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Economic Democracy in Islam

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Abstract

Public law notions seen from shari'a law perspective have not been duly discussed in Islamic countries. Regarding the public finance in Islam and State owned banking system, in many Islamic countries both Shi'a concept banks and Sunni concept banks, while prohibiting usury have worked out a well established shari'a law compliant loan system in favor of the customers. Also economic democracy from shari'a law point of view finds its way through other means provided in shari'a rules (Shi'a or Sunni).

Keywords: *Economic Issues; Taxing Law; Welfare System; Money Lending*

Introduction

Ironically public is always intrigued by discussions on money issues and financial matters. Newspapers and magazines are always full of reports about people's involvement in financial matters and its fruitful or disastrous consequences. For decades press reports on the rich / poor people's attitude toward financial matters have been an interesting subject matter of research for scientists, for instance the way the scientists analyze the commuters' anxiety when they get a mortgage loan in comparison with the upper lots attitudes toward mortgage loan issues.

Financial matters had been one of the core issues in the history of ancient States sovereignty and human civilizations. In Roman Empire money lending was permitted by the Empire authorities. The lending was based on a fixed low interest rate recognized by the Empire itself. Accordingly, any interest bearing loan with a higher interest rate was considered by the State authorities as a clandestine practice and illegal.

The historic documentations and the literary texts show that money lending was a routine matter in Roman Empire. Even the Senators, knights and other politicians were lending money with a fixed interest rate recognized by the State as a lawful practice. Therefore, the interest bearing loan practice could be considered as one of the revenue sources of the Roman's elite people. Cicero for example (Marcus Tullius Cicero) a well-known Roman jurist and a high ranked administrator during the 63s BC, was lending money to certain businessmen with a legally approved interest rate.

The same documentations show that practice of euergetism too had been seen among some high status and wealthy families who voluntarily were helping poor families and individuals in dire needs. [1]

Christianity too was confronted with certain greedy corrupt gangs who were heirs to a usury practice established ages before the nativity. Therefore during the early Christian era, a well rooted network of mafioso was engaged in a cruel practice of usury in the region with a very high interest rate.

The Gospels don't approve the rapacious nature of the human being, being cultivated in an extreme mundane context of the physical life. Yet the biblical texts don't push the believers toward a spiritual life or toward a ethereal and hermitage style of life, rather they ask the believers to be in the context of a real and concrete life with a heart full of tenderness toward the human being in all aspects of the social life, notwithstanding the fact that from the biblical texts we cannot draw up a precise solution for the financial matters of the social life, particularly for the question of interest-bearing loan practice.

A thorough study of the history of Christianity reveals that , Pops through their writings and homilies have categorically condemned the practice of usury and the ways of dealing with money and lending issues which with today's jargons could be called as " speculative money trades " compared to the productive ways of trade and business [2] .

It is also argued that the world's political settings have always had decisive influences on Pops stances on political, social and economic issues during the whole Papal history. It is also true that this assumption could be related to the well-known argument that many ecclesiastical school of thoughts grounding their conceptions in the Scripture, have assumed very conflicting visions on financial and economic rights, for instance, some ecclesiastical

conceptions find the Christian economic democracy in putting certain limits on the right to private property , defending principles which call for the redistribution of wealth and the expansion of worker-owned cooperatives , while some others defending the basic liberties including a complete property right for every individuals in the society , condemn these aberrant visions which have tendencies toward a kind of religious Socialism [3].

Whereas decades ago the whole world was envious of American or French welfare systems and the like countries where workers were getting many perks and bonus payments beside their monthly wages , where the workers and laborers were driving Cadillacs (case of US) and were nestled in modern high-rise building apartments conceived for workers(case of French HLM[4]). Where has gone that cozy life of workers in these countries?

Had it not been for the sabotages of anti-messiahs and devil-worshipers who infiltrated the politico-economic and trade systems of these countries, their welfare systems could have remained prosperous for ever and they would not have needed to borrow the aberrant theories of others.

Concerning the question of usury , the most Middle Ages stoic theologians and Pops have dubbed the practice of usury as a despicable act [5] .

[1] - Andreau Jean, Banking and Business in the Roman World, Translated by Lloyd Janet, Cambridge University Press, 1999, Pp. 12 - 93

[2] - Grisez Germain Gabriel, The Way of the Lord Jesus, Vol. II: Living a Christian Life, Quincy Illinois: Franciscan Press, 1993, P. 34

[3] - Sneigocki John, Catholic Social Teaching, Economic Rights and Globalization in Christianity and Human Rights, Edited by Shepherd Frederick M., Lexington Book, Rowman & Littlefield Pub.Inc. New York, 2009, pp. 149-159

[4] - Habitat a' Loyer Modere' (in French language)

[5] - Aquinas Saint Thomas, Summa Theologica II – II, Q 78 article one, 1265-1274.

Whilst with a closer look at their writings and decrees, we notice that they failed to give a clear guidance to commercial activists who were engaged in trade transactions involving many commercial loans and money exchanges.

Therefore, it is easily noticeable that there has been a legal lacuna in Canon Law on the question of trade related borrowings, which both whole sale traders and retailers have had to use for ages.

Albeit the fact that one could infer from the writings of certain well-known Christian theologians , Saint Thomas Aquinas writings for instance, that money lender in case of commercial borrowings may require what he has lost in the transaction , comparable to the legal theories of " damnum emergens" and "lucrum cessans"[6] it is also true that these eminent theologians of their time have not drawn up a conclusive foundation of Christian financial doctrine , applicable not for the cases of marginalized and disadvantaged individuals in dire need of small amount of money but for the cases of important commercial loans , where the borrower (e.g. a big trader or a giant incorporation) could gain huge profits from his trade related borrowings[7].

Economic Democracy in Islam

The pre-Islamic societies of the Arabian Peninsula were characterized by a nomadic and primitive market economy, based essentially on caravan trade.

Sabaeans (Saba, the present-day Yemen) and Nabataeans (Nabataea the present-day Southern Jordan) helped them to learn maritime trade and expand their foreign trades with other territories and nations (India China, Far East, Greece, Rome and Egypt). Gradually the development of foreign relations and trading links between these nomads and other nations changed their life style and their culture[8] .

Therefore, the pre-Islamic epoch of Arabia became an instance of conjunction and combination of different cultures, customs and rules of different origins.

Professor Hassan Hussein and many other authors are of opinion that many rules (Shari'a based rules) in the actual legal codes of Islamic countries have their roots in the pre-Islamic customs and practices of Arabian Peninsula , customs and rules on sale of goods[9],trading venture[10],partnership[11], mortgage[12], payment of subrogation for tasks and jobs[13]are the best examples [14].

Although to conform to the Islamic concepts these pre-Islamic rules and customs were slightly modified during the Islamic era, but regarding certain theoretical aspects they haven't changed substantially since then.

Concerning the practice of usury, it seems plausible to maintain that the development of trade links or other kind of relations between these nomads and other territories could be one of the major cause of infiltration of usury practice in to the pre-Islamic Arabia. The eminent Sunni faquih Al-Tabari (Abu Jafar Muhammad ibn Jarir Al Tabari , 839-923 AD) explains how the sum of debt in Arabia would be doubled in a year (i.e. with to days standards an interest rate amounting to hundred percent per year) , if the debtor was unable to honor his debt in due time [15]. Some

[6] - Noonan John , The Scholastic Analysis of Usury , Cambridge Harvard University Press , 1957, P. 377
[7] - Grisez Germain Gabriel, Op. Cited, P. 834
[8] - Wynbrandt James, A Brief History of Saudi Arabia , Facts on File Pub. New York , 2010 , pp. 1-28
[9] - Bay in Arabic
[10] - Mudaraba or Muzaraba in Arabic
[11] - Sharika in Arabic
[12] - Rahn in Arabic
[13] - Ju'ala or ja'la in Arabic
[14] - Hassan Hussein , Contracts in Islamic Law in " Issues in Islamic Law " Vol. II , Editor Baderin Mashood A., Ashgate Pub. UK, 2014, p.246
[15] - Al – Tabari , Abu Jafar Muhammad ibn Jarir , Tafsir al – Quran , Cairo , n.d. , 1903 , vol. IV p. 55

Sunni jurists argue that Shari'a law prohibits only this kind of usury (usury of delay) and other kinds of usury (e.g. usury of increase) could be accepted to some extent by Shari'a law , in certain circumstances [16].

It is also discussed that in some circumstances an interest-bearing loan could be compared to a contract of sale (view asserted by Shihab Al-din Al-Qarafi, a well-known Egyptian faquih of Thirteenth Century[17]) .

Whereas Shi'a faquihs relying on basic principles of Shari'a law, unanimously reject the argument on the categorization of the usury.

Accordingly they support the notion of complete prohibition of usury in any form , including all kinds of subterfuges or any market made ruse in disguised appearances (for instance selling an apple to the debtor for the increased amount of debt for a year time period apart the principal amount of the loan)[18].

Much of the discussions on Islamic financial system turns around the banks loans.

Most of the Shi'a concept based banks are State owned banks operating on behalf of the government, while most of the Sunni concept based banks are private banks or private financial institutions acting on behalf of the share holders. In both concepts the loans are dealt with on Shari'a based contracts.

In Shi'a concept banks, most of the medium size loans advanced by the banks as a public service, in favor of ordinary folks are based on Ja'alah (or Ju'alah pronunciation) contract. Ja'alah contract is an Islamic contract by which one of the parties promises to pay a wage or a reward for the performance of an act by the other party.

Shi'a faquihs are of the view that the nature and the modality of the act or performance of a task promised by one party and the amount of wage or the nature of the reward promised by the other party in Ja'alah contract must be determined clearly in advance and ought not to be of a kind prohibited by Shari'a law.

Whilst on the question of determination of the nature of the act or performance of a task before the conclusion of a Ja'alah contract there have been some controversial discussions and views among the Sunni faquihs [19].

In this kind of loan, the customer envisages to buy, for example a house, his personal budget not being sufficient to cover the whole price, he pays half of the price (or part of the price) to the seller and the bank undertakes to pay the other half (or the other part) of the price and perform the totality of the realty transaction for the customer . The customer by the conclusion of a Ja'alah contract bind himself to pay a sum of money to the bank, apart the amount of money which is advanced to the seller by the bank as the other part of the price.

The amount of money to be paid to the bank for the performance of the task (the realty transaction) is agreed upon by the parties in advance.

The customer reaps many benefits from this kind of loan, one is that the lump sum money he or she promises to pay to the bank for the performance of an act – the realty transaction – is not more than

[16] - Al-Sanhuri , Abd al-Razzaq, Masadir Al-Haqq fil Fiqh Al-Islam , Dar al-Fikr Pub. 1953-1954 , 3 Vol. pp. 176-194

[17] - Rehman Scheherazade S., Globalization of Islamic Finance Law, Wisconsin International Law Journal, 2008, Vol.25 No.4 , p. 690

[18] - Mallat Chibli, The Renewal of Islamic Law, Muhammad Baqer as-Sadr, Najaf and Shi'i International, Cambridge University Press , London ,1993 , p.163

[19] - Hafiz Ali Ismail, The Contract of Ja'alah and the Modern Banking Business: Juristic Analysis in Contemporary Issues in Islamic Law , Editor Ansari Abdul Haseeb , Serials Publications , New Delhi, 2011 , pp. 292 - 310

the monetary value depreciation for a ten years period of time , prevalent in Asian and African countries . The second benefit is the modality of payment which under the Ja'alah contract the customer promises to pay the total amount of money (i.e. the other part of the price which he was unable to pay himself or herself plus the reward for the performance of a task) in an installment payment commensurate to his or her personal income.

For the medium size loans , the Sunni concept based banks or financial institutions , being mostly private institutions[20] resort to a Shari'a sale contract, Murabaha .

Murabaha is an Islamic contract used mainly by mid-level income customers to purchase a house or acquire a retail store. The customer not being able to provide enough fund required for the transaction, applies for a Murabaha contract with the Islamic bank. The bank purchases the property from the original seller to re-sell it to the customer for a plus price.

Therefore the parties (the bank and the customer) concludes an agreement (Murabaha contract) upon which the bank binds herself to finalize the transaction proceeding in favor of the customer the day he pays his final down payment. The customer for his part , binds himself by the same contract to pay the plus price of the property to the bank (agreed upon in advance and provided for in the contract itself) by an installment payment in a fixed period of time (ten years for instance)[21] .

In Shi'a concept based banks, large scale loans are used by the industrialists or by businessmen. The customers (physical or legal persons) submit their proposal on an industrial or a large scale business project to the bank.

The bank evaluates the viability and the profitability of the project with all the detailed characteristics of it. If it is approved, the parties conclude an agreement. The agreement based on an Islamic trade contract "Musharikah "provides the terms of a partnership.

In this kind of Shari'a based contract, both parties (the bank and the customer, a physical or legal person) are bound to carry out the business or the project according to the terms of the partnership stipulated in the contract itself. The bank by providing an important part of the budget or by purchasing a considerable number of the shares, becomes a major partner and possesses the power to approve or disapprove the policies of the business. If the bank, for instance, possesses forty nine percent of the capital (where the customer is a legal person) the bank will have a say in the decision making policies proportionate to her share , by the same token the benefits she gets or the losses - if any - she bears should be proportionate to her share . The same principal applies to the customer.

Sunni concept based banks use Mudarabah or Musharakah contracts for the large scale loans . Mudarabah is an Islamic contract by which the bank invests her capital , while the customer promises to conduct the business or lead the investment in a profitable manner . In this kind of Shari'a based contract each party receives a profit , the ratio of the profits being determined in advance in the contract itself .

The Mudarabah contract is considered an advantageous deal from the customer point of view in that , the customer receives a profit without investing his own capital and if the business is confronted with any failure or bankruptcy the bank will bear the losses .

The choice between Mudarabah and Musharakah contracts in dealing with different types of customers who apply for a loan is left to the discretion of the Islamic bank or financial institution .

Albeit this, on the peculiarities of the Musharakah contract, there are some controversial discussions among different Sunni schools .

[20] - Ali Salman Syed , Islamic Banking in the Mena Region , Islamic development Bank , The World Bank , 2011 , Page 7

[21] - Abdul-Rahman Yahia , The Art of Islamic Banking and Finance , John Wiley & Sons Inc. , 2010 , USA New Jersy , pp. 54-55

For the Maliki and Shafeii schools the profits of the contracting parties must be proportionate to their capital invested in the partnership , whereas for the Hanafi and Ahmadi schools the contracting parties in the Musharakah contract may in advance agree upon a different kind of profit sharing terms regardless of the ratio of their investments , although in case of loss (i.e. if the enterprise or the business is confronted with a failure or bankruptcy) the parties will , according to the Hanafi and Ahmadi schools , bear the loss proportionate to their capital invested .

It is also noteworthy that , on the modality of the partnership in Musharakah contracts , according to the Hanafi and Ahmadi schools , the partnership must be based on a capital investment , while the Hanbali and Maleki schools are of the opinion that in Musharakah contract , the partnership in non-monetary form (i.e. property partnership) too is feasible .

For the Shafeii school the admissibility a partnership in non-monetary form will depend on the nature of the property , therefore the stance of the Shafeii school on this issue is somewhere between the two opposed views[22].

Charity loans in both Shi'a shari'a law and Sunni shari'a law are conceived for those who not belonging to the upper lots of the society , are in dire need of cash for a particular use , for example medical treatment of an elderly family member or a small scale domicile renovation ,etc. .

In Shari'a based banks and financial institutions usage , charity loan[23] consists of a low level size loan which is lent without any costs (including banking services costs) and without any accrued values or any addition (including the monetary depreciation) to the principal amount of loan .

The Islamic banks in dealing with some other borrowing requests have at their disposition other kinds of shari'a based contracts with totally different nature , for instance special contracts for agro-economic financing[24], although in both Shi'a concept based banks and Sunni concept based banks practices these kinds of contracts are not considered a major portfolio .

Whereas saving accounts and money deposits , short term and long term deposits , have a very decisive role in the credibility of the Islamic banks .

In Shi'a concept based banks , when a customer decides to get a saving account or a short term / long term deposit account with the Islamic bank , the bank requires a written document signed by the customer by which the customer gives an express agency rights and duties to the bank to use the customer's capital in any lawful business investment in a manner not contrary to the shari'a law and share part of the investment profits with the customer .

Accordingly to attract more clients , the bank extends monthly to her customer a provisional sum of money from her own funds , calculated on a pro quota base of the customer's saving (as an interim payment) whilst the customer has given in advance a written consent to the proviso that the final benefits – or losses if any - of the investment be calculated at the end of each fiscal year by the Islamic bank's administration .

The Sunni concept based banks , for deposit accounts operate by way of profit sharing partnership[25]where customer transfers his capital to the Islamic bank , on the condition that the bank uses this capital in a business or in a project or any other lawful operation compatible with the shari'a law and shares part of her benefits with the customer .

[22] - Usmani Muhammad Taqi , The Concept of Musharakah and its Application as an Islamic Methods of Financing , in " Issues in Islamic Law " Vol. II , Editor Baderin Mashood A. , Ashgate Pub. , UK , 2014 pp. 285-292.
[23] - In Arabic : qard hassan or qard al-hasan.
[24] - In Arabic : muzara'ah contract or musaqat contract.
[25] - In Arabic : Shirkah

For the long term deposits the Sunni concept based banks conclude a shari'a based contract (Mudarabah) with the customer by which the customer provides the capital and the Islamic bank becomes the entrepreneur , while in order to invest the customer's fund in a lawful and profitable business the Islamic bank in turn could conclude a similar contract with some other entrepreneurs , traders or industrialists[26].

The Sunni concept based banks and financial institutions also use another type of fund management technique consistent with Shari'a law , called Sukuk . This instrument is a kind of bond with no interest based dividends.

Sukuk is not related to the stock exchange markets speculations but rather to the tangible assets exchanges , mostly realty leases where the holder collect the rent[27] .

The actual monetary and financial crises in many countries , including the developed countries , once again have opened many debates on the serenity and questionable functioning of the banking systems .

Is it the man's own corruption oriented greed causing the ruin of the world financial network , or it is the financial network itself helping the gradual destruction of the world economy ?

Much is discussed , for the same occasion , on the secure practicability of the shari'a law based banking system . Some authors , optimistic , foresee a bright future for it[28], some others , pessimistic and hostile , find a bit of hypocrisy in it[29]. Regardless of the relevance or irrelevance of all Byzantine and controversial discussions , if we are to seek an optimal equilibrium point between the profits of the banks and financial institutions and the benefits of the customers , given the actual global financial crisis , it is doubtful that the customers could feel comfortable with the current practices of conventional banks . The interest they offer to the customers accounts compared to the persistent chaotic prices situation , realty prices for instance , is nil .

What the Islamic banks offer to their customers through shari'a based contracts is nothing more than a partnership or an investment deal which is much more beneficial and lucrative for the customer .

In quite another field , yet on the economic and financial side , the shari'a public law is confronted by a plethora of contradictory , confusing and tendentious notions asserted by the Muslim academia on the Islamic public finance .

The idea of economic democracy has deep roots in the history of European and American social movements (e.g. the French Revolution of 1789) and has been challenged by many authors and philosophers during the last centuries . While during the same historical period the Eastern societies and nations, from China to Egypt, in their quest for democracy were facing many impediments coming from tyrants .

In modern era , the pros and cons controversial arguments on economic democracy pervaded the religious spheres . Defending the social justice and discussing about the economic inequalities between different classes in the society became a fashionable theme in Western countries , where a respectful number of ecclesiastics were obliged to participate in these movements . To catch up with the modern

[26] - Venardos Angelo M. , Islamic Banking and Finance in South-East Asia : Its Development and Future , Second Ed. , World Scientific Pub. Co. , 2006 , P. 49

[27] - Selvam Arfat , Legal and Regulatory Changes to Promote the Development of Islamic Banking and Finance in Singapore , in Current Issues in Islamic Banking and Finance , Editor Venardos Angelo M., World Scientific Pub. Co. , 2009 , P. 24

[28] - Ali Salman Syed , Islamic Banking in the Mena Region , Islamic Development Bank – Islamic Research and Training Institute , February 2011 , Financial Flagship

[29] - Holden Kelly , Islamic Finance : Legal Hypocrisy Moot point , problematic Future , Bigger Concern, Boston University International Law Journal , Vol. 25:341 , 2007 , P.357

intellectualism of early twentieth century of European and American countries the ecclesiastic literature began to proliferate . Myriad of religious doctrines in defense of economic rights for poor and deprived classes of the nations along with more convenient job opportunities for the disadvantaged and destitute individuals in each society were asserted . Gradually this fashionable defense of poor gave its place to a kind of religious socialism , still an intellectual fad , pertaining to limit in the name of Church the property rights of individuals[30] .

Whereas neither in Christianity nor in Islam these doctrines were not considered as legitimate theories and back in time could be judged by both Christian and Muslim authorities as profane heresies . Furthermore according to original and authentic principles of both religions ,Christianity and Islam , the sanctity of the property rights of the individual were and always are untouchable .

Soon African and Asian intellectual milieus , emancipated from the shackles of colonialism began to imitate the European and American fad of intellectualism by defending certain theories dubbed as religious socialism ,consequently the Muslim communities confronted by leftist movements , were contaminated by certain imported notions conceived to lure Muslim nations into an economic and financial plight and stray them from their original and authentic principles .

Muslim scholars erred from their authentic religious principles when in the name of Islam they opined that " wealth is considered a trust given by God " whereas almighty God never gives any wealth to anybody , otherwise the not-haves would call this an injustice .

According to Islam each individual should endeavor to earn his life in a just way and of course one can receive any wealth by way of inheritance, in other words the achievements of one's ancestors .

We cannot force the individual – in time of peace – in the name of Islam to spend his or her wealth in the interests of the community[31], the term community (of Latin origin : communis) is the basic term of Satanic leftist theories concocted to pillage the nations wealth , while according to the Islamic principles the individual is advised – not forced – to be kind to the not-haves by way of euergetism .

It is absurd to simulate the Islamic principles to the strangers ideologies.

One cannot gain any advantage obsequiously by giving flowers to other school of thoughts or other civilizations.

What differentiates the Islamic shari'a rules in this field , Sunni or Shi'a , from other notions (e.g. concepts pertaining to the Capitalism) is that according to the Shari'a law , one must earn his bread and eventually his wealth , no matter enormous wealth or a few , in a just way (in Arabic : halal) , any wealth acquired so, should be protected by shari'a law and Islamic State .

Therefore imposing any other requisite, restrain and limitation on the individual rights to live his or her life and acquire any wealth could put the shari'a law, Sunni or Shi'a, in a precarious situation in the world.

Regarding other aspects of public finance in shari'a law too, any self-made concept drawn from shari'a could be misleading and harmful to the Muslim nations.

An author who gives a self-willed interpretation on Islamic public finance, imbibed with a partisan tendency and predisposition against, for instance rich people , undermines his or her own competence in this field (fiqh and shari'a) . Furthermore, this could push the Muslim nations toward

[30] - Sniegocki John , Catholic Social Teaching , Economic Rights and Globalization , Edited by Shepherd Frederick M. , Lexington Books , 2009 ,pp. 149-159

[31] - Saeed Abdulah , Shari'a and Finance , in The Ashgate Research Companion to Islamic Law , Edited by Rudolph Peters & Peri Bearman , Ashgate Pub. , 2014 , Page 251

extremism and fascism. It is ridiculous to talk zealously against prosperous and well to do people and call them" oppressor ", where they have gained their wealth in a legitimate (in Arabic: halal) way. While the have-nots and poor people , in view of certain authors oppressed[32] , have no right per se in the rich people's wealth , where the cause of their poverty and weakness is but their own fault or their parent's fault .

Shari'a law has laid down a compulsory levy or charge on wealth and property, without interfering or putting in jeopardy the sanctity of property rights of the individual.

The term "Zakah or Zakat" in Sunni shari'a law refers , from private law point of view , to a kind of alms , which any affluent physical person is to pay in cash or in certain circumstances hand down in kind to the poor and disadvantaged individuals or orphans or stranded travelers in dire need of money or livelihoods[33]. The same term, from public law point of view, refers

to a kind of revenue tax and asset charge, which any prosperous physical person must contribute to the welfare achievement of certain disadvantaged and needy individuals of the society, which they (the paying person and the needy individuals) all are members . In other words, Zakah is similar to a kind of tax in that, if there had been any lacuna in shari'a law in this regard, in order to institute a welfare system in the society, the Islamic State would have been obliged to provide it, or part of it , from its own purse (from the Government budget) .

The mandatory practice of Zakah must follow certain rules provided by Sunni shari'a law on this subject, for instance:

Zakah should be calculated annually, on Arabic lunar calendar base.

Double payment or dual counting of Zakah in a single year is not allowed.

The amount of money calculated as Zakah according to the shari'a rules must be paid exactly to the type of persons prescribed by shari'a law, i.e.

The poor and needy individuals, the orphans, the stranded travelers in need of cash or livelihoods and the collector appointed by the Muslim authorities for this purpose .

The whole amount of Zakats cannot be added or transferred to the State budget or discounted on the miscellaneous expenditures of the local Islamic authorities[34].

If the local Islamic authorities or the administrators of the Islamic State appoint a collector to collect the Zakats of a region, the whole amount of money collected so should be paid to the all eligible individuals (eligibility according to the shari'a rules) and it cannot be spent in any other philanthropic way in time of peace. To receive the Zakah, Sunni shari'a law has given the priority to the eligible individuals of the locality from which the Zakats are collected, in case of surplus of Zakats money in a region the eligible types of other regions become the Zakah recipients . And if the Zakah paying person likes to give his part of Zakah money directly to the poor individuals, he must find the eligible needy individuals of his own neighborhood.

Sunni shari'a has laid down certain rules and procedures on Zakah calculation. According to theses rules the affluent Zakah payer must determine his Zakah dues on his surplus of cash, gold, silver, revenues coming from commercial and industrial activities, agriculture and livestock, revenues from

[32] - Abed al-Jabri Mohammed, Democracy,Human Rights and Law in Islamic Thought, I.B. Tauris & Co. Pub., 2009, Pp.241-243
[33] - Imam Nawawi , Riadh as Salehin , Chaper 216 , 350
[34] - Hassan Hussein , Contracts in Islamic Law , in Issues in " Islamic Law ", Vol. II , Editor Baderin Mashhood A. , Ashgate Pub., UK, 2014 , Page 253

terrestrial mines or seabed mines, revenues from all kind of investments and revenues coming from hand works and other kind of jobs on about 2.5% of current ratio per annum[35] .

Shi'a shari'a law while recognizing the mandatory payment of Zakah for certain productions and materials[36], provides a compulsory payment of 1/5 (in Arabic : Khoms) of any revenue surplus (including any other earnings) on a current ratio per annum .

In other words according to Shi'a shari'a law any Muslim who lives a normal life and possesses a profession of any kind after deduction of his own and his family's expenses gets a surplus of revenue should transfer half of the one fifth of the revenue surplus to an officially recognized faquih or faquih's office, where the other half of the one fifth of surplus payment should be handed to certain types of poor and needy individuals. The same also applies to any gain and earning acquired by occurrence. The total amounts of money collected by the faquih's office shall be spent according to the faquih's decision.

Much is discussed on the legal nature of both Zakah and Khoms payments.

The mandatory aspect of payment of Zakah by the affluent Sunni Muslims and payment of Khoms by the affluent Shi'a Muslims poses this question whether these payments could be regarded as a taxation on revenue and wealth or these compulsory payments should be considered simply as a contribution of the well to do Muslims to the welfare and social assistance system of the Islamic societies.

No doubt that both the Zakah and the Khoms should be regarded not as a private law issue of shari'a law but rather as an issue of public finance of public shari'a law, although the taxing law in any Islamic country could be laid down by appropriate legislations apart from the Zakah and the Khoms payments according to the circumstances and the necessities of the Islamic society concerned.

Yet the dynamic of public shari'a law on this matter remains questionable in our modern world. The ancient life style of our ancestors, including the ancient affluent Muslims life style, is no longer practicable in our modern world. Today if we are to consider the modality of Zakah or Khoms accounting for a well to do Muslim, we ought to consider the life style of a New Yorker Muslim, instead of the rustic life style of a peasant in Yemen or Pakistan, otherwise our legal system will be dubbed archaic and inapplicable.

Today's life style of Muslim parents on the children's education fees side for instance, comprises myriad of unplanned expenses, weighing on the shoulders of the parents, hence the necessity of keeping a saving account for the children's future expenses.

Therefore today's calculation of a surplus revenue of Muslim parents cannot be based on the ancient criteria, the Muslim nations, Sunni or Shi'a, need certain precise rules adjusted for today's life necessities.

In the past, there was no talk of a retirement plan investment for the private sector employees or for the retailer businessmen, in our world every Muslim working in private sectors like everybody else should adopt a retirement plan for his or her future life and his or her family's future life, otherwise his or her future will be ruined.

Actually if the Muslim scholars and jurists fail to develop the public shari'a law and fail to adjust its rules to our modern world with all its hardships and comforts, the Islamic world will face many catastrophic consequences in the near future.

[35] - Husayn Shihata Husayan & Abu Ghuddah Abd as-Sattar , A Guide to Accounting Zakah , Al Falah Foundation , Cairo , 2004 , Page 28

[36] - Such as gold , silver ,wheat etc.

Thus, once again the role of faquihs together with the Muslim scholars and jurists remains to be seen on the dynamic of public shari'a law.

Conclusion

Public opinion in developing countries has not been always well disposed toward modern legal concepts. Prejudice against the expansion of modern legal trends never ends in developing countries. The cultural settings of these countries have a strong tendency toward conservatism.

Against this backdrop and in a world moving so rapidly toward a high-tech oriented life, Muslim nations can not and should not be prisoner of their own socio-legal concepts.

With a closer look at the Islamic countries legal system we can notice that public law issues have not been duly discussed in these countries. Hitherto the private law issues have had an obvious priority of consideration over public law issues in Islamic countries. Legislators in these countries have had an underlying penchant toward certain legal schools of thoughts who defend the supremacy of private law over public law. Consequently, not only the important themes of public law which are given expanded consideration in the European and American countries positive law are non-existent in Islamic countries legislations but also public law issues seen from the shari'a law perspective too have been left to the oblivion in these societies.

The absence of an effective code of law on urban law for instance, in Islamic countries positive public law system, compared to the colossal regulations regarding the modern urbanism principles in European countries legislations shows the obvious inactivity of Islamic countries legislators in these fields.

Today in our world of legal globalization, the expansion of public law themes are confronted with many hurdles in the Islamic societies.

Technically a persistent narrow-mindedness toward the public law syllabus comes from the prevailing private law school of thoughts in the shari'a law curriculum. After the elapse of so many years , these nations ought not to end the traditionalistic pedagogical legal methodology in the Muslim countries law schools in favor of a modern discipline of legal discourses ?

In our discussion on the attitudes of different school of thoughts vis a` vis the development of public law in Islamic countries, bigotry too should be considered as one of the pernicious impediments to the legal development in these societies. Any scientific research on the bigotry as a subject of discourse analysis should take into account certain parameters which are deeply –entrenched with the historical roots of outsiders evil influences in Islamic societies.

Historically since the expansion of Islamic States in the Mesopotamia region many conspiracies have been plotted to destroy the Muslim nations from within, hence the fundamental principles of the Islamic governance and public administration were the best targets. The actual Muslim generations are the hairs to these conspiracies.

In our war-torn, strife-torn world the bigotry has been flourished into the devilish extremism.

Extremism in its political construction is not compliant with any religious credos, be it Islam or be it Christian. Religion as a faith can not be a medium for certain obsequious opportunists to use it as a mundane tool of profiteering. Extremism in its theological construction runs contrary to the basic principles of Islam, where it prohibits any excessive demeanor whatsoever (e.g. prohibition of hermitage life in Islam).

Focusing on more globally debated issues, for instance any excessive expending on army or militarism is prohibited in Islam, where Muslims are not allowed to cause or to begin any war, they are only allowed to proceed to any defense if they are attacked (the authentic meaning of "Jihad").

Extremism in its legal construction could lead to the misperception of shari'a rules, particularly in views of the non-Muslim nations. For example, concerning polemics on certain Islamic penal law issues, we can not find any anecdote of the prophetic era about flagging a wrongdoer, nor any Quranic verses providing strictly this penal law practice. Consequently, the flagging usage could be easily replaced by any conventional punishment, more convenient for today's circumstances.

The intellectual scholars in these countries have got the heavy burden of responsibility to help Muslim nations to get rid of the formalistic view on shari'a rules, shadow of which (i.e. shadow of the formalistic view) has been malevolently on their lives and souls for ages.

Today if the Islamic countries legal systems can not catch up with the modern legal trends globally posited as such, the failure can not be attributed to the outsiders pernicious influences or activities, but rather to the inattentive behavior of the Muslim academic scholars.

Actually these countries are struggling with many legal lacuna, while the antidote being of a legal technical nature calls for an enormous endeavor, the shortcomings seem to be not on the people's side but rather on the Muslim jurists and scholars side.

Finally it seems totally plausible to conclude that Muslim academia's shortcomings could be established by the fact that the Muslim law schools for ages have not carried out any R&D programs in legal issues, particularly on what pertains to the public shari'a law (including shari'a rules on the economic democracy) concepts. Practically we don't find any serious R&D programs being conducted at the law schools of these countries on the democracy and economic democracy notion.

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