

Islamic Economic Principles

Book 1

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1. HONESTY AND COMPASSION IN MONETARY MATTERS, CLEAN LIVING AND HONEST TRADE

2. KINDNESS AND COMPASSION IN MONETARY DEALINGS

3. WEALTH

4. SPENDING

5. CHARITY

6. INVESTMENT

7. The *Bait-ul-Maal* (Public Treasury)

8. INTEREST

- a. Cancellation of Ribaa**
- b. The person who takes or gives interest**

9. DEBTS

- a. Repayment of Debts**
- b. Debts of the deceased and the severity of debt**
- c. Discharging a debt in a better way than the original debt obligation**
- d. Procrastination in payment**

10. GHARAR

1. HONESTY AND COMPASSION IN MONETARY MATTERS, CLEAN LIVING AND HONEST TRADE

Islam has condemned all unclean and unlawful means of making money as wicked and sinful. It has also denounced all profits derived from such means as filthy and unlawful. On the contrary, it has proclaimed great virtues in seeking one's livelihood honestly and in engaging oneself cleanly in trade or any profession.

The Prophet (S.A.W.) has said:

1. "To earn a clean living is also a duty next only to the prescribed duties of faith."
2. "The cleanest food is that which has been earned by the labour of his own hand. Indeed, the Prophet, Dawood (A.S.) used to work with his own hands for the food he ate."
3. "The trader who plies his trade cleanly and honestly will rise in the Hereafter [in the company of] the Prophets, saints and martyrs."

2. KINDNESS AND COMPASSION IN MONETARY DEALINGS

Islam has laid great stress on honesty and truthfulness in trade and other monetary dealings and described profound virtue and excellence in it. It has declared it to be a means of gaining nearness to Allah. Islam, likewise, enjoins us to be kind and avoid harshness and severity in our monetary transactions and has also promised great spiritual advantage in decent trade etiquette.

The Prophet (S.A.W.)'s traditions state:

1. "Blessings of Allah be on him who is mild and gentle in his business transactions and in the realization of his dues."
2. "Allah will protect, from the agonies of the Day of Judgment, him who allows respite to a poor and indigent servant of His in the payment of his debt or writes off the debt (altogether or part of it)."

The above traditions are meant for merchants and other wealthy people from whom people borrow money in the hour of their need or unto whom people are indebted.

3. WEALTH

Allah says: "And Allah presents the example of a village whose inhabitants truly believed in Him, (a village whose) sustenance came easily from each place. It then became ungrateful to the Allah's gifts due to which Allah made it taste the pangs of hunger and fear."

Wealth is the gift of Allah. He may freely remove it from your possession whenever He desires. It is therefore our function to appreciate Allah's gifts and to utilise these in a manner prescribed within the confines of Islamic Law. We must also regularly and punctually discharge any religious obligations relative to accumulating wealth, the most important of which is the discharging of Zakaah and making Haj when you have the financial means.

4. SPENDING

Our finance must not be spent in sin to aid aggression, in extravagance or unproductive avenues. Wealth must be spent in moderation. Many Muslims hasten to un-Islamic investment schemes for capital gain while Islamic avenues are available or could be created for protecting the monetary and purchase power of your wealth. We cannot contract into Haraam insurance policies unless legally obliged to do so by legislation and other obligatory contractual agreements that we are bound in secular society.

5. CHARITY

Rasulullah (S.A.W.) encouraged the giving of charity. It is a manifestation of not being niggardly. It also shows our concern for those less fortunate and is our expression of gratitude to Allah for the gifts that He bestowed us.

6. INVESTMENT

The Arabic term for investment is "*Istismaar*." This word is an abstract noun that is derived from the Arabic word "*thamar*" that means "fruit." The common noun "fruit" is used in Arabic to figuratively refer to all the diverse forms of wealth. [Refer to the Arabic dictionary titled *Al-Bahr-ul-Muheet* by *Abu-Hayyaan Al-Tawhiedi*]. Linguistically, the noun "*istismaar*" means "to seek fruit."

Investment, itself, is not profit. It is a means to acquire profit. However, the objective of the forms of investment is to realise profit.

Investment can be in new projects, for the completion of standing or operating projects, for the renewal of existing projects or for those that are to be undertaken in the future. Investment could be in property purely for expected appreciation in value or may be inclusively related to acquire rentals. Goods or various market products are purchased or produced for selling or keeping. You could even invest in foreign currency. Investment can be in the agricultural, industrial or trade sector or in any other service or professional service related segment of the economy.

The multitude of investment forms exist within the economic system and each form attracts and appeals to specific types of clients in relation to the capital they can outlay from savings. Some categories, like shares, attract clients from a broad spectrum but each investor or unit of investors purchase into the investment product in relation to their

capital and each group limits their investment period to diverse time frames in conformity to their personal or institutional financial needs.

However, investment must be in avenues permitted by the *Shari'ah* so that the returns thereof are "*halaal*." It is prohibited to invest in interest-bearing financial contracts or instruments, in gambling or in items like wine & pork, which the *Shari'ah* has prohibited. Neither can you buy shares in companies that primarily deal in commodities that are prohibited by the *Shari'ah*.

Investment can also be through "*Musharakah*" (i.e. partnerships). Finance could also be extended to trusted people and companies to invest and manage. The latter mode of investment is termed as "*Mudharabah*."

The objectives of investment are many:

1. To protect the purchasing power of money and to increase its quantity.
2. To abstain from poverty and from seeking the assistance of others.
3. To improve one's income for the sake of acquiring education or other needs of life.
4. To enable economic conditions to improve.
5. To fulfil the requirements of citizens and other people.
6. To strengthen one's Islamic personality so that you are not obligated to others.

7. The *Baitul-Maal* (Public Treasury)

The Public Treasury has been incepted in Islam for the accumulation of State income and for the just distribution of such resources into diverse social and economic avenues. The State income comprises of Zakaah, voluntary contributions, taxes and investment income.

The Public Treasury aids various categories of people who deserve assistance.

Those in debt are also aided to discharge specific debts, which they are incapacitated from discharging. Debts of the deserving deceased could also be discharged from the Public Treasury.

People who have lost all their possessions are given aid to the extent that fulfils their exigent necessities. Each social case would be dealt with in conformity to its unique framework and would be aided to the extent that the *Baitul-Maal* or any of its divisions is financially capacitated. Islamic charitable institutions in non-Islamic states do fulfil some of the functions of a Bait-ul-Maal.

The early Bait-ul-Maal function was served through the very Masjid of Nabi S.A.W. without the creation of a separate physical structure. However, in our era, we could say that the entire State revenue, tax, financial and welfare divisions would form part of the Bait-ul-Maal.

8. INTEREST

a. Cancellation of Ribaa

On the occasion of "Hijjatul-Widaa - the Farewell Hajj", Rasulullah (S.A.W.) said: Know well, every bit of Ribaa (interest) which has been contracted into during the period of "Jaahiliyyah - pre-Islamic ignorance" is now cancelled. You will have the capital of your wealth. Do not oppress and you will not be oppressed." [Refer to Abu Da'ud, chapter no.5, part of hadith 3318].

The following inferences are made from the above hadith:

1. Muslims who have previously granted interest bearing loans cannot demand the interest portion of such loans. They will have to only accept and demand their initial capital that was given as a loan immaterial whether such loans were made to Muslims or non-Muslims.
2. Since the hadith was addressed to Muslims, the wording "You will have the capital of your wealth" does not imply that Muslims who owe interest to non-Muslims are now freed of their interest obligation to non-Muslims.
3. Any non-Muslim who accepts Islam, and to whom others are obligated to by interest payments, will have to relinquish such interest gains and accept his capital outlay of the loan only. Converts to Islam will be forgiven for all their previous interest accumulations but will have to forfeit any outstanding interest debt at the instance of accepting Islam.
4. Muslims have been, from that moment, prohibited to contract on the basis of interest.
5. Muslims who have subsequently taken interest from any other person, will be obligated to return the interest as ignorance or violation of the Shari'ah does not permit them any prohibited gain.

Munzari states that the above hadith is also quoted by Tirmizi, Nasaa'ie, ibn Majah and Muslim.

b. The person who takes or gives interest

Abdullah bin Mas'ood narrates from his father who stated: "Rasulullah (S.A.W.) cursed the eater of Ribaa (interest), the one who provides (gives) interest, he who is "*Shaahid* - witness" to it (i.e. the transaction) and also the person who records it." [Refer to Abu Da'ud, chapter four, hadith 3317].

The hadith uses the word "eater" despite that the prohibition equally applies to the person who has taken the interest without actually having eaten any form of food or who has utilised the interest proceeds for any other person's needs. Thus, the word "eater" is used in the sense of "taker."

The above hadith is narrated through different narrations by Tirmizi, ibn Maajah and Muslim. Part of it is also found in Bukhari.

Imaam Nawawi, a Shafi scholar, expressed that the hadith prohibits the recording of interest related transactions as well as being witness to it. It thus prohibits a Muslim to assist "*Baatiel* - Islamically invalid activity".

9. DEBTS

a. Repayment of Debts

As for the borrowers, the Prophet (S.A.W.) used to urge them to do their best to pay back their debts quickly lest they die in a state of indebtedness, with the claim of anyone laying unsettled on their heads.

The strictness of the Prophet (S.A.W.) in this regard can be imagined from the following two traditions that are quite sufficient to show the great importance Islam attached to monetary affairs and the rights of men:

1. "If a person is killed in the path of Allah, all his sins will be forgiven (by virtue of his martyrdom but if he owes anyone anything, even his martyrdom will not secure his release from it."
2. "By the Lord in whose power rests the life of Muhammad, if a person falls as a martyr in the path of Allah and returns to life, and is killed again in the path of Allah and returns to life only to be killed once more in the cause of Allah, and there is still a debt outstanding against him - even he will not be able to enter Paradise (until it is settled)."

May Allah grant us the wisdom to understand the significance and gravity attached to debt and to make it our constant endeavour to ensure that no person's claims are left unsettled by us.

Those indebting themselves should do so for rightful wants and need fulfilment, and work towards fulfilment.

b. Debts of the deceased and the severity of debt.

Samurah narrates: Rasulullah (S.A.W.) lectured us saying 'Is there anyone here from "Bani Fulaan" (i.e. the offspring of a certain person)?' No one replied him. He then again said: 'Is there anyone here from "Bani Fulaan"?' No one again replied him. He then said 'Is there anyone from "Bani Fulaan"?' A person stood up saying: 'I, O Rasulullah.' He asked: 'So what prevented you from answering me in the first two occasions? Know that I did not intend to mention (anything) about you except good... Your *Saahib* (i.e. the deceased of your family) is prevented (from entry into Jannah) due

to his debt.' [Samura stated]. I then saw that it was repaid on his behalf until none remained to claim any further amount from him.

[Refer to the chapter pertaining to "warning against debt - Tashdeed fied Dain", hadith no. 3325 in the Book of Sales, Abu Da'ud]

The above incident took place when Rasulullah (S.A.W.) attended the funeral of one of the Sahaaba. Since he was the final Nabi and Rasul (messenger) of Allah, he was inspired with the fact that the deceased was to be prevented entry into Paradise due to his unsettled debts. Rasulullah (S.A.W.) preferred the benefit of the deceased by having his debt settled.

This is an example to us to be free from the bondage of debt. Money is not a commodity like sand. It should not be wasted nor spent beyond necessity. A path of moderation without extravagance must be chosen. Too much of luxury is detrimental not only to the spiritual self, but also to our material well being. The hadith does not say that the Sahabi spent his money in the wrong way. It only highlights the issue of debt. It is better to live a peaceful life with liveable wages than to aim to own sky scrapers only to be faced with liquidation, sequestration and legal charges and attending courts if our financial affairs are not set straight. Islam does not deny prosperity or wealth. However, these must be earned in conformity to the laws of Allah and without depriving others of their rights. Paying debts earlier will save a person from the problems and agonies associated therewith. It will also enable the creditors to fulfil their obligations. People, today, unfortunately hold back loans in order to capitalise on possible profits. They fail to fulfil their contracts and in the end, at times, suffer the fate of not obtaining loans or credits in the future. On other occasions, they loose their entire capital and are unable to even settle their debts. Others, very cunningly, acquire goods on credit or take debts with the absolutely purpose of usurping the wealth of others and with no intention of repayment. Such persons must be dealt with the full arm of the law.

Muslims are also encouraged to fulfil the debts of the deceased so that the latter are freed of such obligations in the hereafter. It also provides a degree of credit protection to possible creditors and highlights the importance that Islam has given to debt fulfilment.

Debts due from deceased estates must however be compulsorily discharged before distribution to any inheritors.

c. Discharging a debt in a better way than the original debt obligation

Abu Raafi states: Rasulullah (S.A.W.) borrowed a young camel. He thereafter received Sadaqah camels (i.e. those camels given by the people to discharge their Sadaqah "Zakaah"), so he ordered me to discharge to the person (creditor) his young camel. I thus said (to Rasulullah S.A.W.) "I did not find among the camels except a choice camel that is Rabaa'ie (i.e. which is in its seventh year)." Rasulullah (S.A.W.) then stated: "Give him that very one for surely the best of people are those who best fulfil their obligations." [Refer to Abu Da'ud, hadith no. 3330, The Book of Sales in the 11th chapter i.e. "Baab Fee Husniel Qadhaa"]

Imam Nawawi states that it is permissible for the lender to take more (than his loan) immaterial whether that is in the form of better quality or greater number (provided that this is voluntarily provided by the borrower who has not been obligated to the same by the creditor).

Imaam Maalik states that to return a debt (of articles loaned) with an increase in number (by articles of a similar or other genus) is prohibited. Other scholars refute Imaam Maalik's view by stating that the wording of the hadith "Ahsanuhum Qadhaa'an" (i.e. He who is best in payment) is general and not specific to quality despite the fact that the better discharge by Rasulullah (S.A.W.) in the aforementioned hadith was by quality and not an increase in number.

Haafiz Munzari states: "The hadith has been quoted by Muslim, Tirmizi, Nasaa'ie and ibn Maajah".¹

The above details have been extracted from the commentary of Abu Da'ud entitled "Aunul Ma'hbood" by Allamah Abu-tt-Tayyieb Muhammad Shamsul-Haqq Al-Aziem-Abaadi.

The view of Imaam Maalik could also be refuted if precepts from the Sunnah are furnished to express that an increase by number is also permitted.

d. Procrastination in payment

Rasulullah (S.A.W.) said: "*Matal'* (Procrastination) of a 'Ghani' (wealthy or capacitated) person (in the discharge of debt) is '*Zulm'* (oppression) and if any one of you (i.e. creditors) is referred to an able person (i.e. the debtor and transfers liability of the debt to another person) then he (the creditor) should accept. [Refer to Abu Da'ud, hadith 3329, The Book of Sales, Chapter pertaining to Procrastination].

The author of "Aunul Ma'hbood" quotes Imaam Nawawi who views that the order in the hadith pertaining to cession is not an obligation but a preferred option. Imaam Nawawi states that this is the view of the Shafi scholars as well as that of most scholars of other schools of thought.

Haafiz Munzari states: "The above hadith has been quoted by Bukhari, Muslim, Tirmizi, Nasaa'ie and ibn Majah. The hadith is therefore authentic.

Procrastination in payment is detested when one is financially capacitated to discharge the debt since this is equivalent to holding back capital which the creditor requires for his immediate or other needs. Alternatively, such deferment prevents the creditor from possible profitable investment. Even if the above two cases were not pertinent, then too, the creditor is more rightful and entitled to hold his money. Violating his right is therefore "oppression" which allows the creditor to take legal proceedings against the debtor. Debtors have to be clean-hearted and grant people their dues.

¹ The hadith is therefore authentic and valid for inferential purposes.

Who is liable to pay legal and other costs entailed in the procurement by the creditor of his debt? This question has arisen due to the extension of the economic circle of human activity and, in a nutshell and conclusively, the debtor is liable for costs incurred by the debtor to retrieve the debt. Legal costs would also be included in this regard.

10. GHARAR

Abu Huraira states: Verily, Rasulullah (S.A.W.) prohibited the "Gharar - mode of sale.

[Refer to Abu Daud, hadith 3360, Chapter 25].

Haafiz Munzari states: "The hadith has been extracted by Muslim, Tirmizi, Nasaa'ie and ibn Majah." The hadith is therefore authentic.

Gharar, as explained in "Aunul Ma'hbood," refers to an unknown factor that would impair the validity of a contract, e.g. the sale of a slave who, despite belonging to you, has fled.

The selling of such a slave to another will imply that the purchaser cannot assertively ascertain when such an item would be delivered to him. The same applies to free and uncaught birds in the wild or fish in rivers or the ocean since we do not exactly know when or whether such a bird or fish will be caught. Countries or institutions would likewise not be allowed to sell stock of fish in its ocean boundary or other animals in their natural habitat until such animals have been caught and delivery can be made.

The concept of gharar and the idea behind its prohibition can be extended to various contracts, e.g. property that is legally subject to claims from other parties should not be sold until the legal dispute and claims are settled since the purchase of such a property can cause the purchaser loss if valid claims and entitlements lead to the loss of ownership.

The issue of "Gharar" also comes to play when the seller/offeror offers an item for sale without any description of it since the intending purchaser is prevented from valuation of the same at the time of the contract e.g. if the seller says "I offer you my home in city X for Y Riyaals". The client is given no description as to the size, area, condition, age etc. A purchase without proper consideration would thus be detrimental to the buyer. The seller is likewise prohibited from this deal as it would lead to arguments against him.

The contract of sale must therefore not be made on an absolutely unknown factor that cannot be fairly defined or ascertained within reasonable grounds or upon something that the seller cannot, immediately or in the future, provide.

Rasulullah (S.A.W.) prohibited this form of sale to protect peoples wealth from being destroyed and to prevent disputes between people.

There are many forms of "Gharar" which trading parties are best enabled to discern and notice in the context of their transactions.