

Issues in *Fiqh al-Zakat* : Implications for Islamic Banking and Finance

Assoc. Prof. Dr. Sayed Sikandar Shah

Dept. of Fiqh and Usul al-Fiqh

Kulliyah of Islamic Revealed Knowledge and Human Sciences (KIRKHS)

International Islamic University Malaysia

P.O Box 10 50728, Kuala Lumpur Malaysia

haneef75@yahoo.com

ABSTRACT

Zakat in terms of socio-economic role provides a fundamental framework for bringing about structural transformation in the Islamic frame of financing .It meets this goal by making it a mandatory duty on the well to do members of the Ummah ,as defined by Islamic jurisprudence , to part with a portion of their wealth for the productive use of the needy and other eligible social causes . To practically implement this policy ,Islamic law provides us with a legal structure which was founded by the Prophet and subsequently articulated in details by Muslim jurists -both classical and contemporary. Nevertheless ,one when surveying the evolution of the law in this area, will be faced with the daunting challenge of bridging the gap between the classical fiqh and contemporary legal needs and questions. A host of issues are subject of academic debate today including , determination of nisab(exemption limit) , the bases of zakatablity , the productive durable use of zakat fund for the deserving recipients and other incidental issues .Other pertinent questions in the context of Islamic banking and finance revolve around the implications of fiqhi issues on zakat for a bank as zakat paying institution as well as a financing entity of the zakat fund . No doubt, there are huge literatures brilliantly postulating these issues .However, to revisit these issues with the idea of synthesizing and specifically linking them with Islamic banking and finance needs to be further explored .Accordingly, this paper proposes to be an attempt towards that end.

Introduction

Since early 20th century , some leading scholars have been fervently debating the possibility of making fresh *ijtihad* on a host of newly emerging issues of *fiqh al-zakat*. This is due to radical changes that have taken place in the methods of producing new forms of wealth and the way that Muslims deals even with the traditionally designated *zakat* payable wealth .There are many issues¹ that have engaged serious scholarly debate surrounding the *fiqh of zakat* .But for the purpose of this paper ,we ,first ,briefly highlight the current debate about issues ,such as the adequacy of growth as the criterion for zakatability of the wealth; contemporary definition of *nisab*; attempts at revising the rate of *zakat* ,calculation of the *hawl* ; and exemptible assets of the *zakat* payer.Next we focus on the most important aspect of utilization of *zakat* fund in financing .To this end ,therefore ,we first delineate a brief outline of the classical *fiqhi* position on these issues ,as covered by al-Qaradawi and next ,we look at the contemporary debate surrounding them and lastly we discuss their implications for Islamic banking and finance .

Theoretical foundation of zakat

Zakat ²literally means to grow and to increase and to purify .When it is said about a person,*zaka nafsahu*, it means to have improved himself and have become a better person³ .According to Ibn Taymiyyah it implies the idea of making the soul of the *zakat* payer better(morally and spiritually) and his wealth clean⁴.This is succinctly clear from the declared *ratio legis* of zakat commandment according to the Holy Qur`an ,`take *zakat* from their wealth to purify and cleanse them.^{5`}

Technically it stands for an act of monetary worship according to which any Muslim who possesses a wealth(*mal*) equal to or exceeding a laid down limit (*nisab*) has to give away(in person or through (proxy), at the prescribed rate, a portion of it to specifically designated categories of people.⁶

¹ Abu Al-Hasan Sadeq ,A Survey of The Institution Of Zakah: Issues, Theories And Administration(Riyad : Islamic Development Bank Islamic Research And Training Institute ,2004),Discussion Paper II,p.29

² It is to be remembered that Qur`an also uses the word *sadaqah* to imply *zakat* ,for instance ,see al-A`raf : 156,Maryam :31,al-Anbiya : 72 ,al-Mu`minun : 4. Similarly ,the Prophet when dispatched Mu`adh to Yemen,said: ``inform them that Allah has prescribed *sadaqah* on their funds...`. Nevertheless ,it was later on that the jurists technically distinguished between *sadaqah* and *zakat*,the former refers to donation and voluntary charity while the later signifies compulsory financial obligation of the wealthy towards the poor. See Yusuf al-Qaradawi ,*Fiqh az-Zakat*,Monzer Kahf(trns.),(London : Dar al Taqwa Ltd,1999),pp.xlv-xlvi.See also Muhammad Abu-Saud ,Contemporary Zakat(Cincinnati: Zakat and Research Foundation,1988),pp.9-12

³ Ibid .,p.xliii.

⁴ Ibn Taymiyyah ,Fatawa,vol.25,p.8

⁵ Al-Tawbah :103

⁶ Wahbah al-Zuhayli,*al-Fiqh al-Islami wa Adillatuhu(Beirut : Dar al-Fikr,1989)vol.2,p.730.*

Zakat as such derives its validity from numerous verses of the the Qur`an and the prophetic traditions ,among which ,the following are most explicit .The Qur`an⁷ ,among others ,provides :

- *And they were commanded not, but that they should worship none but Allah alone and perform the salah and give zakah, and that is the right religion*⁸
- *... and in their wealth and of possessions is assigned a right for the needy and those who suffer deprivation*⁹
- *O Muhammad ;take out of their possessions sadqat so that you may cleans and purify them thereby , and pray for them).*¹⁰

The substance of the Qur`anic ayat are affirmed by many *hadith (ahadith)*¹¹ of the Prophet:

*Islam is based on five principles :` to testify that there is no god but Allah and that Muhammad is His Prophet, to offer the regular prayers , to pay zakah, perform hajjand to observe the fast.*¹²

*The Prophet sent Mu`adh to Yemen and told him," You are going to people of a Divine Book . First of all invite them to worship Allah (alone) and when they come to know Allah , inform them that Allah has enjoined on them five prayers in every day and night , and when they start offering these prayers , inform them that Allah has enjoined on them zakah which is to be taken from the rich among them and given to the poor among them. And if they obey you that , take zakah from them and do not take the best of their possessions.*¹³

Accordingly, *zakah* like other pillars of Islam is another fundamental *`ibadah* without whose fulfillment one`s claim of loyalty to Islam will be seriously doubted and even negated .That is why Abu Bakr ,the righteous Caliph , resolved to fight those who defied paying it ,contending, among others ,that any one who discriminate between the two pillars of *salah* and *zakah* ,by doing the former and willfully rejecting the other ,it would

⁷ The word *zakat* occurs thirty times in the Qur`an and in twenty –seven of them it is mentioned side by side with *salah*.for details see, al-Qaradawi ,*Fiqh az-Zakat*,pp.9-22.

⁸ al-Bayyinah :5

⁹ al-Dhariyat : 19

¹⁰ al-Tawbah : 103

¹¹ Hadith the plural of which is *ahadith* means relayed information about the Prophet`s ,statements ,practices and tradition which may either contain a legislation or it may just relate the Prophet`s undertaking as administrator .In Islamic jurisprudence , the import of the hadith as such is called Sunnah,which is the second primary source of the *hukm* (law/rule) in Islam.

¹² *Mishkat al-Masabih* ,vol1,p.96

¹³ *Sunan Ibn Majah* ,p.416

be legitimate to be fought against¹⁴. The Prophet is also reported to have said: `` He who pays it seeking the reward from Allah will be rewarded and he who refuses to pay it ,we shall take it from him ``¹⁵

The rationale for such stern position of the Shari`ah about enforcement of *zakat* is that it ,aside from being spiritually invigorating ,is designed to serve the following socio-economic objectives :

1. to promotes economic growth and productivity through the circulation of wealth - *zakat* stimulates economic growth in the sense that it either enables the poor and the needy to become economically productive or helps the state to channel the *zakat* fund to fund raising business sectors with the view of creating job opportunities for the needy and the jobless. ¹⁶
2. to meet the consumption demand of the poor thereby enhancing their purchasing power for goods and services
3. to check the tendency for hoarding the idle money ,hence leads to production of goods ad service
4. to finance projects such as education ,medical care and social welfare again raising productivity of the poor. ¹⁷
5. to ensure equitable distribution of wealth through this means. Islam by instituting *zakat* aims at forestalling the creation of unnecessary unjust gap between the living standard of the poor and the rich ,thus avoiding the most serious malady that afflicts the capitalists society .¹⁸ Accordingly it serves as a basic system for implementation of socio-economic justice of Islam by which a certain portion of the income is transferred from the haves to the have-nots. ¹⁹

Some Fiqhi issues: classical model

1. The Criterion of zakatability

The classical jurists by looking at the application of *zakat* on the traditional sources of wealth ,tried to identify the *raison de tre* of zakatability of wealth . On the the principle of induction based the Prophet`s designation of *zakat* payable wealth²⁰ ,they, hence concluded that growth (*nama*) is bases of zakatability . *Nama* in Islamic legal parlance

¹⁴ This he said in response to `Umar`s objection to such a policy .For details see Mustafa al-Khin *et. All, al-Fiqh al-Manhaji*(Beirut :Dar al-Qalam,1996),pp.274-275.

¹⁵ Al-Bayhaqi ,*al-Sunan al-Kubra* ,vol.4,p.105.

¹⁶ *Ibid.*,pp.41-42.

¹⁷ Imtiaz et all (edits),*Management of Zakat in Modern Muslim Society* ,(Riyad : IDB,IRTI ,2000),p.11.

¹⁸ al-Zuhayli,*al-Fiqh al-Islami wa Adillatuhu* vol.2.,p.372.

¹⁹ Monzer Kahf ,``Zakat : Unresolved Issues in Contemporary Fiqh`` , in *Development and Finance in Islam* ,Sadeq et all(edits.)(International Islamic University Press ,1991),p.174.

²⁰ The Prophet imposed *zakat* on certain heads of livestock other than those for work .He also declared business assets and idle money as zakatable.He also imposed *zakat* on certain types of agricultural crops ,minerals and treasure troves .The classical jurists thus theorized that these implementations lead us to only one conclusion and that is ,`` only naturally growing or potentially growing wealth are subject to *zakat*. `` See *Sunan Ibn Majah* ,pp.416-422; *Mishkat al-Masabih* ,vol.2 ,pp.55-56; al-Qaradawi ,*Fiqh az-Zakat*,pp.77-81

refers to :First, something that provides the owner with profit or benefit. Second, something which is the result of growth in the form of surplus or a newly acquired item²¹. For instance , profit in business is a kind of growth out of investment ,livestock reproduction is another form of newly acquired asset. In these two examples money before investment has potential to grow ,and animal naturally reproduces offspring .That is why they are considered zakat payable assets. Accordingly, and made it a condition that any asset to be liable to zakat ,it must either be actually growing or have the potential for growth.

For instance, al-Kasani is quoted to have reasoned :`` The meaning of zakat is growth and growth does not happen except when there is growing wealth.We do not mean by this that wealth automatically grows per se.But we mean that such wealth is susceptible to growth by some means such as grazing and trading.Grazing is the cause of having milk ,reproduction and meat .Trading is the cause of realizing profits .In this context the cause substitutes the effect and the judgment is attributed to the cause²²`` One of the implication of such a view in the filed of corporate sector is that zakat would be on the circulating wealth and not on the fixed assets of the company.

It is rational because ,``Zakat is legislated to help and relieve the poor without impoverishing the rich ,by having the rich pay from their surplus ,taking a little from the plenty.Imposing zakat on wealth that does not , by definition grow ,reverses this purpose ,since zakat is paid year after year , in addition to living expenses.``²³

In line with the above theory, the jurists ruled:

- i. Assets held for personal and family use ,such as household furniture and transportation are not subject to *zakat*
- ii. Assets that do not grow ,such as bad debts are also not subject to *zakat*.But idle money is subject to *zakat* because it is the fault of the owner who is lax in investing it which robs it of its potential to grow.²⁴
- iii. All growing assets , according to the preponderant view of among jurists except with the Zahiiyyah ,are subject to *zakat* .²⁵

2. Legal -threshold for Zakat(*nisab*)

It is agreed by the majority of the classical jurists that there is no *zakat* on all growing wealth but those reaching the minimum laid down limit as set by the Sunnah (*nisab*).The Prophet is on record to have exempted anything that is less than five camels, forty sheep,two hundred silver *dirhams* or five *wasqs* of grain .Abu Hanifah ,on the other hand ,do not regard this to be a pre-requisite in the case of land crops, fruits and minerals.

²¹ Al-Qaradawi ,Ibid ,,p.76.see also Ibid,pp.66-72.

²² Ibid , p.77

²³ This is opined by Ibn al-Humam,the author of Fath al-Qadir ,cited in Ibid .

²⁴ Ibid.,pp.80-81.

²⁵ For details see ibid ,pp.82-83

Nevertheless , the majority opinions is more rational as it would be imprudent to impose zakat on who are themselves in need of help.²⁶

3. The ratio of zakat

It to be noted that once the above properties reach *nisab*, they will subjected to four types of rates²⁷:

- i. 2.5% from the capital income
- ii. 10% or 5% from the land crops
- iii. according to detailed code of rates for livestock
- iv. 20% of the found treasures

As to why not a flat rate for all the zakatable assets ? Ibn Taymiyyah rationalizes by saying that the ratio of *zakat* has to vary for the above types of wealth due to no or less involvement of human effort in acquiring them²⁸.

4. The Passage of a year over possession of the asset

According to majority of the jurist ,twelve full lunar months should pass over the possession of *zakat* payable asset from the beginning of its ownership.But this condition applies to capital assets ,such as money ,business stock and livestock.This is on a *hadith* where the Prophet says:ect:``There is no *zakah* on ones wealth unless one lunar calendar year transpires over its possession.``²⁹

The jurists have differed about the time that earmarks the *zakat* year for the purpose of determining the *nisab* .Shafī`iyyah and Hanabilah held that the *nisab* must remain constant throughout the year.To Hanafiyyah the *nisab* must be present at the end and beginning of the year and according to Malikiyyah the determining point of time is the end of the year .

In the case of earned income, such as crops,fruits ,minerals and found treasure ,including wages ,salaries professional fees it is not a condition they are classified as earned assets(*mal mustafad*).

5. What to exempt for the zakat

Some jurists held that before assessing the *zakat* ,two requirements of the *zakat* payer must be subtracted from his zakatable income before deciding as to whether he has to pay any *zakat* . They are :

²⁶ Ibid.,pp.85-86.

²⁷ Khan , *Some Accounting Issues Relating to Zakat* p.109

²⁸ Abu Saud, *Contemporary Zakat*,p.32

²⁹ *Sunan Ibn Majah* ,p.424

i. deduction of essential needs (*hawaj asliyyah*)

This is a condition set by Hanafiyyah ,Imam Bukhari and Ibn Kathir. As to what does it means? Ibn `Abidin ,fitting his own socio-economic condition/standard of living , brilliantly delineate it as :`` Those things that are used to avoid the realized or potential destruction of human beings ; realized ones ,such as expenses for living ,clothing ,personal weapons ;and potential ones ,such as the need to pay one`s debt ,tools for handicraft ,home furniture ,animals for personal transportation and books for study .If a person has money designated for such needs ,it is considered non-existent with regard to *zakat*.This is similar to the case of some one whom has no water except that designed for drinking .This water is considered non-existent with regard to performing ablution ,and one is allowed to perform *tayammum* instead.``³⁰

However majority disagreed by saying that this condition is unnecessary as the condition of growth takes care of such needs by classifying them as non-growing asset. *Nonetheless , the Hanafiyyah position is more in keeping with present requirement of modern life and is in harmony with the current taxation practices which exempt a certain amount when clearing people`s payable taxes.* Further , it is supported by the general legal implication of evidences from the Qur`an and the Sunnah.³¹

In The Qur`an ,we read:`` They will ask you what they should give away? Say,``what is surplus from your needs.``³² According to Ibn Kathir ,the surplus means what is in excess of you and your family`s needs.³³ One of the Prophet`s *hadith* is also taken as supporting this understanding when he said:`` *Sadaqah* is taken only out of wealth``³⁴.According to al-Bukhari , this *hadith* makes it a condition that the payer and his family must not be in need.³⁵ It is also supported by the Prophet edict in ordering the *zakat* collector(in case of fruit) to leave one third or one forth for the payer to spend on the neighbors ,friends and relatives.³⁶

Accordingly , the intention behind the above evidences is that all the spending must be made out of surplus wealth. But it must be noted ,as al-Qaradawi, cautions us that this condition only covers basic needs or essential goods and services that one needs to sustain himself and his dependents .It does not cover those things that are simply desired, or they may be considered luxury³⁷. For instance, expenditure on holiday ,desiring to make certain purchases not in the immediate future, or buying big bungalows or luxury cars to escape the *zakat* are some modern examples of luxury since such items are

³⁰ It is quoted in al-Qaradawi ,*Fiqh uz-Zakat* ,pp.87-89 ,from his renowned commentary of al-Durr al-Mukhtar.

³¹ See Abu Saud, *Contemporary Zakat*,pp.72-73.

³² Al-Baqarah : 219

³³ This is according to the opinion by Ibn `Abbas who by way of exegesis maintained so . al-Qaradawi ,*Fiqh az-Zakat* ,p.89. see also Husayn ,*Muhasibat al-Zakat*,p.23.

³⁴ Sunan Ibn Majah , p.432

³⁵ al-Qaradawi ,*Fiqh az-Zakat*,p.89.

³⁶ Ibid.,see also Daud, *The Malaysian Zakat System : Law and Policy Reform* ,p.15

³⁷ Ibid.

neither customary nor reasonable needs.³⁸ I believe the state should set clear guidelines³⁹ from time to time as to what can be considered essential needs, taking into account the fluctuating inflationary movement of the market price for goods and services that Muslims need for their daily subsistence in our time.

ii. deduction of debt

This condition emerges from the conditions of complete ownership and the asset being above one's basic needs. Accordingly, it is another pre-requisite of *zakat*. But for the purpose of application, the jurists have differed in its details. Most importantly, they divided *zakatable* wealth into two categories: apparent (*zahir*)- can be seen by the poor and detected by *zakat* collector, such as livestock and crops, and non-apparent (*batin*)- not easily known to others, such as money in the safe box and business asset.⁴⁰

Accordingly, with regard to the first category, some like Hanafiyyah held that it would be free from *zakat* if overwhelmed by debt or reduces the *zakatable* asset owned by the debtor. The reason being that *zakat* is a financial right due to the poor, the right of the creditor comes first before their right. Majority on the other hand, including Shafi'iyyah differed on this, saying that *zakat* being an act of worship partakes in Allah's right, thus takes priority over the right of the *zakat* recipients.⁴¹

With regard to non-apparent type, again majority⁴² held that debt prevents *zakat* or at least reduces *zakat* on the assets by the amount of the outstanding debts. Minority held that it does not.

Nevertheless, discussing the issue from the apparent and non-apparent type, even if not confusing, is irrelevant today. Because it is a relative concept, it may have suited the jurist's time and circumstances. Today due to the advance in the field of accountancy in business and the practice of safe-keeping one's personal assets with the banks, no one can hide such assets.

The significance of the above juristic discourse, however is that the opinion which says that debt prevents *zakat* is the preferred view because:

- i. Caliph Uthman asked the *zakat* payers to pay back their debts so that he can start paying their *zakat*.⁴³
- ii. ownership in the case of debtor is incomplete
- iii. the aim of *zakat* is to relieve those who are in need, debtor himself is one of them so his need comes first before that of the others.

³⁸ Ibid, p.16

³⁹ Abu Saud proposes the concept of consumer basket value that is normally determined by tax departments as we noted before. see Abu Saud, *Contemporary Zakat*, p.77.

⁴⁰ Al-Qaradawi, *Fiqh uz-Zakat*, Ibid, p.90 see also Abu Saud, *ibid*, pp.61-62.

⁴¹ Al-Qaradawi, *Ibid*, pp.91-93.

⁴² They represent Ahmad, Abu Hanifah and al-Shafi'i in his new opinion. See *ibid*.

⁴³ *Ibid*, p.92.

- iv. in our time, even wealthy people are burdened by loans of many kinds , and pay it by way of installments ⁴⁴.Consequently ,if such debts are not calculated as part of one`s basic requirement for the purpose of calculating *zakat* ,the whole life one would not be able to stay free of debt and pay the *zakat* .

The Contemporary call for rethinking of the above issues

Since eighties where radical changes have occurred in the structure and nature of wealth , some thinkers have been calling for a fresh understanding of the above *fiqhi* issues for its just and consistent application in the modern time .⁴⁵

As to what are the rationales for the case of renewal and reform (*islah wa al-tajdid*),the proponents maintain as follows :

1.Sticking to classical *fiqh* frame of reference would obviously excludes many contemporary forms of wealth from the application of *zakat*. In a study Kahf made an estimation of *zakat* proceeds in eight Muslim countries and it was found that if the *zakat* was applied on livestock ,agriculture ,mining and monetary holdings ,*zakat* proceeds would be between 0.9 % and 2%(except in Sudan where it is 4.3%) of the GPD.But when an estimation was made beyond the classical *fiqhi* position the rate of estimated *zakat* proceeds increased to between 2.0 % and 7.5 % of the GDP.⁴⁶

2. upholding some of the traditional views on *zakat* may divert wealth from poor to the rich. For instance , the *nisab* of money if determined on the basis of silver ,the may be imposed on the poor as silver has sharply depreciated in value as compared with gold . Similar anomaly will arise if we impose the *zakat* on the gross products of the crops as maintained by the classical jurists since all land produce will be subject to 10% or 5% *zakat* once the amount harvested reaches 653 kg of rice .Thus a paddy cultivator once obtains that amount (approximately RM 1800,00) has to pay its *zakat*.However ,to calculate the *nisab* on the net amount after deducting the agricultural expenses and the farmer`s own basic requirements would resolve this anomaly .⁴⁷ Another way that this arises is by exempting the fixed assets for *zakat* .This is so because in the time of revelation business involved a very little fixed assets in a shop or a spot with a few business implements ,but todays business involves large amounts of capital invested in fixed assets ,such as land ,buildings ,machinery and fixtures .Hence , to impose *zakat* on stock and cash alone let say in the case of a manufacturing ⁴⁸ company would result in imposing *zakat* on the poor and sparing the wealthy .

⁴⁴ The scholars when addressing the issue as to which kind of debts are deductible ,expressed two views: both deferred and immediate ,only the immediate type.However , for today`s application ,the first view which covers the deferred type encompassing the system of debt by part-payment in our time is the suitable legal stand to which we subscribe .for details see,ibid ,pp.94-95.

⁴⁵ Kahf ,*Zakat : Unresolved Issues in Contemporary Fiqh*,p.173.

⁴⁶ See for table based on an unpublished study in IRTI,1987,ibid ,pp.185-188.

⁴⁷ See Khan who raises the problem in the context of Pakistan , *Some Accounting issues relating to Zakat* pp.104-105

⁴⁸ Ibid.

Issued to be revised

Due to the above reasons ,the case for reform presses for revising the following :

Growth as the base of Zakatability

The classical notion of growth as the criterion of zakatability has been seriously questioned by Muslim economists .For instance , Kahf ,criticizes it in many ways ⁴⁹ including the following :

First ,it is said to be faulty as a concept. The reason being that it exempts fixed asset of a business entity from *zakat* but this is not unproductive as the theory made it to be .Instead ,it equally contributes to the production process like the circulating wealth . To equate items devoted to personal use (*quniah*) to business fixed asset is invalid ,since the latter is employed to make profit(in a sense is growing).The argument that the Prophet exempted primitive hand tools of production in ancient Madinah cannot be equated with modern machinery and plants of our time .

Secondly , it is argued that the classical jurists have not been consistent when they applied this on assets that do not grow at all .For instance , idle money (is like idle fixed asset)or trade inventory which is in loss or in debt which are not growing . Or when they excluded its application from wealth that do grow .For instance , exclusion of fodder fed livestock ,trees and domestic animals.

Thirdly ,it is also argued that the application of growth in agriculture produce is also arbitrary since they are not growing ,actually or potentially , as they themselves are the result of growth process.⁵⁰Moreover to assume that crops are the increase of land is also invalid as they are the increase of the seeds.

Fourthly ,if growth is the *raison d`tere (illah)* of zakatability then its absence ought to be a reason for the waiving. This is not the case as trade inventory is still zakatable even if it incurs loss.

Accordingly , thinkers such as Kahf feels that the classical jurists were mistaken in their *ijtihad* to shift from richness(*ghina*) as the textually declared *illah* for zakatability of wealth to that of growth,⁵¹ which needs to be reviewed .But what is the operational definition of *ghina* ,he does not elaborate . Abu Saud seems to lay down a practical formula , though not in the context of *ghina* as the yardstick ,when he says:``The theory of ``growth`` as postulated by the past jurists is fraught with complexity and anomalies

⁴⁹ Kahf , ``Zakat : Unresolved Issues in Contemporary Fiqh ,p.181

⁵⁰ Abu Saud says the theory is misleading and unscientific .,see *Abu Saud Contemporary Zakat* ,p.70.

⁵¹ Kahf ,*Zakat : Unresolved Issues in Contemporary fiqh* ,p.183, Mohd.Daud Bakr, also subscribes to the same view but like Kahf does not offer any practical formula for *ghina* as it can be more vague than the concept of growth if left undefined . , see Daud `` *The Malaysian Zakat System : Law and Policy Reform* pp.4-12.

.In fact to apply it one must give the word so many arbitrary implications that the integrity of the theory itself is destroyed .At present we can hardly find any need or justification for such a theory .Suffice it to state that *zakat* is due on all economic goods once they exceed *nisab*, except for those goods acquired for personal use or consumption ,as well as on all money in its different forms if the amount withheld exceeds the limit⁵².

On the other hand, some other contemporary thinkers like al-Qaradawi and official bodies/governmental still advocate the relevance and validity of growth as the base of zakatability ,which is reflected by the Saudi practice of exempting business implements and machineries from *zakat* because they do not grow⁵³.

What should be the nisab today ?

Nisab as pre-requisite derives its validity from many *ahadith*, some important among which are:

- The best of *sadaqah* is that which is paid out of opulence⁵⁴.
- There is no *zakat* on less than five camels,and there is no *zakat* on less than five *awsuq*(measurement of volume) of grain and there is no *zakat* on less than *awaq* of silver (200 *dirhams*).⁵⁵

Rationalizing the above limit of exemption ,al-Dehlawi observed that the *raison d`tere* for such was that in the time of the Prophet five volume of grain (*awsuq*)was sufficient for one family consisting of three persons for one year.Thus the idea was to subject to *zakat* what was in excess of the above⁵⁶

Building on this, Abu Sa`ud maintains that unlike the traditional understanding that all the above limit of exemptions are permanently fixed ,one would state that if five *awsuq* was made a criterion for zakatability of grains as it was enough to sustain a family in the time of revelation ,it cannot be the case today.Accordingly the *nisab* of assets should be reviewed in accordance with actual changes in circumstances ,which is a well-established principle of *fiqh*.⁵⁷This is also justified by textual evidences ,such as the Prophet statement,` no *zakat* is due unless in case of affluence .⁵⁸ Definitely a farmer harvesting five *awsuq* of rice in a country like Malaysia is not affluent nor it suffices him for a duration of one year.Abu Sa`ud therefore ,suggests that there should be a flat rate of *nisab* for all zakatable wealth ,on the rationale that `the basis of *zakat* is to exempt that amount of wealth which is considered ,in a particular community ,sufficient to sustain the family or individual for one year....⁵⁹ According to him ,the procedure would be :

⁵² Abu Saud Contemporary Zakat ,pp.71-72.

⁵³ Shaik and the fatwa by Majlis Tahqiq Masail Hadirah represent this groups stand ,see Sadeq , *A survey of the Institution of Zakat* ,p.38.

⁵⁴ Sunan Ibn Majah ,p.432

⁵⁵ Ibid .

⁵⁶ Saud, *Contemporary Zakat* ,p.75

⁵⁷ Ibid.

⁵⁸ Sunan Ibn Majah ,p.432

⁵⁹ Saud, *Contemporary Zakat*.,p.75

- i. to determine the livelihood requirements of individuals and families (*hawa`j asliyyah*), similar to goods and services that comes under the definition of consumer basket for the sake of taxation in the West .
- ii. To determine the basket value in terms of money at the time of paying *zakat* .
- iii. To regard the value of the basket as limit of exemption that should be deducted from the income before calculating the due *zakat* .

In accordance with the above , Abu Saud suggests that we would overcome the disparity that arises from the classical notion of different *nisab* for different items⁶⁰ .

Kahf offers the rationale for such a rethinking when he maintains : ``The reason why we need to rethink about the *nisab* is that the relative prices of the items of *zakah* have been changing over time, for example, the values of the *nisab* amounts of gold and silver are quite different in the contemporary world and hence the existing nisabs of different new items do not correspond to cost of living. Moreover , the relative importance of items in the basket of basic needs have also changed significantly. Under these changed circumstances, we need to think of deriving a formula of *nisab* on new items which are derived by *fuqaha*, keeping in view the "*nisabs*" of items in the Prophetic traditions, their relative prices and weight in the cost of living at that time and applying this formula to determine the *nisab* of new items in the contemporary world. In particular, the *nisab* of Zakatable new items will have to be determined consistently. This is important in order to preserve the virtues of *zakah* and to achieve its objectives.⁶¹

Manan who also supports the same idea suggests the formula to consist of defining the standard of living of an average family in a given socio-economic context by following a national guideline so as to exempt that from *Zakah*. Any-thing beyond this is subjected to *Zakah*.⁶²

Raquibuzzaman, another proponent of the same proposes that we need to allow different *nisab* and exemption limits for each country, as situations vary from country to country ..His arguments is that the Prophet fixed those to suit the conditions of the Arab society in the seventh century. Reviewing them in line with todays conditions would not violate the Sunnah as to him there is no *hadith* to the effect.⁶³ So to him *nisab* should be the value of what is adequate to maintain a reasonable standard of living, and this should be changed from time to time to reflect the changes in the cost of living .⁶⁴

⁶⁰ He means to imply that the owner of five camels and harvester of five *awsuq* of grain would be subject to one standard limit of exemption.see *ibid.*,pp.76-77. see also Shawqi Ahmad Dunia ,``Ta`ammulat fi Ba`d al-Jawanib al-Fiqhiyyah li al-Zakat `` ,in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A .Kamel Centre for Islamic Economics ,2002),vol.1,p.22.

⁶¹ Kahf ,*Unresolved Issues in Contemporary fiqh* .pp.13-15,& 44-45

⁶² Sadeq, *A survey of Institution of Zakat* ,34

⁶³ *ibid.*

⁶⁴ *ibid.*,p.35

On the contrary others⁶⁵ who oppose this idea in principle ,some of them allow it when the conventional rates and *nisab* are not sufficient to remove mass poverty .To this, they maintain that there is a precedent by `Umar who changed the *Zakah* rates on horse .⁶⁶

Their main arguments is that *nisab* and the rates of *zakah* are fixed by clear directives of the Qur'an and Sunnah. Therefore ,based on the established principle of *usul al-fiqh* ``no *ijtihad* is allowed on issues covered by textual evidences(*la ijtihad fi mawrid al-nass*).`` Accordingly such laws become part of immutable laws of the Shari`ah .Any deviation from this principle can lead to unfortunate results. The reason being that if changes in the *zakah* rates are allowed, this could lead to frequent changes in the *zakah* rates depending on the expediency of the ruling authorities(and it may even become an election issue in countries having multi-party systems) and this will destroy the sanctity of *zakah* which is a form of `ibadah.⁶⁷ Majlis Tahqiq Masail Hadirah of Pakistan ,a body representing this stand strongly opposed the government intention to revise the *nisab* ,among others ,by contending that these laws do not derive their legislative validity from *ijtihad* to be revised and reopened but from the Qur`an,hadith and *ijma`* .They rebutted the contention that due to big gap between the value of gold and silver ,we need to rethink of the issue , by saying that it is not a new issue ,it has happened in the time of the jurists but they did not alter the law as it would be *ultra vires* of Sunnah and *ijma`* .⁶⁸ In terms of economic effect also , the Majlis said ,`` an increase in *nisab* will lead to a fall in the number of *zakah* payers and an increase in that of *zakah* receivers. It will result in two problems. First, demand for *Zakah* will be more than supply. Second, it will appear that *Zakah* encourages living on others, which is not really encouraged in Islam.``⁶⁹

Al-Qaradawi , also while opposes any rethinking on areas such as *nisab* and rate ,mainly because *zakah* ,according to al-Shatibi is,` the kind of transaction that have some characteristics of `worship` ,thus we have to limit ourselves to the texts .Accordingly ,to al-Qaradawi ,such matters are clearly defined by the texts and agreed by *ijma`* .He thus concludes :`` I disagree with those who claim that the minimum exemption and rates of *zakah* are subject to change according to changing circumstances ,on the grounds that such changes conform to the objectives and common benefits of *zakah* .I believe that such changes alter the features of *zakah* and reduces it to a mere civil tax ,like any other taxes imposed by the government .⁷⁰

The Saudi *zakah* administration while favor such a hard line stand on this issue ,admits changes but within the sub-structure of textually defined *nisab* .For instance ,due to that fact that the relative prices of gold and silver have changed, it follows the value of gold (i.e., 85 grams of gold), ignoring the value of silver to determine the *nisab* , which is the case in Pakistan .⁷¹

⁶⁵ see also ,Mushfiqur Rahman ,*Zakat Calculation Based on al-Qaradawi* (United Kingdom: The Islamic Foundation ,2003),pp.3-5.

⁶⁶ People like Shaik suggest this.see Sadeq, *A survey of Institution of Zakat* .35

⁶⁷ Ibid .

⁶⁸ Ibid .,p.35-36

⁶⁹ Ibid ,p.36

⁷⁰ al-Qaradawi ,*Fiqh uz-Zakat* ,p.xxxviii.

⁷¹ Ibid.

The problem with the proposed revised nisab

The rationale of *nisab* according to classical *fiqh* was to impose *zakat* on the wealthy and not on the poor ,i.e.,it is an indicator(*mazannah*) of *ghina* (affluence).If this is taken literally ,a farmer who today harvests five *awsuq* of wheat and needs multiple of that amount to fulfill his other needs ,for all practical purposes is poor .Accordingly,as maintained by Shawqi , taken this rational together with the textual evidences which state that sadaqah is on the affluent(*ghani*) ,we need to rethink about the *nisab*.But this option itself is beset with complexity .For instance ,how to objectively determine *ghina*? Even if we adopt the Hanafiyyah criterion of imposing *zakat* on the *nisab* which is beyond the level of the *zakat* payer`s subsistence (*al-hajat al-asliyyah*), the question is : why do we still need to require the surplus to amount to the jurisprudentially defined concept of *nisab*? Or shall we stick to the condition of yearly term ,arguing that any one who has a surplus /saving amounting to *nisab* ,that is a sign of his *ghina* ? If we abandon both the criteria of *nisab* and *ghina* and advocate flat rate for all types of property, what would be the juridical base of such an option ?⁷²

Revision of the rate

On the revision of the rate .Kahf though do not offer any practical formula ,suggests that the fixation of rates should be consistent with the prescribed rates keeping in view the matters of wealth transformability and the multidimensional nature of dynamic activities in the contemporary world. This would enable the state to redistribute a sizeable amount of wealth from the rich to the poor, and in view of the fact that the rich tends to indulge in "conspicuous consumption" beyond social limits of consumable durables.⁷³

This is again not agreed by al-Qaradawi and others as it would be *ultra vires* of the Sunnah .⁷⁴ Al-Farah also subscribes to this view by maintaining that no *ijtihad* on textually defined measure of `ibadat .It is also rationale that Islam in prescribing the rate has anticipated the interest of both the *zakat* payer and the beneficiaries .⁷⁵

What to exempt?

The scholars while agreeing with the traditional exemption of wealth that the *zakat* payer needs for fulfilling his livelihood requirements ,they disagreed with the following:

i. fixed assets of the business

For instance ,Kahf says : `` consistency requires imposition of zakah on fixed assets, for example. This is because both of "circulating assets" and "fixed assets" contribute

⁷² Shawqi Ahmad Dunia ,*Ta`ammulat fi Ba`d al-Jawanib al-Fiqhiyyah li al-Zakat*, pp.21-23

⁷³ Sadeq , *A survey of Institution of Zakat* ,p.34 see also ,Muhammad Nejatullah Siddiqi *Muslim Economic Thinking: A Survey of Contemporary Literature - Part Three* First International Conference On Islamic Economics (Slected Papers) at <http://www.financeinislam.com> retrieved on 26/01/2007

⁷⁴ al-Qaradawi ,*Fiqh uz-Zakat* ,p.xxxviii.

⁷⁵ Abd al-Fattah Muhammad Farah, *al-Tawjih al-Istithmari li al-Zakat* (Dubai : Bank Dubay al-Islami ,1997),p.28

to production process and hence, to be consistent, both should be Zakatable ⁷⁶. He continues by saying : `` it is not right to say that fixed assets are zakatable only if these produce any return .The latter opinion is inconsistent because idle cash is considered Zakatable even if it does not produce any return, but fixed assets are exempted for not earning return. This will imply favoring large holdings and penalizing small ones, since the use of fixed assets varies directly with firm size. This lacks Islamic rationality. ⁷⁷

Other scholars like Abu Zahrah, Khallaf, Hassan and Al- Qardawi differed with Kahf by maintaining that only the return would be zakatable and not the fixed assets .⁷⁸ OIC Fiqh Academy in 1985 also held that fixed assets are not subject to zakat ,which is reflected in the Saudi application of *zakat* .⁷⁹

ii. type of deductible loan

In our time situation where one incurs debt is different from the time of the classical jurists. Every one ,particularly in the wealthy country starts to be burdened by the running debts the moment he steps into the primary school. By the time he becomes a bread earners ,he is heavily burdened by loans against residential houses ,cars even business . Accordingly, if the stipulation of exempting debt from *zakat* is not understood correctly , many affluent people with expensive cars , houses etc would be exempted from zakat.Shafiqur Rahman seems to advance an enlightened opinion on this by saying that by agreeing that loans that one incurs on these items definitely come under the definition of basic necessity. Now a question arise : are all types of debts deductible ?He answers it in the negative and offers a formula of deductible loans as follows:

- i. be of modest type and not of lavish and extravagant type .Thus the loan of a luxurious car and house would be deductible to the extent of the price of a modest type and any thing over and above it would not.
- ii. be considered as a basic necessity .For instance, one car in good condition that suffices for a small family is a necessity but the second one not. Hence only the loan of the first car qualifies as deductible debt
- iii. interest accruing on such debts should not be deductible

In this way ,he rightly points out ,that we can strike a balance between the two extremes positions of either not exempting debts at all when calculating *zakat* or deducting all types of debts whether necessary or not.⁸⁰

⁷⁶ Kahf ,*Unresolved Issues in Contemporary fiqh* , p. 11

⁷⁷ Ibid,p.13

⁷⁸ Sadeq , *A survey of Institution of Zakat* ,p.32

⁷⁹ Scholars like Maududi and Awad also propound the same legal stand ,see ibid,p.33

⁸⁰ Mushfiqur Rahman ,*Zakat Calculation Based on al-Qaradawi* ,pp.32-37.

Evaluation: bridging the gap between classical law and modern views

From the above, an ordinary citizen (layman) would have two sets of laws in accordance to which he is supposed to fulfil his obligations of *zakat*. The most perplexing question confronting him in this process is obviously one of: which law new or old (constructed by modern or traditional /and neo-traditional thinkers) should he follow? Another dimension, mostly ignored by our well-intentioned scholars from a layman perspective, is which one is the correct law. In the lines that follow, I based on my reading of both the old *fiqh* and the new debate suggest the following:

1. On the case-justification for reform

Firstly, no one should dispute the need or the extension of zakatability base to include the new sources of income within the structure of textually defined types of wealth known to us. To this, there is clear directive from the Qur'an that every wealth (*mal*) has to be cleansed and its owner purified. Thus this point for rethinking as raised by Kahf should no longer be a point of polemics between the modern and conservative *'ulama*.

Secondly, the goal-frustrating juristic ruling of subjecting every five *awsuq* of grains or fruits to *zakat*, without considering the subsistence requirements of the farmer and his cost of farming though supported by the ruling of some *fuqaha*, cannot stand the force of prohibiting the imposition of *zakat* on the poor, i.e., "no *zakat* except on the opulence" and the Hanafiyah requirement of zakatable assets to be above one's basic needs. Hence, this issue should also rest as settled as modern legislation in some jurisdictions like Pakistan have already enforced this *maqasid*-oriented and internally consistent position of the law.

Thirdly, definitely, the distinction between modern types of fixed assets and the primitive tools of business is a real case for reform but it needs to be finally settled by legislation.

2. On the growth as the base of zakatability

One would agree on the questionability of the growth theory from an economic stand point as well as its somewhat inconsistent application in identifying the zakatable wealth by its jurist architects. But to say that the classical jurists erred in applying this to impose *zakat* on idle money or trade inventory amounts to exceeding the limits of rationality when one deals with matters of Islamic law. These two items were made zakatable by unimpeachable evidences from the Qur'an and the Sunnah. Again dismissing such a well-established theory in favor of some vague concepts like *ghina*, I am afraid, would not advance any case for reform. On this issue, however, one would favor the proposition laid down by Abu Saud as a viable criterion (any economic goods that reaches the *nisab*).

3. On the nisab

Here we are confronted with two conflicting interpretations; one premised on the text of the *hadith*, another on their purported *ratio legis* as construed by renowned al-Dehlawi. If

we go by the *ratio legis* of the law and say good by to the textually fixed *nisab*, then the question is: can the human constructed *reason de`ter* of the law overrule the letter of the law itself? There is unanimity among the legal scholars that in matters of *`ibadat* it would be *ultra vires* of the juristic activism in the context of Islam. That is why Kahf was aware of this restriction when he suggested that such may be the course in the case of new forms of wealth but not in the case of those specified by textual sources (*nusus*). On this issue therefore, the stand by the opponents of change is to be upheld as is in line with the fixation of *nisab* by unimpeachable evidences from the *sunnah* (contrary to what has been the claimed) ⁸¹

4. On the rate

The question of rate, I believe, also involves touching the stable part of *zakat* with the intention of augmenting the *zakat* revenue. Definitely it may have good economic reason but jurisprudentially it raises the question of modifying the textual law by the flux of human rationally construed economic expediency. Thus, the classical position still reigns supreme and the economic reason for augmenting the *zakat* revenue, which is the motive for re-rating, can be fulfilled through developing the mechanisms for investing the *zakat* fund in productive ventures as maintained by Farah. ⁸²

5. On deductible assets

Excluding the fixed assets of business from *zakat* can no longer be supported by economic reality of their role in today's business productivity. One may agree with reform proposals in this area. This is similar to the redefinition of *zakat* beneficiaries in our time and will come within the province of human reasoning (*ijthad*). But for the practical implementation, it still remains a point of academic interest unless it is backed by state legislation.

Definition of deductible loans as proposed by Shafique is a judicious construction which should be regarded as correct statement of the law on the type of deductible debts.

Implications for Banking and Finance

Bank as a corporate body for the purpose of fulfilling its *zakat* obligations may have to inform its share holders about the contemporary state of the law. For all practical purposes, it deals with economic goods and services, thus it has to pay their *zakat*. For instance, Bank Faisal of Egypt pays its *zakat* through its own Zakat Box (*sunduq al-zakat*). ⁸³ Accordingly, when assessing its *zakat*, it may opt of the choices as offered in terms of *nisab*, rate, and deductible assets as detailed in this paper. Nevertheless, for a relatively detailed implication of *zakat* in relation to banking and finance, we need to

⁸¹ The scholars of hadith like al-Shawkani, al-Dar Qutni and al-Bayhaqi regards the *ahadith* prescribing the *nisab* as authentic., see al-Bayhaqi, *al-Sunan al-Kubra*, vol.4, pp.81-107.

⁸² Farah, *al-Tawjih al-Istithmari li al-Zakat*, p.28

⁸³ Fu`ad Abd Allah al-`Umar, *Nahw Tatbiq Mu`asir li Faridat al-Zakah*, (Kuwait : Dhat al-Salasil, 1984), pp.42-43.

address two main issues: first, bank as *zakat* paying institution and second bank as a financing institution of *zakat* fund.

Nature and function Islamic banking

Islamic banking as a business enterprise postulates to provide Muslims with an alternative way of financing against the interest based conventional banking system. Operationally it serves as an inter-median between the savers and investors under the two tier-*madarabah* contract, first among the depositors and the bank and second between the bank the parties to whom finance is provided. The bank as the operational framework for business basically derives funds from its shareholders, *mudarib* deposits and demand deposits and *muadarib* investment accounts. From these funds, it offers numerous types of financing including *mudarabah*, *musharakah*, *qard hasanah*, *murabahah*, *bai` mu`ajjal*, *al-ijarah thumma al-bay`ijarah*, *iqtinah* etc.⁸⁴

As to what is the place of *zakat* in this framework? Saleh Kamil⁸⁵, in his call for a shift from Shari`ah-compliant financial products to those of Shari`ah based modes of financing underline the role of *zakat* as follows: "The unique Islamic institution of *zakat* is an ideal way of mobilizing funds and mitigating this short-term view, for short-term investment carries a higher *zakat* rate and vice versa. Real estate investments are an ideal long-term way of harnessing both investments and a fair rate of *zakat*. Muslim countries should institutionalize *zakat* as it is the most efficient fiscal (tax) system and that a whole economy can be run effectively on the basis of *zakat*. Contrary to the common believe *zakat* is not merely a payment to the poor and needy, but can be harnessed for adding value in education, training and tourism."⁸⁶

1. Bank as a *zakat* paying business entity

For the purpose of *zakat*, bank being a corporate body is business entity called *sharikat al-`inan*⁸⁷. It initially takes off as a company on contribution of share capital by the share holders. Later on, it builds up more capital from the investors and depositors. Accordingly, for the purpose of *zakat*, among others, the following questions would arise:

- i. does the bank as a company is subject to *zakat*?
- ii. who should pay the *zakat* on shares of the share holders and how?
- iii. who should pay the *zakat* on the investment accounts?
- iv. who should pay the *zakat* on saving and current accounts?

⁸⁴ Ziauddin Ahmad, *Islamic Banking : State of the Art* (Riyad: IDB Islamic Research and Training Institute, 1994), IDB Prize Winners` Lecture Series No.2, pp.14-33

⁸⁵ He is president of the Dallah AlBaraka Group and a member of the Governing Council of Bank Nagara`s International Center for Education in Islamic Finance. see www.menafn.com, retrieved on 28/02/2007.

⁸⁶ Ibid.

⁸⁷ Husayn Husayn Shahatah, "Muhasibat al-Zakat Li al-Masarif al-Islamiyyah : Bayn al-Fikr wa al-Tatbiq", in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A. Kamel Centre for Islamic Economics, 2002), vol.2, p.8

- v. what is the jurisprudential framework for investment of *zakat* fund for the benefit of the recipients?

The answer to the first four questions, according to Shahatah are:

Zakat obligation the bank

It is a settled law in Islamic jurisprudence that bank as an artificial person (*shakhs `i`tibari*) by itself cannot be a legal person (*mukallaf*). But its shareholders as natural persons are. Thus, it (bank) answers its liability through the natural agent that is the bank general manager. The manager, on behalf of the shareholders (by way of *wakalah*) would be responsible for giving out *zakat* from the business. In short, the *zakat* is on the share holders of the corporate body.⁸⁸

Mode of payment

The *zakat* would be paid by the management of the bank. The applicable *fiqhi* rule would be the rule on *`urud tijarah* i.e market price of the capital shares plus the profits out of the business. As to how should it be paid?

Theoretical aspect is as follows:

Urud al-Tijarah is defined as what has been kept for sale and purchase for profit⁸⁹. Today business asset consists of three kinds of wealth: first, cash and bank balance. Second, working capital and fixed capital. Lastly, receivable debts. Now the most crucial question is what business asset is zakatable and what is not.

Some preliminary answers are:

2. Zakatable assets consist of: cash and bank balance, loans and advances obtained (profit-earning working capital plus the receivable debts.⁹⁰)
3. non-zakatable assets are: fixed assets, namely tools and raw materials, short-term liabilities (loans repayable next year), long term debts and loans obtained for personal consumption⁹¹ It is to be noted that *zakat* paid by the firm should not be treated as expenses otherwise the business tries to realize it from its customer through pricing its products, thus frustrating the whole objectives of *zakat* due upon it.⁹²

⁸⁸ Ibid .p.9. The classical jurists differed as to who should pay: the Hanafiyyah held that the individual share holders but majority held that the corporate on their behalf. The latter is regarded to be more practical by Modern scholars like al-Qaradawi and modern state also adopt this, such as the banks in Dunay, Kuwait and Sudan regard *zakat* as part of annual expenditure of the bank. For details see, al-`Umar, *Nahw Tatbiq Mu`asir li Faridat al-Zakah*, p.43 see also al-Sultan, *al-Zakat : Tatbiq Muhasibi Mu`sir*, pp.76-79; al-Muzayni, al-Murshid al-Hayran fi Ahkam al-Zakat, pp.54-57.

⁸⁹ Al-Sultan, *ibid*, p.68

⁹⁰ Hasan, ``Social Security System of Islam`` ,p.24.

⁹¹ Khan, *Some Accounting issues relating to Zakat* ,p.107.

⁹² Ibid.,po.120.

Zakat on investment accounts

The investment account may either be a general investment type or specific (project financing type). According to Shahatah, in both cases, the *zakat* would be on the investor himself except that in the first case, the *zakat* would be on the profit that he collects and in the second situation, the *zakat* would be on both the principal sum plus the profit.⁹³

Zakat on saving and current accounts

In both the cases, the *zakat* would be on the holder. In both cases, the rule of *zakat* on money applies. Money plus the accrued gift on the saving and on the principal sum on the current account.⁹⁴

2. Bank as a Zakat financing Institution

This issue is another debatable issue .To delineate the role of banks in relation to these activities, we need to thrash out the e debate first.

The jurists have generally held two divergent views on this⁹⁵.One group maintain⁹⁶ that the *zakat* collections must be disbursed immediately to the recipients, the state has no *locus standi* to invest it with the view of generating more income. Their main arguments are⁹⁷:

- it not only blurs the designated class of beneficiaries, it also contravenes the principle of *tamlik* by the recipients, namely the *faqir*, *misikin*, *amil* and *mu'allafat al-qulub* among them. The reason being that the Qur`anic use of proposition *li* implies transference of *zakat* from the owner of wealth to these group. Hence the ruler has no such discretion on the matter
- It is against the condition of prompt distribution of the *zakat* to its recipient .This is the view of the majority of the jurists who argued that delay might be detrimental to the interest f the poor in the event if the fund is destroyed or lost.⁹⁸
- *zakat* is not supposes to be reserved for future need, it is primarily designed to alleviate present economic need of the recipients.
- using *zakat* in income earning projects is a kind of accursed innovation in the area of immutable aspect of Islam .ie. Legislating on a pillar and religious rite.

⁹³ Shahatah, *Muhasibat al-Zakat Li al-Masarif al-Islamiyyah : Bayn al-Fikr wa al-Tatbiq* ,p.11

⁹⁴ *ibid.*,p.13

⁹⁵ According to the resolution adopted by the Fiqh Academy , in its third round of discussion on 13 October ,1986, there were four different position on the issue: conditionally permissible , allowed on the surplus of the collected *zakat* ,permissible to the extent of using the portion allotted to *fi sabil Allah* (in the cause of God) only and total prohibition . see Husayn Ali Muhammad Munazi` , ``Tawzif al-Zakat fi Mashru`at Intajiyah `` in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A .Kamel Centre for Islamic Economics ,2002),vol.3,p.8

⁹⁶ Scholars like Qureshi and Taqi Uthmani represent this point of view. Daud,*Malaysian Zakat System* p.19.

⁹⁷ Farah, *al-Tawjih al-Istithmari li al-Zakat* ,pp.45-46

⁹⁸ Al-Qaradawi ,*Fiqh al-Zakat* ,pp.519- 520

On the contrary, majority⁹⁹ disagreed and rebutted the opponents `s arguments by saying:

- Since according to majority of the classical schools, the ruler can spend the entire *zakat* fund for the benefit of one class alone and that also at different rate. Accordingly, it is well within his power to use *zakat* fund for the benefit of recipients in this way if it would be for their *maslahah*. It is also not against *tamlīk* (transference of private ownership to the poor) as some jurists like Hanafiyyah and Shi`ah Zaydiyyah regarded feasting and clothing of the poor from the zakatable income of the *zakat* payer as fulfillment of his *zakat*.¹⁰⁰

- its disbursement does not have to be prompt as maintained by Abi Bakr al-Jassas of the Hanfiyyah and al-Razi and Shi`ah Imamiyyah. According to al-Razi, it is a well-established principle of *usul al-fiqh* that mere command (to give *zakat*) does not require delayed or prompt disbursement but requiring the disbursement itself (sooner or later).¹⁰¹ The Hanafiyyah also generally classify *zakat* as an obligation with extended due time (*wajib muwaasa`bi al-tarakhi*).¹⁰² Accordingly, instead of giving the poor recipients their share in lump sum, they could be given monthly stipend from the proceeds of the *zakat* investment.

- the risk could be avoided by proper financial planning.
- The very fact that `Umar was insistent on given the poor an amount that would suffice them for rest of their life, and the Hanafis and al-Shafi`is agreement on providing the poor with tools of labor from *zakat* fund to become self-reliant are cogent proofs that *zakat* can be used for future security and the need of the recipients.¹⁰³

- It is not an innovation of denounced type (*madmumah*) as it benefits the recipients and not harm them, thus belonging to the category of approved /praiseworthy innovation (*mahmudah*) which can be initiated on financial matters, such as *zakat*.¹⁰⁴

Accordingly, the majority held it to be permissible provided that:

- the ultimate ownership of its return and the capital sum be spent on the recipients
- only the surplus fund should be invested
- investment activities should be carried out with extra caution and prudent financial planning so as to avoid loss to the pool of *zakat* property.

Nevertheless Qureshi, on the other hand, still contests this idea by maintaining that should not be given a blanket approval and this matter should be left to the to the poor

⁹⁹ Scholars like al-Qaradawi, al-Zarqa, Wahab al-Zuhayli, al-Nabhan, Shahhatah, Munazi` and Farah represents this view. see Munazi`, *Tawzif al-Zakat fi Mashru`at Intajiyah*, p.4

¹⁰⁰ Ibid, pp.17-18.

¹⁰¹ Ibid, pp.14-15

¹⁰² Al-Qaradawi, *Fiqh uz-Zakat*, p.519

¹⁰³ Munazi`, *Tawzif al-Zakat fi Mashru`at Intajiyah*, pp.19-21; Farah, *al-Tawjih al-Istithmari li al-Zakat*, pp.51-52

¹⁰⁴ Farah, *ibid*, p.52.

and needy to choose between consumption and investment, since their consumption needs may be more pressing which may be compensated only by very high profits. In the investment that may be defeated if business incurs a loss. Thus, the optimal choice for the poor and needy may be to avoid any investment from *zakat* funds.¹⁰⁵

In my opinion, the view of the majority is to be credited as it receives support for the Prophet's permission to a group of people from `Uraynah to drink milk of the *zakat* camels¹⁰⁶. This according to Ibn Hajar implies that other uses such as riding and leasing would be also permissible, which by extension covers the issue in question. Further, it is strengthened with the substance of many jurisprudential rule of *zakat* including the following:

1. it is to benefit the deserving poor recipients by providing them with working capital or tools of profession as was agreed by all the jurists
2. it is in line with the idea behind the territorial disbursement of *zakat* as according to al-Qaradawi was intended to effectively help in the alleviation of poverty.¹⁰⁷ In this process it is also in consonance with giving priority to the poor and destitute as the ruler may deem fit. This definitely also harnesses the proposition for productive use of *zakat* fund to make these segments self-sufficient¹⁰⁸
3. From the economic point of view, productive disbursement of *zakat*, to the poor and needy would thwart the inflationary effect¹⁰⁹ of *zakat* on Islamic economy. Accordingly from this stand point, it at macro level, should be permissible as a matter of economic necessity within the framework of Islamic fiscal policy. The productive disbursement scheme for this is suggested to be through preparing a surplus *zakat* budget. Then this fund should be mobilized by investing it in industries to provide employment to the poor. The profit out of these investment would be granted in the form of *zakat* certificate, cashable at the option of the holder after a period of three to six months. In this way the poor people propensity to consume more (demand) at least can be dampened for a short period¹¹⁰. Another dimension is that investment oriented disbursement of *zakat* funds would have cumulative effect on reducing poverty.¹¹¹

¹⁰⁵ He commented on investment proposal by expressing his misgiving about it. see Shawki Ismail Shahatah, "Limitation on The Use of Zakah Funds in Financing the Socio- economic Infrastructure of Society", in Imtiaz et al (eds), *Management of Zakat in Modern Muslim Society*, (Riyad : IDB, IRTI ,2000), p.75.

¹⁰⁶ Quoted in Farah , , *al-Tawjih al-Istithmari li al-Zakat*, p. 55.

¹⁰⁷ Al-Qaradawi , *Fiqh uz-Zakat* , p.637

¹⁰⁸ Quoted in Shahatah, *Limitation on The Use of Zakah Funds in Financing the Socio- economic Infrastructure of Society* , p.62.

¹⁰⁹ It would be inflationary as the poor have higher tendency to consume than the rich. If they are given direct cash as *zakat*, the result would be increase in the aggregate demand in the economy (push the price higher). It thus further damages the interest of the poor. See Sabahaddin Zaim, "Recent Interpretation of the Economic Aspect of Zakah", in Imtiaz et al (eds), *Management of Zakat in Modern Muslim Society*, (Riyad : IDB, IRTI ,2000), p.114.

¹¹⁰ Ibid.

¹¹¹ Ibid., p.116

Proposed theoretical mechanisms for financing The supporters of *zakat* potential for financing have offered various models for *zakat* investments. I had access to the following models .

Shahatah`s proposed model

Shahatah, while proposing a framework for the contemporary use of the *zakat* fund in financing the Islamic socio-economic projects¹¹², suggests the following¹¹³ :

1. *zakat* revenues can be used in lawful *mudarabah* projects, with the Zakah authority acting as the owner of the capital, and the *zakat* beneficiaries acting as partners by contributing their work. The profits will be distributed between them on the basis of a pre-decided ratio.
2. loan can be provided to able-bodied beneficiaries who pay the money back, it may generate a new source of finance for the beneficiaries.
3. giving possession of low cost houses on the basis of rent financing.
4. financing partnership businesses that would culminate in the ownership for the benefit of the *zakat* recipients
5. provision for leasing light fixed assets and production tools with nominal fee or rent to the poor or the needy
6. interest free loans to those suffer calamities, illnesses or costly surgery.

Anwar`s Proposed Model

According to his model, a jurisprudentially consistent mechanism can be worked out for the purpose of *zakat* utilization in financing development projects. To this end, he proposes the establishment of a special financial institution called, "*Awqaf-Zakat Investment Fund*" (AZIF) from the *zakat* fund. It would be registered as a *waqf* institution and shall operate as profit seeking corporate venture. It may have its branches and affiliate offices throughout the country, investing *zakat* funds into long-term concerns. Its paid up capital would be distributed in terms of shares to the *zakat* beneficiaries .It in collaboration with Islamic banks would engage in financing activities in accordance with well-known shari`ah compliant modes in projects that most benefit the poor and the needy/helps the poverty alleviation .For example ,financing of building infrastructure in the rural areas ,financing of the small and medium –sized industries ,such as fisheries and poultries run by poor and for their benefit etc. To manage the loss risk, it would diversify its investment portfolios as well as it builds a loss reserve account from its earnings over time. To him, his model is a shari`ah-compliant one because : First ,it satisfies the juristic conditions of *tamlik* (personal ownership of the *zakat* fund)by the poor and needy as they would be the shareholders of commercial products by virtue of their shares .Second , it guarantees against the loss and meets it, if incurred , from its built –up loss reserve account .Lastly ,it fulfils the condition of immediacy of *zakat* disbursement to satisfy the pressing consumption need of the

¹¹² He proposes financing projects ,such as education ,vocational training ,rehabilitation facilities ,small agricultural and cottage industries ,low cost housing ,heath care etc.For details see Shahatah, *Limitation on The Use of Zakah Funds in Financing the Socio- economic Infrastructure of Society* ,pp.70-71

¹¹³ Ibid,pp.69-73.

poor and the needy as it makes arrangement with the prominent outlets to accept their certificates (Zakat House in Kuwait issues coupons), representing shares, at a price not less than their face value when selling them commodities or services. These outlets can redeem them later on from the *zakat* centres.¹¹⁴

Farah model

To him, to accomplish the utilization of *zakat* fund for investment purposes, there is a need for establishing a special *zakat* investment banks (*bank ithithmar al-zakawiyah*). This bank in coordination with *zakat* departments can conduct financing activities that any other bank may undertake.¹¹⁵

Zaki Badawi's model

To him, to tackle the issue of *zakat* financing, a clear distinction should be made between the utilization of *zakat al-fitr* and *zakat al-mal*. The former should be used for the urgent consumer need of poor and needy, the latter should be invested in productive ventures such as textile factories, machine tools of manufacturing and low cost houses as long-term solution to overcome the problem of poverty.¹¹⁶

The practical model: the practice of Kuwait Zakat House

After outlining the theoretical framework for investment oriented disbursement of *zakat* fund, it is worthwhile to briefly outline as to what have been happening at the implementational level in the Muslim countries. To this end, we refer to the practice by Kuwait Zakat House as an example¹¹⁷.

Kuwait Zakat House is a government institution. It has an independent budget, and was established by Law No.5 in 1982. Its aims at collection and distribution of *zakat* fund and other donations and spending them according to the Shari'ah principles. In this pursuit, its investment oriented approach to *zakat* disbursement are as follows:¹¹⁸

- i. It keeps *zakat* fund in two types of account with the bank, namely current and saving accounts. Its earning on saving accounts increases the original fund deposited with the bank.
- ii. It provides free interest loan to people in need of money and secure its repayment by way of installments.

¹¹⁴ Muhammad Anwar, "Financing Socio-economic Development with Zakat Funds" in *Journal of Islamic Economics*, Vol. 4, 1 & 2, July 1995, 17-18

¹¹⁵ Farah, , *al-Tawjih al-Istithmari li al-Zakat*, pp.19-23

¹¹⁶ Zaki Badawi, "Zakat - A New Source of Development Finance" in *Islamic Banker: News and Analysis of Islamic Banking, Finance and Insurance*, Issue: 4, March 1996, 18-19

¹¹⁷ It is regarded as a successful experience so far. see Anwar, "Financing Socio-economic Development with Zakat Funds" in *Journal of Islamic Economics*, Vol. 4, 1 & 2, July 1995, 17-18

¹¹⁸ al-Ajeel, "A Study On The Activities of Zakah Institutions That Are Based On Non-Compulsory Payment of Zakat", pp.10-30

- iii. It finances the vocational training for capacity building of people capable of becoming productive citizens (under a scheme called, productive rehabilitation scheme). It sponsors poor students' education by offering them interest free loans.

Conclusion and recommendation

The central points covered in this paper were two: First, a review of the available literature on debate about adjusting certain features of *zakat* jurisprudence .Second, the implications of such debates for banking in conjunction with the utilization of *zakat* revenue for financing.

As far as the first issue is concerned, the paper argued and concluded that: There are parts of *zakat* laws than can be reviewed and there are other aspects that are not amenable to human extrapolation. On the renewable part ,we argued and agreed with the extension of *zakat* base to include all economic goods and services of our time .We also agreed that today's fixed assets is a growing wealth in the economic sense and not in the legal sense as defined by the classical jurists, thus it has to be zakatable.We also favor the fresh understanding of deductible debts as today even most wealthy people are not free of running debts of some kind . On the fixed parts of the law , such as *nisab* and rate we beg to differ with modern views as they represent the permanent features of *zakat* as an act of *'ibadah* .To augment the *zakat* revenue ,we alternatively ,fully support the idea of *zakat* financing as detailed in this paper .

And as for the second issue ,the paper concludes that *zakat* poses challenges as well as opportunities for Islamic banking and finance .On the challenge side ,*zakat* has to find its way to banks as far as its enforcement is concerned .On the opportunity side ,for the *zakat* to realize its socio-economic goals of effectively alleviating poverty ,its financing potential needs to be realized beyond what has been practiced so far .

As such, we recommend the following:

- i. the states should make the necessary legislative changes in tandem with the new *ijtihad* on *fiqh al-zakat* to practically enable the banks to fulfill the obligation of *zakat* on behalf of both their customers and share holders .For instance, allowing banks tax-rebates similar to the one accorded to employment *zakat*.This requires amendment of certain laws, such as Inland Revenue Law in Malaysia.
- ii. The banks in coordination with the *zakat* administration department ,be it a Ministry or State Religious Councils as is the cased in Malaysia ,should explore the possibility of financing the *zakat* fund ,beyond its safe-keeping (as suggested models we referred in this study may not well augur with the legal scenario in Malaysia).