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comparative east-west perspective**

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**TOWARDS A JUST FUTURE OF  
ISLAMIC FINANCE: FROM A NEW  
HISTORICAL COMPARATIVE EAST-  
WEST PERSPECTIVE**

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**PhD**

**2017**

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WEST PERSPECTIVE**

**ALEXEY ARAKCHEEV**

**A thesis submitted in partial fulfilment of the  
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## ABSTRACT

Contemporary increased economic and social pressures have raised concerns among both state regulators and clientele about the ability of banks and others financial institutions to survive. One of the fastest growing and significant parts of the world financial system is Islamic finance, which extends worldwide and exploits a highly sophisticated financial products and procedures based on *Shariah*. Grounded on unconventional, ethical and religious maxims, Islamic finance seems to be a solution to the current worldwide financial disaster.

Conventional and Islamic financial systems present two entirely different concepts. The former aims for the achievement of financial gain on behalf of a single firm, or even a single person, whereas the latter is in the interest of the whole society. Therefore, these two systems differ not only in regard to their philosophical foundations, but also in terms of the end results. Therefore, without taking into account the technical and juridical peculiarities, Islamic finance affords more Justice.

This raises the question, what does the word “Justice” mean? The concept of social justice does not have a universal moral or indeed legal interpretation. This study analyses the background of theories of justice in order to explain the phenomenon of justice by putting it in both a social and religious context. This is done so that we can see Justice as a socio-philosophical category associated with religious dissimilarities as well as ethical norms in different societies, undivided from their religious roots.

Finally, this thesis compared the Islamic and Conventional financial systems, their ethics and philosophical basis, and different legal systems in combination with various ideas of justice connected with different religions in order to elaborate the potential future of Islamic finance.

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## **ABBREVIATIONS**

AAOIFI - Accounting and Auditing Organization for Islamic Financial Institutions

ATM - Automated Teller Machine (cash machine)

B2B - business-to-business relations

B2C - business-to-consumer relations

BBC - The British Broadcasting Corporation

BIS - Bank for International Settlement

BP - BP plc, former British Petroleum

CARR - Centre for Analysis of Risk and Regulation

CDO - collateralised debt obligation

CDSs - credit default swaps

CFA - Chartered Financial Analyst

CSR - Corporate Social Responsibility

DCDC - Development, Concepts and Doctrine Centre (UK Ministry of Defence)

ESG - Environmental, Social and Governance

EU - European Union

FCIC - Financial Crisis Inquiry Commission

FSA - Financial Services Authority

GDP - Gross Domestic Product

GNI - Gross national income

GSIA - Global Sustainable Investment Alliance

HDI - Human Development Index

HIV/AIDS - Human immunodeficiency virus infection and acquired immune deficiency syndrome

HSBC - Hong Kong and Shanghai Banking Corporation

IBA - International Bar Association

ICT - information and communication technologies

IDB - Islamic Development Bank

IFRSs - International Financial Reporting Standards

IFSB - Islamic Finance Services Board  
 IGOs - intergovernmental organizations  
 IIBI - Institute of Islamic Banking and Insurance  
 IIFB - Islamic Investment and Finance Board of India  
 IIFM - International Islamic Financial Market  
 IIRA - International Islamic Rating Agency  
 ILO - International Labour Organization  
 IMF - International Monetary Fund  
 ICT - information and communication technologies  
 KPMG - a professional service company and one of the Big Four auditors  
 LLM - Master of Laws  
 LMC - Liquidity Management Centre  
 LSE - London School of Economics and Political Science  
 MBS - mortgaged-backed securities  
 MDG - Millennium Development Goals  
 OICU – IOSCO - International Organization of Securities Commissions  
 PLS - Profit and Loss Sharing model  
 RSB - Religious Supervisory Boards/ SSBs - Shariah Supervisory Boards  
 SME - small-medium enterprises  
 SPV - special purpose vehicle  
 SRI - sustainable and responsible investing  
 STOXX - Index family represents a wide range of stocks  
 UK - United Kingdom  
 UN - United Nations  
 UNESCO - United Nations Educational, Scientific and Cultural  
                     Organization  
 US - United States (of America)  
 US SIF - The Forum for Sustainable and Responsible Investment  
 USSR – Union of Soviet Socialist Republics, also Soviet Union  
 WB - World Bank  
 WTO - World Trade Organisation

## **Author's Declaration**

***I declare that all of the material contained in this thesis is my own work.***

Parts of this work have been published as part of:

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*“Oh, East is East and West is West, and never the twain shall meet...”*

Rudyard Kipling, The Ballad of East and West

\* \* \*

*“There are more things in heaven and earth, Horatio,  
Than are dreamt of in our philosophy.”*

William Shakespeare, Hamlet

\* \* \*

*“And he said, Verily I say unto you, No prophet is accepted in his own  
country”.*

Luke 4:24

# CHAPTER 1: INTRODUCTION AND LITERATURE REVIEW

## 1.1 Introduction

The first time I faced the combination of the concepts of fairness and Islamic finance occurred in October 2006, when I was heading to my then local Arabic food store, located on the world famous Edgware Road.<sup>1</sup> For some reason my wife could not withdraw any cash with her Barclays Debit Card at the ATM of Ahli United Bank.<sup>2</sup> “This isn’t fair!” she said, “Why can’t I withdraw my own money? So what if it’s an Islamic bank?” It appeared that my wife was truly flummoxed, but at the time I could not answer her question.

The link between Islamic finance and fairness, however, seemed to become ingrained in my mind. Thus, when two years later I saw “Islamic Finance and Securitization Law (1MVC7B7)” on the list of additional modules for my LLM Corporate Finance Law degree, I did not hesitate and selected it straight away. I was then thrust into the magical world of Islamic finance, full of technical terms and specialised jargon, like *Riba* and *Haram*, *Murabahah* and *Sukuk*, etc.<sup>3</sup> These terms quickly became staples in my vernacular and, like any neophyte, I began to discuss and give my own views on Islamic finance, its issues and potential. It followed then that my masters’ dissertation was entitled, “Legal Framework for Islamic Financial Institutions in Non-Islamic Countries”.

Having successfully completed my LLM, I thought it reasonable to believe that I understood Islamic finance quite well, if not expertly. I could finally explain to my wife that Islamic banks work not for everyone, but for

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<sup>1</sup> The centre of London has a thriving Arab community, particularly around Edgware Road. [http://www.bbc.co.uk/london/content/articles/2005/05/27/arabic\\_london\\_feature.shtml](http://www.bbc.co.uk/london/content/articles/2005/05/27/arabic_london_feature.shtml)

<sup>2</sup> The Ahli United Bank (UK) plc (formerly known as the United Bank of Kuwait PLC) was established in 1966. [http://www.ahliunited.com/uk/other\\_about.html](http://www.ahliunited.com/uk/other_about.html)

<sup>3</sup> These and other terms will be further explored in the main part of the research paper.

people who subscribe to certain principles, even when dealing with money, and that this was indeed just.

I then wanted to share this new-found knowledge, which led to my first article, entitled “Legal Risks in Islamic Finance Transactions”, being published in the well-respected Journal of Applied Economy (April 2010).<sup>4</sup> The feeling of a job well done, however, quickly vanished. By delving into the depths of Islamic finance further, I was reminded of an old saying, which is usually, although wrongly, ascribed to Albert Einstein<sup>5</sup> - “The more I learn, the more I realise how much I don’t know”.<sup>6</sup> I became aware that my knowledge was limited to legal and technical aspects of Islamic finance and that despite understanding how things work, I did not know the reasons why.

Thus I decided to dig deeper and scrutinise the history and prospective development and distribution of Islamic finance in countries with various legal traditions in relation to the philosophical and religious roots making up their foundation. And most importantly, I wanted to understand whether the principles that make up the foundations of Islamic finance, along with the technical and legal arrangements developed for the daily running of Islamic finance in various countries and jurisdictions, could become the potential basis of the global financial system, making it more efficient and just. So, let the story begin...

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<sup>4</sup> Arakcheev, A., (2010). Legal Risks in Islamic Finance Transactions. The Journal of Applied Economy. Vol. 3, pp: 131-152.

<sup>5</sup> There exists another, less popular, but in my opinion more accurate, variant of this statement, uttered by English romantic poet Percy Bysshe Shelley in his translation from Calderon's “El Magico Prodigioso”- “The more we study the more we discover our ignorance”. See Shelley, P.B., (1824). Scenes from the Magico Prodigioso, Scene 1, <http://www.infoplease.com/t/lit/shelley/3/1/23.html>

<sup>6</sup> Originally from Latin “*ipse se nihil scire id unum sciat*”- I know that I know nothing. See Plato (1840). Πλάτων. The Apology of Socrates, the Crito, and part of the Phædo: with notes from Stallbaum [translated by G. K. Gillespie], and Schleiermacher's introductions. Taylor & Walton, p: 105.



This introductory chapter presents the research subject, aim and objectives, research question and methodology and highlights the potential outcome of this study.

### **1.1.1 Research subject: Islamic finance and Justice**

Nowadays increased economic and social pressures have raised concerns among both state regulators and clientele about the ability of banks and other financial institutions to survive. According to the Dubai Chamber Report (October 2014), “Islamic banking products and services have consistently gained market share in recent times, growing up to 50 percent faster than the traditional banking sector in some markets”.<sup>7</sup> Based on unconventional ethical and religious maxims, Islamic finance seems to be a possible solution to the current worldwide financial disaster. Even the Vatican has offered Islamic finance principles to Western banks as a solution to the economic crisis. As stated by the Vatican’s official newspaper *Osservatore Romano*, “The ethical principles on which Islamic finance is based may bring banks closer to their clients and to the true spirit which should mark every financial service”.<sup>8</sup>

Concurrently, the intensification of socio-economic problems throughout the world, which include widespread poverty, rising levels of debt, unemployment, and consequently inequality, have led to increasing public expectations of the role of social justice in the society. Justice, as a philosophical category, is widely covered in modern Western writing. By contrast, the myriad of its embodiments are rather poorly represented in Eastern (Islamic) works, written in English. Given this fact, it seems

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<sup>7</sup> Dubai Chamber (2014). Dubai Chamber Report for the 10th World Islamic Economic Forum (WIEF), p.2. The report based on a recent study by Ernst and Young and was issued within the framework of the preparations for the 10th World Islamic Economic Forum (WIEF) to be organised in Dubai by Dubai Chamber and the WIEF Foundation from 28th-30th October, 2014.

<sup>8</sup> Napoleoni, L., and Segre, C., (2009). Islamic finance proposals and ideas for the West in crisis, “*Osservatore Romano*”, 4 March 2009, p: 3.

appropriate to look for answers to the multitude of questions posed by various theories of justice to the academic community of the country, historically and more often recently, claiming to be a liaison of sorts between East and West - Russia. In this research I will look at how the views and understanding of Russian academics regarding the issues of justice, coupled with the historically communist emphasis, can potentially delineate a median model of the perception of justice and allow for better assessment of its status in the modern world. Although practically original, this median model of the perception of justice does not create a new theory, but can be useful as an objective filter that takes into account the multilateral (socio-cultural and religious) distinctions of justice as well as Islamic finance in the Islamic and Western scholarly teaching.

The connection with religions is also one of the key factors in this study, taking into account that it is the religion that "... plays the basic role in solving the social problem by way of mobilising the personal impulse for the sake of general interest".<sup>9</sup>

Consequently, the research stems from three sources which are also its component parts – Islamic finance as an unusual sophisticated phenomenon, Justice as one of the basic, fundamental human needs, and the religious roots governing evolution of every civilised society (even though not as powerful as they were in the past).

### **1.1.2 Research Aim and Objectives**

The primary aim of this research is to conduct an exploratory and descriptive study of the potential future of Islamic finance in light of various idea of justice.

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<sup>9</sup> Sadr, M., (2009). *Iqtisaduna: (Our Economics)*. Volume One - Part Two. WOFIS, Tehran, p: 85.

According to the above, the main objectives of the research are divided into three components as follows:

1. To describe justice as a socio-philosophical category in connection with different religions drawing on experience of Russian scholars in their capacity as East-West intermediaries.
2. To assess the foundations of Islamic finance and justice as one of their major principles.
3. To compare the philosophical foundations and practical (juridical) differences between Islamic and Conventional financial systems.

The findings from the conceptual and comparative parts of the research will provide an integrated outlook on the research area and offer essential perceptions for academics, investors, bankers, regulators, politicians and other interested parties.

### **1.1.3 Research question**

In line with the above objectives the main research question of the study is “What is the nature of the concept of justice and its significance for the potential future of Islamic finance?” and based on the philosophical and religious background and legal touches. Subsequently subordinate questions as derived from the main research question can be specified as follows:

1. What is the role of justice as a socio-philosophical category in countries with different religions or political ideologies, and can it affect the further development of Islamic finance?
2. What are, if any, philosophical and practical contradictions and similarities between Conventional and Islamic financial systems, and which one seems more just?

3. What is the legal complexity related to Islamic finance and can it become a barrier to the widespread dissemination of Islamic finance across the globe?

The first research question relates to the conceptual aspects of the study where the origin and evolution of different concepts of social justice is discussed in the light of the Western and Eastern religious and political teaching. The last two research questions relate to the comparative analysis on the Islamic finance issues.

#### **1.1.4 Research Methodology**

According to Kothari (2004), research methodology is a “way to systematically solve the research problem”.<sup>10</sup> More technically, Remenyi *et al.* (2003) describe research methodology as the “overall approach to a problem which could be put into practice in a research process, from the theoretical underpinning to the collection and analysis of data”.<sup>11</sup> More generally, according to Asutay (2004), social researches guided by three possible methodology structures which are empirical research methodology, emergent research methodology, and literature-based research methodology.<sup>12</sup> However, before applying any research methodology, it is important to identify the research philosophy, paradigm, method, strategy and design to be adopted in the study.

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<sup>10</sup> Kothari, C., (2004). Research Methodology: Methods and Techniques. 2<sup>nd</sup> Revised Edition. New Age International Publishers, p: 8.

<sup>11</sup> Remenyi, D., Williams, B., Money, A. and Swartz, E., (2003). Doing Research in Business and Management: An Introduction to Process and Method. London, SAGE Publications, p: 8.

<sup>12</sup> Asutay, M., (2004). Handout for Research Methodology Course. Mimeo. Leicester: Markfield Institute of Higher Education, p: 6.

### 1.1.4.1 Research Philosophy

Research philosophy relates to the researcher's way of thinking, the development and the nature of knowledge and how it is being implemented in a particular field.<sup>13</sup> The choice of a philosophy therefore influences the way in which the research is executed and assists in selecting the most appropriate method for conducting the research.<sup>14</sup>

According to Saunders *et al.* (2016), there are five main types of research philosophies: positivism, critical realism, interpretivism (originated from two traditions - phenomenology and symbolic interactionism), postmodernism and pragmatism, which refer to the concept of the research assumption or paradigm.<sup>15</sup> Further Cohen *et al.* (2007) describe a research paradigm as “the broad framework, which comprises perception, beliefs and understandings of theories and practices to conduct a research”.<sup>16</sup> There are three main components of a research paradigm<sup>17</sup> embodying the philosophy of research: epistemology,<sup>18</sup> ontology<sup>19</sup> and axiology.<sup>20</sup> The difference between the five main types of research philosophies in the line with those components is shown below in Exhibit 1.

---

<sup>13</sup> Saunders, M., Lewis, P. and Thornhill, A., (2009). *Research Methods for Business Students*. 5<sup>th</sup> Edition. Harlow, England: Prentice Hall, pp: 107-108.

<sup>14</sup> Creswell, J. (2014). *Research design: qualitative, quantitative and mixed methods*. 4<sup>rd</sup> Ed. Thousand Oaks, CA: Sage Publications, p: 35.

<sup>15</sup> Saunders, M., Lewis, P. and Thornhill, A., (2016). *Research Methods for Business Students*. 7<sup>th</sup> Edition. Pearson Education, pp: 136.

<sup>16</sup> Cohen, L., Manion, L., and Morrison, K., (2007). *Research Methods in Education*. 6<sup>th</sup> ed. London: Routledge, p: 27.

<sup>17</sup> *Supra* note 13, at pp: 110-118.

<sup>18</sup> Epistemology is the study of knowledge and justification. A complex branch of philosophy in the social sciences, it refers to how we know things. See Della Porta, D., and Michael Keating, M., (Eds). (2008). *Approaches and Methodologies in the Social Sciences: A Pluralist Perspective*. Cambridge University Press, p: 350.

<sup>19</sup> In philosophy, ontology refers to the study of the essence of a certain phenomenon (i.e. without considering its specific variation). In the social sciences, it refers to what we can know. It specifies the form and nature of reality and what can be known about it. *Ibid*, p: 353.

<sup>20</sup> Axiology is a branch of philosophy that studies judgements about value. Although this may include values we possess in the fields of aesthetics and ethics, it is the process of social enquiry. See *Supra* note 13, at p: 116.

## Exhibit 1: Comparison of five research philosophies<sup>21</sup>

<b>Ontology</b> (nature of reality or being)	<b>Epistemology</b> (what constitutes acceptable knowledge)	<b>Axiology</b> (role of values)	<b>Typical methods</b>
<b>Positivism</b>			
Real, external, independent One true reality (universalism) Granular (things) Ordered	Scientific method Observable and measurable facts Law-like generalisations Numbers Causal explanation and prediction as contribution	Value-free research Researcher is detached, neutral and independent of what is researched Researcher maintains objective stance	Typically deductive, highly structured, large samples, measurement, typically quantitative methods of analysis, but a range of data can be analysed
<b>Critical realism</b>			
Stratified/layered (the empirical, the actual and the real) External, independent Intransient Objective structures Causal mechanisms	Epistemological relativism Knowledge historically situated and transient Facts are social constructions Historical causal explanation as contribution	Value-laden research Researcher acknowledges bias by world views, cultural experience and upbringing Researcher tries to minimise bias and errors Researcher is as objective as possible	Retroductive, in-depth historically situated analysis of pre-existing structures and emerging agency. Range of methods and data types to fit subject matter
<b>Interpretivism</b>			
Complex, rich Socially constructed through culture and language Multiple meanings, interpretations, realities Flux of processes, experiences, practices	Theories and concepts too simplistic Focus on narratives, stories, perceptions and interpretations New understandings and worldviews as contribution	Value-bound research Researchers are part of what is researched, subjective Researcher interpretations key to contribution Researcher reflexive	Typically inductive. Small samples, in-depth investigations, qualitative methods of analysis, but a range of data can be interpreted

<sup>21</sup> Adapted from Saunders *et al.* (2016), pp: 136-137.

<b>Postmodernism</b>			
Nominal Complex, rich Socially constructed through power relations Some meanings, interpretations, realities are dominated and silenced by others Flux of processes, experiences, practices	What counts as 'truth' and 'knowledge' is decided by dominant ideologies Focus on absences, silences and oppressed/repressed meanings, interpretations and voices Exposure of power relations and challenge of dominant views as contribution	Value-constituted research Researcher and research embedded in power relations Some research narratives are repressed and silenced at the expense of others Researcher radically reflexive	Typically deconstructive – reading texts and realities against themselves In-depth investigations of anomalies, silences and absences Range of data types, typically qualitative methods of analysis
<b>Pragmatism</b>			
Complex, rich, external 'Reality' is the practical consequences of ideas Flux of processes, experiences and practices	Practical meaning of knowledge in specific contexts 'True' theories and knowledge are those that enable successful action Focus on problems, practices and relevance Problem solving and informed future practice as contribution	Value-driven research Research initiated and sustained by researcher's doubts and beliefs Researcher reflexive	Following research problem and research question Range of methods: mixed, multiple, qualitative, quantitative, action research Emphasis on practical solutions and outcomes

Following the above considerations, the philosophical assumptions underlying this research come mainly from interpretivism,<sup>22</sup> which can gain access to reality through social constructions such as language, consciousness and shared meanings in order to understand phenomena through the meanings that people assign to them.<sup>23</sup>

---

<sup>22</sup> "Interpretivism takes what Positivism and Critical Rationalism ignore – the meanings and interpretations, the motives and intentions that people use in their everyday lives and that direct their behaviour. ... Interpretive social science seeks to discover why people do what they do... It is the everyday beliefs and practises, mundane and taken for granted, which have to be grasped and articulated by the social researched in order to provide an understanding of these actions". See Blaikie, N., (2000). *Designing Social Research: The Logic of Anticipation*. Cambridge: Wiley Blackwell, p: 115.

<sup>23</sup> Myers, M., (2008). *Qualitative Research in Information Systems*. On-line living version, p: 5.

### 1.1.4.2 Research Approach

Generally, according to numerous academic sources (Ali and Birley, 1999;<sup>24</sup> Anderson, 2009;<sup>25</sup> Saunders *et al.* 2009;<sup>26</sup> Soiferman, 2010<sup>27</sup>) there are two traditional research approaches which have been identified as deductive and inductive - i.e. theory testing and theory building. The simple depiction in form of stages in deductive and inductive approaches is shown below in Exhibit 2.

**Exhibit 2: Stages in deductive and inductive approaches<sup>28</sup>**

Pure Deductive	Pure Inductive
Develop theoretical framework ↓ Variables identified for relevant constructs ↓ Instrument development ↓ Outcome: theory tested according to whether hypotheses are accepted or rejected	Area of inquiry identified but no theoretical framework ↓ Respondents identify constructs and explain the relationship between them ↓ Broad themes for discussion identified ↓ Outcome: theory developed

However, in recent years abductive approach is gaining significant ground, whilst aiming to describe and understand social life in terms of social actors' motives and accounts.<sup>29</sup> The comprehensive definition of abduction provided by Saunders *et al.* (2016):

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<sup>24</sup> Ali, H., and Birley, S., (1999). Integrating Deductive and Inductive Approaches in a Study of New Ventures and Customer Perceived Risk. *Qualitative Market Research: An International Journal*. Vol. 2, No. 2, p: 126.

<sup>25</sup> Anderson, V., (2009). *Research Methods in Human Resource Management*. London: CIPD, p: 19.

<sup>26</sup> *Supra* note 13, at pp: 124-125.

<sup>27</sup> Soiferman, K., (2010). Compare and Contrast Inductive and Deductive Research Approaches. *Inductive and Deductive Research Approaches*, p: 3.

<sup>28</sup> Adapted from Ali and Birley (1999), p: 106.

<sup>29</sup> *Supra* note 22, at p: 101.



Abduction “begins with a ‘surprising fact’ being observed. This surprising fact is the conclusion rather than a premise. Based on this conclusion, a set of possible premises is determined that is considered sufficient or nearly sufficient to explain the conclusion. It is reasoned that, if this set of premises was true, then the conclusion would be true as a matter of course. Because the set of premises is sufficient (or nearly sufficient) to generate the conclusion, this provides reason to believe that it is also true.”<sup>30</sup> ... Instead of moving from theory to data (as in deduction) or data to theory (as in induction), an abductive approach moves back and forth in effect combining deduction and induction”.<sup>31</sup>

Typically, a study using abduction starts from social phenomena with lack of applicable theories.<sup>32</sup> Abduction is therefore “a cerebral process, an intellectual act, a mental leap, that brings together things which one had never associated with one another”.<sup>33</sup> Summary of the major differences between deductive, inductive and abductive approaches to research is shown below in Exhibit 3.

**Exhibit 3: Deductive, inductive and abductive approaches to research**<sup>34</sup>

Research aspect	Deduction	Induction	Abduction
<b>Logic</b>	In a deductive inference, when the premises are true, the conclusion must also be true	In an inductive inference, known premises are used to generate untested conclusions	In an abductive inference, known premises are used to generate testable conclusions
<b>Use of data</b>	Data collection is used to evaluate propositions or hypotheses related to an existing theory	Data collection is used to explore a phenomenon, identify themes and patterns and create a conceptual	Data collection is used to explore a phenomenon, identify themes and patterns, locate these in a conceptual framework and test this through

<sup>30</sup> *Supra* note 15, at pp: 144-145.

<sup>31</sup> *Ibid.* p: 148.

<sup>32</sup> Xian, H., and Meng-Lewis, Y., (2018). Business Research Methods for Chinese Students: A Practical Guide to Your Research Project. SAGE Publications, p: 55.

<sup>33</sup> Reichertz, J., (2000). Abduction, Deduction and Induction in Qualitative Research, p: 162.

<sup>34</sup> Adapted from Saunders *et al.* (2016), p: 145.

		framework	subsequent data collection and so forth
<b>Theory</b>	Theory falsification or verification	Theory generation and building	Theory generation or modification; Incorporating existing theory where appropriate, to build new theory or modify existing theory
<b>Generalisability</b>	Generalising from the general to the specific	Generalising from the specific to the general	Generalising from the interactions between the specific and the general

In this study, neither the inductive or deductive approach is attractive but the abductive approach could be better applied due to the multi-layered complexity of research questions.

### 1.1.4.3 Research Method

According to Creswell (2014), research methods refer to “the forms of data collection, analysis, and interpretation that researchers propose for their studies”.<sup>35</sup> There are three highly recognised distinctive methods for conducting research: quantitative, qualitative and mixed methods (Bryman, 1988, 2004; Creswell, 2009; Saunders et al., 2009; Tashakkori and Teddlie, 1998; Williams, 2007).

Quantitative research can be defined as research that “explains phenomena according to numerical data which are analysed by means of mathematically based methods, especially statistics”.<sup>36</sup> Quantitative research also involves collection of typically numeric data and the researcher tends to use mathematical models as the methodology of data analysis.<sup>37</sup> It was originally developed in the natural sciences to study natural phenomena and

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<sup>35</sup> *Supra* note 14, at p: 295

<sup>36</sup> Yilmaz, K., (2013). Comparison of Quantitative and Qualitative Research Traditions: Epistemological, Theoretical, and Methodological Differences. *European Journal of Education*. Vol. 48, No. 2, p: 311.

<sup>37</sup> Williams, C., (2007). Research Methods. *Journal of Business & Economic Research*. Vol. 5, No. 3, p: 66.

includes survey methods, laboratory experiments, simulation, mathematical modelling and formal methods (e.g. econometrics).<sup>38</sup>

Qualitative research simply defined as an “empirical research where the data are not in the form of numbers”.<sup>39</sup> Strauss and Corbin (1998) define it as “type of research that produces findings not arrived at by statistical procedures or other means of quantification”.<sup>40</sup> Further Yilmaz (2013) defines it as “the study of people, cases, phenomena, social situations and processes in their natural settings in order to reveal in descriptive terms the meanings that people attach to their experiences of the world”.<sup>41</sup> Also, according to Denzin and Lincoln (1994), “qualitative research involves the studied use and collection of a variety of empirical materials - case study, personal experience, introspective, life story, interview, observational, historical, interactional, and visual texts - that describe routine and problematic moments and meanings in individuals’ lives”.<sup>42</sup> Qualitative research method was developed in the social sciences to enable researchers to study social and cultural phenomena. Examples of qualitative methods are action research, case study research, ethnography, phenomenological study, grounded theory, semiotics, narrative and metaphor, discourse analysis and hermeneutics.<sup>43</sup> Summary of the major differences between quantitative and qualitative methods is shown below in Exhibit 4.

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<sup>38</sup> Myers, M., (2009). *Qualitative Research in Business & Management*. Thousand Oaks, CA: Sage, p: 8.

<sup>39</sup> Punch, K., (1998). *Introduction to Social Research: Quantitative and Qualitative Approaches*. London, Sage, p: 4.

<sup>40</sup> Strauss, A., and Corbin, J., (1998). *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. 2<sup>nd</sup> edition. Thousand Oaks, CA: Sage, pp: 10-11.

<sup>41</sup> *Supra* note 36, at p: 312.

<sup>42</sup> Denzin, N., and Lincoln, Y., (Eds.) (1994). *Handbook of Qualitative Research*. Thousand Oaks, CA: Sage, p: 2.

<sup>43</sup> *Supra* note 38, at p: 8.

**Exhibit 4: Major differences between quantitative and qualitative research methods<sup>44</sup>**

Research aspect	Quantitative	Qualitative
Assumption about the world	A single reality, i.e., can be measured by an instrument.	Multiple realities
Research purpose	Establish relationships between measured variables	Understanding a social situation from participants' perspectives
Type of question	Closed questions	Open-ended questions
Epistemological orientation	Natural science model, in particular positivism	Interpretivism
Ontological orientation	Objectivism	Constructionism
Research approach	Deductive in nature - a hypothesis is formulated before research can begin	Inductive in nature - a hypothesis is not needed to begin research
Nature of data	Numeric variables	Words, images, themes and categories
Research process	Procedures are established before study begins	Flexible, changing strategies - design emerges as data are collected
Researcher's role	The researcher is ideally an objective observer who neither participates in nor influences what is being studied	The researcher participates and becomes immersed in the research/social setting
Results	Generalizable findings  Universal context-free generalisations	In-depth understanding of respondent's viewpoints Detailed context-based generalisations

As the aim of this study is not to measure or quantify something (i.e. justice or religion), but instead to improve understanding of the potential

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<sup>44</sup> Adapted from Bryman, A., (2012). Social Research Methods. 4<sup>th</sup> Edition. Oxford: Oxford University Press, p: 36; Creswell, J. (2014). Research design: qualitative, quantitative and mixed methods. 4<sup>th</sup> ed. Thousand Oaks, CA: Sage Publications, p.45; Johnson, R., and Christensen, L., (2014). Educational Research: Quantitative, Qualitative, and Mixed Approaches. 5<sup>th</sup> Edition. SAGE Publications, p: 33.

future of Islamic finance in relation to them by obtaining information from relevant sources, the research questions of this study could not be answered by applying quantitative methods.

#### **1.1.4.4 Research Strategy**

According to Bryman (2012), research strategy is “a general orientation to the conduct of research”.<sup>45</sup> Moreover, as Remenyi *et al.* (2003) noted, research strategy provides the overall direction of the research including the process by which the research is conducted.<sup>46</sup> An appropriate research strategy has to be selected based on research questions and objectives, the extent of existing knowledge on the subject area, the amount of time and resources available, and the philosophical underpinnings of the research.<sup>47</sup> Some of the common research strategies are as follow: experiment, survey, case study, action research, grounded theory, and ethnography, archival research, cross sectional studies, longitudinal studies, archival research and participative enquiry.<sup>48</sup> From these various strategies the case study research strategy seems to be more appropriate.<sup>49</sup>

A case study, as Yin (2003) defined, is an “empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident”.<sup>50</sup> Further Dul and Hak (2008) defined case study as “a study in which (a) one case (single case study) or a small number of cases

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<sup>45</sup> Bryman, A., (2012). *Social Research Methods*. 4<sup>th</sup> Edition. Oxford: Oxford University Press, p: 35.

<sup>46</sup> *Supra* note 11, at p: 43.

<sup>47</sup> *Supra* note 13, at p: 141.

<sup>48</sup> Collis, J., and Hussey, R., (2009). *Business Research: A Practical Guide for Undergraduate and Postgraduate Students*. 3<sup>rd</sup> edition, New York, Palgrave Macmillan, p: 11. Also see Saunders *et al.*, (2009).

<sup>49</sup> Research objectives which are being examined in this study can be definitely explored by the case study strategy. Also the case study approach can explain truthful evidence in accordance with research questions.

<sup>50</sup> Yin, R., (2003). *Case study research: Design and methods*. 3<sup>rd</sup> Edition, London, SAGE Publications, p: 13.

(comparative case study) in their real life context are selected and (b) scores obtained from these case are analysed in a qualitative manner”.<sup>51</sup>

Thus, to address the goal of this research, multiple strategies were applied; using case studies for conceptual aspects (justice and religions) and socio-legal analysis<sup>52</sup> with respect to the juridical sub-questions.

#### **1.1.4.5 Research Design**

According to Blaikie (2000), research design is a “process that links research questions, empirical data, and research conclusion.”<sup>53</sup> Evidently, this is simply another version of Yin’ (1984) initial definition of research design as “the logic that links the data to be collected and the conclusions to be drawn to the initial questions of a study.”<sup>54</sup> Another way of defining a research design is to see it as an *action plan* for getting from the questions to conclusions.<sup>55</sup>

Accordingly the exploratory descriptive and comparative research design was implemented due to the nature of the study. Thus, this thesis has a composite interdependent multi-channel (double-loop) structure and comprises both descriptive and comparative parts. The latter in turn contains philosophical and normative (legal) components. The diagram below summarises the overall structure and organisation of the thesis.

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<sup>51</sup> Dul, J., and Hak, T., (2008). Case study methodology in business research. Oxford, Elsevier Ltd, p: 4.

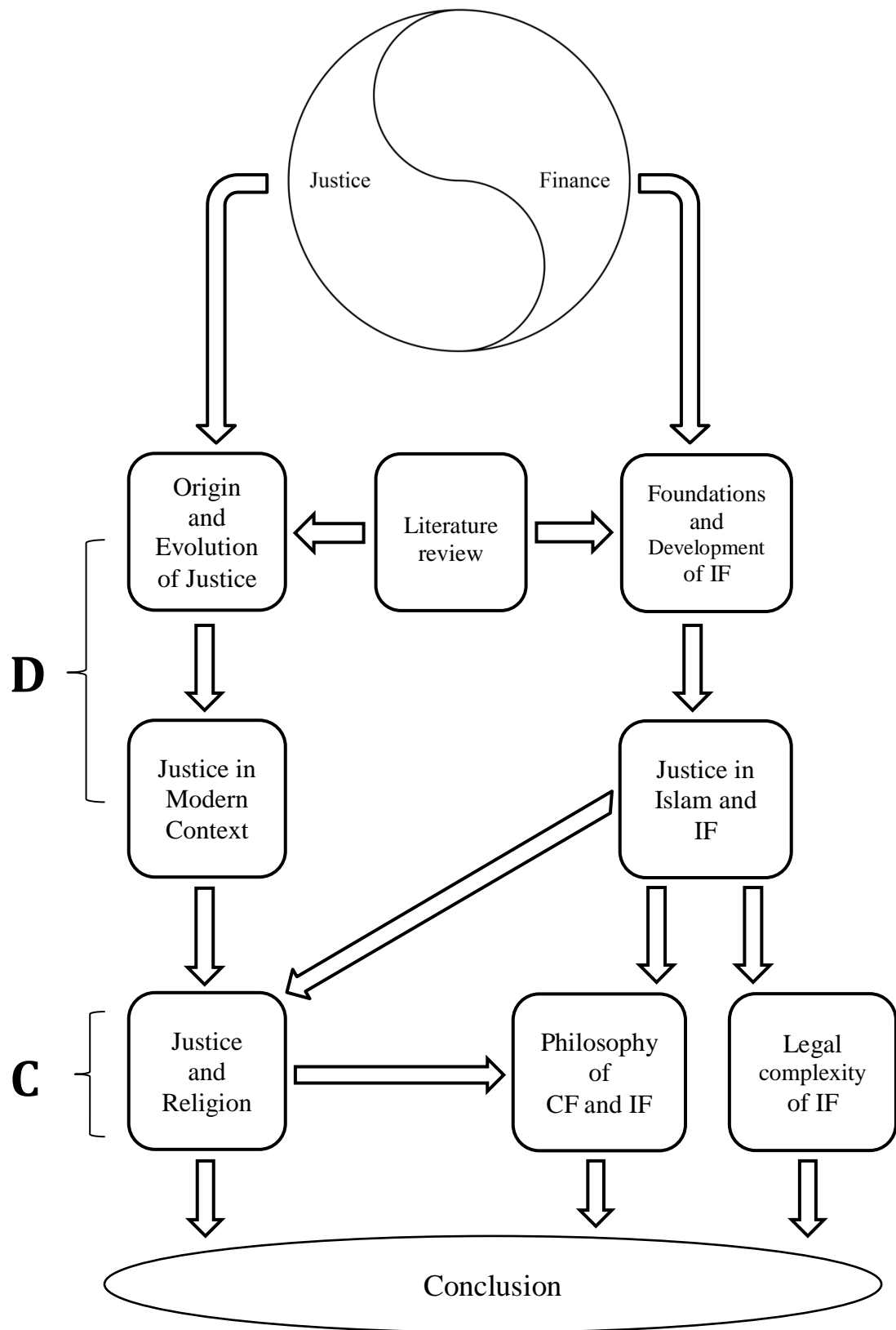
<sup>52</sup> A Socio-legal study is an interdisciplinary approach of studying law “in the broader social and political context with the use of a range of other methods [non-doctrinal] taken from disciplines in the social sciences and humanities”. See McConville, M., and Chui, W.H., (2007). Research Methods for Law. Edinburgh University Press, p: 5.

<sup>53</sup> *Supra* note 22, at p: 39.

<sup>54</sup> Yin, R., (1984). Case Study Research: Design and Methods. Thousand Oaks, p: 27.

<sup>55</sup> Rowley, J., (2002). Using Case Studies in Research. Management Research News. Vol. 25, No. 1, p: 18.

**Exhibit 5: Research structure**



#### **1.1.4.6 Research methodology adopted**

Grounded on the aforementioned characterisation, the research methodology adopted for this study can be positively identified as qualitative literature-based, guided primarily by interpretivism as a research philosophy, used abduction as a research approach and articulated through a comparative case study and socio-legal analysis as multiple strategies that sustained the exploratory and descriptive nature of this research. This combination of research strategies is used due to the fact that only through understanding the multi-faceted context can we ever hope to understand the potential of Islamic finance.

Due to the bipartite nature of the research subject of this research, the legal method of study utilised a comparative socio-legal library based approach that cuts across interdisciplinary boundaries and challenges the basic economic and legal principles normally applied to the analysis of financial systems. This approach “not only provide[s] an alternative to the traditional legal analysis but also encourage[s] ... [the examination of] the relationship between law and ... ethnicity, religion, and other social relations of power”.<sup>56</sup>

The research will begin with a comprehensive literature review of “classical” texts of Ancient, Western and Russian philosophers, recently published papers from respected journals, as well as publications from Islamic and other financial institutions and legal regulators. Materials that are currently available online on the subjects of Justice and Islamic finance will also be consulted and referenced.

The descriptive part is based on an exhaustive exploration of the origin and evolution of justice as a social-philosophical category associated

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<sup>56</sup> *Supra* note 52, at p: 6.



with religious dissimilarities as well as the foundation and development of Islamic finance in different countries from the ancient time through to the present, connected to their religious roots and justice as an integral part.

The comparative part investigates the philosophical principles underlying Conventional and Islamic financial systems and enquires into applicable laws and regulatory frameworks in order to understand the extent of the variations between the two systems and how acute the legal risks are for Islamic finance in non-Islamic countries. The analysis of Islamic finance institutions established in different jurisdictions examines both the common quest for financial products that share legal and economic similarity and the benefits of their cultural diversity. The study also investigates the applicability of the Western legal framework to Islamic finance and discusses related philosophical, religious and cultural differences.

As a result, in addition to its extensive descriptive and comparative contributions, this thesis offers an insight into the potential possibility of the continual spread of Islamic finance as well as the integration of its underlying principles into the commonplace activities of Western financial institutions, i.e. banks, insurance firms and others.

### **1.1.5 Theoretical framework**

This qualitative study does not employ any explicit theory<sup>57</sup> but creates a rich, detailed description of a central phenomenon<sup>58</sup> which consists of two sides - Justice as theory and Islamic finance as implement. Thus, diverse theories found in the social sciences, such as economics, law,

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<sup>57</sup> *Supra* note 14, at p: 100.

<sup>58</sup> “The phenomenologists are concerned with understanding social and psychological phenomena from the perspectives of people involved”. See Welman, J., and Kruger, S. (1999). *Research Methodology for the Business and Administrative Sciences*. Johannesburg, South Africa: International Thompson, p: 189.

political science, and others of social science theories become an overarching framework for this particular research.<sup>59</sup>

According to Van Greuning and Iqbal (2008), "...the foremost priority of Islam and its teachings on economics is about 'Justice and Equity'".<sup>60</sup> Rawls (1999) describes justice as the "first virtue of social institutions" and identifies "the primary subject of justice" as "the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation."<sup>61</sup> He tries to answer such questions as how social and economic advantages should be distributed to all members of society.

This brief sketch clearly shows that Islamic finance aims to be the best way to practically fulfil social justice in the modern word. Thus the analysis of the theory of justice in various contextual implementations will be most appropriate in answering this specific research question.

To be clear, the research purpose is not to analyse every jurisdiction and every legal system involved. That would be an entirely unrealistic venture. Rather the law research will focus on the two powerful legal traditions that now form the fundamental context of the contemporary business world: the Common Law and the Civil Law, with specific reference to where Islamic finance has already been widely discussed and proposed, especially the UK and the US. Also, the EU legislation will have to be taken into account. In addition to studying law as it is formally, the more essential goal should be to examine how it is applied informally and in actuality. In order to uncover and derive the meaning of Islamic finance within the Common Law and Civil Law contexts, the comparative methodology

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<sup>59</sup> *Supra* note 57, at p: 104.

<sup>60</sup> Van Greuning, H., and Iqbal, Z., (2007). Risk Analysis for Islamic Banks. The World Bank, p: 5.

<sup>61</sup> Rawls, J., (1999). A Theory of Justice. The Belknap Press of Harvard University Press, p: 3.

“should not be limited... to the comparative studies of different legal systems”.<sup>62</sup> Non-legal factors such as socio-economical and anthropological interpretations of legal doctrines will be introduced to elaborate a meaningful context whenever necessary. This sort of holistic socio-qualitative comprehension will give us a first approximation of what Islamic finance means under Common Law and Civil Law environments.

### **1.1.6 Contributions to the original knowledge**

Islamic finance is in the process of continuous development, not only in the Islamic world, but also in other, non-Muslim, countries. In the recent years of cyclical financial crises, which have periodically overtaken various countries and continents, religious and spiritual leaders have tried to draw the attention of society as a whole, as well as the harbingers of governments and financial institutions, to the idea of social fairness and integrity, which many believe is the moral principle that lies at the heart of Islamic finance. Consequently, even the most powerful religious leader in the world - Pope Francis - in continuation of the progression set out by his predecessor, Pope Benedict XVI, has called for financial reform along ethical lines.<sup>63</sup>

Moreover, the representative of one of the more conservative Christian churches - the influential spokesman of the Russian Orthodox Church, Archpriest Vsevolod Chaplin (2014) - has called for an extensive discussion of the prospects of creating an unbiased and independent banking system that “would be steeped in ethical rules”.<sup>64</sup>

Thus, my research could become a meaningful element of this discussion and contribute to the original knowledge by providing an analysis

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<sup>62</sup> Banakar, R., and Travers, M., (2005). *Theory and Methods in Socio-Legal Research*. Hart Publishing, p: 239.

<sup>63</sup> The Pope’s words to new Non Resident Ambassadors, 16 May 2013, Vatican Radio. <http://www.news.va/en/news/pope-financial-reform-along-ethical-lines>

<sup>64</sup> [http://www.newsru.com/religy/11nov2014/chaplin\\_banking.html](http://www.newsru.com/religy/11nov2014/chaplin_banking.html)

of the potential evolution of Islamic finance in countries with differing legal traditions and religious roots in two separate ways - academic and practical. Academically, this research will specify the general effects that the various philosophical and religious foundations of countries with different legal systems might have on Islamic finance advancement. It will also track and therefore estimate the legal nuances of some specific financial products provided by Islamic financial institutions.

Practically, the research will aid our understanding of the possible future of the global financial system. After drawing a reasonably detailed picture, not only of the current legal framework, but also of the potential moral and spiritual impact of Islamic finance in countries with various legal systems (e.g. Russia), a practical solution will be proposed, which might help politicians, bankers and regulators to reduce the problems that arise as a result of financial crises - and perhaps even avoid them altogether - and generally make business relations (B2B and B2C) fairer and more transparent.

### **1.1.7 Outline**

The research proceeds as follows.

- Chapter 1 presents the research aim and objectives, question and methodology and reviews the literature for both constituent parts of the research.
- Chapter 2 describes justice as a social-philosophical category.
- Chapter 3 explains the foundations of Islamic finance and Modes of financing related.
- Chapter 4 discuss justice in Islam and Islamic finance.
- Chapter 5 applies the background to explain the phenomenon of justice by putting it in a philosophical and religious context.
- Chapter 6 presents a comparative analysis of the philosophical principles underlying Conventional and Islamic financial Systems.
- Chapter 7 provides a contemporary analysis of the legal complexity of Islamic financial instruments.
- Finally, conclusions will be drawn.

## **1.2 Literature review**

### **1.2.1 Theories of justice**

Justice, which appears to be a fundamental concept underlying and giving impetus to the global social justice movement, has a rich image in Ancient, Western and Russian academic literature. It has continued to be a philosophical category since ancient times, and is widely covered in modern Western literature. The fundamentals of social justice are represented in the works of Ancient, Western and Russian philosophers, such as: Aristotle, Plato, Agoshkov, Alexeyeva, Luter, Kanarsh, Strauss, Fedorova, Jean-Jacques Rousseau, Kapustin, Helvétius, Hume, Hobbes, Locke, Kant, Hegel, Engels, Pirogov, Efimov, Sidgwick, Cherepanov, Nozick, Rawls, Hamlin, Nussbaum, Sen, Mignolo, Guseynov, Stepin, Tolstykh, Aitova, Prokofiev, Burno, Ruchkov, Argunova, Teylor, MacIntyre, Habermas, Davidovich and others. In the works of these authors, the concept of social justice is highly elaborated, prominent in the normative description of social life and considered universal.

The following is a very brief summary of the various positions of the major authors who are relied upon for purposes of this dissertation. Their views will be discussed in more critical detail throughout the work. I conceive of justice in terms of the minimum communalities shared by these authors and I feel that it is important to give voice to the individuated and thus the diversity of views. Thus, this literature review reaches into the unique discrepancy of justice found amongst these authors. Taken together it forms a collage of overlapping social contexts, varying group concerns, short-term aims and long-term visions. The collection of views begins with the Middle Ages and the essential transformations in social justice theory are set out.

- **Feudalism to the Bourgeois Ideology of Equivalent Material Exchange**

The history of social justice can be traced back to the old times; thus the paper by Agoshkov (2008) – “Social justice in the Middle Ages and Modern Times: from Dolcino until Jean-Jacques Rousseau” - considers the early epoch of the feudalism crisis as well as the birth of bourgeois relations, which led to the understanding that the idea of justice interpretation is connected with equality and social justice and is transformed into the principle of equivalent exchange in the ideology of bourgeois reformers.<sup>65</sup>

- **The Lutheran Premise of a Positional Hierarchy in Business but not in Rank**

Martin Luther, in his work “Address to the Christian Nobility of the German nation” ascertains that there is “only difference in position and business and not in rank” between people, focusing on the role of labor in human development.<sup>66</sup>

- **Ancient Cosmocentric to Anthropocentric Humanitarism**

According to Strauss (2000), the paradigm changed from *cosmocentric* (ancient - medieval) to *anthropocentric* (humanitarian), as he describes in his work, “Progress or Return? Modern Crisis of Western civilisation”.<sup>67</sup>

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<sup>65</sup> Agoshkov, A., (2008). Social Injustice in the Middle Ages and Modern Times: from Dolcino until J.-J. Rousseau. Problems of Culturology. Moscow. Vol. 4, p: 20.

<sup>66</sup> Luther, M., (1906). Address to the Christian Nobility of the German Nation (1520). J.H. Robinson, ed. Readings in European History (Boston: Ginn, 1906), p: 5.

<sup>67</sup> Strauss, L., (2000). Progress or Return? The Contemporary Crisis of Western Civilisation. An Introduction to Political Philosophy. Moscow. Logos - Praxis, p: 278.

- **Hobbesian Rights in a Political Order**

In the paper, “Modernism and anti - modernism in the French political thought of the XIX century”, Fedorova (1997) gives Hobbes’ opinion on the rights that are fundamental and defines the characteristics of political order.<sup>68</sup> Besides, he replaces the notion of welfare with the notion of law, which was not known in the classics before.

- **Private Property Accumulation as the Injustice of Despots**

Rousseau (1969) criticises injustice in his “Tractates” and also poses a problem in regard to its origin. In his opinion, it stems from inequality caused by private property and accumulation, which are the source of all social evils. Injustice caused by private property is supported by the government, and the rulers turn from servants of the society into despots by violating the laws.<sup>69</sup>

- **Independence versus Freedom**

In the opinion of Strauss (2000),<sup>70</sup> it was Rousseau who closed the gap between the law and political order, as well as political justice. Kapustin (1994), in his “Morals and politicians in Western political philosophy”, put independence as reality, although he identified it as freedom.<sup>71</sup>

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<sup>68</sup> Fedorova, M., (1997). Modernism and Anti-Modernism in French Political Thought of the XIX Century. Moscow. Philosophy Institute of Russian Academy of Sciences, p: 76.

<sup>69</sup> Rousseau, J., (1969). Tractates. Moscow. Nauka, p: 152.

<sup>70</sup> Strauss, L., (2000). The Three Waves of Modernity. An Introduction to Political Philosophy. Moscow. Logos - Praxis, pp: 76-77.

<sup>71</sup> Kapustin, B.G., (1994). Morale and Politics in Western European Political Philosophy. From Absolute Freedom to Equality Romance. Moscow, p: 28.

Furthermore, the principles of justice, both to Nozick (1974)<sup>72</sup> and Rawls (1999),<sup>73</sup> can be defined only where freedom and equality exist. Rawls's theory of justice is based on equality for all individuals, in regard to their rights, as well as the absence of a hierarchy in the distribution of benefits among the people.<sup>74</sup> According to Nozick (1974), a government with broad functions will no longer be justified if it violates the rights of the people.<sup>75</sup>

- **Influence of Personality**

Helvétius, in his work “A Treatise on Man: His Intellectual Faculties & His Education”, based on his Educational theory, suggests that following the public interest and public benefit is the basis of human morality, the main moral principle, and proposes that justice is the adequacy of actions of individuals for the public good. At the same time, Helvetius noticed that people are internally selfish and seek, first of all, personal gain. He also talked about the necessity of issuing wise laws, and stated that wise government which would be governed by the relevant laws in its activities is essential for justice.<sup>76</sup>

A very similar approach is demonstrated by Hume in “A Treatise of Human Nature [1739]”. He noted that “... *self-interest is the original motive to the establishment of justice: but a sympathy with public*

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<sup>72</sup> Nozick, R., (1974). Anarchy, State and Utopia. N. Y.: Basic Books, Inc., Publishers.

<sup>73</sup> *Supra* note 61, at p: 11.

<sup>74</sup> *Ibid.* p: 72.

<sup>75</sup> *Supra* note 72, at p: 140.

<sup>76</sup> Helvétius, C.A., (1974). A Treatise on Man: His Intellectual Faculties & His Education. 1777. Collection of works in 2 volumes. Moscow. Gospolitizdat. Vol. 2, pp: 183 - 200.



*interest is the source of the moral approbation, which attends that virtue*".<sup>77</sup>

- **Kantian Individualism**

Kant represents justice as follows: justice is an imperative, duty, moral norm, demand. He also isolates a moral law, the essence of which is to justify the freedom of individuals.<sup>78</sup>

According to Kanarsh (2011), Kant is trying "to connect order with freedom and respect the moral dignity of an individual".<sup>79</sup> Kant's theory of justice shows the depth of the changes, as well as the political order, which "transformed into a political-legal one, where the welfare was replaced by the law".<sup>80</sup>

- **Justice as Constitution**

Hegel's interpretation of justice is a constitution containing an absolute idea. According to Hegel (1774) "the constitution is existent justice - the actuality of liberty in the development of all its reasonable provisions".<sup>81</sup>

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<sup>77</sup> Hume, D., (2011). A Treatise of Human Nature by David Hume, reprinted from the Original Edition in three volumes and edited, with an analytical index, by L.A. Selby-Bigge, M.A. (Oxford: Clarendon Press, 1896), p: 337.

<sup>78</sup> Kant, I., (1994). Metaphysical Foundations of Natural Science. Collection of works in 8 volumes. Moscow. CHORO. Vol. 4, p: 195.

<sup>79</sup> Kanarsh, G., (2011). Social Justice: Philosophical Concepts and Russian Situation. Moscow. Publishing house of Moscow University for the Humanities, p: 50.

<sup>80</sup> Kant, I., (1994). Groundwork of the Metaphysics of Morals. Collection of works in 8 volumes. Moscow. CHORO. Vol. 4, p: 107.

<sup>81</sup> Hegel, G., (1990). Philosophy of Right. Moscow. Mysl, p: 264.

Liberty and Equality are the simple rubrics into which is frequently concentrated what should form the fundamental principle, the final aim and result of the constitution. See Hegel's Encyclopaedia of the Philosophical Sciences in Outline, §539.

- **Justice as Social Interactions**

Engels (1955) represents justice as social relations regarding particular historic conditions in the society.<sup>82</sup>

The work, “Social justice: genesis of ideas”, by Pirogov and Efimov (2008) describes fair social relations when the life of a human being matches the epoch.<sup>83</sup>

Kanarsh (2007), in his theory, of a “fair society” states that one can talk about logical discrepancies.<sup>84</sup> The issue of justice requirements is based upon the following values: cultural and local ones, where society’s interests are at the centre, as well as alternative models of mankind’s evolution.

A number of scientists, including Guseynov (2005) in his work “On the possibility of a global ethnos”, have researched justice as a problem of the global dialogue of civilisations and cultures.<sup>85</sup>

Aitova (2011) considers that dialogue, understanding and interaction between cultures could solve global problems, taking into account consent, understanding and justice.<sup>86</sup>

- **Governmental Justice**

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<sup>82</sup> Engels, F., (1955). Anti-Duhring. Marx, K., and Engels, F. Complete set of works. 2nd edition. Vol.20, p: 153.

<sup>83</sup> Pirogov, G., and Efimov, B., (2008). Social Justice: Genesis of Ideas. Social Studies. Vol. 9, p: 5.

<sup>84</sup> Kanarsh, G., (2007). The Concept of “Fair Society” in the Humanities. Skills, Knowledge and Understanding. No. 1.

<sup>85</sup> Guseynov, A.A., (2005). On Possibility of a Global Ethnos. Dialogue of Cultures in the Globalizing World: World Outlook Aspects. Moscow.

<sup>86</sup> Aitova, G.S., (2011). New Understanding of Justice in the Epoch of Globalisation: Social-Philosophical Analysis. PhD Thesis in Philosophy of Science. Moscow.

A modern theory of justice, by Nussbaum (1990), connects the responsibility of the government to the welfare of the society, and acknowledges the people's rights.<sup>87</sup>

The justice of relations by Sidgwick (2005), states that the society is arranged correctly if its institutions are arranged to satisfy the needs of individuals. This idea is utopian, as it is not possible to maintain justice for the whole of the society.<sup>88</sup>

Taylor (1997), MacIntyre (2000) and others negatively assess the situation in Western society, seeing it as a threat that liberals have replaced general welfare with law, as the basis of social existence.<sup>89</sup>

Social justice, according to MacIntyre (2000), is one of the important moral features of a citizen, which allows for supporting different forms of social activity to attain common welfare.<sup>90</sup>

- **Russian Social and Political Forms as Obstacles to Individual Freedoms**

Kanarsh (2011), in "Social justice: philosophical theories and Russian situation", considers social and political reforms, describing them as an obstacle to individual values and freedom.<sup>91</sup>

Likewise, Kanarsh (2008) points out that although the social sciences do not neglect the problem of justice, there is still no theoretical discourse on justice in Russian social science.<sup>92</sup>

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<sup>87</sup> Nussbaum, M., (1990). Aristotelian Social Democracy. in *Liberalism and the Good*. Routledge, pp: 203-252.

<sup>88</sup> Sidgwick, H., (2005). *The Principles of Political Economy*. Moscow. Mirovaya Ekonomicheskaya Mysl. Vol 2, p: 137.

<sup>89</sup> Taylor, C., (1997). *Intersection of Goals: the Debate Between Liberalism and Communitarianism*. Modern Liberalism. Editor L.B. Makeyeva. Moscow, p: 226.

<sup>90</sup> MacIntyre, A., (2000). *After Virtue. A Study in Moral Theory*. Yekaterinburg, p: 339.

<sup>91</sup> *Supra* note 79, at p: 29.

The initial experience of spiritual-cultural evolution includes specific historical forms. Therefore, justice as “gaining experience, its deflection and reflection might have a general component connected to a certain historic situation”, according to Ruchkov (2006).<sup>93</sup>

Prokofiev (2001) thinks that in fact people are not indifferent to how the benefits from their cooperation are distributed; they want to receive more by reducing the share to be given to others.<sup>94</sup>

Argunova (2005), in her work “Social justice: a sociological analysis”, writes that in the union of saints, if such a society could exist, disputes on justice would be hardly likely to exist. The question of justice does not arise unless there are differences between the parties.<sup>95</sup>

Prokofiev (2006) suggests a theory of intercultural justice in his work that would reflect specific features of Russian science – as he wants to comprehend and integrate the existing theories deeply, creating a theoretical synthesis, which is only possible on Russian ground.<sup>96</sup> However, according to Burno (2008), it is necessary to consider that Russian people, due to some natural spiritual features, are not capable of living according to precise rules.<sup>97</sup>

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<sup>92</sup> Kanarsh, G., (2008). To the Question of Russian Discourse of Justice. Polis (Political studies). Vol. 5, p: 160.

<sup>93</sup> Ruchkov, P., (2006). The Truth is Justice. Vestnik of Moscow University. Series 7: Philosophy. Vol.1, pp: 83-107.

<sup>94</sup> Prokofiev, A., (2001). Human Being Nature and Social Justice in Modern Ethic Aristotleship. Ethical Thoughts. 2nd edition, Moscow, p: 41-64.

<sup>95</sup> Argunova, V., (2005). Social Justice: a Sociological Analysis. Synopsis of Doctoral Thesis in Sociology. St. Petersburg, p: 3.

<sup>96</sup> Prokofiev, A., (2006). Theory of Intercultural Justice: Search of Regulatory Grounds. Human being. Vol. 1, pp: 19-35.

<sup>97</sup> Burno, M.E., (2008). On Characters of People (a Psychotherapeutic Book). 3rd edition. Moscow.

Consequently, there are a lot of opinions on social justice, and sometimes they are controversial. Nevertheless, all of the authors admit its presence in social relations, as well as its significance.

### **1.2.2 Islamic finance**

Islamic finance refers to a financial system that is consistent with principles of Islamic law (or *Shariah*) and guided by Islamic ethics; in other words, “[t]he starting point in Islamic finance is the belief in God and thereby His guidance on economic and financial matters”.<sup>98</sup> Thus, a large amount of research has been undertaken into this subject mainly by Muslim scholars. As a result, a substantial amount of academic literature describing Islamic finance already exists, which includes work on the history of the subject and some introductory issues, the general principles and methods of finance, the technical nuances of the practical implementation of financial instruments and the juridical features, especially in regard to the non-trivial relationship with the non-Islamic legal framework. Philosophical and socio-economic issues, such as problems of social and economic justice, are also considered. The key sources of literature are much diversified but include only part of the ocean of Islamic thought that could be used for this particular research. The body of literature is divided into several parts, as shown below:

- **Introductory historical and religious context**

The historical and religious context together with the principles of Islamic finance have been extensively studied by many Muslim and non-Muslim scholars, such as Ayub (2007) in his distinguished work “Understanding Islamic Finance”,<sup>99</sup> as well as Ayub

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<sup>98</sup> Hayat, U., and Malik, A., (2014). Islamic Finance: Ethics, Concepts, Practice. A Literature Review, p: 85.

<sup>99</sup> Ayub, M., (2007). Understanding Islamic Finance. John Wiley & Sons, Ltd.

(2002),<sup>100</sup> El-Gamal (2000),<sup>101</sup> Esposito (2004),<sup>102</sup> Gait and Worthington (2007),<sup>103</sup> Hashmi (2003),<sup>104</sup> Iqbal (1997),<sup>105</sup> Iqbal and Mirakhor (2006),<sup>106</sup> Obaidullah (2005),<sup>107</sup> Presley and Sessions (1994),<sup>108</sup> Sadr (1982),<sup>109</sup> Siddiqi (2002),<sup>110</sup> Usmani (2007),<sup>111</sup> Visser and McIntosh (1998),<sup>112</sup> Warde (2000)<sup>113</sup> and many others. Practically all of the significant publications devoted to Islamic finance begin with an introductory part and in one form or another describe the history and basic principles of Islamic finance. In this thesis the general principles of Islamic finance will be explained in detail later in Chapter 3.

- **Islamic financial Institutions and financial instruments**

In line with the above, these and other scholars have examined the Islamic financial services industry comprehensively in regard to various practical aspects of financial transactions, including

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<sup>100</sup> Ayub, M., (2002). *Islamic Banking and Finance: Theory and Practice*. State Bank of Pakistan.

<sup>101</sup> El-Gamal, M., (2000). *A Basic Guide to Contemporary Islamic Banking and Finance*. Rice University, Houston.

<sup>102</sup> Esposito, J., Editor. (2004). *The Islamic World. Past and Present*. Oxford University Press.

<sup>103</sup> Gait, A., and Worthington, A., (2007). *A Primer on Islamic Finance: Definitions, Sources, Principles and Methods*. School of Accounting and Finance, University of Wollongong, WP No. 07/05.

<sup>104</sup> Hashmi, A., (2003). *Islamic Finance and Economics (IFE): An Evaluation of Its Failures, Successes, and Future Prospects*. Leonard N. Stern School of Business, New York University.

<sup>105</sup> Iqbal, Z., (1997). *Islamic Financial System*. Finance & Development. Vol. 34, No. 2, pp. 42 – 45.

<sup>106</sup> Iqbal, Z., and Mirakhor, A., (2006). *An Introduction to Islamic Finance: Theory and Practice*. Wiley Finance.

<sup>107</sup> Obaidullah, M., (2005). *Islamic Financial Services*. Islamic Economics Research Center, King Abdul Aziz University, Saudi Arabia.

<sup>108</sup> Presley, J., and Sessions, J., (1994). *Islamic Economics: The Emergence of a New Paradigm*. The Economic Journal, Vol. 104.

<sup>109</sup> Sadr, S., (1982). *An Introduction to Principles of Islamic Banking*. Bonyad Be'that, Tehran, Iran.

<sup>110</sup> Siddiqi, M., (2002). *Comparative advantages of Islamic banking and finance*. Presented at Harvard University Forum on Islamic Finance.

<sup>111</sup> Usmani, M., (2007). *An Introduction to Islamic Finance*. Maktaba Ma'ariful Qur'an. Karachi. Pakistan.

<sup>112</sup> Visser, W., and McIntosh, A., (1998). *History of Usury Prohibition A Short Review of the Historical Critique of Usury*. Accounting, Business & Financial History. Volume 8, Number 2, Routledge, London.

<sup>113</sup> Warde, I., (2000). *Islamic Finance in the Global Economy*. Edinburgh University Press, Edinburgh.

various financial instruments. Usmani (2007), in “An Introduction to Islamic Finance”,<sup>114</sup> expounds the origin of products provided by Islamic financial institutions, the practices of Islamic deposits and Islamic contracts and the main points of difference between conventional and Islamic banking. Similarly, in the book “Understanding Islamic Finance”, Ayub (2007)<sup>115</sup> gives an insight into the range of products and procedures of Islamic finance such as *Murabahah* and *Musharakah*, *Ijarah*, *Takaful* etc. The problems arising from the implementation of these practices and the provision of these products are also discussed in Iqbal and Mirakhor (2006)<sup>116</sup>, Abdulkader *et al.* (2005),<sup>117</sup> Ahmad (2000),<sup>118</sup> Ahmad (1994)<sup>119</sup>, Chong and Liu (2007),<sup>120</sup> DeLorenzo (1997),<sup>121</sup> etc.

“Islamic Banking and Finance: Theory and Practice” (Ayub, 2002)<sup>122</sup> examines the technical requirements and changes in conventional banking that would be required to make it conform to Islamic law, without assuming a fully Islamic framework and other supporting Islamic institutions. The issues of Islamic jurisprudence, corporate governance and the challenges faced by the industry are also explained.

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<sup>114</sup> *Supra* note 111.

<sup>115</sup> *Supra* note 99.

<sup>116</sup> *Supra* note 106.

<sup>117</sup> Abdulkader, T., Cox, S., and Kraty, B., (2005). Structuring Islamic Finance Transactions. Euromoney Institutional Investor PLC.

<sup>118</sup> Ahmad, K., (2000). Islamic Finance and Banking: The Challenge and Prospects. Review of Islamic Economics, Vol. 9, pp: 57-82.

<sup>119</sup> Ahmad, Z., (1994). Islamic Banking: State of the Art. Islamic Economic Studies. Vol. 2, No. 1, pp: 1-34.

<sup>120</sup> Chong, B., and Liu, M., (2007). Islamic Banking: Interest - Free or Interest Based. Nanyang Business School.

<sup>121</sup> DeLorenzo, Y.T., Ed. (1997). A Compendium of Legal Opinions on the Operations of Islamic Banks: Murabahah, Mudarabah and Musharakah. Institute of Islamic Banking and Insurance. London, UK.

<sup>122</sup> *Supra* note 100.

- **Islamic commercial jurisprudence and legal perspectives**

The issues of Islamic jurisprudence, corporate governance and the challenges faced by the industry are also explained, for example, in the fundamental treatise “Islamic Finance: The Regulatory Challenge” (Karim and Archer (Eds.), 2007).<sup>123</sup> This book presents a comprehensive analysis of the issues that arise in the development of the structured regulatory, supervisory and legal framework that is essential for the Islamic financial Industry. The nature of the risks in Islamic banking and the regulatory challenges facing both the conventional and Islamic financial sectors are also discussed.

Other sources, such as “Islamic Finance: Law, Economics, and Practice” (El-Gamal, 2008),<sup>124</sup> provide an overview of the historical roots and practice of Islamic finance with an emphasis on the concepts and applications of Islamic banking and finance law. Many valuable case studies and useful examples explain the complicated situation related to modern juridical practice.

Some authors, including Maiya (2008),<sup>125</sup> Djojosugito (2008),<sup>126</sup> Van Greuning and Iqbal (2007),<sup>127</sup> Al-Zumai (2008),<sup>128</sup> and

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<sup>123</sup> Karim, R., and Archer S., Editors, (2007). *Islamic Finance: The Regulatory Challenge*. John Wiley & Sons.

<sup>124</sup> El-Gamal, M.A., (2008). *Islamic Finance: Law, Economics, and Practice*. Cambridge University Press.

<sup>125</sup> Maiya, R.V., (2008). *Risk & Compliance Management in Islamic Banking*. ArabianBusiness.com.

<sup>126</sup> Djojosugito, R., (2008). *Mitigating Legal Risk in Islamic Banking Operations*. Humanomics. Vol. 24, No. 2, 2008, pp. 110 – 121.

<sup>127</sup> *Supra* note 60.

<sup>128</sup> Al-Zumai, F., (2008). *Islamic Finance and the Law of the Land*. Lecture notes. University of Westminster. School of Law.



Murrey *et al.* (2008)<sup>129</sup> suggest that the risks posed by Islamic banks to the financial system differ in many ways from those posed by conventional banks.

Also the issues of corporate governance and the regulatory challenges faced by the industry are explained.

- **Regulation and governance**

The regulatory literature on Islamic finance mostly focuses on commercial banking, which is the largest part of Islamic finance, although a secondary zone is the Islamic alternative to conventional insurance (*takaful*) with its special requirements. Since the late 1990s, the Islamic banking world has accelerated its efforts to standardize regulation and supervision (El Qorchi, 2005).<sup>130</sup> A number of specialised Islamic organisations support the process of standardization and harmonization of regulation in Islamic financial institutions and products – the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the Islamic Development Bank (IDB), the Islamic Finance Services Board (IFSB), the International Islamic Financial Market (IIFM), the Liquidity Management Centre (LMC) and the International Islamic Rating Agency (IIRA) (which are also a significant source of pertinent information). However, “there are still many countries where the legal and institutional framework is not explicit and transparent about Islamic finance, and the framework developed

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<sup>129</sup> Murrey, B., Kelly, S., and Ganzi, J., (1997). Review of Environmental Risk Management at Banking Institutions and Potential Relevance of ISO 14000. Working Paper. Research Triangle Institute.

<sup>130</sup> El Qorchi, M., (2005). Islamic Finance Gears Up. Finance and Development Magazine. International Monetary Fund. Vol. 42, No. 4, pp: 46 – 49.

for conventional finance is being applied to Islamic institutions”<sup>131</sup> (Al Shaali, 2008).

The Handbook of Islamic banking (Hassan and Lewis (Eds.), 2009)<sup>132</sup> highlights the objectives, structure and activities of the major international infrastructure institutions supporting the Islamic financial industry with an overview of the major Islamic financial centres (national and international). Many articles on Islamic finance are, voluntarily or not, focused on regional regulatory issues (Ainley *et al.* (2007),<sup>133</sup> Albalawi (2006),<sup>134</sup> Aldohni (2008),<sup>135</sup> etc.).

The moral aspects of Islamic banking and financial services have also attracted the attention of researchers.

- **Political economy, social and economic Justice**

Socioeconomic justice occupies a visible place in the literature on Islamic economics and finance and is represented by a few authors. For example, the well-known work of Qutb (2000), “Social Justice in Islam”,<sup>136</sup> demonstrates “the persistence of gross socio-economic inequality in most Muslim societies; the need to view Islam as a totality, imperatively demanding comprehensive

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<sup>131</sup> Nasser Al Shaali, the CEO of the Dubai International Financial Centre (DIFC) Authority, speech at the London Sukuk Summit 2008.

<sup>132</sup> Hassan, M.K., and Lewis, M.K., Eds., (2009). Handbook of Islamic banking. Edward Elgar Publishing Ltd.

<sup>133</sup> Ainley, M., Mashayekhi, A., Hicks, R., Rahman, A. and Ravalia, A., (2007). Islamic Finance in the UK: Regulation and Challenges. Working Paper, Financial Services Authority, UK.

<sup>134</sup> Albalawi, H., (2006). Banking System in Islamic Countries: Saudi Arabic and Egypt. Stanford University.

<sup>135</sup> Aldohni, A., (2008). The Emergence of Islamic Banking in the UK: A Comparative Study with Muslim Countries. Arab Law Quarterly, Vol. 22, No. 2.

<sup>136</sup> Qutb, S., (2000). Social Justice in Islam. Islamic Publications International.

implementation”.<sup>137</sup> However, this book is not academic enough being noticeably politically oriented, just like Khadduri (1984)<sup>138</sup> and Williams (2016).<sup>139</sup> A few other papers cannot be fully used since they are limited to the scope of application: Hasan (2007),<sup>140</sup> Mannan (2005),<sup>141</sup> Rosen (2008).<sup>142</sup>

Only a few authors have written books covering all of the necessary aspects of justice in Islamic finance in connection with their religious and philosophical roots and also in comparison with Western traditions. Iqbal (2007) in “Justice: Islamic and Western Perspectives”,<sup>143</sup> contributes a historical account of the Western definitions of justice (mainly economic and social justice) from Plato to the modern day and compares those definitions with the Islamic notion of justice. In “Islam, Peace and Social Justice: A Christian Perspective”, by Van Gorder (2014),<sup>144</sup> we can find a relevant, comprehensive, and empathetic examination of some of the social justice challenges within the Muslim world. As Bramsen (2015) suggests, Van Gorder is “... promoting better relations among the major monotheistic traditions by providing a deeper understanding of shared social justice goals... a richer understanding of Islam’s vast, multi-faceted social justice tradition. He demonstrates a rich knowledge of the Islamic holy texts,

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<sup>137</sup> *Ibid.* Publisher’s description.

<sup>138</sup> Khadduri, M., (1984). *The Islamic Conception of Justice*. The Johns Hopkins University Press.

<sup>139</sup> Williams, P., (2016). *Islam: A Mirage in the Quest for Justice*. Createspace Independent Publishing Platform.

<sup>140</sup> Hasan, S., (2007). *Philanthropy and Social Justice in Islam: Principles, Prospects and Practices*. Publisher A.S. Noordeen.

<sup>141</sup> Mannan, A., (2005). *Social Justice under Islam*. Reference Press.

<sup>142</sup> Rosen, L., (2008). *The Anthropology of Justice: Law as Culture in Islamic Society*. Lewis Henry Morgan Lectures. Cambridge University Press.

<sup>143</sup> Iqbal, Z., (2007). *Justice: Islamic and Western Perspectives*. The Islamic Foundation.

<sup>144</sup> Van Gorder, C., (2014). *Islam, Peace and Social Justice: A Christian Perspective*. Published by James Clarke & Co.

providing myriad arguments for how Islam's teachings and practice are in accord with social justice...".<sup>145</sup> Austin's book (2014), "Social Justice and Social Work: Rediscovering a Core Value of the Profession" is another promising title, as is Chapter 6 of Accomazzo, Moore and Sirojudin's work, "Social Justice and Religion".<sup>146</sup> In addition, there are several articles related to this topic that are also worthy of attention: Chapra (2001),<sup>147</sup> Hasan (1971),<sup>148</sup> Hassan and Kayed (2009),<sup>149</sup> Kuran (1989),<sup>150</sup> and Smirnov (1996).<sup>151</sup>

The other sources are not particularly attractive, as they are localised to a specific market, mainly for public education purposes in the form of a catechism: Ahmad (1982),<sup>152</sup> Yusuf (1988),<sup>153</sup> Qara'ati (2012),<sup>154</sup> Shujaat (2004),<sup>155</sup> Khan (2014).<sup>156</sup>

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<sup>145</sup> Bramsen, A., (2015). Book review. *Journal of Church and State*, Vol. 57, Issue 2, p: 362.

<sup>146</sup> Accomazzo, S., Moore., and Sirojudin, S., (2014). *Social Justice and Religion*, Chapter 6 in: Austin, M., (Ed.). (2014). *Social Justice and Social Work: Rediscovering a Core Value of the Profession*. SAGE Publication.

<sup>147</sup> Chapra, U., (2001). *Islamic Economic Thought and the New Global Economy*. *Islamic Economic Studies*, Vol. 9, No. 1.

<sup>148</sup> Hasan, A., (1971). *Social Justice in Islam*. *Islamic Studies*. Vol. 10, No. 3.

<sup>149</sup> Hassan, M.K., and Kayed, R.N., (2009). *The Global Financial Crisis, Risk Management and Social Justice in Islamic Finance*. *ISRA International Journal of Islamic Finance*, Vol. 1, Issue 1.

<sup>150</sup> Kuran, T., (1989). *On the Notion of Economic Justice in Contemporary Islamic Thought*. *International Journal of Middle East Studies*, Vol. 21, No. 2.

<sup>151</sup> Smirnov, A., (1996). *Understanding Justice in an Islamic Context: Some Points of Contrast with Western Theories*. *Philosophy East and West*. Vol. 46, No. 3.

<sup>152</sup> Ahmad, M., (1982). *Social Justice in Islam*. Adam Publishers & Distributors.

<sup>153</sup> Yusuf, S.M., (1988). *Economic Justice in Islam*. KITAB BHAVAN.

<sup>154</sup> Qara'ati, M., (2012). *Social Justice in Islam*. Kindle Edition. Saracen Publications.

<sup>155</sup> Shujaat, M., (2004). *Social Justice in Islam*. Anmol Publications Pvt Ltd.

<sup>156</sup> Khan, M., (2014). *Social Justice in Islam*. Discovery Publishing House Pvt Ltd.

- **Global financial crisis and Islamic finance**

Throughout this past decade many Muslim scholars and financial practitioners (Ahmed (2009),<sup>157</sup> Ahmed et al. (2014),<sup>158</sup> Alqahtani and Mayes (2017),<sup>159</sup> Ayub (2007),<sup>160</sup> Chapra (2009),<sup>161</sup> Kaye and Hassan (2011),<sup>162</sup> Khan and Crowne-Mohammed (2009),<sup>163</sup> Siddiqi (2009),<sup>164</sup> Wood (2009)<sup>165</sup> and others) discussed the performance of Islamic banking during the recent global financial crisis and suggested that Islamic finance has the potential to become a viable alternative model for the ailing global financial system. The authors argued that Islamic finance is more resilient than conventional finance in the face of such crises. Their arguments are based on main differences of Islamic finance such as modes of financing and corporate governance, which assisted the Islamic financial institutions in sparing them from the global financial crisis. The different factors that caused the global financial crisis

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<sup>157</sup> Ahmed, H., (2009). Financial Crisis; Risks and Lessons for Islamic Finance. ISRA International Journal of Islamic Finance, Vol.1, No. 1.

<sup>158</sup> Ahmed, H., Asutay M., and Wilson, R., (Eds.) (2014). Islamic Banking and Financial Crisis: Reputation, Stability and Risks. Edinburgh University Press.

<sup>159</sup> Alqahtani, F., and Mayes, D., (2017). The Global Financial Crisis and Islamic Banking: the Direct Exposure to the Crisis. Banks and Bank Systems, Vol. 2, No. 3.

<sup>160</sup> *Supra* note 99.

<sup>161</sup> Chapra, M., (2009). The Global Financial Crisis: can Islamic Finance Help? In International Financial Crisis. Islamic Economic Research Center, King Abdulaziz University, Jeddah.

<sup>162</sup> Kaye, R., and Hassan, K., (2011). The Global Financial Crisis and Islamic Finance. Thunderbird International Business Review, Vol. 53, No. 5.

<sup>163</sup> Khan, B., and Crowne-Mohammed, E., (2009). The Value of Islamic Banking in the Current Financial Crisis. Review of banking and financial law, Vol. 29.

<sup>164</sup> Siddiqi, M., (2009). Current Financial Crisis and Islamic Economics. In International Financial Crisis. Islamic Economic Research Center, King Abdulaziz University, Jeddah.

<sup>165</sup> Wood, A., (2009). Islamic finance escapes worst of crisis. Financial Times. March 2009.

also were taken into account (Ascarya, (2017),<sup>166</sup> Jickling (2009),<sup>167</sup> Financial Crisis Inquiry Commission (FCIC) (2011)<sup>168</sup>).

- **Empirical studies and literature reviews**

A serious bibliographic work in the field of Islamic economics and finance is the work of Tahir (2007),<sup>169</sup> entitled “Islamic Banking Theory and Practice: A Survey and Bibliography of the 1995 – 2005 Literature”. This is a survey of the literature produced during one decade (1995 – 2005) and it refers to more than 550 items, with a classification related to publications in English language. Other work in this area includes the survey of contemporary literature provided by Zaman (2008),<sup>170</sup> entitled “Islamic Economics: A Survey of the Literature” and that by Zaher and Hassan (2001),<sup>171</sup> entitled “A Comparative Literature Survey of Islamic Finance and Banking”. The interesting paper “Secondary Databases and their Use in Research in Islamic Economics” provided by Hassan (2008)<sup>172</sup> indicates a number of advantages and disadvantages in the use of secondary data from different sources such as universities, Islamic economics research institutes and Islamic banks or companies, and governments and regulators of Muslim countries. Another valuable example of a Literature

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<sup>166</sup> Ascarya, A., (2017). The Root Causes of Financial Crisis in Islamic Economic Perspective. Jurnal Ekonomi Islam, Vol. 8.

<sup>167</sup> Jickling, M., (2009). Causes of the Financial Crisis (R40173). Washington, DC: Congressional Research Service.

<sup>168</sup> Financial Crisis Inquiry Commission (FCIC) (2011). The Financial Crisis Inquiry report. Washington, DC: US Government Printing Office.

<sup>169</sup> Tahir, S., (2007). Islamic Banking Theory and Practice: A Survey and Bibliography of the 1995 – 2005 Literature. Journal of Economic Cooperation, Vol. 28, No. 1, pp: 1-72.

<sup>170</sup> Zaman, A., (2008). Islamic Economics: A Survey of the Literature. The UK Department for International Development. Working paper 22.

<sup>171</sup> Zaher, T., and Hassan, M.K., (2001). A Comparative Literature Survey of Islamic Finance and Banking. Institutions and Instruments. Vol. 10, No. 4, pp: 155-199.

<sup>172</sup> Hassan, A., (2008). Secondary Databases and their Use in Research in Islamic Economics. Research paper.

Review is “Islamic Finance: Ethics, Concepts, Practice” (Hayat and Malik, 2014),<sup>173</sup> provided by the CFA Institute Research Foundation. All of these bibliographies offer researchers very important structured and first-hand information on the literature on Islamic economics and finance and they also offer an interesting educational approach.

For the ease of readers, a brief glossary of the Arabic terms used in conjunction with Islamic finance has also been added (See Appendix 1. Guideline to Islamic financial Terminologies).

### **1.3 Conclusion**

Literature on the subject of social justice has remained popular and the titles have grown in number. The vast amount of source material can satisfy even the most curious researcher. On the other hand, the link between justice and the foundations of the financial systems has largely been overlooked.

Moreover, the amount of literature on Islamic finance has grown in recent years, due to the ever increasing interest in the topic, from the perspectives of both lay people and specialists from governments and academia. Due to the stable nature of the research subject, however, the majority of the literature is noticeably lacking in presenting new evidence, and generally reiterates material from “classical” sources. The more relevant and topical articles, legal documents and working papers devoted to individual issues are, by and large, exceedingly specialised.

Thus, the existing literature on the subject does not provide a detailed and comprehensive analysis of the prospective development and dissemination of Islamic finance in countries with various legal traditions in

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<sup>173</sup> Hayat, U., and Malik, A., (2014). Islamic Finance: Ethics, Concepts, Practice. A Literature Review. The CFA Institute Research Foundation.

relation to the philosophical and religious roots making up their foundation, which I believe to be the most fundamental factor influencing these prospects. Based on the above-mentioned discussion, it can be argued that the current literature does not provide the answer to the research question.



## **CHAPTER 2: JUSTICE IN THEORY**

### **2.1 Introduction**

Chapter 2 describes justice as a socio-philosophical category and is based on the exhaustive exploration of details regarding the origin and evolution of different theories. The chapter not only illustrates the most widespread theories of justice, but demonstrates how they are perceived in Russian academia. In fact, Russian scholars, being closer to Islamic teaching than Western scholars, give a different understanding of these ideas and, consequently, provide a different setting for an intermediary understanding and interpretation of Islamic finance.

In regard to the methodology, this chapter presents a historical depiction and exploits critical analysis as well as elements of the subjective understanding of the concept of social justice. Concerning the structure, this chapter is divided into two main sections. Section 2.1 describes the origin and evolution of theories of social justice in European philosophy and Section 2.3 presents the contemporary problems and prospects in regard to the concept.

### **2.2 Social justice as a social-philosophical category**

Justice, what does this word mean? “Justice is thus a bit like the proverbial elephant examined by blindfolded explorers” (Lebacqz, 1986).<sup>174</sup> Totally agree. Nevertheless, the notion of justice differs in every culture and depends on the historical context. The term “justice” comes from the Latin *jus*, meaning “right” or “law” and linked to the idea of justification.<sup>175</sup> In the broad sense of the term the concept of justice is based on several areas of

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<sup>174</sup> Lebacqz, K., (1986). Six Theories of Justice: Perspectives from Philosophical and Theological Ethics, p: 9.

<sup>175</sup> <http://legal-dictionary.thefreedictionary.com/jus>

knowledge and many differing perspectives including the ideas of moral correctness based on law, equity, ethics, fairness, rationality and religion. Also, there are a numerous sub-branches of justice, including, among others, “legal justice; criminal justice and punishment (sometimes called retributive justice); economic justice (often called distributive justice); the just organization of states and governments; just relationships between people including spouses, parents and children, social hierarchies, and other social arrangements; international justice; and environmental justice.”<sup>176</sup> The general discussion of justice is divided into the procedural justice as found in the study and application of the law, and the sphere of social justice as found in philosophy, theology and religion.<sup>177</sup>

Social justice<sup>178</sup> is a sociological concept<sup>179</sup> that descends from the philosophical notions of justice, conforms to ethical norms and in fact is one of the fundamental moral and legal values. The idea of justice can be applied equally to various social phenomena and factors, whether these are economic, political or legal, as well as general interpersonal relations. The definitions of this notion have evolved both in theory and practice, through religious and cultural traditions, and with the level of material and spiritual development, and have often been used as a tool for propaganda. However, the concept of social justice has so many various, concordant and discrepant definitions that actually there is not one a universal moral or indeed legal precise. Not without reason, in the 2<sup>nd</sup> volume of “Law, Legislation and

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<sup>176</sup> New World Encyclopedia. <http://www.newworldencyclopedia.org/entry/Justice>

<sup>177</sup> For a popular definition of justice, see Western Theories of Justice <http://www.iep.utm.edu/justwest/> <http://www.yourdictionary.com/dictionary-articles/Definition-of-Justice.html>.

<sup>178</sup> Social justice, according to Oxford Dictionaries, is justice in terms of the distribution of wealth, opportunities, and privileges within a society. [https://en.oxforddictionaries.com/definition/social\\_justice](https://en.oxforddictionaries.com/definition/social_justice)

<sup>179</sup> The Italian Roman Catholic Jesuits scholar Luigi Taparelli d’Azeglio (1793-1862) is generally credited as being the first to use the expression “Social justice” in 1843 in the debates over the beginnings of the Italian Risorgimento (unification). See Palmer, M., and Burgess, S., (Ed.) (2012). *The Wiley-Blackwell Companion to Religion and Social Justice*. John Wiley & Sons, p: 4. See more at Burke, T., (2010). *The Origins of Social Justice: Taparelli d’Azeglio*. *Modern Age: A Quarterly Review*, Vol. 52, No. 2.

Liberty”, published in 1976, Hayek (1978) called the idea of social justice a “mirage.”<sup>180</sup>

### **2.2.1 Origin and evolution of theories of social justice in European philosophy**

The history of mankind does not offer any comprehensive doctrine on a social order, yet, that can be socially justified. The ancient Greek philosophy significantly impacted Western civilisation, as well as influencing most, if not all, systems’ world views. The concept of justice was inalterably perceived as correct norms of behaviour and punishment for their violation, as this was a kind of reaction to the changes in social-economic relations. Philosophers were trying to present human relations as something that is taken for granted. They believed that law supports stability in the society and provides its progress, as this prevents the government and individuals from any negative influences connected with the violation of this legislation. Thinkers and philosophers of the antiquity talked much about social justice. The ancient Greek philosopher, Plato (427–347 B.C.) pointed out that justice, as a virtue, is wisdom. Fair deeds based on virtue are beautiful.<sup>181</sup> In the opinion of another great ancient philosopher Aristotle (384–322 B.C.), justice is a perfect virtue.<sup>182</sup>

The early period of feudalism and the origination of bourgeois relations led to other variants in regard to interpreting justice, eliminating the hierarchical distribution of rights and freedoms, and concentrating more on the sphere of economic relations. The wing of the People’s Reformation run

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<sup>180</sup> Hayek, A., (1978). *Law, Legislation, and Liberty : A New Statement of the Liberal Principles of Justice and Political Economy*. Volume 2. *The Mirage of Social Justice*. The University of Chicago Press.

<sup>181</sup> Plato, (1999). *State. Laws. Anthology of the World Legal Thought*. Moscow. Vol. 1, p: 142.

<sup>182</sup> Aristotle, (2000). *The New Philosophical Encyclopaedia*. Moscow, Mysl. Vol. 1, p: 17.

by Thomas Müntzer<sup>183</sup> used equalitarian ideas of distribution as a means of fair distribution in socialism. The idea of equality and social justice in the ideology of bourgeois reformers was transformed into the principle of equivalent exchange, as Agoshkov (2008) points out.<sup>184</sup> It is customary for the ideologues of the liberal bourgeois to include the issues of injustice in the content of social contract theory. Thus Helvétius pointed out the necessity of “...issuing wise laws, setting a perfect form of ruling...”,<sup>185</sup> underling “...human love for justice based on fear in front of disasters, which accompanies injustice, and in hope for the well-being, as a result of respect, honour and power...”.<sup>186</sup> For this reason, justice requires the interference of the government, which observes relevant laws in its everyday activities.

The anthropologism of the Renaissance period is defined by individual virtues, as individual existence is thought of as being independent from the existence of *civitas*,<sup>187</sup> logically and ontologically preceding any political reality. Kanarsh (2011) thinks that social and political arrangements are considered to be obstacles to the way of implementing “individual freedom” rather than a factor related to human blessing.<sup>188</sup> As mentioned previously in Chapter 1, these changes, according to Strauss (2000), are connected to the transfer of the paradigm from *cosmocentric* (ancient-

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<sup>183</sup> Thomas Müntzer was a leading German radical Reformer during the Protestant Reformation, a fiery and apocalyptic preacher, and a participant in the abortive Peasants’ Revolt in Thuringia in 1524–25. Marxists in the 20th century viewed him as a leader in an early bourgeois revolution against feudalism and the struggle for a classless society. See <http://www.britannica.com/EBchecked/topic/397713/Thomas-Muntzer>

<sup>184</sup> *Supra* note 65, at p: 20.

<sup>185</sup> *Supra* note 76, at p: 200.

<sup>186</sup> *Ibid.* p: 200.

<sup>187</sup> The Latin term *civitas* means citizenship or the body of citizens who constitute a state. See <http://www.dictionary.com/browse/civitas>

<sup>188</sup> *Supra* note 79, at p: 29.

medieval) to *anthropocentric* (humanitarian), the formation of which started in the Renaissance period.<sup>189</sup>

In order to protect bourgeois social relations, a new ideology was necessary, and the concept of justice attracted the attention of philosophers and lawyers. The interpretation of justice required some changes that would define justice concretely. Hence the moral attitude to the universe was changed and the human being aspired to obtain rights rather than responsibilities. Thus new ideas emerged, stating that justice in human relations had its origins in nature.

As Fedorova (1997) points out, the authors of natural law theory, Hugo Grotius<sup>190</sup> and Thomas Hobbes,<sup>191</sup> among other thinkers, considered justice to be a natural law of life in modern times, relating it to the request to establish the state and proclaim law. Hobbes ascertains the principle of patrimonial justice, which equates all subjects in terms of lawlessness rather than freedom. The priority and integrity of individual rights underlie his patrimonialism, and he identifies these rights with the right to live;<sup>192</sup> or, as he indicates in “Leviathan”,<sup>193</sup> individual humans had the natural right to survive. These rights, according to Hobbes, are fundamental and define the characteristics of any political order. Moreover, for the first time in the history of political thought, he replaced the concept of well-being with the concept of right, which had not been known in classical theory before.

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<sup>189</sup> *Supra* note 68, at p: 278.

<sup>190</sup> <http://plato.stanford.edu/entries/grotius/>

<sup>191</sup> <http://www.britannica.com/EBchecked/topic/268448/Thomas-Hobbes>

<sup>192</sup> *Supra* note 68, at p: 76.

<sup>193</sup> Hobbes, T., (1651). *Leviathan or The Matter, Forme, & Power of a Common-Wealth Ecclesiastical and Civill*.

His successor John Locke, in “An Essay Concerning the True Extent and End of Civil Government”,<sup>194</sup> also emphasised that humans had natural rights in regard to life, liberty, and property. As Fedorova (2001) notes, according to Locke, there should be a separation of powers for fair ruling, and fair ruling means governing of law rather than human beings.<sup>195</sup> At the same time, the distinction between Hobbes’ and Locke’s views, which perhaps at first sight is not really that clear, actually is very important. The “theoretical position of Locke concerning the restriction of the government and preservation for the individual of a certain share of his natural freedom has designated a watershed between two traditions in political philosophy: on the one hand, a political absolutism and even totalitarianism, whereby each person belongs entirely to the state, which completely absorbs his freedom and penetrates all of his public being; and on the other – liberalism, a political concept that means transfer by the person of only a part of his existence.”<sup>196</sup> Therefore traditionally John Locke is considered the forerunner of political liberalism.

The Enlightenment made a large contribution to the development of the secular nature of political culture in Europe, whilst its thinkers, such as Voltaire, Montesquieu and Rousseau, who based their thoughts on that of Thomas Hobbes and John Locke, put forward the slogan of freedom, equality and fraternity. In the Enlightenment period, the understanding of the social problem of injustice became acute, in regard to the social stratum and inequality. Among the critiques of the feudal society, Rousseau<sup>197</sup> not only criticised injustice but also investigated the problem of its origin. In his opinion, it stemmed from inequality caused by private property and its

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<sup>194</sup> Locke, J., (1690). Two Treatises of Government. In the Former, The False Principles and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown: The Latter, Is an Essay Concerning the Original, Extent, and End, of Civil Government.

<sup>195</sup> Fedorova, M., (2001). Classical Political Philosophy. Moscow. Ves Mir Publishers, p: 134.

<sup>196</sup> *Ibid.* p: 26.

<sup>197</sup> *Supra* note 69, at p: 152.

accumulation, and therefore it was the source of all social troubles. Injustice caused by private property is strengthened by the state and intensified with the evolution of power, while rulers turn from servants of the society into despots violating the laws.<sup>198</sup> According to Strauss, Rousseau manifested the gap between natural law, political order and political justice.<sup>199</sup> The very same author, as Kapustin puts it, placed independence as “the last ontological reality, whilst associating it with freedom.”<sup>200</sup>

Kant represented justice as follows: imperative, duty, moral norm, and request. He discovered moral laws based on material relations and interests, the essence of which was in justifying the freedom of an individual. However this freedom should not ruin the political order. According to Kanarsh (2011), Kant was trying to “join the order with freedom and respect for the moral human dignity”.<sup>201</sup> He believed that no scientist or lawyer, acting in real relations, could answer the question of whether the demands of the law are always fair. The criteria according to which one can recognise something as being fair and unfair remain unsettled, if according to Kant, “one does not abandon empirical principles for a while, and does not search for a source of judgments in Pure Reason only...”<sup>202</sup> Kant’s concept of justice, according to Kanarsh (2011), shows the depth of changes as well as political order, which, as compared to the Antiquity, “transformed from an ethical-political into political-legal one, whereas well-being as a fundamental value was replaced by the law”.<sup>203</sup> This idea partially intersects with this Hegel’s interpretation of justice as a Constitution, where the absolute idea means comprehending oneself. His theory derives from the

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<sup>198</sup> Rousseau, J., (1907). Discourse on Inequality. St. Petersburg. Typolithography A. E. Vineke, p: 65-86.

<sup>199</sup> *Supra* note 70, at pp: 76–77.

<sup>200</sup> *Supra* note 71, at p: 13.

<sup>201</sup> *Supra* note 79, at p: 45.

<sup>202</sup> *Supra* note 78, at p: 195.

<sup>203</sup> *Supra* note 79, at p: 50.

philosophy of law. Hegel thought that justice was something magnificent in society and such laws were required that would “lead to flourishing of the government”.<sup>204</sup>

However, in the process of the evolution of society, in the transition of social relations from feudalism to capitalism, it was determined that the current social order was not able to solve social problems and provide freedom, equality and fraternity. Therefore, continuing development in opposition to the ideas of the Utopian Socialists, such as Tommaso Campanella, Étienne Cabet, Thomas More, Charles Fourier, Henri de Saint-Simon, and Robert Owen,<sup>205</sup> another universal or even revolutionary idea in regard to fair global rearrangement was put forward, based on social ownership of the “means of production”<sup>206</sup> as an embodiment of universal justice that was a widely known Marxist theory.<sup>207</sup> In Marxism the problem of justice was connected to the justice of social relations for certain historical circumstances of the society. Fair social relations, as Friedrich Engels put it, exist when human life corresponds to the society and unfair relations are those that outlive their usefulness. “The increasing inequality of distribution appears as unjust, only then is appeal made from the facts which have had their day to so-called eternal justice”.<sup>208</sup> Lenin filled the concept of justice with revolutionary content.

According to the Soviet philosophy of Marxism, justice was a measure of action, combining the rights and benefits of an individual, a measure of exactingness used in relation to an individual and society, or a

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<sup>204</sup> *Supra* note 81, at p: 264.

<sup>205</sup> See Utopian Socialism from <https://www.marxists.org/subject/utopian/>

<sup>206</sup> In Marxist theory - the raw materials and means of labour (tools, machines, etc.) employed in the production process

<sup>207</sup> Marxism - the political and economic philosophy of Karl Marx and Friedrich Engels in which the concept of class struggle plays a central role in understanding society's allegedly inevitable development from bourgeois oppression under capitalism to a socialist and ultimately classless society. See <http://www.thefreedictionary.com/Marxist+Theory>

<sup>208</sup> *Supra* note 78, at p: 153.



measure of the lawfulness of political, economic and legal phenomena from the point of view of a certain class and the society as a whole.<sup>209</sup> Justice is considered a reward: both in a material and moral sense.

Thus, justice is a phenomenon that has been investigated by scholars of ethics, philosophy and law, and it is also an object in the following sciences: sociology, economics, social psychology and politics, but none of these pay much attention to the problem of social relations, and therefore this question should be investigated more thoroughly outside of this thesis.

### **2.2.2 Modern theories of social justice**

The ancient Greek philosopher Aristotle laid down the basis of modern theories of justice. He introduced the difference between equalitarian and distributional justice, as well as referring to justice in interpersonal and social relations. Taking into account the affinity of justice and law, it is possible to draw a parallel between the two types of justice and law: the private and the public ones. Equalitarian justice means the distribution of benefits between all members of the society. Distributional justice involves mechanisms of benefit distribution within the framework of social institutions.

The theories of justice in the late XIX-XX centuries, according to Pirogov and Efimov (2008), “reflect the predominance and prosperity of utilitarianism”<sup>210</sup> as the justice of relations between separate individuals. The formula of Sidgwick (2005) is as follows: if the society is arranged correctly and consequently deemed fair, its institutions are arranged to meet the requirements of its individuals.<sup>211</sup> This is a utopian idea, as it is impossible to

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<sup>209</sup> *Ibid.* p: 154.

<sup>210</sup> *Supra* note 83, at p: 5.

<sup>211</sup> *Supra* note 88, at p: 155.

create justice out of individuals because it is a universal attribution related to the whole of society.

In the late XX century, the term “justice” began to be used and strongly associated with the term “social justice”. However, justice is always social and it becomes evident only in social relations. It is due to this conflation that justice cannot be perceived differently, as social justice. Its potential ability can be taken from the natural habitat (e.g. the inhabitants of the tundra are a priori under conditions that are different from the conditions of the Black Earth Belt region), as well as from the social environment – the conditions of existence and activities surrounding people, as Cherepanov (2005) pointed out.<sup>212</sup> However, this remark needs to be clarified, as the potential possibility of regulation and attaining justice in this example does not depend on the environmental conditions: the conditions of the tundra or the Black Earth Belt zone, but rather on the ability of the society and government to take these conditions into account whilst regulating public relations. In any case, justice is an integral part of social relations, which manifests in economics, politics, legislation and law, both with a positive and a negative sign.

Nozick, Rawls and Dworkin believe that the principles of justice might be defined from the point of view of freedom and equality.<sup>213</sup> To prove this theory, they resort to a version of the “contract” or “transaction”. The idea of a contract can be described as a channel via which peculiarities of the market economy, competition, the balance of parties and various procedures linked to making a contract penetrate into ethics. Ethical values represent agreements of a special kind, between participants of market relations. According to Hamlin (1986), liberals insist on the moral

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<sup>212</sup> Cherepanov, V., (2005). Social Justice as a Political Category. Vestnik of Moscow University. Series 12: Political Sciences. Vol.3, p: 36.

<sup>213</sup> Nozick, R., (1974). Anarchy, State and Utopia; Rawls, J., (1991). A Theory of Justice; Dworkin, R., (2004). Taking Rights Seriously.

advantages of social order, where “there is a small, restricted government, similar to a guard, watching the market economy”.<sup>214</sup>

The modern theory of justice of social-democrats, by Nusbaum (1990), reconstructs the ideas of social liberalism – the responsibility of the government to provide welfare to the community and recognise human rights.<sup>215</sup> Liberals, according to Sen, require the correction of inequalities in the distribution of wealth and power, whilst social-democrats try “to show” that they want to eliminate the reasons for poverty and inequality.<sup>216</sup> Meanwhile, Kanarsh (2007) reveals that in a modern context, one cannot talk about the practical discrepancies between liberalism and social-democracy; rather they talk about “logical (social-philosophical ones)”.<sup>217</sup>

As Mignolo (2002) believes, the Western concepts of the late XX century are aimed at the reconciliation of the interests of conflicting parties who are at extreme social poles, to meet the claims of their rivals, rather than at solving the problem of an unfair society. Moreover, the aggregate integrity of justice requirements is based on values that allow different arrangements of life order: cultural and local peculiarities, where the interests of the society lie at its centre, rather than the interests of an individual; and where we also deal with alternative models of mankind’s evolution.<sup>218</sup>

Meanwhile, in Russia, the philosophical and theoretical issues of justice underwent significant changes in the post-Soviet period. They primarily defined justice as being related to processes of formation of a

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<sup>214</sup> Hamlin, A.P., (1986). *Ethics, Economics and the State*. Brighton, p: 80.

<sup>215</sup> *Supra* note 83, at pp: 203-252.

<sup>216</sup> *Supra* note 95, at p: 71.

<sup>217</sup> *Supra* note 84.

<sup>218</sup> Mignolo, W. D., (2002). *The Zapatistas’ Theoretical Revolution : Its Historical, Ethical, and Political Consequences*. Review. A Journal of the Fernand Braudel Center, Vol. XXV. No. 3, pp: 245–275.

social government and differentiated it from the Western variant. At present, there exist different points of view in regard to the problem of justice and its solution. A number of academics have researched “justice” as a problem of global dialogue between civilisations and cultures.<sup>219</sup> They believe that it is possible to solve these problems via dialogue, understanding and interaction between cultures, under the condition of agreeing upon certain values, as well as through mutual respect and justice. In this context, Aitova (2011) focuses on the recognition of heterogeneous social and historical types of civilisation development.<sup>220</sup> Among the contemporary Russian theorists, Prokofiev (2006) advocates “a complex theory” of intercultural justice, where a specific feature of Russian science and philosophy is reflected in a desire to create new models and theories as well as a deep comprehension and integration of existing theories and to create a special synthesis of their bases, which is possible only with the Russian background.<sup>221</sup> The approaches in regard to the theory of intercultural justice utilise quite a limited system of argumentation and do not “see” the values suggested by other approaches.<sup>222</sup> Therefore, other ethical reasons are ignored since, according to Kanarsh (2011), these reasons have a non-instrumental value. However, the values need to be taken into account whilst formulating theoretical statements and working out a practical policy.<sup>223</sup>

In Russia, there is much ongoing discussion regarding the values of market society and the liberalisation of the political system among philosophers, politicians, psychologists, economists, and specialists on ethics; justice is one of the topics of these discussions as well as the outcomes of such social relations. According to Burno (2008), one cannot

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<sup>219</sup> *Supra* note 85.

<sup>220</sup> *Supra* note 86.

<sup>221</sup> Prokofyev, A.V., (2006). Justice and Responsibility: Social-Ethical Problems in Moral Philosophy. Publishing house of Tula State Pedagogical University named after L.N.Tolstoy, pp: 223–226.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Supra* note 79, at p: 96.

but take into the account the fact that Russian people, unlike Western people, are not able to live according to precise rules due to their natural emotional features; they prefer personal freedom to socially arranged freedom.<sup>224</sup> Mass media take a prevalent role in these discussions, and therefore they have a low educational value and predominantly include propaganda and take an ideological stance. Kanarsh (2008) points out that in spite of the fact that not all social studies ignore this issue, in Russian social science there is still no theoretical discourse on justice.<sup>225</sup>

Indeed, sometimes justice as aka honesty. However, they become related to the idea of tribute: the phenomenon of justice can be defined only if we consider it as honesty, together with the idea of duty. Justice, like honesty, implies mutual moral obligations for the participants of social actions. The parties will consider it fair if they participate in something and do not feel they are being deceived; if the benefits received during this interaction correspond to their understanding of tribute and if all of the accepted rules are observed. The idea of duty is defined by shared values, relevant worldviews and social standards. Thus, the idea of justice contains a correlation to tribute, i.e. a commitment to certain values and a certain world view, and this makes the existence of a universal concept of justice highly improbable. Accordingly, the main alternatives are the following: libertarianism, utilitarianism, communitarianism, traditionalism, and meritocracy ideas, along with Rawls's liberalism and egalitarianism. The differences between these theories are defined to a larger extent by the choice of certain value priorities. The followers of utilitarianism consider benefit to be the main value, and they consider social institutions to be fair if they provide the maximum of such benefits and "the greatest happiness of

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<sup>224</sup> *Supra* note 97.

<sup>225</sup> *Supra* note 92, at p: 160.

the greatest number” – this is the idea of Jeremy Bentham,<sup>226</sup> and it is well combined with the modern concept of society, regarding consumption and well-being. These various modern views may be summarised as follows:<sup>227</sup>

1. Liberals take into account the heritage of Locke and Kant and consider the freedom of individuals to be the main value of law;
2. Egalitarians consider equality between people to be the basis, resting upon the heritage of Rousseau; and
3. The followers of communitarianism consider social benefit to be the priority.

The variety of values and priorities is understandable, as the issue of justice arises during a conflict of interests in the distribution of benefits, where all of the participants are concerned, as they are taking part in this interaction. Justice is the property of practice, which suggests competing interests and claims. The fact that for the benefit of achieving certain goals, individuals are mutually involved, gives an impetus for the question of justice to arise. In the alliance of saints, as Argunova (2005) puts it, if such a society existed, there would hardly be any disputes over justice, as everyone would work for the benefit of one goal only, to the glory of God, as defined by the religion, and pursuing this goal would determine the problem of rights. The question of justice would not arise, unless several parties appeared.<sup>228</sup> Speaking about justice implies imposing one’s own demands on others, whereas in fact a balance needs to be found between them all. The existence of value priorities, equality of rights, and the balance of social benefits, allows for finding a necessary balance in any conflict situation. During the last centuries, the most acute arguments were centred on making

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<sup>226</sup> Troyer, J., (Ed.), (2003). *The Classical Utilitarians: Bentham and Mill*. Hackett Publishing, p: xi.

<sup>227</sup> *Supra* note 92, at p: 162.

<sup>228</sup> *Supra* note 95, at p: 3.

a choice between alternative values: the priority of individuals' rights and social benefits.

This contraposition denotes a division between the followers of two philosophical traditions: the deontological tradition and teleological one. The division of these traditions is basic in philosophy. The teleological<sup>229</sup> tradition states that the main task is finding benefit and it originates in Aristotle's philosophy. The deontological<sup>230</sup> tradition appeared from Anglo-Saxon philosophy in the 1970s, thanks to Rawls' ideas. The source of its inspiration was Kant's philosophy, which states that the priority of duty and law underlie the basics of morals. The deontological tradition is based upon achieving a goal, unlike teleology, which emphasises this goal. According to Rawls's liberal egalitarianism, there should be an impartial procedure, a fair arrangement of the society that is capable of defining a fair balance between the parties, irrespective of the subjective ideas of the participants regarding benefit. Having defined the balance of the rights and responsibilities of the parties, it should not be sacrificed for the sake of social benefit, and it should not be formulated abstractly, in isolation from the issue of rights and responsibilities. Thus, the teleological tradition emphasises the priority of benefit and the deontological one emphasises the priority of duty and law.

Modern theories of justice are devoted to the study of distributional justice – aiming for the fair distribution of benefits in the society. After the book “A Theory of Justice” published by Rawls in 1971, the attention of modern philosophers shifted to a great extent towards the topic of justice, and due to this fact several trends emerged, whereby the issue of justice was considered to be based upon value priorities. The appearance of Rawls's theory became a landmark in the development of global philosophical thought. The universal nature of the theory of justice suggested by Rawls

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<sup>229</sup> from the Greek teleos (purpose) and logos (study)

<sup>230</sup> from the Greek deon (duty) and logos (study)

was determined by the liberal and egalitarian values of the author himself, as well as his epoch. Social institutions will be considered fair if they are able to provide equality in regard to the distribution of benefits between members of the society, whereby these benefits are produced as a result of people's social interactions. According to Rawls (1999), social justice is the main virtue of social institutions.<sup>231</sup> One would have difficulty quarrelling with this statement, if we were to take honesty as the basis of the definition of justice. The parallel drawn by the author of "A Theory of justice" between the concepts of justice and honesty is timely to understand Rawls's liberal-egalitarian theory of justice and other justice theories as well, for example, theories of utilitarianism and communitarianism.

According to Kanarsh (2011), the theory of justice suggested by Rawls is the answer to the dominating utilitarianism, being an alternative which is capable of challenging the utilitarianism point of view on the society arrangement, as well as social-economic institutions and practices. In his opinion, the policy of creating a welfare state should be replaced by the policy of benefit distribution, based upon equality of rights for all members in the society. Rawls states that the equality of all individuals, the equality of their rights, and the absence of grounds for a hierarchy in regard to the distribution of benefits between people are the basic grounds for his theory of justice.<sup>232</sup>

In order for this idea to be understandable, the society should be a self-sufficient assembly of people, who are aware of the binding norms of behaviour in their relations and who follow these rules. Let us imagine that these rules establish a cooperation system, aimed at providing benefits for those who follow them. Although any society is a social enterprise, it is created on a mutual basis, and there are coincidences or conflicts of interests

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<sup>231</sup> *Supra* note 61, at p: 48

<sup>232</sup> *Supra* note 79, at p: 102.



that are peculiar to it. The coincidence of interests would be the fact that social cooperation is possible for everyone, for the better. The conflict of interests would be the fact that people are not indifferent to how these benefits received from cooperation are distributed, and judging by their own goals, they would like to receive more and lessen the portion they need to share with the others. A lot of principles are required in order to make a choice among the social arrangements whilst defining the distribution of benefits, in order to come to an agreement regarding such a distribution. These principles are those of social justice, as Prokofiev states, and they provide observance of rights and obligations by all institutions in the society. The same principles define the acceptable distribution of the benefits and burdens of any cooperation.<sup>233</sup>

Rawls's theory, as Teylor (1997) considers, is a variant of the social contract theory, where, within the framework of searching for universal principles of justice, he suggests imagining how several individuals conclude an agreement, regarding some principles of the society's arrangement, which is organised on fair grounds.<sup>234</sup>

As a reaction, new theories of justice emerged. The publication of Rawls's book marked an influential growth in modern philosophy, in regard to liberalism and egalitarianism. In spite of the abstractness and impartiality of his theoretical structure, understanding the theory of justice is impossible without cognising the basic concepts of liberalism and egalitarianism. Understanding is impossible in isolation from the world, based on the individual as an autonomous and free unit, representing the absolute value; it is impossible without the social interaction of individuals on an agreement basis, and based on the equality of parties protecting their interests.

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<sup>233</sup> *Supra* note 96, at pp: 41-64.

<sup>234</sup> *Supra* note 89, at p: 226.

The American philosopher MacIntyre (2000) suggests another theory of justice, where the common goods rather than the rights and freedoms of each individual become the main value. According to his theory, the distribution of benefits in the society must be defined by the merits of people and therefore cannot be equal.<sup>235</sup> MacIntyre's (2000) theory seems to be deeply conservative and demands a return to a morality defined by shared cultural norms as the supervisory ideal of human life. The question naturally arises, which theory is preferable? The answer to the question of what is considered to be fair is very similar, despite the differences between the two theories. Social institutions are considered to be fair if they direct interactions between members of the society in accordance with value-conscious reference points. Justice or the idea of the fair distribution of benefits in the society might be considered the main virtue of social institutions as it guarantees their stability and legitimacy. Thus, the dependence of the idea of justice on a certain worldview is the basis of numerous theories of justice reflecting different values. Thus we should assess these theories of justice from the point of value preferences rather than from the point of truth.

Understanding justice is not unconditional for all people in all times; it is always specific in terms of history and culture. It cannot convey one meaning only, as it depends on changed people and circumstances, as well as their existence and evolution of the society. We can only talk about similar trends in representing justice in societies of different types or epochs. However, at this particular moment in history, every sociocultural entity is utilising its own ideas. They reflect all of the changes that are occurring in the society as an acid test, and the ideas of social justice are renewed

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<sup>235</sup> *Supra* note 90, at p: 119.

together with changes in the society, as MacIntyre (2000) states.<sup>236</sup> Justice also changes its content, together with changes in nature and social relations; justice is a valuable ground to solve class contradictions regarding the distribution of social benefits in a particular state.

At the same time, according to Sen (2004), justice is attained in each cultural-historical community according to ideas that were formed previously; the principles of justice are not abstract formulae received by deductive thinking from a hypothetical model of agreement; rather, they are ethical statements, having their origins and grounds in a certain understanding of the total principles of the community's life.<sup>237</sup> Justice is conditioned by many factors including historical, sociocultural, political, economic factors and it is not denied by moral statues, characterising different stages in the history, in various sociocultural spaces, and reflecting relations between people and their attitudes towards the studied phenomenon.

An analysis of modern representations of social justice requires an explanation and justification of the usage of this term. It should be noted that there is no such thing as extra-social justice. A human being is a social entity; therefore justice – as a legal, political, and moral concept - is social in nature, as it is conditioned by social life, reflects it and plays an ultimate role in social relations.

If authors try to analyse justice without the adjective 'social', then in essence they are disclosing the content of social justice. In reality, situations might arise when people's deeds are evaluated as fair and unfair. In this respect, the term "social justice" is inappropriate. Kymlicka (1997) points out that social justice is in question when relations acquire a social character

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<sup>236</sup> *Supra* note 90, at p: 339.

<sup>237</sup> Sen, A., (2004). *Development as Freedom*. Moscow. Novoye Izdatelstvo, p: 71.

and significance, when justice regulates the relations of groups, collectives, an individual and the society.<sup>238</sup> In this case, justice becomes a generally valid category applied only to the phenomena of social life.

According to Kymlicka (1997), the difference between these two notions is that “justice” is a category of moral and legal awareness, and it is orientated on the evaluation of social institutions, the activities of subjects in social life, as well as their relation to norms of morals and law.<sup>239</sup> The evaluation of social norms and social system is done with the help of the category “social justice”. This evaluation is done by comparing the reality to the social ideal. The social ideal refers to the form of understanding the prospects for mankind’s existence, and the construction of an optimal model of the social order. That is why the problem of justice as a social category became subject to theoretical studies in the epoch of social storms, when a search for a universal basis was under way, as it would be capable of consolidating the splitting society. Monographs and articles are devoted to social justice but there is no universal approach to the interpretation of this social phenomenon. Among the various interpretations of social justice in modern Western philosophy, it is expedient to mention those that are notable for their desire to overcome the gap between abstract theories of justice and social practice and which consider justice as means of alleviation of the existing injustice in the society. The basis of such an approach to the understanding of justice includes deep research into Aristotle’s heritage and also attempts to implement a synthesis of egalitarian and distributional forms of justice known as “Aristotle’s turn”. According to Dworkin (1998), its goal is rethinking the contents and functions of the category “social justice”.<sup>240</sup>

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<sup>238</sup> Kymlicka, W., (1997). *Liberal Equality*. Modern liberalism: Rawls, Berlin, Dworkin, Kymlicka, Sandwell, Teylor, Waltzer. Moscow, p: 183.

<sup>239</sup> *Ibid.* p: 122.

<sup>240</sup> Dworkin, R., (1998). *What Liberalism Isn’t*. Modern liberalism: Rawls, Berlin, Dworkin, Kymlicka, Sandwell, Teylor, Waltzer. Moscow, p: 58.

Thus, the goal is to try and research the liberalism crisis in depth, in the Western countries in late XX-early XXI centuries, to justify the priority of collective values over individual ones, which prevailed in the Western culture for centuries. Philosophers of communitarianism, Teylor, MacIntyre and Nassbaum saw it as a threat that liberals replaced common welfare with law as the basis of social existence. According to Sen (2004), they understood the society as “a free agency of people”, where their own interests would be the only significant ones”.<sup>241</sup> Representatives of communitarianism believe that any personality has a social nature. They are convinced that common wealth has fundamental importance as opposed to individual benefit, and that is why the task of the government is to support and protect the social practice, which will provide the path to the perfection of the human beings in the society. They are convinced that collective values such as retaining social ties, stability and safety have greater priority than liberal partiality in respect to individual freedom and the autonomy of the personality.

Kanarsh (2005) writes that Aristotle’s statement on the inclination of the human being to attain common welfare serves as a precondition to creating a theory of social justice.<sup>242</sup> Social justice, according to MacIntyre (2000), is one of the important moral features of a citizen, which allows for supporting different forms of social activities to gain common welfare: what is a benefit for the polis will equally be beneficial for the human being.<sup>243</sup>

MacIntyre considers the principle of social merits as an objective criterion of social justice. The absence of this criterion, in his opinion, makes the problem of social justice unresolvable within the framework of modern

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<sup>241</sup> *Supra* note 237, at p: 148.

<sup>242</sup> Kanarsh, G.Y., (2005). Justice as moral-political category. Dissertation for a doctoral degree in Political Science. Moscow, p: 101.

<sup>243</sup> *Supra* note 90, at p: 171.

liberal discourse, and causes liberalism theorists to search for a compromise between ethical demands to observe rights and meeting other requirements, quite unsuccessfully. The position of MacIntyre in the solution of this problem, according to Kanarsh (2005), totally excludes autonomy, with the view of subordinating individuals' actions to the requirements of common welfare. However, the "radicalism and absolutism of MacIntyre is not legal but ethical".<sup>244</sup>

The idea of social justice in the communitarianism and social-democratic theories of Nussbaum and Sen represents a moderate variant, in which one can see the influence of Marxist ideas, although there is a certain similarity to the analogous statements expressed by Aristotle.<sup>245</sup> The key statement might be that of Sen (2004), that the ability of a person in regard to activity must be opposed to the passive-consumption position of an individual in the modern "state of welfare". In the future, every person is an active ruler of his fate and not a passive consumer of social benefits.<sup>246</sup> "The state and society", as Habermas (1995) puts it, "gains full control of human abilities". This role supports human activity rather than the distribution of benefits.<sup>247</sup>

As opposed to liberals, social-democrats ascertain equality in all fields of human activity. From this point of view, the struggle against poverty and inequality is also important, as a guarantee of the individual freedoms. Rawls (1999) considers that liberals, together with social-democrats, place a

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<sup>244</sup> *Supra* note 242, at p: 97.

<sup>245</sup> *Supra* note 182, at p: 17.

<sup>246</sup> *Supra* note 237, at p: 71.

<sup>247</sup> Habermas, J., (1995). Reconciliation Through the Public use of Reason: Remarks on John Rawls's Political Liberalism. *The Journal of Philosophy*. Vol. 92, No. 3, p: 109.

high independent value on political and civil rights, which cannot be sacrificed in favour of economic or political ambitions.<sup>248</sup>

In spite of widespread social-democratic views, there are a lot of adherents to the liberal interpretation of social justice in Western modern social philosophy, with social contrast being the buttress of an argument there. Social justice is understood by modern liberals as before, as a system of interrelations between social subjects, pledging to observe the ‘principles of justice’ as exposed by an organised self-analysis. The basis for these interrelations is the principle of an equivalent exchange, which is derived from the law of supply and demand, acting in the society with private property and market mechanisms. Such an approach serves to reduce the tension of standoff and reflects the paradigm of the ruling classes regarding labour and capital, at the expense of the “harmony of social interests” as the basis for social justice.

The classical example of this position represents the theory of justice offered by the most prominent liberal philosopher Rawls (which first appeared in 1971). The publication of “A Theory of Justice” provoked a lot of discussion. The author was praised, and compared to Plato. Habermas (1995) considers that Rawls renewed Kant’s “... theoretical approach with particular reference to the issue of the organization of a just society”.<sup>249</sup> It is known that comparisons do not often justify criticism; nevertheless, Rawls’s ideas deserve attention as they were highly developed and formulated. Today these ideas attract a lot of people from Russia, who sincerely believe in the potential of liberal-democratic values, as well as in the creation of the “free market economy in Russia”.<sup>250</sup>

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<sup>248</sup> *Supra* note 61, at p: 28.

<sup>249</sup> *Supra* note 247, at p: 109.

<sup>250</sup> See <http://www.investopedia.com/terms/f/freemarket.asp>

Rawls's theory, according to one Russian researcher of his work, Alexeyeva (1994), is an alternative to the neoliberal theories of Hayek.<sup>251</sup> It appeared when liberal institutions were undergoing critical attacks on the part of "right-wing" followers of the US president Nixon, as well as on the part of the "new left". The American society of the 1960s was characterised by economic growth, an improvement in people's living standards due to the scientific and technical revolution and a revolution in productive forces. It was clear that welfare was not available to all. Social contradictions and conflicts grew. There was a struggle for equality in regard to gender, race, payment, civic rights, and equal access to jobs and education. The epoch of mass movements started, bringing anti-war ideas, black people and youth protests, the ideology of "big refusal", rebellions and counterculture.

Rawls understood freedom as equality of participation in rights and sources of rights to derive a share of the common benefits and resources. Injustice "is simply inequalities that are not to the benefit of all".<sup>252</sup> The market, according to Rawls, as Alexeyeva (1994) points out, is not a mechanism that automatically leads to fair results.<sup>253</sup>

Bringing back the idea of Kant's social contract, Rawls (1999) considered justice the right of everyone, irrespective of their desire and interests, adjusted according to the ideal of justice.<sup>254</sup> The subject of the contract, according to Rawls (1999), was the moral principle of justice: "the first requires equality in the assignment of basic rights and duties, while the

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<sup>251</sup> F.A. Hayek (1899-1992), recipient of the Medal of Freedom in 1991 and co-winner of the Nobel Memorial Prize in Economics in 1974. His program was presented in "The constitution of liberty" (1960) - to eliminate ruling, to privatize, to decrease the amount of programs to fight unemployment, to eliminate subsidies to housing and the control of rents, to reduce the expenditures in social security and finally to limit trade-union power. The State cannot ensure redistribution, mainly to serve a criteria of "social justice". See Boneau, D., (2004). Friedrich von Hayek, the father of neo-liberalism.

<sup>252</sup> *Supra* note 61, at p: 54.

<sup>253</sup> Alexeyeva, T., (1994). John Rawls and his Theory of Justice. Problems of Philosophy. Moscow. Vol.10, p: 48.

<sup>254</sup> Also see Locke and Rousseau.



second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society”.<sup>255</sup> These are the principles which, according to Rawls (1999), “free and rational persons concerned to further their own interests would accept in an initial position of equality”.<sup>256</sup> “It may be expedient but it is not just that some should have less in order that others may prosper. But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved.”<sup>257</sup> These principles constitute fundamental agreements on uniting citizens. These are fair statements regulating the rest of agreements, as well as emerging types of social cooperation and ruling. As Alexeyeva (1994) writes, Rawls called such principles “justice as fairness”.<sup>258</sup>

According to Rawls (1995), the “... society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles.”<sup>259</sup> This description unites these principles, comprising the methodological discovery of Rawls and his contribution to liberal traditions. One can talk about the reduction of negative consequences rather than not eliminating inequality altogether. In order to come to such an agreement, people should perceive themselves as

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<sup>255</sup> *Supra* note 61, at p: 13.

<sup>256</sup> *Ibid.* p: 10.

<sup>257</sup> *Ibid.* p: 13.

<sup>258</sup> *Supra* note 253, at p: 134.

<sup>259</sup> *Supra* note 61, at p: 4.

free and equal. Rawls understood freedom as equality in exercising rights, as well as receiving a share in the social welfare and resources.<sup>260</sup>

There are two interpretations in the social-democratic understanding of freedom – “positive” and “negative” freedom:<sup>261</sup>

- Freedom is the situation when a person is striving for activity, together with other people, acting for the sake of common welfare,
- Aspiration for autonomous existence.

Thus, the two opposing opinions of the authors of the social-democratic orientation correspond to two contradictory concepts of justice:

- Ethical representation requires the support of human beings, regarding the development of their abilities, which imposes moral obligations on other people and the state.
- Legal representation requires non-interference in a person’s life.

These statements are specified in a number of recommendations. The activity of the government in implementing the principles of social justice, in order to achieve “common welfare”, should include the creation of conditions for social choice, political activity, and the improvement of the quality of life for a particular person.

Freedom and equality provide equivalent rights to all participants of the agreement but each of them takes into account their own interests. These principles, according to Rawls, are a specific case of the general theory of justice, which underlines the fact that “[A]ll social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these

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<sup>260</sup> *Supra* note 61, at p: 62.

<sup>261</sup> MacCallum, G., (1967). Negative and Positive Freedom. *The Philosophical Review*, Vol. 76, No. 3, pp: 312-334.

values is to everyone's advantage".<sup>262</sup> However, whilst assessing Rawls's theory, we can agree with Davidovich (1989) that it has a social orientation – like a variety of virtuous Utopia, which want to convince us that it is possible to construct the principles of justice theoretically and, announcing them as norms of behaviour, all social collisions would be solved immediately.<sup>263</sup>

The presence of inequality as such is not considered to be injustice; it certainly manifests itself when the idea of justice is defied in terms of honesty. The grounds for justice, in Rawls's opinion, exist in an American type society, which is considered healthy, and has a sound arrangement without deviation from the market economy, as well as introducing methods of social regulation whilst keeping private property on productive means. Such a society is capable of working out a system of legal standards corresponding to the principles of justice. Agendas suggested by Rawls deserve attention, as they include ruling economic activity and taxation, maintaining public order and security, and efficient measures for public health and safety, as well as other factors.<sup>264</sup>

The weakness of his theory is its isolation from a specific historical reality, which significantly influences distribution in the society; it also has an impact on the idea of justice. Rawls does not define the level of social priority for the common benefit. Rawls's theory of justice has a conservative-protective character, which is seen in his judgements on relations between the market economy and justice. As Nozick (1994) puts it, "The market is not a mechanism automatically leading to the results established by the second principle of justice".<sup>265</sup> It should be noted that this

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<sup>262</sup> *Supra* note 61, at p: 54.

<sup>263</sup> Davidovich, V., (1989). Social Justice: Ideal and Principle of Activity. Moscow, p: 71.

<sup>264</sup> *Supra* note 61, at pp: 243-247.

<sup>265</sup> *Supra* note 72, at p: 140.

warning was very timely for 1992 (during that year the monograph of Alexeyeva on Rawls's theory was first published), when the liberal-bourgeois economic reforms, called "shock therapy", began in Russia. One of the results of this was hyperinflation. Just over four years, the value of national currency depreciated by 10,000 times resulting in the dramatic impoverishment of the bulk of the population, especially employees of budget institutions and pensioners, and the zeroing of long-term deposits in the State Savings Bank. Another result was the concentration of property in the hands of big capital in a non-market way and disillusionment among the broad masses in the liberal reforms, accompanied by sharp social polarisation (from "oligarchs" to homeless people). The end of this quest was the default of the Russian Federation in August 1998 - the financial crisis with the avowal of the state's insolvency for debts. The default was accompanied by a new round of inflation and the collapse of most of Russia's largest commercial banks.<sup>266</sup>

In Rawls's theory of justice, there is a desire to get rid of anything that is connected with class and social group interests – the so-called bias. His understanding of justice is a certain abstract entity; understandable and affordable to all people. He concludes that the idea of justice is a moral entity without values, or any ethical or aesthetic approaches. He formulates the representation of morals as a cognitive, logical constant that is approved by everybody, by any power; this is something similar to Kant's categorical imperative for the poor. He represents abstract justice, claiming his idea of justice to be universal. Ultimately, justice formulated by him is the result of pure individualism.

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<sup>266</sup> See Simonyan, R., (2010). Without Anger and Predilection. Economic Reforms of the 1990s and their Consequences for Russia. Moscow, Economics; and Reddaway, P., and Glinski, D., (2001). The Tragedy of Russia's Reforms: Market Bolshevism against Democracy. United States Institute of Peace Press.

The active discussion about Rawls's theory continued until the early 1990s. His theory was severely criticised from the "right", on the part of the conservatives and from the "left", on the part of socialists and communitarianism. This criticism made the philosopher review his views on the nature of political justice, and from the 1980s onwards he interpreted his principles of justice as an expression of political culture in liberal-democratic societies – disclaiming the basics of his initial universal claims of "the theory of justice". Kozlov (2010) points out that the philosopher expressed his views in such a way that he did not intend to connect his system rigidly to any political regime. He was also thinking that it was incompatible with various regimes, even the social ones.<sup>267</sup> Rawls's theory of justice is more correctly categorised as "liberal socialism".

In general, looking at Rawls's theory one can agree with Kozlov (2010) that it has a social orientation; it "is a variety of virtuous utopias that want to convince us that it is possible to construct the principles of justice theoretically and that all social collisions will be solved immediately by announcing them as norms of behaviour".<sup>268</sup> It is also appropriate to say that the events in modern Russia testify convincingly to the fact that the reformed Russian society is an example of violating social justice, according to liberal merits.

One opponent of Rawls was his colleague from Harvard University, Professor Robert Nozick, who represented the category of liberals called libertarians. They took an uncompromising position on welfare, believing that the goals of welfare were not compatible with individual freedom. Libertarians are adherents to the theory of a "minimal state", according to which the government should protect market relations but should not be restricted to anything, and there should not be any interference in the

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<sup>267</sup> Kozlov M.I., (2010). Social Justice in the Context of Russian Tradition. Arkhangelsk, KIRA., p: 201.

<sup>268</sup> *Ibid.* p: 168.

economy. “What is minimal state – no state with broad functions and it can no longer be justified if it violates the rights of the people”, as states by Kozlov (2010).<sup>269</sup>

Nozick brings the essence of social justice to observing rights for certain property, which is perceived by him to be part of personality and cannot be transformed into means of solving social problems. In his interpretation, social justice is not connected with the function of redistribution, as it relies upon the principles of natural selection and free competition. Every person has the moral right to act on his or her own, as a slave owner has the right to dispose of their slaves. The philosopher does not appeal to avoiding mutual assistance but condemns any forced help, which in his eyes includes the redistribution of taxation. In his opinion, no one has the right to demand the services of others without their preliminary consent. The state must refrain from huge taxation in order to finance the services of the poor because such taxation equates to violating the rights of the rich. People should live in a way they consider sensible. A person's possessions are fair if they belong to them due to the principles of fair acquisition and transfer, as well as the principle of overcoming injustice. If a person possesses everything that belongs to him by justice, then the total distribution is also fair.

From the philosophical point of view, there are many similarities between the theories of justice of Rawls and Nozick. They are both supporters of the firm rights of the individual and opponents of utilitarianism on the grounds that it erases the differences between individuals. But at the same time, there are significant differences. From a practical point of view, the concepts of Rawls and Nozick are directly opposed: “[A]lthough their theories of justice are quite complex, the key difference between them is that

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<sup>269</sup> *Ibid.* p: 149.

Rawls prefers ‘just’ (i.e. equal) outcomes, while Nozick prefers ‘just’ (i.e. fair) procedures and processes.”<sup>270</sup> Rawls was an egalitarian liberal and supporter of the welfare state. Nozick was a libertarian (“anarcho-capitalist”) and a conservative. Rawls built his theory on the basis of Kant’s deontology; Nozick built his on Locke’s theory of natural rights. Nozick’s theory of justice uses an exchange paradigm of justice; Rawls’s theory adheres to distributive justice. Thus, it can be argued that just as Rawls’s theory of justice was conceived as a counterweight to utilitarianism, so Nozick’s theory of justice is considered as a counterbalance to Rawls’s liberalism.<sup>271</sup>

## **2.3 The problems of social justice in the monopolar world: current state and prospects**

### **2.3.1 Aggravation of social justice problems as a result of the global crisis**

Social justice becomes a condition for the existence of mankind, as it is connected to the growth of a climatic and ecological catastrophe, as well as limitations for further development. The future of mankind represents a social maximum and minimum, natural limitations for development, ecological and climatic catastrophe, and social justice – these would be the key words.

Mankind has always been concerned with the problem of the future, but now, under the threat of a global climatic and ecological catastrophe, this has become even more acute. We find ourselves under conditions, where one needs to accept total responsibility in order not to cause a catastrophe of the future incidentally. According to Peccei (1980), designing our future is an important, difficult and creative intention for mankind. It should become a

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<sup>270</sup> Kulikovskiy, A., (2007). Justice and the Bible. Paper presented at Summit Australia conference, January 2007, p: 7.

<sup>271</sup> Kashnikov, B., (2004). Liberal Theories of Justice and Political Practice in Russia. INO-Centre. p: 95.

sort of cultural renaissance; however it might not arrive at all.<sup>272</sup> It is particularly important under modern conditions that the catastrophe is approaching quicker than our consciousness perceives everything happening around.

It is quite obvious that in connection with the natural limitations of development, the period of spontaneous development has nearly come to an end. Everything that does not accord with the laws of the biosphere leads to a global threat, and a risk of a catastrophe for the planet. In relation to this, the global processes of civilisation should come to an agreement with the requirements of the laws of the biosphere and the economic capacity of ecosystems. The preservation of our biosphere should become the common goal of mankind, as the acceptable levels of consumption and pollution are exceeded more than 10 times.

In 1992, at the UN conference in Rio de Janeiro, devoted to the environment and development, it was proclaimed that the model of development aimed at maximum growth and consumption of the planet's resources had run its course. If the model of 'consumer society' continues to be considered acceptable in the world, it will accelerate the approach of a climatic and ecological catastrophe on the planet, Krylova (2009) writes.<sup>273</sup>

In spite of the necessity to change the frame of reference and the consumption style in developed countries, the "resource consumption model" is spreading all over the world, including Russia. The aggravation of these global problems, including a lack of natural energy resources, the increasing threat of a global catastrophe under the conditions of globalisation, intensive development and economic growth has changed the prospects of the new world order. At the present stage of evolution, the

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<sup>272</sup> Peccei A., (1980). *The Human Quality*. Publishing house Progress, Moscow, p: 32.

<sup>273</sup> Krylova, I., (2009). *Social Modernisation and Crisis Processes in Russia*. "Knowledge. Understanding. Skill." Journal. Vol. 4, p: 27.



problems are becoming worse and new resources are required for newly developing countries in Latin America, Asia and the post-communist world. As Fedotov (2009) states, this also aggravates the problem of the depletion of resources – leading to a threat to the whole of mankind. The question not only pertains to the depletion of resources and the sphere of providing them with a view to attaining economic prosperity; it also testifies to the beginning of a new era – “the era of using energy and changes of climate”.<sup>274</sup>

Many experts consider using the experience of non-Western countries, which is dangerous for the world, as these countries aspire to rapid economic growth, which certainly poses a threat and leads to the exhaustion of natural resources and the aggravation of ecological and climatic problems. The German philosopher Höhle (1993) wrote that the catastrophe we are approaching would have happened long ago had all of the inhabitants of the planet consumed as much energy as the inhabitants of the Western countries do, discharging harmful substances into the atmosphere. No-one would argue that Western societies cannot continue to evolve in this way. Otherwise we will find ourselves in the abyss.<sup>275</sup> According to Privalov (2009) and to modern models, there is a possibility of a catastrophe for the whole planet around 2030-2050, due to the depletion of mineral resources, global warming, pollution of the environment and other negative phenomena.<sup>276</sup>

The point is that it is necessary to make changes in the sphere of consumption, and to lifestyles in these countries; without this global stability will not be attainable. The race for economic growth does not lead to victory; on the contrary, it contributes to poverty prevailing over prosperity

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<sup>274</sup> Fedotov, L.N. (2009). Ecology: from the Society of Risk to the Ecological Society. “Knowledge. Understanding. Skill.” Journal. Vol. 64, p: 14.

<sup>275</sup> Höhle, V., (1993). Philosophy of the Ecological Crisis. Moscow. Institute of Philosophy, Russian Academy of Sciences, p: 17.

<sup>276</sup> Privalov, N.G., (2009). On Possible Catastrophe of 2030-2050. Vek Globalisatsii. Vol.1, p: 67.

on a global scale. The contrast between poor and rich countries is becoming more obvious, and it leads to instability and an “explosive risk” under the conditions of globalisation in the modern world.

In the 1970s Sen-Mark (1977) wrote about the necessity of cardinal changes to the orientation of development. He stated that it would be impossible to eliminate the crisis of the environment if we did not change the economic system, that liberalism should give way to humanism, and that the ideal of progress should be for the sake of the human being.<sup>277</sup>

Peccei (1980) urges us to abandon the concept of human needs and their satisfaction only, describing this in his book “Human virtues”. The underlying idea of this is human evolution and the main goal is self-expression and the revelation of abilities and human personality, as well as people’s’ abilities in general.<sup>278</sup> He posed a question about ‘human revolution’, the purpose of which is social equality and justice. Peccei (1980) considered that with the aggravation of global problems and the threat of an ecological crisis, a more equalitarian society is necessary at all levels of human organisation. The creation of an equalitarian society is a prerequisite for the solution of all human problems in separate countries and on the global level. Otherwise, if you look into the future in prospect, there might be no stable peace, security or social development, freedom of personality or quality of life for anyone. In the new epoch, justice becomes *sine qua non* (Latin ‘precondition’) for the existence of the human society”.<sup>279</sup>

Peccei (1980) believed that there was a social minimum as an integral part of a citizen who had just been born, and this minimum included the

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<sup>277</sup> Sen-Mark, F., (1977). Socialisation of Nature. Moscow. Progress, p: 82.

<sup>278</sup> *Supra* note 272, at p: 233.

<sup>279</sup> *Ibid.* p: 217.

human need for accommodation, food, healthcare, information, education, communication, means of travel and other minimum conditions. This social minimum should contribute to the cultural development of a person, from the physiological point of view. The right to a social minimum as the basis for social relations should be exercised in the global society, by all of its members.<sup>280</sup>

Another question is also raised, concerning the social maximum: this is about the upper limits, beyond which consumption and wastefulness should be considered as prejudices and even a criminal deed and should certainly be suppressed. First of all, this applies to the modern societies of consumption, which contribute to the formation of false values and their inculcation on a greater scale. Thus, in the epoch of aggravation of global problems and ecological restrictions, the theory of social justice has a broad interpretation and there is a growing understanding of the necessity for equal distribution among all citizens, groups and countries.

Humans are facing a dilemma. They appear not to be unable to provide even a modest but necessary level of well-being for every human being on the planet; otherwise it might be torn to pieces because of inner tensions, which are beyond our control.<sup>281</sup> Under the conditions of “globalisation in an American style” inequality is rapidly progressing in the XXI century; both economic and social equality, which might become a source of global social disruptions. In 2007, the UK Ministry of Defence published a report on the global trends of development, in which the emergence of a new class was described as one of the threats to the modern society – the ministry described this class as revolutionary, born on the basis of the current middle class. This class is the so-called proletariat of the digital age, formed from the middle class, comprising employees in the

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<sup>280</sup> *Ibid.* p: 218.

<sup>281</sup> *Ibid.* p: 218.

sphere of ‘spiritual’ production: education, science, research and advanced development, mass media and communications, advertising, marketing, show-business, cinematography, information technology, entertainment industry, specialists of processing and analysis of information and others.<sup>282</sup>

Levashov (2008) writes that the absence of the desire on the part of the political elite to work out a well-balanced policy regarding wages led to the appearance of social contradictions between the middle class and other strata of the society. The potential of the middle class correlates to the intellectual potential of the society, the level of which shows maturity and readiness for change in regard to the social-political relations in developed countries.<sup>283</sup> This also refers to the Russian middle class, who are not happy with the level of profit of the rich and their discriminated status. Therefore, the threat of a social explosion exists, both in Western countries undergoing economic and financial crises and in Russia, where this crisis might be described as the crisis of “a social state”.

In connection with these facts, the appeals of the Microsoft founder Bill Gates and investor Warren Buffett, made in June 2010, aimed at rich representatives of the global society, to contribute half of their wealth to charity, can be considered a landmark. In 2006 Bill Gates transferred 99% of his wealth, which is nearly 50 billion dollars, into the Bill & Melinda Gates Foundation, thus appealing to people whose wealth comprises billions of dollars to act in a similar way.<sup>284</sup>

According to Buffett, the profits received by him from his securities in the investment holding Berkshire Hathaway, of which he is the main

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<sup>282</sup> Development, Concepts and Doctrine Centre (DCDC), (2007). Strategic Trends Programme: Future Characters of Conflict. UK Ministry of Defence. Now replaced by DCDC Strategic Trends Programme: Future Operating Environment 2035, published by DCDC in August 2015.

<sup>283</sup> Levashov, V., (2008). Intellectual Potential of the Society: Sociologic Measurement and Forecasting. Sociological Studies. Vol. 12, pp: 26-36.

<sup>284</sup> <http://uk.reuters.com/article/us-philanthropy-buffett-gates-idUSTRE65F5CC20100616>

shareholder, will be given to charity in the name of social justice.<sup>285</sup> The billionaires on the planet responded to this appeal. However, in Russia, this event remained unnoticed, although this country holds first place in the world in regard to the number of dollar billionaires; this number doubled during 2009.<sup>286</sup> The authorities did not express their concern regarding this fact; on the contrary, the mass media announced that it was an indicator that Russia was overcoming its economic and financial crisis.

The current discussions about the future focus much attention on global capitalism, neo-capitalism as a new sociality of the XXI century, as Fedotova (2008) remarks.<sup>287</sup> Shevchenko (2010) writes that other opinions exist, both among Western and Russian authors. It is notable that the economic and financial crisis that broke out in the West caused a wave of criticism of capitalism. Sarkozy criticised modern capitalism while speaking at the World Economic Forum in Davos, pointing out that it would be possible to save capitalism and market economy, if they were to be transformed and made moral, and that capitalism was an integral part of the value system and civilisation project, a certain idea of the human being’.<sup>288</sup>

A survey conducted among Europeans regarding their attitudes towards capitalism shows that people, in times of crisis, question the prospect of focusing only on economic growth. It points out some negative features of capitalism, which is seen as a threat to the environment and a

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<sup>285</sup> Warren Buffett donates nearly \$3 billion more to charities. The donation is part of Buffett’s 2006 pledge to donate about 85% of his Berkshire Hathaway to the Gates Foundation. At the time, the gift was valued at more than \$30 billion. See The Wall Street Journal, July 14, 2016.

<sup>286</sup> London -based analytic agency Wealth Insight has given Moscow 2<sup>nd</sup> place in its latest study of where billionaires reside globally. Russia’s capital is home to 64 billionaires (in U.S. dollars) and accounts for just under half of the country’s total (130), according to CEO magazine. See [http://rbth.com/business/2013/05/08/moscow\\_takes\\_2nd\\_place\\_globally\\_among\\_in\\_number\\_of\\_billionaires\\_25827.html](http://rbth.com/business/2013/05/08/moscow_takes_2nd_place_globally_among_in_number_of_billionaires_25827.html)

<sup>287</sup> Fedotova, V., *et al.* (2008). The Global Capitalism: Three Great Transformations. Moscow. Cultural Revolution.

<sup>288</sup> Shevchenko, V.N., (2010). The National Way of Russian Development in the Context of a New Stage in the Modernization of the Country. The National Idea of Russia: Materials of all-Russia Scientific Conference, 12 November 2010. Moscow. Scientific Expert, p: 151-165.

cause of social polarisation of the population. Nine out of ten people, as Fedotova (2011) writes, wish for an improvement in the current economic order and are ready to change their habits and lifestyle.<sup>289</sup>

“Capitalism as a system will exhaust its positive abilities in the nearest future”, Shevchenko (2010) believes. At present, much is said about the necessity of a new model of capitalism. But capitalism cannot be humane like a social system. The high living standards in the capitalist countries are maintained at the expense of compulsory payments on the part of the rest of the world, as shown by the recent economic crisis. The issue of a new socialist project for the Russians and the rest of the world is very acute today. Such a project might be considered an alternative to capitalism in its current form.<sup>290</sup> A number of Russian philosophers, Fedotov (2002) among them, believe that in connection with the growing threat of a climatic and ecological catastrophe, the future lies in socialism. It has been said that a viable global order is possible only if it is based on a manageable and planned system of an “ecological socialism type”.<sup>291</sup>

Ecological society is considered to be the most probable option for further development. As far as Russia is concerned, according to Bagdasaryan (2010), a change to the current Russian social-economic model is inevitable because it is an inviable model that might lead the country to the verge of extinction. The country is systematically degrading. Since the collapse of the 1990s, the country has continued to glide downwards. But the vector of sinking to the bottom has not changed yet. A change to the current model of statehood is necessary, otherwise the degradation will continue and the country will face destruction; another option would be to change the

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<sup>289</sup> Fedotova, V., (2011). The Future of Capitalism and Socialism. Round-table meeting ‘Changing Sociality: Contours of the Future’. Polis. Vol.1, pp: 99-100.

<sup>290</sup> *Supra* note 288, at p: 163.

<sup>291</sup> Fedotov, A. P. (2002). Global Studies: the Origins of Science in the Modern World. 2nd ed. Moscow. Aspect-Press, p: 64.

paradigm of the state policy intentionally, so that one could rely on the revival of the country.<sup>292</sup>

Simonyan (2010) also considers that the social model created by the reformers of the country is not efficient and productive economically, socially and in terms of innovation. Such a model is causing the nation to lag behind not only the West but also the East. It should be changed drastically. And we need to do it immediately, without delay, until the return point has been passed.<sup>293</sup> Shevchenko (2010) argues that the capitalist way of development will lead to a dead-end for Russia, to a catastrophe, as the imposed desire to live in the Western style will not be tolerated, even taking into account the country's rich nature. Due to the scarcity of natural resources, people will be able to live like those in the West but the West itself will not let all other countries live according to their patterns and standards of consumption.<sup>294</sup>

Under the condition of the growing threat of a global climatic and ecological catastrophe, it is necessary to abandon the "resource consumption" model of development for the survival of mankind. The rapid development of an ecologically justified strategy is aimed at social-economic and scientific-technical development, as well as working out a reasonable approach to consumption; the adjustment of the needs of mankind to the changing conditions of the planet; and maintaining the ecological balance and parameters of the environment, in which the existence of the community, its normal activities and the health of the people will be guaranteed. To achieve all of this, it is necessary to take into account

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<sup>292</sup> Baghdasaryan, V., (2010). On the Necessity of Changes in the Modern Russian Social-Economic Model. Futurological Congress: the Future of Russia and the World. 4 June 2010, Moscow. Scientific Expert, p: 103.

<sup>293</sup> Simonyan, R., (2010). ). On Some Sociocultural Results of Russian Economic Reforms of the 1990s. Mir Peremen. Vol. 3, p: 113.

<sup>294</sup> *Supra* note 288, at p: 164

the ecological prospect for everyday life and the behaviour of people in all types of activities – economics, politics, production, education, science and technology.

The question is, how can we find new, alternative routes for the development of the world within the framework of the ecological limitations? The criterion of success for social-economic development, within the framework of the ecological limitations, should be connected with the indicators of people's health and lifespan, as well as the provision of these indicators,<sup>295</sup> as Reimers (1992) notes. Economic wealth is an old-fashioned standard with which to measure national treasure. "The wealth of the country is in the health of its population, in the intellectual potential and natural resources for preserving and developing mankind."<sup>296</sup>

It is necessary to form a society of a new type, as well as to alter our attitude towards nature and our relations with other people. This requires new ideas and criteria for development in the new century. Neither science nor economic growth nor technology alone can be such criteria. It is necessary to build a society where material production is not the ultimate goal – it should be an ecological society based on ecological principles. Making such provisions for the activity of people, who observe the ecological norms, whilst the ecological culture is forming, is as important as bringing up people ecologically.

Self-restriction should become part of the creation of such a society. For this purpose, it is necessary to transform from a consumer civilisation to a civilisation based on the deliberate restriction of needs, under the condition of natural limitations, for the sake of survival in the new century. It is necessary to aspire to a civilisation based on rational consumption, the

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<sup>295</sup> Reimers, N., (1992). Hopes for the Mankind's Survival. Conceptual Ecology. Moscow. Rossiya Molodaya Publishing Centre, p: 333.

<sup>296</sup> *Ibid.*



reduction of excessive consumption, the termination of production imposed by the market, in spite of the needs of the people, as this is not contributing to their development, but rather their degradation: both spiritual and physical. For this, it is necessary to give up economic growth as the sole indicator of civilisation's development.

It goes without saying that a lot will depend on the political will and activity of the global society. Moiseyev *et al.* (1985) write that the common goal of mankind, irrespective of their social order, geographical position, historical fate and tradition, should be preserving the stability of the biosphere and its features. The existence of common goals might be the reason for us to look for compromises in our strategies of development and other interrelations.<sup>297</sup>

Under the conditions of ecological restrictions and globalisation, the future society might be built on the basis of universal human values, which should be followed by all peoples across the world. Social justice is one of the universal ideals of mankind; it has inspired all of the great thinkers throughout history. This idea ascertains that all people should be equal in their vital abilities, irrespective of their class, social group, belonging to a certain nation or nationality; they should lay claim to appropriate distribution of material and spiritual wealth among them, as Lopatnikov (1989) notes.<sup>298</sup>

Social justice then is not an absolute idea, that its understanding is determined historically, by the differences of social-economic formations, as Kanarsh (2011) thinks; but the question of social order, arranged on a fair

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<sup>297</sup> Moiseyev, N., Alexandrov, V., and Tarko, A., (1985). *The Human Being and the Biosphere*. Moscow. Nauka, p: 241.

<sup>298</sup> Lopatnikov, L., (1989). *Social Justice. The Experience of Making a Dictionary of New Thinking*. Moscow. Progress, p: 530.

basis, is the main one, both for the classical thought and social philosophy of the modernism epoch, as well as for the modern political theory.<sup>299</sup>

Also, the initial experience of spiritual and cultural development includes general social and particular historic forms. That is why Ruchkov (2006) thinks that justice is “absorption of this experience, its deflection as well as its reflection, which can also have a general component related to a particular historic situation. This “duality” of experience causes difficulties to give a precise, comprehensive definition of ... justice”.<sup>300</sup> Following all this, it is possible to say that each epoch of the mankind posed its own problems of justice and solved them in its own way. Each emerging theory denied the previous one to some extent, retaining a certain degree of continuity. People vary from epoch to epoch, from one society to another, and hence justice shows its social dependence on people who are changing socially too. However, in my opinion, the theory of justice is doomed to the ongoing development.

### **2.3.2 The path to social justice in the modern context**

The globalising world is characterised by a variety of acute social-political and economic problems that all countries are facing at the moment. While it might seem that the possibilities of the society regarding social development and progress are unlimited, many expectations have not become a reality. During the last decades, the situation in the world has become more polarised. The United Nations organisation points out, that the social-economic distinctions between countries will turn from fair to

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<sup>299</sup> *Supra* note 79, at p: 87.

<sup>300</sup> *Supra* note 93, at pp: 83-107.

inhuman, taking into account the current character and trends of global change.<sup>301</sup>

Under modern conditions, the quality of social policy and the principles of social justice in advanced countries are characterised as an achievement of the upper level of 'free society' development, where the main criterion is the provision of rights and freedoms for people in all spheres of life. That is why the vector of social development, according to Lebedeva (2005), is determined by understanding the increased meaning of human resources.<sup>302</sup> The problems of social justice are reflected in the works of the academician Lvov (2007), who stresses that instead of aspiring for wealth, there should be aspiration for a higher standard of living, which is unattainable individually, without enhancing the quality of life for the wider public.<sup>303</sup>

Historical experience shows that the global community is progressing cyclically, whilst global crises continue to emerge. The social-economic transformation that is happening proves the law of changeability in regard to social development. There are several sources of social changes as Plotinsky (1988) considers:

- Demographic reasons – growth of the population, migration, overpopulation;
- Social-political reasons – wars, conflicts, revolutions, reforms;
- Natural reasons – contamination of the environment, depletion of resources, cataclysms;
- Changes in culture, economics and scientific-technical progress;

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<sup>301</sup> World Development Report (2006). Justice and Development. Moscow.; World Development Report (2007). Development and the Next Generation. Washington.

<sup>302</sup> Lebedeva, L., (2005). Social Policy in the Economy of Knowledge. International Trends. Journal of International Relations Theory and World Politics. Vol. 4, No. 3 (12), p: 28.

<sup>303</sup> Lvov, D., (2007). Justice and Spiritual World of a Person. Political Journal. Vol.7, p: 19.

- Social-psychological reasons – saturation, addiction, yearning for novelty, growth of aggressiveness etc.,<sup>304</sup>

At the stage of post-industrial development, social ideas seem to be a failure, and the same can be said about economic efficiency achieved in the process of development. These constant dominants require a connection at the conceptual level. The concepts “formation” and “formation stage” might be regarded as necessary methodological keys to explain the concept of social progress. However, due to their abstractness, they cannot be used when explaining any historical period. It does not follow that the division of global historical aspects during the overall development requires any refusal to understand these processes as a whole. In the general theory of development, it is important to define the reasons that led to the changes in the society. According to researchers such as Grinin (1997), they can be summarised based upon the following attributes: potentiality, reality, globality, locality, sociality, materiality, spirituality, and objectivity.<sup>305</sup> These cause a certain reaction to the circumstances, which Toynbee (1996)<sup>306</sup> calls “Challenge and Response” or “Cap lid and Flint”, which, when they come in contact, cut out the creative spark.

It is currently a central idea that the development of mankind as a community should eliminate contradictions between the human being and nature, providing the exchange of substances and energy with nature, necessary for any person, which is constantly going on in a changeable form. It is possible to solve this problem only by changing the processes of production, the nature of labour and its content, which envisages new emerging contradictions between people and the society, between

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<sup>304</sup> Plotinsky, Y.M., (1988). Theoretical and Empirical Models of Social Processes. Moscow, p: 105.

<sup>305</sup> Grinin, D., (1997). World Orders and Civilisations. Philosophy and Society. Vol.1, pp: 17-18.

<sup>306</sup> Toynbee, A., (1996). The History of a Civilization. Moscow, St. Petersburg, p: 25.

individuals and social groups. This is the logic of development, according to Butenko (1997).<sup>307</sup>

Considering problems is particularly difficult when it is necessary to take into account the local civilisations. This can be illustrated with the example of Russia in the 1990s, which began its reform with a liberal-democratic model but eventually encountered enormous destruction of the industrial and agricultural potential, existing connections and infrastructure. At that time, the process of alienation of a person from power and productive labour was considerably fast. Commerce had a negative impact on the state of education, science and culture. Russia has never experienced such a crisis in the spheres of morality and spirituality. One can also observe the predominance of criminality in the economic, social and productive spheres. The corruption of the political machinery occurred on an unprecedented scale, as noted by Moskvina (1999).<sup>308</sup>

The low performance of the transformation processes can be explained by the inconsistency between economic and social changes, as well as the conditions of the Russian society, first of all, in the economic sphere. The idea of civil national accord should become a strategic goal of the country; a policy should be worked out, taking into account the interests of all social strata of the population, an orientation to the social state, civil society built on the basis of law, democracy, as well as historical, social and national acquired experience,. Thus, the analysis of the issues of world order and the evolution of the civilisation shows that synthesis of civilisation phenomena falls into the pattern of social processes.

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<sup>307</sup> Butenko, A., (1997). The Philosophy of History and the XX Century. Philosophy and Society. Vol. 5, p: 69.

<sup>308</sup> Moskvina, L., (1999). New Social Measurements in the Modern World. Obshchestvennye Nauki i Sovremennost, Vol.3, p: 38.

The principles of social development have always been connected with the manifestation of regularities and irregularities throughout the process of history. The understanding of regularities in the social arrangement of the society, according to Knyazeva and Kurdyumov (1992), is based on mechanical determinism, according to which certain laws dominate in nature, and these laws are mechanically transferred to the society, without paying sufficient attention to the ensuing statistical patterns. Synergetic<sup>309</sup> eliminates this defect, as a trend built on the principle of self-organisation of both animate and inanimate nature, as well as the society, as the human being and nature are subordinated to common synergetic regularities and can be considered a single process of self-organisation.<sup>310</sup> The traditional theories considered that any event could be defined by the initial conditions, and that irregularities occur because of a lack of information. As for synergetic, it places a great emphasis on irregularities, judging by the fact that all systems are mainly in a state of delicate balance, due to spontaneous inner changes. Even small deviations from this balance can lead to considerable changes. When a system appears to be unstable, this is considered its crisis. It comes to another level of functioning, and even further, to its collapse, as stated by Prigozhin and Stengers (1986). Therewith, it is impossible to foresee the state to which it will eventually go. After the way is chosen, determinism comes into its rights – until the moment when the new system is in the range of other spontaneous changes.<sup>311</sup>

Thus, synergetic takes into account deterministic and probabilistic ways of development and its principles are of use when studying the

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<sup>309</sup> Knyazeva, E., and Kurdyumov, S., (1992). Synergetics as a New World View: Dialogue with I. Prigozhin. Problems of Philosophy. Vol. 12, p: 3-21.

<sup>310</sup> Frolova, T., Ed. (2001). Philosophical Dictionary. Moscow, p: 511.

<sup>311</sup> Prigozhin, I., and Stengers, I., (1986). Order Out of Chaos. Moscow, pp: 28-29.

sociocultural development of the society. Two trends in the theory of systems and their self-organisation have a particularly practical significance:

- A new understanding of approaches to the problem of historical determinism, the nature of social crises, the criteria of social progress, the existence of limits in the cultural development of mankind, as well as the role of social utopia.
- The synergetic paradigm is universal, and therefore it has possibilities in regard to resolving contradictions within the framework of the notion 'social order'. The social process, which is identified as chaos, should be considered as a new version of order rather than the absence of any order.

The conceptual principles and processes of self-organisation can be considered from the point of view of a comparative analysis regarding the development of the human society and its natural basis. The Russian scientist, an academician of the USSR Academy of Sciences, Moiseyev (1917–2000) believed that the interrelated development of animate nature and the human being was an important moment in co-evolution. The development of mankind as part of the biosphere cannot be stable and it should always be in accord with the development of the imbalanced and changeable natural system. The principle of co-evolution of the human being and the biosphere is a necessary condition for the survival of mankind.

According to Moiseyev (1990), co-evolution has three levels:

- Inanimate nature,
- Living substance,
- Society as a single process of development.<sup>312</sup>

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<sup>312</sup> Moiseyev, N., (1990). The Human Being and the Noosphere. Moscow, pp: 34-35.

Development occurs according to the principle of complexification. With the advent of the human being, the process of self-organisation was superimposed by a directed sense – intellect. Thanks to the human being as the bearer of this intellect, nature started to cognise of itself and to intensify the process of self-organisation of the substance. The tools of labour and the organisation of activities were both added to the activity of the intellect. The social self-organisation of the animate world is going on as a cultural phenomenon: genetic memory – education – morality.

Moiseyev (1990) thought that the intensity of processes and organised activities, together with the means to exercise such activities, which were created by intellect, became even complicated with the transfer of the society to the informational stage of development<sup>313</sup>. At this level, the principle of co-evolution means a system of prohibitions, eliminating changes in the parameters of the biosphere as an organism in which the human being exists. Today, the changes to the biosphere have approached a forbidden limit, across which mankind cannot trespass, as it does not have the right to do so, if we want to preserve nature. This is the main idea of development, when understanding the future requires thorough investigations, connected with practical activities, development of technology and task-oriented activities of the society. It is necessary to work out such a system of interrelation with the environment, which is capable of preserving it as suitable for the existence of mankind. This principle defines the limits, covering all aspects of life and activity of the human being.

The trend of globalisation is one stage in the evolution of the global society. Throughout the whole of the history of mankind, social systems have become increasingly sophisticated. The global crises give rise to structural changes, which are at present connected with ecological, energetic,

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<sup>313</sup> *Ibid*, pp: 121-139.



food provision, demographic and other problems, which have grown on a global scale. Mankind is facing the following task – to overcome the social inequality among different peoples, and the economic and cultural backwardness of millions of people in Asia and Africa; develop culture and science; preserve the environment; and take care of the gene-pool of mankind and freedom of personality.

It is known that the content and role of globalisation in the world are contrary to universal human values, and even one of the founders of German philosophy, Kant, put forth the idea of a shared world government,<sup>314</sup> considering globalisation as an acknowledgement of the growing interrelation, the consequence of which would be the destruction of national sovereignty.

The representatives of the Club of Rome<sup>315</sup> were the first to analyse global development. In 1968, Peccei sent invitations to thirty European scientists and representatives of the business world, in order to exchange opinions on modern global problems. That was how the organisation the Club of Rome began – as an international non-governmental organisation, the activity of which is aimed at the stimulation of research relating to global problems. Now the Club of Rome plays an important role in forecasting in regard to the process of development. It conducts research on global problems, taking into account the following goals:

- Assistance, so that people can investigate problems regarding nature, globally, in more depth.
- The usage of knowledge to establish relations between states and institutions, both political and legal ones, in order to eliminate

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<sup>314</sup> Kant, I., (1795). *Perpetual Peace: A Philosophical Sketch*.

<sup>315</sup> International think tank composed of prominent intellectuals and decision-makers analysing global, interlinked, long-term problems challenging the future of humanity and the planet using systems analysis. See <http://www.clubofrome.org/>

situations connected with a world crisis – in the opinion of Leibin (1998).<sup>316</sup>

In order to achieve these goals, the Club of Rome appealed to a suggestion from Forrester – an American specialist in the field of system dynamics, regarding the development of a model imitating the evolution of world processes. Three models were considered with a view to exploring trends in global change, and these models took into account the size of investments, population, non-renewable natural resources, contamination of the environment, and food provision.

The implementation of the model “World-3” was carried out by a group of young scientists, guided by Meadows *et al.*, (1991), and the performance of the global system was investigated for over 200 years – from 1900 until 2100. It was supposed that the change in the parameters underlined the current trends in mankind’s development. The calculations showed that a global crisis is inevitable, as growth in industrial production and the global population will collide with natural resources, which are limited, as well as causing contamination of the environment, which is ruinous for the health of the people.<sup>317</sup>

The results of the research were published in 1972 in the US as a report to the Club of Rome under the title “Limits to growth”. According to this document, it will only be possible to prevent a global disaster if appropriate measures are taken to create economic and ecological stability, which envisages a transformation from global growth to a balance. It envisages the satisfaction of the material needs of every person and the realisation of their creative potential.

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<sup>316</sup> Leibin, V.M., (1998). The Club of Rome: Chronicle of Reports. Philosophy and Society. Vol. 6, p: 204-221.

<sup>317</sup> Meadows, D., et al., (1991). The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind. Moscow.

Two years later, in 1974, another report was presented to the Club of Rome under the title “Mankind at the turning point”. This report was prepared under the guidance of Mesarovič and Pestel (1974), who relied upon the fact that mankind was at a critical point and needed to make a choice: whether to go further, following the “cancer” growth, and threatening the existence of the people, or to take the path of organic growth, which would allow for preserving mankind in the historical perspective.<sup>318</sup>

These conclusions served as a basis for the development of further concepts regarding social development. One of the important conclusions was that the growth of industrial production would endanger the environment. The United Nations organisation worked out an approach to stable and sustainable development, which was formulated at International conferences on the environment and development (Rio de Janeiro, 1992) and confirmed by the Program and Plan of action devoted to social problems of development, adopted at the summit in Copenhagen in 1995.

These forums revealed the multidimensionality of global processes. Several workshops on social progress were conducted in Copenhagen in the 1990s, within the framework of the decisions of the summit. Bodo (1982) writes that during the discussions it was revealed that the concepts of social progress need to be renewed, as the idea of social progress acts as a counterbalance to technocracy and market fundamentalism.<sup>319</sup>

The discussions regarding global threats allowed for drawing a conclusion, which was that the driving force for globalisation processes would be global capitalism, representing a political programme with some ideological features. Global capitalism is always in favour of the strong

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<sup>318</sup> Mesarovič, M., and Pestel, E., (1974). *Mankind at the turning point: the second report to the Club of Rome*. Dutton.

<sup>319</sup> Bodo, J., (1982). ). *Global Capitalism: a Necessity of Renewal of the Universal Model*. World Economy and International Relations. Moscow. Vol. 2, p: 89-93.

points of market economy and competes with countries that can be described as developing economies. However, the tendency for incidents should be restricted: the whole system can only function successfully only if it is regulated by the government with the help of a redistribution policy. Meanwhile, the main trend of moving towards the global crisis can be attributed to the liberalisation of the economy, its deregulation, as well as privatisation, competition, and reconstruction - traditional levers of capitalist economic activities, which do not attempt to eliminate the disproportions between poverty and wealth or reduce social inequality. This leads to the opinion that global capitalism is a utopia, a promise that technical progress, the game of market forces and the tendency towards innovation will lead to freedom and prosperity.

The participants of the meetings tended to search for a project that would be an alternative to global capitalism. Suggestions were made regarding a program of alternative civilisation, a search for actions that would slow down the process of globalisation, with a view to conveying a universal meaning of the concept “transitional period”, so that it would be possible to comprehend the path that the world is taking at the moment. There were supporters from a number of institutions and undertakings at all levels, in regard to learning how to be humane, finding reasonable relations between the human being and nature, establishing connections between a personality, a collective and the Universe, and being in harmony with oneself. The dialogue regarding privileges and responsibilities, rights and duties, and freedom and care about common welfare has huge significance for the future.

Globalisation is viewed as a multi-faced phenomenon, and the processes of developing a common system of global connection are acute and significant, according to Kuznetsov (1998), as is the process of internationalisation of the economy, changing the functions of the national

government, and the activation of transnational formations, such as ethnic communities, mafia groups and religious movements. Uncertainty in regard to calling these processes “global” appears when some connections start to go beyond the boundaries of nations and states. This discussion was begun by the Harvard Business School, which stated that the economic nationalism of different states lost its meaning when global firms appeared.<sup>320</sup>

In the economic sphere, the following trends and global processes can be found:

- Globalisation of finances,
- Creation of multinational corporations,
- Regionalisation of economy,
- Intensification of the world economy,
- Tendencies towards convergence.

Representatives of international organisations such as the World Bank (WB), the World Trade Organisation (WTO) and the International Monetary Fund (IMF) are among the supporters of global capitalism, and have spoken at workshops devoted to the problem of social progress.

As the facts show, globalisation has a comprehensive and contradictory character. When scientists talk about global problems, they emphasise the uncontrolled settlement of people, the uncontrolled birth rate, environmental intervention, social inequality, famine, the growth of social injustice, and the scarcity of resources – “... these are just some of the more than thirty problems that have been mentioned”, as Ilyinsky (1999) points out.<sup>321</sup> In the context of this analysis, globalisation is considered to be the

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<sup>320</sup> Kuznetsov, V., (1998). What is Globalisation? World Economy and International Relations. Moscow. Vol.2, p: 12-21.

<sup>321</sup> Ilyinsky, I. M., (1999). The Youth in the Context of Global Processes in the Development of the Global Society. *Molodezh' i Obshchestvo Na Rubezhe Vekov*. Moscow, p: 29.

acceleration of trans-nationalisation, and the intensified growth of development in various countries, with the participation of the United Nations organisation and other institutions.

The social problems of modern times, which reflect the processes of globalisation, are so closely interconnected that it is impossible to distinguish between them. Professor of sociology Kastlz (1998) stated that, in the modern society, migration plays an important role in the majority of social transformations.<sup>322</sup> At present, more than 100 million people live in countries where they were not born, and there are more than 20 million people living as refugees. The migration process touches upon economic spheres, facilitates the participation of other countries in the national economy, and pushes aside the order of existence in the family and the community. The process when some people are involved in social circulation, whereas others are pushed aside to the periphery, levels measures of responsibility of the governments regarding the fates of millions of people. The authorities treat such inequality as a condition for efficient development of the economy.

International migration processes influence social relations, national policy, culture and international relations. Migration inevitably leads to ethnic-cultural atomism inside states and erases traditional boundaries. Development is going on within the framework of a certain social-economic typology. Three models have been widespread in recent years: liberal, social-democratic and conservative, each of them having a main meaning that is described as the capacity of the market to provide social-economic development of the society.

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<sup>322</sup> Kastlz, S., (1998). Globalization and migration: some obvious contradictions. *International Journal of Social Sciences*. Vol. 23, pp: 54-59.

The international conference in Rio de Janeiro in 1992, devoted to the environment and development, concluded that the global changes in the environment have occurred at the expense of nature, and have resulted in both nature and mankind being on the verge of a possible catastrophe. The paradigm of modern development aimed only at pursuing profit cannot be the main force of progress. It is impossible to follow that path any more. The power of civilisation has become a deadly threat to people's lives, and they are on the verge of survival. "Either the whole world will be saved or the whole civilisation will cease to exist",<sup>323</sup> announced Maurice Strong, the Chairman of the organising committee of the conference.

At the Conference of different states, a commitment was made to overcome the huge gap between the majority of the poor and the minority of the rich, share advanced technologies with developing countries, and spread the ideology on reasonable, moderate consumption etc. The main aim of all these measures, as Koptug (1992) states, is to create a movement in favour of social justice and to eliminate the existing tensions in the society.<sup>324</sup>

In 2002 in Johannesburg, a congress was held at which the results of the program "Agendas 21" were discussed; it was pointed out that many decisions had not been implemented, and the reason for this was globalisation and the polarisation of the modern world. The decisions of the forums on globalisation contained the concept of "development – as social development", which was aimed at considering these processes in the social sphere, reflecting natural forms of people's life-sustaining activities, the provision of favourable conditions for existence, adequate health, and satisfaction of material and spiritual needs. The principles of development

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<sup>323</sup> UN Report. Agenda 21. ITAR-TASS, 8 June 1994. Compass. Vol. 86, p: 87.

<sup>324</sup> Koptug V.A., (1992). On the Way Towards Sustainable Development of the Civilisation. Svobodnaya mysl'. Vol. 14, p: 3.

are closely connected with social progress and can be understood within the framework of certain social categories.

Scientists and specialists in the field of social development believe that the social sphere and its modern conditions are important elements for any state. It is this sphere that becomes an indicator of movement of the society along the path of social progress; this indicator can show whether people have started to live better or worse. This is the sphere where the concept “human being” can be measured somehow. Social progress and justice depend on the extent to which people are socially secure in the society, and also on how they use benefits, rights and freedoms.

Under modern conditions, development is considered through the prism of “a human dimension, which takes into account not only the proclamation of person’s rights, but also their observance”. For instance, social justice envisages particular terms that disclose a new understanding of the human dimension. The modern dictionary contains such notions as “single political, social, legal, informational and ecological environment”, “ratio of humanitarian development”, “a person in the humanistic dimension”, “biosocial health”, and “social network and security”. For example, the ratio of humanitarian development is an indicator of the realistic purchasing power of people, their educational level and their standard of living. Biosocial health is the state of utter physical, psychological and social well-being of a person.<sup>325</sup>

In order for this sphere to function properly, a relevant social policy is required, both at the global and national level, at the centre of which should be human life, fair distribution and social stability. The relevance of such a social policy is caused by the fact that in many states the minimum cost of living is not guaranteed, and the government does not bear the responsibility

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<sup>325</sup> *Supra* note 323, at pp: 38-39.



for any devastating repercussions for people, regarding the level of economic development; they also do not take into account the need to develop human potential.

The main principles of social policy are limited to the provision and reproduction of social resources, from which the government receives support for itself, creating conditions for extended reproduction and stability of the social system. An important task of social policy should be the achievement of a necessary level of balance in society's life. Within this the following points should be considered:

- The provision of government's guarantees to prevent famine, disease, demographic explosion, natural and man-made disasters etc.
- The redistribution of physical resources and efforts to provide the required standard of living, as well as providing quality of living to reduce social tension;
- The regulation of standards of living by different measures.<sup>326</sup>

As Lebedeva (2005) writes, the indicators of life quality, apart from traditional values and indicators of development, include the concept of people's access to information and communication technologies (ICT) under modern conditions, which at present plays an important role in 'people's lives, providing possibilities to receive new services and to perfect healthcare and education systems, as well as innovation activities.'<sup>327</sup>

The basis of social policy is the protection of people's interests, the creation of institutional and social-economic prerequisites to satisfy the needs and interests of the population and declare their identity. Civil society

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<sup>326</sup> Report of the World Summit for Social Development (1995). Copenhagen, pp: 28-29.

<sup>327</sup> *Supra* note 302, at pp: 29-31.

cannot exist without these values, or without freedom and social democracy. Historical experience shows that social policy might be implemented by public and local authorities, using a whole arsenal of forms and methods of social work. The principles and standards of social work are comprised according to regulations, codes and declarations: both national and international. They formulate the goals of the programmes and the values of social work. They define the parameters of the activities of the responsible parties – state authorities, public organisations, charity foundations and social workers.

An important stage in the solution to the social-economic task of development on a global scale, regarding social policies and social work, was the convention of the UN General Assembly that took place on 8 September 2000, in which 188 UN states-members participated and the ‘Millennium Declaration’ was adopted.<sup>328</sup>

The participants of the Assembly declared that they were determined to establish fair and stable peace across the whole world, in accordance with the principles of the United Nations Charter, and they were responsible for supporting efforts in regard to the following:

- The sovereignty of all states;
- Respect for the integrity of territories and the political independence of states;
- The regulation of disputes by peaceful means, in accordance with the principles of justice and international law;
- Respect for peoples’ rights and freedoms;
- Observance of equal rights irrespective of race, gender, language and religion;

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<sup>328</sup> United Nations Millennium Declaration. (2000). General Assembly, plenary meeting 8 September 2000. New York, p: 1.

- International cooperation to solve international problems of an economic, social, cultural and humanitarian nature.

The Declaration underlines that the main task of today is to make globalisation a positive factor for all peoples across the world. Although globalisation opens up broad possibilities, its benefits are not enjoyed uniformly and its benefits are also distributed irregularly. Developing countries and countries with transitional economies encounter difficulties in taking measures to solve these problems. That is why globalisation can only be fair if large-scale efforts are made to achieve a common future, which is based on common belonging to the human race. The UN resolutions envisage that measures at the global level should meet the demands of developing countries and countries with transitional economies and should be worked out with their effective participation. As these are common problems for mankind, their solution should be at the centre of global politics.

At the same time, the concept of the nature of consumption is expanding, as nowadays consumption is aggravated by the subordinate position of people. Consumption has become people's duty, while their well-being and social status depend on it. The compulsion for labour is complemented by the compulsion for consumption, e.g. by means of manipulation and advertising. People's individual freedom has become a choice between changeable but identical types of the same goods.

Under modern conditions solving the problems that mankind faces, will be impossible without turning the Western consumption society into the global model of development. It is generally recognised that further expansion of the 'golden billion' standards of consumption might lead to an ecological catastrophe for the planet.

As things are now, the task of the authorities is to implement a social policy in the context of social justice with the participation of 150 leaders of different states and governments; these social problems took centre stage in the work of the World Summit at the UN Headquarters from 14-15 September 2005. An important point was the report of the UN Secretary-General Kofi Annan, under the title “In Larger Freedom: Towards Security, Human Rights and Development for All”.<sup>329</sup>

Based on the “UN Millennium Declaration”, the following UN goals were formulated in the sphere of social security and justice: the eradication of poverty, the attainment of universal primary education, equality for men and women, extending rights to women, the reduction of child mortality, HIV/AIDS response, as well as disease control, the provision of ecological stability, the formation of a global partnership in regard to development.<sup>330</sup>

In accordance with the adopted decisions, discussions on inequality and social justice became extremely active. Now the key problem is the fair distribution of benefits for the population of the whole world. The question is in regard to the spheres of incomes, health and education.<sup>331</sup>

There are various opinions in society regarding the theory of social equality in the world:

- One approach on global inequality takes into account the real incomes of people and their purchasing power;
- Another considers the differences in the standard of living between countries;
- Another considers inequality between people in different countries.

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<sup>329</sup> UN Chronicle (2005). Vol. 3, p: 5.

<sup>330</sup> Report on Social Development (2006). Justice and Development. Moscow, pp: 51-52.

<sup>331</sup> *Ibid*, p: 52.

Thus, there are three types of inequalities within the framework of global inequality:

- Domestic inequality, which is connected with different levels of income, social stratification and poverty.
- Inter-country inequality, where each person has an average income for a particular country, which is growing. Per capita GDP in the richest country was nine times more than in the poorest one in 1870; in 1990 it was 45 times more.<sup>332</sup>

Inter-country inequality is a comparison of three countries and three representatives with an average income; this records data on all populations but according to the index of their average income. Global inequality takes into account all people with real incomes.<sup>333</sup>

Bek (2001) believes that under the conditions of a particular social situation, considering globalisation in terms of the human dimension is particularly important,<sup>334</sup> as well as revealing mechanisms of economic and human development. Economic growth means an increase in workforce productivity, as well as employment growth, which envisages an increase in individual incomes, and an improvement in the working conditions and wealth of the society. The Human Development Index (HDI)<sup>335</sup> was formulated and created to emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone. The HDI can also be used to question national policy choices, asking how two countries with the same level of Gross national income (GNI) per capita can end up with different human

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<sup>332</sup> *Ibid*, p: 53.

<sup>333</sup> *Ibid*, p: 53.

<sup>334</sup> Bek, U., (2001). What is Globalisation? Moscow.

<sup>335</sup> Human Development Report 2016: Human Development For Everyone.  
<http://hdr.undp.org/en/content/human-development-index-hdi>

development outcomes.<sup>336</sup> According to the opinion of scientists and experts from the UN organisation measures should be taken regarding globalisation in order to solve the acute social problems and change the paradigm of social-economic development across all countries.

Thus, social thought and practice are more inclined to draw the conclusion that a person and the development of his/her potential becomes the main criterion of social progress and economic growth. In the reports on personal development based on the Materials of the United Nations Development Program, which have been published regularly since 1990, it is stated that it is necessary to stop the practice of defining the rate of progress in the sphere of human development, only with the help of economic growth factors.<sup>337</sup> Currently, in many countries around the world, an increasing number of politicians, and other formal and informal leaders responsible for public policy, have come to the same conclusion, that progress in the sphere of social development should be more valuable and legitimate, both on national and international levels. To achieve global justice, at the centre of social development should be human personality, ecological and social stability, and justice in regard to the incomes and standard of living across nations; this is inextricably linked with an equitable financial system.

## **2.4 Conclusion**

Chapter 2 presents the essential characteristics of theories of justice and provides their specific classification, whilst explaining their variability. It was found that the very nature of the concept of justice puts it at the forefront of modern civilised society, regardless of its political system. Thus, there are a lot of opinions on social justice, and sometimes they are very

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<sup>336</sup> [http://hdr.undp.org/sites/default/files/hdr2016\\_technical\\_notes\\_0.pdf](http://hdr.undp.org/sites/default/files/hdr2016_technical_notes_0.pdf)

<sup>337</sup> Diligensky, G.G., (2002). Globalisation in Human Dimension. World Economy and International Relations. Moscow. Vol. 7, pp: 4-15.

controversial but nevertheless all authors (both Western and Russian) admit its presence in social relations, as well as its significance.

In conclusion, it can be stated that the necessity for social justice is a one of the basic, fundamental human needs, although it is not explicitly shown in Maslow's pyramid.<sup>338</sup> Thus, if it is not fulfilled, one will be found in a state of disarray and depression, which will force social conflicts of varying degrees of intensity; it follows that without social justice and fairness the availability of material wealth will be insufficient and one will never be satisfied with it.<sup>339</sup>

Anyway, in the new century, and under the conditions of natural limitations, social justice has become a central idea, uniting people across the world; it should be treated as an imperative of the epoch, a condition for the existence of mankind itself. It is obvious that under the conditions of aggravation and a scarcity of natural resources - pure water, energy, and food - overpopulation of the planet, climate change, and the threat of an ecological crisis, modern civilisation will not be able to survive if the society is not built on the fair principles of social justice.

According to the research structure, the following Chapters explain the foundations of Islamic finance and their connection to justice and religion.

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<sup>338</sup> Maslow's Hierarchy of Needs (often represented as a pyramid with five levels of needs) is a motivational theory in psychology that argues that while people aim to meet basic needs, they seek to meet successively higher needs in the form of a pyramid. Maslow, A. H., (1943). A Theory of Human Motivation. *Psychological review*, Volume 50(4), pp: 370 – 396.

<sup>339</sup> See Social Justice Index comprises 27 quantitative and eight qualitative indicators, each associated with one of the six dimensions of social justice: 1) poverty prevention, 2) equitable education, 3) labour market access, 4) social cohesion and non-discrimination, 5) health, and 6) intergenerational justice. <http://www.social-inclusion-monitor.eu/social-justice-index/>

## CHAPTER 3: FOUNDATIONS OF ISLAMIC FINANCE AND MODES OF FINANCING

### 3.1 Introduction

Chapter 3 explains the foundations of Islamic finance, beginning with a brief historical overview and the general terms and definitions based on Islamic fundamental principles. Related developed financial tools in form of Modes of financing in Islamic finance are also described. Furthermore this chapter illustrates how specific modes of financing contribute to social justice (for example, the *Mudarabah* and *Musharakah* contracts). The philosophical and juridical peculiarities of Islamic finance will be further discussed in Chapters 6 and 7.

With reference to the methodology, this chapter presents a terminological interpretation and employs classical sources. Regarding the structure, this chapter is divided into two main sections. Section 3.2 presents the Foundations of Islamic finance and Section 3.3 outlines the mechanisms of Islamic finance implementation in form of Modes of financing.

### 3.2 Foundations of Islamic finance

The history of modern Islamic<sup>340</sup> finance started in the middle of the XX Century. Many academics (Lee and Ullah (2007),<sup>341</sup> Henry and Wilson (2004),<sup>342</sup> *etc.*) have defined the Mit Ghamr Bank,<sup>343</sup> which was set up in

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<sup>340</sup> Islam began in Arabia and was revealed to humanity by the *Prophet Muhammad*. Those who follow Islam are called *Muslims*. Islam is the second largest religion in the world with over 1 billion followers. The 2011 Census recorded 2,706,000 (1,591,000 in 2001) Muslims in England and Wales, around 4.8% of the population (See 2011 Census: Key Statistics for England and Wales, March 2011. Source: Office for National Statistics <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/2011censuskeystatisticsforenglandandwales/2012-12-11#religion>). For more detailed information, see BBC <http://www.bbc.co.uk/religion/religions/islam/>

<sup>341</sup> Lee, K.-H., and Ullah, S., (2007). Integration of Islamic and Conventional Finance. *International Review of Business Research Papers*. Vol. 3, No. 5, p: 241.

<sup>342</sup> Henry, C., and Wilson, R., (Eds.) (2004). *The Politics of Islamic Finance*. Edinburgh University Press Ltd, p: 19.



Egypt in 1963, as the world's first modern Islamic bank. At the same time, Hashmi (2003) argues that interest-free banking, in the form of "loan cooperatives, influenced by European mutual loan experiments and motivated by religious and ethical ideas, was started"<sup>344</sup> on the Indian sub-continent in the late 1940s.<sup>345</sup> Nonetheless, the contemporary practice of Islamic finance has attracted significant attention within the global financial system. Islamic finance services are now expanding worldwide<sup>346</sup> (not only in Islamic countries). In its special report, entitled "Top Islamic Financial Institutions"<sup>347</sup> (published November 2014), *The Banker* includes 400 Islamic financial institutions from 37 countries with *Shariah*-compliant assets, which climbed from USD 1,267bn in 2013 (349 Islamic financial institutions from 37 countries)<sup>348</sup> to USD 1,392bn in 2014 (these rose by 260%, from USD 386bn, in 2006).<sup>349</sup>

Interestingly, the first stand-alone bank licensed by a non-Muslim country to offer *Shariah*-compliant financial service products was the Islamic Bank of Britain,<sup>350</sup> which received Financial Services Authority (FSA) authorisation in August 2004. However, the UK currently accounts for just less than 0.2 per cent of global *Shariah*-compliant assets (it is ranked 17<sup>th</sup> out of the 20 largest countries ranked by total *Sharia*-complaint assets<sup>351</sup>).

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<sup>343</sup> Ayubi, N., (1991). *Political Islam: Religion and Politics in the Arab World*. London: Routledge, p: 179.

<sup>344</sup> *Supra* note 104, at p: 25.

<sup>345</sup> See Bihar Anjuman (Dubai, UAE). *Islamic Banking and Finance - an Introduction*. Evolution of Islamic Banking and Finance in Modern times.

<sup>346</sup> For more detailed information, see *The Banker's* (2007) Top 500 Islamic Financial Institutions ranking list (Map: Islamic Assets and Map: Muslim population).

<sup>347</sup> *The Banker* (2014). Report Top Islamic Financial Institutions, p: 2.

<sup>348</sup> *The Banker* (2013). Report Top Islamic Financial Institutions, p: 3.

<sup>349</sup> *The Banker* (2009). Report Top 500 Islamic Financial Institutions. Supplement, p: 3.

<sup>350</sup> [www.islamic-bank.com](http://www.islamic-bank.com)

<sup>351</sup> *Supra* note 348, at p: 10.

The number of institutions reporting Sharia-compliant products is not known for certain. According to KPMG's (2006) advisory paper, at that time there were about 300 Islamic financial institutions across 75 countries.<sup>352</sup> According to Moody's 2006 report, there were more than 300 Islamic financial institutions.<sup>353</sup> In its second report, "Top 500 Islamic Financial Institutions listing" (published 03 November 2009), *The Banker* takes into consideration 500 Islamic financial institutions from 47 countries.<sup>354</sup> Standard & Poor's Islamic finance Conference (25 September 2012) estimated that there were about 300 Islamic financial institutions across 75 countries.<sup>355</sup> Even so, it can be said that Islamic banking is currently practised in more than 50 countries worldwide (not limited to Islamic countries).

According to Gait and Worthington (2007), a very large number of definitions of Islamic finance can be found in the literature, "ranging from the relatively simple definitions for specific aspects (say, Islamic banking) to more complex definitions covering all financial operations".<sup>356</sup> The most primitive and prevalent definition describes Islamic finance simply as "interest-free"; this is not a complete definition. At the next level, Warde (2000), for example, defines Islamic finance as follows: "Islamic financial institutions are those that are based, in their objectives and operations, on the *Holy Qur'an's* principles (the principles of the Muslim's holy book)".<sup>357</sup> This particular definition suggests that Islamic financial firms are not just banks, but also other types of financial intermediaries that employ *Shariah* principles.

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<sup>352</sup> KPMG (2006). Making the Transition from Niche to Mainstream. Islamic Banking and Finance: A Snapshot of the Industry and Its Challenges Today. Financial Advisory Services, p: 2.

<sup>353</sup> Moody's International Structured Finance (2006). Special Report, p: 2.

<sup>354</sup> *Supra* note 349, at p: 1.

<sup>355</sup> Standard & Poor (2012). Standard & Poor's Islamic Finance Conference 2012 report, p: 7.

<sup>356</sup> *Supra* note 103, at p: 4.

<sup>357</sup> *Supra* note 113, at p: 5.

In a manuscript first published as an IMF<sup>358</sup> Working Paper, Jobst (2007) offered a more comprehensive academic definition of Islamic finance:

“Islamic finance is limited to financial relationships involving entrepreneurial investment, subject to the moral prohibition of (i) interest earnings or usury (*riba*) and money lending, (ii) *haram* (sinful activity), such as direct or indirect association with lines of business involving alcohol, pork products, firearms, tobacco, and adult entertainment, (iii) speculation, betting, and gambling (*maisir*), including the speculative trade or exchange of money for debt without an underlying asset transfer, (iv) the trading of the same object between buyer and seller (*bay’ al-inah*), as well as (v) preventable uncertainty (*gharar*), such as all financial derivative instruments, forward contracts, and futures agreements. These distinctive properties derive from two religious sources predicated on the creation of an equitable system of distributive justice and the promotion of permitted activities (*halal*) and public goods (*maslaha*): (i) the *Shariah*, ... and (ii) the *fiqh*, which represents Islamic jurisprudence based on a body of laws deducted from the *Shariah* by Islamic scholars”<sup>359</sup>.

Furthermore, Islamic law is derived from two primary sources - the *Holy Qur’an* and the *Sunnah*, and two secondary sources - the *Ijma* (consensus of opinion) and the *Qiyas* (judgment upon juristic analogy).<sup>360</sup>

Thus it is plausible to assert that Islamic economics is based on prohibitions and encouragements. According to the norms and ethics in the Islamic framework,<sup>361</sup> there are four basic elements that are prohibited in Islamic finance and business: *Riba*<sup>362</sup> (interest in conventional terminology),

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<sup>358</sup> International Monetary Fund (IMF), [www.imf.org](http://www.imf.org).

<sup>359</sup> Jobst, A., (2007). The Economics of Islamic Finance and Securitization. *Journal of Structured Finance*, Vol. 13, No. 1, p: 3.

<sup>360</sup> Khan, K.M., (1983). Juristic classification of Islamic law. 6 *Houston Journal of International Law*, p: 23.

<sup>361</sup> *Supra* note 99, at p: 43.

<sup>362</sup> *Ibid.* p: 493. *Riba* - Literally, an excess or increase. Technically, it means an increase over the principal in a loan transaction, over a debt or in exchange transactions, accrued to the lender/creditor or a party to exchange without giving an equivalent counter value or recompense (*Iwad*) in return to the other party. *Riba*, meaning prohibited gain, has been explained in the Holy Qur’an by juxtaposing it against (profit from) sale. It explains that all income and earnings, salaries and wages, remuneration and profits, usury and interest, rent and hire, etc. can be categorized either as:

- profit from trade and business along with its liability – which is permitted; or

*Gharar*<sup>363</sup> (ambiguity), *Maisir*<sup>364</sup> and *Qimar*<sup>365</sup> (gambling) and *Haram*<sup>366</sup> (forbidden goods and immoral activities). Another important element, which is one of the *Five Pillars of Islam*<sup>367</sup> is *Zakat* - the religious tax to be deducted from wealth to be paid to the needy.<sup>368</sup> This is “a built-in mechanism in Islam for ensuring the redistribution of wealth and the protection of a fair standard of living for the poor”.<sup>369</sup>

It is not widely known, but the prohibition of interest and usury initially existed in all major religions such as Judaism, Christianity, Buddhism and Hinduism. As summarised in *Tradition: A Journal of*

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- return on cash or a converted form of cash without bearing liability in terms of the result of deployed cash or capital – which is prohibited ( p: 47).

<sup>363</sup> *Ibid.* p: 488. *Gharar* - Literally, uncertainty, hazard, risk relating to major elements of a contract; technically, sale of a thing which is not present at hand, or the sale of a thing whose consequence or outcome is not known, or a sale in which one does not know whether it will come to be or not, such as fish in water or a bird in the air. It refers to an element of absolute or excessive uncertainty in any business or a contract about the subject of contract or its price, or mere speculative risk. It leads to undue loss to a party and unjustified enrichment of another, which is prohibited. Gambling is a form of *Gharar* because the gambler is ignorant of the result of the gamble. Selling goods without allowing the buyer to properly examine the goods is also a kind of *Gharar*. Some examples of *Gharar* are: selling goods that the seller is unable to deliver; selling known or unknown goods against an unknown price, such as selling the contents of a sealed box without exact information about its contents; selling goods without proper description; selling goods without specifying the price, such as selling at the “going price”.

<sup>364</sup> *Ibid.* p: 491. *Maisir* - An ancient Arabian game of chance played with arrows without heads and feathering, for stakes of slaughtered and quartered camels. It refers to all types of hazard and gambling – acquisition of wealth by chance/easily (without paying an equivalent compensation (*‘Iwad*) for it or without working for it, or without undertaking any liability against it).

<sup>365</sup> *Ibid.* p: 492. *Qimar* - Games of chance – gambling. Technically, it is an arrangement in which possession of a property is contingent upon the happening of an uncertain event. By implication, this applies to a situation in which there is a loss for one party and a gain for the other without specifying which party will lose and which will gain.

<sup>366</sup> *Ibid.* p: 488. *Haram* - Anything prohibited by the Shariah, e.g. forbidden goods, such as pork, pornography and alcoholic beverages.

<sup>367</sup> See BBC <http://www.bbc.co.uk/religion/religions/islam/practices/fivepillars.shtml>

The Five Pillars of Islam are the five obligations that every Muslim must satisfy in order to live a good and responsible life according to Islam. The Five Pillars consist of:

- Shahadah: sincerely reciting the Muslim profession of faith
- Salat: performing ritual prayers in the proper way five times each day
- Zakat: paying an alms (or charity) tax to benefit the poor and the needy
- Sawm: fasting during the month of Ramadan
- Hajj: pilgrimage to Mecca

<sup>368</sup> El-Hawary, D., Grais, W., and Iqbal, Z., (2004 ). Regulating Islamic Financial Institutions: The Nature of the Regulated. The World Bank Policy Research Working Paper Series 3227, p: 45.

<sup>369</sup> Samad, A., (2004). Performance of Interest-Free Islamic Banks Vis-À-Vis Interest-Based Conventional Banks of Bahrain, IIUM Journal of Economics and Management, Vol. 12, No. 2, p: 118.

*Orthodox Jewish Thought*,<sup>370</sup> the Pentateuch<sup>371</sup> (The five books of Moses), clearly prohibits one Jew from charging another Jew interest. This prohibition is explicitly stated in three of the five books. In Exodus (1) we read: "If thou lend money to any of my people ... neither shall ye lay upon him interest". This is repeated and slightly amplified in Leviticus (2): "Take no interest of him or increase... Thou shalt not give him money upon interest, nor give him thy victuals for increase." And in Deuteronomy (3) the prohibition against charging interest is widened and-made all inclusive: "Thou shalt not lend upon interest to thy brother, interest of money, interest of victuals, interest of anything that is lent upon interest".<sup>372</sup>

Several Old Testament<sup>373</sup> passages forbid the taking of interest:

- Deuteronomy 23:19-20: "You shall not charge interest on loans to another Israelite, interest on money, interest on provisions, interest on anything that is lent. On loans to a foreigner you may charge interest, but on loans to another Israelite you may not charge interest ..."
- Exodus 22:25: "If you lend money to my people, to the poor among you, you shall not deal with them as a creditor; you shall not exact interest from them".

Also, in the non-canonical *Gospel of Thomas*<sup>374</sup> (V95), Jesus said, "If you have money, do not lend it at interest, but give [it] to one from whom you will not get it back".<sup>375</sup>

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<sup>370</sup> A Journal of Orthodox Jewish Thought is a publication of the Rabbinical Council of America.

<sup>371</sup> The word is a Greek adaptation of the Hebrew expression "ḥamishshah ḥumshe ha-Torah" (five-fifths of the Law) applied to the books Genesis, Exodus, Leviticus, Numbers, and Deuteronomy, and indicating that these five books were to be taken as a whole, as they are in the first distinct reference to a division of the Biblical books. For more information see <http://www.jewishencyclopedia.com/view.jsp?artid=176&letter=P>

<sup>372</sup> <http://www.traditiononline.org/news/article.cfm?id=104082>

<sup>373</sup> All biblical quotes are as translated in The New Oxford Annotated Bible. Other Old Testament passages dealing with the subject of interest are Leviticus 25:35-37, Psalms 15:5 and Ezekiel 18:13.

According to Visser and McIntosh (1988) “... the Roman Catholic Church had by the fourth century AD prohibited the taking of interest by the clergy; a rule which they extended in the fifth century to the laity. In the eighth century under Charlemagne, they pressed further and declared usury to be a general criminal offence. This anti-usury movement continued to gain momentum during the early Middle Ages and perhaps reached its zenith in 1311 when Pope Clement V made the ban on usury absolute...”<sup>376</sup>

Likewise, as the Institute of Islamic Banking and Insurance (IIBI) notes, “[e]ven the renowned Greek philosopher, Aristotle, condemned acquiring of wealth by the practice of charging interest on money”.<sup>377</sup> Also much disliked is the practice of charging interest: this dislike is fully justified in regard to interest arising out of money itself, not as a product of that for which money was provided. Money was intended to be a means of exchange; interest represents an increase in the money itself. Hence of all ways of gaining wealth, this is the most contrary to nature.<sup>378</sup>

On the subject of Buddhism and Hinduism, as many academics (Ghauri and Masood (2015), Gottheil (2012), Iqbal and Mirakhor (2006), Visser and McIntosh (1988), etc.) have similarly noted, the oldest known references to usury are to be found in religious manuscripts: the *Vedic*<sup>379</sup>

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<sup>374</sup> Part of the collection of [Coptic] texts discovered in Nag Hammadi in Egypt at the end of 1945, the *Gospel of Thomas* has a strong claim to be as old as the gospels in the New Testament ([www.bl.uk/onlinegallery/sacredtexts/thomasgosp.html](http://www.bl.uk/onlinegallery/sacredtexts/thomasgosp.html)). The *Gospel of Thomas* is a collection of traditional Sayings (logoi) of Jesus. See <http://www.sacred-texts.com/chr/thomas.htm>.

<sup>375</sup> Ehrman, B., (2003). *Lost Scriptures: Books that did not make it into the New Testament*. Oxford University Press, p: 27

<sup>376</sup> *Supra* note 112, at p: 176.

<sup>377</sup> [http://www.islamic-banking.com/prohibition\\_of\\_interest.aspx](http://www.islamic-banking.com/prohibition_of_interest.aspx)

<sup>378</sup> Aristotle, (1962). *The Politics*, Penguin, p: 46.

<sup>379</sup> *Vedic* religion, also called Vedism, the religion of the ancient Indo-European-speaking peoples who entered India about 1500 BC from the region of present-day Iran. It takes its name from the collections of sacred texts known as the Vedas. Vedism is the oldest stratum of religious activity in India for which there exist written materials. It was one of the major traditions that shaped Hinduism. See Britannica <https://www.britannica.com/topic/Vedic-religion>

texts of Ancient India (2,000-1,400 BC), the *Sutra*<sup>380</sup> texts (700-100 BC), as well as Buddhist *Jatakas*<sup>381</sup> (600-400 BC). For example, in the *Jatakas*, usury is referred to in a demeaning manner: “hypocritical ascetics are accused of practising it”.<sup>382</sup> However, as Fahey (1996) states: “...prohibitions of interest slowly but inexorably were cast aside under the pressure exerted by economic reality and changing theology, and the word *usury* itself, once applied to all interest, came to be associated only with interest levels that were clearly excessive and exploitative”.<sup>383</sup>

Furthermore, according to Iqbal (1997) “[T]he basic framework for an Islamic financial system is a set of rules and laws, collectively referred to as *Shariah*, governing economic, social, political, and cultural aspects of Islamic societies”.<sup>384</sup> Finally, it is absolutely clear that Islamic finance must be compliant with the accepted meaning and interpretations of *Shariah*. As Nomani and Rahnema (1994) pointed out, “... moral and ethical issues based on the Islamic value system are thus a major element in all activities that could be considered as economic. A comprehensive and rigid set of normative guidelines, based on divine revelation, define the sphere of economic life for a Muslim”.<sup>385</sup> In what follows, due to the practical and

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<sup>380</sup> *Sutra* is a type of religious literature present in many Asian traditions such as Hinduism, Jainism and Buddhism. The word *sutra* is a Sanskrit term that means “discourse”. Another meaning suggested for the word *sutra* is “threads”. See Ancient History Encyclopedia [www.ancient.eu/Sutra/](http://www.ancient.eu/Sutra/)

<sup>381</sup> Stories, ballads, anecdotes, and episodes that tell about the previous lives of the Buddha, in both human and animal form. *Jataka* is a Pali and Sanskrit word that means “birth.” See Britannica [www.britannica.com/topic/Jataka](http://www.britannica.com/topic/Jataka)

<sup>382</sup> Gottheil, F., (2012). *Principles of Economics*. 7<sup>th</sup> Revised edition, Cengage Learning, p: 417.

<sup>383</sup> Fahey, C., (1996). Churches Came to Terms with Moneylending. *Dossier: Economic Alternatives*, Vol. 14, No. 5, p: 21.

<sup>384</sup> *Supra* note 105, at p: 43.

This is most widespread definition of Islamic financial system, often used even without reference. Also, according to Van Greuning and Iqbal (2008), the basic principles of an Islamic financial system can be summarized as follows: Prohibition of interest; Money as “potential” capital; Risk sharing; Prohibition of speculative behaviour; Sanctity of contracts; *Shariah*-approved activities; Social justice. For a comprehensive explanation on the subject see Appendix 3. Principles of an Islamic Financial System.

<sup>385</sup> Nomani, F., and Rahnema, A., (1994). *Islamic Economic Systems*. Zed Books, p: 26.

originally theoretical similarity between Islamic economics and Islamic finance,<sup>386</sup> when speaking of economics we mean finance and *vice versa*.

### 3.3 Modes of financing in Islamic finance

Based on the foundations of Islamic finance, described in the previous paragraph, the essential existence condition of Islamic finance is to fulfil the teachings of *Shariah*. In other words, unlike conventional finance, Islamic finance is governed by strict religious rules that prohibit interest-based transactions (*Riba*), the risk of uncertainty in a business transaction (*Gharar*), speculation (*Maysir*) or any game of chance (*Quimar*) as well as any kind of sinful activity (*Haram*). Furthermore, according to Ijaz (2012), the general conditions governing Islamic finance can be defined as follows:

- “Money does not make money in itself, but it is effective only if it involves in a task, activity, or job;
- Investment is lawful only in those business activities which are not prohibited;
- There will be no *Gharar* in business contracts, it means that uncertainty, and ignorance and the conditions which lead to disputes are strictly prohibited”.<sup>387</sup>

Contemporary Islamic finance applies the old practices and creates new products or adapts existing conventional models to Islamic principles.

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<sup>386</sup> First of all, it is well-known that the finance is the blood of the economy. Also, from the Islamic point of view, economic was never considered in isolation, as a separate subject or a distinct domain of activity in Islamic society. Moreover, “there is no even a word for economics in classical Arabic. The term of *Iqtisad* (economic) being a fair recent translation of the modern term "economics" in Arabic and having a very different meaning in classical Arabic. Where it means primarily moderation and keeping to the golden mean as witnessed by the famous book *Ihya Ulum-id-Din*, (Ghazzali, I. M., (1993). *Ihya Ulum-id-din*, Revival of Religious Learnings. English Translation by Al-Haj maulaana Fazl-ul-Karim, Darul Ishaat, Karachi, Pakistan)” see Taheri, M. R., (2000). *The Basic Principles of Islamic Economy and Their Effects on Accounting Standards-Setting*, p: 2.

<sup>387</sup> Ijaz, M., (2012). *Islamic Modes of Financing*. AL-ADWA - Multilingual Research Journal for Islamic Social Sciences, Vol. XXVII, No. XXXVII, pp: 33-39.



However, the main question is how those fundamental principles and conditions affected the practical implementation of Islamic finance? The answer is the number of modes of financing based on *Shariah* principles e.g. “Profit and Loss Sharing” (PLS) models<sup>388</sup> used to avoid interest-based transactions and non-PLS models, which deliver genuine underlying trade and business activities that generate fair and legitimate profit.

According to Hanif and Iqbal (2010), Islamic modes of financing can be classified as *Shariah* based (*Mudarabah* and *Musharakah*) and *Shariah* compliant (*Murabahah*, *Istisna*, *Ijara*, *Diminishing Musharakah*, *Salam*, *Bai Muajjal*, etc.).<sup>389</sup> However, it would seem more practical to categorize the modes of financing based on various forms of Islamic contracts.<sup>390</sup> Consequently, there are four main types of modes of Islamic financing which are summarised in Exhibit 6 below.

**Exhibit 6: Four main types of modes of Islamic financing<sup>391,392</sup>**

1) Participatory modes	2) Sale modes	3) Rent based modes	4) Benevolent based modes
Mudarabah	Murabahah	Ijarah	Qard (Qard-al-Hassan)
Musharakah	Istisna	Ijarah wa Iqtina	
Diminishing Musharakah	Salam		

Even though these modes share some common features (all involve an asset basis, the assumption of risk in the asset by the financier and a profit and loss sharing between the financier and customer), many variations of

<sup>388</sup> <http://nzibo.com/IB2/truemodes.pdf>

<sup>389</sup> Hanif, M., and Iqbal, A., (2010). Islamic Financing and Business Framework: A Survey. European Journal of Social Sciences, Vol. 15, No. 4, pp: 477-478.

<sup>390</sup> The variety of common Islamic contracts in commercial transactions is shown in Appendix 4.

<sup>391</sup> Afkar, T., (2015). Financing Mechanism of Islamic Banking. The International Journal of Social Sciences, Vol. 32, No. 1, p: 2.

<sup>392</sup> Rusni, H., (2014). Legal Documentations for Islamic Financing. ADFIMI Special Workshop, p: 11.

such structures exist for various reasons such as different interpretations by *Shariah* scholars, local law variations of jurisdictions and a lack of market standards and transactions of financing are often custom-built.<sup>393</sup>

The basic principles and visual models of these essential Islamic modes of financing are given below:

### 1) Participatory modes

**a) *Mudarabah* (venture capital)** - is a special type of partnership where one partner gives money to another with a view to invest in a commercial enterprise. The investment comes from the first partner who is called “*rabb-ulmal*” and provides 100% capital, while the management and work is the exclusive responsibility of the other, who is called “*mudarib*”.<sup>394</sup> Under this contract, the resulting profit is shared by the partners according to a pre-agreed ratio, while any loss is borne solely by the provider(s) of capital.<sup>395</sup> There are two types of *Mudarabah* contracts – unrestricted in which the capital provider does not put any restriction on the *mudarib* and restricted in which the capital provider restricts the *mudarib* to perform business with certain conditions e.g. restrictions may be for a particular location or a particular type of investment. The *Mudarabah* contract can be terminated at any time by either of the two parties after due notice.<sup>396</sup>

The diagram below illustrates an example of *Mudarabah* transactions.

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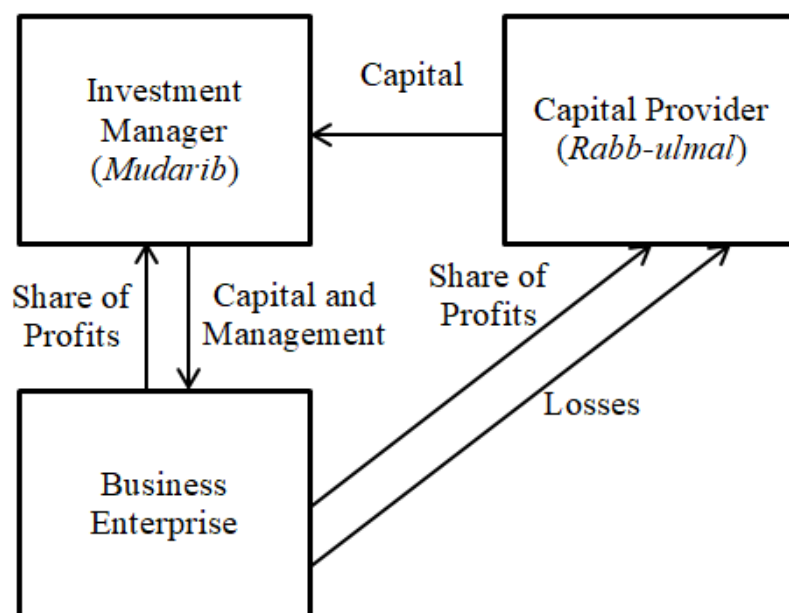
<sup>393</sup> Sandstad, B., (2009). Introduction to Islamic finance - Part II, p: 5.

<sup>394</sup> *Supra* note 111, at p: 47.

<sup>395</sup> Hanif, M., (2014). Differences and Similarities in Islamic and Conventional Banking, p: 5.

<sup>396</sup> For more detailed information, see AAOIFI, (2015). *Shariah Standards*. Manama, Kingdom of Bahrain. Shariah Standard No. 13, pp: 370 - 389.

## Exhibit A: Example of *Mudarabah* transactions<sup>397</sup>



**b) *Musharakah* (equity joint venture)** – is a joint venture between two or more parties in which every one of them contributes capital or other assets and all partners share the profit according to a pre-agreed ratio while the loss is shared according to the ratio of contribution.<sup>398</sup> None of the partners can guarantee the capital or profit share to any other partner.<sup>399</sup> According to Usmani (2007) the root of the word “*Musharakah*” in Arabic is “*Shirkah*”, which means “*Sharing*” and in the terminology of Islamic *Fiqh*, it has been divided into two kinds:

(1) *Shirkat-ul-Milk* (Partnership by joint ownership): meaning joint ownership of two or more persons in a particular property.

<sup>397</sup> *Supra* note 393, at p: 4.

<sup>398</sup> Soufani, K., Cole, O., and O'Sullivan, P., (2015). Is Islamic finance a complement to conventional Western finance? Underlying principles and viability. in *The Philosophy, Politics and Economics of Finance in the 21st Century: From Hubris to Disgrace*. Edited by O'Sullivan, P., Nigel F., Allington, N., and Esposito, M., Routledge, p: 79.

<sup>399</sup> *Supra* note 396, Shariah Standard No. 12, pp: 326.

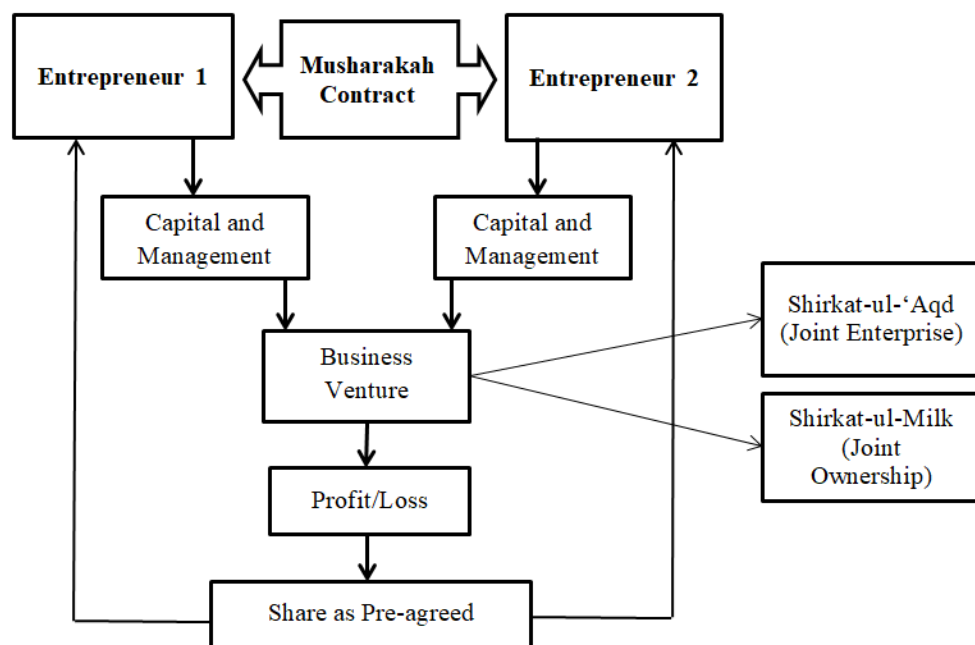
(2) *Shirkat-ul-Aqd* (Partnership by contract): meaning “a partnership effected by a mutual contract”.<sup>400</sup>

The *Musharakah* contract can be terminated in any one of the following events:

- “If the purpose of forming the contract has been achieved;
- In case of a death of any one of the partners or any partner becoming insane or incapable of effecting commercial transaction during the execution of the contract;
- Every partner has a right to terminate the contract at any time after giving his partner a notice.”<sup>401</sup>

The diagram below illustrates an example of *Musharakah* transactions.

**Exhibit B: Example of *Musharakah* transactions**<sup>402</sup>



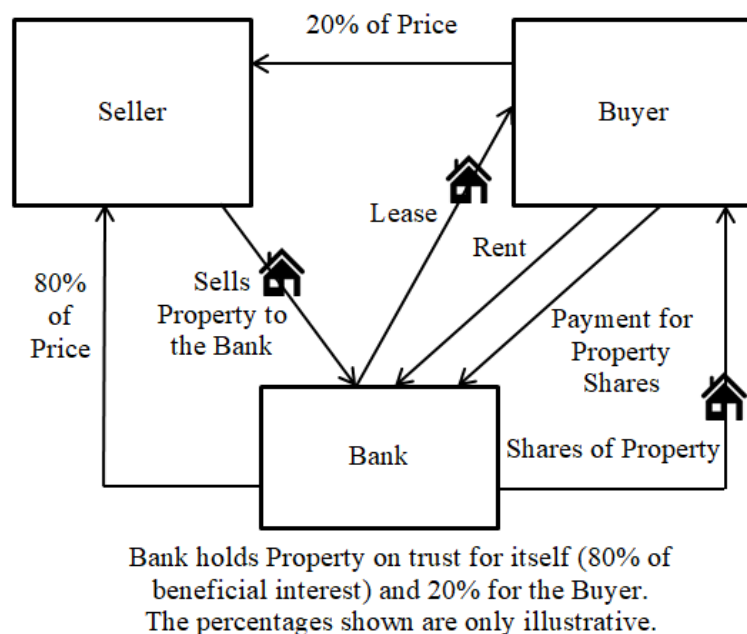
<sup>400</sup> Usmani, M., (2002). Meezan Bank's Guide to Islamic Banking. Darul Ishaat Karchi, Pakistan, pp: 40-41.

<sup>401</sup> *Supra* note 111, at pp: 28-29.

<sup>402</sup> [www.financepractitioner.com/financing-viewpoints/infrastructure-finance-islamic-alternative](http://www.financepractitioner.com/financing-viewpoints/infrastructure-finance-islamic-alternative) and <http://islamic-finance-simple.blogspot.co.uk/2010/05/>

c) **Diminishing *Musharakah*** – is a variation of standard *Musharakah* contract in which one partner acquires portions of the venture from the other partner at mutually agreed intervals, leading to the total ownership by the acquiring partner by the end of the contract.<sup>403</sup> Diminishing *Musharakah* is generally used for real estate financing and has successfully replaced conventional mortgages.<sup>404</sup> The diagram below illustrates an example of *Musharakah* transactions.

**Exhibit C: Example of Diminishing *Musharakah* transactions**<sup>405</sup>



## 2) Sale modes

d) ***Murabahah* (cost-plus-sale/profit)** – is one of the most commonly used modes of financing by Islamic Banks and other financial institutions.<sup>406</sup> It is defined as a particular kind of sale where the seller must disclose the cost of the sold commodity plus an agreed profit mark-up, and sells it to the buyer, who can settle payment in full at a deferred

<sup>403</sup> *Supra* note 398, at p: 79

<sup>404</sup> *Supra* note 395, at p: 23.

<sup>405</sup> Diminishing *Musharakah* mortgage, see <https://www.gov.uk/government/publications/islamic-financing/practice-guide-69-islamic-financing>

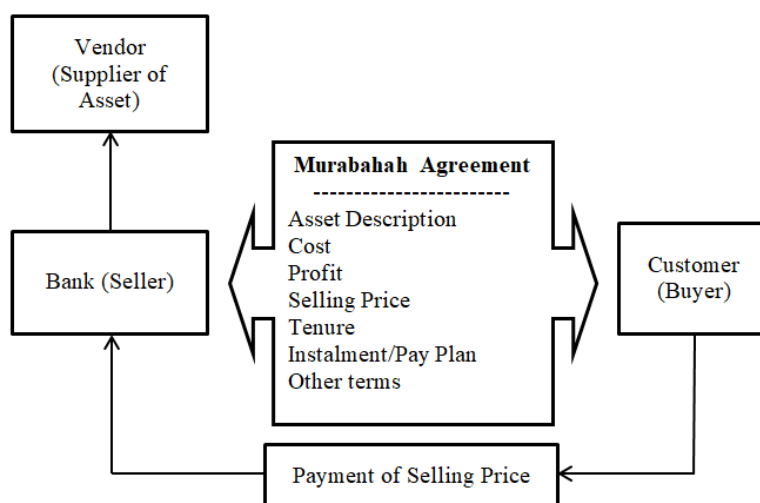
<sup>406</sup> *Supra* note 400, at p: 63.

date or an agreed instalments basis.<sup>407</sup> There are modifications of the standard *Murabahah* contract - Commodity *Murabahah* and *Tawarruq* (also known as Reverse *Murabahah*). Those contracts commonly involve the purchase of commodities such as metals<sup>408</sup> on a deferred payment basis and immediate sale to third party in order to generate liquidity.<sup>409</sup>

According to Sandstad (2009) this is permitted, as the “financier has actually owned the asset (even if only for a very short time), thus bearing the risks of ownership, profit generated on the marked up sale price is regarded as profit derived from the asset and not interest.”<sup>410</sup> Thus, as Hanif (2014)<sup>411</sup> notes, *Murabahah* has successfully replaced the overdraft and short term loans facility intrinsic to conventional banking.

The diagram below illustrates an example of *Murabahah* transactions.

#### **Exhibit D: Example of *Murabahah* transactions<sup>412</sup>**



<sup>407</sup> *Supra* note 398, at p: 80.

<sup>408</sup> Except gold and silver, which are treated by *Shariah* as currency and cannot be used as underlyings. See <http://www.investment-and-finance.net/islamic-finance/r/reverse-murabaha.html>

<sup>409</sup> *Supra* note 398, at p: 83.

<sup>410</sup> *Supra* note 393, p: 2.

<sup>411</sup> *Supra* note 395, at p: 24.

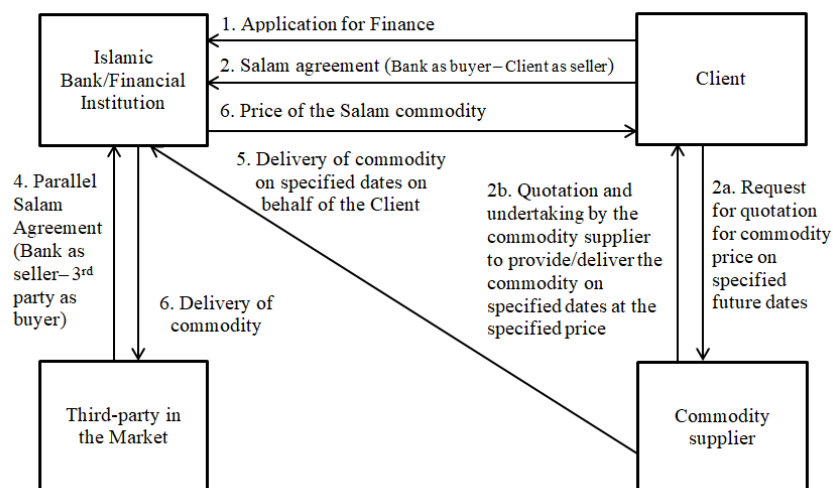
<sup>412</sup> <https://islamicbankers.me/islamic-banking-islamic-contracts/in-focus-murabahah-contract/>

e) ***Salam* (deferred delivery sale)** – is a forward “sale contract whereby the seller undertakes to supply some specific goods to the buyer at a future date in exchange for an advanced price fully paid at spot.”<sup>413</sup> The permissibility of *Salam* (as well as *Istisna*) is an exception to the general rule in *Shariah* that prohibits forward sales<sup>414</sup> and therefore it is necessary that the quality of the commodity intended to be purchased has to be fully specified in terms of the parameters which are capable of being specified definitely with regards to quantity, quality and workmanship leaving no ambiguity leading to potential disputes.<sup>415</sup>

This type of contract is widely used for financing in the agricultural sector, import-export deals, short-term liquidity management and small-medium enterprises (SME's).<sup>416</sup>

The diagram below illustrates an example of *Salam* process.

**Exhibit E: Example of *Salam* process**<sup>417</sup>



<sup>413</sup> *Supra* note 111, at p: 128.

<sup>414</sup> For more detailed information, see Usmani (2002), pp: 68-69.

<sup>415</sup> State Bank of Pakistan (2010). Frequently asked questions (FAQs) on Islamic banking, Vol. 5, No. 1, p: 16.

<sup>416</sup> *Supra* note 398, at p: 83.

<sup>417</sup> Mahadik, J., (2013). Salam: A Good Alternative to Controversial Tawarruq. NEWHORIZON. Global Perspective on Islamic Banking & Insurance. No. 188, p: 32.

**f) *Istisna* (forward sale or manufacture contract)** – is a second specific type of sale where the sale of the commodity is executed before the commodity comes into existence.<sup>418</sup> Undoubtedly for the validity of *Istisna* it is essential that the price is fixed with consent of the parties and that necessary specification of the commodity intended to be manufactured is fully settled between them.<sup>419</sup>

Interestingly, as Sandstad (2009) noted, “*Istisna* contracts are somewhat unusual in Islamic finance as they do not require the “subject matter” (e.g. a construction project which has not yet commenced) to be in existence at the time of the contract.”<sup>420</sup> It is also necessary to mark a significant difference between *Istisna* и *Salam*.<sup>421</sup> *Istisna* is much more flexible concerning the methods of payment (payment can be made in advance, at the time of delivery, in instalments or in a combination of any of these payment options), the timing of contract execution (time of delivery does not have to be fixed) and the possibility of its cancelation before manufacture has commenced. This great flexibility makes this a particularly attractive contract.

*Istisna* is widely used for financing of industrial projects and large equipment manufacture, such as ship or aircraft manufacture,<sup>422</sup> building/construction of houses, plants, bridges, roads and highways and other infrastructure projects common in public-private partnerships.<sup>423</sup>

The diagram below illustrates an example of *Istisna* transactions.

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<sup>418</sup> *Supra* note 111, at p: 135.

<sup>419</sup> *Ibid.*

<sup>420</sup> *Supra* note 393, at p: 3.

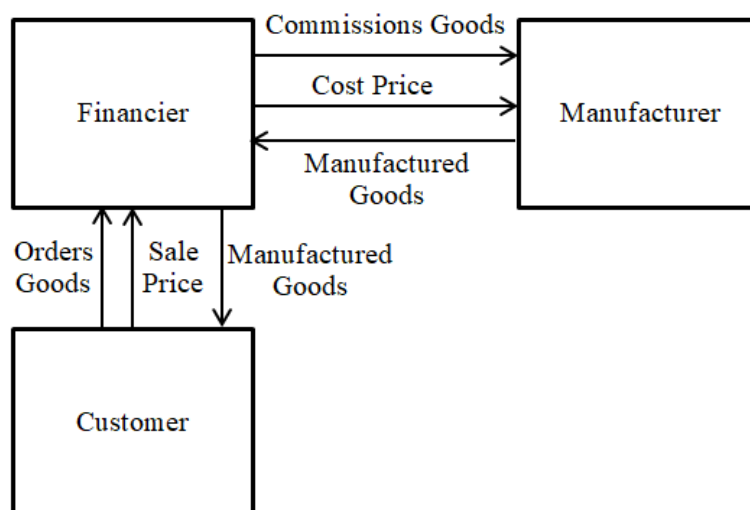
<sup>421</sup> *Supra* note 400, at p: 71.

<sup>422</sup> *Supra* note 393, at p: 3.

<sup>423</sup> *Supra* note 398, at p: 84.



## Exhibit F: Example of *Istisna* transactions<sup>424</sup>



### 3) Rent based modes

**g) *Ijarah* (operating lease)** – is a leasing contract that transfers the usufruct (or service) for a specified period in exchange for a specified consideration.<sup>425</sup> In other type of lease contract (*Ijarah wa Iqtina* - lease-purchase), the lessee has the right to buy the good at the end of the lease period at a pre-determined purchase price.<sup>426</sup> To make these contracts *Shariah*-compliant the leased property remains in the ownership of the lessor and all the liabilities emerging from the ownership shall be borne by the lessor.<sup>427</sup> Consequently the rights of lessee to use the asset are restricted to the lease agreement or/and as per normal course of business.<sup>428</sup>

<sup>424</sup> *Supra* note 393, at p: 3.

<sup>425</sup> Central Bank of Malaysia (2014). *Ijarah* Concept Paper, p: 5.

<sup>426</sup> *Supra* note 391, at p: 10.

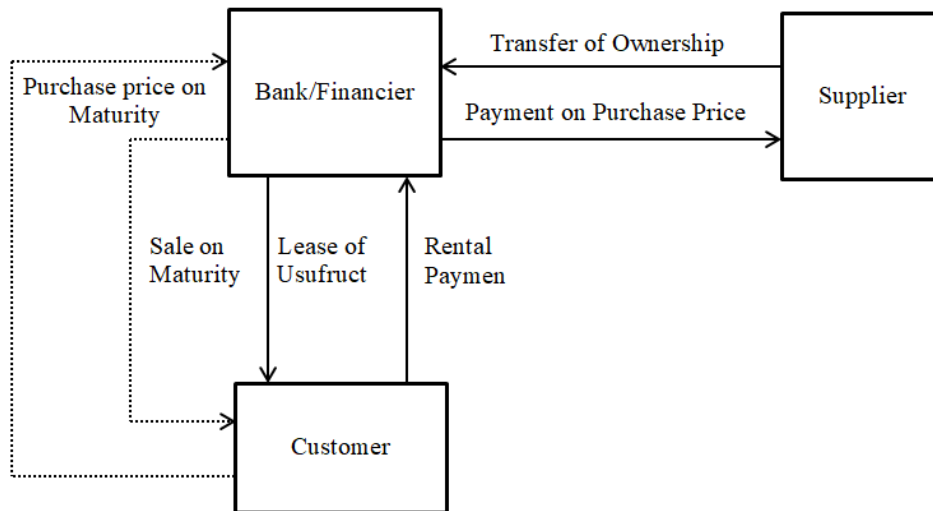
<sup>427</sup> *Supra* note 111, at p: 113.

<sup>428</sup> *Supra* note 389, at p: 478.

Even though *Ijarah* is not originally a mode of financing, Islamic financial institutions “have adopted leasing as a mode of financing instead of long term lending on the basis of interest.”<sup>429</sup>

The diagram below illustrates an example of *Ijarah* transactions.

**Exhibit G: Example of *Ijarah* transactions**<sup>430</sup>



#### 4) Benevolent based modes

**h) *Qard* (*Qard-al-Hassan*) (benevolent loan)** - is a loan that is clear from *Usury* and given to community members who are under financial misery for charitable causes. It is also described as “a mechanism for welfare and not for purposes of business transactions.”<sup>431</sup> This is a free-interest financing which is often funded by *Zakat* and other kinds of charity. Therefore the borrower only repays the principal amount of the loan without interest, mark-up or a share in the business for which the loan was used.<sup>432</sup> However, the borrowers can voluntary pay more even

<sup>429</sup> *Supra* note 400, at p: 77.

<sup>430</sup> *Supra* note 393, p: 4.

<sup>431</sup> Yussof, W., Ismail, A., Ahmad, S., and Ahmad, S. (2015). The Originality of *Qard* and its Implication on the Loan Theory: Does Intention Matter? *JAMS Malaysian Studies Journal*, Vol. 4, p: 15.

<sup>432</sup> [https://uk.practicallaw.thomsonreuters.com/3-503-0057?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/3-503-0057?transitionType=Default&contextData=(sc.Default))

if it is not specified in the contract.<sup>433</sup> In this context, it is important to note that, as Afkar (2015) mentioned, a *Qard* loan is directly connected with spiritual part of life and can be applied to “[c]ustomers who have the intention to perform *Hajj* but there is still a lack of funds may submit an application to the Islamic banks to get additional bailout funds to get a place or serving as a pilgrim.”<sup>434</sup>

According to Iqbal and Shafiq (2015), main characteristics of *Qard-al-hassan* are as follows:

- “The primary objective of *Qard-al-hassan* is to help poor get on their feet to become part of economic activities in a dignified and cost effective manner. Since poor do not have any material collateral, social capital is the only collateral for extending such credit. This also provides an incentive to poor to perform and be able to have access to such credit in the future.
- The practice of *Qard-al-hassan* has also been associated with enhancing harmony among poor and rich segments of the society which leads to more cooperative, collaborative, and caring society.
- The institution of *Qard-al-hassan* can be effectively used to eradicate extreme poverty through opportunities to poor to create new jobs market and business ventures by using their merits, skills and expertise.
- Finally, *Qard-al-hassan* can serve as tool to enhance financial and social inclusion in the society. By extending credit to poor, they can be brought into the formal financial sector and as they come out of poverty, they are better integrated and included in the society. In this respect, *Qard-al-hassan* is one of the tools to

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<sup>433</sup> *Supra* note 431, p: 15.

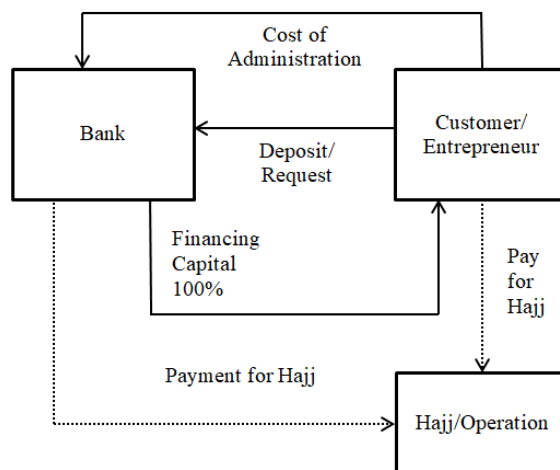
<sup>434</sup> *Supra* note 391, at p: 12.

achieve economic and social justice as envisioned by Islamic economics.”<sup>435</sup>

Therefore, as Iqbal and Shafiq (2015)<sup>436</sup> clearly described, *Qard-al-hassan* is a voluntary instrument of redistribution of wealth within a society used in Islamic finance in order to facilitate the issue of financial and social inclusion and sharing of resources between the haves and the have-nots<sup>437</sup> in accordance with core principles of social justice in Islam.

The diagram below illustrates an example of *Qard* transactions.

**Exhibit H: Example of *Qard* transactions**<sup>438</sup>



For a deep and detailed comprehensive analysis of the subject see the fundamental and truly outstanding book – “Understanding Islamic Finance” by Muhammad Ayub (2007). The variety of implementation of Islamic finance modes in different type of Islamic Banking products and services is shown below in Exhibit 7.

<sup>435</sup> Iqbal, Z., and Shafiq, B., (2015). Islamic Finance and the Role of Qard-al-Hassan (Benevolent Loans) in Enhancing Inclusion: A Case Study of AKHUWAT. ACRN Oxford Journal of Finance and Risk Perspectives. Special Issue of Social and Sustainable Finance. Vol. 4, Issue 4, p: 26.

<sup>436</sup> *Ibid.* p: 25

<sup>437</sup> Direct reference to Marx’s description of two major economically based social classes: the “bourgeois” (the “haves”) and the “proletariat” (the “have nots”). See Ballantine, J., Roberts, K., and Korgen, K., (2017). Our Social World: Introduction to Sociology, SAGE Publications, p: 197.

<sup>438</sup> *Supra* note 391, at p: 12.

## Exhibit 7: Islamic Banking products and services<sup>439</sup>

Nature of Product/Service	Modes and Basis
<b>I. Deposits - fund mobilization</b>	
Current deposits	Amanah – Qard to bank; no return payable
Savings deposits	Mudarabah
General investment term deposits	Mudarabah
Special investment deposits	Mudarabah, closed-and open-ended mutual funds, Wakalatul Istismar
Individual portfolios	Mudarabah, Wakalatul Istismar
Liquidity generation	Tawarruq – reverse Murabahah, sale to any 3 <sup>rd</sup> party
<b>II. Trade finance, corporate finance</b>	
Project finance	Musharakah, Mudarabah-based TFCs, syndication through Mudarabah, Murabahah, Istisna, Ijarah/Ujrah
Working capital finance	Murabaha, Salam, Musharakah in single transactions
Export finance – preshipment	Salam/Istisna plus Murabahah and Wakalah, Murabahah, Musharakah
Import finance	Murabahah, Musharakah
Cash finance	Salam, Istisna, Tawarruq (sale to 3 <sup>rd</sup> party)
Export finance – post shipment (bill discounting)	Qard-al-Hassan in local currency (spot rate) and promise to sell foreign exchange in future market – exchange rate differential bank's income; Murabahah if funds needed for next consignment
Letter of credit	Commission, Ujrah along with Murabahah, etc.
Letter of guarantee	Kafalah, service charge
<b>III. Agriculture, forestry and fisheries</b>	
Production finance for input and pesticides	Murabahah, Salam
Tubewells, tractors, trailers, farm machinery and transport (including fishing boats)	Ijarah Munahia-bi-Tamleek, Salam, Murabahah
Plough cattle, milk cattle and other livestock; dairy and poultry	Murabahah, Salam
Storage and other farm construction (Sheds for animals, fencing, etc.)	Diminishing Musharakah or rent-sharing
Land development	Operating Ijarah, Salam
Orchards, nurseries, forestry	Salam, Musaqat
<b>IV. Treasury</b>	
Money market – inter-bank	Mudarabah with or without allocation of assets
Liquidity management	Sale/purchase of permissible securities,

<sup>439</sup> Based on Ayub (2007). Understanding Islamic Finance, pp: 194-195.

Fund management	Parallel Salam, Tawarruq
Trading in Sukuk, stocks	Mudarabah, Wakalatul Istismar, trading in permissible stocks and Sukuk Depending upon the nature of instruments Forex operations Unilateral promise to buy/sell foreign exchange simultaneously at pre-agreed rate
<b>V. Personal advances (including consumer durables and housing)</b>	
Consumer durables	Murabahah/instalments sale
Automobiles	Ijarah Munahia-bi-Tamleek, Murabahah
Housing finance	Diminishing Musharakah, Murabaha
Providing cash for personal needs	Salam if possible, Tawarruq
<b>VI. Personal needs</b>	
Microcredit or Microfinance	Qard-al-hassan
Basic requirements (school fee for children, cost of medical treatment, etc.)	Qard-al-hassan
Bailout the Hajj	Qard-al-hassan

The permissibility of the aforementioned Islamic modes of financing and their adherence to the *Shariah* principles related to financial transactions has been investigated from all angles and accepted by the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) in *Shariah Standards (2015)*<sup>440</sup> which are officially adopted by a number of Central Banks and Financial Authorities on a mandatory basis or as guidance.<sup>441</sup>

As a final point, it is vital to note that Islamic financial institutions should operate by serving social objectives and promote the social welfare of the society, while the social justice and ethical norms have to be executed in accordance with the *Maqasid al-Shariah*.<sup>442</sup> Therefore, the abovementioned

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<sup>440</sup> *Supra* note 396.

<sup>441</sup> AAOIFI *Shariah* standards have been made part of the mandatory regulatory requirement in jurisdictions such as Bahrain, Oman, Pakistan, Sudan, and Syria. AAOIFI *Shariah* standards have also been adopted by Islamic Development Bank Group, a multilateral institution. In addition, AAOIFI *Shariah* standards have also been used as basis of national *Shariah* guidelines in jurisdictions such as Indonesia and Malaysia. In other jurisdictions including Brunei, Dubai International Financial Centre, France, Jordan, Kuwait, Lebanon, Saudi Arabia, Qatar, Qatar Financial Centre, South Africa, United Arab Emirates and United Kingdom as well as in Africa, Central Asia and North America, AAOIFI *Shariah* standards have been used voluntarily as basis of internal guidelines by leading Islamic financial institutions. See <http://aaoifi.com/standard/shariah-standards/?lang=en>

<sup>442</sup> See Paragraph 4.3 Justice in Islamic Finance, p: 151.

modes of Islamic financing are the *Shariah*-compliant instruments for the implementations of those social objectives.

According to the majority of scholars, the *Musharakah* and *Mudarabah* are the ideal modes of financing<sup>443</sup> due to their particular emphasis on social justice, equity, risk sharing, property rights, economic development and optimum resources allocation in accordance with *Sharia* principles.<sup>444</sup> Usmani (2007) strongly declared that the “ideal instrument of financing according to *Shariah* is *Musharakah* where the profits and losses both are shared by both the parties according to equitable proportion.”<sup>445</sup> Moreover, according to Choudhury and Malik (1992), Islamic finance should “produce goods that fully mobilize the resources of society towards productive transformation using of *Zakat*, abolition of interest, and the establishment of *Mudarabah*.”<sup>446</sup> Thereby, the main instruments by which the interest-based system has to be replaced are *Musharakah*, *Mudarabah* and their variants based on PLS system.<sup>447</sup> It is the best mechanism of flow of money from the rich to the poor. Through this, Islamic finance has enabled someone who has skills but not enough investment, to do business in the fair and best ways for society and make the economy flourish.<sup>448</sup>

Usmani (2007) explained the very just nature of PLS: “Islam has termed interest as an unjust instrument of financing because it results in injustice either to the creditor or to the debtor. If the debtor suffers a loss it is

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<sup>443</sup> *Supra* note 111, pp: 12, 72.

<sup>444</sup> Kwan, K., (2010). Islamic Finance. The Association of Corporate Counsel (ACC).

<sup>445</sup> *Supra* note 111, p: 164.

<sup>446</sup> Choudhury, M.A., and Malik, U.A., (1992). The Foundations of Islamic Political Economy. London: Palgrave Macmillan, pp: 166-167.

<sup>447</sup> *Mudarabah* is considered to be one of the most preferable modes of Islamic Finance both by earlier and contemporary jurists and Islamic scholars. See Shaikh, S., (2011). A Critical Analysis of *Mudarabah* and a New Approach to Equity Financing in Islamic Finance. Journal of Islamic Banking & Finance, Vol. 28, No. 3, p: 3.

<sup>448</sup> By far the most impressive argument in favour of Islamic finance has been that it integrates the financial sector with the real sector. See Siddiqi, M.N., (2006). Islamic Banking and Finance in Theory and Practice: A Survey of State of the Art. Islamic Economic Studies. Vol. 13, No. 2, p: 6.

unjust on the part of the creditor to claim a fixed rate of return, and if the debtor earns a very high rate of profit, it is injustice to the creditor to give him only a small proportion of the profit.”<sup>449</sup> Accordingly, as Van Greuning and Iqbal (2008) clearly noted, “[s]ocial justice demands that borrowers and lenders share rewards as well as losses in an equitable fashion.”<sup>450</sup> Pramanik (2003), also argued that “the PLS system helps in fostering co-operation, fellow-feeling, unity friendship, interdependence and above all universal brotherhood by involving everyone in both production and investment.”<sup>451</sup>

Consequently, it is reasonable to say, that *Musharakah* and *Mudarabah* as partnership contracts based on the PLS system ensure availability of more financial resources to small businesses and promote justice and equity in a society, since all deserving ventures get financed and not just those with a well-established credit history or excellent collateral.<sup>452</sup> Therefore, a financial system based on “a risk sharing system would lead to greater equity, allocative efficiency, financial system stability, and GDP growth”.<sup>453</sup>

Other instruments, such as *Murabahah*, *Ijara*, *Salam*, *Istisna* and *Sukuk* must also be applied “in a manner that insure justice and fairness in transactions while spreading the risk among all parties”<sup>454</sup> involved.

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<sup>449</sup> *Supra* note 111, p: 17.

<sup>450</sup> *Supra* note 60, p: 7.

<sup>451</sup> Pramanik, A., (2004). *Fighting Poverty and Inequality*. Malaysia: International Islamic University, p: 8.

<sup>452</sup> Khan, F., (2010). How ‘Islamic’ is Islamic Banking? *Journal of Economic Behavior & Organization*. Vol. 76, p: 808.

<sup>453</sup> Iqbal, M., and Molyneux, P., (2005). *Thirty years of Islamic banking: History, performance and prospects*. New York: Palgrave Macmillan, pp: 31-34. Quoted from Khan (2010), *Supra* note 452.

<sup>454</sup> Oshodi, B., (2014). *An Integral Approach to Development Economics: Islamic Finance in an African Context*. Ashgate, p: 105.



### **3.4 Conclusion**

Chapter 3 explains the foundations of Islamic finance which is based on prohibitions and incentives and illustrates the fundamental principles of Islamic finance as well as its general terms and definitions. In addition, Modes of financing in Islamic finance and their contribution to social justice have been also discussed. Consequently it is shown that the aforementioned Modes of financing as a mechanism of practical realisation the major principals of Islamic finance can help to eliminate the injustice of the conventional interest-based system and contribute to the achievement of socio-economic justice which Islam seeks to achieve. Then in accordance with the research structure, the concept of social justice in Islam and its connection to Islamic finance will be discussed further in Chapter 4.

## CHAPTER 4: JUSTICE IN ISLAM

### 4.1 Introduction

Chapter 4 defines the concept of social justice in Islam as core principle that covers all the aspects of human life. The idea of justice integrated with Islamic finance is also discussed. It will be shown that justice is an indispensable component of Islamic finance and that one cannot exist without the other.

With reference to the methodology, this chapter presents a terminological interpretation and employs classical sources. Regarding the structure, this chapter is divided into two main sections. Section 3.2 defines the social justice in Islam and Section 3.3 presents the continuous relationship between justice and finance in Islam.

### 4.2 The concept of social justice in Islam

It is impossible to understand the essence of social justice in Islam,<sup>455</sup> if one cannot perceive the basic representations of the surrounding world in this religion, as well as understandings of the Divine nature, life and the human being. Social justice is to be considered as part of the great beginning (*asl*), to which the whole of Islamic theory can be traced.

Islam does not allow any arbitrary interpretation of different sides of human life and is not restricted to their consideration as any particular features; it lays out a universal idea of the Divine and the surrounding world, life in general, human beings, the laws, which are connected with all of these, as well as doctrines, ceremonies of worship (*'ibadat*) and people's everyday life (*muamalyat*). On the basis of this comprehensive

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<sup>455</sup> In this case Islam is considered in general without taking into account the specific features inherent in two main branches of Islam - Sunni and Shia. According to Pew Forum estimates, 87-90% of the world's Muslims are Sunnis, while 10-13% are Shias. See The Pew Research Center Report (2012). The World's Muslims: Unity and Diversity.

representation, Islam does not solve problems in isolation from each other. The true Islamic representation can be found only in its original sources – the *Holy Qur'an*, the *Sirach* (Life of Mohammed – pbuh) and the *Sunna* (practical activities). These sources are enough to understand Islamic theory. Murtazin (2008) writes that understanding this representation facilitates the cognition of Islamic principles, helps to correlate the particular with the general, trace its trends and marks the interrelations between them. They represent the undivided whole and bring a result only if these parts and trends are united.<sup>456</sup>

Islam touches upon the following aspects:

- The nature and essence of relations between the Creator and the Creation of the World;
- Relations between the world, everything that exists in it and the human beings;
- Relations between an individual and the society;
- Relations between a person and his/her soul;
- Relations between a citizen and the government;
- Relations between social groups and the society.<sup>457</sup>

Mankind did not have a complete understanding of the Creator, the Creation of the World, life, human beings and the surrounding world for several epochs, until Islam came along, together with its understanding of the world and laws, which has a very comprehensive nature. Islam is a religion describing all things in existence; it is the monotheism and unity of all religions in the religion of the Supreme Being; all messengers of God appealed for a united religion at the advent of life.<sup>458</sup> Islam is the religion of

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<sup>456</sup> Murtazin M., Editor. (2008). Islamic Studies. Moscow Islamic University, p: 17.

<sup>457</sup> *Ibid.* p: 18.

<sup>458</sup> *Ibid.* p: 20.

ideology with a scent of Sharia, having a spiritual essence; it describes the spirituality of material and economic values together with the moral values of carnal life and after-life. The *Holy Qur'an*, the sacred scripture of Islam, considers justice to be a supreme virtue.<sup>459</sup> According to Dowson and Devenish (2010), most chapters of the Qur'an implicitly or explicitly deal with the notion of justice:<sup>460</sup>

- **Equality in Justice**

“O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor...” (Qur'an 4:135)

“Let not the hatred of a people swerve you away from justice. Be just, for this is closest to righteousness...” (Qur'an 5:8)

“God does not forbid you from doing good and being just to those who have neither fought you over your faith nor evicted you from your homes...” (Qur'an 60:8)

- **Justice as an obligation**

“God commands you to render trusts to whom they are due, and when you judge between people, judge with justice...” (Qur'an 4:58)

“We have revealed to you the scripture with the truth that you may judge between people by what God has taught you.” (Qur'an 4:105)

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<sup>459</sup> “In general, the *Holy Qur'an* uses three terms, *'adl* (justice), *qisṭ* (equity), and *mīzān* (balance/ scale) to signify justice and equity. Among the meanings of these words are: to straighten, set in order, and fix in the right place; to balance, counterbalance, or establish equilibrium; to be equal or equivalent or to match; fairness, impartiality, absence of discrimination and, honesty, straight-forwardness, uprightness, righteousness, and correctness”. See Iqbal, Z., (2007). *Justice: Islamic and Western Perspectives*. The Islamic Foundation, p: 36.

<sup>460</sup> Dowson, M., and Devenish, S., Eds. (2010). *Religion and Spirituality (International Advances in Education: Global Initiatives for Equity and Social Justice)*. Information Age Publishing, p: 5.

“...If you judge, judge between them with justice...” (Qur’an 5:42)

“And the Word of your Lord has been fulfilled in truth and in justice. None can change His Words.” (Qur’an 6:115)

“...Say: I believe in the Scripture, which God has sent down, and I am commanded to judge justly between you...” (Qur’an 42:15)

- **Justice as a personal virtue**

“...Be just, for it is closest to God-consciousness...” (Qur’an 5:8)

“...When you speak, speak with justice, even if it is against someone close to you...” (Qur’an 6:152)

Whilst comprehending the nature of the Islamic spiritual vision of the surrounding world, life, and human beings, one can also see some features of social justice in Islam. This justice covers all the aspects of human life, which are not restricted to economic justice only; it touches upon all spheres of human life, including people’s behaviour, feelings, conscience, soul, intuition and internal world. As Qitb (2000) noted, “[A]bove all other things, it is a comprehensive human justice and not merely an economic justice; that is to say, it embraces all sides of life and all aspects of activity”.<sup>461</sup> Islam bases its realisation of social justice on two facts: “the absolute, just and coherent unity of existence, and the general, mutual responsibility of individuals and societies”.<sup>462</sup>

Stating the law and order, Islam does not neglect the love of people towards each other; however it treats greed and avarice with respect to its laws and instructions. It does not oblige a person to do more than he/she can,

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<sup>461</sup> *Supra* note 136, at p: 45.

<sup>462</sup> *Ibid.*

taking into account their social needs and interests and the ultimate goals of an individual and the society, which have been forming for centuries.<sup>463</sup>

Islam considers it unfair when the interests of an individual prevail over the interests of the society. Sometimes, justice is achieved through inequality with an unequal distribution of wealth. As Qutb (2000) suggests, “Islam prescribes the basic principles of social justice and establishes the claim of the poor to the wealth of the rich; it lays down a just principle for power and for money”,<sup>464</sup> In other words, “Islam prescribes a guarantee for fulfilling basic needs while accepting the reality of natural inequalities among human beings and checking extreme inequalities in societies through injecting moral values”.<sup>465</sup> It sees injustice in human nature, and the possibilities of people, whilst setting the dictate of the society. This injustice manifests itself not only in attitudes towards a personality but also in those towards the society. A personality that is deprived of the possibility of self-realisation loses its energy for life, which negatively influences not only the personality but also the society, which cannot utilise the results of those people’s activities.<sup>466</sup>

The law, vesting the right ‘to use people’s labour in the society, simultaneously imposes restrictions on people’s rights and freedoms, restraining people’s egoistic ambitions; the law must always remember people’s right to self-actualisation without causing a conflict on interests between people and the society, and without compromising the ultimate goals and principles of life. Life, according to Islam, is in cooperation, solidarity, but not in struggle or confrontation; it is meant to show the creative powers of a person and the society and not deprive them of any

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<sup>463</sup> *Supra* note 456, at p: 19.

<sup>464</sup> *Supra* note 136, at p: 33.

<sup>465</sup> Ahmad, K., and Hassan, A., (2000). Distributive Justice: The Islamic Perspective. *Intellectual Discourse*, Vol. 8, No. 2, p: 165.

<sup>466</sup> *Supra* note 456, at p: 23.

freedom. Everything that is not prohibited is allowed. A person is rewarded for any actions, as predetermined by God and God's laws; any deed made in favour of God, to achieve the ultimate life goals, is all that Allah wishes!<sup>467</sup>

The understanding of life in Islam is a deep analysis of economic and any other life values that form the balance and equality in the society, that guarantee justice to everyone without any restrictions, as the followers of communism proclaim, as well as treating justice as a levelling approach, which does not recognise any economic differentiation. According to Islam, there are a lot of value categories but justice seems to be more attainable, and that is why Islam literally did not introduce economic equality as a duty, as that might contradict the essence of the human being, and the existence of different people, and it would also intervene in the realisation of different people's capabilities as well as leading to the interests of disabled people being ignored. Islam declared the principles of equal opportunities and justice in the society, leaving the gates open for competition in labour. Islam did not declare its economic values to be the ultimate ones, as it is more interested in the nobility in front of Allah; this elevates those who believe in Allah, as people who have been granted true knowledge.<sup>468</sup>

Justice in Islam means equality across all value categories, including economic ones. This justice provides the scope for action and does not contradict the ultimate goals of life. Consequently, apart from purely economic values, there are some virtues that are placed above them, and these true virtues become the means of attaining equality in the society where people have different incomes. It establishes differentiation of income, depending on the eagerness of people and their talents, and it is not connected with unfair means of earning, which are prohibited by Islam. Moreover, life, according to Islam, means mercy, cooperation, love, and

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<sup>467</sup> *Supra* note 456, at p: 25.

<sup>468</sup> *Ibid.* p: 26.

mutual assistance between all members of the society, not only between Muslims – “no difference is made between one religion and another”.<sup>469</sup>

Thus, Islam condemns luxury, facilitating the development of low whims and wishes, becoming the reason of differentiation in the life of people. Islam provides the right for property for the poor, which corresponds to their needs and meets the interests of the society, warranting them equal rights, equality and development without ignoring any other aspects of life, so that they connect with each other and represent a single unity, being in harmony with the unity of the whole world, and with the unity of life and the human being.

Hence, according to Murtazin (2008), Islam does not state equality in regard to financial issues, as income depends on people’s abilities and background, which vary a lot. Absolute justice is the differentiation of incomes and the advantages of one group of people over others; if justice is provided, it is attained as follows:

- It provides equal possibilities to all people – people’s social origin, background, gender, race and disability do not prevent them from working;
- It takes into account the true values and releases the human soul from any bearing on economic values; these should take a reasonable place but not have a predominant role. This refers to people who have lost their spiritual values, whose money has become their main value.<sup>470</sup>

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<sup>469</sup> *Supra* note 465, at p: 117.

<sup>470</sup> *Supra* note 456, at p: 36.



### 4.3 Justice in Islamic finance

*Shariah* includes not only laws that people must follow, but also norms or things that are worth having or doing from the viewpoint of God.<sup>471</sup> The idea of justice is ingrained in the very foundation of Islamic finance – *Shariah*. Moreover, an integral part of the fundamental concept of *Shariah* - *Maqasid al-Shariah*<sup>472</sup> (The end goals of Islamic Law) - is social justice. According to Vejzagic and Smolo (2011), “a profound perception of *Maqasid al-Shariah* involves the serious obligation of each individual and organization to justice and social welfare ... [and] calls for establishment of justice, elimination of unfairness and alleviation of privation”.<sup>473</sup> The locus of *Maqasid al-Shariah* in the general structure of the Islamic legal concept *Shariah* is shown below in Exhibit 8.

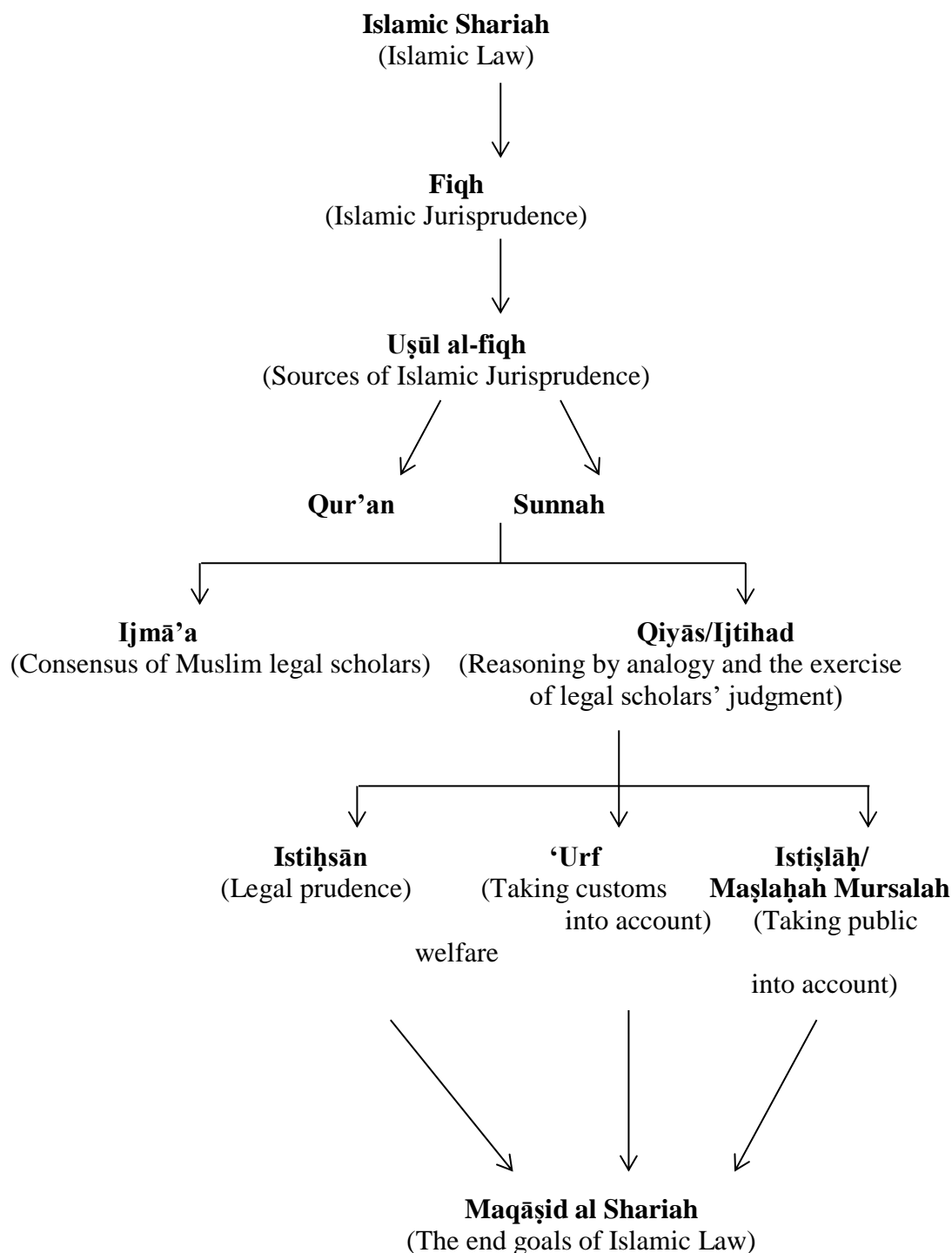
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<sup>471</sup> *Supra* note 385, p: 2.

<sup>472</sup> The objectives which *Shariah* is inherently meant to attain. This embodies the rationale of *Shariah* is reflected in protecting and preserving public welfare/interests (*Maslahah*) in all walks of life (social, economic, political, etc.). Every *Shariah* based *Hukm* (ruling) basically revolves around a purpose involving, in general, bringing about benefits or preventing potential damages, bad consequences or calamities, whether in the interest of individuals or societies. In short, *Shariah* objectives (*Maqasid*) are exemplified in promoting the welfare of all human beings and communities in terms of faith (*Din*), existence and sustenance (*Nafs*), intellect (*Aql*), posterity (*Nasl*) and wealth (*Mal*). See Appendix 1. Guideline to Islamic Financial Terminologies.

<sup>473</sup> Vejzagic, M., and Smolo, E., (2011). *Maqasid Al-Shariah in Islamic Finance: An Overview*. Research Paper presented at the 4th Islamic Economic System Conference 2011 (iECONS 2011), pp: 2-5.

## Exhibit 8: The general structure of the Islamic legal concept<sup>474</sup>



Yet, the conception of *Maqasid al-Shariah* is not the subject of this research, as it goes far beyond its framework.<sup>475</sup> Furthermore, according to

<sup>474</sup> Abdelkader, D., (2000). Social Justice in Islam. International Institute of Islamic Thought. USA, p: 40.

Sadr (2009), the Islamic economy is composed of three broad and basic components,<sup>476</sup> which are:

- *The principle of double (multifaceted) ownership*, notably different forms of ownership at the same time. This means that from an Islamic point of view, ownership is accepted in three parallel forms: private ownership, public ownership and state ownership.<sup>477</sup>
- *The principle of economic freedom within a defined limit*, restricted by Islamic values in the fields of production, exchange and consumption.
- *The principle of social justice*, which will guarantee the happiness of society.

Therefore, social justice as one of the main components of Islamic finance is built on two general principles - one is the principle of general mutual responsibility and the other is the principle of social balance.<sup>478</sup> Otherwise, justice can be promoted by satisfying two moral value-based conditions, which are:

- First, the lender and the borrower must agree to share the risk, the losses and the profits. This is one of the tenets of Islamic finance: “no risk, no gain”<sup>479</sup> or the Profit and Loss Sharing system (PLS),<sup>480</sup>

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<sup>475</sup> For a detailed discussion of the subject, see Dr. Jasser Auda's fundamental manuscript - *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought (IIIT), 2008. This book can be described as one of the few uncompromising works in the field and hypothetically there is no better book available in the English-speaking world that provides the same critical approach to understanding Islamic philosophy.

<sup>476</sup> *Supra* note 9, at pp: 49, 60.

<sup>477</sup> Ökte, M., (2010). *Fundamentals of Islamic Economy and Finance: Theory and Practice*. Electronic Journal of Social Sciences. Vol. 9, No. 31, p: 183.

<sup>478</sup> *Supra* note 9, at pp: 58 - 59.

<sup>479</sup> *Supra* note 149, at p: 38.

<sup>480</sup> See [http://www.islamic-banking.com/profit\\_and\\_lose\\_sharing.aspx](http://www.islamic-banking.com/profit_and_lose_sharing.aspx). Interestingly enough, the PLS banking system was patented in the USA as innovation in 2009 (<http://www.google.com/patents/US20110087569>).

which reduces the antagonism between the providers of capital and those who benefit from it by their work and expertise.<sup>481</sup>

- Second, an equitable share of the financial resources provided by financial institutions should become available to the poor in order to alleviate inequalities in regard to income and wealth.<sup>482</sup>

Additionally, as Ökte (2010)<sup>483</sup> clearly notes, three elements are also necessary for the execution of social justice in Islam. These are *tawhid* (monotheism)<sup>484</sup>, *Ijtihad* (independent legal judgement),<sup>485</sup> and *ethics*.<sup>486</sup> Therefore, social justice can only be achieved through the following fundamental principles of an Islamic financial system, *Riba* and *Zakat*,<sup>487</sup> the stability of the real value of money, and state responsibility for income distribution. These are the original tools used to carry out social justice in Islamic society.<sup>488</sup>

In practice, at the macro level, the Islamic financial system attempts to realise justice through wealth circulation, efficiency in regard to resource utilisation, the fulfilment of society's basic needs, the elimination of poverty and the improvement of human wellbeing.<sup>489</sup> At the micro level, financial transactions demand equal rights and opportunities and must not be enforced without the mutual consent of both parties. Also, unfair dealings or unjustified actions that would lead to economic injustice or exploitation,

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<sup>481</sup> Moisseron, J-Y., Moschetto., B-L., and Teulon, F., (2014 ). Islamic Finance: A Review of the Literature. Working paper. IPAG Business School, p: 6.

<sup>482</sup> *Supra* note 479, at pp: 38-39.

<sup>483</sup> *Supra* note 4777, at p: 185.

<sup>484</sup> [http://www.oxfordislamicstudies.com/article/opr/t125/e2356?\\_hi=15&\\_pos=2](http://www.oxfordislamicstudies.com/article/opr/t125/e2356?_hi=15&_pos=2)

<sup>485</sup> See Appendix 1. Guideline to Islamic Financial Terminologies

<sup>486</sup> "There is no division of ethics and law in Islam", cited from Manzoor, S.P., (1984). Environment and Values: An Islamic Perspective. In Touch of Midas Scientific Values and the Environment in Islam and the West. Ed. Ziauddin Sardar. Manchester: Manchester University Press, p: 157.

<sup>487</sup> See Paragraph 4.2

<sup>488</sup> Taheri, M.R., (2000). The Basic Principles of Islamic Economy and Their Effects on Accounting Standards-Setting, p: 4.

<sup>489</sup> Ladlin, M.A. and Furqani, H., (2013). Insights on the Ends (Maqasid) and the Means (Wasa'il) in Islamic Finance. Research paper, p: 3.

such as bribery, fraud or deception, cheating, uncertainty and a lack of clarity (*Gharar*), or an unjustified increase in wealth (*Riba*) are condemned.<sup>490</sup>

The essence of the Islamic socio-economic principles<sup>491</sup> can be embodied into three fundamental goals: (a) the achievement of economic justice and the achievement of sustained economic growth, (b) broad-based prosperity and job creation, and (c) the adoption of Islamic economic and financial practices. Below the details of these goals are divided into more specific objectives based on the Rehman-Askari “Economic Islamicity Index”:<sup>492</sup>

- Equal economic opportunities for all members of society and economic freedom,
- Economic equity,
- Personal property rights and the sanctity of contracts,
- Job creation for all that can and want to work and equal availability of employment,
- Equal availability of education,
- Poverty prevention and reduction; basic need fulfilment in terms of food, shelter, clothing and rest; and alms giving to charity,
- Taxation to meet the unfulfilled needs of society and to address social issues generally,
- The appropriate management of natural and depletable resources to benefit all members of current and future generations,
- The abolition of corrupt practices,
- The establishment of a supportive financial system,
- Financial practices that include the abolition of interest, and

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<sup>490</sup> *Ibid.* p: 4.

<sup>491</sup> Rehman, S., and Askari, H., (2010). How Islamic are Islamic Countries? *Global Economy Journal*, Vol. 10, Issue 2, Art. 2, p: 14.

<sup>492</sup> *Ibid.* p: 14.

- The effectiveness of the state in achieving the above (general economic prosperity).

Most of the principles stated above are related to justice. Consequently, as Rehman and Askari (2011) have noted, “[E]conomic development and growth, along with social justice, are the foundational elements of an Islamic economic system. ... The goals of Islam for the society are the welfare of all its members and socioeconomic justice. All members of an Islamic society must be given the same opportunities to advance”.<sup>493</sup>

#### 4.4 Conclusion

Chapter 4 defines the concept of social justice in Islam and how it is connected to Islamic finance. In summary, it is reasonable to say that the Islamic economic system is based upon the notion of justice and the existence of rules governing the economic behaviour of individuals and financial institutions in Islam can be understood only by means of justice.<sup>494</sup> As Usmani (2007) states, “[a]ccording to the Islamic principles, business transactions can never be separated from the moral objectives of the society”.<sup>495</sup> Also, as Van Greuning and Iqbal (2008) note, “...the foremost priority of Islam and its teachings on economics is about ‘Justice and Equity’”.<sup>496</sup> Consequently, it is plausible to assert that Islamic finance is based on “social justice, equitability, and fairness as well as the practicality

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<sup>493</sup> Rehman, S., and Askari, H., (2010). An Economic Islamicity Index (EI2). *Global Economy Journal*, Vol. 10, Issue 3, Art. 1, p: 13.

<sup>494</sup> <https://islamhouse.com/en/articles/429666/>

<sup>495</sup> *Supra* note 111, at p: 244.

<sup>496</sup> *Supra* note 60, at p: 5.

of transactions”<sup>497</sup> and resembles the Platonic view of philosophy, which is a way of untangling the good and bad in life.<sup>498</sup>

Thus, having explored the fundamental principles of Islamic finance, it is clear that the concept of justice is fully integrated with Islamic finance in accordance with Islam as their religious basis. Accordingly, to answer the main question of the thesis, it is logical to consider the situation of social justice in other religions. Chapter 5 focuses on the evolution of the concept of social justice in various religious denominations.

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<sup>497</sup> OICU – IOSCO (2004). Islamic Capital Market Fact-Finding Report. Report of The Islamic Capital Market Task Force of the International Organization of Securities Commissions, p: 8.

<sup>498</sup> Plato’s *Republic* 10.618c *et seq.* See Plato, C. D. C. Reeve (2004). *Republic*. Hackett Publishing Co, Inc.

## CHAPTER 5:

### JUSTICE IN VARIOUS RELIGIOUS DENOMINATIONS

#### 5.1 Introduction

Chapter 5 provides an analysis of the background of theories of justice in order to explain the phenomenon of justice by putting it in both a social and religious context. The study illustrates that justice is a socio-philosophical category associated with religious dissimilarities as well as ethical norms in different societies, undivided from their religious roots. The scope of this chapter is expressly limited to the primary and most widespread monotheistic<sup>499</sup> (Judaism, Christianity and Islam)<sup>500</sup> and no-God (Buddhism)<sup>501</sup> religions, as well as the communist model, which in turn can be regarded as a peculiar quasi-religious<sup>502</sup> system. This choice is due to two factors: 1) primarily the prevalence and popularity of religion, and 2) objectively limited opportunities for analysis of polytheistic<sup>503</sup> religions, such as Hinduism,<sup>504</sup> which are excluded from this study.

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<sup>499</sup> Relating to or characterised by the belief that there is only one God. See <https://en.oxforddictionaries.com/definition/monotheistic>

<sup>500</sup> The demographic study – based on the analysis of more than 2,500 censuses, surveys and population registers – found that there were 2.2 billion Christians (32% of the world's population), 1.6 billion Muslims (23%), 1 billion Hindus (15%), nearly 500 million Buddhists (7%) and 14 million Jews (0.2%) across the world, as of 2010. See The Global Religious Landscape from The Pew Research Center <http://www.pewforum.org/2012/12/18/global-religious-landscape-exec/>

<sup>501</sup> Buddhism is a tradition that focuses on personal spiritual development. Buddhists strive for a deep insight into the true nature of life and do not worship gods or deities. See <http://www.bbc.co.uk/religion/religions/buddhism/>

<sup>502</sup> “In the Soviet Union the quasi-religion of Communism expelled traditional religion from the public space, and filled it with its own symbols, rites and doctrines”. Agadjanian, A., (2001). Public Religion and the Quest for National Ideology: Russia's Media Discourse. *Journal for the Scientific Study of Religion*. Vol. 40, No. 3, p: 351. Also see Tillich, P., (1934). *The Totalitarian State and the Claims of the Church*. *Social Research*. Vol. 1, No. 4, pp: 405-433.

<sup>503</sup> Polytheism, the belief in many gods. See <https://www.britannica.com/topic/polytheism>

<sup>504</sup> Unlike most other religions, Hinduism has no single founder, no single scripture, and no commonly agreed set of teachings. Throughout its extensive history, there have been many key figures teaching different philosophies and writing numerous holy books. For these reasons, writers often refer to Hinduism as “a way of life” or “a family of religions” rather than a single religion. See <http://www.bbc.co.uk/religion/religions/hinduism/atalance/glance.shtml>



With regard to the methodology, this chapter presents socio-anthropological interpretations and exploits critical analysis as well as elements of both a historical and geographical understanding of justice. In respect to the structure, this chapter is divided into two main parts. Sections 5.2, 5.3, 5.4 describe the concept of social justice in various religious denominations and sections 5.5, 5.6 investigate the concept of social justice, particularly in Russia, according to religious and secular aspects.

## 5.2 Christian theories of social justice

The Christian concept of social justice is reflected in the Bible's Great commandments,<sup>505</sup> which are considered the core of the Christian religion in most Christian denominations. In the commandment, "love your neighbour as yourself", the initial true meaning of social justice is revealed, and believers use this in their everyday life. The Christian theory of justice can also be traced to the principles of the Old Testament.<sup>506</sup>

The first principle is *human corruptness*, which means that a human being, created as an image and resemblance of God, has fallen, by refusing to obey God. Over time, we are dealing with a corrupted person. A lapse from virtue is an event that should be always in sight. People construct their society themselves, and their corruptness is fixed in their social institutions. These institutions press upon people, newly entering life, deforming them, and making them show their corruptness. But corruptness is not a natural state of a person and Christianity proposes a way of getting rid of such corruptness.

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<sup>505</sup> Matthew 22:35-40

...<sup>35</sup> and one of them, a lawyer, asked him a question to test him. <sup>36</sup> "Teacher, which commandment in the law is the greatest?" <sup>37</sup> He said to him, "'You shall love the Lord your God with all your heart, and with all your soul, and with all your mind.' <sup>38</sup> This is the greatest and first commandment. <sup>39</sup> And a second is like it: 'You shall love your neighbor as yourself.' <sup>40</sup> On these two commandments hang all the law and the prophets." See The New Oxford Annotated Bible with the Apocrypha. Augmented Third Edition, New Revised Standard Version, p: 1780.

<sup>506</sup> The Old Testament makes up the first two-thirds of the Christian Bible with the last third being the New Testament. The Old Testament is essentially the Jewish Bible, or Tanakh, with some minor variations. See <http://www.religionfacts.com/old-testament>

The second principle is the principle of the Law of God, which ascertains the domination in the form of the Law of God over Israel. The principle of the Law of God itself cannot reach perfection as it is oriented towards a corrupted mankind. The law is given to disobedient people who reject God. The Law keeps Israel, making it obey God.

The outcome of the Old Testament period describes birth of Mother of God and the Saviour. God created society and brought it up, leading through a historical gap – the Old Testament period, which is interesting in terms of the social respect. Simply speaking, as Nash (1985) noted, “The basic idea in the Old Testament notion of justice is the righteousness and fairness.”<sup>507</sup>

All Ten Commandments,<sup>508</sup> according to Kozlov (2010), have their social meaning:

- The first three commandments set the domination of God, including the domination in social relations.
- The fourth prescribes the schedule of work and rest.
- The fifth and seventh protect the family as a social cell.
- The sixth interprets the supreme value of life, which should be protected socially.
- The ninth is honesty, without which society cannot exist.
- The eighth and tenth protect property on which the economic structure rests.<sup>509</sup>

Thus, the first four commandments cover the domination of God and theocracy and the last six commandments tell us about love for thy neighbour.

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<sup>507</sup> Nash, R., (1985). Socialism, Capitalism and the Bible. Imprimis. Vol. 14, No. 7, p: 4.

<sup>508</sup> The Ten Commandments, the commandments summarising the basic obligations of man towards God and his fellow men, were delivered to Moses on Mount Sinai engraved on two tables of stone (Exodus 20:1–17). Also known as the Decalogue. See <http://www.dictionary.com/browse/ten-commandments>

<sup>509</sup> *Supra* note 267, at p: 201.

According to Saint Basil the Greek,<sup>510</sup> corruption divided nature into personalities. But the connection between them continued to exist – it remained, including as a form of social connections, without which a person would not have a human image. Society cannot exist if it is comprised only of egoists. St. Basil clearly stated, “For if we all took only what was necessary to satisfy our own needs, giving the rest of those who lack, no one would be rich, no one would be poor, and no one would be in need”.<sup>511</sup> Furthermore, he preached on practical matters of money and power and his homilies were not only generally addressed to wealthy people, but also included advice to those who loaned or wished to procure loans with interest, based on the twin precepts of mercy and justice.

Bonding manifests itself in love. Love from God and for God holds people together ideologically and gives them a common ideology. Love for their neighbour means connections between members of the society. Nonetheless, due to corruption, the principle of love is restricted. Thus, love does not contradict the Law, and the Law protects it from human corruption. An example of such love could be almsgiving. The commandments say that you should not be cruel in front of beggars; you should give them everything they need, your heart should not mourn, and God will bless you for that.

Another example of social justice is love for distant people, which is often considered by theologians. Social justice is embedded in the Law of God,<sup>512</sup> which is very important. As Mariottini (2007)<sup>513</sup> noted, the earliest

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<sup>510</sup> Basil of Caesarea (born ad 329, died 379), also known as Saint Basil the Great, was a famous 4th century bishop who is known for his theological propositions and liturgical writings. As bishop of Caesarea he wrote several works on monasticism, theology, and canon law. He was declared a saint soon after his death. See <https://www.britannica.com/biography/Saint-Basil-the-Great>

<sup>511</sup> St. Basil the Great, “I Will Tear Down My Barns”, in Schroeder, C.P., (2009), *On Social Justice: St. Basil the Great*, St Vladimir's Seminary Press, Popular Patristics Series, Vol. 38, p: 69.

<sup>512</sup> *Supra* note 506.

<sup>513</sup> Dr. Claude Mariottini, Professor of Old Testament at Northern Baptist Seminary.

prophet Amos used the words “justice” and “righteousness”. Justice is the primary word since it appeared first in parallel to the two sentences. “Justice is the result of seeking or loving good, as in Amos 5:15. Justice is also the fruit or the result of righteousness, as in Amos 6:12. Thus, according to Amos, righteousness is essential to the well-being of the community... The righteous person does what is right to other persons involved in the relationship.”<sup>514</sup> Thus, the Old Testament does not only cover specific norms and the social essence of justice – love your neighbour as yourself. Indeed, justice is represented by the idea that everyone should receive according to their merits during distribution, without fear or favour. In the words of Amos: “But let justice roll on like a river, righteousness like a never-failing stream!” (Amos 5:24).<sup>515</sup>

Consequently, taking social justice as a norm on our lives, according to the Christian tradition, everyone should treat himself/herself in the same way as anyone else, i.e. love others as you would love yourself. This can only refer to a fair person, thus making us aware that social justice is not possible without love among members of the society. Martin Luther claimed that there is only a “distinction in position and business and not in rank between people, that all Christians are truly of spiritual estate, and there is no difference among them, save of office alone”.<sup>516</sup> He also noted an important role of labour for human beings.

Considering all of this, we can state that the basic principles of social justice that are ingrained in Christianity do not contradict the principles

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<sup>514</sup> Mariottini, C., (2007). Amos and Social Justice. <https://claudemariottini.com/2007/10/01/amos-and-social-justice/>

<sup>515</sup> See <http://biblehub.com/amos/5-24.htm>. Those words also cited by Martin Luther King, Jr., in his famous “I Have a Dream” speech in Washington, D.C. in August 1963. See <https://www.archives.gov/files/press/exhibits/dream-speech.pdf>

<sup>516</sup> *Supra* note 66, at p: 5.

underlying Islamic finance; moreover they possess the same cultural and historical roots.<sup>517</sup>

### **5.3 The concept of social justice in Judaism**

In Judaism all humans are equal before God; they have equal rights in regard to, as well as their neighbours, for mercy and justice. They are meant to live in the society according to social justice norms. The requirement of social justice is repeated in Thor, and its violation is considered to be a heavy sin in the society. In Judaism, the concepts “justice” and “mercy” are the same. Judaists consider it their duty to take care of the poor. Judaism represents ethical monotheism and religion in its ethics as its integral part. The cognition of God is knowledge; God rules the world and people should follow the way God shows them.

Love for God is a responsibility for human beings. They are obsessed with it; they will do good, even at the expense of their own lives. The duty of a person is to keep the soul pure as if it were a gift from above. A person has an evil inclination (the “Yetzer ha-ra”) and a good inclination (the “Yetzer ha-tov”);<sup>518</sup> with the help of Thor’s instructions, people can overcome fear, turning the energy of the Yetzer ha-ra into good. If a person goes wrong, the way of forgiveness is open through confession, and partly compensates for the damage incurred. A human being is created as an image of God, and people should preserve their own dignity, as well as that of other’s.

All people are equal and have the right to freedom and justice. The commandment – to love they neighbour as yourself - means that a person should love others, as we are all God’s children. The Jewish theory is that

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<sup>517</sup> Similar concepts to Usury Prohibition are explained in detail in Chapter 3, pp: 120 - 124.

<sup>518</sup> <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803125333955>

everybody is under the power of one God. A person should believe in truth, as the world is based upon it, and those who neglect this betray the world. The world believes that God's gifts are blessed, including wealth, if one uses this term correctly.

Judaism is against austerity. It looks into the future with optimism; the world is the place where God offers to found its realm. Charity is among the virtues of every person. Those who need help are worth it as they are God's children. Almsgiving is not only compassion; it is a form of justice – restoring what people were deprived of as a result of an imperfect society. That is why it is called “Tzedakah” (charity).<sup>519</sup> A person cannot isolate himself/herself from the society, as they must perform all of their obligations towards the government. For hundreds of years Judaism taught that “Dina D'Malkhutah Dina” – “the law of the land is the law”.<sup>520</sup>

The family in Judaism is the cornerstone of the society. Singlehood is rejected, and the task of a family is to bring up children and provide solidarity. Marriage is treated as the possibility to make a contribution to the welfare of the world. A woman, like a man, is created as an image of God, and therefore she is an equal partner in everything, including marriage. In Kabala, marriage is imitation of spiritual joining of origins: masculine and feminine, peculiar to God. Since the earliest times, monogamy has been a form of marriage among Jews. At about 1000 rabbi Gersh b.Yeshua from Mainz defined monogamy as a norm for Jews, excluding those who lived in Muslim countries. Mixed marriages are prohibited by Orthodox Judaism. However, if a non-Jew turns to Judaism, such a marriage can be approved. Divorce is not approved but is possible. According to Biblical laws, a woman cannot prevent her husband from divorcing her, and if he wants to

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<sup>519</sup> Tzedakah is the Hebrew word for acts that we call “charity” in English: giving aid, assistance and money to the poor and needy or to other worthy causes. See <http://www.jewfaq.org/tzedakah.htm>

<sup>520</sup> See <http://www.encyclo.co.uk/meaning-of-Dina%20D%60Malkhutah%20Dina>

divorce, rabbinic law defends women, making divorce very costly for the husband. A wife has the right to demand a divorce if she has been treated violently. Later, the law prohibited divorce without a wife's consent.

The modern practice is very close to the old position of rabbis. Orthodox rabbis do not allow Jews to have a wedding if they are divorced only through a civic institution. Before entering another marriage they ask for a "Get" (Jewish divorce document). Reformist rabbis recognise a civic divorce and do not require a "Get".

The Bible teaches us to educate children, which implies not only education itself but also providing assistance for children. Children must show respect and honour for their parents; the prophet Malachi said that the Kingdom of Heaven will come, if fathers' hearts turn to their children and children's hearts turn towards their fathers.

God makes Law, based on the principle of social justice. By proclaiming private property in ancient Israel, God believed that property would not accumulate in the hands of just one person. The law envisages not to seed or harvest every seventh year and to leave everything that has been grown in the fields to the poor and animals. During the seventh year, all debts were waved and all slave-Jews were released.

Then there is the 50<sup>th</sup> year' cycle. In the anniversary year, in addition to "Saturday definitions", the land was returned to its owners free of charge, even if it was bought from them. However, the law on the anniversary year, as Ben-Shlomo (1994) writes, was not observed in Israeli history; nor was the law observed in the seventh year. Hebrews believed that the 70-year

Babylonian Captivity was a punishment for ignoring the Sabbatical year 70 times.<sup>521</sup>

Social justice in household law means the following:

- A hired person had to receive payment before sunset as he was poor.
- Paying twice in case of theft: for an ox – one should pay 5 times more, for a sheep – 4 times more, and if you have nothing to pay, slavery will wait for you or you should abandon your children as slaves.
- In the states of Assyria, Babylon and Egypt, there were severe laws for slaves, which turned them into lawless work-stock. In Israel it was common practice to release a slave after six years of work. The life of a slave was completely different here. They were personalities with more freedom; much more than the Russian peasant serfs had. That is why ‘enslaving’ for failure to pay off debts or selling children into slavery should be understood in terms of such freedom. In fact, slavery meant selling the labour of people and their children to pay off debts.<sup>522</sup>

The Law of Moses requires treating a slave very carefully, as he is an impoverished brother who has been sold without imposing any slavery work on him. Slaves work until the anniversary year, after which they leave together with their children into possessions of their fathers, as these are Moisei’s slaves, whom he took away from the Egyptian land, and they cannot be sold in the same manner as the slaves of other peoples.<sup>523</sup>

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<sup>521</sup> Ben-Shlomo, Y., (1994). An Introduction to Jewish Philosophy. p: 69.

<sup>522</sup> See The Jewish Encyclopaedia. <http://www.jewishencyclopedia.com/articles/13799-slaves-and-slavery>

<sup>523</sup> See The Encyclopaedia of Judaism. <http://www.judaicaru.org/encycl/encycl.html>



The legislation also takes care of earning a living for a slave: a slave who obtained liberty was given cattle and some grain; it was required to give him everything God blessed, whilst remembering that you were once a slave in Egyptian land too; and God commanded everybody to do so. Everything was to be given to a liberated slave free of charge. There was also another norm: not to give away slaves who had escaped from their master, in case they defected to you – this was the attitude towards Jewish slaves.<sup>524</sup>

The attitude towards non-Jewish slaves was different. The slaves could be yours forever; you could buy them from other peoples. In this case they could be property and could be inherited. Neither the “Sabbath” nor the “Jewish anniversary year” refers to such slaves.<sup>525</sup>

Household damage was interpreted as follows: if someone dug a pit and an ox or a donkey fell into it, the owner of the pit should pay the owner of the cattle. Usurocracy had a rule that one could not lend to the neighbour but could to a foreigner. During trade, the law allowed for naming a fair price and prohibited any deceit in business.<sup>526</sup>

Scientists claim that in the Old Testament period, Jewish people did not always observe the Law. That is why the stratification of the rich and poor became more obvious. Considering the aforementioned, even though justice in Judaism is prescribed mainly for co-religionists, we can state that the basic principles of social justice that are ingrained in Judaism do not contradict the principles underlying Islamic finance; moreover they possess the same cultural and historical roots.<sup>527</sup>

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<sup>524</sup> *Ibid.*

<sup>525</sup> *Ibid.*

<sup>526</sup> *Ibid.*

<sup>527</sup> The similar concept of Usury Prohibition explained in details in Chapter 3, pp: 120 - 122.

## 5.4 The concept of social justice in Buddhism

The idea of social justice in Buddhism<sup>528</sup> lies in the interaction of everything in existence. It represents justice brought forward by understanding the unity of people, and compassion for living objects, as the human soul can reincarnate after a physical death. Everything is considered to be moral that helps attain agreement with others.<sup>529</sup>

Another characteristic of Buddhism is its asociality. Buddhism is orientated towards the social side of life, much less than other religions, due to the following reasons:

- Originally it did not accept any reality other than reasoning power in its present state;
- It only provides an individual way to finding salvation.

There are several reasons for Buddhism's asociality: Buddha announced that the human world was the area of error for the human conscience in the non-existent reality, and in doing so it adjudged mankind, which is impossible to rectify by particular recommendations, e.g. by the necessity of monks to live as a community. Due to this fact, all people appeared to have been taken captive by their own illusions. As Torchinov (2006) states, their task is not to provide a comfortable existence for themselves and others but to help each other to reach nirvana by escaping this world. The unity is necessary to facilitate this escape from the mortal life.<sup>530</sup>

After all, there is no other religion in which mankind is condemned in a similar way. Buddhism is the religion of individualists, who have to live

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<sup>528</sup> In this case Buddhism is considered as modern without deep historical investigation and only taking into account the three major branches of Buddhism (Mahayana Buddhism, Theravada Buddhism and Vajrayana (sometimes described as Tibetan) Buddhism). See The Global Religious Landscape from The Pew Research Center. <http://www.pewforum.org/2012/12/18/global-religious-landscape-buddhist/>

<sup>529</sup> Torchinov, E.A., (2006). Introduction to Buddhism, p: 24.

<sup>530</sup> *Ibid*, p: 27.

alongside each other but do not intend to maintain any social relations. Everyone saves themselves, at best helped by the Master. In our life we are seeking support on the part of the surrounding people. If the question deals with the cultivation of Nadaville – its attainment does not depend on concentrating on your own ego and the desire to get support from other people. Reaching nirvana means liberation from all needs, as Torchinov (2006) writes.

The characteristics of Buddhism imply the indifference of one person in regard to another. It does not imply love for other people at all, as love envisages social support, mutual life and activity. The search for nirvana “liberates us from all needs”. Buddhism elevates only compassion. Compassion is a special sign of love; in Buddhism it is above ethics and means that if a person suffers in this world, he/she cannot escape it but if people see others suffering and cannot escape, they realise that they can suffer together. This is the so-called compassion of two captives, each of them being ready to abandon the human world, in order to hide hurriedly in the blessed nirvana. “And there is no other institution, apart from us ourselves, where one could seek help.”<sup>531</sup> This is quotation from the social principles in Buddhism. There is’ no-one to help; only your own ‘principles of awareness’ are real, and even Buddha is not the teacher or saviour but only a source of information, advising us on how to escape this life and reach nirvana.

This kind of asociality has led to a situation where Buddhist states are not able to repel other countries’ attacks. When the British Indian forces, under the command of Sir F.Younghusband, carried out their armed expedition to Tibet,<sup>532</sup> its inhabitants retreated from their borders, laying

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<sup>531</sup> *Ibid*, p: 33.

<sup>532</sup> The British expedition to Tibet or Younghusband expedition to Tibet began in December 1903 and lasted until September 1904. See [www.bbc.co.uk/radio4/history/empire/episodes/episode\\_74.shtml](http://www.bbc.co.uk/radio4/history/empire/episodes/episode_74.shtml)

down their weapons. Moreover, Tibet could not resist the Chinese invasion<sup>533</sup> in the 1950s.

Currently, the asociality of Buddhism is associated with the negation of God, concentration on reason and the purification of consciousness. This makes Buddhism attractive for modern liberal intellectuals, who hide themselves in an atheistic doctrine, and who are obsessed by the desire to escape the problems of modern society, abandon responsibility in front of God, and hide from spirituality – all of these have created the preconditions for entering a new, “astral world”, where meditation helps, based on mysterious principles of existence.<sup>534</sup>

Buddhism helps eliminate the social problems and conveniences of the society, as well as wealth and pleasure, whilst considering the human world to be an illusion, a play of consciousness and a set of thoughtful forms. Buddhism becomes a simplified surrogate of religion for many people, as it does not require them to attend church, make confessions, or speculate on the nature of the soul; on the contrary, it lets people contact higher reason via meditation, and concentration, which are mostly done in isolation. Consciousness and nirvana are the two constituents of Buddhism. The idea of ultimate individuality attracts Western intellectuals to this religion. But it penetrates the West via a completely modified version. Young Western liberals are concerned with how to find an alternative to the dogmas of the establishment, and they advocate Zen-Buddhism not as a way to a perfect life but as a philosophy based on the life of individualists.<sup>535</sup>

Consequently, “Nothing” is real in Buddhism. The main Nihil is nirvana and those who split from it and are lost in their own thoughts are

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<sup>533</sup> See “Chinese takeover of Tibet in the 1950s” from <http://factsanddetails.com/china/cat6/sub32/item228.html>

<sup>534</sup> Nath, S., (1998). *Encyclopaedic Dictionary of Buddhism*, Sarup & Sons. Vol. 3, p: 781.

<sup>535</sup> Rosemont, H., (1970). Is Zen Buddhism a Philosophy? *Philosophy East & West*. Vol. 20, pp: 63-72.

small “nothings” – this is “the principle of consciousness”, which gets caught in the Samsara (wheel of life), and such is the understanding of a person. People’s true goal is relief from human existence, purification from all illusions, escaping Samsara and a quick recovery to the Great Nihil – by merging with Nirvana. All of the rest is a set of mistakes, errors and fuss, as well as catching the wind.<sup>536</sup>

Thus, in Buddhism, although there is no God who appears to be the supreme authority, setting general rules and doctrines of justice, this also does not oppose the social justice principles that function as the foundation of Islamic finance.

### **5.5 The representation of social justice in Russian Orthodox tradition**

Religious organisations have their own theories, which they use to explain a number of problems connected with personality, society, freedom and justice, family, marriage, economics, morals, law, state order, demography, power, war and peace, democracy, and ecology. The degree of development for these questions depends on specific conditions, particular moral teachings, the experience and traditions of religious organisations, personnel availability and other conditions. The peculiarity of social doctrines in the Christian trend is connected with the fact that they do not exist as separate theoretical disciplines but represent part of social ethics, the norms of which are prescribed to be implemented in real life.

Political-economic concepts are described as moral requirements, and people have to adhere to these concepts during the production, circulation and distribution of material benefits. Analysis of the moral aspects of social activity provides anthropocentrism as the confession centre in social

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<sup>536</sup> Harvey, P., (1990). *An Introduction to Buddhism: Teachings, History and Practices*. Cambridge University Press, p: 103.

theories. These absorbed different social approaches for many centuries, and these theories evolved in world thought, representing people, justice, freedom and democracy; these were compared with Christian ideas of saving people, and the belief in the victory of good over evil, proclaiming a life of happiness and prosperity. According to Kozlov (2010), the theological basis of Christian social doctrines constitutes the ideas of the Holy Bible, the works of church fathers, the decisions of clergy meetings, the observations of confession leaders, and research on religious philosophers, theologians and sociologists.<sup>537</sup>

Many thinkers draw Christian social doctrines out of civil sociologic and political theories, which have been replenished and altered over the course of evolution, with the development of social-philosophical ideas. Some statements have been abandoned, whereas others have evolved and gained a perfect shape, and many new ones have emerged. The social orientation has also changed. Due to these circumstances, the social doctrine of Catholicism is considered to be the most developed and systematic one among the Christian confessions. Theologians, social scientists and Catholic scientific institutions deal with the explanation of social problems. Doctrine is taught in confessional educational establishments. The II Vatican Council (1962–1965) gave considerable impetus for the analysis of social problems within the context of modern democracy and social science.<sup>538</sup>

In Russia, there were special historical conditions, combining peculiarities of statehood and church relations during the epoch of tsarism and Soviet power; this explained the fact that among the widespread confessions in this country there was no systematic social doctrine that could interpret the problems of sociology, political economy, law, and politics,

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<sup>537</sup> *Supra* note 267, at p: 192

<sup>538</sup> Benestad, B., (2011). *Church, State, and Society: An Introduction to Catholic Social Doctrine*. CUA Press, 500 pages.

although these problems were considered in the works and speeches of religious figures, philosophers, theologians and publicists.

In connection with some democratic changes in the country, the Russian Orthodox Church had the opportunity to develop its own social theories freely and systematically, comparing these to the reality. A number of important provisions were made in the church documents in the 1990s. In 1994, the Bishop's Council of the Russian Orthodox Church created a working group to develop an approach reflecting the church's views on the issues of church-governmental relations and the problems of the modern society in general.

The group included representatives of Synodal institutions, theological schools, church-social organisations, theologians and specialists in the church. The approach was discussed and adopted by the Bishops Council in August 2000 and was known under the title "Bases of the Social Concept of the Russian Orthodox Church". It considers a broad scope of problems, such as: the church and the state; the church and the nation; Christian ethics and secular law; Labour; the church and politics; property rights; criminality, punishment, and rehabilitation; war and peace; personal issues, family and social morals; problems of bioethics; health of the nation; ecological problems; culture, science and education; international relations and problems of globalisation and secularism.<sup>539</sup>

According to Kozlov (2010), this document has particular significance not only for the Russian Orthodox Church but also for the whole of Orthodoxy. Whilst considering this document, one should bear in mind that this is a paper that is trying to connect all of the events in the society, from

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<sup>539</sup> "Bases of the Social Concept of the Russian Orthodox Church" (2000). See Official Web Site of the Russian Orthodox Church. <http://www.patriarchia.ru/db/text/419128.html>. For English translation, see <http://orthodoxeurope.org/page/3/14.aspx> "Bases of the Social Concept of the Russian Orthodox Church" (2000). See Official Web Site of the Russian Orthodox Church. <http://www.patriarchia.ru/db/text/419128.html>. For English translation, see <http://orthodoxeurope.org/page/3/14.aspx>

state relations to morals, bind them with the Divine and give them world outlook interpretations.<sup>540</sup>

Nevertheless, the document has a number of positive common cultural and social features, which are important for many believers and non-believers. The Russian society needs a process of transformation and modernisation, which should be implemented taking into account the peculiarities of Russian history and culture. The neglect of the cultural and spiritual-moral components was the reason for the failure of many ill-designed reforms in Russia, the authors of which did not take into account the mentality of the people, or their spiritual values, cultural traditions or preferences. The traditional domestic institution – the Russian Orthodox Church - is trying to give answers to the most burning social issues, resting upon spiritual traditions and moral values, as well as Russian culture, which must provide spiritual wellbeing and equality among people, and facilitate progress in different spheres of social life.

The church stands for the dialogue of all people irrespective of their world view differences. The document contains appeals for co-operation in charity, the protection of moral issues, saving cultural heritage etc. Appeals for co-operation on the part of different world views should be the basis for mutual actions among public-spirited people. The patriotic and social aim of this document lies in the fact that it was prepared to protect the national ethical standards, and nationwide interests, against thoughtless copying of foreign “templates”. It is aimed at inter-ethnic and inter-religious tolerance, a variety of property forms, family support, reasonable demographic policy, and public health care, among other factors.<sup>541</sup>

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<sup>540</sup> *Supra* note 267, at p: 196.

<sup>541</sup> Verkhovsky, A., (2008). Public Interactions between Orthodox Christian and Muslim Organisations at the Federal Level in Russia Today. *Journal Religion, State and Society*. Vol. 36, Issue 4: Islam and Orthodoxy: Coexistence, Confrontation and Comparison. pp: 382-383.



The attitude of the church towards the government and authorities is also of special interest. After many years of searching for a model of interaction with the government, taking into account the complexity of the current social conditions, the Russian Orthodox Church, for the first time in its history, announced the necessity of isolation from any political system, pointing out the political and social forces in power. The refusal to be involved in politics is manifested in the undesirability of clergy membership being part of political parties, coalitions, movements, and pre-election campaigns, as well as the inexpediency of participating in elections to representative bodies as parliamentary candidates.<sup>542</sup>

The current position of the church is also expedient from the point of view of its long-term interests: as an institution with a 1000-year history, it does not have to be associated with any political system or political regime that has existed for decades or less. Speaking about the attitude of the church towards the government at the Jubilee Bishops' Council in 2000, His Holiness Patriarch Alexy II of Moscow and All Russia described it as a position of "critical solidarity".<sup>543</sup>

This refusal to support political powers, as well as the policy of non-interference in the affairs of the government, is combined with the recommendation to use alternative forms of social activity, and interact with the authorities at different levels, in the name of common welfare, especially in the fields of charity, peacekeeping, solving social problems, preserving and protecting the cultural heritage, and addressing concerns about public morality. The theoretical rationale for isolation from the authorities is accompanied by a critical review of the Russian reality. It covers the following aspects:

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<sup>542</sup> *Supra* note 267, at p: 199.

<sup>543</sup> Patriarch Alexy II., (2000). Report on the Life of the Russian Orthodox Church in the Outgoing Century. Jubilee Bishops' Council. Moscow. <http://www.patriarchia.ru/db/text/421863.html>

- Elements of systemic crisis, which hit the economy, education, science, and social security;
- Criminality is condemned, as well as immorality, propaganda of sin and defect, and violence between people of different nationalities and cultures, world views and political opinions;
- Sharp social differentiation is condemned, as well as absence of any economic basis to implement the acquired freedoms.

Without questioning the nature of the authorities and the necessity of reforms, and while pointing out the successes of the Russian democracy, the authors of the document state that not all citizens can take advantage of them, that the tight situation is aggravated by disadvantaged social groups; many have a feeling of discontent, which leads to conflicts, demonstrations and strikes. At present, the emphasis on justification of the social mission of the Russian Orthodox Church seems to be very significant in this respect, as the church claims that it is on the side of the poor and deprived, and that nowadays, under the conditions of freedom, it can act as a patroness again, to face the high and mighty.<sup>544</sup>

Special attention is paid to the spheres of science, educational services, culture, charity, the protection and reconstruction of historical monuments, and social morals. The practice of propaganda proliferation aimed at criminal pursuits in the Russian media is condemned, as is the exploitation of sex instincts by pseudo culture, which destroys personality, family and society. A significant role is attributed to theoretical peacekeeping activities, the condemnation of violence, adherence to the resolution of conflicts by peaceful means, and maintaining fair peace and well-being for all those who suffer from conflicts, irrespective of their confessions or nationality. The Russian Orthodox Church followed similar

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<sup>544</sup> *Supra* note 267, at p: 192.

ideas recently; they were embedded in the appeasing intermediary position of the Moscow Patriarchate on the eve of the tragic days in October 1993, preventing the escalation of bloodshed in Chechnya, Yugoslavia and other regions.<sup>545</sup>

In the meantime, there are sections of the document that were not sufficiently worked out, such as in regard to the problems of labour and property. In this respect, everything is restricted to the traditional interpretations, although life has brought many new aspects into these issues. Information technologies penetration and cybernation have significantly influenced the sphere of labour, and property has acquired new forms. There are some contradictions in the text, and it has been noted that in connection with the changes of social conditions, separate statements regarding the whole concept might seem well-developed and perfected. However, the chapter in which there is a question about the role of the government points out the fact that the church does not have any powers to change anything in its learning. The question is not about the principles of the belief system itself but about the principles of attitudes towards the state as an exceptional political institution, the historical forms of which are changing; so the attitude of the church must change as well.<sup>546</sup>

Such a presentation of the problem contradicts the spirit of the document. Particular attention is paid to the issue of democracy, the interrelations of the principle of collegiality and united authority in the sphere of social activities of the church. The document covers the issue of democracy at length, in the spheres of different activities of the modern society, but as far as the social activity of the church organisation itself is concerned there is a bias in favour of the Church government, in terms of

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<sup>545</sup> *Supra* note 5411.

<sup>546</sup> Papkova, I., (2010). *The Orthodox Church and Russian Politics*. Woodrow Wilson Centre Press with Oxford University Press, p: 18, 34.

hierarchy. The role of the principle of collegiality and the social activity of the church deserves more attention and new approaches need to be developed. In general, the “Bases of the Social Concept of the Russian Orthodox Church”, according to Kozlov (2010), is an integral and meaningful document, requiring thorough research. At present, there are several conditions for further development of the social theory of the Russian Orthodox Church and other religious organisations of Russia.<sup>547</sup>

Therefore, the Russian Orthodox Church and the principles of social justice it espouses appear to be the closest to the Islamic precept of Social Justice, as this is precisely what the Russian Orthodox Church does, by assigning its flock the least independent role before God, which corresponds to Islam, unlike the more liberal Western Churches.

### **5.6 The Soviet (communist) model of social justice**

The Soviet socialist model of social justice relies on the Marxist statement, which is similar to populist ideas of justice; the statement says that the exploitation of one person by another prevents the achievement of justice. Exploitation prevents the all-round development of people, transforming their personalities into a set of functions. This led the Russian Bolsheviks to be convinced about the rightness of their deeds and ideas; two weeks after the Great October Socialist Revolution, Lenin announced that the Bolsheviks were supported by the majority of the people, representing the majority of the suppressed throughout the whole world.<sup>548</sup>

The future society was thought of as a social order, the fairest order in history, as it was to provide broader rights and freedoms to all people. The Bolsheviks’ ideas found great support in the Russian society in 1917, as they

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<sup>547</sup> *Supra* note 267, at p: 194.

<sup>548</sup> Lenin, V., (1967). Complete set of works. 5<sup>th</sup> edition. Vol.45, p: 401.

corresponded, in Berdyaev's opinion, to "certain Russian traditions and pursued the universal social truth, which was understandable to Russian control procedures only".<sup>549</sup>

The specific character of the Soviet model of social justice, Berdyaev believed, was dictated by the victory of the Great October Socialist Revolution, which was arranged by Lenin, not strictly following the Marxist canons – "in the name of Marx but not according to Marx".<sup>550</sup> "The greatest paradox in the fate of Russia and the outcomes of the Russian revolution was in the fact that the liberal ideas and the ideas of the universal law turned out to be utopian at the time. Bolshevism wanted to be more realistic, corresponding to the situation that was developing in Russia in 1917. This was determined by the course of Russian history as well as other weaknesses and the lack of creative spiritual powers. Communism became the fate of Russia, the so-called internal moment in the fate of the Russian people" – this is the opinion of Berdyaev.<sup>551</sup>

Having appeared on Russian ground, Marxism was welcomed by Russian intellectuals and became more than just a theory; according to Kara-Murza, it was not only a learning: it was a form of public conscience in the cultural layer.<sup>552</sup> The history of Russian "intelligentsia"<sup>553</sup> arranged the grounds for communism, filling the concepts of Marxism with its own

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<sup>549</sup> Berdyaev, N., (1990). *Origins and Meaning of the Russian Communism*. Moscow, p: 91.

<sup>550</sup> Berdyaev, N., (1990). *Russian Idea. About Russia and Russian Philosophical Culture*. Moscow, p: 263-264.

<sup>551</sup> *Supra* note 549, at p: 93.

<sup>552</sup> Kara-Murza, S., (2001). *Soviet Civilisation. Book one. From the Beginning to the Great Victory*. Moscow, p: 10.

<sup>553</sup> Intellectuals considered as a group or class, especially as a cultural, social, or political elite. Based on a word of Latin origin meaning intelligence, has come into the modern global vocabulary from Russia. By the 1870s the word identified a particular type of publicly active Russian intellectual. The word supplied a taxonomic label for a distinct group of people whose professional identity or public function were no longer described by the traditional categories of the Russian social structure into which they were born, nor did they fit the categories of the state's own rankings and definitions of state service. See Kimball, A., University of Oregon <http://pages.uoregon.edu/kimball/ntg.htm>

meaning. Berdyaev pointed out that “Marxism was russified”.<sup>554</sup> “The idea of Marxism, connected with the mission of the proletariat, contributed to the Russian messianic idea. In the Russian revolution it was not the empirical proletariat who was dominating but rather a myth on proletariat. Nevertheless, the Communist revolution was a true one, as it wanted to bring welfare and liberation to the whole of the world”.<sup>555</sup>

The ideology maintained by the Soviet state was aimed at reaching an ideal, the “bright future”, completing a certain cycle of history. The main role of dreaming about the “bright future” was given to the working people, and the result of their unification would be creating the state of workers and peasants. The ideology of the people comprised many features of the national consciousness, which were formed over centuries. Berdyaev defined them as a thirst for social justice, and acknowledgment of the working people as the supreme type of mankind.

An aversion to capitalism, an aspiration for a new world view, a changing attitude to life, intolerance, a hostile attitude to the cultural elite, a negation of spiritual values, and the infusion of theological character into materialism – all of this was peculiar to the Russian revolutionary intellectuals. The researcher of Russian Marxism, Zhukotsky (2000) believes that taking into account the similarity in the value orientations of Marxist and Russian intellectuals, their unsettled state in the present and aspiration for the future, the Marxism spirit could only be implemented on Russian ground, in the form of revival romanticism<sup>556</sup> and Enlightenment<sup>557</sup>

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<sup>554</sup> Russify - to cause to become Russian in character. British Dictionary definitions  
<http://www.dictionary.com/browse/russification>

<sup>555</sup> *Supra* note 549, at pp: 100-101.

<sup>556</sup> A movement of the eighteenth and nineteenth centuries that marked the reaction in literature, philosophy, art, religion, and politics from the neoclassicism and formal orthodoxy of the preceding period. See <http://archive.vcu.edu/english/engweb/eng372/intro-h4.htm>

<sup>557</sup> The period in the history of Western thought and culture, stretching roughly from the mid-decades of the seventeenth century through the eighteenth century, characterized by dramatic revolutions in science,

rationalism, under the condition of the unique historical situation of Russia.<sup>558</sup> Russian Marxism has powerful populist roots, determined by the Russian cultural tradition. The populist ideology is implemented as a way of adapting the Marxism theory to the historical practice of Russia.<sup>559</sup> The phenomenon of the Russian revolution occurred due to aggravation of contradictions under the pressure of capitalisation, as well as the crisis of “Russian faith”.<sup>560</sup> There is a cultural - historic connection between the peculiarities of the “Russian faith” and the “religion of Sovietism”.<sup>561</sup> One should understand the “religion of Sovietism” as a belief in communism, a form of secular confession, with public and administrative factors of development, relying on a wilful, fair person, who is altruistically implementing the hope of “collective rescue”. The “religion of Sovietism” represents a social adaptation of the ethical belief of the intellectuals – ethics of service to the “world” and “in peace”.

Without differentiating Marxism and Sovietism from any religion, one can agree that the peculiarities of the Russian religious mentality determine the peculiarities of Russian secularisation. In spite of the fact that the Soviet state came into conflict with the Russian Orthodox Church, it did not lose its ideological nature. The religious component, which became the ideology of the state under the influence of Marxism, transformed into the social-

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philosophy, society and politics; these revolutions swept away the medieval world-view and ushered in our modern Western world. See Stanford Encyclopedia of Philosophy <http://plato.stanford.edu/entries/enlightenment/>

<sup>558</sup> Zhukotsky, V., (2000). Russian Marxism in Religious Interpretation (Historical-Philosophy Aspect). Abstract of doctoral dissertation in Philosophy of Science. Yekaterinburg, pp: 44-45.

<sup>559</sup> *Ibid.* p: 45.

<sup>560</sup> Russian society in general decline of the Orthodox Church authority, the authority of doctrinal, moral and domestic. Russian educated society has largely lost their need to seek answers to the spiritual life in the Church.

<sup>561</sup> “Sovietism is essentially a way of looking on the reason of man’s existence. Its atheism is but one of the many religions used at different times by politicians for the purpose of unification of the country according to their political lights, through an imposed unification of religious obligations.” McGarrigle, F.G., (1930). The Soviet Religion. The Commonweal, p: 177.

ideological and socialist one, retaining traditional moral values: collectivism, social justice, spirituality, patriotism, and great power statehood.

The religious world view was replaced by an atheistic one; the communist belief was at its heart, as described by Lenin, based on the fact that if the leap to social justice were possible, this would have been done at the expense of abandoning the principles of the bourgeoisie only. The consciousness of the masses, according to Zhukotsky (2001), was formed under the influence of socialist ideas, which gained a foothold as a populist ideology and culture. There were representations of a fair social order, in the consciousness of the masses, described as “life without masters” and “mir”,<sup>562</sup> and such representations induced the desire to implement these ideas immediately. The utopian dreams about a fair future were an inspiration for everybody and they became widespread; as a result, slogans appeared, describing the “Red Guards”<sup>563</sup> attacking the capital”, “transfer to the communist production and distribution” etc.<sup>564</sup>

The anti-capitalist sentiments embraced even the upper most layers of the Russian society. Sorokin pointed out that in 1917, socialism became a religion of the majority of the masses; Marx and other ideologists became gods.<sup>565</sup> In 1914, the Minister of Interior of Imperial Russia, Durnovo, describing the situation in the country, admitted that “the masses have

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<sup>562</sup> “Mir” - in Russian history, means a self-governing community of peasant households that elected its own officials and controlled the local forests, fisheries, hunting grounds, and vacant land. To make the taxes imposed on its members more equitable, the mir assumed communal control of the community’s arable land and periodically redistributed it among the households, according to their size. See <https://www.britannica.com/topic/mir-Russian-community>

<sup>563</sup> Red Guards (also called Workers’ Militia) were volunteer armed bands formed by industrial workers in the cities during the Russian Revolution of 1917. See [http://www.encyclopedia.com/topic/Red\\_Guards.aspx](http://www.encyclopedia.com/topic/Red_Guards.aspx)

<sup>564</sup> Zhukotsky, V., (2001). Populist Origins of Leninism: “The Craft of Reason” or “Irony of History”. Problems of Philosophy. Vol. 1, p: 55.

<sup>565</sup> Sorokin, P., (1990). Hunger and the Ideology of the Society. Quintessence: Philosophy Almanac. Moscow, p: 398.



adopted the principles of non-conscious socialism as their confession”.<sup>566</sup> As Zhukotsky (2006) points out, the radicalism of the Russian revolution had deep populist roots. It was dictated by the inner conditions of the Russian civilisation in their capitalist surroundings, as well as the unwillingness to accept the logic of capitalist development in a particular historical situation.<sup>567</sup>

That is why, during the first years after the Great October Socialist Revolution, under the conditions of an acute class struggle, there emerged an approach embedding the concept of social justice, which was presented as the juxtaposition of the old and the new. Social justice was represented as the negation of the previous order. This orientation reflected historical regularities, and Lenin explained that there had been no such changes in the course of any other great revolution, as great revolutions are born out of contradictions between the old and the new, for the sake of development and aspiration for the new.<sup>568</sup> According to Lenin, the Soviet experience of the creation of social justice was that it “moves the masses forward”.<sup>569</sup> The victory of the Great October Socialist Revolution allowed for bringing the concept of social justice into the sphere of social practice from the sphere of abstract ethics. Social justice, as Lenin underlined, was aimed at “the masses of half-proletariat, petty bourgeois in the city and in the country, it was a war having the biggest accent on starvation, on earning a crust”.<sup>570</sup>

The keynote of the transformations aimed at the implementation of social justice was the following formula: Everything is for a person, in the

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<sup>566</sup> Durnovo, P.N., (1922). Memorandum Report to Nicholas II Submitted in February 1914. *Krasnaya Nov’*. Vol. 6(22), p: 196.

<sup>567</sup> Zhukotsky, V., (2006). Dialogues on Russian Revolution, People’s Unity and Public Holidays in Modern Russia. Nizhnevartovsk, p: 43.

<sup>568</sup> Lenin, V.I., (1967). Complete set of works. 5th edition. Vol.45, p: 401.

<sup>569</sup> Lenin, V.I., (1967). Complete set of works. 5th edition. Vol.34, p: 332.

<sup>570</sup> *Ibid.*

name of a person. This was further detailed in the slogans: “Factories – to the workers!”, “Land – to the peasants!”, “Power – to the Soviets!”, and “Peace – to the peoples”. The decrees of Soviet power were aimed at implementing the idea of social justice, transforming the society’s life, and proclaiming social security. The general orientation of these reforms from top to bottom and from the bottom upwards, according to the historian Spirin, was characterised by the notion of paternalism.<sup>571</sup>

New legislation on social security and labour had been created since the very first days of the revolution, and this legislation was the most progressive among the civilised countries of the time, as it envisaged the following:

- The reduction of the working day for the under-aged and working women,
- Holiday: maternity and post-delivery leave,
- The prohibition of labour for women and teenagers in hazardous industries.

A special decree defined the maximum reward for top officials and civil servants, starting from the Chairman of the Council of People’s Commissars. Spirin (2000), writes that the highest salary of a civil servant was not to exceed the salary of a qualified worker, which was 500 roubles a month, plus an extra 100 roubles for each dependent.<sup>572</sup>

Thus, even in the first documents of the Soviet government, the idea of social justice was reinforced as a cult of labour in the society, eliminating any possibility of making a profit at someone else’s expense; the unification

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<sup>571</sup> Spirin, N.V., (2000). Paternalism in the History of the Russian State. Personality. Culture. Society. Special issue, p: 139

<sup>572</sup> Spirin, N., (2000). Paternalism in the History of the Russian State. Personality. Culture. Society. Special issue, p: 13V.

of the people confronted the power of money, antagonism and hatred. The III All-Russia Congress of Soviets of Workers', Peasants' and Soldiers' Deputies (January 1918) adopted the "Declaration of Rights of Working and Exploited People", which became an integral part of the first Constitution of the Soviet republic. In it, a set of social, economic and cultural rights of the working person was proclaimed on behalf of the government, and this became the reference point for the whole world.

In the paper devoted to the creation of the first socialist state "The State and Revolution", Lenin claims that the first phase of communism cannot provide justice and equality; the differences still remain. However, the exploitation of one person by another is not possible, as it is not possible to seize the means of production, factories, machines, and land, private property.<sup>573</sup> Distribution according to labour and the inequality in consumption, resulting from it were considered by Lenin as unfair, from the point of view of communism. He writes that Marx also showed the course of development of a communist society, which would eliminate 'injustice' first, but was not able to eliminate further injustice characterised by the distribution of products of consumption according to labour and not according to needs.<sup>574</sup> From the point of view of the socialist ideal, equal attitudes to the means of production and receiving benefits "according to work" should be perceived by the society as fair. The essence of social justice is in the fact that everyone should contribute according to their abilities and receive according to their labour.

Sorokin expressed his own views on social justice, which were similar to Lenin's views. He noted that everyone is rewarded according to the degree of socially useful work they carry out. If we look narrowly at the changes surrounding us, we might notice that the growth in unearned income

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<sup>573</sup> Lenin, V.I., (1967). Complete set of works. 5<sup>th</sup> Edition. Vol. 33, p: V2.

<sup>574</sup> *Ibid.* p: V3.

is being restricted gradually in different forms by means of struggle between labour and capital. There is no doubt about who, out of these two competitors, will win: sooner or later the victory will be on the side of the labour.<sup>575</sup> Nevertheless, during the Soviet era, labour remained underestimated and the mechanism of implementing social justice was not ideal, even decades after the revolution, due to a number of different reasons.

The public state ownership that existed in the USSR envisaged general private property. It became the trophy of bureaucracy, acting as a carrier for the depersonalisation of productive nature and management. It is suffice to remember the destructive character of this trend for the social organism, as endless instructions ignore the human being and limited the initiative on any occasion. His knowledge of Marxist theory allowed Lenin to suggest a mechanism to counteract the bureaucratisation of the state machine. However, his idea was never implemented. The incorrect decision of the issues regarding the elimination of private property became the reason for serious mistakes, which negatively influenced the process of state and public construction as follows:

- As a result, the Soviet society was wrongly defined as developed, which led to inflated requirements in relation to the society and its members.
- Comparing theoretical knowledge regarding the socialist society and the reality, the citizens came to the conclusion that the mistakenness or inefficiency of the theory, and its incorrect implementation by the leadership of the country had had severe political consequences.

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<sup>575</sup> *Supra* note 565, at p: 139.

- New demands appeared in the process of the USSR's development, under the conditions of the emerging scientific and technical revolution, which clearly needed a new policy. Unfortunately, this necessity was not perceived, and the Soviet system appeared not to be ready for the new requirements, which were considered by the leadership as a void caprice rather than reality.

In the 1970s, after gaining military parity with the US, it was possible to turn the economy towards the people, to make their way of life perfect, and to renew socialism on the basis of technological revolution. Professor Mishin (1999) expressed a well-posed opinion on the tragic error of the Communist Party of the Soviet Union, which implied a lack of support for the mobilisation model of early socialism, as well as the fact that the Communist Party did not see its exhaustiveness and did not take into account the necessity of transfer to a new form of socialism, resting upon the possibilities of progress, and scientific and technological revolution with modern productive forces.<sup>576</sup> No mechanism for defining the demands of a person and the society was formed in the Soviet system of management, and there was no ability to meet personal demands, taking into account the state of productive forces. One cannot say that it was not done at all; however one must admit that there were no adequate instruments at their disposal.

Early socialism had a lot of defects but these do not give any grounds to negate its positive contribution to the solution to the problem of social justice. In this regard it should be noted that turning social justice into a reality allowed for connecting humanistic principles with people's interests. The solidarity of working masses was opposed to private interests. It manifested itself in the fact that the newly-born Soviet state smashed the sacredness and inviolacy of private property and disproved that the working

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<sup>576</sup> Mishin, M., (1999). *Russia's Choice and Historical Need*. N.Novgorod: NISOC, p: 156.

masses could not rule the state. The Soviet state invented a system of justice that fully corresponded to its essence and was one of the ways of solving this issue. The Soviet model demonstrated the possibilities of creating conditions to promote the development of people's abilities. It showed these facts to the whole of the world, as well as the formation of a cultural and spiritual image of a person, adequate for this political order.

Building a society without exploitation disclosed the huge potential of the peoples who united in the USSR. Within a short period, the Soviet government had transformed into one of the industrial superpowers of the planet, with advanced science, and the best systems of education and healthcare. Russia, devastated by wars, turned into a mighty atomic superpower, within just one generation. The country was in the top ten according to the main indicators of living standards. Even the policy to restore the capitalist order, which led to the deindustrialisation of the country, and the lowering of the cultural and educational level of the people, could not destroy everything created in the Soviet period. The cultural, military, scientific and industrial potential that Russia possesses at present was created during the Soviet period.

Social justice became part of the Soviet arrangement of the society and world views; social and not bourgeois values were close to the traditional mentality of the peoples united in the USSR, as these bourgeois values collided with the communal-collectivist Russian tradition, where social justice becomes a certain value. The idea of social justice, as the experience shows, gave a special meaning to existence, appealed to its best features and enhanced social solidarity and activity. Exactly at that time, traditional values predetermined the outcome of the 1917 revolution, and while the Communist party followed them, it received support from the masses, as it made them part of the renewal of the Russian society. Owing to the achievements of socialism, social justice took root in the nation's

awareness as a basic value, and people who got used to living in a fair society did not want to put up with other values and principles; they rejected the propaganda of thoughtless consumption, the cult of profit, and appeals to follow trashy feelings and instincts.

The Soviet model of social justice included ideas about the participation of the millions of USSR citizens and ideologists of the Russian Orthodox Church. The church connected canonical ideas with actual problems of modern reality and tried to infuse the collectivist character into its doctrinal statement by means of revising individual principles. The church reoriented its interpretation of social justice during the Soviet period, taking into account the new social practice. The basis for the opinions on social justice was a religious understanding of the mortal life and a renewal of Christian anthropology. Although theologians tried to present “life in God’s kingdom” as an ideal, nevertheless, they began to admit that life starts as a mortal one. Therefore one must create living conditions upon the earth as well as build some prerequisites for a happy life in eternity.

It is remarkable that the Patriarch of Moscow and all Rus’ and Primate of the Russian Orthodox Church Kirill, in his speech at the XI World Russian People’s Council, pointed out that the reformers of the 1990s did not take into account the specific character of the national values, and the cultural code of the people, leavened on religious tradition, as a result of which Russia lost the fair society. The clergyman gave such an estimate of the Soviet model of social justice for the first time, and this estimate excluded the huge contrast between the luxury of some people and the poverty of others, due to the existing social system. The Chairman of the Moscow Patriarchate Department for External Church Relations Metropolitan Kirill of Smolensk and Kaliningrad (July 2006) spoke about the “Moral code of builders of communism”, based upon Christian fundamental rules, and he also named the October revolution the response to

the violation of the principle of social justice, having said that one should draw conclusions from history.<sup>577</sup>

It was proved by the Soviet experience that in spite of atheism, communist ideals do not contradict Russian values, as was repeatedly shown during the revolution, the wars, and the building of communism. Meanwhile, one should not idealise the Soviet society with its model of social justice, contradictory nature and negative humanistic ideas in many fields and compare it to real practice. In particular, these were the ideas that led to dramatic consequences in social life. Among the negative features of implementing social justice in the Soviet era, there were some dogmas that followed the distorted perception of the ideas of Marxism classics, including the formal realisation of democratic norms, corruption of the ruling establishment, and affirmation of the authoritarian regime, among others.

Thus, the Soviet model of social justice became a landmark for the way the humanisation of the society works; it represented a dialectic synthesis of Orthodox and populist models; and it absorbed many of their features by negating them. The Soviet system acted as a guardian of the Russian spiritual tradition and fundamental values, and an embodiment of the ideals of justice and equality. The Soviet system of social development incorporated the intention to consider the development of the Soviet society within the framework of the historical process, as well as the desire to see its evolution as something having certain grounds, as a self-evolving phenomenon. Therefore, according to Allik et al., (2011) “the distinctive Russian identity is often thought to have been shaped by political and historical forces, including its size, its geographic identity spanning Europe

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<sup>577</sup> Official Web Site of the Russian Orthodox Church - <http://www.patriarchia.ru/db/text/27609.html>



and Asia, its ties to the Muslim world, its climate, and its centuries of autocratic rule by the Czars and their successors in Soviet Russia.”<sup>578</sup>

Therefore, the principles of social justice are interpreted not from the point of view of collectivists but rather individual interests, as a religious background, on which the people’s life rests. Justice is good and good is truth; any person should understand being the basis of life. Yearning for the triumph of truth over falsehood and injustice pushes us towards the search for this very truth, in order to transform the world and save it from injustice.

Considering the aforementioned, the socialist model of social justice seems to be the most idealistic one, as well as being more declaratory and removed from reality. This is due to its foundations being entirely theoretical, without an expansive period of testing in the real world in order to back them up, unlike the religious principles, which arose out of experience and struggle and were substantiated by generations of practice. Still, this obvious shortcoming could act as a benefit, given that many successful principles can be borrowed from other theories and implemented here.

## **5.7 Conclusion**

The analysis of the concept of social justice across various religious denominations conducted in this chapter has confirmed the inseparable nature of the religious and ethical norms that develop in a particular society, and its understanding of fairness.

Furthermore, both the suitability and the absolute demand for theoretical principles of social justice that make up the foundation of Islamic

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<sup>578</sup> Allik, J., et al., (2011). Personality Profiles and the “Russian Soul”: Literary and Scholarly Views Evaluated. *Journal of Cross-Cultural Psychology*. Vol. 42, No. 3, p: 374.

finance in virtually all religious denominations without the exception of Buddhism have been confirmed.

Thus, this chapter lays the groundwork for answering the first component of the research question; moreover, it fully confirms the adequacy of the moral and ethical principles that form the foundation of Islamic finance, for the countries and regions where religion is the predominant influence on society.

Chapter 6 analyses the philosophical principles underlying Conventional and Islamic financial systems.

## **CHAPTER 6:**

# **COMPARATIVE ANALYSIS OF THE PHILOSOPHICAL PRINCIPLES UNDERLYING CONVENTIONAL AND ISLAMIC FINANCIAL SYSTEMS**

### **6.1 Introduction**

This chapter analyses the most widespread financial systems in the world, both in the economical and the geographical sense - Conventional and Islamic financial systems. Whilst we are discussing Conventional financial systems, we will mostly be focusing on capitalist systems and only in certain aspects will socialist systems be mentioned; this is in part due to a disintegration of most of these systems, which today only exist in a few countries, i.e. Cuba, Venezuela, etc. At the same time, both systems, to some extent, have been proved inefficient to establish an economic balance in the society.

With regard to the method, this chapter presents the comparative investigation of the philosophical principles that are elemental to Conventional and Islamic financial systems.

With regard to the structure, this chapter is divided into three main sections. Section 6.2 describes the Philosophy of Conventional finance, while Section 6.3 presents the Philosophy of Islamic finance. Section 6.4 demonstrates the practical differences between Conventional and Islamic financial systems.

### **6.2 Philosophy of Conventional Finance**

The philosophy of finance does not exist as a standalone subject. Only one really radical idea, which is repeatedly wrongly attributed to Marx, can be identified as a philosophical origin of modern conventional (i.e. capitalistic) finance - “Capital eschews no profit, or very small profit, just as

Nature was formerly said to abhor a vacuum. With adequate profit, capital is very bold. A certain 10 per cent. will ensure its employment anywhere; 20 per cent. certain will produce eagerness; 50 per cent., positive audacity; 100 per cent. will make it ready to trample on all human laws; 300 per cent., and there is not a crime at which it will scruple, nor a risk it will not run, even to the chance of its owner being hanged. If turbulence and strife will bring a profit, it will freely encourage both.”<sup>579</sup> This evaluation, made more than 160 years ago, seems to be true today. According to Dobson (1993), modern financiers “view ethics in the context of objective wealth maximisation”<sup>580</sup> only.

Hence when discussing philosophy in contemporary finance, one usually refers to the philosophy of investments. Generally, the investment philosophy is clearly defined as the basic standards and beliefs which lead investment practices. The factors influencing the investment philosophy include risk tolerance, investment goals, and personal ideas about what guides markets.<sup>581</sup> But is it a genuine philosophy, i.e. “a group of theories and ideas related to the understanding of a particular subject”<sup>582</sup> or even “the general principles or laws of a field of knowledge”?<sup>583</sup> These assertions are to be doubted. In reality, conventional investment is only a style of investment activity practised by an individual investor or money manager.<sup>584</sup>

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<sup>579</sup> Quoted by Marx (Capital: A Critique of Political Economy - The Process of Capitalist Production as a Whole, 1867, p: 834) as a footnote to Capital from Dunning, T., (1860). Trades' Union and Strikes, London, p: 36.

<sup>580</sup> Dobson, J., (1993). The Role of Ethics in Finance. Financial Analysts Journal. Vol. 49, No. 6, p: 57.

<sup>581</sup> <http://financial-dictionary.thefreedictionary.com/Investment+Philosophy>

<sup>582</sup> <http://dictionary.cambridge.org/define.asp?key=59385>

<sup>583</sup> <http://www.yourdictionary.com/philosophy>

<sup>584</sup> <http://www.answers.com/topic/investment-philosophy>

However, there is one type of investment which can be described as philosophically originated - the socially responsible and/or ethical investment grounded on religious (moral) or ideological roots.<sup>585</sup> Socially responsible investing has existed for several centuries in form of faith-based investing when it mostly meant not investing in specific activities or controversial businesses such as tobacco, firearms, alcohol or gambling and slavery. Religiously motivated investors like the Quakers and Methodists practised investments with their religious beliefs. As Quakers settled in North America, they refused to make profits from the weapons and slave trade. The “Pioneer fund”, founded in 1928, was the first modern mutual fund employing strategy based on religious traditions and placed ethical constraints centred on human welfare and non-violence that excluded firms engaged in alcohol, tobacco, arms and ammunition. In 1971 the Methodists in the US established the “Pax World Fund” which avoided investment in businesses involved in armaments, alcohol and gambling. Back in the 1920’s, the Methodist church in the UK refused to invest in what they considered “sinful” companies involved in the production of alcohol, tobacco and gambling.<sup>586</sup>

Further, according to Statman (2005), “while the origins of the social responsibility movement are in religion, much of today’s social responsibility movement was born in the impassioned 1960s, when struggles for civil rights, women’s rights, anti-war and pro-environment policies served to escalate awareness of social responsibility. Opposition to Apartheid in South Africa was a rallying cry that brought many into the socially responsible investment movement in the late 1970s and the

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<sup>585</sup> Ethical investment or social investment, also known as sustainable, socially conscious, “green” or socially responsible investing (SRI), is investing only in companies, funds and other assets that meet certain standards in terms of social welfare, the environment, racial equality or other public issues. See <http://lexicon.ft.com/Term?term=socially-responsible-investing--SRI>

<sup>586</sup> Lehner, O., (2017). *Routledge Handbook of Social and Sustainable Finance*. Routledge, pp: 530-531. Jeurissen, R.J.M., (2007). *Ethics & Business (Management in Society)*. Gorcum b.v., p: 245.

movement continues to grow today as emphasis shifts to corporate governance.”<sup>587</sup> In addition, it was the anti-Vietnam War, the civil rights movement, and environmental issues (Chernobyl, Bhopal, and the Exxon Valdez oil spill) that caused individuals to think about their investment practices.<sup>588</sup>

At the present time socially responsible investment is an umbrella term that ultimately means providing finance to achieve a combination of economic and social and/or environmental goals and pooled different types of investment practices such as follow:<sup>589</sup>

- ethical investing
- sustainable and responsible investing (SRI)
- “green” investing
- mission-based investing
- impact investing
- social enterprise investing
- triple/double bottom line investing
- Crowdfunding

Socially responsible investment has three distinctive strategies which, according to the Social Investment Forum (2003) definition, “work together to promote socially and environmentally responsible business practices and, in turn, encourage improvements in the quality of life throughout society:

- **Screening** is the practice of including, excluding, or evaluating publicly traded securities from investment portfolios or mutual funds

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<sup>587</sup> Statman, M., (2005). The Religions of Social Responsibility. *Journal of Investing*. Vol. 14, No. 3, pp: 13-14.

<sup>588</sup> Redins, L., (2006). The Evolution of Socially Responsible Investing. Environmental News Network.

<sup>589</sup> <https://www.investmentbank.barclays.com/content/dam/barclaysmicrosites/ibpublic/documents/our-insights/esg/barclays-sustainable-investing-and-bond-returns-3.6mb.pdf>; <https://www.ussif.org/>

based on social and/or environmental criteria. ... Conversely, they avoid investing in companies whose products and business practices are harmful.

- **Shareholder Advocacy** describes the actions many socially aware investors take in their role as owners of corporate America. These efforts include dialoguing with companies on issues of concern, as well as filing, co-filing, and voting on proxy resolutions. Proxy resolutions on social issues and corporate governance issues are generally aimed at influencing corporate behavior toward a more responsible level of corporate citizenship, steering management toward action that enhances the well-being of all the company's stakeholders in alignment with improving financial performance over time.
- **Community investing** is capital from investors to communities that are underserved by traditional financial services. It provides access to credit, equity, capital, and basic banking products that these communities would otherwise not have. In the US and around the world, community investing makes it possible for local organizations to provide financial services to low-income individuals, and to supply capital for small businesses and vital community services, such as child care, affordable housing, and healthcare.”<sup>590</sup>

In recent years, the term “screening” was exchanged with “ESG incorporation” and now involves the application of explicit Environmental, Social and Governance factors into the investment process and the term “impact investing” has gained currency as a broader term to encompass

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<sup>590</sup> Social Investment Forum (2003). 2003 Report on Socially Responsible Investing Trends in the United States. SIF Industry Research Program, p: 3.

community investing and other investments in businesses that create social or environmental benefits alongside financial returns.<sup>591</sup>

The motivators of socially responsible investing have radically increased in the past years as a result of Global Financial Crisis of 2008.<sup>592</sup> According to a recent study completed by The Forum for Sustainable and Responsible Investment (US SIF), professionally managed SRI assets have grown to nearly \$8.72 trillion in 2016 from \$639 billion in 1995, which represents nearly 22% of the \$40.3 trillion in total assets under professional management in the United States.<sup>593</sup> In general, according to the Global Sustainable Investment Alliance (GSIA), the worldwide ‘sustainable investment’ market grew from US\$13.3 trillion at the start of 2012 to US\$22.9 trillion at the start of 2016, with its share rising to 26.3% of all professionally managed assets in the main world regions.<sup>594</sup>

There is also another type of financial institutions that become important trends among bank customers in US and Europe - Social and Ethical banking. According to Benedikter (2011b) “Social banks define themselves as “banks with a conscience”. They focus on investing in communities, providing opportunities for the disadvantaged, and supporting social, environmental, and ethical agendas. Social banks try to invest their money only in endeavours that promote the greater good of society, instead of those which generate private profit just for a few. ... This means that social banks consider social and economic “sustainability” when making

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<sup>591</sup> United States Social Investment Forum (USSIF) (2010). The Report on Socially Responsible Investing Trends in the United States.

<sup>592</sup> Currently, there are few most well-known ethical and social indices such as the MSCI KLD 400 Social Index (former Domini 400 Social index) (<https://www.msci.com/msci-kld-400-social-index>), FTSE4Good Index Series (<http://www.ftse.com/products/indices/FTSE4Good>), KLD-Nasdaq Social Index (<https://www.nasdaq.com/symbol/susa>) and Dow Jones Sustainability Index Family (<http://www.sustainability-indices.com/index-family-overview/djsi-family-overview/index.jsp#tab-3>).

<sup>593</sup> <https://www.ussif.org/files/Infographics/Overview%20Infographic.pdf>

<sup>594</sup> Global Sustainable Investment Alliance (GSIA) (2016). 2016 Global Sustainable Investment Review. [http://www.gsi-alliance.org/wp-content/uploads/2017/03/GSIR\\_Review2016.F.pdf](http://www.gsi-alliance.org/wp-content/uploads/2017/03/GSIR_Review2016.F.pdf)



financial decisions. ... For social banks, the responsibility for the whole of society is the most important measure for a good lending practice and is more important than profit alone. This is why social banking is often called “banking for social cohesion”, or cooperative banking”.<sup>595</sup> Likewise, the ethical banks “invest only in projects offering value added to society, mainly from an educational, cultural, environmental, and/or social perspective”.<sup>596</sup> The prime examples of Social and Ethical banks are Triodos Bank<sup>597</sup> and Jak Members Bank,<sup>598</sup> whereas the Co-operative bank is one controversial instance.<sup>599</sup>

The abovementioned definitions of social and ethical banking as well as the description of the fundamental principles of socially responsible investment clearly show the similarity with the basic doctrines of Islamic finance which is also concerned with achieving its goals: to enhance justice, equitability, and social well-being.<sup>600</sup> In both cases, there exist barriers, founded on religious and ethical principles and similar screening techniques are used. Basis for Islamic finance “Profit and Loss Sharing” (PLS) model can be considered as pure case of Shareholder advocacy. Likewise Community investing is an integral part of the daily practices of Islamic

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<sup>595</sup> Benedikter, R., (2011b). European Answers to the Financial Crisis: Social Banking and Social Finance. Spice Digest Stanford. For more detailed information, see Benedikter, R., (2011a). Answers to the Economic Crisis: Social Banking and Social Finance. New York: Springer.

<sup>596</sup> Callejas-Albiñana *et al.* (2017). Assessing the Growth of Ethical Banking: Some Evidence from Spanish Customers. *Frontiers in Psychology*. Vol. 8:782, p: 3.

<sup>597</sup> Triodos Bank is one of the world's leading sustainable banks with mission “to make money work for positive social, environmental and cultural change.” See <https://www.triodos.com/en/about-triodos-bank/who-we-are/>

<sup>598</sup> The JAK Members Bank, or JAK Medlemsbank, is a cooperative, member-owned interest free financial institution based in Skövde, Sweden. See <http://community-currency.info/en/currencies/jak-bank/>

<sup>599</sup> Co-operative bank “markets itself as an ethical bank, and seeks to avoid investing in companies involved in certain elements of the arms trade, fossil fuel extraction, genetic engineering, animal testing and use of sweatshop labour as stated in its ethical policy.” See <https://marketingstockport.co.uk/news/co-operative-bank-no-longer-sale/> However, “Move Your Money” launched an ethical bank scorecard in 2013 and found The Cooperative Bank “was not quite as ethical as it liked to portray, lagging way behind all other ethical providers, and even most challenger banks.” Cited from The Guardian (February 18 2017). <https://www.theguardian.com/money/2017/feb/18/co-op-bank-for-sale-time-to-leave-ethical-values-under-threat-alternatives>

<sup>600</sup> See Chapter 3: Foundation of Islamic finance and Modes of financing and Paragraph 6.3 Philosophy of Islamic finance.

financial institutions, due to “Islamic finance is community-oriented and entrepreneur-friendly, emphasising productivity and the physical expansion of economic production and services.”<sup>601</sup> Furthermore, the business model, used by interest free financial institutions, like Social and Ethical banks, seems like a complete analogy of one of the Islamic mode of financing Qard-al-Hassan.<sup>602</sup> A comparison of ethical and Islamic investments is shown below in Exhibit 9.

**Exhibit 9: A comparison of ethical and Islamic investments**<sup>603</sup>

	Key areas	Ethical investment	Islamic investment
1	Main purpose of the investment	The investment seeks a financial return while pursuing ethical motives	The investment seeks a financial return while conforming to Shariah principles
2	Investment policy	Guided by a clearly stated ethically-oriented or socially responsible investment policy	Guided by Shariah principles
3	Securities selection process	Clearly identified ethical criteria which serve as the filtering mechanism in the securities selection process, and help determine whether a particular asset or stock is suitable for investment or should be avoided altogether	Shariah guidelines are used as the screening mechanism in the securities selection processes to ensure that only Shariah-compliant securities are selected and that “non-Shariah” securities are avoided
4	Asset universe	A limited number of securities that fulfil the pre-determined ethical criteria	Limited to Shariah-compliant securities only
5	Investment support services	Requires the following: 1) an ethics board that screens, monitors and makes decisions on the admissibility or withdrawal of securities;  2) a research team that	Requires the following: 1) a Shariah advisory board that screens; monitors and makes decisions on the admissibility or withdrawal of securities (note that this may also require a Shariah officer who supervises and monitors Shariah-compliance);

<sup>601</sup> Askari, H., Iqbal, Z., Krichenne, N., & Mirakhor, A., (2011). The Stability of Islamic Finance: Creating a Resilient Financial Environment for a Secure Future, John Wiley & Sons (Asia), Singapore, p: 18.

<sup>602</sup> See Paragraph 3.3 Modes of Financing in Islamic Finance.

<sup>603</sup> Di Mauro *et al.* (2013). Islamic Finance in Europe. European Central Bank, Occasional paper series, No. 146, p: 37.

		identifies potential securities and monitors fund performance.	2) a research team that identifies potential securities and monitors fund performance.
6	Shareholder activism	Shareholders/investors play an active role in ensuring that company activities remain within ethical boundaries	Shareholders/investors do not always play an active role in advising the company to act according to Shariah principles
7	Type of investor	Open to all investors, especially those who are ethically-concerned or religious	Open to all, especially investors seeking assets that are compatible with their religious belief and ethical values

The vast number of academic literature published recently (Aldohni (2016),<sup>604</sup> Askari *et al.* (2010),<sup>605</sup> Mansour *et al.* (2015),<sup>606</sup> Elmelki and Ben Arab (2009),<sup>607</sup> Jaufeerally (2012),<sup>608</sup> Hijazi (2016),<sup>609</sup> Hussein (2004),<sup>610</sup> UNDP (2014),<sup>611</sup> Bank Negara Malaysia (2015),<sup>612</sup> and others) mostly confirm these similarities, and in some cases even consider Islamic finance, as a peculiar case of the ethical finance framework. For example, according to Foo (2017), “[a]nother form of SRI common in Asia is Islamic finance and *Shariah*-compliant financial schemes.”<sup>613</sup> Moreover, as the Central Bank of Malaysia (2015) acknowledged “*Shariah*-compliant investment has

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<sup>604</sup> Aldohni, A., (2016). Is Ethical Finance the Answer to the Ills of the UK Financial Market? A Post-Crisis Analysis. *Journal of Business Ethics*, pp: 1-14.

<sup>605</sup> Askari *et al.* (2011). *The Stability of Islamic Finance: Creating a Resilient Financial Environment for a Secure Future*, John Wiley & Sons (Asia) Pte. Ltd., Singapore.

<sup>606</sup> Mansour *et al.* (2015). How Ethical is Islamic Banking in the Light of the Objectives of Islamic Law? *Journal of Religious Ethics*, Volume 43, Issue 1, pp: 51–77.

<sup>607</sup> Elmelki, A., and Ben Arab, M., (2009). Ethical Investment and the Social Responsibilities of the Islamic Banks. *International Business Research*. Vol. 2, No. 2, pp: 123-130.

<sup>608</sup> Jaufeerally, R.Z. (2012). Islamic Banking and Responsible Investment: Is a Fusion Possible? In: Vandekerckhove, W., Leys, J., Alm, K., Scholtens, B., Signori, S., Schäfer, H. (Eds.) *Responsible Investment in Times of Turmoil*. *Issues in Business Ethics*, Vol 31. Springer.

<sup>609</sup> Hijazi, S., (2016). *Islamic Finance and Christian Finance: A Shared Heritage*. Grant Thornton.

<sup>610</sup> Hussein, K., (2004). Ethical Investment: Empirical Evidence from FTSE Islamic Index. *Islamic Economic Studies*, Vol. 12, No. 1, pp: 21-41.

<sup>611</sup> UNDP (2014). *Islamic Finance and Impact Investing*. United Nations Development Programme.

<sup>612</sup> Bank Negara Malaysia. (2015). *SRI & The Case for Islamic Investment Funds*.

<sup>613</sup> Foo, M., (2017). *A Review of Socially Responsible Investing In Australia*. An independent report for National Australia Bank (NAB), p: 5.

established itself as a niche market within and alongside the SRI context as there is a fusion between the two concepts.”<sup>614</sup>

Similarly, there is “a small collection of financial institutions which strive to conduct their business in accordance with the Holy Bible and the teachings of the Church”.<sup>615</sup> According to the Financial Times, “[t]he Stoxx Europe Christian Index is comprised of 533 European companies that only derive revenues from sources approved “according to the values and principles of the Christian religion”. BP, HSBC, Nestlé, Vodafone, Royal Dutch Shell and GlaxoSmithKline are among the companies in the index. Only groups that do not make money from pornography, weapons, tobacco, birth control and gambling are allowed to be listed. A committee, which Stoxx says includes representatives of the Vatican, screens shares, which are drawn from the Stoxx Europe Christian Index.”<sup>616</sup>

However, with regard to the key principles of STOXX Europe Christian Index, there are at least a few aberrations, such as:

- Vodafone, as a leading mobile internet provider, can easily be involved in risky content including pornography, on-line casinos, games containing acts of violence, etc.;
- GlaxoSmithKline, as a pharmaceuticals giant, provides a number of birth control drugs in different forms; and
- British Petroleum’s oil spill in the Gulf of Mexico, “which is threatening to devastate fishing and tourism industries, and wildlife habitats along the Louisiana coast”<sup>617</sup> is definitely an example of damage to the environment.

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<sup>614</sup> Bank Negara Malaysia. (2015). SRIs & The Case for Islamic Investment Funds, p: 10.

<sup>615</sup> Hijazi, S., (2016). Islamic Finance and Christian Finance: A Shared Heritage. Grant Thornton.

<sup>616</sup> Financial Times, April 27 2010

<sup>617</sup> Financial Times, May 1 2010.

Consequently, cynically speaking, for many companies it looks like a marketing strategy rather than a real philosophy. Another way which just “contributes to value, and thus to a competitive advantage to the company”<sup>618</sup> typically used by traditional banks and financial institutions is incorporation of ethical and social aspects through Corporate Social Responsibility (CSR) policy. Moreover, despite the marked progress in recent times, socially responsible investment, similarly to Islamic finance remains a rather niche product.

Therefore, it could be stated that there are no underlying principles that provide the ground for any philosophy of conventional finance.

### 6.3 Philosophy of Islamic finance

In contrast to conventional finance, Islamic finance is not just a collection of advanced techniques. The fundamental principles of Islamic finance “have remained unchanged since their initial development over 1,400 years ago”.<sup>619</sup> Also, as the Islamic Investment and Finance Board of India (IIFB) suggests, the “Islamic concepts of money and capital, the relationship between risk and profit, the social responsibilities of financial institutions, etc.”<sup>620</sup> are explained in detail by *Shariah*, the Islamic law.<sup>621</sup> Furthermore, Islam, by means of *Shariah* “contains guidance in every sphere of life including [the] socio-economic fields”.<sup>622</sup> Does this mean that Islamic finance as an inalienable part of Islamic economics is based on a specific

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<sup>618</sup> Perrini, F., Pogutz, S., and Tencoti, A. (2006). Developing Corporate Social Responsibility: a European Perspective. Edward Elgar Publishing. p. 72.

<sup>619</sup> See IFSL Research. Islamic Finance 2010. p: 7.

<sup>620</sup> <http://iifbindia.org/Knowledge%20Centre.html>

<sup>621</sup> At the same time, “[t]he English term “Islamic law” is ambiguous, translating two Arabic terms, *Shariah* (the divine law) and *Fiqh* (human comprehensions of that law).” See Vogel, F., and Hayes, S., (2006). Islamic Law and Finance: Religion, Risk, and Return. Arab & Islamic Laws. Brill, p: 32. Normally the Western scholars when refer to Islamic law mean the *Fiqh* and not the *Shariah*. However, in this paper we must be more precise and will mainly use the *Shariah* as the principal source of law.

<sup>622</sup> *Supra* note 111, at p: 16.

philosophy? Undoubtedly, yes. However, how can we identify this philosophy?

It is generally acknowledged that Islamic economics is based on prohibitions and encouragements in accordance with the norms and ethics of the Islamic Law (*Shariah*). As Siddiqui (2001) notes, those prohibitions are intended to protect the Islamic “economic system, which aims at securing extensive socio-economic justice”<sup>623</sup> and primordially were not based on economic theory but on the Divine Authority. However, in essence the *Shariah* can be seen as a natural law with its general ethical principles “to do good, avoid evil, cooperate with others in good works”,<sup>624</sup> which correspond directly with the first precept of [natural] law enunciated by St. Thomas Aquinas - “good is to be done and pursued, and evil is to be avoided”.<sup>625</sup> Interestingly, one of the most renowned Islamic philosophers and scientists, Avicenna (Ibn Sīnā)<sup>626</sup> had a great influence on St. Thomas’ thought. Avicenna, in turn, was a follower of the ancient Greek philosophers (Aristotle and Plato<sup>627</sup>) and tried to reconcile their writings with the teachings of the *Holy Qur’an*.<sup>628</sup> Meanwhile, as Pelligrino (2001) impartially suggests, the doctrine “Do good and avoid evil is the *primum*

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<sup>623</sup> Siddiqui, S.H. (2001). Islamic Banking: True Modes of Financing. New Horizon, May-June, Vol. 109, p: 1.

<sup>624</sup> The Holy Qur’an says: “Let there arise from among you a band of people who invite to righteousness, and enjoin good and forbid evil.” (3:104) See <http://www.islamicvoice.com/november.98/features.htm>

<sup>625</sup> The Summa Theologica by St. Thomas Aquinas, trans. Fathers of the English Dominican Province, 1947. Q[94], A[2]. See <http://www.sacred-texts.com/chr/aquinas/summa/index.htm>

<sup>626</sup> Avicenna or Abū 'Alī al-Husayn ibn 'Abd Allāh ibn Sīnā in Arabic, (980 – 1037). According to Encyclopaedia Britannica, “He was particularly noted for his contributions in the fields of Aristotelian philosophy and medicine. He composed the *Kitāb al-shifā'* (*Book of the Cure*), a vast philosophical and scientific encyclopaedia, and *Al-Qanun fi al-Tibb* (*The Canon of Medicine*), which is among the most famous books in the history of medicine.” See <http://www.britannica.com/EBchecked/topic/45755/Avicenna>. For more detailed explanation also see <http://muslimheritage.com/features/default.cfm?ArticleID=473>

<sup>627</sup> Far more Aristotelian than Platonic, actually.

<sup>628</sup> *Supra* note 102, at p: 13.

*principium* of all ethics”,<sup>629</sup> and ethics “is indeed a practical philosophy ... (the philosophy of action and conduct)”.<sup>630</sup>

But what makes the Islamic philosophy different from the underlying principles of other religions? The answer is simple and obvious – it is in its everyday practical implementation. Islam is a relatively young religion<sup>631</sup> and thus has sufficient fidelity to keep the basic principles alive. As Presley and Sessions (1994) fairly state, “[I]n this respect Islam is not only a divine service, like Judaism and Christianity, but also involves a code of conduct which regulates and organises mankind in both spiritual and *material* life”.<sup>632</sup> Consistent with the philosophy regarding the conduct of the individual, Islamic financial institutions in their everyday life are guided by a legitimate control body known as the *Shariah* Supervisory Board (SSB),<sup>633</sup> which is composed of eminent Islamic jurists, scholars and academics.<sup>634</sup>

According to the Institute of Islamic Banking and Insurance (IIBI), the day-to-day application of *Shariah* by the *Shariah* Supervisory Boards is two-fold. First, in the increasingly complex and sophisticated world of modern finance they endeavour to answer the question of whether or not proposals for new transactions or products conform to the *Shariah*. Second, they act to

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<sup>629</sup> Pellegrino, E.D., (2001). The Internal Morality of Clinical Medicine: A Paradigm for the Ethics of the Helping and Healing Professions. *Journal of Medicine and Philosophy*, Vol. 26, No. 6, pp: 559-579; Cited from Colgan., R. (2009) *Advice to the Young Physician: On the Art of Medicine*. 1<sup>st</sup> Edition. Springer, p: 68.

<sup>630</sup> Horrigan, P.G., (2002). *Introduction to Philosophy*, p: 14.

<sup>631</sup> Booth, A., (2017). *Analytic Islamic Philosophy*. Palgrave Macmillan, p: 50.

<sup>632</sup> *Supra* note 108, at p: 585.

<sup>633</sup> Rammal, H. G., (2006). The Importance of *Shariah* Supervision in Islamic Financial Institutions. *Corporate Ownership and Control*. Vol. 3, Issue 3, p: 205.

<sup>634</sup> There are “... four types of legal personnel who played fundamental roles in the construction, elaboration and continued operation of the *Shariah*. These are the Mufti, Author-jurist, the judge and law professor [scholar].” See Hallaq, W.B., (2009). *An Introduction to Islamic Law*. Cambridge University Press, p: 8.

a large extent in an investigatory role, in reviewing the operations of the financial institution to ensure that they comply with the *Shariah*.<sup>635</sup>

Moreover, as Shaikh Yusuf Talal DeLorenzo, a leading Islamic scholar, says “[u]nless a financial product or service can be certified as *Shariah* compliant by a competent *Shariah* supervisory board, that product’s authenticity is dubious”.<sup>636</sup> This philosophy implies tight restrictions, which apparently diminish the efficiency of the investment market in the short-term but also prevent it from running rampant in the long-term. As a result it can be argued that the philosophy of Islamic finance - this orientation is not for profit, but for the common good – is for the maximisation of social welfare.

#### **6.4 Practical differences between Conventional and Islamic financial Systems**

As a result of profound fundamental differences between Conventional and Islamic financial systems, there are comparable discords when implementing them in the real world. The principal ones are summarised in Exhibit 10 below.

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<sup>635</sup> [http://www.islamic-banking.com/shariah\\_supervisory\\_board.aspx](http://www.islamic-banking.com/shariah_supervisory_board.aspx)

The clear definition of the role of SSB is provided by Usmani in the Introduction to the Compendium\*, “The function of a *Shariah* Supervisory Board is of a very delicate nature. On the one hand, they are meant to abide strictly by Islamic principles, and on the other they have to fulfil the requirements of a constantly emerging needs of the contemporary marketplace. The task entrusted to the *Shariah* boards is indeed a difficult one; because when we claim that Islam provides solutions to the problems of every time and place, we do not mean that Islam has given a specific rule for each and every minute detail of every transaction.”

\*DeLorenzo, Y.T., Editor. (1997). A Compendium of Legal Opinions on the Operations of Islamic Banks: Murabahah, Mudarabah and Musharakah. Institute of Islamic Banking and Insurance. London, UK.

<sup>636</sup> <http://www.dinarstandard.com/finance/DeLorenzo012308.htm>



**Exhibit 10: Practical differences between the Conventional financial system and the Islamic financial system<sup>637</sup>**

<b>Origin of difference</b>	<b>Conventional Financial System</b>	<b>Islamic financial System</b>
Basis of Financial System	Interest/Riba	Interest Free, Profit or Loss Sharing, Zakat and Compensation based
Sources of the System	Intellects brain storming of the economic problems of men's life	The Holy Qur'an and the Sunnah/Hadith
Religious Belief	Secular and separates religion from other parts of human life	Belief in the unity of God and relates this belief to the economic life of a man
Scientific nature	Economics is a positive science as like as biology, physics which have no value, value neutral. Economic Laws are like physical laws.	Economics is value-oriented. Permissible and prohibition have to be complied. Economic laws are like natural laws.
Freedom of Economic Activity	Capitalism - Individuals enjoy freedom Socialism - State/Government enjoys economic freedom	Restrictive freedom is allowed in the light of Shariah for all participants - the State/Government and/or Individuals
Understanding of Market	Market-Oriented: Market can or cannot solve all the problems. Capitalism - 100% of market; Socialism - zero Market, 100% State/Government	Market can solve major problem but not all. Considerable part of economic problems has to be solved by the State/Government
Ownership	Capitalism- Individual ownership Socialism- State/ Government ownership	God is the exclusive owner. Man is the caretaker of the property
Competition	Capitalism- Logical and unethical competition Socialism - No competition	Logical Competition and financial co-operation
Wealth distribution	Capitalism - Unequal Socialism - Equal	Equitable
Social and environmental welfare	Do not consider the social and environmental welfare	Ensure social and environmental welfare
Lender or Bank's expectation in terms of debt financing	Interest	Profit or Loss Sharing

<sup>637</sup> Elaborated from Dr. Syed Zulfiqar Ali Shah (Assistant Professor, International Islamic University, Islamabad) Lecture notes (2015), pp: 15 -16 and Moisseron, J-Y., Moschetto., B-L., and Teulon, F., (2014). Islamic Finance: A Review of the Literature. Working paper. IPAG Business School, pp: 10 -11.

The currency	Through trade and keeps its value	Through trade. Money is not in itself an asset.
Nature of operations	Total separation between the depositors and the banks.	Islamic banks give depositors the opportunity to know what use is made of their money, and at the same time provide them with the opportunity to decide on their preferred investments
Logic of transactions	Transactions are based on financial assets.	Transactions are based on real assets.
Remuneration	Gathering funds from applicants by paying interest.	Partnership, sharing of profits and losses between the banks and depositors. Islamic finance does not allow a fixed remuneration due to the mere lapse of time.
Owners exception in respect of investment	Dividend or part of profit in case of equity financing	Part of Profit or Loss
Goals of financial System	Capitalism- Individual's profit Socialism- profit of the society	Welfare of both the Individuals and Society here and hereafter
Result	Concentration of income and economic power in few hands or State/Government. Inefficiency	Maximum and equitable distribution of economic opportunities and higher production in the society
Social outcome	Unfair in the public conscience	Just in the public conscience

This comparative table clearly demonstrates the main differences between the two financial systems and these dissimilarities can be divided into three main mutually overlapping groups:

1. Variety in the philosophical/religious and socio-economic principles underlying each system, videlicet Sources of the Economic theory, Religious Belief, Scientific nature, Origin of Financial System, Freedom of Economic Activity, Understanding of Market;
2. The technical features of applying these principles in practice, videlicet Nature of operations, Property Ownership, Lender or

Bank's expectation in terms of debt financing, The currency, Logic of transactions, Remuneration;

3. The main objectives of the systems and the results achieved for society, videlicet Goals of financial System, Competition, Wealth distribution, Social and environmental welfare, Social outcome, Global Result.

Thus, with detailed consideration, it is obvious that although at first glance some of the principles or tools are basically identical, the Islamic financial system is far away from the Conventional financial system.

## **6.5 Conclusion**

The comparative analysis of the Conventional and Islamic financial systems conducted in this chapter demonstrates that despite their external similarities in terms of their functionality and main purpose, i.e. covering financial transactions and the exchange of money between investors, lenders and borrowers, Conventional and Islamic financial systems present two entirely different concepts. The former represents the achievement of financial gain on behalf of a single firm, or even a single person, whereas the latter is in the interest of the whole society.<sup>638</sup>

Therefore, these two systems differ not only in their philosophical foundations, but also in terms of the end results. In view of that, without taking into account the technical and juridical peculiarities, Islamic finance

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<sup>638</sup> Somewhat ironically, one of the meanings of the word "socium", derived from Latin and commonly used in Russian as a substitute for society, is the word "sharing", which is directly linked to one of the foundations of Islamic Finance – the Profit and Loss Sharing system. See definition of *socius* – *social* – *socium* <http://latin-dictionary.net/definition/35230/socius-socia-socium>

can seem fairer according to collective consciousness<sup>639</sup> than Conventional finance.

Thus, this chapter also answers the second component of the research question and confirms the precedence of the principle of fairness, as an essential part of Islamic financial system's functionality.

The legal complexities and implications of Islamic financial system will be discussed further in chapter 7.

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<sup>639</sup> The theory of collective consciousness originated in a book written by Durkheim called *The Division of Labor in Society* in 1893. See <http://study.com/academy/lesson/collective-consciousness-definition-theory-examples.html>

## **CHAPTER 7: LEGAL COMPLEXITY OF ISLAMIC FINANCIAL INSTRUMENTS**

### **7.1 Introduction**

Chapters 4 and 6 revealed a fundamental discrepancy between Conventional Finance and Islamic finance in regard to their philosophical and ethical basis. This chapter analyses the legal framework that exists in non-Islamic countries in order to ascertain how the legal risks, which are quintessential to technical and juridical difficulties in implementing Islamic finance in the Western world, could become a barrier to the widespread dissemination of Islamic finance across the globe. As a result, this chapter prepares the ground to answer the research questions by matching Islamic finance with Conventional (Western) regulatory models and the legal framework. The method used for this chapter is legal analysis. The study is undertaken with a critical attitude, highlighting the uncertainty inherent to Islamic finance, when in the Western regulatory landscape.

With regard to the structure, this chapter is divided into two main sections. Section 7.2 presents the legal risks in conventional and Islamic finance. Specifically connected to the research question, Section 7.3 discusses the sources of legal complexity in Islamic finance in particular.

### **7.2 The legal risks**

#### **7.2.1 Legal Risks in conventional finance**

A fairly narrow definition of legal risk is given by Bank for International Settlement (BIS)<sup>640</sup> in the Core Principles for Systemically Important Payment Systems (2001): “Legal risk – the risk of loss because of

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<sup>640</sup> The Bank for International Settlements (BIS) is an international organisation which fosters international monetary and financial cooperation and serves as a bank for central banks. Established on 17 May 1930, the BIS is the world's oldest international financial organisation.

the unexpected application of a law or regulation or because a contract cannot be enforced”.<sup>641</sup> A more broader explanation is provided by Abdulkader *et al.* (2005), which describe the legal risk as “the risk that a particular transaction does not produce the economic results that a party had bargained for, either because there has been a change in law or regulation or more usually because the party failed to appreciate or address one or more of the risks inherent in the transaction”.<sup>642</sup> Similarly McCormick<sup>643</sup> (2007) identified legal risk as “the risk of loss either (a) as a result of transaction documentation not having the legal effect that one or more of the parties intend or (b) as a result of adverse claims (whether or not resulting in litigation)”.<sup>644</sup>

A more advanced and most relevant definition of legal risk is offered in a draft of discussion paper widely debated at a working party of the International Bar Association:<sup>645</sup>

“Legal risk is the risk of loss to an institution which is primarily caused by:

- a) a defective transaction; or
- b) a claim (including a defence to a claim or a counterclaim) being made or some other event occurring which results in a liability for the institution or other loss (for example, as a result of the termination of a contract); or

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<sup>641</sup> <http://www.bis.org/publ/cpss43.pdf?noframes=1>

<sup>642</sup> *Supra* note 117, at p: 200.

<sup>643</sup> Roger McCormick – acknowledged legal risk expert, Project Director of the Law and Financial Markets Project at London School of Economics and Political Science, and a Visiting Professor at LSE. Since 2002 Roger has been the Co-chairman of the International Bar Association’s Legal Risk Working Party.

<sup>644</sup> McCormick, R., (2007). Legal Risk, Law and Justice in a Globalising Financial Market. *Law and Financial Markets Review*, p: 283.

<sup>645</sup> The International Bar Association (IBA), established in 1947, has a membership of 30,000 lawyers and 195 bar associations and law societies. <http://www.ibanet.org/>

- c) failing to take appropriate measures to protect assets (for example, intellectual property) owned by the institution; or
- d) change in law.

The reference to a defective transaction in (a) above includes:

- entering into a transaction which does not allocate rights and obligations and associated risks in the manner intended;
- entering into a transaction which is or may be determined to be void or unenforceable in whole or with respect to a material part (for whatever reason);
- entering into a transaction on the basis of representations or investigations which are shown to be misleading or false or which fail to disclose material facts or circumstances;
- misunderstanding the effect of one or more transactions (for example, believing that a right of set-off exists when it does not or that certain rights will be available on the insolvency of a party when they will not);
- entering into a contract which does not, or may not, have an effective or fair dispute resolution procedure (or procedures for enforcement of judgements/arbitral decisions) applicable to it;
- entering into a contract inadvertently;
- security arrangements that are, or may be, defective (for whatever reason)”.<sup>646</sup>

All those definitions serve to illustrate the twofold nature of legal risk, which is concerned with both the external aspects, such as a change or breach in law or regulation and the internal aspects like a defective contract or transactions procedure.

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<sup>646</sup> IBA Working Party on Legal Risk (2003). Draft Discussion Paper, p: 13.

However, there is no final explanation on what does the *legal risk* mean. The most comprehensive analysis of legal risk substance is conducted by Tobias Mahler<sup>647</sup> (2007) in his remarkable article “Defining Legal Risk”<sup>648</sup> which is based on a presentation at the conference "Risk and Regulation 2006" at the London School of Economics and Political Science (LSE). Even though Mahler (2007) pointed out in introduction “the definitions given for legal risk differ widely, and no generally accepted notion of legal risk seems to exist”,<sup>649</sup> further he successfully reviewed, systematized and analysed existing definitions of legal risk and finally proposed a context-independent definition and classification of legal risk based on norm theory. In the end Mahler came to the conclusion that, “the combination of the norm-theoretic approach with the distinction of normative and factual uncertainties renders a matrix of legal risk, which should be generally applicable for the identification of legal risks, independent of the context”.<sup>650</sup> In consequence it is possible to say, that legal risk faced by conventional financial institutions is also applicable to Islamic banking.

### 7.2.2 Legal Risks in Islamic finance

The very essence of Islamic finance differentiates the nature of risk that the Islamic financial institution faces. “The reality is Islamic banks draw their founding blocks from Sharia and they operate fully under the ‘law of

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<sup>647</sup> Tobias Mahler, Norwegian Research Center for Computers and Law (NRCCL), University of Oslo, <http://folk.uio.no/tobiasm/>.

<sup>648</sup> This article is based on a presentation the author gave at the conference “Risk and Regulation 2006” at the London School of Economics and Political Science (LSE), organized by the Centre for Analysis of Risk and Regulation (CARR). An earlier version of this paper was presented at the conference “Commercial Contracting for Strategic Advantage – Potentials and Prospects”, Turku University of Applied Sciences, June 13 -16, 2007. Published in the Conference Proceedings on pages 10 - 31.

<sup>649</sup> Mahler, T., (2007). Defining Legal Risk. Yulex 2007. Norwegian Research Center for Computers and Law (NRCCL), p: 209.

<sup>650</sup> *Ibid.* p: 235.



land’ where they exist”.<sup>651</sup> Consequently the *Shariah* compliant banks generally face all of the same risks as conventional financial institutions, as well as several that are unique to Islamic finance. As Maiya (2008) notes, risks unique to Islamic banks include: “pricing risk under mark-up financing; commodity risk; ownership risk (assets owned as part of financing); reputation risk (for non-compliance with *Shariah* principles); counterparty risk in the case of *Murabaha* (declining to honour the “promise to buy” agreement), *Istisna* (declining to honour the “promise to accept the delivery” agreement), *Salam* (declining to honour the “supply on time and quality, quantity” agreement)”.<sup>652</sup>

Furthermore, according to State Bank of Pakistan (2008), *Shariah* non-compliance risk is “considered as falling within a higher priority category in relation to other identified risks” and “such compliance requirements must permeate throughout the organisation and their products and activities”.<sup>653</sup>

Thus, it is arguable that those kinds of risks are relevant for each party involved in finance transactions provided by Islamic finance Institution and can be observed irrespective of particular sort of transactional structures (e.g. *Murabaha*, *Mudaraba*, *Istisna*, *Ijara*, etc.) or type of financial services providers such as Islamic Banks, Finance companies and Islamic Insurance (*Takaful*) companies.<sup>654</sup>

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<sup>651</sup> Abou-El-Fotouh - First Vice President and Group Head of Corporate Governance and Compliance at ABC Bank Egypt, he is a leading expert on money laundering and terrorist financing controls in the Middle East-North Africa region with extensive experience in AML compliance and training. Statement at ‘Money Laundering Alert 13th Annual International Conference’, Florida, March 17-19, 2008.

<sup>652</sup> *Supra* note 125, at p: 2.

<sup>653</sup> State Bank of Pakistan. (2008). Risk Management Guidelines for Islamic Banking Institutions, p: 18.

<sup>654</sup> See Paragraph 3.3 Modes of financing in Islamic finance, pp: 125-141.

The most sufficient analysis of legal risk in Islamic finance is prepared by Reza Djojosingito<sup>655</sup> (2008) in article “Mitigating Legal Risk in Islamic Banking Operations”. This undoubtedly actual paper “elaborates legal risk exposed to parties to Islamic banking transactions encompassing the issues of the capacity of the parties to enter into a contract and its enforceability, uncertainty in laws, regulations, and legal actions pertaining to *Shariah*; as well as the legality of Islamic financial instruments”.<sup>656</sup>

### **7.3 The sources of legal complexity in Islamic finance**

#### **7.3.1 The deficiency of legal bases**

A uniform regulatory and legal framework supportive of an Islamic financial system has not yet been completely developed. According to Turk Ariss and Saredidine (2007), the existing banking regulations in Islamic countries are based on the Western banking model. Only few countries such as Malaysia and Indonesia have made efforts to develop a separate legal framework under which Islamic banks can operate in a dual banking system.<sup>657</sup> New regulations in Brunei and Pakistan also have supported the expansion of an Islamic finance industry alongside conventional financial services.

Since the late 1990s, according to El Qorchi (2005), the Islamic banking world has accelerated efforts to standardize regulation and supervision.<sup>658</sup> First of all, this is the Islamic Development Bank,<sup>659</sup> which is playing a key role in developing internationally acceptable standards and

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<sup>655</sup> The author is an employee of the Legal Department at the OPEC Fund for International Development, Austria.

<sup>656</sup> *Supra* note 126, at p: 110.

<sup>657</sup> Turk Ariss, R., and Saredidine, Y., (2007). Challenges in Implementing Capital Adequacy Guidelines to Islamic Banks. *Journal of Banking Regulation*. Vol. 9, p: 59.

<sup>658</sup> *Supra* note 130, at p: 48.

<sup>659</sup> Islamic Development Bank (IDB) is a multilateral development financing institution, established [1973] to foster social and economic development of its member countries and Muslim communities world-wide. [www.isdb.org](http://www.isdb.org)

procedures and reinforcement the banking sector's architecture in different countries. In addition there are other international institutions which are working to set *Shariah*-compliant standards and harmonize them across the world. These include the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI),<sup>660</sup> the International Islamic Financial Market (IIFM),<sup>661</sup> the Islamic Finance Service Board (IFSB),<sup>662</sup> the Liquidity Management Centre (LMC),<sup>663</sup> and the International Islamic Rating Agency (IIRA).<sup>664</sup> However, as Al Shaali (2008) pointed out, "there are still many countries where the legal and institutional framework is not explicit and transparent about Islamic finance, and the framework developed for conventional finance is being applied to Islamic institutions".<sup>665</sup>

Moreover, even the regulatory framework for banking is not enough. As Djojosingito (2008) argues, "the creation of conducive legal framework is inevitable, especially those for operational aspects of Islamic banking, for sufficient infrastructure to allow Islamic banking to grow and for establishing friendly infrastructure toward Islamic banking".<sup>666</sup> Also, as KPMG (2006) suggests, the fact remains "that a large proportion of Islamic banking transactions are conducted within the bounds of international

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<sup>660</sup> AAOIFI (established in 1990) is an Islamic international autonomous non-for-profit corporate body that prepares accounting, auditing, governance, ethics and *Shariah* standards for Islamic financial institutions and the industry. <http://aaoifi.com>

<sup>661</sup> IIFM was founded [2002] as an infrastructure institution with the mandate to take part in the establishment, development, self-regulation and promotion of Islamic Capital and Money Market. [www.iifm.net](http://www.iifm.net)

<sup>662</sup> IFSB (established in 2002) is an international standard-setting organisation that promotes and enhances the soundness and stability of the Islamic financial services industry by issuing global prudential standards and guiding principles for the industry. [www.ifsb.org](http://www.ifsb.org)

<sup>663</sup> LMC was established in 2002 for the purpose of facilitating the investment of the surplus funds of Islamic banks and financial institutions into quality short and medium term financial instruments structured in accordance with the *Shariah* principles. [www.lmc Bahrain.com](http://www.lmc Bahrain.com)

<sup>664</sup> IIRA (established in 2005) assists the Islamic financial services industry to gain recognition locally and internationally as strong and capable financial institutions, adhering to greater standards of disclosure and transparency. [www.iirating.com](http://www.iirating.com)

<sup>665</sup> *Supra* note 131.

<sup>666</sup> *Supra* note 126, at p: 113.

(typically English) law. Islamic financial institutions must address this legal reality and work to ensure that they are able to deal with this hurdle”.<sup>667</sup>

### **7.3.2 Inadequacy of existing legal system**

The two highly powerful legal systems,<sup>668</sup> being now a fundamental part of contemporary business world, the Common Law and the Civil Law, regrettably, do not conform to the Islamic doctrine and vice versa. The main effects of this are as follows:

#### **a) The issues of legislative orders in countries following Civil law system**

Civil law system accentuates on the codification of laws and requires that all rules have to be transformed into written law. This is a basis on which the Civil laws should be created. The imperative part of this is that the lower level laws/regulations cannot contradict higher level laws/regulations. On the subject of the Islamic finance, “this principle potentially presents difficulties as most of the building blocks of the commercial laws which serve as a foundation for the Islamic banking rarely recognize directly the Islamic principles or mention any reference to Islamic legal principles. Even though referral to the unwritten laws as another source of laws may be made, it is difficult to argue that the unwritten laws encompasses Islamic principles as most treatises construe these unwritten laws as the conventions in state governance practices and not as a general principles of laws or a custom where the Islamic principles are likely to be part of”.<sup>669</sup> Quite the contrary for the Common law system it seems easier to make

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<sup>667</sup> *Supra* note 352, at p: 17.

<sup>668</sup> There are many other less considerable legal systems in today’s world such as Hindu law, Pre-Colonial legal systems in Africa and the Americas, and Socialist legal system, developed originally in the Soviet Union.

<sup>669</sup> *Supra* note 126, at p: 114.

essential changes of existing legislation to accommodate some of the Islamic principles via the “case law”.<sup>670</sup>

**b) The inexistence of laws related to the Islamic mode of financing**

As described in the previous section the most Civil and Common law jurisdictions do not have the comprehensive laws related to Islamic mode of financing. According to Djojosingito (2008), “The reference to Islamic mode of financing usually was implicitly embedded into the legal or regulatory instruments which deals with Islamic bank which may define some Islamic modes of financing and for limited extend the mechanism thereof”.<sup>671</sup> As a result the judges (courts) can make their own interpretation on some particular Islamic mode of financing.

**c) The absence of basic laws for Islamic banking**

In spite of the fact that Islamic banking is recognized in many countries with different jurisdictions,<sup>672</sup> the existent laws cover only the very basic principles of Islamic banking. Only few countries, such as Sudan, for example, adopted *Shariah* compliant regulatory frameworks for the entire banking sector in 1984.<sup>673</sup> Also, as Djojosingito (2008) notes, “the laws for instance fails to address the issue of double taxation in Islamic financial transactions or the specific supervisory needs of Islamic bank and sometimes contain

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<sup>670</sup> Part of common law, consisting of judgments given by higher (appellate) courts in interpreting the statutes (or the provisions of a constitution) applicable in cases brought before them. Called precedents, they are binding on all courts (within the same jurisdiction) to be followed as the law in similar cases. See <http://www.businessdictionary.com/definition/case-law.html>

<sup>671</sup> *Supra* note 126, at p: 114.

<sup>672</sup> *Supra* note 348, at p: 1.

<sup>673</sup> Karim, N., Tarazi, M. and Reille, X., (2008). Islamic Microfinance: An Emerging Market Niche. Focus Note No. 49, August 2008. Consultative Group to Assist the Poor (CGAP), p: 4.

general requirements for banking industries which impede the development of Islamic banking”.<sup>674</sup>

Furthermore, as KPMG suggests, “Islamic financial products can be at a disadvantage in the marketplace when it comes to taxation in certain jurisdictions, suffering a relatively greater burden when compared to conventional finance. This disadvantage may be due to a lack of sufficient and appropriate understanding of these products by the relevant tax authorities. Classic examples of such instances include the tendency to treat some Islamic products as equity products rather than confer upon them the taxation benefits of being debt products. Although there have been significant advancements in the taxation treatment of Islamic products, in many countries (the United Kingdom in particular has made a number of changes to existing legislation<sup>675</sup> to accommodate some of these products via the Finance Act 2005<sup>676</sup>) these investigations are at an early stage and further work is required to help enable Islamic institutions to compete on a level playing field with their non-*Shariah*-compliant peers.

Apart from conventional taxation, Islamic financial institutions must also consider the need to accrue and provide for Islamic tax - *Zakat*. There are disparities in the industry around this issue, with some industry participants arguing that the *Zakat* should be provided by the

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<sup>674</sup> *Supra* note 126, at p: 114.

<sup>675</sup> Changes in legislation relating to Islamic finance products are announced as part of the Budget, following discussions initiated by Islamic Bank of Britain. The Finance Act 2005 includes changes specifically related to the taxation of Islamic financial products with the aim of putting them on a level playing field with other comparable non-Islamic financial products. Adapted from Islamic Bank of Britain, [www.islamic-bank.com](http://www.islamic-bank.com)

<sup>676</sup> The Finance Act 2005 prescribed changes to Excise Duties, Value Added Tax, Income Tax, Corporation Tax and Capital Gains Tax. [www.opsi.gov.uk/acts/acts2005/ukpga\\_20050007\\_en\\_1](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050007_en_1)

institution and others arguing it should be provided for by the investor/depositor”.<sup>677</sup>

**d) Inadequacies of laws related to asset securitization compatible to *Shariah***

The traditional assets securitization mechanism utilizes the securitization in form of debts receivables and such method is completely unacceptable for the Islamic counterpart as based on the pure debts. Nonetheless, as Djojosedjito (2008) points out, the development of the legal aspects of the assets securitization compatible to Islam was still lagged behind, despite the fact that the asset securitization is one of the most important mechanisms for mobilizing financial resources for Islamic financial institutions.<sup>678</sup>

**7.3.3 Uncertainty in laws and regulations appertaining to the *Shariah***

As previously discussed, the current situation in most legal regimes is not very helpful to the development of Islamic finance operations due to the fact that any operation undertaken by Islamic banks or other Islamic financial Institutions create some sort of legal risk. In general, there is ongoing conflict of laws between *Shariah* and local laws which have arisen within few main legal areas such as follows:

**a) Uncertainty in laws, regulations, and legal actions appertaining to the principles of *Shariah***

Legal risk arisen from uncertainty in laws, regulations, or legal actions will even affect a transaction which is properly documented. Such uncertainty will occur if the court construes that some transactions do

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<sup>677</sup> *Supra* note 368, at p: 12.

<sup>678</sup> *Supra* note 126, at p: 114.

not conform to *Shariah*. It is also important that many laws related to Islamic finance are imprecise. Particularly for Islamic banks, as Djojosingito (2008) suggests, “the result can be devastating as the integrity of the whole operations can be questionable if part of it is not interpreted according to *Shariah*”.<sup>679</sup>

The other problem concerning this aspect is that some legal institution is just not competent of delivering judgments related to *Shariah*. “Judges in non-*Shariah* court for instance rarely receive proper training in *Shariah*. Therefore, it is too much to expect that their decision will reflect the *Shariah* principles”.<sup>680</sup> However, this kind of legal risk is still present since the final decision is decided by the court.

The other problem is the jurisdiction of *Shariah* board. For example, the Indonesian National *Shariah* board's *fatwas* are binding upon the *Shariah* boards of the Islamic banks but not to the financiers of the Islamic banks. This will create problem as the financiers are free to invest the financing in any way they like.<sup>681</sup> Consequently, as Djojosingito (2008) argues, “the adherence to *Shariah* can be included in the covenants or events of defaults in the relevant financing agreements. However, such covenants can only be effective if the interpretation of *Shariah* by courts is consistent”.<sup>682</sup>

#### **b) Legality of Islamic financial instruments**

Also, one of the common legal risks faced by Islamic banks is the legality of Islamic financial instruments. “Due to the absence on

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<sup>679</sup> *Ibid.* p: 115.

<sup>680</sup> *Ibid.*

<sup>681</sup> *Ibid.*

<sup>682</sup> *Ibid.*



recognizable laws pertaining to Islamic financial instrument, some transactions might be deemed illegal by law even though *Shariah* allow such transactions”.<sup>683</sup>

In addition, according to Djojosedjito (2008), “The biggest issue which might arise from the legality of Islamic financial instrument is the probability of selective enforceability. As an Islamic financing structure usually involves several financial instruments, the illegality in parts of the instrument used in the transaction may result in that only the favourable terms in a contract is enforced. The problem with selective enforceability is that most of *Shariah* compatible financing is conducted through a web of contracts and if any part of such a web fails to function or only part of the web is enforced, the integrity of the whole system in term of *Shariah* compatibility might be compromised”.<sup>684</sup>

### **c) Legal capacity to enter into a contract**

Another component of legal risk that affects the operations of Islamic banks is legal capacity. The legal capacity can be defined as the ability to legally enter into a legally binding agreement (make a contract). The result of non-existence of any legal capacity is that the contract is deemed *ultra vires*,<sup>685</sup> and is therefore unenforceable.

For example, as do points out it is related to the exploit of special purpose vehicle (SPV) in project finance transactions. “While the *Shariah* will view the SPV as either a *Mudarib* or a *Wakil*, the law will view them as a trustee. At the outset, the difference seems trivial as all

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<sup>683</sup> *Supra* note 126, at p: 115.

<sup>684</sup> *Ibid.*

<sup>685</sup> It is Latin for “beyond the powers”. An action outside the proper authority or power of a corporation or corporate officer as established in the corporate charter. See <https://legal-dictionary.thefreedictionary.com/ultra+vires>

of them share many things in common. However, when it comes to the issue of legal capacity of the SPV to enter into a contract, the legal consequences depend on whether the SPV is regarded as *Mudarib*, *Wakil*, or simply a trustee”.<sup>686</sup> Accordingly, transactions which are absolutely acceptable under *Shariah* may be declared *ultra vires* by conventional law jurists.

#### **d) Law vs. the principles of *Shariah***

Other problems have religious character. As Hooker (2002) suggests, the “[Islamic] jurisprudence has not been developed by way of precedent, or by way of codification but by way of scholarship. The nearest parallel for the European traditions is the *canon law*<sup>687</sup> at the time of Aquinas [St. Thomas]. Like the canon law, Islamic scholasticism began from the fixed principle of revelation contained in a text, originally received orally but later written down – the *Qur’an*”.<sup>688</sup>

Moreover, Islam has various scientific schools (such as Hanafi, Maliki, Shafari, Hanbali, Zaydi, Jaffari, etc.) among two main doctrines – Sunni and Shia. As Egorov *et al.* (2002) note “all schools have different treatments and interpretations of Islamic Banking operation, what impedes to unify and modify Islamic Banking. Besides, almost all Islamic private banks have Religious Supervisory Boards (RSBs) [also called *Shariah* Supervisory Boards (SSBs)].<sup>689</sup> These Boards are given wide powers and authorities to examine any

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<sup>686</sup> *Supra* note 126, at p: 116.

<sup>687</sup> Canon law is the body of laws and regulations made by or adopted by ecclesiastical authority, for the government of the Christian organization and its members. Canon is derived from the Greek *kanon*, i.e. a rule or practical direction. see The Catholic Encyclopedia, <http://www.newadvent.org/cathen/09056a.htm>

<sup>688</sup> Hooker, M., (2002). Introduction: Islamic Law in South-east Asia. *Journal of Asian Law*. Vol. 4, p: 214.

<sup>689</sup> See <https://www.islamicbanker.com/education/shariah-supervisory-board>

contract, method or activity relating to the conduct of their banks”.<sup>690</sup> Moreover, according to Institute of Islamic Banking and Insurance, “financial institutions that offer products and services conforming to Islamic principles must, therefore, be governed by a religious board that act as an independent *Shariah* Supervisory Board comprising of at least three *Shariah* scholars with specialised knowledge of the Islamic laws for transacting, *fiqh al mu`amalat*, in addition to knowledge of modern business, finance and economics”.<sup>691</sup> As consequence it is arguable that the Islamic jurisprudence was developed by way of scholarship while the Common law jurisprudence was developed by way of precedent and the Civil law by way of codification.<sup>692</sup>

The clear example of this inconsistency is provided by Djojosingito (2008) through the Islamic Development Bank (IDB) *Sukuk*: “It is stated that the decrease in the proportion of the pool to below 25 per cent will trigger a dissolution event. While the decrease in the proportion itself is another type of risk, the treatment arises from such decrease will trigger a legal risk. While such a condition is not acceptable from *Shariah* point of view and must lead to dissolution of the *Sukuk* because the prohibition in trading of debts is absolute, the liquidation may not be authorized from legal point of view because the law will see the reason as to why the proportion decreases to such level taking into account the interest of the *Sukuk's* holders”.<sup>693</sup>

The other importance is the fact that all Islamic finance institution is governed by laws other than *Shariah*. The classical example is *Shamil*

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<sup>690</sup> Egorov, Puginsky, Afanasiev, & Partners (EPA&P), (2002). Alternative Banking Regulation – the Islamic Approach, p: 1.

<sup>691</sup> [http://www.islamic-banking.com/shariah\\_supervisory\\_board.aspx](http://www.islamic-banking.com/shariah_supervisory_board.aspx)

<sup>692</sup> *Supra* note 126, at p: 116.

<sup>693</sup> *Ibid.*

*Bank of Bahrain v Beximco Pharmaceuticals Ltd and others* (2004)<sup>694</sup> case, which is a good demonstration on how a court may understand *Shariah*. The Court held that *Shariah* principles did not apply and that the financing scheme was enforceable.<sup>695</sup> “This represents legal risk as a contract which is supposed to be governed by *Shariah* will be interpreted not according to *Shariah*”.<sup>696</sup>

In addition, despite the fact that compliance with *Shariah* principles does mean a greater cost, such regulations play an important role in helping the Islamic bank build trust and manage risk effectively. According to Al Shaali (2008), “Significant weaknesses in the legal, governance and systemic liquidity infrastructure are impeding the spread of product innovations in Islamic finance and preventing effective supervision and risk management. There needs to be more done in terms of setting supervisory and regulatory standards tailored to Islamic banks. This is necessary to support industry development”.<sup>697</sup>

#### **7.3.4 Inconspicuous sources of legal risks**

Another challenge for the Islamic financial Institutions is to understand how to treat their products and services under Environmental laws and Corporate Governance laws.

##### **a) Environmental laws**

Islamic banks, like other financial institutions, are potentially liable for environmental damage that their operations cause. Even if the

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<sup>694</sup> [2004] EWCA Civ 19, [2004] 1 WLR 1784. British and Irish Legal Information Institute. [www.bailii.org](http://www.bailii.org)

<sup>695</sup> Lovells (2005). *Shariah Law in the English Courts*, p: 3.

<sup>696</sup> *Supra* note 126, at p: 116.

<sup>697</sup> *Supra* note 131.

banking operations are not pollution-intensive and contamination from their own operations is not the crucial environmental concern, there is impending environmental liability which arises from particular financial transactions. As Al-Zumai (2008) notes, “Due to the fact that Islamic finance is asset based liability in general and environmental liability becomes an issue”.<sup>698</sup>

Furthermore, according to Murrey *et al.* (2008), the “poor environmental practices by banks' customers may reduce the value of collateralised property and/or increase the likelihood of fines or legal liability that reduces a debtor's ability to make payments to the bank”<sup>699</sup>. A classical instance where environmental laws can obstruct the development of Islamic finance in this area is ship building funding<sup>700</sup>. In addition, there are some other cases where banks have been held liable for contamination [US v. Fleet Factors Corporation (1991); US v. Maryland Bank and Trust (1986); and US v. Mirabile (1985)].<sup>701</sup>

## **b) Corporate Governance laws**

Islamic banking cannot be seen in isolation from an important component of law related to Corporate Governance. However, these significant issues such as compliance with Basel II, Combined Code (2003), Sarbanes Oxley Act (2002), International Financial Reporting Standards (IFRSs), IAS 39 (Financial Instruments - Recognition and Measurement), FAS 133 (Accounting for Derivative Instruments and

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<sup>698</sup> *Supra* note 128, at p: 10.

<sup>699</sup> *Supra* note 129, at p: 3.

<sup>700</sup> *Supra* note 126, at p: 110.

<sup>701</sup> Boyer, M., and Laffont, J.-J., (1997). Environmental risks and bank liability. *European Economic Review*. Vol. 41, No. 8, pp: 1433-1434.

Hedging Activities), USA PATRIOT Act (2001),<sup>702</sup> and Money Laundering Regulations (2007), etc. are not discussed in this paper due to space limitations.

## **7.4 Conclusion**

The analysis of the legal complexities of Islamic finance conducted in this chapter revealed that despite their functional similarities and shared motivation, Conventional Finance and Islamic finance are two governing models that differ in several significant respects from one another. The main difference arises from the very basis of the judicature within which the financial institutes actually exist – Islamic jurisprudence was developed by way of scholarship, while Common law jurisprudence was developed by way of precedent and the Civil law by way of codification. Also, the analysis identified the significant role of a unique non-governmental actor – the Religious Supervisory Boards (RSBs), which have both supervisory and consultative functions. Thus Islamic financial Institutions draw their founding blocks from Shariah but operate fully under the “law of land”, which is the main source of legal risk for Islamic financial Institutions. Therefore, the existence of an adequate legal and regulatory framework is a critical aspect of the realisation of the opportunities offered by Islamic finance.

The other dissimilarity stems from differences in the investment and savings culture as well as distinctions in regard to the interpretation of the governing law and regulations relating to various financial instruments. However, in spite of the fact that this research has identified important technical and juridical difficulties related to implementing Islamic finance in the Western world and the particular legal risks attributable only to Islamic

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<sup>702</sup> Acronym – “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001”

finance, it has also shown that these are not insurmountable obstacles to the continuing spread of Islamic finance.

Consequently it is asserted in this thesis that, with regard to the development of an appropriate regulation of Islamic finance, the establishment of an Islamic regulatory framework outside of the Islamic countries that contemplates the same regulatory goals – investor protection and financial system stability – represents a vital opportunity for the development of a consistent financial system internationally.

Final Chapter 8 provides the conclusion.

## CHAPTER 8: CONCLUSION

### 8.1 Introduction

This concluding chapter presents the results of the exploratory and descriptive study of the potential future of Islamic finance in light of various idea of justice connected with different religions in comparison with Conventional finance. The prospective contributions to knowledge that the thesis planned to achieve<sup>703</sup> are also suggested.

Chapter 1 defined the research subject, aim and objectives, research questions and methodology. As previously mentioned this thesis has a composite interdependent multi-channel (double-loop) structure and comprises of both descriptive and comparative parts. The latter in turn comprehends the philosophical and normative (legal) components.<sup>704</sup> All of these findings are preceded by a review of the literature related to the constituent parts of the research.<sup>705</sup>

The first contribution relates to the first two main objectives of the research<sup>706</sup> and determines the role of justice as a socio-philosophical category and assesses its effect on further development of Islamic finance in countries with different religions or political ideologies. Accordingly, Chapter 2 studies justice as a socio-philosophical category, as well as its origin and evolution, while Chapter 4 defines the concept of social justice in Islam as core principle that covers all the aspects of human life. The idea of justice integrated with Islamic finance is also discussed. It was shown that justice is an indispensable component of Islamic finance and that one cannot

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<sup>703</sup> Section 1.1.6 *supra*.

<sup>704</sup> Section 1.1.4.5 *supra*.

<sup>705</sup> Paragraph 1.2 *supra*.

<sup>706</sup> Section 1.1.2 *supra*.

Objective 1: To describe justice as a socio-philosophical category in connection with different religions drawing on experience of Russian scholars in their capacity as East-West intermediaries.

Objective 2: To assess the foundations of Islamic finance and justice as one of their major principles.



exist without the other. Likewise Chapter 5 provides a detailed exploration of justice in relation to dissimilar religious backgrounds. In addition, both chapters consider the historical and modern context of various types of justice. Paragraph 8.2 below summarises those findings.

The second contribution relates to the last main objective of the research<sup>707</sup> and provides the original comparative analysis of the philosophical principles underlying the Conventional and Islamic financial systems, which was presented in Chapter 6.

The third contribution also relates to the last main objective of the research<sup>708</sup> and concerns the differences between the Conventional financial system and Islamic finance in relation to the regulatory framework of Islamic finance. Consequently, Chapter 3 presents the foundations of Islamic finance, while Chapter 7 provides a detailed analysis of the legal complexity of Islamic financial instruments.

The summary of the analysis and comparison of the philosophical and juridical problems and risks that could potentially become a barrier to widespread dissemination of Islamic finance across the globe is presented in paragraph 8.3.

Finally, paragraph 8.4 provides the answer to the research question: *“What is the nature of the concept of justice and its significance for the potential future of Islamic finance?”* This response is based on the analysis of potential effects that the various philosophical and religious foundations of countries with differing legal systems and religious roots might have on the advancement of Islamic finance.

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<sup>707</sup> Section 1.1.2 *supra*.

Objective 3: To compare the philosophical foundations and practical (juridical) differences between Islamic and Conventional financial systems.

<sup>708</sup> *Ibid.*

## 8.2 Justice for “believers”<sup>709</sup>

Chapter 2 describes justice as a socio-philosophical category, as well as its origin and evolution, while Chapter 4 and Chapter 5 provide a detailed exploration of justice in relation to dissimilar religious backgrounds in order to answer the first subordinate research question: *“What is the role of justice as a socio-philosophical category in countries with different religions or political ideologies, and can it affect the further development of Islamic finance?”*

As pointed out in paragraph 1.3, the subject of social justice has remained popular in the literature and there are many articles on this subject. The vast amount of source material could satisfy even the most curious researcher. However, the link between justice and the foundations of the financial systems has largely been overlooked. Moreover, the existing literature on the subject of Islamic finance does not provide a detailed and comprehensive analysis of the prospective development and dissemination of Islamic finance in countries with various legal traditions in relation to the philosophical and religious roots making up their foundation.

Chapter 2 studies justice as a socio-philosophical category and is based on the exhaustive exploration of the details of the origin and evolution of different theories. The chapter not only illustrates the most widespread theories of justice, but demonstrates how they are perceived in Russian academia. In regard to the structure, this chapter is divided into two main sections. Paragraph 2.1 describes the origin and evolution of theories of social justice in European philosophy and paragraph 2.3 presents the contemporary problems and prospects in regard to the concept.

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<sup>709</sup> The term “believers” in this case signifies not only true believers, who adhere thoroughly to particular religious dogmas, but also the general population of a country whose worldview, moral truths and values have historically been formed under the influence of a dominant doctrine.

It was found that the very nature of the concept of justice puts it at the forefront of modern civilised society, regardless of the political system. Although there are a lot of opinions on social justice, sometimes very controversial, all authors (both Western and Russian) admit its presence in social relations, as well as its significance. More importantly, it can be stated that the necessity for social justice is a one of the basic, fundamental human needs. Thus, if it is not fulfilled, one will be found in a state of disarray and depression, which could create social conflicts of varying degrees of intensity; it follows that without social justice and fairness the availability of material wealth is insufficient and one can never be satisfied with the status quo. It was also found that the society's demand for justice, and therefore the recognition that it is lacking, is fairly evident. Moreover, the analysis of the concept of social justice across various religious denominations conducted in these chapters confirms the inseparable nature of the religious and ethical norms that develop in a certain society, and its understanding of fairness.

Chapters 4 and 5 analyse the differences and similarities of theories of justice to explain the phenomenon of justice by putting it in both a social and religious context. The study illustrates that justice is a socio-philosophical category associated with religious dissimilarities as well as ethical norms in various societies, undivided from their religious roots. These chapters exploit critical analysis as well as elements of both a historical and geographical interpretations of justice.

In respect to the structure, this chapter is divided into two main parts. Paragraphs 4.2, 5.2, 5.3, 5.4 describe the concept of social justice in various religious denominations, paragraph 4.3 presents the continuous relationship between justice and finance in Islam and paragraphs 5.5 and 5.6 investigate the concept of social justice particularly in Russia according to religious and ideological aspects.

It was found that the basic principles of social justice that are ingrained in Christianity and Judaism do not contradict the principles underlying Islamic finance; moreover, they possess the same cultural and historical roots.<sup>710</sup> Besides, in Buddhism, although there is no God who would appear to be the supreme authority, whose role would be to set general rules and doctrines of justice, this does not oppose the social justice principles that function as the foundation of Islamic finance. Additionally, the Russian Orthodox Church and the principles of social justice it espouses appear to be closest to the Islamic precept of social justice; as this is precisely what the Russian Orthodox Church does, by assigning its flock the least independent role before God, corresponding to Islam, unlike the more liberal Western Churches.

Furthermore, the socialist model of social justice seems to be the most idealistic one, as well as being more declaratory and removed from reality. This occurs due to its foundations being entirely theoretical, without an expansive period of testing in the real world in order to back them up, unlike the religious principles, which arose out of experience and struggle and were substantiated by generations of practice. Still, this obvious shortcoming could act as a benefit, given that many successful principles can be borrowed from other theories and implemented here.

Therefore, both the suitability of, and absolute demand for, the theoretical principles of social justice that make up the foundation of Islamic finance in virtually all religious denominations without the exception of Buddhism have been confirmed. Thus, it reaffirms the adequacy of the moral and ethical principles that form the foundation of Islamic finance for different countries and religions.

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<sup>710</sup> The similar concept of Usury Prohibition explained in details in Chapter 3, pp: 120 – 122.

### **8.3 The peculiarity of Islamic finance – the comparison in terms of the philosophical and legal scope**

An ample quantity of academic research in relation to Islamic finance has been conducted on the basis of their religious and functional uniqueness. Thus the Islamic financial system can be fully appreciated only in the context of Islam's teachings on business ethics, wealth distribution, social and economic justice, and the role of the state.<sup>711</sup> Chapter 3 addressed this issue by explaining the foundations of Islamic finance and their connection to justice. Paragraph 3.2 presents the fundamental principles of Islamic finance as well as the general terms and definitions. Paragraph 3.3 illustrates the various types of mode of financing in Islamic finance as mechanism of practical realisation the core principles of Islamic finance developed to the achievement of socio-economic justice which Islam seeks to succeed.

In order to answer the second research question: *“What are, if any, philosophical and practical contradictions and similarities between Conventional and Islamic financial systems, and which one seems more just?”* Chapter 6 provides a comparative analysis of the philosophical principles underlying the Conventional and Islamic financial systems, the most widespread financial systems in the world, both in the economical and geographical sense. This chapter is divided into three main sections. Paragraph 6.2 describes the Philosophy of Conventional finance and shows its existence within Conventional financial system philosophically originated socially responsible and ethical investments, while paragraph 6.3 presents the Philosophy of Islamic finance. Paragraph 6.4 demonstrates practical differences between the Conventional and Islamic financial systems.

The finding based on the comparative analysis of the Conventional and Islamic financial systems conducted in this chapter demonstrates that

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<sup>711</sup> <http://www.islamic-banking.com/islamic-finance.aspx>

despite their outward similarities in terms of their functionality and main purpose, the Conventional and Islamic financial systems present two entirely different concepts. The former is concerned with the achievement of financial gain on behalf of a single firm, or even a single person, whereas the latter is concerned with the interests of the whole society. Therefore, these two systems differ not only in their philosophical foundations, but also in terms of the end result. In view of that, without taking into account the technical and juridical peculiarities, Islamic finance can seem fairer according to collective consciousness than Conventional finance. Accordingly, this chapter also confirms the precedence of the principle of fairness, as an essential part of the Islamic financial system's functionality.

While Chapters 3 and 6 revealed a fundamental discrepancy in approach relating to the philosophical and ethical basis of Conventional finance and Islamic finance, Chapter 7 was focused on the legal environment and provides a contemporary analysis of the legal complexity of Islamic financial instruments in order to answer the third subordinate question: *“What is the legal complexity related to Islamic finance and can it become a barrier to the widespread dissemination of Islamic finance across the globe?”*

This chapter analyses the legal framework that exists in non-Islamic countries in order to ascertain how the legal risks, which are quintessential to technical and juridical difficulties in implementing Islamic finance in the Western world, could become a barrier to widespread dissemination of Islamic finance across the globe. Structurally, this chapter is divided into two main sections. Paragraph 7.2 presents the legal risks in conventional and Islamic finance, whereas paragraph 7.3, specifically connected to the research question, discusses the sources of legal complexity in Islamic finance in particular.

The analysis of the legal complexities of Islamic finance conducted in this chapter revealed that despite their functional similarities and shared motivation, Conventional finance and Islamic finance are two governing models that differ in several significant respects from one another. The main distinction arises from the very basis of the judicature within which the financial institutes actually exist – Islamic jurisprudence was developed by way of scholarship, while Common law jurisprudence was developed by way of precedent and Civil law by way of codification. The other dissimilarity stems from differences in the investment and savings culture as well as distinctions in terms of the interpretation of the governing Law and regulations relating to various financial instruments. Moreover, the analysis identified the significant role of a unique non-governmental actor – the Religious Supervisory Boards (RSBs), which have both supervisory and consultative functions.

All of the chapters above are correspondingly structured to facilitate the answer to the main research question presented in the final paragraph, 8.4.

#### **8.4 The potential future of Islamic finance**

So, what is the potential and just future of Islamic finance?

As exposed in this study, Islamic finance has certain distinctive features that pose an obstacle to its further successful evolution:

- Firstly, for the vast majority of clients of Conventional financial institutions, Islamic finance significantly differs in regard to the philosophical, moral and ethical principles that make up its foundation;<sup>712</sup>

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<sup>712</sup> Paragraph 6.2 and 6.3 *supra*.

- Secondly, the aims and results of Islamic finance are unlike those of Conventional finance (see Exhibit 10: Practical differences between the Conventional financial system and the Islamic financial system),<sup>713</sup> which, most of the time, make it less appealing to the financial community at large;
- Lastly, Islamic finance functions in fundamentally distinct legal systems, and is forced to adapt, while having significant restrictions imposed on it; at the same time it lacks the ability to use some particularly complicated financial instruments.<sup>714</sup>

Therefore it is reasonable to say that an Islamic financial system, in theory, offers a complete and solid solution. In reality, however, it is understood that the Islamic financial practice “is not yet mature, and as a result there exists dependence on structures that, by their nature, are artificial”.<sup>715</sup> As Amin (2009) suggested, “Islamic finance still is a strict subset of conventional finance. Everything done in Islamic finance can be done using conventional contracts”.<sup>716</sup> Thus, according to Ökte (2016), “at its current stage of development it is difficult for the Islamic financial system to assume a significant role in ensuring the health and strength of the international financial system in the near future”.<sup>717</sup>

Concurrently, this thesis has identified the positive fundamental qualities of Islamic finance, which could potentially aid its further evolution. As is often said, challenges and opportunities are *two sides of the same coin*.

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<sup>713</sup> Paragraph 6.4 *supra*.

<sup>714</sup> Chapter 7 *supra*.

<sup>715</sup> Salah, I., (2009). Islamic Finance in the Current Financial Crisis. Berkeley Journal of Middle Eastern & Islamic Law, Vol. 2, No. 1, pp: 150.

<sup>716</sup> Amin, M., (2009). Would Islamic Finance Have Prevented the Global Financial Crisis? NEWHORIZON, Vol. 173, p: 42.

<sup>717</sup> Ökte, M., (2016). The Role of Islamic Finance in Shaping the New Financial Order. International Journal of Business and Social Science, Vol. 7, No. 2, p: 229.



The pronounced social orientation of Islamic finance, which is based on the precedence of moral and ethical principles, is becoming more sought after, and not in the Muslim world alone. The recent global financial crisis increased the demand for more stable, fair and transparent relations between banks and financial intermediaries and the “real economy”,<sup>718</sup> which also provide cooperation rooted in mutual assistance and support. Throughout this past decade many Muslim scholars and financial practitioners (Ahmed (2009), Ahmed *et al.* (2014), Alqahtani and Mayes (2017), Ayub (2007), Chapra (2009), Kayed and Hassan (2011), Khan and Crowne-Mohammed (2009), Siddiqi (2009), Wood (2009) and others)<sup>719</sup> discussed the performance of Islamic banking during the recent global financial crisis and suggested that Islamic finance has the potential to become a viable alternative model for the ailing global financial system. Considering the variety of factors that caused the global financial crisis, the authors argued that Islamic finance is more resilient than conventional finance in the face of a potential crisis.<sup>720</sup>

Several factors were identified as causes of the crisis. The traditional view is that the crisis was caused by extraordinarily high liquidity, laxity of lending standards, and the rapid pace of financial engineering.<sup>721</sup> The Financial Crisis Inquiry Commission (FCIC) identified ten causes, global and domestic, which are essential to explaining the financial and economic crisis amongst which are low interest rates, excessive and imprudent

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<sup>718</sup> The part of a country's economy that produces goods and services, rather than the part that consists of financial services such as banks, stock markets, etc. See Cambridge English Dictionary <http://dictionary.cambridge.org/dictionary/english/real-economy>

<sup>719</sup> See section 1.2.2 Literature review

<sup>720</sup> Warde believes that Islamic banks survived the first phases of the crisis because most of the cases and the practices that led to the crisis would not pass the *Shariah*-complaint procedures of Islamic institutions. See Warde, I., (2012). Status of the Global Islamic Finance Industry. In Eisenberg, D., and Nethercott, C., (Eds.) *Islamic Finance: Law and Practice*. Oxford, UK: Oxford University Press. Par. 1.49, p: 13.

<sup>721</sup> *Supra* note 717, at p: 230.

lending, scant regulation and toxic mortgages.<sup>722</sup> Moreover, Jickling (2009) suggested 26 most important causes which led to a full-blown crisis.<sup>723</sup> However, from an Islamic perspective, the primary cause of the crisis is not just the inadequate and inappropriate regulatory and supervisory frameworks or other technical issues. Kaye and Hassan (2011), define the financial crisis as a crisis of failed morality. This ethical failure together with a breakdown in the relationship between the originators of subprime loans and their investors (“originate-to distribute model”<sup>724</sup> of securitization) triggered the crisis.<sup>725</sup>

There is a general opinion that moral and ethical principles that form the foundation of Islamic finance<sup>726</sup> would prevent Islamic financial institutions from being directly exposed to such crises. According to Alqahtani and Mayes (2017), “most (if not all) of the practices and financial instruments such as mortgaged-backed securities (MBS), collateralised debt obligation (CDO) and credit default swaps (CDSs), which are believed to be responsible for the crisis, are not permitted under Islamic principles”.<sup>727</sup> All of the major principles<sup>728</sup> of *Shariah* law that are applicable to finance as well as corresponding financial instruments and services,<sup>729</sup> distinguish it

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<sup>722</sup> Financial Crisis Inquiry Commission (FCIC) (2011). The Financial Crisis Inquiry Report. Washington, DC: US Government Printing Office, pp: 417-418.

<sup>723</sup> These are Imprudent Mortgage Lending, Housing Bubble, Global Imbalances, Securitization, Lack of Transparency and Accountability in Mortgage Finance, Rating Agencies, Market-to- Market Accounting, Deregulatory Legislation, Shadow Banking System, Non-Bank Runs, Off-Balance Sheet Finance, Government-Mandated Subprime Lending, Failure of Risk Management Systems, Financial Innovation, Complexity, Human Frailty, Bad Computer Models, Excessive Leverage, Relaxed Regulation of Leverage, Credit Default Swaps (CDS), Fragmented Regulation, No Systemic Risk Regulator, Short-term Incentives, Tail Risk and Black Swan Theory. See Jickling, M., (2009). Causes of the Financial Crisis (R40173). Washington, DC: Congressional Research Service, pp: 2-7.

<sup>724</sup> Bord, V., and Santos, J., (2012). The Rise of the Originate-to-distribute Model and the Role of Banks in Financial Intermediation. FRBNY Economic Policy Review, July 2012, p: 21.

<sup>725</sup> *Supra* note 162, at p: 552.

<sup>726</sup> See Chapter 3 and Chapter 4.

<sup>727</sup> *Supra* note 159, at p: 105.

<sup>728</sup> See Paragraph 3.2 Foundations of Islamic finance and Appendix 3. Principles of the Islamic financial system.

<sup>729</sup> See Paragraph 3.3 Modes of financing in Islamic finance.

from conventional finance and will assist the Islamic financial institutions in sparing them from the global financial crisis. There are some examples as follow:

- Whereas debt cannot be traded because it can lead to *Riba*, products like CDO/MBS would not exist in an Islamic finance.
- Derivative products like CDS are prohibited under Islamic law due to, among other reasons, the existence of *Gharar*.
- Toxic securities and assets cannot be exposed by Islamic financial institutions due to the *Shariah* prohibitions.
- Requirement for ethical conduct when the financial institution is required to treat customers fairly.

Additionally, as Chapra (2008) clearly noted, both the financier and the entrepreneur should equally share the profit as well as the loss,<sup>730</sup> based on the principle of “no risk, no gain”<sup>731</sup> in order to fulfil the condition of justice and assess risks more carefully. This double assessment of risks by both the financier and the entrepreneur helps reduces excessive lending and borrowing.<sup>732</sup> The diagram below shows the intrinsic principles of the Islamic financial system potentially capable of safeguarding against financial crises.

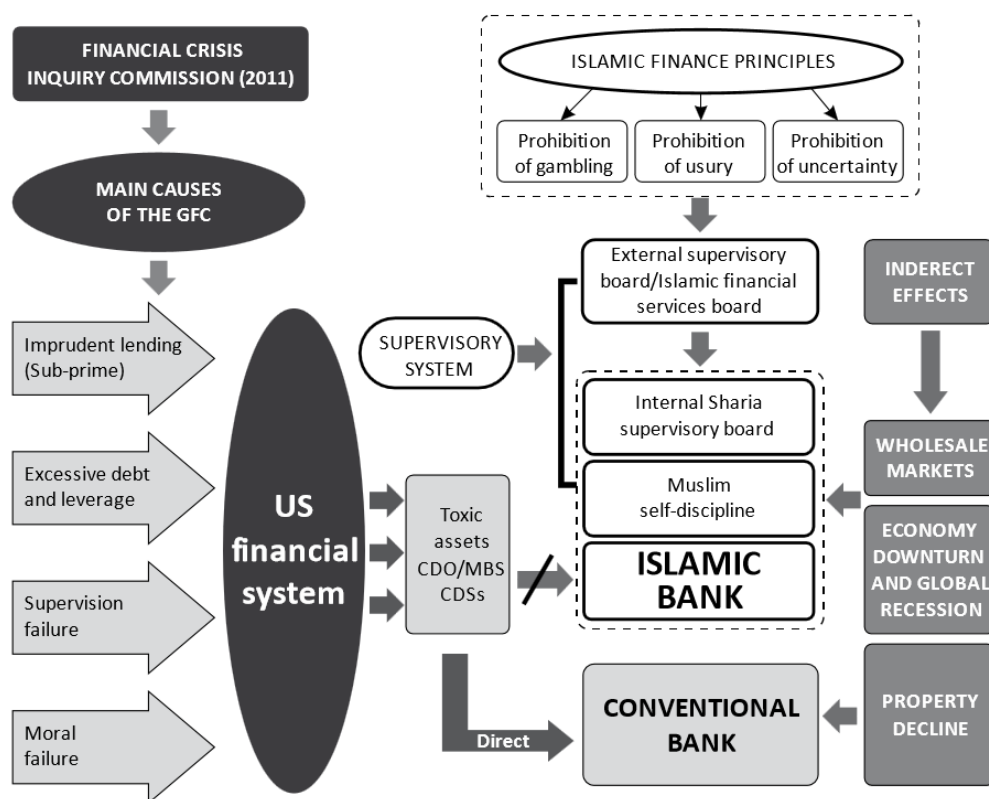
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<sup>730</sup> “Profit and Loss Sharing” (PLS) model, *supra* note 480.

<sup>731</sup> Chapra, M., (2008). The Global Financial Crisis: Can Islamic Finance Help Minimize the Severity and Frequency of Such a Crisis in the Future? Conference Paper presented at the Forum on the Global Financial Crisis at the Islamic Development Bank, October 25, p: 13.

<sup>732</sup> *Supra* note 162, at p: 558.

**Exhibit 11: Principles of the Islamic financial system potentially capable of safeguarding against financial crises**<sup>733</sup>



Consequently, the above provides the confidence to propose that adopting Islamic financial principles would “minimizing the severity and frequency of financial crises by getting rid of the major weaknesses of the conventional system”.<sup>734</sup>

However, even if the Islamic financial system appears to be more just and sustainable in comparison to conventional finance why should the Western nations employ Islamic systems? The answer is twofold:

- Firstly, from the professionals (e.g. banks, insurance companies and other financial institutions) point of view it was already widely

<sup>733</sup> *Supra* note 159, at p: 105.

<sup>734</sup> *Supra* note 161, at p: 18.

employed and growing every year<sup>735</sup> and supported by various governments and other officials around the world.<sup>736</sup>

- Secondly, from the customers (e.g. ordinary people and businesses) applicability of Islamic finance can be based on the continually growing demand for ethical and socially responsible investment using analogous principles to those philosophical that are underlying to the Islamic financial system.<sup>737</sup>

Although designed to meet the specific religious requirements, Islamic finance is not restricted to Muslims alone: both the financial services provider and the customer can hold any religious belief or none at all.

To conclude, the answer for main research question “*What is the nature of the concept of justice and its significance for the potential future of Islamic finance?*” with regard to subordinate questions summarised as follow:

1. The very nature of the concept of justice puts it at the forefront of modern civilised society, regardless of the political system in use. Although there are a lot of opinions on social justice, and sometimes they can be quite controversial, all authors (both Western and Russian) admit its presence in social relations, as well as its significance. More importantly, it can be stated that the necessity for social justice is a one of the basic, fundamental human needs. Moreover, the analysis of the concept of social justice across various religious denominations conducted in these chapters confirms the inseparable nature of the religious and

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<sup>735</sup> See Appendix 5. Stages of evolution of the Islamic financial services industry

<sup>736</sup> See Paragraph 3.2 Foundations of Islamic finance and Appendix 2. Development of the Islamic Financial Services Industry

<sup>737</sup> See Chapter 6. Comparative analysis of the philosophical principles underlying Conventional and Islamic financial systems.

ethical norms that develop in a certain society, and its understanding of fairness.

2. The philosophical and moral principles that comprise the infrastructure of Islamic finance are viewed as being fairer in the public perception, and more importantly are entirely acceptable from the moral standpoint of societies and countries that are swayed by the major religions. At the same time, Islamic finance meets the requirements of the conservative and, in many ways, the orthodox portion of the population, by *returning to primary origins and sources* (i.e. the abandonment of interest rates in the past); as well as the progressive fraction, which can be influenced by trends and fashions enough to demand something more exotic, even when it comes under the guise of Islamic finance. With respect to the practical differences between the Conventional and Islamic financial Systems, the principles that make up the foundation of Islamic finance could bring about fairer redistribution, reduce social tension and the ever-increasing disparity between the rich and the poor, and contribute to a more equitable society.<sup>738</sup>
3. Despite the noticeable differences between the Islamic and Western legal systems, and differences in the investment and saving cultures, Islamic finance is able to not just survive in the

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<sup>738</sup> 1) Pope Francis, when he spoke about the financial crisis that we are experiencing today, said that it is a product of a profound human crisis. He noted that, "There is a need for financial reform along ethical lines that would produce in its turn an economic reform to benefit everyone... Money has to serve, not to rule". See The Pope's words to new Non Resident Ambassadors, 16 May 2013, Vatican Radio <http://www.news.va/en/news/pope-financial-reform-along-ethical-lines>

2) Kirill, the Patriarch of Moscow and all Rus' and Primate of the Russian Orthodox Church said that, "the way to overcome the economic crisis is through overcoming the crisis of human souls, through the rejection of the cult of wealth, from unrestrained consumption, from the pursuit of profit at any cost, from the selfish use of property, from neglecting the needs of the poor". He also remarked that the "Orthodox civilization, in cooperation with representatives of other cultural traditions, can offer its approaches to the development of a social and economic model that would be built on moral principles rooted in our spiritual heritage". See The Word of His Holiness Patriarch Kirill at a reception at the Greek Embassy on the occasion of the Day of the Triumph of Orthodoxy 10 March 2009, <http://www.patriarchia.ru/db/text/579825.html>

3) The 14<sup>th</sup> Dalai Lama,<sup>738</sup> speaking to Buddhist students in the Indian holy city of Varanasi, said that the global economic meltdown is the result of a crisis of morality. "Lack of spirituality and culture is the main cause behind the rampant corruption in the world. People have become selfish and materialistic, which has led to the economic slowdown". Telegraph.co.uk 13 Jan 2009, <http://www.telegraph.co.uk/news/worldnews/asia/tibet/4229146/Dalai-Lama-moral-crisis-caused-economic-woes.html>

existing legal framework, but also successfully develop, especially if some alterations are made to the system, as has already been shown in recent history.<sup>739</sup> At the same time it is necessary to underline that Islamic finance can provide more customer protection. Therefore, even though the thesis does not consider any particular changes to the legal system and public policy,<sup>740</sup> the results of the research do suggest that these alterations are possible and could be supported by society and businesses, given appropriate guidance and certain efforts by governments and the business community. In spite of the fact that this research has identified important technical and juridical difficulties related to implementing Islamic finance in the Western world and the particular legal risks attributable only to Islamic finance, it has also shown that these are not insurmountable obstacles to the continuing spread of Islamic finance.

Admittedly, the introduction and dissemination of Islamic finance in non-Muslim countries poses a set of very complicated questions in the fields of theology, economics, ideology, jurisprudence, interreligious and state-confessional relations, and world and domestic politics. Accordingly, the main problem lies in the fact that to resolve those questions, it is necessary to obtain not only formal (technical and juridical) corrections, but also more radical – legislative and socio-political transformations. The practical solution for the development of Islamic finance should be found in firstly, apprising experts and public through making detailed information about Islamic finance available to them; secondly in the creation of an educational system for future Islamic finance specialists; and lastly by making

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<sup>739</sup> See Appendix 4. The development of Islamic finance in the United Kingdom.

<sup>740</sup> This question is well beyond the parameters of this particular research and needs significant coordinated efforts of Government and public as well as financial organisations.

appropriate alterations to the legal framework and the principles of the financial system.

Consequently, this thesis answers the main question regarding whether the future successful development of Islamic finance as a more just system is possible; the answer is “yes”. As a final point, it was found that there is a real possibility of the continual spread of Islamic finance as well as the introduction of its underlying principles into the commonplace activities of Western financial institutions. This could potentially lead to a reduction in the problems that arise as a result of financial crises - or perhaps even mean they are avoided altogether - and generally make business relations fairer and more transparent.

To complete, it is worthy to clarify, why Russia and Russian sources were used for this thesis. Perhaps Russia is the country where the potential of Islamic finance can be successfully realised.<sup>741</sup> Considering the authoritarian character of the established political elite, the transformation of the financial system in Russia to the principles of Islamic finance could be accomplished quite easily. And Russia, once again, could become an example for the whole world - this time, an example to follow.

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<sup>741</sup> See Appendix 7. Prerequisites for further development of Islamic finance in Russia.



## APPENDICES

### Appendix 1. Guideline to Islamic financial Terminologies

Terminology	Meaning
<b>Bai' Urbun</b> بيع العربون	A sale agreement in which a security deposit is paid in advance as part payment towards the price of the asset if the contract continues to its conclusion. The deposit is forfeited if the buyer does not meet his obligation to complete the purchase of the asset. The forfeited money is considered as <i>hibah</i> (هبة/ gift) to the seller.
<b>Bai' Bithaman 'Ajil</b> بيع بثمن أجل	A contract of sale on a deferred payment ( <i>bai' nasiah</i> / بيع النسئية) and instalment ( <i>bai' bit taqsid</i> / بيع بالتقسيط) basis within an agreed payment period.
<b>Bai' Murabahah</b> بيع المrabحة	A contract of sale based on cost plus where the acquisition cost and the seller's profit margin are disclosed to the buyer at the time of the contract. The settlement of the price is normally made on deferred payment terms i.e. <i>bai' bithaman 'ajil</i> .
<b>Bai' Inah</b> بيع العينة	A financing facility involving two separate sale and purchase contracts on a same asset and it can be in the following two arrangements: <ol style="list-style-type: none"> <li>1. A financier sells an asset to a customer on deferred payment terms. Immediately thereafter, the financier repurchases the same asset from the customer on cash terms at a price lower than that of the deferred payment sale.</li> <li>2. A financier buys an asset from a customer on cash terms. Immediately thereafter, the financier sells back the same asset to the customer on deferred payment terms at a price higher than that of the cash sale.</li> </ol>
<b>Bai' Dayn</b> بيع الدين	It refers to the buying and selling of debt instruments e.g. certificates, securities, trade documents and papers in the secondary market that conform to the Shariah requirements. All these documents are essentially issued by the debtors to the creditors as evidence of indebtedness ( <i>syahadah al-day</i> ). The <i>Bai' Dayn</i> happens when the creditor sell the debt documents to third parties. Only documents evidencing real debts ( <i>الدين الثابت/ dayn thabit</i> ) i.e. debts arising from “bona fide” business transactions may be traded.
<b>Bai' Istijrar</b> بيع الإستجرار	A contract between a supplier and a customer whereby the supplier supplies a particular item on an ongoing basis on an agreed mode of payment until they terminate the contract. It is equally applicable for a contract between a wholesaler and retailer for the supply of a number of agreed assets.
<b>Bai' Istisna'</b> بيع الإستصناع	A purchase order contract whereby a buyer orders a seller to manufacture an asset according to specifications in the purchase

	contract to be delivered on a certain future date. The settlement of the purchase price is according to an agreed terms and conditions between the two parties.
<b>Bai' Muzayadah</b> بيع المزايده	A sale of an asset in public through the process of bidding among potential buyers and the asset is sold to the highest bidder. This is commonly known as auction sale.
<b>Bai' Salam</b> بيع السلم	A contract in which a full payment of the price is paid in advance at the time of contract for assets to be delivered later at a future date. It is necessary that the quality of the assets intended to be purchased is fully specified leaving no ambiguity leading to dispute. The objects of this sale are ordinary assets and cannot be gold, silver or currencies because these are regarded as monetary values exchange of which is covered under rules of <i>Bai' al Sarf</i> , i.e. mutual exchange is hand to hand without delay. This mode of financing is often applied in the agricultural sector, where the bank advances money for various inputs to receive a share in the crop, which it then sells.
<b>Bai' Wafa'</b> بيع الوفاء	A contract with a condition that when the seller pays back the price of the sold asset, the buyer returns the asset to the seller. It is a <i>bai'</i> (sale) in form but a pledge (رهن / <i>rahn</i> ) in substance.
<b>Batil</b> باطل	Null and void.
<b>Darurah</b> ضرورة	Emergency. In the emergency, Muslims may disregard aspects of <i>Shari'ah</i> laws in order to save their faith, life, property, intellect and posterity.
<b>Dhamanah</b> ضمانه	A contract where a person underwrites claims or obligations that should be fulfilled by a debtor, supplier or contractor. In the event that the debtor, supplier or contractor fails to fulfil his obligations, the guarantor is responsible to fulfil such obligations.  Majority of <i>fuqaha'</i> view that the <i>dhamanah</i> is similar with <i>kafalah</i> .
<b>Fasid</b> فاسد	Unsound or unviable. In a contract, a <i>fasid</i> condition will render the contract invalid.
<b>Fatwa</b> فتوى	An opinion or pronouncement on <i>Shariah</i> issued by a group of scholars ( <i>fuqaha'</i> ) whose are sufficiently qualified and knowledgeable of the methodology for the issuance of fatwa, as well-established under the discipline of Islamic jurisprudence ( <i>usul fiqh</i> ). In practice and depending on jurisdictions, fatwa may also be referred as <i>Shariah</i> "rulings", "edicts" and "opinions." In Malaysia, only National Fatwa Council and states' Fatwa Committees has the power to issue fatwa, while the <i>Shariah</i> Advisory Council of Bank Negara Malaysia, <i>Shariah</i> Advisory Council of Securities Commission and individual banks' <i>Shariah</i> Committees only has the power to issue "decisions."

<b>Fiqh al-mu'āmalāt</b> فقه المعاملات	Islamic commercial jurisprudence, or the rules of transacting in a <i>Shariah</i> compliant manner
<b>Gharar</b> غرر	An unknown fact or condition. In a commercial transaction, an excessive/ major <i>gharar</i> (غرر فاحش/ <i>gharar fāhish</i> ) e.g. the fact or condition of either the contracting parties or the asset in the contract or the price of the asset are not known or made known to contracting parties makes a contract null and void.
<b>Ghish</b> غش	Cheating, fraud, or deception. All of these are prohibited by the <i>Shariah</i> .
<b>Hadith</b> حديث	The sayings, deeds and endorsement of the prophet Muhammad SAW. <i>Hadith</i> is also referred as <i>Sunnah</i> .
<b>Halal</b> حلال	Lawful or permissible. The concept of <i>halal</i> has spiritual overtones. In Islam there are activities, professions, contracts and transactions that are explicitly prohibited ( <i>haram</i> ) by the <i>Shariah</i> . All other activities, professions, contracts and transactions are <i>halal</i> . The concept of <i>halal</i> differentiates Islamic economics from conventional economics. In conventional economics all activities are judged on economic utility. In Islamic economics, spiritual and moral factors are also involved, where an activity may be economically sound but may not be allowed if it is forbidden by the <i>Shariah</i> .
<b>Haram</b> حرام	Unlawful or forbidden. Activities, professions, contracts and transactions that are explicitly prohibited by the <i>Shariah</i> .
<b>Haq Maliy</b> حق مالي	Refers to rights on the asset. Examples of such rights are <i>haq dayn</i> (rights to the claim of a debt) and <i>haq tamalluk</i> (rights of ownership).
<b>Hibah</b> هبة	A gift awarded to a person voluntarily or something given to a person without exchange.
<b>Hiwalah</b> حوالة	A contract of transferring a debt obligation of a debtor to a third party.
<b>Ibra'</b> إبراء	Giving up of a right. In a commercial transaction a creditor gives up part or all of his right to a debtor usually for early settlement of the debt. Some scholars ( <i>fuqaha'</i> ) opine that <i>Ibra'</i> is similar with rebate. However, in Islamic banks this concept is applied in wider context such as in implementation of floating rate products with a fixed selling price.
<b>Ijarah</b> إجارة	A contract whereby a lessor (owner of an asset) leases out an asset to a customer/lessee at an agreed rental payment and pre-determined lease period upon the ' <i>aqd</i> (contract). The ownership of the property

	remains with the lessor while the lessee only owns the right of the use of the property.
<b>Ijarah Thumma Bai'</b> إجارة ثم البيع	Refers to an <i>Ijarah</i> (leasing) contract to be followed by a <i>bai'</i> (sale) contract. Under the first contract, the lessor leases out an asset to a lessee at an agreed rental payment over a specified period. Upon expiry of the leasing period, the lessee enters into a second contract to purchase the property from the owner at an agreed price.  In certain jurisdiction, <i>Ijarah Thumma Bai'</i> is called <i>Ijarah Muntahiah Bit-Tamlik</i> .
<b>Ijmā'a</b> إجماع	Scholarly consensus - is the anonymous opinion of the whole <i>Umma's</i> Islamic scholars.
<b>Ijtihad</b> اجتهاد	(Arabic: "effort") in Islamic law, the independent or original interpretation of problems not precisely covered by the <i>Qur'an</i> , <i>Hadith</i> (traditions concerning the Prophet's life and utterances), and <i>Ijmā'a</i> (scholarly consensus). Also can be described as a jurist ( <i>faqih</i> )'s endeavour to formulate a rule or legal decision ( <i>hukum</i> ) by interpretation of the evidence ( <i>dalil</i> ) found in the <i>Shariah</i> sources.
<b>Istihsān</b> استحسان	Doctrine of Islamic law ( <i>Shariah</i> ) that implies reconsidering an action, behaviour, or practice that was impermissible or constrained by legal reasoning, to the effect of allowing it exceptionally in special circumstances or occurrences where it brings about unseen benefits or improvements to individuals, the society, or the wider economy. The concept of <i>Istihsan</i> is used in cases a jurist, after applying reasoning, concludes that something is preferable or beneficial, even if it is not approved by others. As such, <i>Istihsan</i> , in <i>Shariah</i> , implies the preference of hidden analogy ( <i>Qiyas Khafi</i> ) over apparent analogy ( <i>Qiyas Jali</i> ).
<b>Istiṣlāḥ</b> استصلاح	Relating to the sources of Islamic law, it is an unprecedented judgement within the overall <i>Shariah</i> framework, motivated by public interest but not supported by the <i>Qur'an</i> or <i>Sunnah</i> .
<b>Jahl</b> جهل	Ignorance.
<b>Jua'lah</b> جعالة	A unilateral contract promising a reward for the accomplishment of a specific task.
<b>Kafalah</b> كفالة	Refer to <i>Dhamanah</i> .
<b>Khiyanah</b> خيانة	A breach of trust, betrayal or treachery which is clearly prohibited by <i>Shariah</i> .
<b>Maisir</b> ميسير or	Gambling. Any activity that involves betting, involving money or any items on the outcome of an unpredictable event. The bet is forfeited if the outcome is not as predicted by the bettor and the

<b>Qimar</b> قمار	person against whom the bet is made takes the bet. This activity is clearly prohibited by the <i>Shariah</i> .
<b>Mal</b> مال	Anything of natural desire by humankind, and can be stored for times of necessity; has specific or general use and is permissible by <i>Shariah</i> for the purpose of extracting its benefit.
<b>Maqāṣid al Shariah</b> الشريعة مقاصد	The objectives which <i>Shariah</i> is inherently meant to attain. This embodies the rationale of <i>Shariah</i> is reflected in protecting and preserving public welfare/interests ( <i>Maslahah</i> ) in all walks of life (social, economic, political, etc.). Every <i>Shariah</i> based <i>Hukm</i> (ruling) basically revolves around a purpose involving, in general, bringing about benefits or preventing potential damages, bad consequences or calamities, whether in the interest of individuals or societies. In short, <i>Shariah</i> objectives ( <i>Maqasid</i> ) are exemplified in promoting the welfare of all human beings and communities in terms of faith ( <i>Din</i> ), existence and sustenance ( <i>Nafs</i> ), intellect ( <i>Aql</i> ), posterity ( <i>Nasl</i> ) and wealth ( <i>Mal</i> ).
<b>Maṣlaḥah Mursalah</b> مصلحة مرسله	Unregulated/ unattested public interest ( <i>Maslahah A'ammah</i> ) for which there is no textual authority/ reference (source of <i>Shariah</i> ) to judge it as valid or invalid (permissible or impermissible). Scholars usually define it as the process of seeking a benefit ( <i>Maslahah</i> ) or preventing harm ( <i>Mafsadah</i> ), in a way compatible with the objectives of <i>Shariah</i> ( <i>Maqasid Al-Shariah</i> ). It may also be used as a source of <i>Shariah</i> where the primary and secondary sources are silent. An example is the introduction of Islamic banks and financial institutions into the economic life of a society.
<b>Muamalat</b> معاملات	Economic transactions among human being.
<b>Mudarib</b> مضارب	Entrepreneur in a <i>mudharabah</i> contract.
<b>Mudharabah</b> مضاربة	An agreement between a provider of capital ( <i>rabbul mal</i> ) who provides 100% capital for a business and entrepreneur ( <i>mudharib</i> ) who manages the business applying his expertise. Under this contract, the resulting profit is to be shared between them according to a pre-agreed ratio, while any loss is to be borne solely by the provider of capital.
<b>Muqasah</b> مقاصة	Debt settlement by contra transaction or setting off.
<b>Musaqah</b> مساقاة	An agricultural contract whereby the owner of agricultural land shares its produces with another person in return for his services in irrigating the garden.
<b>Musawamah</b> مساومة	A general kind of sale in which price of the commodity to be traded is bargained between seller and the purchaser without any reference to the acquisition cost incurred by the seller.

<b>Musharakah</b> مشاركة	A contract between two or more parties to contribute capital in various proportions to a partnership. Profits generated by the partnership are shared in accordance with the terms of <i>musharakah</i> contract whilst losses is shared in proportion to the respective contributors' shares of the capital.
<b>Musharakah Mutanaqisah</b> مشاركة متناقصة	Diminishing <i>musharakah</i> ; allows equity participation and sharing of profits in a pre-agreed ratio, and sharing of losses on a pro-rata basis. This provides a method through which the bank keeps on reducing its equity in the asset, ultimately transferring ownership of the asset to the customer/ partner. The contract provides for payment to purchase equity shares held by the bank, over and above the profit paid to the bank. Simultaneously the customer purchases some of the bank's equity, progressively reducing it until the bank has no equity and that results in ending the partnership.
<b>Muzara'ah</b> مزارعة	An agricultural contract whereby a person works the land of another person in return for a share in the produce of the land.
<b>Qabadh</b> قبض	<i>Qabadh</i> means taking possession in the contracts of exchange (' <i>uqud mu'awadhat</i> ). Generally <i>qabadh</i> is practiced based on <i>urf</i> i.e. the common practices of the local community in recognizing the way the possession of an asset has taken place. <i>Qabadh</i> is varies from one type of asset to another.
<b>Qardh</b> قرض	Loan.
<b>Qardh Hasan</b> قرض الحسن	Refers to benevolent loan, i.e. a loan contract between two parties with no extra charge over and above the loan. Any extra payment imposed by the lender or promised by the borrower is prohibited. However the borrower is permitted to pay extra on payment at his absolute discretion as a token of appreciation.
<b>Qiyās</b> قياس	Analogy - is the intelligent reasoning by which scholars can issue rules on matters and events that the <i>Qur'an</i> and <i>Sunnah</i> didn't mention or handle. This can be implemented through extending original rules (ones for which there is an explicit legal text in the <i>Qur'an</i> and <i>Sunnah</i> ) to similar or equivalent matters or events for which there is no finite legal text in either the <i>Qur'an</i> or <i>Sunnah</i> .
<b>Qur'an</b> قرآن	The holy scriptures of Islam i.e. the words of Allah revealed to the Prophet Muhammad SAW in Arabic conveyed by the angel <i>Jibrail</i> AS.
<b>Rabbul Mal</b> رب المال	The investor or capital provider in a <i>mudharabah</i> contract.
<b>Rahnu</b> رهن	Making an asset a security or collateral for a debt. The collateral will be used to settle the debt when the debtor is in default. It may also be used as a name for a kind of borrowing with collateral or pawn broking.

<b>Riba</b> ربا	An increase, in a loan transaction or in exchange of a <i>ribawi</i> asset, accrued to the owner (lender or seller) without giving an equivalent counter value or compensation in return to the other party. It is prohibited according to <i>Shariah</i> . In <u>lending</u> , it is the extra payment imposed by the lender or promised by the borrower over and above the loan (known as <i>riba qardh</i> ). In <u>trade</u> it is mostly the difference in weight in the exchange of gold of different measures of purity, e.g. 10 grams of 750 gold with the 8 grams of 835 gold (known as <i>riba fadhl</i> ); or the difference in <u>time</u> between payment and delivery in foreign currency exchange, e.g. payment of RM10,000 on 1st January 2008 and delivery of USD3,800 on 2nd January 2008 (known as <i>riba nasiah</i> ).
<b>Sadaqah</b> صدقة	Voluntary charitable giving.
<b>Sarf</b> صرف	A contract of buying and selling of currencies.
<b>Shariah</b> شريعة	Islamic laws relating to all aspects of human life established by Allah for his servants. The laws are divided into three, i.e. those relating to belief ( <i>'aqidah</i> ), those relating to deeds ( <i>fiqh</i> ) and those relating to ethics ( <i>akhlaq</i> ). In this meaning, <i>Shariah</i> is another word for Islam.
<b>Suftajah</b> سفتجة	Bill of Exchange.
<b>Sukuk</b> صكوك	Asset backed bonds which are structured in accordance with <i>Shariah</i> . <i>Sukuk</i> evidencing an undivided pro-rata ownership of underlying asset. Most of these bonds may be traded in the market, depending upon how they are structured; at par, premium or discount.
<b>Sunnah</b> سنة	Refer to <i>Hadith</i> .
<b>Syirkah 'Inan</b> شركة العنان	Financial partnership.
<b>Ta'widh</b> تعويض	Compensation agreed upon by the contracting parties as a payment that can be claimed by the creditor when the debtor defaults in the payment of his debt. Shariah Advisory Council of Bank Negara Malaysia decided that the <i>ta'widh</i> may be imposed on the defaulting debtor who fails to meet his obligation to pay the financing based on the following conditions: i. The amount of <i>ta'widh</i> cannot exceed the actual loss suffered by the financier; ii. The determination of compensation is made by a third party, which is Bank Negara Malaysia; and

	iii. The default or delay of payment is due to negligence on the part of the debtor.
<b>Tadlis al-‘aib</b> تدليس العيب	An act of a seller intentionally hiding the defects of goods, which is clearly prohibited by <i>Shariah</i> .
<b>Takaful</b> تكاافل	<i>Shariah</i> compliant insurance i.e. a protection plan based on <i>Shariah</i> requirements (concept of sharing and protecting of one another via contribution to a pool by taking advantage of a sizeable group). A person becomes a participant by undertaking a contract of <i>tabarru’</i> and paying a participative contribution ( <i>tabarru’</i> ) to a common <i>takaful</i> fund whereby he allows his contributions to be used to help other participants whenever they suffer defined losses. The commercial contracts of <i>mudharabah</i> and <i>wakalah</i> are incorporated into <i>tabarru’</i> contracts to increase the size of the <i>takaful</i> fund.
<b>Tanajush</b> تناجش	A conspiracy between a seller and a buyer wherein the seller is willing to sell the asset at a price higher than that of the market. This is done so that others would rush to buy the asset at a higher price, resulting in the seller obtaining a huge profit. This act is clearly prohibited by <i>Shariah</i> .
<b>Tawarruq</b> تورق	It is the purchase of a commodity (i.e the subject matter of <i>tawarruq</i> ) on deferred payment basis by way of either <i>bai’ musawamah</i> or <i>bai’ murabahah</i> . The commodity is then sold for cash to a party other than the original seller. In personal financing, a customer buys a commodity from the bank on a deferred payment basis and the immediately resells it for cash ( <i>wariq</i> ) to a third party. In this way, the customer can obtain cash without taking out an interest-based loan.
<b>Ujrah</b> أجرة	A payment for <i>manfa’ah</i> i.e. usufruct on the use of another’s property. Another term related to <i>ujrah</i> is <i>ajr</i> ( <i>plural ujur</i> ), which refers to payment for a service. It is also applied to salary, wage, pay, fee(s), charge, enrolment, honorarium, remuneration, reward, etc.
<b>‘Uqud Ishtirak</b> عقود الإشتراك	Contracts of participation or partnership.
<b>‘Uqud Mua’wadat</b> عقود المعاوضات	Contracts of exchange.
<b>‘Uqud Tabarru’at</b> عقود التبرعات	Contracts of gift or donation.
<b>‘Urf</b> العرف	The norms, values, and customs of the majority of a society or community which individuals are expected to observe or apply in speech, attitudes, interrelationships, etc. These collectively acceptable norms are usually used as a legal basis for rulings and



	decrees, etc, insofar as they don't conflict with <i>Shariah</i> precepts and principles. In the realm of Islamic financial and commercial transactions, a subset of ' <i>Urf</i> ', known as ' <i>Urf Tejari</i> (business customary practices), provides a basis for guidance in everyday business affairs.
<b>Uṣūl al-fiqh</b> الفقه أصول	A set of principles whereby rules of Islamic jurisprudence (Fiqh) are derived from specific evidences in the main <i>Shariah</i> sources (the Qur'an and Sunnah) and secondary <i>Shariah</i> sources (Ijmā'a and Qiyās). The purpose of Uṣūl al-fiqh is to deduce the rules of Fiqh from the evidence and clues found in the sources of <i>Shariah</i> . Uṣūl al-fiqh explains how Islamic law should be worked out from available sources and how it can be classified and put into application. Also called Islamic jurisprudence, i.e. the discipline of knowledge and methodologies of understanding and interpreting <i>Shariah</i> .
<b>Wadi'ah</b> وديعة	Safe custody. Originally, safe custody is referred to as <i>wadi'ah yad amanah</i> , i.e. trustee custody, which according to <i>Shariah</i> , the trustee custodian has the duty to safeguard the property held in trust. <i>Wadi'ah yad amanah</i> changes to <i>wadi'ah yad dhamanah</i> (guaranteed custody) when the trustee custodian violates the conditions to safeguard the property. He (the custodian) then has to guarantee the property.
<b>Wakalah</b> وكالة	A contract of appointment of an agent whereby a person appoints another to act on his behalf.
<b>Waqf</b> وقف	An endowment or a charitable trust set up for Islamic purposes (usually for education, mosques, or for the poor). It involves tying up a property in perpetuity so that it cannot be sold, inherited, or donated to anyone.
<b>Zakat</b> زكاة	A religious obligation of alms-giving on a Muslim to pay a certain amount of his wealth annually to one of the eight categories of needy Muslims ( <i>asnaf</i> ). The objective is to take away a part of the wealth of the well-to-do to be distributed among the <i>asnaf</i> . According to the <i>Shariah</i> , zakat purities wealth and souls.

Based on:

[www.bankislam.com.my/Your\\_Guideline\\_to\\_Islamic\\_Financial\\_Terminologies/asp](http://www.bankislam.com.my/Your_Guideline_to_Islamic_Financial_Terminologies/asp)

[www.investment-and-finance.net/islamic-finance/...](http://www.investment-and-finance.net/islamic-finance/)

<https://islamicmarkets.com/dictionary>

[www.cimaglobal.com/Documents/Islamic%20finance/2011/Guides/Glossary.pdf](http://www.cimaglobal.com/Documents/Islamic%20finance/2011/Guides/Glossary.pdf)

[www.sbp.org.pk/departments/ibd/glossary.pdf](http://www.sbp.org.pk/departments/ibd/glossary.pdf)

## Appendix 2. Development of the Islamic financial services industry

The landmark events in the industry's development are summarized here chronologically.

1890s	Barclays Bank opened its Cairo branch to process the financial transactions related to the construction of the Suez Canal. This is understood to be the first commercial bank established in the Muslim world. As soon as the bank's branch was opened, Islamic scholars initiated the critique of bank interest as the prohibited <i>riba</i> .
1900 – 1930	The critique also spreads to other Arab regions, and to the Indian sub-continent. In this debate, a majority of scholars subscribed to the position that interest in all its forms constitutes the prohibited <i>riba</i> .
1930 – 1950	Islamic economists also initiated the first critique of interest from the Islamic economic perspective and attempted to outline Shariah compliant alternatives in the form of partnership.
1950s	Islamic scholars and economists started to offer theoretical models of banking and finance as a substitute for interest-based banking. By 1953, Islamic economists offered the first description of an interest free bank based on two-tier <i>mudarabah</i> (both collection of funds and extension of financing on a <i>mudarabah</i> basis). Later, they showed that financial intermediation can also be organized on a <i>wakalah</i> basis.
1960s	Applications and practices in finance based on Islamic principles began in Egypt and Malaysia. The landmark events include the rise and fall of Mit Ghamr (Egypt) Saving Associations during the 1961–1964 period and the establishment of Malaysia's Tabung Haji in 1962. Tabung Haji has since flourished and has become the oldest existing Islamic financial institution in modern times. Operational mechanisms for institutions offering Islamic financial services (IIFS) began to be proposed and a number of books on Islamic banking based on profit-and-loss-sharing/bearing and leasing were published.
1970s	Islamic banks emerged with the establishment in 1975 of the Dubai Islamic Bank and the Islamic Development Bank (IsDB). Also in 1975, <i>fiqhi</i> objections to conventional insurance became pronounced, laying the ground for an alternative structure. Financial <i>murabahah</i> was developed as the core mechanism for the investment of Islamic banks' funds. Academic activities were launched with the first International Conference on Islamic Economics, held in Makkah in 1976. The first specialized research institution – the Centre for Research in Islamic Economics – was established by the King Abdul Aziz University in Jeddah in 1978. The first <i>takaful</i> company was established in 1979.
1980s	More Islamic banks and academic institutions emerged in several countries. Pakistan, Iran and Sudan announced their intention to transform their overall financial systems so as to be in compliance with Shari'ah rules and principles. The governors of central banks and monetary authorities of Organization of

	<p>Islamic Conference (OIC) member countries, in their Fourth Meeting held in Khartoum on 7–8 March 1981, called jointly for the first time for strengthened regulation and supervision of IIFS. The Islamic Research and Training Institute (IRTI) were established by the IsDB in 1981. In 1980, Pakistan passed legislation to establish <i>mudarabah</i> companies.</p> <p>Other countries such as Malaysia and Bahrain initiated Islamic banking within the framework of the existing system. The International Monetary Fund (IMF) published Working Papers and articles on Islamic banking, while PhD research and other publications on Islamic banking were on the increase in the West. The OIC <i>Fiqh</i> Academy and other <i>Fiqh</i> boards of IIFS engaged in discussions and the review of financial transactions. Islamic mutual funds and other non-banking financial institutions emerged towards the middle of the 1980s.</p>
1990s	<p>Public policy interest in the Islamic financial system grew in several countries. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) was established and its first standards were issued. The development of Islamic banking products intensified. Interest in Islamic finance increased in Western academic circles, and the Harvard Islamic Finance Forum was established.</p> <p>Large international conventional banks started operating Islamic windows. The Dow Jones and Financial Times Islamic indexes were launched. Systemic concerns and regulation, supervision and risk management issues gathered momentum. Several countries introduced legislation to facilitate Islamic banking and its regulation and supervision. Commercial event organizers discovered Islamic banking and finance activities as a source of lucrative business.</p>
2000 – 2006	<p>Sovereign and corporate <i>sukuk</i> as alternatives to conventional bonds emerged and are increasing rapidly in volume. Bahrain issued Financial Trust Laws. International Islamic financial infrastructure institutions such as the Islamic Financial Services Board (IFSB), International Islamic Financial Market (IIFM), (General) Council for Islamic Banks and Financial Institutions (CIBAFI), and the Arbitration and Reconciliation Centre for Islamic Financial Institutions (ARCIFI), as well as other commercial support institutions such as the International Islamic Rating Agency (IIRA) and the Liquidity Management Centre (LMC), were established. The systemic importance of Islamic banks and financial institutions has been recognized in several jurisdictions.</p> <p>The governments of United Kingdom and Singapore extended tax neutrality to Islamic financial services.</p>

Adapted from

[http://www.ibisonline.net/En/Policy\\_Dialogue/TenYearFrameworkAndStrategies.pdf](http://www.ibisonline.net/En/Policy_Dialogue/TenYearFrameworkAndStrategies.pdf)

### Appendix 3. Principles of the Islamic financial system

*Prohibition of interest.* Prohibition of Riba - a term literally meaning “an excess” and interpreted as “any unjustifiable increase of capital whether in loans or sales” - is the central tenet of the system. More precisely, any positive, fixed, predetermined rate tied to the maturity and the amount of principal (that is, guaranteed regardless of the performance of the investment) is considered Riba and is prohibited. The general consensus among Islamic scholars is that Riba covers not only usury but also the charging of “interest” as widely practiced. This prohibition is based on arguments of social justice, equality, and property rights.

Islamic law encourages the earning of profits but forbids the charging of interest because profits, determined ex post, symbolize successful entrepreneurship and creation of additional wealth, whereas interest, determined ex ante, is a cost that is accrued irrespective of the outcome of business operations and may not create wealth. Social justice demands that borrowers and lenders share rewards as well as losses in an equitable fashion and that the process of accumulating and distributing wealth in the economy be fair and representative of true productivity.

*Money as “potential” capital.* Money is treated as “potential” capital - that is, it becomes actual capital only when it joins hands with other resources to undertake a productive activity. Islam recognizes the time value of money, but only when it acts as capital, not when it is “potential” capital.

*Risk sharing.* Because interest is prohibited, suppliers of funds become investors instead of creditors. The provider of financial capital and the entrepreneur share business risks in return for a share of the profits. The terms of financial transactions need to reflect a symmetrical risk-return distribution that each party to the transaction may face. The relationship between the investors and the financial intermediary is based on profit- and loss-sharing principles, and the financial intermediary shares the risks with the investors.

*Prohibition of speculative behaviour.* An Islamic financial system discourages hoarding and prohibits transactions featuring extreme uncertainties, gambling, and risks.

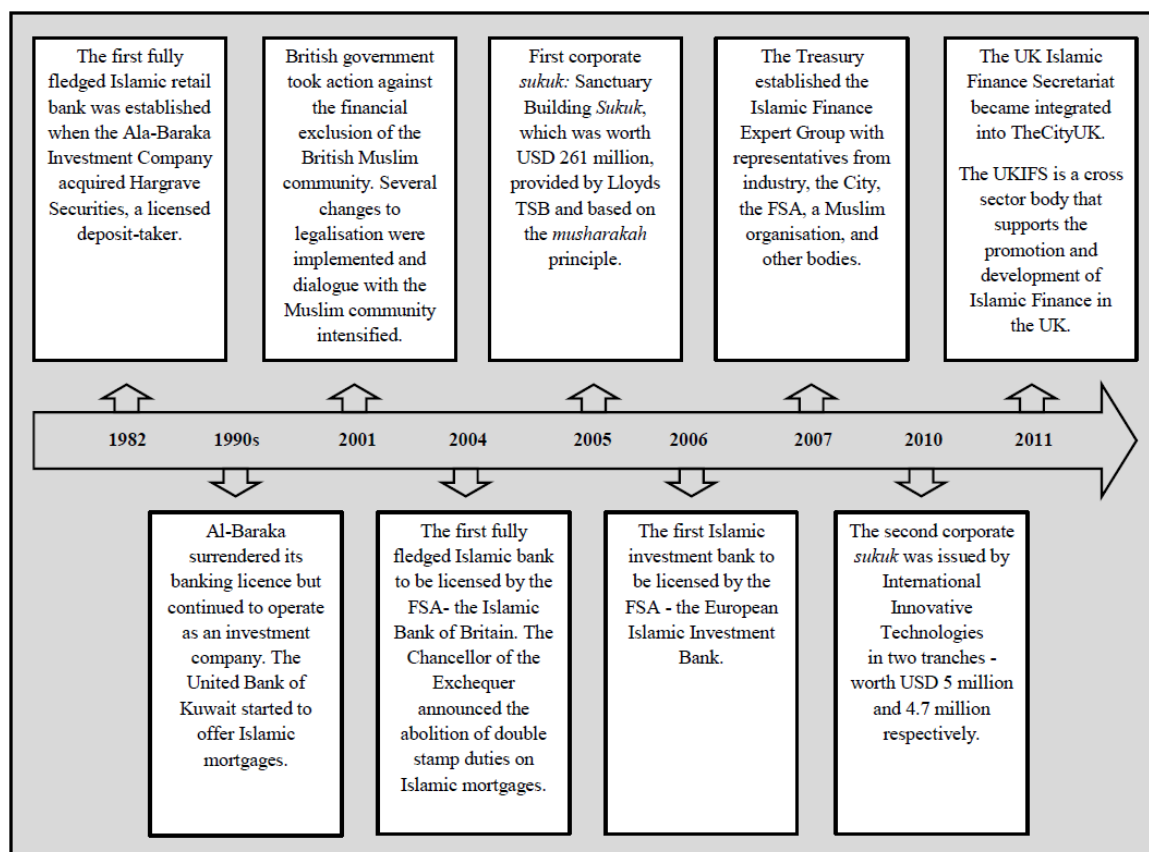
*Sanctity of contracts.* Islam upholds contractual obligations and the disclosure of information as a sacred duty. This feature is intended to reduce the risk of asymmetric information and moral hazard.

*Shariah-approved activities.* Only those business activities that do not violate the rules of Shariah qualify for investment. For example, any investment in business dealing with alcohol, gambling, or casinos is prohibited.

*Social justice.* In principle, any transaction leading to injustice and exploitation is prohibited. A financial transaction should not lead to the exploitation of any party to the transaction. Exploitation entails the absence of information symmetry between parties to a contract.

Cited from Van Greuning, H., and Iqbal, Z., (2008). Risk analysis for Islamic banks. The World Bank. Washington, DC, p: 7.

## Appendix 4. The development of Islamic finance in the UK



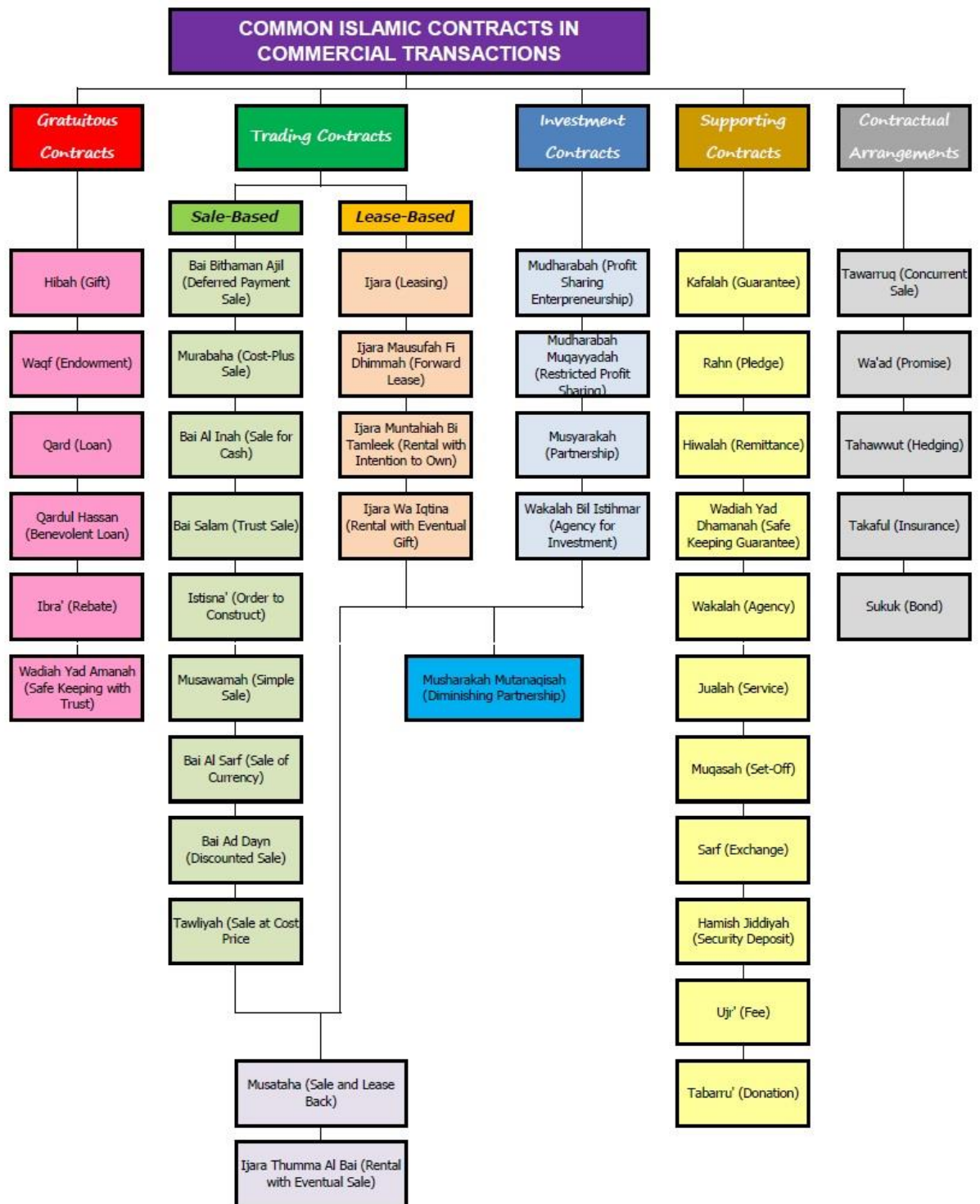
Source: KFN Research <http://www.islamicfinance.com/2014/12/iclamic-finance-in-the-united-kingdom>

## Appendix 5. Stages of evolution of the Islamic financial services industry

1970s	1980s	1990s	2000s	2005-Present
<b>Institutions:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banks</li> </ul> <b>Products:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banking products</li> </ul> <b>Area:</b> <ul style="list-style-type: none"> <li>Persian Gulf</li> <li>Middle East</li> </ul>	<b>Institutions:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banks</li> <li><i>Takaful</i></li> <li>Islamic investment companies</li> </ul> <b>Products:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banking products</li> <li><i>Takaful</i></li> <li>Mutual funds</li> </ul> <b>Area:</b> <ul style="list-style-type: none"> <li>Persian Gulf</li> <li>Middle East</li> <li>Asia Pacific</li> </ul>	<b>Institutions:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banks</li> <li><i>Takaful</i></li> <li>Islamic investment companies</li> <li>Asset management companies</li> <li>Brokers and dealers</li> </ul> <b>Products:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banking products</li> <li><i>Takaful</i></li> <li>Mutual funds or unit trusts</li> <li><i>Sukuk</i></li> <li><i>Shari'ah</i>-compliant stocks</li> <li>Islamic brokerage</li> </ul> <b>Area:</b> <ul style="list-style-type: none"> <li>Persian Gulf</li> <li>Middle East</li> <li>Asia Pacific</li> </ul>	<b>Institutions:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banks</li> <li><i>Takaful</i></li> <li>Islamic investment companies</li> <li>Asset management companies</li> <li>Brokers and dealers</li> <li>e-commerce</li> <li>Islamic investment banks</li> </ul> <b>Products:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banking products</li> <li><i>Takaful</i></li> <li>Mutual funds or unit trusts</li> <li><i>Sukuk</i></li> <li><i>Shari'ah</i>-compliant stocks</li> <li>Islamic brokerage</li> </ul> <b>Area:</b> <ul style="list-style-type: none"> <li>Persian Gulf</li> <li>Middle East</li> <li>Asia Pacific</li> <li>Europe</li> <li>United States</li> <li>Global offshore</li> </ul>	<b>Institutions:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banks</li> <li><i>Takaful</i></li> <li>Islamic investment companies</li> <li>Asset management companies</li> <li>Brokers and dealers</li> <li>e-commerce</li> <li>Islamic investment banks</li> <li>Islamic rating agency</li> <li>Islamic Forex brokers</li> </ul> <b>Products:</b> <ul style="list-style-type: none"> <li>Commercial Islamic banking products</li> <li><i>Takaful</i></li> <li>Mutual funds or unit trusts</li> <li><i>Sukuk</i></li> <li><i>Shari'ah</i>-compliant stocks</li> <li>Islamic brokerage</li> <li>Hedging &amp; Risk management</li> <li>Liquidity management Tools</li> <li>Forex trading</li> </ul> <b>Area:</b> <ul style="list-style-type: none"> <li>Persian Gulf</li> <li>Middle East</li> <li>Asia Pacific</li> <li>Europe</li> <li>United States</li> <li>Global offshore</li> <li>China</li> <li>Russia*</li> </ul>

Developed from Islamic Capital Market Fact Finding Report, July 2004, p: 16.  
<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD170.pdf>

## Appendix 6. The variety of common Islamic contracts in commercial transactions



Source: <https://islamicbankers.me/2015/10/>

## Appendix 7: Prerequisites for further development of Islamic finance in Russia

The head of the Russian Central Bank Elvira Nabiullina stated in November 2014 that her agency was examining the issue of introducing special regulations for Islamic banking.<sup>742</sup> At the same time, several projects concerning the introduction of Islamic banks in Russia were discussed, primarily in regions with a predominantly Muslim population - Bashkiria, Tatarstan and the Chechen Republic.

Moreover, considering the recent problems with financing that have resulted from international sanctions, the interest in Islamic finance has increased significantly, similar to the previous crisis. In 2015, the Association of Russian Banks and the Association of Russian Regional Banks made an appeal to the Russian Central Bank with a proposal to adopt legislative acts that would allow the creation of banks that would act according to *Shariah* law.<sup>743</sup>

The Russian Orthodox Church (ROC), as early as 2015, also advocated the creation and implementation of an interest-free lending system in Russia. Archpriest Vsevolod Chaplin, Chairman of the Synodal Department for the Interaction of the Church and Society of the Moscow Patriarchate, proposed in November 2015 that a working group be established to develop a concept and basic principles for building an Orthodox financial system (OFS). At the same time, he referred to the example of Islamic banking, which refuses loan interest, although this “does not reduce its efficiency”.<sup>744</sup>

At the Gaidar Forum in January 2016, which included Prime Minister Dmitry Medvedev and members of his government, Islamic finance was discussed for the first time as a source of new opportunities and prospects for the successful development of Russia’s financial system and economy. They also discussed legal obstacles, taxation and administrative barriers to the establishment of Islamic banks and other risks associated with Islamic finance.<sup>745</sup>

During his first visit to the North Caucasus, Kirill, the Patriarch of Moscow and all Rus’ (May 2016) acknowledged the common understanding of the Rule of God among orthodox Christians and Muslims, while declaring Western Christianity “inauthentic”. The Primate of the Church also mentioned that in Russia, “Neither orthodox Christians nor Muslims are ready to live by laws that contravene the will of God and God’s moral rule. This is our basis, thus there is a foundation to form a shared existence.”<sup>746</sup>

In recent years, world economists and politicians have argued about the continued wealth divide. This same question is also prevalent in Russia. According to researchers, the indicators of inequality in the country have reached record heights. In 2016, the consulting firm Capgemini called Russia “the most unjust large economy in the world” and its estimates show that 62% of Russia’s wealth is concentrated in the hands of dollar millionaires and a further 26% in the hands of billionaires.<sup>747</sup> In Russian society, therefore, there is a clear demand for a more equitable distribution of the national wealth.

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<sup>742</sup> <http://islamic-finance.ru/blog/2014-11-27-272>

<sup>743</sup> <http://www.centrasia.ru/news2.php?st=1455599880>

<sup>744</sup> <http://russianmind.com/biznes-po-religioznyim-kanonam/>

<sup>745</sup> <http://islam-today.ru/ekonomika/na-gajdarovskom-forume-v-moskve-startuet-ekspertnaa-diskussia-po-islamskim-finansam/>

<sup>746</sup> <http://www.newsru.com/religy/15may2016/cyrillsays.html>

<sup>747</sup> <http://www.newsru.com/finance/17mar2017/rurichest.html>



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<http://factsanddetails.com> Knowledge aggregator  
<http://financial-dictionary.thefreedictionary.com> Financial Glossary  
<http://folk.uio.no> Norwegian Research Centre for Computers and Law (NRCCL)  
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