

The Binding Nature of *Wa'ad* (Promise) and Its Application in Islamic Finance

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Abstract

Murabaha, Ijara, Musharakah or any other Islamic financial transaction as inherited from Islamic jurisprudence, was not tailored to fit readily the needs of financiers for substituting financing techniques. The present shape of Islamic financial transactions have been evolved from the original contracts of the same names, with many additions and alterations. One of the modern day additions to the original Islamic financial transactions is the series of "promises or undertakings". Therefore, Wa'ad (Promise) plays a central role in the transactions used by Islamic financial institutions and without re-defining the boundaries of the nature of Wa'ad (Promise) in these transactions, the whole Islamic financial system would collapse or, at least, would be irreparably damaged. This paper discusses the binding nature of Wa'ad (Promise) in Shariah (Islamic Law) both from Diyanata (moral) and Qada'a (legal) angles, in the context of the modern Islamic financial system by analysing the fixed and flexible sphere of Shariah (Islamic Law).

Keywords: Promise, *Wa'ad*, undertaking, Islamic finance, *Murabaha, Ijara, Musharakah, Sukuk*.

1. Introduction

The consensus view of contemporary Muslim jurists, who have identified interest with the prohibited *riba* (interest), has led Muslim scholars to search for appropriate institutional arrangements for restructuring their economic and financial system on the principles prescribed by *Shariah* (Islamic Law). Consequently, a growing literature has developed with the aim of rediscovering the doctrinal foundations of Islamic economics and applying them to analyse the functioning of a modern-day Muslim economy. The area of Islamic banking and finance has naturally received the most attention by Islamic economists and jurists, in view of the direct outcome of the prohibition on the payment and receipt of interest. Alternative Islamic modes of finance have thus been developed, their comparative advantages assessed and their applicability to various sectors and operations considered.

In their quest for a viable Islamic financial system that would replace the illicit practices of interest financing, most Islamic financial institutions turned towards existed mode of business transactions such as *Murabaha, Ijarah, Musharakah and Mudarabah*. However these mode of business transactions as inherited from Islamic jurisprudence, were not tailored to fit readily the needs of bankers and other financiers for a substitute financing technique. In other words, the present shape of the Islamic financial products have been evolved from the original contracts of the same name, with many additions and alterations.

One of the modern day additions to the original Islamic mode of business transactions is the series of "*promises or undertakings*" initiating from both parties, i.e. bank and customer. As a result, *Wa'ad* (promise) plays a central role in the transactions such as *Murabaha, Ijara Wa Iqtina* or *Sukuk* used by the modern Islamic financial system. More specifically, one can argue that, without re-defining and re-restructuring the boundaries of the nature and status of *Wa'ad* (promise) in *Murabaha, Ijara Wa Iqtina* or *Sukuk* transactions as well as in other contracts of the Islamic financial system, the whole Islamic financial system would collapse or, at least, would be irreparably damaged. At the same time, given that Islamic law is meant to apply to every aspect of a human's life, including the financial system, in all ages, consequently, the principle of *Shariah* (Islamic Law) must evolve and grow, so that it may be able to cater to the demands of the changing times.

This paper discusses the binding nature of *Wa'ad* (promise) in *Shariah* (Islamic Law) from two angles, i.e. morally (*Diyanata*)¹ and legally (*Qada'a*), especially in the context of the modern Islamic banking system. However, this will require us first to explain the fixed and flexible parts of *Shariah* (Islamic Law) so as to determine where the binding nature of *Wa'ad* (Promise) lies? Is it a part of the fixed portion of *Shariah* (Islamic Law) which cannot be changed at all? Or does it lie within the ambit of the flexible part, which can be adapted with care and greater flexibility, while keeping in mind the purposes of *Shariah* (Islamic Law), known as *Maqasid al-Shariah* rightly explained by Al-Ghazali². This will be the burden of Section 2 to explain in more detail the two spheres of *Shariah* (Islamic Law), i.e. the fixed and flexible parts of *Shariah* (Islamic Law), the discovery of which falls within the domain of the jurists. Section 3 then elaborates on the binding nature of *Wa'ad* (Promise) morally and legally from the context of different schools of thought. Section 4 contains concluding remarks.

2. Spheres of Shariah (Islamic Law)

Shariah (Islamic Law) is meant to apply to every aspect of a human's life, regardless of time and place. Therefore, *Shariah* (Islamic Law) has to evolve and grow so that it may be able to cater to the demands of changing times. That is why *Shariah* (Islamic Law) grew gradually to become a complete legal system and that is where the jurists played their important role. The laws as mentioned in *Quran* and *Sunnah* of the Prophet (PBUH) have been determined and fixed for all times to come. These comprise the core legal concepts and norms of *Shariah* (Islamic Law). According to Islamic believes, Muhammad (PBUH) was the last of the prophets. Therefore, humankind has no freedom to change these laws at all. However, these fixed laws cover a relatively small area of a Muslim's life in the changing world, especially in the modern era. The bulk of these laws remain to be discovered (flexible sphere), while remaining within the ambit of these fixed and core legal concepts as laid down by *Quran* and *Sunnah*³. To understand properly the two different spheres of *Shariah* (Islamic Law), we have first to understand two things: the meaning of *hadd* and the classification of laws on the basis of rights (*Hukm taklifi*)⁴.

2.1. Hadd and Hukm Taklifi

The majority of Muslim people associate *hadd* with crimes, which means "fixed penalties determined to be the right of Allah". However, this is the narrow understanding of *hadd*. There is a wider *doctrine* of *hadd* and this should not be confused with the narrower concept of fixed penalties. To simplify the matter, we may say that all those issues of the law which are explicitly stated in the texts of *Quran* and *Sunnah* fall within the ambit of the wider meaning of *hadd*. This wider meaning of *hadd* is indicated in *Quran* in several places. For example, consider the case where the form of divorce is laid down and it is suggested that property given to the wife should not be taken back upon divorce. The verse ends with the warning: "*These are the limits (imposed by) Allah. Transgress them no. For whose transgresseth Allah's Limits: are the wrongdoers.*"⁵ This wider doctrine of *hadd* works hand in hand with the concept of *haqq Allah* (the right of Allah). Thus, *Hukm taklifi* (right) is divided into those laws that relate to the right of Allah and those that relate to the rights of *haqq a'abad* (the subject), human beings.⁶ The right of Allah is owed by the Muslim community to Allah, and is not owed by the individuals to the community or to the state. Therefore, the right of Allah is fixed by Allah, once and for all and is not subject to legal or judicial review. Thus, it is outside the purview of the law and jurists.

¹ *Diyanata* means that the person is accountable on the Day of Judgment alone and is not enforceable legally in this world.

² See Al-Ghazali, Abu Hamid Muhammad ibn Muhammad, (450-505 AH/1058-1111 AD), "*Al-Mankhul*", Researcher, Dr. Muhammad Hassan Haitho, *Dar al Fiker*, Damascus.

³ For more detail about the spheres of Islamic law, please see Imran Ahsan Khan Nyazee, (1994) "Theories of Islamic Law", Chapter 8, pages 110 to 126, Islamic Research Institute, Islamabad, Pakistan.

⁴ *Hukm* means a communication from Allah, *Al-Mighty*, related to the acts of the subjects (human) through a demand, option or declaration. In other words, *Hukm taklifi* means the obligation creating rule, i.e. the primary rule of the Islamic legal system.

⁵ *Quran*, Surat Al-Baqarah (2: 229).

⁶ It is important to note that the right of Allah should not be confused with either the right of the state or the right of the community. The right of Allah is independent of the right of the state or the right of the community. The right of the state is, in fact, the right of the individuals, as a whole, which has been referred to as a (*haqq al-sultan*) by *al-Sarkhsi*. For more detail about different kinds of rights in *Shariah (Islamic Law)*, please see Al-Sarakhi, Shams al-'immah Abu Bakr Muhammad ibn Abi Sahl Ahmad (died 490 AH/1096AD), "*Kitab al-Mabsut*", Vol. 9, p. 133, Dar al-Ma'arif, Beirut.

It can never be altered. Therefore, all laws that are related to the right of *Allah* are part of the fixed sphere of *Shariah* (Islamic Law), i.e. not subject to any change or alteration till eternity.

By contrast, all laws that are not related to the right of *Allah*, i.e. those that are related to *haqq a'abad* (the right of individuals) or the right of *haqq al-sultan* (the state) and which have not been expressly stated in the texts of *Quran* and *Sunnah*, belong to flexible sphere of *Shariah* (Islamic Law), which is liable to change. In fact, such laws should be continuously changed in each era, in order to cater to the demands of the changing times in the light of the primary sources of law as explained in *Quran* and *Sunnah*.⁷

However, any laws that involve the right of the individual, but have been specifically fixed in *Quran* or in *Sunnah*, belong to the fixed sphere and are to be considered as rights granted by Allah and as boundaries fixed by Him; for example, the laws of inheritance that have been explicitly laid down in *Quran* and *Sunnah*. Such rights are to be considered together with other basic and inalienable rights that have been explicitly granted by Allah to individuals. They may not be changed or even suspended temporarily, whatever the emergency may be.⁸ They are outside the scope of legal review.

2.2. Relationship of the Spheres

The two spheres of *Shariah* (Islamic Law), which we may call the "fixed" and "flexible" spheres, are linked to each other through an organic relationship. They are not mutually dependent. In fact, it is the flexible sphere that is dependent on the fixed and unchangeable sphere. In other words, the flexible sphere of *Shariah* (Islamic Law) revolves around the fixed sphere. Therefore, it is the flexible sphere of *Shariah* (Islamic Law) the discovery of which falls within the domain of the jurists.

Most of the acts of *Ibadat* (worship) fall under the fixed sphere of *Shariah* (Islamic Law), while most of the man-to-man dealings, i.e. *Mua'amalat* (transactions), fall under the flexible sphere of *Shariah* (Islamic Law). For example, if we look into the case in hand, we come into the conclusion that there are no hard and fast rules prescribed by *Quran* and *Sunnah* about the nature of *Wa'ad* (promise). Therefore, it falls within the ambit of the flexible sphere, consequently within the domain of the jurists to determine its nature. This is the area to which we now turn in the next Section.

3. Views of the Jurists on the Binding Status of the Wa'ad (Promise)

Since *Quran* and *Sunnah* did not prescribe any hard and fast rules about the nature of *Wa'ad* (promise), it, therefore, falls within the domain of the jurists to discover its binding nature, both morally as well as legally. In this regard, research shows that the Muslim jurists have differing views about the binding nature of *Wa'ad* (Promise). Moreover, not only do the jurists have different opinions across the different schools of thought about its binding nature, but also within the same school of thought.⁹ However, this does not mean that each and every aspect of the *Wa'ad* (Promise) is controversial among the jurists. There are certain aspects where there is consensus in their opinions¹⁰, for example, jurists unanimously agree that: (i) a person must not fulfill a *Wa'ad* (Promise) which has been given to do a *haram* (prohibited) thing; (ii) a person must fulfill a *Wa'ad* (Promise) to do *wajib* (an obligatory) thing¹¹; and (iii) a person is recommended to fulfill a *Wa'ad* (Promise) to do *mubah* (an optional) thing¹². In short, Islamic jurists have differing views about the binding nature of the *Wa'ad* (Promise) both *Diyanata* (morally) and *Qada'a* (legally), which can be summarised and divided into two broad groups i.e. (i) *Wa'ad* (Promise) is not binding; and (ii) *Wa'ad* (Promise) is binding.

⁷ Deduction of laws from the primary source of *Shariah* (Islamic Law) is called *Ijtihad* or *Takhrij*. For more detail about *Ijtihad* and *Takhrij* in Islamic law, please see Imran Ahsan Khan Nyazee, (2000) "Islamic Jurisprudence", pages 9 to 16, International Institute of Islamic Thought and Islamic Research Institute, Islamabad, Pakistan .

⁸ "These are settled portions ordained by Allah: and Allah is All-Knowing, All-wise." Quran, *Surat Al-Nisā* (4:11).

⁹ This is the case within the *Hanafi* and *Maliki* schools of thought, which will be explained later in this Section.

¹⁰ Ahmad bin Muhammad Al-Razin, "*Hukm al-ilzam bil Wafa bil-Wa'ad*", available @ (visited 24/11/2011) <http://almoslim.net/node/82806>.

¹¹ Abu Muhammad 'Ali ibn Ahmad ibn Sa'id ibn Hazm Al-Zahiri (An 384-456AH/994-1064 AD), "*al-Ahkam le-ibn Hazm*", Vol. 5, p.21, First ed., Dar al-Hadith, Cairo, Egypt.

¹² Abu Muhammad 'Ali ibn Ahmad ibn Sa'id ibn Hazm Al-Zahiri (An 384-456AH/994-1064 AD), "*Al-Muhlla*", Vol. 8, pp. 28-30, Dar al-Afaq al-jadida, Beirut.

3.1. *Wa'ad* (Promise) is not Binding

Many jurists are of the opinion that 'fulfilling a *Wa'ad* (Promise)' is a noble quality. It is advisable for the promisor to observe it; and its violation is reproachable, but it is neither *wajib* (mandatory) nor enforceable *Qada'a* (through the courts). Among the jurists sharing this view are *Hanifi*¹³, *Shafia*,¹⁴ *Hanbili*¹⁵, *Zahiri*¹⁶ and *Maliki*.¹⁷ The legal arguments for their views may be summarised as follows:

3.1.1. Grounds for Opposing Views

Those jurists who reject the binding nature of *Wa'ad* (Promise) morally and legally are relying on different grounds as they understand them. The most important grounds are itemised as follows:

3.1.1.1. The tradition of the *Holy Prophet* (PBUH) is clear about the non-binding nature of the *Wa'ad* (Promise) which states: "*Malik related to me from Safwan ibn Sulaym that a man asked the Messenger of Allah (PBUH), 'Can I lie to my wife, Messenger of Allah?'* The Messenger of Allah (PBUH) said, *'There is no good in lying.'* The man said, *'Messenger of Allah! Shall I make her a promise and tell her?'* The Messenger of Allah (PBUH), said, *'It will not be held against you'*".¹⁸

The above mentioned saying of the Prophet (PBUH) mentions two issues. First, when the companion(r) asked the Prophet (PBUH) about telling a lie to his wife, the Prophet (PBUH), said, *"There is no good in lying."* So the companion was stopped from lying. In other words, it is *haram* (prohibited) to tell lie, even to one's wife. The second point is when the Prophet (PBUH) was asked about the *Wa'ad* (Promise), the Prophet (PBUH) said, *"It will not be held against you."* One may understand from the context that the companion was asking about not fulfilling the *Wa'ad* (Promise) and the Prophet (PBUH) replied that *"It will not be held against you"*, i.e. there is no sin on you if you do not fulfill it, and you were not be held liable for not fulfilling it. This narration manifests the non-binding status of a *Wa'ad* (Promise) and that the promisor will not be held liable on the Day of Judgment if he did not fulfill his *Wa'ad* (Promise).

3.1.1.2. Also, the narration of the Holy Prophet, (PBUH) is clear in its meaning that a *Wa'ad* (Promise) is not binding. "*Zayd ibn Arqam narrates that the Prophet (PBUH) said, 'When a man makes a promise to his brother with the intention of fulfilling it and does not do so, and does not come at the appointed time, he is guilty of no sin.'*"¹⁹

3.1.1.3. The third argument of this opposing group is based on logic. They refer to the situation where "A" promises "B" that "A" will give "B" two horses. This is called a contract of *Tabrue* (gift). It is like a promise, a unilateral contract, but the nature of it is *Mubah* (optional) and, according to most of the jurists, the contract of *Tabrue* (gift) is a not binding. Therefore, the person making a *Tabrue* contract can revoke it any time before delivery of the gift item. If the contract of a *Tabrue* is not binding, then a promise to do a *Tabrue* or an optional act should not be considered binding²⁰.

¹³ Abu Bakar Al-Jassas (305-370 AH/ 917- 980AD), "*Ahkam ul-Quran*", Vol.3, Al-Mataba-ah al-Bahiyyah, Cairo, Egypt.

¹⁴ Muhammad Shamsul Haq al-A'azeem Abadi Abu al-Tayyab, "*A'wnul Ma'abood*", Vol. 13, p. 232, 2nd Edd. *Dar al-kutab al-a'almiah*, Beirut.

¹⁵ Ibrahim bin Muhammad al-Hanbali (816- 884 AH/ 1413-1479 AD), "*Al-Mubdia'a*", Vol. 9, , *al-Maktaba al-Islamia*, Beirut, see also, A'ala aldin Abu alhasan Ali ibn Sulaman Al-Mardardavi (817-885 AH/1414-1480 AD), "*A-Insaaf*", VOL. 11, , *Dar al-turath al-Arabi*, Beirut.

¹⁶ Abu Muhammad 'Ali ibn Ahmad ibn Sa'id ibn Hazm Al-Zahiri, supra note 11.

¹⁷ Muhammad bin Abdul Baqi bin Yusuf bin Ahmad bin Alwan al-Zarqani (1055 –1122 HA/1645 –1710 AD), "*Sharh al-Zarqani a'la Muwatta Malik* ", vol. 4, p.115, *Dar al-kutab al-a'almiah*, Beirut, see also Abu 'Abdullah Muhammad ibn Ahmad ibn Abu Bakr al-Ansari al-Qurtubi (died 671 AH/1272 AD), "*Jami'a al-Ahkam al-Qurtabi*", Vol.18, *Dar al-Sha'ab*, Cairo, Egypt.

¹⁸ Mālik ibn Anas ibn Malik ibn 'Āmr al-Asbahi (93-179 AH/711-795 AD), "*Muwta Malik*", VOL.2, *Hadith* No. 1791, *Dar al-turath al-Arabi*, Egypt.

¹⁹ Sulaman bin al-Asha'ath Abu Dawood (202-275 AH/817- 888 AD), "*Sunan Abu Dawud*", Vol. 4, p.299, *hadith* No. 4995, *Dar al Fikar*, Beirut, see also Abu Eesa Muhammad ibn Eesa al-Tirmidhi (D. 279AH / 892AD), "*Sunan al- Tirmidhi* ", VOL. 5, p. 20, *Dar al-turath al-Arabi*, Beirut.

²⁰ Ibrahim bin Muhammad al-Hanbali, supra note 15.

3.1.2. *Wa'ad* (Promise) is Binding

A number of Muslim jurists are of the view that fulfilling a *Wa'ad* (Promise) is mandatory and a promisor is under a moral as well as legal obligation to fulfill his *Wa'ad* (Promise). According to them, a *Wa'ad* (Promise) can be enforced through the courts of law as *Shariah* (Islamic Law) is the complete code of life, covering each and every aspect of a Muslim's life and is also based on high standards. Therefore, a *Wa'ad* (Promise) is binding as the fulfilling of a *Wa'ad* (Promise) is considered as a good character trait of a human in all ages. Due to its importance, *Quran* and *Sunnah* have greatly emphasised the fulfillment of *Wa'ad* (Promise) in several places in different contexts²¹. It has been counted as one of the best character traits of all the Prophets, i.e. they always used to fulfill their promises²².

Therefore, a *Wa'ad* (Promise) is binding and it is *haram* (prohibited) not to fulfill it without any acceptable excuse²³. In other words, if the promisor does not fulfill it, he will be held accountable on the Day of Judgment and vice versa, i.e. the people who fulfill their *Wa'ad* (Promises) will be rewarded²⁴. This is the opinion of *Hanifi*²⁵, *Hanbili*²⁶, *Maliki*²⁷, *Imam Ibn Tamiya*²⁸, *Qazi Saeed bin Umar bin al-Shwa'a* (Chief Justice of Kufa)²⁹, *Muhammad bin Ahmad al-Qurtabi*³⁰, *Umar ibn Abdul Aziz*³¹, *Ibn Arabi*³² and *Muhammad Amin Shinqiti*³³.

3.1.3. Responses to the Opposing Views and grounds for supporting views

The group of jurists who insist on the binding nature of a *Wa'ad* (Promise) refute the legal arguments of the opposing view as follow:

3.1.3.1. The first narration mentioned in Clause 3.1.1.1 above is about a specific situation, i.e. about the relationship of husband and wife and nothing to do with general rules of law. Also, if we reflect on the second narration from a different angle, then the binding nature of *Wa'ad* (Promise) can be seen. "*When a man makes a promise to his brother with the intention of fulfilling it and does not do so*", this clearly conveys the message that a *Wa'ad* (Promise) is made to be fulfilled.

²¹ For example in *Surah Al-Muminun*, *Allah Al-Mighty* describes the character traits of successful people in these words: "*Who are true to their trust and promises*", (*Quran* 23: 8)

²² *Muhammad bin Ismail al Bukhari* (194- 256 AH/809- 869 AD), "*Sahih al-Bukhari*", Vol. 2, p.952, Researcher, Dr. *Mustafa Daib al-Bulgha*, *Dar ibn Kathir*, Beirut, 3rd Edd., *Dar ibn Kathir*, Beirut.

²³ *Muhammad bin Ahmad al-Qurtabi*, supra note 17.

²⁴ "*Anas ibn Malik narrated from the Messenger of Allah (PBUH) that he said: "guarantee me six things, I will guarantee you the paradise. They asked what they are? He said: Do not tell lie when you speak, do not go back on your words when you make a promise, do not commit breach of the trust, lower your gazes, restrain your hands, and guard your private parts scrupulously"* narrated by *Muhammad bin Abdullah Al Hakim Al-Nisabori* (D. 405AH/ 1014 AD), "*Al-Mustadrak A'ala Al-Sahihain*", Vol. 4, P. 39945, Researcher, *Mustafa Abdul Qadir A'ata*, *Dar-ul-Kutub A'amiah*, Birut.

²⁵ *Zain u din ibn Ibrahim ibn Muhammad ibn Nujaim* (926-970 AH/ 1519-1562), "*al-Bahar al-Raiq*", Vol.1, p. 167, *Dar al-Ma'arifah*, Beirut, see also *Muhammad Amin ibn Abidin* (1198–1252 AH / 1783–1836 AD), "*Hashia ibn Aa'bidin*", Vol. 1, p. 411 and Vol. 8, p.386, 2nd edd., *Dar al-Fikr*, Beirut, see also *al-Sarakhi*, *Shams al-'immah Abu Bakr Muhammad ibn Abi Sahl Ahmad* (D. 483AH/1090AD), "*Kitab al-Mabsut*", Vol. 11, p. 109, *Dar al-Ma'arifih*, Beirut.

²⁶ *Ibrahim bin Muhammad al-Hanbali*, supra note 15, see also, *Ali ibn Sulaman Al-Mardardavi*, supra note 15.

²⁷ *Ibn Abdul Bar Abu Umar Yousaf bi Abdullah al-Namri* (368-463AH/ 978-1070AD), "*Al-Tamheed le-ibn Abdul Bar*", Vol. 3, P.206-208, Researchers: *Mustafa bin Ahmad Ulvi* and *Muhammad Abdul Kabir albakri*, *Wazarat Umom ul-awqaf wa shoaon al-Islamiah*, Syria.

²⁸ *Ahmad bin Abdul Halim ibn Taymia*, (D. 728 AH/ 1327 AD), "*al-Fatawa al-Kubra*", Vol. 3, pp.278-482, Researcher, *Hasanain Muhammad Makhloof*, *Dar al-Ma'arafa*, Beirut, and see also, *Ahmad bin Abdul Halim ibn Taymia*, (D. 728 AH/ 1327 AD) "*al-Ikhtiyarat al-Fiqhiyya*", p. 331, Researcher: *Muhammad Hamid al-Faqih*, *Dar al-Ma'arafa*, Beirut.

²⁹ *Muhammad bin Ismail al Bukhari*, supra note 22. Also see, *Shihabuddin Ahmad bin Ali bin Hajr Abu al-Fadal A'sqalani al-Shafi* (773-852 AH/1372-1448 AD), "*Fath al-Bari*", Vol. 5, p. 290, Researchers: *Muhammad Fauad Abdul Baqi* and *Muhibud Din al-Khatib*, *Dar al-Ma'arafa*, Beirut.

³⁰ *Muhammad bin Ahmad al-Qurtabi*, supra note 17.

³¹ *Muhammad shamsul Haq al-A'azeem Abadi Abu al-Tayyab*, supra note 14.

³² *ibid*, and see also, *Muhammad bin Ahmad al-Qurtabi*, supra note 17.

³³ *Muhammad al-Amin ibn Muhammad al-Mukhtar al-Shanqiti* (1322 -1394AH/1905-1974 AD), "*adhwa al-bayan fi idhah al-Quran bil-Quran*", vol. 3, pp. 438-441, *Dar al Fikar*, Beirut.

In other words, the promisor has to fulfill it, unless something happens beyond the control of the promisor, in which case he is not accountable on the Day of Judgment (*Wallahu a'alam bithwab*).

- 3.1.3.2. The building of law does not stand on a single pillar especially on the one which is designed for a specific task. In other words, the whole picture has to be taken into account before giving any verdict about any situation, such as the binding nature of a *Wa'ad* (Promise) in that particular. All relevant sources and injections about a specific issue have to be considered carefully, scrutinised with due diligence, and always taking into account the *Maqasid al-Shariah* (the purposes or objectives of Islamic law). Thus, the verdict should not be given on the basis of the above mentioned Sayings of the Holy Prophet (PBUH) alone as there are other several verses of *Quran* and Sayings of Holy Prophet (PBUH) regarding the binding nature of a *Wa'ad* (Promise).
- 3.1.3.3. Allah Almighty says in *Surah As Saff*: “*O you who believe! Why do you say that which you do not do? Most hateful it is with Allah that you say that which you do not do*”³⁴. In this verse, Allah Almighty has condemned those people who say something and then do not do it. It is also said that a person not honoring his word will incur the wrath of Allah Almighty. Nothing will incur the wrath of Allah Almighty, except not doing *wagib* (obligatory acts) or doing *haram* (prohibited acts). Therefore, not fulfilling a *Wa'ad* (Promise) is one of these two things, i.e. *wagib* or *haram*, so it is covered by the condemnation³⁵. In other words, not fulfilling a *Wa'ad* (Promise) is *haram* (prohibited) and, thus, fulfilling a *Wa'ad* (Promise) is *wagib* (obligatory).
- 3.1.3.4. In another verse of *Quran*, it has been considered one of the character traits of the Prophets. *Quran* Says: “*And mention in the Book (the Qur'ân) Ishmael. Verily! He was true to what he promised, and he was a Messenger, (and) a Prophet*”³⁶. In this verse, Allah Almighty considered the fulfillment of a *Wa'ad* (Promise) one of the character traits of Prophet Ismael while praising him. Anything which was considered as a character trait of the Prophets must be considered as an important element of the character traits of believers. Since the Prophets were fulfilling their promises, therefore, believers must do the same. Thus, a *Wa'ad* (Promise) is binding. Likewise, it has been considered as a one of the necessary conditions for success in *Surat Al-Mu'minûn* in these words: “*Those who are faithfully true to their Amanât (all the duties which Allâh has ordained, honesty, moral responsibility and trusts etc.) and to their covenants*”³⁷. If something is the prerequisite of success and, without it, success on the Day of Judgment is not possible, how can the very same thing not be binding? In short, all the above mentioned verses support the opinion that a *Wa'ad* (Promise) is binding and the promisor will be accountable on the Day of Judgment if he does not fulfill his *Wa'ad* (Promise).
- 3.1.3.5. The Prophet (PBUH) considered that the breaking of a *Wa'ad* (Promise) was one of the signs of a hypocrite. It was narrated by Abu Huraira that: “*the Prophet (PBUH) said, "The signs of a hypocrite are three: Whenever he speaks, he tells a lie; Whenever he promises, he always breaks it (his promise); If you trust him, he proves to be dishonest. (If you keep something as a trust with him, he will not return it.)*”³⁸ Thus, this narration of the Prophet (PBUH) is clear about the binding nature of a *Wa'ad* (Promise), i.e. if a person does not fulfill his *Wa'ad* (Promise), he will be considered as a hypocrite.
- 3.1.3.6. Likewise, in another narration the Prophet (PBUH) elaborated on the importance of fulfilling a *Wa'ad* (Promise) in these words. It was narrated by Abdullah ibn Amir that: “*My mother called me one day when the Apostle of Allah (PBUH) was sitting in our house. She said: Come here and I shall give you something. The Apostle of Allah (PBUH) him asked her: What did you intend to give him? She replied: I intended to give him some dates. The Apostle of Allah (PBUH) said: If you were not to give him anything, a lie would be recorded against you.*”³⁹

³⁴ *Surah As Saff* (61:2).

³⁵ Muhammad al-Amin ibn Muhammad al-Mukhtar al-Shanqiti, supranote 33.

³⁶ *Al Quran Surah Maryam* (19:54).

³⁷ *Al Quran, Surah Al-Mu'minun*, (23:7).

³⁸ Muhammad ibn Ismail Al-Bukhari, supra note 22.

³⁹ Ahmad ibn Hanbl Abu Abdullah al-Shaibani (164-241AH/780-855AD), “*Masnad al-Imam Ahmad ibn Hanbl*”, Vol.3, p. 447, hadith No. 15740, Muassastul Qurtaba, Egypt.

- 3.1.3.7. Furthermore, the Prophet (PBUH) guaranteed Paradise on the fulfillment of a *Wa'ad* (Promise); thus, the following narration clearly mentions the importance and binding nature of a *Wa'ad* (Promise). Abu Al-Qasim Al-Baghawi recorded that: "Abu Umamah said, "I heard the Messenger of Allah (PBUH) say: "Guarantee me six things and I will guarantee you Paradise: when any one of you speaks, he should not lie; if he is entrusted with something, he should not betray that trust; if he makes a promise, he should not break it; lower your gaze; restrain your hands; and protect your private parts"⁴⁰." The Prophet (PBUH) guaranteed Paradise on the fulfillment of a promise; thus, this narration clearly conveys the importance and binding nature of a promise.
- 3.1.3.8. The companion Abu Bakr (R), the second *Khalifa*, fulfilled the *Wa'ad* (Promise) made by the Prophet (PBUH), even after he passed away. Ibn Jabr narrates that: "the Prophet (PBUH) said to me: "if we get wealth from Bahrain then I will give such and such of wealth". The wealth did not come from Bahrain until the Prophet (PBUH) passed away. When the wealth from Bahrain arrived, Abu Bakr (R) said: "anyone who owes something to the Prophet (PBUH) or whom the Prophet (PBUH) has promised, should come to us". Jabir said: I came to Abu Bakr (R) and said to him that the Prophet (PBUH) has promised me "if the wealth from Bahrain came, I will give such and such of it". He said, Then he said to me "count it". It was five hundred. He said: "take two time of it and he gave me some more"⁴¹. The above mentioned narration is the best example of the binding nature of a *Wa'ad* (Promise) as the companion Abu Bakr (R), the second *Khalifa*, give it the characteristic of a loan or debt. Like debt, it is binding and has to be fulfilled and enforced as well. That is why the companion Abu Bakr (R), the second *Khalifa*, fulfilled the *Wa'ad* (Promise) of the Prophet (PBUH), after he passed away.
- 3.1.3.9. Imam al-Bukhari narrates in his book that *Qazi Saeed bin Umar bin al-Shwa'a* (Justice of *Kufa*) has enforced a *Wa'ad* (Promise) in the courts⁴². Taking into account this precedent, *Imam Yousif Qardawi* has rightly concluded that "whatever is morally binding is also legally binding, because it is the duty of an Islamic court to implement the injunction of *Allah Almighty*. If a person is accountable on the Day of Judgment for any act, then he must be held accountable for the same act here in the courts of this world."⁴³
- 3.1.3.10. It is also important to note that when the jurists are elaborating the nature of *al-Wa'ad* or promise, they meant a *Wa'ad* (Promise) to do a *mubah* (optional) thing, while excluding completely a *Wa'ad* (Promise) in the context of a commercial business transaction, as it is clear from the very words of the jurists. They called it *Wa'ad al-mutlaq* or just a *Wa'ad* (Promise) without any context. As explained above, their opinions are different about the *Wa'ad* (Promise) used in other contexts, such as a *Wa'ad* (Promise) in a commercial transaction.

4. Conclusion

Shariah (Islamic Law), has no parallel in history. It has, indeed, been the most successful legal system, a system that has been practiced for more than fourteen hundred years by many people and different nations with widely differing cultures and local conditions. One of the main reasons why *Shariah* (Islamic Law) has been so successful is that all the fundamental principles of *Shariah* (Islamic Law), and most of its details, have been laid down by Allah Almighty and His Holy Prophet (PBUH) and provide practical solutions for all humans' needs. The Islamic banking system does not falling outside the ambit of Islamic law, rather it is part of every modern Muslim's life. *Wa'ad* (Promise) in the context of Islamic banking plays an important role and makes it possible for Muslims to deal with banks/financial institutions and conduct *Halal* (permitted) financial transactions, especially in consumer finance, export import finance and housing finance.

⁴⁰ Ismaeel bin Umar bin Kathir, al-Dimashqi Abu al-Fida, (D. 774 AH/ 1372 AD), "Tafsir ibn Kathir", Vol. 3, p. 283, *Dar al-Fikr*, Beirut, see also, Ibin Abdul Bar Abu Umar Yousaf bi Abdullah al-Namri, Vol. 5, p. 81, *Supra* Note 27.

⁴¹ Muhammad ibn Ismail Al-Bukhari, Book "Witnesses" Vol. 2, P.952, *supra* note 22. see also Ibin Abdul Bar Abu Umar Yousaf bi Abdullah al-Namri, Vol. 3, P.210-213, *supra* note 27.

⁴² Muhammad bin Ismail Abu Abdullah al Bukhari, Vol. 2, p.952, *supra* note 22, Also see, Ahmad bin Ali bin Hajr Abu al-Fadal A'asqalani al-Shafi "Fath al-Bari", Vol. 5, p. 290, *supra* note 29.

⁴³ Yousif Qardawi, "Al Wafa Bil Wa'ad, Mujallat Mak,a' al- Fiqh aL-Islami, No.5, VOL.2, P.857. research paper submitted to the 5th Round of the Organization of the Islamic Conference (OIC), available (visited 24/11/2011)

<http://www.dahsha.com/old/viewarticle.php?id=32556>

After analysing the arguments of the jurists upon the nature of a *Wa'ad* (Promise), the preferred opinion is that a *Wa'ad* (Promise) has a binding characteristic, especially when it used in a commercial transaction. As it has been enforced by the Islamic courts, therefore, it should be enforced in the courts when it is used in a commercial transaction.

Furthermore, the issue of a *Wa'ad* (Promise) and its binding characteristic falls in the flexible sphere of *Shariah* (Islamic Law), which is subject to changes in accordance with needs and demands of time and place, therefore, comprehensive local law should be enacted regarding the enforceability of a *Wa'ad* (Promise) in commercial transaction. In this regard, guidance may be taken from the verdict issued by OIC Islamic *Fiqh* Academy in its Fifth Round, held at Kuwait from 10th to 15th December 1988. The OIC Islamic *Fiqh* Academy stated that “a *Wa'ad* (Promise) in commercial transactions is binding on the promisor with the following conditions:

- 4.1.1. the *Wa'ad* (Promise) should be a one-sided;
- 4.1.2. the *Wa'ad* (Promise) must have caused the promisee to incur a liability;
- 4.1.3. if the promisee is to purchase something, the actual sale must take place at the appointed time by the exchange of offer and acceptance; a mere *Wa'ad* (Promise) itself should not be taken as the concluded sale; and
- 4.1.4. If the promisor backs out of his *Wa'ad* (Promise), the court may force him either to purchase the commodity or pay actual damages to the seller. The actual damages will include the actual monetary loss suffered by him, but will not include the opportunity cost⁴⁴.

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