

# OBJECTIVES OF ISLAMIC FISCAL POLICY

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## Abstract:

Islamic Fiscal Policy has a very wide range and touched almost all aspects of Public finance. Fiscal policy in Islam is formulated to achieve certain desire of economic goals. Islamic Fiscal policy encompasses government revenue, expenditure and debt policies. Most of the objectives of Islamic Fiscal policy are as of in Capitalist economy but its interpretation and implementation and implementation are different from traditional fiscal policy. The objectives are: efficient allocation of resources, equitable income distribution, economic stability, economic growth and safeguarding and spreading the religion within the country as well in the world at large--- a salient features of Islamic Fiscal Policy. To achieve the above goals the Islamic Fiscal Policy put stress on the Islamization of whole economic system. The Islamization process are: propagation of Islamic Knowledge pertaining to financial aspects: the ideas of Halal and Haram have the pivotal role in the Islamic Fiscal Policy whereas the Traditional Fiscal Policy totally is devoid of it. The aim of the paper is to investigate how the values and norms have been established on the basis of Islamic teachings and how to achieve the objectives of Fiscal Policy on the basis of Islamic norms and values.

No doubt the Islamic Fiscal Policy has a very wide range and touches almost all aspects of Public finance. Faradi, Salama, Hashami, Kahf, Metwelly, Siddiqui, all believe that the Islamic Fiscal Policy in Islamic State, is an ideological orientation. An Islamic Economy has to be evolved in an ideological framework of Islam and it cannot be value neutral. Ideological orientation depends on the values and norms of Islam that bases on Propagation of Islam, Lawful (Halal) and unlawful (Haram) and Brotherhood.

The tools of Macroeconomics of any economy have Monetary policy, Fiscal Policy, Income policy and Foreign economic policy. But Fiscal Policy and Monetary policies are two important policies at least

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## REFERENCES

1. *All Pakistan Legal Decisions* 1990, Karachi, (DB) 342 P.359
  - a) Qur'an 2:187
  - b) Qur'an 2:228
  - c) Al Bukhari, Sahih Bukhari, Beirut, Darul Fikr, Babul Ilm
  - d) Qur'an 4:1
  - e) Qur'an 4:1
2. *All Pakistan Legal Decisions* 1990, Karachi, (DB) 342, P.360
3. Asaf A. A. Fyzee "*Outlines of Muhammadan Law*" 3<sup>rd</sup> Edition, Oxford University Press 1964 (P. 5)
4. Ibid P.9
5. Sir Roland Knyvet Wilson, "*Muhammadan Law*" Lahore Law Publishing Company, P. 50
6. Syed Ameer Ali, "*Muhammadan Law*" Lahore, Law Publishing Company, 7<sup>th</sup> edn. P.13 Vol. II
7. Ibid P. 13
8. Ibid P. 13-14
9. Ibid P. 14
10. Ibid P. 43
11. *All Pakistan Legal Decision* 1990 Supreme Court 1 P.14
12. Ibid P.14
13. Ibid P.15
14. Ibid P.14
15. Ibid P.16
16. *All Pakistan Legal Decisions* 1969 Karachi 234 (D.B.) P.337-338, D, E, G & H
17. *All Pakistan Legal Decisions* 1961 Dacca 140 P.144 – 145 A&B
18. *All Pakistan Legal Decisions* 1978 Karachi 42 P.48, B
19. *All Pakistan Legal Decisions* 1994 Supreme Court 326 P.330, D
20. *All Pakistan Legal Decisions* 1958 Supreme Court (Pak) 298, P.311
21. Shaukat Mahmood "*Constitution of Pakistan*", 1973, 2<sup>nd</sup> Edition 1992
22. *All Pakistan Legal Decisions* 1995, Lahore (D.B.) 27, P.41 H

Concept of equality before the law does not involve the idea of absolute equality among human beings, which is a physical impossibility. The protection of equal laws means that among equals the law should be equal and should be equally administered and that there should be no denial of any special privilege by reason of birth, creed or the like and also equal subjection of all individuals and classes to the ordinary law of the land.

Discrimination on the ground of sex alone has been prohibited by Article 25<sup>(2)</sup>. No discrimination on the ground of sex alone is permitted except on the ground of reasonable and intelligible clarification. The provisions of Article 25<sup>(3)</sup> is considered essential for the protection of women and children as it is assumed that the women and children in our society need protection. In view of Article 25<sup>(3)</sup> the question of protection of the rights of women and children arises almost in every case wherein they or either of them are involved. The protection does not only mean the protection of the body but also the rights, which include property rights.

Article<sup>18</sup> is also of some interest to women. This Article ensures the right of women to enter any lawful profession or occupation and to conduct any lawful trade on the same basis as men. Women have also every right like men to have access to places to public entertainment or resort and there will be no discrimination in this behalf as provided under Article.<sup>26</sup> Under Article<sup>27</sup>, safeguard has also been provided to women against any discrimination in services on the basis of sex. To encourage full participation of women in national life, Article<sup>34</sup> has been inserted in the Constitution, which provides that "Steps shall be taken to ensure full participation of women in all spheres of national life.

A woman may become Judge of the High Court, if otherwise qualified. There is no bar under Article 193 of the Constitution for elevation of women as Judges. It has been observed in the case of Habib-ul-Wahab Al-Khairi & Ors. Vs. Federation of Pakistan & Ors.<sup>(22)</sup> That "All are equal before law and the Constitution and women who are more than half of the population of the country cannot be deprived of their rights guaranteed to them by the Holy Qur'an and the Constitution. Women if properly educated and trained would certainly become excellent Judges to administer Justice even-handedly."

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passed but the conditions relating to women's rights, status and property wise particularly in rural areas have not been improved. As compared with men, rural women in Pakistan are less educated and more ignorant and illiterate. They lack independence of judgment in exercising their right to vote and that a vote for woman means a second vote for the husband, father, brother or son. They have little knowledge of the functions and working of the local bodies. Social customs prohibits them from mixing with man and consequently from canvassing and being canvassed by men and deep rooted prejudices disable them from appearing at election meetings or voting in mixed constituencies.<sup>(20)</sup> Positive steps are needed to be taken in this behalf.

### **The Constitution of the Islamic Republic of Pakistan, 1973**

Islam is the State Religion of Pakistan Article 2 of the Constitution of the Islamic Republic of Pakistan, 1973 declares Islam to be State Religion. (That does not mean that there will be any religious oppression of non-Muslims. The preamble of the Constitution has clearly stated that adequate provision shall be made for the minorities freely to profess and practice their religions and develop their cultures).

The insertion of Article 2-A in the constitution which delace the objective Resolution to form part of substantiated provisions is the enforcement of Qur'an and Sunnah within the framework of the principles and provisions of the Objective Resolution through Courts of Law. Objective Resolution not only provides a guideline for expounding the Constitution and true understanding thereof but occupies a pivotal position and has become a substantive source of power. State is obliged to carry forward establishment of Islamic Society and exercise its authority to enable Muslims to order their lives, in accordance with injunction of Islam, as set forth in the Holy Qur'an and Sunnah article 31 has been inserted into chapter II in the Constitution wherein the guideline of ideological orientation of the State have been provided. By virtue of Article 31, the State has been mandated to make the teaching of Holy Qur'an and Islam compulsory, to facilitate the learning of Arabic language and promote unity, observance of Islamic moral standards.

Constitution of Pakistan guarantees to all citizens of Pakistan equality before law and equal protection of law and there is no discrimination on the basis of sex.

Article 25<sup>(1)</sup> of the Constitution provides that "All citizens are equal before law and are entitled to equal protection of law." Article 25<sup>(2)</sup> provides that "There shall be no discrimination on the basis of sex alone". Clause <sup>(3)</sup> of Article 25 provides that "Nothing in this Article shall prevent the state from making any special provision for the protection of woman and children".

pardanashin lady. The legal protection given to a pardanashin or an illiterate woman cannot be transmuted into a legal disability. <sup>(16)</sup>

In the case of *Ayana Dasi versus Arena Bala Dasi & Ors* (17) it has been held that "the object of the rule of law, which is applicable to pardanashin ladies, is to protect the weak and helpless, and consequently such a rule should not be restricted to that class only, but should apply to the case of a poor woman who is equally ignorant and illiterate though not a pardanashin in the strict sense of the term". "Accordingly to the established principle, in case of a document executed by an illiterate pardanashin lady, the burden lies on those who seek to hold the lady to the terms of her deed to satisfy the Court on evidence that the deed was actually executed by her with full understanding of what she was about to do; that she had full knowledge of the nature and effect of the transaction into which she is said to have entered and that she had independent and disinterested advice in the matter."

On the same subject it has been held in the case of *National Bank of Pakistan versus Dawood Yousuf Mithani & Ors*.<sup>(18)</sup> That "it is well settled that in the sub-continent pardanashin ladies have been given a special protection in view of special conditions of the times; they are presumed to have imperfect knowledge of the world, as by the pardah system they are practically excluded from the social intercourse or communion with the outside. Thus a rule has been evolved for the protection of pardanashin ladies when a duty has been cast upon a person claiming under an instrument signed by a pardanashin lady not only to prove the execution of the document but also that the nature of the transaction contained in the document was fully understood by such executing pardanashin woman".

In the case of *Irshad Hussain versus Ijaz Hussain & Ors*.<sup>(19)</sup> it has been held by the Supreme Court of Pakistan that "whether a lady is a Pardanashin is a question of fact. The burden of proof that any document purported to have been executed by a Pardanashin lady affecting her right in an immovable property was substantially understood by the lady and was her voluntary, intelligent, free and conscious act, is upon the person claiming any right under such deed. This rule has been extended to illiterate ignorant lady whether she is Pardanashin or not. This rule of wisdom and caution thrown round the Pardanashin, illiterate and ignorant women is to protect them from exploitation, duress, fraud and misrepresentation."

### **Women of Rural Areas**

No doubt in our urban society women are not only asserting their rights but also are believed in some quarters as able to protect themselves and their rights. In other social sectors they still are highly dependent upon the good will of men around them; and in the rural areas the conditions under which they are living in the 21<sup>st</sup> Century, is highly disgusted. Women are not being educated enough about their rights. More than five decades have

continues to exercise all the rights and privileges, which the law allows. She can alienate or transfer her property in any way she pleases without any extraneous control of her husband; she can act as an administratrix or executrix or be appointed a Mutawalliah. She has a distinct lien upon her husband's estate for ante-nuptial or postnuptial settlements. She can enter into binding contracts with her husband and proceed against him in law Courts, if necessary. Her earnings acquired by her personal exertions cannot be touched by her husband. Nor can she be treated with impunity. She can receive property without the intervention of the trustees. It is not by way of courtesy that she enjoys this unique position and legal status, but it is due to the injunctions of the Book of God."

"It would, therefore, not be far from truth to say that under the Islamic law a woman occupies a superior legal position in comparison to her English or Hindu sister. Thus it is apparent that she occupies the best position as regards her legal status, and no other system of law stands any comparison to the Islamic system in this respect." "Mohammad (صلى الله عليه وسلم) effected a complete change of the legal status of females, from that of complete dependence and servitude to that complete independence and enjoyment of full legal rights and privileges, so much so that he placed them on a footing of perfect equality with men in the exercise of all legal powers and functions, which stand in bold relief when compared with the state of law amongst ancient Arabs of the pre-Islamic days."<sup>(15)</sup>

### **Pardanashin Illiterate Women**

These women have been completely secluded from the normal life of the community and prevented from meeting persons from opposite sex and supposed to need special protection of the Courts.

The judicial pronouncements have woven a cloak of protection for pardanashin ladies, who because of their ignorance, inexperience of business matters and social conditions are not able to understand the nature of business transactions. The law regarding pardanashin ladies equally applies to illiterate and ignorant women. This rule shall apply even if there is nothing in the nature of coercion or deception in the transaction. The onus is always on the person who takes advantage of a transaction to show that the transaction was actually conceived and put into practice by the disposer herself. The party taking advantage must show to the Court that the deed was explained and understood by the executants and she adopted it with full knowledge and comprehension. The fact whether independent advice was available to a pardanashin lady at the time when she entered into a transaction can be taken into consideration in order to determine whether she thoroughly comprehended and had deliberately of her own free will, carried out the transaction. If it is found that the document was conceived and executed by her free will, it shall be upheld notwithstanding the fact that the executant is a

the unity of the personalities of a husband and wife, and that she had no separate legal existence which rendered her incapable of holding separate properties. So neither the husband could make any grant in her favour nor could she bring any action for redress against anybody without his consent, as both the acts involved an idea of her separate existence. The disabilities were subsequently modified by the Court of Equity and the Married Women's Property Act. Sir Henry Maine has nicely given the state of the pure English Common Law in these words: "I do not know the operation and nature of the ancient patria potestas can be brought so vividly before the mind as by reflecting on the prerogatives attached to the husband by the pure English Common Law and by recalling the rigorous consistency with which the view of a complete legal subjection on the part of the wife is carried by it, where it is untouched by Equity or statutes, through every department of rights, duties and remedies".<sup>(13)</sup>

### **Status of Female under Hindu Law:**

"The position of a female in Hindu Law is that of perpetual tutelage as Manu (Manu Smriti, IX, 7) has laid down: "While young, she remains under the control of her father, after marriage, under the control of her husband; on his death, under the control of her sons; she does not deserve complete independence at any time".

"There are different sorts of Stridhan properties in Hindu Law; broadly speaking, one over which a female has absolute right of ownership and which she can use, give, or sell quite independently of her husband's control, the other over which her powers are subject to her husband's consent. The latter class of property is unknown to the Muslim system of law, where properties are primarily and naturally individual; there is no difference between the position of a male or female as regards proprietary rights. So any property, which a female gets from a relation, a friend or a stranger or inherits from her deceased relation, whether during maidenhood or converture or widowhood, is her absolute property and can be said to be her Stridhan. So the Islamic system has given full and unimpaired proprietary rights to females, and her position remain quite independent and distinct in the eye of law".<sup>(14)</sup>

### **A wife's position in Islamic law:**

"On her marriage, her individuality is not lost and she remains a distinct member of the society; her existence or personality is not merged into that of her husband. The contract of marriage gives no power over her person beyond what the law defines, and non-whatever upon her goods and property. Her property remains hers in her absolute individual right; the doctrine of coverture is not recognised in the Islam. She can sue or be sued by her debtors or claimants without joining a next friend, or under husband's name. After she has passed from her father's house into her husband's home, she

issues, but if you have issues, they shall have an eighth ( $1/8^{\text{th}}$ ) part of what you leave after paying the bequests and debts". "In short, Qur'anic heirs called "sharers" consist of those relations who were previously excluded in favour of the customary heirs, but whose claim on the score of proximity was not inferior to them. They may be grouped under the following heads: --

- (1) Husband or wife,
- (2) Female agnatic descendants,
- (3) Ancestors, including female ancestors who are not customary heirs,
- (4) Collaterals, such as full and consanguine sisters and uterine sisters and brothers<sup>(11)</sup>

### **Position of females in Roman Law**

"Originally a female, under Roman law, had very little of personal and proprietary independence, but gradually she extracted herself out of it, as is evident from the observations of Sir Henry Maine. He says: "Anciently, there were three modes in which marriage might be contracted according to Roman usage; one involving a religious solemnity, the other two-observance of certain secular formalities. By the religious marriage of *Confarreatio*, by the higher form of civil marriage which was called *Coemptio*, and by the lower form which was termed *usus*, the husband acquired a number of rights over the person and property of his wife, which were on the whole in excess of such as are conferred on him in any system of modern jurisprudence. But in what capacity did he acquire them? Not as husband but as father. By the *Confarreatio*, *Coemptio*, and *usus*, the woman passed in *manum viri*, that is, in law, she became the daughter of her husband. She was included in his *Patria Potestas*. She incurred all the liabilities springing out of it while it subsisted and surviving it when it expired. All her property became absolutely his, and she was retained in tutelage after his death by the guardian whom he had appointed by will. These three ancient forms of marriage fell, however, gradually into disuse, so that at the most splendid period of Roman greatness, they had almost entirely given place to a fashion of wedlock, old apparently, but not hitherto considered reputable—which was founded on a modification of the lower form of civil marriage. Without explaining the technical mechanism of this institution now generally popular, I may describe it as amounting in law to a title more than a temporary deposit of the woman by her family. The rights of the family remained unimpaired, and the lady continued in the tutelage of guardians whom her parents had appointed and whose privileges of control override in material respects the inferior authority of her husband. The consequence was that the situation of the Roman female, whether married or unmarried, became one of great personal and proprietary independence".<sup>(12)</sup>

### **Position of a Married Woman under English Law:**

"It was the influence of that Canon Law that introduced the notion of



sister. On her marriage she does not lose her individuality. She does not cease to be a separate member of society, and her existence does not "merge" in that of her husband. No doctrine of "overture" is recognised; and her property remains hers in her individual right. She can sue her debtors in the open Courts, without the necessity of joining a next friend or under cover of her husband's name. She continues to exercise, after she has passed from her father's house into her husband's home, all the rights, which the law gives to men. All the privileges which belong to her as woman and a wife are secured to her not by the courtesies that "come and go", but by the actual text in the book of law. She can alienate or devise her property without asking the leave of her husband. She can act as an administratrix or executrix, or be appointed a Mutwallieh (Governor of a charitable endowment).<sup>(8)</sup>

### **A Musulman Wife**

A Musulman wife retains in her husbands' household all the rights, which the law vests in her as a responsible member of society. She can be sued as a femme sole. She can receive property without the intervention of trustees. She has a distinct lien upon her husband's estate for her ante-nuptial settlement. Her rights as a mother do not depend for their recognition upon the idiosyncrasies of individual judges. She can enter into binding contracts with her husband, and proceed against him in law if necessary. Her earnings acquired by her individual exertions cannot be wasted by a prodigal husband, nor can she be ill-treated with impunity by one who is brutal.<sup>(9)</sup>

### **The Reforms of Mohammad (صلی اللہ علیہ وسلم)**

The Arabian Legislator reformed the entire pre-Islamic customs. He gave, by express provision of the law, rights of inheritance to those who were excluded by the ancient institutions. One of the great result of the new legislation was to raise women in the scale of civilisation, by elevating their moral and social position, and giving the widow, the mother, the daughters, and sisters heritable rights.<sup>(10)</sup>

### **Females' Position in Muslim Law**

Qur'an goes on to describe the rights of females to succession. "Covet not the grace by which God hath preferred some of you to others; unto men there is a portion of what they have earned, and unto women the portion of what they have earned." "Men ought to have the portion of what their parents and kindred leave, women a part of what their parents and kindred leave, whether it be little or much, let them have a determinable portion." "With regard to children, God command the you (to give) the male portion of two females, and if there be females more than two, they shall have 2/3<sup>rd</sup> of that which the deceased leaves; and if there be only one, she shall have a half." "Half of what, your wives leave, shall be yours, if they leave no issues, but if they leave issues, then a fourth of what they leave shall be yours. And your wives shall have a fourth part of what you leave if you have no

employers, some protection against gross tyranny, some reasonable notice before dismissal, and above all with a substantial pecuniary equivalent for the sacrifices demanded of them. He found them, at least in some tribes, the property of their male kinsmen, to be used, sold, or let to hire like other chattels. He left them possessed of full legal personality, capable of acquiring property and contracting on their own account, and conversely amenable to the general criminal law, but with their rights of inheritance on the one hand and their punishment on the other hand, defined in most cases at one-half of those provided for free males.<sup>(5)</sup>

### **Ancient Arab customs**

The ancient Arab customs had, in the succession of a deceased person's property, one principal object in view, viz., the maintenance of the goods in the family. With this view, the succession was confined exclusively to the male relation, and even among them to those who were capable of bearing arms. The daughters, the widows, the mothers, as well as the minors were directly or indirectly excluded from succession; the daughters because their birth was regarded a misfortune and because they ceased upon their marriage to be members of the natural family; the widows, unless mother of children, because they possessed no recognised rights and were ordinarily treated as part of the husband's patrimony; the minors, because they were unable to defend by their arms the tribal rights and privileges, and their goods therefore belonged to their tutors.<sup>(6)</sup>

### **Position of women in Islam**

The reforms instituted by Mohammed (صلى الله عليه وسلم) effected a vast and marked improvement in the position of women. Both among the Arabs and Jews who inhabited the peninsula of Arabia the condition of women was extremely degraded. The Hebrew maiden, even in her father's house, stood in the position of a servant; her father could sell her if a minor. He, and after his death his son, disposed of her at their will and pleasure. The daughter inherited nothing except in the extremist case. Among the pagan Arabs, a woman was considered a mere chattel, she formed an integral part of estate of her husband or her father; and widow of a man descended to his son or sons by right of inheritance, as any other portion of his patrimony.<sup>(7)</sup>

### **The status of women in Islam**

Under the Islamic laws, a woman occupies a superior legal position to that of her English sister. As long as she is unmarried, she remains under the parental roof, and until she attains her majority, she is, to some extent, under the control of the father or his representatives. As soon, however, as she is of age the law vests in her all the rights, which belong to her as an independent human being. She is entitled to share in the inheritance of her parents along with her brothers, and though the proportion is different, the distinction is founded on a just comprehension of the relative circumstances of brother and

“O Mankind: reverence Your Guardian – Lord Who created you from a single person, Created, of like mature, His mate, and from them twain Scattered (like seeds) Countless men and women”

It is further stated in the same verse:

واتقوا الله الذى تسالون به والارحام ان الله كان عليكم رقيباً ١- e

*“And fear Allah through whom you demand (your mutual rights) and (do not cut the relations of) the wombs (kinship) surely, Allah is ever an all watcher over you”*

The woman whose womb bears the infant, as mother, is held in reverence, love and respect. The Holy Prophet (صلى الله عليه وسلم) as stated by Syed Amir Ali, is reported to have said, “Paradise lies at the feet of the mother”. This is the highest regard, which is paid by Islam to a woman. Islam measures men and women with same yardstick in justice, prayer, charity, punishment and reward.<sup>(2)</sup>

The concept of equality before law and principles of “equal protection of law” were for the first time given and firmly practised by the Holy Prophet (صلى الله عليه وسلم).

### **Position of women in pre-Islamic Arabia**

The position of women at the time of the Prophet (صلى الله عليه وسلم) was no better than that of animals: They had no legal rights, in youth they were the goods and chattels of the fathers, after marriage the husband became their lord and master. Polygamy was universal, divorce was easy and female infanticide was common.<sup>(3)</sup> Woman was never a free agent in marriage. It was the father or other male guardian who gave her in marriage and her consent was never called for. There was no limit to the number of wives a man could have.<sup>(4)</sup>

Islam gives to women all her rights due to her. According to the special needs of his time, the Prophet (صلى الله عليه وسلم) was a very earnest champion of women’s rights the form which his advocacy took resulted in stamping out female infanticide, laying down definite restrictions to the early Arab licence about marriage, and enabling free born women to pursue under more tolerable conditions, the only vocation then open to them, that of child bears and child-sucklers with some measures of freedom in choosing their