

The Use of Zakat Revenue in Islamic Financing: Jurisprudential Debate and Practical Feasibility

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Recent juristic debate rages around the possibility of using *zakah* revenue in Islamic law of public finance to better realize its intended poverty eradication goal. At the theoretical level, both the proponents and opponents employ extensive juristic argumentations to support their points of contention. The thrust of the proponents' argument is that *zakah* without productive implementation would not serve its designated goal of poverty alleviation while the opponents countered this case by saying that *zakah* collection is primarily designed to be immediately disbursed to the consumption needs of the recipients and not *vice versa*. In practice, however, it seems that the arguments by the proponents is favored as some countries like Kuwait and Malaysia, aside from providing handouts, also finance health care and education for the poor and needy. Accordingly, in our considered opinion, these issues need to be revisited with the primary aim of identifying a balanced legal stand and a feasible institutional framework which takes into full account both the consumption needs and future self-sufficiency of the deserving recipients. To this end, this paper begins by briefly outlining some theoretical aspects of *zakah*. Then, it proceeds to critically examine the juristic debate surrounding the permissibility of *zakah* utilization for financing Islamic socio-economic infrastructure. And lastly, it reviews the proposed framework for such utilization with the idea of advancing some jurisprudentially consistent proposals for further academic explorations.

Conceptual framework

*Zakah*¹ literally means to grow, to increase and to purify. When it is said about a person, *zaka nafsuhu*, it means to improve and become better.² According to Ibn Taymiyyah, it implies the idea of making the soul of the *zakah* payer better and his wealth purified.³ This is succinctly clear from the declared *ratio legis* of *zakah* commandment according to the Holy Qur'an, "Take *zakah* from their wealth to purify and cleanse them."⁴

¹ It is to be remembered that the Qur'an also uses the word *sadaqah* to imply *zakah*, for instance, see al-A'raf :156, Maryam:31, al-Anbiya:72, al-Mu'minun:4. Similarly, the Prophet, when dispatching Mu'adh to Yemen, said: "Inform them that Allah has prescribed *sadaqah* on their funds..." Nevertheless, it was later on that the jurists made a technical distinction between *sadaqah* and *zakah*, defining the former as donation and voluntary charity, and viewing the latter as financial obligation that a *zakat* payer must fulfill toward the poor. See Yusuf al-Qaradawi, *Fiqh az-Zakat*, Monzer Kahf (trans.), (London: Dar al Taqwa Ltd, 1999), pp.xlv-xlvi. See also Muhammad Abu-Saud, *Contemporary Zakat* (Cincinnati: Zakat and Research Foundation, 1988), pp.9-12

² Al-Qaradawi, *Ibid*, p.xliii.

³ Ahmad Ibn 'Abd al-Halim Ibn Taymiyyah, *Majmu' al-Fatawa* (Mecca: Maktabat al-Nahdah al-Hadithah, n.d), vol.25, p.8.

⁴ Al-Tawbah:103

Technically, *zakah* stands for an act of monetary worship according to which any Muslim who possesses wealth (*mal*) equal to or exceeding a laid down amount (*nisab*) has to give away (in person or through proxy), at the prescribed rate, a portion of it to specifically designated categories of people.⁵

Legislative foundation

Zakah derives its validity from numerous verses of the Qur`an and prophetic traditions, among which the following are explicit. The Qur`an⁶, among others, mentions:

- And they were commanded not, but that they should worship none but Allah alone and perform the *salah* and give *zakah*, and that is the right religion.⁷
- ... and in their wealth and of possessions is assigned a right for the needy and those who suffer deprivation.⁸
- O Muhammad, take out of their possessions *sadqat* so that you may cleanse and purify them thereby, and pray for them.⁹

The substance of the above Qur`anic *ayat* are affirmed by many *ahadith* (pl. of *hadith*)¹⁰ of the Prophet:

- i. It classifies *zakah* as one of the pillars of Islam:

Islam is based on five principles: “to testify that there is no god but Allah and that Muhammad is His Prophet, to offer regular prayers, to pay *zakah*, to perform *hajj* and to observe fasting.”¹¹

- ii. It declares it to be the designated right of the poor that has to be levied on the wealth possessed by the wealthy:

The Prophet sent Mu`adh to Yemen and told him, “You are going to the people of a Divine Book. First of all invite them to worship Allah (alone) and when they come to

⁵ Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* (Beirut: Dar al-Fikr, 1989) vol.2, p.730.

⁶ The word *zakah* occurs thirty times in the Qur`an, and in twenty-seven of them it is mentioned side by side with *salah*. For details see, al-Qaradawi, *Fiqh al-Zakat*, pp.9-22.

⁷ Al-Bayyinah:5

⁸ Al-Dhariyat:19

⁹ Al-Tawbah:103

¹⁰ *Hadith*, the plural of which is *ahadith*, means relayed information about the Prophet’s statements, practices and tradition which may either contain legislation or may just relate the Prophet’s undertaking as an administrator. In Islamic jurisprudence, the import of the *hadith* as such is called *Sunnah*, which is the second primary source of the *hukm* (law or rule) in Islam.

¹¹ Al-Khatib Tabrizi, trans. Fazlul Karim, *Mishkat al-Masabih* (Delhi: Islamic Books Services, 1994), vol1, p.96.

know Allah, inform them that Allah has enjoined on them five prayers every day and night, and when they start offering these prayers, inform them that Allah has enjoined on them *zakah* which is to be taken from the rich among them and given to the poor among them. And if they obey you, then take *zakah* from them and do not take the best of their possessions.¹²

Accordingly, *zakah* like other pillars of Islam is another fundamental *‘ibadah* without which the fulfillment of one’s claim of loyalty to Islam will be seriously doubted and even negated. That is why Abu Bakr, one of the righteous Caliphs, resolved to fighting those who defied paying it, contending, among others, that it would be legitimate to fight against anyone who discriminates between the two pillars of *salah* and *zakah* by doing the former and willfully rejecting the other.¹³ The Prophet was also reported to have said: “He who pays it seeking the reward from Allah will be rewarded and he who refuses to pay it, we shall take it from him...”¹⁴

Characteristics

Zakah, unlike the social security system in the West¹⁵, has the following unique features¹⁶:

- It is a pillar of Islam, and hence its payer does not do any favor to the beneficiary but discharges his obligation toward Allah.
- Although it somewhat resembles other state-enacted taxes as the state can collect it through its own functionaries and can penalize its deliberate default, *zakah* surpasses the worldly jurisdiction of the sovereign states as its enforcement as a religious obligation lies deep in the inner conscience of the believers.
- It has been designed to be used for specific causes.
- In terms of welfare coverage, it does not only provide relief for the poor and downtrodden but even to wealthy under stress such as new entrants to the fold of Islam and *bona fide* insolvent debtors.

The socio-economic purposes

Aside from its spiritual and moral¹⁷ objectives, *zakah* as a pillar of Islam is legislated to achieve the following socio-economic goals:

¹² Muhammad Ibn Majah, *Sunan Ibn Majah* (Beirut: Ihya al-Turath al-‘Arabi, n.d.), p.416.

¹³ He said this in response to ‘Umar’s objection to such a policy. For details see Mustafa al-Khin *et. al*, *al-Fiqh al-Manhaji* (Beirut: Dar al-Qalam, 1996), pp.274-275.

¹⁴ Ahmad Ibn Husayn Al-Bayhaqi, *al-Sunan al-Kubra* (Multan: Nashr al-Sunnah, n.d.), vol.4, p.105.

¹⁵ It is a system devised to provide for social contingencies, such as incapacity to work, unemployment, old age or death of the bread winner in two ways: by social insurance in which the beneficiary must contribute; and social assistance which, although does not require contribution by the beneficiary, is conditioned upon his means of income. Furthermore, the coverage of *zakah* is wider than the social assistance as aside from helping disabled, it also helps a debtor in distress etc. See Najmul Hasan, “Social Security System of Islam”, *International Centre for Research and Islamic Economics* (Saudi Arabia: King Abdul Aziz University, 1984), pp.5-9 & 36.

¹⁶ *Ibid.*, p.18. See also M.M. Metwally, “Fiscal Policy of an Islamic Economy”, in *Readings in Public Finance in Islam*, edit., Mahamoud A. Gulaid & Mohamed Aden Abdullah (Jeddah: Islamic Research and Training Institute, 1995), pp.303-305.

1. to promote economic growth and productivity through the circulation of wealth i.e. *zakah* stimulates the economic growth in the sense that it either enables the poor and the needy to become economically productive or helps the state to channel the *zakah* fund to profit-accruing business sectors with the view of creating job opportunities for the needy and the jobless¹⁸
2. to meet the consumption demand of the poor, thereby enhancing their purchasing power for goods and services
3. to check the tendency for hoarding the idle money, hence leading to production of goods and services
4. to finance projects such as education, medical care and social welfare, and again raising the productivity of the poor¹⁹
5. to ensure equitable distribution of wealth through this means. By instituting *zakah*, Islam aims at forestalling the creation of unnecessary unjust gap between the living standard of the poor and the rich, thus avoiding the most serious malady that afflicts the capitalist society.²⁰ Accordingly, it serves as a basic system for the implementation of socio-economic justice of Islam by which a certain portion of the income is transferred from the haves to the have-nots.²¹

Accordingly, from an economic point of view, these objectives have been epitomized *zakah* as a fundamental *`ibadah* aside from cleansing the human soul from selfishness and niggardliness, it is designed to serve as an effective measure in Islamic law of public finance. At the macro-economic level, it helps the redistribution of wealth from the wealthy to the vulnerable and the poor either by direct disbursement or by providing them with education, health facilities and other social services. At the micro-economic level, it provides powerful incentive to invest wealth rather than leaving it idle or unused.”²²

Bases of zakatability

Zakah becomes obligatory on a person, among others,²³ in accordance with the following general terms:

¹⁷ *Zakah* as a pillar of Islam and an act of worship is profoundly and spiritually flourishing. Its spiritual effect in terms of cleansing the *zakah* payer from the stinginess and niggardliness is underlined by the Qur'an, al-Tawbah:103. For details see, Ahmad Husayn `Ali Husayn, *Muhasabat al-Zakat* (al-Iskandariyyah: al-Maktab al-Jami`I al-Hadith, 2006), pp.29-39.

¹⁸ Ibid., pp.41-42.

¹⁹ Intiazi et al (edits), *Management of Zakat in Modern Muslim Society*, (Riyad: IDB, IRTI, 2000), p.11.

²⁰ Al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu* vol.2, p.372.

²¹ Mundhir Kahf, “Unresolved Issues in Contemporary Fiqh”, in *Development and Finance in Islam* (edit. Sadeq et al), International Islamic University Press, 1991, p.174.

²² Abu Al-Hasan Sadeq, *A Survey of The Institution of Zakah: Issues, Theories and Administration* (Riyad: Islamic Development Bank Islamic Research and Training Institute, 2004), Discussion Paper II, pp.61-17, and Habib Ahmed, *Zakah and Awqaf in Poverty Alleviation* (Jeddah: Islamic Development Bank Islamic Research and Training Institute, 2004), Discussion Paper 8, p.70.

²³ The juristic discourse on conditions of *zakah* is extensive, which have been ably summarized by Al-Qaradawi in his renowned work *Fiqh al-Zakat*. Some of these terms, such as productivity (growth/*nama*) has been seriously questioned by some contemporary economists. However, these details extend beyond the discussion of this paper, which offers only a brief outline of what we see as fit for the purpose of this study. For details see al-Qaradawi, *Fiqh al-Zakat*, pp.42-95.

- i. He fully owns and has control over his *zakah* payable wealth. This implies that mere possession of property is not a condition for obligation of *zakah*.
- ii. He owns productive property (known as 'growing wealth' as defined by the classical jurists). An item of wealth is held to be productive if it naturally increases by itself or has the potential to yield income. Thus, assets that are subject to depreciation owing to their use are not zakatable.
- iii. He owns *nisab*-fulfilling wealth which is over and above of his basic needs (subsistence). In Islamic Jurisprudence, in order to be zakatable, all zakatable wealth must reach certain quantum. For instance, the quantum for cash money and business inventory is the value of 85 grams of gold.
- iv. He owns such a quantum of money for duration of one year.

Types of zakatable wealth

The Prophet (p.b.u.h.) designated six common types of wealth that constituted the sources of income as zakatable in his time. They were metals (gold and silver-minted and unminted), agricultural crops (wheat, maize, barely, date and grape), mineral, treasure troves, livestock (camel, sheep and cow) and trade inventory. The succeeding generations of scholars have added other growing sources of wealth to the above list. Today zakatable wealth consists of agricultural wealth, animal wealth, underwater wealth, mineral wealth, industrial wealth, cash money, trade asset and income from shares, bonds, etc.²⁴

Zakah Beneficiaries

The Holy Qur`an identifies eight categories on which *zakat* must be spent. As we read in the Qur`an: “*as-sadaqat (zakat) are only for the fuqara’ (the poor), and al-masakin (the poor) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (toward Islam); and to free the captives; and for those in debt; and for Allah’s Cause, and for the wayfarer a duty imposed by Allah and Allah is All-Knower, All-Wise.*”²⁵

In practice, what do these categories refer to? The Prophet had determined them according to the socio-economic condition of his time and environment.²⁶ Likewise, the classical jurists²⁷ detailed the law within the context of their own understanding of the categories. Today, they are defined as follows:

- i. *Fuqara’* and *masakin* (the poor and needy) include orphans, divorced women, old people, handicapped, patients, permanent low income earners, families of

²⁴ For technical details see Ibid, 64-338.

²⁵ Al-Tawbah: 60.

²⁶ For instance, the Prophet defined *miskin* as the one who does not turn round men and who a morsel or two and a date or two turns back, but a *miskin* is he who does not find enough to make himself free from wants... nor he stands up and beg. See *Mishkat al-Masabih*, vol.2, p.61.

²⁷ The classical jurists also defined these beneficiaries. For instance, according to Hanafiyyah, *faqir* is better off than *miskin* as he has but not equal to *nisab*, whereas to Shafi`iyyah and Hanabilah, the reverse is the case. Abd Allah Ibn Ahmad Ibn Qudamah, *al-Mughni* (Cairo: Dar al-Qalam, n.d), vol.6, p.457-458. See also Abd al-Hafiz Farughli Ali al-Qarni, *al-Zakah wa Hajat al-`Asr*, (Qairo: Dar al-Sahwah, 1989), pp.113-114.

the prisoners and missing people, as well as students.²⁸ However, as to how much they should be given, the jurists' opinions differ. Some jurists maintain that they should be given what is sufficient for them and their families for a duration of one year.²⁹ This is mainly because if one full year is the unit of time for the collection of *zakah*, by the same unit of time the poor and needy should also be given the *zakah*. According to contemporary *ijthad*, the payment can be made directly to them if they have no expertise or are handicapped, sickly or weak; but if they are able to work, they should be equipped with tools and training to become productive or helped to become self-employed. That is why the Prophet asked a beggar to take the hatchet and collect wood wire rather being dependent on begging.³⁰

- ii. The *`amil* refers to the employee of the *zakah* department or other *zakah* management organizations as they devote their time and energy in the collection and distribution of *zakah*. In today`s context, such officers are salaried civil servants³¹ or staff of charity organizations. Thus, this portion may be given by way of another benefit to them or made part of portion to be used in financing.
- iii. Those who have been inclined (toward Islam) refer to new converts, and this is in order to integrate them into the Muslim community as they are cut off from their economic resources when revering to Islam. It may be also spent on encouraging peace and friendship between Muslims and non-Muslims.³² It may be also used to rehabilitate those confused about Islam or show tendency to renounce Islam.
- iv. Freeing slaves. Today, however, slavery is no longer part of our social life. Thus, this allocation can be used to free Muslims from captivity or oppression and socio-economic domination of the powerful.³³
- v. The insolvent. This category includes those who have incurred debt on account of poverty, wars, economic recession or even *bona fide*³⁴ loss in business activities. They should be helped to write off their liability.
- vi. For Allah`s Cause. There are numerous interpretations as to what this category means. Some say that it assigns a portion for those involved in *jihad* in the real sense of doing it for the sake of Allah, as the Prophet explained when he was asked about a man who fought for his tribe, because he is brave, or to show off: which of them was fighting for the sake of Allah? He said: "The one

²⁸ The list shows the practice *zakah* of Kuwait and Malaysia. See Abdul Qader Dhahi al-Ajeel "A Study on the Activities of Zakah Institutions that are Based on Non-Compulsory Payment of Zakat". A paper presented on the Third Zakah Conference, Kuala Lumpur, May 14-17, 1990, pp.11-12. See also Sayed Sikandar Shah (Haneef), *Zakat of Salary through Income Tax Rebate: Understanding its Legal Bases in Islamic Jurisprudence*, Unpublished IIUM Funded Research Project, 2007, pp.31-33, respectively.

²⁹ This is the view of the Malikiyyah, while to the Hanafiyyah each should be given 200 *dirhams*, and to the Shafi`iyyah they should be given an amount which makes them self-sufficient for their whole life. See Al-Khin, *al-Fiqh al-Manhaji*, p.323 and Ibn Qudamah, *al-Mughni*, vol.6, p.456.

³⁰ *Mishkat al-Masabih*, vol.2, p.245.

³¹ Abu Saud *Contemporary Zakat*, pp.166-167.

³² Ibid. See also Nadiyah Ahmad Hashim, "Masarif al-Zakat" in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A. Kamel Centre for Islamic Economics, 2002), vol.3, pp.19-20.

³³ Sadeq, *A Survey of the Institution of Zakah: Issues, Theories and Administration*, p.40 and also Abu Saud, *Contemporary Zakat*, p.166.

³⁴ Sadeq, *A Survey of the Institution of Zakah: Issues, Theories And Administration*, Ibid.

who fights so that the word of Allah may be supreme is the one who is fighting for the sake of Allah.”³⁵ Nonetheless, a vast majority of modern jurists suggest a broader understanding of “the cause of Allah” that extends beyond military engagements. To them, this phrase includes all types of struggles toward a righteous cause, such as propagation of Islam, Islamic education, activities to establish Islamic way of life by replacing anti-Islamic or secular systems, spending for social welfare programs and economic development projects, manpower training or even education in various scientific and technical fields on the ground that such programs will help the poor who directly participate in them.³⁶

- vii. The way farers. This category refers to travelers and all those who have lost contact with their local residence and are stranded in a foreign land and want to go back to their countries.³⁷ Such people may be given enough *zakah* to enable them to reach their homeland, even if they are rich in their own country.³⁸

Modern *ijtihad* on *Zakah* Disbursement

The classical jurists addressed the minutest details of the law of *zakah* to address judicious implementation of *zakah* in the context of socio-economic conditions as obtained at their time. Modern jurists in their turn revisited similar issues in the conditions that prevail at our time. In brief, some of the pertinent issues that pertain to today’s disbursement of *zakah* are as follows:

1. Mode of payment to the poor and needy

The issue here is whether the *zakah* has to be given directly to the poor and needy or if it can be utilized to take care of their welfare. Some contemporary scholars including Mohammad Qutub say that *zakah* can be used to provide social services such as for hospitals, schools and also for factories which create employment opportunities for the people.³⁹ According to Abu Zahrah, *zakah* can be given to welfare organizations whose core business is to look after the welfare of the poor and destitute.⁴⁰

Nevertheless, other scholars like Shihatah object to the use of *zakah* in socio-economic structure for the public as *zakah* does not belong to general public revenue in the state budget.⁴¹ But some exceptions include the financing of: 1) Islamic education, (2) vocational training and its necessary tools, (3) agriculture and cottage industries, (4) simple fixed assets for small utility and trade projects, (5) working capital for craftsmen, (6) low-cost-housing, and (7) medical facilities, free of charge or at a nominal fee. To

³⁵ Ibid.

³⁶ Renown figures like Maududi, Syed Qutb, Abul Kalam Azad and Shibli Nomani maintain this stand, Ibid.

³⁷ Ibid.

³⁸ For a detailed account of modern interpretation of *asnaf* (*zakah* beneficiaries), see Ahmad `Abd al-Aziz al-Muzayni, *al-Murshid al-Hayran fi Ahkam al-Zakat* (al-Kuwait: Dhat Salasil, 1984), pp.111-176.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

him, Islamic moral values and brotherhood requires provision of these goods and services in an Islamic society.

Qureshi also maintains that in principle, *zakah* should not be spent for the development of socio-economic structure except if such projects would enhance the position of the poor and the needy.⁴² This is also the official stand in Pakistan.⁴³

We believe that the proponents' view is more consistent with the spirit of the law of *zakah*, which was long ago envisaged by our jurists. For instance, al-Nawawi stated: "The purpose of *zakah* is to make the poor and needy reach their sufficiency. A craftsman would be given an amount sufficient to buy tools and equipment that would allow him to work and gain his sustenance... farmers would be given enough farming land to enable them to gain sufficiency of sustenance."⁴⁴ This thesis is built upon the statement by `Umar who said: "When you give, make the recipient rich."⁴⁵

1.2. Non-Muslims as recipients

Modern scholars are of divided opinions on this matter. Some like Shaik and Abu Saud maintain that there is no evidence in the Qur'an nor in the *Sunnah* to prohibit this, provided that the needs of Muslims are met first and the non-Muslims in question do not indulge in hostility towards Muslims.⁴⁶

On the contrary, other scholars like Maududi held this not to be permissible on the basis of the *hadith* "To be taken from your rich people and to be distributed to your poor people." Here "you" refers to "Muslim", while the non-Muslims should be helped from general welfare funds.⁴⁷ We believe some may argue that the view of permissibility may find support from non-conditionality of Islam on the part of slaves and insolvent debtor but its extension to *faqir* and *miskin* requires a policy decision on the principle of *siyasa shar'iyyah* by individual states.

2. Amount to be given to the recipients

A question arises as to whether the *zakah* fund should be equally distributed to all categories or to the extent of their needs. Some scholars like Abu `Ubayd appear to have suggested that there is no limit of paying *zakah* to a single recipient.⁴⁸ For example, it is permissible to pay a beneficiary so much that he can buy a house, if he does not have one. This receives support from the implication of the classical jurists' pronouncements. For instance, al-Nawawi is reported to have held that a recipient of *zakah* should be given enough money to make him self-sufficient. According to Malikiyyah and Hanabilah,

⁴² Ibid, p.40

⁴³ The Majlis Tahqiq Masail Hadirah totally rejected this idea as it violates the principle of its *tamlik* by the deserving beneficiaries, Ibid.

⁴⁴ Quoted in al-Qaradawi, *Fiqh al-Zakat*, pp.355-356.

⁴⁵ *Sunan al-Dar Qutni*, vol.2, p.133.

⁴⁶ Ibid, Abu Saud, *Contemporary Zakat*, p.176.

⁴⁷ Sadeq, *A Survey of the Institution of Zakah: Issues, Theories and Administration*, p.41.

⁴⁸ This represents the Hanafi's position. See Nadiyah Ahmad Hashim, "Masarif al-Zakat", p.38.

self-sufficiency should be assured for a full year.⁴⁹ But according to al-Shafi`I, all beneficiaries must be give their due shares.

Corollary to this is, must *zakah* be given to all the heads of recipients? The answer to this question varies among the jurists. Some like Abu `Ubayd and al-Mawardi maintain that it has to be spent on all the categories mentioned and no category should be encroached upon by another. Nevertheless, according to Ab `Ubayd, it does not have to be equally portioned, and the ruler has the discretion to allocate more to those who are more in need than others.⁵⁰

Abu Yusuf, on the other hand, does not see this as necessary. To him, the ruler has the liberty to give the *zakah* to anyone of the eight categories. He may spend only on one category if it is deemed most appropriate.⁵¹

Debate over legitimacy of *zakah* financing

As to whether *zakah* fund can be utilized in financing development projects and trade ventures to expand its disbursement beyond the current need of the recipients, especially among them the poor and needy, the jurists have generally held two diverging views⁵². One group maintains⁵³ that the *zakah* collections must be disbursed immediately to the recipients; the state has no *locus standi* to invest it with the view of generating more income. Their main arguments are:⁵⁴ firstly, it does not only blur the designated class of beneficiaries, it also contravenes the principle of *tamlík* by the recipients, namely the *faqir*, *miskin*, *amil* and *mu`allafat al-qulub* among them. The reason being that the Qur`anic use of proposition *li* with reference to them implies the transference of *zakah* from the owner of wealth to these groups. Hence, the ruler has no such discretion on the matter. Secondly, it is against the condition of prompt distribution of the *zakah* to its recipient. This is the view of the majority of the jurists who argued that delay might be detrimental to the interest of the poor in the event that the fund is destroyed or lost.⁵⁵ Thirdly, *zakah* is not supposed to be reserved for future needs, rather it is primarily designed to alleviate the present economic need of the recipients. Lastly, using *zakah* in income earning projects is a kind of disapproved innovation in the area of immutable aspect of Islam i.e. legislating on a pillar and religious rite, thus *ultra vires* of the Islamic law.

⁴⁹ Ibid, p.39. See also Khurshid Ashraf and Iqbal al-Nadwi, "Masraf al-Fuqara wa al-Masakin: Tatbiqatuhu al-Mu`asirah", in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A. Kamel Centre for Islamic Economics, 2002), vol.3, pp.6-14.

⁵⁰ Sadeq, *A Survey of the Institution of Zakah: Issues, Theories And Administration*, Ibid, p.42.

⁵¹ Ibid. See also Khurshid Ashraf and Iqbal al-Nadwi, "Masraf al-Fuqara wa al-Masakin: Tatbiqatuhu al-Mu`asirah", pp.6-14.

⁵² According to the resolution adopted by the Fiqh Academy in its third round of discussion on 13 October, 1986, there were four different position on the issue: conditionally permissible, allowed on the surplus of the collected *zakah*, permissible to the extent of using the portion allotted to *fi sabil Allah* (in the cause of God) only and total prohibition. See Husayn Ali Muhammad Munazi, "Tawzif al-Zakat fi Mashru`at Intajiyah" in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A. Kamel Centre for Islamic Economics, 2002), vol.3, p.8.

⁵³ Scholars like Qureshi and Taqi Uthmani represent this point of view. Daud, *Malaysian Zakat System* p.19.

⁵⁴ Abd al-Fattah Muhammad Farah, *al-Tawjih al-Istithmari li al-Zakat* (Dubai: Bank Dubay al-Islami, 1997), pp.45-46.

⁵⁵ Al-Qaradawi, *Fiqh al-Zakat*, pp.519- 520.

The majority⁵⁶, on the other hand, disagree and rebut the opponents' arguments by saying that firstly, since according to the majority of classical schools the ruler can spend the entire *zakah* fund for the benefit of the most in need of help among the *zakah* recipients, it is well within his power to finance socio-economic infrastructure for such as an end. Secondly, it would not be a violation of *tamlīk* (transference of private ownership to the poor) as some jurists like Hanafiyyah and Shi`ah Zaydiyyah do not make this a condition for spending on these categories. To them, feasting and clothing of the poor from the zakatable income of the *zakah* payer amount to the fulfillment of his *zakah*.⁵⁷ Thirdly, its disbursement does not have to be prompt as maintained by Abi Bakr al-Jassas of the Hanfiyyah and al-Razi and Shi`ah Imamiyyah. According to al-Razi, it is a well-established principle of *usul al-fiqh* that mere command (to give *zakah*) does not require delayed or prompt disbursement but requiring the disbursement itself (sooner or later).⁵⁸ The Hanafiyyah also generally classify *zakah* as an obligation with extended due time (*wajib muwaasa`bi al-tarakhi*).⁵⁹ Accordingly, instead of giving the poor recipients their share in lump sum, they could be given monthly stipend from the proceeds of the *zakah* investment. Forthly, the very fact that `Umar was insistent on giving the poor an amount that would be sufficient for them for rest of their lives, and the Hanafis and al-Shafi`is agreement on providing the poor with tools of labor from *zakah* fund to become self-reliant are cogent proofs that *zakah* can be used for future security and the need of the recipients.⁶⁰ Lastly, it is not an innovation of a denounced type (*madmumah*) as it benefits the recipients and does not harm them, thus belonging to the category of approved or praiseworthy innovation (*mahmudah*), which can be initiated on financial matters, such as *zakah*.⁶¹

Accordingly, the majority of contemporary jurists hold it to be permissible provided that:

- the ultimate ownership of its return and the capital sum be spent on the recipients,
- only the surplus fund should be invested, and
- investment activities should be carried out with extra caution and prudent financial planning so as to avoid loss to the pool of *zakah* property.

Qureshi, on the other hand, still contests this idea by maintaining that it should not be given a blanket approval and this matter should be left to the poor and needy to choose between consumption and investment, since their consumption needs may be more pressing, which may be compensated only by very high profits. Thus, the optimal choice for the poor and needy may be to avoid any investment from *zakah* funds.⁶² El-Din also

⁵⁶ Scholars like al-Qaradawi, al-Zarqa, Wahabah al-Zuhayli al-Nabhan, Shahhatah, Munazi` and Farah represents this view. See Munazi` in *Abhath Nadwat al-Tatbiq al-Mu`asir li al-Zakat* (al-Azhar: S.A .Kamel Centre for Islamic Economics, 2002), vol.2, p.4.

⁵⁷ Ibid, pp.17-18.

⁵⁸ Ibid, pp.14-15.

⁵⁹ Al-Qaradawi, *Fiqh al-Zakat*, p.519.

⁶⁰ Ibid., pp.19-21; Farah, *al-Tawjih al-Istithmari li al-Zakat*, pp.51-52.

⁶¹ Farah, *ibid*, p.52.

⁶² He commented on investment proposal by expressing his misgiving about it. See Shawki Ismail Shihatah, "Limitation on the Use of Zakah Funds in Financing the Socio-economic Infrastructure of Society", in Imtiaz et al (edits), *Management of Zakat in Modern Muslim Society*, (Riyad: IDB, IRTI, 2000), p.75.

joins Qureshi by saying that in today's context this option is not economically feasible as the role of small scale industries today has dwindled and is superseded by the increasing rise of global corporate economy.⁶³

In our opinion, the view of the majority is to be credited as it receives support based on the Prophet's permission to a group of people from `Uraynah to drink milk of the *zakah* camels.⁶⁴ This, according to Ibn Hajar, implies that other uses such as riding and leasing would be also permissible, which by extension covers the issue in question. Furthermore, this argument is strengthened by the substance of many jurisprudential rule of *zakah* including the following:

1. It is to benefit the deserving poor recipients by providing them with working capital or tools of profession as was agreed by all the jurists.
2. It is in line with the idea behind the territorial disbursement of *zakah* as according to al-Qaradawi was intended to effectively help in the alleviation of poverty.⁶⁵ This process is also in consonance with giving priority to the poor and destitute as the ruler may deem fit. This definitely also harnesses the proposition for productive use of *zakah* funds to make these segments self-sufficient.⁶⁶
3. From the economic point of view, productive disbursement of *zakah* to the poor and needy would thwart the inflationary effect⁶⁷ of *zakah* on Islamic economy. Accordingly at macro level, it should be permissible as a matter of economic necessity within the framework of Islamic fiscal policy. The productive disbursement scheme for this is suggested to be through preparing a surplus *zakah* budget. Then, this fund should be mobilized by investing it in industries to provide employment for the poor. The profit from these investments would be granted in the form of *zakah* certificate, cashable at the option of the holder after a period of three to six months. This way, the propensity for the poor to consume more (demand) can at least be dampened for a short period.⁶⁸ Another dimension to this is that investment oriented disbursement of *zakah* funds would have a cumulative effect on reducing poverty.⁶⁹

Proposed theoretical mechanisms for *zakah* financing

⁶³ Saifeddin Tag El-Din, "Allocative and Stabilization Function of Zakat in an Islamic economy", in *Readings in Public Finance in Islam*, edit., Mahamoud A. Gulaid & Mohamed Aden Abdullah (Jeddah: Islamic Research and Training Institute, 1995), p.332.

⁶⁴ Quoted in Farah, *al-Tawjih al-Istithmari li al-Zakat*, p.55.

⁶⁵ Al-Qaradawi, *Fiqh al-Zakat*, p.637.

⁶⁶ Quoted in Shihatah, *Limitation on the Use of Zakah Funds in Financing the Socio-economic Infrastructure of Society*, p.62.

⁶⁷ It would be inflationary as the poor have higher tendency to consume than the rich. If they were given direct cash as *zakah*, the result would be increased in the aggregate demand in the economy (pushing the price higher). It thus further damages the interest of the poor. See Sabahaddin Zaim, "Recent Interpretation of the Economic Aspect of Zakah", in Intiazi et al (edits), *Management of Zakat in Modern Muslim Society*, (Riyad: IDB, IRTI, 2000), p.114.

⁶⁸ Ibid.

⁶⁹ Ibid., p.116

The supporters of *zakah*'s potential for financing have offered various models for *zakah* investments, among them include the following models:

Shihatah's proposed model

Shihatah, while proposing a framework for the contemporary use of the *zakah* fund in financing the Islamic socio-economic projects,⁷⁰ suggests the following:⁷¹

1. *Zakah* revenues can be used in lawful *mudarabah* projects, with the *zakah* authority acting as the owner of the capital, and the *zakah* beneficiaries acting as partners by contributing their work. The profits will be distributed between them on the basis of a pre-decided ratio.
2. Loans can be provided to able-bodied beneficiaries who pay the money back; this may generate a new source of finance for the beneficiaries.
3. Giving possession of low cost houses on the basis of rent financing.
4. Financing partnership businesses that would culminate in the ownership for the benefit of the *zakah* recipients.
5. Provision for leasing light fixed assets and production tools with a nominal fee or rent to the poor or the needy.
6. Interest free loans to those suffering from calamities, illnesses or costly surgery.

Anwar's Proposed Model

According to this model, a jurisprudentially consistent mechanism can be worked out for the purpose of *zakah* utilization in financing development projects. To this end, Anwar proposes the establishment of a special financial institution called "Awqaf-Zakat Investment Fund" (AZIF) from the *zakah* fund. It would be registered as a *waqf* institution and shall operate as profit-seeking corporate venture. It may have its branches and affiliate offices throughout the country, investing *zakah* funds into long-term concerns. Its paid up capital would be distributed in terms of shares to the *zakah* beneficiaries. In collaboration with Islamic banks, AZIF would engage in financing activities in accordance with well-known *Shari'ah*-compliant modes in projects that would most benefit the poor and the needy and helps alleviate poverty. For example, the financing of building infrastructure in the rural areas, as well as the financing of the small- and medium-sized industries, such as fisheries and poultries run by the poor and for their benefit etc. To manage the loss risk, AZIF would diversify its investment portfolios as well as building a loss reserve account from its earnings over time. To Anwar, this model is a *Shari'ah*-compliant one because of the following reasons: (i) it satisfies the juristic conditions of *tamlík* (personal ownership of the *zakah* fund) by the poor and needy as they would be the shareholders of commercial products by virtue of their shares; (ii) it guarantees against the loss and meets it, if incurred, from its built-up loss reserve account; (iii) it fulfills the condition of immediacy of *zakah* disbursement to

⁷⁰ He proposes financing projects such as education, vocational training, rehabilitation facilities, small agricultural and cottage industries, low cost housing, health care etc. For details see Shihatah, *Limitation on the Use of Zakah Funds in Financing the Socio-economic Infrastructure of Society*, pp.70-71

⁷¹ *Ibid*, pp.69-73.

satisfy the pressing consumption need of the poor and the needy as it makes arrangements with prominent outlets to accept their certificates (Zakah House in Kuwait issues coupons), representing shares at a price not less than their face value when selling their commodities or services. These outlets can redeem these certificates later from the *zakah* centers.⁷²

Farah's model

To Farah, to accomplish the utilization of *zakah* fund for investment purposes, there is a need for establishing a special *zakah* investment bank (*bank iththimar al-zakawiyah*). This bank, in coordination with *zakah* departments, can conduct financing activities that any other banks may undertake.⁷³

Zaki Badawi's model

To Zaki, in order to tackle the issue of *zakah* financing, a clear distinction should be made between the utilization of *zakat al-fitr* and *zakat al-mal*. The former should be used for the urgent consumer need of the poor and needy, while the latter should be invested in productive ventures such as textile factories, machine tools of manufacturing and low cost houses as long-term solutions in overcoming the problem of poverty.⁷⁴

The Practical Model: The Practice of Kuwait Zakat House

After outlining the theoretical framework for investment oriented disbursement of *zakah* funds, it is worthwhile to briefly mention what has been happening at the implementational level in the Muslim countries. To this end, we refer to the practice by Kuwait Zakat House as an example.⁷⁵

Kuwait Zakat House is a government institution. It has an independent budget and was established by Law No.5 in 1982. It aims at collecting and distributing *zakah* funds and other donations and spending them according to the Shari'ah principles. In this pursuit, its investment oriented approaches to *zakah* disbursement are as follows:⁷⁶

- i. It keeps *zakah* funds in two types of accounts with the bank, namely current and saving accounts. Its earning on saving accounts increases the original fund deposited with the bank.
- ii. It provides free interest loan to people in need of money and secure its repayment by way of installments.

⁷² Muhammad Anwar, "Financing Socio-economic Development with Zakat Funds" in *Journal of Islamic Economics*, vol. 4, 1 & 2, July 1995, pp.17-18.

⁷³ Farah, *al-Tawjih al-Istithmari li al-Zakat*, pp.19-23.

⁷⁴ Zaki Badawi, "Zakat—A New Source of Development Finance" in *Islamic Banker: News and Analysis of Islamic Banking, Finance and Insurance*, Issue: 4, March 1996, pp.18-19.

⁷⁵ It is regarded as a successful experience so far. See Anwar, "Financing Socio-economic Development with Zakat Funds" in *Journal of Islamic Economics*, vol. 4, 1 & 2, July 1995, pp.17-18.

⁷⁶ al-Ajeel, "A Study on the Activities of Zakah Institutions that are Based on Non-Compulsory Payment of Zakat", pp.10-30.

- iii. It finances the vocational training for capacity building of people capable of becoming productive citizens (under a scheme called productive rehabilitation scheme).
- iv. It sponsors poor students' education by offering them interest-free loans.

Conclusion

From the above discussion, it is clear that the productive use of *zakah* funds for the benefit of its beneficiaries derive its validity from many arguments by both legal and economic scholars. It becomes all the more rationally acceptable on the surplus *zakah* fund lying with the current accounts and even saving accounts of the banks in the case of countries that impose mandatory *zakah* on its citizens.⁷⁷ It would not be sensible that such huge amounts would be left idle and not exploited to increase the much needed fund for alleviating poverty and helping other *shari`ah*-designated social causes. As for religious legitimacy of such procedure, it suffices that the Prophet's practical guidance of asking the beggar to get the hatchet and collect the wood fire and sell it rather than being dependent on begging. Similarly, his permission to utilize the camel (collected as *zakah*) for milk and other utilities should not leave any shred of doubt on the lawfulness of *zakah* investment and financing. Moreover, since some countries have already embarked on this mode of disbursement, the academic debate about its legality should no longer be a subject of academic controversy. What remains ahead of us is the challenge of doing it efficiently so that the twin objectives of seeing people still fulfilling their *zakah* obligations, and beneficiaries from among the poor and needy attaining self-sufficiency are met. Accordingly, to successfully undertake such financing activities at the legal plane, the following *fiqhi* requirements must be met:

- i. The financiable funds should come from the portions of *zakah* allocated to beneficiaries other than those allotted to the unproductive poor and needy recipients. This should be combined with surplus funds available, if any, with *zakah* institutions. To do this, *zakah* collection must be made compulsory on all wealth including wages or businesses.
- ii. The operational cost should come from the profits or the organization budget.
- iii. Financing mechanism to carry out investment activities could be framed within the legal framework of each and every country. The reason is that in most of the Muslim countries, the *zakah* collection and disbursement are carried out by statutory bodies such as state religious councils affiliated with the other government bodies, such as Awqaf Ministry or Ministry of Finance. In our opinion, such a *zakah* body can have an entrepreneurship wing to conduct such financing activities, advised by competent *shari`ah* experts from an array of fields, such as Islamic law, economics, business, management, sociology etc. This would have the advantage of saving *zakah* departments from being seen as business organizations by ordinary folks.

⁷⁷ For instance, in Pakistan by 30 June 1989, over 4 billion rupees of undisbursed *zakah* fund was left idle in a current account. See Muhammad Anwar, "Financing Socio-economic Development with Zakat Funds" in *Journal of Islamic Economics*, vol. 4, 1 & 2, July 1995, pp.17-18.

- iv. The proper financial planning as highlighted in this paper should be in place so as to forestall avoidable business risks.
- v. The immediate consumer needs of the able bodied poor for essential goods and services, via practical mechanisms as referred to in this paper, should be fulfilled.