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# ISLAM AND MUSLIM SOCIETIES

## A SOCIAL SCIENCE JOURNAL

*Islam and Muslim Societies* is an academic refereed journal published under the authority of *Center for Social Action and Development* (CSAD) by Serials Publications, New Delhi. Published bi-annually, it is international in character though South Asia is its main area of interest and coverage. The Journal does not promote any particular point of view or ideology.

*Islam and Muslim Societies* is primarily a forum for scholars across the disciplines of Sociology/Social Anthropology, Economics, History, Political Science, Law, Philosophy and other related streams and provides open space for research and dialogue on Islam (except theological debates/issues) and Muslim societies across the globe.

The Journal invites contributions in the form of original articles- theoretical, empirical and policy analysis- short notes, review articles, book reviews, news relating to research and academic/professional fora and communications. A detailed note for contributors is given on the back cover.

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# ISLAM AND MUSLIM SOCIETIES

*Editor*  
NADEEM HASNAIN

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## FROM THE EDITOR'S PEN

Islam and Muslim Societies have been there in the social science discourse the world over yet this has been a relatively neglected area of research especially in Asian Studies. It is during the last two decades or so that South Asian Islam and Muslim communities have received considerable attention from various disciplines of social sciences.

The Islamicist scholars working within the domain of 'Islamic Studies' have contributed substantially and significantly but their contributions have largely been confined to Islam as a religion and not Muslim Societies. Moreover, the superiority of the sociological vision over the Islamicists in terms of empirical, conceptual and methodological rigour is now established beyond doubt. For instance, the sociological vision envisages the history of Islam as that of the mutual reaction and interface of "great" (textual) and "little" (empirical, field based) traditions. Islam is not an empire except at certain moments in history, neither is it a group of peoples of common ethnicity. No degree of glorification or romanticisation of Islamic *Ummah* can conceal the cultural heterogeneity of Islamic or Muslim societies.

There is a sudden resurgence and emergence of interest in Islam and Muslims among the non-Muslim populations of the world, especially among the western societies, after 9/11. The knowledgeable persons are amused by the soaring sales of Quran in the west after this incident. Those rushing in to find out what is said about 'terrorism' or 'terror tactics' or this and that in Quran will be disappointed. Oliver Roy (2004) in his important work *Globalized Islam* sounds very convincing when he says that "the key question is not what the Koran says, but what Muslims say the Koran says. The issue is not Islam as a theological corpus, but the discourses and practices of Muslims". The Talibans of Afghanistan may be a classic case of what some claimants of Islam believe and interpret.

Alongwith the resurgence of Islam in recent years, there has been an understandable upsurge of scholarly interest among the practitioners of social sciences in Muslims, their religion and socio-political and socio-economic conditions. Because of dearth of professional-academic journals devoted exclusively to this field of study, many of them, especially the relatively lesser known and younger ones, have had to wait for years in getting their contributions published. This journal is an humble attempt to provide a forum and open space for research and dialogue on Islam (excluding theological issues) and Muslim societies. If the response from the readers and contributors is good its periodicity may be increased to three numbers every year consisting of around 250 pages each.

Nadeem Hasnain  
Editor

## 'UNIVERSAL' VALUES IN ACTION— WITH THEIR FAITH LEGACIES

*Jonathan Benthall*

**Abstract:** *Whether phrased in religious or secular terms, claims to moral absolutes are trumps played to win a card-game. The religious may invoke God to promote territorial claims; the secular may invoke human rights to justify military intervention, or they may invoke 'saving Nature' to justify the displacement of local people to make way for game reserves. We must question all affirmations of moral absolutes by viewing them in political context. The issue of whether absolute moral values exist at all, or are no more than contingent rhetorical claims, has been staple fare for anthropology classes since the 1970s. It has recently become concrete and topical in the public sphere of non-governmental organizations (NGOs) and campaigning groups – and not least in the Muslim world.*

Academics have lambasted Samuel P. Huntington's 'clash of civilizations' thesis as crude and inflammatory – though it can seem grimly plausible if reformulated as a set of mutually reinforcing stereotypes. Among this American political scientist's redeeming merits is his sensitivity to the heritage of religious values that cultures are left with, even when religious belief has ceased to dominate. An intriguing question for our time is how far Judaeo-Christian assumptions underlie Western claims to secular universalism. The Muslim world provides a basis for comparison. If the Muslims had repelled the Crusaders and successfully colonized medieval Europe, a kind of post-Islamic humanism might have emerged in the modern West rather than the post-Christian humanism that we actually have. (Incidentally, I am not a religious person, but come from a Church of England background, which must surely colour my thoughts on these questions. A Jew, a Muslim or anyone from outside the cultures of the Abrahamic monotheisms would have different perspectives.)

The paramount clash of civilizations, for Huntington, is between Islam and the West. All reasonable people would prefer such a clash to be forestalled through dialogue. Scholars have done much to break down the myth of a monolithic Islam by showing how it has been just as diverse as Christendom, and as permeable to outside influences; and yet the notion

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of an undivided *umma*, or community of believers, is one that most devout Muslims subscribe to. Issues of charity, human rights, humanitarian law, religious toleration and women's rights bring out clear commonalities between the Judaeo-Christian and the Islamic traditions, but also some salient differences. I shall touch on these and give more detailed attention to a matter that has only recently come to the fore – the relevance of Islam to environmentalism – and to changing patterns of religious authority within Islam.

Belief in the individual soul's direct relationship with God, and in the earth's resources as deriving from God's bounty, is common to all three Abrahamic faiths. These principles underpin their commitments to almsgiving, charity, and other expressions of social solidarity. The Muslim tithe or *zakat* is of course one of the five pillars of Islam, while the *waqf* or charitable foundation was a major legal institution in most of the Muslim world until the twentieth century. Present-day Muslim charities share some common features such as frequent allusions to Quranic tradition, use of visual motifs like the minaret and the crescent, and a special concern for orphans and refugees. The European ideal of setting aside a 'charitable' sphere of public activity meant to be unpolluted by political forces has its counterpart in Islam. The same difficulties in realizing this ideal – and everyone knows how politicized Western aid can be – have constantly arisen. For instance, during the Afghan conflict of the 1980s and the Bosnian conflict of the 1990s, Islamic charities vied both with Western agencies and with one another to win hearts and minds in the course of bringing material relief aid.

A cloud has hung over Muslim charities since the 9/11 attacks on the United States, owing to suspicions against them of money-laundering or financing terrorism. But almost certainly the U.S. Administration and the Sanctions Committee of the United Nations have over-reacted in their compilation of black lists, with no rights of defence or appeal, thereby both punishing a large number of *bona fide* Islamic charities and fuelling resentment against the United States. A kind of emergency or martial law has been allowed to continue with no time-scale set for a return to normality.

To take but one example of a successful Muslim charity, Britain's largest Muslim overseas aid agency, Islamic Relief, has won wide respect. It has broken from Muslim tradition in dissociating itself completely from proselytizing efforts and mosque-building, and has promoted a liberal interpretation of the *zakat* rules that allows funds raised from *zakat* to be used to help non-Muslim as well as Muslim beneficiaries.

Much scholarly and polemical attention has been given to the disparities between Islamic legal principles and the emerging corpus of universal human rights. However, nearly all the flashpoints – such as gender issues, or capital and corporal punishment – are vigorously debated within the Muslim world itself. Perhaps the cardinal moral principle enshrined in Islamic doctrine is justice. This calls all human beings to account for their acts, but without imposing the mystical burden of Original Sin, central to institutional Christianity.

Humanitarianism, in the narrow sense of formal conventions restraining the conduct of hostilities, is a field that has also stimulated comparison between the Islamic and Western traditions. Islamic moralists addressed the 'laws of war' long before Christian Europe, though at a time when the religious order recognized no sharp distinction between spiritual

and temporal matters, and when such practices as enslavement and plunder were considered a necessary part of war. Islamic law and the Geneva Conventions are compatible in recognizing, for instance, the principle of mutual respect between armies in combat, and that of the protection of combatants.

The issue of religious toleration may also be looked at comparatively. Historically, Islam spread as fast as it did through accommodating or absorbing a wide variety of local traditions, such as the cult of saints in North Africa. In some regions such as south India, mixed forms of religion emerged – to be reproved by later, neo-orthodox revivalists. There is also an explicit Islamic tradition of toleration – but subtly different from its Christian counterpart.

The principle of toleration rests on a 'double negation': first I negatively appraise something that others do, then I decide not to intervene. It has acquired moralizing justifications, but its emergence in Europe after internecine religious wars had more to do with expediency. Toleration connotes generosity from a position of dominance, and is to be distinguished from pluralism and cultural relativism, with their egalitarian leanings.

Both Christianity and Islam inherited the ancient Jewish abhorrence of idolatry. Disapproval of false gods easily shades into demonizing them. But whereas Judaism ceased to be a proselytizing religion after the medieval period, partly as a result of the persecutions it endured, both Christianity and Islam have throughout their history been faced with the political issue of their attitude towards other belief-systems among whose adherents they sought converts or had to co-exist. The stated dogma of a faith is no evidence of the practice of its adherents at any historical moment. Indeed, preaching against prejudice discloses its presence in a society rather than its absence. But theological doctrine is at least – whatever else it may be – a form of social theory that has some degree of influence over conduct.

The Christian idea of toleration did not begin to mature until the seventeenth century C.E., and was at first confined to relationships within Christendom rather than outside it. But it was grounded in the ideal of universal brotherly love as expressed in the Gospels. Modernizing Christian theologians have extended the notion of toleration to include non-Abrahamic belief-systems such as the Asian religions and various forms of what used to be known as 'paganism', as well as the agnostic humanism that dominates the intellectual life of Western elites today. (This last proposition remains broadly true, I suggest, despite the resurgence of Christian evangelism in some countries, notably the United States, the revival of religion in some former Communist states, and the growth of various forms of individual spirituality in which westernized Buddhism has played an important part.<sup>1</sup>)

The Islamic law of toleration was structural or concentric. Muslims were at the centre. Outside it were the People of the Book, mainly Jews and Christians (with some evidence of Quranic preference for the latter), recipients of earlier and valid monotheistic revelations. The cults and practices now known as Hinduism came also to be included, when a Muslim imperial court came to rule the huge non-Muslim population of India, though the *ulama* were not unanimous over this matter and there remained an element of paradox in relations with Hindus. People of the Book were granted qualified privileges under Islamic regimes as *dhimmis*, with the result that the oppression of the Jews was never as severe as it was

under Christian Europe. But beyond this circle of recognized religious communities lay a horrifying condition of polytheism, paganism or godlessness. Something of this contempt for, or fear of, *kufir* and *shirk* survives into Muslim civilization to this day.

Muslims do not generally ask for allowances to be made for them as a cultural exception, for Islam is not an ethno-religion like that of the Jews or the Sikhs. Nor is Islam a faith strongly identified with a single country, such as Hinduism or Shinto, despite its spiritual centre in Mecca and Medina. From its Arabian tribal origins, it developed into an alternative universalism, offering a critique of Christian universalism and of its successor, post-Christian secularism. This last has – to a great extent unconsciously – retained much of Christianity's universal aspiration while also seeking to place religion in a residual category, that of private choice in a competitive 'market' of beliefs. A related form of secularism, influenced by cultural anthropology, tends to view religions as human artefacts. No doubt a comparable Muslim secularism, nourished as much by culture as by theology, is emerging in many parts of the world today, eclipsed for the time being by the salience of religious politics and the growth of extremism.

We do not need to adopt the neo-Marxist view – that supposedly universal values are *merely* disguises for privileged interests – to insist on the need to ask always who is parading them. Take the environmental movement – a relatively new ideological theatre in which Islam has as yet only a bit-part. What claims to be a global movement to 'save the planet' turns out to involve huge clashes of political and economic interests. There is also a clash between the humanistic desire to preserve civilizations in biodiverse settings, and a strictly biological neutrality according to which human beings are merely on a par with other highly adaptable animals such as rats, which would inherit the earth after a cosmic catastrophe. Can Islam make a contribution to these thorny debates?

Some kind of a pragmatic relationship is already building up, as yet only a small scale, between Islam and the environmental movement. Environmentalism consists of a wide spectrum of activist organizations, with diffuse support from many worried citizens and fitful commitments by governments and businesses. Environmentalists are often as convinced as any religious believers of the sacredness of their own commitments. But the movement is weak in many regions – including much of the Middle East, where crises of water shortage and air pollution loom. This is to a great extent because politicians and industrialists are constrained to take a short view – by their need for votes and profits respectively – and there is the aggravating factor in the Middle East of pressing political and military conflicts. Religious leaders have huge grass-roots influence through their hierarchies and networks. And all the faiths have in common that they take a long view of life across many generations. Intellectuals and academics are able to take a long view too, and indeed to have long-term influence through their contributions to educational systems; but to reach a wider public they are dependent on the mass media, which have many competing priorities. So some environmentalists are beginning to take the power of religions seriously.

But is the influence of religions on the environment necessarily healthy? All the three Abrahamic monotheisms have tended to legitimize man's domination over nature. By contrast, the Asian religions such as Hinduism, Buddhism and Jainism tend to give more

stress to continuities between human beings and other animals. Independently of each other, in the late 1960s, an American historian of technology, Lynn White, attacked the disastrous 'anthropocentrism' of Christianity, and an Iranian historian of science, Seyyed Hossain Nasr, warned of impending ecological crisis and argued that it had spiritual roots. Much has been written on this issue since, and a kind of alternative tradition has been identified within both Christianity and Islam, emphasizing the human role as that of steward or *khalifa* (vice-regent) over the earth rather than freeholder. A watershed in the encounter between religions and conservation was the convening in 1986 of an inter-faith meeting by the World Wildlife Fund (WWF) in Assisi, Italy, the birthplace of St Francis – who with his legendary love of all creation is accepted as the patron of environmentalism within Christianity. Attempts have been made within Islam to grant a similar status to the Sufi mystical poet, Rumi.

One of the by-products of Assisi has been a publishing series sponsored by the Harvard University divinity school, entitled Religions of the World and Ecology. Its recently published collection of essays, *Islam and Ecology: A Bestowed Trust*, is the best academic treatment of the theme to date. Two interwoven themes run through this book. One is theological, expressed in some of the most glorious passages of the Quran: the majesty, logic and diversity of the cosmos, and the cyclical regeneration of life as a sign of God's purposes. The second theme, also reflected in the Quran, is more factual, recording the geographical setting in which Islam was founded: an environment where natural resources – especially water, fruit trees and livestock – have always to be carefully conserved to secure human survival. The colour green, adopted by the environmental movement, has a much older association with the Prophet Muhammad, and the Quran is full of imagery of fruits and gardens as emblems of paradise.

The principal editor of this book, Richard C. Foltz, explores the avant-garde themes of animal rights and vegetarianism in the context of Islamic doctrine. Reverence for all animal creation runs right through the Quran, but the Islamic tradition of meat sacrifice is so strong as to make vegetarianism seem alien. A leading Fatimid theologian once condemned vegetarianism as a blasphemous attempt to be more compassionate than God the Merciful, the Compassionate. Foltz takes the breezy view that it is less important which interpretations of Islam are correct than to encourage the articulation and putting into practice of 'eco-friendly, non-hierarchical' ones. Non-Muslims may well agree, but the process of interpretation in Islam is rather more complicated than that. Who you are – your training and status – may be as important as what you say, and outsiders need to adopt a subtle approach if they are to have any influence.

Few in the West can be aware of the existence of Islamic environmentalism in today's Iran – a homegrown movement independent of Western-imported models, enshrined in the 1979 constitution but now also represented by scores of independent environmental organizations. At least three of these currently combine women's issues with environmental campaigning. Foltz does not fail to point out the ironic contrast between the Islamic Republic of Iran's ecological commitment and the environmental apathy displayed by both Presidents Bush, father and son.

However, Islamic teaching on social issues is often utopian in style. By contrast with Harvard's academic approach, the British follow-up to the 1986 WWF meeting in Assisi has been more practical. The Alliance of Religions and Conservation (ARC) carries out concrete programmes. One of these has been the adoption of mountain ranges in China as sites sacred to Daoists and Buddhists and hence eligible for protection from commercial development. On a smaller scale, the Parsis of India have pledged to buy all the baval wood needed for their fire temples from sustainable groves. More grandly, ARC is cooperating with the World Bank and other leading financial institutions to promote 'faith compliant investment', that is, mobilizing the combined power of the world's religions to influence corporations to develop environmentally responsible strategies in such industries as water and energy. ARC has found it more difficult to form practical alliances with Muslim leaders than with some of the other religions, but considers that the potential for cooperation with the Muslim world is immense.

At the grass-roots, Muslim charities that supply basic relief, welfare and medical services for poor communities are well supported; but such issues as human rights, the environment and women's rights are often seen as less important, in part perhaps because they are identified with the interests of middle-class 'do-gooders' dependent on external funding.

In all the campaigning causes in the West that I have mentioned, secular intellectuals and activists are highly influential even if their dominance is not unchallenged. Inter-faith dialogue between religious specialists has tended to be carried on in a separate and rather unpractical sphere. More recently it has come to be realized that the same campaigning issues can be cast in a religious idiom that gives access to immense networks of believers. The same process can be seen in the Muslim women's movement. Anne Sofie Roald has drawn our attention to the difference between its three tendencies. First, secular Western-influenced feminism; second, Muslim liberationism modelled on its Christian analogue (like that of Leila Ahmed and Fatima Menissi); and third, the newer development of 'loyalist revisionism' which digs deep into Quranic sources to question received ideas about the role of women in Islamic law, without accepting that Western feminism has the right answers for Muslim women.<sup>2</sup> No variety of Muslim feminism has yet had a perceptible impact on the teaching of mainstream Islamic authorities, which remains for the most part extremely patriarchal, but in our world of ever widening access to communications media, radical change is by no means unthinkable.

The *ulama* no longer have a monopoly on interpretation, for the opportunities presented by new media have enabled lay personalities to compete with them for popular influence. One example is Mustafa Mahmud in Cairo, who has successfully publicized a socially progressive view of Islam that is in many respects a personal creation. An intellectual such as Tariq Ramadan – committed to such causes as women's rights and environmentalism – has become a popular hero among French Muslims, whom he urges to find a harmonious balance between their personal religious commitments and the majority culture that surrounds them.

'Secularization' is a notoriously slippery concept, with six or seven different meanings to be found in the sociology textbooks. Some sociologists of religion, seeking to reverse

the orthodoxies of thirty years ago, contend that the decline of religious commitment in western Europe makes this continent in fact the exceptional case – a resurgence of religion being more the rule in other regions of the world. I think the truth is more nuanced: that the 'glue' of religion which keeps societies together never disappears, but can emerge in surrogate forms including political ideologies, and even academic disciplines such as ecology and anthropology in their popularized forms.

It is possible for religion (in the strict sense) to cohabit with a scientific approach to the world; yet whenever science has come into conflict with religious institutions, science has won. The intellectual success of science is likely to continue to chip away at religious doctrines, leading to a gradual disempowering of religious norms and institutions.

There is no evidence however that this process will take place rapidly. With Muslims in particular, for reasons closely linked to global geopolitics, the resistance to secularization is clear-cut. Does it not follow that if causes such as environmentalism, women's rights and so forth – which appear to be Western-derived even if in fact they have counterparts in Islamic history – are to make real progress in a Muslim context, they should learn to express themselves in an Islamic idiom, as part of the ongoing process of interpretation or *ijtihad*? Secular, universal morality is expressed in a rarefied idiom that can do with the ballast of religion.

Some liberal humanists contend that it is possible to construct a system of ethics based on natural science and independent of all religious preconceptions. That is indeed a worthwhile, indeed noble aim, but it is more difficult than it looks. The very concept of the individual soul or spirit, common to all three Abrahamic monotheisms and largely inherited by Western liberal humanism, has no grounding in evolutionary biology. The creationists of the United States have grasped this fact and they advance an alternative model of 'intelligent design'. They are paralleled in the Muslim world by intellectuals such as 'Abd al-Salam Yasin, the veteran Moroccan Islamist, who views Darwinism as the main obstacle to faith and spirituality because it elevated a "bestial postulate" to the status of dogmatic truth.<sup>3</sup>

One can imagine the possibility of a good – as opposed to an intellectually tawdry – Scientology, perhaps drawing on the Asian religions. But we do not have one yet. Such a philosophy would have first to convince the intellectual elite, and then, even more importantly, make itself acceptable to large populations. Until such a day arrives, should we not try to understand more clearly the ethical systems we have got?

## NOTES

1. See Raphaël Liogier: *Le Bouddhisme mondialisé: une perspective sociologique sur la globalisation du religieux* (Paris: Ellipses, 2004).
2. Anne Sofie Roald, 'Feminist reinterpretation of Islamic sources: Muslim feminist theology in the light of the Christian tradition of feminist thought', in K. Ask and M. Tjomsland, eds., *Women and Islamization: Contemporary Dimensions of Discourse on Gender Relations* (Oxford: Berg, 1998), 17-44.

3. Henri Lauzière, 'Post-Islamism and religious discourse of al-Salam Yasin', *Int. Jnl of Middle East Studies*, 37.2, May 2005, 241-61.

The author co-wrote *The Charitable Crescent: Politics of Aid in the Muslim World* with Jérôme Bellion-Jourdan (I.B. Tauris, 2003). Some of the ideas in this article were explored in two articles in *Anthropology Today*: 'The greening of Islam?' (19.6, December 2003) and 'Confessional cousins and the rest: the structure of Islamic toleration' (21.1, February 2005).

# MODERNITY, ISLAM AND 'A TRIPLE LIBERATION'

Ranjit Sau

**Abstract:** *The Muslim world is immersed in a great debate: Iraq is burning, Turkey is approaching the EU, an Islamist movement of global scale is under way, Arab intellectuals are calling for profound reform. Tariq Ramadan has offered an interpretation of scriptures and tradition that affirms Islamic modernity with a distinction that marks it apart from its Western counterpart.*

*Ramadan suggests 'a triple liberation' in terms of piety, pragmatism, and assimilation. He has discovered 'an important margin of manoeuvre' towards Islamic modernity—a maneuver consisting of three components.*

*This essay annotates Ramadan's thesis. It adds a fourth 'liberation' to accommodate the structure of the world system of his vision, and a fourth instrument of maneuver, viz., the accumulation of capital. Accumulation, in effect, has been a spiritual anathema in Islam. This essay brings capital accumulation within the ambit of Islamic piety. The minimum optimal rate of saving and investment is computed to be equal to the ratio between, on the one hand, the sum of the rate of zakat and that of population growth, and on the other, the productivity of capital.*

The America-Iraq war of 2003 was over in less than three weeks, it was a one-sided show. Never before did a Muslim country fall so promptly to an infidel invasion. Iraq stood alone in the battlefield, its loneliness was stark. In the aftermath, though, resistance continues. Meanwhile, underway is an Islamist movement of global scale that displays loyalty to the Al Qaeda.

Turkey has entered into negotiation for membership of the European Union—a Muslim country seeking to be part of a large non-Muslim community. Meanwhile, a group of courageous Arab economists, social scientists and other scholars has prepared human development reports under the auspices of the UNDP calling for modernization of Arab lands. The Muslim world is immersed in a great debate.

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Ranjit Sau is an economist by training, taught in several universities in India and USA and retired from the Indian Institute of Management, Calcutta.

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Kosambi (1975:13) reminds us that 'vast religious upheavals are generally indicative of powerful changes in the productive basis, hence must be studied as such, not dismissed as senseless flickers on the surface of an unchanging substratum.' 'Ideas (including superstition) become a force once they have gripped the masses', he (ibid:10) continues, 'they supply the forms in which men become conscious of their conflicts and fight them out.' 'No historian may dismiss or ignore such ideas nor can he be regarded as having fulfilled his task', Kosambi warrants, 'unless he shows why, how, and when the grip was secured.' He envisages in history an interplay between the mode of production and the mode of reflection.

Tariq Ramadan has distinguished credentials. He is the grandson of Hassan al-Banna, the founder of the Muslim Brotherhood in Egypt. His father, Said Ramadan was an ideologue of the Muslim Brotherhood, persecuted and exiled from Egypt for 41 years until death. A professor of philosophy and Islamic studies at the College of Geneva and at the University of Fribourg in Switzerland, Tariq Ramadan is revered as 'a Muslim Martin Luther'. Writing in the *Washington Post* (August 29, 2004), Paul Donnelly cites his book, *Islam, the West and the Challenges of Modernity*, as 'perhaps the most hopeful work of Muslim theology in the past thousand years'. This book, indeed, traces a path towards 'Islamic modernity' with full obeisance to the sources of Islam, viz., the holy Koran, the Sunna and the Hadith.<sup>1</sup>

Ramadan describes, in brief, his thesis on 'a triple liberation' as follows. One of the liberations relates to the observance of faith. 'Islam accepts (material) progress in that it is one of the measures of time, but it makes faith and conscience the tools of balance and limits. This is because there is no justice without balance and no harmony without limits. ... Human reason, in its autonomy, will try to remain *faithful* to this orientation. Everything that it produces in terms of tools, techniques and knowledge is in accordance with the finality (ends) to which it subjects them. Thus it is not a question of opposing progress. ... What is the object of contestation is the manner in which these are used. ... The modernity of Islam puts the principle before the tool, orientation before the limit and the conscience of finality before (the glamour of means). ... In Islam, the aspiration towards transcendence is original and natural. It is part of the human being to the point of qualifying as blind or dead anyone who does not live faith.' And reason roams within the perimeter of faith. Of the three liberations, such observance of piety will be the first one.

'Nothing in Islam is opposed to individual engagement, social reform, to progress and wellbeing', concludes Ramadan. 'On the contrary, one of the principles (of Islam) is to consider that all social reform and scientific progress that bring an improvement in the lives of men are permitted. ... This is indeed the central axis of the Muslim concept of a possible modernization. ... Muslims are formally demanded to find this challenge. ... To be believers and pragmatic, this is the second liberation.'

'The third liberation which ... should enable us (Muslims) to unfetter ourselves from the mirages of Western technology ... should not confine us to a nervous rejection of the West that is demonized by *reaction*. One must take things into consideration; think the finalities (ends), select the means and derive benefit from experiences at all levels. It is at

this cost that Islamic modernity can avoid the crisis that the West is today going through.' This is the third liberation. It foresees no clash of civilizations.

'Here we shall find out that there exists an *important margin of manoeuvre* enabling us to carry out the reforms which are impressed upon us and which should allow us to face contemporary challenges', writes Ramadan (2001:2; italics added). The first three sections of the present essay annotate Ramadan's case for the three liberations associated with Islamic modernity and his discovery of an 'important margin of manoeuvre'. The last three deal with our extensions of his thesis.

*Why Islamic Modernity?* The universe has been created by a singularly unique divine spirit, and men have been appointed 'viceroys on the earth'<sup>2</sup> — thus a great responsibility has been bestowed upon men. On the Day of Judgment, they have to account for what they have done with their endowments. Such is the Islamic concept of the universe and of human beings.<sup>3</sup>

Today, Muslims find themselves constrained under the prevailing circumstances so much so that they are not in a position to discharge their sacred duty as 'viceroys in the earth'. They have fallen far behind in the ranks of communities in the world. As much as 85 percent of the 1.5 billion Muslims are poor, and 60 percent of them are without literacy. Almost all countries with a Muslim majority are under the yoke of dictatorship of one kind or another.

As a culture and civilization, Muslims are lagging behind others, even by their own historical standard. The period between the fifth and fifteenth centuries is known as the Middle Ages in Europe's history. It is a dark interlude between the decline of ancient civilization — Greece and Rome — and the rise of modern civilization in Europe. In this medieval millennium, Islam was the leading civilization in the world; it was the intermediate stage between the ancient East and the modern West, to which it contributed mightily. But during the past four centuries, the Islamic world has lost its dominance and its leadership, and has fallen behind both the modern West and the rapidly modernizing Orient. This widening gap poses increasingly acute problems, both practical and emotional, for which the rulers, thinkers and rebels of Islam have not found effective answers.

Meanwhile, the rest of the world is on the move. After the inertia of Middle Ages, the fifteenth century saw the first upheaval in Europe. A great movement was inaugurated to touch the economic, social and political spheres. This moment of transformation is identified by a term that conveys the most positive considerations, namely, modernization. It is a liberation, the breaking of chains of all intangible dogmas and stilted traditions. Within this, reason, science and technology are set in motion. Finally, it is also man brought back to his humanity, with the duty of facing up to change, to accepting it and mastering it.

From the seventeenth century, and more clearly the eighteenth, a number of thinkers took strong positions in favour of modernity. Everyone became somehow opposed to traditional society and called for rationalization and secularization of society. They also defended a new status of the individual. This movement, which found its vigour 300 years ago, is still very much alive today and has lost nothing of its legitimacy in the West. Many defend modernity in the name of freedom, progress, autonomy of reason as also in the

name of a certain idea of man and humanity. Modernity and modernization constitute the foundation of Europe's contemporary society.

*What Modernity?* No one can deny the contribution of modernization in Europe when comparing the two models of society — feudal and civil. To consider the facts from this perspective, modernization has given everything to man in the West: from liberty to knowledge, from science to technology. In short, it restored him to his humanity and to his responsibility.

Yet, more and more voices are heard criticizing modernization and the founding principles of modernity. Some intellectuals level the reproach of excess. As with all revolutions, this one too has not escaped its failure by crossing the Rubicon. The means of liberation have become ends in themselves in an amnesia of normative values. Rationality has become the truth, and progress the meaning and value; lately, thus, modernization has turned into an ideology, an '-ism': modernism. It is clearly a distortion of the first élan, but at the same time, it seems that this is the logical result. For it conveys an unlimited optimism and an exaggerated faith in man. Defenders of modernization, lured by historical data, have wanted to cut themselves off from any frame of reference to values in order to rush forward to the future in all freedom. The forces of attraction combined with efficiency, productivity, growth, investment, and consumption have dispossessed man of a part of his humanity. The West is said to be passing through 'a crisis of modernity'.

'The West has given us', agrees Ramadan (ibid: 8), 'a particular form of modernity, it partakes of its history and points of reference [ideology].' 'Another civilization can', he is confident, 'from within, fix and determine the stakes in a different fashion. This is the case of Islam.' Islam will have its own design of modernity in keeping with its history and spirituality.

### **The Sacred and The Secular**

A sense of doubt pervades the Western culture, but not so in the case of Islam. Relieved of that burden, Islam, which literally means 'submission' in Arabic, admits of no rebellion. The Western mind is nourished by Greek-Roman and Judaeo-Christian sources. Sayyid Qutb, a contemporary of Hassan al-Banna and an acknowledged ideologue of the Muslim Brotherhood, argued that humankind's fatal error had begun with Socrates in ancient Greece. The error consisted of an arrogant and deluded faith in the power of human reason — the audacious faith which, after many centuries, produced in modern times the tyranny of technology over our life.

The Greek rationalists had a doubt about the efficacy of human senses: the human senses, they thought, were not dependable, but were erroneous and misleading. Accordingly, the truth must be sought without using senses and observation, and by the use of reason and logic alone. They introduced a dichotomy between 'appearance' and 'reality' that became one of the fundamental categories of ancient intellectual controversy. If things are really not what they seem, our senses are at fault because they reveal to us the appearance (which is not true) rather than the reality (which is true).

Prometheus, the great friend of men in Greek mythology, symbolizes the first 'metaphysical rebellion'. In order to protect men from death, Prometheus steals fire from heaven and gives it to men, for which he suffers the pain of binding and eternal damnation. One notices a similarity between the scope of this act and that of Adam and Eve in the Judaeo-Christian tradition. From this moment on, it is conflict which colours the rapport between men and the divine, and the tension will never disappear.

In modern times, Albert Camus in his book, *The Rebel*, points to a specific human impulse, ancient and august, which is the one to rebel, that got its start as an urge to rebel against the heaven. And he points to the peculiar ways in which that urge has evolved. Camus invokes the myth of Prometheus who in a spirit of radical action takes the final step into full-scale rebellion. Yet the titan's transgression is man's benefit. Camus looks on Promethean rebellion as the basis of human progress, and of human freedom, too. The West is imbued with this Greek-Roman and Judaeo-Christian tradition; as a result, at the first blush, its civilization looks so much different from the Islamic.

The whole experience of Europe since the eighteenth century had been one of visible progress; and progress makes strength. During those years the Western countries seemed to have discovered the secret of human advancement — seemed to be making forward strides in the here and now, seemed to have discovered the principle that, if allowed to function, would continue to generate progress indefinitely into the future. Science, rational thought, and general education seemed to be steadily moving forward. Superstition, ignorance and illiteracy seemed to be in retreat. Technology and industry advanced, wealth increased, human rights spread, democracy and self-government grew stronger — at least in some countries. And what was the secret behind those many areas of progress, the all-powerful, all-conquering principle?

'It was the recognition that all of life is not governed by a single, all-knowing and all-powerful authority — a divine force. It was the tolerant idea that every sphere of human activity — science, technology, politics, religion and private life — should operate independently of the others, without trying to yoke everything together under a single guiding hand. It was a belief in the many, instead of one. It was an insistence on freedom of thought and freedom of action — not on absolute freedom, but on something truer, stronger and more reliable than absolute freedom, which is relative freedom: a freedom that recognizes the existence of other freedoms, too. Freedom consciously arrived at. Freedom that is chosen, and not bestowed by a divine authority on high. The idea was, in the broader sense, liberalism — liberalism not as a rigid doctrine but as a state of mind, a way of thinking about life and reality' (Berman 2003:37).

Man, being the viceroy on earth in Islamic conception, has every obligation to investigate and rule over nature on God's behalf. Islam, therefore, points man towards science, not away from it. The Islamic notion of man and his relation to the physical world led, in the Islamic universities of Andalusia and of the East, to the discovery of the inductive method — a scientific procedure of experimentation and inference, through observation, from particular to the universal, from singular to the general. It opened the door to all further scientific and technological progress.

The Muslim discoveries of science had been exported into Europe. And there, in Europe of the sixteenth century, the method began to yield results: modern science was born. Now, the principle of science collided with the dogma of the Church. The priests insisted on the irrational components of their creed. They insisted on locking scientific knowledge into one more unalterable dogma, to be enforced by church power. And the scientists fought back.

‘For a long time, the Church opposed science, rationality and free thought. The process of secularization is very clearly the process by which the viceroy-in-the-earth claimed his rights after being long suppressed by the authority of the Church’ (Ramadan 2001: 88). Out of this contest, the line of demarcation between the spheres of the sacred and of the secular came into view.<sup>4</sup> The European imagination pictured God on one side, and science on the other. On one side, the natural human yearning for the transcendence and for divinely ordered life; on the other side, the natural human desire for knowledge of the physical universe. It was a strenuous division between the religious and the profane; it was, in Sayyid Qutb’s phrase, the root of the ‘hideous schizophrenia’ of modern life in the West.

Muslim tradition does not have those traits. Islam accommodates no provision for doubt or provocation to rebel. It provides no scope for struggle, no temptation to protest. In Islam, submission is all, which creates a unified, moral, and satisfying society — at least potentially, even if Muslims in any given era might have forgotten their religious obligations. Submission is the road to social justice, to a contended soul, and to harmony with the world. More than a third of the Koran is composed of the expression of *twahid* (oneness): the divine unity, which Muslims seek to imitate in their personal and social lives by integrating their institutions and priorities, and by recognizing the overall sovereignty of the transcendent. The notion of Islam as totality — embracing all aspects of human existence — is, to Qutb, the most important concept, distinguishing this religion from all other worldviews.

Islam offers a holistic vision of life and human behaviour. ‘The presence of God, the absence of clergy, and an awareness of individual responsibility are some of the many elements which offer in their simplicity a very specific idea of the ‘profane’ and the ‘sacred’. It is the remembrance of God in man’s consciousness that produces the sacred. Thus, any action which is in appearance free and totally ‘profane’, from hygiene to sexual intercourse, from trade to social engagement, is sacred from the moment it is nourished with the remembrance of God and a respect for ethical limits’ (ibid:229). ‘The sacred permeates the profane that is carried by means of a vivified memory. This is a teaching that is both exacting and open, one which has been dispensed to the Muslims of the entire world.’

Faith and reference to the divine, the idea that the sacred is not uniquely in rituals, but rather any act that preserves alive in one’s conscience the remembrance of the Creator, all these nourish the daily existence of men and women and give strength and meaning to their spirituality. The Muslim world is a world of memory. Not uniquely an intellectual memory but intimately a memory of the heart too. It is the heart that understands.<sup>5</sup> The Koranic message mixes at the same time force of meaning and an energy of emotion; its comprehension lies indeed in these two dimensions. The very essence of the religion

addresses as much the heart as it does reason, it touches emotion and reason, the heart and the mind. If there is a tension that resides in the Muslim, it expresses daily in a shift between forgetfulness and remembrance, and not — or not singularly — in the experience of doubt.

In the West, the sacred and the profane are two distinct spheres of human exigency; in Islam, there is no such externally imported boundary between the two: to recall, 'any action, which is in appearance free and totally 'profane' ... is (transformed into) sacred from the moment it is nourished with the remembrance of God and a respect for ethical limits.' Muslims, at this moment, bear a precious onus of searching for the ethical limits. It is in the course of this search that Islam seems to meet the West. How are the moral principles articulated? How and where do you look for ethical limits? The scripture ordains the 'signs' of nature, but how does one read those symbols?

'Every system of morality that ever had any reputation in the world, has, perhaps, ultimately been derived. As they are ... founded upon natural principles, they are ... in some measure in the right', says Adam Smith (1759:264). 'But as many of them are derived from a partial or imperfect view of nature, they are ... in some aspects in the wrong.' And it is reason which is the indispensable instrument for the exploration of nature. Smith (ibid:319) continues: 'It is by reason that we discover those general rules of justice by which we ought to regulate our actions. ... The general maxims of morality are formed ... from experience and induction.' In Islam, too, the faithful are enjoined to look for the divine 'signs' all over the universe: 'Surely in the creation of the heaven and earth and in the alteration of night and day there are signs for men possessed of minds' (3:190)<sup>6</sup>. Now, Muslims have discovered, and the West has fruitfully utilized, the scientific method of induction. Thus occurs a congruence of appreciation between the West and Islam about this natural source of piety, namely, the laws of nature.

### Belief and Pragmatism

Balance and harmony, including a balance between concerns for the present life as well as for the afterlife<sup>7</sup>, are a recurrent theme in the pages of scriptures. Individual, family, society, and polity, all imbue inspiration by submission to the transcendent. 'The teaching of harmony between the microcosm and the macrocosm, that one finds in Hinduism and Buddhism, are present here (in the holy Koran) in numerous verses' (Ramadan 2001:230).

*Individual:* Man's responsibility is total: with regard to what he sees, hears, does and feels. Of all these, he will have to give account, and this inward looking must arouse humility, an attitude without insolence. Here there is no question of an 'original sin', an eternal fault or challenge to the Creator. By the doctrine of *fitra*, man has a natural aspiration towards Him. A human being is born as a Muslim, only his environment may take him in other directions. A famous hadith clarifies the sense of *fitra* thus: 'Every new-born child is born in the state of *fitra*, it is the parents that (may) make him (a nonbeliever)' (ibid:224).<sup>8</sup>

Man has the autonomy to discern 'the good' and to disparage the evil. 'Consult your heart', said the Prophet, 'for the good is that which appeases your soul and calms your heart. Sin is that which troubles you inwardly and causes embarrassment and vexation in your heart, even if people provide you with all possible juridical justifications' (ibid:236).

Moral tension partakes of human nature. Peace of the heart or its agitation testify to the way taken, but the choice always remains within the hands of human beings. Individual's conscience is the sole arbiter to discern 'the good' — a profound responsibility for man, indeed. This doctrine resonates in Western thought as well. The categorical imperative of Kant (1998:31) is as follows: '*act as if the maxim of your action were to become by your will a universal law of nature.*' It continues: '*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*' The moral worth of a person emanates from his capacity to enunciate such universal law of nature.

The individual has seven rights in Islamic tradition: (a) the right to life and a vital minimum for a decent social existence, (b) the right to family, (c) the right to housing, (d) the right to education, (e) the right to work, (f) the right for justice, and (g) the right to solidarity (ibid:40). These seven do not cover all the elements that concern the individual and the society. The society is held accountable for making the exercise of human rights feasible for the individual. The emphasis on the realization of these seven rights of the individual is one of the three components that make up Ramadan's 'important margin of manoeuvre' towards Islamic modernity.

*Family:* 'The family is part of the basic structure (of society), since one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to another', writes Rawls (1999b:157). He continues: 'reproductive labour is socially necessary labour. Accepting this, a central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture.' Rawls places the family in the context of justice and political virtues. 'Citizens must have a sense of justice and the political virtues that support political and social institutions. The family must ensure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.'

Sayyid Qutb is a critic of the Western lifestyle. If in a liberal society, he says, 'the division of labour is not based on family responsibility and natural gifts, ... if woman is forced from her basic responsibility of bringing up children; and if ... because material production is considered to be more important, more valuable and more honourable than the development of human character, then such a civilization is 'backward' from the human point of view, or *jahili* in the Islamic terminology' (cited in Berman 2003:89).

Ramadan's position is essentially consistent with Rawls' and relatively pragmatic compared to Qutb's. He reminds us that at one time Muslim women used to engage in trade and participate in public meetings; they were even in charge of the market in Madina under Caliph Omar. Furthermore, they were active in social life in the seventh century. Certainly, men and women have the same duties and rights before God and will be rewarded the same way: 'I waste not the labour of any that labours among you, be you male or female — the one of you is as the other' (3:195).

Clear signs are posted by scripture with regard to the composition of a pious family. Each person has the right to enjoy family life, and society should offer all possible facilities for living with the family in a normal environment. It is imperative, if this is to be achieved,

that adequate local structures are established. 'To have eight people living in one room is not conducive to sound family life, but it is rather akin to running a prison, representing a little other than suffocation. That is also conducive to creating future rifts, tomorrow's solitude and marginalization' (Ramadan 2001:40).

Father has the task of maintaining the family; in other respects both parents have equal rights and duties. 'They (mother and child) must be maintained and clothed in a reasonable manner — by the child's father. None should be charged with more than one can bear. A mother should not be allowed to suffer on account of her child. The same duties devolve upon the father's heir. But if, after consultation they choose by mutual consent to wean the child, they shall incur no guilt' (2:233). These signs point to the conception of a family where father bears the financial burden while both parents jointly and equally decide other matters from weaning the child from breast-feeding to the size of the family keeping in view the family's material conditions. Herein resides the second constituent of Ramadan's 'important margin of maneuver' towards Islamic modernity.

*Society:* There is no real practice of the faith without personal involvement in the community. The serenity of our solitude in front of the transcendent, Ramadan maintains, cannot occur unless it is sustained by our relation with our fellow beings, to be renewed daily. It is a responsibility that weighs on each individual. There exists, by extension, a determining requirement addressed to the group and to society. Hence the social dimension is absolutely fundamental. To organize the social space is to give one the means to live fully and serenely one's own identity. Any reflection on a project of society whose aim is to redeem the challenges of modern life, whether in the West or in the East, should articulate itself around this space.

Now, zakat is the third pillar<sup>9</sup> of Islam; by tradition it is two-and-a-half percent of one's wealth per year. Collected locally, the proceeds are utilized for community works and for distribution among the poor. Its essence points to the importance of social participation in the Muslim universe. This levy 'purifies' on the religious, sacred and moral plane, the property of the one who possesses it, and projects the believer in the collective sphere.

Besides the payment of zakat, another condition regarding property management is one of the most rigorous Islamic restraints on social affairs: it is the prohibition of *riba*, i.e., usury or interest. It is a moral axis around which social and economic thought in Islam is elaborated. Below, in order to illustrate the historical process of evolution, the ban on the practice of usury in the medieval West will be taken as a characteristic element of the prevailing social, economic and spiritual complex.

The revelation has very harsh words about those who hoard precious metals: 'Those who treasure up gold and silver — give them the good tidings of a painful chastisement, the day they shall be heated in the fire of Gehenna (hell) and therewith their foreheads and their sides and their backs shall be branded' (9:34). The evocation of the pains in the afterlife aims at awakening people's consciousness with regard to the seriousness of an attitude which borders on idolatry.

The conception of property in Islam is sacred and socially oriented. A zakat, at the rate of 2.5 percent on wealth per year, would mean that in 40 years — a generation — a 'private

property' is almost entirely abolished as it is returned to the community: the social fund constituted by zakat being consecrated to the needs of the poor. No one, hence, can live an idle life by the inheritance of his family.

*Polity:* Muslim society has a fundamental point of reference in the Koran and the Sunna, from which it derives the spirit of its social organization. But it has no clergy<sup>10</sup> and it posits as a principle of its viability the necessity of a rational, juridical research, the application of the law, and social participation (election, representation, etc.). Therefore, it is not a theocracy.<sup>11</sup>

Moreover, Muslim society matches up a considerable number of presumptions of Western secularism (in addition to recognizing liberty of conscience, religion and belief), but it never empties or cuts off from its religious and ethical point of reference. Therefore, it is not, strictly speaking, secular either. In sum, Muslim society is neither theocratic nor secular in the Western sense.

In the political domain, as also in social and economic spheres, there exists a framework of the Islamic point of reference defined by the Koran and the Sunna which corresponds more or less to the status of a fundamental law — the Constitution — vis-à-vis national legislations. On an ethnological level, the religious sources imply a concept of the universe, of man and his organization of the city as a system of values and culture. On temporal matters consultation among the people occurs often in scriptures and in the tradition. The Koran endorses it explicitly: 'Better and more enduring is God's recompense to those who ... conduct their affairs by mutual consent' (42:38). 'Take counsel with them in the conduct of affairs' (3:159). Prophet Mohammad had established the first Islamic state in Madina in AC 622, and formulated its Constitution. It was an umma of two communities, Muslims and Jews, each granted full freedom of religion. The Constitution pays obeisance to the divine authority: the sovereignty of the umma belongs to the transcendent.

Supported by these considerations, and taking into account the diversity of the modes of consultation in the history of Islamic civilization and reflections produced by the ulema, Ramadan (2001:84) proceeds to lay out several principles for the polity. One of those principles is the creation of a Council of Deliberation, *majlis al-shura*; it resembles a modern-day legislative parliament. Its composition is such that the Council would be an agency to compose the mantra of modernity.

There would be two types of competences of the members in the Council. On the one hand, those related to the knowledge of the principles of Islamic orientation, and, on the other, those with the mastery of economic, political, and social affairs. For it is impossible nowadays to leave the legislative function to theologians alone. Social, political, economic and even medical and experimental sciences have reached a level of complexity that it is not possible to deal with the related juridical and ethical questions without consultation with experts in these various domains. Members of this Council are to be chosen by the people. The Council, in turn, would select the President or Imam. 'The separation of power is one of the fundamental principles of the organization of the city,' Ramadan (ibid:85) points out, 'and this was respected from the moment [the first Caliph] Abu Bakr succeeded to the Caliphate [in AC 632].' Judges had to exercise their function in an autonomous

fashion and in accordance with the principle of equality of all before the law.' Here we see the nucleus which could have historically evolved into what is known today as full-fledged democracy with separation of power in the polity. The proposed *majlis al-shura* (Council of Deliberation) of members with two types of competence will be an agency for transformation of the society, polity and economy. The *majlis* is the third constituent of Ramadan's 'important margin of manoeuvre'.

### Assimilation: The Aristotelian Principle

'From the Bhagavad Gita to the Torah and Gospel, from Dostoevsky to Baudelaire, the human horizon remains the same' (ibid: 60). It envisages conflicts at two levels: individual and social. Correspondingly, there are two dimensions of jihad, namely, inward and outward.

Tension is natural and the conflict of the inward is human. Life is the test of balance for men, for they are capable of inducing both the best and the worst from themselves. They struggle daily against the most negative forces of their being. Mastery over self, serenity, respect of others and gentleness are not natural, but are acquired by means of a permanent, personal effort. This inward effort, this struggle against the postulations of interiority is the most appropriate — literal and figurative — translation of the word 'jihad'. This drive for self-purification is at the heart of human distinction. It is not a question of reducing jihad to a personal dimension, but rather returning to its most immediate reality. Inward jihad is to man's humanity what instinct is to an animal's behaviour.

The real meaning of Islamic spirituality resides in reforming the space of one's interiority, rejoicing in spirituality and with generous human action. It is loving in transparency and living in the light, rather than being subjected to the despotic fierceness of a life which is reduced to instinct. This tension towards the mastery of the self is conveyed by the word, jihad, which enjoins self-purification. This jihad is in the internal dimension.

Besides self-purification, there is another level at which men have to struggle, which constitutes the social jihad. Nowadays, the real enemies are hunger, unemployment, exploitation, delinquency and drug addiction. These evils have to be dealt with collective efforts, a continuous fight and a complete jihad which needs each and everyone's participation (ibid:68). Such is the nature of the jihad in its social dimension.

The holy book accepts all apostles and their communities. 'We believe in that which has been revealed to us and which was revealed to you. Our God and your God is one' (29:46) — *Ishwar Allah Tera Naam*. 'Those that deny God and their apostles ... were unbelievers. For the unbelievers we have prepared a shameful punishment' (4:149). There are other verses in the holy book with the same message recognizing a multiplicity of faiths, communities and nations. And its command is: 'Vie with each other in good works', 'get to know each other.'

One basic characteristic of man is that no one person can do everything that he might do; nor a fortiori can he do everything that any other person can do. The potentialities of each individual are greater than those he can hope to realize: and they fall far short of the powers among men generally. Thus everyone must select which of his abilities and possible interests he wishes to encourage; he must plan their training and schedule their pursuit in

an orderly way. Different persons with similar or complementary capacities may cooperate so to speak in realizing their common and matching nature.

When men are secure in the enjoyment of the exercise of their own powers, they are disposed to appreciate the perfections of others, especially when their several excellences have an agreed place in a form of life to the aims of which all aspire. It is through a social union founded upon the needs and potentialities of its members that each person can participate in the total sum of the realized natural assets of the others. We are led to the notion of the community of mankind the members of which enjoy one another's excellences and individuality elicited by free institutions and they recognize the good of each as an element in the complete activity the whole scheme of which is consented to and gives pleasure to all. This community may also be imagined to extend over time, and therefore in the history of a society the joint contributions of successive generations can be similarly conceived.

Men have a tendency to learn from each other. Other things being equal, they enjoy the exercise of their mastered and accumulated capabilities, that is, their innate or trained abilities; and this enjoyment increases the more the capacity is realized, or greater its complexity. This is known as the Aristotelian Principle (Rawls 1999a:372-79). The intuitive idea here is that men take pleasure in doing something as they become more proficient in it, and of two activities they can do well, they prefer the one drawing upon a larger repertoire of more intricate and subtle discriminations. For example, chess is a more complicated and subtle game than checkers, and algebra is more intricate than elementary arithmetic. Someone who can do both generally prefers playing chess to playing checkers, and he would rather study algebra than arithmetic.

There are two interesting implications of the Aristotelian Principle. One: as a person's skills or capacities increase over time, he would come to prefer the more complex activities that he can now engage in, which call upon his newly realized skills. Two: as we witness the exercise of well-trained abilities by others, these displays are enjoyed by us and arouse a desire that we should be able to do the same things ourselves. We want to be like those persons who can exercise abilities that we find latent in ourselves. And our own fellow associates are likely to support these activities as promoting the common interest and also to take pleasure in them as displays of human excellence. To the degree, then, that the esteem and admiration of others is desired, the activities favoured by the Aristotelian Principle are good for other persons as well. Learning from one another's efforts and appreciating their manifold contributions, men gradually build a system of knowledge and belief; they work out recognized techniques for doing things and elaborate styles of feeling and expression. In these cases the common aim is often profound and complex (Sau 2003: 56-59).

The Aristotelian Principle that originally refers to individuals can be conceptually extended into the spheres of faiths, communities, and nations. It appeals to natural tendencies of human beings. The Koran says: 'We have created you ... and made you into nations and tribes, that you might get to know each other' (49:13). 'View with each other in good works' (5:49).

During the Middle Ages, Islam was the leading civilization in the world, marked by its great and powerful kingdoms, its rich and varied industry and commerce, its original and creative sciences and letters. Islam, far more than Christendom, was the intermediate stage between the ancient East and the modern West. The religious sentiments prevailing in the land of Islam and in the West were similar in many a respect: that religion pertains every aspect of human life, that there is no separation between church and state, that usury is sinful, for example. The West went through a profound reform of religious and social doctrines especially over the next three centuries, sixteenth to eighteenth, and it continued thereafter. Within a relatively short period of one century, namely, the sixteenth, there occurred a division of power between temporal and spiritual authorities, and interest payment acquired legal and moral recognition on the same ground as wages of labour and rent on land. No such transition took place in Islam. Now we shall explore in the light of history the reason for this difference between the two systems. It will transpire that social and religious speculations respond to economic and political conditions.

'Mankind does not reflect upon questions of economic and social organization until compelled to do so by the sharp pressure of some practical emergency', observes Tawney (1926:76). 'The sixteenth century was an age of social speculation for the same reason as the early nineteenth — because it was an age of social dislocation.' Arguing in terms of historical materialism, Kosambi (1975:13) maintains a more specific view to the effect that reflections upon social and economic aspects of life are induced by the exigency of the mode of production. Translated into terms of European history, the social attitude to usury, for example, changed in the sixteenth century from a mortal sin of avarice to a legitimate claim for diligence of the lender, in the wake of the vast expansion in production, investment, trade and commerce. Now, Tawney (1926:118) comes close to Kosambi when he says: 'The impetus to reform or revolution springs in every age from the realization of the contrast between the external order of society and the moral standards recognized as valid by the conscience or reason of the individual. And naturally it is in periods of swift material progress, such as the sixteenth and eighteenth centuries, that such a contrast is most acutely felt. ... Shocked by the gulf between theory and practice, men turned this way and that to find some solution of the tension which racked them.'

If the first legacy of the Middle Ages to the sixteenth century Europe was the idea of religion as embracing all aspects of human life, the second one was the doctrine of economic ethics. The church's doctrine of economic ethics is the expression of the conditions of medieval industry. In the great commercial centres there was sometimes a capitalism as inhuman as any the world has seen. But outside those precincts, trade, industry, the money market, all that we call the economic system, was not a system, but a mass of individual trades and individual dealings. Pecuniary transactions were a fringe on a world of natural economy. There was little mobility or competition; there was very little large-scale organization. There is no place in medieval theory of economic activity which is not related to a moral end. It is right for a man to seek such wealth as is necessary for a livelihood in his station. To seek more is not enterprise, but avarice, and avarice is a deadly sin. Labour — the common lot of mankind — is necessary and honourable; trade is necessary, but

perilous to the soul; finance, if not immoral, is at best sordid and at worst disreputable. So it was in the realm of Islam as well. The suspicion of economic motives in the West had been one of earliest elements in the social teaching of the church, and was to survive till Calvinism — in the sixteenth century — would endow the life of economic enterprise with a new sanctification.

To the medieval Europe, to 'take usury is contrary to scripture; it is contrary to Aristotle; it is contrary to nature, for it is to live without labour; it is to sell time, which belongs to God, for the advantage of wicked men; it is to rob those who use the money lent; it is unjust in itself, for the benefit of the loan to the borrower cannot exceed the value of the principal sum lent to him; it is a defiance of sound juristic principles' (ibid:55). The economic background to it all was very simple. For loans are made largely for consumption, not for production. The farmer whose harvest fails or whose beasts die, or the artisan who loses money, must have credit, seed-corn, cattle, raw materials, and his distress is moneylender's opportunity. Naturally, there is a popular sentiment against the engrosser who holds a town to ransom, the monopolist who brings the livings of many to the hands of one, the moneylender who takes advantage of his neighbours' necessities to get a lien on their land and foreclose. Among the peasants and small masters who composed the mass of the population, borrowing and lending was common, and it was with reference to their petty transactions, not to the world of high finance, that the traditional attitude towards the moneylender and usury had crystallized.

The derogatory attitude to usury was rarely applied to large-scale transactions of kings, feudal magnates, bishops and abbots. It was even more rarely applied to Papacy itself: Popes regularly employed the international banking-houses of the day, with a singular indifference to the morality of their business methods, took them under their special protection, and sometimes enforced the payment of debts by the threat of excommunication. As a rule, the international money-market escaped from the ban on usury. It was, of course, neither hypocrisy nor unfair discrimination. Rather, it was that the whole body of intellectual assumptions and practical interests, on which the prohibition of usury was based, had reference to quite a different order of economic activities from that represented by loans from great banking-houses to the merchants and potentates who were their clients. Its object was simple and direct — to prevent the affluent moneylender from exploiting the necessities of the peasant or the craftsman; its categories, which were quite appropriate to that type of transaction, were those of personal morality. It was from them that the church's scheme of economic ethics had been worked out, though set at naught at high places. Indeed, under such anomalous situation, 'the contrast between the external order of society and the moral standards', 'the gulf between theory and practice', was becoming increasingly palpable to many. All this will be swept away soon with the high tide of an economic revolution. The time was ripe for reform.

One cause that made financial capitalism as characteristic of the age of the Renaissance (ending in the mid-sixteenth century) as industrial capitalism was to be in the nineteenth century, consisted in the mere expansion of the scale of commercial enterprise. A steady flow of capital was needed to finance the exchange of products handled on the world

market. The cheapening of bullion, and the rise in prices swelled the profits seeking investment, the growth of an international banking system mobilized immense resources at the strategic points. Nourished by the facilities of peaceful commerce, the financial capitalism of the age fared sumptuously, if more dangerously, at the court of princes. Mankind, it seems, hates nothing so much as its own prosperity. For approximately three quarters both of the sixteenth and of the seventeenth centuries, Europe tore itself to pieces. The centralized states, engaged in internecine warfare, were everywhere faced with a desperate financial situation. What remained when they were exhausted in battle was the money-market, and to the rulers of money-market sooner or later all states came. The financier received his payment partly in cash, partly in concessions, which still further elaborated the network of financial connections that were making Europe an economic unity.

Like the rise of the great industry three centuries later, the economic revolution which accompanied the Renaissance gave a powerful stimulus to speculation. Both in Germany and in England the Humanists turned a pungent criticism on the social evils of their age. Martin Luther inaugurated the Reformation, and social theory began to emancipate itself from the stiff ecclesiastical framework of the Middle Ages. Where Lutherism had been socially conservative, deferential to established political authorities, the exponent of a personal, almost a quietistic, piety, Calvinism came as an active and radical force. It was a creed which sought, not merely to purify the individual, but to reconstruct the church and the state, and to renew the society by penetrating every department of life, public as well as private, with the influence of religion.

Calvinism was largely an urban movement; in its earlier days it was carried from country to country by immigrant traders and workmen. Its exponents addressed their teaching primarily to the classes engaged in trade and industry who formed the most modern and progressive elements in the life of the age. They set the profits of trade and finance on the same level of respectability as the earnings of labourer and the rents of landlord. It would take two centuries to Adam Smith (1776) to introduce the Calvinist idea of profit into the positive science of economics.

The Calvinists do not abandon the claim of religion to moralize economic life; but the life they are concerned to moralize is one in which the main features of a commercial civilization are taken for granted; their teachings are designed for application to such conditions. It is in the light of that change of social perspective that the doctrine of usury associated with the name of Calvin is to be interpreted (Tawny 1926:114). Interest is lawful, Calvinists say, provided that it does not exceed an official maximum; even when a maximum is fixed, loan must be made *gratis* to the poor; the borrower must reap as much advantage as the lender; excessive security must not be extracted. No man may snatch economic gain for himself to the injury to his neighbour. Now comes the contrast.

In the political history of Islam, the last three centuries of the Middle Ages belonged to the Mongols. Pouring down from the Euro-Asian steppe, they created in the heartlands of Islam four large empires, to decline during the second half of the fourteenth century. Thereafter, in the late fifteenth and early sixteenth centuries, there arose three major Islamic

empires, namely, the Safavid in Iran, the Mughal in India, and the Ottoman in Anatolia, Syria, North Africa and the Arabian peninsula. The question is: why was there no social or religious transformation there comparable to the European episode? Or, to take a symptomatic core of the European reform, for example, why does the prohibition on usury or interest persist in the realm of Islam till today? Apparently, there is no dearth of 'the contrast between the external order of society and the moral standards', or of 'the gulf between theory and practice'. For an evidence of such anomaly between thoughts and deeds, consider the fact that despite the ban on interest in Islam, the autocrats of the oil-exporting Muslim countries 'called upon Western banks to operate their transfer', namely, the voluminous petro-dollars accrued in the wake of oil price hike in 1973 and 1979; the money was put in interest-bearing bonds managed by Western banks. 'The Muslim petromonarchies of the Gulf — representing the vivid force of OPEC — by putting the money generated by oil in banks and letting the latter run the loan on interest ... acted in an inconsiderate fashion and forgot the fundamental principles of the prohibition of interest in Islam (Ramadan 2001:135). 'OPEC could have managed quite well in recycling its money and lent directly the money to the Third World. This way, they could have avoided offering to banks an opportunity to dispose of a weapon of absolute force. Moreover, the countries producing petrol would have been, today, in a better position.'

In view of the European experience, it is now tantamount to asking why financial capitalism did not flourish in Islamic lands. For, had financial capitalism taken root to culminate into industrial capitalism, we surmise, social and spiritual reforms could have followed in its train. We shall pursue this line of inquiry under the hypothesis, suggested by Kosambi, to the effect that history moves with interaction between the mode of production and the mode of reflection.

For centuries in the Middle Ages, Islam represented the greatest military power on earth — its armies, at the very same time, were invading Europe and Africa, India and China. It was the foremost economic power in the world, trading in a wide range of commodities through a far-flung network of commerce and communication in Asia, Europe and Africa; importing slaves and gold from Africa, slaves and wool from Europe, and exchanging a variety of foodstuffs, materials and manufactures with the civilized countries of Asia. It had achieved the highest level so far in human history in the arts and sciences of civilization (Lewis 2002:6).

Inheriting the knowledge and skills of the ancient Middle East, Greece, and of Persia, Islam added to them several important innovations from outside, such as the use and manufacture of paper from China and decimal positioning numbering from India. It was in the Islamic Middle East that Indian numbers were for the first time incorporated into the inherited body of mathematical learning. To this rich inheritance scientists and other scholars in the Islamic world added an immensely important contribution through their own observations, experiments, and ideas.

In most of the arts and sciences of civilization, medieval Europe was a pupil and in a sense dependent of the Islamic world, relying on Arabic versions even for many otherwise unknown Greek works. And suddenly, the relationship changed. Even before the

Renaissance, Europeans were beginning to make significant progress in the civilized arts. The Muslims were for a long time unaware of this.

When Portuguese navigator Vasco da Gama sailed around Africa into the Indian Ocean at the end of the fifteenth century, he opened a new sea route between Europe and Asia, with far-reaching consequences for the Middle East, first commercial, later also strategic. In the seventeenth century a new and — for the Middle East — a far more dangerous situation arose. By that time Portuguese, Dutch, and other Europeans in Asia were no longer there simply as merchants. They were establishing bases that in time became colonial dependencies. As their power extended from the sea to the seaports and even into the interior, the new European empires in Asia, controlling the points of both of arrival and of departure in East-West commerce effectively outflanked the Middle East.

Western success on the battlefield and on the high seas were accompanied by less resounding but more pervasive and ultimately more dangerous victories in the marketplace. The discovery and exploitation of the New World for the first time provided Europe with ample supplies of gold and silver. The fertile lands of their new colonial possessions enabled them to grow new crops, including even such previous imports from the Middle East as coffee and sugar, and to export them to their former suppliers. The growing European presence in South and Southeast Asia accelerated and expanded this process, and old-established handicrafts faced the double challenge of Asian cheap labour and European commercial skill. The Western trading company, helped by its business-minded government, represented a new force in the Middle east. These developments and the accompanying changes in both internal and external affairs aggravated old problems and created new ones of increasing range and complexity — monetary, fiscal, financial, and eventually economic, social and cultural (ibid:16).

The Mongols had brought the greatest political upheaval in the Middle East since the Arab invasions of the seventh century, but unlike the Arab Muslims they brought no spirituality with them. They were, however, tolerant of all religions, though they tended towards Buddhism. Their law code, Yasa, which was attributed to Chengiz Khan himself, was a narrowly military system, which did not affect civilians. It was Mongol policy to build on local traditions once they had subjugated the area, and so by the end of the thirteenth and the beginning of the fourteenth centuries all four of the Mongol empires had converted to Islam.

The sweeping destruction of the invasions, when so much had been lost, led to an intensification of the conservatism that always characterized an agrarian society. When resources are limited, it was impossible to encourage inventiveness and originality. Consequently, education was designed to preserve what had already been achieved and to put a brake on ingenuity and curiosity of the individual, which would undermine the stability of the community that had no means of integrating or exploring fresh insights. By the fourteenth century, the study and observance of the Sharia was the only type of piety to be accepted by all Muslims — Sunni and Shia, Sufi and Faylasuf alike. By this time, the ulema liked to believe that these laws had been in place from the very beginning of Islamic history. Thus, many of the ulema believed that nothing ever changed. Hence, they were

content that the 'gates of ijtihad' (individual initiative) were closed. After the loss of so much of the learning of the past, the destruction of manuscripts and the slaughter of scholars, it was more important to recover what had been lost than to inaugurate more change. Because the Mongol military code made no provision for the civil society, the ulema with the Sharia at hand continued to govern the lives of the faithful, and their influence tended to be conservative (Armstrong 2002:96). The post-Mongol empires in India, Iran and Anatolia were essentially army states after the Mongol fashion. Whatever little surplus was procured in the countryside it was dissipated to finance expeditions for conquest and to pay the bills of elite's luxury, leaving little scope for the development of capitalism (Raychaudhuri 1982). So the ban on interest continued in Muslim community.

### **Reason and Freedom**

'Needless to say, metaphysics, however sublime, were not the daily food of the Middle Ages, any more than of today. ... Needless to say, also, general ideas cannot be kept in compartments, and the conviction of medieval thinkers that life has a divine purpose coloured the interpretation of common affairs as it was coloured [in the West] by physics in the eighteenth century and by the [Darwinian] idea of evolution in the nineteenth' (Tawny 1926:34). Over-arching common ideas generally emanate from three sources: intuition, religion, and reason.

According to a hadith, 'the Prophet was reported to have said that the best Muslims were going to be his contemporaries, the second best the generation after, and so on, the decline continuing till the end of time' (Naipaul 1981:157). 'The world constantly decays and has constantly to be re-created. The only function of intellect is to assist that re-creation.' It is a doctrine of continuous decline.

In the post-Mongol world, the great reformer of the day was Ahmad ibn Taymiya (1263-1328). Paying obeisance to the doctrine of continuous decline, he attacked all Islamic developments that had occurred after the Prophet and the rashidun: Shiism, Sufism and Falsafah. Inspired by the teaching of Taymiya, an extreme right-wing orthodoxy arose during the eighteenth century, led by Mohamad ibn Abd al-Wahhab (1703-92). It recognized only two authorities: the Koran and the Sunna. On that basis, Abd al-Wahhab declared that the Ottoman sultans were apostates and worthy of death, because they did not conform to his vision of true Islam. Instead, he tried to create an enclave of pure faith, in the image of his view of the first umma of the seventh century.<sup>12</sup>

Darwin (1859:460) speaks, not of continuous decline, but of progress through natural selection, whereby 'endless forms most beautiful and most wonderful have been, and are being evolved'. He did not identify human society as a field of application of his theory of evolutionary progress. Indeed, human beings do not passively adapt themselves to a given environment; they can influence the nature of the world in which they live. So, they have achieved for themselves a certain degree of freedom for evolution with the help of reason. In the West the idea of evolutionary progress steered by human contrivance, rather than definite decay, has received general acceptance and coloured the interpretation of common affairs.<sup>13</sup>

*A Calling.* Zakat is one of the five pillars of Islam. It is an annual levy traditionally at the rate of 2.5 percent of one's wealth. Given a certain quantity of wealth, to begin with, the amount of zakat will fall over the years as the remaining part of the wealth dwindles. Unless the community's total wealth is continuously renewed, less and less will be available to the poor who are beneficiaries of zakat, straining their livelihood. In any case, the initial amount of wealth will be almost exhausted in paying zakat over a period of some forty years: private possession will thus return to the public community within a generation. This is a part of piety, no doubt.

Now, suppose that the community's population rises at the rate of two percent per year. Then population will double in thirty-five years. Again, unless the community's total wealth grows at the same pace the means of subsistence of the poor will fall. Hence the community must make effort to augment the volume of wealth every year. That can only be done with periodic investment. That is to say, the piety of zakat necessitates investment in production. The argument can be extended to conclude that investment in productive capacity of the community is an essential prerequisite for the piety of zakat, the third pillar of Islam. The minimum required optimal rate of investment can be computed: it is equal to the ration between, on the one hand, the sum of the rate of zakat and that of population growth, and on the other, the productivity of capital.<sup>14</sup>

There is another way of looking at the virtue of investment: in terms of piety. According to a hadith, the Prophet said: 'It is better for one of you to take his ropes, go to the mountain and carry a bundle of firewood on his back and then sell it, than to beg of people, who will either give him or deny him charity' (Ramadan 2001:42). 'None has eaten a better provision than that coming from the work of his hand.' Another hadith adds: '[Caliph] Umar said that it is not appropriate for a Muslim to sit and wait for his needs to be satisfied, for the sky never rains with gold and silver' (ibid:71). In short, productive work is a part of man's nature and his fundamental right. It is infinitely more pious for a person to earn his bread rather than to depend on charity. And it is a solemn task of society to provide full employment of labour, which in turn requires capital investment.

A hadith reports the following: 'The best of men is the one who is most useful to his fellowmen' (ibid:xviii). So, an entrepreneur's activities that create jobs for others must be blessed with piety. By setting up factories to employ workers he helps the people earn their bread. Similarly, a person can serve the people by saving money and lending it to the entrepreneur who will invest it for expansion of his factory. In short, then, capital accumulation and its investment come within the ambit of service to community, and amount to the remembrance of the transcendent. Contrary to Ramadan's view that 'accumulation [of capital] is rigorously condemned in all its forms', investment now shows itself purified by Islamic piety.

There are several verses with 'signs' relating to productive transformation that takes place in nature. 'And the fruits of the palm and the vine, from which you derive intoxicants and wholesome food. Surely in this there is a sign for men of understanding' (16:67). Another verse points to how in nature bees make honey in the process of pollination. 'Your Lord inspired the bee, saying: 'Make more homes in the mountains, in the trees, and in the

hives which men shall build for you. Feed on every kind of fruit" (16:68). Here man is enjoined to cultivate beehive in increasing numbers. And there is indication as to how 'every kind of fruit' goes into the making of honey. Several verses describe perched earth coming to life with raindrops, possibly giving hint about agriculture. Over all, they paint a picture of nature humming with productive processes. And the faithful is called upon repeatedly to observe the signs of nature and draw lessons from them.

Once investment is recognized as a corollary of piety, and thus made not just respectable, but a Lutheran calling (Weber 1930) the Islamic world could regain its momentum that was lost centuries ago. So, investment can play the role of an agency of modernity, since it would induce growth in production, employment, trade and commerce, which has been historically proved to be a torch-bearer of enlightenment and a solvent of superstition and taboo (Russell 1935, 1952). Investment, therefore, could be construed as the fourth component of Ramadan's 'important margin of manoeuvre'.

*Al-Shahada.* When, by the eighth century, the Muslims established their great empire, the Sharia gave a religious interpretation of the conquest, dividing the world into the Dar al-Islam (the House of Islam), which was in perpetual conflict with the Dar al-Harb (the House of War). All non-Muslim lands, including Europe, fell into the latter category. History would show that this demarcation was a serious blunder.

'In most of the arts and sciences of civilization, medieval Europe was a pupil and in a sense a dependent of the Islamic world', writes Lewis (2002:7). 'And then, suddenly, the relationship changed.' Even before the Renaissance, Europeans were beginning to make significant progress in the civilized arts. With the advent of 'New Learning', they advanced by leaps and bounds, leaving the scientific and technological and eventually the cultural heritage of the Islamic world far behind them. The Muslims for a long time remained unaware of this, for they showed no inclination to know about Europe, having placed that region in the precinct of the Dar al-Harb, an enemy territory. Judged by history, it was a costly mistake.

A binary partition of the world is too constrictive. The two shades of black and white leave out a whole range of other colours in between. And in nature, by divine dispensation, there are so many of them. 'Had your Lord pleased, all the people of the earth could have believed in Him, one and all. Would you then force people to have faith? None can have faith except by God's leave' (10:96). Again, 'men have divided themselves into factions, each rejoicing in its own doctrines. Leave them in their error till a time appointed' (23:59), which is the Last Day. No mortal, therefore, is entitled to arrogate to himself the divine task of dispensing 'punishment' to the sinner.

Monotheism, the central core of Islam, is not a creed that is exclusive to one religion; it is to be found also in Christianity, Judaism as well as Hinduism, among others. Rituals differ, no doubt; but that is permitted in spirituality. 'For every community we have ordained a ritual' (22:33). So, if faith in monism or monotheism is the necessary and sufficient criterion of an acknowledged religion, then one can contemplate the existence of a third sphere, namely, Dar al-Shahada (the House of Faith), which encompasses the Dar al-Islam entirely and possibly a part of the so-called Dar al-Harb. If so, a large area of the world including Europe and America would come within the purview of the Dar al-Shahada.

Turkey has approached the EU for membership. Islam, now the fastest growing faith in the world, has become the second largest religion in France; it would attain that status in the whole of Europe and America sooner or later. In India it has acquired that distinction centuries ago. On the other hand, the land of Islam relies on the West for science, technology and market. Under the circumstances, the traditional conception of a two-tier world is restrictive, confusing and incoherent. The wider map of a three-fold classification — Dar al-Islam, Dar al-Harb, and Dar al-Shahada — would be philosophically valid, practically meaningful and mutually rewarding. It will promote tolerance, respect and cooperation. As it takes the Muslims from the straitjacket of the conventional notion of a two-tier world to a three-dimensional conception, it would open the universe, as it were, a bit more to them.

### Conclusion

The West has seen a particular form of modernity emanating from its own history. Japan, Russia, China have taken their distinct routes. Now, Islamic modernity has to emerge 'from within' another civilization. Modernization is not coterminous with Westernization. However, all successful episodes of modernization share certain common properties: the economic base diversifies and the polity changes in the direction of greater popular participation, while some beliefs and rituals make way for new ones. The triple liberation Ramadan contemplates and the margin of maneuver he works out are essentially consistent with those universal features. Our addition of capital accumulation to his scheme fills a crucial gap and improves the possibility of success.

Alternative interpretation of Islamic scriptures and tradition are available. So, a question of choice from among those comes to the fore. The creed of a religion is *a priori*, axiomatic; there is no way of proving or disproving it. The scope of experimentation is far more limited in this field than in physical sciences. Of course, science too relies on *a priori* judgments: every theory of science depends upon another theory (Lakatos 1978). In the context of faith, one can possibly observe and compare the performance of a number of other communities and make judgment on the basis of their history (Sau 2004:60-67). Ramadan's approach stands the scrutiny of such a standard.

Ramadan speaks of 'a triple liberation' relating to respectively faith, pragmatism, and assimilation. To which we have added widening of the world horizon with the conception of Dar al-Shahada that supplements and overlaps the areas of the Dar al-Islam and the Dar al-Harb. He discovers three levers of manoeuvre to bring about Islamic modernity, namely, individual rights, family reciprocity, and political democracy. We have enlarged his scheme with an economic variable, viz., investment, within the boundary of Islamic piety.

### NOTES

1. In the literature, two distinct meanings are attached to the word Islam, as equivalents both of Christianity and Christendom. In the one sense it denotes a religion, a system of belief and worship; in the other, the civilization that grew up and flourished under the aegis of that religion.

The word Islam thus denotes a more than fourteen centuries of history, a billion and a half people, and a religious and cultural tradition of enormous diversity (Lewis 2003:3). We shall follow this convention of using it in two meanings, leaving the context to make it more specific.

Prophet Mohammad received Koranic messages in Makka (AC 610-622) and Madina (AC 622-632). The Sunna records the application of the Koranic principles to every aspect of life by the Prophet. The hadith represents the saying and deeds of the Prophet and his Companions as recollected by their contemporaries, and composed in the ninth century (An-Naim 1996, Rahman 1979). The term rashidun refers to first four caliphs — Abu Bakr, Omar, Uthman, and Ali — also known as 'rightly guided caliphs'.

2. 'It is He who has appointed you viceroys in the earth, and has raised some of you in rank above others, that He may try you in what He has given you' (Koran 6:165). The Western conception is not too far from this. Cf. 'The human being was originally appointed the proprietor of all the goods of the earth (Genesis 1:28), though he was to have only their usufruct (the right to enjoyment of the advantage of a property belonging to another) under his Creator and Lord as the supreme proprietor' (Kant 1793:118).
3. For other conceptions of man, see Radhakrishnan and Raju (1966).
4. The Western doctrine of the division between the sacred and the secular can be found in the Bible: 'Render to Caesar the things that are Caesar's, and to God the things that are God's' (Mark 12:17).
5. 'Have they never journeyed through the land? Have they no heart to reason with, or ears to hear with? It is their hearts, and not their eyes, that are blind' (Koran 22:46).
6. For simplicity, henceforth, reference to all Koranic verses will be given by only two such numbers as (3:190), which means chapter 3 and verse number 190.
7. 'But seek, by means of that which God has given you, to attain the abode of the hereafter. Do not forget your share in this world' (28:77).
8. During his research trip to Indonesia, author Naipaul met with a prominent person, Imaduddin, who embodied a rare combination of science and faith: he was a lecturer of electrical engineering at the Bandung Institute of Technology as well as an Islamic preacher. Imaduddin told Naipaul: 'Everyone was born a Muslim, without sin.' 'What follows from this — though Imaduddin did not say it — was that everyone in the world outside Islam was in a state of error, and perhaps not quite real until he found his Muslim self' (Naipaul 1998:45).
9. The five pillars of Islam are: the profession of faith, prayer, zakat, fasting, and pilgrimage to Makka.
10. 'Formally, Islam has no clergy. It does not officially separate church from society, any more than it formally separates church from state. It does not possess, as some other civilizations have been said to possess, an exemplary centre holding up the ideal to man, whether in a political or a religious court. If anyone in practice possesses such a role within Islam, it is the scholars, the theologian-jurists, the ulema. But they do not constitute a sacramentally segregated caste or stratum: they can only claim scholarship, familiarity with the scripturally recorded social/legal ideal, and hence the ability and will to practice and implement it, and no more .... However, [the rural people] do need ritual specialists to maintain and service periodic rituals, which fortify and define those local groups, which constitute the social framework, and maintain stability and security. If priests managing this punctuation [the social punctuation of time and space] do not exist, then they must be invented. And so they are. The most characteristic institution of rural

Islam was the saint cult. The saints were generally living personages, performing services here and now, in person, rather than being revered for past sanctity and used for mediation in another world' (Gellner 1994:16-18).

11. 'Classical Islam recognized a distinction between things of this world and things of the next, between pious and worldly considerations. It did not recognize a separate institution, with a hierarchy and laws of its own, to regulate religious matters. Does this mean that Islam is a theocracy? In the sense that God is seen as the supreme sovereign, the answer would have to be yes indeed. In the sense of government by a priesthood, most definitely not. The emergence of a priestly hierarchy and its assumption of ultimate authority in the state is a modern innovation and is a unique contribution of the late Ayatollah Khomeini of Iran to Islamic thought and practice' (Lewis 2003:20).
12. But the arrow of historical time has moved irreversibly in one direction; under the present circumstances there is hardly any possibility of going back to the Madina of early seventh century. The Muslim community has split into several sects. It would be interesting, though, if one feature of the Madina Constitution of 622 is resurrected in Muslim countries, namely, the freedom of religion of all communities.
13. 'Up to the beginning of this [twentieth] century people believed in an absolute time. That is, each event can be labeled by a number called 'time' in a unique way. ...  
 'The laws of science do not distinguish between the past and the future. ... The increase of disorder or entropy with time is one example of what is called the arrow of time. ... There are at least three arrows of time. First, there is the *thermodynamic* arrow of time, the direction of time in which disorder or entropy increases. Then, there is the *psychological* arrow of time. This is the direction in which we feel time passes, the direction in which we remember the past but not the future. Finally, there is the *cosmological* arrow of time. This is the direction of time in which the universe is expanding rather than contracting.  
 'The non-boundary condition of the universe, together with the weak anthropic principle, can explain why all three arrows point in the same direction — and moreover, why a well-defined arrow of time should exist at all' (Hawking 1988:144). This is the conception of time to a physicist.  
 In the calendar of Hindus, time is cyclical marked by the infinite repetition of four epochs, namely, satya, treta, dwapor, and kali in that order. The Kali Age (the Dark Age) is said to have begun on 3101 BC, and precisely at that time the twin cities of Mohenjodaro and Harappa were founded. Also the Great Flood of Manu took place. In Islam, as stated above, time is regressive in that the Muslim community is thought to undergo a qualitative decay over time, a sort of the thermodynamic entropy.  
 However, we can comprehend a sort of 'social time'. In physics, there is no one to help nature to recoup from entropy. But, in a society where several communities are neighbours, they can learn from each other and recharge their vigour, especially in line with the Aristotelian Principle; it would stem the forces of decline (Sau 2003:55-64).
14. 'Zakat, a levy, not on revenue but on wealth, in order to purify it, stops any accumulation' (Ramadan 2001:149). But we shall see in a moment that the practice of zakat necessitates positive accumulation of wealth, which is investment; hence, one can say, this pillar of Islam purifies capital accumulation.

Suppose that wealth can be used as means of production or for consumption. Let  $K$  denote the quantity of wealth which is also the community's stock of capital;  $z$  is the rate of zakat on  $K$ . Let  $s$  be the rate of saving and investment as a percentage of the community's annual income, and  $b$  the productivity of capital or the output-capital ratio. The recipient of zakat spend all of it on consumption. It follows that  $K_t = (1-z)K_{t-1} + sbK_{t-1}$ , where subscript  $t$  is an indicator of time.

This equation implies that the growth rate of capital, defined as  $(K_t - K_{t-1})/K_{t-1}$ , is measured by  $(bs - z)$ . Should population growth rate be  $n$ , and per capita income is held constant over time, then we get  $(bs - z) = n$ . That is,  $s = (z+n)/b$ . In other words, the rate of saving and investment in an economy with zakat must grow at a rate equal to the ratio between, on the one hand, the sum of the rate of zakat and that of population growth, and on the other, the productivity of capital. Hence, under the piety of zakat, the optimum rate of capital accumulation in a growing community is positive.

For example, let  $z = 2.5$  percent,  $n = 2.5$  percent, and  $b = 0.25$ . Then the optimal rate of saving and investment is 20 percent, that keeps per capita income and capital constant. Instead, if  $n = 0$ , then it is 10 percent. In case the community's actual saving rate at any time is below the optimal level, it must be raised to the optimal level, otherwise the ability to pay zakat will be jeopardized in course of time. Much like the operation of depreciation on capital, zakat tends to erode the stock of wealth of the community; investment replenishes it.

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# ISLAMIC FINANCIAL INSTRUMENTS FOR THE DEVELOPMENT OF INFRASTRUCTURE

*Ausaf Ahmad*

**Abstract:** *A successful financial system requires both financial institutions and financial instruments. The evolution of Islamic financial instruments has somewhat lagged behind the development of Islamic financial institutions. This paper explores the evolution of such Islamic financial instruments that may be used in mobilizing resources for the development of infrastructure. This is done against the backdrop of low-income Muslim countries, which lack both in infrastructure as well in financial institutions. The paper suggests that an appropriate institutional framework is required before Islamic financial instruments could be successfully launched and used.*

## Introduction

A financial system crucially depends upon the existence of a financial market and a number of financial instruments. A financial market is an organization through which the suppliers and users of finance (usually credit) are brought together to conduct business, while financial instruments are the devices through which the suppliers and users (sellers and buyers) of finance conduct their business. Thus financial instruments provide a way to raise finance and to invest them. In more technical usage, financial instruments refer to financial papers through which financial resources are raised and invested. The financial papers are bought and sold on the financial market like other commodities. However, from an Islamic point of view, modern financial markets involve a number of institutions and practices, which are repugnant to mores and ethical norms prescribed by Islam for its followers in conducting their financial deals. For instance, Muslims are required not to indulge in *Riba*. They are also required to avoid some other undesirable practices such as speculation and gambling. The desire of Muslim savers and investors to have financial instruments that do not violate Islamic injunctions has led to the evolution of Islamic financial instruments.

Obviously, the Islamic financial instruments (IFIs) have several distinguishing features. The first and foremost among them is that they are not based upon the concept of interest

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*The views and opinions expressed in this paper are personal to the author and in no way represent the official views of the institutions where he works.*

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(Riba). Instead of a creditor and debtor relationship, the IFIs envisage establishing a participatory relationship between the suppliers and users of finance. An IFI would also represent a share in some real and productive asset. Its yield will depend, on the one side, upon the productivity of the asset whose shares it will represent, and on the other more important side, it will be influenced by the changing market conditions in the real sector. Thus, IFIs will reflect a crucial link between the financial and real sectors of the economy. In the modern capitalistic economy, the financial sector has become divorced from the real sector to a significant extent. The financial sector is superimposed on the real sector and dominates it in such a way that whenever the financial system crumbles, it sends serious shock waves throughout the real sector of the economy. This is because of intensive speculative activity on the financial markets. Hence, more often than not, the returns on the financial assets do not represent the productivity of the real sector. This becomes a serious source of instability in financial markets, which are volatile for some other reasons as well. It may be argued that the common stock may provide a link between the real and financial sectors in the capitalistic economy. However, the speculative activity in the stock markets prevents it to perform any useful stabilizing function to any significant measure. The markets for the IFIs will be comparatively more stable as their return will directly reflect the productivity of the real assets and actual business conditions. Furthermore, speculative activity will be minimal at best because speculation will be discouraged on the moral grounds.

The IFIs shall also be free of *maysar* (gambling) and *Gharar* (excessive ambiguity)<sup>1</sup>. The elements of gambling (*maysar* or *Qimar*) are present in a contract when payment from one party is determined but from the other party remains uncertain. Similarly, the element's excessive ambiguity (*Gharar*) may be found in a contract if the details with respects of at least one of three constituents of a valid sale, price (*thaman*), object of the sale (*mabia*) and time (*ajal*) are not specified unequivocally and unambiguously<sup>2</sup>. Since all financial instruments reflect a contract between two different parties, and more specifically they fall in the category of sale deeds, hence IFIs have to fulfill all necessary requirements of a legal sale contract from an Islamic point of view. These requirements shall confer upon the IFIs added attributes of stability.

The present study aims at exploring the evolution of such IFIs as may be used in mobilizing resources for the development of infrastructure of the economy. This is to be done against the backdrop of Islamic countries, most of whom, being low-income developing countries, are known to have serious insufficiency of infrastructure facilities. Even in the high-income oil-rich developing Muslim countries, development of infrastructure is of rather recent origin. Since availability of infrastructure plays a vital role in economic development, developing Islamic countries have to raise resources for building necessary infrastructure. An attempt shall be made here to explore the possibility of this being done using IFIs.

The paper is divided into four sections including introductory and concluding sections. Section two reviews the need and significance of Islamic financial market and nature of IFIs. It is pointed out that there is a serious need of making a clear-cut distinction between

Islamic modes of financing and IFIs that, more often than not, are confused with each other in discussions regarding Islamic financial markets. The third section is devoted to an examination of the main issue: how IFIs could be used for financing the development of economic infrastructure. The last section provides summary and conclusion.

## Islamic Financial Instruments

### Need and Significance of Islamic Financial Markets

The emergence of a number of Islamic banks, during the last 25 years, has succeeded in exhibiting the feasibility of interest free banking beyond any reasonable degree of doubt<sup>3</sup>. However, the task of establishing a full fledged Islamic financial system still remains largely unfinished as Islamic banks are presently faced with a number of practical and conceptual problems, foremost among them is the establishment of a secondary Islamic financial market.

A large number of Islamic banks have to live with high excess liquidity, as they do not have enough profitable avenues to place their funds. Main reason for this situation is the absence of appropriate IFIs and a market for these instruments. If IFIs had existed, then Islamic banks would have been able to invest their excess liquidity in these assets. Later, they would sell these financial assets as and when they might be in need of cash. Thus, it would offer them a way for profitable placement of funds. The banks, in turn, could share these profits with their depositors and shareholders. It is clear that evolution of IFIs and the establishment of a secondary market for these instruments would give a big boost to the development of Islamic banking. That is why attention is now focused on devising financial instruments, which are in accordance with the requirements of Islamic *Shari'ah* and could be used by Islamic financial institutions.

Although establishment of a full-scale interest free financial market in any Islamic country is still only a distant possibility, in some countries some progress has been made in devising interest free financial instruments such as introduction of Participation Term Certificate and profit and loss sharing Certificate of Investment in Pakistan.<sup>4</sup> Recently, some important steps towards introduction of Islamic financial system have also been taken in Malaysia.<sup>5</sup>

From an Islamic (Read: *Shari'ah*) Perspective, there are two problems with secondary markets:

1. The instruments traded may be objectionable because they are *Riba* bearing.
2. The trading of instruments itself may be defective.<sup>6</sup>

The first problem is concerned with the evolution of IFIs. The second problem is concerned with the structure of the financial market. Most of the literature on the IFIs, and the present paper is no exception either, is concerned exclusively with the first problem. Hence, major preoccupation of these efforts is to devise such financial instruments that do not involve *Riba*. The second problem of structural reforms of existing financial markets has received little, if any attention. This was also natural as the first problem is that of feasibility and the second problem is concerned with the question of efficiency. Logically, feasibility has to be established before determining and settling the questions of efficiency.

In view of the above, a number of financial instruments have been suggested that are claimed to be interest free. For example, M.A.Mannan in one of his essays on the subject, proposes no less than ten different IFIs which may potentially be devised.<sup>7</sup>

A common characteristic of proposed Islamic financial papers is that they are claimed not to be based on the concept of interest. Hence, these suggested financial instruments could potentially be utilized to develop Islamic financial markets. Since most of the Islamic countries presently do not have any well developed structures of securities and capital markets, and many of them do not have any financial markets at all, it may be easier for these countries, under these circumstances, to design and develop the Islamic financial markets from the very beginning rather than first establishing the financial markets and then trying to reform them according to Islamic precepts. This may be the justification of any endeavour of devising IFIs at this stage.

However, presently, most of IFIs remain at the level of ideas and suggestions, waiting to be implemented and tested by the market. In fact, some of these may also need rigorous formulation both from financial and *Shari'ah* points of view. For example, many aspects of proposed human capital certificate need to be reviewed from the *Shari'ah* perspective.<sup>8</sup> Some of the proposed instruments like loan certificates, indexed loan certificates and Zakah certificates may also need careful scrutiny, as they do not provide any measurable return to the investor.<sup>9</sup> In the absence of any pecuniary return, the scope of suggested instruments may be limited at best.

### **Distinction between Modes of Financing and Financial Instruments**

It has been noticed that some confusion still persists between the terms modes of financing and financial instruments, at least in the context of discussions on Islamic banking. Many people use the terms IFIs and Islamic modes of financing interchangeably.<sup>10</sup>

The word "mode" is used to indicate "the manner in which work is done."<sup>11</sup> It is synonymous with method and procedure. Therefore, mode of finance would mean the method by which finance is raised or provided. Hence, Islamic modes of finance refer to those methods of raising or providing finance, which are, permitted Islamically. Thus, according to this definition, *Musharaka*, *Mudaraba* and *Murabaha* etc. should be described as modes (or techniques) of finance and not as financial instruments.

Similarly, the expression "instrument" is used to refer "a thing used in performing an action"<sup>12</sup> Hence, financial instrument would refer to "tools" or "implements" which are used in the process of financing. Keeping this in mind, a financial instrument has been defined by a contemporary writer as a "certificate representing a common share in a fund raised for investing and making a profit, issued by the body acting on its behalf, which provides for its negotiation and conversion into liquid money when required."<sup>13</sup> Although it may be interpreted as a matter of semantics, but for conceptual clarity, it is also necessary to distinguish between the expressions "financial instruments" and "instruments of financing". The instruments of financing is the same as modes of financing or techniques of financing but financial instruments is altogether a different thing which is related with the secondary market of financial assets<sup>14</sup>

**Shari'ah Considerations in Islamic Financial Instruments**

The Council of the Islamic Fiqh Academy established by the Organization of the Islamic Conference (OIC) considered the subject of the IFIs in its fourth session held in Jeddah in 1408H (1988). The Council particularly considered the subject of *Muqaradah* bonds and investment certificates; but the principle enunciated by it in process of giving an opinion on *Muqaradah* bonds, are quite general and may be used as guiding principle in devising other types of Islamic financing instruments. That is why, these recommendations are summarized here:

1. The certificate must represent a joint share in the project, for whose establishment or financing, it has been issued. Ownership remains valid throughout the duration of the project. It also confers all;
2. The instrument must provide all necessary information regarding *Mudarabah* contract as in case of conditions required by the *Shari'ah* for any valid contract.
3. The certificates must be negotiable at the end of subscription period.
4. The one who receives funds collected from the subscribers to the certificates for investment in the proposed project, is *Mudarib* (active partner of a *Mudarabah* contract). His ownership in the project is limited to the extent of his subscription. The *Mudarib*'s role, in handling the subscribed funds and the project property is that of a trustee, who may not be held responsible unless his liability is permitted under the rules of *Shari'ah*.
5. It should *not* contain a guarantee from the manager of funds, for the capital or a fixed profit or a profit based on a percentage of the capital.
6. It should *not* contain any statement implying sale of any kind, whether conditional or future. However, it may include a promise to sell (if the need be) for which a sale contract may be put into effect separately specifying the good to be sold, and price to be paid as per agreement of contracting parties.
7. It should *not* contain any statement, which may imply that the company has fixed the profit. If any such clause exists, it would turn the contract void.
8. The size of profit is determined by liquidation or evaluation of the project in money terms. In order to satisfy *Shari'ah* requirements profits are defined as an excess of total value of project over its total capital. These profits are to be divided between the shareholders and the *Mudarib*, in accordance with their terms of the contract.
9. Profits are due when realized, and owned by declaration or evaluation and become payable only upon distribution. If the project produces revenue and yields, it may be distributed. Whatever is paid to contracting parties before settlement or evaluation is considered a payment on account.
10. A third party guarantee is allowed by the *Shari'ah* in certain conditions. The third party must be totally unrelated to contracting parties in term of legal personality or financial status. It may promise to donate a specific sum with counter benefit to meet losses in a given project. However, such commitment is independent of any commitments

made in the *Mudaraba* contract whose implementation is not contingent upon the fulfillment of this promise.<sup>15</sup>

The Islamic Fiqh Academy, by adopting the above resolution, has paved the way for the establishment of Islamic financial markets. Although this resolution was adopted specifically to approve the *Muqaradah* / or *Mudarabah* bonds which were proposed to be used by the Ministry of *Awqaf* in Jordan in order to develop *Awqaf properties*, this may be noted that out of ten conditions identified by the Academy as a requirement of a legitimate Islamic financial instrument, eight conditions are of quite general nature. Hence, it may be expected that, keeping the ruling of the Fiqh Academy in view, it is now possible to devise new interest free financial instruments, which may eventually be used by institutional, and non-institutional investors.

### **Actual and Potential IFIs: A Brief Survey**

This section presents a brief survey of some actual and some potential IFIs.

#### **Participation Term Certificates**

The Participation Term Certificates have been introduced in Pakistan to replace interest-based debentures. These are transferable corporate instruments, which are based on the principle of profit and loss sharing and are intended to satisfy the medium and long-term financial requirements of the industry. Thus, the PTCs are mainly an instrument of project financing on the basis of profit sharing. The working of PTCs may be described as follows<sup>16</sup>.

A company approaches a Development Financing Institutions (DFI) for partial financing of a specific project. The amount paid by the DFI is a loan to the company concerned against its fixed assets. The company undertakes the implementation and completion of the project to the satisfaction of the DFI. Upon completion of the project, all fixed assets pertaining to the project standing in the name of the DFI are purchased by the company at an amount, which is referred to as "purchase price". The purchase price includes "the amount paid to the company for the implementation of the project and any penalty which the company may be liable to pay plus a profit which would not be less than 12 percent earned on similar amounts for the same period in other avenues of investment handled by the DFI."<sup>17</sup> The company issues PTCs equivalent to the purchase price payment to the DFI. The denomination and maturity of PTCs are decided with the advice of the relevant DFI.

It should be mentioned that under the PTCs, profits are shared in agreed ratio while losses are shared in the ratio of bank's and company's investment. The share of the PTC holders in the profit is deducted prior to the claim of shareholders in the profit of the company in any given year. In case of loss, first, loss is met by the free reserves including the credit balance in the profit and loss account of the issuer. Then, the balance of loss is shared between the PTC holder and other provider of funds in proportion to their funds. It has been held that "of all the provisions in the PTC agreement, the one relating to treatment of losses or profit falling below the norms is most debatable."<sup>18</sup> The provision of charging the losses to reserve does not appear to be based on sound logic. The reserves belong

exclusively to owners or shareholders as a part of equity. Then, why is the entire loss in any given year to be absorbed by the reserves? In fact, the loss should be distributed on a pro rata basis between the partners of the business.<sup>19</sup>

The proceeds of PTCs are to be exclusively used for implementation of the project for which they have been issued. There has been an attempt to protect the interests of the PTC holders in several ways. For example, there is a provision to appoint a trustee who can keep an eye on the business of the issuer of the PTCs. The trustee has the right to call any information, visit the premises of the factory and have access to all required records. The PTC holders are given option to convert a certain proportion of outstanding PTCs into ordinary shares. Similarly, existing stockholders are also given right option to subscribe to fresh issue of PTCs.<sup>20</sup>

It is rather unfortunate that experiment of PTCs in Pakistan was rather short lived. Now, they have been largely replaced by the Term Finance Certificates (TFCs), which is crucially based on the principle of mark up rather than on the principle of profit and loss sharing, as was the case with the PTCs.<sup>21</sup>

### **Housing Certificates**

Housing certificates is an interest free financial instrument, which is being used, by the Mass Housing and Public Partnership Administration (hereafter referred to as the Administration) in the Republic of Turkey to mobilize resources for the development of the housing sector. The certificates are issued by the Administration against any specific mass housing project. Each single certificate represents one square meter of flat ownership in a given project. Usually the term of a certificate is five years, which is extendible. In case of extension of term, the certificates are ratified by the Administration to be valid for a subsequent period.

The housing certificates are issued bearer and are "negotiable" in the secondary market. The certificates bear an initial value declared by the Administration. It is recalculated on 10th of every month and remains valid till the 10th of the next month. The declared value of the certificate reflects the demand and supply situation in construction sector and not the demand supply situation of the housing certificate itself. Thus, initial value of the certificate becomes a "reference price" for transactions in the secondary market. The housing certificate could be encashed by authorized banks immediately upon demand at the latest announced certificate price.

The houses are built by the Administration under a specific mass housing project within five years after the issuance of the certificate related to that project. The certificate owners can make the down payment required for purchasing the flats in terms of housing certificates. The remaining balance may be paid either in cash or in certificates of equivalent amount.

It is reported that the Administration used these housing certificates to finance a mass housing project in Istanbul, Turkey for which 250,000 certificates were issued. The administration was able to sell all the certificates issued by it. The Turkish experience of using housing certificates for financing the housing sector has met with some success. However, it is still early to judge its efficiency and efficacy as a financial instrument.

Nevertheless, it is an innovative step in the evolution of interest free financial instrument for specific purpose.<sup>22</sup>

### ***Mudarabah* Certificates**

A *Mudarabah* certificate is a certificate of a definite denomination issued to the subscriber of the *Mudarabah* acknowledging the receipt of the money subscribed by him.<sup>23</sup> Business companies in Pakistan, if they are registered as a *Mudarabah* company, are allowed to float their own *Mudarabah* under the *Mudarabah (floatation and control) Ordinance* of 1980. Two types of *Mudarabah* are permitted under law in Pakistan - multiple *Mudarabah* that has more than one specific purpose or objective, and specific purpose *Mudarabah* that has a single purpose. Similarly, it could be either for a limited period or perpetuity. An authorized company only under certain conditions, which include the following, could float *Mudarabah*: (i) The issuing company should be registered as a *Mudarabah* company. (ii) The consent of Controller of Capital Issue must be obtained. (iii) A prospectus containing name, type of *Mudarabah*, amount, conditions, business prospects, and method of profit distribution should be filed with the Registrar. (iv) The business, which is the user of funds raised by *Mudarabah*, must not be opposed to any Islamic injunction.<sup>24</sup>

There are certain other conditions prescribed for *Mudarabah* which include the following:

(i) The assets and liabilities of each *Mudarabah* must be kept separate for each *Mudarabah* operation. They should also be distinct from the general accounts of the *Mudarabah* Company. (ii) If minimum amount is not subscribed by the specified date, all money is to be refunded within 15 days of the specified date; (iii) *Mudarabah* certificates are transferable in the manner prescribed in the prospectus; (iv) *Mudarabah* certificates must be issued within 30 days of allotment.<sup>25</sup>

During the last few years there had been a substantial increase in the number of *Mudarabah* companies in Pakistan and *Mudarabah* certificate has also emerged as an important Islamic financial instrument.<sup>26</sup> However, It has also been noticed that despite this increase, investment companies and insurance companies have not yet accumulated any significant holding of *Mudarabah* certificates. One reason for this situation may be the inability of these institutions to lock their funds for any long period. These institutions require being highly liquid. Hence they prefer to invest their funds in such financial instruments that would give them quick returns and which could also be converted into cash if and when the need be. Consequently, these institutions have placed relatively smaller proportion of their funds in *Mudarabah* certificates, which are financial instruments of medium and long term. This is reflected in the low proportion of *Mudarabah* certificates held by the insurance and investment companies in Pakistan.

### **Other Potential IFIs**

In addition to what has been discussed above, various proposals have emerged from time to time to evolve new types of financial instruments that will give Islamic banks an opportunity to expand their resource base by becoming significant means of resource mobilization. It is

proposed to briefly discuss here three such proposals viz. Islamic Certificates of Deposits (ICDs), Islamic Investment Certificates and *Muqaradah* bonds.<sup>27</sup>

#### (a) Islamic Certificates of Deposits (ICDs)

It is proposed that Islamic Certificates of Deposits (ICDs) will be issued by an Islamic bank according to a fixed timetable and in different denominations. These certificates will have maturity period of more than two years coinciding with the closing of accounting period and thus making the calculation of the profit easier and convenient.<sup>28</sup>

The ICDs will be income-yielding instruments. These certificates will yield revenue, which will be paid annually in accordance with the profits realized by the bank. The bank will act as a *Mudarib* and shall be entitled to a share of profits made out by the use of the funds provided by these certificates. It is suggested that weight of revenue for these certificates should be kept higher than ordinary accounts, which provides funds usually for less than a year. The weights will be higher for higher maturity period. The Islamic bank issuing the ICDs will declare its willingness to buy the certificates issued by it, if and when submitted to it, any time after the original issue of the certificates. The bank will also periodically announce the price at which it is willing to buy the outstanding shares.

#### (b) Islamic Investment Certificates

The proposed investment certificates are different from the ICD because these are tied to a particular project or group of projects. The issuing Islamic bank may invest the funds raised by the proposed ICDs in any permissible business activity, which is perceived by the bank as the most profit yielding at that moment. In contrast to this, the investment certificate would raise funds for a specified and particular project the details of which would be made known to prospective investors. This particular project or group of projects may be given a separate legal entity so that funds (and accounts), specifically raised are not mixed with the general activities of the bank. The issuing bank shall be the trustee or the manager of these funds while investors would be the owner as transaction involved in these certificates is in the form of restricted *Mudarabah*. A number of other conditions may also be stipulated for successful operation of these certificates, the details of which are available elsewhere.<sup>29</sup>

#### (c) Muqaradah/Mudarabah Bonds

*Muqaradah* (which is another name for *Mudarabah*) bonds were conceived in Jordan to finance the development of commercial properties owned by the *Awqaf*. These bonds are to be issued by an authorized agency, which wants to develop specified *Awqaf* properties into income yielding projects. The resources are raised by issuing the documents of definitive value in the name of their owners who pay their funds to the owner of the project in the hope of a profitable return.

*Muqaradah* Bonds do not yield any interest. Instead, they yield annual varying return, which is a share in the profit of the project in which the proceeds of the bonds have been invested. These bonds have to be amortized within a definite period. For example, if *Muqaradah* bonds have been issued for  $n$  years, then,  $1/n$  th proportion of the total bond

issue shall be amortized every year. The issuing authority will purchase the shares worth of  $1/n$  th amount of the bond issue at a declared price in addition to distributing a share of profits to document holders. Thus, after  $n$  years, the issuing authority shall successfully purchase all shares and bond issued by it will be fully amortized. At this stage, the bond holders shall cease to be the owners of the project, which was financed by their money, raised through the issuance of the bonds. Thus, ownership of completed project could be transferred to the original *Waqf* whose earning capacity would be enhanced by the addition of one more earning asset.

### IFIs for the Development of Infrastructure

It is generally understood that infrastructure facilities, which exhibit dominant characteristics of a public good, are mostly financed by the government. Roads, highways, ports, airports, and railways etc. could be cited as examples. Similarly those infrastructure facilities, which show the dominant characteristics of a private good, are financed by either private sources or by a combination of public and private sources. Further, it may be observed that, in developing countries, there has been a trend of relying more and more on the state resources for development of infrastructure, while, in the advanced industrialized countries, large private corporations shoulder some of the responsibilities of the government to expand infrastructure facilities.

This section will investigate how Islamic financing techniques could be used in providing finance to the development of infrastructure and particularly what IFIs could be devised in order to raise resources and to associate private sector, both organized companies and individuals, in efforts to build an effective and viable infrastructure for the economies of Islamic countries.

Development of infrastructure in Islamic countries offers a challenging task for several reasons. Firstly, most of the Islamic countries being low income countries, lack in adequate infrastructure. Even in the oil rich Islamic countries, the development of social and economic infrastructure is of rather recent origin. Hence, it is imperative for the Islamic countries to develop their social and economic infrastructure, if they wish to achieve higher rates of economic growth because infrastructure some times becomes a serious bottleneck in rapid expansion of the economy. Therefore, these countries have to raise resources for the expansion and development of the infrastructure. In view of numerous demands on the public resources, it may be prudent to explore the possibility how private resources could be involved in the development and management of economic infrastructure in these countries. Secondly, in view of Islamic prohibition of interest (*Riba*) one must also examine the relevance of Islamic financing techniques for providing finance to this sector.<sup>30</sup> Since major Islamic financing techniques like *Mudarabah* and *Musharakah* are basically based on the principle of profit sharing, it is argued, that these techniques are amenable only to activities, which generate explicit, recognizable and even measurable profit.<sup>31</sup> Further, although *Murabaha* is not based on profit sharing as such but knowledge of profit is very much required. Hence, *Murabaha* cannot be applied in cases where cost and benefits both

are not explicit. It is in this context that question of financing of infrastructure facilities in the Islamic economy assumes added significance.

Several Muslim economists have examined the question of interest free financing of infrastructure where the benefits may not be exclusive and measurable. Siddiqi has pleaded for interest free loan from the public, which may be encouraged by moral Suasion and tax breaks. It is implicit in his recommendation that financing, implementation and management of the infrastructure projects in the Islamic economy will be done by the state. The state may also use coercion in certain cases where it may become absolutely necessary.<sup>32</sup> On the other hand, Chapra recommends, "a certain proportion of commercial banks demand deposits upto a maximum of, say, 25 percent should be diverted to the government to enable it to finance socially beneficial projects in which profit sharing is either not feasible or not desirable."<sup>33</sup>

In another paper Chapra has provided further details regarding this proposal. The amount obtained by diverting a certain proportion of demand deposits of commercial banks to the public treasury is to be used mainly for social projects where no measurable economic return accrue and where profit sharing is not feasible. The amount diverted from the demand deposits is to be considered as a *Riba* free loan (*Qard Hasan*) to the government against which the government will issue non-interest bearing and non-marketable securities.<sup>34</sup> The securities will have a maturity date and will be redeemed on that date. The government will also pay "a service charge on this amount equivalent to 25 percent of the operational cost of banks in mobilizing demand deposits. The service charge will not be in the nature of *Riba* because the government will only be reimbursing the commercial banks on appropriate basis."<sup>35</sup>

Since some critique of this proposal has already appeared elsewhere,<sup>36</sup> it may suffice here to say that in the event of being non-marketable, the securities issued by the government against the portion of demand deposits acquired by it, may be mere receipts. These securities may not qualify to be called a full-fledged financial instrument, which may be acquired, held and liquidated as the need might arise. Further, there are certain other weaknesses in the proposal of diverting a certain portion of demand deposits to government. First of all, it has to be justified on the basis of *Shari'ah*. At present, there do not appear to be enough *Shari'ah* grounds to provide support to such an action. However, even if this is done, it may be done only as an exception and not as a rule. There are unresolved problems in redemption of the deposits to the public and paying service charge to the bank while depriving the public who are the real owners of the deposits. It may also be apprehended that any "confiscation" of deposits may cause a run on the commercial banks.<sup>37</sup>

In a recent paper Siddiqi has argued that *Mudarabah* financing can be resorted to even in the services sector such as education, health care and information with the condition that "it should be possible to calculate the profit or losses consequent to condition of new capital acquired on the basis of profit sharing."<sup>38</sup> Siddiqi identifies only two conditions for applicability of *Mudarabah*: that the product should be marketable and it should be possible to calculate the profit.<sup>39</sup> If financing of infrastructure projects meets these conditions, then it should be possible to devise new financial instruments on the basis of *Mudarabah* which may be used to mobilize resources for the development of infrastructure<sup>40</sup>.

It is well known that Islamic financing techniques are not confined only to *Mudarabah* and *Musharakah*, which, on certain conditions, are considered to be superior to other financing techniques.<sup>41</sup> There are many other techniques such as deferred sale (*Bay' al Salam*), hiring or renting (*Ijarah*), hire and purchase (*Ijarah wa Iqtina*), diminishing participation (*Musharaka Mutanaqisah*), and manufacturing contract (*Istisna*), which can be the basis of non-interest financial transactions in an Islamic economy.<sup>42</sup> Among these, *Salam* and *Istisna* may be more suited to the requirements of infrastructure financing. *Salam* may be defined as the sale of a duly identified thing to be delivered in future in return for a price that is paid in advance during the session in which the deal is concluded.<sup>43</sup> On the other hand, *Istisna* is a contract by which immediate purchase of some thing is put into effect which is subject to manufacture and which the manufacturer undertakes to deliver, duly manufactured, using materials available to him, in accordance with certain specifications for a specified amount of money.<sup>44</sup>

*Istisna* contracts may particularly be relevant to development of economic infrastructure in the economy because of several reasons: In an industrialized society a number of products such as bridges, dams, industrial complexes, refineries, ships, power stations, airplanes, etc. can not be built unless a buyer is found for them before hand. This may be because production of these goods is highly technical and complex. Hence, technical specifications and other attributes of goods in question may vary greatly among different buyers. Furthermore, production of these goods also involves high financial cost. The producers may lose a great deal of money if they do not find a buyer after production has taken place. Hence, to be on the safe side they would like to have an assured buyer before starting the production. Under such circumstances, provisions of *Istisna* contracts may be quite relevant and useful.

It may also be possible to evolve different kinds of financial instruments using Islamic financial techniques to raise resources for the development of infrastructure. In this paper brief outline of three financial instruments shall be presented which may be used to mobilize resources for this sector. These are *Mudarabah* bonds, *Istisna* certificates and leasing certificates. However, before these proposed financial instruments are described, it may not be out of place to have a close look at the legal and institutional framework in which these financial instruments are supposed to work.

### Legal Framework

It will be stating the obvious if it is said that no fully developed model of Islamic financial market exists in the present day world. The idea of Islamic financial market is still at its initial stages. However, its various elements and components are available in several countries, foremost among them are Islamic banks and financial institutions. The buyers, sellers, financial instruments and financial institutions constitute different elements of a financial market. All these elements perform their respective functions subject to certain "rules of the game" which may be referred to as legal framework.

In case of Islamic financial markets, the buyers are available in the sense that there is a definite desire amongst the Muslim savers to invest their savings in a way that is permitted

by the Islamic *Shari'ah*, which does not involve *Riba* and also provides with *Halal* returns on their investments. The Islamic banking and financial institutions, now spread in several Muslim and some non-Muslim countries are also keen to experiment with the IFIs. This will enable them to raise resources as well as help them find a secondary market for Islamic finance. However, presence of all these factors is necessary but not sufficient for the establishment and healthy growth of Islamic financial markets. An appropriate legal and institutional framework will provide such a sufficient condition. Hence, this section sheds some lights on the requirement of a legal framework for an Islamic financial market.

A legal framework for the Islamic financial market is required to prescribe the "rules of game" for savers and investors both individual and institutional. Hence, it may include all the laws, which are directly and indirectly concerned with the functioning of a financial market. The legal framework of an Islamic financial market might include the following:

### **Islamic Banking Laws**

This set of laws will be concerned with the establishment, functioning and growth of Islamic banking in the country. In several Muslim countries such laws already exist which have provided a framework for the working of various Islamic banks.<sup>45</sup>

### **Laws Concerned with Financial Institutions**

These laws will also have direct bearing on the development and functioning of the financial market i.e. what kinds of financial institutions are allowed to exist, what is the domain of their work and what is the line of demarcation between the financial institutions, banking institutions and other commercial establishments.

### **Company Laws**

These laws deal with the establishment, structure, nature and function of business companies in the country and prescribe the ways and means in which business companies are authorized to raise financial resources. Hence, in defining the contours of a financial or capital market, these laws also assume a special significance.

### **Institutional Framework**

An effective and flourishing financial market requires a number of institutions for its effective functioning such as commercial banks, financial institutions, communication networks etc. However, because of its special nature, Islamic financial market may require some more institutions, which are not required ordinarily by the financial markets in other countries. The institutions required by the Islamic financial markets may be classified into three categories:

#### **(a) IFIs and Capital Issue Authority**

It is proposed that in order to establish Islamic financial markets in the Muslim countries a central agency be established in each country. This agency may be called the IFIs and Capital issue Authority (IFICIA). Its function will be similar to that of the Security and Exchange

Commission (SEC) in the USA<sup>46</sup> It will oversee the capital issue of the companies, supervise the *Shari'ah* compatibility of various financial instruments and regulate and control the financial market. Each financial institution which would like to issue an Islamic financial instrument, would be required to submit its proposal to IFICIA which will get it examined by its three technical arms:

- Economic and Financial Board will assure the economic and financial viability of the proposed financial instrument. It shall also examine the feasibility of the project, which is being proposed to be established using the funds collected by floating the financial instrument. If proposal is found to be sound on economic, financial and technical grounds, then, it will be forwarded to other divisions of the IFICIA for clearance and approval.
- The Legal Control Board will be another important component of the IFICIA. It shall examine the procedural viability of the proposal and make sure that all legal requirements prescribed by the government and other official agencies have been followed in full.
- The *Shari'ah Control Board* will be the apex body of the IFICIA. It will examine the proposal from the *Shari'ah* point of view and make sure that none of the *Shari'ah injunctions* have been violated. It will also take care of moral aspects of the deals such as truthful representation of all relevant facts, social relevance, observance of *Shari'ah rules* to a valid contract etc.

### **(b) Islamic Banking and Financial Institutions**

It is also assumed that there will be a number of Islamic banking and financial institutions existing in the country, which will be conducting normal banking and financial business in conformity with the Islamic *Shari'ah* and in accordance with the laws enacted by the State for such institutions. These Islamic banks and other financial institutions may invest their surplus funds in the IFIs, which are issued by other institutions for the development of infrastructure in the economy. In this connection, Islamic banks and financial institutions shall be free to make their own choices, motivated by their own institutional interests. They will neither be forced nor influenced by the government, issuing authority or any other agency to purchase any specific amount of certificates/bonds issued by any other institution. However, the Islamic banking and financial institutions may offer themselves to the issuing authority to be appointed as commission agent for the sale of financial instruments issued by various agencies from time to time.

### **(c) Issuing Institutions**

Let us also assume that some other institutions particularly required for the development of economic infrastructure in the economy also exist. For example, the task of building highways or bridges may be handed over to some specially created specialized agencies such as Highways Construction Corporation (HWCC) or the Bridges Construction

Corporation (BCC). Similarly the tasks of development, construction and management of airports and seaports may be entrusted to Air Ports Development Authority (APDA) or the Sea Ports Development Authority (SEPDA) etc. It is not necessary that ownership pattern of any or all of these institutions may adopt any specific pattern. These institutions may be either in the private sector, or in the public sector or in the joint sector with a participation of both public and private resources. If efficiency is the prime mover, then, it may be advisable to have these institutions in the private sector. However, if equity is the main consideration, then this institution may be in the public sector. Irrespective of the ownership structure, an important consideration is that these institutions should have a legal personality of their own distinct from the government. It is also necessary that their decision-making and financial policies must be free. These institutions may be authorized to issue IFIs from time to time in order to raise funds required for the development of infrastructure. In what follows, an attempt shall be made to show how this can be done using various concepts of IFIs.

### **Mudarabah Bonds**

The concept of *Mudarabah* bonds (which is the same as *Muqaradah* bonds) was evolved in Jordan for the development of *Awqaf* (religious trusts) properties.<sup>47</sup> The concept of *Mudarabah* bonds may be used to mobilize resources for the development of infrastructure in the economy. However, this concept is more likely to succeed in those infrastructure projects, which generate a specific and recognizable income. An example of such infrastructure projects may be highways, seaports and airports where it is easier to distinguish between the user and non-users. Hence, exclusion principle is applicable in some measure. It is only natural to expect that user of these services must be charged some price for the services they use. That is why these projects may be regarded as *revenue generating infrastructure projects*. Furthermore, it is also possible to distinguish between different users on the basis of nature and purpose of their use. For example airport authorities might distinguish between different groups of passengers who pass through the airport or between different airlines, which land at the airport etc. Thus, these users may be charged different prices and it may be used for enhancement of revenues. In short, in all such infrastructure facilities where price is being charged and revenue is being generated, it is possible that *Mudarabah* principle may be employed.

### **Issuance of Bonds**

The bonds will be issued by the agency, which wants to raise resources for the development of an infrastructure project. For instance, let us assume that an agency called the Highway Construction and Development Corporation (UCDC) wants to raise resources to construct a motorway between two important cities. It will prepare a blue print of floating *Mudarabah* bonds worth of, say, 200 million dollars, which is the estimated cost of constructing the motorway. The HCDC submits its proposal including the detailed scheme of floating the bonds, expected revenue streams, feasibility study of the main project etc. to the IFIs and Capital Issue Authority (IFICIA) which will examine the proposal from technical, economic,

financial and *Shari'ah* point of view. If the proposal is found to be in order on all these grounds, the IFICIA may give green signal to the HCDC, which will then issue the bonds along with its prospectus. Conversely, as is standard practice in financial markets, the HCDC may appoint an "issue manager" to manage the issue against an agreed upon fee.

Main characteristics of *Mudarabah* bonds as these may be applied to the infrastructure sector may be described as follows:

1. Each *Mudarabah* bonds will be a document of definite value issued to its owner against the sum of money he gives to the issuing agency for a specific task.
2. The agency will pay back the owner of bonds the principal amount invested in the project as well as a share of the profit made by the project during the period that funds were in use.
3. The bonds will be guaranteed by the government. On behalf of the government, either the central bank or any authorized bank may guarantee to purchase the bonds presented to it on their face value. It should be kept in mind that bond-issuing corporations will be authorities, which are independent of the government. Since the guarantee by a third party is allowed by the *Shari'ah*, the government may guarantee these bonds being the third party having no direct bearing with independent corporations (issuers of the bond) or the individuals (buyers of the bonds).
4. The holder of a bond shall be deemed to own an appropriate unit of the project after it comes into existence for instance, the bonds issued by the HCDC may represent one meter of road length or the bonds issued by the APDA may represent one square meter floor space of the airport etc. The distribution of profit, at the end of the accounting period, may be at a pro rata basis.
5. The proceeds from the sale of bonds shall be diverted to implementation of the project for which bonds have been issued. The feasibility report of the project, or its main features shall be appended to the prospectus of the bonds. The bonds purchaser shall be told specifically the risk factors involved in the project.
6. The bondholders shall be entitled to a part of the net profits of the project as per conditions laid down in the bond.
7. The issuing authority may appoint an Islamic bank as an agent to manage the issue of the bond. The Islamic bank, in this case, shall be entitled to a fee for the services it shall render in marketing the bond. The amount of fee payable to the Islamic bank by the issuing authority may be determined through mutual negotiations.
8. The net revenue of the project may be divided into two parts. One part may be distributed amongst the bondholders as their share in the profits. The other part may be used to purchase back a given amount of bonds. Thus, a portion of all issued bonds will be retired each year. At the end of the period, all bonds would have been purchased by the issuing authority. At this stage the distribution of profit to bond holders would cease, as there would be no bondholders any more. The agency will then become the sole owner of the project.

9. The accounts of each project managed by the issuing authority shall be kept separate so that identification and disbursement of profits remains convenient. However, the projects of which the issuing authority is the sole owner and in which no *Mudarabah* funds are involved may have common accounts. There will be a grace period for the implementation of the project. During this period the bondholders will not be entitled to any share of profit and the amount of bond during this period shall be considered an interest free loan (*Qard Hasan*) from the bondholders to the issuing authority.
10. The issuing authority may issue bonds for more than one project at a time. However, the bonds issued for different projects shall have to be project specific and their implementation, management and accounting systems will also have to be kept separate and distinct.

### A Hypothetical Example

Let us assume that resources are to be raised by an infrastructure development corporation for building an infrastructure project. The corporation decides to float *Mudarabah* bonds in order to raise resources for this purpose. The total resources required for the construction of this project (which may be the construction of a highway or building of a bridge over a river) are M. Some other relevant variables are defined as follows:

N	=	Number of bonds to be issued
M/N	=	Denomination of each bond = m
T	=	Total time period the bonds remain in existence
T	=	$T_1 + T_2$
$T_1$	=	Gestation period of the project
$T_2$	=	Revenue generating period of the project
$R_t$	=	Total Revenue generated from the project at the time t
$E_t$	=	Cost of operating the project at the time t
$P_t$	=	Net profit from the project at the time t = $R_t - E_t$

Considering that bonds will be issued under the conditions of *Mudarabah*, profits will be distributed between the active partner (*Mudarib*) and the owners of the funds (*Rabb al Mal*) in the proportion mutually agreed. Hence we have:

$$P_t = (1 - x) P_t + x P_t \quad 0 < x < 1$$

Where x is the proportion of the profit going to one party. For the sake of simplicity, let us assume that the part of profit due to *Rabb al Mal* is entirely distributed among the bond holders and part of the profit due to *Mudarib* is used completely to extinct some portion of the bonds. Hence, the *Mudarib* will purchase a portion of the bonds from his share of profit.

Thus, average return per bond shall be

$$(1 - x) P_t / N$$

and average rate of return on each bond shall be

$$\frac{(1 - x) P_t}{M} \times 100 = b_t$$

It may be noted that  $b_t$  which represents the rate of return on *Mudarabah* (*Muqaradlah*) bonds is a variable on two counts. It is varying through changing  $P_t$  each year depending upon the performance of the project and business conditions in the economy. Further, it is also changing due to a changing  $M$ . Since all bonds have to be extinct in  $T_2$  years, each year  $N / T_2$  bonds have to become extinct. Thus, each year  $M$  is reduced by  $N / T_2 \times m$  amount. With each year  $M$  will progressively be reduced. This will have a beneficial effect on  $b_t$ . If the profit of the project,  $P_t$  is also rising over time, it will reinforce the increasing trend of  $b_t$ .

However, it may be pointed out that *Mudarib*, which in the present case is the issuing authority of bonds, has to repurchase the bonds, from his own share of profits. This puts an additional constraint for the extinction of bonds. In the present example, if all the *Mudarib*'s share of profit that is  $x P_t$  is used to purchase part of the bond value issued, it will take  $M / x P_t$  years to repurchase all bonds. It shall be the duty of the IFICIA to ensure that bonds are fully extinct within the stipulated period and the scheme is completely viable economically and financially.

A question may be raised that how the issuing authority will purchase the portion of issued bond and which one will be picked up first. Further, why those who are picked are being denied a chance of higher return at a later stage? The issuing authority may declare that it will purchase back a specified number of the bonds. This may be done like over the counter sale and on the first come, first served basis. That is, first instance, at the end of the first year, the bank declares that it will purchase 10,000 bonds. Now, the bondholders who are pressed for liquidity shall sell their bonds to the issuing authority. The bondholders, who could keep their money invested longer in the bonds, shall reap the benefit of higher returns. Next year again the bank will announce that it will purchase another 10,000 bonds and so on. The scheme will go on like this. Of course, it is assumed that more bondholders shall be willing to sell the bonds than the issuing authority is willing to buy. So long this assumption remains valid, the system is expected to work fine. However, if there were only a few bondholders, much lower than the issuing authority would like to have, then what? It may be asserted first of all it is not likely to happen as there are always pressing factors calling for more liquidity. Hence, there will always be a sufficient number of persons who would wish to liquidate their bond holdings. Secondly, even if it happens that bond sellers wish to sell much less than what issuing authority has declared to buy, then there would be a downward pressure on the rate of return of bonds; which would compel others to sell their bond holdings.

### **Perpetual Mudarabah Bonds**

Perpetual *Mudarabah* bonds may be designed as a modified form the Ordinary *Mudarabah* forms discussed above. The ordinary *Mudarabah* bonds are for a fixed term. The perpetual *Mudarabah* bonds could be for an unspecified period. Ordinary *Mudarabah* comes to an end with the extinction of bonds and reverting back of the project to the bond issuing authority. The perpetual *Mudarabah* bonds may remain in existence as long as the project lasts. In other words, the owners of perpetual *Mudarabah* bonds become the partners in the project for an indefinite period. These bonds could be utilized in all those areas of infrastructure development where a large sum of money is required for a long period such as telephones, railways, airports and seaports etc.

The perpetual *Mudarabah* bonds issued to raise capital for such facilities may not only be project-specific but may also be individual specific i.e. the bonds purchased by the buyers may be registered in their names. Although, perpetual *Mudarabah* bonds, as an earning asset, could also be bought and sold on the open market, the requirement of registration may curb any speculative activity.

The perpetual *Mudarabah* bonds owners will also receive a share of profit earned by the project, as bonds owners will be the provider of capital under a *Mudarabah* agreement. The rate of return on these bonds may generally be higher than ordinary *Mudarabah* bonds as, in this case, no provision will have to be made for the extinction of bonds. Instead, all profits due to owner of funds shall be distributed among the bondholders on a pro rata basis.

### **Istisna Certificates**

Anas Zarqa has proposed the issue of Deferred Price Certificate of Indebtedness (DPCs), which is issued by the public authority in order to finance an infrastructure project.<sup>48</sup> The scheme suggested by Zarqa would operate as follows:

The public authority gives specification of the infrastructure project (roads, bridges, dams, etc.) it wants to build. Bids are invited from private investors/contractors who will build the required facilities and sell it to the public authority against a deferred price to be paid in installment. The public authority may issue the Deferred Price Certificates of Indebtedness as the price. The total face value of DPCs shall be equal to total deferred price. The certificates will have different maturities in accordance with the installment plan agreed upon by the two parties.

### **Leasing Certificates**

It is possible to devise a variant of Istisna certificates and extend it to the concept of leasing which is a permissible contract according to Islamic Shari'ah. It may operate as follows:

The public authority announces the specifications of an infrastructure project. The bids are invited from investors/contractors. The public authority issues the leasing certificates worth of the total amount required for the project. For example, if the total estimated cost of the project in question is two million dollars, then, 200,000 certificates bearing a face value of ten dollars each may be issued. After completion, the project may be

handed over to the public authority on the basis of lease against a specific rental. The rental income resulting from the project may be divided by the number of certificates to calculate the yield on each leasing certificate.

Since the yield on certificate is completely independent of the face value of the certificates, the leasing certificates may be made negotiable and traded as an earning asset in the secondary market.

The Istisna and leasing certificates may be used to finance infrastructure projects where any recognizable income is not generated and it is not possible to distinguish between a user and a non-user. Hence, the public authority may provide the service and still involve private resources for making the provision of the services.

### Conclusions

In this paper, an attempt was made to examine such IFIs that may help in raising resources for the development of economic infrastructure in the Islamic countries, which mostly lack in adequate infrastructure facilities. Hence, if ways and means could be found through which private sector could be associated with the development of economic infrastructure, it may augur well for economic development in these countries. The use of IFIs offers a way through which private resources could be mobilized for the development of infrastructure. Nevertheless, use of IFIs shall be feasible only if financial markets are well developed.

It also appears necessary to spell out the distinction between the "Islamic modes of financing", "Islamic instruments of financing" and "IFIs". Although it has been found that these expressions have been used rather indiscriminately and interchangeably in the relevant literature, it is prudent to make clear distinction between them so as to avoid confusion. It is pointed out that while it may be legitimate to speak synonymously of Islamic modes of finance, and Islamic instruments of finance for activities like *Murabaha*, *Musharakah* and *Mudarabah*, it may not be completely justified to refer to these activities as to IFIs, which is altogether a different connotation.

This study makes a brief survey of evolution of IFIs some of which have been used in actual market and many others are still at the proposal stage. Such IFIs include: Participation Term Certificates, Housing Certificates, *Mudarabah* Certificates, Islamic Certificates of Deposits, Investment Certificates, and *Muqaradah* Bonds etc.

The study also examines various issues involved in financing of infrastructure. Since most of infrastructure facilities exhibit the characteristics of public goods- non-excludability and non-rivalness, it is customarily held that finance for infrastructure must be provided through public budget. In view of current move of privatization, there is renewed thinking on the issue of financing of infrastructure. Hence it is considered desirable, particularly from the efficiency point of view, to involve private resources in the provision of infrastructure.

Among the economic infrastructure, there may be a number of facilities, which show dominant characteristics of a private good; hence they generate revenue, which are

identifiable and measurable. In all such cases principle of profit sharing can be applied. Consequently, the study develops a scheme of *Mudarabah* bonds, which may be used to raise resources for development of economic infrastructure. In this connection, a plea has been made for the evolution of an appropriate institutional framework by establishing new institutions like Islamic Financial Instrument and Capital Issue Authority (IFICIA), which shall oversee the development of financial instruments and their use in accordance with the injunctions of Islamic *Shari'ah*.

## NOTES

1. I am thankful to a friend, who read an earlier unpublished draft, for drawing my attention to these important characteristics of Islamic financial instruments.
2. A number of good studies are now available on explanation of these concepts. For an introductory treatment, see Hamid Husain Hassan, "The Jurisprudence of Financial Transactions" in Ahmad and Awan (1992). More sophisticated treatment can be seen in Hussein Hamed Hassan (1993) and Sami Al Suwailem (2000).
3. In discussions regarding Islamic banks a problem may occur that is that of definition. Some banks may be regarded more Islamic than others while some other may not be regarded Islamic at all, though these banks may describe themselves as an Islamic bank. Some times it is argued that not *all* Islamic banks operate within the bonds of the *Shari'ah*. However, it may be pointed out that a large number of Islamic banks *do* operate within the bonds of *Shari'ah*. An objective and institutional criterion for the Islamic nature of Islamic banks may be the existence of a *Shari'ah* control board. Many Islamic banks have a special board of *Shari'ah* scholars attached to them, which oversees their operations and makes sure that *Shari'ah* rules are not violated. This existence of such boards shall go a long way in spelling out the impression that some Islamic banks may not operate within the bonds of the *Shari'ah*. However, some times doubts are raised even about authenticity of *Shari'ah* boards themselves. There is a distinct possibility of conflict of interest if the scholars attached to the Board are employed by the Bank. Therefore many people plead for an independent *Shari'ah* board.
4. Various aspects of Islamic reforms of banking and financial system in Pakistan may be seen in *Elimination of Riba From the Economy*, Islamabad: Institute of Policy Studies, 1994. Particular reference may be made to Ghulam Rasool, "Role of *Mudarabah* Floatation in Pakistani Capital Markets", and Ebrahim Sidat, "Legal Framework for an Islamic Financial System with Reference to Company and Mercantile Law" in the same book.
5. For a review of introduction of Islamic financial system in Malaysia see Ausaf Ahmad, *Towards An Islamic Financial Market: A Study of Islamic Banking and Finance in Malaysia*, Jeddah: Islamic Research and Training Institute, 1997.
6. I am thankful to a friend for pointing out this distinction.
7. A random list of Islamic financial instruments, suggested by the Islamic economists and bankers from time to time might include: Participation Term Certificates (PTCs), Profit and loss Sharing Certificates of Investments (CIOs), Term financing certificates, *Mudarabah* certificates, Specific *Mudarabahs*, Equity Financing Certificates, Commodity linked Bonds, and Zero coupon Bonds etc. M.A. Mannan has suggested no less than 10 different financial instruments including loan certificates, indexed loan certificates, Islamic commercial papers, integrated investment bonds,

profit sharing certificates, expected rate of dividend certificates, rent sharing certificates, firm commitment certificate, Zakah certificates, and Human capital certificates. For details see: Mannan, M. A. (1990) *ô An Appraisal of Existing Financial Instruments and Market Operations from an Islamic Perspectiveö* in Ariff, Mohammad and Mannan, M. A.; (ed.) *Developing A System of Islamic financial Instruments*, Jeddah : Islamic Research and Training Institute, Islamic Development Bank, p. 96. Also see Mannan, M. A. (1993) *Understanding Islamic Finance: A Study of Securities Market in Islamic Framework*, Jeddah: Islamic Research and Training Institute, Islamic Development Bank, pp. 75 - 83.

8. Ariff, Mohammad and Mannan, M.A. (ed. 1990) *op.cit.* p. 97.
9. Mannan, M.A. (1993) *op.cit.*
10. For example, it may be mentioned that, five case studies from different Islamic banks located in Egypt, Sudan, Malaysia, Bangladesh and Pakistan were presented at an international seminar on Developing a System of Islamic Financial Instruments that was held in Malaysia in 1986. The authors of most of the papers presented at this seminar, with the exception of the paper on Pakistan, mistook Islamic mode of finance for Islamic financial instruments and invariably used them interchangeably. This was recognized in the seminar itself. Mohammad Ariff, in course of a discussion on a paper *ôstressed the need to make a clear distinction between institutions and instrumentsö*. In this regard he pointed out that *Mudarabah*, *Musharkah* and *Murabaha* all represent modes of financing and not specific instruments. He lamented that much of the discussion centered on modes of financing rather than on individual and specific instruments as such. See: Ariff, Mohammad and Mannan, M.A.; *Developing a System of Islamic Financing Instruments*, Jeddah: Islamic Research and Training Institute , Islamic Development Bank, 1990, p.74.
11. The Concise Oxford Dictionary p. 650.
12. *ibid*, p.520.
13. Hassan, Hussein Hamid, "Financial Intermediation in the Framework of *Shari'h*" in Ariff, Mohammad and Mannan, M. A. (Ed. 1990), p.27.
14. However, in the current literature dealing with Islamic finance a clear-cut distinction between financial instruments and instruments of financing is seldom made and maintained, which is the source of much confusion in the discussion dealing with the subject. For instance, see Qureshi, D.M. The Role of *Shari'ah* based Financial Instruments in a Muslim Country in Ariff, Mohammad and Mannan, M.A. (Ed. 1990) pp. 49-67.
15. Resolution No. 5 concerning *Muqaradah* bonds and investment certificates approved by the Council of the Islamic *Fiqh* Academy during its fourth session held in Jeddah, Kingdom of Saudi Arabia from during 8-12 *Jumad al Akhira* 1408 H (6 - 11 February 1988). Please note that the aforesaid resolution has not been quoted verbatim. Instead, some phrases have been reworded in the interest of clearer exposition. However, full text of the resolution in its English translation as published by the Academy is reproduced in the appendix for interested readers.
16. For further information on the PTCs, see Khan, M. Fahim (1992) A Case Study of the Application of Profit Sharing Contract in the Banking Sector of Pakistan in Al Al Bait Foundation (1992) *Investment Strategy In Islamic Banking*, Amman: Al -Al Bait Foundation, pp. 250-286 and Qureshi, D.M.(1990), The Role of *Shari'ah* Based Financial Instruments in a Muslim Country in Ariff, Mohammad and Mannan, M.A. (Ed. 1990)N pp. 49-67. Also see Ebrahim Sidat, Legal Framework for an Islamic Financial System with reference to Company and Mercantile Laws in

- Institute of Policy Studies (1994), *Elimination of Riba from the Economy*, Islamabad: Institute of Policy Studies pp. 237 - 257.
17. Khan, M. Fahim (1992), p. 269.
18. Ebrahim Sidat (1994), p. 246.
19. *ibid.* p.246.
20. Qureshi, D.M. (1990), p.61.
21. Ebrahim Sidat (1994), p.242.
22. For details see Buyukdeniz (1991).
23. Ahmad, Ausaf (1993).
24. For further details on Mudarabah as being practiced in Pakistan, see Rasool, Ghulam (1994) pp. 217-36.
25. These and other details are available in Qureshi, D. M. (1990), also see Rasool, Ghulam (1994) and Khan, Tariqullah (1994).
26. Tariqullah Khan, *Redeemable Islamic Financial Instrument for Capital Participation in Enterprises*, Jeddah: Islamic Research and Training Institute, 1995.
27. El-Hannawi, Mohammad (1993) pp. 57-70.
28. The proposal to have ICDs of maturity more than two years is based on the fact that the central banks in most of the Islamic countries require a portion of time deposits of maturity less than two years to be deposited with the central bank as reserve. The deposits have maturity more than two years are exempted from reserve requirement.
29. El- Hannawi, Mohammad (1993) pp. 64-65.
30. For explanation and rationale of prohibition of *Riba*, Islamic alternative to commercial banking and other related issues, available literature on Islamic banking may be consulted. Particularly see, Siddiqi, M. N. (1973) and Siddiqi, M.N.(1983).
31. For details on Islamic financing techniques see Ahmad, Ausaf (1987), Ahmad, Ausaf (1992). A good review of Islamic financing techniques is also available in Ahmad, Ziauddin (1989) and Ahmad, Ziauddin (1994).
32. Siddiqi, M.N. (1983).
33. Chapra, M. Umar (1985) p.161.
34. Chapra, M. Umar (1985) p. 162-63 also p.197.
35. Chapra, M. Umar (1982).
36. See Mohammad Ariff's comment on Chapra's paper in Ahmad, Ziauddin et. al (eds. 1983) p.49 and Mohammad Saqr's comment on Chapra's paper in Ariff, Mohammad (1982) p.185. Also see Ahmad, Ausaf 1993-B) pp. 25-26.
37. Attention to these points was drawn by an anonymous referee whose contribution is gratefully acknowledged.
38. Siddiqi, M.N. (1991) p. 21.
39. Siddiqi, M.N. (1991) p. 28.
40. For an attempt to develop a financial instrument on the basis of *Mudarabah*, See Khayrullah, Walid (1994) pp. 79-102.

41. For instance Siddiqi (1991) argues that sharing is a superior contract than hiring. Also see Zakariya Man, "Islamic Banking 2: The Malaysian Experience" in Ariff, Mohammad (1988) pp. 66-102. Zakariya Man considers financial techniques such as *Murabahah*, *Bai' bith thaman ajil*, and *ijarah* as "second line techniques. In contrast to this, *Mudarabah* and *Musharakah* are considered to be as "first line techniques."
42. For a detailed discussion of these techniques as they are practiced by various Islamic financial institutions, see Ahmad, Ausaf (1992).
43. Hammad, Nazih (1994).
44. Zarqa, Mustafa Ahmad (1994).
45. More details are available in Ausaf Ahmad (1993).
46. With the emergence of capital markets and increasing integration of national financial markets with the international market, several developing countries have established similar agencies which provide institutional framework and oversee the rules of games in financial market. Malaysia and India could be cited as examples.
47. See Khayrullah, Walid (1994) pp. 79-102.
48. See Zarqa (1991) for details.

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