

The End of Ideology and the Rise of Islam

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For thousands of years, from the earliest dim beginnings of human consciousness, man has been longing to comprehend Reality and adjust himself to its demands.

“From the primitive kneeling before some supposedly sacred tree or holy stone, thrilled with the thought that somewhere at the back of perceived phenomena has, and vibrates a force, a power beyond his knowing, into contact with which he must somehow come down to the great faiths of today.”¹

Man has always felt that there is a Great Reality, behind and beyond and within shifting panorama of nature and history.

One may not like to stand inside the cloistered walls of the traditional forms of religion, yet faith is a dire necessity. Kant says of metaphysics, that:

“It is an instinct which we cannot destroy, however much its successful achievement may be denied.”²

It is also true of religion. This quest for Reality cannot be banished from human nature. To live without this urge is impossible. If nature has the horror of a vacuum, the human soul has the fear of emptiness. Blake says:

“Man must have and will have some religion; if he has not the religion of Jesus, he will have the religion of Satan and will erect the synagogue of Satan, calling the prince of this world God and destroying

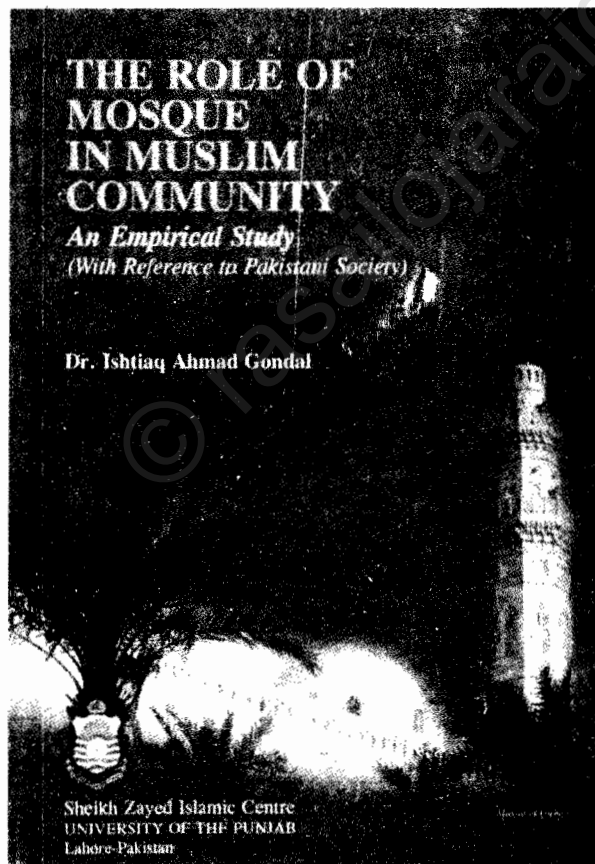
all who do not worship Satan under the name of God.”³

Modern Man in Search of Soul:

Eric Fromm says that the countries in Europe which are among the most democratic, peaceful and prosperous ones, and the United States, the most prosperous country in the world, show the most severe symptoms of mental disturbance. The aim of the whole socio-economic development of the Western world is that of the materially comfortable life, relatively equal distribution of wealth, stable democracy and peace, and the very countries which have come closest to this aim show the most severe signs of mental unbalance.

Fromm concludes that could it be that the middle-class life of prosperity, while satisfying our material needs leaves us with a feeling of intense boredom, and that suicide and alcoholism are pathological ways of

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Islamic Scholars have consensus that Sharikah and Mudarabah are the real modes of Islamic finance. Murabaha, Ijarah, Salam and Istisna were adopted modes of finance temporarily for interim periods. When Sharikah and Mudarabah are established, others will be withdrawn. But it can not be made possible up till now. Ijarah and Murabaha are the major modes of Islamic finance which are being used. Main cause of not using Sharikha and Mudarabah as mode of finance in our financial institutions is that the partner and Mudariba in Sharikah and Mudarabah are “Ameen” not Dhamin of investment (Capital) according to the Shariah. Most of the investors are not investing their capital in Sharikah and Mudarabah based instruments and products in financial institutions because they do not trust others about their investments. They want to ensure the security of their capital.

Without implementing teachings and injunctions of Islam in our individual and collective life, we cannot have the true results from any system which is presented in Shariah to solve our problems. Untill we do not adopt Sharikah and Mudarabah as major modes of finance, we shall not be able to change prevailing economic system into Riba free Islamic economic system in its true senses.

It has further three sub divisions:

1. Sharikat-ul-amaal
2. Sharikat-ul-amwaal
3. Sharikat-ul-wajooH. (9)

We can explain some rules of Musharakah on over all basis as under.

- All the valid conditions of sale should be present in the Musharkah for its validity.
- Investment comes from all parties
- Percentage of profit should be determined when contract is made
- Lumpsum amount is not allowed in Musharakah
- Ratio of profit distribution is a contradictory point in Musharakah.
- According to Imam Malik and Shafi profit is shared according to the percentage of investment. According to Imam Ahmad profit sharing ration can be different from investment. Imam Abu Hanifah make a coordination between the both point of views. According to him if the partner will remain sleeping through out the contract the profit should not exceed from its investment.
- On the point of loss all the Islamic jurists are given one view that loss will be distributed according to the share of investment.
- Any partner can exercise its right for the termination of contract.
- If the partner dies or insane then the contract is automatically terminated.

Mudaraba:

Mudaraba is a special kind of partnership, where one partner gives money to another for investing it in a commercial interprise. The investment comes from the first partner who is called Rabul Mall and the management is exclusively done by Mudarib.

- I) Rabul Mall may specify a specific business and Mudarib have to do that business.
- II) Rabul Mall can contract with more than one person
- III) Islam has not specify the percentage of profit it depends upon the parties mutual consent, but it is prohibited strictly to allocate lump sum amount to any party.
- IV) Any party can terminate the contract only condition is a notice to other party. (10)

- 2: Salam is available for those supplies for which quality and quantity can be differentiated separately
- 3: It is compulsory to mention in the contract regarding accurate date and place of delivery.
- 4: Contract is not applicable on particular field or commodity such as particular land of rice or fruit because particular field can be destroyed.
- 5: While contracting, the quantity of commodity must be clearly specified leaving no ambiguity in the mind of any party.

So salam is beneficial for both parties, seller enjoys advance payment while buyer take the benefit of price lower than the spot rate.

Istisna'a:

Istisna is a mode of finance it is defined as:

“Kind of sale where a commodity is transacted before it comes into existence”.(7)

We can say in current era of global business a party orders to manufacture a product and for this some time he/she have to pay advance payment.

The important point in the case of Istisna that the manufacturer uses its own material for production otherwise the contract will be of Ijara rather than Istisna.

Also it is important to fix the price with the approval of concerned people and specification of product should also be settled.

There are some differences between Istisna and Salam:

- 1) In Istisna manufacturing of commodity is necessary
- 2) In salam full price is paid in advance but in Istisna there is no such condition
- 3) Delivery time is important time of Salam and not of Istisna.(8)

Musharakah:

The term of Musharakah is used in Islamic mode of financing it comes from **word Sharikah**; that means **sharing**. It can be separated into two kinds.

1) Sharikat ul Milk:

It refers to combined ownership of the property by two or more parties; it has two ways.

1. At the option of parties, such as jointly purchase of equipment.
2. It comes automatically for example heir's ownership of property after the death of concerned person.

2) Sharikat ul Aqd:

It means partnership by mutual contract

Ijara has two different types:

- 1: If a person provide services and wage is given as compensation, in this sense employee is called Mustajir and the employee is called Ajir.
- 2: Other type is regarding the usufruct of assets and properties. So Ijara means "to transfer the usufruct of a particular property to another person in exchange for rent claimed from him". (3)

For this concept the term Leasing is used in English, lessor is called Mujir and the lessee is called Mustajir and the rent payable is called Ujrah.

Now we briefly explain some basic Islamic rules for second type of Ijara

- 1: For valid lease contract property must be in the possession of lessor.
- 2: The liabilities rising from owner ship of property shall be born by lessor.
- 3: Lease asset is only used for purpose mentioned in lease contract.
- 4: Damage to the leased asset by misuse or negligence must be born by lessee.
- 5: Properties of two or more persons can be leased out and the leasing amount is dispersed according to the respective share in the property.
- 6: Rent amount must be fixed, but it is permitted that for different phase, different rent is fixed.
- 7: If the rent is not paid on agreed time the lessee can be accountable to pay price calculated in approved rate. (4)

So these concepts are used for financing of this type.

Salam:

As it is known very well, according to the jurisprudence of Islam it is compulsory for the validity of contract that the physical ownership is necessary for the seller. But it has two exceptions based on some defined conditions we will discuss both separately.

Salam:

"A sale where by the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot".(5)

Holy prophet (PBUH) allowed Salam on following circumstances: (6)

- 1: Full payment should be made from the end of buyer because salam is allowed with keeping in mind the unavailability of finance of the seller like farmers.

1. Murabaha

It is the most frequently exercised mode of Islamic financing which is practically implemented in financial institutions and in other financial transactions.

It is defined as:

“Murabaha is particular kind of sale where the seller expressly mentions the cost of the sold commodity he has incurred, and sells it to another person by adding some profit” (1)

For financial transactions by using Murabaha, it is very important that all conditions of sale defined by the Islamic jurists should be fulfilled.

For example:

- I) Before sale, the commodity of sale has to be in the possession of vendor.
- II) If the sale is attributed to a future date or event, it will be regarded as void and if parties want to effect sale, a fresh sale contract is required.
- III) Price should be certain for the validity of the sale
- IV) The delivery of the commodities must be certain etc.

Now we can explain financial transactions by using Murabaha in following points

- 1: On the time of sale the cost of goods sold is expressed in mudaraba and sells the commodity by adding profit with the mutual consent of both parties
- 2: Cost include all expenses like carrying charges and other taxes etc, but the administrative expenses like salaries of staff and rent are not included.
- 3: The validity of Murabaha depends on the fact that parties should know about the exact cost otherwise Musawama is used.
- 4: Most preffered way is that the financier himself purchase commodity but due to non applicability of the concept, they can also higher agent for purchasing commodity on their behalf.
- 5: Commodity should be purchased from the third party
- 6: Payment can be made on deffered basis with the mutual consent of both parties.

So, we can conclude by saying that this Islamic instrument is not a loan that bears interest but it practiced as a sale of commodity by adding some agreed profit whose payment can be made in some future date.(2)

Ijara:

“It is also a term used in Islamic Fiqh, which means to give some thing on rent”

Islamic Modes of Financing

Muhammad Ijaz*

The fundamental objective of Islamic finance is to fulfill the teachings of the Holy Quran, as opposed to capitalist approach to get maximum return from financial assets.

The operations of markets based on Riba or unfair contracts, the risk of speculation (Gharar) are inapplicable as the basic principle of the Shariah.

The Holy Quran does not contain any condemnation regarding the investments which are morally acceptable and have the benefits of fair and legitimate profit.

Islamic law reflects the general spirit of Allah's commands that control all the aspects of Muslim life. Islamic finance is directly related to spiritual values and social justice. In Islam there is no separation between religion and the state of business.

Receiving and paying interest is prohibited for Muslims as per the injunctions of Shariah law which prevents vigilant Muslims from involving in prohibited economic transactions.

Some conditions governing Islamic investment can be described as follows:

- Money does not make money in itself, but it is effective only if it involves in a task, activity, or job.
- All the investment must be made on the basis of profit and loss sharing; investment is lawful only in those business activities which are not prohibited.
- There will be no gharar in business contracts, it means that uncertainty, and ignorance and the conditions which lead to disputes are strictly prohibited.

Islamic Modes of Financing:

In pursuant to the judgment of the supreme court on Riba dated December 23, 1999 the commission for Transformation of Financial System was set up in the State Bank of Pakistan. The commission gave approval for the Islamic modes of financing on the basis of Musharaka, Mudaraba, Murabaha, Musawama, Leasing, Salam and Istisna. The Shariah board also gave approval of these financial modes in order to circulate the business of Banks conducting Islamic banking in Pakistan. Details of these essentials are given below.

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1946 and these were based upon changes in the law of England.⁽²¹⁾ However, the new Companies Act 1935 was introduced on the basis of previous statutory developments. The Directors' Liability Act of 1890 created the directors' liability to compensate all shareholders for damages suffered due to their untrue statements.²² The Insolvency Acts (1986, 1994 and 2000), the Company Directors Disqualification Act 1986, and the Enterprise Act 2002 also enacted to govern the insolvency, winding up and directors disqualification proceedings. Now the Companies Act 2006 is enacted that repealed the Companies Act 1985. New Companies Act 2006 is comprehensive in which already legal principle of common law through court decisions also incorporated and codified to bring clarity for business and corporate communities.

Conclusion:

The companies and corporate activities are as old as societies. The corporate and trade activities have direct concern on state economy. That is why; these activities were regulated under the supervision of state authorities rather than individuals themselves. The corporate norms of earlier societies and empires prevailed in the later societies with some modifications that were required with the passage of time. The Roman legal culture is influential in the development of western corporate system but the principles of Islamic law of contract are regarded as comprehensive business arrangements among the business communities and they laid down the basic principle of Islamic and western corporate law through partnership business in which companies are regarded as modern form of partnership or joint-stock companies.

certain privileges by Royal Charter. During 17th century most of these companies started joint stock trade on their members' behalf and these companies also established fixed capital represented by shares which was freely saleable and transferable. At that time, company was incorporated only by Royal Charter or act of Parliament. The first two decades of 18th century witnessed the flood of fraudulent schemes of company flotation and the best example is South Sea Company and an associated company, the Sword Blade Company.(17)

In 1720, the Parliament came down to remedy the deception of investors through Bubble Act. The Act prohibited the use of corporation unless the corporation was authorized by Royal Charter or Act of Parliament but the Act exempted from its application to: 1) all the undertaking established before 24 June, 1718 and, 2) two companies founded by Act; South Sea Company and the East India Company. This particular Act provided the benefits of the South Sea Company in competition with the Bank of England but this company failed and its shares decreased ridiculously.(18) In this crisis, the estates of the directors were confiscated for the benefit of the company. The similarity is found between the recent corporate crises i.e. Enron and HIH Ltd, where several of the directors and officers were prosecuted and jailed. Although the Bubble Act 1720 made impossible for companies to raise further capital by invitations to the public for the next hundred years to 1825 (repeal of the Bubble Act) but it does not destroy the unincorporated companies which continuously formed and freely issued their transferable shares.(19)

In 19th century, two new developments occurred in British corporate law: first, the Joint Stock Companies Act 1844 was enacted- under which any company comprising more than twenty five members with transferable shares might obtain incorporation by registering a deed of settlement executed by its members. Secondly, the Limited liability Act 1855 was passed which provided limited liability of the members of a company.(20) The act was repealed by the Joint Stock Companies Act 1856 that allowed incorporation of the companies with limited liability and introduced the memorandum and articles of association by omitting the provisional registration and deed of settlement. During 1862 to 1907, a number of laws were passed that permitted the alteration of capital, the amendment of the memorandum and articles, as well as registration of private Companies. The Companies Consolidation Act 1908 gathered all the previous laws into single Act. The amendment of the law continued till the Act of 1907. In India, the company laws were introduced in 1850. This was followed by changes in 1857, 1866, 1887 till the law of 1913 which based upon the English Law of 1908. Changes made in this law in

- i. Shirkat al-Amwal by way of mufawadah in which two or more partners invests a sum of money equally in a business with equal footing in their capabilities and share its profit and loss according to agreement and will be responsible for each other transactional acts.
- ii. Shirkat al-Amwal by way of 'Inan in which two partners invest their capital not necessarily with equal proportion of shares and run their business representing each other with no responsibility of loss.

B. *Shirkat al-A'mal or Shirkat al-Abdan* (The Company of Bodies or Labours):

- i. *Shirkat al-A'mal or Shirkat al-Abdan* by way of mufawadah in which two or more people come together with their skills such as consultants, doctors, engineers, craftsmen, lawyers and constitute the company with equal proportion of profit and loss and equal responsibility in business transactions.
- ii. *Shirkat al-A'mal or Shirkat al-Abdan* by way of 'Inan in which two or more people come together with their skills such as consultants, doctors, engineers, craftsmen, lawyers and constitute the company with different proportions of shares in profit and loss e.g., $\frac{1}{3}$ and $\frac{2}{3}$ or $\frac{1}{4}$ and $\frac{3}{4}$ or any negotiated settlement.

C. *Shirkat al-Wujooh* (The Company of reputation)

- i. *Shirkat al-Wujooh* by way of mufawadah (The Company of reputation) In this type of company, the capital is provided by silent partner and the reputation is used by the active partner both of them will be responsible/liable and having equal proportion of the profit and loss. The partners could be rich merchant having guarantee for payment of debts and the company is backed by the wealthy partners.
- ii. *Shirkat al-Wujooh* by way of 'Inan. In this type of business the capital is provided by the silent partners and reputation, standing and respect is used by the active partner having no responsibility/liability for each other and both of the partners having different proportions shares, profit and loss.(15)

2.2 Evolution of British system of Companies:

The Company or corporate governance is as old as the company or corporate form itself. During the 11th to 13th century associations of merchants called 'Merchant Guilds'. Guild means an association of merchants or crafts people in medieval Europe which was formed to provide counseling to its members and to formulate rules and regulation for trade. They obtained Charter from Crown to secure their members from practices of monopoly. Later on, this trading was known as 'Commenda' or 'Societas'.(16) These Guilds with the passage of time matured into family partnership and then partnership with outsiders. In 14th century, the word 'company' was adopted by certain merchants for trading overseas with