasons for the realization and catering of *Maqāsid al-Sharī'ah* in the business of an IFI. First, the policy makers and management consider these objectives when they set policies and guidelines for their business. Secondly, these objectives will be used for evaluating the business of an IFI whether it adheres to the underline principles and true spirit of Islamic law (Dusuki, et al. 2011).

Maqāsid al-Sharī'ah in Islamic finance are directly related to “*hifz al-māl*”, and preservation of wealth is one of main five objectives of *Sharī'ah* (*darūriyyāt*). In this section, we explain the objective of “*hifz al-māl*” and how it caters the objectives of contemporary Islamic financial system.

2.5 Preservation of Wealth (*al-māl*):

Preservation of wealth (*al-māl*) is one of the unanimously accepted objectives of *Sharī'ah*. There are many verses of the Holy Qur'ān and sayings of the prophet (PBUH) that shed light on the protection of wealth and its higher status in *Sharī'ah*. *Ibn' Āshūr* said:

“*Sharī'ah* aims to preserve the social order and promote the Ummah's prowess. If we deeply examine the Qur'anic verses and the Prophetic traditions dealing with property and wealth, we find ample evidence that property and wealth have an important status according to the *Sharī'ah*” (Ashur, 2006).

Allāh (swt) created it as a blessing and mean for human beings in order to survive in this world and succeed in the hereafter by using it according to *Sharī'ah* guidelines. It should be noted that in some verses of Qur'ān Allāh (swt) calls it “*fitna*” and a form of test. On one hand, it can be used as means for fulfilling needs such as food, clothe, shelter, and performing religious obligations such as *Zakāh*, *Sadaqa* and *Hajj* etc. which result in success of this world and hereafter. On the other hand, if someone uses it for evil and bad things and spends his wealth in a way that does not please Allāh (swt), then it is “*fitna*” and a real test for him. Therefore, Imam Al-Ghazālī said:

"أن المال مثل حية فيها سم وترباق ففوائده تربياقه وغوائله سمومه فمن عرف غوائله وفوائده أمكنه أن يحترز من شره ويستدر من خيريه."

Wealth is like a snake, it has poison and antidote. The benefits of wealth are antidote and bad evils of wealth are considered as poison. So, the one who knows its pros and cons, he can get benefits form it and avoid harm and bad evils of it (Al-Ghazali, 2007).

There are at least five dimensions through which the preservation of wealth can be achieved (Dusukiet al., 2011).

- 1) Protection of wealth through ownership.
- 2) Protection of wealth through acquisition and development.
- 3) Protection of wealth through damage.
- 4) Protection of wealth through its circulation.
- 5) Protection of wealth through its value protection.

These dimensions are considered as core values for an Islamic financial system. Therefore, these are discussed in the following part with necessary details.

2.6 Protection of Wealth through Ownership:

In Islam, Allāh is the ultimate owner of wealth. Whatever we possess in this world, belongs to Allāh (swt). The Qur'ān states: "To Him belongs what is in the heavens and what is on the earth and what is between them and what is under the soul".(20: 6)

Human being as vicegerent of Allāh (swt) are allowed to earn and get ownership of wealth according to His guidelines. The Qur'ān states: "Beautified for people is the love of that which they desire – of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allāh has with Him the best return".(3:14)

The *Sharī'ah's* point of view regarding the private ownership of individuals creates a balance in the economic system. It takes a balanced approach between capitalism and communism. On one extreme, communism completely denies the right of ownership for the individuals. On the other extreme, capitalism gives the absolute right to the individuals to accumulate wealth even it is on expense of public interest. *Sharī'ah* takes into account both private and public interests (Lahsasna, 2013). The right of individual ownership is accepted, but they are not allowed to damage or harm others property and it cannot be taken from someone without his or her consent and fair compensation.

2.7 Protection of Wealth through Acquisition and Development:

When *Sharī'ah* considers the protection of wealth as an objective, obviously, its acquisition and development through permissible ways is necessary in order to achieve this objective. There are many verses in the Holy Qur'ān and sayings of the prophet (PBUH) which ask human beings to put their efforts for earning halal or acquire wealth in a halal way (Najjar, 2006). Allāh (swt) says: "And when the prayer has been concluded, disperse within the land and seek from the bounty of Allāh, and remember Allāh often that you may succeed".(62: 10)

In this verse, Allāh (swt) commands us to seek the bounty and blessing of Allāh which is wealth through efforts. The prophet (PBUH) said: "To seek halal earning is an obligatory duty following other obligatory duties" (Al-Tibrīzī, 1961).

Sharī'ah also encourages development of wealth through acquisition. Therefore, business and trade is considered as one of the ways to preserve wealth. The unused wealth would be subject to depreciation as *Sharī'ah* imposed *Zakāh* on accumulated wealth. So, trade and business is encouraged as it develops wealth and provides opportunity for everyone to benefit from the process of creating wealth (Lahsasna, 2013). Hazrat Umar Farooq (may Allāh be pleased with him) said in one hadith: "Verily, whoever has charge over an orphan with wealth then let him invest it. He should not leave it to be eaten by *sadaqah*" (Ibn Anas, 1989). Because when you invest the wealth of an orphan, it will grow continuously. Otherwise, it will be consumed and eaten.

2.8 Protection of Wealth from Damage:

Sharī'ah considers wealth as blessing and bounty of Allāh (swt) and means for human survival and perform certain religious obligations. It does not allow someone to damage or destroy the wealth and property. It emphasizes to take sufficient measures to protect the wealth from any kind of damage. There are at least three dimensions given by *Sharī'ah* for the preservation of wealth. Protection of wealth from wasting it without any purpose, like putting fire on precious property. This is totally forbidden and haram in *Sharī'ah* whether the person owns this property or not. Allāh (swt) says: "And when he goes away, he strives through the land to cause corruption therein and destroy crops and animals. And Allāh does not like corruption"(2: 205). In another verse, Allāh (swt) says: "And do not give the weak-minded your property"(4:5). These verses and many sayings of the Holy prophet (PBUH) provide evidence that it is not allowed to damage or destroy the wealth or property. The second dimension is protection of wealth from consuming it in a way which harms human being. At times, people not only waste their money but spend in a way that harms them such as spending money for alcohol and other intoxicants. It is worse than the

first scenario. Therefore, it is also prohibited strictly. The third dimension is protection of wealth from squandering and excessive consuming. It is often observed that we use our money or wealth excessively. We spend more than our actual needs. This kind of attitude is condemned in Qur'an and Sunnah. Allāh (swt) says: "Eat and drink and not be excessive" (7:31). "And do not spend wastefully. Indeed, the wasteful are brothers of devils" (17: 26, 27). These are very clear guidelines given by *Sharī'ah* for protection of wealth form damage (Najjar, 2006).

2.9 Protection of Wealth through its Circulation:

Wealth circulation or distribution is very important aspect in *Sharī'ah* among the objectives of *Sharī'ah* regarding wealth. In *Sharī'ah*, wealth should be circulated in the society as extensively as possible rather than keeping it in few hands. *Sharī'ah* aims to narrow the gap between poor and rich by providing equal opportunities. Therefore, it is not allowed for individuals or group to monopolize primary sources of wealth such as Mines, forests, unowned barren lands, hunting and fishing etc.

Allāh (swt) says: "So, it should not become confined only to the rich people among you".(59: 7)

Another aspect of distribution of wealth in Islam is to enable every one to acquire the wealth rightfully. But this concept is very different from the approach of materialistic economic systems. In other systems, only those are entitled to get shares in wealth who participate and take direct part in the process of producing wealth. Furthermore, wealth belongs to Allāh (swt) from *Sharī'ah* point of view. Therefore, it should be acquired and used as per the guidelines of Allāh (swt). He made obligatory for those who reached the specified level of wealth to share their wealth with poor, helpless, needy and paupers etc. So, the right of acquiring wealth is not limited to those who have direct participation in wealth production. Allāh (swt) says: "In their wealth is a known right for those who ask for it and those who have need for it".(70: 24, 25) He says in another verse: "and pay what is rightfully due to him on the day of harvesting". (6:142.)

In these verses, Allāh (swt) used the word "*haq/* right" that makes clear that poor and needy are eligible to acquire wealth as a given right from Allāh who is the ultimate owner of universe and wealth. However, those who put their efforts in the process of wealth production, get abundance of rewards from Allāh for sharing this blessing with others. There are different channels for wealth distribution in Islam such as *Zakāh*, *Ushr*, *Kaffārah*, *waqf* and *sadaqah* etc. In Shoot, it can be said that there are two categorizations as per their right on wealth. Primary right has been given to those who have direct participation and

secondary right belongs to those who do not have direct contribution in the process of wealth production (Shāfi‘Tet al., 1979).

2.10 Protection of Wealth through its Value Protection:

Value protection is very important aspect in preservation of wealth. *Sharī‘ah* put certain restrictions in order to protect the value of wealth and make sure the pricing reflects the actual supply and demand as opposed to control pricing (Najjar, 2006). Allāh (swt) says: “do not deprive people of their due” (7: 85). The literal meaning of word “*bakhs*” is undervaluing, deceiving or reducing the supplies in order to control the price. As a matter of fact, Islam does not consider money as a commodity; it is only a medium of measurement or exchange. The rules and regulations regarding different types of money transactions are discussed in classical fiqh books under the topic of *bab al-sarf* (Dusukiet al., 2011).

The importance of preservation of wealth through value protection is explained in the following hadith: “The Prophet (PBUH) appointed a man as the governor of Khyber, who (later) presented him with an excellent type of dates (janib). The Prophet asked, are all the dates of Khyber like this?” He replied, “(No, but) we barter one *sā* of this (excellent type) for two *sā* of ours, or two *sā* of it for three of ours.” Allāh’s Apostle said, “Do not do that (as it is a kind of usury); rather, sell the mixed of dates (of inferior quality) for money, and then buy the excellent dates with that money” (Bukhari, 1987).

This hadith gives indications that the Prophet (PBUH) wanted to determine the actual value of dates according to market forces as its fair price is necessary in order to prevent manipulation and deception. In addition, the Prophet (PBUH) prohibited different types of sale which has negative impact on commodity price such as “*talaqqi al-rukban*” (buying goods from caravans from outside the city) and *najash* (Bidding without intention of buying) etc (Dusukiet al., 2011).

2.11 Contemporary Islamic finance in the light of *Maqāsid al-Sharī‘ah*:

In the previous section, the philosophical foundation of *Maqāsid al-Sharī‘ah* has been discussed. Now, we need to examine the current practices of Islamic banking and finance in the light of *Maqāsid al-Sharī‘ah*. What they have done so far towards achieving *Maqāsid al-Sharī‘ah*? One of main challenges for Islamic finance is to bring products which are in line with principles of Islamic law without compromising their profitability, competitiveness and viability in a long way (Abozaidet al., 2007).

On one hand, it cannot be denied that Islamic banks have succeeded in mobilizing funds in a *Sharī‘ah* compliant way. They rely on different contracts and modes

of finance which are legitimate from *Sharī'ah* point of view. On the other hand, it can be argued that Islamic banks focused on satisfying Just legal and necessary requirements. They did not pay attention on achieving the *Maqāsid al-Sharī'ah* and true spirit of Islamic finance. There are significant deficiencies in current applications and contracts of Islamic banks (Ahmad, 2011).

Therefore, it is important to explore the underlying reasons behind the current Islamic banking practices. Why Islamic banks are not willing to take initiatives which would help them to achieve the utmost *Maqāsid al-Sharī'ah* such as circulation of wealth, financial inclusion and transparent financial practices based on justice and fairness.

2.12 *Sharī'ah* Compliant: Validity Vs Permissibility:

As mentioned above, one of the biggest challenges for Islamic banks to develop products in line with *Sharī'ah* rules without compromising on their profitability and competitiveness. However, the question should be asked as to how to justify a product whether it is *Sharī'ah* compliant or not? How different schools of Islamic law determine the validity of a contract and product? What is more important: form or substance?

Muslim jurists and fiqh scholars have different approaches on the issue of determining the contract legality or validity. Some emphasize its legal form and structure while other stress more on substance and the intention of contracting parties. Those who stress more on substance, they support their view with the hadith of the Holy Prophet (PBUH): “matters are determined by intention” (Bukhari, 1987). This hadith mentions that matters should be determined according to their underlying intention of contracting parties or substance of contract rather than just considering their legal structure or form. However, Imam Shāfi'ī is of the view that it is not possible practically to judge the intention of contracting parties or validate the contract by identifying its underlying purpose. His view is based on *Sharī'ah* texts which suggest that judgment should be based on appearance and form (Dusuki, 2009).

Scholars differentiated between two types of *hukam* (ruling) in order to reconcile the texts in a practical manner. *Hukam* is divided in to two types: *Hukam Qadhaan* and *Hukam Diyanatun*. The former focuses on legal requirements and *Sharī'ah* conditions in respect to its form and appearance. But the latter is concerned with the compliance in substance and purpose with rules of *Sharī'ah*. In other words, if a contract fulfills the legal requirements of *Sharī'ah*, it would be termed as a valid contract (*Sahih Qadhaan*). And if the intention of contracting parties and substance also meet the *Sharī'ah*

requirements, then it could be termed as permissible contract (*Sahih Diyanatun*). It means every valid contract is not necessarily permissible (Ibid).

It should be noted that fuqaha and scholars only differ in terms of determining the validity of contract. However, if the substance of contract or intention of contracting parties is against the *Sharī'ah*, the contract would not be permissible even if it is valid in its appearance. Even Imam Shāfi'ī (d. 204 AH) explained some examples in which contract become impermissible because of its substance or intention such as selling grapes to winery or selling arms to the enemies of the Muslims (Abozaidet al., 2007).

It may be summarized from the above discussion that scholars agree on the importance of substance and only fulfilling the legal structure is not sufficient for achieving noble objectives of *Sharī'ah*. Therefore, it is essential for an Islamic financial product to be valid and permissible in order to be deemed as *Sharī'ah* compliant. However, if we look at current practices of Islamic banks, we realize that the compliance in terms of substance is neglected. A good example could be *bay al-inah* which is widely practiced in Malaysia. There are many products which are based on this controversial contract such as BBA (*Bay Bithaman Ajil*), Islamic overdraft facility, Islamic credit card (*bay al-inah*-model) and Islamic private debt securities etc.

2.13 Profit Maximization:

Islam does not prohibit to make profit as it is the bounty of Allāh. However, there are some guidelines that must be fulfilled in order it to be legitimate. First and foremost, it should be free from all prohibited elements such as *riba*, *gharar*, *maysir*, fraud, *ghaban fahish* (over pricing), hoarding etc. Secondly, it should follow market norms and trends. Thirdly, the ethical teachings of *Sharī'ah* such as fairness, justice, transparency etc. should be taken into consideration.

There is no doubt that the ultimate objective of financial institutions is profit maximization. Islamic banks also strive for market competitiveness and profitability. However, there should be some differences between Islamic banks and their counter parts as Islamic banks are based on the teachings of *Sharī'ah*. Therefore, it is responsibility of Islamic banks to consider the social outcomes and well-being of society equally along with their financial returns and profit.

It is observed in current practices of Islamic banks that they undermine the ethical norms of *Sharī'ah* in their pursuit of profit maximization. As per Kasri et al. (2014):

“Tempting marketing slogans such as ‘Can’t afford to go on holiday to Europe? We are glad to offer you a tawarruq facility no security needed’ or ‘Why wait for tomorrow when you can live the life of your dreams today with our tawarruq facility?’ have been employed by Islamic banks to promote their credit card business. In some instances, the banks have even promised to approve the facility within 60 minutes, failing which the customer receives a discount on the facility. According to Rafe Haneef, the tawarruq facility is a highly profitable business where customers often end up paying an effective profit rate based on APR of 12% to 28%! Hence, it is natural for banks to actively promote this type of financing that reaps such huge profit margins. Likewise, this has resulted in marketing strategies in which only the lower flat rates are highlighted to entice customers, as opposed to educating them about the eventual high APR of this facility.” (pg no: 14)

2.14 Debt vs Equity:

There is almost consensus among traditional scholars and Islamic economists that equity based contracts represent the true spirit of Islamic finance as it would provide the equal opportunity to everyone and hence fulfills the ultimate objectives. In a debt-based financial system, equal opportunities are not provided to both the parties. A rich can borrow money as much as he can; whereas, a poor does not have access to funds. That’s why, debt based financial system continues to increase the gap between rich and poor. It is obvious that this nature of debt based system is against the objectives of *Sharī’ah* (Yusof et al., 2009).

It is evident from the current practices of Islamic banks worldwide that the majority of their operations are based on debt-like instruments rather than equity. According to Malaysian Islamic finance report (2015) Islamic financial institutions in Malaysia generally concentrate on debt-like instruments such as *Murabaha* and *Ijarah*. The profit and loss sharing contract such as *Musharakah* and *Mudarabah* only represent 6% of total financing. Islamic banks avoid equity-based contracts because of several reasons. First, equity based contracts are subject to agency problems, because on one hand the entrepreneurs have disincentive to put their efforts and disclose the actual profit. On the other hand, banks do not want to do more efforts and commitment for supervision and monitoring of PLS based contracts. Second, risk sharing contracts are not suitable for short term financing due to their high degree of risk. Last, unfair tax treatment and legal framework in several countries are also considered as major obstacles in using equity based contracts (Farooq, 2007).

Islamic banks should gradually move to risk-sharing finance which is claimed to have potential of achieving the noble objectives of *Sharī’ah*. A renowned

Sharī'ah Scholar Sheikh Mufti Taqi Usmani conceded that Islamic banks are not doing visible efforts to make some progress towards this journey. More precisely, 'Uṣmānī (2002):

“This philosophy cannot be translated into reality unless the use of Musharakah is expanded by the Islamic banks. It is true that there are practical problems in using the Musharakah as a mode of financing, especially in the present atmosphere where the Islamic banks are working in isolation, and mostly without the support of their respective governments. The fact, however, remains that the Islamic banks should have progressed towards Musharakah in gradual phases and should have increased the size of Musharakah financing. Unfortunately, the Islamic banks have overlooked this basic requirement of Islamic banking and there are no visible efforts to progress towards this transaction even in a gradual manner, even on a selective basis (pg no: 165).”

3. Conclusion:

This paper attempts to explain the philosophical foundations of *Maqāsid al-Sharī'ah*, and particularly the dimensions of preservation of wealth (*hifz al-māl*) which are considered to be the core values of Islamic finance. As discussed, Islamic financial system is not only the game of profit maximization and financial returns. Indeed, it is a holistic system which is based on strong ethical foundations and divine values of *Sharī'ah*. These ethical values of *Sharī'ah* enable a financial system to contribute to the well-being of the society and create a just society. Even after four decades, Islamic bank did not achieve their socio-economic objectives as these values are continued to be undermined by Islamic banks. As the industry has moved to second phase and has reached up to \$ two trillion; therefore, it is a high time for them to evaluate their current strategies and realize the socio-economic objectives of *Sharī'ah*.

In order to develop a viable and promising Islamic financial system, we need to address prevalent deficiencies in current practices of Islamic financial institutions. The overreliance on form and neglecting the substance prevents the growth of Islamic finance industry. In addition, there is a dire need to strike a balance between financial returns and social returns. It is time for Islamic banks to move towards equity-based contracts and stop mimicking conventional instruments. They would not be able to prove themselves as a viable alternative for society unless the above mentioned core values and objectives of *Sharī'ah* are embedded in their business culture.

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