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Invention and Innovation in Islamic Finance: Where to Look?

Invention means the creation of a new idea or product; while, innovation involves improving an already existing idea or product. These two concepts are very crucial for an organization to survive in any specific industry, or in the world generally. This is mainly due to the fact that in today's capitalist economic system the prevalence of cut-throat competition is a basic norm. Don Sheelan was quoted by Chapra (2008) saying:

"Innovation is the lifeblood of an organization... without it, not only is there no growth, but, inevitably, a slow death." Like any industry, the finance industry is also deeply indelible in the fierce competition. Therefore, these two concepts are also very important for any financial institution to thrive in the global financial market.

The Islamic finance industry is contemporarily a niche area in the global finance sphere that has its own Institutions, i.e. Islamic financial institutions (IFIs), which are the main players in this industry. It is still a relatively new industry and also comparatively small, USD 1.35 trillion (Thomson Reuters, 2013). Due to the infancy of the industry, it faces several challenges and issues regarding sustainability and progress. In order to survive, it requires the initiatives of novel ideas and innovative products. It cannot be emphasized enough the importance of further development of the existing Islamic financial products, acknowledging some meaningful improvement, will ascertain the overall growth and efficiency of this industry.

To develop Shari'ah compliant products based on creativity and sound commercial viability, the IFIs are required to have not only a firm grasp of business and financial issues but also vast knowledge of Shari'ah principles. Therefore, on one hand, the Islamic financial products need to be robust in commercial and business terms, and on the other, their basis must be endorsed by Shari'ah principles. Beside this theoretical backdrop, it can be observed that the current process of product development and financial engineering is highly influenced by conventional products, although the Shari'ah compliance aspect is taken into consideration. This means that the main underlying idea and basis are borrowed from the conventional system, while the Shari'ah is perceived as mere restriction. The main concern is that the conventional financial products reflect the nature and spirit of their own specific system (i.e. capitalism), which is an inseparable attribute of these products. Due to such approach, the Islamic finance industry has been criticized by many for merely replicating its conventional

counterpart. Chapra (2008) expresses his concern that the Islamic financial system is lacking authenticity, and has not achieved the Islamic vision yet. Moreover, this behavior also undermines the Shari'ah as the basis for invention and innovation in the Islamic finance industry.

Perhaps it is time for the Islamic finance industry to search more into the right direction for innovative ideas and products. If Islamic finance industry wants its products to stand apart from the conventional financial products, and surely it should, then it needs to change its approach. It is time for this industry to go back to the basics, i.e. sources of Shari'ah, and discover what Shari'ah has to offer to the financial world. The Messenger of Allah, may Allah bless him and grant him peace, said:

"I have left two matters with you. As long as you hold to them, you will not go the wrong way. They are the Book of Allah and the Sunnah of His Prophet." (Malik, Muwatta, n.d.)

The above hadith infers that Muslims should consult with the sources of Shari'ah in all matters, in order to remain on the right path and economic and financial issues are not an exceptional to this. The same inference can be considered when it comes to the innovation in Shari'ah compliant product development and financial engineering. Therefore, the author believes that if the sources of Shari'ah are carefully examined and analyzed for the purpose of product development and financial engineering, the Islamic finance could become more authentic and more aligned to the Islamic vision (i.e. Maqasid al-Shari'ah).

For the purpose of a brief demonstration, this article offers an example of a secondary source of Shari'ah and discusses its role in the Islamic financial system. Fatwa of a companion of the Messenger of Allah, peace be upon him, (or Qawl al-Sahabi) is a secondary source of Shari'ah. The term refers to any opinion of a Sahabi on religious issues that is based on his/her own Ijtihad (independent reasoning). In classical Usul al-Fiqh books, scholars debated on whether the Qawl al-Sahabi is binding proof or not. There are six opinions about the bindingness of Qawl al-Sahabi.

1. Qawl al-Sahabi is not a binding proof upon any Mujtahid. This opinion is held by al-Amidi and also one of the views held by Imam Ahmad and Imam Shafi'i.
2. The second view, which is held by some Hanafi jurists including al-Karkhi, is that the Qawl al-Sahabi is binding only when it is related to any non-Ijtihadi matters.

3. The third view, which is similar to the second view, is that the Qawl al-Sahabi is binding only when it goes against the analogy (Qiyas). This is the view of al-Karkhi (second opinion) and al-Ghazali.
4. The fourth view is that of Imam Shafi'i (second opinion). He opined that the Qawl al-Sahabi is only a binding proof when it is supported by analogy (Qiyas).
5. A small group of jurists held the view that only the Fatwa of the four rightly guided Caliphs is binding.
6. The sixth view considers Qawl al-Sahabi as an absolute binding proof and is preferred over mere Qiyas of a Mujtahid. However, they expressed that if the Qiyas of a Mujtahid is based on the higher sources of Shari'ah then it will overrule Qawl al-Sahabi. This view is held by majority of the jurists, i.e. Hanafis, Malikis, Imam Ahmad (according to one of his views) and Imam Shafi'i (according to one of his views).

Al-Shatibi mentions that beside the differences of opinions on whether Qawl al-Sahabi is binding, most of the jurists tend not to contradict with the fatwa of Sahabi. They mostly try to base their arguments on Qawl al-Sahabi whenever it is applicable.

There are many examples of Qawl al-Sahabi in Islamic jurisprudence, particularly in the Islamic law of contract which are directly related to Islamic finance. For instance, al-Tabarani narrates in his Mu'jam:

Abdullah Bin 'Abbas (may Allah be pleased with him) narrates that the messenger of Allah (peace be upon him) said: if you have bought food then do not sell it until you take possession of it. Ibn 'Abbas said: I think other items are also like food in sale.

From the above narration, it is observed that Ibn 'Abbas issued a fatwa that, not only food items but, all the goods cannot be sold unless they come under the possession of the seller. Shafi'is, Hanafis and Hanbalis also agree with this opinion. This ruling plays a crucial role in the sale contracts. A significant influence of this fatwa can be easily observed in most of the sale contracts which are embedded in the Islamic financial products, as the real ownership is a condition for the validity of any sale contract used in Islamic finance industry.

Another good example of Qawl al-Sahabi is the usage of Bai' al-'Inah in Malaysia. It is sale and buy back transactions between the contracting parties. Al-Zela'i states that the wife of Zaid Bin Arqam (may Allah be pleased with him) visited 'Ayesha (may Allah be pleased with her) with a slave girl. She told 'Ayesha that she sold that slave girl to Zaid for 800 dirhams on credit and bought her back from him for 600 dirhams on cash. 'Ayesha replied to her:

“What a bad thing you bought and what a bad he bought. Inform Zaid Bin Arqam that he has spoiled his Jihad with the messenger of Allah (may peace be upon him), unless he repents”.

From the above narration, it can be seen that the practice of a companion provides proof for the permissibility of Bai' al-'Inah; while, the fatwa of another companion declares it otherwise. From this narration, Hanbalis and Malikis understand that Bai' al-'Inah is not permissible, basing their opinion on the fatwa of 'Ayesha. Imam Abu Hanifah deems this sale as defective, while al-Shaibani considers such sale as detestable. Imam Shafi'i, Abu Yusuf and Zahiris allow such sale, basing their opinion on the practice of Zaid Bin Arqam. Therefore, Shari'ah Advisory Councils (SACs) of Bank Negara Malaysia and Securities Commission Malaysia allow Bai' al-'Inah agreeing with Imam Shafi'i's opinion. Subsequently, the concept of Bai' al-'Inah has been utilized in many liquidity instruments, money market and Islamic capital market in Malaysia. This example finely produces evidence about how Qawl al-Sahabi leads to different juridical opinions regarding the issue, which lead to a variety of Islamic financial products. It may be clear from the examples above that Qawl al-Sahabi, or sources of Shari'ah in general, can offer a great deal of novel ideas for the creativity in coming up with a vast array of financial products. Therefore, it can be re-emphasized that a holistic approach towards the sources of Shari'ah should be adopted, which will not only increase the authenticity and reliability of the Islamic financial products, but also help bridging the gap between the theory and practices. This will ensure that the Islamic finance strives towards achieving the Islamic vision (Maqasid al-Shari'ah) too.

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