

NON-SHARĪ'AH COMPLIANT FINANCIAL TRANSACTIONS IN PAKISTAN AND ITS SOCIO-ECONOMIC IMPACT ON THE SOCIETY

PhD Thesis - Islamic Studies

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Transliteration System

	Consensus between systems not using diacritical marks	Consensus between systems using diacritical marks
ء	‘	‘
ا	aa	ā
ب	b	b
ت	t	t
ث	th	ṭ
ج	j	ǧ
ح	H	ḥ
خ	kh	ḫ
د	d	d
ذ	dh	ḏ
ز	r	r
ز	z	z
س	s	s
ش	sh	š
ص	S	ṣ
ض	D	ḍ
ط	T	ṭ
ظ	Z	ẓ
ع	‘	‘
غ	gh	ḡ
ف	f	F
ق	q	q
ك	k	k
ل	l	l
م	m	m
ن	n	n
ه	h	h
و	w/uu	w/ū
ي	y/ii	y/ī
آ	’aa	’ā
ة	h, t	h, t
ى	y, ae	ỳ, ā, à
لا	la	lā
ال	Al, al-	al

Approval Sheet of The Committee

Title of thesis “**Non-Sharī‘ah Compliant Financial Transactions in Pakistan and Its Socio-Economic Impact on the Society**”, by Zeeshan Rais Khattak, accepted by the Department of Islamic thought and culture, National University of Modern Languages, Islamabad in fulfillment of the requirements for the PhD Degree in Islamic Studies.

The Department confirms that it has read thesis and approved it for the defense purpose. They are fully convinced about its quality and hereby request the Faculty of Social Sciences for the approval of the thesis

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Candidate Declaration Form

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As a PhD student of the department of Islamic Studies, hereby present by thesis for the partial fulfillment of the degree which was prepared under the supervision of **Dr. Rao Farhan Ali** Co-supervisor **Dr Malik Saqib Ali**. I solemnly declare that the thesis:

The topic of the Thesis: Non-*Shari'ah* Compliant Financial Transactions in Pakistan and Its Socio-Economic Impact on the Society

that I am presenting this work which is totally based on my effort. It should be noted that the work done under the topic is neither submitted/published elsewhere before nor it would be submitted using my name to any other university in the future times to come.

Name of the Researcher: Zeeshan Rais Khattak

Signature of the Researcher: _____

National University of Modern Languages, Islamabad

A Word of Thanks

I thank Almighty Allah and praise the Prophet Muhammad (May peace be upon him) for giving me an opportunity to excel in the field of research. I adhere the efforts of all those who are involved in the quest of making it possible from academia to admin of the university. I am also great full to my family who always chaired me up and helped me in all regards.

Abstract

The main objectives of the study is to examine the socio economic effectiveness of non-Shariah compliant financial transaction prevailing in the country, Pakistan. These Non-Shari'ah financial transaction include Riba, Gharar and Maysir, which are involved in different financial and economic activities with complexity. This study has been an attempt to identify the prohibited elements in the current circumstances and it explored the aftermaths of these practices in the society. The study is qualitative in nature. A comprehensive survey has been conducted to collect the first hand data from the relevant unit of analysis (individuals) and findings of the research are derived on the basis of their responses. The probability sampling design has been used whereas simple random sampling technique is used to obtain the empirical results of the research. The responses of the respondents have been gathered with the help of likert scale. The study setting was non-contrived.

The result show that upsurge in debt servicing deplete the resources to be spent on the development projects for the society. Also inability to pay ribawi payments forces local industries shutdown. The bailout plan based on Riba leave the adverse impact on the society. It is because of the fact that this type of transaction is incurred where the economy as debt based. Therefore Rescheduling and Rearranging of the debt can have an impact on the economy, particularly in business and trade. Production, logistical, and supply chain delays can result from rapid schedule changes. This may lead to higher expenses, lost revenue, and possibly harmful impacts on the economy as a whole. It also creates International dependency which restrict to design conducive policies.

Traces of Gharar is found in many transactions like crypto currency, benami, prize bonds, Patwari system, Unilateral and by lateral contracts, documentation of legal paper etc. Also Failure to fulfill Contractual obligations in a business/service contracts causing financial losses creating Al Gharar Al fahish: Undervalue Registration, Pending cases, in the courts, ease of Doing Business, Fraud, Misleading information are also causes of Gharar found in the financial transactions. Hence, Gharar is a major problem of our society that is disturbing the socio-economic activities.

Obsession in the gambling create mental disorders and other psychological diseases. Individuals who participate in gambling activities may experience additional.

Hence, Government should establish an Islamic Central Board which may be designated the responsibilities to ensure compliance of the Islamic financial products and services launched by the financial institutions. Further legislation is required to put further checks over the financial system of the country to ensure that it is Ribā, Gharar and Maysir free.

All the alternatives like Islamic Banking against Conventional Banking, Takaful against insurance, Sukuk bonds at the treasury side and other alternatives must implement in letter and spirit and replace completely its counterpart so that the Shari'ah Compliance is observed.

The Educational institutions need to educate and develop the conceptualization regarding the Non-Shariah compliant elements as Riba, Gharar and Maysir by offering courses that are properly designed for the cause.

Keywords: *Socio-Economics system, Maslaha Mursala, Riba, Maysir and Gharar, Crypto Currency, Shari'ah', Fiqh, Ethics.*

CHAPTER 1 INTRODUCTION TO THE STUDY

1.1 Introduction

The Non-*Shari'ah* compliant transaction could be found into many ways. It may be that the whole transaction is void due to the prohibition in explicitly, there may be elements of prohibition that if cleared; the whole transaction is rectified as done in the matters of *Shari'ah* compliance, there may be a practice that is not established within our upheld norms and customs and makes it an unethical ways and means adopted to accomplish any financial task.

Islam demands from its followers while engaging into the financial transactions that they may abstain from all the actions that contradicts the financial matters well elaborated and establish *Shari'ah* based principals in this regard. While complying with the *Shari'ah*, a Muslim should also keep in mind the glorious principal of *Tawakul*. The word “*tawakul*” which mean true self-reliance doesn't merely means to have a solemn faith on Allah rather it's a diligent duty of a Muslim to avail all the recourses for getting any sort of job done especially through *halāl* means. Allah doesn't appreciate those who don't strive to earn a respectful life in his/her society and only depend on others to fulfill their needs.

For this purpose Islam has described many virtues for earning a *halāl* livelihood and seeking the lawful resources from the bounties of Allah. Abu Hurairah (ra) reports: “Once we were sitting in the presence of Allah's Messenger while a young person came to him from the mountains. When we saw him we wished that he invested his youth, energy and efforts in the way of Allah. Allah's Messenger heard our words and remarked,

“Is the person killed in the way of Allah the only right person? The person who makes efforts for his parents is equal to the one who fights the battle in the way of Allah. And the person who tries to earn a lawful living for his family is also in the way of Allah and the person who tries to keep himself away from *harām* is also in the way of Allah. On the other hand, the person who is always in the pursuit of seeking much more wealth is in the way of Satan.”¹

¹ Abu 'l-Qāwsim Sulaymān Ibn Ahmad ibn Ayyoob ibn Muṭawyyir al-Lakhmī ash-Shāmī at-ṬabarāniAl-*Mujam Al-Awsat li Al Tabarani*, (260 AH/c. 874 CE - 360 AH/971 CE), DKI, (Beirut, 2012 (Beirut, Lebanon)), Hadith no. 4:285

One of the most ruinous and ill-fated drawbacks of consuming *ḥarām* income is that; Allah (swt) leaves a person to himself, without his prayers and supplications being heard Him, and hence he is denied blessings even though he may observe all the obligations, which are required for him as a Muslim. A person consuming *ḥarām* has no chance of making his religious activities approved and accepted by Allah. It is reported that when Saad Ibn Abi Waqqas (ra) requested the Messenger of Allah to pray for him so that his supplications are accepted by Allah, he had urged him to take only what is *ḥalāl* and abstain from what is *ḥarām*, and then had commented:

“By the being in whose hand is the soul of Muhammad, a slave (of Allah) takes a *ḥarām* morsel into his stomach, then his no act will be accepted until forty days. And whose flesh grows out of *ḥalāl* income and interest, and then he's most deserving of the Hellfire.”¹

In an Islamic law of framework, Islamic economics attempts to balance between market, family, society and the state. The Islamic economic model seeks to harmonize self-interest with the social interest. It gives self-interest a longer-term perspective by encouraging the individual to fulfill his or her social obligations. Islamization, if fully practiced, will address those income distribution and poverty alleviation issues where other economic systems have fallen short. This in turn would serve to eliminate the sources of instability, violence and propensity towards intimidation arising from a sense of deprivation. The world, in short, would be a far happier place to Live.

Abu Hurairah (ra) reports that once the Messenger of Allah (saws) said,
 حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا أَحْمَدُ بْنُ عَبْدِ الْمَلِكِ، حَدَّثَنَا مُوسَى بْنُ أَعْيَنَ،
 حَدَّثَنَا عَمْرُو بْنُ الْحَارِثِ، عَنْ دَرَّاجِ أَبِي السَّمْحِ، عَنِ ابْنِ حُجَيْرَةَ، عَنْ أَبِي هُرَيْرَةَ،
 أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ " إِذَا أَدَّيْتَ زَكَاةَ مَالِكَ فَقَدْ قَضَيْتَ مَا
 عَلَيْكَ " .

“Whoever accumulates unlawful wealth and then gives it in charity, he will never be rewarded and the burden of sin will be upon him.”²

¹ Muhammad ibn Hibban ibn Ahmad al-Tamimi al-Busti (c. 270–354/884–965), *Sahih ibn e Habban*, Al Ihsan, hadith: 3367, Hadithun Hasanun, Dar Ibn Hazm

² Abū ‘Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rab‘ī al-Qazwīnī (b. 209/824, d. 273/887), *Sunan Ibn Majah*, Hadith#1788, Chapter 3: Wealth on which Zakat is not paid on 'hoarded treasure', Book 8: The Chapters Regarding Zakat, Darussalam, Hadithun Hassanun

These Prophetic narrations clearly indicate that consuming even a morsel of *ḥarām* or putting on a *ḥarām* cloth deprives a person of the acceptability of his religious activities by Allah and His blessings are withheld from such a man until he repents for his sins sincerely and resolves to earn his living henceforth only through *ḥalāl* means. All his acts of worship will come to naught. Generally, people think that once they have performed all the Obligatory worships of Islam like *saum*, prayers, *sadaqah* and *zakah*, then they are successful in their religious duties that have been made Obligatory upon them by Allah. However, when they will stand before Allah (swt) on the Day of Reckoning accounting for their deeds, they will find all their exertions and efforts made at them are as good as nothing, for they had been denied the blessings of Allah (swt) by consuming the forbidden (*ḥarām*) things that have been enshrined and preserved in numerous books down to the last detail. They will find, on the other hand, that they have been engulfed by punishment. The only reason that prevents them on walking towards the path of Paradise would be that they had consumed *ḥarām*.

The first variable of the study is related to transactions involving *interest/ ribā*. The involvement of Interest at different level of its engagement in the financial transactions is also a big question mark to how we are going to secure our system from the drawbacks of it. The first and the upper most level is the public sector where the organizations are involved in it directly or indirectly. The second and the medium level tell the story of the involvement in the interest-based transactions and also take up the discussion about the parallel transaction that is based on the Islamic financial engineering. On the second variable of the research are the financial transactions that involve *gharar* (ambiguous) and the third variable is *maysir* (gambling) in it. The study analyzes it and tries to calculate that how badly it has struck our economy and talks about its causes due to which it has found its way into our economy.

The above mentioned three variables which are prohibited from the beginning of the contract. There is no debate on the legitimacy of such elements. The moment their presence is found the product becomes prohibited. Their introduction is as follows:

i. *Ribā* (Usury/Interest)

It refers to a stipulated increase over and above the loan amount that a debtor agrees to pay to his creditors in relation to a specific period of time. Charging an extra amount for

the time, irrespective of the outcome of the enterprise is considered injustice. The borrowed money would have to be invested and combined with efforts and there could be the possibilities of loss to a single party (debtor).

For several months, Pakistani economists have been warning that the country is heading towards a serious debt problem that will destabilize the economy. The overall debt, estimated at 12.7 trillion rupees in 2016, is considerably higher than the 9.5 trillion rupees in 2013. External debt, at 73 billion dollars, has also increased substantially, compared to 61 billion dollars in 2013. Currently, External Public Debt was recorded US\$ 78 billion dollars at the end of June 2020 and increased by around US\$ 4.6 billion during the year.

ii. Gharar

Sale of probable items whose existence or characteristics are not certain, due to the risky nature that it makes it similar to gambling. The main reason for prohibition of *gharar* is the existence of vagueness in rights and liabilities that can be exploited to deceive people into thinking that they are getting a better deal, which in reality is not the case. Ambiguity in a contract may arise when its pillars & conditions are not clearly defined. *Gharar* also arise when certain product is sold without label.

In contemporary financial transactions, the two areas where *gharar* most profoundly affects common practice are insurance and financial derivatives. Jurists often argue against the financial insurance contract, where premia are paid regularly to the insurance company, and the insured receives compensation for any insured losses in the event of a loss. In this case, the jurists argue that the insured may collect a large sum of money after paying only one monthly premium. On the other hand, the insured may also make many monthly payments without ever collecting any money from the insurance company. Since “insurance” or “security” itself cannot be considered an object of sale.

The other set of relevant contracts which are rendered invalid because of *gharar* are forwards, futures, options, and other derivative securities. Forwards and futures involve *Gharar* since the object of the sale may not exist at the time the trade is to be executed. Islamic Law permits certain exceptions to this rule through the contracts of Salam and Istisna.

iii. *Maysir*

It includes all kinds of gambling. In gambling the winner and loser win or lose by mere chance. The winner does not lawfully earn what he has won, and the loser loses his money without a fair compensation. Gambling allows the winner to consume others property unlawfully and unjust because in gambling there is no exchange of counter values between the parties. Islam encourages people earn

Although all forms of gambling exist in our country, the prize bond slips/numbers ‘*parchi jua*’ is the most prevalent, especially in Sindh and Punjab. The lower cost and better odds in this gambling are the main reasons which have attracted a colossal number of punters from the lower and middle classes. Their living through honest effort and prohibits appropriating others property by chance. Moreover there are several betting sites especially in games like cricket, football etc.

1.2 Literature Review

The economy of any country is the backbone of its progress. Therefore, it is necessary to analyze the economic challenges facing the government and develop a plan to overcome them. (Tukhliev et al., 2020)¹. This pointing out of the economic based challenges shows the vitiating trends and helps guide the policy makers for the sake of developing policies designed for the future (Chandukala et al., 2008).²

According to khair (2019)³, due to the globalization the financial transactions are seriously involving the elements that are explicitly *ḥarām* in the eye of the *Sharī‘ah*. According to him the international trade contracts are generally finalized in dollars or they are less prompt and are dealt with a future date of maturity and hence incur ingredients that are prove to rejection in the eye of *Sharī‘ah* itself. According to Naveed (2017)⁴ one of the

¹ Tukhliev Abdullayev, *Contemporary trends in international economic integration: Challenges and prospects*. International Journal of Psychosocial Rehabilitation, 2020 24(2), 308–313,

² Chandukala, S. R., Kim, J., Otter, T., & Allenby, G. M. Choice models in marketing: Economic assumptions, challenges and trends. Now Publishers Inc, 2008, 56.

³ Asif, Khair Muhammad, PhD dissertation: *A Comparative Analysis of Prohibited Trades in Islamic Economic System*, University of Sindh, Jamshoro, (2019), 22

⁴ Naveed, Asif, Ph.D thesis, *A Shariah Analysis of Agent Role in Financial Matters*, University of Karachi, 2017

main reasons of failure to build an Islamic Financial system is because of the influence of the west on our culture and education. He elaborates the point by saying that the Islamic scholars are unable to clear the doubts in the minds of the locals due to the lack of understanding the Islamic laws related to the financial system. The situation becomes worst because of the fact that Islamic Scholars themselves are not well aware of the Contemporary issues related to the financial system given by the west to the world. This gap is continuously heading the society toward implementing a system that is non-*Sharī'ah* compliant.

Pakistan's economic problems have been protracted over the past four decades or so. The indicators reflect that in Pakistan, growth without development is observed (Easterly, 2001).¹ Moreover, the research Scholars blame volatile economic policies for economic challenges (Mahmood, 2008)². The policy shift has directly affected other important sectors such as energy, textiles, education, tax revenues, and industrial growth (Mergat, 2018)³. Growth and development in Pakistan has been particularly affected by the lack of coherent policies (Saboor et al., 2015)⁴. According to Easterly (2001), “weak social indicators reduce the productive capacity of an economy and its ability to service its high debts, not to mention the loss of human welfare from making very little social and political progress” (Easterly, 2001).

Good governance thrives the state toward advancement and assures that it is essentially free of corruption. Unfortunately, Pakistan is well on its way down the ladder on this account. Corruption in all its forms whether gigantic, moderate and small, permeating all levels of government and all segments of society may it be public, private, political, judicial and commercial. (Umbreen, 2010) Paradoxically, corruption acts as a balancing mechanism for the market here in a largely unregulated administrative model. There is a surreal economic logic to this give-and-take at the individual level, but the economic cost

¹ Easterly, W. (2001). The political economy of growth without development: A case study of Pakistan. In: Dani Rodrik (Ed.), Search of prosperity: Analytic narratives on economic growth. Princeton University Press, 2012, 439–472 & 33)

² Mahmood Rehman, (2008). Evaluation of macro-economic policies of Pakistan (1950–2008). Journal of Political Studies, 17, 57–75

³ Mengal, . Role of print media in China-Pakistan economic corridor as stakeholder. International Journal of Business, Economics and Management Works, 2018, 32–35.

⁴ Saboor Khan, Multidimensional deprivations in Pakistan: Regional variations and temporal shifts. The Quarterly Review of Economics, 2015, 57–67.

to society is enormous. Corruption severely affects the lives of citizens through lower returns on the use of resources and adds multipliers to their cost of living. The genesis of corruption in Pakistan can be traced back to the mega-events of the 1940s to the 1990s and into the present decade. The earnest attempts at accountability that arose in the mid-1990s and entrenched itself at the turn of the century were comically transformed into tools of political patronage or victimization. For the past two years, there has been a legal vacuum in practice at the national level. A set of measures is needed to eliminate this risk. Awareness in the general public and the emergence of a strong civil society, a bustling media, and a newly independent judiciary are all in and of themselves a guarantee of the success of any future accountability program.¹

There has been an increased focus on the non-economic aspects of development in recent times. However, these aspects are not independent of the level of economic development of an individual or society. Therefore, social and economic development as a measure of society's economic performance and social progress has gained more recognition. There are various indicators that serve to determine the level of social and economic development in society. Broadly, the umbrella of social and economic indicators includes concepts such as happiness, well-being and quality of life, living conditions, life situations, social capital, public and political trust, environmental concepts, good governance etc.

However, Pakistan due its socio-Economic problems, it is lagging behind as a progressive community. That is the root cause due to which Pakistan is facing a continuous down fall in its economy despite the fact that the past regimes have tried their best for its revival. Many attempts have been made to cope up with the problem but it seems like our Socio- Economic system is based on the wrong footings.

The economic literature highlights several other factors that may influence the price level in the case of Pakistan. The price of oil is managed in Pakistan and changes in it are likely to have significant spillover effects on inflation. Historically, the exchange rate has also remained under tight administrative control. The exchange rate trend analysis clearly highlights periods of overvaluation followed by sharp adjustment. The resulting

¹ Ambareen Javaid, *Corruption and its Deep Impact on Good Governance In Pakistan*, *Pakistan Economic and Social Review* Volume 48, No. 1 (Summer 2010), 123-134

overvaluation may pass into inflation. Another important factor is the cost of borrowing capital, i.e., the rate of interest which may contribute significantly to cost-push inflation¹. (Jalil 2014)² In the case of Pakistan find the interest rate to be an important determinant of inflation; however, the relationship between the nominal interest rate and inflation is not one and the same, so the Fisher effect³ does not prove.

The studies are evident that there is always negative correlation between the higher rate of interest and government spending. Macroeconomic models predict that during normal times (when the economy is not at the zero lower bound), government spending cause's nominal interest rates to rise, potentially crowding out investment and lowering future economic output. The logic is simple: government spending leads to excess demand for resources. For markets to clear, interest rates must rise to induce households to delay consumption or firms to delay investment.⁴

Similarly. Higher rate of interest increases circular debt. Empirical evidence shows that in all cases a more sustained debt accumulation leads at least temporarily to higher long-term interest rates (paolo 2006).⁵

Many developing countries' government liabilities have increased due to rising interest payments, price hikes of oil imports, and unfavorable conditions in the international markets for their primary exports. As a result, they are caught in a vicious circle of deficit and debt: the increasing budget and trade deficits lead to more borrowing while debt accumulation over time causes the fiscal deficit to widen further. Their current expenditure has also risen over time due to

¹ Cost-push inflation (also known as wage-push inflation) occurs when overall prices increase (inflation) due to increases in the cost of wages and raw materials.

² Jalil, *Fiscal deficit and inflation*: New evidences from Pakistan using a bounds testing approach. (Economic Modelling), (2014) 120-126.

³ In economics, the Fisher effect is the tendency for nominal interest rates to change to follow the inflation rate. It is named after the economist Irving Fisher.

⁴ Daniel Murphy, *Review of Economic Dynamics*, Volume 18, Issue 3, 435-708 (July 2015) , <http://www.EconomicDynamics.org>, cited 17 May, 2023

⁵ Paolo Paesani, Rolf Strauch and Manfred Kremer, *Public Debt And Long-Term Interest Rates The Case Of Germany*, European Central Bank, Working paper, Italy And The Usa, Issue no.656, July 2006

overspending, and this behavior is also motivated by the availability of foreign aid and easy borrowing (Shonchoy, A. 2010).¹

Consequently, Low development expenditures due to debt servicing. The result from estimation on successive modeling of the above variables together with Robert Solow growth model variables shows a significant and negative relationship between economic growths and the ratio of debt service to export (Dereja, .2015).² Debt servicing shifts resources away from the social sector, especially health and education (Fosu, 2008). This is mainly because it is difficult for the government to cut down recurring expenses. This illustrates the relationship between debt servicing and public spending.

Moreover, by Using the fiscal response model, developed a link between debt servicing, aid, and fiscal variables for the period 1975– 99., it was concluded that the bulk of the foreign aid offered to highly indebted poor countries (HIPC) to meet their public spending needs, especially in the social sector, is misused (McGillivray and Ouattara 2005)³. A large portion of this aid is used for debt servicing, which then has a negative impact on public spending. Another important result indicates that foreign aid does not induce a decline in borrowing. Hence, this finding contradicts the argument that public debt and foreign aid are substitutes for one another.

Zakaria (2010)⁴ reported that both fiscal and monetary policies are major determinants of inflation. (Khan 2007)⁵ It also shows that the government deficit is small while direct taxes are putting downward pressure on the price level. Likewise, (Jalil 2014). Their findings show that apart from deficits, the most important factors that contribute to inflation

¹ Shonchoy, *what is happening with the government expenditure of developing countries: A panel data study. In Proceedings of the German Development Economics Conference*, (Hannover 2010 No. 2). Frankfurt: German Economic Association.

² : Dereje Abera Ejigayehu, The Effect of External Debt On Economic growth, chapter four, Analysis, 38, <http://www.diva-portal.org/smash/get/diva2:664110/FULLTEXT01.pdf> , cited on 18th May 2023

³McGillivray & Ouattara, Aid, *debt burden and government fiscal behavior in Côte d'Ivoire. Journal of African Economies*, issue 14(2), 247–269, 2005

⁴ Zakaria, *Openness and inflation: evidence*, (Doğuş Üniversitesi Dergisi), 11 (2) 2010, 313-322, (2010), 78-88

⁵ Khan, *Determinants of recent inflation in Pakistan*, (Munich Personal RePEc Archive) 2010, 108- 126

are interest rate, trade openness, private sector credit and government borrowing. We cannot find any study of Pakistan that looks specifically at the relationship between inflation and various measures of tax including total taxes, sales taxes, direct and indirect taxes.

The structure of Islamic law is built on the high grounds of moral values. These moral values are universal in its nature. Therefore, Islam confirms the moral values as integral part of the divine revelation. Ahmad (2015)¹ elaborates the fact that Moral values can be seen as the foundation of human civilization and without it there may be no difference between civilized man and animal. Removing moral values and moral responsibility from society, any kind of evil can be justified, as it gradually appears in Western societies. Moral values and their strength in the nation is something these people are proud of. A nation whose collective rises always has the ability to lead other civilizations with its own; the same is true on the contrary. This is the reason behind this when we see many non-Muslim countries leading the world, just because they are steadfast on high moral values such as justice, protection of the rights of the weak and so on. And when a nation, Muslim or non-Muslim, departs from these high moral values, no one can save them from their demise. One of the core moral values is the flow of money in accordance with the equality and social justice. According to Hassan Shah (2020)², that in an Islamic culture the flow of money should be deep down to the extent that even the poor segment of the society and concept of concentration of wealth must be discouraged.

Islamic Economics is normally used as a terminology to elaborate the sequential study of the concepts related to Islamic economics and theories in the light of the Islamic *Shari'ah* laws. This field is a very massive field as it covers and embraces immense versatility in it (Muhammad 2020)³. However, Siddiqui (2008)⁴ notes that Islamic economics is no longer attractive as a subject. The author finds no harm in this but regrets

¹ Ahmad, Sajjad, phd dissertation: *The concept of moral responsibility & its impact on individual & society in the light of Sunnah of the Prophet (S.A.W)*, Faculty of Islamic Studies, AIOU, 7

² Shah, Syed Abrab Hassan, PhD Dessertation: *Micro Financing in Pakistan-A Critical and Analytical Review According to the Islamic Injunctions*, Department of Islamic Studies, The University of Bahawalpur, 10

³ Haque, Mohammad Imdadul; Ahmad, Shakil; and Azad, Mohammad Shakir, "Mapping of scientific literature on Islamic Economics, Banking and Finance 1955 to 2020" (2020). *Library Philosophy and Practice* (e-journal). 4306

⁴ . Siddiqi, M. N. (2008) *Obstacles of Research in Islamic Economics*. JKAU: Islamic Econ., 21(2), 81-93.

the loss of spirit to present Islamic economics as an alternative to socialism and capitalism. Moreover, the study identified six obstacles to the development of Islamic economics which are absence of historical studies, lack of empirical studies, insufficient institutional support, and lack of adherence to ethical standards for research and publication, and poor vision. According to Hassan (2017)¹, Conservatism failed to prove to the world the possibility of practicing Islamic economics. In addition, the undue focus on empirical analysis and appropriate educational approaches are other issues highlighted by the study. The study found that the absence of arbitrated scientific journals in Islamic economics and finance, and the classification of Islamic economics and Islamic finance have further hampered the development of Islamic economics as a social science.

Sharī'ah compliance is one of the core branches of the Islamic economics as it confirms about the transaction in its validity. Normally the term *Sharī'ah* Compliance refers to the scrutiny of financial transactions related to the Islamic Banking system. Muhammad (2017)² observes the point that the study reveals that Islamic banking and finance may involve an element of concern, uncertainty and prohibited gambling in *Sharī'ah* in their products and services which is assumed that the *Sharī'ah* compliance products available today are not much different from their conventional counterparts. This may happen due to a lack of forensic knowledge banking practitioners have a correct understanding of the concept of usury, *maysir* and *gharar* when structuring the product, including when determining the monthly installment in the contracts like wadi'ah, Murabaha and Musharakah. According to the study conducted by Salem (2021), the results of this study indicate that compliance with Islamic law has a positive and significant impact on service quality and customer satisfaction with Islamic banking services. The research findings also indicate that service quality partially mediates the relationship between *Sharī'ah* compliance and customer satisfaction with Islamic banking. If the study is expanded to an extent of general market behavior compiling the *Sharī'ah* compliance

¹ Hassan, A. (2008, February). *Secondary Databases and their Use in Research in Islamic Economics*. (In Papers and books based on the proceedings of the Conferences organized by the Islamic Economics Institute), KAAU. (No. 46). King Abdulaziz University, Islamic Economics Institute, 137-167

² Mihajat, Muhammad Iman Sastra, *Contemporary Practice Of Ribā, Gharar And Maysir In Islamic Banking And Finance*, (International Journal of Islamic Management and Business), Vol. 2, No. 2,

principal the result would be more positive and the efficiency will prove growth in real terms.

On the other hand, Non- *Sharī'ah* Compliant financial transaction is a wider term and applies to those transaction that involve elements like *interest, gharah, maysir, qimar* and other elements that makes a transaction inconsistent in the eye of *Sharī'ah* until and unless eliminate otherwise. According to khair (2019)¹, due to the globalization the financial transactions are seriously involving the elements that are explicitly *ḥarām* in the eye of the *Sharī'ah*. According to him the international trade contracts are generally finalized in dollars or they are less prompt and are dealt with a future date of maturity and hence incur ingredients that are prove to rejection in the eye of *Sharī'ah* itself. According to Naveed (2017)² one of the main reasons of failure to build an Islamic Financial system is because of the influence of the west on our culture and education. He elaborates the point by saying that the Islamic scholars are unable to clear the doubts in the minds of the locals due to the lack of understanding the Islamic laws related to the financial system. The situation becomes worst because of the fact that Islamic Scholars themselves are not well aware of the Contemporary issues related to the financial system given by the west to the world. This gap is continuously heading the society toward implementing a system that is non-*Sharī'ah* compliant.

Involvement of interest in the transactions is considered to be the unacceptable in the eye of the *Sharī'ah*. Abdul Raheem (2005)³ says that although there are other sins like fornication, murder, shirk that are bigger then interest itself but almighty declares war only on those who involved in the interest bearing transaction. He further elaborates his point saying that Islamic teaches us to create a society that built on the concept of social cooperation and collective agreement. This means that the society involved in the interest bearing transactions is following the line that is totally opposite to it. However, the Qur'an generally prohibits that every form of fixed and predetermined interest (whether small or

¹ Asif, Khair Muhammad, PhD dissertation: *A Comparative Analysis of Prohibited Trades in Islamic Economic System*, University of Sindh, Jamshoro, 22

² Naveed, Asif, Ph.D thesis, *A Shariah Analysis of Agent Role in Financial Matters*, University of Karachi, 2017

³ Ashraf, Abul Raheem, PhD desertation: *Ahkam-E- Riba jadid ijihadaat ka Tajziyaati Mutaali'ah*, department of Islamic Studies, Univesity of Punjab. Lahore,2005, 12-13

large, for investment, consumption, saving, lending, etc.) is considered usury regardless of whether it is used for consumption or other types of purposes (Mannan, 1980)¹.

Gharar is the second important element in transaction with the aim to avoid deception and to protect the right of contracting parties, minimize disputes and to reduce the opportunity of exploitation one counterparty by another in transactions, so that no one or both parties cheated or aggrieved (Mihajat 2016).² The Islamic economic system differs from the traditional systems. It discourages disputes between parties to contracts by eliminating *Gharar* (ambiguity) and uncertainty and encourages the contract to be beneficial to society by prohibiting interest. It also encourages zero-return financing such as *Qard al-Hasana* to reduce poverty in the community and fulfill the needs of the needy (Ahmad 2019).³

Gharar Based transactions are one of the main source of corruption. Studies Positive relation between Ambiguous transactions with Money Laundering. Typical securities-related laundering schemes often involve a series of transactions that do not match the investor's profile and do not appear designed to provide a return on investment (FATF 2009)⁴

It is argued that Money Laundering or TF activities may give rise to significant levels of criminal proceeds or “hot money” flowing into and out of individual financial institutions in ways that are destabilizing for these institutions. Such inflows or outflows can be either cross-border or domestic and where transactions in illegal markets or criminal proceeds are significant in relation to the size of the country's formal sector, these flows can affect the entire financial system and have cross-country or potentially global effects (IMF 2012).⁵

¹ Mannan, *Islamic Economics: Theory and Practice*. (Delhi: Idarah-i Adabiyat-I Delhi). 98, (1980)

² Mihajat, Muhammad Iman Sastra, *Contemporary practice of Riba Gharar and Mysir*, (International Journal of Islamic Management and Business), Vol. 2, No. 2, August 2016

³ Ahmad Muhammad Mushtaq, *The Concept of Qarz-ul-Hasan and its Practices in Islamic Banking Industry of Pakistan*, Al basirah, volume 8, issue 2, 71,

⁴ FATF, *Annual Report 2008-2009, Money Laundering and Terrorist Financing Threats*, 17, 2009, https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/National_ML_TF_Risk_Assessment.pdf.coredownload.pdf. Retrieved on May 28, 2023

⁵ IMF, *Guidance Note on Anti Money Laundering and Combating the Financing of Terrorism- Inclusion In Surveillance and Financial Stability Assessments*, Series: Policy Papers, Volume 2012: Issue 104 17 Dec 2012 <https://www.elibrary.imf.org/view/journals/007/2012/104/007.2012.issue-104-en.xml>, retrieved on May 28, 2023

Maysir is the third important elements in the financial transaction when it comes to prohibition due to it. There is no doubt and no disagreement whatsoever as far as the prohibition of the elements of qimar or *maysir* (gambling or wagering) and *Gharar* (uncertainty) in a contractual agreement between the contracting parties according to the Islamic law of business transaction. According to Husnain (2014), the rationale behind the prohibition of *Gharar* is to ensure the full consent and satisfaction of the parties to the contract. Full approval can only be obtained in the case of full disclosure and transparency and through full knowledge of the contracting parties of the corresponding values to be exchanged. A *Gharar* ban protects against unexpected losses and possible disagreements about qualities or incompleteness of information.¹

All three of the elements discussed are considered prohibited and illegal in accordance to the law of Pakistan. However, there is abundance of reports and studies confirm about these non-*Sharī'ah* complaint transaction as part of our some financial transactions (knowingly or unknowingly) disturbing the socio- economic system of Pakistan with a great impact on it (in the form of losses, mismanagement, corruption, fraud). For instant Farooq (2012)² talks about the negative impact of the Interest based transaction on the economy of Pakistan. According to his point of view, it has created negative impact in two ways. It affects poor Pakistanis in two ways. First, as debt service obligations increase, the government will take a large amount of personal income in the form of taxes to pay off the outstanding debt and the amount of interest. Secondly, given the inability of the government to meet its increasing debt service obligations in the face of insufficient foreign exchange earnings, the government will require donor countries for concessions that will inevitably affect the social, political and economic policies of the recipient country. As a result, the Government of Pakistan is supposed to adopt policies that are dictated by donor countries but are not necessarily in the national interest. Some of the readings that has a direct influence on the study are list below:

¹ Husnain, Ahmad Sanusi, *The prohibition of Maysir (gambling) and Gharar (uncertainty)*, PBM, July 12, 2014

² Farooq, Muhammad, *Interest, Usury and its Impact on the Economy*, (Publishers: Qurtaba), September, 2012 https://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/7_3/Dialogue_July_September2012_265-276.pdf

“**Governing the Ungovernable (2018)**”¹ by Ishrat Husain is the book that seeks to examine the causes of this slow, unstable and uneven development of the last twenty-five years, and through a process of theoretical and empirical evidence, argues that the most powerful explanatory hypothesis. It also suggests electoral and strengthening approaches to restructuring key public institutions related to accountability, transparency, security, economic growth and equality. It also talks about the stereotype about the army as it is involved trade and business and clears the fact that all of the earnings are used in meaningful way for the welfare of the institution.

“**AAOIFI *Sharī‘ah* Standards (1993 and updating)**”² is a book that develops accounting and auditing and *Sharī‘ah* standards for Islamic financial institutions...³ . Nonetheless it’s a biggest source available in consideration to Islamic Banking and Finance. It’s a great achievement of the team of scholars, who created a pack of *Sharī‘ah* compliant products. It’s a backbone of Islamic Banking System. However it is committed to facilitate the commercial banking system by alternate and *Sharī‘ah* compliant financial transactions. It is based on the assumption that all the manual must be used by the bank with no question asked about its legitimacy. The assumption helps in maintaining the principal of *talfeeque* (consultation of all the *fiqhi* opinions) to avoid any circumstance that lead to adopt the non-*Sharī‘ah* compliant transaction.

The Lawful and the Prohibited in Islam (*Al-ḥalāl Wal ḥarām Fill Islam*, 1999)⁴ by Yusuf Al-Qaradawi, This popular book dispels the ambiguities surrounding the honorable *Sharī‘ah*, and to fulfill the essential needs of the Muslims in current age. It clarifies the *ḥalāl* (Lawful) and why it is *ḥalāl*, and the *ḥarām* (Prohibited) and why it is *ḥarām*, referring to the Quran and the *Sunnah* of His Messenger (Peace be upon him). It answers all the questions which may face the Muslims today, and refutes the ambiguities and lies

¹ Hussain, Ishrat, *Governing the Ungovernable, Institutional Reforms for Democratic Governance*, oxford press, 2018

² *Accounting and Auditing Organization for Islamic Financial Institutions*, Guidelines for Authors / Academic Contributors for JOIFA Books: Khan, A. R. (1993), Financial Intermediation, New York: Springer Publishers Standards.

³ *Accounting and Auditing Organization, Sharī‘ah Standards*, Introduction, VIII, <http://aaoifi.com/shariaa-standards/?lang=en> , retrieved on 17th May 2020

⁴ Al-Qardawi, *Yousal The Lawful and the Prohibited in Islam (Al-Ḥalāl Wal Haram Fil Islam*, American Trust Publication, January 30, 1999

about Islam. However the study only focuses on the primary sources and helps in finding the real situation of the society related to its indulgence in the activities not confirmed with the *Sharī'ah* status.

“Prohibited Elements in Islamic Finance” (2015)¹ by MD Akhtar Uddin is a source book to my topic. The Book it highlights all sorts of prohibited elements in Islamic finance in the light of Qur'an and *Sunnah* and comes up with examples for further elaboration on the topic.

“Islamic law of contracts and business transactions” (2010)² by Tahir Mansuri is also source book as per the topic. It's divided into two parts. The first part deals with the general theory of contracts in Islam wherein topics such as general principles of contracts, elements of a contract, delegated authority, division of contracts into valid, voidable and void contracts, *gharar*, *ribā*, extrinsic conditions, defect of consent, and the classification of contracts with regard to their subject matter have been discussed. The second part deals with specific contracts such as contracts of sale, leasing, partnership, *mudārabah*, surety ship, and assignment of debt.

“Islamic Jurisprudence: *Uṣūl Al fiqh*” (2003)³ by Imran Ahsan Khan Nyazee. The book discusses the topic in depth and tells us about the primary and secondary sources of *Sharī'ah* and styles of *ijtihad*⁴.

However, Umer Chapra's book **“The Need for a New Economic System”**, Review of Islamic Economics argues that Islamic economic system is the need of the day as its world view and strategy are in line with each other. Shows how Islamic economic principles promote growth with equity and efficiency....⁵

¹ Akther Uddin , *Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir INCEIF*, Kuala Lumpur, Malaysia, 13 October 2015

² Mansori, Muhammad Tahir, *Islamic law of contracts and business transactions*, (Sharī'ah Academy), 2010

³ Niazi, Imran Ahsan Khan, *Islamic Juresprudence: Usulul Fiqh*, (Sharī'ah Academy), 2001

⁴ Ijtihad means “to put effort”; in Islamic law, the independent or original interpretation of problems not precisely covered by the Qur'an, Hadith (traditions concerning the Prophet Muhammad's life and utterances), and *ijmā'* (scholarly consensus)

⁵ Muhammad Akram Khan, *Islamic Economics (An Annotated Bibliography)*, International Institute of Islamic Economics, 3rd Volume (1988 – 1997) .2

Muhammad Anwar's book "**Islamic Economic Methodology**" suggests a process whereby the discipline of Islamic economics can grow through empirical investigations and improvements in the Islamic theories and economic practices of an Islamic society....¹

"**Hurmat-e-Ribā aur Ghair Sudi Maliyati Nizam**"², Mehmood Ahmed, Ghazi's book also translated in English titled as "**Prohibition of Ribā and Interest-free Financial System**" explains the *Qur'anic* verses relating to the prohibition of *ribā*. Counters the arguments which assert that interest and *ribā* are two different things. Describes the nature of consensus on the prohibition of interest in Pakistan. Makes suggestions about the non-interest-bearing financial system....³

The Federal Sharī'ah Court of Pakistan examined 115 petitions and three h moto notices on the legality of interest in the financial system of Pakistan. The judgment is an historical document as it puts together all the evidence against the legality of interest. It argues that the interest prevalent in financial institutions and in government transactions is *ribā* and thus not lawful....⁴

Socio-Economic Challenges in Pakistan (2017)⁵ by Mrs. Fahmida Aslam, Mr. Jamshed Ali Baloch Economic turmoil in Pakistan is due to facets of reasons. The country since its very inception has remained in a vicious cycle of political instability, the lamentable lack of civilian leadership, long military rules and weak institutions. The cumulative implications of the scenario manifest Adhocism, inconsistencies in economic policies, foreign debt and fragile industrial policy.

Issues in Pakistan's Economy (2006)⁶ is a book written by S. Akbar Zaidi This book is the main text for post-graduate courses on South Asia's development, economic history and on its political economy. For researchers on Pakistan's economy, it is the key source

¹ Muhammad Akram Khan, *Islamic Economics (An Annotated Bibliography)*, International Institute of Islamic Economics, 3rd Volume (1988 – 1997). 3

² Ghazi, Mehmood Ahmad, *Hurmat-e-Riba aur Ghair Sudi Maliyati Nizam*, institute of policy Studies, Islamabad, 2nd Edition 1996

³ Muhammad Akram Khan, *Islamic Economics (An Annotated Bibliography)*, International Institute of Islamic Economics, 3rd Volume (1988 – 1997), 96

⁴ Muhammad Akram Khan, *Islamic Economics (An Annotated Bibliography)*, International Institute of Islamic Economics, 3rd Volume (1988 – 1997), 95

⁵ Aslam, Fahmida, *Socio-economic challenges in Pakistan, the Government- Annual Research journal of Political Science*, University of Sindh, Jamshoro, Sindh University Press, 2017

⁶ Zaidi, S. Akbar, *Issues in Pakistan's economy*, (oxford University press), 2006

for reference, and covers a huge and diverse array of data, literature reviews, commentary and analysis.

It is evident from the above discussion that although much work is done different aspect of economy of Pakistan but with the view of *Sharī'ah*, the space for its analysis is still present, so that one can see through its actual position and causes that are creating hindrances for it to become a full *Sharī'ah* Compliant economy.

The study focuses to analyze the non-*Sharī'ah* compliant issues that are related to the Socio-Economic system of the country and how the selected variables of research (*ribā*, *gharar*, *maysir*) are creating the impact over the society as a whole.

After analyzing these research ingredients in thorough manner, it is only then possible that solutions for its alternative approach maybe advised which will help the society to adopt and let them free from involving into something that is prohibited in the light of *Sharī'ah*.

Moreover Pakistan is badly suffering from the problems related to its economy. The rationale of the study is in line with the fact that if the problems related to the Non- *Sharī'ah* Compliance financial transactions are highlighted and resolved, the economy of Pakistan will not only flourish but also will be according the will of *Sharī'ah* law.

1.3 Significance of the Study

It is observed that general public of Pakistan still believe interest, bribe and maybe some other transactions as prohibited transactions. The fact is totally against it and negates this general perception. Certainly there are other prohibited elements in a financial transaction that must be catered to fulfill the *Sharī'ah* law and its demand. The glorious institution of Islamic Finance is based on a standard principal of

“You do no wrong, nor are you wronged”¹

and repels what’s ambiguous. *Hadith* of the Prophet (PBUH) advocates the same

“But he who falls into ambiguous matters (eventually) falls into that which is *ḥarām*”.²

¹ verse 279:2

²Abu Daud, Abū Dāwūd Sulaymān ibn al-Ash‘ath ibn Ishāq al-Azdī al-Sijistānī (b: 817 AD, d: 889 AD), *Sunan Abi Daud*, Book 23, kitaab Al-Buyu, Chapter: Regarding Avoiding Things That One Doubts, hadith 5, Sunan Abi Daud: 3330, Darussalam.

The main purpose of selecting the topic is to analyse whether our society cares about the prohibition in a sense as mentioned clearly in Qur'an and Sunnah. The cause for choosing *Ribā* (Interest), *Maysir* (gambling) and *Gharar* (ambiguous transactions) is that they are one of those transactions that are explicitly prohibited by the Qur'an and Sunnah.

The negative impact of illegal, non-*Sharī'ah* compliant transactions has made the nation of the Country pay the losses in the shape of corruption, mal practices and in efficiency which is to be avoided by all means.

In this study all these issues will be studied in detail to prove the above statement is correct and realize the fact in real time research work.

1.4 Research Objectives

1. To analyze and explore *Hukm e Shari'*, its classification and its relation with *Al Maqasid Al Sharī'ah*?
2. To examine the Non- *Sharī'ah* compliant financial transactions prevailed in the society of Pakistan?
3. To analyze the Islamic view point related to current Business Ethics in the Society of Pakistan.
4. To investigate the socio-economic impact of the Non-*Sharī'ah* Complaint Transactions (*Riba, Gharar and Maysir*) and its impact on the Society.

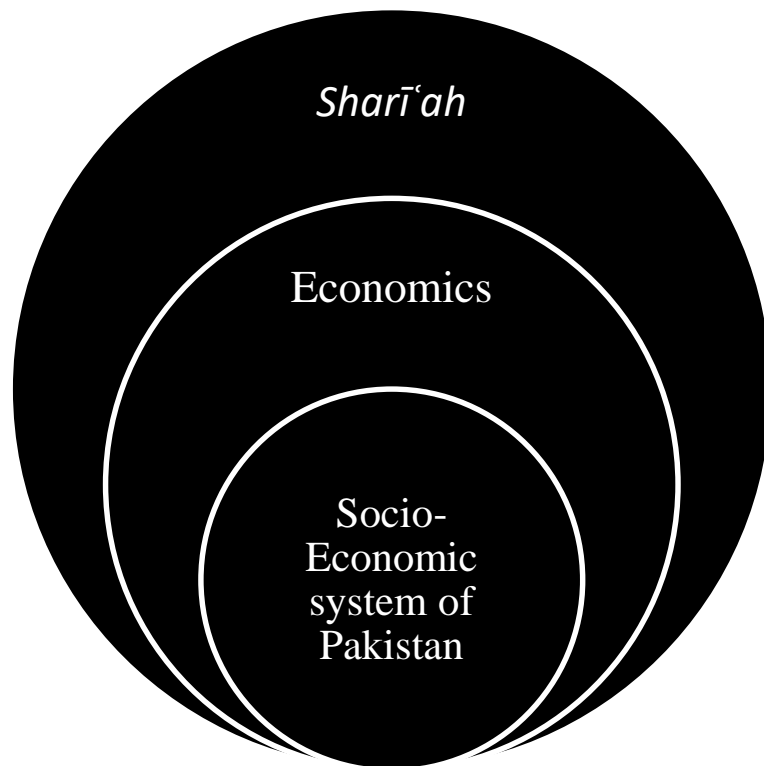
1.5 Research Question

1. What is the *Sharī'ah* Rulings on the financial transactions?
2. What are the Non- *Sharī'ah* compliant financial transactions prevailed in the society of Pakistan?
3. What is the Islamic view point related to current Business Ethics in the Society of Pakistan?
4. What is the socio-economic impact of these Non- *Sharī'ah* compliant financial transactions on the society of Pakistan?

1.6 Limitation of the Research

It is Important to limit the boundaries of the topic so that the research maybe more meaningful and result orienting. The topic is vast enough to intercept specifically at least three areas of Specification. The first is the Knowledge of *Sharī'ah*, the second is the knowledge of Economics and the finally knowledge related to the Socio-Economic system of Pakistan. The diagram is shown for the sake of understanding:

Limitation and delimitation circle



The diagram shows the complexity of the search. However, more focus would be on the side of non-*Sharī'ah* Compliant financial transactions from which the Socio-Economic of our society affected. Moreover, the research is not limited to the formal economy rather it checks the financial transaction exploring the informal economy as well. However certain other points maybe worthy to mention for the sake of clarity of mind:

- The study covers the Non- *Sharī'ah*' compliant financial transactions in the socio-economic system of Pakistan and its impact over the society comprising prohibited elements in it, immoral activities and malpractices in the society disturbing the outlook of the financial system of Pakistan. This study specifically captures the societal footprints of the Riba, Maysir and *Gharar*.
- The study is not limited to Islamic Banking system.
- The Study is based on the Economy of Pakistan
- The study is not limited to the formal economy.
- The study only specifies any solution as per *Sharī'ah*' laws to the financial transactions based on the conventional economic system if that is recommendable.
- The study is focused on devising government level policies for the sake of control of the spread of the above specified Non- *Sharī'ah*' compliant financial transactions i.e. *Riba, Gharar and Maysir*
- The study focuses on the practical examples related to the Non- *Sharī'ah*' compliant financial transactions i.e. *Riba, Gharar and Maysir*. However for the sake of understanding the variables are also elaborated to ensure a meaningful discussion.
- The study comprises of three variables that are Interest, Gharar and Maysir that are dealt with in a very detailed manner. Its historical background, transaction involving these elements, its alternate transaction if any as per the shai'ah based financial engineering and its social impact on the society and what might be the cure if any.

1.7 Research Methodology

The research is conducted with a Mix Method Approach, both Quantities and Qualitative methods are used to conduct the research.

Talking about the Research tools, primary sources of Islamic *Sharī'ah* Law are preferred in the research work, more over:

1. The principles of *Tafseer bil Masoor* and *Tafseer bil Ray Al Mehmood* will be kept in view for the commentary of *Qur'anic* verse.
2. Principles of al rivayah and al dirayah would be considered in view while explaining the sayings of the Prophet (PBUH).

3. Principles of Islamic jurisprudence will be kept in view while generating a juristic opinion.
4. Principles of *Ijtihad* would be kept in view while generating an opinion based on *Ijtihad*.
5. Principles of history writing will be kept in view while capturing/analyzing a historical event.
6. Online research is conducted to authenticate the research with the current situation of the economy. In this regard, News agencies, Business reviews, e books, e journals, websites, e archives are all reliable source of information. E.g. the news, Express tribune, Business recorder, Nawai Waqt, The Dawn, Gulf News etc., and reports from highly reputed organizations like World Health Organization, World Trade Organization, International Monetary Funds, Transparency International Reports, trending Economics, International Justice Project, United Nation Development Program, The Ministry of finance, State Bank of Pakistan, Security and Exchange Commission of Pakistan and many other national and international agencies are extensively mentioned in the research.
7. More over for the sake of writing style, referencing method and techniques adopted as per the Chicago Manual Style
8. The University format is also key guidance in writing of the thesis which clearly mentions the font, font style, footnotes style and other formatting issues that are in accordance with the international research practices

1.8 Research Gap

Most of the research done in the field of Islamic Finance is basically targeting the Islamic Banking sector, Islamic Finance modes and many other related topics that is highly appreciable, but it is also important to see the real picture of the economic environment of the country in real. The research is based on the concept of applied social science¹ where variables are analyzed in according to the data available in the natural world.

¹ Applied social sciences are those academic social science disciplines, professions and occupations which seek to use basic social science knowledge, particularly from sociology, economics and political science, and to a lesser extent psychology, social psychology and anthropology to measure an impact on the daily life of communities, organizations and persons. Some authorities would also include portions of economics,

Moreover the study focuses the economy of Pakistan as a whole in the light of Shar'iah Financial Laws targeting the financial transaction where discrepancies are found that one can relate to the Non- *Sharī'ah* Financial Compliant transactions related to the variables of the study. The Study targets the economic and financial markets of Pakistan in this regard. This mix of the variables with the limitation of the economy of Pakistan is a unique work done in the Share of Non- *Sharī'ah* Compliance.

and in particular economic analysis and economic planning as applied social sciences. https://en.citizendium.org/wiki/Applied_social_sciences , retrieved on 17 May 2020.

CHAPTER 2. *SHARĪ'AH* RULINGS ON FINANCIAL TRANSACTIONS

2.1 Introduction

In a practicing environment, *Sharī'ah* provides set of governed principals that helps in guiding commercial transactions, economic, social, political, and other cultural aspects of Islamic societies.

If strictly taken into account, the financial laws that are covered in the *fiqh*¹ section related to *al fiqh al Mua'malat al Maliyah*², presents broad concepts of different financial transactions accepted as portion of classical *fiqh*. Meaning thereby, classical *fiqh* is *encompassed* with the other sections as well like *fiqh ul Usrah wa al mawaris* (*fiqh* related to the concept of family and the law of inheritance), *fiqh al ibadat* (*fiqh* related to the matters of worship), *fiqh al siyasah* (*fiqh* related to the political issues) and so on and so forth.

It is important to know that application of these financial transactions is limited in accordance with its general conditions and some strict limitation that allow it to stand correct as a legitimate financial transaction in the eyes of the lawgiver. Any transaction mentioned in the classical *fiqh*, all its terms and conditions specify its mode of finance especially limiting it to a specific purpose of transaction. For example, a forward sales contract (Bay Al Salam)³; this is one of the speculative types of Sales (Bay of Al-Gharar). In the science of transactional jurisprudence (*al fiqh al Maliyah*, it is particularly permissible that concession (Rukhsah) to meet the people's need and the public interest. Hence Sale based on some advanced payment of an item that was not available at the time of completion of the sale, but will be delivered in the future with a fixed future date. However, the price must be paid immediately during. This permissible is based on the practicing custom (custom or *Urf* that responded to the needs of the audience. According

¹ Fiqh: It is related to knowing of Legal Injunctions derived from the practical side of *Shari'ah* from its detailed Primary sources.

² In modern perspective, this category of Jurisprudence of transactions which is related to the financial transactions and other provisions of Sharia in human actions treating financial activities in the light of public interest, in order to satisfy people's needs and settle the dispute between them, which is directly derived from the detailed evidence in Texts, or extended by inference from the general assumptions of Sharia.

³ It is a form of contract in which a lender (Al-muslim) buys an asset from a party seeking financing (the seller or Al-muslim Ileihi), pays the purchase price of the asset in advance and agrees to take delivery of the asset at a later date. ... In either case, the asset is usually sold at a higher price.

to a *Qaida al shari'ah* "The need is treated as necessities", whether general or private. It is noteworthy here that Bay Salam is developed into a community need in terms of public interest. However, Bay Salam is linked to the general purpose of the general concept of the Islamic *Fiqh* (as whole).

2.2 Islamic *Shari'ah* Law, Its Classification

Islamic law is a divine law which comprises of the final list of command from its lawgiver; The Almighty Allah. It was revealed on the last Prophet, Muhammad (PBUH) in a non-sequential way (*mufferaqan, munajaman*) but still meaningful and applicable on the society that confirms and accept it as its code of conduct. In the Holy Quran Allah Says:

﴿إِنَّ الدِّينَ عِنْدَ اللَّهِ الْإِسْلَامُ﴾

Truly, the (recognized) religion in the sight of Allah is Islam.¹

In an Islamic state the supreme power and authority vest to the Lord "Rub" The Sustainer and the cherisher of the world. He is the only one holding such power and shares none his authority. His sovereignty is consistent with his final word. Almighty asserts the fact in the final word:

﴿تَبَارَكَ الَّذِي بِيَدِهِ الْمُلْكُ وَهُوَ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ﴾

Blessed is He in whose hand is dominion and He is over all things competent.²

And in other verse the Almighty conclusively remarks as:

﴿لَهُ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَإِلَى اللَّهِ تُرْجَعُ الْأُمُورُ﴾

His is the dominion of the heavens and earth. And to Allah are returned [all] matters.³

Islamic law is partly coercive and mainly corrective and persuasive.⁴ The argument stating it's partly coercive refers to the crimes of grave nature such as killing, physically injured, adultery (fornication), theft, robbery in the passing ways and drinking of alcohol are sentenced to the severe punishment and it's for the larger good of the society, so that order and peace must maintained and the sin must be corrected because of the fact that its existence may cause extinction to the purpose of the creation of the human race. While the

¹ Verse 19:3

² Verse: 67:5

³ Verse: 57:5

⁴ Maslehuddin, Muhammad, *Philosophy of Islamic Law and the Orientalists*, (Islamic publication Ltd), p 20.

argument that it's mainly corrective and persuasive refers to the changes in the circumstances, norms of the society or dealing with an unforeseen event as it accommodates these changes keeping in view time, place and nature of the problem. This is a very challenging job to create balance in the laws i.e. not being too harsh which may lead to anarchy and not being too lenient which may lead to a casual behavior of the people toward the commandments and taking them for granted. This mechanism works so accurately because *Sharī'ah* junctions give us a clear and unequivocal view about what is permissible and what is forbidden, what is good and what is bad. Almighty says:

﴿لِيُمَيِّزَ اللَّهُ الْخَبِيثَ مِنَ الطَّيِّبِ وَيَجْعَلَ الْخَبِيثَ بَعْضُهُ عَلَىٰ بَعْضٍ فَيَرْكُمُهُ جَمِيعًا فَيَجْعَلُهُ فِي جَهَنَّمَ ۗ أُولَٰئِكَ هُمُ الْخَاسِرُونَ﴾

[This is] so that Allah may distinguish the wicked from the good and place the wicked some of them upon others and heap them all together and put them into Hell. It is those who are the losers.¹

Almighty says explicitly:

﴿تَبَارَكَ الَّذِي نَزَّلَ الْفُرْقَانَ عَلَىٰ عَبْدِهِ لِيَكُونَ لِلْعَالَمِينَ نَذِيرًا﴾

“Blessed is He who sent down the Criterion (criterion of good and bad) upon His Servant that he may be to the worlds a warner.”²

The Islamic law therefore works for the betterment of the society without disturbing its originality in terms of their ways of living, their habits regarding their primitive issues of conducting their routine operations and so on and so forth. It only point out the evil doings or any activity that may unevenly disturbing the fragment of the society that may lead to injustice or oppression.

2.2.1 Interpretation of the terminologies *fiqh* and *Sharī'ah*:

Islamic Law (*Sharī'ah* law) is often intermingled with the term *fiqh* (*jurisprudence*). Although both co-relates with each other but a sharp line maybe drawn to differentiate with each other. It should be well understood that *Sharī'ah* is a wider term and covers all aspect of knowledge related to the revelation, while the term *fiqh* is considered to be its application

¹ Verse 8:37

² Verse 25:1

side, where reasoning on the basis of the capacity of a human mind is stressed on the available concrete and flawless knowledge provided by the Islamic Law.

The word "Legal", indicates the exclusion of matters of faith. Although these matters are part of *fiqh* in its general and literal sense, it is not considered practical as it mainly relates to the actions of hearts as well.¹ A classical definition of *fiqh* is as follow:

”وأما الفقه: فمعناه عند العلماء: مَعْرِفَةُ الْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ مِنْ أَدْلِيَّتِهَا التَّفْصِيلِيَّةِ.“

“*fiqh*; according to Islamic Scholar is related to knowing of Legal Injunctions derived from the practical side of *Sharī‘ah* from its detailed Primary sources.”²

Technically *Fiqh*, is the comprehensive Islamic jurisprudence, encompassing all aspects of life, primarily based on interpretations of the Qur‘ān and *Sunnah*, and influenced by consensus and juristic judgment.³

Suleman Al- Asqar, on the other hand *Sharī‘ah* can be defined as it is the:

” تُطَلَّقُ بِشَكْلِ عَامٍّ عَلَى كُلِّ مَا شَرَعَهُ اللَّهُ وَسُبْحَانَهُ مِنَ الْعَقَائِدِ وَالْأَخْلَاقِ وَالْأَعْمَالِ، وَتُطَلَّقُ بِصِفَةٍ خَاصَّةٍ عَلَى كُلِّ مَا شَرَعَهُ اللَّهُ مِنَ الْأَحْكَامِ الْعَمَلِيَّةِ فَقَطْ دُونَ الْأَخْلَاقِيَّةِ وَالْإِعْتِقَادِيَّةِ مِنْهَا، وَالْوَارِدَةَ فِي الْكِتَابِ وَالسُّنَّةِ، أَمَّا الْفِقْهُ فَهُوَ الْعِلْمُ بِالْأَحْكَامِ الْعَمَلِيَّةِ الشَّرْعِيَّةِ الْمُسْتَنْبَطَةِ مِنَ الْأَدِلَّةِ التَّفْصِيلِيَّةِ، فَالْفِقْهُ مَحْضُورٌ بِالْأَحْكَامِ الْعَمَلِيَّةِ فَقَطْ، الصَّادِرَةَ مِنَ الْعَبْدِ غَايَةَ التَّقَرُّبِ مِنْ رَبِّهِ، وَالَّتِي تَصُدَّرُ أَحْكَامَهَا إِسْتِنْبَاطًا مِنْ أَدِلَّةِ الْكِتَابِ وَالسُّنَّةِ، وَبِنَاءٍ عَلَى مَا سَبَقَ فَالشَّرِيعَةُ تَتَمَثَّلُ بِالْأَحْكَامِ الْمُنَزَّلَةِ مِنَ اللَّهِ، أَمَّا الْفِقْهُ فَيَتَمَثَّلُ بِالْأَحْكَامِ الَّتِي اسْتَخْلَصَهَا الْفُقَهَاءُ مِنْ نُصُوصِ الشَّرِيعَةِ أَوْ بِالذَّلَائِلِ الِاجْتِهَادِيَّةِ، مِثْلَ: الْقِيَاسِ، وَالْمَصَالِحِ الْمُرْسَلَةِ، وَأَقْوَالِ الصَّحَابَةِ، كَمَا أَنَّ الشَّرِيعَةَ عَامَّةً، وَالْفِقْهُ خَاصٌّ، وَالشَّرِيعَةُ صَحِيحَةٌ كُلُّهَا، أَمَّا الْفِقْهُ فَقَدْ يُخْطِئُ أَحْيَانًا بِسَبَبِ اجْتِهَادِ الْفُقَهَاءِ فِي أَحْكَامِهِ.“

“It applies in general to all the beliefs, morals and deeds that God, The Glorified, has legislated, and in particular it applies to all practical rulings that God has legislated, including evidences related to the ethical or belief in them, which are mentioned in the Qur‘an and the *Sunnah*. As for jurisprudence, it refers to the practical side of the *Sharī‘ah* sources deduced from the detailed evidence. Jurisprudence is limited to practical rulings only, issued by the servant with the aim of getting close to his Lord, and whose rulings are inferred from the evidence of the Book and the *Sunnah*, and based on the above, the Sharia is represented by rulings revealed from God, as for jurisprudence, it is represented by the rulings that the jurists have extracted from the texts of Sharia or jurisprudential evidence,

¹Anas, P Aboobacker, *Fiqh: Definition, Scope, Subject Matter, And Characteristic Features*, Aligarh Muslim University, (Aligarh, India), 3

² تاج الدين السبكي المحلي، جمع الجوامع، 32/1

³ Glossary of Arabic Terms in Issue 30/1, JKAU: Islamic Econ., Vol. 30 No. 1, 158 (January 2017),

such as: Qiyas, the interests sent, and the sayings of the Companions, just as Sharia is general, jurisprudence is specific, and Sharia is all valid, as for jurisprudence, it may sometimes be mistaken because of the jurisprudence of its jurisprudence in its rulings.”¹

2.2.2 Use of *Shari’ah* based terminology in the current scenario.

It is the duty of the Islamic capable scholars to establish a wide spread knowledge dealing every single issue that require clarification in areas like *akhlaq* (ethics), *ibadaat* (worshipping), *muamalat* (financial transaction).

The differences between the two terms don’t confuse the correlation rather it is completing each other in a manner that the theory and Practical make it more meaning full and rational for its followers. Following points are important of note about the difference creating between the two words: *Sharī’ah* and *fiqh* are as follows²:

- *Sharī’ah* has a broader scope that encompasses the entire theology and injunctions related to humanity performance but it is strictly bound to the text, on the contrary the discipline of *fiqh* deals with these injunctions of *Sharī’ah* for the sake of establishing the reasons for extraction of modern/ current *Sharī’ah* related issues and tells us about the status of it being lawful or *unlawful*. Hence sometimes the interpretation based on the principal of *Ijtihad* is accepted and sometime due to some error in the deductive method, it is rejected. For example *Sharī’ah* permits rubbing wet hands on the socks as an alternative of washing the feet time and again for the sake of ease. The problem arises about the quality of the socks that isn’t mentioned in the *hadith*. The problem arises on the quality of the socks whether it would be pure lather or any socks made up of any sort of material. Hence the Jurist of different school of thought will elaborate their deductions according to their perception about the quality of the material.
- *Sharī’ah* includes three main components, namely, belief, *fiqh* and ethics while the law of *fiqh* is just one component of *Sharī’ah*. For example, according to

¹ سليمان الأشقر، عمر (1994)، نحو ثقافة إسلامية أصيلة (الطبعة الرابعة)، الأردن : دار النفائس للنشر والتوزيع، صفحة 179. بتصرف نادبة شريف العمري، أعضاء على الثقافة الاسلامية (الطبعة التاسعة)، بيروت: الرسالة، صفحة 114.

2 Prawitra Thalib, *Distinction Of Characteristics Sharia And Fiqh On Islamic Law*, Yuridika 33(3):438 DOI:10.20473/ydk.v33i3.9459, Universitas Airlangga, September 2018,

Sharī'ah perspective, Prayer has many dimensions that must be covered by the performer especially talking about the inner attentiveness while the *fiqh* side is only concerned with the formalities that are related to the physical aspect of it.

- The *Sharī'ah* law is perfect, unchangeable and forever, while at the same time *fiqh* varies with the change in the time, place and person. It is because of the fact that the injections of *fiqh* are attributed with the practical side of it. Hence the practice can be changed due to the circumstance at the current point of time. The simple example is the instruments of media like Television and smart mobiles. Although the Jurists due to their side effects initially opine to refrain its usage but with the passage of time and change in the thought of locals, led these equipment to be part of their lives. This concerned the religious scholars of our time to think otherwise. They came to the conclusion that these electrical appliances related to the media and mass communication are playing a vital role in making the mindset of a common person, especially issues related to political and social background. They also realized the fact if we want to stop the invasion of the western media that is responsible of many side effects and unrest in our society, we need to play role of our part by influentially and actively participating into it. Therefore many Islamic educational programs and even Islamic channel are on air right now. We can now find multiple Islamic based activities on Facebook and YouTube channel as well.
- *Sharī'ah* is based on revelations derived from the Qur'an and *Sunnah* only. *Fiqh*, at the same time, is the result of reasoning and deduction based on knowledge which is constantly evolving.
- *Sharī'ah*, on the first place, has a level of business ranging from what is allowed and not allowed (*ḥalāl* and *ḥarām*). Hence the injunctions of *Sharī'ah* are limited and a jurist can only use it in the sense of derivation, extending *ahkam* from it, whereas, it's *fiqh* that specifies the injunction in the form of its legality. Of course these injections are not mentioned in Quran and *Sunnah* in a direct form of related knowledge based on the evidences from it. This unique feature is again helping the Islamic Scholars to widen their point of view where

the level of acceptance is always varying from each other based on the causes that are more preferable among the scholar on a single point of dispute. This ongoing development in the field of Jurisprudence due to the difference of opinion has made the religion of Islam as the only one which is workable under the most compelling conditions it has to face. This is again because of the fact that the set criteria from *ḥalāl* to *ḥarām* show the determined boundaries that need to be enforced with the best possible and available solutions.

Hence use of the terminology of *Shari'ah* instead of *fiqh* is more encompassing and general and accommodates the jurisprudence with in its sphere of understanding.

2.2.3 Attributes of the *Shari'ah* Laws

Allah has bestowed us with the divine law that just not only suffice the needs of the people connected to it but at the same time it is making complete sense. It is because of the fact that the attributes attached to the *Shari'ah* laws are universal. Some of the main attributes are as follows:

Comprehensive and complete: Sharia is a comprehensive guideline that takes into account all aspects of human life. It gives us guidance from the day of our birth until the day we die. It briefs us about the time before we are born and after we die. Sharia shows its guidance wherever we are; at home, in the mosque, and at work, our relationship with God who is our, with each other, our families, our societies, and the whole society. The fact that *Shari'ah* law is mechanically so sound is due to the complete and guided personality of the Prophet (May peace be upon him). Quran guarantees his personality in these words:

﴿لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا﴾

“There has certainly been for you in the Messenger of Allah an excellent pattern for anyone

whose hope is in Allah and the Last Day and [who] remembers Allah often”¹.

Moreover, it also teaches us how to deal with people, even animals and things. It applies to our physical needs, as well as our minds and spirits. It includes our words,

¹ Verse 33:21

feelings and actions. Hence it's a complete package of solution based on the human pure nature and its applied behaviors.

So, it is an all-encompassing way of life. If one reads the Noble Qur'an and the traditions of the Prophet, (peace and blessings be upon him), he/she will be able to see this trait clearly. Allah says:

﴿وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ﴾

“And we have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims.”¹

What is a miracle is that despite its universality and inclusiveness, you will find it consistent and free from any contradiction. This is inconformity with the above attribute that the Holy Quran is a complete book to be followed. Although this is not a book of Science but it definitely discussed generally accepted realities of the Universe and life. This makes it a book of signs through which a follow can easily infer that there is a creator behind all this nature who is complete and absolute in every single aspect. This is why there isn't a single scientific contradiction found in The Book. Allah Almighty confirms this fact as follows:

﴿أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ ۚ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلَافًا كَثِيرًا﴾

“Then do they not reflect upon the Qur'an? If it had been from [any] other than Allah, they would have found within it much contradiction.”²

Balanced and moderate views of Shari'ah Law: The *Shari'ah law* is also balanced and moderate that it eventually creates balance between body and soul, between mind and emotions and between this life and eternity. It balances between theory and Practical life, between thinking and action, between the unseen and the apparent. Sharia promotes freedom, but it bears responsibility as well. That is why the whole practical side of the *Shari'ah Law* known as the Islamic Jurisprudence deals with the human in accordance to his/her responsibility and rights.

This main point is totally missing in all other prevailing systems, religions, beliefs that are always contradicting with the real life issues and are answerless to the critical question about it. That is why the concept of secular state and the pluralist societies comes out to curtail the religious values. On the contrary Islam presents a full package to the believers

¹ Verse 16:89

² Verse 4:82

and non- believers who are falling in its jurisdiction must enjoy their freedom with responsibility.

Recuing Moderate approach while practicing Islam: Sharia relation between texts and reality is moderate one. The Messenger himself, (may Allah bless him and grant him peace) has always promoted this moderate and balanced understanding of Islam. He used to return his companions to this moderation whenever he saw any imbalance in their actions or ideas. The famous story of the three people who wanted to be excessive in their rituals of fasting every day, praying all night and completely abstaining from marriage is a clear example of this. The Prophet of Islam (May peace be upon him) commented on their work:

((وَاللَّهِ إِنِّي لَأَخْشَاكُمْ لِلَّهِ وَأَتَقَاكُمْ لَهُ، لَكَيْتِي أَصُومُ وَأُفْطِرُ، وَأُصَلِّي وَأَرْقُدُ وَأَتَزَوَّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَن سُنَّتِي فَلَيْسَ مِنِّي))

“By Allah, I am more submissive to Allah and more afraid of Him than you; yet I fast and break my fast, I do sleep and I also marry women. So he who does not follow my tradition in religion, is not from me (not one of my followers)”¹

In another incident, The Messenger of Islam (may God bless him and grant him peace) agreed to the advice of Salman Al-Farisi, may God be pleased with him, to Abu Dardaa, may God be pleased with him, when he said to him:

((عن أبي جحيفة عن أبيه قال قال أخى النبي صلى الله عليه وسلم بين سلمان وأبي الدرداء فرار سلمان أبا الدرداء فرأى أم الدرداء متبذلة فقال لها ما شأنك قالت أخوك أبو الدرداء ليس له حاجة في الدنيا فجاء أبو الدرداء فصنع له طعاما فقال كل قال فإني صائم قال ما أنا بأكل حتى تأكل قال فأكل فلما كان الليل ذهب أبو الدرداء يقوم قال نم فنم ثم ذهب يقوم فقال نم فلما كان من آخر الليل قال سلمان فم الآن فصليا فقال له سلمان إن لربك عليك حقا ولنفسك عليك حقا ولأهلك عليك حقا فأعط كل ذي حق حقه فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذَلِكَ لَهُ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدَقَ سَلْمَانُ))

Abu Juhaifa reported: The Prophet, peace and blessings be upon him, made a fellowship between Salman and Abu Darda. Salman visited Abu Darda and found his wife Umm Darda dressed in worn out clothing. He asked her why she was like this. She said, “Your brother Abu Darda is not interested in this world.” Then Abu Darda entered and prepared a meal for Salman. Salman asked Abu Darda to eat with him but he said, “I am fasting.” Salman said, “I will not eat until you eat.” So Abu Darda ate with him. When the night time arrived, Abu Darda stood for prayer but Salman asked him to sleep, and Abu Darda slept. After a while Abu Darda arose again but Salman asked him to sleep. When it was the last hours of the night, Salman asked him to get up and they both offered night prayers. Salman said to him, “You have a duty to your Lord, you have a duty to your body, and you

¹ Muslim, Abū al-Ḥusayn ‘Asākir ad-Dīn Muslim ibn al-Ḥajjāj ibn Muslim ibn Ward ibn Kawshādh al-Qushayrī an-Naysābūrī, Book 67, Kitāb Al Nikāh, Hadith 1, No.5063, Dar ul Salam

have a duty to your family, so you should give each one its rights.” Abu Darda came to the Prophet and told him what happened. The Prophet said, “Salman is correct.”¹

Hence it is meant here that one needs to rest, eat, sleep, spend time with family and take care of guests as well. These rights cannot be ignored during prayer, fasting, and recitation. This is the beauty of Islam that it carries proportions for every religious activity that accounts to be moderate and balanced.

Release the burdens : One of the important features of Sharia is that it makes things easy and removes the burden. The Holy Quran introduces the personality of the Prophet (may peace be upon him) in these words:

﴿الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ ۗ فَاَلَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ ۙ أُولَٰئِكَ هُمُ الْمُفْلِحُونَ﴾

“Those who follow the Messenger, the unlettered prophet, whom they find written in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them. So they, who have believed in him, honored him, supported him and followed the light which was sent down with him - it is those who will be the successful.”²

One may think that law of prohibition is tough and restricting us to adopt a natural life style but this argument can be easily refuted by the fact that numbers of prohibitions like *khamar* (liquor) and pork that are mentioned through explicit text. For the sake of understanding lets analyze an example from the Hindu religion. Brahmins and a group of philosophers, who subsist on vegetarian food, are only forbidden to themselves kill and eat animals. They claim that slaughtering animals is cruelty that men commit on these creatures which are living beings like them and should not deprive animals from their right to live. However, when we think about creation, we realize that these animals were not created with a free will, as they were not blessed with reason or freedom of choice; we see that, too their natural condition is that they submit to the service of man. So it is irrational to observe that a person will not benefit from their meat after slaughtering as well as benefit from their service while they are alive. If the prohibitions are creating unnatural restrictions

1 Bukhari, Abū ‘Abd Allāh Muḥammad ibn Ismā‘īl ibn Ibrāhīm ibn al-Mughīrah ibn Bardizbah al-Ju‘fī al-Bukhārī, Al Jami’ Al Shahih Bukhari, Kitab Al Saum, Hadith#1867.

² Verse 7:157

it will create hardship and mankind will suffer to an extent, it will let go the commandments and thus will be sinful and answerable in the court of law.¹

Another verse also confirms this relief in these words:

﴿يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ﴾

God wills everything for you; He does not want to put you in trouble.²

He described Muhammad in a verse as "*mercy to the worlds*."³

The Messenger, may God bless him and grant him peace, describes himself as a "gifted mercy". Several ahadith confirm this fact. One Hadith is mentioned that is in response to the Bedouin who urinated in the Mosque of the Prophet:

﴿فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ "أَهْرَبُوا عَلَيْهِ سَجْلًا مِنْ مَاءٍ أَوْ دَلْوًا مِنْ مَاءٍ" ثُمَّ قَالَ "إِنَّمَا بُعِثْتُمْ مُبَسِّرِينَ وَالْمُتَّبِعُونَ مُعَسِّرِينَ"﴾

"....But Prophet said: 'Pour a bucket of water over it - or - a tumbler of water over it.' Then he said: 'You have been sent to make things easy (for the people); you have not been sent to make things difficult for them.'⁴

Hence, the most practical thing about the *Shari'ah* law is that it relaxes the burden over its practitioner. Indeed it's a mere blessing over the Muslims by the law giver.

Easy provisions: this point could be understood in the context that the *Shari'ah* Law gives permission and easy rulings in almost all rituals when it created a burden: tayammum can replace ablution if water is lost; Salah can be abbreviated and combined if traveling; One can pray sitting or lying down if it is difficult to stand up; It is permissible to break the fast in Ramadan for the traveler, the sick, pregnant and breastfeeding mother.

Another aspect of *Shari'ah* ease is that it is easy to understand. Although the Qur'an and the traditions of the Messenger (May God bless him and grant him peace) are deep and sophisticated, they make it easier for people to understand and contemplate it. Almighty said in his book:

﴿وَلَقَدْ يَسَّرْنَا الْقُرْآنَ لِلذِّكْرِ فَهَلْ مِنْ مُدَكِّرٍ﴾

"Indeed, the Qur'an has made us easy to understand and remember"⁵

Synergy through mutual cooperation: The teachings of Sharia are mutually supportive. They create synergy between people, as they help each other to promote

¹ Yousaf Al- Qaradawi, The Lawful and Prohibited in Islam, Wisdom International School for Higher Education Studies (WISHES), p 19.

² Verse 2: 185

³ Verse 21:107

⁴ Abū 'Īsā Muḥammad ibn 'Īsā as-Sulamī aḍ-Ḍarīr al-Būghī at-Tirmidhī, Jami' at-Tirmidhi, Hadith 147, Chapter 112, Book of Purification: "What Has Been Related About Urine That Touches The Ground".

⁵ Verse 54/17

goodness and remove evil. The law also establishes synergy between people and their leadership at all levels. Allah says:

﴿وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ ۚ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ ۚ أُولَٰئِكَ سَيَرْحَمُهُمُ اللَّهُ ۗ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ﴾

“The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give *zakah* and obey Allah and His Messenger. Those - Allah will have mercy upon them. Indeed, Allah is exalted in Might and Wise.”¹

The individual and society are nurtured by the synergy between development and the positive impact (also known as *tarbiyah*) on the one hand, and abiding of laws and regulations on the other hand. Qur’an emphasizes this particular point:

﴿لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ ...﴾

“We sent our messengers with clear signs, and we brought down the book and the balance (truth and error), so that men would stand in justice ...”²

Laws Practically implementable in the society through repentance- hit and trail method: *Shari’ah* came to deal with humans as they are. Acknowledges their needs and desires. God knows actual needs of the people because He created them and knows they need to eat, drink and marry. They have material needs and they need the same way that they have their spiritual and emotional needs. God created people from the mire and breathed into them their soul.

Therefore, Sharia recognizes that humans will advance and descend, and may guide people, or may be lost. He recognizes the fact that people are weak and may disobey and will need to learn how to repent.

“Handhala, may God be pleased with him, the companions of the Prophet, believed that he was a hypocrite because he was not with the Prophet (May peace be upon him) all the time, causing decline in his Iman. The Apostle attributed him by admitting that this is the nature of mankind”.³

¹ Verse 9/71

² Verse 57/25

³ Muslim ibn Hajjaj, Sahih Muslim, Book 50: The Book of Repentance, Chapter: The Virtue Of Constant Dhikr, Thinking Of The Hereafter, And Remembering That Allah Is Always Watching; Permissibility Of Stopping That Sometimes, And Attending To Worldly Matters, Hadith#14.

Regarding the practical nature of the law, God made everything permitted with only a few harmful things. God opened a very wide door to repentance - always, no matter what sin. God Almighty said in the Noble *Qur'an*:

﴿وَاللَّهُ يُرِيدُ أَنْ يَتُوبَ عَلَيْكُمْ﴾

“Allah wants to accept your repentance”¹

The Messenger may God’s prayers and peace be upon him, says:

﴿وَلَيْسَتِ التَّوْبَةُ لِلَّذِينَ يَعْمَلُونَ السَّيِّئَاتِ حَتَّىٰ إِذَا حَضَرَ أَحَدَهُمُ الْمَوْتُ قَالَ إِنِّي تُبْتُ الْإِسْلَامَ وَلَا الَّذِينَ يَمُوتُونَ وَهُمْ كُفَّارٌ ؕ أُولَٰئِكَ أَعْتَدْنَا لَهُمْ

عَذَابًا أَلِيمًا﴾

“However, repentance is not accepted from those who knowingly persist in sin until they start dying, and then cry, “Now I repent!” nor those who die as disbelievers. For them we have prepared a painful punishment.”²

Acknowledgment of differences due to difference of Opinion: Sharia also recognizes the differences between people, nations and cultures. Therefore, the Messenger (May peace be upon him) used to answer the same questions differently, depending on the circumstances of the questioner. He treated the elderly differently from the young, and allowed his wife Aisha to play with the young women given their age. People would have been allowed to practice their culture as long as it did not contradict Islamic teachings. The Sharia also recognizes the need for rest and leisure to recharge energy as long as it is done appropriately without sins.

Shari’ah Preserved for Humanity over and above all other aspects: An important feature of Sharia is that it is the last *Shari’ah* of humanity providing all the information for the sake of establishment of the code of life flawlessly. It will continue to survive and reach generation after generation. Therefore, God preserved and protected his resources. The Qur'an was sent to a community known for its preservation capacity. The whole book is kept in people's memory. The Qur'an reaches us through a long, yet powerful chain of narrators who memorized the Qur'an as revealed to the Messenger, may God bless him and grant him peace.

It was also written and preserved at the time of its revealing and compilation in one book a few months after the death of the Prophet, peace and blessings be upon him. The enemies of Islam failed to enter a single letter into the Qur'an. The Almighty said:

¹ Verse 4/27

² Verse 4:18

﴿إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ﴾

“We descended on the dhikr and will protect it”.¹

Moreover, the tradition of the Prophet was preserved even after deliberate attempts to corrupt it and introduce new things to it. God enabled Muslim scholars from the past and the present to develop one of the most noble sciences, i.e. the science of hadith, a science concerned with documenting the traditions of the Messenger (May God bless him and grant him peace). The effort to distinguish the authentic traditions of the Prophet from those weak or fabricated is unprecedented in the history of mankind. One must feel comfortable and proud that the law is protected by its sender.

2.2.4 Concept of *Al Hukm al-Shar'i* (الحُكْمُ الشَّرْعِي) and its classification:

The *Hukm e Shari'*, *taklifi* and *wad'i* related to the financial issues is a great matter of concern in Islam. It is because of the fact that the knowledge about the legality about any financial transaction is based on the divine knowledge. Hence in the personal capacity it is very important for every Muslim to equip him/ herself to have the basic knowledge about all the prohibited elements in a financial issues or should know the opinion of the Shari'ah scholars about it, that make the transaction fall under the category in haram, *makruh* or *mubah*.

Islamic financial institutions have Sharia boards or experts that analyze and approve financial goods and transactions to make sure they comply with the principles of *Hukm-e-Shari*. These scholars are knowledgeable in both Islamic law and contemporary finance, and it is their responsibility to offer advice on the legitimacy of financial transactions and goods according to Islamic law. Maintaining the integrity and adherence of Islamic finance to Sharia standards requires this procedure.

It's significant to highlight that Islamic financial institutions and scholars may use *Hukm e Shari'ah* in different ways. Although there may be many interpretations and practices, the main goal is to match financial operations with Islamic values of justice, fairness, and moral conduct.

¹ Verse 15:9

The term of *al hukm al shar'i* is a specialized term that elaborates actually about the any case related to *Sharī'ah* that needs clarification in way that it recognizes its actual position from variant levels of permissibility (*ḥalāl*) to Prohibited (*ḥarām*). The definition pin points the elaboration:

”الأقرب أن يُقالَ في حدِّ الحُكْمِ الشَّرْعِيِّ أَنَّهُ خِطَابُ الشَّارِعِ الْمُفِيدُ فَائِدَةً شَرْعِيَّةً.“¹

“The closest to be said in the definition of Al Hukm Al Shar'i; it is the useful speech of the Law Giver (Almighty Allah) that gives the benefits of *Sharī'ah* based upon the code of conduct or way of life.”

One of the contemporary scholar defines and expands the meaning of the discussed terminology in these words:

The *ḥukm shar'ī* (*aḥkām*) in its literal sense carries the meaning of a rule of Islamic law.

Thus *aḥkām* (rules) is the plural form of *ḥukm* (rule), which means rule, command, the absolute, order, judgment, injunction, prescription, and decree.²

Technically, it is considered a rule of Islamic law that defines adillah as the science of the proofs of *fiqh* and the indications that they provide with regard to the *aḥkām* of the *sharī'ah*³.

Hukm shari then again carries three basic elements in it. *hakim*, *muhkam fiḥ* and *muhkam alayh*.

Hakim: The law giver in an Islamic law is known as *hakim*. *Hakim* not only holds authority to execute law rather He is the primary source to all the knowledge. Therefore has the ultimate power to make rules and Law for the mankind. Almighty himself elaborates the fact in Quran:

﴿قُلْ إِنِّي عَلَىٰ بَيِّنَةٍ مِّن رَّبِّي وَكَذَّبْتُمْ بِهِ ۗ مَا عِندِي مَا تَسْتَعْجِلُونَ بِهِ ۗ إِنْ الْحُكْمُ إِلَّا لِلَّهِ ۗ يُقْضَىٰ الْحَقُّ ۗ وَهُوَ خَيْرُ

الْفَاصِلِينَ ﴿٤٥﴾

Say, "Indeed, I am on clear evidence from my Lord, and you have denied it. I do not have that for which you are impatient. The decision is only for Allah. He relates the truth, and He is the best of deciders."⁴

Hakim is a very unique power through which arise the concept of reward and punishment. Almighty says in the holy Quran:

¹ الأمدى، أبو الحسن سيد الدين علي بن أبي علي الإحكام في أصول الأحكام، (المكتب الإسلامي)، بيروت، ص 95/1

² Kayadibi, Saim. *Principles of Islamic Law and the Methods of Interpretation of the Texts (Uṣūl al-Fiqh)*. (Kuala Lumpur: Islamic Book Trust) 106. ISBN 978-967-0526-33-1, 2017

³ Ibid

⁴ Verse: 6:57

” يَوْمَ نُقَلِّبُ وُجُوهُهُمْ فِي النَّارِ يَقُولُونَ يَا لَيْتَنَا أَطَعْنَا اللَّهَ وَأَطَعْنَا الرَّسُولَ ﴿٦٦﴾ “

The Day when their faces are flipped into fire, they will say, “if only we have obeyed Allah and obeyed his messenger”.¹

The *Mahkum fih*: it is the action on which *hukam* maneuvers. It is the actions, rights, and obligations of the *Mukallaf* (bearer of the responsibility) that constitute the subject of the order, prohibition, or Permissibility. This is because all orders and prohibitions are concerned with the actions and behavior of the person concerned. Talking about the financial obligations that occur due to the qualification of paying it by the Mukallaf, for E.g. zakat, khums, dam etc.

The *Mahkum alay*: It is the subject (legal person) for whose conduct of the *hukm* is stipulated. It is the person whose calling requires judgment or judgment requires him to act in a specific way. A person who possesses legal capacity, whether acting directly or through delegation of authority; he comes under the above role. Hence, that person must be able to understand God’s command (communication that creates an obligation) and must also understand the reasons for his responsibility to become responsible.

2.2.5 *Hukm e Taklifi* (defining Laws) and its Classification:

Islamic law basically revolves around *halāl* (permissible) and *haram* (prohibited). In between these two positions lie other mild and harsh positions. These positions confirm the relationship of command over Human kind by Almighty-*The* lawgiver in accordance to their overall behavior.

In accordance with law that is align with the *Sharī‘ah*, its jurisprudential division basically falls under certain levels of accountabilities that are categorized into Five levels, which are *Wajib*, *Mandub*, *Mubah*, *Makruh* and *haram*. However Hanafī school of thought added two more level with in the five-level classification based on the "certainty" of the evidence. These two levels are based on obligations and prohibitions for the one who either is qualified for the act or otherwise, namely:

- Obligation of the Commandments (اوامر): Once the Mukallaf qualifies the condition of any action, he has to fulfill the requirement and obligation attached to that act to fulfill that Hukm.

¹ Verse: 33:66

- Prevention of Sinful acts from Prohibition(نواهي) : Once the *mukallaf* is not qualified for the compliance of any action, the action is prohibited and if he/she is involved in an action that is prohibition he/she is sinful. E.g. act of fornication

Practical application from this distinction is that, “commandments and Prohibitions” become part of the Islamic Law which means that they are not only part of the code of Islamic practice but also The Islamic belief system. This implies the fact that any of these levels if didn’t taken into account will surely endanger one’s faith. While issues related to, “Obligation or “Sin” is not a matter of dogma or belief in a sense one must strive to its level best.¹ These divisions are as follows:

Obligatory (fardh واجب فرض): It is the announcement which totally demands the performance of an act. Its performance is demanded by the Law giver in binding term as *Aamdi* says in his famous book:

”الْوَجُوبُ الشَّرْعِيُّ عِبَارَةٌ عَنِ خِطَابِ الشَّارِعِ بِمَا يَنْتَهِضُ تَرْكُهُ سَبَبًا لِلذَّمِّ شَرْعًا فِي حَالَةٍ مَا. 2“

“The legal obligation is an expression of the discourse of the Law Giver what the abandonment of it rises, as a reason for the vilification of a law in any case.”

Omitting such performance will lead to punishments as per the guidance of the law giver. *Wajib* has different classes that depend upon the criteria we are dealing with. They are as follows:

- **Wajib Mutlaq (واجب مطلق) and Wajib Mukallaf (واجب مقيد):** The first class is based upon its timing of offering a certain act. If the timing on an act is not restricted and the *mukallaf* is free to offer an obligation at any time suitable it is known as *wajib mutlak*. The classical example for this class is the payment of *kaffarah* and *nadhr* for fasting sometime suitable in future. If the timing on an act is restricted and the *mukallaf* is not free to offer an obligation at any time suitable it is known as *wajib muqaiyyad*. The classical example for this class is the five time prayers.

¹ Hyder, Gulam, Comparing The Legal Rules (Ahkam-I Shariah) In The Maliki And Shafii Schools With The Hanafi School Of Thought, Jurnal Ilmiah ISLAM FUTURA Vol. 16. No. 1, Agustus 2016, 1-8

² الامدي، الإحكام في أصول الأحكام ، 98/1

- ***Muhaddad and Ghair Muhaddad*** (محدد و غير محدد): The second class is based upon the extent and amount of the act required. If the extent of amount required is determined by the law giver it is known as *wajib muhaddad*. The classical example is again five time prayer and zakat obligation. Once the cause is found, both the acts become liable to offer due to the time restriction plus specific amount of the act imposed by the lawgiver. While *wajib ghair Muhaddad* is vice versa, here the extent and amount isn't determined by the law giver. Classical example for this class is the amount paid for the remuneration of the ex-wife and children and looking after the expenses of the next of kin, as no amount is declared by the Law giver therefore court or *Qazi* has the authority to decide the amount payable by the ex-husband.
- ***A'yni and Kafai*** (عيني و كفائي): The third class is based upon the person who is liable and has the capacity to offer the act. If the lawgiver has declared an act to be offered by every single capable person it is known as *wajib a' yni*. Classical examples are prayers, fasting and *hajj*. If the requirement of an act is community based and fulfillment of the act is not on every single person. It is known as *wajib kafai*. Classical example is offering *funeral* prayer in a community. In this case the *funeral* prayed by some will be sufficient and the whole of the community will be exempted.
- ***Mua'yyan and Ghair Mua'yyan*** (معين و غير معين): The fourth class is based upon the termination of the object of an act. If the act is required by the law giver specifically and there is no choice in termination of the act it is known as *wajib muayyan*. The subject must perform the act as it is, without terminating any object of an act. Classical example are five time prayers, fasting and payment of due wages. If the act isn't specific and the subject can *opt* any determined act, it is known as *wajib mukhayyar*. Classical example is the breaking of an oath. The subject has the option to adopt accordingly: providing food for ten needy people, or clothing them, or the freeing of the slave.

Difference between Fardh and Wajib: In the Shafi'i and Maliki school of thought, there is no difference between *Fardh* and *wajib* for any obligatory or non-obligatory worshiping act performed according to its conditions. Henceforth it is necessary for its

validity that all its elements are obligatory and must be performed accordingly. It is also to be noticed that inadmissibility of performing an act of worship intentionally invalids the whole act.¹

Wajib, therefore is an obligation that arises from a specific source or evidence دليل قطعي. The Hanafi School of thought however calls this as *Fard*. For them, *wajib* is a little weaker in terms of raising its Evidence, for speculative interpretation is open in it. One of its main differences of *Fard* from the term *Wajib*, is that denial of *Fard* is considered to be as a disbelief (*Inkar* انكار, Blasphemy). While *Wajib* is also an absolute binding and it must be performed or one will face Punishment due to its non-performance but at the same time he won't be considered to fall into *Kufr*.²

Preferable: (*Mustahab* مستحب/*Mandub* مندوب): It is the announcement which indecisively demands the performance of an act. Its performance is not binding on the subject from the law giver and hence no blame or punishment is assigned in case of omission of the act. Aamidi says:

«الْمَنْدُوبُ هُوَ الْمَطْلُوبُ فَعَلُهُ شَرْعًا مِنْ غَيْرِ ذَمٍّ عَلَى تَرْكِهِ مُطْلَقًا»³

“Al Mandoob is a term that refers to a demand which is required in accordance with the Shar’; quitting it is will bring to legal responsibility upon the bearer at all.”

The junction must be in the form of text or any known general principles of *Sharī‘ah*. Classical example is writing an agreement in an event of transaction. For instance the verse of Quran indicates:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ﴾

O you, who have believed, when you contract a debt for a specified term, write it down.⁴

But the next verse proves the fact that recording of the debt is recommendable and not binding in its nature:

﴿وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ، فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ﴾

And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah⁵.

¹ Shihabuddin, Abu al-'Abbas Ahmad ibn an-Naqib al-Misri, Umdat as-Salik wa 'Uddat an-Nasik, translation: Reliance of the Travelers: A classic manual of Islamic sacred law, translated by Nuh Ha Mim Keller, USA: Sunna Books, 1994, 30.

² Dogan, Recep, *Ahkam Shar'i (Values of Islamic Law). In Usul al-Fiqh methodology of Islamic jurisprudence*, Centre for Islamic Studies and Civilization, Clifton, NJ: Tughra Books, 2014, 15.

³ الأملدي، الإحكام في أصول الأحكام ، 119/1

⁴ Verse 2:282

⁵ Verse 2:283

Again, there are three main classes of *mandub* known as *sunnah muakkadah*, *sunnah ghayr muakkadah* and *sunnat zawa'id*. If the act is persistently performed by the prophet (peace be upon Him) and didn't let go the action except for some occasions it is then known as *Sunnah muakkadah just like two rakats of Sunnah in Fajr prays*¹. Here it must be noted that if the action is compulsory for the completion of *wajib* the subject will remain answerable and his/her personality maybe doubtful but he/she won't be liable for punishment. Another classical example is *adhan* and congressional prayers. Moreover, if the act isn't performed in a sequential way rather Prophet (peace be upon Him) performed it in a non-sequential manner it is known as *Sunnah ghar muakkadah*. No blame or punishment is to be imposed on the non-doers of such act. Classical example is four rakats before *asr* and *isha*. While the acts performed by the prophet (peace be upon him) which are considered to be of daily routine matters as a human being are known as *sunnah zawa'id* just like his dress, food, perfumes, his character, his dealings in family/social matters or market behaviors are all set examples and are worthy to be followed. Who so ever adopts such acts out of love and affiliation with the personality of the Prophet (Peace be upon him) his liable for the reward. No doubt or punishment is imposed on the non-doers of such acts.

Permissible (Mubah / مباح / جائز): Imam Aamidi has defined Permissible Acts (Mubah) as follow:

”أَمَّا الْمُبَاحُ فَهُوَ فِي اللُّغَةِ مُشْتَقٌّ مِنَ الْإِبَاحَةِ وَهِيَ الْإِظْهَارُ وَالْإِعْلَانُ، وَالْأَقْرَبُ فِي ذَلِكَ أَنْ يُقَالَ: هُوَ مَا دَلَّ الدَّلِيلُ السَّمْعِيُّ عَلَى خِطَابِ الشَّارِعِ بِالتَّخْيِيرِ فِيهِ بَيْنَ الْفِعْلِ وَالتَّرْكِ مِنْ غَيْرِ بَدَلٍ.“²

“In case of Mubah, it is derived from the word *Al-Ibaha* and it is to show something or announce some news So, the nearest in this regard, it is said: it is a proven fact with respect to which, it is preserved as it is, in accordance to the speech of the Law Giver with a grant of an option, to perform that action or to quit, avoiding any change”.

It is the announcement which confers a choice between the performance and omission of an act. It is the third degree performance act where it is less weighted than *mandub*. It is mentioned in noble texts like words mentioning “*there is no harm for you*” or by saying “*it is no sin for you*”. The procedure to call an act *mubah* is known as *istishab* which states

¹ Qadri, *Sayyad Shah tahir ul haque*, The Book Of Prayer (Kitaab-ul-Salaat), The Rakaats In Prayer, Translation: Qadri, Farid, ahl e Sunnah, 2001, 22, <https://www.ahlesunnat.biz/salaat.pdf>, retrieved on 17th September

² الامدي، الاحكام في اصول الاحكام، 126/1

that anything that is not expressly prohibited or considered detestable by the law giver is permissible:

”الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم”¹

In Principal everything is permissible until it’s proven otherwise which will lead to its prohibition.

This sharia maxim is based on the concept of reverse psychology. Hence all contracts and transactions are permissible, unless there is evidence indicating that it’s not permissible or *ḥalāl*. Act like extant of eating, doing business, playing and spending time with the family and the list goes on. These actions are good to go till the extant its allowed.

b) Discouragable Act (*makruh* مكروه): It is the announcement which indecisively demands to refrain from an act. Unlike other scholars, scholars of *hanafi* school of thought, *makruh* is divided into two types; *makuh tehrimun* and *makruh tanzihun*. Both categories are described as follows:

- ***Makruh Tehrimun*** (مكروه تحريمي):The first one is likely to fall under the category of *ḥarām* and is considered to be opposite to *wajib*. According to *hanafi* scholar it is an act whose omission has been demanded by the lawgiver in certain terms through probable evidence. Classical example is sending engagement message upon another sent earlier that response is still waiting, giving an offer over a sale where response is still pending. Technically speaking the evidence is based on a *khobar wahid*. Hence if someone denies such evidence is liable for punishment, though he will not be imputed to *kufr*.²
- ***Makruh Tanzihun***(مكروه تنزيهي): The second type is a simple *makruh*, a disapproved act, here lawgiver demands an omission of an act in non-binding terms, whatsoever maybe the type of evidence but its omission is better than commission. It is discouraged act whose denying may also not impute to *kufr*. Classical example is doing sale purchase at the time of congressional prayers. Although it has a relaxed *hukm* in comparison to the *makruh tehrimun* but one shouldn’t make a habit of doing such acts in routine.³

¹ الأشباه والنظائر، عبد الرحمن بن أبي بكر، جلال الدين السيوطي، (دار الكتب العلمية)، الطبعة: الأولى، 1411 هـ - 1990م، 1/60

² Kamali, M.H, Principal of Islamic Juresprudance, Defining Law, Makruh, IIUM, part 2, 89,

³ Kamali, M.H, Principal of Islamic Juresprudance, Defining Law, Makruh, IIUM, part 2, 89,

- **Forbidden act (ḥarām حرام):** It is the announcement which demands totally to refrain from an act. Unlike the *hanafi* scholars, opinion built by the *jamhur* scholars is that it is not important whether the evidence produced for *Hukm* is probable or definitive, the result will be binding in its nature. However examples of *ḥarām* act with definite evidence are eating pork, murder with intention to kill, unlawful sexual intercourse, marriage with *muharramat* in relation and the list goes on. *ḥarām* again is classified into two types: prohibited due to an internal and external factor. Here it is important to note that in case of later prohibition (due to some internal effects), no beneficial legal effects or gains maybe observed. Classical example is a baby born due to the result of unlawful legal intercourse. Hence the baby will be deprived from the benefits of inheritance, while theft can't be a reason for the claim of ownership. If the prohibition is due to some external factor, the act is legal in itself once the factor is out of the sight. This is known as *muharram li zatihi*. Classical example is fasting at the day of Eid. Here it's important to note that prohibition due to internal effects can't be permitted until its compulsion *idtirar*. Like drinking alcohol in the event of ultimate thrust, uncovering parts of bodies for necessary act inevitable to perform just like surgical operation of a body part that comes under the *Hukm of Hijab*.¹

2.2.6 *Hukm Wad'i* and its Types:

Types of *Hukm Wadi*: The word *Wad'i* means to lay or lie down. Technically, it's a list of elements that the legislator's declaration of something be a cause (*sabab*) or a condition (*Shart*) or Impediment (*Man'i*). There are three basic types of *Hukm Wadi*, *Sabab*, *Shart* and *Man'i*.

Sabab (cause سبب): It is the reason on the basis of which the *Hukm taklifi* is invoked or established.² For example sunset is the *sabab* for the *magrib* prayers.

Shart (condition شرط): The word *Shart* literally means an inseparable sign. Technically speaking, *Shart* means a thing whose absence assure nonexistence of the object of the subject (*mashrut*), but its presence does not necessarily assures the existence of the

¹ الأشباه والنظائر، عبد الرحمن بن أبي بكر، جلال الدين السيوطي، دار الكتب العلمية، الطبعة: الأولى، 1411 هـ - 1990م، 59d1/60

² Im am, Al Ghazali, Abu Hamid Muhamamd bin Muhamamd, Al Mustafa min ilm al usul, 1, 93.

subject matter.¹ For example *shart* (condition) of praying is to fulfill the compliance related to it like kibla direction, cleanliness of the cloths and the place etc.

Man'i (Impediment مانع): *Man'i* 'is the attribute whose existence entails non-existence.² For example a father will not be killed in compensation for killing his son or mensuration period is considered *Man'i* for the conduction of Prayers.

There is another classification of *Hukm Wad'i* as follows: *Sahih, Fasid* and *Batil*.

Sahih (valid صحيح): *Sahih* is a thing whose basic elements and terms are brought together as far as it is recognized by the *Sharī'ah* with its regard to the command. Hence prayer, fasting, and sale are valid when the circumstances and essential elements of each of them are present.

Fasid (irregular فاسد): *Fasid* is defined as that which is legitimate by its nature but not legitimate by its attribute.³ Hence, its removal for the object is mandatory to make it valid. For example in a contract of sale the element of *Gharar* and interest is considered to be *fasad* until it is cleansed from the transaction. This division is only considered to be true by the *Hanfi* scholars while majority of the scholars see as a synonym to the word *Batil*.

Batil (invalid باطل): *Batil* is an element that confirms neglecting the objects in all the possible respects, even though the object exists. It is due to nonfulfillment of the rights of disposition due to the incapacity of the person.⁴

2.3 *Sharī'ah* Prohibitions in the light of *Maqasid al-Sharī'ah*

Understanding that Islamic culture is varied due to the difference in the civilizations practicing Islam in different ways is crucial. Therefore, sustaining *Maqasid al-Shari'ah*

¹ Ibid.94

² Ibn Al-Lahham Al-Bali Al-Hanbali (736-795). *al Mukhtaar fi Usti' al Fiqh, Makkah*, (Jami'at al Malik Abd al Aziz), 1980, 67.

³ Muhammad Ijaz, *Classification of Hukm Shar'I and Comprehensiveness of Shariah*, (Sheikh Zaid Islamic Centre), 2016, 3,

⁴ Saad Uddin Al Taftdzani (712-791 H), *al-Talwih 'ala al-Tawdih li-Matn al-Tanqih fi Usul al-Fiqh* , Matbah Muhammad `Ali Sabih wa-awladih, vol 1, 123

calls for a context-specific strategy that takes into account local quirks while supporting the core ideas and goals of Islamic law. The ideals of *Maqasid al-Shari'ah* in Islamic culture are promoted and preserved in large part because to the work of Islamic scholars, community leaders, and educators.

In order to uphold *Maqasid al-Shari'ah* in Islamic economics, a thorough and all-encompassing strategy that takes ethical, social, and spiritual considerations into account is necessary. It is the responsibility of scholars, politicians, and practitioners to ensure that economic operations are governed by the Islamic teachings' tenets of justice, fairness, and compassion.

Collaboration between academics, decision-makers, financial institutions, and the general public is crucial for maintaining *Maqasid al-Shari'ah* in Islamic economics. While addressing the potential and problems of today's economy, it is necessary to make ongoing efforts to bring economic practices into line with Islamic ideals.

Islamic injunctions are always purposeful and meaningful. This phenomenon is meaningful and makes the society to be cultured and on the strong footing based on values. This phenomenon is known as *Maqasid al-Shari'ah*. It is important to know that according to the *Shari'ah* law financial transaction must fulfil the objectives of the *Shari'ah*. Hence it is not enough to say that particular transaction is valid or invalid.

This means that there should be a meaningful relation between the validity of the transaction and the objectives of *Shari'ah*. Any transaction or contract that offends or jeopardises any of these objectives is invalid under *Shari'ah*. It is pertinent to note here that the *maqāsid al-shari'ah* are alternately referred to as Rights of Allah S.W.T in Islamic Law. The right of Allah in *Shari'ah* refers to everything that involves the benefit of the community at large. *Taftazani* defines *Huquq* related to Allah in the following words:

“By the rights of God is meant that which comprehends a public benefit, not peculiar to any individual”¹.

¹ Mas'ud ibn 'Umar Taftāzāni, al-Talwiḥ, Cairo: Maktabah Muhammad 'Ali Ṣabīḥ, 1957, vol.2, .151

2.3.1 Definition and Further elaboration of *Maqasid al-Sharī'ah*

Imam Shatibi has defined the *Maqasid Al Sharī'ah* as under:

”معرفة الحكم والغايات والأسرار التشريعية الثابتة العامة الشاملة، المقصودة في جنس التشريع العام لتحقيق

مصالح العباد في الدارين التي وُضعت الشريعة من أجلها.“¹

“Knowledge of governance, goals, and comprehensive general statutory secrets, intended in the genus of general legislation to achieve the interests of people in this world and here after, for which the *Sharī'ah* was established”.

Lateral meaning of the term *Maqasid* which is plural of *Maqsid* has a verity of meanings like purpose, objective, principle, intent, goal and end.² All of these meaning refer to the purpose/objective/ principle/ intent/ goal/ end related to the Islamic rulings given by the Jurists. One of the earlier scholars of who came up with the idea of *Maqasid al Sharī'ah* was Imam al *Juwainī*³ thought it to be parallel to the concept of Public interest. No doubt in a broader concept of *Maqasid Al Sharī'ah*, is the main objective and goad of every Jurist that he has to attain when it comes to the solution of a unique problem never dealt before.

However one of his successors, Al Imam Abu Hamid al-Ghazali elaborated *Maqasid al Sharī'ah*, which he placed entirely under what he called ‘unrestricted interests’ known as *Al Maslaha Al Mursalah*⁴. The idea is highly adored by the later jurists of Islam. Al-Qarafi Linked up *Maqasid Al Sharī'ah* by a ‘fundamental rule’ that he stated as

“Any purpose that is not valid unless it leads to the fulfilment of some good Mafa’ah or the avoidance of some mischief (mafsadah).”⁵

Other eminent jurists like Imam *Al-shatbi*, *Al-Gazali* and *Al-Ashure* also defined it in more or less in same meaning.

¹، إبراهيم بن موسى بن محمد الشاطبي، (1320–1388)، الموافقات، (دار ابن عفان)، الطبعة الأولى 1417هـ/ 1997م، 1/1

² Mohammad al-Tahir Ibn Ashur (1879 – August 1973), *Ibn Ashur-Treatise on Maqasid Al-Shariah*, trans. Mohamed ElTahir El-Me sawi, vol. 1st (Lonzdon-Washington: International Institute of Islamic Thought (IIIT), 2006), ii

³ Dhia' ul-Dīn 'Abd al-Malik ibn Yūsuf al-Juwaynī al-Shafī'ī was a Persian Sunni Shafī'i jurist and mutakallim theologian. His name is commonly abbreviated as Al-Juwayni; he is also commonly referred to as Imam al Haramayn, meaning "leading master of the two holy cities", that is, Mecca and Medina. He was Born: February 17, 1028, Neyshabur, Iran and Died: August 20, 1085, Neyshabur, Iran. His Era of Middle Ages was the Islamic Golden Age.

⁴ Al Ghazali, Abu Hamid Muhammad ibn Muhammad al-Ghazali(c. 1058 – 19 December 1111), *al Mustasfa min ilm al usul*, Baghdad, 1294 A.H, vol 1, 172

⁵ Shihāb al-Dīn Abu 'l-Abbās Aḥmad ibn Abi 'l-'Alā' Idrīs ibn 'Abd al-Raḥmān ibn 'Abd Allāh ibn Yallīn al-Ṣanhājī al-Ṣa'īdī al-Bahfashīmī al-Būshī al-Bahnasī al-Miṣrī al-Mālikī (also known as simply known as Shihāb al-Dīn al-Qarāfī or al-Qarāfī, (1228–1285), *Al-Dhakheerah* (Beirut: Dar al-Arab, 1994) vol. 5, 478.

There is another dimension of *Maqasid al Sharī'ah* that is interlinked with the legislation side. Among them Fakhruddin al-Razi, Al *Amidi* and Najmuddin *alTufi* were more of this view by defining it in these words:

“What fulfils the purpose of the Legislator”.¹

However one of his successors, Al Imam Abu Hamid al-*Ghazali* elaborated *Maqasid al Sharī'ah*, which he placed entirely under what he called ‘unrestricted interests’ known as *Al Maslaha Al Mursalah*². The idea is highly adored by the later jurists of Islam. This idea is more interlinked with the application side of the problem. Al-*Qarafi* Linked up *Maqasid Al Sharī'ah* by a ‘fundamental rule’ that he stated as:

“Any purpose that is not valid unless it leads to the fulfilment of some good Mafa’ah or the avoidance of some mischief (mafsadah).”³

2.3.1.1 Levels of *Maqasid Al Sharī'ah*

Traditionally, *Maqasid* are divided into three basic levels which are named as necessities (*darūrah*), needs (*hajiyah*), and luxuries (*tahsiniyaat*). Necessities, as per *Imam Al Ghazali*, who is the creator of the idea, further revolve around preserving *Sharī'ah* goals through preservation of one’s faith, soul, wealth, mind, and offspring. These necessities are considered to be essentials for stable human life itself. There is also a general agreement that the preservation of these necessities is the ‘objective behind any revealed law and not just the Islamic law. Purposes at the level of needs and luxuries are considered not that compelling because of the reason that life carries out smoothly even in its absence but with some difficulties. Examples are marriage, trade, and means of transportation. Islam encourages and regulates these needs but having said that, the lack of any of these needs is not a matter of life and death, especially on an individual basis. Especially at the level luxuries, life is more cherishing and promising such as using perfume, stylish clothing, and beautiful homes. These are things that Islam encourages, but also asserts how they should take a lower priority in one’s life. The levels in the hierarchy are overlapping and

¹ Najmuddin al-Tufi, *Al-Tain Fi Sharh Al-Arbain* (born 673 AH / 1276 CE Baghdad-Died 716 AH / 1316 CE, (Beirut: al-Rayyan, 1419 H) 239.

² Al Ghazali, *Al Mustasfa min ilm al usul*, Baghdad, 1294 A.H, vol 1, 172

³ al-Qarafi, Shihāb al-Dīn Abu 'l-Abbās Ahmad ibn Abi 'l-'Alā' Idrīs ibn 'Abd al-Rahmān ibn 'Abd Allāh ibn Yallīn al-Ṣanhājī al-Ṣa'īdī al-Bahfashīmī al-Būshī al-Bahnasī al-Miṣrī al-Mālikī (AH1228– AH1285) *Al-Dhakheerah*, (Beirut: Dar al-Arab, 1994) vol. 5, 478.

interrelated. In addition to the theory, each level should serve the level(s) below. ¹ Imam *Shatibi* while discussing the concept of *darūrah* clearly stated that, it shouldn't be considered in the areas of Ibadah. He stated the idea that it should be only considered in the matter of *mu'āmalāt* (worldly matters).² Also, the general lack of one item from a certain level moves it to the level above. For example, the decline of trade on a global level, for example during the time of global economic crises, moves trade from a need level into a life necessity level and so on. That is why some jurists preferred to perceive necessities in terms of 'overlapping circles,' rather than a strict hierarchy. However it is the level of necessity that makes objectives of *Sharī'ah* questionable if its purpose not served.

There are five notable principle objectives of *Sharī'ah* that are discussed under the chapter of necessities (al *darurah*), unanimously accepted by the *Sharī'ah* scholars:

- **Preservation of Din (religion):** These five essentials are derived from the Sharia as essential and fundamental to human existence. Therefore, every society must preserve and protect these five imperatives; otherwise, human life will be cruel, brutal, poor, and miserable here and in the hereafter. For example, to establish the first necessity, religion, whatever is required and needed as useful tools to actually establish and fulfill the necessity of spirituality contained in the divine law, such as: all principles, rituals, and belief in angels, Messengers, Day of Resurrection and so on. All these things are mentioned to serve the purpose to establish spirituality as a necessity in the presence of humans on earth.
- **Preservation of Nafs (life) :** The second necessity, which is life, is guaranteed by obtaining legitimate means of livelihood, such as food, Marriage, medicine, shelter, etc. A way to protect it is through enforcement provided Punishments stipulated in the Divine Law. For example adultery, false accusation, murder, and Suicide are those sins that directly influence the life itself and hence can't be forgone.
- According to the Islamic Divine Law life is a necessity and it is one of the top priorities that must be preserved at all costs. After all killing is prohibited in Islam,

¹ Ishak, Hj. Suliaman, *The Theory Of Priority Of Maslaha Over The Legitimacy Of Nass Of The Qur'an And The Hadith: A Conceptual Discussion*, Vol. 4, AL-BAYAN Journal of Al-Quran & al-Hadith, ISSN:1394-3723, 79-88

² Al-Shatibi, Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī (720 – 790 A.H./1320 – 1388 C.E.), *Kitāb al-i'tisām*, (Dar Al Kutub Al Ilmiyah), volume#2, .375-379.

and whomsoever kills a person it is as if he or she has killed all humans, or the human race. Every human is a unique representative of mankind; if all people died except one, then that person is the only one who represents mankind among other existences such as animals and trees. For this importance of life Islam ranked it as a top priority to be necessarily preserved and protected. Since humans do not always respond to the rules of legislation and sometimes act against their own interests, thus the legislature made strict legislation to punish the act of killing.

- **Preservation of Aql (Intellect):** The same holds true for the third necessity, intellect. It must be assured that all activities related to the intellect must be under strict supervision of *Sharī'ah* law that will insure that society must not be kept unrest and unease when it comes to the information that comply any restricted foreign agenda, prejudice thoughts, casting evil programs and other forms of information that can eventually compromise this very principle that confirms the necessities. Especially Muslim youth is seem to be problematic when exposed to an immature material like pornography, violence and other activities mainly carried out now day through media.
- **Preservation of *Nasl* (progeny):** It is necessary and essential to the existence of the human race. The benefit of reason to the human existence might be beyond reason. Thus, it is secured by lawful means of sustenance, and protected against destruction by a set of rules and punishments. For example, anything that diminishes the intellect's ability to function properly such as alcohol or any similar substance is prohibited. I will give further elaboration on intellect when I discuss reason and revelation.
- **Preservation of *Mal* (property):** In regard to property, which is very beneficial and necessary to the human life, divine law facilitates all lawful means for its acquisition, and secures it by defending the right of ownership through penalizing theft. Any financial transaction or contract that ignores, jeopardizes or offends these established objectives of the *Sharī'ah* is an invalid transaction in the eye of the *Sharī'ah* itself.

2.3.1.2 A broader Aspect of Sharī‘ah- Maqasid Al Sharī‘ah: *Maqasid al Sharī‘ah* refers to the higher objectives of Islam. According to *Al Imam Al- Juwayni*:

It refers to the goals and purposes of sharī‘ah either generally (al-Maqāsid al-āmmah) or in reference to its particular themes and subjects (al-maqāsid al-khāssah).¹

This definition is based on the theory of universality related to *Maqasid al- Sharī‘ah* by the eminent scholar *Al-Shatibi*. According to his understanding, the purposes of *Sharī‘ah* can be categorized into three types:

- *Al Maqasid- al-āmma* (objectives based on the general purposes) which are the objectives of *Sharī‘ah* for the benefit of the people.
- *Al Maqasid al-Khāssah* (objectives based on the Specific purposes) which are the objectives of Sharia in a specific dimension or aspect of life, such as intentions in commercial affairs, family life or the criminal court.
- And *Maqasid al- Juziyah* (objectives based on the partial purposes) which are the aims or wisdom of Sharia behind a specific activity such as family responsibility to meet goal of marriage and avoiding continuous harm to abstain from divorce. ²

Maqasid Al Sharī‘ah has a pivotal role in the *Ahkam* laid by the Lawgiver. It is a scientific method to observe the underlying causes for which a certain law maybe commenced. Not only this, it assures that the certain benefits expected or harms repelled from a given law must be fulfilled in its true letter and spirit. In the current modern age laying down laws that are in full conformity to the Islamic law is not an easy task at all. For a *Mujtahid* it is compulsory to have good hold on sharia knowledge so that it may be possible for him to deduct new *Ahkam* in the light of the objectives *Sharī‘ah*.

Maqasid Al Sharī‘ah comes out of to root words *Maqsad*, firstly *Maqasid* which means objectives and secondly *Sharī‘ah* which refers to Islamic law. Thus *al maqāsid al Sharī‘ah* takes a good care of all the aspects of *Sharī‘ah* that ensures will being or at least meaningful survival of human race. Hence *Sharī‘ah* is a concept that welcomes its experts to have a balance approach. From individual to a society, harmony must prevail in every single aspect and circle of life. In the war of attaining highest of luxuries to the lowest of survivals human race must not be ignorant. Surely this objective can’t be attained until the institution

¹ Al Juwayni, Abdul al-Malik Ibn Abdullah Al-Juwayni (419-478H), *Al-Burhan fi usul al-fiqh (annotated by Abdul-Azim al-Deeb)* (Qatar: Wazarat al-Shu’un al-Diniyyah, 1400 AH), 183.

² Al-Shatibi, *Al-Muwafaqat (the Reconciliation of fundamentals of Islamic Law)*, General publishing limited, Uk, Vol. 1, 7

doesn't lay down certain parameter within its legal system. This legal system must be ensure a flexible approach so that a diverse society may inculcate all its integral functions intact and one must not feel himself/ herself alien to that specific environment. One can buy a latest model automobile but he must not forget that being part of a society he has certain obligations as well that he/ she must fulfill in order to feel free and safe and not feeling alien to its environment due to his lavish style of living. He/ She must pay *zakat* per annum, *sadaqat* time to time and must keep a close eye on the lifestyle of its neighborhood so that sense of deprivation must not prevail in the society. Thus *Maqasid al Sharī'ah* provides basis for the *Sharī'ah* itself to exist with its true traits. It ensures a collective wisdom of a God fearing society that he/she wants to live a decent life in accordance with the junctions of *Sharī'ah*. This ethical test of a synthetic and inclusive approach is thoroughly debated under the heading of *Maslaha*.

2.3.2 Understanding the terminology of Al Maslaha Al Mursalah: *Masaleh* are deducted from the underlying cause or attributes of the *Ahkam*. According to Imam Ghazali, *Maslaha* is an expression of procuring benefit or deferring harm, not necessarily aligning with the objectives of the creation. It refers to the benefits preserving the *Sharī'ah*'s objectives of religion, life, intellect, progeny, and wealth.¹

The Principle of *Al Maslaha Al Mursalah* help in many ways to preserve the interests of public through securing ease of life and repulsion of unavoidable situations faced by Muslim societies as a whole. Some of the important points related to its composition are as follows:

- *fiqh* in its entirety composition is based on the best interests of society. What is desired is the benefit and evidence for that, and harm is forbidden, and there are many indications for that. This is a fixed origin agreed upon by *Fuqaha* (Muslim jurists). None of them claimed that the Islamic Sharia brought anything that was not in the best interest of the people, nor did any of them say before that there is anything harmful in any law or ruling in the

¹ Abū Hameed Al-Ghazāli, *Al-Mustasfa*, 275

Sharia that was legislated for Muslims. Although there is no disagreement on its basis, there may be an application to it.¹

- The Sharia contains an explanation of everything that results from the welfare of people. This fact is proven through the concept of analogy. Hence, any injunction present in the text, can be inferred and applied to a text by analogy, and the mujtahid cannot discover any welfare until and unless there is no testimony to it in the Sharia. Imam Al-Shafai was the author of this opinion. Therefore, he launched an all-out attack on all those who considered that there was no benefit that had been approved through *Istihsan* which is considered a secondary source of legislation of *Shai'ah* from the legislator. According to the Al *shafai*, the basis of his opinion is based upon the fact that Allah who is the Lawgiver can't neglect the welfare; Rather, Allah (S.W.T) did not leave the believer in vain. Any existence to a benefit must be delivered to the society for a larger good. Allah says in the Qur'an:

"Does man reckon he will be left to go on unimpeded?"²

Life is constantly evolving. So the *Masaleh* related to life are always changing every time. If these *Masaleh* are not updated and adjust to the interest of the people, they would be in collective trouble. Avoiding it in a way that it does not violates the Sharia goal which leads to the preservation of common Interest and stay away from hardships.³

- The main goal of descending *Sharī'ah* is to provide an environment to their believer that is more beneficial and less harmful. Allah said to his Messenger in Qur'an:

﴿وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ ۗ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ مَلَأَ آبَائَكُمْ إِبْرَاهِيمَ ۗ هُوَ سَمَّاكُمُ

الْمُسْلِمِينَ﴾

“And Struggle for (seeking the pleasure of) Allah, a struggle that is owed to Him. He has chosen you and did not impose any hardship on you in the religion, the faith of your father Ibrāhīm”.⁴

1 Abdulmalik Oricha Ali, Maslaha Al Mursalah; the concept, sources, history and benefits as a source of Islamic Law, NCEIF (Intern. Centre for Edu. in Islamic Finance) , 2013, 7

² Verse 75:36

³ Maslahah as an Islamic Source and its Application in Financial Transactions, The Validity Of Maslahah As Islamic Source, Quest Journals Journal of Research in Humanities and Social Science, Volume#2, Issue 5 (2014) pp: 66-71, ISSN(Online) : 2321-9467, #3,

⁴ Verse 22:78.

- The scope of *Masaleh* is wider than *Qayas* (deduction). Many historical events advocate to the facts. Compilation of Qur'an from the fear of its loosing, Battle of *Abu bakr* Siddique (May Allah be please with him) against those who violated the law and refused to pay Zakat. All these examples and like are proof of the fact that *Al Maslaha Al Mursalah* are legal source of law.¹
- The *Maslaha* is something that is genuine in nature as opposed to an imaginary *Maslaha* that is not worthy of it. Legislation wise, there must be a reasonable possibility that the benefits may be transferred like abstaining harms it may entail otherwise. An Imaginary/ delusional *Maslaha* example is the devolution of husband's right to divorce by authorizing it completely to the court.²
- The underlying cause has variable levels from lower, parallel to higher orders. Classical example is the prohibition of wine. Underlying cause at the lower level is intoxication. While at the underlying cause at the higher level is protecting ones intellect required to perform *Ibada'h* especially.

The two words *Maslaha* and *manfa'ah* are synonyms to each other. Literally speaking, it means benefit or Utility. It is defined as the seeking of benefits and repelling of *ḥarām*. In the modern philosophy this law is similar to the law of Utility expounded. This law was initially discussed by Jeremy Bentham, according to him it means securing the maximum Human happiness.³ Although the definition is close to the meaning of *Manfa'ah* but it clearly lacks the meaning of *Maslaha*. However, technical meaning of *maṣlaḥah* is different, it is seeking of benefits and repelling of *ḥarām* as stated by the lawgiver. This elaborated fact is evident in the definition of *Al Ghazali* regarding *Maqasid al Shari'ah*:

“What we mean by *maṣlaḥah*, however is the preservation of the ends of the shar' ”⁴.

¹ Wahbah Mustafa al-Zuhayli (1932 – 8 August 2015), *Al-Wajiz fi Usl Al-Fiqh*. (Damascus: Dar Al-Fikr), 2006, 92

² Laldin, Mohammad Akram. *Islamic Law: An Introduction*, Kuala Lumpur International Islamic University of Malaysia (2006)

³ Bodenheimer, Edgar, *Jurisprudence: the philosophy and method of the law*, (Harvard University Press) p 84

⁴ Al Ghazali, *Al Mustasfamin ilm al usul*, Baghdad, 1294 A.H, vol 1, 286.

Preservation of the ends of *Shar'* here refers to the *maṣlaḥah mu'tabarāh*. *Masaleh Mu'tabarāh* are considerable circumstances in the eye of *Sharī'ah* because they doesn't clash with the objectives principles of Islamic law. Classical example is the underlying cause of prohibition of wine is intoxication, this can be extended to other intoxicating items and law can execute them as *ḥarām* items. So, by generalizing the underlying cause we are able to preserve the life which will preserve the society as a whole. So we can say that preservation of life is one of the *Masaleh Mu'tabarāh*. On the other hand if any sort of clash arises while preserving the end of *Sharī'ah* then those *maṣāliḥ* will be considered as *maṣlaḥah mulghat*. All of these *maṣāliḥ* are well identified and pin point to the extent there is less or eligible margin of error. The problem lies in identifying *Hukm* in the newly recorded cases. This is catered in another type of *maṣlaḥah* whom *Sharī'ah* has not spoken out and considered to be new cases confronted. These are known as *maṣlaḥah Mursalah*. The word *irsal* means to *let go*. Which means that the solution for the issue being considered, the text have let gone of it.

Dr Alauddin Al Zafrani elaborates the terminology in a scholarly way saying:

”وأما المصلحة المسكوت عنها: فهي التي لم يرد في اعتبارها أو إبطالها دليل خاص من الكتاب أو السنة أو الإجماع أو القياس، لكنها لم تخل عن دليل عام كلي يدل عليها، فهي إذن لا تستند إلى دليل خاص معين، بل تستند إلى مقاصد الشريعة وعموماتها، وهذه تسمى بالمصلحة المرسلة. وإنما قيل لها مرسلة لإرسالها؛ أي: إطلاقها عن دليل خاص يقيد ذلك الوصف بالاعتبار أو بالإهدار ولهذا قيل أن نحكم على عمل بأنه حلال لأن فيه مصلحة، علينا أن نبحث عن نوع المصلحة؛ فإذا كانت ودائع البنوك وشهادات الاستثمار - مثلاً - تدخل تحت عقد القرض فكل زيادة على رأس المال هي من الربا النسبنة المحرم، فليس لأحد أن يقول بالحل لأن فيها مصلحة كما يدعي.“¹

As for the term Al Maslaha Al Maskoot: it is the case about which the Lawgiver didn't specify any evidence or proof from Quran, Sunnah, through consensus and analogy that may potentially specify its being right or wrong, but it did not abandon it, as general evidence that indicates it, then it is not based on a specific evidence, but rather is based on the purposes and general characteristics of the law, This is called Al Maslaha Al Mursalah. Rather, it was said to be Mursalah due to its being sent; that is: specific evidence been tagged that restricted the description of its characteristic in consideration either enforcing

¹ د. علاء شعبان الزعفراني، الأحكام الفقهية لسوق رأس المال، ج:2، ص: 324، الناشر: دار الصفوة بالقاهرة، الطبعة الأولى 1436هـ - 2015.

it or rejecting it. Therefore, before we judge a practice as *ḥalāl* because it is a *Maslaha* to deem so, we have to search for the exact *Maslaha*. If for example any transaction entered under the loan contract, proven to be an increase in the capital creates usury, then that is forbidden, so no one can say that it is *Maslaha* because it has an amount of interest claimed.

Hence, the application of *maṣlaḥah Mursalah* comes in action, once the jurist fails to find the solution of the problem directly from the primary sources of *Sharī‘ah*. It is because he can’t create a direct link from the text. Thus the jurist can’t find the rule for the desired case through literal interpretation nor can he extend the application from a certain rule through *qiyas*. The only way to find the solution is to look up all the evidences collectively provided in the legal texts related to the certain issue. Classical example of *maṣlaḥah mursalah* is the compilation of Quran. Although the orderly series of surah was declared by prophet peace be upon him but it wasn’t written into book form until in the late period of reign of *Abu Bakar Siddique* (may Allah be pleased with him). The decision was taken in a larger canvas and greater interest of preservation of *din*. Another example with different perspective is the ruling of Umer (may Allah be pleased with him) against a murder. Umar (may Allah be pleased with him) abrogated the rule of *qisas*. He maintained his decision to kill all of those who planned to kill and not just one who actually killed the person. This decision was again taken in the larger canvas of preservation of life. In Quran Allah says:

“In retaliation there is life for you”¹.

However this definition of *Maslaha* is assimilated with other attributes that directly affect its application. Say for instance Imam Ghazali stance about *Masalaha Mursala* is required to fulfil any utter important need (*darūrah*) to sustain the flow of life in accordance to its *Maqasid* related to *Sharī‘ah*. These essentials that guarantee objectives of *Sharī‘ah* are preservation of life, *din*, wealth, mind and off springs. This means that the outcome of application of *Maslaha Mursalah* will totally be dependent on these essentials. *Imam Ibn e Taymiyyah*² on the other hand, expanded the scope of these essentials and declared that preservation of *Sharī‘ah* in not just limited to the former essentials. Gowhar Quadir Wani talks about it as, *Maslaha* is an expression of procuring benefit or deferring harm, not

¹ Verse : 2:179

² Ibn e Taymiyyah, Taqī ad-Dīn ‘Aḥmad ibn ‘Abd al-Ḥalīm ibn ‘Abd al-Salām al-Numayrī al-Ḥarrānī, known simply ibn Taymīyyah, (d. 728/1328), He was a Sunni ‘Ālim, muhaddith, judge, proto-Salafist theologian, and sometimes controversial thinker and political figure

necessarily aligning with the objectives of the creation. It refers to the benefits preserving the *Sharī'ah*'s objectives of religion, life, intellect, progeny, and wealth.¹

2.4 *Maqasid Al Sharī'ah* related to the Prohibitions in Islam:

The chapter of prohibitions in *Sharī'ah* has a very significant role to play and finding its objectives or reasoning has always been a very interesting part that the Islamic Jurists have been performing for long. On the first place some unchangeable rules will always stand forth that are commonly noted in all prohibited actions/activities/things.

The theme of the topic also undertakes discussion about the *Sharī'ah* prohibitions and its different dimensions related to the causes of making things *ḥalāl* or *ḥarām*. After analyzing these common ingredients in the prohibitions one can easily understand the fact that it is for the betterment of the humanity; keeping them away from the harms or it. These points maybe as follows.

The Basic rule of permissibility: Talking about the general conduct of *Sharī'ah* is that until a revelation or an underlying cause for declaring something *ḥarām* is evident, things must be considered as *ḥalāl*. Jalal-ud-Din Suyuti says:

”الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم.”²

The Basic As/ Refers to the Permissibility of Things.

The holy Quran advocates the fact:

﴿يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ ۖ تَبْتَغِي مَرْضَاتَ أَزْوَاجِكَ ۗ وَاللَّهُ غَفُورٌ رَحِيمٌ﴾

“O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful”.³

This is the first principle that everything that God Almighty created and the benefits derived from it for the benefits of men are permitted. Nothing is forbidden except for what is forbidden by an explicit and explicit text (i.e., either a Quranic verse or a clear, authentic and explicit Sunnah of the Prophet, peace and blessings of God be upon him, which are the two main sources of Islamic Law). This is clear from the following text (verse).

¹ Gowhar Quadir Wani, *Beyond the Five Essentials: A Study of Ibn Taymiyyah's Extension of Maqāsid al-Sharī'ah*, (India International Islamic Academic Conference 8-9 October), 2016, India Islamic Cultural Centre New Delhi, India

²الأشياء والنظائر، جلال الدين السيوطي، 1/60

³ Verse: 66/1

Technically speaking, if an explicit text (*nas*) isn't available in shape of Quranic verse or in a clear, explicit and authentic Hadith/ *Sunnah*; nothing is *ḥarām*. Consequently, if the text of Quran and Hadith isn't sound, meaning thereby if a particular Hadith is Weaker or it doesn't explicitly states the prohibition or there arise a contradiction in the text and so on and so forth, the original law of permissibility will prevail. It is interesting to note that a very small number of texts in Quran and Hadith both clearly and explicitly indicated the prohibited acts. The hadith of the prophet (may peace be upon him) narrates:

((مَا أَحَلَّ اللَّهُ فِي كِتَابِهِ فَهُوَ حَلَالٌ , وَمَا حَرَّمَ فَهُوَ حَرَامٌ , وَمَا سَكَتَ عَنْهُ فَهُوَ عَافِيَةٌ فَأَقْبَلُوا مِنْ اللَّهِ عَافِيَتَهُ , فَإِنَّ اللَّهَ لَمْ يَكُنْ نَسِيًّا , ثُمَّ تَلَا هَذِهِ آيَةَ ﴿وَمَا كَانَ رَبُّكَ نَسِيًّا﴾ 1)) 2

“What Allah has made lawful in His Book is *ḥalāl* and what He has forbidden is *ḥarām*, and that concerning which He is silent is allowed as His favor. So accept from Allah His favor, for Allah is not forgetful of anything”.

He then recited,

"And thy Lord is not forgetful.

This maxim offers certain *Sharī'ah* based Objectives as follows:

- The basic aim of *Sharī'ah* is to avoid unnecessary hardships and unwanted restrictions.
- *Sharī'ah* never prohibits anything that makes *Mukallaf* in a position of rejecting it, due to the Non-Compliance of its basic requirements and needs to continue the life circle.
- *Sharī'ah* if prohibits anything, it is for the benefit of *mukallaf*. This means that *Sharī'ah* wants to abstain the harms way for the followers by establishing path more secure and safe
- If there isn't any prohibition revealed for any concerned issue of life, the basic principal is to continue the activities, until and unless something is established otherwise.

***The basic rule in Munhyaat* الأشياء المحرمة *is Prohibition*:** this means that what is prohibited will stay prohibited forever: this rule is derived from the maxim that says:

¹ Verse : 19:64

² أبو الحسن علي بن عمر، سنن الدارقطني، مسند البزار، 26/10

”الأصل في النهي انه يقتضي لتحريم“¹

”The Basic (Asl) ruling of don’ts (النهي) in things is subject to Prohibitions”

This regulation is unanimous amongst most of the Scholars. Ibn Abd al-Barr, may God have mercy on him, said: “And in it: that it is forbidden by God, if it is mentioned, then it is prohibited, unless it is removed from that by evidence showing what is meant otherwise. The Messenger of God once asked about the trade of Alcohol, may God’s prayers and peace be upon him, he replied:

“Did you not know that God forbade it? Then he said: The one who forbade drinking it is forbidden to sell it?”²

Imam Shafi remarked to this particular phenomenon in these word:

”أَصْلُ النَّهْيِ مِنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ كُلَّ مَا نَهَى عَنْهُ ، فَهُوَ مُجَرَّمٌ حَتَّى تَأْتِيَ عَنْهُ دَلَالَةٌ تَدُلُّ عَلَى أَنَّهُ إِنَّمَا نَهَى عَنْهُ لِمَعْنَى غَيْرِ التَّحْرِيمِ إِذَا أَرَادَ بِهِ نَهْيًا عَنْ بَعْضِ الْأُمُورِ دُونَ بَعْضٍ ، وَإِنَّمَا أَرَادَ بِهِ النَّهْيَ لِلتَّنْزِيهِ عَنِ الْمُنْهَى وَالْأَدَبِ وَالِإِخْتِيَارِ“³

Translation: “Basic concept while forbidding something/action by the authority of the Prophet, may peace be upon him, is prohibition. It will be considered as prohibited until some evidence compels otherwise by declaring certain act prohibited and the rest isn’t, or the prohibition is for the cause of letting it go, due to attainment of purity, ethics and authority”.

Although it is complex debate that goes on between the scholars about the prohibitions and permissible/s but having said that the general rule indicates that there is always some sort of harm in the things until and unless it is cleared from the point of view of *Sharī‘ah*.

This maxim offers certain *Sharī‘ah* based Objectives as follows:

- The main objective of *Sharī‘ah* is to make sure that the Mukallaf must know about the prohibited things.
- It is not important to know specifically; why the thing is prohibited? Hence if something is prohibited from the view point of *Sharī‘ah*. It will remain the same even if the cause and effect theory does not support the prohibition itself. There is another very important maxim that supports the above reasoning. It says :

¹ الفزويني، السيد علي الموسوي (ت: ١٢٩٨هـ)، تعليقة على معالم الأصول، تحقيق ونشر مؤسسة النشر الإسلامي، قم ، ط ١ ، ١٤٢٢هـ، ج ٤ ص ٤٩٠

² الشيخ محمد الصالح المنجد دلالة النهي على التحريم ، وذكر بعض الصوارف التي تصرف النهي من التحريم إلى الكراهة،

³ Shafai, Abū ‘Abdillāh Muhammad ibn Idrīs al-Shāfi (767–19 January 820 CE) , *Kitāb Al Umm*, (Dar al Ihya Al turath Al A’rabi, Beirut), IAD Academy, 55469 : *المشاهدات*, 10th October, 2017.

“لا قياس في مقابل النص”¹

“There is no analogy acceptable that is confronting the basic text”

Block chain effects due to the commission of Prohibited activity: For instance, it is obligatory on every single Muslim to earn in a way that is compliant with the guidelines and principles of *Shari‘ah*. *Hazrat Jabir* (May Allah be pleased with him) narrated that the Holy Prophet has said:

“There is no flesh raised that sprouts from the unlawful except that the Fire is more appropriate for it.”²

Ibn Mas‘ud narrated that *Rasulullah* said:

“A slave (of Allah) who acquires *ḥarām* wealth and gives charity from it, it is not accepted from him. If he spends from it, he does not have any blessing (*barakah*) in it. If he leaves it behind him (i.e. he dies) it will be a means of taking him to the fire (of Hell). Verily, Allah does not wipe out evil deed with evil deed; instead, He wipes out evil deed with good deed. Indeed, the repulsive does not wipe out the repulsive.”³

Therefore it is a foremost duty of a believer to adopt means and ways that are acceptable in the court of Allah S.W.A. Not only the sin of attaining such wealth through any unlawful for the one who is involve is limited to him/her but also has the tendency that it will directly or indirectly effect those who are affiliated with him/ her. The sin of attaining *ḥarām* food is so greave that it disturbs all the departments of Human Life. His/her character, circle of social life, acts of worships, his *muamalat* (financial issues) even if they are acquired through right means and even the stages of life hereafter are not safe from the curse of attaining unlawful/ *ḥarām* that he attained. Point to be noted here is that it doesn’t matter that he did it out of greed, deliberately or mistakenly, he /she will reasonable and answerable in the court of Allah s.w.t. May Allah save us all from indulging in activities not approved in the highest court of Allah s.w.t.

Prophet (May Peace Be upon Him) said:

(يسروا ولا تعسروا، وبشروا ولا تنفروا.)

¹ زكريا بن غلام قادر ، أصول الفقه على منهج أهل الحديث ، القاعدة الثانية لا قياس في مقابل النص ، المكتبة الشاملة الحديثة ، ص61-

² Tirmizi, Abū ‘Īsā Muḥammad ibn ‘Īsā as-Sulamī ad-Ḍarīr al-Būghī at-Tirmidhī (824 – 9 October 892 CE / 209 - 279 AH), *Jami` al-Tirmizi*, BaabSajda Tilawat Ke Ehkaam O Masail, Hadith no. 614

³ Ahmad, Aḥmad bin Muḥammad bin Ḥanbal Abū ‘Abd Allāh al-Shaybānī (November 780 – 2 August 855 CE/164–241 AH), *Musnad Ahmad*, (Darrusalam), Hadith no. 3672,

“Make things easy and don’t make things difficult, give glad tidings and don’t preach hatred”¹.

Unfortunately, our society doesn’t bother to understand that by following rituals and adopting certain practices that are not in line with *Sharī‘ah* is basically putting oneself into harm’s way. One must understand the fact that the things prohibited in the framework of *Sharī‘ah* is for mankind’s own benefit and his own good. It may contain impurities that can be harmful for his health or behavior. Likewise, the Prophet Muhammad (May peace be upon him) was asked about the cheese, margarine and fur, he said:

Muslim follow what Allah has in his book and let go what God has forbidden in his book, and for the things about which he is silent about, He has pardoned them.²

One of the bad habits of the Pagans of Makkah was that they use to declare certain beliefs that were just based on mere guesses. They did this act to an extent making things *halāl* and *ḥarām* instead.

These types of self-imposed actions are totally unacceptable in the eye of *Sharī‘ah*.

Another way of looking toward the *Sharī‘ah* perception about the prohibition law is to see through the weight of its being beneficial. *Sharī‘ah* on the first step considers all things and acts permissible that are completely beneficial and then in the second step all those things and acts are totally prohibited that are completely harmful and then lastly if anything or act over through its benefits toward its harms and impurity, it again falls into category of *ḥarām*. This is way gambling and wine is prohibited in Islam. Islam isn’t ignorant to admit its benefits but emphasizes on the original position and that its harms outweighs its benefits. This Principle is explained in the Qur'an in relation to wine and gambling:

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ ۖ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا ۗ﴾

﴿وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْغَفْوُ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَتَفَكَّرُونَ ۗ﴾

They ask thee concerning wine and gambling. Say (Oh Prophet): In them is great sin and some benefit for human beings, but the sin is greater than the benefit.³

¹ *Bukhari*, Abū ‘Abd Allāh Muḥammad ibn Ismā‘īl (b 122 Ah-!97 AH) , *Sahih Bukhari*, Book 3, hadith 69
² Tirmizi, *Jami` at-Tirmidhi*, The Book on Clothing, Chapter: What Has Been Related About Wearing Furs, Book#24, Hadith#7

³ Verse: 2:219

Relaxation from the original rule of prohibition in compelling situations: Although the rules regarding the prohibitions is affirmative but the exception to the rule is always there. Hence the laws related to *Shai'ah* are wide and easy to adopt. Allah clears the fact in these words:

﴿قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ

الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَامَةِ ۗ كَذَلِكَ نُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ﴾

Say, "Who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?" Say, "They are for those who believe during the worldly life [but] exclusively for them on the Day of Resurrection." Thus do we detail the verses for a people who know.¹

Occasionally sometimes information about a particular thing or act isn't clear and its prohibition may be questionable. For instance in the case of carrion, pig and blood; Quran declares it *harām*:

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ ۗ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ

فَلَا إِثْمَ عَلَيْهِ ۗ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾

He hath forbidden you only carrion, and blood, and swine flesh, and that which hath been immolated to (the name of) any other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.”²

And yet for a long time before the advancement in scientific research it was unknown to the mankind about its harms and impurities. The only duty for a Muslim is to stay firm in his belief even if something isn't making sense. Quran clears the fact:

﴿وَقَالُوا سَمِعْنَا وَأَطَعْنَا ۗ غُفْرَانَكَ رَبَّنَا وَإِلَيْكَ الْمَصِيرُ﴾

" And they say, "We hear and obey. 'We seek' Your forgiveness, our Lord! And to You 'alone' is the final return." "³

A Muslim must follow the clear directions of Islam and must not fall in the trap of the devil. Yet, Another Islamic principle is that if something is prohibited, anything which

¹ Verse 7:32

² Verse 2:173

³ Verse: 2:285

leads to it is likewise prohibited. It is enough for a Muslim to abstain himself/ herself from an unlawful sexual intercourse rather it is diligent duty to strictly avoid whatever makes it attractive to do so.

Clarity in prevailing of Ahkam through avoidance of Hilah (حيله) while its application:

Islam is very clear about the *Ahkam*. All these *ahkam* are clearly mentioned in Qur'an and Sunnah. There is no confusion in the matters of permissibility and prohibition between the scholars of true conscious. However if someone knowingly or unknowingly misleads , confuses or deceives Muslims about it , Islam holds such a person or Institution responsible for it and they will be answerable in the highest court of Allah (s.w.a). The Prophet (may peace be upon him) said:

"Do not do what the Jews did in order to (technically) legalize Allah's prohibitions by flimsy excuses."¹

This *hadith* refers to the story of the Jews who made a trap for the fishes, to catch them on Saturday, which was declared as a holiday in their Book *Torah* and hunting or doing any business activities were *haram*. Even a clear and good intention won't work in reversal of a prohibited law and vice versa. The Prophet (may peace be upon him) then said:

A man travels far, unkempt and dust-stained (for *hajj*, *umrah*, or the like), raising his hands to the sky (and saying), 'O Lord! O Lord!' while eating what was *haram*, drinking what was *haram*, wearing what was *haram*, and nourishing himself through *haram* means. How then could his prayers be accepted?²

So the basic objectives are to abstaining *haram* and obtain cleanliness of the body and the soul as well. The root of this principle is the saying of the Prophet (peace be on him):

((الْحَلَالُ بَيْنَ، وَالْحَرَامُ بَيْنَ، وَبَيْنَهُمَا مُشَبَّهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ، فَمَنْ اتَّقَى الْمُشَبَّهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعَرْضِهِ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ: كَرَاعٍ يَزْعَى حَوْلَ الْحِمَى، يُوشِكُ أَنْ يُوَاقِعَهُ، أَوْ وَإِنَّ لِكُلِّ مَلِكٍ حِمَى، أَلَا إِنَّ حِمَى اللَّهِ فِي أَرْضِهِ مَحَارِمُهُ، أَلَا وَإِنَّ فِي الْجَسَدِ مُضَغَةً: إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ، وَإِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ، أَلَا وَهِيَ الْقَلْبُ.))³

¹ Ibn al-Qayyim, Shams al-Dīn Abū 'Abd Allāh Muḥammad ibn Abī Bakr ibn Ayyūb al-Zur'ī l-Dimashqī Ḥanbalī, *Ighathat al-Lahfan*, Egypt: al-Matba'ah al-Maymaniyah, 1320 AH vol. 1, 308

² Nawawi, Abu Zakariyya Yahya bin Sharaf Al Nawawi, الأربعون النووية, Hadith No:10

³ البخاري، أبو عبدالله محمد بن إسماعيل، صحيح البخاري، باب فضل من استبترأ لدينه، 20/1- مسلم بن الحجاج أبو الحسن القشيري، المسند الصحيح، 1219/3

The ḥalāl is clear and the ḥarām is clear. Between the two there are doubtful matters concerning which people do not know whether they are ḥalāl or ḥarām. Whosoever indulged into doubtful matters indulged into haram.¹

Just as Islam forbids everything that leads to the ḥarām, it also forbids resorting to technical laws for doing the forbidden with false excuses. For example, God Almighty forbade the Jews to fish on the Sabbath. To get around this, they would dig trenches on Friday so the fish would fall for them on Saturday and be caught on Sunday.

Concept of Heela (tricks, حيله) in Islam and its level in accordance to its acceptance:

Sharī‘ah describes *Heela* as, it is what leads to a purpose by a hidden way, that is, either you reach your goal in a clear, open way, or you reach your goal in a hidden way. However there are contain **Levels of Heela (tricks, حيله)** to accommodate a situation within the prescribed limits of the *Sharī‘ah* Law:

- One that is not recommended by the *Sharī‘ah* itself. For example if someone wants to avoid the give zakat or hajj rituals by giving a certain amount of charity known as اسقاط.²
- One that is recommended by the *Sharī‘ah* itself. For example concept of Murabaha is allowed by the *Sharī‘ah* scholars as it is a dual purchase (bai‘atān fī bai‘a) to avoid the prohibition of usury by making two contracts of purchase and re-purchase (at a higher price).

Status of Prohibitions/ prohibited acts in times of compelling needs: *Islam* also understands other circumstances or variables that may compel someone indulged into ḥarām; unwillingly and unwantedly. The principle under these unavoidable situations is different. These situation basically demands relaxation from the set rules and principles laid down by the *Sharī‘ah*. This is the principle of the last resort:

“الضرورات تبيح المحظورات”

Necessity Dictates Exceptions/ removes restrictions³.

¹ Ibe Hajar, Shihāb al-Dīn Abū ‘l-Faḍl Aḥmad ibn Nūr al-Dīn ‘Alī ibn Muḥammad ibn Ḥajar al-‘Asqalānī [al-Kinānī](#) (18 February 1372 – 2 February 1449 CE / 773 – 852 A.H.), *Al Kitāb Al Jama’*, Al Sharh, Bulugh Al Maram, latest Edition, Baab Al Zuhd, Hadith#1482

² It is a concept of payment of fine or a charge so that any left obligatory rithual is compensated by paying it.
³ درر الحکام في شرح مجلة الأحكام، علي حيدر خواجه أمين أفندي، المتوفى: 1353هـ، الطبعة الأولى ص: 37

One must be sure that the quantity of a *ḥarām* item must only be consumed in a sufficient quantity that removes the necessity. In this context, after listing the prohibited foods in the form of dead animals, blood, and pork, Allah says:

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهْلَ بِهِ لِغَيْرِ اللَّهِ ۖ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ ۗ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿١٦٧﴾

...But if one is compelled by necessity, neither craving (it) nor Transgressing, there is no sin on him; indeed, Allah is Forgiving, Merciful.¹

The importance of the issue is evident due to the fact that the verse is repeatedly descended at four places in the Quran. This is a beginning of a whole lot of a new discussion- General *Ahkam* are all subject to change in an uncertain situation. This important task ensures that the main objectives of *Sharī‘ah*, like preservation of din, life, intellect, wealth, self-respect and generation of the human race must be fulfilled at any cost beard. Once the task is fulfilled; general position of *Ahkam* laid by the *Sharī‘ah* is restored to its original state. This system of preservation of all acknowledged values by Islam is known as *Maqasid al Sharī‘ah*.

The prohibition implies corruption through acquiring means of invalidation (الفساد)

The word corrupt hear means falsehood (الباطل). This meaning is acceptable among the majority scholars. This meaning may imply in ritual acts: their occurrence in some kind of defect, as long as the duty remains intact, and in financial issues: until its effects makes it un-sequential and not as per the prescribed way of performance. These are fundamentalist principles that have branches and graduations, and it is related to this rule, which requires imposing restrictions until the corruption ends up. Hence declared relations will damage the marriage contracts, *Ribā* will invalidate any financial transaction and so on and so forth. Imam Shoukani, a great scholar is very much clear about this fact as he says:

”والحق أن كلَّ نهْيٍ من غير فرقٍ بين العبادات والمعاملات يقتضي تحريم المنهْيِ عنه وفساده للبطلان اقتضاءً شرعياً ، ولا يخرج عن ذلك إلا ما قام الدليل على عدم اقتضائه2.

¹ Verse 2:173

² امام، الشوكاني محمد بن علي، إرشاد الفحول إلى تحقيق الحق من علم الأصول، الناشر: دار الكتاب العربي الطبعة: الأولى، ص: 97-98

Translation: All forbidden acts are corrupt without any discrimination that they are from the chapter of rituals, financial issues, they all fall under the act of prohibitions and its corrupt element will cause it to cease from the point of *Sharī'ah* and it will never be pulled out from the circle of prohibition until and unless their maybe certain evidence may stand forth that will establish otherwise from the point of *Shai'ah*.

2.5 Examining Conditions of *Maṣāliḥ Mursalah* in the Modern age

It is important to first understand first about the Maqasid Al Shari'ah in this regard. It is because of the fact that office of *Maṣāliḥ Mursalah* is basically used for the establishment and attainment of higher objectives of *Shari'ah*.

Contemporary studies introduced new objectives of *Sharī'ah* that were induced directly from the texts, not from the work of jurisprudence literature in Schools of Islamic law. Significantly, this approach allowed the intentions to overcome the shortcoming of historical *fatawa* representing the values and supreme principles of the texts. So, detailed provisions will emerge from these general principles for more deep and thorough understanding.

Rashid Rida, a well renowned scholar of Islam while surveying the Qur'anic text to identify the objectives of *Sharī'ah* came with some variable points that were unintentionally left unnoticed by the former jurists. This include reforming the pillars of faith and spreading awareness of Islam as a religion of pure nature, reason, knowledge, wisdom, Evidence, freedom, independence, social, political and economic reform, and Women's rights.

Another great scholar Al-Tahir Bin Ashour suggested that the general objectives of Islamic law are the preservation of order, equality, freedom and facilitation and the preservation of purity (abundance). Here it should be noted that the purpose of the "freedom" proposed by Ibn Ashour and Many other contemporary scholars differ on the purpose of Slavery. Here a contemporary sense differs from the past because of the fact that now days Muslims are captive of the secular/ capitalistic order of the world especially the economic world order. He debated that main objective of *Sharī'ah* is to secure the Fundamentals of the Social System in Islam. This comes with the concept of freedom. It has many concepts like freedom of speech, freedom of belief and disbelief, freedom to

adopt a culture. He advocate that the background of freedom comes from concept of free will (*mashiyah*).¹

Yusef Al-Qaradawi in his Survey of the Noble Qur'an, he concluded the following appealing purposes that *Sharī'ah* suggested are Preserving faith, Human dignity and rights, inviting people to worship God, and purification of the soul, Restoring moral values, building a righteous family, fair treatment of women, and building a strong Islamic nation, and the call to a cooperative world. However, al-Qaradawi states that it is only necessary to propose a theory in universal purpose. It occurs after developing a level of experience with detailed texts.²

Taha Jabir Al-Alwani indicated that in the Qur'an, the supreme and prevailing purposes which according to him are monotheism, the purification of the soul, and the development of civilization.³

This proves that although the objectives of *Sharī'ah* are unchangeable but at the same time the compelling needs (*Dharurah*) keep on changing with effect to the time and condition that need to be addressed come forth that were either undressed or the it's compelling need wasn't there.

According to *Imam Ghazali Al maṣlaḥah Al Mursalah* must hold certain condition fulfilled:

- a) It must not conflict with the text. For example one can't kill a human being through desperation of hunger to fulfill his *dharurat* (necessity) of eating is not an acknowledged act in the sight of *Sharī'ah*. Also, preservation of life can't be secured by kill someone innocent.
- b) It must uphold the general preposition of Law. Therefore all the intoxicating goods are considered *ḥarām* in conformity with the law: all that intoxicate is *ḥarām*.
- c) It must also consider the implication of the text. Any meaning coming out of the *maṣlaḥah* varies from the objectives of the guiding text will not be accepted. Therefore watching a woman for a long time with lustful eyes

¹ Mohammad al-Tahir Ibn Ashur, *Usul Al-Nizam Al-Ijtima'i Fil Islam*, ed. Mohamed El-Tahir Mesawi (Amman: Dar al-Nafais, 2001) 256, 268

² Yusuf al-Qaradawi, *Kayf Nata'amal Ma'a Al-Quran Al-'Azeem?*, 1st ed. (Cairo: Dar al-Shorouk, 1999).

³ Taha Jabir al-Alwani, *Maqasid Al-Shari'ah*, 1 ed. (Beirut: IIIT and Dar al-Hadi, 2001), .25.

definitely abrogates the meaning of hadith that approves first glimpse on a woman unintentionally.

- d) It should lie in the range of *dharurat* (necessity). Which mean that the case must confirm one of the top five purposes of the *Sharī'ah*: preservation of din, life, wealth, integrity and generation.
- e) It should be *Qati* (definitive). That is we must be sure about the consequences and results from it.
- f) It should be general *kulli*. This means that it should be beneficial for the entire Ummah and general public as well.

If these condition are not fulfilled the *maṣlahah* will not be considered as *maṣlahah mursala* rather it will fall into the category of *gharib* (strange), that is it will be seen as an improbable case which May be accepted or denied due to uncertain results.

The word *kulli* means general. *Al Ghazali* however defines it as an act beneficial for the entire *ummah*. In this sense the scope of the meaning is limit only for *Ummah*. However general public interest is also one of its mandates. This means that definition of *Kulli* states its nature is a bit restricted to a specified area. Just for the sake of understanding and a food for thought, one may think the circumstances of the overall outcome of the events and realm of thought at the time of Islamic civilization was touching horizons; out of which *Al Ghazali* may have thought out the definition of *Kulli*. At that time *Ummah* was dominant in its diverse cultural values, *Sharī'ah* based economy and strong army position in the world that was well managing the defense of ideology and boarders of the Muslim World. *Maslaha* at that time was rightly understood by *Al Ghazali* because if *Ummah* wants to be in control of the current position, it may let go a concern for a while until the cause of it is over.

Maslaha also meant that a single unsolvable issue will be entertained at a time. This principal is also compromised in the current scenario as Muslim world is strictly following the west in almost all the spheres of life. Especially when the financial system is taken into account, it is compatible with the laws and condition to the western school of thought. This mean Muslim world is in line with the financial system that is based on the speculative economy due to the highly volatile paper currency. One can easily incur that Muslim world as its using the paper or any other facility equivalent to it in terms of its effect, confirms

that the decision of using currency was just a mere decision to in line it with the rest of the world rather the dynamics of the whole financial system that is now managed with the financial tools that allows the authorities to manipulate the currency in accordance with the market forces. The monetary policy could be tightened by increase in the interest rate or vice versa by increase in the spending from the government to stimulate the market making growth set at a higher pace. Hence it's a matter of time when this system is going to collapse as the bubble economy reaches to its full. It is beyond doubt that the financial system that is applicable right now in the world is to facilitate the capitalist mind set where the rich concedes to become richer and the poor seeks to be less prosperous due to the scarce available resources. Hence saying that adoption of the paper currency was a *Maslaha* that never had to be let go; at least one can easily draw inference that it doesn't fulfil the term and condition of *maṣlahah mursala*. It means that Maslaha is now more generalized than ever.

Now, taking the above discussion into consideration, at the current point of time nothing is same as past; Circumstances vary in every single aspect of life and its mandates. By far, nothing is controlled by the Muslim world especially when it comes to the financial system and its governing laws. Our culture, economy and weak army can neither defend its ideology nor its borders as it is violated by the western forces every now and then. In today world, Systems are imposed by the west on us. We live in a state where *balwa* is prevailed throughout in general. This means we are living in an environment that is totally compromised. None of the Islamic state could claim that it has established the *Sharī'ah* framework on the affairs of the state. In comparison to the past, presently certain other attributes maybe missing in the derivation of Ahkam from the tool of *maṣlahah mursala*:

- a) *Maslaha mursala* May not be only beneficial for the Muslim *community*: We live in an era, where stagnation prevails in our thoughts. The decision power required to deal with a particular problem seems missing that is considered as an unsolved case in the Islamic theology. This weakness has shuddered belief of public on *mujtahidin* of true conscious. A very heavy price is paid by the society as whole. Even if the fatwa is given on the very basis, merits and mechanics that need to be followed, Ummah is no more interested in right and wrong. In accordance with the current prevailing situation of disbelieve,

Muslim *Ummah* is duty bound to abide the rules that are set by the west to run their financial systems. There is no single state in the Muslim world that is free to set its rules that is acceptable to the rest of the world where it can trade on its rules. This shows that Muslim Countries are engaged in the war of its survival. Hence *maṣlaḥah* will for the time being serve Muslim *Ummah* to survive until its glory is again restored. This shows that in this era only that *Maslaha* will be acceptable which is beneficial for all. Take a look at the financial system of the world. It is uniform and all the laws are well followed and applicable in the rest of the world. So, any *Maslaha* that is catering benefits of Muslim world and only convers the perspective of the Muslim theology will tantamount to isolation. The Irony is that *Ummah* is not even trying to innovate any system that is beneficial for the world community. This would be too much to ask; we are unable to device a single derivative that could be declared as a patent, marked as an original work. On the other hand the west is more concerned to build or establish a system that is more acceptable and valuable addition to the world economics.

- b) Avoidance of compromising the essentials of *Al Maqasid Al Sharī'ah*: it is evident from the conditions of Maslaha Mursalah that we can only undertake derivations like Maslaha, Istehsan and others if it's not in conflict with the objectives of *Sharī'ah*. If *maṣlaḥah* approves creating Islamic Banks just to facilitate some customers that are reluctant to adopt conventional banking system; the idea maybe questionable. Various Commercial banks all over the world hold Islamic Banking windows now. These Islamic banking windows work as subsidiaries of the parent conventional banks. Point of discussion is that their main goal isn't Islamization of the Banking system rather they work for the profit motive. This looks like controlling environment that is basically misleading goals of *Sharī'ah* as the primary aim is to create an opportunity for those who are reluctant to use the banking system due to the discrepancies. Hence Islamization of the financial system is again compromised. Anways, having said that, Question arises that, is it the right way to think and is it according to the definition of *Maslaha*? Are there some secular goals to be

fulfilled by the financial companies through their shrewd thinking? Muhammad *Hudaib* shows his concern by propagating his idea that Islamic finance's rise into mainstream global finance may not be strictly driven by religious obligations but more to toward political-economic control. It has undergone transformation to become acceptable, blending religious goals with modern secular objectives. Hence there is a big question mark about this trend to continue or halt ¹

In other words IBs won't make any difference in figures. Its usage is just like a tool of deriving profits from a system that's well managed by the commercial banks. The principle of *maṣlahah* is again compromised as its benefit is not general *kulli*.

Moreover deriving a *hukam* while maintaining all its merits, will guarantee that the causes and implications of it is not under a controlled environment. This guarantee is also compromised as discussed earlier. Another example is related to the *fatawa* that *fiqh* academies are busy issuing these days for solving questionable issues in view of *Sharī'ah* Principles. Although *fiqh* academies all over the world are working out the process very efficiently but some time it is difficult to justify that their work is compatible to the thoughts and circumstances of *Ummah*. This phenomenon is evident in the near past. *fiqh* academies of ISNA, ISRA, Indian *fiqh* Academies and other academies of the west have given strange *fatawa* on mortgage, permission of intoxication up to a certain limit, compilation of Muslim minority laws that has its unique principles of conduct etc. All these urges clearly show the deviation from straight thinking.

Mujtahidin must have a free will to do the job and they must not be duty bound: Several examples can be quoted that clearly show how difficult is to be on the right side. Example of Islamic financial system is evident. *Sharī'ah* advisory working in different Islamic banks is paid by them because they working as employees. This is the clear case of conflict of interest and against *maṣlahah* as well. This status of *Sharī'ah* advisors falling under the principle of Conflict of Interest will lead to poor performance due to various causes. On one side they watch the transactions closely to confirm its workability with respect to

¹ Muhammad Hudaib & Roszaini Haniffa, *Islamic finance: from sacred intentions to secular goals?*, Bradford University School of Management, (Bradford University School of Management), Bradford, UK, October 2010

Sharī'ah principles and on the other hand they face immense pressure from the Banks they are paid from. This pressure comes in different ways on them which in the end force them to compromise in their work. They may forgo an illicit transaction in larger benefit of their organization. A report by Al *Hassan al Aidaros* was submitted on this topic which was a compiled through a questionnaire. This questionnaire was conduct on the views of *Sharī'ah* auditors of different Islamic Banks of the countries. In the conclusive argument of the report it reflects that 95% of auditors in Malaysia support establishing a professional *Sharī'ah* auditing body to streamline the Malaysian business context. They believe this would ensure the integrity and code of conduct of *Sharī'ah* auditors, maintain their independence, avoid conflicts of interest, and directly impact the performance of ICBs. Over 77.5% of auditors believe their role is to maintain unbiasedness, avoid family relationships, and avoid conflict of interest, with over half stating their commitment directly impacts ICB's operation performance.¹

- a) Capability and ability must be at par the jurists of the earlier period of the Muslim Scholar, this phenomenon is missing badly. Although we are rich in the literature availability as compared to the past. We also may have good knowledge about the work done in the past but in the field of application we are yet to prove our capabilities in this regard. Muslim scholars of the past were more concerned about the application of the *Sharī'ah* which made it undoubtedly a complete code of life. Take a look at the contemporary *fatawa* given on the issue of cryptocurrency. Muslim Scholars seem to be divided in this issue related to its permissibility.

Moreover life in now days is more complex than before. The whole world is interdependent to each other for carrying out daily rules of businesses. Muslim world up till now is behaving as a market niche. We are system bound to follow the laid principles set by the west globally. The irony is that Muslim Scholars don't realize their responsibilities in the current scenario. They have confined their abilities only to defend Muslim ideology through their words befitting it to be called as *fatawa*.

¹ Al-Hasan Al-Aidaros, *The Need of Independent Shariah Members in Islamic Cooperative Banks: An Empirical Study of Professional Accountants in Malaysia, internation review of Management and business research*, (International Review of Management and Business Research), volume#4, march 2015,

- a) A result derived through the said tool must be acceptable by all other *mujtahidins* of true conscious: In the glorious period of *Ummah*, there was single boundary system approach. Our shared values were so strong that no one outside the Muslim world dare to challenge us. The core saviors of the ideology were the Muslim Scholars of that time. They had check on every minute development in the society. They enjoyed their authority at the state level. This one unit approach saved us from the foreign invasion in all spheres of life. Now due to Non-availability of state backing, Muslim scholars are experiencing this hedge of miscommunication which is letting them down to avail single approach. Hence *maṣlahah* can't be fulfilled if the unanimity of thought is missing.
- b) *Maslaha mursalah* must deal a specific issue: *maṣlahah mursala* always implies that there is some unresolved issue or a new unsolved case that needs to be catered in accordance with the *Sharī'ah* lines. In current scenario this attribute is also compromised. If we analyze the developmental process of Islamic Banking system, it is total substitute to the conventional banking system accepted globally. In other words the core idea has been taken from the conventional banking system. We never say that Islamic banking is a *Sharī'ah* based banking rather naming it as *Sharī'ah* compliant banking. The fact is that the core idea is copied from an alien system in which all the prohibited elements are involved as per *Sharī'ah* law is concerned. By implementing a sharia compliant banking system we are talking about the change of a whole system which is at par conventional banking system. Hence *Maslaha* principle is not just applied to a specific case only; it applies to confront a system that's collapsing our values in terms of culture and finance. If true spirit of *Maslaha* had been followed then a proper Islamic Banking with all the values related to Islamic Finance would have been inculcated. However it's time to see through the real boundaries of *Maslaha* that may be workable in accordance with the today conditions. If it's not possible for whatever maybe the reason then all these *Masaleh* that are introduce for the sake attaining bigger must stand corrected. The Hadith of the prophet states this fact in a very straight way:

((حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ، حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ، حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفِ الْمُرَيْثِيِّ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا وَالمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا " . قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ))

Kathir bin 'Amr bin 'Awf Al-Muzani narrated from his father, from his grandfather, that the Messenger of Allah ﷺ said: "Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful."¹

Maslaha Mursala is applicable in time of necessities: It is an attribute of a case where necessity prevails for the time being. Once the necessity is fulfilled, the *Hukm* will settle down to its original place. This attribute is again limiting the scope. Even If in certain cases we see that *maṣlahah* has provided a permanent solution for the case based on its necessity, its original position is definitive. It has been discussed earlier that the Islamic Banks are developed on the basis of *Sharī'ah* compliance. What does this exactly means? The answer is simple; we never had banking system parallel to the conventional system. Hence the *Sharī'ah* scholars of our time looked toward this western style of banking system and discovered a whole new style of banking compatible with the *Sharī'ah* lines as well as the original system of banking. This implies that we are strengthening the western banking system because it is in conformity with the regulations and law provided through it. Also that we have officially approved to give them (conventional banks) the authority to control whatever maybe the benefits and harms that will arise from it; they can imply on us. The industry of Banking is run in accordance with the set standards. The Basel Accord serves the purpose and all the Banks are regulated through their revised editions. These regulations mitigate risks, establish standards for the operations department, specify credit disbursement procedures for the credit department, liquidity limit of the banks and so on and so forth.

Point of the whole discussion is that definitions and attributes of *maṣlahah* have been compromised due to the current scenario. We are running the whole financial system on the principle of necessity. We even take the core attribute of necessity for granted.

1 امام، الترمذي، في الأحكام باب ما ذكر عن رسول الله صلى الله عليه وسلم في الصلح، رقم 1352

Necessity is no more driven from the word *ḍarūrah*. The best definition for the word necessity in the current scenario is “need of the day”. This is the best Muslim scholar of our time manage to do. They have steadily replied back to the western system that wills to eradicate the existence of other systems. We can also name this strategy as “principle of last resort”. This war of survival will carry on between the systems and at the end of the day one will absorb the weaker. Islamic financial institutions must compete until they get the loins share in the market and establish their position so well that they may dictate their term of conditions. Right now we follow the way of *rukhsa* and it must deal with the change of *Azeema*. It is important for the *Sharī‘ah* scholars that they must not forgo futuristic approach for some current benefits. Muhammad Hudaib commented on this situation in his way:

“The divergence in the interpretations of the *Sharī‘ah*, which results in the so-called Arab and Malaysian models, is fast converging to further consolidate the power for Islamic financial institutions to compete with their conventional counterparts. Ijtihad (juridico-ethical reasoning and argumentation) for legitimating innovation of financial products was made based on the unduly application of Maqāsid al-*Sharī‘ah* (purposes of the law) which takes into account the degree of benefits for human interests (*maṣlahahh*) as opposed to harm (mafsadah). Other adaptive mechanisms in legitimizing the modernization of Islamic finance and financial institutions include urf (local custom) and *ḍarūrah* (necessity)¹. Besides deregulation of the financial sector resulting from the policies of the new world-order, greater alliance between bankers, governments and *Sharī‘ah* scholars facilitate the innovation of *Sharī‘ah*-compliant products as opposed to *Sharī‘ah*-based products (i.e. based on the sacred goal of Islamic finance). In short, over the years, the ardent sacred intentions were slowly suppressed and secular goals promoted and the process intensified in the neo-colonial global economic and debt-peonage era”.²

Other than that, Islamic finance confront other serious challenges in its internal system as they Lack human resources, Governance Issues in Sharia Councils, presence of some less qualified scholars for the Composition of the *Sharī‘ah* Council, Some members of the *Sharī‘ah* councils are with no teaching experience and are less familiar with the research methodology for Islamic *Sharī‘ah* , Most *Sharī‘ah* councils do not have economic advisors

¹ *Darurah* allows a mitigation whereby a Muslim can commit an unlawful action, or omit an obligation or delay it. This mitigation is consistent with the objectives of shariah which aim to preserve basic human necessities namely religion, life, intellect, lineage and wealth.

² Muhammad Hudaib & Roszaini Haniffa, **Islamic finance: from sacred intentions to secular goals?**, (Bradford University School of Management), Bradford, UK, October 2010

whose main purpose is to clear the mechanism of a certain transaction for which fatwa is required by the *Sharī'ah* councils.

The Gresham Law clearly advocates that less quality product will slowly diminish the high quality products from the market. This phenomenon is also reflected here in Islamic financial markets as well due to overwhelming participation of less qualified members of the *Sharī'ah* councils advisory. They are the one responsible of the increased spread of ambiguous products, which are more sort of traditional products marketed as Islamic product. The *Sharī'ah* councils advisory talks about the *Tawarruq*, by use it through multiple sale and Salam contracts, legalizes interest-based transactions by creating a new gateway without altering total results. This includes Ena-based products, risk trading products, swaps, and securitization of debt and cash for banks to earn huge profits, while ensuring proper hedging of losses and profits.¹

The above case scenarios clearly show how much of challenges are faced by Islamic finance that pose serious questions of ethics, on the side of *Sharī'ah* board memberships and they being responsible of the mess conceived by wrong placement of products that surpass to qualify the basic criteria of Islamic financial engineering and due to which Islamic finance is seen in a skeptical way by its critics. Mabid Ali al Jahir has also referred this problem of ethical banking in the Islamic Banks which is still to be settling down in a way that overall banking impression is tilted toward positivity by inculcating Islamic norms.²

Yet another swiping statement is given by another scholar about the Islamic Banking system in these words:

“With a meticulous analysis, it can be visible that the current practices of the Islamic banks are, in many cases, not in conformity with the *Sharī'ah* required standards. Many Muslim economists, for example, favor equity-based instruments and place greater social welfare responsibilities and religious commitments, in order to realize Maqāsid al-*Sharī'ah* for equitable distribution of wealth and promoting economic development and growth, whereas most of the Islamic banking products range from Bai' Bithaman 'Ajil

1 Arthur J. Rolnick and Warren Weber, *Gresham's law or Gresham's fallacy?*, (Researchgate), Quarterly Review, 1986, vol. 10, issue Win, 17-24

² Mabid Ali Al-Jarhi, *Reviving the Ethics of Islamic Finance*, Munich Personal RePEc Archive (MPRA), Paper No. 66732, posted 18. September 2015 00:41 UTC

(BBA)¹, Bai' al Dayn², Islamic credit card with Bay' al-'Inah³ contract, Tawarruq, and many such other contracts.”⁴

Having all said, it doesn't refer to cancellation of the subject or disgrace to the efforts of the Islamic Scholars that have, on the contrary, worked their level best to mitigate the issue and come up with the *Sharī'ah* based answers to the issue. The above discussion is just based on the concept as said, there is always room for excellence, or attributed as, Sky is the limit. Any sort of negativity in this regards equates to the enmity to services offered by the esteemed Islamic scholar which is unacceptable and unavoidable offence.

2.6 Non-*Sharī'ah* Compliant Financial Transactions

The term "non-Shari'ah compliance" describes behaviors, customs, or dealings that deviate from Shari'ah, or Islamic law. Non-adherence to Shari'ah can have a substantial social and economic impact, particularly in Muslim-majority nations or areas where Islamic values are integral to the development of cultural norms and business practices. Here are a few possible effects:

1. Social Impact:

Conflicts between cultures and religions Cultural and religious problems within a society might arise from non-*Shari'ah* compliant practices because certain segments may feel that their values and beliefs are being compromised.

Social Division: It might produce a rift in society between those who follow *Shari'ah* law to the letter and those who do not, which could result in disputes and the dissolution of society.

¹ Bai Bithaman Ajil is a “deferred payment sale”, which works like a murabahah contract, but with payment generally made on a deferred basis. In some countries Bai Bithaman Ajil is also known as Bay' al Muajjal

² Bai al dayn is essentially a contract of the sale of debt. Being a contract of sale, there must be all the elements or pillars of a sales contract such as legitimacy of contracting parties, and offer and acceptance. Between the contracting parties there must be a subject matter of sale, a price, and delivery of the asset. The asset in this case, however, is a financial asset or a debt.

³ Bay' al-'Inah: It is a sale and buy-back agreement, is a type of Islamic finance that is a banking activity that is congruent with Shariah, which are the principles of Islamic law

⁴ Noor Muhammad Usmani, *Applications of Maqasid al-Shariah and Maslahah in the Islamic Banking Practices: An Analysis*, (Conference Paper) · October 2010 DOI: 10.13140/RG.2.1.3578.0644, # 12

Perceived Moral Decay: Conservative segments of society may view non-adherence to *Shari'ah* principles as moral decay, which might result in social stigmatization and condemnation.

Social Exclusion: People or companies that violate *Shari'ah* rules may be shunned by some groups in society or boycotted, which can harm their reputation and means of subsistence.

2. Economic Impact:

Diminished Market Participation: Businesses that do not comply with *Shari'ah* may find it more difficult to do business with Islamic financial institutions or to enter markets in areas where Muslims predominate.

Loss of Investor Confidence: Businesses that engage in non-compliant operations risk losing the trust of investors, especially Muslim investors who are searching for investments that are morally and *Shari'ah*-compliant.

Limitations on finance: If *Shari'ah* standards are not followed, it may be difficult to get Islamic finance choices like Islamic banks and Sukuk (Islamic bonds).

Trade Barriers: Failure to comply may lead to trade restrictions with nations or areas where upholding Islamic values is essential for business dealings.

Impact on Tourism: Non-*Shari'ah* compliant activities may discourage tourists or have an adverse effect on the hospitality sector in nations with a sizable Muslim population or those that draw Muslim tourists.

Legal and Regulatory Challenges: Shari'ah standards must be followed in order to avoid legal and regulatory issues, which might result in fines or other limitations from the government.

It is crucial to remember that the social and economic effects of non-adherence to Shari'ah law might differ according on the area, the particular behaviors in question, and the dominant norms of culture and religion. The effects could be more noticeable in nations where Islamic law is formally enforced, but they might also be less severe in civilizations with a greater degree of secularism. Furthermore, different people's and groups' attitudes on Shari'ah compliance might have differing degrees of influence.

Al fiqh Al Mu'āmalāt is considered to be an important branch of Islamic Law that assures proper commercial relations between the members of an Islamic society. But it also provides guidelines for a practicing Muslim elsewhere in the world who wants its religion to guide him for this purpose in specific. The jurists of the classic period have paved a great focus on this field ; specifically trades like sale-purchase, hiring, *waqf*, gifts, partnership, surety , assignment of debt, mortgage and other commercial contracts. While doing so, they also identified area of disapproved business practices and unlawful modes of acquisition of property and disposition thereof. Some of the main transactions are prohibited in a single strike of a sentence like the verse of Quran:

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ﴾

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.¹

While other transactions have some prohibited elements mixed in it which makes it *haram*. *Sharī'ah* scholars identify these impurities in a certain transaction and try to fix it in conformity with the maxim that says: in principle everything is permissible. This is because the injections pertaining to this particular discipline are revealed in general terms. This is not seen in the case of *Ibadat*. The issues relating *Ibadat* are considered to be

¹ Verse 5:90

universal injunctions and therefore remain unaffected by time and space. They are not subject to modification nor any change through any tool of *Ijtihad*. As these fixed commandments were necessity; hence these have been provided by the Lawgiver. Imam ibn e Taymiyyah explains the above fact:

“The acts and deeds of individual are of two types: Ibadat (devotional acts) whereby their religiousness is improved and adat (transactions) which they need in worldly matters. An inductive source of sharia establishes that devotional acts are sanctioned by express injunctions of the *Sharī‘ah*. Thus what is not commanded can’t be made obligatory. As for transactions, the principle governing them would be permissibility and absence of prohibition. So nothing can be prohibited unless it is proscribed by Allah and the Messenger.”¹

Question arises why such optimism shown in the sphere of financial transactions? This again confers that Islamic law is full of miracles. At the advent of Islam things were not that complicated as they look like in current scenario. Almost everything is subject to change. This agent of change isn’t coming from the internal system of Muslim world rather we are at the receiving end. Moreover to cope up such abrupt changes we need intellect to react at par western thinking. This challenge is well meet by our scholars? Time has yet to decide; but one thing is for sure Islamic law pertaining to financial issues has the capacity of building its own institution compatible with its principles. Hence different people at different paces and in different times may seek guidance and fulfill their requirements.

Having said that Islam never compromises its glorious principle of Justice pertaining to financial laws; Qura’n reveals it:

﴿فَإِنْ لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِؕ وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ﴾

If you do not, then beware of a war with Allah and His Messenger! But if you repent, you may retain your principal—neither inflicting nor suffering harm.²

Broad principles of Islamic financial laws advocate this principle and it’s important for any sort of transaction to be free from injustice for the parties involved. No one is allowed to take unreasonable advantage over others. Rights and liabilities of every single entity must guarantee in the event of contract writing, executing the transaction, delivery

¹ Ibn e Taymiyyah, Taqī ad-Dīn ‘Aḥmad ibn ‘Abd al-Ḥalīm ibn ‘Abd al-Salām al-Numayrī al-Ḥarrānī, known simply ibn Taymīyyah, *Al fatawa al kubra*, Beirut, Dar al kutub al ilimiyah, 1197.

² Verse 2:289

of the goods, payment schedule and many other issues that need to be addressed in advance. For the larger good of the humanity certain actions must not be included in a valid contract.

2.6.1 Mutual contract based on unlawful conditions like fraud and coercion

Islam considers these acts against the free will. These misleading acts from any person or entity are basically breach of trust. Qur'an clearly reveals the facts:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ﴾¹

Not betray the trust of Allah and the Messenger-, and do not betray your mutual trusts, while you know.

The Holy Prophet Muhammad said in a famous Hadith:

((عن عمرو بن شعيب عن أبيه عن جده أن النبي صلى الله عليه وسلم نهى عن بيع وشرط

2((

This is not only breach of trust but it is against the principle of free consent as well. Consequently principle of mutual consent is not free and fair. This fairness can only be guaranteed through a proper trade contract. This fact is revealed in Qur'an:

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.³

The principle of free consent requires that consenting parties have certain and definite knowledge of the subject matter of the contract and the rights and obligations arising from it. Classical example is the contract of *bai inah* (buy back sale): this is a compromised sale; here the sale of an asset is commenced on a higher price than that for which the seller originally sold it. The seller immediately buys the sold item on a higher price than the original price and deferred payment schedule. This is a clear case of loan in the form of sale.

2.6.2 Prohibition of Gharar (speculation, hazard, risk):

The rationale for the Prohibition of gharar is to ensure full consent and satisfaction of the parties in a contract. Without full consent, a contract may not be valid. Full consent can

¹ Verse 8:27

² المعجم الاوسط للطبراني، من اسمه عبد الله، 10/4512

³ Verse 4:28

only be achieved through certainty, full knowledge, full disclosure and transparency. In financial contracts gharar may lead to injustice, exploitation and enmity among contracting parties. The jurists have identified several rationales for the prohibition of gharar sale. Some of them were related to fraud since such a sale amounts to obtaining the property of others by selling unavailable goods and also the contract may lead to disputes and disagreements between the parties in the contract. While in Islamic law, an agreement must bring an immediate and certain obligation. In the following discussion, we will summarize those rationales for prohibition of gharar. The aim of such prohibition of gharar by the lawgiver in Islam was:

- To avoid badly anticipated losses and disputes with reference to quantities and qualities of goods as well as due payments.
- To avoid inequity in exchange.
- To protect the weak against exploitation by the strong.
- To ensure that the commercial partners exactly know the counter value which is offered in a transaction since gharar stands for not knowing the value of a purchased good.
- To ensure that one party does not have unfair advantage over the other as Islam seeks to ensure justice, equity and fair play in all business dealings.
- Not to cause a vendor to consume or erode the property of others unlawfully especially if it is supposed that the purchaser cannot take possession of the transacted goods.
- To avoid enmity, in which case a broad scope of risky transactions becomes valid.
- To avoid ignorance or non-existence. This implies a restrictive scope of valid transactions.
- To avoid contracts involving fraud and deception. This may subsequently lead to disagreements between the parties.

Here parties undergoing a contract are uncertain about the outcome of the contract. This is the core reason of dispute and litigation between the parties. Its literal meaning is to face risk, hazard. It comes out of the Arabic word *taghrir* that means

to expose oneself or one's property to jeopardize.¹ *Imam Muhammad bin abi Bakar* says:

«الْغَرَرُ: بِفَتْحَتَيْنِ الْخَطَرُ وَ غَرَّهُ يَغْرُهُ بِالضَّمِّ غُرُورًا خَدَعَهُ، يُقَالُ: مَا غَرَّكَ بِفُلَانٍ؟ أَي كَيْفَ اجْتَرَأْتَ عَلَيْهِ؟. وَ التَّغْرِيرُ حَمْلُ النَّفْسِ عَلَى الْغَرْرِ.»²

Talking about its technical meaning:

تعريفه اصطلاحاً: اختلفت عبارات الفقهاء في تعريف الغرر ، وجمعها المعنى العام للغرر وهو جهالة ما يؤول إليه عاقبة العقد، ولعل أجود تعريف له هو تعريف ابن عرفه حين قال : قال المازري : الغرر ، هو ما تردد بين السلامة والعطب ، ولما لم يرتض التعريف عرف الغرر بأنه : " ما شكَّ في حصول أحد عوضيه أو مقصوده منه غالباً."³

A contract is considered to contain *Gharar* if its occurrence is doubtful; it will actually take place or not, thing that is not within the knowledge of the parties or it actually exists or not, acquisition of the subject matter is in doubt and quantum of it is unknown.⁴ Allama sarkhasi says:

"*Gharar* takes place where the consequences (of a transaction) remain unknown".⁵

((عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ؛ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الْغَرْرِ.))⁶
((وَنَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْأَبْقَى وَعَنْ بَيْعِ الْغَرْرِ وَهُوَ مَعْلُولٌ يَعْجزُ الْبَائِعُ عَنْ تَسْلِيمِ الْمَبِيعِ أَوْ جَهَالَةَ فِي الْمَبِيعِ فِي نَفْسِهِ عَلَى وَجْهِ يُفْضِي إِلَى الْمُنَازَعَةِ.))⁷

Examples of transactions based on *Gharar* are immense like sale of fish in sea (uncaught), birds in the air (free), fetus in the womb (animal) and unripe fruits at the beginning of the season, when their quality and quantity is impossible to be established accurately.

In a hadith Abu Hurairah (r.t.a) narrated:

¹ Darir, Muhammad Siddiq, *Al-Gharar fi al- Uqud wa Atharuuhu fi al tatbiqat al muasirah*, (Supra) 10

² زين الدين أبو عبد الله محمد بن أبي بكر، مختار الصحاح، المكتبة العصرية - الدار النموذجية، بيروت، 1/225

³ أبو عبد الله محمد بن علي بن عمر التميمي المازري، المعلم بفوائد مسلم، الدار التونسية للنشر، 2/243

⁴ Muhammad Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, (Shari'ah Academy) IIUI. 3-4

⁵ Al Sarakhsi, Abu Bakr Muhammad Ibn Ahmad al sarakhsi, *Al- Mabsut*, (Dar al- Marif), Beirut,1978, vol.13, .194

⁶ مالك بن أنس بن مالك، الموطأ، مؤسسة زايد بن سلطان آل نهيان للأعمال الخيرية والإنسانية الإمارات، الطبعة الأولى، 1425 هـ، 4/960

⁷ محمد بن أحمد بن أبي سهل شمس الأئمة السرخسي ، أصول السرخسي ، دار المعرفة - بيروت 2/175

“The Holy Prophet forbade sale by pebbles and the *Gharar* sale i-e undetermined and speculative transactions”.¹

In another Hadith Prophet (may peace be upon Him) said:

“If Allah spoiled the fruits what right would one party have to take the money of his brother?”²

- *Gharar* or uncertainty is found in different cases and shapes that can hurt the parties’ benefits in real time. The two main places where *Gharar* transaction can be identified are: *Gharar* relating to *sighah*(form) of the contract and *Gharar* related to the Subject matter of the contract.
- *Gharar* related to *Sighah*(form) of then contract can be cited in the study of two sale in one, Earnest money (*arbun*) sale, a contingent sale, contracts based on future dates.

2.6.1 Two Sales in One (bayatan fi bay’in):

The underlying cause of prohibiting the contingent sales, is to avoid being an invalid safe. This can happen due to the resulting elements that can affect the transaction with interest and *Gharar*. Moreover two inconsistent contract are prohibited because it won’t fulfil the guarantee that the transaction provides. For example, The underlying cause of Incompatibility of contracts whereby one contradicts with the other, such as a loan with a sale at a discount, a loan with a contractual benefit, financing with a contractual rebate, and so forth.

In the Hadith of the Prophet May peace be upon him, the concept is elaborated in such manner:

((عن أبي هريرة قال قال النبي - صَلَّى الله عليه وسلم: من باع ببيعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أَوْكُسُهُمَا

أَوْ الرِّبَا))³

¹ Muslim ibn al-Ḥajjāj, Abū Al-ḥusayn Muslim Ibn Al-ḥajjāj Al-qushayrī, (born c. 817, Nīshāpūr, Iran—died 875, Naṣrābād), *Sahih Muslim*, Kitab al buyu, (Dar ihly al Turath al- Islami), (Kitab al Tijarah) , no:1513, vol:3, 1153

² Muslim ibn al -Ḥajjaj Muslim, *Sahih Muslim*, Kitab al buyu, (Dar ihly al Turath al- Islami), Kitab al Tijarah, bab wad’ al jawai’ih , no. 1554, vol. 3, 1190

³ سنن أبي داود، أبو داود سليمان بن الأشعث، دار الرسالة العالمية، الطبعة الأولى، 1430 هـ، 5/329

It refers to a sale contract where seller give option to the buyer that he/she can buy a commodity on different price keeping the time in view. The buyer then opts the sale without specifying the price on which he/she bought the item. Hypothetically seller quotes the words in the contract, “I sell you this commodity for 150.Rs on cash and 300 rupees on credit”. And in response the buyer says: “I accept and purchase the commodity”.

Earnest Money: Majority of the Islamic scholars are inclined to the fact that earnest money creates uncertainty at the time of failure of non-completion of the contract. The uncertainty is due to the stipulation that the amount will be confiscated if the buyer is unable to pay the price of commodity. Here it involves many other principles of *Sharī‘ah* that are compelling toward uncertain nature of the value of the transaction. Like what exactly is the risk mitigated here? If it is the compensation for the time gained by the buyer; or the said value is a compensation because the nature of contract is uncertain due to the future event outcome; both underlying causes on which the transaction is built will be treated as the core cause of *Gharar*. While the rest of the scholars are of the view that the earnest money is within the category of an option contract. It is due to the fact that the earnest money is a receiving that confirms it as a consideration for the sake of gaining stipulated time from the selling party/ Bank for the sake of full payment. The selling party is however, countering and reciprocating it by restricting himself in exercise of his legal right of selling it to some other party in respect of his owned property that is waiting to be sold out with due course of time as mentioned in the contract of sale. However, the earnest money can’t be forfeited if the transaction can’t be completed if the selling party is considered as a faulty for instance if the commodity is produced on time to the customer.¹ But the Question again arises that why should the selling party bear the wear and tear cost of the property, if it isn’t its fault. Consequently, if it is considered unreasonable to do so then the burden of wear and tear must be on the buyer at the event of the non-payment of the price of the commodity. Keeping this factor in view say a person sold a car of 10 lacs and the payment is delayed for a period of four months and the buyer pays 25 thousand

¹ Mansori, Muhammad Tahir, *Islamic law of contracts and Business transactions*, (Sharia’ Acadimy), International Islaim University Islamabad. 98

amount of the car .the buyer after four months is unable to pay the remaining cost of the car. The seller at the event of non-payment of the remaining value confiscates the earnest money in lieu of the wear and tear of the car due to its usage. This means that the earnest money was rightfully confiscated and its main purpose that it served was to let go the harm's way and avoiding dispute.

Contingent Sale: it is a contract that is contingent upon a stipulated condition. Say for example the seller says "I will sell you X car if you sell me Y car". This stipulated condition again falls in the category of *Gharar*. It is because the outcome of future event is uncertain by many ways, even if the transaction is hand on hand it has a great deal of chance of falling into *ribā*. The majority of scholars are of the opinion that the contingent sale is void. However *ibn taymiyyah* see it to be a valid sale. ¹

2.6.3 Transactions involving Gharar due to the uncertain features of the subject matter

Transactions that involve *Gharar* are also due to the uncertain features of the subject matters. Like uncertain features regarding genus of the object. A hypothetical example is if a person sells an object through the words, "I sell you an item for ten". Here the seller doesn't specify the object of sale. Sometimes the seller specifies the object but do not communicate about its kind. For example by saying, "I sell you a car at such and such price. Here the seller didn't communicate about the make, is it Honda, Suzuki or corolla?etc. furthermore sometimes it's important to specify the features like the model year? From where is it assembled? What Its color? Is it xli or gli? And so on and so forth.

However the main goal is to drop all sorts of confusions at the time of sale, so that no enmity may arise after the commencement of the sale and in the future events. Jurist have therefore emphasized on the topic with very minute details for the purpose of clarification:

Hanafi Jurist: according to the *hanafi* jurists the description of the subject matter isn't necessary, if it is physically present at the time of sale. Furthermore in case of the object is invisible, is it mandatory to describe its feature at the time of contract? This is again subject

¹ Darir, Muhammad Siddiq,, *al-Gharar fi al- Uqud wa Atharuuhu fi al tatbiqat al muasirah*, 16

to difference of opinion. Some *Hanafi* jurists are of the view that the buyer has the right to reject if the commodity because of the right of inspection, hence describing features at the time of contract isn't mandatory. But the advocates of description don't favor this argument. They are of the view that the right of inspection is given to buyer only to remove minor un-certainties and not the major one. Hence it is important that all the features must be listed at the time of contract.

Maliki Jurists: *maliki* strongly emphasize that the description of the subject matter must be list at the time of commencement of the agreement. Irrespective of the fact, that it is present or absent, visible or invisible.

Shafi Jurists: shafi jurist with difference of opinions agree and disagree upon the matter of description. Hence hold all the available verity of the argument correct.

Hambali jurists: they are more tilted toward *maliki* jurist. Hence sale of an object isn't permissible with unknown attributes.

After the debate is over about the description of the object, the jurists take up another attribute related to its quantity. Is it mandatory to cover all aspects related to the quantity of the object? Yes, scholars have commenced their opinion that it's mandatory. Thus to sell a heap of grain haphazardly without reference to its quantity and the measure used for the weighing purpose. Any sort of concealment of the fact that can result in a deviated understanding of the specified quantity as per contract will cancel the contract.

Another hypothetical case that relates to the specification of the subject matter is if its number is overwhelming at a single point of sale. For example selling a goat out of a herd and selling a piece of cloth out of bulk. Hanafi scholars allow it to the extent of three items of sale out of which one is sold. Say for example the seller says, "I sell you the goat out of these three. Maliki allow it without specification of numbers with a stipulation of option of determination for the buyer.

Other than that it is also important that the time of the deferred payment must be mentioned in the contract and the payment will be fixed at the time of the commencement of the contract and will remain effective unchangeable at the time mentioned in the contract. Item sold on an expectation is not accepted. Say for example the seller says, "I sell you what this animal will produce". This product is as per *Ijma* declared to be a non-existent item. But with exception of the rule the transaction of *salam* (sale of future item

with advance) and *Istisna'* (contract of manufacturing) is permissible and allowed until and unless the conditions related to the selling item is within the specified framework of *Shari'ah*. The position in these two future contracts is relaxed due the fact their existence is certain in the future and also that the benefit is specified in the contract in clear terms. Here it must be assured that the seller has the total control over the product he is selling because inability of seller to deliver the object of sale to the buyer also forms *Gharar*. For example sale of a stray animal whose whereabouts are not known to the seller, sale of the car which is stolen and yet to be found and sale of the items whose real or constructive possession is yet to be established.

It is interesting to say that the *Gharar* is ineffective in contracts of gratuitous contracts, donations and will of a dead person. Here it is emphasized that majority of the jurists are of the view that matter for the donations must be known. Therefore unborn calf or milk in the udders of an animal is not allowed. In case of will jurists are unanimous that it is valid even if the subject matter is non-existent. Hence it is the duty of the heirs that they must carry out the will as per demand.

2.6.4 Prohibition of Ribā (Interest):

Here are some of the reasons of prohibition of *Riba* in Islam:

- ***Debt is Causing Burden to Others:*** Whether it's for personal or for the society, debt is giving a huge burden for the borrower. When people involve themselves in debt, it means they have been in a difficult situation and meet the dead ends everywhere. Also the fact has spoken that debt could even cause killing and suicide. When they feel like the burden of living in debts is too much and they feel like can't take it anymore, they choose to end their lives. It happens everywhere, including in a modern country.
- ***It is against the Spirit of Brotherhood:*** The Islamic spirit of brotherhood is quite clear: all Muslim should be the brother of another Muslims. Brother means family, and family should help each other when in needs. It's where the spirit lies, to help each other. But *riba* is indeed far from helping. Instead of helping, loaning money with interest makes the burden even bigger. It's not helping at all.
- ***Riba is a Greedy Act:*** *Riba* is surely an act full of greed, multiplying the amount of money in a completely wrong way. Greed is not allowed in Islam, as it's not the trait of Muslim. Stay away

from all the greedy act, including the riba. Riba are based on greediness, hard heartedness and selfishness.

- **Riba May Cause a Major Inflation:** Riba affects the economic in a bad way. It may cause the inflation, and it's quite dangerous for the economy. In fact, riba is one of the major contributor of the inflation.
- **Riba Disadvantage the Borrower:** It's an unfair transaction in economy because riba is benefiting only for the loaner or the owner of the money. Whereas for the borrower, riba is only disadvantaging them. In the beginning they get the money, but afterwards they should pay in the bigger amount than they borrow in the first place. It makes the situation even harder than before.
- **Riba Creates Monopoly in the Society:** Monopoly is also prohibited in Islam. While riba itself is prohibited in Islam, it also cause monopoly in some ways. How riba can creates monopoly because of its unfair aftereffect for both party involved in the transaction. They wealthy is rewarded by more money, while the poor is getting nothing but paying the money that they are not indebted.
- **Riba Makes the Distribution of Wealth Uneven:** As riba only advantageous for the wealthy, it makes the distribution of the wealth become uneven as well. To make a balanced, stable society, the distribution of wealth should be even. It against the principle of the economics.
- **Riba Teaches a Muslim Not to Work Hard:** Through riba, a Muslim can be wealthier without having to work hard. Unlike the ethics of Islam, where a Muslim should work hard to create sustenance in their lives. But by riba, someone can be wealthier by lending their money, and they put the burden to the other person to make themselves wealthier. This act is surely not allowed by any means in Islam.
- **Riba Causes a Bad Relation Among People:** Riba can caused rift and faction in the society. They can be divided by the unfair transaction and it can be dangerous for the society in the future.
- **Riba is Giving More Power to the Rich:** As riba would only benefited the rich, it gives even more power to the rich people. As they get wealthier, their power increase and it will be become even more unfair for the poor.

Literally *ribā* stand for an increase or addition. Technically speaking: it is an increase of amount that has no corresponding consideration which has been stipulated in favor of one of the two parties, in a contract of exchange.¹

This definition implicates that *ribā* will always constitutes an increase in amount and the increase in amount is without any risk. So the beneficiary will always be a single party and it will be a contract of exchange between at least two parties. Talking about its prohibition; it is evident in Qur'an and *Sunnah* both. The verdict against the transaction of *ribā* mentioned in the Qur'anic revelations is gradual which means it was not prohibited at a single strike. The sequence from the beginning till the final verdict shows that Almighty communicated the issue with his believers a way of letting them know its harms and history and then once the message had been conveyed in its full spirit, it was casted out from its roots and declared as a prohibited act not to be engaged in any manner or form within the society of the Muslims living under the code of *Sharī'ah*. This sequential flow starts with the first revelation revealed in the fifth years before *Hijrah*:

And whatever you give for interest to increase within the wealth of people will not increase with Allah. But what you give in zakah, desiring the countenance of Allah - those are the multipliers².

Here the focus is only at its literal meaning i-e increase in wealth. It's a mere comparison between zakat and Interest. The second verse was revealed in the early age of the madani period and a little bit of more emphasis:

And [for] their taking of usury, while they had been forbidden from it. And their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment.³

This verse talks about the previous condition of the interest as it was prohibited on Jews but they didn't abstain and committed a grave sin. The third revelation was after *ghazwa* of *Uhud*:

O you, who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful.⁴

¹ Thanwi, Ashraf Ali Thanwi (1862–1943), *Kashaf Istiaḥ al- funun*, (Sharikat al Khayyat le al-kutub), vol. 3, 592

² Verse 30:39

³ Verse 4:161

⁴ Verse 3:130

This verse explicitly disapproves interest as a mode of finance. In the next verse Allah says:

Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein.¹

The verses is in response to the non-believers argument who took the verdict for granted and keep on ridiculing it as they were doing it before by stating that there isn't any difference between trade and interest. Allah took notice of their behavior and reconfirmed His final verdict against *ribā* once again. This made the Believers faith more strengthen and questioned about the awkward position of the non-believers. The final ayah is as follows:

O you, who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged.²

Here in this verse Allah declares *ribā* as an act of violence. Believers must abstain from it and keep on believing it as a grave sin. The one who is involved in it is no more in the lines of believers. He has no option but to repent from his heinous act of non-believing. This verse especially takes Muslims into account and beholds them to stay away from it. Other else they will be declared as enemies of Allah and his messengers. They will never prosperous and never seek glory. Their fate will be decided as losers. So it's important for Muslims that their society must be clean from the evil of *ribā*, just like other acts of grave sins like intake of vine, consuming dead meat or pig and so on and so forth.

Moreover *ribā* is a main source creating contentions between the parties. It is because of the nature of this transaction that things never get settled there and then rather it all depends upon the future outcome of the events. Therefore comparing it with other modes of finance is faulty and brings no purpose. It is a general belief that most of the society is risk averse and wills not to go for a risky job or business and show weakness. The shrewd

¹ Verse 2:275

² Verse 2:275-276

facilitators of interest based transactions usually take advantage of this attitude which creates weakness in the financial system in which all the opportunities must be open for all on the basis of just rules of business and person who agrees upon the terms of the interest based transaction actually tends to look for a wrong risk mitigating tool. This situation is faith disturbing where a person is only eager about self-well-being and let go other at the harm's way. Anyway if someone is indulged into a *ribā* transaction and wants to revert back so that he may presume an upright position of a true belief; he is not only welcomed back but also he has full authority and right to claim his capital money back.

Prohibition of *ribā* transaction is more evident in *Sunnah*. The prophet (peace be upon Him) explicitly void the transaction of *ribā* and said at the last *hajj* sermon of that:

“Beware; all *ribā* outstanding from the *ribā* prevalent during the pre-Islamic era is void. You are entitled to your principal money. Neither shall you oppress nor shall you be oppressed. Beware the first claim of *ribā* which I cancel is that of my Uncle.”¹

He said:

From Jabir, who said: “the messenger of Allah (peace be upon Him) cursed the one who charges *ribā*, he who gives it, the one who records it and the two witnesses; saying that: they are all equal”.²

Contents of *ribā* involving in transactions are more thoroughly discussed in *Sunnah* than Qur’anic text. A thorough study of these sayings lets us know different aspect of *ribā* transaction. According to the study of text as per *sunnah* is concerned *Ribā* is divided into two main categories. The first one is related to the Qur’anic text; *ribā* in the transactions of debt. All the above quoted verses are related to the conditions of *ribā* at the time of ignorance. This kind is also known as *ribā al jahiliyyah*. Mainly three forms of *ribā* were practiced at the pre-Islamic period in the Arabian society. Firstly at the time of advancing the loan; the Arabs use to stipulate an extra amount of money over and above the capital advanced for the loan. This money is expected to be returned with the capital money. Abu bakr Jassas ponders light on the topic:

¹ Sahih Muslim 1598.

² ibid

“This *ribā* which was known to and practiced was that they used to advance loan in the form of dirham and dinar for the fixed term with an agreed excess over and above the amount of loan”.¹

The second form of *ribā al jahilliyah* was that the stipulated amount fixed over and above the loan was to be paid every month. At the time of expiry of the contract the principal amount was returned in full. If the debtor didn't give back the principal money as per the contract; the contract was again renewed by increasing the payable amount and the time of the contract.

The third form of *ribā al jahiliyyah* was by selling the certain commodity on the basis of deferred amount payment. At the time of expiry if the debtor didn't successfully paid the debt amount the contract was renewed by increasing the amount and the time period of the contract. *Suyuti* depicts the picture in his words:

They use to purchase the commodity on the basis of deferred payment then on the date of maturity the seller use to increase the amount due in lieu of further delay.²

The second type of *ribā* is revealed in *Sunnah*. This type is related to the sale transactions. It is more complicated and covers other market based mall practices in this regard. This is again divided into two basic categories. *Ribā al fadl* and *ribā al nasa*.

Ribā Al fadl:

الرِّبَا نَوْعَانِ رَبًّا الْفَضْلَ وَرَبًّا النَّسَاءَ فَأَلَّوْلَ هُوَ فَضْلٌ عَيْنَ مَالٍ عَلَى الْمَعْيَارِ الشَّرْعِيِّ وَهُوَ الْكَيْلُ وَالْوَزْنُ عِنْدَ اتِّحَادِ الْجِنْسِ وَالثَّانِي هُوَ فَضْلُ الْخُلُودِ عَلَى الْأَجَلِ وَفَضْلُ الْعَيْنِ عَلَى الدَّيْنِ فِي الْمَكِيلِينَ وَالْمُوزُونِينَ عِنْدَ اخْتِلَافِ الْجِنْسِ أَوْ فِي غَيْرِ الْمَكِيلِينَ وَغَيْرِ الْمُوزُونِينَ عِنْدَ اتِّحَادِ الْجِنْسِ وَعِلَّةُ رَبًّا الْفَضْلُ هِيَ الْقَدْرُ الْمُتَّفَقُ مَعَ الْجِنْسِ أَعْنِي الْكَيْلُ فِي الْمَكِيلَاتِ وَالْوَزْنُ فِي الْأَتْمَانِ وَالْمَثْمَنَاتِ وَعِلَّةُ رَبًّا النَّسَاءِ هِيَ وَجُودُ أَحَدٍ وَصَفِي عِلَّةُ رَبًّا الْفَضْلَ وَهِيَ الْكَيْلُ فِي الْمَكِيلَاتِ أَوْ الْوَزْنُ الْمُتَّفَقُ أَعْنِي أَنْ يَكُونَ ثَمَنِينَ أَوْ مَثْمَنِينَ لِأَنَّ وَزْنَ الثَّمَنِ يُخَالِفُ وَزْنَ الْمُثْمَنِ وَهَذَا عِنْدَنَا وَعِنْدَ الشَّافِعِيِّ رَبًّا الْفَضْلُ هُوَ الْفَضْلُ الْمَطْلُوقُ مِنْ حَيْثُ الدَّاتُ أَوْ حُرْمَةُ بَيْعِ الْمَطْعُومِ بِجِنْسِهِ ثُمَّ التَّسَاوِي فِي الْمَعْيَارِ الشَّرْعِيِّ مَعَ الْيَدِ مَخْلُصٌ عَنْ هَذِهِ الْحُرْمَةِ بِطَرِيقِ الرُّخْصَةِ.³

¹ Ab Bakr al Jassas, Abū Bakr Aḥmad ibn ‘Alī al-Rāzī al-Jaṣṣāṣ, (305 AH/917 AD - 370 AH/981 AD), *Ahkam Al Qur’an*, (Dar al Kitāb al- Arab)i, vol 1, 465

² Suyuti, Abū al-Faḍl ‘Abd al-Raḥmān ibn Abī Bakr ibn Muḥammad Jalāl al-Dīn al-Khuḍayrī al-Suyūfī (c. 1445–1505 CE), *Al Durr al Mukhtar*, (Beirut), vol. 2, 72

³ تحفة الفقهاء، محمد بن أحمد بن أبي أحمد، أبو بكر علاء الدين السمرقندي، دار الكتب العلمية، بيروت – لبنان 2/25

it is an increase by way of excess stipulated in one of the two counter values, in transaction of exchange. Technically speaking it is unequal exchange of two commodities of the same ingredient or kind as exchange of wheat with wheat.¹

Unequal exchange of values can be in weight or measure of capacity or count. This means that it is a homogenous exchange of good with an increase from one side with respect to weight and measurement. Example is wheat /grain of 5kg with an exchange of 6kg wheat/grain. Six basic items are explicitly mentioned in two *Ahadith* of the prophet (peace be upon Him). The Prophet (peace be upon Him) said:

From Abu Saeed al-Khudhari, who said: “the messenger of Allah said: Do not sell gold for gold except when it is like for like; nor misappropriate one through the other; nor sell silver for silver except like for like; nor misappropriate one through the other, nor sell things that are absent for those that are present.”²

In another Hadith Prophet said:

From Ubadah Ibn Samit who said. The Messenger of Allah said : “Gold for gold , Silver for Silver, Wheat for Wheat, barley for barley, dates for dates, salt for salt, like for like , in equal weights, from hand to hand. If those species differ, then sell as you like as long as it is from hand to hand”.³

The two *ahadith* implicate some different versions of *ribā* which looks different from the one mentioned in the Quran that also prevail in the financial market. It covers all those transactions of same genus where sale isn't equal from both the sides; moreover the transaction is commenced on the basis of spot or deferred payment. It also covers the transactions of identical goods where weight/measured is disturbed in a spot or deferred payment. In a case of *ribā* which was heard at Supreme Court of Pakistan the verdict was given. According to the verdict a barter transaction between two different weighable or measureable commodities when delivered from only one side is deferred.⁴

The rationale is the basis of the prohibition of *ribā al-fadl* and has a very meaningful impact over a faithful society. It is to safe guard the benefits of the party with less experience, knowledge or ignorance; that may get tested by the other parties whom through

¹ Kasani, 'Ala' al-Din al-Kasani, bada al sanai, Dar Al Hadith, Cairo, vol. 5, 183

² Muhammad ibn Isma'il Sanani, Imam Muhammed Ibn Ismael al Ameer al Yamany as San'ani, Subul Al Salam Sharh Bulugh Al Maram, Dar al-Fikr, 1938, vol. 3, 37

³ Muslim, Sahih, Kitab al-Masaqat, bab al-Sarf Hadith no.1587, vol. 3, 1211, vol. 3, 37

⁴ The news, *Order of ssupreme court*, Apellate banch of Riba, The News, December 24, 1999

their experience, influence and knowledge may exploit the former. Hence, the lawgiver as a savior safeguarded the interest by eliminating injustice by making sure that the exchange should be equal on both the side. Another aspect is to safe guard the interest of the public by eliminating different sorts of social crime, As an unequal exchange of the same commodity which may give birth to social crimes like monopoly, hoarding for the sake of abnormal profits. For instance, a rich man can hoard dates for the upcoming crises and when the crises of shortage is at peak he not only sales the date on higher prices rather can control the quality of it as well which means he is in the position to sell inferior dates on the price of superior dates making the price all-time high.

Another rationale for eliminating *ribā-fadl* is to make sure that the commodity as a medium of exchange is money. This stipulation helps the economy to promote an intermediate act of money as a medium of exchange. In a hadith the prophet (peace be upon him) instructed Bilal (may Allah be pleased with him) to sell measure of dates for money and after he completion of the sale, purchase superior ones with that money.

Ribā al- Nasa(delay) : it is an increase due to the delay in time which means it is an increase of another condition of the transaction based in the *ribā al fadl*. Hence *ribā al- Nasa* takes place when articles of same genera or different genera measured or weighted, are exchanged with deferment on one side, even if the excess of any sort isn't observed, the transaction will tantamount to *ribā al-Nasa*. Hence it is because of the delay in the completion of the transaction. Thus, 5kg of silver is exchanged with the 5kg of gold or silver with a stipulation of extra time of a year or so. This extra period of delay is not acceptable for the same reasons mentioned in *ribā al-fadl*.

Six items of sale in the above hadith are explicitly mentioned that may fall in the category of *Ribā al fadl*, if the principles of exchange are ignored. They are Gold, silver, wheat, barley, dates and salt. Question arises here that are these commodities subject to law or other commodities also come into range due to underlying cause *illah*. Jurists of all the sects have gathered on the unanimous opinion that the restriction just doesn't imply on the six mentioned commodities in the hadith rather the *Hukm* is extendable on the other commodities that resembles the six commodities with regard to the *illah*. The general resembling maybe on the basis; the *illah* should be plain and consistent so that the meaningful analogy takes place; same *illah* must appear on both the sides of the elements

of analogy, Object (far'a) and subject (asal); the analogy must be general and not specified to a single case.

Keeping these general unanimous opinions in view that describes the attributes of underlying cause, jurists have showed their analogy based on the six commodities mentioned in the above Hadith.

Hanafi jurists: if the underlying cause is not based on similarity i-e similar weight and measure; if the similarity isn't observed, in an event of hand to hand transaction *ribā al-fadl* will take place. Classical example is exchange of iron with cotton. According to this analogy, it does on run with any transaction that is based on count because it is neither weighted nor measured. Classical example is eggs, oranges, mangoes etc.

Shafi Jurists: the underlying cause for gold and silver is based on their currency-value (*thamaniyyah*) and for rest eatable items i-e for wheat, barley, dates and salt is food-value (tu'm). Hence compatibility of items is only observed if the underlying cause is similar. For example *ribā* will only run in the event of exchange between the two vegetables of the same kind if the other conditions of exchange aren't fulfilled.

Maliki jurists: the underlying cause is currency value and storage capacity/ hoarding. According to *Maliki analogy* only runs in the non-perishable goods i-e gold and silver. The four remaining items, it can be stored for a reasonable time without perishing. Hence for eatables like vegetables; transaction with respect to hand on hand maybe delayed because of their perishability. This means any non-perishable item have the tendency to become currency for exchange. Imam Malik says:

“If the people of an age make currency out of the skin of camel and that become prevalent among the people. I view its exchange with gold or silver with delay unlawful.”¹

This implicates that homogenous exchange of currency should fulfill the demand of equality in quantity and prompt delivery from either sides. This isn't in the case in heterogeneous exchange say dollars with rupees; here equality isn't required. However delay or deferment in delivery may lead to *ribā al-Nasa*.

2.6.5 Prohibition of Qimar: *qimar* is a pure game of chance in which the player expects an abnormal profit if he/ she strikes the correct option and wins among the other competitors. As opposed to others equally eligible for the gain, its income is a result of a

¹ Sahnun, Muhammad Ibn Sa'id Ibn Habib, *Al mudawwanah al Kubra*, (Dar sadir), Cairo, vol. 8, 395, 396

lucky draw or a lottery. This unequal distribution of wealth is the result of the said transaction and is against the glorious principal of justice: “you do no wrong, nor are you wronged”.¹

2.6.6 Prohibition of Maysir (gambling):

With regard to the wisdom behind the prohibition of gambling, any wise person will see that there are many reasons for it, including the following:

- Gambling makes a person rely on accidents, luck and wishful thinking for his earnings, instead of hard work, the sweat of his brow and paying respect to the ways prescribed by Allah.
- Gambling destroys families and causes the loss of wealth through haram means. It makes rich families poor and humiliates proud souls.
- Gambling results in enmity and hatred among the players, because they are consuming one another’s wealth unlawfully and getting wealth unlawfully.
- Gambling turns people away from the remembrance of Allah and from prayer, and pushes the players to have the worst of attitudes and habits.
- Gambling is a sinful hobby that wastes time and effort, and makes people get used to laziness and idleness. It stops the ummah from working and producing.
- Gambling pushes people to commit crimes because the one who is penniless wants to get hold of money in any way he can, even if he has to steal it or take it by force, or through accepting bribes and cheating.
- Gambling causes stress, illness and nervous breakdowns. It breeds hatred and in most cases leads to crime, suicide, insanity and chronic illness.
- Gambling pushes the gambler to bad behavior such as drinking alcohol and taking drugs. The atmosphere in which gambling takes place is dimly lit and filled with cigarette smoke; people talk in hushed voices and whispers, and sneak in and out as if they are up to no good. They come in hesitantly, filled with suspicion, and gather around the green table, breathing uneasily and with their hearts pounding. They are

¹ Verse 4:161

supposed to be friends playing a game, but in reality they are enemies, each of them lying in wait for the other and trying to make gains at the expense of the other and his children. The owner of the place tries to numb the feelings of all participants by offering dreamy music, fallen women, all kinds of drinks and cigarettes. The green table is surrounded with cheating and deception. The waiters and girls may tell one player about another player's cards, helping one player to beat another by means of nods and whispers. Sometimes they achieve a kind of balance to make sure the game carries on and people stay for longer. No doubt everyone loses in the end, they lose the money they spend on drinks and cigarettes, the money they give to the waiters, the money they spend on drinks for the girls, and all kinds of other losses. Even the one who wins all or most of the games loses all or most of his winnings, and the loser loses everything. And at the end of the night, they all sneak away, showing the signs of depression and humiliation, and the loser warns the winner to look out the next day.

- How many families have become poor because of gambling? How many mouths have gone hungry, how many bodies have become naked or been clothed in nothing but rags? How many marriages have failed, how many jobs have been lost, because of a person who stole money to support his gambling habit? How many men have sold their religion and honor at the gambling table? Gambling destroys everything, even when the aim is money. It includes wine, smoking, bad company, darkness, confusion, cheating, and hatred, watching for opportunities to take advantage of others, deception and all other kinds of evil.

Its literal meaning refers to getting something quite easily or getting a profit without working for it. The risk level in *maysir* is very high. The player most of the time loses the capital (totally or partially). In the event of profit he/she is liable to gain an abnormal profit ratio while the competitors must forgo the capital (fully or partially) to fulfill the contract. This is again against the principal of injustice: you do no wrong, nor are you wronged you do no wrong, nor are you wronged¹. Most

¹ ibid

common form of gambling prevailed in Arabs before the advent of Islam was through casting arrows on the marks, marked carcass of a slaughtered animal in a bag. The following Qua'nic verses form the basis of prohibition of contracting under conditions of games of chance. Allah Says:

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.¹

Allah Says in his book:

O Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer: will ye not then abstain? ²

In Another place Allah say:

O They ask thee concerning wine and gambling. Say: 'In them is great sin and some profit, for men; but the sin is greater than the profit.' They ask thee how much they are to spend; say: 'what is beyond your needs'. Thus doth Allah make clear to you His signs: in that ye may consider.³

A notable Islamic Scholar states while defining the term of Gambling in these words:

"It is a kind of game where "each one of two contestants seeks to defeat his partner in an action or statement in order to take over property set aside for the winner"⁴

According to Al Shawkani:

"It is a situation where there must be one of the player gains and another loose."⁵

However the contemporary scholar Sabuni concludes it in these words:

"Every game which results in profit for one party and loss for another". Generally, in modern applications, the act of gambling sometimes referred to betting on the occurrence of a future event."⁶

¹ Verse 5:90

² Verse 3: 91

³ Verse 4: 219

⁴ Al Maliki, Ibn al- Arabiyy, '*Aridat al-Ahwazi*, Sharh Sahih Al- Tirmizi, al-Qahirah: (Dar al-Kutub al-Ilmiyyah), 1934, Vol VII,

⁵ Al-Shawkani, *Nayl al Awtar*, vol. x, al-Riyad: Dar Ibn al-Qayyim, 2005

⁶ Al-Sabuni, *Al-Bayan Tafsir Ayat al-Ahkam min al-Qur'an*, vol.1, (Dimashq:Maktabah al-Ghazaliyy), 1980

The term *maysir* is broader than *qimar*. *Maysir* includes all types of gambling, that is, it is more than just a specific game of chance. The term *Maysir* was originally used as a reference to the pre-Islamic darts game where seven people wagered on shares (parts) of a dedicated prize. *Maysir* is prohibited under Islamic law on the grounds that the agreement between the participants is based on an unethical temptation presented by hopes that you fully wish in the minds of the participants that they would gain it by chance, without regard to the possibility of loss.

Talking about other terms that are close to *Maysir*; *Jahala* indicates ignorance or ambiguity regarding the subject of sale or price. In other words, it is a lack of knowledge about the details of an object, event, or action, knowledge about its occurrence. For example, from a Hanafi perspective, if the issue of sale or price (*thaman*) is associated with great ignorance, which leads to a dispute (*munaza'ah*) between the two parties of the contract, then the sale becomes defective (*ba'i Fasid*). On the other hand gambling is not based on *jahala* as the initial price or bet is well known to the parties specified to take part in it.¹

In terms of permissibility, Ibn Taimiyah and Ibn Al-Qayem categorize contests into the following three groups:

- First off, games like chess and dice cause more harm than good. Such contests are prohibited, regardless of whether they have a cash incentive. Ibn Taimiyah and Ibn Al-Qayem think that chess distracts a player's attention more than dice do.
- Second, sports like javelin are allowed even when there are financial gains involved since they include more good than bad.
- Thirdly, competitions that involve neither good nor bad, such as racing, are acceptable as long as there is no financial gain involved.²

¹ القمار والميسر قد يختلف معناهما وحكمهما واحد، أحكام الشريعة . الميسر . حكم الميسر . الحكمة من تحريم الميسر . المراجع أحكام الشريعة جاء في كتاب الله ، 2018 ، ص 50

² Ibn Taimiyah, *mukhtasar Al-Fatawa Al-misriyah*, 525; Ibn Al-Qayem, *Al-Froosiyah*, 32 & 83.

2.6.7 Prohibition of Khilabah (fraud) and Ghishh(deception): Although *khilabah* or *tafif* and *ghishsh* have been used in the text of Quran but it is confirmed in the Sunnah. However some words caring its meaning maybe traced out in the Text of Quran like *Khida'*. These terms confirm the trick based practices by one of the parties to induce a person to a contract without which he would have not entered it. So, in a contract of any sort, if element of fraud or deception in any shape is found, the transaction will be effect to null and void at the very time it is found to be so. Qur'an and *sunnah* disapprove fraud, cheating and deception in whatever form they might be.

((عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَجُلًا ذَكَرَ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، أَنَّهُ يُخَدِّعُ فِي الْبَيْعِ، فَقَالَ: إِذَا بَايَعْتَ فَقُلْ لَا خِلَابَةَ))¹

Some of the prevalent form of these transaction in the pre Islamic period were like short measuring or weight in the products like eatables were known *tafif*; false bidding of a particular item, just for the purpose of raising the amount *najash*; leaving an animal un milked for the purpose of sale at a higher price by showing extra yield of milk was known as *tasriyyah*; trading at the out skirts of the city to consume whole lot at a lower price and then selling it on a higher price in the proper market of the city was known as *talaqqi al-ruqbaan*.

These violations were closely monitored by the prophet (may peace be upon him) and rendered his orders instantly to stop it for the sake of eliminating injustice in the society and letting the poor survive in the market. The prophet (may peace be upon him) said:

“If both the parties spoke the truth and describe defects of the goods, then they would be blessed in their transactions, and if they told lies and hid something, then the blessing of their transaction would be lost”.²

The holy prophet (may peace be upon him) also asserted that:

“Swearing (by the seller) is beneficial to the trade, i-e it may persuade the buyer to purchase the goods, but in that way he will be deprived of God's blessing to the earnings”.³

About the fraudulent element in a certain transaction Holy Prophet said:

¹ صحيح البخاري، محمد بن إسماعيل أبو عبدالله البخاري الجعفي، 3/65

² Muhammad ibn Ismai Bukhari, *Shahih Bukhari*, kitab al buyu, bab idha bayyana al- bayyi'ani, no. 2079, 410,(Dar al-Kitab al-arabi,Beirut). 410

³ Ibid.,bab yamhaqullah urriba, no. 2087, 412

It is reported that a person came to Holy Prophet (may peace be upon him) who was defrauded in buying. The holy Prophet instructed him to say at the time of buying, “there should be no attempt to deceive, and I have the right to cancel it within three days”.¹

He also said that:

” the honest and truthful merchant will be on the day of resurrection together with the Prophets, the faithful ones, the martyrs and the pious people”.²

Yet in another hadith:

It is reported that the Holy Prophet (may peace be upon him) once happened to pass by a heap of grains in the market place and on examination found that the grain beneath the surface was wet while that on surface was dry. He chided the seller for restoring to such deceptive tactics and said, “He who deceives is not one of us”³

In terms of permissibility, Ibn Taimiyah and Ibn Al-Qayem categorize contests into the following three groups:

- First off, games like chess and dice that cause more harm than good. Such contests are prohibited, regardless of whether they have a cash incentive. Ibn Taimiyah and Ibn Al-Qayem think that chess distracts a player's attention more than dice do.
- Second, sports like javelin are allowed even when there are financial gains involved since they include more good than bad.
- Thirdly, competitions that involve neither good nor bad, such as racing, are acceptable as long as there is no financial gain involved.

2.6.8 Prohibition of two or more Mutually-inconsistent contracts or contingent Contracts:

This is a well-established point as per *Shari‘ah* law and is confirmed in verity of Ahadith:

((عَنْ أَبِي هُرَيْرَةَ، قَالَ: “نَهَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعَتَيْنِ.))⁴

¹ Ibn Majah, Abū ‘Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rab‘ī al-Qazwīnī, Kitāb al-Aḥkām, bab al –hajr ala man yuqsidu malahu, *Sunan Ibn Majah*, no. 2205, vol. 2, 743

² Ibn Majah, Abū ‘Abdillāh Muḥammad ibn Yazīd Ibn Mājah al-Rab‘ī al-Qazwīnī, Kitāb al-Aḥkām, Kitāb al-Aḥkām, bab al –hathth ala al- makasib, no. 2139, vol. 2, 724

³ Muslim, *Sahih Muslim*, Kitāb al Iman, Bab qawl a-Nabi man ghashshana falaysa minna, no. 102, 99

⁴ صحيح البخاري، محمد بن إسماعيل أبو عبد الله البخاري الجعفي، 1/82

Hadith is narrated by Abu Hurayrah (may Allah be pleased with him) the prophet (may peace be upon him) prohibited from two sales in one sale (bayatan fi bay).¹

Traditionally, this sort of transaction was found in different ways. An Eminent *Sharī'ah* scholar, Dr Muhammad Tahir Mansoori in his book *Islamic Law of Contracts and Business Transactions* records three different cases:

The sale of two articles for two prices: here seller while selling an item of sale stipulates a cross transaction with price fixed. The seller says, “I sell you this article at this price on the condition that you sell your house at this price.

Contingent Sale: this arrangement occurs when two contracts are mutually inconsistent to each other which create incompatibility that may lead to *Gharar* or *ribā*. Hence to prevent these errors *Sharī'ah* law disapproves certain arrangement. A hypothetical example is when A says to B, “I sell you my house if C sells his House to me”. Here the completion of first contract is contingent upon the second contract.

2.6.9 The sale of a single object for two prices: this sale maybe portrayed in two ways. In the first way one of the two prices is paid in cash and the second price payable is deferred. For example A says to B “I sell you this commodity for one hundred in cash and one hundred and fifty on credit”. In the second way the selling party says’ “I sell this garments cash down for such and such price on the condition that I will buy it back after a certain delay at a certain delay at a certain other price”.²

2.6.10 Non-Conformity of contracts with the Maqasid al Sharī'ah (objectives of the Sharī'ah): *Sharī'ah* law isn't just a textual obligation that doesn't adhere itself with the consequences of its outcomes. The *Sharī'ah* Law is so naturally aligned with the practicing behavior that it demands from its followers to maintain a balanced approach between them. *Sharī'ah* has laid its core objectives to ensure the benefits of religion (by large) are preserved. By preservation of the objectives of the *Sharī'ah* we mean to say that a society is incomplete if its native's basic necessities are not fulfilled and as a result the whole society is put into harm's way even if they are following the injunctions of the *Sharī'ah* whole heartedly. This engine of preservation of benefits of the religion is very heavily dependent on the intellect of dutiful human beings. Hence we can say that all the

¹ Abu Daud, *Sunan abu Daud*, Kitab al-Buyu, Bab fi man ba 'a bay 'atayni fi bay 'atih, no.3461, 274

²Mansoori, Muhammad Tahir Mansoori, *Islamic Law of Business Contract*, (Sharia' Academy), International Islamic University Islamabad, 10-11

injections of *Sharī'ah* are directed towards the realization of these objectives known as *Maqasid al Sharī'ah*. According to the eminent scholar named imam *Taftazani* objective of *Sharī'ah* can also be alternately referred as “*hudud-Allah* (حدودالله)” that are considered to be in the sense corresponds with the Public interests or Public policies He says:

By rights of God is meant that which comprehends a public benefit, not peculiar to any individual. It is referred to God because of the greatness of its significance and generality of benefits¹

2.6.11 Violation of the Principle of Liability for loss and Entitlement to Profit: This is another golden principle of *Sharī'ah* for the commercial based transaction or contracts. This is enlightened through the Hadith of Prophet (May peace be upon him):

Usufruct devolves with liability: This principle states that a person is entitled to profit only when he bears the risk of loss. The principle works in a number of contracts such as a sale, lease or partnership contract. A businessman is entitled to receive profits and gains in his work for a reason.
2

Prophet Muhammad (May peace be upon Him) said in a Hadith:

A loan with a sale is not permitted, neither two conditions in a sale, nor a profit of a thing allowed which is not in one's liability, nor the sale of what you do not have in your permission.³

Hence a person in a hiring or partnership contract is entitled to gains and profits because he/she is willingly ready to take risk and bear loss. In a contract of rent the owner is entitled for the profits because he/she is ready to bear the loss in the form of destruction of the building. But using a sale contract for the purpose of loan or paying something to the creditor over and above the principal sum by the debtor is not allowed because the creditors doesn't bare any risk over the amount lent.

The above classifications if found are the root cause of any transaction to be called as non-*Sharī'ah* compliant transaction. More over these are the root causes that are explicitly

¹ Taftazani, Mas 'ud ibn 'Umar Taftazani, al Talwih, Makataba Muhammad Ali Sabih, cairo, 1957, 1562

² Abu Daud, Sunan abu Daud, Kitab al-Buyu, Bab fiman Ishtara' a'bdan fasta'malahu, no. 3508, vol. 3, 777

³ Nasai, Abu Abd al- Rehman Ibn Shu'ayb Nasai, Sunan, Kitab al Buyu', Bab Shartan Fi Buyuin, , Kitab al-Tijarah, Dar al Da'wah, Istanbul, no. 4625, vol. 7, 33

mentioned in the core literature of *Sharī'ah* law i-e Quran & Sunnah. However it must be kept in mind that the variation of the transactions in the modern world has distinctively made it tricky to exactly pin point the nature of transaction either it falls in the category of non-*Sharī'ah* compliant activities or not. The complexity of the issues have made the scholars work consistently to describe every single transaction to its place of justification either acceptable with the norms and the financial category of the *Sharī'ah* compliant transaction or due to any short fall that it become unable to be justifiable as per the standards of *Sharī'ah* and falling straight into the bucket of non-*Sharī'ah* compliant activities. Some checks to keep a transaction valid as per *Sharī'ah* standards are as follows:

- The confusion that the Islamic finance faces in the current scenario is because of the fact that a product or a transaction can't be understood simply by its technically elaborative condition based on any contract by the Islamic financial law. Certain perimeters are required in general to see whether the transaction is in line with the demands of the Islamic financial laws which will prove that a certain transaction is within the principles of *Sharī'ah* compliance. Four of such parameters are as follows:
- The first parameter is the qualification of an '*aqd*. It is a basic requirement of a transaction to be fulfilled and shows mutual consent of both the parties. In the modern world a law of contract is very well placed to cover up this qualification. This elaborative piece of paper must constitute all the inbuilt requirements of a contract that *Sharī'ah* law has given in detail.
- The second parameter is the qualification of that particular '*aqd* with the broad principles mentioned in the realm of *Maqāsid al-Sharī'ah*. This additional require will confirm securing benefits of both the parties, prevalence of justice and repulsion of harmful and injurious activity. In short it will manage any sort of *Gharar* based activities in conformity of the modern financial norms which could only be understood through practice and experience based on the very well acquaintance of the conventional system of financial activities.
- The third qualification is based on the financial report approach. This qualification is restricted to IFIs only which means that this is the internal check system of the banking transaction through which a *Sharī'ah* advisor will

come to know if there is any ambiguity or shortcoming is prevailing. The *Sharī'ah* advisor will confiscate the transaction in the event of non-qualification of the defined parameters of the *Sharī'ah* compliance. Generally what the *Sharī'ah* advisors interestingly know from these financial reports is that the transaction is based on loan or sale, and whether a sale is a true sale or not. This check is an extra qualification which helps out the *Sharī'ah* advisors to control all the ongoing operations in conformity of principles that assures *Sharī'ah* compliance.

- “The last and much expertise qualification is the legal documentation of that certain transaction which is a documentation of it in more depth than the initial *'aqd*. This is an important phase of transaction especially in IFIs, tender documents that covers all the information from the initial *'aqd* to the termination or completion of the contract. In this documents both the parties secure their risks in detail which helps them to claim their positions in the event of dispute like nonpayment, late deliverance of the goods and so on and so forth. This is a very specialized document that every single entity prepares in accordance with its inner circumstances that it has to bare while dealing with other parties for the purpose of trade, availing any service, import & export.”¹

These above mentioned checks are considered to be the most professional approach to mitigate the risk factor and consist of some very heavy documentation to stop any attempt of corruption in the transaction in any form. Especially the legal document is considered to be a bible sort of approach which is a clear binding among the party to disclose all the facts and figures that will help the authorities to check the final outcome of the transaction completed in every single manner of fairness. It is a dilemma to know that even this much of work isn't enough to cover all the loop wholes that will make the transaction befitting to perfection. Every now and then we hear about mega corruptions especially in the government sectors of our country in which tenders of worth millions of rupees are won by the unworthy parties that not only quote higher prices but also deliver goods of inferior

¹ Archer, Simon & Abdul Kareem, Rifaat Ahmed, *Islamic Finance: The new regulatory challenge*, chapter# 11, *Sharī'ah- Non-compliance risk*, second edition, (Wiley finance series), 242

quality, construct big projects with some low quality goods and so on and so forth. This clearly indicates that for making something absolutely resembling excellence is not done only by the heavy paper work or some articulate mindful approach in awarding some job to do some job who seems to be fulfilling the written document based requirements rather it is more important to control other variables that even the *Sharī'ah* compliant approach can't see further from its capacity. *Sharī'ah* compliant approach is workable on the points that could be well judged in form of a material approach but in fact our society is so well equipped to over or outsmart this man made laws interpreted through divine laws or laws built through personal experiences. The problem lies in our defaulted intentions that no divine or legal approach can overcome. As a nation we have mastered deceits to the perfection that only Almighty can witness them at the Day of Judgment by giving our hands and other body parts used in the way of *ḥarām* and illegal ways to witness against us. The Holy Quran confirms this event in these words:

On a Day when their tongues, their hands and their feet will bear witness against them as to what they used to do. That Day, Allah will pay them in full their deserved recompense, and they will know that it is Allah who is the perfect in justice.¹

The menace of corruption is so much inculcated in our blood that from the leak tender information/ pre bid information through which the companies lock the deal till the event of election in which the total turn out of the votes are always manipulated by the unseen forces; you can find it deep down into the routes of the society. This menace of corruption has heavily disturbed our socio- economic balance of our society and griping into it with more strength and power.

According to the transparency international and trending economics Pakistan stands 117th out of 180 countries in terms of corruption index which is relatively high to other countries of the world.² Alas, It's the country in which people claim their faith at the level of state religion they follow a supreme divine law in lining the legal laws in it. It's simply amazing to capture the situation is altogether different and disturbing. We need to inline our behavior toward the divine law and refrain from all the non-*Sharī'ah* compliant activities that are main problem of the economy. These are mostly based on lacking of

¹ Verse 24/24.

² Trending economics, *Pakistan Corruption Rank*, <https://tradingeconomics.com/pakistan/corruption-rank>, retrieved on: June 10, 2019

moral values at the system level vis-a-vis market and personal level which will be discussed in the coming chapter with the will of Almighty Allah.

CHAPTER 3. SOCIO-ECONOMIC SYSTEM OF PAKISTAN IN THE LIGHT OF ISLAM

3.1 Introduction

Socio-Economics is also referred to the term known as Social Economics. The term *Socio- Economic*¹ is related to or concerned with the interaction of social and economic factors.² If the term is discussed in totality then it is sometimes used as an umbrella term for various fields of research. The term "social economics" may generally refer to "the use of economics in the study of society". More specifically, contemporary practice considers the behavioral interactions of individuals and groups through social capitals, social markets (not excluding, for example, marriage screening, any behavioral exhibit of the specific society or any other social activities, contracts or any gathering that exhibit any agenda of concern that needs to be planned out in accordance to the available resources though its efficient use) and the formation of social norms within the relationship of economics to social values.

The main economic systems of the world and their related concepts are as follows:

- **Capitalism:** Capitalism, unlike the Islamic economic system and socialism, considers capital as an individual factor of production that is based on the factor payment of interest as an opportunity cost. It is also known as free market economy system. It supports the capitalists to benefit from the accumulation of wealth. Furthermore, an imaginary separating line is created those part away entrepreneurs who can't carry on continuing to feed the capitalists as they can't afford to exercise interest payment on the debts. In this regard, the interest has a significant impact on the allocation of resources. It influences basic economic decisions such as what and for whom to produce. In this way, Interest serves the capitalists and allows them to accumulate wealth.

¹ According to the SBP definition of the term Socio-Economic System refers to the development of the Social sector in Pakistan with a focus on poverty, demography, employment, literacy, education and health".

² Definitions, Socio Economic, Oxford Languages and google, https://www.google.com/search?sxsrf=ALeKk01547yqc6W01D4f_5hW1SNs6R2Q%3A1613237292231&ei=LAwoYNrSDa6j1fAP16CKsAw&q=socio+economic+terminology&oq=socioeconomic+terminolo&gs, retrieved on 13 July, 2019

This is evidenced by empirical statistics about income and wealth inequality in the second half of the twentieth century when monetary capitalism expanded with institutional support in an increasingly integrated global economy.¹

- ***Socialism:*** Socialism is a system in which everyone in society has an equal share in the various elements of production, distribution and exchange of resources. This form of ownership is granted through a democratic system of government. Socialism has also been demonstrated by a cooperative system in which each member of the community owns a share of the communal resources.² Its founder Karl Marks proclaimed that the system was built to replace other economic systems for the sake of equal distribution of wealth. However, the theory kills the concept of self-motivation that drives the individual and companies to excel and be efficient.³
- ***Mixed Economy System:*** it is the compromised sort of approach of both the economic systems i-e Capitalism and socialism. It can also be argued that none of the said systems are work hundred percent as per their attributes. Hence we find public and private sectors work side by side for the sake of their advocated benefits. Working on the same concept, the governments not only intervene in the market to regulate prices but also provide subsidies to encourage the production and availability of necessities at low prices to the poor masses. On the other hand, high tariff rates are also charged for luxuries with inelastic demand.
- ***Islamic Economic System:*** The Islamic economic system in its true sense does not exist in any country. However, its salient features and important values can be discussed. It is a combination of the natural features found in capitalism, such as the right to private property, private pursuit of economic interest, use of market forces, etc., used together with some distinctive features derived

¹ Sheikh, Salman, *A Comparative Study of the Major Economic Systems in the aftermath of the Great Recession, Critical Analysis of Socialism*, Munich Personal RePEc Archive, 5, December 2009

² Corporate finance Institute, Economics Articles, What is socialism, <https://corporatefinanceinstitute.com/resources/knowledge/economics/socialism/> , retrieved on 27th September, 2021

³ Sheikh, Salman, *A Comparative Study of the Major Economic Systems in the aftermath of the Great Recession, Critical Analysis of Socialism*, Munich Personal RePEc Archive, 12, December 2009

from Islamic economic teachings, such as interest-free economics, desired moral aspects like self-pursuit, providing social and economic justice to achieve the goals of socialism as naturally as possible without denying individual freedom and incentives.¹

The term Economy is Greek in origin which conveys the meaning of *management of the Households expenditures*.² This makes sense as economy of any country is just like managing a household like taking decision for the sake of allocating domestic duties, expenditure and making choices between the available commodities. Similarly economics refers to a specific aspect of human behavior; an attempt for the optimal use of scarce resources to meet your needs which, by contrast, are numerous and unlimited.

Hence in an Islamic framework, the Socio-Economic outcomes will be relatively different from the capitalistic or socialist financial norms. For example, Interest bearing transactions in the markets of an Islamic ideological country like Pakistan is against its Social norms. The Socio-Economic System will always be the one that is parallel to the social Norms and values of the Country. This is the main reason that it is responsible for the Socio-Economic system of the country should be based on the *Shari'ah* law which is the main source of our social values and norm. Hence only a *Shari'ah* backed economic system will be the most efficient Socio-Economic system of the country if applied in full letter and spirit.

3.2 Definition of Socio- Economic System

The term Economy is Greek in origin which conveys the meaning of *management of the Households expenditures*.³ This makes sense as economy of any country is just like managing a household like taking decision for the sake of allocating domestic duties, expenditure and making choices between the available commodities. Similarly economics refers to a specific aspect of human behavior; an attempt for the optimal use of scarce

¹ Ibid, P# 13

² National Bank of Belgium, *What is the economy/economics?*, 1 September 2014, http://www.nbbmuseum.be/doc/infosheets/fiche_information_EN_01.pdf, 2nd march 2020

³ National Bank of Belgium, *What is the economy/economics?*, 1 September 2014, http://www.nbbmuseum.be/doc/infosheets/fiche_information_EN_01.pdf, 2nd march 2020

resources to meet your needs which, by contrast, are numerous and unlimited. This concept is incorporated in the following definition:

“Economics is the study of how society manages its scarce resources”¹

The definition is strictly advocating the limitation of resources that the humanity is facing due to large number of population that is surviving to maintain the basic needs of life. Another definition adds a meaningful aspect of welfare being for the humanity:

“Economics is a Science of the material side of the human welfare”²

Talking about the term 'Social-Economics/ Socio-Economics', it may generally refer to the 'use of economics in the study of society. More specifically, contemporary practices that consider the behavioral interactions of individuals and groups through social relationship for the sake of dealing effectively through social markets that will help create social values of the market.³ Hence we can conclude its definition in these words:

"It is a discipline, studying the reciprocal relationship between economic sciences on the one hand and social philosophy, ethics, and human dignity on the other toward social reconstruction and improvement"⁴

Another in-depth definition of socio-economics is as follows

“It is used to refer to several different fields of study. The phrase social economics can be used to refer broadly to the use of economics in the study of society. More specifically, modern practice takes into account the development of social norms⁵ as well as behavioral interactions of people and groups through social capital⁶ and social markets (not excluding, for example, sorting by marriage). In terms of how economics and social values interact”.⁷

¹ Gregory Mankiw, *Principles of Economics*, September 2004. 7th Edition | ISBN: 9781285165875,

² Lionel Robins, *An Essay on the Nature and Significance of Economic Science*, Chapter#1, Science of Economics, the Macmillan company, 2, <https://books.google.com.pk/books?id=nySoIkOgWQ4C&printsec=frontcover&dq=definition+of+economic+pdf&hl=en&sa=X&ved=2ahUKewjGgZ7u75PwAhXLARUIHSUXDWsQ6AEwAXoECAMQAg#v=onepage&q=definition%20of%20economic%20pdf&f=false>, retrieved on 30 October, 2021.

³ John Eatwell, Murray Milgate, Peter Newman, W.W. Norton, *Social Economics: The New Palgrave*, (STICERD), 1989, xii

⁴ Mark, A. Lutz, *Handbook of Economics and Ethics, Social Economics*, 516, (Edward Elgar Publishing), 2009

⁵ **Social norms** are learned and accepted from an early age, often in infancy,⁵ and held in place by social sanctions ('punishments') for non-adherence to the norm and social benefits ('rewards') for adherence. If people conform to the norm, they expect to be socially accepted or rewarded; if they do not conform, they expect to be socially punished or excluded

⁶ Social capital can be defined simply as the existence of a certain set of informal values or norms shared among members of a group that permit cooperation among them

⁷ John Eatwell, *Social Economics: The New Palgrave*, xii, (Palgrave Macmillan), 1989.

Some of the main shares that indicates the socio-economic condition of a country is gauged are showed in the diagram:



In an Islamic frame work, the Socio-Economic outcomes will be relatively different from the capitalistic or socialist financial norms. For example Interest bearing transactions in the markets of an Islamic ideological country like Pakistan is against its Social norms. The Socio-Economic System will always be the one that is parallel to the social Norms and values of the Country. This is the main reason that it is responsible for the Socio-Economic system of the country should be based on the *Shari'ah* law which is the main source of our Social values and norm. Hence only a *Shari'ah* backed economic system will be the most efficient Socio-Economic system of the country if applied in full letter and spirit. Hence while carrying out the research work certain attributes of the term may be observed as follows:

- Social economic theories often take into account factors outside the mainstream economics focus, including the influence of the environment and ecology on consumption and wealth.¹

¹ Evan Tarver, Somer Anderson, *What Is Social Economics?*, (Investopedia), Updated Nov 2, 2020

- Social economics may attempt to explain how a particular social group or socioeconomic class behaves within society, including their actions as consumers.¹
- It is the study of a society that shows difference of class due to uncontrollable variables like affordability. Children from low-income families generally do not have the same opportunities as children from middle or upper-income families. For example, low-income families may not be able to pay for their children's participation in team sports, music lessons, or private lessons, which could propel them toward a prosperous future (in addition to providing them with increased confidence to take on more challenges). Also, these children may attend overcrowded schools where education is underfunded or understaffed.
- The study of Socio economic behavioral system of a society helps understand the influences that are responsible for the class difference like educational system. For example in the society of Pakistan there are many variants of curriculum devised to target a specific community that feel uncomfortable to even join the lessor class in accordance of their thinking. Some of them, most commonly the upper most class feels that the secular course outline is better for their children that must be followed. While the families with the religious background think their children must get a deep knowledge about the religion and so on and so forth.
- The study of socio economics problems helps the researchers establish the correlation between the socio economic indicators with the social issues in certain areas like education, ecology, corruption, child labor, condition of the prevailing justice, rights of the women and so on and so forth. This study of socio economic indicators helps the investors, migrants, funding agencies and other related organizations to devise their futuristic approach about the society for the sake of devising policies.

¹ Ibid.

- Most of these socio economic indicators are carefully devised and published by the organizations of the western world like transparency international, organizations under United nations, UNICEF, World Economic Forum World Food Organization, World health organization, World trade organization, International labor organization, Food and Agriculture organization, International Monitoring fund and so on and so forth. It is important for a country to make sure the reports published by these organizations are portraying the positive of the country. This is important because it can cause some negative impact on our economy like incoming flow of Dollars or other currencies, tourism, industrialization, job creation and other areas of development.

It is evident that all these Socio-Economic factors are based on continuous list of issues that needs a research work in detail. Therefore, all the dimensions of the topic may not be able to be encompassed here in this chapter. However issues of more importance and interest are touched here for the sake of a meaningful and result oriented discussion.

3.3 Intolerable situation of Education due to child labor and poverty

Education stands for the exploration of unknown, discovering new valuable ideas so we may connect to each other globally. It is to attain information about oneself and it is considered to be the main objective for what the human race is created. It is this knowledge through which human race has adapted all the changes and challenges coming forth in a society, its people and in the way of establishing an authoritative power at state level for the purpose of governance and uniformity.

Talking about the western philosophy about its vision regarding education, Sir Richard Livingstone declares that education as some *knowledge of good and evil*¹. This definition gives a wholesome of choice for the man kind to opt good and evil in accordance with their thinking and approach about it. Aristotle elaborates the fact:

¹ Cirtis, J. S., *Introduction to the Philosophy of Education*, (London: University tutorial press Ltd), 1960, v

If there is no agreement about the aims, neither is there about the means. Different persons starting with ideas about the nature of goodness, naturally disagree about the practice of it.¹

One can clearly understand the fact on which Aristotle emphasized is that's knowledge/ education isn't just a formula of gathering information. If this was the fact then computers are most well educated appliances of the society. Indeed it's the objectives and aims upon which its value may be deemed. Western philosophers have always lacked these determinants of values. According to their perception these values change from time to time, places and people. This is clear sign of lack of uniformity. These western philosophers have given importance to the matter only, neglecting the soul and its importance in building a civilized and balanced society. It is the Quran that declares the Knowledge just don't have connection with the body only, it has some higher objectives to fulfill that are connected to the soul of the human body as well. One part of the soul is associated with the bodily desires which are somehow same to the animals. The other part of soul is connected with the development of the mind. This unique part of our soul has the ability to dictate the human body, its needs and desires. This higher part works better when it is connected to the divine knowledge. It is because man knows less about its workability. Thus a balanced approach between body and soul is needed so that the higher and wanted results may be attained in accordance with the purpose of the life itself.

The bond of a society, its history and its fate is interdependent with its educational stats. Many scholars have declared a clear and strong co relation between the both. Mahmood Hassan elaborates the fact:

Education is a social process and it receives its meaning and essential logic from the human society of which it is the part. In its broadest sense the totality of the human experience within the society whether tangible or nontangible is called its culture. The consensus within a society, which is both intellectual and emotional, is what that, gives a culture its inner source of strength and motive force.²

While A.K. Barohi definition about the knowledge is rather more in depth and in accordance with our cultural values based on Islamic ideology by saying:

By education we understand participation is a cultural process by which successive generations of men and women take place in our national history upon the foundation of

¹ Aristotle, the Politics, 1337, p a & b, <https://www.bard.edu/library/arendt/pdfs/Aristotle-Politics.pdf> ,
Retrieved on October, 2022

² Absar Ahmad, *Concept of education in Islam*, 12

an ideological commitment to the Islamic way of life and a certain manner of thinking and action confirming its tenets and commands.¹

Numerous *Ahadith* and Qua'nic text is available on the topic that confirms its importance as a basic need for the Muslim society. The very basis of knowledge is pen which is a beginning tool for the purpose of learning is recorded in the Holy book. More importantly it's the first revelation of Quran; an acknowledgement for the Highest Authority:

Read! In the Name of your Lord, Who has created (all that exists), has created man from a clot (a piece of thick coagulated blood). Read! And your Lord is the Most Generous, Who has taught (the writing) by the pen, has taught man that which he knew not. ²

Education therefore isn't just an optional thing in a Muslim community rather its compulsion must be sensed at every level of the state conduct. It must also be considered as the basis of all social fragments. Quran advocates this fact:

[This is] a blessed Book which we have revealed to you, [O Muhammad], that they might reflect upon its verses and that those of understanding would be reminded. ³

Islam declares the fact that knowledge is the true basis of fear from the Al mighty which will lead to all goods for sure. Quran says:

.....Only those fear Allah, from among His servants, who have knowledge. Indeed, Allah is Exalted in Might and Forgiving.⁴

And ignorance is the basis of all wrong doings. Quran says:

Now such were their houses in utter ruin because they practiced wrongdoing (knowingly but due to their ignorance on their part). Verily in this is a SIGN FOR PEOPLE OF KNOWLEDGE.⁵

The Holy Prophet (May peace be upon him) himself emphasized on the topic and declared seeking knowledge as a collective responsibility by saying:

“Anas ibn Malik reported: The Messenger of Allah, peace and blessings be upon him, said, “Seeking knowledge is an obligation upon every Muslim.”⁶

After the war of *badar* the captives were given several options by the Prophet (May peace be upon him) to let themselves free from captivity. One of the options was for those

¹ A.K. Brohi, Education in an ideological State, *Aims and objectives of education*, 63

² Verse 96:1-5

³ [Verse 38:29](#)

⁴ Verse 35:28

⁵ Verse 27:52

⁶ Imam, Ibn e Majah, *Sunan Ibn Mājah*, kitab mukadimah bab fadl al ulama wal hath ala talab ilm, Dar al jail, Bairot, hadith no: 224,

who weren't in a position to pay, was to teach ten persons in lieu of their freedom. Meaning there by the Prophet (may peace be upon him) was well aware of the fact that it is education that matters a lot in building up the nation on strong footings. The persuasive nature of Prophet (May peace be upon him) also specifically demanded from the society good nourishment and quality education for the female. The prophet said:

He, who has a slave girl and teaches her good manners and improves her education and then manumits and marries her, will get a double reward.¹

However, it is a dilemma that Pakistan is considered to be one of the leading countries in the Muslim world and yet it has the worst numbers regarding its educational states. According to the economic survey of Pakistan, its literacy rate has declined from 60% to 58%. More than 2.5 million are deprived from going to school for one reason to another.² This is the lowest rate worldwide. It has the second largest out of the school population after Nigeria. We affiliate ourselves with the Prophet (May peace be upon him) who declared Knowledge as an eternal light.

One of the main reasons for neglecting schools is that families with low income are more interested in enhancement of their income. Local businesses promise the same and no literacy is required for that as they are operations only require basic investment and human labor like establishment of a sale point, may it be cart on the road side, it will promise a welcoming and an immediate income source.

We as a nation need to understand that our survival is solely dependent on the acquisition of both the forms of Knowledge i-e worldly and religious. We must insure that our upcoming generation must attain its identity in its purest form. It is understandable that not all of us can be religious scholars but a fragment within us must take the responsibility to endeavor for the cause and lead the nation in accordance with the glorious principals of Islam. The number in Pakistani society is overwhelming at this point of time having 32,000 madrassas (registered and non-registered) serving for the cause; almost 3.5 million students are registered at this point of time.³ It is debatable whether their curriculum is up to date or not but without any doubt it is adding on to the cause of a *parha likha* Pakistan. Certain

¹ Ibid, Kitab Al Mukadimah,

² Dawn news, Education Reform, <https://www.dawn.com/news/1431049> , retrieved on 20th April, 2020

³ The Express, Tribune, *Mainstream Madrassas*, <https://tribune.com.pk/story/1627829/6-mainstreaming-madrassas-opinion-edited-draft> , retrived on 31 May, 2020

areas that they are very strong at; Govt. of Pakistan offers them Master's degree in Islamic Studies and Arabic language who so ever complete at least seven years long course known as *darsee Nizami*. There is no second opinion that the quality of the education must be assured as their graduates seldom make it to the main stream of the society in terms of finding excellent opportunities in Jobs. Anyways whatever maybe the reform govt. of Pakistan is interested to make into the madrassas; it is their responsibility to cooperate with them guaranteeing them there personal identity. At least as a nation all the segment of the society must have a similar worldview based on harmony in thinking that will ensure the right direction for the development, integrity and peace. It is important that the students of madrassas after completion of their degrees must take part in the betterment and advancement of the society through their skills which must be at par any other institution of Pakistan. Moreover their reasonable representation in the civil and military organizations must be ensured by enhancing the level of the Madrassa education. This will root out the class difference on the basis of religious conflict in thoughts which is responsible for the dissection of the society and intolerant behavior.

It is in the mandate of a welfare society that the education must be in reach to the entire citizens but here in Pakistan the problem is in the swing as most of the Parents chose private schools to be the best choice for their children and pay high fee structures without any regulation. Two main reasons that the parents prioritize admitting their child in the Private schools is that firstly, the capacity in the govt. schools isn't enough to absorb the demanding and increasing numbers of the students nationwide. Secondly the quality education in the govt. institutes isn't ensured at par the international standards. Parents therefore without any other available option in their hand tilt toward the slogans built by the private schooling systems to capture their attention. This is burdensome job for the parents to keep up with as the private schools ruthlessly slaughtering the parents with the blade of expensive fee schedule that they have to follow. Like it or not this vicious circle is a big question on the integrity of Pakistan as some of the schools also link themselves with some foreign agenda for the sake of acquiring funds from the foreign agencies and in lieu to that propagate there values and cultural preferences that in the long run creates an unrest in the society. This westernizing of the culture must be taken into account and dealt with the problem in an efficient way. The best thing to do is to implement a universal

curriculum that is heavily promoting our cultural values; none of us want to make our upcoming generation pretending to be a “sick chicken of west”.

Private schooling system is the basis for the class difference in the society as discussed earlier. The high-fi curriculum of the private school makes an incompatible environment between the upcoming breed of children in the country. However private schools are less to be criticized; it is the government policies that matters a lot. It is the government to be blamed for the ununiformed curriculum, less allocation of budget and unskillful staff hired for the teaching purpose. Normally private schools are offering or at least try to affiliate themselves from the Cambridge based curriculum. Parents for this reason are easily trapped at the time of admitting their child in schools seeking no other option available for them to acquire. There are also other multiple reasons that are responsible for this disaster. Certain steps must be taken in this regard:

- A long-lasting and broad based vision must be adopted to create a national education policy that will ensure the right track for achieving the higher goals to cope up the problem once and for all. The vision of 2030 education policy devised by the planning commission of Pakistan is very important in this regard. One of the hallmarks of this plan is to introduce a uniform policy in the educational institutes nationwide. This will give a fair chance for the student of rural areas to compete with the students of urban areas and at the end of the day both can seek the job market with the same level of knowledge and exposure. The policy of vision 2030 clearly indicates that the education expenditures must be at par 7% of GDP which is not the case in the current scenario; it is revolving around 2.4.
- More focus should be on the point that 100% children must attend the schools. These 3.5 million children not attending the school represent huge number, if enrolled, can certainly change the whole scenario from negative to positive sentiment and depict a favorable picture for the country to the rest of the world. For attainment of the cause, incentives must be given to those families and individuals that will help them in sending their child to the school. These poor families have a very limited circle of life. Their whole hearted struggled is spent on fulfilling their basic needs of life. They also need counselling from

the government appointees to make them understand why education is so important for their children. The problem is still to be addressed especially in the interior parts of the provinces where there is less awareness about the knowledge itself.

- The solution to improving education quality must involve the latest technological practices in leveraging the standard at par the developed world. Technology has surpassed all other determinants of change in rest of the fields of life as well. Although, Government of Pakistan kept it in view and took a huge initiative to provide the laptops for the student of higher degree but is this enough? Certainly not. Technology must be introduced in all the departments that are involved in education from the lowest to the Highest. Our classrooms must be equipped with the modern tools of education. Teachers must be given training to use the facilities so that their way of using it is more professional. The technology will also help the teaching staff look unbiased and independent while assessment of the student is conducted. This means that the technology will restrict the negative behavior of both the entities; teachers and student to surpass their limits and get carried away with their emotions letting the main goal lost or differed due to some misconduct or misunderstanding of other point of view. Just for the sake of argument, our PhD programs seriously lack professionalism. The lack of cemenetry between the concerning variables that need synchronization for the sake of smooth process till the end. If the technology is put in between these variable that include the researcher, the institution, the supervisor and the governing instruction like Higher Education Commission, will sure insure that the research work conducted is at par the required standard and commence at the prescribed time and date of completion of the degree. Say, all the work done by the researcher that is ongoing must be submitted online to a portal where the report regarding its quality must be put forward. These actions will create a history for both the researcher and the supervisor with a specified time line. For instance if the research work isn't at par the international standards or lacking some sort of professionalism, the researcher must be cautioned in the beginning of submission of his first draft

of his first sub topic of his first chapter. These and other extra precautionary measures must be taken into account so that the process may be smooth from the beginning till the end with less possibility of clash and higher probability of work done with synchronized minds. Technology has the power to eliminate those who don't use it effectively and replace them with those who are more capable of and affective in using these software or gadgets that are human friendly and work efficient. However the real challenge lies in how are we going to acquire this and implement it in the field of education? The real problem that's hindering the way is its cost value which is very high. It is however need of the day.

3.4 Alignment of Business Ethics in the light of Shariah and contemporary practices.

It is important for any nation to show a positive outlook to the rest of the world for the sake of smooth relations and economic growth through the foreign investments. Unfortunately our Socio- economic indicators are not very promising as disused earlier. Therefore it is important to know about the moral and ethical values that Islam preaches to its followers which will guarantee an environment for acceleration in all shares of life, especially activities related to business and economics.

A business is any particular occupation or Work in the field as self-employment for earning; Businesses maybe such as agriculture, trade or art, or any other Profession can have countless shapes and verities. Hence in the affairs related to the trade, ethics remains the pivotal part. Ishtiaq Ahmad says about it:

Business ethics on the other hand is a special branch that is related to the ethics that examines rules and ethical principles in a commercial competitive environment. Moreover it implies to moral Differences or Ethical problems that can arise in a business environment; any special duties or an obligation that applies to persons engaged in trade. Those who interested in business ethics studying different types of business activities that are ask whether the behavior is morally correct or wrong.¹

¹ Ishtiaq Ahmad Gondal, *Business Ethics in Islam*, (Al-Adwa), 34:25, #1

Business can also be understood as an economic system in which goods and services are exchanged with one another or for money, based on their perceived value. A business (also known as a corporation or corporation) is an organization designed for providing services of goods or both to consumers.

In business, there are many different people one has to answer: Clients, shareholders, and clients. Business ethics are the ethics that refer to the ethical rules and regulations that govern the business world. In other words they are the ethical values that guide the way we do business or other businesses Decisions. The law requires some working ethics, for example The Stock and Exchange Commission regulates the method of investment bankers and stock brokers Doing business, and court rules that deal with privilege dictate some Ethical decisions for lawyers. However, there are also commercial decisions do not go near the guidelines of the law, in terms of moral or ethical judgments must be manufactured. The ethical principles that govern the business ethics are cited below:

- Ethics are principles, values and they define what is right and wrong behavior.
- Ethics are stated by the law, custom, and public opinion.
- Ethical behavior may differ from society to society.
- Ethical standards are ideal for human conduct.
- There is no accurate definition of ethical standards.

Unlike its counterpart, the western school of thought, business ethics in Islam is an extremely colossal term. The references relating to the topic are present in larger and powerful quantities. The book of the Holy Quran and the Sunnah of our beloved Prophet, Hazrat Muhammad (SAW) provides us with an open call to clarify our vision on the business Ethics in Islam.

Islam provides us with complete moral and ethical solutions regarding the conduct of business, if only once implemented with transparency; it can achieve right decision in business activities in specific and the economy as a whole. Ethics are the moral standards by which people judge behavior. Morality is often summed up in what is considered to become golden rules.¹

¹ Gondal, Ishtiaq Ahmad Gondal, *Business ethics in Islam*, (Al-Adwa), 34:25, 1

The concept of business morals/ business ethics is as old as the Islam itself which got its rebirth by the hands of the last Prophet Muhammad PBUH. In his childhood he got busy in building up his managerial skills by providing person services by taking the herd of goats for grazing toward mountains. Abu Saleem Muhammad Abdul Hai wrote in his book as follows:

“Muhammad, at the age of 10 or 12 started graving the goats with other children. Graving the quadrupeds was a very common occupation of children even the ones from the noble families use to graze goats”¹

Prophet Muhammad PBUH at his age of 25 confirmed his mastery as a trader when after took the caravan trade of Hazrat Khadijah (razialla Unha) to Basra and returned Macca making handsome profits. Famous writer, Fazlur Rahman mentions the fact in his words:

“Its extraordinary trading activity. He has a reputation as an honest and trustworthy merchant since his young age”. Besides that, at the age of 25 years, the Prophet had become a wealthy entrepreneur and trade abroad no less than 18 times.²

Hence, It is due to the above fact that Prophet Muhammad PBUH showed his followers the right way to business that was based on the practices which are now internationally accepted norms like consciousness to see though what is right and wrong, wish less working for achieving the goal, purity for seeking truthfulness and mental peace, publicity of all the activities that must be well informed in the circle, Humanity inculcating all the variables like respect, decorum in their policies and programs, transparency and so on and so forth.³

The most important of all is that these financial practices were based on the concrete knowledge of divinity and experience. The first and the foremost teaching in the light of his teaching were to ensure that all financial activities should be legally acceptable viz-a-viz should be on strong footings of morality/ moral values.

¹Abdul Hai, Abu Saleem Muhammad Abdul Hai, *Holy Life Of Prophet Muhammad (PBUH)*, 10-11, <https://islamicstudies.info/history/seerah/HOLY-LIFE-OF-HAZRAT-MUHAMMAD.htm>, retrieved on 16th february, 2020

² Ali, Sajawal Ali, *The Prophet Muhammad S.A.W: Life As A Trader And Entrepreneur In The Perspective Of Business Ethics*, (academia .edu), 2,

³ Ashish Kumar, Savani University, *The basic principles and components of Business ethics*, Vol-6, Issue-3 2020 IJARIIE-ISSN(O)-2395-4396, july 2020, <https://www.researchgate.net/publication/342672976> *The basic principles and components of Business ethics*, retrieved on 18 september, 2019

3.4.1 Honesty and Truthfulness: Islam also vacates this attributes throughout its teaching and demands from the Muslims to adopt it as a main characteristic in the business dealings. Allah says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَكُونُوا مَعَ الصَّادِقِينَ﴾

“You who believe, be mindful of Allah: stand with those who are true.”¹

Similarly emphasizing more on this point, The Prophet Muhammad (PBUH) said:

“No one testifies that there is no Allah but Allah and Muhammad is the Messenger of Allah—honestly from the heart (sidq min qalbih)—but that Allah will forbid him from entering Hellfire.”²

Hence, telling the truth or lying is habit that is learned and, if essential, should not be learned through practicing. A Muslim must practice telling the truth so much that it becomes the second nature, and always telling the truth without any effort, this is a sign of a pure heart entering heaven.

The Prophet PBUH said:

((حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا جَرِيرٌ، عَنْ مَنْصُورٍ، عَنْ أَبِي وَائِلٍ، عَنْ عَبْدِ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " إِنْ الصَّدْقَ يَهْدِي إِلَى الْبِرِّ، وَإِنَّ الْبِرَّ يَهْدِي إِلَى الْجَنَّةِ، وَإِنَّ الرَّجُلَ لَيَصْدُقُ حَتَّى يَكُونَ صَدِيقًا، وَإِنَّ الْكُذْبَ يَهْدِي إِلَى الْفُجُورِ، وَإِنَّ الْفُجُورَ يَهْدِي إِلَى النَّارِ، وَإِنَّ الرَّجُلَ لَيَكْذِبُ، حَتَّى يُكْتَبَ عِنْدَ اللَّهِ كَذَابًا "))

“You must be honest. And honesty leads to righteousness, and righteousness to heaven. Man continues to be honest and encourages honesty until it is registered with God as faithful. And beware of falsehood. Lying leads to evil and evil leads to hellfire. A man continues to lie and urges falsehood until he writes a liar with God.”

The attribute of truthfulness in the business contracts and deals counts a lot. It not only affects the lives in this worldly life but also hereafter. The prophet Muhammad PBUH once said:

عَنْ أَبِي سَعِيدٍ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «التَّاجِرُ الصَّدُوقُ الْأَمِينُ مَعَ النَّبِيِّينَ وَالصِّدِّيقِينَ وَالشُّهَدَاءِ»

¹ Verse 9:119

² Bukhari, *Sahih al-Bukhari*, 6094, Chapter 69: "O you who believe! Be afraid of Allah, and be with those who are true", Book 78: Good Manners and Form (Al-Adab)

Aba Sa'id reported God's Messenger as saying, "The truthful and trusty merchant is associated with the prophets, the upright, and the martyrs."¹

On the other hand the Prophet PBUH disliked the dishonesty the most. The Prophet PBUH said:

عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - { آيَةُ الْمُنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبَ، وَإِذَا وَعَدَ أَخْلَفَ، وَإِذَا أَنْتُمِنَ خَانَ

Abu Hurairah (RAA) narrated that the Messenger of Allah (ﷺ) said: "There are three signs of a hypocrite: when he speaks, he tells lies; when he makes a promise, he breaks it; and when he is entrusted, he betrays his trust."²

3.4.2 Goodwill; A reward for the Honesty

After practicing honesty, truthfulness, sincerity and other moral norms, Goodwill comes as a reward for it. This is the real identity of a successful businessman. Once a businessman/ woman establishes his/ her goodwill, Ensures a smooth and steady growth and a promising future. The Prophet of Islam PBUH introduced Islam in these words:

حَدَّثَنَا سُرَيْجُ بْنُ يُونُسَ، وَيَعْقُوبُ الدَّوْرَقِيُّ، قَالَا حَدَّثَنَا هُشَيْمٌ، عَنْ سَيَّارٍ، عَنِ الشَّعْبِيِّ، عَنْ جَرِيرٍ، قَالَ بَايَعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى السَّمْعِ وَالطَّاعَةِ فَلَقَّنَنِي " فِيمَا اسْتَطَعْتَ " . وَالنُّصْحَ لِكُلِّ مُسْلِمٍ . قَالَ يَعْقُوبُ فِي رَوَايَتِهِ قَالَ حَدَّثَنَا سَيَّارٌ .

It is narrated on the authority of Jarir that he observed: I owed allegiance to the Messenger of Allah (May peace and blessings be upon him) on hearing (his commands) and obeying (them) and the Prophet instructed me (to act) as lay in my power, and sincerity and goodwill for every Muslim.³

There is another hadith that confirms Goodwill as an integral attribute of a business person. The Prophet PBUH said:

وعن أبي يعلى معقل بن يسار رضي الله عنه قال: سمعت رسول الله صلى الله عليه وسلم يقول: "ما من عبد يستر عليه الله رعية، يموت يوم يموت وهو غاش لرعيته، إلا حرم الله عليه الجنة" ((متفق عليه)) ((وفي رواية: "فلم يحطها بنصحه لم يجد رائحة الجنة")) وفي رواية لمسلم: "ما من أمير يلى أمور المسلمين، ثم لا يجهد لهم وينصح لهم، إلا لم يدخل معهم الجنة".

Abu Ya'la Ma'qil bin Yasar (May Allah be pleased with him) reported: Messenger of Allah (ﷺ) said, "Any slave whom Allah makes him in charge of subjects and he dies while he is not sincere to them, Allah will make Jannah unlawful for him." [Al-Bukhari and Muslim]. Another narration is: Allah's Messenger (ﷺ) said, "He who does not look after his subjects with goodwill and sincerity, will be deprived of the fragrance of Jannah." A

¹Mishkat al-Masabih, Chapter 2, book: *Gentleness in Business Dealings* - Section 2, Book 11: Business Transactions, Hadith 2796, 2797,

² Ibn e Hajr, *Bulugh al-Maram* Book 16: The Comprehensive Book, Hadith 1528

³ Muslim, Sahih Muslim 56c, Chapter 23: Clarifying that the religion is sincerity, Book 1: The Book of Faith

narration in Muslim is: Messenger of Allah (ﷺ) said, "A ruler who, having control over the affairs of the Muslims, does not strive diligently for their betterment and does not serve them sincerely, will not enter Jannah with them."¹

Hence both the buyer and seller must be honest to each other for the sake of smooth business. If both are loyal to each other they will not only benefit in this world but hereafter as well.

3.4.3 Fulfillment of contracts: Islam emphasizes exceptional importance to fulfilling contracts and promises. Basic principles of truth, honesty and trust are included here. Thus a Muslim, a dealer / a manager must maintain his trust, promises and contracts. The following verses From the Qur'an and this fact:

“O ye who believe! Fulfill your contracts.”²

Allah says:

True believers are those who faithfully observe trust and covenants.³

Numerous *Ahadith* of the Holy Prophet (May God bless him and grant him peace) emphasize on the fact. One of the disciples of Prophet (SAAS) said:

“I bought something for the Prophet (SAAS) before he received his prophetic commission and as there was something still due to him I promised him that I would bring it to him at his place but I forgot. When I remembered three days later, I went to that place and found him there. He said that the prophet had been here for three days waiting for you.”⁴

3.4.4 Avoiding Hoarding (Ihtikar) of items (especially consumable items) for the sake of price hype: The Arabic word "Ihtikar" (monopoly) refers to stockpiling food in advance of a price increase. Ihtikar is defined by the Hanafi scholars in terms of terminology as the act of purchasing food and other comparable goods with the intention of holding onto them till the price increases.⁵

¹ Nawawi, Riyad as-Salihin, Chapter 78: Obligation of Rulers to show Kindness to their Subjects, Book: The Book of Miscellany, no. 653.

² Verse 5:1

³ Verse 23:8

⁴ Abu Daud, Sunan, Abi Dawud, *General Behavior (Kitab Al-Adab)*, Book 43, Hadith 224,

⁵ AL-MASRI, RAFEEQ YUNUS, *Islamic Jurisprudence Of Financial Transactions*, For Undergraduate Students of Economics & Management Chapter (VI): Bribe (Rashwah), Part (V): The Most Important Taboos 153 Chapter: VII Unfairness (Ghubn), 153

Hoarding whether in cash or in kind is completely detestable to the teachings of Islam. At the Islamic terms hoarding of wealth (gold, silver, and other money) is called hoarding. Previously condemns hoarding of wealth and preventing its circulation in society. The Holy Quran expressed the fact in the strongest terms:

“And there is those who buy gold and silver and spend it not in the way of God: announce unto them a most grievous penal on the Day when heat will be produced out of that (wealth) in the fire of hell, and with it will be branded their foreheads, their flanks and their backs. This is the (treasure) which be buried”.¹

Prophet (SAAS) said:

Ma`mar (Allah be pleased with him) reported Allah's Messenger ﷺ as saying: “He who hoards is a sinner”.²

There is slight difference about Ihtikar among the Four School of thoughts

- Ihtikar, according to Maliki jurists, is the process of observing market behavior in advance of price increases.
- Ihtikar, according to Shafai jurists, is the act of buying food at a time when food costs are on the rise in order to sell it later for a higher price; this action puts other people through hardship.
- Ihtikar, according to the Hanbali School, refers to purchasing food and storing it in anticipation of a rise in price.³

3.4.5 Confirmation of right of Labors: Commercial organizations have an ethical responsibility to look after the general well-being and improve the performance of their employees. They should not treat the workers as machines or tools, but rather as humans.

"Give the laborer wages before his perspiration be dry"⁴

The Prophet Muhammad ﷺ said:

"Those who work under you are your brothers. Allah has placed them to Work under you.

So if a brother is working under another brother, it is incumbent. Upon the brother in

¹ Verse 9:34-35

² Muslim, Sahih, Muslim, *The Book of Musaqah* (26), Chapter: The prohibition of hoarding staple foods, Book 22, Hadith 161.

³ AL-MASRI, RAFEEQ YUNUS, *Islamic Jurisprudence Of Financial Transactions*, For Undergraduate Students of Economics & Management Chapter (VI): Bribe (Rashwah), Part (V): The Most Important Taboos 153 Chapter: VII Unfairness (Ghubn), 144

⁴ Ibn Majah, Sunan, *Ibn Majah*, The Chapters on Pawning, Book 16, Hadith 8, Vol. 3, Book 16, Hadith 2443.

authority to provide the same food for his younger brother as he takes part himself and gives him the same clothing as he wears and does not put too much workload on his (worker's) shoulders lest he is overburdened and if he overburdened, you should come to his help".¹

3.4.6 Bribery hurting Duties that must have been performed on its merits: An important area of public concern is the employment practice in organizations. Discrimination, favoritism, corruption and bribery are very common in large organizations especially in the public sector in the case of hiring and promotion decisions. According to Islam, the office or position is considered as a Divine trust. Therefore, should be granted to deserving persons and responsibility should be accorded only to that person who is able to bear it and who has the power to do justice to the trust placed in him. There are evidences revealed by the Qur'an and Sunnah.

"Allah commands you to render back your trust to those to whom they are due and when you judge between man and man that you judge with justice"²

It is the duty of the appointee to prove his/her honesty in all the aspects of the job.

The hadith advocates the above fact:

"Buraida reported the Prophet as saying, "When we appoint someone to an administrative post and provide him with an allowance, anything he takes beyond that is unfaithful dealing".³

The law of justice in the court of Almighty at the Day of Judgment will be so harsh that no one will be spared from it. The hadith strictly paves the parameters of such rulers/ administrators/ responsible in these words:

"Abu Huraira reported God's Messenger as saying, "He who has been ruler over ten people will be brought on the day of resurrection shackled till justice loosens his chains or tyranny brings him to destruction".⁴

1 Al Tabrizi, Muhammad ibn 'Abd Allāh, *Khatib Al-Tabrizi. Mishkat al Masabih*, Marriage, Chapter #17, Chapter: Maintenance, and a Slave's Rights, Book 13, Hadith 283.

² Verse 4: 5

³ Mishkat al-Masabih, *The Offices of Commander and Qadi*, Chapter: Provisions and Presents for Rulers, Section 2, Book 18, Hadith 86.

⁴ Mishkat al-Masabih, *The Offices of Commander and Qadi*, Provisions and Presents for Rulers, Book 18, Hadith 37.

According to *Al-Ghazali*, bribe is “the act of forwarding money or any other type of property to someone with the aim of getting his support in committing an unlawful act or averting an incumbent duty”.¹

Bribe is impermissible for the briber, bribe taker and the middleperson who facilitates its payment. It is strictly forbidden if it is given for the sake of accomplishing a forbidden act, or inflicting oppression upon others. Some jurists consider bribe as impermissible for its taker, while it is permissible (or detestable) for the briber when he forwards it for the sake of obtaining a lawful right or avoiding injustice.² An example of this is the case when the briber is afraid of harm, which might be caused to him or to his family. However, there is no doubt that the sin committed by someone who takes the bribe for the facilitation of an unlawful act is greater than the sin committed by a person who fails to get his right without forwarding bribe.

The scholars of *Hanafi*, divided type of bribery into four categories:

- First, bribery done so that someone will be appointed as a judge or officials (just as civil servant). The ruling of this category is forbidden for both sides.
- Second, a judge who asks for bribery before deciding something. This type is also forbidden for both sides, even though the decision is right and fair, since deciding for fair decision is the obligation of judges.
- Third, giving a certain amount of money to someone to prevent his tyranny or to gain benefits (by acquiring his rights). This type of bribery is forbidden to the bribed only.³

¹ Al-Ghazali, *Ihya' Uloom Al-Deen*, Alrisalah Alalamiyah, volume 5, 917-921

² Annual Survey of International & Comparative Law, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?*, OTHER CONCEPTS CATEGORIZED AS BRIBERY IN ISLAM, volume 18, issue 1, Article 9, 2012, 198, <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1161&context=annlsurvey> , retrieved on 20 may, 2023

³ Annual Survey of International & Comparative Law, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?*, OTHER CONCEPTS CATEGORIZED AS BRIBERY IN ISLAM, volume 18, issue 1, Article 9, 2012,

- Fourth, giving certain amount of money to someone who help the giver to get his rights. Giving and receiving such money/property is permitted, because the status of the money resembles wages.

3.4.7 Environmental protection: One of the greatest means today. Large industrial plants pollute the environment. The merchants, in their passion for money, are completely oblivious to the environmental repercussions of industrialization. According to Islam, no individual or organization has the right to use its resources in a way that harms or causes inconvenience to people or society in general. Prophet (SAAS) has said:

“There should be neither harming nor reciprocating harm.”¹

The above discussion proves that how much Islam takes this matter serious. The purpose of sustaining the dignity of humanity in the eyes of Qur’an is always kept on height of honor. There are other countless examples from Qur’an and Sunnah that not only covers ethics in business but encompasses all spheres of life regardless it is related to the ethical issues based on individual, social, political and even if they relate to the issues regarding animals.

3.5 Business ethics and Contemporary Practices

The economy is one of the most important parts of human life because of its multi-dimensional effects on various aspects of our lives. Our Prophet, may God bless him and grant him peace, He introduced detailed ethical principles to promote fare and business. These principles led to the expansion of trade to the international level and the spread of Islam around the world. Unfortunately, the Muslim merchants and businessmen forgot the golden prophetic principle and fell into various wrong practices including hypocrisy, Fraud, fraud, embezzlement, dishonesty, breach of promise, etc. This exercise of wrong practices results in adverse effects in terms of customer dissatisfaction as well increased risk in trade. Moreover, imported products are popular in Market while domestic products are losing ground due to its quality and other related issue like low packing material, lower grade stuff and so on and so forth. One of the elementary and major causes of this troubling

¹ Sunan, ibn Majah, The Chapters on Rulings, Book 13, Hadith 33.

situation is the lack of professional and less know how of Islamic ethics. It must be restored by following the letter and spirit of the prophetic principles. Under the said context, Muslim traders, Entrepreneurs and service providers are evenly facing this serious economic problem related to the issue of Ethics. It would be soon and earlier to pass on any conclusive remark but our¹ moral values are less embraced in our actions. We need to include these economic values So that we can achieve success in this world and hereafter. In the Holy Book of Muslims, Al Quran, the word of “Trade” is repeatedly occurred that shows the impact and significance of the topic. Almighty says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا
أَنْفُسَكُمْ ۚ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا﴾¹

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.

((التاجر الصدوق الأمين مع النبيين والصديقين والشهداء))²

Translation: An Honest trader will be standing with the Prophets and truthful(s) and Martyrs in the Day of Judgment.

One of the great Islamic jurisprudence scholars Ibrahim *Nakh'i* was asked about an honest trader in comparison to the one who has reserved his life for the sake of worshipping Almighty. His answer was that an honest trader is more likely to be on the higher ranks as he is all along constantly in the condition/state of war/*Jihad*.³

The truth behind this saying is that at the time of the great scholar Ibrahim *Nakh'i*, even Islamic scholars were also busy in doing business activity. This helped them in many ways like ensuring that the markets were free from the malpractices, It helped them propagating Islam true picture through which nonbelievers use to accept Islam. Now days it is inverse as the religious sect isn't engaged in the economic activities; malpractices like impurity of consumable items say milk, bakery items and on, the message of Islam has been stopped propagating and insignificant numbers of converts actually accept Islam as their religion. Some of the market realities of the country are as follows:

¹ Verse, 4:29

² عبدالله بن عبدالرحمن الدارمي، سنن الدارمي، باب في التاجر الصدوق ، رقم الحديث 2581

³ Ali, Rao Farhan Ali, Lack of ethics in trade and business and its prevention, AFKĀR Research Journal of Islamic Studies Volume 3, Issue 2, December 2019, PP: 01-12 E-ISSN 2616-8588; P-ISSN 2616-9223, www.afkar.com.pk; www.iri.aiou.edu.pk , 9th August 2020

3.5.1 Trade of impure drinking water in the Market: Drinking Water is our life line. It is regretfully noted that very high profile companies who are involved in this business carelessly sell impure water packed in glooming cans of Plastic bottles. They earn billions of rupees with the help of this business. Not only they are responsible for this unhygienic distribution of the less clean water but also they invade taxes by showing less sale invoices. Recently a government institute by the name of Pakistan Institute of research in water resources has warned the public about this problem and also published the names of those companies on its websites. This institute has a web of offices and sub offices around the country through which they collect samples throughout the country through random sampling. Quarterly report of these companies is as follows¹:

¹ Quarterly Report Bottled Water Quality (April-June, 2020), Pakistan council of research in water resources, <http://www.pcrwr.gov.pk/Bottled%20Water/Bottled%20water%20April-June%202020.pdf>, retrieved on 10th January 2020

Fig#1

Quarterly Monitoring of Bottled/Mineral Water (April-June, 2020)

Item	No.	% age
Total No. of Brands Collected	108	-
Overall Safe Brands	96	89
Overall Unsafe Brands	12	11
Chemically Safe Brands	99	92
Chemically Unsafe Brands	09	08
Microbiologically Safe Brands	106	98
Microbiologically Unsafe Brands	02	2

Name of Targeted Cities (10)	(Tando Jam, Faisalabad, Sialkot, Islamabad, Muzaffarabad, Multan, Karachi, Peshawar, Quetta, Lahore & Gilgit)
---------------------------------------	--

Unsafe Brands	Ziran	21- km Industrial Area Ferozepur Road Lahore
	MM Pure	Burns Road Shahr-e-Liaquat Karachi.
	Blue Spring	Korengi industrial area Karachi.
	Aqua Best	BB-19 Defense view Karachi.
	Blue Plus	Q.N Traders: S.I.T.E Karachi.
	Alpha 7 Star	A product of Alpha Seven Star Contact: 0316 1277218
	YK Pure	Albadar society Badshah khan road Kemari Karachi.
	Hibba	S.I.T.E Karachi. Contact: 03069200186
	Leven Star	Head office B 1 block 20 F B Area Karachi.
	Dista Water	A product of M.Y. Sons Beverages: Gohar House Liaquat Colony Bridge Hyderabad
	DJOUR	Aimanabad Road, Chowk Akbarabad, Sialkot, 51310 Pakistan
	Chenab	Street 1 Nishat Abad, Faisalabad.

An environmental researcher, Professor Ahmad Hassan Siddiqui also pointed out some of their financial issues of these mineral water companies that they extract at least one lac liters per day of water and are not even ready to pay their due taxes. In the year of 2019 the Supreme Court of Pakistan ordered these companies to pay a rupee against a liter of water that they extract. ¹

3.5.2 Adulterant of Milk for the sake of trade: Milk is a natural nutrient. It has calcium in abundance which is good for bones. It is complete diet for almost every age of person. Milk has many byproducts and main ingredients in many consumable goods/products like yogurt, yeast, *lassi*, *ghee*, cakes, bakery item etc. that is a value addition to almost any form of food when mixed and used and never shows any side effect at all. However it is interesting to know that Pakistan is the fourth largest country in terms of the production of the milking. Approximately five hundred and ninety tons of milking

¹ GEO, Geo tv, November 13, 2018, video link: <http://www.urdu.geo.tv/latest/192941>, retrieved on 20th August, 2020

capacity is recorded during last year.¹ The following chart exactly shows the mixture percentage of the milk.²

	Lactose	Protein	Fat	Water	Minerals
Cow Milk	4.9	3.4	4.6	86.6	.5
Buffalo Milk	5.1	3.7	6.2	84.2	.7

It is devastating, how milk is adulterated in the market. Senior scientist Syed Suleman Ali says about it as follows:

Translation: “Fat is a very important content of milk which is a natural mixture of it. They adulterators, however mix some artificial ingredients like digital fat, Detergent, Sugar, urea and formalin (which is harmful for the health). It is an evident fact that the increased percentage of urea damages the kidneys. For this reason it is potentially harmful for the kids to intake the powder milk as it contains an increased portion of melamine.”³

Although, it is customary practice, this kind of adulterated milk is known as while poison, yet this act of crime is openly practiced in every single part of the country. Big cities like Karachi, Lahore, and Islamabad are also facing this sort of trouble. For the sake of it, more than 20% of chemicals, melamine, edible oil, and chalk are added. At the end, bleach powder is also added so that the milk looks as fresh as new. Furthermore, pure milk is only mixed for the purpose of taste and nothing. Another scholar Rabia Shabir say:

These sorts of contaminated milk can cause several diseases like headache, indigestion, vomiting, eye sight weakness, liver and kidney related problems; till the extant it can cause cancer and possible be a cause of death toll.⁴

3.5.3 Adulteration in the cosmetics items: It is natural instinct of a human to look good and decorated in terms of wearing impressive clothes and ornaments, suited booted

1 Abdul Sattar, *Milk Production in Pakistan*, PIDE 1st January, 2020, <https://www.dailyaaj.com.pk/ne> , retrieved on Blog: 8th May 2021

2 Afkar, digest, volume 2, issue 2, December 2019, <https://roohanidigest.online/tr/Category/> ,retrieved on 14th March 2020

³ Syed, Asim Mehmood, *Quadrat ka azeem tohfa doodh jab zehr ban jai*, October 9, 2016

⁴ Raiba Shabbir, doodh mein milawat, jasarat news, Daily magazine, October 28, 2017

and make up accordingly. Islam has no issues with it rather it appreciates and encourages to do so. The Holy Quran says:

﴿قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزَّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ﴾

“Say, My Lord has only forbidden open and secret indecencies, sinfulness, unjust aggression, associating others with Allah in worship — a practice He has never authorized—and attributing to Allah what you do not know.”¹

The fact is that we face adulteration in cosmetics as well. We as a society spend a lot on the cosmetics which include a number of foreign brands due to which we bear an extra amount of burden in the shape of import bill. This is because the local products are not properly regulated and subject to adulteration. Nazeer Hussain Khan while writing an article on the local cosmetics, he states opening remarks as follows:

“To look superior and acceptable in society, people from all over the world use various types of cosmetic products to enhance or alter their facial appearance and body texture. In recent times, an exponential surge in cosmetic use has been observed in Pakistan, and hence spending money on personal-care products is high. However, there are many reported facts about high loads of lead, mercury, copper, and others hazardous and cancerous elements in local Pakistani cosmetic brands. Consumers of these brands are at high risk of many clinical issues, including cancer. As such, it is a necessity to make people aware of the devastating harmful effects related to cosmetic use. The aim of this study was to provide information for stakeholders and raise awareness in the general public about the use of these local unauthorized personal-care cosmetic products, along with government strategies to stop this cosmetic blight on human health”.²

3.5.4 Use of food colors to dye the edibles: According to Pakistan counsel of Scientific and Industrial Research (PCSIR) use of food color is all prevailed in domestic and local items both. It is added in the toffees to look like colorful and attractive and shiny. Children having tendency to be effected easily; diseases related to ENT are common symptoms found in its frequent users.³ Moreover it is also used

¹ Verse, 7:33

² Nazeer Hussain Khan, *Personal-Care Cosmetic Practices in Pakistan: Current Perspectives and Management*, 7 January 2021, Volume 2021:14, 9-21 <https://www.dovepress.com/personal-care-cosmetic-practices-in-pakistan-current-perspectives-and-peer-reviewed-fulltext-article-CCID> , retrieved on March 2021

³ Newspaper, Nawa-e waqt, 9 December, 2017

it tea as well. The food color for this reason is extracted through the wood-waste, skin of opium and chickpeas. According to the newspaper *Roznama Pakistan*, this helps accommodate increase in the weight per kg for 150 to 250 rupees.¹ However the report is a bit older and the prices of the tea packs have increased manifolds. The prices regarding brands that are multinational companies are almost 1000 rupees per kg.² One can imagine that low income level person will definitely go for an inferior brand that is local and far cheaper than the others.

Technically speaking, the upper class is the one who can and will always go for the superior/ imported commodity whose quality is always guaranteed.

3.5.5 Society literally consuming dead meat:

The livestock sector plays a very vital role in the economy of Pakistan. It is very labor intensive and comprises a large portion of the rural workforce. Pakistan is a diverse and ethnic country with a Muslim majority, with a population more than 195 million who are Muslims, Christians, Hindus and other minorities. Livestock contributed 11.6% to GDP during 2016 compared to 56.4% and 11.7% last year. Total value added from livestock increased at constant price factor of Rs. 1247 billion rupees in 2015. 1292 billion in 2016, showing growth of 3.63%.³

Islam strongly supports using meat as a best food to intake. It is because of the taste and permanent source of energy which makes it top of the line variant in the department of food chain. In fact it will be the most desirable food of the natives in Jannah. Quran Says:

{وَلَحْمِ طَيْرٍ مِّمَّا يَشْتَهُونَ}

“and meat from any bird they desire.”⁴

The following chart shows the consumption of meat in different variants.⁵

¹ Newspaper, *Roznama Pakistan*, 25 april, 2017, retrieved no. <https://en.dailypakistan.com.pk/25-Apr-2017>

² Daraz, 26 February, 2021, <https://www.daraz.pk/tea/>, March 2021

³ Urdu Point, About 4,995 *Thousand Tons Of Meat To Be Produced In 2020-21, ISLAMABAD*, (APP - UrduPoint / Pakistan Point News - 16th Jun, 2020), <https://www.urdupoint.com/en/business/about-4995-thousand-tons-of-meat-to-be-produced-948385.html#:~:text=The%20government%20has%20set%20a,as%20well%20as%20for%20export&text=The%20domestic%20production%20of%20meat,according%20to%20an%20official%20document.>

Retrieved of December, 2021

⁴ Verse, 56/21

⁵ Pakistan Topics: Agriculture, Live Stock Production, Production Quantity Pakistan - Production of poultry meat, World Data Atlas, <https://knoema.com/atlas/Pakistan/topics/Agriculture/Live-Stock-Production-Production-Quantity/Production-of-poultry-meat>, retrieved on April, 2021

Consumption of the meat (in tons)

Duration	2016-2017	2017-2018	2018-2019	2019-2020
Beef	2,085,000	2,155,000	2,227,000	2,380,000
Mutton	701,000	717,000	732,000	748,000
Chicken	1,175,058	1,281,083	1,396,119	1,523,155

Adulteration in the meat is done in many ways like mixing dead meat, meat of donkey, injecting water in meat to make it heavier. It is done through injection of water into its jugular vein which makes its way into body by passing from the heart and then all the other veins. A careful study shows that three kilogram of water is injected into a goat and alike, ten kilogram into cow and alike to earn more illegal money.¹

3.5.6 Adulteration of ḥarām ingredients in the imported items: Former senior designation of Science and technology Mian Ijaz Ahmad while informing the standing committee of national assembly of Pakistan, told that seventeen imported eatable items are examined and found adulterated with *ḥarām* ingredients. Some of these items are toffees, chocolate, dairy products, soups and pastas.²

Hence, it is evident with the abundance of above published proofs that our society is seriously lacking its moral and we have failed to establish a fair impression on the outer world that we are a progressive society and do mean this incompetence.

3.5.7 Corruption running like blood through veins in the society:

The nearest term to corruption in the Islamic finance are *Khilaba*, *Ghishh*³ and *Ghaban*. It is an Arabic word which means “unfair advantage”. It also refers to fraud, cheating and deception.⁴ According to the *Hanaḥī* jurists, *Ghubn* is considered to be minor when the price remains within the range of experts’ evaluation if the commodity in question is of an

¹ Nawa e waqt, 5 September, 2019, www.nawaiwaqt.com.pk/05-sept-2019/1058318 , 5th October 2020

² 92 news, newspaper dated: 22 July, 2018

³ The terms *khilaba* and *Ghishh* are discussed earlier. see 110-117

⁴ Abdul Rafay, *Handbook of Research on Theory and Practice of Global Islamic Finance*, Chapter 42. Shari’ah-Based Financial Intermediation, volume 2, IGI Global, 20

unknown price. If the commodity is of a known price like bread, meat, apples and banana *Ghubn* cannot be considered as minor. The Maliki jurists believe that minor *Ghubn* refers to the degree of *Ghubn*, which is normally considered to be acceptable. To the *Shafai* jurists also, minor *Ghubn* indicates the degree of *Ghubn*, which normally thought to be tolerable. As regards excessive *Ghubn*, the *Hanafi* jurists indicate that it refers to the case when the price does not fall within the range of experts' evaluation.¹

Another word for Corruption is translated as *Ifsaad* or *Fasaad* in Arabic which refers toward an immoral behavior that will lead to improper results. In *Qur'an* and *Sunnah* its meaning further refers to a deviation that threatens the social order, economic balance and ecological issues from its original place. Text used for elaborating the upper meaning of the word Corruption in simple terms like Just or unjust refers to the harmfulness of the social organization and within the relation to the standards of moral norms. Although corruptions have many forms in our society that's legging us behind in the long run of attaining advancement and prosperity but the dreadful of all the shapes is one that's involved in the financial issues. Financial corruption is now the biggest challenges for the governing institutions to cope up with. Deals under the table, percentages or kickbacks in the contracts, bribery for the sake of interference in the matters of merits and so on and so forth are the evils that have paved its jaws on the system as a whole making it weaker and more vulnerable for the majority of the society due to an unjust act of a small, influential and elite class for the sake of gaining extra favors at the cost of the rest of the society.

Transparency International (TI) defines corruption as abuse of entrusted power for private gains.²TI classifies it in accordance with the amount of losses and the area where it happened into grand, petty and Political. Grand corruption stand for those acts high level mega corruption at a position of state by manipulating polices for the sake of top ranked leaders that will help them from benefiting from the public sector. Petty corruption is based on a low or medium level public officer that benefit from the citizens on daily routine work. Political corruption is surprisingly defined as manipulation of policies, institutions and rue

¹ AL-MASRI, RAFEEQ YUNUS, *Islamic Jurisprudence Of Financial Transactions*, For Undergraduate Students of Economics & Management Chapter (VI): Bribe (Rashwah), Part (V): The Most Important Taboos 153 Chapter: VII Unfairness (Ghubn), 153

² Transparenc International, *What is Curruption*, <https://www.transparency.org/what-is-corruption> , retrieved on 11th May, 2020

of procedures in the allocation of resources and financing by political decision makers who do this all to strengthen their power, status and wealth. Surprised by these definition because none of this

Under the Islamic law all the jurist are unanimous all the jurists consider corruption as *ḥarām* act in all form and shapes including nepotism, distortion, bribery etc. and they deduce the rule from comprehensive evidences of Quran, *Sunnah* and *Ijma*. It is mentioned in the Quran:

﴿وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْءُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ﴾

And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].¹

The verse clearly indicates the wrong doings in all possible forms and call upon the highest authorities like rulers by using of unwanted and brutal force, judges by giving unjust verdict knowingly, decision makers by conflict of interest, parties of a conflict facilitating unjustified appropriation of the property against the will of the lawful owner or some public property by obtaining a favorable ruling from the higher authorities in exchange of bribery. These are all false action and deceptive measures for attainment of any meaningful thing that's legally and morally out of reach or impossible to have it in the legal frame of work. These acts are called upon as acts bearing *batil* (deceptive) and *Ithm* (sinful) in it on a very higher account because due to its effect whole society will be in suffering and pain.

In a very lengthy hadith of the the Prophet (May peace be upon him) which is narrated by Abu Humaid al-Sa'idi:

The Messenger of Allah (PBUH) appointed a man from the Azd tribe called Ibn Al-Utbiyya, in charge of Sadaqat to be received from Banu Sulaim. When he came back, the Messenger of Allah (PBUH) asked him to render his account. He said: This wealth is for you (i.e. for the public treasury) and this is a gift presented to me. The Messenger of Allah (PBUH) said: You should have remained in the house of your father and your mother, until your gift came to you if you spoke the truth; then he addressed us. He praised God and extolled Him, and afterwards said: I appoint a man from you to a responsible post sharing with the authority that God has entrusted to me, and he comes to me saying: This wealth is

¹ Verse, 2:188

for you (i.e. for the public treasury) and this is a gift presented to me. Why did he not remain in the house of his father and his mother and his gift came to him, if he was truthful? By God, any one of you will not take anything from the public funds without any justification, but will meet his Lord carrying it on himself on the Day of Judgment. I will recognize any one of you meeting Allah and carrying a growling camel, or a cow bellowing or a goat bleating. Then he raised his hands so high that whiteness of his armpits could be seen. Then he said: O my Lord, I have conveyed Thy Commandments.¹

The above Qua'nic verse, in conjunction with the Hadith quoted clearly shows the wonderful model of the Muslim society which is based on the glorious and unique principal of Honesty and repugnance with which it views corruption as worst as deceit, bribery and cheating. It is just not the sole responsibility of the authorities to look after this heinous crime, every Member of the society is responsible to overcome such flaws through their utter conscious, firm belief and concrete actions. This task can only be accomplished when all the fragments of the society are working under the state defined Laws and abiding it from its letter and spirit. No one is more worthy from the other for extra benefits attained over and above the law. The Prophet (May peace be upon him) said once:

وعنه قال: قال رسول الله صلى الله عليه وسلم: "انصر أخاك ظالماً أو مظلوماً" فقال رجل: يا رسول الله أنصره إذا كان مظلوماً أرأيت إن كان ظالماً كيف أنصره؟ قال: "تحجزه -أو تمنعه- من الظلم فإن ذلك نصره

Anas ibn Malik reported: The Messenger of Allah, peace and blessings be upon him, said, "Support your brother whether he is an oppressor or is being oppressed." It was said, "O Messenger of Allah, we help the one being oppressed but how do we help an oppressor?" The Prophet said, "By seizing his hand."²

In another narration, the Prophet said:

"By restraining him or preventing him from committing injustice, for that is how you support him."³

The above hadith gives a clear picture about the responsibly of every single person of the society that must not only comply with the prevailing laws but also must be well educated to be effective enough to not let any other person be a part of socio-economic

¹ Bukhari, Muhammad bin Ismail AL Bukhari, *Sahih Al-Bukhari*, The Book On Judgments: Kitab Al-Ahkaam / Chapter 8: State Officers Gifts, Vol. 9, 89

² Yahyā ibn Sharaf al-Nawawī; (Born, Muharram 631 AH/ October 1233. Nawa, Ayyubid Sultanate ; Died, 24 Rajab 676 AH/ 21 December 1277), *Riyad as-Salihin* Chapter 27: *Reverence towards the Sanctity of the Muslims*, Book: The Book of Miscellany, no. 237

³ AL Bukhari, Muhammad bin Ismail, *Sahih Bukhari*, Kitab Al zalim, Bab unsur akhaaka zalimun ow mazlumun, Hadith no 2312

crime or misconduct that will lead the society toward a certain harm's way. Moreover he shouldn't be exceeding his canvas of effectiveness by taking law in his hands. He must be helpful for the agencies in taking care of all negative elements and observation of peace and harmony in daily business of life. It doesn't end here as it is the sole duty of the governing agencies of the state to be connected with the public and watchful enough to observe any uncertain event that may disturb the life circle of the society. It is clearly judged from the above Hadith that even a single person involved in socio-economic harms is considered as a loss for all.

Unfortunately our society is not taking interest in eradicating these socio-economic evils from the effected fragments, although Pakistan is a country with a population of more than two hundred and fifty million and has an overwhelming majority of Muslims, that's more than ninety percent of the total. The Muslims in this country were expected to run it under the glorious principals of the *Shari'ah*. Although its constitution of 1973 makes its all junctions truly in accordance with the *Shari'ah* laws and confirms that no other law is implementable that's colliding with its injunctions; history is evident about how we overruled the constitutional obligation of safe guarding it from the malpractices and smashed its holiness with the unlawful and lusty desires of getting into power for the sake of looting and plundering the mutual funds by exercising extra judicial powers that was not ordained to the rulers of this country but they managed to do so because they were public office bearers. The sanctity of the public trustees for the purpose of management of the funds that were collected by the poor nation of this country through levying highest rates of indirect taxes has been totally destroyed. It is clear case of concentration of wealth in handful number of people. People of Pakistan this time voted for a new party whose main slogan is to eradicate corruption out of the system creating an environment purely based on merits and didn't tolerated the orthodox political parties and their famous other slogans. Still the tug of war is going on and time will tell truly that who is right and who is wrong. While politicians are facing a tough time in the market to establish an upright position and build a positive image among the people of Pakistan, other government institutions of Pakistan especially judiciary and army have gained a favorable image in the society by restoration of their dignity, upright decision, rule of law, nation building approach and eradication of corruption.

Currently, the stats of the economy of Pakistan are very disturbing. Not even a single private or public sector is secure from its menace. This situation of the country has dented its positive image in the world due to which Pakistan is facing multi problems in several spheres of competition. According to the transparency International 2017, corruption perception index ranks the country 117 out of 118 countries. Under these circumstances, it is significant obstacle in terms of establishing business. Especially bribery and kickbacks in big projects has been proven eye caught opportunities where companies arrange are win-win situation for all the stakeholders, providing them opportunity to gain illegal profits. Under the *penal code of Pakistan* individuals accepting or offering these sorts of briberies are considered as punishable offense. While under the *Prevention of corruption act* companies involved in the case of facility payments, gifts and bribery are strictly liable and is considered to be punishable acts. Former prime minister of Pakistan Mr. Nawaz Sharif was held accountable due to the unrecorded assets and was disqualified due to maintaining offshore companies that was declared through panama papers. This shows that despite sound framework of ant corruption laws and money laundering, are not been implement in letter and spirit. This deliberate misconduct clearly shows that laws regarding anti-corruption are ineffective and that officials with free will are engaged in corruption with impunity.

There is a higher risk of corruption in the so called autonomous body of the judiciary in Pakistan. According to the survey conducted by the World justice project between august to December, 2017 two third of the people in the participating in the survey indicated that they have interacted with the courts in past years and have been reported to pay bribe.¹ According to the world Justice Protection Law forum, Pakistan Stints on the 98th position in terms of criminal Justice, as on 2020. In terms of rule of Law its position while dropping down to 120th.² Parties under the trial even influence the proceedings of the courts, concealment of facts, bribing the staff and judges, prolonging the hearing tactics and other tactics to prevent a judgment based on merits. Sometimes it seems like our courts

¹ World Justice Project, Law index, <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020> , retrieved on 22nd June, 2020

² World justice Project, Pakistan Ranked 120 Out Of 128 Countries On Rule Of Law, Dropping One Position, <https://worldjusticeproject.org/sites/default/files/documents/Pakistan%20-%202020%20WJP%20Rule%20of%20Law%20Index%20Country%20Press%20Release.pdf>, retrived on 13th March, 2021

deliberately complex the simple issue to an extent that justice is useless and late enough to say that: justice delayed is justice denied. For example NAB related cases where political influence makes it difficult for the officials to stop the ongoing money laundering and once the money is laundered out of the state; it becomes almost impossible to retrieve that money, kickbacks in the government projects and abuse of Power by the public representatives and so on and so forth. While in other sorts of cases the formalities of the justice are ignored to an extent that it seems like: justice hurried is justice buried. Examples like case of the execution of ex-prime Minister Zulfiqar Ali Bhutto, high profile case of Reco Dec in which without any feasible working by the Baluchistan Government; it signed a joint venture with the Antofagasta and Canada's Barrick Gold Corporation and then supreme court of Pakistan revoked the contract as it was against the national interest and now due to this single handed decision of the supreme court of Pakistan, the government of Pakistan is fighting the case in the international courts where the companies have claimed 11.5 billion dollars against the rejection of a legal contract by Pakistan¹ and also other leading examples shows the incompetence of our organization or one can also say that there may be other vested interests of the individuals that have lead the nation and the land of pure into such dark crises. Supreme Court should have let the case handle by the concern organizations so that there may have some other alternative Like handling the issue diplomatically and making a new agreement possible under the agreed terms by both the parties. Since 2011 the case is heard by the international court of justice. The local newspaper broke the news:

An arbitration tribunal of the World Bank's International Center for Settlement of Investment Disputes (ICSID) has ruled against the Islamic Republic of Pakistan in relation to the unlawful denial of a mining lease for the Reko Dec project in 2011, Chilean mining company Antofagasta plc.²

3.6 Religious Belief System Affecting the Socio-Economic System

Islam is a practical religion that covers all spheres of life in a way that its followers can maintain a code of life healthier, safer and realistic. General rules and principals of

¹ The Express Tribune, *Reko Diq case: Pakistan rejects \$11.5b damages claim*, <https://tribune.com.pk/story/1457556/reko-diq-case-pakistan-rejects-11-5b-damages-claim/> retrieved on 3rd November, 2020

² The Dawn, Water drainage work delayed, <https://www.dawn.com/news/1321955> , retrieved on 16th of June, 2020

Islam are based on practical approach that ensures its followers may lead a prosperous life by enjoying the creations created by the almighty so that he/she can survive the needs and requirements of life in a very honorable and pleasing way.

3.6.1 Ideology of the state perfectly aligned with the Religious belief: The principals of Islam clearly mention that humanity is sacred and there prevails on supremacy in terms of creed, color or any other status. The only thing that matter is the one who maintains a balanced life in conformity with the *Sharī'ah* rules. After all the given benefits that are mentioned by the almighty in the Qur'an and *sunnah* in many citations, it is the human that carries the burden of responsibility. He/she is the one who after having all the possible favors from the almighty must deliver, perform and develop the socio- economic system that must inculcate values of the highest stature like sanctity, peace, security, justice, patience and all other qualities that are suitable to recall the lost concept of a welfare state. The humans till the current point of time have taken all the favors of life from the nature and used it in manner that is less humane and least social based values like selfishness, hatred, greed, dependency, trust deficit and the list of these less human values that the humanity is exhibiting is a long one and sorrowful.

The ideology of Pakistan in this regard is very clear. It came into being as a first state in the name of Islam, where Muslims and other minorities can practice their belief in a free environment, where there may not prevail any compulsion from other state of mind stopping its native to do so. This is because as a true Pakistani we must believe in the fact that only Islam is a true answers of all the difficulties that mankind having faced so far. Quaid e Azam Muhammad Ali Jinnah once said:

Brotherhood, equality and fraternity of man—these are all the basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent.¹

Indeed it's weakness of faith that the nation of Pakistan didn't showed up or put up a good show in any of the sphere of life in an acceptable level in the eyes of the almighty in accordance to is last message which is the *Sharī'ah* Law. Talking about our socio economic picture and efficiency in this regard, by large we are considered

¹ Quaid e Azam, Muhammad Ali Jinnah, *Address to Public Reception, Chittagong*, 26 March, 1948. <http://www.pakistan.gov.pk/Quaid/quotes.html> , retrieved on 4th June, 2020

the most corrupt nation on the face of the world. Pakistan at this point of time is declared at the verge morally and economically bank corrupt nation by certain foreign rating agencies. We are considered to be the top most countries who promote terror activities and where rights of the minorities have been confiscated to any level beneath the human respect and honor. On December 11, 2018 US Secretary of State Mike Pompeo announced that the United States had classified Pakistan as a country of particular concern because of engaging in or tolerating systematic, sustained and genuine violations of religious freedom. Washington reduced Pakistan's classification of religious freedom at the same moment as Islamabad has taken several unprecedented steps that indicate a desire to help ease the plight of religious minorities.

This US state position is though not portraying the real picture because just in recent past government of Pakistan opened doors of its border in *Kartarpur* for the Sikhs of India to come for the pilgrimage in Pakistan. A foreign news agency reports this event on its webpage in these words:

Pakistani Prime Minister Imran Khan on Wednesday led a new ceremony to cross the border with India; days after New Delhi said it would support a corridor to facilitate the Sikh minority to visit one of its holiest sites across the border. The corridor, known as the "Peace Corridor" which is the Indian border town of Dera Baba Nanak, will link to Gurdwara Darbar Sahib, the last place of the founder of Sikhism Guru Nanak in the Pakistani state of Punjab.¹

Critics here in Pakistan consider the act of blacklisting as a tool of pressure for the newly regime in Pakistan by the state department of America. Another example is the case of *Asiya bibi*. The US is disturbed by the non-releasing of the convicted *Asiya bibi* due to the country wide protest by the religious leader *Khadim Hussain rizvi*. They have rightfully paved their case because Supreme Court of Pakistan released her, absolved from all acquisitions but then due to the countrywide protest forced the supreme court of Pakistan to reconsider the merits of the case and as a result *Asiya bibi* is still in imprisonment. Although the Pakistani agencies for security took prompt action against the responsible for the protest but US again played its card by blacklisting Pakistan so that she may be released as soon as possible.

¹ Voice of America, Ayesha Tanzeem, November 28, 2018. <https://www.voanews.com/a/pakistan-india-move-to-open-historic-border-crossing-for-sikhs/4677995.html> , retrived on 22nd July, 2020

Point of discussion is that most of the times internationally our beliefs are wrongfully questioned and discussed in a way that is likely to be exaggerated and reported without any concrete evidence. Some critics in Pakistan are of the approach that due to this dilemma or state of confusion that we mix our beliefs and sentiments with the state business.

Having said that, sometimes our negative and intolerable approach is also the cause due to which it seems that our religious beliefs are a big source of hurdle in the development of the country, especially when it comes to the economy.

3.6.2 Overseas Pakistanis; A permanent source of Remittances: Another point to be noted here is that it is due to our religious belief that Pakistani living overseas is strongly connected to the economy of Pakistan. We must thank our fellow countrymen who work outside the country and send us billions of dollars in form of foreign remittance, on the basis of which government of Pakistan is favorably helped out to run daily business of the state. According to the report the workforce working in the foreign countries are as follows¹:

Fig#2
(%) of Overseas Pakistani Workers by Province Region of Origin, 1981-2013.

1 RASHID AMJAD, G.M. ARIF, *Analyzing The Impact Of Overseas Migration And Workers' Remittances In Khyber Pakhtunkhwa (Kp): Suggested Measures For Maximizing Development Benefits (Study Conducted For Igc Pakistan)*, International Growth center, Lahore School of Economics, Working paper, F-37108-PAK-1, <https://www.theigc.org/wp-content/uploads/2014/09/Amjad-Arif-2014-Working-Paper.pdf> , retrieved on 23rd May, 2021

Province/region	Punjab	Sindh	KP	Balochistan	AJK	G&B	FATA	Total (%)	Total (No.)
1981-2003	51.25	9.99	25.4	1.23	6.49	0.07	5.57	100	2763314
2004	55.83	6.85	24.71	1.84	6.38	0.16	4.23	100	173824
2005	54.5	9.26	24.7	2.18	6.30	0.26	3.79	100	142135
2006	54.69	8.1	24.5	1.85	6.54	0.2	4.18	100	183191
2007	53.76	7.12	26.73	1.29	6.80	0.13	4.18	100	287033
2008	47.94	7.37	30.54	1.58	7.41	0.09	5.07	100	430314
2009	49.88	7.63	28.41	1.11	7.76	0.13	5.09	100	403528
2010	52.51	8.77	27.08	0.86	6.21	0.13	4.46	100	362904
2011	50.06	8.79	28.48	1.15	7.25	0.16	4.11	10	456893
2012	53.54	7.3	27.62	0.80	6.08	0.12	4.54	100	638587
2013	53.59	8.46	24.5	1.45	6.41	0.18	5.41	100	473563
Total %	51.74	8.81	26.42	1.25	6.63	0.11	5.04	100	
(1981-2013) Nos	3267750	556088	1668244	78938	418835	7029	318403		6315286

The other spread sheet shows the placement of the work force over the globe in percentage¹:

Distribution (%) of Pakistanis who went abroad through BEOE during 1981-2013 period by country of destination

United Arab Emirates	30.8
Saudi Arabia	51.2
Oman	8.0
Kuwait	2.6
Bahrain	1.8
Qatar	1.5
Others countries of the Middle East	2.5
Rest of the world	1.6
All	100

¹ Bureau of Emigration and Overseas Employment - BEOE (2013); Data on the Annual Placement of Pakistani Workers Abroad by Districts of Origin, Country of Destination and Occupation while Abroad, BEOE, Ministry of Labour and Manpower, Islamabad.

Foreign Remittances are more blessing for Pakistan as in the Phase of corona (Covid-19). It has given a huge support to the government in the form of inflows of dollars and other currencies. According to the report the phase of Covid- 19:

Remittances remained above the \$2 billion mark in December 2020 for the seventh month in a row. In the first half of 2020-21, inflows totaled \$14.2bn. The amount was about 25 per cent higher than \$11.37bn received in July-Dec 2019.¹

The strong bond of Islamic ideology and nationality that we share with the overseas Pakistanis, made this possible. Our Socio-economic values are enhanced due to the mutual cooperation. Hence it is important to note that we must take care about the rights and responsibilities related to them like instant justice because they are far away and can't bear the pain if their relatives and loved ones are in pain, right to vote and so on and so forth. It is also worthy to note that the remittances they send into the country, if sent on a constant rate, changes into savings and investment which will create a positive impact over the economic indicators.

However, the fortunes are not the solutions as cure of the problem is basically dependent upon the glorious principles of Islamic ideology and religious beliefs. The real cure is to move forward in the way of self-reliance and stop all the leakages that our economy has faced in the past. All forms of corruption like kickbacks in the awarding of the tenders of national interests, usage of low grade material in these projects, lavishly managed the state business by the bureaucrats, and other government nonproductive spending must be stopped at once. Self-containment and abstaining from all sorts of extravagances that one can't afford is the basic lesson of Islam. Moreover, Islam advocate middle path of decency, neither its path of misery extravagances. Even lavishly spending in the way of Almighty is also not allowed, other else the believer will regret. Quran depict this picture in the following words:

Make not thy hand tied (like a niggard's) to thy neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitute.²

Yet another verse emphasizes the importance of the topic in the following words:

1 Mohiuddin Aazim, *The rise and rise of remittances*, January 18, 2021, <https://www.dawn.com/news/1602001/the-rise-and-rise-of-remittances> , retrived on 27th March 2021

² Verse 17:29.

But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world. And do good as Allah has done good to you. And desire not corruption in the land. Indeed, Allah does not like corrupters.¹

This is a classical verse that elaborates the meaning of moderation in Islam. The verse tells us that although Almighty wants to judge a person in his case, He does not want to judge everything to the point of falling into poverty. Similarly, He does not want to become a miser person by not spending it at all. Therefore, the more moderate method is to spend some (wealth) for good reasons and to maintain some of its needs and necessities. Almighty does not want to spend a person on harsh spending everything, and does not want the person to continue to save everything due to his miser behavior.

This is what basically that lacks in the overall society of Pakistan; lack of understanding what basically moderation means i-e we must cover-up our trade deficit by cutting imports bill and promoting the export of the country. Our economy would have been the leading economies of the world if we have ever considered the glorious principals of Islam regarding state business but sorrowfully our tendency toward wrong means of earning clearly show how much we have set ourselves a side from the teachings of Islam. We knowingly commit wrong doings in using sources for earning like bribery, treachery, hoarding etc. and earn hell fire for our family and don't bother if something isn't in conformity with the belief systems of Islam. Our understanding has sought darkness to the extent of materialism or less then that i-e we have adopted to live like animals where every single one of us thinks for its own survival by hook or by crook and let other suffer the pain. The under lying cause of such behavior is due to the worship of the desires and worldly pleasures. Quran took notice of this sort of behavior in the following words:

﴿وَلَقَدْ ذَرَأْنَا لِجَهَنَّمَ كَثِيرًا مِّنَ الْجِنِّ وَالإِنسِ لَهُمْ قُلُوبٌ لَّا يَفْقَهُونَ بِهَا وَلَهُمْ أَعْيُنٌ لَّا يُبْصِرُونَ بِهَا وَلَهُمْ آذَانٌ لَّا يَسْمَعُونَ بِهَا أُولَئِكَ كَالْإِنعَمِ بَلْ هُمْ أَضَلُّ أُولَئِكَ هُمُ الْغَافِلُونَ﴾

Indeed, we have destined many jinn and humans for Hell. They have hearts they do not understand with, eyes they do not see with, and ears they do not hear with. They are like cattle. In fact, they are even less guided! Such 'people' are 'entirely' heedless.²

¹ Verse 28:77

² Verse, 7:179

The verse not only shows the internal face of our society but the statistics shows a very cruel face of the humans globally as well. It is clearly lack of understanding of the concepts of a true way of life and ignorance from the lessons learnt from the past as the humanity is moving day by day toward destruction and if the ways are not changed, all of us will suffer a never ending loss. The aim and idea of conquering the resources of the world with power, enmity and clash of believers and civilizations has weaken the human values and the life and human race itself is at stake. We, humans are very good at it as we are taking every possible measures to destroy the prevailing belief, cultural and social systems, financial systems, glorious heritage that gives us message of a more meaning full life, high norms etc. by waging wars against the humanity itself. We have created weapons of mass destruction that are so high in its velocity that if they are triggered in their full thrust it can literally disturb the whole solar system. All of this is in the name of security, peace and self-reliability. The urge of doing the damage is so high that for gaining a personal benefit we can cross all the limits of humanity and stress to the limits of adopting and becoming worst face of the animal instinct, based on deceitful and mean behavior. The irony is that we don't stop here rather we tend to justify our wrong doings through certain ridiculous and lame justifications like the concept of democracy based on self-interest or national interest, portraying rightful supremacy of the state over other states, influencing systems over others by calling them weak, dangerous and threatening and the list of these man made excuses is a very lengthy.

The point of all this discussion is that the economic system of the world is lacking the core moral values that must guide the policy makers to limit their personal interest within a circle where safety must prevail so that humanity must abstain from harming each other from greed and lust for money, declaring war for illegal encroachment of other states and lands for the sake of capturing others resources.

The interest based economy of the world has created numerous problems for the international financial markets where the financial position of the companies and huge consortiums always exaggerated from the real value. This is the basic cause of creation of a bubble economy which is totally dependent on the banking system because it creates non existing assets through hypothecation and mortgage and other loaning

instruments. Governments pass on bail out packages for sustaining these giant financial groups. It is because if these organizations undergo bank corrupts or blacklisted due to non-payments, chaos will prevail in the market and people will lose jobs in bulk and the daily business of the state will be disturbed. This situation will definitely ignite a chain effect on other organizations as well and as a result negative signals of mistrust will lowdown the morale of the potential investors. Time and again the world economy has experienced these downfalls in the economy but less attention is made toward the structural flaws of the financial system.

Islam therefore advocates a financial system that's truly based on the real figures. Islam always appreciates those tools or derivatives of finance that negates the negative sentiments by giving all stakeholders equal opportunity on the basis of their actual worth. All those financial transactions or activities that are responsible for the false appreciation of the value of a certain asset or commodity through gambling, futures, forwards, hypothecation, virtual concept of the money and other factitious transactions where paper money is considered as a commodity or asset on which you can earn without commencing any risk; Islam holds such actions cause and part of the problem and always wants from its believers to abstain themselves from it. Not only this but also other intelligently deceiving ways through which money may be concentrated in less hands that easily control the free flow of it and thus create a panic in the market through poverty and class difference. This financial unrest clearly then generates social and financial unrest in the forms of crimes in the society through treachery in the contractual obligations, theft maybe real or artificial like the theft of millions of rupees from the banking sector by attaining its secret information through instruments used for hacking, hoarding for the sake of higher rate of the return over the consumable and need based commodity and so on and so forth.

Islam covers this flaw in the financial transactions by introducing inculcated moral values in its own prescribed modes of finance that ensures a steady economy on the basis of real values. It is because of this reason that all the modes of finances that are primary sources like *mudarba* and *musharakah* and secondary sources like *murabaha*, and *ijara* are properly asset backed with a unique value in it that it can't be disturbed by changing of the rates of return like interest, inflation, and depreciation of the asset

and so on and so forth. Islamic modes of finance also has an in-built system of that mitigates the risk prevailed into the market by limiting the loss to an extent it's bearable by the stakeholder. If the principals of Islamic finance are properly followed while trading, it leads toward a solid footing on which the businesses can run. It is unique in this sense that it controls the speculative nature of the market like abnormal losses due to the crash of the stock exchange, risk mitigation through diversification if the modes of finances used in a smarter way and the one who takes the risk must be worthy for it and must prove it on the basis of material and substantial means. Hence the abiding moral value in Islamic finance is not just an act of charity or an optional act rather it is an obligation on whom undergoes a transaction; must fulfill these moral obligations. From the initiation of ownership of a commodity, till the time of selling a commodity a comprehensive Islamic law prevails to protect the rights of both the buyer and seller. This theme is also kept intact in the process of financial engineering of an Islamic financial product made by the *Shari'ah* scholars and other experts of accounting and auditing, operational experts of the financial sectors especially banking sector, certified auditors and other valuable institutions. In this regard a team of specialized persons have created a master piece under the name of AAOIFI standards¹ that talks about the all the prevailing financial transaction prevailing in the market and offer its alternative under the *Shari'ah* compliance products seeking its roots form the Islamic modes of finance, primary or maybe secondary.

¹ The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is an Islamic international autonomous non-for-profit corporate body that prepares accounting, auditing, governance, ethics and Shari'a standards for Islamic financial institutions and the industry. <http://aaoifi.com/our-history/?lang=en>

CHAPTER 4. IMPLICATIONS OF INTEREST RATE ON THE SOCIO-ECONOMIC SYSTEM OF PAKISTAN

4.1 Introduction

The term 'Social-Economics/ Socio-Economics', generally refer to the 'use of economics in the study of society. More specifically, contemporary practices that consider the behavioral interactions of individuals and groups through social relationship for the sake of dealing effectively through social markets that will help create social values of the market.¹ Hence we can conclude its definition in these words:

"It is a discipline, studying the reciprocal relationship between economic sciences on the one hand and social philosophy, ethics, and human dignity on the other toward social reconstruction and improvement"²

Another in-depth definition of socio-economics is as follows

"It is used to refer to several different fields of study. The phrase social economics can be used to refer broadly to the use of economics in the study of society. More specifically, modern practice takes into account the development of social norms³ as well as behavioral interactions of people and groups through social capital⁴ and social markets (not excluding, for example, sorting by marriage). In terms of how economics and social values interact".⁵

Some of the main shares that indicates the socio-economic condition of a country is gauged are showed in the diagram:

¹ John Eatwell, Murray Milgate, Peter Newman, W.W. Norton, *Social Economics: The New Palgrave*, (STICERD), 1989, xii

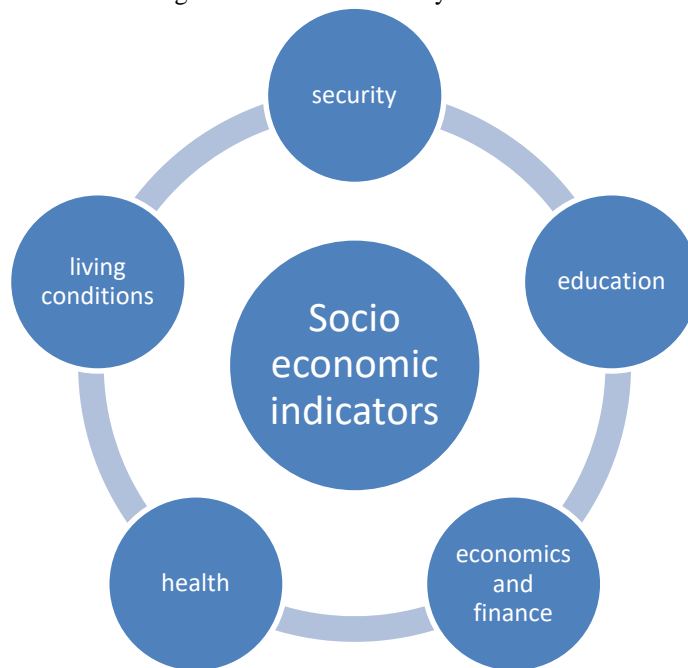
² Mark,A. Lutz, *Handbook of Economics and Ethics, Social Economics*, 516, (Edward Elgar Publishing),2009

³ **Social norms** are learned and accepted from an early age, often in infancy and held in place by social sanctions ('punishments') for non-adherence to the norm and social benefits ('rewards') for adherence. If people conform to the norm, they expect to be socially accepted or rewarded; if they do not conform, they expect to be socially punished or excluded

⁴ Social capital can be defined simply as the existence of a certain set of informal values or norms shared among members of a group that permit cooperation among them

⁵ John Eatwell, *Social Economics: The New Palgrave*, xii, (Palgrave Macmillan), 1989.

Fig#1: Socio- Economic System



Interest involved in the financial markets is one of the last nails in the coffin which makes a society more vulnerable in terms of moral devaluation of it and slowly falling towards a trap of bankruptcy due to the non-payments of the interest based loans. It works more in a way to affect the societies badly in its indirect approach; it has the ability to ruin well off and advancing societies without shedding blood or creating any sort of war arena. Meaning thereby its users are never aware about its negative financial impact, they have to face at the end rather they enjoy it in the beginning of their interest-based transaction due to their short term planning by not grasping the later results of it.

The term Economy is Greek in origin which conveys the meaning of *management of the Households expenditures*.¹ This makes sense as economy of any country is just like managing a household like taking decision for the sake of allocating domestic duties, expenditure and making choices between the available commodities. Similarly economics

1 National Bank of Belgium, *What is the economy/economics?*, 1 September 2014, http://www.nbbmuseum.be/doc/infosheets/fiche_information_EN_01.pdf,^{2nd} march 2020

refers to a specific aspect of human behavior; an attempt for the optimal use of scarce resources to meet your needs which, by contrast, are numerous and unlimited.

Hence in an Islamic framework, the Socio-Economic outcomes will be relatively different from the capitalistic or socialist financial norms. For example, Interest bearing transactions in the markets of an Islamic ideological country like Pakistan is against its Social norms. The Socio-Economic System will always be the one that is parallel to the social Norms and values of the Country. This is the main reason that it is responsible for the Socio-Economic system of the country should be based on the *Shari'ah* law which is the main source of our social values and norm. Hence only a *Shari'ah* backed economic system will be the most efficient Socio-Economic system of the country if applied in full letter and spirit.

4.2 Implication of Interest on the financial performance of State Owned Enterprises:

Currently, Pakistan has a mix Economic System¹ which is outcome of many experiences in economic restructuring of its economic system. The state-owned enterprises (SOEs) make up a large part of the GDP. It is due to the fact that the Government expenditures that are spent through the public sectors on different development project make a good total of GDP of any Country. On the contrary, the private sector is excelling at a decent pace but the main problem lies with the documentation of the economy. Therefore, the true picture of private sector investment is not reflected while calculating the GDP growth. This fact is also mentioned in a research paper in these words:

There has been a long-standing consensus among the development community that the role of government in managing the economy is very important, at least for developing countries, where market structure and institutions are not yet developed to self-regulate the private sector.²

4.2.1 Definition of the SOEs/ PSEs:

State Owned Enterprises (SOE) are likely to remain an important tool in any government tools to create social and public value given the correct context. It is the driving

¹ A mixed economy is an economy organized with some free market elements and some socialistic elements, which lies on a continuum somewhere between pure capitalism and pure socialism. ... Mixed economies socialize a select industry that are deemed essential or that produces public goods.

² National Bank of Belgium, 1 September 2014,.: *What is the economy/economics?*, http://www.nbbmuseum.be/doc/infosheets/fiche_information_EN_01.pdf , retrieved on 3rd January, 2020

force of the government that will see the country in accordance with its projections and planning. It is the brain of the society that will lead to the logical outcomes of all sorts of successes or failures that it has to face strongly lie on the performance of these organizations. The Word SOE is defined as the term in these words:

A state-owned enterprise (SOE) is a legal entity that is created by a government in order to partake in commercial activities on the government's behalf. It can be either wholly or partially owned by a government and is typically earmarked to participate in specific commercial activities.¹

The definition talks more about the scope of the SOEs but it isn't defining the main goal of its creation as to why they are likely to be under the state governance. This is because the definition of the SOEs varies from the form of government that a country adopts. Although countries can share the attributes of the said definition but there is a series of differences in the ingredients of SOE in a place to the other like issues related to its operations, governance and regulation etc. According to the compendium of National practices it has other operation that depicts the societal picture of that state. It says:

The motivations for state ownership can wax and wane over time, but state-owned enterprises (SOEs) appear to be an enduring feature of the economic landscape and will remain an influential force globally for some years to come. As such, it is important to ensure that – whether held nationally, regionally or locally – the state's Investments actually deliver the societal outcomes desired.²

It is without any doubt that state can't ignore the basic idea on which the society is built. The problem of the Islamic states lies here who ignored the fact that their demands and desires are not inculcated in these SOEs. For this reason, we are always on the crossroads of adopting ideologies that do not inline the societal outcomes desired. See for instant there isn't any single Islamic state that has significantly devised its financial system that is free from the menace of interest. Although the public sentiments always hedge the idea but due to the crafting of the policies that regulate our systems of state follow the

1 Approach Paper, *World Bank Group Support for the Reform of State-Owned Enterprises*, 2007-2018: An IEG Evaluation December 20, 2018, 3, <https://documents.worldbank.org/curated/en/107181548340490150/pdf/133958-WP-PUBLIC.pdf> , , retrieved on 23rd Feb, 2019

2 OECD, *Ownership and Governance of State-Owned Enterprises A Compendium of National Practices*, 2018,9, <file:///C:/Users/Dell/Documents/EGDownloads/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices.pdf> , , retrieved on 17th April, 2020

theme that is conventional based. Certainly, Islamic financial institutions are evolving but it requires time to grip the international market. A report depicts the reality:

The global Islamic financial services industry experienced a third consecutive year of single-digit growth in 2016, reaching a point where stakeholders must re-think their growth strategy. The projected growth rate for 2016 was 7.41%, underperforming by 5.65%, causing stakeholders to revise downwards the estimates of the industry's future size. This slowdown necessitates a pause in the industry's growth and expansion strategies.¹

It should be the main focus of the public sector to create an environment for up bring the Islamic financial markets to a level of growth where it can compete its counterparts.

Pakistan is a country that runs public Sector institution (PSI) also known as State Owned Enterprises (SOE) as an ownership-based model that is predominantly centralized. The Ministries exercise under the law ownership rights in the majority of state-owned companies.² The Ministry of Finance in practice plays an important role in supervision of state-owned companies. SOEs are classified into three groups: Public Sector Corporations (PSCs), Development Finance Institutions (DFI) and Federal Authorities (FA). Although the state-owned enterprises are governed by different regulations/ regulatory authorities, but they are seriously lacking a uniform policy for the sake of unity in the functions. The companies Act (2016), amended in 2017 provides a primary act and comprehensive law for the sector to run its business accordingly.³

4.2.2 Contribution of the SOEs/PSEs in the Economic Growth

The public sector is generally composed of organizations maintained and handled by the government and initiate to provide services/facilities to its people. Through the process of subcontracting, public sector institutions often involve private institutions to provide goods and services to their citizens. The public sector (also called the state sector) is part of the economy comprising both public services and public institutions. Public services

1 Overview Of The Global Islamic Finance Industry, chapter# 1, p# 1, http://gifr.net/gifr2017/ch_01.pdf , , retrieved on 24th May, 2020

2 Disclosure and Transparency in the State-Owned Enterprise Sector in Asia, *Stocktaking of National Practices*, OECD, 2017, <https://www.oecd.org/countries/bhutan/Disclosure-and-Transparency-in-SOE-Sector-in-Asia.pdf> , retrieved on 16th December 2021.

3 National Assembly Of Pakistan, *A Bill to reform and re-enact the law relating to companies and for matters connected therewith*, http://www.na.gov.pk/uploads/documents/1487136261_767.pdf , retrieved on 11th Novermer, 2018

include public goods and government services such as the military, law enforcement, infrastructure (roads, bridges, tunnels, water supply, sewerage, electrical networks, telecommunications, etc.), public transport, and public education, health care. Those who work for the same government, such as elected officials. The public sector may provide services that cannot be excluded from those that do not pay (such as street lighting), services that benefit the entire community and not just the individual who uses the service. Public institutions or state-owned enterprises are self-financing businesses subject to public ownership that provide various goods and services for sale and usually operate on a commercial basis. ¹

Different governments from around the world may imply their own unique way of financing public services. Funding of public sectors is usually through taxes and fees and through remittances from other government levels (for example from the federal government to the provincial or state government). However its methodology varies from country to country meaning thereby there isn't any hard and fast rule. Mostly advanced countries usually believe in devolution of power and cater the public sectors organizations as provincial subject, only those sectors are kept under the influence of federation that are of the national interest like those related to the security of the country, excise and taxation, federal reserve, Militaries of the countries and other organizations. Other than this there are other notable responsibilities on the Public sector for which any government for the purpose develop its public sector. Some of the main established points are:

- ***Prompt Action required for the economic Growth:*** The public sector is required to plan, start and accelerate the process of economic growth. As it is a well-known fact that developing countries are in a vicious circle of poverty. Only through economic planning, expansion and its proper execution through the public sector it is surely possible to break the cycle of vicious poverty by accelerating economic growth, especially the poor part of the population of the country which needs help to come into the main stream of life by involving actively in the financial activities.

- ***Building Infrastructure of the Land:*** Building up the economic infrastructure of the country, such as energy, fuel, transport and telecommunications etc. Without an

¹ What is the Public Sector? Definition & Examples. (2016, June & July) from <http://www.privacysense.net/terms/public-sector/> , retrieved on 13th May, 2020

expansion of the basic infrastructure of economic development, the state can't accelerate toward advancement and the resources of the country will remain optimally unutilized. However the profitability of these projects may be limited as its main goal is to provide an opportunity for the foreign investors due its investment friendly environment. Moreover, the profits from these infrastructural projects take time to accumulate due to the long-term nature. While the private sector with limited investments are generally interested in quick returns and therefore do not want to invest in these huge and boring project. Therefore, the task of the public sector is to make sufficient investments to remove the hurdles and restriction to economic growth and its development.

- ***Industrialization in the developing county:*** Public sector of the country, especially a developing country like ours, must expand heavy industries like steel, fertilizers, other chemical industries and engineering industries like machinery manufacturing industries. Investing in these industries will ensure rapid capital building that decisively determines economic growth, jobs creation in the economy of the state and helps achieve self-reliance as well. Private enterprises on the other side as mentioned above, hesitate to invest enough in these heavy industries, because they do not make quick and high profits. This is due to the ideology backed by the economist, who says that public sectors are based on the idea of enhancement of public welfare. This phenomenon is face by many other countries. A report confirms the same fact about the underperformance of the public sector of India in these words:

“Some of the persons and economists associated with our Planning Commission who formulated policies on public sector enterprises as well as those who were entrusted with setting them up and running them played down the idea of profit making by public enterprises and unduly emphasized the social obligations of public enterprises. It is only recently that profit aspect of public enterprises has been given due recognition”.¹

In addition, investment requires a huge amount of resources that private companies may not be able to mobilize.

- ***Creating Opportunity for the sake of Job creation:*** It is the sole responsibility of the SOEs to generate the resources of the state in accordance with the growing ratio

1 Subho Mukherjee, *Top 9 Causes of Poor Performance of Public Enterprises in India*, <https://www.economicdiscussion.net/india/public-enterprises/top-9-causes-of-poor-performance-of-public-enterprises-in-india/11019> , retrieved on 19th August, 2020

of the population of the country. This could be in form of Job creation in the market or new ventures for the sake of exploration of new opportunities. According to the latest report of UNDP Pakistan has recorded a significant growth in youth population. Perhaps the report show the highest numbers ever recorded in this regard. According to the report, it is one of the countries having majority of population based on her youth, after Afghanistan, in south Asia. It says that the total population Of Pakistan is 64 per cent under the age of 30 and 29 per cent between the ages of 15-29.¹ Unfortunately, the stagnant or declining figures of the economy are a big problem in this respect.

- ***Creating environment for the sake of perfect competition:*** The public sector must be expanded not only to provide compensatory or cheap power to large business houses, but also to verify the concentration of economic power in a few private hands for the sake of handling a situation were perfect competition is replaced with the monopoly situation . This means that the public sector should not remain confined to basic infrastructure and heavy industries, but if it has to verify the emergence of monopolistic conditions to stop the price hypes at the time of market pressures, to stop concentration of resources in some mean hands. For this purpose, it should include investment in the consumer goods industries and their production possible with in the country to pervert large amount of imports from the outside world. For coping this challenge, government require significant technological considerations to produce a scale of consumable items in abundance. This eventually cut a significant cost spent on the imports of goods on the bills paid in foreign currencies especially US dollars. Pakistan till now is answerless and helpless to address this huge question mark on its economy because of neglecting its needs based on long-term and concrete policies compatible with the world view and upcoming needs of the society.
- ***Development of the Industries in the location that are comparatively highly populated and poor areas with less income:*** The public sector has an important

¹ UNDP report, *Pakistan currently has largest youth population of its history*, The News International, <https://www.thenews.com.pk/print/311910-pakistan-currently-has-largest-youth-population-of-its-history-undp-report> , 24 March, 2021

role to play in establishing industries and specific infrastructure inevitable for the economically underdeveloped areas of the country for the sake of their flourish in their economic activities and maintenance of healthy life style. These specialized projects would help ensure balanced regional development, income generation at par other favored areas (mostly cities) and provision of employment for the poor across the country. In the case of underdeveloped areas of the countries like interior Punjab, suburbs of the KPK and Sindh it's a target still to be achieved. Although heavy projects like CPEC that promises to up root the economic activities in different part of the country by connecting Gwadar which is situated in Baluchistan and then the whole country with central Asia; it's still a dream come true for the poor and neglected population of the country especially Baluchistan and Sindh because from the start of the History of Pakistan they remained unexplored and unattended.

• ***Development of the social Sectors:*** The public sector plays an important role in promoting social sectors such as education, health care, poverty alleviation and ensuring the supply of clean drinking water throughout the country. Hence these focused public sectors projects launched in these social spheres to maintain quality of life must improve to an extent prescribed by the constitution of the state. Therefore, the government and the public sector must play a more active role in the areas of social development. It should be noted that the public sector was expected to work with efficiency to reduce the cost of production, as well as to generate surpluses or savings that, once returned to investment, would help accelerate the overall investment and capital worth of the economy.

Finally, it is the public sector for which governments has to undergo huge expenditure for attainment of its services. This included financing of the public sectors for which the governments has to pay higher rate of interests. The report says:

“Since the private sector lacks the moral sentiment and incentives of a responsible government to provide for various segments of the economy, including the underprivileged, the public sector's role is significant. Expenditure on public services accounts for more than one third of GDP in most countries, hence interest and expectations

of these services are high and management of public funds needs to be able to withstand scrutiny from all quarters”.¹

Pakistan historically made all the sectors intact with the federation and burdened its governance system to an extent it couldn't perform up to the mark. Unfortunately in Pakistan these beneficial projects always face operational and governance issues like approval of all the development projects from the federation, budget allocation formula where less influential provinces like Baluchistan always suffer either due to limitation of the developmental budgets or due to the personal likeness or dis likeness of the owners of the state business which mostly occurs due to change in the regime. The reports that summed up the cause of the delayed projects in Pakistan in these words:

“We found that around 80% construction projects in Pakistan faced delays, and only 20% of construction projects were completed within scheduled time duration and estimated cost. E.g. The large construction project of Port Tower Complex by KPT (Karachi Port Tower) is a 1,947 ft (593 m) tall skyscraper approved for construction in Karachi, Pakistan. Investment needed for this project is around billion US \$. It was planned and approved during the reign of President Pervez Musharraf. But later due to changes in government and organizational changes, this project is in delay.”²

Dr. *Abdul Ghafoor Awan* while discussing the role of the public sector in the growth of economy of Pakistan passes his conclusive remarks that the government sector plays a crucial role in Pakistan's economic growth, but there is a significant discrepancy in its investments. Investment patterns vary significantly, affecting private sector investment. Low investment leads to lower economic growth. The study examined various variables, including GDP, health expenditures, education expenditures, development expenditures, household expenditures, and working employment. Results showed that household and health expenditures negatively impact growth rates, while government expenditures on education and development

1Arsalan Shaikh, ACCA (Member, Subcommittee for the Public Sector - ACCAPakistan); Nida Naeem ACCA, *An Introduction To Public Financial Management, Members Network Panel ACCA Pakistan & Chairperson, Subcommittee for the Public Sector An Introduction To Public Financial Management* 2013,p#1,

https://webcache.googleusercontent.com/search?q=cache:fsCQy7n43LkJ:https://www.accaglobal.com/content/dam/ACCA_National/pk/mem/Members_network_panel_2013.pdf+&cd=2&hl=en&ct=clnk&gl=pk, retrieved on 6th July, 2019

2 *Causes and Effects of Delays in Large Construction Projects of Pakistan*, (Kuwait Chapter of Arabian Journal of Business and Management), Review Vol. 1, No.4; December 2011, http://arabianjbm.com/pdfs/KD_VOL_1_4/3.pdf, Retrieved on 28th May, 2019

correlate positively with GDP growth. Labor force use also positively correlates with GDP growth. Therefore, the government must increase development spending and employment opportunities to boost economic growth.¹

4.2.3 Interest Bearing Financing Of SOEs: Bonds/Securities, Bailout Plans and Banking credit:

There are number of SOEs of Pakistan that constantly require bailout package for the sake of its business requirement that it is offering to the public. Some information about the phenomenon is as follows:

4.2.3.1 Bailout Packages due to underperformance: It is a well-known fact that public sectors of Pakistan on the current status are under performing. SOEs like PIA, WAPDA, SNGPL and others may be well-known but it is more toward defaming side. It is noted that some of the sectors are categorized as mal-functioning white elephants like Pakistan steel mills, PIA, SNGPL etc. that are ready for privatization or require a big bailout package for its revival. This situation was grasped back in 2012 by the eminent economist Mr.Farakh A.khan who pointed out the alarming situation the failed institutions in Pakistan hinder societal problems and economic failure. Leaders must work to restore these institutions if they are genuinely thinking about implementing change²

Experts opine that privatization is the only solution to this problem. A detailed implementation plan including privatization and restructuring is being developed to overcome the situation. This clearly indicates that the policy makers are failed to devise a plan to re-regulate these companies into a profit making machines.

Talking about the privatization of these PSEs, two power plants Project and other small entities are predicted by the current government to be privatized for expected revenue of \$2 billion. In addition to that international investors have been contacted in a joint venture in Pakistan Steel Industries Company, and renewed telecommunications licenses for the mobile sector by more than one billion dollars.³

¹ Awan, Abdul Ghafoor, *Role Of Government's Sectors In The Economic Growth: Evidence From Pakistan*, *Global Journal of Management, Social Sciences and Humanities*, Vol 6 (1) Jan-March, 2020 62-89.

https://www.researchgate.net/publication/338659749_ROLE_OF_GOVERNMENT'S_SECTORS_IN_THE_ECONOMIC_GROWTH_EVIDENCE_FROM_PAKISTAN, retrieved on 29th October, 2020

² Farakh A. Khan, *"Pakistan's Failing Institutions," Pak Tea House*, September 25, 2012, <http://pakteahouse.net/2012/09/25/pakistan-failing-institutions/> , Retrieved on 7th May, 2020

³Mehtab Heider, The News, International, *No plan for loss-making public sector enterprises*, july 15,2019.

Just a bit of a correlation of the ongoing situation, The Ministry of Finance acknowledged that state-owned enterprises turned into net losses in 2015-16 when their net losses amounted to 44 billion rupees as these entities had previously made net profits.¹ This was the first time when state-owned enterprises faced losing entities on a collective basis but now the situation is more severe and intense as the net profit was converted into a net loss for all 197 PSEs, and the National Treasury faced a loss of PKR. 44.772 billion, FY16. The actual loss is largely due to losses booked in the balance sheet of energy distribution companies. The top ten bleeding state-owned companies have caused cumulative losses of 225.9 billion rupees in just one year. The national airline PIA tops the list of ten deficit entities with losses of PKR. 45.276 billion.² According to a recent report published by the World Bank, in recent years, Pakistan's State-Owned Enterprises (SOEs) have a significant liability of 12-18% of the GDP, despite their loss-making nature.³

Hence, in the situation of losses, the governments for the sake of the greater interest of the society go for the bailing out program to save the projects/companies of the state. In case of PIA, many bailout programs have been offered for its rehabilitation. However all gone vain with less likely results obtained in this regard. Recently ECC (The Economic Coordination Committee) has again offered PIA with a last chance of rehabilitation. The Reports confirm that the federal government has approved an Rs457 billion restructuring plan for Pakistan International Airlines to make the airline financially viable, despite lacking a business plan. The plan includes layoffs of 25% of the current workforce, closure of non-profitable routes, and sharing international routes with other airlines.⁴

Moreover the power sector is the most overburdened PSE and loss incurring institution that the federal has to take care for. It is the burden of the other SOEs energy consumption that is a massive challenge for the federal government as it has to clear it in the form of circular debts. However, the government is silent on its policy regarding the fate of power

¹ Farakh A. Khan, "*Pakistan's Failing Institutions*," *Pak Tea House*, September 25, 2012, <http://pakteahouse.net/2012/09/25/pakistan-failing-institutions/>, Retrieved on 7th May, 2020

¹ Mehtab Heider, The News, International, *No plan for loss-making public sector enterprises*, July 15, 2019.

² Ibid.

³ Business Recorder, *Business & Finance, Liabilities of loss-making SOEs range from 12-18pc of GDP, says World Bank*, 30 June 2021, <https://www.brecorder.com/news/40103894>, retrieved on 5 September, 2021

⁴ Rana, Shehbaz, The Exoress, Tribune, *Govt approves Rs457b PIA restructuring plan, ECC sends package to federal cabinet for final endorsement*. April 2021, <https://tribune.com.pk/story/2293696/govt-approves-rs457b-pia-restructuring-plan> retrieved on 16 August, 2021

generation companies and the distribution of lost energy. As a last resort the government has bailed out the IPPs once again. The reports confirm that the government has completed the first payment transaction amounting only 40% of total of Rs89.2bn to 20 Investment Partnerships (IPPs), divided in cash, Sukuk, and PIBs, coordinated by the State Bank of Pakistan, power division, and various organizations..¹

Similarly, due to the COvid-19 phenomenon, Pakistan Railways is also suffering losses. The reports confirm that the Pakistan Railways received an additional grant of Rs6 billion in the previous financial year (2019-2020) to cover revenue loss due to train suspension and partial restoration. However, due to decreased passenger traffic following the virus outbreak, the shortfall in revenue in the first two months of the current financial year has risen to Rs5.860 billion..²

The current government is serious about fixing these losses once and for all. Recently, an announcement of its policy of choosing to restructure and convert its key government losing projects in exchange for privatization. Accordingly, the Government allocated 14 state-owned enterprises for restructuring and transformation. These include Pakistan International Airlines, Pakistan Railway, Pakistan Steel Mills and all three entities that have been removed from the privatization list.

Other state-owned companies that have been removed from the privatization list include National Bank of Pakistan, State Oil Company of Pakistan, Sui Northern Gas Pipelines Limited, Sui Southern Gas Company, Civil Aviation Authority, National Highway Authority, National Logistics Company, Pakistan Trade Company, Printing in Pakistan, Utilities Corporation and Industrial Development Bank.

Most of these companies have a direct link with the life of a common person. This indicates the fact that if the privatization or public listing of these companies is completed, these companies will be no more working on the basis of the concept of welfare rather their utility price determination would be on the basis of demand and supply. One thing is for sure that it would be a bumpy road for the locals, who see things in its on perspective of a limited circle of their life where every single Penny counts.

¹ Dawn, *Govt pays Rs89bn to 20 IPPs as first instalment*, 5th june, 2021, <https://www.dawn.com/news/1627607> , 16 August, 2021

² Tribune. *Railways seeks govt bailout, Suspension of operations due to pandemic hits revenue*, 4th October 2020. <https://tribune.com.pk/story/2266870/railways-seeks-govt-bailout> , Retrieved on 6TH August, 2021

The entities on the privatization list include SME Bank, First Women Bank, Haveli Bahadur Power Plant, Parri Petroleum, Lakhra Coal Mines, Services International Hotel Lahore, and Jinnah Convention Center Islamabad.¹

4.2.3.2 Bailout Packages through floating Bonds/ Sukuk Bonds and security: The state bank of Pakistan has the mandate to take financial decisions for the sake of preventing the country from default or bank currupsy. However generating the revenue in this way may be disastrous in the long term. According to recent reports, circular debt has again crossed the 1.8 trillion rupees mark and will reach 2 trillion rupees soon. Hence it was reported that the government had plans to launch sukuk bonds to raise another 200 billion rupees. It was reported that a group of local banks are willing to pledge the assets of distribution companies (Disco) and generation companies (Gencos) in exchange for loans. Electricity consumers will service the new facility by paying an additional fee in the tariff.²

Al though the decision of opting *sukuk*, which is an Islamic bond, is a good decision but having said that it will create an extra burden on the consumers, especially the households with the limited budget.

Moreover GOP is seriously involved in different sorts of T-Bill, bonds and certificates to uphold its foreign reserves and stimulate the economy as well. These financing tools are purely based on the interest and totally against the philosophy of the *Sharī'ah* Law. Recently, the tenders for the sale of Government Treasury bonds of Pakistan to the market for 3 months, 6 months and 12 months which were invited by State Bank of Pakistan through primary dealers on August 25, 2021 with settlement date of August 26, 2021.³ The auction target was Rs. 800.00 billion. The invoice value was as follows (Amount in Millions PKR)⁴

1 Farhat Ali, Loss-making PSEs: *Restructuring versus privatization*, Business Recorder, dec 8, 2018. <https://fp.brecorder.com/2018/12/20181208429415/> , Retrieved on 11th May, 2020

² The News, International, Circular debt and Sukuk, february 26, 2020, <https://www.thenews.com.pk/print/619823-circular-debt-and-sukuk> , retrieved on 5th September, 2021

³ State Bank Of Pakistan, *Domestic Markets & Monetary Management Department, Government of Pakistan Market Treasury Bills (MTB's) Auction Result*, <file:///E:/finance%20books/auction-tbills.pdf> , retrieved on 5th September, 2021

⁴ ibid

Fig#2: Sukuk Based bailout packages

Tenor	Realized Value	Face Value
03 Month	316,833.673	322,121.725
06 Month	1,016,004.811	1,053,761.995
12 Month	166,164.411	179,500.000
Total	1,499,002.895	1,555,383.720

The above strategy of piling up the Treasury bills, certificates and *Sukuk* bonds may help the government better its outlook but in reality it's a cut on the revenue from the Budget side that is used to secure the payable generated by it. That is why at the end of the day our economy is always left with the less income to inaugurate developmental and especially welfare projects that is highly important to change the life of the millions, especially those living under the poverty line.

Bailout Packages from the international Agencies on the basis of Interest loans as a last resort:

Why Bailout Packages: Although the Governments of their time have been fighting to overcome the problem of either rehabilitating the public sector or giving up some of them through privatization, it is not only time taking job but also requires lots of bail out packages for the sake of surviving permanent loss to shut down. Day by day the financial situation of Pakistan is getting tightened due to its financial requirements exceeding its financial resources. Currently it is facing internal pressure by its costly operations which always show the gap in the budgetary/ fiscal side; the shortage may grow to an extreme deficit of Billions of Dollars. In addition to its external debts, it is also facing a tremendous pressure to pay its previously consumed loans taken from the foreign loaning agencies like World Bank, Asian development Bank, International Monetary fund and others. All these loans gained from the international loaning agencies not only helps us bear our internal losses but it also helps us clearing debt services on these external loans, cover the disparity in the taxation policies due to which the low percentage of taxes are gathered, losses incurred due to undocumented economy or undeclared business, Moreover, Tax free industries and services, negative effects of money laundering, tax evasion due to less declaration of assets and the list goes on are referring to an irrecoverable condition of the economy.

4.2.3.3 State Bank external debt report of FY 18-19: This depicts a picture of collective failure as a nation showing the incompetence level of the Public sector organizations. This problem seems to be unsolvable by the responsible and concerned authorities especially regulatory authorities like Federal board of revenue, Security and Exchange commission Of Pakistan SECP and the state bank of Pakistan; It's because these organizations are considered to not letting any organization of Pakistan getting failed when it comes to deliverance and performance of it but sometimes it seems that these regulating bodies are part of the problem.

The following chart shows the figure of last three quarters of the financial year 2018-2019 that State bank of Pakistan paid external debts to clears it accounts to balance value.¹

The external debts have always been the problem for the country due to many reasons but one of the main reasons is the currency in which it is been acquired is mainly the US dollar. The debt recorded in the FY 18- FY 19 is as follows²:

Fig#3: Total Debt Servicing for three Quarters (Amount in Millions)

¹ Annual Report 2017-2018 (State of the Economy), chapter#6, *Domestic and External Debt, state bank of Pakistan*, <http://www.sbp.org.pk/reports/annual/arFY18/Chapter-05.pdf>, summarized by Iftikhar Ali ,Senior, Joint Director, http://www.sbp.org.pk/ecodata/pakdebtsvr_summary.pdf , Retrieved on 14th May, 2020

² Ministry of Finance, *Debt Policy Statement 2019-20 - > DPS_2019_2020PDF* , 18. 7 (iii) *Development in Domestic Debt during FY 2018-19*, (Ministry of finance).

Description	FY - 18			Q1- FY19			Q2- FY19		
	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
A. Public debt (1+2+3)	4,190	1,787	5,977	1,458	429	1,888	1,219	660	1,879
1. Government debt	4,105	1,555	5,660	1,375	360	1,735	1,178	585	1,763
2. From IMF	86	128	214	84	36	120	42	36	77
3. Foreign exchange liabilities	0	103	103	0	33	33	0	39	39
B. Public sector enterprises (PSEs)	332	78	410	90	45	135	30	17	47
a. Guaranteed debt	69	61	129	32	41	72	3	10	12
b. Non guaranteed debt	263	18	281	58	4	62	28	7	35
C. Bank Borrowings	1	61	62	1	19	20	2	15	16
D. Private Sector	651	390	1,041	350	59	409	838	134	972
a. Guaranteed debt	0	0	0	0	0	0	0	0	0
b. Non guaranteed debt	651	390	1,041	350	59	409	838	134	972
Total Debt Servicing (A+B+C+D)	5,174	2,316	7,490	1,900	552	2,452	2,089	826	2,915

Note: The debt servicing excludes principal repayments of short term borrowings by scheduled banks from banks abroad.

The entire amount paid for the clearance of external debt is mostly incurred by the taxes from the poor nation of Pakistan. The situation seems to be worsening because of the fact of non-performance of the government of Pakistan as it has failed to cover all the debt services through its pocket. For this reason it intends to go for another IMF program to clear its liability side. Point to be noted that the loans taken from the friendly countries like China, UAE, Saudi Arabia and others despite being millions of dollars couldn't help the country out of the ongoing financial crisis and now finance minister again announces that he is going to undergo another loan from IMF which will finally resolve the issue of the liquidity faced by the newly government of Pakistan. The last three financial quarters show the external debt servicing accumulatively isn't more than 1.28 billion dollars upon the total debt of more than 31 billion dollars.¹ If we minus the principal amount from the total external debt servicing, the remaining amount is the interest amount which is approximately thirty seven million dollars against the principal amount. It shows that it can be recorded as decimal amount of our total expected GDP of the country which is expected to be 315 billion dollar till the end of this financial year.² It implies that the total amount of interest that we are paying i-e 37 million dollars may be calculated in the decimals of the total GDP which is approximately 1.17% of the total GDP.

1 The Nation, *Pakistan's debt, liabilities grows to Rs31 trillion: SBP*, March 19, 2019, <https://nation.com.pk/07-Dec-2018/pakistan-s-debt-and-liabilities-surge-to-rs31-trillion> , Retrieved on 16th May, 2020

2 Trading Economics, *Pakistan GDP*, March 19, 2019, <https://tradingeconomics.com/pakistan/gdp?poll=2019-03-31> , Retrieved on 17th May, 2020

The above value of the interest paid shows that it's a negligible for any government which won't be overburdened to pay it. The main problem of our economy is thus the negative trend of the main indicators of economic on the whole. Say for example deficit in trade accounts, current account deficits, fiscal deficit or budget deficit and so on and so forth. This down ward trend of the economy has made the country incur debt in billions of dollars which the government has to pay from nowhere. This proves that the interest money isn't the core problem that our economy is facing. Accordingly, interest isn't the cause of the problem of the whole situation from which our economy is going through rather it would be more reasonable to say that it's the effect arose from the unresolved problems that our economy had to face. Interest money must be considered among other negative notions present in the socio-economic system of Pakistan like poverty, corruption, class discrimination, racism, violence, partial justice, economic injustice etc. that indicates the root cause of the whole problem is still there and awaits some men of zeal and honor to come forth to eradicate it. The bad and malfunctioned errors and practices in the economy of Pakistan must be eradicated through a major surgery, cut or a bypass of the whole financially disabled and non-deliverable situation of it. Especially the public sectors itself because after we rehabilitate them, it's going to rehabilitate the economy function properly. We simply need a revolution of reforms in our financial system from the scratch through legislation and proper accountability.

4.2.4. Interest Involvement in the Investment side of the Public Sector

It is the public sector that must control the overall functions of the state. The government under its regulating organizations take care the daily business of the state in a very professional manner. It is noteworthy that predominantly these organizations are involved in the interest based transactions. Having said that, with a little interest and zeal, the functions related to the investment side of the SEOs can easily be *Shari'ah* Compliant. Following are the organizations that are mainly responsible for it.

4.2.4.1 State Bank of Pakistan (SBP):

State Bank of Pakistan (SBP) is currently regulating banking industry (Public and Private) i.e. all commercial and retail banks, microfinance banks, investment banks and

financial institutions registered through banking companies' ordinance 1962.¹ SBP was a core duty to regulate the Economic Policies of the state to guarantee the daily business activities. Technically speaking all its financial measures to regulate the currency has a direct impact over all the institutions.

Although, SOEs are especially constituted for the sake of providing the services in different areas to build an infrastructure that will uphold the Socio- Economic system of the country and welfare being of the countrymen. However it isn't achieved so far due to many internal causes discussed earlier. The public sector has pushed the financial indicators to its limit due to the non-performance. To sustain the pressures, in the present scenario, the State Bank of Pakistan (SBP) is undergoing a monetary tightening phase that has consistently raised discount rates over the past few months. The central bank is taking some corrective measures to prevent the economy from rising inflation, increased circulation of funds, and the possibility of a decline in the growth rate in the fiscal year 2018-19. It should be noted here that previously the currency was upheld to an artificial or fixed exchange rate.

4.2.4.2 National Bank of Pakistan: National Bank of Pakistan (the Bank) was established on November 09, 1949 under the National Bank of Pakistan Ordinance, 1949 and is listed on the Pakistan Stock Exchange.² There are 2,127,513,026 issued & outstanding Ordinary shares of the Bank, of which the Federal Government through the State Bank of Pakistan holds 75.2%.³ The consolidated statement is as follows:

- Major shareholders include Foreign Companies (5.92%), Public Sector Companies (6.0%), and the general public (6.61%). The Bank has subsidiary companies operating in both the financial and non-financial sectors. The Bank's subsidiaries include an Asset Management Company, an Exchange Company and a Securities Brokerage House. Operations by the parent entity

1 The Banking Companies Ordinance, 1962, Ordinance No.vii of 1962. *An Ordinance to consolidate and amend the law relating to banking companies.*

<https://www.fmu.gov.pk/docs/laws/Banking%20Companies%20Ordinance-1962.pdf> , 14th February, 2019

2 The National Bank Of Pakistan ordinance 1949, <https://www.nbp.com.pk/nbp-ordinance/nbp-ordinance.pdf> , Retrieved on 17th May, 2019

3 The National Bank Of Pakistan, *Building Resilience Creating Opportunities Pattern of the Shareholding report*, As of December 31, 2020, P#365 <https://www.nbp.com.pk/FinancialStatements/AnnualReport2020.pdf> , Retrieved on 23rd May, 2021

i.e. the Bank; however, account for the largest share of Group assets and profits.¹

- With a total asset base of PKR 3.0 trillion, (USD 18.82 billion) and accounting for ~12% of total industry assets, the Bank has been designated a “Domestic Systemically Important Bank” by the State Bank of Pakistan. The report says: “In line with D-SIBs Framework, State Bank has carried out the annual assessment on the basis of financials of the end of December 2019. As per this assessment, three banks viz. Habib Bank Ltd., National Bank of Pakistan, and United Bank Ltd. have been designated as D-SIBs for the year 2019.”²
- The Bank also handles treasury transactions for the Government of Pakistan as an agent to the State Bank of Pakistan. The Bank operates 1,514 domestic branches in Pakistan³ and 21 overseas branches (including the Export Processing Zone branch, Karachi).⁴ The Bank has wide local and international outreach through a network of branches and ATMs, subsidiaries, representative offices, agency tie-ups and correspondent banking relationships, etc.
- The Bank is well-diversified across its major business segments of retail, commercial, corporate & investment, Islamic, treasury and international operations. The Bank’s international operations exist in South & Central Asia, Middle East, Western Europe and North America.⁵ Demonstrating a strong franchise, 67.2% of total assets of the Bank are funded by customer deposits. The Domestic Current and Savings Account (CASA) ratio was 83.8% as at December 31, 2020. ⁶

¹ Ibid., P#365

² ProPakistani, *SBP Appoints Domestic Systemically Important Banks*, 4th September, 2020, <https://propakistani.pk/2020/09/04/sbp-appoints-domestic-systemically-important-banks/#:~:text=As%20per%20this%20assessment%2C%20three,SIBs%20for%20the%20year%202019.> Retrieved on 5th March, 2020

³ NBP, domestic Network, <https://www.nbp.com.pk/BRNTWRK/DomesticBrLocator.aspx> , Retrieved on 28th December, 2020

⁴ NBP, Overseas Network, <https://www.nbp.com.pk/BRNTWRK/OverseasBranchFinder.aspx> , Retrieved on 16th March, 2020

⁵ Ibid,

⁶ The National Bank Of Pakistan, *Building Resilience Creating Opportunities Pattern of the Shareholding report*, As of December 31, 2020, P#357 <https://www.nbp.com.pk/FinancialStatements/AnnualReport2020.pdf> , Retrieved on 25th March, 2020

- *Aitemaad* Bank is the subsidiary of NBP which was launched with in 2015 with a vision of expanding its Islamic branches up to 100¹ but now it has successfully opened its 190² branches. This means that demand of Islamic banking is high. It is worthy to note that the Bank is offering all the services that can be offered under Islamic Banking framework. All sorts of deposits like short, medium and long term with some specific names. All of its relevant information is mentioned on its official website description.³

4.2.4.3 Industrial Development Bank of Pakistan: The Industrial Development Bank of Pakistan (IDBP) is one of the oldest development financing institutions in Pakistan and has been set up with the primary objective of extending the term of finance for investment in the manufacturing sector of the economy. Over the years, however, the bank has become an institution that has promoted the development of small and medium enterprises in rural / less developed regions of the country.

The Industrial Development Bank is wholly owned by the Government of Pakistan, of which 57% is held by the Federal Government, 36% by the State Bank of Pakistan and 7% by the Provincial Governments and other public sector corporations. Its Board of Directors consists of representatives from the private sector appointed by the Ministry of Finance.

In the recent past, IDBP has suffered significant losses due to the influx of loans.⁴ By the mid-2000s, IDBP had lost about Rs. 27 billion. The Government of Pakistan merged IDBP with ICP in 2006 the for-profit Investment Corporation of Pakistan to improve the financial performance of ICP.⁵ The bank continued its commercial struggle and by the end of 2009 the accumulated deficit had increased to Rs. 28 billion.⁶ However, government of Pakistan is looking for ways to make the IDBP economically viable.

1 The News, NBP to expand Islamic banking network, 28th June, 2015,

[https://www.thenews.com.pk/print/48311-nbp-to-expand-islamic-banking-network,2nd of July, 2019](https://www.thenews.com.pk/print/48311-nbp-to-expand-islamic-banking-network,2nd%20of%20July,2019)

2 The NBP, Aitemaad Islamic Banking, <https://www.nbp.com.pk/BRNTWRK/IslamicBrFinder.aspx>, Retrieved on 19th of Oct, 2020

3 Aitemaad Islamic Banking, <https://www.nbp.com.pk/islamic/DepositScheme.aspx>, Retrieved on

4 Dawn news, IDBP, ADBP fraught with bad loans: PAC, July 26, 2002,

<https://www.dawn.com/news/49644/idbp-adbp-fraught-with-bad-loans-pac>

5 Dawn News, Action of Rs 2billion of investment portfolio, October 10, 2006

<https://www.dawn.com/news/214102/auction-of-rs2bn-icp-investment-portfolio-merger-with-idbp>

Auction of Rs2bn ICP investment portfolio: Merger with IDBP, Retrieved on 16th Feb, 2020

6 Dawn News, NA body opposes revamping of IDBP, December 2009,

<https://www.dawn.com/news/831414/na-body-opposes-revamping-of-idbp>, Retrieved on 4th of June, 2019

Talking about its mission, The Bank provides medium and long term finance in industrial and foreign currencies for investment of assets in new industrial projects as well as for expansion, balancing, modernization or conversion of existing projects. It provides technical, financial and administrative advice to its clients on planning and executing industrial projects. It also helps in the transfer of technology from developed countries to industrial enterprises in Pakistan.

A unique feature of the Industrial Development Bank of Pakistan is that in addition to being a development financing institution, it is also a scheduled bank and an authorized foreign exchange dealer. In this way, IDBP expands its clients to all types of merchant, investment and commercial banking services, including short-term growth, business financing, lease financing, guarantees and underwriting. Thus the Industrial Development Bank of Pakistan operates a complete banking system, in addition to the role of a development financing institution.

The Industrial Development Bank of Pakistan has the unique honor of financing the first projects for a diverse list of products. These include Ultra High Temperature (UHT) Pack Milk, Three Wheeler, Radio / Wireless Receiver Set, Marble Processing, Coal Mining, Granite, acetic Yarn, PVC Deep Marine Fishing etc. with an Annual export capacity of Rs. 10.00 billion. The value addition through the completed project is estimated at about Rs. 15 billion annually. The net worth of IDBP is around Rs. 3,338 million.¹

The Bank help the government machinery in many regards. In this way, IDBP expands its clients to all types of merchant, investment and commercial banking services, including short-term growth, business financing, lease financing, guarantees and underwriting. The financing to these clients is based on the fact that it will help to develop an infrastructure in the country on the basis of long term financing.

It is important to note that the IDBP works with thirteen commercial banks and has no account in any local Islamic Bank. Hence they are unable to finance institutions/collect bills or facilitate banking services on behalf of government institutions that are linked with the IDBP.

¹ Implementation and Economic Reforms Unit Ministry of Finance, Islamabad, Federal Footprint - State Owned Enterprises, *Annual Report 2018-19*, Industrial Development Bank Limited 62, http://www.finance.gov.pk/publications/SOE_Report_FY19_Vol_I.pdf, Retrieved on 3rd March, 2020

4.2.4.4 Zarai Taraqiati Bank Limited: Zarai Development Bank Limited (ZTBL)

Formerly the Agricultural Development Bank of Pakistan (ADBP) is a major financial institution attracted to the development of the agricultural sector through the provision of financial services and technical knowledge. As a loaning agency, the organization helps the agriculture sector grow in the country through sustainable financing, special loan programs, technical assistance, and reliable access to other products and services, increasing credit availability in the agricultural sector, contributing effectively to economic growth, career growth and also promoting the development of professional skills and technical skills of employees.

Currently ZTBL is working on its restructuring and reorganization plan. ZTBL Reorganization Plan includes the following.

- **Governance:** To create an environment that facilitates good governance and accountability.
- **Systems:** Modernize operations through the use of technology, networking, and communication tools.
- **Business processes:** Smooth products and delivery systems to reduce transaction costs simplify operations, operations; and increased access.
- **Products and Services:** Introduce economically viable products and services.
- **Human Resource Development:** Improving the quality and skills of management and staff and strengthening training capacity.
- **Establish new hardware and software platforms to support IT:** MIS accounting systems, including forensic accounting, and risk management functions.

ZTBL engages in interest-based transactions since it is a traditional bank, which is a characteristic of traditional banking systems. This indicates that ZTBL follows standard banking norms by adding interest to loans and paying interest on deposits. ZTBL provides its clients with a range of additional financial products and services in addition to interest-based transactions, including:

- **Bank Accounts:** ZTBL provides customers with interest on their deposited funds through a variety of bank accounts, including savings accounts, current accounts, and term deposits.

- Loans: ZTBL provides its customers with a variety of interest-bearing loans, including personal, commercial, and agricultural loans.
- Credit Cards: ZTBL provides its clients with credit cards that enable them to pay and purchase for the amount borrowed and pay it back with interest.

4.2.4.5 Security and Exchange Commission of Pakistan (SECP)

Security and Exchange Commission of Pakistan (SECP) is currently regulating all public and private companies/firms etc. registered through Companies Ordinance 1984¹. However, the Securities and Exchange Commission of Pakistan (SECP) was constituted under the Securities and Exchange Commission of Pakistan Act, 1997.² The SECP was initially responsible for regulating the corporate sector and the capital market. Over time, its mandate has expanded to include oversight and integration of insurance companies, non-banking financial companies and private pensions. The SECP has also been assigned to oversee various external service providers in the corporate and financial sectors, including chartered accountants, credit rating agencies, corporate secretaries, brokers, and surveyors.³

One of the important functions of the SECP is registration of the Companies. This work has been entrusted to the Registration of Departments, Companies and The Law Division, which has field offices, is known as the Company Registration Office (CROs) for a variety of inclusion / enrollment purposes Companies. Since the inception of the SECP, several operational changes have been introduced and a friendly atmosphere has been created in CROs. Corporation Companies is ensured easy, smooth and fast completion this process takes place within three days of the availability of other public services such as name, certified copies are provided in one day. The e-service has been launched in September 2008 by the SECP⁴. This e-service facilitates online availability of names, online participation of companies and e-filing of legal statements. It enables to

1 The Companies Ordinance, (XLVII OF 1984) , *Part 3,-Securities And Exchange Commission Of Pakistan*, 9, <https://www.ma-law.org.pk/pdflaw/Companies%20Ordinance.%201984.pdf> , Retrieved on 24th May, 2021

2 The Securities And Exchange Commission Of Pakistan Act, 1997, Part , *The Commission, Establishment of the Commission*, 8, https://opc.lhc.gov.pk/pdf/SECP_Act_1997.pdf , Retrieved on 16th Feb, 2020

3 About SECP, <https://jamapunji.pk/about-secp> , Retrieved on 29th June, 2021

4 Securities And Exchange Commission Of Pakistan Promoters' *Guide Formation And Incorporation Of Companies Under The Companies Ordinance 1984*, 2, <https://www.secp.gov.pk/wp-content/uploads/2016/03/PromotersGuideEnglish-new.pdf> , Retrieved on 21st July, 2020

communicate online using company promoters and management e-services Portal, without visiting the SECP office. Online services save time and resources, Increase efficiency, create a paperless environment, promote confidence and stabilize the country's economy.

The SECP is headquartered in the federal capital, Islamabad and has eight regional Offices (company registration offices). One is in federal capital, four provincial in the capital and three other major cities: Multan, Faisalabad and Sukkur. SECP organized into the following divisions:

- Law Company Division
- Securities Market Division;
- Companies Division of Special Companies;
- Finance and Admin Division
- Research, HR & Training Division;
- Insurance Division
- Information Systems and Technology Division.

Talking about the *Sharī'ah* criterion about the non *Sharī'ah* compliant companies, certain criterion must be kept in mind¹:

- The core business shouldn't violate any principal of *Sharī'ah*. That means company cannot invest in the companies providing the financial services based on interest, leasing companies, insurance companies and any other business not approved by the *Sharī'ah*.
- The ratio of non-*Sharī'ah* compliant income should be negligible. This means that the core business of the company should contain transaction based on the described *Sharī'ah* criterion like it should be free from the menace of gambling, misappropriation of wealth, *Ribā* and so on and so forth.
- The core business of the company shouldn't be based on any item or activity that doesn't run in line with the *Sharī'ah* prescriptions like it alcohol. Addictive drugs, penalty charge on late payment on credit sale, income from casinos or any dividend income from the mentioned businesses.

¹ Meezan Bank, Sharī'ah Screening criteria, <https://www.meezanbank.com/shariah-screening-criteria/> Retrieved on 20th March, 2021

- The illiquid asset ratio should be the reason of the income of that company. Here it should be note that illiquid assets are those assets that guarantee fix payments based on interest.
- From investment Point Of View Company shouldn't involve extensively in interest bearing debt based tools like TFCs, bonds, T-bills.
- Market price of the share must be grater then the value of the liquid assets.
- The shareholder reserves the authority to raise voice against the company if it perceives that the company is deviating from its *ḥalāl* business to the non-*Sharī'ah* compliant businesses.

Unfortunately most of the companies fall deficient to fulfill the above requirement. However, it seems to be a sense of achievement for the SECP that it is working hard in the *Islamization* of the economy of Pakistan by establishing an Islamic Financial Market under the supervision of Islamic Financial Division (IFD). The IFD claims that it is busy in conduct of Seminar, roadshows, conferences conduct in the public to make sure that they understand the basic *Sharī'ah* principles of related to the modes of finance. Some of the significant developments published on the website of SECP are as follows¹:

- For the sake of *Sharī'ah* governance rules, SECP is following the Malaysia based IFSB² standards. Moreover AAOIFI standards are also kept in view for the sake of attainment of a beneficial approach and cross referencing. In fact some of the regulations passed by the AAOIFI standards are implemented. Standards like *Sukuk*, *Qabd* and Agency contract that are implemented in true letter and spirit.
- All Shares Islamic Index was launched in January, 2016 under which more than 250 companies have been registered that is considered to be the *Sharī'ah*

1 Security and Exchange Commission of Pakistan, Islamic Finance Department (IFD), *Significant developments*, <https://www.secp.gov.pk/islamic-finance/significant-developments-2/> , Retrieved on 6th May, 2020

2 The Islamic Financial Services Board (IFSB) is an international standards-setting body that promotes stability and stability in the Islamic financial services industry while issuing international strategy standards and guidelines for the industry. Is defined to include banking, capital markets and a wide range. The Insurance Sector IFSB conducts research and coordinated initiatives on industry-related issues, as well as roundtables, seminars and conferences for regulators and industry stakeholders. <https://www.ifsb.org/#:~:text=The%20Islamic%20Financial%20Services%20Board,defined%20to%20include%20banking%2C%20capital> , Retrieved on 7th October, 2021

compliant organization. However out of these companies the active companies are fewer due to unknown causes. The latest chart is as follows¹:

- *Sharī'ah* compliant Companies that are related to the mutual funds comprise their shares of 41% and rest of the shares are related to the industries that are *Sharī'ah* based pension funds
- For the sake of flourish of the *Sharī'ah* compliant industry, 2% of the tax rebate has been given to those companies registered under the scheme of *Shari'ah* compliant listed manufacturing companies.
- Tax credit is offered to the investors investing in the sukuk based markets other than the companies that are investing heavily in the *Sukuk* market for the sake of inculcating the retail business in the portfolio of the SECP.

Standard regulatory provisions have been passed for the sake of managing the *Sharī'ah* compliant companies and Securities that are registered under the SECP *Sharī'ah* compliant Policy.

4.2.5 Need of the Islamization of the Economy to prevent the harmful elements responsible for the downfall:

Although we have a rich and abundant Islamic laws related to the financial system, but we are unable to implement them on our financial system. The truth is, the more we are away from the adopting the glorious principles of Islamic finance, the more we have to be interdependent to these loaning agencies who offer very false program of progress. In this unorthodox way we will never be able to make the socio- economic system of Pakistan flourish. These Islamic principles of Finance disapprove from involving into any interest based debts both at the level of micro and macro. These glorious modes of Islamic finance also depict a very true picture of real economic activities based on the reality and justice. Principles of finance that are offered by Islam to the world are the only set of tools that will ensure a smooth running of the economic activities around the globe because it always appreciates to consider to float the real value of the money due to its mechanism of asset based transactions, elimination of interest based transactions and encouraging participatory

¹ SECP, *Register of the Sharī'ah Advisors*. <https://www.secp.gov.pk/islamic-finance/register-of-shariah-advisors/>. Retrieved on 14th November, 2020

modes of finance like *musharkah* and *mudharbah* because these sharing modes of finance guarantee maximum rate of return on the base of some real, intellectual or some skillful based investment to cater mega projects of the countries with a will of mutual cooperation with each other.

On the other hand we also need to evolve our Micro financing system free from the stain of Interest. Islamic modes like *salam* or *istasna'* which will guarantee small businesses to flourish and make a positive sign in the overall business and economic activity. If we succeed to evolve our industry once without indulging into debt financing, we surely will stand up on our feet. Our success lies in acceleration of our efficiency which will stable our economy, making our socio economic system free from the external influence.

The economic models lent by the western economic system have always proven to be troublesome because of their artificial control over the resources of the world due to the fact that the loaning agencies under covered working for their foreign hidden agenda. Anyhow being part of the global economic system we also need to be compatible with the ongoing situation of the global financial market and services that the world is offering on the basis of reciprocity. Moreover we must prevent our financial market becoming consumer based market rather we must focus on enhancement of our exports and show the world what we have got the best to offer them in terms of export quality goods. This will surely shift the burden and fix the problem of the trade gap deficit. We must focus to live in accordance with the Islamic of contentment and self-sufficiency.

The inference could easily be drawn from the above discussion of interest rate adjustment mechanism that SBP is rigorously following the western financial based policies. In an Islamic frame of mind we can never overcome our problem by adopting interest based system. Although, due to the non-availability of an Islamic framework in totality; we can't vanish the interest based transaction from our economy. It is due to the fact that our socio- economic dependency over the world financial system. Our best approach would be minimizing it to a rate that is inconsiderable. This would be the best way to start the process of islamization of the economic system of our country that is badly trapped into non-*Sharī'ah* compliant financial transaction hurting our socio-economic values based on the leading principals of *Sharī'ah* law.

For this reason SBP must follow some guide lines as follows:

- Not to involve in the debt based transaction whether it is from the loaning agency that offer their loans in conformity with the western financial laws.
- Not to float the bonds on the basis of attractive interest rates. It is because of the fact that this hot money is only good for the betterment of the outlook of the SBP foreign reserve accounts. These bonds normally could be called off any time the debtor wants it. This is totally putting the whole economy at risk of a single transaction that may become the cause of flight of capital. It is better to float the *Sukuk* bearer bonds¹ that have a clear mentioned date of maturity and rate of return mentioned on it.
- If any loan availed from any loaning agency must be a production based loan for financing a project that is inevitable for the project to carry on for its survival only.

4.2.6 Impact of the Riba on Public Sector

4.2.6.1 Economic Impact: Our economy is facing continuous challenge of repayments of the loans which are interest-based, acquired from the foreign loaning agencies is much more challenging as it is to be repaid in dollars. The economy of Pakistan is in a serious turmoil and every single national of the state can feel the pressure. Certain problems needed to be addresses are as follows:

4.2.6.2 Increase in the Inflation rate: At the end of March 2018, the State Bank of Pakistan increased its benchmark interest rate by 50 basis points to 10.75 per cent, which took effect from April 1. Inflation in the core consumer price index averaged 6.5 percent in July-February of fiscal 2018 -19, compared with 3.8 percent in the same

¹ Sukuk is an Islamic financial instrument, similar to a bond in Western finance, that complies with Islamic religious laws. Since the structure of traditional Western interest-bearing bonds is not permissible, the issuer of the sukuk bond must sell a certificate to an investor group, and then use the money to purchase the assets in which the capital is invested. The issuer must also make a contractual promise to buy back the bond at a future date at par value.

period last year. Meanwhile, the annualized CPI inflation rate rose to 7.2 percent in January 2019 and then to 8.2 percent in February 2019 which is the highest annual rise in inflation since June 2014.¹ These pressures on core inflation are explained by price adjustments in the Electricity and gas bill, the substantial increase in perishable food prices, the continued impact of exchange rate depreciation as discussed earlier. Hence core inflation maintained its upward trajectory for 13 months, rising to 8.8% in February 2019 from 5.2% the previous year. The fiscal deficit for the first half of FY 2018-19 was higher at 2.7 percent of GDP compared to 2.3 percent for the same period last year. The government borrowed PKR 3.3 trillion from SBP and retired Rs 2.2 trillion from its loans from scheduled banks (on a cash basis) during the period from July 1 to March 15 of the fiscal year 2018-19.² However the borrowing is still going on and the SBP records it in these words:

“Adjusting for the accrued interest income, the government’s net retirements to SBP stood at PKR 1.8 trillion, which more than offset its PKR 1.7 trillion net borrowing from commercial banks. In overall terms, the government retired PKR 123.0 billion to the banking system in Q1-FY20 on cash basis”.³

4.2.6.3 Outflow of the foreign currencies especially dollars: Banks are currently facing a liquidity crisis due to the results of the central bank's policy to keep the market in control for fear of inflationary pressures coming out of dollar outflows. Most loans and advances from scheduled banks are in three sectors, i.e. agriculture, industrial and export sector which showed a mixed trend after higher interest rates. Most sectors are reluctant to acquire new lines of credit

¹ Ministry of finance, *Inflation*, Chapter#7, 106,

http://www.finance.gov.pk/survey/chapters_14/07_Inflation.pdf , 15th October, 2020

² The State Bank Of Pakistan Economy, Chapter#3, *Inflation and Monetary Policy*, First Quarterly Report for FY20, 27-29. <https://www.sbp.org.pk/reports/quarterly/fy20/First/Chap-3.pdf> , Retrieved on 30th March, 2021

³ The State Bank Of Pakistan Economy, Chapter#3, *Inflation and Monetary Policy, First Quarterly Report for FY20*, 30-31. <https://www.sbp.org.pk/reports/quarterly/fy20/First/Chap-3.pdf> , Retrieved on 22nd Feb, 2021

because of the increase in the cost of financing. State Bank tries to achieve economic stability by changing the amount of money in circulation, the cost and availability of credit, and the formation of the country's national debt in more disciplined way which may be retired with due course of time.

4.2.6.4 Hot Money acquired in the form of T-Bills: In recent months, SBP has taken certain steps in open market operations where it buys or sells T-bills on the open market. A few years ago, SBP's intention was to expand the money supply as it bought from the open market and reduced discount rates and KIBOR¹. With the growth in the economy in recent years and the rise in cash circulation, SBP now intends to block money supply, so, it sells treasury bills on the open market and gradually increases discount rates. This tool is widely used by SBP in daily control of money supply due to ease of use and relatively smooth interaction with the economy as a whole. Another option that SBP enjoys and exercises frequently is the "discount window loans".² This tool helps solve the problem of credit insolvency of the banks. Normally, SBP provides funds to commercial banks and other depository institutions at discounted rate. This rate is usually set at least 100 basis lower than the KIBOR. Therefore, by influencing money supply, monetary policy defines the ranges of inflation, unemployment, interest rates and economic growth.

4.2.6.5 Interest Rate Policy of SBP on the higher side: With inflationary pressures constantly rising, the State Bank regularly raises interest rates in an effort to keep the pace of economic growth consistent, the biggest challenge this government faces. Higher borrowing

1 KIBOR stands for Karachi Inter Bank Offer Rates.it is the average interest rate at which banks want to lend money to other banks.

2 The discount window is a central bank facility that offers very short-term loans (often overnight) to commercial banks. The discount window rate is higher than the target rate of the Fed funds, which encourages banks to lend and lend to each other and only turn to the central bank when necessary.

costs usually slow the economy by forcing consumers and businesses to cut spending and investment. But the effects of higher interest rates affect different groups in different ways. SBP changes the economy by buying and selling treasury bills to control discount rates, while banks charge interest rates on each other for overnight loans. When the discount rate rises, other interest rates tend to follow as lenders look for higher returns. For example, when SBP raised interest rates by fifty basis points, banks increased their KIBOR (borrowing rate for their customers) by a similar amount. Like KIBOR, other interest rates are also linked to the SBP discount rate. Factors such as the level of government borrowing and future inflation expectations make things more intense in the market with an expected increase in the prices. Although the economic indicators look more stable but the implication of the policy of tightening the monetary policy by increase in the discount rate to 13% and above but the result seems to be i-e strict policy measures to control the trade deficit and account deficit, market size shrink, industry closing units, an employment rise which is in fact all-time high, CPI at its highest, public expenditure cut, highest debt servicing that Pakistan has ever faced approximately 15.4% of the budget that is almost expected to rise to 1.270 trillion RS annually and so on and so forth.¹ There isn't anything technical in it. It is the law of nature that is applied here. Even the modern economic theories confirm that the increasing interest rates have negative relation with the investments. It is the debt trap that the economy of Pakistan is facing right now. Thankfully, due to the corona factor

¹ Shahbaz Rana, The Express tribune, *Debt servicing to hit record Rs2.8 trillion*, June 4, 2019, <https://tribune.com.pk/story/1986464/2-debt-servicing-hit-record-rs2-8-trillion/> , Retrieved on 7th August, 2020

the international scenario changed and the discount rate had to push down as low as 7.38% on 24 April 23, 2021.¹

4.2.6.6 Loaning Agencies planning of the Budget: The federal banks of the developing countries of the world always have to make their economic policies in line with dictation from the loan agencies guaranteeing them payment of their loan back to them. Once they get caught into their interest based loans and divert their limited resources toward debt servicing, their first priority with regard to their financial obligations automatically shifts toward the loaning agencies due to the heavy loan agreements and there timely payments to preventing themselves from the black listing due to the non-payment. This persuades the federal banks of the developing countries to devise a policy that isn't state friendly. They rather prefer to tighten their monetary policy and raise their prevailing interest rate in the interbank trading and as a result investments and savings all over the economy of the state lower down as the financial activities slow down due to it. Recently State bank of Pakistan felt this heat and raised their interest rate basis points. It was reported by the local news agency:

“The State Bank of Pakistan (SBP) has increased interest rate by 150 basis points (bps) to 12.25 per cent from 10.75 per cent effective from May 21, 2019. The SBP increased the policy rate while announcing its monetary policy for next two months”.²

This increase in the basis points in the interest rates is also due to some significant events occurred on the macro level decisions which were thought to be the main reason behind it. This fact is also confirmed by the monetary Policy committee (MPC) of the state. Among these variables of increase is the staff level agreement of the

1 KIBOR as on, 23 April 23, 2021, <https://www.sbp.org.pk/ecodata/kibor/2021/Apr/23-Apr-21.pdf> ,
Retreived on 25th May, 2021

² The News International, *SBP increases interest rate by 150 basis points to 12.25 percent*, 20th May, 2019, <https://www.thenews.com.pk/latest/473896-sbp-increases-interest-rate-by-150-basis-points-to-1225-percent> , retrieved on, 17 August, 2020

state with the International Monetary Fund (IMF) to obtain thirty nine month duration of facility of worth six billion dollar. The program is designed to restore macroeconomic stability and support sustainable economic growth and is expected to unleash substantial additional external financing. Moreover government borrowing trends reflect a widening fiscal deficit during the first nine months of fiscal year 2019 compared to the same period of the year 2018. Adding to the above financial problem is the exchange rate depreciation of almost about 5.93 percent creating an impact of increase of PKR 149.65 per US dollar at the end of May 20, 2019. These figures are expected to go higher in coming days showing the negative trend of the market, forcing the government to avail another IMF loan.

Experts also confirm that IMF imposed other serious conditions on these loans as well like increase of electricity bills, gas bills and adjustment of the exchange rates, imposing new taxes especially on the consumable items and other measures that will guarantee the smooth payment of the scheduled payments of the loans acquired from them. This vicious circle of loans and its repayment to these loaning agencies on the first place weaken the overall financial efficiency of the sovereign states. It is also notable point that most of these loans were again spent over the stabilization of the economic indicators due to which the loan amount was utilized and vanquished in a very short period of time and consequently State bank of Pakistan is again ready to acquire another loan from the loaning agencies and whole directly influence and control the economic decisions. It is without doubt that these debts directly influence the fate of the public toward a never ending story of socio-economic stress, pain and agony. At the end of the day these loaning agencies are happy to collect a good income in the form of interest and the principle amount from state bank of Pakistan which retrieves

them from the public through unjustified taxes, mostly on the consumable items. The problem of the overall economic system of the country in the Islamic perspective is that usually that the governments of the states conceal the real value of the economic efficiency by controlling the exchange rate and interest rate tools to speculate a figure that is beyond the reality. These factitious figure help the economy grow as it's often done to encourage the foreign investments and for the sake of spending on the infrastructural reforms that the government feels inevitable for the sake of advancement.

4.2.6.7 Surging figure of Public Debts compiling an extra burden on the society: According to the latest report for the 2018-2019 fiscal years, published by the finance division of the government of Pakistan:

“According to the Pakistan Economic Survey of 2020-21, total public debt was recorded at Rs38, 006bn at end March 2021, registering an increase of Rs1, 607bn during first nine months of current fiscal year (9MFY21) which was much less when compared with the increase of Rs2, 499bn witnessed during the same period last year”.¹

The cumulative increase in the debt stock cannot be entirely attributable to government borrowing. Foreign loans are contracted in different currencies. However, payments are effectively converted to Rupee Pak. Thus, the devaluation of the rupee buck against international currencies could increase the value of the external public debt portfolio when converted to the rupee for reporting purposes. This is evident from the fact that the increase in external public debt contributed Rs.1.9 billion to the public debt during the first nine months of the current fiscal year, while government borrowing to finance the external deficit amounted to RS 524 billion during the period. This discrepancy was mainly due to the devaluation of the rupee due to artificial holding against the US dollar. It should be noted that the depreciation of Pak Rupee increases

¹Malik, Asad, *The Dawn News, Govt earmarks Rs3.06tr for debt servicing*, <https://www.dawn.com/news/1628877>, retrieved on 16th August, 2021

the rupee value of external public debt; however, any such negative impact spread over many years depending on the life of any particular loan and the effect of instant cash flow is not significant.¹

According to the report of IMF this debt is going to pile up to a new record projection in 2023-24 as projected by IMF. The new figure of external debt that is expected to be in the fiscal year of 2023- 2024 is projected more than 133 billion US dollars.²

4.2.7 Social Impact: *Riba* based transactions has made several negative impacts over the society that is directly effecting the life style of the people and creating hurdles in smooth business transactions:

4.2.7.1 Inflation arising from the circular debt affect the consistent rise in the price level of the essential items

It must be noticed here that circular debts carry high amount of interest payable by the Government of Pakistan because of the delay in the payment of the outstanding bills. Usually these debts are cleared by the financing the loans by the attainment of interest based loans through the scheduled commercial banks. The reporting agency confirms this fact:

“So much so the power consumers have paid the stunning cost of Rs19.2 billion as interest rate on the loan borrowed by the power sector,” reveals the latest official documents on the power sector. The power joint secretary also confirmed the figure of the circular debt of Rs977 billion saying that the government is all set to borrow more loans of Rs80 billion from commercial banks to lay off some arrears of IPPs and some of the Pakistan State Oil”.³

Talking about the total circular position of the country, the reports confirm that:

The circular debt, commonly known as power sector payables, grew at an average rate of about Rs1.5bn per day (Rs45bn per month) in 2019-20 to reach Rs2.15 trillion.⁴

¹ Pakistan Economic survey, *Economic Adviser’s Wing, Finance Division Government of Pakistan*, Islamabad, www.finance.gov.pk , Retrieved on 8th May, 2020

² International monetary fund, *IMF country report No 19/212, Pakistan Request For An Extended Arrangement Under The Extended Fund Facility — Press Release; Staff Report; And Statement By The Executive Director For Pakistan*, July 2019, 34/96, Retrieved on: <https://www.imf.org/en/Publications/CR/Issues/2019/12/20/Pakistan-First-Review-Under-the-Extended-Arrangement-Under-the-Extended-Fund-Facility-and-48899>

³ Khalid Mustafa, The News, , *Rs977 billion circular debt makes power sector unsustainable*, March 16,2018, <https://www.thenews.com.pk/print/292960-rs977-billion-circular-debt-makes-power-sector-unsustainable> , Retrieved on 5th April , 2020

⁴ Dawn News, The ticking time bomb of circular debt, 12 October, 2020,

This form of debt is the payment that the government has to clear it yearly due to the nonpayment of the bills to the Public sector companies; mostly the electricity based companies which are mostly arranged out of the budget facilities, acquired on the basis of high rate of interest. The inefficiency of these public sectors have cost us over the years in the form of circular debts that is considered to be a question mark over the performance of the whole system that is basically responsible to look after even micro issues that may cost even an extra penny as it is a burden over the weak economic system of Pakistan. This loss is always incurred by the new governments in the form of losses incurred by these public sectors organizations that never bother to settle themselves by justifying their expenses in the light of their income. For this reason special loans are arranged out of the way to at least let these public organizations some breathing space and operate until they may be able to overcome their losses. But this formula didn't really work at all as these organizations are smart enough to hold other responsible of their bad governance and always manipulate their position for the extra finance budget they need for their business to run on the same parameters due to which they will again confront the same situation in the coming fiscal year. According to the media sources the government plans to arrange another loan facility to the power sector in this regard; a worth loan 1.44 billion dollars. The sources confirm that only power sectors have incurred losses up to or more than 10 billion dollars this fiscal year 2018-2019; especially due to late payments. Independent power producers (IPPs) have cautioned the government about the situation and showed their fuming attitude due to the late payment to the power sector; especially by the public sectors who are responsible for the whole unrest. If the situation isn't defused by the government representatives especially revision of the unjust agreements signed at the time of their instalment of the facility, the same financial crises will revert back every year. These IPPs are selling the energy on very unrealistic terms that are not practiced elsewhere in the world. This show casual approach of or public sector which is based on their non-professional behavior; intentionally or unintentionally. Both the ways they are answerable to the authorities because of the fact

<https://www.dawn.com/news/1584617> , Retrieved on 5th March, 2020

that the funds they allocate in certain projects that are aimed to benefit the socio- economic system of the society are on the very first place considered to be as trust.¹

These loans incurred by the government of Pakistan are not free. A stipulated increased amount of interest is added in the total loan which is on the first place impermissible in the court of Lawgiver as it clearly include interest over and above the loan facility acquired for a certain time period. The justification for accruing such loan is told to be the greater interest of the nation. This can be a case of *Maslaha* (the greater public interest).

It must not be forgotten that the loan we incur from the foreign loaning agencies are basically returnable that were acquired in foreign currency mostly dollars which is again subject to the increase due to the speculative nature of the exchange rate which is again out of the control of the regulatory authorities as it is the market behavior that will decide the value of money. This escalating amount of foreign payable debts has always burdened the fiscal and monetary policies of the state bank of Pakistan. This implies another interesting fact these loaning agencies because of their stake in our economy are always in control of the financial policies implement by the concerned authorities of the country in an indirect way which are always in consultation with these agencies especially IMF. There isn't any way that we can get out this trap so easily. The only way to overcome the problem is to stop taking those loans and manage our infrastructural weakness in the financial system of the country.

The question arise here is that these loans taken by the government of Pakistan for the payments of the circular debts acceptable as a religious need *Dharorah* (necessity)? Truly the answer is no, because the genuine reason behind the circular debts is the mismanagement of the public sector companies. These companies have to show first their full zeal and effort to overcome their weakness and only then there may be a provision of availing of a temporary loan only to help out the public sector companies settle their financial issue with a guarantee that in future they will run their organization on the basis of their original capacity. By overcoming its weaknesses it's clearly meant that it should realize its gap between the profit and loss, resolve its mismanagement issue, introduce austerity measures to lessen their expanses and make their business activity more

¹ Reuters, *Govt plans to borrow another \$1.44bn to manage circular debt*, Dawn, March 13, 2019, <https://www.dawn.com/news/1464127> , Retrieved on 22nd May, 2021

affectively and more profitable so that in future they don't have to rely on the external assistance. Say for example in the case of line losses incurred by the WAPDA, SNGPL and other public sector is an internal weakness that must be stopped with the help of the authorities in a given time frame and if they succeed to do that they may avail the required amount of money to pay their circular debts.

Projects like the generation of a low cost energy that were inevitable to be installed on time were always neglected although their importance in the regional or national development can never be denied shows again the incapability of the government organization in this regard. The problem of the allocation of funds which always remained a bone of contention between the federation and the provinces was addressed when the historic resolution of 18th amendment passed dated: 8th of April. Some of the key public sectors as health and education Agriculture became the prime responsibility of the provinces of the state of Pakistan. Moreover collection of the revenues became a provincial subject. Everyone welcome the change and thought the fruits of the democracy will now reach to the lower middle and the ultimate lower class of the country but time showed that it was just another useless ordinance. The Public sectors that are financed by the federation fall short of the funds after this amendment and also didn't welcome the change and due to the short of funds the government were again compelled to take interest based big loans from the foreign agencies of the world and the financial position of the country became worsen day by day. On the other hand Federation is also striving hard in maintaining fiscal and monetary policy of the country due to less sources of income and high rates of return of the loans from the loaning agencies is compelling it to cut the budget of the development, forfeiting the provided subsidies and finally adding on a new burden of taxes, especially on the consumable items. The devaluation of the rupee against the dollar has also added up payment pressure to the loaning agencies and is considered to be the main catalyst in a disproportionate increase of inflation which is again a form of interest that the public has to pay due to the devaluation of the money.

Hence the resulting situation arising from the problem is disturbing the society in every way possible. It is becoming a constant challenge for the government to run its state business with harmony. In fact, it is biggest hurdle for the state machinery to reach its destiny making Pakistan a welfare state.

4.2.7.2 Negative relation of Interest payment with expenditure on the social capital which is directly analogous to the welfare of society: Due to an increasing loan payment pressure over the economy of Pakistan, its social infrastructure is in a bad state, and this has a significant impact on every Pakistani living there. Electricity outages and inadequate access to clean water and sanitary facilities affect everyone. Additionally, as the population grows, so do our problems. Poor infrastructure is a struggle that the Pakistani government and people must fight, and it appears that they are winning.

For a nation to sustain and accelerate economic growth and social development, its infrastructure must be improved and expanded. For Pakistan's economy and to improve quality of life, it is essential to improve the quality and coverage of services in the areas of transportation, logistics, power, water supply, and sewage treatment.

According to estimates, Pakistan loses between 4 and 6 percent of its GDP, or roughly \$6 billion. Our products' production costs are increased by around 30% as a result of logistical difficulties. This has a big effect because Pakistan is up against fierce competition in the export markets from countries like China and India. Pakistan has significant requirements for infrastructure expansion and improvement but few resources to meet those demands. In addition to having little room for additional spending, the public sector is ill-equipped to construct and maintain infrastructure. The public sector cannot spare resources for infrastructure development due to tight fiscal indicators like the fiscal deficit of 4.2%, the trade deficit of almost \$10 billion, and the current account deficit of 4.4% of GDP. Given that the economy is expanding on average by 7% annually, infrastructure investment must account for 7% to 9% of GDP.¹

4.2.7.3 Increase in Debt Servicing to GDP ratio causes adverse impact over the society due to less expenditure on the development projects: Because of historical events that are rife with instances of approximate debt overhangs, rescheduling of foreign loans, and

¹ The state bank of Pakistan infrastructure taskforce , *The Pakistan infrastructure report*, state bank of Pakistan, Introduction, p#5, <https://www.sbp.org.pk/departments/ihfd/InfrastructureTaskForceReport.pdf> retrieved on May 2023

current account deficits, Pakistan has always faced a formidable problem servicing its external obligations. Although the country temporarily enjoyed a break from the onerous payback obligations thanks to the postponement or restructuring of loan arrangements, the ensuing costs hindered economic growth. The average Pakistani citizen's standard of living is steadily declining. Pakistan's domestic and foreign debt payments are taking money away from spending on development because of rising unemployment and inflation.

.It is important to note that the public debt is just reaching its peak of \$500 per person. High levels of public debt, in particular the presence of numerous equilibrium states where investors view debt as dangerous and, by requiring a risk premium and raise the fiscal burden and effectively make debt riskier to payback.¹

All the above mentions financial problems are deriving the decision making forces to cut the development projects and compromise on the life style of the people of the country.

4.3 Implication of interest on financial performance of Private Sector

The private sector of a state is always considered to be the backbone of its economy. The growth of any economy of the world is dependent on the efficiency of its public sector performance. The domain of the private sector could be understood through the following definition:

Private sector maybe defined as:

“The private sector refers to organizations that have a core strategy and mission to engage in profit-seeking activities, whether by production of goods, provision of services, and/or commercialization. This includes financial institutions and intermediaries, small and medium-sized enterprises (SMEs), individual entrepreneurs, farmers, co-operatives, and large corporations, which operate in the formal and informal sectors. This definition excludes independent foundations, non-governmental organizations (NGOs), and civil society organizations (including business associations).”²

¹ Rizvi, Syed Ahsan, *Debt-Servicing Capacity and Economic Development: A Study of Pakistan*, Chapter 1 Debt-Servicing Capacity and Economic Development: A Study of Pakistan, p#2, July 2021, <file:///C:/Users/Dell%20E7450/Downloads/-AsifKamran-IC1145-202010290000013.pdf> , retrieved on June 2, 2023

² Jose di bella, *The Private Sector and Development, Key Concept, the North- South Institute, Policy Brief*, <http://www.nsi-ins.ca/wp-content/uploads/2013/09/The-Private-Sector-and-Development-Key-Concepts-FINAL-Policy-Brief.pdf> , September 2013. Retrieved on 18 August, 2021

The private sector is part of the economic system of a country run and owned by individuals and corporations. Most private sector institutions are run for sake of profit earning. Unlike the government controlling the operations and regulation of the public sector organization, private organizations are neither guaranteed nor bailed out at the time of crunch or a huge loss. The only thing that matters to the government is to regularize them and make sure that its beneficial for the society and its harming attitude like monopoly, harmful selling of the illicit goods that can disturb the cost effectiveness, health hazards and as a result create stress for the locals. Charity and sometimes form a third segment known as the volunteer sector like NGOs, charity hospitals and other ventures organizations, helping any segment of the society and sharing the burden of the government of the country and are considered to be the part of the private sector. These private sectors are creating more difference in the developed countries where better facilities, infrastructures and other means of ease of doing businesses are available such as the United States, United Kingdom, etc. where the government imposes relatively few restrictions on companies and give them a huge infrastructure to grow and prosperous. However countries like China are not that much open to the Private organizations where the public sector has the lion's share of the economy are also notable. This sort of controlled economic environment is scarcely seen now days. The idea of a free market economy, globalization, free zones and other independent and less regulated economic and financial systems show that the world is moving faster toward less interdependency to the extent that the borders of the states will not make any significant problem in business handling. Ideas like creation of an internationally recognized single currency, bit coin and other idea like creation of economic corridors will make the system of trade more vibrant and competitive. This challenge however can't be achieved if the private sector isn't able to compete in the open market rate of the exporting goods.

In many service areas, there is a considerable overlapping between public and private sector industries. Both are bound to run with a mutual understanding for the sake if the nature of the job needed to be accomplished. Examples of institutions that operate cooperatively may be waste management, water management, and

health care and security services where due to the huge burden and work load in a limited time to serve. Both the sectors work side by side to entertain the locals of the country. However, sometimes these sectors takeover the businesses due to operational and financial issues for the sake of running the organization and working in a smooth way. In Pakistan Most often it is the public sector that gives away its shares of organizations like PTCL, private property based societies like Bahria town which was considered to be the project of Armed forces, field of education, licenses of 3g and 4g to the private telecommunication etc. to lessen its burden of responsibility. This act of transforming a publicly owned enterprise into ordinary privately owned organization that basically works for their profit motive is defined as privatization. Many other huge public organizations are also in the way of privatization like PIA, Pakistan Steel mills, COMSATS and other valuable and considerable assets of the states to the local or international private companies. At least in Pakistan this transformation or privatization of the companies is due to the companies suffering huge losses. Issues like mismanagement, over staffing, corruption, political interference and many other issues are the Hallmark of the public sector organization. Ishrat Hussain who is a very prominent economist of Pakistan and has served the civil organizations talks about the importance of public private partnership in perspective of Pakistan economy that whenever private organizations have worked in competition with the public organization, the performance of the public sector is more efficient.

The above analysis put forward by the eminent scholar is so very true and depicts the exact picture of our economic problems where public sector is the root cause of every single matter that we as a nation are facing. Talk about Pakistan Railway which is incurring losses, facing accidents due to the damaged and old trails on which the train has to run; in fact these trails are as old as the reign of the English empire ruling of the subcontinent.

The Private organization is considered to be the back bone of the economy. Hence it is very important that a business friendly environment must be maintained for this purpose. If the

Private sector flourishes, it will definitely increase a great amount of growth in the GDP of the country. The reports confirm:

“Almost 80 percent private sector consumption contributed towards Pakistan’s GDP growth rate, then followed by public sector consumption that contributed just 13 percent per annum for achieving growth momentum”.¹

4.3.1 Contribution of the Private Sector in the Economic Growth

Private sector organizations are considered to be the backbone of any economy in the world, regardless whatever maybe the model they are following. They also play a vital and pivotal role in achieving high and sustained economic growth and helps the public sector share the burden of responsibilities for the sake of smooth running of the businesses of the country. The private sector share productivity in almost all spheres of life and participates in the economy of the country in many ways to Push its economic growth an extra mile and show the world that their country is the best place to live. The key role of the private sector in economic growth of especially developing countries like ours compliments in many ways. As private sectors:

- ***Regularization of the Private Sector:*** Generates 90 per cent of jobs where more than 60 per cent of the total investment of the economy of the country is done by these privately governed organizations, especially this is true in the case of the developing countries. This fact is also very much true in the case of Pakistan where these privately governed companies hold the lion’s share of the prevailing financial market but the problem lies in the managerial issues like dealing of their employees, their salaries, their age factor for the sake of induction and retirement and other non-availability of the insurances like health, social securities, retirement age and pension issues and so on and so forth. It seems like working class in Pakistan is trapped in these Private organizational structure and their vicious policies due their well-defined cause of profit motive neglecting the concepts of being welfare

¹ The News, Mehtab Heider, *80pc private sector consumption contributes towards Pak GDP growth rate*, July 28, 2020, <https://www.thenews.com.pk/print/693271-80pc-private-sector-consumption-contributes-towards-pak-gdp-growthrate#:~:text=ISLAMABAD%3A%20Almost%2080%20percent%20private,annum%20for%20achieving%20growth%20momentum.&text=Pakistan%20has%20been%20successful%20in%20achieving%20inclusive%20growth>, Retrieved on 19 December, 2020

organizations serving the society and upbringing the concept of affordability and quality control mechanism due to non-regularization of these organizations by the controlling authorities or non-availability of the concept of perfect competition in the market forces based on demand and supply. That is cause due to which people of Pakistan especially majority of the educated and skilled workers demand government backed jobs due to the better prevailing sense of guarantees and assurances these Public organizations give to their employees. It is very alarming situation that our regulatory authorities are not taking any notice of the situation going on in these man handled organizations that don't care about the basic rights of neither their employees nor their customers. There is still no sign of implemented government policies that assures proper defined salaries scale in the private sectors, well defined mechanism of the job criteria like defining maximum work load, job hours, basic package salaries etc. The hierarchy and management of these private owned businesses make policies which prefer more about the benefit of the owner. Although it is a worldwide phenomenon where right and requirements of the working class in the private organizations are abuse but in Pakistan its perfect case of negligibility and irresponsibility shown by the social and economic fragments of the society. There is huge list of awaiting working class or in fact every single fragment of the society of Pakistan lined up for the work visa, study visa and nationality or other form of visas to leave this retard system where rich becomes more prosperous and the poor falls into more serious poverty trap with due course of time.

- ***Mobilization of governmental Revenues:*** Contributes more than 80 per cent of government revenues in low and middle income generating countries through the company Taxes, leases and income tax on employees of the private organizations. In the case of Pakistan it is altogether different as the country tries to escalate toward development our private investment to GDP ratio has always remained on the weaker side throughout the economic history. To provide momentum for private investment, the Government must improve the favorable domestic policy and friendlier environment to create an opportunity for the foreign private investment flowing easily in the financial market. The fact is that efficiency of both the sectors

and their overall productivity of public investment are truly dependent over the long-term progressive government policies. However Pakistani companies should better explore regional value chains of opportunities and get hold of it. Neighboring Countries of East Asia like China, Hong Kong, Japan, Macau, North Korea and Taiwan that have shown a great deal of enhancement in certain areas like technology, automobile, tourism, chains of Industries etc. are the true sense of inspiration for the developing countries of this Part of the world. To get hold of the market lions share we must seriously take steps to inline our policies with the needs and requirement of this part of the world because of the accessibility, to seek attention and attraction to sell the local goods, build our infrastructure and relay more on creating our national products by flourishing and enhancing the Private sector nationally or internationally. According to a report more than 80% of Pakistan's workforce is still besieged in informal sector jobs, with little social protection or other social benefits as described above. However even in these worst conditions when foreign investments isn't fluent in the economy of Pakistan, small and Medium enterprises SMEs are considered to be the backbone of the industry and has largely contributed to job creation.

- ***Helping the Government sustaining its developing Projects:*** Talking about the corporate sustainability, it provides services in those areas where government didn't pay no or less attention and feels like a helping hand by the external variables. This helps the government to overcome the problem in their planning about those much needed projects of interests. In the case of the economy of Pakistan it faces severe scarcity of energy, for example, corporate investments in sustainable energy priorities for energy efficiency, access to energy and cleaner energy sources has been a key factor in supporting the sustainable development agenda. Investments in renewable energy and co-generation projects and improved energy efficiency made commercial and industrial processes less vulnerable to energy fluctuations even if the problem is still be addressed by the government by making large project of energy and sanitation, private sectors have done well to cater the problem for the time being. Never the less this has also enhance overall fiscal capacity of the country as well. Moreover, Companies around the world are discovering "waste

wealth". The private sector in Pakistan must exploit the recycling and waste management capabilities that can lead to the creation of entirely new industries.

- ***Social Development side of the less developed areas of the country:*** It also help design new project based on social development of the country by bringing up new opportunities in the areas neglected by the governments especially rural area of the countries. Due to these private organizations working in such remote area or ideas young entrepreneurs emerge and fill the gap. These models of social businesses development are very much worked out in the region of South Asia. Especially China is one such example where now more than 80% of the population is living above the poverty line. Although in the case of Pakistan, less attention is paid in these areas like health, environment and other skillful jobs but even then some social companies are already making their presence felt in Pakistan. According to the Pakistan Opportunity Report, a new wave of creative young entrepreneurs has emerged and is confident in developing innovative startups in areas such as environment, health and skills. Dozens of young women and men from remote areas of Pakistan have become social entrepreneurs. For example, Youth Participation Services (YES) is a network dedicated to financing social projects in Pakistan. In particular, YES is looking to finance small-scale social projects being created and run by disadvantaged youth in the country. This is clearly an important trend, and social development that will benefit greatly from the contribution of private sector which is based on the principal of benevolence, generosity, humanitarianism.¹
- ***Provision of the Basic services:*** It provides an increasing share of basic services such as banking, telecommunications and health education that compliments the public sector catering the need of the people of the state.
- ***Self-Sustainability in the production of necessity of goods:*** It Invents, designs and produces most goods and services used by the poor people of the state and leads the economy toward producing and manufacturing their own goods, agricultural

¹ Shamsah Akhtar, *former governor of state bank of Pakistan, speech at United Nation ESCAPE, The Role of the Private Sector: Partnerships for Sustainable Development*, dated: 19 Dec 2014, <https://www.unescap.org/speeches/role-private-sector-partnerships-sustainable-development> , Retrived on 18th May, 2020

activities and other notable area of work that saves lots of money due to the local production. This again is a key factor in saving the state reserves keeping in view the fact that the foreign reserves of the country stay intact due to the less consumption of the import items.

- ***Discouraging the import culture in the country:*** Almost every country of the world in general and developing countries in specific are hit badly with the import item due to which the governments have to spend a lot of money to sustain balance of the trade. Therefore, it is important for the governments to obtain supportive private organizations that will help create an environment good for its people as they may not always see toward the public sectors for their accomplishment of basic needs.

Moreover to strengthen the relationship between the private sector and the government organizations, some regulatory authorities must play their role effectively. These include sound legal Institutions that must establish a meaningful relationship and direction for both the institutions. In the case of Pakistan regulatory authorities that assist these Private organizations are, Federal Board of revenue (FBR), Security and exchange commission of Pakistan (SECP). These regulatory authorities help in creating systems that guarantee smooth running of the businesses, promote decent employment and protection of it, especially for the marginalized departments like manpower with or without skill who can't afford their businesses, can't cultivate or give any other services to the local and after effect is in the form that these civilians can't earn their livelihood or feed their families.

The scope and diversity of the private sector operating in any country strongly affects the overall financial flows of the economy. Private financing, from investments and remittances point of view has grown significantly in the past decade, reducing share of global development finance. This has increased the impact of the private sector in the formation and development of the economies of the developed world especially. Private organizations also work in a unique way that effects and extends its local goods and services produced in the geographical location where production and infrastructure availability makes it more accomplishable than any other part of the world. High private investment has also been shown to be associated with fast-growing economies where infrastructure availability is more promising than other countries. For instance in the last

two decades Pakistan has seen some worst business condition and due to such vulnerable activities many private sectors , especially textile industries, leather industries and other notable industries have shifted to more reasonable environment like that of Bangladesh and Malaysia. That is the reason Government options of preferences can encourage or discourage the flow of private investment into the economy. If the forefront of the government policies lacks addressing an infrastructure that is inevitable for the flourishing of the businesses at the private level; it will soon be a dead market for the inner as well as the outer world. In some cases, poor policy settings can exacerbate the lack of investment by the private sector in poorer or disadvantaged areas Undermining competition crowds of private investment. This can stifle entrepreneurial activity and create jobs and the development of the market, which undoubtedly limits the potential for growth and poverty reduction within the economy.

4.3.2 Involvement of Private sector in Riba based transactions:

The private sector is heavily dependent of the banking sector. The banking sector needs good clients so that periodic payments to its clients may be confirmed on time. For this reason it heavily rely investing on the ventures offered by the private sectors.

4.3.2.1 Private Sectors attaining Riba backed loans: In Pakistan Private sector organization's banking credit attained from the local banks reached a record level of 768 billion rupees at the end of fiscal year 2017-18. The main reason behind this increase is the demand for fixed and ongoing investments by various companies for purpose of growth and acceleration. According to the State Bank of Pakistan (SBP), banking credit for conventional and Islamic banks to the private sector collectively rose to 768.252 billion rupees in fiscal year 2018. 747.926 billion Credit values recorded in the past fiscal year 2017. This indicates that an increase of Rs. 2.7 percent i-e 20 crore Rs recorded from the recent year figures which are indeed a good sign. Meaning thereby this year, the banking sector exceeded the credit value for the past fiscal year despite the fact that interest rates were adjusted twice by 25 basis points and 50 separately i-e is 3.00% of the increase in the second half of fiscal year 2018. This accumulates the interest rate increase to 10.25% till

the date.¹ Details also show that the figures of the credit to the private sector by banks amounted to Rs. 253 billion in the first half of fiscal year 2018 while the value of credit Rs. 515 billion is recorded in the second half of the fiscal year 2018. Here it is important to understand that banking credit is the amount of money that considers to be paid and committed to the private clients/companies and individuals in the form of a loan due to their credit worthiness and other guarantees that makes them solvent at the time applying for the loan. This means that in the event of not fulfilling the promise of paying back the amount of the bank from where it borrowed; within the time mentioned in agreement of loan, bank can easily recover its money from its collateral. This shows that the credit worthiness of these private organizations is improving day by day as a result the increase in the investment in the private sector is evident. The private sector uses bank loans primarily as a fixed investment to expand its operations in the prevailing scenario of economic growth as well as achievement of the future development goals in line set by the government of Pakistan like China-Pakistan Economic (CPEC), government based tenders, rural area development programs, infrastructural programs and so on and so forth or credit facility to the private set venture in the form of private listed companies, sole proprietorships like *fauji* fertilizers, Angro pvt.Ltd, Hub co Pvt.Ltd, Naya tell, and so on and so forth. These private businesses, according to the latest SBP report, their fixed investment loans represent the highest level in 12 years in the closing fiscal year 2018. These privately managed companies come from various major sectors also include textiles, cement, energy, fertilizers, transport and communications that shows clearly that Pakistan is moving towards native interdependency from the foreign dependency in almost every possible field of advancement but still it's a small amount of portion that we achieved and achieved at a very slow pace.

4.3.2.2 Riba based loans to the Private Sector for the sake of expansion: The continued rise in credit lending to the private sector is not only a healthy indicator of macroeconomic stability, but it is also beneficial for the banking sector to gain margins from different sectors of clients other than the government. Commercial banks' credit to

¹ The News, *Business, Private sector loans rise to Rs530.40 billion in July-January*, dated: february 3, 2019

the private sector grew to Rs. 541 billion in fiscal year, 2018 compared to Rs. 511 of fiscal year 2017, showing a 5.8 percent growth.¹

The point to be understood is that running finance in its soul contains interest at whatever may be the rate decided between the lenders (Banks) and borrows (Private sector organizations). In its conventional sense this short-term/long-term financing is used to meet financing requirements for the borrower to meet its expenses incurred on the daily basis. This type of financing does not include a fixed number of payments, as in the case of financing installments of a certain products. Running finance is a revolving financing as it is considered to be a credit facility to the borrower. Once the financing limit is approved, the borrower has the freedom to withdraw the amounts within this limit. The borrower can withdraw the amount and repay it as many times as he wishes; however, he must pay more than the amount he actually used on a monthly basis or as per planned by the lender. This means that there isn't any asset required for the sake of transactions. Banks simply charge interest value on the principal amount of loans used for a certain period by the borrower. This is a clear cut case of interest banking where credit is availed by the borrower from the lender to stabilize his ongoing expenses of his/her business. This in any shape/size and length of transaction is considered as *ḥarām* by the lawgiver and prohibited due to the stipulated increase of amount agreed upon unanimously even if that maybe the case of dire need where business is ready to suffer a loss and eventually closed its operations permanently.

4.3.2.3 Running Finance as a Major source of Interest based Investment:

Currently, commercial banking system hold share about 85% of share where tools of financing are clear cut based of the non-*Sharī'ah* compliant financial activities like interest involve in the fixed deposits whether it may be long term or short term financing of the corporate sector through interest based tools of financing known as running finance. Previously, Islamic banking claimed 12.6% of the total Islamic banking sector in Pakistan. It says that:

“Total assets of *Sharī'ah*-compliant banks in the country increased 21.9% to Rs2.48 trillion in the year ended June 30, 2018. With this, the market share of Islamic banking assets

¹ The News, *Business, Private sector loans rise to Rs530.40 billion in July-January*, dated: february 3, 2019

surged to 12.9% in the overall banking industry compared to 11.6% in June last year. Similarly, deposits at Islamic banks grew 18.2% to Rs2.03 trillion, showing the market share of their deposits in the overall banking industry surged to 14.8% in June 2018 compared to 13.7% in June 2017. The network of Islamic banking industry consisted of 21 Islamic banking institutions – five full-fledged Islamic banks and 16 conventional banks, having standalone Islamic banking branches by end-June 2018; the network of Islamic banking industry increased by 96 branches. “This addition was mainly due to demerger of 90 branches of MCB Bank Limited and their merger into MCB Islamic Bank Limited,” it said. Branch network of the Islamic banking industry was recorded at 2,685 spread across 111 districts by the end of June 2018. The number of Islamic banking windows, operated by conventional banks having standalone Islamic banking branches, stood at 1,284.”¹

However, in the near past the IBs have shown some remarkable capacity to grown in the current scenario. According to the current report the total market share of IBs in contrast with the commercial banks is not more the 18% for the fiscal year 2020. Although, the Structure of the Conventional banking is not totally synchronized with the State which is based on the principles of *Shari’ah* law but still it owns the loin shares. It’s the free will of the Private organizations to adopt any form of financial system that suits it. Technically speaking, the state is by large protecting the interest of the western based financial markets for the private institutions which also include many multinational companies who feel uncomfortable when it comes to Islamic Banking based financing options. If this is the stance of our national organization that were built under the concept of an Islamic ideology; shows a serious deficit in the policy making at par the ideology of Pakistan as well.

4.3.2.4 Commercial Banking interest based setup: Mostly Commercial bank are responsible for providing loans to the Private sectors on the basis interest bearing tools like leasing, running finance and other financial tools. Before the advent of Islamic banks our private sector was purely financed by them on the basis of interest bearing tools but now as Islamic banks have solved the problem partially by providing veracity of tools of financing to the private sector.

1 Siddiqui Salman, *Pakistan’s share in global Islamic banking assets just 1%*, *The Express Tribune , Business*, September 04, 2018. <https://tribune.com.pk/story/1794540/2-pakistans-share-global-islamic-banking-assets-just-1/>

The basic financing tool that is a need of any financial institute is the Running Finance¹. Running finance is also termed as revolving financing. Once the financing limit is approved by the banking authority w.r.t it's paying capacity, credited by its loaning agency, the borrower has the freedom to withdraw the amount, within a specific limit of withdrawal and payback time. The borrower can withdraw the amount and repay it as many times as he wishes to fulfill his need of cash; however, he must pay more than the amount he actually used on the basis of duration due to the interest charged on it. Hence the money or cash is treated here just as commodity of sale and not the just as a medium of exchange of the goods or any other value. The difference between running financing and any other type loan is that it a type of financing where interest is charged on the amount spent only for a specific period of the usage of the funds, whereas in the case of a loan interests of other kind is charged on the entire amount, regardless of its use. Running finance is essentially helpful or appropriate for those businesses where income can be deposited from work on which a return is expected in the future dates. Moreover in the case of long-term purchase of fixed assets, the product is most appropriate because of its low rate of return. Flexibility in payment of running financing provides higher flexibility in the timing and amount of payment, where as in the case of long-term commitment of loan is a complicated task to handle for both the parties where a fixed amount of return in the lieu of interest and is required to be paid as per plan of return, within the specified time mentioned in the agreement. In the case of ongoing financing, the amount paid can be paid at any time, while in the case of the loan, the regular installment is required.²

4.3.2.5 Investment through Capital Market

For Private companies, capital market is a very lucrative source of collecting extra money by just flouting their shares at Stock exchange through registration of the companies with SECP. However there are certain traces of interest bearing shares of stocks that is used by the investors financing the listed companies. Some of these are as follows:

1 Running finance or overdraft facility is a short term finance provided to customers to fulfill their working capital needs by allowing withdrawals from their account in excess of the credit balance, maintained with the Bank.

2 SME Bank, Blog: *difference-between-personal-installment-loan-and-running-finance*, dated 17th April, 2019, Retrieved on <https://smebank.org/products/loan-facilities/running-finance/>, 20/6/2020

- ***Preferred Stock:*** Preferred stock is a mixed stock; It is similar to bonds in some ways and to common stocks in other ways. Preference stock provides a specified return that is paid before any dividends are paid to common shareholders, and takes precedence over common stock if liquid exists. Like common stock, preferred stock represents ownership in the company; however, they do not have any of the Fong rights of ordinary shareholders. Both preferred stock and common stock are part of the total equity. Also unlike common stocks, preference stocks pay fixed dividends that do not fluctuate. The Main benefit of owning preferred stock is that the investor has a preferential claim on the company's assets over the common shareholders. Preferred shareholders always get their dividends first, and in the event of a company bankruptcy, preferred shareholders are repaid before the common stockholders.¹
- ***Ready Market Board:*** Ready Market Board as it is called in Pakistan is where shares are bought or sold “on the spot”. Delivery takes place literally in a few days. If the buyer buys a share, he will receive delivery, and if he sells the share, he must deliver the shares to the clearing house on the day of selection. In Pakistan, more than 70% of all market trade takes place on the Ready Board. The selection cycle in ready market in Pakistan is T + 2, which means that the trade must be chosen in the 2-day Trading plus cycle.
- ***Futures/Forward Market or Derivative Marketing:*** The futures or derivatives market in Pakistan is a simple straight forward market. The forward counter was introduced to allow investors to hedge their risk. However, this counter is also used by speculators who adopt higher risks in order to get higher returns on their investments. Not every stock is available in the ready market in the futures market. Only liquid stocks are available there. In the futures market, an investor can either close his position before the end of the contract period or he can take delivery or take delivery of the stock at some date in the future,

¹ Security and Exchange commission of Pakistan(SECP), Saving and Capital Market, p#22, <https://jamapunji.pk/sites/default/files/Savings%20%26%20Capital%20Markets.pdf> , retrieved on 16 feb, 2020

which is one to three months in Pakistan. The futures market is growing globally in importance and has higher trading volumes than the ready market but the futures market in Pakistan is still in its nascent stage and most of the trading is done in the ready market.¹

- **Book Building Method:** Book building is the systematic process of generating, capturing, and recording investor demand for stocks during an initial public offering (IPO), or other bonds during their issuance process, in order to support efficient price discovery. When companies want to raise capital from external sources, they use various means for themselves. Two of the most common means of raising funds are the initial public offer (IPO) and the following public offer (FPO). In Pakistan, a recent FPO was conducted for OGDC shares as the government stripped boron of its stake for the second time. During an IPO or FPO, the company either offers its shares to the public at a fixed price or offers a price range, so that investors can set the appropriate price. The method of displaying stocks by providing a price range is called the book-building method. This method provides an opportunity for the market to discover the price of the offered bonds. It is a mechanism in which, during the period when the offer book is open, bids are collected from investors at different prices, which are within the price range specified by the issuer. The process is geared towards both regular investors as well as retail investors. The issue price is determining the closing of the bid based on the demand generated in the process.²

4.3.3 Islamic Financial Markets in the Private sector:

It is worthy to note that main work of Islamic finance is done in the financial market of the private sector. Islamic banking is one of its hallmarks. To start with it is important to understand that Islamic Financial system is bound to follow financial laws, principal and Modes that are *Shari'ah* backed.

¹ Security and Exchange commission of Pakistan(SECP), Saving and Capital Market, Ibid. p#24

² Security and Exchange commission of Pakistan(SECP), Saving and Capital Market, Ibid, p#25

4.3.3.1 Principles of Islamic Finance for the Private Sectors: The corporate/ giant customers are generally considered to be the regular clients of the banking sector on whom it can rely, for profit generation and offer another banking service, for the sake of safe and guaranteed earning avenues that is inevitable for the bank for its growth an expansion. The same is true about the corporate sector itself as it requires this loaning facility for the fulfillment of its daily business activities, its growth and expansion. Both the areas serve for the betterment of its public by creating local ventures that may cater needs and wants of them. This creates a circle of economic activities which in our modern economic terminology is known as demand and supply circle. Hence it is inevitable for the Islamic Banks to come forth and fill this gape through its *Sharī'ah* innovations through financial engineering and deep rooted study of the variable and the cause of the problems. No doubt it's a deep rooted problem with many if and buts regarding *Sharī'ah* point of view that must be catered and solved accordingly. However an asset backed running finance is available on certain sharia based modes of finance through which wide range of Sharia-compliant products and services are available through Islamic banking to fulfill the requirements of the corporate customers to the extent of the goods and products that is for trade purpose or any item required for the purpose of production or even for their personal demand. These Items of trade are usually non consumable items. However with the variation of the modes of finances offered by the *Sharī'ah* frame of work, it is relaxed to the extent of consumable items, order to purchase or advance payments for the purpose of manufacturing, purchase of crops before its yield etc. The following products are suitable to meet especially business demands of the worthy customers that are interested to join the Islamic banking system either they feel its *Sharī'ah* compliant or providing better, efficient and cost effective line of products of sale:

- *Murabaha:* *Murabaha* is best suited to the banking customers to meet short-term working capital requirements for any business to purchase raw materials, goods and commercial goods as well as export finance schemes that are offered by the State bank of Pakistan. Here it is to be noted that under *Murabaha* mode of finance only non-consumable items are under the consideration of sale/ purchase. Hence any non-consumable item required by the client of any size i- e an individual customer or a corporate customer in accordance with their

personal or corporate requirements. In general terms, *Murabaha* here means the sale of goods by one person to another under an arrangement in which the seller is obliged to disclose to the buyer its cost of the goods sold either on a cash basis or on a deferred payment basis including the profit margin in the single sale price of that specific good which is agreed upon by both the parties for the purpose of sale. The scope of business in *Murabaha* even becomes wider as it could be dealt with in tangible and intangible assets as well. *Murabaha* transactions in respect of any debt instrument including receivables are also conceived as invalid transaction. Being a sale transaction, it is necessary to have the goods that are subject to sale in the *murabaha* deal in the possession of the customer whether physically or constructive in nature. The Automobile sector has largely taken benefit out of this mode of finance. Many clients from different sectors procure machinery by using this mode extensively. Different plans help out the customer to opt what is more convenient to them. The lesser the time limit the more the payment plan is efficient.

- **Salam:** Salam is considered as prepayments against deferred delivery of goods which means it's a type of sale where the seller undertakes to supply specific goods of sale to the buyer at a future date against a fully paid price at the time of the sale contract transferring full right of the good to the buyer for the sake of further event to occur like selling on a greater or lower price. The specification, quality and quantity of the product must be determined at the time of sale to avoid any ambiguity that may become a cause of the dispute. The date and place of delivery must be agreed upon by both of the parties but can be changed with the mutual consent of the parties with changing other variables of the contract and other conditions of the commodity at the time of the agreement. This mode mainly covers the clients from the agriculture sector and sometimes corporate clients are also taking benefit from it.
- ***Istisna'*:** *Istisna'* is a selling method, at an agreed price, where the buyer orders a manufacture, assembly or construction, or causes anything to be delivered at a future date. The item must be known and defined to the extent of removing ambiguity with regard to its specifications, including type, quality, quantity,

etc. The price of the goods to be manufactured must be determined in absolute terms. The agreed price may be paid in lump sum or in installments in the agreed upon payment schedule between the parties. Providing material or taking any other liability for the sake of manufacturing of the item is not the responsibility of the buyer. Generally this mode is for the corporate sector client.¹

The main differences between *Istisna'* and *Salam* are as follows:

- In the case of transaction based on *Istisna'*, the subject matter of *Istisna'a* treatment is always something that needs to be manufactured / accumulated / preserved etc., while in the case of *salam*, the subject matter may not be needed to manufacture, accumulated or preserved etc. because the subject matter is nether prepared from the beginning nor ready for sale at the time of execution of the contract.
- It is not necessary to pay the price in *Istisna'a* in advance and only an earnest money or promise to purchase may be enough or any other setting between the two parties is acceptable for the execution of the contract. It is not even necessary to pay the full price upon delivery of the subject matter. Hence it may be postponed at any time in accordance with the stated agreement of the parties. Payments may also be made in installments. In case of contract based on *Salam*, the full price of the product must be paid in advance.
- The delivery time must not necessarily be fixed in contract of *Istisna'a*, while the time of delivery in a contract of *istisna'a* is an essential part of the sale agreement and must be decided at the time of signing of the contract.
- The *Istisna'a* contract may be cancelled before starting the work of the manufacturing of the product but information must be properly shared to the manufacturer as an ethical obligation of the buyer of the *istisna'* product . In the contract of *Salam*, it can't be unilaterally annulled.²

1 Bank of Khyber, *working capital finance*, dated April 3, 2019, <https://www.bok.com.pk/islamic/working-capital-finance>

2 Frequently Asked Questions (Faqs), *Riba and Interest, Islamic Banking, state bank of Pakistan*, <http://www.sbp.org.pk/IB/FAQ.asp>

It is true that the financial system that is given by Islam is a unique system which is based on the real and concrete business practices; it also creates some limitations for certain business practices too. That is why Islamic financial system is ignored due to its limitations whether knowingly or unknowingly that these limitations are for their own good and for their own greater interest. Some of the genuine limitations that an Islamic financial system has in it by default are responsible for the hurdles faced while dealing with the conventional thinking as they are the dead-end for the both systems. There are at least six basic limitations that must be taken into consideration when implementing an Islamic financial transaction. These principles distinguish a financial transaction from the treatment of usury / interest into an Islamic financial transaction. These principles also help the product developers to introduce variety of solutions to the private sector so that the systems is assured, guaranteed and acceptable in the eye of the Lawgiver.

- ***The permissibility of the contract in the eyes of the lawgiver:*** Before performing any financial transaction, the counterparties must verify whether the transaction is based on a *ḥalāl* product and acceptable in the eyes of the lawgiver. This means that Islam does not except any relaxation while performing these financial transactions that it should be falling into the category of *ḥarām* items in any way questionable in the view of the original sources especially Quran and *Sunnah*. Examples are many in this regard like meat of pork, vein or any other item that can cause intoxication in this regard. Hence the contract is not a valid contract, which by its nature is invalid in accordance with the provisions of Islamic law. While a contract which is inherently valid, but some invalid components are included so the result will be commenced in the same direction until the *ḥarām* ingredients are not cleared by in large. If again these invalid components are not removed from the valid contract, the contract will still be revocable.
- ***Sharing risks:*** Islamic scholars have drawn two principles from the words of the Prophet Muhammad (peace and blessings of Allah be upon him). These two are "*Al-Khiraj Bi al dhamman*" which indicates toward the condition of making a person entitled for profit, usufruct or any other gain, meaning that no profit can be made from an asset or capital unless the risk of ownership is taken

by the owner of that profit bearer. Thus, in every single transaction in an Islamic financial institution or by its holder (s) bear the risk of ownership of tangible assets, real services or capital before obtaining any profit from it in the form of investment, *ijara* or any other form of gain that is suitable in accordance with the environment.

- ***There is no ribā / interest in that specific transaction:*** in an Islamic environment one cannot participate in interest based transactions. They can't lend money to earn extra amount of gain or profit. However, as mentioned above about the entitlement of risk, it makes a profit by risking tangible assets, real services or capital and transfers this profit / loss to the bearer of the risk of that certain capital.
- ***Purpose based economic activity:*** it is more of an ethical obligation over the Muslim as a key society member that he/she must be conscious about their activities that they opt to perform for the purpose of earning. It is because of the fact that ethical error in any fields of the life if conflict with the objectives of the *Sharī'ah* is also questionable.
- ***Justice and fairness in the financial environment and abstinence of Gharar in the contract of sale:*** Islamic financial system imparts fairness through their operations in any form of business environment. Transactions based on doubtful terms and conditions can't become part of Islamic financial environment. All terms and conditions in this regard must be include in the transactions of sale/ purchase and disclosed correctly so that none of the party fall into any sort of inbuilt trap of dishonesty, forgery and other misconducts and harm one of the both contracting party. This is clear cut case base on the knowledge of *Gharar* that *Sharī'ah* has asked its believers to carefully adopt in the process of earnings and loses as both of the wanted and unwanted notions must be at par nearest to the utter fate of the contracting parties.
- ***Law of Land vs. Islamic Sharī'ah Law in context of the subject matter ready to sale and purchase:*** As mentioned above, during the execution of any Islamic transaction, it must be assured that no subject matter for sale or any financial activity is financed through Islamic financial institutions if it has a

clear cut clash with the injunction of *Sharī'ah*. In addition to the former condition if some subject matter or any sort of financial activity may be permitted under the Land Law, but if it isn't allowed by the *Sharī'ah* law giver, they can't be financed by any Islamic financial institution.

All of the above points are undoubtedly beneficial for the betterment of the economic systems if applied with full soul and spirit. Although it may create stress for the financial institutions working under frame work of *Sharī'ah* in an international environment but Islamic financial checks are very helpful because of the fact it assures the financial systems not coughed in a financial recession that the world has experienced many times.

4.3.3.2 Islamic concept of Running Finance for the Islamic Banks: Islamic economists and finance scholars generally believe that participatory/Musharakah financing methods are preferable to trade-based methods culminating debt-based transactions. This is because Islamic finance theory is based on the sharing of risks and profits. Accordingly, in order to provide working capital for the corporate sector, Mufti Muhammad Taqi Usmani introduced the idea of managing the partnership (Running Musharakah RM) on the basis of the contract company in his book "Introduction to Islamic Finance" (2000). The idea was given practical form by Meezan Bank, Pakistan during 2008-2010. Its use increased excessively after 2014 and currently about 25% of the total financing by Islamic Banking Institutions (IBIs) in Pakistan is covered by RM.¹

Hence, the product of Running *musharakah* which is now a days practiced by Islamic Banks is basically a way out for the financing the corporate and giant businesses who need running cash or liquid money to sustain their growth on the first place and multiply it through expansion in their setup by installation of new units that will again on the first place increase their capacity output of the production and making other connected possibilities like new job creations, wealth creation, helping the GDP grow at a sustainable ratio or percentage and so on and so forth. One of the most welcoming output of this expansion is that it makes the country less dependent on the imports and after fulfilling the needs locally, moving toward the exports and earning valuable money which will result

¹ Akram Muhammad, *Running Musharakah-Based Working Capital Finance Case Study From Pakistan*, December 31, 2019, (JOIFA) Vol. 3 , Issue 1 / 2019, 8, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3705866 , Retrieved on 19 May, 2020

into increase of the foreign reserves and hence stabilize the economic position of the country and making the society moving toward a better position where it is self-sufficient and in a position to afford a reasonable life style that will insure an environment of peace, hope and prosperity. So, the concept of industrialization is only achieved when on the first place there is a concrete policy of financing especially these giant corporations which are related to the consumable items for the survival of basic life circle like textile industry, auto mobiles, medicine, variety of house hold items and so on and so forth.

Coming back to the product of running *musharakah* practiced by Islamic banks in Pakistan, it is a new phenomenon exercised by them to fulfill the vacuum of financing. The sharia scholars of the country at its inauguration or its launching period were quite skeptical about the product and some are still now opposing this view as an alternate of the product of conventional banks naming Over Draft/ Running finance/ working capital but with due course of time it became acceptable in the market as almost all the Islamic banks have offered it to their valuable customers and took an immense importance for an upcoming of an Islamic value added product based on the true lines of *Sharī'ah* principals. Before going deep into the process flow of the product it is important to know about its *Sharī'ah* attributes that makes it an alternative or a *Sharī'ah* compliant product of its counterpart products used in the conventional banking system:

Running *Musharakah* is based on the glorious principals of *Musharakah*. *Musharakah* is a word of Arab origin that means participation. Technically speaking it is a bilateral/ multilateral agreement, provided that the capital and its benefit are shared by two or more persons. Due to the *musharakah* agreement they become partner to each other who launch a financial business to earn profit.¹ Based on the above definition, a partnership must be defined as a contract between two or more persons in the execution of a particular business with a view to not only sharing profits but if consequences compel, loss will also be shared as per agreed terms usually in accordance with the total value of investment with an unlimited responsibility which means each partner is fully responsible for the other's actions and obligations in financial matters.²

¹ Khan, Muhammad Akram Khan, *Glossary of Islamic Economic*, (MANSELL), London (1990), 100.

² Noraziah, Che Arshad & Ismail, Abdul Ghafar, *Sharī'ah parameters for Musharakah Contract: A comment*, (International Journal of Business and Social Science), ; October 2010, Vol. 1 No. 1

It is again another specified form of *Musharakah* named as *Sharikat al Aqd* also known as *Sharikat al Annan* which confines its meaning to transaction based on contractual partnership or partnership by contract or joint commercial enterprise by which an agreement between two or more individuals to share their assets, labor or liabilities for the purpose of earning profit. This type of partnership is affected by the mutual contract among the partners. It is further divided into three major types. *Sharikat al Amwal*. The Arabic word "money" means money or capital. This is a partnership in capital or investment when all members of the contract invest some capital in a commercial or commercial enterprise. *Sharikat Al Aamaal*: The Arabic word "*Amal*" that means action, action, work or service. *Shirkat-al-Aamaal* is also referred to as *Shirkat-al-Sanai* (because partner capital is their skill) or *Shirkatal-Abdan* (because partners do some manual work such as tailors, electricians, butchers etc.) This is a partnership in services where all members or partners undertake jointly Provide some services to their clients and distribute income earned among them according to the agreed rate. The third one is known as the *Sharikat Al Wujuh*. The word "*Wujuh*" is the Arabic word meaning faces, which can be used more for reputation and good intentions or we can say it is the investment of ones goodwill of the business name or any intellectual based investment that will give the new venture a recognition which will help it flourish more easily and heavily. Meaning thereby, partners in this type of partnership practice their business using their reputation and goodwill in the market rather than their skills and capital. People trust them because of their sense of responsibility, trustworthiness, and the qualities of their leadership. They may also have the capacity to buy goods on a credit facility or at a deferred rate than the market and sell them immediately for cash price inclusive of a good rate of return on the money invested. Dividend income is then distributed at an agreed rate between the shareholders.¹

Other than the above major attributes that any running *Musharakah* agreement has to take care of, certain other attributes are also part of the product as follows:

- **Running *Musharakah*** is a *Shari'ah*-compliant alternative to traditional/conventional banking on-going financing facilities and is the most popular product among customers in which The operation of the running *musharakah*

¹ Muhammad Mushtaq Ahmed, Muhammad Farooq & Muhammad Arsalan, *Running Musharakah Product of Islamic Banks: An Alternative of Running Finance*, (Al-Idah), 33,Dec 2016, 5.

will allow the Client to withdraw funds and adjust them as necessary and without providing any additional documental proof to the Bank as required in other Islamic financing products. Like *Murabaha*, *Diminishing Musharakah*, *Ijarah muntaihaya bi al tamlik* and so on and so forth. This is because of the fact that the specific commercial activity has a high acceptance in the market that almost nulls the risk factor of the loss of the amount of the investors provided by the bank operating with the client for the sake of profit generation.

- Under the facility of Running *Musharakah* is only provided to the client who carries out a commercial activity that is **declared *halāl* and approved by the *Sharī'ah* junctions.**
- The Share of Profits shall be based on the gross profit of the Client's business or any proportion of the profit sharing mutually agreed upon in the *Musharakah* Agreement / Contract and subject to a quarter to quarter review / period to the period.
- RM can't be used to finance / purchase **fixed assets**.
- The Bank and the Client shall enter into participation, based on **the *Sharikat al Aqd***. The Bank and the Client shall invest in the specific operating activities (or any specific sector thereof) of the Client's business.
- The investment provided by the bank to the client will only be used to finance the **operational activities of the business of the customer**; this clearly means that no other personal or even over and above any other business activity that isn't part of the contract sign by the client by its bank providing the facility of Investment.
- The Bank and the client will **participate in the profit / loss sharing formula**; resulting from the participation in proportion to the profit sharing ratios.
- The bank and the client **share the probability of risk** that may lead to the loss in the business transaction and therefore are entitled for the earing of the profit.¹

¹ Muhammad Mushtaq Ahmed, Muhammad Farooq & Muhammad Arsalan, *Running Musharakah Product of Islamic Banks: An Alternative of Running Finance*, (Al-Idah), 33 Dec 2016, 13

Process Flow of the transaction: Talking about the process flow of the transaction of running *musharakah*, it is important to know that one should know exactly how transaction of running finance is worked out in the conventional banking system:

This interest based transaction is offered by the banking sector to fulfill the needs and requirements of its corporate customer. It is one of the most common forms of borrowing tools through commercial banks for the industrial concerns required to fulfill for the sake of smooth running of the business.

A limit of financing is determined by the bank as per agreed amount by the both the stakeholders which is then used by the client in a series of small transactions as per its business requirements. The amount used by the client in series of transaction is known as overdraft.

It is made available either against the mortgage of goods, products/goods or against their expenditure through an evaluation process in the credits department of the bank. Here they thoroughly check the credit worthiness of the client through its at least two years business account statement, volume of the business and borrower's credit rating by the state bank of Pakistan. It starts from AAA and goes down to D.¹

In RF, the borrower is allowed to borrow funds from the bank up to a certain limit, either once or as appropriate and suitable to the customer for meeting his needs fulfilled. The Borrower prefers this type of lending because it facilitates the payment of mark or service fees only to the amount actually used.

If the borrower does not use the full limit, the bank must lose the return on the unused amount. In order to compensate for this loss, the Bank may provide for an appropriate clause in the Cash Financing Agreement under which the Borrower will be required to pay the mark or service fees at least half or one quarter of the maximum amount allowed for its cash financing, even when the amount is not used.

In accordance with the *Shari'ah* point of view the transaction is void on the very first place as the burden of risk isn't shared between the working partners i-e the loaning agency and the corporate customer and adding to this situation markup is also a fixed rate of return.

¹Credit Rating of Banks/DFIs, *Consolidated Position on Credit Rating of Banks/DFIs*, (Rating History) http://www.sbp.org.pk/publications/c_rating/index.htm, Retrieved on 12-Jul-2021

Now, coming back to the *Running Musharakah* transaction, its process flow is a bit lengthier and a bit complicated as well. Sometimes it seems to be at par its counterpart running finance and sometime it is more of a cosmetics work to legalize it as per the *Shari'ah* requirement. Its critics point out many certain notable points that sometimes conflict with the objectives of *Shari'ah*

Running *Musharakah* is also offered by the banking sector to fulfill the needs and requirements of its corporate customer. It is now adopted in the Islamic Bank against or as an alternative interest based transaction of running finance available in commercial banks. Both of these transactions are for the industrial concerns required to fulfill for the sake of smooth running of the business. . The process flow of the running *musharakah* is as follows:

- A limit of financing is determined by the bank as per agreed amount by the both the stakeholders which is then used by the client in a series of small transactions as per its business requirements. The amount used by the client in series of transaction is known as **overdraft**. It is also same sort of operational detail as mentioned in the above while discussing the process flow of running finance.
- The client keeps on returning the used amount within a **specified time period** mention in the beginning of the contract till the time of maturity of the contract as mentioned in the agreement. The rate of return is tied up with the KIBOR rate of return which varies on the daily basis. Hence the rate of return is always subject to change Again same as above transaction of Running Finance.
- In the end the client pays the markup value on the amount used in different intervals on the basis of daily weighted average of the income as per ratio decided between the both stakeholders. This is the point that differs in the calculation of the profit as above in the running Finance.

Just for the clarity the whole transaction is elaborated by a hypothetical example as follows:

- Person “A” goes to his bank “B” and asks for a bank loan for expansion of his business. B sees through his business activities and judges his credit worthiness and then decides to approve and arrange a credit line facility for its prestigious customer.

- The agreement is signed by both the parties on the basis of Partnership mode namely *Sharikat al Aqd* where A is active partner and B after financing the credit line facility acts as a sleeping partner. The transaction period is say one year.
- The profit ratio is tangled with the benchmark of KIBOR; say KIBOR+1. Profit ceiling is decided up to say 8% of the total investment provided by the partner B. After the profit ceiling is conceived by the partner B, it changes its profit formula to target profit rate. This rate is negligibly so nominal that rest of the profit falls into the account of the partner A. Says for instance 1 rupee after every one lac Rs is the remaining share of the B.

The flow chart of the transaction on the basis of hypothetical credit facility say 8,00,00,000 PKR on the basis on 8% of the net investment on the basis of profit ceiling mark is as follows:

Share of A = 20,000,000 PKR

Share of B = 80,000,000 PKR

Profit ceiling = $10,00,00,000 * .08 = 800,000rs.$

B share of the profit on the basis of profit ceiling (profit ceiling * investment of B/ total investment) = $800,000 * 8,00,00,000/10,00,00,000 = 640,000 Rs$

Target profit of B = $1,06,40,000 * .00001 = 106 Rs$

Total profit of B = 640,000.106 Rs

Profit of the depositors of the bank B = $640,000.106 * .1 = 64,000.rs$ (round off)

This example exactly shows how financing helps these corporate customers grow up huge within a matter of certain transactions as the loins share of the accumulated profit is always adding to their account and how minimal amount goes into the initial customers who are basically the one that made it possible to accumulate such high funds at one place for the corporate customers to use for their own good. This vicious circle is even ignored by the Islamic Banking systems due to the market pressure that they have to maintain because if they don't go as per the requirements of the market, they will certainly lose their prestigious and giant customers. However the bad luck doesn't ends here as these giant companies are like to be brands of foreign countries as our country is still surviving in maintaining an infrastructure that will help the local industrialist to come forth into the

game of nation building process. This exactly means the capital that is earned is again flight outward to the customer's account to its own national financial organizations and the premises where all of this profit generation process took place remains the deposal of thesis corporate multi nationals to deliver once again as our inability is costing us in every single sphere of financial circle.

Sharī'ah based Observations regarding the Transaction of the Running Musharakah: However, talking about the *Sharī'ah* observations regarding this transaction of Running *Musharakah*, there is a line of jurists who have an inverse point of view about the product of running *Musharakah*. They believe it to be a compromised way of thinking and tends to be more tilting toward solving a sensitive issue of running finance/ over drafts or any other form of loans practiced in the conventional banking system in an un acceptable way in the eyes of *Sharī'ah*. The whole transaction is set just for the sake of capturing new and profitable ventures especially corporate sector due to their capability of generating high and consistent profitability then the organization may be ideologically aligned with the Islamic banking principals and consider it to be more of the problem related to their faith. On the other hand these organizations are considerably weaker in their limited size and capacity to generate or consume huge amount of funds for the sake of creating profits for the Banking sector due to their less clientele and limited scope of business. Even if we exclude the above argument, still there is another point of view which is based on the fact that running *musharakah* is a product based on the principal of necessity and the only way out for the sake of financing those organization who demand for the liquid money for fulfilling their requirement for their running expenses but the problem basically is due to a weak financial engineering of the product and also that it has many questionable issues regarding the matters of compliance in the eyes of *Sharī'ah* law. Certain *Sharī'ah* observations regarding the whole transaction are discussed as follows:

Credit line of RM: The assessment of the required investment for a certain project in total is only possible in the end of the project. This means that both the partners are not aware of the exact amount they require for the respective period.

The transaction only confirms the profit to the extent of amount used by the client in the project. This means that client is not responsible for the investment invested for the whole tenure of the business.

The circulations of transactions are also not determined at the beginning of contract.

There are two lines of profit i-e one the first place hedge profit through modern concept of profit ceiling and after the required profit is realized, the method is changed to the target profiting and the rest of the profit remains unattended and the client is lucky enough to get hold of the rest of the loins share in the profit that he/she accrued in the business for that specific period.

In the contract of *sharikat al Aqd* the shared amount by the partner is in the form of money. Here in the transaction of running finance the client gets the credit line facility by simply showing his financial account statement. Even if something is considered to be the share of the client is basically not in the form of money and may be in a form of some declared asset.

Transaction based on Hiba: The target profit is basically applied through the concept of *Hiba* i-e gift. Hence it is more considered to be *heela* i-e trick as the client gets the major portion of the profit and leaves the bank with a very small amount of the profit and that it has to again share it between itself and the depositors who are only liable for the 10% approximately of the remaining profit from the 100% of the bank. Speaking over the ethical ground and building an opinion as per the eye of the law giver, the distribution of the profit must be just. This means that the depositors who came up with the loin share of financing the project are left up with the very small amount of return. This is totally an unknown and alien phenomenon in the sigh of the objectives of *Sharī'ah*.

Islamic Principal of justice and equality: The list of the excuses is also very lengthy that is counter argument to its critics but the point is that will the dream of a Islamic financial model may ever be accomplished in true faith of the Islam that inculcates moral value inbuilt in its teaching? Well the answer is very simple and that is we as an *Ummah* have to work harder to clear this hedge by creating new financial market structures where principal of justice must prevail with side by side innovating new ideas to capture the main stream of the global financial market. Allah says in Quran:

“So do not weaken and do not grieve, and you will be superior if you are [true] believers.”¹

Allah requires from its believers to keep on believing on him as a creator and must not fall into the prey of non-believers in any sense and must not show any sort of weakness in

¹ Verse 3:139

any department of life. Simply it's a tug of war that believers are in a good chance to win by making this world a better place to live where all the humanity must have equal opportunities over the bounties that Al Mighty has bestowed upon them and undoubtedly believers are more worthy of it. Allah says in Quran:

Say, "Who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?" Say, "They are for those who believe during the worldly life [but] exclusively for them on the Day of Resurrection." Thus do we detail the verses for a people who know?"¹

This verse of Quran can only be fulfilled in its true letter and spirit if Muslim *Ummah* as a whole contribute in the policy making issue in regard to the financial matters of the world. If Jews being less in numbers can dictate the super powers of the world then we as a second largest group of people of the world are in a better position to achieve this target. This is not only better for the *ummah* to achieve this target but it's also best for the sake of humanity that an *Ummah* that declares itself as a just community. Allah says in Quran:

"And thus we have made you a just community that you will be witnesses over the people and the Messenger will be a witness over you. And we did not make the Qiblah which you used to face except that we might make evident who would follow the Messenger from who would turn back on his heels. And indeed, it is difficult except for those whom Allah has guided. And never would Allah have caused you to lose your faith. Indeed Allah is, to the people, Kind and Merciful."²

It is the teaching of Islam to whom the verse is pointing, shows the way of moderation. We have discussed this point in our former chapter that how the teachings of Islamic inculcates the attributes of just and equality and its inbuilt system of these values make it a unique system that if adopted in the current global financial system will definitely create a harmony and bring peace in those parts of the world who are literally suffering for their accomplishment of the basic needs and requirements missing in tier justice system which is inevitable for the sake of continuation of the life itself .like food, quality education and healthy life.

The point of discussion is that if we keep on persisting to comply with the conventional ways and methods of financing by tailoring it in the view of the Islamic financial principal, we will lose the above mention attributes that are inbuilt within our process of thought. We

¹ Verse 7/32

² Verse 2:143

can't just keep on making things possibly acceptable in the eyes of *Sharī'ah* law just through financial engineering tools. We need to understand the core purpose of it. We can't just use the *Sharī'ah* laws to facilitate the western thinking for the use of money instrument. However it's a challenging art and needs synchronization of ideas about which the above verse refers.

4.3.3.3 Takaful Based companies: Takaful is an Islamic insurance concept that observes the rules and regulations of Islamic Sharia. Takaful is basically an Islamic insurance system based on the principle of cooperation (mutual assistance) and *Tabaru* (voluntary contribution), in which the risks are shared collectively by the group. It is based on cooperation to provide mutual financial security and assistance to protect mutuals from specific risks.¹

- ***Sukuk- Islamic Bond:*** The word "*sukuk*" is the plural of the Arabic word "sak" which means "certificate", so *sukuk* can be described as contracts of credit for the ownership of an asset, or contracts of usufruct. Sukuk differ from regular bonds in that they do not pay interest. Islam forbids the payment of interest, but a financial obligation or a financial instrument linked to the performance of real assets is acceptable. *Sukuk* is one of the most popular and accepted methods of financing in the Islamic capital market. *Sukuk* are suitable new financial instruments, first issued by Malaysia in the year 2000, created in response to the need for medium to long-term Sharia-compliant financing that would have good market liquidity.²
- ***Islamic Unit Trust Funds:*** Islamic unit trusts funds, more commonly referred to as *Sharī'ah* Funds or Pooled Investment Scheme. Offer for investors to invest their money in a variety of securities that are managed and selected by professional managers in accordance with Islamic Sharia principles in a common pool to earn ḥalāl profits. Bonds or a unit are issued to the fund's subscribers giving them the right to subscribe and guaranteeing them the

¹ Security and Exchange commission of Pakistan(SECP), *Saving and Capital Market*, Ibid p#143

² Security and Exchange commission of Pakistan (SECP) ,Saving and Capital Market, <https://jamapunji.pk/sites/default/files/Savings%20%26%20Capital%20Markets.pdf> p#143.

proportional profit that the funds actually achieve. The return on units is not fixed, and depends on the actual profit earned by the fund. Profit of money can be obtained from two main sources i.e. dividend income and capital gain (buying and selling of bonds at higher prices). Sharia-compliant bonds include bonds (shares or *sukuk*) of Islamic financial institutions, corporate bonds operating in accordance with Islamic principles, and guarantees included in Islamic stock indices. Islamic mutual funds (investment funds) differ according to the type of investment and the method of financing (*Murabaha*, *Musharaka*, *Ijara*, etc.); Investment field (public works, real estate, or leasing); investment period (short, medium or long term); involve risk (low, medium or high risk); and whether the boxes are open or closed. There are many types of Islamic funds, which include equity funds, *Ijara* funds, commodity *Murabaha* funds, Real Estate Investment Trusts (REITs), hybrid funds and others.

4.3.4 Impact of the interest on the private sector

Higher Interest Rate

Due to the monetary tightened policies practiced in Pakistan, the rate of Interest is on the higher side. At current point of time the rate lending rate is 7% (plus KIBOR).¹ This has affected the growth factor of the private sector and its expansion as well. Hence, Instead of giving importance to the interest rate in their economic policies, more focus should be on the increase per capita income, national spending, and improve working conditions in their countries to increase saving. For this reason, SBP should also try to lower the lending rate and inflation, increase trade for the sake of inward remittances to increase investment.

According to the Asian Development Bank figures, the GDP growth of the economy of Pakistan is shown up to 2%.² Hence if we want to boost our economic growth indicator, we must encourage the Profit Sharing modes of Islamic Finance in true letter and spirit.

Concentration of Wealth: The Banking sector has a very strict screening criteria for awarding loans, it largely focuses on the corporate sectors, which it perceives more reliable

¹ Trending Economic, Interest Rate, Asia, <https://tradingeconomics.com/country-list/interest-rate?continent=asia> , retrieved on 5th September, 2021

² Asian Development Bank, GDP growth Rate, 2021 forecast, <https://www.adb.org/countries/pakistan/economy> , retrieved on 5th September 2021.

when it comes to the guarantee for the return of the loan. This criterion of awarding loans has damaged the SMEs growth. As a result the business is flourishing in a limited manner. This has a very serious implication over the society as it encourages the curtail to set price on a higher ceiling and providing less benefits to the grass root level.

Less Job creation: Job creation in the market has always been a problem for the nation. Our economy is not flourishing at a speed it is required to excel rather our population is growing at a very high pace. According to the latest statistics, Pakistan is one of the poorest countries in the world, and has one of the highest population growth rates in the world at around 3.0% annually. For more than two decades, the average woman in Pakistan has given birth to more than 6 children.¹ While the unemployment rate in Pakistan is gadding to 5%. According to the ministry of finance, Before COVID-19, the working population was 55.74 million. This number dropped to 35.04 million indicating that people either lost their jobs or were unable to work. As a result of wise government decisions, the working population has reached 52.56 million as of October 2020.² The gap can only be filled if we make policies that are more realistic and less superficial.

Declination of Foreign Direct Investment: Due to the constant pressure over the economy of Pakistan and Covid-19 pandemic issue both have cumulated the loss in the form of declination in the Foreign Direct investment of the country. According to the sources, Foreign investment in various sectors of the Pakistani economy such as energy, telecommunications, financial business, oil and gas production declined by 40% to \$167.6 million in March 2021.³

Import led economy of the country: Pakistan has one of the main issues that its imports are always greater than its exports. Due to this problem, most of our economic indicators like current account, trade account, FDI and alike are showing a constant indication toward negative side. Hence if we want to improve our economy, we need to balance out our expenditures by putting out economy back on track. This can only be

¹ Robey, B, National Library of Medicine, Pakistan's population growth: the need for action, <https://pubmed.ncbi.nlm.nih.gov/12283984/> , Retrieved on 5th September, 2021

² Ministry of Finance, Overview of the economy, https://www.finance.gov.pk/survey/chapters_21/Overview.pdf , retrieved on 5th September, 2021

³ The Express Tribune, International, FDI drops 40% to \$168m in March 2021, 30th April 2021, <https://tribune.com.pk/story/2295652/fdi-drops-40-to-168m-in-march-2021> , retrieved on 5th September, 2021

achieved by improving the condition of the trade related to the private sector which is constantly facing pressure from the outer world in term of competition. Hence Interest rate shouldn't be the gauge to measure the growth of economy rather realistic approach should be propagated through adopting the *Shari'ah* Led economic Indicators which are clear from the speculation. According to Pakistan Bureau of Statistic:

“Based on the provisional figures of imports and exports the balance of trade in March,2021 was (-)514,199 million in terms of Rupees and (-)3,295 million in US dollars. The balance of trade figures cumulative from July - March, 2020-2021 were (-)3,360,416 million in terms of Rupees and 20,831 million in US dollars. 14. Four statements giving quantity and value details of selected commodities of exports and imports for the month of March, 2021 and July – March, 2020 - 2021 along-with the data for previous month and corresponding period of last year are enclosed.”

Hence, the only way to revive the economy is to revive the Private sector of the state. Until and unless the GOP doesn't own it, the problem may go on to the extant, the revival may be impossible.

Social and financial distress in the Society: Keeping in view the above discussion, when all the economic indicators are showing a downward impact due to the higher interest rates; it creates a negative sentiment all over the financial market where over all business efficiency is disturbed and people show negative attitude toward the market by not investing into it. This signal of no confidence over the market triggers an impact over the economy as a whole and the market activities slows down to an extent, it discourages the consumer behavior to stay alert from any possible loss in the income and feel insecure. Hence the private businesses suffer a lot under this pressure created by the regulating institution.

4.4 Involvement of the Local Businessmen in Interest Based Transactions and its Implication on the Society of Pakistan

It is important to understand that a local businessman is not only the true face of the economy but also he/she is fighting for their survival to meet their means by balancing their income and expensive. This means they are totally dependent on the government which will ensure an environment of flourishing and success.

The local business community in Pakistan is facing challenges in many ways and still awaits the men of zeal to sort of solutions for them so the concept of *ease of doing business* ensured. The definition of the local business and its dimensions are as follows:

4.4.1 Definition of Local Businessmen

Local Businessmen are related to Small Business. These Small businesses are considered to be privately owned corporations, partnership based ventures and sole proprietary.¹ Its names vary from Micro financing to Small and Medium Enterprises and entrepreneurs. It's employment capacity also very from fifteen to five hundred persons work force.² According to SAMEDA, the definition of SME inculcates certain attributes like 250 employees, with a paid up capital of about 25 million rupees and annual turnover of 250 million rupees.³ Although these small businesses are less in quantum but still it's an essential part of the economy as it working on the concept of self-employment and generate income for the government in the form of taxes.

4.4.2 The interest bearing financing of the Local Businessmen

The consumption of the loans by the local businessmen who consume loans that are facilitated by the local loan providers, tends to be on a very high rate, has made the situation of the society quite unrestingly. Certain groups of effectees are the ones who face genuine problems due to the financial crises like locally based working farmers having a very limited income, fishermen, Rickshaw drivers, crafts worker, technicians, field workers, seasonal work of harvesting or ginning or husking, and many others sorts of laymen services happening all over the cities are just like bonded labor because of their reliance on informal loans for money to complete their life circle of feeding, clothing and other human needs to be fulfilled there and then that these influential private moneylender provide them.

¹ Jassim, Jaffar, *Defining Micro, very Small and small Enterprises: Moving toward the standard definition continuum*, jan, 2018, Paper no 34, <https://www.pmn.org.pk/publications/Defining%20Micro,%20Very%20Small%20&%20Small%20Enterprises.pdf>, retrieved on 23rd March, 2021

² Australia Fair work act, 2009, *The fair work commission*, <https://www.fwc.gov.au/awards-and-agreements/minimum-wages-conditions>

³ The Money Lending Ordinance 1960, Ordinance, No. XXIV of 1960, Update: Thursday April 10, 2014, <http://punjablaws.gov.pk/laws/126.html>, 5

Moreover failure in the field of crop cultivation, Unexpected financial losses from natural or man-made disasters, sudden health problems in the family, or any other disaster that put these people into an impassable web of lenders who demand more than a pound of meat from the borrowers' victims; The stories of *Munshi Prem Chand* are essential guides to learn about the social role of lenders in the Indian subcontinent, note that the lenders have been in our cities and villages for generations and now it is associated with a social and religious organization involved in some educational projects.¹ Kashif says that these lenders, which operate in the local sector and minimize the shortcomings of formal financial services, have gained tremendous strength and size in the past eight years. Forming an association with stockbrokers, private commodity dealers, private bankers, descendant clergy and bureaucrats, the lenders have taken over the formal banking system and financial services to their advantage. In rural areas, where the majority of Pakistan's population lives, formal financial services hardly make up between 25 and 30 percent of agricultural credit financial needs More than 70 percent of agricultural credit needs are provided by informal sector creditors at 50 to 100 percent interest, according to the findings of a reporter on rural finance. This was the first time that in it a particular report was highlighted on the financial issues of lower class farmers. The report was prepared in 2003 for the State Bank of Pakistan by a committee headed by *Jahangir Tarin*, who later became a minister comprising members of senior bureaucracy, central banks and politicians. Since the report was submitted the scale of agriculture has ballooned European loans to reach 200 billion rupees in the current financial year, according to one of the leaders of the farming community, which represents one-fifth of actual needs of about one trillion rupees. It is estimates that approximately 800 billion rupees are coming from the informal sector to farmers in this fiscal year. So lenders are literally taking the crops over before they are mature to established higher rates of returns.² The farmer gets little wages and stays under debt until the next harvest. Lending to the informal sector is not in cash but in the form of inputs. All these inputs are given approximately twice the official fixed rate and more credit

¹ For instant see: Dawn News, *Five Premchand stories from early 20th century which are still relevant*, 18 August, 2018, <https://www.dawn.com/news/1424183> , retrieved on 4th September, 2021

² Lutfullah Saqib, *The Role of Informal Agricultural Finance in the Development of Local Farming in Khyber Pakhtunkhwa (Pakistan): A Critical Analysis*, *Pakistan Journal of Social Sciences (PJSS)* Vol. 37, No. 2 (2017), 420-434, <https://www.bzu.edu.pk/PJSS/Vol37No22017/PJSS-2017-II-08.pdf> , retrieved in 30th September, 2021

at interest. Last season, fixed wheat was officially priced at Rs 425 for 40 kg. The vast majority of small farmers in the Saraiki belt of Punjab and Sindh could not get 350 rupees. “After disposing of their crops at this price – Rs 350 per kg – most farmers cannot pay their debts and therefore have to engage themselves and their family members in the service of the money lender as bonded labor. Almost 50 per cent of Pakistan’s farmland is barely owned by hundreds of families, which It operates in national and local legislatures and controls almost every government.

Moreover, Feudal families are closely related to the military and other members of the defense services. Therefore, state institutions are destined for the nobles and a large number of farmers still live as enslaved slaves. Prime Minister Syed Yusuf Raza Gilani belongs to a well-established feudal family in Multan and enjoys religious and spiritual standing.¹ But he also belongs to the most extreme political party in Pakistan, the Pakistan People’s Party, which carried out land reforms and introduced agricultural income tax for the first time in July 1977. The report analyzes that Subject to the other provisions of this Act, there shall be levied, assessed and collected each year a tax in respect of agricultural income of a tax year of an owner at the rate specified in the First Schedule to this Act.²

Talking about Sindh, lenders not only suffocate the rural population, but also approached the jugular vein of a large number of urban dwellers. Hunters in Sindh and Baluchistan are the victims of these lenders for ages. Fishermen need boats, tools, equipment and fuel, so they need money for deep-sea fishing trips that last from two to three days to more than a week. The conditions under which all fisherman requirements are met by borrowers are not different from what is given to farmers. Just as the crop is harvested prior to its maturity, the hunters are harvested before being brought to the auction hall in Fish Square. Motorists in Karachi are another example of rough exploitation by lenders. The Lucrecy of this business model could be understood by comparison of anyone with 200 to 300 vehicles in Karachi, like owning more than 1,000 acres of fertile farms.³ The vehicle is loaned to the newcomer from the village for Rs 300,000 to Rs 350,000 at

¹ Perviaz Tahir, *Taxing agriculture*, March 12, 2019, <https://www.dawn.com/news/1469136>

²THE PUNJAB AGRICULTURAL INCOME TAX ACT 1997, (Act I of 1997), Charge of agricultural income-tax, no 3, <http://punjablaws.gov.pk/laws/398.html>

³ Dawn News, *Private moneylenders playing havoc with working class*, 30th March, 2008, <https://www.dawn.com/news/295741/private-moneylenders-playing-havoc-with-working-class> , retrieved on 30th September, 2021

100% interest. The driver of the vehicle is required to pay at least 200 rupees to 300 rupees a day to adjust his loan and interest, which has never been settled and will remain owed to creditors. In its last budget, the Sindh government has announced the replacement of 68,000 vehicles with new three-wheeled gas-powered vehicles that will be provided on an ownership basis¹. The National Bank of Pakistan offered gas-powered vehicles on an ownership basis to the unemployed. There are people within the government and the traffic police who are creating all the obstacles to the failure of this scheme but elections and the direction of a popular government at the federal and provincial levels have given some hope to the oppressed and the desperate on the ground. The new rulers also come from the same old classes but in new clothes and a new language. Can they reach the expectations of the poor in Pakistan? Can they finish or at least take notice about what exploitation is going on in the market in the name of business? The answer is yet to be conceived in future events which are almost going to be not happening. All the slogans, all the zeal is only till the date these public office bearers make it there.

4.4.3 Involvement of interest in the investment side of local business

The investment side of the organizations are the integral part of its balance sheet. If the investment side is clear of any discrepancy, showing healthy wealth statements, it will guarantee that the organization on the right path. Other else there is all the chance of getting in credit crunch.

Involvement of Interest in Micro financing Institutions: Micro financing has led the economy of Pakistan revived in a very specialized way and made it possible in the reference of development of the country by funding the poor people or small businesses led by the middle or lower middle class of the society. Micro finance is a tool of providing loans and basic financial services to the poor excluding deposits (in the case of MFIs working for the capital gain) which mean it spends upon upholding the poor community by giving them a chance to build up some skill or small sized businesses. People living in poverty especially in rural areas, Need a variety of financial tools to manage their business, build assets, and stabilize Consumption and protect themselves against risk of bank corrupt or insolvency.

¹ Ibid

Financial services needed by the poor class can vary according to their requirements like Working capital loans, consumer credit, savings, pensions, insurance and money transfer services. MFIs have a very significant role to play in the lives of the Poor people as they rarely receive services through the formal financial sector because of the limited scope of their financial capacity and risk of not returning huge losses. The problem is that MFIs are the least prioritized institutions in Pakistan and due to non-availability of effective micro financial institutional programs. This is because of the fact that MFIs of the country either limited amount of recourses or thought policies of financing.

The barriers that the SMEs can't address their need to fill their financial gap through a variety of financial services based upon relationships, mostly informal ways that are not even legitimate and at a very high rate of return. Financial service providers for the poor also include donors, non-profit and non-governmental support, Non-governmental organizations, cooperatives and community development institutions such as self-help Groups found all over the country in the form of undocumented and non-sequential economy of Pakistan, credit unions, commercial banks, state and insurance companies, credit cards, post Offices and other points of sale. Non-bank financial institutions (NBFIs) and non-governmental organizations have led the way in developing practical credit methodologies for the poor and reaching large numbers of poor living in the country. The reason behind the MFIs questionable in the eye of *Sharī'ah* is because of its lending policies based on interest. As it is well aware fact that interest in any form is not allowed in Islam those institution follow the conventional ways of business can be easily rejected; yet another cause of MFIs in Pakistan not workable is due to their high rates of returns. According to a reporting agency, it says that the Pakistan's microfinance sector faces high interest rates of around 30%, despite the global consensus favoring for-profit microfinance for the poor. However, a novel interest-free microfinance model has been successful in Pakistan for over a decade, causing confusion among global microfinance experts. It says that the Pakistan's microfinance sector faces high interest rates of around 30%, despite the global consensus favoring for-profit microfinance for the poor. However, a novel interest-

free microfinance model has been successful in Pakistan for over a decade, causing confusion among global microfinance experts. ¹

Yet another reporting agency records the interest value up to 35% or even more on the total debt. The sector's weak financial position is attributed to its costly over-expansion strategy, which has negatively impacted its cost and productivity. Current interest rates on microfinance loans in Pakistan are 35% or higher.

4.4.4 Impact of Interest bearing financing to Local Business:

In accordance with the above discussion, certain causes are responsible for people involved in this interest based transactions:

- ***Undocumented economy:*** Our country has a history of undocumented economy which has proved to be a headache for the regulatory authorities. Moreover due to less efficient ways to control undocumented transactions like *hundi* or *havalah* we not only get deprived from the precious taxable income but also we less know about the certain cause for which the transaction took place. This is also a form of terrorism as some of this money is used by the unverified group to harm the stream functioning of the society. On the other hand our labor class specially living in the middle east countries are always questioning the higher levels of taxes paid in case if they use a proper taxable channel. This income is a barely livelihood of their family members that are 100% dependent on them. However, the whole scenario case multi problem issues that the state has to face.
- ***Weakness in the Law implementation:*** Private loaning organizations work in a form of web for the sake of getting influentially stronger day by day. These local loaning communities are good in their business because of the fact that they are well aware of weaknesses of the law enforcement agencies. Moreover it is also supported under the law providing agencies like local Police stations working in a behavior locally known as the “typical Thana Culture” who work

¹ The Express Tribune, Business, *Novel approach: Interest-free lending to poor surprises ‘the entire world’*, January 25, 2013, <https://tribune.com.pk/story/498713/novel-approach-interest-free-lending-to-poor-surprises-the-entire-world/>, Retrived on 26th May, 2020

for these local loaning agencies for recovering of their loans in form of agreements that gives the authority to the lender over the lendee to confiscate his belongings in case of non-payment of the interest based debts.

- Local businessmen who face genuine problems due to the financial crises like locally based working farmers having a very limited income, fishermen, Rickshaw drivers, crafts worker, technicians, field workers, seasonal work of harvesting or ginning or husking, and many others sorts of laymen services happening all over the cities are just like bonded labor because of their reliance on informal loans for money to complete their life circle of feeding, clothing and other human needs to be fulfilled there and then that these influential private moneylender provide them. Moreover failure in the field of crop cultivation, unexpected financial losses from natural or man-made disasters, sudden health problems in the family or any other calamity make these people in an impassable network of lenders who claim more than a pound of meat from victims of the borrowers; The stories of Munshi Prem Chand are key evidences to learn about the social role of moneylenders in the subcontinent, noted that lenders have been in our cities and villages for generations.
- ***Mistrust between the locals and government organization:*** Due to the higher level of mistrust between the government organizations and business entities/ NGOs / local level financial activities orienteers, people more relay on doing their financial activities through an undocumented ways as described above. They are more comfortable in doing their daily routine business through cash. This is again a way letting someone not giving access to its financial information which again becomes a question mark for the government organizations about how and where this undocumented chain of transaction is initiated. No one knows if it's used for the betterment of the society or otherwise. Unfortunately knowingly or unknowingly our religious organizations well known as Madrassas also fall under this category too. No doubt their fear is valid as they are sure of the fact that once the government organizations get hold of the source of these donation they will rightfully or some wrong means ask about it. Government of Pakistan from the time of

intendance till now has done nothing in this regard as these Madrassas work in an order of NGOs by fulfilling all of their financial obligations through these funds whom source is still alien. It is easily understandable for those working close in this sort of environment that a huge amount of funds come from the foreign where like-minded group of people make it possible without letting anyone know its type, quantum and purpose of its use. However the tug of war is on and time will decide about the fate of it but very clearly one can see that there is no other way then to cooperate with each other and solve the issue once and for all. One shouldn't forget the fact that many madrassas are accused for terror activities which is not good for the whole madrassah community as we know that they have striven hard for a very noble cause of making alive the eternal voice of *qallaha wa qala rasool*.

- ***Ignorance of upholding the concept of ḥalāl and ḥarām:*** It is dreadfully sorry to say that the nature of the local society isn't that transparent that we may shift all the burden of responsibility on the weak shoulders of the regulatory authorities of the government. Meaning there by, these people cross all the limits without observing limits of *ḥalāl* and *ḥarām* when they feel they are going to experiencing some financial activity that will do some good for them in the terms of high profits or income. They don't care if its *ḥalāl* or *ḥarām* and their only motive are to stay alive in the market by whatsoever maybe the way. Sometimes it is so grieve to know that people for their own benefits can cause harm to other people living aside them. The junctions of *Sharī'ah* are very clear about *ribā* but still these ignorant local of our society are bold enough to cross the line that was basically stretched by the lawgiver himself. Certainly it is duty of men of Knowledge *Ulemas* to take notice of it and not let someone use the divine junction against the will of the lawgiver. They must inculcated the *Sharī'ah* values regarding *ḥalāl* and *ḥarām* so forcefully that people of faith must stop doing these heinous crime that will not only be a cause of loss in this world but also in coming time hereafter.

CHAPTER 5. IMPLICATION OF *GHARAR* ON THE SOCIO-ECONOMIC SYSTEM OF PAKISTAN

5.1 Introduction

Gharar based transactions are found in abundance in our society causing some bad effects over the efficiency of the financial activities. Its conditions related to its prohibition are discussed earlier in the beginning chapter¹ and for that reason any transaction involving the elements of *Gharar* is considered as a *non-Sharī'ah* compliant transaction.

In a business deal, *gharar*, an Arabic word for uncertainty, risk, or conjecture, is used. *Gharar*-based transactions, which are deemed unethical and forbidden in Islamic finance, are those that contain an excessive amount of ambiguity or risk. Transactions must be based on actual, tangible assets and contain a defined level of risk in order to be considered Islamic finance. Transactions based on *gharar* are in violation of this rule because they contain speculative and unpredictable components that could provide one party with an unfair advantage over the other. Gambling, speculating, and insurance agreements based on hazy occurrences are a few examples of *gharar*-based transactions. A contract that pays out a certain sum of money if it rains on a specific day, for example, would be seen as a *gharar*-based transaction because the result is uncertain and beyond the control of the parties.

However, *Gharar* is largely avoided in Islamic banking in Pakistan and is seen as a bad component of contracts. The State Bank of Pakistan, the nation's central bank, has published guidelines for organizations that provide Islamic finance that forbid *gharar* in their dealings. According to these rules, financial institutions must make sure that contracts are clear, unambiguous, and don't carry a lot of risk. Despite these rules, *gharar* is still a problem in various aspects of Pakistani Islamic banking. Some financial products, like Takaful insurance, have come under fire for allegedly containing *gharar*-related components. In Pakistan's Islamic financial sector generally, there is a growing awareness of and worry about *gharar*, and efforts are being made to solve this issue through legislation

¹ Please see chapter#1: 1.3 *Non-Sharī'ah' Compliant/ Prohibited Financial Transactions And Its Classification*, p106

and education. The state Bank of Pakistan has provided guidelines for the abstinence of *gharar* based transactions¹. Some of its main points are as follows:

- Financial institutions are not permitted to engage in speculating or any other activity that entails a high level of risk or uncertainty. They are expected to run their operations responsibly and sensibly.
- Interest-based trades are not permitted; Islam forbids trades involving interest. Financial institutions must provide *Shari'ah*-compliant lending and investing options that are interest-free.
- Risk disclosure: When conducting a financial transaction, financial institutions must inform their clients of all pertinent risks. This covers market risks, risks related to the underlying assets, and any other pertinent variables.
- Utilization of standard contracts: Financial institutions must utilize open and equitable standard contracts. The parties' rights and obligations should be properly spelled out in these agreements.

5.2 Historical Perspective of the *Gharar* Based Transactions

In an open market operations, Investors always offer products, services, business deals and other activities showing it as a transaction accumulating attributes of fairness and justice; for a lay person if something is available on the floor of the market, seems legitimate and ready to adopt it in order to seek profit out of it. Their main focus is only on the business side where every single opportunity availed on the basis of future prospects is clearly enough to be justified as a fair legal activity. Say whatever one wants to; the main driving force in the market is greed for making more profit that defines the suggestive position of the commodities.

The history of these *Gharar* based activities was observed even before the social media wasn't that much active in our society. The *Gharar* based transactions took place in isolation through its working agents that use to float it through their personal contacts and made their social fragment connected to them believe it's a real transaction bearing profits. Another implication that made these bogus transactions successful was the element of non-

¹ Chapra, Umer, REGULATION AND SUPERVISION OF ISLAMIC BANKS, 89, https://www.sbp.org.pk/departments/ibd/regulation_supervision.pdf

awareness of these sorts of activities ongoing into the market by any regulating authority that had a very little check on it. One of these bogus transactions that remind me was known as “dollar jet”. Although its information wasn’t preserved through the mechanism available for recording events but I could gather its process flow from an agent that is very well to me, in fact he is cousin of mine. His name is Mr. *Aljaz Ahmad*¹, who told me about its process flow and how this transaction worked. The idea basically resembles specific Ponzi scheme² based on the formula of pyramid flow of transaction. The process flow of this *Gharar* based transaction is as follows:

- The scheme named *dollar jet* was initiated by a foreign based company in Europe with no office in the native country where it intended to operate by flouting certificates through the passengers coming into the country through air flights bearing these certificates into their personal luggage. The agents use to get these certificates from them without any hindrance, neglecting any fear of check from the local authorities.
- The certificate worked as a tool of block chain that we know in our time. They use to sell it on its initial value to its first agent who then uses to sell these certificates for about 20 dollars each. The block chain completed after they sold it to another four new agents.
- After a person purchased the certificate, it was mandatory for him to sell another four of these certificates through his/her contacts.
- This made him group leader of the other four buyers of the certificates and once he retrieve the total money 80\$. The first circle of transaction was completed
- The agent use to submit the money into the account of the company and the company sent the profit of 40\$ to his agent whom he/she use collect it from the bank as foreign remittance.

¹ Ijaz Ahmad Jan, *interview taken work place: Al Awsa enterprises*, main Baniglal Islamabad. Dated 1st May, 2021

² A ponzi scheme is a form of fraud where the scammer uses the money he receives from "new" clients to pay "profits" to older customers. ... Then the scammer takes only a small amount of money, until he succeeds in expanding the base of his scam, distributes "profits", and eventually disappears with only all his cash.

- Once the profit matured, the transaction also mature eliminating the name of the beneficiary from the chain and creating four new beneficiaries until they fulfill their task of selling next four certificates and so on and so forth.
- This block chain was successful until it became more and more aware by the locals. Eventually became an epidemic as people started hoarding these certificates and sell it on higher prices, claiming higher price of selling than announced by the company and so on and so forth. Even the Banking staff was well aware of the situation and they also cash this opportunity and claimed their share of money for not passing information about the remittances to the higher authorities.
- Consequently the dollar jet scheme flopped leaving many agents suffer the loss and on the other hand company gained capital money in millions from this activity, without any recognized investment and any fear of investigation they had to face.

This early example of era of 90s was just a welcome note over the situation about what our society had to face afterwards. History is evident about the fact that our nation due to their ignorant behavior had to pay very high amount of cost for these incomplete transactions. It is a clear cut example of *Al Gharar Al fahish* as we are clearly unaware about the subject matter for which the funds were collected. Other than that we also don't know about company which was initiating these illegitimate transactions and about where exactly the money is flowing toward? This means that the company core business was unknown. Another fact is that what agent paid for a certificate, didn't contain any initial value of the money over which no profit percentage was paid. This is why these certificates weren't acting like bearer bonds about which we are well aware of, applicable in our current market practices. The bearer bonds main attribute is to accumulate profit percentage over its original price that is paid back with it once the time of its maturity is lapsed. Hence the example of the dollar jet scheme is a perfect example of *al Gharar al fahish*. As its core value is not stored in any sort of subject matter, it will be deemed *Batil* and not *fasid*. Hence it is totally rejected from the view point of *shai'ah*.

5.3 Definition of *Gharar* (Speculation, hazard, risk)

Here parties undergoing a contract are uncertain about the outcome of the contract. This is the core reason of dispute and litigation between the parties. Its literal meaning is to face risk, hazard. It comes out of the Arabic word *taghrir* that means to expose oneself or ones property to jeopardize.¹ *Imam Muhammad bin abi Bakar* says:

«الْغَرَرُ: يَفْتَحَتَيْنِ الْخَطَرُ وَ عَرَهُ يَغُرُّهُ بِالضَّمِّ غُرُورًا خَدَعَهُ، يُقَالُ: مَا عَرَكَ بِفُلَانٍ؟ أَيِ كَيْفَ اجْتَرَأَتْ عَلَيْهِ؟. وَ التَّغْرِيرُ حَمْلُ النَّفْسِ عَلَى الْغَرَرِ.»²

Talking about its technical meaning:

تعريفه اصطلاحاً: اختلفت عبارات الفقهاء في تعريف الغرر ، ويجمعها المعني العام للغرر وهو جهالة ما يؤول إليه عاقبة العقد، ولعل أجود تعريف له هو تعريف ابن عرفه حين قال : قال المازري : الغرر ، هو ما تردد بين السلامة والعطب ، ولما لم يرتض التعريف عرف الغرر بأنه : " ما شكك في حصول أحد عوضيه أو مقصوده منه غالباً."³

A contract is considered to contain *Gharar* if its occurrence is doubtful; it will actually take place or not, thing that is not within the knowledge of the parties or it actually exists or not, acquisition of the subject matter is in doubt and quantum of it is unknown. ⁴ Allama sarkhasi says:

“*Gharar* takes place where the consequences (of a transaction) remain unknown”.⁵

((عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ؛ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ الْغَرَرِ.))⁶
((وَنَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْأَبْقِ وَعَنْ بَيْعِ الْغَرَرِ وَهُوَ مَعْلُولٌ يَعجزُ الْبَائِعُ عَنْ تَسْلِيمِ الْمَبِيعِ أَوْ جَهَالَةَ فِي الْمَبِيعِ فِي نَفْسِهِ عَلَى وَجْهِ يُفْضِي إِلَى الْمُنَازَعَةِ.))⁷

Examples of transactions based on *Gharar* are immense like sale of fish in sea (uncaught), birds in the air (free), fetus in the womb (animal) and unripe fruits at the beginning of the season, when their quality and quantity is impossible to be established accurately.

In a hadith Abu Hurairah (r.t.a) narrated:

¹ Darir, Muhammad Siddiq, *al-Gharar fi al- Uqud wa Atharuuhu fi al tatbiqat al muasirah*, 10

² زين الدين أبو عبد الله محمد بن أبي بكر، مختار الصحاح، المكتبة العصرية - الدار النموذجية، بيروت، 1/225

³ أبو عبد الله محمد بن علي بن عمر التميمي المازري، المعلم بفوائد مسلم، الدار التونسية للنشر، 2/243

⁴ Muhammad Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, (Shari'ah Academy), IIUI.

⁵ Al Sarakhsi, Abu Bakr Muhammad Ibn Ahmad al sarakhsi (483 Hijri (1090 CE)), *Al- Mabsut*, (Dar al-Marif), Beirut, 1978, vol.13, 194

⁶ مالك بن أنس بن مالك، الموطأ، مؤسسة زايد بن سلطان آل نهيان للأعمال الخيرية والإنسانية الإمارات، الطبعة الأولى، 1425 هـ، 4/960

⁷ محمد بن أحمد بن أبي سهل شمس الأئمة السرخسي ، أصول السرخسي ، دار المعرفة - بيروت 2/175

“The Holy Prophet forbade sale by pebbles and the *Gharar* sale i-e undetermined and speculative transactions”.¹

In another Hadith Prophet (may peace be upon Him) said:

“If Allah spoiled the fruits what right would one party have to take the money of his brother?”²

Gharar or uncertainty is found in different cases and shapes that can hurt the parties’ benefits in real time. The two main places where *Gharar* based transaction can be identified are:

- *Gharar* relating to *sighah* (form) of the contract and *Gharar* related to the Subject matter of the contract.
- *Gharar* related to *Sighah* (form) of then contract can be cited in the study of two sale in one, Earnest money (*arbun*) sale, a contingent sale, contracts based on future dates.

Maysir (gambling): its literal meaning refers to getting something quite easily or getting a profit with working for it. The risk level in *maysir* is very high. The player most of the time loses the capital (totally or partially). In the event of profit he/she is liable to gain an abnormal profit ratio while the competitors must forgo the capital (fully or partially) to fulfill the contract. This is again against the principal of injustice: you do no wrong, nor are you wronged you do no wrong, nor are you wronged³. Most common form of gambling prevailed in Arabs before the advent of Islam was through casting arrows on the marks, marked carcass of a slaughtered animal in a bag.

The following Qua’nic verses form the basis of prohibition of contracting under conditions of games of chance. Allah Says:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْاَنْصَابُ وَالْاَزْلَمُ رَجْسٌ مِّنْ عَمَلِ الشَّيْطٰنِ فَاَجْتَنِبُوْهُ لَعَلَّكُمْ تَفْلِحُوْنَ ﴿٩٠﴾

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.⁴

¹ Muslim ibn al-Hajjal Muslim, *Sahih Muslim*, Kitab al buyu, Dar ihly al Turath al- Islami, Kitab al Tijarah , no:1513, vol:3, 1153

² Muslim ibn al-Hajjal Muslim, *Sahih Muslim*, Kitab al buyu, Dar ihly al Turath al- Islami, Kitab al Tijarah, bab wad’ al jawai’ih , no. 1554, vol. 3, 1190

³ ibid

⁴ Verse 5:90

Allah Says in his book:

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدُوَّةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ ﴿٣٩﴾

O Satan's plan is (but) to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer: will ye not then abstain? ¹

In Another place Allah say:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا ۗ وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْأَعْقَابُ ۗ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٣٠﴾

O They ask thee concerning wine and gambling. Say: 'In them is great sin and some profit, for men; but the sin is greater than the profit.' They ask thee how much they are to spend; say: 'what is beyond your needs'. Thus doth Allah make clear to you His signs: in that ye may consider.²

A notable Islamic Scholar states while defining the term of Gambling in these words:

"It is a kind of game where "each one of two contestants seeks to defeat his partner in an action or statement in order to take over property set aside for the winner"³

According to Al Shawkani:

"It is a situation where there must be one of the player gains and another loose."⁴

However the contemporary scholar M.A Sabuni concludes it in these words:

"Every game which results in profit for one party and loss for another". Generally, in modern applications, the act of gambling sometimes referred to betting on the occurrence of a future event."⁵

The term *maysir* is broader than *qimar*. *Maysir* includes all types of gambling, that is, it is more than just a specific game of chance. The term *Maysir* was originally used as a reference to the pre-Islamic darts game where seven people wagered on shares (parts) of a dedicated prize. *Maysir* is prohibited under Islamic law on the grounds that the agreement between the participants is based on an unethical temptation presented by hopes that you

¹ Verse 3: 91

² Verse 4: 219

³ Al Maliki, Ibn al- Arabiyy (D. 543 Hijri), , *Aridat al-Ahwazi*, vol. VII, (al-Qahirah: Dar al-Kutub al-Ilmiyyah, 1934

⁴ Al-Shawkani, Nayl al Awtar, vol. x, al-Riyad: Dar Ibn al-Qayyim, 2005

⁵ Al-Sabuni, al-Bayan Tafsir Ayat al-Ahkam min al-Qur'an, vol.1, Dimashq:Maktabah al-Ghazaliyy, 1980

fully wish in the minds of the participants that they would gain it by chance, without regard to the possibility of loss.

Talking about other terms that are close to *Maysir*; *Jahala* indicates ignorance or ambiguity regarding the subject of sale or price. In other words, it is a lack of knowledge about the details of an object, event, or action, knowledge about its occurrence. For example, from a *Hanafi* perspective, if the issue of sale or price (*thaman*) is associated with great ignorance, which leads to a dispute (*munaza'ah*) between the two parties of the contract, then the sale becomes defective (*ba'i Fasid*). On the other hand gambling is not based on *jahala* as the initial price or bet is well known to the parties specified to take part in it.

5.4 The rationale behind the prohibition of *Gharar*

The rationale behind the prohibition of *Gharar* is to ensure the full consent and satisfaction of the parties to the contract. Full consent can only be obtained in the case of full disclosure and transparency and through full knowledge of the contracting parties of the corresponding values that are intended to be exchanged. Avoidance of *Gharar* protects against unexpected losses and possible disagreements about qualities or incompleteness of information.

Instead of *Gharar* based transactions, Sharia promotes the principle of profit and loss sharing between banks and entrepreneurs as an approach to encourage brotherhood and cooperation in business relations. Mutual risk sharing can help absorb the weight of the loss by sharing it equitably among all parties. However, risk and uncertainty are conditioned on the adequacy and accuracy of the information to make reasonable estimates of outcomes. There can be no potential risks and uncertainties in contractual obligations. Some of the other rationales are as follows:

- To avoid the discrepancy in prices of the goods
- To avoid the uncertainty of the obligation
- To avoid poorly anticipated loss and disputes regarding quantity and quality of goods as well as payments due.
- To avoid unequal exchange.
- Protecting the weak from the exploitation of the strong.

- To ensure that the trading partners know exactly the corresponding value which is given in the transaction because *Gharar* means not knowing the value of the commodity purchased.
- To ensure that one party does not have an unfair advantage over the other as Islam seeks to ensure justice, fairness and equity in all business dealings.
- Not to compel the seller to illegally consume or erode the property of others, especially if it is assumed that the buyer cannot possess the traded goods.
- To avoid hostility, in this case a wide range of risky transactions becomes effective.
- To avoid ignorance or non-existence. This means a restricted range of valid transactions.
- To avoid contracts that involves fraud and deception. This may later lead to disagreements between the two parties.

The outcome of all the above points mentioned is the unrest that the society has to go through.

5.5 Patwari System: A main source of Gharar through fake documentation

If we are not giving direct access to the information of the assets to the customers, means that we are again creating an environment where one is dependent on the system which will surely exploit its position which may lead to concealments of facts declaring wrong figures of sale or purchase, so that the considered value is undervalued. This problem with our financial system is about the excess to information that is considered to be the write of a citizen in the developed countries. In this era of internet, people, especially in the developed country have made excess to information easier to the extent that one can easily excess it while sitting in his/her drawing room and using laptop for the purpose. Unfortunately this level of ease is still a dream in our country, especially when the information is linked with the public sector organization. Take a look at the *Patwar khana*. The *Patwari* is the sole responsible of registration and transfer of the land through the execution of the *fard* on the name of the beneficiary. These *patwaris* work under the *tehsildar* and normally regularize three to four villages.

The system of land recording in Pakistan is as old as the Mongol period of reign. The Mongols established a strict system of revenue collection under the Emperor Akbar. It was

this record of the land through which taxes were collected over the agricultural land of the owner for the governor of a specific area by agents authorized to do so. These owners of large spaces were often called *zamindars* (owners) which even now days in the area of Punjab are recognized with the same name. They were directly in contact with the agents for the purpose of the maintenance of land record that had to be altered due to the sale and purchase of it. These Realtors were given real estate or *jagirs* as gifts in exchange for their services to the ruler such as provision of an updated land record, tax collection over the actual position of the land record, sale and purchase of it, demarcation of the state land, mapping of the area under their supervision, provision of troops for war and so on and so forth.

This revenue collection system on the basis of land record was then improved and consolidated by the British administration in India. Surveys were conducted on a large scale to demarcate the boundaries of individual land assets. Property and other taxes were redefined to manage day-to-day affairs of the British Government. After the independence from the state of India, a new system named PIU (Produce Index Unit) was introduced. Agricultural land was set within the framework of a comprehensive survey of land units based on the PIU - a measure of land based on taxonomy and productivity. The objective of this exercise was to introduce a fair and equitable agricultural tax system i-e the low-value rain-fed plantation of the PIU should not be taxed equal to the irrigated land in the channel with a higher PIU value. Unfortunately, PIUs was last updated in Pakistan in 1959 and is still a bone of contention among the organization as its case of legalization is still pending in the court. Meanwhile the *patwari* system, at least in Punjab, completed digitizing record of the land registry and establishing the Punjab Land Registry Authority. In Sindh, the Land Registry was updated by the LARMIS Revenue Board. Centers have also been established where the computerized land registry can be accessed, confirmed and approved but again the record is only accessible by the official staff managed by the *Patwariz* themselves which definitely shows the unwilling of solving of the problem by the Land revenue department by not letting the public directly access to the information. The corrupt mafia involved in this national crime was the unveiled by a news agency which confirmed the fact that the local staff of the department was doing this deliberately. The International Crisis Group's 2010 reported that Reforming Pakistan's Civil Service, blames

provincial revenue departments for inadequate checks on patwari, stating that they lack the resources and will to hold them accountable. The report argues that the system of land revenue improvement requires a complete cleansing of the revenue departments from top to bottom.¹

These *Patwaris* know that they will be largely ineffective after the information will be floated to the nationals of the country. However, they are not forced to leave work but retire after the completion of working age. The fact that this digitalization should have ended the problem but it seems that until and unless the game is in the hands of these *Patwaris* and *Gardawars*, Public will definitely face the same problem of bribery, tempering of the record, unwanted delay due to long and lengthy process etc. The fact is more elaborative in the report by news agency:

“The report, quoting a revenue officer, says that “there are major vested interests at work in preserving the existing system of land management. The landed elite, many of whom are also politicians sitting in national and provincial legislatures are in collusion with the patwaris, who grant them preferential access to land and other privileges in exchange for bribes and protection from prosecution”.²

In fact the whole drama of digitalization of the land record is just a projection of fairness and transparency. Recently, the chief justice of Pakistan passed his remarks about this corrupt system of *Patwari* as dens of corruption. The Supreme Court has debarred Patwaris, officials responsible for maintaining land records, from transferring land in urban areas. The Chief Justice criticized the corruption within the offices of Patwaris, stating that successive governments have not fulfilled their responsibilities. The three-member bench, led by Chief Justice Mian Saqib Nisar, is currently hearing a case on the functioning of Patwar khanas in urban areas.³

Similar to the above fact, another face of these agents of *Gharar* and how it's working in our country is predominant in the form of non-declaration of assets. While the current government is fighting against the heinous crime of tax evasion prevailing in every nook and corner of the market in whole of the country, it seems that business community has a

1 DAWN, *Saying goodbye to patwari culture*, April 30, 2012, <https://www.dawn.com/news/714502> ,
Retrieved on 18th April, 2020

² Ibid.

³ Business recorder, *CJP describes 'Patwar khanas' as dens of corruption*, Jan 4th , 2019, <https://fp.brecorder.com/2019/01/20190104437060/>, Retrieved on 19th April, 2020

strong and tricky relation with the tax collecting agencies like FBR where they find new means and way of not letting the government achieve in their task of flourishing the culture of taxes in the country through documentation of the un declared assets and income. Recently tax amnesty scheme was announced for the asset declaration for the last time and FBR warned the business community of total confiscation of the undeclared assets. However the results were not so overwhelming but not to be under estimate, more than one hundred thousand people have been recognized as filers by an increase of 5%.¹ And now the government is at the verge of the biggest crack down in the history of Pakistan against its own tax collect agency known as FBR.

The Federal Board of Revenue (FBR) has announced a massive reshuffle of over 2,500 officials to improve efficiency and break the link with businesses. The move is part of the FBR's efforts to collect Rs5.550 trillion in fiscal year 2019-20. The move follows the successful completion of the tax amnesty scheme, which has led to the FBR targeting those who remain outside the tax net. The first phase of the reshuffle involved 2,150 low-paid staff of Inland Revenue, with the maximum number of employees transferred in Karachi, followed by 565 in Lahore, and 357 in Islamabad. The move is the first of its kind in the FBR's history. al story of our society isn't appreciable at all. In the very first place we are deceiving ourselves and not someone else. These deceptions have created a trust deficit in our society and whatever is the outcome of that deficit conceived, it's the society that had to pay indirectly for it in terms of failures to constitute a system that's stronger from the inner side. This inner view of the financial story of our society isn't appreciable at all. In the very first place we are deceiving ourselves and not someone else. These deceptions have created a trust deficit in our society and whatever is the outcome of that deficit conceived, it's the society that had to pay indirectly for it in terms of failures to constitute a system that's stronger from the inner side. Quran talks about this attitude in these words:

They [think to] deceive Allah and those who believe, but they deceive not except themselves and perceive [it] not.²

5.6 An Islamic Approach towards the Nature & Problems of Cryptocurrency

¹ The Tribune Express, *FBR witnesses biggest shakeup in its history by shahbaz rana*, Jul.06, 2019, <https://tribune.com.pk/story/2007188/2-fbr-witnesses-biggest-shakeup-hi/?amp=1>, Retrived on 20th April, 2020

² Verse 2:09

The financial recessions that hit the global markets over the past two decades has surely let the financial specialist think over about the fact that the medium of transaction like paper money or fiat money has certain flaws that are responsible of cause. Surely, the attributes of the money that promises the stability must inculcate value like it must have a stable value; it must be durable to the extent it couldn't be easily destroyed; its acceptability must not be challenged; its divisibility maybe helpful for trade purpose and so on and so forth. In pursuit of attainment of such medium of exchange, the financial world must seek lessons from the past incidents of financial recessions as mentioned earlier. Take a look at the current expected recession that is going to hit the economy of the world due to the pandemic corona; IMF reports that the financial market would shrink by 3% of the total in the year of 2020. The lost money clearly indicates that the current mediums of exchange are not fit to call as Islamic money because of the fact that it does not fulfils the objectives of *Sharī'ah*; especially when it comes to glorious principal of preservation of money.

Nonetheless, the system of economy of the world is evolving day by day. Most of the technological systems, financial operations, banking transactions and other old fashion money related concerns that were interdependent and manually handled are replaced with certain acknowledged and Fast Track Technological Inventions like plastic cards, mobile based transactions and banking transactions based on the use of internet where a single click can make you feel free transacting the amount at your will. Moreover the demand of concept of an ease in life style and a fast track economy has led the world to simplify the clerical jobs like filling the vouchers manually, collection of hard cash money for the sake of delivering it to the beneficiary and so on and so forth. This whole innovation has been bestowed upon the world by the Research and Development departments dealing with the IT based financial transactions. The R & D Departments are mostly active in the Western World worthy to call themselves as trendsetters. Their basic goal is to centralize the financial information in a manner that the markets may connect with each other globally. This is due to the fact that they can foresee the upcoming challenges of globalization of the economy of the world. This is why they link their perception with a universal concept of New World Order where world has to integrate with each other in every aspect of life especially in the larger framework of economic system that is totally integrated regardless of boundaries and variation in the currency paper. Surely it's the Western World that leads

the change. On the other hand Muslim world is on the receiving end. It has only one duty on its part and that is to make sure that their systems are compatible and adaptable with the developed world to ensure that they receive the benefits of their research and developmental work.

This Technology is a tool that can connect the horizon of the world based on the imaginary power of command and control of the system that may be helpful and meaningful. We see the people connected to Facebook, tweeter and other social data based connecting Medias that synchronize the actions and thinking of the people around the world on certain common needs like ease of communication, transfer of information with each other, shortening the distances of the corresponding users, neglecting man-made boundaries and so on and so forth. Here, it is important to note that one can only benefit from these technological advances if he/ she follows the terms and conditions based upon the policies of the initiator of that particular tool of technology that is offering some social service to the community through their interface where one can easily open his/ her account. In this way the integrated systems empower its users on a local level without any interference of any other organization or authority. Surely it's the concept of free will that is helping the humans living on the earth to build an ideology that is far more superior with less supervision and control which was the main cause of limiting the world to go forward due to its possessive nature.

What is cryptocurrency? : The very concept of oneness in thinking and integration of thoughts and actions which are based on the usage of technology is also used in the concept of cryptocurrencies. Dr *Robby Houben* in his article defines the term of cryptocurrency by mainly affiliating it with the technology:

“Establishing a definition of cryptocurrencies is no easy task. Much like blockchain, cryptocurrencies has become a “buzzword” to refer to a wide array of technological developments that utilize a technique better known as cryptography. In simple terms, cryptography is the technique of protecting information by transforming it (i.e. encrypting it) into an unreadable format that can only be deciphered (or decrypted) by someone who possesses a secret key. Cryptocurrencies such as Bitcoin are secured via this technique using an ingenious system of public and private digital keys” (Houben, 2015)¹

¹ Robby HOUBEN, "*Bitcoin: there two sides to every coin*", (ICCLR), Vol. 26, Issue 5, 2015, 195

Talking about the term itself has been defined in different ways associating it with the attributes most likely. Some define it with the attribute of its affiliation with the technology while others say the main feature is its affiliation with the internet and ease of doing business. *Banik* who is senior research scholar however associates security of the currency as its core feature. He defines the term in these words:

“A cryptocurrency is a digital or virtual currency that uses cryptography for security purpose. A crypto currency is difficult to counterfeit because of its security feature. A defining feature of a cryptocurrency, and arguably its most endearing allure, is its organic nature; it is not issued by any central authority, rendering it theoretically immune to government interference or manipulation”.(Banik, 2018)¹

Concept of virtual money: The concept of virtual money was successfully started on 12th of January, 2009 by its inventor named *Satoshi Nakamoto* who exercised first cryptocurrency transaction from the company name Bitcoin Treatment (BTC). They sent 10 BTC to the coder named Hal Finney. It was year 2011 in which the first ever transaction took place for acquiring a pizza worth 30 US dollars. *Satoshi Nakamoto* died in 2013 and what he left behind was the world's first encrypted currency based transaction. In the later times to come Bitcoin became more popular among its users who saw how important it was for the purpose of daily routine financial transactions (Brito, 2013). In the year 2007, the value of one Bitcoin currency was equivalent to the value of one US dollars which later in 2011 rose up to 7,576.24 US dollars. After the success of the Company, Bitcoin, many other followed the trend and jumped into this block chain based technology. Companies like *Litecoin*, *Pakcoin*, *OneCoin*, *DasCoin*, Pay Diamond or Initial Coin Offerings (ICO) tokens are well integrated into the market of the virtual money/ cryptocurrency.

Features of Cryptocurrency

This technology has achieved an ease in the financial transaction to the extent that it may substitute the ongoing transaction system, if yes, then we seriously don't need any interdependency tools like banking based transactions; plastic cards, paper currency etc. that actually play the role of the third party known in the Islamic Financial Jurisprudence

¹ G.G. Banik, Cryptocurrency: *Its Risks And Gains And The Way Ahead*, (IOSR Journal of Economics and Finance (IOSR-JEF)) e- ISSN: 2321-5933, p-ISSN: 2321-5925. Volume 9, Issue 2 Ver.1 (Mar-Apr .2018), PP 38-42 www.iosrjournals.org , Retrived on 15th April,2020

as a *hawala* transaction. It uses the concept of peer to peer transaction which is based on the connection of a person directly to another person. This means that the system will itself take place of being a guarantor as a third party without any manual interference generating multiple copies of the undergone transaction at several encrypted destinations which works as a proof of that particular transaction.

Another feature of the cryptocurrency is that it is digitally encrypted that means it works and passes information in the shape of binary codes to its user which is nearly impossible to hack. This is why this currency is impossible to be hacked or stolen by making it available instantly to its users.

Moreover, the first ever technology that uses the above characteristics was named *Block Chain Technology*. Under the *Block Chain Technology*, the information of the transaction is recorded under the distributive ledger technology (DLT). So what actually block chain does is that it records the data of a transaction that if once recorded can never be changed or forgotten and at the same time everyone can retrieve it and it is open for the public access.

Drawbacks of crypto currency:

As it is said that there is always room for improvement; the concept is rather new and possess some uncontrollable features that maybe question from the *Sharī'ah* point of view. However, without going into detailed discussion about its mechanism of working, there seems to be many related drawbacks in this transaction which at least make it fall into the transaction based on the effects of *Gharar* (Uncertainty) and other impermissible acts of *Sharī'ah* rules in it:

- No third accredited party intervention makes the transaction guarantee less. In contrast with the paper money which is a device of payment that is backed by its corresponding federal reserve and could be easily documented through the banking transaction, receipt system, stamp paper and so on and so forth; the transaction carried out through cryptocurrency is said to be less complicated. However, Qur'an is strictly against this freewill as humans must go for a proper/ legal documentation of the transaction for which it's performed. Even a non-trade based transaction like giving some loan on debt to someone; Qur'an makes humans realize the importance of documentation in these words:

“O you, who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice”¹.

- If this is the level of a careful attitude required for any transaction of debt then for the proper trade transaction, it should be more carefully documented where the urge of profit motive is at the front of all other urges. We can't let go all the financial and economic system built by the humanity on the name of the technology and ease.
- The privacy in the money matter is a core concern of any person; the issue must be properly dealt with, which is totally compromised as the technology is open for the access of information to everyone from anywhere.
- The basis of the cryptocurrencies is to lessen the dependency of human on the corporate sectors and government sector; so that the unnecessary taxation and other duties that are always hindering the smooth transaction must be stopped as they are the cause of inefficiency and extra burdensome. So, it is important to get rid of this colonial approach where it is just like feeding a bear who always asks for more. By following a financial system of a country we opt to choose a certain paper currency that keeps us bound to obey rules and regulation beyond one's will. On the contrary, if this happens, it will create a catastrophe for the governing authorities because the whole system of taxation and money printing will fall and the centralized financial system will no more prevail in the countries. Hence there will be no more scope for the monetary or fiscal policies for the government at all. The consequences of the matter are very high as the power of decision, especially in the money matters will be no longer effective due to the charge taken by the technology itself. Hence it must be understood that the scope of the technology should be understood in a very mannered and proper way for the sake of facilitation of the human style of living and not for the technology itself. Transferring the power of decisions to a technology which was initially bestowed by the Almighty to the humans will definitely compromise the basis and purpose of creation of the humanity itself. At the same time it compromises the objectives of *Sharī'ah* as well which only

¹ Verse 2:283

entitles the human for making the decisions in the money matters. No doubt the selfishness of the human beings have made the world an unaffordable place to live for the poor communities of the social fragments but it's the human again who will undo this evil through its authority without imposing a technology which can't even judge the feelings of the humans. Even the cryptocurrency doesn't have control over itself as it is run over software made by its initiators. Hence the technology is a big question mark for itself and for its very purpose for which it was introduced; ease of doing transaction.

- Islam only recognizes those transactions that are well asset backed. Cryptocurrency doesn't bother about it as its buyer doesn't buy any physical asset. These crypto currencies are a form of virtual money that exists only in the virtual world. Hence concept or the basis of sale and purchase is missing from the whole idea. The currency may become a medium of exchange but it can't be treated like a commodity which could be sold or purchased. Some time it is felt that the cryptocurrency only recognizes the person who buys it. It means that it is treating the human as a commodity and it's calculating the worth of that particular human. The phenomenon is still untold and unclear.
- The law of inherence isn't applicable on the current cryptocurrency structure. This means that if the buyer of the cryptocurrency dies, the shares of the cryptocurrency will also forfeit with it or transferred to another person who's name maybe mentioned as either or survivor. Hence the responsiveness of this virtual money is also limited in this specific problem and many other alike extreme cases which can't be handled and sorted out without his/her (owner of the cryptocurrency) intervention for the sake of transferring it to other person or entity. The point made here is that if we accept cryptocurrency as a medium of exchange we need to sort out the answers of the problem within the framework that *Sharī'ah* provides us.
- The speculative nature of the cryptocurrency shows the defect in its financial engineering which doesn't sit in the parameters of the values of the principles of *Sharī'ah*. The proof of the argument is self-evident. On April 06, 2018 Bitcoin was traded at a value 6464.26 US dollars, this is significant record of

about 66% drop in the value of the unit price. The drop is in the comparison of its highest value which is 19,780 US dollars which is recorded in December 2017. The current market value is of the unit as today (May 28, 2020) is 9,140.40 (approximately) US Dollars. If the speculation is at that rapid rate, the economy of the world will stagger panic and impossible to retrieve the losses incurred in an event of crash of the market due to the destabilization of the virtual currency.

- The crypto currency isn't easily accessible and an expensive tool to buy. Say for example how many of us even afford to buy a single unit of cryptocurrency that as expensive as seven thousand plus US dollars? How will one be able to introduce the virtual currency to the illiterate class of our society which is more than 50% of the whole population? Moreover as discussed earlier the variation of the rate is so rigorous that won't be considered a good idea to make it a medium of exchange because one need to a stability in it for the sake of transaction purpose. Also to follow the rate of the cryptocurrency that is changing every now and then, will be again considered a cause of a constant headache for determination of a single rate against other medium of exchanges. We see that to keep our rupee stabilized; we keep it entangled with the US dollars in its denomination. Unlike this virtual currency is designed to flout freely without caring how its volatile nature can affect its recipient.

Pakistan's stance on cryptocurrency

Pakistan is one of the countries who have initially banned this sort of virtual concept of money. It had banned all sorts of activities regarding this currency like its advertisement, its trade and other related activities to it. The local newspaper records the fact that The State Bank of Pakistan (SBP) has banned cryptocurrencies in the country, despite Bitcoin's significant rise in value in 2017. The SBP stated that virtual currencies like Bitcoin, Litecoin, Pakcoin, OneCoin, DasCoin, Pay Diamond, and Initial Coin Offerings (ICO) are not legal tender, issued, or guaranteed by the Pakistan government. The SBP has not authorized or licensed any individual or entity for the issuance, sale, purchase, exchange, or investment in such virtual currencies/coins/tokens in Pakistan. All banks, development

financial institutions, microfinance banks, and payment system operators are advised to refrain from processing, using, trading, holding, transferring value, promoting, and investing in such virtual currencies/tokens.¹

The decision of the State Bank of Pakistan is a right one at least in my opinion. We shouldn't jump into the pool without any preparation. Before initiating any idea one must cater all sorts of questions that arise from launching it and must provide all possible logical conclusions of all the outcomes from it. One must cross verify the idea and pave it on some very strong footings. However, having said that, we can't just forego the idea of virtual currency because it carries some very influencing features in it and also because we fear from it and the change that will occur from it. Cryptocurrency is now a reality and ever-increasing pressure over the countries that are hesitant to adopt the idea from financial committees is also a matter of concern. The economy of the world has to be synchronizing one way or the other whether we are ready or not. A news agency covers the story that Pakistan is implementing new cryptocurrency regulations to enhance its financial crime combat record. The move aims to combat money laundering and terrorism financing while regulating digital currency across the country. The move is partly a response to FATF's concerns about cryptocurrencies' role in controlling terrorist financing.)²

Analysis of cryptocurrency from Islamic perspective

The esteemed class of religious scholars in Pakistan is again referring their opinion about the issuance of the cryptocurrency in a mixed way. *Maulana Mufti Muhammad Saeed Ahmad Khan* and *Dr Javaid Ahmad Ghamdi*, renowned Islamic Scholars and publically affiliated figures, are highly in the favor of cryptocurrency. In fact the former one urges to accept this medium of exchange as soon as possible. *Mufti Saeed Ahmad Khan* seems to be bold enough to accept the challenge but implementing it then and there is a big question mark as to how we can forgo all the *Sharī'ah* related issues with a single stroke of a pen. This again looks like an ignorant way of responding to an issue as a list of *Sharī'ah* related

1 The Express tribune, *Pakistan bans cryptocurrencies*, 6th April, 2018, <https://tribune.com.pk/story/1679446/2-pakistan-bans-cryptocurrencies/> , Retrived on 21st April,2020

2 Cointelegraph, *Pakistan Plans New Digital Currency Regulations Following FAFTA's Urging by By William Suberg*, April 01, 2019, <https://cointelegraph.com/news/pakistan-plans-new-digital-currency-regulations-following-faftas-urging> , Retrived on 22nd April, 2020

doubts which have been questioned from the Muslim scholarly audience who care for the future repercussions of the issues. However, their video of discussion is available at YouTube as well and it's easily retrievable. While *Maulana Mufti Taqi Usmani* totally rejected the idea by saying that it doesn't have the basic attribute for calling it as a medium of exchange as it doesn't hold any intrinsic value and considered it as a speculative tool that will destabilize the economic system and its concrete values. Although *Mulana Mufti Taqi Usmani* is a well renowned and an iconic personality but his response to the issue is far later than the time the issue evolved. Meaning thereby it seems like he was sorting the issue to be settled down and then he would be in a better position to pass his verdict and opinion on this diverse issue. His fatwa in the shape of an audio speech came to the market after the Bitcoin crashed. This shows the inclination of the literate and experienced scholar towards the driving forces market and not the merits of the issue itself. His audio is easily retrievable on the below link on the social media channel. However, whatever their response is, crypto currency is a real time product that will obsolete the former modes of currency and they can't run away from the real world developing situation. However, more moderate and practical approach in this regard is that of an eminent Islamic scholar Dr *Muhammad Ma'Sum Billah* who not only welcomes the idea of this virtual currency but also accepts the challenge of neutralization of the issues that may look like a cause of *Shari'ah* offence as discussed earlier. Moreover he says that the main issue is to synchronize the whole transaction in accordance with the Islamic Concept of general rules of Permissibility under the realm of *Maqasid Al Shari'ah*. His view about the resolution of the issue is more related to its compliance. He suggests that the product needs to be reformed in the Islamic perspective of acceptability which requires issues like operational mechanism, standard planning and strategies, legitimate objectives and manifesto, documentations and manuals, policies and guidelines to be resolved and financial engineering for the sake of compliance of the product at par with the real world view about its composition.

According to his thinking cryptocurrency should be introduced in the Muslim world and elsewhere through *Shari'ah* currency management. By acknowledging its effectiveness, he says that this may eventually lead to the fight against poverty, unemployment and the local economic crisis as well as global environmental disaster

because of the fact that the corporate world itself is regulating the money issues for the enhancement of its business and finally having the lion's share of the market through the concentration of wealth. *Sharī'ah* currency management, with its universal character will be more benefiting to the human race, regardless of religion, race, status, sex or color and even nationality.

The other point that *Mohammad Ma'sum Billah* suggests is that the Islamic cryptocurrency must cater the values related to the Islamic ideology. For the this reason he advocates to cut 2.5% of zakat over the total value of the share for the sake of seeking benefits for those who are the deprived sect of the society. This idea in a larger realm of thinking won't work because the very existence of the idea of the cryptocurrency is to stop regulating the money in any way possible and to up bring the real value of the money. The idea however may be workable if it thought and worked other way round by involving regulation for those who volunteer to give their zakat to the government or at least find him/ herself in lined with the ideology of the Islam related to money matters. After all Crypto currency is all about setting the humanity free from the unwanted and unethical influence over the wealth in any shape or form. We Muslims must stick to the idea with its core value, if we want to succeed in attaining the market grip on it so that we may be the one to derive the world's order to our convenience.

Suggestions: Having said that, as a pure Islamic Ideological Thinker, the sensitivity will always be there to not let go the whole transaction fall into any aspect that may contain any ambiguity (*Gharar*). For this reason Islamic based ḥalāl cryptocurrency must carry some suggesting values or attributes and for this reason the *Sharī'ah* currency model should be based on the following dimensions and Philosophy:

- The model must be run on the basis of Principles of *Sharī'ah* approved modes of finance like *Al-Bay-Wa-Al-Shirah* (trading contracts), *Musharaka* (partnership) based contracts, *Mudharbah* (co-partnership) contracts, *Hawala* (exchange based) contracts, *Bai'-al-Sarf* (money exchange) contracts and likewise other secondary modes of finance. This will need a good financial engineering keeping in view, the core values of these modes of finance.

- The overall operation of the model should be facilitated with a hybrid structure compliant with the provisions of Islamic law. The implementation of such model can't be achieved until and unless it's purely asset backed.
- The company must be supported by an asset of Equal Value Display and must contain an initial currency value at least, while its products and services (Business operations) depend on assets (currencies / tokens). This will help to cope with the speculative nature of cryptocurrency which is highly unmanageable as the past events confirm the same. The problem, however, is that once you buy the virtual currency, you lose the real or unit value of the asset or service against which the unit of the virtual currency is generated. This means that now it is the trend of the market of the virtual currency that will determine the value of the asset or the service against it based on the principal of demand and supply. In my perception the unit price of the cryptocurrency must be fixed against the other leading currencies and time to time regulated in real time. This will help to control the volatility of the cryptocurrency by not letting its users to play with it for the sake of earning abnormal profit. In other words principal of hedging may be applied, as applied in the market to control the price of the commodities and goods that are used in daily routine not letting someone play with it due to the price fluctuation of such commodities, whatever may be the reasons like hoarding, scarcity and excess in production etc.
- Total process must be facilitated through legitimate and divine principles keeping in view that the *Maqāsid al Sharī'ah* are fully complied. The very structure of the Islamic Theology is entangled with its own preferences that confirm that the ideology of the Muslim culture is intact. Otherwise we may be deeply deprived of the fortunes of what the Almighty has bestowed upon the Muslims and on the non-believers as well.

Here it's important to note that these ideas that are creating limitations due to the Islamic values which will only work for those who believe in it; others must be set free from it, transacting on the normal policy just like adopted by other makers of it. Hence an Islamic ḥalāl cryptocurrency will always serve as an optional tool for those who are in thirst

of acquiring it. The rationale is simple; for the non-believers living in an Islamic ideological state, they may consume pork or alcohol without fearing the state taking action against them and for those who claim to believe but still want to pursue the conventional way of life must be given a chance to have it because if we won't entertain them, someone other than us, out of our periphery is offering it with the help of technology that facilitates online transactions.

The above ideas must be synchronized and the organization must develop a standard product for the Islamic cryptocurrency. Hence It is, therefore, important that the regulatory standard of the financial transactions based on cryptocurrency must be introduced, especially the AAIOFI standards and others to post a Regular Standard on the Topic for the purpose of understanding the core idea with its application showing how it may be workable in the economic system of the world with the *Sharī'ah* perspective, which is again first and last option of regulating any issue in the eye of a true believer.

Talking about the approach that seeks reality, UAE is one of the Progressive Islamic Countries that are thinking ahead of all the other Islamic countries in this regard and dreams to become one of the hubs of this technology. Not only it has established hubs for the cryptocurrencies but also made its local involve in this business. The idea is also to make the cryptocurrency more acceptable in the eye of *Sharī'ah* law. A company named OneGram is known creating an idea of physically asset backed cryptocurrency which is backed by the commodity of gold. The company perceives that it will resolve the *Sharī'ah* issues pertaining to the issuance of the idea of a cryptocurrency. The story says:

“A local start-up company founded last year, OneGram, is issuing a gold-backed cryptocurrency — part of efforts to convince Muslims that investing in cryptocurrencies complies with their faith..... Each OneGram cryptocurrency unit is backed by at least a gram of physical gold stored in a vault. The idea is to limit speculation.”¹

The effort clearly indicates that only a progressive thought can prevail in a society that is promising to move towards advancement and competitiveness for the sake of survival in this world that is surely based on the ideology of cut-throat-competition and according to this rule only the initiators of the idea are in a better position and worthy to be followed as

¹ Daily Times, Business, *Cryptocurrency traders use old gold in drive to draw Islamic investors*, April 9, 2018, <https://dailytimes.com.pk/225557/cryptocurrency-traders-use-old-gold-in-drive-to-draw-islamic-investors/>, Retrived on 25th May, 2020

they will be considered to be the trendsetters. Although, progress of *Ummah* on this issue is again at a pace of a snail which is basically due to the lack of interest in the R&D Department, this makes us the market followers; well deprived from the lion's share of the crypto currency as a service provider. Mostly the audience we may attract will be the true practicing Muslims who feel like the *Shari'ah* backing is a must on this issue.

Finally talking about its justification to adopt as a substitution for the paper currency, it has more or less same logic that is working for the later. Although both the sides that are holding their remarks on the legality of the cryptocurrency are heavily equipped with the *Shari'ah* based arguments but when it comes to the concept of need and *Dharurah*, it always wins. Another Islamic way of thinking comes from the *Shari'ah* maxim that states the idea to opt what's less harmful between the two actions: أخف الضررين. Then another question arises that what would be the less harmful between the two ways or actions, the answer is again stated in one of the Hadith of the Prophet (May peace be upon him). The Hadith is narrated by *Sayeda* Aisha in these words:

“Whenever Allah's Messenger (Peace Be upon Him) was given the choice of one of the two matters, he would choose the easier of the two, as long as it was not sinful to do so, but if it was sinful to do so, he would not approach it. Allah's Messenger never took revenge (over anybody) for his own sake but (he did) only when Allah's Legal Bindings were outraged in which case he would take revenge for Allah's Sake.”¹

So, the tradition of the Prophet of the Almighty clears that He was never reluctant to opt new ways in handling situations and always led himself to the easier options to adopt. Until and unless we are not in a position to create independent financial markets, it is better to follow the way that's at least in the favors of the *ummah* and for the sake of attainment of bigger good.

Muslims have always adopted trends whatever the world has offered them, regardless of the outcomes of the consequences. Same is the case with the cryptocurrency, it ought to work and establish itself and obsolete the older system of the paper currency. The eminent scholars are rightful to share their *Shari'ah* related observation on the upcoming more

1 Imam, Al Bukhari, *Sahih Al Bukhari*, book 61: Virtues and Merits of the Prophet (pbuh) and his Companions , Chapter 23: The description of the Prophet (saws), Hadith 69, <https://sunnah.com/bukhari/61/69>, Retrived on 30th June, 2020

sophisticated and easier to adopt phenomena, but the world will only listen to what is more rational, facilitating and reasonable to adopt.

Final contentions and conclusion

The above reasoning may only be workable if Crypto currency can replace the prevailing financial tools of trading. Following may be the characteristics of the crypt currency that make it a step ahead from the Fiat/ paper/ traditional currency:

- Unlike Fiat/traditional paper currency, Crypto or virtual currency is issued by an independent source that can't be regulated by the regional authorities. This characteristic may have some drawbacks in its determination of value and acceptance related issues but in the long run this characteristic will be a major breakthrough in making a universal currency based on the idea of perfect competition. This feature is assumed to be the key towards creating an environment where values of assets will be determined in its original value.
- As the cryptocurrency based companies are basically providing a service to the market which will gradually takeover other form of currencies, it will side by side disturb other financial sectors as well. Take an example of the banking sector; the whole system is based on the paper currency. The physical movement of the money will no more be required which means that it is the click of the button that matters most. In the realm of thought, one can easily guess that the technological change in the financial based transactions will totally shift the paradigm towards new era of a much more need financial world that will serve the humanity and not the financial organizations. This means that it is the technology that will take over the new system where there isn't any need of filling the receipt; there will be no need of opening an account and so on and so forth. Simply, banking system won't be required for the purpose of day to day dealing. So, it would be better for the financial systems of the world to align their systems based on manual transaction to build software for the smart systems that are more compatible to the upcoming technology where they can actually find a reason for their existence in the market.

- Crypto currency proponents argue that it is more reliable than paper money because it is resistant from the possibility of inflation that has been known to hurt paper currency for the sake of determination in its value. For example, with a maximum of \$ 21 million to spend on Bitcoin, a limit is marked. Hence, there is only a limited supply of how much this currency is produced, making inflation impossible. This contrasts with Fiat funds, which can be printed infinitely at the user's will to expense, leading to higher prices and an overdose of paper production contracting the value before its printing. It is worthy to note that cryptocurrency is generated through a complex method of algorithm that restricts and limits its generation of it on the large scale and if done so, it requires a heavy system to compute because after the generation of number of crypto currency based coins, the process will be more complex to handle.
- The economy of the world is now documented in an unprofessional way where powerful is alleged to control the economies of the world by restricting the trade facilities just workable in their currencies like US dollars and Euros. The one who negates the idea is left alone in the world. It is also a form of slavery that the world faces now. The idea of equal opportunity on the basis of acknowledgement of other resources can only be fulfilled if the cryptocurrency is compulsory applied in a worldwide canvas of trade. If the technology can bring ease in other spheres of life than why it isn't given way in the prevailing economic system.
- By negating the encryption industry, banks are clearly missing the opportunity to make more money in the future, other than their existing customers. While industries around the world are adopting Block chain for data transfer and logistical support purposes, the pressure is mounting on the banking systems to do the same. However, in the current scenario, banks continue to adhere tightly to outdated and rigid methods of financial transactions in which a lot of clerical job is involved. This persuasion of the old method is now creating a gap in the investor-bank relationship as the later isn't able to meet the current challenges due to the advancement in the sector of IT and other technological influences. Undoubtedly, banks began to falter with the change of time.

Branches continue to close, and banks are making desperate attempts to create newer services to meet the needs of their customers. The paradox is that while banks struggle to adapt, they stubbornly stick to their old protocol, refusing to include the crypto industry as a substitute to the ongoing financial system, which may be exactly what the world is going to adopt in future. Moreover, Banks are working to assist Giant Corporates Clients by arranging huge amount of loans from the depositors. This is a capitalist state of mind where wealth is concentrated in a few hands abstaining large group of people to benefit from it on the grounds of mutual cooperation to build large enterprises, ignoring the glorious principals of equal and justifiable level playing fields for all.

- It is worthy to note that some of the companies that provide crypto currency consisting lion's share, claim that it's providing the facility on the basis of the non-profit means:

“Bitcoin is a grassroots nonprofit project that seeks to fashion a new currency out of little more than cryptography, networking and open-source software.....”¹

This unique feature of the crypto currency makes it more practical and workable in the market. This will surely compensate the problem of trust deficit which is innate in the paper or traditional currency. This particular feature will enhance the acceptability of it in the prevailing financial system. Once the possession over the currency is lost by the governing bodies and crypto currency takes the administrative control over the circulation of the money, it will prove to be a step ahead towards the stability and acceptance between the driving forces of the market. The transparency of the crypto currency will ensure that every single stakeholder regardless he is in the position of governance, private organization, a local person, a business man etc.; all the organs of the state are likely to work in their own periphery maintaining a discipline in the money matters without exploiting others through fake money creation. It is evident that the fiscal or monetary failures of the governments that they face every single year is compensated and recovered by the tools that basically create an environment of exploitation in the society like inflation, depreciation in the value

¹ Greenburg, Andy, *Crypto currency*, (Forbes), April 20, 2011, <https://www.forbes.com/forbes/2011/0509/technology-psilocybin-bitcoins-gavin-andresen-crypto-currency.html#70c1b265353e> , Retrived on 1st June,2020

of the currency, current account deficit, trade deficit etc. This unjust behavior has to be stopped and at least money creation must be free from the state regulation so that financial market in no way is disturbed.

- The very concept of this currency is clear from its stance and that is to provide a peer to peer service with no involvement of any sort of organization that can manipulate its position through the backing of the regulatory organizations for its price/ value determination and other legal liabilities for the sake of its stability and upholding, for which the client of the user of that particular money type has to pay in the form of inflation or on the basis other monetary policies which are most of the time speculative in nature. Why should the user pay for the wants and needs of the government organizations in the form of taxes, inflation and other sources related to it? The debate is on for the discussion in the whole world where crypto currency is ready to put a difference following its ideology of universality; cutting the effects of boundaries, justice; the banks are bailed out and the layman is left behind in the miseries and sorrows of life, and equality; where the opportunities must be open to all for earning in the projects that in the current scenario are considered to be the right of the corporate sector, who involve the banks in a smart way to organize cash on a very nominal price.
- If the crypt currency promisingly casts out the prevailing banking systems, the markets will be more practically near to its client that may have a full authority over the investment plans working for them. The very justifiable concept of distribution of profit that will depict a true picture will be a win-win situation for both corporate customers and the clients. It is obvious that in a free market completion, only those companies will survive who offer decent and reasonable investment plans more suitable to the individual fund providers; rather more attractive profit ratios to its customers round the globe. Sound too good to be true but this will be the real economy of the world that makes its ideology more comforting to the humanity and not to the sector itself which is always looking forward for expansion without thinking about the clients who give their resources into their hands and at the end of the day remain empty

handed. If the world is real and the people living in this world are benefiting from having full excess to their resources then this exploitation of people's resources must stop this instant and if the crypto currency is the answer to the problem, so be it.

5.7 Indirect Taxes on Consumable Items for Increasing Revenue for Financing the Government Machinery: A Debatable Issue

In the current scenario of our financial retail market; the nation of Pakistan is facing an unprecedented situation regarding the taxation system of Pakistan. A lay man of the community is unhappy about the invasion of taxes especially on those items that are consumable in nature and are required to fulfill the needs in daily routine.

The main reason behind the approach regarding the indirect taxes is because of very narrow earnings of the government or the Federal board of revenue through direct taxation as no one is ready for it and don't want to declare his/her real asset value or business worth. This phenomenal is again due to the fact that government can't impose direct taxes on the community where major population of the local are living in rural areas of the countries and are lucky enough if they succeed in fulfilling their daily routine expenses. More than 30% of the households are living below the poverty line. The life of a lay man is already disturbed to an extent it's scary for him/her to hear about taxes in the form of sales or income. Hence the smartest way to generate the income is through the back door channel. Moreover they successfully do this by increase in the prices of the retail items till 17% app; where the Burdon of taxes is levied upon who so even purchases it. Although the current government is striving hard enough to levy the taxes of the business community but curtails of the business industries are not letting this thing happen. This what happened when government imposed GST on the flour mill:

All Pakistan Flour Mills Association (APFMA), Khyber Pakhtunkhwa chapter, has rejected the imposition of 17 per cent sales tax on flour and demanded of the government to withdraw the decision as it will directly affect the poor people.¹

¹ The Dawn news, *Millers reject 17pc sales tax on flour*, July 11, 2019, <https://www.dawn.com/news/1493322>, Retrived on 2nd June, 2020

The demand of waiving off the GST was so compelling and successful that the government had to bow head in front of the strong mafia. Their basic logic was that if the government goes for the tax on the flour, the poor community will have to pay for it. Their logic isn't bothering them to think that they must lessen their profits and gains as to accommodate the government sector who have a bigger job to do and that are the smooth running of the state business. Moreover industries which are earning some very good revenue for the country like leather industry, textile and garments industries also tend to ask the government to skip the taxes for the sake of the increase in the exports. The reality is that no one wants to cut their profit percentage for the sake of the development projects of the country.

Truly imposition of the taxes without or prior to any agreement is a highest form of *Gharar*. For it is an obligation of the state to fulfil the contractual obligations before any transaction. The contract must also carry a meaning full interpretation where all sect of the society must not be catered with a single behavior of motivation of earning. At least one must follow the custom which is that the goods produced within the country must not be overburdened price tags for the poor community especially on the consumable items. Yes, imposition of taxes on the imported items or luxury items is a complex case and imposition of taxes on these items makes sense as it is burden over the market in terms of trade deficit or current account deficit which is again paid from the pocket of the government that is again collected and paid from the precious taxes. However the issue is very sensitive and need more research for the sake of the maintenance of the objectives of the *Sharī'ah*.

5.8 The Impact of *Gharar* Based Transactions on the Society

Gharar based transactions has been an integral part of the business customary practices. Knowingly that it will have a long term effect on the society. Some of the outcomes of these transactions are as follows:

5.8.1 Failure to fulfill Contractual obligations in a business/service contracts causing financial losses creating Al Gharah Al fahish:

It is important to know that any legal contract that is executed among the parties has a pivotal role in establishing ventures verifying the intentions in a meaningful way and helping them out to foresee, accommodate the incidents that may occur in the future events, securing their interest till the time it is ended or pursued in litigation otherwise. A legal contract maybe defined as:

“It is an agreement between private parties creating mutual obligations enforceable by law. The basic elements required for the agreement to be a legally enforceable contract are: mutual accepted, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality. In some states, element of consideration can be satisfied by a valid substitute. Possible remedies for breach of contract include general damages, consequential damages, reliance damages, and specific performance.”¹

Like any other civilized society of the world, Pakistan sustains a legal system that guarantees a smooth business contract. This means that if a person undergoes a business contract, he/ she must follow a proper legal procedure that will ensure safety and precautionary measures against any unforeseen incidence. For this reason contracting parties use a formal paper for the sake of contract that is known as stamp paper or a legal pager. It is a daily routine paper that is used by the public in all sorts of dealings that may need a guarantee to secure future incidences related to time, payment of money, renting out a place and so on and so forth. The thing which is required by the law is that while undergoing a stamp paper, the contracting must fulfill requirements related to stamp duty. The stamp duty guarantees the worth of the contract and makes sure that all the legal requirements are appropriately covered. This means that a properly executed stamp paper has undergone stamp duty exact and equal amount mention by the law and verified from a court of law with all information disclosed in front of the law and nothing hidden for the sake of tax evasion. However in reality, mall-practices are pursued through corruption and concealment of facts. In a recent past a case was recorded by the local media that elaborates the point how people conceal their information to avoid tax:

¹ Legal information institute, *Definition of contract*, <https://www.law.cornell.edu/wex/contract#:~:text=Definition,consideration%3B%20capacity%3B%20and%20legality>. , Retrived on 2nd April 2020

“The offices of the sub-registrars of property registration branches are allegedly doing “undervalue registration” of the property deeds causing a huge loss to the national exchequer. Recently one such case had been reported to the authorities concerned which is said to have caused a loss of millions to the exchequer. Fahmida Sultana, Haroon Muhammad, Nasir Muhammad, Salman Muhammad, Tariq Muhammad and Shahnaz Tareen obtained ownership document from the area patwari on May 30, 2016 to sale their property on Bosan Road. The road is included among the areas having status of commercial by the Multan Development Authority and is one of the most expensive areas of the city. The persons owned over 20 kanal out which they sold out 5 kanal and 18 Marla to Muhammad Abdullah Shaikh, Shaikh Salman Usman, Amanullah, Manzoor ul Haq, Shahroze Saleem and Muhammad Shayan Saleem at a cost of Rs60 million and paid against which Rs1.8 million (three per cent) as stamp duty, Rs0.6 million (one per cent) town tax, Rs1.2 million (two per cent) capital value tax and Rs0.6 million (one per cent) advance tax. The total paid taxes were calculated as Rs4.2 million. Sources said that as per the official rates, the value of the property should not be less than Rs197 million as stamp duty should be Rs5.91 million, Rs1.97 million town tax, Rs3.94 million capital value tax and Rs1.97 million advance tax. The total value of the payable tax as per government rate is Rs13.79 million -- a loss of Rs9.59 million.”¹

The above could not have been executed if the sub- registrar wasn’t involved with the party. The example is just to show how much it matters to be transparent for the contracting parties and authorities to show vigilance to overcome such discrepancies so that loss may not be borne by the exchequer. However, there is always a chance to fall into the grey area while commencing a business agreement by the contracting parties. May it be intentional or unintentional, once the mistake is committed, can lead to unforeseen consequences.

Moreover, Fraud, misinformation, coercion, and under the influence are not only what makes the contract null or void, but the validity of the contract can be affected as a result of that error which was committed during the conclusion of the contract. Indeed, the correct contract must be free from any kind of errors on behalf of the contract parties. These technical mistakes often fall into *Al Gharar al Fahish* and could be an error is an understanding of facts, the meaning of words or law, which causes one or both parties to conclude a contract without understanding obligations or outcomes. Some of the important points related to valid contracts are as follows:

¹ Dawn news, *Property undervaluation cases go on unchecked*, may 2017, <https://www.dawn.com/news/1332137> , Retrived on 3rd April, 2020

The essential elements of a valid contract: According to Article 10 of the contract act 1987, Pakistan:

“All agreements are contracts, if they are entered into with the free consent of the parties, competent to contract, for legal consideration with a legal subject matter, and not under this expressly to be void.”¹

The General Law of Contracts in Pakistan is contained in the Contract Law 1872 and is the main law Source of contract regulation law in Pakistan. The English language decision is also cited (where applicable) in the courts. It specifies the circumstances in which a promise made by both parties to the contract must be fulfilled; they are legally bond as per law. Each of us knowingly enters into a number of contracts every day without knowing that each contract creates some rights and duties on the contracting parties. The law deals with the enforcement of these rights and duties on the parties. The law defines a "contract" as an agreement that is enforceable under the law. Basics of a valid contract are:

- The ability to enter into a contract;
- The intention to enter into a contract;
- Offer and acceptance;
- Consideration;
- The free consent of the parties;
- The subject matter of the legal agreement;²

Writing is not necessary for the validity of the contract, except in the case of a specific legal provision that it requires writing. However the arbitration clause must be in writing. This clause will help the parties settle a dispute out of court. It is because of the fact that the dispute may occur about the performance of a particular contract, a lawsuit for unfair or unlawful treatment in the workplace, or a defective product, among other things. However if the case isn't settled and dispute arose between the contracting parties, a legal contract will serve the purpose. However, as discussed earlier that meaningfulness will always matter in a legal contract. Hence, it is an established principle that if there is a mistake related to such a fact, which is essential to an agreement, may actually affect the

1THE CONTRACT ACT, 1872, **CHAPTER II OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS, *What agreements are contracts,***

<https://www.ma-law.org.pk/pdflaw/Contract%20Act,%201872.pdf> , Retrived on 3rd April, 2020

² Harshit Vaddi, ***What are the essentials of a valid contract,*** 1,

https://www.academia.edu/40004190/What_are_the_essentials_of_a_valid_contract

agreement to extent it may be null and void. The error can actually be classified into the following types¹.

Unilateral errors: A one-sided error occurs when only one party in the contract is under error. This type of error is the most common. Some of the real time examples may elaborate how these errors damage the deals:

The party's own fault: When one of the parties makes a contract with another party and makes mistakes while performing the contract, that party cannot avoid the contract.

Fault resulting from fraud or alike: When one of the parties concludes a contract with another party and a mistake is made by one party on the other side to the party through fraud, etc., this contract is voidable and the affected party can avoid this contract.

For example, in a contract sale of screws, one party might mistakenly believe that the word "screw" refers to a particular brand of screws (such as a company Phillips head screws), when the term actually means any standard type of screw. Thus, if only one party holds this misconception, but the other party is clear regarding the meaning of screw with its specified featuring that maybe different than the other main feature of a normal screw, it may lead to a one-sided error dispute. On the other hand, if both parties believed that the word "screw" actually meant "nails", then this would be an example of a mutual mistake. In addition, unilateral mistakes also frequently involve prices, quantities, dates, and errors pertaining to the description of goods or services included in the contract. In addition to the above example, one-sided errors also include prices, quantities, dates, and errors related to describing the goods or services included in the contract.

If a one-sided error occurs during the contracting process, it may have an impact on the outcome of the contract. The rationale behind this premise is that it would be unfair for only one party to understand the true meaning of the contract while the other does not understand it. As mentioned earlier, the court will usually issue one of two of the following remedies to correct the unilateral error:

- ***Denunciation:*** Cancellation of a contract is a remedy that cancels a contract completely. The purpose of this treatment is to return the parties to the position they were in before the conclusion of the contract. Refunds are granted in

¹ P.M.M. Rahman, *CONTRACT LAW - (I)*, AL MUSTAFA INTERNATIONAL UNIVERSITY, faculty of Law, 5-7, https://www.academia.edu/9716751/CONTRACT_LAW_I, Retrived on 4th April, 2020

different situations, however, when it comes to one-sided errors, it usually only applies to technical errors (for example, errors in calculations) or in the event that there is an unfair position in bargaining power.

- **Correction:** On the other hand, a contract is fixed when the written agreement is changed to reflect the parties' original understanding of the terms of the contract. The repair is usually reserved for mutual faults, but will be granted for unilateral errors only in cases where one party is at fault and the non-at fault party is unaware that the other party is confused.¹

Basically, the remedies granted depend a lot on whether the party not at fault knew that the other party did not understand a clause in their contract. Therefore, if the party not at fault learns that the other party has committed a unilateral mistake, the result is usually nullification of the contract (revocation). By contrast, if the non-fault party was not aware of the other party's fault, then treatment would usually involve reform (i.e. rewriting the agreement).²

Gharar due to Bilateral Mistake: a bilateral mistake occurs when both parties to the agreement are under error on a matter of fact making it as an incomplete document, which is necessary for the agreement for its completion. Types of bilateral Mistakes are as follows:

Mistake regarding subject matter: In such mistakes, the parties to the agreement make a mistake regarding the subject matter of the contract and the agreement is void. The error regarding the topic may take various forms. This may relate to the existence, identity, title, quantity, quality or price of the subject matter. All of these are briefly listed below:

- **An error in the existence of the subject of the contract:** when the two parties believe at the time of making the contract that the subject matter of the contract exists, but in reality it is not so, there is a mistake and the agreement is void. For example, X agrees to sell a certain shipment to Y as it is on its way from abroad. Unfortunately, however, the ship carrying the cargo was thrown away

¹ Law house, Stimel and Rosers, *Basic Laws of Contract, Mistake And The Ability To Avoid The Agreement*,

[https://www.stimmellaw.com/en/articles/mistakeandabilityavoidagreement#:~:text=If%20the%20non%20mi%20staken%20party%20knows%20or%20should%20know%20that,can%20be%20reformed%20\(rewrite\).](https://www.stimmellaw.com/en/articles/mistakeandabilityavoidagreement#:~:text=If%20the%20non%20mi%20staken%20party%20knows%20or%20should%20know%20that,can%20be%20reformed%20(rewrite).)

² LegalMatch, *Unilateral Mistakes in a Contract*, <https://www.legalmatch.com/law-library/article/unilateral-mistakes-in-a-contract.html>, Retrieved on 18th November, 2021

ahead of time or the deal. Neither X nor Y was aware of this. Under these circumstances, the agreement is void.

- ***An error in identification:*** when the parties to the contract have a different topic in their minds, that is, one of the parties intends to deal with something and the other with another contract is void due to the lack of consensus on the same topic.
- ***Quantity Error:*** If both seller and buyer have a misunderstanding about the quantity or extent of the subject matter, this will render the contract void. For example, P inquired about the price of rifles from H indicating that he might buy up to fifty. Upon receiving the quote, wired, "Send out three guns." But due to the mistake of the telegraph writer, the message sent to H was "Send the guns." H sent fifty rifles. P accepted three rifles and brought back the remaining forty-seven. And it was said that there is no contract between the two parties. However, P was responsible for paying for the three guns, as a tacit contract was made.
- ***Error in Quality:*** If there is a mistake in the quality of the matter on the part of both parties, the contract is void. For example, A offers to buy a race horse from an 8. 8 horse dealers who accept the offer thinking it is for a cart. The agreement is void.
- ***Ownership error sometimes:*** the buyer actually owns the property, which the person wants to sell to him. However, the concerned parties are not aware of this fact. In such cases, the agreement will be void. For example, A has agreed to receive a fisheries lease agreement from B. At the time of the transaction, however, neither party was aware of the true ownership status. The agreement was declared void.
- ***Price error:*** The agreement is also void where the parties make a mistake in the subject price. For example, A agreed to lease his quarry to B at a rate of return of 1 per cubic foot of quarried stone, subject to a minimum rent of Rs 5,000 per month. But by agreement, the rental number is wrongly written as Rs 50,000. The agreement is void in principle.

- **Error regarding Performance:** When the parties to the contract enter into it believing that they are capable of performing, when in reality it is not, there is a mistake in the facts regarding the possibility of implementation. And the contract is void and on the basis of it, any failure in performance may arise for physical or legal reasons. For example, D enters into a contract with R to play in concert, on a certain day, to be organized by the latter. But D was unable to participate in the program due to illness that day. The court decided that the contract had become void due to the impossibility of its implementation.

5.8.2 Financial Irregularities in the contracts due to incomplete documentation–

A case of Al gharar Al fahish: It is important to note that the irregularities that relates to the financial side of the projects are subject to the severe outcomes that can't be waived off in any way law of the land may approve. However it is a matter of worry and concern that certain negligence are held upon without any fear of caught hold by the concerning authorities that are put on the check not to let that happen. For instance a new agency records the picture of the public contracts in the financial year 2019-2020¹:

“The Auditor General of Pakistan (AGP) in its Audit Report 2019-20 has unearthed Rs 1,142 billion in **financial irregularities** pertaining to the Ministry of Water Resources. According to the audit report, the financial irregularities are related to procurement, contract management and accounts of the ministry. In total, 79 cases amounting to Rs768, 675 million in irregularities related to procurement and contract management were observed. Similarly, 16 cases containing asset management issues amounting to Rs 65,081 million were also pointed out. Additionally, three cases amounting to a total of Rs171.21 million pertaining to issues in management of accounts with commercial banks, four cases amounting to Rs11, 056.53 million pertaining to employee related issues, 18 cases amounting to Rs287, 937.59 million relating to value for money and service delivery and nine other cases amounting to Rs9, 096 million were observed. Meanwhile, the AGP has asked the Ministry of Water Resources to comply with the Public Procurement Rules, 2004 and the WAPDA Procurement and Contract Manual, 2014 for procurement of goods and services. Additionally, the ministry has also been advised to devise a strong and reliable mechanism for renewal, encashment and verification of performance bank guarantees to avoid financial losses and fraud. Furthermore, the AGP

¹AGP, *unearth Rs1,142bn irregularities in Ministry of Water Resources, The AGP has asked the ministry to strengthen internal controls, improve service delivery and increase reliance on IT based applications* By *Shahzad Paracha* -July 5, 2020, <https://profit.pakistantoday.com.pk/2020/07/05/agp-unearths-rs1142b-irregularities-in-ministry-of-water-resources/> , Retrived on 6th April, 2021

has also urged the ministry to take necessary steps to ensure realistic feasibility studies and detailed designs for acquisition of land before awarding contracts or commencing work. According to the document, the ministry needs to proactively resolve land acquisition issues, avoid reliance on cash transactions and adapt Information Technology (IT) based solutions. The department needs to strengthen its administrative and operational internal controls to improve service delivery and to obtain fair value for money through public spending and improve its reliance on IT based applications, document said.”

The outlook of the public sector in awarding contract has always been a problem for the governments. Wherever public dealing comes in action, it opens doors of irregularities where the sanctity of the contract under the concept of trust is totally neglected. Almost all the sectors come in this very form of discrepancy. These discrepancies show different sorts of variants that has cause severe damage to the ex-checker as well as the integrity of the country. Take a look inner picture of these contracts pertaining to such discrepancies:

5.8.3 The Pakistan Post financial regulations due to wrong quotation; a perfect example of Bilateral Mistake in the contract: It is well perceived that government organizations have a very strict rules and regulations of recording financial activities. From the transfer of funds by state bank to the respective organizations as per their prescribed quota, till the release of it for the projects, a very strict monitoring is established to verify that truth is maintained for the sake of check and balance. However in the process of tendering or three bid quotations¹, it comes under the department of the Ministry of Communications which was hit by another corruption scandal as the general manager of Pakistan Post was accused of misappropriating 40 million rupees in purchasing medicines for poor employees in the department. This was stated in a 2012 audit report that was submitted to Parliament. The audit report reveals that the position of Director General has released 38 million rupees to senior officers in the name of the special bonus which has been described as an illegal act because the laws in question did not allow him to satisfy the blue-eyed officer with public money. The document with this correspondent further reveals that a construction company contractor has been illegally paid PKR 26 million, and the General Manager has also opened a special bank account to deposit 19 million rupees of public funds without approval and approval of the Ministry of Finance. The audit report

¹ Three bid quotation is a process through which the government offices fulfill their instant requirements and needs which is often limited to one lac rupees.

was deeply disturbed by the officers who had purchased an insurance policy of Rs.65 million without the approval of the senior officials of Pakistan Post. The officers themselves illegally received 14 million rupees in incentives from the public treasury. ¹

5.8.4 PIA Scandal regarding the fake Licenses and void contracts; a perfect example of unilateral mistakes in the contract: The scandal of the licenses of PIA pilot was reveal to the public because of some dreadful events that compelled the Administration and highest authorities to finally take a step that severe. The detail of these events is a lengthy on but the incident that triggered the whole action is linked with crash of an Airbus at a public place where series of houses directly came under effect. On 22 May, 2020 an Airbus A320 operated by Pakistan International Airlines (PIA) crashed in a densely populated neighborhood of Karachi, about one kilometer from the city's main Jinnah International Airport. The accident killed 97 people out of the 99 people on board and one person on the ground, according to official data. This was the second PIA crash in five years. In December 2016, an ATR-42 flying from Chitral to the capital, Islamabad, crashed into a hillside near the town of Havelian, killing all 47 on board. According to the Aviation Safety Foundation, 60 serious safety-related incidents have been reported in Pakistan since 1956. This does not include accidents or other maneuvers - such as an alleged modern pattern of unsafe methods - which are only specific to the airline's flight data management system (FDMS) and the country's aviation regulatory authority, the Pakistan Civil Aviation Authority (PCAA).²

It was disastrous news for the world that CAA of Pakistan announced that the pilots numbering 141 from Pakistan International Airlines, nine from Air Blue and 10 from Serene Air, adding that the rest were from flying clubs, charter aircraft services or foreign airlines were suspended from the jobs due to fake licenses and degrees. The minister said that airlines and clubs have been informed that the credentials of pilots are questionable, and they should not be allowed to travel, adding that the names of all the pilots have also been put up to civil aviation.

¹ Huge financial irregularities in Pakistan Post, By Zafar Malik, MAY 23, 2016, <https://dailytimes.com.pk/80505/huge-financial-irregularities-in-pakistan-post/> , Retrived on 7th April, 2020
² Alia Chughtai, *Pakistani pilot license scandal: The fallout*, 20 Jul 2020 <https://www.aljazeera.com/news/2020/7/20/pakistani-pilot-licence-scandal-the-fallout> , Retrived on 8th April, 2020

Furthermore it was added to the news that these pilots who are being investigated were all recruited before the reign of PTI in 2018, referring to the start of the current government's mandate. This meant the current government of PTI had to embark on correcting the mistakes of the past. Here it is important to note that five Civil Aviation Authority officials who have been proven involved in the scandal have also decided to suspend. The Minister himself took action and had their stop-work letters ready and told that he has done this all in consultation with the legal team as they are now ready to start criminal proceedings against them. Other than that three or four other people that were not directly affiliated with case, but their involvement in the scandal was discovered, and criminal investigations may open against them as well. The questionable licenses issue caught the world's attention after the Minister of Aviation at the National Assembly announced that about 150 Pakistan Airlines pilots had fraudulent licenses. Currently, there are 860 active pilots in the country out of which 262 of those pilots did not self-test. In response to the action, Chief Justice of Pakistan (CJP) Gulzar Ahmad summoned the Director General of the Civil Aviation Authority (CAA) to explain allegations of fraudulent licenses by some pilots of various airlines in the country who use airliners and thus lay down their lives of people at risk - a serious crime under the law. The Director General of the Civil Aviation Authority was said to require to file a comprehensive report before the Supreme Court within two weeks in this regard, and when the case is heard again after three weeks, the chief executives of PIA, Air Blue and Serene will also appear before the court with reports on the professional qualifications of pilots in their airlines. The credibility of the Civil Aviation Authority and the General Civil Aviation Authority was also dealt a major blow when the International Air Transport Association (IATA) expressed concern about a serious lapse in licensing and safety oversight by the aviation regulator.¹

Unfortunately, the US Department of Transportation (DOT) has revoked the special permission granted to Pakistan International Airlines (PIA) to operate direct flights to the United States amid the COVID-19 pandemic. The authority cited "serious safety concerns"

¹ Dawn news, *262 pilots under investigation for 'dubious' credentials to be grounded, says aviation minister*, 26 Jun 2020, <https://www.dawn.com/news/1565352/262-pilots-under-investigation-for-dubious-credentials-to-be-grounded-says-aviation-minister>, Retrieved on 10th January, 2021

behind the decision with continuing repercussions for the Minister of Aviation, Ghulam Sarwar Khan, regarding questionable pilot licenses. The ban came days after the European Union and the United Kingdom canceled the PIA's flight permit. The airline was notified of the decision via email, and a spokesperson for Pakistan International Airlines, Abdullah Hafeez Khan, confirmed. After the European Union Air Safety Agency (EASA) and the UK Civil Aviation Authority, several countries, including Malaysia, have banned Pakistani pilots from flying aircraft until their licenses have been approved by the Pakistani authorities.¹ Moreover the loss in terms of finance is far more serious concern for the authorities to cope up with.

5.8.5 FATF (Financial action task force) response to the Ambiguous Transactions: Including these locally brought ambiguous transaction that are undocumented and unverified, Pakistan faces a serious threat related with the transactions that are internationally hurting the communities. The FATF (Financial action task force) organization sees these sorts of invalid financial ambiguities and holds the authority to put its member countries onto grey list. The FATF has prepared a comprehensive report over these financial irregularities in the economic system of Pakistan. The document exclusively covers all the facts in a very minute manner. It is a comprehensive report related to the Speculative transaction reports (STRs). One of the charts that is self-explanatory to what is said²:

Fig#1

1 ProPakistani, *After EU, US Bans PIA Flight Operations Posted 3 months ago by Raza Rizvi*, <https://propakistani.pk/2020/07/10/after-eu-us-bans-pia-flight-operations/> , Retrived on 10th April, 2021

2 AGPR, *Anti-money laundering and countering the financing of terrorism measures in Pakistan – APG 2019*, CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES, 57, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Pakistan-October%202019.pdf> , Retrived on 10th April, 2020

Table 3.7: Percentage of total STRs analysed and disseminated as financial intelligence by crime-type (2015 – 30 June 2018)

Designated categories of offences	2015	2016	2017	2018*	% of total
Regulatory violation	7.35%	12.46%	42.49%	21.31%	27.40%
Tax evasion, tax crime	0.00%	26.61%	26.42%	24.93%	22.77%
Hawala/hundi	34.52%	15.69%	7.91%	12.06%	13.77%
Corruption, bribery	10.02%	16.25%	6.23%	9.38%	9.42%
Smuggling offences including Currency	22.72%	7.98%	5.61%	3.49%	7.83%
Terrorism, including terrorist financing	8.02%	12.46%	2.43%	4.56%	5.63%
Fraud	5.12%	3.92%	3.93%	3.22%	3.93%
TBML	0.00%	0.00%	2.49%	3.08%	1.79%
Virtual Currency	0.00%	2.10%	0.44%	3.35%	1.34%
Benami Accounts/Transactions	0.00%	0.00%	0.37%	4.56%	1.14%
Other**	3.56%	0.00%	0.25%	1.74%	0.94%
Trafficking in humans/migrant smuggling	0.67%	1.68%	0.75%	0.13%	0.80%
Illegal trade in financial instruments	4.45%	0.00%	0.00%	0.80%	0.74%
Illicit drug trafficking	1.11%	0.56%	0.12%	1.88%	0.71%
Capital Flight	0.00%	0.00%	0.00%	2.82%	0.60%
Illicit arms trafficking	0.00%	0.00%	0.25%	1.47%	0.43%
Extortion	2.00%	0.00%	0.00%	0.40%	0.34%
NPOs - Misuse of Donations	0.00%	0.14%	0.00%	0.54%	0.14%
Forgery	0.45%	0.14%	0.00%	0.13%	0.11%
Sexual exploitation (including children)	0.00%	0.00%	0.12%	0.13%	0.09%
Insider trading, market manipulation	0.00%	0.00%	0.19%	0.00%	0.09%

Although the variable in the chart are self-explanatory, however TBML needs to be elaborated as it stands for trade-based money laundering. All the above figures are as good as marking our position to be labelled as a black listed economy. If serious actions aren't taken this will clearly be a destination of dooming our economy in the no man's land.¹ This means that if Pakistan isn't lucky enough to clear its status as it's in the grey list till the time, its repercussions will be devastative as it will be considered as one of the NCCTs ('Non-Cooperative Countries or Territories'). The forum of SADF (South Asian democratic forum) gives its conclusive remarks in following words:

Being then potentially classified as one of the NCCTs ('Non-Cooperative Countries or Territories'), Pakistan will not only find itself in company with Pariah states like Iran and North Korea but also has to face severe legal and economic consequences, leading to the 'complete international financial and diplomatic ostracizing' of the country.²

1 APG, *Anti-money laundering and counter-terrorist financing measures, Pakistan, Mutual Evaluation Report*, October 2019, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Pakistan-October%202019.pdf>, Retrieved on 11th April, 2020

2 Siegfried O. Wolf, *A Papyrus Victory: Pakistan's latest escape from the FATF's blacklist, South Asian Development Forum*, <https://www.sadf.eu/comment-155-a-papyrus-victory-pakistans-latest-escape-from-the-fatfs-blacklist/>, Retrieved on 11th April, 2020

These *Gharar* based transaction had kept on striking our society hard while disturbing socio economic balance of it. These ambiguous transactions are prevalent everywhere in our society to disturb the law and peace situation in our market. From the transactions related to the real state to the creation of an off shore company, from making money white from the unregistered prize bonds to the flout of the *Gharar* based Ponzi schemes, it has shown possible means and ways through which it has created a gap of mistrust and fear of fraudulent transactions that our society had to bear cost of it from every now and then. The formulas adopted for the purpose of trapping the local public and even some times educated class, are so smartly designed that influence them making their eyes turned into stone leaving them unthinkable about the questions related to its legitimacy in a closer way to abstain one's self from falling into it and losing considerable amount of money which can't be retrievable once lost and gone out of hands.

5.8.6 Disputes arising between the parties over financial concerns and its delayed settlement due to inefficient contract enforcement mechanism provoking *Gharar* Based activities in the system: Another form of *Gharar* that has disturbed our society regarding its financial activities is the non-existence of an efficient mechanism for the enforcement of the financial contracts that is important for the smooth and easy process of doing business. In our daily life happenings, it is obvious to know about certain conflicts arise between parties of concern due to some ambiguous points leading to *Gharar* over some financial settlement usually taking place due to the variety of unfortunate events like event of loss, end of the term of the contract, cancellation of the contract from one side without consenting other party, striving for more profit share neglecting rights and obligation of the other party, striving for more rental payments then prevalent in the market, unsolved problems of inheritance, dispute leading to fights and eventually forcefully occupation of business or land etc.; Other than that, it maybe deliberately due to some bad intentions that leads to some dispute among the parties of concern. These situations sometime leads to police station interventions or legal proceeding in judiciary where cases stay pending for many years of life and in some cases we often hear about the transfer of cases from one generation to another.

Another great matter of concern lies with the judiciary itself. The inefficiency that is causing may also arise due to some lame causes or excuses like lake of resources, less

number of judges, pressure over the courts due to stay orders and so on and so forth. Most of the cases may be settled earlier due to its simple nature; we can say that the cause may be as little as it may be compiled under the cause of *gharar al yaseer i-e* an ambiguity that is as small as negligible like some writing mistake, less know how about the law itself etc. but due to the inefficient judicial system it becomes a cause of consistent suffering for the parties of concern. The stats related to our Judiciary are devastation. A news agency records the fact:

“A data issued by the National Judicial Policy Making Committee (NJPMC) has showcased that more than two million cases were pending in the Supreme Court, Federal Shari’ah Court, high courts and the district judiciary. Giving bifurcation of the cases, the report mentioned that 45,508 cases were pending in the Supreme Court till July 31, 188,411 cases were pending in Lahore High Court, 84,341 cases were pending in High Court of Sindh, 38,464 cases were pending in Peshawar High Court, 5,313 cases were pending in High Court of Balochistan, 15,847 cases were pending in the Islamabad High Court, 1,287,121 cases were pending in District Judiciary Punjab, 105,458 cases pending in district judiciary Sindh, 210,025 cases were pending in district judiciary Khyber Pakhtunkhwa, 17,000 cases were pending in district judiciary Balochistan and 43,924 cases were pending in district judiciary Islamabad.”¹

The following chart shows the in-depth picture of the whole case²:

Fig#2

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- 1 The News, *Over 2m cases pending in superior, lower judiciary*, Sat Oct 03, 2020, <https://www.thenews.com.pk/print/702243-over-2m-cases-pending-in-superior-lower-judiciary#:~:text=National&text=ISLAMABAD%3A%20A%20data%20issued%20by,courts%20and%20the%20district%20judiciary> , Retrived on 22nd March, 2021
 - 2 Law and Justice Commission of Pakistan, *Consolidate statement showing pendency, institution and disposal of cases during the period 1- 15th June, 2020 in the Supreme Court of Pakistan*, Federal Shariat Court, High Courts and District Judiciary, http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/courts.pdf

**Consolidate statement showing pendency, institution and disposal of cases during the period 1- 15th June, 2020
in the Supreme Court of Pakistan, Federal Shariat Court, High Courts and District Judiciary**

Superior Courts	Pendency	Institution during the period	Disposal during the period	Balance
Supreme Court of Pakistan	44,939	446	260	45,125
Federal Shariat Court (Upto 31st May, 2020)	200	0	0	200

Name of Courts	Old Cases Filed upto 31-12-2011			New Cases Filed from 1-1-2012				Old + New (Grand Total)			
	Pend	Disp	Bal	Pend	Inst	Disp	Bal	Pend	Inst	Disp	Bal
High Courts											
Lahore High Court	8,196	154	8,042	181,483	5,139	6,253	180,369	189,679	5,139	6,407	188,411
High Court of Sindh	12,823	4	12,819	70,849	943	261	71,522	83,672	943	265	84,341
Peshawar High Court	2,638	4	2,634	35,680	885	735	35,830	38,318	885	739	38,464
High Court of Balochistan	69	0	69	5,249	104	109	5,244	5,318	104	109	5,313
Islamabad High Court	620	4	616	15,165	221	155	15,231	15,785	221	159	15,847
Total (High Courts)	24,346	166	24,180	308,426	7,292	7,513	308,196	332,772	7,292	7,679	332,376
District Judiciary											
District Judiciary, Punjab	9,508	1	9,507	1,255,926	120,760	99,072	1,277,614	1,265,434	120,760	99,073	1,287,121
District Judiciary, Sindh	621	13	627	101,732	10,120	7,027	104,831	102,353	10,120	7,040	105,458
District Judiciary, KPK	409	3	405	202,558	24,657	15,815	209,620	202,967	24,657	15,818	210,025
District Judiciary, Balochistan	47	0	47	16,415	1,166	628	16,953	16,462	1,166	628	17,000
District Judiciary, Islamabad	1,204	0	1,204	42,018	929	227	42,720	43,222	929	227	43,924
Total (District Judiciary)	11,789	17	11,790	1,618,649	157,632	122,769	1,651,738	1,630,438	157,632	122,786	1,663,528
Grand Total (Supreme Court, Federal Shariat Court, High Courts and District Judiciary)								2,008,349	165,370	130,725	2,041,229

The difference is reported due to transfer, re-opening/restoration, remand and in case where leave to appeal is granted.

This list advocate a clear and perfect example that depicts the face of our judiciary, enforcing agencies and other related organization have failed to solve the cases and are found weak and usually helpless in front of certain external variable like insufficient evidences, influences on the cases to be disposed of or kept in the state of pending.

These causes have created an unrest position among the parties of concern and our society as a whole.

Talking about the *Gharar* based financial transaction that actually creates unrest in our society makes the whole environment of the business disturb due to these *Gharar* based causes which are responsible for the non-flourishing of a smooth business environment, flight of capital as credible financial institute, resourceful businessmen and companies of the country lose their interest in performing in an underperforming

environment of a society where law and order situation not handled anymore by the law enforcing agencies due to weak regulations or other external influential variables. A local newspaper depicts this social weakness of our society in terms of figures that is assessed by the foreign agency in these words:

“In the World Bank’s ‘Ease of Doing Business Index 2016’, Pakistan’s ranking has plummeted further to 138 out of 189 countries, indicating that the regulatory environment is not conducive for businesses. Statistics of the State Bank of Pakistan (SBP) also revealed that investment was shifting out of the country. This is mainly due to an inefficient contract enforcement mechanism; an essential element in attracting foreign and local investment.”¹

Although the report is a bit older but the fact is evident that the business environment in the country has fallen down to the worst condition in the history of the state where flight of capital through money laundering, scarce business opportunities, disturbing trust deficit between the regulatory authorities of the state and the local business men, weak indicators of the economy, danger of economy to fall into a debt trap and then collapse and bank corrupt, low or negative employment generation rate and many other causes of the problem show that our country is a bitter place for its native to survive under these circumstance.

According to the criteria of numbering, Countries holding large investments from private companies of a definite scale are usually ranked under 70 as there contract enforcement policies are considered efficient and in this contrast Pakistan is ranked 151th out of the total in contract enforcement showing less efficiency. For a country with good and considerable infrastructural reforms for the sake of welcoming investments inflow, quick trials are essential for businesses especially private entities to flourish in a free and progressive environment, which may resolve any issue instantly to stay in business. This prompt action in judicial exercise will ensure quality financial services, not letting the investors suffer through waiting for the results after a long judicial dispute. Unfortunately judicial system of Pakistan doesn’t guarantee this facility till the date and the main reason behind this weakness is the inefficiency of the contracts enforcement that filled with a non-expressive weakness, vague language structure, non-compliance of contracting parties with the regulatory authorities, weakness in the establishment of a purposeful environment

1 The Express Tribune, Business, *Inefficient contract enforcement mechanism in Pakistan*, June 13, 2016, <https://tribune.com.pk/story/1121424/resolving-commercial-disputes-inefficient-contract-enforcement-mechanism-pakistan/>, Retrieved on 15th April, 2020

important for any business to execute its operation due to the infrastructural weaknesses. These weaknesses are acting like agents of *Gharar* in a financial transaction. For example bribing may never be considered as an issue catered under the ingredients of *Gharar* but one must not forget to consider that bribing creates unconventional paths of irregular actions that make its operatives change wordings of the contracts for the sake of concealment of facts, delaying tactics, for gains and abnormal profit etc. This means that we can't let go these side issues that our society exploits to create ambiguity in the financial matters especially in the financial based contracts.

In Pakistan, the duration of the contract is very unpredictable and so ineffective that at best, it may take about 3 years expiring and at worst; it may last as for a long unprecedented and un-prescribed period. This means that it's totally dependent on the personal behavior of the contracting parties as the contract isn't elaborative enough to fix confusion arising after its execution in any regard. Especially in case of the rented property, where the committees of the lessees are weaker the lessor is strong enough to revoke any mentioned condition in the contract, add certain other condition which weren't there before, cancellation of the contract by force or through the regulatory authority like police or influential personalities, increase an unacceptable raise in the rent of the premises or other else the lessee may be forced to quit. In all of the above conditions no mechanism is placed to control the situation and in the end the party has to suffer the consequences of loss of capital money. To be more precise in the argument an example in accordance with the breach of contract, a specific performance case for sale was filed dated February 26th, 2000, before the *Sargoda* Civil Court, where the final decision was made 10 years later. Similarly, a petition for the right to file an appeal was filed in the Supreme Court of Pakistan against the Lahore High Court ruling in 2003. The Supreme Court of Pakistan issued its decision on this appeal after 10 years on 7 May 2013. The suspension of cases in domestic courts is another obstacle to the rapid implementation of commercial contracts. The annual report of the Lahore High Court indicates that of the 317,459 cases in 2014, 164,683 (52% of the total cases) were added to the current business accumulation, of which 44,908 are civil cases and 9,106 are commercial cases. These piling up cases require speedy justice other else country will face an irrecoverable loss in terms of figures i-e loss of heavy investments, loss in the job sector which is already facing a serious crises, overall discouraging numbers

of growth etc. Although the legal system gives higher priority to the settlement of commercial disputes, it is not possible to find an exclusive court or to divide it, which is also one of the main reasons for the suspension of disputes in local courts. Another aspect of the ambiguity that could be understood through the fallout of it, court's delay in the decision of a case generates a new cost for availing the facility of filing the suit in the honorable court. Conflict resolution costs are usually high and unpredictable. According to a senior Islamabad High Court lawyer, for a dispute involving a 49.5 million rupee claim filed at the Islamabad High Court, a private construction company paid about PKR. 2 million as legal costs, amounting to 4% of the value of the claim.¹

An effective Legal system of any country is considered to be the back bone for the financial institutions of that country. It not only regulates the financial institutions through addressing their financial dispute but also keeps check on their ambiguous activities that can harm the financial system of that country. Unfortunately our judicial system is weak enough to control these financial situations because of a bitter fact that its services are not for free, here judicial system is entangled with the money issue. Here an effective legal system encourages and protects only those who have power to pay for the services that the court provides against it and the business entities, companies and other services are well aware of the fact that courts will only support them. If one of the parties fails to pay it is shore short that justice will be more for the one who paid well for it. For this reason mega companies hire chambers for their business sport which help them not only to control the taxation issues that could have been on the higher side in case of their absences but also help them get out of the unforeseeable incidents that if happened in other progressive systems of the world could have cost them their whole business in lieu of it. In simple words Justice in Pakistan is treated as a commodity which could be purchased and who so ever is worthy for it can easily cover its issues based on crime, negligence or other financial irregularity. Moving one step forward toward the procedural laps of our judicial system, it is again the ineffective contract enforcement mechanism, due to the complex judicial processes. This could be easily understood by the fact that from filing a lawsuit until the

¹ The Express tribune, business, *Inefficient contract enforcement mechanism in Pakistan*, Talha Azhar, June 13, 2016, <https://tribune.com.pk/story/1121424/resolving-commercial-disputes-inefficient-contract-enforcement-mechanism-pakistan/>, Retrieved on 17th April, 2020

final verdict, the judicial process suffers from delaying tactics used by the parties involved. This includes unnecessary prolonging of the case due to rescheduling of the case, changing the judge which would start the proceeding from the beginning, repetition of the arguments, and inconclusive remarks of the court in the end of the final proceeding, implementation issues and issues of bribe and so on and so forth.

Since there is no limit to the postponements, the parties can prolong the court hearings proceeding till the extent of justice delayed justice denied. Moreover, diverse applications can also play a key role in prolonging the period of dispute resolution, for example instead of providing a written statement, usually a miserable request is filed by the defendant to buy some more time. While it is very clear that the legal framework of civil disputes contains well-defined time standards for service of the process, first hearing, submission of a defense statement, completion of the evidence period, and final judgment. Less than 50% of the cases are closed on the time schedule in accordance to the law while rest of the cases are adjourned violating its own lawful guidelines. Adding more substance to the above argument, most of the local courts are run manually without getting any benefit of the online system that the world has applied to every field of service for the sake of time cut and ease of its . In order to access laws and regulations, to establish a hearing schedule, to send notices to lawyers, to track the status of a particular case and for many other purposes of case management, there is no electronic device available (within the court) for judges to use. Similarly, electronic case management devices are also not available to lawyers. Moreover, the plaintiff cannot file an electronic lawsuit. One can't even pay court fees through an electronic system. The system is designed to be totally dependent overall lawyer who will manage all these issues which would have been easily done on a laptop while sitting at home or office. It is deliberately designed so just to promote the judicial culture and not the culture of ease. Performance monitoring systems are also absent in most competent courts. Performance reports that can be useful in analyzing the time period of outstanding cases are not created and individual cases are provided. Unfortunately, upgrading the enforcement mechanism has not been a priority for any government in this country. It is highly recommended that the government of Pakistan implement all necessary reforms in this sector, otherwise the country's ranking in the ease of doing business index will decline more and the country will always remain unattractive to investments.

The above discussion regarding ease of doing business may not be a perfect example of the *Gharar* based transaction that may be catered as a classical example in the *Sharī'ah* law. The very need of the discussion was due to the fact that these loophole in our financial systems that have prevalent in our society are working as agents which encourages the financial institution, business entities and other services department to adopt unconventional ways and perform ambiguous legal and financial activates that will then finally be considered as the proper set example of *Gharar* in the sharia frame of work.

5.8.7 Benami transactions: The word *Benami* basically comes from the origin of South Asian Indian language which means “no name” or “without name”. As expected by its name it denotes any property whose original owner is not known. Hence the factitious person whose name is used for the purchase of a land, property or any other movable or immovable asset is basically a camouflage for the real owner who uses him instead for his personal financial gains. ¹

The chapter of *benami* transaction was started and known first by the parliament of India by passing an act named as *benami* transaction prohibition Act 1988. This act was introduced because of the sense of the issues related to black money was very high. Hence *benami* and black money go parallel to each other. It is a clear cut case of asset beyond means. A beneficiary of *benami* transaction actually conceals the actual quality of his money by not declaring source of it. This means that the black money he/she once incurred can't be disclose so rather inviting people to point fingers on the black money a diversion is created so that law enforcement agencies may not get involve and disclose the wrong means of earning once he/she assimilated for it. The benami case is a perfect example of *Gharar* based transaction where the facts about the owner and his available money for the *benami* transactions are deliberated concealed in the documents of sale and purchase. Other Possible means for the Benami transactions may be land plots, homes/dynasties, shopping malls/ arenas, shops, housing schemes, bank accounts, vehicles, corporate shares in a listed

1THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988, *Prohibited Transactions*
<https://web.archive.org/web/20130812221150/http://finmin.nic.in/law/Benami%20Transaction%20Prohibition%20Act1988.pdf> , Retrived on 1st May, 2020

company, ornaments, jewelries, foreign currencies/ exchange, legal documents and intangible real estate with financial value in shape of guarantee files provided by the source.

The act of prohibition of *Benami* transaction, 2017 elaborates the technical meaning of the term in these words:

"Benami property" means any property which is the subject matter of benami transaction and also includes the proceeds from such property;

(A) benami transaction" means: a transaction or arrangement where a property is transferred to, or is held by, a person, and then, consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefits. Direct or indirect, of the person who has provided the consideration, except when the property is held by:

- A person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner or

-a director of a company, agent or legal adviser, and any other person as may be notified by the Federal Government for this purpose; or

-any person being an individual in the name of his spouse or in the name of any child or in the name of his brother and sister or lineal ascendant or descendant and the individual appear as joint owner in any document of such individual and the consideration for such property has been provided or paid out of known resources of income of the individual; or

(B) A transaction or arrangement in respect of a property carried out or made in a factitious name; or

(C) A transaction, or arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership; or

(D) A transaction or arrangement in respect of a property where the person providing the consideration is not traceable or fictitious.¹

More over the benami Prohibition law is again enforced in the benami act 2019, where the FBR has comprehensively described and elaborating the procedure of the law. The FBR now intends to not only attach the *benami* asset on the name of its owner from its available information but also introduce the whistle blower effect which denotes that the one who gives the information of the property will be entitled for the five percent of the received amount from it and so on and so forth. The local agency of information reveals the story that the FBR has been granted the power to take action against Benamidars, fictitious individuals who have

¹ The Benami Transactions - *National Assembly of Pakistan, benami transactions (prohibition) act 2017*, http://www.na.gov.pk/uploads/documents/1485947203_112.pdf , Retrived on 3rd May, 2020

transferred or held Benami property on their names. The Benami Transactions (Prohibition) Act, 2017, which was approved by Parliament during the last regime, has been made operational, allowing the government to confiscate all properties and bank accounts registered with a fictitious person. The relevant Tribunal will decide the sale process of confiscated bank accounts and properties under the Benami Act. This move is part of the government's efforts to document the economy and take strict actions against those who registered their assets with fictitious individuals to evade taxes.¹

Once the *benami* transaction is completed, it serves the main purpose and that is the possession over the asset. This asset may be in any form that could be legalized through multi transactions until it could be declared as white money and once it is done so, it can be used elsewhere for whatever wants and needs be fulfilled. The only problem is the initial source that it was used on the very first place. The only problem remains then is the agent of *benami*, if the agent admits and declares himself /herself which was used as a cover for the purpose of *Benami*, the cover will be blown away and the initiator of the whole transaction which is the beneficiary of it can then be easily put on the radar of investigation and persecution.

Another tendency that arises for the sake of clearance of the *Benami* based transactions is to shift the money to an off shore account out of the country and once it's done nothing is required to prove what was once illegal. This activities even if generated through *benami* based transaction, it will be considered as activity based on money laundering due to the involvement of the hard cash.

An example of the financial activity under Benami is the Hajveri House of the former finance minister Ishaq Dar which is situated in Gulberg, House III, H Block, Lahore spread over four channels. A team of the security officials, headed by the Assistant Commissioner of the city, reached at the residence to confirm the order and forced all persons inside it to evacuate immediately from the premises. The property will be sold soon by the NAB as per the orders of the Supreme Court. The former finance minister was accused of possessing more assets than well-known sources of income. The order was with reference

¹ Business recorder, benami laws goes into effect, March 12,2019, <https://fp.brecorder.com/2019/03/20190312454565/> , Retrived on 5th May, 2020

to the Supreme Court ruling of 28 July in the Panama paper case. Hence to fulfill the requirement of the Law on 2 July 2019, the NAB ordered the seal of his real estate assets and the confiscation of bank accounts. This step was taken because the convicted person didn't comply the procedure and did showed his presence in the court of law as he flew off the country abstaining other cases of crime as well. Although Mr. Ishaq Dar responded to the case by saying that he has gone to London for health treatment and has not returned back to the country yet but despite many legal notices served for this purpose by the NAB for the compliance of the court order, he is still persistent not to come back and still using the excuse as a cover. Moreover his wife pursued the court proceeding and responded objecting the court's decision and claimed that Hajveri House belonged to her. She said her husband gifted her said facility on February 14, 1989, and therefore could not be confiscated. On the other hand, NAB claimed that the house could not be delivered to his wife and disproved her claims that the house was her property. NAB stated that the property could not be returned to her wife because she had no evidence to authenticate its claims. NAB also proved the fact that Dar House was bought in 1988 and showed the records of Land Department that he is still the owner of the property.¹

This was just an example about how illegitimate and fatal is the financial activity based on *Benami* transaction. The consequences of an invalid transaction are sometime beyond one's control. This is the main reason why Islam has responded so firmly on these irregularities based on the *Gharar*. However it is expected that more than one hundred and fifty Pakistanis are involved in the *Benami* based transactions and they are also likely to be punished for that. The news agency records the fact: 150,000

The Board has already collected bank account information for more than 150,000 Pakistanis from 26 jurisdictions abroad as well as information from the Dubai authorities on real estate held by Pakistanis in the United Arab Emirates.²

Moreover it is apprehended that the people who are involved in the *Benami* based transaction would face strict forfeits and challans, including the seizure and restriction of

1 Samaa New, *District administration seizes Ishaq Dar's house in Lahore* by Tehmina Ahmed, July 27, 2019, <https://www.samaa.tv/news/2019/07/district-administration-seizes-ishaq-dars-house-in-lahore>, Retrieved on 2nd May, 2020

2 Samaa News, *The FBR will be punishing people involved in 'benami' transactions*, February 8, February 04, 2019, <https://www.samaa.tv/news/2019/02/the-fbr-will-be-punishing-people-involved-in-benami-transactions-from-february-8/>, Retrieved on 4th May, 2020

the authority for sale of their property and that of freezing of their own bank accounts until cleared. Federal Board of Revenue is also expected to notify the *benami* rules and procedures after being reviewed by the Ministry of Law. It is also likely to observe that authority apprehend that any property held in Panama or undeclared property will be confiscated for 90 days and then sold thereafter. Other than that Data relating to bank accounts, travel records and large property records are checked by FBR. The government seems not to declare any new amnesty plans offerings and won't bother those who have benefited from amnesty schemes in the past, according to the FBI. Those with legal treasures or had declared their property should not be afraid of FBR notices because they are regulated now.

Pakistan is still in the state of denial as its elite or business class stand as a hurdle between the nation and its law. Their denial is based on their cruel approach and measures of double standards. They happily want to stay long in the country but when it comes to the formality of declaration of the assets or tax submission they stand side by side with its business community (regularly known as *Anjuman e Tajiran*) for its vested interest against the regulatory authorities and law enforcement agencies for not exposing them. The behavior of our financially progressive class is beyond ones understanding as they have led the country into dark ages or stone ages where the only law works, known as the law of jungle.

In a free and progressive world people recognize the importance of taxation system and link their business activities with the rules and injunctions of the state and show their will for the flourishing of the society and development of the country through its development project by pay exact amount of taxes to the authorities. Their every business activity is recorded and no hidden agenda thus threatens the supremacy of the state law.

Pakistan is a country where one can give ample of examples showing that many of us have established their own way and standards of dealings as if it is state within a state. This is exactly what happens when the authorities of the state fail to establish proper working rules of business for every single sphere of life. This irregularity is the result of mismanagement which is most of the time seen as a deliberate act of misconduct. This helps the resourceful manage its interests by compromising the larger good of the society.

The activities related to *benami* based transaction whether it is hiding of assets through non declaration, tax evasion by not quoting the exact sales of a business, hundi or *hawala* as means of money laundering etc. are the classical forms and more up to date examples of the *Gharar* based transaction, for the purpose where one deliberately conceals the facts of his financial activities so that he/she may not be charged extra amount of payable money by the authorities of the state.

5.8.8 Money laundering; Gharar related to the hard cash money

Normally, actors of the money-laundering conceal the illegitimate proceedings of a financial crime from the public evidencing it. Money is laundered and disguised through technique as a genuine profit earning that is realized by lawful means and allows its apprehenders to use it without drawing attention to their illegal goings-on. Money laundering has been criminalized in an attempt to remove profits from crime. The focus was on the fact that it was wrong for any person to assist a criminal benefit from his or her illegal activities or to reduce the activity by providing financial assistance. However, Money laundering here in its specific meaning relating to our society is transferring of the hard cash money or something near to it, avoiding the regulatory authorities for the sake tax evasion and making it appear to be derived from a legal source.

The facility of money laundering is mainly offered by the financial institutions themselves through managing, controlling, transferring the money and finally making it look like white money through several transactions.

It is the technology that made possible setting up the desk for the money laundering. Automation makes it next to impossible for the regulatory to trace where the money came from and where it went, allowing the exchange of dirty money concealed with the art of it. Therefore, as technology and money transfer methods continue to evolve, it is important for the regulation authority to update itself for the sake of systematic cybercrime prevention.

Money-laundering occurs when a person or an external business entity transmits the money of another person's activities based on any financial crime, drug trafficking, some immoral activities that can create some good hard cash money, Tax evasion and other flawed accounting practices etc. here it is important to know that Drug trafficking also

depends on the process of concealment of the assets as clean money. Another type of money laundering is again specific for us and that comes under financial terrorism. Our country has survived a lot from this type of money laundering as it was considered to the hub of terrorism. More than seventy thousand lost their lives and worth one hundred and fifty billion dollars of infrastructure destroyed from these terrorist activities, bombing in the social area and highly sensitive areas, terrorist attacks and so on and so forth. Money laundering depends on placement of the funds, classes of the transactions and integration of the same money to the market as a hundred percent legal and pure money ready for the entitlement of the name of beneficiary, company or any other sort which shows that the beneficiary has the right to reserve it.

Talking about of the stages of money laundering, the money which is laundered from a weak financial system is separated from its original beneficiary. This stage is accomplished by flow of money through a complex sequence of transactions to hide its source and from where it came.

In this cleansing process “Shell companies” which are basically inactive companies used to facilitate getting red from the initial and original financial trails. These shell companies are often used in the layout to conceal the source of money as described above and typically implement a service that requires series of frequent cash payments. Hence this concealment of cash transactions is useful for money laundering because it makes it difficult for the government based regulatory authorities to trace the original money trails. To accommodate this procedure, false invoices and receipts are also attached to help concealing the funds further. Sometimes, the masters of this art continue to transfer funds to different other Shell companies to remove them from the original source. Here it is interesting to know that these masters in the art of money laundering are none the less from the community of financial and legal advisory service providers.

Eventually, in the integration round, money that was successfully turned white is returned back to its initial owner and he/she returns and resubmits this documented money indirectly into the circle of the economy. For example, Shell Companies may now purchase a well-documented property on the name of the money launderer that will be used by him/her at par will.

In States especially the western states where deliberately or unintentionally with weak governments or less efficient financial regulatory laws or for the sake of welcoming the foreign reserve that provide offshore financial services, money launderers can obtain legitimate financial accounts that apparently allow them to transfer their dirty money without being recognized. In these countries, money laundering is often overlooked and money launderers can increase their gains by passing the social hurdle of their society and encouraged for move illegal activities that will give them illegitimate financial leverage. However the money laundering is a menace often observed in the third world countries where people seek insecure environment for living and are desperate to setup another venture somewhere out of their country in more advanced countries where their children can prosper and be safer than them. This logic may not rationalize the act of money laundering but one can't negate the tendency of the instinct that urges the demand of safety and acceleration in the worldly life.

However for further fulfillment of safety and security requirements, the money launderers are observed keeping their hard cash money in foreign banks with the help of registration of an off shore company. These off shore companies provide facility of external accounts providing more privacy, taxes reduction, and less regulation because of the soft financial policies for the disclosure of the source of the money. The illegal owner will be able to hide his money in the account without reporting its presence to the regulatory authorities here in Pakistan and will be able to earn interest on the deposited funds without paying personal income taxes to the FBR.

Again, the only single problem remains is the leakage of the information about the off shore company like what happened in the case of Panama leaks. The initiator of the Leaks Sir Julien Assand not only listed the name of the beneficiaries of it but also change the course of the future politics. Many influential personalities came under the record of the authorities and had to pay a very enormous price of their act in term of finance and bad will. These papers change the course of politics in Pakistan as an elected prime minister was disqualified and banned for his rest of his life by the Supreme Court of Pakistan from holding any public offices. One of the news agencies covered this event:

Former Pakistan Prime Minister Nawaz Sharif has been sentenced to 10 years in prison and fined \$10.6 million on corruption charges linked to 2016 Panama Papers revelations about his family's properties overseas. The National Accountability Bureau, Pakistan's

anti-graft court, also has convicted Sharif's daughter Maryam to a seven-year prison term and his son-in-law Muhammad Safdar to one year imprisonment.¹

In April 2016, a probe by an international association of investigative journalists exposed files leaked from the company of Panamanian Foreign Service & Mosac Fonseca, about the connotation of Sharif's children with foreign companies with four apartments in a luxury residential complex in the foreign jurisdiction of London.

These properties are now expected to be confiscated by the Pakistani government or if they don't manage to satisfy NAB through an offer of paying back an amount of money under a draconian act named plea bargain they may be able to lift up the pressure. Truly it's a discrimination in the criminal laws of the country as a local criminal or thief that conceive to get hold of some money is imprisonment for years, while these public office holders if manage to get hold of the public money on the basis of corruption simply let go in lieu of some reason money which may be tantamount to peanuts of what they earned out of it.

Subsequently these allegations as told above led to the Sharif dismissal from office for the first time in July 2017, and then received an enduring ban of political activities in April 2018. However the case is still in the courts for further hearing but as the family of the Prime Minister isn't able to show the connection of the money trail, it has become permanent headache.²

In the scenario of Pakistan, the greatest risk to anyone involved in money laundering as observed in the above case is imprisonment. It creates problems for those who are directly or indirectly involved in the chain of the *Gharar* based money laundering transactions like bankers, legal advisors, corrupt certified accountants who may be forced to participate, as well as highly paid corporate leaders who may or may not be aware of the process. Other risks associated with the money laundering activates when the information is leaked to certain criminal entities who are in a position to take benefit of it like risk of extortion or threats against themselves and their families of the money launderers for whom

¹ International consortium of Investigative journalists, *Former Pakistan PM Sharif Sentenced To 10 Years Over Panama Papers*, July 06, 2018, <https://www.icij.org/investigations/panama-papers/former-pakistan-pm-sharif-sentenced-to-10-years-over-panama-papers/>

² International consortium of Investigative journalists, *Former Pakistan PM Sharif Sentenced To 10 Years Over Panama Papers*, July 06, 2018, <https://www.icij.org/investigations/panama-papers/former-pakistan-pm-sharif-sentenced-to-10-years-over-panama-papers/>, Retrived on 5th May, 2020

they are working. For covering a lie, one has to create certain other covers that may compromise the safety and security of the whole transaction. Once the cover is blown it automatically generates legal proceeding which will definitely lead toward investigations like the commencement of JITs or high powered commissions in our countries that are busy in sorting out high profile money laundering and other financial corruption cases like panama papers, LNG cases, Ashiana housing schemes etc. one thing is for sure that the illegitimate money earned through kickbacks, embezzlement of funds and other means leads to money laundering because foreign remittance is the easiest excuse that one can adopt overcoming all the legal proceeding against him. As on now, the world is moving fast against the concept of financial information sharing through bilateral agreements which will give exact details about the properties and banks accounts of the country men elsewhere in foreign. Adding to the situation the foreign agency named Financial Action Task Force (FATF) who is constantly combatting against money laundering has worn Pakistan that if it didn't come over the phenomena of money laundering which is the main source of all sorts of terror activities that the world is facing, will finally put Pakistan into the grey list. Our numbering regarding financial transparency is also not very good as we are rated with the third world countries.

Pakistan has already barely sidestepped being blacklisted by FATF once. However the threat is still on the Peak. If there is one clear message to Pakistan coming out of the FATF meeting upcoming session, Pakistan is ready to join the countries already put into gray list. Hence the problem is not only sensitive from the inner spare but also from the outer world as well. We need to pull up our socks in terms of the world demand of transparency. The FATF declaration has also evidently mentioned that:

Not only did Pakistan fail to complete its action plan items with January deadlines, it also failed to complete its action plan items due May 2019". It then 'strongly urged' Pakistan to swiftly complete its action plan by October or else face the music.¹

Although India is actively building the conspiracy theory against Pakistan related to the money laundering activities for the sake of flourishing terrorism in the region so that it may be put into the Grey list but it's our organizations as well that have second the argument by publishing the fake accounts reports under JITs investigation.

¹ The Tribune Express, *FATF and Pakistan's future by Hassan Khawar*, June 25, 2019, <https://tribune.com.pk/story/1999392/6-fatf-pakistans-future/>, 7th May, 2020

We are talking about billions of rupees that have laundered with exemption from the law directly under the nose of regulators, adding to the situation those involved in hundi and hawala operations still continue to work.

The fact of the matter is that while we are good at making legal and regulatory reforms which are essential for the sake of paperwork but the point is that we are still very pathetic in operational frame of work. Nothing could be proven on ground at all as the status quo is behind all this fuzz. They want an elite system for themselves and a regulated heavily automated system for the public. In response to the above situation public has adapted well disguise for not cooperating in the field of financial regulations and have created their own short cuts sufficing their personal business and other financial needs.

However under unbearable pressure from the FATF that government can't sustain, it has started crack down on banned organizations like lashkar-e-Dawaa, detouring its services, freezing its ongoing financial accounts and capturing the responsible and caging them behind bars. Anyways these international organizations are well aware of the fact the these are mere cosmetics for the sake of not letting Pakistan into grey list as no legal proceeding are at sight. There is no sign of investigations against terror financing cases that led to convictions, punishments, severe restraints on adapting financial services or cash carriers, the absence of effective coordination between law enforcement agencies and the regulatory vacuum of a group of highly dangerous and risky financial activities.

It was China, Turkey and Malaysia that helped us dig out from the situation of FATF sanctions viz a viz our intense diplomatic efforts which played as our last resort. It is necessary that at least three countries, among 37 countries must support in the meeting to abstain the blacklist threat. Pakistan is fortunate that Saudi Arabia getting full membership of FATF and as a close friend and important strategic ally, it can give us leverage over the issue.

However the diplomacy stuff may keep us out of the blacklist, but we can't get out of the problem of the gray list, which requires far more votes of confidence to over right our fate of financial crises that we are in . This however requires strong and concrete steps to overcome the menace of the *Gharar* based transactions of money laundering. Islam already warn us about it, but we over looked the injunction and now is the time of paying the price in terms of devaluation of the country's goodwill. This can only be achieved by redressing

the whole mess of undocumented economy into a documented one where each transaction speaks for itself to be as transparent as glassware itself. We, as a nation must understand that money laundering is an illegal offend and we are not only answerable in this worldly life but also here after.

While we are working on commissions to scrutinize public debts that are suspected to be looted and plundered by the public office holders and creation of bands for examining everything under the sun, it is time to shift some grave consideration to this very significant concern of money laundering as well. Recently formed National Development Council, which includes highly powered personals including the army chief himself and other senior provincial ministers as members, must consider a permanent way-out of the menace of money laundering by placing full force of the state behind it. Otherwise, the danger of blacklisting will continue to trouble us every few months, expelling the confidence of the investors and uncertainty of the market forces looming afterward.

Final word for the problem of *Gharar* based money laundering is that the amount of money that we can save by avoiding this menace can let us stand on our feet once again. So it's on the very first place, our own problem and not that of FATF or some other foreign organization. Just to clear the picture about how big is this money; the local news agency well informs the nation which covers the report put forward by an American think tank Global Financial Integrity (GFI) about the economy of our state:

“In Pakistan, estimates of illicit financial flows put over \$10bn as escaping taxation and being siphoned off outside the country. This is with nearly one-third of the population living below the poverty line”.¹

This money is so big that if secured and turn into legal and proper channel of financial transaction, it will not only relieve us from the current account deficit but also that Pakistan will be in a position of balancing out its budgetary loss facing at the end of every single year. Although it is a fact the money laundering is a universal problem that every single economy has to face now a day but for us it is a matter of survival. If we don't settle the problem of *Benami* transactions and alike, our un documented economy will mount with the due course of time.

¹ Dawn News, *Pakistan loses \$10bn a year to money laundering* by Anwar Iqbal, march 6th, 2017, <https://www.dawn.com/news/1318697> , Retrived on 10th April , 2020

Chapter 6 IMPLICATION OF MAYSIR ON THE SOCIO-ECONOMIC SYSTEM OF PAKISTAN

6.1 Introduction:

After the independence of Pakistan, the very first gambling act was officially consolidated resulting from the resolution passed by the West Pakistan. The act was known as West Pakistan Prevention of gambling 1961. Before that two major gambling act were intact i-e Public Gambling act and Bombay prevention of Gambling act 1887.¹ Purpose behind both of these acts was introduced to propose punishments for those who run gaming houses for the public. More over these two acts were enforced through notification and enactments in the areas of NWFP, Punjab and Baluchistan. The fact that the Sindh province came under the presidency of Bombay, a similar sort of regulation was passed known as the Sindh prevention of gambling act 1887.²

However after the disintegration of one unit of Pakistan, In May 21, 1977 the Prevention of Gambling act 1977 was enacted with its application to the whole of Pakistan. Due to the significance of the above act, four provinces of that time came up with their own resolution in this regard to emphasize the issue dated 1978 naming the Punjab/Baluchistan/ KPK and Sindh prevention of gambling act.³ This latest act is act of prevention of gambling is exhaustive to all the forms and nature of gambling activities like open of game houses, sports betting, casinos/online casino, lottery. Point to be noted that cases regarding gambling are heard in the courts in accordance with the provincial laws which are more adaptable with the current scenario, comparatively more modernly designed and comprehensive in its scope that covers almost all forms of gambling activities. For instance look at the Punjab prevention of gambling act:

“Penalty for owning or keeping or having charge of a common gaming house:
Whoever:

¹ Public Gambling Act 1867 - *Law and Justice Commission of Pakistan*, repeal of public gaming act 1867, 75-77, <file:///C:/Users/Dell/Documents/EGDownloads/110.pdf> , Retrived on 22nd April,2020

² Ibid.

³ Ibid.

- being the owner or occupier, or having the use, of any house, room, tent, enclosure, vehicle, vessel or other place keeps or uses, or knowingly or willfully permits the same to be occupied, kept or used by any other person as a common gaming-house; or
- has the care or management, or in any manner assists in conducting the business, of any common gaming-house; or advances or furnishes money for the purpose of gaming with persons frequenting any common gaming-house,
- Shall be punishable with imprisonment for a term which shall not be less than one month nor more than one year, or with fine which shall not be less than one hundred rupees nor more than one thousand rupees, or with both.
- In a prosecution under sub-section (1), it shall not be necessary to prove that the person found playing was playing for any money, wager or stake.
- Penalty for being found in common gaming-house: Whoever
- is found in any common gaming-house playing or gaming with cards, dice, counters, money or other instruments of gaming, or for the purpose of gaming, whether for any money, wager or stake or otherwise, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.
- Any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Penalty for gaming in a public place:

Whoever is found gaming in any public place, street or thoroughfare, shall be punishable with imprisonment for a term which may extend to [three years], or with fine which may extend to [five thousand rupees], or with both.”¹

6.2 Maysir Based Financial Transactions and its Economic Repercussions

¹ THE PUNJAB PREVENTION OF GAMBLING ORDINANCE, *An Ordinance to provide for the prevention of gambling*, March 14th, 1978, <http://punjablaws.gov.pk/laws/329.html> , Retrived on 23rd April, 2020

Similarly other provincial ordinances are also as elaborative as above and suffice the need of preliminary demand of action against the illegal and prohibited activity declared by the religious clauses which have been discussed earlier. Having said that, one should be naïve enough to ignore the reality on ground about the issue of gambling which is prevalent in every single form of it in our society and mostly well under covered. Most of the gambling activities are for the purpose of pastime and generally played and bet on *ludo*, local cricket matches, carom board matches, billiard matches etc. in *gali* (streets) and *muhallaz* (towns) where regulatory authorities are unable to object the ongoing activities. These activities are happening everywhere in the country on betting as low as hundred rupees. Most of the time these activities are invisible and unpredictable as the organizers and betters are same and only want to create a competition for it. As it's just a mere beginning of what's it's going to turn into. These small practices at a local level are just stimulation and adaption of the bigger gambling based criminal activities. Although these small scaled gambling are a main source of quarreling between the challengers and it seldom turns into a criminal activity in form of a fight which then results into wounds or even killing. Till this stage one can consider it as an immoral activity which shares the burden of sin on the shoulders who take the injunctions of *Sharī'ah* for granted and will be answerable in the court of Allah (s.w.t) in here after. There is no way we can stop these ongoing activities by law. The only way out is to educate the society about its harm and tell those the harms occurred from it due to its addiction. A well intact social pressure must be maintained to stop the society fall in these sorts of menace.

6.2.1 Activities Responsible for the Gambling based Transactions

The main cause of worry is sensed when it takes its course as a commercial activity and involves serious money into its circle. These activities based on the gambling then start hurting the socio- economic system of the country. Activities of gambling which are tried to institutionalize it from its organizers like establishing it in the form of running *adda* (stations) where people are gathered under a well-defined code of the game involving some serious amount of money poured into it. These activities are based on a limitless risk that its challengers or participant take it on under the glorious or lustrous rule of higher risk-

higher profit. It is this institutionalized gambling *addas* where we see the law enforcement agencies in action against it.

However, the news are so mixed about the actions of the police department that confuses a researcher as to verify exactly what they are up to? Sometimes the police department is on a raid against gambling dens and recovers the law while closing numerous dens in one go. Look at the news agencies report which shows how professional our police department is when it comes to the law enforcement issues. A local newspaper reports an incident in these words:

The police on Thursday raided two gambling dens operating in different localities and arrested 12 persons for their alleged involvement in the illegal activity. Acting on a tip-off, Waris Khan Police raided a gambling house operating in Dhoke Khabba and held eight accused Shahbaz, Nadeem, Abdul Qadoos, Bazaid, Afzaal, Zubair, Kamran and Bilal Naseem and recovered bet money and seven mobile phones. In another raid, Civil Lines Police arrested four accused Amir, Shahzad, Tahir and Qaiser from Dheri Hassanabad red-handed and recovered bet money and other items including computer, LCD, TV, Dish Antenna and four mobile phones from the accused.¹

Another activity was reported during a cricket match was played. The agency reports:

A police official said SHO Sargodha Road police station conducted raids at Baba Pan Shop, Zain Pan Shop, Millat Road and nabbed 10 people identified as Shafiq, Eshaaq and others red-handed while gambling on a cricket match. Similarly, Bahlak police also arrested three persons identified as Zahid Tauseef, etc. on gambling charges. The police also confiscated money, mobile phones and other material from them and sent them behind bars.²

This sensational news and many other reporting sound as if our society is moving toward a very right direction cleansing the society from evil of the gambling. Yet other sources confirm another dimension of these ongoing criminal activities. A very comprehensive report against these dens of gambling in a major city of Lahore is recorded by a professional news agency which shows the direct connection between these dens and the regulatory authorities under covering these false activities. The report says that a report submitted to Punjab Chief Minister Shahbaz Sharif reveals that over 150 gambling dens in the provincial capital have the support of politicians, government officials, and police

1 Pakistan Today, *Police raid gambling dens, nab 12 men*, July 16, 2019, <https://www.pakistantoday.com.pk/2014/07/10/police-raid-gambling-dens-nab-12-men/> , Retrived on 24th April, 2020

2 The express tribune, *Police apprehend 13 gamblers*, August 07, 2017. <https://tribune.com.pk/story/1475539/police-apprehend-13-gamblers/> , Retrived on 25th April, 2020

officers. The dens are raided to deceive people and have hired houses at important places and hired beautiful girls to promote their business. The dens operate in various police limits, with the bookies' president living in Township and general secretary being Iqbal, alias Bala, of Ichhra. Other bookies include Bobby Butt, Sami, Mazhar, Sh Naeem, Chacha Yaqoob, Ahsen, Amir Shah, Tony, Pervez, Tahir Butt, Qalb Abbas, Lohari Gate, Malik Sadaqat, Humaun Khan, Zubair alias Jhara, Waseem Maqsood, Ashfaq Ahmed Kharak, and Asif Ali. Local Social Welfare Officers (SHOs) receive heavy bribes from the bookies every month, and in some areas, they run their business in the name of their employees in connivance with the police. Action will be taken against SHOs for links with bookies¹.

Hence it isn't enough to show that the security organizations are alert to coup up the problem but they should assure that our environment is free of the said menace. They must assure that they did not deliberately left the loose ends.

6.2.2 Gambling Based Activities on the local side of daily business activities

Many other reports clearly show that these sorts of illegal activities are happening in almost every major areas of the country. Its scale and size may vary but its lustrous and ignorant behavior of the society has managed to open these sorts of dens in every nook and corner of the country. One thing these reports confirm that behind these illegal activities, there are influential men involved looking after and protecting these dens as their major profitable business. These men reside in every single form of influence, from where they easily manage to make a mob and by using their authority, they easily balancing out any threats they may fall into. These dens can never exist if the law enforcing agencies aren't behind these activities. Another report confirms about the fact that it's the police department that is nurturing these dens. This report not only emphasizes how these dens are working but also how they are protected from the law as there under cover is excellent. One must salute these news reporters as to how they even manage to capture these ongoing sites and extract information from these no go areas. There are many incidents recorded by the media where these street reporters working on a very low wages gave up their life. The report clearly

¹ Daily times, *Over 150 gambling dens in Lahore have support of politicians, police: report, Monday, July 15, 2019*, <https://dailytimes.com.pk/55508/over-150-gambling-dens-in-lahore-have-support-of-politicians-police-report/>, Retrieved on 25th April, 2020

depicts the reality as it points out six gambling dens operated in public areas of the city allegedly under the watchful eye of men from a law enforcement agency. One of them which is located in the heart of the city in Mozang Chungi on Jail Road is operated under the guise of an amusement park. A stage for dancers and kiosks for electronics and other household items have been set up to give the venue a festive look. However, a completely different scene was found when this reporter visited the scene. A man dressed as a law enforcement agency with two people from a private security agency was on guard at the main entrance. On the left side of the entrance, some law enforcement agency officials were present in a tent. Half a dozen of them were on guard duty inside the amusement park. Besides the kiosks, four counters for gambling purposes were also set up. One of the counters was closed while the rest were open. One of the counters had a plastic sheet on the main desk. On the sheet were animal signs such as a lion, a horse, a peacock, an elephant, a deer and a camel. There was also a dot matrix behind the main desk. Players bet on animal signs ranging from 100 to 1000 rupees. The counter managers rotate the board, asking the gambler to shoot and throw the point. The dot hit a mark on the rotating board. Gamblers who bet on the point hit win double the money they put on the line. This reporter has seen 20-25 people play the game and more than 50,000 rupees are at stake. The second counter also has a sheet of paper printed with red, blue, and white tennis balls on it. There is a large glass bowl behind the main desk with three color perforations on the surface. Gamblers bet on three colors. Someone is given a tennis ball and puts it in a jar. The remainder bet on three holes. All those gamblers who bet on the hole that catch the ball win. About 30 people, including workers, shop owners and students, went bankrupt in the game. The betting range was between 10 and 100 rupees and 10,000 to 25,000 rupees at stake. The third counter contains a desk with items for everyday use such as soap, bottles, cosmetics, and cigarettes placed on it. Gamblers mostly children and teenagers get 2 spins for 5 rupees. They throw the ring on the table and win the items. Each bid costs them 5 rupees. When this reporter approached a law enforcement official and asked him about all the activities going on there, the man in uniform asked him to identify himself. Upon refusal, the security men told him to "don't care about your private affairs". Similar festivals were also held in five different places in the city. One is being played inside a cinema on Abbott Road directly in front of the Kela Gujar Singh Police Station and CIA Headquarters.

There are four other festivals running in Minar-i-Pakistan and Scheme Morr on Multan Road, Shahdara and near a railway crossing at Kot Lakhpat. Police sources told Dawn that the law enforcement agency is not alone in the work. Some private parties also participated in the game as a front-end. It was alleged that the law enforcement agency received 20,000 to 50,000 rupees per day from each of the amusements as protection money. The district police also get their share on a daily basis from the amusement park managers in their purview, they said, adding that it was not understood that the higher police hierarchy was ignorant of the practice. The sources said again, the parties had influential people who acted as mediators. The sources claimed that the mediators include businessmen, senior officers from various departments and some media professionals.¹

This lengthy report is a bit old one but its recording was important in a sense to show that how these dens are covered. Usually after publishing these reports these dens disappear for a while and in accordance to the perfect option of another time and space they reappear altogether with a new zeal and effort to promote the evil in the society in a more dynamic and organized way making it impossible in future to be caught. Nonetheless it's the will of the law enforcing agencies that misses all the time other else there is no chance for the promotion of evil in our society where the supreme law of the Almighty prevails. Almighty says in his book of last message about the act of Jews to conceal fact by actually using some delaying tactics:

“But they could hardly do it”.²

This is the end of the evils that gambling introduces to the world. There are other bad and evil deeds intact with it. These dens of evil where gambling is ongoing also invites it users to other non-*Sharī'ah* confirmative activities like usage of drugs, involvement of women and sex, availability of illegal weaponry, human trafficking even to outside world, usage of alcohol and all possible means of corruption that a man is likely to fall into comes as surprise gifts.

Another report confirms that the Police in their crackdown in Lahore against anti-social elements arrested 12 lawbreakers including a gambler along with recovering 770 grams of Charas, 15 liters of liquor, two eight-round 30-bore pistols, a truck, cash worth

1 Dawn, *Six 'legal' gambling dens in Lahore*, December 27, 2001, <https://www.dawn.com/news/12199>,
Retrieved on 26th April, 2020

² Verse, 2:71

Rs 2,700 and other money from their possession. According to the police spokesperson, Nasirabad Police has detained Qasim for possession of 200 grams of Charas. Racetrack police recovered 280 grams of charas from Amir's possession. Shuntra Police thwarted Hamad Ali with 150 grams of charcoal while Abdul Basit was sent behind bars to retrieve 140 grams of Charas. Mandra police arrested Mobashir for carrying five liters of liquor while 10 liters of Gul Muhammad and Nadim were seized. In the meantime, New City Police booked Saddam for possession of 30 pistols and three rounds. Kalar Sedan police found 30 pistols and five bullets from Yasser. Ratamral police seized a lightweight truck and arrested Muhammad Amin. Gujar Khan Police has arrested Hussain Sadiq for violating the ban on chalk walls.

One possible interpretation of these raids launched by the authorities is that these missions are basically compromised as the regulatory authority leak the information to the sources of the evil organizers prior to the action by the police. They simply present some money with some other notable evidences to satisfy the law, just to create a diversion for their upcoming projects as they very well know that they can't persistently stay on a single place for a long time period. This diversion helps out in many ways like covering the leaked information if any, tolerating the social pressure against these dens, exploration of more lucrative areas for the business and so no and so forth.

Presence of gambling in any society is a sign of a low mental level that can crash into false ideas which are sometimes not even imaginable for a regular mind. This denotes an addictive nature of human being which can simply loose every single precious belonging that results from the betting and losing it time and again. Especially in an uncontrolled environment like one in our society men have even casted or bet their family members into betting and lost their possession over it. One of the cases in near past is reported by the news agencies:

“A drug addict, Ali Raza hailing from suburbs of Chiniot lost his wife in gambling. According to details, Mehwish, who was currently staying with parents to take her SSC exam, was brought back home by her drug addict husband. He also torn off the roll number slip of his wife and threatened her of severe consequences if she did not follow his directives. Upon refusal, Ali Raza brutally tortured his wife with sharp-edged weapon injuring her critically. However, Mehwish managed to flee from the house and reach the

home of parents. The victim girl has appealed the authorities for taking notice of the incident.”¹

Clearly this is an act of shame that shows the actual direction of the society and one can calculate the magnitude to misfortunes of the innocents who have nothing to do with the gambling. The husband who did this wasn't unaware of the consequences but he might have tried to make her wife realize that he did all this gambling stuff for their future and now it was the time to recover the lost goodwill. Anyways our criminal history is full of these sorts of happenings and incidents. The above report is just a glimpse of the whole picture where the details are even worst then that. People don't even bother to present their daughter or immature aged children for the purpose of betting. This is clear indication of mind sickness.

6.3.3 Game shows and fun houses contributing and propagating gambling activities

Another aspect of these illegitimate activities is that the world media is covering these issues directly on the daily basis to show how inconvenient is Pakistan to live in or stay as an immigrant or even opting as a choice for the tourism. Clearly these foreign agencies are working for the promotion of their own agenda as they are well known about the fact that it's a homogeneous sort of problem in which they themselves are caught and their society is also paying a huge price in the name of liberalization, sex working approach etc., where people loose every single bit in the casinos and the out of anxiety opt suicide for relieve. By the grace of Almighty among all odds Pakistan has a very less rate of suicide or anxiety disorder. Due to a strong family system where people care for each other and help out the ones stuck into bad habits like gambling, adultery, theft etc. the addicts may get a chance to overcome other else it becomes a permanent source of threat for others. There are many evidences available of the internet that confirms the above fact but the point of the discussion is that we are ourselves responsible for our own bad will that foreign media is taking leverage of it. We must keep our society clean from this menace through promotion of keen knowledge that should help the people not get stuck into it *viz-a-viz* a strong formation of the law and order in the country where both i-e the law enforcement agencies

¹ Pakistan today, *Drug addict 'loses' wife in gambling*, march 31, 2019, Daily Pakistan, <https://www.pakistantoday.com.pk/2019/03/31/drug-addict-loses-wife-in-gambling/> , Retrived on 28t April, 2020

and the culprits of the crime must very well know that the law will strike back hard if neglected.

Another problem is about the gambling addiction in our society which isn't well addressed up till now. We hear about the seminars and programs on the drug addict, HIV ads, and alcohol addicts but we never listen across any organization working for the gambling addicts of our society. It's discussed above that the gambling addiction is a worldwide phenomenon and the world has well responded to it but a third world country like ours is still to be heard taking step against these evils. It is just like sucking blood through our own vanes. One of my associates who was involved in gambling activities I don't want to disclose his name said to me something about the gambling addiction once that it runs into your veins just like the circulation of the blood. If you extract the blood from your body, you will die. Just like that you can never quit gambling once you are addict to it. There is simply no rehabilitation center especially that may cater and cure the problem of gambling addiction in Pakistan. Hence it is the total failure of the government and the NGOs working for the betterment of the society who aren't taking any interest in rehabilitation of these addicts.

The menace of gambling on the basis of betting or in the form of lottery which almost more or less work like it, is found unrestricted everywhere like in malls in the shape of fun cities or fun lands where different games give you a chance to win a jackpot on a single strike, television programs like Pakistani versions of the Indian show *kon bane ga karoor pati*, morning shows, unfortunately also in Ramadhan transmissions like *jeeto Pakistan*, *Neelam ghar* etc. although a preliminary sort of action was taken by the Islamabad High court of Pakistan by taking notice of the above situation and asking PEMRA to stop this non sense. According to the reports Islamabad, on Wednesday, directed the Supreme Court to ban all programs containing lotteries and gambling on TV channels during the holy month of Ramadan. One Department of the International City for Humanitarian Services consisting of Judge Shawkat Aziz Siddiqui issued these directives during the adjudication of a petition against the violation of the code of conduct for morning programs and Ramadan broadcasts by some TV channels. IHC has also banned shows such as "Nelam Ghar" and those that look like circus shows during the holy month. Judge Seddiqi indicated in the order that: "It is the responsibility of the state to provide an atmosphere in line with

the teachings and requirements of Islam stipulated in the Holy Qur'an and the Sunnah of the Prophet. As such, obscenity, morals and obscenity of any kind and nature are contrary to the order of Islam and offensive to the guarantees stipulated in the Basic Law of the country, i.e. the constitution.” The ruling stated: “It is not permissible to broadcast any program that suggests the inclusion of lotteries and gambling, even if it is for a noble purpose such as Hajj and Umrah tickets, etc., whether it is a live or recorded broadcast.¹

However the order of the Islamabad high court was once again led down due to the lack of intentions as these programs capture and seek attention of many stray minds sitting and watching these programs on the television screens. Mostly these are unattended children, teens and house wives.

Yet another approach is simultaneously work for an environment where these gambling based activities must be legalized and center and casino must legally open where one must find every single facility to console their stresses on the similar parameters of the west is promoting these activities. Their main point of argument is based on the fact that these legitimate centers of gambling known as casino will help generate the economic activity.

However, despite the risks and dangers involved, it is better to leave it up to the citizens to decide on their morals and dispose of their savings. The best trade-offs between freedom and order remain in the relaxation of gambling law to decriminalize and legalize such activity, there is no doubt that the government must protect citizens from fraudulent practices, eliminate money laundering, and prevent organized crime to control such activities. This is why legalizing such activities not only provides safe and legal channels for citizens for such recreation due to regulation, but can also help generate significant public revenue Without delving into the embarrassing reasons, most of us realize that The racing horse is legally protected in Pakistan. Let's just say that our bureaucracy and feudal class will always make an exception for their lifestyles. ... If the law enforcement authorities target civilians, they will even charge citizens with suspicion of gambling on the possession of dice and cards under the current situation. Extremely harsh laws.... The

¹ The Nation, *IHC bans lottery, gambling shows on TV channels in Ramazan*, 10th May, 2018, <https://nation.com.pk/10-May-2018/ihc-bans-lottery-gambling-shows-on-tv-channels-in-ramazan> , Retrieved on 30th April, 2020

inability of fans to participate in such skilled paid games due to the local gambling ban is unfortunate. Pakistani fans, like the rest of the civilized world, should not be exceptions when it comes to skilled online gaming. While local fans may not be excited about the prospects of the NFL (Football league), they certainly do rave about EPL (English Premier League) and cricket related tournaments. With the advent of the Pakistan Super League, Pakistani cricket fans will lose a legal way to put their money into their favorite franchises. The bottom line is that there is no reason why an adult Pakistani should not have access to gambling and skilled gaming, online or offline, whenever they want to entertain themselves. Access to pay gambling and gaming can be considered a right of citizens, and when done responsibly it can really be an enjoyable activity. We have a choice to be blindly morally nervous as usual, or make it safer and legal for citizens to enjoy paid skilled games, if not gambling.¹

Point of coping such a big para is that me as researcher wanted to actually copy the emotion of the writer. The rash words used by him simply tell us how this segment of the society is eager for the change. They know very well about the consequences of the actions that why they won't speak directly on the *Shari'ah*. This tug of war between the liberals and the conservatives is an ongoing issue which clearly shows the level of ignorance and the diversity of the ideas in a state where a single and unanimous law was passed to us by our elders. This critical observation isn't false in its totality as we all know very well that betting on the horse race and lottery system over the government approved prize bond etc. is nurtured in the same nursery which bans it from the other side. He truly called it as an act of hierocracy as two contradictory laws can't be prevailed at a same jurisdiction. Anyways it's a food for thought and one must be aware of the repercussions of the action we are commencing as it will definitely pave an opportunity for unlikely incidences in the future that will be recorded as an unprecedented flow of event in the history of the country. Our actions right or wrong are the driving force for the upcoming events and will decide our fate as successful nation or otherwise. If we have opted that our constitution and laws will remain subdue to the supreme law of Quran and Sunnah then we shall abstain from

¹ The News, *Why Pakistan should legalise gambling by Haroon Raza*, January 30, 2016, <https://nation.com.pk/30-Jan-2016/why-pakistan-should-legalise-gambling>

contradictory action that shows the partial thinking of the society where every single critic confirms that we are a nation of two or more mind sets.

6.4 Gambling in Commercial Insurance

The idea of commercial insurance is rejected in the *Sharī'ah* Law because it contains elements of gambling, *Gharar* and *Ribā'*¹. Moreover it comprises of both the elements of risk, that is, Pure and Speculative risk.²

Talking about the issue of gambling in the conventional insurance, the holder of the document loses the premium that is paid in case if it is not claimed or the loss does not occur. On the other hand, the policy holder may be entitled to a larger amount than he is entitled to as compared to the premium. In other words, the insurance company undertakes to pay a certain amount of money (compensation) insured in the event of a risk and the insured agreed to pay another sum of money (premium) if the risks did not occur. This is not the case in the Takaful business, where policyholders are considered to donate an amount of money to help each other in case any of them suffer a loss.³

In contrast to the above conventional system that is not fulfilling the *Sharī'ah* compliance, Takaful has many models that eliminate the *Sharī'ah* related questionable issues. They are *Mudarabah*, *Wakalah* and *Waqf* model respectively. Pakistan is basically following the *Waqf* based Model/ *Waqf* Agency (*Wakalah*) Model. According to this model, the endowment fund is created as a separate legal entity with the contribution of the subscriber's amount and the amount deposited in this fund is considered a donation (voluntary donation). The objective of this fund is to provide relief to the participants

¹ Al Amri, Khalid, *A survey of the Islamic insurance literature – takaful, Insurance Markets and Companies, LLC Consulting Publishing Company “Business Perspectives”*, 30 July 2015, #2, https://www.businessperspectives.org/images/pdf/applications/publishing/templates/article/assets/6395/IMC_2015_01_Al-Amri.pdf , retrieved on 30 August, 2021.

² SECP, *Takaful Guide, JamaPunji*, 11/20, <https://jamapunji.pk/sites/default/files/TakafulGuide.pdf> , retrieved on 4th September, 2021

³ Mohammed Khan & PricewaterhouseCoopers, *Takaful Vs Conventional Insurance, What is conventional insurance?*, 2, <https://www.mbri.ac.ir/userfiles/file/Islamic%20Banking/%D8%A8%D8%A7%D9%86%DA%A9%20%D9%85%D9%82%D8%A7%D9%84%D8%A7%D8%AA/Takaful/Takaful%20vs%20Conventional%20Insurance.PDF> , retrieved on 4th September, 2021

against losses determined in accordance with the terms and conditions of the endowment fund.¹

Although the concept behind the insurance in both conventional and Islamic thought is same but there are some considerable and notable points in the Islamic framework that makes it different from its counterpart. The points are as follows:

- ***Principle of Joint guarantee/Ta'awun:*** Takaful is conceptually defined as an Islamic financial protection system that includes a joint guarantee plan in providing potential or contingent compensation, but conventional insurance relies on compensation for loss in return for a premium paid by the insured. The Takaful process is based on the concepts of cooperation (Ta'awun), solidarity, guardianship and brotherhood, but traditional insurance is based on achieving material gains on behalf of others. In the Islamic society, the system of takaful operated on the basis of cooperation and contemplation. Participants mutually agree to help and ensure each other by collecting contribution from individuals, for mutual cooperation. Literally, insurance operates on the process of risk transfer under which one protects oneself on behalf of others, the main purpose of takaful under the Islamic system is to bring property rights to all parties involved, and the aim of the contract is to help policyholders through bad times. Dividend profits are not the main objective whereas sharing any profit incidentally is acceptable but in traditional system business are started with the aim of earning profit.²
- ***Social Solidarity / Joint Liability:*** Takaful, the Islamic alternative to traditional insurance is based on the idea of social takaful, cooperation and joint compensation for members' losses. is an agreement between a group of persons who agree to jointly share responsibility for the loss or damage that may be caused to any of them; From the fund they donate collectively but in the traditional setup the loss is compensated by the insurance company according to the terms and conditions of the policy. Takaful insurance has grown not only as an innovative financial tool,

¹Hussein, Mehr Mushtaq, *Conceptual And Operational Differences Between General Takaful And Conventional Insurance*, (Australian Journal of Business and Management Research), Vol.1 No.8 [23-28] | November-2011,

² Yusof, M. F. (1996). *The Concept and Operational System of Takaful Business*. New Horizon: 10-14.

but also on the basis of religious considerations. The Takaful contract provides solidarity in respect of any tragedy of life and loss of business or property. The Islamic model of the insurance policy is based on the basic principle of cooperation and mutual solidarity. But for conventional insurance, there are no religious limits and the purpose of insurance is to protect the avoidance of risk from suffering the full cost of those actions on the part of nature which affect them unfavorably.¹

- ***The concept of Aaqilah:*** Takaful is not a recent concept in Islamic commercial law. Existing jurists acknowledge that the basis of joint liability or *takaful* was laid under the concept of "*Aaqilah*" system, which was a joint arrangement assistance or compensation that was customary in some tribes in the time of the Noble Prophet (May God bless him and grant him peace). In the event of any natural disaster, each person would have contributed something so that the loss would be compensated. Takaful is mainly based on The *Aaqilah* idea of paying blood money as payment is made by the entire tribe. Islam accepted the principle of mutual compensation and shared responsibility.²
- ***Risk Allocation:*** The conceptual difference between *takaful* and conventional insurance is that the risks in *takaful* are not exchanged via contribution payments paid to the operator which means that the operator does not sell and the participant does not buy any coverage of the risk. The operator plays the role of fund manager on behalf of the participant. So the operator does not bear the risks, however, the risks are distributed among the participants who have agreed to take the risks jointly. Under the traditional framework, insurance is a contract between two parties, in which one party agrees to assume the other party's risk in exchange for an insurance premium and the other party undertakes to pay a fixed amount of money to the first party when an uncertain event occurs in a specified period.³

¹ Maysami, R. C. and Kwon, W. J. (1999). *An analysis of Islamic Takaful insurance- a cooperative insurance mechanism. Journal of Insurance Regulation* 18: 109–132

² Billah, M. M. (1998). Islamic Insurance: Its Origins and Development. *Arab Law Quarterly* 13(4): 386-422.

³ . Spence, M and Zeckhauser, R. (1971). Insurance, *Information, and Individual Action*. (Source: [http://www2.uah.es/econ/MicroDoct/Spence Zeckhauser 1971 Insurance Information Individual%20](http://www2.uah.es/econ/MicroDoct/Spence_Zeckhauser_1971_Insurance_Information_Individual%20), retrieved on 6th September, 2021

Financial Analysis: According to SBP, In Pakistan, there were 51 insurance companies (7 life insurance, 39 general insurance and 5 takaful), with assets amounting to 876 billion Pakistani rupees (~9 billion US dollars), by the end of December 2015. According to SBP, the assets of the insurance sector showed stable growth, averaging 15%, over the period 2009-2015. In 2012 alone, assets increased by 19%. Premium collection of 234 billion Pakistani rupees (US\$2.34 billion) and claims of Pakistani rupees 89 billion (US\$890 million), It was registered and approved during 2015. Premiums and claims showed a steady (average) growth of 16% and 9% respectively over the study period (2009-15). This sector also contributed to the national treasury with 5 billion Pakistani rupees as income tax during 2015. Return on equity remained at 19% in 2015 while the average return on equity for five years was 15%. The insurance sector is about 3% of GDP, which shows a huge potential that is not yet capitalized.¹

To truly understand the Takaful opportunities in Pakistan, we need to know where the current insurance sector is and where. This is best understood by comparing it to another country that shares many features with Pakistan. India, which is a much larger neighbor, has an insurance penetration rate of 4.8%, compared to 0.8% in Pakistan, and an insurance density of US\$38.40, compared to US\$5.90 in Pakistan. These values strongly illustrate the existence of a large gap in Pakistan in terms of financial safeguards. However, 2020 saw unprecedented growth in family *takaful* not seen in decades. Despite the economic slowdown caused by the COVID-19 pandemic, dangerous shutdowns of more than three months, increasing unemployment, and massive pressure on healthcare infrastructure, the Single Family Takaful industry recorded more than 40% of new business contribution growth, which was lower from 8% on the average cumulative growth rate (CAGR) for the past nine years (2011 to 2019). Renewals from existing *takaful* members (customers) who have experienced stagnation have also improved.²

¹ Trading Economics, <http://www.tradingeconomics.com/pakistan/gdp> . Accessed on April 3, 2020,

² Durrani, Muhammad Waqas, *Takaful Number, Growth of Family Takaful business post pandemic in Pakistan and beyond*, Islamic Finance news, 17th February, 2021, retrieved on 4th September, 2022, <https://www.pakqatar.com.pk/family/wp-content/uploads/sites/3/2021/02/Growth-of-Family-Takaful-business-post-Pandemic-in-Pakistan-and-Beyond.pdf>

6.5 The Impact of *Maysir* Based Transactions on the Society

There is an immense variation in the games that used to create an environment that flourishes illegal activities like *Maysir* (gambling). Gambling may have a variety of detrimental effects on Pakistani society, all of which should be carefully considered. Consider the following important points:

- Social structure:
 - Addiction and mental health: Gambling has a strong potential for addiction, which can result in debt, unemployment, broken relationships, and even mental health problems including anxiety and despair. This may have a detrimental influence on families and communities, with difficult consequences that spread.
 - Crime and disorder: There is a possibility that the presence of criminal elements in illegal gaming activities may result in a rise in crime, violence, and exploitation. This has the potential to upend social order and undermine community trust.
 - Reduced productivity: People who gamble excessively may find themselves ignoring their obligations at home and at work. This may have an effect on production levels generally and result in financial losses.
 - Poverty and debt: Gambling can result in large losses that put people and families in debt and sometimes even beyond the reach of their means. This may worsen already-existing economic disparities and bring about more suffering.
 - Predatory lending and exploitation: People who are in debt from gambling may be more susceptible to predatory lending methods, which would only make their situation worse. This has the potential to start a vicious circle of exploitation and put people in awkward situations.
 - Strain on social safety nets: Government resources and social safety nets may be further taxed by increased financial obligations brought on by gambling

losses. Resources may be taken away from other crucial services as a result of this.

- **Moral and ethical issues:**

- Normalizing risk-taking: Gambling has the potential to encourage a culture that values taking chances and making rapid decisions above long-term planning. This may have detrimental effects on people and society at large.
- Exploitation of vulnerable populations: Some groups are more vulnerable to the negative effects of gambling than others, such as those with poor incomes or mental health issues. This presents moral questions about possible exploitation and predatory behavior.
- Religious objections: Many members of Pakistani culture adhere to strict religious views, and gambling is forbidden in Islam. It is possible to view gambling as morally repugnant, which might result in conflict and societal disgrace. It's crucial to remember that these are only possible effects and that not all gamblers suffer from these drawbacks.

- **Adverse Financial Impact:**

- Personal financial difficulty: Gambling may cause addiction and damage a person's or a family's finances. Poverty rates may rise as a result, putting pressure on social safety nets.
- Productivity loss: Gambling may take up time and money that could be used for other worthwhile endeavors, which could have negative effect on the economy.
- Criminal activity: Communities and companies may suffer as a result of unlawful gambling's connection to organized crime and other criminal activity.
- Tax evasion: By operating outside of the official tax system, underground casinos may be able to avoid paying taxes to the government.

Some featured gaming activities in the society of Pakistan are as follows:

6.5.1 *Parchi Jua*: A local game played on the basis of the serial numbers in prize bonds

One of these institutionalized gambling sources in Pakistan is the sale of prize bond serial numbers which is known as the game of *parchi jua*, prospered in different parts of the state. It has turned out to be an ideal scheme of gambling among a large amount of people from the lower class and middle class of the society of Pakistan, especially among the new generation of people who want to become millionaire through shortcuts within a limited time frame. Although *parchi jua* is lawfully forbidden and banned by the government of the country, clever merchants opt different ways and means of camouflage like setting up shops of different legal items to portray as if there is some legitimate activity going on. These gambling dens are run by influential figures of the areas in collaboration with some black sheep in the police department via a viz political system where they are well paid for their services. Despite the existence of all forms of gambling in our country, the vouchers of "parchi jua" are the most widespread, especially in Sindh and Punjab. The low cost and best odds in this gamble are the main reasons that have attracted a large number of people more related low and middle class and never hesitate to jump into any opportunity that they perceive they can cash it. The minimum price for receipt is worth 10 rupees that varies to the extent of 10,000 rupees increasing the chance of rewards. As the prize bond is drawn every 14th and last day of each month, the gambling takes place. These nights are usually considered to be as Chand Raat (nights of bounty) among its challengers. At first, the initial buyer is seen active in the market of *Jua Parchi* but eventually they slip off as they were planted to trigger the sale and then middle-class buyers become the main buyers of the market of *Parch Jua*. The brokers of the slips have established vents and each vent has its own operating linkage and number of employs comprising of well-organized workforces and brokers to deal in prize bond slips. They do business worth millions of rupees on a daily routine. Most of the shooters in these schemes frequent visits to forecasters who have developed a reputation for choosing correct numbers. There are numerous methods of gambling on prize bond numbers. Acquisition of the first digit of a serial number is called a *safha* wager; purchasing the first two numbers is known as *aakra*; Gambling on three or

more numbers is possible too. One can even bet on whether the winning numbers will be kali or jut (odd or even).¹

Unfortunately this heinous crime is a result of an activity that is already questionable in the light of *Sharī'ah*. Prize bonds are simply considered an illegitimate exercise as it inculcates elements of *Gharar*. It is sorry to see that these sort of gambling activities are flourishing well in our society and it's an unjust play where many loose to make a person rich. The level of ignorance is so high that its initiators control the ongoing situation and the society is helpless against them because of their increasing power in the government authorities and on the ground as well.

6.5.2 Sporting activities involving gambling due to betting (*satte bazi*)

It is discussed earlier that how gambling activities are penetrated in our society in different ways like financial transaction, lottery and other forms of gambling activates. One of the main sources of gambling is through the sporting activities mainly cricket, horse races and other forms of local gaming activities. It is a well-planned mechanism where a bookie arranges the competition and sets benchmarks for the gambling money. The contestants guarantee the bookie about their participation by throwing money into his account or pay him in hard cash and that gives the bookie full authority over the money of the contestant and in the case of losing the bet, the participants lose the money and all goes to the one who gave a more accurate guess. In the case of cricket which is the most popular game in the subcontinent, the betting is now on the basis of spot delivery of the ball. This means that the one loses or wins the lottery on just a call of a single delivery and its outcome. Here it is important to know that the bookie charges his fee for the sake of organizing the function and he/ she aren't responsible for the outcome of the betting procedure. In case of the backing off of a contestant, the bookie comes forth as a guarantor and pays of the winner his/ her lottery. Now in the current scenario the people fond of cricket gambling, prefer to gamble on the websites available for the purpose. Many websites are available² and many other offer their online services for the purpose. Their claim is that local gambling dens are illegal, problematic and more dangerous and

¹ The Nation, *The growing menace of gambling in Pakistan*, April 25, 2015, <https://nation.com.pk/25-Apr-2015/the-growing-menace-of-gambling-in-pakistan>, Retrived on 10 June, 2020

² See the website, like <https://sportsbetting.net.in/pakistan/>, <http://www.pakistancricketbetting.com/>

unreliable. Although they share the information about the activities related to gambling banned in Pakistan side by side, especially on their front page. Some of them also gave cover by declaring it as a *ḥalāl* way of gambling but this psyche merely used to gain the attention of the potential customers. In reality they are selling the same substance as other gambling sites. Hence Islam doesn't differentiate between *ḥalāl* and *ḥarām* gambling sites.

However the local level gambling dens are still considered to be a hall of fame. In the event of cricket world cup 2007 was considered to be the biggest event of gambling in Pakistan at that time. According to a report, a regular small scaled bookie easily earned ten thousand rupees per match. While the big-time bookies could easily make up to 700 US dollars on a single match in which the giant gambling customer threw money up to one hundred and sixty five thousand dollars.¹ These were not just layman but highly influential personalities involved in such heinous activities. A former cricketer and the current prime Minister of Pakistan Mr. Imran Khan has also confessed of a cricket gambling activity. He did this intentionally as he was in a situation where he was indebted for worth a million rupees due to the election activities of 2002. The report says:

The PTI chief said he gave advice to his brother-in-law for about three or four hours for betting during which he not only removed the Rs1 million deficits, but won Rs2 million more as well. The anchor told Imran Khan that this action might invoke Section 15, as gambling is illegal in Pakistan and the party may also be banned. Imran said the money was not transferred to the party as it was his personal loan and he returned the loan from Rs3 million won through gambling. He insisted that there was nothing wrong in it.²

Other than financial losses or dispute arising due to bearing unprecedented losses in these sort of activities, It is evident from the report that gambling based transactions generates other side effects that can cost a person pay from lifetime unbearable consequences like character assassination, disqualification from the current status of designation and so on and so forth. Same thing happened with some of our seasoned cricketer involving in the match fixing. Match fixing can be categorized as an ideal gambling base transaction. surely it a kickback for the players who are involved in it,

¹ Dawn, *Pakistani cricket gambling set for big boom*, March 12, 2007, <https://www.dawn.com/news/237039/pakistani-cricket-gambling-set-for-big-boom> , Retrived on 15th, June, 2020

² The news, *Imran admits gambling to return his loans*, September 25, 2017, <https://www.thenews.com.pk/print/232390-Imran-admits-gambling-to-return-his-loans>, Retrived on 15th June, 2020

resulting from the spot fixing of a ball or getting out on a specific ball, low run rate etc. that may result in winning or losing of the match helping the bookies winning huge gambling profits from the it.

A very famous case of match fixing in the history of Pakistan cricket was recorded in the year of 2010 when the team of Pakistan was at the tour of cricket series at England. It was told that three Pakistani cricketers Muhammad Amir, Muhammad Asif and Salman But were alleged for taking a handsome amount of bribery for the sake of match fixing. Behind the scene it was an Indian millionaire Muhammad Majeed who was involved in an illegal betting worth hundreds of thousands of pounds. He set up the whole picture of match fixing. Both Muhammad Amir and Muhammad Asif agreed upon spot fixing of three consecutive no ball in line. They were paid 150,000 pounds in cash and while the deal was about to mature, the cameras recorded the scene. It is notable that the skipper Salman Butt was the ringleader of the cricketers involved in this whole drama in which other players like Kamran Akmal were also alleged of taking the amount of bribe. Eventually seven out of the whole team had to undergo the investigation initiated by the Scotland Yard which is an investigative agency in London. This resulted in imprisonment of the involved players and a limited five years of ban or a life time banned from playing cricket. Due to the minor aged player, Muhammad Amir is lucky to get a second chance for building his career once again.¹ Similarly Danish Kaneria also had to face a life time ban from the cricket due to involvement in bribe as he himself confessed it in the year of 2012 after denning the allegation from 2009. The report says:

A former Pakistan cricket star has confessed to his role in a spot-fixing scandal in England, after denying it for six years. In an exclusive interview with Al Jazeera's Investigative Unit, Danish Kaneria admits he induced a teammate at Essex County Cricket Club to underperform for money paid by a notorious bookmaker. Kaneria, Pakistan's most successful Test spin bowler, was banned from the sport for life by cricket authorities in 2012, but until now, has always protested his innocence. In the television confession, he

¹ The Guardian, *international edition*, *Match-fixing allegations hit England v Pakistan Test at Lord's*, August 29, 2010, <https://www.theguardian.com/sport/2010/aug/29/match-fixing-allegations-england-pakistan> , Retrived on 16th June, 2020

says: "My name is Danish Kaneria and I admit that I was guilty of the two charges brought against me by the England and Wales Cricket Board in 2012."¹

In the year 1994, another scandal showed up and indicated the involvement of senior Pakistani international cricketers Salim Malik and Wasim Akram. The case was on air when three regular Australian cricketers confess to have received bribes worth around 757,000 dirhams from Pakistan's Salim Malik, to fix the match. Salim Malik for the time being was acquitted of the Australians' allegations by the Pakistan Cricket Council due to the fact that he was on the official tour with the team. It was a solemn decision by the officials of the Pakistan Cricket board that no one from PCB will comment on this story till its concrete clear whether he was involved or not. In 2000, a committee headed by former Supreme Court Justice *Malik Muhammad Qayyum* was formed to examine allegations of corruption charges against the team members. The committee found that Malik was involved in match-fixing and banned him from playing sports for lifetime. The Committee also found *Wasim Akram* guilty of taking bribe for the purpose of fixing the match but he was lucky enough to escape the allegation as one of the witness prejudged himself.²

Experts are of opinion that the leads of the cricket based gambling activities are tied up with the historical decision of the General Zia ul Haq about legalizing the tote betting on the horse race. A tote betting is basically:

“A system of betting on horse races using an electronic machine that totals all bets, deducts management charges and taxes, and determines the final odds and payouts”.³

Surprisingly, this politically inspired decision took place in 1979 which was evident of the fact that it was pure influence of the political personality who were the owners of the horse race courses on the General who was well known to adopt a strict shar'ah line

1 A Jazeera new agency, *Pakistan cricket star Danish Kaneria admits to match-fixing by David Harrison*, October 19, 2018, <https://www.aljazeera.com/news/2018/10/pakistan-cricket-star-danish-kaneria-admits-match-fixing-181017113624950.html>

2 The National, **How gambling made Pakistan's national game a disgrace** by Tom Hussein, October 25, 2010, <https://www.thenational.ae/uae/how-gambling-made-pakistan-s-national-game-a-disgrace-1.513730>, Retrived on 17th June, 2020

³ Encarta Dictionary, *North America*, Microsoft Dictionary Encyclopedia.

while running the state business. However the said form of betting was legalized with the rationale that it was based on the raffle. ¹

Under the system, the stallion owners only received payment when their horses finished in the top three in the race. Popular keenness for betting was exploited by political owners of the best pedigree horses. The owners of the stallions worked with the hosts of the racing clubs and riders for the sake of creation of a winning record of a horse. These horses than became favored by betters, attracting heavy bets. In some races, these favorite stallions stumble mysteriously, incurring enormous profits for the owners of the stallions. Indeed it was a gate way to the corruption which introduced a whole new chapter of fixing a game. By the late 1980s, the number of bookmakers and their beneficiaries had amplified vividly to include officials as well, who could help in the booming illicit circulation they were supposed to control.

It is notable that earlier, betting activities had to be placed through South Asian betting offices in London, so most Pakistanis were unapproachable due to the involvement of the foreign currency in it. In the year of 1990 and 1991 this problem was solved by some famous bookmakers like *javed*, *Arif* and *Nayyer* famous by their nick names *Godha*, *Pappu* and *Babloo* respectively took the game to the whole new level as they introduced it in the local currency allowing the local to participate and bet in the gaming activity.

This was the time when these popular bookmakers of the horse race started working closely with the bookmakers of Mumbai who use to control the betting in the international cricket because they were the one setting all the odds for the purpose of match fixing and spot fixing. ²

Other examples like bear-dog fights, dog race, pigeon flying competitions, different birds fighting competition, game of ludo, game of carom and many other forms and shades of gambling based activities are countless in numbers.

There are many other individual cases as well that show how these gambling based activities can ruin the social and economic fragments of life. One can conclude the debate

¹ The National, How gambling made Pakistan's national game a disgrace by Tom Hussein, October 25, 2010, <https://www.thenational.ae/uae/how-gambling-made-pakistan-s-national-game-a-disgrace-1.513730>, Retrieved on 20th July, 2020

² I The National, ***How gambling made Pakistan's national game a disgrace*** by Tom Hussein, October 25, 2010, <https://www.thenational.ae/uae/how-gambling-made-pakistan-s-national-game-a-disgrace-1.513730>

by commenting that gambling shows flaws in the personality of a person. A well educated person may also be seen involved in these types of low level activities or at least non *Shari'ah* compliant activities that indicate frustration of his mind or an unsatisfactory behavior. A time comes when this casual behavior changes into an addiction and remains with him forever. Certainly it's the recognize and fear of the Almighty that is missing from the hearts of the human race and when they don't find anything to console their heart they eventually indulge into these worldly misfortunes of lives. It may give them a relief for the time being but at the end of the day; it's a universal fact that he/ she we lose every single penny that we had once in his/ her possession.

The human race is smart enough to indulge in these sorts of activities that could be considered as a synonym for the phrase "self-destructive mode". In other words it is the reward that mankind is visualizing due to its selfish behavior and forgotten its core purpose of life. Our hearts are empty vessels that are filled with whatever we pour into it. The satisfaction of hearts is the key for all the good deeds that we need to seek for comparatively successful lives. Almighty says:

Those who have believed and whose hearts are assured by the remembrance of Allah. Unquestionably, by the remembrance of Allah hearts are assured."¹

Surely, these are the bounties of a good faith that guide its follower toward a righteous path and eternal happiness. Almighty is the sole creator of the human race and knows better for whatever is beneficial for him and whatever is harmful for him. The life itself is a lifetime opportunity and one can't afford to lose it in activities that are not acknowledgeable or promising for the end result and that is the basic requirement of a sole to be successful in the court of the Almighty and be surely entitled for his eternal bounty. For this reason, the first and foremost clause that is stipulated by the creator is to spent justly, whatever he owns without disturbing his/ her life and others as well. If not succeeded he will have to pay with his good deeds that he incurred in his whole life effort. So the core result of this heinous activity of gambling is to lose the wealth that he had once in this temporary life by the Almighty and clear the debts of his bad deeds like entitlement of a wealth through unlawful activity of gambling by giving away his/ her good deed in lieu of the bad deeds. Certainly it's a worst form of transaction that a man can undergo. The

¹ Verse, 13:28.

suffering of the life will never finish if we tend to lose the basic school teaching of patience at the times of hardships and remembering the Almighty in prayers especially at the times of need. Al mighty says:

O you who have believed, seek help through patience and prayer. Indeed, Allah is with the patient.¹

It is indeed the way of life that one adopts to seek pleasures and bounties from it. It is without the doubt that the path of true faith that guarantee this in a life of its follower. Indeed the true faith is Islam that basis its knowledge on practical and applicable approach.

6.5.3 Online betting activities

There are many ways online betting is capturing the audience and appealing them to actually bet some heavy amount of the money in it. Some of its dimensions are as follows:

6.5.3.1 Online gambling statistics

Global gambling statistics show that around 26% of the population gamble. This means that 1.6 billion people worldwide gamble and 4.2 billion gamble at least once a year. When it comes to internet gambling and demographics, a UK study concluded that 17% of the population gambled online, resulting in revenue of £ 5.3 billion for the online market alone. In the United States, the numbers are very different - in 2016, only 3% of the 4.2 billion who gambled regularly said they gambled online. This number should have risen in the following years, as revenues in 2018 fell to \$ 306.5 billion for the US online gambling market.²

6.5.3.2 Muslims Response toward Online Betting sites: Muslims have always proven themselves to be excellent adapters as end users of the technology. The part of our society that is well equipped with the latest technology developments, can use it better than any other nation, may only be considered to be adapting whatever is offered from the western society. The social media has played a very crucial role in building this tempo in our culture which was once recognized to be a culture full of Islamic values.

¹ Verse, 2:153.

² Gambling statistics, *Global Gambling Industry in Recent Years*, <https://www.casino.org/features/gamblingstatistics/#:~:text=Online%20Gambling%20Statistics&text=That%20means%20around%201.6%20billion,for%20the%20online%20market%20alone>. Retrived on 20th August, 2020

Now days we need not move to a western country for adoption of their life style. We only need to follow their trends and cultural values to become one of them. It is however a though provoked in our youth that by living or educating themselves in a western sort of culture or thinking will eventually give them the edge over the others that are living aside with them in a traditional way. It is however felt that once we fit in ourselves in the western based culture, these countries will accept our existence at par their terms of references pertaining to every single sphere of life. This could be an allusion of the very segment of our society but the reality is far from the grasp. Almighty says:

And never will the Jews or the Christians approve of you until you follow their religion. Say, "Indeed, the guidance of Allah is the [only] guidance." If you were to follow their desires after what has come to you of knowledge, you would have against Allah no protector or helper.¹

This is what it's seen when we talk about the online betting in Pakistan. All you need is a wallet payment facility. These are the customary credit cards used more preferably since no check or restriction on the transaction is exercised by the regulatory authority of the government.

6.5.3.3 Online Betting in Pakistan: Even now days, bulk of sports betting in Pakistan is carried out with illegal betting bookmakers setting up a temporary sites from where they accept betting. Often, they simply rent out a hotel room and accept bets over the phone. Currently, Pakistani laws relating gambling sets a penalty and a year imprisonment whosoever is involved in this illicit activity, whether it's sports betting or other forms of gambling; all shades and forms of it are highly chargeable offences. This is because the sports betting laws have been written for many years in past and are technically explicitly applicable only to this type of gambling in a public place. Interestingly, these laws do not address private betting online that's carried out from the device of mobile with an online sports websites, online based international casinos that accepts Pakistani bookies recognized through their personal accounts that every single betting sites ask from you to establish if you are interested in playing these games involving betting activities. So despite being a known illegal activity, it is clear that Pakistani sports bettors have moved online to avoid the hassles of the criminal laws associated with dealing with bookmakers. Some of

¹ Verse 2:120.

the famous international online gaming websites that are highly preferred all over the world and in Pakistan may be:

- Bet365.com: bet365.com covers cricket and football comprehensively in terms of the number of tournaments available and betting markets. They have more intuitive interfaces for mobile and desktop and are constantly innovating with the most advanced betting features. Lots of banking methods are available for Pakistani teenagers.
- MarathonBet.com: MarathonBet.com has been operating since 1997 and sponsors the best English and Spanish football clubs. They have moved to offer higher pay prospects for all sports, including cricket. With its “AdvanceBet” named feature, it allows users to unlock unsettled bets against new bets, even with zero account balance.
- Betway.com: Betway.com serves more than two million account holders worldwide and offers a beautiful interface with an excellent mobile platform for the punters. Like most top betting sites, they also offer an early cash withdrawal features. Betway.com offers cricket and football betting.
- 888sport.com: 888sport has been in business since 1997 and is one of the largest online sports books in the world. The 888sport.com brand may recognize its presence in the world of online poker, as it probably provides one of the best three poker platforms that one can play. It is also known to sponsor various football clubs throughout Europe. The parent company, 888 Holdings is traded on the London Stock Exchange. 888sport also likes cricket.

There are countless other series of betting websites that helps gather the better from all over the world for the sake of creating an event and initiating gambling activities especially for those who don't have a solid local platform of betting or hinder jurisdictional, legal, religious or moral limitations in performing these acts. Other than these websites, many other featuring websites are there which are especially made for specifically Pakistani audience like onlinebetting.com.pk, Pakistansportsbetting.com, onlinecasino.com.pk and so on and so forth. ¹

¹ Pakistan Sports Betting, *The best online sports betting sites for people in Pakistan*, <http://www.pakistansportsbetting.com/>, Retrived on [1st August, 2020](#)

The world of online betting is so versatile that one doesn't need to travel outside the country to join the gambling based activities. Talking about the craze of casinos and for the sake of it, people use to travel those western countries which are considered to be the hub of the gambling activity; now it's a click of the button that enables and entitles a person from its official login user logic to participate in games like poker, wheel of fortune (lottery based), cards, spin of ball and so on and so forth. This is a never ending story now as the locals of different localities around the world participate in these gambling based activities without any fear of the authorities. Every single fortunate or unfortunate needs and wants are at its door step which is totally a personal concern of the person who is using that facility. While using this online betting facility that one can easily grasp certain benefits out of it:

- First of all, online betting is safer in all respects. Whether the users of it reside in Karachi, Lahore, Faisalabad, Hyderabad, Peshawar or anywhere else in Pakistan, their personal safety will not be compromised in dealing with an online service provider listed in an accredited and authenticate website. The payment is no issue as online betting websites offer payments or bets through the credit cards, and in the scenario, the card provider will not present any physical threats if they ask you to submit the bet and in case of winning a certain bet, one can easily get hold of the money as it directly transfer to the account of beneficiary.
- Secondly, the money is safe and always at fingertips of the beneficiary. It is because, all listed betting sports books are abroad and are not affected by Pakistani local laws at present. Once the punter deposits, he has full access to withdraw his money whenever he wants without any wait. When the better bets on a local bettor, there's always the risk of a police raid or bust, putting the profits or even the principal money at risk.
- Thirdly, the punter acquires and holds full control and responsibility for his wager. Through the Internet and mobile interfaces; he/ she can clearly see the odds and bets, if he/ she want to, confirming each bet before entering the system. In an event of a manual betting; the phone with your local bettor, there

is every chance to register the bet incorrectly or make you feel bad because of a bad call or simply find a way to undo a winning bet after it has occurred.

- Fourth, the better has a wide range of betting options that go beyond simple match results. For example in a betting website, each of the above sports books offers more than 100 ways to bet on EPL football games and over 50 ways to bet on IPL cricket matches.¹
- Finally, online sports books offer innovations such as the ability to participate in live betting and play as well as the ability to settle bets before the game ends so you can make early profits or save some cash through a potential loss.
- Regarding the hard earned money from these gambling activities, online betting sites provide you with outstanding service that are the hallmarks of the internet based betting sites. However, there are no guarantees when dealing with a local bookmaker as they are unregulated and are perceived as running an illegal operation by the Pakistani government in accordance with its preventing law; in an online betting facility, Sports books are organized online and run to encourage your ongoing play with them. Other than that the statistical assistance and hundreds of options for offered for making it easier for a customer to sort out the odds are not available in the local betting programs. Once the transaction is complete the capital money with the earned money is straight away transferred in the account of the better. This money is considered to be an offshore investment that is once received is as good as white money. Hence no questions asked after wards about the source of earning.

It is without a doubt that these gambling based unlawful and non-*Shari'ah* compliant activities come under the jurisdictional offence as the claimant to these activities denies the on ground prevailing laws that rejects these activities by law. Hence it comes under the cybercrime offense which must be dealt with in an impressive manner leaving a lesson for others indulging in these types of activities. It is the duty of the state to uphold the supreme law: the *Shari'ah* law over other man made optional laws or those laws that may be subject

¹ Pakistan Sports Betting, *The best online sports betting sites for people in Pakistan*, <http://www.pakistansportsbetting.com/>, Retrived on 5th August, 2020

to change. Meaning thereby the state must assure that the cyber laws must be intact with the conformity to the laws of the land.

6.5.3.4 Effects of Gambling on the Health

Although gambling can affect the life on the whole but it's first sign occurs when the addicted person feel distressed and in secure. After experiences a level of excitement, disappointment and losing, it disturbs the whole chemistry of the human body. The overwhelming thoughts of gaining abnormal profits convey and negative signal to the brain and heart which in response start manipulating wrong results that leads its prey to adopt certain value and habits that are both hazardous for the body and the customs, especially when we talk about an environment that is by law restricts the gambling based activities. It is therefore leads to fear of exposing oneself in front of the social circle which may cause him/her trouble to face in the form of rejection from society. This is again problematic as the isolation that the addicted person may face is a more severe symptom of distress and unease that is created due to unlawful activities. If the addicted person keeps on persisting his unlawful and health hazardous activities for long, it is obvious he may fall into other wrongdoings like theft, intoxication, fornication till the extent the prey may give up his faith related activities and sneak into the path of hopelessness. The process may take a bit long until the time will ensure that the pray will start analyzing that he has no way going back to his normal life again. This is precisely the time when his negative thoughts about the society and especially his/her loved ones will lead to eventually give away his interest in his life and that is the time when his health related problems may exceed the limits of cure. That is way Quran has clearly warned the humanity about these inhuman activates as the essence of the satanic activities which is the message of disaster in itself. The Book of Almighty says:

﴿إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ﴾

Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?¹

¹ Verse, 5:91

6.5.3.5 Financial Problem: Basic cause of distress

Often times the financial crisis is the reason why a person treats gambling. It is also not uncommon for partners, friends, or family members to tell us that they did not realize that their loved ones had a gambling problem until there were serious financial consequences such as calling the court for non-payment of debts, or taking a property restitution procedure for their home. Financial troubles can actually build up, and more quickly than you think. Bills aren't being paid, credit caps are exceeded, and debt is piling up - everyday payday loans seem like a solution, but higher interest rates make the situation worse. Borrowing or stealing from loved ones, companies, or employers also occurs when people feel increasingly hopeless. One might feel as though there is no opportunity to pay off your debts unless you are gambling. Many people who feel completely trapped by their financial situation feel the same. Continuing to gamble will increase the amount of debt - and gradual debt clearing will take time, but it is actually the only way to manage the problem. Many problem gamblers in the first place have never told anyone how much they are owed, and it can be difficult to take this step and tell people he/she trust, but this is essential if the addict is going to control the situation and improve it.

6.5.3.6 Psychological effect on the health

According to the Royal College of Psychiatrists, problem gamblers are more likely than others to suffer from low self-esteem, disorders related to stress, anxiety, poor sleep and appetite, developing problem substance abuse, and suffering from depression. In this section, one explores some of the reasons for this; one must get an advice if these matters happen to him/her. If someone suffers from all, some, or all of the following:

- Severe emotions or mood swings
- Feeling like gambling is the only thing you enjoy, except for other things
- Using gambling as a way to deal with problems or other feelings in your life
- Difficulty sleeping
- Feeling depressed or anxious
- Having suicidal thoughts¹

¹ GamCare, *How can gambling affect your life?* , <https://www.gamcare.org.uk/gambling-impacts/how-can-gambling-affect-your-life/?cn-reloaded=1> , Retrived on 10th August, 2020

If the answer is yes to any of these questions, gambling could be a problem. Although many people gamble to escape depression or other mental health problems, gambling can make these conditions worse. If one gambles a lot on your own, he/she may have found a "high" expectation of "big win" as being extremely mentally interesting and highly exciting, and perhaps better than the emotions you feel while participating in any other activity. The addict may also have found that the devastation caused by the loss is too low, which leads to a feeling of hopelessness. This is especially the case when large sums of money are wagered, which increases the possibility of a massive "high", but also makes the "low" feeling worse when it comes. Feelings of loss and hopelessness after a gambling outburst can lead to an immediate increase in the urge to gamble to try to return to "high". However, by continuing to gamble, any negative feelings will only get worse.

The impact of these highs and lows on the mental health of addict can be significant. Studies show that brain chemistry and cell structure can be altered through this type of exposure. The "reward" system in the brain can be affected: Where previously the addict could find pleasure in other activities such as food or sex, may now find that these activities do not have much attraction.

People who gamble compulsively often have substance abuse problems, personality disorders, depression or anxiety. Compulsive gambling may also be associated with bipolar disorder, obsessive-compulsive disorder (OCD), or attention-deficit / hyperactivity disorder (ADHD).¹

6.5.3.6 Treatment/ cure of the compulsive Gambling

Although there is no proven method for preventing problem gambling, educational programs that target individuals and groups at increased risk may be beneficial. If someone have risk factors related to compulsive gambling, consider avoiding gambling in any way, people who gamble, and places where gambling occurs. However, one must get available treatment at the earliest sign of a problem to help prevent gambling from getting worse.

¹ Compulsive Gambling, *symptoms and causes*, <https://www.mayoclinic.org/diseases-conditions/compulsive-gambling/symptoms-causes/syc-20355178> ,
Retrieved on 10th August, 2020

Compulsive gambling can be difficult to treat. This is partly because most people find it difficult to admit that they have a problem. However, one of the main components of the treatment is working to admit that you are a compulsive gambler.

If family or employer pressures the addict for treatment, he/she may find himself/herself resistant to treatment. In this case it is even harder to control the disease as the addict isn't cooperating. This is why it is recommended to be friendly with the addict and try to convince him/her in the nicest way. It is because the addict has only one thing left on his side and that are the loved ones. Treatment for compulsive gambling may include the following methods:

- ***Psychiatric treatment.*** Behavior therapy or cognitive behavioral therapy may be helpful. Behavior therapy uses systematic exposure to the behavior you want to let go of learning it and teaches you skills to reduce your desire to gamble. Cognitive behavioral therapy focuses on identifying unhealthy, irrational, and negative beliefs and replacing them with healthy and positive ones. Family therapy may also be helpful.
- ***Pharmaceutical.*** Antidepressants and mood stabilizers may help problems that often accompany compulsive gambling - such as depression, obsessive-compulsive disorder, or ADHD¹. Some antidepressants may be effective in reducing gambling behavior. Medicines called anti-narcotics, which are useful for treating substance abuse, may help treat compulsive gambling.
- ***Self-help groups:*** Some people find that talking to others who have problem gambling may be a helpful part of treatment. One must healthcare professional for advice on self-help groups, such as Gamblers Anonymous, and other resources.
- ***Physical Exercise:*** gambling and other alike diseases have a very high tendency to make its way back and again get hold of its prey in an instant.

¹ Attention deficit hyperactivity disorder (ADHD) is a mental health disorder that can cause above-normal levels of hyperactive and impulsive behaviors. People with ADHD may also have trouble focusing their attention on a single task or sitting still for long periods of time.

Both adults and children can have ADHD. It's a diagnosis the American Psychiatric Association (APA) recognizes.

[https://www.healthline.com/health/adhd#:~:text=Attention%20deficit%20hyperactivity%20disorder%20\(ADHD,and%20children%20can%20have%20ADHD.](https://www.healthline.com/health/adhd#:~:text=Attention%20deficit%20hyperactivity%20disorder%20(ADHD,and%20children%20can%20have%20ADHD.) , 15th August, 2020

Therefore one must be not only healthy mentally but also should seriously involve him/ herself in the physical healthy games like body building and fitness clubs.

Treatment for compulsive gambling may include an outpatient program, an inpatient program, or a residential treatment program, depending on your needs and resources. Treatment for substance abuse, depression, anxiety, or another mental health disorder may be part of your treatment plan for compulsive gambling.

CHAPTER 7. Findings and Interpretations

7.1 Introduction

The objective conducting this survey is to seek the understanding of the Non-*Shari'ah*-Compliant financial transaction from the perspective of its users. It is intended to clearly assert the fact that the study may be conducted as per the responses gathered from the respondents as alienated as possible. One of the main objective of this survey is to see if the respondents are sensitive and concerned about the phenomena of Non-*Shari'ah*-Compliance in our economy.

The survey conducted is an effort to provide the ground for the research study. Survey is an efficient tool that measure the social and economic impact of any research problem over the society. Moreover the diversified sections of the society keep their point of view upon any ask question is totally as per their experience. Hence it is only a learning about how and what they think. Especially when the topic is so specialized that not everyone is either eligible to be the part of the sample or they are sometime reluctant to answer the asked questions in the survey. This makes it more challenging. However the question prepared for this purpose are kept general in nature so that the audience is interested to answer it without any complexity. The source that is used to gather information is through the *Google forms*. The questionnaire consists of both the versions either a bit descriptive or given closed ended question/Dichotomous questions to observe their opinion. The open ended answers are then analyze theoretically while closed ended answers are first presented in graphs and then analyzed theoretically. The survey is however kept easy and interesting for the respondents to response in the earliest and yet in a very meaning full way.

7.2 Research design of the Study

The main philosophy behind the Research Design is to make choices of a series of rational decision-making. It guides the researcher to follow the successive stages to compile its research thoroughly. A well-planned research design helps ensure that your methodology match your research objectives, that you collect high-quality data, and that one may the right kind of analysis to answer your research questions, utilizing credible sources of structured and unstructured interviews. It further allows the researcher to draw valid and upright conclusions. Some of the main features of the research design is as follows:

- **Nature of Study:** The nature of the study is Descriptive in nature. Since it describes the phenomenon taking place in the society.
- **Type of Investigation:** The type of investigation is co relational in Nature.
- **Researcher Interference:** The researcher interface in collecting the data was minimal because the researcher interacted with the respondents once in the whole time span in this research.
- **Study Setting:** Study was conducted in natural environment. It implies that responses were gathered in natural setting.(non-contrived study)
- **Unit of Analysis:** Individuals; They are the individuals from different specialized class of the society comprises practitioners, researchers, bankers, teachers, businessmen
- **Estimation Technique:** Structured interviews are carried out to receive the Responses of the respondents.
- **Sampling Design:** Probability sampling design is deployed. The chances of selection of the respondents was 100%.
- **Sampling Technique:** Random sampling technique; the respondents were selected randomly.
- **Nature of Data:** The data was collected through one short technique. Likert scale was used to collect the data.

7.3 Survey on the Socio-Economic impact of Non-*Sharī'ah* compliance financial transactions

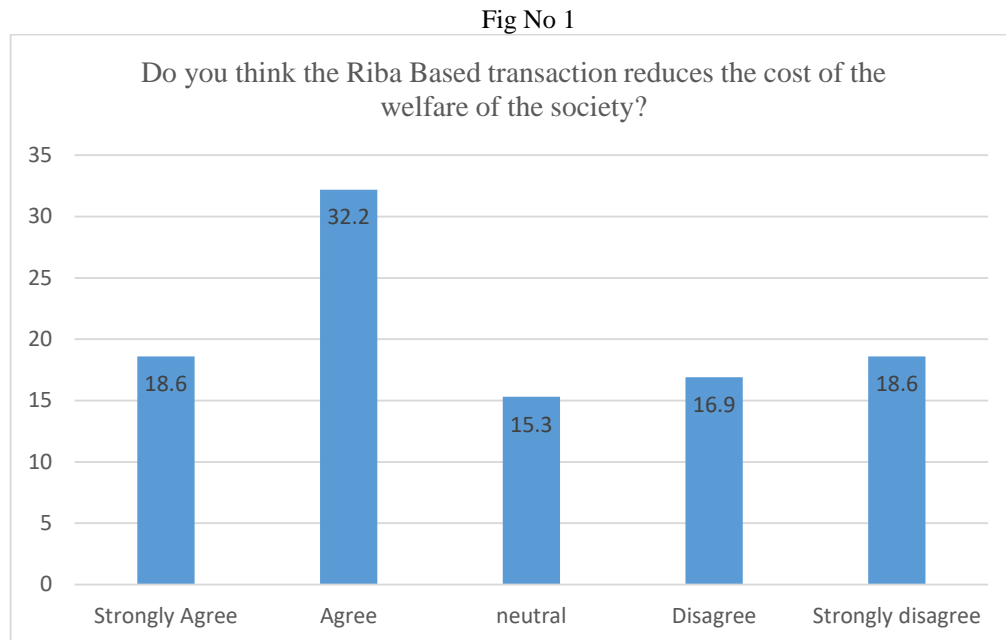
The Survey was conducted with a limited size of the respondents due to the fact that its knowledge is complex and systematic. However for the sake of diverse response, data is collected from the respondents relating to the different spheres of life other than the *Sharī'ah* based. All the respondents are carefully chosen so that the response is estimated to the level of accuracy. The Survey Questionnaire is as follows:

7.3.1 Social Impact of *Riba*

Interest/*Riba* has many variants in the society from Public sector to Local Business man. Some of interest based transactions are as follows:

The economy of Pakistan as we know is heavily indebted due to the foreign loans and that has why our quality of life is declining day by day. This impact has directly influenced

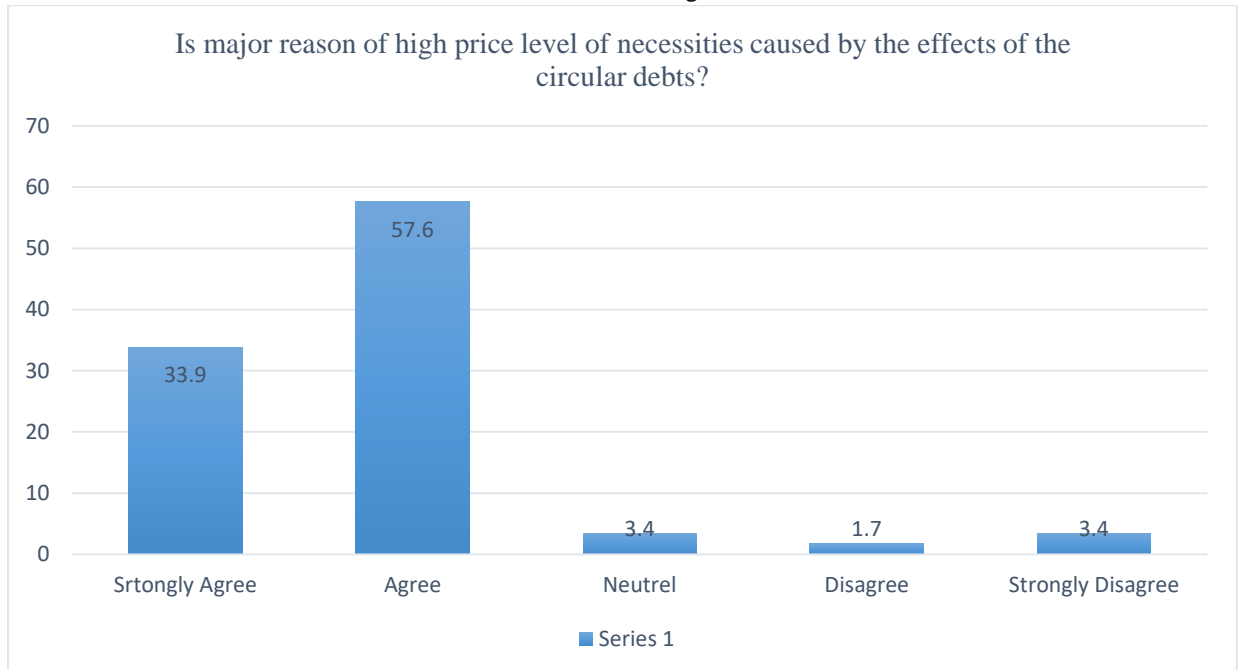
the welfare being of the society as the major portion of the tax based revenues face serious cuts due to interest payments by the existing governments.¹ As per the results 32.2 percent respondents responded that *Riba* based transactions damages the welfare of the society whereas 18.6 also agreed it actually happens. The results are reflected below:



Circular debt has always been a challenging factor in our economy. Moreover, the contracts with foreign-based companies are also initiated in dollars, which itself is a challenge for the government to pay for it. Respondents not only know about this phenomenon but also responded in an accordingly manner that confirms the fact. Respondents with an overwhelming majority of 90% felt the same and agreed with the fact.

¹ Pls see Literature Review, Daniel Murphy, *Review of Economic Dynamics*, Volume 18, Issue 3, 435-708 (July 2015), <http://www.EconomicDynamics.org>, cited 17 May, 2023,

Figure No 2

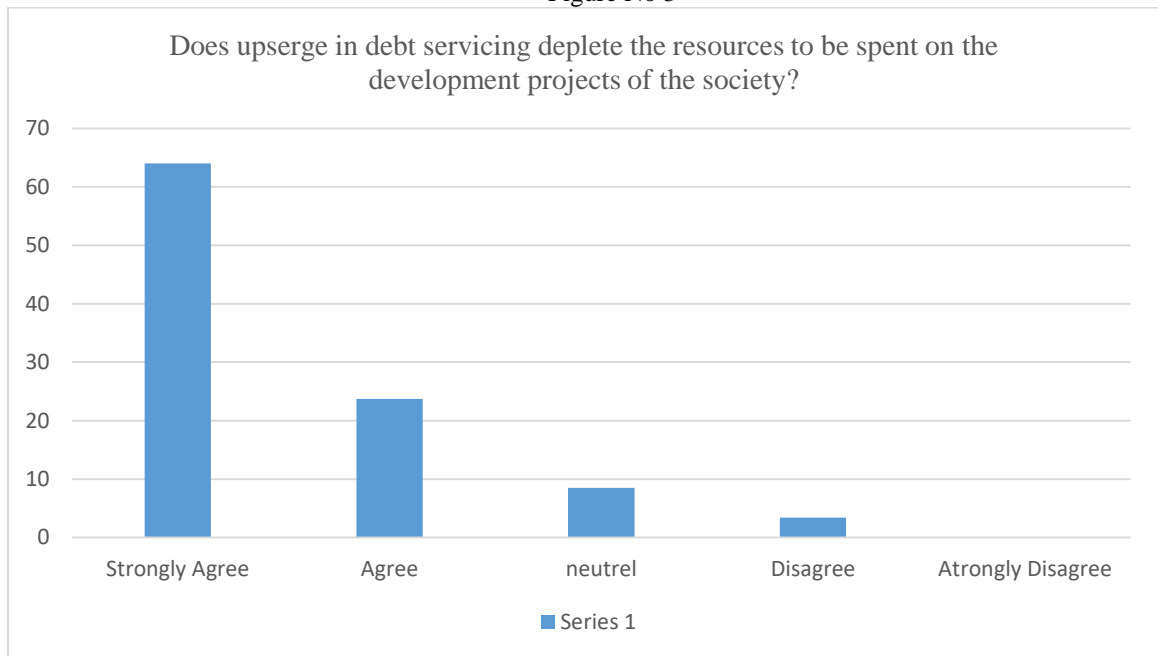


Pakistan has always been facing payment pressures due to the loans acquired on interest. It is for this reason, our economy is facing external pressures of Payoffs.¹ Most of the budget is settled of in debt serving.² The percentage of the response to the question is same as the above question with is 90%.

¹ See Literature Review, Dereje Abera Ejigayehu, The Effect of External Debt On Economic growth, chapter four, Analysis, 38, <http://www.diva-portal.org/smash/get/diva2:664110/FULLTEXT01.pdf> , cited on 18th May 2023

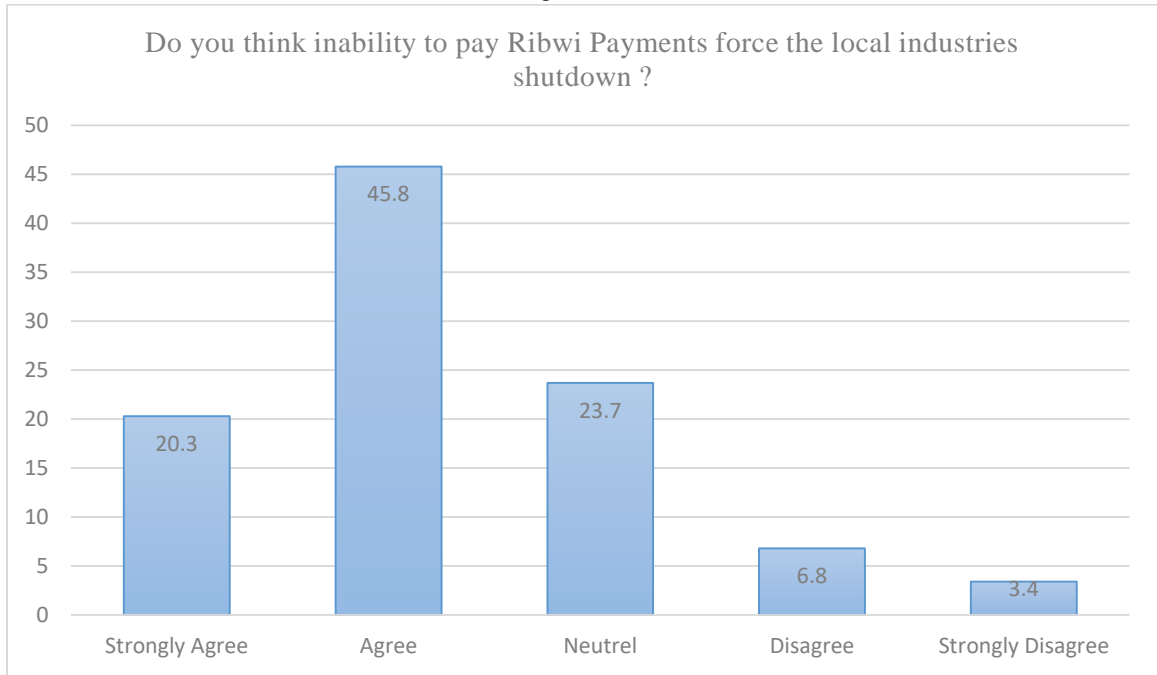
² See literature Review, McGillivray & Ouattara, Aid, *debt burden and government fiscal behavior in Côte d'Ivoire. Journal of African Economies*, issue 14(2), 247–269, 2005

Figure No 3



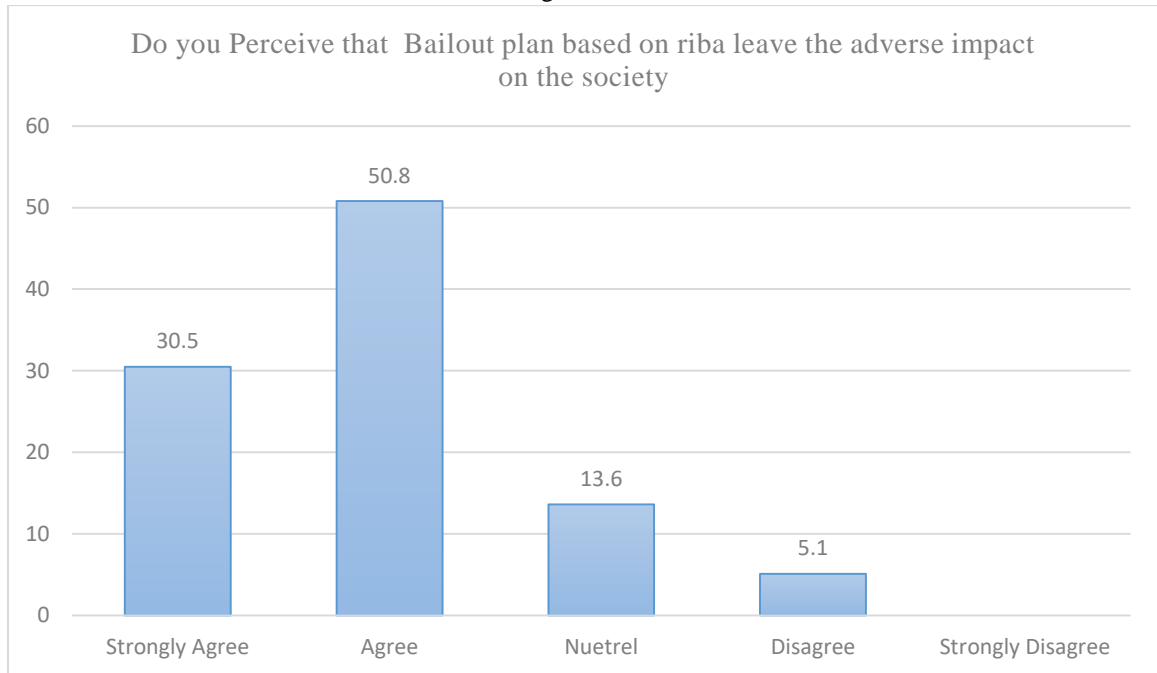
7.3.2 Economic Impact of Riba: The suppressing situation of the loans is a permanent problem that is faced by the government. It needs to arrange other external loans to maintain the balance in the payment. The problem of default is rising every day. The question is that if we are unable to meet the deadlines in our payment schedules of the interest based debt, will our economy be halted. Although 60% agree to the question raised but 23% remained neutral is Mistry that need to be sought out. The respondents show their reservation to the question asked in the survey:

Figure No 4



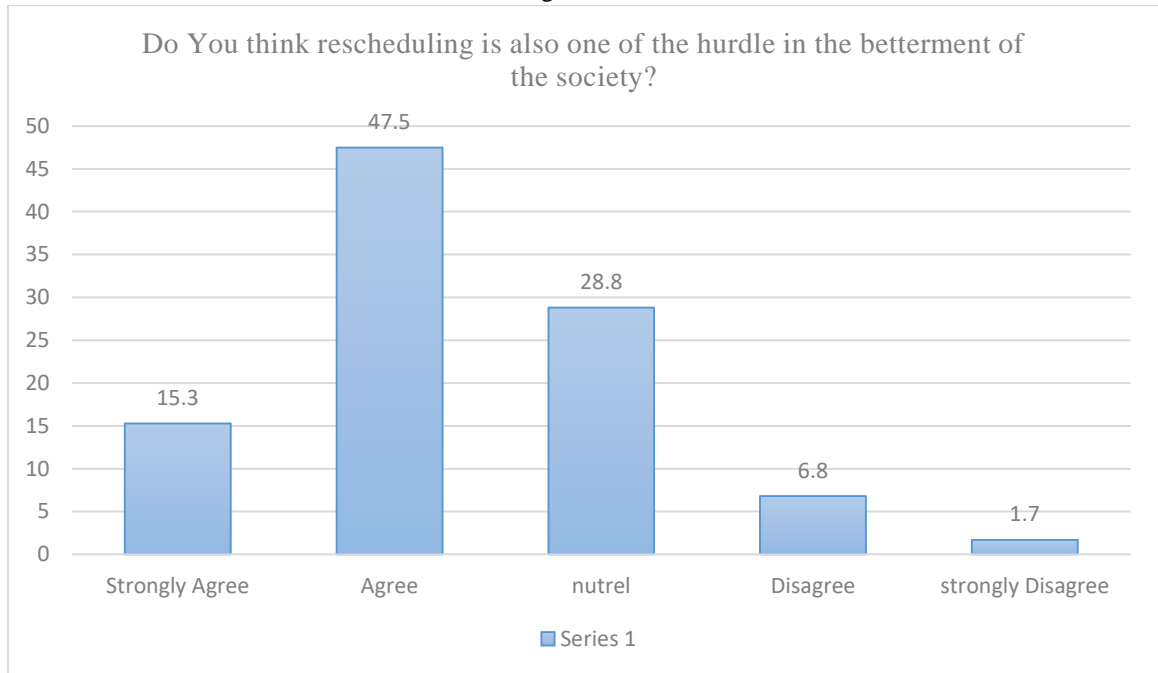
The constant pressure of the *Ribwi* Payments is only catering the rescheduling of loan. This causes up rise in the cost of living as the society is the one which suffers the most. Eventually it's the society that has to bear the expense of all ongoing economic challenges. The Respondents know this economic condition very well. More than 80% have confirmed the fact:

Figure No 5



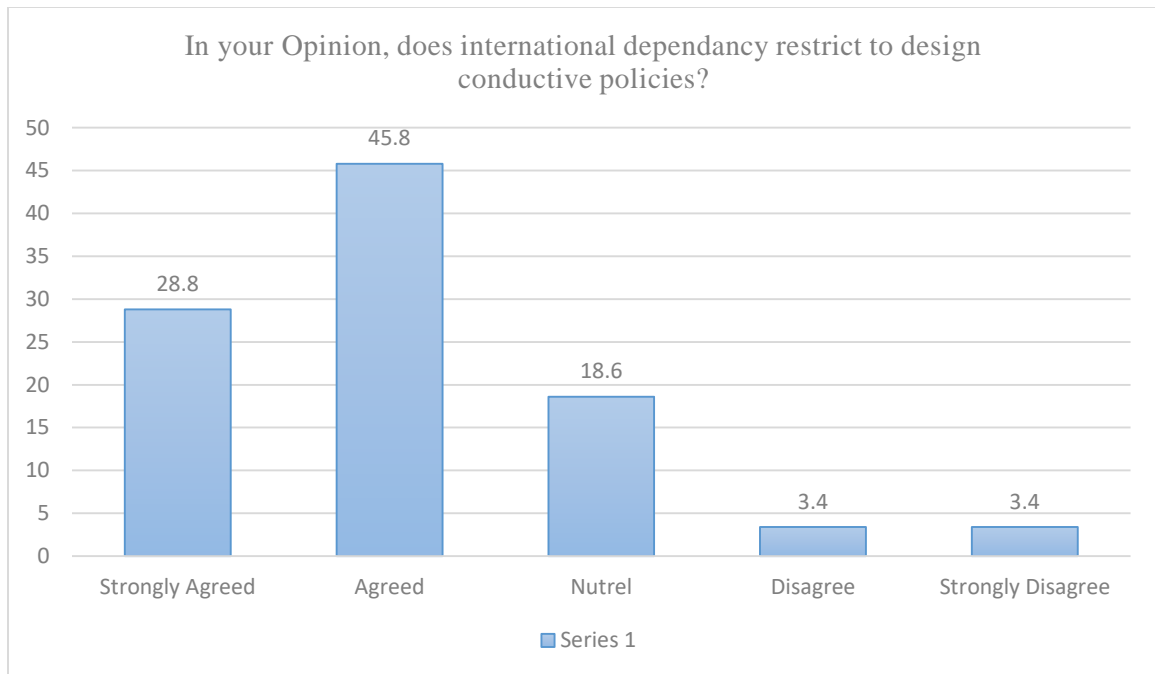
The economic decisions have always an opportunity cost that the society has to pay in terms of cut in their benefits and development projects. Pakistan is continuously stuck into this vicious circle of debts repayments schedule which is inevitable due to the inappropriate economic policies. As the negative effects has always caused rise in the inflation and cut in the social and development project that has made the life of the local person venerable. The Respondents have also observed the current situation while answering the relevant question 60% have agreed the fact:

Figure No 6



Too much of the dependency on the international loaning agencies isn't good for the economics of the developing countries. They require to fulfill the requirement and conditions paved by the agencies that may become a permanent problem where one may not be able to make policies at will. Pakistan is certainly one of those countries who is heavily depending on the economic conditions that always important as if it doesn't meet those targets, it won't be entitle to have fresh loans. The Respondent confirmed the situation and voted for the agreement by 74.6%:

Figure No 7



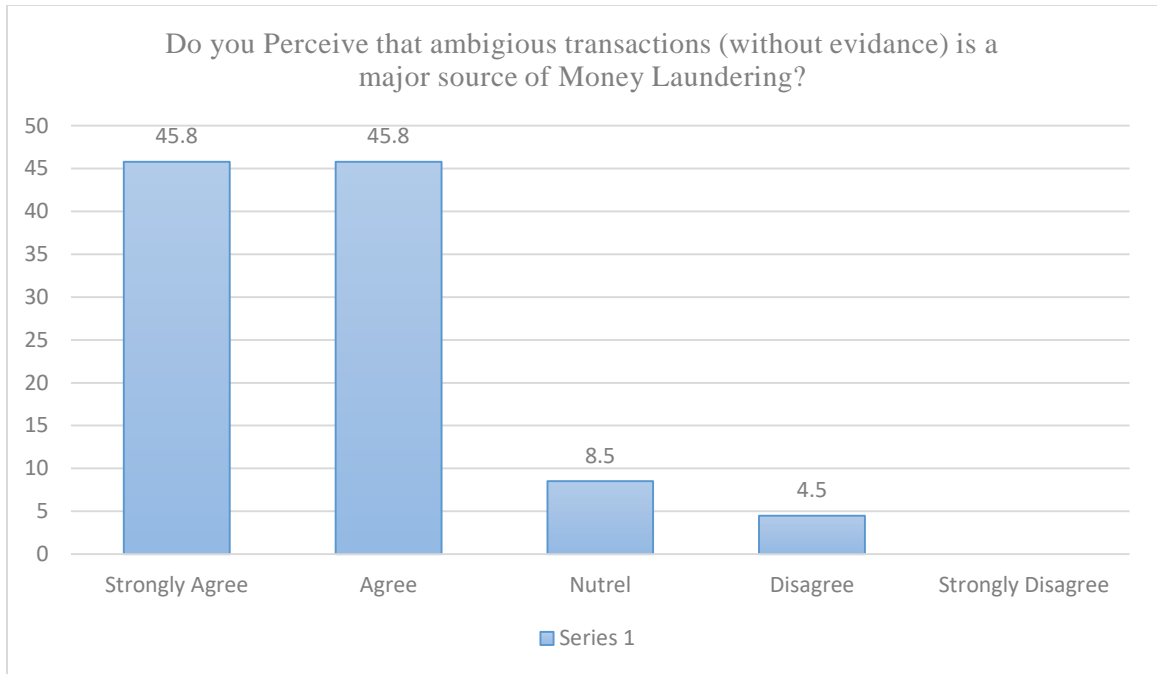
7.3.3 Social Impact of Gharar Based Transactions on the Society:

Ambiguous transaction has always been a source of all the illegal transaction. One of these transactions is laundering of the foreign currency out from the country, making shortage of it. The circle is continuous and is indirectly facilitated by the beneficiaries especially in power.¹ It is one of the major source of corruption as well.² Respondent show their concern in an overwhelming majority of about 92%:

Figure No 23

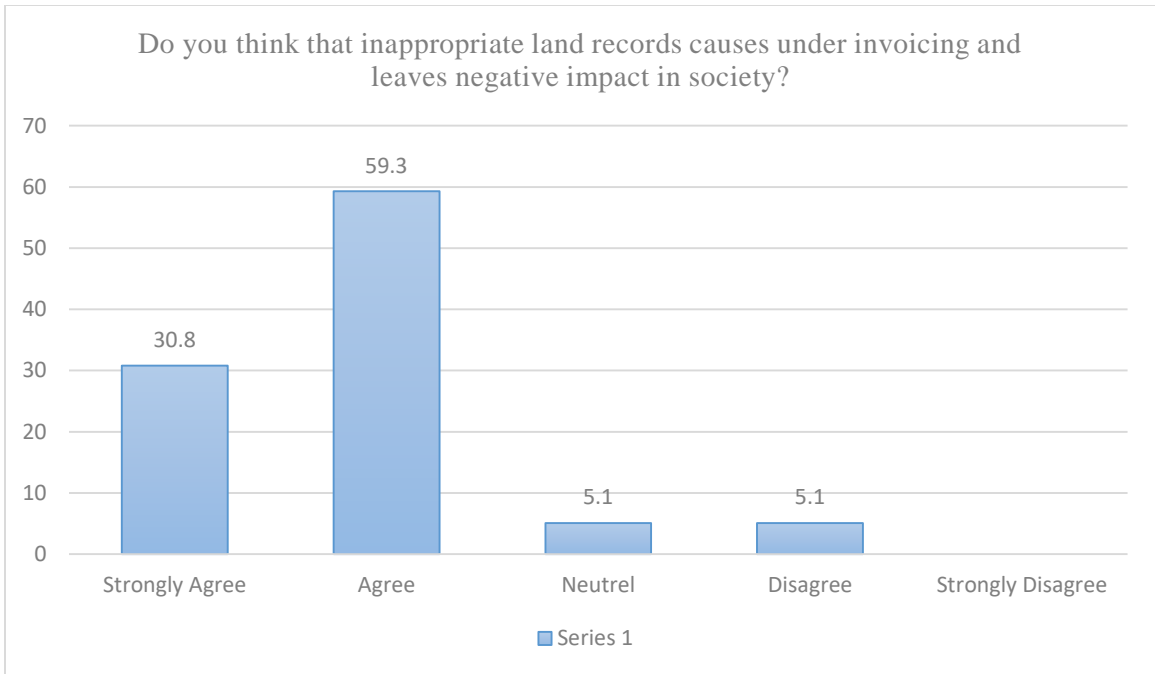
¹See Literature ReviewFATF, *Annual Report 2008-2009, Money Laundering and Terrorist Financing Threats*, 17, 2009, https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/National_ML_TF_Risk_Assessment.pdf.coredownload.pdf. Retrieved on May 28, 2023

² IMF, *Guidance Note on Anti Money Laundering and Combating the Financing of Terrorism-Inclusion In Surveillance and Financial Stability Assessments*, Series: Policy Papers, Volume 2012: Issue 104, 17 Dec 2012 <https://www.elibrary.imf.org/view/journals/007/2012/104/007.2012.issue-104-en.xml>, retrieved on May 28, 2023



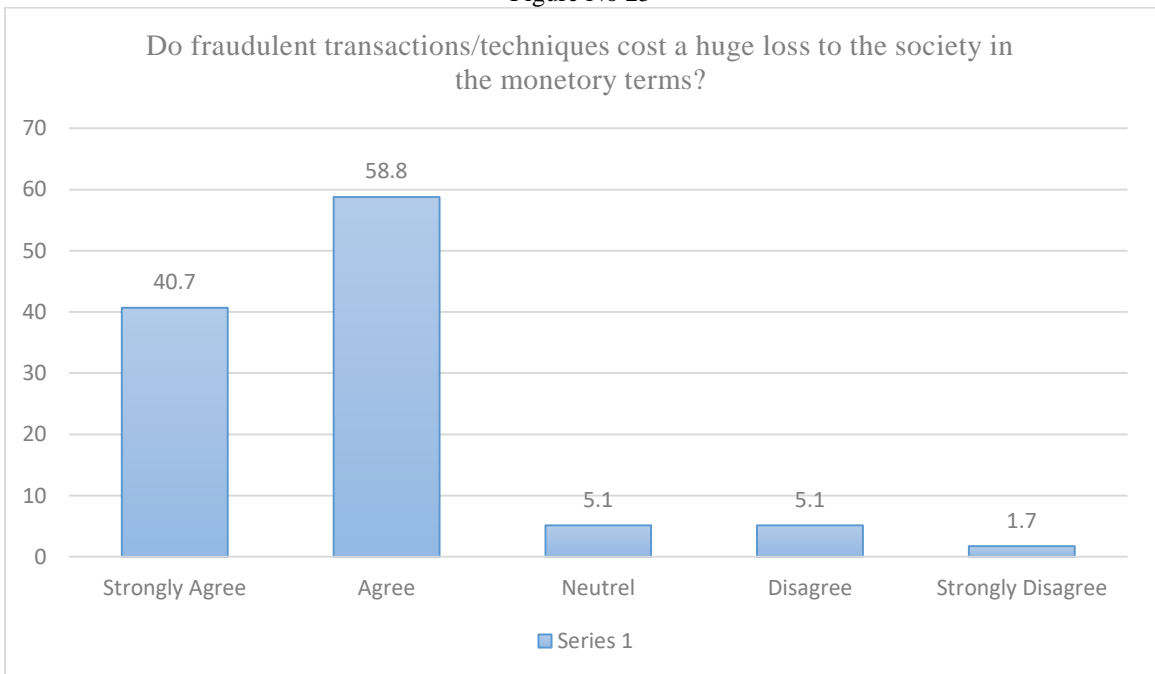
One of the deliberately unchecked areas is the land records where one can easily manipulate the taxes payable to the government, due to which the government is left with a very less amount of capital. It has become one of the safe havens for those who don't want to declare their actual worth to again evade the taxes. The right to information is also restricted where one can't access the document of property that any person is concealing under the legal protection. The Respondents vote for it 90% and are well aware of the situation:

Figure No 24



One of the biggest challenges for our financial regulatory authorities is to stop the fraudulent transactions which is causing unrest in the society. Many have lost their finances and now they are on the mercy of those fraud elements of the society. About 98% of the Respondent are well aware of the fact:

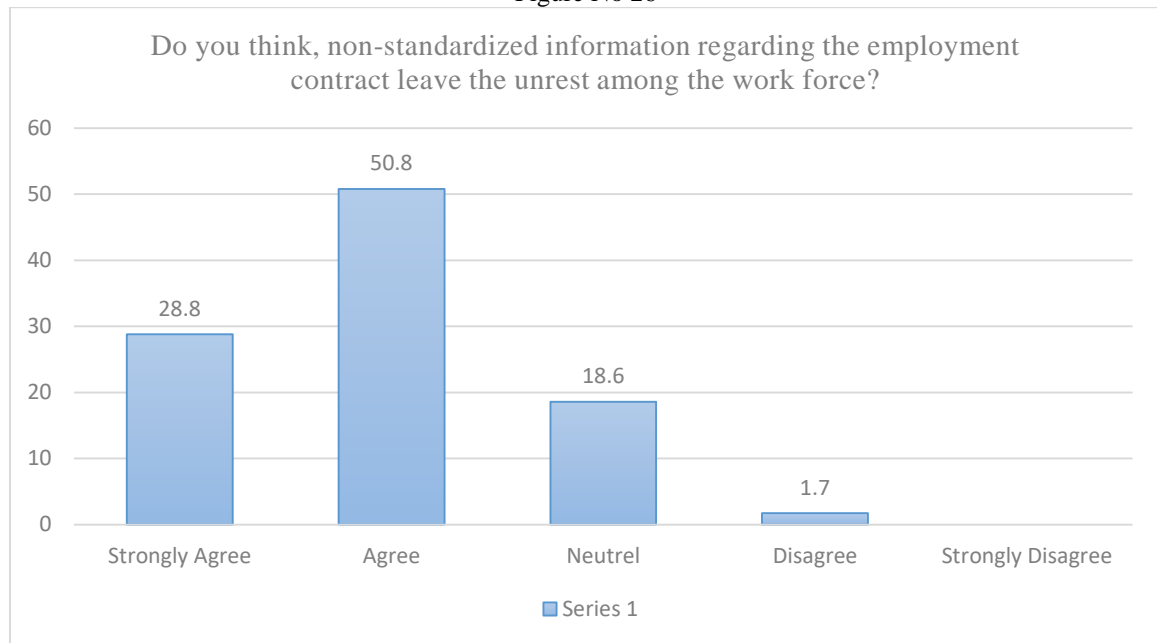
Figure No 25



Among other shapes and designs where the information isn't secure, a non-standardized contract has proven to be problematic. Often that is a point of contention

between the parties. The information should be standardized in the contracts alike. 78% of the Respondent's reply to the pertaining question is as follows:

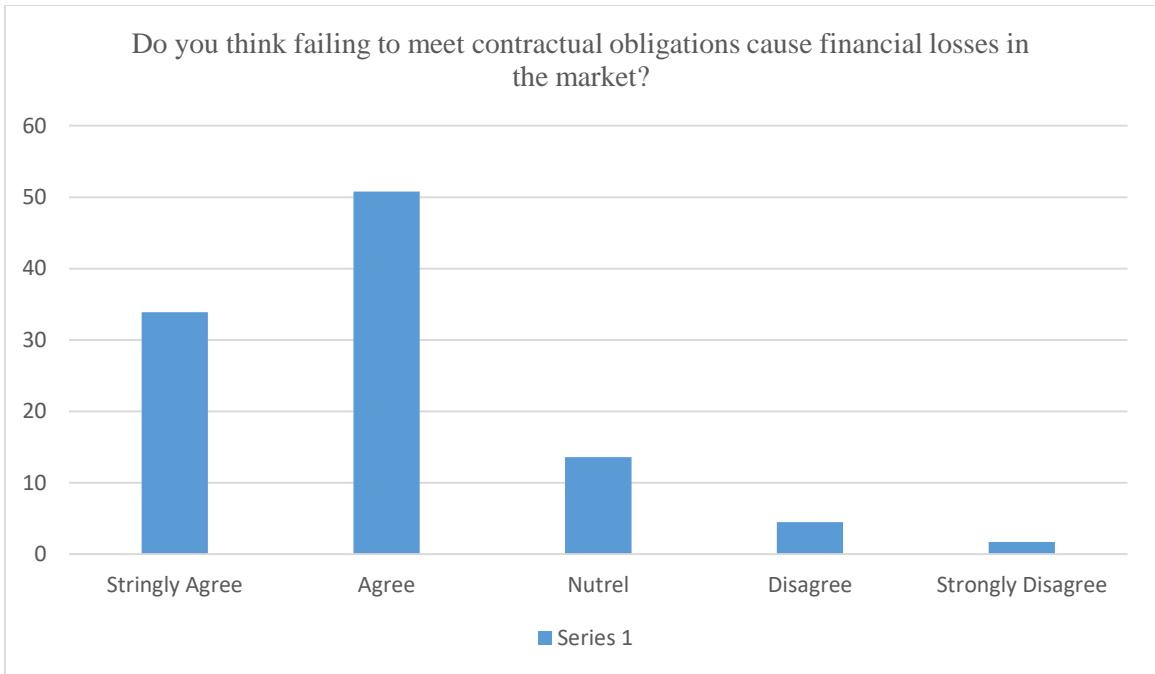
Figure No 26



7.3.4 Economic Impact of *Gharar* on the Society

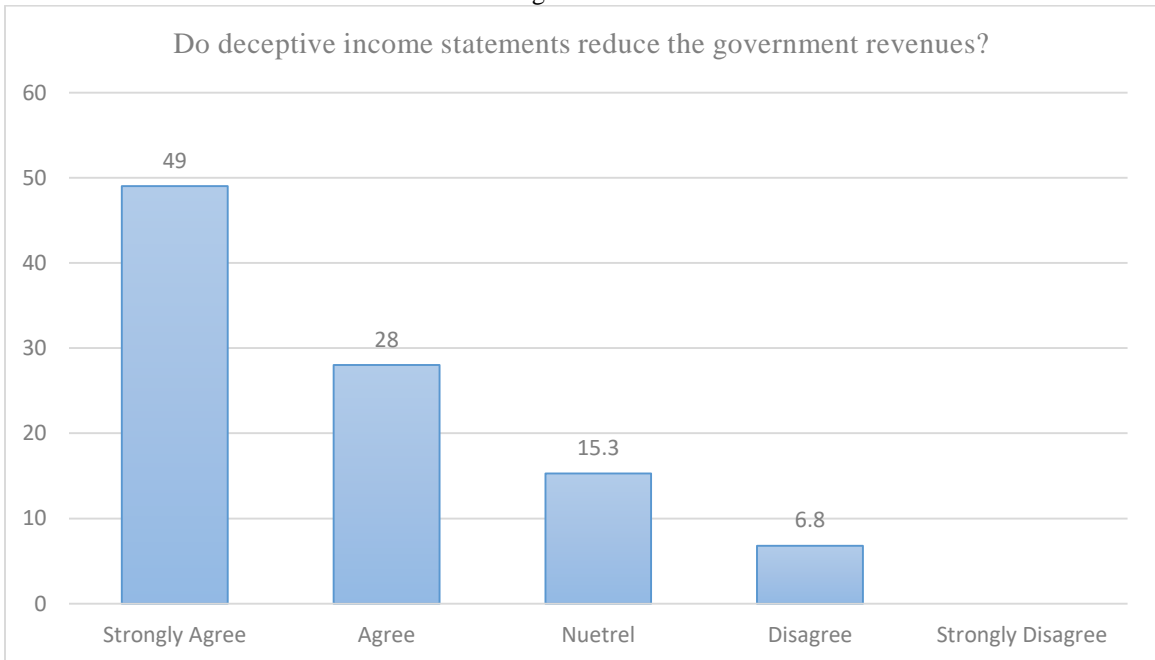
Generally speaking, the contract available in the market as we know that not standardized or not scrutinized by the law enforcement agencies, makes it in effective at the time of contention between the parties. Cases remain pending and unresolved in the courts for the above reason. Hence resulting undue loss or permanent closure of the businesses/services. The Respondent know this irregularity and confirm the query:

Figure No 27



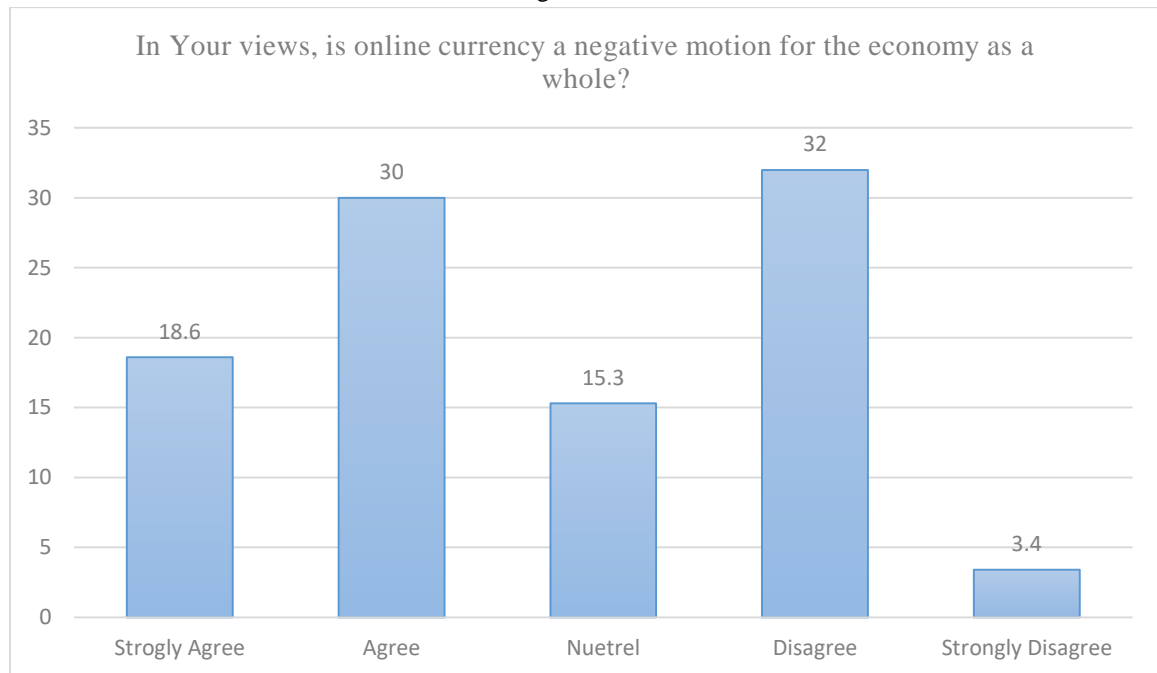
One of the main objective of concealment of the assets is that the entity or a person intents not to declare assets to the financial regulators so that the liability to pay the taxes is minimize. It's a common trend in the local financial markets and is practiced on the market on a very large scale. 77% of the Respondents are well aware of the fact:

Figure No 28



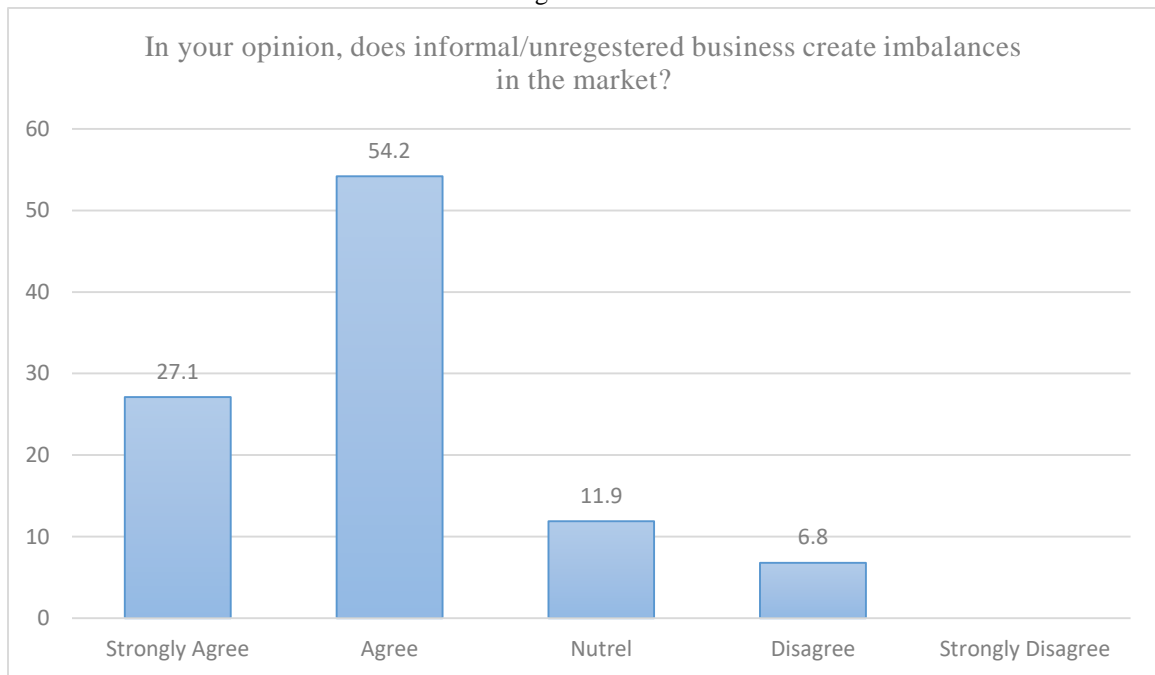
Online currency is a new phenomenon for the contemporary economics, as its dynamics are still to be determined. However from the perspective of the user it is high appreciable and should be adopted or replace regular currency. The Respondents are very much familiar with the new technology backed online currency. The Answer to the pertaining query is somehow mixed as only 49% of the respondent agreed to the fact.

Figure No 29



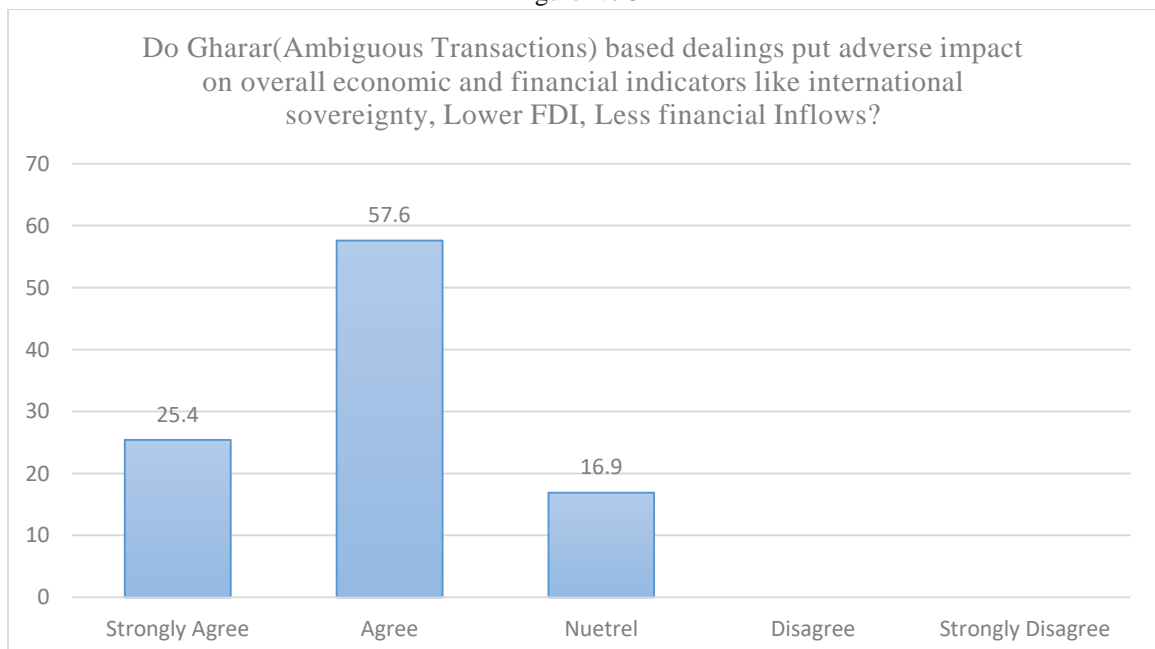
One of the main problem our local markets are that they prefer to stay undocumented and declare themselves as non-filers. This a an extremely abnormal behavior as the market forces want an absolute free will and never want to cooperate in the law enforcing agencies. Whatever maybe the reason but this behavior is expediting an unhealthy competition between the market forces. 81% of the respondents confirm the fact:

Figure No 30



Ambiguous *Gharar* based Transactions as a whole isn't good for the economy as its side effects can lead us to a point of no return. The Responded do observe same sort of sentiments: Do Gharar(Ambiguous Transactions) based dealings put adverse impact on overall economic and financial indicators like international sovereignty, Lower Foreign Direct Investment, less financial inflows etc.

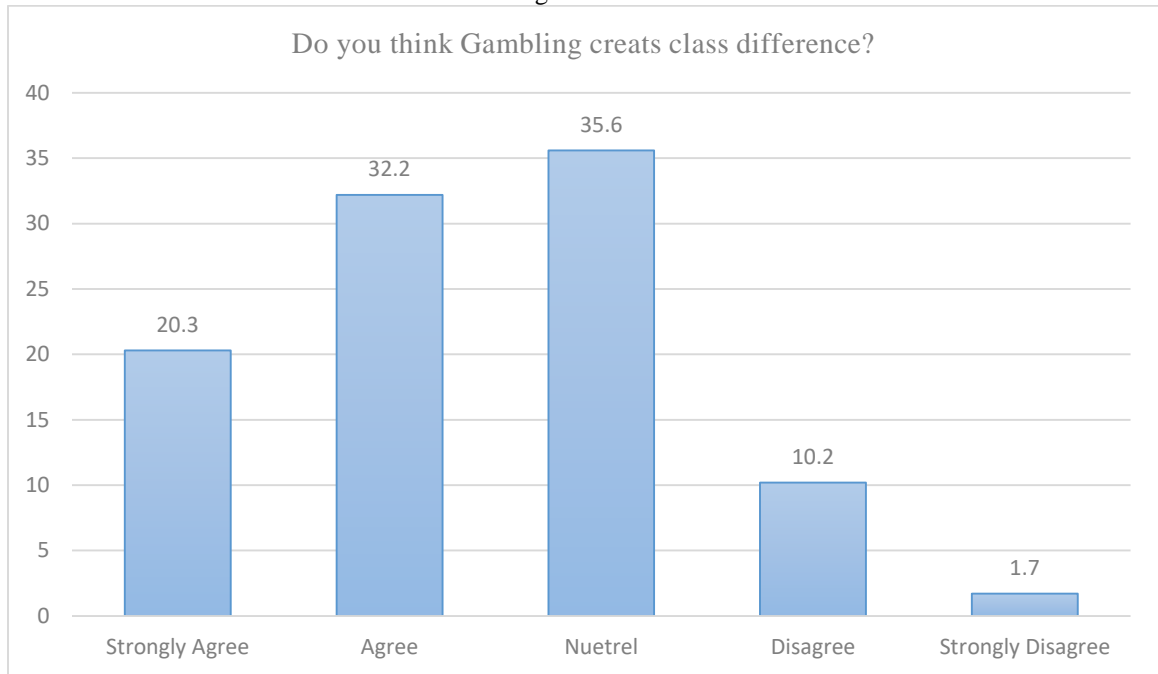
Figure No 31



7.3.5 Social Impact of Gambling On the Society

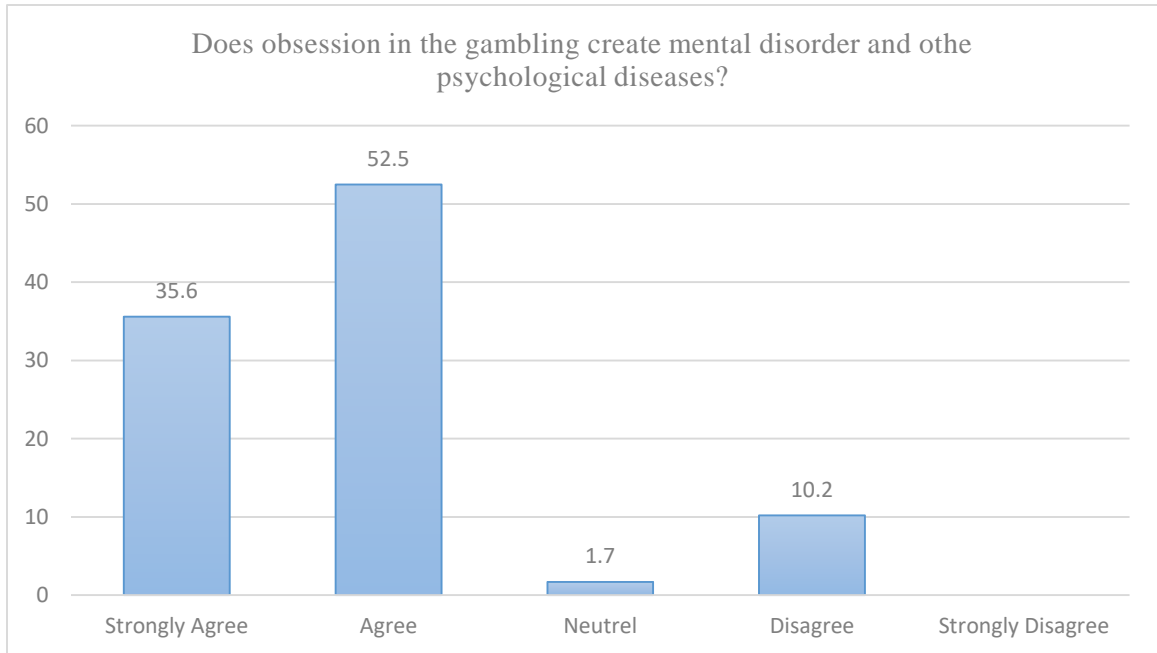
Out of many drawback of Gambling based transactions, it has a grievous impact on the social fragmentation creating class difference as the wealth is concentrated in few hands. The Respondents are familiar with the fact. 53% agree to the fact:

Figure No 32



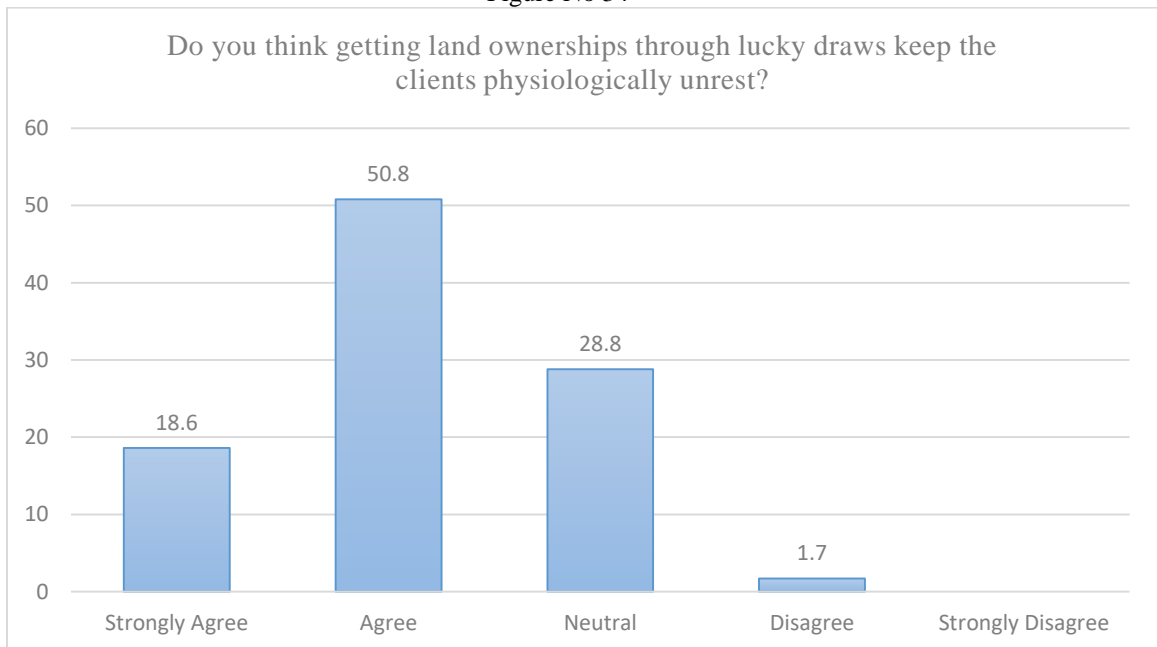
Although gambling is affecting all the classes but especially the lower Middle class is in the survival mode and taking huge risks and then losing all the savings create psychological effects as the ultimate effectees are they and their families. 87% of the respondent gave their feedback about it in the positive manner:

Figure No 33



Luckily draws or the lottery system are the basic tools to trap the public by grasping their attention toward the gambling base activity. These activity generate a maximum amount of inflow of capital especially when the receiving token to the recipients is high like offering plots in the societies of their preferences. The question is based to record such tendencies about which 69% of the respondents confirmed in positive manner:

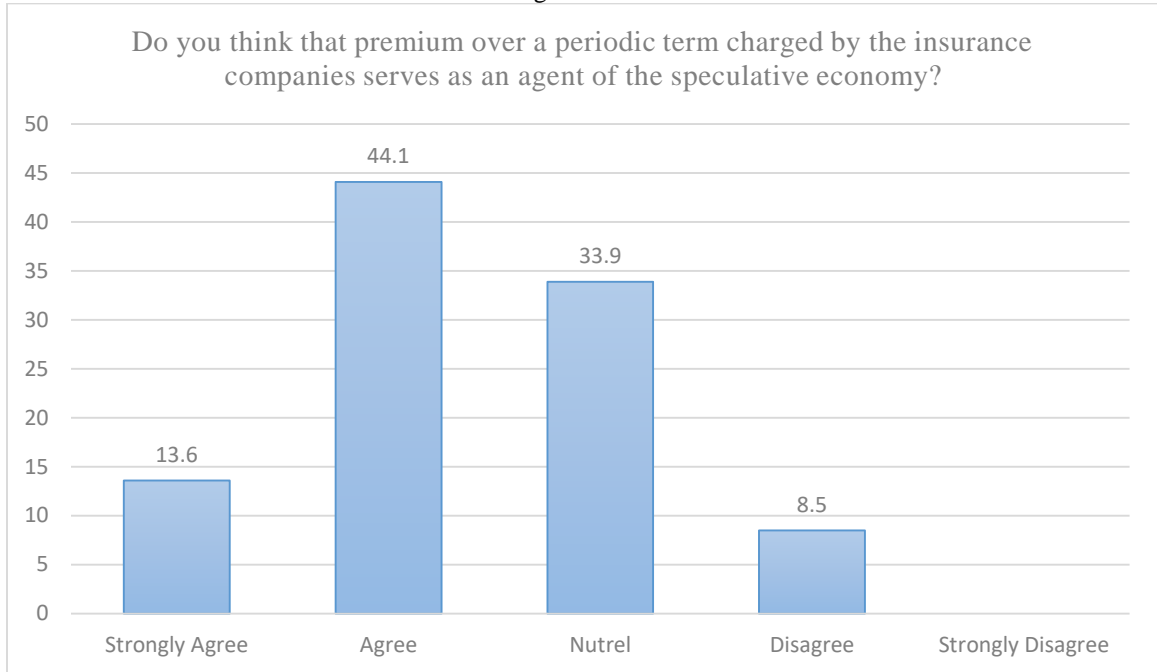
Figure No 34



7.3.6 Economic Impact of Gambling On the Society:

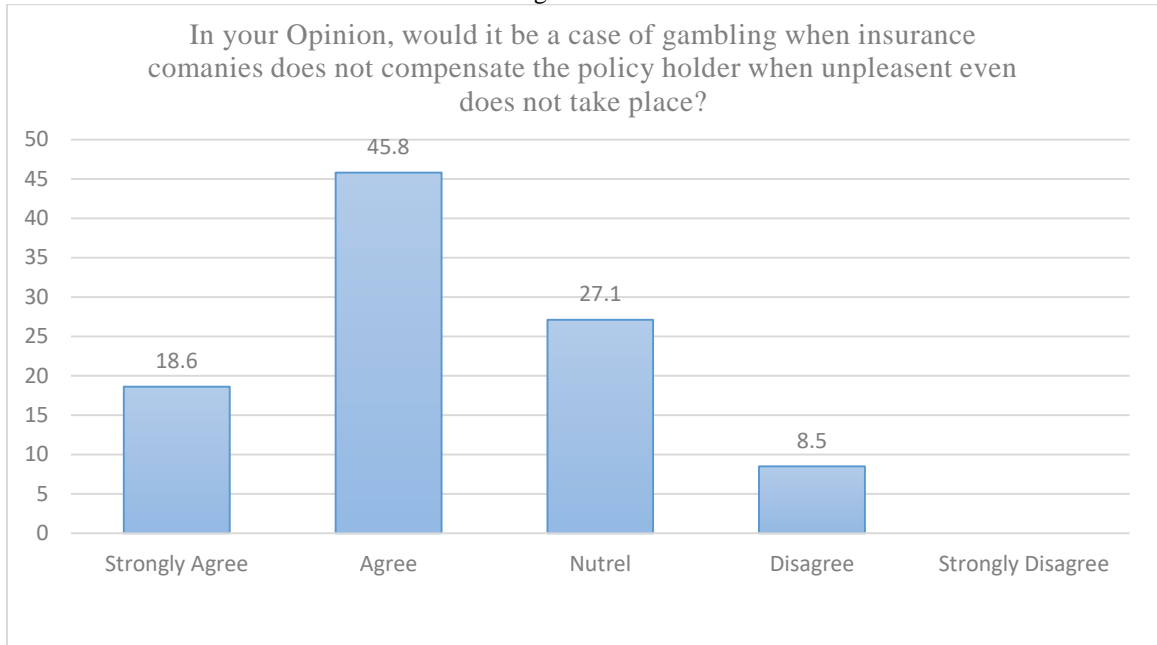
One of the main factor in the insurance based transactions is that it creates speculation in the economy as the premium asked for covering the asset is always misappropriating the profits margins and give birth to the unjustifiable distribution of wealth. However the responses are recorded with the mix sentiments as 58% opine the same as expected. Most of the insurance companies are working ambiguously:

Figure No 35



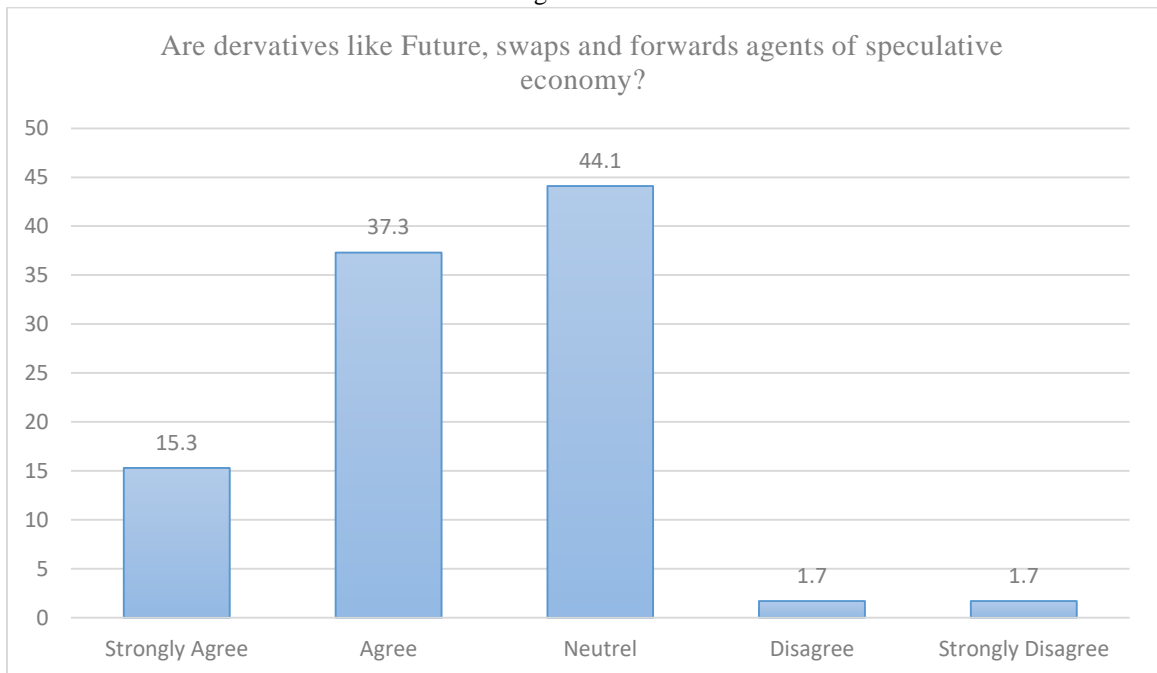
Main problem in the insurance policies lie at the time of expiry as the amount is sacked even if the polled in money by the policy holders don't experience an accidental claims against their premium. However this phenomenon is anticipated by Respondents as 64% confirmed the fact:

Figure No 36



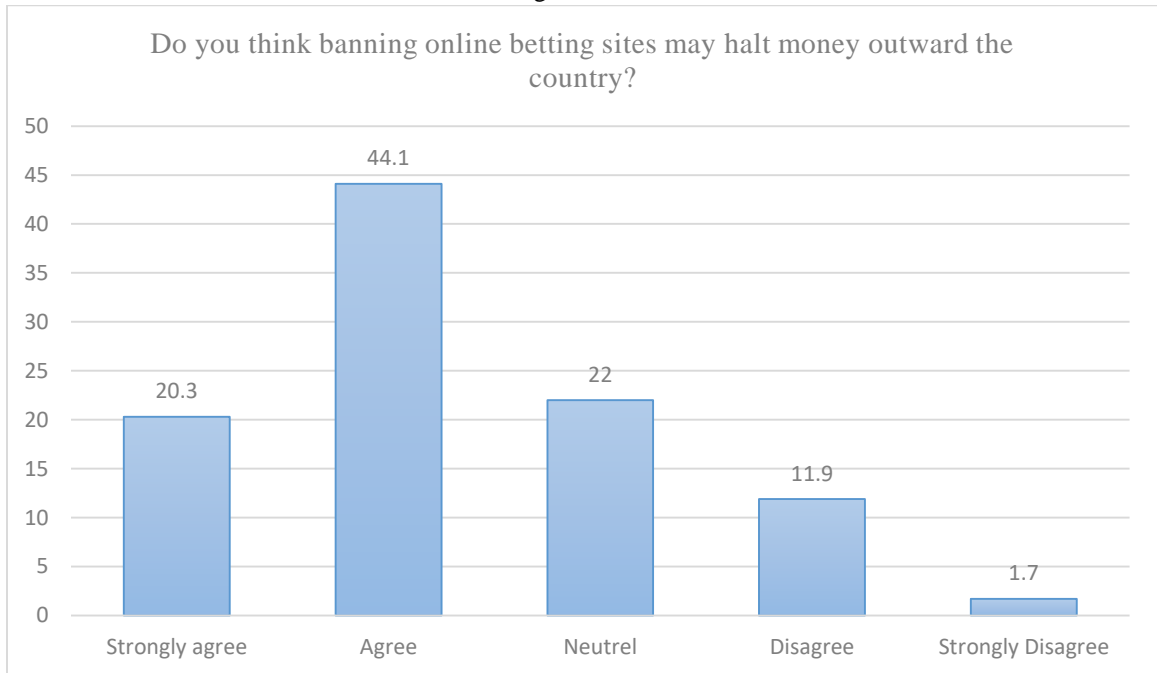
Similar sort of Question is asked about other derivatives of speculative economy. 53% of the respondents acknowledged the fact:

Figure No 37



Talking about the online betting activities, it creates a negative impact on the economy.
64% of the respondents are responsibly acknowledging the fact:

Figure No 38



CHAPTER 8. CONCLUSIONS AND DISCUSSION

8.1 Conclusion

Although we have a strong bond with the Islamic Ideology but having said that when it comes to the financial issues we show weakness. This means we are good in *Ibadat* but worse in the issues related to *Mua'malaat*.

The main purpose of the *Shari'ah* compliant transactions is to peruse Islamic values / in all spheres of economic and finance, unfortunately our financial instruction system deviates from the maintaining the Islamic core values and is promoting the commercialization.

In our financial system, the outcome of the financial transactions isn't aligned with the *Maqasid al Shariah*, rather more focus is on apparent resemblance of the transaction.

Moral values related to the business practices in the local markets are violated in the form of Adulteration for the sake of Maximization of the profit is a normal norm.

All three sectors i-e Public Sector, Private Sector and Local Businesses have abundant traces of interest bearing transactions, both the side i-e Financing and investment.

Concerning to the *Riba* economic Impact on the society, *Riba* based transaction and liabilities reduces the cost for the welfare of the society. The economy of Pakistan as we know is heavily indebted due to the foreign loans and that has why our quality of life is declining day by day. This impact has directly influenced the welfare being of the society as the major portion of the tax based revenues face serious cuts due to interest payments by the existing governments

Major reason of the high price level of necessities based items is due to the effects of the circular debt. The circular debt is arising due to many factor mainly it's the gap the income and expenditures, subsidies and inefficiency like line losses

Upsurge in debt servicing deplete the resources to be spent on the development projects for the society. The huge part of our budget collection is now spent in balancing out the debt incurred over a long period of time which is always subject to increase due to acquiring new loan just to level up the deficit in the budget. One of the main head of the

expenditure is the repayment of the external debt. Hence the cut in the budget is always from its development side.

Inability to pay *Ribawi* payments forces local industries shutdown. The private sector is very sensitive about its economic conditions as they need to maintain profit margins that keeps them going all the way. If the *Ribawi* payments that are paid against the external loans, this will create negative sentiments in the local economy and may cause the partial closer of the industries.

The Bailout plan based on *Riba* leave the adverse impact on the society. It is because of the fact that this type of transaction is incurred where the economy is debt based. In a debt based economy, extra taxes are collected to clear the debts incurred to ensure the daily business of the state. The extra burden of taxes then creates an overall negative impact over the economy like price hike, inflation, slow pace growth of the economy etc.

Rescheduling is also one of the hurdles in the betterment of the society. Rearranging can have an impact on the economy, particularly in business and trade. Production, logistical, and supply chain delays can result from rapid schedule changes. This may lead to higher expenses, lost revenue, and possibly harmful impacts on the economy as a whole.

International dependency restricts the design of conducive policies. It can definitely limit a nation's ability to create and put into effect policies that are suitable for its unique requirements and circumstances. The interests and objectives of those external entities may restrict or affect a country's policy options when it becomes highly reliant on other countries for resources, trade, or financial support.

Financial institutions are also badly affected by the *Riba* based dealings. It has the potential to negatively affect financial institutions' profitability and balance sheets. Loan demand is impacted by rising borrowing costs, which could also lower the net interest margin when interest rates rise.

The SOEs are working in a conventional way where interest is the basic ingredient in the financial transactions or it is the government responsible for the cause as the entire economic system is based on the interest based system. The SOEs need to work on the notion of *Shari'ah* compliance for the sake of its integrity. The comment generally shares the sense of distress and mistrust over the SOEs in this regard. There are many reasons for it that show why the respondents answered about the SOEs in such a way. Public listed

companies has a role to play in the economy which is not just to maximize the profits for the government but to provide those services that create ease in the society. The ongoing thrashing increase in the cost price of the services that these SOEs, say for example WAPDA is a big concern in this regard. This has created a negative behavior in the consumers because of the fact that they are totally dependent to the system. Moreover the charges that are over and above the services acquired by the consumer are one way or the other, is considered to be either an act of oppression or financial non-transparency.

The in-depth knowledge about the Private organization clearly show the investment side of the private organization is also under going through the problems of transparency. Due to the deregulation of the market mechanism, government is facing problems in generating taxes. Nothing is secured to the position where its basis are for the betterment of the system of the country. The Private organization of the country still need special assistance in this regard so that it's delivering as per the requirements and needs of the country but also should create an environment where it is exhibiting the characteristics of the perfect market competition.

Contribution of Islamic Banking sector for the Growth of Private Sector is considerably slow. According to the current report the total market share of Islamic banks in contrast with the commercial banks is not more the 18% for the fiscal year 2020

Traces of *Gharar* is found in many transactions like crypto currency, *benami*, prize bonds, Patwari system, Unilateral and by lateral contracts, documentation of legal paper etc. Also Failure to fulfill Contractual obligations in a business/service contracts causing financial losses creating *Al Gharah Al fahish*: Undervalue Registration, Pending cases, in the courts, ease of Doing Business, Fraud, Misleading information are also causes of *Gharar* found in the financial transactions

Gharar is a major problem of our society that is disturbing the socio-economic activities. Some of it is in the form of Financial Irregularities in the contracts due to incomplete documentation.

Usually, Ambiguous transactions (without evidence) is major source of money laundering. Criminals can make it more difficult for regulatory and law enforcement organizations to spot and look into shady operations by purposefully obfuscating financial transactions or adding confusion. Additionally, by using shell corporations, offshore

accounts, intricate financial structures, or by incorporating illegal funds into legal firms, these techniques allow for the use of ambiguous transactions to conceal a lawful transaction. Cases like Panama and other foreign accounts are examples that confirm the case

Certainly, inappropriate land record causes under invoicing and leaves negative impact in society. A property deal may be undervalued or undercharged as a result of inaccurate land records. This happens when the real worth of a property is purposefully concealed from buyers or authorities during the sale or transfer procedure. This dishonest practice frequently entails cooperation between sellers, buyers, and occasionally dishonest officials. The parties involved intend to pay less in taxes, fees, or duties or to get around rules and limits pertaining to land transactions by undervaluing the property. Rich people or corporations can use it to avoid paying their fair share of taxes, which places pressure on other tax payers. As a result, socioeconomic inequalities are made worse, and the government's capacity to appropriately meet societal requirements is diminished.

Usually, fraudulent transactions/techniques cost a huge loss to the society in monetary terms. In Pakistan, Fraudulent actions also have an impact on enterprises and result in financial losses. Companies may suffer losses as a result of false bills, or counterfeit goods, among other dishonest tactics. Costs are raised, which has an indirect impact on everyone in society. Businesses frequently pay the expense of losses brought on by fraudulent transactions, and they could pass these costs on to customers by increasing the cost of their goods and services. Individuals' ability to buy things is ultimately impacted, which lowers their level of economic security as a whole. Fraudulent transactions have a negative impact on the credibility of institutions and financial systems. People may become reluctant to participate in economic activities if they lose faith in the security of their financial transactions, which could slow down economic growth.

It is evident that Non-standardized information regarding the employment contract leave the unrest among the work force. Non-standardized information means that, even if different employees perform identical duties or have comparable levels of expertise, their contracts may contain varied terms and conditions. As a result, in the working class of the country, there seems to be a sense of unfairness and favoritism, which can cause unrest and discontent. Employees who are unsure of their rights, perks, and entitlements may be

affected by unclear employment contracts. It can cause uncertainty and resentment among the workforce when there is ambiguity over matters like leave policy, work hours, overtime, or other significant measures. There may be a lack of openness in the organization if employment contracts are not standardized and information is not readily available to all employees. Employee trust and morale may suffer if they believe that the terms and circumstances of their contracts were arbitrarily chosen without any justification or consistency. Uneven benefits and leave entitlements among employees may be the result of non-standardized information. Employees may experience feelings of injustice and resentment as a result of some having better working conditions than others. Employees may feel driven to work longer hours or forego their entitled leave in circumstances where leave regulations or work hour provisions are unclear due to fear of consequences or misconceptions. Increased workloads, stress, and ultimately employee unrest may result from this.

Normally, *Gharar* occurs from the fear of failing to meet contractual obligations cause financial losses in the market. Market losses may result if one of the parties to the deal decides to act out of fear and takes measures that depart from the original agreement. Our local markets are seriously subject to this kind of financial discrepancy. The party concerned that they won't be able to fulfil their responsibilities may take measures that go against the letter and spirit of the agreement. This might be making an effort to alter the terms, delaying payments, or providing inferior products or services. Contractual violations or unclear actions may result in legal issues between the parties involved. This may lead to time- and money-consuming legal action, arbitration, or mediation proceedings. A loss of reputation and trust can accompany financial losses in the markets. A party's reputation may suffer and future business opportunities may be harmed if they breach a contract or conduct ambiguous business. Many cases, on the local level, have been recorded in this regard.

It is evident that Deceptive income statements reduce the government revenues. In fact, false income declarations can harm the government's ability to collect taxes in any nation, including Pakistan. Profit and loss statements, commonly referred to as income statements, detail a company's revenues, costs, and net income for a given time period. They are crucial for figuring out how much tax a business should owe the government.

When businesses falsify or manipulate their income statements, they artificially exaggerate their expenses or inflate their claimed income. As a result, they pay less tax than they ought to, which lowers government revenue. As tax revenues are crucial for funding public services, infrastructure development, healthcare, education, and other government programs, this might have a considerable impact on the economy of the nation. This may have a detrimental effect on the nation's economic stability in the form of budget deficits, decreased financing for public services, and other issues.

Normally online currency isn't perceived as a negative notion for the economy as a whole. In Pakistan, some demographic groups are actually adopting and using crypto currencies like Bit coin at an increasing rate. Crypto currencies may provide a number of advantages, including quicker and less expensive cross-border transactions, greater financial inclusion for unbanked populations, and significant investment and economic growth opportunities. These benefits were thought to have a favorable economic impact on Pakistan. Furthermore, the Pakistani government had expressed interest in investigating ways to use block chain technology, which powers crypto currencies, to improve efficiency and transparency in fields like remittances and supply chain management. However running a business of virtual currency is officially for the time being as illegal.

In the economy of Pakistan, Informal/unregistered business create imbalances in the market as they play less role in the betterment of the societies due to the tax evasion. In order to avoid paying taxes and increase their revenue, informal firms frequently operate outside of the established tax framework. This unfairly burdens those who pay their taxes, such as registered firms and individuals. Businesses' tax evasion can reduce the funds available for social welfare programmers, infrastructure improvement, and public services since the government depends on tax revenues to pay for these programmers and development projects.

Normally, *Gharar* based dealings put adverse impact on overall economic and financial indicators like international sovereignty, Lower FDI, less financial inflows etc. indeed have a negative impact on a nation's overall economic and financial indices, including international sovereignty, foreign direct investment (FDI), and financial inflows, often known as opaque or dubious practices. This response especially discusses how such practices can affect Pakistan. By weakening confidence and credibility among the

international community, ambiguous deals might threaten a nation's international sovereignty. International partners, particularly investors, lenders, and trading partners, may become skeptical and lose faith in a nation if its economic and financial practices are seen as opaque or dubious. This may make it more difficult for the nation to assert its sovereignty and influence on the world scene. Due to worries about corruption, a lack of transparency, and legal uncertainty, potential investors may be hesitant to invest in a nation that is known for its opaque business practices. As a result, FDI inflows may decline, which might reduce the amount of money available for economic growth and impede the creation of jobs. It is the class differences in the society is outcome of the legal gambling schemes. It is a symptom of social illness of the society. Product of legal gambling schemes in Pakistani society, they are a sign of a larger social dissatisfaction. While it is true that there are class gaps in many nations, blaming just legal gambling systems for them may be oversimplifying a complicated problem. The effects of gambling are normally felt by both the individual and their financial situation. It is unlikely to be the only reason for social class disparities. Class divides are significantly influenced by a number of variables, including systemic inequality, a lack of social assistance programmers, scarce economic prospects, corruption, and unequal access to resources.

Obsession in the gambling create mental disorders and other psychological diseases. Individuals who participate in gambling activities may experience additional stressors and challenges in Pakistan, where gambling is often banned and socially stigmatized, which may be linked to mental health problems. Individuals who struggle with gambling addiction or have mental health issues related to gaming should seek professional assistance. Psychologists and psychiatrists are two examples of mental health specialists who can help with these issues by offering support, counselling, and evidence-based treatment options.

Getting land ownerships thorough lucky draws keep the clients physiologically unrest. All such effort less incomes create and adverse effect on its viewers. Feelings of anger, unfairness, and unhappiness may result from this technique of acquiring property, which depends more on luck than on merit or hard work. Additionally, in the economy of Pakistan, it could make one feel as though they depend more on luck than on self-control and initiative. Furthermore, in the societies like Pakistan, when people see others profiting

easily from such lucky draws, it might negatively affect how fair and equitable they perceive the world to be. It might increase feelings of injustice and undermine confidence in the institutions designed to allocate resources fairly. Relying on chance to determine ownership can prolong social inequities in nations where land ownership plays a substantial role in wealth accumulation and social mobility. Pakistan has witnessed undercutting of the meritocracy principles, it can worsen already-existing gaps and impede socioeconomic advancement.

Offering premium over a periodic term charged by the insurance companies serves as an agent of the speculative economy. Basically, Insurance companies do not act as speculative agents in the economy; rather, they charge premiums to cover the costs of providing insurance coverage. Instead of engaging in speculative activities, their main goal is to manage risk and offer financial safety. However, in a situation like the economy of our nation, these financial organizations make additional income and invest the money in a variety of financial products, including stocks, bonds, real estate, and derivatives. As they want to produce profits and gradually increase their money over time, these investment decisions contain a component of speculation.

Insurance companies does not compensate the policy holder when unpleasant even does not takes place. Hence it is a clear case of Misappropriation of wealth. It is worthy to note that Risk assessment is frequently used to determine insurance premiums, with higher premiums being charged to people or firms who pose larger risks. This may cause some people to pay more for insurance coverage than others, which may lead to inequalities in wealth. The insurance firms assert that a voluntary contract between them and people or businesses is the foundation of their business. Thus, they suggest that people base their decision to buy insurance on their risk profile and their perception of their need for protection. Insurance companies also offer financial security against unforeseen disasters, which can aid in a person's or an organization's loss recovery. Here it is worthy to note that voluntary contracts are not chargeable.

Derivatives like Future, swaps and forwards agents of speculative economy. Due to their leverage and speculative nature, derivatives can increase market volatility. Rapid price changes brought on by derivative trading may have repercussions on the real economy, resulting in decreased investment, uncertainty, and possible economic

instability. It can be challenging to appropriately estimate the risks of some derivative contracts due to their complexity and lack of transparency. This lack of transparency can result in incorrect pricing and judgment, which could result in huge losses for market participants and negative ripple effects on the real economy. In the Economy like Pakistan these derivatives are only commonly used as hedging tools.

It would be a good suggestion that banning online bet sites may halt money outward the country. Many individuals enjoy online betting as a sort of entertainment, so outlawing it might not reduce demand. Instead, it might push users to questionable or unregulated platforms, which would result in even more money leaving the country without any kind of regulatory control. However, since these websites may be located outside the borders of a given nation, it may be challenging to completely outlaw online gambling. Due to this, blocking access and preventing users from engaging in online gambling activities may be difficult.

For all three Non *Shari'ah* Compliant activities i-e Interest, Gambling and Maysir; constitution of Pakistan is very clear about its illegality as well as they are prohibited in the eyes of *Shari'ah* but due to the weakness shown by the law abiding agencies it is massively prevailing in our society.

All three variables are *Riba*, *Gharar* and Gambling have many variants that are prevailing in our Socio-Economic system. It is important to identify them and take precautionary measures to cope up with the problem of Non-*Shari'ah* Compliance.

8.2 Policy Recommendations

In an Islamic Financial system the outcome of the transactions must align with the *Al Maqasid Al Shari'ah* rather than focusing on apparent resemblance of the transaction with the Islamic finance.

The main purpose of the *Shari'ah* compliant transactions is to peruse Islamic values in all activities pertaining to economic and finance, unfortunately the mechanisms of financial transactions deviate from maintaining the Islamic core values rather promoting the commercialization. Hence *Shari'ah* values should be promoted while containing the commercialization.

Government should establish an Islamic Central Board which may be designated the responsibilities to ensure compliance of the Islamic financial products and services launched by the financial institutions. Further legislation is required to put further checks over the financial system of the country to ensure that it is *Ribā* free.

All the alternatives like Islamic Banking against Conventional Banking, Takaful against insurance, *Sukuk* bonds at the treasury side and other alternatives must implement in letter and spirit and replace completely its counterpart so that the *Shari'ah* Compliance is observed.

The Educational institutions need to educate and develop the conceptualization regarding the Non-*Shariah* compliant elements as *Riba*, *Gharar* and *Maysir* by offering courses that are properly designed for the cause

It is the Duty of the council of the Islamic Ideology that All the Interest based transaction must be ceased systematically. The Council should assure that The *Riba* Based Financial Institutions must report about the measures they have taken in this regard in their periodic report. The harms of the Interest based transactions must be better understood in terms of the effects of it on the socio-economic system of Pakistan just like corruption, robbery, theft, deception, tax evasion and other immoral activities

Keep in the view, the activities that are *Gharar* and Gambling based, for the sake of its restriction, Economy must be documented and computerized and leakage of the money outflow must be avoided and tax evasion must be stopped.

For the sake of controlling the online Betting and Gaming websites, the authorities must link up with the cyber security to block these online betting websites, fake accounts of virtual money and alike; keep a vigilant eye on those involved in it.

Finally, it is recommended that a Central board of *Shari'ah* should be placed to control the activities involving non- *Shari'ah* compliant financial transactions. This institution will act like a watchdog and will inform the law enforcing agencies, if any suspicious activity is ongoing in the society or market. This will help up bring the standard of the society as a progressive and *shari'ah* abiding.

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2	((التاجر الصدوق الأمين مع النبيين والصديقين والشهداء))	سنن الدارمي	137
3	((الخلال بين، والحرام بين، وبينهما مشبهات لا يعلمها كثير...))	صحيح البخاري	77
4	((الصلح جائز بين المسلمين إلا صلحاً حرم حلالاً أو أحل حراماً...))	جامع الترمذي	88
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6	((فَقَالَ كُلُّنَا قَالَ فَإِنِّي صَائِمٌ قَالَ مَا أَنَا بِأَكِلٍ حَتَّى نَأْكُلَ قَالَ فَأَكَلْنَا...))	صحيح البخاري	45
7	((من باع بَيْعَتَيْنِ فِي بَيْعَةٍ فَلَهُ أَوْكُسُهُمَا أَوْ الرِّبَا))	سنن أبي داود	98
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9	((يسروا ولا تعسروا، وبشروا ولا تنفروا))	صحيح البخاري	74
10	((وَاللَّهُ إِنِّي لَأُحْشَاكُمُ لِلَّهِ وَأَتَفَاكُمُ لَهُ، لَكِنِّي أَصُومُ وَأُفْطِرُ...))	صحيح البخاري	45

List of Terminologies

Serial No.	Terminologies	Page No.
1	Al Hukum Al Shar'i: The ulema of usul define hukm shari; “As a locution or communication from the Lawgiver concerning the conduct of the <i>mukallaf</i> (person in full possession of his faculties) which consists of a demand, an option or an enactment	51
2	Al Maqasid Al Sharī'ah: <i>Maqasid</i> al- <i>Sharī'ah</i> is the aims or goals intended by <i>Islamic</i> law for the realization of benefit to mankind.	32
3	Al Maslahah Al Mursalah: It means benefit or interest. • So Istislah involves the acquisition of benefit and repulsion of the harm to the public based on the benefit or interest that will be enjoyed by the public.	61
4	Bai' al 'inah: It is a sale and buy-back agreement, is a type of Islamic finance that is a banking activity that is congruent with <i>Sharī'ah</i> , which are the principles of Islamic law	91
5	Bai' Bithaman Ajil: It is a “deferred payment sale”, which works like a murabahah contract, but with payment generally made on a deferred basis. In some countries Bai Bithaman Ajil is also known as Bay' al Muajjal.	90
6	Bai' al dayn: It is essentially a contract of the sale of debt. Being a contract of sale, there must be all the elements or pillars of a sales contract such as legitimacy of contracting parties, and offer and acceptance. Between the contracting parties there must be a subject matter of sale, a price, and delivery of the asset. The asset in this case, however, is a financial asset or a debt.	91
7	Bay al Salam: A lender (Al-muslim) buys an asset from a party seeking financing (the seller or Al-muslim Ileihi), pays the purchase price of the asset in advance and agrees to take delivery of the asset at a later date. ... In either case, the asset is usually sold at a higher price.	101
8	Crypto currency: it is a digital or virtual currency that uses cryptography for security purpose.	263

9	Darurah: <i>Darurah</i> allows a mitigation whereby a Muslim can commit an unlawful action, or omit an obligation or delay it. This mitigation is consistent with the objectives of <i>Shari'ah</i> which aim to preserve basic human necessities namely religion, life, intellect, lineage and wealth.	63
10	fiqh al Ibadat: <i>fiqh</i> related to the Matters of worship.	37
11	fiqh al siyasah: <i>fiqh</i> related to the political issues.	37
12	fiqh ul Usrah wa al mawaris: <i>fiqh</i> related to the concept of family and the law of inheritance.	37
13	fiqh: It is related to knowing of Legal Injunctions derived from the practical side of <i>Shari'ah</i> from its detailed Primary sources.	37
14	Gharar: Sale of probable items whose existence or characteristics are not certain, due to the risky nature.	355
15	Hemorrhage: it is an escape of blood from a ruptured blood vessel.	156
16	Ijmā': (Arabic: إجماع) is an Arabic term referring to the consensus or agreement of Islamic scholars on a point of Islamic law. ... Sunni Muslims regard ijmā' as the third fundamental source of Sharia law, after the Qur'an, and the Sunnah.	154
17	IJTIHAD: (Arabic: "effort") in Islamic law, the independent or original interpretation of problems not precisely covered by the Qur'ān, Hadith (traditions concerning the Prophet Muhammad's life and utterances), and ijmā' (scholarly consensus)	29
18	ISTISNA' CONTRACRT: A contract to build, manufacture, construct or develop the object of sale at a definite price, over a defined period of time, according to agreed specifications between the parties.	225
19	Khilabah (fraud) and Ghishsh (deception): the words like <i>khilabah</i> or <i>tafif</i> and <i>ghishsh</i> have been used in the text of Hadith.	115
20	KIBOR: stands for Karachi Inter Bank Offer Rates.it is the average interest rate at which banks want to lend money to other banks.	234
21	Maysir: it is Known as Gambling. Its literal meaning refers to getting something quite easily or getting a profit with working for it. The risk level	16

	in <i>maysir</i> is very high. The player most of the time loses the capital (totally or partially).	
22	Mua'malat al Maliyah: Financial matter.	37
23	Mua'malat al Maliyah: In modern perspective, this category of Jurisprudence of transactions which is related to the financial transactions and other provisions of Sharia in human actions treating financial activities in the light of public interest, in order to satisfy people's needs and settle the dispute between them, which is directly derived from the detailed evidence in Texts, or extended by inference from the general assumptions of Sharia.	43
24	Mua'malat: Worldly matters.	41
25	Musharakah: it is based on the Islamic principle of Sharikat ul Amwal, in which all the partners invest some capital into the business.	235
26	Mysir: It includes all kinds of gambling. In gambling the winner and loser win or lose by mere chance.	40
27	Parchi Jua: A local game played on the basis of the serial numbers in prize bonds.	330
28	Qallaha wa qala rasool: Qur'an and Hadith	249
29	Qimar: Qimar is a pure game of chance in which the player expects an abnormal profit if he/ she strikes the correct option and wins among the other competitors. As opposed to others equally eligible for the gain. The income is a result of a lucky draw or a lottery.	110
30	Ribā: it is a concept in Islamic banking that refers to charged interest. It has also been referred to as usury, or the charging of unreasonably high-interest rates. There is also another form of <i>ribā</i> , according to most Islamic jurists, which refers to the simultaneous exchange of goods of unequal quantities or qualities.	30
31	SUKUK: these are Islamic bonds in the form of certificates with each <i>sakk</i> representing a proportional undivided ownership right in tangible assets, or a pool of predominantly tangible assets, or a business venture (such as a <i>mudārabah</i>).	180

33	<p>Talfique: <i>Talfique</i> is the amalgamation of the opinions of several <i>fiqhi</i> schools of thought into one crucial issue that often differs from all. It appears to be an instrument of <i>ijtihad</i>, and it is used as a categorical Sharia ruling in the absence of such a ruling when there is a divergent opinion among the jurists.</p>	32
34	<p>Ummah: Typically refers to a single group that shares common religious beliefs, specifically those that are the objects of a divine plan of salvation.</p>	82

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1	Abd al-Raḥmān ibn Abī Bakr ibn Muḥammad Jalāl al-Dīn al-Khuḍayrī al-Suyūṭī	1
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10	Abū Bakr Aḥmad ibn ‘Alī al-Rāzī al-Jaṣṣāṣ (b 305 AH/917 AD – d 370 AH/981 AD)	107
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18	'Ala' al-Din al-Kasani (b ?- d, 1191 AC)	108
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31	Shihāb al-Dīn Abū 'l-Faḍl Aḥmad ibn Nūr al-Dīn 'Alī ibn Muḥammad ibn Ḥajar al-'Asqalānī al-Kinānī (18 February 1372 – 2 February 1449 CE / 773 – 852 A.H.)	1
32	Shihāb al-Dīn Abu 'l-Abbās Aḥmad ibn Abi 'l-'Alā' Idrīs ibn 'Abd al-Raḥmān ibn 'Abd Allāh ibn Yallīn al-Ṣanhājī al-Ṣa'īdī al-Bahfashīmī al-Būshī al-Bahnasī al-Miṣrī al-Mālikī (also known as Shihāb al-Dīn al-Qarāfī). (1228– 1285 A.H)	1
33	Taha Jabir Al-Alwani (1935 – March 4, 2016)	84

34	Taqī ad-Dīn Aḥmad ibn Abd al-Halim ibn Abd al-Salam al-Numayri al-Ḥarrānī (January 22, 1263 – September 26, 1328), known simply Ibn Taymiyyah	1
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2	ADBP	Agriculture development bank Pakistan	195
3	AGP	The Auditor General of Pakistan	292
4	AHDH	Acute hyperactivity disorder	417
5	APFMA	All Pakistan Flour Mills Association	285
6	BBA	Bachpan Bachoo andolan	145
7	BEOE	Bureau of Emigration & Overseas Employment – GOP	167
8	BTC	Bitcoin Treatment	269
9	COVID- 19	'CO' stands for corona, 'VI' for virus, and 'D' for disease. Formerly, this disease was referred to as '2019 novel coronavirus' or '2019-nCoV.'	168
10	CPEC	China Pakistan Economic Corridor	181
11	CPF	The Central Provident Fund	129
12	CPI	Consumer Price Index	202
13	CRO	Consumer Registration Office	131
14	DFI	Development Finance Institute	177
15	DLT	Distributive ledger technology	270
16	DOT	Department of Transportation	296
17	D-SIB	Domestic Systematically Important Banks	192
18	ECC	The Economic Coordination Committee	184
19	FATF	Financial action task force	275
20	FBR	Federal Board of revenue	266
21	FDMS	flight data management system	295
22	FIA	Federal Investigation Agency	300
23	FY	Financial Year	3

24	GDP	Gross Domestic product	140
25	GFI	Global Financial Integrity	316
26	GOP	Government of Pakistan	186
27	GST	General Sales Tax	285
28	IATA	The International Air Transport Association	296
29	ICSID	International Center for Settlement of Investment Disputes	163
30	IDBP	Industrial Development Bank of Pakistan	193
31	IFD	Islamic Financial Division	198
32	IFI	Islamic Financial Institute	123
33	IFSB	The Islamic Financial Services Board	198
34	IGC	International Growth Centre	1
35	IHC	ISLAMABAD HIGH COURT	328
36	IMF	International Monetary Fund	26
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40	LNG	Liquefied Natural Gas	314
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42	MPC	Monetary Policy Committee	205
43	NA	National Assembly	134
44	NAB	National Accountability Bureau	12
45	NATCO	The Northern Territory Transport Company	247
46	NBFI	Non-bank financial institutions	251
47	NCCT	Non-Cooperative Countries or Territories'	297
48	NGO	Non-Government Organizations	47
49	NICL	National Insurance Company Limited	348
50	OCD	Obsessive Compulsive disorder	348
51	OECD	Organization for Economic Co operation and Development	1

52	PA	Provincial Assembly	135
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91	YES	Youth Participation Service	219
92	ZTBL	Zarai Taraqiati Bank limited	195

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APPENDIX

QUESTIONNAIRE:

Name:

Age:

Occupation:

Experience:

Region:

SECTION - I

SOCIO IMPACT OF RIBA:

1 Do you think Riba based transaction and liabilities reduces the cost for the welfare of the society?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

2: Is major reason of the high price level of necessities caused by the effects of the circular debt?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

3: Does upsurge in debt servicing deplete the resources to be spent on the development projects for the society?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

SECTION II

ECONOMIC IMPACT OF RIBA ON THE SOCIETY

1 Do you think inability to pay Ribawi payments forced local industries shutdown?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

2 Do you perceive that the Bailout plan based on Riba leave the adverse impact on the society?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

3 Do you think rescheduling is also one of hurdle in the betterment of the society?

	<i>Strongly Agree</i>	<i>Agree</i>	<i>Neutral</i>	<i>Disagree</i>	<i>Strongly Disagree</i>
4	In your opinion, does international dependency restrict to design conducive policies?				
5	Do you think, financial institutions are also badly affected by the Riba based dealings?				

SECTION III

STATE OWNED ENTERPRISES

- 1 Do you have knowledge about SOEs?
- 2 Are you introduced with the mechanism of SOEs?
- 3 Are you familiar with the financing of the SOEs?
- 4 Is it *Sharī'ah* compliant?
- 5 If NOT, What is the main issue behind?
- 6 Are you acquainted with the portfolio investment by the SOEs?

Note Comments are recorded and shared in the chapter of Survey.

SECTION IV

Private /Organizations/Institutions

- 1 Do you know about the working of private institutions in Pakistan?
- 2 Are they registered under the Islamic Laws?
- 3 The way they finance their financial services and products, are they as per *Sharī'ah*?
- 4 What potential threats they find in their financing?
- 5 Are you agreed that their investment in different projects is *Sharī'ah* based?
- 6 Do you find any ambiguity in their operations regarding investments?

Note Comments are recorded and shared in the chapter of Survey.

SECTION V

Local Business/ Entrepreneurship

- 1 Do you think local businessman holds the necessary and sufficient information regarding Islamic laws of business?
- 2 Are you familiar with the informal deceptive business techniques?
- 3 Do you think local businessman is exposed to the deceptive financing and investment techniques in the market?
- 4 Are there any informal activities prevailing in the system?
- 5 What do you opine, is there any mechanism to control these informal deceptive techniques?
- 6 Do you think, these practices has long term adverse effects on society?

Note Comments are recorded and shared in the chapter of Survey.

SECTION VI

1. Is *Gharar* and *Maysir* known to you?
yes no I don't know
- 2 Do we have any statutory body in Pakistan to monitor these transactions?
yes no I don't know
- 3 Do you think *Gharar* and *Maysir* takes place when both parties intends to earn profit without proper investigation?
yes no I don't know
- 4 Do you thinks, *Gharar* and *Maysir* exists in our daily transactions?
yes no I don't know
- 5 Do a layman know about these terminologies?
yes no I don't know
- 6 Do Governments has any mechanism to prevent them?
yes no I don't know

7 Do Government penalize the culprits when identified?

SECTION - VII

SOCIO IMPACT OF THE GHARAR ON THE SOCIETY

9: Do you perceive that ambiguous transactions (without evidence) is major source of money laundering?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

10: Do you think that inappropriate land record causes under invoicing and leaves negative impact in society?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

11: Do fraudulent transactions/techniques cost a huge loss to the society in monetary terms?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

12: Do you think, non-standardized information regarding the employment contract leave the unrest among the work force?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

SECTION VIII

ECONOMIC IMPACT OF GHARAR ON THE SOCIETY

13: Do you think failing to meet contractual obligations causes financial losses in the market?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

14: Do deceptive income statements reduce the government revenues?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

15: In your views, is online currency a negative motion for the economy as a whole?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

16: In your opinion, does informal/unregistered business create imbalances in the market?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

17: Do Gharar based dealings put adverse impact on overall economic and financial indicators like international sovereignty, Lower FDI, less financial inflows etc.

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

SECTION - IX

SOCIO IMPACT OF GAMBLING ON THE SOCIETY

18: Do you think that class differences in the society is outcome of the legal gambling schemes?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

19: Does Obsession in the gambling create mental disorders and other psychological diseases?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

20: **Do you think getting land** ownerships thorough lucky draws keep the clients physiologically unrest?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

SECTION X

ECONOMIC IMPACT OF GAMBLING ON THE SOCIETY

18: Do you think Gambling creates class difference?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

19: Does Obsession of Gambling create mental disorder?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

20: Do you think getting land ownership through lucky draws keeps the client psychological unrest?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

21: Do you think that premium over a periodic term charged by the insurance companies serves as an agent of the speculative economy?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

22: In your opinion, would it be a case of gambling when insurance companies does not compensate the policy holder when unpleasant even does not takes place?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

23: Are derivatives like Future, swaps and forwards agents of speculative economy?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*

24: Do you think banning online bet sites may halt money outward the country?

Strongly Agree *Agree* *Neutral* *Disagree* *Strongly Disagree*