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ETHICAL DIMENSIONS IN ISLAMIC FINANCE: THE WAY FORWARD
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At a Seminar organised by the Securities Commission about two years ago on the financial crisis in the West, I asked the paper writer, a professor from Australia, whether the crisis was due to the system (i.e. the conventional system) or the abuse of the system. He replied, "Abuse". Then I said, "If it is abuse, then abuse may happen in the Islamic system too." He agreed but he argued that there is a difference because the Islamic system is faith-based.

There is no question that Islamic finance is faith-based. But, it is a big mistake to think that all the players will be religiously ethical. Even the prohibited (*haram*) are breached all the time, sometimes including by ourselves, what do you expect regarding ethics and when money is involved?

In Malaysia we read about customers, allegedly assisted by someone from within, cheating Al-Rahnu and a non-Muslim CEO of a company allegedly fraudulently obtaining from an Islamic bank and defaulting millions of Ringgit. We have seen employees of Tabung Haji being charged for criminal breach of trust. We have seen both Muslim and non-Muslim customers, who have defaulted, raising a defence that the transaction was not Shariah-compliant, hoping to avoid their obligation to pay their debts. Crossing the border, we have seen a bank that had offered a Shariah-compliant product turning around to say that it is not Shariah-compliant, in an attempt to avoid the obligation under the contract.¹

There is a tendency amongst Muslims to assume that if they do something which they believe to be "Islamic" and in the name of Islam, everything will turn out fine: Allah s.a.w. will take care of everything. They forget that "*sunnatullah*" applies to all: you have to do the right thing to get the right result. They forget that even the Prophet and his troops lost the Battle of Uhud, not because of lack of piety or wavering faith, but because the archers deserted their positions and prematurely rushed for the spoils of war. It is a question of not following orders and lack of discipline.

Coming back to Islamic finance. Why do things that I have mentioned happened?

Thirty years is not a very long time in the history of banking and finance. We still remember that the first Islamic bank in Malaysia was established to provide a non-riba based banking to pious Muslims. At that time both the bank and the customers very concerned about compliance with the Shariah in their

transactions. However, within a short period, beyond anybody's expectations, Islamic banking and Islamic finance had grown into a trillion-dollar business.

As a result, people and banks who/which otherwise would have nothing to do with anything "Islamic" became interested in Islamic banking and Islamic finance, not because of piety, but because of money. The faith factor loses its significance. Non-Muslim customers too came in, again not because of the desire to avoid committing a sin, but partly because they are attracted by the fact they would not be penalised with penalty and compound interest, not even interest after judgment plus Islamic bank's own weakness in enforcement.ⁱⁱ Competition amongst the industry players and the desire to increase profits comparable to the conventional counterpart adds to the dilution of the faith factor.

In short, we should not depend too much on the faith factor. We have to be realistic. We must remember that we are not only dealing with pious customers and pious employees or even bankers. We are also dealing with crooks. We should not be naïve.

What is this "Islamic ethics" that we are talking about? Muslims are very fond of using the word "Islamic" as a brand name. Hence, we have, Islamic banking, Islamic finance, Islamic clinic, Islamic medicine, Islamic kindergarten, Islamic beard, Islamic tooth brush and so on that the West has added, Islamic bomb, Islamic terrorist leading to Islam phobia. In the case of ethics, if you try to list them, it boils down to two words: honesty and fairness. Honesty is honesty and fairness is fairness. They cut across all religions and a fair portion of it has been covered by the law, I mean the existing law that we have. It is a matter of implementation.

There may be other areas which are not covered by law, civil or criminal. That is the area that we should be looking at. The focus should not only be towards one particular side. It should be both. Both parties, the IFIs and the customers/investors must be ethical.

I think we should not waste our time trying to define ethics or Islamic ethics. Just list them down. It is easier to list them down. After all, you don't define every animal that you want to refer to. You just call them by their name, buffalos, camels, donkeys, goats etc. You know what animal it is when you mention or see one.

What do we do? I don't have a clear cut answer because I am not a banker, a regulator, a Shariah scholar, all in one. In any event, who has? I believe it requires people with experience and expertise from all relevant disciplines to sit together and formulate whatever you want to call it, rules, regulations, guidelines or whatever. Having listed it, the question is how to effect compliance? That, I think, is the biggest challenge. I think a committee should be set up. It does not matter if other people don't do it. If you want to lead you have do what other

people have not done. It does not matter if the conventional people do not do it. We should start worrying if they do it and we don't and if they are more ethical than the Islamic. Unfortunately, we see a lot of that in life.

I think we should start working.

Thank you.

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NOTES

ⁱ Get name of the bank/case

ⁱⁱ A non-Muslim lawyer told me seven or eight years ago, "The good thing about Islamic bank is that it is slow in enforcement." I hope things have changed. I also hope that our introduction of late payment charge in the Rules of Court will help.