Islamic finance attempts to rearrange the modern financial practices to be in line with Shari’ah principles and requirements. The industry has grown considerably over the last three decades and has a global reach. We contend such trend is not only triggered by the fact that banking and finance operation is now satisfying the Islamic law requirement (Shari’ah compliant) but also because of the objectives and values it promotes. Islamic banking and finance brings Islamic visions of economy in the financial sphere in the effort of realizing human wellbeing (maslahah) and a just and fair order of society. The financial practices are arranged to meet those objectives.

Maqāṣid al-Sharī’ah constitutes the objectives of the Shari’ah as a system of life and comprises the basic philosophical foundations that give guidelines and justifications for IBF’s raison d’être in contemporary times. In Islam, finance is viewed as part of the Sharī’ah. Adherence to maqāṣid al-Sharī’ah as the grand objective of Islam is necessary for developing genuine and indisputable ‘Islamic’ finance. This dimension should be given attention and treat as indispensable element in developing solid foundations of Islamic banking and finance.

**Sharī’ah Definition**

Al-Qaradawi (2007: 16-22) in his *Dirasah fi fiqh maqāṣid al-Sharī’ah* observed, *Sharī’ah*, as a term and concept, has been understood differently. *First*, *Sharī’ah* is viewed as ‘Islamic laws’ or ‘Islamic rulings’ (*ahkām*) pertaining to ‘ibadah (that regulates God and Man relationship) or *mu’amalah* (that regulates man with man relationship). *Sharī’ah* in this perspective is limited to the domain of law that regulates practical aspects of human life; personal, society, state or international relationship. As *Sharī’ah* is reduced as Islamic law, it is then often equated (if not reduced) as *fiqh*. In this dimension, the *maqāṣid al-Sharī’ah* is put in the framework of the objective of ‘Islamic law’ or the objective of Islam in legislation.

*Second*, *Sharī’ah* is viewed in a wider concept as a system of life that encompasses all aspects of the creed and belief system (*aqīdah*), the legislation and rulings (*ahkām*) in Man – God relationship (‘ibadah) and man – man relationship (*mu’amalah*) as well as the system of ethics and moral (*akhlaq*). *Sharī’ah* in this perspective covers the entire
spectrum of Islamic life that include belief, moralities, virtues and principles of
guidance, economic, political, cultural and civilizational matters that concern not only
the Muslim community but the entire humanity. *Sharī‘ah* is the entire worldview of
Islam that consists of the body of Divine guidance, its structure and format and also
constructs.

The paper explores the ends and means from the second definition of *Sharī‘ah*. *Maqāṣid
al-Sharī‘ah* is the entire goals and objective of Islam as a system of life which
constitutes standards and criteria, values and guidance based on divine revelation
(*wahy*) to be applied in practical life in solving the problems and guiding mankind life
direction. In a more specific manner, *maqāṣid al-Sharī‘ah* is the aims or underlying
purposes of *Sharī‘ah* upon which it was established. The discussion of *maqāṣid al-
Sharī‘ah* in Islamic finance, therefore, should be seen in this broader perspective and
context. It should not be confined to Islamic objective in law and legislation related to
financial activities. Instead it encompasses the purpose of Islam in financial activities.

The approach would not only observe the ‘correct mechanisms’ in technical-procedural
sense but most importantly able to capture the essential spirit and noble goals as well as
right direction in certain action and hence technical errors due to rigid literal reading of
the text could be avoided.

The Ends (*Maqāṣid*)

As *Sharī‘ah* is designed on the basis of human interest (*masalih al-‘ibad*) and for the
purpose of human wellbeing (*maṣlahah*), the *maqāṣid sharī‘ah*, therefore constitutes the
various dimensions of human needs and their fulfillment will create a balanced
satisfaction in human life as individual and society and help realizing human well-
being. Therefore, *maqāṣid* would embrace the micro and macro dimensions of
individual life and society. In particular to Islamic finance, the *maqāṣid Sharī‘ah* refer
to the overall goals and meaning that the *Sharī‘ah* aims to achieve from its principles
and rulings related to the financial activities and transactions.

For Islamic economics, banking and finance, the objectives, among others, would
include the circulation of wealth in the society, advocating fair and transparent financial
practices and promoting socio-economic justice.

A. Wealth Circulation

Wealth circulation is involving all processes from wealth creation, consumption and
distribution. This objective is derived from the Qur’an that says “….so that wealth is
not circulated among the rich in the society only” (Qur’an, 59: 7). Islam intends to
ensure that the resources have to be circulated in the economy to activate human
resources in the pursuit of well-being and intergenerational continuity.

Commercial and financial activities are viewed positively as mechanism to circulate the
wealth among all the sections of society so that it is not concentrated at the hand of the
few and would go into all sectors of economy that would benefit human wellbeing.
Islam encourages wealth to be employed in productive activities. The funds should not be wasted, left idle (Qur’an, 9: 34) or managed unprofessionally (Qur’an, 4: 5).

Islamic economic system as a general framework would ensure fair and equitable mobilization and distribution of resources. Islamic finance in particular is developed in line with Islam’s objective of wealth circulation by observing Islamic rules that puts regulations of right and wrong in the spirit of protecting wealth (hifz al-mal). Islamic finance institutions, including Islamic banks, takaful companies, mutual funds and other Islamic finance companies, play a role in resources circulation in society and increasing human wellbeing.

B. Fair and Transparent Financial Practices

Permissibility (ibahah) is the overarching principle governing commercial and financial transactions. This principle is aimed to facilitate the maṣlahah realization or removing the hardship or harms in financial transactions. Freedom of contract is therefore not only recognized as part of the system but is also guaranteed and treated as necessary ingredient for a valid contract. Nevertheless, this freedom is to be done within the atmosphere of fairness, equity, justice and high morality. Any contract stipulated and agreed by both parties should be respected and enforced (Qur’an, 5: 1).

Transparency means that all financial transactions must be conducted in a manner that all the parties are clear about all important facts of the transactions by avoiding all causes of disputes, clashes or damages to any party in all dimensions of contract. The Qur’an has stressed that all agreements and contracts should be as transparent and clear as possible (Qur’an, 2: 282, 17:35, 11:84, 26:181-182, 55:9, 83: 1-3).

Fairness means equity between transacting parties, honesty and truthfulness as well as efficiency in transactions. Fraud, deception, manipulation, of any kind is therefore condemned. Islam insists that the contract is only legitimate if there is mutual consent of the parties. A transaction that takes place by pressure or fraud or mis-statement by any party is not valid. Likewise, Islam disapproves all commercial practices which involve explicit or implicit harm and injustice to the contracting parties or to the public at large and which restrict the freedom of trade, or stand in violation of the Qur'anic injunctions and the approved business conduct (Balala, 2011: 6).

C. Justice in Macro and Micro dimension

If maqāṣid of wealth circulation is related to the macro goal of Sharī’ah as we are assessing the overall impact and contribution of Islamic finance to macro-economy and maqāṣid of fair and transparent financial practices is related to the micro goal of Shari‘ah in transactional instruments and mechanisms, maqāṣid on justice embraces both micro and macro dimensions.

At macro level, the goal is to realize social justice. Islamic financial system attempts to realize economic justice through wealth circulation, efficiency in resources utilization, fulfilling society’s basic needs, elimination of poverty and improving human wellbeing.
The main purpose of resource circulation (distribution) is to achieve justice, maximum efficiency and improvement of human wellbeing in general.

In practice, the Islamic system of economics is structured to coordinate and harmonize the various economic interests of individuals or groups within the society to achieve those ideals. In this framework, free market with a fair process and just mechanism that would ensure fair circulation of resources in society as well as maintain a stable and dynamic economic life is guaranteed. The State also plays a role in a dynamic setting of an Islamic economic system to ensure both individual freedom is respected while social objectives are achieved.

Justice also embraces in individual dealings. Economic transactions demands equal rights and opportunities and are not allowed to be enforced without mutual consent of two parties (taradi). Likewise, unfair dealings or unjustified actions that would lead to economic injustice or exploitation such as bribery (rishwah), fraud or deception (ghish), cheating (tadlis), uncertainty and lack of clarity (gharar) or unjustified increase in wealth (riba) are condemned. *Riba* is very much related with injustice. It is prohibited not simply because a matter of interest on loans or banking interest. Instead, it is a comprehensive concept which encompasses all factors of production and distribution, such as capital, land and labor whereby one party attempt to gain benefit at the expense of other party without having an equal counter value (’iwad) (AbuSulayman, 1998: 99). *Riba* is forbidden on the ground that it fosters the unjust acquisition of wealth at the expense of social justice, the equitable distribution of wealth and the wellbeing of the community (Choudhury, 2012). The abolition of *riba* also implies that Islam promotes cooperative and participatory financing for resource mobilization and circulation in society and later on could attain general productivity and wellbeing.

The Means (*Wasa’il*)

As *Sharī‘ah* runs through the vein of human interest, and the objective of *Sharī‘ah* is none other than human wellbeing, *Sharī‘ah* provides the necessary ways and means (*wasa’il*) to establish and preserve it in human context and reality. The *wasa’il* can be classified, in accordance with the nature of *maqāṣid*, into those that will institute the *maṣlahah* (in this case smooth the circulation of wealth, promote fair and transparent financial dealings and realize social justice) and prevent the *mafsadah* (i.e., those that would prevent wealth from smooth circulation, lead to unfair financial dealings or against social justice).

**A. Facilitating Financial Contracts**

To institute a smooth circulation of wealth in society, *Sharī‘ah* facilitates various types of transactions and strongly encourages Muslims to participate and undertake necessary types of financial activities. The transactions validated in the Qur’an and Sunnah are not exhaustive and new transactions can be introduced as long as they are not contradictory to the principles of *Sharī‘ah*.

The freedom of contracts is guaranteed so long it does not annihilate fairness and good measure as propagated by the *maqāṣid al-Sharī‘ah*. The contract should be respected
and fulfilled not only in order to protect the interest of parties involving in certain contract, but also to serve the very purpose of contract that put the parties into it and hence they are willingly to bind themselves into it (Qur’an, 5: 1).

In addition to that, in the spirit of protecting the interest of parties involving in a contract, to avoid hardship in performing the contract or as a matter of justice and equity, in cases of difficulty, cessation and cancellation of contract is allowed. Dissolution (inhilal) of contract after its formation as valid (sahih) and enforceable (nafidh) before the completion of its execution (or during its execution) is possible through (1) mutual agreement (iqalah), (2) revocation and termination (faskh), (3) impossibility (istihalah) of contractual performance, or (4) automatic dissolution by death, destruction of subject matter, expiry period, achievement of purpose, etc (Islam, 1998: 339). This is not to say the invalidation of contract due to certain factors emerge for example in the pillars (arkan) or conditions (shurut) of a contract. This is because Shari’ah firmly stands in the spirit of cooperation and fair treatment among the contractual parties. Therefore, it does not allow a loophole to exist so that unfair or unjust treatment could happen.

B. Establishing Values and Standards

In financial transactions and activities, just, transparency and fair dealings are considered as one of the main objectives of Shari’ah. Shari’ah aims at creating an equal and fair transactional atmosphere and at protecting the parties against exploitation or imbalance of their reciprocal rights and obligations as a result of lack of fair and objective criteria according to which their rights and obligations can be determined with an acceptable degree of exactitude and certainty.

The application of Shari’ah in financial sphere should therefore not result in injury, harm or difficulties to either individuals or the public at large as Shari’ah intends to create a positive atmosphere in commercial transactions whereby exchanges are done on the basis of brotherhood, cooperation and mutual benefit of both parties. Therefore, Shari’ah institutes some values, measures and standards to be preserved in the transactions and indicates some negative elements to be avoided as they would annihilate the objective. Those values and standards would relate to both the macro maqāṣid dimension of having a smooth wealth circulation in society and micro maqāṣid aspect of having fair and transparent financial dealings.

Those values do not only act as guidelines in economic activities, but must be translated into practical rulings that would avoid the fasād or corrupt acts such as unfair dealing, arrogance, abusiveness, stinginess, greed, exclusivism, individualism and exploitation of others (Qur’an, 2:195, 7: 31, 11:85, 28: 77 107: 1-3). At the same time, truth and honesty (Qur’an, 5: 119, 39: 33, 16: 90, 4: 58), responsibility (Qur’an, 52:21), trust (Qur’an, 4:58, 40:32), generosity (Qur’an, 56:77, 44:17,26), justice (Qur’an, 2: 278-9), friendship and cooperation (Qur’an, 49: 13, 49: 10, 13) in the spirit of protecting customers, stakeholders and the public are highly encouraged and must be preserved in financial dealings as those values would ensure smooth allocation of resources and fair dealings in transaction.
C. Instituting the Social Responsibility

In the spirit of social justice, Islam brings about a balance between individual right and their duties and responsibilities towards others. The concept of *fard kifayah* (social obligation) puts the responsibility to those who are capable or better-off to assist those who are not capable or worse-off. As it is an obligation (*fard*), social responsibility is therefore not an option. This framework of mutual cooperation and assistance should become social context of an Islamic economy whereby society will grow without disparity, uncaring or exploitation in various forms and deformities (Fazlurrahman, 1969: 1).

The emergence of Islamic banking and finance should be viewed in this context. IBF is part of the Islamic economics that is going to be directed to contribute richly to the achievement of the major socio-economic goals of Islam such as socio-economic justice and equitable distribution of income and wealth (Chapra: 2008). Corporate social responsibility of IBF is more expected in society as the institutions carry ‘Islamic’ name which implies the institutions would promote Islamic ideals/objectives in human life (Dusuki and Abdullah: 2007).

Conclusion

IBF institutions should observe *maqāṣid* in their corporate objectives and policies and also use them to verify compliance to true Islamic principles for IBF’s progress will be monitored by how well it realizes the *maqāṣid* in producing a good economy marked by the spirit of brotherhood (*ukhuwwah*) and cooperation (*ta’awun*), social equality and social justice (‘*adālah*), just and fair allocation of resources, elimination of poverty, protection of the environment and helping society in achieving wellbeing (*maslahah*).

*Maqāṣid* is a comprehensive concept that explicates the very ideals/objectives of *Sharī’ah* related to human life. As *Sharī’ah* is an all-embracing concept that is concerned with human life and human wellbeing, *maqāṣid* should not be reduced in merely identifying its objectives in legal/law dimension. The *maqāṣid* discussion in financial sphere should always refer to the general objective of *Sharī’ah* that give grand framework and direction of how financial activities should be arranged in Islamic economic system and should not be limited in fulfilling the minimum legal requirement (called as *Sharī’ah* compliant). In the framework of *maqāṣid*, Islamic finance and banking activities lead to the actualizations of *Sharī’ah* objectives in realizing the *maṣlahah* (benefits) and preventing or repelling the *mafsadah* (harms). This endeavor would embrace the micro and macro dimensions of individuals and society in a financial system inspired by Islamic values.

References and Further Reading


