

PRODUCT DEVELOPMENT

HOLISTIC NATURE OF ISLAMIC PRODUCT DEVELOPMENT

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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 respite from practising *ribā* 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 necessary connections and establishing a synergistic financial system that is relevant to consumers, whilst offering Islamic bankers competitive edge in a volatile and dynamic market environment. That's not all, these products and services must also be *Syariah* compliant.

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-tadyik*) and inflexibility (*al-tashaddud*) in making *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 reject 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:

Fanatical views

Often fanaticism driving *Syariah* decisions related to *ibadah* or *mu'amalah*, 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.

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

Undoubtedly, classical scholars have made tremendous efforts in developing different areas of Islamic *mu'amalah*, and contemporary scholars must refer to these works in order to further develop *fiqh al-mu'amalah*. Having said that, it is also vital for contemporary scholars to venture beyond the scope of the classical *ijtihād* 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* (*maqāsid al-Shari'ah*) in making any decision, and not just relying on the literal meaning of the text. Understanding the *maqāsid* is an essential prerequisite for undertaking the process of *ijtihād* and defining the operational framework of Islamic finance.

In this respect, Ibn Qayyim in *I'lam, al-muwaqqi'in* (1991: Vol. 4, 134) emphasises that it is not allowed for a mufti to quote the Qur'an 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 two extremes. However, an ultra-literal approach should not be taken, ignoring the *maqāsid* in favour of rigid textual understanding or an ultra-liberal approach, which throws around terms like *maqāsid* and *maslahah* 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 *sadd al-dhara'i* in disputed issues

The unnecessary propagation of the *sadd al-dhara'i* concept in Islamic law may lead to unnecessary prohibition of something

and hence, birth difficulties to society. *Sadd al-dhara'i* blocks the lawful means to an unlawful end. The approach is taken to prevent certain harmful results from happening if certain actions are undertaken. *Sadd al-dhara'i* is recognised as one of the legitimate sources of Islamic law. Nevertheless, unnecessarily propagating *sadd al-dhara'i* 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 benefitting the Muslim society and helping Muslim consumers avoid harm.

Excessive flexibility

Excessive flexibility (*tasahhul*) 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 Islam propagates tolerance and hopes to achieve simple and easy decisions but this does not justify negligence. *Ijtihad* 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 *ijtihād* 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 *darurah*

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. Practising *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 *darurah* has its limitations as stipulated in the maxim which reads, "Necessity should be estimated according to its required amount (*al-daruru tuqaddaru bi-qadriha*)".

Choosing the facility (*tatabbu' al-rukhas*) and advocating the easiest view of the *mazahib* (*al-talfiq bayn al-mazahib*)

No doubt Islam allows its followers to utilise the facility given by Allah. On certain occasions, if there is *darurah* (emergency need), *syariah* allows individuals to embark on impermissible approaches to survive. However, there are limiting factors to this as stipulated in the legal maxim, "whatever is allowed because of an excuse would be cancelled when the excuse disappears (*ma jaza li-'udhr batala bi-zawalih*)".

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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 principle delineated in *usul al-fiqh* and not the easiest, as the strongest view is often deemed to be the best view to be followed.

Likewise, the usage of legal devices (*al-tahayul al-fiqhiyyah*) particularly to succumb to any prohibited matters is not allowed. Imam Ibn Qayyim in *I'lam al-Muwaqqi'in* (1991: vol. 4, 170-171) in this regard mentioned that it is not allowed for Islamic scholars to engage in *haram* and *makruh* actions as legal devices. However, if that individual has good intentions in engaging the allowable legal devices, then it is allowed as done by the Prophet s.a.w. when he instructed Bilal r.a. to exchange dates with dirham and buy with the dirham the intended dates so as to free himself from a *ribawi* transaction.

The moderate approach

Islam emphasizes on the importance of moderation (*al-wasatiyyah*) 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-Shatibi in *al-Muwafaqat* (1997: vol. 5, 276) emphasises the importance of moderation when he says, "A wise *mufti* 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-yusr*" (choosing the simple and accurate decision) is very much emphasized in Islam. The Prophet s.a.w. himself was seen to always choose the easiest between two things as long as it is allowed in Islam. The Prophet s.a.w. also urges 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-Baqarah*:185).

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 'Alamin (mankind, jinns and all that exists)" (*Al-Anbiya*: 107).

In building and developing the Islamic financial industry, it is important for *Syariah* scholars to adhere to this perspective. The *ijtihad* in Islamic finance needs to take into consideration all aspects, including 'illah, *maslahah*, *hikmah* and *maqasid al-Shari'ah* so that good results are achieved linking the universal *usul* (roots) with *furu'* (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 (*nusus*) and produce a moderate, balanced and just output (*Qur'an*, 55:8-9). 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. *Ijtihad* 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, without which the integrity of the whole industry will be at stake. Nevertheless, it is important to note that this is an *amanah* (responsibility) that must be discharged with utmost professionalism and integrity.

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 endeavour, a dynamic and continuous communication and interaction between *syariah* scholars, industry players, regulators and the society (customers) 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*.

COUNTRY FOCUS DUBAI

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.

