

# Principles, objectives, and tools of market regulation in Islamic perspectives.

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## Contents

<b>INTRODUCTION.....</b>	<b>3</b>
<b>SECTION ONE.....</b>	<b>3</b>
<b>OBJECTIVES OF MARKET REGULATION IN ISLAMIC PERSPECTIVES</b>	
.....	3
<i>Economic Objectives of the Islamic Government:.....</i>	5
<i>Foundation of Market Regulation in Islam:.....</i>	7
<i>Objectives of Regulating the Private Sector:.....</i>	14
<i>Objectives of Regulating the Economic Public Sector:.....</i>	16
<b>SECTION TWO.....</b>	<b>17</b>
<b>CRITERIA OR PARAMETERS OF MARKET REGULATIONS IN</b>	
<b>ISLAMIC PERSPECTIVES .....</b>	<b>17</b>
1. <i>The economic freedom .....</i>	17
2. <i>Implementation of the Shari'ah Rules.....</i>	19
3. <i>Role of Philanthropic Sector.....</i>	19
5. <i>Public Versus Private Interests.....</i>	20
6. <i>The Shura in Decision Making .....</i>	21
<b>SECTION THREE.....</b>	<b>21</b>
<b>TOOLS OF MARKET REGULATIONS .....</b>	<b>21</b>
<i>Tools of Market Regulations Through The Use of Public and Community Properties:</i>	
.....	23
<i>Tools of Market Regulations in the Private Sector:.....</i>	25
<i>Direct Tools of Market Regulation .....</i>	28
<i>Macro Tools of Market Regulations .....</i>	30
<i>Innovative Tools of Financing as Means of Regulating the Market.....</i>	33
<b>CONCLUSION .....</b>	<b>34</b>
<b>REFERENCES.....</b>	<b>36</b>

## **Introduction**

The task set forth in the title of this paper shall be undertaken in three sections. Section one will deal with the objectives of market regulations in the Islamic perspectives. Section two will try to derive the criteria or parameters that guide the path of economic policy with regard to regulating the commodity, financial, monetary and labor markets in general. And in section three, we will discuss the policy tools available in the Islamic economic system for reaching the given objectives.

It should be noted at the outset of this paper that we have very few texts that deal directly with issues of market regulation. Specifically, we have the texts of Sunnah that discuss matters like pricing, *Hisbah* (ombudsmanship), and the advice of avoiding breaking the currency used in the society.

Hence, the discussion throughout our paper will heavily depend on the general and specific objectives of Shari'ah as well as on related issues that provide important implications as to all three sections of this paper.

## **Section One**

### ***Objectives of Market Regulation in Islamic Perspectives***

The objectives of market regulation in the Islamic economic system are certainly derived from the economic objectives of Islam itself as a way of life especially those that are assigned to the Islamic government.

The general economic objectives of the Islamic system are very well known, and repeatedly discussed in the contemporary Islamic economic writings. What is important, however, is to observe that some of these objectives rank higher than others. It is of equal importance to know which of these objectives is assigned essentially to individuals, i.e. the private sector, which is assigned to the public economic sector and to the economic policy of the government, and what is left to the charitable or third sector.

It seems that the objective of producing income sufficient to sustain one's needs and wants and to fulfill the material joy in this life is the first economic objective in the Islamic system and it is essentially assigned to the private sector. Individuals are repeatedly called on in the Qur'an and Sunnah to walk in the tracks of earth and seek the sustenance provided by Allah, the A. We know from the Sunnah that when a poor guy came to the Prophet (pbuh), he guided him to use his own resources and helped him liquidate them through a public auction, he also helped the poor man make better use of these resources and guided him to produce wood from the mountain for sale, and to increase his consumption and saving together.

To this objective, we may add a second, and perhaps second in its rank, objective of the private sector; that is the objective of construction and prosperity on earth. Allah created the earth for the use of mankind and called on all of us to construct it, and to make the best use we can of all His resources (the Qur'an, verses 11:61, 30:9, 9:19, and 52:4). This I'mar (or Imran or imarah) of the earth is where Ibn Khaldun derived the name of the science that he invented in the thirteen century and called 'Ilm al Imran, which covered sociology, economics, and political science.

It should be noted that the Islamic government has, through its economic policy, many things to help individuals in the fulfillment of these two major objectives assigned to them.

With these two objectives comes also the objective of economic development at the micro level, which is in fact only a part of the objective of imran.

### **Economic Objectives of the Islamic Government:**

Keeping in mind that the Islamic system believes in the co-existence of an economic public sector along with the private sector, which is evident at least through the very fact that the Islamic economic system assigns certain productive properties in the society to the government to form a base for the government-owned or society-owned economic enterprises, one may argue that the essential general objectives of economic policy are as follows:

1. Promoting the private sector and supporting its activity in realizing its objectives of material joy, construction, and prosperity. This may be the first objective of the economic policy of the Islamic government because this promotion increases the realization of all other objectives and increases the ability of the private sector to give in terms of Zakah, Sadaqat and other contributions, as well as it increases taxes that in turn support the other objectives of the economic policy.
2. Maximizing the benefits of members of the society from the available public properties by means of their efficient management, maintenance, and development.
3. Providing economic means and resources necessary for the political and military power of the Islamic state, which is intended for raising the Word of Allah high in the world and for protecting the Islamic society from any potential external aggression. This implies increasing the speed of development; both economic and social, improving the scientific knowledge

and technological application and optimizing the military might of the Islamic Ummah.

4. Providing financial resources sufficient for the fulfillment of the administrative functions, including law and order, of the government.
5. Supervising and monitoring (and stepping in when necessary to fill the gap of production and distribution) the private sector's activities aimed at provision of basic needs to every person in the Muslim society and guiding individuals in their efforts to increase the economic joys and welfare.
6. Maintaining socio-economic balance and promotion of socio-economic justice by means of re-distribution of wealth and income within the boundaries permitted in Shari'ah. The objective of economic balance includes stability of prices and economic activity unless one likes to assign it as a separate objective on its own, since the stability of economic activity and prices is very much related to both balance and development. Stability may be an objective by implication. However, with regard to economic policy in a demand and supply driven pluralistic market, it may important to note that economic stability, a prerequisite as it may be, jumps to the forefront among the objectives of economic policy. We should also observe that this objective might include some of the items that come under the protection and maintenance of the moral framework of economic activity. For instance, prevention and elimination of monopolies come in fact under both objectives of economic balance and the compliance with the moral framework, because monopolistic practices are themselves exploitative and therefore immoral.

7. Protecting the moral framework set in Shari'ah for economic activities and promoting "ordaining what is known as good and preventing what is known as bad". Protecting the moral framework of economic activity also includes the realization of the Islamic principle which dictates that income is only deserved or earned through either the provision of human services or the ownership of growing properties that there should be no parasitic, fraudulent or phony activities taking place as means of acquiring incomes from other persons without the provision of productive services or the ownership of productive assets. The morally based prohibited economic activities include gambling, trading of artificially created financial assets or non-existing assets such as assets that exist only on paper or by creation of fabricated relationships, such as indices, etc.

### **Foundation of Market Regulation in Islam:**

From the economic objectives of the Islamic government, we are able now to derive the objectives that relate to market regulations, but with the very small number of texts in the original sources of Shari'ah that deal directly with market regulations we will have to depend on Maqasid al Shari'ah and a few rulings in matters close to our subject. Studying these Maqasid and the few Shari'ah rulings on issues like pricing, *Hisbah*, breaking the currency, *Iqta'*, *Ihya'*, *Hima*, and the practices regarding land *Kharaj*, etc., provides us with an insight of market regulations in the Islamic economic system and helps drawing the landmarks of their foundations.

Under this subtitle we will briefly discuss the Maqasid related to our subject and a few examples of Shari'ah rulings in related areas.

**Maqasid al Shari'ah:**

**The Concept of Maslahah:** All the overall objectives of Shari'ah can be summarized in the promotion, the preservation, and the protection of five basics ('Usul) that summarize and combine all matters related to the existence of human beings in this universe. These basics are religion, life, mind, prodigy or posterity, and property or wealth. Whatever adds a benefit to these five things or any of one of them is a Maslahah, or benefit, and what hurts or damages any of them is a Mafsadah, or harm. Thus one can summarize the objective of all Messengers including the last one, Muhammad (peace and prayers upon them all) is to promote the Masalih and to avoid or eliminate the Mafasid. Protection and Promotion of life includes human rights as they are always associated with life, since, according to Shari'ah, the promotion, preservation, and protection of human life includes dignity and purity of human beings as the best creation of Allah, the Almighty, the basic right to have peaceful living and to exercise one's ability and use one's resources to promote one's objectives, and the promotion of human honor and human freedom in all spheres of activities.<sup>1</sup>

The specific objective of promotion, preservation, and protection of property and wealth includes the right of individuals to take free decisions concerning the use of their properties, savings, accumulation, growth and development, etc. All members of the society are entitled to protection against

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<sup>1</sup> There is no doubt that the association of human beings in families, societies, and international communities imposes certain limitation on individual freedom which vary from one society to another. While societies vary in accordance with individual desires and distribution of power both economic, military, and political, the Islamic system has its own, God-given constants from which such a limitation must not deviate; and any restriction on individual freedom that exists in the Islamic system is for the benefit of human association. It is a restriction that is either God-given, therefore most suitable for the nature of human beings or must be based on the consent of members of the society and to the benefit of the group as a whole. Otherwise any such restriction is refused and tagged as anti-Islamic though it may be imposed by rulers who carry Muslim names and in Muslim societies.



extortion and expropriation by any coercive or unjust means not only vis-à-vis other individuals but also against the government itself.

### **Shari'ah examples of Government interference with the Market:**

**Pricing:** The text we have on pricing is a famous one. What is important about it is that the Prophet (pbuh) refused to determine prices when there was a rise in prices in Madinah and some people complained to him. He emphasized that there are forces created by Allah which determine prices in the market, Further, he indicated that pricing may entail injustice inflicted on someone, one way or another and he (pbuh) does not want to indulge in any injustice.

It is well known that many Muslim scholars comment on this saying that it applies to the free and fair play of market forces, under normal, practical and realistic degree of free competition. It is argued by several Muslim scholars that whenever there are obstacles in the way of the market forces or whenever there is a public interest that overweigh the free play of the market forces, government must step in to price goods and services in as much as such pricing fulfills the overwhelming objective of Shari'ah in bringing what is good and avoiding what is bad. Thus, the matter with pricing is an issue of weighing the different objectives on the one hand the objective of preservation of freedom and individual economic choice, and the interests of the whole society on the other hand.

This indicates that both protection of economic freedom and choice and protection of public interest are valued as major objectives of market regulation in the Islamic system.

**Al Hisbah:** *Al Hisbah* (ombudsmanship) is a function of supervising the activities and transactions that take place in the market from three angles. One, that all activities and transactions are undertaken within the boundaries of the rules of Shari'ah; two, that all activities and transactions are done with observation of the moral values and ethical principles of Islam as a religion; and three, the

ombudsman (Muhtasib) is also charged with the function of “ordaining what is known as good and forbidding what is known as wrong” in the market.

These functions have been implemented throughout Islamic history from the time of the Prophet Muhammad (pbuh) until the end of the nineteenth-century. In fact, there were Muhtasibs all over the Islamic history. We should keep in mind that when a society goes down or deteriorates in its cultural standards or at least stagnates, all functions including those of the Muhtasib go along with the general decline or stagnation.

The idea of the Muhtasib tells that one of the major objectives of market regulations to promote the two-tier filtration of economic activities and transactions. That is, the filtration at the level of the consciousness of the economic actor and within his/her heart and the filtration at the level of monitoring the observance of legal and moral values and rules in market relationships by a special semi-governmental agency. This second filtration comes from the presence of the Muhtasib in the market and her/his authority in ordaining what is good and preventing what is wrong. It should be noted that the authority of al Muhtasib lies somewhere between personal moral advices and supervision on the one hand and a legally binding action of a judiciary system on the other hand. In other words, the Muhtasib’s authority is a little below a judge who gives final dictates on the compliance of transactions and economic relationships with the rules of Shari’ah.

**No breaking of the currency:** We should first note that at the time of Prophet Muhammad (pbuh), there was not national currency of the Muslim society. Muslims were using three kinds of currencies; two of them were minted by other nations. The dirham of pre-Islamic Persia and the dinar of the Byzantines. The minting of both currencies was not under the authority of the Islamic government. The third type of currency was used at that time was raw gold and silver, which were used as currency by their weights. Yet the Prophet

(pbuh) is known to have prevented breaking the currency of Muslims meaning that the currency used by Muslims.

Obviously, the significant implication of this saying is to provide sufficient means of payment in the Muslim economy. This may indicate that the provision of adequate quantity of money (as means of payment) in the society is a responsibility of the Islamic government. Later on, most Fuqaha discussed the issue of minting currencies and considered it as an exclusive function of the Islamic government.

Some contemporary writers derived from this exclusiveness of minting that the government must be the sole producer of money, hence they called for 100% reserves in the banking system. I don't think that the Prophet's sayings on currency as well as the Fiqhi opinions historically known in the classical literature provide sufficient ground or support for such a deduction. They rather do provide ground for government supervision, control, management and final say over the quantity of money in a Muslim society. This does not necessarily mean that the government must be the sole producer of all means of payments especially that in our time the humanity discovered new forms of means of payment besides the demand deposits such as entries using the credit card system and electronic entries in the electronic banking system that is spreading like fire. Hence, it is an excessiveness and exaggeration, in my opinion, to see in these sayings and Fiqh opinions a ground for 100% reserves on demand deposits.

The texts that discourage breaking the currency, when taken along with the texts that look with apprehension to hoarding of gold and silver, provide a reasonably strong indication to the objective of price stability because in both cases withdrawal of means of payment from market circulation on the basis of individual desires and private interests is a main reason for price instability and such texts that stand against these practices obviously stand in support of price stability.

**Al Iqta’:** Al Iqta’ is the assignment of public property, or the usufruct of a public property, to private individuals. It is conditional, according to Shari’ah, on enhancing the public interests and the welfare of the society and satisfying the requirement of social and economic justice. This assignment may be on the basis of giving away the ownership, in Iqta’ al Tamlik or giving away only the benefits or usufructs while ownership is maintained in public hands. The latter is called Iqta’ al Irfaq. The practice of Iqta’ must always aim at servicing the benefit of the public and the societal interests, either in increasing the efficiency or productivity of public properties or for rewarding persons for extremely beneficial acts they have taken in the public interest, or for increasing the quantity of resources utilized in the productive processes in the society. Iqta’ may also take the form of granting a public property for a concessional price.

The implication of Iqta’ lies in its promotion of private sectors’ initiatives and interests as well as the aggregate efficiency of the economy. Iqta’ thus points to the objectives of development and growth on the one hand and to the promotion of private sector, rewarding private initiatives and supporting individuals in their private economic enterprises on the other hand.

**Ihya’ al Mawat:** Ihya’ al Mawat is a lego-economic institution that rewards with private ownership those who venture, with their own resources to reclaim certain idle lands. In Shari’ah, lands are essentially of four types. One, the privately owned land; two, lands that are owned by the Islamic state, as represented by the Islamic government, this is like private ownership of the Islamic state, or Bait al Mal, or any other agency that the Islamic state assigns for administering such lands; three, lands owned by the Muslim community as shared together with equal rights of accessibility to all members of the society, such as roads, forests, and areas assigned for community activities in towns and villages, like parks and recreation areas; and four, land that is not owned by anybody, it is, in a sense, part of the public domain, but it is not owned by the government or Bait al mail as a legal entity per se.

These idle tracts of lands that are not within the productive process, at the time and level of development of the society, nor are they owned privately by virtue of exchange contracts, inheritance or other legal means of acquiring properties. Thus, idle lands that are dead from a productive point of view can be owned through the act of reclamation. An individual may go on and revitalize such lands by undertaking projects of cleaning, irrigation, planting, cutting trees, etc. and use the land for productive agriculture. Persons who bring idle non-owned lands into a productive use become owners of these lands, once they are privately reclaimed and revived.

Ihya' (revivication) of such dead tracts of land may be done with permission of the Islamic government according to some scholars, while many others believe that such permission is not required, and that individuals are free and encouraged to go and find unutilized and unowned tracts of land and bring them into productive utilization and consequently claim a title of ownership on them. However, fencing a land alone, though it may be a first step for revivication, does not give a right of ownership, it only gives a priority for the person who made the fencing to reclaim or revivicate the land but if that person doesn't do that, the fencing alone loses its value once sufficient time passes without taking the revivication steps.

The virtue of revivication to our present discussion is to emphasize an indication to the promotion of private sector and individuals initiatives in creating new sources of income and rewarding such private initiatives and productive undertakings.

**The treatment of conquered lands:** conquered lands are treated as a property of the whole Ummah. The practice of the Prophet Muhammad (pbuh) in the land of khaibar as well as the companions after him with regard to the lands of Syria, Persia, Iraq, and Egypt was such that serves the objective of promoting private sector and private investment decision-making by assigning these lands to the same peasants who knew how to farm them while at the same time, freeing

human resources of mostly devout Muslims (members of the conquering forces) to undertake the task of administering the government and promoting the national strength and might of the Ummah as a means to maintain international justice and peace.

Hence, here again in the way conquered lands were treated, we find a finger pointing to the objective of promoting the private sector.

**Hima:** The concept of Hima is interesting. Hima is the appropriation of tracts of land within the public domain to certain appropriated use in the service of the public interests. The Prophet (pbuh) and his Successors practiced the Hima of certain tracts of land for the grazing of publicly owned riding animals that are used by the Muslim army and government. They also protected or assigned certain pieces of land for temporary grazing of animals, cattle, sheep, and camels, collected as Zakah; while waiting for their distribution to the poor and needy. Interestingly, the charter given by the second Successor of the Prophet (pbuh) to the manager of a Hima tract instructed him to allow and permit the animals of the poor to enter that tract for free grazing while preventing the large herds of the rich persons, like Uthman and Abd al Rahman from entering the Hima land because they have a huge wealth that they can rely on.

Finally, it goes without saying that the very fact of imposing the Zakah, the third pillar of Islam, indicates that women and men are encouraged to strive in the economic ventures to become rich and have the reward of paying Zakah.

### **Objectives of Regulating the Private Sector:**

Since the Islamic economic system is founded on the basis of dual ownership, private and public, it is relevant to discuss market regulation within this spirit. On the one hand, we have the regulations of market relations between the public sector enterprises and individuals these cover both the factors of production markets, including employment in public enterprises and their output

market. And on the other hand, we have regulations that relate to relationships within the private sector. Hence, we will try to discuss the objectives of market regulation in these two types of relationships while keeping in mind the close interaction and inter-influences between them.

While the objectives of market regulations in the public economic sector will be left to the following subsection, here are the Islamic government objectives of market regulation policies in the private sectors:

1. The promotion and support of private sector in its undertaking of economic activities toward its objective of development, growth, and fulfillment of human wants with a surplus that can be used for Zakah, Sadaqat, contributions and taxes that aim at the promotion of social cohesion and the strength of the Islamic society and its religion, people, and territories.
2. Next comes the preservation and enhancement of social balance and socio-economic stability, which includes price stability, and the promotion of employment and growth without pebbles or ups and downs or with a minimum of them.
3. The third objective is the promotion of Islamic moral values in the marketplace and in market relations; and the enhancement of peaceful market relations with minimum disputes. This also includes ordaining what is commonly known as good and forbidding what is commonly known as bad.

With these three important objectives of market regulations in the private sector, we can go now to their counterparts in the public sector.

## **Objectives of Regulating the Economic Public Sector:**

The above objectives relate essentially to market regulation of the private sector's economic activities. Since the public sector's economic enterprises have basically a different set of objectives and responsibilities because they are part of the government, we must look for the objectives of regulating the economic public sector closer to where we find the government itself.

First, we must add a social justice dimension as an essential aim of the economic enterprises of public sector which applies to all their activities and relationships, including employment policies, pricing policies, and policies of quantitative adjustment in output.

Secondly, since the government is charged with the implementation of social priorities with regard to its economic behavior in the market, economic enterprises owned by the public sector are also considered a primary means to achieve the Shari'ah-given priorities. Hence, it is part of their objectives, and the objectives related to the regulation of their activities, to preserve and maintain the social priorities, especially when it comes to the production and distribution of necessities, then conveniences, then of improvements and beautifications.

Thirdly, the economic enterprises of the public sector must also aim at spreading the benefits of public utilities so that they are attainable by all members of the society especially that public utilities are usually based on the use of community property in which people have common and equal right of accessibility as stated in the saying of the Prophet (pbuh) with regard to such utilities of his time, fire, pasture and water. Therefore the regulations related to the production and distribution of such public utilities must uniquely observe making them attainable by all people as much as this is possible, without using these utilities as a mean of generating income to the government that implicitly means that people are charged an additional or excessive fee above their costs or fair prices.



## **Section Two**

### ***Criteria or Parameters of Market Regulations in Islamic Perspectives***

The criteria or parameters that guide the economic policy in the area of market regulation are also derived from the general objectives of Shari'ah as well as the many indications of specific texts and rulings. Hence, the first and foremost criterion is the maintenance and support of economic freedom of individuals and their choice of market action.

#### **1. The economic freedom**

It is an essential and basic principle of the Islamic economic system; we find such statements in the general rules of Fiqh as “humans are fully authorized over their own properties. They can dispose of them the way they please” and there are no limitations on human behavior except those imposed by god” we find also such texts as Allah is the price-setter, He is the one who gives plenty and He is the one who holds his giving”, “pricing is itself an injustice (Zulm) and the Islamic-state decision maker cannot take such a measure as Allah will question him on “injustices done to humans in their blood or properties.” When the second successor of the prophet appropriated a piece of land for the grazing of the livestock collected in Zakah, he declared “by god, it is their property (the people’s property) and if it were not necessarily needed for the grazing of their livestock, I would have not appropriated it and reserved it from them.

The sole decision-maker regarding the utilization of one’s property is the owner him/herself and economic freedom is wide-ranged that an Islamic government must not restrict it unless for a very important reason. The fact that the Islamic law prohibits certain practices and certain commodities does not imply an exception of economic freedom. It only indicates that there are harmful things and hurtful actions that require the law to interfere in guiding individuals. This

guidance is not a restriction on the transactions and the disposition of properties that are not included in what is harmful of things that exist in the world. Every human being realizes that if you want to protect and improve the five pillars of human life on earth mentioned earlier (al Usul al Khamsah), harmful commodities must be excluded from the attainable set of goods because they are not good, and hurtful behavior must be avoided because it brings damage. The prophet (pbuh) repeatedly declared the protection of the full right of owners over their properties, and this protection does not only apply to other individuals, it also applies to bringing the attention of the government to respect private freedom in economic matters. In his famous farewell Khutbah, the prophet (pbuh) put it clearly: “behold, surely your bloods and your properties are protected the way this day (of Arafat) and this place (of hajj) are respected and sacred.”

Further, it is well known that when the prophet (pbuh) instituted or inaugurated the newly created market for Muslims in Madinah, the first thing he asserted was that this is your market, no one has a right to impose any restriction on you nor any tax and you are free to enter this market and make your own transactions with full freedom and complete individual choice. He, in fact, created an independent market because the previously existing marketplace was dominated by political powers that imposed restrictions on the behavior of the actors in the market as well as taxes on their properties and transactions. One can go on and on in emphasizing the importance of the private sector, its initiative, and its choice in development and growth and in the fulfillment of the basic needs for men and women in the Islamic society. We are individually called on in the Qur’an and Sunnah to seek the sustenance given by Allah, and individually required to spend on our families and neighbors and to give for Zakah and Sadaqat and other Divinely mentioned donations. This can only be done if we are left free to produce and if our initiatives and sense of freedom are respected and allowed to venture in the tracts of earth.

In the Sunnah, we find the example of that person who asked the prophet for charity and he guided him to use his own resources for production and self-reliance rather than taking charity from others or from the government, although whatever is given by the government is a full right of the poor and needy, yet the basic responsibility for one's own sustenance falls on the person himself.

## **2. Implementation of the Shari'ah Rules.**

The market regulations must also abide by the Shari'ah rules that determine the legal framework of economic transactions in sales, hiring and employment, finance, etc. It is also required to ordain the fulfillment of the Shari'ah obligations and the avoidance of the Shari'ah prohibitions.

## **3. Role of Philanthropic Sector**

The market regulation is also required to recognize **the important role of the philanthropic sector in the economy**. This sector that is based on both the one-shot Sadaqat and the Sadaqat that provide a flow of benefit, i.e. the Awqaf, both types of donations played a significant role in the Islamic history and reduced the burden of the government. Almost all help extended to the poor and needy, health care, education, and public utilities in addition to places of worship and their support were traditionally activities carried out by the third sector in the history of Islam. Supporting the third sector and privileging it through tax concessions and procedure reductions is also one of the parameters that guide the economic policy in designing its market regulation.

## **4. Reduction of Government and Taxation.**

Taxation in Shari'ah is exception not a rule and the government in the Islamic system derives its authority to impose taxes from the principle delegation of people not from any Divine ordinance or state authority beyond the individual

members of the society. Although the Islamic economic system assigns revenue generating properties to the state to finance the activities of the government sector, the existence of a mandatory strong third sector, represented mainly by Awqaf and Zakah, indicates that the Islamic system does not favor a big government, it rather puts restriction on taxation, by allowing them only as a last resort, a tool for generating revenues necessary for running the basic functions of the government. Taxation in the Islamic system is the right of the state derived from an authority over individuals. This famous restriction is exemplified by the ruling of one great scholar, al Iz Ibn Abd al Salam when he opposed a proposed tax by the government to finance the Muslim army in defending Muslim land against the mogul invasion. He insistently argued that the government must first liquidate and utilize the available resources including the huge amount of wealth that was embezzled by the ruling class before any taxes can be imposed, even for the purpose of defense. This rule asserts that taxes are only a last resort and a source of finance for the government treasury; they cannot be imposed if the government has sufficient resources from those revenues assigned in Shari'ah for running the Islamic state.

### **5. Public Versus Private Interests**

The fifth criteria relates to the rule that **a public interest supercedes a private interest**. That is, once we determine that there is a real interest for the public we will give a second rank to the private interest and the latter may be sacrificed, if necessary, for the former. This rule gives preference to the interest of the group over the interest of one of its individuals. This rule is also governed by the principle of necessity, which implies that the rule is applicable only in case of conflict, where the realization of the public interest can only be done at the expense of sacrificing a private one, provided the amount of sacrifice must not exceed what is needed to realize the public interest.

## **6. The Shura in Decision Making**

Finally, the sixth parameter also derives its existence from the principles that deal with the nature of the authority of the Islamic government as a **government by delegation**. It is a government selected by people, and it must always abide by the people's decision and preferences, hence, taxes and revenues, expenditures, all restrictions, and regulations in the market, and in the society at large, can only be adopted on the basis of delegation of authority from the members of the Islamic society. Without an adequate Shura system and representation tools of market regulations cannot be in Islamic perspectives.

### **Section Three**

#### ***Tools of Market Regulations***

We've discussed the objectives and criteria of market regulation in the Islamic economic system in the first two sections. It may be worthwhile to note that the Islamic system has several commonalities with the other systems in the world. This is obviously natural because we all are men and women with God given abilities to rationalize and understand and Islam is a religion that heavily counts on the Fitrah (human nature) which is also a main guide for all human rationale, unless when it is obstructed or disoriented by social attitudes and tyrannies. Such similarities between the Islamic system and other systems, not only in the areas of market regulations, but also in many other areas of the economic system simply mean that the historical experience of non-Muslim men and women refine, through time, their minds and spirits and clear them from many of the distortions that obscure their rationale, hence they come closer and closer to the good Fitrah of Islam created by Allah (swt).

The discussion of the tools of market regulation from Islamic perspective does not go beyond what is commonly known as derived from the historical

experience of societies, yet we must observe that as a Divine-sourced system, it must always behave within the God given revelation and principles.

The traditional and conventional way of discussing the tools of market regulation usually begins with the macro policy tools that influence the behavior of the macro-economic variables. These consist of three main types of policies; fiscal, monetary, and open-mouth. Fiscal and monetary tools are not a part of this paper, and they do not essentially differ from what is known in the literature. The open-mouth tools refer to the government policies that depend on announcement, declarations, threatening, and calling on the actors in the market to improve their behaviors and bring them in line with the objectives and norms of the society as adopted and declared by the government.

Market regulation policies at the micro level include income policies, credit and finance policies, licensing policies, and pricing and arbitrations policies.

Before discussing these different policies, I would like to introduce the tools of market regulation in Islamic perspective from a different angle. An angle that I feel is more consistent with the Islamic economic system itself. As we know, the Islamic economic system is marked with the coexistence of considerable amount of public properties along with private properties. This must be reflected, in my opinion, in the tools of economic policy available for influencing the market, hence it affects the type of tools used in market regulation in the Islamic economic system. I prefer to discuss the tools of market regulation in two subsections; one, tools available through the management of the public and community properties<sup>2</sup>, and two, tools for regulating the private sector.

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<sup>2</sup> As we know, the Shari'ah assigns certain properties for the community. The Hadith of the prophet (pbuh) refers to those kinds of properties through the services they provide "All people are partners in three: grazing pasture, water, and fire." Another Hadith adds the salt land to these three. Where the prophet (pbuh) gave a piece of land to Abiad Ibn Hammal and later was told that this was a land that produces salt, which was used by all the community, he asked the person to give it back and left it as a community property accessible to all. The importance of the community property lies in that its services must be made accessible by all members of the community on equal footing and without any hidden taxes.

## **Tools of Market Regulations Through The Use of Public and Community Properties:**

Public and community properties are managed by the state; their development and output as well as method of investment can affect the private sector to a substantial degree. Hence, the market regulation through the public and community properties may take either the form of quantitative changes that use the manipulation of output and input quantities in the public sector as tools to influence the behavior of the actors in the private sector, changes in the mode of utilization and investment of public and community properties, and price and credit changes in the economic public sector.

1. **Changes in output** of the economic public enterprises affects the private actor through the interaction they have with this output, which they normally use as input, in their private businesses and industries, or as consumer goods such as utilities produced by the economic public enterprises.

Additionally, **changes in employment** in the economic public sector affects the employment in the private sector in at least two ways. One: by setting standards of wages and labor benefits for the whole economy, and two: by influencing the aggregate demand for labor. The economic public sector may be able to increase or decrease its demand for labor without affecting its output by manipulating the choice of labor capital-intensive technology. Hence, it can reduce or increase the labor supply available for the private sector.

Such **quantitative changes** influence aggregate output and other macro variables (consumption, employment, income, etc.), whether directly through the public sector's employment and output policies or indirectly through their multiplied effects on the private sector.

Certainly, the effect of the public sector's quantitative policies depends on its economic integration with the rest of the economy and its market share and relationships with the private productive sector. Given the appropriate information, one may calculate the multiplier of the public sector output and

employment policies and set numerical targets for the desired effect through the application of the quantitative policy of the economic public sector.

2. On the other hand, several other micro policies are also available through the management of public and community properties. The example given by the early Islamic state is the way it handled the land input in agriculture, which was then the overwhelming source of income and output. This example indicates that **changes in the approach or method of investment** of the public sector's properties affects also the private sector's behavior. Most of the land owned by the public sector was given to private individuals on rental basis and all decisions of farming left to these individuals against a given rental, i.e. Kharaj. This was a method of investment of the public property that aimed at three objectives at the same time as recorded from the discussion in the policy making circles at the time of the second successor of the prophet (pbuh). This trio of objectives consists of: one, liberating a huge amount of the labor force to serve in the directly needed process of liberating those who were under oppression, social, political, or religious outside the boundaries of the Islamic state; two, to produce a stable income or revenues for the Islamic state, needed to sustain its administrative functions; and three, to leave a reasonable flow of income for the future generations.

To this we may add the **tool of Iqta'**, whether of ownership of a property or of its usufruct only. It was also used to enhance the objectives of growth and development. At the same time, the limitation imposed on the private sector's utilization of agricultural and grazing land under the Hima were minimum and mainly practiced for the grazing animals of Zakah and the armed forces.

Hence, the **selection of policies of investment** of the public sector's resources represents another tool through which the economic public sector influences the market.

3. The **price policy** of the economic public sector is another micro tool available to the government to regulate or influence the market. Changes in the



prices of the output of the public sector may take the form of across the board changes or selective and discriminatory pricing. The latter may include price discriminations between consumption use and the use of industries, between small users and large ones or between users in different regions of the country or in different industries, depending on the target sought by the public sector policy.

4. Lastly, **discriminatory commercial credit** or selective credit policy by the public sector enterprises represents another tool in the hands of the economic public sector to influence the behavior of the private actors in the market. This is essentially the type of commercial credit that is extended by the public sector enterprises to their customers.

### **Tools of Market Regulations in the Private Sector:**

#### **The Hisbah (A Regulatory Agency):**

It is important at the outset of this subsection to remind us of the nature of the institution of *Hisbah* and its historical role and functions in the Muslim market. It may be one of the most deep-rooted institutions of market regulation, not only in the Islamic history, but also in the history of mankind at large.

It is irrelevant and perhaps futile to argue whether *Hisbah* is an Islamically created institution or it existed before Islam<sup>3</sup>. What matters really is that it is an institution that existed since the time of the prophet (pbuh) and it continued since then, with an important market role, to the extent that it has become a powerful institution that was intrinsically attached to the Muslim markets throughout the economic history of Islam. It is reported that the prophet Muhammad (pbuh) was the first ruler in the Islamic history that practiced the *Hisbah* on the market. And it was assigned to outstanding and Shari'ah-knowledgeable persons ever since the

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<sup>3</sup> There is some scanty evidence that some sort of ombudsmanship existed in the Roman Empire, but certainly it never took the depth and wide coverage of markets as was developed in the Islamic societies. Middle Ages European imported the concept from the Muslim Spain and Middle East.

death of the prophet (pbuh). The Muhtasib (ombudsman) has assistants around him and can enforce her/his decisions with the help of the law enforcement agencies.<sup>4</sup>

The word itself is derived from *Hisab* (account/accountability), and the institution of *Hisbah*, was assigned several market functions in the Islamic history and jurisprudence. These functions include the following:

1. Quality control, whereby all kinds of products were subjected to quality checks and supervision to maintain a quality standard that is desired by the society.
2. Shari'ah control. This function includes the supervision of the market actors from the point of view of the compatibility of their contracts with the Shari'ah, that no Riba contracts are done, no deception neither fraud, etc. are practiced.
3. Moral filtering. This function includes that all actors in the market in their transactions are observing the moral and ethical values of the Shari'ah. These include truthfulness in transaction and declaration of all the characteristics of merchandise, apprentices are not treated unfairly, animals are not over-burdened or underfed, etc.
4. Environment control. This includes that all transactors do not exceed their own domain of practice. For instance, merchants do not exhibit goods and merchandise in the street outside their own shops, hence infringing on the right of purchaser and passers-by to the whole street; craftsmen don't produce fumes or other particles that may hurt passers-by or neighbors; noise-producing craftsmen have shops away from residential areas and other businesses, etc.
5. Health control. The *Hisbah* institution was also assigned the function of health control in the Islamic market. For instance, it is required to see to

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<sup>4</sup> It is reported that Omar assigned a learned woman companion of the prophet (pbuh) whose name was Al Shaffa' as a Muhtasib in Madinah and she remained in that position until she died.

it that merchandise may not be exposed to insects, their production is done under healthy conditions, no harmful or rotten ingredients are used by the producer, that producers of bread, meat, and other ready food items follow all rules of cleanliness to the extent that they were forced to employ a worker to stir the air continuously to scare away flies and other insects, to wash with soap (Muslims invented soap), to cover their nose, mouths, and all their hair when they deal with dough and the fresh bread, etc. In fact, you find in the classical books on *Hisbah* a detailed description of health and cleanliness rules and suggested methods of inspection, including surprise visits, etc.

6. The arbitration function. The *Hisbah* institution was also assigned the function of arbitration in market disputes between workers and employers as well as between sellers and buyers and between the merchants themselves. In this sense the *Hisbah* represents an agency that provides quick and immediate arbitration to solve disputes before they reach the court so that once the two parties accept the arbitration of the Muhtasib, any of the Muhtasib assistants or sometimes a committee formed by the Muhtasib, the dispute is usually solved on the spot without waiting for court procedures.
7. Anti-monopoly functions and pricing. The *Hisbah* institution was also assigned to see to it that no monopoly is practiced in the market, the type of monopolies mentioned in the books of *Hisbah* where the Muhtasib has to interfere include an implicit agreement between producers to raise the prices of their services or goods, the existence of one producer/seller of a commodity if he/she hoards or stores a commodity in order to reduce the market supply. If a commodity is actually produced by one single producer, then the *Hisbah* institution must enforce pricing, as argued by Ibn Taymiyyah and others. Hence

this function includes pricing if it becomes the only way to eliminate monopolistic practices.

8. The supervision over the continued provision of public utility services in the market and society. The *Hisbah* institution was also assigned the task of seeing to it that the public utilities are maintained in a proper way. These include roads, bridges, and streetlights. Water fountains for homes and Mosques, public bathrooms, drainage, sewage, etc. If any of these public services is damaged or affected by wear and tear or naturally calamities, the *Hisbah* institution steps in to supervise repair and maintenance, and if there are no financial resources in the treasury of the local government, help from the center is sought or taxes are imposed on the rich for repair and maintenance of public services.

This institution of *Hisbah* had a heritage in all Islamic countries and major cities. This was developed in the Muslim societies at the time when Europe was sinking in ignorance and barbarism. The institution of *Hisbah*, once revived, represents a semi-governmental agency that takes charge of several aspects of market regulations especially those that do not fall under the macro policies. It can be charged with all or most of the above-mentioned functions of which we have a rich historical experience.

There remain the other tools of direct regulations of the market and the macro-lend regulations, which will be discussed in the following subsections.

### **Direct Tools of Market Regulation**

1. **Pricing** may be the most important tool of market regulation. It should be noted, though, that the rejection of pricing by the prophet (pbuh) had aimed at avoiding the infliction of injustice, which negatively affects the efficiency of the market. Hence, it has been argued throughout the Islamic history by Shari'ah scholars that whenever there is injustice in the market, either created by explicit or

implicit agreement of the producers or the buyers of a commodity or a service, or by the very nature of the production process of a commodity such as transporting electricity or goods and people on railways where it is inefficient to have the provision of the service exercised on competitive basis. In such cases, the Fuqaha argued that pricing becomes necessary for the implementation of justice itself, hence direct pricing may be exercised under such circumstances as stated in a clear manner by one of the late brilliant Shari'ah scholars, Ibn Taymiyyah. Determination of minimum wages also falls under the title of pricing. It must be noted however that fixing a minimum wage by the Islamic state is not intended to provide sufficient means of sustenance for the laborer and her/his family; this is the responsibility of Zakah, Sadaqat, and the Islamic state itself. Minimum wages in the Islamic economic system may be needed for the implementation of justice in case of imbalance in the bargaining powers of workers and employers, especially in non-unionized markets. Therefore, setting a minimum wage in the Islamic system is a tool for the implementation of justice, rather than a tool for guaranteeing decent livelihood for all members of the society.

2. The **explicit use of the tools of Iqta', Ihya', and Hima** may also be, to a certain extent, considered a direct tool for influencing the individual behavior of the market actors especially if we add that all kinds of conditions and reservations may be attached to Iqta' and Hima and, according to certain Fuqaha, to Ihya' as well.

3. We have also the tool of **licensing and registration**, which is used essentially for protecting the transactions from deception, misleading information and fraudulent and other profiteering practices. Licensing may also be used to restrict import, export, or entry to certain markets. Yet such uses should always observe their vulnerability from the point of view of infringing on personal economic freedom, and unless there is sufficient wisdom to support the use of licensing as a restrictive tool, market forces may be unfairly distorted or twisted to the benefits of certain individuals or classes.

4. **Subsidies:** Subsidizing income of the poor is essentially a function of the third sector, especially Awqaf and Zakah. These are two intrinsic institutions of any Islamic economy. They directly subsidize income earners, not goods production. The price subsidies and production subsidies can hardly find any support in Shari'ah. One may find very little room for their application in an Islamic economy outside the import substituting infant industries. In general, the Islamic system has a preference of direct income subsidies rather than indirect ones.

### **Macro Tools of Market Regulations**

The macro tools of market regulation include fiscal policy and monetary policy. The details of these policies using taxation, public expenditures, public debt management, and the tools of monetary policy are well known and much discussed in both Islamic and conventional economic literatures and I don't think any repetition would add a new value. However, there are a few due observations on these two major types of tools of market regulation and we need to spare a paragraph or two for innovative tools for making provisions of certain publicly produced goods and services available in the market in a manner that affects market regulation.

1. Public revenue policies go back in the Islamic history to the time of Abu-Yusuf when he suggested to the Abbasid Khalifah Harun al Rashid a shift from a money amount Kharaj system to a percentage system on the ground that such a percentage system is fairer to farmers while it does not negatively affect average revenues because good years revenues make up bad years.

This implies that changes in ratios, exemptions, and procedures of some public revenues such as Kharaj was considered one of the tools to influence the behavior of individuals in the market. It is also known that Omar, the second successor of the prophet Muhammad (pbuh) also

reduced the custom tax, that was imposed on foreign merchants who brought goods in the country, on food items brought to Madinah and other cities of Hijaz at the time of famine and food shortage.

2. Our second note relates to the general limitation of taxation policy in Islam, which is a part of what I call the fiscal constitution implied in the Shari'ah. The Islamic government does not have a free hand in imposing and/or increasing taxes. Taxes are only a last resort to which the government may opt only for the purpose of furnishing the treasury with direly needed revenues while no other public revenues are available. In other words, taxation even comes after public borrowing because public borrowing, even if it were forced on individuals, is a lesser evil than taxation. The prophet specifically mentioned that the Islamic market must have no restrictions nor Mukus and Mukus are taxes of that kind. Hence taxation, though may be needed in many countries in today's life, are not the rule nor are they derived from the mere authority of the government or the state on its people. Taxes are imposed as an exception and their increase is also an exception. Furthermore, whenever taxes are utilized in any Muslim country, the Shari'ah provides a set of rules and prerequisites that represent some kind of a fiscal constitution that does not allow the government to over-tax people nor to use taxation as a means of transferring wealth from one group of the society to another outside the Zakah and the fulfillment of basic sustenance needs of the poor and deprived.
3. Our third note relates to government expenditures. Here again, expenditures must equalize the equal and must not allow privileges to any area or group in the country except on the basis of more pressing needs of such area or group than the others'. In other words, government expenditure may favor the poor and needy but they may not favor the rich, industrialists, urban areas, etc.

4. With regard to monetary policy, we need to notice that at the time of the prophet (pbuh) there was no national currency of the Islamic state. The market continued to be based on dual system of metallic currency, gold, and silver, taken by weight, even minted currencies were considered by their weight or the weight of pure metal in them. Yet we find most contemporary writers in Islamic economics insists that the issuance of money is one of the primary aspects of sovereignty of the state and its seniorage must be kept in its hands. They find some support in the writings of the late Fuqaha regarding the Hisbah over mint houses. Hence, if we want a fresh thinking on this matter, we may find a lot of wisdom in support of government exclusiveness over the issuance of fiat money or currency, and a wide authority over other domestic means of payments yet this authority must not eliminate the freedom of transactions in the system to their right exercise the issuance, the transfer, and the acceptance of debts, as means of payment as long as this practice is done within the means of Shari'ah. We should remember that current accounts in banks and credit created by using credit cards and electronic means of payment are all considered debts in Shari'ah.

Hence, there is not sufficient support for insisting on depriving private banks from their ability to issue credits or for depriving individuals from creating their own means of payments. While we keep this in mind, we must not overlook the value of the argument that banks are only able to accept demand deposits and develop them into means of payments by virtue of the licensing by government and support given by the general public.

Hence, both the public and the government must have a say not only in determining the amounts of credit or means of payments created by the banking system and the use of such credit but also they have a right to a



fair part of the cake that results from this privilege the banking system enjoys. This calls for a monetary policy that can manipulate, through a free banking system, the quantity of money in the society as well the sectoral and industries utilization of credit in areas of social priorities. The government can use the banking system's credit as a policy tool, e.g., it can subsidize infant or national-security sensitive industries and credit-penalize industries that produce goods and services for the consumption of rich only.

### **Innovative Tools of Financing as Means of Regulating the Market**

In this subsection, we will discuss two points that relate to market regulation while at the same time works in the direction of democratizing the economic decisions of the government and reduce the size of government expenditures.

First, there is a need to utilize new modes of financing public utilities as well as for all publicly provided goods and services.<sup>5</sup> The idea here is to through the burden of financing on the users of these goods in such a way that sells them future goods and services against immediate payment. The proceeds of this kind of sale go for the payments for the cost of production of these future goods and services. This way we produce at a lower cost because we do away with the cost of financing. This kind of financing can be implemented through the use of future services (and goods) certificates.<sup>6</sup>

Furthermore, this approach of financing is more democratic because the failure of selling the certificates to its users and/or financiers means lack of public support for the production of the commodity or service itself or a lack of trust in the ability of the issuer to guarantee delivery on maturity.

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<sup>5</sup> This new line of thinking also applies to private goods that have mass consumption.

<sup>6</sup> Future services certificates are negotiable, while future goods certificates are pure Salam, and the majority of scholars view it as non-negotiable.

Second, there is a need to promote the third sector, especially in those Muslim countries that have huge heritage of Awqaf. These Awqaf can be enhanced by improvements in the methods of utilization of existing Awqaf properties as well as by establishment of new Awqaf funds or properties for the provision of several of the goods and services that are presently produced by the government in many Muslim countries. It is to the betterment of all Muslim societies if the Awqaf can resume their role in providing education, health care, and most social services including helping the poor and needy. The role of Awqaf is always supported and supplemented by the implementation of Zakah although one of them seeks to establish assets that produce a flow of services for the philanthropic sector, which is the meaning of al Sadaqah al Jaryah, while the other takes primary care of existing and immediate needs.

## **Conclusion**

This paper attempted to discuss the Islamic principles, tools, and parameters for market regulation. The main theme of the paper was two fold. On the one hand, it argued that whatever market regulations might be imposed by the government in the Islamic economic system must by minimum and only to the extent of the need that is supported by public interests especially in the areas of health, quality control, moral control, and avoidance of prohibited transactions. Those market regulations are such that while they serve the public interest, they must only put minimum limitation on private economic freedom. The government is better off utilizing indirect tools of regulating the private sector's markets and the behavior of its actors. Those indirect tools consist of the management of public and community properties, their output and employment policies, and the pricing policy of their products.

Second, the paper also argued that the market experience throughout the Islamic history has produced very rich heritage in institutionalizing market

regulation through *Hisbah* agency as well as in the promotion of the philanthropic sector and its activities that replace the government in providing several goods and services including health, education, and several public utilities all over the Muslim world.

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