

## **CORPORATE SOCIAL RESPONSIBILITY: APPROACHING IT FROM THE OBJECTIVE-OF-SHARI'AH PERSPECTIVE**

**Dr Anowar Zahid**

Faculty of Law, Universiti Kebangsaan Malaysia

[dr.anowar.zahid@gmail.com](mailto:dr.anowar.zahid@gmail.com)

### **Abstract**

*Corporate social responsibility, as a legal topic, has received much attention from scholars of corporate law from Western perspective. The reason behind such attachment of importance is that in the present world corporations impact, to a great extent, people's lives, commercial, social, cultural and even political. On the other hand, they have an important role to play in connection with environment, people's morals and ethics, product wholesomeness, etc. In the process of Islamization of laws there is a need to consider this issue from Islamic perspective. In this proposed paper this matter would be addressed from Shari'ah objective perspective.*

**Keywords:** corporate, *maqasid*, *Shari'ah*, social, responsibility.

### **Introduction:**

Jurisprudentially speaking, a corporation is a legal person separate from its members. It carries on business with funds typically coming from two channels-shareholders (equity funds) and creditors (loan funds). If it is a public company, the shareholders are the members of the public. If it is a private company, the shareholders are a limited number of private individuals. It has a board of directors who runs its business on behalf of the shareholders. There are employees who work under the board and accomplish the duties assigned to them. This is a simple structure of a corporation. It superficially shows that a corporation is merely a business organization which is managed by a board for shareholders for the purpose of making profits- maximization of profits. And the shareholders are the ultimate recipients of the profits. As such maximization of profits is the sole goal and character of a corporation.

Taking a broad view of the corporate activities in the day-to-day life of the modern world, one would agree that a corporation while carrying on its business activities affects/concerns other people and also various matters of the society in which it operates its business, especially in an era when corporations have emerged, both nationally and internationally, as humongous economic powers. There are many multinational corporations (MNCs) whose annual income surpasses the combined gross domestic products (GDP) of a significant number of less developed countries (LDCs) of the present world.<sup>1</sup> To put in short, the

---

<sup>1</sup> I. Bantekas, 'Corporate social responsibility in international law', 22 *Boston University International Law Journal* 309, at p. 309.

interests of other people and phenomena are related to and affected by the activities of corporations given the size and effect of their economic activities. For example, while conducting its business for maximization of profits a corporation may not pay the employees and workers well, may not provide them with a good working environment. It may manufacture products which are unwholesome and so are not good for the consumers. It may pollute the environment in the process of manufacturing its products. The environmental pollution may injure the other members of the society. In this vein corporations are connected in many ways with the society in which they operate their businesses. As such they are no more merely private economic entities; rather they are perceived as social organizations whose activities are likely to 'affect the interests of the society'. And this is what is known as "corporate social responsibilities (CSR)."<sup>2</sup>

However, is CSR an Islamic concept? This is a natural query by a Muslim mind as each and every Muslim is warranted to practice Islamic *Shari'ah* in all aspects of life. In quest of an answer to this question the present paper has been written, which looks at the concept from the objectives (*maqasid*) of *Shari'ah* perspective. The reason behind this approach is that both CSR and Islamic *Shari'ah* share apparently a common objective, which is to achieve benefits and to prevent harms in society. Whether this convergence is really true has been examined in this paper by comparing the various components of CSR with the *Shari'ah* values that serve different objectives (*maqasid*).

### **The Concept of Corporate Social Responsibility(CSR)**

In order to judge the relevance of CSR to the business world the proponents of the theory of the firm (called free market school) look at the very nature of and reasons for business activities of men in general. They posit that people engage in business for their self-interest of profits. Adam Smith who was the pioneer of this school of thought put this notion in simple terms in the following statement:

It is not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their *own self interest*. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.<sup>3</sup>

In other words, the motive for profit is the driving force behind the business or economic activities, which Smith called an "invisible hand" while he was advancing the reasons as to why investors employ capital in foreign countries.<sup>4</sup> Though it is claimed that this was Smith's observation on the business

---

<sup>2</sup> S. Sheikh, *Corporate Social Responsibilities: Law and Practice*, (London: Cavendish Publishing Ltd., 1996), p. 197.

<sup>3</sup> A. Smith, *The Wealth of Nations*, read at [http://en.wikipedia.org/wiki/Wealth\\_of\\_Nations\\_on\\_26\\_March\\_09](http://en.wikipedia.org/wiki/Wealth_of_Nations_on_26_March_09).

<sup>4</sup> A. Smith, *The Wealth of Nations*, Book IV at [http://en.wikipedia.org/wiki/Invisible\\_hand#cite\\_ref-2](http://en.wikipedia.org/wiki/Invisible_hand#cite_ref-2) on 26 March 09.

world (“economic reality”) and not a proposition for a social policy,<sup>5</sup> his followers have taken the self-interest of profit maximization as the central tenet of their philosophy. And many of them believe that profit maximization is the only social responsibilities companies have. Milton Friedman is probably the most prominent of them. According to him, in a free-enterprise and private-property system ‘there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits’.<sup>6</sup> Beyond this there is no other social responsibility for corporations because they are soulless artificial persons. Of course individual members of the society, such as corporate executives, can have social responsibilities in the sense of spending their own money for the cause or benefit of his family, friends, club or society. These they can do in their personal or private capacity. But the corporate executives cannot spend the money of the stockholders for social services because being their agents the former’s responsibility is to make profits and profits only, of course, staying within the bounds of law, social ethics and rules of game, i.e., rules of open and free competition and without deception or fraud.<sup>7</sup> However, later Friedman partially changed his stance and acknowledged CSR subject to the condition that the CSR activities have bearing on the promotion of the company’s financial interest.<sup>8</sup> ‘(W)ithout reciprocal interest, corporate responsibilities is not a sustainable idea.’<sup>9</sup> This has assumed the modern position of economic theories of the firm.

Against the only-profit maximization philosophy there have emerged the Managerialists who are concerned about the economic powers of corporations. The leaders of the Managerialists, Berle and Means, expressed their concern almost 80 years ago in the following words:

The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state... Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organization.<sup>10</sup>

Therefore, given its size, income and dominant role in an economy a modern corporation can no longer be considered as a private business enterprise absorbed

---

<sup>5</sup> *Supra* note 3.

<sup>6</sup> M. Friedman, ‘The social responsibility of business is to increase its profits’, *The New York Times Magazine*, September 13, 1970, read at <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> on 26 March 09.

<sup>7</sup> *Ibid.*

<sup>8</sup> ‘Freedom and philanthropy: an interview with Milton Friedman’ (1989) 71 *Business and Society Review* p. 23 cited in Sheikh, *supra* note 2, at p. 27. :

<sup>9</sup> Sheikh, *ibid.*

<sup>10</sup> Adolf A. Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York:

Harcourt, Brace & World, [1932] 1968), p 313 cited in M. Mizruchi, Berle and Means revisited: the governance and power of large U.S. corporations, at p. 23 read at <http://www-personal.umich.edu/~mizruchi/tsweb.pdf> on 27 March 09.

in profit maximization as a sole objective. Rather it has practically assumed the status of a major social organization and as such owes the society a number of responsibilities.<sup>11</sup> One of the responsibilities is profit maximization and others are to pursue 'non-pecuniary objectives which will have a direct effect on the society'.<sup>12</sup> The corporate managers (directors) who are in control of the organization are in charge of shouldering those responsibilities to a set of claimants including the shareholders, workers, consumers and the State.<sup>13</sup>

In fact, the above concept of broader responsibility of managers was originally proposed by Professor E. Merrick Dodd in 1932<sup>14</sup>, which was later carried forward by Berle and Means who initially were against him. Dodd based his argument on the managers' trusteeship relationship with the company. He viewed that the managers were not the trustees of the shareholders only; rather they were the trustees of other stakeholders and the society as a whole. Subsequently his view was reinforced in case law. In American case of *AP Smith Mfg v. Barlow*<sup>15</sup> the directors proposed to donate \$1,500 to the Princeton University and an additional contribution to its maintenance. The minority shareholders objected to this alleging that it contravened the objects of the company. The court upheld the donation on the ground of the company's wider obligations to the community: 'Modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within they operate.'<sup>16</sup> (per Jacobs J)

Over time the broader concept of directors' social responsibilities has increasingly gained popularity both in national and international jurisdictions. In the present world CSR is a legally protected phenomenon. For example, the Section 172 of the UK Companies Act 2006 provides that

A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and

---

<sup>11</sup> Berle and Means, *The Modern Corporation and Private Property*, p. 1 cited in Sheikh, *supra* note 2, at p.30.

<sup>12</sup> Sheikh, *supra* note 2, at p. 33.

<sup>13</sup> Berle and Means, *The Modern Corporation and Private Property*, p. 9 cited in Sheikh, *supra* note 2, at p. 30.

<sup>14</sup> E.M. Dodd, Jr, 'For whom are corporate managers trustees?' (1932) 45 *Harvard Law Review* 1145.

<sup>15</sup> (1953) 13 NJ 145, appeal dismissed, (1953) 346 US 861.

<sup>16</sup> *Ibid.*, at p. 868.

(f) the need to act fairly as between members of the company.

Similarly, at the international level multinational enterprises (MNEs) are encouraged by the Organization for Economic Co-operation and Development (OECD) to pay attention to CSR issues. The OECD Part II of Guidelines says that 'Enterprises (MNEs) should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders.' After this it mentions a number of specific matters of which MNEs should be mindful. In particular it asks the MNEs, among others, to

- 1) Contribute to economic, social and environmental progress with a view to achieving sustainable development.
- 2) Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.
- 3) Encourage human capital formation, in particular by creating employment opportunities and facilitating training opportunities for employees.
- 4) Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues.
- 5) Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
- 6) Refrain from discriminatory or disciplinary action against employees who make *bona fide* reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the *Guidelines* or the enterprise's policies.

**Sum-up:**

The foregoing describes the concept of CSR from the perspectives of the firm theories and managerialists theories. Of them the proposition of the managerialists has received acceptance in the modern time. According to them, corporations are not only responsible to their shareholders, but also to persons or communities called "stakeholders" for the impact of their activities. "Stakeholders," are of two types: primary (employees, customers, investors, suppliers) and secondary (all others such as environment).<sup>17</sup> 'Essentially, CSR is the deliberate inclusion of [public interest](#) into corporate [decision-making](#), and the honoring of a [triple bottom line](#): People, Planet, Profit.'<sup>18</sup>

## 1. The Concept of Objectives-of-Shari'ah (*Maqasid al-Shari'ah*)

---

<sup>17</sup> Bantekas, *supra* note 1, at p. 311.

<sup>18</sup> [http://en.wikipedia.org/wiki/Corporate\\_social\\_responsibility](http://en.wikipedia.org/wiki/Corporate_social_responsibility) visited on 1 April 09.

Objectives of *Shari'ah* (hereafter *maqasid*) stand for 'the purposes which the Law (*Shari'ah*) was established to fulfill for the benefit of humankind.'<sup>19</sup> "Benefit" in this context refers to mercy from Allaah (God the Almighty), which may be traced in the following verses of the Qur'an:

'O mankind, a direction has come to you from your Lord; it is a healing for the (spiritual) ailments in your hearts and it is guidance and mercy for the believers.'<sup>20</sup>)

'We have sent you (O Prophet Muhammad) as the mercy for the whole creation.'<sup>21</sup>

*Shari'ah* aims to attain mercy for mankind by ensuring their benefits and removing their harms. In the interpretation and lawmaking process the aims of *Shari'ah* (*maqasid*) are resorted to as an independent method. In the lawmaking process the *mujtahids* (Islamic jurists) resort first to the literal interpretation of the Qur'an (the Book of God revealed to the Prophet Muhammad, peace be upon him) and *Sunnah* (the Traditions of the Prophet). If this method does not find the answer to a given issue, then the *mujtahids* turn to the *qiyas* (analogical deduction) to derive necessary rules from the Qur'an and *Sunnah*. Should the issue in question is of such nature that the Qur'anic or *Sunnah* rules cannot be extended to it by *qiyas*, the *mujtahids* will address the issue in light of the *maqasid* of *Shari'ah*.<sup>22</sup>

Example: Whether wine is allowed in *Shari'ah* is answered by the Qur'an and *Sunnah* themselves. The Qur'an says, 'Drinking wine is the act of devil, so leave it.'<sup>23</sup> And the Prophet said, 'Every intoxicant is wine and every wine is prohibited.' *Mujtahids* can find this rule straight from the Qur'an and *Sunnah*. Now, if a question arises as to whether narcotic drugs, which intoxicate, are allowed or not, the answer is not available directly from Qur'an or *Sunnah* because they contain no provision directly concerning drugs. In this case the *mujtahids* have to compare the drugs with wine. Because both wine and narcotic drugs intoxicate and the Qur'an and *Sunnah* prohibit intoxicants, *mujtahid* extend the *hukm* (command) of prohibition to narcotic drugs by *qiyas*. But if there is a drug which does not intoxicate but does cause memory loss, what will be the ruling or *hukm* in that case? The wine rule cannot be extended by *qiyas* to this case because the effective cause (*illah*), meaning intoxication, is not present. To solve this issue *maqasid* of *Shari'ah* will be resorted to. As indicated above, *maqasid* seek to remove harm and to achieve benefit for the humankind. This drug in question poses a harm to human intellect, which ultimately may affect life. Therefore, to eliminate this harm *Shari'ah* prohibits this drug. To quote the Prophet in this connection, 'Harm must be eliminated.'

---

<sup>19</sup> A. Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (Kuala Lumpur: The International Institute of Islamic Thought, 2006), at p. xxiii.

<sup>20</sup> *Qur'an* 10:57.

<sup>21</sup> *Qur'an* 21:107.

<sup>22</sup> I.A.K. Nyazee, *Theory of Islamic Law: the Methodology of Ijtihad* (Islamabad: The International Institute of Islamic Thought, 1994), at p. 291.

<sup>23</sup> *Quran* 5:90.

It should be added here that *maqasid* are not used only as an independent lawmaking method; they are considered in the lawmaking by other two methods as well. For example, if *qiyas* gives a result that is difficult to practice or harmful for society, then *maqasid* will come into play. To remove the hardship the *qiyas* rule shall be rejected and an exceptional rule shall be made. Thus a contract without subject-matter being in existence is generally void. On this ground a manufacturing contract (*istisnah*), whose subject-matter (e.g., a garment) is non-existent, is not valid. If this *qiyas* rule is accepted, that will be inconvenient for the society and as a result the objective of *Shari'ah* (achieving benefit and removing harm) will be defeated. In order to uphold the objective an exception is made to the *qiyas* rule by allowing *istisnah* (contract). This method of lawmaking is called *istihsan* (judicial preference).

The term, *maqasid*, probably occurred for the first time in the juristic writings of the early 10<sup>th</sup> century jurist Abu Abd Allaah al-Tirmidhi al-Hakim (d. 932). It received more frequency of reference in the works of the 11<sup>th</sup> century jurist and Imam of the Two Sacred Shrines, Imam Abu al-Ma'li Abd al-Malik ibn Abd Allaah al-Juwayni. He is considered to be the real pioneer of this theory, which he developed in his famous Islamic jurisprudence work, *al-Burhan*. He introduced a three-fold division of the *maqasid*, namely “essentials” (*daruriyyat*), “needs” (*hajiyyat*) and “embellishments” (*tahsiniyyat*), which will be discussed in the next paragraph. This division has been endorsed generally by the *Ulama* (Islamic scholars) ever since. Al-Juwayni's theory was further developed by his student, Abu Hamid al-Ghazali (d. 111) in his works, *Shifa al-Ghalil* and *al-Mustafa*. After him, further refinement was performed by Imam Abu Ishaq al-Shatibi (d.1388) in his *al-Muwafaqat*.

The three broad divisions- essentials, needs and embellishments- have become the basis of all discussion of *maqasid*. Essentials include five major interests, namely religion, life, human intellect, family lineage and material wealth. Originally al-Juwayni included these five in the first category of *maqasid*. Later scholars had added more to them by further research. As a result the *maqasid* seem to have assumed an open-ended list of interests, which include, among others, the following: fulfillment of contracts, preservation of the ties of kinships, honoring the rights of one's neighbors, social welfare support, freedom, human dignity, human fraternity, protection of fundamental rights and freedoms, economic development, R&D in technology and science, peaceful coexistence among nations, and love of God, sincerity, trustworthiness and moral purity.<sup>24</sup> The second category, i.e. “needs” include concessions granted to the *hukm* of the Lawgiver in exceptional time and situation so that the essentials remain in existence. For example, obligatory five times prayer is an essential part of the religion of Islam. When a believer is on travel, he/she is required to shorten the prayers so that it does not become a burden on him or her, but at the same time the *hukm* of Allaah (prayer in the present case) remains in practice. Similarly when a believer is sick and feels hard to fast, he/she is allowed to break the fast, but

---

<sup>24</sup> M.H. Kamali, *Shari'ah Law: An Introduction* (Oxford: One World, 2008), at pp. 126-127.

he/she has to make it up when he/she regains good health. In this way the second category of *maqasid* grants “concessions” to make the essentials easy to practice. It does not, however, give “exemptions” from the essential parts of *Shari’ah* with the purpose that they (essentials) continue in existence. The third category entails optional and supererogatory duties. For example, optional prayers, optional charity, good manners, etc. The aim of this category is to encourage the believers to do extra things which are not obligatory so that it becomes easy and comfortable for them to practice the essentials. To do the supererogatory things Allaah and His Messenger have encouraged the believers a lot. For example, the Prophet encouraged the Muslims to make optional charity (*sadaqah*), even half a date, and to save themselves from the hell fire. The whole purpose is to make them habituated to making charity so that it will be easy for them to give *zakah* (obligatory charity). And in that case the essential command of *Shari’ah* (*zakah*) will be established plus *zakah* and *sadaqah* together will bring economic justice in society- the gap between the rich and the poor will be narrowed- and a fraternal community will develop thereby over time.

*Maqasid* have two aspects- preservation of interest (*ibqa*) and protection of interests (*hifz*).<sup>25</sup> The former is a positive step to establish and maintain the *maqasid* and the latter a negative or defensive step to safeguard them from harms or to deal with the violations or harms committed against them. For example, religion is preserved by creation of conditions that ease worship and other fundamental pillars of Islam. And religion is protected by fighting those who fight Islam or by punishing those denounce the faith after accepting. Life is preserved by making arrangements (e.g., by providing food, clothing, shelter, medication etc.) that are essential to survive. Life is protected by punishing those who destroy it without legal justification. Family is preserved through the institution of marriage and healthy family life and it is protected by taking legal action against those who act in detriment to this institution (e.g., whipping a fornicator 80 times). Human intellect is preserved by providing education and conditions and environment congenial to its growth, while it is protected by penalizing those adopt ways and means to destroy it. Wealth is preserved through establishing the system and means of its legal ownership and healthy growth, while illegal ownership (e.g., by theft or illegal possession) is punished by relevant law.<sup>26</sup> Thus the gist of the theory of *maqasid* is to achieve benefit and eliminate harm for the wellbeing of the mankind.

Now, how to achieve benefit and eliminate harm? By educating people, ensuring social, legal and political justice, and realizing public interest.<sup>27</sup> These may be briefly stated further in the following.

### **Educating People:**

---

<sup>25</sup> Nyazee, *supra* note 22, at pp. 241-242.

<sup>26</sup> See *ibid*.

<sup>27</sup> Kamali, *Shari’ah law*, *supra* note 24, at pp. 27-36.



Human society consists of individuals. It is the humans who really can bring good to the society by good deeds and evil by evil doings. And behind his actions lies his intention. If the intention is good, the actions will be good. If the intention is wrong, actions will be wrong too. For this reason Prophet Muhammad said in effect that in the human body there is piece of flesh (i.e., heart). If that is correct, human actions will be correct. Accordingly Islam teaches to cleanse and purify the heart with “right belief” and fear of God. “Right belief” means the belief in “There is no god except Allaah (God) and Muhammad is the Messenger of God”. By accepting this belief one accepts the sovereignty of God and subjects himself/herself to the desire of God and His Messenger. In other words, he/she accepts the whole system of faith, religion and law taught by Islamic *Shari’ah*. It means after submission to the will of God, no one is supposed to act upon one’s own desires and whims. In this respect he/she is guided by the sense of ever vigilance by God, which is expressed, in Islamic terminology, as “fear of God” (*taqwa*). With the sense and belief that God is watching him/her and that he/she will have to stand alone before Him on the Day of Judgment to give account of the whole life a believer can refrain from going against the commands and desires of God and His Messenger. So that believers can inculcate this fear of God in their hearts God has commanded them to present themselves before him five times a day through prayers (*salah*). Before going to *salah* believers have to make clean themselves and make ablution (*wudu*), which teaches them internal and external cleanliness in their lives. To pray they have to maintain the prescribed time period for each *salah*. They are required to pray preferably in congregation (*jama’*) where they stand side by side before God irrespective of their social or economic or any other status. This brings the sense of humility and brotherhood in them. Believers face one direction (towards the Ka’ba- House of God situated in Makkah), which shows their discipline. When they pray in congregation, they follow one leader (*Imam*), brings the sense of unity amongst them. They start *salah* by saying “*Allaahu Akbar*” (God is the Great). By this utterance they belittle themselves and brush aside their pride and arrogance in the presence of God. After this utterance they are not allowed to talk, eat, drink or to do any other things which are not part of the *salah*. By this they are expected to become accustomed to the rules of *salah*, in other words to the law of *Shari’ah* broadly speaking. When all the ritualistic requirements are completed, they come out of *salah* by saying “*Assalaamu alaikum wa rahmatullah*” (peace and mercy of God be upon you) to the right and the left sides. In this way they wish good to their fellow believers, which is a great teaching of public interest in their lives. All these actions the believers are required to do with a sense of ever vigilance of God at least five times a day. This is the “essentials” part of *Maqasid*. In addition, they are encouraged to pray optional and supererogatory *salah*, which belongs to “embellishments” part of *Maqasid*. By doing this they inculcate the fear of God in their hearts, which helps them outside *salah* to stay away from sins and also to do other good deeds which are related to God as well as to their fellow believers, mankind at large and even to other creations and environment. That is why God says in the Qur’an about the merits of *salah* that

‘Surely prayer (*salah*) keeps one away from indecency and evil, and certainly the remembrance of God is the greatest (form of devotion.)’<sup>28</sup>

### **Ensuring Justice (*‘Adl*):**

Islam aims to reform personal character with *taqwa* at the individual level and makes the Muslims ready to serve the society- to do justice in the society. This is the very fundamental purpose of all revealed religions as the Qur’an says: ‘We sent Our Messengers with evidences and revealed the Book and the balance through them so as to establish justice among people’.<sup>29</sup> Through justice Islam wants to ‘establish an equilibrium by way of fulfilling rights and obligations and by eliminating excess and disparity in all spheres of life.’<sup>30</sup>

The Qur’an emphasizes the establishment of justice so much by referring to it at least in fifty three places. It uses the term (*‘Adl*) in a comprehensive sense calling upon Muslims to be just at all levels of life- private, public, legal, social, economic, political, national and international- without making any discrimination on any ground whatsoever. The following verses may be quoted in support of the comprehensiveness of justice in Islam:

‘O believers! Stand out firmly for justice as witnesses to God, even if it be against yourself, your parents and relatives and whether it be against rich or poor’<sup>31</sup>

‘And let not hatred of a people divert you from the path of justice. Be just as it is closest to excellence in piety’<sup>32</sup>

‘And when you speak, speak with justice’<sup>33</sup>

The Qur’an lays down the provision for retributive legal justice when it provides for punishment, for example, for killing, theft, fornication and adultery, which violate the *maqasid* of life, property and family respectively. At the same time Islam provides for distributive justice. An Islamic State is responsible to make sure that everybody has food, clothing, shelter and other necessities of life. If the State fails to fulfill this responsibility and anybody commits a crime (e.g., theft) being compelled by the economic hardships, the Qur’anic punishment concerning the crime shall not apply. For example, the Second Caliph of Islam, Umar bin Khattab, suspended the theft punishment (which is cutting off hands) against some people who committed theft because at that time in Madina there was a severe famine and they did not have food to eat. This is an example of the economic preservation of one of the *maqasid*, namely life. In the similar vein, other *maqasid* must be preserved. Imran Khan Nyazee has put forward a scheme

---

<sup>28</sup> Qur’an, 29:45.

<sup>29</sup> Ibid., 57:25.

<sup>30</sup> Kamali, *Shari’ah law*, supra note 24, at p. 30.

<sup>31</sup> Qur’an 4:135.

<sup>32</sup> Ibid., 5:8.

<sup>33</sup> Ibid., 6:152.

of how all the five essentials can be preserved in an Islamic economic system. According to him,

- (a) the economic system of an Islamic State must be compliant with *shari'ah* requirement so that religion is preserved;
- (b) it must ensure that nobody goes hungry or homeless;
- (c) it must provide basic means necessary for a healthy family life;
- (d) it shall provide support for the education and development of intellect;
- (e) after fulfilling the above, the economic system will engage in increasing wealth within the restrictions of *Shari'ah*.<sup>34</sup>

### **Realizing Public Interest (*Maslahah*):**

In order to preserve and protect *maqasid* sometimes it is necessary to make laws considering their usefulness in the public interest in the event when there is no clear provision in the *Shari'ah*. For example, for the survival and healthy development of human life environment and ecological balance are essential. In absence of any direct legal provisions in the Qur'an or *Sunnah* the government may pass laws for their protection. Imam Malik, the founder of the Maliki School of Islamic law, devised this method of lawmaking. The whole purpose behind this approach of lawmaking is to bring benefit and to prevent harm, which is a rehash of the purpose of *maqasid*. In this lawmaking process first priority is given to those public interests which come within category of "essentials", then to those which qualify as "needs", and lastly to those which serve as "embellishments", described above. In order to apply this method the following conditions need to be fulfilled:

1. When there is a need to secure a benefit or to prevent a harm of the people in general;
2. When there is no clear *hukm* (provision) in the Qur'an, *Sunnah* or *ijma'* (consensus of Islamic jurists in general) with regard to the act of securing the benefit or preventing the harm;
3. When such an act is essential to serve a public interest (*maslahah*), like protecting five essential values, namely religion, life, intellect, family lineage, and property;
4. The *maslahah* must not conflict with any *Shari'ah* principle, e.g. any law legalizing interest (*riba*);
5. The *maslahah* must be rational and acceptable to the people of sound mind;
6. This method shall not apply to the matters of worship (*ibadat*).<sup>35</sup>

---

<sup>34</sup> Nyazee, *supra* note 22, at p. 263.

<sup>35</sup> See M.H. Kamali, *Principles of Islamic Jurisprudence*, 3<sup>rd</sup> ed. (Cambridge, UK: The Islamic Texts Society, 2003), at pp. 358-360; A.A. Qadri, *Islamic Jurisprudence in the Modern World* (Lahore, Pakistan: Sh. M. Asharf, 1963), at pp. 224-225.

## Corporate Social Responsibility (CSR) and *Maqasid*

As we have noticed above, corporations are treated as social institutions and not merely as private business enterprises meant for maximization of profit. They must make profits, but that's not the only objective. They must safeguard the interests of the creditors, suppliers, employees, consumers and the society as a whole. On the other hand, *maqasid of Shari'ah* are there to serve both individual as well as public/social interests. In this section of the paper we will look at if the CSR fits in the *maqasid* framework and, therefore, is worthy to be supported from Islamic point of view.

First of all it would be relevant to determine the status of a corporation from Islamic law perspective. There is no clear provision regarding this issue in the Qur'an or *Sunnah*. By *qiyas* (deductive analogy) Mufti Taqi Uthmani, a renowned Islamic jurists of our time, has held that a company is a legal person same as a *waqf* (public endowment). The basic characteristic of a *waqf* is that people dedicate some properties for religious or charitable purpose divesting their ownership in them. Allaah becomes the owner of the property. The beneficiaries of the *waqf* enjoy the benefits for which it has been created. The *waqf* emerges as an entity separate from the donors. This institution can, for example, make contracts, buy and sell properties and, sue and be sued. Similar is the capacity of a company.<sup>36</sup> Only the main difference between a company and a *waqf* is that the former is formed primarily for profits and the latter for religious and charitable purposes. But does *Shari'ah* consider this economic institution as a social one and hold it responsible to society in the similar way the managerialists do? This issue is being undertaken below.

Islam has made business lawful and at the same time imposes on businessmen and business institutions social responsibility. To quote the Qur'an: 'Allaah has made business lawful for you.'<sup>37</sup> And the real business in the sight God is to use the wealth and life for the cause of God,<sup>38</sup> which definitely includes the service to the mankind as the Prophet said, for example, that 'The one who looks after and works for a widow and for a poor person, is like a warrior fighting for Allaah's cause or like a person who fasts during the day and performs prayers all night.'<sup>39</sup> The Prophet said at another place, 'The best of people are those that bring most benefit to the rest of mankind.'<sup>40</sup> In same way as Allaah and His Messenger want the believers to do good to others they forbid them not to cause any harm as the Qur'an says, 'O you believe! Eat not up your property amongst yourselves in vanities; let there be amongst you traffic and trade by mutual goodwill nor kill (or destroy) yourselves: for Allaah has been Most Merciful to you.'<sup>41</sup> The Prophet said, 'The Muslim is he/she from whose hand and tongue the

---

<sup>36</sup> Taqi Uthmani, *Islamic finance*, read at

<http://www.darululoomkhi.edu.pk/fiqh/islamicfinance/limitedliability.html> on 9 April 09.

<sup>37</sup> *Qur'an* 2:275.

<sup>38</sup> *Qur'an* 61:10-11.

<sup>39</sup> *Bukhar* 835

<sup>40</sup> *Dâraqutni, Hasan*.

<sup>41</sup> *Qur'an* 4:29.

people are safe'<sup>42</sup>. Though the Qur'anic verses and the sayings of the Prophet address the humans (believers), they apply by analogy to corporations/business organizations as well as they are composed of humans and are administered by humans. As such it may be maintained that the traditional concept of CSR is recognized by Islam as both aim at achievement of benefits and prevention of harms.

Now the specific components of CSR, such as responsibility toward the creditors, employees, consumers, will be assessed from *maqasid* perspective.

### **Creditors:**

CSR advocates that corporate directors owe duties to the creditors whose money is involved in the business. They must take care that the creditors' money is put in right investment and the company does not incur insolvency. If it becomes insolvent, the creditors will be entitled to satisfy their loan that remains due out of its property.<sup>43</sup> The whole idea is to protect their money and to pay back their principal plus interest. From Islamic point of view the idea of taking care of creditors' interests including paying back their loan is well supported. Islam emphasizes creditors' interests so much that the Prophet said, in effect, martyrdom washes off sins except the liability of loan.<sup>44</sup> Allaah asks the believers to fulfill their obligations.<sup>45</sup> But Islam does approve interest-based loan because interest (*riba*) has adverse impact on society. The debtor invests the loaned money and may or may not make profits. If he/she makes profits, that is his/her. Alternatively, he/she may incur loss. In either case the creditor is not a party, meaning he/she does not receive any portion of the profit nor does he/she shares the loss with the debtor. He/she receives a set percentage of interest regardless of debtor's profit or loss whatsoever. In case of profit it is an injustice against the creditor that he/she receives nothing of the profit. The debtor makes money and the creditor is deprived; he receives only a particular amount of money most likely smaller than the amount of profit. On the other hand, in the event of loss the debtor bears the whole burden; the creditor receives the interest having no regard to the fate of the debtor. This is an economic injustice situation. That is why 'Allaah has declared business lawful and forbidden interest (*riba*).<sup>46</sup> And the Prophet said, 'May Allaah send down His curse on the one who devours *riba* and the one who pays it and on the two witnesses and on the person writing it.'<sup>47</sup> As such corporate responsibility to creditors, in general, is buttressed by Islamic *Shari'ah*, but responsibility for interest (*riba*) does not have any place in Islam. This is against religion- one of the *maqasid* of *Shari'ah*. It may be noted here that religion is number one objective of *Shari'ah* because the very purpose of the creation of humans by Allaah is His worship<sup>48</sup>

---

<sup>42</sup> *Tirmizi*, Iman 12.

<sup>43</sup> *Kinsella v. Russell Kinsella Pty Ltd.* (1986) 4 NSWLR 722 (Street CJ); *Winkworth v. Edward Baron Development Co Ltd* (1987) 1 All ER 114.

<sup>44</sup> *Sahih Muslim*, Book 20 no. 6469

<sup>45</sup> *Qur'an* 5:1.

<sup>46</sup> *Qur'an* 2:275.

<sup>47</sup> *Ahmad* 624.

<sup>48</sup> *Qur'an* 51:56.

### **Employees/workers:**

Modern company law (such as section 172 of the UK Companies Act 2006 referred to above) recognizes that while making corporate decisions the management should take into consideration the interests of the employees. The following may be the possible interests which modern law seeks to guarantee: (i) the employees should be paid well so that they can live well; (ii) there should not be any discrimination based on color, language, gender or any other ground; (iii) forced/compulsory labor should be abolished; and (iv) the employees' health and safety should be ensured.<sup>49</sup> Islamically the corporate managers are in a lofty responsibility to safeguard the interests of the people working under them as the Prophet said, 'Each of you is a shepherd and each is responsible for his flock.'<sup>50</sup> Though this *hadith* (saying) of the Prophet relates to family responsibility, it may be applied to corporate managers by inference. About the responsibility of employers for the employees the following *hadith* is relevant to quote: 'Allaah has placed them (employees) under you. They are your brothers. So anyone of you has someone under him, he should feed him out of what he himself eats, clothes him like he himself puts on, and if that be the case, let him not put much burden that he is not able to bear, then lend your help to him.'<sup>51</sup> By inference again it may be deduced from this *hadith* that the managers are responsible to pay the employees in such a way that they can have enough food, shelter, clothing and medication to support their lives. They should not force them (workers) to work beyond their capability. As well, being the "shepherd" for the employees the managers should ensure a healthy and safe working environment for them. Furthermore, there should be no discrimination whatsoever in the employment or treatment of employees because languages, colors, races etc have been created by Allaah for identification purpose and not for discrimination. To quote the Qur'an in this respect, 'O mankind! We have created you from a single male and female and made you into nations and tribes so that you may know each other. The most honorable of you in the sight of Allaah are surely the righteous.'<sup>52</sup> In this way the CSR relating to employees is supported by Islam. And this is to preserve the *Shari'ah* objective of life by ensuring due rights, fairness and justice. There should be measures of punishment under law to deal with the encroachment of this objective.

### **Consumers:**

Today under law (e.g., UK Company law mentioned above) corporations are responsible to the consumers for their product and services. A recent survey held in Ireland shows that company's service (81%), their honesty and openness (69%), and product quality (66%)- these three are the most considered factors for

---

<sup>49</sup> See, for instance, *Organisation for Economic Co-Operation and Development (OECD) Guidelines*.

<sup>50</sup> Imam Bukhari, *Al-Adab al-Mufrad* (tr. Aisha Bewley) read at <http://www.sunnipath.com/library/Hadith/H0003P0010.aspx> on 11 April 09.

<sup>51</sup> *Shaiih Bukhari* 2359.

<sup>52</sup> *Qur'an*, 49:13; 30:22.

the public.<sup>53</sup> Similar kind of responsibility is underscored by Islam. Businessmen's service to the society is acknowledged by the Prophet thus- 'The importer (of an essential commodity) into the town will be fed (by Allaah) and the hoarders will have (Allaah's) curse upon him'.<sup>54</sup> Virtues of their honesty and fair dealings are rewarding in the Prophet's words, 'The honest, trustworthy merchant will be with the Prophets, siddeeqs (true believers) and martyrs (in Paradise).'<sup>55</sup> Elsewhere the Prophet said, 'The merchants will be raised on the Day of Resurrection as evildoers, apart from those who fear Allaah and are honest.' The Prophet praised the honest businesspeople probably because of their role in wealth creation, which is one of the purposes (*maqasid*) of *Shariah*.

Under the traditional law (e.g., tort and contract laws) companies are responsible to consumers for their products<sup>56</sup> and services<sup>57</sup>. The possible objective of this responsibility regime is the protection of health and safety of the consumers. The scope of responsibility under Islamic law is wider. In order to protect religion, life (health, safety, etc) and intellect Islam prohibits the production, marketing or selling of any foods or products which are religiously prohibited (*haram*), such as pork, wine/intoxicants, pornography, etc.<sup>58</sup> The dealings with the consumers must also be just and fair: 'And give full measure when you measure, and weigh with a just balance; this is better and fairer for your end.'<sup>59</sup> Thus Islam encourages wealth creation but within its religious framework as the Prophet said, 'If Allaah makes something unlawful (*haram*), He makes its price also unlawful.'<sup>60</sup>

### **Environment:**

Environment is a common concern of the world community today for the survival of the mankind. This concern has been expressed through national, regional and international legislation, instruments and policies, which require/encourage corporations to act in an environment-friendly manner. To this end, corporations will do the following:

- sound environmental management;
- the precautionary approach fitted to industry needs;
- cleaner production, recycling, and use of renewable resources through technological innovation, and the sharing of such innovation, and

---

<sup>53</sup> 2009 Survey Report of Consumer Attitudes in Ireland towards Corporate Responsibility at [http://www.bitc.ie/uploads/2009\\_Survey\\_Report.pdf](http://www.bitc.ie/uploads/2009_Survey_Report.pdf) visited on 11 April 2009.

<sup>54</sup> *Ibn Majah* 2144.

<sup>55</sup> Read at <http://www.islam-qa.com/en/ref/77225> on 11 April 09.

<sup>56</sup> E.g., *Donoghue v. Stevenson* [1932] AC 562.

<sup>57</sup> E.g., *Ann v. Merton London Borough Council* [1978] A.C. 728; *Batty v. Metropolitan Property Realisations Ltd.* [1978] Q.B. 554.

<sup>58</sup> See, for example, *Qur'an* 5:3: 'Forbidden to you (for food) are- dead meat, the blood, the flesh of swine and that on which name of other than Allaah has been taken.' Also the *hadith* says that 'Allaah and His Messenger made illegal the trade of alcoholic liquors, dead animals, pigs and idols'. *Bukhari* 2082.

<sup>59</sup> *Qur'an* 17:35.

<sup>60</sup> *Ahmad* 2546.

- public disclosure and consultation with stakeholders.<sup>61</sup>

Environment and human life are interdependent. If the environment is polluted or otherwise affected, that will impact our life. Life being one of the leading objectives of *Shari'ah* Islam, without doubt, supports the preservation and protection of environment. The Prophet forbade Muslims to destroy trees and crops even at the time of war let alone at the time of peace. He also prohibited mistreating the animals even. All the purpose behind is to maintain a worth living and healthy planet so that human beings can survive and worship their Lord (Allaah), which is the very purpose of their creation. Another purpose of environmental protection is to help other creations exist so that they can also glorify Allaah:<sup>62</sup> 'The Seven Heavens and Earth and all beings therein celebrate His praise, and there is no a thing but hymns His praise.'<sup>63</sup>

### **Other Social responsibilities:**

As mentioned earlier, the corporation is a social institution and hence has responsibilities owed to the society at large apart from its direct claimants. Accordingly it should make charity, help the poor, build up various public welfare and religious organizations like schools, vocational institutions, clubs, prayer halls, etc. In that case the corporation will turn into a "good citizen" in the society.<sup>64</sup> This aspect of CSR has its place in Islam as well. As noticed above, establishment of social justice and serving public interests are important means of attainment of the *maqasid* of *Shari'ah*. To reiterate, the Qur'an says-

It is not righteousness that you turn your faces towards East or West; but it is righteousness- to believe in Allaah and the Last Day and the Angels, and the Book, and the Messengers; to spend of your substance, *out of love for Him*, for your kin, for orphans, for the needy, for the wayfarers, for those who ask; and for the freeing of captives; to be steadfast in prayer, and practice regular charity; to fulfill the contracts which you make; and to be firm and patient in pain and adversity and throughout all period of panic. Such are the people of truth, God-consciousness.<sup>65</sup>

It is important to note that the above verse requires that the social works must be for the pleasure of Allaah, which is the common requirement for any good deed in Islam. So, the corporations should render their community service only for Allaah the Almighty, otherwise that will not be accepted on the Day of Judgement. This makes a departure from the traditional corporate social service. Corporations

---

<sup>61</sup> Bantekas, *supra* note 1, at p. 335

<sup>62</sup> See A. Ahmad, 'Islamic water law as an antidote for maintaining water quality', (Spring 1999) 2(2) *University of Denver Water Law Review* 169, at 178.

<sup>63</sup> *Qur'an* 17:44.

<sup>64</sup> Sheikh, *supra* note 2, at p. 170.

<sup>65</sup> *Qur'an* 2:177.



typically carry out such service to promote their business. To them, as mentioned earlier, no reciprocity of interest no social responsibility.’<sup>66</sup>

### **Conclusion:**

CSR is a modern concept- a secular concept. It does not concern religion or pleasure of God. It advocates for the involvement of corporations in the service of the community as a whole in addition to making profit. It has three characteristics which do not match with Islam. First of all, the corporation is a business organization driven by the desire for making profit. It does not concern about whether the business capital is (Islamic) religiously lawful (*halal*) or not. In other words, interest-based business is not a matter of concern for CSR advocates. Second, they do not care about the lawfulness (*halality*) of the company products. In Islam these two things, namely capital and products/services, must be *halal*. Third, the traditional CSR supporters take it as a part of corporate profit making goal. They believe the corporation should render CSR service to earn name as a “social service provider” so that its business may promote. But Islamically this is not acceptable. Islam requires that all kinds of good deeds must be for the pleasure of Allaah; no name or fame can be expected. It must be a selfless service devoted to the Almighty Who has created humans and blessed them, as “trustees”, with ‘possessions, wealth, expertise, abilities, positions and power’ for the time being,<sup>67</sup> holding the ultimate power with Him- to Whom all affairs must turn back for account. With a change of belief, attitude and practice in these three important matters the CSR concept is Islamically acceptable as they serve the *maqasid* of *Shari’ah*.

---

<sup>66</sup> *Supra* note 9.

<sup>67</sup> M.R. Muwazir, R. Muhamad and K. Noordin, ‘Corporate social responsibility disclosure: a *tawhidic* approach’, (Jan-June 2006) 14 (1) *Jurnal Syariah* (Shariah Journal) 125, at p. 134.