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APPLICATION OF *MAQASIDU 'SH-SHARIᶜAH* IN ISLAMIC FINANCE WITH PARTICULAR REFERENCE TO ITS IMPLEMENTATION IN NIGERIA

MUHAMMAD JUMAT DASUKI

ABSTRACT

Looking at a crucial position occupied by *Maqasid* al-*shari'ah* in *ijtihad* process a valid examination of the text and provide interpretation to achieve the Islamic ruling, one will not doubt its significance to Islamic jurisprudence. The primary objective of *Maqasid* al-*Sharicah* is the realization of benefit to the people connecting their affairs both in this world and the hereafter. It is generally held that the *Sharicah* in its entire ramification aims at securing benefit for people or protecting them against corruptions and evils. The aim of this paper is to elaborate literal and technical meaning, history, methodology, classification of *Maqasid* al-*Sharicah* and its identification in Qur'an and *Sunnah*. The paper also aims at explanation of the concept of *Maqasid al- Sharicah* in Islamic jurisprudence in order to appreciate its contribution towards comprehensive rational and realistic answers, to contemporary financial issues with particular reference to its implementation in Nigeria.

Keywords-: Bank, Islamic finance,*Maqasidal- Sharicahsh, Maslahah.*

INTRODUCTION

The primary objective of *Maqasid al- Sharicah* is the realization of benefits to people in their affairs both in this world and in the Hereafter. In order to achieve the highest objectives of *Sharicah* in protecting man's wealth and property, the Islamic Finance system is required to accomplish several key principles that have been underlined in the *Sharicah* commercial law and to promote justice in its application.

Muslims ought to conduct their business activities in accordance with the requirement of their religion and to be fair and just towards others. Business activities in consequence, must be broadly inspired and guided by the concept of goodness and trust and regulated within those boundaries by legal framework; committed to values such as justice and the ban on interest *riba* and prohibition of hoarding (*ihitikaar)* and other malpractices. Productions and distributions, which are regulated by the *Halal-Haram* code, must adhere to the notion of justice, honesty and public interest.

Therefore, this paper examines the concept of *Maqasid* al- *Sharicah*, its characteristics as identified in the Quran and *Sunnah* and its implications for contemporary Islamic finance, in order to increase awareness of the *Maqasid* approach in structuring and developing Islamic finance products. The paper also focuses on implementation of Islamic finance in Nigeria especially Islamic Banking sector, which received the attention of most promoters in Nigeria. It further examines the implementation, challenges and prospects of Islamic finance system in Nigeria.

DEFINITION OF *MAQASID AL- SHARICAH*

The word *Maqasid* is the plural form of *Maqsad* meaning object, goal, aim or intent.[1] The term *Maqasid al- Sharicah* is derived from two Arabic words, which denotes objectives of Islamic law. Muslim Scholars agree to the fact that Islamic *Sharicah* came to fulfill a general

universal goal. The fulfillment of the well-being of human beings in this life and the Hereafter and the ultimate goal of *Maqasid al- Shari'ah* therefore is: to serve the interests of all human beings and produce benefits and at same time protect them against harm and hardship.

Abu Hamid al-Ghazali defined *Maqasid al- Shari'ah* as follows:

> The very objective of the *Shari'ah* is to promote the well-being of the people, which lies in safeguarding of their Religion, their lives, their intellect, their posterity and their wealth. Whatever ensures the safeguarding of these five foundations serves public interests and is desirable, and whatever hurts these foundations is against the public interest and its removal became benefit.[2]

According to *Imam al-Shatibi*;

> The goal of prescribing the law is to free man from his whims, so that he may be the servant of Allah by choice, just as he is His slave (in maters about which he has) no choice.[3]

Understanding these, definitions promote cooperation and mutual support within the family and the society. This is manifested in the realization of the uppermost objectives of *Shari'ah*, which rest within the concept of compassion and guidance that seek to establish justice, eliminate prejudice and alleviate hardship as well as fulfillment of the worldly and after-life well-being of humans.

CHARACTERISTICS OF *MAQASID AL- SHARI'AH* AND ITS IDENTIFICATION IN QUR'AN AND *SUNNAH*

Muslim Scholars generally considered *Maslahah* to be the all- pervasive value and objective of *shari'ah* to the individual and community. The word *Maslahah* serves as a juristic device that has always been used in Islamic Legal theory to promote public benefit and facilitate the improvement at same time prevent social evil, corruption and injustice.[4] The Quranic expression of this can be deduced from the following verses: "We have not sent you but as a mercy to the world" (Q 21:107). This also can be seen in the traditions of the prophet Muhammad (S.A.W) who said: "I have not been sent but to be a blessing to them".[5] In the verse of the Quran, the important purpose of the prophet hood to humankind is emphasized. This very important objective of mercy (*Rahmah*) mentioned in above verse and *Hadith* is most clearly manifested in the realization of *maslahah* (benefit).

Islamic scholars have generally considered *Rahmah* to be the basic objective of the *Shari'ah* and have to all intents and purposes be used synonymously and interchangeably with *Maslahah*. They still maintained that the identification of the characteristic is based on an inductive reading *Istiqra* of the texts of the Quran and the *Sunnah*.

Ibnal-Qayyim clearly opines that the *Shari'ah* is based on wisdom and achieving people's welfare in this life and in the Hereafter. The *Shari'ah* is all about justice, mercy wisdom and good. Thus, any ruling that replaces justice with injustice, mercy with mercilessness, common

good with harm, or wisdom with nonsense, is a ruling that does not belong to the *Shari'ah* even if it is claimed to be so according to some interpretations.[6]

CLASSIFICATIONS OF BENEFIT OF *MAQASID AL-SHARI'AH*

According to the Muslim Scholars, the benefits (*masalih*) of *Maqasid* al-*Shari'ah* are juristic device that has always been used in Islamic legal theory to promote public benefit and prevent social evils or corruption. It can be categorized into three, namely Necessities, (*Daruriyyat*) Convenience (*Hajiyyat*) and Refinement (*Tahsinyyat*)

Necessities (*Daruriyyat*)

The first category is the necessities, which covers six elements which constitute the basic needs of human beings, they are 1.Religion 2. Life 3. Intellect . 4. Lineage5.Wealth 6.Dignity.[7]

Thus, six necessities are the basic needs of human existence, whoever neglects them, would be creating chaos, which will lead to total disruption of life. Therefore, they should be protected and safe guarded in order to sustain a meaningful life. For example, in order to establish and attain the necessity of spiritual well being, Allah orders muslims to believe in the six pillars of faith (*Iman)*, He encourages the *halal* marriage and the consumption of foods which are *halal* and *tayyib* in order to attain a descent life.[8] In every rules enjoined by Allah, there is a priority in protecting these six elements. This is in line with the prime goal of *Shari'ah*, which is the promotion of good, or benefit of man as Allah`s vicegerents on the earth.[10]

Conveniences (*Hajiyyat*)

The second category which is convenience (*Hajiyyat*) refers to something that people require to curtail constraints and difficulties in their lives, in other words, it is a benefit that seeks to remove hardship and severity: the main purpose is to eradicate hardship and difficulties. Although people can survive without such convenience, but their lives will be a bit difficult, and that will be contrary to what Allah the creator wishes for man.[9] Allah says: 'Allah intends every facility for you; He does not want to put you to difficulties'. (Q2:185). The prophet (SAW) was also reported to have said: "And Allah has impressed no difficulties on you in the religion".[10]

A great number of concessions have been granted, such as the shortening of the *Salat* (Prayer) by travelers (Q4:101), the breaking of the fast by the sick ones and travelers during Ramadan (Q2:184) and taking unlawful meat or food if a person is forced by necessity (Q5:3 and Q6:145) for the purpose of convenience. These concessions were classified as *hajiyyaat* because they are aimed at preventing hardship: but they are not essential: people could indeed live without them if they were obliged to.

Refinement (*Tahsiniyyat*)

The third category is refinement (*Tahsiniyyat*) , which refers to an act that will make human life easier and always in highest standard of moral conduct, so as to attain refinement and perfection in the life of the people at all levels. If people neglect it, it will not affect the whole life structure of making life difficult and hard but life becomes far from the moral virtues and good nature.[11]

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Shari'ah encourages cleanliness of the body and attire for the purpose of worship, *Ibadah*, it also encourages offering charity to those in need, it also recommends supererogatory prayers and voluntary fasting. In customary matters and interpersonal relation, it encourages *al-rifq* (gentleness), *Husnul-khulq* pleasant speech, conduct, and so forth. The purpose of all this is the attainment of refinement and excellence in all areas of human conduct.

CONCEPTS OF ISLAMIC FINANCIAL SYSTEM

Financial systems, Islamic finance feature banks, capital markets, fund managers, investment firms, and insurance companies. However, these entities are governed by both Islamic law and finance industry rules and regulations that apply to their conventional counterparts. An interest free system that prevents transaction in prohibited activities, such as gambling, *riba* (interest) and other transactions that involve uncertainties (gharar). The foundation and essential feature of Islamic finance is that it is interest-free. [12] Islam prohibits Muslims from taking or giving interest *riba* regardless of the purpose for which such loans are made and regardless of the rates at which the interest is charged. *Riba* is a predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period. The prohibition of *riba* was mentioned in four different verses of the *Qur'an*. The first verse emphasizes that interest deprives wealth of Allah's blessings (Q 30:39). The second verse condemns it, likening it with wrongful appropriation of property belonging to others (Q 2:276). The third verse enjoins Muslims to stay away from interest for the sake of their own welfare (Q 2:278 & Q 3:130). The fourth verse establishes a clear distinction between interest and trade, urging Muslims to take only the principal sum and to forgo even this sum if the borrower is unable to pay. It is also declared in the Qur'an that those who disregard the prohibition of interest are at war with Allah and His Prophet (Q 2:275). The following are some of the verses that condemned *riba* (interest) "But Allah has permitted Trade and forbidden *riba*" (2:275) "O you who believe! Fear Allah and give up what remains of your demand for *riba*, if you indeed are believers. If you do it not, take notice of a war from Allah and His Messenger; but if you turn back, you shall have your capital sums; deal not unjustly and you shall not be dealt with unjustly " (Q2:278-279).

The prohibition of interest is also clearly stated in several prophetic *ahaadeeth* (sayings of the prophet). The prophet condemned not only those who take interest but also those who give interest and those who record or witness the transaction, stressing that they are alike in guilt.

Islamic financial institutions must ensure that all their transactions are *Shari'ah* compliant not only in their forms and in legal technicalities but more importantly in their economic substance, which should be premised on the objectives out lined by the *Shari'ah*. [13]

In the first category of *Maqasid* al- *Shari'ah*, necessities ت ا there are six key components that require to be protected and one of them is the protection of property or wealth (*maal*). In relation to Islamic Financial system, it is important to ensure the implementation of the system in line with the ultimate objective of *Shari'ah* which is to protect the property or wealth and being well distributed among the *'Ummah*.

Therefore, it is necessary to examine the objective of and property preservation as well as the general objectives of Islamic finances, which are categorized into three as follows: [14]

1. Preservation of wealth through ownership and acquisition
2. Preservation of wealth from damage
3. Preservation of wealth through its circulation

Preservation of wealth through ownership and acquisition

Islam reinforces natural will in man by inducing the appropriate psychological and moral State of mind to influence participation in economic activity. There are many Quranic Verses that affirm this such as :(Q 67:15). The prophet was reported to have said that, no person has sustenance better than that earned by his own hand. [15]

Furthermore Islamic economics goes beyond struggling for daily bread only, but also ensures good relationship between man and his creator and between man and his fellow men, in other words, Islamic economics inculcates good behaviors and manners into human life in its practice and subject selfish interest to collective interest.

Preservation of wealth from damage

The next focus is to emphasis the need to preserve the wealth from being damaged and exposed to any form of harm according to the *Shari'ah* and this can be looked upon from two dimensions: protecting wealth from risk that can harm it, and protecting wealth from damage through its use for harmful purposes. [16]

The longest verse in the Quran 2.282 explains the rules guiding the validity and validation of contracts and the fulfillment of its stipulations to take proper care of protection of wealth from damage .The verse clearly directs Muslims to record debts and business dealings and to take witnesses. This prevents the possibility of a party denying what took place, which could lead to a loss of capital, if the dealing takes place during a journey, Allah allows collateral to be taken for the debt, if no record is taken. Allah suggests such actions so that debtors and businesspersons will become aware and responsible in fulfilling their respective obligations, therefore it is understood that trust of the other party is not sufficient, but steps must be taken to avoid fraudulence and unreasonable losses.

In another verse (Q2:188 and Q4:5), Allah directed human beings not to expose their wealth to danger of destruction. Such situation can also occur in business and investment matters, whereby a major risk, if not managed properly, can bring about catastrophic damage that may paralyze a nation's economy and disrupt the life of the public.

In addition, for the purpose of this the following methods of acquiring wealth were denounced in Islam like Gambling, theft, interest and usury, smuggling, usurpation of property and bribery.

Preservation of wealth through its circulation

Circulation can be defined as the transfer of wealth in the community among as many hands as possible without causing any harm to those who have acquired it lawfully. The[17]

Quran has clearly indicated the need to prevent wealth from remaining in the hands of few persons. (Q59:7)

The circulation of wealth is a very important element of wealth preservation in Islamic law, which guarantees a balanced and harmonious society and facilitates sustainable economic development.

Islam permits sole proprietorship of business, partnership, as well as joint ventures and provides the law guiding them not to contradict the principles of the Islamic economic system. There is unlimited scope for expansion in the size of commercial and industrial ventures. Islam recognizes various kinds of partnership between two or more persons in commercial and industrial ventures,[18] like *Wadiah*(safekeeping) *Hibah*(Gift) *Mudarabah*(profit sharing) *Murabahah*(cost plus).*Musharakah*(joint venture) *Ijarah* (leasing or renting) etc.

Furthermore, in order to achieve this objective the *Shari'ah* also establishes and prescribes financial measures that ensures a balanced society and reduces poverty by providing a continuous source of income for lower class as follows: Institution of *Zakat* (obligatory alms), monopoly, inheritance, bequest, charitable acts and interest-free loan

ISLAMIC FINANCE IN NIGERIA

Islamic finance refers to the financial system in which services, instruments and transactions are done in accordance with *Shari'ah* principles. The tendency is for people to see Islamic finance as simply being Islamic banking and the avoidance of interest. It goes beyond that. The bigger picture of Islamic finance includes such other areas as Islamic insurance (*Takaful*) Islamic capital market, Islamic asset management. It also includes or involves other important principles, which encourage entrepreneurship, risk-taking, transparency, preservation of property rights and ethical values such as justice, fair dealing and fair pricing, mutual cooperation and mutual respect among contracting parties. Indeed Islamic banking is only an aspect of Islamic finance that received much attention in Nigeria. [19]

The agitation for Islamic (interest-free) banking in Nigeria has taken quite a while. However, its manifestations started crowding from 1991 when government started taking responsive actions towards actualizing it. The Banks and Other Financial Institutions Act (Amended) of that year recognized banks that are established on the basis profit and loss sharing. Other manifestations include: In 1996 Habib Bank Plc opened a non-interest banking window but could not register significant success because of absence of framework for non-interest banking. In 2003, during Obasanjo's tenure Nigeria became a full member of the Islamic Development Bank. In 2004, approval in principle was granted to Jaiz Bank to operate as a full fledged Islamic bank subject to meeting mandatory capital requirement of N25 billion. [20] In January. 2009, the Central Bank under Charles Soludo joined the International Financial Services Board as full member. The IFSB is an international standard-setting organization for the Islamic financial services industry. [21]

In March 2009, the Banking Supervision Department of the CBN released the draft of the framework for the Regulation and Supervision of Non-Interest Banks in Nigeria for comments by Stakeholders. In January 2010, the CBN Governor, Sanusi Lamido Sanusi,

set up a non-interest banking unit in the CBN. In August 2010, the CBN released the new banking model, which included non-interest banks among the specialized banks and will operate either at National or Regional level with capital requirements of N10 billion and N6 billion respectively. In September 2010, the Nigeria Deposit Insurance Corporation (NDIC) released its exposure draft on Non-Interest (Islamic) Deposit Insurance Scheme for comments by stakeholders.[22] The CBN has already issued the regulatory framework for the operation of the banks in Nigeria. The framework covers such critical banking issues as licensing requirements, instruments of transacting business, establishment of non-interest window by conventional bank, prudential guidelines, risk management and Auditing, Accounting and other disclosure requirements.[23]

CHALLENGES FACING ISLAMIC FINANCE IN NIGERIA

There are a number of challenges that have to be addressed for the successful operation of Islamic Finance in Nigeria. Some of these challenges are:

1. Unfamiliarity with the Islamic Finance system: despite the growth of Islamic banks over the last 30 years, many people in the Muslim and non-Muslim world do not understand what Islamic Banking actually is about. The basic principle is clear, that is contrary to Islamic law to make money out of money and that wealth should accumulate from trade and ownership of real assets. However, there is no single definition of Islamic banking. A major issue here is that, it is the *Shari'ah* councils or board at individual Islamic bank that actually define what is not Islamic banking, and what is and what is not the acceptable way to do business, which in turn can complicate assessment of risk for both the bank and its customer.[24]

2. Lack of *Shari'ah* complaint Liquidity Management Instrument: Islamic banks invest their excess liquidity in interest-based instruments, which are liquidity management instruments that are in the market, which place them at a competitive advantage with respect to their conventional counterparts. In addition, the current inter-bank market and the instrument used by the Central Bank for Monetary Policy Operations are all interest- based with no equivalent government securities or other money market instruments that are *Shari'ah* compliant, all of which are essential to avoid a liquidity bottleneck for Islamic banks when they come to operation.[25]

3. Lack of Knowledge of Accounting and Auditing Standard Pertinent to Islamic Institutions, the balance sheet structure of Islamic banks is unique and even though the Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) on accounting and auditing standard for Islamic Banking products is available. There is the need to train conventional counterparts and auditors in the operation of the standard.[26]

Prospect for Islamic Banking in Nigeria

Islamic banking in Nigeria has a lot of prospects. Some factors that are likely to increase the prospect include:[27]

1. Awareness Campaign, that is ongoing by the CBN, NDIC, Media publications and other efforts by civil organizations.
2. Provision of deposit insurance cover by the NDIC

3. Possible patronage by the teaming Muslim population that had hither-to abstained from banking due to interest elements in the conventional banking.
4. Acceptance as potential alternative to the conventional banks.
5. Possible patronage by ethical Christians.
6. Global acceptance of the system.

It is hoped that with the backing of the government and the regulators and the market discipline that is expected from both the operators and the banking public the system will succeed for the overall good of Nigeria and Nigerians.

CONCLUSION

The 20th century has witnessed the resurgence of the Islamic Financial System, the system is socially significant as it is widely gaining acceptance and attention all over the world especially in Muslim dominated nations. The purpose of Islamic Financial system is to identify and establish an economic order that conforms to Islamic law devoid of exploitation and selfish interest. More than 70 countries have Islamic banks that offer interest free alternatives to conventional banking system. Several countries such as Pakistan and Iran have gone so far to outlaw every form of interest: And banks in these countries have adopted formally and extensively Islamic method of deposit and loan taking.

Hence, the Islamic finance is much more than just refraining from charging interest and conforming to the legal technicalities and requirements on offering Islamic financial products, but also a system, which aims at contributing to the fulfillment of the socio-economic objectives and creation of a just society. In the process of conducting business, Islamic financial institution, seek to bring about a lasting balance between earning and spending in order to achieve betterment for the whole community. This has been manifested as the higher objectives of Islamic financial system, which are deeply rooted in *Maqasid al-Shari'ah*.the details of which has been succinctly presented in the paper.

The Government has to regulate the distribution and production of wealth in many ways. It also has to stimulate agriculture, commerce and industry by partaking in a bold way in those activities without monopolizing them. There is however, a set order of priorities and the top place in it is assigned to the regulation of distribution and planning for the satisfaction of the basic needs of every individual member of the society. Therefore, we hereby recommend the followings:

a. Responsibility of the state is to see that the system of *Zakat* and all auxiliary measures designed to take the surplus from the rich and distribute among the poor function effectively and in the spirit of devotion to Allah.
b. Public property is to be managed by the Government in the best way that ensures maximum output and the same time preserves the free character by the endowment of nature. In addition, with regards to private commerce and industry, it is the duty of the Government to have an elaborate and effective system of *Hisbah* (market policing i. e on the spot checking of weight and measures, quality commodities offer for sale, proper gradation etc.

c. The Government has the responsibility to promote industrialization through creating an enabling environment and human capital development. The Government has the duty of guiding the free play of the natural economic forces, including unrestricted flow of goods and services to repel nationalism.

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