

QARDHUL HASAN AS A PROPOSED TOOL FOR SOCIAL FINANCING THROUGH TEMPORARY CASH WAQF AND ZAKAH: A MAQASID APPROACH¹

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ABSTRACT

This research article aims to study the possibility of actualizing temporary cash *Waqf* and Zakah in contemporary world as they constitute the basin pillars of social financing in Islamic financial and economic system, and they have a very important role in achieving higher intents of Shariah like justice, social cooperation, and economic welfare.

The problem of the research lies in the differences of opinions of scholars regarding permissibility of applying Qardhul Hasan on Zakah and this article attempts to employ Maqasid approach to give the preference among those views as well as delineating the rules and proposing suitable tools for it. Similarly, it again taking Maqasid approach propose application of Qardhul Hasan on temporary cash *Waqf*. The study is carried out considering the contemporary Islamic banks in general and suggest for actual application in Malaysian context.

Content analysis and comparative analysis methods have been used to carry out the research.

The research concludes that applying Qardhul Hasan through temporary cash *Waqf* and Zakah for social financing is permissible in the light of Maqasid-e-Shariah.

KEYWORDS

Temporary Cash *Waqf*, Qardhul Hasan, Social financing, Islamic banks, Maqasid-e-Shariah

1. INTRODUCTION

Qardhul Hasan is a very important concept of the Quran and Sunnah which might be very useful in incorporating social financing through Zakah and temporary cash *waqf*. contemporary

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banking is mainly based on loans which contains elements of interest which are strictly prohibited in Islam. Qardhul Hasan may become a great alternative to this loan if theorized and presented properly. To apply Qardhul Hasan as a tool to be used for social financing through Islamic banks Zakah and temporary cash *Waqf* can be proved adequate sources for Qardhul Hasan.

This article using content analysis and comparative analysis using Maqasid approach deals with the possibilities of applying Qardhul Hasan on Zakah and temporary cash *Waqf*.

Whether is Zakah or *Waqf* they are by and large still in the practice according to what was available in premodern system of finance and economy. It is the need of our time to connect the utilization of Zakah and *Waqf* with later developments in the field of economy and finance.

This study has tried to propose Qardhul Hasan as a tool for social financing through Zakah and temporary cash *Waqf*.

There are many studies which deal with issue of Zakah or temporary cash *Waqf* but there are very few studies which deals with question of Qardhul Hasan in *Zakah* and *Waqf*. When it comes to the question of Qardhul Hasan in *Zakah*, there are two major and noteworthy studies, one is written by Naef al-Ajmi entitled “al-Iqraz min Amwal al-Zakah”(Al-Ajmi, 2008) and second with the same title by Hamdi Subh Taha (Taha, 2009). Both studies have investigated the question from one side of the arguments without considering Maqasid and trying to combine the two camps. Qardhawi has also discussed the issue in his magnum opus book “Fiqh al-Zakah”(Qardhawi, 1973) which was very helpful in the discussion, but he didn’t deal it with reference to finance and Islamic banking. As far as the question of Qardhul Hasan in temporary cash *Waqf* is concerned, there are no direct studies, however, Ferdous Abdul Rahman and Muhammad Amanullah wrote an article entitled “Implementation of Temporary *Waqf*: A Comparative Study Between Kuwait and Malaysia” (Ab Rahman & Amanullah, 2017b) in which they looked at temporary *Waqf* from legal perspective in the two countries. These two authors published another article entitled “Challenges and Problems Facing the Application of Temporary *Waqf* in Selected States in Malaysia: New Issues and their Guiding Rules” (Ab Rahman & Amanullah, 2017a) which again limited its scope to legal aspects of temporary *Waqf*. Another relevant work is published by Bouhedda Ghalia et al, entitled “Activating Temporary *Waqf* and Its Mechanisms in Social Financing in Alleviating the Effects of Covid-19: Applications Prospects in Malaysia” (Ghalia et al., 2021) which was limited in its scope and touched on possible role of temporary *Waqf* in situations such as Covid-19, flood, or any natural disaster, and proposed some models to help the people in such type of disaster. However, none of above-mentioned papers address temporary cash *Waqf* with reference to Qardhul Hasan as a tool for social financing using Maqasid approach. Some other works confined their scope to historical aspects of *Waqf* in Malaysia such as “*Waqf* history and legislation in Malaysia: A contemporary perspective” (Yacoob, 2013) by Hisham Yaacob, “Model Perbankan Wakaf Korporat: Analisis Wakaf Selongor Muamalat” by Ramli and Jalil (Ramli & Jalil, 2014) and another one by Fares Djafri and others entitled “*Waqf* Property: Concept, Management, Development, and Financing” (Djafri et al., 2022). All these studies are very helpful to understand the history and development of *Waqf* in Malaysia but do not touch on its relationship with Qardhul Hasan for social financing. Therefore, the present study will fulfil a very important gap where *Zakah* and temporary cash *Waqf* will be studied as potentials for social financing through Qardhul Hasan.

2. WAQF IN ISLAM

Waqf has been among the most important concepts of Islamic economic systems which effectively works for social welfare of deprived and poor classes of the societies. However, there is no consensus on the definition of *Waqf* among Islamic scholars as Hanafi scholars define it as “restraining a property from the ownership of others” (Al-Surkhusi, 1989, p. 12:27), while according to Maliki scholars, it is defined as “providing the benefits of a property or its yields in any form even with a charge to someone deserving for the period the donor deems appropriate” (Al-Darder, 2000, p. 124). Shafi scholars define it as “holding up the useful wealth while retaining its original form and to spend its benefits on available permissible things” (Al-Sharbīnī, 1997, p. 2:485), whereas Hanbali scholars defined it as “keeping the useful wealth of an absolute owner from him while retaining its original form and making its benefits for charity with the purpose of getting closer to Allah” (Al-Buhuti, 2000, pp. 4: 329-30). The main reason behind this disagreement on the definition of *Waqf* is that there are not so many details of *Waqf* in original scriptural texts as observed by Jasser Auda and that is to make it as much flexible as it can always evolve with needs and demands of new circumstances (Auda, 2020). Most of the Quranic texts which are referred to in connection with the validity and permissibility of *Waqf* are general references related to the charity and spending for the sake of Allah. For example, Allah says in the Quran 2:177:

﴿أَيَسِّرَ الْبِرَّ أَنْ تُولُوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ
وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي
الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ
الْبَأْسِ يُؤْتِيكَ الَّذِينَ صَدَقُوا بِوَأْلِكَ هُمُ الْمُتَّقُونَ﴾

True piety does not consist in turning your faces towards the east or the west - but truly pious is he who believes in God, and the Last Day; and the angels, and revelation, and the prophets; and spends his substance - however much he himself may cherish - it - upon his near of kin, and the orphans, and the needy, and the wayfarer, and the beggars, and for the freeing of human beings from bondage; and is constant in prayer, and renders the purifying dues; and [truly pious are] they who keep their promises whenever they promise, and are patient in misfortune and hardship and in time of peril: it is they that have proved themselves true, and it is they, they who are conscious of God.

Similarly, at another place He says in the Book 2: 261

﴿مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أُنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِائَةٌ حَبَّةٌ يَوْمَ الْقِيَامَةِ
يُضَاعَفُ لِمَنْ يَشَاءُ اللَّهُ وَاسِعٌ عَلِيمٌ﴾

The parable of those who spend their possessions for the sake of God is that of a grain out of which grow seven ears, in every ear a hundred grains: for God grants manifold increase unto whom He wills; and God is infinite, all-knowing.

As far as prophetic narrations are concerned with respect to the permissibility and significance of *Waqf* there are three different expressions which denote the meaning of *waqf*.

There is a set of narrations which speaks in terms of charity and spending in the path of Allah, and they are used to legitimate waqf and convey the essence and significance it carries. For instance, it has been narrated on the authority of Abu Mas'ud al-Ansari who said:

(جاء رجلٌ بناقةً مخطومةً فقال هذِهِ فِي سَبِيلِ اللَّهِ. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَكَ بِهَا يَوْمَ الْقِيَامَةِ سَبْعُمِائَةٍ نَاقَةٍ كُلُّهَا مَخْطُومَةٌ)

A man brought a muzzled she-camel and said: It is (offered) in the way of Allah. The Messenger of Allah (ﷺ) said: “For this you will have seven hundred she-camels on the Day of Judgment all of which will be muzzled” (Muslim, 1955).

Another set of narrations use the word *Habs* which means holding or restraining. For example, Ibn Narrated:

(أَصَابَ عُمَرُ بِخَيْرٍ أَرْضًا فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَصَبْتُ أَرْضًا لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ مِنْهُ، فَكَيْفَ تَأْمُرُنِي بِهِ قَالَ " إِنْ شِئْتَ حَبَسْتَهَا، وَتَصَدَّقْتَ بِهَا ". فَتَصَدَّقَ عُمَرُ أَنَّهُ لَا يُبَاعُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ، فِي الْفُقَرَاءِ وَالْفُرْقَانِ وَالرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ، وَلَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ.)

When `Umar got a piece of land in Khaibar, he came to the Prophet (ﷺ) saying, I have got a piece of land, better than which I have never got. So, what do you advise me regarding it? The Prophet (ﷺ) said, “If you wish you can hold it as an endowment to be used for charitable purposes.” So, `Umar gave the land in charity (i.e. as an endowments on the condition that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, Jihad, and for guests and travellers; and its administrator could eat in a reasonable just manner, and he also could feed his friends without intending to be wealthy by its means” (Bukhari, 2001).

Finally, there is a mention of word Waqf as stated in the saying (*asar*) of Jabir as he said:

(لم يكن أحد من أصحاب النبي صلى الله عليه وسلم ذو مقدرة إلا وقف.)

“There was no one is the companions of the prophet who was capable but didn’t make waqf” (Al-Nawwi, n.d., p. 15:323).

So, it is agreed upon position among the Muslim scholars that Waqf is permissible or rather highly recommended in Islam but since the original text of Islam is silent on most of the details pertaining to waqf therefore there is a vast range of issues in waqf which are points of disagreement and contention among the scholars as they go back to scholarly opinions of jurists based on ijthihad and reasoning. We will discuss here some such issues only which are related to the issue in hand.

2.1 The Issue of Temporary Endowment (*Waqf Muaqqat*)

In classical Muslim scholarship, there was no specific classification in Waqf. It was simply a permanent endowment of properties for the welfare of general people or for specific groups of the society. The condition of permanent (*Tabeed*) was essential in waqf, even though some scholars had prospects for temporary endowment as well as it can be noticed above in the definition expounded by Maliki scholars. However, in modern time, many scholars have classified waqf into two types based on the duration of its usufruct as follows:

Permanent endowment (*Waqf Muabbad*): To hold the property permanently for the welfare of the people in general or for specific groups. This is the classical notion of waqf and there is no disagreement on this kind of waqf.

Temporary endowment (*Waqf Muaqqat*): Temporary confinement of wealth for the purpose of public benefit from it directly or indirectly for the welfare of the people in general or for specific groups.

There are two camps among the scholars regarding the permissibility of temporary waqf. First camp comprises of majority of classical scholars and some contemporary scholars. Their main argument is that the property of waqf can never come to the ownership of anyone, and secondly, waqf is spending for the sake of Allah and it can be achieved only by withdrawing from the ownership permanently. Second camp comprises of Maliki scholars and some other scholars from other schools of jurisprudence as well and many contemporary scholars. Their counter arguments are as follows in brief: firstly, there is no condition of permanence (*Tabeed*) in the original sources of Islam. Secondly, Waqf is carried out for the purpose of social welfare and scholars have allowed to put conditions on the ways of its usufruct, similarly, there should not be any impediment in putting the condition of period for its usufruct.

From the Maqasid perspective, the second position seems preferable as it allowed opportunity of charity and endowment for those who are not capable of donating their wealth for good. Secondly, with the advent of new institutions of finance and economics the regulation and management of temporary waqf has become feasible which would not have been easy erstwhile.

2.2 The Issue of Cash Waqf

Cash waqf has been defined as “the confinement of an amount of money/cash from the founder and the dedication of its usufruct, according to the founder’s condition (s), in perpetuity to the welfare of the society” (Magda, 2009, p. 40)

In the early Islamic jurisprudence, there has been a debate whether wealth (*māl*) or cash can be object of waqf or not. Majority of classical Muslim scholars are of the view that wealth (*Māl*) or cash is not acceptable in *Waqf* (Auda, 2020). The reason behind this view goes back to the same point as discussed above that permanence and perpetuity is an essential condition for a *Waqf* to be valid and acceptable (Al-Maqdisi, 2005). There are two major counter arguments against this argument. Firstly, as mentioned above, the condition of permanence does not have any clear and undisputed ground in the Quran and Sunnah. Secondly, there are, on the contrary, some examples from time of the prophet that the companions did waqf of those things which were from the category of consumable wealth rather than having the quality of permanence. For instance, Abu Huraira narrated: The Prophet (ﷺ) said:

(مَنْ أَحْتَبَسَ فَرَسًا فِي سَبِيلِ اللَّهِ إِيمَانًا بِاللَّهِ وَتَصَدِيقًا بِوَعْدِهِ، فَإِنَّ شَبْعَهُ وَرِيَّهُ وَرَوْتَهُ وَبَوْلَهُ فِي مِيزَانِهِ
يَوْمَ الْقِيَامَةِ)

“If somebody keeps a horse in Allah's Cause motivated by his faith in Allah and his belief in His Promise, then he will be rewarded on the Day of Resurrection for what the horse has eaten or drunk and for its dung and urine” (Bukhari, 2001)

Similarly, it is reported regarding Khalid bin Waleed that he kept his armours and weapons in the path of Allah (Bukhari, 2001; Muslim, 1955).

However, it should be noted that the acceptability and permissibility of cash waqf is not completely a new view, rather it can be referred to few early Hanafi scholars like Muhammad bin Hasan and Zufar who gave emphasis on custom (*Urf*) in the matter of Waqf and suggested that anything that can be measured or weighed can be designated as *Waqf* (Ibn ‘Ābidīn, 2000). In the view of Maqasid-e-Shariah and developments of modern institution of finance like Islamic banks and Islamic finance, many contemporary Muslim scholars and organizations are in favour of cash waqf such as the International Fiqh Academy, The European Council of Fatwa and Research and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), among others, have published *Fatwas* in support of the legitimacy of cash *Waqf* (Auda, 2020).

3. THE ISSUE OF QARDHUL HASAN

Loan has a very crucial role in any financial system. There is a dire need to introduce new concepts and innovative products of loan in Islamic finance and Islamic banking. Islam has a unique notion about loan which is termed as Qardhul Hasan. However, to understand the notion of Qardhul Hasan it is imperative to understand the connotation of loan (*Qarz*).

What is loan?

According to the Cambridge dictionary: loan is “an amount of money that is borrowed, often from a bank, and has to be paid back, usually together with an extra amount of money that you have to pay as a charge for borrowing” (*Cambridge Dictionary*, n.d.). Similarly, it is defined in Oxford dictionary as: “A thing lent; something the use of which is allowed for a time, on the understanding that it shall be returned or an equivalent given; *esp.* a sum of money lent on these conditions, and usually at interest” (*Oxford English Dictionary*, n.d.). Another famous dictionary defines it as: “something lent usually for the borrower’s temporary use” (*Merriam-Webster*, n.d.).

It can be summed up that loan is borrowed (a), for a temporary use of borrower (b), and usually paid back with an extra charge (c).

On the contrary, Qardhul Hasan is defined in dictionary as: “loan provided without any profit or extra charge” (Mustafa et al., n.d., p. 1:444). As a terminology, it is very close to how it is defined linguistically. Some of the definitions are as follows:

- (a) “Agreement with someone on providing him an amount of money on the terms that he will return the same”(Ibn ‘Ābidīn, 2000, p. 5:161).
- (b) “Offering an amount of money to someone for the sake of Allah so that he can benefit from it and later return the similar or the same” (Al-Adwi, 1994, p. 2:164).
- (c) “To own something on the condition that same will be returned” (Ibn Mulaqqin, 1986, p. 5:36).
- (d) To offer someone an amount of money with the purpose of ease so that the beneficiary can benefit from it and return the same” (Ibn Muflih, 1997, p. 4:92).

From the above definitions, it is evident how goodly loan or *Qarz-e-Hasan* is different from conventional notion of loan which is the cornerstone of modern economy and banking. The differences and similarities between the two can be seen in the table below:

S.N.	Conventional Loan	Qardhul Hasan
1	Extra charge or profit is expected	No extra charge or profit is expected
2	Intention is to get the profit	For the sake of Allah
3	No non-monetary factors	To ease and facilitate the business of others are the objectives of it
4	Temporary use of the loan	Temporary use of goodly loan
5	Conventional loan is not permissible in Shariah	Goodly loan is highly recommended

3.1 Shariah standpoint on Qardhul Hasan

Qardhul Hasan is permissible (*Mubah*) for the borrower and recommended (*Mustahabb*) for the lender. There are two kinds of evidence on its recommendation. Firstly, there are general evidence which push for helping others in their need. For instance:

(مَنْ نَفَسَ عَنْ مُؤْمِنٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا، نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ، وَمَنْ يَسَّرَ عَلَى مُعْسِرٍ، يَسِّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ، وَمَنْ سَتَرَ مُسْلِمًا، سَتَرَهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ، وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ.)

Abu Hurairah (RAA) narrated that the Messenger of Allah (ﷺ) said: “If anyone relieves a Muslim believer from one of the hardships of this worldly life, Allah will relieve him of one of the hardships of the Day of Resurrection. If anyone makes it easy for the one who is indebted to him (while finding it difficult to repay), Allah will make it easy for him in this worldly life and in the Hereafter, and if anyone conceals the faults of a Muslim, Allah will conceal his faults in this world and in the Hereafter. Allah helps His slave as long as he helps his brother”. (Muslim)

Imam Shaukani said in the commentary of this narration: “there are many Quranic verses and Prophetic sayings which call for cooperation and helping needy Muslims and removing their hardships and there is no disagreement among scholars on its legality. Ibn Ruslan said: there is no disagreement in legitimacy of asking for loan in a time of need” (Al-Shawkani, 1993, p. 5:272).

Secondly, there are many explicit texts on it in the Quran and Sunnah. For example, Allah says in the Quran 2:145:

﴿مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً وَاللَّهُ يَقْبِضُ وَيَبْسُطُ وَإِلَيْهِ تُرْجَعُونَ﴾

“Who is it that will offer up unto God a goodly loan, which He will amply repay, with manifold increase? For, God takes away, and He gives abundantly; and it is unto Him that you shall be brought back”.

Likewise, the Prophet (SAW) said:

(مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا قَرْضًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَتِهَا مَرَّةً)

“There is no Muslim who lends something to another Muslim twice, but it will be like giving charity once” (Ibn Majah, 2009).

It is clear from the above references that goodly loan is highly appreciated in Islam. Now we will look at the possibility of applying Qardhul Hasan on Temporary Cash *Waqf*.

There are no clear texts on permissibility or impermissibility of lending from *Waqf* in the original sources of the Shariah as observed by Jasser Auda that Texts (*Nusus*) are silent on most of the details regarding *Waqf*. However, this issue largely resembles the issue of lending from *Zakah*. Even though there was no discussion on lending from *Zakah* as well in the classical Muslim period but due to the recent institutional development of finance and banking and advancement of the vast industry of Islamic finance and banking contemporary Muslim scholars have sufficiently dealt with the question of lending from *Zakah*. We will use that discussion to understand the question of lending from temporary cash *Waqf* based on the method of analogical reasoning (*Qiyas*).

4. THE ISSUE OF FINANCING FROM ZAKAH

Muslim scholars have dealt with the question of lending or financing from the money of *Zakah*; however, they define the issue in different ways. We will present two definitions of what it means to lend from *Zakah*.

Firstly, some scholars define it as: “that a person who has the amount of *Zakah* lends a part of it to a someone who is needy but not from those who deserve *Zakah* so that he can benefit from it and return it later” (Taha, 2009).

Another definition says: “that a person who has the amount of *Zakah* lends from that amount to someone who needs it” (Al-Ajmi, 2008).

It can be noticed that the first limits it scopes to only those needy people who are not eligible for *Zakah* while the second keeps it open for anyone who need it. However, there is a shortcoming in both the definitions that they do not touch on the objectives and intents of allowing lending from *Zakah*. Some other scholars have proposed more comprehensive definition as follows: “that a person who has *Zakah* lends from it to someone for the purpose of his ease or in the interests of *Zakah* so that he benefits from it and return it later”.⁵ It implies that the lending from *Zakah* can be for two purposes; firstly, in the interest of *Zakah* i.e., to protect the amount of *Zakah* from damage or loss (such as theft or robbery etc.) which will also

⁵ Ahkam Idarah... 277.

be eventually beneficial for needy people. Secondly, to help the needy people out of facilitation and ease.

Based on these two purposes and reasons of lending or financing from *Zakah* scholars have different opinions on the permissibility or impermissibility of financing from *Zakah*.

4.1 The issue of financing from *Zakah* to protect the money of *Zakah*

Contemporary Muslim scholars unanimously opine that if the purpose of lending from the money of *Zakah* is to keep that money from damage, loss, theft etc. then the lending is permissible as it will protect the money of *Zakah* and at the same time it will be helpful for those people who need loan (Taha, 2009). They corroborate this view with following arguments:

Firstly, classical scholars had permitted collectors of *Zakah* to make use of that money in the way interest of *Zakah* or interest of beneficiaries requires it. For example, Ibn Qudama, a famous Hanbali scholar said: “when the collector has collected the *Zakah* and need to sell it for the interest of beneficiaries of it, he may do so” (Al-Maqdisi, 2005, p. 2:532). Similarly, al-Buhuti, another classical scholar said: “it is allowed for the collector of *Zakah* to sell the cattle and such goods of *Zakah* for reasons such as fear of loss, benefit of *Zakah* etc.” (Al-Buhuti, 1983, p. 2:270). drawing on the same line if lending or financing from the money of *Zakah* can help protect that money of *Zakah* from loss and damages or to avoid unnecessary costs or risks of transferring from one place to another, it should be permissible.

Secondly, in the situation of fear of loss and wastage, lending can guarantee its protection as loan is guaranteed and borrower is supposed to return it any way regardless of whether he lost it by mistake or by action (Al-Ajmi, 2008).

Thirdly, scholars permitted lending from the properties of orphans if it is in the interests of the orphans (Al-Maqdisi, 2005). Using analogy, the same ruling can be extended to lending from *Zakah* if it is in the interest of *Zakah*.

Fourthly, this issue can also be extended from what is referred to as the issue of *al-Suftajah*. It is defined as: “a person lends someone an amount in a place and receives the same amount in another place. In doing so, the lender avoids the risks of the way and the costs of carrying, and the borrower benefits from that loan.” (Ibn Taimiyah, 2004, p. 29:534) Ibn Taimiyah comments on this saying: “the right view in this regard is permissibility, because the lender sees the benefits of being safe from the risks of carrying along and borrower sees the benefits of loan, hence, both are in win-win situation. The lawgiver does not prohibit what is useful and beneficial for people and people need that. Rather he prohibits only those things which are harmful and corrupt, and Allah has given them better options.” (Ibn Taimiyah, 2004, pp. 29:455-56) Using analogical reasoning, lending from *Zakah* is considered permissible as it protects the goods of *Zakah* and achieves benefits intended by it.

4.2 The issue of financing from *Zakah* to facilitate for the people

Contemporary Muslim scholars are divided into two camps when it comes to the issue of lending or financing from *Zakah* for the sake of needy people and not for the purpose of protecting *Zakah* itself.

One group of scholars view it as impermissible, for instance, Ali Jadd al-Haq, Rafiq al-Misri, Ahmad bin Humaid, Hamdi Subh Taha, Husamuddin Affanah and others. Whereas the other group of scholars say of its permissibility, for example, Maududi, Abu Zuhra, Khallaf, Abdurrahman Hasan, Muhammad Hameedullah, Qardhawi, Abdul al-Sattar Abu Ghudda, Muhammad al-Zuhaili, Naef al-Ajmi and others.

4.3 Arguments of opponents of financing from *Zakah* for the purpose of facilitation

The opponent group who sees the financing from *Zakah* as impermissible hold their position on following grounds:

Firstly, they say that the Quran has specified the channels of *Zakah* as mentioned in the verse and lending or financing is not among them. The Quran 9:60 reads:

﴿ إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ
اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ عِوَاللَّهِ عَلَيْهِمْ حَكِيمٌ ﴾

The offerings given for the sake of God are [meant] only for the poor and the needy, and those who are in charge thereof, and those whose hearts are to be won over, and for the freeing of human beings from bondage, and [for] those who are overburdened with debts, and [for every struggle] in God's cause, and [for] the wayfarer: [this is] an ordinance from God - and God is all-knowing, wise.

Secondly, by lending from *Zakah* the offerings of *Zakah* delays in reaching to those who deserve it on time, and this is not permissible because payment of *Zakah* is obligatory to make it instantly.

Thirdly, by starting cycle of lending and financing from *Zakah* the offerings will never reach to those who deserve and mentioned in the Quran as there will be an unending cycle of lending and repaying. Therefore, lending being an obstruct to what is commanded in the Quran is impermissible.

Fourthly, lending from *Zakah* results in deprivation of real needy and poor people from what they deserved and *Zakah* is basically devised for the need of poor people.

Fifthly, there are many risks and threats in lending from *Zakah* such as inability of borrower to repay, his delay in repayment without a reason, his denial of having taken loan and other risks which may cause wastage and loss of *Zakah*.

Sixthly, it is nowhere recorded in the life of the prophet and the companions and the entire Muslim history that they lent from *Zakah*, while there were all the reasons that they should have done it. Hence, it is evident that lending is not permissible.

4.4 Arguments of proponents of financing from *Zakah* for the purpose of facilitation

Scholars who are in favour of financing from *Zakah* for the purpose of ease and facilitation of the people rely for their position on following arguments:

Firstly, they take beneficiaries of loan from *Zakah* comparable with those overburdened with debts (*Gharimin*). Since debts can be paid from *Zakah* while it will not be paid back it should

be preferable to give Qardhul Hasan from *Zakah* to those who will pay it back later (Qardhawi, 1973).

Secondly, the Quran has mentioned among the channels of *Zakah* debtors who are borrowers in fact, and it also includes those who need to borrow for temporary need but are willing to repay after a short duration of time.

Thirdly, lending a goodly loan should be considered as the same category that of debtors (*gharimin*), hence, it is enough for a person who is giving *Zakah* to give it to the account of debts which can be spent as lending a goodly loan. Therefore, this account will be part of channels of *Zakah* without any need of making distinction between debtors and borrowers in its functions.

Fourthly, they refer to a tradition which says:

(عَنْ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، أَنَّهُ قَالَ قَالَ حَرَجَ عَبْدُ اللَّهِ وَعُبَيْدُ اللَّهِ ابْنَا عُمَرَ بْنِ الْخَطَّابِ فِي جَيْشٍ إِلَى الْعِرَاقِ فَلَمَّا قَفَلَا مَرَّ عَلَى أَبِي مُوسَى الْأَشْعَرِيِّ وَهُوَ أَمِيرُ الْبَصْرَةِ فَرَحَّبَ بِهِمَا وَسَهَّلَ لُهُمَا قَوْلَ لَوْ أَقْدِرُ لَكُمَا عَلَى أَمْرٍ أَنْفَعُكُمَا بِهِ لَفَعَلْتُ . ثُمَّ قَالَ بَلَى هَا هُنَا مَالٌ مِنْ مَالِ اللَّهِ أُرِيدُ أَنْ أُبْعَثَ بِهِ إِلَى أَمِيرِ الْمُؤْمِنِينَ فَأَسْلِفُكُمَا فَتَبْتَاعَانِ بِهِ مَتَاعًا مِنْ مَتَاعِ الْعِرَاقِ ثُمَّ تَبِيعَانِهِ بِالْمَدِينَةِ فَمُؤَدَّيَانِ رَأْسِ الْمَالِ إِلَى أَمِيرِ الْمُؤْمِنِينَ وَيَكُونُ الرِّبْحُ لَكُمَا فَقَالَا وَدِدْنَا ذَلِكَ . فَفَعَلَ وَكَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ أَنْ يَأْخُذَ مِنْهُمَا الْمَالَ فَلَمَّا قَدِمَا بَاعَا فَأَرْبَحَا فَلَمَّا دَفَعَا ذَلِكَ إِلَى عُمَرَ قَالَ أَكُلُ الْجَيْشِ أَسْلَفَهُ مِثْلَ مَا أَسْلَفَكُمَا قَالَا لَا . فَقَالَ عُمَرُ بْنُ الْخَطَّابِ ابْنَا أَمِيرِ الْمُؤْمِنِينَ فَأَسْلَفَكُمَا أَدْيَا الْمَالَ وَرَبِحُهُ . فَأَمَّا عَبْدُ اللَّهِ فَسَكَتَ وَأَمَّا عُبيدُ اللَّهِ فَقَالَ مَا يَنْبَغِي لَكَ يَا أَمِيرَ الْمُؤْمِنِينَ هَذَا لَوْ نَقَصَ هَذَا الْمَالَ أَوْ هَلَكَ لَضَمِنَاهُ . فَقَالَ عُمَرُ أَدْيَاهُ . فَسَكَتَ عَبْدُ اللَّهِ وَرَاجَعَهُ عُبيدُ اللَّهِ . فَقَالَ رَجُلٌ مِنْ جُلَسَاءِ عُمَرَ يَا أَمِيرَ الْمُؤْمِنِينَ لَوْ جَعَلْتَهُ قِرَاضًا . فَقَالَ عُمَرُ قَدْ جَعَلْتَهُ قِرَاضًا . فَأَخَذَ عُمَرُ رَأْسَ الْمَالِ وَنَصَفَ رِبْحِهِ وَأَخَذَ عَبْدُ اللَّهِ وَعُبيدُ اللَّهِ ابْنَا عُمَرَ بْنِ الْخَطَّابِ نِصْفَ رِبْحِ الْمَالِ)

It is reported on the account of Zayd ibn Aslam that his father said, "Abdullah and Ubaydullah, the sons of Umar ibn al-Khattab went out with the army to Iraq. On the way home, they passed by Abu Musa al-Ashari who was the amir of Basra. He greeted them and made them welcome and told them that if there was anything he could do to help them, he would do it. Then he said, 'There is some of the property of Allah which I want to send to the amir al-muminin, so I will lend it to you, and you can buy wares from Iraq and sell them in Madina. Then give the principal to the amir al-muminin, and you keep the profit.' They said that they would like to do it, and so he gave them the money and wrote to Umar ibn al-Khattab to take the money from them. When they came to sell, they made a profit, and when they paid the principal to Umar he asked, 'Did he lend everyone in the army the like of what he lent you?' They said, 'No.' Umar ibn al-Khattab said, 'He made you the loan, because you are the sons of the amir al-muminin, so pay the principal and the profit.' Abdullah was silent. Ubaydullah said, 'You do

not need to do this, amir al-muminin. Had the principal decreased or been destroyed, we would have guaranteed it.' Umar said, 'Pay it.' Abdullah was silent, and Ubaydullah repeated it. A man who was sitting with Umar said, 'Amir al-muminin, better that you make it a qirad.' Umar said, 'I have made it qirad.' Umar then took the principal and half of the profit, and Abdullah and Ubaydullah, the sons of Umar ibn al-Khattab took half of the profit. (Malik, 1985)

This tradition clearly indicates that property of Allah which include *Zakah* can be used for lending.

Fifthly, the option of lending keeps debtors from taking *Zakah* because borrowing is easier than taking *Zakah*. Some people may feel uncomfortable in taking *Zakah* instead of their need, but they will not hesitate in taking loan. Therefore, some classical scholars opined that for travellers it is preferred to take loan if he finds than to take *Zakah* and same applies to debtors also (Ibn Humam, 1970).

Sixthly, lending a goodly loan from *Zakah* contributes practically to abolishing usury and interest-based loan.

Seventhly, comparing the issue of lending from *Zakah* with the issue of lending from the properties of orphans if it is in the interest of the orphan. Similarly, if it is in the interest of *Zakah* and the beneficiaries of *Zakah* and the Muslims at large (Al-Ajmi, 2008; Taha, 2009).

Eighthly, general objectives of Islam entail permissibility of lending to those who need loan as part of the category of debtors. Hence, it is better to provide the facility of financing from *Zakah* to those who need it to meet their necessities (Qardhawi, 1973).

4.5 Analysis of arguments in the light of Maqasid-e-Shariah and its implications for the issue of *Waqf*

If arguments of both sides are analysed deeply it is evident that there are two reasons which seem to be constraining the permissibility of lending or financing from *Zakah* for the purpose of facilitation and ease of the people.

First is that it is not among the categories mentioned in the Quran according to first camp while it is included in the category of debtors.

Secondly, by opening the gate of lending and financing from *Zakah* those who deserve it indeed might be deprived of it.

Considering the objectives of Shariah in *Zakah* such as obedience of Allah, purification of giver from sins and greed, purification of wealth from bad elements, growth of wealth in more just manner, purification of hearts of needy and poor from envy and jealousy towards rich people, sympathizing and helping needy people, circulation of money, achieving social justice and social cooperation and development of Islamic economic system. In addition, objective of ease (*taysir*), objective of facilitation (*Irfaq*), objective of investing and increasing the wealth and other objectives these two reasons can be managed by applying some conditions instead of taking either of absolute position: rejection or approval.

Contemporary scholars have introduced many conditions to regulate the process of lending and financing from *Zakah* such as:

Lending and financing will be allowed only if it does not deprive the real deserving recipients of *Zakah*.

There must be a proper distribution of proportions of *Zakah* between the established channels of *Zakah* and financing.

In lending from *Zakah* those must be preferred who are needy or in other words who need loan for necessities (*Zaruriyat*) or needs (*Hajiyyat*) instead of luxuries or embellishments (*Tahsiniyyat*).

There must be a proper institutional mechanism to govern and regulate the process of lending and financing.

The process of lending and financing from *Zakah* must be under Islamic banks and institutions of Islamic finances to avoid any Shariah-incompliant elements in the process.

These are some examples to navigate and maintain the two groups and find out a more balanced and inclusive position in this regard.

Now, coming to the issue of *Waqf* there are neither of these two constraints as temporary cash *Waqf* will be open for all instead of any specific group or class of the society unlike *Zakah*.

Secondly, by applying Qardhul Hasan on *Waqf* it will only increase efficiency and productivity of *Waqf*.

Thirdly, objectives of Shariah in *Waqf* which are more or less same, entails to utilize temporary cash *Waqf* for social financing.

Hence, using the method of analogical reasoning and taking into consideration the higher intents of Shariah, it can be derived that applying goodly loan through Islamic financing on temporary cash *Waqf* is not only permissible but rather recommended.

5. MECHANISM OF FINANCING FROM ZAKAH AND TEMPORARY CASH WAQF

Once it is established that financing (giving Qardhul Hasan) is permissible from *Zakah* and temporary cash *Waqf*, we will present an overview of how to apply this concept in practice. There are four actors in the process of this financing; donor who is giving *Zakah* or making a temporary cash *waqf*, Islamic banks who will act as agents of doner, thirdly, state religious council who will supervise the whole process to ensure Shariah-compliance in it, and finally the beneficiaries or borrowers who will take goodly loan and return it after defined period. However, there is a need to be studied different modalities of governing *Zakah* and temporary cash *Waqf* for social financing which is not in the scope of this article and in future further studies should be carried out for it.

6. CONCLUSION

In conclusion, *Waqf* has been among the most important tool for social welfare throughout the Islamic history but unfortunately, with the advent of modernity and new developments of world *Waqf* was not updated to be effective and useful through new institutions of our time such as banks and finances etc. There were differences of opinions on different forms of *Waqf* but in

the view of new developments it is easy to give preference to those opinions which are more compatible with time and more beneficial and effective to achieve objectives of Shariah as Maqasid-e-Shariah is considered as an effective tool for preference. Therefore, it is found that *Waqf* can be cash as well as temporary.

Similarly, Qardhul Hasan is another very important notion in Islam which might be very helpful if employed in coordination with Zakah and temporary cash Waqf. There has been long discussion on permissibility or impermissibility of applying Qardhul Hasan on *Zakah*. It is found that though both camps have arguments to corroborate their views but if analysed in the light of Maqasid approach the position of those scholars who see permissibility is preferable. Though there was not discussion on whether Qardhul Hasan can be applied on temporary cash waqf or not but if the issue of Waqf is seen in comparison with *Zakah* or in analogy with *Zakah* it seems that there is no issue in applying Qardhul Hasan on temporary cash *Waqf*. However, it is important to note that there must be a proper mechanism and model to govern this whole procedure to avoid any thing which is contrary to the principles of Shariah.

Moreover, it can be concluded that social financing is a very important notion and has a crucial role in social welfare and alleviation of poverty and promotion of knowledge for those who are unable to afford the cost of education and by employing Qardhul Hasan through *Zakah* and temporary cash *Waqf* Islamic banks can play a great role in social financing.

Finally, it is recommended that further studies should be conducted on more specific details regarding governing and operationalizing the notion of applying Qardhul Hasan on *Zakah* and temporary cash *Waqf* through institutions of Islamic finance and banks.

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