Mobilization of Capital - I

The Stock Market and Shares

The large scale operations have much higher profitability than small scale operations carrying out the same business. Large scale operations employ higher technology that further raises their profitability. To provide for the huge capital required shares are floated.[102] The joint stock companies have higher profitability and return on capital. Accordingly people subscribe in shares. Majority of the equity based companies are controlled by the capitalist exploiters and their agents, majority whereof is inimical to social justice and Islam. Purchase of shares of these companies strengthens the hands of the aforementioned exploiters and oppressors.

Divine law (Al-Shariah) permits joint economic activity and regulates it under its provisions of Musharikah and Mudarbah. The firms based on partnership are the modern version of the activities that are carried on under provision of Musharikah. Generally Partnership Act provides enough freedom to the partners to agree to such terms that will be consistent with the provisions of divine law (Al-Shariah). To be permissible, the partnership must not violate the mandatory provision of Al-Shariah. However, in practice most of the partnerships violate the provision of Al-Shariah.

Capital Market Instruments

A public limited company can raise funds by taking debt or by floating shares. These constitute capital market and share market respectively.

The debt market

It comprise of instruments like Debentures, bonds, etc. These securities carry fixed rate of interest and are issued for a fixed period. Debt certificates can be sold. Any company that deals in any of these instruments definitely deals in interest. Therefore, ownership, sale and purchase of the shares of such companies will normally not be permissible (under the divine law)

Share market

It comprises of dealings in the shares of the companies. Share means share in the share capital of the company. It reflects contribution (but not ownership) of a shareholder in the share capital of the company. Public may buy shares directly from the company and it constitutes the primary market. Companies establish contact with the masses in the primary market to raise funds from the public. Public may also buy shares from others who may be willing to sell the shares held by them and this constitutes secondary market. Success in the primary market depends on the expected position of the shares in the secondary market. When people expect that a particular share will sell with good premium, they tend to over subscribe it.

Primary market

It consists of the sale of the shares by the companies to attract public funds. Funds are raised to set up new companies. This share market is also called, 'New Issue Market.' It is also used to collect funds for expansion and diversification of existing companies as well as for converting an already existing company into a public company.

Secondary market

It is not possible for the sellers to immediately locate a buyer for the shares held buy them. Therefore, the sellers have to contact an intermediate person called **broker.** The brokers normally have information regarding hundreds of buyers and sellers of many companies.

Stock Exchange

Stock Exchange is an auction market of shares and other securities. It facilitates the buying and selling of shares and other securities and regulates it to ensure orderly dealing. It is the place where the member brokers of the Stock Exchange meet to transact the business of sale and purchase of shares for their clients. Stock Exchange allows brokers who are its members, to transact business at its floor and others are not permitted.

The company that has raised money from the masses by issue of shares is required to get its share listed with at least one Stock Exchange. Listing of shares provides liquidity to the investor and facilitates easy trading. The Stock Exchange allows trading in the listed shares, after the company complies with the guidelines issued by it.

Share

It is a unit of account measuring shareholder's interest in the company. Share certificate is a document issued by the company. The share certificate is normally issued for a hundred shares that is called a market lot. If a shareholder wants he/she may get his/her holdings split into smaller lots. A public limited company can create and issue two types of shares, namely preference shares and equity shares. Sometimes companies raise fund from their existing shareholders and this issue of shares is called rights issue and the shares issued are called rightshares.

Preference shares: These shares carry fixed amount as dividend as also a preferential right to get back the contributions, in the event of the winding up of the company. *This fixed amount of dividend is the same as interest* and therefore, any company that willingly opts to issue preference shares deals in interest. Holders of preference shares do not have any voting rights.

The equity share: These shares do not assure any return or right of redemption. *Dividend that a company gives to its equity shareholders is a part of the profits earned. But it may not be a Halal (rightly earned) income because it often include interest based dealings and even otherwise the profit might have been earned by means not permitted* *under the divine law*. The equity shares carry the main financial risk in case the company is unsuccessful as also the reward if the venture of the company is successful. The equity shareholders have the right to vote on the resolutions placed before the general body meeting of the company. The voting right is in proportion to the number of the shares held.

These shares are actively traded in the share market. Each share of a company has a face value (usually Rs. 10/-). Shares sell with premium that is poorly related to the true worth of the company. The premium is determined by the performance of the company but it has little to do with the face value.

Rights issue: This issue is for the existing shareholders only. The shareholders are entitled to issue of shares in proportion of their existing shares. However, the shareholders may renounce the shares due to them and may apply for additional number of shares but the shareholder who renounces the shares due to him/her can not apply for additional number of shares. Those applying for additional number of shares are allotted the shares that are renounced by other shareholders.

Bonus shares: These are the shares, companies issue to its existing shareholders free of cost. The existing shareholders get bonus shares in proportion to the number of shares held by them. This amounts to increasing the number of shares of the company with its assets remaining unchanged. Normally, it is done when the share has appreciated considerably. Practically it amounts to holding more shares each of lesser values with their total worth remaining unchanged.

Share Transactions

There are three types of share transactions namely on the spot, cash and forward. **On the spot trading** involves exchange of cash and the share certificate within 24 hours. In case of **cash trading** the exchange of cash and share certificates has to completed before the expiry of the date fixed for the purpose. Following the purchase of shares, share certificate is received and then the registrar of the stock exchange issues a transfer deed that bears a date stamp. It is essential that the share certificate is transferred within a year or the date of yearly accounting of the company, whichever is earlier. The shares are sold and purchased many times prior to expiry of the said date. The shares may be transferred to final buyer instead of the first buyer. The completion of this transfer process may take 3-4 months. When the shareholder sells his/her share holding to another person, the buyer has to send the share certificate to the company to get it transferred to his/her name. Most companies appoint external agents as their share transfer agents to render efficient service.

Forward trading: The buyer and seller agree to buy and sell (respectively) a given number of shares of a given company at agreed price on an agreed date. This type of trading also known as ***Badla or settlement*** trading rarely involve actual sale and purchase of the shares, rather the difference is made-up. The difference is the difference between the prevailing price of the shares on the date on which the shares were to be provided and the previously agreed price. *Thus it is a purely speculative business and therefore, it is not permissible under the provisions of Al-Shariah.*

Insider trading: Sometimes a company expects or plans to enter a more profitable phase or is expecting to raise its profitability by entering in collaboration with some more efficient company. Those who are in know of it, start buying shares of those not aware at a price marginally higher than the prevailing market price. Thus the insiders-mainly the majority shareholders deprive other shareholders (public) of major benefits keeping them in the dark. Clearly, this fraudulent trading is not permitted under the divine law.

Shares and provisions of Al-Shariah

Shareholders

Investing public put their money in the company and get share certificate as a document for the money invested. By holding shares in the share capital of the company the investor becomes a shareholder of the company. A shareholder is entitled to get a share in the profits made by the company that the shareholder gets as dividend or Bonus shares. As long as the shareholder holds the shares he/she continues to get share in profits but *normally, shareholder can not interfere in the conduct of the business of the company. A shareholder can neither ask for dissolution of the company nor can he/she ask the company to pay back his/her contribution. A shareholder can sell his/her shares in the market but one who buys the shares will be subject to the same limitations.*

Shares according to Al-Shariah

Equity based companies may be considered to be constituted under Musharikah provisions of Al-Shariah. Normally few shareholders who often belong to the same business house own more than half of the shares that are held by the public. In such companies in which the government do not own shares the interest seeking capitalist exploiters normally own more than half the shares. These shareholders are the majority-share-holders and effectively these shareholders numbering a few are the real owners, as in practice, they exercise all the executive authority to the exclusion of all other shareholders. Right to vote in the General Body Meeting do not confer any significant right to vast majority of the shareholders. Because, it is the majority shareholders who determine the outcome. The small minority of the shareholders who own majority of the shares appoint the Board of Directors. If we were to collect data regarding a hundred top business houses of the world it will be seen that they control most of the economic activities of the non-socialist world. However, if we were to collect data regarding total subscription of these business houses, their contributions may not exceed 10% of the total subscriptions. Thus, there are two distinct classes of shareholders, viz., the majority shareholders and the minority shareholders. The masses constitute the minority shareholders and holding share do not give them any authority to exercise any control over the conduct of the business of the company. The Board of Directors holding most lucrative posts are free to act contrary to the directions of the said vast majority of the shareholders. Thus, purchase of shares is a one way traffic, rather a trap once you enter into it there is no escape.[103] The said few shareholders lay the trap and the masses are trapped. *It is through these shares that the capitalist conspirators* *have gained near total control over the vast resources of the world.* Thus, normally buying shares amount to putting one's resources under the control of the interest seeking capitalist exploiters as generally they own the majority shares. *The provision of law that grants this exclusive authority to these interest seeking capitalists, clearly violates the Musharikah provision of divine law.*[104] Not only that they deal in interest but they do what ever seems to serve their interest. **Under these circumstances it will have to be held that;**[105]

General Participation in the existingShare

Business is Not Permissible

In view of the following facts this conclusion becomes incontrovertible;

(i) Every Muslim has to account regarding utilization of resources put under his/her command including the investment of the resources owned. Therefore, this near total surrender of once authority will not be permissible unless the person to whom the authority is surrendered happens to be God fearing and righteous. Voluntary surrender of authority in favor of the interest seeking speculators will not be permissible as people will be judged with those to whom they entrust their affairs.

(ii) Participation in share business is not the case of utilization of resources by some individuals rather a large part of the community's resources are invested in it. Therefore, it has to be seen that the community's resources are being utilized in a manner that is likely to result in the realization of human Falah and goodly living (Hayat-e-Tayyiba). We are fully aware of the severity of the problem of unemployment. As brothers in faith, we have rights against one other. Muslim work force that is facing severe unemployment problem has a right to be given preference in the businesses that employ substantial subscriptions from the community (*Rf. Pg*.-1). Considering the discriminatory treatment to which true Muslims are subjected, this condition may not be satisfied unless the Board of Directors is controlled by the righteous.

(iii) Under the provisions of Al-Shariah the Shurka-e-Kar (partner) has right to guide and control the business. Shurka-e-Kar may ask for division of assets as well as for termination of business and such a request leads to the end of partnership. None of these rights are available to the most of the shareholders as small number of shareholders holding majority of shares are free to neglect all others. This is normal practice and no exception. Although the nature of the business of shares may justify the voluntary surrender of some authority to those who are entrusted with the job of proper management of the business, the total surrender of authority by the righteous to the interest seeking capitalists is simply nor permissible under the divine law. Further there is no justification for denying the right to quit the partnership as normally it possible to make provisions that will allow due compensation to be paid to those who opt out.[106] Clearly, the laws that govern the existing shares business are not consistent with the divine law. This constitutes another violation of the provisions of Al-Shariah.

(iv) According to the provisions of Al-Shariah, the Board of Directors should be an agent of the shareholder and is bound to obey the command of the shareholders. However, in the existing environment the Board of Directors can and really does violate rather totally disregard the direction of most of the shareholders, the majority shareholders alone being the exception.

(v) It must be realized that sharing book profits is not enough. Employment and control over the conduct of the business are two very important benefits which should not be neglected. Those in whose hands the control is vested, often corner most of the benefits, therefore, it ought to be ensured that the control vests with the righteous. At least the security and vigilance functions should be under the control of the righteous. Those who control the business exercise lot of discretionary powers such as with whom to enter in contract for the supply of labor, to whom to grant dealership and the amount of credit individual dealers should be allowed. These may not be important for the shareholders who may not be interested in such contract but are very important for the community. These indirect benefits often exceed the book profits. For example the salaries and wages earned by the employees often far exceed the book profits.[107] Therefore, unless care is taken to safeguard the interest of the community in this regard, participation of the community in share business will strengthen the serpentine grip of the capitalist exploiters on the economy and it is leading to the total marginalization of Haqq.

(vi) Share based business is a form of economic cooperation. Allah (S.W.T.) has ordained us,

> "Help ye one another in good deeds and righteousness but help ye not one another in sin and rancor." (Al-Maidah-2)

Therefore, there do not arise any question of permissibility of subscribing capital for activities that are not permitted by Al-Shariah. Even if the business do not involve activities directly banned by Al-Shariah. Participation in business controlled by the capitalist exploiters help and strengthens them and increase their exploitative potential.

The Ummah should cooperate in respect of the companies controlled by the righteous. In respect of the companies set up by the righteous to ensure profitable employment of the unemployed members of the community, to protect the righteous from compulsion to deal in interest and to root out injustice and exploitation; the cooperation and help is not only permitted but highly desirable. Therefore, it may be concluded that,

(a) Participation in shares of companies that carryout activities prohibited by the divine law is not permissible.

(b) It is not proper for the Ummah to buy shares of the companies controlled by the capitalist exploiters or the enemies of Islam.

(c) In the existing scenario it is not correct to hold that the ownership of shares means proportionate share in the holdings of the company because the shares

held by the public normally do not allow them any indulgence in the conduct of the business of the company.

(d) Share business is really a Musharikah contract of higher order and the working of these companies may be easily modified to conform to the divine law.

The righteous try their best to abide by the provisions of Al-Shariah and therefore, in case of companies controlled by them most of these objections will not apply. Considering the large number of shareholders it is not possible to run the business by consensus.[108] However if the shareholders are given freedom to withdraw their subscription together with their share in the profits earned,[109] it can be held that the surrender of executive authority by the shareholders is voluntary and thus there will not be any violation of the provisions of Al-Shariah in this regard. Further, it is recommended that those in whom the control of the company vests should allow the minority shareholders to appoint the directors who will be responsible for security and vigilance.

The basic reason that makes participation in share business desirable is the higher rate of return. This higher return is due to use of higher technology and scale of operations. Considering the tremendous effort that is required to ensure compliance with the provisions of Al-Shariah, it is desirable to explore and adopt alternative procedures. (To be discussed.)

Share Prices and Its Fluctuation

The net worth of the company should determine the price of its shares, e.g. price of the share should equal the net worth of the company divided by the total number of the shares. Share prices are strongly related with the performance of the company but the prices do not represent the net worth. When a company is performing nicely it gives good dividend and demand of its shares increases. Increase in the demand causes the share prices to shoot up. Unaware of the true worth public goes on buying the shares even if the price has exceeded its real worth. Similarly, prices fall when the performance is poor. Public are not aware of the true worth of the shares. *Vested interests in the media often create distorted image of a company and its performance and this often misleads the public.* Share prices are determined by interest and speculation and not the true worth. It is why share prices fluctuate widely. It is illustrated below:

(i) Share market is controlled by the interest seeking capitalist exploiters and speculators. When the speculating capitalists think that the prices will continue to rise, they go on buying spree. This raises demand of the shares and causes their prices to shoot-up. Similarly, when they speculate that the prices will fall, they start unloading the shares, public also start selling off the shares held by them and the share prices plummet to lowest.

(ii) Often share prices are pushed up or down by the collusion between the management (majority shareholders) and the brokers to suit to their requirements. When the prices are rising, public start buying shares, speculating that the prices will continue to rise. This raises demand of the shares and causes their price to shoot-up. Public does not know where to stop and continues to buy shares at highly inflated prices. In such cases the share prices have to fall back to normal (This is called ***correction***). Similarly, when the prices are falling public start selling off the shares held by them and the share prices plummet to the lowest. Public does not know where to stop and continue selling even when prices have fallen badly. To sum up,for the public it amounts to selling the shares purchased at the inflated prices, at the lowest price. Clearly, the public is the looser.

(iii) Capitalist speculators who control the share market often assess the share prices by relating return to interest. According to them share is worth the capital that earns the amount of interest that equals the profit (including appreciation) earned by the share. Suppose a share earned a dividend of Rs. 2/- and its price appreciated by Rs. 2/-, during the year. Then the total return from this share equals Rs.4/-. Suppose the prevailing rate of interest is 8%. Then according to these interest seeking capitalists the said share is worth Rs.50/-. Therefore, if its face value is Rs.10/- its premium will be Rs.40/-. Not only the rate of interest but also the profitability of economic activities vary widely and therefore, this link between the share prices and the interest rate causes the share prices to fluctuate badly.

Premium: To buy the shares one has to pay face value and in addition premium. The amount by which the market worth exceeds the face value of a share is called premium. As discussed, the share prices fluctuate widely and can be manipulated. The public is not aware of the real worth of the shares. Therefore, it is not possible to hold that the market prices of the shares, represent their real worth. The premium on the shares is determined by interest seeking, speculation and fraud by the speculating capitalist exploiters. Normally premium has little to do with the real worth of the shares. The data listed in the following table explains it:

Company	Buildings	Machinery	Inventory	Cash holdings	Real worth	Face value	Premium	Market value
A	1	-	0.1	8.9	10	10	20	30
B	4	5	4	1	14	10	10	20
C	12	22	23	28	85	10	17	27
D	12	77	18	10	117	10	200	210

Comparison Between True Worth And Market Worth

Company A is just registered, its promoters are reputed entrepreneurs and it is likely to perform very well. Company B is an ordinary company that has been set-up recently. Company C is an old company making little profit. Its cash holdings are in form of bad debts, it is why its shares are selling for a price lower than its cash holdings. Company D is performing nicely.

It is to be noted that generally market worth is much higher than the real worth. In practice the difference between the real worth and market worth may be even more than what is depicted by the data tabulated above especially in case of companies performing nicely. This difference between the real worth and the market worth determined by the premium is a measure of the effect of dominance of interest, speculation, fraud, manipulation[110] and exploitation on the existing share based business. *I am very much sure that anyone who understands the significance of this difference and is willing to comply with the divine law will never agree that general participation of the Ummah in these companies is desirable or even permissible.*

Face values simply do not relate with the real worth except for the new companies. Even if all other conditions are fulfilled, ***general participation of the Ummah in these companies will not be desirable unless a share pricing system is designed that enables the masses to know the real worth of the shares,*** they wish to buy. Considering the fact that the companies issue dividend, the real worth of the shares should agree with the face value specially if the dividend equals the profits earned. Then, why is it that the face value simply do not relate with the real worth? Clearly, it is due to the depreciation of currency. For example when currency depreciates to half, the real worth will become twice the face value even if the dividend paid exactly equals the *profits* earned. ***However, to design such a system, a standard of wealth has to be adopted for use as a unit of account.***

Floating Of New Shares

New shares are floated to set up new company as well as to meet the requirement of funds for modernization, expansion and diversification. The origination of the shares requires preparation of a plan of the proposed economic activity that has been fully analyzed for its technical, financial and legal feasibility and expected profitability. Necessary information and advice may be obtained from the institutions and firms that specialize in this work. Investing public can not judge this work, therefore, the public has to be convinced that the company will be set up and that it will be highly profitable. This requires underwriting. Financial institutions give the warrantee that they will buy the shares that are not subscribed after charging a fee or commission.[111]

The shares are finally distributed to the public through agents who specialize in this work and through the brokers. This placement of the shares is carried out either through prospectus or through offer for sale. In the former process the company itself present the shares for sale to the public. In case of new company there is no premium and the shares sell at the face value. However, in case of existing company the shares sell with a premium, i.e., to buy the shares public has to pay the face value and in addition premium.

Sometimes instead of presenting the shares directly to the public the shares are presented to the issue houses and the brokers-firms. These intermediaries sell the shares to the public at some higher price. The difference known as turn represent the benefit these intermediaries earn. These intermediaries often earn hefty profits and this represent an equal loss to the public. Accordingly in case of big issues[112] and excluding such issues where turn is marginal it is preferable to buy shares that the company directly offers for sale to the public.

Ownership of shares and the Divine Law

As discussed, holding a share normally do not allow any indulgence in conduct of the business of the company. Thus, 'the purchase of shares' is 'to buy the right to get a proportionate share in the book profits of the company.' These profits are passed to the shareholders in form of dividend and bonus shares. The Board of the Directors decides whether to pass some benefits to the shareholders or to withhold it. The share prices are not determined by the real worth of the shares. Share prices are controlled by the interest seeking and speculation of the interest seeking capitalists. Often, share prices are manipulated by the vested interests to suit them and it results in severe loss to the share holding public. Public is not aware of the real worth of the shares and the share holding public do not posses any ownership rights Thus, purchase of shares is not like buying some property. *Clearly, purchase and sale of shares assist the interest seeking and speculating exploiters. Further, subscribing capital to buy shares violates many provisions of Al-Shariah. Therefore, holding shares should not be permissible under the provisions of Al-Shariah except in case of companies controlled by the righteous who try their best to ensure compliance with the provisions of Al-Shariah.* Now, let us discuss this issue with special reference to purchase of shares with intention to hold them[113] .

According to the provisions of Al-Shariah the Shurka-e-Kar (shareholders in this case) are the joint owners of the business and they are bound by the provisions regarding Musharikah. Thus the sale and purchase of shares is a case of substitution of the Shurka-e-Kar. Therefore, the provisions regarding Musharikah will also apply. One of the mandatory provisions in this regard is that the distribution of the profits and losses among the Shurka-e-Kar must be in proportion to their subscriptions. In case of the equity share based companies the sharing of the profits and the losses is in proportion to the number of shares held. Therefore, this provision of Al-Shariah will not be satisfied unless every shareholder subscribes exactly the same amount per share to the company to become its owner. *In case of new shares, Ulema hold that the shares should be sold and purchased for a sum that equals its face value, i.e. without any premium and this stipulation satisfies the aforesaid condition*.

It is not essential that the price of shares issued at different occasions must equal because the real worth of the shares may actually vary with time. Suppose, presently real worth of shares of a company is 100, the mandatory provisions of Al-Shariah referred above requires that the company should issue the new shares for the sum of 100 only. **To buy or sell the shares for any other consideration will violate the said provision of Al-Shariah**. Suppose Zaid buys the share for 100 but sells it to Bakr for 200. Such a transaction may be held to be valid but the sprit of the aforesaid stipulation is definitely violated because despite having invested 200 Baker will be entitled to the same benefits to which most others shareholders are entitled having invested only 100.

It is really unfortunate that while others are searching for capital to invest, the rich members of the Ummah are searching for avenues to invest the capital held by them. The majority of the Ummah is poor and is not able to get any capital to work upon. **Why is it that our rich do not offer the capital held by them to our entrepreneurs in accordance with the provisions of Al-Shariah**? (While the availability of capital is poor, the investment is definitely not a problem**.) Because, our misinterpretation of the provisions of Al-Shariah have made it almost impractical and obsolete**.[114] Definitely, *the solution of these problems lies in correcting the distortions produced by our misinterpretations.* I therefore, hold the opinion that **sale and purchase of shares of the companies other than those controlled by the righteous is not permissible** except for some special reasons. However, the sale and purchase of the shares of the companies controlled by the righteous that are set up with intention to establish justice should be recommended.

Trading in Shares

Trade is not only permitted but prophet (P.B.U.H.) has even recommended it. However, the trading in shares is not like what the trade normally is and even in case of normal trade Al-Shariah provides for safeguards to ensure that there is no injustice, fraud and manipulation. Malpractice such as hoarding is criminal offense.

Unlike normal trade, trading in shares do not fulfill any necessity or need of the society[115] . Ownership of a share implies participation in the business of the company with the controllers of the company to which the shares relate and it is obligatory on the buyer to ensure compliance with the provisions regarding Musharikah. How can we justify voluntary participation in activities that clearly violate the provisions of Al-Shariah. Under the prevailing conditions it only helps the capitalist conspirators to gain control over the resources that are still out of their control. Those who trade in shares hold the shares for no reason other than expecting increase in premium. As discussed, the interest seeking and speculation of the speculating capitalist exploiters control the premium.

The reasons due to which it is not possible to hold that the purchase of shares is generally permissible apply to trading in shares as well. Accordingly the trading in shares will generally not be permissible. However, **trading in shares with the intention** to help the righteous dispose off the shares of the companies controlled by the capitalist exploiters or with intention **to provide liquidity to the shares of the companies controlled by the righteous may be permitted provided that these companies make the correct data regarding their net worth and performance available to the public from time to time**.

Some Related Topics

Government's control:

Shares have a very profound effect on the national economy. The government controls it through its control over the stock exchanges that control debt as well as share market. Government control reduces the incidence of excessive fraud, speculation and manipulation. However, fraud and corruption has pervaded most of our institutions and therefore, it is not difficult to see the authorities misusing their authority to harass honest joint stock companies and to reward the fraudulent. Therefore, the solution of these problems lies in following a system that has an in-built mechanism to reward the honest and to penalize the corrupt so that the need for governmental interference is minimized.

Tax angle

The profits or capital gains arising out of share transactions are subject to income tax. If the investor holds the share for one year and sells it thereafter, the capital gains is called long term capital gains and it is charged at 20% only. If the share are brought and sold within one year, then the profit is called short term capital gains and the normal rate of tax is applied, which may be higher than long term capital gains rate. Any loss made in long term or short term can be set off against the profit and tax has to be paid on the remaining amount only.

Charge of Zakah

Productive investment is exempt from charge of Zakah but nonproductive investment including merchandise are chargeable to Zakah (*Rf. Pg*.- 1and 1). Therefore, the shares of the industries carrying out productive work will be exempt from charge of Zakah but their non productive inventories as well as profits will be charged Zakah at the rate of 2.5%. In case of trading companies, shops and establishment that are used as means of trade will be exempt from charge of Zakah but stock in trade will be charged to Zakah. Regarding those who trade in shares, market worth of the shares held will be charged to Zakah at the rate of 2.5% per year. It is narrated in a Hadith in Bukhari, 'neither separate the cattle that are held together nor join together the cattle that are held separately, for charge of Zakat. Let the two partners bear the Haqq due (Zakat) equally.' Therefore, it will be preferable to charge Zakah on the company directly however, where the management of the company is controlled by non Muslims or if the government do not allow the company to disburse the Zakah directly, it should be paid by the individual share holders.

Essential modifications

The provisions that govern the right of the shareholders and the conduct of the share based (joint stock) companies should be modified to purge them off the elements of injustice and exploitation. Once this is done, the share business will conform to the provisions of Al-Shariah and it will be possible to hold that the general participation of the Ummah in these joint stock companies will be permissible unless they indulge in activities that are banned by Al Islam (for the reason that these are against the human welfare). We shall discuss it under the following three heads.

(i) Assessment of the real worth of a share,

(ii) Exit Policy and

(iii) Entrepreneur should be treated as Karobari Fareeq and shareholders as Sahibe-Sarmaya.

Assessment of the real worth of the shares

In respect of Mudarbah, the provisions of Al-Shariah provide that the division of profit between the sahib-e-Mal (creditor) and the Karobari Fareeq (entrepreneur) should be done only when the capital returns to its original or standard state and the business in wound-up. Because, it is not possible to correctly predict profit or loss prior to the termination of the business. The provision requiring capital returning to original or standard state is very important. This is because, otherwise proper accounting is not possible. Depreciating paper currency is no standard of wealth and therefore, it can not be used as a standard of account. Selection of standard of account is discussed in previous chapter.

Accounts should be maintained in terms of the agreed standard. Subscription of the members to the company should be converted and recorded as equivalent subscription in units of the agreed standard. Profit and loss should be computed with respect to the agreed standard. Depending upon the requirement of the company and the members the profit may be distributed among the members, may be incorporated as a new subscription or the value of the shares may be raised. Loss if any may also be similarly dealt with. To compute the real worth of the inventories their market worth should be used provided real sale and purchase take place. However, where actual sale and purchase do not take place the price should be determined by the purchase price (in terms of the standard) less depreciation. The expenses incurred during setting up of the company should be divided with respect to product obtained to total expected production. Charges on advertisement may be distributed in accordance with the total expected sales after the advertisement and sales after advertisement. The worth of the shares should be assumed to charge gradually between the periods of assessment. This procedure, if followed will Insha Allah provide the best possible estimate of the real worth of the shares. Companies need funds for renovation, modification and expansion and therefore it is essential to allow for some procedure so that this requirement could be satisfied. Under these conditions there is no harm if the company sell its shares for amount that equals the real worth of its share, as per the best possible estimates. Considering the fact that it is a case not only of Musharikah but also that of sale.[116] Provisions of Al-Shariah are flexible enough to recognize the necessities and needs, there should not be any objection to the procedure outlined above. It should be noted that unless this is done premium based procedure that amounts to cooperation with the interest seeking and speculating capitalists exploiters in their interest seeking and speculation.

Exit Policy

It is essential to remove unreasonable restrictions against the right of the members. The company should provide for a mechanism to pay back the subscription of the members who may seek exit. Once provision for exit is incorporated, it can be held that the undue restrictions in this regard have been eased. Accordingly partnership in such companies will no longer involve any violation of Al-Shariah. The payment may be made by disposing off inventories or non essential assets. Alternately the remaining members may buy back the shares either individually or collectively. The exiting members should also have the freedom to sell off their shares in the market subject to such reasonable restriction as might be agreed between the share holders. The failure of the company to buy back the shares shall entitle the members to seek dissolution of the company.

Due Reward To The Entrepreneurs

The entrepreneur who plans and sets up the activity makes lot of sacrifices. The existing provisions governing the joint stock companies do not provide for any benefit to the entrepreneurs, although there are provisions that allow lot of benefits to the capitalist creditors. For example, commission is paid to the under writers. While there is no harm if the entrepreneur is satisfied with the benefits that accrue to them as shareholders, justice demands that there should be provisions that allow them reasonable benefits if they so desire. In the absence of such provisions the entrepreneurs try to maintain their control by manipulation. They place themselves and their relations in the board of directors and provide for very lucrative benefits for these positions. Islamic provisions allow the entrepreneur to share benefits in mutually agreed proportion but the high salaries do not conform to them. Accordingly, it will be better to allow some benefits, say 1 to 5 percent of the profit to the entrepreneurs for the reason that they set up the activity that involved lot of sacrifices and hard work. Due to their attachment with the business they are most suitable to manage the activity. They should not get any salary but the expenses incurred by them should be borne by the company. They should be on the Board of Directors in an honorary capacity.

Thus, the equity based business will be run by the entrepreneurs under the provisions of Mudarbah while it will be governed under the provisions of Musharikah in respect of the remaining shareholders. Entrepreneurs will then be the agents of the shareholders and therefore, they should abide by the directions of the shareholders that are passed by the General Body Meeting. The dissenting members shall either accept the majority decision or may seek exit, however, in case the majority view do not conform to the provisions of Al-Shariah the minority group should be entitled to seek dissolution. Similarly if the minority view do not conform to the provisions of Al-Shariah, they may be required to abide by the majority decision. Conflict among the shareholders and the entrepreneurs may be resolved by mutual consultation, failing which the shares held by the dissenting shareholders may be brought back or else the company may be dissolved. Entrepreneurs may be substituted by the employee directors who may be entitled to receive salary but in that case also the entrepreneurs should continue to get some commission from the profits earned by the company in recognition of their entrepreneurial activity. Entrepreneurs should have the right to oversee the conduct of the business of the company unless they are found to abuse this authority.

These provisions are likely to motivate the honest entrepreneurs to take up large scale entrepreneurial activity and to help them thwart away take over bids by the vested interests. Entrepreneurs will of their own not oppose appointment of competent directors. Because, a higher profit implies a higher profit to them as well. As regards the subscriptions of the entrepreneurs, the profit or loss shall accrue at the same rate that applies to other shareholders. Our ability to enforce these provisions will Insha Allah purge the equity based business from the elements of injustice and exploitation that have been incorporated due to dominance of the capitalist creditors and speculators.

living of the rich has followed the trend of increase in gold prices while the standard of leaving of the poor have fallen as the prices of silver have lagged behind. Zakah is charged on Sahib-e-Nisab. It is the level where poverty ends and affluence begins. Clearly it lies between the level determined by the two. Ahde Risalat represent an standard period in the history of the world. It is why the two standards matched. If justice could be restored, these will Insha Allah match again. However, till it happens best course available to us is the middle course suggested above.

Move Back Back to Content The End