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EDITORIAL

This July 2015 edition of the international IAIS journal, *Islam and Civilisational Renewal*, continues in the tradition of providing topical thought-provoking articles and viewpoints addressing important issues in the contemporary Muslim world with insights and policy recommendations towards revitalising Islamic civilisation and helping negotiate the way forward in these challenging times.

This issues’ six Articles include two papers on the struggle for women’s equity and empowerment, beginning with my article on “Women in the Workplace: Shari‘ah and Contemporary Perspectives”. I firstly paint the contemporary picture for these women in the Muslim world – who deserve much better - and then address the holistic Shari‘ah position by emphasising that it does acknowledge a role for both custom and culture and also their tendency to change over time. Some negative social values and excessive patriarchal customary practices crept into usage in the Islamic classical and medieval periods but if these are not in tune with the normative rulings of the Qur‘an and the Sunnah, or if society has moved in a different direction over time, then such practices, may potentially be amended or removed. Where variable positions are held by different schools of *fiqh*, then one may select an approach, according to the *takhayyur* principle of Islamic jurisprudence, that is more suitable for contemporary Muslims. It is stressed that on some occasions the general principles of Shari‘ah may facilitate a better understanding of its specific rules and so ideally these should often be considered together.

A Chinese scholar, Asna Husin, in “The Struggle for Women Empowerment in Aceh: Opportunities and Challenges” looks at the aftermath of the ending of the 30-year insurgency for an independent Aceh. The study analysed Islamic principles of peace, cultural beliefs and practices, and the political environment of the earlier conflict and contemporary realities using historical accounts, academic research and interviews. She concludes that despite the widespread political conservatism, women themselves provide hope for gender equality, justice and empowerment, especially through the efforts of female activists who come out of the Islamic boarding schools and NGOs.

Abdul Karim Abdullah in “The Educational Role of Literature in Islam” stresses that literature can serve as a powerful instrument towards civilisational renewal by contributing to the development and strengthening of moral integrity, as well as by promoting a culture of literacy and learning. Mohammad Abdullah’s paper on “A New Framework of Corporate Governance for Waqf: A Preliminary Proposal” is a timely call for the improvement in the management of the increasingly important Islamic institution of *Waqf*, which he says has taken a new trajectory, both as a product and as an institution and legal entity, especially in the Islamic finance industry. He proposes how a corporate governance model can be developed for it based on existing *fiqhi* rulings as well as modern regulatory guidelines. Moving to Islamic banking, Kareem Muritala Kewuyemi, presents his findings based on research including the results.
of a questionnaire survey of business people - both Muslims and non-Muslims - in his article “Customers’ Awareness and Patronage of Islamic banking in Nigeria”. The results show the willingness of Muslims and a large number of non-Muslims to patronise Islamic banking and services in Nigeria. This provides good scope for Islamic banks to expand their clientele in Nigeria, if not globally.

Tengku Ahmad Hazri in “Performance Art as an Instrument of Spiritual Contemplation: The Case of the Malay Wayang Kulit (Shadow Play)”, has analysed the traditional Malay-Indonesian shadow puppet play and while noting its original embrace of the Hindu-Buddhist cosmology, teachings and story-telling, influenced also by animism, analyses that the penetration of Islamic teachings in the archipelago brought about a reinterpretation of the play by building upon and changing the people’s pre-Islamic beliefs in a way of “intercultural dialogue through art”.

Four Viewpoints provide a varied array of topics for different readership interests. Two have an Islamic science background. Daud Abdul-Fattah Batchelor highlights in “Encouragement of Scientific Enquiry in the Noble Qur’an” some of the reasons for the stimulation provided towards the flowering and prodigious output of new ideas and discoveries by Muslim scientists at the beginning of the Golden Age of Islamic civilisation. He calls for close collaboration between the scholars of revelation (Ulama) and the scholars of natural phenomena (‘scientists’) to recapture the initiative for a new Islamic enlightenment. Fadhl Mohammed Mohammed Fushoosh’s contribution on “The Hijri and Gregorian Calendars: Comparison and Conversion” provides a better appreciation of the merits of the Hijri calendar and calls upon the Ummah to value it and return to its regular usage in their daily affairs.

Ahmad Badri Abdullah in “Reimagining Islamic Ethics in Contemporary International Relations” has proffered some valuable suggestions based on the Islamic sources and intellectual tradition how the application of its ethical principles may positively contribute to achieving a more just global community. Tengku Ahmad Hazri provides a thought-provoking article titled, “Balancing Text and Context through Maqasid-based Ijtihad”. He notes that ijtihad (independent reasoning) is central to Islamic law after the Qur’an and Sunnah, and involves both knowledge of the law and knowledge of the circumstances that need legal resolution. He criticises the approach that brings together the ‘scholars of the text’ and the ‘scholars of context’ as being unacceptably dualistic, and proposes instead that the effort should be placed on the harmonisation of the maqasid al-khalq (maqasid of creation) and the maqasid al-shari’ah (maqasid of the Law), as proposed by scholar Gamel Eldin Attia - in the footsteps of the illustrious predecessors Shah Wali Allah and Ibn Ashur - as one way of establishing harmony between the Shari'ah and the ‘context’. Hazri believes Maqasid-based ijtihad can contribute to harmonisation of these two.

The issue closes with reviews of four significant recent events held in Malaysia, including “The World Halal Summit and Conference 2015” held 1-2 April; the IAIS
“Seminar on Shari‘ah Courts in Malaysia: Major Themes and Developments” on 21 April; and the IAIS Forum on “Implementation of *Hudud* in Malaysia: Between Ideal and Reality” on 23 April 2015. The International Conference on *Maqasid Al-Shar‘iah* in Public Policy and Governance” was co-organised by IAIS, the Selangor Islamic Religious Council, and the Razak School of Government, on 15-16 June 2015.

I thank all of our contributors and my colleagues in the editorial committee and the publications unit who have supported the production of this volume, and I commend this issue to you the reader and trust you will find it interesting and informative.

Mohammad Hashim Kamali
*Editor-in-Chief*
WOMEN IN THE WORKPLACE: SHARĪ'AH AND CONTEMPORARY PERSPECTIVES

Mohammad Hashim Kamali*

Introductory Remarks

An attempt is made in the following pages to expound Sharī'ah positions on women’s right to work and her freedom to choose the work she undertakes, and then also to own its proceeds regardless of her marital status. It is important to explain the Islamic perspective in this regard as it is influential in determining public perceptions among Muslims even if statutory legislation may have ruled on the rights in question. Yet one of the challenges of general concern is also that the Sharī'ah positions on women’s rights are often conflated with patriarchal customs that undermine women’s rights. Women’s conditions vary widely among Muslim countries and regions which tend to have cultural characteristics of their own, and face similar but also different challenges. Yet perceptions and attitudes prejudicial to gender equality still persist to the effect that women should stay at home and those who try to secure outside employment should obtain their husband or guardian’s permission first. With the exception perhaps of educated professional women in urban centres, women who seek employment opportunities, let alone equal status with men, often risk loss of family support, even being ostracised, especially in places where the conditions of women have not changed much in recent decades.

Custom and culture, prevailing economic conditions, education, urbanisation and a host of other factors all play a role and need to be taken into account in presenting a holistic picture of women, their role and place in the employment sector, society and government generally. The Sharī'ah is also cognisant of the role of custom and culture and their liability to change in the course of time, and designates, in turn, a number of formulae under the rubric of ijtihād, general custom (‘urf) and the maqāṣid of Sharī'ah to integrate necessary and beneficial change. It is inadvisable therefore to draw straight analogies and suggest direct
application of some of the rules of *fiqh* that were formulated under different sets of circumstances which differ widely from the conditions prevailing now. This flexibility is also contemplated under the Sharī’ah principle of permissibility (*ibāhah*), which is applicable to civil transactions and customary matters (*mu’āmalāt wa ‘ādāt*). New developments in these areas are thus deemed to be permissible barring the existence of a prohibition. This is unlike the sphere of beliefs and devotional matters (*’aqīd wa ṣibādāt*) to which *ibāhah* is generally not applied. Work related matters are generally subsumed under *mu’āmalāt* and *‘ādāt*, unless there be a specific prohibition based on stronger evidence that precludes the application of *ibāhah*.

To address the subject before me, I begin with the definition, scope and value of women’s right/freedom of work and then review the basic guidelines of the Qur’ān and Sunnah on the subject. Direct recourse to the source evidence is important, not only in its own right, but also due to the medieval social values that crept in over time and influenced the formulation of *fiqh* rules on women’s issues. Even the Qur’ān commentaries were not spared. Patriarchal customary practices and their reductionist impact of women’s right also need attention. As one commentator stated, in most cases, it is the custom rather than religious injunction that hindered women’s participation in economic activities. In some communities, working women were deemed to have a lower moral standing.  

In the event of a discrepancy between a customary practice and the normative ruling of Qur’ān and Sunnah, the former will not be acceptable. Yet in practice such customary positions gradually influenced the attitudes even of scholars and interpreters by the back door, as it were, to influence Qur’ān interpretation and *fiqh*.

Whereas the Qur’ān actually strengthened the position of women *vis-à-vis* the then prevailing customs of pre-Islamic Arabia, medieval interpreters often moved in the opposite direction to weaken it.

Then I review the schools and scholars of *fiqh* and their positions on the continuity of values or otherwise they may have manifested. When there exist more than one interpretation or opinion in the source evidence, I take a selective approach, in accordance with the Islamic jurisprudence principle of selection (*takhayyur*), and take that interpretation or view, whether of earlier or modern scholars, that seems more suitable to the conditions of contemporary Muslims.

In dealing with the subject before us, it is important also to bear in mind, not only the particularities of *fiqh* and contemporary opinion, but also the broader principles of Sharī’ah that provide guidelines for interpretation and enforcement. This is once again a characteristic aspect of Qur’ān interpretation (*tafsīr*) wherein the general provisions (*‘ām*) of the Qur’ān may facilitate a better understanding of its more specific rules so that the general and the specific of the Qur’ān are not totally separated from one another.
Definition, Scope and Value of Work or ‘Amal

‘Amal is basically an economic concept, which is defined as “physical or mental exertion by a human being made for generating economic gain, or for enhancing and developing an existing value.” According to another definition “‘amal consists of self-exertion by a human being either individually or in collaboration with others in order to produce goods or render a particular service.”

In modern Arabic writings, expressions such as ‘āmil (worker) and its plural ‘ummāl, the right of work (haqq al-‘amal), and hurriyat al-‘amal (freedom to choose one’s work and profession) refer mainly to work in its legal and economic senses; yet ‘amal also retains its general meaning and it is as such inclusive of religious work that earns one a spiritual reward. ‘Amal is a means of earning a living for the individual and of making a contribution to society, just as it is the principal arena of a person’s compliance with, or defiance of, God’s injunctions. ‘Amal is a personal duty of every able-bodied Muslim, and a collective obligation (fard kifā‘i) of the community to build the earth and develop its resources for the benefit of humanity. References in the Qur’ān and Sunnah that often occur to ‘work with one’s hands’ have led some to conclude that agriculture, industry, and commerce are the most meritorious of all works as they cater for the basic needs of life, both of humans and other inhabitants of the earth.

The personal freedom and right of individuals to work is inviolable, unless the work in question partakes in infliction of harm (darar) on others, in which case it would fall within the purview of the renowned ḥadīth “Harm may neither be inflicted nor reciprocated in Islam.” Work that partakes in harm and corruption is generally unlawful, and so is the revenue that accrues from it. No one may make a business out of defaming others nor profit through acts of oppression. Work that involves prostitution, gambling, sorcery, fraud and immoral behaviour is sinful (ma‘ṣiyah) and must be avoided. The basic rule here is: whatever that leads to harām, or used in order to procure harām also becomes harām. A worker is consequently not entitled to any wages for the unlawful work he or she might have completed, and may even become liable to compensation or punishment.

Work that falls between the two categories of halāl and harām should also be avoided if one can find alternative work which is clear of doubt. This would be to act in conformity with the ḥadīth that “One who keeps clear of doubts purifies his faith and his honour.” If no other alternative could be found, then one may undertake doubtful work to the extent necessary for the fulfillment of basic needs. Work that is clear of doubt is preferable even if it involves greater hardship. Should there arise a conflict between the fulfillment of a personal obligation (fard ‘ayn) and indulgence in unlawful work, the latter is tolerated, according to some ulamā‘, including Imam Malik, to the extent necessary.
Suppose that someone lives in a place where no other work to support oneself and family is available except through unlawful work, excluding crimes, and one cannot escape to another place either - one may take it but only to the extent of necessity for survival, but no more than that. This is equivalent to the concession Sharī'ah has grants to a person who fears death from starvation. According to a legal maxim “necessity (darūrah) makes the unlawful lawful,” but the necessity in question must, according to another maxim be “measured according to its true proportions.” An accurate assessment of necessity would also indicate when it is no longer the case, at which point one must return to the normal rules of Sharī'ah.

Work which partakes in fard kifā'i refers to all beneficial work that promotes public welfare such as working in industry and agriculture, health services, education and the like. If some people in the community undertake it, the duty is fulfilled generally, but works of this kind may never be abandoned altogether. In the event when this happens, the government may compel those who are capable of doing so to work.

The most noble of all professions is intellectual work that involves teaching, writing and research. This is because intellectual development is one of the higher objectives, or maqāsid, of Islam and bedrock of all other areas of improvement. This is followed by productive and industrial work that meets people’s needs, or which brings great benefit, to the people. Those who occupy themselves with such work earn God Almighty’s blessing and reward. The elderly and the child should not be engaged in strenuous work and it is a responsibility partly of the guardians/relatives and the authorities to ensure that this does not occur. Child labour and assignment of paid work to minors is forbidden unless it has educational value and takes place under supervision of the father/guardian. Similarly women should not be assigned work that is incompatible with their feminine dignity, and this includes work that brings them into contact with doubtful characters and situations. Women are otherwise permitted to work in trades and professions of their choice. They may work in order to earn a living, for career satisfaction, and use the income they earn from work as they wish.

Review of the Source Evidence

‘Amal (lit, work, action, and conduct) is often used in the Qur’ān, the Sunnah and fiqh literature in conjunction with ‘aqīdah and ‘imān (dogma and faith). This juxtaposition of ‘aqīdah and ‘amal conveys with it the message that the two go hand in hand and that the one is basically deficient without the other. ‘Amal in this sense has religious and spiritual undertones and it is often viewed in the Qur’ān and Sunnah as the external manifestation of belief. The close relationship of faith and good deeds is also evident in the typical phrase which occurs in over
fifty places in the Qur’ān as “those who believe and do good works – *al-ladhīnā āmanū wa ʿamīlū al-sāliḥūt.* The obvious implication is that ‘*imān* and ‘*amal* are intimately related and complement one another.

The spiritual content of ‘*amal* can also be seen in the following Qur’ānic address to the Prophet Muhammad:

Tell the believers to work. Then soon will God, His Messenger and the believers will see the work you have done (Q al-Tawbah, 9:105).

The Prophet is thus directed to remind the people of the value of work and what it takes to make it a source of pride for the community and a firm basis by which to gain the pleasure of God and His Messenger. It is then declared in another verse that “We shall not cause to waste the recompense of one who excels in ‘*amal.*” (Q al-Kahf, 18:30).

The reference to ‘*amal* in both of these verses is to all works, both pertaining to the affairs of this world and those of the next. This is because in Islam lawful ‘*amal* becomes a dimension of worship (*‘ibādah*) when it is done to the best of one’s ability. Work that qualifies as service to God must necessarily be of a high calibre wherein attention is paid to quality and the anticipated outcome, and it is free of dishonesty, cheating and negligence. The Prophet has added his voice in a ḥadīth that “God loves it when a worker undertakes a work that he does it well.”

And declared in another hadīth that “No one has ever eaten food purer than what is earned by the toil of one’s hands. For the Prophet (cum-King) David, pbuh, used to earn his living by the toil of his hands.”

These passages are evidently not gender based and apply equally to all. The next verse we quote is explicitly on women’s right to work and their exclusive entitlement to what they earn from it. The verse thus declares that “Men are entitled to what they earn and women are entitled to what they earn.” (Q al-Nisā’, 4:32).

The renowned Qur’ān commentator, al-Ṭabarī (d.923/310), has considered this to be a clear authority on women’s right of work. This conclusion is supported by the words used, in particular, *naṣīḥ* (proceeds or result of work), and *ikṭīsāb* (acquisition), which mean earning something through work. He disagrees with the view that *ikṭīsāb* in this verse refers to a share of inheritance. Al-Ṭabarī explains that inheritance is not earned as such, but received without self-exertion and personal labour. Hence those who ignore the difference between *ikṭīsāb* and *mīrāth* are taking an unacceptable position. Any attempt to equate inheritance with the fruit of personal labour is likely to go against the spirit of the text and the work ethics of Islam that not only entitles everyone, but make it a duty, in certain situations at least, of everyone to work for their living, and support his or her family. According to another observer, this verse it also implies that
women are entitled to take up all suitable occupations they might be capable of undertaking.\textsuperscript{17} The substance of the foregoing has been endorsed elsewhere in the text where God Most High makes it known that “I will not suffer the work of any worker among you to be lost, whether male or female, the one of you being from the other.” (Q āli-’Imrān, 3:195).

The late Rector of al-Azhar, Shaykh Mahmūd Shaltūt’s commentary on this verse draws attention to the phrase (ba’dukum min ba’d) which eliminates the distinction between men and women in respect of religious and all beneficial work, thereby establishing substantive equality between them. This Qur’ānic language is also indicative of partnership and co-operation between men and women in the work they do within the family and the society at large in the sense that both play equally important roles and there is no superiority of one over the other.\textsuperscript{18}

On the subject of authority, or \textit{wilāyah} (also guardianship, protection), the Qur’ān clearly entitles men and women equally to its exercise in respect of one another and in respect, by implication, also of participation in the management of public affairs and government. Thus it is declared that “the believers, men and women, are protectors (awliyā’, pl. of wali) of one another, they command good and they forbid evil.” (Q al-Tawbah, 9:71).

In addition to validating \textit{wilāyah} for men and women in the sense of cooperation and mutual support, this verse entitles them both to the most comprehensive of all \textit{wilāyāt}, which is to promote good and to prevent evil, also known as \textit{hisbah}. \textit{Hisbah} is a broad concept of wide-ranging applications, so much so that government itself is a branch of \textit{hisbah}, which means that participation in government and leadership in political affairs is a right equally of men and women. Women are consequently entitled, based naturally on qualification and competence, to hold government positions that may involve the exercise of \textit{wilāyah} in government affairs.\textsuperscript{19} These are further discussed below.

Work from the Shari‘ah perspective may be evaluated as either recommendable (\textit{mandūh}) or obligatory (\textit{wājib}), just as it may, in the negative sense, be classified as reprehensible (\textit{makrūh}) or forbidden (\textit{hārām}). Work is recommendable if it is beneficial and prevents the individual from dependency on others, poverty and begging. Work that is obligatory may consist either of a personal obligation (\textit{farḍ ‘ayn}), or a collective obligation (\textit{farḍ kifā ‘i}). To exert oneself in order to earn a lawful living in the face of dependency and degradation is a personal obligation of every capable individual, especially if one’s bodily needs and protection against destruction and disease cannot be met in any other way. Work is also obligatory in order to repay a personal debt, if the debt in question cannot be otherwise repaid.\textsuperscript{20} An able-bodied man is also under a duty to support himself and his immediate family, wife, and children (cf. Q al-Talāq: 65:6, Q al-Baqarah, 2:133).
This is important, especially in male-dominated cultures where employment opportunities for women are scarce to non-existent.

Muhammad al-Ghazālī (d.1993) and Sādiq Affī21 have both concurred with Abū Zahrah (d.1974) to the effect that the Shari‘ah entitles women to work and to earn their living whenever they need to do so or when they can make a special contribution to society. But they add that it is preferable for women to devote their creative energy and work to motherhood since they can make a unique contribution in this area to the well-being of the family and society. It is then added that women may join the workforce in the following four situations:

1. When they have abilities and skills that are particularly valuable to the community as a whole. This is when they excel others, including men, and the role they can play here is considered almost as unique as they can play as mothers and managers of households.

2. When they undertake work to which they are particularly suited such as working in childcare, in health care services and education. Some ulema, including Ibn al-Humām al-Ḥanafi (d.1465 C.E), have considered this kind of work as a collective obligation (fard kifā‘i) that applies particularly to women. As for the question of agreement between the spouses, the husband is advised not to stand in the way of his wife when she wishes to work in any of these capacities.

3. When women work side by side with their husbands and family and assist them in their work. This is often the case in the countryside where in farming families, small landholders and other low-income families women assist their men-folk in various capacities, often combining their duties as mothers and household managers with these other activities. Their contributions in these capacities deserve special recognition and “these are the exemplary women of our society; they are hardworking, efficient and compassionate, not like the ones who work as singers and dancers in the night clubs....”

4. When a woman is in need of earning a living to support herself and her family and there is no one else to support her and her family, in which case she would have to work as a matter of necessity. Having said this al-Ghazali added that in an Islamic welfare state, this last category of women are also entitled to support from the public treasury (bayt al-māl) regardless of whether she is a Muslim or a non-Muslim. For this is the purport of the ḥadīth in which the Prophet has declared “whoever leaves behind property, it shall belong to his heirs, but if he leaves a debt or dependents in need, they shall be my responsibility.”22
Women as a Witness, Judge and Head of State: Issues Over Wilayah

Commentators from early times have advanced different views concerning on women’s eligibility for public office under the rubric of wilāyāt, which are of two kinds, public and private. Some maintain that men and women are equal only in the domain of private authority (wilāyah khāssah), but not in respect of that which involves the exercise of public authority (wilāyah ‘āmmah). Wilāyah is defined as the authority of one person over another person or persons which renders the latter bound by the decision of the former without any need for prior agreement.23 Private wilāyah refers primarily to guardianship over the person and property of another because of some deficiency in the legal capacity of the latter. It is thus stated by the proponents of this binary division and its application to women, that women can be legal guardians and may be employed as teachers, nurses and supervisors of waqf (charitable endowment) but not as ministers, judges and political leaders.24

As for women’s eligibility for public office which partakes in wilāyah ‘āmmah, such as the office of the head of state, prime minister (waziwr al-taftīd), judge, governor, officer in charge of market inspection and ḥisbah, the head of public grievances tribunal (wālī al-maḍālim), which partake in both religious and temporal authority, early Muslim scholars have maintained that only the first two are reserved for men but disagree regarding the rest. Abul Ḥasan al-Māwardi (d.1058/450H) thus precluded women from the top two posts as both involved military leadership for which women were not eligible. The main textual authority quoted for this view is the Qur’ānic verse, which declared that “men are the maintainers (qawwāmūn) of women for what God has made some of them excel others and for what they spend out of their wealth” (Q al-Nisā’, 4:35).

Also quoted is another verse, which provides that “women have rights similar to those that men have over them in a just manner, and men are a degree above them.” (Q al-Baqarah, 2:228).

And also the hadith to the effect that “a nation whose affairs are led by a woman shall not prosper.”25

General consensus (ijmār) is often cited in support of the view that only men are eligible for the offices of head of state and prime minister. There is no explicit consensus (al-ijmār al-ṣarīḥ) of the learned on record, whether written or verbal, on this, nor is there a clear ruling in the sources to prevent equality even at this level. The most one can say is that it is a practical and a presumptive ijmār, which has, in any case, been questioned, again in practical terms, by the recent experience of Muslim countries such as Pakistan, Bangladesh, and Indonesia, all of which had elected heads of states and prime ministers – some of whom were
elected more than once. Hence the *ijmāʿ* in question is not definitive even at the level of practice (i.e., *al-ijmāʿ al-fiʿlī*), which is not a binding form of *ijmāʿ* in any case.26

Notwithstanding its weaknesses, however, the *ijmāʿ* ruling at issue has, in turn, been extended by way of analogy (*qiyās*) to a number of other public offices, as mentioned above, which are also reserved for men. Imam Abū Ḥanīfah has held, on the other hand, that women may become judges in matters in which they are admissible as witnesses, which means practically all matters except the prescribed penalties (*ḥudūd*) and just retaliation (*qiṣās*).27 To say that women are not eligible for judicial office or that of the head of state, is thus based on analogical reasoning (*qiyās*), and the original case (*ḥadīth*) here is witnesses, not the office of judge, nor that of the head of state. Ibn Ḥazm al-Zāhiri has held, on the other hand, that except for the office of the head of state, women are eligible for all other offices of government. In support of this view, Ibn Ḥazm has cited the Qur’ānic text on the very subject of government, which provides that “God commands you to hand over the trusts (*al-amānāt*) to whom that they are due, and when you judge between people, you judge with justice.” (Q al-Nisā’, 4:58).

*Al-amānāt* in this text is a reference to public office as a trust and responsibility that may be handed over to the best qualified. Ibn Ḥazm stated that the verse is perfectly general and draws no distinction between men and women in respect of their eligibility as trustees and repositories of *amānāt*. The Qur’ān basically envisages everyone as qualified, men and women both, and that we follow the general tenor of its ruling as it is.28

As for the above-mentioned ḥadīth, which has been quoted in support of the majority ruling that women are not qualified to become judge or head of state, it is evidently an inference. The ḥadīth was, as the records indicate, concerned with a particular situation, that is, when the Prophet was informed that the daughter of the Chosroe of Persia had taken charge of the affairs of that country, and this was the Prophet’s response to that particular development. It is also noted that the ḥadīth does not contain a ruling but speaks of prosperity and success. Ibn Ḥazm has commented on this ḥadīth that it refers, in any case, to only one position, namely that of the head of state and does not apply to other public offices (*wilāyāt*) to which women are generally eligible. More recently, commentators have added the observation that unlike the monarchs or emperors of earlier times, power in a modern state is diffused between its various organs and subjected to a set of constitutional checks and balances in almost all present-day Muslim countries. Under these conditions even when a woman becomes the head of state, her powers would be limited by these factors. The rules of war have also drastically changed, and the head of state-cum-commander-in-chief,
who was earlier expected to lead the army in the battlefield of jihād is no longer expected to play that role. The weapons of war now in use dictate a different logic, which is quite the opposite. It would indeed seem patently inadvisable for the head of state to go into the battlefield under the present conditions.29 The rules of Islamic jurisprudence also hold that a substantial change in the effective cause and rationale (‘illah) of a ruling should be followed by a corresponding change and a suitable ruling (ḥukm) to replace it through ijtihād.

It may be noted in passing that a group of the Kharijites, namely the Shuhaybiyyah, have held that women are eligible for the office of head of state.30 The majority (jumhūr) have also held it permissible, as a matter of necessity, for a woman to become head of state if she assumes office by military force in order to prevent bloodshed. But this is only tolerated as the caliphate of necessity, which may only last for as long as it has effective power at its disposal.31

A wide spectrum of modern scholars and ulema, including Rashīd Riḍā, Maḥmūd Shaltūt, Muhammad Yusuf Mūṣā, ‘Abd al-Hamīd Mutawalli and others maintains that women are qualified to be representatives (wakīl) in Parliament, ministers, witnesses and judges, all of which partake in the exercise of public authority (wilāyah ‘āmmah). They have considered the view that sought to confine women’s eligibility to the private wilāyāt as weak and less than reliable.

The whole debate has come under the scrutiny of the Federal Sharī‘ah Court of Pakistan, which looked into the details and attempted fresh interpretations of Qur’ānic verses and ḥadīth. The FSC came to the conclusion that the two verses above (i.e. 4:35 & 2:228) basically explain one another and the degree that is granted to men signifies leadership in the family on account of their responsibility for the provision of maintenance. That the general equality of the sexes in respect of rights and duties they enjoy has in the meantime, been confirmed by the second of these two texts. Equality is indeed the principal message of this verse; hence the exception made in its latter clause should not be taken so far as to suppress its principal theme. This is not a new interpretation, in fact, as some earlier Qurʾān commentators have also drawn similar conclusions.32

Women as Witnesses

With regard to women’s qualification for appointment to judicial posts, the correct interpretation on this is that of the Qurʾān commentator Ibn Jarīr al-Ṭabarī (d.310/923) who held, contrary to the then prevailing majority, that women are fully qualified for employment in judicial posts. The majority of the leading schools, as already noted, passed negative judgments on analogy with the position of the head of state. Al-Ṭabarī regarded this to be a discrepant analogy (qiyyās maʿ al-fāriq) on the analysis that women judges do not lead the jihad.
The principal task of a judge is to comprehend and implement the Sharī'ah and attempt *ijtihād*, and men and women stand on the same footing in this regard.\textsuperscript{33} Al-Ṭabarānī thus held that women may become judges in all types of disputes, including the *hudud* and *qiṣāṣ*.\textsuperscript{34}

With regard to women’s partial disability to act as witnesses before the courts, my enquiry leads me to the conclusion that there is no clear textual mandate on this in the Qur’ān or authentic ḥadīth.\textsuperscript{35} The Qur’ānic provision on this occurs only once (Q al-Baqarah, 2:282) and that too in a specific context. The verse thus provides, with reference to money loans and borrowing that it should be clearly documented and testified by “two witnesses from your men. And if two men are not available, then one man and two women of your choice should witness, so that if one forgets, the other woman can remind her. And the witnesses should not refuse when they are called for testimony ...” In their comments on this verse, In Taymiyyah (d. 1328 C.E), his disciple Ibn Qayyim al-Jawziyyah and Mahmud Shaltut observed that the Qur’ānic text here speaks in a language of persuasion and preference, and not in the manner of laying down an injunction. The text also does not preclude the possibility of one woman acting as a witness, or of women being witnesses in a case without there being a male witness.\textsuperscript{36} In view of Islam’s unwavering commitment to truth and justice, all avenues that vindicate truth and serve the cause of justice must be left open. If allowing women to give credible testimony in the quest for justice, especially in critical cases where a woman may be holding vital testimony, it should undoubtedly be admitted. The verse is confined to commercial transactions and took into account the conditions of women in Arabia at the time, and those have changed since. The context was such that women were easily pressurised by men, often their male relatives, to revoke their testimony due to subsequent change of circumstances/interests. A second female witness was thus needed to remind her about her testimony and be firm on it as any change could prejudice the cause of justice.\textsuperscript{37}

Furthermore, since the ruling under review is specific to financial contracts, it does not apply to other contracts and transactions. A reference is made in this connection to the Qur’ānic ruling over witnesses in imprecation in (Q al-Nur, 24:6-8) which stipulates that those who accuse their wives and have no witnesses except themselves, let them testify four times, but that the charge will collapse if the wife also testifies four times and rebuts the charge. According to Mahmud Shaltut “four testimonials by a man ... are rebutted by four similar testimonials by a woman, who affirms that she is telling the truth and that the man has lied.” Shaltut added that on matters of human dignity and justice, Islam does not discriminate between the sexes.\textsuperscript{38} Then also the number specification of two female witnesses equalling one male is not maintained in matters privy to women where one female witness is acceptable. Ibn Qayyim al-Jawziyyah
thus stated that the Sharī`ah credits the testimony of one woman as a full proof in matters in which women’s familiarity and understanding are considered to be superior to that of men, such as family matters, pregnancy, child birth and so on.39 A contemporary commentator adds in confirmation that the present day Muslim countries admit women’s testimony in all matters, civil and criminal, without any discrimination and this has now become a matter of general practice.40

With reference to qiwāmah in financial matters, women enjoy equal ownership rights over what they earn, or receive by way of gift and inheritance, and are fully qualified also to manage their financial affairs, civil transactions and contracts. The Hanafi school has extended this position also to the contract of marriage, which an adult woman can conclude by herself - although the majority of other schools have considered marriage as an exception and require its solemnisation by the legal guardian (wali), even if the woman is an adult. But then, since Islamic jurisprudence permits selection (takhayyur) among the available rulings of the leading madhhabs, the Hanafi view can be adopted by other schools and has, in fact been so adopted, by other Muslim jurisdictions in the course of 20th century family law reforms. Then there is basically no Sharī`ah issue of concern over an adult women’s capacity to conclude her own marriage contract. Yet patriarchal customs among tribal and village populations still present obstacles to women’s enjoyment of their financial rights. The problem here is essentially not juridical but one of prejudicial custom and that of male-dominated society.41 To give an example, the Qur’ān assigns specified shares in the inheritance to female relatives, which is, however, widely denied to them by their male relatives. Statutory enactments in many Muslim countries that banned such practices on pain of imprisonment and fines have also not succeeded in curbing entrenched customary positions. The lesson one learns here is that prescriptive law reform needs to be followed by wider campaigns on awareness raising, education and supportive policy initiatives. Muslim women in rural Asia and Africa are not well aware of their rights either under the Sharī`ah or statutory law. Legislation should naturally be encouraged and continue to lead the way in the campaign for economic empowerment of women. In some particularly difficult situations, recourse may be had to affirmative action legislation and or a quota system, for example, in their admission to schools and employment centres, on a temporary basis at least, to promote the objectives of equal rights for all.42

An Historical Sketch

Broadly speaking, business activity (al-tijārah) was regarded as a respected profession among Arabs, which had also received Qur’ānic approval (cf. Q Al-Nisa’, 4:29). Historical evidence suggests that women were active in business
and active in the public space during the lifetime of the Prophet, pbuh, and after his demise during the time of the four Rightly-Guided Caliphs. Lady Zaynab bint Jahsh, the wife of the Prophet, used to work in tanning the hides and gave as charity the income she earned from it. Aishah bint Abu Bakr, also the Prophet’s wife, was a learned person who was highly regarded by the Companions, many of whom sought her views on juridical issues, especially after the Prophet’s demise, when she also became active in politics. It is further reported that the Cleaner of the Mosque of Madinah, at the time of the Prophet, was a woman by the name of Harqa’. And then also Ra’itah, the wife of the renowned Companion, ‘Abd Allah ibn Mas’ud, earned money through handicraft - she asked the Prophet a question whether it was right for her to spend her earning on her husband and child, for they had no other income than what she earned. She added that she could not spare to give any of it in charity. To this the Prophet replied “you also earn a (spiritual) reward by spending on your family. Spend as you wish.”

Reports also indicate that women traders were active in the market of Madinah, a fact which led the second caliph, ‘Umar al-Khattab, to appoint, upon assuming office, a Muslim woman, Shifa’ bint ‘Abdullah, as Controller of the Madinan Market (Shaykhah Sūq al-Madīnah). Some women ran businesses with their husband’s participation but many did so on their own, and were as such by no means confined to their home. This they did irrespective of their marital status, with the only condition that they be mature and capable to conduct business activity. Among the noted businesswomen of that period, mention is made of Umm al-Munzir bint Qays, a date trader in the market of Madinah, and Asma’ bint Muhkramah bint Jandal, who was a perfume trader. Note also the report: when Qaylah Umm Bani ‘Ammar al-Ansariyyah met the Prophet, she explained to him that she was a businesswoman engaged in buying and selling goods, as she wanted to ensure that what she was doing was permissible (ḥalāl). Many other women of Madinah were engaged in the sale of goods such as cheese, oil and cloth. A second kind of businesswomen of note were those who hired others to run their business, such as Khadijah, Mother of Believers, who engaged Muhammad (later, Prophet Muhammad) to lead her business caravan to Syria. Women were also active in agriculture, planting seeds, carrying crops, collecting firewood, fetching drinking water, embroidery and handicraft, whereas herding, raising livestock and warfare were mainly conducted by men.

Women also participated in public services and political affairs. ‘Arwah bint ‘Abd al-Muttalib, was actively engaged in the propagation of Islam during the Makkah period. She visited her relatives to explain Islam to them. Asma’ bint Abu Bakr was instrumental in the Prophet’s successful migration from Makkah to Madinah. She kept an eye on enemy movements and informed the Prophet and her father Abu Bakr when they were hiding in the cave of al-Nur. Umm Ayman
was a courageous woman who became well-known for walking 270 kilometres all alone when she migrated from Makkah to Madinah, for which the Prophet admired and respected her.

Women also took part in jihad and provided support services such as nursing the wounded and providing food and water, and even fighting occasionally. Thus, it is reported that Nusaybah used a sword when she defended the Prophet in the battle of Uhud, and that Umayyah bint Qays al-Ansariyyah participated in fighting in the battle of Khaybar. The Prophet awarded the latter with a necklace for her bravery, which she always wore and even left a will that it should be buried with her when she dies.49

Reports further indicate that the women of Makkah and Madinah took part in giving bay’ah (pledge of allegiance) to the Prophet, which he received from groups of Muslims. Historical records indicate that bay’ah was practiced even before its affirmation in the Qur’ān. Thus it is noted that prior to the Prophet’s migration to Madinah, two incidents of bay’ah, known as the First ‘Aqabah and Second ‘Aqabah took place (the latter is also known as Bay’at al-Ridwān), the second of which also included women. Also when the Prophet successfully conquered Makkah in the year 8 Hijrah, many women came to grant him pledge of allegiance. One of them was the legendary Hind bint ‘Utbah, wife of Abu Sufyan, a sworn enemy of the Prophet, who had maimed and ripped open Hamzah, the martyred uncle of the Prophet in Uhud. Then when she embraced Islam, the Prophet accepted her bay’ah in the presence of his male Companions in al-Safa.50 All of this attests to the fact that the women of Arabia during the time of the Prophet were able to arrange their daily lives such that they could cope both with their work as mothers and wives - and their outside activities.51

‘Abd al-Halim Abu Shaqqah’s encyclopedic work, Tahrīr al-Mar’ah fi ‘Asr al-Risālah (liberation of women during the Prophetic era – in six volumes),52 is the most exhaustive and widely acclaimed work on its subject to date. Some of the conclusions he has reached in the second volume of his work may be highlighted as follows. He begins by addressing the question whether it is an Islamic requirement for women to be confined to their homes. To this he responds that “participation of women in public life and her meeting with men is the Sunnah of our Prophet, peace be on him.” As for the question whether this Sunnah is definitive or open to doubt (qat‘i, or ḥanni), he states that the total number of reports on this subject, which consists of about 300 hadiths, including the acts, sayings and tacit approvals of the Prophet, when taken together amount to decisive evidence in the rank of Mutawātir. Most of these ḥadiths are also clear beyond interpretation. Participation (mushārakah) in public life is thus the approved Sunnah.

Abu Shaqqah continued: One can hardly find a sphere of life where encounter
and participation between men and women did not take place during the time of the Prophet. Available evidence in the Qur’ān and the hadith collections of al-Bukhari and Muslim indicates that women’s participation in the life of the community during this time was dignified, and that dignified encounters took place at the initiative of men and women, as and when the occasion required. Women made their own decisions, and they often met with the Prophet accompanied by their men, other Companions, and occasionally on their own. Women met with women for short times and for longer hours when the occasion so required, within and outside their homes.

On a broader note, one of the reasons many Muslim scholars have attempted fresh interpretation of the source evidence on women’s equality is a certain dissonance that exists between the Qur’ānic directives on human equality and justice, and some of the medieval interpretations thereof. This has motivated, as Sa’diyya Shaikh observed, scholars in Egypt, Kuwait, Turkey and the US, including Muslim women, to work on the assumption that much of the unjustified departures from the principles of equality and justice on some aspects of women’s rights can be rectified by re-understanding the sacred text. There is a common core of understanding that solutions to the issues concerned must come from the resources of Islam itself. It is further noted that people in different countries and regions, especially Muslims living in the West, tend to relate differently to Islam. Most of the issues relating to women’s equality in the workplace, for instance, are not of a great concern for Muslim women residing in the West. They do have other concerns, of course, but this is not a pressing issue to them. For many, it seems, as Shaikh further noted, “Islam is not one among many equally weighted identities but rather a primary source of understanding one’s very being in the world.”

Women in the Workplace: The Malaysian Experience

I begin with recounting an episode over women’s rights that gained media attention in Malaysia in the late 1990s. The debate started with a statement of the then Spiritual Leader of Islamic Party of Malaysia (PAS) and Chief Minister of Kelantan, Nik Aziz Nik Mat, who announced (6 March 1999) that the PAS government (PAS was and still is the ruling Party in the state of Kelantan) would conduct a study with a view to prohibit wives from working. Thus he said: “it was unfair that they should be made to work, which was the responsibility of men.” Nik Aziz added that he had no intention of stopping women from work, but that his primary concern was to find ways to ensure that children were not neglected while their mothers were at work. However, he questioned the need for women who worked “secara seronok atau suka-suka” – “just for the fun of it” – but were
affecting the future of their children. “Islam teaches people to get married so that mothers can look after the children.”

Nik Aziz further stated that PAS had adopted a ruling which disallowed its women members to stand as candidates in elections, because “it could not guarantee their safety and dignity,” and the ruling would also help to prevent women from bergeser (coming into contact with men), for there were groups out to “disturb” women campaigners during elections. This ruling was said to be temporary and that the party would continue to nominate women Senators. He also stated that PAS already had two women Senators (from Kota Baru and Mekebang), and that the Islamic party had “never prevented its members from supporting women candidates in championing the cause of Islam.” He further added that he was not questioning the right of widowed women or orphans to seek employment, but was aiming instead at the well-to-do mothers who “work for the sake of money and enjoyment.”

One may note here that to say that making an exception for some women, women Senators in this case, appears rather selective and politically expedient. It appears that the women in question were influential and the prohibitive ruling was relaxed in their favour.

Nik Aziz’s statements were not well received and prompted negative responses from both government leaders and the media. The then Prime Minister, Dr. Mahathir, said in response that women had their roles and responsibilities “but we cannot separate them and tell them to stay at home. Who are the people selling vegetables at the Kota Baru market?” A reference to the fact, as is generally known, that women participate actively in businesses in Kelantan.

The then Human Resources Minister, Lim Ah Lek, in his comment praised women’s contribution to the workforce and said that “it was wrong to even think about the idea. Instead of equal opportunities, it is discrimination and regress for the women as well as affecting the livelihood of the family.” He added that it would be an offence under the law to disallow women to work, especially when they want to work, and it is their right to do so.

_Utusan Malaysia_ (daily) carried a commentary to say that “ Malaysian women were shocked by the statement.” That the achievement of several leading women in business and government did not come overnight but came only after “fighting male prejudice” – adding that PAS was unrealistic to have “presented its narrow opinion” to the people of Malaysia.

_Mingguan Malaysia_ questioned whether PAS leaders can support single mothers who are jobless. Statistics showed that Kelantan recorded a 13% divorce rate in 1997. Nik Aziz should study the causes, the paper added, and consider the realities that working women were facing.

Pramodini Menon, Vice Chairman of the Malaysian Trade Union Congress’s
Women’s Committee commented that earning money is as important as taking care of the children, teaching them and instilling religious values in them. If the man in the family is unemployed, is the government prepared to provide enough for the family? Besides, the right to work is a basic right of women; to take this away devalues women. In 1997, the Malaysian Government proposed to amend the Employment Act to encourage women to come out and work as the country was facing a labour shortage and did not want to be overly dependent on foreign workers. “What has Nik Aziz to say to this?”

Menon added: We are burdened with the reality that many men are not responsible for their women and children. Many women are being divorced every year without getting their due share of maintenance and matrimonial property. Many more children are abandoned by fathers who ignore court orders to provide for them. The real solution is not denying women the right to work; it is to provide them with the support system needed to exercise their rights. This includes affordable childcare centres in the neighbourhood or workplace, flexible working hours and extended maternity leave.

Representatives from seven women organisations of Malaysia also wrote in a commentary that “Nik Aziz Mat’s retrogressive comments on women, work and the family are causing much concern to us in the women’s movement.” This is especially the case in view of the fact that “there is nothing in the Qur’ān or in the hadith which prevents women from working outside the home. In fact the Qur’ān extols the leadership of Bilqis, the Queen of Sheba, for her capacity to fulfill the requirements of the office, for her political skills, her leadership qualities and her independent judgment …” (Q al-Naml, 27:23-44). Provided a woman is well-qualified and best suited to a task, there is no Qur’ānic injunction to prohibit her from undertaking it because of her sex. The ḥadīth literature also records many instances of women leaders, scholars and women who fully participated in public life.

Women representatives further added that Malaysians live in a society that encourages women to work and excel academically. Malaysian girls outperform boys in almost all areas of education, reflecting similar worldwide trends. A reference was made to the 1998 statistics for Malaysia, which showed that girls formed 65.3 per cent of the enrollment for pre-university education, and that of the 79,014 university students, 54.5 per cent were female. They also showed that 47.1 per cent of the labour force in 1995 were women. A slightly higher ratio of 60: 40 percent of female to male population in Malaysian universities has been maintained ever since.

At the grass roots level, it was added, that women were “daily confronted with the stark reality that many men are not responsible for their women and children, and also that Muslims record the highest divorce rate in Malaysia.”
All of this points to the fact that women in Malaysia have been actively campaigning for their rights over many decades, and have made significant progress, partly due to a favourable political environment that obtains in this country. An early piece of legislation, a tangible result perhaps of that campaign, was the Pensions (Amendment) Act 1968, which granted equal pay for equal work to men and women alike. Similarly, married women became entitled to file separate income tax assessments under the Income Tax (Amendment) Act of 1975. In 2001, the Women, Family and Community Development Ministry was set up under the then Prime Minister Mahathir. Then came the landmark amendment to Article 8(2) of the Federal Constitution, which prohibited all discrimination based on gender. This was followed in 2004 by a policy initiative under the then Prime Minister Abdullah Badawi to increase women’s participation in government and corporate leadership to 30 per cent (as per UN recommendation). Women are as a result being promoted to leadership positions, a policy which has been subsequently endorsed, by the incumbent Prime Minister Najib Razak’s administration.

Conclusion and Recommendations
This paper looked into the issues of women’s empowerment in the workplace. Our examination of the source evidence of the Qur’ān and Sunnah, historical data, as well as juristic doctrine is generally affirmative of Islam’s essentially egalitarian outlook on women’s rights. We have also ascertained the scope and size of the challenges that arise from prejudicial customary practices that undermine women’s rights – sometimes contrary to Islamic guidelines. This aspect of the challenge tends to be tenacious and difficult to uproot. Some of the more tangible results of past efforts manifested in reformist legislation have also been surveyed, especially in the case of Malaysia. I now conclude with a set of actionable policy recommendations for follow-up reform as follows:

• Women’s right of work is part and parcel of the general challenge of gender equality and justice. Hence it is important that the more particular issues of women’s empowerment in the workplace are contextualised into the larger matrix of equality. New solutions to issues should also be related to aspects of equality in matrimonial law, as well as in the economic and social conditions of women in their particular settings.
• Women have always shouldered arduous work as wives and mothers within the family and society, without actually gaining due recognition for it. This should be rectified by due acknowledgment of their contribution as well as grants of material assistance in child benefits and availability of
child care facilities, health care and adequate maternity leave for working mothers.

- Countries and regions of the Muslim world differ widely in respect of their capabilities, acceptance or otherwise of major changes in women’s rights, notwithstanding also their significant commonalities. Particularities of culture and socio-economic conditions must be duly recognised in one’s quest and plan for further improvement.

- Islamic law is cognisant of the differences of custom and culture, in so far as these are recognised as valid bases in law and judgment, provided they do not contravene the basic norms of fair play and justice. The theory of *ijtihād* is also cognisant of the role of custom in so far as it makes contextualisation of custom and culture of society a pre-condition of *ijtihād*.

- Islamic law has stagnated nevertheless and a certain disconnect has developed over time, between the Sharīʿah and social reality, as well as statutory legislation. The colonial legacy and its inherent bent on secularist modernity ensured that statutory law in the Muslim world is not energised by the guidelines of Qurʾān and Sunnah or the resources of *ijtihād*, but by a wholesale importation of western laws and institutions into their former colonies.

- Gender equality in the workplace still looms large and remains a challenge unmet in the larger part of the Muslim world, not so much because of a lack of statutory law and policy, but that much of what already exists is prescriptive and wanting of effective implementation. A lesson to be learned may be that law and policy making on gender issues need to be action-oriented. It is better to be gradual and effective rather than idealistic and ambitious beyond context.

- Our village folks, religious leaders and conservative strata of population have often remained uninvolved or aloof to the issue of women’s rights and the efforts to address them at the level of law and policy. These efforts need to be more inclusive and reach out for the people’s consultative input. Law and policy should be such that people can relate to and understand. The importance of enlisting the support of imams and religious leaders to the gender justice campaign can hardly be overestimated.

- Muslims need to own the agenda of gender justice themselves. The fact that this has hitherto been largely driven by western ideas has generated internal resistance among Muslims – sometimes even among those who may otherwise be less than hostile to reform. For Muslims to own that agenda is to anchor it in local culture and Islam. One can still keep an open outlook on beneficial input from other traditions, but only when
substantive harmony with indigenous values is carefully ascertained in one’s quest for overall improvement.

- Gender justice issues are closely tied to the Muslim perceptions of piety, which adds to religious sensitivities. Even in the fiqh tradition, the subject of matrimonial law (munākahāt) features next, in the order of thematic classification, to devotional matters (‘ibādāt), due to the recognition that marriage has a devotional (ta’abbudī) aspect and is different in that respect from the rest of civil transactions (mu‘āmalāt). All this notwithstanding, the fact remains that marriage is a civil contract in Islamic law.

- It is advisable for western sponsors and advocates of women’s equality to recognise in their supportive projects and programmes in Muslim countries, or the most conservative among them at least, that an openly assertive stance on gender issues can be counter-productive.

- Gender justice campaigns by the Muslims themselves should approach the outstanding problems according to a carefully graduated approach that takes up the relatively softer issues, such as education, literacy, and healthcare before they move on to the more challenging problems of reform on core issues of local custom, matrimonial law and inheritance. Women’s equality in the workplace too is internally diverse. For instance, employment of women in certain professions, such as medical services, teaching, social and family support sectors are not as sensitive as their participation in elected assemblies, police and prison services and the like. Gradualism and pragmatism also avail one of the benefits of self-assessment over time.

- Finally, some Muslim countries, such as Malaysia, Indonesia, Morocco, Turkey and even Egypt can perhaps form a common platform to act in unison in the advancement of gender justice in other parts of the Muslim world. Some of these countries enjoy better prospects of receptivity and cooperation with other Muslim countries. The countries just mentioned may consider participation in projects that seek to strengthen the family unit, local economy and education with the significant participation of women themselves.
Notes

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5. Al-Bukhari, Şāhīh al-Bukhārī, kitāb al İmān, b. min fa’dl man istabara’ a li-dīnīhi, ḥadīth no. 50; Muslim, Şāhīh Muslim, k. al-musāqāt, b. akhdh al-halāl wa tark al-shubhāt, ḥadīth no. 2996.


22. Hadith reported by all the major collections of ḥadīth (i.e. muttafaqun ‘alayh): al-Bukhari, *Ṣaḥīḥ al-Bukhārī*, III, p. 155.


29. For a discussion of the source evidence on reserving the position of the head of state for men, see Kamali, *Freedom, Equality and Justice*, pp. 63-65.


34. Ibid., pp. 66-70.

35. Ibid., pp. 66-69.


45. al-‘Asqalani, al-Iṣābah, XIII, pp. 4-5.

46. Ibid, XIII, 106.


48. Al-‘Asqalani, al-Iṣābah, XII, 114.


56. Id.


60. Id.

61. Id.


64. “Denying Women Right to Work Deprives Them of Choice,” New Straits Times, Kuala Lumpur, March 20, 1999. The seven women groups mentioned were: Sisters in Islam, All Women’s Action Society, Pusat Khidmat Wanita Pertiwi, Women’s Aid Organisation, Women’s Crisis Centre, and Women’s Development Collective. It was added that the 1997 statistics from the Selangor Syariah Court showed that out of 2,165 registered divorces, only 29 were granted a mut’ah (consolation gift), 58 were on division of matrimonial property, 55 of wife maintenance, 63 of child
maintenance, and only ten cases of ‘iddah maintenance. This “abysmal record from one of the most developed states in Malaysia is a tragic reflection of how far reality is from the Qur’anic ideal of responsible Muslim male.” Noted also was the experience of single mothers which showed that their standard of living plunged immediately after divorce or desertion and fell into the poverty trap, while their ex-husbands tended to experience little change in their living standards.

65. See for details Sharifah Hapsa Shahabudin, NST article as above.
Abstract: We explore the concept of peace from a broader sense than merely the absence of war, through the eyes of Acehnese women who continue to strive for better political representation and social justice utilising Islam as their foundational point. The study analyses Islamic principles of peace, cultural beliefs and practices, as well as the political environment, which engulfed Aceh. Historical accounts and academic research form a theoretical base for our analysis, while interviews with influential women, Ulama leaders, political figures as well as community activists provide integral content for our survey. This inquiry concludes that in spite of widespread political conservatism being promoted by the GAM political party of Partai Aceh and parochial religious fanaticism being advocated by certain transnational groupings, women themselves provide hope for gender equality and empowerment. Women of the dayah (Islamic boarding school) and NGO activists may work together to pursue their Islamic endowment of peace and accomplish pragmatic actualisation of equality and justice.

Introduction

Gender is regarded by many as a secular value infiltrated into Acehnese and other Muslim societies through Western influence. Though there is some truth in this perception, especially with the use of the terms ‘gender equality’ or ‘human rights’ for women and the discursive debates employed in promoting them, Muslim women’s efforts for representation and arguments for equity are as old as Islam itself. Umm Salamah, the wife of the Prophet Muhammad, once asked him: “What is with us (women) that we are not mentioned [by God] in the Qur’ān as men are mentioned?” God heard her complaint and then the verse1 (Q al-Aḥzāb 33:35): “Surely the Muslim men and women and the faithful men and women…” was revealed.2 Similarly, Arwah or Umm Mūsa, wife of the second ‘Abbasid Caliph al-Manṣūr, requested a written marriage stipulation from her husband that he would neither marry a second wife nor take a concubine while she was still alive.3 When the Caliph subsequently regretted his agreement and sought it annulled, Arwah appealed to the chief justice whose verdict ruled in her favour.

Both Umm Salamah’s advocacy for equal treatment of men and women in Allah’s revelation, and Arwah’s attempt to not share her husband with other women, were gender-oriented advances advocating women’s rights and equity. These examples demonstrate that while these two great ladies of Islam may never
have recognised the term gender nor promoted explicit gender discourse, yet
gender was acted upon as second nature to them. Understanding gender as an act
rather than a discursive idea is very important in our discussion of women’s rights
and responsibilities in an Islamic context, for this same attitude is being repeated
in Aceh and was found in many other Islamic societies throughout history.

This paper explores women’s active participation in public life in Indonesia’s
westernmost province of Aceh, as a form of peacemaking in which women
mediate paths to active peace in their community providing a sense of orientation
and objective in the activities of their family and society. We begin with a brief
survey of the role of Islam in women’s understanding of peace, their search for
individual and collective rights as well as for public responsibilities. Then we
focus on the challenges facing women within the constraints of a traditional
Islamic society such as Aceh, as they evolve toward their own specific form of
modernity, highlighting their religious and cultural possibilities and limits in
their engagement. The last section explores the new reality that may fuel the
further advancement of women or hinder them in moving forward, recognising
the essential contribution of female religious authorities in their work to educate
youth and to uplift their society, as well as those conservative political elements
which manipulate religious aspirations and seek to mitigate peace building
efforts.

Islam and Acehnese Women’s Participation in Public Life

The name Islam, or the Arabic term “al-islām”, derives from the notion of salm,
silm, and salāmah meaning security, peace-making, resignation and conciliation,
and is also associated with the term salām ‘salutations of peace & security’.
Sincere resignation to Allah’s revealed guidance is the essential connotation of
the word “islām,” and as a conventional technical term it serves as the name for
the Muslim faith: “I have chosen Islam as your religion” (Q al-Mā`idah 5: 3).

Another important spiritual foundation for peace in Islam is the belief that God is
the ultimate source of Peace: “He is God; there is no god save He; the King; the
Holy and the Peace [al-Salām]” (Q al-×ashr 59: 23). The notion of God being
named al-Salām is repeated in the supplication (du`ā’) recited by Muslims at the
conclusion of the five daily obligatory prayers (salāt): “O God, You are Peace,
the Source of Peace, and to You Peace returns . . .” This understanding that God is
the origin of Peace is traditionally attributed to Khadijah, the beloved first wife
of the Prophet, when she responded to “the salutations of peace from [her] Lord”
by saying: “Allāhu l-Salām wa minhu l-Salām [God is Peace and from Him Peace
derives].” The Qur’ānic testimony and Khadijah’s recognition of God being al-
Salām, as well as the divine naming of the Muslim faith al-islām, highlight that
peace is an intrinsic part of Islam. Therefore, peace from an Islamic perspective embodies both a vertical spiritual dimension as well as horizontal practical aspects, for God al-Salām reveals al-islām as a religion enjoining human beings to experience lives of peace and security in the best sense of the word.

Peaceable living in the real sense of the word is reflected in the notion that peace in Islam is neither merely the absence of war nor the elimination of discrimination and injustice in the community. It is holistic peace implanted in the essence of the human constitution (fitrah – innate recognition of monotheist reality) radiated into their hearts as a manifestation of their sincere resignation to God al-Salām as true Source of Peace, and translated into healthy thinking and positive attitudes extended to peaceful treatment of fellow men and women, as well as the flora and fauna or their natural surroundings. Such a comprehensive approach to peace is a fundamental principle in the Muslim activation of peace and security throughout ages. However, the complexity of Muslim cultural life and recent history, the nature of relations within their own communities and with their fellow humans and other nations, and the level of Muslim spiritual and intellectual astuteness as well as their collective political stability, has led many Muslims to overemphasise one dimension of Islamic teachings at the expense of other aspects. When it comes to the issue of the role of women, cultural dimensions guided by intellectual discrepancies now clenching Muslim communities worldwide often overrule the spiritual inclusiveness and foundational openness of Islam. These challenges actually provide women either an opportunity to engage in social activities and peace building, or pose an obstacle preventing their progress. Deciphering the situation from the reality of contemporary cultural constraints: women may be both victims of societal incompetency as well as advocates for communal advancement.

Women in Aceh, like many other areas in Indonesia and South East Asian nations, have historically lived in a women-friendly environment. The form of Islam, which penetrated Aceh from the ninth to twelfth centuries CE by means of traders and Sufi fraternities, contributed to and encouraged the free movement and social engagement of women. Commonly engaged in the market place and within Sufi groupings, women were as active as men in commerce and the ṭarīqah. In the political arena Acehnese have romanticised their experience of women leaders, especially the famous four Sultanahs who ruled over Aceh for fifty-nine consecutive years (1641–1699), and the woman admiral Keumala Hayati who controlled the Sultanate’s sea security, as well as female revolutionary leaders fighting the Dutch colonials. The women leaders of traditional Islamic learning institutions called dayah (from Arabic zāwiyyah ‘study lodge’) were also celebrated. However, prolonged conflicts during Suharto’s decentralisation and unification policy (1967–1997) limited women’s active role as religious preachers
While traditional religious openness enabling the public role of women evaporated, a new kind of women social activism emerged. Conflict, violence and political limitations (to evoke Michel Foucault's ‘docile body’) brought a new energy to the people of Aceh. Many students and young men and women reacted to their political limitations by establishing new non-governmental organisations (NGOs), and this fresh civic energy mushroomed in Aceh and all over Indonesia. This was made possible as Indonesia opened up during the peaceful political and social revolution of reformasi in the late 1990s that led to the fall of Suharto, and encouraged political openness and democracy.7 Sympathy and support from national and international NGOs further strengthened the civic movement in Aceh. Even though this new activism was initially religiously neutral or even secular in its nature, many students from Islamic universities such as the Ar-Raniry State Islamic University were among the most active advocates of this new energy. Many women activists, including victims of conflict, emerged during this period and were as actively engaged as their male counterparts. While religious conservatism steadily gained support and its advocates became more organised, the religiously neutral and secular activists became more comprehensive in their outlook, realising they could not antagonise traditional Islamic groups and religious convictions while operating in Aceh. Interestingly enough, women were among the leading advocates of this convergence, and to overcome religious conservatism they had to work both with the political establishment and with the existing Islamic institutions utilising religious language and aspirations.

Conflict and violence in Aceh for nearly three decades led to the victimisation of numerous men, women and children, with the latter two suffering the most. As conflicts intensified in the last decade of Suharto’s iron grip over Indonesia, Aceh was put under the ‘Operasi Darurat Militer’ (DOM – Military Emergency Operation). During this period, certain pockets of Aceh underwent great intimidation and brutality with many hundreds of Acehnese killed without this being known by the rest of the citizens of Indonesia. As reformasi erupted and DOM was finally lifted in 1998, the numerous military atrocities in Aceh were unveiled to the public eye. Aceh received sympathy from the across the nation and internationally – which strengthened Acehnese civil society. Initially, while the situation in Indonesia progressed, Aceh suffered even further. The information about military atrocities during the DOM period fueled Acehnese support for independence (merdeka). For the first time ever a large majority of the population in this province would have selected the merdeka option had they been given a chance to hold a referendum, which became the popular demand at the time. To contain the political unrest, thousands of non-organic troops

(penceramah) and as community leaders, which had been common phenomena up to 1970s.
were inserted into Aceh, and in May 2003 during the era of President Megawati Sukarnoputri the province was once again put under military emergency law (a while later a civil emergency was imposed), which was only lifted in 2005 after the convulsive disaster of the Tsunami inundation. Consequently, the bloodbath of torture, killings, and sexual abuse of women became a daily reality. The Indonesian military victimised many women during this period, and burnt numerous villages and towns, while gangs of orang tidak dikenal (‘unknowns’) burnt over one thousand local schools during this emergency era. Although most of the schools were rebuilt and victims were rehabilitated after the signing of the 2005 peace agreement in Helsinki in the aftermath of the Tsunami, the pervasive fear, intimidations, extortions and the severe limitations of movement during that era could not be easily forgotten or forgiven.

In the midst of the high civilian contentions and referendum demands, a group of Aceh women convened in February 2000 the first All Acehnese Women Congress of Duek Pakat Inong Aceh attended by 437 women from across this province. Women activists led by Naimah Hasan walked a fine line,\(^8\) taking a neutral position between the demands for referendum (inviting independence) or for re-integration with Indonesia. They also had to convince both the military and the rebel leaders of their neutrality and the importance of their Duek Pakat. Several women leaders, for example, had to sneak into the jungle to meet the late GAM military commander Tengku Abdullah Syafi’i in his hide-out in order to solicit his blessing for their congress and to request the participation of the GAM female combat wing known as the inong balee (lit. ‘female widowers’), even while the military was circling the area in order to capture him dead or alive.\(^9\) Intimidation, terror and coercion for or against the existing options of plebiscite and re-integration were among the challenges faced by the organisers and participants of this congress. Some participants even walked out during the deliberations accusing the Duek Pakat of having been hijacked by the re-integration camp, while one outsider told a student participant: “you are dead if the congress recommends a referendum.”\(^10\) What was interesting about this congress is the fact that women in Aceh were among the first to demand that “the Aceh conflict be resolved through dialogue and nonviolent means.”\(^11\) They were also the first to request the quota of 30 percent women representation in politics and decision-making, long before the issue was debated at the national level in Indonesia. The Duek Pakat also publicly registered women’s support for the implementation of shari’ah law, requesting a form of Islamic juristic practice friendly toward women.\(^12\)

Praise for this deliberative council of women was great. The late Acehnese historian M. Gade Ismail was quoted by the Jakarta Post: “The most valuable thing to come out of the Duek Pakat … is that women are showing us men and
the students how to solve differing points of view in a democratic manner.”13 Another person spoke of the Duek Pakat in the context of “Acehnese women map the future.” Indeed at the time when the voices of moderation were absent, these women filled the gap. When the Acehnese were polarised between the rival camps of referendum and that of re-integration, women initiated a middle way by concentrating on the process rather than the result. They insisted that whether it be merdeka through referendum, or reaffirmation of Aceh’s connection with Jakarta, the issue had to be debated in a non-violent manner. Women’s capacity to negotiate their presumed victimhood by turning it into strength, guided the path of their society and country. The voices of women in this Duek Pakat became a turning point, for since then many have followed the example set by these courageous women in their demands for negotiation and for seeking a peaceful means to resolve the Aceh conflict.

Women’s demand for compromise to solve the conflict became increasingly adopted in the province, for despite a few failures at the end of the road in 2005 the peace agreement between GAM and Jakarta was achieved through nonviolent means. But their call for women political representation in public life has been a continuing struggle. Even though women have succeeded in putting in place regulations for their 30 percent representation in the political process and decision-making activities at both the national Indonesian and provincial Acehnese levels, such laws have never been properly implemented. Loopholes in the laws and lack of will among the political authorities are some of the obstacles preventing women from achieving due representation in different dimensions of public life. The following example explains both the ambiguity of the law and the absence of good will among the political elites. The Indonesian election law of 2003 requires every political party to register 30 percent women representation in their party leadership structure and on their candidacy list. To meet this requirement the party enlisted female relatives or friends of the party leadership who often had no experience, and registered them on the “shoe number [nomor sepatu]” on their candidacy list. Since the law followed a vertical voting system accumulating all votes onto the first and the next candidates on these lists, very few women received enough votes in Aceh in the 2004 nationwide elections. Similar experiences have occurred across the country.

Though the law has since been improved, the women’s struggle continues. The current election law passed in 2009 requires political parties to crisscross one woman for every two male candidates on the candidacy list, but this slight improvement of the status of women in the law from the previous “shoe number” did not increase women’s election to the parliament. At the national level, out of the 560 members of the 2014 parliament there are only 79 female representatives, or 14 percent – and this is lower than the 2009 parliament when 103 women,
or 18 percent, became national law makers. The situation in Aceh is the same: of the 81 parliamentary seats in 2014, women gained 12 places or 14 percent, compared to the 2009 elections when only five women, or seven percent, assumed the parliamentary positions of 69 members. Numerous reasons contributed to women’s inability to gain access to the ‘male world arena.’ Among the many factors that put barriers on women are the high elections costs and the prevalence of money politics in which women are inexperienced players. The placement of women’s candidacy on the zigzag number 3, 6 and 9; the lack of a political network; and the lack of logistical support from the party leadership are other obstacles preventing women from gaining equal representation in this political field. In other words, in spite of improvements in the law, many political parties continue to regard women as only fulfilling regulatory requirements without whose participation their own election registration would be void. This shortsighted political culture remains strong in Aceh and across the country.

Challenges and Cultural Possibilities

Women have always been active in public life in Aceh. Traditional Acehnese society centered around villages never explicitly talked about gender equity and women’s public engagement, yet women were involved in every aspect of village activity. It is true that very few women had assumed the position of village heads, but until as recently as 1995 when the law on local government was enacted the position of the village head was more symbolic. Village activities were run by the most influential members of society, namely the Ulama and enlightened leading individuals, the wealthy and the most generous. A few of these persons were women who were the most influential in their village, including during the elections of village heads. This was the era when politics, intrigues and hope for financial gains were remote from village experience. Although the 1979 and 1995 laws on village governance do contain a positive statement on the role of women and require a female representative in the village council, yet in practice that very same position actually mitigates the traditional collective voluntarism of influential women in village affairs. Coupled with financial gains for village leadership promised by these laws, collective responsibility slowly subsided in many Acehnese villages. For the same reasons, united female engagement in their village life became minimal. Politics and selfish intrigues have further damaged the situation, and now most village activities and women involvement in community affairs is decided from the top. Ironically, such is the price of modernity and legal reform.

This relapse or regression of the strength of women in village leadership does not mean that women’s participation in public life in traditional Acehnese society disappeared completely. The traditional form of income generation should reflect
a positive reality. The most important rural income production in Aceh is farming and selling produce in the traditional markets. The two are connected for each supports the other. The involvement of women as vendors in markets remains overwhelming, and they continue to control a great number of small and medium size operations. This commercial activity allows women to contribute to their family income and to be financially independent to some extent. Although these informal business actors may not play a very important role in the country’s economic growth, since very few of these women could make a decent income, they indeed contribute greatly to the wellbeing of their family and the fair upbringing of children – and thereby to the health and vigor of society. These petty-trader women often possess bargaining power and are very independent.

In addition to the market, women in Aceh are also active in agriculture. In this arena women share more than half the work of planting, caring and harvesting of agricultural products (esp. rice and vegetables), thereby controlling their family finances. They often decide either to sell the produce or to retain them for family consumption. Such economic independence is a reflection of their strong character manifested in their overall role as equal partners in both the household and society.

Cooperation between men and women in traditional society has to some extent influenced daily life in urban centers. Medium size enterprises and petty-trade in Aceh’s cities and towns still depends on a partnership between men and women. However, the real challenges occur in the areas of modern urban occupations, such as employees in government offices, in political parties, the police force, academic institutions, major local and national companies, international corporations, important social organisations and the Ulama body. All these institutions are important because they control most of the resources, decide policies and shape public opinion. When the 2000 Duek Pakat requested 30 percent female representation in politics and in decision-making bodies, the women participants had in mind all these institutions. Although over recent years they have succeeded in incorporating the 30 percent quota into laws and regulations at both local and national levels, women continue to face great obstacles in putting those laws into practice. Similarly, they have been able to persuade the Ulama Consultative Council (MPU) since 2007 to accommodate female representation in its leadership structure, but again such singular women have not been allowed to play a key role in this important organisation’s decision-making. The police force has also been accommodating women, but female officers are still far below quota. Finally, major business enterprises are still beyond women’s reach, given that few women are truly large entrepreneurs.

The challenge to implement the 30 percent quota remains a constant exertion and the following two examples reflect this reality. After the 2006 provincial
elections women in Aceh worked to transform the tiny Women Empowerment Bureau in the provincial government system into the Women Empowerment and Child Protection Body (Badan) with a major profile and sizable budget. They worked hard and negotiated the issue with Aceh’s Governor, Vice Governor, members of parliament, and political parties. Although they experienced a number of setbacks along the way, the government and the parliament finally accepted the proposal and transformed the Bureau into the Badan. However, this was not the end of their struggle, for a new challenge of selecting the right person to lead this Body emerged. Since its inauguration in 2008 the Governor has appointed three different women to lead the Badan, and the selection of the second one was regrettable for she had little interest in women empowerment and gender equity. When the then Governor Irwandi Yusuf was questioned about placing the wrong individual to head this institution, sadly his response reflected his indifference to women’s concerns: “I cannot resist, she keeps asking.” The current leader of the Badan is slightly better, but her political and cultural conservatism, coupled by her attachment to the ruling party prevents her from viewing women issues from a wider and a more comprehensive scope. The above Irwandi episode and the current practice show the nature of political culture in contemporary Aceh, and women’s continuing need to struggle in order to gain political rights and their legal share in decision-making.

The second example is more telling of the unproductive environment for women’s engagement in public life. The issue emerged in April 2010 when Anisah was sworn in as camat (head of sub-district) in Plimbang in North Aceh. While Anisah was not the only female camat in Aceh, her position became very controversial when the head of the local parliament in that district – Ridwan Muhammad, of Partai Aceh – argued for her removal on the basis that in a province such as Aceh ruled by the shari’ah, a women could not be a legitimate political leader. His conservative judgment led to heated debates on the role of women in decision-making with on-going media coverage, and many counter arguments expressed both locally and at the national level. The Governor, who is also of the Partai Aceh, registered his support for Anisah, invoking Aceh’s history when the four Sultanahs had ruled over Aceh for fifty-nine consecutive years with the full support of the Ulama of that era.

Anisah’s fate was decided by the enormous support she received from both men and women across the province as well as from community leaders, yet the controversy reveals the growing strength of a deeply embedded conservative political culture being promoted in certain areas of Aceh. The appeal to shari’ah is being used and abused by ill-educated “illiterate” politicians in order to gain political traction, while the silence of major Ulama leaders over this issue of legitimate female political leadership further complicates the situation. These
debates did indeed lead to some positive outcomes. They have encouraged people
to think seriously about this issue, and many have gone beyond their normal
capacity and conventional knowledge to learn more about the range of Islamic
legal positions on the issue of women leadership.

While arguing for women participation in politics is a difficult undertaking,
women could have gained more success in academic institutions such as schools
and universities. However, no Acehnese universities have had women Rectors or
even candidates running for the office of Rector. There are several female Deans
of academic departments, but their number is insignificant. Similarly, a few
women have assumed positions as school principals, especially at the high school
level, even though the majority of teachers in such schools are women. The lack
of women leadership in Aceh’s academic institutions may best be explained in
relation to both internal factors concerning women, and those of external public
reality. Externally, society and academic institutions have not awarded affirmative
action any priority, and although women are normally given the same opportunity
they don’t have any enthusiasm to run for high office. Secondly, since running
for important positions involves ‘chopping off the heads of other candidates’
when garnering supporters and denigrating rival candidates, most women are
not prepared for such unhealthy distasteful competition. Internally, a few women
who meet the requirements for such positions are prevented from running due to
their personal situations including family responsibilities or the attitude of their
husbands. Another internal factor placing obstacles on women is the concern that
they would not receive proper support even from other women, and therefore
it is better not to run. Thus, family pressures and lack of self-confidence are
two chief internal factors preventing women from moving forward in this arena.
In order for them to climb this ladder they should not be faced with a choice
of family or career. Rather, women should receive support in their efforts both
to raise family and to advance their career. This undoubtedly requires unfailing
assistance and cooperation from their husbands and other family members, for
only with their corporation may women progress in both domains. The lesson
here is that women’s empowerment is not just about educating women – but
about enlightening husbands and young men as well.

Contemporary Conditions for or Against Women Empowerment

In addition to these issues, the following two contemporary conditions may
further hinder women’s advancement in Aceh. One is the dominant political
conservatism widespread in society, and the other is parochial religious
fanaticism. The Acehnese government, like the rest of Indonesia, has never been
very willing to accommodate gender concerns without effective pressure exerted
from women and by international bodies like the United Nations. True: the forces acting from within and from without have gradually changed the political discourse in Aceh and throughout Indonesia, leading to the reform of laws and public regulations. Nevertheless, the implementation of those legal requirements continues to be problematic, even though government rhetoric on gender has often been accommodating. The situation is even less constructive in Aceh.

Although Aceh has a long history of women leadership and the general positive attitude towards women social involvement, their experience in politics is not very encouraging. Since the 2009 elections of GAM leaders through their Partai Aceh to govern the province, women met a more conservative political environment. The controversy over a female camat described above reflects the recent spread of political conservatism. Even Irwandi, who supported the legitimacy of the female camat, is conservative on many other gender issues. The reason for his selection of the Head of the Women Empowerment Body mentioned above, the budget he assigned for gender concerns, and his views on certain cultural–religious practices such as polygamy are just a few examples of his conservatism. The current Governor Zaini Abdullah is not very different either. He is not known for supporting women’s agenda and his silent attitude is overtaken by his more flamboyant Vice Governor famous for his love of women and enthusiasm for polygamous marriage. The latter is also known for his religious conservatism. As one activist commented: “We cannot confirm his support for women since the issue of equality is the lowest of his agenda. Unfortunately, neither he nor the Governor has promoted a constructive policy for women after more than two years in the office.”

The local parliaments both at the provincial and district levels were then controlled by the Partai Aceh, whose many members were quite insensitive toward female issues. The current parliament selected in 2014 has reduced the Partai Aceh membership, yet the provincial government’s gender concerns remain lower in priority. The Partai Aceh not only tolerates but promotes polygamy, and many of its leaders, including the current Vice Governor, are polygamous husbands. In fact, since their rise to power, polygamy has become a statement of status among political elites. Conservative political culture is also reflected in the policy and programs of the provincial government, and therefore “gender mainstreaming efforts are not moving anywhere.” In short, the political culture and religious conservatism promoted by the Partai Aceh, and supported by certain religious establishment figures, have created a low intellectual and social atmosphere that is unhealthy for future women equity projects.

In addition to parochial political conservatism, religious fanaticism is also on the rise in this province. While Aceh has always been a very devout Muslim region and the Acehnese are proud of their Islamic roots, many are quite concerned with
the ways Islam is now being applied. Women do support the implementation of the *shari‘ah*, as they clearly expressed during the *Duek Pakat*, because they believe strongly in the Islamic principles of justice and equity. “*Sharī‘ah* is about justice and the protection of the weak, but the version of the *shari‘ah* being implemented in Aceh is about punishment and exposing the wrong doing of others.” The problem with the Acehnese version of the *shari‘ah* is that “everyone claims it is God’s law while in reality it is the interpretation of God’s law by the Ulama and politicians. Our inability to distinguish between human interpretations and divine injunctions is a serious matter.” Another criticism regarding the application of *shari‘ah* law has to do with the target of legal enforcement. The critics observe that the *shari‘ah* has only punished women and the weak, while the politicians and the powerful have not been touched by it.

In spite of all these criticisms, many women continue to expect that the *shari‘ah* can truly promote the spirit of justice and equality — and thus the problem is not with the *shari‘ah* as such, but with the manner it is being interpreted and applied. Other women feel that the *shari‘ah* can never be just toward women, but they have no choice except to work within the existing legal framework. Despite the differences of opinion, these two groups of women often work together in order to accomplish common objectives. In addition, there are others who always view the *shari‘ah* or its implementation very positively, and these represent the most conservative among Acehnese women. According to them, the problem is not with “God’s law and its application” but with the people who are not following divine commands. Aligned with each of these three main orientations one finds men who share their respective views, and thus the discourse on *shari‘ah* in Aceh is dominated by these three differing views, with the first two often found supporting each other.

These debates among lay women and men are also reflected in discourse among the Ulama. While all of the Ulama in Aceh unequivocally support the *shari‘ah* and have worked hard to get it adopted by the government, it is the Acehnese traditional Ulama heading the *dayahs* (religious boarding schools) represented by the MPU who are truly the core of Acehnese religious authority. They are generally open to criticisms concerning the implementation of the *shari‘ah* as long as these views are expressed in a proper venue and in a dignified manner. As a matter of practical distinction, I may refer to them as the *sarung* Ulama [i.e. who wear traditional clothing]. In addition to this traditional or *salafi* religious establishment, there are university Ulama who are largely professors and graduates of Ar-Raniry Islamic University, being the most open to pluralist views and social-religious criticisms. These ‘white collar’ Ulama are also well represented in the MPU. The two groups share a great deal of commonalities, but are not always in agreement. The third type is the most conservative group
and is a new comer in Aceh. This group may be identified as the *jubbah* religious authority [wearing the white Arab-style shirt or *jubbah*], and comprises several groups of outside origin: *Hizbu t-Tahrir*,33 *Jama`ah Tabligh*,34 *Wahhabis*,35 as well as several national groups that all arrived in Aceh recently to assist during the 2004 Tsunami, and have grown roots in the province. The *jubbah* Ulama are very active in promoting their views and, despite being outside imports, they are gaining ground in Aceh. The most conservative women group mentioned above belongs to this new *jubbah* religious establishment.

Although all of these Ulama groups and their women supporters share the same enthusiasm for the *shari’ah*, the Ar-Raniry Ulama are more understanding of women’s predicament in the context of the unintended abuses of *shari’ah*. The *sarung* Ulama are also listening to criticisms and complaints, but they are more careful and limited in their accommodations and responses. In contrast, the *jubbah* leaders see nothing wrong in the *shari’ah* implementation, suggesting that problems have arisen due to the lack of positive responses from the public and therefore, more severe forced implementation is necessary. Although the *sarung* Ulama share very little in common with the *jubbah* group regarding Islamic viewpoints, when it comes to *shari’ah* discourse the *sarung* Ulama are in alignment with this ultra–conservative group. A prominent leader of MPU Teungku Ismail Yacob stated about the *jubbah* leaders:

> Even though the [dayah] Ulama disagree with the ways in which they express their views, they help promote greater support for the *shari’ah*. Their opinions on certain aspects of Islam in the manners of just halal and haram are problematic because Islamic norms consist of more than halal and haram options.36

Since the *salafi* Ulama rarely express their opinions on controversial issues in public, the general masses are left vulnerable to the conservative views of the *jubbah* groups, or those of the Ar-Raniry scholars. When asked the reasons for their silence, the *dayah* Ulama’s typical response: “these are minor issues.” One wonders what are their major concerns? Proselytising is certainly one.37 Another explanation for their silence is that the Ulama generally dislike to contradict one another in public, and therefore when they disagree on issues they discuss them behind closed doors. Solidarity and consensus is a chief characteristic of Ulama culture in Aceh, as elsewhere in Muslim societies. However, the new more radical *jubbah* Ulama do not appear to exhibit this characteristic, and therefore they are outside the mainstream. The real concern is that such radical well-organised groups may assume the lead in providing public guidance, which in turn puts them on better terms with the masses.

Too much attention to obstacles may distort reality. Among the conditions
that provide hope for women empowerment are women factors. Two of the three groups of women described above are active members of society and are well aware of the obstacles which hinder gender equity. These women groups work in different arenas to improve their own condition and those of their families and society. Similarly, the conservative group is also providing services, but its activity falls outside the purview of this study. Two examples may explain the nature of activism by women groups in promoting gender empowerment. One is the effort by the dayah women who seek to shine within their cultural limits. Women presently consist of about 1.5 – 2 percent of the dayah leadership in Aceh, for there are only ten to fifteen women among the seven hundred dayah leaders. Therefore, dayah culture is overwhelmingly male in nature.38

However, a few women who are leading dayahs work systematically to break barriers and to act within the constraints of the dominant dayah environment. Their mission is significant on a number of grounds. First, internally they are reclaiming the role and the position of women in the predominantly male world of the dayah and Ulama, highlighting the veritable Islamic position on equal rights and shared responsibilities between men and women in seeking and disseminating knowledge. Second, they are also providing religious leadership in the community which is otherwise dominated by male Ulama – demonstrating that females can also exercise Islamic intellectual and spiritual authority. Thirdly, they offer themselves as religious role models not only for young women but for young men as well, since their students in the dayahs are both male and female. Lastly, dayah women leaders and teachers may enrich debates on the role of women in public life not only for the consumption of the general public but, more especially, for the enlightenment of the dayah community. Ummi Rahimun, one of the dayah leaders in Aceh Besar, expresses her view that “the involvement of women in politics is necessary since women like their male counterparts are given the responsibility to bring benevolence (rahmah) and goodness (kebaikan) to others.” She contends that many Hadīths (narrated traditions from the Prophet) support women’s social engagement, and that dissenting views are in contradiction with “the spirit of Islam and Prophetic practice.”39 This type of discourse by a noted female Ulama such as Rahimun is sorely needed in the social and religious context of contemporary Aceh.

The second group of women who are laying the groundwork for women empowerment are the general social activists. As mentioned earlier, they are of two types: the religious and the liberal.40 These two groups view the role of Islam in public life differently, yet they share the view about the need for active engagement of women in society. They argue that this cannot be achieved without hard work by women themselves. Therefore, some concentrate on improving the legal foundations for the empowerment of women,41 while others provide
assistance to inexperienced female members of parliament and policy makers in order to help them improve their capacity and be aware of gender concerns. Furthermore, they represent women assisting other females and their families to improve their quality of life, and by so doing they hope to make these women aware of their rights and responsibilities in their respective surroundings. Finally, there remains a large number of women who constantly try to improve their own qualifications through both formal and non-formal education in order to become better members of family and society and better their material conditions, so that they may compete for political appointment and important public offices. All of these women are indeed true agents of change in contemporary Aceh.

**In conclusion:** The present study demonstrates that peace building forms an Islamic core value manifested in the inner provision of human capacity (*fitrah*), in human relations with the divine, in their horizontal connections as community members, and in their treatment of nature. Women as part of the human family are endowed with rights and responsibilities to enjoy and fulfill their earthly obligation of maintaining and promoting peace. However in reality this remains a luxury for most women who continue to struggle to overcome difficult conservative religious, cultural and political battles in order to claim the very provisions bestowed upon them by God *al-Sālam*. Understanding these Islamic core values provides Acehnese women genuine hope to pursue their striving for their Islamic endowment of equality and justice.

**Policy Recommendations**

Our study on the role of Acehnese women in advocating peace and justice invites reflection on broader efforts for women equity across communities and cultures. Government ministries, planners, and civic actors must heed and apply the following insights.

- Women empowerment and social justice are essential Islamic principles that should be embraced by all Muslim communities and cultures for they are important milestones for reviving civilisational Islam.
- Women empowerment is not only about educating women about their rights and responsibilities, but more significantly about enlightening husbands and young men in society to uphold essential principles.
- Women empowerment always works against cultural conservatism and religious fanaticism, since these two often impose a low intellectual and social atmosphere dangerous for both women agenda and civilisational renewal.
- Muslim women including the Acehnese sincerely believe and continue to expect that the sharī`ah can truly promote the spirit of justice and equality.
Notes

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1. Those unfamiliar with the ‘causes of revelation’ of the Qur’ān (the exegetical genre known as asbāb al-nuzūl) should be mindful that among the many occasions of Qur’ānic revelation were events provoking answers and responses to requests by the Muslim community of the time – including prominent women. The complaints and veiled protests by the Prophet’s wife Umm Salamah fall within this category.


7. For a comprehensive description of the Indonesian new revolution, refer to Kevin O’Rourke, Reformasi: The Struggle for Power in Post-Suharto Indonesia (Crows Nest, NSW: Allen & Unwin, 2002).

9. Tengku Abdullah Syafi’i was killed by the Indonesian military while still in hiding in January 2002.


11. Interview with Naimah Hasan (December 2013).


14. For detailed analysis refer to “Sulitnya Wanita ke Parlemen” in local daily *Serambi Indonesia*, 28 April, 2014.

15. As a young girl I observed that my female religious teacher, my mother and a few other local ladies were consulted about every move of our village. Nothing could happen in the village without their support, and these great women always acted in the best interests of their village and community, and were among the wisest and most generous leaders. These ladies also worked together as a group in support of their male counterparts and the village head.

16. His response in Acehnese: “han ek kudeungoe dingeng-ngen sabee”, was reported by the former Dean of the Law School at Syiah Kuala University, who was an advisor to the Governor.

17. Rejection of women *camats* in other parts of Indonesia occurred in 2001 when the selection of five female *camats* by the Bupati of Tasikmalaya was refused by the community on religious grounds.

18. For a good overview of the debates refer to the article in *Modus Aceh* (November 24, 2010) and provincial daily *Serambi Indonesia* (October 2010).


20. These two Partai Aceh members were elected as Governor and Vice Governor of Aceh on 9 April 2012.


22. Interview with T. Husein Banta (14 October, 2010).

23. No serious study has been made on the practice of polygamy among PA leaders or among the contemporary Acehnese, but judges at the religious courts and female lawyers who defend divorce cases clearly suggest that polygamy is on the rise in Aceh, and GAM leaders are among the faithful practitioners of polygamy.

24. Statement by a former member of parliament during the discussion on gender sensitive budgeting (9 December, 2013).

25. One example of this low culture occurred on 10 March, 2015 when the Rector of Ar-Raniry Islamic University met with a group of 30 women activists under the program “Meet the Rector.” This professor spent the first half hour of his two-hour speaking session dwelling on the importance of polygamy which generated protests from some members of the audience.

26. Aceh is credited for the historical spread of Islam in the Archipelago and for the development of Islamic intellectual scholarship throughout Indonesia and the entire Malay speaking region in South East Asia.

28. Interview with Nurjannah Ismail (March 2010).

29. Interview with Fuad Mardhatillah (September 2010).

30. For a balance of views on the application of the shari‘ah in Aceh see Husin, “Women and Shari‘ah Law”.

31. For details see Feener, *Shari‘a and Social Engineering*.

32. Global groups such as Hizbut Tahrir Indonesia (HTI) fall under this category. It is one of the most active groups advocating the implementation of Islamic law through its utopian idea of *khilāfah* (Islamic caliphate).


35. Wahhabism had arrived in Aceh prior to the Tsunami largely through the Acehnese graduates of Saudi universities who promoted the puritanical type of Islam upon their return to Aceh. Some of them have even established *dayahs* in some areas of Aceh. However, in spite of their initial puritanical views, the pre-Tsunami Wahhabi leaders worked within the Ulama system by making necessary adjustments and cultural changes. The post-Tsunami Wahhabism arrived in Aceh with Gulf money supported by Indonesian promoters predominantly from Java. Unlike the Acehnese Wahhabis, the new comers are outside the mainstream of Aceh’s Ulama leadership and culture.

36. Interview with Tengku Ismail Yacob (November, 2010).

37. In early 2010 the Ulama were speaking against conversion of Acehnese to Christianity by some NGO workers assisting in Aceh after the Tsunami.


39. Rahimun referred to the widely reported recent controversy and debates over women’s political leadership in Aceh in her response to the right of a woman to be a sub-district head (*camat*) and other political appointments (see Husin, “Authority and Leadership”).

40. The term ‘liberal’ does not imply their being irreligious, since with respect to personal devotions they may be as devout as the more conservative religious.

41. *Jaringan Perempuan untuk Kebijakan* (Women Network for Policy Improvement) is one of the significant groups created by women to negotiate legal and policy issues.

42. *Mitra Sejati Perempuan Indonenesia* (The True Partnership of Indonesian Women) and *Balai Syura Ureng Inong Aceh* (The Consultative Council of Acehnese Women) are two major women organisations focusing on capacity-building of female policy makers.
Educational Role of Literature in Islam

Abdul Karim Abdullah*

Abstract: This paper argues that literature - story telling in particular - can be an effective way of teaching ethics. Exposing readers to good role models can help impart ethical values. The Qur’an itself uses story telling to convey many of its ethical principles. Literature can serve as a powerful instrument in the cause of civilisational renewal, not only by promoting a culture of learning and literacy, but also by contributing to the development and strengthening of moral integrity.

Art, science and literature - commonalities and differences

Literature is a collection of writing on a particular topic or in a specific area, with the purpose of conveying knowledge or insight of one kind or another to the reader. Literature is a means of communication. There is literature as art as well as literature on the subject of science. Literature as art differs from scientific literature in important ways. This is due to differences between art and science.

Science is typically classified into natural (empirical) science and social science. Natural science focuses on the world of nature. Social science, by contrast, looks at man. Religious sciences focus on the relationship between the Creator and his creation. They also help man understand his duties to the Creator as well as to fellow human beings. Religious sciences comprise the study of sacred text, beliefs, ethics, languages, interpretation, jurisprudence, and history.

Natural science seeks to comprehend, explain and to transform the world. Its aim is to make life better in the material sense. Art, by contrast, seeks to understand, explain, and reform man. In other words, art and science complement one another.

Art seeks to capture and express the sublime (the spiritual). Art in the form of literature can help a person to become a better human being by making him or her aware of his or her limitations. Exposure to a work of art opens a new world to man, one that need not exist merely in the imagination. In this sense, art can help man realise his potential to the fullest.

The power of art to educate is due to its ability to convey, in a literary manner, wisdom conveyed by religion. Unlike science, art speaks directly to the heart. By reforming individuals, art can help reform society. It can also do this by raising social awareness, for example by highlighting the plight of the poor and vulnerable minorities.
Art can be classified into visual, performing and literary art. Visual arts comprise calligraphy, painting, and sculpture. Performing arts include music, drama, and film. Literary arts include poetry, drama, short stories and novels.

Art can also be categorised according to the period in which it flourished. Thus we speak of classical, medieval or romantic art. However, art can also be classified into Umayyad, Abbasid, Persian, and Ottoman art, each exhibiting significantly different features and characteristics of their own.

Art and science constitute different ways of interacting with, and expressing insight about reality. The methodology for discovering knowledge in the modern sciences is encapsulated in what is known as the “scientific or empirical method.”

But what is the methodology of capturing and expressing insight by art?

The artist never produces art from nothing; a work of art is a product of the artist’s engagement with his or her own experience of life and a response to it. In that sense, every work of art is a statement. The imagination plays an important role in art. With the help of the imagination the artist can escape the narrow confines of his or her own experience.

Art aims at perfection. What is striking about works of art is that they appear to be perfect and flawless. A “masterpiece” is a work of art that is free of defects, is internally consistent, and conveys a powerful message to the reader. It leaves a lasting impression, and is both aesthetically pleasing and ethically endowed.

In general, art is intuitive while science tends to be rational. Art communicates an articulation of reality to the viewer or the reader in a different way than science. The latter observes, measures, records and analyses data; it also discovers patterns and predicts outcomes. It identifies and describes cause and effect relationships. It does this by studying relationships between measurable variables and discovering what are known as “scientific laws.”

Science relies mainly on the intellect (reason) while art utilises intuition. However, this does not mean that science can dispense with the imagination, or that art can do without precision. It just means that precision manifests itself in a different way in the arts than it does in the sciences. In the sciences precision is a measurable phenomenon. In the arts, precision takes an intuitive form. The imagination is also important in scientific research, as it would be difficult to make scientific discoveries without the use of the imagination.

While art does not appear to have any immediate practical use, the products of science are viewed as eminently useful and practical. However, art need not merely entertain or please; art can also, and indeed should have a didactic or educational function. For example, children can learn ethics through stories, as good stories are interesting and easy to comprehend.
At its best, art seeks to express *truth*, in particular truth about what matters most. Art alerts the reader to the need for spiritual *growth*, inclusive of the *purification* of the soul. Art teaches man that he or she can rise above the constraints and limitations imposed on him or her by the demands of a given time and place.

Art also alerts the reader to the need for ethical consciousness, or the idea that a person is responsible for his or her actions. Artistic experience alerts a person to the fact that his or her actions impact other people in different ways, that can hurt as easily as gratify.

Art, in other words, teaches man to act with *justice*. The ethical teaching of a story is typically summed up in the expression, “the moral of the story is …” The core message in every good story, its “moral” constitutes its most important, *educational* part.

**Literature in culture and civilisation**

Literature as art takes the form of poetry, stories or drama. Poetry is written in verses that rhyme and generally give expression to feelings. While poetry is a part of literature, not all literature is poetry. The greater part of literature comprises inspirational works: short stories and novels.

Every nation has its own literature. The quality of its literature reflects the degree of its spiritual development. National literature consists of various narratives that express and encapsulate the unique identity of a particular community.

Literature is a response to, and a commentary on the prevailing conditions of a given historical period. Literature attempts to transcend the limitations imposed on the artist by historical circumstances. It seeks to discover and communicate the highest or *universal* truth.

Literary effort seeks to solve the riddle of human existence, to answer questions such as “Who am I?” “Where did I come from?” “What is the meaning of life?” It tries to do this by reconciling the temporal with the eternal, the subjective with the objective, and the particular with the all-encompassing. It can accomplish this by alerting man to his roots and helping him to understand better his place in the greater scheme of things.

It is neither possible nor desirable to separate literature from its social and historical context. In that sense, all literature is “historical.” This does not mean, however, that literature cannot express what is known as “higher” or “timeless” truth, an awareness that transcends the constraints of a particular time and place.

Different types of literature achieve their objectives in different ways. Classical literature emphasises tradition, respect for elders, order, duties, and a sense balance, harmony and hierarchy. Medieval literature gave expression to religious feelings and devotion. The Romantic movement, by contrast, emphasised love,
the family, the individual and spontaneity. These periods broadly reflect different stages in the social and moral development of man.

Literature as an art form – fiction, non-fiction or science fiction – communicates meaning to readers.6 “Meaning” is a specific conception of reality and of man’s place in the world. This conception is shaped, to a large degree, by the artist’s own experience of, and response to the conditions of his or her time.

Various articulations of meaning compete for the allegiance of man. “Meaning” as it finds its expression in literature, takes the form of a “worldview.” This worldview is expressed in the way various characters relate to each other and to the environment in which they find themselves, how they struggle with, and eventually overcome or succumb to, as the case may be, the challenges that face them.

Awareness of his or her community’s worldview enables a person to fit in better. The worldview of a particular community teaches him or her his duties, his place, responsibilities, what he can expect, what he must or must not do and how to conduct himself or herself in general.

Every worldview holds up some value as being the most worthy of realisation. One ideology may emphasise equality, while another may place a greater emphasis on liberty. Yet another worldview may emphasise piety as the most important quality worthy of attainment.

Despite a great diversity of ideals that one encounters within the world’s leading civilisations, some values appear to be shared by all civilisations. For example, all major civilisations view justice as a universal value. Differences arise because different people tend to understand justice differently, and as a result have different notions about how to realise it.

Because of the diversity of values and the different ways of life they signify, an important challenge in life is to identify and commit oneself to a way of life that is indeed worthy of commitment. The choice is important, as man’s destiny depends on the way of life he chooses to follow. Different choices or alternatives are identified and explored in all great literature.

Making the right choice requires knowledge. Knowledge not only enables man to make the right choices, but also to rise above the confines of particular historical periods in which he or she may find himself. The attainment of knowledge, however, presupposes the ability to distinguish truth from falsehood.

As there are different types of truth, there are also different types of knowledge, each kind of knowledge encapsulating a certain kind of truth. The highest truth is religious truth. Indeed, the Qur’an refers to God as the Truth (al Haqq).7 The challenge in life is to attain knowledge of the highest truth. This takes place by becoming conscious of God. Once a person attains knowledge of the highest truth, he or she is ready to receive and benefit from guidance.8
There are many ways to gain knowledge. The invention of the printing press and of the Internet has made possible the dissemination of knowledge on an unprecedented scale. As a result of the wide availability of information, critical thinking skills have become more important than ever before.

Readers need to assess the quality of the information now available on the Internet and elsewhere. Critical thinking is also important for literary criticism, the discipline that evaluates literary works in the light of credible criteria.

Globalisation has resulted in a major democratisation of information dissemination. This offers opportunities but also presents risks. The opportunities include the possibility of new art forms, and reaching rising numbers of people. The risk is that excellent literature may get buried under a heap of mediocre, commercial production.

Literature plays an important role in both in culture and civilisation. The difference between the literature of a culture and that of a civilisation is that the appeal of culturally determined literature tends to be limited to members of a particular ethnic class, while literature of a civilisation transcends tribal differences and speaks with universal appeal. Great literature is “borderless.”

Each civilisation has its own literature. This literature expresses the identity of the civilisation and helps maintain its cohesiveness over time. In the process of interacting with its counterparts, a civilisation may incorporate ideas or knowledge from other civilisations. A degree of “cross-pollination,” in other words, takes place over time.

The books that a given civilisation cherishes tell a great deal about that civilisation. It is the responsibility of knowledgeable persons to call the attention of their fellow citizens to the best books available to them.

In one sense one may perhaps speak of “a battle of the books.” At a deeper level, however, this “battle” reflects a battle of ideas and even ideologies, a competition of different worldviews for the allegiance and support of mankind.

Ideas confront each other in books, the mass media and cyberspace. They also confront one another on battlefields. Adherents of one ideology (such as socialism) may come into conflict with the supporters of another ideology (such as national socialism).

Ideas that form the core of an ideology explain to a significant degree the success or lack of it by the adherents of that ideology. Flawed ideologies and the ways of life they propagate do not last, as the fate of communism, for example, has shown.

Additional examples of conflicts fought on battlefield between different ideologies can be found in various “revolutions.” These have ushered in what is known as “modernity.” Modernity emerged as a result of various intellectual, political and economic developments.
The most important among these appears to have been a re-articulation of the relationship between *reason* and *revelation*. This resulted in the elevation of human reason to a position higher than what it occupied previously and its engagement as an active participant in the quest for *knowledge*. These developments collectively culminated in what came to be known as the *Enlightenment*.12

The elevation of reason (and by implication science) and the side-lining of religion altered the relationship between the two, at least as it was commonly understood until then. Reason and science found new prestige, while religion was relegated to the realm of private pursuits.

The political upheavals that accompanied the Enlightenment include the English, American, French, and other revolutions.13 These events represented not only major transformations of a political nature; they also heralded the emergence of new notions about ethics. These notions differed in significant ways from their predecessors.14

Significant upheavals have also taken place in Muslim history. These have been marked by the disintegration of various dynasties and their replacement by others. Even in contemporary times we find various upheavals taking place in different parts of the world. Examples can be seen in the changes of various regimes that have taken place, and are still taking place, during and in the aftermath of what has come to be known as the *Arab Spring*.

**Good literature**

Good literature is enjoyable as well as educational. Such literature helps the reader to become a better person (ethical). It does this by exposing the readers to good role models, represented by leading characters within literary narratives.15 Literary narratives alert readers to the consequences of different ethical choices, as illustrated within the narrative of a story.

One example is a life of crime. A novel can show that “crime does not pay,” by showing the consequences of a criminal lifestyle. Literature appeals to *fitrah* or human nature. It is only natural to be interested in stories. Human nature (*fitrah*) is such that the human being responds to, and is moved by stories.

In order to be truly internalised (learned), knowledge needs to be apprehended not only intellectually but also in some sense “experienced.” In Islam, sufis distinguish between mere knowledge (*ʻilm*) and a higher form of cognition in the form of the *experience* of knowledge (*maʻrifah*).

Literature explores various archetypes and contrasts them to each other, typically by casting them as antagonists. Good literature alerts the reader to the difference between good and evil and to draws him or her to join the struggle on the side of the good. The writer should make good characters attractive and
worthy of emulation. Bad characters, by contrast, should be cast in a poor light, so that readers will not want to become like them.\textsuperscript{16}

An important quality of good literature is realism. Writers can gain the trust of their readers by being realistic, and by writing about the concerns of the readers. Unrealistic scenarios will not likely hold the attention of readers for long.

Interest can be enhanced by the use of literary devices. These include dialogue, description, suspense, metaphors, similes, and allegories. There is a need to strike a balance in the use of literary devices, for example between description and dialogue. Stories can be told in the first person or the third person.

Literature develops \textit{compassion} in a reader, a concern for the “other.” Compassion is emphasised extensively in the Qur’an. Literature can help make readers more compassionate by making them aware of the suffering of other people. By calling the reader’s attention to the plight of the poor, literature can also help readers develop social consciousness, and in that way contribute to social change. In other words, literature serves not only as a mirror to reflect social conditions, but also as a catalyst to change them.\textsuperscript{17}

Good literature should illustrate the triumph of good over evil.\textsuperscript{18} By alerting the reader to the need be ethical, good literature can strengthen the reader’s \textit{morale}. The role of the writer is to serve as the “conscience” of his or her community. By writing, he credits acts of goodness and censures acts of wickedness. In this way he or she can contribute to “commanding what is good and prohibiting what is evil.”

\textbf{Literature and religion}

There is on-going debate about literature and the role it can play – if any – in the lives of Muslims. Strict interpretations of Islam appear to limit the role of literature (and art) in Islam. Artistic representations are often identified with vain indulgence and thus discouraged.

Some critics view literature with apprehension, as undesirable and even harmful; it may keep people from more important commitments. Others – including non-Muslims – perceive literature as “dangerous.” The danger stems from “corrupting” the morals of the people and thereby contributing to the disintegration of the community.

Concerns about possible harmful effects of literature on readers are justified. Indeed, such concerns have been around for as long as literature. Many stories, novels and plays portray questionable behaviour. Some works even appear to justify such behaviour by making it appear “normal.” Positive role models are often lacking. In so far as no element of worship is involved, however, writing and reading literature are not incompatible with an Islamic outlook.

Even the Qur’an directs the believers not to ‘follow’ the poets (26:224), for they often say what they do not do. However, the text here does not say
anything negative about poetry as such. Rather, it touches on what the poets do or believe. A lesson to draw here is that the poets should infuse realism and ethics into the fabric of their poetry. So if poets write poems that promote right values and causes, there should be no basis for objections from the perspective of Islam.

The fact that storytelling is in principle not objectionable in Islam is confirmed by the fact that the Qur’an itself narrates many stories (qasas). It does this with an educational purpose in mind. Where writers of stories follow the Qur’anic model – and seek to educate – literature in principle would be acceptable in Islam, as it helps to realise the aims of Islam. Qur’anic messages often need to be delivered in lighter language for children, the youth, and those lacking direct familiarity with the Qur’an. In this way, literary effort can contribute to a re-invigoration of the Islamic civilisation.19

Literature can also help build bridges of understanding between different civilisations. Such literature enables the reader to see things form other people’s perspectives, by “putting the reader in other people’s shoes,” and serve as a means of promoting good relations and friendship among people.

It is best to focus on books that have emerged over time as “classics.” These can be found in every civilisation. These books have attained the status of “classics” by articulating the basic human choices (the human condition) in ways that people from different backgrounds can relate to easily. Indeed, many classics have drawn inspiration from religion.

The study of literature needs to be accompanied by learning how to analyse literature, an activity known as literary criticism. In the case of Islamic literary criticism, the reader is taught to read and comment on literature from the Islamic perspective. In this way, any weaknesses of the work, such as the absence of noble and admirable characters, can be highlighted. In a similar vein, the merits of a give work can be pointed out, where and when appropriate.

There is no prohibition of telling of stories in the Qur’an. The Shariah upholds the principle of original permissibility (ibahah): everything is permitted unless it is prohibited by a clear text. Literary merit should be measured by its content and message. Whether it serves a good or a bad purpose is the decisive criterion from the perspective of Islam.

Literature and the Qur’an

The Qur’an is eminently well suited to provide guidance to writers, as it is in itself, a masterpiece of communication. This is attested to by the Qur’an itself, especially in those of its verses which call attention to its own inimitability (i’jaz).20 I’jaz is manifested not only in the linguistic excellence of the Qur’an but also in the overall psychological effect that it generates on the part of the reader.
The language, rhythm, message, narrative, emotional appeal and psychological impact of the Qur’an all combined become the embodiment of *i’jaz*.

By common acknowledgment, the Qur’an had a major impact on the development of Arabic literature. The Qur’an is rich in the use of literary devices, use of illustrations, imagery, and metaphor, thus adding beauty, life, and colour to plain words.\(^{21}\)

The Qur’an has without doubt provided a level of linguistic excellence unparalleled in the history of the Arabic language ... The Qur’an remains a book of inimitable quality, not only from a linguistic, but also from an intellectual, point of view.\(^{22}\)

A good example of a narrative with an ethical teaching can be found in the story of the prophet Joseph.\(^{23}\) This story is presented in the Qur’an as a “most beautiful story” (*ahsanul qasas*). As a young man, Joseph was betrayed by his own siblings, who were jealous of the apparent preference given to him by their father, the prophet Jacob, son of Isaac, one of the two sons of Abraham.

Out of jealousy, Joseph’s brothers conspired against him – initially even considering killing him – and dropped him into a well. The story illustrates the trials and tribulations that may be experienced by a person over the course of his or her lifetime. However, patience, perseverance and above all faith in God will carry a person through, God-willing.

Joseph was eventually rescued by travellers and sold into slavery in Egypt for a “small price.” The wife of his master tried to seduce him but Joseph did not go along. She falsely accused him and he was imprisoned. However, on account of his ability to interpret the King’s dream about the coming famine, he was eventually released from prison. He then became a very important person in Egypt, the keeper of the storehouse.

Later his siblings came to Egypt for the purpose of trading. They did not recognise him but he recognised them. He arranged for his father to be brought into Egypt also. The story has a happy ending, where the family is re-united and settles in Egypt.

The story explores a number of themes. Among them are sibling rivalry, conspiracy, betrayal, suffering, exile, slavery, false accusation, need for patience, redemption, clearing from false accusation and finally reconciliation.

The story illustrates that no matter how badly things may look for a person, one should never give up hope and put one’s trust in God. It also illustrates that God “is the best of planners.”\(^{24}\)

On account of its universal appeal, Leo Tolstoy in *What is Art* identified the story of Joseph as one of the most universal of stories.\(^{25}\) Thomas Mann wrote an entire book, *Joseph and his Brothers*, after having been inspired by it.\(^{26}\)
story of Joseph thus constitutes an excellent example of a story with a powerful message, which can serve as a model for all writers.

**Literature in the Muslim world**

The Islamic civilisation produced a notable literary legacy, which includes the works of Hafez, Rumi, Iqbal, Naguib Mahfouz and others. The origin of Arabic poetry goes back about sixteen centuries. It emerged within the context of a tribal culture, and initially took the form of oral recitations. Literature in written form did not emerge until after the revelation of the Qur’an.

Poets were important persons in the tribe. Poets provided their tribes with narratives that expressed the identity and aspirations of the tribe. The poet was an important spokesperson for the tribe. Central to his work was the expression of tribal solidarity or asabiyyah.

Poetry was also the primary means of education in good manners (adab). Poets extolled the virtues of the Arab tribes and motivated them in battles by emphasising the strength of one’s own tribe and highlighting the weaknesses of the opposing tribes. Poems depicted in detail various heroic exploits and adventures by brave warriors. The theme of love also figured prominently in the literature of the Arabs.

Well-known stories include *The Thousand and One Arabian Nights* or the exploits of Sindbad the Sailor. The hakawati (storyteller) played a major role in the Arab community right up to the advent of the mass media.

The revelation of the Qur’an transformed the Arab society and its way of life in a profound way. It weakened tribal loyalties, and in their place introduced the universal, civilisational outlook of Islam. It brought focus on ethical concerns and weaved them into the fabric of Arabic literature.

Gradually, the poet gave way to the imam, and the recitations of poetry gave way to recitations of the Qur’an. The praise of the tribe gave way to the praise of God. In this way the Qur’anic revelation transformed a tribal culture into a universal community of believers.

Under the banner of Islam, the warring Arab tribes united into a single nation. Later, other nations were drawn in to form a civilisation, in which tribal or ethnic differences gave way to a faith-based community.

Islam also had a significant impact in Persia. Under the influence of Sufi teachings, mysticism became a significant element of Persian poetry. This poetry had a robust didactic component: many poems conveyed wisdom to readers. Nowhere was the influence of Islam on Persian literature more evident than in the work of Jalal al-Din Rumi, in particular his *Masnavi*.

Rumi lived during the time of the sacking of Baghdad by the Mongols in 1258. The *Masnavi* comprises 26,000 verses. Persian sufis regard it as second
only to the Qur’an as a source of enlightenment and mystical experience. The Masnavi is a story of a “spiritual hero in quest of the Fountain of Life.”

Rumi’s work influenced various sufi orders in Persia, Turkey and India. Another example of Persian poetry may be found in the work of Mohammad Shams al-Din Hafez. He lived in Shiraz and was a master of the ghazal. His collection (divan) contains 400 ghazals.

The origins of Turkish literature date back to the time of the Mongol occupation of Anatolia, at the end of the thirteenth century. As in Persia, Turkish poetry was likewise influenced by mysticism. The fourteenth century saw a blossoming of Turkish literature. A well known poet of this era was Asik Pasa. His Book of the Stranger was a didactic poem exploring ethical and moral themes.

A popular type of poem was the heroic epic. The oldest example of this kind of poem is The Book of My Grandfather Korkut, known in English as The Book of Dede Korkut. It contains twelve tales, recounting the exploits of various Oghuz heroes.

The novel did not emerge in Turkish literature until the end of the nineteenth century, notably in the works of Ahmet Mithat, published from 1875 to 1910. Under the influence of Mithat, both poetry and prose took on a distinctly didactic character, a trend that was to continue subsequently.

Naguib Mahfouz, the recipient of the Nobel prize for literature in 1988, was a noteworthy Egyptian writer of the twentieth century. His Cairo Trilogy traced the lives of three generations, headed by the patriarch el-Sayyed Ahmed Abdel Gawad, starting with World War I and ending with the overthrow of King Farouk by the Nasser regime in 1952.

The Trilogy documents a family conflict as well as the efforts of ordinary people to adapt to modernity. He emphasised the need to think imaginatively. His social criticism led to the banning of some of his books.

Naguib Mahfouz called for a “new world,” one in which Arabs would participate and collectively pursue scientific empowerment, economic development, and peaceful co-existence with the other.

Urdu literature found an eloquent representative in the work of Muhammad Iqbal, a well-known poet in Pakistan. On account of his participation on the Muslim independence movement, Iqbal has been hailed as a “spiritual” founder of modern Pakistan.

Iqbal’s thought is rooted in the Qur’an, and shows a deep concern with reforming the education of Muslims. The Reconstruction of Religious Thought in Islam was a collection of lectures published in 1930. Here Iqbal tried to articulate the universalism of Islam that, as he saw it, was being eroded by parochial tendencies.
Iqbal saw the purpose of life in the need to actualise one’s potential to the fullest by developing the self. This was to be done by means of attaining knowledge. His theory of knowledge (epistemology) identified empiricism, rationalism, and intuition as different ways of perceiving reality, all complementing one another.\textsuperscript{39}

He liked to refer to the verse in the Qur’an, which states, “Verily God will not change the condition of a people till they change what is in themselves” (Q ar-Ra’d, 13:12). He emphasised action. He saw the best representation of the ideal person in the prophet of Islam (pbuh).

Literature in the West

Literature plays an important role in other parts of the world as well. Much of it explores the themes of social and personal reform. One example can be found in Charles Dickens’ \textit{Oliver Twist}, published initially in 1837. The novel is set against the Industrial Revolution. The novel depicts a life of poverty and hardship. The book exposes the harsh treatment of orphans by the Victorian society.

Oliver was an orphan who worked in a workhouse and was later employed by an undertaker. He escapes to London and is adopted by Fagin, the leader of a gang of young thieves. The book chronicles Oliver’s many attempts to escape the life of crime forced on him by circumstances.

The novel is an indictment of Victorian society and its harsh exploitation of child labour. In a different way, the novel also teaches that “crime does not pay,” as all evil characters come to a bad end in one way or another.\textsuperscript{40}

Victor Hugo’s \textit{Les Miserables} was first published in 1862, twenty-five years after Dickens’ Oliver Twist. It is set against a time of revolutionary transformation of France from a medieval to an industrial society. Like Dickens’ novel, \textit{Les Miserables} illustrates the plight and social alienation of the poor.\textsuperscript{41}

The story begins just after Napoleon’s second defeat at Waterloo. The main character, Jean Valjean, attempts to escape his criminal past and find a “straight path.” He eventually achieves success through repentance and personal reform.\textsuperscript{42}

Leo Tolstoy’s \textit{Anna Karenina} narrates how the main character in the novel, Anna comes to a tragic end. She followed her desire for love without regard for the consequences of her actions. As a result, she paid a heavy price.\textsuperscript{43} By contrast, two other characters in the novel, Levin and Kitty, are able to have a good marriage.

The novel explores the themes of infidelity, family break up, social isolation and personal tragedy. All these were illustrated by Anna’s experience. The relationship of Levin and Kitty was balanced, and in that way it illustrated the “middle path.” Theirs is the only truly happy family in the novel.
Faust was published in 1808. Goethe worked on it for many years. It tells a story of a scholar who sells his soul to the Evil One in exchange for power and pleasure. Goethe based his work on a German legend. A Faustian person is someone who sacrifices moral principles for worldly gain. Faust’s story is a tragedy.

Faust was dissatisfied with his life as a scholar. He felt something was missing from his life. He thought it was power and pleasure. With the devil’s help, Faust seduced an innocent young girl, Gretchen, and destroyed her and her family. However, God forgave her and she was saved. In order to obtain his own salvation, Faust needed to go through a series of additional trials.

Dante’s Divine Comedy, a masterpiece of Italian poetry, is an allegory narrated in the first person. Written between 1308 and 1321, it shows influence of Islam. Its publication in Europe signalled the end of the Middle Ages and the beginning of European modernity, in the form of the Renaissance.

The Divine Comedy describes a man’s journey to God, a man who is initially lost and in search of “the straight way.” This journey takes place in three stages: hell, purgatory and heaven. Each constitutes a separate part of the work. The narrative is an exploration of the “unseen” world or metaphysical reality. The emergence of the Renaissance during Dante’s time was due in part to the rise of secularism, challenging the widespread dominance of institutionalised religion.

Conclusions and recommendations

Literature enables readers – especially young readers – to step outside of the confines of their experience and gain a broader perspective. This helps the reader to see the “bigger picture,” and hopefully develop in him or her empathy for the other. Exposure to literature can educate the reader and make him or her more tolerant of differences between people and in this way contribute to a more peaceful co-existence on the earth.

Literature offers opportunities for teaching of ethics. It gives concrete expression to abstract concepts and illustrates them in real life scenarios. These abstract concepts include what are known as virtues and vices, such as piety, fair play, gratitude, patience, generosity, and compassion.

Vices by contrast include impiety, injustice, self-centeredness, and cruelty. Literature provides readers with good role models to emulate. This learning experience takes place with the help of the imagination.

Ethically endowed narratives represent moral qualities in the form of different characters, both good and evil. The struggles between the various characters represent the struggle between good and evil. Literary narratives enable people to see the consequences of wrong choices in the lives of other people, without having to experience personally the suffering caused by those choices. In this
way, educational literature can help people live better lives, more in harmony with the ethical teaching of religion.

Given the important role literature plays in the development of a community, it is advisable to support the writing and teaching of good (educational) literature. Institutions of learning should offer courses in creative writing, literature, comparative literature and literary criticism.

- Muslim institutions of learning appear to be slow in appreciating the literary contributions of other traditions. It is high time to change this by offering courses in Islamic and Western literature.
- Courses on Islamic literary criticism should focus on major and more mature literary traditions and disseminate the best in Arabic, Turkish, Persian, Egyptian and Urdu literature to wider levels.
- Translations of worthy literary works from other languages should be supported. This will enrich each civilisation thus benefiting from the literary masterpieces found in other civilisations.
- Competitions should be held and prizes offered for outstanding contributions. Exposure to good literature should help to develop better taste in the reader.
- Courses in comparative literature in Muslim institutions of learning should explore themes common to different traditions, with the objective of highlighting their commonalities and differences in the spirit of advancing harmony and cooperation between them. Interdisciplinary courses on literature and ethics or literature and social reform, should also be offered.

Notes

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3. There is significant evidence in the Qur’an of the importance of cause and effect relationships in Islamic epistemology. Perhaps the most obvious of these is the link between a person’s actions or “deeds” and his destiny. The believers of and
the doers of good deeds are rewarded by God with paradise. The disbelievers and doers of evil are rewarded with hell.


6. The view that “there is no meaning in literature,” expressed among others by Northrop Frye, is not uncommon among contemporary literary critics. See for example Frye, Northrop *Creation and Recreation*, University of Toronto Press, 1980, p. 28.


9. One indicator of “great” literature is that worthy books are often translated into other languages. This indicates the transnational appeal of such writing.

10. This “cross-pollination” is not restricted to mere ideas. Inventions also get passed on from one civilisation to another. For example, paper was invented in China. Subsequently, Muslims began to produce paper in an improved form. Finally, the Christian world discovered paper upon the re-conquest of Muslim Spain and also improved on it.

11. Some universities have implemented what they call “great books programs.” These are programs in which only the best books are studied, to enable students to interact with the best thinkers of the past and present.

12. What is known as the “Scientific revolution” was triggered by the Renaissance. The Scientific revolution in turn was a precursor of the Enlightenment. It is of some interest that the Renaissance was in an important sense the exact opposite of the rejection of pre-modern ideas in the Muslim world by the opponents of the Mu’tazilites. In contrast to this rejection, the supporters of the Renaissance developed interest in these ideas, much like the Muslims themselves did earlier, during the time of Harun al Rashid and the flowering of the Muslim civilisation in Baghdad at the time.

13. These took place in 1688, 1776, and 1789, respectively.

14. An example of such a new ethical paradigm can be seen in the rallying cry of the French revolution, “liberty, equality and fraternity.”


16. The “Law and Literature Movement” emerged in the US in response to the


18. C.f. Qur’an 5:100. In other words, good literature should give the lie to the popular but false dictum, according to which “nice guys finish last.” Barazangi, Nimat Hafez, Donald Malcolm Reid, Syed Rizwan Zamir, Dietrich Reetz, Joseph S. Szyliowicz, Akbar S. Ahmed and Anis Ahmad, “Education,” in *Oxford Islamic Studies Online*, accessed online on 21 February 2015; <http://www.oxfordislamicstudies.com/article/opr/t236/e0212>


24. Q ali-Imran, 3:54, Q al-Anfal, 8:30.


27. For the influence of Iqbal on contemporary Islamic thought in general, and literature in particular, see various essays in *Iqbal Review*, Journal of the Iqbal Academy, Pakistan, Muhammad Suheyl Umar (Ed.), Iqbal Cyber Library,


34. A ghazal is a form of poetic expression. It consists of two lines that rhyme and a refrain (repeated line or lines).


41. Charles Dickens’ The Tale of Two Cities similarly takes place during the time of the French Revolution.


43. Tolstoy, Leo Anna Karenina, Oxford University Press, 2008.


45. The fact that literature written by non-Muslims may contain elements not in harmony with the Qur’anic worldview need not mean that therefore such literature should be in principle avoided. Weaknesses if any can be highlighted during the process of the literary analysis of the work.
A NEW FRAMEWORK OF CORPORATE GOVERNANCE FOR WAQF: A PRELIMINARY PROPOSAL

Mohammad Abdullah*

Abstract: The global cumulative waqf assets have been estimated to be worth $105 billion. Though, this estimation is not based on exact data, it reflects only a glimpse of what the institution of waqf may entail in the process of and struggle for socio-economic upliftment of the ummah. However, despite possessing the potential of improving society, a substantial proportion of total awqāf is still lying dormant across the world. In modern day economy, waqf has taken a new trajectory, both as a product and as an institution/legal entity, especially in the Islamic finance industry. Consequently, this scenario automatically demands that the institution be fairly regulated and closely monitored. However, not much has been written in the corporate governance area of waqf. This article has three aims: firstly, to briefly examine the salient features of waqf from the perspective of fiqh al-awqāf, secondly, to explore the evolution of the fiqh al-awqāf in the light of waqf being metamorphosed into a corporation-like entity, and finally, to propose the possibilities of how a corporate governance model can be developed for the institution based on the existing waqf rulings and modern regulatory guidelines.

Introduction

Waqf (plural; awqāf) denotes an Islamic perpetual charitable institution. The practice of waqf has its origin in the Medinan period of prophetic life (622-632 A.D). Waqf as an institution evolved in the eighth century A.D, and vastly proliferated in the subsequent centuries (Hennigan, 2004).

The institution of waqf primarily serves two objectives. On the one hand, in spiritual terms, waqf provides a vehicle for perpetual reward for a wāqif (donor), on the other, it confers a myriad of socio-economic benefits on the whole community in general, and on the underprivileged section of the society in particular. As far as the first objective of waqf is concerned i.e. spiritual reward in Hereafter, it is, in fact, immediately achieved once the deed of waqf is formally executed. However, since the second objective of waqf is rooted in the material provisions of benefits to the beneficiaries, it demands for a sustained consistency in the process of waqf management and fairness in the mechanism of revenue/usufruct distribution.
From the beneficiaries’ perspective, efficient management of a waqf is as critically significant as the endowment itself. In fact, ultimately the beneficiaries receive a portion of what is generated as the revenues of the waqf corpus, and hence they should be, in general, more concerned about its efficient management and fair distributional policies than any other aspect of the institution.

Waqf embodies a typical example of community property in which the interest of the whole community is vested, albeit, in different capacities. Notably, in a waqf khayri (philanthropic waqf) certain purposes, rather than persons, are designated as the main beneficiaries. In comparison, in a waqf ahlī (private/family waqf), specifically nominated individuals become beneficiaries (Oberauer, 2013). Thus, it is evident that in a philanthropic waqf, each member of the community is a potential beneficiary, as he/she may possibly qualify for the benefits merely by subscribing to the given purpose or by becoming a part of the purpose for which the waqf has been founded.

In general, compared to philanthropic waqf, a private/family waqf is regarded as restricted in its beneficial character, as it does not include the community as a whole into its domain. However, though in an indirect way, ultimately, a private/family waqf too turns to the community. This notion is best manifested in a scenario where the nominated beneficiaries are no longer existent, and the accruing benefits are diverted to the poor and needy of the community (al-Mawsū‘ah, 2006). With this notion in view, it may be argued that, in one way or another, all awqāf belong to the community and hence, there is a greater need to ensure that the interest of the community (as the stakeholders of waqf) is protected in a consistent manner.

Arguably, unlike the traditional versions of waqf-administrative mechanisms in which, generally, it was appreciated that different awqāf were governed, managed and administrated by individually appointed mutawallis (trustees), the modern trend in waqf industry seeks to appreciate the institutional management of collectively pooled waqf properties (Çizakça, 2011). To this end, there has been a noted shift in both the paradigm of waqf donations and the parameters of their management. Remarkably, due to the marked changes in means, methods, mechanisms and management of modern waqf donations and their administration, the demand to explore the corporate structure of waqf and its governance framework is bound to rise across the board.

Corporate governance, in general, defines the rights, roles and responsibilities of both the principals and agents of a corporation along with determining the underlying “relationships between a company’s management, its board, its shareholders and other stakeholders” (OECD, 2004: 11). A good framework of corporate governance helps to improve the overall credibility of a given institution/company and enhances the confidence of its stakeholders. Thus, a
A NEW FRAMEWORK OF CORPORATE GOVERNANCE FOR WAQF

A proper governance framework for a *waqf* corporation would not only contribute to bring greater accountability and transparency in the operation, but would also play a crucial role in enhancing the long term health of the institution itself (Dusuki et al, 2012).

At this point, it is worth noting that there is a thin line between the early attempts of consolidating different *waqf* properties into groups and subjecting them under the administration of few state-appointed de facto *mutawalli* (waqf administrators), and what the recent demands for institutional *mutawalli* are directed to. In the case of the former, apparently the honesty, transparency and management skills of *mutawalli* (waqf administrator) and the system were seen with a pinch of scepticism by the community (Kahf, 1999). However, a recent trend shows that these three characteristics, combined with the element of accountability, make the institutional administration of *waqf* more attractive and trustworthy. With other factors aside, for the modern *waqf* industry, the credibility of an institutional *mutawalli* has greater precedence over that of an individual *mutawalli*. This phenomenon may be best explained by referring to the principal-agency problem, which is inherent in individual *mutawalli* to a greater extent than in the institutional *mutawalli*. In fact, in the case of institutional *mutawalli*, the principal-agency problem is substantially resolved by virtue of it being formally incorporated which makes the corporation subject to both the regulation and monitoring (Hashim, 2013).

Apart from these, the modern concept of ‘professionalism’ in different sectors has caused a subtle change in the equations of preference for various stakeholders and in this regard, the *waqf* sector is no exception. Additionally, the phenomenon of globalisation has also been an agent of change in the modern *waqf* industry. To this end, endowers from a spectrum of geographical locations could easily participate and contribute in the pool of a *waqf* which is being managed by some international charity organisations overseas (Nadwi and Kroessin, 2013).

In a statistical survey carried out by Ernst & Young in 2010, the global *waqf* industry has been estimated to be worth more than $105 billion (IFN, 2012). However, the accuracy of this figure is fiercely disputed with the claims that since a larger portion of *waqf* is managed on individual levels, it is almost impossible to figure out the exact worth of the industry with precision. By comparison, in another informal estimation, the total market value of the industry has been suggested to be worth approximately $1 trillion, out of which Malaysia, Saudi Arabia and Egypt are believed to be in possession of $325.2, $266.6 and $82 billion *waqf* assets respectively (IFN, 2012).

With these facts and figures in mind, the seriousness of effective *waqf* management could be hardly over-emphasised. Also, for a consistent and sustainable development of the industry, the mechanism of efficiency,
accountability, transparency, monitoring and control would have to be installed in the system. To this end, the need for a proper framework of governance for the \textit{waqf} corporations has assumed an unparalleled level of significance.

**Waqf governance: an overview of past and present**

In the jurisprudential discourse of \textit{waqf}, the deed of Omar ibn al-Khattab (R.A.) occupies cardinal status with reference to permissibility, legality, applicability, practicality and other technicalities of a typical \textit{waqf} deed (al Asqalani 2001; Ibn al-Qudamah, 1997). In fact, the deed of Omar (R.A.) is deemed as the primary source of \textit{waqf} jurisprudence by the early jurists of Islamic history. Perhaps that is why in almost all major \textit{fiqh} books, the \textit{waqf} of Omar (R.A.) along with the transcript of his conversation with the Prophet (pbuh) is repeatedly quoted in the chapters discussing \textit{waqf}-rulings (Kahf, 1999).

Notwithstanding this, in the classical \textit{fiqh}-literature, most of the \textit{waqf}-governing issues have been discussed in an atomistic manner instead of being deliberated with a holistic approach. Possibly, two main reasons may be attributed to this phenomenon. Firstly, the governing structure of \textit{waqf} continued to evolve until the third century AH through the application of analogical reasoning by the early jurists (Hennigan, 2004). The mammoth task of deriving \textit{waqf} related rulings through the application of analogical reasoning was necessitated due to the lack of explicit primary sources which could define and govern each jurisprudential aspect of \textit{waqf} in a comprehensive manner. The inevitable implication of this scenario manifested itself in the form of repeated discussions among the early jurists on partial and isolated components of the institution, compared to the coverage of an all-inclusive framework of \textit{waqf} governance in one place (Hennigan, 2004). Secondly, since most of the early examples of \textit{waqf} were of a separate nature, founded by individuals, managed and administered by the individually nominated \textit{mutawallis} in accordance to the aspirations of the founder, most \textit{awqâf} deeds required a separate form of jurisprudential discussion (Coulson, 2007).

In terms of the governing conditions and regulations of a \textit{waqf}, the \textit{wâqif} (endower/donor) enjoys an absolute discretionary power to set up the administrative guidelines, criteria of beneficiaries’ selection and principles of its revenue distribution. In this regard, the jurisprudential maxim “\textit{shart al-wâqif kal nâs al-shâri’î}” (the stipulations of \textit{wâqif} holds the status of the legislator) constitutes the crux of the related rulings (Zuhayli, 1996: 156). Though the extension of this authority to a \textit{wâqif} expanded the domain of flexibility to the endower in a micro term, however, it delimited the possibilities of uniformity in the governing structure of \textit{waqf} on the macro
level. To this end, a vast array of variations in the stipulations of the early waqf-deeds demanded the classical jurists to exert themselves to examine and discuss the shari‘ah validity of individual deeds rather than providing them with enough scope to delve into the possibility of a uniform framework of waqf governance (Hennigan, 2004).

Though the jurisprudence of waqf successfully produced a plausible legal framework of separation between actual and beneficial ownerships of a waqf as early as second century AH, however, it could not overtly declare the institution as a separate legal entity until recently (AAOIFI, 2010; Uthmani, 2008). Perhaps, an early consensus on the legal status of a waqf would have saved much effort of the later jurists expounding upon the question of who, actually, owns the subject matter of a waqf. In addition, perhaps a jurisprudential resolution over the legal status of a waqf would have prepared the canvas for recognition of a waqf-based legal entity in as early as medieval Islamic societies (Kuran, 2003).

This proposition is specifically relevant to the opinion of critics who suggest that if waqf had developed into a corporation-like entity in classical or medieval period, the potential viability, sustainability and durability of the institution would have improved substantially (Kuran, 2003). This is, however, a highly debatable notion, as the historical records reveal that the fate of waqf has not been as much attached to the question of its legal status as has been tied with the political stability or instability of Islamic regimes (Chapra, 2008). Additionally, it has also been argued that it was impossible for the classical or medieval waqf to transform into a corporation-like entity, as the concept of corporation itself evolved as late as the 16th century, and that too in some peculiar circumstances which were completely alien to Islamic territories (Abbasi, 2012, Çizakça, 2012).

The institution of waqf continued expanding its domain until it reached its zenith during the Ottoman period (Çizakça, 2000). In fact, it was during the colonial period that the institution of waqf sustained severe blows which marginally aborted the practice of establishing new awqāf (Kozłowski, 1985). This phenomenon culminated especially after the Treaty of Paris in 1860 in which the abolition of waqf was among the primary conditions imposed by the British negotiators to advance loans to the Ottoman authority (Çizakça, 2000). However, in the wake of decolonisation in Muslim lands, along with other positive developments, consistent efforts have been poured in by the community to revitalise the functions and operations of this glorious institution both as a concept and as a practice. To this end, though there are a number of identified challenges and obstacles en route, however, mainly three of them could be regarded as central ones. They may be summarised as follows:
1. Revival of traditional/old waqf properties by resorting to the legal and financial means as per the requirements of specific cases.
2. Re-invigorating the confidence of the community in the practice of waqf.
3. Rescheduling the structures and frameworks of management and governance of the institution in line with the modern needs and requirements of the time.

Importantly, the transitional period between the past and present of waqf has created a vacuum in the administrative and managerial structure of the institution. The pitch, patterns and priorities of traditional waqf management practices do not necessarily comply with the modern trends and dynamics of existing corporate governing frameworks. Whereas, the applied elasticity in tools and methods of making waqf has expanded the domain of waqf to embrace cash, stocks and other mobile and intangible assets as valid subject matters of waqf, the management framework of the practice has yet to be fully transformed into a corporate structure (Mahed, 2009; Mohsin, 2009). Furthermore, alongside other institutional adaptations, the models and paradigm of waqf both as a concept and as a practice need to be more transparent and more pragmatic. Whereas transparency in the governing mechanism is vital to confidence-building, pragmatism would entail wider prospects and greater avenues for applying the need-oriented approaches towards the institution of waqf.

Traditionally, the functions and operation of a typical waqf have been directly or indirectly dictated by the set of conditions stipulated by the wāqif (donor/endower) himself. Thus most often the classical governing structures of waqf would have been formulated in compliance with the expressly pronounced objectives of wāqifs on individual levels. In this context, the possibility of administrating waqf on individual basis was regarded as a reflection of the great freedom available to the individuals with reference to the properties owned by them. It is suggested that, in this way, the institution was more efficient, effective, productive and relatively more competitive in terms of its functional structure, smooth operation, revenue generation and in the depth and breadth of its outreach to the deserving entities (Kahf, 1999).

The first noted divergence from this method of waqf governance has been traced to the Umayyad period. In the year 736 AD, for the first time in Islamic history, an Egyptian Judge, Tawba ibn-Namir introduced the register of waqf in order to bring the institution under the direct regulatory control of the state (Coulson, 2007). Since then, different attempts were made to control the institution either by the state appointed officials directly or, to the least, by ushering in the involvement of regulatory-mechanism indirectly. However in general, waqf continued maintaining its independence from the state, and the institution enjoyed
the virtual status of the third sector/voluntary sector of economy at large (Kahf, 1999). In fact, the function of medieval waqf essentially set forth the beginning stage for what is now termed as social enterprise (Singer, 2008).

Apparently, the nomination of mutawalli (waqf administrator) in the early Islamic societies was carried out on the basis of either the merit of individual’s piety or his nearness to the wâqi’f. This method of mutawalli selection would have been more productive mainly due to two reasons. Firstly, most of the traditional waqfs were in the form of already revenue-generating immovable properties which would require, in general, an honest administrator to look after the properties rather than requiring individuals of proven managerial expertise and extra administrative skills. In fact, the main criterion for the selection and appointment of a mutawalli was the latter’s ability to safeguard the corpus of waqf and to not let it be exposed to the risk of loss or corruption (Kahf, 1999).

Secondly, most often the geographical location of the given properties would have fallen in the locality of the wâqi’f himself; providing him with enough scope to oversee the management and administration of the same, or in his absence by his heirs. This tradition of mutawalli appointment was followed in the subsequent waqf deeds as a general principle, except in rare cases where no mutawalli was nominated in the deed, and eventually the qâdî would have had the final discretionary authority to delegate this responsibility to individuals of proven piety (Powers, 1993).

**Need and significance of the corporate structure of waqf and its governance**

The jurisprudential framework of waqf is moulded on a distinctive and immaculate design which scarcely has had a parallel, at least in the sphere of charitable institutions. The mark of this distinction is rooted in the intrinsic flexibility and structural elasticity of jurisprudence of waqf and its need-oriented adaptation mechanism. This salient feature of waqf is best embodied through the conferment of a myriad of possibilities to all fundamental characters of the institution. Be it a wâqi’f (waqf administrator), mawqûf bihi (the object of waqf), mawqûf ‘alayh (beneficiaries) or mutawalli (trustee/waqf administrator), all is subject to a broad range of possible varieties. The central point of this practical flexibility is characterised by the notion of expanding the domain of social welfare as wide as possible and that too in a perpetual manner (Abu Zuhra, 1972).

Perhaps, in modern times, the nature of dynamism which is inherently embedded in the framework of waqf-management would be under-utilised if a suited structure of corporation is not explored for the management of the existing awqâf. In fact, of late, due to renewed calls for revival of awqâf coupled with the
appeal of active community participation in the institution, it is only natural that the demands for effective waqf management practices intensify. For this purpose, the older versions of charity organisations might have to be properly transformed into corporations as per the specific requirements of the different jurisdictions (Mahed, 2009).

The central theme of the waqf corporations should be characterised in the light of both shari‘ah injunctions and the requirements of legal technicalities of the land. In most cases, apparently, there are more affinities between jurisprudence of waqf and the rules pertaining to the charitable entities than the contradictions in them. For instance, in the context of common law, waqf is equated with charitable trust and thus, is commonly perceived to fit in the legal framework of trust (Marwah and Bolz, 2009).

The modern fiqh al-awqaf (jurisprudence of waqf) has recognised waqf as a separate “legal entity or ‘theimmah’ that may engage in selling, buying, letting and borrowing” (Marwah and Bolz, 2009: 815). This recognition, in fact, has spurred the possibilities of transforming the waqf into the structure of a modern company/corporation. This new development is, seemingly, in congruence to the special nature and peculiar characteristics of waqf in terms of ensuring its longer durability on its own. However, the similarity between the waqf and a modern company does not sustain with reference to the given powers of the shareholders in a company, as they can liquidate it once they have decided to do so (Kahf, 1999). This provision starkly collides with the requirements of a waqf which demands ensuring the perpetuity, irrevocability and inalienability of the institution (Edge, 2008). In this context, either a new framework for the waqf-corporation has to be solicited or a suited amendment would be required in the existing company framework. Under the common law, in fact, the framework of permanent charitable trusts apparently suits best to these peculiarities of waqf. However, the problem with the legal framework of charitable trust as applied under the common law is that it does not deem the waqf ahli (family/private waqf) as ‘charitable, and hence curtails the special exemptions and privileges such as waiver of ‘rules against perpetuities’ from being enjoyed by the family waqf (Stibbard, Russell, and Bromley, 2012). Though, from a purely legal point of view, under the common law a “Charity did not need to be performed through the medium of the trust…and even today it need not be. It could, for example, be carried out through a company” (Matthews, 1996: 1). However, compared to the charitable trust, the provisions of a charitable company do not sit well with the special nature of waqf so far as the application of cy-pres doctrines is concerned; which is vital to maintain the perpetuity of waqf. For the purpose of transforming waqf into a corporation structure, the new legal framework introduced by the Charity Commission UK as ‘Charitable Incorporated Organisation’ (CIO), may
be adopted. According to the legal provisions “A CIO is a corporate body (like a company) that can own property, employ staff and enter into other contracts in its own name (rather than in the names of the trustees) (Charity Commission, 2012). However, adoption of this structure would entail for the waqf-corporation to comply with its regulatory and governance guidelines which may, occasionally, conflict with some jurisprudential aspects of waqf.

Hence, for the time being, if the existing framework of the corporation is to be sought for waqf management, possibly, its legal loopholes with reference to the special nature of waqf could be compensated only through the introduction of a strong mechanism of governance. To this end, the issue of waqf governance can be treated under the guidance of the traditional fiqh al-awqāf principle which holds that if the wāqif has stipulated that multiple mutawallis would administer the waqf, any reduction in the stipulated number of mutawallis would not be allowed. It is suggested that the rationale of this principle is “that the wāqif did not rely on concentration of full power in a single hand” in the matter of his waqf (al-Mawsū‘ah, 2006: 220). Hence, a framework of governance which may resist the concentration of power in a single or few hands can match the peculiar nature of waqf in the modern context. In this regard, for example, the corporate governance guidelines as proposed in the common law propel the scope of ‘best practices’ in the industry, which ultimately compliments the shari‘ah-oriented recommendations too (Dusuki et al, 2012: 683). In fact, “the sharia and Western governance do have many principles in common such as the aim of ensuring fairness, transparency and accountability” (Foster, 2013:4).

A tailor-made framework of greater transparency, accountability and effective management of a waqf-corporation could be achieved through maintaining a fair compliance with the codes and ethics of the available corporate governance guidelines (FRC, 2012). Additionally, in order to infuse the spirit of shari‘ah in the structure of the available governance framework, some core principles and specific elements of maqāṣid al-shari‘ah (the higher objectives of shari‘ah) would have to be voluntarily incorporated into the waqf corporations. This may be materialised through embedding the concept of ‘adl (justice), sidq (honesty), maṣlaha (social welfare), rifq (being considerate to others), amānah (moral integrity), dayānah (self-accountability) and mu‘āwanah (mutual cooperation) in the ethical codes of governance. The infusion of these salient features of maqāṣid in the framework of governance would not only foster an Islamic environment in the work place but would also boost the level of shari‘ah-orientation in all stakeholders (Dusuki, 2008).

In the process of formulating a governance framework for the waqf-corporation, infusion of the above-mentioned key maqāṣid-oriented elements should be emphasised upon from the very beginning. In this process, right from
the members of the *waqf*-corporation to other stakeholders, all have to be given fair and proportionate representation in the board of trustees/directors. This mechanism would provide a better canvas of democratic communication and would ultimately enhance the confidence of the community itself in the institution (IFSB, 2006: Principle 1.1). Moreover, perhaps by appointing an additional executive to liaise between different stakeholders and trustees, a plausible pitch for exchange of good ideas and relevant thoughts could be shaped and served across the board.

Though in a limited capacity, the roles and responsibilities of the trustees/directors coincide with that of a *qādī* in an Islamic polity. These include appointing the management team, fixing the wages, setting up the internal monitoring and regulatory criteria and providing internal supervision and best advice to the management. This analogy between the role of a *waqf* institution’s trustees and *qādī* is explicitly evident in cases where the *wāqif* has neither nominated any *mutawallī* nor has left a formal deed. In such a scenario, the onus lies upon the *qādī* to appoint a suitable *mutawallī* for the property, to fix his/her wage, to regulate the terms of management and to provide supervision and suitable advice to the *mutawallī* (al-Mawsū‘ah, 2006). From a different angle, in the modern context, the status of trustees/directors is also comparable with the *de jure* *mutawallī* himself too. Similar to the *mutawallī* who owes fiduciary duty to the *wāqif* and the beneficiaries, directors/trustees too are obliged to fulfil their fiduciary obligations to the shareholders/beneficiaries by the legal provision. In this context, honouring the fiduciary obligation would mean

“…That the fiduciary must act solely in the interest of his principal: the fiduciary must act to secure his principal’s best interest, and must not allow his own self-interest, or the interest of others, to govern his behaviour in any way that would conflict with the principal’s best interest” (Penner, 2010: 19).

Hence, the nomination/election criteria for the board members/trustees should be mooted with this analogy in view. This analogical comparison should ensure that no trustee is elected on the merit of academic or professional credentials only with the exclusion of his/her *shari‘ah* knowledge and religious orientation or vice versa. Instead, a blend of the two qualifications and relevant experience should be taken into consideration prior to setting forth the stage for their entry in general. Variety in the educational backgrounds of directors is always recommendable (IFSB, 2006: principle 1.1). In fact, a team of trustees composed of experts from different fields of expertise would broaden the horizon of diversity, mutual interaction and coverage of all appropriate dimensions in the decision making process (Hashim, 2013).
As far as the remuneration of the executive trustees is concerned, it may be fixed in a competitive term. Though, a good number of them would be providing their services on voluntary basis, the provision of good remuneration for others is vital to retain competent and eligible members on the board. Retaining competent board members is crucial in view of the fact that it is they in whose leadership the entire operation is executed (Charity Commission, 2012). Presumably, paying slightly higher remuneration to a competent board for the prudent and smooth functioning of the operation is more justifiable than to cutting the expenses at the cost of exposing the corporation to various risks. In fact, the incompetency of the board may cause reputational risk to the institution (Coyle, 2004).

The criteria of the selection of the management team in general may be formulated on equal terms with other similar corporations with the exception of giving a special preference to those individuals who share the vision and ideals of the waqf institution. Apart from this, the executives and management team should be inducted into the philosophy and ideals of waqf prior to delegating them the practical responsibilities of the operation. If the values, ethos and ideals of the institution are successfully infused in the work environment, this may help the institution to attract and retain an efficient workforce in a much cost-effective manner. By being inspired by the ideals and objectives of the institution, individuals of high moral and ethical orientation may prefer to dedicate their services for the social and humanitarian causes over relatively more lucrative offers. Ideally, the management team should comprise of a separate section of specialists, who know the fiqh al-awqāf inside out along with being well-versed with the legal technicalities of a waqf deed. The team should be competent enough to ably exploit the flexibility of fiqh al-awqāf to mould a specific deed in such a plausible manner which would best suit the objectives of the donor and alongside conform to the legal requirements of the land.

Importantly, the waqf contributions made through cash, stocks, sukuk (Shari‘ah-compliant bonds) and commercial properties would require a special team of experts to manage them prudently. In particular, cash waqf requires the services of a fund manager to invest and manage them in line with the special requirements of fiqh al-awqāf (Mohsin, 2009). For this purpose, on the one hand, shari‘ah filtering criteria of investment must be taken into consideration, and on the other hand, a great degree of caution should be exercised to ensure that the corpus of waqf is not exposed to the risk of loss or diminution. To this end, in line with the needs of different circumstances, the services of a fund manager may also be outsourced, provided the special nature and requirements of cash waqf are communicated to the service provider in advance (Çizakça, 2011).
In addition, services of volunteers should be availed in different capacities, and the concept and culture of donating time and energy for charitable purposes should be promoted by the corporation. This may lead to cost-effectiveness of the operation and also provide the advantage of garnering a wider support and participation of the community in this process.

Furthermore, involvement of the reputed *shari‘ah* scholars in the whole operation both at the executive and non-executive levels may work to improve the confidence of donors on one hand, and would help prepare a sound environment of internal *shari‘ah* monitoring and auditing on the other. Remarkably, since the practice of *waqf* relies on a deep socio-spiritual-orientation of donors, active association of *shari‘ah* scholars with the corporation at different levels would presumably authenticate the practice from this angle as well. As a result, this may boost the level of spiritual contentment of the donors to a great degree. Thus, perhaps a board comprising of the donors, *shari‘ah* scholars and other elected individuals of appropriate expertise, relevant experience and high qualification may represent the interest of various stakeholders in the best possible manner (IFSB, 2006: principle 1.1). In this process, an appointed executive trustee may be entrusted with the responsibility of liaising among the involved parties, and of communicating their ideas and concerns towards each other in a cogent and convenient manner. This provision may significantly reduce the burden of convening the board meetings every now and then, and would help in maintaining the flow of ideas in a precise and timely manner.

**The principal/agent relationship and fiduciary obligation of *waqf*-corporation: few suggestions**

In the light of the foregoing analysis it may be concluded that by developing *waqf* into a corporation three vital objectives could be served. Firstly, the independent nature of *waqf* is maintained as a separate legal entity. Secondly, the legal requirements of fulfilling the fiduciary duty by the corporation would help reduce the agency problem to a marginal level. And thirdly, the legal provision of installing an appropriate governance mechanism would eliminate any possibility of concentrating the power of property-disposition into a single hand.

At this juncture, it is worth suggesting that in this process the role of the *wāqif* must not be confined to a passive donor only. As this may eventually result into fostering a less competitive environment in terms of effective management and greater transparency among the *waqf* corporations. Instead, in a similar situation, the primary focus of the *waqf* corporations may shift from maintaining good governance and efficiency, to concentration of efforts on media campaigning and advertising to raise funds without being bothered about the high expenses.
involved in the process. This phenomenon becomes more probable if the mechanism of internal control and external monitoring is not scrutinised properly (Iqbal & Mirakhor, 2007). In fact, lack of competitiveness in waqf management practices is neither good for the long term health of the institution nor appropriate for consolidating the confidence of an existing or potential donor.

It may be suggested that a fairly active and properly informed donor mindset could be the stepping stone in the process of ensuring good governance of a waqf corporation. Ideally, an active donor should scrutinise the credentials of the waqf organisation before deciding to avail its services as of a de facto mutawallī. Arguably, to draw an analogy of the ideal relationship between a potential wāqif (donor) and the institutional mutawallī, the stages of donor’s choices and priorities may be divided into three phases. In the first phase, ideally the relationship between the two should be that of a potential investor and stock broker. The philosophy of this relationship necessitates the application of rigorous scrutiny to the authenticity, competitive fee, quality of services and ease of accessibility to the investor.

In the second phase, the credentials of the institutional mutawallī should be evaluated by the donor on the parameters of a good fund manager. In this phase, similar to a fund manager, the institutional mutawallī should be judged in terms of its trustworthiness, quality of stewardship, consistency in performance, competitiveness, relevant experience, managerial skills and discretionary competence. Technically, since both the fund manager and the mutawallī owe fiduciary duties to investors and donors respectively, the yardstick of examining the credentials of the former should be applied to measure the competency of the latter as well.

In the final phase, the donor (wāqif) should presume his position as that of a shareholder in a limited company. At this stage, it is incumbent upon the donors to ensure that along with abiding by the stake-holder theory, the waqf-corporation is equally concerned to safeguard their (the donors’) interest too. Though, unlike the for-profit-corporations, in the non-profit or charity institutions, the concept of share-holders does not apply; and the donors are regarded as the members of the organisation (Charity Commission, 2012). However, it may be suggested that with reference to waqf corporations, donors should be recognised as ‘virtual2 shareholders’, and the idea of their ‘virtual dividend’ should also be postulated. According to this theory, protecting the corpus of waqf perpetually (the ‘virtual share’ of donor) and striving to magnify its underlying revenues/ benefits (the ‘virtual dividends’) becomes the primary interest of the wāqif (the ‘virtual shareholder’), which must be safeguarded by the corporation.

To illustrate this proposition, it is essential to note that from the sharī‘ah perspective the promised reward of a waqf in the Hereafter is perpetual only
because of the perpetual nature of its charitable benefits in this world. The *sharīʿah* premise upon which the concept of the recurring reward of a *waqf* is based is a prophetic *hadīth* which stated that after the demise of a believer, there are only three possible sources of addition to his/her sum of virtues. Out of these three, *sadaqah jāriyah* (a continuous charity) leads the list (Muslim/1631). Since a *waqf* is intrinsically perpetual, hence it qualifies the criterion of *sadaqah jāriyah*. Considering this criterion, it is almost obvious that the perpetual nature of a charity is the primary condition for the continuity of the promised reward. And, this is why the majority of scholars did not see an edible or consumable commodity fit to become the subject matter of a *waqf*, since these would not provide perpetual benefits (Ibn Qudama, 1997).

Based upon the foregoing hypothesis, it is arguable that if a *waqf* is terminated after a while due to a lack of the *wāqif*’s seriousness or negligence, the underlying benefits would stop recurring, and hence, the provision of his perpetual reward would also be jeopardised. This lack of seriousness on the part of the donor may be reflected in the form of his indifference in selecting a fit and proper institutional *mutawallī*, for example. Hence, while it is mandatory for the *wāqif* to rigorously scrutinise the credentials of the *mutawallī*, the *mutawallī* too is obliged to ensure the perpetuity of the given corpus. Additionally, building upon the same hypothesis, it may be propounded that though the perpetuity of the donors’ reward is almost ensured with the establishment of a *waqf* deed by the active *wāqifs*, the amount of the expected reward would vary according to the size and scale of the recurring benefits from the given properties. To further simplify this thesis, for instance, it is worth considering that if a *waqf* endowed by X suffices to supply drinkable water to one hundred people; the expected reward for X would be greater than the expected reward of Y, whose *waqf*, with other variables being constant, suffices only for fifty people. Thus, it is arguable that the expected amount of reward for a *waqf* depends on the size and scale of its underlying benefits. To this end, though in an indirect way, the *sharīʿah* validity of this proposition may be sought by citing the prophetic *hadīth* which holds that “Whosoever takes an initiative towards a virtuous deed would receive the reward for his initiative and also for the actions of all those who follow him in this” (Muslim/1017). The point of reference in this tradition lies in the second part of the *hadīth*, which implies that each time the number of the followers grows, the amount of reward for the initiator also increases. Hence, the sum total of initiators’ promised reward depends here on the total number of his followers. Similarly, in a *waqf*, the sum total of the donor’s reward would depend upon the total amount of benefits accrued to the beneficiaries. Interestingly, the context of the above mentioned *hadīth* reveals that this statement of the Prophet (pbuh) is linked with his exhortation to the practice of charity (Muslim/1017). With this
proposition in mind, it may be argued that with reference to *waqf*, the size of the virtual dividend of a donor could be improved through managing his/her *waqf* efficiently so that its yields may grow and the incurring benefits may reach to a greater number of beneficiaries.

In a nutshell, the interest of a donor could be best served only if the related *waqf* corporation is sincerely committed to ensure the continuity of his *waqf* along with striving to improve his virtual dividend through an efficient management of the given corpus. In this regard, it may be suggested that the nature of the fiduciary duty owed by the *waqf*-corporation to its donors would be synonymous to the one owed by a for—profit company to its shareholders or by a *muḍārib* (entrepreneur) to the *rab al-māl* (capital provider) (IFSB, 2006: principle 2.1). Therefore, along with other stake-holders, ensuring the protection of donors’ interest too would constitute the primary responsibility of the institution. Perhaps, the application of these three criteria of a donor’s choice in terms of selecting a *waqf*-corporation to rely upon may spur a greater sense of competitiveness and transparency among the *waqf* corporations, which in turn would strengthen the structure of good governance in the industry.

**Conclusion**

Historically, *waqf* has represented the philanthropic sector of Islamic economy. For a long period of its history, most of the *awqāf* had been composed of real estates which were managed by individually appointed *mutawallis* and governed by the sets of stipulations articulated by the *wāqīfs*. Compared to this traditional mechanism, in the modern day *waqf* practices both the means of *waqf* donations and methods of their management have witnessed a noted change of trajectory. While most of the new *awqāf* are made in the form of cash or intangible asset-classes such as stocks and *sukuk*, the responsibility of their management, in general, is being borne by the institutional *mutawallis*.

To this end, there has arisen a greater need for pragmatism of approach towards *waqf* management practices on the corporate level. Arguably, in the process of moulding an effective corporate governance framework for *waqf* as per the modern requirements, stipulating an absolute compliance with the classical *waqf*-rulings may confine the scope of dynamism in the institution. Also, perhaps, in the formulation of a good governance mechanism, the role of an active donor would be critically vital.

Additionally, it seems appropriate to suggest some fundamental changes and adaptations in the classical *waqf* governance model in line with the need of the time. Also, arguably, for different jurisdictions some tailor-made new paradigms of *waqf* governance models should be solicited, which may potentially help in
resolving the exclusive problematic spheres and challenging arenas of their own specific locations.

Finally, as proposed in this paper, the concepts of virtual shareholder (for the \textit{wāqif}), virtual share (for the \textit{waqf}) and virtual dividend (return on \textit{waqf}) should be recognised. This, in turn, would help to create a competitive environment amongst the institutional \textit{mutawallīs} and promote greater transparency in \textit{waqf} management practices.

Notes

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1. The doctrine of cy-pres holds that if the explicit purpose/object of a charitable trust fails/terminates, the fund must be steered to some other purposes which are similar to the original one. This doctrine is analogous to the \textit{fiqh al-awqāf} ruling which states that if the nominated purpose/beneficiaries of a \textit{waqf} cease to exist, the benefits would be diverted to the other closest purpose (Gardner, 2003).

2. The term ‘virtual’ here denotes the assumed characters in \textit{waqf} corporations which are comparable with the actual characters of shareholders/shares/dividends etc. in a for-profit company.

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PERFORMANCE ART AS AN INSTRUMENT OF SPIRITUAL CONTEMPLATION: THE CASE OF THE MALAY WAYANG KULIT (SHADOW PLAY)

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Abstract: This article offers an interpretation of the wayang kulit (Malay shadow play) as a type of traditional art, in which the art forms are conceived within the broader cosmology derived from religious tradition. To this end, it focuses on three aspects of the play, namely, the rituals, mythology and symbolism in the setting to uncover their meanings and how these relate to the tradition in which it was conceived. As the play predates Islam and was immersed in animistic and Hindu-Buddhist milieu, it underwent reinterpretation to accommodate the coming of Islam and in fact was utilised to convey Islamic message by building on the people’s pre-Islamic beliefs, thereby offering an instance of intercultural dialogue through art.

The Malay world as a repository of traditional art has often been overlooked by writers on the subject. By traditional art here is not meant simply an art form that has been around for a long time, but one that is conceived within a specific tradition conforming to the symbolism and laws of that tradition. The purpose of the art has been less for the privilege and luxury of the few than as an aid for man’s contemplation towards the higher spiritual truths. The forms of the art are but symbols that collectively constitute the ‘words’ begotten upon the union of ‘letters’, serving as the stepping stone for man to penetrate them and fathom beyond appearances to the world of meaning, indeed, to the contemplation of the Divine. That many of these arts survived today as a legacy from the distant past is in itself testimony to man’s resilience in holding to the last vestiges of the sacred even as the modern world constantly seeks to relegate it to the Museum of Superstition. This is evident if one considers the Malay shadow play, or wayang kulit, which, despite the preponderance of MTV and Hollywood blockbusters, had nevertheless endured till today with all its traces of the occult, magic and mystical practices. Deciphering some of the spiritual symbolism present in this art will be the aim of our discourse, and we will explore in particular, the wayang’s unique ways of defining the relations between the immanent and the transcendent. To this end, we will investigate not only the technicalities of the art, but also its myths, setting, rituals and even the training of the dalang (puppeteer).
An Introduction to the Wayang Kulit

Wayang kulit, the Malay shadow play, is a form of folk entertainment that makes use of the principles of light and shadow, involving puppet play moved and manipulated by the performer or puppeteer, known as the dalang, behind a white screen (the kelir) of a small, raised hut known as the panggung [Figure 1]. The puppets themselves are made visible to the audience as silhouettes or shadows [Figure 2], made possible by the presence of light, often through light bulbs or paraffin lamp, suspended between the dalang and the screen, and directed towards the screen from behind it [Figure 3].

Figure 1: The Panggung. The white screen is known as the "kelir"

Figure 2: The puppets of the play are shown as shadows from behind the kelir

Figure 3: The view from behind the kelir – the shadow player performing with lamp suspended between him and the puppets.
Performance is typically accompanied by traditional music and is often preceded by a series of elaborate rites and rituals, involving invocation of spirits and supernatural powers, purportedly to protect the performance from evil influences as well as in captivating the attention of the audience. For obvious reasons, the shadow play is carried out at night, and occasionally done, not for purely entertainment’s sake, but towards more spiritual and exorcist ends. Although originally enacted only on specific events, such as circumcision ceremonies or the harvesting season, contemporary times have witnessed the flourishing of the wayang kulit largely as popular entertainment or cultural phenomenon, by virtue of which it has become an important tourist attraction. In the Peninsula Malaysia today, at least four types of wayang kulit are to be found, namely the wayang Siam, wayang Jawa, wayang gedek and wayang kulit Jawa. Our research will focus on the first, namely the wayang Siam of Kelantan, insofar as it is the most well-known among the various wayangs.

The puppets of the Malay shadow play are made from leather, hence the term wayang kulit, literally meaning “leather play” (wayang = play; kulit = leather). The design of the puppets shows a remarkable variety of influences. Like those of the Nang Talung, a type of shadow play from Thailand, the majority of the characters of wayang Siam have only one movable arm, with the other arm holding a weapon, and often standing upon some kind of a ‘transport’ made up of various creatures such as serpents or dragons [Figures 4]. Moreover traditional male characters are similar in appearance, both featuring the typical Thai pinnacled crown although they are different in form. It has also been suggested that the structure of the characters of Rama and Hanuman in the wayang Siam reflects some elements tracing back to India, not to mention other sources, most notably to Thailand and Java, to such an extent that northern Peninsula Malaysia – of which Kelantan is a part – has been described as a “shadow-puppet melting pot.” Interestingly enough, notwithstanding the myriad of origins that have shaped the Kelantanese shadow play, the puppets have nevertheless evolved structures unique and distinctive to its homeland Malaysia.
The repertoire of the shadow play revolves around the story adapted from the Hindu epics of Ramayana and Mahabharata, particularly in its localised Malay variant, the Hikayat Seri Rama (The Epic of Seri Rama) and the Hikayat Pandawa Lima (The Epic of the Five Pandava Brothers), but especially in their popular folk version, the Hikayat Maharaja Wana (The Epic of Lord Ravana). Now in these localised editions, some of the original characters assume new names. Hence Rama becomes Seri Rama, Sita is Siti Dewi, Hanuman is Hanuman Kera Putih (Hanuman the White Ape) and Ravana is Maharaja Wana. For the sake of performance however, the dalangs are torn between remaining faithful to this central plot and keeping the audience’s interest alive (i.e. the audience would have been bored if the same plot is enacted over and over again). Ironically, the audience themselves are hardly fond of ‘new’ stories, preferring instead, to indulge in tales garbed with claims of their timelessness and primordiality. That is why stories for the play are divided into the cerita pokok (trunk story) and the cerita-cerita ranting (branch stories), with the former being stories drawn from the original epic while the latter new stories presented as extensions of the original narrative. In brief, the Hikayat Maharaja Wana tells of the events in the sky kingdom (Kayangan) prior to Seri Rama’s birth, then goes on to explain about his birth, along with his brothers. Then as the story unfolds, Siti Dewi’s heart was won over by Seri Rama when he emerged victorious in an archery competition organised by her father, Maharisi Kala Api, after which the jealous Maharaja Wana – who lost the game to Seri Rama – kidnapped her to Langkapuri. Seri Rama and his brother then embarked upon a quest to rescue her, during which he encountered Hanuman Kera Putih, the son he never knew he had, who generously offered to be part of the fellowship. After many trials and tribulations, Maharaja Wana was defeated and Siti Dewi freed from his hands. The cerita-cerita ranting use the same basic characters and main storyline, but are varied as pleased by the dalangs – all in their effort to preserve the legacy of the wayang among the common folks.

A typical performance of the play also includes recitation of mantras, along with other rites and rituals. Already here it can be seen that the shadow play is not reducible to its appearance as ‘profane’ human drama enacted in puppet forms, but instead is steeped within the mysteries of occultism and spiritual practices. These rituals include the jampi (chants or spells), kenduri (feast), buka panggung (rites to commence the theatre) and berjamu (ritual performance). The wayang often begins with salutations upon supernatural beings and before the introductory music starts, the jampi is recited along with the numerous offerings in the kenduri, from food to cash payment, and invoke upon the power of such beings as hantu (ghosts), jinn (genies), jembalang (hovering spirits) and even the “original teacher” of the dalang. The purpose apparently is manifold, ranging from the protection of the performance from subtle malign influences.
and winning the audience’s attention to calming the audience and subduing the possibility of fights and quarrels among them. In other words these spells and magic work as a force-field generator that not only serve as protective measures but to transport the entire performance to a cosmos unto its own, ‘locking’ and binding the shadow player and the audience to one another.

The shadow play is by no means exclusive to the Malay world. Similar theatrical forms are equally found across Southeast Asia and even beyond. In Malaysia and the Indonesian islands of Java, Bali and Lombok, it is known as wayang or wayang kulit; in Thailand and Cambodia, the term nang (and also ayang in Cambodia) is used. Outside this region, it is also found in India, China and Turkey, and even extinct forms in Iran and Egypt. Historically, the art itself has been around for centuries. The earliest reference to shadow puppetry appear in the Jataka tales (Buddha’s birth stories) of India, around 200 BC; the Piyingxi, or shadow play of China, is said to date back 2000 years to the Han dynasty; the classical Javanese shadow play (wayang kulit Purwa) has been confirmed to have existed from about the 9th century; while the earliest Malay shadow play of Kelantan has been traced back to the reign of Long Yunus (1763-1798) in the 18th century. During that period, the play had its headquarters in the Court of the Raja (King) of Patani, and “appeared in Kelantan in the rather unsettled surroundings of Long Yunus’ Balai [Court] when circumstances were favorable.”

Islam-Wayang Encounters

The shadow play being in existence long before the coming of Islam to the Malay world, naturally this new religion that settled here some centuries ago was bound to confront the pre-Islamic heritage of its new abode. Reaction was by no means uniform, but it has largely been less favorable to the eyes of official religious authorities than to the common people. Objections to this art assume many different forms. The rites and rituals of the wayang, particularly the recitation of mantras (jampi), are said to contain syncretistic formula that mix animistic, Hindu and Islamic elements. Theologically this is deemed to be a serious threat to the aqidah (central belief) of the Muslim. In the more social and practical dimension, critics are apt to point out the so-called immorality of the dalangs, including their lack of discipline in observing even basic injunctions of the Shariah such as the hajj (pilgrimage to Mecca, one of the five pillars of Islam), while some are said to be womanisers by abusing spiritual knowledge acquired through dalangship to make themselves appear as darlings to the chics. Others find fault in the symbolism of the play, arguing that the dalang’s performance of the shadow play is analogous to God’s control of man and the universe, and hence the dalang here is seen as “playing God”, a point which we will return to later.
Despite the various rituals that appear to sanctify Islamic message in the play, an important observation of its practitioners nonetheless hints something about the seemingly “irreligious” dimension of the art. We have noted earlier that a common criticism of the dalangs is that few of them actually went to perform the hajj. Although this alone is scarcely a fair basis for the harsh verdicts made against them (for this could be due to lack of financial resources or other factors), those who did perform the hajj are noted to have actually abandoned their art upon returning home and “repented” for having practiced it for so long. Some who claimed to have met Prophet Muhammad (may peace and blessings be on him) in their dreams too decided to forsake the world of the wayang. Exactly how far the practice of wayang kulit violates the principles of Islam is by no means easy to assess, and we will not make such an attempt here, as it is a research project unto itself. But one is inclined to think that the wayang, or the dalangship per se is not intrinsically un-Islamic, as testified by the teacher of the famous dalang Dollah Baju Merah, who, having cast his dalangship aside and left his practice following a dream of meeting the Prophet, nevertheless continued teaching it. One possibility is that, rather than leaving the art altogether, he saw something valuable in it – perhaps sympathising with its function as an instrument of support for spiritual contemplation, which we will discuss later – and therefore seek to “Islamise” it “from within” by going through the very roots of the wayang, namely, the education of dalangs.

Wayang Kulit: Myths and Genesis

Turning now to the mythology that sustains the wayang kulit, one may readily appreciate that myths serve not only as symbols that reveal a wealth of meanings but also elevate the art form from the ranks of folk plays to the vehicle that conveys higher spiritual messages. It is precisely myths that accord the art its aura of timelessness and sacred dimension – a claim not altogether false if one considers the historical origins of the wayang kulit. Even by a myth-free historical account alone, theories abound as to its genesis and many attribute it to a cult of ancestor worship among the primitive tribes of Nusantara. It was believed that the spirits of the ancestors (called hyang) could be summoned for their aid and magic by making images and puppets to induce their presence and ‘capture’ them on these forms. These images and puppets serve as the temporary abode in which the souls may dwell in brief while the worshippers plead for their guidance. The puppets are thus the rendezvous where the spiritual and the corporeal intersect, a meeting point between the Divine transcendent and the earthly immanent. Only by this means that profane men can communicate with all that partakes of the sacred. While this ancient theology to which wayang kulit was bound does not
survive the passage of time, residues of the spirituality that underpins the art are nevertheless still observed today, as can be seen in the elaborate mythology that surrounds the wayang.

In its earlier form, the play is said to have been first brought to earth from the kayangan (the heavens) by a certain Pak Dogol (one of the main characters in the Wayang Siam), who is actually Dewa Sang Yang Tunggal (The One Great One), the highest Dewa (God) of the kayangan. He was bored of living alone in Paradise and wished to observe his subjects, and thus descended to earth as a hideous old man. Out of his bodily dirt, he created what later came to be his companion, Wak Long. Now in this sense, it has been suggested that, while many would not have confounded the Sang Yang Tunggal (and by implication, Pak Dogol) (The One Great One) with Allah Himself (The One God), there are others who would have succumbed to such confusion. But this mythological account has nevertheless been replaced with another, which seemed to be less religiously objectionable.

For many dalangs today, there is a general agreement that the wayang originated from a certain Haji Mula (literally, the first Haji, one who has performed the hajj), but the silsilah or chain of evolution, explaining his transmigration from one form to another, culminating in Pak Dogol, varies from dalang to dalang. A noteworthy interpretation is that Haji Mula was originally the Angel Azizin who resided in the kayangan before the creation of Adam, the Prophet and first man. Once Adam was created, all was commanded by Allah to prostrate before the new creature, but the Angel Azizin refused, insisting that he was created first, hence more honour and glory lie in him rather than this more recent creation. Furious, God banished him from Paradise and he underwent a series of evolution – or rather de-evolution – in which he degenerated into Haji Mula, and later on, a hideous atavism called Pak Dogol. Angel Azizin was once beautiful, but is now ugly and forbidden to touch anything that belongs to God. Left to himself, unable to even clean his body, he grew bodily dirt to such an extent that it became a new being, which came to be known as Wak Long. The wayang is said to be brought to man by Pak Dogol, i.e. Haji Mula, who was the first dalang. Both Allah and Prophet Muhammad were claimed to be the original teachers of the art.

The mythological revision narrated above may sound gibberish, but we believe there may be something more substantial to the story than a superficial “Islamisation” of the art by means of name-changing and giving central prominence to religious personalities. To the contrary, the mythological revision and the exposition of an elaborate silsilah, tracing the genealogy of the art back to its Divine Source in this respect perfectly mirrors the attitude common among practitioners of traditional art, namely, rather than remaining heedless to the influence of the new religion, or even dismissing it as irrelevant, the puppeteers have taken upon themselves to re-interpret the myth of genesis and made it more
in tune with Islam. The point is less to appease to the common want of religious justification for the art than for the realisation among the art practitioners themselves, that the original myths represent certain spiritual archetypes utilised to convey supra-formal meanings. Yet these archetypes are strictly bound to the religious tradition – which serves as the ‘language’ for the symbols so to speak – within which it has been conceived, that is to say, as the receptacle to receive the message. Once the tradition makes way for another tradition, it makes perfect sense to “translate” the message into the new language, i.e. the new tradition, and hence the necessity to revaluate the role of the symbols, while simultaneously remaining faithful to the original message.

One may cite two examples to illustrate this point. The first is the creation of Wak Long from Pak Dogol’s body, which is reminiscent of the creation of Eve from Adam’s rib. His refusal (in the earlier form of Angel Azizin) to prostrate before Adam finds its parallel in Iblis’ similar reaction towards the creation of Adam, and since Adam was only created once, one is apt to identify Pak Dogol with Iblis. Such could have doubtless been the interpretation had the story ended there, but it doesn’t and Pak Dogol’s saga continued. Unlike Iblis, Haji Mula sought repentance from God after his banishment from Paradise. This element of repentance is crucial to Islamic theology, for it was Iblis’ despair, hopelessness and incredulity in God’s mercy that led him to be known as Satan, for the Quran has constantly reminded man to “not despair of God’s mercy except unbelievers” (Q Yusuf,12:87). This is why Haji Mula, despite the gravity of the punishment against him (he was denied everything that partakes of God’s creation), nevertheless did not surrender his hope in God, the Most Merciful (al-Rahman) and Most Compassionate (al-Rahim). The second is the juxtaposition of characters belonging to different traditions with one another, partly as a device to invite the audience to rethink their perception and judgment about certain characters of the play, which represent specific religious symbol. This is why in the shadow play, Pak Dogol, an abstraction of a personality belonging to various traditions, is made to encounter the heroes of Hindu epics, which calls for one to come to terms with a dialogue between the two traditions of Hinduism and Islam, precisely the transition that the wayang itself, not to mention Malay society, has had to confront.

Symbolism in the Repertoire: The Universal Archetype and the Symbolic Expression

As an instrument of support for spiritual contemplation, discernment between the Absolute and the relative in traditional art is extremely critical. The wayang’s device in accomplishing this task is through the repertoire, namely,
by distinguishing between what is perennial or universal and what is transient or particularised expression of the universal. Now this aspect is especially evident in the very structure of the wayang stories. To describe the relations between the narratives, the dalangs employ a tree imagery, with the ‘trunk’ being the main story of the Cerita Maharaja Wana (Story of Lord Ravana), the ‘original’ epic drawn from the Ramayana or Mahabharata, and the ‘branch’ stories (cerita-cerita ranting) being minor tales or anecdotes drawn from the main saga. Whereas the trunk originates from a clearly defined source, namely, the two Hindu epics, the cerita-cerita ranting are exhausted only by the creativity of the dalangs. The branch stories however, are not radically new innovations but rather extensions of the original story. Characters from the principal myths are retained but are now made to confront new situations, such as a battle against new raksasa (demons). Minor characters may sometimes be added to the branch story but the chief dramatis personae have always been the authentic mythical figures.

This then, is the crucial point: the universal and the particular in the repertoire are represented by the trunk and branch stories respectively. This is why, despite the myriad of branch stories authored by the dalangs, the mere presence of the mythical heroes and villains is reason enough to secure their dependency upon the original source. Who is Seri Rama? Why is Maharaja Wana so hostile towards him? Constrained within the universe of the cerita ranting, one is apt to be left with dismay and disappointment in learning that answers cannot be found for these curiosities. Only by transcending this relativity and returning to the source of the narrative will the truth be revealed. The universality of the trunk story stems from its very conception within a world of a primordial tradition. It is thus the archetype containing within it manifold possibilities for manifestation in the world of change, becoming and multiplicity. Like the centre of the circle, the trunk story is what radiates and illuminates all the cerita-cerita ranting which are like its circumference. For this transcendental archetype to be accessible to the world of immanent, one cannot thus bypass the contingencies in which man finds himself, such as the cultural and psychological peculiarities or even the predominant mood or temperament of the day. The diversity of the human receptacles is thus a factor in determining the mode of archetypal expression. For this reason the dalang’s role in producing a compelling cerita ranting that is able to engage the audience while at once remaining faithful to the perennial message that he seeks to convey, lying at the back of his mind, is pertinent. This explains why “the majority of dalang are somewhat loath to admit that they invent tales involving the characters of Ramayana” as they deem this central plot to be “most inviolable.”

The nexus between the immanent and the transcendent, between the relative and the Absolute is further testified by how the characters in the shadow play
interact with one another. Of special note here is how the mythical characters deal with Pak Dogol and Wak Long. These latter two characters form an essential component of the wayang Siam repertoire but are nevertheless absent from either the Hikayat Seri Rama (the Malay literary rendition of the Ramayana) or the Hikayat Pandawa Lima (the Mahabharata). Now at this juncture it is perhaps safe to contend that their appearance is thus exclusive to the wayang Siam story, and that for as much for entertainment as for serving symbolic purposes. Our contention here is that Pak Dogol represents a form of particularisation of a spiritual archetype and his role as clown-servant to Seri Rama or the Pandava brothers demonstrates the subordination of the particular to the universal; that the particularisation of the symbol is meant to serve the meaning of the symbol.

This claim that Pak Dogol as particularisation of universal symbol is supported by the fact that, while he assumes this personality solely in the wayang Siam of Kelantan, his resemblances are nevertheless to be found throughout the region. He is known variously as Semar, Dewa Sealam Tunggul, Empu Purwa, Sang Adi Putra and Dewa Agung Kepala Sekalian Dewa in different parts of Southeast Asia. This is so even when there are dalangs of wayang Jawa who wished to refute any such association between Pak Dogol and Semar, for “the explanation of the origin of Semar… is nearly the same as that told about Pak Dogol.” Pak Dogol accordingly is a ‘native’ of Kelantan, born here as a specific reincarnation of an abstract, nameless entity that manifests everywhere in the area, assuming different names. One of the tasks of the dalangs is to make Pak Dogol and Wak Long especially agreeable to the audience, for that is what a particularised symbol does, namely to address the peculiar traits of the human receptacle. To accomplish this, these characters are conferred an interesting attribute – as the comic relief for an otherwise solemn performance. In one of the cerita ranting, called the Kerak Nasi or Nasi Dingin repertoire, the dalang even explored a conflict between Seri Rama and Pak Dogol, in which the latter was driven out of the palace on account of his lowly origin and some simple mistakes. Eventually, Seri Rama had to pay a heavy toll for this unjustified action. This repertoire lucidly illustrates how symbols, while often misunderstood and misconstrued, are nevertheless needed as the vehicle for transcendental meaning to express itself.

Symbolism in the Setting

The setting of the wayang is also symbolic and in some cases this has also been the source of controversy behind the peculiarly “un-Islamic” character of this art. One interpretation proposes that the panggung represents the universe, the macrocosm so to speak, in which man lives and breathes. The follies and foibles of the puppets are those of us mortals; the white screen is the sky or the face of
the world; the lamp is the sun which enables there to be day and night; while the *dalang* is none other than God, the invisible puppeteer who controls and lords over all of creation that is the puppets of the shadow play. Indeed, there is a common expression in the Balinese and Javanese cultures of Indonesia – to which the *wayang Siam* traces some of its influences – that “life in the world is like puppet, we are controlled by a *dalang* – the God.”25 What many find disturbing therefore is the religiously unpalatable thought that the *dalang* here is ‘playing God’, an act that verges easily upon the serious possibility of slipping into *shirk* (putting anything at par with God, a grievous crime in Islamic theology and jurisprudence). Nevertheless, a closer scrutiny reveals such a macrocosmic interpretation of the setting to be untenable and a more persuasive case is to understand it as the microcosm, or specifically, *man* as the microcosm, the small world or miniature universe in whom all that exists in the world is reflected.

This re-conceptualisation accordingly carries with it the necessity to reevaluate the macrocosmic theory of the panggung, which seems to be vindicated by lucid accounts of the structure of the cosmos as elaborated by the *dalangs*. The localised (i.e. the Indonesian origin) Hindu cosmology’s concept of *tri angga*, or three-fold division of the world into the holy (*utama angga*), intermediary (*madya angga*) and profane (*nistha angga*) was applied to the organisation of the panggung.26 But at the same time, this trinitarian logic was extended to connote the life cycle of man, symbolised by the three stages involving the puppets – awakening them from their sleeping box, making them move and unfold the story, and finally to return to their ‘slumber’ in the box, equivalent to the mortal process of birth, life and finally, death. Now what this reveals is the intersection or correspondence between the universe as the macrocosm and man as the microcosm. To be clear, this outlook only has sanctity insofar as it is sustained by animistic or Hindu cosmology. Post-Islam as mentioned, this macrocosmic identification became less tolerable, and hence shifts the paradigm towards a more firmly rooted microcosmic vision of the *wayang*. Islam’s influence, expressed in symbolic terms, is accordingly to absorb the weight of the cosmos and places it solidly on man as God’s vicegerent on earth. The *dalang* is no longer the ‘invisible God’ but man’s deepest self, and the entire shadow play is to be construed as the drama that unfolds as man journeys to comprehend and realise his innermost being. In the process, the *dalangs* employ many devices lest the audience sheepishly succumb to the superficiality of appearances and overlook the reality beyond the shadows. This is easily attested by how the puppets themselves were lavishly colored, beautified and adorned, yet are only as shadows during performance. Even as the narrative had begun, the *dalangs* frequently remind the audience not to be deceived by appearances, as seen in how Dollah Baju Merah warns that Pak Dogol should never be misjudged for his less-than-pleasant looks.27
only the audience knew the myth and semi-theological underpinnings of the play, Pak Dogol would have fared better in their eyes. Hence the need to probe what goes on *inside* the panggung, for this is where the truth lies, not in the cheers and jeers among the masses outside. Man must constantly seek within himself for the ultimate questions, not outside.

But man is not an alienated being. He is inescapably bound to his Creator whom he will encounter at the very substratum of his soul, for “he who knows himself, knows his Lord.”²⁸ His Creator then is only accessible within the cadre of religious tradition, which necessitates discipline in following the Divine decree.²⁹ Now this results in the formulation of elaborate rituals in the shadow play that secures one strictly along the path of God. One of the rituals pertaining to setting of the *panggung* is that it cannot be directed to face the Ka’bah,³⁰ presumably to prevent the audience from turning themselves against the Ka’bah, the spiritual center of this world, for doing so metaphorically places oneself in opposition to the religion – from which the art itself finds its legitimacy – whereas one cannot possibly become acquainted with one’s inner self by abandoning one’s faith. This is further reinforced by the performance of other rites designed to ward off evil spirits while the *wayang kulit* is being performed.

Once the performance begins, what takes place can be understood from two levels. One, is the straight-forward depiction of folk entertainment at work. On another level, what actually happens is this: the *dalang* is engaged in a process of spiritual contemplation largely to the oblivion of the crowd. In doing so, he makes use of the visible acts and expressions which veil a wealth of inner, esoteric and mystical dimension, analogous to the performance of *salat* or *Hajj*, or even the dances of mystical cults (e.g. the Whirling Dervishes), which nevertheless can be discerned by the few who possess the requisite temperament and disposition of the soul to fathom their mystique. In *wayang* parlance, such persons are said to be in possession of the right *angin*, literally meaning ‘wind’, but here denotes a certain inner proclivity or inclination towards the secrets of the art.³¹ A *dalang* will only impart his knowledge if the prospective student possesses this *angin*. Once he is accepted as a pupil, the latter will then accompany the master to performances as apprentices, occasionally performing the opening ceremony, or even some basic repertoire under the guidance of the master. The knowledge that will be handed down is not only that pertaining to the performance but also contain some elements of magic or occultism. Two forms of knowledge are imparted, namely, the *ilmu luar* (outer, or exoteric knowledge) and the *ilmu dalam* (inner, or esoteric knowledge), the latter of which involves hidden knowledge useful in protecting the dalang’s art from demons, evil spirits and other influences³² as well as engaging the audience and other uses, but also can be abused, such as in making himself irresistible to women. When the student
is ready to ‘graduate’, the master will perform a special rite called pelimau, or bathing with flowers, to mark his ‘convocation’. Thus it can be seen here that the shadow play performance also serves as a form of semi-initiation into the art, with the majority ‘failing’ this test, while the few with the right will and angin will be sparked by intense curiosity enough to approach the dalang and plead for his knowledge, who will then welcome him into the occult world of the wayang circle. This then, distinguishes wayang kulit from many other traditional arts, which require initiation to be conveyed their mysteries. The wayang is involved in spiritual initiation even at the very ‘profane’ level as folk entertainment.

Conclusion and Recommendations

The wayang kulit has evolved significantly from its pre-Islamic roots to a new presence in an Islamic milieu: its symbolism reinterpreted, its myth retold and its setting and structure seen in a new light. It remains today one of the few legacies of traditional art inherited from the pre-Islamic times of the Malay world and beyond. As befitting the perennial message that it seeks to convey, the wayang was able to adapt itself to the new religion of Islam that settled here some centuries ago and was indeed integrated into the very fabric of Islamic culture and civilisation, even as it has been constantly besieged by exoteric religious authorities. What accords this art its timeless message is its role as support for spiritual contemplation, as a spiritual autobiography narrated in symbolic forms, of man’s effort to realise the formless transcendent in the world of forms and relativities. So long as this primordial view of art lingers with the play, its heritage will continue to mark its presence in the years to come. Towards preserving such heritage, it is suggested that:

• The wayang kulit should be more prominently highlighted in relevant cultural and educational programmes as an instance of intercultural dialogue through art particularly in a society’s transitional phase from its pre-Islamic origin to the coming of Islam.

• An appreciative view of traditional arts should also be cultivated among the populace by linking these arts to the religious and spiritual cosmologies within which they are conceived. Such an approach would nurture a more accommodative spirit towards artistic practices that may at first glance seem religiously objectionable.

• The potential role of traditional arts in propagating the message of Islam should also be explored in greater depth.
Glossary of Malay Words

Angin: literally, “wind” but in wayang terminology, the inner propensity towards the art.

Berjamu: ritual performance.

Buka panggung: rites to commence the shadow play ceremony.

Cerita-cerita ranting: ‘branch stories’, extended narratives of the shadow play drawn from the ‘trunk story’ or cerita pokok.

Cerita pokok: ‘trunk story’, the main repertoire of the shadow play, taken from the Hikayat Maharaja Wana, inspired by the Hindu epics of Mahabharata and Ramayana.

Dalang: the puppeteer or shadow player of the wayang.

Hantu: ghost.

Hikayat: epic.

Jampi: chants or spells.

Jembalang: hovering spirits.

Jinn: genies.

Ilmu dalam: inner, or esoteric, knowledge; the magical or occult elements involved in the training of the dalang, usually imparted once trust with the teacher is secured, and is the last form of instruction in the training.

Ilmu luar: outer, or exoteric, knowledge; knowledge pertaining to the technicalities of the play, including the skills in handling the puppets and the repertoire.

Kayangan: The Heavens, or Paradise. In wayang mythology, this is where Haji Mula or Pak Dogol originates from. In the Hikayat Maharaja Wana, the abode of Seri Rama and his brother Lakshmana.

Kelir: the white screen of the panggung through which shadow puppets are shown to the audience.

Kenduri: feast.

Panggung: a small raised hut from which the shadow play is performed.

Pelima: bathing with lime and flowers, a ritual ceremony to mark the ‘graduation’ of a pupil from his dalangship training.

Wayang Kulit: the Malay shadow play, literally meaning “leather play”, on account of the materials used for making the shadow puppets.
Notes

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1. The exorcist role is not performed through the shadow play itself but is accomplished through the use of the puppets, rituals and some of the spells of the shadow play. Often this is done as part of the more explicitly exorcist art of main peteri. For a discussion on this, see Barbara S. Wright, “Dance Is the Cure: The Arts as Metaphor for Healing in Kelantanese Malay Spirit Exorcisms”, *Dance Research Journal*, Vol. 12, No. 2 (Spring - Summer, 1980), pp. 3-10.

2. This classification is by no means exhaustive and different writers have assigned different names for the various wayang types.


4. Ibid.

5. Ibid.


8. Ibid., p. 3

9. Ibid.


14. This makes sense if we recall that one of the purpose of the rituals was to make the play constantly attractive to the audience. Evidently for some dalangs, the ‘audience’ here has acquired a whole new meaning and it is not the play alone that can be made ‘attractive’.


16. Ibid.

19. Ibid., pp. 56-58.
27. In one of the repertoire, Dollah Baju Merah said, “Pak Dogol tunggul bukan sebarang tunggul, / di luarnya tunggul di dalamnya ramai. / Buruk bukan sebarang buruk, di luarnya buruk / di dalamnya bertuah. / Pak Dogol jangan dicaci kelak majal ketulah / diri membawa mati”, which roughly translates into “There is more to Pak Dogol’s simplicity than meets the eye, / simple on the outside, yet rich on the inside. / More to his ugliness than meets the eye, ugly on the outside / fortune and beauty on the inside. / Curse not Pak Dogol / for that shall bring curse unto the one who cursed.” See Hashim Yaacob, “Wayang Kulit in the Malay Cosmology”, Faridah Noor Mohd Noor (ed.), Dimensions of Shadow Play in Malay Civilisation, p. 28.
28. This is a famous hadith of Prophet Muhammad (pbuh).
29. “The three grand revelations of the Real, or theophanies, namely, the cosmos or macrocosm, man or the microcosm, and religion, all comprise forms which lead to the formless, but only the third enables man to penetrate the world beyond forms, to gain a vision of forms of both the outer world and his own soul, not as veil but as theophany.” See Seyyed Hossein Nasr, Knowledge and the Sacred, Lahore: Suhail Academy, 1988, p. 261.
32. Ibid, p. 44.

References


CUSTOMERS’ AWARENESS, ATTITUDE AND PATRONAGE OF ISLAMIC BANKING IN NIGERIA

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Abstract: This study examines customers’ awareness of Islamic banking products and services in Nigeria and explores their attitude towards them. It also investigates their patronage of the banks. An 18-item questionnaire was designed for businesspersons, Muslims and non-Muslims, to obtain information on issues such as awareness of Islamic banking, loans without interest, collateral security, agency, partnership based on sharing of profits and losses and patronage of an interest-free financial system. The results show the willingness of the Muslims and a large number of non-Muslims to patronise Islamic banking products and services. Products and services offered by a large number of the respondents were shari‘ah-compliant. Their readiness to give collateral security, which is neither compulsory nor against the dictates of Islam, indicates their attitude and preparedness to patronise Islamic banks. However, a few non-Muslim respondents state they will not patronise Islamic banking products even if they are profitable and they are the only products in the banking sector in Nigeria. This study will assist promoters of Islamic banks in Nigeria to know where they can establish full-fledged Islamic banks. There is need for the existing and the potential Islamic banks to create more public awareness on Islamic banks.

Keywords: awareness, attitude, patronage, Islamic banking, interest, customer, Nigeria

Introduction

Nigeria as a country covers an area of 927,773 square kilometers. It is an agrarian economy. Its major cash crops include cocoa, rubber, hides and skin, palm produce, cotton, and groundnuts, to mention a few. Its food crops are yam, ice, maize millet etc. (International IDEA, 2001:153). Agricultural products represent a large share of Nigeria’s exports. The sector accounts for two-thirds of total output and employs about 73 percent of the total labour force. Minerals such as tin, coal and columbite also form part of its exports. During the period, visible increases occurred in the living standards of a large number of Nigerian people (Anyanwu, 1993; Ekpo, 1986). It was assumed that the oil boom would further increase the standard of living of Nigeria. The opposite was the case for a large number of people have been living below the poverty line of one dollar per day as a result of corruption and mismanagement.
Upon introduction of the banking system in 1894 (Ekezie, 2002), one would expect that the poverty level of the people would be reduced because of the belief that people would have access to funds with which they can engage themselves in various professions and commercial activities. This expectation was dashed as a result of high interest rates attached to loans given by the banks. Presently, the average interest rate on loans given out by the Nigerian banks is about 25 percent (CBN Website).

Therefore, many people could not source funds from banks, not only because of the high interest rates, but also their inability to provide collateral. The introduction of Islamic banking on 13 January 2011 gave the poor another opportunity of having access to a cheap source of funds. This is because Islamic banking looks at feasibility studies instead of credit worthiness and interest rates as standards. The poor do not have to get collateral before they can have an easy access to funds in an Islamic financial system. However, collateral may be requested to prevent or reduce moral hazards such as dishonesty and a running away of the entrepreneur. People, particularly the poor with good business experience, but lacking funds to put their business acumen to use can thrive better with this type of banking. It can empower the poor and raise their living standards in a better way than conventional banks can. Both finance users and capital providers benefit in terms of returns (Fuad and Mohammed, 1988).

Going *ultra vires* is nearly impossible in an Islamic financial system because all the products are asset-backed. For instance, in *murābahah*, assets, machines, goods, etc. are bought for a person that is interested in this product. So, there is no chance of using the funds for a thing that is not in the business plan. As good as the bank is in relation to the have and the have-nots, it can only survive if it is patronised by people. Therefore, the feasibility, viability and profitability of Islamic banks depend on the number of customers they can attract. In the light of the above-mentioned reasons, the paper seeks to examine customers’ awareness of the bank, explore their attitude towards it and investigate their patronage of the bank. To achieve these objectives, the paper seeks to answer these research questions.

1. To what extent are people ready to accept unlimited liability?
2. Are there *Shari’ah*-compliant products in people’s businesses?
3. To what extent are business persons ready to give collateral security before they obtain loans?
4. Are Islamic products being used by business persons inadvertently?
5. Are people ready to patronise Islamic financial institutions?
6. Are Nigerians aware of Islamic banks?
7. If they are, are they ready to patronise it?
These and other questions will be answered in this paper. Answering these questions, posed to businesspersons, will also assist some cooperatives who plan to establish Islamic micro-finance banks. It should also help existing Islamic financial institutions to innovate products that will assist them in attracting additional customers, both Muslims and non-Muslims.

**Literature Review**

Principles of *Sharī'ah* govern the operation of Islamic banks. The principles are derived from the Quran, the *Sunnah*, *Qiyās* and *Ijmā’* (Ali, 1986: 17). The principal sources are the first two. The Quran was revealed to the Prophet (*Peace be upon him*) over a period of about 23 years. No stone was left untouched and unturned in the Quran in relation to all aspects of human life: social, moral, economic and political (Q6:38). As regards the principles of Islamic banking, the Qur’ān discusses them. It must, however, be mentioned that details as regards the operation of Islamic banking are not in the Qur’ān. It only gives the broad principles. Scholars elaborate them with a view to deriving the details of its operation. The second principal source is the sayings and deeds of the prophet (*pbuh*). The Prophet (*pbuh*) who was the one who received the revelation directly from Allah through the angel Jibril was in the best position to explain the words of Allah and how they can be applied in our social, political, moral and commercial dealings.

Under an Islamic bank, risks and rewards are shared by depositors and Islamic banks. This is not the case under the conventional banking system. Both risk and rewards are born by the bank. The depositors are only given fixed rates of return. Interest–based loans, which are the credit policy of the conventional bank, are not allowed under Islamic banks. This is because of the prohibition of interest as contained in Q 2:275-279 and other Qur’anic verses. *Ribā* (interest) is prohibited because it is a sure gain without any possibility of loss; i.e. whether the finance user makes a gain or incurs loss, the provider of funds must get both his capital and the interest on it. The culture of brotherhood and sympathy is totally negative as regards getting back the loan on interest. Therefore, from the moral and spiritual points of view, it is clearly seen that interest-based loans are based on selfishness, greed and hard-heartedness. In Islam, money cannot give birth to money. Aristotle likened money to a barren hen, which could not lay eggs until money is used when he enumerated the nature of money. In the words of Aristotle, “a piece of money cannot beget money” (Aristotle Book 1, Chapter X, 1258). In relation to barrenness of money, St. Thomas Aquinas declared that the taking of usury (interest) for money lent was unjust in itself because this was to sell what did not exist (Vaish, 2000: 341). Islamic banking products include
murābahah, mushārakah, ‘ijārah, ‘istiknā’, bay‘un mu‘ajjal and sukūk. These products can be used by both Muslims and non-Muslims. Egboro (2011) in his work on interest-free banking in Nigeria, welcomes both Islamic as well as Christian banking, as he believes that interest-free banking is for both Muslims and Christians. The only difference between the two forms of banking is that the latter prohibits interest to some extent while in the former not only are all forms of interest prohibited totally but also other Sharī‘ah non-compliant products and services such as pork, alcoholic drinks and pornography are totally prohibited. The fear of many people is that Islamic banks may discriminate against non-Muslim. The fear is unfounded. The perspectives and attitudes of people, both existing and potential customers towards Islamic banking differ. In countries such as Kuwait, Sudan and Pakistan, religion is the main attraction of Islamic banking while the main attractions for non-Muslims in those countries are the bank’s products and services, good customer relations, and effective and efficient service (Rammal & Zurbruegg, 2007).

Alao (2012) in his study titled “Islamic Banking: The Controversy over non-Interest Banking System in Nigeria” believes that the principles of Islamic banking may challenge sharp practices in conventional commercial banks in Nigeria. He also believes that principles of interest-free banking as contained in the Bible predated Islam. He then warned the operators of the bank not to discriminate against the Christians while urging the Christians to wake up from their slumber and establish similar banks to assist their people. From the researches conducted in Mauritius (Dineshwar 2013), Pakistan and Turkey (Okumus, 2005), Thailand (Lateh et al, 2009), South Africa (Priviledge, 2014), Malaysia (Thambiah et al 2011, and Australia (Rammal and Zurbrueg 2006) to mention a few, there is a high level of awareness of conventional banking products such as current accounts and savings accounts. It was also noted that the only knowledge a large number of non-Muslim respondents in those countries had in relation to Islamic banking principles was the prohibition of interest in the operation of Islamic banking. They had little or no knowledge of the Islamic banking products and services.

Methodology

In this study, the research method used was the survey. The major instrument used for gathering data was the questionnaire, though some key people were also interviewed. An 18-item structured questionnaire was designed to elicit information from businesspersons on issues such as awareness of Islamic banking, loan without interest, collateral security, agency, partnership based on sharing of profits or losses and patronage of interest-free financial system. We decided to use a questionnaire as our instrument because it is the most productive
when a researcher needs to reach out to a large number of respondents. In fact, the cost of conducting survey questionnaires is lower than any other forms of research such as face-to-face interviews.

In measuring attitudes, feelings, perceptions, opinions and stimuli, Likert type scales, also called summated rating scales, are used in this study. This is because it is one of the three methods that can measure objectively to some extent, the subjective and abstract concepts that are usually embedded in the feelings and perceptions of people (Nnamd 2004: 58) towards Islamic banking. Two other methods are: Thurstone equal appearing interval scales and cumulative scales. Using this method, the researcher was able to analyse the results and make deductions and conclusions therefrom. In this study, respondents were asked to rate their attitude towards Islamic banking in Nigeria. Using a Likert scale of 5 points, the degree of agreement by the respondents to each of the items in the questionnaire is measured. We calibrated the scale into strongly agreed (SA), agreed (A) undecided (U), disagreed (D) and strongly disagree (SD) with the value of 5, 4, 3, 2, and 1 respectively. The numbers have no intrinsic value.

Population

The population studied consisted of Muslims and non-Muslims in major commercial centres in Nigeria: Ibadan, Lagos, Uyo, Aba, Kaduna and Kano. The business persons surveyed included market women and men, private employees, contractors, and government employees. It was assumed that they would be able to give their opinions as regards the feasibility, viability and profitability of an interest-free financial system in Nigeria.

Administration of instruments

The researcher employed research assistants who administered the questionnaire in major commercial centres in Nigeria: Ibadan, Lagos, Aba, Uyo, Kano and Kaduna. These places were chosen because they gave a good representation of the other areas not covered. Business persons were provided 1,100 copies of the questionnaire. The completed and returned copies were 1,067. The response rate was 97.00 percent

\[
\frac{1,067 \times 100}{1,100} = 97.00\% 
\]
Analysis of Data and Discussion of Findings

In this section, we present the findings of the research as regards customers’ awareness, attitude and patronage of Islamic banking products. According to the Oxford Advanced Learner’s Dictionary, awareness means “knowing that something exists and is important,” and “being interested in something” (Hornby, 2005:88). In the real sense, awareness is very important because one cannot put an attitude towards an object if one does not have knowledge of the object. It is also not possible to make a decision whether one will patronise it or not until one has the knowledge of its operation. So, awareness of a particular product will make a potential buyer of the product seek knowledge about it with a view to gaining complete information about the product. Having gained the knowledge, he will decide whether to buy the commodity or patronise the business. If after a trial he finds the product suitable for his taste, he adopts it. Therefore, the paper examines customers’ awareness of Islamic banking because it determines their patronage. The probability of patronising the bank is very high if a person is aware and understands its features.

What do we really mean, when we use the word “attitude”? In defining an attitude, a standard and acceptable definition given by Fred (1973: 495) is considered. He has defined an attitude as “an organised predisposition to think, feel, perceive and behave towards a referent or cognitive object”. Albarracin (2005: 4) viewed attitude as a psychological tendency to view a particular object or behaviour with a degree of favour or disfavour. Attitude may also mean the way that you think and feel about somebody or something; the way you behave towards somebody or something that shows how you think and feel (Hornby, 2005: 81). It can be inferred from these definitions that people develop various attitudes towards objects, people and events they encounter. They may be positive or negative.

The data obtained from the questionnaire attached as an appendix were analysed here to provide answers to the research questions earlier itemised and the findings of the research were also discussed.
Table 1: Respondents’ Demographic Profile

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>437</td>
<td>41.0</td>
</tr>
<tr>
<td>Female</td>
<td>630</td>
<td>59.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100</td>
</tr>
<tr>
<td><strong>Religion</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Islam</td>
<td>154</td>
<td>14.4</td>
</tr>
<tr>
<td>Christianity</td>
<td>882</td>
<td>82.7</td>
</tr>
<tr>
<td>Judaism</td>
<td>17</td>
<td>1.6</td>
</tr>
<tr>
<td>Others</td>
<td>14</td>
<td>1.3</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100</td>
</tr>
<tr>
<td><strong>Work (type)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owner</td>
<td>227</td>
<td>26</td>
</tr>
<tr>
<td>Agent</td>
<td>755</td>
<td>70.8</td>
</tr>
<tr>
<td>Apprentice</td>
<td>17</td>
<td>1.6</td>
</tr>
<tr>
<td>Others</td>
<td>18</td>
<td>1.7</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100</td>
</tr>
<tr>
<td><strong>Level of Education</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No formal education</td>
<td>27</td>
<td>2.5</td>
</tr>
<tr>
<td>Primary</td>
<td>54</td>
<td>5.1</td>
</tr>
<tr>
<td>Secondary</td>
<td>229</td>
<td>21.5</td>
</tr>
<tr>
<td>NCE/OND</td>
<td>624</td>
<td>58.5</td>
</tr>
<tr>
<td>BA/BSc/HND</td>
<td>133</td>
<td>12.5</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100</td>
</tr>
</tbody>
</table>

From the descriptive result, the demographic profile in Table 1 indicates that 41 percent of the respondents were males while 59 percent respondents were females. The descriptive analysis revealed that Christian respondents were 882 i.e. 82.7 percent while 154 respondents were Muslims. The reason for giving Christians a larger number of the questionnaire was to ascertain their feelings towards Islamic banking. As regards Muslims, we have assumed that, all things being equal, virtually all of them would patronise Islamic banking because of the affiliation of their religion to the bank.

With regard to work, the highest number (70.8 percent) of the respondents showed that they were agents while 26 percent indicated they were business owners. A number of Islamic banking products need agents to work with principals, i.e. business owners. This high percentage is appropriate. Frequency and percentage analysis showed that 58.5 percent of the respondents were Nigeria Certificate in Education (NCE)/Ordinary National Diploma (OND) holders followed by holders of Senior School Certificate Examination (SSCE) (21.5 percent). 12.5 percent were holders of Bachelor of Arts (B.A)/Bachelor of Science (BSc)/Higher National Diploma (HND) certificates. These 3 sets of people involved...
were categorised in their working age group. Involvement of these people in the administration of questionnaire would indicate whether Islamic banking would be acceptable and patronised because they would form large numbers of people that have purchasing power and an educational background to patronise the bank.

Table 2: Taking interest free loan and bearing of unlimited liability

<table>
<thead>
<tr>
<th>Description</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>I can take loan without interest</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>339</td>
<td>31.8</td>
<td>31.8</td>
<td>31.8</td>
</tr>
<tr>
<td>A</td>
<td>471</td>
<td>44.1</td>
<td>44.1</td>
<td>75.9</td>
</tr>
<tr>
<td>SD</td>
<td>91</td>
<td>8.5</td>
<td>8.5</td>
<td>84.4</td>
</tr>
<tr>
<td>D</td>
<td>85</td>
<td>8.0</td>
<td>8.0</td>
<td>92.4</td>
</tr>
<tr>
<td>U</td>
<td>81</td>
<td>7.6</td>
<td>7.6</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>I can accept unlimited liability</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>70</td>
<td>6.6</td>
<td>6.6</td>
<td>6.6</td>
</tr>
<tr>
<td>A</td>
<td>203</td>
<td>19.0</td>
<td>19.0</td>
<td>25.6</td>
</tr>
<tr>
<td>SD</td>
<td>231</td>
<td>21.6</td>
<td>21.6</td>
<td>47.2</td>
</tr>
<tr>
<td>D</td>
<td>259</td>
<td>24.3</td>
<td>24.3</td>
<td>71.5</td>
</tr>
<tr>
<td>U</td>
<td>304</td>
<td>28.5</td>
<td>28.5</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Loans without interest and bearing of unlimited liability

Research question one: To what extent are people ready to accept unlimited liability? Items 1 and 2 of the questionnaire attached as an appendix provided answers to this research question. Our respondents were asked whether they could take loans without interest or they preferred paying interest to sharing profit and loss. As can be seen from Table 2, a large number of our respondents (75.9) among business persons indicated their readiness to take loans without interest. By implication, they should also be ready to bear unlimited liability if losses were incurred. Bearing unlimited liability is one of the characteristics of interest-free financial system. A large number of our respondents (74.4 percent)
were not ready to bear such a burden. This is understandable if one considers our corrupt environment where many people are not honest. If it is established and people are seen to be honest, they may not mind bearing unlimited liability arising from business transactions of an interest-free bank.

Are there Sharī’ah compliant products in people’s businesses? To what extent are businesspersons ready to give collateral security before they obtain loans? Items 4-8 of the questionnaire provided answers to these research questions.

<table>
<thead>
<tr>
<th>Description</th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>One should be able to expose the secrets of one's business for monitoring</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>319</td>
<td>29.9</td>
<td>29.9</td>
<td>29.9</td>
</tr>
<tr>
<td>A</td>
<td>256</td>
<td>24.0</td>
<td>24.0</td>
<td>53.9</td>
</tr>
<tr>
<td>SD</td>
<td>173</td>
<td>16.2</td>
<td>16.2</td>
<td>70.1</td>
</tr>
<tr>
<td>D</td>
<td>227</td>
<td>21.3</td>
<td>21.3</td>
<td>91.4</td>
</tr>
<tr>
<td>U</td>
<td>92</td>
<td>8.6</td>
<td>8.6</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Keeping proper accounts of business is necessary</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>70</td>
<td>6.6</td>
<td>6.6</td>
<td>6.6</td>
</tr>
<tr>
<td>A</td>
<td>203</td>
<td>19.0</td>
<td>19.0</td>
<td>25.6</td>
</tr>
<tr>
<td>SD</td>
<td>231</td>
<td>21.6</td>
<td>21.6</td>
<td>47.2</td>
</tr>
<tr>
<td>D</td>
<td>259</td>
<td>24.3</td>
<td>24.3</td>
<td>71.5</td>
</tr>
<tr>
<td>U</td>
<td>304</td>
<td>28.5</td>
<td>28.5</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Every business should be shari’ah compliant</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>70</td>
<td>6.6</td>
<td>6.6</td>
<td>6.6</td>
</tr>
<tr>
<td>A</td>
<td>203</td>
<td>19.0</td>
<td>19.0</td>
<td>25.6</td>
</tr>
<tr>
<td>SD</td>
<td>231</td>
<td>21.6</td>
<td>21.6</td>
<td>47.2</td>
</tr>
<tr>
<td>D</td>
<td>259</td>
<td>24.3</td>
<td>24.3</td>
<td>71.5</td>
</tr>
<tr>
<td>U</td>
<td>304</td>
<td>28.5</td>
<td>28.5</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>
Willingness and preparedness to accept Islamic banking products.

Research questions two and three: Effective supervision and monitoring of businesses can reduce costs and increase profitability. As shown in Table 3, the frequency analysis revealed that nine hundred responded kept proper accounts of their business and about a half of the respondents (53.9 percent) were ready to expose the operational activities of their business for monitoring. This attitude is in line with the dictate of Islam as contained in Q2: 282. Partners in business are advised to write down the transactions between themselves. If they cannot, they should call a scribe to do that on their behalf.

An interest-free financial system does not only prohibit interest in its operation, Sharī‘ah non-compliant products such as pork, wine, etc are also frowned upon. Our result shows that products and services offered by many respondents were sharī‘ah compliant (88.2 percent). The implication of this is that there are more than enough sharī‘ah compliant products that interest-free financial institutions can make use of. To test the understanding of our respondents with regard to Sharī‘ah compliant products, a follow-up question was put to them, whether they sell pork, alcoholic drinks etc. Many of them are not interested in the above-mentioned products which are not Sharī‘ah-compliant. It must be mentioned that it is not only the charging of interest that makes Islamic
banking different from the conventional banks. Islamic banks should not deal in the above-mentioned products and other *Sharī’ah* non-compliant ones as stated in the Quran and the Sunnah (Q 2:168, 172, 219; Q 5:90-91).

Providing collateral as security is neither compulsory nor against *Sharī’ah*. However our results show that our respondents (77 percent) are ready to provide collateral to show their readiness to pay back loans without interest. In case they cannot pay back the loan, the banks can sell the security to recoup their funds. Are Islamic products being used by businesspersons inadvertently? Items 3, 9-17 of the questionnaire provided answers to this research question

Table 4: Attitude of respondents to the use of Islamic banking products and services

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Do you describe your goods to your customers?</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>515</td>
<td>48.3</td>
<td>48.3</td>
<td>48.3</td>
</tr>
<tr>
<td>A</td>
<td>431</td>
<td>40.4</td>
<td>40.4</td>
<td>88.7</td>
</tr>
<tr>
<td>SD</td>
<td>23</td>
<td>2.2</td>
<td>2.2</td>
<td>90.8</td>
</tr>
<tr>
<td>D</td>
<td>22</td>
<td>2.1</td>
<td>2.1</td>
<td>92.9</td>
</tr>
<tr>
<td>U</td>
<td>76</td>
<td>7.1</td>
<td>7.1</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Do you leave your buyers to identify the contents of your goods?</strong></th>
<th>Frequency</th>
<th>Percent</th>
<th>Valid Percent</th>
<th>Cumulative Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA</td>
<td>352</td>
<td>33.0</td>
<td>33.0</td>
<td>33.0</td>
</tr>
<tr>
<td>A</td>
<td>352</td>
<td>33.0</td>
<td>33.0</td>
<td>66.0</td>
</tr>
<tr>
<td>SD</td>
<td>79</td>
<td>7.4</td>
<td>7.4</td>
<td>73.4</td>
</tr>
<tr>
<td>D</td>
<td>138</td>
<td>12.9</td>
<td>12.9</td>
<td>86.3</td>
</tr>
<tr>
<td>U</td>
<td>146</td>
<td>13.7</td>
<td>13.7</td>
<td>100.0</td>
</tr>
<tr>
<td>Total</td>
<td>1067</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>
### Can you be an agent for the sales of goods?

<table>
<thead>
<tr>
<th></th>
<th>SA</th>
<th>A</th>
<th>SD</th>
<th>D</th>
<th>U</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>434</td>
<td>524</td>
<td>31</td>
<td>14</td>
<td>64</td>
<td>1067</td>
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If you contribute capital and your money is lost due to armed robbery, accident etc, must your be refunded?

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Can you contribute labour and capital?

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Can you share loss on the ratio of capital contributed if loss is incurred?

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<td>43.8</td>
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</table>

### Attitude of respondents to the use of Islamic banking products and services

*Research question four as contained in the appendix:* Our respondents were using Islamic products unknowingly. For instance, from Table 4, it could be seen that 947 (88.7 percent) indicated that they described their goods to their customers. In Islam, *caveat emptor* (let the buyer beware) is not applicable. It is the seller that should make known the conditions of his goods (i.e. *caveat venditor*). The
Prophet also said; “He who deceives us is not part of us” (Al-Hafiz, 1996: 286). Specifications are attached to some goods. The implication of this is that buyers need to read them in order to identify the features and contents of such goods. Item 10 was used to elicit information as regards this type of sales. Our respondents (66 percent) indicated that they left their customers to identify the contents of their goods through this medium. Our respondents (54.3 percent) offered credit sale to their customer as shown in table 2. Agency is one of the ways by which Islamic financial products are being used. Many of our respondents (89.6 percent) were ready to be agents for capital owners or business owners.

Our respondents also accepted advance payments and delivered goods later. This arrangement is called salam. Our respondents (73.2 percent) have been practicing this arrangement. It will not be difficult for them to make use of this Islamic financial product. Bay‘un mu‘ajjal (delayed payment) is also being practised by them. Our respondents (64.2 percent) delivered goods and received payment later.

Our result shows that our respondents agree to be partners in business. One of the Islamic financial products is to contribute labour and capital for the purpose of carrying on a project or a business. Our respondents (88.7 percent) seem to like the arrangement. This may be a result of reducing the risk associated with giving out funds to users and leaving them to make their decisions alone. In this arrangement, both are active partners. They are even ready to share loss based on the ratio of the capital contributed (80.4 percent).

*Mudārabah* (a financial technique whereby financial and human resources are combined together) is tested by asking our respondents whether they can share loss according to the ratio of capital contributed in the case where the loss is incurred and is not due to negligence of the finance user. It is clear from their response that they are ready to bear such loss (79.6 percent). This is a good indication that Nigerian customers are ready to patronise the products. In the Islamic financial system, the capital owner cannot get his/her money back if there is a loss and the loss is not due to the capital user’s negligence. Our respondents (28.1 percent) seemed to be uncomfortable with this arrangement. However, about 26 percent of them did not accept it while another 26 percent could not come to a decision. The implication is that people do not trust others. If the capital user is trusted, the provider of funds may be sympathetic and waive the repayment of such stolen funds or destroyed property. It is one of the principles of *mudārabah*, that the finance provider bears the loss incurred if the loss is not due to negligence or the fact that the user has gone *ultra vires* and the finance user loses his labour, energy and time. He is also not entitled to any returns. Another product, *Mushārakah*, was tested by asking the respondents whether they can contribute both labour and capital. A large number (88.3 percent) agreed that they were ready to do that
with the Islamic bank. The product is a partnership that involves the combination of labour and capital from both the finance provider and the finance user. Our respondents’ opinion on *salam* and *bay’un mua’jjal* was sought and we found that 66.7 percent and 64.2 percent of our respondents, respectively, agreed that they would patronise the two products. *Salam* is a sale in which the price is paid in advance and the commodities are delivered on a specified future date while *bay’un mua’jjal* is a deferred payment in which the payment for the inputs or implements sold to the customers by the bank is made later. Our respondents were very comfortable with the two products. Some Islamic products such as *‘ijārah* and *murābahah* involve an agency. In the light of this, our respondents were asked whether they would want to be agents. A large number of them (89.8 percent) showed their intention to be agents for Islamic banking. This suggests that the success of the bank is sure. *‘Ijārah* is employment of the services of human beings on wages and utilisation of assets and property on rent while *murābahah* means cost plus mark-up.

Are people ready to patronise Islamic financial institutions? Items 18 of the questionnaire provided answers to this research question.

Table 5: Patronage of Islamic banking

<table>
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<tr>
<th>If Shari’ah financial institutions are available, would you support them and feel more comfortable?</th>
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<th>Percent</th>
<th>Valid Percent</th>
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Patronage of Islamic Banking

*Research question five:* Patronage is the foundation of usage of Islamic financial products and services. If the foundation of a building is not strong, the building is
bound to collapse. In the same vein, if the awareness of the products is not there, patronage of the bank cannot happen. If there is no patronage or it is low the bank may not survive. Interest-free financial institutions may not have problems in getting customers to patronise them. Eight hundred and fifty-three (81.4 percent) of our respondents were ready to do business with them if they are established. This means the environment is conducive for interest-free financial institutions. A very few respondents (5.6 percent) were not ready to patronise Islamic banking even if it is the only banking product in the Nigerian economy.

**Personal Interview with some Key People**

It was found impossible to use personal interviews and telephone interviews to collect the necessary information needed due to the time and cost constraints. Nevertheless, the researcher still used this method to interview some key people whose views on the issue can serve as a good representation of different groups. For the constraints of finance, space and time, we present the views of one person that are believed to be representative of the views of other people not interviewed. A retired professor of religious studies at the University of Ibadan and an ordained Catholic priest, Rev. Father, Professor Joseph Kenny, was interviewed in his office (10.00 a.m. 9 February, 2011 and 11.00 a.m., 15 June, 2011).

**Question:** What is your view as regards *ribā* (interest)?

**Answer:** It has an element of injustice. In fact, if care is not taken, one can be indebted to banks or lenders forever if one takes a loan with interest. In fact, we had to do without borrowing when we were building our offices and classrooms.

“I do not have a bank account. My pension is paid into the account of the community. I have never taken a loan on interest.” As regards giving loans without interest, Professor Kenny expressed his fear: “I don’t know how that can work. If you give a loan of say, N50,000 to a person and you take the same amount back from him after a year or more, how can the bank employees be paid? Where would you get money to build bank offices?”

**Conclusion**

This study provides important information about awareness and attitudes of our respondents, both Muslims and non-Muslims, as regards Islamic banking. The level of their awareness is very low. Islamic banks should promote their presence...
as well as their investment products. They need to invest in advertising both, so that Nigerian customers can consider their products among the extensive variety available in Nigerian financial institutions. Islamic banks should explore various means such as radio, television, workshops, conferences, seminars and the Internet to disseminate information on the operation of Islamic banking. Imams and Islamic preachers should propagate the teachings of Islam on Islamic banking. Non-Muslims should be assured by educational campaigns of non-discrimination if they patronise Islamic banking. Islamic bankers should use simpler words to explain the activities of their banks to non-Muslims and Muslims with a view to making them comprehend their products and services so as to patronise the banks. At present, the banks are restricted to the Northern part of the country. Many branches need to be opened in all the states if the banks are to compete with conventional ones in the country. This will give a large number of people easy access to the bank if they are interested in investing in Islamic banking products and services. Nigeria is an attractive financial market to offer Shariah compliant products and services because of its large population, of which Muslims are in the majority. Islamic banks have a greater chance of being more quickly integrated because many Nigerians are looking for an alternative way of banking. Now that a regulating structure has been put in place by the Central Bank of Nigeria together with other financial Acts, people will have confidence in patronising the banks. New products should be developed to cater to the various needs of existing and potential customers of the banks, both Muslims and non-Muslims.

**Recommendations:**

- Islamic banking operators should not discriminate against any person on the basis of religion and ethnicity.
- The government needs to create an enabling environment for the operation of Islamic banking.
- There is a need to develop policies and strategies and the institutional legal framework which will reduce the issues of dishonesty, moral laxity and information asymmetry from the sides of both the Islamic banking operators and their customers.

**Notes**

* Kareem Muritala Kawuyemi is a Lecturer at the University of Ibadan. He obtained his B.A. and M.A. in Arabic and Islamic Studies from the University of Ibadan Nigeria, in 1990 and 1995, respectively, where he is also currently completing his Ph.D.*
References


Lawal, Y.O. Islamic Banking in Nigeria: A Stimulant for Mobilising Funds for Productive Activities American Journal of Social and Management Sciences ISSN Print: 2156-1540, ISSN Online: 2151-1559, doi: 10.5251/ajsms.2012.3.4.132.139 © 2012, Science Huβ,
http://www.scihub.org/AJSMS


Rev. Father, Professor Joseph Kenny was interviewed in his office when he was alive (10.00 a.m. 9 February, 2011 and 11.00 a.m. 15 June 2011).


The three people whose views represent other peoples’ responses were Professor (Reverend Father) Joseph Kenny, Magistrate Uthman and Jolaade Misbau.

APPENDIX

DEPARTMENT OF ARABIC AND ISLAMIC STUDIES
UNIVERSITY OF IBADAN

QUESTIONNAIRE ON CUSTOMERS’ AWARENESS, ATTITUDE AND PATRONAGE OF ISLAMIC BANKING IN NIGERIA

Dear Respondents,

This questionnaire is designed to collect pieces of information on Customers’ Awareness, Attitude and Patronage of Islamic Banking in Nigeria. Therefore, the questionnaires are divided into two sections. All the information gathered would be treated with utmost confidentiality. I thank you for filling out this form. Please, respond on time.

SECTION A

Sex: Male ( ) Female ( )
Religion: Islam ( ) Christianity ( ) Judais ( ) Others ( )

Type of business: 
Ownership status: Owner ( ) Agent ( ) Apprentice ( )
Education: No formal education ( ) Pry Sch. cert. ( ) SSCE ( ) OND/NCE ( ) BA/BSc/HND ( ) Postgraduate ( )

SECTION B

Please respond to the following questions below using the following:

SA: I strongly agree, A: I Agree, SD: I strongly disagree, D: I disagree, U: I am undecided

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<td>Can you accept unlimited liability</td>
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<td>3</td>
<td>If you contribute only capital, can you share profit and loss</td>
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<td>Are you ready to expose the secrets of your business for monitoring</td>
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<td>Do you keep proper accounts of your business</td>
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<td>Is your business Shariah compliant</td>
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<td>Do you sell pork, alcoholic drinks, dead animals and their likes</td>
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<td>Do you describe your goods to your customers</td>
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<td>Can you be an agent for the sales of goods</td>
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</tbody>
</table>
For our enlightenment and progress, the Muslim ummah today needs to regain the spirit of wonder of the early Muslims whose faith in God (iman) soared under inspiration from the Qur’anic revelation and tutelage of Prophet Muhammad (peace be upon him). With these, Muslims could appreciate God’s Majesty and Omnipotence, and His Mercy and Benevolence in creating the universe with man in the august role as khalifah (vicegerent) and custodian of the earth and the heavens. In one inspiring verse 45:13, God says: “He has subjected to you, as from Him, all that is in the heavens and on earth. Behold! In that are signs indeed for those who reflect.”

The imagination of a Muslim scientist reading the Noble Qur’an would thus naturally be stirred by verses where Allah avers to natural phenomena and their benefits, encouraging mankind to investigate more deeply. The Prophet (pbuh) encouraged people to “explore the meanings of the Qur’an and to search for its mysteries”. Islam as a science-friendly religion promotes scientific investigation and technological advancement that contributes to human wellbeing.

Muhammad Iqbal wrote in his book, The Reconstruction of Religious Thought in Islam, that for a long time Muslim scholarship remained under the influence of Hellenistic thought that was theory-oriented. The Qur’an however, eventually changed that and in this sense Iqbal characterised the Qur’an as “anticlassical” in its strong focus on experimentation and inductive reasoning. This is a great encouragement for Muslim scientists to seek beneficial knowledge. Consequently, early Muslim scientists expanded the frontiers of science and technology as a foundation for building a world-leading civilisation. The frequent invitations in the Qur’an to the use of sense observation, reflections on the Qur’an itself, as well as on the quest for truth and knowledge, combine to encourage scientific enquiry and experimentation.

‘Science’ is used in this article in the context of the natural sciences, such as physics, chemistry and biology. However, in contrast to its accustomed secular usage in the West, a Muslim scientist inspired by the Qur’an would maintain a connection of science with spirituality whilst acknowledging the world’s divine origin. The Qur’an itself uses the term ‘ilm, or knowledge in the broadest sense; not separating knowledge of the manifested world detected by the senses
and rational thought (‘alam al-shahadah), from the vastly greater world of the unseen (‘alam al-ghayb), which transcends it. God encourages all to supplicate, “O my Lord, advance me in knowledge” (20:114). Many knowledge-seekers down the ages have also prayed as such, and have been rewarded with valuable insights. An American Nobel Prize-winning physicist, Charles Townes, in *The Convergence of Science and Religion*, elucidated that most important scientific discoveries appeared like a “revelation”. This is akin to *ilham*, or divine inspiration.

God Almighty in His Wisdom provides humanity with two books – *kitab al-tadwini* (written revelation; i.e. al-Qur’an) and *kitab al-takwini* (‘book’ of natural phenomena to be deciphered ontologically). Interpretations of these two ‘books’ from the same Source should be in agreement. If they do not appear to be so then scientists need to revisit their theories since Muslims believe the Qur’an to be infallible. Muslim scientists have a great advantage over scientists of other faiths in that the Qur’an is believed to be pristine, i.e. extant in the original language of revelation, and without error. The Qur’an declares itself (2:2) to be a book of reliable guidance. So the Qur’anic verses on natural phenomena can yield true and reliable insights. The challenge however, is in interpreting meanings of the verses correctly.

Scholars believe that the Qur’an on its own admission contains references to all essential themes (12:111; 16:89) but does not go into details. It is not a science textbook. However, it provides numerous scientific insights in more than 750 verses on natural phenomena.

Scientists should appreciate that Islamic scholars routinely derive insights and rulings from the Qur’an. Scholars of *fiqh* derive Shari’ah laws from it as the primary scriptural source using *usul al-fiqh* (jurisprudence) principles. Similarly, Muslim scientists need to approach and understand the Qur’an with *taqwa* (God-consciousness) and humility.

Informed *tafsir* (exegesis) of the Qur’an depends traditionally on four sources: the Qur’an explicating other verses, the Sunnah, Arabic language, and the Prophet’s Companions. These should also be investigated regarding scientific exegesis of the Qur’an, called *tafsir ‘ilmiy*. A number of classical polymath scholars applied a similar approach, including al-Jahiz (776-869) and Ibn Hazm (994-1064). The great classical Qur’an commentator, Fakhr al-Din al-Razi (1149-1209) was a pioneer using contemporary knowledge of science in his major work, *Mafatib al-ghayb* (*The Keys to the Unknown*). For example, from Allah’s title, *rabb al-‘alamin* (Lord of the worlds), in al-Fatihah, the opening chapter of al-Qur’an, he proposed the existence of many ‘universes’ rather than just the one known (the Milky Way galaxy) at the time. Only much later was the existence of other galaxies confirmed by Edwin Hubble.
using powerful telescopes in the early 20th century. Rana Darjani, a Jordanian molecular biologist, believes that interpretations of the Qur’an can evolve with new scientific discoveries.

Arguably, among the most impressive Qur’anic verses, scientifically considered, are those describing development of the human foetus in the womb (32:8-9): “Then He fashioned him in due proportion, and breathed into him of His spirit. And He gave you (the faculties) of hearing and sight and feeling (heart).” These clearly prefigure more recent gynaecological findings of the true sequence of organ appearance in the developing foetus – first ears, then eyes, and finally heart.

As a young western scientist, my own experience in realising the Truth and so embracing Islam resulted partly from being shown Qur’anic verses accurately describing natural phenomena. My faith increased on reading the verse (21:30): “Do not the Unbelievers see that the heavens and earth were joined together, before we clove them asunder? ... Will they not then believe?” In 1967 as a university student learning about the origin of the universe, the “Steady State Theory” now considered obsolete, was still taught along with other theories. Only subsequently did the “Big Bang Theory” gain prominence and is still the most popular theory best fitting the available evidence. It is also the theory most compatible with what the Qur’an states regarding the universe’s origin.

It is imperative however, that scientists do not over-stretch the meaning of verses to prove after the fact, that the Qur’an had pre-figured certain modern discoveries. Leading UAE scholar Nidhal Guessoum convincingly dissected and discounted some such claims from the Qur’an, e.g. determining the ‘age of the universe and age of the earth’. Excessive claims using the so-called ‘i’jaz (miracle) approach’ may demean the Qur’an rather than reflect its inimitable qualities. Another error would result from being too adamant on adopting one Qur’anic meaning over other possible alternatives. One researcher, Fadhel al-Sa’d argued on television that the earth is flat, due to his faulty reading of verse 57:21. His view is easily disproved by observations from spacecraft.

The Muslim world would seem to be on the doorstep of important advances in scientific understanding inspired by the Qur’an. To enhance such development, the scientific fraternity needs support from governments and industry, and increased research funding. Close collaboration between the scholars of revelation (the ‘ulama) and the scholars of natural phenomena (‘scientists’), particularly by promoting development of those capable of crossing tadwini/takwini boundaries in the pattern of the early Muslim universal scholars (likely reflected in the Qur’anic title, ulu al-albab - people of exceptional wisdom and sound intellect)\(^1\), can recapture the initiative for a new Islamic enlightenment.
Notes

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The Hijri and Gregorian Calendars: Comparison and Conversion

Fadhl Mohammed Mohammed Fushoosh*

Two calendars are in regular use in the Muslim world: the Gregorian and the Hijri. The Gregorian calendar is named after the Roman Catholic pope, Pope Gregory XIII, while the Hijri is named after the migration (hijrah) of Prophet Muhammad (peace be upon him) from his homeplace, Makkah to the town of Madinah in 622 CE. Islamic rituals are directly based on the hijrah as the greatest historical landmark marking the beginning of the era for the spread of Islam and establishment of the new Muslim polity. Thus, for a Muslim the Hijri calendar is not merely a calendar but a matter of identity of which s/he should be proud. However, the Muslim experience of colonisation and the subsequent imposition of the Gregorian calendar have led to the marginalisation of the Hijri calendar. Consequently many events are not known by the Muslims by their Hijri date. Many do not know how to determine the equivalent Hijri date. The Gregorian calendar was introduced by Pope Gregory in 1582, and underwent many modifications whereas the Hijri calendar remained as it started.

From Julian Calendar to Gregorian Calendar

The different calendars have adopted two systems in calculating the number of days in a year: the lunar calendar, which is based on moon cycles, and the solar calendar, which depends on the annual rotation of the sun. The definition of the seasons is related to the solar system.

Long after Jesus the Messiah (pbuh) departed this world,1 Christendom felt the need to define the Easter Day accurately, following the precedent believed to be established by the Nicene Council in 325 CE. The preceding Roman calendar had been divided between the two systems, the lunar and the solar. Although keen to observe the seasons which are definable only with reference to solar movement (years of 365.242199 days’ duration), the Julian calendar initially followed the lunar system in numbering the days, and therefore, its year was 354 or 355 days. This is because the Easter period is specified with reference to both the vernal equinox and the full moon. This puts calculation of the Julian dates at variance with the seasons.

In 46 BC, Julius Caesar decreed that the year be 365 days instead of 354 days. Eleven days had to be added to the days of the year. Moreover, to approximate the number of days of the real solar year the Romans added one day (to February) every four years (leap years), thus creating an average of 365.25 days per year.
This however, made them out of step with the moon’s phases, although it retained
the divisions invented by the Romans to mark the beginning and end of lunar
months. By the sixteenth century the Julian calendar had drifted by four days
out of the moon’s phase. Moreover, there was a difference of eleven minutes and
fourteen seconds every year amounting to ten days difference by the sixteenth
century.2

Due to the solar/ lunar calculations involved in specifying Easter, the Julian
calendar grew inconsistent and therefore created uncertainty within Christendom.3
Pope Gregory ordered then that ten days be deleted from the calendar. Thus days
from 4 October, 1582 to 15 October, 1582 were expunged to make the date as
close as possible to the actual date. Moreover, it was ruled that any century
year indivisible by 400 would not be considered a leap year. After all these
modifications the number of days in the year became 365.2425, as opposed to
the real solar yearly period of 365.242199 days. This slight difference has been
ignored until today.4

The Hijri Calendar

The Hijri calendar is a lunar calendar devised by the Muslims under the decree
of caliph ‘Umar bin Al-Khattab. The normative feature marking the beginning,
middle and end of the month is the moon phases. The names of the twelve
lunar months begin with Muharram, then Safar, Rabi’ al-awwal, Rabi’ al-thani,
Jumada al-awwal, Jumada al-thani, Rajab, Sha’ban, Ramadan, Shawwal, Dhu al-
Qai’dah, and Dhu al-Hijjah. The Islamic religious obligations are based on this
calendar. The annual fasting ritual is decided by sighting the new moon (hilal)
at the beginning and end of the Ramadan month. The annual zakat payment
is determinable on the basis of the end of a cycle of one lunar year. Also, the
hajj (pilgrimage) period is fixed according to specific dates in the lunar year.
Each month may be of 29 or 30 days’ duration depending upon astronomical
positioning of the earth and moon, and weather conditions. The lunar year is of
approximately 354 days’ duration. The eleven day difference from the solar year
is one of the wisdoms allowing for variation over time as fasting falls on different
seasons throughout the Metonic cycles.5

Excellent Characteristics of the Hijri Calendar

1. It is a wholly divine system - the length, sequence, beginning and end of
the months are determined by God. The astronomers have no authority
but to apply the system, which is equally observable by ordinary people.
The experts and the most intellectually challenged alike can observe the
beginning and end of the month and act accordingly in their religious duties.
2. The solar-lunar difference is a chance for Muslims to enjoy performing their rituals in various seasons. Thus, s/he would sometimes fast in the spring, summer, autumn and winter, with differing lengths of fasting time according to the seasons. The approximate cyclic return of the same seasonal position for the Hijri calendar date occurs every 33 years of the Gregorian calendar.

3. Following the Hijri calendar is part of the Muslims’ identity. This makes them stand distinct among other cultures and proud of possessing a system that has been consistent and in perfect conformity with their obligations.

4. It is simple and precise. Only one system is followed, i.e. the lunar. The Roman calendar however, was modified by Julius Caesar, and named after him; similarly, the Julian calendar was modified into the Gregorian, all to redefine the day of Easter which was celebrated at different times by different churches. These were not consistent, and therefore many modifications and calculations had to be considered to bring the Easter observance into harmony with the progression of time. Moreover, for the Gregorian calendar, expertise is needed for complicated calculations. The Hijri calendar is free from such complications and every Muslim can perform his rituals with confidence. He can personally check to ensure no one misleads him in defining the days when he should perform his obligations. Further, unlike the European calendars, the Hijri has been consistent from the very beginning and thus is in no need of reform.

5. Political authorities played vital roles in the Gregorian, Julian and Roman calendars. For example, the number and names of days were tampered with. In 8 CE, Augustus changed the name of the sixth month (in the Roman year) to August to commemorate his achievements. Similarly, Julius Caesar named the fifth month after himself. They also changed the number of days in the months. They made February 28 days and the rest 30 and 31. The Hijri calendar is totally determined by Allah and man has no authority over it. God says in the Qur’an: “Verily, the number of months in the sight of Allah is twelve [in a year]; so ordained by Him the day He created the heavens and earth; of them four are sacred months.” Furthermore, he condemned those who make any changes where they defer some months and make substitution between them.

6. The Hijri calendar started as the name indicates with the hijrah year of Prophet Muhammad (pbuh). By contrast, the date of birth of Jesus Christ (pbuh) did not mark the beginning of the Gregorian year. Some Christian scholars believe his birth was actually in 6 BC yet they are still adamant in citing the year as Anno Domini meaning ”Year of the Lord".
Hijri-Gregorian Conversions

a. To Convert Gregorian (hereafter CE) to Hijri (hereafter AH)

Year 2015 is converted into a Hijri year using the formula:

\[
\frac{\text{CE} - 622}{0.97} = \frac{2015 - 622}{0.97} = \frac{1393}{0.97} = 1436.082474226804
\]

Since the decimal fraction is less than 0.5 it is ignored, and the remaining number 1436 is the present Hijri year.

b. To Convert the Hijri to Gregorian

The Hijri year (AH) is converted to Gregorian (CE) using the formula:

\[(\text{AH} \times 0.97) + 622\]

Year 1436 AH is thereby converted to Gregorian, as follows:

\[1392.92 + 622 = 2014.92\]

Since the fraction is more than 0.5, it should be counted as one, which when added to 2014 becomes 2015, the current CE year.

Notes

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1. According to the Quran, Jesus (pbuh) did not die as Allah raised him up to heaven (Q4:157-158).
2. (365.25-365.242199) days X1300, since the Council of Nicaea in 325 CE.
3. The Church of Alexandria celebrated Easter on the Sunday after the 14th day of the Moon (computed using the Metonic cycle) that falls on or after the vernal equinox, which they placed on March 21. However, the Church of Rome still regarded March 25, as the equinox and used a different cycle to compute the day of the Moon. By the 10th century all churches (except for some on the eastern border of the Byzantine Empire) had adopted the Alexandrian Easter, which still
placed the vernal equinox on March 21; although Bede had already noted its drift in 725—it had drifted even further by the 16th century. http://en.wikipedia.org/wiki/Gregorian_calendar (Accessed 10-3-2015).

4. The difference may amount to one day in 3,322 years.
5. The Metonic cycle is a period close to 19 years, which is nearly a common multiple of the solar year and lunar month periods.
6. The Qur’an 9:36
8. All calculations are approximate.
Reimagining Islamic Ethics in Contemporary International Relations

Ahmad Badri Abdullah*

The deplorable plight of Rohingya Muslim boat refugees who have been refused entry by their neighboring Muslim countries was a disheartening episode for the ummah. The subsequent involvement of the Turkish government in dispatching ships of the Turkish Armed Forces to rescue the refugees has reopened the discourse on the necessity for a confederation of Muslim nation-states acting in concert within the global context as an operative framework of Islamic ethics in international relations. The episode invites Muslims to rethink the role of their own religious tradition in providing relevant ethical guidelines for international affairs that simultaneously address the reality of the modern nation-state.

Islam facilitates a systematic study of ethics through both the authority of the Qur’an and Sunnah as well as through independent judgment and reasoning (ijtihād). The emphasis on Islam’s ethical tradition does justice to the central concerns of Islam which are imperatively spiritual, as well as to its elements which have immensely influenced the secular realms that are beyond the limits of the sacred and the spiritual. To a great degree, Islam continues to influence the domestic and foreign policies of Muslim-majority countries across the globe. Therefore the relevance of Islam to the modern international system can never be overstated. However ethics as applied to international relations is unfortunately a neglected field in contemporary Muslim scholarship.

The earliest account on international relations by a Muslim scholar was provided by al-Shaybani (d. 189 AH/ 804 CE) via his theory of siyār (laws of nations) which prescribes measures to manage the relations between Muslim countries as well as their relations with non-Muslim countries. The theory divides the world into three domains, namely the domain of peace (dār al-Islām), the domain of war (dār al-harb), and the domain of alliance (dār al-ṣulḥ). Nonetheless the post-World War international socio-political realities demand a revision to this classical scheme. Thus, for prominent contemporary scholars, war is no longer the normal state of affairs between Muslims and non-Muslims. A nation in which Muslims residents enjoy a high degree of religious freedom cannot be deemed an abode of war. Accordingly, the scholars propose that secular democratic nations which have embassies or enjoy diplomatic relations with Muslim countries fall within the realm of the abode of covenant (dār al-‘ahd) or the abode of invitation to Islam (dār al-da‘wah).
Beyond the classical theory of *siyār*, few innovative ventures have been seen to date. Instead, faced with the challenge of a radically new international order unleashed by European imperialism, Muslim thinkers apologetically proposed compatibility of Western practices and institutions with various Qur’anic verses and prophetic hadiths rather than formulate novel Islamic ethical theories of international relations. Such theories need to be articulated to realize the *Shari‘ah*’s aim to provide meaningful guidance to Muslim collective life, towards a just world order as enshrined in the Qur’an. Moreover Muslims and the third world states are more amenable to abiding by their own ethical principles rather than those which are foreign to them.

A close reading of the Qur’an suggests that it invests primarily in the one global Muslim community (*ummah*) and condemns moral attributions along linguistic, tribal, or ethnic lines. The collective community of Muslims has been endowed with a high standing by virtue of their humanity and moral commitment, not by their affiliation to any particular human group, be it racial, ethnic, or national. Therefore, the modern concept of nation-state is alien to the Islamic outlook of international relations as argued by Muhammad Iqbal:

“Tribal or national organisations on the lines of race or territory are only temporary phases in the unfoldment and upbringing of collective life, and inasmuch as I have no quarrel with them; but I condemn them in the strongest possible terms when they are regarded as the ultimate expression of the life of mankind.”

As an elementary example for this discussion, Sohail Hashmi argued that humanitarian intervention deconstructs the modern concept of the nation-state. Humanitarian crises throughout the Muslim world created contingencies which demand for principles of intervention to be duly considered. An Islamic approach to humanitarian intervention is significant for a number of reasons. Among others, international norms of humanitarian intervention have yet to be accepted across all nations and cultures, especially in the third world countries where any form of intervention is regarded as the lingering legacy of Western imperialism. It is imperative therefore that the very concept of humanitarian intervention needs to be based on a universal and cross-cultural consensus. Thus, Hashmi argued, since the enforcement of justice in Islam is elaborated through the concept of jihād, the ethics of humanitarian intervention must now be regarded as part and parcel of the general conception of contemporary jihād.

Two types of humanitarian interventions are noticeably envisaged in the Qur’an, namely intervention on behalf of oppressed Muslim minorities, and intervention in a conflict between Muslims. In the former case, the Qur’an delineates two courses of actions namely the physical removal of the Muslims...
from the oppressor’s territory and a collective response of the Muslim community to reclaim the right of the oppressed. This is definitely relevant to the abovementioned case of the Rohingya refugees who fled their country due to the oppressive policies of the Myanmar regime. In the latter situation, the operative Qur’anic verse suggests two consecutive steps. The first step is to seek reconciliation between the conflicting parties and the second step is to launch a collective intervention on behalf of the aggrieved party due to its unacceptable means to achieve its end.

In spite of that, there is a debate on whether Muslims may cooperate with non-Muslims in collective intervention against an oppressive Muslim regime. On one reading, the Qur’an seems to prohibit Muslims from taking unbelievers as ‘friends’, ‘allies’, or ‘protector’ and this lay the basis for the rulings on rebellions (aḥkām al-bughāt) which prohibit the taking of non-Muslim allies to deal with Muslim rebels, especially if the military control is in the hands of non-Muslims.

However, the Qur’an also envisages a more dynamic moral and political cooperation whereby humanity at large needs to positively contribute to the pursuit of a just global community:

“To each among you have We prescribed law and an open way. If God has so willed, He could have made you a single community, but His aim is to test you in what He has given you. So strive as in a race in all the virtues.”

Moreover, the verse that warns Muslims from taking non-Muslims as associates need to be read together with verses that elaborate such ruling to be exercised on those who are clearly hostile to Muslims and to Islam itself.

To be clear, the above elucidation of Islamic ethical guidelines in international affairs appears to oversimplify the complexity of contemporary global scenario in which geo-economic and geopolitical powers constantly shift between multiple actors. However, at the very least these ethical principles should be an eye-opener for Muslims to reimagine the pivotal role that their intellectual tradition can play in offering an alternative outlook on the relations between Muslim nation-states—an outlook that places the collective community (ummah) at its core. It might also pave the way for Muslims to significantly contribute to the establishment of a just global order from the standpoint of their own religious and ethical values.

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Balancing Text and Context through Maqasid-Based *Ijtihad*

*Tengku Ahmad Hazri*

Contemporary *ijtihad* is faced with the challenge of relating the revealed text to the surrounding circumstances, i.e. the “text” to the “context” as Tariq Ramadan puts it. This is perhaps why *ijtihad* is often seen as the principal instrument by which reason is negotiated with revelation. But there may be instances where an asymmetry exists between the text and the context. In such scenarios, one remedy which has been proposed is for the text to be made adapted to the context. However, the context itself may sometimes be interpreted, understood and conceptualised within a framework that may be at odds with the objectives of Shari’ah (*maqasid al-shariah*). *Maqasid*-based *ijtihad* offers a possible way of converging, synthesising and harmonising the context and the text.

I

One overriding theme of *maqasid al-shari’ah* is that *maqasid* should enlighten the path of *usul al-fiqh* (legal methodology) for the *usul* has become burdened with technicalities. Through the retrieval of the underlying objectives of the Shariah it is hoped that such difficulties can be overcome. Yet a historical look at the development of Islamic law reveals the centrality of *ijtihad*. We know this by looking at the very hadith which establishes the proof or authority for *ijtihad*, namely, the hadith of Mu’adh ibn Jabal, in which Mu’adh said, on being asked by the Prophet (pbuh) how he would decide cases that come before him, that he would refer, first to the Qur’an, then the Sunnah of the Prophet, and then he would exert himself (*ajtahidu*)—saying nothing about of the various methods that we find in usul al-fiqh. These evolved later as variations and formalisations of *ijtihad* within procedural restrictions. It follows therefore, that the placing of *maqasid*-based *ijtihad* at the forefront of Islamic legal thought is none other than restoration of the original spirit of the Shari’ah.

Indeed knowledge of the *maqasid* is one of the requirements or conditions of a *mujtahid*. Ibrahim al-Shatibi was even explicit about it by classifying *ijtihad* into two headings, namely, those of the purposes and those of the sources and methods of deduction. The former is more fundamental than the latter and in fact, the latter serve the former. Earlier scholars have also hinted at the same idea, for instance, al-Shafi‘i (as later quoted al-Ghazali and al-Shawkani) claimed that universal principles should be given priority over particulars. And thus, there
has always been recognition of knowledge of the *maqasid* as a prerequisite or requirement for *ijtihad*.

But the differences between *maqasid* and *ijtihad* must also be noted. *Maqasid* are basically abstract, general principles, not the specific rulings themselves. Thus, faced with specific issues demanding practical and pragmatic rules to guide action, laying down the *maqasid* per se would be insufficient. Instead, specific conclusions are needed so as to enable the *maqasid* to resolve the pressing issue or problem that the jurist is confronted with.

*Ijtihad* by contrast is practical, as can be discerned from its very definition, namely as “the total expenditure of effort by a jurist to infer with a degree of probability, the rules of Shari’ah from the detailed evidence in the sources”.1 And thus, whereas the *maqasid* are abstract, theoretical and conceptual, *ijtihad* is practical and result-oriented, and thus capable of operationalising the *maqasid* or putting them in practice.

From this definition it follows that *ijtihad* is a “legal” exercise. “Maqasid-based *ijtihad*” is precisely the means by which links can be established between the “legal” and its so-called “context”.

II

The process of *ijtihad* involves two types of knowledge, namely, knowledge of the law, and knowledge of the circumstances that need legal resolution (i.e. the “context”). What we have considered thus far in relation to the requirements, conditions and prerequisites for *ijtihad* relate largely to the “legal” dimension of *ijtihad*. These are knowledge of the Qur’an, knowledge of the Sunnah, knowledge of the Arabic language, knowledge of the branches of law (*furu‘* works) and where there is consensus (*ijma‘*), knowledge of analogical reasoning (*qiyas*) and knowledge of the purposes of Shariah. The jurist must also be aware of the custom of society. Yet the question remains: what is the conceptual framework needed for such knowledge?

One possible solution to the dilemma which has been advanced is for the coming together of *‘ulama al-nusus* (scholars of the texts) and *‘ulama al-waqi‘* (scholars of the context). But this approach, apart from being dualistic, assumes the mutual exclusiveness of the “text” and “context”. The eminent philosopher Seyyed Hossein Nasr aptly says, “These days we are often told to keep up with the times. Rarely, however, does one ask what the ‘times’ have to keep up with.” Nasr’s critique underscores an important point about the so-called “context”: that the so-called context itself is produced and interpreted in accordance with a particular conceptual framework. It is the interaction of the conscious subject with the world around it that produces what is called the “context”. But how can
the Shari’ah be made to “adapt” to the “context” if the “context” in relation to say, issues in economics, governance, politics and human rights, is itself interpreted in accordance with conceptual framework which rests on mistaken assumptions about the nature of man, his needs and his aspirations?

III

Let’s now return to the two dimensions of revelation. To recapitulate, these are (1) the sacred Law which guides human conduct, and (2) information about the nature of reality. This distinction finds its expression in Ibrahim al-Shatibi’s distinction between ‘legal intent’ (maqasid al-shariah) and ‘creational intent’ (maqasid al-khalq). It is not the Shari’ah alone that is purposive but the whole of creation itself has been created towards end-goals, or purposes. This is indicated in several verses of the Qur’an, for instance, in Sura Ali Imran (3:115), “Did you think We have created you in play (i.e. without purpose)?”; Sura al-Dukhan (44:38), “And We did not create the heavens and the earth and that between them in play”; and Surah Sad (38:27), “And We did not create the heavens and the earth and that between them aimlessly.”

Gamal Eldin Attia builds upon this distinction to elaborate on six different types or categories of maqasid. These are (1) the maqasid of creation (maqasid al-khalq), (2) the higher maqasid of the Law (maqasid al-shari’ah al-aliyah), (3) the universal maqasid of the Law (maqasid al-shari’ah al-kulliyah), (4) special maqasid of the Law (maqasid al-kulliyah al-khassah), (5) the particular maqasid of the Law (maqasid al-shari’ah al-juz’iyyah), and (6) human maqasid (maqasid al-mukalla’f). To recall from our earlier point, maqasid-based ijtihad is one way of establishing harmony between the Shari’ah and the so-called “context”. Attia’s six-fold classification represents an attempt towards that.

IV

In practical terms, therefore, the harmonisation of legal and creational intents allow for the broader selection of literature from which the maqasid could be ascertained, not strictly from the genre of fiqh or usul al-fiqh, but also from theology (‘ilm al-kalam), spirituality (tasawwuf), ethics (akhlaq), politics (siyasa) and philosophy (hikmah or falsafah). In the latter literature, there are ample discussions on what Shatibi and Attia called maqasid al-khalq, although these are hardly referred to by this name. Ibn ‘Ashur in his Treatise on Maqasid al-Shari’ah argues that the maqasid al-shariah are grounded in fitrah (the innate nature of man). In elaborating on the nature of fitrah, he cites from the philosopher Ibn Sina. In philosophical literature, the realisation of man’s fitrah is explained in terms of the acquisition of the four cardinal virtues (al-fada’il),
namely temperance (‘iffah), courage (shaja’ah), wisdom (hikmah) and justice (‘adalah). The one who has attained to these virtues has fulfilled the maqasid al-khalq in relation to the human species and thereby be in conformity with his fitrah, which Ibn ‘Ashur defined as “the natural disposition (khilqah) and order (nizam) that God has instilled in every created being.”

If the categorisation of maqasid is construed hierarchically, from the most pressing, urgent and necessary to the aspirational, the fulfillment of the fitrah amounts to conformity to the highest aspiration of the maqasid for to seek for the refinement and excellence (ihsan) in a thing is none other than to seek for the complete realisation and fulfillment of a thing’s reality (haqiqah) as intended by the Creator, including its objective and purpose in the total scheme of things. Such convergence of legal and creational intents is indeed realised in the very person of the Prophet (pbuh), who as concurrentlylawgiver (shari‘) andlegally competent addressee of Shari‘ah (mukallaf), embodies the harmony of maqasid al-shari‘ah and maqasid al-mukallafin (human maqasid), a part of maqasid al-khalq. That it is possible for other than the Prophet to likewise harmonise the two is indicated in the hadith that “when [God] loves [a servant] [He becomes] his hearing with which he hears, his sight with which he sees, his hands with which he seizes and his legs with which he walks.”

There have also been works which attempt to harmonise the two maqasid. One example is Shah Wali Allah’s Hujjat Allah al-Baligha (The Conclusive Argument from God). It is interesting that Shah Wali Allah deemed his work to be a work on the science of asrar al-din (secrets or inner meanings of religion), which is almost the same as Ibn ‘Ashur’s definition of maqasid al-shari‘ah, namely as “the deeper meanings (ma’ani) and inner aspects of wisdom (hikam) considered by the Lawgiver (Shari‘) in all or most of the areas and circumstances of legislation (ahwal al-tashri‘)”, with the important difference that, whereas Ibn ‘Ashur focuses on the Shariah, Wali Allah probed even into the inner meanings of beliefs and elaborated on the metaphysical realities as informed through revelation. He explained how the whole of created world is made towards serving the universal interest or universal comprehensive benefit (al-maslaha al-kulliyya). In other words, Wali Allah sought to harmonise, synthesise and synergise maqasid al-shariah and maqasid al-khalq.

It is in the harmonisation of these two that we find the significant contribution of maqasid-based ijtihad.

Notes
* Tengku Ahmad Hazri is Research Fellow at IAIS Malaysia. He would like to acknowledge and thank Prof. Mohammad Hashim Kamali, Dr. Daud Batchelor, Dr. Mohammed Farid Ali, Tawfique al-Mubarak and Ahmad Badri Abdullah for...
their constructive arguments and critical insights which have helped to refine the viewpoint from an earlier draft. He may be reached at ahmhazri@iais.org.my.


3. Narrated by Bukhari.

SIGNIFICANT EVENTS AND DEVELOPMENTS

The World Halal Summit and
8th World Halal Conference 2015
(Kuala Lumpur, 1-2 April 2015)

Daud AbdulFattah Batchelor

An inspirational event, the annual World Halal Summit held on 1-2 April, 2015, helped cement Malaysia’s reputation as a leading referral centre on Halal knowledge and technology. It comprised the International Halal Showcase exhibition, 8th World Halal Conference (WHC), and five concurrent conferences – The 6th JAKIM Halal Certification Bodies Convention, Certifiers Forum, Scholars Forum, Academics Forum and the Business Forum. WHS 2015 was a platform to provide opportunities for industry stakeholders to collaborate, network, discuss and propose viable ideas for expansion, and to overcome challenges. The halal ecosystem involves capital investment, manufacturing, distribution, training, and supervision.

YB Dato’ Sri Mustapa Mohamed, Minister of International Trade and Industry Malaysia highlighted that the global halal market is fast growing and offers great potential for players. In 2012 there was an estimated 1.8 billion Muslims worldwide, with the population rising twice as fast as non-Muslims. The rising population will ensure rapidly rising demand for halal products. Mustapa stressed “It is vital to meet the challenges of the next phase of growth of the halal ecosystem. There is an urgent need for new structures and regulatory frameworks that will further strengthen confidence amongst consumers, industry players and investors. A halal economy ultimately benefits the entire global community since the founding principles of a Sharia-compliant economy are aligned with universal values making many halal products and services equally attractive to non-Muslim consumers.” Growing interest in halal food by non-Muslims reflects consumer interest in organic agriculture and strict standards. Many non-Muslim US food producers seek halal food because they consider it to be more wholesome. The halal food industry currently satisfies only 20 percent of existing demand. Malaysia was the first nation in the 1970s to establish government halal certification, with collaboration between the Department of Islamic Development Malaysia (JAKIM) and Standards Malaysia. The Halal Industry Development Corporation (HDC), established in 2006, is the coordinating body that promotes participation and growth of Malaysian halal companies, which grew 30 percent from 2013 to 2014.
One major focus of WHC 2015 was to interlink Islamic banking & finance and the world of halal. This is fully justified and highly achievable since both draw legitimacy from Islam and are complementary partners. Each sector is growing 15 to 20 percent annually. Rushdi Siddiqui, CEO of Zilzar Technology remarked: “Halal food makes up 20 percent of global food production, and yet so little of the halal industry players actually use Islamic financing.” Badlisyah Abdul Ghani, CEO of CIMB Islamic Bank, remarked that since the halal food industry is dominated by small medium enterprises (SMEs) in Muslim countries, more niche Islamic banking facilities are needed. Zafar Khotamov, Senior Strategist at the Islamic Development Bank, said that IDB is developing ideas how to provide such financing.

The total market value of the global halal market is estimated at USD 3 trillion annually, comprising USD 1.8 trillion for Islamic banking and financing services, and USD 700 million for the halal food market as Muslims are required to eat halal food. Halal products also include chemicals, health care, cosmetics, pharmaceuticals, and leather goods. Eighty-five percent of halal food production actually occurs in non-Muslim countries. Halal vaccines, medical services and tourism have much potential. The halal vaccine market is huge: for example, two million people performing hajj annually require meningitis shots. To drive positive awareness about halal vaccines it should be stressed that immunisation complies with the objectives of Shariah (maqasid al-Shari’ah) by protecting one’s health and the health and life of one’s family; and by contributing to the preservation of wealth. Important issues related to halal slaughtering include firstly, too many cases involved animal cruelty, and secondly, animal rights activists in the West attack the Islamic slaughtering method as ‘barbaric’ despite the fact that it actually reduces pain and distress to the animal. UK Halal Food Authority chief, Saqin Mohammed called on the Organisation of Islamic Cooperation (OIC) to conduct a global public relations campaign in support of halal slaughtering.

A big challenge facing the global halal industry is the lack of a unified and consistent standard. There are at least 500 certification agencies globally. Further, the lack of a unified standard has raised production costs for exporters as they need to follow different national regulatory standards. Thai and Malaysian representatives suggested that to obtain a quantum industry leap a supreme body is needed, probably under OIC oversight, to issue a global standard. It was suggested that halal industries first establish regional arrangements for standardisation before going global. In the South East Asian region Malaysia is working with Indonesia and Thailand to harmonise halal standards. The Gulf Cooperation Council (GCC) Standardization Organisation’s Nabil Molla highlighted the need for a single accreditation body for the halal industry and suggested that halal accreditation bodies could sign memoranda of understanding...
(MOUs) to mutually recognise each other. Others stress that unifying standards should not be imposed unilaterally but be allowed to progress naturally.

In the Scholars Forum Yusuf Patel, Chair of the South African Halal Authority, highlighted that halal is a divine brand, pure and good for the well-being of all people; it purifies the heart and mind and opens doors for acceptance of prayers. Every step in the halal food chain from ‘farm to plate’, involving slaughterhouse, transport, packaging and delivery, is critical to avoid contamination and waste. Fourier Transform Infrared (FTIR) spectroscopy allows rapid tests for porcine (pig) contamination. Scholars stressed that while applying the Shari’ah framework new concepts have appeared not previously seen in scholars’ texts. Niyyah (intention) in manufacture is of over-riding importance and scholars indicated there could be no halal beer or wine.

A highlight was the Ambassadors’ Panel with input from the UK, European Union, China, New Zealand and Australia. Issues addressed included the importance of CSR, sustainability, food safety and quality, and a unified certification system.

Seminar on Shariah Courts in Malaysia
(Kuala Lumpur, 21 April 2015)

Tengku Ahmad Hazri

Ahmad Hidayat Buang explored the historical development of, and current issues pertaining to the Shariah courts in Malaysia, to examine whether or not the courts have indeed undergone transformation over the years. For a start, the courts have indeed undergone reform, from their original constitution set-up until the constitutional amendment of 1988, which introduced the now controversial Article 121 (1A), which excludes the High Court from any jurisdiction on matters falling within the ambit of the Shariah courts. So yes, there has been a transformation, but it is not so “radical” as the legal dualism of Shariah and civil law that is still retained within the legitimate structure established by the Federal Constitution. Still, the Shariah courts themselves are moving closer towards “civilianisation,” i.e. gradually becoming like the civil courts.

Political controversies aside, the Shariah courts do offer promising features lacking in civil courts. One of these was presented as a case study by Dr Naim, namely on the role of the Family Support Division (BSK) under the Shariah courts in enforcing and implementing court orders requiring former husbands to pay maintenance to their ex-wives and children. The BSK was established in response to the startling finding that as many as 12,300 former husbands have
neglected this basic responsibility, even after ex-wives have obtained court orders to that effect, no thanks to the previous lack of enforcement mechanism. Consequently, the court relied on Caliph ‘Umar al-Khattab’s dictum that “an order is useless if it cannot be enforced,” to figure out means by which the court order is complied with. And the result is even more promising: nearly 60 percent of the husbands paid up. One was even able to fork out a whopping RM100,000 in cash for all the arrears.

Public Forum: The Implementation of Hudud in Malaysia: Between Ideal and Reality (IAIS Malaysia, 23 April 2015)

Ahmad Badri Abdullah

On 23 April 2015, IAIS Malaysia and MySuara TV jointly organised a public forum entitled ‘The Implementation of Hudud in Malaysia: Between Ideal and Reality’. The panelists were Emeritus Professor Dato’ Paduka Dr. Mahmood Zuhdi Haji Ab. Majid from the Department of Fiqh & Usul al-Fiqh, Kulliyyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia (IIUM), Associate Professor Dr. Mohamed Azam Mohamed Adil the Deputy CEO of IAIS Malaysia, and Mr. Musa Awang the President of the Syariah Lawyers Association of Malaysia. Professor Zuhdi highlighted the fact that hudud demands stringent implementation procedures as well as tight self-discipline by members of society. Hudud, he claimed, is part and parcel of the whole Shari’ah system. Hence to implement it in isolation of the other aspects of Islamic teachings will fail to bring about its intended objectives, namely justice and fairness. Moreover, he maintained that to operate hudud in the Malaysian dual-law system would lead to injustice to Muslims, since non-Muslims enjoy an absolute freedom from the law. Therefore a feasible solution is to incorporate some elements of hudud in the existing laws of the country. He proposed that the government enact a blood money (diyat) act in order to resolve fatal road accident cases, as an alternative to the current procedure.

Dr. Azam provided a historical overview on the development of Islamic law in Malaysia and pinpointed that the public perception on hudud has been shaped by the colonisation process of the past. Therefore the restoration of the law in the new setting of modern nation-state demands a well-planned strategy. Adding to Professor Zuhdi’s proposal, he suggested that hudud be strategically infused in the existing penal code, since the latter already includes a number of hudud offences. Musa Awang, on the other hand, highlighted that the country’s
Constitution is in fact the main legal hurdle for the implementation of hudud, since it places religious affairs under the states’ authority and empowers the Shari’ah courts with only limited jurisdiction. Even though there are hudud offences in the court’s enactments, their punishments remain in the form of ta’zir. Therefore, he proposed that the academic communities discuss diligently the two possible options, either to incorporate hudud in the current law or to construct an entirely new structure of hudud law in the country.

International Conference on Shari’ah Objectives (Maqasid) in Public Policy and Governance (IAIS Malaysia, 15-16 June 2015)

Asadullah Ali Al-Andalusi

The International Conference on Shari’ah Objectives in Public Policy and Governance was held between the 15th and 16th of June, 2015 at the International Institute of Advanced Islamic Studies (IAIS) Malaysia, co-organised by the Selangor Islamic Religious Council (MAIS) and Razak School of Government, and partnered with Al Naqiy Islamic Solutions Sdn Bhd and the Muslim Youth Association of Malaysia (ABIM). Sponsors included CIMB Islamic, Permodalan Nasional Berhad (PNB), Majlis Agama Islam Selangor (MAIS).

The goals of the conference were to advance applicable maqasid-based theories in the form of policies related to good governance on a global scale. Several participants presented, making up seven sessions in total over a two day period. The guests ranged from fellow academics, to government officials, policy consultants, and students.

Professor Dato’ Sri Dr. Zaleha Kamaruddin, Rector of the International Islamic University Malaysia (IIUM), opened the conference with a keynote address revolving around the creation of a Maqasid Index for Public Policy and Governance, which seeks to grade Muslim-majority countries on the basis of how they implement Islamic principles at the government level. The framework for this assessment was constructed by 100 Muslim scholars across the globe, facilitated by IIUM, and seeks to challenge the current standard of assessment, the concept of Human Rights; the “religion of the 21st century,” according to Dr. Zaleha.

Following the keynote address, Session 1 began with a discussion on the maqasid’s Theory and Methodology. Among the four speakers, Associate Professor Dr. Adi Setia Md Dom set the mood for the discourse. He highlighted that the maqasid cannot be utilised within the contemporary secular framework of utilitarian ethics, and must only be contextualised within the boundaries of the
Shari’ah. Following this, Dr. Mohamed Rafeek Mohamed Mousoon expressed the possible applicability of the *maqasid* through the maxim of ‘*wasatiyya*’, or moderation in Islam. Dr. Adis Duderija followed with his lecture on how Islamic principles view minorities, grounding his thoughts in the controversial views of the Syrian reformer, Muhammad Shahrur. Finally, the session closed with a lecture by Dr. Recep Dogan explicating the *maqasid* in regards to governance from the perspective of the Turkish reformer and spiritual leader, Fethullah Gulen.

Session 2 continued the theme of the first session with talks from Professor Dato’ Dr. Abdul Monir Yaacob, Nik Norishky Nik Hassan Thani, Mr. Kairat Moldashev, and Mr. Marifatul Haq Muntakhabul Haq. The first lecture discussed the nature of *maqasid* in relation to Human Rights, particularly regarding the Malaysian experience. The second related the concept of *maqasid* with “Shari’ah compliant” businesses and industry. The third focussed on the *maqasid* in facilitating pluralism and co-existence among different faiths and cultures, with an emphasis on taking examples from the Prophetic treaties of Medina and Hudaybiya. And finally, the fourth speech focussed on the *maqasid* in relation to financial transactions with emphasis on classical and contemporary approaches of the Islamic scholarly tradition.

The post-lunch discussion began with an opening speech from former Malaysian Prime Minister – and chairman of IAIS – YABhg Tun Abdullah Haji Ahmad Badawi, which provided a vision of hope and progress, not only in regards to the conference, but for society as a whole. Finally, Professor Mohammad Hashim Kamali closed with a second keynote address on the synergies between the political aspects of the Shari’ah and the concept of *maqasid* – how both interrelate and how the latter can affect the former; a necessary lecture in the context of policy creation and reform in the Muslim world.

Session 3 – the theme being *Governance* – ended the first day with three additional presentations from Dr. Abu Ayub Ibrahim, Associate Professor Dr Nor’a’in Othman and Professor Dr Mahadzira Mohamed. The first talk reviewed case studies of *waqaf* management in Bangladesh through *maqasid*. The second presentation looked at the obstacles facing the tourism industry in light of Muslim majority concerns and how to implement a balanced approach to business and recreation through utilising the *maqasid*. Finally, Dr Mahadzira spoke on a *maqasid* approach towards drug abuse and rehabilitation.

The second day of the conference opened with keynote addresses from Senator Dato’ Dr. Asyraf Wajdi Dato’ Dusuki, Professor Tan Sri Dato’ Dzullkifli Abdul Razak, and Emeritus Professor Dato’ Paduka Dr. Mahmood Zuhdi Hj. Abdul Majid. Each presented a specific topic related to the *maqasid*, from Islamic finance to education, as well as the operational effects and realisation of *maqasid*-based theories in Malaysia.
Shortly thereafter, Session 4 began with the theme of *Finance and Wealth Management*. The first speech was given by Associate Professor Dr. Hasan Ahmad, on the foundational concepts of finance and wealth management in the context of *maqasid* in the 21st century. Following this, Ms. Nora’inan Bahari lectured on the concept of the maslahah (public interests) in the context of *maqasid* and *fatwa* (legal opinions) regarding business dealings in Malaysia. The session then closed with a presentation from Mr. Kazi Md. Tarique on the applications of *maqasid* in Islamic banking, with particular emphasis on a case study of Islami Bank Bangladesh Limited.

Session 5’s theme was Public Policy – which would continue to the final session – beginning with a speech from Associate Professor Dr. Azila Ahmad Sarkawi on a survey of local (Malaysian) authorities on their perception of *maqasid* in relation to urban sustainability. The next speech, by Professor Dr. Khairuddin Abdul Rashid, focussed on academic programmes centred on built environment – particularly within the International Islamic University of Malaysia – and how the maqasid can better formulate a framework for teaching architectural applications in society. Finally, Associate Professor Dr. Mohamed Azam Mohamed Adil closed the 5th session with a talk on ASB/ASN investment from a *maqasid* viewpoint.

After the lunch break and Zuhr prayer, the final two sessions took place, continuing the theme of ‘Public Policy.’ The session began with a speech from Dr. Muhammad Obaidullah about tax management in rural Bangladesh and how a *maqasid* perspective can help to assist in this task. The next presentation, by Mr. Jamaludin Ibrahim, attempted to formulate a comprehensive model of cybersecurity based on the *maqasid*.

The final session (7) began with Dr Mohamad Azam presenting on behalf of Ms. Rafeah Saidon on the prevention of illegal marriages based on a *maqasid* approach. Following his talk, Mr. Tengku Ahmad Hazri gave a talk on reinterpreting the concept of ‘constitutionalism’ through a *maqasid* perspective. Mr. Tawfique al-Mubarak then attempted to tie Islamic financial institutions to environmental protection through a *maqasid* approach. And finally, Mr. Ahmad Badri Abdullah spoke about the applications of *maqasid*-based ‘systems thinking’ on public health.

The second day came to a close with remarks from Professor Mohammad Hashim Kamali on the prospects of the conference, policy reforms, and gratitude towards the participants and guests, with a promise to collect all papers and suggestions for future publication.

A few of our presenters (Mr Asif Mohiuddin, Dr Amana Raquib, and Dr Maszlee Malik) were unable to be with us in person but they submitted their papers.
CALL FOR PAPERS

*Islam and Civilisational Renewal* (ICR) invites scholarly contributions of articles, reviews, or viewpoints which offer pragmatic approaches and concrete policy guidelines for Malaysia, the OIC countries, civic non-governmental organisations, and the private corporate sector. The principal research focus of IAIS is to advance civilisational renewal through informed research and interdisciplinary reflection with a policy orientation for the wellbeing of Muslim communities, as well as reaching out to non-Muslims by dialogue over mutual needs and concerns.

Our enquiry and recommendations seek to be realistic and practical, yet simultaneously rooted in Islam’s intellectual and spiritual resources, Muslim political and social thought, inter-faith exchanges, inter-civilisational studies, and global challenges of modernity.

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