

**FINANCIAL AND SHARIAH ANALYSIS OF HAJJ-RELATED
SERVICES: A CASE STUDY**

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Abstract

In many developing countries, the state plays a major role in providing various Hajj-related services. The services are sometimes quite comprehensive. The pre-hajj services could be enumerated as: provide relevant information; help pilgrims prepare relevant travel documents; conduct training programs relating to performance of hajj and the like. Providing logistical support for travel, boarding and lodging of pilgrims, of course, remains an important component of the overall package both prior to and during the hajj. The overall purpose is to enable pilgrims perform hajj smoothly without being bogged down by infrastructure-related constraints. The organizations that are created for this purpose and are engaged in providing these services often lack professionalism. More importantly, there is hardly a mechanism through which the quality of these services could be measured and monitored. While the state may play an important role in providing the services with a welfare objective, private sector operators governed by profit and/non-profit considerations are also part of this industry.

Apart from services that are essentially non-financial, the state also often aims to provide financial support and services for performance of hajj. This may range from maintaining and managing special deposit accounts (as in Malaysia, for example), to providing a subsidy (as in India) in order to finance the hajj-related expenditure. Are such subsidies justifiable from the standpoint of Shariah? One viewpoint is that the holy Qur'an, which specifically enjoins every Muslim to undertake the Hajj at least once in his or her lifetime, also insists that the pilgrimage is obligatory to those who could afford this journey. This, in their opinion, requires denial of such subsidy and the hajj must be done from "within" the pilgrim's own resources. The contrary view is that when there is no plea on the part of any Muslim individual or body to the government to defray Hajj expenses, and the subsidy is introduced voluntarily under special circumstances, this deserves a different treatment from the standpoint of Shariah. In this paper, we seek to undertake a financial and Shariah evaluation of such financial support and services focusing on the India as a case study. The case study approach has been found to be useful in highlighting the "special circumstances".

Introduction

In many developing countries, the government plays a major role in providing various Hajj-related services. The services are sometimes quite comprehensive. The pre-hajj services could be enumerated as: provide relevant information; help pilgrims prepare relevant travel documents; conduct training programs relating to performance of hajj and the like. Providing logistical support for travel, boarding and lodging of pilgrims, of course, remains an important component of the overall package both prior to and during the hajj. The overall purpose is to enable pilgrims perform hajj smoothly without being bogged down by infrastructure-related constraints. Governments in different countries often set up specialized agencies to undertake and facilitate provision of hajj-related services. Often the government also assumes a paternal role and seeks to extend assistance to pilgrims in financial management of their hajj-related expenditure. Such assistance ranges from extending subsidy in various forms, as in case of India, to designing and implementing various savings and investment packages, as in case of Malaysia. The overall goal of such exercise seems to be to enable pilgrims manage their financial resources for performance of hajj. While the overall objective of extending help to pilgrims is a laudable one, the mechanisms used are at times not beyond controversy. This paper undertakes a comparative case study of India and Malaysia - two countries that send a fairly large contingent of pilgrims every year. It examines the facilitating mechanisms used by respective governments *with a focus on financial aspects* from a Shariah point of view and makes some important suggestions.

Shariah Teachings Regarding Hajj

There is no doubt that hajj is obligatory only when one can afford the expenses of the journey to Makkah and back through his own resources. "Hajj to the House is a duty that mankind owes to Allah those who can afford the journey" (3:97) However, leading ulama have differed on the definition of 'afford'. While majority of jurists hold the view that the person must be in possession of food and conveyance, Imam Malik has gone to the extent of counting the pedestrian walking power (for one who travels on foot) and begging (for one who depends on charity) as fulfilling the condition of affording the provisions for performing hajj. (1)

At another occasion, the Qur'an has emphasized on the arrangement of provision before undertaking this journey. "And take a provision (for your selves) for the journey. But the best provision is the fear of Allah (or right conduct)". (2:197) Ibn Abbas narrated that the people of Yemen used to come for hajj and used not to bring provision with them and used to say that they depend on Allah. On their arrival they used to beg the people and so Allah ordered that provisions must be arranged before undertaking the hajj journey. (2) In a saying of the Prophet, peace be upon him, 'affording the journey' has been explained as the provision and conveyance. (3) To make the hajj obligatory, one should be already in possession of the provision and conveyance. If someone else offers to him, it is not mandatory for him to accept it and to go for hajj. (4) On the other hand, if someone accepts such offer or even without an arrangement sets out to perform hajj, his hajj will be right and valid. (5)

It may be noted that in a number of narrations, the hajj has been called as jihad (struggle or fighting for the cause of Allah). (6) So much so that a few jurists hold that zakah can be used for the assistance of a hajj, though the majority of scholars does not subscribe to this opinion. (7)

Hajj is most monastic form of worship. But there is no harm that a person avails this opportunity to do some commercial activities. "Allah has made the House of Ka'bah a means of stabilizing the (community) life of people, the holy month, the animal offering and the animal which are collared as mark of dedication."(5:97) In surat al hajj, Allah (S.W.T) says, "And proclaim to mankind the pilgrimage, they will come to you on foot and on every lean camel. They will come from every deep ravine. So that they may witness things that are of benefit to them". (22:27-28). The term *manafe`* which is plural of the word *manfa`ah*, is a very comprehensive one which includes all kind of benefits including economic. At another occasion Allah (S.W.T.) specially mentioned the permissibility of the economic gain during the hajj period. "... And there is nothing wrong if you seek the bounty of your Lord during the pilgrimage."(2:198) The phrase '*ibtigha mardati'llah*' (seeking Allah's bounty) is a known Qur'anic expression for earning one's livelihood.

In pre-Islamic era a number of trade fairs were linked with the hajj such as Ukaz, al-Majannah, Dhu'l Majaz, etc. (8) After Islam some Muslims thought that it was against purity, sincerity and God-fearing to engage in any commercial business during the hajj. So the Qur'an removed this misconception and made it clear that a person with full observation of Divine injunctions could engage in economic activities while performing hajj. This proves that the provision of services on commercial basis and use of hajj occasion for economic gain was common not only in pre-Islamic society but continued in the Islamic history also. And both local people and pilgrims mutually benefited from this opportunity through direct commercial activities as well as logistic support.

As far as voluntary services and philanthropic institutions are concerned, they always dominated the commercial aspect. The Quraish in *Jahiliyyah*, the custodian of the House of God, considered it a matter of pride and honor to extend every support to the pilgrim that he needed. Qusayy ibn Kilab (the fourth grand grand father of the Prophet) who was custodian of Ka'bah in his time, used to provide pilgrims free of charge food and drinks. (9) The Qur'an has also acknowledged these good practices of *Jahiliyyah* but reiterated that in absence of true faith they had no value in the sight of Allah. "Have you made the mere giving of water to pilgrims and guardianship of the Holy Mosque as the same as one who believed in Allah and the Last Day and struggle in the way of Allah? Not equal are they in Allah's sight". (9:19) This practice continued throughout the Islamic history. And now the chain has extended, as we have seen, to the originating country of the pilgrims too. However, the huge expenditure made by the present Saudi Government for the sake of the pilgrims on provision of water, transportation, accommodation, health, cleanliness, etc. has left far behind all such expenditures in the past.

Role of Hajj Committee, India

In India the primary facilitator of hajj that provides hajj-related services to over sixty percent of total pilgrims is a specialized agency named as Hajj Committee that was created by an Act of the government called the Hajj Committee Act, 1959. The duties of the Committee, *inter alia*, as prescribed by the Act are (10):

- To collect and disseminate information useful to pilgrims;
- To advice and assist pilgrims during their stay in the cities and ports of embarkation, while proceeding on or returning from pilgrimage, in all matters including vaccination, inoculation, medical inspection and issue of passes and Passport, and to co-operate with local authorities concerned in such matters;
- To give relief to indigent pilgrims;

- To negotiate and co-operate with Railways, Shipping Companies, Air Ways and Travel Agencies for the purpose of securing traveling facilities for pilgrims;
- To bring the grievances of pilgrims and any irregularities and omissions on the part of travel-related service providers;
- Generally to look after the welfare of the pilgrims; and
- To discharge such other duties in connection with pilgrim traffic as may be prescribed.

The government in subsequent amendments and notifications clearly prescribed that:

- The Committee shall act as an Agent for the Indian Air Companies for the purpose of Chartering Haj Air Flights.
- The Committee shall undertake the distribution of food grains parcels by making suitable arrangements to the pilgrims in Saudi Arabia.
- The committee may undertake the distribution of clothes and food grains for consumption of the pilgrims in transit as well as for carrying the same to Saudi Arabia for their use of consumption during their stay in Hedjaz as prescribed by government of Saudi Arabia from time to time.
- The Committee may provide medical assistance to the inbound pilgrims.
- The Committee may also make necessary arrangements for the pilgrims for traveling from and to their place of residence in India.
- The Committee may make necessary arrangements for assisting and guiding the pilgrims in Bombay.
- Arrangements for inoculation, vaccination and final medical check up of and enforcing other such restriction imposed on the pilgrims by the government from time to time shall be made by the committee.
- The Committee shall arrange proper accommodation for the pilgrims in transit.
- The Committee shall provide relief and repatriate such of the indigent Indian Haj Pilgrims as a stranded in Bombay soon after their return from the pilgrimage.

While there is little disagreement among scholars regarding provision of such services with the objective of making the hajj a smooth experience for the pilgrims, it is the financing mechanism that has come under cloud.

The Act provides that all expenses under the above heads are met from the Welfare Fund or the Haj Fund of the Haj Committee. The fund is credited with *interalia*:

- (a) The interest on deposits made by pilgrims;
- (b) The fees charged for the registration of the pilgrim passes
- (c) The sums realized from the sale of the effects of deceased pilgrims and sum of money left by deceased pilgrim, which are unclaimed and have lapsed to the government;
- (d) Any sums received by the Haj Fund from private sources; and
- (e) Any sums allotted by the Central Government or any State Government to the Haj Fund.

The Haj fund is held in trust and remains under the control and management of the committee. It is applied to the following purposes: (a) salary and allowances of staff of the committee; (b) payment of charges and expenses incidental to the object specified above

and (c) payment of subsidy to any Haj Committee established in any State in India. The Act clearly specifies that the Haj Fund, shall be kept in the State Bank Of India or such other scheduled bank as the Central Government may from time to time direct. It also makes clear stipulation regarding investment of balances of Haj Fund. According to the Act, the Committee, with the previous sanction of the Central Government, may place in fixed deposit with any Bank or may invest the same in Government or any other public securities and may likewise dispose of such securities as may be necessary. The income resulting from any fixed deposit or from any such security or from the sale of proceeds of any such security, is credited to the Haj Fund.

Problems & Controversies

The above arrangement has clearly some major components that are not acceptable from the stand point of Shariah. The commingling of interest with Hajj Fund is clearly inadmissible and cannot be justified on any ground. This fact needs to be highlighted and the Muslim community in India must demand a Shariah-compatible financing mechanism from policy makers that is free from elements of riba.

The second feature that needs serious discussion and scrutiny is the last component in the financing mechanism - sums allotted by the Central Government or any State Government to the Haj Fund. It has been referred to as the subsidy component and has been the subject of a vociferous debate in the Indian media and among scholars and policy-makers. The so-called subsidy generally takes the form of a reduced airfare for the pilgrims.(11) The following contentions are generally made.

a. Haj is an Islamic obligation for those who can afford the costs involved in its performance. That today's governments undertake to organize the pilgrimage should be no excuse to demand the subsidy. There can be no justification for this kind of largesses. It will be morally inaccurate for Muslims to even demand subsidies for Haj even under an Islamic governance. (12)

b. The Qur'an specifically insists that the pilgrimage must be done from 'within' the pilgrim's own resources and that one's pilgrimage may not be 'accepted by God' if expenditure on transport to the Hajj holy sites and on food is not out of the the pilgrim's own money.(13)

The Mechanism in Detail

Before we turn to the question of desirability and admissibility of the subsidy or otherwise, it would be pertinent to examine the role of the pilgrim in the entire mechanism and whether and how he or she asks for and receives such a subsidy to finance its hajj. In order to correctly appreciate the mechanism, we must clearly distinguish between two parties: the Hajj Committee as an agency created by the Indian government and the pilgrims in their individual capacities. The Hajj Committee is not a representative of the pilgrim. It is not just a facilitating organization; it is a provider of services and charges every pilgrim for the entire package of services, including transportation. The agency is supposed to price the package of services prudently and with a welfare objective devoid of any profit motive, unlike the providers of such services in the private sector. In pursuit of its welfare objective, and to maintain prices at a reasonable level, the agency has been seeking financial support from its parent, the government. And it must be underscored here that though the prices charged may apparently include an element of subsidy resulting in bringing the prices below their normal market levels, prices also include the financial and non-financial costs of inefficiency

of this service provider. The latter component is often absent in services provided by many private sector operators. There are two conclusions that may be derived from the above:

a. The claim of subsidy is a matter that is negotiated between the agent, Hajj Committee and its principal, the government. This negotiation is part of the overall pricing mechanism. The pilgrims, individually or collectively, has no role whatsoever, in the negotiation process and is a price-taker.

b. It is an open question whether the prices that are charged ultimately by the Hajj Committee is above or below normal. Though apparently the service package provided by private operator is marginally higher than that provided by the Hajj Committee, the prices are not comparable as they are not for identical services. It is widely believed that the services provided by the Hajj Committee are inferior to that of most private operators. In fact, in the market, there is a range of service packages that are available and that are priced differently.

c. Some commentators have singled out “air fare” for the purpose of comparison in order to provide evidence in favor of the subsidy component. The airfare being charged over the last few years are said to be below the normal market levels. (14) However, here too, the comparison undertaken is grossly inaccurate; due to absence of data on possible bulk discounts that pilgrims as a whole may avail in a fair market.

Even if we assume that every pilgrim asks for and receives a financial assistance from the government to perform hajj, is this practice acceptable in Islam? In the light of our brief review of the relevant Shariah teachings in this regard in section 2, we are in a position to comment on this question.

Shariah Position on External Assistance

There may not be two opinions that the supply of pre-hajj services, such as provisions of related information, assistance in preparation of the relevant documents, training programs on hajj rituals are not only desirable but obligatory on the home country of *hujjaj* (pilgrims), as these services enable them to perform hajj correctly and conveniently.

Similarly, providing logistic support for travel, boarding and lodging of pilgrims are also necessary requirement to perform the hajj smoothly and worry-free. However, a clear distinction needs to be made between the issue of providing support services to pilgrims and reducing the airfare through a financial subsidy from the government.

As far the issue of hajj subsidy in India and some other countries, is concerned, first of all, it may be kept in mind that pilgrims themselves never demand such subsidy. Nor do their programs of hajj depend on subsidy. In fact, a large number of pilgrims do not avail such subsidy. They perform hajj fully on their own expenses. However, if the government of a country or certain institution extend subsidy, it is not required from the pilgrims to reject it or protest against it. Especially when as a citizen of that particular country they are entitled of such assistance. Hajj is a journey of piety, so government or NGOs try to share in this good deed in some way or other. As we noted above that a small minority of jurists thinks that even zakah may be spent on hajj – a controversial issue. But there is no difference of opinion regarding help of a pilgrim from non-zakah revenue. According to a tradition the husband of Umm Ma’qal trained and brought up a young camel for the sake of ‘*jihad fi sabil Allah*’. His wife asked from him the camel to perform hajj who denied. At this she

complained the Prophet who ordered him to give her it to her and remarked, "The hajj and umrah are *'fi sabil Allah'*. (15) We have already referred to ahadith that refer to hajj in a broader sense as jihad. Thus, any expenditure to facilitate hajj should always be welcome. The important requirement is to use the resources in most efficient and economical way, and that there should be an appropriate mix of public and private organizations to render the required services in the best possible way.

Lessons from Tabung Haji, Malaysia

In Malaysia the primary facilitator of hajj that provides hajj-related services is a specialized agency called the Pilgrim Management and Fund Board, locally known as Lembaga Urusan dan Tabung Haji (LUTH). It was launched about three decades back as a modest proposal, but is presently one of the greatest cooperative success stories in Malaysia, and perhaps one in the world. Since the problem highlighted in this paper focuses on the financial aspects of the facilitating process, such as, interest on deposits and element of subsidy we concentrate on the financial model employed by LUTH.

LUTH was originally envisaged as a simple saving scheme, to enable villagers to save at the post office for going for hajj by an academic, Professor Ungku Aziz. Prior to the creation of Tabung Haji, it was normal for rural Malays to save up their paddy surplus to buy buffaloes, and later to convert the buffaloes into land. The land thus bought, after years and years of saving, was later sold off for the cash to perform the pilgrimage. Since the use of land as a vehicle of savings was economically damaging and led to fragmentation, under-utilization of land, a simple post-office savings scheme was designed as a substitute. While other interest-bearing savings schemes had failed in mobilizing savings of the rural Malays who preferred to keep their savings 'under the mattress', Tabung Haji scheme was a success. This was because, it was repeatedly emphasized that it would be run on the basis of investment of the savings in halal activities, and the profit gained would be deposited to the intending pilgrims' accounts as bonuses.(16)

While one of the main strengths of Tabung Haji is its monopolistic position in Pilgrims Management derived from the Tabung Haji Act, it has, over the years, been accepted as financial institution that carries out its financial activities according to Shari'ah principles. It provides for a vehicle of savings not only for the purpose of pilgrimage but also for other needs as well.

In implementing its function as a saving institution, Tabung Haji adheres to the 'Wadiah' principle i.e. 'Wadiah Al-Wakalah Al-Mutlaqah' i.e. the depositors give consent to Tabung Haji to manage their deposits for the purpose of investment. The profit derived from the investment then are to be distributed among the depositors in the form of bonus. This is done after Tabung Haji has determined the net distributable profit for the year after the payment of Zakat. The deposits are guaranteed by the government of Malaysia.

What is the Shariah position on the above case of Malaysia in maintaining special account and managing the savings for hajj and umrah purposes?

No doubt hajj is obligatory only when a Muslim is already in possession of necessary provision for this purpose as we noted above. But if someone who lacks this condition try to manage it by disposing off his property in use such as agricultural land, house and household goods, or even through borrowing, then this will not affect the validity of hajj. The Malay Muslims in general have utmost desire to perform hajj and visit the holy palaces of Islam. For

this purpose even those who could not afford the journey of this sacred land used to sell their essential assets. After return they became heavily indebted and faced unforeseen difficulties.(17) Tabung Haji sought a solution for this problem and induced Malay Muslims to save for this purpose and invested their savings for growth and in this way not only saved them from being prey of indebtedness and poverty, but also improved their conditions and paved the way for Islamic banking experiment in Malaysia. There is no doubt in Shariah permissibility and acceptability of this whole process. Thus, the intending pilgrims start enjoying spiritual benefits and economic fruits (manafe') since the very day they open a saving account intending to perform hajj.

Concluding Remarks

The first and foremost requirement is that the Indian model be made free from the elements of riba. The element of interest on hajj deposits be done away with forthwith. While the subsidy element may be an acceptable one, it is certainly not free from controversy. The Malaysian model is clearly a superior one. It is proposed therefore that the government of India may consider restructuring the operations of Hajj Committee entirely. Especially the financial model may be redesigned along the Malaysian lines. A deposit scheme may be designed that would perhaps be the maiden interest-free scheme in the Indian economy. While objections to introduction of interest-free banking may raise immediate concerns among policy-makers, given the set guidelines for commercial banking, a beginning in this direction could be made through the hajj deposit schemes specifically meant for pilgrims. The deposits could be guaranteed by government of India and invested in a portfolio of Shariah-acceptable projects and assets. At a later stage, the scope of interest-free hajj savings scheme could be expanded, as it has happened in case of Malaysia. Reorganization of Hajj financing may thus pave the way for introduction of interest-free Islamic finance in India.

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