

# Methods and Methodologies in *Fiqh* and Islamic Economics<sup>\*</sup>

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**Abstract:** This paper discusses the methodology and methods of reasoning in *fiqh* and critically examines their application to Islamic economics. It argues that *fiqh* methods are mainly designed to find out whether a certain act is permissible or prohibited for an individual. Islamic economics, on the other hand, is a social science and, accordingly, its proper unit of analysis is society, not the individual. Methodologies of *fiqh* and Islamic economics also differ as the former focuses on prescriptions. It prescribes what an individual should do or avoid. In contrast, Islamic economics is more concerned with describing economic realities. While *fiqh* prescriptions are permanent in nature and for all individuals, economic descriptions may change from time to time and from society to society. This paper argues that the methods of reasoning in *fiqh* and Islamic economics are not necessarily the same. While *fiqh* is well served by its methodology and methods set out in *uṣūl al-fiqh*, Islamic economics should rely on a methodology and methods that suit its social and descriptive nature.

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## **I. Introduction**

This paper begins with a discussion on methods and methodologies. It explains how the adoption of different standards for the acceptability of certain evidences can lead to differences in approaches and methodologies. It also discusses that various disciplines have different units of analysis or objects of inquiry, which it contends, call for different methods of

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reasoning. The paper examines the legal methods of reasoning in Islamic jurisprudence (*uṣūl al-fiqh*) and discusses their application to group-related issues and economics. It next argues that Islamic economics should rely on a methodology and methods of reasoning that would best suit its social and descriptive nature.

## II. Methodological Discourse

Reason alone is not an independent source of knowledge. One of its great weaknesses is its subjectivity – different individuals can come to a different understanding of the natural and social phenomena they observe. To avoid this there is a need for rules and standards to evaluate the arrangement of thoughts and propositions. Reason also needs to rely on certain tolls for the investigation of the truth. These tolls differ from each other and their use depends on whether the type of study calls for an examination of natural or social phenomena. A method is defined as a systematic arrangement and ordering of thoughts. It refers to a mode, procedure or way of investigation according to a defined and regular plan. A method teaches us how to arrange thoughts, propositions and arguments in a way appropriate to the investigation or exposition of a certain proposition or observation. Method includes structured reasoning such as induction or deduction where thoughts progress in an orderly way from one stage to another until they reach a certain objective and convincing conclusion. Method also refers to research techniques and tools used to gather data such as observation, case studies, or surveys. A methodology, on the other hand, is a science that deals with methods and their application in a particular field. It is concerned with the suitability of the methods and techniques of reasoning employed in a certain investigation. Methodology determines the sources from which a particular knowledge can be derived and the approach taken by a researcher to achieve understanding of certain phenomena. It also sets standards for the acceptability of evidence and determines the role of reason in the investigation. By providing standards for the acceptability of evidence and a set of methods for a systematic ordering of thoughts, methodology liberates reason from subjectivity and personal inclinations. This results to some extent in objectivity and predictability. Scholars and researchers in a particular field who use the same set of methods and methodology are better able to understand and evaluate work in that field.

Researchers' choice of methods and methodology is influenced by the basic unit of analysis in their discipline. By 'unit of analysis' is meant the object of the particular research – natural phenomena, legal rules, markets,

behaviours of an individual or a group. The kind of units of analysis in a field influences the choice of methods for the investigation of the truth in that discipline. Natural phenomena, for example, comprise entities that have no volition of their own; *i.e.* they do not choose how they behave; rather, how they behave is governed so-called 'natural laws'. For such phenomena, the appropriate methods are those that can discover such laws – they include observation, experimentation, induction, deduction and other scientific methods which are mostly aimed at producing descriptive analyses.

By contrast, humans have volition; they can make choices. Nevertheless, they are also subject to rules and regulations or laws, which are either man-made or of divine origin. While man-made law is derived from customs and conventions or made by a legislature, Islamic law has its own unique sources based on revelation. The role of human reason is to extend the normative statements given in the Qur'ān and the *Sunnah* to new cases through the exercise of *ijtihād*. The methodology adopted for this purpose is different from the methodology used in the natural sciences. In the methodology of *fiqh* the role of reason is to extend the law divinely prescribed for humans to new cases, while in scientific methodology the role of reason is to discover the laws in nature through observation and experiment. Human nature and behaviour are different from the phenomena studied by the natural sciences. The latter are consistently subject to 'natural laws' and predictably uniform; by contrast, human nature can be changed by education, family upbringing, economic and social factors, or controlled by self restraint.<sup>1</sup>

A human group or collectivity is not subject to the kind of laws that govern natural phenomena. The many individual members of the group have diversified choices and preferences. This results in numerous variables, which militates against consistency or uniformity. Similarly, a group should not be treated like an individual. An individual is held responsible for his actions and omissions. He is therefore the only proper subject for the enforcement of the law. For instance, an individual could be prosecuted for offences, or sued for civil liabilities. In contrast, human groups and societies cannot be prosecuted as a group in a court of law, imprisoned, punished, or declared bankrupt collectively. The commands and prohibitions addressed to an individual are meant to be permanent. In contrast, group related decisions are not about command and prohibitions. They are temporary decisions, which may differ from a society to a society, from a situation to a situation, and from time to time. A human group or collectivity is the proper subject of research for the social sciences.

The collective behaviours of human groups are the proper subject of research for the social sciences, not the natural sciences. Different criteria of proof also have an impact on methodologies and influence the choice of methods. The main difference between Islamic and secular methodologies lies in source of knowledge, and the former's acceptance of revelation as supreme proof, while the latter denies any role for revelation in discovering or explaining the truth and recognises only empirical methods.

### III. *Fiqh* as a Legal System

Literally, the word *fiqh* means to understand and have knowledge of something. As a technical term it refers to knowledge of the practical legal rules as derived from their particular sources (Mahmasani, 2000: 8). During the time of the Prophet (*pbuh*), *fiqh* was not used in the latter sense alone but carried a wider meaning covering the whole of religion. For instance the Qur'ān states: "That they may gain understanding (*liyatafaqqahū*) of the religion" (9: 122). The Prophet is also reported to have blessed Ibn 'Abbas saying: "O God give him understanding (*faqqihhu*) in religion" (Al-Bukhārī 2002:46 vol.1.) Both, the Qur'ānic verse and the *Ḥadīth*, mean a deeper understanding of the religion and not only knowledge of the legal rules. However, later the science of *fiqh* got a more specialized meaning, which became synonymous with law and legal matters. Thus, *fiqh* as understood today includes various branches of legal rules on transactions, family matters, criminal offences, as well as matters related to worship ('*ibādat*).

The Qur'ān and the *Sunnah* provide normative statements on what an individual Muslim ought to do or avoid, which constitute the basic units of analysis in the discipline of *fiqh*. The early jurists focused especially on those rulings of the Qur'ān and *Sunnah* that concerned the actions, rights, and obligations of an individual Muslim. The verses of the Qur'ān that contained these rulings were termed as *āyāt al-aḥkām*. A *Sharī'ah* ruling (*ḥukm Sharī'*) was defined as a communication from the Lawgiver concerning the conduct of the *mukallaf* (Kamali, 1989: 321). A *mukallaf* refers to an individual able to understand and carry an obligation. Based on this the acts of a Muslim individual would fall within the five categories of obligatory (*wājib*), recommended (*mandūb*), permissible (*mubāḥ*), abominable (*makrūh*) and prohibited (*ḥarām*).<sup>2</sup> The *sunnah* of the Prophet is defined to include his sayings, acts, and tacit approval where the emphasis was more on legal *sunnah* (*sunnah tashrī'iyah*). It is largely these individual rights, obligations, and actions that have characterised the discourse of *fiqh*.

#### IV. The Methodology of Islamic Jurisprudence (*Uṣūl al-Fiqh*)

With the spread and expansion of Islam to new territories unprecedented issues arose that demanded answers. In order to avoid legal chaos these answers had to be provided with reference to the Qur'ān, *Sunnah*, the practice of the Companions and reasoned opinion (*ra'y*). In the words of Iqbal (2004:118) "systematic legal thought became an absolute necessity". Differences however emerged. These differences were initially geographical where 'the people of traditions' (*ahl al-ḥadīth*) were mostly associated with Madina, while the 'people of reasoned opinion' (*ahl al-ra'y*) were mostly associated with Kufah. Later, however they found as their chief representatives Imam Malik in Medina and Imam Abu Hanifah in Kufah. These early disagreements between the people of traditions (*ahl al-ḥadīth*) and the people of reason (*ahl al-ra'y*) and the subsequent emergence of various *fiqh* schools could be attributed to their differences of methodologies. This could be seen in the different standards that they adopted for the acceptability of *ḥadīth* and in particular solitary (*āḥād*) *ḥadīth*. The *Ḥanafīs*, for instance, gave preference to analogy over a solitary *ḥadīth*. They also differed on the extent to which reason could be allowed to play a role in determining matters of *Shari'ah* as far as legal (*fiqh*) issues were concerned. These subsequently influenced their choice of methods. While all schools agreed on analogy (*qiyās*) they differed over other methods. Imam Shāfi'ī who initially tried to bridge the gap between the two methodologies could not condone the *Ḥanafīs* excessive use of reason and in particular their juristic preference (*istiḥsān*) as it permitted unlimited use of reasoning. His methodology is therefore closely identified with those of the people of traditions (*ahl al-ḥadīth*).<sup>3</sup> However, the methodologies adopted by all the *fiqh* schools have a common characteristic – they all make reason subservient to revelation. The difference however, was in the degree.

The methodology that evolved through the efforts of Muslim jurists is called *uṣūl al-fiqh*. It is concerned with the sources of the *Shari'ah*, the rules of interpretation of the source texts and the methods of reasoning. It represents a joint venture between revelation and reason where the latter is always subservient to the former. The role of human reason is to extend the normative statements of the Qur'ān and the *Sunnah* to new legal issues or to provide answers to new legal problems through certain well-developed methods of reasoning. These methods include analogy (*qiyās*), consensus (*ijmā'*), juristic preference (*istiḥsān*), general public interest (*maslaha al-mursalaha*), blocking the means (*sadd al-dharā'i'*), presumption

of continuity (*istiṣhāb*) and customs (*‘urf*). The exercise of *ijtihād* through these various methods of reasoning produced immense wealth of legal rules. However, the bulk of these rulings were concerned with the conduct of the individual *mukallaf*.

Consequently, the methods of reasoning used in *uṣūl al-fiqh* are also more individually oriented. *Ijma‘*, for instance, is defined as consensus of Muslim jurists upon a matter of Islamic law (*ḥukm shar‘ī*) (Zuhaili 1998:491). All non-legal matters such as matters related to war, or matters concerning the management of peoples' affairs (*tadbīr umūr al-ra‘iyyah*) are excluded from the scope of *ijmā‘*. (Zuhaili 1998: 536) All analogical deduction (*qiyās*) is defined as the extension of a *Sharī‘ah* ruling from an original situation (*aṣl*) to a new situation where the latter has the same effective cause (*‘illah*) as the former. The *ḥukm* that is extended to the new case must be with regard to practical matters. It must be a legal rule that pertain to acts, rights, and obligations of an individual. A certain rule that does not fall within the ambit of *fiqh* cannot be extended to new issues through *qiyās*. *Istiḥsān* as a method of reasoning relies on *qiyās* which was initially introduced by the *Ḥanafī* School and later adopted by the other Schools of *fiqh*. *Istiḥsān* was applied to cases where a decision based on *qiyās* would produce hardship to the people. As a result a Muslim jurist will set aside *qiyās* and give preference to another evidence that may remove hardships.<sup>4</sup> *Maṣlaḥah* literally means benefit. Technically, *maṣlaḥah mursalah* refers to a consideration which is proper and harmonious with the objectives of the *Sharī‘ah*; it secures a benefit or prevents a harm; and the *Sharī‘ah* provides no indication as to its validity or otherwise.<sup>5</sup> *Sadd al-dharā‘i‘* is defined as blocking the means to an expected evil which is likely to materialize if it is not obstructed (Kamali, 1989: 310). Based on this method the means even if permissible itself would be declared prohibited if it leads to an evil or prohibited act or outcome.

## V. Uṣūl al-Fiqh and Group-Related Issues

*Uṣūl al-fiqh* as a methodology aims to arrive at normative statements that conform to the principles of Qur’ān and *Sunnah*. These normative rulings are made by jurists through the process of *ijtihād* and bind each and every member of the society. A widely used method of reasoning is analogy (*qiyās*) which is almost universally accepted by all *fiqh* schools. *Qiyās* or deductive reasoning is reasoning from the principle. It extends a certain rule of the Qur’ān and the *Sunnah* to a new case where the latter has the same effective cause (*‘illah*). While referring to *qiyās*, Iqbal observes: “The School of Abu

Hanifa tended to ignore the creative freedom and arbitrariness of life, and hoped to build a logically perfect legal system on the lines of pure reason (Iqbal, 2004:140). The creative freedom and arbitrariness of life is evident in the social sciences in general and economics in particular, more so than in the legal system of Islam. The existence of numerous variables and factors influencing social and economic phenomena and the changing nature of social and economic realities militate against formulating permanent laws similar to those of *fiqh*.

A case in point is the practice of the Prophet (*pbuh*) that he confiscated the lands of tribes who fought the Muslims and did not surrender peacefully. The use of analogy (*qiyās*) would lead to the confiscation of any land whose inhabitants put up a fight and did not surrender peacefully. The legal ground (*'illah*) to confiscate the land was present when Iraq was conquered. However, against the opinions of the Companions who insisted on following the practice of the Prophet (*pbuh*), 'Umar (ra) refused to distribute the massive territories of Iraq among the Arab soldiers. Fazlur Rahman argues that Caliph 'Umar's refusal to distribute massive territories one after another among the soldiers 'was motivated by fundamental considerations of socio-economic justice' (Rahman, 1996: 220-32, 224). He also argues that the Prophet "was acting within a restricted milieu of tribes' and his practice cannot be carried on 'where vast territories and whole peoples are involved; otherwise you violate the very principles of justice for which the Prophet had been fighting all his life'.<sup>6</sup> The reason why Caliph 'Umar departed from an established practice was his deep insight to distinguish between a rule of the Prophet (*pbuh*) that concerns groups and a rule that is addressed to an individual. A ruling concerning a group may change from a situation to a situation. A mere mechanical comparison of one situation with another and the application of a *Sunnah* intended for the former to the latter would lead to rigidity and sometimes unfair decisions. Converting a ruling of the Prophet initially meant for a group and intended as a policy statement into a legal rule intended for all the times to come and apply that to all subsequent similar cases may go against the intention of the Prophet (*pbuh*) and the higher objectives of the *Shari'ah*.

Another example could be the distribution of *zakāh* funds to the eight recipient groups. The majority of jurists are of the opinion that the authorities are not bound to distribute the *zakāh* fund equally among the eight recipient groups. Some of the groups may receive a higher proportion than others. They also argue that this is a policy issue left to the authorities



to decide whether *zakāh* funds should go to some recipient groups such as the poor and the needy to the exclusion of others. Thus, the distribution aspect of *zakāh* is not governed by *fiqh* rules and is entirely left to the Muslim authorities to decide as this concerns issues related to groups. Similarly, the issue of how *zakāh* affects the distribution of wealth across classes and groups could not be addressed by the methods of reasoning in *uṣūl al-fiqh*. In contrast, the basic principles concerning the amount of *niṣāb*, the duration of *ḥawl*, the rate of *zakāh* are laid down by *fiqh* as *zakāh* is an obligation on an individual. *Fiqh* methods of reasoning such as *qiyās* are used to extend the rule of *zakāh* to rented houses and salaries. These are issues that cannot be decided by resort to interviews and questionnaires or left to authorities for their decision.

Besides analogy (*qiyās*) another method of *uṣūl al-fiqh* that may not suitably be applied to group issues is consensus of juristic opinion (*ijmāʿ*). *Ijmāʿ* according to the majority opinion represents a juristic consensus on a legal (*fiqhī*) issue. An *ijmāʿ* is also binding on subsequent generations. Instead consultation (*shūrā*) could be the right method for matters that affect groups and collectivities. It represents the deliberation and decisions of experts in a certain field other than the law (*fiqh*). These decisions may not be followed in subsequent similar situations. In *shūrā* the overriding principle is the consideration of public interest which may change from time to time.

In contrast *maṣlaḥah* also called *istiṣlāḥ* is more suitable as a method to introduce policies for the general public rather than a law for the individual. Indeed, the examples of *maṣlaḥah* given in *fiqh* books are not purely legal but are related to governmental decisions, policies and administrative issues. These include issuing currencies, establishing prisons, waging war on those tribes who refused to pay *zakah*, and imposing *zakāh* on the wealthy when public treasury runs out of funds. These are measure aimed to secure a certain public benefit (*maṣlaḥah*). Similarly, *sadd al-dharāʿi* has a great potential to be used to block the means to a certain public harm (*mafsadah*) or to open the means to a certain public beneficence (*maṣlaḥah*). For instance, when Ḥudhayfah one of Caliph ‘Umar’s officials in Madain married a Jewish woman the Caliph ordered him to divorce his wife. In reply to Hudhayfah who wrote to the Caliph arguing for the validity of the marriage the Caliph wrote that his example might be followed by others attracted by the beauty of the women of *ahl al-dhimmah* (Kamali, 1989: 313). It must be noted, however, that the jurists from both the *Hanafi* and *Shāfiʿī*



schools had reservations about the suitability of *maṣlahah al-mursalah* and *sadd al-dharāi'* as independent proofs in *uṣūl al-fiqh*. The opponents of *maṣlahah* argued that the use of *maṣlahah* would result in the application of *ḥarām* and *ḥalāl* in some places or to some persons and not to others. Al-Shāfi'ī approves of *maṣlahah* only within the general scope of *qiyās* while Abū Ḥanīfah recognises it as a variety of *istiḥsān*. (Kamali, 1989: 278). The *Ḥanafī* and *Shāfi'ī* jurists also did not recognise *sadd al-dharāi'* as a principle of jurisprudence in its own right. They argue that the necessary ruling regarding the means can be derived by recourse to other principles such as *qiyās* and *istiḥsān* (Kamali, 1989: 314).

The methods of reasoning in *uṣūl al-fiqh* could be defined as reasoning from the principles prescribed in the source texts, *i.e.* the Qur'ān and the *Sunnah*. These methods enable a jurist to arrive at a normative statement and extend it to new cases. The methods of reasoning in economics could be described as reasoning from experience and observation. These methods of reasoning produce descriptive hypotheses or assumptions that suggest a certain relationship between economic variables or discover a certain economic reality.<sup>7</sup> For instance, the methods of reasoning in *fiqh* are not meant to discover or explain the effects of prices on behaviours, the law of supply and demand or to tell us how markets behave in a certain given situation. These methods of reasoning can explain what should be supplied and what should be demanded or what an individual should do or refrain from. In contrast methods of reasoning in economics are not designed to decide on the permissibility or prohibition of acts or things. For instance, it is not possible to decide whether or not *tawarruq* or *bay' al-ʿinah* are permissible through observation, market research, case studies, questionnaires, interviews, or surveys. These are purely legal issues and should be decided with reference to legal methods of reasoning of analogy (*qiyās*) or blocking the means (*sadd al-dharāi'*).

## VI. Economics as a Descriptive and Social Science

Economic theories and principles are descriptive hypotheses and assumptions that explain economic realities. A descriptive statement or a statement of a fact is a statement of what is. It is a statement that describes a specific reality or a certain relationship between variables. Such statements are arrived at ostensibly on the basis of observation of economic phenomena and realities in a certain society and some assumptions about human economic behaviours. They involve numerous variables which defy permanence

and always demand a new investigation and approach. For instance, data-based research of economic crises and conditions is descriptive. This can only reveal the situational character of the discipline. There exist so many variables that it is difficult if not impossible for economic research to be of any predictive value. In contrast the rules of *fiqh* are normative statements. A normative statement is a statement of value that expresses an attitude towards what should be. It expresses a preference. It is not concerned with describing scientific or economic realities.<sup>8</sup>

Economics is a social science. It is concerned with policy issues that affect groups or collectivities. Policy decisions related to collectivities involve numerous variables that defy permanence and always demand revision. They are not legal rulings. A legal rule by its very nature is addressed to an individual. It establishes on a permanent basis whether a certain act is obligatory (*wājib*) or forbidden (*ḥarām*). Whereas economic policies are not about obligation or prohibition. They are mainly based on factual realities and are intended to achieve certain results. Economic policies may therefore differ from time to time and from one society to another. However, an Islamic economic policy should always endeavour to achieve the objectives of the Sharī'ah.

Economics is not the study of one individual's behaviour but how an aggregate of them would behave in a given economic situation. Since it is difficult to predict how groups of people would behave, due to the existence of numerous variables and preferences, the study therefore is focused on general human nature. Assumptions about 'rational individuals' motivated by self-interest are used to formulate certain economic theories and hypotheses. These theories and hypotheses are used to predict how groups of humans would make their decisions with regard to scarce resources.

Among the most important economic assumptions that have widespread implications for the premises and theories of this discipline are those that relate to humans' natural dispositions and motives as they are and not as they ought to be. Economic assumptions and theories cannot be built on human behaviour as it ought to be. Such an attempt assumes the observance and internalization of *fiqh* rules and ethics by each and every individual of a certain group. The problem with this assumption is that individuals differ with each other as far as the observance and implementation of *fiqh* and ethics are concerned. *Fiqh* rules and ethics are extraneous forces that impose certain restraints on human behaviour. The influence of these extraneous forces differs from one individual to another. It is therefore always safe to

base assumptions on human nature and find out how, not one individual, but a group of them would behave in a certain given economic context. For instance, Caliph ‘Umar (ra) refused to distribute Iraqi land among the soldiers on the ground that if Arab soldiers became land settlers they would cease to be fighters. He argued based on human nature that if a person settles and busies himself with the land he is more likely to abandon jihad, as a result of which the cause of religion may suffer. We should not forget that among the soldiers were the Companions and the Successors. This policy was made with reference to human nature as it is and not as it ought to be. It is not therefore argued that how groups of humans ought to behave should not be addressed by economic policies. Rather, Islamic economic policies should be designed in a way that would ensure people’s compliance with the Shari‘ah principles. Thus, the difference between secular and Islamic economics is in the design and implementation of economic policies.

## VII. Sources and Methods of Reasoning in Islamic Economics

### 7.1. The Holy Qur’ān

The first source for the knowledge of Islamic economics is the Qur’ān as is also the case with *fiqh*. However, unlike *fiqh* which focuses on Qur’ānic verses that confer rights or impose obligations on individuals (*āyāt al-aḥkām*), Islamic economics should focus on those verses that contain descriptive statements about human nature. Similarly descriptive statements of the Qur’ān on economic phenomena and verses concerning groups or collectivities fall within the ambit of Islamic economics.

The Qur’ān has many descriptive statements on human nature. These include, for instance, verse 33: 72 which states that man “has always been prone to be most wicked, most foolish”; verses 42:27 which links human transgression to affluence and richness; verses 4: 32, 20: 131 that explains the covetous nature of man which desires what others have and thereby his vulnerability to be influenced by external social and economic factors.<sup>9</sup> Humans by nature love wealth. For example, verses 3: 14-15 describes man’s love of wealth and verse 100: 8 states that “verily, to the love of wealth is he most ardently devoted”. Islam does not, therefore, condemn seeking wealth but instead introduces certain guidelines within which wealth can be earned and spent. We may also refer to verse 2: 30 where the angels while referring to man’s *khilāfah* on earth said that men would “spread corruption thereon (*liyufsidū fihā*) and shed blood”.<sup>10</sup> The fact that God did not reject their claim but merely said that, “verily, I know that which you do not know” shows that

man by nature is prone to cause disorder (*fasād*).<sup>11</sup> These descriptions in the Qur'ān of human nature fall outside the scope of *fiqh*.

The Qur'ān also describes the attributes of certain economic realities. For instance, verse 43: 32 states: "But is it they who distribute thy Sustainer's grace? [Nay, as] it is We who distribute their means of livelihood among them in the life of this world, and raise some of them by degrees above others, to the end that they might avail themselves of one another's help". This verse describes the differences in wealth, talents, physical and mental capacities and other potentials among people. It also explains the reason for the existence of these differences as they enable humans to make use of each other and in the process meet each other's economic needs.

The Qur'ān also describes the attributes of groups or collectivities. These statements are wider in scope and application than the normative statements of the Qur'ān or *Sunnah*. While the latter are only applicable to Muslim individuals the former are equally applicable to both Muslim and non-Muslim collectivities. For instance, verses 2: 251 and 22: 40 states: "were it not that God repels (*daf'*) some people by means of others, corruption (*fasād*) would surely overwhelm the earth". The word *daf'* used in both verses literally means repelling<sup>12</sup> and convey the meaning of checking and defending.<sup>13</sup> This, it is argued, is a descriptive statement concerning human groups and not its individual members. The Qur'ān in these verses says that in order to restrain groups of people from doing injustice to each other the law of mutual check and balance applies. Some Muslim commentators are of the view that these verses refer to two groups of people one standing for justice, peace, and order (*iṣlāh*) and the other representing the forces that are for oppression, war, and disorder (*fasād*). They subsequently argue that if the forces that are for justice and order (*iṣlāh*) do not check those that stand for injustice, then disorder (*fasād*) will prevail on earth. From this they conclude that if Muslims do not check and repel the non-Muslims the outcome will be disorder (*fasād*) on earth.<sup>14</sup> This interpretation, however, means that when Muslims are powerless the forces that stand for disorder (*fasād*) could not be countered. This necessarily means that this rule (*sunnah*) of Allah (swt) with regard to human societies would not be operational. Furthermore, this interpretation has unnecessarily restricted the wider implications of these verses. The Qur'ān in these verses refers to one of the laws (*sunnah*) of Allah (swt) whereby He empowers groups of people to counter each other's aggression and keep each other, through mutual checking and repelling, in a state of balance. This will act as a natural deterrence which restrains collectivities from aggression. It may cover a situation where the forces that

are for justice and order (*iṣlāḥ*) check other forces that stand for injustice and disorder (*fasād*). However, it may also equally cover situations when two equally oppressive or evil powers or two groups which are equally just may find themselves, because of their conflict of interests in the complex world of politics and economics, in a position to restrain and check each other. It is this mutual checking by different political and economic forces that curbs disorder (*fasād*) and keeps various groups and powers in a state of equilibrium (*iṣlāḥ*). In contrast, it is the absence of mutual repelling and checking by different human groups that can lead to disorder (*fasād*). This concept of mutual check and balance could also be extended to markets. For a market to be in a state of equilibrium there should be competitions among the various market forces. Competitions prevent monopoly of any one force and ultimately bring about equilibrium (*iṣlāḥ*) to the market. A competitive market represents a state of equilibrium and determines a fair price which should not be disturbed by unnecessary interferences.

### 7.2. Sunnah of the Prophet (*pbuh*)

The second source for the knowledge of Islamic economics is the ḥadīth of the Prophet (*pbuh*). The division of *Sunnah* into legal (*sunnah tashrī'iyah*) and non-legal *sunnah* (*sunnah ghayr tashrī'iyah*) has provided a useful guidance in order to distinguish between a *hadith* which provides a basis for a *fiqh* rulings and a ḥadīth which does not (Kamali, 1989: 51). Among the non-legal *Sunnah* are also the rulings which originate from the Prophet (*pbuh*) in his capacity as imam or head of the state such allocation and expenditure of public funds, decisions pertaining to military strategy and war, appointment of state officials, distribution of booty, signing of treaties, and *etc.* which legal rules cannot be derived. This type of *Sunnah* does not entitle individuals to any right, nor oblige them unless a decree to that effect is given by a lawful authority.<sup>15</sup>

A situational treatment of the Prophet (*pbuh*) of certain group issues should not be taken as a definite, rigid rule meant for all times and all situations to come. Instead we should focus on what the Prophet intended to achieve.<sup>16</sup> The ḥadīth related to groups that concerned socio-political and economic issues should be understood to have meant to prevent a certain public harm and to realize a certain public interest. The spirit of these types of ḥadīth which is the prevention of public harm (*mafsadah*) and the realization of public interest should be pursued. However, the means used to prevent a public harm or to achieve a public interest may differ. These are

related to policy matters which could best be dealt with by the concerned leadership through the process of consultation (*shūrā*). It is therefore argued that a distinction should be made between a decision made on a question of law and a decision made on a question of policy. Group-related decisions were meant to acquire a certain public interest (*maṣlahah*) and prevent certain harm (*mafsadah*) the consequences of which were not necessarily limited to an individual but affected a certain group or the society as a whole. These decisions concerned policy issues and were not intended to become permanent legal rules.

This argument is further supported by the practice of the Prophet (*pbuh*). There were complaints that the prices of certain items were high and people requested the Prophet (*pbuh*) to fix the prices. He replied: "Allah is the one who fixes price, who withholds, who gives lavishly, and who provides, and I hope that when I meet Him, none of you would have a claim against me for any injustice with regard to blood or property".<sup>17</sup> A proper way is to identify a public harm that the *ḥadīth* intended to prevent and not the application of *qiyās*. The *ḥadīth* indicates that prices are determined by forces which are beyond human control. That the forces of supply and demand and competitions among maximising agents propel market towards equilibrium and determine a fair price for commodities, goods, and labour. It also indicates that price determination by the state (*tas'ir*) or any other state interference that disturbs the normal market conditions and equilibrium is harmful. However, this equilibrium could be disturbed, for instance, by hoarding, meeting the rider on his way to the market (*talaqqī al-rukbān*),<sup>18</sup> monopolies, underselling, and collusion among otherwise competitive firms. These practices allow market players to manipulate prices and introduce a degree of artificiality into the market. They act as hindrances to the natural functioning of the market, distort the existing equilibrium and spoil markets. Interference is therefore necessitated in order to stop interferences and restore the balance to the market. In this way, it is argued, the true meaning and spirit of the *ḥadīth* is upheld. Muslim jurists have also accepted the possibility of interference in the market in these situations under the doctrine of necessity and public interest. Indeed the institution of *ḥisbah*<sup>19</sup> was established to prevent these hindrances to the natural functioning of the market. The *muḥtasib* was responsible for supervising markets and common morals. Among his duties were to check irregularities and to ensure that market players were on the right track and did not indulge in malpractices.

### 7.3. Readings of economic phenomena

The Qur'an and *Sunnah*, as discussed, constitute the two principal sources for Islamic economics. Using these sources may be described as reading from the texts. The other source for Islamic economics is 'reading' economic phenomena. Such reading enables the researcher to study certain economic phenomena and discover the relationships between variables. This will help to discover the reality as it is. The tools for reading economic phenomena include observation, experience, inductive reasoning, surveys, questionnaires, interviews, market research, statistical methods, quantitative research and other methods and techniques of economic analyses developed by conventional economics. This will result in a different type of *ijtihād* where human reasoning guided by revelation is applied to the study of economic phenomena.

### 7.4. The Objectives of the *Shari'ah*

While studying the descriptive economic realities of the society a Muslim economist should be guided by the objectives of the *Shari'ah* and propose policies that would achieve them. The objectives of the *Shari'ah* in particular when they are group-oriented and not individually focused provide valuable intellectual foundation for the subsequent development of Islamic economic ideas. One of the principal objectives of the *Shari'ah* is the prevention of *fasād*. The word *fasād* which is mentioned almost fifty times in the Qur'an has a wide range of meanings. It signifies "a state of disorder, or disturbance, or of destruction, annihilation, waste, or ruin" (Lane, 1982: 2396 Book 1). It also connotes mischief, corruption, exploitation, wrong, and all forms of injustice, mismanagement, anarchy, and chaos.<sup>20</sup> *Fasād* is the opposite of *iṣlāh*. *Iṣlāh* is derived from the root word *ṣalaha* which literally means good, incorrupt, sound, right or a proper state, or in a state of order (Lane, 1982: 216 Book 2). *Iṣlāh* refers to a state of equilibrium where things are in a proper order and balance. Muslim jurists have also used the word evil (*sharr*) and harm (*ḍarar*) as synonymous with *mafsadah*. Ibn Ashur argues that numerous textual proofs confirm the fact that removal of corruption (*dar' al-mafāsīd*) and the acquisition of good (*jalb al-maṣāliḥ*) is "the overall objective of the *Shari'ah*" (Ibn Ashur, 2006: 88) and the "fundamental universal rule of the *Shari'ah*" (Ibn Ashur, 2006: 90). Muslim jurists are of the opinion that any measure that prevents a *mafsadah* is in line with the objectives of the *Shari'ah* even if the latter does not provide any indication as to its validity, always provided that it should not turn a prohibited act into a permissible one and vice versa.<sup>21</sup>



In order to prevent a public harm or evil (*mafsadah ʿāmmah*) the Muslim economists should emphasize *Shariʿah*-oriented economic policies (*siyāsah sharʿiyyah iqtisādīyah*). A *Shariʿah* oriented policy is a policy that is designed to achieve the objectives of the *Shariʿah*. Since prevention of harm or disorder (*fasād*) is one of the principal objectives of the *Shariʿah*, a *Shariʿah* oriented policy should be designed in a way that would achieve this objective. However, a public harm (*mafsadah*) due to the dynamic interaction of socio-economic forces presents itself in a variety of forms. It may also vary in degrees from time to time and differ from one society to another. It is therefore not possible to identify on a permanent basis and enumerate the various forms of *mafsadah* and the corresponding *maṣlaḥah*. Neither are they enumerated by the Qurʾān or the *Sunnah*. While deductive reasoning (*qiyās*) can be used to declare on the permissibility or prohibition of a certain act or thing on a permanent basis, it is not feasible to use *qiyās* to decide whether or not a certain situation amounts to *mafsadah* by comparing it with a previous form of *mafsadah*. Instead inductive reasoning is used to identify the causes or effects, as the case may be, of a certain economic *mafsadah*. Similarly, the prevention of a certain public harm (*mafsadah*) or acquiring a certain public interest needs various approaches and policies. These policies once taken are meant to deal with a particular issue that affects the public in a certain time-space and may change with the passage of time. They are not rules of law that cannot be amended and are meant for generations to come. In other words policies are not intended to declare a certain act permanently permissible (*ḥalāl*) or prohibited (*ḥarām*).

It was due to this evolving nature of *mafsadah* and *maṣlaḥah* that Muslim jurists did not enumerate them on a permanent basis. Instead they laid down certain general maxims on how to deal with a *mafsadah*. For instance, the *Mejelle* states: ‘Repelling an evil is preferable to securing a benefit’.<sup>22</sup> The jurists have also held that a private harm could be inflicted in order to prevent a public harm. Article 26 of the *Mejelle* says: “A private injury is tolerated in order to ward off a public injury”. These legal maxims show the priority that Muslim jurists have accorded to the removal of public harm (*mafsadah/ḍarar*) even if it is at the expense of an individual or individuals. For instance, non-performance of basic duties by a state may lead to underdevelopment, unemployment and economic crises. These are various forms of *mafsadah* that should be avoided by imposing more taxes, in addition to *zakāh*, on individual citizens.<sup>23</sup> In circumstances where two evils (*mafsadah*) present themselves at the same time the lesser of the two evils is chosen. In such cases the greater evil is avoided by the commission

of the lesser. The *Mejelle* states: "In the presence of two evils the one whose injury is greater is avoided by the commission of the lesser".<sup>24</sup> It also states: "Severe injury is removed by lesser injury".<sup>25</sup> These maxims indicate that various measures could be valid provided they lead to the prevention of public harm or disorder (*mafsadah*). The method for the prevention of public harm and the ways for the realization of public interest would change from time to time and place to place.

### VIII. Conclusion

Methodologically speaking a Muslim jurist's approach towards legal issues and a Muslim economist's approach towards economic phenomena have one thing in common. Both these approaches and the methodologies of investigation have accorded revelation a superior position, whereas reason and empirical observation are always made subservient to it. However, the methods of reasoning and research in the two disciplines differ as they focus on two different units of analysis. In *fiqh* the subject-matter is the acts, rights, and duties of an individual Muslim. It prescribes whether a certain act is obligatory (*wājib*) or prohibited (*ḥarām*) or falls between these two on a permanent basis. Subsequently, its focus is on the normative statements of the Qur'ān and the *Ḥadīth*. The methods of reasoning in *fiqh* are designed to extend these normative statements to new cases. In contrast, economics is a social and descriptive science. Its basic units of analysis are human nature, scarce resources, economic phenomena, and a large aggregate of persons. Thus, *fiqh* and Islamic economics in their search for discovering the truth have to rely on two different set of methods as the objects of inquiry in the two disciplines are different.

It was due to the needs of everyday practical life that *fiqh*, and not economics and social sciences in general, got the greatest attention from the Muslim jurists in the formative history of Islamic law. This focus on the actions, rights, and duties of an individual Muslim has subsequently influenced the later efforts of Muslim jurists in developing a methodology for *fiqh*. *Uṣūl al-fiqh* has the most comprehensive methods for legal reasoning. However, some of these methods, in particular analogy (*qiyās*), juristic preference (*istiḥsān*), and consensus of juristic opinions (*ijmā'*), may not suit the social and descriptive aspects of Islamic economics. On the other hand, public interest (*al-maṣlaḥah al-mursalah*) and blocking the means (*sadd al-dharā'i'*) can usefully be employed to guide Islamic economic policies.

Islamic economics should pay greater attention to those verses of the Qur'ān that describe human nature and economic phenomena. Similarly, descriptive statements of the Qur'ān on human groups and collectivities provide valuable intellectual foundation for the development of Islamic economic thought. Non-legal *Sunnah* (*Sunnah ghayr tashrī'iyah*) and *ḥadīth* on markets are another source for Islamic economics. The focus should be on how to deal with a certain public harm (*mafsadah*) that the *ḥadīth* intended to prevent. In the light of these two sources Islamic economics can adopt methods of reasoning and analysis developed by conventional economics. This will help a Muslim economist to know the reality, explain particular economic phenomena and discover the particular relationship between economic variables. The knowledge of the objectives of the *Shari'ah* is another source for Islamic economics. The objectives of the *Shari'ah* when they are related to groups and in particular the prevention of public harm (*mafsadah*) and the acquisition of public interest (*maṣlahah*) are guiding principles for designing *Shari'ah*-oriented economic policies.

## NOTES

1. Many Qur'ānic verses and *aḥādīth* refer to *akhlāq*. The Prophet (pbuh) is reported to have said that he was sent to perfect the most beautiful *akhlāq*.
2. The Hanafis have classified human conduct into the seven categories of obligatory (*fard*), lesser obligatory (*wājib*), recommended (*mandūb*), permissible (*mubāḥ*), disapproved (*makrūh tanzihī*), reprehensible (*makrūh taḥrīmī*), and prohibited (*ḥarām*).
3. For a discussion see *Al-Shāfi'ī's Risāla: Treatise on the Foundations of Islamic jurisprudence*, translated into English by Majid Khadduri, 1987, pp. 28-40. See also Taha Jabir al-Alwani, *Uṣūl al-Fiqh al-Islāmī*, 1990, pp. 33-7.
4. See Kamali, 1989: 245-266. See also Nyazee, 2000: 230-2.
5. See Kamali, 1989:267.
6. Italics in the original.
7. See Zarqa, 2003: 3-42.
8. *ibid*, p. 6.
9. *ibid*, pp. 14-15.
10. Muslim commentators have advanced different arguments as to the source the of angels' knowledge about these two destructive human qualities. There are arguments that angels' knowledge was based on inference which they came to by comparing Adam (as) with the jinn who had inhabited the earth prior to man, caused corruption and shed blood thereon. There are also arguments that the angels were informed by Allah (swt) and that the Qur'ān, while discussing the events of the creation, because of brevity, did not mention this part of the conversation between Allah (swt) and the angels. See Imām Fakhr al-Dīn al-Rāzī, *al-Tafsīr al-Kabīr*, pp.169-170; 'Abdullāh Muḥammad ibn Aḥmad, al-Anṣārī al-Qurtubī, p. 235; Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān 'an Ṭawīl Āyy al-Qur'ān*, pp.157-160; Abū al-Faḍl Shihāb al-Dīn al-Sayyid Mahmūd al-Alūsī al-Baghdādī, p. 222; Muḥammad ibn 'Ali ibn Muḥarnmad al-Shawkānī, p. 63.

11. See Fazlur Rahman, 1999: 17-18.
12. See Lane, 1982: 890, Book 1.
13. See Asad, 1980; and Ali, *The Meaning of the Holy Quran*, respectively.
14. See for example, Rāzī, Qurṭubī, Shawkānī, Ṭabarī; see also Abū'l-Qāsim Maḥmūd ibn 'Umar al-Zamakhsharī, p. 382 and Jalāl al-Dīn al-Suyūṭī, 1993: 764-769. See also Muḥammad al-Ṭāhir ibn 'Āshur, pp. 500-503; Muḥammad Ḥusayn Faḍlallāh, 1983: 220-221.
15. *ibid*, p. 56 where the implication of the *ḥadīth* 'whoever reclaims barren land becomes its owner' is discussed.
16. For a discussion see Fazlur Rahman, 1996: 129-189 and 147-148.
17. Reported by Aḥmad, Abū Dāwūd, al-Tirmidhī, Ibn Mājah, al-Dāri, and Abū Ya'lā. See also Yūsuf al-Qaraḍāwī, 1995: 255.
18. It refers to a practice where a caravan would be stopped on their way to the city market and telling them that prices there are low, with the design to purchase their goods themselves at the lowest possible price. See Essid, 1995: 156.
19. The history of the institution of *ḥisbah* goes back to the time of the Prophet pbuh. It remained in existence throughout the greater part of the Muslim world until the beginning of the twentieth century. The officer in charge of the *ḥisbah* was called *muḥtasib*. For a discussion see Islahi, 1988: 186-191.
20. See al-Zabīdī, 1306H: 452 vol. 2; Mir, 1987: 42.
21. See al-Ghazālī, 1356/1937: 139-140.
22. *The Mejelle*, Article 30.
23. See, al-Qaraḍāwī, 2000: 986.
24. See *The Mejelle*, Article 28 and 29.
25. *ibid*, Article 27.

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