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AN APPRAISAL OF THE SPLIT OF THE CONTEMPORARY MUSLIM JURISTS ON THE DOCTRINE OF CORPORATE PERSONALITY

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Abstract

Corporate personality has been a point of debate and discussion for over decades among the contemporary Muslim jurists particularly when it comes to Islamic financial institutions as they claim to be Shariah-compliant whereas they are incorporated as a "separate legal personality" a concept that does not find its place in classical Islamic jurisprudence. According to some scholars, Muslim jurists of the classical period were well aware of this concept. Salmond observed that this concept of separate entity originated in idolatry-cultures particularly in Hindu culture.[1] Such indications may also be inferred from the following Quranic verse: "And out of what Allah has produced in plenty as crops and as cattle, they assigned Him a share: And they say, according to their wish: "This is for Allah, and this- for our 'partners'!" But the share of their 'partners' does not reach Allah, whereas the share of Allah reaches their 'partners'! Evil (and unjust) is how they judge![2] Thus, classical jurists, though well aware of this concept, did not attribute legal personality to Islamic institutions such as waqf, baitul mal and masjid. Hence, this remained an alien doctrine to Islamic jurisprudence throughout the middle ages. However, in near past this doctrine received recognition in the western courts of law. Thus, this phenomenon has led contemporary Muslim scholars to divergent views as to whether or not a separate legal personality may be assigned to a non-human being in Islamic law. This study will undertake an appraisal of conflicting views of Muslim Jurists based on evidences adduced from Islamic legal texts and traditions.

Keywords: *Corporate Personality; Separate Legal Entity; Islamic Institutions; Islamic Jurisprudence; Analogy*

[1] P. J. Fitzgerald (ed), *Salmond on Jurisprudence* (12th edn, London: Sweet & Maxwell) 1966.
[2] Qur'an, Surah Al-An'am (The Cattle) 6:136 [Professor Dr. Syed Vickar Ahmad (tr) 'English Translation of The Message of The Holy Quran' (Lombard IL: Book of Signs Foundation 2007)].

INTRODUCTION

Corporate legal personality is a common law principle of the United Kingdom which was settled by the House of Lords in *Salomon* case.[3] The apex court upheld the doctrine of distinct legal entity of a company from its members as set out in the then Companies Act, 1862 (UK).

Salomon was a leather merchant who caused his boot-making business to be incorporated into a limited liability company called Salomon & Co. Ltd. in 1892. He sold his business to this company against 39,000 pounds. The nominal capital of the company was 40,000 pounds, divided in to 40,000 shares with each share worth one pound. The shares-subscribers were his own family members including himself, his wife, a daughter and four sons with one share subscribed by each family member. However, Salomon further allotted to himself 20,000 shares afterwards with no more subscription made by any other shareholder ever in the company.[4] Moreover, debentures of 10,000 pounds were also issued to him in the fourth meeting of the Board of Directors held in January 1893 thus making him a "secured creditor" against a floating charge.[5] Salomon also received an advance of 5,000 pounds from Edmund Broderip against the security of the debentures.

However, soon after the incorporation, the company defaulted in making payments of interests to the creditors on the issued debentures. Since half debentures were held by Broderip he sued for his secured debt thus the company was liquidated and he was paid his 5,000 pounds. Likewise, Salomon as being a secured creditor/debenture holder, was also to be paid from the company's remaining asset worth 1055 pounds.

On the other hands, the ordinary/unsecured creditors were left with nothing to claim from the company's assets. Hence the liquidator contended that Salomon should not be allowed to claim his debentures/floating charge, rather on the contrary, he should be held responsible to indemnify the company's debts for defrauding the unsecured creditors.

The trial court maintained that the company was merely a nominee of Salomon. The court further observed that suppose if the nominee had been an individual instead of this company he could have called on Salomon for indemnification from the liabilities as his principal. In this case, since the company is a nominee so it will assume the same position. Therefore, Salomon was held liable for indemnification of all the company's debts owing to the unsecured creditors.

Salomon preferred an appeal in the Court of Appeal. The appellate court also upheld the judgement of the trial court on the grounds that Salomon formed the company as a shield to limit his liability and issued debentures to enable himself to obtain priority over the other creditors which is contrary to the true intent and meaning of the Companies Act 1862.[6]

He further appealed in the House of Lords. Here, the House of Lords reversed the judgments of the subordinate courts and his claim was honored against the floating charge/priority over

[3] *Salomon v A Salomon Co. Ltd* [1896] UKHL 1 [1897] AC 22 UK.
[4] *Broderip v Salomon* (1895) 2 Ch 323, UK <https://vlex.co.uk/vid/broderip-v-salomon-807563317> accessed 1 October 2025.
[5] ibid.
[6] ibid.

unsecured creditors. He was declared entitled for his secured debt/debentures on the grounds that all the legal requirements were fulfilled in the process of incorporation of Salomon Co. Ltd. and the subordinate judges had no power to go beyond the words of the statutes to check the intent of the parties.[7]

On this point, the Law Lords also proposed that a law ought to be enacted to secure the preferential rights of the ordinary/unsecured creditors which could not be ensured in the given case for want of a legislation. Thus, in pursuit of the Law Lords' proposition, a very prompt response was made by the British parliament by passing a law called, 'Preferential Payments in Bankruptcy Amendment Act 1897' to address the issue of the unsecured creditors.[8]

Since the development of this case law, separate legal entity has become an integral part of incorporation of a company worldwide. On the other hand, there are no separate statutes of company laws to provide a distinct and Shariah-complaint procedure for incorporation of Islamic financial institutions. Therefore, they also have to be incorporated under general Company Laws of the land which hold the doctrine of corporate personality except Malaysia. She has legislated an independent statute for Islamic financial institutions. However, this statute also includes the doctrine of separate legal entity for incorporation of Islamic banks.

Therefore, due to application of this alien doctrine to Islamic financial institutions, modern Muslim jurists have diverged and split into two schools of thoughts. First those who subscribe the doctrine through analogical deductions and second those who hold that there is no ground and justification for such an analogy.

Thus, this article focuses on the conflicting views of both the schools and structured as follows. Part II discusses as to how this concept of corporate personality has been integrated within the legal framework of Islamic financial institutions operating in the Muslim States' jurisdictions. Part III analyses the analogical deductions and evidences adduced by the Muslim jurists who are proponent of the doctrine of corporate personality. Whereas part IV represents those jurists who hold divergent views on the doctrine. The article will analyze the arguments and evidences, produced in rebuttal. In short, the article will assess as to how far analogy and interpretation of Shariah may be justifiably extended to warrant the doctrine of corporate personality.

II. INTEGRATION OF THE DOCTRINE OF SEPARATE LEGAL ENTITY WITHIN THE LEGAL FRAMEWORK OF ISLAMIC FINANCIAL INSTITUTIONS

The doctrine has been subjected to critical analysis by the contemporary Muslim jurists for the reason that all Islamic banks and financial institutions are incorporated as a separate corporate body under the company laws of their respective countries. Whereas, all the Muslim States have enshrined the doctrine in their legal systems reason being a universal practice in the corporate world.

Pakistan hosted 'Second Islamic Conference of Foreign Ministers' in Karachi in 1970 wherein she proposed Islamic banking under the umbrella of 'Organization of Islamic Cooperation'

[7] *Salomon* (n 3).

[8] The parliament enacted Sections 2 and 3 of the Preferential Payments in Bankruptcy Amendment Act, 1897.

(OIC). However, later, in 1981 the government of Pakistan on its own initiative, opened seven thousand separate counters to offer Islamic banking products within the conventional banks across the country as a pilot project.[9] On this point of time, the question of corporate personality of Islamic banks was not relevant as the project was launched in conventional banks which were conventionally incorporated as a separate legal entity.

However, when it came to incorporate an independent Islamic bank in Pakistan, the question of corporate personality became relevant, yet no amendment was thought to be made in the conventional banking law named 'Banking Companies Ordinance 1962' to address the question of compatibility of the doctrine with Shariah principles and precedents. Hence, the first full-fledged Islamic bank in Pakistan was also incorporated under the same conventional banking law along with integration of the doctrine of corporate personality in Islamic banking institution as no amendment was made in the Ordinance. Moreover, State Bank of Pakistan also issued license in recognition of the Islamic Bank, once incorporated as corporate body under the Ordinance of 1962.

Likewise, in Malaysia, 'Islamic Banking Act 1982' which was subsequently replaced with 'Islamic Financial Services Act 2013' contains the doctrine of corporate personality as an integral part of incorporation of Islamic banking institutions. Similarly, in pursuance of the statutes, the case law also stands in recognition of the concept in Malaysian court of law.

Thus, it may be stated that the Muslim-majority countries who have developed their respective legal framework for Islamic banks may not be justified to argue that there is a practical need for Islamic financial institutions to operate in modern legal framework based on such modern doctrines. Because there is no constraint of jurisdictions for independent Muslim States as they are free nations to legislate, independent of foreign factors, to develop their own models of finance. This very approach was officially put on record by the founder of Pakistan on the occasion of inauguration of central bank of Pakistan. Such an excuse may only be sought by those Islamic financial institutions who operate within non-Muslim jurisdictions if they fail to fully comply with Shariah being under constraint.

Furthermore, the question arises as to whether the concept of limited liability conforms with Islamic principle of accountability and justice. Similarly, in case of insolvency of an Islamic financial institution what would be ethical implication as the doctrine of corporate personality will not allow ethical intervention in satisfaction of the debts of the creditors. Whereas the doctrine of *Istehsan* (juristic preference/equity) will require just and fair treatment with the creditors in order to meet the *maqsid* (end) of Shariah, i.e. *hifzul mal* (preservation of wealth), among the five *maqasid* (ends). Thus, integration of the doctrine of corporate personality in Islamic financial institutions has posed multiple challenges as regards Shariah-compliance particularly fulfillment of the objectives/ends of Shariah.

I. THE JURISTS' PROPOSITIONS THROUGH QIYAS (ANALOGICAL DEDUCTION)

[9] Mahmood Aurangzeb, 'Islamization of Economy in Pakistan: Past, Present and Future' (2002) 41 (4) Journal Islamic Studies 675-704.

The jurists who recognize this doctrine and justify its application to the present-day Islamic commercial enterprise, deduce evidences form the precedents of such institutions which were though not commercial enterprises yet they are deemed separate legal entities. Following institutions have been referred for analogical deduction by the proponent jurists.

A. The Institution of Waqf (Charitable Endowment),

Waqf is a legal as well as religious institution as the *waqif* (donor) dedicates his property for public benefits or for certain people and vests its ownership in Allah Almighty alone. Thus, he ceases to be owner of such property and the beneficiaries get entitled to benefit from the corpus or proceeds of the property. These scholars deem that the Classical Muslim jurists considered this institution as a separate legal entity and assigned some characteristics like of a natural person. The evidence they deduce is the ruling that if a property is purchased from the *waqf*-income such property will not become part of the *waqf* on its own. It will be treated as a property held by the *waqf* under its ownership.[10]

From the above examples it is evident that the classical Muslim Jurists had recognized a *waqf* to own a property which is a characteristic of a natural person. It means that although *waqf* is not a human being yet it has been characterized as a human being so far as it relates to ownership-rights. Therefore, once *waqf's* capability of ownership is recognized it will be logical to establish that *waqf* can sell and purchase a property. Likewise, it may become a creditor and a debtor and can sue and be sued, meaning thereby that all the characteristics of a juridical person can be attributed to *waqf*.

B. Masjid (Mosque)

Likewise, they deduce another evidence that a donation given to a *masjid* does not form part of the *waqf* rather it comes under the ownership of the *masjid*.[11] Some jurists of the Maliki School of jurisprudence have also expressed such views that a *masjid* is capable of owning a property, though such capability of the *masjid* will be constructive while the capability of a human being is physical.[12] Ahmad Al-Dardir,[13] a Maliki jurist has also considered validity of *wasiyyah* (will/bequest) made for a *masjid* for being capable of ownership.

C. The Institution of Baitul Mal (Exchequer of a Muslim State)

Baitul mal is another precedent which is treated as a separate legal entity by these jurists. It is a public/common property of the citizens of an Islamic State who have certain beneficial rights in it yet no one can claim individually to have ownership rights in *baitul mal*. Moreover, *baitul mal* holds certain rights and obligations as stated by an eminent classical Hanafi jurist Al-

[10] *Al-Fatawa Al-Hindiyyah* (in Arabic) [*The Indian Islamic Legal Compendium*) vol 2 (Quetta: Maktabah Rasheediya) 417.

[11] ibid vol 3, 240.

[12] Muhammad Al-Khurashi on Khalil's *Mukhtasar* (in Arabic) [*The Summary*] vol 7 (Beirut: Darul Kutub Ilmiyyah 1997) 80.

[13] Al-Dardir, *Al-Sharh Al-Kabir 'ala Mukhtasar Khalil (in Arabic)* [*The Great Commentary*] (Beirut: Darul Kutub Ilmiyyah 1995).

Sarakhsi.[14] The great scholar further goes on to say that a department of *baitul mal* can borrow from another department in the event of shortage of funds. For example, money may be borrowed from *sadaqah* (mandatory charity) department of *baitul mal* for payments of salaries to the army if funds go short in *kharaj* (tax) department. However, such funds will be treated as debt on the borrowing department and an advance from the lending department thus assigning rights and obligations not to the head of the Islamic State but to the departments themselves being a debtor and a creditor.

Thus, it becomes clear from the above that not only *baitul mal* but also its various departments are capable of holding rights and obligations. It means that each department is a separate legal entity which can become creditor and debtor and thus can sue and be sued like a juridical person can do all such functions as a separate legal entity. Concludingly it can be said that the classical jurists had recognized the concept of juridical person with regard to *baitul mal* as well.

D. Khultah-Al-Shuyu

This is a principle recognized in Shafii school of jurisprudence that if two or more persons jointly run a business as a partnership while having stock mixed up, *zakat* (mandatory charity) will be levied on each partner individually but will be payable on their joint stock as a whole. Moreover, if a partner individually is not liable for payment of *zakat* due to his assets being less than the *nisab* (minimum prescribed value for levy of zakat) yet he would be required to contribute proportionately if the combined value of the assets exceeds the *nisab*. Concludingly it can be said that the principle of joint stock reflects a concept of juridical person as *zakat* is levied on the joint stock and not on individual partners, meaning thereby that the joint stock is treated as a separate legal entity from the individual partners.[15]

E. Inheritance under Debt

This means that the liabilities of a deceased person exceed all of his left-over estate/property. According to the proponent jurists such an estate will be treated as a separate legal entity because the deceased is no more owner of this estate, nor are his heirs because the creditors have preferential rights over the heirs. Likewise, the creditors are also not owners of the estate as it is still not divided among them through settlement. Thus, being estate of no body, it is an entity on its own.

Similarly, the heirs or the executor, if nominated, can look after the estate as administrators and not owners. The common feature here between such an estate and a juridical person is that both have limited liability to the extent of their assets. If all the estate is not capable of satisfying all the claims of the creditors they cannot claim their remaining debt from the heirs and the same is true to juridical person as it also holds limited liability. Thus, through *qiyas* of this precedent, ‘inheritance under debt’ the doctrine of distinct entity can be justified for a commercial enterprise, i.e. corporation.[16]

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[14] Muhammad ibn Ahmad Al-Sarakhsi, *Kitabul Al-Mabsut* (in Arabic) [*The Book of the Content*] vol 14 (Beirut: Darul Kutub Ilmiyyah 2001) 33.

[15] Mufti Taqi Usmani, *Introduction to Islamic Finance* (Karachi: Maktabah Ma’ariful Quran 2018) 227-228.

[16] ibid 228-229.

F. Limited Liability of the Master of a Slave

Although slavery is no more in vogue but the legal principles laid down by the classical jurists can be referred to relate to contemporary issues to seek legal solutions. Therefore, the proponent jurists consider this precedent to be very close to the doctrine of juridical personality.

There were two types of slaves in the past. One who was not allowed by his master to trade or carry out a commercial transaction. Such a slave was called *qinn*. Another type of the slave was the one who would be allowed by his master to trade, called *al- 'abd al-ma'zoon*.

Al- 'abd al-ma'zoon (slave of second type) used to be initially given a sum by his master to trade freely and the income would rest in his hands. However, if he incurs debt which exceeds all his incomes he could then be sold by his creditors to set off their debts. However, if the sold money could not suffice to satisfy their debts or if the slave dies under the debt, in both the events, the creditors would have no right to claim their debts from his master. It means that though the master owned the slave and all his business including all his debts but the liability of the master was limited to the value of the slave and the capital he invested in him only and not beyond to his personal assets.

This example is considered as the nearest precedent of classical jurisprudence and can be used through qiyas for the limited liability of the shareholders. It means that as the insolvency of the slave does not bind the master to unlimited liability similarly insolvency of a company should not bind its shareholders to unlimited liability.

However, the jurists propose that the principle of limited liability should be restricted to the public advantage only. Therefore, they maintain that the limited liability should be applicable to the shareholders of public companies only as they are not and cannot be acquainted of the day-to- day business affairs including the company's debts if exceed the assets. Hence, they should not be held responsible for all such transactions in which they had no knowledge nor any role. Whereas, the shareholders of private companies can easily acquire knowledge of the day-to-day business affairs thus should be held responsible for all of its liabilities unlimitedly.[17]

To mention a few of the leading contemporary Muslim jurists who advocate and deduce evidences from classical Islamic jurisprudence to apply through qiyas and justify corporate personality are Justice (R) Mufti Taqi Usmani and his school of thought, Darul-Uloom Karachi (a leading seminary in Pakistan).[18]

Another leading scholar advocating the doctrine is Mustafa Ahmad Al-Zarqa.[19] Similarly, Muhammad Abu Zuhra is also a prominent figure among the present-day Muslim jurists advocating the doctrine.[20] Ali Al-Khafif is another notable jurist in line with others in the same

[17] ibid 231.

[18] He served as a member of Council of Islamic Ideology (Pakistan) prior to joining Federal Shariat Court in 1982 and subsequently Shariat Appellate Bench of the Supreme Court of Pakistan till 2002. His views can be found in his book cited above (n 15).

[19] Mustafa Ahmad Al-Zarqa, *Al-Madkhal Al-Fiqhi Al-'Am* (in Arabic) [*Introduction to General Islamic Jurisprudence*] vol 3 (Dimashq: Dar al-Fikr 1968) 287.

[20] Muhammad Abu Zuhra, *Al-Milkiah wa Nazariat al-'Aqd fi al-Shari'ah al-Islamiah* (in Arabic) [*The Ownership and the Theories of Contract in Islamic Jurisprudence*] (Al-Qahirah: Darul Fikr Al-Arabi 1996) 264.

pursuit.[21] Abdul Razzaq Al-Sanhuri is the most influential Egyptian jurist who drafted the Egyptian civil code by way of synthesis between Islamic law and modern legal doctrines which impacted other Arab countries to pursue the same suit in drafts of their civil codes.[22]

Some Professors of Law at International Islamic University Malaysia have also compared the position of corporate personality with Islamic Law as well as with Malaysian legal system. They observe that there is a split in the jurists' positions on the given issue. However, the Malaysian statutes such as Islamic Banking Act 1983 and the case law recognize corporate personality as an Islamic notion.[23]

Similarly, Professor Muhammad Arafa has also mentioned that the Gulf States who have based their legal systems on Islamic law, have also accepted corporate personality as an Islamic notion hence included the doctrine in their civil codes.[24]

The professor is of the opinion as he quotes Imran Khan Nyazee in his support that Islamic jurists of the classical period were dealing with the system of jurisprudence that combined religious duties with worldly affairs and directly emerged from the text or extended through strict analogy. However, there is another domain of Islamic jurisprudence which is called s*iyasah shariya* (State jurisdiction). This domain was left over by the classical jurists to the rulers of the time to exercise in order to run the State affairs which is a flexible part of jurisprudence. The doctrine of corporate personality may be analyzed within this jurisdiction by the Muslim States' institutions in the modern times.[25]

This may be worth mentioning here that Majallah al-Ahkam al-Adliyyah (Comprehensive Ottoman Civil Code of Islamic Law compiled between 1868-76) though did not incorporate the doctrine of corporate personality yet the Ottoman Commercial Code of 1850 did so; which was a transposition from the French Commercial Code of 1807.[26]

It is also ironic that the Ottoman Commercial Code of 1850 contained articles relating to *riba* (interest/usury) despite the fact that *riba* was banned across the Ottoman Empire (stretched in three continents: Eastern Europe, Middle East and North Africa) because its legal system was based on Shariah since its foundation in thirteenth century.[27]

II. THE CRITIC-JURISTS ON THE DOCTRINE OF CORPORATE

[21] Al-Khafif, Ali, '*Al-Sharikat fi al-Fiqh al-Islami, Buhuth Muqaranah'* (in Arabic) [*Partnerships in Islamic Law: A Comparative Study*] (Al-Qahirah: Jami'at al-Duwal al-Islamiah: Ma'ahad al-Dirasat al-'Arabiah al-'Aliah n.d.) 22.

[22] Abdul Razzaq Al-Sanhuri, *Masadir al-Haq fi al-Fiqh al-Islami* (in Arabic) [*The True Sources of Islamic Law*] vol 1 (Beirut: Dar Ihya' al-Thurath al-'Arabi) 18.

[23] Halyani Hassan, Zuhairah Abd Ghadas, Nasarudin Abdul Rahman, 'The Myth of Corporate Personality: A Comparative Legal Analysis of the Doctrine of Corporate Personality of Malaysian and Islamic Laws' (2012) 6 (11) Australian Journal of Basic and Applied Sciences 191, 196.

[24] Muhammad Arafa, 'Rethinking the Tales of the Shariah: God Is Not A Juristic Person, But the Mosque Is' (2023) 1 (29) Southwestern Journal of International Law 115, 124.

[25] ibid 134.

[26] ibid 117.

[27] Yasar Bilicioglu, 'The Legitimacy Paradigm of The Ottoman Commercial Code: Ulama and Interest' (2023) 13 (1) Journal of Islamic Review 115,116.

PERSONALITY

a. Juristic Person vs Natural Person

When the critic jurists compare the limited liability of an artificial person with unlimited liability of a natural person they observe that the law intends to empower an artificial person by giving it a shield of "limited liability" whereas leaves the natural person vulnerable to unlimited liability. It means that the fictitious person enjoys a special legal protection which makes it stronger than a natural person in "pursuit of gains" while renders it weaker in bearing "liability".[28]

They also draw attention to the fact that the classical Muslim jurists themselves developed the jurisprudence of the above-mentioned Islamic institutions (*waqf, baitul mal* etc.) but they never extended the doctrine of separate legal entity to commercial enterprises which is a clear evidence that despite being well aware of the concept, they did not approve analogy for commercial ventures.

The critics also contend that the above-mentioned institutions have wrongly been referred to for analogical deductions on the grounds discussed below.

b. Sanity and Puberty As Pre-requisite

Al-Sarakhsi maintains that the capacity for holding rights and obligations requires sanity and puberty which are the characteristics of a human being alone.[29] Since both the features lack in *baitul mal* and *waqf* therefore they cannot become capable of holding a claim or title. However, if rights and obligations are attributed to Islamic institutions that is due to special circumstances, i.e. protection of public and private interests/rights. Whereas, no separate legal entity has ever been attributed to such institutions in classical Islamic jurisprudence. Thus, the analogy made by the contemporary jurists is rebutted on the ground that the analogy requires two similar cases for analogical deduction whereas corporation and the Islamic institutions are not similar cases in essence, hence such *qiyas* is called '*qiyas ma'al fariq'.*
According to Imran Ahsan Khan Niyazee,[30] the classical Muslim jurists were well aware of the concept of legal personality yet they did not assign it to the institutions like *baitul-mal, waqf* etc.[31] In support of his argument, he referred to the rulings of Al-Sarkhsi[32], Al-Ghazali[33] and Al-Taftazani who maintain in vivid word that intellect is pre-requisite condition for legal

[28] *Murawwajah Islami Bankari: Tajziati Mutala'ah* (in Urdu) [*The Current Practices of Islamic Banking: An Analytical Study*] (Karachi: Maktabah Bayyinaat Jami'ah Al-Uloom Al-Islamiyyah, Allama Yusuf Binnuri Town 2008) 118.
[29] Al-Sarakhsi (n 14) vol 2, 233.
[30] He undertook a study on 'Corporate Personality and Usul-ul-Fiqh' during a fellowship in Islamic Legal Studies Program at Harvard Law School in 1996. The work was first published in a book form titled: Islamic Law of Business Organization. (Islamabad: Islamic Research Institute 1998).
[31] Imran Ahsan Khan Nyazee, 'Corporate Personality in Fiqh (Islamic Law)' (October 4, 2022) 2 <https://ssrn.com/abstract=4237513> accessed 1 October 2025. The detailed discussion has been provided in Imran Ahsan Khan Nyazee, *Theories of Islamic Law* (Rawalpindi: Federal Law House 2007) 95-114.
[32] Muhammad ibn Ahmad Al-Sarakhsi, *Kitabul Usool* (in Arabic) [*The Book of Islamic Jurisprudence*] vol 2 (Beirut: Darul Ma'arifah 1978) 333.
[33] Imam Al-Ghazali, *Al-Mustafa min Ilm al-Usul* (in Arabic) [*The Selected from the Principles of Islamic Jurisprudence]* vol 1 (Beirut: Darul Kutub Ilmiya) 54.

personality. Therefore, having intellect, legal personality has been assigned exclusively to human being, as held by all the classical jurists. This unanimous view is further explained by an eminent scholar Sadrul Shari'ah that it is *'ahd* (covenant) taken by Allah Almighty from the humankind to fulfil obligations.[34]

Similarly, Al-Sarkhsi treats legal personality as *al-amanah* (trust) which was offered to mountains but they refused and man accepted.[35] Thus this exclusive 'covenant' and 'trust' cannot be further granted by a human being to a non-human being. Moreover, they maintain that non-human being cannot be assigned legal personality as it lacks intellect which is a basic and distinguishing characteristic that enables a human being to become capable of execution of rights and obligations (performance of both).[36]

c. Real Owners vs Beneficial Owners

Similarly, in *waqf* and *baitul mal*, ownership rights are not attributed to individuals because ownership rights belong to Allah alone in both and public has only the beneficial rights. Whereas in case of a company, ownership rights belong to its shareholders who are the real owners of the assets of the company and they are natural persons, not artificial persons. Therefore, no analogy can be drawn between company and *baitul mal* or *waqf*.[37]

d. Distribution of the Assets vs Non-Distribution

Likewise, in case of liquidation of a company its assets are distributed among its shareholders proportionately as they are the owners of the assets of the company whereas in case of liquidation of *baitul mal* or frustration of *waqf* there is no such concept of return of the assets as there is no individual owner or shareholder in both the institutions to claim.[38] Similarly, if the *waqf* is dedicated and declared for the public at large and there is a large number of beneficiaries/poor then the *mutawalli* (manager of the *waqf*) has a right to give away to the poor as much as he deems fit unlike the corporate personality which does not have such a right or discretion rather it is bound to give the dividends/profits according to the predetermined ratio among its shareholders.[39]

e. Dual Roles vs Single Role

Moreover, administrators of *baitul mal* and *waqf* are not shareholders or owners of these institutions. They only discharge their duties in the interest of public/others. Whereas the directors of a company are shareholders/owners and sometimes appointed as employees as well. Thus, they have dual or more interests: ownership-interest in shares of the company,

[34] Sadr Al-Shariah, *Al-Tawdih* (in Arabic) [*The Elaboration*] vol 2 (Beirut: Darul Kutub Ilmiya n.d.) 750-751.
[35] Al-Sarakhsi (n 32) 332.
[36] Nyazee (n 31) 7.
[37] Fakhrul Islam Al-Bazdawi, *Kashf-ul-Asrar* (in Arabic) [*Revelation of Secrets*) vol 3 (Beirut: Darul Kutub Ilmiya n.d.) 444.
[38] Imam Muhammad Amin ibn Abideen, *Raddul Muhtar* (in Arabic) [*The Answer to The Baffled to The Exquisite Pearl*] vol 4 (Karachi: H.M. Saeed Company) 339.

[39] *Al-Fatawa Al-Hindiyyah* (n 10) 416.

commercial interest in shares' dividends/profits and sometimes employment interest. Thus, being shareholders, they act as owners while on behalf of the other shareholders they act as agents which is unlike the role of administrators of *baitul mal and waqf* as neither they act as owners of *baitul mal and waqf* nor as agents of the beneficiaries of both the institutions.

f. Noble Cause vs Derogatory Approach

Baitul mal and *waqf* are constituted with an aim to fulfill the needs of individuals and public at large, whereas a company is incorporated with the whole and sole aim of earning money to fulfill the needs and desires of its shareholders exclusively. Thus, it can be said that *baitul mal* and *waqf* are established for the service of mankind which is a noble cause whereas a company is constituted with an aim to empower an artificial person through the veil of limited liability to supersede and prevail all-natural persons in pursuit of gains, which reflects derogation of mankind.

g. Inheritance Under Debt vs Separate Entity

The critics observe that analogy of corporate personality through 'inheritance under debt' is untenable. They maintain that to declare such an estate as a separate legal entity from the deceased person is an incorrect view for the reason that liability of the deceased person is not extinguished due to insufficiency of his estate and the creditors' claims remain intact despite the fact that they are not paid in full and these claims will stand honored if not here then hereafter. Therefore, the 'estate under debt' will be attributed to the deceased and he cannot be exonerated from the debts-burden as mentioned in a Hadith.[40] Thus, it can be safely said that due to death of a natural person his estate does not become an artificial person for the reason of limitation/constraint of liability. This limitation arises due to the death of the deceased and not as an independent principle on its own as in the case of company. All the claims are attributed to such an estate only because of the death of natural person. Or in other words, since no one else is liable for his debts after his death therefore all the claims are attributed to his estate due to non-existence of the liable person anymore.

As mentioned above that indebtedness belongs to the deceased and not to his estate therefore claims of the creditors remain intact despite the lack of the estate. The only way for lapse of the creditors' claim is either by payment to them in full or through waiver by them in full.

h. Khultah-Al-Shuyu Under Financial Obligation

To respond to *khultah-al-shuyu*, the critic-jurists acknowledge that according to the three founder-jurists (Imam Malik, Imam Shafii and Imam Ahmad ibn Hanbal) *zakat* is levied on the joint stock of the partnership only and not on an individual partner. However, they contend that in case of a company, dual tax system operates, one on the company and the other on its shareholders. It means there is no similarity between *khultah-al-shuyu* and a company so far as financial obligations are concerned. Thus, analogy stands far from the principle of similarity between *'asl* and *far'* (original rule and new case). As regard the reason why the three founder-jurists levy *zakat* on the joint stock instead of the individual partners is that the three jurists

[40] Muhammad ibn Ismail Bukhari, *Al-Jami' al-Sahih* (in Arabic) [*The Authentic Collection*] vol 1 (Karachi: Qadeemi Kutub Khana 1961) hadith no. 306; Imam Muslim ibn Al-Hajjaj, *Sahih Muslim* (in Arabic) [*Authentic Collection of Hadith by Muslim*] 2 vols (Karachi: Qadeemi Kutub Khana 1956) 135.

maintain that *zakat* is a financial obligation unlike the view of Imam Abu Hanifah to whom *zakat* is a worship. Thus, the reason to apply *zakat* on *khultah-al-shuyu* is not that it is a separate legal entity but to maximize the amount of *zakat* which is only possible if it is levied on the joint stock instead on the individual partners.

i. Crossing School of Jurisprudence

This is also to be critically noted here that the proponents of the corporate personality resort to other schools of Islamic jurisprudence to justify the doctrine despite the fact that no such compelling circumstances exist. This is itself deviation from the established principle that a legal reasoning should be exercised within the broader principles of a single school of jurisprudence for standardizations.

The Rulings of the Muslim Jurist Organizations

Majlis-Ul-Ulama of South Africa also criticized the propositions of the proponent jurists and observed that it is misapplication of analogy to the precedents of the Islamic institutions. They relied on the above-mentioned evidences and published a critique in a book form.[41] Likewise, Wifaq-ul-Madaris Al-Arabiya (board of Islamic seminaries) Pakistan also criticized all the grounds of the above propositions and declared the analogy contrary to Shariah principles. They also published a comprehensive critique in a book form.[42] This critique was compiled and endorsed collectively by the leading *dar-ul-ifta* (houses of Islamic legal rulings) of Pakistan under the patronage of Saleem Ullah Khan who was the then president of Wifaq-ul-Madaris Al-Arabiya Pakistan.

CONCLUSION

The founder of Pakistan, Muhammad Ali Jinnah, set a golden guiding principle for its financial system in his inaugural address of the central bank, named 'State Bank of Pakistan' on July 1, 1948. He said: "I shall watch with keenness the work of your Research Organization in evolving banking practices compatible with Islamic ideas of social and economic life …. We must work our destiny in our own way and present to the world an economic system based on true Islamic concept of equality of manhood and social justice. We will thereby be fulfilling our mission as Muslims and giving to humanity the message of peace which alone can save and secure the welfare, happiness and prosperity of mankind".[43]

As a universal observation, this may be maintained that the principle of "separate legal entity with limited liability" has transformed business organizations of the past into the business empires of the present, featured with imperialistic characteristics. It is evident from the corporate practices over a century that the doctrine of corporate personality has given them vast powers (under the shield of limited liability) to raise massive funds from the giant creditors

[41] Majlis Al-Ulama, *The Concept of Limited Liability – Untenable in The Shariah* (South Africa: Majlis Al-Ulama 2000).
[42] *Murawwajah Islami Bankari* (n 28).
[43] 'Islamic Banking: History of Islamic Banking in Pakistan' *State Bank of Pakistan* (Karachi: 1 July 1948) <https://www.sbp.org.pk/departments/IBD.asp> accessed 10 October 2025.

(protected by limited liability) to establish business empires across the world. These immunities and safeguards have enabled them further to surface political arena and influence world politics by massive funding to political campaigns to ultimately impact on the State policies. And this is why, when widespread public protests are agitated against unjust State policies, such giant corporations are also boycotted by the mass consumers reason being that these "limited liability corporations" are considered responsible in the shift of "balance of power" through motivated policies.

In the current scenario, the Jewish corporations can be cited as an ideal example whose products have been boycotted worldwide for being considered as complicit for the grave violations committed by the State of Israel. On the other hands the US policies tilt towards the Aggressor State due to such corporate giants' influences over the State.

However, it is left over the readers to analyze and form their own independent opinions in the light of the interpretations, produced by the proponents of the doctrine of corporate personality and the evidences adduced by the critic-jurists.