After centuries of practicing Western financial systems, Islamic societies around the world are welcoming Islamic finance — a relatively new field in the contemporary Muslim world. Based on the concept of riba, Islamic finance aims to provide Muslims insight from practicing riba and other prohibited elements in financial transactions. However, in spite of these efforts, it is still a gargantuan task coming up with a holistic financial system and products that truly comply to the principles of Syariah, whilst fulfilling the needs of Muslim consumers.

In countering these challenges, the wisdom and insights of Syariah scholars are vital in making the certain decision when establishing a syariah-compliant financial system and products. However, the need of the hour is to make sure that these practices do not compromise the values and principles of the Syariah framework.

This calls for scholars to have an in-depth understanding of Islamic law and its context in economic and financial practices as well as operations. The approaches taken to fully decipher the texts and contexts have to be appropriate in order to enable effective and accurate decision-making. There are three possible angles or approaches that Islamic scholars may take to fully understand the subject matter and in arriving at Syariah-compliant decisions in Islamic finance. These approaches may be deemed too rigid or inflexible, excessively flexible or even moderate to a certain extent.

Rigidity and inflexibility

The rigidity (al-tadlîk) and inflexibility (al-tasaddad) make syariah decision may occur when scholars tend to impose heavy conditions and requirements on financial practices in the modern world. At the same time, they also tend to reflect innovation on the grounds of refraining from classical practices or others. As a result, these reservations birth new challenges and offer no alternatives for Muslim consumers. This rigid and inflexible approach may stem from the following reasons:

Classical views

Often fanaticism driving Syariah decisions related to isbah or muamalah, can pose a major stumbling block in the Muslim world, because every scholar has a different perspective or view on circumstances or issues posed to them at varying times.

Syariah Yusuf al-Qaradawi, in his book al-Ihtith fi al-Islam, emphasized that "...some scholars when asked about a particular issue related to contemporary muamalah will always refer to a particular muhâzhâ literature. If there are no similar instances in these literatures, they will disallow the referred muamalah issues on the premise these issues do not exist in the classical literature although what originally matters in muamalah is impermissible unless it is stipulated in the classical literatures".

Undoubtedly, classical scholars have made tremendous efforts in developing different areas of Islamic muamalah, and contemporary scholars must refer to these works in order to further develop fiqh al-muamalah. Having said that, it is also vital for contemporary scholars to venture beyond the scope of the classical Ihtith in order to further develop and enhance Islamic financial products.

Rigid literal textual reading in the absence of reference to Syariah objectives

Firstly, it is important for a scholar to understand the objectives of syariah (moodâl or al-Shari‘ah) in making any decision, and not just relying on the literal meaning of the text. Understanding the moodâl is an essential prerequisite for undertaking the process of Ihtith and defining the operational framework of Islamic finance.

In this respect, Ibn Qayyim al-Jawziyy in Ihtith, al-mawaqif‘in (1991: Vol. 4, 154) emphasizes that it is not allowed for a mufti to quote the Quran or Sunnah literally and said this is permissible and forbidden unless he is aware that what he said is what is intended by the Lawgiver.

This does not mean that the literal meaning of the text should be ignored. Instead, it is a balancing element between the two extremes. However, an ultra-literal approach should not be taken, ignoring the moodâl in favour of rigid textual understanding or an ultra-liberal approach, which throws around terms like moodâl and muamalah in the absence of any clearly defined methodology, and ends up disregarding, overriding or twisting the meaning of Syariah texts.

The unnecessary propagation of the usage of sadh al-dhara’il in disputed issues

The unnecessary propagation of the sadh al-dhara’il concept in Islamic law may lead to unnecessary prohibition of something and hence, birth difficulties to society. Sadh al-dhara’il blocks the lawful means to an unlawful end. The approach is taken to prevent certain harmful results from happening if certain actions are undertaken. Sadh al-dhara’il is recognised as one of the legitimate sources of Islamic law. Nevertheless, unnecessarily propagating sadh al-dhara’il is not in the best interest of the Muslim society. For example, some would disallow the structuring of Islamic financial products by imitating conventional product structures. In making this decision, allowing or disallowing should be weighed from the angle of benefiting the Muslim society and helping Muslim consumers avoid harm.

Excessive flexibility

Excessive flexibility (tasâhho) in Islamic financial product development is obvious among some of the scholars who will agree and allow most, if not all, of what is brought to them. This is often influenced by pressure from certain quarters, where product approval is concerned or even negligence in the part of scholars in their investigations on given issues. Another factor that causes excessive flexibility in making Syariah decisions is the tendency to want to please others as well as a lack of knowledge needed in arriving at effective decisions.

No doubt Islamic propaganda tolerance and hopes to achieve simple and easy decisions but this does not justifies negligence. Ihtith in this regard should be understood as the utilisation of efforts in arriving at a certain decision where one sees no possibility to further investigate a particular issue. The output of Ihtith by a scholar, however, can be right or wrong, but this does not matter provided that one has exercised all the means in arriving at the right decision.

Some of the factors that may lead to excessive flexibility in syariah decision-making are as follows:

Excessive utilisation of the principles of maslahah and darâmah

Among the examples of such usage in mu’amalah is the view which allows in the indulgence of riba in order to bring about benefits in economic activities. Practicing riba is obviously against the Quranic injunction. Therefore, the utilisation of maslahah is disallowed in the situation where it is against the explicit text. Similarly, the utilisation of darâmah has its limitations as stipulated in the maxims which read, “Necessity should be estimated according to its required amount (al-duru’u wa ad-darâmah bi-qarâ’ih).”

Choosing the facility (tatabbû’ al-tukhâs) and advocating the easiest view of the mazhab (al-talîf bayn al-mazhab)

No doubt Islam allows its followers to utilise the facility given by Allah. On certain occasions, if there is darâmah (emergency need), syariah allows individuals to embark on impermissible approaches to solve their problems. However, there are limiting factors to this as stipulated in the legal maxims, “whatever is allowed because of an excuse would be canceled when the excuse disappears (mu’azzâ bi-‘âshir bâ’iz bi-‘amâla’).”
As for choosing the different views provided by the schools of Islamic thought, the recommendation is to find the strongest view in accordance with the criteria and principles delineated in Umdat al-Fiqh and not the weakest, as the strongest view is often deemed to be the best view to be followed.

Liwisweise, the usage of legal devices (al-tahawīl or al-ḥizāya) particularly to succumb to any prohibited matters is not allowed. Imam bin Qayyim in Fatawah al-Fatwa in al-Imam al-Mawardi (1991: vol. 4, pp. 170-170) in this regard mentioned that it is not allowed for Islamic scholars to engage in haram and makruh actions as legal devices. However, if an individual has good intentions in engaging the allowable legal devices, then it is allowed as done by the Prophet (pbuh) when he instructed Umm Habiba to exchange dates with dhirham and buy with the dhirham the intended dates so as to free himself from a ribāi transaction.

The moderate approach

Islam emphasizes on the importance of moderation (al-wasāya) in everything. In arriving at wise decisions and resolving issues, Syariah scholars ought to take the approach of moderation, which includes tackling issues related to Islamic finance. This means that Islamic scholars shall investigate issues and arrive at decisions without compromising the fundamentals of Syariah. As for interpretations, it may vary from one situation to another depending on the circumstances, practices and the needs of society as well as the industry as a whole.

Imam al-Shaikhi in al-Muwassat (1997: vol. 5, pp. 276) emphasizes the importance of moderation when he says, "A wise mujtahid is the one who provides moderate and practical solutions for the public and will not burden them with unnecessary burdens (al-shiddah) and will not also be inclined towards excessive flexibility up to the point of compromising syariah principles").

Islamic precepts indicate that its followers need to be moderate in all their undertakings. It also emphasizes on the importance of making decisions which will serve the needs of the people and at the same time are practical to be implemented. The concept of al-wasāya (choosing the simple and accurate decision) is very much emphasized in Islam. The Prophet (pbuh) himself was seen to always choose the easiest between two things as long as it is allowed in islam. The Prophet (pbuh) also urged his followers to facilitate the needs of life without going through difficulties, provided they are allowed in Islam. This is based on the verse: "Allah intends every facility for you. He does not want to put you in difficulties. (al-Saṣrār: 85).

The crux of the matter remains that the Islamic system was revealed to bring blessings in life and not rigidity. This is evident in the following verse: "And We have sent you (O Muhammad SAW) not but as a mercy for the Alimān (mankind, Jinns and all that exist)" (Al-An‘ām: 107).

In building and developing the Islamic financial industry, it is important for Syariah scholars to adhere to this perspective. The (itiḥād in Islamic finance needs to take into consideration all aspects, including Ilhām, maslahah, hikmah and masaqad al-Shari‘ah so that good results are achieved linking the uni̇versal usul (roots) with furū‘ (branches), and practical laws with its objectives. In other words, they are read all together in synergy with their rationale and purposes so that a balance exists between process and purpose, form and substance, literal interpretation and substantive understanding in formulating Syariah decisions.

Such a process would lead us to a balanced approach in deriving laws from the texts (masla and produce a moderate, balanced and just output (Qur'an, 5:80-89). In practice, this can be done by studying the suitable Syariah principles to be applied in any financial product whilst meeting market needs.

The ultimate goal is to come up with various financial products that are in compliance with Syariah, which are viable and practical in satisfying the needs of society. However, it must also be relevant, sustainable and marketable in competitive financial market, be it in the local or global markets, to invoke a robust and flourishing Islamic financial system.

Conclusion

Regardless of the challenges and the many ambiguities, Islamic finance has gained tremendous traction over the last four decades. Syariah scholars need to quickly and effectively resolve various issues within the Islamic finance industry in order for it to grow and penetrate deeper into the global market. If needed in Islamic finance is very much needed and the role of Syariah scholars is crucial in aligning Islamic finance with the precepts of Syariah.

Syariah scholars are the backbone of this rapidly flourishing industry and must be on the lookout for any change that takes place. As such, the role of Syariah scholars is to ensure that they are always available to address any problem that arises in the industry and that they do so in a way that is in line with the principles of Syariah.

Syariah scholars are expected to be able to come up with Syariah decisions that are solid (strong basis in syariah sources) viable (able to be applied in practical financial operations), and valuable (bringing real benefits/maslahah to the people). Syariah scholars must ensure that all decisions made are realistic and serve the interest of the ummah.

In this endeavor, a dynamic and continuous communication and interaction between Syariah scholars, industry players, regulators and the society (customers) is at large, with regards to Islamic finance issues and operations, is very important. The future of Islamic finance is entrenched in the efforts and commitment of these stakeholders to develop the industry based on strong fundamentals, principles and objectives of Syariah.

Dubai, an Islamic Economic Powerhouse Influencing Trade Far Beyond Its Shores

Dubai's ambition to be a capital of the global Islamic economy may be overwhelming and larger than what most can fathom. However, the Kingdom has the potential to play a very significant role in the context of Islamic finance more than ever due to its extended commercial tentacles. Firstly, it must be acknowledged that the Islamic economy is more than just Islamic finance and halal food; instead it is a multi-billion dollar industry that is set to have a monumental impact on global trade.