

Appraisal of Some Scholastic Views on Juridical Personality with reference to Islamic Banking Companies

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Abstract

The system similar to that of modern corporate body did not exist at the time of early periods of Islam, nor is there any express provision in Islamic Sources of Sharī‘ah on the concepts associated with present day companies. Therefore, the scholars of Islam differed in their viewpoints on the juridical personality of a ‘body corporate’ extending arguments both favouring and disfavouring it. Earliest contemporary work/ rulings on this issue could be traced back to beginning of the 20th Century (Rahim, 1908). Further works on the subject divulge diverse view of scholars/‘*ulamā*. The difference of opinion got intensified in the beginning of 21th Century when Islamic banking was re-launched in Pakistan. While the viewpoint of both, the proponents as well as opponents may be relevant, the author after discussing the arguments concludes that the view of the proponents is more authentic and convincing and has accordingly discussed and concluded that Islamic banks with their present character are not un-Islamic as far as their juridical capacity is concerned.

Keywords: Corporate Body, Juristic Person, Limited Liability, *Waqf*, *Bayt al-māl*, Joint Stocks, Trust, Islamic Jurisprudence.

KAUJIE Classification: I0, E0, L0, O3, T0, T1

JEL Classification: K00, K12, M10, Z12

1. Introduction

The concept, model and functioning of a ‘Company’ as legal person is only a few centuries old. When the practice widened, the character of company was further improved by inculcating the idea of perpetual succession through the principles of transferability allowing transfer of shares by shareholders, registration of the company with its unique name, right to sue and be sued in its name and the limited liability as one of the options.

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Historically, the concept more or less similar to that of a modern day 'body corporate' had been used in different societies with different names. The terms '*chreokoinōnina*' (Byzantine), *societas* (Romans), '*isqa*' (Jews) and '*qirāḍ*'/ '*muqāraḍa*' or '*muḍārabah*' (Islam) have long been used to describe the characteristics of joint ventures that could be considered similar to a company, partnership, etc.

Of these terms, '*commenda*' seems to have gained more commonality and popularity amongst the contemporary writers.¹ According to Timur Kuran (2011, p. 52), the most popular variants, *commenda* and *societas maris* resembled the *muḍārabah* and *mushārahah*. Both *commenda* and *muḍārabah* offered more flexibility than their closest contractual form i.e. '*isqā*', found in Talmud. Udovitch (1962)² regards *qirāḍ* (or *muḍārabah*)³ as precursor of *commenda*, and argues that western merchants learned such techniques from their Muslim colleagues in the Eighth Century. Pryor (1977)⁴ finds the antecedents of *commenda* in the Roman *societas*, Byzantine *chreokoinōnina*, Muslims' *qirāḍ* and Jewish '*isqa*'.

With the Industrial Revolution of Europe giving birth to the new concepts of company, the corporate law voyaged across the colonized nations, mostly via common law system under dominant patronage of the Great Britain. When the oldest known companies, i.e. Muscovy Company (Willan, 1956), East India Company (Sir George Christopher Molesworth Birdwood, 1893) and Hudson Bay Company⁵ were being formed in the years 1555,⁶ 1600⁷ and 1670⁸ respectively, their founders might not have foreseen that the World would soon be entering into a new era of human

¹ For a detailed account on the term *commenda* see: Ron Harris, The Institutional Dynamics of Early Modern Eurasian Trade: The *Commenda* and the Corporation, available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.501.7973&rep=rep1&type=pdf>, accessed on 17 Sep 2015.

² Cited by Ronald Findlay, Kevin H. O'Rourke (2007), p. 97.

³ Added by Humble researcher.

⁴ Cited by Ronald Findlay, Kevin H. O'Rourke (2007), p. 97.

⁵ Hudson Bay Company still exists. See web page: <http://www.hbcheritage.ca/hbcheritage/history/overview>, accessed on 25 Aug 2015.

⁶ Willan, T. (1956), *The Early History of the Russia Company, 1553-1603*, Manchester: Manchester University Press.

⁷ The Muscovy Company was chartered in 1555 as an English trading company; it had a monopoly on trade between England and Muscovy until 1698, and survived as a trading company until the Russian Revolution of 1917. See Guildhall Library Manuscripts Section <http://www.history.ac.uk/gh/russia.htm>, accessed on 25 Aug 2015.

⁸ The company was incorporated by English Royal Charter in 1670 for trading into Hudson's Bay and functioned as a *de facto* government in parts of North America. See https://en.wikipedia.org/wiki/Hudson%27s_Bay_Company, accessed on 25 Aug 2015.

interactions, expansions, developments under the attire of the ‘juridical person’ being created.

The joint stock companies used to pool up the stocks (commodities) against the securities known as share certificates. In 1825, transferability of their shares was allowed to shareholders of the stock companies. The right of suit in their own name and their registration was later allowed to companies in 1826 and 1844⁹ respectively, which triggered the minds of jurists to properly coin the concept of ‘juridical personality’. The privilege of ‘limited liability’, however, could only be granted expressly in 1855¹⁰ under the Limited Liability Act 1855, one year after passage of the Joint Stock Companies Act 1854. That is how the concepts were conceived and put into practice by the British parliament. Later, the concepts were confirmed in 1896-7 by virtue of famous case, *Salomon v. A Salomon & Co Ltd.*¹¹ In US, the first recognition of body corporate was a landmark case of the US Supreme Court in 1819.¹²

The concept of ‘juridical personality’ is one of the basic legal fictions. It is a non-human entity born to the law and it enjoys the status similar to that of a natural person.¹³ It has a legal name, rights, obligations, protections, privileges, responsibilities and liabilities just like human beings.¹⁴

The reason why the topic is significant is that most of the business and economic activities in the world are taking place by ‘bodies corporate’. The issue of declaring ‘bodies corporate’ against the principles of *Sharī‘ah*, will have much repercussions and might turn into turmoil in the society, particularly the Islamic world. Therefore, there is an urgent need to address the issue and explore/ determine the Islamic view about the ‘bodies corporate’.

2. Objective and Methodology

Objective/ Research Questions: This paper is based on analysis of the material available on the subject in the light of the principles of the *Sharī‘ah* as we find in classical sources of Islamic law. The objective is

⁹ Under the Companies Act, 1844.

¹⁰ Irfān Ahmed Sheikh (1986), *Company Law in Pakistan*, Lahore, p.1

¹¹ See: United Kingdom House of Lords Decisions, [1896] UKHL 1, [1897] AC 22, <http://www.bailii.org/uk/cases/UKHL/1896/1.html>, accessed on 3 Sep 2015.

¹² *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819). For text of the case see: <https://supreme.justia.com/cases/federal/us/17/518/>, accessed on 3 Sep 2015.

¹³ But obviously with few exceptions.

¹⁴ Excerpts taken from http://en.wikipedia.org/wiki/Legal_personality, 25 Aug 2015.

to explore the concept of ‘bodies corporate’ and their status under *Sharī‘ah* and its precedents/ equivalents in *Sharī‘ah*, if any. A few questions in this regard are: What is the concept of ‘bodies corporate’ and how they emerged? What was the early response of the jurists/ Islamic scholars/ ‘*ulamā*’ when the concept and practice of ‘bodies corporate’ reached and started flourishing in the Muslim nations? What are the arguments of those scholars who consider the concept as something not repugnant to Islam? What are the arguments/ precedents these scholars rely upon? What are the arguments of those scholars who consider the corporate bodies alien to Islam? What is the preferred view as per analytical review and what is the conclusion?

Methodology: For undertaking this study, the researcher has used published data based on library research exploring works/ books of different scholars/ ‘*ulamā*’ and *fatāwá* of various *muftís* issued time to time during the current century after emergence of hot debate in Pakistan over the validity, authenticity and genuineness of the Islamic banks as body corporates. The debate, *inter alia*, included contesting points such as juristic personality of the Islamic banks.

Plan of the Paper: After brief introduction and historic perspective, the view point of the scholars of the 20th century on the issue in general would be explored, followed by discussion on possible precedents of the juristic personality in the Islamic law which serve as the bases for arguments of the proponents. Thereafter, the points/ arguments of the opponents would be briefly discussed. Since the humble researcher finds himself inclined to agree to the proponents of the Islamic banks having juridical personality based on the strength of arguments, the next section would be dedicated to discussing the data and offering possible replies to the arguments/ points furthered by the opponents of the of the Islamic banks having juridical personality. Last section would contain conclusion.

3. Viewpoints of Scholars/‘*Ulamā*’ on the Status of Body Corporate

The contemporary viewpoint of the Islamic jurists on the issue emerged with the advent of 20th century. Sir Abdur Rahim¹⁵, in his book (1911)¹⁶ “The Principles of Muhammadan Jurisprudence” (P. 218) referred to

¹⁵ Sir Abdur Rahim (1867–1952) was a judge and politician in British India.

¹⁶ This is the substance of his lectures delivered in 1907 at the University of Calcutta, as Tagore Professor.

some jurists and conceived that the concept of ‘juridical Person’¹⁷ is not alien to Islam. Abdul Qādir ‘Awdah¹⁸ in his book “*al-Tashrī‘ al-Jinā‘ī*” (التشريع الجنائي الإسلامي مقارناً بالقانون الوضعي), “Islamic Criminal Legislation - compared with Modern law” dedicated a chapter on criminal liability discussing the juridical person. The book of Mustafā al-Zarqā,¹⁹ titled *al-Madkhal al-Fiqhi al-‘Ām* (المدخل الفقهي العام) contains a detailed description on the issue of ‘juridical person’. Contrarily, Schacht,²⁰ in his book ‘An Introduction to Islamic Law’ (1964) contended that Islamic law does not recognize juristic persons.²¹ As can be seen, all this was happening almost in first half of the 20th century. The later writings were mainly based on the arguments furthered by these scholars.

While describing the Islamic banking in the first decade of 21st century, a group of the contemporary ‘ulamā, *inter alia*, viewed that ‘Juridical Person’ is not against the Islamic injunctions. On this point, the books of Mufti Taqī Usmani, (2000)²², the Research work of a Group of Muftīs of *Dār al-iftā’*, *Jāmiā al-Rashīd*, Karachi (2009),²³ Collection of

¹⁷ Although the terms ‘Juristic Person’, ‘Juridical Person’, ‘Legal Person’, ‘Artificial Person’, ‘Persona Ficta’, and ‘Body Corporate’ basically have different connotations if seen minutely from technical aspects, yet in this study these terms have been used without prejudice to those technicalities.

¹⁸ Abdul Qādir ‘Awdah (1906-1954) a judge and constitutional jurist in Egypt.

¹⁹ Mustafa Ahmad Al-Zarqā was (1904 - 1999) born in Syria and died in Riyadh on 3 July 1999.

²⁰ Joseph Schacht (1902 - 1969), was a British-German professor of Arabic and Islam at Columbia University, New York.

²¹ Schacht, Joseph (1964), ‘An Introduction to Islamic Law’ Oxford Clarendon Press, p.125-126. He also wrote ‘Origins of Muhammadan Jurisprudence’ (1950).

²² Usmānī, M. Taqī (2000). *An Introduction to Islamic Finance*, Karachi; Wāhid, Muftī Abdul (2008). *Jadīd Ma‘āshī Masā’il awr Hadrat Mawlanā Taqī Usmānī Ke Dala’il ka Ja’ezah*, {(جدید معاشی مسائل اور مفتی تقی عثمانی کے دلائل کا جائزہ)}, *New Economic Issues and Analysis of the Arguments of Muftī Taqī*, Majlis Nashriāt-e-Islam, Karachi; Usmānī, M Taqī (2009). *Ghair Sūdī Bankārī: mut‘alliqā fiqhī masā’il kī tahqīq awr ishkālāt kā jā’ezah* {(غیر سودی بینکاری: متعلقہ فقہی مسائل کی تحقیق اور اشکالات کا جائزہ)}, *Interest Free Banking: Research on Relevant Fiqh Issues and Analysis of the Objections*, Maktaba Ma‘ārif ul Qur’ān, Karachi.

²³ Fellow Muftīs of *Dārul Īftā wal Irshād* (Ed.) (2009), *Ghair Sūdī Bankārī, Fiqhī Taṣawwūr, ḍarūrat o Ahmiyat, Aham Masā’il kī Tahqīq* {(غیر سودی بینکاری: فقہی تصور، ضرورت و اہمیت، اہم مسائل کی تحقیق)}, *Banking without Interest: Juristic views, necessity & significance, research on important Issues*, Al-Hijāz, Karachi.

Opinions of Various ‘*ulamā* (2009)²⁴ and work of Muftī Sāqibuddin, (2009)²⁵ can be quoted as example.

There are, however, contrary views of scholars/‘*ulamā* as well and their arguments cannot be overlooked altogether. Of these, Nyazee (2000)²⁶, Maulana Muhammad Tasin, (2001)²⁷ Muftī Habibullah,²⁸ *Fatāwā* of a group of Muftīs from Jāmia al-‘Ulūm al-Islāmiya, Binnori Town, (2008)²⁹ Muftī Abdul Wahid, (2008),³⁰ Muftī Ahmad Mumtaz, (2010)³¹ and Muftī Zar Wali Khan (2014)³², are a few to quote.

This study will evaluate the concept of ‘Juridical Person’ of a banking company, in conjunction with a little appraisal of the corporate laws in Pakistan, India and UK and the corporate laws of some of the Muslim Countries on the issue of juridical personality.

4. Possible Precedents of ‘Juridical Person’ in *Fiqh*

It has been asserted by the proponents that the concept of a ‘juridical person’ capable of rights and obligations had been existent since olden times. To substantiate this, they have drawn inference from Holy Qur’ān³³

²⁴ *Islāmi Bankārī Awr Sirat-e-Mustaqīm* ‘(Islamic Banking and the Straight Path (اسلامی بینکاری اور صراط مستقیم)) in the Islamic banking and ‘*ulamā* (اسلامی بینکاری اور علماء) (2009), Al Afnān, Karachi.

²⁵ *Islāmī Bankārī Awr Muttafiqa Fatwey Kā Tajziah*, {(Islamic banking and analysis of unanimous fatwa) (اسلامی بینکاری اور متفقہ فتوے کا تجزیہ)}, the book in soft form was accessed on site www.deeneislam.com, in August 2015.

²⁶ Imran Ahsan Nyazee (2000). *Islamic Law of Business Organisations (Corporation)*, International Institute of Islamic Thoughts, Islamabad, chapters: 5-12.

²⁷ Maulana Muhammad Tasin (1923-1998) served a head of *Majlis-e-Ilmi Foundation* Karachi for decades. In his book ‘*Mutabādil Sūdī Nizām ke Da‘wey*’ he has discussed that the whole corporate system is based on Capitalism which is not as per Islam.

²⁸ His two books, *al-Radd ‘ala al-Usmani* (الرد علی العثماني) and *Takmila al-Radd ‘ala al-Usmani* (تکملة الرد علی العثماني) contain a number of criticisms on the Islamic Banking System.

²⁹ Fellow Muftīs of *Dār al-Ifā’, Jāmeah al-‘Ulūm al-Islāmiya*, Binnori Town (Ed.) (2008), *Murawwaja Islāmī Bankārī: Tajziātī Muṭāliā – Shar‘ī Jāiza – Fiqhī Naqd o Tabṣera* {(مروجہ اسلامی (بینکاری): تجزیاتی مطالعہ – شرعی جائزہ – فقہی نقد و تبصرہ)}, the *Islamic Banking in Practice: Analytical Study – Shar‘ah Rulings – Juristic Critique and Comments*}, Maktaba Bayyenanā, Karachi. (hereafter reperd to as *Murawwaja Islāmī Bankārī*)

³⁰ Wāhid, Muftī Abdul (2008), *Jadīd Ma‘āshi Masā’il awr Hazrat Mawlanā Taqī Usmānī Ke Dala’il ka Ja‘eza*, {(جدید معاشی مسائل اور مفتی تقی عثمانی کے دلائل کا جائزہ)}, *New Economic Issues and Analysis of the Arguments of Muftī Taqī*}, Majlis Nashriāt-e-Islam, Karachi.

³¹ Mumtāz, Muftī Ahmad (2010), *Ghair Sūdī Bankārī – A Judicious Academic Analysis*, Jamia Khulafā –e- Rāshidīn, Karachi.

³² Khan, Mufti Zar Wali (2014), *Nām Nihād Islāmī Bankārī*, Al-Jāmia Al-Arabia Ahsan ul Ulūm, Karachi.

³³ “And the polytheists assign to Allah from that which He created of crops and livestock a share and say, "This is for Allah," by their claim, "and this is for our partners [associated with Him]." But

which shows that the Pagans of Arab, while distributing the products of agriculture and cattle, treated their idols as co-sharers beside Almighty Allah's share, thus attributing to them an entity which could acquire properties i.e. 'juridical personality'.

*Allāma Māwardī*³⁴ while describing the '*bayt al-māl*' has stated that it connotes a 'fund' and not merely a 'place' in itself (لأنَّ بَيْتَ الْمَالِ عِبَارَةٌ عَنْ (الجهة لا عن المكان).³⁵ This indicates that '*bayt al-māl*' may not be taken as a mere place of storage but includes all kind of public assets, e.g. immovable property, animals' herds, ammunition depots and water reservoirs etc. Therefore, it has more similarity with 'Juridical Person' having financial liability than that of a mere storage (of wealth).³⁶

Sheikh Mustafā Ahmad Al-Zarqā has covered the issue of 'juridical person'³⁷ exhaustively by classifying and sub-classifying it as under:

- 1) **Public Legal Person:** It is a legal person which relates to affairs and interests of people at large. It has two categories; (a) 'public authorities', e.g. the State and its subordinate departments, (b) 'public organizations' like public sector universities, hospitals, orphanages, etc.
- 2) **Private Legal Person:** The private legal person is solely created by the will of individuals and has no relation with State's administration. These private persons are of two kinds: a) As per their formation, e.g. foundations, and organizations; and b) As per the purpose they are aimed at; e.g. companies, or associations.³⁸ According to *al-Zarqā*, the private legal person has two ingredients: a) the common private interest of the partners in the business which distinguishes it from a natural person; and b) the specific liability which is essential part of the legal person.³⁹

what is for their "partners" does not reach Allah, while what is for Allah - this reaches their "partners". Evil is that which they rule." (al-An'ām:136).

³⁴ Al-Māwardī, *Al Ahkām al Sultāniyyah* (الأحكام السلطانية للموردي), p. 335.

³⁵ Al-Māwardī while discussing the income and expenditures of *bayt al-māl* under section الْقِسْمُ الرَّابِعُ has stated: 'every valuable to which Muslims as a whole are entitled and not owned by any particular Muslim is termed as right of Baitul Māl and once possession is taken over the mere fact of taking over will be deemed as its ownership whether the item has been transferred into its custody or not because *bayt al-māl* connotes a Head and not merely a place ...' (Translated from Urdu).

³⁶ Al Mişri, Rafiq Yūnus (1999), *Uşul al Iqtisād al Islamī*, pp. 17, 23-24 and 48.

³⁷ al-Zarqā (1998), *al-Madkhal al-Fiqhī al'Ām*, vol.3 p. 283-4.

³⁸ *ibid*, vol.3 p. 273

³⁹ *Ibid*.

From the writings of proponents of the 'Juridical Person' it has further been gleaned that certain 'precedents' are there in the classical *fiqh* which prove that the concept of 'Juridical Person' is not repugnant to *Sharī'ah*. These precedents are *waqf* (وقف), *bayt al-māl* (بيت المال), Deceased's Property Run-Over by Debt (ترکه مستغرقه فی الدين) and Joint Stock (خلطة الشیوع).

4.1 *Waqf* (وقف)

Waqf in Islamic law is a legal and religious institution through which a person donates a property for the sake of virtue or a charitable purpose. Such property ceases to be owned by the donor, and those for whom the property is declared as *waqf* (beneficiaries) can benefit from the usufruct or the corpus of the property.⁴⁰ The person who manages the affairs of the *waqf* is called trustee (*mutawallī*). Classical *fuqahā'*, particularly followers of *Mālikī* School have elaborately mentioned rulings on the institution of *waqf* which indicates it as an entity.

4.2 *Bayt al-māl* (بيت المال) - Exchequer of an Islamic State

Bayt al-māl is the exchequer of an Islamic State. All the people of an Islamic state have beneficial rights in the assets of *bayt al-māl*, being public property; however, none can claim to have ownership rights. Still, the *bayt al-māl* has some rights and obligations.⁴¹ It has been recognized in Islam as having virtual existence similar to that of a physical person capable of payments, liabilities and receipts.⁴² Even some *fuqahā'*,⁴³ have mentioned that if one department⁴⁴ of *bayt al-māl* is short of money it can borrow money from another department and it will be treated as loan.⁴⁵

4.3 Deceased's Assets Run-Over by Debt (ترکه مستغرقه فی الدين)

As per the classical *fiqh*, if deceased's property is found less than its debts, the creditors cannot demand repayment of their (full) loans from

⁴⁰ M. Taqī Usmānī (2000), *an Introduction to Islamic Finance*, pp 154-155.

⁴¹ Ibid. p.156.

⁴² M. Taqī Usmānī (nd), *Islām Awr Jadīd Ma'īshat O Tijārat*, p. 80

⁴³ Like Imām Sarakhsī and Imām Zailī has mentioned details of the *bayt al-māl* in their books *al-Mabsūṭ* and *Tabyīn al-Ḥaqā'iq*.

⁴⁴ According to literature of *fuqahā'* on the subject, there are two departments of the *bayt al-māl*, *Khīrāj* (from which salaries of the officials are given) and *ṣadaqah* (which accumulates zakah etc. for general welfare of poor and needy people).

⁴⁵ The statement of Sarakhsī reads: "If the head of an Islamic state needs money to give salaries to his army, but he finds no money in the Kharaj department of the *bayt al-māl* (wherefrom the salaries are generally given) he can give salaries from the *ṣadaqah* (*Zakāh*) department, but the amount so taken from the *ṣadaqah* department shall be deemed to be a debt on the Kharaj department"; cited by M. Taqī Usmānī, *an Introduction to Islamic Finance*, p. 156.

deceased's heirs, because their demand is directed to the deceased's property itself. Therefore, the assets the deceased left behind are the only fund to which the claimants can approach for recovery of their claims. This can be an example of 'Juridical Person' in the Shari'ah law.⁴⁶

4.4 Joint Stock (خطة الشيوخ)

According to the 'Three Jurists' (الأئمة الثلاثة)⁴⁷, particularly *Imām Shāfi'ī*, in case a property is jointly owned by various people, and it reaches the limit of *niṣāb*, the *zakāt* will be levied on the joint property as a whole without ascertaining whether each one of the partners is individually owner of *niṣāb* or not. This can be referred to as precedent for proving that the joint stock becomes a 'Juristic Person' according the schools of thought of the *Three Jurists*. Taking analogy from this, it can be said that joint ownership of a property renders any association of persons as a separate entity. Hence, company's status as a 'Juridical Person' has a precedent in the *Fiqh*.⁴⁸

*Abdul Qādir Awdah*⁴⁹ has mentioned that the concept of juridical personality has been recognised in Islam from the very beginning. "Therefore *bayt al-māl*, *waqf*, schools, shelters, hospitals etc. were considered to be having capacity to possess and dispose of rights and do all other acts in that capacity...."

Al-Zarqā,⁵⁰ beside the four examples of precedents enunciated in the preceding paragraph, has mentioned two additional precedents of 'Legal Person', which are enumerated hereunder.

4.5 Debarring a *Qāḍī* from Deciding its Own Case

It has been established in classical *fiqh* books that in their official capacities if a *qāḍī* or *Ālim* is made administrator or beneficiary of any *waqf* and there arises a dispute regarding the affairs of *waqf*, the *qāḍī* is not debarred from deciding upon the case being the party himself.

⁴⁶ M. Taqī Usmānī, p. 81.

⁴⁷ Once this term is used it means, the three Imāms of *Fiqh* other than Imām Abu Hanīfa.

⁴⁸ M Taqī Usmānī (nd), *Islām Awr Jadīd Maīshat O Tijārat*, p. 81.

⁴⁹ Abdul Qādir Awdah, *al-Tashrī al-Jināī*, Vol.1 p. 393-394. The texts reads as: (وقد عرفت الشريعة الإسلامية من يوم وجودها الشخصيات المعنوية، فاعتبر الفقهاء بيت المال جهة، والوقف جهة؛ أي شخصاً معنوياً، وكذلك اعتبرت المدارس والملاجئ، والمستشفيات وغيرها، وجعلت هذه الجهات أو الشخصيات المعنوية أهلاً لتملك الحقوق والتصرف فيها، ولكنها لم تجعلها أهلاً للمسئولية الجنائية؛ لأن المسئولية تبني على الإدراك والاختيار وكلاهما منعدم دون شك في هذه الشخصيات. Juridical person was known in Islamic law since beginning, The Islamic Law considered *bayt al-māl* as a head, and *Waqf* as another head, and also considered schools, shelters, hospitals, etc., as heads and made these entities or juridical persons capable of possessing rights and disposing them off, but did not assign them criminal liability; because the liability is based on perception and choice and both are non-existent in these figures, (translated by humble researcher).

⁵⁰ al- Zarqā, *al-Madkhal* (المدخل), vol.3 pp. 283-4.

However, if a *waqf* is made for the *qādī* in his personal capacity then he is disqualified from sitting in the decision of that *waqf*.⁵¹ This capacity of the *qādī*, as distinct from his personal capacity is something which can be termed as Juridical Personality attached to a *qādī*.

4.6 Status of *Ijārah* after Death of the Leasing Caretaker

According to Hanafī School, if any of the parties to a lease is dead, the contract of lease is quashed; however in case a lease caretaker dies who was party to lease agreement of the *waqf* property, the lease is not quashed because the caretaker is not considered to have done this for himself but for the *waqf*.⁵² This shows that the caretaker beside his own natural capacity has a personality capable of rights and obligations which are not extinguished even with the death of his natural personality.

5. Additional Possible Precedents from *Fiqh*

From further exploration of the Islamic literature and deliberation on the topic, this researcher believes that some more precedents can be traced in the Islamic law. The following two important institutions prevalent in the classical *Fiqh* that resemble the Juridical Personality can be presented:

5.1 The State's Head (السلطان)

The office of State's head has a specific personality beside his natural personality. One of the traditions of the Holy Prophet declares that the State's head (سلطان) would be *walī* for those who have no other *walī*.⁵³ Imām Bukhārī has created a title namely "chapter on the State's Head becoming *walī*" wherein he has reported a *ḥadīth* in which the Holy Prophet arranged marriage of a woman on behalf of her *walī*.⁵⁴ There are other examples of State's head entering into the shoes of a *walī*⁵⁵ for conducting marriage of a woman.

Although these traditions are specific in application to marriage, yet it implies that the State's head has a financial responsibility towards his

⁵¹ Ibid, p. 260.

⁵² ibid, p. 261.

⁵³ This *ḥadīth* has been reported by *Imām Tirmizī*, *Imām Abu Dāwūd*, *Imām ibn Mājah* and *Imām Nasā'ī*. The text reads as: "لا نكاح إلا بولي والسلطان ولي من لا ولي له"

⁵⁴ The *ḥadīth* has been accessed via <http://www.alfiqh.com/montda/index.php?showtopic=16347>, on 31 August 2015.

⁵⁵ It may be noted here that according to Hanafī school of thought permission of *walī* is not condition precedent for validity of *nikāh*, which is mandatory in other schools of thought. The contemporary scholars of Arabian Peninsula also give verdict on its being mandatory; see *Fatwa* (No. 162/18) of Shaikh bin Bāz etc. at <http://www.islam-qa.com/ar/ref/111844>, accessed on 31 August 2015.

subjects as well as reported from the Holy Prophet in a *ḥadīth* wherein he asserted that he is more near to the believers than their own souls, so if someone died in a state of indebtedness he (the Prophet) would pay for his debts, and if he left behind wealth, that will be distributed amongst his heirs.⁵⁶ It can be concluded, therefore, that State's head has a personality other than his own natural personality which makes him to stand in the shoes of *walī* not only for conducting marriages but for repayment of loans for those who might die in the state of indebtedness.

5.2 The 'Āqilah (العاقلة)

Another institution, nearer to the concept of 'Juristic Person' is the institute of 'Āqilah (العاقلة). Linguistically 'aqala (عَقَلَ) means to pay *diyat* (ديت). In Islamic law, briefly, when someone inadvertently (خطأً) or mistakenly (شبه العمد) kills a person, virtually a fund is constituted with the contribution by the family of the person at whose hands killing has occurred, normally, proportionate to their entitlement in the property of the murderer, for payment to the family of the deceased person as *diyat*. The contributors to this virtual fund are jointly called 'āqilah in the Sharī'ah law. This theory of the 'āqilah prevalent in the classical books of *ḥadīth*⁵⁷ and *fiqh*⁵⁸ is testimony that it is an entity other than normal humans which has been held liable for payment of compensation.⁵⁹

6. Opponents' Views/ Arguments on 'Juridical Person'

Contrary to the above view and arguments supported by some precedents from the classical *Fiqh*, some 'ulamā strongly assert that the concept of 'Juridical Person' is not in consonance with *Sharī'ah* law. They profess that joint ventures and trade have been existent throughout the history since olden times. It is hard to presume that the classical jurists overlooked this fact and the necessity of creation of juridical personality. There is no mention of the concept of 'Juridical Person' in the books of *fuqahā'*. This shows that the earlier *fuqahā'* considered the concept as alien to the *Sharī'ah*. Countering the arguments relied upon by the proponents; the opponents have tried to establish dissimilarities between

⁵⁶ Bukhārī, *Ṣaḥīḥ* Bukhārī, *ḥadīth No. 4979*; The words of *ḥadīth* read as أنا أولى بالمؤمنين من أنفسهم. فمن توفي من المؤمنين فترك ديناً فعلى قضاءه ومن ترك مالا فلورثته. The *ḥadīth* with some changes in words has also been reported by Imām Tirmizī.

⁵⁷ As reported by Amr b. Shoyb (RA) in all the Six Authentic Books (صحيح سنة) except Jāme Tirmizī that the Holy Prophet in a case of woman once decided that the male members shall pay *Diyat* on her behalf. { أن رسول الله صلى الله عليه وسلم قضى أن يعقل عن المرأة عصبتها من كانوا ولا يرثون منها إلا ما { فضل عن ورثتها (رواه الخمسة إلا الترمذي).

⁵⁸ Al Bahūthī, *Kasshāf al-Qinā an Matn al-Iqnā*, Vol. 6 p. 59.

⁵⁹ For details on 'āqilah visit http://www.islamweb.net/newlibrary/display_book.php?idfrom=8438&idto=8440&bk_no=16&ID=665, accessed on 18 Jan 2010.

the above noted precedents and a body corporate. Their arguments⁶⁰ can be summarised in the ensuing points/ arguments:

6.1 Only Human beings are Held Liable - Imām Sarakhsī

According to Imām Sarakhsī, only ‘human beings’ can be capable of liabilities and not the ‘animals’ (ولهذا اختص به الأدمى دون سائر الحيوانات التى (ليست لها ذمّة صالحة).⁶¹ Therefore, none other than human beings can be assigned a liability and the concept of assigning juridical personality to something other than human beings is not valid.

6.2 No Ownership Relation between the Administrators and Assets of Waqf / Bayt al-māl

There is no relation of ownership between administrators of *waqf/ bayt al-māl* and the assets they hold, whereas in case of a company, ownership relation exists between shareholders and the assets.⁶² Hence equating the two to prove juridical personality is not logical.

6.3 Dissimilarity between Assets of Company and Waqf / Bayt al-māl

In case of bankruptcy, assets of a company are returned to shareholders pro rata, whereas in *waqf / bayt al-māl* there is no particular share of anyone,⁶³ so the assets are not returned to anyone. Therefore, taking precedent from *waqf / bayt al-māl* to prove juridical personality is not justified.

6.4 Discretionary Powers of Trustee viz a viz CEO of a Company

In case of *Waqf ‘Ām* (general trust), the trustee is at liberty to grant as much as he wishes to any one beneficiary more than other beneficiaries (ثم يعطى من كل فريق من شاء منهم ويفضل البعض ما يشاء لأن قصده الصدقة وفى الصدقة الخ...⁶⁴ However, the CEO/ President of a company (‘Juridical Person’) has no such powers. Hence, there is difference between the two and juridical personality cannot be proved.

6.5 Nature of Post of Trustee vis-a-vis Directors of a Company

The trustee of *waqf* and director of *bayt al-māl* are basically voluntary posts, whereas directors of company are salaried persons of the company and have inherent interest in the affairs of the company.⁶⁵ Therefore, comparing the both to prove juridical personality does not seem reasonable.

⁶⁰ Of the writings of the opponents, the focus of the humble researcher would be on the Fatwā or view point of Muftīs from Jamia Binnori Town, Karachi, titled as Murawwaja Islāmī Bankārī.

⁶¹ Sarakhsī, *Uṣūl al Sarakhsī* (اصول السرخسى), vol.3, p. 233.

⁶² Murawwaja Islāmī Bankārī, p.122.

⁶³ For details on the ownership of *waqf* see: Ibn Ābidīn (d. 1252 AH), *Radd al Mukhtār* المختار , Book of Waqf كتاب الوقف , Maktabah Saeed , Karachi, vol. 4, p. 339.

⁶⁴ Fatāwa al-Hindiyyah, فتاوى الهندية Chapter Five: *Wilāyat al-Waqf wa Taṣarruf Al-Qayyim Fil Awaqif* ولاية الوقف وتصرف القيم فى الأوقاف , Maktabah Rashīdiyyah, Quetta, vol.2, p. 416.

⁶⁵ Murawwaja Islāmī Bankārī, p.124.

6.6 Welfare in *Waqf /Bayt al-māl* vs. Commercial Interests in Company

Waqf and *bayt al-māl* are created for the welfare of mankind, whereas the company under the shadow of “Juridical Person” only protects the interests of a few people and is usually based on dishonouring human values.⁶⁶ There is difference of essence between the two, which prevents to take precedent from the former to legitimise the latter.

6.7 Deceased, but not the Assts Liable

The Deceased’s Assets Run-over by Debt (تركه مستغرقة فى الدين) cannot become precedent for Juridical person because it is the deceased’s liability and not of the assets which the deceased left. The reason why it is deceased’s liability is because the pronouns (ضمائر) occurring in the texts of the traditions of the Holy Prophet (PBUH) reported by *Bukhārī*,⁶⁷ *Muslim*⁶⁸ and *Tirmizī*⁶⁹ refer to the deceased and not to his ‘left over property’.

As regards the question of creditors who are directed to the deceased’s property it can be firstly, because the debt is a monetary liability of the deceased and this liability is attracted to the property more than any other liabilities, and secondly because no claim can be preferred against the deceased in person after his death, therefore creditors are referred to the property.⁷⁰ This does not mean that the deceased has ceased to be the debtor.⁷¹

6.8 *Zakāh* of Joint Stock vs. Tax in a Company

The opponents assert⁷² that the Joint Stock (خطة الشبوع) cannot be the precedent of juridical person because as against *Zakāh* of joint stock, the tax in a company is levied on individuals not the company jointly.⁷³ This makes it clear that there is a difference between joint stock and a company. The reason why *Zakāh* is payable on joint stock is that according to the Three Jurists (other than Hanafi school) *Zakāh* is payable

⁶⁶ Ibid, p. 124-5.

⁶⁷ See for example the words ‘هل عليه من دين’, Al-Bukhārī, Muhammad b. Ismāīl, *Ṣaḥīḥ* Bukhārī صحيح البخارى, Qadīmī Kutubkhāna, Karachi, Vol.1, p. 306.

⁶⁸ see for example the words ‘يغفر للشهيد كل شئى إلا الدين’, *Muslim b. Hajjāj, Ṣaḥīḥ Muslim* صحيح مسلم, Qadīmī Kutubkhāna, Karachi, Vol.3, p. 135.

⁶⁹ See for example the words about an indebted martyred ‘ما دخل الجنة حتى يقضى دينه’, Jāme^c Tirmizī, H.M. Saeed, Karachi, vol.1 p. 206.

⁷⁰ In legal terms, it is called a claim in rem as against claim in personam.

⁷¹ Murawwaja Islāmī Bankārī, p. 127.

⁷² Ibid.

⁷³ This argument on taxation of individuals not a company is legally incorrect. Section 4 of the Income Tax Ordinance, 2001 says that tax shall be charged on every person. Section 80 defines the person and it includes the juridical person.

as a monetary liability and it has nothing to do with the capabilities (حيثيت تكليفية) of the individual shareholders. Moreover, levying *Zakāh* on the joint stock, irrespective of the capabilities of the shareholders, is more beneficial for the needy people (أنفع للفقراء). Therefore, joint stock cannot become a precedent for juridical personality.

7. Analysis of the Opponents' Arguments:

The points offered by the scholars opposing juridical personality can be subjected to discussion and analysis as under:

7.1 Imām Sarakhsī's Statement - Only Human Beings are Liable

The wording of *Imām Sarakhsī* indicates that he actually compared the human being with animals in holding the former liable.⁷⁴ There is no mention that *Imām Sarakhsī* disallowed to hold a human being bearer of an office, to be responsible in that capacity. *Abdul Qādir Awdah*⁷⁵ raised similar point when defining the liability⁷⁶ wherein he excluded the animals and inanimate materials from the liability.⁷⁷

Imām Sarakhsī has rightly stated that only a human being is capable of holding the responsibility and not the animals as asserted. Despite the company having juridical personality, once there comes a question of liability, company's directors are generally held responsible under special circumstances. In courts, whenever a 'Juridical Person' is made party to some proceedings, it is done in the name of its head as an agent of the company because none other than human being is ultimately to be held liable.⁷⁸

Similar to the above stated statement of Imām Sarakhsī, the Pakistan's Companies Ordinance, 1984 also asserts that only natural person shall be

⁷⁴ The phrase he used is (ولهذا اختص به الأدمى دون سائر الحيوانات التي ليست لها ذمة صالحة) which makes it clear that he wanted to distinguish humans from animas.

⁷⁵ Abdul Qādir Awdah (1906-1954) a judge and constitutional jurist in Egypt. His book "al-Tashrī al-Jināī" (التشريع الجنائي الإسلامي مقارناً بالقانون الوضعي) (Islamic Criminal legislation - compared with law" Dar al-Kutub al-Ilmiyah, Beirut, Lebanon.

⁷⁶ Awdah has actually described 'criminal liability' which can be referred to as an example for civil liability as well.

⁷⁷ His definition reads: (الإنسان محل المسؤولية: ولما كانت الشريعة الإسلامية تشترط أن يكون الفاعل مدركاً مختاراً، فقد كان طبيعياً أن يكون الإنسان فقط هو محل المسؤولية الجنائية، لأنه وحده هو المدرك المختار. أما الحيوان أو الجماد فلا يمكن أن يكون محلاً للمسؤولية الجنائية لانعدام الإدراك والاختيار). Humans are place of responsibility: As the Islamic law requires the committer to be able to perceive and chose, it was natural that the human being is the only place of criminal responsibility, because he alone is able to perceive and chose. The animal or inanimate objects cannot be subject to criminal liability for the lack of perception and choice. See *al-Tashrī al-Jināī*. Vol.1, p. 393.

⁷⁸ For instance, if Mr. ABC (a natural person) intend to sue XYZ (a company), the title of the plaint would be "Mr. ABC vs. XYZ, Co. through its CEO/President" in the capacity as an agent.

appointed as director of a company.⁷⁹ This is so because in the event of liabilities, only human being can be made party to the litigations and proceedings.

7.2 Points of dissimilarities between *Waqf/Bayt al-māl* and a Company

The opponents have compared *waqf/ bayt al-māl* with the Company and criticized the concept of Juridical Personality on the arguments/ basis of the non-existence of ownership relation, treatment of assets in case of bankruptcy or failure, distribution of benefits/ profits and the purpose of welfare or business. It is clarified that despite these differences between the *Waqf/ bayt al-māl* and the Company the results are not different.

According to the provisions of classical *Fiqh* on precedents, *Nazār* (نظير) and *Zu al-Nazār* (ذو النظير), are not required to be necessarily same in all respects.⁸⁰ In addition, the institutions of *Waqf/ bayt al-māl* and the company have different purposes and aims and hence are governed by different sets of laws, rules and regulations. If minute details of the two do not match, it does not bar the former becoming precedent for the latter

7.3 Nature of Post of Trustee vis-a-vis Directors of a Company

Concerning the voluntary position of the head of *waqf* and *bayt al-māl*, and payment of remunerations, if any, to the directors of a company, it is contended that although the post of a trustee (قيّم) is a voluntary but according to the law once a trustee has accepted the trust he cannot renounce it arbitrarily.⁸¹

Although the Trusts Act 1882 provides no right of remuneration for his trouble, skill and loss of time in executing the trust, it keeps the option of remuneration open for the trustee by one of the following ways:

- a) Remuneration can be agreed in the instrument of trust entered into by the author of the trust (واقف), or
- b) Remuneration can be agreed in a contract with the beneficiary (موقوف عليه), or
- c) Remuneration can be settled with the Court at the time of accepting the trust.⁸²

It may be of interest to point out that in *Sharī'ah*, voluntariness is not a recommended option for any office holder. That is why a person

⁷⁹ Section 175 of the Companies Ordinance, 1984.

⁸⁰ Mufti Sāqibuddin, *Islāmī Bankārī Awr Muttafiqa Fatwey Kā Tajziyah*. The book accessed at www.deeneislam.com, in Aug 2015.

⁸¹ Section 46 of the Trusts Act, 1882.

⁸² Section 50 of the Trusts Act, 1882.

voluntarily offering his services for the post of Judge is not allowed to be appointed for the same. Perhaps, this is the reason that the Holy Qur'ān, while mentioning the heads (مصارف) of payment of *Zakāt*, has included the Collectors of *Zakāt* (عاملين)⁸³ as one of the heads for its payment in order to discourage the voluntary appointments to such an important institution of the Islamic Society.

A general guidance by *Sharī'ah* is that as a precautionary measure Islam generally discourages taking loans to save people from indebtedness. Indebtedness is the act which in first place relates to human being (حقوق العباد)⁸⁴ but failing to repay the same also amounts to disobedience of Almighty Allah (حقوق الله)⁸⁵. Such acts have dual liabilities, of this world and of the hereafter as well.

7.4 The Deceased's Liability in case of Run-Over Assets

The liability of debtor will remain intact until he pays the loan or it is rendered defective due to death of the debtor, in which case, in the Hereafter, he will also be answerable to Almighty Allah. Hence, the traditions, which relate to questionability of the deceased even after his death are related to the liability in the hereafter. The words⁸⁶ and essence of the traditions also support this version e.g. in the hereafter a martyr is absolved of every liability except debts for which he remains questionable before Almighty Allah.

The Deceased's Assets run-over by debt (تركه مستغرقه في الدين) can be a precedent for the 'Juridical Person' as the creditors can only restrict their claims to the value of the inheritance. Their claims follow neither the deceased nor the heirs. The fact that these traditions refer to the liability in the hereafter and not this world, has seemingly been ignored by the opponents.

⁸³ Out of the seven heads, Collectors are at serial three which further depicts the importance of non-voluntariness in a sensitive financial institution like *zakāt* collection. The seven heads are: the needy people (فقراء), the deprived people (مساكين), the Collectors of *zakāt* (عاملين), for those whose hearts are to be reconciled (مؤلفه القلوب), for freeing a captives (الرقاب), the debtors (غارمين), the path of Allah (سبيل الله), the wayfarers (ابن السبيل). Qur'ān 9:60; the verse reads as: The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allāh, and (for) the wayfarer; a duty imposed by Allāh. Allāh is Knower, Wise. (English translation by Mohammed Marmaduke Pickthall).

⁸⁴ Like dealings (معاملات) e.g. business transactions, family matters etc.

⁸⁵ Like rituals (عبادات) e.g. offering Prayers, Fasting and paying *Zakāt* etc.

⁸⁶ 'هل عليه من دين' and 'يغفر للشهيد كل شيء إلا الدين' occurring in different traditions reflect that the deceased is questionable in the sight of Allah.

7.5 *Zakāh* of Joint Stock vs. Tax in a Company

Not levying tax jointly from the shareholders of a company and charging *Zakāh* on the joint stock has basic difference of essence. Tax is levied because of regulations and not as a religious duty, whereas *Zakāh* is charged as Islamic duty, hence both have different sources of law.

Also, according to the details, joint stock is of two kinds, the stock which is so intermixed that cannot be separated e.g. common property of heirs after death of a deceased. On the other hand, there may be the stock which is separately owned by various people but has been put together e.g. herd of goats of different people in a meadow which can be separated. *Zakāh* is unanimously levied in first case, and in second case the three schools other than Hanafī School, believe that it is imposed on joint property.

The opponents assert that *Zakāh* on joint stock is the view of the three jurists and not the Hanafī School, so how can followers of Hanafī School take it as precedent for proving the juridical personality. It is stated that for determining a principle, the point of view of the other Jurists of classical times can be referred. It has been classically a practice that the schools of thought used to mention the views of other schools in their books, but it does not tantamount to departure from their school of thought. Moreover, imposition of *Zakāh* in joint stock is in the best interest of the poor people (أنفع للفقراء). However, it does not negate the fact that the capacity of the joint stock seems to be that of a ‘Juridical Person’.

Imam Ramlī says: “The will (*waṣīyyah*) in favour of a mosque is lawful although the intention is to make it owner of the property. Mosque is like a free natural person and can hold property”⁸⁷.

It is apt to note that the contemporary scholars who have objected to juridical personality have raised this point with reference to the Islamic Banking. It may be noted that status of banks among other corporate bodies having juridical personality is just a tip of an iceberg. All the companies, bodies, organizations and institutions in the world whether doing trade or otherwise have this concept of ‘Juridical Personality’. Strangely, the opponents have given the fatwa on the Islamic banking companies only; but not on the companies in general. There is no difference in the two having a status of juridical person.

Lastly, almost whole of the business and economic activities in the World are being run on basis of corporations for last over 150 years, and

⁸⁷ Al-Ramlī, vol. 6, p. 47-49.

in case of Islamic banks for about 40 years. Had there been such a grave problem with the Islamicity of the bodies corporate, there would have been strong voices/ assertions/ *fatāwá* of *'ulamā* from various regions of the World since very beginning, but it is not so. Rather, many of the Muslim countries have provisions related to 'juridical person' in their corporate laws. For example, Egypt⁸⁸ has this provision since 1948. Kuwait had it since 1960⁸⁹ and maintained the same in new law in 2012.⁹⁰ Oman and UAE have the provision on juridical personality since 1974⁹¹ and 1988⁹² respectively. Saudi Arabia had the provisions in old law since 1965⁹³. The new Saudi law issued in 2015 (effective from 2nd May 2016)⁹⁴ has elaborately covered the provisions⁹⁵ related to the juridical personality and relaxed the procedure of attaining such status.⁹⁶

8. Conclusion

The modern concept and practice of juridical personality is not very old. The character of a Company as juridical person started and matured in the first half of 19th Century between 1819 and 1855. Therefore, clear rulings of classical *fuqahā'*/*'ulamā* on the issue could not be traced prior to the 19th century and the first such writing appeared in 1911. The perusal of writings of *'ulamā*/ scholars for more than a hundred years (since 1911) divulges that there had been two different opinions on the issue. However, this difference never resulted into declaring the entire corporate system based on juridical person as against Islam and as such, no significant *fatwā* was available on the repugnancy to Islam of the system based on juridical personality of bodies corporate.

A sharp aggressiveness has been noticed in the writings of opponent *'ulamā* at the beginning of 21st Century whereby the Islamic banking based on, *inter alia*, concept of juridical personality, has been declared more dangerous and worse than the conventional banking. The humble researcher after narrating the point of view of the proponents and opponents has

⁸⁸ Articles 52 – 53 of The Civil Code of The Arab Republic of Egypt, No 38 (1948).

⁸⁹ Article 2 of the Law of Commercial Companies, No. 15, 1960 (Repealed)

⁹⁰ Articles 78, 126, 267, 283 of the Companies Law Decree No. 25 of 2012 (as amended by Law No. 97 of 2013).

⁹¹ Article 3 of the Commercial Companies Law of 1974.

⁹² Article 12 of the Federal Law concerning Commercial Companies, No. 8, 1984 as amended by Federal Law No. (13) of 1988.

⁹³ Article 13 of the old Companies Regulations, 1965 issued vide Royal Decree No. (M/6) Dated 22/3/1385 AH (corresponding to 22/7/1965 AD).

⁹⁴ Published by the Ministry of Commerce and Industry (MOCI) on 9 November 2015 in the Saudi Gazette (Um Al-Qura) on 4 December 2015.

⁹⁵ See for example Articles: 14, 55, 149 and 155.

⁹⁶ Under Art 14 of the New Companies Regulations, a company shall have a de facto juristic personality. Previously under the repealed Companies Regulations a company acquired juristic personality only after having recorded its name in the Commercial Registry for Companies.

endeavoured to prove that the view of the proponents has more authenticity and acceptability. Accordingly, the arguments of the opponents have been analyzed and countered appropriately in section 7 above.

The opposing scholars have raised this issue while discussing the Islamicity of Islamic banking, being a body corporate after about 40 years of its launching in 1970s. The share of Islamic banks in the entire corporate sector having juridical personality is very petite. If at all, there had been any objection on the juridical personality that should have been made on the corporation itself much earlier than the inception of Islamic Banks about forty years ago.

The author perceives that debate on the issue does not seem to be culminating into a logical and acceptable solution. The proponents reassert their stance time and again that whatever they are doing in the name of Islamic banks, is fully justified. Mufti Taqi (2009), while writing the reply to the book of opponents (2008) has clearly said that he had done it after making *istikhārah*, necessary consultations and advice of his colleague *'ulamā*. Once he was fully convinced, only then he started writing reply of the opponents' books. On the other hand, the opponents are also adamant on their viewpoint and continue to write against the Islamic banks as appears from the compilation of Mufti Zar Wali (2014).

The possible precedents of the juridical personality commonly discussed by proponents have been elaborated as *waqf*, *bayt al-māl*, Deceased's Assets run-over by Debt and Joint Stock. Other two precedents added by Al-Zarqā, are Debarring a *Qāḍī* to decide his own case and Status of *Ijārah* after death of the leasing caretaker. This author has proposed two more precedents to the list. These are the office of State Head (*Sultān*) and the *'Āqilah* (العاقلة).

Based on the points put across in the paper at sections 5 and 7 above, it is concluded that the point of view of majority of the contemporary scholars/*'ulamā* who hold the view that there is no repugnancy in deeming the 'juridical person' as Islamic, is more realistic and authentic. The provisions contained in the laws of various Muslim countries also support this version.

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