

The Spirit of Shari'ah in Contracts and Business Transactions: An Appraisal

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ABSTRACT

The basic philosophy of Islamic Law is to protect the rights of the persons because all the commands of Almighty Allah has revealed with due purposes and objectives. But due to the human ineptitude cannot understand the reasons. The fundamental and true spirit of Islamic Law is to protect the rights of the individuals in every field of Shari'ah including Contracts and Business Transactions. The current study highlights the objectives of Shari'ah in several contracts and financial transactions in the light of Qur'an, Sunnah and Islamic Legal Maxims. The focus of this research paper is on the one branches of Islamic Law, namely Law of Contract. It also elaborates the true spirit of Almighty Allah in describing the injunctions in this filed. This paper comes with so many illustrations that Almighty Allah has prescribed the rulings in accordance with Maqasid Shari'ah. It also discusses the relationship of the rulings of Law of Contract with the objectives of Shari'ah. It denotes that contract is to be made in its true spirit in accordance with Shari'ah prescriptions. This paper also analyses the contracts in the light of Maqasid Shari'ah and highlights that individuals objectives should not be given priority in case of any contradiction while acting upon the commands of Shari'ah. This research concludes that objectives of Shari'ah are very important in every field of Islamic Law including law of contract and a mere priority over individuals is not recommended by Islamic Law. The spirit and objectives of Islamic law must be protected.

Key Words: *Contract, Business Transaction, Objectives of Shari'ah, Islamic Law, Shari'ah, Spirit of Shari'ah,*

Introduction

Islam is a complete code of life and a religion for every civilization since the advent of humanity at the arrival of Hazrat Adam (A.S) on Earth and to be continued till the Day of Judgment as the Holy Qur'an states:

إِنَّ الدِّينَ الَّذِي رَضِيَ اللَّهُ عَلَيْهِ اسْلَامٌ

“Truly, the (recognized) religion in the sight of Allah is Islam.”¹

Islam is the religion preached by all the Holy Prophets and Messengers (Peace be Upon Them). Islam is not just a religion but a complete way of life which necessitates submission and compliance to the will of Almighty Allah and his laws as revealed upon his last Prophet Muhammad (PBUH) in the form of the Holy Qur'an. All revealed rules and laws are revealed by Allah almighty including the preceding revealed scriptures have the same source of origination. This is the reason that all these divine revelations are based on the same essence and spirit.

The Spirit of Shari'ah

The spirit in all these divine revelations is the oneness of Almighty Allah, need for the divine authority and system to regulate the human lives and the values and standards of morality and justice.² This unity in essence among all the divinely revealed religions is confirmed by the Holy Quran in many places as Almighty Allah states:

شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّىٰ بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَىٰ وَعِيسَىٰ أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَنْ يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ

“The same religion has He established for you as that which He enjoined on Noah--that which We have sent by inspiration to thee--and that which We enjoined on Abraham, Moses, and Jesus: namely, that ye should remain steadfast in Religion, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which thou callest them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him).”³

This ayah indicates that Almighty Allah has sent several messengers to various nations for their guidance. All these Prophets (PBUH) have come with Shari'ah for their nations in their era. Islam without any change has been an accepted religion for all times as it was at the time of Hazrat Adam (A.S). But Shari'ah changed over times through different Prophets at different periods. According to the divine interests, subsequent evolutionary stages in societies, needs and challenges faced by these diverse stages of civilization.⁴At the same time this gradual revision in

Shari'ah was aimed to allow the societies to pass through distinct cultural, ethical, social and legal bodies so that they may develop their distinct identities, with the purpose to educate and train them for the realization of the greater goal of obeying the Superior.⁵ The final and the most perfect legal system (Shari'ah) was revealed upon the Holy Prophet Muhammad (PBUH)⁶. The Holy Prophet (PBUH) addressed in the following words in His last sermon as the Holy Quran states:

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا

*"Today, I have perfected your religion for you, and have completed My blessing upon you, and chosen Islam as Din (religion and a way of life) for you."*⁷

This verse manifests that before Islam the religion was in organizational process but after the last Holy Prophet (PBUH) and the last revelation, Islam has recognized a complete religion and was recognized as the complete code of life. It means before Islam there was Shari'ah but was not organized properly; was for several communities and nations. But after the final revelation of the final of the revealed book of Almighty Allah, Islam is completely organized and considered a religion till the Day of Judgment.⁸

Islamic Law of Contracts in Accordance with Shari'ah

Islam explains about the methods of worship, principles pertaining to society, rules and commands regarding the mutual affairs and relationships, Halal (Permitted things) and Haram (Prohibited things), limits and restrains regarding the lawful and unlawful actions.⁹ This long term and gradual developments in Shari'ah were never merely intended to instigate and prompt people belonging to different periods and ages to behave in different ways as prescribed by their respective rules and commands of Shari'ah. Instead, there were actually divine interests as we mentioned above which the Lawgiver sought to achieve through these laws, rules and regulations.

Extensiveness of Shari'ah Rulings

Islam preaches the way to spend lives. It demonstrates on how human beings behave in a particular society in a particular situation. Like all other aspects, Shari'ah also teaches us how to be mindful in all transactions we make, Having a glimpse of the world about rules and regulations, that may come across enormous amount of aimed rules and regulations that are striving for disciplining society and ensuring its smooth functioning in all aspects: social, ethical, political or economic. All rules and regulations have a significant purpose and nothing is aimless in this regard. For simplicity, mentioning here the example of traffic signals and one of its rules and objectives will not be out of place. The red light signal does not merely aim to impose a aimless rule of disturbing the constant movement of traffic or

delaying public from reaching destinations. But there is actually a predetermined goal and a desired wisdom to protect human life by avoiding or at least minimizing accidents and other distasteful incidents. However, when required to attain the same goal in an extraordinary and unusual way, the rule for the same red light, on the same road will change for the accomplishment of the same purpose. However, this expected change in the general rule is not an innovation on the spot, but the rule for the exceptional case was actually prefixed by the lawmakers to tackle such kind of issues by not giving up the predetermined objective. For example, in case of any emergency like carrying of a serious patient to hospital; violation of red signal is utmost need of the hour to save the life of a human being. Ambulances are not required to stop for the red light. Because the purpose of saving lives at the moment is achievable in a different but predetermined way. So, rules are actually the means and ways for achieving the predetermined desired goals and objectives and are changeable according to the state of affairs.

Shari'ah Rulings about the Contracts

Likewise the same objectives can be observed in all rulings of Shari'ah particularly in Islamic Law of Contract. The rules of Shari'ah regarding the contracts of Bay' (contracts) clearly mention that a person cannot sell anything until he owns it and the commodity is either in his actual or constructive possession¹⁰. This general principle aspires for the protection of wealth which is one of the objectives of Shari'ah and at the same time prevention or avoidance from any possible dispute or conflict that may take place between the contracting parties¹¹ by eliminating the possible element of Gharar (uncertainty) in the subsequent delivery of the subject matter. This general principle about the subject matter of the contract of Bay' gets its strength from various ahadith of the Holy Prophet Muhammad (PBUH) as stated:

عَنْ حَكِيمِ بْنِ حِزَامٍ، قَالَ يَا رَسُولَ اللَّهِ يَا تَيْبِنِي الرَّجُلُ فَيُرِيدُ مِنِّي الْبَيْعَ لَيْسَ عِنْدِي أَفَأَبْتَاغُهُ لَهُ
مِنَ السُّوقِ فَقَالَ: لَا تَبِعْ مَا لَيْسَ عِنْدَكَ .

“This Hadith is narrated by Hakim Ibn Hizam that he asked from the Holy Prophet (PBUH): A man comes to me and wants me to sell him something which is not in my possession. Should I buy it for him from the market? The Holy Prophet (PBUH) replied: “Do not sell what you do not possess.”¹²

The same objective is prescribed in another Hadith of the Holy Prophet (PBUH) as said:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ ابْتِئَاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ.

“This Hadith is narrated by Ibn Umar (RA) that the Holy Prophet (ﷺ) said: The buyer of foodstuff should not sell it before it has been measured for him.”¹³

Another Hadith in the same context as the Holy Prophet (PBUH) stated:

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ ابْتِئَاعَ طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَقْبِضَهُ.

“Hazrat Abdullah Ibn Umar (RA) reported that the Holy Prophet (PBUH) said: Whoever buys food let him not sell it until he has taken possession of it.”¹⁴

In Sahih Muslim, the same meaning is mentioned as stated by the Holy Prophet (PBUH):

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ اشْتَرَى طَعَامًا فَلَا يَبِيعُهُ حَتَّى يَسْتَوْفِيَهُ وَيَقْبِضَهُ.

“This Hadith is narrated by Abdullah Ibn Umar (RA) the Messenger of Allah (PBUH) said: He who bought food grain should not sell it until he had taken it has been properly measured and taken in full possession.”¹⁵

Exceptional Case of Salam Sale

But the case of Salam sale is an exception to the above stated general principle. In sale of Salam the buyer is required to pay a fixed amount in advance for the commodities the seller does not own with an obligation on the seller to deliver them at a predetermined future point in time¹⁶. The object and wisdom of avoiding disputes among the contracting parties was not sacrificed in this exceptional case of Salam. It was ensured even in this case by imposing strict conditions required to be fulfilled before entering into such kind of contract.¹⁷

This kind of sale was prevalent among the Arab societies even before the advent of Islam and was subsequently permitted as an exceptional case by the Holy Prophet (PBUH) while acknowledging the financial problems usually farmers and traders face. However, it was later on permitted by the jurists for all kinds of things that are determinable in terms of their quality and quantity.¹⁸ The Holy Prophet (PBUH) permitted contract of Salam as stated:

عَنْ ابْنِ عَبَّاسٍ قَالَ قَدِمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ فِي التَّمَارِ السَّنَةَ وَالسَّنَتَيْنِ فَقَالَ: مَنْ أَسْلَفَ فِي تَمْرٍ فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ.

“Hazrat Ibn Abbas (RA) narrated that when the Holy Prophet (PBUH) came to Medinah, they were used to contract salam for one or two years in fruits. So, He (PBUH) said: Those who want to contract Salam in dates, he has to do so for a specified weight and for a definite time.”¹⁹

In the same context, another Hadith is mentioned in Sahih Muslim as stated:

عَنْ ابْنِ عَبَّاسٍ، قَالَ قَدِمَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالنَّاسُ يُسَلِّفُونَ فَقَالَ لَهُمْ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ أَسْلَفَ فَلَا يُسَلِّفُ إِلَّا فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ.

“This Hadith is reported by Ibn Abbas (RA) that when the Messenger of Allah (PBUH) came to Medinah, the people were contacting Salam and the Holy Prophet (PBUH) said: He who makes an advance payment should not make advance payment except for a specified measure and weight (and for a specified period).”²⁰

In the same context, a Hadith has been mentioned in Sahih al-Bukhari as:

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ قَدِمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ، وَهُمْ يُسَلِّفُونَ بِالتَّمْرِ السَّنَتَيْنِ وَالثَّلَاثَ، فَقَالَ: مَنْ أَسْلَفَ فِي شَيْءٍ فَفِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ.

“Hazrat Ibn Abbas (RA) narrated this Hadith and said that when the Prophet (PBUH) came to Medinah and they were doing salam contract in dates for two and three years. Then the Holy Prophet (PBUH) said: “Whoever pays in advance the price of a thing to be delivered later should pay it for a specified measure at specified weight for a specified period.”²¹

The same meaning is prescribed in another Hadith as mentioned in Sunan Al-Nasa’i:

عَنْ أَبِي الْمُنْهَالِ، قَالَ سَمِعْتُ ابْنَ عَبَّاسٍ، قَالَ قَدِمَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ فِي التَّمْرِ السَّنَتَيْنِ وَالثَّلَاثَ فَنَهَاهُمْ وَقَالَ: مَنْ أَسْلَفَ سَلَفًا فَلْيُسَلِّفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ.

“This Hadith is narrated by Abi Al-Minhal that I have heard by Ibn Abbas he said that when the Prophet Muhammad (PBUH) came (to al-Madinah), they used to pay in advance for dates, two or three years in advance. He forbade them that and said: ‘whoever pays in advance for

dates, let him pay for a known amount or a known weight, to be delivered at a known time."²²

Intention in Accordance with the Objectives of Shari'ah

Rules and objectives are actually two heads of a single rope and are closely related and interlinked. If one of them is eliminated or overlooked, the other will be worthless itself. But the latter is what actually matters for the realization of which rules are designed and enforced. From another dimension of this objective oriented philosophy and interpretation of Shari'ah. It is pertinent to note that while performing certain lawful acts, the legal consequences which the Lawgiver seeks to achieve in the course of these acts should be considered to attain the same purpose which the Lawgiver intended to achieve through them. These ways and means (rules and actions) which lead to goals should not be used as legal devices or tricks to achieve other goals whose achievement was not intended by the Law Giver or those illegal goals the achievement of which is itself not possible directly with the means and ways provided by Shari'ah in order to avoid any offence against the will of Allah, as explained in the legal maxim:

الأُمُور بِمَقَاصِدِهَا

*"Basis of all acts is objective thereof"*²³

It is one of the Five Universal Legal Maxims of Fiqh from whom other subsidiary maxims are derived. It is based on the Hadith of the Holy Prophet (PBUH) as said:

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ

*"Verily actions are judged by the intentions."*²⁴

The application of this legal maxim is in all fields of Islamic law. Niyah (intention) is a component which plays an imperative role in determining the status of acts of the subjects whether the actions are verbal or physical, be it prayer, divorce, sales, good deeds, fasting or any other act.²⁵ It denotes that the reward of any deed is depending on the intention if it is good and lawful then rewarded otherwise not. There are two fold roles of intention. One is moral and the other is legal. The moral role is related with the intent to Ikhlas (sincerity) of the subject while doing some act, which leads to the Allah's Pleasure. Whether the act is acceptable or not to Allah will purely depend on the intention of the person. Even if is acceptable the sincerity in the act will determine the reward for the act in the hereafter.²⁶ In this regard a maxim manifests as:

لَا ثَوَابَ إِلَّا بِنِيَّةٍ

*"No afterlife rewards (for the deeds) without examining the intention behind them"*²⁷

The Legal Role of Intention

On the other hand is the legal role of intention, which deals with the awareness or unawareness of an individual while making some actions. It determines whether an individual has discharged his duty as demanded by the Lawgiver or not. Intention determines the validity or invalidity of several contracts such as Tawarruq, Bay' al-'inah, Bay' Bil-Wafa, and many others are declared invalid by majority of the jurists only on the basis of the respective intention and motivating cause of the contracting parties and the inconsistency of their objectives with the spirit of the Shari'ah in each contract.²⁸ An act or speech is accepted and rewarded only if it is done with proper valid intention. If an act is done with a bad intention, even if the appearance of the act is in accordance and compliance with the Islamic Laws, it will be invalidated. ²⁹

Keeping in mind that a good intention does not change the legal status of any unlawful act. If a person makes an illegal act with good intention, the illegality of the act will not be changed and the actor will be sinned. For example, if a person having an intention to provide some food material to a poor family by stealing it for them, the act of stealing will remain prohibited even if it is done with a good intention. On the other hand ill-intentions deprive the actor from the reward of his good deed and even may cause him to be punished in the hereafter as the Holy Prophet (PBUH) stated:

عَنْ أَبِي مُوسَى رَضِيَ اللَّهُ عَنْهُ قَالَ جَاءَ رَجُلٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ الرَّجُلُ يُقَاتِلُ لِلْمَعْنَمِ، وَالرَّجُلُ يُقَاتِلُ لِلذَّكْرِ، وَالرَّجُلُ يُقَاتِلُ لِيُرَى مَكَانَهُ، فَمَنْ فِي سَبِيلِ اللَّهِ قَالَ مَنْ قَاتَلَ لِيَتَكُونَ كَلِمَةً لِلَّهِ هِيَ الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ.

"This Hadith is narrated by Abu Musa (RA) that a man came to the Holy Prophet (PBUH) and asked: A man fights for war booty; another fights for fame and a third fights for showing off; which of them is in Allah's Cause?" The Prophet said, "He who fights that Allah's Word (i.e., Allah's religion of Islamic Monotheism) be superior is in Allah's Cause." ³⁰

This universal legal maxim ³¹بمقاصدها الأمور is originated from a Hadith of the Holy Prophet Muhammad (PBUH) ³²إنما الأعمال بالنيات and it is considered a corner stone of the concept and philosophy of intentions and motivating causes behind the juridical acts in Shari'ah.³³ The above stated universal maxim plays an essential role in the assessment and evaluating the legality of an act or a contract. It suggests that while judging the validity or invalidity of an action; its intended goal must be taken into account, besides its apparent form and structure.

The intention determines the end result of an act. For example, if a person finds something lying on the street and he picks it up from there. Now let's suppose if the things are destroyed or harmed in his hands whether he is liable to compensate the real owner of the things or not. This purely depends on the motivating cause that leads him and forces him to pick up the lost things. Now if his intention is to take the thing from the street and hand it over to its real owner, he is not required to compensate the real owner for the destruction of his commodity because in this case his status is considered as a trustee. But if his intention is to retain the things, he is to be considered liable for the destruction of the commodity and he is required to pay compensation to its owner. This example shows the status of a person on the basis of the intention who has changed from a trustee to a usurper.³⁴

Likewise, selling grapes to a person who extracts wine from them, selling weapons to a habitual criminal who uses to kill innocent people, selling weapons when there is *fasad* ³⁵ and renting house to a person who uses it for gambling, dancing or any other prohibited activity is invalid if the seller or the lessor has prior knowledge of the bad intention of the buyer. Similarly if a person has enough wealth and paying Zakah has become obligatory upon him almost but he uses a legal device to escape from the obligation of Zakah by making a gift before completion of the year with the intention to escape from paying Zakah. Such gifts are considered invalid in Shari'ah due to the bad intention of the subject of law.³⁶

The Principle of *Sadd al-Dhari'ah*

In Islamic Law every contract is backed by a divine objective. So, the intention of the contracting parties should not contradict with the divine objectives in any particular contract. If there is any inconsistency the contract is stand void and if the contract is in accordance with the objectives of Shari'ah, considered a valid contract.³⁷ Likewise, all lawful deeds and actions are also invalidated by the Shari'ah which may lead to undesired or unlawful ends as a legal maxim indicates:

الذرائع الى الحرام تسد

*"Lawful means to unlawful ends shall be blocked."*³⁸

All those lawful means which leads to unlawful ends should be blocked and only those ends are permitted to attain through these means which the Lawgiver has actually intended to achieve from. This principle is not concerned with unlawful acts as they are prohibited in any way. It only discusses that lawful ways which may lead to unlawful results. For instance, the cultivation of poppy is restricted in many countries despite its need in the formation of many medicinal drugs because it may lead to the production of heroin and opium.³⁹ Similarly, abstaining from certain deeds such as trade

and commercial transactions at time of Friday prayer and continuing business at this time may act as a barricade in the Friday congregational prayer.⁴⁰ Almighty Allah has clearly forbidden any act at the time of Friday prayer as sated:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا الْبَيْعَ ذَلِكُمْ خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

“O ye who believe! when the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allah, and leave off business (and traffic): that is best for you if ye but knew!”⁴¹

The principle of Sadd al-Dhari‘ah gets its strength from the Holy Qur’an as Allah Almighty forbids Muslims from insulting the idol-worshippers in order to avoid any undesired reaction from their side. In a response they may insult Almighty Allah.⁴² The act of insulting idol-worshippers is an act which might have been otherwise permissible but is banned only to avoid expected unlawful consequences. Principle Sadd al-Dhari‘ah is based on the idea of preventing the happening of an evil before it actually materializes.⁴³ So, the prohibition is based on the uncertain expected unlawful results, but whether these results actually take place or not is something out of the question. Insulting idol-worshippers is banned even if a Muslim intends and expects that in such an action the unlawful results not take place.⁴⁴

It is imperative to note here that it is the consistency in the objectives of the acts of the subjects with the divine objectives which is to be taken in to account, mere the legality and lawfulness of the intention or the objective of the contracting parties in a contract is not enough for its validity. That is if the objective in a contract is lawful but it is still inconsistent with the objective of the Lawgiver in a particular contract, it stands invalid. For the validity of a contract the condition of lawfulness of the purpose and intention of the contracting parties is necessary but not sufficient. What if people start doing contracts by considering permissible objectives that they like and ignore the real and primary objectives behind such contracts? If this situation takes place what will be the status of Shari‘ah and what will be its role in regulating the society when its particular objectives behind particular acts and contracts become unattainable by being replaced by other permissible or impermissible objectives and intentions.

Many maxims have been derived from the above mentioned universal maxim which have broadens its scope of applicability. One of the basic maxims is as under:

العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني

“In contracts effect is given to objectives and meaning not to words and phrases.”⁴⁵

This subsidiary maxim is purely for all kinds of contracts and business transactions. It helps in differentiating between the natures of different kinds of contracts. It declares that appearances and expressions cannot be the integral part of any contract unless they are consistent with the intention of the contracting parties. So, the intention and the meaning of a contract determines its status, not mere looking at words and formations because words are actually just ways to express meanings. Words are accepted as the foundation and essence of a contract only if they are consistent with the meaning and intention of the contract otherwise it is the meaning which is to be considered.⁴⁶ For example, if someone says to another that I lend you my car for RS 500 per day. In this statement the word used is lending but it is actually the act of hiring rather than lending as explained in Article 3 of Al-Majallah al-Ahkam al-Adaliyyah, as “In contracts effect is given to intention and meaning and not to words and phrases”.⁴⁷

The case of Bay' al-'Inah

Bay' al-'Inah is a legal device used to reach an end the accomplishment of which was not possible straight forward in the scope of Shai'ah. In Bay' al-'Inah two contracts are combined together to achieve an illegitimate usurious end. As an example, let us say A sells a pen for Rs 50 to B on cash payment and B on the spot sells the same pen back to A for Rs70 on deferred payment basis. What is the end result? It is just a legal device and a trick for borrowing on interest. Doing trade is never intended by both of the parties. The two contracts are legitimate independently but combining them has changed the result. A never intended to sell the commodity and B never intended to buy it. Actually A had some money which B wanted to borrow. The end result is that B lent A Rs50 and will receive Rs70 after some predetermined time. The majority of Muslim Jurists believe that this transaction is prohibited because the intended objective of the transaction opposes the objective laid down by the lawgiver.⁴⁸ The same is bad intention is also found in some other transactions such as Tawarruq⁴⁹. The objective that the parties aim to achieve in the combination of the above given two independently lawful transactions is completely usurious and unlawful. They are using lawful means to arrive at unlawful ends proscribed by Shari'ah.⁵⁰Hence, It is the foundation and the motivational force of a contract or any activity which is to be considered, not mere looking at its arrangement or formation alone.

Conclusion

From the above intensive discussion regarding the soundness and validity of any act, transaction or contract we have reached a conclusion that any contract can be declared valid in its spirit if it satisfies three conditions. The first is the validity of arrangement, formation and appearance of a contract. In the second place is the legality and permissibility of the objective and the desired end intended to achieve by the contracting parties through the contract. And in the third place is the consistency of the permissible objective intended by the contracting parties with the divine objective intended by the Lawgiver to achieve in a particular contract. This philosophy behind the third condition covers a great part of the objective of this paper and what the paper is all about. That is while performing acts we should not look only into the validity of appearances and objectives of our acts, but we should also consider the objective the Lawgiver intended to achieve in these acts. Because the rules and commands of Shari'ah are backed by goals and wisdoms of the Lawgiver which must be considered in order to achieve the greater objectives of Shari'ah.

Shari'ah is a goal in itself and was never revealed to be a law for regulating people and making them behaving in a particular way. Presuming it simply a regulatory law will reduce from its holiness and sanctity. Shari'ah is a divine law consists of commands from Allah backed by goals and objectives that serve as spirit for it, eliminating of which will leave nothing but useless customs. These objectives are actually the divine interests that the Lawgiver seeks to achieve for the smooth functioning of the societal issues, whether they are social, political, intellectual, or economic. A performance from a person or institution that may crush or defeat these divine interests even under the umbrella of Shari'ah will be considered an offense converse to the will of the Lawgiver. In a nutshell it is concluded that objective and purpose of any act or transaction and its consistency with the objective and intention of Allah is equally important as its outer form.

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- ³⁴- Mansoori, *Shari'ah Maxims on Financial Matters*, (International Institute of Islamic Economics, International Islamic University Islamabad, Pakistan, 2007), 21-22.
- ³⁵- It means when any state or the country thinks that there is a dire need to ban the buying and selling of weapons during the period of turmoil to the terrorists, robbers etc. See for more detail: Mansoori, *Shari'ah Maxims on Financial Matters*, 39-45.
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