

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

“The Law-suit For Elimination of Interest and the 14 Questions of Federal Shariah Court”

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 30/1 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 Sharia 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 30 March, 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!

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### **The 14 Questions of Federal Shariah Court and the Answers to Those**

In order to hear the case all over again the Federal Shariah Court issued a questioner consisting of 14 questions. Mr. Hafiz Atif Waheed, In- charge Research Section, prepared a reply and submitted it to the Court. In view of the importance of the case and for the purpose of communication the questions and their answers are listed as follows:-

Question 1:

What is the authoritative definition of the term Riba, in the light of commentaries of the Holy Quran Is there any difference between Riba, Usury and Interest? Can the term Riba be also applied to commercial and productive loans given by the banks and financial institutions on the basis of Interest?

Question 2:

What is the definition of the term Qarz? Whether the term Qarz is synonymous to the term " Loan"? In what meaning the term Qarz has been used in the Holy Quran?

Question 3:



Whether the expression 'Bai' بيع or "sale" which has been permissible in the Holy Quran has any relevancy with the present interest banking transactions? Whether these transactions are covered by the term "Bai". بيع?

Question 4:

Explain "Riba-ul-Fadl" with specific reference to its applicability in present day banking transactions?

Question 5:

What is the "Illat" علت or legal cause of the prohibition of Riba? What is the moral and legal aspect of its prohibition in the light of Quran, Sunnah of the Holy Prophet and the views of Jurists of various schools of thought? Whether the legal maxim "الحكم يدور مع العلة وجوباً وعدمًا" can be applied in the case of Riba?

Question 6:

The criteria set by the Constitution for the Federal Shariat Court to declare any law repugnant to Islamic injunctions, is the Holy Quran and Sunnah of the Holy Prophet; in the presence of the clear injunctions of the Holy Quran and Sunnah of the Holy Prophet what is the value of the views of contemporary Ulema regarding the legality or illegality of any issue?

Question 7:

Can the prohibition of Riba be applied on non Muslims citizens of Islamic State also? Can the prohibition of Riba be extended to the loans obtained from non Muslim States while the fact is that the laws of foreign countries, their national policies and international monetary laws are beyond the control of Pakistan?

Question 8:

What is your opinion regarding the permissibility or otherwise of indexation keeping in view the devaluation and inflation during the period of borrowing with specific reference to the juristic views of contemporary jurists.

Question 9:

What is meant by "Ra'as-ul-Mal" as appeared in the Holy Quran? It is fact that the value of the paper currency has a trend of decrease in the inflationary situation. If a debtor who has borrowed a particular amount of paper currency repays the same amount to his creditor after a lapse of substantial time, the creditor can suffer the effects of inflation. If he demands his debtor to pay more in order to compensate him for loss of value, he has suffered, can this demand be treated as a demand of Riba?

Question 10:

Are the current fixed return modes like Murabaha diminishing Musharka etc as used/practiced by the contemporary Islamic banks in line with the higher purposes of Shariah? Whether these modes can be termed as real alternatives of Interest?

Question 11:

What are the objectives of Islamic finance? Does the modern Islamic finance fulfill these objectives?

Question 12:

What is the Islamic alternative to the present discounting of bills? Are the modes used/practiced by the Islamic banks for discounting are in line with the spirit of Shariah?

Question 13:

Is the priority banking services given to current account holders in conformity with the principles of Shariah?

Question 14:

If all the transactions based on Interest are declared prohibited to Islamic injunctions, what procedure will be adopted with regard to previous foreign loans, past transactions and agreements with non Muslims and Muslims countries?

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### The Detailed Answers

Question 1:

What is the authoritative definition of the term Riba, in the light of commentaries of the Holy Quran Is there any difference between Riba, Usury and Interest? Can the term Riba be also applied to commercial and productive loans given by the banks and financial institutions on the basis of Interest?

Answer:

Since to provide an authentic definition of the Riba we need to keep the teachings of Quran and Sunnah in view, hence before initiating a direct talk on the points raised in this question it is proper that we present a categorical and undeniable essence from the Quran and the Sunnah.

The Divine Guidance Descended in Quran about the Interest

(1)..... (Al-Baqarah: 276)

Those who devour interest, they will .....translation from (**Hilali and Saman**) to be incorporated.

(2)..... (Al-Baqarah: 279)

From the words of this verse (.....وان تبتم---اموالكم.....) it becomes absolutely clear that the interest is in fact an addition over the principal sum. These Ayahs also elucidate that

the demand for extra amount is initiated by the lender. Nevertheless, it may be so that the borrower too, at the time of borrowing money, accepted the payment of this extra amount as a sacred verse Allah has directed the money lender to provide relief to the poor borrower till he gets relief. Here اقتضا النص means that the lender is to provide the respite without any monetary gain. In this verse the lender is being taught, that keeping in view the extreme penury of the lender he should forego his amount as an offering to the borrower. Many commentators have narrated that, contrary to this custom in practice in Arabia before the revealing of the divine command about the prohibition of Riba, a borrower who was unable to return the amount in a stipulated period, in return for payment of an additional amount, he was allowed a grace period/respice.

### The Sayings of Holy Prophet (Allah's Peace be Upon Him) About the Riba

In various sayings Hazrat Muhammad (SAW) has condemned the interest and while explaining the ayahs of Quran has stated:-

(1) ان الربا و ان----- تصير الى قتل (1)  
مشكوة المساييح، باب الربوا، بحواله ابن ماجه

“The interest may result in an additional profit but its fate is poverty and insolvency”.

(2) Jabber(ra) reported that :-

عن جابر رضى الله تعالى قال: لعن رسول الله صلى الله عليه وسلم اكل الربا ومو-----  
(رواه مسلم)

“The messenger of Allah, may peace be on him, cursed the devourer of usury, its payer, its scribe and its two witnesses, and he said that they are equal ( Rawaha )Muslim)

(3) عن عبد الله بن حنضله رضى الله تعالى غسيل الملائكة قال قال رسول الله صلى الله عليه وسلم درهم ربا يا كلفه  
الرجل ----- من سته و ثلثين زنية (احمد)

Abdullah bin Hanzala(ra), **one given bath by the angels**, narrates the messenger of Allah, may peace be on him, said that, who so ever devours knowingly one dirham, he sins equal to committing of adultery for thirty six times. (Ahmed)

(4) Hazrat abu Hurarah (ra) has narrated that the Prophet (may peace be on him) said “on the night I was taken up to heaven I came upon people whose bellies were like houses which contained snakes which could be seen from outside their bellies. I asked Gabriel who they were and he told me that they were the people who had consumed riba.”

(Ahmed Ibn Majah)

(5) Hazrat Ali (ra) narrated, the Messenger of Allah, (may Allah's peace be on him), said, “every loan that reaps profit is riba”.

(6) عن فضل بن عبيد (را) قال: كل قرض جر منفعة----- وجوه الربا (اعلا السنن)

Fazalah bin Ubaid (ra) said, “Each loan which reaps benefit is one of the kinds of interest”.

(Aalae Alsunan)

(7) Hazrat Anas (ra) has narrated that, the Prophet (peace be up on him) said, when any one of you gives a loan to someone and the borrower offers him a gift or a ride, he should not accept the ride and the gift, provided they had such relations since past and had been offering gifts and ride to each other”.

Ibn Majah and Beheeqi have quoted in Shaeb Al Iman. From it transpired that the lender has even been stopped to receive even an ordinary benefit from the borrower.

Amarah Hamdani has narrated that Hazrat Ali( ra) said,

قال رسول الله صلى الله عليه وسلم (كل قرض جر-----  
(المطالب العليه ابن حجر----- طبع بيروت)

In fact this hadith has been quoted with an authority in 'a book “Masnade Hadees” a book of Haris bin Muhammad bin abi Ussamah Altamimi Albaghdadi (died :282 Hijrah).This august hadith also clarified that whatever an additional benefit a lender receives other than his principal sum that is an interest. Allama ibn Abd Albar has written that there is a unanimous consent of whole Ummah on the definition of Riba related to the Holy Prophet (peace be upon him).He quoted the definition as under:-

اشترط الزيادة .....قبضة من او حبه ( المتهدد لا بنعبدالير : ج 4، ص 681، طبع لاهور، 1983ع)

“Putting condition for an addition and an increase on the principal amount is interest even if it is a handful of grass (fodder for animals) or a grain.”

### The Shariah Law of Riba

\* There is no admonition for any sin like the one prescribed for Riba based dealings.

This is the proof of this fact that riba is an extreme injustice and a robbery committed in the rights of Allah and the human beings. For this very reason Holy Prophet (pbuh) had prohibited all types of interest based transactions and declared those against the law within the Islamic state established by him (pbuh). So much so that, in the pacts made with the non Muslims they were bound and warned to not to indulge in interest based business, and failing which the pact will stand void and Muslims will take up arms against them. A same type of pact was made with the Christians of Najran. The Arab tribe of Banu Mughira was known for lending money on interest. After the conquest of Makkah the Holy Prophet (pbuh) annulled all of their interest. The Holy Prophet (pbuh) directed the administrator of Makkah that, if they keep indulging in the interest based business, stop them by declaring war against them. During the period of ignorance Hazrat Abbas (ra) uncle of Holy Prophet (pbuh) was a sound businessman. He dealt in interest based business and charged interest from the borrowers on amount loaned to them. On Hajjah Tul Wida the Holy Prophet, may Allah’s peace be on him, announced in clear terms that,

“All the interest of the period of ignorance became void and foremost, I annul the interest of my uncle Abbas bin Abdul Mutalab payable to him by the people”.

- In Holy Quran ‘bei’ means sale of kind for kind and ‘riba’ means concession in return for kind.

Allah commands:-

(احل الله البيع و ----- سورة -- ) “Allah has made ‘bei’ lawful and forbidden the interest”. In ‘bei’ the individuals exchange the kind. The buyer pays the money and the vendor in return provides the item. To procure the item he makes an effort, he travels to a close or a far distance. For his labour the vendor earns profit from the buyer. Whereas, in the interest based transaction the borrower gives additional amount on the principal sum received as a loan. The lender thus receives extra money but he gives nothing to the borrower in return. Allah has ordained (-----) “If you refrain from devouring interest you will get your real capital, the principal capital”. In the next verse the command is, (و ان كان ذو عسرة-----) “if the borrower is poor then he should be given a grace period till ease”, that is, do not charge him for the grace period, give respite only and do not receive any thing in return. These ayahs explain the real nature of riba. It is called Riba al-Quran or Riba al Nasaitah. In the period of Jahliyah this very Riba was in practice.

\* A person came to Hazrat Abdullah bin Umar and said, I gave loan to a person and demand that you will give more than what I have given you’. Hazrat Abdullah bin Umar said, “This is what riba is”.

\* Zaid bn Aslam Tabaee narrates that during the period of Ignorance the nature of riba was that, when it was the time to return the amount, the lender would ask the debtors do you give the due or pay the riba. If a debtor returned the loan that was received and if he could not pay then the period of loan was extended (in lieu the loan period was extended) and riba was also enhanced. (Mauta Imam Malik)

#### Consensus of Ummah on Prohibition of Riba

The prohibition of ‘Riba’ is decisive. It is proven without doubt from the Holy Quran and the Sunnah that dealing in riba is unlawful. The Ummah since early days till today is unanimous about its prohibition. The companions of the Holy Prophet (pbuh), the adherents to the successors of the Holy Prophet (pbuh) and the scholars of each period have remained united on this aspect.

Ibn Abdelber (rh, died: 462 Hijrah) says: (قد اجمع المسلمون-----اوحبة)

“It is unanimous consent of the Muslims on the sayings of their Prophet (pbuh) that putting any condition for an increase and addition in principal amount is riba even if this increase is equal to a handful of grass or even a single grain.”

The leader of the commentators, Ibn Jareer Tabri(rh) , Imam Tahavi (rh), Abu Bakar Jassas (rh), Imam Baghvi (rh), Qazi Abu Bakar bin Erbi (rh), Imam Fakhar ul Deen Razi (rh), all hold the same opinion that any extra payment received conditionally or on a contract over and above the principal amount of a debt is riba.

(1) (Imam Baghvi (rh) (died: 516 Hijra) said:-

ان اهل الجاهلية كان  
----- (معالم التنزيل-262-----)

“In the times of Jahliyah on the date of the maturity of a loan period the lender would ask for the payment. The debtor would tell him that if you increase the time limit I will increase your principal amount. As such both would make a deal.”

- (2) Imam abu Muhammad Abd Almunem bin Abd Alrahim(rh) (died : 547 Hijra) says:-

ما كالت العرب تفعله..... احكام القران - جلد 1 ص 400

“In case of a delay in paying back the loan the Arabs would resort to increase. Thus the lender in case of delay would ask the debtor, are you returning the loan or would pay with riba?”

- (3) (Imam Fakhar ud Din Raazi(rh)(Died: 606 Hijra) has explained the usual practice of the period of Jahliyah as follows:-

و اما ربا النسبية فهو الامر..... يتعميون به (التفسير لكبير جلد 7: ص 72

“The riba on a loan was well known in the times of Jahliyah. It was so that people would sell their goods to others on this condition that so much of interest is to be paid monthly but the principal amount would remain intact. On the completion of the period payment was demanded from the debtor. If he was not in a position to pay then the time period was increased and in return for this increase in time the amount of riba was also increased. It was this riba on which settlements were made during the times of Jahliyah.”

The definitions of riba as defined by Imam Fakhar ud Din Raazi and Imam Baghvi have already been quoted earlier.

- (6) Pir Karam Shah Alazhari describes:-

“In Arabic dictionary the term riba means increase. As per this term that settled increase was called riba which was paid on a sum paid after due date. The different prevalent practices were that someone bought something, and if he could not pay in cash, then a time period was fixed for making the payment. If the person could not pay on appointed date, then the time period and the cost of that particular item was also increased. For example if an item was purchased for Rs.10/- and promise made by the buyer that the payment to be made after one month. On completion of one month in case the payment of Rs.10/- was not arranged then the debtor would request for an additional one month and would agree to pay Rs.12/-.The another form was that Rs.100/- were taken on loan and agreement was made by the borrower to pay additional Rs.10/- every year with Rs.100/.Both these forms in those times were called riba.

(Zia-Alquran: Vol 1, Page 210)

Mallana Maudoodi writes:-

“As per the terminology the Arabs called that additional amount “ribwaa” (ربوا) which a lender used to receive from the borrower on agreed rate in addition to the principal amount. The same is known as ‘interest’ in our language.”

(Tafheem Alquran: Vol 1,Page 210)

Mauallana Ameen Ahsen Islahi has defined the riba as follows:-

“Riba, yarbo, ribaen all mean an increase and a further increase. From same comes “rabo”, which means it is that fixed additional amount which a lender receives from the borrower on his principal amount in return for one time grace period. The above mentioned term remained well known for same sense/connotation during Jahliyah and in Islamic world. The types have remained different but in reality it is so that, a lender receives an amount at a fixed rate, from the borrower due to his this right that he lets him use his principal amount for a given period of time.  
(Tadabare Quran: Vol.,1 Page 586)

In the light of elucidation from Quran, Sunnah, the consensus of Ummah, and the views from the above mentioned commentators and scholars of jurisprudence, we opine that the definition of interest given in the historic verdict of `1999 of Sharia Appellant Bench of the Supreme Court is authentic, concise and highly comprehensive. That definition is as follows:-

Any amount big .....production activity.

This definition has been derived from Surah Al Baqarah: 277-278, which states:-  
“O Ye who believe! .....nor shall you be wronged.”

From the clear words of the translation this becomes obvious that any type of increase in the principal amount given as a loan falls in the category of interest, regardless of the fact that interest it is simple or compound, whether an enhancement in the principal amount is due to provision of some articles/ some services rendered or is linked with some productive activity. The proof of this definition being authenticated and reliable is that, with reference to its explanation and exposition this is in line with and according to the point of view of commentators like Ibne Jareer, Tabri, Abu Bakar Jassas, Baghvi, Ibne Alarabi, Imam Raazi and it also fully conforms to the point of view of other known expositors of Quran. These scholars explained interest keeping in view the three practices of the period of Jahliyah as follows:-

1. The pact for a loan would be conditional that the amount payable would in excess to the principal amount. As such the rate of interest was settled at the time of the payment of loan. Abu Bakar Jassas in his book “Ahkam Al Quran” has mentioned:-

“There was a practice in Arabs that they used to give dirham or the dinars for a particular period of time on loan and over and above the principal amount a sum was settled at the start.”

2. The loan was (also) given on this condition that the lender will receive an agreed amount every month but the principal amount will remain intact. When the loan period would come to end the lender would ask for the payment of his principal sum. In case the debtor was not in a position to pay the amount, in that situation the time period and amount payable was also increased.

3. (Sometimes) an article was sold on deferred payment. When the time of payment would be nearing the seller will give respite to the buyer by enhancing the amount payable. In regard to this practice Imam Sautee has written:-

“This was also a practice in the Arabs that they would purchase something on the basis of deferred payment. At the due date the seller by making an increase in the actual amount payable would increase the period of payment.”

Therefore, sometime at the time of making a deal no condition was laid for any increase in the capital amount but it was done at the time of completion of the time period and close to the time of payment.

**The definition of interest as follows can be declared authentic, credible, and standard:-**

“The Interest in a pact is that increase in the principal amount which has no alternate for an amount, labour or the responsibility?”

The important aspect of this definition is that it has been arranged as per the command of Holy Prophet (pbuh) الخراج بالضمان (the right/claim for the profit is dependent on accepting the responsibility for the loss). Its comparison is that a lender earns profit without putting in any labour or bearing any responsibility for the danger of a loss.

According to Shariah there is no difference in interest and the usury. As such the term riba is applicable on all those loans which are advanced by the banks or financial institutions/departments for trading and productivity/production purposes.

This point needs attention that the definition of interest given by the International Fiqh Academy and the prominent Fiqh Institutions encompasses the banking and the present form of the profit of banks. The religious scholars of Ummah have a particular consensus and a unanimous consent on this issue. As such regarding the definition of riba and difference between interest and the usury we completely agree with the dialogues in Shariah Appellant Bench of Supreme Court of Pakistan and adopt the same. This definition is available on the following pages of the judgment:-

Judgment of Justice Khalil ur Rehman PLD page no 82to 85(publishers: Shariah Academy.....Islamabad).....Lahore) Judgment of Justice Mufti Muhammad Taqi Usmani..... Educational Press Lahore)

Similarly there is the case about its applicability on trading and production related loans. In this regard too, we completely agree with the dialog concerning decision of Shariah Appellant Bench of Supreme Court of Pakistan and we adopt the same. The dialog pertaining to this appears on following pages of the court decision:-

Judgment of Justice Khalil ur Rehman PLD page no .127 to 140 (publishers: Shariah Academy, International Islamic University, Islamabad) Judgment of .....Lahore)

Hence there is no difference between riba, interest and the usury, because of three commonalities in all these as follows:

- (1) Increase in principal amount in lieu of grace period/respice/postponement.
- (2) The fixation of percentage of increase.
- (3) The inclusion of the condition of increase in the loan deed.



In the modern economic terminology there is no difference in interest and the usury. In all the authenticated dictionaries both convey the meaning as interest. If there is any difference that is due to the percentage of interest because; in usury it is comparatively on the plus side. Since four thousand years old Hammurabi law till today the interest and the usury have been considered one and the same. The interest rate in different times and different countries have been 2 % to 60% and merely on the basis of interest rate one cannot be declared legitimate and the other illegitimate.

The term riba is applicable on every interest which the banks charge on commercial and productive loans. The riba or interest is not of a specific type i.e. simple or compound nor is it applicable only on some particular loans i.e. personal, commercial or productive loans hence, the riba encompasses all sorts of interest charged on all types of loans. A conditional and fixed profit will be termed “Alriba” even if the loan is for the commercial and productive purposes and being advanced by an individual or an institution or by a bank. In this respect our arguments are as follows:-

(1) The prohibition of riba is in an order in general i.e.it has not been specified for a particular type of a loan or an interest. Allah commands:-

(واحل الله البيع---حرم الربوا-----)(البقره: 275)

“Allah has permitted trading and forbidden interest”

In this sacred ayah the word ‘alribawa’ is single/alone/ and the letters Alif lam are immersed in word riba signifying that here the term riba encompasses all types of riba. According to the ‘Asoole Sarkhasi’ a customary word is of about seven types and one of the types being that a word should be single and it commences with Alif lam.

هو اللفظ الزى يستغرق جميع----- (اصول سرخسى: ج 1 ص 125)

A common word is that which encompasses all the people and kinds/categories which posses the capacity to get absorbed in its connotation. As such here this is the very meaning of word Alribawa being a common word and that is why it cannot be associated with personal loans only, but it encompasses all the type of loans. According to the ‘ اصول ’ those words also give proof of being common words the meanings which actually include and encompass commonality like عامته، كافته (whole, entire), جميع, عامه, (public, of the masses)كافة(whole, all, universal, general public)etc. If we keep this type of commonality in view then, the hadith as follows is a proof that riba is applicable on all types of loans. The Holy Prophet ( Allah’s peace be on him) said:-

(كل قرض جر نفعاً فهو ربا )

(المطالب العاليه از ابن حجر: ج 1، ص 441 رقم : 1373 طبع بيروت)

“Every loan that reaps profit is interest”

This hadith has already been quoted along with its authority. In the expanse of this word كل (all) any loan taken for any purpose gets contained. The reason is that the words which define these texts for riba and its prohibition have been defined in common words and no conditional sentence or any exemption bounds or follows those words. There are no other injunctions which specify or give a touch of exception to those words; hence the words of aforementioned text will be included in common words. The overall impact of this being that any space for an exception for a peculiar loan will cease

automatically and it shall be applicable on every such loan the agreement of which contains the condition for a fixed increase on principal amount, regardless of the purpose of a loan.

Probably this propaganda of the supporters of the prevalent banking system caused the Honourable Court to ask this question that Islam has prohibited that riba which is paid on the personal loan which the needy people availed to meet their expenses and the lenders charged them cumbersome riba, whereas there was no concept /tradition of commercial loans in those days. Maulana Amin Ahsen Aslahi while giving the reference of Ayah (و ان كان ذو عسرة فنظرة الى ميسرة -----) mentioned:-

“In the Arabic language the word ‘ان’ is not used for the ordinary and the usual situation, but to narrate a seldom and a rare happening. To describe the day to day events /happenings the Arabic word ‘اذا’ is used. In the light of this statement if we ponder it becomes evident that in those days borrowers were ذو ميسره (affluent).Seldom it so happened that the borrower was a poor person or he became poor after obtaining the loan and in that situation he was dealt with leniently.”(Tadabre Quran, Volume 1, Page 594,595)

Here he has mentioned an opinion of his learned teacher Maullana Hameed ud Deen Frahi(ra). The narration of which would not be without benefit:-

( وان كان ذو عسرة فنظر الى ميسرة ط-----)  
يلوح من هذا الكلمات انهم كانوا.....فى الربو،  
والله اعلم بالصواب....  
(تدبر القرآن:ج1 ص594، 595)

From the words of this ayah وان كان ذو عسرة----- it clearly transpires that the Arabs charged riba from the rich also. The Arabs were traders and riba based trading was in vogue in them. As such keeping in view the matter concerning interest there is not much of difference in their and our state of affairs. .... والله اعلم بالصواب.

(3) Allah commands:-

( يا ايها الذين امنوا اذا تداتم ..... فكتبوه ط وليكتب بينكم --- شيا) (البقره : 282 )

“O Ye who believe! When you borrow one from other.....and not diminish anything there from” (Al-Baqarah: 282)

This ayah which is called “اية الدين” is the longest ayah. We have copied the initial part of it. It is quite evident from the text of this ayah that here the case of giving a loan or credit to a poor for his personal use is not the point of discussion. But it is about taking and giving loan for large scale trading and productive projects. Further, here the matter has been discussed to formally reduce the loan deal to writing. To give this deal an authenticity the presence of witnesses is also essential otherwise it will remain unreliable. For the same reasons in this ayah this practice of provision of evidence through the witnesses, has been given validity. It is obvious that this arrangement is not suitable for obtaining loan for personal use ,on small scale from hand to hand, but for financial or trading purposes , given and taken, under a pact for a particular period . The directions given to the lender and the borrower in this ayah are meant to dispel their mutual doubts.

Our above mentioned point is proved by a saying of Hazrat Ibn Abbas (ra) that,

“this ayah was a revelation about a sale agreement of wheat by advance payment and the sale was on loan.

Imam Ibn Jabeer narrates that Hazrat Abbas said:-

نزلت هذه الآية : يا ايها الذين امنوا اذ تداينتم..... اجل مسمى)

فى السلف فى ..... اجل معلوم - جامع البيان: ج 3 ص 159)

“This ayah is a revelation about sale of wheat {the cost of wheat is to be paid in advance and wheat is to be received after the harvesting} the quantity of the wheat and time period should be known.”

”واحل الله البيع و حرم الربوا“ Pir Muhammad Karam Shah Alazhari(ra) in connection with in thought provoking words said about the personal and financial loans that, “This matter needs to be investigated whether the people of those days would only get a personal loan or it was common to get interest based loan for the trading purposes too? Some of the people who did not find time to study in depth the traditions and circumstances of Arabia opine that in those days loans were taken to meet personal needs and in that backward society there was no concept of availing a loan for business. But if they care to see world map, they would know that in the absence of Suez Canal and when there were no large ships, it was the Arabian Peninsula which was a land route for trade caravans between the East and the West. The Arabs in general and the people of Makkah in particular were used to extensive trading. This fact is very much there in Quran that the trading caravans of people of Makkah would go towards Yemen and Iran in winters and towards Syria in summers. This was their basic means of living. History is a witness to the fact that the caravan returning from Syria under Abu Sofiyani and to which the Muslims after getting out of Medina, planned to surround en-route, contained the capital goods of people of Makkah. There was not a single house in Makkah which did not pool in for that caravan. The share was of two types. The lender will either share in the profit or get his share fixed regardless of fact whether the borrower earned profit or sustained a loss. In the presence of these historical facts is this supposition valid that the Arabs of the past did not borrow money on loan for business purposes. The Quran has declared all types of riba prohibited. No permission anywhere you can show for obtaining business interest.”(Zia ul Quran: Volume 1, page 193)

As we have made it clear that principally Islam makes no discrimination in respect of applicability of interest on personal or financial loan, nor declared it permissible to give interest on the financial loans. Till today those acknowledging interest permissible distinctly for productive loan, leave apart any text from Holy Quran; have not been able to present an authentic hadith in support of their argument. Whereas by explaining in the light of some of the Quranic verses we have made it clear that, no exemption or peculiarity is available from the formal commandments of Holy Book and the Sunnah for the applicability of interest on business loans. We have also made it clear that in the period of Jahliyah in addition to personal loans, giving and taking of business and productive loans was in practice and interest was received and given on those loans. Now we will present such traditions which will make the dust to settle completely. Not in the period of Jahliyah only but also before receiving the firm command for prohibition of interest, during the time of Holy Prophet’s (pbuh) in Makkah and later in Medina the business and productive loans were in practice, more over interest was given and taken on those. From many traditions it is evident that ayah riba in respect of descending order is the last ayah of the Quran. These traditions are narrated by great companions like

Hazrat Abdullah bin Abbas (ra) and Hazrat Umar (ra). The Holy Prophet(pbuh) himself on the day of Hajjah tul Wida gave command for the elimination of interest and declared the interest of his (pbuh) own uncle Hazrat Abbas (ra) annulled.

The former commentator Imam Ibn Jareer Tbari in respect of descending of Ayahs

(ياايها الذين امنوا اتقوا الله..... كنتم مومنين : 278) (البقره)

has narrated these traditions regarding this ayah. These traditions have also been quoted by the later commentators, including the author of ‘Dare Mansoor’ author commentaraotr, Tadfseer Mazhari, and author of Commentary Rooh ul Bian.

Hazrat Zahak bin Mazaham Tabaee said:-

كان ربا يتبايعون به فى الجاهليه..... رروس اموالهم -- (جامع البيان : ج 3، 147)

“In the period of Jahlihah the people carried out interest based business. When they accepted Islam they were commanded to receive only the principal amount.”

While narrating the background of revelation of “وذروا ما بقى من الربوا“ he wrote in reference to Imam Sdi:-

نزلت هذا الاية فى الاعباس بن عبدالمطلب و رجل من بنى المغيرة كانا شريك فى الجاهلية سلفا فى الربا الى اناس من ثقيف من بنى عمرو بن عمير، فجا الاسلام ..... من الربا.

“These ayahs were revealed in respect of Hazrat Abbas (ra) and a person from Banu Mughirah who were partners in a business. They had lent their money on interest to Banu Umar a branch of the tribe of Banu Sakeef. At the dawn of Islam (interest being declared forbidden) their huge amount was lent on interest. About that Allah revealed this ayah that, relinquish what remains of interest.”

In this tradition the narration is about the amount lent on interest by two traders to the tribe of Banu Amar. A huge amount was payable by Banu Amar . Imam Ibn Jareer has quoted Ibn Jareeh that, Banu Umar would lend interest based loans to Banu Mughira.

و كالت بنو عمار بن عمير بن عوف يا خزون الربا من بنى المخيرة و كالت بنى المغيرة يربون لهم فالجاهليه فجا اسلام و لهم عليهم.....الافاذ زتهم بحرب (جامعالبيان:ج3ص147)

“During the Jahlihah period Banu Umar and Banu Mughira dealt in interest based trade. At the advent of Islam a huge amount of Banu Umar was due on Banu Mughira as such they approached Banu Mughira and demanded the balance of the remaining interest. The Banu Mughira refused to pay interest in the Islamic era (both the tribes had accepted Islam).The case was taken to Hazrat Etab bin Aseed. He referred the matter to Holy Prophet (pbuh) through a letter. On that this ayah was revealed:-

“O ye who believe! fear Allah and relinquish what remains of interest, if you are believers.

The Holy Prophet (pbuh) wrote this ayah and sent it to Hazrat Etab (ra).He further wrote that, if these people agree to leave better it is, otherwise give them an ultimatum for battle.”

Here Imam Ibn Jreer Tabri (rh) has quoted a narration from Ikrmah (rh) as follows:-

كانوا ياخذون الربا على بنائى المغيرة يزعمون ..... حبيب وربيعه و هلال و مسعود  
(جامع البيان ج 3 ص 157)

“They thought that, Masood, Abd Yaleel, Habib, and Rubiah bani Umar bin Umair were taking interest at the responsibility of Banu Mughira. Hence they were those whose interest was due on Bani Mughira. Later Abd, Yalil, Habib, Rubiah, Hilal and Masood embraced Islam.”

In the first narration it is clearly mentioned that people were carrying on interest based business before the receipt of ultimate command about the prohibition of interest. Here it is understood that interest based business means the taking and giving of interest on business loans. From the later mentioned three traditions it is clear that between them the giving and taking of loans pertained to business deals because on personal loans mutual exchange is not possible. A huge capital being assigned to each other shows that these loans were taken for trading purpose; otherwise it is of no use to take huge loans for personal use. The names mentioned in respect of these loans are among the chiefs of Banu Sakeef and Taif and it is inconceivable to think about them that they would take loans for personal needs.

Here this point is worth mentioning that, initially in the Federal Shariah court in 1991 and later in Shariah Appellant Bench in 1999 on the basis of coming up of strong arguments, the decision have given that it is not correct from the concept of the applicability of interest, to differentiate between personal and business loans. Further that the term “Alrabu” is applicable on interest accrued from productive and business loans advanced by the banks. We fully endorse these sections of the decisions of Honourable Courts. These sections of decision of Shariah Appellant Bench are printed on pages of PLD as follows:-

1. Judgment of Justice Khalil ur Rehman PLD page No:127 to 140.....Educational Press, Lahore.)

Question No 2:

What is the definition of the term Qarz? Whether the term Qarz is synonymous to the term “Loan”? In what meaning the term Qarz has been used in the Holy Quran?

**Answer.** In Quran terms of qarz, qarze hasna(money lent without interest and repaid at the convenience of the borrower) and دين have been used. The meaning of دين and قرض are nearly same whereas qarze hasna is meant to be alms and is understood to be worship. A command in Holy Quran is as under:-

( من ذا الذى يقرض الله قرضا حسنا..... واليه ترجعون) ال بقره: 245

“Who is that will lend Allah

First of all a word “ادهار” is used in Urdu language. At times دين, قرض are used as synonym of loan, debt or of borrowing, whereas in actual position word “ادهار” is a translation of English term Credit. In banks and financial institutions the word loan is

used only for *قرض* or *دين*. The word loan is antonym of cash/ready money, indicating a state of debt customary in the buying and trading atmosphere, and we say that so and so bought that on cash i.e. by paying in ready cash. And opposed to it if one is not in a position to pay in ready cash /on the spot and requires some grace period/ respite then it will be called *ادهار*/credit, payable after fixed duration, more over *ادهار* is also borrowing for temporary use.

Allama Shami has defined *دين* as follows :-

الدين : ماوجب فى الزمة ..... من القرض (رد المختار على الدر المختار، جلد 7 كتاب البيوع، ص 700 )

An item due to an agreement or by wasting or using becomes the responsibility of a person or an item taken on loan becomes the responsibility of an individual, is *دين*. It is more general as compared to *قرض* and it is necessary to fix duration.”

Opposed to that Imam ibn Abideen Shami (rh) does not consider fixation of period essential but thinks it to be valid, whereas the author of Hidayah neither considers fixation of period essential nor declares it legal. In respect of a loan to perceive the fixation of the time period not essential by both the acclaimed fiqh scholars proves that, for them the ‘Qarz’ means the giving and taking of articles on loan because in case of articles it is not essential to lay down a period.

انه يصح تاجيله مع ..... تاجيله لا يصح (رد المختار على الدر المختار، جلد 7 كتاب البيوع، ص 402 )

“And for credit it is not compulsory to fix duration, in case a period is fixed, in spite of it being non compulsory it is correct and the lender after fixation can withdraw from it but, it is directed in Hidayah that it is not correct to fix length of time in the case of credit.”

The gist of discourse is that the term loan and the credit nearly mean same. The “loan” is normally used for credit and some time it is used for borrowing for temporary use (consult Almoord). Yet in the working/affairs of banking and the financial institutions the word “loan” is only used in the meaning of credit/is understood as credit. As far as its connection with present banking system is concerned it suffices to say that the whole of the conventional banking system depends on *riba*. The Qarz can be defined as:-

“It is the transfer of ownership of an exchangeable commodity to a person who agrees to return the same type of a commodity in future.” Or in other words, “Giving some of own capital money/wealth/merchandise/effects/possessions to other person so that (of same type) will be received back in future.” In accepted Islamic law it means ‘on demand liability’. In the Malaki fiqh in case of loan the determining of a time period is essential. AAOIFI has approved of this point of view. It is noteworthy that in Islamic law the terms “loan” and “Qarz Hasana” (money lent without interest and repaid at the convenience of the borrower) do not have a different meaning. In the writings of acclaimed Muslim scholars there is no mention of term Qarz Hasana’. AAOIFFI in his standards has defined credit /loan as follows:-

“To transfer the ownership of some exchangeable commodity to such a person who is bound/committed to return same type of commodity.” Actually such transfer takes place in currency. However other exchangeable commodities can also be the material for loan. In Quran Qarz as a word has not been used terminologically or in a legal sense. There it relates to benevolent act in way of Allah and means spending of wealth.

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Question 3:

Whether the expression 'Bei' بيع or "sale" which has been permissible in the Holy Quran has any relevancy with the present interest banking transactions? Whether these transactions are covered by the term "Bai". بيع?

**Answer.** In the current system the function of banks is that, by employing various means banks collect wealth (on credit), add it up /deposit it, give loan to others and keep increasing own capital stocks. So their status is of a financial intermediary between the depositors and the actual users. The pacts of banks with their lenders and the borrowers (who spend) are in reality based on giving and taking of loan. They do not have any connection/concern with selling or trading of commodities, which is ordained in Quran. Moreover the Banking Companies Ordinance also does not authorize the banks to deal in the trading of commodities. However, it is not applicable on present Islamic Banking, nor it should be so.

Question 4:

Explain "Riba-ul-Fadl" with specific reference to its applicability in present day banking transactions?

**Answer:**

Riba Alnsiah (ربا النسيئه) is a type of interest on loan. There is a clear directive for its forbiddance in Quran. Opposed to it "Riba-ul- Fadal" is called Riba Alhadees or Riba Alnaqd. Command for its prohibition and forbiddance is in Hadith. "Riba-ul- Fadl" is namely the surplus which results due to hand to hand exchange of same kind of items/species. Riba -ul- Fadl is also called Rib Hukmi (mandatory interest) and command of interest is effective on it. It is also called Riba Alkhafi, hidden interest because unlike Riba Alnasisah, apparently it is not an exposed interest but it is a means, hidden door, and a trick to the open interest. Its prohibition is proved from the genuine traditions and one of the aspects of its forbiddance is as a blockade of the source (سد ذريع). (سد ذريع)

Hazrat Abdullah bin Umar(ra) narrates that Nabi Akram (pbuh) directed:-

( لا تاخذوا الدنيا ..... انى اخاف عليكم )

(كنز العمال : ج 4، 117)

Translation:-

“Do not sell one dinar for two dinars and one dirham for two dirham and one saa for two saas, I am afraid you may not get involved in devouring of interest.”

Allama ibn Qayem (rh) says:-

(الربانوعان : نوع حرم لما فيه من..... وسدا للزائع) (اعلام الموقعين : ج 3 ص 134)

Translation:-

“The riba is of two types: one being riba النسيه which is forbidden for its intrinsic ill and the second type is of the kind which has been forbidden that it should not become a means to riba النسيه.”

It is worth mentioning here that a need to mutually sell or exchange same types of commodities arises when in spite of same type of commodity, their kind and standard is different, e.g. a type of rice, wheat, or gold is being sold or exchanged with a different type and in such a situation both the kinds are of a different standard. To redress such a situation a hadith of beloved Holy prophet (pbuh) narrated by Hazrat abu Saeed Khudri is as follows:-

جا بلال بتمر برنى، فقال ----- بين سهل فى حد يثه : ” عند ذلك ” (صحيح مسلم كتاب البيوع-----7)

Translation:

“Once Hazrat Billal (ra) came to the Holy Prophet (Allah’s blessings be upon him) with barni dates. The Holy Prophet (Allah’s blessings be upon him) asked from where did you bring these? He submitted that we had dates of an inferior quality. I gave two saas and bought one saa. The Holy prophet (Allah’s blessings be upon him) expressing astonishment said that, “absolutely interest. Never do like this and when you want to buy better dates then sell your own dates for dirham or in exchange of some other thing and then from that money buy better dates.”

Review another hadith:-

- عن ابى سعيد الخدرى (را قال قال رسول اله صلى الله عليه وسلم ) الذهب بالذهب والفضة بالفضة و التمر -----سوا)(صحيح مسلم، كتاب المساقات، باب الصرف، رقم : 7067 الصر فرقم)

“Hazrat abu Saeed Khudri (ra) related that the Holy Prophet (Allah’s blessings be upon him) said, gold in exchange for gold, silver in exchange for silver, date in exchange for date, wheat in exchange for wheat, barley for exchange for barley and salt for exchange of salt can be sold but condition is that all are equal and done hand to hand. Who gave extra or took extra he traded riba. Both the giver and the taker are equal.

According to these traditions few points become very clear:-

- (1) The Holy Prophet (Allah’s blessings be upon him) laid down first condition for mutual exchange or sale of six items of same kind that, those should be equal and this equality should be in quantity.
- (2) If the same kind of species are exchanged or sold on the basis of quantity and it provides an advantage to one party then it is riba. The Holy Prophet (Allah’s blessings be upon him) taught to avoid this. He (pbuh) directed that one party should sell its item in the market and from the sale proceeds should buy the desired item.
- (3) The second condition of this exchange and sale is that this should take place hand to hand, i.e. on cash. If the element of credit gets involved in it then it will be riba regardless of the fact that the item being provided on the basis of deferred payment is equal quantitatively. Apparently the reason is that if party A sells 10 kilos wheat and in return gets 10 kilos wheat after six months from party B then, there is precisely a possibility that as the cost of wheat six months back was Rs.5/- per kilo and after six months it may be Rs.6/- per kilo and in this way the former party gets a benefit of Rs.10/- and this being Riba Al-fazal is liable to be avoided.
- (4) The majority of scholars of fiqh basing their Qias(conjecture) on six things mentioned in hadith, have included same species for sale/exchange whether marketable commodities or the eatables, but sold according to the size and the weight. Some also said these are sold in numbers like 50 walnuts, 12 bananas or 24 apples etc. The Zahiri (rationalist) Scholars who do not acknowledge conjecture, they do not include



other items and according to them except six things i.e. gold, silver, wheat, barley, dates and the salt mentioned in hadith, with increase and decrease the sale of other items is not forbidden. As the entire current system of banking is based on credit and Riba Al-fazal is the interest of cash and loan which is received as a result of exchange or sale of same kind of species, or is received due to exchange or sale of kinds of different types hence Riba Al-fazal is applicable on current banking trade. As such anything being taken or given (i.e. a sum in cash) is same species.

At this point to improve it further, we would like to suggest an amendment to the definition of Riba Al-fazal which has been devised in connection with Riba in the light of the historic decision of the Supreme Court. The honourable court after making clear the original form of Riba, i.e. the interest of credit and trade has mentioned different types of Riba.

1. A transaction of money.....deferred payment.
2. A barter transaction.....side is deferred.
3. A barter transaction..... is deferred.

That is,

- (1) The mutual exchange of same type of currency when its "value" is not equal on both sides, whether this trade is on the spot or is by deferred payment.
- (2) The mutual exchange of same type of two weighable /measureable items on the basis of exchange of item for item (barter system) when the quantity is unequal on either sides or handing over of item has been deferred by one party.
- (3) Mutual exchange on barter system of two different types of weighable /measureable items, when the handing over of the goods has been deferred by one of the parties.

In our opinion in abovementioned point (1) the word quality (value) should be replaced with quantity (amount or sum), because in case of same types of units the Islamic law demands that instead of value the quantity should be equal on the both sides. As such if Rs.10/- note is purchased in Rs.12/- then this exchange will fall in the category of Riba.

In this list the fourth type could be "the mutual exchange of a sum consisting of different types of valued units, whereas the payment being deferred by one party." This most important and current practice of riba has not been considered in the decision. In the above mentioned decision this should be included as fourth condition/form. If dollar is required to be exchanged with rupees then according to Islamic law it should be done hand to hand. In case of deferred payment from a certain party riba will come into existence.

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#### Question 5:

What is the "Illat" علت or legal cause of the prohibition of Riba? What is the moral and legal aspect of its prohibition in the light of Quran, Sunnah of the Holy Prophet and the views of Jurists of various schools of thought? Whether the legal maxim "الحكم يدور مع العلة" "وجوبًا وعدمًا" can be applied in the case of Riba?

**Answer:** A cause (عات) of a principle should not be entangled with its wisdom (Hikmat). In fact a cause (Illat) is such an unambiguous and a consistent characteristic up

on which the applicability law depends. The cause is defined as that trait of “source” which is constant, clear, and bearer of a specific relationship with Shariah law. This could be a reality, incident or a policy in view of which the law giver has issued an order.

Wisdom (Hikmat) means that vision, foresight, knowledge and the ground of rationality based on which a law is made. The aim of Hikmat (wisdom) is to provide advantage, help avoid damage, and as a means it becomes the very aim of a making of a law.

Since a policy operative in the background of a law is concealed and ambiguous or ever changing as such a cause is made a base for framing of laws due to its characteristics of being clear, fixed, and unchangeable, whereas a policy (Hikmt) is never permanent nor it is possible to determine it definitely.

An example can help us understand the objectives of cause and the policy. According to the principle of ‘expected damage’ the right of a joint owner or a neighbour in respect of an immovable property takes precedence and whenever his shareholder or the neighbour intends selling it, he can buy it. In ‘expected damage’ the joint ownership is cause, whereas the wisdom is to protect shareholder/ the neighbour from loss in case of sale to a third party/an out-sider. Here an effort has been made to provide protection against some probable physical or mental distress, and not necessarily that it may so happen physically. So policy (Hikmat) is not constant .As such the cause of ‘expected damage’ is joint ownership, which opposed to policy (Hikmat) is permanent and constant, because with the change in the circumstances no change takes place in it. As such the right of shareholder and the neighbour of the seller of property remain intact, that they can claim their right against any common buyer, even if the sale does not cause them any loss, trouble or anxiety.

From the text of Quran and the elucidations of the worthy elucidators it transpires that in the prohibition of interest, the cause is that addition which has no alternate cost/value. The philosophy or argument concerning prohibition of riba is related to exploitation, injustice and the concentration of wealth. A cause is made the base of a principle in Islamic law, and not the policy. In connection with riba, the cause is that addition in the principal amount which has no alternate while it is being arranged. Therefore, a contract which contains any such like condition shall be an interest based pact, regardless of the fact that these monetary dealings result in any injustice and exploitation or not. It is very difficult to weigh every interest based contract on the criterion of injustice and illegitimate advantage .As the matter of interest pertains to public law as such it is inevitable to formulate law regarding prohibition of Interest.

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 Question-6

The criteria set by the Constitution for the Federal Shariat Court to declare any law repugnant to Islamic injunctions, is the Holy Quran and Sunnah of the Holy Prophet; in the presence of the clear injunctions of the Holy Quran and Sunnah of the Holy Prophet what is the value of the views of contemporary Ulema regarding the legality or illegality of any issue?

**Answer:** The sources of Shariah allow an acclaimed and established Muslim scholar to elucidate a point concerning an issue of Shariah. To explain a divine law a scholar and a fiqh uses his authority in the light of Quran and Shariah. (Refer to Ayah 83 of Surah Al-Nisa). If his point of view is according to the principles of Shariah, objectives, and disposition then it has a legal status.

We hold this opinion that the constitution of Pakistan has this vacuum that the Federal Shariah Court should give its decision concerning a matter to be Islamic or un-Islamic only when there is a clear command in Quran and Sunnah about such an issue. In the sources of Shariah next to the Book and the Sunnah, 'Qiyas' (conjecture) and the consensus (Ijma) are in precedence. A number of commands of Shariah have been derived from the consensus and many such Shariah commandments are deduced through conjecture. About whole of the Ummah is unanimous in this regard. If a section has some controversy, at least this can be said that the all the adherents and the majority of Ummah agrees on this issue. As such in regard to ascertain and to test a law to be Islamic or opposed to Islam we should mention consensus and conjecture after the Book and the Sunnah in the constitution of Pakistan. There is a dispute in the scholars and learned about the issue whether the door of consensus is closed after the four Imams or the contemporary Scholars can take a new approach concerning contemporary issues? The history of four paths tells us that a number of acclaimed and the established scholars being the followers of the four Imams differed with few of the legal opinions/innovations of their Teachers, rather in some instances they even followed completely an opposite scholarly/academic approach to the exertion of their teachers. And it so happened that the academic stance of the pupils was declared superior and those who came afterwards kept following their point of view and are giving legal rulings on the same. There in fiqh Hanfi the pupils of great Imam Abu Hanifa, namely Imam Yusuf and Imam Muhammad Rehamham Allah Taallah have differed with few of his opinions. It is very clear that these differences would crop up on the basis of scholarly arguments and those established scholars who followed, understood that their Imams were not innocent and they could commit a mistake in their exertion. Also out of those a few of the disagreements were not of the type that in a different kinds of a problem only the best and the opposite of the best are being decided but those dissents were for justification and non justification and concerning legality and forbiddance. The issues like the share of produce (Mazarat) (on the share of produce in case of absent landholder Imam Abu Hanifa considered that illegal, but Imam Yousaf (ra) holds a view for its justification). We find there exists same sort of disagreement amongst the four Imam's in relation to matters concerning their legal opinions. Imam Shafei (ra) opposed to other three Imams considered few of the types of share of produce legal.

In his case same sort of difference is there regarding justification and non justification in connection with a revolt against Muslim rulers. As such we understand

that in relation to declaring a matter Islamic or un Islamic the opinion of contemporary scholars is important due to the following considerations:-

- (1) They can give their opinion about a command of the Quran and Sunnah to be apparent.
- (2) They can assist a court for elucidation, explanation, peculiarity and condition in a law.
- (3) They can elucidate and explain the direction inferred through consensus and conjecture.
- (4) From a number of innovations and the opinions of Scholar Imams, they can declare an opinion to be superior/better/stronger on the basis of that being closest to the Book and the Sunnah.
- (5) At present the “collective” and “institutional consensus” has become a favourite medium of representation to hold legal discussion on nontraditional issues of Islamic fiqh and the explanation of Shariah. Those views from juridical gatherings and decisions based on the collective decisions of the fiqh and the scholars are taken as trustworthy and their position is acknowledged. For the same reasons in the matter under consideration the rulings of above mentioned institutions of collective consensus have extra importance above the individual views.

Question 7:

Can the prohibition of Riba be applied on non Muslims citizens of Islamic State also? Can the prohibition of Riba be extended to the loans obtained from non Muslim States while the fact is that the laws of foreign countries, their national policies and international monetary laws are beyond the control of Pakistan?

**Answer:**

It will be essential for the non Muslim citizen of Muslim state to refrain from interest, because it relates to public law .In this regard we get a lead from the pact which was made by Holy Prophet (Allah’s peace be on him) with the Christians of Najran. In the pact it was clearly written that the Christians would not trade interest, whereas they were allowed to use wine and pork. The Muslim state is bound to have regard for the pacts with foreign countries.

The question raised by the honourable court is important and fixed. Overlooking other many interest based trades, only this has been asked whether the prohibition of interest will also be applicable on the non Muslim citizens or not. Here it is essential to make it clear that the matter under discussion is the carrying out of interest based business between the non Muslim citizens of an Islamic state. It is so obvious that as they can not engage in an interest based transaction with a Muslim in an Islamic state, so we have kept this point out of discussion. Our arguments are as follows:-

Foremost: On the receipt of final divine command about the prohibition of interest the command of the Holy Prophet (Allah's peace be on him) on the Hajjah Tul Wida is also general/public and absolute.

قضى الله انه لا ربا و ان..... فانه موضع كلمه (ضيا النبي : ج 4 ص 753)

“Allah has pronounced that there is no riba. First of all I annul the riba of Abbas (ra) bin Abdul Mutalib, and all of it is written off.”

In same way in Ayah Riba the riba described there is common, absolute and in it all forms of trading of riba has been declared forbidden and at no place in Quran this common and absolute command has any particularity and condition due to which any concession may result for the non Muslims of an Islamic state to indulge in riba. According to the Ahnafs even it is not proper to restrict any final command of Quran with a true hadith (*narrated by a single companion*), whereas we do not have any such hadith which is *صريح الاله* and *صحيح الاسناد* and in the light of which a way out be found for creating in this common, absolute order, a particularity and condition to let a non Muslims of an Islamic state to indulge in riba.

Secondly: From the hadith as narrated by Imam Sarkhassy it becomes evident that the Holy Prophet (may Allah's peace be on him) stopped those also to indulge mutually in interest who opted to enter into a pact with the Islamic state.

كتب الى نصارى..... من الله و رسوله (كتاب المسبوط، ج 14 باب السرف : 72 )

The Holy Prophet (may Allah's peace be up on him) wrote to the Christians of Najran that, who so ever indulges in Riba then there is no pact between them and us, and wrote to the fire worshipers of Hijar who so ever offers riba he should be ready for war with Allah and His Apostle (may Allah's peace be up on him).”

It is mentioned in a narration of abu Daoud:

ولا يفتنوا عن ..... يا كلوا الربا (ابو داود، رقم : 2677)

“They will not be turned from their religion (this pact will remain intact) as long as they do not abrogate it or do not devour riba”.

### **Thirdly: -**

There is a dispute amongst the ‘Fuqaha’ about the trading of riba between a Muslim and a non believer in a land (where rules and laws are contrary to Islam) is legitimate or not but in an Islamic state between non Muslim citizens and the Muslims citizens or within the non Muslim community, the prohibition of mutual trading of interest is one of those decided issues about which there is no dispute.

Here a question may arise in the mind that when there is no restriction of other forbidden things on the non Muslims why then the applicability of forbiddance of riba? The answer is that about riba it is the general command of Quran and its motive is to have complete eradication of riba takes place in an Islamic state, and none of its citizens citizen is allowed to indulge in interest based trade, whether he is Muslim or non Muslims . Whereas, as the command for other prohibitions like taking of wine and eating of pork is concerned, those are specifically concerned with Muslims. That is why in the pact made with the Christians of Najran it was clearly indicated there that, they will not indulge in trading of interest.

ومن اكل ربا----- منه بريية

( كتاب الخراج، لابي  
يوسف: 78)

“If any inmate of state devours riba my responsibility for him will lapse.”

This blessed act of the Holy Prophet (Allah’s peace be on him) demonstrates this wisdom that in comparison to other prohibitions riba is far more harmful socially and economically. If the Christians of an Islamic state are allowed to carry on interest based trade then there is an apprehension that it will have grave effects on social and economic affairs of an Islamic state. Probably on the basis of this policy the Holy Prophet (Allah’s peace be on him) stopped the Christians of Najran to indulge in interest based trade. The scholars have enumerated advantages of restricting the non Muslims of an Islamic state to indulge in riba. One of the wisdom is that command of riba being forbidden exists in former divine Sharias also. As such the purpose to stop them from riba was not to force them to follow Islamic Shariah but it was the enforcement of one of the agreed upon commands of all the divine Sharias. It should remain in view that Quran has mentioned this just to confirm that riba was forbidden to the Jews whereas, at many places in the Bible and the Psalms of David, there is a discussion about forbiddance and prohibition of Riba. Allama Syed Sabiq has quoted a consensus of all the members of Synagogue about its forbiddance.

He says:-

واتفقت كلمة رجال----- الربا تحريما قاطعا.

“All the Priests and the Scholars are united on the absolute prohibition of riba.”

(فقه السنه: ج 3 ص 130,132)

Imam Sarkhasi has explained this to be the very policy for stopping the Christians of Najran to indulge in riba:

قد صح ان رسول الله صلى الله عليه وسلم ----- قال تعالى ---- وقد نهوا عنه( شرح السير الكبير : 4 / 1536  
( 1548 )

“From the true evidence it is proven that the Holy Prophet (peace be up on him) wrote to the Christians of Najran to leave interest based trade or listen to the challenge of war from Allah and His Holy Prophet (peace be up on him).It was for the reason that interest was an act of sin in their religion. From the Holy Quran it is clearly proven that this is illegitimate in their religion. There is a command: “and taking of interest was also a crime of the Jews whereas they were forbidden from it.”

Here this matter is worthy of consideration that after the demise of the Holy Prophet (peace be up on him) when the people of Najran came to Hazrat Abu Bakar (ra), he also ratified the pact which the Holy Prophet (peace be up on him) had made with them in which they were forbidden to devour interest. So while ratifying the pact the First Caliph wrote:-

وفا لهم بكل ما كتب لهم محمد النبي صلى الله عليه وسلم

“(this pact) is (being made) for execution /completion of all those promises which the Holy Prophet (peace be up on him) has written for them.”(Kitab Al Akhraj Labi Yusof: 79)

It is endorsed so in the Kitab Al Akhraj that when Hazrat Umar Farooq (ra) became Caliph they came to him. He evicted them from Najran e Yemen and settled them in Najran e Iraq, because he had a misgiving about them that they may harm the Muslims. After their banishment he entered into a pact with the people of Nijran.

Here this point is worth consideration that after all what danger the Christians posed to the Muslims that on the basis of which Hazrat Umar (ra) decided to banish them? This fact is amply clarified from the endorsement in the book ‘Kitab Al Amwal’ as follows:-

فلما ولي عمر بن الخطاب اصابو..... هم عمر (كتاب الاموال:202)

“When Hazrat Umar (ra) became caliph at that time the people of Najran were found to be devouring interest so he banished them.”

In fact to guard against this very danger he evicted them as they had got involved in the interest based trading. There were all the chances of their bad influence affecting the Muslims and getting them involved in interest based business. As such Imam Abu Obaid (rh) has given justification for the prohibition of interest on the non Muslims of an Islamic state on the basis of “سده ذريعه” because the effects of interest based trade could be contagious and reach Muslims too. As such the real purpose to impose a check on the Christians of Najran was to protect the Muslims from the affairs involving interest. So he writes:-

غلظ عليهم اكل الربا خاصة من بين..... فياكل المسلمونالربا(كتاب الاموال : 204،203)

“Hazrat Syedna Umar (ra) apart from all other acts contrary to Shariah particularly dealt severely with them in case of interest and did not declare that legitimate for them. He knew that they were indulging in heinous sins like attributing partners to Allah and drinking wine etc. Hazrat Umar (ra) arranged all this only to keep Muslims save because as a result of their involvement in trade with them the Muslims may not also start devouring interest.

In short even in the light of other divine Sharias for the Jews and Christians not only in an Islamic state, but in their own states the interest based business is not legitimate, whereas in an Islamic state they cannot be allowed to carry on interest based

business on the basis of the principle of “سدہ ذریعہ”().Further this principle will be applicable on all the minorities whether they are believers of divine Sharias or otherwise.

Fourthly, under the constitution of Pakistan and for the applicability of a law under this constitution the words “all the citizens of Pakistan” are written. In the same way the Punjab Prohibition of Personal Riba Act 2007 is applicable on all the citizens residing in Punjab whether they are Muslims or non Muslims.

### **The Loans Obtained From Other Countries**

The prohibition of payment of interest will also be applicable on the loans obtained from the non Muslim countries, because a prohibition applicable on a citizen of a Muslim country will firstly be applicable on an Islamic state. As per the command of Holy Prophet (peace be up on him) on the Hajjah tul Wida, it is the duty of a state to eradicate interest completely, instead that she itself gets involved in the interest based trading. More over an Islamic state is a representative and a lawyer of the Muslim citizens. According to the principle of fiqh a thing which is not permissible to a client is not permissible to his lawyer too. The same principle is in practice in fiqh Hanfi.

Here it will be useful to elucidate that in the public notice the query in the perspective of investment by Muslim and non Muslim states, and in regard to that we fully endorse and adopt the dialogue included in the decision of Shariah Appellant Bench of Supreme court of Pakistan, dated 23 December 1999.The said decision is available on the pages of PLD as follows:-

1. Judgment of Justice Khalil Ur Rehman PLD page No.313 to 321.....
2. Judgment of Justice Mufti Muhammad Taqi Usmani .....(Publisher Malik Muhammad Saeed.....educational Press Lahore)

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#### **Question 8:**

What is your opinion regarding the permissibility or otherwise of indexation keeping in view the devaluation and inflation during the period of borrowing with specific reference to the juristic views of contemporary jurists

#### **Answer:**

Indexation means that the debtor should make good that loss which the lender sustains due to reduction in buying power of currency caused by inflation. Some people give the reference of the law of Indemnity according to which a person who causes inconvenience to other is responsible to redress the grievance/ damage caused. As far as the loss to the lender due to inflation or its effects is concerned, it in no way can be considered as an act of a borrower. Under this scenario how a borrower can be held responsible and a demand made to him to make good the loss? It is obvious that any such system will be detrimental to the interest of the borrower. More over the Shariah in no form considers any conditional increase to the principal



amount legal. The hadith becomes applicable that it is a type of riba when a condition is laid down by the lender for extra monetary gain and he receives it under the head of indexation.

However the fuqaha of the present times have diverse views for the justification of indexation of loans. Those consisting of scholars like Rafique Al Misry, Sultan Abu Ali, M A Manan, Zia ul din Ahmed, Umer Zubair and Gul Muhammad consider Indexation to be legal. They do not find anything repugnant to /contrary to the laws of Shariah. They consider those precisely in accordance with Quran and the Sunnah. Contrary to those there are scholars who consider the indexation to be in clash with/contrary to the teachings of Islam. In their view the indexation is actually a receipt of a fixed profit and it also negates the principles concerning the payment of the loan. This group consists of scholars like Muhammad Umar Chapra, Manzar Kaif, M Nijat Ullah Sidiqui, Muhammad Hassan Alzaman, Maulana Taqai Usmani, Ahmed Saloos and some other well known Ulema.

The Supreme Court in the decision of Shariah Appellant Bench, 1999, keeping in view opposing points of view in different matters of contemporary Islamic fiqh, has made an endeavour to follow a middle course. The honourable Court does not accept the indexation of loan in the form of inflation, because in any economic system it is a usual phenomenon. However, in the case of hyper inflation the court accepts the right of the lender that he should be compensated for sustaining a heavy loss. For this purpose the principle of gross fraud has been introduced to compensate the lender for a heavy loss which he faces due to the devaluation of currency. As a result of hyper inflation he receives from the borrower an amount having value much below the actual when it was loaned.

The gross fraud is that heavy loss which one party of a pact sustains and the experts cannot evaluate /assess the same. Basically the gross fraud is linked to a pact for the sale of an item in which the seller earns an extra ordinary profit from the buyer.

The court has equalized the loss sustained in a sale deal by the seller with the loss which a lender faces due to the hyper inflation. As such from the point of view of the court the case of the devaluation of currency can be attributed to the traditional concept of gross fraud. In other words the court has determined that the principle of gross fraud can be applied when the inflation reaches to the level of hyper inflation and such steps be taken so that the rights of the lenders are protected. Here a reference can be made to the principle compiled by the fiqhs about Floos (a copper coin) and this can be applicable here (detailed decision, Justice Khalil ur Rehman page 366).

It is understood that if the circulation of the copper coin stops or its worth drops much below the customary value then it will lose its position as a medium/ source of exchange and store of value, thereby it will not be accepted for any traditional worth or as a legal currency. In such situation the real value of customary Floos will be paid in a transaction. As long as the value of currency remains within the usual inflation limits, established according to this principle, regardless to any difference in latent value all trade, payments and repayments will be made on the basis of the customary value of the currency. All the same, as the inflation rate crosses the defined limits and enters the circle of hyper inflation it will be established as a cause of gross fraud. This is an exceptional situation which cannot be considered as common.

For the present day Muslim scholars the important problem at hand concerning inflation and its elucidation by the honourable court has a position of praise worthy 'Ijtihad'. This is a moderate and a balanced point of view. The court has not accepted the right of a lender for a loss

and its compensation in a normal inflation but has kept a space in case of hyper inflation, because in the later situation the ratio of inflation crosses the fair limits.

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**Question 9:**

What is meant by "Ra'as-ul-Mal" as appeared in the Holy Quran? It is fact that the value of the paper currency has a trend of decrease in the inflationary situation. If a debtor who has borrowed a particular amount of paper currency repays the same amount to his creditor after a lapse of substantial time, the creditor can suffer the effects of inflation. If he demands his debtor to pay more in order to compensate him for loss of value, he has suffered, can this demand be treated as a demand of Riba?

**Answer:** Capita/principal sum is a specific term. This Quranic term reveals /discloses the capital which a lender lends to the debtor at the time of giving loan regardless of the fact that, the loan is for personal use or for the productive use. This term is never used for the intrinsic value of the amount, and in no case a justification may be created out of this term for the indexation of loans.

The capital amount in Quran is the actual principal which a lender pays to a borrower at the time of giving a loan. Any type of addition to it, Islam adjudges it to be riba. The Quran itself has defined the capital. The Command of Allah is as follows:-

فان لم تفعلوا فا ذانو..... ولا تظلمون: البقره))

“If you ..... (Al Baqra: 279)

In this Ayah it has been clarified that if you repent for indulging in riba you will receive your capital amount and you will not be committing injustice to any one nor any body will be unjust to you.

This part of Ayah has clarified that to receive more than the capital is riba and cruelty against the borrower and any reduction in the capital amount is injustice to the lender, as such the meaning of لا تظلمون ولا تظلمون is that the borrower should not reduce the principal amount and the lender should receive no extra amount other than the capital amount. All the authenticated interpreters of the Quran have elucidated that “لا تظلمون” means do not indulge in excess and “ولا تظلمون” means no reduction should be made in the capital amount. Please refer to Tafseer ibn Kaseer, Tafseer Ma’alim Al Tanzil, Tafseer Rooh Al Maani ,Tafseer Jamae Al Bian.

Without doubt it is a reality that the ratio of inflation is ever increasing in Pakistan, and if the lender does not receive any extra payment on his principal amount then after a few years there will be a reduction in the buying power of his principal amount. It will result in a loss to him. As such few of the scholars are of the view that it is essential to make good the loss through the indexation and accordingly here riba will not be applicable, further it is the interpretation of Quranic command لا تظلمون ولا تظلمون.

The present day Ullema i.e. Rafque Al Misri, Sultan Abu Ali, M A Mannan, Zia ud Din Ahmed, Umer Zubair, and Gul Muhammad hold this view on the other hand the

scholars who are not in favour are, are Muhammad Umer Chapra ,Manzar Kaif, M Nejat ullah Siddiqui, Muhammad Ahsan ul Zaman, Maulana Taqi Usmani, Ali Ahmed Saloos and many others.

On the basis of rational and revealed evidences we agree to the view held by the scholars listed later:-

(1) First of all it is essential to determine that due to the inflation or due to reduction in the worth/value of currency, whatever purchasing power a rupee loses, is that the result of negligence or a mistake on the part of the borrower that, he should be forced to pay a ransom in shape of indexation? With little pondering /consideration this becomes clear that both these situations are not in the control of a debtor nor as a result of his some fault inflation is increasing and the value of our currency is devaluing constantly in the country. This all is the result of the policies of our rulers who by printing new currency notes daily in billions, are promoting dearness and the inflation in the country. Today in the developed countries neither the ratio of inflation nor their currencies are unstable like ours. Till a particular time the currency of Pakistan remained stable .Putting the onus of increase in the ratio of inflation and devaluation of purchasing power of currency on a borrower is not just. The principle is that each shall carry own load. Someone cannot be blamed for the mistake or carelessness of others. As such due to the inflation and further fall in the value of money and the resultant reduction in purchasing power it is not just to bind a borrower for the recompense.

(2) A question comes up that, suppose if a lender does not give his money as a loan can he save his money from the effect of inflation and devaluation?

For sure its answer is in negative. But this can be said that there are various ways and measures available to him to save his money from such effects to some degree, for example:-

- a. He can invest his money in joint or profit sharing business.
- b. He can purchase gold, silver or other stable currency.
- c. He can purchase property/land.
- d. He can invest to enhance his business.

And we also say the same that when he has various means available to save his money from inflation and devaluation by using lawful means then, why he should use a mean to get involved in riba.

(3) In the current banking system the indexation of bank loans cannot be promulgated as a well known substitute of riba for various reasons as follows:-

- a. How to determine that the ratio of inflation and the ratio of devaluation of money are equal to ratio of indexation? Because there is a real apprehension of riba in case of disparity in these and those who are acknowledgers of its validity they also adjudge it to be a compensation and not that a profit in shape of riba. If the ratio of indexation is more than the inflation etc. then straight away it is riba.
- b. If both these ratios are equal then would the bank not compensate those in shape of indexation who advance the loans to the bank? It is very clear that the same principle will also be applicable for the accountholders of the bank accounts and in this case what incentive there remains with the bank that whatever it collects from the debtors in shape

of indexation, it pays the same amount to own account holders. An important issue is that how the bank is going to meet its heavy expenditures?

(4) The attention of the acknowledgers of indexation did go towards “ لا تظلمون (latuzlamoon) but not towards لاتظلمون (latazlamoon) because if a person gets a loan of one million @ indexation ratio of 12% per annum ,he will pay Rs .24,000, whereas the worth or the value of the rupees would have become Rs. 76,000. In such a case putting extra burden on the borrower would be like ”اضعا فا مضعة ” because it will be double the loss for him. One that, being a borrower he has to face the loss in capital amount due to inflation and secondly he will compensate for the loss of buying power of the capital of the lender. Actually he is no way responsible for any devaluation or the loss. All the ‘fuqaha’ are united on the point that in the repayment of a loan the equality in the kind and the quantity is essential i.e. whatever and of what type was received, the same is to be returned. Any equality in cost or in the buying power is not essential. So while returning a loan the kind and the quantity are the deciding agent and not the buying power. Whereas the very concept of the base of indexation of loan is that the borrower returns the loan instead of equality in kind and quantity but equality in buying power and similarity. The ‘fuqaha’ have defined the loan as follows:-

هو عقد مخصوص، يرد على دفع مال..... فصح استقرض جوز وبيض (الدر المختار كتاب البيوع.....)

“Loan is a pact in which a person gives an item to a borrower. At the time of returning the item, the borrower returns the alike/similar item. The transaction of loan is correct for items measurable and weighed but not correct for those which cannot be counted. In case of مال مثلى the quantity can be ascertained by counting, provided the units are not very diverse but same like, i.e., walnuts and the eggs.

On the bases of these arguments, we do not consider that the indexation of loan is allowed by Shariah nor is it workable by the banks.

Question 10:

Are the current fixed return modes like Murabaha diminishing Musharka etc as used/practiced by the contemporary Islamic banks in line with the higher purposes of Shariah? Whether these modes can be termed as real alternatives of Interest?

**Answer:**

To the point and a simple answer is that the current methods of fixed profit i.e. Murabaha and Musharakaha Mutnaqizah (incompatible partnership) in practice in Islami banks in the present form are not compatible with the objectives of Shariah and these cannot be declared as the true substitute of interest. This is the reason that the scholars who are considered to be experts in the financial matters concerning the field of Islami banking are also of the view that these should be used in acute situation and by strictly following the conditions as laid down by Shariah. Maullana Muhammad Taqi Usmani giving his view says:-

“The Islamic Banking System is not meeting its basic demands nor there are worth mentioning efforts to develop partnership. The profit making, and monopoly are used traditionally in the framework of ‘LIBOR’ and its final result materially is not different to interest. In some Islami banks this was felt that ‘Murabaha’ and ‘Ijarah’ have not been adopted as per the procedure in line with Shariah.

Maullana himself admits that ‘Murabaha’ and ‘Ijarah’ were adopted as an excuse /a measure as such to give it a permanent position is not correct. Accordingly he says:-

“An excuse was invented and there is no doubt about it being an excuse. As such where ever I have an authority there I try to convince them to restrict affairs concerning Murabaha and Ijarah and gradually move forward towards “partnership” and “business partnership”. Where they are not doing so, I am gradually drifting apart from them for the reason that, ‘we made use of an excuse, now keeping all endeavors foxed on it is not right.

On the basis of moderate point of view mentioned above the majority of scholars hold this view that the real Islamic substitute of interest are Musharka and Mudharaba but in Islamic banking their volume is not significant, instead the systems adopted in banking sector based on Marabaha, Ijarah and Musharka Mutnaqsah are making the objectives of Shariah and exemplary system of financing ineffective. Therefore, the requirement is that for the sake of interest free banking, dependence on Musharka and Muddarba is increased and Marabaha, Ijarah and Musharka Mutnaqsah are maintained in their real Shariah form and their use in the system of banking is to be avoided to the maximum.

Howsoever this point is important in its own capacity that for adopting real alternates of Islamic financing in the banking system, there is a genuine need to introduce revolutionary steps for the improvement of the current “atmosphere”. Therefore, in a atmosphere where the traders keep duplicate accounts, are shy of disclosing their real profit , taxation system is full of corruption, the bank deposits being given in the charge of such businessmen without adopting safety measures would be equal to taking such a risk that both the firm and the account holders will get adversely affected. So in such situation making such pacts and adopting methods through which fixed profit is expected are acceptable only under this condition that those should be adopted in truly crystal clear manners and in the letter and spirit of Shariah, further that by refraining from all those excuses which at present are a source of anxiety for the scholars.

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Question 11:

What are the objectives of Islamic finance? Does the modern Islamic finance fulfill these objectives?

**Answer:**

The modern experts and the analysts in reference to Islamic monetary affairs have strongly stressed in their writings that this system should be based on the moral values and for the attainment of the objectives of Shariah. According to these scholars the financial system of Islam should be compatible with the following values and the objectives:

- I) Discouragement of capitalism and concentration of wealth
- II) Encouragement of investment and justified profit for the investors
- III) The provision of cultural and social justice

- IV) To assist in to provide Incentive/encouragement for creating real atmosphere for the economic activity
- V) Active role in social responsibilities

If we examine the current Islamic Banking and the financial system from the point of view of its usefulness and objectives, it transpires that the supreme objectives and the values of Shariah have not been given the status which these deserved. The banks instead of keeping the usefulness and objectives in view, keep their attention foxed on Islamic jurisprudence and the legal points concerning their deals. Generally instead of attainment of objectives of Shariah they just pay attention towards the actions forbidden in Islam like interest, risk, gambling etcetera. This type of thinking sometimes becomes a reason for a failure in the attainment of real objectives. The Islamic banks at times depend on a stratagem and adopt measures and excuses to avoid coming into the grasp of Islamic laws .In these measures on the basis of *تورق، عينه* bond many other businesses are connected, and via these higher profit rate promises are executed for those with huge deposits. Such bargains apparently do fulfill the requirements of an effective legal pact but as a result of implementation on those the access to the real goal of Islami monetary system does not remain possible. Because such instruments of currency obviously do not become the cause of an economic activity. Their sole aim is to provide the facility of liquidation with a distinct profit. The distribution of profit in the name of ‘gift’ to depositors of huge amounts is also an excuse.

The Islamic banks normally do not take part in an activity of social welfare and prosperity, whereas they can do so easily. For this purpose out of the large deposits in the current accounts they can fix a portion of dividends, on which they earn a lavish profit but do not pay anything to the accountholders. The position of a current account is like a loan which is given to the bank by the depositor. As such a borrower has no right to a profit in exchange.

To build a separate recognition in tune with the Islamic spirit the Islamic banking needs to concentrate on the objectives of Shariah and the values instead of rules and regulations and legal hairsplitting of a business deal. An Islamic banking system will only come into being when it is established on the foundation of Shariah and it remains operative to discharge its duties for the attainment of social objectives .But for this it is essential to have a complete seizure of the state of “race” with the interest based banks, and that is not possible without complete bar on interest!

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Question 12:

What is the Islamic alternative to the present discounting of bills? Are the modes used/practiced by the Islamic banks for discounting are in line with the spirit of Shariah?

**Answer:**

In the conventional system of banking the discounting of the bill of trade is an easy and a simple procedure. But as this system is based on the fixed ratio interest as such it cannot be adopted to the very letter. In the conventional method a commercial concern after making deduction in the bill of trade gives to the bearer of the bill an amount which is less than its real value, because this payment is made before the completion of due date of the bill. For example

against a bill a payment of Rs.100, 000/- is to be paid after three months, the bank will pay Rs.90, 000/- before the stipulated time. Out rightly this is interest and the Shariah has declared it forbidden.

The Islamic bank of today instead of making a deduction, on receipt of a bill of trade worth Rs.100, 000/- keeps it as a guarantee with itself till its maturity period of 3 months. A separate pact is made with the customers for the profit of Rs.90, 000/- in which the buyer is to be paid the actual cost Rs.900, 00 and about Rs.10, 000 as profit on the completion of the period. This period coincides with the duration of bill which was accepted as a guarantee. On the completion of the period of bill of trade the bank receives the bill from "Ijra kundah" i.e. the borrower of the buyer. The amount is used for the payment which is payable to the customer under the Murabaha on completion of the period.

In the same context the Islamic banks under another system in vogue, instead of making a deduction from the bill advance a loan without interest for the same amount to the buyer. Then as a representative of the same customer they receive a bill from the initiator i.e. the borrower of the buyer and demand service charges for this service. Although the Council of Islamic Ideology has approved it as an alternate method for the deduction, but still the scholars who view Islamic monetary matters with deep insight, have serious reservations about this tactical reasoning from the point of Shariah.

Concerning the deduction the third practice is that the Islami banks make a deal with the bearer of the trade bill for a deferred payment. The bank, for an example receives 1000 dollars worth Rs.100, 00/- from the individual and deposits those with the bank. The said bank sells those dollars in the market on the current local rate. The cost difference in the value of dollar at the time of making the deal and at the maturity of the pact is received by the bank as profit.

At the back of such a deal the supposition that works is that the present paper currency in reality is not a coin, as such the principal of riba Alfazal Q is not applicable. This way as per Shariah the permission is supposed for delay in the exchange of two currencies. This argument is in conflict with paper currency related consensus of Ummah. All well known institutions of Fiqh have a consensus that for practical purposes the position of paper currency is like the dirham and dinar. As such the time involved in exchange of currency, any delay in this regard or an increase will be included in types of riba.

In our view the discounting practices of Islamic banks concerning the trade bill as discussed above, will truly be Islamic once the interest related method of conventional banking be legally prohibited and this restriction abolished that the banks can act as financial intermediary only and cannot deal in trade practically. In such a situation a bank cannot be bound in any LIBOR or KIBOR but will be bound by the prevalent trade profit ratio, because in Islamic system the bank is practically a center of trading activity.

Question 13:

Are the priority banking services given to current account holders in conformity with the principles of Shariah?

**Answer:**

The Holy Prophet (SWAS) has forbidden any borrower to present any gift or benediction of any type and shape to the lender. In Shariah there is no room for any preferential treatment on the basis of a loan. He (SWAS) directed that if it is done it will be established in its own reality to be riba, except that the exchange of presents was taking place prior to entering in a pact for the loan! As in the deal for a current account the link between depositor and the bank respectively is of a lender and the borrower so, for the bank ( which is like the one borrowing loan) it is not legitimate that it should give some gifts, monetary incentive, services, or such benefits which have no direct link with the sum deposited /withdrawn. In these incentives out of different expenditures complete or partial exemption is included, such as credit card charges, deposit box, transfer of money, letter of guarantee, letter of credit. On such incentives which are not linked with the current accounts only, this principle is not applicable there.

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Question 14:

If all the transactions based on Interest are declared prohibited to Islamic injunctions, what procedure will be adopted with regard to previous foreign loans, past transactions and agreements with non Muslims and Muslims countries?

**Answer:** Principally and visually all loans and the monetary pacts based on interest are illegitimate, because by violating the orders of Quran and Sunnah, by breaking the pact of obedience of Allah and His Prophet (ASWS) to make a pact and then to complete that is forbidden. As such to keep away from this illegitimate act it is allowed for a Muslim to undo such a pact. Such pacts and international loans in which payment of interest is conditional there is no doubt for those being false and bad. Because the Holy Prophet (PBUH) has commanded that :-

مآبال اقوام يشترتون شروطا ..... وان شترط مائة مرة .....(صحيح البخارى،كتاب الصلاة،رقم:456)

“How bad is the state of those who put such conditions which are not legitimate in the Book of Allah? Who so ever puts such term which is not allowed in the Book of Allah his that condition will not be fulfilled even if he has put that hundred times”

It is reported by Hazrat Umar and his on Abdullah bin Umar (RA):-

(صحيح بخارى، كتاب الشروط رقم 2734)



“Any term which is against the Book of Allah shall be false even if fixed hundred times.”

From the aforementioned narrations this thing becomes clear that all interest based international deals fall in the category of false contracts, and breaking of those is lawful.”

Imam Bukhari in his book ‘Kitab-ul-Ilm’ has a chapter with the heading

”باب اذا اصطلحوا على جور فهو مردود”

A chapter about the truce made between the parties on the conditions contrary to the Shariah and such contract will be invalid. He has quoted this hadith for such like pacts being false and invalid .A servant of a person committed adultery with his wife. The father of the adulterer arranged a compromise by giving in exchange one hundred goats and a slave girl. When the Holy Prophet (PBUH) came to know he (PBUH) commanded:-

( لا قاضين بينكما بكتاب الله ... فغدا عليها انيس فر جمها ) ( صحيح بخارى ، كتاب الصلح : رقم

(2695)

“Between you I will decide according to Allah’s Book, the slave girl and your goats will be returned to you, your son will be whipped hundred times and shall be banished from the country for one year. And Anees you go early morning tomorrow to the woman and stone her to death. Hazrat Anees went to her and stoned her.”

From these commandments this fact becomes clear about the teachings mentioned in the Book and Sunnah for fulfilling of contracts, pacts and promises made, but all these do not include the pacts and contracts which are renounced and declared false for being based on evil conditions. The interest based pacts fall in same category.

The Federal Shariah court has given a ruling concerning article 23 of Pact Law 1972 on 20 October that in article 23 any pact which forbidden and repugnant to Quran and Sunnah be declared void. The Shariah bench of the Supreme Court has also confirmed the order of the Shariah Court concerning article 23. This decision can become an example in the issue under discussion because a contract of giving and taking of interest is against Quran and the Sunnah as such should be abolished.

#### How to Terminate These Pacts?

When on the basis of principles and ideology it has been decided that interest is illegitimate and a forbidden matter, than for a Muslim or an Islamic country it is not legitimate to make pact with a Muslim or a non Muslim on the basis of interest. Now at personal or on country level the matter of interest pacts is more of a strategic and a procedural nature. Depending on the situation in the country, internal and external lenders being Muslim or non Muslim, based on the details, on the basis of precedence and delay, the pacts can differ from one another. But the steps as follows would be inevitable:-

- (1) It shall be decided that in future no interest based pact to be made internally or at foreign level.
- (2) This should also be decided that all those ongoing internal pacts will only be honoured for the principal amount and the clause of interest be deemed non operative in future.
- (3) No interest will be charged or paid on official loans.
- (4) Bank will pay profit to its clients on the basis of partnership and profit sharing.
- (5) If the government wants to get funds from the people on the basis of different bonds and securities that sum will only be taken on non interest basis.
- (6) In case of foreign loans the plan of action could be that we should negotiate with them and inform them as the interest has been forbidden legally so we are unable to pay interest and they should write off our interest. A time frame for the payment of the principal amount should be agreed upon. In case they do not agree then they could be given the options like the debt-for-equity swap. Through such options they can meet their goal of capital amount and the expected profit. Further onwards no interest based loan be obtained from foreign sources and own resources be relied upon. Expenses should be cut drastically and arrangement made to take the country gradually out of the loan trap. It is essential to arrange for earlier payment of principal amount and maximum efforts made to get rid of amount of interest. In case under the international laws the payment of loan is inevitable and in case of nonpayment if there is danger of a major quarrel then this payment be made disdainfully. It is essential to get out of such bad pact, and it is very clear to abstain from such contract in future.

Through a number of international laws for example by disowning any responsibility for the loans obtained by undemocratic governments, an attempt can be made to get a remission for the payment of interest. Same way in the long term loans with the incentive of retuning the loan in two to three large installments there is the possibility of getting the interest money reduced partially or excused completely. Here this question can be raised that how can government abstain from getting interest based loans when the state of economy of country is in worse state? Our answer is that the government should adopt the path of self-reliance and for that on the solid footing planning should be done on the line as follows:-

- (a) The maximum utilization of national resources and wealth in the right direction under own policies. For example by working honestly by using hydro, wind, solar, coal, nuclear geothermal and with various other resources in five to ten years 60 thousand megawatt electricity can be produced. By using Thar coal, Rekodeck, Sandek, and other valued wealth the luck of the nation can be changed.
- (b) By ending royal expenditures and deficit investment, deficit budget and trade deficit.
- (c) Corruption to be controlled. At present there is corruption and evasion worth Rs. 1000 billion.
- (d) With the return of foreign accounts of the rulers, politicians, and the officers to the country the scarcity of capital can be controlled.
- (e) The recovery of plundered money. Now international laws are cooperative, minimum worth 150 billion dollars can be received back.

- (f) Appeal to the overseas Pakistanis to make available exchange money for mother land building.
- (g) A liberal and indiscriminate system for collection of zakat and taxes.

If someone says that that the government takes such loan involuntarily as such under the light of Shariah rules of *ما يبيح للضرورة بقدر بقدرها* and *الضرورات تبيح المحظورات* permission can be given to pay interest, but we cannot agree to such argument because the conditions which are required for applicability of those Shariah rules are nonexistent here.

16-11-2016

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**Annexure**

**The history of efforts made for the eradication of Interest in Pakistan and the probabilities in future**

**Prohibition of Interest**

On the points as follows there is no dispute amongst the scholars as well as the decision of Islamic Ideology Council and the Federal Shariah Court favours that:-

- 1) The Interest is totally prohibited whether “compound” or “Simple.”
- 2) The interest is prohibited whether loan is taken for personal use or for the trading.
- 3) Interest is not only on loan but it is in *bei* also. The interest of loan (which is usually on cash) ‘*riba Alnsiah*’ and interest of *bei* which is in sale purchase of items and in the giving items on loan is called ‘*ribaalfadal*’.
- 4) If a matter involves interest it should be considered as prohibited, whether apparently “injustice” is visible or not. If loan is given on 1% interest that is prohibited but if 100% profit is being earned in *bei* and there is no defect from Shariah point of view the deal will be legal. That is why Allah in answer to the mischief maker’s statement *احل الله البيع و حرام الربوا*. *الحل الله البيع و حرام الربوا* has just replied in these words.

**The history of efforts made for the eradication of Interest in Pakistan**

**1) The decision of Islami Ideology Council’s Ruling 23-12-1969**

In this decision all types of interest was declared “Riba” regardless of the objective of loan, the percentage, the time period or the parties concerned.

**2) Presidential order to the Islami Ideology Council dated 29-9-1977**

Under this command the Council was asked to prepare a report based on the features of an interest free Islamic economy. A report was prepared by a selected panel. After the study of the report it was reviewed and the Council issued its own report after making necessary amendments on 12-6-1980. It was a very useful, comprehensive basic document concerning the interest free finances. This report provides a complete blue print for making available 12 alternate modes of financing for the trading and industrial purpose.

(Note: This report remained pending in the “cold storage” of the Ministry of finance till the end of 1980. So much so, that there was a ban on its normal publication. The process for its “freedom” and permission for printing and publishing could only commence when the then Chairman of the Islami Ideology Council, Justice (Retd) Tanzeel ul Rehman complained to Dr Israr Ahmed(rah) who at that time was the member of Gen Zia’s Majlise Shura. It was his forceful insistence that General Zia permitted its printing).

### **The Ordinance of the State Bank for the Commercial banks, 1980**

Through this circular all the commercial banks were directed to make their operations firm with effect from 01-01-1981 in confirmation to Islamic lines. Meaning there by that they will not accept interest bearing deposits nor will they advance any interest bearing lending. Keeping the running current accounts of the account holders intact, instead of the saving account a PLS account was initiated and the banks were bound by the 12 alternates for the trade and industrial financing as follows:-

- Mudharaba
- Musharaka
- Ijarah
- Ijarah wa Iqtina
- Equity participation
- Rent Sharing
- Mark up financing in shape of bei Murabaha for sale / purchase of goods
- Buy back pacts for purchasing of the property
- Trade bills
- Participatory Term Certificates
- Interest free loan on the basis of service charges
- Interest free loans

#### 4) **The Circular of State Bank no 12 for the commercial banks-1984**

In accordance with this circular on the basis of mark up financing, the banks were permitted to advance common loans free of bei Murabaha. The outcome was that the banks stopped financing on the basis of Muddarba, Musharka, Ijarah and instead adopted mark up for most of these. They made changes even in the legitimate modes of financing and put such conditions that their deformed shape turned contrary to Shariah and interest based.

#### 5) **The decision of Federal Shariah Court 1991**

In accordance with November 1991 decision “Aalriba Aalmuharam” (الربا المحرم) is applicable on whole of the state financial system, matters, and laws concerning interest. Moreover in the guise of “mark up” whatever pseudo interest free financing is being done it is “interest” in reality. The court has ordered the Federal Government to terminate all interest

related matters by 30 June 1992 and to introduce interest free alternates. In case of failure to implement these instruction by due date all interest related laws will become null a void.

6) The Government's appeal against the decision of Federal Shariah Court

Instead of initiating endeavours to implement the decision of Federal Shariah Court by appointing experts to suggest an alternate system, of banking, the government filed an appeal in the Appellant Bench of Supreme Court against this decision. The case is still pending with Supreme Court. During this period the Supreme Court through a questionnaire has invited the views and recommendations of prominent Scholars, economists and lawyers of the country concerning different matters. As if the Supreme Court all over again wants to review all the matters.

7) Commission for Islamaization of the economy

The central government along with filing an appeal against the decision of the Federal Shariah Court appointed a commission with the above mentioned caption headed by the governor of the State Bank of Pakistan. This commission presented a report based on the efforts of working of a group of experts in June 1992 (this report got published but was removed from the public view) in which this opinion was given that including mark up all types of interest in fact are Riba.

As if the end product of whole of the efforts put in so far for the eradication of interest is a big Zero. At present under the most of the important heads of the financing in the Pakistani banks, that principle of mark up is being practiced openly, which is "Riba" from the point of view of the Council of Islamic Ideology, the Federal Shariah Court, and the Commission for the Islamaization. Further, few of the interest free heads initiated are apparently still working, like Ijarah, Musharka, construction financing, NIT, ICP schemes etc. Due to the gradual changes brought in their rule and regulations these have also become a form of "Riba." The new era which commenced with the decision of Federal Shariah Court of 1991 has been "frozen" in the "cold storage" of appeal.

## **The Present state of Affairs**

### **1) Banking**

At present out of the operations of the banks there is hardly any about which it can be confidently said to be completely in line with principles of Shariah. Particularly the one related to income. The details are follows:-

- **The Sources of Income:** A huge amount deposited in the banks is distributed under different heads from which the banks receive their income.
  - 1) The interest received from financing in the government securities.
  - 2) The banks are bound to keep a portion of their deposits with the state bank. They get interest on "bank rate."
  - 3) The interest accrued from trade financing (name of mark up is being used).
  - 4) The sale /purchase of trade bills .These are sold and purchased on "mark down."Further, short terms Over Drafts are issued. Mark up is received on those.
  - 5) Interest received on loans advanced for personal needs for long or short time.
  - 6) Mark up received from financial leasing. Under this head the bank, leasing company, or Muddarba Company, advances loans to different departments or individuals for the purchase of machines, equipments, land, buildings, or the

vehicle etc. The item purchased is presumed to be the property of the lender, but the lender remains free of any responsibility for the purchase, maintenance, or of the depreciation charges. The leasing company has sole concern for its principal amount and the mark up. In the deal no “Business Risk” is involved for her.

The principle of mark up adopted in all the financings enumerated above is interest according to the Islami Ideology Council, Federal Shariah Court, and the Commission for Islamaization of the economy.

- 7) The method of “Operating Lease” is close to the principle of Ijarah of Shariah. In this type of financing the leasing company is responsible for the purchase of the item, expenses for its maintenance, and depreciation etc as considered necessary according to principle Ijarah of Shariah. This method is rarely in use, secondly there are few points in its details which are objectionable according to Shariah.
- 8) Musharka: Very insignificant financing has been done under this principle. But the rules framed are such that neither the bank incurs a loss nor the profit drops beyond a certain percentage. Due to these points it also resembles interest.
- 9) PTC (Participatory Term Certificate) is long a term financing scheme based on the terms of profit and loss. Those trading concerns which desire long term loans they on the bases of profit and loss get these loans. Different banks and DFIs, in exchange of PTCs provide the loans on fixed profit ratio. The loss is shared according to the capital amount. In view of some risks for the bank this system was discontinued in 1989. The PTC was un-Islamic due to few of its details, but it was certainly a step forward in respect of interest free financing. It was later changed to TFC (Term Finance Certificate) which is in total a form of mark up and the compound interest.
- 10) Building Financing: It was started on the basis of rent sharing in 1979 and from Shariah point of view it was a workable proposition. Presently the process of financing of capital amount is being done in such a way that the capital, period, and the rate of inflation is kept in view hence it is a varied type of interest.
- 11) NIT and ICP Schemes: These two departments initiated with collecting domestic savings on profit and loss sharing bases. Later their financing also started in PLS account, TFC and financial leasing and as a result a portion of filth of interest got mixed up.

**\*Payments:** The bank makes payments under two important heads:-

- 1) Deposits: Under this head the bank distribute a small portion out of his whole profit mainly from the interest, in its account holders and keeps the major amount with itself.
- 2) Loan: The borrowing of a commercial bank from other banks. The loan is paid with interest, whereas the payment to state bank is done on profit and loan basis.

#### **The Borrowing Lending of the Government**

Most of the transactions of government are based on loans, which are taken and given on interest, for example:-

- The loan from state bank on mark up.
- From center to provincial government loan on interest
- Interest based loan to government employees from government for house and transport.
- Payment of interest provident fund of government employees

- Large scale government savings schemes issue of various bonds and payment of interest on those.
- Payment and receipt of interest on foreign loans
- The central government interest based loan to semi independent departments

### **The Future Possibilities**

A) Interest free banking system can be established on following permanent basis :-

- 1) Joint financing, i.e. Mudharaba and Musharakah based sharing profit and the loss.
- 2) Bai Muajal, bai Slam and Ijarah (leasing) based Uqoode bai and Uqoode Ijarah
- 3) TMCL (Time Multiple Loan) based long and short term loans for users, traders and for the government (suggested by Sh Mehmood Ahmed Marhoom, writer, "Sood ki Mutbadal Assas" in English and Urdu and a huge book "MAN AND MONEY." It is under publication!)

Iv) Interest Free Loan for Users and the Government

B) Based on these foundations the form of banking would be that at one hand the banks would collect personal savings in current and the PLS accounts and on the other hand they will invest as per the options mentioned above.

- 1) For this purpose the amount will be received from the account holders on the basis of profit and loss and shall be under the Muddarba, Musharka, and the Ijarah accounts. The ratio of profits for example  $\{1/2: 1/2\}$ ,  $\{1/4:3/4\}$ ,  $\{1/3:2/3\}$  etc. will be decided before hand among the bank and the account holders. Aforementioned three accounts will be administered separately.
- 2) The banks will make the payments under the same heads to investors and negotiate for the percentage of profits separately (the percentages will be according to the supply and demand of the capital).
- 3) The account keeping of savings will be done on daily and the yearly basis. The ratio of division of profit will be decided in the beginning of each year.
- 4) Some of the trade loans, trade bills etc. will be provide under TMCL etc.
- 5) House financing will be provided on the basis of Musharka Mutnaqisah (Shirkateh Enan) Trading Ijarah and Ijarah Aqtnaa.
- 6) The banks will maintain their financial link with the State Bank on the basis of Muddarba, PTC and the interest free loans.

### Practical Steps for the Eradication of the Interest

A) Doctrinal and the Common Steps

- 1) Those entire amendments are immediately made in the constitution due to which Pakistan at the minimum principally, and at the constitutional level acquires the status of an Islamic state or of a Caliphate. This will infuse a fresh resolve, create a national spirit for selflessness, and sacrifice in the people.

- 2) The government of Pakistan should immediately withdraw its appeal against the decision of the Federal Shariah Court, but may ask for some deferment for its promulgation.
- 3) The damages, evilness, of interest be widely advertised for the information of general public in the light of Ayahs of holy Quran and by quoting Hadees so that the people in the light of Allah's command " يا ايها الذين امنو اتقوا الله .....ان كنتم مومنين (البقره: 278) are prepared mentally and emotionally to get rid of interest and to accept the loss.
- 4) To make "The Commission for Islamization of the Economy" effective there is a need to induct the Scholars and experts at a larger scale and they devote their services totally for this purpose. More over they are given wide range of authority and facilities to supervise the operation of eradication of Interest in more effective way.
- 5) To reduce government loans the budget deficit is to be reduced by slashing expenditures and making tax recovery system effective and realistic.
- 6) The Judicial system is made effective and alert. The people should have easy access to the courts to get their cases against interest resolved. This will require necessary amendments in the judicial procedures. Such action will provide a built in system for the eradication of interest.
- 7) New departments are established for legitimate Shariah based trading.
- 8) Since the curse of interest cannot be eliminated on capital and cash until and unless the agriculture is also not purged of interest, as such action is now initiated to end feudalism and to abolish un-Islamic absentee landlordship system.

#### B) Immediate and Essential steps

- 1) The interest on mutual loans of provincial and federal governments and on loan of State Bank to the federal government is abolished with immediate effect. As a result of this action, there will be no effect on income and expenditure. This should be done immediately.
- 2) All loans given by government to Semi Government departments' corporations, WAPDA, Railways, and to the PTC are converted into "equities" immediately.
- 3) All payment of interest under the government saving schemes, consisting of government loans, bonds, certificates and on securities to be stopped immediately. A proper plan of action is announced to pay the capital amount of these loans.
- 4) All interest taken on loans given to the government employees for purchase of house or transport and interest paid on GPF is eliminated immediately.
- 5) Bank financing be restricted to the following forms, all over again, as was done with effect from 01 January 1981:-
  - I) A joint Investment on the basis of Mudharaba and Musharaka, with the partnership in profit and loss.



II) Bai muajal, bai slam, bai Murabaha, Ijarah (leasing) based on Uqoode bai and uqoodee Ijarah.

III) On the basis of Time Multiple Counter loan (TMCL) short and long term loans for consumers, traders and the government (Suggested by : Sh Mehmood Ahmed, Deceased. Writer "Sood ki Mutbadal Assas)

Iv) The Interest free loans for the consumers and the governments.

6) The Debt- Equity Swap method can be adopted to adjust the international loans. Under this procedure the foreign countries and their institutes are permitted to invest in actual term to receive their revocable loans. The local government provides them the capital for investment in local currency and guarantees to them for the payment of profit to them in the foreign exchange. The experience of Latin American countries is useful.

7) The commercial banks are permitted to invest in real investment and trading projects. There is no restriction from Shariah nor there any other problem.

8) The speculative trading to be banned completely in the market and only actual buying and sale of shares is allowed.

9) For the audit of banks from the view of Shariah a separate firm audit system is organized.

10) By maintaining first two forms in "Qarz utaro aur Mulk Sanwaro Muhim" the third "Bachat Account" be stopped forthwith and instead zakat to be collected and a guarantee provide that it should only be used in payment of foreign debts.

(والذين جاهدوا فينا ليهدينهم سبلنا) (العنكبوت:69)

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