بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيم

**Preface**

This is a subtle reality and its denial is impossible that Pakistan came into being in the name of Islam and on the proclamation and belief in Kalama Tayyebah. Neither on the basis of any rationality nor in the light of Shariah it is acceptable to let any other law prevail except Shariah in a country, which was established at the cost of losing the chastity and lives of millions of innocents. This is the precise reason that Quaid-e-Azam Muhammad Ali Jinnah’s vision for Pakistan being an Islamic Welfare State is evident from his number of addresses delivered during the struggle of Pakistan Movement and later on different occasions.

The address of our Quaid on the inaugural ceremony of the State Bank of Pakistan in 1948 is part of *historic record*. He said:

“I shall watch….. (Put the statement from page3)

This statement of Quaid e Azam is a sort of a policy statement which is crystal clear in its vision and meaning. While laying down the foundation stone of the Pakistan’s Central Monetary Regulatory Institution, the proclamation of this formal point of view was to highlight that the constitutional history of Islamic Republic of Pakistan and the issue of prohibition of Riba remained side by side.

In both the constitutions of 1956 and 1962 it was endorsed categorically in clear and in unambiguous terms that the Government of Pakistan will make its best endeavor to eliminate the curse of the interest from the national economy. Later in 1973 constitution, which is understood to be a unanimous constitution and body of rules and regulations of our history, in its article’s subsidiary section “F” it has been laid down that, “as soon as possible the government must eliminate Riba”.

During 1962 in addition to making of 1962 constitution, a Council of Islamic Ideology was established by the Government of Pakistan at the national level. In this council genuine scholars from all paths and schools of thought were given representation. It was included in the official duty of the Council that this institution would compile such recommendations that by practicing on those the lives of Pakistani people be moulded in an Islamic frame.

On 3rd December 1969 the Council of Islamic Ideology fulfilling its constitutional obligation, opined unanimously in a report that, “Riba is forbidden in its all forms and any increase and decrease in the mark up does not affect its forbiddance”. It was further stated that under the present banking system the granting of loans and all business transactions between individuals, departments and the governments in which an additional amount is charged on principal capital, falls under the definition of Riba. Same way any increase paid on the provident funds, postal insurance schemes and on saving certificates etc.etc is also Riba. Any increase received against loans given to federal and provincial employees is also another form of Riba. Therefore, all these aforementioned transactions are forbidden.

Later on after 8 years during 1977, the President of Pakistan Gen Muhammad Zia ul Haq directed the Council to recommend after having done a thorough research and investigation, such methods to eliminate the curse of Riba /interest. Thereafter, the council carried out detailed appraisal, conducted discussions with expert bankers, financial wizards, and religious scholars and after a global level deep study of the complications in this regard, presented its report to the President of Pakistan on 25 June 1980.In this report comprehensive proposal for elimination of interest and its alternate system was given. It was intimated that with the implementation of these proposals the economy of Pakistan can completely be made free of Riba within a period of 2 years.

The paramount significance of this report can be noticed from the fact that the Kingdom of Saudi Arabia’s ‘king Abdul Aziz University Jeddah’ got it translated into Arabic and got it published for the benefit of own government, intellectuals and the general public. But what is distressing is that, the bureaucracy of the country got in the name of Islam did not make serious efforts to implement the report. Rather half heartedly they introduced Musharka, Muddarba, and Murabaha financial schemes in such ill manners that these failed to achieve meaningful results. Thereafter, the council released a ‘revised report’, in which it expressed grievances and administered a warning in these words:-

“The Council has reviewed those steps which government has taken for the implementation of Islamic System of Economy during 1980-1981.The measures adopted for the elimination of Riba are completely contrary to the recommendations submitted by the Council. The method adopted by the government became a very cause for defeating the purpose.”

When the warnings of the Council failed to create any affect over the then government, during 1990 a Pakistani Mr. Mahmud ur Rehman Faisal filed a petition No 3o/1 before Federal Shariah Court which was constituted to give decision according to Islamic laws and in the light of Islamic commands. The petitioner requested the Shariah Court that by declaring the current interest based economic system as un-Islamic, a restriction be imposed on it, and the present government be directed to abolish Riba like curse from the financial system of Pakistan. The Federal Sharia Court along with this case conducted combined hearing of similar 114 other cases. During the hearings bankers, economists, government officials and religious scholars gave their detailed versions and delicate discussions were held. Oral and written statements were recorded and finally during October 1991, a historical verdict consisting of 157 pages was announced by the Court. The Federal Sharia Court consisted of Chief Justice Tanzeel ur Rehman, Justice Fida Muhammad Khan, and Justice Obaid ullah khan. The court in its verdict not only defined the interest to make it a standard tool to examine the present interest based sections/clauses in the economic system but also through deep study of 22 laws pertaining to interest declared all interest based transactions, including the banking transitions forbidden. The Court instructed federal and all the provinces that all the relevant laws must be changed up to 30 June 1992.The Court further instructed that by 01 July 1992 all interest based laws will become unconstitutional and all interest based business transactions being un-Islamic will be established forbidden.

The said judgment of Federal Sharia Court got overwhelming acceptance at the public level and this hope was born that, after of 45 years of establishment of Pakistan now our economic system would be on right track and the people would get rid of interest like exploitative and oppressive trickery. On the other hand the banks and the interest grabbers became worried that their expanded net of interest based loans may become weak and the government got worried that at the international level problems may surface in getting of loans…and the trade activity may not get suspended. Therefore, before the 30 June all financial institutions, banks and some high powered individuals filed appeals in Shariah Appellant Bench of Supreme Court against the verdict of the Federal Sharia Court.

These appeals became a hurdle in the implementation of this judgment and the matter remained in cold storage for seven years. At last in early 1999 Supreme Court of Pakistan formed a Sharia Appellant Bench and it heard appeals for a number of months on regular basis. The five member bench consisted of Justice Khalil ur Rehman Khan as Chairman, and justice Wajih ud Deen, Justice Munir A. Sheikh, Justice Mufti Maullana Taqi Usmani and Justice Dr.Mehmood Ahmed Ghazi were the members. The Honourable court, keeping in view the issues of fiqh, economy, socio, law and the constitution coming under discussion during the hearing, to get assistance concerning these matters, in addition to the lawyers of the parties concerned, appealed to specialists in the field of to assist the court. As such a lot of researchers, specialists and the legal attorneys apart from Pakistan, across the globe provided their feedback, suggestions and valuable citation references from old and modern books and manuals. The copies of all the valuable information was made part of court proceedings.

As a result of a thorough and diligent examination of all the record mentioned above, and after having listened to the pertinent legal arguments of the scholars and the lawyers, the Shariah Appellant Bench of the Supreme Court up-held the decision of the Federal Shariah Court, and declared that all the modern banking systems and interest based laws were prohibited and forbidden in the light of Islamic teachings. The Court after allowing a further relaxation and more time to the government directed her to replace all banking system and laws repugnant to Islam with an economic system completely free of Riba by June 2001.

The above mentioned decision of Shariah Appellant Bench was like an unsheathed sword for the exploiters i.e. the ruling elite. This whole self-interested lot appreciating the said decision to be contrary to their vested interest unanimously begged the Supreme Court for the redress of grievance. So, before 01 June, 2001 the government filed an application in Shariah Bench and a request was made to keep the current interest based system running for the next two years. Apparently this was an application for a stay order which was filed before June 2001 through UBL. Thus as a result based on this application the Court accepted the request and allowed a grace period of one year instead of 2 years. The Court directed that all constitutional and the administrative arrangements be completed by June 2002.Honesty demanded that the then government by making use of the concession granted on her request should earnestly have replaced the laws within in stipulated time. Practically no effort was made to complete the impending task, rather new interest based schemes were being executed and arrangements made to get further loans.

When the stipulated period was about to end, a review petition was filed by UBL. During this period a significant event took place. Justice Khalil ur Rehman and Justice Wajih ud Deen were retired for not taking oath on PCO. Justice Mehmood Ahmed Ghazi being appointed on an official appointment also no longer remained the part of the Appellant Court .Only Justice Munir A. Sheikh, and Justice Mufti Maullana Taqi Usmani remained on the Bench. Just prior to hearing, there occurred a “blast”. Justice Maullana Taqi Usmani was one of those judges who were writing judgments concerning the appeals about interest. Due to his own scholarly status and religious knowledge, Justice Maullana Taqi Usmani was ahead of all other judges. Without giving any reason he was removed from the Appellant Bench. In new Bench Allama Khalid Mehmood and Mr.Rashid Ahmed Jallandhury were appointed on scholar’s seats. For the review petition the Bench consisted of Justice Munir A. Sheikh form the previous Bench and rest were all the new appointees as the judges. In this bench Justice Sheikh Riaz Ahmed was appointed as Chairman. The other judges, Justice Qazi Muhammad Farooq, Justice Dr.Khalid Mehmood and Justice Rashid Ahmed Jallundry were made part of the Bench.

The essence of the proceedings for the review petition in newly formed Bench is as follows. The UBL’s lawyer Raja Muhammad Akram initiated his arguments on 12 June; 2002.He based his argument on an ayah from Holy Quran. He stated that, the current banking system on the whole conforms to the overall meaning of “Bai” (a conditional sale or mortgage) hence, to determine bank interest as ‘Riba’ and to declare it forbidden is incorrect. Meaning thereby that, all over again it is required to be settled if the bank interest is Riba or not? He further argued that Islam considers only an unjust rate to be forbidden and according to him simple interest is not oppressive .He also claimed that teachings regarding interest are not of legislative level but of moral level. As such the prohibition of interest promulgated through law is not in accordance with justice.

Mr.Raza Kazim the attorney for the government initiated his arguments by submitting that the government fully supports the appeal and the submissions of UBL. It is not possible to act upon the judgments given by the Shariah Appellant Bench and the Federal Shariah court. He tried to prove that the prohibition on interest will result in economic anarchy in the country and all the economic business activity will come to a standstill. He demanded the repealing of earlier decision and claimed that the Government contacted 53 Islamic states with a view to implement interest free economy but all the countries advised that interest free banking system is impractical…more over the implementing of interest free economy will prove to be destructive for the economy …. and as a result we will get cut off from the rest of the international community… and our survival will be at stake. At that stage the official lawyer presented his co lawyer Dr.Riaz ul Hassan Gillani for submission of his arguments before the Court. Dr.Riaz ul Hassan in his peculiar style tried to prove that the previous court at a number of times deviated to follow the commands of the Quran and Sunnah. The distorted version of the ideology of Imam Abu Hanifa (ra) and other Islamic Jurists was presented and above all, all the citizens of Pakistan whether Muslims or the non Muslims, have been treated indiscriminately. Dr. Riaz ul Hassan Gillani did not support his arguments by giving any clear proof from Quran, Sunnah or from the sayings of Imam abu Hanifa, but never- the- less the claims were presented with such surety as if whatever was communicated was wholly correct.

After Dr. Riaz ul Hassan Gillani, the Attorney General of Pakistan Makhdoom Ali Khan while criticizing the earlier decisions took the stance that, both the Federal Shariah Court and the Shariah Appellant Bench in the light of regulations as described in articles 29,30(2),38(F) ,81(C),121(C) have not kept in view their jurisdiction to hear the case, nor took note of the fact that such cases could be instituted or not in the Shariah Appellant Bench and the Federal Shariah Court Courts.

Mr.Muhammah Ismail Qureshi, Mr.Justice Khizar Hayat(Retd), and Mr.Hashmat Ali Habib also presented their arguments in the court and while objecting to the very formation of the said court, they raised this point that the bench has not been formed as per the regulations of the Constitution. More over this argument was advanced that a court has a limited jurisdiction while hearing a review petition. Further that, when a superior court having jurisdiction to give a verdict has reviewed certain laws, regulations, and the facts in detail, the same are not raised again under the guise of a review. Whereas the issues, on which the opposing lawyers have based their review, were discussed and heard in details, and only then the last decision was given. This reason was also advanced that as partial action has already been taken on the decision of the Supreme Court, as such now the law does not permit the review.

The bench constituted for the review petition after a brief hearing of a few days in a great haste announced its decision. It annulled with a single stroke of the pen the verdict of 23 December 1999 of Shariah Appellant Bench and the decision of Federal Shariah Court announced on 14 November 1991.It further ordered to send the case for second hearing to Federal Shariah Court. Thus the said court ruined the strenuous toil of half a century by multiplying it with zero and relegated the case back to day one position.

Many important questions rather doubts arise if the track of the above mentioned facts are kept in view:-

1. First of all there is a basic difference in a “review” and an “appeal”. During hearing of an appeal there is a limit to accommodate fresh questions, but in review no new questions can be raised. After all what was the reason that not only the Court permitted fresh questions but also on the basis of those same questions the decisions of Federal Shariah Court and Shariah Appellant Bench were rejected?
2. The most noticeable characteristic rather defect of this decision is that the judges of the said bench did not narrate the reasons on the basis of which they were declaring null and void those very important and long lasting decisions .In the decision only such arguments have been quoted which indicate as to which lawyer said what. More over the arguments of only those lawyers were related who debated against the previous decision. The debates and arguments advanced by second party were not considered worth mentioning. Likewise, the arguments were not scrutinized, put together. Those reasons were not mentioned based on which the review was being carried out and also those reasons were not mentioned due to which it became inevitable to declare the previous decisions null and void. What sanctity there remains of the decisions given in such like manner?
3. The ability, good reputation, and the scholarly status of the learned members of the bench (who took oath under PCO) hearing the review appeal, appears to be far below in comparison with the learned judges of 1991 Shariah Appellant Bench. As per the public opinion, the present bench in all respects was of no match to the last bench. In spite of all this the present bench by disregarding /bypassing moral/ethical and legal norms is declaring null and void the decision of the last two courts. As if the PCO Court for the review was superior to the independent Supreme Court of Pakistan. After all why it so happened?
4. When the Bench of 1999 commenced hearing of the Riba case the decision of Federal Shariah Court was read in the court and bench listened to it for complete one week. Whereas the court of 2002 did not listen to the decisions of Federal Shariah Court or of 1991 Shariah Appellant Bench. Is it not so that in this way the legal and moral position of this decision gets hurt?
5. The prime ambiguity is that if the decisions of the former courts had some flaws then the present review court was responsible to hear those important questions and given the decision. Why was this not done? Contrary to that by negating both the last decisions and again sending the case of Riba to a lower court, it clearly appears that by giving cruel un Islamic Riba system an unlimited postponement a flag of treason has been raised against Allah (SWT) and His Prophet (PBUH).

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A second era of the efforts for the eradication of Interest began in 2012. At the central level of Tanzeem -e- Islami a decision was taken to revive the case of Prohibition of Interest, dully remanded by Supreme Court of Pakistan, lying pending since 2002 in Federal Shariah Court. It was decided to make an effort to get it fixed for a hearing. Therefore, on 4 August, 2012 an application with title,

“An Application to Fix for Hearing” by Khalid Mehmood Abbasi (An important and a responsible personality of Tanzeem-e- Islami) verses Federation of Pakistan”, through Mr.Kokab Iqbal Advocate Supreme Court, was filed in Federal Shariah Court. In the said application the court was appraised of the efforts made in the past for the prohibition of Interest and the decisions of the Supreme Court of Pakistan of 1999 and 2002 were made a base for the application. A request was made that:-

*“It is therefore, respectfully prayed that the above case(PLD 2002, SC 800) may kindly be ordered to be fixed for hearing at a very early date convenient to this Honourable Court.”*

On 17 August 2012 this reply was received from the Federal Shariah Court that:-

As the applicant is not a party in the case mentioned above and since this application has not been filed as per the procedure 1981 of Federal Shariah Court, as such this application is rejected.

On receipt of this answer on behalf of Mr .Khalid Mehmood Abbasi a second application titled ‘Petition under article 203-D of the Constitution of Pakistan’ was filed. It was constitutional applications vide Federal Shariah Court section 34-CPC/Interest being against injunction of Islam. Through this application keeping the constitutional image of Pakistan and the constitutional responsibility of the state of Pakistan in view it was prayed:-

“In this spirit…….the Islamic Republic of Pakistan.

As a result of filing of this petition the Federal Shariah Court through its letter dated 26 September 2013 accepted the application for the hearing. Later the Court communicated 22 October, 2013 as the date for initial hearing and it communicated the intention of jointly disposing of same like many other applications.

Since 22 October, 2013 till writing of these lines except for some formal activities no noteworthy development appears to be have taken place. In the first and the initial hearing along with this other 117 lumped cases were acknowledged. It was communicated that on the 2nd hearing the arguments will be reviewed and petitioner will be given chance to speak.

At the 2nd hearing on the basis of absence of Deputy Attorney General good news of a fresh date was broken. It was further informed that a questionnaire will be sent to the petitioners, law experts, scholars, and to the financial experts and the issue shall be debated in the light of those questions. As such a questionnaire consisting of 14 questions was sent from Federal Shariah Court through a letter and in news papers. All parties concerned were directed to send their answers direct to the registrar of Federal Shariah Court according to one’s ability and potential.

Tanzeem prepared the detailed answers of the entire questions and through its lawyers submitted those in the office of Shariah Court along with the request, that the case be processed speedily, keeping in view its importance and sensitivity.

Three additional Supreme Court lawyers, namely Mr.Ray Bashir Ahmed, Mr.Ghulam Fareed Sanootrah and Mr. Asad Butt were hired from our side to assist the court. In addition to us some individuals and organizations also submitted their replies. The Muthida Milli Majlis, Jamat e Islami, and people like Sh. Ibrahim Wadelo and others are included.

In the beginning of 2014 all the above activity had been completed and it was awaited that with a renewed vigour now this case will be debated in the court to get rid of the curse of interest. But till writing of these lines no proper debate has commenced in the Federal Shariah Court and the case is once again a prey of an unlimited postponement.

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During this period the writer was constantly in touch with different lawyers, specialists/experts and also kept reviewing the possibility that the case could be reopened or not all over again in the Supreme Court of Pakistan? The writer had the impression that the decision of 1999 awarded by Shariah Appellant Bench of Supreme Court of Pakistan maintained a position of evidence in itself, though it was declared null and void by the court taking oath under PCO in 2002.Making it a base of plea that the decision of 1999 was suspended under the pressure of some state and non state departments, and the present Supreme Court be requested to declare the decision of 2002 null and void and If so happens then it can be hoped that rest of the going would be smooth.

With this desire and hope in view the writer contacted many experts and consulted various lawyers for taking up this case in the Supreme Court. After enough deliberations and the consultations this was decided to assign this task to Mr.Raja Muhammad Irshad on the basis that he remained associated with Ajnuman -e –Khudam ul Quran for a long time, is sufficiently conversant and agrees with the thought of founder of the Tanzeem and is highly experienced in the methodology and working of the courts.

Raja Sahib included two other senior lawyers Mr.Sadar Muhammad Gazi and Mr.Shamshad ullah Cheema in his team. The writer met those gentlemen a number of times at Islamabad and apprised them of the history of the case and, its matter and whatever was in its favour and the disfavour.

precondition due to an extreme constraint and a dire need or with a mutual

understanding, disclosed his willingness in view of a greed for earning some profit on the principal amount. But the warning of Holy Quran to the lenders to leave their remaining balance of the interest and be contended with the principal amount is a proof that it is the money lender who demands the interest for his own gain.

(3) ……(Al-Baqarah :280)

“And if borrower …….

In this After having gone through the case in details the group opined that for a number of reasons it is not easy to get the decision of 1999 restored. Instead, it will be more proper to raise this case vide section 38-F of the Constitution. So the team prepared the case on same bases on 30March, 2015 and on behalf of Ameer Tanzeem Islami Hafiz Akif Saeed a Constitutional Petition verses Federation of Pakistan titled ‘The Petition under article 184(3) of the Constitution of Pakistan was admitted in the Supreme Court. This Constitutional petition carried this request:-

“In view of the above …….. wrath of Almighty Allah.”

On 9 May, 2015 a reply from the Registrar Office was received informing that the application had been rejected due to a number of reasons, so it was not worth hearing.

Because the reasons stated were unreasonable and unconstitutional as such on 23 March 2015, a Civil Miscellaneous appeal was admitted. It was demanded in the application that the Office of the Registrar is not authorized to turn down a Constitutional application pertaining to basic rights. On these bases it was requested that by rejecting the objections of the Registrar the application may be presented before the Petition Court. After accepting this request the Registrar presented the case in the court of Justice sarmad Jalal Usmani. After examination of the case he opined that in view of the sensitivity of the case it should be heard by more than one judges. So on 05 October, 2015 Justice Azmat Saeed jointly heard this case with Justice Sarmad Jalal Usmani. After a brief hearing the judges turned down the application on the grounds that the case is already subjudice in Federal Shariah Court.

In brief the Interest case once again after landing completely in its initial stage, is in the court of Federal Shariah Court. Once again and through the judgment of PCO court of 2002 a number of such debates have been reopened which had been discussed in details in last two cases and decision with exhaustive explanations have been given on them. Along with these, many new discussions have been initiated. These are unsuccessful attempts to give a new turn to this case. The Government of Pakistan due to its constitution is duty bound to prohibit Interest, and the Government has promised a number of times to do so. Now the Federal Shariah Court has commenced hearing of review case. The learned Court is requested to restore its last decision and issue orders to the Government to make arrangements for its promulgation. The scholars, Jurists and the religious parties from all over the World d expressed their joy over last decision and praised the learned Court. Even now if the learned Court restores its decision it will be a great service to Ummah and the decision of the court will be written in golden words in the history, Insha Allah!