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SHARIAH MINDS IN ISLAMIC FINANCE



An Inside Story of a Shariah Scholar

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CHAPTER ONE

HOW DO WE DEFINE A *SHARIAH* SCHOLAR?

In one of the seminars that I attended in Tokyo in 2007, I was informed or rather pre-empted by the organiser that the Japanese audience was very keen to meet me personally, as a great majority of them had never ‘seen’ a *Shariah* scholar before. Indeed, I was the first Muslim scholar in Islamic finance to appear before this audience in the flesh. Believe it or not, they were expecting a person that is very much different from them. To their surprise, a *Shariah* scholar is like any other professional in the working world.

Being a bit disappointed, I guess, the audience started to ask very basic questions that are not at all related to the theme of the conference. Out of curiosity, they asked about how someone could become a *Shariah* scholar, in terms of education, language, behaviour and professional skill, and even age and gender. They simply asked how long does a scholar need to learn Arabic (for non-native Arabic speaking scholars) and *Shariah* law to be recognised as a *Shariah* scholar, thus being able to advise financial institutions on Islamic finance matters. They even asked whether a Japanese can be a recognised *Shariah* scholar, if he or she does fulfil all the requirements which I had already alluded to in my response to some of their basic questions.

A Scholar in the Eyes of a Muslim Community

In Islamic communities, the perception by the public of who is a *Shariah* scholar is quite obvious, though the general public is not able to describe precisely the prerequisite characters of a *Shariah* scholar. Equally true is that the public would consider all the scholars as belonging to one specific group. A person is regarded as a scholar if he possesses the knowledge of Islam to a degree that he could give guidance and advice to the general public on any issue relating to Islam.

As a result, the community often conveniently simply ascribe someone (and sometimes literally anyone) who has some knowledge on Islam as a scholar. The general public is not aware of the specialisation of knowledge that exists in Islamic teachings. After all, their interaction with the scholars has been very much focused and biased towards personal ritual conducts, such as prayer, fasting and family matters, including marriage, divorce and inheritance. Indeed, every Muslim is taught these aspects since his or her younger days. Consequently, the scholars who specialise in these aspects of Islamic law are very intimate to the members of the society and likewise, the members of the society always look up to these scholars. Since the early days of Islam, these are the community scholars who enjoyed the uninterrupted cordial relationship with the community.

Shariah scholars in the field of Islamic finance are part of the pool of *Shariah* scholars in the community. On one hand, some of them may have been actively involved with the members of the society, such as being the imams and preachers at mosques. These scholars also act as public figures or motivators or frequent speakers on Islam, appearing in many forms of media. On the other hand, some of them may not interact directly with the society, but are muftis or *Shariah* judges or teachers and professors in colleges and universities or any other dedicated Islamic educational institutions or a researcher in research-based entities. Possibly,

some of them could also be businessmen or simply writers or NGO activists or involved in any other profession which does not give them the opportunity to deal directly and actively with other members of society.

It is clear that a *Shariah* scholar is neither defined by an official post nor by any particular profession. Perhaps, it is something else, which is more tangible and measurable. It is on that basis that we can define who is a *Shariah* scholar and who is not, thus transcend the nature of their profession or even qualification.

Qualifications of a Scholar

It appears to mind that it is the knowledge of the *Shariah* that defines *Shariah* scholarship. A person with *Shariah* knowledge can function in many fields of profession, including as teachers, judges, imams, researchers, businessmen, etc. Therefore, it is evident that it is knowledge which defines the capabilities of a person in any field of life and specialisation. The follow-up question would be what is the minimum 'quality and quantity' of this knowledge that would make a person a *Shariah* scholar or otherwise in the context of Islamic finance?

Possessing sufficient *Shariah* knowledge is the basic qualification for someone to call himself or for the society or authority to consider someone, a *Shariah* scholar. Intellectual capabilities are normally ascertained by looking at certain academic qualifications awarded to a person by recognised universities or colleges and in some countries, by a private setup or agency, which controls the provision of this type of qualification or certification. Most of the contemporary scholars who are currently the *Shariah* advisors in Islamic finance belong to this group of scholars. There are various academic degrees being recognised. In theory, as well as in practice, there is no preference to one type of academic qualification over the other.

The official academic qualification is the easiest way to ascertain whether an individual fulfils the intellectual prerequisite

of a scholar or otherwise. It is also observed that the society or even the relevant authorities do not scrutinise further whether this academic qualification is specifically related to the study of Islamic law (commonly known as *Shariah* studies) or any other disciplines, such as the study of comparative laws, the study of *hadith* (the Traditions of the Prophet Muhammad (PBUH)) or the Quranic exegesis or even Arabic linguistics. This leads to only one conclusion, namely the academic qualification and its specialisation is not as critical as the real knowledge that a person possesses for him to be considered as a potential *Shariah* advisor.

This is quite different from other professions, such as accountancy, law or fund management. Each of these professions has a standard entry point for anyone to be recognised as one of the qualified members of the profession. Once this person has met and fulfilled the entry requirements, the society and other bodies have no power to admit or not to admit someone to a particular profession. The entry requirements have replaced the function of the society in determining whether someone is qualified to join a particular professional group or not.

On this note, I would foresee that in the near future, *Shariah* scholars would need to be certified as “Certified *Shariah* Scholars” before they can take up this profession as their career. This will be an encouraging development, since every scholar must go through a *Shariah* proficiency assessment. This will not only open up an equal opportunity to any potential scholar or even non-officially-trained person to be considered as certified *Shariah* scholars, but will also for the first time, create a structured entrance requirement into this profession. If this happens, *Shariah* advisory would become a formal career path and job opportunity, whereby any *Shariah* graduate, and technically anyone, is eligible to be considered as a certified *Shariah* scholar if they possess the minimum knowledge requirements.

In Islamic finance, there is another group of *Shariah* scholars

who did not undergo any formal and official *Shariah* training, and hence, have no academic qualification or degree whatsoever in *Shariah*-related studies. Instead, they underwent a private learning process, which can sometimes be more robust and demanding than the officially recognised learning process. This is a great manifestation of how scholarship and knowledge have been traditionally nurtured in Islamic history. Many great scholars of the Islamic world were the products of this private and unofficial learning process, which took place in the mosques or under close mentorship of another great scholar, or in many other forms of learning and certification. This process also produced many scholars of high credentials, not only for general Islamic teachings but also for Islamic finance.

However, we have yet to see a new pool of scholars who are the product of apprenticeship of the great scholars of the day, namely those who are now leading Islamic finance scholarship, as well as *Shariah* advisory practices. It will be astounding to have this new group of scholars in the near future. The teachers and the masters are the real Islamic finance gurus and thought leaders who will supervise the learning and coaching to these young scholars, leveraging mainly on their real experience and practice. If this really happens in the near future, this will definitely be one of the 'exponential achievements' in the world of Islamic finance. It will be 'exponential' because potential *Shariah* scholars will be personally coached by someone who has personal experience with the industry for a few decades. It is highly expected that both the learning curve and the quality of academic resilience of these new scholars will be exponential by any standard, the likes which the world of Islamic finance has never seen before. Be prepared for exciting times ahead!

CHAPTER EIGHT

WHAT ARE THE ISSUES MOST FREQUENTLY ASSOCIATED WITH *SHARIAH* SCHOLARS?

Shariah scholars represent an integral element of contemporary Islamic finance. Being integral to the system, *Shariah* scholars have been linked to, and associated with, a number of issues in the journey of Islamic finance thus far. While some of the issues are straightforward, others are quite controversial. This chapter gives an opportunity for me to indulge in all these issues and provide some “defence” from a *Shariah* scholar’s perspective, i.e. for issues that require a response. Nevertheless, I can assure everyone that the discussion will be as objective and constructive as possible.

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Shariah Scholars and Maqasid al-Shariah

It can be inferred from some writings (and also from non-published opinions and comments in many conferences and workshops) that *Shariah* scholars are blamed for not being able to promote the attainment of *maqasid al-Shariah* in their product approvals. The focus of the *Shariah* scholars, as alluded to by many writers, as well as critics, has been very legalistic on the literal meaning and interpretation of the rulings without looking, as they claimed, into the very objectives that Allah has prescribed to be observed in all of His Divine prescriptions. In short, *Shariah* scholars have failed miserably to promote this concept of Divine high objectives of the law or simply *maqasid al-Shariah* in the sphere of Islamic finance.

They equally lamented that had the *Shariah* scholars been able to infuse this concept in their *fatwas* and approval, Islamic financial products might have taken a different shape altogether, which may significantly alleviate poverty in the society where the Islamic banks are operating in. This may also bring all possible outcomes from a *maqasid* perspective, such as equitable distribution of

wealth via the profit and loss sharing concept, encouragement of more SME financing-based activities and the like.

The fact is that in most Muslim communities, poverty is the norm and SMEs are still in bad shape. Conveniently, Islamic banks became the scapegoat and the silver bullet will always be shot to the chest of *Shariah* scholars. In an even simpler-minded analysis, we also sometimes hear that *Shariah* scholars are just issuing the *fatwa* for a consideration of a fixed *Shariah* professional fee, regardless of whether that *fatwa* will help the society at large or otherwise. The *Shariah* scholars are the paid agents of the banks, thus their duty is to make the banks, the one who pay them, happy and comfortable from a profitability perspective.

So, what is going on, really? Why are the balance sheets of most, if not all Islamic banks, consisting mainly of debt-based assets and liabilities? Why is the element of profit and loss sharing absent in a bank that is founded to provide fair and equitable dealing to everyone: the surplus and deficit units in the society? Why do the current *Shariah* scholars, given their knowledge and respected position in the community, not try hard to make this happen?

It is not an unusual thing that when we do not like a particular situation or phenomenon, we tend to denigrate that matter in strong and sometimes in nearly apocalyptic terms. Some Muslim economists who have vehemently argued for more equitable financial dealings have found fault with the current state of Islamic finance, particularly Islamic banking. They find it undesirable and perhaps blameworthy that Islamic banks, by and large, have been focusing on debt-based financing, such as *murabahah*, *ijarah* and more so on the most controversial contract of *tawarruq*, also known as commodity *murabahah*. To add fuel to the fire or salt to the wound, the application of *mudarabah* and *musharakah* is almost negligible. The situation on the ground has even been described as a mockery to the Islamic finance industry.

In any society, it is quite natural that when someone holds a

high position, our expectations of him will be equally high. It is not an exaggeration to state that one of the most undesirable aspects of having a *Shariah* board is that it becomes the focus of the attention by most stakeholders. No other stakeholders are as exposed and as vulnerable as the *Shariah* boards. This is understandable, as this organ is a new creature in the whole organisation of the modern financial system. This organ comes from nowhere but it needs to interact with the existing stakeholders that are already entrenched in the industry.

As much as it gets all the trust to ensure *Shariah* compliance, it also becomes the centre of attention of all criticisms for anything which is deemed as not working well or not achieving what is expected by some groups in the community. Unfortunately, there is not the slightest consideration by the critics to ascertain the terms of reference that actually prescribes what a *Shariah* scholar can and can't do in discharging his duties.

CHAPTER THIRTEEN

THE DIARY OF A *SHARIAH* SCHOLAR

I used to share the details of my travelling arrangements with some of my colleagues, friends and family members, and sometimes with the media. Most of them immediately responded, “We don’t envy your travelling commitments”. What a remark. This part of the scholar’s life, week in and week out, may not be that visible to many. Most of the players in the global Islamic finance market might have heard about the extensive travelling that *Shariah* scholars need to do. But I don’t think they would know how extensive that has been in terms of flight time and miles of flying per month and per year. This chapter is all about the life and working style of a typical *Shariah* scholar who is active in the *Shariah* advisory world. The narrations in this diary may not be fully accurate, but they can give a fair flavour of the diary of a global *Shariah* advisor.

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The Schedule of Scholars

If you are longing to become a true and effective *Shariah* scholar, just be close to one of the leading scholars. Spend your time as much as they spend for reading, research and thinking. These scholars can teach you how. The lifestyle of a scholar, for all intents and purposes, is a good practical guide that provides a step-by-step guide of activities. So, what kind of a lifestyle are we talking about here?

My observation and recollection on this aspect tend to indicate that the lifestyle of a scholar does not differ that much from one scholar to another. Indeed, their lifestyle is predictable because the nature of work and duties for each of them is almost the same, despite living and working in many different locations and time zones around the world. Yes, despite these differences, the lifestyle and work behaviour of these scholars are remarkably similar. Their lifestyles share one common attribute, which is *scarcity of time* (italics for emphasis)

If any practising *Shariah* scholar feels that has a lot of free time, then he or she has not fully entered the real world of *Shariah* advisory practice. There are many things to plan and to do - on a daily basis - as a contemporary scholar interacting with the whole ecosystem of a modern financial system. His engagement will be of multi levels, tasks and dimensions. In any case, I have learned that scarcity is a source of strength and great achievements. The less time one has, the more he can produce and accomplish. His mind would all the time be focused and structured, since the amount of time that he has does not commensurate to the amount of work

that needs to be done, not to mention having tight deadlines for many of the deliverables.

Apart from attending to their family matters and societal obligations, they will normally start their day by checking the e-mails that were sent when they were soundly asleep. Their minds would try to absorb as many issues as possible and will then store these issues in their minds for a moment, while allowing their minds to start cracking all the potential issues and challenges that they need to respond to. They do this quietly using the power of their *Shariah* minds, while doing their other routine activities in the morning, such as performing some physical exercises or having breakfast or reading some books or spending time with their family members and relatives.

As for me, while taking my morning walk, my mind starts digesting all the issues, trying to get the right perspective of the *Shariah* issues (if any) and to respond to these issues (if that is feasible). As far as I am concerned, morning walks has many functions, and normally, it serves well to prepare me to start the day as an active *Shariah* scholar. When I am ready to start my day, almost all of the issues have been resolved, at least in the frame and recesses of my mind.

In the early afternoon, when their minds have finished analysing the issues and started to offer some responses and solutions, the scholars will spend some time to reply to all the queries that they have received. Some of the responses could be easy and straightforward, but some would be rather complicated. Replying to all the e-mails or text messages or taking the calls while in the office, relatively speaking, is a pleasant job to do. However, that is seldom the case. More often than not, the active scholars need to reply and to make a decision between meetings and sometimes, when they are on the move, and on many other occasions, while passing through all the immigration and security checkpoints at the various airports of the world. This has always

been a painstaking exercise.

