

THE ROLE OF DISTRIBUTIVE JUSTICE OF *AL-GURM BIL-GUNM* IN ALLEVIATING SOCIO-ECONOMIC RECESSION IN NIGERIA

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Abstract

The fulfilment of basic needs of an individual is among the topmost agenda of the Islamic system of administration and governance. This study addresses and propounds juristic exertion of *Hanbali* School of jurisprudence which explains that provision of *nafaqah* (maintenance) is compulsory only upon whoever can inherit the *mu'sir* (the poor). Other schools shared contrary views. This study examines the views of the four *sunni* schools of jurisprudence in relation to maintenance (*nafaqah*). Findings revealed that the influence of Maliki School of jurisprudence in the practice of maintenance (*nafaqah*) in Nigeria increases poverty and recession. The study therefore concludes that the Hanbali's view will go a long way in alleviating socio-economic recession in Nigeria especially the problem of malnutrition among the pupils of *Al-majiri* schools.

Keywords: *Al-Gurmu bil gunm*, distributive justive, economic recession, *nafaqah*

Introduction

The economic system of Islam leaves no stone unturned in the area of socio-economic security of mankind. Islam is very much concerned about the welfare of man in this world in order to promote his salvation in the hereafter. This is evident in Islamic teachings which provide the most effective guidelines for eradicating poverty and achieving an equitable distribution of income and wealth. Islam also stands for the organization of

economic life in a manner that the basic needs of all human beings are met. It tends to achieve this purpose by influencing the behaviour pattern of the individual in the society to a particular direction and activating a number of institutional mechanisms duly supplemented by suitable state action¹. The income distribution in Islam is based on justice (*adalah*) which is the basic purpose of guidance provided by Allah through His messengers². Allah has made man His vicegerent on earth and enjoined on him the duty of dealing justly with everyone³. Distributive justice is one of the most important components of the Islamic vision of a just socio-economic order and one of the most important features of the scheme of distributive justice as envisaged by Islam is the assurance of the fulfilment of the basic needs of all, irrespective of the stage of development of a country.⁴ This implies eradication of absolute poverty. Absolute poverty as defined by the United Nations in 1995 is a condition characterized by severe deprivation of basic human needs including food, safe drinking water, sanitation, facilities, health, shelter, education and information. It depends not only on income but also on access to services⁵. It is referred to, in 2018, as earnings below the international poverty line of \$1.90 per day as set by the World Bank. International Poverty Line is a monetary threshold under which an individual is considered to be living in poverty. The widely used expression is living on less than a dollar a day. Majority of those living in absolute poverty reside in south Asia, sub-Saharan Africa, the West Indies, East Asia and the Pacific⁶.

To ensure the fulfilment of the basic needs of all, Islam promulgates the principle of the poor having a 'right' (*haqq*) in the income and wealth of the well to do members of the society⁷. In Islam humanity is a single creation of God, and all have an equal right to acquire their sustenance from God-given resources. However, if for whatever reason, some members of the human brotherhood fail to acquire sufficient provision for the fulfilment of their basic needs through their own effort or through effortless effort, they have a right in the earnings and wealth of others.⁸ Legal measures and moral extortion are used in Islam to eradicate poverty and deprivation in order to ensure that basic needs are fulfilled. It is on this basis that the Islamic institution of *zakāt*, *sadaqah*, *nafaqah* and *infāq* exist⁹.

Economic Recession

Economic recession is when the economy declines significantly for at least six months. It is witnessed when the Gross Domestic Product (GDP) growth rate is negative for two consecutive quarters or more. It is a period

of falling economic activity spread across the economy lasting more than a few months.¹⁰ A distinction is made between economic recession and economic depression. It is believed that the unemployment rate in recession is less severe than in a depression. A recession is economic contraction that lasts for at least six months, while depression lasts longer and more severe and last for several years.¹¹ The Muslim scholars' connotation for recession is *kasād*. It is mentioned in Qur'ān 9:23:

قُلْ إِنْ كَانَ ءَابَاؤُكُمْ وَأَبْنَاؤُكُمْ وَإِخْوَانُكُمْ وَأَزْوَاجُكُمْ وَعَشِيرَتُكُمْ وَأَمْوَالٌ
اقتَرَفْتُمُوهَا وَتِجَارَةٌ تَخْشَوْنَ كَسَادَهَا وَمَسَاكِينُ تَرْضَوْنَهَا أَحَبَّ إِلَيْكُمْ مِنَ اللَّهِ
وَرَسُولِهِ وَجِهَادٍ فِي سَبِيلِهِ فَتَرَبَّصُوا حَتَّى يَأْتِيَ اللَّهُ بِأَمْرِهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ
الْفَاسِقِينَ

Say; if it be that your fathers, your sons, your brothers, your mates, or your kindred; the wealth that ye have gained; or the commerce in which ye fear a decline; or the striving in His messenger, or the striving in His cause; then wait until Allah brings about His decision; and Allah guides not the rebellions.

The word *kasād* in this context is used to connote 'decline in commerce i.e. economic recession.' Economic recession is a test of Allah in life that afflicts mankind periodically to enable them have more faith in Allah and for them to endure in being faithful to Allah by returning to His laws during such occurrences. Muslims are enjoined during recession to hold onto their responsibilities towards Allah and to assist those in need especially in the area of *nafaqah* (maintenance). It is in recognition of this that the distributive justice of *gurm bil gunm* (liability is linked to gain) is re-examined for Nigerian Muslims as part of measures to eradicate recession.

Al-Gurm bil Gunm as a Distributive Justice of Nafaqah

Al-Gurm literally means 'loss or damage.'¹² Technically, it signifies liability that is incumbent upon a Muslim to settle such as security, debt and *diyyah* (blood wit).¹³ *Al-Gunm* signifies gain or profit.¹⁴ It technically signifies the spoils of war or booty and benefit.¹⁵ In the context of this study, it is used to signify 'gain.' Perhaps the Hanbali School derived these terms from the Prophet's *hadīth* narrated by Abu-Hurayrah in this form. Allah's Apostle Said:

The mortgaged item does not become the property of the mortgagee- it remains the property of the owner who mortgaged it – he (i.e. the mortgagee) is entitled to its benefits or increase in value (*Lahu Gunmuhu*) and he is liable for its expenses or loss (*wa*

alayhi Gurmuhu). (Hadith 881 in Bulug al-Maram, Sunan Dar-al Qutni 3:126; Sahih ibn Hibban 13:5934).

The fulfilment of basic need of an individual is the topmost agenda of Islamic economic system. *Al-gurm bil gunm* is a preponderance of Hanbali School of Jurisprudence that states that provision of *Nafaqah* is compulsory only upon whoever can inherit the *mu'sir* (the poor) based on the share of their inheritance.¹⁶ In other words, just as the rich would have inherited such poor relative of his, had it been that he is rich, it behooves that the rich should provide maintenance to his poor relative. The school, therefore, held the view that *Nafaqah* is compulsory upon any person that can inherit his (poor) relative(s). It becomes necessary for the rich relatives to maintain the poor relatives even if they are not among the prohibited degree of relatives (*Dhul-Mahram*) according to Hanbali School.¹⁷

Based on this preponderance, it is necessary for a man to maintain his uncle's son because he can inherit him though they are not *Mahram*.¹⁸ The provider should therefore be an heir to the poor either as agnatic heir or a sharer.

The Qur'ānic usage of the word 'relatives' is *Dhawul Qurba* or '*Ulul Qurba* mainly translated as 'kindred', 'kith and kin', 'kinsfolk' and 'relatives'¹⁹.' However, the Qur'ānic references to relatives do not identify exactly who would fall under this category and who would not. As a consequence, the jurists shared divergent opinions on who are those family members that belong to the category of 'relatives' indicated in the Qur'ān. The four schools of Jurisprudence recognised by the Sunni scholars are Maliki, Shafi'i, Hannafi, and Hanbali schools. These schools shared divergent of opinions over the extent of incumbency of *Nafaqah*. The Maliki School opined that *Nafaqah* is compulsory upon the children to their poor parents and upon the parents to their children. It is therefore compulsory upon a father to provide *Nafaqah* for his child(ren)²⁰. It is also compulsory upon a son to provide same to his parents who are alive at the first degree (i.e. biological father and mother not including grandfather and grandmother how high so ever). Therefore, in Maliki School, *Nafaqah* is not compulsory upon son's son, to their grandfathers and vice-versa. It is also not compulsory upon brothers and uncles.²¹ Ismail,²² regarded this as the strictest and most difficult preponderance among all the other schools' views. The school based its evidence on Qur'ān 17:23; 31:15 and 2:233 which states:

Thy Lord hath decreed that ye worship none but him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honour (Qur'ān 17:23).

But if they strive to make thee join in worship with Me things of which thou hast no knowledge, obey them not; yet bear them company in this life with justice (and consideration), and follow the way of those who turn to Me (in love) (Qur'ān 31:15).

The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. However, he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear... (Qur'ān 2:233).

These verses explain the fact that children should be kind to their parents in several ways among which is carrying the responsibility of maintaining them. Fathers are also enjoined to maintain their children. The Maliki School of law also based its preponderance on the *hadīth* of the Prophet which states:

أَنْتَ وَمَالُكَ لِأَبِيكَ

‘You and your wealth are for your father’
(Sunan Ibn Majah, 2:2291)

The Prophet also said to Hind, the wife of Abu Sufyan to take out of the wealth of Abu Sufyan what will be sufficient to feed her and her children, when she complained to the Prophet about the stinginess of her husband - Abu Sufyan.²³

The school of Jurisprudence that is closely related to Maliki School is the Shafi'i School of Jurisprudence. It propounded that the obligation of *Nafaqah* is upon the ascendants (*ʿUsūl*) to their descendants (*furu'*) and vice-versa without stopping at a particular degree and level of ascendancy or descendancy. This implies that the circle of beneficiaries is widened when compared to that of the Maliki School. Fathers, grandfathers, mothers, grandmothers how high whatsoever are included. Likewise, son's sons how low whatsoever are also included. The Shafi'i School extended the meaning of *wālid* (father) and *walad* (son) to comprise all the ascendants and descendants. The school used the same verses in the Qur'ān and Hadīth used by the Maliki School to buttress its view²⁴

The criteria used by the Hanafi School of Jurisprudence to show the extent of incumbency of *Nafaqah* is the prohibited degree of marriage (*Mahram*). The prohibited degree of marriage presupposes that if one of them is a male and the other a female, marriage between them would be considered unlawful based on the rules of Islam. The group of people in this category includes fathers - how high so ever, sons - how low so ever, brothers, sisters, both paternal and maternal uncles and aunts. Accordingly, *Nafaqah* is not compulsory upon the son of an uncle to another son of an uncle²⁵. The school relied upon the exhortations of the Qur'ān as follows:

Serve Allah, and join not any partners with Him; and do good - to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess: for Allah loveth not the arrogant, the vainglorious (Qur'ān 4:36).

See they not that Allah enlarges the provision and restricts it, to whomsoever He pleases? Verily in that are signs for those who believe. So give what is due to kindred, the needy, and the wayfarer; that is best for those who seek the Countenance of Allah, and it is they who will prosper (Qur'ān 30:37-38).

Dhul Qurba as mentioned in the verses signifies close relatives based on *mahram* relations, according to Hanafi School. The school did not include relatives other than *Mahram*.²⁶

The Hanbali School shared almost the same opinion with the Hanafis and explained that fathers (however high) should provide and receive maintenance as an obligation and sons-howsoever low, should provide and receive maintenance irrespective of their title of inheritance. Maintenance of relatives not belonging to the two classes is also obligatory if the person liable to provide maintenance inherits from the person being maintained either by *Fard* (obligatory share) or *Ta'sib* (the residue share). Therefore, if a person is excluded from inheritance, he will not be responsible for maintenance. Thus *Nafaqah* of the incapacitated poor man is obligatory on his rich relative(s) who will inherit from the poor man if it is assumed that the poor man leaves inheritance. If there is a number of such relatives, the amount of maintenance is distributed amongst them according to the share of their inheritance from him. This is in accordance with the principle of *Al-gurm bil gunm* as explained earlier ²⁷. The school's

preponderance is based on the statement of the Qur'ān which comes in this form:

The mothers shall give suck to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child. Nor father on account of his child, **an heir shall be chargeable in the same way**. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what you do (Qur'ān 2:233).

The Hanbali School propounded that the phrase “an heir shall be chargeable in the same way” in the above verse signifies an obligation of *Nafaqah* to a poor man by his relatives who can inherit him. Therefore, the verse made *Nafaqah* obligatory upon the heirs in the same manner the same verse made it obligatory to the father.²⁸ This preponderance connotes a wider circle of obligation of *Nafaqah* to encompass those near relatives who are not *Mahram*.

The condition of insecurity in Nigeria demands that the extent of obligation of *Nafaqah* based on the Hanbali School's preponderance should be embraced to ensure wider distribution of wealth and sustenance for the less-privileged among the Muslim community. This is informed by the fact that lack of effective *Nafaqah* practice has left a lot of Nigerian Muslims who are supposed to be maintained by their relatives wandering on the streets of towns and cities seeking for alms. Among them are children of premature ages and aged men and women. This makes them susceptible to cultism and crimes. Nigeria, therefore, needs this type of preponderance to enhance social security and economic well-being of its citizens. In Islam, the principle of public maintenance pervades the whole fabric of Muslim society. The individual is held responsible for his person, his family, his near relatives, the society in which he lives and finally the whole humanity. *Afzal-ur-Rahman*,²⁹ made reference to a law of nature upon which the rise and fall of nations depends. It was observed that a nation which spends its wealth on itself freely and plentifully, prospers and remains living forever and that which spends in a miserly manner, ceases to exist as a free nation.

In Islam, human needs and aspirations are classified into three main groups of basic necessities (*darūriyyāt*), convenience (*hajiyyah*) and *tahsiniyyat* or *kamāliyyat* (refinement).³⁰ *Darūriyyāt* include not only items which safeguard man's physical existence (*nafs*) but also man's religion (*dīn*), intellect or reason (*'aql*), progeny (*nasl*) and property (*māl*). *Hajiyyat* improves the quality of life and removes bearable hardship and difficulty, while *tahsiniyyat* adds beauty and elegance to life without transgressing the limits of moderation.³¹ *Nafaqah* mainly focused on *darūriyyāt* because it consists all activities and things that are essential to enable an individual observe all the obligatory Islamic duties, secure healthcare, food, clothing, shelter, education, employment and possessing a family.³²

Al-gurm bil gunm is an Islamic distributive justice which ensures fair distribution of wealth through *Nafaqah* to the eligible recipients for the welfare and security of mankind. Zarqa³³ defined 'distribution' as transfer of income and wealth between individuals irrespective of whether it is by way of exchange (in market) or by another means (such as inheritance) and whether it is concluded between individuals directly (such as gifts or trust), or through the state (such as *Zakāh* on visible assets), or between the state and individuals (such as guarantee by the state of a minimum level of living for individuals) and whether it is obligatory (such as *sadaqat al-fitr*) or voluntary (such as supererogatory *sadaqah*). Therefore, distributive justice in Islam signifies measures that have distributive or redistributive bearing specifically prescribed by *Sharī'ah* (Islamic law) and have to be compulsorily implemented in line with the requirement of *al-adl* (justice) and based on the Islamic teachings. Distributive justice in Islam tends to activate man's moral consciousness to act justly with others and help those in need in a spirit of universal brotherhood.³⁴ Distributive justice is one of the most important components of the Islamic vision of a just socio-economic order. The most noteworthy feature of the scheme of distributive justice as envisaged by Islam is the assurance of the fulfilment of the basic needs of all, irrespective of the stage of development of a country. The second aspect of distributive justice is the general pattern of income distribution in the society. To ensure the fulfilment of the basic needs of all, Islam promulgates the principle of the poor having a 'right' in the income and wealth of the well-to-do members of the society. The institution of *Nafaqah* is geared towards the fulfilment of distributive justice among Muslim family and relatives.

Recommendations

In line with the explanations related in this study, the following recommendations are hereby presented:

- i. Nigeria should adopt in its *Sharī'ah* law courts the distributive scheme of *Nafaqah* based on Hanbali School of Jurisprudence of *al-Gurm bil Gunm*.
- ii. Muslims in Nigeria should embrace *Nafaqah* practice based on the preponderance of Hanbali School's *al-Gurm bil Gunm*.
- iii. Nigeria preaching (*daw'ah*) activities should include the practice of *al-Gurm bil Gunm* in their propagation for effective public enlightenment of Muslims.
- iv. Friday Mosque Imams should be approached to include *Nafaqah* by way of *al-Gurm bil Gunm* in their various sermons on Fridays.
- v. Research works should be sponsored to ascertain the practice of *al-Gurm bil Gunm* among Muslim families in Nigeria for possible improvement of it and adoption by Nigerian government, interested individuals and non-governmental organisations (NGOs)

Conclusion

Islam places particular responsibility on all well-to-do members of the society to help their close relatives through an institutional mechanism known as *Nafaqah*, which can be given legislative effect if found necessary. The practice of *al-Gurm bil Gunm* will go a long way to eradicate economic insecurity, if embraced by Nigerian Muslims and government. It will make the poor feel a sense of belonging and will create in him positive emotional attachment to the *Munfiq* (spender) and/or the state that promulgates such law. Nigerian government should be more committed to its poverty eradication programmes through involving Islamic economic experts to advise and implement such programmes among the Muslims in line with their religious needs and aspirations in order to ensure peace and security. *Nafaqah* had served in the past as one of the viable institutions of Islamic Social Security that remained undeleted in the scheme of Islamic economic planning and administration. As a sub-set of *Nafaqah*, *al-Gurm-bil-Gunm* should be considered and a law to that effect be promulgated in Nigeria in order to achieve peace and security.

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