

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH**

SHARIAT PETITION NO.30-L OF 1991

M/s. Farooq Brothers Vs. UBL, etc.

For petitioners:

Dr. Aslam Khakhi, Advocate
(supported by Mrs. Yasmeen Haider, Advocate), Mr. Qaiser Imam, Advocate. Mr. Saif Ullah Gondal, Advocate for Jamat-e-Islami. Dr. Fareed Ahmed Paracha. Mr. Imam Dullah and Sujah Ullah. Mr. Zafar Ali Raja, Advocate. Raja Muhammad Akram, Advocate. Malik Ghulam Sabir, Advocate. Col. Retd. Syed Iqbal Hashmi, Advocate. Mr. Muhammad Siddique Mughal & Qazi Muhammad Siddique, Advocates. Mr. Emad-ul-Hassan, Advocate. Mr. Javed Mansoor Khan, Advocate. Mr. M. Kowkab Iqbal, Advocate. Rai Bashir Ahmad, Mr. Ghulam Farid Senator and Mr. M. Asad Manzoor Butt, Advocates. Raja Farrukh Arif Bhatti, Advocate. Mr. Ghulam Qadir Jatoi, Advocate. Prof. Muhammad Ibrahim Khan, Advocate. Touseef Abbasi, Sher Hamad Khan Advocates. Mr. Anwar Mansoor Khan, Senior Advocate. Mr. Faiz Rasool Jalbani, Advocate. Syed Sikander Abbas Gillani, Advocate. Mr. Salamat Ali Chohan, Adviser to State. Mehmood ur Rehm, Advocate. Mr. Atif Waheed. Mr.

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Ishtiq Ahmed Farooq. Mr. Liaquat Baloch, Jamat-e-Islami, Lahore. Dr. Atta-ur-Rehman, Jamat-e-Islami. Lahore. Dr. Sahams-ul-Haq Hanif, Peshawar. Mr. Khuda Yar Khan, Mr. Muhammad Aftab Abbasi, Tanzim-e-Islami. Qazi Irfan. Mr. Muhammad Saeed Al-Raee, Retd Inspector General of Police. Squardon Leader (Retd.) Tariq Abdul Majeed. Lt. Commander Rtd. Mehmood Iqbal, General Secretary (Foreign), Ghulam Murtaza Jatoi, Advocate. Mr. Adnan Ramay and Muneeb Ali Awan, Advocates. Mr. Muhammad Younas Meo, Advocate. Maluna Abdul Maalik. Mr. Muhammad Anwer Abbasi, Advocate. Dr. Muhammad Hafeez Arshad, Al-Hafeez Welfare Trust, DHA-II. Mr. Abdul Ghafoor Chochan, Wing Commander Zarin Qureshi for Tanzee-e-Islami. Mr. Imran Shafique, Advocate. Dr. Sahams-ul-Haq Hanif, Peshawar. Mst. Rashidan, Mst. Shukran Bibi, Mst. Saleema Bibi daughters of Khurshid Muhammad. M/s. Bodhla Cotton Ginning and Pressing Factory. Mr. Umer Latif. Mufti Ahsan Waqar, Head Shariah Board, NBP. Dr. Mufti Tajamal Muhammad Zubair Usmani, UBL. Mr. Tanveer Farhan Mehmood, Head of Islamic Banking System, UBL. Mufti Muhammad Ibrahim Essa, Shariah Advisor and Mr. Jalaluddin Ahmed, Chief Executive. Mr. Muhammad Saeed Alrai (PSP). Mr. Muhammad Iqbal. Mr. Muhammad Ayub, Director Research & Training Islamabad. Mr. Muhammad

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Anwar Abbasi. Col. (R) Abdul Rahman. Mr. Ghulam Jillani. Prof. Dr. M. Fahim Khan. Mr. Riaz Ahmed, Mr. Zahoor Ahmed & Mr. Saeed Ahmed sons of Khurshid Muhammad. Mr. Khuda Yar Khan. M/s. Farooq Brothers. Mr. Ishtiaq Ahmed Farooq. Mr. Babar Moinuddin. Mufti Abdul Ghaffar, Darul Fatta, Sukkur. Dr. Humaira Awais Shahid, Lahore. Mr. Gul Muhammad Toor. Prof. Muhammad Asif. Mir Zaman Khan, Mr. Tauseef Ahmed Advocate, Mr. Khurram Imam Advocate, Mr. Imdadullah Advocate. Ms. Abida Safdar, Assistant A.G. KPK, Ms. Sofia Noreen, Assistant A.G.KPK.

For respondents:

Mr. Khalid Javed Khan, Attorney General for Pakistan. Mr. Anwar Mansoor Khan, Ex-Attorney General for Pakistan. Mr. Ashtar Ausaf Ali, Ex-AG Pakistan. Ch. Ishtiaq Meharban, DAG, Mr. Pervaiz Khan Tanoli, Assistant Attorney General for Federal Govt., Ch. Saleem Murtaza Mughal Addl. Advocate General Punjab and Mr. Ahsan Hameed Dogar on behalf of AG Sindh, Mr. Muhammad Ayyaz Khan, Advocate on behalf of AG Balochistan. Syed Aley Rizwi, Addl. A.G. Sindh. Mr. Kashif Paracha, Addl. AGP. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, Assistant A.G. Baluchistan. Malik Akhtar Hussain, Addl. A.G. KPK. Mr. Nazeer Abbasi, Standing Counsel for Federal Govt. Mr. Razzaq A. Mirza, Addl. Advocate General Punjab. Syed

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Wajid Ali Gillani, Addl. Advocate General, Punjab. Mr. Mujahid Ali Khan, DAG KPK. Ms. Sofia Noreen, Assistant Advocate General, KPK. Mr. Nadeem Arshad SO Legal Ministry of Finance. Mr. Ali Safdar Naghra, Law officer on behalf of Secretary Finance Punjab. Raja Ahsan Mehmood Satti, Standing Counsel for Federal Government. Syed Aley Maqbool Rizvi, Additional Advocate General, Sindh. Barrister Qasim Ali Chochan, Assistant A.G. Punjab. Mr. Arshad Ahmad Assistant A.G. KPK. Mr. Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Raza Abbas Naqvi, AAG Punjab. Mr. Shaukat Rauf Siddiqui, Addl. Advocate General, Punjab. Mr. Muhammad Zikria Sheikh, Deputy Attorney General of Pakistan, Lahore. Mr. Yousaf Qureshi, Assistant A.G. Punjab. Mr. Walayat Khan, Assistant A.G. KPK. Mr. Razaq A. Mirza Addl. Advocate General Punjab. Mr. Wallayat Khan Assistant Advocate General, KPK. Mr. Salman Akram Raja, Advocate for SBP. Syed Ansar Hussain, Deputy Director on behalf of SBP. Mr. Javed Iqbal Khan, Advocate for Chairman Punjab Cooperative Board for Liquidation Lahore. Mr. Mehmood Nazir Rana, Law Officer SBP. Mufti Ehsan Waqar, Chairman/Head Shariah Board, NBP. Barrister Maqbool Ahmed, Advocate on behalf of Mr. Salman Akram Raja, Advocate. Mr. Muhammad Tajamul Hussain, Manager NBP Legal. Mr. Rustam on behalf of Sindh Bar Counsel. Mr. Zaheer Tanoli, Law officer on

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behalf of UBL. Tahir Shabbir, Deputy DAO, Mr. Rawalpindi on behalf of Secretary Finance, Punjab Lahore. Mr. Shahid Saleem, Ministry of Finance, Lahore. Ms. Iram Younas on behalf of Ministry of Commerce and PIC. Mr. Masood Anwar, Advocate for NICL Ministry of Commerce. Mr. Aziz ur Rehman, Advocate. Mr. Ayyaz Hussain, Executive Officer Law National Insurance Corporation. Mr. Shakeel Asghar Law Officer on behalf of Chief Secretary KPK. Dr. Mehmood ul Rehman Faisal DG National Savings. Mr. Shaukat Rauf Siddiqui, Addl. Advocate General, Punjab. Raja Saleem Ullah law officer Finance Department Govt. of Punjab. Malik Ghulam Advocate for State Bank of Pakistan. Mr. Ghulam Nabi Azhar Industrial Assistant Registrar Cooperative Department Lahore. Mr. Wallayat Khan Assistant Advocate General, KPK. Mr. Muhammad Yousaf MD Legal Affairs SLIC. Mr. Abdul Shakoor Saqib, Deputy DAO Rawalpindi. Mr. Feroz Malik, Deputy Manager State Life Insurance. Mr. Khan Pacha Senior Superintendent, Office of the Chief Executive Terbela. Ms. Bushra Qamar, President Provincial Bar Council Punjab Lahore. Mr. Salah ud Din Khan, Gandapur and Manzoor Leghari, Advocates on behalf of Sindh Bar Council. Mr. Shakil Ahmed, Assistant Solicitor Ministry of Law and Justice. Mr. Javed Ali Deputy District Accounts Officer Punjab Finance Department. Muhammad Javed Iqbal Assistant

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Vice President, ZTBL. Mr. Muhammad Javed Ali, DAO Punjab Finance Department Rawalpindi. Mr. Muhammad Asad Mehmood Section Officer (Insurance) Commerce Islamabad. Mr. Muhammad Aslam Sipra Deputy Director Finance, Punjab Government. Mr. Ghulam Muhammad and Mehmood Shafqat for State Bank of Pakistan. Mr. Saleem Shehzad Section officer Ministry of Finance. Mr. Sohabit Ali Talpur Deputy Secretary Ministry of Finance Islamabad. Mr. Saleem Ullah Director State Bank of Pakistan. Mr. Muhammad Yousaf, SPS to Ahmed Dildar Member Legal FBR Islamabad. Rana Abdul Ghaffar Khan, Advocate for respondents. Mr. Saim AR Abbas, Assistant Registrar Industrial Cooperative. Mr. GM Abbasi, Director State Bank of Pakistan. Mrs. Imrana Baloch AOR on behalf of Govt. of Punjab. Mr. Zain-ul-Abidin, Secretary Sindh Bar Council. Mr. Raza Mohsin Qazalbash, Director State Bank of Pakistan. Ghani Value, Glass Limited, Lahore. Muhammad Yaseen Traders, Commission Agent. Momin Cotton Ginners & Oil Mills, Rahim Yar Khan. M/s. Welcome Agro Chemicals, Bahawalpur. Raazi Hospital, Rawalpindi. Mr. Mazhar A Nurani.

Economist:

Mr. Shaukat Shehzad.

Jurisconsults:

Dr. Attiq-ul-Zafar Khan,
Dr. Hafiz Muhammad Tufail,
Dr. Muhammad Ayub, Dr.
Muhammad Tahir Mansori, Dr.

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Muhammad Qaseem, Prof. Dr.
Muhammad Yousaf Farooqi
and Mr. Asim Mansoor Khan.

Amicus Curiae:

Dr. Ijaz Ahmed Samdani, Dr.
Zaheer-ud-Din Babar Awan,
Advocate, Barrister Abdullah
Babar Awan, Advocate Mr.
Anwar Mansoor Khan, Mr.
Asim Mansoor Khan, Maluana
Asmat Ullah, Maulana Ahmed
Ali Siddiqui, Dr. Waqar
Masood, Ex-Secretary Finance,
Islamabad.

Public Notice:

Mr. Shakeel Ahmed, Ex-Banker.
Mst. Balqees Rahat, Advocate,
Syed Arshad Hussain,
Advocate, Sayyid Tahir and Mr.
Saad. Hujaj Ali Nawaz Khan,
Mr. Muhammad Umar Khan,
Mr. Siraj ul Haq, Ameer
Jama'at-e-Islami.

Date of Institution: 28.03.1991

SHARIAT MISC. APPLICATION NO.04-L OF 2002

Muhammad Ismail Qureshi, Adv. Vs. Government of Pakistan.

Counsel for petitioner:

Ch. Abdur Rehman, Advocate
and Mian Sher Alam, Advocate
Barrister Abrar Nahakm
Advocate, Malik Wiqar Saleem,
Advocate, Hafiz Muhammad
Saeed, Advocate.

For respondents:

Ch. Ishtiaq Meharban, DAG.

Date of Institution:

20.09.2002

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SHARIAT PETITION NO.27-L OF 1990

M/s. M.A. Qureshi & sons, etc. Vs. National Bank of Pakistan

For petitioner: Mr. Iqbal Hamed-ur-Rehman
Advocate and Mr. Muhammad
Amin Sheikh, Advocate.

For respondents: Mr. Aijaz Ali Khaskheli,
Ghulam Rasool Korai and
Khalid Mahmood Siddiqui,
Advocates on behalf of NBP

Date of Institution: 06.11.1990

SHARIAT PETITION NO.01-K OF 1991

Niazuddin Pir Bux Allahwala Vs. Federal Govt. of Pakistan, etc.

For Petitioner: Mr. S.M. Saeed, Advocate.

For respondents: Mr. Ahmad Bashir and Aziz-ur-
Rehman Farooqi, Advocates. Ms.
Sarah Rehman, Advocate, Mr.
Babar Sattar, Advocate for HBL.
Mr. Aneeq Salman Malik,
Advocate for HBL. Mr.
Muhammad Saleem Manager
HBL Zone office Islamabad.

Date of Institution: 03.02.1991

SHARIAT PETITION NO.08-K OF 1990

Syed Afzal Hussain Vs. Government of Sindh, etc.

For Petitioner: Syed Afzal Hussain (in person)

For respondents: Syed Ali Zafar, Advocate, for
Chairman Pakistan Banking
Council Karachi, Farrakh
Qayyum, Deputy Secretary
(BKG) Government of Pakistan
Finance Division Islamabad.

Shariat Petition No.30-L of 1991 &
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Date of Institution: 12.11.1990

SHARIAT PETITION NO.17-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law, etc.

For petitioner: Dr. Mahmood ur Rehman Faisal (in person)

For respondents: Syed Ali Zafar, Advocate. Mr. Salaman Akram Raja, Advocate for SBP. Syed Ansar Hussain, Deputy Director SBP. Mr. Mahmood Nazir Rana, Law Officer SBP. Barrister Maqbool Ahmed, Advocate SBP.

Date of Institution: 25.06.1990

SHARIAT PETITION NO.18-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law, etc.

For petitioner: Dr. Mahmood ur Rehman Faisal (in person). Mr. Tahir Malik, Advocate for petitioner.

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 25.06.1990

SHARIAT PETITION NO.20-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law, etc.

For petitioner Dr. Mahmood ur Rehman Faisal (in person)

For respondents: Syed Ali Zafar Advocate.

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Date of Institution: 25.06.1990

SHARIAT PETITION NO.21-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law,
etc.

For petitioner: Mr. Muhammad Amin Sheikh,
Advocate for petitioner.

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 25.06.1990

SHARIAT PETITION NO.21-L OF 1990

Syed Musharaf Alam, etc. Vs. Habib Bank Limited

For petitioner: Mr. Muhammad Amin Sheikh,
Advocate for petitioner.

For respondents: Mr. Babar Sattar, Advocate.
Mr. Aneeq Salman Malik,
Advocate for HBL. Mr.
Muhammad Saleem Manager
HBL Zone office Islamabad.
Ms. Sarah Rehman, Advocate
for HBL.

Date of Institution: 30.08.1990

SHARIAT PETITION NO.30-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law, etc.

For petitioner: Dr. Mahmood ur Rehman
Faisal (in person)

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 30.06.1990

Shariat Petition No.30-L of 1991 &
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SHARIAT PETITION NO.31-I OF 1990

Dr. Mahmood ur Rehman Faisal Vs. Secretary, Ministry of Law, etc.

For petitioner: Dr. Mahmood ur Rehman Faisal (in person)

For respondents: Syed Ali Zafar, Advocate. Mr. Muhammad Sultan, A.P. Legal National Savings. Mr. Muhammad Tanveer Mehmood (NSO) C.D.N.S. Mr. Aziz-ur-Rehman Farooqi, Advocate. Mr. Bakht Bahadur Director CDNS. M/s. Nazir and Sardar Hameed CDNS Islamabad. Mr. Zaheer Abbas Joint Director, CDNS. Sardar Hameed Akhtar on behalf of Ministry of Finance. Sardar Hamad Akhtar, CDNS, Islamabad.

Date of Institution: 30.06.1990

SHARIAT PETITION NO.01-L OF 1991

Ch. Ijaz Ahmad Vs. The Provincial Government, etc.

For petitioner: Ch. Ijaz Ahmad (in person)

For respondents: Malik Muhammad Nawaz, Advocate.

Date of Institution: 01.01.1991

SHARIAT SUO-MOTO NO.02-I OF 1991

The Attorney-General for Pakistan, etc.

For respondents: Mr. Khalid Javed Khan, Attorney General for Pakistan.

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Mr. Anwar Mansoor Khan, Ex-Attorney General for Pakistan. Mr. Ashtar Ausaf Ali, Ex-AG Pakistan. Ch. Ishtiaq Meharban, DAG and Ch. Saleem Murtaza Mughal Addl. Advocate General Punjab and Mr. Ahsan Hameed Dogar on behalf of AG Sindh, Mr. Muhammad Ayyaz Khan, Advocate on behalf of AG Balochistan. Syed Aley Rizwi, Addl. A.G. Sindh. Mr. Khashif Paracha, Addl. AGP. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, Assistant A.G. Baluchistan. Malik Akhtar Hussain, Addl. A.G. KPK. Mr. Nazeer Abbasi, Standing Counsel for Federal Govt. Mr. Razzaq A. Mirza, Addl. Advocate General Punjab. Mr. Mujahid Ali Khan, DAG KPK. Mr. Nadeem Arshad SO Legal Ministry of Finance. Mr. Ali Safdar Naghra, Law officer on behalf of Secretary Finance Punjab. Raja Ahsan Mehmood Satti, Standing Counsel for Federal Government. Barrister Qasim Ali Chochan, Assistant A.G. Punjab. Mr. Arshad Ahmad Assistant A.G. KPK. Mr. Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Raza Abbas Naqvi, AAG Punjab. Mr. Yousaf Qureshi, Assistant A.G. Punjab. Mr. Walayat Khan, Assistant A.G. KPK.

Date of Institution: 06.10.1991

Shariat Petition No.30-L of 1991 &
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SHARIAT PETITION NO.02-L OF 1991

Dr. Syed Asad Gillani, etc. Vs. Government of Pakistan, etc.

For petitioner: Dr. Syed Asad Gillani (in person). Sheikh-ul-Hadith Maulana Abdul Malik, Mansoora Lahore.

For respondents: Mr. Ghulam Nabi-Azhar Industrial Assistant Registrar Cooperative Society Lahore. Mian Azhar Hussain Assistant Electric Inspector Energy Department Govt. of Punjab.

Date of Institution: 05.01.1991

SHARIAT SUO MOTO NO.03-I OF 1991

The Attorney General for Pakistan, etc.

For respondents: Ch. Ishtiaq Meharban, DAG and Ch. Saleem Murtaza Mughal Addl. Advocate General Punjab and Mr. Ahsan Hameed Dogar on behalf of AG Sindh, Mr. Muhammad Ayyaz Khan, Advocate on behalf of AG Balochistan. Syed Aley Rizwi, Addl. A.G. Sindh. Mr. Khashif Paracha, Addl. AGP. Mr. Asthar Ausaf Ali, Ex-AG Pakistan. Mr. Khalid Javed Khan, Attorney General for Pakistan. Mr. Anwar Mansoor Khan, Ex-Attorney General for Pakistan. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, Assistant A.G. Baluchistan. Malik Akhtar Hussain, Addl.

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A.G. KPK. Mr. Nazeer Abbasi, Standing Counsel for Federal Govt. Mr. Razzaq A. Mirza, Addl. Advocate General Punjab. Mr. Mujahid Ali Khan, DAG KPK. Mr. Nadeem Arshad SO Legal Ministry of Finance. Mr. Ali Safdar Naghra, Law officer on behalf of Secretary Finance Punjab. Raja Ahsan Mehmood Satti, Standing Counsel for Federal Government. Barrister Qasim Ali Chochan, Assistant A.G. Punjab. Mr. Arshad Ahmad Assistant A.G. KPK. Mr. Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Raza Abbas Naqvi, AAG Punjab. Mr. Yousaf Qureshi, Assistant A.G. Punjab. Mr. Walayat Khan, Assistant A.G. KPK.

Date of Institution: 06.10.1991

SHARIAT SUO MOTO NO.04-I OF 1991

The Attorney General for Pakistan, etc.

For respondents: Ch. Ishtiaq Meharban, DAG and Ch. Saleem Murtaza Mughal Addl. Advocate General Punjab and Mr. Ahsan Hameed Dogar on behalf of AG Sindh, Mr. Muhammad Ayyaz Khan, Advocate on behalf of AG Balochistan. Syed Aley Rizwi, Addl. A.G. Sindh. Mr. Khashif Paracha, Addl. AGP. Mr. Asthar Ausaf Ali, Ex-AG Pakistan. Mr. Khalid Javed Khan, Attorney General for Pakistan. Mr. Anwar Mansoor

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Khan, Ex-Attorney General for Pakistan. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, Assistant A.G. Baluchistan. Malik Akhtar Hussain, Addl. A.G. KPK. Mr. Nazeer Abbasi, Standing Counsel for Federal Govt. Mr. Razzaq A. Mirza, Addl. Advocate General Punjab. Mr. Mujahid Ali Khan, DAG KPK. Mr. Nadeem Arshad SO Legal Ministry of Finance. Mr. Ali Safdar Naghra, Law officer on behalf of Secretary Finance Punjab. Raja Ahsan Mehmood Satti, Standing Counsel for Federal Government. Barrister Qasim Ali Chochan, Assistant A.G. Punjab. Mr. Arshad Ahmad Assistant A.G. KPK. Mr. Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Raza Abbas Naqvi, AAG Punjab. Mr. Yousaf Qureshi, Assistant A.G. Punjab. Mr. Walayat Khan, Assistant A.G. KPK. Mr. Ashraf, AC (HR) Kasur. Mr. Javed Ali, Punjab Finance Department.

Date of Institution: 20.10.1991

SHARIAT PETITION NO.04-K OF 1991

Javed Mazhar Vs. Federation of Pakistan, etc.

For petitioner: Javed Mazhar (in person).

For respondents: Ch. Muhammad Nawaz,
Advocate for respondent No.3.
Mr. Amjad Ali, A.O. Customs.

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Mr. Muhammad Javed Iqbal,
APV, ZTBL.

Date of Institution: 03.03.1991

SHARIAT PETITION NO.16-I OF 1991

Allied Paper Industries Limited, etc. Vs. NBP.

For petitioner: Raja Muhammad Akram,
Advocate.

For respondents: M/s. Ajaz Ali Khaskheli,
Ghulam Rasool Korai and
Khalid Mahmood Siddiqui,
Advocates on behalf of NBP
and Mr. Qasim Bhatti, MIS,
Officer, NBP, Regional Office
Rawalpindi. Mr. Muhammad
Riaz, Vice-President UBL,
Legal Division and Mr. Zaheer
Ahmad Tanoli, Law Officer for
UBL.

Date of Institution: 28.03.1991

SHARIAT PETITION NO.16-A/I OF 1991

Allied Paper Industries Limited, etc. Vs. NBP, etc.

For petitioner: Raja Muhammad Akram,
Advocate. Mr. Sameer Khosa,
Advocate.

For respondents: Mr. Qasim Bhatti MIS-Officer
NBP, Regional office
Rawalpindi. Mr. Abdul Rauf,
Advocate.

Date of Institution: 19.09.1991

SHARIAT PETITION NO.16-C/I OF 1991

Allied Paper Industries Limited, etc. NBP, etc.

Shariat Petition No.30-L of 1991 &
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For petitioner: Raja Muhammad Akram,
Advocate. Mr. Sameer Khosa,
Advocate.

For respondents: Mr. Qasim Bhatti MIS-Officer
NBP, Regional office
Rawalpindi.

Date of Institution: 19.09.1991

SHARIAT PETITION NO.17-I OF 1991

Allied Paper Industries Limited, etc. Vs. NBP.

For petitioner: Allied Paper Industries Ltd,
etc.

For respondents: Malik Muhammad Siddique
Awan, and Rizwan Mahmood
Advocates, for NBP.

Date of Institution: 28.03.1991

SHARIAT PETITION NO.17-A/I OF 1991

Allied Paper Industries Limited, etc. NBP, etc.

For petitioner: Raja Muhammad Akram,
Advocate. Mr. Sameer Khosa,
Advocate.

For respondents: Mr. Nadeem SO Legal Ministry
of Finance.

Date of Institution: 19.09.1991

SHARIAT PETITION NO.17-C/I OF 1991

Allied Paper Industries Limited, etc. Vs. NBP, etc.

For petitioner: Raja Muhammad Akram,
Advocate. Mr. Sameer Khosa,
Advocate.

Shariat Petition No.30-L of 1991 &
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For respondents: Mr. Qasim Bhatti MIS-Officer
NBP, Regional office Rawalpindi.

Date of Institution: 19.09.1991

SHARIAT PETITION NO.24-L OF 1991

Muhammad Ashraf and Muhammad Akram
Vs.
Industrial Estate, etc.

For petitioner: Muhammad Ashraf and
Muhammad Akram (in person)

For respondents: Mr. Javed Iqbal Khan,
Advocate and Ch. Muhammad
Yaqub Sidhu, Advocate for
Chairman Punjab Cooperative
Board for Liquidation Lahore.
Mr. Jameel Ahmed Qazi
Industrial Inspector
Rawalpindi. Mr. Ghulam Nabi
Azhar Industrial Assistant
Registrar Cooperative
Department Lahore. Rana
Naeem Akhtar, Assistant
Manager Legal for
NICFC/PCBL. Mr. Liaqat Ali,
Industrial Assistant Registrar
Lahore Punjab.

Date of Institution: 19.03.1991

SHARIAT PETITION NO.25-L OF 1991

Muhammad Iqbal Naaz Vs. Government of Punjab, etc.

For petitioner: Muhammad Iqbal Naz (in
person).

For respondents: Mr. Nasir Javeid Virk and Mr.
Tahir Lateef Sheikh, Advocates

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HBFCL. Mr. Shafqat Rasool, Manager Legal, HBFC. Mr. Sammer IAR Cooperative. Mr. Jameel Ahmed Qazi Industrial Inspector Rawalpindi. Mr. Muhammad Shahid Butt, Industrial Assistant Registrar Cooperative. Rana Abdul Ghaffar Khan, Advocate for respondents.

Date of Institution: 19.03.1991

SHARIAT PETITION NO.27-I OF 1991

Muhammad Ashraf, etc. Vs. Industrial Assistant Registrar, etc.

For petitioner: Muhammad Ashraf (in person)

For respondents: Mr. Jameel Ahmed Qazi Industrial Inspector Rawalpindi. Mr. Liaqat Ali, Industrial Assistant Registrar Lahore Punjab.

Date of Institution: 03.06.1991

SHARIAT PETITION NO.28-I OF 1991

Muhammad Iqbal Naz Vs. Government of Punjab, etc.

For petitioner: Muhammad Iqbal Naz (in person)

For respondents: Mr. Jameel Ahmed Qazi Industrial Inspector Rawalpindi. Mr. Liaqat Ali, Industrial Assistant Registrar Lahore Punjab.

Date of Institution: 03.06.1991

Shariat Petition No.30-L of 1991 &
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SHARIAT PETITION NO.30-I OF 1991

Tariq Mahmood, etc. Vs. Province of the Punjab, etc.

For petitioner: Mr. S.M. Tayyab, Advocate.

For respondents: Mr. Javed Iqbal Khan, Advocate on behalf of Chairman Cooperative Board for Liquidation, Lahore. Rana Naeem Akhtar, Assistant Manager Legal for NICFC/PCBL. Syed Mir Ahmed Shah, Cooperative Punjab.

Date of Institution: 04.06.1991

SHARIAT PETITION NO.31-I OF 1991

Faiz Ahmed, etc. Vs. HBL, etc.

For petitioner: Faiz Ahmad (in person)

For respondents: M/s. Ahmed Bashir and Aziz ur Rehman Farooqi, Advocates. Syed Ali Zafar, Advocates. Mr. Mehmood Tanveer, NSO. Mr. Muhammad Saleem Manager HBL Zone office Islamabad.

Date of Institution: 04.06.1991

SHARIAT PETITION NO.32-I OF 1991

Faiz Ahmed, etc Vs. Habib Bank Limited, etc.

For petitioner: Faiz Ahmed (in person)

For respondents: M/s. Ahmed Bashir and Aziz ur Rehman Farooqi, Advocates for HBL. Mr. Muhammad Saleem Manager HBL Zone office Islamabad.

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Date of Institution: 04.06.1991

SHARIAT PETITION NO.33-I OF 1991

Faiz Ahmed, etc. Vs. HBL, etc.

For petitioner: Faiz Ahmed (in person)

For respondents: Mr. Ahmed Bashir Advocate
and Mr. Aziz ur Rehman
Farooqi Advocate for HBL. Mr.
Muhammad Saleem Manager
HBL Zone office Islamabad.

Date of Institution: 04.06.1991

SHARIAT PETITION NO.35-I OF 1991

M/s. Kashmir Fabrics Vs. M/s. Habib Bank Limited.

For petitioner: M/s. Kashmir Fabrics (in
person)

For respondents: Syed Ali Zafar Advocate.

Date of Institution: 04.06.1991

SHARIAT PETITION NO.42-I OF 1991

Muhammad Hashim Vs. M/s. National Bank of Pakistan.

For petitioner: Muhammad Hashim (in
person).

For respondents: Mr. Aziz Ali Khaskhali,
Advocate. M/s. Ghulam
Rasool Korai and Khalid
Mahmood Siddiqui, Advocates
on behalf of NBP.

Date of Institution: 15.06.1991

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

SHARIAT PETITION NO.45-I OF 1991

Muhammad Hashim Vs. NBP, etc.

For petitioner: Muhammad Hashim (in person)

For respondents: Mr. Aziz Ali Khaskhali, Advocate. M/s. Ghulam Rasool Korai and Khalid Mahmood Siddiqui, Advocates on behalf of NBP.

Date of Institution: 19.06.1991

SHARIAT PETITION NO.48-L OF 1991

Mst. Noor Bakhat
Vs. Housing Building Finance Corporation, etc.

For petitioner: Petitioner's counsel has died.

For respondents: Mr. Tahir Lateef Advocate for HBFC. Mr. Shafaat Rasul Manager Legal HBFC. Mr. Hashmat Ali Habib, Advocate.

Date of Institution: 05.06.1991

SHARIAT PETITION NO.51-I OF 1991

Muhammad Iqbal, Advocate Vs. Government of Punjab, etc.

For petitioner: Muhammad Iqbal Advocate (in person).

For respondents:

Date of Institution: 27.08.1991

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

SHARIAT PETITION NO.56-I OF 1991

Messrs Kashmir Fabrics Vs. The Federal Government of Pakistan.

For petitioner: M/s. Kashmir Fabrics (in person).

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 28.09.1991

SHARIAT PETITION NO.57-I OF 1991

Messrs Kashmir Fabrics Vs. Federal Government of Pakistan, etc.

For petitioner: M/s. Kashmir Fabrics (in person).

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 28.08.1991

SHARIAT PETITION NO.64-I OF 1991

Mohammad Mukhtar Ahmad Farani Vs. Govt. of Sindh, etc.

For petitioner: Mohammad Mukhtar Ahmad Farani (in person)

For respondents: Govt. of Sindh through Secretary Law.

Date of Institution: 21.09.1991

SHARIAT PETITION NO.65-I OF 1991

Muhammad Mukhtar Ahmad Farani Vs. Govt. of Baluchistan.

For petitioner: Mohammad Mukhtar Ahmad Farani (in person)

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

For respondents: Govt. of Baluchistan through
Secretary Law.

Date of Institution: 21.09.1991

SHARIAT PETITION NO.66-I OF 1991

Muhammad Mukhtar Ahmad Farani Vs. Govt. of NWFP.

For petitioner: Muhammad Mukhtar Ahmad
Farani (in person)

For respondents: Govt. of NWFP through
Secretary Law.

Date of Institution: 21.09.1991

SHARIAT PETITION NO.67-I OF 1991

Mohammad Mukhtar Ahmad Farani Vs. Govt. of Punjab

For petitioner: Mohammad Mukhtar Ahmad
Farani (in person)

For respondents: Govt. of Punjab through
Secretary Law.

Date of Institution: 21.09.1991

SHARIAT PETITION NO.68-L OF 1991

Naveed Asif Vs. Allied Bank of Pakistan Ltd., etc.

For petitioner: Mr. Muhammad Amin Sheikh,
Advocate.

For respondents: Syed Ali Zafar, Advocate ABL.
Mr. Khawar Ehsan Manager
SAM ABL.

Date of Institution: 09.07.1991

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

SHARIAT PETITION NO.69-L OF 1991

Naveed Asif Vs. Allied Bank of Pakistan Limited, etc.

For petitioner: Mr. Muhammad Amin Sheikh,
Advocate.

For respondents: Syed Ali Zafar, Advocate for
respondent. Mr. Khawar Ehsan
Manager SAM ABL. Mr.
Khurram Ehsan, Member SAM
North ABL.

Date of Institution: 09.07.1991

SHARIAT PETITION NO.70-L OF 1991

M/s. Alcos (Pak) etc Vs. NBP, etc.

For petitioner: Mr. Muhammad Amin Shaikh
Advocate.

For respondents: Mr. Aijaz Ali Khaskheli,
Litigation Officer, Mr. Ghulam
Rasool Korai, and Khalid
Mahmood Siddiqui, Advocates
for NBP. Syed Ali Zafar,
Advocate.

Date of Institution: 09.07.1991

SHARIAT PETITION NO.71-L OF 1991

M/s. Alcos (Pak) etc. Vs. NBP, etc.

For petitioner: Mr. Muhammad Amin Shaikh
Advocate.

For respondents: Mr. Aijaz Ali Khaskheli,
Litigation Officer, Mr. Ghulam
Rasool Korai, and Khalid
Mahmood Siddiqui, Advocates
for NBP. Syed Ali Zafar,

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Advocate

Date of Institution: 09.07.1991

SHARIAT PETITION NO.72-L OF 1991

M/s. Alcos (Pak) etc. Vs. NBP, etc.

For petitioner: Mr. Muhammad Amin Shaikh
Advocate.

For respondents: Mr. Aijaz Ali Khaskheli,
Litigation Officer, Mr. Ghulam
Rasool Korai, and Khalid
Mahmood Siddiqui, Advocates
for NBP. Syed Ali Zafar,
Advocate. Mr. Muhammad
Javed Iqbal, APV, ZTBL.

Date of Institution: 30.06.1991

SHARIAT PETITION NO.74-I OF 1991

Abdul Qayyum Qureshi Vs. Federation of Pakistan.

For petitioner: Abdul Qayyum Qureshi (in
person)

For respondents: Attorney General and Deputy
Attorney General for Pakistan.

Date of Institution: 19.10.1991

SHARIAT PETITION NO.74-L OF 1991

Naveed Asif Vs. Allied Bank of Pakistan Limited, etc.

For petitioner: Naveed Asif (in person)

For respondents: Aijaz Ali Khaskheli, Litigation
Officer, Mr. Ghulam Rasool
Korai, and Khalid Mahmood
Siddiqui, Advocates for NBP.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Syed Ali Zafar, Advocate. Mr.
Khurram Ehsan, Member SAM
North ABL.

Date of Institution: 09.07.1991

SHARIAT PETITION NO.78-I OF 1991

Mr. Gulzar Ahmad Khan Senator Vs. Province of Punjab, etc.

For petitioner: Mr. Gulzar Ahmad Khan (in person)

For respondents: Syed Mir Ahmed Shah,
Cooperative Punjab.

Date of Institution: 11.11.1991

SHARIAT PETITION NO.79-I OF 1991

Mr. Gulzar Ahmad Khan Senator Vs. Province of Punjab, etc.

For petitioner: Mr. Gulzar Ahmad Khan Senator (in person)

For respondents: Mr. Javed Iqbal Khan,
Advocate for Chairman Punjab
Cooperative Board for
Liquidation Lahore. Mr. Jameel
Ahmed Qazi Industrial
Inspector Rawalpindi. Rana
Naeem Akhtar, Assistant
Manager Legal for
NICFC/PCBL. Mr. Liaqat Ali,
Industrial Assistant Registrar
Lahore Punjab.

Date of Institution: 11.11.1991

SHARIAT PETITION NO.80-I OF 1991

Mr. Gulzar Ahmad Khan Senator Vs. Province of Punjab, etc.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

For petitioner: Mr. Gulzar Ahmad Khan
Senator (in person)

For respondents: Punjab Cooperative Board.

Date of Institution: 11.11.1991

SHARIAT PETITION NO.82-I OF 1991

Ch. Sarwar Hayat, Province of Punjab, etc.

For petitioner: Ch. Sarwar Hayat (in person)

For respondents: Syed Mir Ahmed Shah,
Cooperative Punjab.

Date of Institution: 11.11.1991

SHARIAT PETITION NO.83-I OF 1991

Ch. Sarwar Hayat Vs. Province of Punjab, etc.

For petitioner: Ch. Sarwar Hayat (in person)

For respondents: Syed Mir Ahmed Shah,
Cooperative Punjab.

Date of Institution: 11.11.1991

SHARIAT PETITION NO.84-I OF 1991

Ch. Sarwar Hayat Vs. Province of Punjab, etc.

For petitioner: Ch. Sarwar Hayat (in person)

For respondents: Syed Mir Ahmed Shah,
Cooperative Punjab.

Date of Institution: 11.11.1991

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

SHARIAT PETITION NO.85-L OF 1991

Mohammad Sharif Vs. Province of Punjab, etc.

For petitioner: Mohammad Sharif (in person)

For respondents: Mr. Muhammad Shahid Butt,
Industrial Assistant Registrar
Cooperative. Mr. Liaqat Ali,
Industrial Assistant Registrar
Lahore Punjab.

Date of Institution: 15.08.1991

SHARIAT PETITION NO.01-L OF 1992

Mst. Mumtaz Begum Vs. Province of Punjab, etc.

For petitioner: Syed Afzal Haider, Advocate.

For respondents: Syed Mir Ahmed Shah,
Cooperative Punjab.

Date of Institution: 28.01.1992

SHARIAT PETITION NO.07-I OF 1992

Abdur Rehman Siddiqui, Advocate and Muhammad Mansoor
Jafer Vs. Federation of Pakistan, etc

For petitioners: Abdur Rehman Siddiqui
Advocate and Muhammad
Mansoor Jafer (in person).

For respondents: Mr. Khalid Javed, Attorney
General for Pakistan, Ch.
Ishtiaq Meharban, DAG for
Pakistan, Ch. Saleem Murtaza
Mughal, Addl. Advocate
General Punjab, Mr. Arshad
Khan, Addl. A.G. KPK. Sardar
Ali Raza, Addl. A.G. KPK. Mr.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Tanveer Mehmoor (NSO) C.D.N.S. Sardar Hameed Akhtar, CDNS National Savings. Mr. Muhammad Sultan, AP (Legal) National Savings. Mr. Bakht Bahadur Director CDNS. M/s. Nazir and Sardar Hameed CDNS Islamabad. Mr. Zaheer Abbas Joint Director, CDNS. Sardar Hameed Akhtar on behalf of Ministry of Finance. Sardar Hamad Akhtar, CDNS, Islamabad.

Date of Institution: 02.02.1992

SHARIAT PETITION NO.08-I OF 1992

Abdur Rehman Siddiqui, Advocate and Muhammad Mansoor Jafer Vs. Federation of Pakistan, etc.

For petitioners: Abdur Rehman Siddiqui Advocate and Muhammad Mansoor Jafer (in person).

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Tanveer Mehmood (NSO) C.D.N.S. Mr. Muhammad Sultan, AP (Legal) National Savings. Mr. Bakht Bahadur Director CDNS. M/s. Nazir and Sardar Hameed CDNS Islamabad. Mr. Zaheer Abbas Joint Director, CDNS. Sardar Hameed Akhtar on behalf of Ministry of Finance. Sardar Hamad Akhtar, CDNS, Islamabad.

Date of Institution: 02.02.1992

SHARIAT PETITION NO.09-I OF 1992

Abdur Rehman Siddiqui, Advocate and Muhammad Mansoor Jafer Vs. Federation of Pakistan, etc.

For petitioners: Abdur Rehman Siddiqui
Advocate and Muhammad Mansoor Jafer (in person)

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Tanveer Mehmood (NSO) C.D.N.S. Mr. Muhammad Sultan, AP (Legal) National Savings. Mr. Bakht Bahadur

Shariat Petition No.30-L of 1991 &
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Director CDNS. M/s. Nazir and Sardar Hameed CDNS Islamabad. Mr. Zaheer Abbas Joint Director, CDNS. Sardar Hameed Akhtar on behalf of Ministry of Finance. Sardar Hamad Akhtar, CDNS, Islamabad. Raja Mehmood Subhani Manager Legal on behalf of Chief Secretary Punjab.

Date of Institution: 02.02.1992

SHARIAT PETITION NO.11-I OF 1989

Mushtaq Hussain Shah Vs. WAPDA.

For petitioner: Musthaq Hussain Shah (in person), Mr. Salah ud Din Khan, Advocate, Mr. Musa Bashir Janjua Advocate.

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Mr. Imtiaz Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Aziz-ul-Haque Nishtar, Advocate for respondent. Mr. Sajjad Ali Advocate for Director (Legal) WAPDA, WAPDA House

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Lahore. Mr. Tahir Malik Advocate for State Life Insurance Cooperation Rawalpindi Zone. Mr. Salman Mushtaq, Deputy DAO on behalf of Chief Secretary Punjab. Mr. Masood Anwar, Advocate for NICL. Mr. Ayaz Hussain, Executive Officer NICL. Mr. Muhammad Umar Khan, NICL-MOC. Barrister Adam Hassan Malik on behalf of Postal Life Insurance. Mr. Awal Daad, Assistant Superintendent Postal Life Insurance. Mr. Sajjad Zafar, Advocate for WAPDA. Mehr un Nisa Khalid, AGM. Mr. Abdul Bais, Dy. Director Admn WAPDA. Mr. Muhammad Farooq Malik, DM, SLIC. Mr. Abdul Shakoor Saqib, Deputy DAO Rawalpindi. Syed Wajahit Ali, ADPLI Lahore. Mr. Muhammad Siddique Malik, DG Legal GEPCO WAPDA. Dr. Muhammad Akram Nawaz, GM Postal Life Insurance, Post office Service Management Board. Mr. Niaz Sardar, Deputy Director Admin WAPDA. Rao Akram Khurram, Advocate on behalf of Pakistan Insurance Corporation. Mr. Muhammad Nusrat Hussain ED (OPS) NICL. Mr. Khan Bacha, Senior Superintendent WAPDA Office CE (P) Tarbela. Mr. Mahmud Raza Khan, Advocate on behalf of Chairman Pakistan Insurance Corporation. Mr. Jibran Khalil law officer Govt. of Punjab.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Date of Institution: 10.06.1989

SHARIAT PETITION NO.59-I OF 1992

Roshan Din Roshan Vs. Federal Govt. of Pakistan, etc.

For petitioner: Roshan Din Roshan (in person)

For respondents: Khalid Umar Chaudhary, Law officer Punjab Bar Council, Salah ud Din Khan Gandopar Sindh Bar Council, HCB (Annexue) Karachi. Mr. Muhammad Farooq Malik, DM, SLIC. Mr. Abdul Shakoor Saqib, Deputy DAO Rawalpindi. Syed Wajahit Ali, ADPLI Lahore. Mr. Zain ul Abideen Secretary Sindh Bar Council.

Date of Institution: 12.10.1992

S.S.M.NO.02-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

S.S.M. NO.03-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.04-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.05-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.06-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.07-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar

Shariat Petition No.30-L of 1991 &
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Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.08-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.09-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr.

Shariat Petition No.30-L of 1991 &
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Muhammad Ayaz Khan Swati,
Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.10-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.11-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Shafqat Rasool, Advocate NICL.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Date of Institution: 29.07.1992

SHARIAT SUO-MOTU NO.13-I OF 1992

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 03.11.1998

SHARIAT PETITION NO.04-I OF 2003

Iqtidar Ahmad Bhatti
Vs.
Federation of Islamic Republic of Pakistan, etc.

For petitioner: Mr. Rai Khan Muhammad, Advocate.

For respondents: Deputy Attorney General for Pakistan.

Date of Institution: 05.04.2003

SHARIAT PETITION NO.02-L OF 2004

Tehsil Municipal Administration Vs. Federation of Pakistan, etc.

For petitioner: Rana Ghulam Sarwar, Advocate. Mr. Noor Ahmad, Assistant Board of Revenue Tehsil Municipal Administration

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Kasur. Mr. Muhammad Abid, Municipal Officer (Finance) Municipal Corporation Kasur. Mr. Rashid Mehmood, Municipal Officer Retd Municipal Corporation Kasur. Mr. Idrees Khan, Municipal Officer Regulations Municipal Committee Kasur. Mr. Khalil Ahmed Tehsil Municipal Administration Govt of Punjab Kasur.

For respondents:

Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Ibrahim (AEI) Energy Department Punjab. Iqbal Ahmed Khan, respondent No.16. Mr. Muhammad Yaseen, Director Technical Power. Mr. Muhammad Adnan Khan Senior Law officer Board of Revenue Punjab. Mr. Tariq Nazeer Law Officer, Board of Revenue Punjab on behalf of respondents No.5 and 9. Raja Mehmood Subhani Manager Legal on behalf of Chief Secretary Punjab.

Date of Institution: 27.02.2004

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

SHARIAT PETITION NO.04-L OF 2003

WAPDA through its Chairman Vs. Province of Punjab, etc.

For petitioner:

Mr. Muhammad Ismail Qureshi, Advocate. Mr. Abdul Bais, Dy. Director Admn WAPDA. Mr. Muhammad Siddique Malik, DG Legal GEPCO WAPDA. Mr. Niaz Sardar, Deputy Director Admin WAPDA.

For respondents:

Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Ibrahim (AEI) Energy Department Punjab. Mr. Muhammad Yaseen, Director Technical Power. Mr. Muhammad Adnan Khan Senior Law officer Board of Revenue Punjab. Mr. Muhammad Siddique Malik DG Legal GEPCO. Mr. Tariq Nazeer Law Officer, Board of Revenue Punjab on behalf of respondents No.5 and 9. Raja Mehmood Subhani Manager Legal on behalf of Chief Secretary Punjab.

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Date of Institution: 12.09.2003

SHARIAT PETITION NO.06-L OF 2003

WAPDA through its Chairman, etc. Vs. Province of Punjab, etc.

For petitioner: Mr. Justice (Retd) Muhammad Munir Paracha, Advocate for GEPCO, Gujranwala. Mr. Aurangzeb Mirza Advocate for petitioner. Mr. Abdul Bais, Dy. Director Admn WAPDA. Mr. Muhammad Siddique Malik, DG Legal GEPCO WAPDA. Mr. Niaz Sardar, Deputy Director Admin WAPDA.

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Ibrahim (AEI) Energy Department Punjab. Mr. Muhammad Siddique, DG Legal GEPCO. Mr. Muhammad Yaseen, Director Technical Power. Mr. Muhammad Adnan Khan Senior Law officer Board of Revenue Punjab. Mr. Tariq Nazeer Law Officer, Board of Revenue Punjab on behalf of respondents No.5 and 9. Raja Mehmood Subhani Manager

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

Legal on behalf of Chief
Secretary Punjab.

Date of Institution: 01.11.2003

SHARIAT PETITION NO.09-L OF 2003

WAPDA through its Chairman, etc. Province of Punjab, etc.

For petitioner: Mr. Aurangzeb, Advocate. Mr. Muhammad Siddique Malik, DG Legal GEPCO WAPDA. Mr. Niaz Sardar, Deputy Director Admin WAPDA.

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan. Mr. Muhammad Ibrahim (AEI) Energy Department Punjab. Muhammad Siddique Malik, DG Legal on behalf of GEPCO Limited Gujranwala. Mr. Muhammad Yaseen, Director Technical Power. Mr. Muhammad Adnan Khan Senior Law officer Board of Revenue Punjab. Mr. Abdul Bais, Dy. Director Admn WAPDA. Mr. Tariq Nazeer Law Officer, Board of Revenue Punjab on behalf of

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respondents No.5 and 9.

Date of Institution: 03.12.2003

SHARIAT PETITION NO.01-I OF 2004

Pakistan Water and Power Development Authority
Vs.
Federation of Pakistan, etc.

For petitioner: Syed Kazim Hussain Kazmi, Advocate and Naeem Ahmed Awan Advocate for GENCO-III, Muzaffargarh. Mr. Muhammad Ashraf Sheikh, Advocate for NPGCL, TPS, Muzaffargarh. Mr. Muhammad Usman Sheikh, Advocate for GENCO-III, Muzaffargarh. Mr. Muqarras Iqbal, Chief HRM Admn, NPGCL, on behalf of petition. Mr. Muhammad Iqbal Anjum, CEO NGPCL, TPS through CEO WAPDA, Thermal Power Station Muzaffargarh. Mr. Muqarrab Iqbal, Chief Human Rights NPGCL. Mr. Salamat Ali Jogi (DM) on behalf of Chairman State Life Insurance Corporation of Pakistan. Musa Bashir Janjua, Advocate.

For respondents: Ch. Ishtiaq Meharban, Deputy Attorney General for Pakistan. Mr. Salamat Ali Jogi, D.M. on behalf of Chairman State Life Insurance Corporation of Pakistan.

Date of Institution: 30.01.2004

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SHARIAT MISC. APPLICATION NO.08 -I OF 2007

Syed Muhammad Baqir Ali Gilani Vs. Govt. of Pakistan.

For petitioner: Syed Muhammad Baqir Ali Gilani (in person)

For respondents: Syed Ali Zafar, Advocate.

Date of Institution: 25.04.2007

SHARIAT PETITION NO.01-L OF 2008

Mst. Shaista Yasmeen, etc. Vs. Government of Pakistan.

For petitioner: Mst. Shaista Yasmeen (in person). Mian Ghulam Ullah Khan Joiya, Advocate. Mr. Muhammad Ahmed Hassan Khan, Advocate, Mr. Muhammad Javed-ur-Rehman Rana, Advocate. Syed Muhammad Ilyas Chairman Awam Dost Part, Chief Editor Hafiza Newspaper, Lahore.

For respondents: Mr. Salman Akram Raja, Advocate for SBP. Mr. Tahir Latif Sheikh and Mr. Nasir Javed Virk Advocates for respondent No.2 HBFC. Mr. Rehan Nawaz, Advocate for respondent No.4 State Bank of Pakistan. Mr. Hashmat Habib Advocate for HBFCL Karachi. Mr. Shafqat Rasool Manager Legal HBFC. Mr. Zahid Ali Khan former G.M. HBFC Lahore. Mr. Dil Afroz Subhani Advocate for respondents No.4 to 7. Mr. Muhammad Amin Officer Grade-I SBP Lahore. Mr. Muhammad Nawaz

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Waseer Standing Counsel for Federal Government. Mr. Zafaraullah Khan GM, Legal, HBFC. Mr. Abid Ali Baig Law Officer HBFC. Mr. Irshad Ali Khan Officer Grade-I on behalf of State Bank of Pakistan. Mr. Hamza Liaquat, Manager Legal HBFCL. Mr. Shafqat Rasool, Manager Legal, HBFC.

Date of Institution: 07.07.2008

SHARIAT PETITION NO.02-K OF 2008

Manzoor Ahmed Yousfani Vs. Government of Pakistan.

For petitioner: Manzoor Ahmed Yousfani (in person).

For respondents: Mr. Muhammad Aslam, DAG

Date of Institution: 08.07.2008

SHARIAT PETITION NO.12-I OF 2013

Khalid Mehmood Abbasi Vs. Govt. of Pakistan.

For petitioner: Mr. Muhammad Kokab Iqbal, Advocate and Ghulam Fareed Sanotra and Rai Bashir Ahmad and Rai Usman, Advocates. Mr. Muhammad Younas Meo, Advocate and Mr. M. Asad Manzoor Butt, Advocate. Mr. Muhammad Rafique Nizami, Advocate. Mr. Atif Waheed Incharge IRTS Quran Academy Lahore.

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch.

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Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 01.08.2013

SHARIAT PETITION NO.03-I OF 2014

Raja Nasir Khan Vs. Ministry of Law, etc.

For petitioner: Raja Farrukh Arif Bhatti, Advocate.

For respondents: Mr. Khalid Javed, Attorney General for Pakistan, Ch. Ishtiaq Meharban, DAG for Pakistan, Ch. Saleem Murtaza Mughal, Addl. Advocate General Punjab, Mr. Arshad Khan, Addl. A.G. KPK. Sardar Ali Raza, Addl. A.G. KPK. Mr. Muhammad Fareed Dogar, AAG Baluchistan. Mr. Ahsan Hameed Dogar Advocate on behalf of AG Sindh, Mr. Muhammad Ayaz Khan Swati, Addl. A.G. Balochistan.

Date of Institution: 14.05.2014

SHARIAT PETITION NO.01-I OF 2019

Atif Waheed Vs. Federation of Pakistan.

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For petitioner: Mr. Atif Waheed (in person)
Mr. Muhammad Younas Meo,
Advocate.

For respondents: Ch. Ishtiaq Meharban, Deputy
Attorney General for Pakistan.

Date of Institution: 15.01.2019

Date of Remand of petition by 24.06.2002
the Hon'ble Supreme Court

Dates of Hearing: 03.06.2013, 21.10.2013, 05.11.2013,
18.05.2015, 16.06.2015, 29.10.2015,
25.04.2016, 03.10.2016, 30.01.2017,
31.01.2017, 13.02.2017, 14.02.2017,
06.03.2017, 13.03.2017, 10.04.2017,
23.04.2018, 14.05.2018, 11.06.2018,
24.09.2018, 16.10.2018, 06.11.2018,
11.12.2018, 15.01.2019, 19.02.2019,
19.03.2019, 16.04.2019, 30.11.2020,
07.12.2020, 21.12.2020, 03.02.2021,
27.05.2021, 30.09.2021, 17.11.2021,
18.11.2021, 01.12.2021, 02.12.2021,
03.12.2021, 09.12.2021, 15.12.2021,
16.12.2021, 13.01.2022, 21.01.2022,
03.02.2022, 17.02.2022, 01.02.2022,
18.02.2022, 22.02.2022, 03.03.2022,
10.03.2022, 12.03.2022, 16.03.2022,
21.03.2022, 25.03.2022, 26.03.2022,
04.04.2022, 09.04.2022, 11.04.2022 &

Last Date of Hearing: 12.04.2022

Date of Judgment: 28.04.2022

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبُوَا
ALLAH HATH PERMITTED TRADE AND FORBIDDEN USURY

JUDGMENT:

DR. SYED MUHAMMAD ANWER, J. The Civil Shariat Review Petition No.01 of 2002 filed by the United Bank Limited was allowed by the Hon'ble Shariat Appellate Bench of the Supreme Court on 24.06.2002 under its Shariat Review Jurisdiction; resultantly, judgment dated 23.12.1999 in Civil Shariat Appeals Nos.11 to 19 of 1992 and the judgment dated 14.11.1991 of the Federal Shariat Court passed in Shariat Petitions Nos.42-I + 45-I of 1991, etc. were set aside and the cases were remitted to the Federal Shariat Court for determination afresh in the light of contentions of the parties as noted in the said judgment and observations made upon them, which were germane to the controversy. According to the said judgment, parties were permitted to raise any other issue relevant to these cases in addition to the points raised before the Hon'ble Shariat Appellate Bench of the Supreme Court. The Federal Shariat Court was also allowed by the Hon'ble Shariat Appellate Bench of the Supreme Court through its judgment dated 24.06.2002 to take into consideration any

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point on its own motion or from any other aspect, which it may find relevant for determination of issues involved therein.

2. The background of the case is that the United Bank Limited filed a Civil Shariat Review Petition No.01 of 2000 under Article 188 of the Constitution of the Islamic Republic of Pakistan, seeking review of the judgment dated 23.12.1999 passed by the Shariat Appellate Bench of the Supreme Court in Shariat Appeals Nos.11 to 19 of 1992, whereby the judgment dated 14.11.1991 of the Federal Shariat Court was affirmed and it was declared that Riba in all its forms and manifestations was prohibited by the Holy Qu'ran and Sunnah of the Holy Prophet (SAW) in addition to that many laws were declared as repugnant to Islamic Injunctions.

3. The Federal Shariat Court after in-depth discussion and hearing the view point of subject specialists and scholars declared the laws and provisions of laws, as repugnant to the injunctions of Islam through its judgment (PLD 1992 FSC 1). An appeal was filed in the Shariat Appellate Bench of the Supreme Court and the impugned judgment of the Federal Shariat Court was upheld by the Shariat Appellate Bench of the Supreme Court vide its judgment titled Muhammad Aslam Khaki Versus Muhammad Hashim (PLD 2000 SC 225); consequently following laws were declared repugnant to the

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injunction Islam with the direction that these law will cease to have effect from 31st March, 2000:

1. The Interest Act, 1839.
2. The West Pakistan Money-Lenders' Ordinance 1960
3. The West Pakistan Money-Lenders Rules, 1965.
4. The Punjab Money-Lenders' Ordinance, 1960
5. The Sindh Monery-Lenders Ordinance, 1960.
6. The N.W.F.P. Money-Lenders' Ordinance, 1960.
7. The Balochistan Money-Landers, Ordinance, 1960.
8. Section 9 of the Banking Companies Ordinance, 1962.

The provisions of the following laws which contained the term 'interest' within the meaning of Riba were declared repugnant to the injunction of Islam.

1. Section 10 of the Government Saving Banks Act (V of 1893).
2. Sections 79 and 80 of the Negotiable Instruments Act. (XXVI of 1881) in respect of interest on money claims, "Mark-up), "Services charges", etc.
3. Sections 114 and 117 (c) of Negotiable Instruments Act of 1881).
4. Sections 28,32,33 and 34 Land Acquisition Act (1 of 1894).
5. Sections 34, 34-A, 34-B and O.XXXVII, R.2(a) of Civil

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Procedure Code (V of 1908) relating to interest, Mark-up, lease, hire purchase and service charges.

6. Sections 2(12), 35(3), 144(1), O.XXI, R.11(2)(g), O.XXI, R.38, O.XXI, R.79(3), O.XXI, R.80(3), O.XXI, R.93, O.XXXIV, R.2(1),(a)(i)&(iii),(c); O.XXXIV, R.11, O.XXXIV, R.4(1) & (2), O.XXXIV, R.7(a)(c)&(2), O.XXXIV, R.11, O.XXXIV, R.13(1) & (2) O.XXXIX, R.9 of Civil Procedure Code regarding interest.
7. Section 59 of the Cooperative Societies Act(VII of 1925), provision relation to interest.
8. Rules 14(1) (b), 22 and 41 of Cooperative Societies Rules, 1927, provision of interest.
9. Section 3-BB (1) (b), 27(3), 29(8)(b), C(iii),47-B and 81(2) (d) of Insurance Act, 1938, provisions for a range of rates of interest etc.
10. Section 22(1) of the state Bank of Pakistan Act (XXXII of 1956) relating to purchase of Bills, Debenture, bonds etc, on the basis of interest.
11. Rule 17(1)(1)(3) of Agricultural Development Bank Rules, 1961.
12. Section 25(2)(a) &(b) of the Banking Companies Ordinance (LVII of 1962) regarding giving of directions by State Bank regarding rates of interest or Mark-up.
13. Rule 9(2) &(a) of the Baking companies Rules, 1963.

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14. Rule 9 of the Banks (Nationalization) payment of Compensation Rules, 1974.
15. Section 8(2)(a)&(b) of the Banking Companies (Recovery of Loans) Ordinance (XIX of 1979) relating to interest and Mark-up.
16. Banks (Nationalization) payment of Compensation Rules 1974.
17. Banking Companies (Recovery of Loans) Ordinance, 1979.

4. In addition to that the Shariat Appellate Bench of the Supreme Court also held as follows:-

- a. Any amount big or small, over the principal, in a contract of loan or debt in "riba" prohibited by the Holy Quran, regardless of whether the loan is taken for the purpose of consumption or for some production activity; there is no difference between different types of loans so far as the prohibition of Riba is concerned. The prohibition of Riba is absolute irrespective of the fact whether the additional amount stipulated over the principal loan or debt is small or large.
- b. All the prevailing forms of interest either in the banking transactions or in private transactions do fall within the definition of Riba.
- c. Similarly any interest stipulated in the Government borrowings acquired from domestic or

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foreign sources is Riba and clearly prohibited by the Holy Quran.

5. In addition to that the Shariat Appellate Bench of the Supreme Court directed the Federal Government to take certain steps which according to the court were necessary to transform the economy of Pakistan like, the Government should take strict austerity measures to drastically curtail the Government expenditure, and deficit financing should be controlled. It also suggested certain laws to be framed like, an Act to regulate the Federal consolidated Fund and Public Account, Provincial Consolidated Fund and Public Account requires to be enacted by the parliament and the Provincial Assemblies for their proper regulations; and laws similar to the freedom of information Act, the Privacy Act and Ethics Regulations of United States, Financial Services Act of Britain be enacted. Shariat Appellate Bench of the Supreme Court suggested certain offices to be established like, Serious Fraud Office (SFO) to control white collar and economic crimes, Credit rating agencies in the public sector etc.

6. The Shariat Appellate Bench of the Supreme Court directed certain special departments to be established within the State Bank. In addition to that for transformation of the existing financial system to the one conforming to Shariah certain time lines were also given by the Shariat Appellate Bench. The Government was directed

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to convert the domestic inter Government borrowings as well as the borrowings of the Federal Government from State Bank of Pakistan on interest free basis.

7. The Shariat Appellate Bench of the Supreme Court vide its judgment (PLD 2002SC 801) in the Review Order held: "we are of the considered view that the issues involved in these cases require to be re-determined after thorough and elaborate research and comparative study of the financial systems which are prevalent in the contemporary Muslim countries of the world. Since the Federal Shariat Court did not give a definite finding on all the issues involved determination whereof was essential to the resolution of the controversy involved in these cases. It would be in the fitness of things if the matter is remanded to the Federal Shariat Court which under the Constitution is enjoined upon to give a definite finding on all the issues within its jurisdiction."

8. "Resultantly, Civil Shariat Review Petition No. 1 of 2000 filed by the United Bank Ltd is allowed, the judgment dated 23th December, 1999 passed by the Shariat Appellate Bench of this Court in Shariat Appeals Nos.11 to 19 of 1992 and the judgment dated 14th November, 1991 of the Federal Shariat Court passed in Shariat Petitions No.42-1+45-1 of 1991 etc, are set aside and the cases are remitted to the Federal Shariat Court for determination afresh in the

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light of the contentions of the parties noted above and the observations made which are germane to the controversy. Besides the points raised before this Court, the parties would be at liberty to raise any other issue relevant to these cases and the Federal Shariat Court may also, on its own motions, take into consideration any other aspect which may arise or may be found relevant for determination of the issue involved herein."

9. The Review Petition was decided in 24.06.2002, whereby the judgment dated 23.12.1999 passed by Shariat Appellate Bench of the Supreme Court and judgment dated 14.11.1991 of the Federal Shariat Court were set aside and the cases were remanded to this Court for re-determination afresh in the light of contentions of the parties as noted in the said judgment and observation made upon them, which were germane to the controversy. Two decades have passed since the announcement of the judgment in the Review Petition, and ever since the matter kept pending adjudication which is not at all an appreciable state of affairs. Although, this delay happened due to one or the other practical and procedural hindrances but still no excuse can be made acceptable. Nevertheless; this dark cloud of delay has a silver lining too. The delay has brought certain positive changes in the matter in issue of this case, i.e., the introduction and promotion of Islamic Banking or Interest-Free Banking in Pakistan at an

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exponential level took place during this period. During this period of last 20 years Islamic Banking has become a reality in Pakistan. Many topics which were considered as mere academic debate have become real and practical issues, like different modes of Islamic financing their practicality and operations at individual as well as at corporate level. Both the judgments which were set aside by the Remand Order of the Hon'ble Sharit Appellate Bench of the Supreme Court contained a very thorough and elaborative juristic literature on a very sound academic footing, which was appreciated and praised not only in Pakistan but all over the world in the relevant circles attached to the field of Islamic financing or Islamic Banking. Academically both the judgments are considered as master piece and land mark judgments for laying the foundation of Islamic Banking in the contemporary world. During the past 20 years both the judgments provided practical help and guideline for the development of Islamic Banking in Pakistan. At present, Islamic Banking, i.e., Interest Free Banking is a reality not only in Pakistan but all across the world. Resultantly, the significance of so many questions are changed, which were debated and agitated upon by the parties previously, while arguing those petitions in the Federal Shariat Court and in the Sharit Appellate Bench of the Supreme Court as well as in the review petition. For example, the question whether Islamic Banking is practical, viable and feasible or not in Pakistan or

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whether the implementation of Islamic Banking in Pakistan will impose any risk to the stability and security of Pakistan or not. All such questions perhaps have lost their significance which were previously relevant when the case was pending and was argued in the Hon'ble Shariat Appellate Bench of the Supreme Court. As a consequence of this change, the gravity of the importance of some academic questions have changed with Islamic Banking being regulated by the State Bank of Pakistan with the able and appropriate advice and guidance of its Shariah Board. In light of this background, we have divided the questions for our determinations in the following categories to dilate upon them accordingly:

- i) Firstly, questions or points raised by the petitioner in the Review Petition before the Supreme Court were almost the same, which were earlier raised by them either before the Federal Shariat Court or Shariat Appellate Bench of Supreme Court and most of these questions were dilated upon elaborately. Some of these questions are repetitions of one or two points in different ways. For instance some of these points which were raised by the petitioners, in the Review Petition, and were noted down by Shariat

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Appellate Bench of the Supreme Court in para 6 can be summed up in the following manner:

- a. Does the Holy Quran only prohibit Riba which is doubled and multiplied interest and it does not prohibit what is reasonable and fair?
- b. The Riba has not been defined in the Holy Quran and all that has been held in the judgment under review is based on Qiyas.
- c. The definitions and differentiation between usury, Riba and interest have not been properly distinguished.
- d. Charging of Riba on personal loans is prohibited while it is not prohibited on productive, industrial or commercial loans.
- e. Banking is a kind of business and business is permissible in Islam. (reference para 11)
- f. Banking interest is not Riba. (reference para 16 of the Remand Order)

10. In general these are those questions which are off and on raised and relied upon by those persons or scholars who try to derive some kind of exception from the complete and absolute prohibition of Riba. Although, these and other similar questions were dilated upon

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elaborately by the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court; but still we intend to re-determine these questions and some other similar type of questions for compliance with the direction of the Shariat Appellate Bench of the Supreme Court. We have formulated different questions of determinations to answer and address all such questions. It was also argued by the petitioners in the Review Petition that judgment of the Federal Shariat Court was authored with some predetermined mindset (Reference para 9 of the Remand Order). Though this argument of the petitioners in the review petition was perceptibly subjective, still we have consulted and relied upon the relevant books, article and other literature as much as possible covering opinions of all schools of Islamic jurisprudence belonging to every geographic location of the world. We have relied upon the consensus oriented opinion of the contemporary world like opinions of Islamic Fiqh Academy (IFA) of the Organization of the Islamic Cooperation (OIC) and obviously the corpus of classical literature of exegetes and Islamic Jurisprudence. For Example while concluding just one point of determination i.e whether the interpretation of Verse 3:130 Holy Quran means that only 'doubled and multiplied' Riba is prohibited and what is reasonable and fair is not prohibited. We consulted more than one hundred exegetes (Tafaseer) written by the scholars of different schools of thoughts, from

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different countries and background and were from different era of that last fourteen hundred years.

ii) Secondly, some points were raised by the petitioner while arguing the Review Petition but have either become irrelevant or have become less important due to the changed reality regarding the progress and proliferation of interest-free banking in Pakistan and the world over, specially in the last two decades, i.e., after the decision of the Review Petition. This category mainly includes the doubts raised by the Federal Government regarding the practical implementation of interest free banking in the country or the transformation of economy from conventional banking to Islamic banking, etc., the points which were raised by the counsel for the petitioner in the review petition in this context were mainly reproduced in para-7 of the Review Order. For example:

- a. Implementation of interest free banking is not practical or feasible (Reference on para 7 and para 14 of the Remand Order).
- b. If the interest-free banking is introduced it will pose high degree of risk to the stability of Pakistan.

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11. Such type of apprehensions and questions which were earlier raised by the Federal Government through Ministry of Finance and State Bank of Pakistan have practically become irrelevant since the interest-free Banking or Islamic Banking is now a reality not only in Pakistan but all across the world. To explain this we have formulated points of determination to dilate upon the point whether there is a proper legal and regulatory framework available in Pakistan for the Islamic Banking or not. What is the status of Islamic Banking in Pakistan and what are the different practical examples of Islamic Banking available in the world.

iii) Thirdly, when this case was being heard previously before the Federal Shariat Court , subsequently in the Shariat Appellate Bench Supreme Court and finally during the hearing of the Review Petition in the Shariat Appellate Bench of the Supreme Court, the respondents in this case in one way or the other relied upon one of the arguments which were made by scholars who attempted to either create some exception from the general principle of prohibition of Riba; or tried to legitimize wholly or partly Riba in the name of banking interest. Secondly; while arguing the case earlier before the Sahriat Court

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and Shariat Appellate Bench of the Supreme Court the respondents did rely upon the opinion of these scholars but could not produce the primary reference material of the scholar so referred to, based on the Quran and Sunnah as required. Normally these are the personal opinions of the scholars so referred. Most of the time such opinions were an attempt to portray the conventional interest based banking system as an unavoidable practice in the contemporary world. In this regard either they did not give any proper resource material or they gave the secondary resource material like, article and journals etc. which contained the view point of a third scholar about their point of view. The points so raised by such scholars do not affect the Ijma (consensus) of the scholars of Ummah about the absolute prohibition of Riba. Furthermore, the proliferation of Interest-free banking internationally has changed the relevance of these personal opinions of some scholars. Moreover the phenomenon of Islamic Banking has not only remained restricted to the Muslims only but the non-Muslims are also espousing Islamic Banking. For example the international banks like Standard Chartered

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and HSBC etc., are pretty much involved in practicing Islamic Banking. In addition to this the International Financial Institutions like World Bank, Asian Development Bank and even the International Monetary Fund (IMF) have adopted a policy of inclusiveness regarding Islamic Banking. This international acceptability of the Interest-Free banking or the Islamic Banking based on absolute prohibition of Riba has further recognized the already established Ijma (consensus) of the Ummah that Interest-free Banking is Riba free Banking. With this back ground to address these issues we have, *inter alia*, formulated a few points of determination to cover all those points raised by the scholars and addressed them in the light of the Injunctions of Islam as laid down in the Quran and Sunnah.

- iv) Fourthly, there are certain points which were raised before the Hon'ble Shariat Appellate Bench of the Supreme Court in the proceedings of Review Petition and were noted in the Review Order (e.g. Reference para 10 and para 15 of the Remand Order); but before us, both the parties stated that they do not want to stress upon

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those points. Therefore, we have decided to dilate upon those points only to the extent as much required. This category includes the following types of issues:

- a. In which manner the inflation and indexation is to be tackled in the country, (Reference para 15 of the Remand Order);
- b. In which manner the economy is to be transformed from conventional style to Islamic one, or
- c. What is the relevance of Riba al-Fadl in banking or fiscal matters? etc.

v) Fifthly, the petitioner raised some questions before the Hon'ble Shariat Appellate Bench of the Supreme Court for the very first time like question regarding the jurisdiction of the Federal Shariat Court over the matter in issue (Reference Para 12 of the Remand Order) Such questions are thoroughly considered and dilated upon at length by us since they are raised for the very first time in this case after many decades of its initiation.

vi) Sixthly, during the arguments of the case before the Federal Shariat Court and the Shariat Appellate Bench the opinion of certain scholars have been referred from the respondents' side, by the National Bank of Pakistan,

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and were thoroughly examined, but despite that this point was reiterated again, during the hearing of the Review Petition. The Review Order only got reference of the names of those scholars without reference to their specific opinion. Their opinions have always been taken as “exception” and were generally either not accepted in some cases and refuted or rejected, in other cases by majority of the scholars and academic bodies all across the world. In order to have clarity and keep the record straight, *inter alia* , one of the questions we posed to the respondents including the lawyers of National Bank, and the State Bank of Pakistan, is:

“Is there any effective and impressive findings of the scholars named Shaikh Muhammad Abduhu, Shacikh Rashid Rida, Abdul Razzaq Sanhuri, Shaikul Azhar Mahmood Shaltut, Shaikul Azhar Dr. Muhammad Sayyid Tantawi, Abdul Wahab Khallaf and Dr. Maroof Daoualibi on the subject under discussion? ”

This question is relevant in this case from two aspects:

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Firstly; these scholars who attempted either to create some exception from the general principle of absolute prohibition of Riba; or they tried to legitimize Riba wholly or partly on one pretext or the other.

Secondly; while arguing the case earlier before the Federal Shariat Court and Shariat Appellate Bench of the Supreme Court the respondents did rely upon the opinion of these scholars but could not produce the primary reference material. Either they did not give any proper resource material or they gave the secondary resource materials like, article and journals etc. which contain the view point of a third scholar about the point of view of these scholars. With this background we circulated among the parties this specific question. Therefore we thought it necessary to give them another chance to produce the proper reference material if any.

In response the National Bank of Pakistan firstly gave a detailed reply explaining that that the National Bank of Pakistan is currently operating 189 branches, which are completely dealing in the Islamic Banking under the name of National Bank of Pakistan Aitemaad in accordance with the Shariah-Compliant Modes duly approved by the State Bank of Pakistan. This stance of the National Bank of Pakistan taken in its reply was evident enough to demonstrate change in its

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strict stance against Islamic Banking. In addition it also did give answer to the above mentioned question which was lacking any primary reference in their reply. More importantly when the Head of its Shariah Board Mufti Ehsan Waqar, appeared before us, the counsel appearing on behalf of National Bank of Pakistan Mr. Khalid Mehmood Siddiqui, Advocate in presence of Mufti Ehsan Waqar, Head of Shariah Board of National Bank of Pakistan made a statement on 25.03.2022 that National Bank of Pakistan is not pressing its reply after consulting Mufti Ehsan Waqar, Head of Shariah Board of National Bank of Pakistan.

In response of the same Question the State Bank of Pakistan gave the following reply; which was adopted by the Attorney General for Pakistan on behalf of the Federal Government. The answer of the State Bank of Pakistan to the above mentioned question is as follows:

“The opinion/findings of the above mentioned scholars, which have been extracted from various research articles/books are as under:

i. Shaikh Muhammad Abduhu:

- a. Dr. Abdul Azim Islahi¹ Professor, Islamic Economics Institute King Abdulaziz University, Jeddah Saudi Arabia in his paper titled “**Economic Thought of**

¹ https://mpra.ub.uni-muenchen.de/68363/1/MPRA_paper_68363.pdf

Muhammad Abdūh: An omitted aspect of his biography has narrated as follows:

- b. "On interest: Once when someone enquired from Rashid Rida, the famous scholar and a student of Abdūh, about the latter's opinion regarding depositing in investment funds and partaking of such profits, the former observed:
- c. If there is any official fatwā of ustadh imām (Muhammad Abdūh) regarding investment funds, then it must be in the collection of his fatāwā with the Ministry of Justice. It can be obtained from there. I have not seen any fatwā in this respect. However, I heard him saying in one of his meetings with khedive, the substance of which is:
- d. The Government has established a saving fund in the post office department through royal decree, to facilitate the poor to deposit their savings, so that it can be invested for them. It has been known that about 3,000 poor depositors did not withdraw the profits accrued to them according to the decree. So the Government enquired from me: 'Is there any Sharī'ah way to make this profit valid (ḥalāl), so that the poor would not be committing any sin by profiting from it?' At this, I orally replied that it could be done by observing Sharī'ah rules of muḍārabah partnership in the investment of money deposited in a saving fund, thus the chief superintendent talked to the khedive

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regarding a modification of the royal decree and its
Shari‘ah compliance.”

ii. Shaikh Rashid Rida

- a. In the chapter “**The modern debate over Riba in Egypt**” of the book **Interest in Islamic Economics-Understanding Riba** edited by Abdulkader Thomas² the following is mentioned:
- b. “Riba regarded the original interest rate set on a loan as lawful, despite being in consideration for the delayed term of payment. If, however, at maturity, another interest charge is made in consideration for deferring the payment further, that interest charge constitutes unlawful which if repeated constitutes riba al-jahiliyya.”

iii. Dr. Muhammad Sayyid Tantawi

- a. Mahmoud A. El-Gamal, Chair of Islamic Economics, Finance and Management, and Professor of Economics and Statistics, at Rice University in Houston, Texas in his paper **"Interest" and the Paradox of Contemporary Islamic Law and Finance**³ mentions Sheikh-al-Azhar Muhammad Sayyid Tantawi’s fatwa/stance on interest as follows:

³ Fordham International Law Journal, 2003 available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1915&context=ilj>

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- b. "The essence of the fatwa is that bank depositors should be viewed as passive investors and banks should be viewed as their investment agents. The problem of interest on bank deposits is thus reduced to one which permits pre-specifying the "profits" to which depositors are entitled as a percentage of the capital, instead of specification as a percentage of actually realized profits."
- c. "Elsewhere, Tantawi elaborated on the fatwa's justification of fixing the profit share as a percentage of the partnership's capital on moral hazard considerations. In his book, Tantawi stated that "non-fixity of profits [as a percentage of capital] in this age of corruption, dishonesty and greed would put the principal under the mercy of the agent investing the funds, be it a bank or otherwise."

iv. Abdul Razzak Sanhuri

- a. Haider Ala Hamoudi, Assistant Professor of Law, University of Pittsburgh School of Law and author of article titled "**Baghdad Booksellers, Basra Carpet Merchants, and the Law of God and Man: Legal Pluralism and the Contemporary Muslim Experience**⁴" has commented on the Sanhuri's Civil Code under the section titled "The Civil Code and the Shari'a" as follows:

⁴ <https://escholarship.org/uc/item/3626x0d2>

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- b. "Sanhuri describes at great length how the taking of interest on loans can be reconciled with classical Sunni thought."
- c. Dr. Mohammad Omar Farooq, Associate Professor of Economics and Finance at Upper Iowa University, in his paper "**The Riba-Interest Equivalence: Is there an Ijma (consensus)?**"⁵ mentions as follows :
- d. "His views were similar to 'Abduh and Rida. [also, see Saleh, pp. 28-29; Netzer, 2004]. In the 1940s Egyptian jurist al-Sanhuri argued that the Qur'an sought chiefly to ban interest on interest", i.e., compound interest. [Vogel and Hayes, p. 46]"

v. Shaikh ul Azhar Mahmood Shaltut

- a. Dr. Fathi Osman, in his book, **Concepts of the Qur'an: A Topical Reading** (2nd edition, Los Angeles, MVI Publications, 1999), p. 919, mentions the following:

"Muhammad Abduh, the distinguished Egyptian mufti and commentator on the Qur'an [d. 1905], considered the interest paid by the post offices for the savings there as lawful, an opinion later supported by Mahmud Shaltut, the former Sheikh of al-Azhar [d. 1962] Moreover, he allowed for the interest on state bonds, if the economic development

⁵ Transnational Dispute Management, Vol. 4, No. 5, September 2007

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and the individual and public interests require issuing them [al-Fatawa, 8th., Cairo: 1975, pp. 351-355]. Additionally, Shaltut agreed to any transaction with any fixed interest in advance, if it was offered by the Muslim state or any establishments' subsidiary to the state or affiliated with it, as it assumed that there is no exploitation of either party in such cases."

vi. Abd al-Wahhab al-Khallaf

- a. In the chapter " The modern debate over Riba in Egypt" of the book **Interest in Islamic Economics-Understanding Riba** edited by Abdulkader Thomas⁶ the following is mentioned on page 82:
- b. "Tantawi then quotes Shaykh Abd al-Wahab Khallaf:

Thus mudaraba takes place according to the agreement of the parties. We are presently in an era in which the uprightness of people has diminished, and if the investor is not guaranteed a fixed return then his partner will take advantage of him."

vii. Dr. Marouf al-Daoualibi

- a. Dr. Mohammad Omar Farooq, Associate Professor of Economics and Finance at Upper Iowa University, in his paper "**The Riba-Interest Equivalence: Is there an Ijma (consensus)?**"⁷ mentions as follows :

⁶ <https://ie.um.ac.ir/images/329/Articles/Others/Latin/Interest%20in%20Islamic%20Economics.pdf5.pdf>
⁷ Transnational Dispute Management, Vol. 4, No. 5, September 2007

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"In the 1930s, Syrian scholar Marouf al-Daoualibi suggested that the Qur'an bans interest only on consumption loans, not investment loans."

12. Once again the State Bank of Pakistan as well as the Federal Government of Pakistan failed to provide the actual source of the opinions of majority of the scholars who are referred herein above and they relied mostly on the secondary type of sources. That means to answer the specific question which we asked they relied on somebody else's point of view about them. Even though to fulfill the direction of the Shariat Appellate Bench of the Supreme Court, for re-determination of these questions we have examined the opinions of the above mentioned scholars irrespective of the fact whether they are placed before us through primary source or secondary. To examine this aspect of the case we concluded that the crux of arguments forwarded by the above mentioned scholars who intend to by-pass the strict prohibition of charging interest on a loan can be summed up in either of the following statements:

1. Riba is prohibited on the loan taken for personal needs and Riba is not prohibited if the loan is taken for commercial or productive purposes.

2. Only that Riba which was known in Arab society when those verses of the Quran were revealed is forbidden and prohibited.

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3. The Riba on usurious loans is prohibited whereas the interest which is fair and just is not prohibited.

4. The simple interest upon a loan is permissible and charging of doubled and multiplied interest upon a loan is prohibited.

13. We would discuss in detail these points while determining the relevant points of determination. Additionally, at this point it is essential to understand that the approach which is adopted by some of the respondents is fundamentally flawed. This is because, relying on one odd opinion advocated by a few scholar without having any basis for their arguments does not affect the status of the opinion upon which there is consensus of the overwhelming majority of scholars of the Ummah which in turn is further supported by the opinion of the highly reputed research bodies like International Islamic Fiqh Academy of OIC, and Auditing and Accounting Organization of Islamic Finance Institute AAOIFI etc. This opinion is not only accepted but also followed by Islamic Financial Institutions all across the world. More importantly, when the Shariah Standard of AAOIFI is already adopted by the State Bank of Pakistan itself the objection made by the State Bank of Pakistan to the concept of Interest free Banking is contradictory.

In addition to this, the State Bank of Pakistan relied on some apparently obscure statement of those scholars which are referred

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above. For Example to answer one of our questions The State Bank in its reply explained the point of view of Abd al-Wahhab al-Khallaf and Tantawi as:

“In the chapter “ The modern debate over Riba in Egypt” of the book **Interest in Islamic Economics- Understanding Riba** edited by Abdulkader Thomas ⁸ the following is mentioned on page 82: “Tantawi then quotes Shaykh Abd al-Wahab Khallaf:

Thus mudaraba takes place according to the agreement of the parties. We are presently in an era in which the uprightness of people has diminished, and if the investor is not guaranteed a fixed return then his partner will take advantage of him.””

This point of view is highly subjective in nature in a way it is not even a point of view rather it is an apprehension which can be adequately dispelled or removed by analyzing the actual data regarding the success of Islamic Banking all over the world, which we would analyze in detail while examining the relevant points of determination in this regard.

14. The reliance of the State Bank of Pakistan on such a flimsy plea to oppose Islamic Banking or Interest-free Banking is unfounded. Moreover, the reply of the State Bank of Pakistan does not suit to

⁸ <https://ie.um.ac.ir/images/329/Articles/Others/Latin/Interest%20in%20Islamic%20Economics.pdf5.pdf>

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prevalent circumstances where the State Bank of Pakistan has already committed to implement Interest-Free Banking and as a result thereof the Islamic Banking Industry is exponentially flourishing in Pakistan.

15. The following Jurist Consults appeared before this Court and expressed their scholarly opinion on different aspects of this case:

- 1) Dr. Tahir Mansoori
- 2) Dr. Hafiz Muhammad Tufail
- 3) Dr. Muhammmad Ayub .
- 4) Dr. Attique-al-Zafar
- 5) Dr. Muhammad Yousaf Farooqi,
- 6) Dr. Ejaz Ahmed Khan
- 7) Dr. Qasim.

Following Scholars from the foreign countries did submit their views and comments on the subject of Riba and Islamic Banking:

1. Dr. Wahbah -al Zuhaili was a world famous Islamic Scholar who did submit his comments in writing.
2. Dr. Sami bin Ibrahim al Suwailem, Chief Economist in the Institute of Islamic Research and Training, a group of Islamic Bank for Development.
3. Mr. Wadelo.

Following Scholars, Economists and Lawyers, have submitted their opinion during the proceedings of this case:

1. Anwar Mansoor Khan, former Attorney General for Pakistan/Senior ASC.

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2. Dr. Babar Awan, ASC.
3. Dr. Fareed Ahmed Paracha, Assistant Secretary-General Jamat e Islami Pakistan
4. Siraj-ul-Haq, Ameer Jamat-e-Islami.
5. Dr. Atif Waheed (Tanzeem-i-Islami).
6. Mr. Waqar Masood Khan, former Federal Secretary, Advisor to Prime Minister, submitted a book titled "Transition to a Riba Free Economy" authored by himself.
7. Sujha Udin Shaikh, Ameer Tanzeem-e-Islami.
8. Dr. Humaira Awais Shahid
9. Prof. Dr. Fahim Khan.
10. Qazi Irfan,
11. Rafiq Nizami Advocate.
12. Tariq Abdul Majid
13. Shahzad Shaukat, Chartered Accountant.
14. Farooq I.A.
15. Amanatullah, Advocate for the KP Government,
16. Younas Mayo Advocate High Court.
17. Dr. Shams ul Haq Hanif Islamic scholar
18. Erum Yousaf Advocate
19. Salman Akram Raja Advocate Supreme Court of Pakistan
20. Syed Iqbal Hashmi Advocate Supreme Court.
21. Prof. Muhammad Asif
22. Mr. Salamat Ali Chohan
23. Muhammad Asif Sheraz
24. Muhammad Saeed Raee
25. Mr. Tahir Mehmood Hamdani
26. Syed Arshad Hussain, Advocate
27. Zareen Qureshi Wing Commander (R)

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- 28.Shakeel Ahmed.
- 29.Mufti Asmat Ullah, *amicus curiae*
- 30.Ahmed Ali Siddiqui, *amicus curiae*.
- 31.Mufti Ahsan Waqar, Head Shariah Board, NBP.

The Research Wing of this Court, the Library Staff and the attached Staff Members helped us in accumulating the relevant material available duly submitted by experts and general public who were interested to give their inputs. In this regard the names of Dr. Motia-ur-Rehman, Senior Research Adviser and Mr. Asmat Ali Khan, Research Officer, are worth mentioning.

16. After hearing the parties at length and reviewing the voluminous material provided by the parties, *amicus curiae*, jurist-consults and other experts from general public, who were keen and interested in providing their input in the case. We have formulated certain points of determination. We gave serious thought to every point raised before us through verbal or written arguments. In addition, we conducted elaborate and thorough research to understand all the points raised by the petitioners in Civil Review Petition before Shariat Appellate Bench of the Supreme Court. Moreover, we have thorough consideration to all the fundamental points involved in this case. After undertaking all this exercise, we are

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of the view that following are some basic points which need our determination:

- i) Whether the Federal Shariat Court has jurisdiction to adjudicate upon the matter as prayed for in different Shariat Petitions pending adjudication before it.
- ii) What is 'Riba' according to injunctions of Islam in the light of Holy Qur'an and Sunnah of the Holy Prophet (ﷺ) and how it is defined by the Muslim jurists and scholars in the light of Holy Qur'an and Sunnah?
- iii) Whether the term 'Riba' is confined to compound interest only, hence in the light of Islamic injunctions only charging of compound interest on loans is prohibited and not the charging of simple interest.
- iv) Whether the prohibition of Riba in Islam changes with the change in the percentage of interest charged upon a loan and is there any difference between usury and interest?
- v) Whether only the charging of interest upon consumption loans is prohibited and the charging of interest upon commercial or productive loan is not prohibited in Islam.

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- vi) Whether the Islamic Banking model is practical or not and is the Islamic Banking a kind of heela(حیله).
- vii) What is the status of Islamic banking worldwide especially in the Islamic world and in Pakistan?
- viii) Whether the interest or Riba becomes permissible if the transaction are undertaken or made in the name of business.
- ix) Whether mechanism of indexation and inflation should be adopted by the banking sector in Pakistan to balance the inherent imbalance in the economic transactions.
- x) Whether the charging of interest by banks on loans given by them to their customers is Riba or not; and whether the charging of interest by the depositors of a bank upon their deposits in the bank is Riba or not according to the Injunctions of Islam.
- xi) Whether Pakistan will have to obey its international commitments on payment of interest or Riba on international loans already taken, and how to deal with the future foreign borrowing of the Government in accordance with the Islamic Injunctions.

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xii) Whether the Federal Shariat Court should give timeline to the Government to take necessary steps for formulation of legislation which can provide enabling legal framework necessary to transform the Conventional Banking System into Riba-Free or Islamic Banking System.

17. Now, we take these points of determinations one by one:

Determination Point-I

Whether the Federal Shariat Court has jurisdiction to adjudicate upon the matter as prayed for in different Shariat Petitions pending adjudication before it.

During hearing of review petition the then Attorney-General for Pakistan Mr. Makhdoom Ali Khan raised questions regarding jurisdiction of the Federal Shariat Court as well as the maintainability of the petition before the Shariat Court, which was noted by the Hon'ble Shariat Appellate Bench of the Supreme Court of Pakistan (hereinafter Supreme Court) in the Review Order in the following manner:

“Mr. Makhdoom Ali Khan, learned Attorney General for Pakistan vehemently contended that the Federal Shariat Court as well as the Shariat Appellate Bench did not at all deal with the question of jurisdiction as well as maintainability of the petitions before the Federal Shariat Court with reference to the provisions of Articles 29,

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30(2), 38(f), 81(c) and 121(c) of the Constitution of the Islamic Republic of Pakistan, 1973 and have only referred to the constitutional provisions relating to jurisdiction of the Federal Shariat Court to examine fiscal laws. We have also noticed that the payment of interest finds mention in Article 161 as well as the definition of the expression 'pension' in Article 260 of the Constitution. Regarding the provisions of the Constitution as contained in the Principles of Policy in relation to elimination of Riba it was observed by the Federal Shariat Court that the government did not make any effort to achieve the objective set out therein and the judicial aspect of the case was not taken into consideration. In this behalf, reference may be made to the observations made by Dr. Tanzil-ur-Rahman, C.J. at page 51 of the judgment, which read as under:

"55. As to interest, Pakistan's Constitution, 1956 provides that the State shall endeavour to eliminate Riba as early as possible (Art.28-F), but no effort was made to realize that objective. In 1962 Constitution, it was, again, provided in the principles of policy (No.18) that Riba (usury) should be eliminated. Similar provision was again made in the Constitution of 1973, (Art.38-F). "

The learned Attorney General Mr. Khalid Javed Khan appeared and reiterated the objection regarding the jurisdiction of Federal Shariat Court on the lines it was earlier raised before the Supreme Court by Mr. Kakhdoom Ali Khan, the then Attorney General for

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Pakistan. Mr. Salman Akram Raja, the counsel of State Bank of Pakistan also reiterated the same objections.

18. Mr. Anwar Mansoor Khan, Senior Advocate Supreme Court appeared as *amicus curiae* in this case. He assisted the Court on the point of jurisdiction, i.e., whether Federal Shariat Court has jurisdiction to hear and decide this matter or not, as this point was raised primarily by Mr. Makhdoom Ali Khan, the then Attorney General for Pakistan. Mr. Anwar Mansoor Khan stressed on the fundamental provisions of the Constitution of Islamic Republic of Pakistan, 1973, which highlight the Islamic characteristics of the Constitution and the State of Pakistan. He reiterated the opening para of the preamble, which states as under:

“Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;

Mr. Anwar Mansoor Khan read out another para from the preamble, which reads as follow:

“Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;”

He related the aforesaid paragraphs of the preamble with the Article 2A of the Constitution. After reading the Article 2A, he drew the attention of this Court towards an annexure of the Constitution

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which contained the Objective Resolution, which clearly and undoubtedly outlined the raison d'être of the Constitution of Pakistan by its constituent Assembly, which is wholly and solely Islamic. Mr. Anwar Mansoor Khan stressed upon the following paras of the Objective Resolution:

"Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set-out in the Holy Quran and the Sunnah;"

After that he explained in the light of Article 203B(c) what does law mean for Federal Shariat Court? He read out Article 203B(c), which states:

203B. In this Chapter, unless there is anything repugnant in the subject or context,--

(c) "law" includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal or, until the expiration of [ten] years from the commencement of this Chapter, any fiscal law or any law relating to the

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levy and collection of taxes and fees or banking or insurance practice and procedure;

On the basis of this Article, he forwarded the arguments that any law whatsoever its scope may be, except the Constitution, comes under the jurisdiction of Federal Shariat Court to examine it on the touchstone of Holy Quran and Sunnah whether that law is against the Injunctions of Islam or not. He related his arguments with the fact that the petitioners have challenged certain law(s). According to the petitioners the impugned law(s) are against the Injunctions of Islam.

After that he read out Article 203D, which reads as follow:

“203D. (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

(A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:

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- (a) the reasons for its holding that opinion; and
- (b) the extent to which such law or provision is so repugnant;

and specify the day on which the decision shall take effect

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam,

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.”

Reading the Article stressing upon a phrase of Article (203D), which says “the question whether or not any law or provision of law is repugnant to the Injunctions of Islam” he made an argument that the Federal Shariat Court has full and complete jurisdiction to hear and decide these petitions. He drew the attention of this Court that initially there were certain restrictions upon the jurisdiction of Federal Shariat Court related to Muslim Personal Law, and until the expiration of 10 years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or

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insurance practice and procedure. These limitations are mentioned in Article 203B(c) which was incorporated in the Constitution in 1980 through the Constitution Amendment Order, 1980 (P.O. No.1 of 1980), Article 3, for the “existing Chapter 3A” (w.e.f. 26th May, 1980). Hence, the limitation for barring the jurisdiction of Federal Shariat Court on certain areas mentioned above ended after 10 years commencing from 1980 ending in 1990 and now Federal Shariat Court has full jurisdiction over the fiscal laws also to analyze them at the touchstone of Islamic injunctions, i.e., the Holy Quran and Sunnah of the Holy Prophet (SAW).

19. After making all these arguments, he made it a point that the jurisdiction over the matter to decide it in accordance with Article 203D(2), the Hon’ble Shariat Appellate Bench of the Supreme Court under its Shariat Review Jurisdiction decided the matter and remitted it back for its determination afresh. In support of his arguments, he read out para-19 of the Review Order, which is reproduced hereunder:

“Resultantly, Civil Shariat Review Petition No.1 of 2000 filed by the United Bank Ltd. is allowed, the judgment, dated 23rd December, 1999 passed by the Shariat Appellate Bench of this Court in Shariat Appeals Nos.11 to 19 of 1992 and the judgment, dated 14th November, 1991 of the Federal Shariat Court passed in Shariat Petitions Nos.42-I + 45-I of 1991 etc. are set aside and the cases are remitted to

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the Federal Shariat Court for determination afresh in the light of the contentions of the parties noted above and the observations made which are germane to the controversy. Besides the points raised before this Court, the parties would be at liberty to raise any other issue relevant to these cases and the Federal Shariat Court may also, on its own motion, take into consideration any other aspect which may arise or may be found relevant for determination of the issues involved herein."

20. He made it a point that remitting the matter back to the Federal Shariat Court after recording all the contentions of the parties clearly means that the Federal Shariat Court has jurisdiction over this matter to hear and decide; otherwise the Hon'ble Shariat Appellate Bench could have decided this question of jurisdiction when was raised before it.

21. Dr. Zaheer-ud-Babar Awan, Senior Advocate Supreme Court also appeared as *amicus curiae* in this case. He made arguments on the point of jurisdiction, i.e., whether the Federal Shariat Court has jurisdiction to hear and decide this matter or not? Dr. Babar Awan unequivocally stated that Federal Shariat Court has complete and exclusive jurisdiction to adjudicate upon this issue. It has exclusive power in the Constitution, which no other court has to declare any law whether is it in accordance with the Injunctions of Islam as laid down

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in Holy Quran and Sunnah or not. For the reasons stated below, he stated that constitutionally the decisions of the Federal Shariat Court has binding force in them.

He was also of the view that the judgment of the Shariat Appellate Bench was never set aside by the Review Order, rather the judgment of the Shariat Appellate Bench was upheld by the Hon'ble Supreme Court while deciding the Review Petition in the form and manner, it was decided. Dr. Babar Awan also read out the relevant paragraphs of the preamble alongwith the Article 2A of the Constitution to highlight and to elucidate the meanings and importance of phrase “the Islamic Injunctions” in the Constitution. He also relied upon Article 227 of the Constitution, which requires from a government to bring all laws in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah. Article 227(1) reads as follows:

“227. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such injunctions.”

He placed Article 203D(1) and 203D(1A) in juxtaposition to Article 227 (1) to show that there lies no ambiguity, whatsoever, regarding jurisdiction of Federal Shariat Court to examine and decide whether the laws or the provisions of any law, under challenge before

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this Court are repugnant to the injunctions of Islam as laid down in Holy Quran and Sunnah of the Holy Prophet (PBUH) or not. He read out Articles 203D(1) and (1A), which are as follows:

“203D. (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet (SAW), hereinafter referred to as the Injunctions of Islam.

(1A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List or to the Provincial Government in the case of a law with respect to a matter not enumerated in the Federal Legislative List, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.”

According to him while deciding the matter, this Court has to keep in mind that Islam is the founding principle of the Constitution and the State.

22. We have heard the arguments on this point forwarded by learned counsel of the petitioners as well as the arguments given by two amicus curiae mentioned in this case. The question regarding the limitation on the jurisdiction of Federal Shariat Court on the same lines and grounds was raised earlier in different cases but the Shariat

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Appellate Bench of the Supreme Court finally decided the matter by holding that the Federal Sharait Court has complete jurisdiction to adjudicate upon such matters, i.e., the Federal Shariat Court has jurisdiction to examine and review any law on the touchstone of the Injunctions of Islam in the light of the Quran and the Sunnah and to decide whether such law is repugnant to the Injunctions of Islam or not, irrespective of the fact if any law or the provision of any law is linked with any Article of the Constitution.

23. This issue of jurisdiction on these lines first came up in case titled GOVERNMENT OF N.-W.F.P. THROUGH SECRETARY, LAW DEPARTMENT Vs. Malik SAID KAMAL SHAH [PLD 1986 Supreme Court 360]. In this case an indirect inferential bar was pleaded deduced from some provisions of the Constitution like Articles 269, 268(2) and 8(3). It was pleaded that the Federal Shariat Court has no jurisdiction to adjudicate upon the matter on the jurisdiction that the provisions of law, which are under examination of the Federal Shariat Court through Shariat Petitions have constitutional protection, hence, the jurisdiction of Federal Shariat Court is barred. Upon this plea, it was held by the Federal Shariat Court that:

"The question arises : can the Court declare anything invalid or bad which is declared valid by the Constitution? The answer to this question must be in the negative. But here the Court is confronted with another difficulty which to say the least is

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insurmountable. It cannot declare any provision of the Constitution as repugnant to Islamic Injunction. Any declaration of repugnancy with Shariah of the provisions of law placing ceiling on ownership or reducing it, would amount to declaration of those Constitutional provisions as bad which declare those laws either valid or untouchable."

[PLD 1986 SC 360 Page 465]

However, the Shariat Appellate Bench held that the provisions of the Constitution themselves are immune from scrutiny of the Federal Shariat Court and not the laws made on the authority of any provision of the Constitution. The relevant portion of the judgments at page-466, which is as follows:

"We do not think that any such bar in fact exists so far as the new Constitutional dispensation is concerned. An entirely new power was conferred on the Specified Courts or benches thereof. A test of repugnancy i.e. Injunctions of Islam was prescribed. This empowerment had its own inhibitions and limitations, and, but for these, it transcended all constitutional protections and safeguards. For example all laws, but not the Constitution, Muslim Personal Law, any law relating to the procedure of any Court or Tribunal" or, any fiscal law or law relating to the levy and collection of taxes and fee or banking or insurance practice and procedure" could be tested on this standard "notwithstanding anything contained in the Constitution". To apply this test of repugnancy to the Constitution or a provision thereof is one thing and to apply this test to any other law, validated, continued or protected under the Constitution is another. The first is prohibited, the second is not."

[PLD 1986 SC 360 ref:/page-660]

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24. In another case titled NUSRAT BAIQ MIRZA Vs. GOVERNMENT OF PAKISTAN and another [PLD 1991 Supreme Court 509], the relevant portion of the judgments as follows:

"We notice that the Federal Shariat Court in the judgment under appeal has clearly held that "the impugned memorandum fell in the category of usage having the force of law and therefore it could be considered by this Court under Article 203-D" but the main reason given by the learned Federal Shariat Court for rejecting the petition of the appellant was that the impugned rules and memorandum were protected under Art.27(1) of the Constitution. This view of the Federal Shariat Court, as mentioned earlier, cannot be upheld in view of the judgment of this Court quoted above. Even if it is proved that the Rules and Memorandum under consideration were framed under the authority of Article 27(1) of the Constitution, they cannot be held to be the provisions of the Constitution itself and their examination in the light of the Injunctions of Islam does not amount to examining a provision of the Constitution. We, therefore, hold that the Federal Shariat Court has the jurisdiction to entertain the petition of the appellant under Article 203-D of the Constitution and has the jurisdiction to decide whether or not the impugned laws are repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah." [PLD 1991 Shariat Appellate Bench Supreme Court 509 ref:/p. 513]

[Emphasis added]

25. The same question was again discussed in the case of Qazalbash Waqf and others Vs. Chief Land Commissioner, Punjab, Lahore and others [PLD 1990 Supreme Court 99] and it was again found that in view of the non obstante clause appearing in the Art.203-A the laws promulgated under or protected by any provision of the

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Constitution cannot be given the status of the "Constitution" itself as contemplated in Art. 203-C. Hence they are not immune from their examination on the touchstone of the Holy Quran and Sunnah. In this case, it was held at page-138:

"The learned counsel appearing for the appellants have generally argued that non-obstante clause in Chapter 3-A should be given its full effect so as to subordinate every other provision of the Constitution and the limitations on the jurisdiction, if any, should be read within the provisions of Chapter 3-A and not outside it. The law brought for examination under Chapter 3-A was the Regulation and the Act and not any provision of the Constitution and, therefore, the limitation contained in clause (c) of Article 203-B does not get attracted, if indirectly constitutional provision gets affected. What is authorised directly and expressly cannot be denied or neglected on inference or indirectly."

"It is correct as observed in Said Kamal's case (PLD 1986 S C.360) that the Petitions from which the present Appeals have arisen do not expose any constitutional provision as such to the test of repugnancy or invalidity as is provided for in Chapter 3-A. The, provisions of the Regulation and the Act are under challenge and they qualify as law as defined in Chapter 3-A. It is true that if the material provisions of the Regulation and the Act are declared to be repugnant to the injunctions of Islam in the manner as the appellants seek them, the consequences under Article 203-D, clause (3) sub-clause (b) may have in substance the effect of contravening what is prescribed in Article 253. But then the question is whether the expression \"law\" in clause (2) of Article 253 has that extensive connotation as to include judicial pronouncements as well?"

26. Mr. Salman Akram Raja while arguing pointed out the provisions of Articles 29, 30(2) 38(f) 81(c) and 121(c) of the Constitution

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to be relevant in support of his argument, in addition to that he also referred to Article 161 which contains mentioning of word “interest” in it and Article 260 of the Constitution wherein the definition of the expression “pension is mentioned” which contains the word “interest” in it. The first Article upon which these arguments regarding the bar on the jurisdiction of Federal Shariat Court was relied upon is 81(c) of the Constitution, which sates as under:

“81(c) all debt charges for which the Federal Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Federal Consolidated Fund”

The Article 81 of the Constitution is related to the expenditure which can be charged from the Federal Consolidated Fund. The term “interest” as mentioned in this Article does not protect the charging of interest by the banks in the country.

The second Article mentioned is Article 121(c), which states as follows:

121. (c) all debt charges for which the Provincial Government is liable, including interest, sinking fund charges, the repayment or amortisation of capital, and other expenditure in connection with the raising of loans, and the service and redemption of debt on the security of the Provincial Consolidated Fund;”

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This Article is in verbatims to Article 81(c). The only difference is that it is related to the Provincial Consolidated Fund like Article 81(c) here also the term “interest” is not used in any general sense which does not legitimize the charging of interest by the bank all across the country.

The fourth Article he referred to in support of his arguments is Article 161. The whole Article 161(1)&(2) does not contain the word “interest” in it. However, an explanation to clause (2) of Article 161 does contain the word “interest” in it in the following manner:

161. Explanation.—For the purposes of this clause "net profits" shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydro-electric station at a rate to be determined by the Council of Common Interests, the operating expenses of the station, which shall include any sums payable as taxes, duties, interest or return on investment, and depreciations and element of obsolescence, and over-heads, and provision for reserves.

[Emphasis added]

In this explanation the word “interest” is written before a disjunctive “or” as “interest or return on investment”. Even here the word “interest” does not appear in any binding sense.

Lastly, he relied upon Article 260 of the Constitution. Article 260 contains definition of some expressions which are used in the Constitution; one of them is the term pension which states as follows:

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"pension" means a pension, whether contributory or not, of any kind whatsoever payable to, or in respect of, any person and includes retired pay so payable, a gratuity so payable, and any sum or sums so payable by way of the return, with or without interest thereon or any addition thereto, of subscriptions to a provident fund;

[Emphasis added]

27. Mere reading of this expression shows us that the charging of interest upon the payable sums is optional it is not compulsory; hence, it is not binding in every situation. Hence, its applicability cannot be stretched to provide the ground to legitimize interest in the banking system of Pakistan.

28. We have examined all the Articles mentioned hereinabove and are of the view that they put no bar or restriction upon the jurisdiction of Federal Shariat Court to examine the laws challenged by the petitioners through their petitions only on the basis that the term "interest" is used in these articles of the Constitution. However, the mentioning of Article 38(f) here is out of the place because it talks about the elimination of Riba from the country as early as possible. The presence of Article 38(f) in the Constitution of Pakistan is all the more reason provided by the Constitution to the Federal Shariat Court to adjudicate the petitions pending before it challenging the existence of Riba interest in various laws. Moreover the counsel of the petitioners

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categorically stated that they have not filed the petitions on the basis of

Article 38(f). We have observed following points are of due relevance:

i) Firstly, none of the petitioners have invoked the jurisdiction of this Court on the point of violation of a principle of policy. On the contrary, all the petitioners have invoked the jurisdiction of Federal Shariat Court by challenging some laws or the provisions of law on the ground that these laws or their provisions are against the Injunctions of Islam as stated in Quran and Sunnah. In the light of Chapter 3A of the Constitution, it is the exclusive jurisdiction of the Federal Shariat Court to be exercised in such matter. Upon this point, Articles 203D and 203DD alongwith Article 203(f) are very much clear and there is plethora of judgments of the Apex Court regarding the exclusive jurisdiction of Federal Shariat Court in this regard. This exclusivity of jurisdiction is categorically mentioned in Article 203(G) of the Constitution, which states as follows:

“203G. Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court.

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Decision of Court binding on High
Court and courts subordinate to it”

29. By virtue of provisions of Article 203(G) of the Constitution, the Supreme Court or even a High Court had no jurisdiction to test repugnancy or contrariety of any existing law or any legal provision to the Injunctions of Islam as laid down in the Holy Quran and Sunnah and such jurisdiction is vested exclusively in the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court. The Apex Court held this principle in its judgment reported as ZAHID REHMAN Vs. The State [PLD 2015 SC 77] as follows:

“speak of the Injunctions of Islam and it must never be lost sight of that by virtue of the provisions of Article 203G of the Constitution of the Islamic Republic of Pakistan, 1973 this Court, or even a High Court, has no jurisdiction to test repugnancy or contrariety of any existing law or legal provision to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah and such jurisdiction vests exclusively in the Federal Shariat Court and the Shariat Appellate Bench of this Court”

30. This exclusivity of Jurisdiction to examine as to whether a provision of law is repugnant to injunctions of Islam or not vests in the Federal Shariat Court. This point has been consistently examined and reviewed as such in the light of Article 203(G) of the Constitution in many other Judgments of the Honorable Supreme Court, High Courts and of Federal Shariat Court like *Saeed Ahmad Malik versus Shamim Akhtar and Others (1999 SCMR 1558)*, *Ali Azhar versus Arzoo Fatima (PLD 2022 Sindh 1)* and *Mian Abdur Razzaq Aamir and others versus*

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Federal Government of Islamic Republic of Pakistan and others (PLD 2011 FSC 1).

31. Hence, the question raised by the counsel of the Federal Government is out of the place and baseless.

ii) Secondly, when any relief is sought by a petitioner on some others provision of law or constitution, the solution of which is coincidentally in line with any principles of policy, it does not mean that the petitioner is seeking relief on the basis of a principles of policy, rather in such a situation the petitioner can make a petition and may rely on any principles of policy, which is in line with the relief he sought. The petitioners have challenged some laws on the basis of Islamic Injunctions, seeking declaration that these provisions of law are against the Injunctions of Islam as laid down in Holy Quran and Sunnah (SAW) because they fall within the definition of Riba, which is prohibited in Islam. Hence, the prayer of the petitioners in their petitions cannot be and should not be viewed as a prayer for only the implementation of a non-justiceable right in the Constitution. This perception is completely wrong and holds no weightage.

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iii) Thirdly, although the principles of policy are non-justiciable rights, however, each principles of policy mentioned in the Constitution is binding upon the government and it is the responsibility of each organ and authority of the State to act in accordance with these principles of policy so is the case of Article 38(f) by virtue of which Riba had to be eliminated as early as possible from Pakistan. The Government is bound to follow the principles of policy as elaborated in several judgments. Reference in this context is placed on the case of 2015 SCMR 1739, 2012 SCMR 779, PLD 2016 SC 189, 2005 SCMR 100, PLD 2015 SC 275 and PLD 1984 SC 439.

iv) Fourthly, it is the intention of the framers of the Constitution that the Government is supposed to act upon the principles of policy stated in Chapter-2 of the Constitution progressively. In order to maintain a check upon the working of the government, Article 29(3) was inserted by virtue of which the President of Islamic Republic of Pakistan in relation to the affairs of Federation and the Governor of each Province, in relation to the affairs of the Province are bound to submit an annual report on the observance and implementation of the principles of

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policy. This provision was inserted in the Constitution by its framers to keep the Government at course in accordance with the principles of policy stated in the Constitution.

Article 29(3) of the Constitution states as follows:

"29. (3) In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each Province in relation to the affairs of his Province, shall cause to be prepared and laid before [each House of Majlis-e-Shoora (Parliament)] or, as the case may be, the Provincial Assembly, a report on the observance and implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the National Assembly [and the Senate] or, as the case may be, the Provincial Assembly, for discussion on such report."

Hence, if Article 38(f) read in juxtaposition with Article 29(3) then the making of sporadic reference to Article 38(f) do not render the petitions incompetent as claimed.

32. During the course of arguments, this aspect of principles of policy was pointed out to the Attorney General for Pakistan specifically with regard to Article 38(f) and also with regard to all the other principles of policy in response to which the Attorney General Mr. Khalid Javed Khan professionally responded to the query and submitted that he will communicate this observation of the Court to the President of Pakistan so that this aspect of the Constitution should be observed and acted upon accordingly in future.

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v) Fifthly, Article 38(f) is unique in its construction and intention. It is time bound when it says that "the State shall eliminate Riba as early as possible" unlike all other principles of policy all of which are open ended as no time limit is placed in any sense on any of them except on Article 38(f). This does not mean that the Government can take a plea in perpetuity that it is indulged in such exercise of elimination of Riba. On the contrary, the fact is that despite the lapse of almost half a century, no concrete steps have so far been taken by the Government to eliminate Riba from Pakistan and the Government is apparently indulged in a never ending exercise of eliminating Riba from the country. If this aspect of Article 38(f) is read in juxtaposition with the responsibilities placed on the organ and the authority of the State mentioned in Article 29 of the Constitution, the question can be asked from the relevant organs and authorities of the State.

vi) Sixthly, the petitions pending before this Court have rightly invoked the jurisdiction of this Court and the final disposal of these petitions will be an auxiliary step in the direction to achieve the ultimate goal of elimination of Riba from the country as set out in Article 38(f) of the principles of policy.

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The goal of elimination of Riba is set out constitutionally;
hence, the outcome of these petitions in either case will help
the Government of Pakistan in achieving this goal.

33. In the light of above-mentioned arguments, the question which was formulated by us to decide the issue of objection raised by the respondent regarding the jurisdiction of Federal Shariat Court, i.e., whether the Federal Shariat Court has jurisdiction to adjudicate upon the matter as prayed for in different Shariat Petitions pending adjudication before it. We concluded to hold without any hesitation that the Federal Shariat Court has exclusive jurisdiction to decide these matters; hence, the petitions are maintainable before us.

Determination Point-II

What is 'Riba' according to injunctions of Islam in the light of Holy Qur'an and Sunnah of the Holy Prophet (ﷺ) and how it is defined by the Muslim jurists and scholars in the light of Holy Qur'an and Sunnah?

The counsel for UBL raised several questions before the Honorable Supreme Court of Pakistan while arguing the Review Petition and the honorable Supreme Court noted these questions in paragraph 6 of the Remand Order, one of them is:

"The term 'Riba' has not been defined in the Holy Qur'an and all that has been held in the judgment under review is based on Analogy / Qiyas (قياس)."

34. To resolve and re-determine this question, we have

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formulated the above mentioned question.

So far as the arguments **advanced** in the review petition, by the Counsel of M/s UBL, that the term '*Riba*' has not been defined in the Holy *Qur'an*? The argument is too weak and **erroneous** *per se*. There are many fundamental terms used in the Holy *Qur'an* which have never been 'expressly defined' therein. The Quran is not a dictionary or legal lexicon. Amongst all, the best example is word *Salat* (صلوة/صلوة), the recognized pillar⁹ of faith and the religion¹⁰, **revealed** in the Holy *Qur'an* in numerous verses. Without its observation, the faith of a Muslim remains incomplete; but it is not defined in the Holy *Qur'an*.

35. It is defined by the Prophet (ﷺ) and understood by us through *ahadith* and *Sunnah al Nabaviyah* (سننه نبويه) and practice of His Companions *i.e.* *Sahaba*(رضي الله عنه). *Qiyas* (قياس) or analogy done by Islamic jurists for any *Hukam-i-Shari* is always based on *Qur'an* and *Sunnah*, and the attempt to define the term '*Riba*' by the Muslim Jurists and

⁹ *Mishkat al-Masabih* 4: It is narrated that the Prophet ﷺ said: "Islam is based on five things: the testimony that there is no god but Allah, that Muhammad is His Servant and Messenger, the observance of the *Salah* (prayer), the payment of *zakat*, the Pilgrimage, and the fast during Ramadan." [Sahih al-Bukhari & Muslim]

¹⁰ Sahih Muslim, Book 1, Hadith 20:

It is narrated that the Prophet ﷺ said: "(The superstructure of) Islam is raised on five (pillars), *i.e.* Allah (alone) should be worshipped, and (all other gods) beside Him should be (categorically) denied. Establishment of *Salah* (prayer), the payment of *Zakat*, Pilgrimage (to the House of Allah), and the Fast of Ramadan (are the other obligatory acts besides the belief in the oneness of Allah and denial of all other gods)."

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scholars is no exception to this rule of Islamic Jurisprudence.

36. The meaning of the term '*Riba*' and how it is defined in the *Qur'an* and *Sunnah* has been very elaborately explained and discussed in the judgment of the Federal *Shari'at* Court from page 60 to page 70 in general. The counsel of the petitioner, [during course of arguments](#) before us, categorically stated that he relied on the points discussed earlier and dilated upon by the Federal *Shari'at* Court and which were elaborately mentioned in the judgment. However, to comply with the directions of the Honorable Shariat Appellate Bench of the Supreme Court for re-determination of the issues afresh, we have elaborated the term '*Riba*' as it appears in the *Qur'an* and *Sunnah*, in addition to the fact regarding how it already has been explained by the Muslim Jurists, *muhadithin* and *mufasareen* etc. over the centuries. We have gone through how it is defined and perceived by the institutions of the world which are involved in the promotion and adoption of Islamic Banking or Islamic Finance because these institutions are practicing interest-free or *Riba*-Free banking worldwide.

'*Riba*' is undisputedly, categorically, explicitly and absolutely prohibited by *Nass-i-Qati*, i.e., *Qur'an* and *Sunnah*. There is consensus and unanimity amongst the scholars that the word '*Riba*' means to increase, to grow, and to rise.

37. To know the literal meaning of this word some of the

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Standard Arabic dictionaries are referred herein below:

1. *Ibn-e-Fāris*¹¹ defined 'Riba' as:

«ربی یا ربا: یدل علی اصل واحد و هو الزيادة والنماء والعلو.»¹²

[دونوں الفاظ کا اصل ایک ہی ہے جبکہ معنی: 'زیادہ ہونا، بڑھنا اور بلند ہونا ہیں']

2. *Al-Jawhari*¹³ explained the literal meaning of the word 'Riba':

«رَبَا الشَّيْءٌ يَرْبُو رَبْوًا، أَيْ زَادَ وَالرَّابِيَّةُ: الرَّبْوُ، وَهُوَ مَا ارْتَفَعَ مِنَ الْأَرْضِ.»¹⁴

[کسی چیز کا بڑھنا۔ الرَّبْوُ ایسی جگہ جو (عام) سطح زمین سے بلند ہو]

3. *Al-Fayyumi*¹⁵ explain the meaning of the root word of 'Riba' in his book¹⁶ as:

«(رَبْ وَ) : الرَّبَا الْفَضْلُ وَالرَّيَادَةُ.»¹⁷

[رَبَا، بڑھنے ہوئے اور زائد کو کہا جاتا ہے۔]

38. After noting the literal meaning of the word 'Riba' the technical meaning in which this word 'Riba' is used in the *Qur'an* is more important to reach at a just conclusion of the case. The meanings

¹¹ *Ibn-e-Fāris*, Abu'l-Husayn Ahmad bin Faris bin Zakariyya bin Muhammad al-Razi al-Qazwini al-Hamadhani, (308–395H/920–1004AD) recognized as a specialist in lexicography, also studied poetry, grammar, Quranic exegesis (*tafsīr*) and Jurisprudence (*Fiqh*).

¹² ابن فارس، أبوالحسين أحمد بن فارس بن ذكرياء، معجم مقاييس اللغة، دارالفکر للطباعة والنشر والتوزيع، 12 م، تحقيق وضبط: عبدالسلام محمد هارون، دون طبعة، ج 2، ص 483. 1399هـ/1979م.

¹³ *al-Jawahri*, Abu Nasr Isma'il ibn Hammad al-Jawahri, also spelled *al-Jauhari* (d. 393H) was a Turkic lexicographer and the author of a notable Arabic dictionary: "The Crown of Language and the Correct Arabic" was his magnum opus dictionary of Arabic; often abbreviated as 'The Correct Language', and, the *الصحاب* in the language, which contains about 40,000 entries.

¹⁴ الجوهري، أبو نصر إسماعيل بن حماد الفارابي، منتخب من صحاح الجوهري، فصل [ربا]، ط إلكترونية، الرابط: <https://al-maktaba.org/book/28100/1778>

¹⁵ *al-Fayyūmī Al-Hamawi*, Abu'l Abbas Ahmed bin Muhammad bin Ali, (d. 450H/1058AD).

¹⁶ Being only a technical dictionary of the Arabic language with a focus on explaining technical words used in the *Fiqh*.

¹⁷ الفیوی الحموی، أبو العباس أحمد بن محمد بن علی، المصاح المنیر فی غریب الشرح الكبير، فصل [رب و]، ج 1، ص 217، ط إلكترونية. الرابط: <https://al-maktaba.org/book/12145/1096>

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of the term 'Riba' as explained by eminent exegesis writers of the *Qur'an (mufasareen)* and how it has been defined by the jurists over the centuries is necessary. This stands explained in the following paragraphs, as the different *mufassirin* and jurists have defined the term 'Riba' as follows:

1. *Al-Mawardi*¹⁸ in his exegesis defined the 'Riba' as:

«الربا هو الزيادة على مقدار الدين لفترة الأجل.»¹⁹

['ربا، قرضٌ كَمِّ مَقْدَارِ مِمْهُلَةِ دِينٍ كَبَدَ لِمَنْ بُرْهُونَى كَرَنَاهُ -]

Riba' is to increase the amount of loan in return for giving respite.

2. In exegesis of *Imam al-Nasafi*²⁰, the term 'Riba' defined as under:

«هو فضل مال خال عن العوض في معاوضة مال بمال.»²¹

[مالٌ كَبَدَ لِمَالٍ بِرُهُونَى جُوْكِى بَدَلَ سَخَالِي هُوْ]

In exchange for wealth, there would be an increase in wealth which is devoid of any reward.

3. According to *Ibn-e-Atiya al-Andalusi*²², 'Riba' is:

«الربا هو الزيادة، وهو مأخوذ من ربا يربو. إذا نما وزاد على ما كان، وغالبة ما

¹⁸ *al-Mawardi*, *Abu'l Hassan Ali bin Muhammad Bin Habib al-Basri*, (d. 450H/1058AD), jurist, also wrote the most significant classical theoretical explanation of public law in relation to political theory: 'الأحكام السلطانية' 'Ordinances of Government'.

¹⁹ الماوردي، أبو الحسن علي بن محمد بن حبيب البصري، النكت والعيون تفسير الماوردي، دار الكتب العلمية، بيروت، لبنان، ج ١، دون طبعة وتاريخ، ص 347، طبعة إلكترونية بالرابط:

Electronic version available at: <https://al-maktaba.org/book/33866/487>

²⁰ *al-Nasafi*, *Imam Abu'l Barakat Abdullah bin Ahmad bin Mahmud Hafiz-ud-Din*, (d. 710/1310AD), famous Muslim jurist who wrote some one hundred books on such diverse topics as *Fiqh*, *Tafsir* and etc. He wrote a short, succinct and accurate summary of the authentic Muslim beliefs in his popular work: *شرح العقائد للنسفي*.

²¹ النسفي، الإمام أبو البركات عبدالله بن أحمد بن محمود حافظ الدين، مدارك التنزيل وحقائق التأويل، ت: زكريا عميرات، دار الكتب العلمية، بيروت، لبنان، 2014م، ج ١، ص 151، ردمك: 978 2 74515850 5 ISBN 978 2 74515850 5

²² *Ibn-e-Atiya al-Andalusi*, *Abdul Haq ibn Ghalib* (d. 546H/1147). *Ibn-e-Khaldun* described: "He summed up all Qur'anic commentaries and endeavoured to include only the most accurate."

كانت العرب تفعله من قوتها للغرم أتقضي أم تربى؟ فكان الغريم يزيد في
عدد المال۔»²³

’ربا‘ بڑھوتی ہے۔ یہ لفظ (ربا یربو) سے مانو ہے۔ غالباً اس کا اطلاق اس طرح سے ہوتا
ہے جیسے کوئی قرض دینے والا قرض دار کو کہہ کر کیا تم قرض ادا کرو گے یا تمہارے
ذمے مال بڑھایا جائے؟ پس مال کی مقدار میں بڑھوتی کر دیتا، اور مطالبة کرنے سے
رک جاتا۔

It is like a lender asking the borrower; either pay the loan or increase your liability. So the owner of the wealth would increase the amount of wealth, and stop demanding. So the lender would increase in the amount of loan and present hiself from demanding of the loan.

4. Al-Zajaj²⁴, in his *Tafsir* defined as:

«كل قرض يؤخذ به أكثر منه أو يجرّ منفعة»²⁵
هر قرض جس پر زیادہ مال لیا جائے یا جس پر نفع لیا جائے۔

Every loan on which more wealth is taken or on which profit is taken.

5. Imam at-Tabrij²⁶ defines ‘Riba’ in his *tafsir* as:

«وحرم الربا، يعني الزيادة التي يزداد رب المال بسبب زيادته غريميه في
الأجل، وتأخير دينه عليه»²⁷
’ربا‘ ایسی بڑھوتی ہے جسے مالک رقم، پیسہ یا رُوغیرہ قرض لینے والے کے ذمہ مہلت دینے میں
قرض کی تاخیری ادا یکلی پر لگاتا ہے۔

²³ الأندلسى، القاضى أبو محمد عبد الحق بن غالب بن عطية، المحرر الوجيز فى تفسير الكتاب العزيز تفسير ابن عطية، ت: عبدالسلام عبدالشافى محمد، دار الكتب العلمية، بيروت، لبنان، ط١، ١٤٢٢هـ/٢٠٠١م، ج١، ص ٣٧١، ردمك:

ISBN 2-7451-3211-3

²⁴ Al-Zajaj, Abu Ishaq Ibrahim bin As-Ssari bin Sahal al-Baghdadi, (d. 311H/927), was a grammarian of Basrah, a scholar of philology and theology, and a favourite at the Abbāsid court.

²⁵ الزجاج، أبو إسحاق إبراهيم بن سهل البغدادي، معانى القرآن وأعرابه، ت: عبدالجليل عبده شلبي، عالم الكتب، بيروت، لبنان، ط١، ١٤٠٨هـ/١٩٨٨م، ج٤، ص ١٨٧

²⁶ al-Tabari, Abū Ja'far Muḥammad bin Jarīr bin Yazīd (839–923CE), was an influential scholar, historian and commentator on the Qur'an. Beside his famous Qur'anic commentary, *Tafsir al-Tabari*, he wrote on such subjects as world history, poetry, lexicography, grammar, ethics, mathematics, and medicine.

²⁷ الطبرى، أبو جعفر محمد بن جرير، تفسير الطبرى جامع البيان عن تأویل آى القرآن، ت: محمود محمد شاكر، مكتبة ابن تيمية، القاهرة، ط٢، دون تاريخ، ج٦، ص ١٣

'Riba' is an increase that the owner of the money lends to the borrower on deferment of the loan.

6. *Imam As-Sarkhasi*²⁸ defined 'Riba' in his famous book as under:

«فَأَمَّا الرِّبَا فِي اللُّغَةِ: هُوَ الرِّيَادَةُ. يُقَالُ: أَرْبَى فُلَانٌ عَلَى فُلَانٍ، أَيْ رَازَدَ عَلَيْهِ. وَيُسَمَّى الْمَكَانُ الْمُرْتَفِعُ رَبْوَةً لِرِيَادَةِ فِيهِ عَلَى سَائِرِ الْأُمُكَنَّةِ. وَفِي الشَّرِيعَةِ: الرِّبَا: هُوَ الْفَضْلُ الْخَالِي عَنِ الْعَوْضِ الْمَشْرُوطِ فِي الْبَيْعِ»²⁹

پس 'ربا' لغت میں بڑھوتی کو کہا جاتا ہے۔ اُربی فُلَانٌ عَلَى فُلَانٍ یعنی اس نے بڑھایا۔ اور بلند مکان کو دیگر مکانوں سے بلند ہونے کی وجہ سے رَبْوَة کہا جاتا ہے۔ اور شریعت میں ایسی بڑھوتی جو بیع کی شرط کے علاوہ ہو، اسے 'ربا' کہا جاتا ہے۔

'Riba' in Arabic literary meaning is 'addition'. It is said in Arabic that أَرْبَى فُلَانٌ عَلَى فُلَانٍ means he added or increased. Moreover, the raised ones among the houses are called 'Rabwah'. In Shari'ah perspective, such an increase which is in addition to the conditions of sale, is called 'Riba'.

7. *Ibn al-Arabi*³⁰ explained 'Riba' as:

«كَانُوا يَتَبَاعِيْعُونَ وَيَرْبُونَ، وَكَانَ الرِّبَا عِنْدَهُمْ مَعْرُوفًا، يُبَايِعُ الرَّجُلُ الرَّجُلَ إِلَى أَجَلٍ، فَإِذَا حَلَّ الْأَجَلُ قَالَ: أَتَقْضِي أُمْ ثُرِيٍّ؟ يَعْنِي أُمْ ثَرِيدِيَّنِي عَلَى مَالِي عَلَيْكَ وَأَصْبِرْ أَجَلًا آخَرَ. فَحَرَمَ اللَّهُ تَعَالَى الرِّبَا، وَهُوَ الرِّيَادَةُ»³¹

(اہل عرب) بیع اور ربا کے معاملات کیا کرتے تھے۔ ان کے نزدیک معروف ربا یہ تھا کہ کوئی شخص دوسرے کو ایک مقرر وقت تک قرض کا معاملہ کرتا۔ پس جب وہ وقت گزر جاتا تو وہ کہتا کہ کیا تم قرض ادا کرو گے یا تمہارے اوپر رقم بڑھادی جائے۔ یعنی کیا تم مجھے زیادہ رقم دو گے جس کے بدلے میں مہلت دے کر صبر کروں۔ پس اللہ پاک نے ربا کو حرام کر دیا اور ربا بڑھوتی ہے۔

(Arabs) used to deal with sale and usury. According to him, it was customary for a person to give a loan to another for a fixed

²⁸ As-Sarkhasi, Abu Bakar Muhammad bin Ahmed bin Abi Sahal al-Hanafi, (d. 483H/1090), was a Persian jurist and also an Islamic scholar of the Hanafi school of thought.

²⁹ السرخسي، أبو بكر محمد بن أبي سهل الحنفي، كتاب المبسوط في الفقه الحنفي، ت: أبو عبدالله محمد حسن إسماعيل الشافعي، دار الكتب العلمية، بيروت، لبنان، ط1، 1408هـ/1988م، ج11، ص 127

³⁰ Ibn al-'Arabi, Abū Bakr Muḥammad ibn 'Abdallāh, born in 468H/1076 and died in 543H/ 1148, was a Muslim Judge and scholar of Maliki law.

³¹ ابن العربي، أبو بكر محمد بن عبدالله، أحكام القرآن، ت: محمد عبد القادر عطاء، دار الكتب العلمية، بيروت، لبنان، ط1، 2013م، ج1، ص 189، ردمك: 6 ISBN: 978 2 74517974 6

period of time. So when that time passed, he would say, "Will you repay the loan or increase the amount on you?" That is, will you give me more wealth in return for which I will be patient by giving respite. So Allah forbade usury and (this) increase (forbidden).

8. *Ibn al-Arabi* further said that:

«الرِّبَا أَيْ: إِنَّمَا الزِّيَادَةُ عِنْدَ حُلُولِ الْأَجَلِ آخِرًا مِثْلُ أَصْلِ الشَّمَنِ فِي أَوَّلِ الْعَقْدِ؛ فَرَدَ اللَّهُ تَعَالَى عَلَيْهِمْ قَوْلَهُمْ، وَحَرَمَ مَا اعْتَقَدُوا حَلَالًا عَلَيْهِمْ، وَأُوْضَحَ أَنَّ الْأَجَلَ إِذَا حَلَّ وَلَمْ يَكُنْ عِنْدُهُ مَا يُؤَدِّي أَنْظِرَ إِلَى الْمَيْسَرَةِ تَحْفِيْفًا.»³²

ربا سے مراد وقت ختم ہونے پر نئی مہلت دے دینا جو اصل عقد کئے گئے رقم، جس میں بڑھائی جاتی ہے۔ اللہ پاک نے اس بڑھوتی کو حلال جانے والے لوگوں کے اس خیال کو رد کیا اور واضح کیا کہ جب مہلت ختم ہو جائے اور قرض دار کے ہاں ادائیگی کے لئے کچھ نہ ہو تو اس پر نرمی کرتے ہوئے آسان مدت تک مہلت دی جائے۔

'Riba' means giving a new respite at the end of time which is extended to the original contracted money. Allah, may He be glorified and exalted, rejected the idea of those who considered this increase as halal and clarified that when the respite is over and the debtor has nothing to pay, then he should be given a respite for an easy period.

9. *Allama Aini*³³ said:

«وَهُوَ فِي الشَّرْعِ: الزِّيَادَةُ عَلَى أَصْلِ الْمَالِ مِنْ غَيْرِ عَقْدِ تَبَاعَ، قَالَهُ أَبْنُ الْأَثِيرِ: وَقَالَ أَصْحَابَنَا: الرِّبَا فِضْلُ مَالٍ بِلَا عَوْضٍ فِي مُعَاوَضَةِ مَالٍ بِمَالٍ كَمَا إِذَا بَاعَ عَشْرَةَ دَرَاهِمٍ بِأَحَدِ عَشْرِ دَرَاهِمٍ، فَإِنَّ الدَّرْهَمَ، فِيهِ فَضْلٌ، وَلَيْسَ فِي مُقَابِلَهُ شَيْءٌ، وَهُوَ عَيْنُ الرِّبَا.»³⁴

شرعی معنی میں ربا ایسی بڑھوتی کو کہا جاتا ہے جو اصل مال پر ابتدائی عقد کے علاوہ لی جائے۔ یہ تعریف ابن الاشیر نے کی ہے۔ ہمارے علماء کہتے ہیں کہ: ربا زیادہ مال ہے جو کسی بدلتے کے

³² Ibid, p. 321

³³ *al-'Ayni*, *Abū Muḥammad Maḥmūd bin Aḥmad bin Mūsā Badr al-Dīn*; born in 762H/1360, died in 855H/1453.

³⁴ العینی، الإمام العلامة بدر الدين أبي محمد محمود بن أحمد، عمدة القاري شرح صحيح البخاري، ض: عبد الله محمود محمد عمر، دار الكتب العلمية، بيروت، لبنان، ط١، ١٤٢١ھ/٢٠٠١م، ج١١، ص ٢٨٤، ردمك:

بغیر مال پر مال کی صورت میں لیا جائے۔ جیسا کہ دس دراہم کو گیارہ دراہم میں بچنا کہ ایک دراہم اس میں زائد ہے، اور اس کے مقابلے میں کوئی چیز نہیں، اور یہ عین ربا ہے۔

In the Shari'ah, 'Riba' is an increase the initial contract. This is the definition given by Ibn al-Athir. Our scholars say: 'Riba' is increase in the principal amount which can be taken without any recompense. Like selling ten dirhams for eleven dirhams, that one dirham is more than that, and there is nothing to recompense that one Dirham so that is the exact 'Riba'.

10. *Imam al-Sana`ani*³⁵ defined 'Riba' as:

«الرِّبَا هُوَ الزِّيادةُ فِي الْمَالِ مِنْ الْعَيْرِ لَا فِي مُقَابَلَةٍ عِوْضٍ»³⁶
ربا مال میں ایسی زیادتی کو کہا جاتا ہے جس کے مقابلے میں کوئی عوض نہ ہو۔
'Riba' Mal is said to be an excess in which there is no consideration.

11. *Mullah Ali al-Qari*³⁷ said:

«الزَّائِدُ عَلَى رَأْسِ الْمَالِ قَالَ تَعَالَى: ﴿وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ﴾³⁸
وَلَأَنَّ الرِّبَا هُوَ الزِّيادةُ»³⁹
اصل مال پر بڑھوتی ربا ہے: ارشاد ہے: ﴿وَإِنْ تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ﴾ کیوں کہ ربا بڑھوتی ہی ہے۔

12. *Ibn 'Abidin*⁴⁰ explained 'Riba' as:

«هو الفضل الخالي عن العوض»⁴¹

³⁵ *al-Sana`ani*, Imam Muhammad bin Isma`il, (d. 1182H) was a prolific writer. And skilled jurist, firm in his adherence to Islam and the Sunnah, repudiating anything that opposed them.

³⁶ الصناعي، الإمام محمد بن إسماعيل الأمير اليماني، سبل السلام شرح بلوغ المرام من جمع أدلة الأحكام، ت: أبي عبدالرحمن عادل بن سعد، الكتاب العالمي للنشر، بيروت، لبنان، دون طبعة وتاريخ، ج 3، ص 52.

³⁷ *al-Qari*, Nur ad-Din Abu al-Hasan Ali bin Sultan Muhammad al-Hirawi (d. 1014H/1605), known as Mulla Ali al-Qari was an Islamic scholar. He is considered to be one of the masters of Hadith and imams of Fiqh, Qur'anic Commentary, Language, History in Hanafi circles.

³⁸ *Surah al-Baqarah*, 2: 279

³⁹ القاري، نور الدين أبو الحسن علي بن سلطان محمد الهروي، مرقاة المفاتيح شرح مشكاة المصايب، ت: جمال عيتاني، دار الكتب العلمية، بيروت، لبنان، 2021م، ج 3، ص 470، ردمك: 978-2-7451-7494-9

⁴⁰ *Ibn 'Abidin*, Muhammed Amin bin 'Umar bin 'Abd al-'Aziz bin Ahmad bin 'Abd ar-Rahim bin Najmuddin bin Muhammad Salahuddin al-Shami, (d. 1252/1836), known in the Indian subcontinent as al-Shami, was a prominent Islamic Jurist and scholar, considered the authority of Hanafi Fiqh / School of law. He was a state employee with the title of *Amin al-Fatwa*.

ایسا اضافہ جو کسی عوض کے سوا ہو۔

An increase without any compensation.

13. *al-Shirbīniy*⁴² defined as:

«عَقْدٌ عَلَى عِوَاضٍ مَخْصُوصٍ غَيْرِ مَعْلُومٍ التَّمَاثِلٍ فِي مِعْيَارٍ الشَّرْعِ حَالَةُ الْعُقْدِ
أَوْ مَعَ تَأْخِيرٍ فِي الْبَدَلَيْنِ أَوْ أَحَدِهِمَا»⁴³

کسی بدے کے عوض عقد کرنا جو شرعی معیار کے مطابق کسی مثل / بدے کے بغیر ہو یا بدالیں کی مابین
تأخیر ہو یادنوں میں سے ایک صورت ہو۔

Making a contract in exchange for an exchange without any similarity which is not according to the Shari'ah standard or delay between the exchanges or one of them.

39. There are 12 verses in the *Qur'an* which deal with the term 'Riba' which is relevant to this case. The term 'Riba' is used in *Surahs: al-Baqarah, Aal-e-Imran, al-Nisa* and *ar-Rum*. Sequence of the revelation of these verses (ترتیب نزولی) is different from the sequence in which they occur in the *Qur'an*. The sequence of their revelation is important to understand because the verse which declared complete prohibition of 'Riba' in all its forms and manifestation was revealed gradually. This aspect of gradualism (تدریج) or stepwise approach in imposing full prohibition of 'Riba' is explained below to understand that the prohibition of 'Riba' though categorically and explicitly mentioned in

⁴¹ ابن عابدین، محمد امین بن عمر بن عبد العزیز الدمشقی الحنفی، حاشیة رد المحتار على الدر المختار، المعروفة بحاشیة ابن عابدین، 21/5

⁴² *ash-Shirbīniy*, *Shamas ud Din Muhammad bin al-Khaṭīb*, (d. 977H/1570) an Egyptian *Shafi'i* scholar who wrote many works on exegesis, *Fiqh*, the Arabic Language, and other Islamic disciplines.

⁴³ الشريینی، شمس الدين محمد بن الخطیب، مفہوم المحتاج إلى معرفة معانی ألفاظ المنهاج، دار المعرفة، بيروت، لبنان، ط 1، 1418ھ/1997م، ج 2، ص 30

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

the Holy *Qur'an* was revealed gradually. Hence, all the verses of the Holy Quran regarding the prohibition of Riba must be read and understood collectively. Any attempt to read any of such verse out of context may cause misunderstanding in comprehending the full meaning of prohibition of Riba. It is one of the aspects of Shariah that some of the commands of Allah or *ahkam* were revealed gradually, well known amongst them is the revelation of Hukum of prohibition of liquor in the Quran.

40. The prohibition of 'Riba' is also among such *ahkam* which were revealed gradually. The very first *Ayah* which was revealed in this regard was Verse 39 of *Surah ar-Rum* which revealed in the year 6 *Nabawi* in *Makkah* it says:

﴿وَمَا أَتَيْتُمْ مِّنْ رِّبَاحٍ بُوْرَا فِي أَمْوَالِ النَّاسِ فَلَا يَرُبُّوْرَا عِنْدَ اللَّهِ وَمَا أَتَيْتُمْ مِّنْ رَّكْوَةٍ تُرِيدُوْرَهُ وَجْهَ اللَّهِ فَأُولَئِكَ هُنَّ الْمُضْعُفُوْرَهُ﴾
⁴⁴

”اور جو تم سود دیتے ہو کہ لوگوں کے مال میں افزائش ہو تو خدا کے نزدیک اس میں افزائش نہیں ہوتی اور جو تم زکوہ دیتے ہو اور اس سے خدا کی رضامندی طلب کرتے ہو تو (وہ موجب برکت ہے اور) ایسے ہی لوگ (اپنے مال کو) دو چند سے چند کرنے والے ہیں۔“⁴⁵

“³⁹. That which ye lay out for increase through the property Of (other) people, will have No increase with God: But that which ye lay out For charity, seeking The Countenance of God, (will increase): it is These who will get A recompense multiplied.”

⁴⁴ Surah ar-Rum, 30: 39

⁴⁵ جالندھری، مولانا فتح محمد، فتح الحمید، قرآن مجید ترجمہ جدید، تاج کمپنی، لاہور، ۱۳۵۳ھ

41. The principle of gradual and stepwise revelation of rulings in *Qur'an* is termed as: *tadreej* (تدریج) in *Fiqh*. Instead of abrupt prohibition of 'Riba', the rulings were revealed in gradual and stepwise fashion, same is pointed by various eminent scholars in their exegesis upon *Ayah* 39 of *Surah ar-Rum*, the first ever verse revealed in the context of prohibition of 'Riba'.

*Syed Abul A'la al-Mawdūdī*⁴⁶ explained the flaccidity reflected therein:

”قرآن مجید میں یہ پہلی آیت ہے جو سود کی مذمت میں نازل ہوئی۔ اس میں صرف اتنی بات فرمائی گئی ہے کہ تم لوگ تو سود یہ سمجھتے ہوئے دیتے ہو کہ جس کو ہم یہ زائد مال دے رہے ہیں اس کے دولت بڑھے گی، لیکن درحقیقت اللہ کے نزدیک سود سے دولت کی افزائش نہیں ہوتی بلکہ زکوٰۃ سے ہوتی ہے۔ آگے چل کر جب مدینہ طیبہ میں سود کی حرمت کا حکم نازل کیا گیا تو اس پر مزید یہ بات ارشاد فرمائی گئی کہ: ﴿يَسْعَى اللَّهُ الرِّبُوَا وَيُرِبِّي الصَّدَقَاتِ﴾ ”اللہ سود کا مٹھہ مار دیتا ہے اور صدقات کو نشوونما دیتا ہے۔“ [بعد کے احکام کے لیے ملاحظہ ہو: آل عمران: ۱۳۰، البقرۃ: ۲۷۵ تا ۲۷۶]

⁴⁸ [۲۸۱]

”سورۃ الروم کا نزول جس زمانے میں ہوا ہے اس وقت قرآن مجید میں سود کی حرمت کا اعلان نہیں ہوا تھا۔ یہ اعلان اس کے کئی برس بعد ہوا ہے۔ قرآن مجید کا طریقہ یہ ہے کہ جس چیز کو بعد میں کسی وقت حرام کرنا ہوتا ہے، اس کے لیے وہ پہلے ذہنوں کو تیار کرنا شروع کر دیتا ہے۔ شراب کے معاملے میں بھی پہلے صرف اتنی بات فرمائی گئی تھی کہ ”وہ پاکیزہ رزق نہیں ہے۔“ [النحل: ۲۷] پھر فرمایا کہ ”اس کا گناہ اس کے فائدے سے زیادہ ہے۔“ [البقرۃ: ۲۱۹] پھر حکم دیا گیا کہ ”نشے کی حالت میں نماز کے قریب نہ جاؤ۔“ [النساء: ۳۳] پھر اس کی قطعی حرمت کا فیصلہ کر دیا گیا۔ اسی طرح یہاں سود کے متعلق صرف اتنا کہنے پر اکتفا کیا گیا ہے کہ یہ وہ چیز نہیں ہے جس سے دولت کی افزائش ہوتی ہو، بلکہ حقیقی افزائش زکوٰۃ سے ہوتی ہے۔ اس کے بعد سود در سود کو منع کیا گیا [آل عمران: ۱۳۰] اور سب سے آخر میں بجائے خود سود ہی کی قطعی حرمت کا فیصلہ کر دیا گیا۔

⁴⁶ *Al-Mawdūdī*, *Syed Abul Alā*, (1903– 1979) was an Islamic scholar, Islamist ideologue, Muslim philosopher, jurist, historian, journalist, activist and religious scholar active in British India and later, following the partition, in Pakistan.

⁴⁷ *Surah al-Baqarah*, 2: 276

⁴⁸ مودودی، سید ابوالاعلیٰ، تفسیر القرآن، ادارہ ترجمان القرآن (پرائیویٹ) لیٹریٹ، لاہور، طبع یازدهم، جولائی ۱۹۹۱ء، جلد، ص 759

٤٩“[٢٧٥:١] البقرة:

Justice *Pir Muhammad Karam Shah al-Azhari*⁵⁰ phrased the similar findings:

”حرمت سود کا حکم جو بڑی وضاحت سے مدینہ طیبہ میں ہجرت کے بعد نازل ہوا۔ اس آیت میں اس حکم کی طرف پہلا قدم ہے۔ قرآن کریم کا یہ دستور ہے کہ وہ برائی جس کی جڑیں اس معاشرہ میں بڑی گہری چلی گئی ہوں اس کی حرمت کا یک لخت حکم نہیں دیتا بلکہ تدریجی احکام سے پہلے ایسی فضا تیار کی جاتی ہے کہ لوگوں کی وابستگی اس سے ختم ہو جائے۔ اور اس سے نفت کے جذبات پیدا ہو جائیں، پھر اس کی حرمت کا قطعی حکم صادر فرمایا جاتا ہے جس طرح شراب وغیرہ کے احکام میں آپ ملاحظہ فرمائچے ہیں۔“⁵¹

*Maluana Abdul Rehman Kailani*⁵² has explained the revelation of prohibition of ‘Riba’ in gradual manner in the following way in his exegesis:

”یہ پہلی آیت ہے جو سود کی مذمت کے سلسلہ میں نازل ہوئی، پھر سورۃ آل عمران کی آیت نمبر ۱۳۰ کی رو سے مسلمانوں کو سود در سود سے روک دیا گیا۔ پھر آپ ﷺ کی وفات سے چار ماہ پیشتر سورۃ البقرۃ کی آیت نمبر ۲۷۵ تا ۲۸۱ کی رو سے مکمل طور پر حرام قرار دے دیا گیا۔ چونکہ شراب کی طرح سود بھی اہل عرب کی گھٹی میں پڑا ہوا تھا۔ لہذا ایسی برائیوں کا استیصال بتدریج ہی ممکن تھا۔“⁵³

The second *hukam* which was revealed in this regard is in *ayaat* 160-161 of *Surah an-Nisa* which was revealed in *Madina* soon after *Hijrat* they say:

⁴⁹ Ibid, p.759~760

⁵⁰ *al-Azhari*, Justice *Pir Muhammad Karam Shah*, (1918-1998) was an Islamic scholar of Hanafi jurisprudence, Sufi, and Muslim leader. He is known for his magnum opus *tafsir*. In addition to that he authored comprehensive and detailed biography of the Prophet ﷺ titled as ‘*Zia-un-Nabi*’, or ‘*Diya al-Nabi*’. He also served as justice on the Supreme Court of Pakistan Shari’at Bench till his death He was a justice of the Federal Shari’at Court, when it was first established in 1981.

⁵¹ ازہری، جیش پیر محمد کرم شاہ، تفسیر خیاء القرآن، نسخہ، لیشنا، لہور، سنا اشاعت ۱۳۹۹ھ/ ۱۹۹۵ء، جلد سوم، ص ۵۷۷

⁵² *Kailani*, Maulana Abdur Rahman, (d. 1995) a renowned scholar, writer and jurist of Salafi School of thought in Pakistan who wrote books in Islamic disciplines.

⁵³ کیلانی، مولانا عبد الرحمن، تفسیر القرآن، مکتبۃ السلام، لہور

(فَبِظُلْمٍ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدَّهُمْ عَنْ سَبِيلِ اللَّهِ كَثِيرًا ﴿١٤﴾ وَأَخْذِهِمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ وَأَكْلِهِمُ أَمْوَالَ النَّاسِ

بِالْبَاطِلِ ۖ وَأَعْتَدْنَا لِلْكُفَّارِ يُنَمِّهُمْ عَذَابًا أَلِيمًا)⁵⁴

”توہم نے یہودیوں کے خلموں کے سبب (بہت سی) پاکیزہ چیزیں جوان کو حلال تھیں ان کو حرام کر دیں اور اس سبب سے بھی کہ وہ اکثر خدا کے راستے سے (لوگوں کو) روکتے تھے۔ اور اس سبب سے بھی کہ باوجود منع کئے جانے کے سود لیتے تھے اور اس سبب سے بھی کہ لوگوں کا مال نا حق کھاتے تھے اور ان میں سے جو کافر ہیں ان کے لئے ہم نے درد دینے والا عذاب تیار کر رکھا ہے۔

55“

“¹⁶⁰ For the iniquity of the Jews We made unlawful for them certain (foods) good and wholesome which had been lawful for them; in that they hindered many from God's way.

¹⁶¹. That they took usury (interest) though they were forbidden; and that they devoured men's substance wrongfully; We have prepared for those among them who reject faith a grievous punishment.”

Jurist *as-Sābūnī*⁵⁶ explained the concept of gradual revelation of certain *ahkam*. He further analyzed the gradual revelation of *ayaat* of *Surah an-Nisa* and he correlated it with the gradual revelation of verses that prohibited liquor, in the following manner:

﴿فَبِظُلْمٍ مِّنَ الَّذِينَ هَادُوا حَرَّمْنَا عَلَيْهِمْ طَيِّبَاتٍ أُحِلَّتْ لَهُمْ وَبِصَدَّهُمْ عَنْ سَبِيلِ اللَّهِ كَثِيرًا ﴿١٤﴾ وَأَخْذِهِمُ الرِّبَا وَقَدْ نُهُوا عَنْهُ﴾⁵⁷، وهذه الآية مدنية، وهي درس قصه الله سبحانه علينا من سيرة اليهود الذي حرم عليهم الربا فأكلوه واستحقوا عليه اللعنة والغضب، وهو تحريم (بالتلويح) لا

⁵⁴ Surah an-Nisa, 4: 160~161

جاںدھری، مولانا فتح محمد، فتح الحیدر، قرآن مجید ترجمہ جدید، تاج کتبی، لاہور، ۱۳۵۳ھ

⁵⁶ *As-Sābūnī*, Muhammad 'Alī, (1930-2021) was a prominent Syrian Hanafi Scholar, best known for his Qur'anic exegesis titled 'The Elite of Interpretations'.

النساء، 5: 160-161

(بالتصريح) لأنَّه حكاية عن جرائم اليهود وليس فيه ما يدل دلالة قطعية على أنَّ الربا محظى على المسلمين. وهذا نظير (الدور الثاني) في تحريم الخمر: **﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ﴾**⁵⁸، الآية حيث كان التحريم فيه بالتلويح لا بالتصريح.⁵⁹

قول بارى تعالى: **﴿فَيُظْلِمُ مِنَ الَّذِينَ هَادُوا حَرَمَ مِنَّا عَلَيْهِمْ طَيِّبَاتٍ أَحْلَتْ لَهُمْ وَبَصَدِّهِمْ عَنْ سَبِيلِ اللَّهِ كَثِيرًا ۚ وَأَخْنِذُهُمُ الرِّبِّلَا وَقَدْ نُهُوا عَنْهُ وَأَكْلَمُهُمْ أَمْوَالَ النَّاسِ بِالْبَاطِلِ ۖ وَأَعْتَدْنَا لِلْكُفَّارِ مِنْهُمْ عَذَابًا أَلِيمًا ۚ﴾**، مدینہ منورہ میں نازل ہوا۔ اس آیت میں اللہ سبحانہ و تعالیٰ نے یہود پر ربا حرام کرنے کا قصہ بیان کیا ہے، جسے ان یہود نے جائز قرار دیا اور لعنت و غضب کے مستحق ٹھہرے۔ یہاں ربا کی صراحتاً نہیں بلکہ اشارۃً حرمت بیان کی گئی ہے۔ کیونکہ یہ یہود کے گناہوں کا محض ذکر ہے جو کہ مسلمانوں پر ربا کے حرام ہونے پر قطعی دلالت نہیں کرتا۔ حرمت ربا کے دوسرے مرحلے کی یہ آیت حرمت شراب کی آیت کی طرح ہے جس میں ارشاد باری تعالیٰ ہے: **﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ﴾** اس آیت میں شراب کی حرمت کو اشارۃً بیان کیا گیا ہے۔

The third *ayah* which was revealed in this sequence was *ayah* 130 of *Surah Aal-e-Imran* which says:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَّاً أَضْعَافًا مُضْعَفَةً ۚ وَ اتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ ۚ﴾

”اے ایمان والو! لوگوں کا چونا سود نہ کھاؤ اور خدا سے ڈروتا کہ نجات حاصل کرو۔“⁶⁰

”¹³⁰ O ye who believe! devour not usury doubled and multiplied; but fear God; that ye may (really) prosper.”

There is a consensus of *Mufassirin* that this *Ayah* was revealed soon after *Ghazwah-e-Uhud* in Madina. Justice *Mufti Muhammad Taqi Usmani*⁶² while explaining *tafsir* of this *Ayah* referred to *Tafsir al-*

58 البقرة: 2: 219

59 الصابوني، محمد علي، رواعی البيان تفسیر آیات الأحكام من القرآن، مکتبۃ الغزالی، دمشق، مؤسسة مناهل العرفان، بيروت، لبنان، ط 3، 1400ھ/1980م ج 1، ص 390

⁶⁰ *Surah Aal-e-Imran*, 3: 130

61 جالندھری، مولانا فتح محمد، فتح الحمید، قرآن مجید ترجمہ جدید، تانج پین، لاہور، ۱۳۵۳ھ

⁶² *Usmani, Mufti Muhammad Taqi*, served as a Alim judge on the Shari'at Appellate Bench of

Kabir of Imam Razi as follows:

”امام رازی نے تفسیر کبیر میں فرمایا ہے کہ جنگ احمد کے موقع پر کمکے مشرکین نے سود پر قرض لے کر جنگ کی تیاری کی تھی، اس لئے کسی مسلمان کے دل میں بھی خیال ہو سکتا تھا کہ مسلمان بھی جنگ کی تیاری میں یہی طریقہ اختیار کریں، اس آیت نے انہیں خبردار کر دیا کہ سود پر قرض لینا حرام ہے، یہاں سود کو کئی گناہ کر کھانے کا جو ذکر ہے اس کا مطلب یہ نہیں ہے کہ کم شرح پر سود کی اجازت ہے؛ بلکہ اس وقت چونکہ سودی قرضوں میں بکثرت یہی ہوتا تھا کہ سودا اصل سے کئی گناہ کر جاتا تھا اس لئے ایک واقعے کے طور پر یہ بات بیان کی گئی ہے ورنہ سورۃ البقرۃ [آیت: ۲۷۸ و ۲۷۷] میں صاف واضح کر دیا گیا ہے کہ اصل قرض پر جتنی بھی زیادتی ہو وہ سود میں داخل اور حرام ہے۔“⁶³

Dr. Israr Ahmed⁶⁴ has explained this *ayat* of Surah Aal-e-Imran as follows:

” واضح رہے کہ شراب اور جوئے کی طرح سود کی حرمت کے احکام بھی تدریجاً نازل ہوئے ہیں۔ سب سے پہلے ایک کمی سورۃ الروم میں انفاق فی سبیل اللہ اور سود کو ایک دوسرے کے مقابل رکھ کر سود کی قباحت اور شناخت کو واضح کر دیا گیا: ﴿وَمَا آتَيْتُمْ مِنْ رِبَآلَ يَنْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَنْبُوْ عِنْدَ اللَّهِ وَمَا آتَيْتُمْ مِنْ رِكْوَةً تُرْيَدُونَ وَجْهَ اللَّهِ فَأَوْلَئِكَ هُمُ الْمُضْعَفُونَ﴾ جیسے کہ شراب اور جوئے کی خرابی کو سورۃ البقرۃ (آیت: ۲۱۹) میں بیان کر دیا گیا تھا۔ اس کے بعد آیت زیر مطالعہ میں دوسرے قدم کے طور پر مہاجنی سود usury سے روک دیا گیا۔ ہمارے ہاں آج کل بھی ایسے سودخور موجود ہیں جو بہت زیادہ شرح سود پر لوگوں کو قرض دیتے ہیں اور ان کا خون چوس جاتے ہیں۔ تو یہاں اس سود کی مذمت آتی ہے۔ سود کے بارے میں آخری اور حتیٰ حکم ۲۹ میں نازل ہوا، لیکن ترتیب مصحف میں وہ سورۃ البقرۃ میں ہے۔ وہ پورا رکوع (نمبر ۳۸) ہم مطالعہ کر چکے ہیں۔ وہاں پر سود کو دوٹوک انداز میں حرام قرار دے دیا گیا اور سودخوری سے بازنہ آنے پر اللہ اور اس کے رسول ﷺ کی طرف سے جنگ کا الٹی میثم دے دیا گیا۔“⁶⁵

the Supreme Court of Pakistan, and on the Federal Shari'at Court. He was a member of Council of Islamic Ideology (CII).

⁶³ عثمانی، مفتی محمد تقی، آسان ترجمہ قرآن، مکتبۃ معارف القرآن، کراچی، ۱۴۲۹ھ، جلد اول، ص ۲۲۰

⁶⁴ Dr. Israr Ahmed, (1932–2010), was a Pakistani Islamic theologian, philosopher, Islamic scholar who was followed particularly in South Asia as well as by South Asian Muslims in the Middle East, Western Europe, and North America. Founder of *Tanzeem-e-Islami* and various religious magazines. He wrote about sixty books about Islam and Pakistan. As of 2017, twenty-nine books have been translated into several other languages, including in English.

⁶⁵ ڈاکٹر اسرار احمد، بیان القرآن، انجمن خدام القرآن، خیبر پختونخواہ، پشاور، سن اشاعت، حصہ دوم، ص 38

Allama Syed Safdar Hussain Najfi ⁶⁶ has explained this aspect of stepwise / gradual prohibition of 'Riba' at length as under:

”سودخوری کی حرمت کے چند مراحل:

ہم جانتے ہیں کہ قرآن کا یہ طریقہ ہے کہ وہ معاشرے کی ایسی براہیاں جن کی جڑیں گہری ہو چکی ہیں ان کے بخ کرنے کے لیے آہستہ آہستہ زمین ہموار کرتا ہے اور لوگوں کو تدریجیاً ان کے مفاسد سے آگاہ کرتا ہے اور جب قرآنی احکام قبول کرنے کے لیے آمادگی حاصل ہو جائے تو قانون تصریحی شکل میں بیان کر دیتا ہے (خصوصاً ایسے موقع پر جہاں گناہ سے آلو دگی کا امکان بہت زیادہ ہو)۔

یہ بھی واضح ہے کہ دنیا یے عرب زمانہ جاہلیت میں سودخوری میں شدت سے ملوث تھی، خصوصاً مکہ کا گرد نواح سودخوروں کو ختم کرنے کے لیے حرمت کا مرکز تھا اور ان کی بہت سی فتنے اجتماعی براہیوں کے سبب یہی براکار و بار تھا۔ بنابر ایں قرآن مجید نے سودی خوری ختم کرنے کے لیے حرمت کا حکم چار مراحل میں بیان کیا ہے:

□ — پہلے پہل سود کے بارے میں سورۃ روم آیت ۳۹ میں ایک اخلاقی نصیحت پر زور دیا گیا ہے۔

چنانچہ ارشاد خداوندی ہے:

﴿وَمَا آتَيْتُم مِّنْ رِبَّا لَيْبُوا فِي أَمْوَالِ النَّاسِ فَلَا يُبُواعِنْدَ اللَّهِ وَمَا آتَيْتُمْ مِّنْ زَكُوٰةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضَعُوفُونَ﴾^(۲۹)
یعنی صرف کوتاہ نظر افراد کے نگاہ میں سود کھانے والوں کی ثروت میں سود لینے سے زیادتی ہوتی ہے لیکن خدا کے ہاں اس میں کوئی زیادتی نہیں ہوتی بلکہ زکوٰۃ اور راہ خدا میں خرچ کرنا دولت و ثروت کی زیادتی کا باعث ہے۔

□ — سورۃ النساء آیت ۱۶۱ میں یہودیوں کی غلط رسوم و عادات پر تلقید کرتے ہوئے ان کی سودخوری کی طرف اشارہ کرتے ہوئے کہتا ہے: (وَأَخْذِهِمُ الرِّبْلَوْا وَقَدْ نَهُوا عَنْهُ)
ان کی ایک بڑی عادت یہ تھی کہ وہ سود کھاتے تھے حالانکہ انہیں اس سے منع کیا گیا تھا۔

□ — زیر بحث آیت میں جیسا کہ اس کی تفسیر کے ذیل میں بتایا جائے گا، سود کی حرمت کا صریح حکم ذکر ہوا ہے لیکن سود کی صرف ایک قسم کی طرف جو بہت بڑی قسم ہے۔ ارشاد ہوا ہے۔

□ — آخر میں سورۃ بقرہ کی آیت ۲۵ سے لے کر ۲۷۹ تک ہر قسم کی سودخوری کی شدت سے ممانعت کا اعلان کیا گیا ہے اور اسے خدا سے جنگ کرنے کے مترادف قرار دیا گیا ہے۔
﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُكْلُوا الرِّبَآوا أَضْعَافًا مُضْعَفَةً﴾ اس آیت میں سود کی فتنہ ترین قسم کی حرمت کی طرف اشارہ ہوا ہے اور اضعافاً مُضْعَفَةً (چند و چند) کی تعبیر موجود ہے۔ رباً فاحش سے مراد یہ ہے اصل سرمایہ ہی اضافی سود کے ساتھ ساتھ بڑھتا رہے۔ یعنی

⁶⁶ Najafi, Syed Safdar Hussain, (1932-1989) was a Pakistani Scholar belongs to Shi'a sect, who authored number of books on Tafsir, Fiqh etc.

سود پہلے مرحلے میں اصل سرماۓ میں جمع ہو جائے اور آئندہ اصل سرماۓ میں سود جمع ہونے پر جو سرمایہ ہے اس پر سود لگے اور اسی ترتیب سے ہر مرتبہ کا سود اضافی سرمایہ بن کر گذشتہ سرماۓ میں جمع ہوتا جائے اور سرماۓ کی نئی رقم تشکیل دیتا جائے۔ اس طرح قلیل مدت میں ایک دوسرے پر سود کی زیادتی کی وجہ سے مقروض کے قرض سے کمی گناہ زیادہ ہو جائے اور اس کی زندگی مکمل طور پر دیوالیہ ہو جائے جیسا کہ روایات تواریخ سے معلوم ہوتا ہے کہ زمانہ جاہلیت میں یہ معمول تھا کہ اگر مقروض قرض کی مدت ختم ہونے پر قرض نہیں ادا کر سکتا تھا تو فرض خواہ سے تقاضا کرتا کہ وہ سود اصل قرض کا مجموعہ نئے سرماۓ کی شکل میں اسے بطور قرض دیدے اور اس سے سوڈ لے۔ ہمارے دور میں بھی اس قسم کی ظالمانہ سودخوری کثرت سے راجح ہے۔⁶⁷

There is a consensus among the scholars that the last and final *hukam* (حکم) which unequivocally/ expressly and categorically prohibited 'Riba' was revealed in the following *ayah* of *Surah Al-Baqarah*:

﴿الَّذِينَ يَا كُفُونَ الرِّبُّوا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ السَّيِّطُونُ مِنْ الْمِسْكِنِ ۚ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّا أَبْيَعُ مِثْلُ الرِّبُّوا وَأَحَلَّ اللَّهُ الْبَيْعَ وَ حَرَمَ الرِّبُّوا ۖ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّنْ رَّبِّهِ فَاتَّسَعَ فَلَهُ مَا سَلَفَ ۚ وَ أَمْرُهُ إِلَى اللَّهِ وَ مَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَلِدُونَ ۚ يَسْأَلُ اللَّهُ الرِّبُّوا وَ يُبَيِّنُ الصَّدَقَاتِ ۚ وَ اللَّهُ لَا يُحِبُّ كُلَّ كَفَّارٍ أَتَيْهُمْ ۚ إِنَّ الَّذِينَ أَمْنَوْا وَ عَلِمُوا الصِّلْحَةِ وَ أَقَامُوا الصَّلَاةَ وَ اتَّوَ الرِّكْوَةَ لَهُمْ أَجْرُهُمْ عِنْدَ رَبِّهِمْ ۚ وَ لَا خُوفٌ عَلَيْهِمْ وَ لَا هُمْ يَحْزَنُونَ ۚ يَا أَيُّهَا الَّذِينَ أَمْنَوْا اتَّقُوا اللَّهَ وَ ذَرُوا مَا بَقِيَ مِنَ الرِّبَّوِا إِنْ كُنْتُمْ مُّؤْمِنِينَ ۚ فَإِنْ لَمْ تَفْعَلُوا فَإِذْنُوا بِحَرْبِ مِنَ اللَّهِ وَ رَسُولِهِ ۚ وَ إِنْ تُبْتَمِمْ فَلَكُمْ رُؤُسُ أَمْوَالِكُمْ ۚ لَا تَنْظِمُونَ وَ لَا تُنْظَمُونَ ۚ﴾⁶⁸

”جو لوگ سود کھاتے ہیں وہ (قبوں سے) اس طرح (حوالہ باختہ) انھیں گے جیسے کسی کو جن نے لپٹ کر دیوانہ بنادیا ہو یہ اس لئے کہ وہ کہتے ہیں کہ سود بچنا بھی (لفع کے لحاظ سے) ویسا ہی ہے جیسے سود (لینا) حالانکہ بیع کو خدا نے حلال کیا ہے اور سود کو حرام تو جس کے پاس خدا کی نصیحت پہنچی اور وہ (سود لینے سے) باز آگیا تو جو پہلے ہو چکا وہ اس کا اور (قیامت میں) اس کا معاملہ خدا کے سپر دا اور جو پھر لینے لگے گا تو ایسے لوگ دوڑھی ہیں کہ ہمیشہ دوڑھ میں جلتے رہیں گے۔ خدا سود کو نابود (یعنی

⁶⁷ شیرازی، ناصر مکارم، تفسیر نمونہ، مترجم: مولانا سید صدر حسین بھنپی، مصباح القرآن ٹرست، لاہور،، کتابخانہ اشاعت، ج. ۱، ص ۷۸

⁶⁸ Surah al-Baqarah, 2: 275~279

بے برکت) کرتا اور خیرات (کی برکت) کو بڑھاتا ہے اور خدا کسی نا شکرے گنہگار کو دوست نہیں رکھتا۔ جو لوگ ایمان لائے اور نیک عمل کرتے اور نماز پڑھتے اور زکوٰۃ دیتے رہے ان کو ان کے کاموں کا صلحہ خدا کے ہاں ملے گا اور (قیامت کے دن) ان کو نہ کچھ خوف ہوگا اور نہ وہ غمناک ہوں گے۔ مونو! خدا سے ڈرو اور اگر ایمان رکھتے ہو تو جتنا سود باقی رہ گیا ہے اس کو چھوڑ دو اگر ایسا نہ کرو گے تو خبردار ہو جاؤ (کہ تم) خدا اور رسول سے جنگ کرنے کے لئے (تیار ہوتے ہو) اور اگر توبہ کرو گے (اور سود کو چھوڑ دو گے) تو تم کو اپنی اصل رقم لینے کا حق ہے جس میں نہ اور وہ کو نقصان اور نہ تمہارا نقصان۔⁶⁹

- 275. Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: "Trade is like usury but God hath permitted trade and forbidden usury. Those who after receiving direction from their Lord desist shall be pardoned for the past; their case is for God (to judge); but those who repeat (the offence) are companions of the fire: they will abide therein (forever).
- 276. God will deprive usury of all blessing but will give increase for deeds of charity: for He loveth not creatures ungrateful and wicked.
- 277. Those who believe and do deeds of righteousness and establish regular prayers and regular charity will have their reward with their Lord: on them shall be no fear nor shall they grieve.
- 278. O ye who believe! fear God and give up what remains of your demand for usury if ye are indeed believers.
- 279. If ye do it not take notice of war from God and his Apostle: but if ye turn back ye shall have your capital sums; deal not unjustly and ye shall not be dealt with unjustly.

There is also another consensus among the scholars that this was the final *hukm* of Allah which was revealed upon Prophet Muhammad (صلی اللہ علیہ وسلم) before he left this world. These *ayah* contain the final and absolute prohibition of 'Riba'.

*Ibn-e-Kathir*⁷⁰ while explaining this fact wrote that:

69 جاندھری، مولانا فتح محمد، فتح الحمید، قرآن مجید ترجمہ جدید، تاج کمپنی، لاہور، ۱۳۵۳ھ

70 *Abū al-Fidā' Ismā'īl ibn 'Umar ibn Kathīr* (1301–1373) was a Shāfi'i jurist, historian, and exegete.

”حضرت ابن عباس فرماتے ہیں سود کی حرمت سب سے آخر میں نازل ہوئی [بخاری] حضرت عمرؓ یہ فرمائ کہتے ہیں افسوس کہ اس کی پوری تفسیر بھی مجھ تک نہ پہنچ سکی اور حضور کا انتقال ہو گیا۔ لوگو سود کو بھی چھوڑو اور ہر اس چیز کو بھی جس میں سود کا شائیبہ بھی ہو [مسند احمد] حضرت عمرؓ نے ایک خطبہ میں فرمایا: شاید میں تمہیں بعض ان چیزوں سے روک دوں جو تمہارے لئے نفع والی ہوں اور ممکن ہے میں تمہیں کچھ ایسے احکام بھی دوں جو تمہاری مصلحت کی خلاف ہوں، سنو! قرآن میں سب سے آخر سود کی حرمت کی آیت اتری، حضورؐ کا انتقال ہو گیا اور افسوس کہ اسے کھول کر ہمارے سامنے بیان نہ فرمایا پس تم ہر اس چیز کو چھوڑو جو تمہیں شک میں ڈالی ہو [ابن ماجہ] حضرت عائشہؓ سے مروی ہے کہ جب سورۃ بقرہ کی آخری آیت حرمت سود میں نازل ہوئی تو حضرتؓ نے مسجد میں آکر اس کی تلاوت کی اور سودی کا رو بار اور سودی تجارت کو حرام قرار دیا۔

اس آیت کے نازل ہونے کے بعد نبیؐ صرف نوراتوں تک زندہ رہے اور ربع الاول کی دوسری تاریخ کو پیر کے دن آپ ﷺ کا انتقال ہو گیا۔ ابن عباسؓ سے ایک روایت میں اس کے بعد حضورؐ کی زندگی اکتیس دن کی بھی مروی ہے، ابن جریحؓ فرماتے ہیں کہ سلف کا قول ہے کہ اس کے بعد حضور ﷺ نورات زندہ رہے ہفتہ کے دن سے ابتداء ہوئی اور پیر والے دن انتقال ہوا۔ الغرض قرآن کریم میں سب سے آخر یہی آیت نازل ہوئی ہے۔“⁷¹

*Jalal uddin as-Suyuti*⁷² has narrated this fact with reference to many *muhaddithin* in his *tafsir* as:

”۱۹۔ احمد، ابن ماجہ، ابن الصفر میں، ابن جریر اور ابن المنذر نے حضرت عمرؓ سے روایت کیا ہے کہ سب سے آخر میں نازل ہونے والی سود کی آیت ہے اور رسول ﷺ اس کی تفسیر ہم کو بتلانے سے پہلے اس دنیا سے چلے گئے۔ اس لیے سود اور جس میں سود کا شبہ ہو دونوں کو چھوڑ دو۔

”۲۰۔ ابن جریر، ابن مردویہ نے حضرت عمر بن خطابؓ سے روایت کیا کہ انہوں نے خطبہ دیتے ہوئے ارشاد فرمایا کہ نزول کے اعتبار سے آخری آیت ہے۔

”۲۱۔ ابن جریر، ابن مردویہ نے حضرت عمر بن خطابؓ سے روایت کیا کہ انہوں نے خطبہ دیتے ہوئے ارشاد فرمایا کہ قرآن کی آخری آیت نازل ہونے کے اعتبار سے سود کی آیت ہے اور رسول اللہ ﷺ اس دنیا سے کوچ فرمائے گئے۔ جبکہ آپؐ نے ہمارے لیے اس کی وضاحت نہ بیان فرمائی۔ سو چھوڑو تم اس چیز کو جو شک میں ڈالے اور اس چیز کو

⁷¹ ابن کثیر، حافظ عباد الدین ابو الفداء، تفسیر القرآن العظیم

⁷² al-Suyuti, Jalal -ud-Din Abdur Rahman bin Abi Bakar bin Muhammad bin Sabiq-ud-Din al-Khudhayri, (849-1445H/ 911-1505) was an Imam, Hafiz, exegete and Shafai Jurist who wrote about 600 books.

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اختیار کرو جو شک میں نہ ڈالے۔

۲۲۔ سجھاری، ابو عبیدہ، ابن جریر، بیہقی نے دلائل میں شعبی کے طریق سے حضرت ابن عباس[ؓ] سے روایت کیا کہ آخری آیت جو اللہ تعالیٰ نے اپنے رسول پر نازل فرمائی وہ سود والی آیت ہے۔

۲۳۔ بیہقی نے دلائل میں سعید بن المیب[ؓ] کے طریق سے روایت کیا کہ حضرت عمر بن خطاب[ؓ] نے فرمایا آخری آیت جو اللہ تعالیٰ نے نازل فرمائی وہ سود کی آیت ہے۔⁷³

*Qazi Sanaullah Panipati*⁷⁴ writes in his *tafsir* as:

”آیت ربا کا ثمار سب سے آخر میں نازل ہونے والی آیات میں ہے۔ شعبی نے حضرت ابن عباس[ؓ] کا قول نقل کیا کہ رسول اللہ ﷺ پر سب سے آخر میں جو آیت نازل ہوئی وہ آیت ربا ہے۔

حضرت عمر[ؓ] بن خطاب کی روایت میں آیا ہے کہ سب سے آخر میں آیت ربا نازل ہوئی حضور ﷺ نے وفات تک اس کی تشریع ہم سے نہیں فرمائی لہذا تم سود کو بھی چھوڑ دو اور سود کے شبہ کو بھی۔⁷⁵

*Syed Mawdudi*⁷⁶ explain this ayah as the last and final hukam of Allah regarding absolute prohibition of ‘Riba’ as:

”یہ آیت فتح مکہ کے بعد نازل ہوئی اور مضمون کی مناسبت سے اس سلسلہ کلام میں داخل کر دی گئی۔ اس سے پہلے اگرچہ سودا یک ناپسندیدہ چیز سمجھا جاتا تھا مگر قانون اسلام سے بند نہیں کیا گیا تھا۔ اس آیت کے نزول کے بعد اسلامی حکومت کے دائرے میں سودی کا وبار ایک فوجداری جرم بن گیا۔⁷⁷

Some aspect of the ayah is explained by *Maluana Abdul Rehman Kailani*⁷⁸ as:

”یہ ہیں وہ آیات جنہیں ‘آیات ربا’ کہا جاتا ہے، جن کے مطابق سود کو کلیتًا حرام قرار دیا گیا اور یہ

⁷³ الیسوطی، جلال الدین، در منثور

⁷⁴ *Pānipati*, 'Allāmah Qādi Thanā'ullah 'Uthmāni, (d.1225/1810) the muhaddith was one of the most erudite scholars of undivided India. He is the author of 'Tafsir Mazhari'

⁷⁵ پانی پتی، قاضی ثناء اللہ، تفسیر مظہری

⁷⁶ *Al-Mawdūdī*, Syed Abul Alā, (1903– 1979) was an Islamic scholar, Islamist ideologue, Muslim philosopher, jurist, historian, journalist, activist and religious scholar active in British India and later, following the partition, in Pakistan.

⁷⁷ مودودی، سید ابوالا علی، تفسیر القرآن، ادارہ ترجمان القرآن (پرائیویٹ) لیٹریٹ، لاہور، طبع یا زد ہم، جولائی ۱۹۹۱ء۔

⁷⁸ *Kailani*, Maulana Abdur Rahman, (d. 1995) a renowned scholar, writer and jurist of Salafi School of thought in Pakistan who wrote books in Islamic disciplines.

سورۃ بقرہ میں سب سے آخر میں بلکہ آپ کی وفات سے صرف چار ماہ پیشتر نازل ہوئی تھیں۔ چنانچہ حضرت عائشہؓ فرماتی ہیں کہ 'جب سورۃ بقرہ کی سب سے بعد نازل ہونے والی آیات سود کے بارے میں نازل ہوئیں تو نبی اکرم ﷺ نے مسجد میں جا کر ان آیتوں کو سنا یا۔ پھر شراب کی سوداگری بھی حرام کر دی، [بخاری۔ کتاب التفسیر زیر آیات مذکورہ] اور حضرت عمرؓ نے فرمایا: 'آیات ربا قرآن کی ان آیات سے ہیں، جو آخر زمانہ میں نازل ہوئیں اور رسول اللہ ﷺ کی وفات ہو گئی۔ پیشتر اس کے کہ تمام احکام ہم پر واضح فرماتے۔ لہذا تم سود کو بھی چھوڑ دو اور ہر اس چیز کو بھی جس میں سود کا شانہ بہ ہو۔ [ابن ماجہ، دارمی، بکوالہ مشکوہ، کتاب البيوع، باب الربا۔ فصل ثالث]

ان آیات کے نزول کے چند ہی دن بعد آپؐ نے جستہ الوداع ادا کیا اور اس حکم کو عملی جامہ پہناتے ہوئے اپنے خطبہ جستہ الوداع میں یوں اعلان فرمایا کہ: 'جالیلیت کے تمام سود باطل قرار دیئے جاتے ہیں اور سب سے پہلے میں اپنے خاندان کا سود یعنی عباس بن عبدالمطلب کا سود باطل کرتا ہوں، [مسلم، کتاب الحج، باب حجۃ النبی]

شراب کی طرح سود بھی دراصل عرب معاشرہ کی گھٹی میں پڑا ہوا تھا اور اس کا استیصال بھی بندرتک ہوا۔ سود کی مدت میں سب سے پہلی نازل ہونے والی آیت سورۃ روم کی آیت نمبر ۳۹ ہے جس میں یہ بتلایا گیا کہ 'جو رقم تم سود پر دیتے ہو تاکہ لوگوں کے اموال بڑھ جائیں تو ایسا مال، اللہ کے ہاں نہیں بڑھتا'، دوسری آیت سورۃ آل عمران کی آیت نمبر ۱۳۰ ہے جس میں کہا گیا کہ: 'اے ایمان والو! دگنا چو گنا سود نہ کھاؤ، (یعنی سود مرکب) پھر اس کے بعد سورۃ بقرۃ کی مندرجہ بالا آیات نازل ہوئیں۔ جن کے بعد سود ایک فوjudarی جرم بن گیا اور عرب کے سود خور قبیلوں کو آپؐ نے عمال کے ذریعے آگاہ فرمایا کہ اگر وہ سودی لین دین سے باز نہ آئے تو ان کے خلاف جنگ کی جائے گی۔'⁷⁹

Maulana Ameen Ahsan Islahi⁸⁰ said:

”وہ معین اضافہ ہوتا ہے جو ایک قرض دینے والا مجرد مهلت کے عوض اپنے مقروض سے اپنی اصلی رقم پر وصول کرتا ہے۔ جاہلیت اور اسلام دونوں میں یہ اصطلاح مذکورہ مفہوم کے لیے مشہور ہی ہے۔“⁸¹

A definite increase that a lender receives from its debtor only on its principal amount in return of a respite. The term has been popular in both *Jahiliyyah* (before Islam) and Islam according to the above meaning.

⁷⁹ کیلانی، مولانا عبد الرحمن، تفسیر القرآن، مکتبۃ السلام، لاہور

⁸⁰ Islahi, Amin Ahsan, (1904–1997), was a Pakistani Muslim scholar famous for his Urdu exegesis: *'Tadabbur-i-Quran'*.

⁸¹ اصلاحی، امین احسن، تدبیر قرآن

*Abu Ahmad Bin Ali al-Razi*⁸² said:

”اہل عرب کے ہاں ربوا کا جو مفہوم تھا اور جس پر وہ آپس کی لین دین میں عمل پیرا ہوتے تھے یہ تھا کہ درہم و دینار قرض لیے جائیں۔ قرض کی ایک مدت ہو اور مدت گزرنے پر لی ہوئی رقم کچھ اضافے کے ساتھ واپس کر دی جائے۔ اس اضافے کا فیصلہ باہمی رضامندی سے ہوتا تھا۔“⁸³

The concept of Riba among the Arabs and those who were using it was: to borrow dirhams and dinars, as a loan for a specifies period of time, after that period the payable amount should be increased (due to late payment). The increase was decided by mutual consent.

*Islmail Haqi*⁸⁴ said:

”شریعت میں سود مکملی و موزونی اشیاء میں بلا عوض زائد شے لینے کو کہتے ہیں۔ یہ امام ابوحنیفہ اور آپ کے اصحاب کا مذہب ہے۔ یہ ان چیزوں میں جاری ہوتا ہے: سونا، چاندی، گندم، جو، کھجور، نمک۔“⁸⁵

”In Shari'ah, 'Riba' means to take extra things for free on items of the scale able and weight-able items. This is Imam Abu Hanifa (عَمَّا لَيَكُونُ) and his follower's view point. It applys in: 1. Gold, 2. Silver, 3. Wheat, 4. Barley, 5. Dates, and 6. Salt.

*Abdul Majid Darya Abadi*⁸⁶ said:

”اصطلاح شریعت میں ربوا کہتے ہیں اصل قرضہ پر زیادتی کو یا بلا معاوضہ مال، مال پر زیادتی کو، خواہ یہ بڑی ہو یا چھوٹی۔ ہو فضل مال خال عن العوض فی معاوضة مال بمال (مدارک) اہل عرب اس لفظ کو اس زائد رقم کے لیے استعمال کرتے تھے جو قرض خواہ اپنے قرض دار سے مہلت کے معاوضہ میں وصول کرتا تھا۔ اردو میں اسی کا ترجمہ سود

⁸² al-Jaṣṣāṣ, Abū Bakr Aḥmad bin 'Alī al-Rāzī, (305-370H/ 917-981)

⁸³ الحصاص، الإمام أبي بكر أحمد بن علي الرازي، أحكام القرآن، دار أحياء التراث العربي، بيروت، لبنان، 1412هـ/ 1992م، ج 2، ص 189

⁸⁴ Ismail Haqqi al-Barousawi (d. 1127H), author of 'Tafsir Ruh al-Bayan' in Arabic which has also been translated in Urdu by Mufti Faiz Ahmed Owaisi.

⁸⁵ حقی، شناساً عیل، تفسیر روح البیان، مترجم: مفتی فیض احمد اویسی، ناشر

⁸⁶ Daryabadi, Maulana Abdul Majid Daryabadi, (1892 –1977), was an Indian Muslim writer and exegete of the Qur'an. In addition to contributing an extensive commentary on the Qur'an in English, Daryabadi wrote also an independent *Tafsir* in Urdu titled: 'Tafsir Majidi'.

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ہے اور سود کا مفہوم ہر شخص سمجھتا ہے۔⁸⁷

The term 'Riba'in Shari'ah refers to the excess of the original debt or the excess of the unpaid wealth, whether it is large or small. The Arabs used the word for the extra money that the lender received from his debtor in response of the respite. Its translation in Urdu is Sood and everyone understands the meaning of Sood.

Sayyid Qutb⁸⁸ said:

”ربا کا خلاصہ یہ ہے قرض روپیہ واپس لینے کے ساتھ ساتھ سود خور کچھ زیادہ بھی وصول کرتا ہے۔

⁸⁹“

The summary of 'Riba' is that in addition to returning the loan amount, the usurer also receives a little more.

Jalal ud Din as-Suyuti and Jalal ud Din Mahalli⁹⁰ said:

”اصطلاح میں ربو اس زائد رقم کے لئے استعمال کرتے ہیں جو ایک قرض خواہ اپنے قرض دار سے ایک طے شدہ شرح کے مطابق اصل کے علاوہ وصول کرتا ہے، اسی کو ہماری زبان میں سود کہتے ہیں۔⁹¹“

The term usury refers to the excessed amount that a borrower receives from his debtor at a fixed rate in addition to the basic amount. This is called interest in our language.

Malauna Aashiq Elahi⁹² said:

”وہ قرض جو زائد کچھ لے کر آئے تو وہ سود ہے۔⁹³“

The loan that brings even a little bit more is interest.

Muhammad Abdhu Alfalah⁹⁴ said:

”اصطلاح شریعت میں خاص شرح کے ساتھ جو اضافہ اصل (راس المال) پر لیا جاتا ہے اسے ربا

⁸⁷ دریا آبادی، عبد الماجد، تفسیر ماجدی

⁸⁸ Sayyid 'Ibrāhīm Ḥusayn Quṭb, (1906–1966) was an Egyptian author, educator, Islamic scholar, theorist, and exegete.

⁸⁹ سید قطب، فی تخلیل القرآن، اسلامی اکادمی، لاہور

⁹⁰ Jalal ud Din as-Suyuti Mahalli

⁹¹ سید طیب، جلال الدین سعیدی، تفسیر جلالی

⁹² Bulandshahrī, Maulana Muḥammad 'Āshiq Ilāhī Bulandshahrī Muhājir Madanī, (1925-2002) was a prominent Indian Islamic scholar.

⁹³ بلند شہری، مولانا عاشق الہی، تفسیر انوار اہلبیان

⁹⁴ Alfalah, Muhammad Abdhu Ferozpuri, (1917- 1990), Pakistani exegete.

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کہتے ہیں۔⁹⁵

In Shari'ah, the increase which is taken on the original amount/ Capital (ras-ul-mal) with a special increased rate is called 'Riba'.

Javed Ahmad Ghamdi⁹⁶ said:

”اس سے مراد وہ معین اضافہ ہے جو ایک قرض دینے والا مقرض سے اپنی اصل رقم پر محض اس لیے وصول کرتا ہے کہ اس نے ایک خاص مدت کے لیے اس کو یہ رقم استعمال کرنے کی اجازت دی ہے۔⁹⁷“

This refers to the specific increase that a lender receives from the debtor on his Capital amount on only reason that it has allowed him to use that amount for a certain period of the time.

Allama Qurtabi⁹⁸ said:

”ربا جس پر شرعی اصطلاح ہے وہ دو چیزیں ہیں: نساء کو حرام قرار دینا اور عقود اور مطعومات میں تفاضل (زیادتی) جیسا کہ ہم اسے بیان کریں گے اور اس میں غالب وہی ہے جو عرب کرتے تھے، قرض دینے والے کے لئے ان کا یہ قول ہے: أَتَقْضِي أُمَّ تِرْبَى؟ (کیا تو ادا کرے گا یا تو اضافہ کرے گا) پس وہ (قرض دینے والا) مال کی تعداد میں اضافہ کر دیتا اور قرض لینے والا اس پر صبر کرتا اور یہ سب حرام کر دیا گیا ہے۔ اس پر پوری امت کا اتفاق ہے۔⁹⁹“

Maulana Idrees Kandhlawi¹⁰⁰ said:

”ربا شریعت میں اس مالی زیادتی کا نام ہے جس کے عوض اور مقابلہ میں مال نہ ہو۔¹⁰¹“

'Riba' in Shariat term is the name of the financial excess for which, there is no wealth or any other thing/ goods in exchange return.

Maluana Muhammad Ubda Ferozpuri¹⁰² said:

95 الفلاح، محمد عبدہ، اشرف الحوائی

⁹⁶ Ghāmidī, Jāvēd Ahmad, (b1951) is a Pakistani Muslim theologian, Quran scholar, Islamic modernist exegete and educationist.

97 غامدی، جاوید احمد، ابیان

⁹⁸ al-Qurtubi, Imam Abu 'Abdullah Muhammad bin Ahmad bin Abu Bakr al-Ansari al-Qurtubi (1214-1273) was a famous *mufassir*, *muhaddith* and *faqih* from Cordoba of Maliki origin.

99 قرطی، ابو عبد اللہ محمد بن احمد تفسیر قرطی

¹⁰⁰ Kāndhlawī, Muḥammad Idrīs bin Muḥammad Ismā'īl Ṣiddīqī Kāndhlawī, (1899-1974) was a Islamic scholar of *hadith* and *tafsir*. He honored with the post of *Shaykh at-Tafsir* at 'Darul Uloom' Deoband in India, thereafter migrated to Pakistan and served as *Shaykh al-Hadith wat-Tafsir* at 'Jamia Ashrafia' Lahore.

101 کندھلوی، مولانا محمد ابریس صدیقی، معارف القرآن

¹⁰² al-Flah, Muhammad Abda Ferozpuri, (1917- 1990), Pakistani exegete.

”الربا (سود) راس المال یعنی اصل سرمایہ پر جو بڑھوتی لی جائے وہ ربو کہلاتی ہے۔ لیکن شریعت میں خاص قسم کی بڑھوتی پر یہ لفظ بولا جاتا ہے۔ چنانچہ زیادہ ہونے کے اعتبار سے فرمایا: ﴿وَمَا آتَيْتُمْ مِّنْ رِّبَآ لَيْلَيْبُوْفَیْ أَمْوَالِ النَّاسِ فَلَا يَرُوْعَانَدَ اللَّهَ﴾ [الروم: 39] اور تم کسی کو جو چیز (عطیہ) زیادہ لینے کے لئے دو تاکہ لوگوں کے اموال میں بڑھوتی ہو وہ اللہ کے یہاں نہیں بڑھے گی۔ اور آیت: ﴿يَمْحَقُ اللَّهُ الرِّبَآ وَيُبَرِّئُ الصَّدَقَاتِ﴾ [البقرة/ 276] اللہ سود کو بے برکت کرتا ہے اور خیرات کو بڑھاتا ہے۔ میں محن کا لفظ لا کر اس بات پر تنبیہ کی ہے کہ ربا، یعنی سود میں برکت نہیں ہوتی اس کے مقابلہ میں زکوٰۃ کے متعلق فرمایا: ﴿وَمَا آتَيْتُمْ مِّنْ زَكْوَةً تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضْعُفُونَ﴾ [الروم/ 39] اور تم (محن) خدا کی رضا جوئی کے ارادے سے زکوٰۃ دیتے ہو تو جو لوگ ایسا کرتے ہیں وہی اپنے دینے ہوئے کو خدا کے ہاں بڑھا رہے ہیں۔¹⁰³

Syed Abu al-Aala Maududi¹⁰⁴ said:

”اصطلاحاً اہل عرب اس لفظ کو اس زائد رقم کے لیے استعمال کرتے تھے جو ایک قرض خواہ اپنے قرض دار سے ایک طے شدہ شرح کے مطابق اصل کے علاوہ وصول کرتا ہے۔ اسی کو ہماری زبان میں سود کہتے ہیں۔“¹⁰⁵

Arabs used the term 'Riba' to refer the excess money that a creditor receives from his debtor in addition to the Capital at a fixed rate. This is called interest in our language.

Mufti Ahmed Yar Khan Naeemi¹⁰⁶ said:

”اصطلاح شریعت میں ناپنے تو لے والی ہم جس چیز میں بلا عوض زیادتی کو ربو کہتے ہیں۔“¹⁰⁷
The term 'Riba' in Shari'ah refers to the unpaid excess in a weighed and Same commodity.

Imam al- Jaṣṣāṣ¹⁰⁸ has given a comprehensive definition of 'Riba' as:

”هو القرض المشروط فيه الأجل وزيادة مال على المستقرض.“¹⁰⁹
یعنی قرض کا وہ معاملہ جس میں ایک مخصوص مدت ادائی اور قرض دار پر مال کی کوئی زیادتی معین

¹⁰³ الغلاح، محمد عبد، مفردات القرآن

¹⁰⁴

¹⁰⁵ مودودی، سید ابوالاعلیٰ، تفہیم القرآن، ادارہ ترجمان القرآن (پرائیویٹ) لیٹریٹری، لاہور، طبع یازد ہم، جولائی 1991ء
¹⁰⁶ Naeemi, Mufti Ahmad Yar Khan, (1904-1971)

¹⁰⁷ نعیمی، منتظر احمد یار خان، اشرف التفاسیر، تفسیر نعیمی، مکتبہ اسلامیہ، لاہور

¹⁰⁸ al-Jaṣṣāṣ, Abū Bakr Aḥmad bin 'Alī al-Rāzī, (305-370H/917-981)

¹⁰⁹ الجصاص، الإمام أبي بكر أحمد بن علي الرازي، أحكام القرآن، ت: محمد الصادق قمحاوی، دار احیاء التراث العربي، بیروت، لبنان، 1412ھ/1992م، ج 2، ص 189

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کر لی گئی ہو۔

"The loan which is returnable by the borrower after certain fixed period with some determined increase."

This definition is apparently based on the wordings of a hadith narrated by Hazrat Ali (ؑ).¹¹⁰

«کل قرض جرّ منفعةً فهو ربا.»

ہر وہ قرض جو اپنے ساتھ نفع لائے وہ ربا ہے۔

"Any loan that brings increase with it is 'Riba'."

In addition to that a similar definition of 'Riba' is also narrated by a Sahabi (ؓ) of Prophet (ﷺ) Hazrat Fadala Bib Abeed(ؓ):

«کل قرض جرّ منفعةً فهو وجه من وجوه الربا.»¹¹¹

ہر وہ قرض جو اپنے ساتھ اضافی رقم لائے وہ ربا کی شکل میں سے ایک شکل ہے۔

"All kind of loans that draws profit with it are one kind of 'Riba' out of the different kinds of 'Riba'."

42. According to above mentioned definitions of 'Riba' any amount taken or given in a loan transaction in excess to the actual loan amount is 'Riba'. The definition mentioned hereinabove based on the Hadith compiled by *as-Suyuti* clearly indicates that the increased amount upon a loan transaction has to be pre-determined or has to be mentioned as a condition for grant of loan or granting of extra time at the end of agreed period to return the loan. Similarly, in the other Hadith the same meaning of pre-determination of the excess amount that has to be settled as precondition for granting any loan is depicted

¹¹⁰ *al-Jami al-Saghir* of *as-Suyuti*, Hadith No.6336, some have narrated this as:

¹¹¹ السنن الکبری للإمام البیهقی، الحدیث رقم: 10933، ج 5، ص 573

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by the word *Jarra* (جَرَّ). To make this clear *Abu Bakr al-Jassas Razi* used

the word *Al-Mashroot* (المشروع) in the definition of 'Riba'.

Above mentioned are the examples in which the legal definition of the term 'Riba' is explained by different jurists in the light of *Qur'an* and *Sunnah*. The first and the foremost type of 'Riba' is called "Riba as *al-Nasi'h*" (ربا النسيمة), which is the most famous and well known type of 'Riba'. Since this type of 'Riba' is prohibited in *Qur'an*; therefore, it is also called 'Riba al-*Qur'an*' (ربا القرآن). In addition to that this type of 'Riba' was known and practiced by the Arab tribes before the dawn of Islam in the period of ignorance (زمان جاهليت). Therefore, this kind of 'Riba' is also called 'Riba al-*Jahiliya*' (ربا الجاهلية). Since this type of 'Riba' is associated with (قرض) or the transaction involving loan, therefore, it is also called 'Riba al-*Qard*' (ربا القرض). Some jurists have called it as 'Riba *Jali*' (ربا جل) being obvious in form.

43. Another type of transaction known as 'Riba al-*fadl*' (ربا الفضل) is also prohibited which was explained by Prophet (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) himself. The 'Riba al-*fadl*' is also called 'Riba-*ul-Sunnah*' because its prohibition is

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based on *ahadith-e-Nabawi* (ﷺ) and *Sunnah* of the Prophet (ﷺ).

Basically 'Riba' al-fadl is referred to that specific increase which occurred in relation to exchange of exactly similar types of goods. Riba al-fadl is related to trade and at that time not only in Arabia but all over the world barter trade was in practice, therefore, in the classic books of Islamic Jurisprudence example of barter trade exists to explain the prohibition of Riba al-fadl. As explained earlier Riba al-Fadl is related to trade of goods, but it is not directly related to banking and financial transaction. However some principles can be drawn, while doing trade or drafting trade contracts which are being used in banking, on the basis of the Ahadith explaining the prohibition of Riba al-fadl. Following are the relevant *Ahadith* which provide the basis of the prohibition of 'Riba al-Sunnah' or 'Riba al-fadl'. Those six things which are referred in *ahadith* are known as 'amwal-e-Rabwiya' (اموال ربوية).

44. The prohibition of 'Riba al-fadl' is in fact a precautionary measures introduced by Islam to implement the complete prohibition of 'Riba' in any manner and all its forms. So according to *Ibn Qayyim*, the prohibition of 'Riba al-fadl' is in fact taken under the concept of 'Sadd-uz-Zarai' to maintain prohibition of 'Riba' al-Naseah or 'Riba' Al-

Qur'an'.¹¹²

”رہا الفضل، کی حرمت درحقیقت ایک انسدادی نوعیت کا حکم ہے۔ اہل عرب میں چونکہ اشیاء کے ہم جنس تبادلے کا دستور تھا اور اس میں کمی بیشی رائج تھی اور خطرہ تھا کہ یہ چیز ”رہا النسیئة“ کے ارتکاب کا پیش نہیں ہونے گی۔ اس لیے آنحضرت ﷺ نے اس سے منع فرمایا، چنانچہ بعض روایات میں حرمت ”رہا الفضل“ کے ساتھ آپ ﷺ کے یہ الفاظ بھی منقول ہیں: ”اپنی اخاف علیکم الربا“ یعنی ”مجھے تم پر رہا کا خوف ہے“ [علی المتقی: کنز العمال، دکن ۱۳۱۲ھ، ۲: ۲۳۱]۔ اس سے واضح ہے کہ ”رہا الفضل“ کی حرمت درحقیقت ”رہا النسیئة“ ہی کے مکمل سدباب کے پیش نظر کی گئی تھی۔“¹¹³

At some instances upon certain invalid business transaction the word ‘Riba’ is also used for them in some *ahadith*. Abu Bakar al-Jassas did explain this factor:

”اللہ تعالیٰ نے اس رہا یعنی سود کو باطل قرار دیا جو ان لوگوں کے ہاں مردوج و متعارف تھا۔ اس کے ساتھ ہی خرید و فروخت کی اور کئی صورتوں کو بھی باطل قرار دے کر انہیں رہا یعنی سود کا نام دیا۔ اس بنا پر قول باری (و حرم الربا) ان تمام صورتوں کی تحریم پر مشتمل ہے کیونکہ شریعت میں ان تمام صورتوں پر لفظ رہا کا لحاظ ہوتا ہے تاہم عربوں کے ساتھ سودی لین دین کی صرف وہی صورت تھی جس کا ہم نے ذکر کیا ہے یعنی ایک مقررہ مدت تک کسی کو قرض دینا اور اس میں زیادتی اور اضافے کی شرط لگادینا شریعت میں رہا کے اسم کا اطلاق کئی معانی پر ہوتا ہے۔

اول تو وہ ہے جس پر زمانہ جاہلیت میں لوگوں کا تعامل تھا۔ دوم مکمل اور موزون کے تحت آنے والی اشیاء میں سے کسی ایک جنس میں تھا ضل یعنی کمی بیشی کے ساتھ خرید و فروخت جیسا کہ ہمارے اصحاب کا قول ہے۔ امام مالک کا قول ہے کہ جنس کی یکسانیت کے ساتھ یہ اعتبار کیا جائے گا کہ وہ چیز اشیائے خوردنی میں سے ہو اور اس کا ذخیرہ کر لیا جاتا ہو۔ [احکام القرآن، ابو بکر جصاص، البقرہ: 275-279]

البته نبی کریم ﷺ نے رباء کے مفہوم میں بیع و شراء کی چند صورتوں کو بھی داخل فرمایا جن کو عرب رباء نہ سمجھتے تھے، مثلاً چچے چیزوں کی بیع و شراء میں یہ حکم دیا کہ اگر ان کا تبادلہ کیا جائے تو برابر سرا بر ہونا چاہیے، اور نقد دست بدست ہونا چاہیے، اس میں کمی بیشی کی گئی یا وحدار کیا گیا تو وہ بھی رہا ہے، یہ چھ چیزیں سونا، چاندی، گیہوں، جو، کھجور اور انگور ہیں۔

اسی اصول کے ماتحت عرب میں معاملات کی جو چند صورتیں مزابنہ اور محاقلہ کے نام سے رائج

¹¹²

اردو و ارکہ معارف اسلامیہ: This aspect of Riba al-Fadl is explained in the book: p.178

¹¹³ ابن قیم الجوزیہ، محمد بن ابی بکر بن ایوب بن سعد الزریع الدمشقی، ابو عبد اللہ شمس الدین، (693-766ھ) اعلام المؤمنین، مکتبہ قدوسیہ، لاہور

تحییں آیات رباء نازل ہونے کے بعد رسول کریم ﷺ نے ان کو رباء میں شامل قرار دے کر منع فرمایا۔ [ابن کثیر بحوالہ مسند رک حاکم، ص ۳۲۷، ج ۱]

اس میں یہ بات قابل غور تھی کہ ان چھ چیزوں کی خصوصیت ہے، یا ان کے علاوہ اور بھی کچھ چیزوں ان کے حکم میں ہیں اور اگر ہیں تو ان کا ضابطہ کیا ہے، کس کس صورت کو داخل رباء سمجھا جائے، یہی اشکال حضرت فاروق اعظمؓ کو پیش آیا، جس کی بنابر فرمایا: إِنَّ آيَةَ الرِّبْوَ مِنْ آخِرِ مَا نَزَّلَ مِنَ الْقُرْآنَ وَالنَّبِيُّ قَبْضَ قَبْضٍ قَبْلَ أَنْ يَبْيَنَهُ لَنَا فَدَعُوا الرِّبْوَا وَالرِّبِّيَّةَ۔ [أحكام القرآن، للجصاص، ص ۵۵۱، وتفسیر ابن کثیر بحوالہ ابن ماجہ، ص ۳۹۸، ج ۱] یعنی آیت رباء قرآن کی آخری آیتوں میں ہے اس کی پوری تفصیلات بیان فرمانے سے پہلے رسول کریمؐ کی وفات ہو گئی اس لیے اب احتیاط لازم ہے، رباء کو تو چھوڑنا ہی ہے جس صورت میں رباء کا شبہ بھی ہو اس کو بھی چھوڑ دینا چاہیے۔

فاروق اعظمؓ کی مراد معاملات بیع و شراء کی وہ صورتیں ان کی تفصیلات ہیں جو جاہلیت عرب میں رباء نہیں سمجھی جاتی تھیں، رسول کریم ﷺ نے ان کو رباء میں داخل قرار دے کر حرام فرمایا، باقی اصل رباء جو تمام عرب میں معروف و مشہور تھا اور صحابہ کرام ﷺ نے اس کو چھوڑا، رسول کریم ﷺ نے اس کا قانون نافذ فرمایا اور حجۃ الوداع کے خطبہ میں اس کا اعلان کیا، اس میں فاروق اعظمؓ کو کوئی اشکال یا اشتباہ ہونے کا کوئی امکان نہیں، پھر جب فاروق اعظمؓ کو رباء کی جن خاص صورتوں میں اشتباہ پیش آیا تو اس کا حل یہ تجویز فرمایا کہ جن صورتوں میں رباء کا شبہ بھی ہو ان کو بھی چھوڑ دیا جائے۔

مگر جیسی تھی کہ آج بعض وہ لوگ جو یورپ کی ظاہری ٹیپ ٹاپ اور دولت مندری اور موجودہ نظام تجارت وغیرہ میں سود کے رکن بن جانے سے مرعوب ہیں، انہوں نے فاروق اعظم کے اس ارشاد کا یہ نتیجہ نکالا کہ رباء کا مفہوم ہی محمل رہ گیا تھا، اس لیے اس میں رائے کی گنجائش ہے، جس کے غلط ہونے کا کافی مواد سامنے آچکا ہے، احکام القرآن میں ابن عربی نے ان لوگوں کا سخت انکار کیا ہے جنہوں نے اس فاروقی ارشاد کی بنابر آیات رباء کو محمل کھاتھا۔

ابن عربیؓ نے احکام القرآن میں فرمایا: إِنْ مَنْ زَعَمَ أَنْ هَذِهِ الْآيَةُ مُحَمَّلَةٌ فَلْمَ يَفْهَمْ مقاطع الشريعة فِإِنَّ اللَّهَ تَعَالَى أَرْسَلَ رَسُولَهُ إِلَى قَوْمٍ هُوَ مِنْهُمْ بِلُغَتِهِمْ وَأَنْزَلَ عَلَيْهِ كِتَابَهُ، تَيْسِرًا مِنْهُ بِلُسَانِهِ وَلِسَانِهِمْ وَالرِّبَا فِي الْلُّغَةِ الرِّبَاوَةِ وَالْمَرَادُ بِهِ فِي الْآيَةِ كُلُّ زِيَادَةٍ لَا يَقْابِلُهَا عَوْضٌ۔ یعنی جس قوم نے یہ کہا کہ یہ آیت محمل ہے، اس نے شریعت کی تصریحات کو نہیں سمجھا، کیونکہ اللہ تعالیٰ نے اپنے رسول کو ایسی قوم کی طرف سمجھا کہ وہ خود اسی قوم میں سے تھے ابھی کی زبان میں بھیجا ان پر اپنی کتاب آسمانی کے لیے ابھی کی زبان میں نازل فرمائیں اور لفظ رباء کے معنی ان کی زبان میں زیادتی کے ہیں اور مراد آیت میں وہ زیادتی ہے جس

کے مقابلہ میں مال نہیں بلکہ میعاد ہے۔¹¹⁴

45. According to the majority of the Jurists, 'Riba' of surplus or 'Riba al-fadhl' comes into existence in a sale transaction that involves the exchange of one of the 'Ribawi' commodities, i.e., the commodities which are mentioned in the *ahadith* of the Prophet (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ). (such as dates, wheat, and salt etc.) for the same type of commodity but different amount or weight. 'Riba al-fadhl' arises from the exchange between two items of the same type, but in unequal amounts. The addition on one side of the transaction has to be in physical quantity rather than in value, it is irrelevant if that increase or addition is initially stipulated in the contract or not. The basis of 'Riba al Fadl' or 'Riba al-Hadith' is based on following *ahadith* of the Prophet (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ):

1. The Prophet (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ) said:

عَنْ عُبَادَةَ بْنِ الصَّامِيتِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «اللَّهُبْ بِاللَّهَبِ، وَالْفِضَّةُ بِالْفِضَّةِ، وَالْبُرْ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالثَّمُرُ بِالثَّمُرِ، وَالْمِلْحُ بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، سَوَاءً بِسَوَاءٍ، يَدًا بِيَدِهِ، فَإِذَا اخْتَلَقَتْ هَذِهِ الْأَصْنَافُ فَبِيُّعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدِهِ». [رَوَاهُ مُسْلِمٌ]¹¹⁵

Narrated 'Ubada bin as-Samit ^{رض}: Allah's Messenger ﷺ said: "Gold is to be paid for with gold, silver with silver, wheat with wheat, barley with barley, dates with dates, and salt with salt,

¹¹⁴ اشرفي، عبد الرحمن، بحثات القرآن

¹¹⁵ Bulugh al-Maram 7: 833, Sahih Muslim 81: 1587, <https://sunnah.com/bulugh/7/66>

same quantity for same quantity and equal for equal, hand to hand (i.e. payment being made on the spot). If these classes differ, sell as you wish as long as payment is made on the spot."
[Reported by Muslim]

2. Narrated Abu Sa'id al-Khudri : The Prophet (ﷺ) said:

عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ ، قَالَ، قَالَ رَسُولُ اللَّهِ ﷺ : «الْذَّهَبُ
بِالْذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالثَّمُرُ
بِالثَّمُرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ فَمَنْ زَادَ أَوْ اسْتَزَادَ فَقَدْ
أَرْبَى الْأَخْذَ وَالْمُعْطَى فِيهِ سَوَاءً».¹¹⁶

"Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, salt by salt, like by like, payment being made hand to hand. He who made an addition to it, or asked for an addition, in fact dealt in usury. The receiver and the giver are equally guilty."

3. From Abu Sa'id and Abu Hurayrah :

وَعَنْ أَبِي سَعِيدٍ وَأَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَعْمَلَ رَجُلًا
عَلَى خَيْرٍ فَجَاءَهُ بِتَمْرٍ جَنِيبٍ فَقَالَ: «أَكُلُّ تَمْرٍ خَيْرٌ هَكَذَا؟»
قَالَ: لَا وَاللَّهِ يَا رَسُولَ اللَّهِ إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعِينِ
وَالصَّاعِينِ بِالثَّلَاثِ فَقَالَ: «لَا تَفْعَلْ بِعِ الْجُمْعَ بِالدَّرَاهِمِ ثُمَّ ابْتَعِ
بِالدَّرَاهِمِ جَنِيبًا». وَقَالَ: «فِي الْمِيزَانِ مِثْلَ ذَلِكِ».¹¹⁷

"Allah's Messenger ﷺ appointed a man over Khaibar and he brought him dates of a very fine quality. He asked him whether all the dates of Khaibar were like that, and he replied, "I swear by God that they are certainly not, Messenger of God. We take a sa' of this kind for two, and two for three." So he said, "Do not do so. Sell the lot for dirhams, then buy the very fine dates

¹¹⁶ Sahih Muslim, 'The Book of Musaqah': 1584e. <https://sunnah.com/muslim:1584e>

¹¹⁷ Mishkat al-Masabih, 'Business Transactions', Hadith 2813, Hukm: متفق عليه (الألباني).
<https://sunnah.com/mishkat:2813>

for 'dirhams'." He said that it was the same when things were sold by weight."

In addition to the prohibition of Riba and Ribawi activities as much as possible this Hadith also explain the two other basic requirements which Islam was to promote in the economic sector, one is the just circulation of money in the society and avoidance of imbalance in the economic activities or economic exploitation. Islam wants to eliminate completely the economic exploitation in all forms.

4. From *Abu Sa'id al-Khudri* :

قَالَ جَاءَ بِلَالٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِتَمْرٍ بَرْنِيٍّ فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مِنْ أَيْنَ هَذَا». قَالَ بِلَالٌ كَانَ عِنْدَنَا تَمْرٌ رَدِيٌّ، فَبَعْثَ مِنْهُ صَاعِيْنِ بِصَاعٍ، لِتُطْعِمَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عِنْدَ ذَلِكَ «أَوَّلَ أَوَّلَ عَيْنَ الرِّبَا عَيْنُ الرِّبَا، لَا تَفْعَلْ، وَلَكِنْ إِذَا أَرَدْتَ أَنْ تَشْتَرِي فَبِعِ الشَّمْرَ بِبَيْعِ آخَرَ ثُمَّ اشْتَرِه». ¹¹⁸

"Once Bilal brought Barni (i.e. a kind of dates) to the Prophet ﷺ and the Prophet ﷺ asked him, "From where have you brought these?" Bilal replied, "I had some inferior type of dates and exchanged two Sa of it for one Sa of Barni dates in order to give it to the Prophet; to eat." Thereupon the Prophet ﷺ said, "Beware! Beware! This is definitely Riba (usury)! This is definitely Riba (usury)! Don't do so, but if you want to buy (a superior kind of dates) sell the inferior dates for money and then buy the superior kind of dates with that money."

5. Narrated *Fadalah ibn 'Ubayd al-Ansari* :

قَالَ: اشْتَرَيْتُ يَوْمَ خَيْرٍ قِلَادَةً بِاُثْنَيْ عَشَرَ دِينَارًا فِيهَا ذَهَبٌ وَخَرْجٌ فَفَصَلَّتْهَا فَوَجَدْتُ فِيهَا أَكْثَرَ مِنْ اُثْنَيْ عَشَرَ دِينَارًا

¹¹⁸ Sahih al-Bukhari, 'Representation, Authorization, Business by Proxy', Hadith 2312, <https://sunnah.com/bukhari:2312>

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فَذَكَرْتُ ذَلِكَ لِلنَّبِيِّ ﷺ فَقَالَ: «لَا تُبَاعُ حَقًّى تُفْصَلَ». [رَوَاهُ

¹¹⁹ مُسْلِمٌ]

“that at the battle of Khaibar he had bought a necklace in which there were gold and gems for twelve dinars, and after considering them separately he found that it was worth more than twelve dinars, so he mentioned that to the Prophet ﷺ who said, “It must not be sold till the contents are considered separately.”

[Muslim narrated it.]

This Hadith also explains one of the principles of Islam that in all economic activities Islam wants to eliminate any possibility of ambiguity or uncertainty.

6. *Abu Umamah* said:

عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ شَفَعَ لِأَخِيهِ شَفَاعَةً، فَأَهْدَى لَهُ هَدِيَّةً، فَقَبِيلَهَا، فَقَدْ أَتَى بَابًا عَظِيمًا مِنْ أَبْوَابِ الْرِّبَا». [رَوَاهُ أَحْمَدُ، وَأَبُو

¹²⁰ دَاوُدٌ]

The Prophet ﷺ said: “Whoever intercedes for his brother and that one gives him a gift for that (intercession) which he accepts, he has engaged in one of the most terrible types of Riba (undeserving increase in something).”

[Reported by Ahmad and Abu Dawud]

7. From 'Abdallah ibn Abi Awfa:

قال رسول الله ﷺ: «غَنِيَ الْمُسْتَرْسِلُ حَرَامٌ». ¹²¹

The Prophet ﷺ said: “Deceiving a mustarsal [an unknowing entrant into the market] is ‘Riba’.”

¹¹⁹ Mishkat al-Masabih: 2817, <https://sunnah.com/mishkat:2817>

¹²⁰ Bulugh al-Maram 7: 833, <https://sunnah.com/bulugh/7/77>

Sunan Abi Dawud 3541, <https://sunnah.com/abudawud:3541>

¹²¹ Suyuti, al-Jami' al-Saghir, under the word *ghabn*

Kanz al-'Ummal, Kitab al-Buyu', al-Bab al-thani, alfasl al-thani, on the authority of Sunan al-Bayhaqi

8. It is narrated by 'Abdullah bin Abu 'Aufa:

حَدَّثَنِي إِسْحَاقُ، أَخْبَرَنَا يَزِيدُ بْنُ هَارُونَ، أَخْبَرَنَا الْعَوَامُ، قَالَ حَدَّثَنِي إِبْرَاهِيمُ أَبُو إِسْمَاعِيلَ السَّكَسِيُّ، سَمِعَ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى - رضي الله عنهم - يَقُولُ: أَقَامَ رَجُلٌ سِلْعَتَهُ فَحَلَّفَ بِاللَّهِ لَقَدْ أُعْطِيَ بِهَا مَا لَمْ يُعْطُهَا فَنَزَّلَتْ ۝ إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلًا ۝ وَقَالَ أَبْنُ أَبِي أَوْفَى الْمَاجِشُ آكِلُ رِبَا خَائِنٌ ۝ ۱۲۲.

"A man displayed some goods in the market and took a false oath that he had been offered so much for them though he was not offered that amount. Then the following Divine Verse was revealed: "Verily! Those who purchase a little gain at the cost of Allah's covenant and their oaths... Will get painful punishment." (3:77) Ibn Abu 'Aufa added, "Such person as described above is a treacherous Riba eater (i.e. eater of usury)."

قال رسول الله ﷺ: الْمَاجِشُ آكِلُ رِبَا خَائِنٌ ۝ ۱۲۳.

The Prophet ﷺ said: "A *najish* [one who serves as an agent to bid up the price in an auction] is a cursed taker of 'Riba'."

'The Urdu Encyclopedia of Islam' اردو دائرہ معارف اسلامیہ explained all these aspects in its own style in a precise manner as:

”اس طرح قرآن و حدیث میں ادنیٰ غور و فکر سے یہ بھی واضح ہو جاتا ہے کہ 'ربا' کے معاملے میں یہ بات قطعی غیر متعلق ہے کہ قرض کس غرض کے لیے حاصل کیا گیا ہے، عہد رسالت اور عہد صحابہؓ میں ہر قسم کے قرض پر اضافہ وصول کرنا 'ربا' کہلاتا تھا، اور اسے حرام سمجھا جاتا تھا، خواہ قرض کسی عام صرف ضرورت کے واسطے لیا گیا ہو یا کسی تجارتی یا پیداواری ضرورت کے لیے۔ ہمارے زمانے میں بعض حضرات نے یہ خیال ظاہر کیا ہے کہ جو قرض تجارتی اغراض کے لیے حاصل کیا گیا ہو اس پر مقروض سے معین شرح پر سود وصول کرنا 'ربا' میں داخل نہیں، کیونکہ عہد رسالت ﷺ میں صرف صرف اغراض کے قرضے راجح تھے، تجارتی قرضوں کا رواج نہ تھا... یہ

¹²² Sahih al-Bukhari, 'Witnesses': 2675, <https://sunnah.com/bukhari:2675>

¹²³ Cited by Ibn Hajar al-'Asqalani in his commentary on al-Bukhari called *Fath al-Bari*, *Kitab al-Buyu'*, *Bab al-najsh*; also in *SuyutT*, *al-Jami al-Saghir*, under the word *al-najish* and *Kanz al-'Ummal*, op. cit., both on the authority of Tabarani's *al-Kabir*

خیال درست نہیں۔

اول تو اس لیے کہ جب قرآن و حدیث اور آثار صحابہؓ کے رو سے ربا النسیئة کی یہ تعریف کہ ہر 'وہ قرض جس پر معاہدہ کے ذریعہ کوئی اضافہ مقرر کیا گیا ہو، متعین ہو گئی تو اس کے بعد یہ تحقیق بالکل غیر ضروری ہے کہ قرض کس مقصد کے لیے حاصل کیا جا رہا ہے، اور اس میں تجارتی اور صرفی اغراض کا فرق نکالنا قرآن و حدیث کے مفہوم میں ایک بے دلیل زیادتی کے مترادف ہے؛ دوسرے یہ خیال بھی صحیح نہیں کہ عہد رسالت اور عہد صحابہؓ میں تجارتی قرضوں کا رواج نہ تھا، روایات میں اس دور کے کئی تجارتی قرضوں کا ثبوت ملتا ہے، چند مثالیں درج ذیل ہیں:

— تفسیر ابن جریر میں روایت ہے کہ بنو عمرو بن عمیر بن عوف، بنو المغیرہ سے قرض لیا کرتے تھے [السیوطی: الدر المنشور، ۱: ۳۶۶]۔ اس روایت اور اس جیسی کئی روایتوں میں قبائل عرب کا باہم قرض لینا دینا مذکور ہے، یہ شخصی قرض نہ تھے جنہیں صرفی کہا جائے، بلکہ اجتماعی قرض تھے، کیونکہ قبائل عرب کی حیثیت مشترک سرمایہ کی کمپنیوں جیسی تھی، جن کے ذریعے قبلے کے افراد مشترک تجارت کیا کرتے تھے، لہذا یہ قرض شخصی ضروریات کے بجائے تجارتی اغراض ہی کے لیے ہوا کرتے تھے۔

— مند احمد ، البزار اور الطبرانی نے عبد الرحمن بن ابی بکر سے نقل کیا ہے کہ آنحضرت ﷺ نے فرمایا کہ اللہ تعالیٰ قیامت کے دن اس شخص کو بلاۓ گا جس نے کسی سے قرض لے کر اسے ادا نہ کیا ہو، اس سے پوچھئے گا: اے اہن آدم! یہ قرض تو نے کس واسطے لیا؟ اور کیوں لوگوں کے حقوق ضائع کیے؟ وہ کہے گا: اے پروردگار! میں نے قرض لے کر نہ اسے کھایا، نہ پیا، نہ پہننا اور نہ اسے کسی اور کام میں لگاسکا، بلکہ یا تو مجھ پر آتش زنی کی آفت آگئی، یا مال چوری ہو گیا، یا (تجارت میں) خسارہ (وضیعہ) ہو گیا... اخ” [الهیشی: مجمع الزوائد، بیروت ۱۹۶۷ء: ۱۳۳]۔ اس حدیث میں واضح طور پر تجارتی قرض کا تصور پایا جاتا ہے۔

— حضرت زبیر بن العوامؓ کے بارے میں صحیح روایات سے ثابت ہے کہ وہ لوگوں کی امانتیں اپنے پاس اس شرط پر رکھتے تھے کہ انھیں یہ قرض قرار دے دیا جائے، تاکہ اس سے رقم کے مالک کا یہ فائدہ ہو کہ اس کا مال ضائع ہونے سے محفوظ ہو جائے (کیونکہ امانت اگر 'ہلاک' ہو جائے تو امانت رکھنے والے پر اس کا تاو ان نہیں آتا، اس کے برخلاف مقتروض کے پاس سے قرض کی رقم ضائع ہو جائے تو وہ اس کا ذمہ دار ہوتا ہے)۔ اور اپنا یہ فائدہ ہو کہ اسے تجارت میں لگا کر اس سے نفع حاصل کیا جاسکے۔ چنانچہ انہوں نے اپنی شہادت کے وقت بائیس لاکھ کی رقم چھوڑی، یہ ساری رقم کا رو بار میں لگی ہوئی تھی [ابخاری: الصحیح، کتاب الجہاد، باب برکۃ الغازی فی مالہ، دہلی ۱۳۵ھ، ۱: ۲۳۱]۔ تجارتی قرض کی واضح مثال بینکنگ کی وہ شکل ہے جو عہد صحابہؓ میں رکھ تھی۔

□ — حضرت عمرؓ کے صاحب زادے حضرت عبد اللہ اور عبید اللہؓ ایک مرتبہ عراق گئے، وہاں عراق کے گورنر حضرت ابو موسیٰ الاشعریؓ نے بیت المال سے ایک رقم انہیں بطور قرض دی، جو وہ حضرت عمرؓ کے پاس مدینہ بھیجا چاہتے تھے، لیکن اگر بطور امانت انہیں دیتے تو ضروری نہ تھا کہ وہ محفوظ رہتی، اس لیے کہ راستہ میں ضائع ہو جانے کی صورت میں عبد اللہ اور عبید اللہ پر تاوان نہ آتا اس لیے بطور قرض دی تاکہ رقم بھی بیت المال تک پہنچ جائے اور عبید اللہ اور عبید اللہؓ اس سے نفع بھی حاصل کر سکیں۔ [امام مالک: الموطا، ص ۲۸۵
کتاب القراض، دارالاشعاعت کراچی ۱۳۷۱]

□ — ہند بنت عقبہؓ نے حضرت عمرؓ کے زمانہ (۲۳ھ) میں تجارت کی غرض سے بیت المال سے قرض لیا، اور بلاد کلب میں جا کر اس سے تجارت کی۔ [الطبری، قاہرہ، ۱۳۵۷ھ: ۳]

[۸۷]

ان واقعات سے یہ بات پایہ ثبوت کو پہنچ جاتی ہے کہ عہد رسالتؓ اور عہد صحابہؓ میں تجارتی قرضوں کا رواج تھا۔ البتہ 'ربا' کی حرمت کے بعد ان پر سود کالین دین ختم ہو گیا تھا۔ یا تو ایسا قرض بغیر کسی نفع کے دیا جاتا تھا، جیسا کہ حضرت زبیرؓ اور ہند بنت عقبہؓ کے واقعات میں ہوا، یا پھر رقم دینے والا مضاربہ کا معاملہ کرتا تاکہ تجارت کے نفع میں دونوں متناسب طور سے (نہ کہ معین شرح سود پر) شریک ہوں، اس معاملہ کو اس عہد میں 'قراض' کہا جاتا تھا۔¹²⁴

After having knowledge of all the directions of the Prophet ﷺ which constitute the strict ruling of *Shari'ah* for prohibition of 'Riba' in all forms and under any circumstance *Caliph Hazrat Umer*ؓ made a very important statement which is a source of guidance for us. This statement of *Hazrat Umer*ؓ is reported by many source as:

حَدَّثَنَا نَصْرُ بْنُ عَلَيٍ الْجَهْضَمِيُّ، حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ، حَدَّثَنَا سَعِيدُ، عَنْ قَتَادَةَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ، قَالَ إِنَّ آخِرَ مَا نَرَلْتُ آيَةً الرِّبَا وَإِنَّ رَسُولَ اللَّهِ ﷺ قُبِضَ وَلَمْ يُفَسِّرْهَا لَنَا فَدَعْوَا الرِّبَا وَالرِّبِيَّةَ.¹²⁵

Nasr bin 'Ali al-Jahdami related to us: *Khalid bin al-Harith* related to us: *Sa'id bin Abi 'Arubah Mihran* related to us from *Qatadah* from *Sa'id bin*

¹²⁴ اردو ارکہ معارف اسلامیہ، دانش گاہ پنجاب، لاہور، ط ۱، ج ۱۰، ص ۱۷۲-۱۷۵

¹²⁵ *Sunan Ibne Majah*, 2276, <https://sunnah.com/ibnmajah:2276>

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al-Musayyab from 'Umar bin al-Khattab who said:
"Indeed, the last of what was revealed is 'ayah al-Riba'; the Messenger of Allah was taken in death before he explained it. So shun (what is clearly) 'Riba' as well as (what is in) doubt (fa da'u al-'Riba' wa al-'Riba'h)."

[Emphasis added]

According to another tradition, 2nd Caliph Hazrat Umer (ؓ) gave the same statement in *Khutba* as:

'Umar said¹²⁶: "O people! I do not know if (sometimes) we may order you to do things that are not permissible for you or may prohibit for your things that are permissible for you. Indeed, the last of what was revealed in the Qur'an is the 'ayah al-Riba' and indeed the Messenger did not explain it before he died (for lack of time). So move away from what creates doubt in you to what does not.

[Emphasis added]

46. After going through all the verses of the *Qur'an*, *ahadith*, saying of Companions/ *Sahabah* (ؓ) of the Prophet (ﷺ), the opinion of the Muslim Jurists, *muhaddithin*, lexicographers and *mufassirin* especially the opinion of Hazrat Umer (ؓ). We hold that 'Riba' should be defined inclusively not exclusively. It means that in the light of the Verses of the *Qur'an*, saying of the Prophet (ﷺ) and the practice of *Sehabah Karam* (ؓ), any transaction which has the slightest doubt of being included in any type or category of 'Riba' must be included in the definition of 'Riba'. There is a consensus among

¹²⁶ Darmi 129; a similar tradition is quoted by Ibn Kathir from Ibn Majah

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the Jurists that the '*Riba*' is completely and absolutely prohibited according to the Injunctions of Islam as laid down in the *Qur'an* and *Sunnah* of the Prophet (ﷺ). In addition to this in the light of all the verses related to the prohibition of *Qur'an*, *ahadith* of the Prophet (ﷺ) narrating '*Riba*', explanations of all the jurists, scholars and *mufassirin* of *Qur'an* related to '*Riba*' we have concluded that:

i. According to the Injunctions of Islam, '*Riba*' exists in a loan or a financial transaction in which increase in principal amount of the lender of the money occurs.

ii. That increase in a transaction occurs according to the wishes of loan lending party (lender) at a predetermined rate or without any predetermined rate.

(It is irrelevant whether the increased amount upon a loan is fixed at the initiation of the loan contract or charged after the lapses of certain stipulated time period).

iii. The transaction occurs in the absence of any exchange of a counter-value or recompense or *Iwid* (عوض).

iv. *Riba* is prohibited absolutely in all of its forms and manifestations.

47. *Shari'ah* strictly prohibit all types of '*Riba*' therefore any kind of socio-economic, legal or religious change in the borrower or the lender of a loan transaction involving '*Riba*' does not change the nature of prohibition. '*Riba*' is equally forbidden for the poor and the

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rich and even for the Muslims and the Non-Muslims in an Islamic State. Similarly, nature of its prohibition does not change with the change in the purpose of taking loan; which mean that the loan taken on 'Riba' for commercial, productive or industrial purpose is as prohibited as the charging of 'Riba' upon a loan which is taken to fulfill personal need. Likewise, change in the ratio of percentage at which 'Riba' is charged on a loan in a transaction does not change legal effect of prohibition of 'Riba' in a transaction. This means that no limit of percentage can be fixed for the purpose that up till that limit charging of interest upon a loan is legal or permissible and more than that is forbidden or prohibited. Similarly, change in legal status of any party involved in a 'Riba' transaction, for example if one of the parties or both the parties in a transaction are legal persons, does not change the legal or *Sharai*' effect of the 'Riba' transaction it will remain prohibited.

Determination Point-III

Whether the term 'Riba' is confined to compound interest only, hence in the light of Islamic injunctions only charging of compound interest on loans is prohibited and not the charging of simple interest.

48. Para-6 of the remand order contains the contentions raised by the counsel representing UBL, the petitioner that Riba is confined to charging of compound interest on a loan. We have made this point of

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determination to examine this contention between this point was raised by some respondents before us also.

49. The counsel of UBL made an argument before the Shari'at Appellate Bench that actually the *hukam* for the prohibition of *Riba* is in verse 130 of *Surah Aal-e-Imran* which does not prohibit what is reasonable and fair, it reads as follow; Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَوَ أَضْعَافًا مُضْعَفَةً ۚ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ 127

”اے ایمان والو! یہ بڑھتا اور چڑھتا سود کھانا چھوڑ دو اور اللہ سے ڈرو، تاکہ تم فلاح

پاؤ۔“ ۱۲۸

“O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful.”¹²⁹

This *Ayah* means that all which is prohibited is only the ‘doubled and multiplied interest’. He stressed upon a phrase used in the verse

﴿أَضْعَافًا مُضْعَفَةً﴾ and said it means that only doubled and multiplied

interest comes under the definition of the prohibited *Riba* it does not include charging of simple interest.

¹²⁷ Surah Aal-e-Imran, 3:130

¹²⁸ جالندھری، مولانا فتح محمد، فتح الحمید، تاج کمپنی لیمیٹڈ، لاہور

¹²⁹ Ali, Abdullah Yousuf, 'The Presidency of Islamic Researches, Ifta, Call and Guidance', 'King Fahd Glorious Quran Printing Complex' (KFGQC), Al-Madinah Al-Munawarah, Saudi Arabia, 1410H/ 1989

Shariat Petition No.30-L of 1991 &
All other 81 connected matters relating to Riba/Interest

50. We have gone through more than 100 *tafasir* of the Qur'an written in different time period of history in different Islamic centers of the world by scholars of different background and followers of different schools of Islamic jurisprudence. We have made this set of *tafasir* to examine this particular as well as other issues involved in this judgment. This has been done in order to cover a wide spectrum of opinion to help in understanding the opinion of the majority of Muslim scholars in accordance with the injunctions of Islam as laid down in *Qur'an* and *Sunnah*. We have found not a single one of the *mufassir* out of 105 *mufassirin*, which we consulted who is of the view, which were mentioned by the counsel of UBL that the *ayah* 130 of *Surah Aal-e-Imran* only prohibits double and multiplied interest and it does not prohibit simple interest in a transaction.

51. The counsel of the UBL referred to the meaning of this *ayah* only without relying on any reference, however, since this point was raised by the learned counsel of UBL and was noted by the honorable Shariat Appellate Bench of the Supreme Court; therefore, for deeper appreciation of the issue we consulted this set of exegeses (*tafasir*), as this was the desire of the Shariat Appellate Bench of the Supreme Court when it remanded the case with the direction of re-determination of the issue afresh.

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The exegeses (*tafasir*) that were consulted (written in Arabic¹³⁰, Urdu¹³¹ and Persian¹³²) to note the *tafsir* of verse 130 of Surah

¹³⁰ List of Arabic exegesis:

<u>EXEGESIS</u>	<u>EXEGETE</u>
1. روائع البيان	الصابوني، محمد على
2. في ظلال القرآن	سيد قطب
3. أحكام القرآن	الجصاص، أحمد بن علي أبو بكر الرازي الحنفي
4. الجواهر الحسان في تفسير القرآن	الشعالي، الإمام عبد الرحمن المالكي
5. التفسير الكبير ومفاتيح الغيب	الرازي، أبو عبد الله محمد عمر الحسن الحسين على
6. تفسير ابن عباس	ابن عباس، عبد الله بن عباس بن عبد المطلب
7. تفسير البحر المحيط في تفسير القرآن	أبو حيان الأندلسى، محمد يوسف على يوسف
8. جامع البيان عن تأويل آي القرآن	ابن جرير الطبرى، أبو جعفر محمد جرير يزيد
9. تفسير بحر العلوم (تفسير السمرقندى)	السمرقندى، أبو الليث نصر محمد أحمد ابراهيم
10. إرشاد العقل السليم إلى مزايا الكتاب الكريم	أفندي، محمد أبو السعود حمـيـ الدين محمد مصلح الدين مصطفى عـمـاد الدين العـمـادـي
11. تفسير النكـتـ والعيـون	الماوردي، على بن محمد
12. معالـمـ التـنـزـيل	بغـويـ، أبو محمد حـسـينـ بن مـسـعـودـ الفـراءـ
13. تفسـيرـ القرـطـبـيـ	الـقـرـطـبـيـ، أبوـ عـبدـ اللهـ حـمـدـ بنـ اـحـمـدـ
14. مـدارـكـ التـنـزـيلـ	الـنـسـفـيـ، اـبـوـ الـبرـكـاتـ عـبـدـ اللهـ اـحـمـدـ حـمـدـ بنـ مـحـمـدـ
15. تـفـسـيرـ اـبـنـ كـثـيرـ	ابـنـ كـثـيرـ، الـحـافـظـ عـمـادـ الدـيـنـ اـبـوـ الـفـداءـ
16. الدـرـمـنـثـرـ	الـسـيـوـطـيـ، الـإـمـامـ جـلـالـ الدـيـنـ
17. تـفـسـيرـ الـجـلـالـيـنـ	الـسـيـوـطـيـ، الـإـمـامـ جـلـالـ الدـيـنـ
18. التـفـسـيرـاتـ الـأـحـمـدـيـةـ فـيـ بـيـانـ الـآـيـاتـ الـشـرـعـيـةـ	جيـونـ، مـلاـ اـحـمـدـ
19. الكـشـافـ	الـزـخـشـريـ، حـمـودـ بـنـ عـمـرـ زـخـشـريـ
20. رـوـحـ الـمـعـانـيـ	الـآـلـوـسـيـ، شـهـابـ الدـيـنـ حـمـودـ
21. مـحـاسـنـ التـأـوـيلـ	قـاسـيـ، جـمـالـ الدـيـنـ
22. تـفـسـيرـ التـسـهـيلـ لـتـأـوـيلـ التـنـزـيلـ	ابـنـ عـدـوـىـ، أـبـوـ عـبـدـ اللهـ مـصـطـفـىـ
23. تـيـسـيرـ الـكـرـيمـ الـرـحـمـنـ فـيـ تـفـسـيرـ كـلـامـ الـمـنـانـ	الـسـعـدـيـ، اـبـنـ تـيـمـيـةـ عـبـدـ الـرـحـمـنـ بـنـ نـاصـرـ
24. تـفـسـيرـ التـحـرـيرـ وـالـتـنـوـيرـ	ابـنـ عـاـشـورـ، مـحـمـدـ الطـاـهـرـ
25. الـمـنـتـخـبـ فـيـ تـفـسـيرـ الـقـرـآنـ	مـجـلـسـ عـلـمـاءـ اـزـهـرـ
26. الـخـواـطـرـ لـلـشـعـرـاءـ (ـتـفـسـيرـ الشـعـراـوـيـ)	الـشـعـرـاءـيـ، مـحـمـدـ مـتـوـلـيـ

¹³¹ List of Urdu exegesis:

<u>EXEGESIS</u>	<u>EXEGETE</u>
27. تـفـسـيرـ اـبـنـ مـسـعـودـ	ابـنـ مـسـعـودـ، عـبـدـ اللـهـ، تـرـجـمـهـ مـولـانـاـ شـمـسـ الدـيـنـ
28. تـفـسـيرـ الـمـنـارـ	اـشـرـىـ، عـبـدـ الـكـرـيمـ فـضـلـ كـرـيمـ شـمـسـ دـيـنـ
29. عـرـوـقـ الـوـثـقـىـ	اـشـرـىـ، عـبـدـ الـكـرـيمـ فـضـلـ كـرـيمـ شـمـسـ دـيـنـ
30. شـانـ نـزـولـ قـرـآنـ	اـحـمـدـ، مـولـانـاـ يـاـضـ
31. تـرـجـمـانـ الـقـرـآنـ	آـزـادـ، مـولـانـاـ بـوـالـكـلـامـ
32. ضـيـاءـ الـقـرـآنـ	اـزـهـرـىـ، پـيـرـ مـحـمـدـ كـرـمـ شـاهـ

33.	تفسير نکات القرآن	اشرف، مولانا عبد الرحمن
34.	تفسير اشرفی	اشرفی، سید محمد مدنی
35.	تدریب قرآن	اصلاحی، مولانا امین احسن
36.	اسرار التنزیل	اعوان، مولانا محمد اکرم
37.	تفسیر شنائی	امر تسری، شاء اللہ
38.	تفسیر القرآن	امروہوی، سید ظفر حسن
39.	خلاصہ مضامین قرآن	انجیت نوید احمد
40.	فیوض القرآن	بلگرانی، ڈاکٹر سید حامد حسن
41.	انوار البیان	بلند شہری، مولانا عاشق الہی
42.	تفسیر القرآن الکریم	بھٹوی، حافظ عبد السلام
43.	تفسیر مظہری	پانی پتی، قاضی شاء اللہ
44.	مطالعہ قرآن حکیم	پروفیسر حافظ احمد یار
45.	دعوت القرآن	پیرزادہ، شمس
46.	امداد الکرم	پیرزادہ، محمد امداد حسین
47.	بیان القرآن	تحانوی، مولانا اشرف علی
48.	اشرف التفاسیر	تحانوی، مولانا اشرف علی
49.	شوابد قرآنی	توحیدی، شیخ محمد علی
50.	تفسیر دعوۃ القرآن	خالد، ابو نعیمان سیف اللہ
51.	جوہر القرآن	خان، مولانا غلام اللہ
52.	تذکیر القرآن	خان، وحید الدین
53.	تفسیر ماجدی	دریا آبادی، عبد الماجد
54.	تفسیر حقانی	دہلوی، ابو محمد عبدالحق حقانی
55.	تفسیر موضع القرآن	دہلوی، شاہ عبد القادر
56.	مظہر القرآن	دہلوی، مفتی شاہ محمد مظہر اللہ
57.	تفسیر کشف الرحمن	دہلوی، مولانا احمد سعید
58.	بیان القرآن	ڈاکٹر اسرار احمد
59.	تفسیر الکتاب	ڈاکٹر محمد عثمان
60.	انوار القرآن	ڈاکٹر ملک غلام مرتضی
61.	تفسیر راجہما	رفنجانی، آیت اللہ رہائی وغیرہ
62.	مفہوم القرآن	رفعت اعجاز
63.	تیبیان القرآن	سعیدی، مولانا غلام رسول
64.	تیبیر الرحمن لبیان القرآن	سلفی، ڈاکٹر محمد القمان
65.	اشرف الاحوالی	سلفی، محمد عبدالغفار
66.	معالم العرفان	سواتی، مولانا صوفی عبد الجمید
67.	احسن التفاسیر	سید احمد حسن
68.	تفسیر عمدۃ البیان	سید عمار علی
69.	احسن البیان فی تفسیر القرآن	سید فضل الرحمن
70.	روح القرآن	صدیقی، ڈاکٹر محمد اسماعیل

Aal-e-Imran and we found that none of them is of the view which was

71.	ذخیرۃ الجان فی فہم القرآن	صغر، مولانا سرفراز خان
72.	مصابح القرآن	ظاہر، پروفیسر عبدالرحمن
73.	تفسیر عثمانی	عثمانی، مولانا شیراحمد
74.	آسان ترجمہ قرآن	عثمانی، مولانا محمد تقی
75.	تفسیر انوار البیان فی حل لغات القرآن	علی محمد
76.	البیان	غامدی، جاوید احمد
77.	مفردات القرآن	فیروز پوری، مولانا محمد عبدہ
78.	الحسنات	قادری، علامہ ابوالحسنات سید محمد احمد
79.	معارف القرآن	قاسی، مولانا عبد القیوم
80.	بصیرت قرآن	قاسی، مولانا محمد آصف
81.	حل القرآن	کیر انوی، جیب احمد
82.	معارف القرآن	کاندھوی، مولانا ادریس
83.	تیسیر القرآن	کیلانی، مولانا عبدالرحمن
84.	تفسیر فوائد القرآن	مدنی، عبد القیوم مہاجر
85.	مدنی کبیر	مدنی، مولانا اسحاق
86.	زبدۃ البیان فی تفسیر القرآن (تفسیر المدنی الصغیر)	مدنی، مولانا اسحاق خان
87.	عمدة البیان فی تفسیر القرآن (تفسیر المدنی)	مدنی، مولانا اسحاق خان
88.	تفسیر خزانۃ العرفان	مراد آبادی، علامہ نعیم الدین
89.	مختصر تفسیر عتیق	مفہت عتیق الرحمن
90.	معارف القرآن	مفہت محمد شفیع
91.	تفسیر محمود	مفہت محمود
92.	تفہیم القرآن	مودودی، مولانا سید ابوالا علی
93.	تفسیر تسہیل القرآن	مولوی فیروز الدین
94.	فہم القرآن	میاں محمد جمیل
95.	تفسیر نمونہ	نجفی، سید صدر حسین
96.	فیضان الرحمن	نجفی، شیخ محمد حسین
97.	الکوثر فی تفسیر القرآن	نجفی، محسن علی
98.	بلغ القرآن	نجفی، محمد علی
99.	سرراج البیان	ندوی، مولانا حنفی
100.	تفسیر نعیمی	نجیمی، مفتی احمدیار خان نعیمی
101.	فصل الخطاب	نقوی، علامہ سید علی
102.	اسباب نزول قرآن	نیشاپوری، محمد علی
103.	تفسیر کلی	یوسف، مولانا صلاح الدین
104.	احسن البیان	یوسف، مولانا صلاح الدین

¹³² List of Persian exegesis:

	EXEGESIS	EXEGETE
105.	تفسیر فرات الكوفی	الکوفی، أبو القاسم فرات بن إبراهیم بن فرات

forwarded by the counsel of UBL in his arguments.

Although none of the *mufassir* out of these 105 endorse the view which was taken by counsel of UBL; however, some of the explanation of the *mufassirin* which we consulted are worth noting like:

1) *Al- Jassas*¹³³ has written while explaining the *tafsir* of *ayh* 30 of *Surah Aal-e-Imran* as:

”قول باری ہے: ﴿لَا تَأْكُلُوا الرِّبَآوَ أَضْعَافًا مُضْعَفَةً﴾ ” یہ بڑھتا اور چڑھتا سود کھانا چھوڑ دو“ قول باری ﴿أَضْعَافًا مُضْعَفَةً﴾ کے دو معنی بیان کیے گئے ہیں اول تا جیل قرض کی ادائیگی کی مدت میں اضافے کے ساتھ سود کی رقم میں اضافہ کرتے جانا اور ہر مدت کے لیے زائد رقم کی قسط مقرر کر دینا۔ دوم سودی رقموں کے ذریعے اپنے مال میں کئی گناہ اضافہ کر لینا یہ اس بات کی دلیل ہے کہ جس چیز کا خصوصیت کے ساتھ ذکر کر دیا جائے، وہ اس پر دلالت نہیں کرتی کہ اس کے مساوا چیزوں کا حکم اس کے برعکس ہے کیونکہ اگر ایسا ہو تو پھر کئی کئی گناہ بڑھا کر سود خوری کی تحریم اس پر دلالت کرتی کہ اگر کئی کئی گناہ اضافے کی صورت نہ ہو تو سود کھانا مباح ہے۔ جب سود کی مطلقاً ممانعت ہو گئی خواہ اس کی مذکورہ بالا کیفیت ہو، یا نہ ہو، تو اس کی اباحت کے بارے میں لوگوں کے قول کا بطلان واضح ہو گیا بلکہ ان کے لیے یہ سمجھ لینا ضروری ہو گیا کہ اباحت پر دلالت قول باری ﴿وَحَرَّمَ الرِّبَآوَ﴾ کی وجہ سے منسوخ ہو گئی ہے کیونکہ اب اباحت کے حکم کے لیے کوئی موقع و محل باقی نہیں رہا۔“¹³⁴

2) *Ibne- Ashur*¹³⁵ has explained as:

”أَمَّا مَعْنَى قَوْلِهِ: ﴿وَحَرَّمَ الرِّبَآوَ﴾ فَهُوَ فِي حُكْمِ الْمَنْفِي لِأَنَّ حَرَّمَ فِي مَعْنَى مَنْعَ، فَكَانَ مُقْتَضِيًّا اسْتِغْرَاقَ جِنْسِ الرِّبَآ بِالصِّيَغَةِ إِذْ لَا يَطْرَأُ عَلَيْهِ مَا يُصِيرُهُ حَلَالًا پر قول تعالیٰ: ﴿وَحَرَّمَ الرِّبَآوَ﴾ کی مراد میں چوں کہ نہ کرنے (ختم کرنے) کا حکم ہے کہ ﴿وَحَرَّمَ﴾ منع کے معنی میں ہے۔ تو اس منع / ختم کرنے کا تقاضہ ہے کہ یہ الف لام جنس ربا کے استغراق کے لئے ہے جس سے

¹³³ *al-Jassas*, Abū Bakr Aḥmad bin ‘Alī al-Rāzī, (305-370H/ 917-981)

¹³⁴ الجصاص، أَحْمَدْ بْنُ عَلَى أَبْوَ بَكْرِ الرَّازِيِّ الْخَنْفِيُّ، حُكْمُ الْقُرْآنِ

¹³⁵ *Ibn ‘Āshūr*, Muḥammad al-Ṭāhir, (1879–1973) was an Islamic scholar and reformer, *Mālikī* jurist and *Shaykh-ul-Islam*, *Qur’ān* exegete, *mufti*, and professor at the *Zaytūna* University and the *Šādiqiyā* school in Tunis.

ہر معاملہ جس میں ربا موجود ہو، تو ﴿الرِّبَا﴾ کا وجود اس معاملے کو حلال نہیں بننے دیتا۔”¹³⁶

3) Imam Rāzī¹³⁷ has explained it in the following fashion:

«الْوَجْهُ الرَّابِعُ: أَنَّ قَوْلَهُ وَأَحَلَّ اللَّهُ الْبَيْعَ يَقْتَضِي أَنْ يَكُونَ كُلُّ بَيْعٍ حَلَالًا، وَقَوْلُهُ وَحَرَمَ الرِّبَا يَقْتَضِي أَنْ يَكُونَ كُلُّ رِبَا حَرَامًا، لِأَنَّ الرِّبَا هُوَ الرِّيَادَةُ وَلَا بَيْعٌ إِلَّا وَيُقْصَدُ بِهِ الرِّيَادَةُ، فَأَوْلُ الْآيَةِ أَبَاحَ جَمِيعَ الْبَيْعِ، وَآخِرُهَا حَرَمَ الْجَمِيعَ، فَلَا يُعْرَفُ الْحَلَالُ مِنَ الْحَرَامِ بِهَذِهِ الْآيَةِ، فَكَانَتْ مُجْمَلَةً، فَوَجَبَ الرُّجُوعُ فِي الْحَلَالِ وَالْحَرَامِ إِلَى بَيَانِ الرَّسُولِ ﷺ.»

”چونھی بات: یہ قول باری تعالیٰ: ﴿وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَمَ الرِّبَا﴾ کا تقاضا ہے کہ ہر بیع حلال اور ہر قسم کا ’ربا’ حرام ہے۔ کیونکہ ’ربا’ زیادتی ہوتی ہے اس میں بیع نہیں ہوتی۔ آیت کی ابتدا میں ہر قسم کی بیوع جائز قرار پائیں جبکہ آخری حصے میں ہر قسم کی ’ربا’ حرام قرار پائیں۔ پس حلال اور حرام کو مجمل انداز سے اس آیت میں بیان کر دیا گیا ہے۔ پس تفصیل کے لئے نبی اکرم ﷺ کی طرف رجوع کیا جائے گا۔“¹³⁸

4) Imam Mālik¹³⁹ also explained as under:

«فَأَمَّا الرِّبَا، فَإِنَّهُ لَا يَكُونُ فِيهِ إِلَّا الرَّدُّ أَبَدًا وَلَا يَجُوزُ مِنْهُ¹ قَلِيلٌ وَلَا كَثِيرٌ. وَلَا يَجُوزُ فِيهِ مَا يَجُوزُ لِغَيْرِهِ² لِأَنَّ اللَّهَ تَبَارَكَ وَتَعَالَى قَالَ فِي كِتَابِهِ: ﴿وَإِنْ تُبْتُمْ فَلَكُمْ رُؤُسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ﴾.¹⁴⁰»¹⁴¹

¹³⁶ ابن عاشور، تفسیر تحریر والنور، 3/86

¹³⁷ Imam al-Rāzī, Abū ‘abd Allāh Muḥammad ibn ‘umar ibn Al-ḥusayn Fakhr Ad-dīn (1149/1150–1210) often known by the sobriquet Sultan of the Theologians, was a Persian polymath, an influential Islamic scholar, one of the pioneers of inductive logic. He wrote various works in the fields of jurisprudence, medicine, chemistry, physics, astronomy, cosmology, literature, theology, ontology, philosophy, and history.

¹³⁸ امام رازی، فخر الدین، تفسیر کبیر، 78/17

¹³⁹ Imam Mālik, Mālik bin Anas bin Mālik bin Abī ‘Āmir bin ‘Amr bin Al-Ḥārith bin Ghaymān bin Khuthayn bin ‘Amr bin Al-Ḥārith al-Asbahī al-Madānī Malik ibn Anas (711–795/ 93–179H), was an eminent Muslim Jurist, theologian, and hadith traditionist.

¹⁴⁰ سورة البقرة، 2: 279

5) Justice *Mufti Muhammad Taqi Usmani*¹⁴² has referred *Imam Razi* explaining the meaning of this *ayah* as:

”امام رازی نے تفسیر بیکر میں فرمایا ہے کہ جنگ احمد کے موقع پر مکہ کے مشرکین نے سود پر قرض لے کر جنگ کی تیاری کی تھی، اس لئے کسی مسلمان کے دل میں بھی خیال ہو سکتا تھا کہ مسلمان بھی جنگ کی تیاری میں یہی طریقہ اختیار کریں، اس آیت نے انہیں خبر دار کر دیا کہ سود پر قرض لینا حرام ہے، یہاں سود کو کئی گناہ کر کر کھانے کا جو ذکر ہے اس کا مطلب یہ نہیں ہے کہ کم شرح پر سود کی اجازت ہے؛ بلکہ اس وقت چونکہ سودی قرضوں میں بکثرت یہی ہوتا تھا کہ سودا اصل سے کئی گناہ کر جاتا تھا اس لئے ایک واقعہ کے طور پر یہ بات بیان کی گئی ہے ورنہ سورۃ البقرۃ (آیت ۲۷۷ اور ۲۸۷) میں صاف واضح کر دیا گیا ہے کہ اصل قرض پر جتنی بھی زیادتی ہو وہ سود میں داخل اور حرام ہے۔“¹⁴³

6) *Maulana Ashraf Ali Thanwi*¹⁴⁴ explains this *ayah* as:

”اے ایمان والو سود مت کھاؤ (یعنی مت لو اصل سے) کئی حصے زائد (کر کے) اور اللہ تعالیٰ سے ڈرو امید ہے کہ تم کامیاب ہو۔“ [130]

”یہ جو فرمایا کہ اصل سے کوئی حصے زائد کر کے۔ یہ سود کے حرام ہونے کی قید نہیں کیونکہ سود قلیل ہو یا کثیر سب حرام ہے۔“¹⁴⁵

7) *Allama Ghulam Rasool Saeedi*¹⁴⁶ about this *ayah* said:

”اس آیت میں سود مرکب کو حرام کیا گیا ہے، لیکن اس آیت میں اس کا مفہوم مخالف معتبر نہیں ہے کہ صرف سود مرکب حرام ہے، اور سود مفرد جائز ہے کیونکہ سورۃ البقرۃ میں اللہ تعالیٰ نے مطلقاً سود کو حرام کر دیا ہے۔ اللہ تعالیٰ کا ارشاد ہے: ﴿وَأَحَلَ اللَّهُ الْبَيْعَ وَحَرَمَ

¹⁴¹ الإمام مالك بن أنس بن مالك بن عامر الأصبحي المداني (ت 179ھ)، الموطأ، ت: محمد مصطفى الأعظمي، مؤسسة زايد بن سلطان آل نهيان للأعمال الخيرية والإنسانية، أبوظبي، الإمارات، ط 1، 1425ھ - 2004م، ج 4، ص 996.

¹⁴² Usmani, Mufti Muhammad Taqi, served as a scholar judge on the Shari'at Appellate Bench of the Supreme Court of Pakistan, and on the Federal Shari'at Court. He was a member of Council of Islamic Ideology (CII).

¹⁴³ عثمانی، مفتی محمد تقی، آسان ترجمہ قرآن، مکتبۃ معارف القرآن، کراچی، ۱۴۲۹ھ، جلد اول، ص ۲۲۰

¹⁴⁴ Thanwi, Maulana Ashraf Ali, (1862–1943) was an Indian Muslim scholar, author, jurist and, an alumnus of the 'Darul Uloom' Deoband, and authored several hundred books including 'Bayan Ul Qur'an and 'Bahishti Zewar'.

¹⁴⁵ چنانی، مولانا اشرف علی، بیان القرآن،

¹⁴⁶ Saeedi, Allam Ghulam Rasool, (1937-2016) a Pakistani exegete, muhaddith and writer.

الرِّبَا طٌ [البقرة: 273] 'اور اللہ نے بیع کو حلال کر دیا اور سود کو حرام کر دیا'۔¹⁴⁷

8) Dr. Luqman Salfi¹⁴⁸ wrote :

"زمانہ جاہلیت میں جب قرض کی مدت پوری ہو جاتی، تو قرض والا کہتا کہ تم میری رقم واپس کرو، یا میں مدت بڑھادیتا ہوں اور تم رقم میں اضافہ کرو، آیت میں لفظ ﴿ایمان﴾ کے ساتھ خطاب سے اس طرف اشارہ ہے، کہ ایمان کا تقاضا سود کو چھوڑ دینا ہے۔ اور سورہ بقرۃ میں سودی کا رو بار کو اللہ اور اس کے رسول سے جنگ کھا گیا ہے۔ کئی گنابنا کر سود لینے کا ذکر، زمانہ جاہلیت کی عادت بیان کرنے کے لیے کیا گیا ہے، کہ وہ لوگ ایسا کرتے تھے، ورنہ سود تو ہر حال میں حرام ہے، چاہے کم ہو یا زیادہ، اور تقویٰ کا تقاضا یہی ہے کہ سود نہ لیا جائے۔"¹⁴⁹

9) Sayyid Quṭb¹⁵⁰ has also discussed the point of view raised by the counsel of UBL very precisely because in Egypt there were some scholars who wanted to legitimize *Riba* or charging of interest in one pretext or other. He writes in his *tafsir* of this ayah as:

"سود اور سودی نظام میعشت پر بحث 'فی ظلال القرآن' پارہ سو ۷ میں تفصیل کے ساتھ بیان ہو چکی ہے۔ اس لئے یہاں ہم اس پوری بحث کو دہرانا مناسب نہیں سمجھتے۔ لیکن یہاں ا ﴿اَفْسَعَاً فَمُضْعَفَةً﴾ کے الفاظ پر غور کرنا مناسب ہو گا۔ اس لئے کہ ہمارے زمانے کے بعض لوگ ان الفاظ کی آڑ لے کر یہ مفہوم بیان کرتے ہیں کہ جو چیز حرام کی گئی ہے وہ اضعاف مضاعفہ ہے۔ رہا وہ سود جو چار فی صد ہو، پانچ فی صد ہو، سات فی صد ہو، نو فی صد ہو تو وہ اضعاف مضاعفہ نہیں ہے، لہذا وہ حرام نہیں ہے۔"¹⁵¹

10) Maulana Ghulamullah Khan¹⁵² explained the meanings of this *ayah* relying on a *Hadith* as:

"یہ جو فرمایا ہے کہ چند در چند سود نہ کھاؤ اس کا معنی یہ نہیں ہے کہ تھوڑا بہت کھانا جائز ہے۔ کیونکہ سود کا ایک در ہم لینا بھی حرام ہے رسول اللہ ﷺ نے ارشاد فرمایا ہے کہ سود کا ایک

¹⁴⁷ سعیدی، غلام رسول، تبيان القرآن، ضياء القرآن پبلیکیشن، لاہور، 2015ء

¹⁴⁸ Salfi, Dr. Muhammad Luqman, (1943-2020), famous exegete from India, who have number of books in Arabic and Urdu.

¹⁴⁹ سانچی، ڈاکٹر غلام بنیسیم بیان القرآن، مکتبۃ

¹⁵⁰ Sayyid 'Ibrāhīm Ḥusayn Quṭb, (1906–1966) was an Egyptian author, educator, Islamic scholar, theorist, and exegete.

¹⁵¹ سید قطب، فی ظلال القرآن، اسلامی اکادمی، لاہور

¹⁵² Maulana Ghulamullah, (1905-1980) was a Pakistani Islamic scholar, also known as *Sheikh ul Qur'an*.

درہم بھی کوئی شخص کھاتا ہے اور یہ جانتا ہے کہ وہ سود کا ہے تو وہ چھتیں مرتبہ زنا کرنے سے بھی زیادہ سخت ہے۔ [مشکوٰۃ المصانع صفحہ ۲۳۶: ازادہ دار قطنی]

۵۔ اس کا مطلب یہ نہیں کہ تھوڑا سود لے لیا کرو۔ دونے پر دونا ملت لو۔ بات یہ ہے کہ جاہلیت میں سودا سی طرح لیا جاتا تھا جیسے ہمارے یہاں کے نئے لیتے ہیں۔ سوروپے دیئے اور سود در سود بڑھاتے چلے گئے یہاں تک کہ سوروپے میں ہزاروں روپیہ کی جائیدادوں کے مالک بن بیٹھے۔ اسی صورت کو یہاں ﴿أَضْعَافًا مُّضْعَفَةً﴾ سے تعبیر فرمایا۔ یعنی اول تو سود مطلقاً حرام و فتح اور یہ صورت تو بہت ہی زیادہ شنیع و فتح ہے جیسے کوئی کہے میاں مسجد میں گالیاں مت بکو۔ اس کا مطلب یہ نہیں کہ مسجد سے باہر کننے کی اجازت ہے بلکہ مزید تفتح و تشنیع کے موقع پر ایسے الفاظ بولتے ہیں۔¹⁵³

11) Maulana Idrees Kandhlawi¹⁵⁴ has explained the Ayat in much detail and has given other such examples too where similar style of narration is adopted by the Quran to make a message more strong and clear.

”ارشاد فرمایا: اے ایمان والوں مت کھاؤ سود دو نے پر دونا تو بر تو کہ اصل سے کئی گنازیادہ ہو جائے، مطلب یہ ہے کہ اصل قرض سے ایک پائی بھی زائد لینا جرم ہے اور صریح ظلم ہے اور کھلا ہوا بخل ہے کہ خدا کے لیے ذرہ برابر بلا معاوضہ کسی کی ہمدردی بھی گوارا نہیں۔ اور اصل قرض سے کئی گناز اند لے لینا اس کی قباحت اور شناخت کی تو کوئی حد نہیں ﴿أَضْعَافًا مُّضْعَفَةً﴾ سود تو قسالت قلبی اور بے رحمی کی آخری منزل ہے۔

آیات قرآنیہ اور بے شمار احادیث نبویہ ﷺ سے مطلق ربا کی کلینٹاً ممانعت اور حرمت ثابت ہے اور اس آیت میں جو ﴿أَضْعَافًا مُّضْعَفَةً﴾ کا لفظ آیا ہے وہ قید احتراز ی نہیں بلکہ تو نیخ اور سرزنش کے لیے جو اس زمانہ میں راجح تھی جیسے کوئی نیک دل اور دین دار حاکم کسی موقعہ پر اپنے عملہ کے ان لوگوں سے جو رشتہ خور ہوں یہ کہے کہ صاحبو زیادہ حرام نہ کھاؤ اور حد سے نہ بڑھو تو اس کا یہ مطلب نہیں ہوتا کہ تھوڑا حرام کھانا تو جائز ہے اور زیادہ حرام کھانا ناجائز ہے۔

¹⁵³ خان، مولانا غلام اللہ، جواہر القرآن

¹⁵⁴ Kāndhlawī, Muḥammad Idrīs bin Muḥammad Ismā'īl Ṣiddīqī Kāndhlawī, (1899–1974) was a Islamic scholar of *hadith* and *tafsir*. He honored with the post of *Shaykh at-Tafsir* at 'Darul Uloom' Deoband in India, thereafter migrated to Pakistan and served as *Shaykh al-Hadith wat-Tafsir* at 'Jamia Ashrafia' Lahore.

ایسے الفاظ مزید تقصیح اور تشییع کے لیے بولے جاتے ہیں جیسے فرمایا: ﴿فَلَا تَجْعَلُوا لِلّٰهِ أَنْدَادًا﴾ یعنی خدا کے لیے متعدد شریک نہ ٹھہراؤ، اس کا یہ مطلب نہیں کہ خدا کے لیے ایک دو شریک ٹھہرانا جائز ہے اور تین چار ناجائز ہے بلکہ مطلب یہ ہے کہ خدا نے برتر کا تو ایک بھی شریک نہیں مگر تم ایسے ظالم ہو کہ تم نے خدا کے لیے بہت سے شریک ٹھہر ار کئے ہیں

قرآن کریم میں ہے: ﴿وَلَا تَشْرُوْا بِأَيْتٍ شَنَّا قَلِيلًا﴾ میری آیتوں کے بدلہ میں تھوڑی قیمت نہ لوساں کا یہ مطلب نہیں کہ آیات قرآنیہ میں تحریف کر کے زیادہ قیمت لینا تو جائز ہے اور کم قیمت لینا حرام اور ناجائز ہے آیات الہیہ کے مقابلہ میں ہفت اقلیم کی دولت بھی بیش ہے، پس جس طرح اس آیت میں شن قلیل کی قید عار دلانے کے لیے اسی طرح آیت ربوا میں ﴿أَضْعَافًا مُضْعَفَةً﴾ کی قید عار دلانے کے لیے خوب سمجھ لو۔ خلاصہ کلام یہ کہ ﴿أَضْعَافًا مُضْعَفَةً﴾ کی قید احترازی نہیں بلکہ اس زمانہ کے رسم و رواج کے مطابق جو ظالم اور بے رحم اضعافاً مضعافہ سود لیتے تھے ان کی توبخ اور سرزنش کے لیے اور ان کو عار دلانے کے لیے بڑھائی گئی ورنہ اگر یہ قید احترازی لی جائے تو مطلب آیت کا یہ ہو جائے گا کہ جب تک سوداً صل رقم سے کم از کم سہ چند ہو جائے اس وقت تو حلال ہے یعنی جب تک سو کا سود و سونانوے تک رہے اس وقت تک تو وہ سود حلال ہے اور جب سود پورا تین سو ہو جائے تب حرام ہو گا غرض یہ کہ از روئے قرآن و حدیث ربا مطلقًا اور کلیتاً حرام ہے اور اضعافاً یا غیر اضعافاً ہو قلیل ہو یا کثیر۔¹⁵⁵

12) Qazi Sanaullah Panipati¹⁵⁶ writes :

”﴿لَا تَأْكُلُوا الرِّبَوَا أَضْعَافًا مُضْعَفَةً﴾ اے اہل ایمان! سود نہ کھاؤ چند در چند بڑھا کر، ﴿أَضْعَافًا مُضْعَفَةً﴾ تید احترازی نہیں ہے (کہ اگر چند در چند نہ ہو تو سود کھانے کی ممانعت نہیں) بلکہ مطلق ربوا کی ممانعت ہے اور ان کے طریق عمل پر زجر ہے۔¹⁵⁷

13) Sheikh Muhammad Hussain Najafi¹⁵⁸ states:

”بنابریں یہ ’دو گنا چو گنا‘، قید کی حیثیت سے نہیں ہے کہ جو سود ایسا نہ ہو وہ جائز ہو ایسا نہیں ہے، اس قسم کی قید کی کئی مثالیں قرآن مجید میں پائی جاتی ہیں جو در حقیقت قید نہیں ہیں ﴿وَ

¹⁵⁵ کاندھلوی، مولانا محمد اوریں، معارف القرآن

¹⁵⁶ Pānipatī, 'Allāmah Qādi Thānā'ullah 'Uthmānī, (d.1225/1810) the muhaddith was one of the most erudite scholars of undivided India. He is the author of 'Tafsir Mazhari'

¹⁵⁷ پانی پتی، قاضی ثناء اللہ، تفسیر مظہری

¹⁵⁸ Najafi, Shaikh Muhammad Hussain, (born 1932) is a Pakistani scholar, received *ijazah's* of *ijtihad* from different *marjas* of Hawza Elmiye Najaf, in 1960.

لَا تَشْتَرُوا بِأَيْتِيٍّ شَيْنَا قَلِيلًا ﴿٢١﴾ ’اللہ کی آیات کو کم قیمت پر فروخت نہ کرو، [البقرة: ۲۱] اس کا یہ مطلب ہرگز نہیں ہے کہ زیادہ قیمت ملے تو پھر فروخت کر دو۔ ﴿وَيَقْتُلُونَ النَّبِيِّنَ بِغَيْرِ حَقٍّ﴾ جو نبیوں کو ناحق قتل کرتے ہیں، [آل عمران: ۲۱] اس کا یہ مطلب نہیں ہے کہ حق کے ساتھ پیغمبروں کا قتل جائز ہے کیونکہ ایسا تو ممکن ہی نہیں ہے بلکہ یہ قتل بہر صورت ناحق ہی ہے۔¹⁵⁹

52. After going through a voluminous scholarly work of the Muslim scholars of every era and of every background we are of the considered view that *Riba* is *haraam* (حرام) or prohibited in every form and quantity. Its prohibition is not at all dependent on its percentage or the mathematical style in which it is calculated. It is evident from the phraseology or expression of the *Qur'an* itself that here only 'doubled or multiplied interest' is not meant or intended but it also includes even the smallest percentage of interest in it. *Riba* or interest is absolutely prohibited and forbidden.

Determination Point-IV:

Whether the prohibition of Riba in Islam changes with the change in the percentage of interest charged upon a loan and is there any difference between usury and interest?

53. In the twentieth century soon after the introduction of banking business in the Muslim majority countries, attempts have been made to legitimize *Riba* completely or at least partly by creating

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some exceptions in the absolute prohibition of Riba. One such attempt has been made by the Attorney General for Pakistan when he forwarded the arguments that 'banking interest' is not the Riba which is prohibited in Islam. Perhaps this is the only question which was raised by the Attorney General for Pakistan through which he tries to legitimize banking interest and get banking interest out of the definition of the term Riba. Although he did not give any additional arguments in support of his point but kept on repeating it. The crux of his attempt to legitimize banking interest was based on the arguments that banking interest is something different from Riba hence it is not haram or prohibited. According to him, Riba is called usury and interest is not usury hence it is not Riba. He remained silent on the queries as to how and why is it different, he could not give any answer.

54. The first and the foremost response made by the petitioners to the approach taken by the Attorney General for Pakistan was that the reality of anything does not change by merely changing its name. Similarly the legal effect and legal implication of any order does not change by changing the name of any process.

55. To understand the relation of these two words i.e usury and interest we have to explore and understand their historic links

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especially in the period of European history which is generally known as post Christian era or the period of Renaissance. Taking usury is a sin and is forbidden in Christianity. The word usury in that sense is used in many Verses of the Holy Bible. In total there are 17 Verses about Usury from 11 Books of the Holy Bible like in Exodus 22:25 as "If thou lend money to [any of] my people [that is] poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury." In Leviticus 25:36 as "Take thou no usury of him, or increase: but fear thy God; that thy brother may live with thee." In Leviticus 25:37 as "Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase." In Deuteronomy 23:19 as "Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury" Similarly in Deuteronomy 23:20, Nehemiah 5:7, Nehemiah 5:10, Psalms 15:5, Proverbs 28:8, Isaiah 24:2, Jeremiah 15:10, Ezekiel 18:8, Ezekiel 18:13, Ezekiel 18:17, Ezekiel 22:12, Matthew 25:27, Luke 19:23. All these verses condemn the act of taking usury as a major sin in Christianity. With the advent of the 16th century, however, some efforts were made to legitimize some percentage of usury. This fact is explained by Britannica while defining the term usury as:

"usury, in modern law, the practice of charging an illegal rate of **interest** for the **loan of money**. In Old English law, the taking of any compensation whatsoever was termed usury. With the

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expansion of trade in the 13th century, however, the demand for **credit** increased, necessitating a modification in the definition of the term. Usury then was applied to exorbitant or unconscionable interest rates. In 1545 England fixed a legal maximum interest, and any amount in excess of the maximum was usury. The practice of setting a legal maximum on interest rates later was followed by most states of the United States and most other Western nations.”

The term usury as used in the Holy Bible is explained by Harper's Bible Dictionary as “usury, lending at interest; later, at an exorbitant rate. The laws of Israel forbade lending to a needy Hebrew, with expectation that principal plus interest would be returned, in the form of money, food, or anything else. There was no compulsion about lending at interest to foreigners or strangers, for such transactions involved risk.” Since the Torah allowed lending at interest to non-Jews. Pope Leo X, on May 4, 1515 in Lateran Council-V Session-X, officially promulgated, for the first time in the history of the Roman Catholic Church, the lawfulness of interest-bearing loans, for charitable purposes. [Usury in Christendom the Mortal Sin that was and Now is Not, Michael Hoffman, P-260 and The Oxford Companion to the Bible, P-463, 1993 Ed. Bruce M. Metzger and Michael D. Coogan]. After that gradually many commercial and political centers of Europe started making law to circumvent or by-pass usury. They started setting by law a certain limit of usury as “legal” and called it “interest” whereas; higher than that limit was counted as usury according to them. The lending was done between individuals or small

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groups of people in the beginning. As banking institutions grew in popularity, communities began to develop regulations governing how much interest should be paid. During the reign of King Henry VIII England in 1545, Parliament approved a law allowing interest rates of up to 10%, with anything beyond that being usury. This was the starting point from where relatively less amount of usury in the name of interest was legitimized by law. The colonies in the United States followed suit, passing their own usury laws based on the English model. Even after the colonies gained independence from England, this practice persisted. Most states have usury laws in effect, which establish a limit on how much interest a lender may charge.

56. In Europe, the first time, in 1540, an imperial order allowing interest payments of up to 12% on commercial loans in the Habsburg Netherlands was issued. In 1545, Henry VIII's Parliament passed a law allowing interest payments of up to 10% (on all loans) in England.

57. Professor Khursheed Ahmed very aptly concluded this aspect of economic history of usury in his book (Elimination of Riba from the Economy p.39-40). He said "Historically interest and usury always treated as one and the same thing. It was only in the post-Christian, post-Renaissance period of European history that the term

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interest was used as a substitute for usury to wriggle out of the religious and moral prohibition”

58. On the very outset this was done in the Christian world by dividing the prohibited usury into two categories i.e. one was labeled as usurious interest and other was labeled non-usurious interest. As a consequence, charging of interest at higher rate than a certain arbitrarily fixed rate was labeled as usury; whereas charging of less interest than the fixed rate was simply called interest. Resultantly, a certain arbitrarily set rate of interest on a loan was permanently labeled as “interest” which was declared legal hence permissible; whereas charging of interest at a rate higher than the highest permissible rate of interest was labeled as “usury” which was declared as prohibited hence illegal. Here, a passage from the Jewish Encyclopedia¹⁶⁰ is worth noting which says:

“Usury: In modern language this term denotes a rate of interest greater than that which the law or public opinion permits; but the Biblical law, in all dealings among Israelites, forbids all “increase” of the debt by reason of lapse of time or forbearance, be the rate of interest high or low, while it does not impose any limit in dealings between Israelites and Gentiles. Hence in discussing Jewish law the words “interest” and “usury” may be used indiscriminately.”

¹⁶⁰ written by : Executive Committee of the Editorial Board., Lewis N. Dembitz, Joseph Jacobs (<https://jewishencyclopedia.com/articles/8136-interest>)

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The historic aspect of the coining of the term interest is further confirmed by Catholic Encyclopedia while explaining the history of usury and interest as:

“Economists generally uphold the theoretical lawfulness of interest on loans. For a long time civil law was in agreement with canon law; but as early as the sixteenth century, Germany allowed interest at 5 percent; in France, on the contrary, interest on loans was forbidden until the Decree of 2 and 3 October, 1789. Contemporary laws always consider the loan for consumption as gratuitous in principle, but allow a stipulation for the payment of interest to be added. In modern legislation two questions remain to be decided:

whether it is desirable to establish a maximum legal rate; and

by what means usurious exactions may be prevented.”¹⁶¹

This historic back ground of legitimizing banking interest and making it an exception to the absolute prohibition of usury and how this approach is utilized in the modern legal framework is explained by Arkansas Encyclopedia as:

“As early as the ninth century in England, the taking of interest was frowned upon. Later, Parliament specifically authorized the practice in the reign of Henry VIII, but that enactment was short lived. Gradually, in many jurisdictions, the absolute prohibition gave way to a balancing between “reasonable” interest charges and unreasonable charges—that is, usury. Broadly speaking, extensions of credit at rates exceeding some standard set by the state have been termed “usurious” and the result “usury.”¹⁶²

¹⁶¹ (Catholic Encyclopedia <https://www.newadvent.org/cathen/15235c.htm>)

¹⁶² (Encyclopedia of Arkansas <https://encyclopediaofarkansas.net/entries/usury-13876/> An Article on Usury)

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“The Hebrew word for “usury” is “neshek,” meaning literally “a bite,” from its painfulness to the debtor; while in Lev. xxv. 36, 37 “increase” is the rendering of the Hebrew “marbit” or “tarbit” which denotes the gain on the creditor’s side, and which in the later Hebrew becomes “ribbit.”¹⁶³

59. The word ‘Riba’ is defined in Encyclopedia of Islam as: “The word ‘Riba’ literally means increase, it is a technical term, usury is interest, and in general an unjustified increase of capital for which no compensation is given. Derivatives from the same root are used in other Semitic languages to describe interest.”

Etymology of word usury:

“usury (n.) c. 1300, “practice of lending money at interest,” later, at excessive rates of interest, from Medieval Latin usuria, alteration of Latin usura “payment for the use of money, interest,” literally “a usage, use, enjoyment,” from usus, from stem of uti (see use (v.)). From mid-15c. as “premium paid for the use of money, interest,” especially “exorbitant interest.”¹⁶⁴

60. The same word, ‘Rabbit’ is translated as (سُود) in Urdu translation of the Holy Bible and the word (رب) is used in Arabic translation of the Holy Bible. This further clarifies that there is no difference in all these words, they are either synonymous of each other like usury & interest or translation of one word from one language into other. Like ‘usury’ or ‘interest’ are translated as (رب) in Urdu and (رب) in Arabic in different versions of the Holy Bible.(تَبَرِّجٌ, 22:25).

¹⁶³ <https://www.jewishencyclopedia.com/articles/14615-usury>

¹⁶⁴ (<https://www.etymonline.com/word/usury>)

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If we match the translation of one verse 22: 25 of Bible of book of Exodus in which Word usury is used we will find that:

In old or classical English version of Bible the word of Usury is used as:

“25 If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury.”¹⁶⁵

In Arabic Version of the Bible same word is translated as (ربا) as:

انْ اقْرَضْتَ فِتْنَةً لِّشْعِيِ الْقَبِيرِ الَّذِي عِنْدَكَ فَلَا تَكُنْ لَّهُ كَائِنًا. لَا تَفْعُوا عَلَيْهِ رِبَا.¹⁶⁶

In Urdu translation of Bible same word is translated as (رب) as

25 اگر تو میرے لوگوں میں سے کسی محتاج کو جو تیرے پاس رہتا ہو کچھ قرض دے تو
اس سے قرض خواہ کی طرح سلوک نہ کرنا اور نہ اس سے سود لینا۔

And if we consult same verse of Bible in in Modern English the word Interest is used as :

“If you lend money to any of my people who are in need, do not charge interest as a money lender would. (Exodus 22:25)¹⁶⁷

Which means there is no difference in the words usury and interest. The term of “interest” was coined to legitimize certain percentage of usury. Currently Attorney General for Pakistan tried to forward the same arguments that the term interest is different from the term usury hence usury is Riba which is prohibited while interest is not Riba so it is not prohibited. These arguments of the Attorney General for Pakistan in this regard are flawed and hold no weightage in them hence rejected. Interest and usury are two synonyms used to translate the meaning of the term Riba.

¹⁶⁵ <https://www.wordproject.org/bibles/parallel/urdu/index.htm>

¹⁶⁶ <https://bit.ly/3Dqw7k> .22:25 خروج

¹⁶⁷ <https://www.bible.com/search/bible?q=usury>

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61. Usury and the interest are used interchangeably even in Bible. Technically they both are one and the same thing. In the English version of the Holy Bible the word 'usury' is used at many places in the same meanings as already stated earlier. One such example is the Book of Exodus (22:25), where it is mentioned as:

"If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury: [Ref: "King James Version", Emphasis added].

62. At the same time the same word is normally translated as 'interest' in different versions of the Holy Bible, for example the same verse [Exodus 22:25] is in another English version of Bible, it is translated as :

"If you should lend money to my people, to the afflicted alongside you, you must not become like a usurer to him. You must not lay interest upon him."

(New World Translation of the Holy Scriptures, Emphasis added).

The same word is translated as (رس) in Urdu translation of the Holy Bible and word (رس) is used in Arabic translation of the Holy Bible. This further clarifies that there is no difference in all these

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words, they are either synonymous of each other like usury & interest or translation of one word from one language into another.

63. According to injunctions of Islam, a thing which is prohibited is deemed to be prohibited completely and absolutely. Its quantity does not have any effect over its prohibition, i.e., if the large quantity of a thing is prohibited, a very small quantity of it is also equally prohibited. This basic principle of Islamic jurisprudence is based on the following Hadith of the Prophet (SAW):

وَعَنْ جَابِرٍ: أَنَّ رَسُولَ اللَّهِ قَالَ: مَا أَشْكَرَ كَثِيرٌ، فَقَلِيلٌ حَامِرٌ 1261

The Prophet (SAW) said: if a large amount of anything causes intoxication, a small amount of it is prohibited."

While deciding this point of determination: "Whether the prohibition of Riba in Islam changes with the change in the percentage of interest charged upon a loan and is there any difference between usury and interest."

64. Since it is proven fact that historically such efforts were made in the Christian world during the sixteenth century, to dilute the impact of strict prohibition of usury as is stated in the Holy Bible. Likewise, similar attempts were initiated in the Islamic world at the advent of twentieth century to create some kind of exception for the

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banking interest from the definition of Riba. To get the right answer of this question it is important to understand the definition of these two terms i.e Riba and interest. While concluding some of the previously mentioned points of determination we have defined the term Riba very elaborately in the light of the Injunctions of Islam. We have also elaborated the reasons that why the definition of term Riba should be formulated all-inclusively instead of all-exclusively. Moreover all other points have also been discussed which were raised by the respondents to create a legitimate exception of the comprehensive term Riba.

65. We are of the view that according to the Islamic principles of jurisprudence there is no difference between Riba and interest. Hence in principle both are one and the same thing and prohibited in Islam. Alteration in the name of any term does not change the legal effect of it. If we consider that these are two different things then it will mean that charging of an interest upon a loan which is legal by virtue of law is permissible and allowed whereas more than that specific limit is prohibited and illegal. For Example charging of 8% of interest upon a loan is legal and it is not “usury” hence it is not a sin; however charging of 8.5% of interest upon a loan is forbidden and is illegal as well as a great sin. Similarly the argument that charging of 8% of

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interest upon a loan is called as “interest” and more than that is called “usury” and one is legal and other is not.

The principle of Islamic law is very much clear and there is unanimity among the Muslim Jurists that where a large quantity of anything is prohibited then the smallest quantity of the same is equally prohibited. Similarly by changing the name of anything on the basis of its quantity does not change the governing principle regarding that thing.

Interest no matter how it is defined is usury for all practical purposes and from every angle hence according to Islamic injunctions these are merely two different synonyms used for Riba hence their presence in any transaction is prohibited.

66. According to Islamic injunctions anything which is prohibited is prohibited absolutely, even the minute quantity of it is prohibited, we cannot make it legal by associating it with a different synonym of the same word as happened in the case of usage of terms usury and interest in the West generally. According to the Holy Quran and Sunnah, the prohibition of *Riba* does not depend upon the quantum or the percentage of amount on which the interest is charged in any transaction, or the rate of interest taken in a transaction, but the presence of certain factors in a specific transaction make it forbidden or

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prohibited. In the light of Injunctions of Islam, we cannot say that certain percentage of usury called as interest is legal and more than that is illegal and prohibited or taking interest on private loans from needy and the poor is forbidden, whereas it is permissible on industrial or commercial loans.

It cannot be said according to Holy Quran and Sunnah that upto certain percentage interest upon transaction is permissible and more than that it is not permissible, for example, less than 5% of interest is permissible and more than 5% of interest is forbidden and known as 'usury' or 'Riba'

67. Hence we are of the considered view that usury and interest are synonyms of the English language used to translate the meaning of the term Riba and there is no difference in them. If we call Riba as usury or we call it interest it does not make any difference, it is prohibited according to Islamic Injunctions in the light of Holy Quran and Sunnah. The prohibition of Riba is absolute. Moreover, according to the Injunctions of Islam the effect of prohibition of Riba does not change with the rate at which interest is charged upon a loan.

Determination Point-V:

Whether only the charging of interest upon consumption loans is prohibited and the charging of interest upon commercial or productive loan is not prohibited in Islam.

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68. The counsel of UBL also argued before the Shariat Appellate Bench of the Supreme Court in Review Petition and some of the respondents also argued before us that the status of a person who takes loan of millions of rupees is different from a poor and needy person. So according to them the prohibition of taking interest upon a loan is a kind of concession or relaxation for the poor people and not for the industrialists or for a businessman who is taking loan for commercial purposes. On these grounds they argued that taking 'Riba' upon a loan from a poor person is forbidden while it is permissible if it is taken by a businessman for commercial purposes. According to the proponents of this idea, it rather is equivalent to business when it is taken from a businessman upon a commercial loan. These arguments are incorrect from the historical perspective because the society of Arabs where the Holy Quran was revealed, was a trading society and taking and lending loans for commercial purposes was a common practice, this is a historic fact. Maulana Abdur Rehman Kailani has very elaboratively written on this aspect of Arabic society which existed at the time of Nabi Kareem ﷺ. He has written a book (تجارت اور دین کے مسائل) wherein he highlighted the historic fact regarding trading

activities of that society at that particular time in addition he highlighted the same in his exegesis. The relevant portion is being

reproduced below:

”جو مسلمان سود کے جواز کی نمائندگی کرتے ہیں۔ وہ یہ کہتے ہیں کہ جس سود کو قرآن نے حرام کیا ہے وہ ذاتی یا مہاجنی قرضے ہیں جن کی شرح سود بڑی ظالمانہ ہوتی ہے اور جو تجارتی سود ہے وہ حرام نہیں۔ کیونکہ اس دور میں ایسے تجارتی سودی قرضوں کا رواج ہی نہ تھا۔ نیز ایسے قرضے چونکہ رضامندی سے لئے دیئے جاتے ہیں اور ان کی شرح سود بھی گوارا اور مناسب ہوتی ہے اور فریقین میں سے کسی پر ظلم بھی نہیں ہوتا، لہذا یہ تجارتی سود اس سود سے متنقہ ہے جنہیں قرآن نے حرام قرار دیا ہے۔

— دورِ نبوی ﷺ میں تجارتی سود موجود تھے اور سود کی حرمت سے پیشتر صحابہؓ میں سے حضرت عباس اور خالد بن ولید ایسے ہی تجارتی سود کا کاروبار کرتے تھے۔ اس دور میں عرب اور بارخصوص کمہ اور مدینہ میں لاکھوں کی تجارت ہوا کرتی تھی۔ علاوہ ازیں ہمسایہ ممالک میں تجارتی سود کا رواج عام تھا۔

— قرآن میں ربوا کا لفظ علی الاطلاق استعمال ہوا ہے جو ذاتی اور تجارتی دونوں قسم کے قرضوں کو حاوی ہے۔ لہذا تجارتی سود کو اس علی الاطلاق حرمت سے خارج نہیں کیا جاسکتا۔

— قرآن نے تجارتی قرضوں کے مقابل یہ آیت پیش کی ہے ﴿يَعْلَمُ اللَّهُ الرِّبُوْا وَيُنْهِيُ الصَّدَقَاتِ﴾ [البقرة: 275:2] اللہ نے تجارت کو حلال کیا ہے اور سود کو حرام جبکہ ذاتی قرضوں کے مقابل یوں فرمایا: ﴿يَعْلَمُ اللَّهُ الرِّبُوْا وَيُنْهِيُ الصَّدَقَاتِ﴾ [البقرة: 275:2] اللہ سود کو مٹاتا ہے اور صدقات کی پرورش کرتا ہے۔ گویا اللہ تعالیٰ نے سود کے خاتمہ کے لئے ذاتی قرضوں کا حل 'صدقات'، تجویز فرمایا ہے اور تجارتی قرضوں کے لئے شرکت اور مضاربہ کی راہِ کھلائی ہے جو حلال اور جائز ہے۔¹⁶⁸

69. The *hukm* which was revealed for the prohibition of 'Riba' is absolute. It does not differentiate between the rich and the poor loan borrower. According to Injunctions of Islam, 'usury' is associated with the ways and mode of transaction not with the quantity or type of interest. The nature of prohibition of *Riba* does not change with any change in the form or status of the borrower or the lender.

¹⁶⁸ کیلانی، مولانا عبد الرحمن، تیسیر القرآن، مکتبۃ السلام، لاہور

This type of arguments that *Riba* is prohibited for *Sarfi* loan or upon those loan which are taken for personal needs and it is not prohibited if it is taken for commercial or productive needs are based on two types of reasoning.

- i. Firstly; that the reason behind prohibition of *Riba* is the existence of *Zulm* (OPP) or exploitation of the borrowers in such transaction. Person who takes loan on interest to fulfill his personal needs is exploited by the lender therefore the Quran prohibited only this exploitative practice. This type of Interest is also known as '*Sarfi Sūd*' (سارفی سود) or personal loan. According to this theory; charging of riba or interest upon a loan is permissible from a person who takes loan for commercial or productive purposes this type of interest is also known as '*Tijarti Sūd*' (تجارتی سود).
- ii. Secondly, it is also argued that there did not exist the concept of commercial loan, or productive loan in the Arab society at that time when those verses were revealed. It was a tribal society and there was no concept of commercial loan prevalent among them. Hence the interest which is prohibited in the *Qur'an* is only the interest on personal loan.

70. In early twentieth century some Muslim scholars felt that banking is unavoidable in the realm of commerce and industry, not just on a national but also on worldwide level. This drove them to claim that only usury is haram (illegal), but not commercial interest,

because making commercial interest haram would obstruct their path to industrialization and economic advancement in insurmountable ways. They only included usury in the name of *Riba* since it is explicitly banned in the *Qura'n* and Sunnah, and they excluded commercial interest from ambit of *Riba*. As a result, it was determined that the ban of *Riba* was limited to usury, whereas interest on commercial loan was permissible. In sub-continent *Sir Syed Ahmed Khan*¹⁶⁹ was the first proponent of this concept. He stated:

”جو ذی مقدور اور صاحب دولت و جاہ و حشمت ہیں اور اپنے عیش و آرام کے لئے روپیہ قرض لیتے ہیں جائیدادیں مول لیتے ہیں مکان بناتے ہیں اور قرض روپیہ لے کر چین اڑاتے ہیں گو ان کو قرض دینا بعض حالتوں میں خلاف اخلاق ہو مگر ان سے سود لینے کی حرمت کی کوئی وجہ قرآن مجید کی رو سے مجھ کو نہیں معلوم ہوتی۔

اسی طرح بہت سے معاملات قرضہ کے ہیں جو تجارت کے کاروبار میں پیش آتے ہیں اور ایسے بینکوں کے قائم ہونے سے سودی تجارت کے مقاصد کے لئے روپیہ قرض دیتے ہیں اور ایک جگہ سے دوسری جگہ روپیہ پہونچادیتے ہیں اور ہر قسم کے آڑھتوں کا کام کرتے ہیں اور جن سے تجارت کو اور ترقی ملک کو اور افزونی آبادی کو نہایت امداد پہونچتی ہے ان معاملات میں جو سود کہ لیا و دیا جاتا ہے مجھ کو قرآن مجید کی رو سے اس کے ایسا ربا ہونے کے جس کو اس آیت میں حرام کیا ہے کوئی وجہ نہیں معلوم ہوتی۔ پس حکم ربا، جو قرآن مجید میں ہے وہ نہایت اخلاق و نیکی پر مبنی ہے اور کسی طرح ترقی تجارت و ترقی ملک و دولت کا مانع نہیں ہے۔ فقہاء نے بلاشبہ اپنے اجتہاد اور قیاس سے ایسی قیدیں بڑھادی ہیں جن سے ربا کا حکم تجارت کی ترقی کا مانع قوی ہو گیا ہے، مگر قرآن مجید سے ایسا نہیں پایا جاتا۔“¹⁷⁰

This approach is against the basic principle of Islamic Injunctions. When Islam prohibits anything it prohibits not only one specific form of something which is currently widespread, but it prohibits all forms of that thing that may emerge in the future. The fact that the state or

¹⁶⁹ Sir Syed Ahmed Khan, Syed Ahmed Taqvi bin Syed Muhammad Muttaqi, (1817 –1898).

¹⁷⁰ سر سید احمد خان، تفسیر القرآن و حوالہ الہدی والفرقان ص 317 سورہ البقرہ

form has changed has no bearing on the judgment.

71. The claim that commercial interest did not exist in the days of the Prophet ﷺ is completely wrong. Following are some examples from the scholarly research done by many scholars while interpreting and explaining the Verses of *Riba* in their *tafasir*. They all explain that the Arabian society at that time was a trading society and charging of interest on commercial loan was very much in vogue in Arabia at that time rather the existence of interest on commercial loan was one of the reasons for revelation of some of these verses of the *Qur'an*. Justice *Pir Muhammad karam Shah*¹⁷¹ has explained this aspect pointing out the famous example of trade practices of Arab tribes and people as:

”کیا اس وقت کے لوگ صرف نجی ضروریات کے لئے ہی سودی قرض لیا کرتے تھے یا کاروبار کرنے کے لئے بھی سودی قرض کا اس وقت عام رواج تھا۔ بعض لوگ جنہیں عرب کے حالات اور رسم و رواج کے تفصیلی مطالعہ کی فرصت نہیں ملی، کہتے ہیں کہ اس وقت صرف ذاتی ضروریات کے لئے ہی قرض لیا جاتا تھا اور کاروبار کے لئے قرض لینے کا اس قدیم غیر متدن معاشرہ میں کوئی تصور نہ تھا۔ لیکن اگر وہ دنیا کا نقشہ ملاحظہ فرمائیں تو انہیں معلوم ہو جائے گا کہ اس وقت جب کہ نہر سویز نہیں کھدی تھی جب کہ بڑے بڑے بھری جہاز معرض وجود میں نہیں آئے تھے۔ مشرق و مغرب کی تجارت خشکی کے راستے سے ہوتی تھی۔ اور اس امر کا تذکرہ تو خود قرآن حکیم میں ہے کہ اہل مکہ کے تجارتی قافلے سردیوں میں یمن و فارس کی طرف اور گرمیوں میں شام و روم کی طرف باقاعدگی سے جاتے تھے اور یہی ان کا ذریعہ معاش تھا اور تاریخ اس پر

¹⁷¹ *al-Azhari*, Justice *Pir Muhammad Karam Shah*, (1918-1998) was an Islamic scholar of Hanafi jurisprudence, Sufi, and Muslim leader. He is known for his magnum opus *tafsir*. In addition to that he authored comprehensive and detailed biography of the Prophet ﷺ titled as 'Zia-un-Nabi', or 'Diya al-Nabi'. He also served as justice on the Supreme Court of Pakistan Shari'at Bench till his death He was a justice of the Federal Shari'at Court, when it was first established in 1981.

اُہل شاہد ہے کہ جو قافلہ شام سے ابو سفیان کی قیادت میں مکہ واپس جا رہا تھا جس کا مسلمانوں نے مدینہ طیبہ سے نکل کر محاصرہ کرنے کا ارادہ کیا تھا اس میں تمام اہل مکہ کا سرمایہ تھا۔ مکہ میں کوئی گھر ایسا نہ تھا جس نے اس میں اپنا حصہ نہ ڈالا ہو۔ اور حصہ کی دونوں مختلف شکلیں رائج تھیں۔ یا تو سرمایہ دینے والا نفع میں شریک ہوتا تھا یا وہ اپنا مقررہ حصہ ٹھہرا لیا کرتا خواہ قرض لینے والے کو نفع ہو یا نقصان۔ ان تاریخی حقائق کی موجودگی میں یہ فرض کر لینا کب روا ہے کہ اس وقت کے اہل عرب کاروبار کے لئے سودی قرض نہیں لیا کرتے تھے۔ قرآن نے ہر ربا کو حرام کیا۔ کہیں آپ کاروباری سود لینے کی اجازت نہیں دکھا سکتے۔

سود عرب کے جاہل معاشرہ میں مروج تھا اور لوگ اپنی نجی اور کاروباری ضروریات کے لیے سودی قرض مکہ کے بڑے بڑے ساہوں کاروں سے لیا کرتے تھے اس آیت میں سود کے متعلق اس تصور کا بطلان کیا۔ الروم: 39 کے ذیل میں۔¹⁷²

*Maulana Ghulam Rasool Saeedi*¹⁷³ quoted a very famous tradition with reference to *Saddi* that Arab tribes used to indulge in commercial interest very commonly. He narrated it as:

”ان آیات میں اللہ تعالیٰ نے سود کو مطلقاً حرام کیا ہے۔ اللہ تعالیٰ نے سود مفرد کو بھی حرام کیا ہے اور (آیت) (لَا تاکلوا الرِّبَا وَالضَّعَافَا مَضْعَفَةً)۔ (آل عمران: 130) دُگنا چو گنا سود نہ کھاؤ“ فرمائے کہ سود مرکب کو بھی حرام کیا ہے اور ہر جگہ مطلقاً سود کو حرام کیا ہے اور نجی اور کاروباری قرضوں کا فرق نہیں کیا علاوہ ازیں تاریخ اور حدیث سے ثابت ہے کہ زمانہ جاہلیت میں کاروباری قرضوں پر سود لینے کا بھی عام رواج تھا۔

ابن حجری: ”آیت) وذر و ما بقی من الرِّبَا (البقرہ: 278) کی تفسیر میں لکھتے ہیں :

یہ وہ سود تھا جس کے ساتھ زمانہ جاہلیت میں لوگ خرید و فروخت کرتے تھے۔

علامہ سیوطی اس آیت کی تفسیر میں لکھتے ہیں: امام ابن حجری اور امام ابن حاتم نے اپنی اپنی اسناد کے ساتھ مددی سے یہ روایت بیان کی ہے کہ یہ آیت حضرت عباس بن عبد المطلب اور بنو مغیرہ کے ایک شخص کے متعلق نازل ہوئی ہے۔ یہ دونوں زمانہ جاہلیت میں شریک تھے اور انہوں نے ثقیف کے بنو عمرو بن عمیر میں لوگوں کو سودی قرض پر مال دے رکھے تھے۔ جب اسلام آیا تو ان دونوں پر بڑا سرمایہ سود میں لگا ہوا تھا۔

¹⁷² ازہری، جیش پیر محمد کرم شاہ، تفسیر غیاث، القرآن، غیاث، لائل، ہرگز، لائل، کیشنا، لاہور، سال اشاعت 1399ھ/1995ء، جلد سوم، ص 577

¹⁷³ Saeedi, Allam Ghulam Rasool, (1937-2016) a Pakistani exegete, muhaddith and writer.

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All other 81 connected matters relating to Riba/Interest

ان روایات سے معلوم ہوتا ہے کہ زمانہ جاہلیت میں بڑے بڑے تاجر خورde فروشوں کے ہاتھ ادھار پر مال فروخت کرتے تھے اور اس پر سود لگاتے تھے اور اس سے واضح ہو گیا کہ زمانہ جاہلیت میں کاروباری اور تجارتی قرضوں پر سود لگانے کا عام رواج تھا اور اس کو اربوا کہا جاتا تھا۔ قرآن مجید میں عموم کے صیغہ سے سود کی ممانعت کی ہے خواہ وہ سود نجی قرضوں پر ہو یا تجارتی قرضوں پر۔¹⁷⁴

Some *mufasirin* have stated in their *tafasir* that these verses were revealed primarily to prohibit the commercial loan as *Ibne Kathir*¹⁷⁵ wrote:

”ان آیات میں اللہ تعالیٰ ایماندار بندوں کو تقویٰ کا حکم دے رہا ہے اور ایسے کاموں سے روک رہا ہے جن سے وہ ناراض ہو اور لوگ اس کی قربت سے محروم ہو جائیں تو فرمایا کہ اللہ تعالیٰ کا لحاظ کرو اور اپنے تمام معاملات میں اللہ تعالیٰ سے ڈرتے رہو اور تمہارا سود جن مسلمانوں پر باقی ہے خبردار اس سے اب نہ لو جکہ وہ حرام ہو گیا، یہ آیت قبیلہ ثقیف بن عمرو بن عمیر اور بنو مخزوم کے قبیلے بنو مغیرہ کے بارے میں نازل ہوئی ہے، جاہلیت کے زمانہ میں ان کا سودی کاروبار تھا۔“¹⁷⁶

*Allama Nishapuri*¹⁷⁷ narrated it as:

”السدی کا قول ہے کہ یہ آیت حضرت عباس اور خالد بن ولید کے بارے میں نازل ہوئی یہ دونوں دور جاہلیت میں ایک دوسرے کے شریک کاروبار تھے لوگوں کو سود پر رقم قرض دیتے تھے جب اسلام آیا تو ان کی بڑی بڑی رقوم سود پر لگی ہوئی تھی اس پر اللہ نے یہ آیت نازل کی اور نبی ﷺ نے فرمایا جان لو کہ جاہلیت کے زمانے کا تمام سود منسوخ اور سب سے پہلا سود میں عباس بن عبدالمطلب کا منسوخ ہوتا ہو۔“¹⁷⁸

¹⁷⁴ سعیدی، غلام رسول، تبیان القرآن، خیاء القرآن ہیل کیشز، لاہور، 2015ء

¹⁷⁵ *Abū al-Fidā' Ismā'īl ibn 'Umar ibn Kathīr* (1301–1373) was a Shāfi'i jurist, historian, and exegete. Born in Busra, Syria, *Najafī*,

¹⁷⁶ ابن کثیر، حافظ عمار الدین ابوالقداء، تفسیر القرآن الحظیم، سورۃ البقرۃ، 275 تا 279

¹⁷⁷ *Nisabpuri*, Abu al-Hasan Ali al-Wahidi bin Ahmad bin Muhammad, (398-468) was a great scholar of Shāfi'i school of thought. Expert in Commentary of the Holy Qur'an, *Asbab Al-Nuzul* (Causes of the revelation of the holy Qur'an), Arabic & History.

Abū al-Fidā' Ismā'īl ibn 'Umar ibn Kathīr (1301–1373) was a Shāfi'i jurist, historian, and exegete. Born in Busra, Syria, *Najafī*,

¹⁷⁸ نعیم شاپری، ابو الحسن علی الواحدی بن احمد بن محمد، اسباب نزول القرآن، البقرۃ، 275، دارالاشاعت، کراچی

*Maulana Syed Mohammed Madni Jilani Ashrafi*¹⁷⁹ highlighted that diction used in the *Qur'an* is clearly meant for prohibition of commercial loan in this particular verse he writes:

”چنانچہ یہ بات سورہ الروم (۳۰) کی آیت ۳۹ میں خود قرآن نے واضح کر دی ہے کہ اس کے زمانہ نزول میں سودی قرض زیادہ تر کاروباری لوگوں کے مال میں جا کر بڑھنے کے لیے دیئے جاتے تھے۔ اس کے لیے آیت میں ﴿لَيَرْبُوا فِي أَمْوَالِ النَّاسِ﴾، اس لیے کہ وہ دوسروں کے مال میں پروان چڑھتے، کے الفاظ آئے ہیں۔ یہ تعبیر، ظاہر ہے کہ غریبوں کو دیئے جانے والے سودی قرضوں کے لیے کسی طرح موزوں نہیں ہے، بلکہ صاف بتاتی ہے کہ اس زمانے میں سودی قرض بالعموم تجارتی مقاصد کے لیے دیا جاتا تھا اور اس طرح قرآن کی اس تعبیر کے مطابق گویا دوسروں کے مال میں پروان چڑھتا تھا۔“¹⁸⁰

72. Two of famous scholar who are also linked in relation of teacher and student i.e. *Maulana Ameen Ahsan Islahi*¹⁸¹ and *Jāvēd Ahmed Ghāmidī*¹⁸² very categorically stated in their respective *tafsir* that the change in the purpose of taking loan on interest does not have any implication on the illegality of charging interest or *Riba*. Similarly, any change in the socio-economic status of the borrower or for that matter of the lender does not have any effect on the legal status of *Riba* or interest it remains prohibited under any circumstances. They say:

”لقطِ رِبْوَا کا مفہوم: رِبَا یعنی رِبَا کے معنی بڑھنے اور زیادہ ہونے کے ہیں۔ اسی سے رِبْوَا ہے جس سے مراد وہ معین اضافہ ہوتا ہے جو ایک قرض دینے والا مجرد مهلت کے عوض اپنے مقرض سے اپنی اصلی رقم پر وصول کرتا ہے۔ جاہلیت اور اسلام دونوں میں یہ اصطلاح

¹⁷⁹ Ashrafi, *Syed Muhammad Madni Jilani*, often referred to *Madni Miyan*, (b. 1938 / 1357 H) is an Indian Islamic scholar, theologian, spiritual leader and author from India. He is an expert of Islamic Philosophy, Islamic Sacred Law and Fiqh (Jurisprudence).

¹⁸⁰ جیلانی اشرفی، سید محمد نی، سید القاصیر معروف بـ تفسیر اشرفی، شیخ الاسلام ٹرست، احمد آباد، گجرات، 2009ء، جلد، ۲، ابقرۃ، 275

¹⁸¹ *Islahi, Amin Ahsan*, (1904–1997), was a Pakistani Muslim scholar famous for his Urdu exegesis: 'Tadabbur-i-Quran'.

¹⁸² *Ghāmidī, Jāvēd Ahmad*, (b1951) is a Pakistani Muslim theologian, Quran scholar, Islamic modernist exegete and educationist.

مذکورہ مفہوم کے لیے مشہور رہی ہے۔ اس کی شکلیں مختلف رہی ہیں۔ لیکن اس کی اصل حقیقت یہی ہے کہ قرض دینے والا قرضدار سے ایک معین شرح پر صرف اس حق کی بنابر اپنے دیئے ہوئے روپے کا منافع و صول کرے کہ اس نے ایک خاص مدت کے لیے اس کو روپے کے استعمال کی اجازت دی ہے۔ اس امر کو اس کی حقیقت کے تعین میں کوئی دخل نہیں ہے کہ قرض کسی غریب و نادار کو دیا گیا ہے یا کسی امیر و تاجدار کو اور نہ اس بات سے اس میں کوئی فرق واقع ہوتا ہے کہ قرض کسی میت کی تجهیز و تکفین کے لیے دیا گیا ہے یا کسی رفاهی اسکیم کے لیے دیا گیا ہے، یا تجارت، زراعت اور صناعت کے کسی انفرادی یا اجتماعی منصوبے کے لیے دیا گیا ہے۔ جاہلیت اور اسلام دونوں میں ریبوا کی اصطلاح کا جو مفہوم مسلم رہا ہے اس میں ان ظاہری اختلافات سے سر موفرق واقع نہیں ہوتا۔ جو لوگ یہ سمجھتے ہیں کہ مقصود قرض یا قرضدار کی نوعیت و حیثیت کی تبدیلی ریبوا کی عرفی حیثیت کو بدل دیتی ہے ان کا خیال بالکل غلط ہے۔ آگے آپ دیکھیں گے کہ خود قرآن کے الفاظ سے اس خیال کی پوری پوری تردید ہو رہی ہے۔¹⁸³

*Jāvēd Ahmed Ghāmidī*¹⁸⁴ writes:

”اردو زبان میں اس کے لیے سود کا لفظ مستعمل ہے اور اس سے مراد وہ معین اضافہ ہے جو ایک قرض دینے والا مقرض سے اپنی اصل رقم پر محض اس لیے وصول کرتا ہے کہ اس نے ایک خاص مدت کے لیے اس کو یہ رقم استعمال کرنے کی اجازت دی ہے۔ یہ قرض کسی غریب اور نادار کو دیا گیا ہو یا کسی کاروباری اور رفاهی اسکیم کے لیے، اس چیز کو ربا کی حقیقت کے تعین میں کوئی دخل نہیں ہے۔

اس کے لیے آیت میں ﴿لَيَرْبُوْا فِيْ أَمْوَالِ النَّاسِ﴾، اس لیے کہ وہ دوسروں کے مال میں پروان چڑھے، کے الفاظ آئے ہیں۔ یہ تعبیر، ظاہر ہے کہ غریبوں کو دیے جانے والے سودی قرضوں کے لیے کسی طرح موزوں نہیں ہے، بلکہ صاف بتاتی ہے کہ اس زمانے میں سودی قرض بالعموم تجارتی مقاصد کے لیے دیا جاتا تھا اور اس طرح قرآن کی اس تعبیر کے مطابق گویا دوسروں کے مال میں پروان چڑھتا تھا۔¹⁸⁵

73. Those who are in favor of this concept that only usurious interest is prohibited and interest on commercial loan is not. The reason for the prohibition of *Riba* (Interest) is that if a borrower suffers

¹⁸³ اصلاحی، امین احسن، تدبیر قرآن

¹⁸⁴ Ghāmidī, Jāvēd Ahmad, (b1951) is a Pakistani Muslim theologian, Quran scholar, Islamic modernist exegete and educationist.

¹⁸⁵ خامدی، جاوید احمد، ابیان

a loss, he is still required to pay an excess amount over the principal, which is essentially an exploitation of his need, whereas the lender receives an increase on his surplus capital without exerting any effort, which is unjust. However, this component is absent in commercial interest according to them.

They also stressed on the point that in case of usurious loan, consent of the borrower is missing with regard to the rate of interest. Commercial interest is acceptable since both parties have mutual consent, whereas *Riba* is forbidden solely because one party acts exploitatively. One party gets the excess and other gets the loss only because he has no other alternative.

*Maluana Abdul Rehman Kailani*¹⁸⁶ has explained all these aspects very clearly in his *tafsir* as:

”سودی قرضے دراصل دو طرح کے ہوتے ہیں۔ (1) ذاتی قرضے یا مہاجنی قرضے یعنی وہ قرضے جو کوئی شخص اپنی ذاتی ضرورت کے لئے کسی مہاجن یا بینک سے لیتا ہے اور (2) دوسرے تجارتی قرضے جو تاجر یا صنعت کار اپنی کاروباری اغراض کے لئے بینکوں سے سود پر لیتے ہیں۔ اب جو مسلمان سود کے جواز کی نمائندگی کرتے ہیں۔ وہ یہ کہتے ہیں کہ جس سود کو قرآن نے حرام کیا ہے وہ ذاتی یا مہاجنی قرضے ہیں جن کی شرح سود بڑی ظالمانہ ہوتی ہے اور جو تجارتی سود ہے وہ حرام نہیں۔ کیونکہ اس دور میں ایسے تجارتی سودی قرضوں کا رواج ہی نہ تھا۔ نیز ایسے قرضے چونکہ رضامندی سے لئے دیئے جاتے ہیں اور ان کی شرح سود بھی گوارا اور مناسب ہوتی ہے اور فریقین میں سے کسی پر ظلم بھی نہیں ہوتا، لہذا یہ تجارتی سود اس سود سے مستثنی ہے جنہیں قرآن نے حرام قرار دیا ہے۔

یہاں ہم مجوزین تجارتی سود کے تمام دلائل بیان کرنے اور ان کے جوابات دینے

¹⁸⁶ *Kailani, Maulana Abdul Rahman*, (d. 1995) a renowned scholar, writer and jurist of Salafi School of thought in Pakistan who wrote books in Islamic disciplines.

سے قاصر ہیں۔ [جس کو تفصیلات درکار ہوں وہ میری تصنیف 'تجارت اور لین دین کے مسائل و احکام' میں سود سے متعلق دو ابواب ملاحظہ کر سکتا ہے] لہذا چند مختصر دلائل پر ہی اکتفا کریں گے:

□ — دورِ نبوی میں تجارتی سود موجود تھے اور سود کی حرمت سے پیشتر صحابہؓ میں سے حضرت عباس اور خالد بن ولید ایسے ہی تجارتی سود کا کاروبار کرتے تھے۔ اس دور میں عرب اور بالخصوص مکہ اور مدینہ میں لاکھوں کی تجارت ہوا کرتی تھی۔ علاوہ ازیں ہمسایہ ممالک میں تجارتی سود کا رواج عام تھا۔

□ — قرآن میں ریبوا کا لفظ علی الاطلاق استعمال ہوا ہے جو ذاتی اور تجارتی دونوں قسم کے قرضوں کو حاوی ہے۔ لہذا تجارتی سود کو اس علی الاطلاق حرمت سے خارج نہیں کیا جا سکتا۔

□ — قرآن نے تجارتی قرضوں کے مقابل یہ آیت پیش کی ہے ﴿يَسْتَحْقُ اللَّهُ الرِّبْوَا وَيُبُرُّ الْصَّدَقَاتِ﴾ [البقرة: 275:2] اللہ نے تجارت کو حلال کیا ہے اور سود کو حرام جبکہ ذاتی قرضوں کے مقابل یوں فرمایا: ﴿يَسْتَحْقُ اللَّهُ الرِّبْوَا وَيُبُرُّ الْصَّدَقَاتِ﴾ [البقرة: 275:2] اللہ سود کو مٹاتا ہے اور صدقات کی پروردش کرتا ہے، گویا اللہ تعالیٰ نے سود کے خاتمه کے لئے ذاتی قرضوں کا حل 'صدقات' تجویز فرمایا ہے اور تجارتی قرضوں کے لئے شرائیت اور مضاربہ کی راہِ کھلائی ہے جو حلال اور جائز ہے۔

□ — جہاں تک کم یا مناسب شرح سود کا تعلق ہے تو یہ بات آج تک طے نہیں ہو سکی کہ مناسب شرح سود کیا ہے؟ کبھی تو ۲۰ فی صد بھی نامناسب شرح سمجھی جاتی ہے۔ جیسا کہ دوسری جنگ عظیم کے لگ بھگ زمانے میں ریزو بیک آف انڈیا ڈسکاؤنٹ ریٹ مقرر ہوا اور کبھی ۲۹ فی صد شرح سود بھی مناسب اور معقول سمجھی جاتی ہے [دیکھئے: اشتہار انوسمٹنٹ بنک مشتہرہ 'نوابے وقت' مورخہ ۱۱ اگست ۱۹۷۷ء] شرح سود کی مناسب تعین نہ ہو سکنے کی غالباً وجہ یہ ہے کہ اس کی بنیاد ہی متر لزل اور کمزور ہے۔ مناسب اور معقول شرح سود کی تعین تو صرف اس صورت میں ہو سکتی ہے جب یہ معلوم ہو سکے کہ قرض لینے والا اس سے کتنا تعین فائدہ حاصل کرے گا اور اس میں سے قرض دینے والے کا معقول حصہ کتنا ہونا چاہئے۔ مگر ہمارے پاس ایسا کوئی ذریعہ نہیں جس سے یہ معلوم ہو سکے کہ قرض لینے والے کو اس مقرر مدت میں کتنا فائدہ ہو گا، یا کچھ فائدہ ہو گا بھی یا نہیں۔ بلکہ اُٹا نقصان بھی ہو سکتا ہے۔ ثانیاً ایک ہی ملک اور ایک ہی وقت میں مختلف بینکوں کی شرح سود میں انتہائی تفاوت پایا جاتا ہے اور اگر سب کچھ مناسب ہے تو پھر نامناسب کیا بات ہے؟ ثالثاً اگر شرح سود انتہائی کم بھی ہو تو بھی یہ سود کو حلال نہیں بن سکتی۔ کیونکہ شریعت کا یہ اصول ہے کہ حرام چیز کی قلیل مقدار بھی

حرام ہی ہوتی ہے۔ شراب تھوڑی بھی ایسے ہی حرام ہے جیسے زیادہ مقدار میں
[الترمذی، أبواب الأشربة، باب ما اسکر کثیرہ فقلیلہ حرام]

— جہاں تک باہمی رضا مندی کا تعلق ہے تو یہ شرط صرف حلال معاملات میں ہے
جس کا مطلب یہ ہے کہ حلال اور جائز معاملات میں بھی اگر فریقین میں سے کوئی
ایک راضی نہ ہو تو وہ معاملہ حرام اور ناجائز ہو گا۔ جیسے تجارت میں مال بیچنے والے
اور خریدنے والے دونوں کی رضا مندی ضروری ہے ورنہ بیع فاسد اور ناجائز ہو گی۔
اسی طرح نکاح میں بھی فریقین کی رضا مندی ضروری ہے۔ لیکن یہ رضا مندی
حرام کاموں کو حلال نہیں بناسکتی۔ اگر ایک مرد اور ایک عورت باہمی رضا مندی
سے زنا کریں تو وہ جائز نہیں ہو سکتا اور نہ ہی باہمی رضا مندی سے جو گا جائز ہو سکتا
ہے۔ اسی طرح سود بھی باہمی رضا مندی سے حلال اور جائز نہیں بن سکتا۔

علاوہ ازیں سود لینے والا کبھی سود دینے پر رضا مند نہیں ہوتا۔ خواہ شرح سود
کتنی ہی کم کیوں نہ ہو۔ بلکہ یہ اس کی مجبوری ہوتی ہے اور اس کی دلیل یہ ہے کہ
اگر اسے کہیں سے قرض حسنہ مل جائے تو وہ کبھی سود پر رقم لینے کو تیار نہ ہل۔

— رہی یہ بات کہ تجارتی سود میں کسی فریق پر ظلم نہیں ہوتا۔ گویا یہ حضرات سود
کی حرمت کی علت یا بنیادی سبب ظلم قرار دیتے ہیں۔ حالانکہ یہ تصور ہی غلط
ہے۔ آیت کے سیاق و سباق سے واضح ہے کہ یہ الفاظ سودی معاملات اور
معاہدات کو ختم کرنے کی ایک احسن صورت پیش کرتے ہیں یعنی نہ تو مقروض
قرض خواہ کی اصل رقم بھی دبا کر اس پر ظلم کرے اور نہ قرض خواہ مقروض پر
اصل کے علاوہ سود کا بوجھ بھی لاد دے۔ ان الفاظ کا اطلاق ہمارے ہاں اس وقت
ہو گا جب ہم اپنے معاشرہ کو سود سے کلیتاً پاک کرنا چاہیں گے، یا نجی طور پر قرضہ
کے فریقین سود کی لعنت سے اپنے آپ کو بچانے پر آمادہ ہوں گے۔ سود کی
حرمت کا بنیادی سبب ظلم نہیں بلکہ بیٹھے بٹھائے اپنے مال میں اضافہ کی وہ ہو س
ہے جس سے ایک سرمایہ دار اپنی فاضل دولت میں طے شدہ منافع کی ضمانت سے
یقینی اضافہ چاہتا ہے اور جس سے زر پرستی، سنگ دلی اور بخل جیسے اخلاق رذیلہ
جنم لیتے ہیں۔¹⁸⁷

74. Imam Tabri referred to some tradition in support of the fact
that the practice of taking interest on commercial loans was common

in Arabia. Not only did individuals take such commercial loans on interest but some tribes indulged in this exploitative practice so much so that according to some traditions the expansion of this evil practice was the reason for the revelation of these verses of the elimination of *Riba*.

«6259 - حدثنا القاسم قال، حدثنا الحسين قال، حدثني حجاج، عن ابن جريج --- وكانت بنو عمرو بن عمير بن عوف يأخذون الربا من بني المغيرة، ﴿يَأَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنَّ كُنْتُمْ مُّؤْمِنِينَ﴾¹⁸⁴ كی تفسیر میں امام محمد بن جریر طبری ابن جریر سے طویل روایت نقل کی ہے جس میں بتایا گیا ہے کہ بنو عمرو بن عمير بن عوف بن المغیرہ سے قرض لیا کرتے تھے۔ [تفسیر الطبری: جامع البيان شاکر، 6/23]

عن الفسحان فی قوله: قال: كان ربأ يتبایعون به فی الجahلیyah، فلما أسلیموا أمرؤاً أیا خذوا رؤوس أموالهم. قول باری تعالیٰ: ﴿يَأَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنَّ كُنْتُمْ مُّؤْمِنِينَ﴾¹⁸⁴ کی تفسیر میں ضحاک بن مزاحم (تابعی) فرماتے ہیں کہ جاہلیت کے دور میں لوگ سود پر کاروبار کرتے تھے۔ پس جب اسلام لائے تو انہیں حکم دیا گیا کہ وہ فقط راس المال (اصل مال) ہی واپس لیں۔ [تفسیر الطبری: جامع البيان شاکر، 6/24]

عن السدى: رأيَّا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِلَى (ولا تظلمون)، قال: نزلت هذه الآية فـ العباس بن عبد المطلب ورجلٍ من بني المغيرة، كانا شريكين في الجahلیyah، يُسْلِفان في الرِّبَا إِلَى أَنَّاسَ مِنْ ثَقِيفٍ مِنْ بَنِي عِبْرٍ¹⁸⁵ وَهُمْ بَنُو عِبْرٍ بْنُ عَبَّيْنَ، فجاء الإِسْلَامُ وَلَهُمَا أَمْوَالٌ عَظِيمَةٌ فِي الرِّبَا، فَأَنْزَلَ اللَّهُ (ذَرُوا مَا بَقِيَ) مِنْ فضلٍ كَانَ فِي الجahلیyah (من الرِّبَا).

﴿يَأَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا ...﴾ إلی: ﴿وَلَا تُظْلِمُوا﴾ سدی سے روایت ہے کہ یہ آیت عباس بن عبد المطلب اور بنی المغیرہ کے ایک شخص کے متعلق نازل ہوئی، وہ دونوں جاہلیت میں شرکت دار تھے، دونوں ثقیف میں بنو عمرو بن عمير کو لوگوں کو سودی قرض دیا کرتے تھے، پس جب اسلام آیا تو ان دونوں کی بہت زیادہ دولت سود پر دی ہوئی تھی۔ پس اللہ نے ﴿وَذَرُوا مَا بَقِيَ﴾ میں جاہلیت کے سودی زائد مال کو چھوڑنے کا حکم دیا۔¹⁸⁶

75. In *Tafseer Rooh al-Bayan* many other traditions are referred

to prove the point that interest on commercial loans was a common practice in Arabia. So the argument that such type of practice was not known to them, hence making it legal and permissible is a fundamentally flawed argument and factually wrong. *Allama Binouri*¹⁸⁹ writes:

”عہد رسالت میں سود کے حرام ہونے کے حکم سے قبل تجارتی سود کا رواج تھا بے شمار
احادیث میں اس کا تذکرہ ہے:

در منثور میں ابن جریر کے حوالے سے یہ روایات منقول ہے:

«كانت بنو عبر و بن عامر يأخذون الربا من المغيرة، وكانت بنو المغيرة يربون لهم في
الجاهلية، فجاء الإسلام، ولهم عليه مال كثير.» [در منثور، ج 1، ص 366]

”زمانہ جاہلیت میں بنو عمرو بن عامر، بنو مغیرہ سے سود لیتے تھے، اور بنو مغیرہ
انہیں سود دیتے تھے، جب اسلام آیا تو ان پر ایک بھاری مال واجب تھا۔“

اس روایت میں صراحتاً اس بات کا ذکر ہے کہ دو قبیلوں کے درمیان سودی لین دین تھا۔ ان
کی حیثیت بھی بالکل آج کل کی تجارتی کمپنیوں (Trading Companies) جیسی تھی کہ
ایک قبیلہ کے لوگ اپنا مال جمع کر کے اس سے اجتماعی طور پر تجارت کرتے تھے۔ اگر بڑے قبیلوں
کے درمیان اس انداز میں سودی معاملہ اور کاروبار ہو تو آخر تجارتی سود کے علاوہ اسے کیانام دیا
جا سکتا ہے؟ ظاہر ہے کہ یہ تجارتی سود ہی تھا۔

طاائف کی زمین اپنی زرخیزی اور شادابی کی وجہ سے ہمیشہ عرب تاجروں کی کاروباری
و لچکیوں کا مرکز ہی ہے۔ طائف کی پیداوار سے تبادلہ میں باہر سے آنے والی تجارتی اشیاء
اچھی خاصی مقدار میں حاصل ہوتی تھیں۔ یہاں کے باشندے سود کی عام و با میں مبتلا تھے۔
علامہ طبری تحریر فرماتے ہیں کہ قریش کہ کی ایک شاخ بنو مغیرہ ان کے مستقل گاہک
(Customers) تھے اور ان کے درمیان سود کی وصولی کا طریقہ یہ طے پایا کہ اگر مقررہ
وقت پر اصل رقم سود کے ساتھ ادا نہ کی جاتی تو اس پر سود کو دو گناہ کر دیا جاتا۔

سود کی حرمت سے متعلق قرآنی حکم نازل ہونے سے قبل عباس بن عبدالمطلب اور خالد بن
ولید مشترکہ سرمایہ (Joint Investment) سے ایک کمپنی قائم کر رکھی تھی۔ ان کا کاروبار

¹⁸⁹ Allama Banuri, Muhammad Yousuf, (1908–1977) was a Pakistani Islamic scholar, founder of Jamia Uloom-ul-Islamia, Karachi and former President and Vice President of Wifaq ul Madaris Al-Arabiya, Pakistan.

خصوصاً سودی معاملات طے کرنا تھا۔ [جامع البيان، ابن جریر طبری، ج 4، ص 55]

اسی طرح امام بغویؓ نے حضرت عطاء بن ابی رباح اور حضرت عکرمؓ سے روایت نقل کی ہے کہ حضرت عباس اور حضرت عثمانؓ کی ایک سودی رقم کسی تاجر کے ذمہ واجب تھی، جب انہوں نے اس سودی رقم کی وصولی کا مطالبہ کیا تو سود کی ممانعت سے متعلق وحی کے نزول کے بعد رسول اکرم ﷺ نے انہیں روک دیا اور انہوں نے سود کی رقم چھوڑ دینے کا فیصلہ کیا۔

اس روایت میں بھی تصریح ہے کہ یہ رقم ایک تاجر کو دی گئی تھی۔ خلاصہ یہ ہے کہ ان تمام روایات سے واضح طور پر یہ بات ثابت ہوتی ہے کہ زمانہ جاہلیت اور عہد نبوت میں تجارتی سود کا بھی رواج تھا۔ جن سے اس استدلال کا بے بنیاد اور تاریخ کی صحیح روایات کے منافی ہونا واضح ہو جاتا ہے کہ عرب میں تجارتی سود کا رواج نہیں تھا۔

اس کے بعد اس بات کا جائزہ لیا جانا بھی ضروری ہے کہ سود کی کتنی قسمیں ہیں اور ان کے اصطلاحی نام کیا ہیں اور ان کی حرمت کیسے ثابت ہے؟¹⁹⁰

*Abduhu al-Fallah*¹⁹¹ has given some further reference of *Imam ash-Shawkānī*¹⁹², *Imam at-Tabrī*¹⁹³ and *Allama as-Suyuti*¹⁹⁴ to disprove the claim that the Arab society did not know the commerce and trade hence they did not know the concept of interest on commercial loans he wrote:

”شوكاني لفظ ریبوا اپنے وسیع تر معنی کے اعتبار سے مذکورہ صورت کو بھی شامل ہے لیکن یہ کل ربا نہیں ہے بعض قبائل میں تجارتی سود بھی رائج تھا۔ علامہ طبری لکھتے ہیں کہ: (كان رباتاً يبعون به في الجahiliyah) [ج 4، ص 107] یعنی 'جاہلیت' میں ایک صورت ریبوا کی یہ بھی تھی جو خرید و فروخت میں ہوتا۔ علامہ سیوطی لکھتے ہیں: «نزلت في العباس ورجل من بنى المغيرة كانا شريكين في الجahiliyah سلفاً في الريالى أناس من ثقيف (ايضاً) كان بنو المغيرة يرجون ثقيف» [در منثور] یعنی 'ربا' جس کی مذمت میں یہ آیات نازل ہوئی ہے وہ جاہلی دور میں

¹⁹⁰ علامہ بنوری، محمد یوسف، تفسیر روح البیان

¹⁹¹ *al-Flah, Muhammad Abduhu Ferozpuri*, (1917- 1990CE), Pakistani exegete.

¹⁹² *al-Shawkānī, Muhammad ibn Ali ibn Muhammad ibn Abdullāh*, (1759-1839CE/ 1173-1255H), was a great scholar of Islam, jurist, judge, and reformer.

¹⁹³ *al-Tabarī, Abū Ja'far Muḥammad bin Jarīr bin Yazīd* (839-923CE), was an influential scholar, historian and commentator on the Qur'an. Beside his famous Qur'anic commentary, *Tafsir al-Tabari*, he wrote on such subjects as world history, poetry, lexicography, grammar, ethics, mathematics, and medicine.

¹⁹⁴ *al-Suyuti, Jalal -ud-Din Abdur Rahman bin Abi Bakar bin Muhammad bin Sabiq-ud-Din al-Khudhayri*, (849-1445H/ 911-1505) was an Imam, Hafiz, exegete and *Shafai* Jurist who wrote about 600 books.

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بسلاسلہ کاروبار (تجارت) تھا جو ثقیف اور بنو مغیرہ وغیرہ قبائل باہم بطور شرکت کیا کرتے
اور جو سودی قرض کا لین دین جاری تھا موجودہ سودی نظام بھی اس کے تحت آتا
ہے۔¹⁹⁵

76. As *Sir Syed Ahmed Khan* was the first one to put this point of view that the Quran prohibit the usurious loan only which is usually borrowed by the poor and needy to fulfill his personal needs and at the same time the loan which is taken by the wealthy people for commercial use is not forbidden. The same approach was adopted by *Sayyid Rashid Ridā*¹⁹⁶ who was the *Shaikh al-Azhar* in Egypt. His reference was also relied upon by the respondent in the Review Petition. The State Bank of Pakistan relied upon the same argument which was argued before us. On our inquiring of the primary source of their opinion they failed to substantiate their argument regarding our query. An important point to be noted here is that neither *Sir Syed Ahmed Khan* nor *Rashid al-Raza* relied on any source upon which they based their respective opinions, nor did they interpret any such source in their favor. On the contrary both scholars admittedly expressed this as their personal opinion. For this reason, some of the *mufassirin* even criticize *Allama Rashid al-Raza* in their *tafsir*, one such example is of

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¹⁹⁶ *Sayyid Rashid Ridā, Muhammad Rashid bin 'Alī Ridā bn Muḥammad Shams al-Dīn bn Muḥammad Bahā'* al-Dīn bin Mūnlā 'Alī Khalīfa, (1865–1935CE/ 1282 –1354H), was a prominent Islamic scholar, reformer, theologian and revivalist, being Salafi scholar who called for the revival of Hadith Sciences.

Allama Mohsin Ali Najafi¹⁹⁷ who writes as:

”کچھ حضرات اس آیت سے یہ استدلال کرتے ہیں کہ قرآن نے جس سود کو حرام قرار دیا ہے، اس سے مراد زمانہ جاہلیت میں راجح سود مرکب، یعنی سود در سود ہے، جب کہ قرض پر سود اور معاملاتی سود حرام نہیں اور احادیث میں سود کی مؤخر الذکر دو اقسام کے بارے میں جو ممانعت آئی ہے وہ کراہت پر مبنی ہے۔ [رشید رضا، الربا و المعاملات فی الاسلام، ص 52۔ کیافی الربا فیہا و اقتصادیاً، ص 29]

اس پر دلیل یہ دیتے ہیں کہ نزول آیت کے وقت لوگ کئی گناہ زیادہ سود لیتے تھے۔ جب کہ قرض پر سود اور معاملاتی سود میں کئی گناہ کا تصور نہیں ہوتا۔

جواب یہ ہے کہ سنت رسول ﷺ میں ہر قسم کے سود کی ممانعت جس تاکید اور شدت سے آئی ہے، اسے صرف مکروہ قرار دینا نہایت ہی نااصفانی ہے۔ اگر اس طرح کی ذاتی رائے کا باب کھل جائے تو لوگ بہت سے حرام اور واجب احکام کو کراہت اور مستحب پر محو کر کے شریعت کو مسخ کر دیں گے۔“¹⁹⁸

77. After going through all these books and relevant sources, we are of the view that any such personal opinion of any person has no legal binding, irrespective of whether that opinion was given by anybody from the sub-continent or from Egypt, especially when that opinion is in opposition to the overwhelming scholarly opinion of the Muslim world from every era and from every corner of the world. In addition to that it is also a relevant fact in our consideration that such an opinion was normally given when the majority of Muslim states were under colonial rule and they had no concept of Islamic Banking. Hence those scholars were living under specific socio-economic and

¹⁹⁷ Najafi, Allama Mohsin Ali (b.1938) is a *Shia* scholar, *muffassir*, Chancellor & founder of 'al-Kausar Islamic University', Islamabad.

¹⁹⁸ شیعی علامہ محسن علی، الکوثر فی تفسیر القرآن، مصباح القرآن ٹرست، لاہور

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political conditions where it was almost impossible for them to imagine the concept of Islamic Finance at the national level let alone at an international level. Hence they obviously ignored and rather erred in making an opinion which was against the principles of Islamic Jurisprudence and even against the Injunctions of Islam. In Islam a rule does not change with the change in appearance of that thing upon which it is applicable. For example, Liquor is prohibited in Islam so it will remain prohibited in Islam irrespective of the fact that the style of its brewing, manufacturing and packing are totally different from the era when it was declared prohibited. Similarly, the quantity in which it is used or the manner in which it is used or the name or brand to which it is called does not have any impact on the basic ruling of Islam about it, that it is prohibited under all conditions and all its manifestations and forms. Same is the case of *Riba* or interest be it on personal loan or on commercial loan it is haram and prohibited. By giving consent no illegal act can be made legal like fornication, gambling or selling wine etc. under Islamic Jurisprudence.

78. Now coming to the point of determination, whether only the charging of interest upon consumption loans is prohibited and the charging of interest upon commercial or productive loans is not prohibited in Islam. For all the reasons discussed herein above we

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have decided this point of determination as, that the prohibition of *Riba* is absolute, irrespective of the fact as to whatever purpose the loan is taken on interest. The purpose of taking loan does not change the status of prohibition of *Riba*.

Determination Point-VI:

**Whether the Islamic Banking model is practical or not
and is the Islamic Banking a kind of *heela* (حيلة)?**

79. While arguing the review petition, the petitioners forwarded two nebulous types of arguments:

Firstly, Islamic Banking is not practical, and

Secondly, whatever is being done in the name of the Islamic Banking is just a *heela* (حيلة) i.e. devices to avoid what is otherwise *Riba*.

80. In para-10, of the review order the argument of a counsel Dr. *Syed Riaz ul Hasan Gilani* ASC representing the Federation were reproduced wherein he stressed upon the fact vehemently that the alternate banking Islamic Banking and financial system i.e. Islamic Financial system as proposed in the impugned judgment under review was not at all workable and the Government has found it incapable of

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being implemented. The para-11 of the Review Order, contains the arguments of Mr. *Gilani* that all the Islamic banking system suggested in the judgment under review is a misnomer and according to him except *Musharika* (مشاركة) other modes of finance are nothing but *heela* (حيلة), i.e. devices to avoid what is otherwise *Riba* which are in fact more harsh and oppressive having the element of *Zulm* (ظلم) and are worst in consequences as compared to the various forms of interest prevalent in the present day banking system which have wrongly been termed as *Riba al-Nasi'ah* (ربا النسبة) in the judgment under review. According to him the judgment under review omitted to take into consideration the fact that the alternate system is not a consensus oriented system and had been bitterly opposed by many eminent jurists.

81. As we have already taken notice of the fact that the ground reality regarding Islamic Banking is completely changed from the time when the review petition was being heard and now. Therefore; to get the actual data we asked relevant and specific questions from the State Bank of Pakistan to explain the steps so far taken by the State Bank of Pakistan regarding promotion of Islamic banking in Pakistan. Answers

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to these questions, helped us in assessing the actual state of affairs of Islamic Banking in Pakistan. Whether the model of Islamic Banking and Islamic Finance are actually applicable in Pakistan or not.

82. The question we asked from the State Bank of Pakistan and its answer are as follows:

What steps have so far been taken by the State Bank of Pakistan and Government of Pakistan through Ministry of Finance to promote Islamic Banking in Pakistan?

Following are some of the key initiatives taken by the State Bank of Pakistan (SBP) for the promotion of Islamic banking industry in Pakistan:

b. Licensing:

SBP has allowed three types of Islamic banking institutions to operate in the country i.e.:

- (i) Full-fledged Islamic banks;
- (ii) Islamic banking subsidiary of conventional banks; and
- (iii) Standalone Islamic banking branches (IBBs) of conventional banks.

c. Rationalization of Minimum Capital Requirements (MCR) for Islamic Banking Subsidiaries

With the objective of encouraging banks to move

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towards a subsidiary based model, SBP has revised the initial Minimum Capital Requirement (MCR) for establishment of Islamic banking subsidiary from Rs 10 billion to Rs 6 billion in October 2014.

d. *Shari'ah Supervisory and Compliance Framework*

A multi-tiered *Shari'ah* supervisory and compliance framework is in place for Islamic Banking Institutions.

e. *Essentials and model agreements of Islamic modes of financing*

The State Bank of Pakistan introduced essentials and model agreements of Islamic modes of financing including *Musharaka* (مشاركة), *Mudaraba*

(مساومة), *Murabaha* (مراجعة), *Musawama* (المساومة),

Leasing (إيجار), *Salam* and *Istisna* (السلم استصناع) for the banks conducting Islamic banking business in Pakistan.

f. *Islamic Microfinance Operations:*

For encouraging Islamic microfinance, SBP has also allowed establishment of full-fledged Islamic microfinance banks, Islamic microfinance divisions of conventional microfinance banks, Islamic

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microfinance services by full-fledged Islamic banks and Islamic microfinance services by conventional banks.

g. Revised instructions on Islamic Banking Windows Operations

Keeping in view the significant potential of Islamic Banking Windows (IBWs) in enhancing the share and outreach of *Shari'ah* compliant financial services and increase in financial inclusion, SBP has issued revised instructions for banks to expand the scope of operations of IBWs.

h. Guidelines for Conversion of a Conventional Bank into an Islamic Bank

In order to promote Islamic banking and facilitate the process of conversion of an existing conventional bank into an Islamic bank, SBP issued detailed guidelines in 2017.

i. Liquidity Management Solutions for Islamic Banking Industry

Considering the importance of liquidity management for Islamic banking industry, State Bank of Pakistan (SBP) is working on providing multiple liquidity management solutions for the industry.

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**j. Exemption from KIBOR as Benchmark Rate for
Participatory and *Vikalah* (وکالہ) Modes Based
Products**

To encourage participatory based modes of financing by Islamic banking institutions on asset side, SBP has allowed that the financing provided on the basis of participatory (*Musharaka & Mudaraba* (مشارکة و مضاربة) and *Vikalah/ agency* (وکالہ) modes by the Islamic banking institutions shall be exempted from the requirement of using KIBOR as benchmark rate.

k. Adoption of International *Shar'iah* & Prudential Standards:

SBP has remained a key member of international standard setting bodies like AAOIFI¹⁹⁹ and IFSB²⁰⁰. Various standards issued by these international standard setting bodies have been adopted after customizing the same in accordance with the local market.

1. Issuance of Five Year Strategic Plans for Islamic Banking Industry of Pakistan:

SBP, in consultation with all key stakeholders, has

¹⁹⁹ AAOIFI: 'Accounting and Auditing Organization for Islamic Financial Institutions', is a Bahrain based nonprofit organization that was established in 1991 to maintain and promote *Shari'ah* standards for Islamic financial institutions, participants and the overall industry. <http://aaoifi.com/>

²⁰⁰ IFSB: 'Islamic Financial Services Board', established in 2002, at Malaysia, is an international standard setting body of regulatory and supervisory agencies that promotes the soundness and stability of the Islamic financial services industry, covering banking, capital market and insurance. <https://www.ifsb.org/>

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issued three five year Strategic Plans for Islamic banking industry of Pakistan; first strategic plan was for the period (2007-12), second one was for (2014-18) while the third strategic plan is for the period 2021-25.

m. Instructions for Profit & Loss Distribution and Pool Management for Islamic Banking Institutions (IBIs):

SBP has issued detailed instructions for Profit & Loss Distribution and Pool Management in IBIs to improve transparency and disclosures and bring standardization in IBIs' profit and loss distribution policies and practices.

n. Islamic Refinance Schemes:

Various refinance schemes on the Islamic principles have been launched by SBP. These mainly include Islamic Export Refinance Scheme (IERS), Islamic Long Term Financing Facility (ILTFF), Islamic Financing Facility for Renewable Energy (IFRE), Islamic Financing Facility for Storage of Agricultural Produce (IFFSAP) and Islamic Refinance Facility for Modernization of SMEs (IRFMS).

o. Capacity Building and Awareness Creation Initiatives:

SBP is actively engaged in capacity building of the

industry through various training programs to enhance industry's human resource capacity. Moreover, targeted seminars, conferences, and workshops across the country are also conducted to increase awareness about Islamic banking and finance.

p. Other Initiatives:

- i. SBP issues a quarterly publication on developments in Islamic banking and finance.
- ii. In order to ensure adequate supply of trained human resource to the industry as well as to act as an incubator for research on contemporary issues, SBP in collaboration with key stakeholders has helped in establishing three Centers of Excellence (under DFID²⁰¹ funding) at leading business schools including: Institute of Business Administration (IBA), Karachi, Lahore University of Management Science (LUMS), Lahore and Institute of Management Sciences (IM Sciences), Peshawar.
- iii. On recommendations of SBP, tax neutrality has been provided to Islamic financial institutions and their customers by the Government of Pakistan

²⁰¹ Department for International Development-UK, DFID was a ministerial department from May 1997 to September 2020. It merged with the Foreign and Commonwealth Office to create FCDO.  <https://bit.ly/35zB4LK>

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through Finance Act 2017.

- iv. To promote Islamic finance in the country, SBP is collaborating with SECP, the capital market regulator. SECP has created a dedicated Islamic Finance Department and has started taking initiatives for building necessary infrastructure for development of Islamic capital market.
- v. In recognition of its efforts, SBP has been voted as the best central bank in promoting Islamic finance four times (2015, 2017, 2018 and 2020) by a poll conducted by Islamic Finance News (IFN), RED Money Group Malaysia. Moreover, Global Islamic Finance Awards (GIFA) has also awarded SBP as “Best Central Bank of the Year 2020”.

83. After explaining the efforts of the State Bank of Pakistan regarding the promotion of interest free banking in Pakistan, the Counsel of State Bank of Pakistan argued that the State Bank is pursuing the goal mentioned in Article 38(f) of the Constitution regarding the elimination of *Riba* as early as possible from the country. The Counsel for the State Bank of Pakistan stated that presently under the prevalent legal and regulatory framework available in Pakistan for Islamic Banking or *Riba* free Banking if someone wants to do his business completely *Riba* free it is hundred percent possible. He also

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made it a point that at state level things are moving in the right direction, but there are certain challenges in complete implementation of *Riba* Free Banking. At the end of his arguments, he stressed that there are certain challenges faced by the Islamic banking industry due to limited availability of Sharia-compliant investment avenues etc.

84. The Review Order contains a reference of an affidavit dated 06.06.2002 which was filed by the Ministry of Finance before the Shariat Appellate Bench. It was referred in para-33 of the judgment of the Shariat Appellate Bench of the Supreme Court and same was referred in Remand Order's para-7, which reads as follows:

"That Government of Pakistan has made best possible efforts under Article 190 and Article 203D(3)(a) of the Constitution of the Islamic Republic of Pakistan, 1973 to find ways and means to implement the directives contained in paragraphs (7), (8) and (9) of the Order dated 23-12-1999 of Hon'ble Supreme Court of Pakistan (Shariat Appellate Bench) but has found that implementation of the said directives is not practical or feasible and if attempted will pose high degree of risk to the economic stability and security of Pakistan."

[Emphasis added]

85. The statistics of today are quite opposite to the

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apprehensive statement contained in the above-referred affidavit.

According to Islamic Banking Quarterly Bulletin (Apr-June, 2021) of SBP, Pakistan's assets of Islamic Banking Industry (IBI) worth Pakistani Rupees 4,797 Billion (approximately US Dollars 30.45 billion) as in June, 2021. The Year on Year (YoY) growth of Islamic Banking assets was recorded at 32% by end June 30, 2021. The share of Pakistan's Islamic Banking to Total Banking Industry is 17%.

86. It is witnessed that Islamic Banking is contributing a lot in bringing economic stability in the country according to its market share. Similarly, the apprehension that Islamic Banking may pose a risk to "security of Pakistan" is also unfounded. Not the slightest of evidence was produced by the deponent of the affidavit along with the affidavit nor any such arguments were forwarded by any of the respondent even before us.

87. In addition, the State Bank of Pakistan is also making efforts to remain compatible with the international standers of Islamic Banking. Currently there are many international organizations which are systemically working on standardization of Islamic finance and Islamic banking like IFSB²⁰². AAOIFI²⁰³ have successfully developed

²⁰² IFSB: 'Islamic Financial Services Board', established in 2002, at Malaysia, is an international standard setting body of regulatory and supervisory agencies that promotes the soundness

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100 *Shari'ah* standards in the area of Accounting, Auditing, Ethics and Governance for Islamic economic finance. Out of these 100 *Shari'ah* Standards of Audit and Accounting and Islamic Banking, 16 *Shari'ah* Standards have been adopted by the State Bank of Pakistan in order to standardize Islamic Banking practices and Accounting and Auditing mechanisms in Pakistan.

88. The following are the *Shari'ah* Standards adopted by the State Bank of Pakistan:

i. **Default in payment by a debtor (المدين الماطل):**

AAOIFI²⁰⁴ Standard number 03 deals with Default in payment by a debtor and it was adopted by the State Bank of Pakistan (SBP) on July 01, 2010 via Islamic Banking Department (IBD) Circular No. 01 of 2010.

ii. ***Murabaha* (مراجعة) to the purchase order.**

It is AAOIFI²⁰⁵ *Shari'ah* Standard number 08 and it was adopted by the State Bank of Pakistan on July 01, 2010 via IBD Circular No. 01 of 2010.

and stability of the Islamic financial services industry, covering banking, capital market and insurance. <https://www.ifsb.org/>

²⁰³ AAOIFI: 'Accounting and Auditing Organization for Islamic Financial Institutions', is a Bahrain based nonprofit organization that was established in 1991 to maintain and promote *Shari'ah* standards for Islamic financial institutions, participants and the overall industry. <http://aaoIFI.com/>

²⁰⁴ Ibid

²⁰⁵ Ibid

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iii. Lease (إيجار وإيجارة المنتهية بالتمليك):

It is AAOIFI²⁰⁶ Shariah Standard number 09 and it was adopted by the State Bank of Pakistan on July 01, 2010 via IBD Circular No. 01 of 2010.

iv. Mudaraba (المضاربة):

It is AAOIFI²⁰⁷ Shariah Standard number 13 and it was adopted by the State Bank of Pakistan on July 01, 2010 via IBD Circular No. 01 of 2010.

v. Sharika, Musharaka and Modern Corporations (الشركة، المشاركة والشركات الحديثة):

It is AAOIFI²⁰⁸ Shari'ah Standard number 12 and it was adopted by the State Bank of Pakistan on July 01, 2013 via IBD Circular No. 01 of 2013.

vi. Investment Sukuk (صكوك الاستثمار):

It is AAOIFI²⁰⁹ Shari'ah Standard number 17 and it was adopted by the State Bank of Pakistan on July 15, 2013 via IBD Circular No. 03 of 2013.

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ Ibid

²⁰⁹ Ibid

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vii. Debit/ Charge Card & Credit Card (بطاقة الحسم وبطاقة الائتمان):

It is AAOIFI²¹⁰ *Shari'ah* Standard number 02 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

viii. Guarantees (الضمانات):

It is AAOIFI²¹¹ *Shariah* Standard number 05 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

ix. Documentary Credit (الاعتمادات المستندية):

It is AAOIFI²¹² *Shariah* Standard number 14 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

x. Possession (القبض)

It is AAOIFI²¹³ *Shariah* Standard number 18 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

²¹⁰ Ibid

²¹¹ Ibid

²¹² Ibid

²¹³ Ibid

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xi. Syndicated Financing (التمويل المصرفي المجمع)

It is AAOIFI²¹⁴ Shariah Standard number 24 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

xii. Online Financial Dealings : (التعاملات المالية بالإنترنت)

It is AAOIFI²¹⁵ Shariah Standard number 38 and it was adopted by the State Bank of Pakistan on March 01, 2019 via IBD Circular No. 01 of 2019.

xiii. Loan (القرض)

It is AAOIFI²¹⁶ Shariah Standard number 19 and it was adopted by the State Bank of Pakistan on January 03, 2020 via IBD Circular No. 01 of 2020.

xiv. Agency and the Act of an Un-Commissioned Agent (الوكالة وتصرف الفضولي) :

It is AAOIFI²¹⁷ Shariah Standard number 23 and it was adopted by the State Bank of Pakistan on January 03, 2020 via IBD Circular No. 01 of 2020.

xv. Banking Services in Islamic Banks (الخدمات المصرفية في المصارف الإسلامية)

²¹⁴ Ibid

²¹⁵ Ibid

²¹⁶ Ibid

²¹⁷ Ibid

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(الإسلامية):

It is AAOIFI²¹⁸ Shariah Standard number 28 and it was adopted by the State Bank of Pakistan on January 03, 2020 via IBD Circular No. 01 of 2020.

xvi. Unilateral and Bilateral Promise (الوعد المواجب)

It is AAOIFI²¹⁹ *Shari'ah* Standard number 49 and it was adopted by the State Bank of Pakistan on September 02, 2020 via IBD Circular No. 03 of 2020.

89. After reviewing the response of the State Bank of Pakistan which is also owned by the Attorney General for Pakistan on behalf of the Federation, we are of the view that Islamic Banking or Interest Free Banking is a reality. It is not only very much practical but also feasible, not only in Pakistan but across all over the world. Islamic Banking is very much a practical reality of Pakistan hence any apprehension raised by the Federation before the Shariat Appellate Bench back then at the time when the Review Petition was being argued in the Shariat Appellate Bench lost ground if they had any.

90. The argument of referring the activities undertaken in the

²¹⁸ Ibid

²¹⁹ Ibid

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name of Islamic Banking as *heela* (حيلة) is completely unfounded, baseless and unsubstantiated. The products of Islamic Banking are issued by the State Banks are reviewed and approved from *Shari'ah* Board of the State Bank in the light of Islamic Injunctions. The accounting standard referred to above adopted by the State Bank of Pakistan are made and issued by a highly reputed Bahrain based International body of well recognized Islamic scholars of the world. The institution is called AAOIFI. In addition to that these Standards were also endorsed by the Council of Islamic Ideology. In the light of all these evidence we are of the view that naming the Islamic Banking as a whole as *heela* (حيلة) is an unfounded and baseless argument.

However, while arguing the petition before us one of the petitioners and a jurist-consult did advance a point that a few products of the Islamic Banking are seldom objected that they are not strictly in accordance with the Islamic principles of finance or banking. In such cases according to them the *Shari'ah* Board of the State Bank for Pakistan remain continuously involved in taking affirmative actions and corrective measures whenever required. After hearing argument about any such apprehensions products used in Islamic Banking which

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are not strictly *Shari'ah*-compliant; for that eventuality we are of the view that every citizen is at liberty to challenge the legality of any such product which is being practiced and acted upon in the name of Islamic Banking. If any citizen thinks that any product of Islamic Banking is not in accordance with the injunctions of Islam and the name of Islam is only being used as *heela* (حيلۃ) then he can invoke the jurisdiction of the Federal Shariat Court any time, till date no such petition is pending before this court challenging any specific product of Islamic Banking. We are of considered view that Islamic Banking model is not only practical but feasible also not only in Pakistan but all across the world.

Determination Point-VII:

What is the status of Islamic banking worldwide especially in the Islamic world and in Pakistan?

91. The economic and monetary sectors are ever changing and evolving at national as well as at international level. Considering the changes undergone at international level, viz-a-viz., interest free on Islamic banking and keeping the direction of the Hon'ble Shariat Appellate Bench of the Supreme Court in mind of taking thorough and elaborate research regarding financial systems, which are prevalent in

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the contemporary Muslim countries of the world, we consider it very relevant and appropriate to examine some national and international factors of Islamic banking, which are very much connected and relevant to the matters in issue in these cases for the re-determination of the case.

92. What is the status of Islamic banking in contemporary Muslim countries and also worldwide? The answer to this question in the light of actual data helped us in understanding the problems and prospects attached to the matter in issue. This ultimately assisted us in reaching a practical and equitable conclusion of the case. To get the relevant answer in the light of actual statistics and real data, we have formulated few questions and circulated them amongst the parties to get their answers from every aspect. The questions were specifically given to the State Bank of Pakistan as well as to the Federal Government of Pakistan. We, *inter alia*, asked the following questions, which are relevant to know the current status of Islamic banking the world over:

- i) How many contemporary Islamic countries are dealing in Islamic Banking, Islamic Financial System and how these systems are being operated generally?
- ii) How many International banks and financial institutions are indulged in Islamic banking/Islamic Financing in

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different forms to provide Riba free services for their customers?

- iii) What is the response of International Financial Institutions like World Bank, IMF, Asian Development Bank, IDB etc., towards Islamic Banking purely from economic point of view? Do they provide financing on Islamic principles?
- iv) Is there any example in the world that the international financial transactions of a sovereign state with the International Financial Institutions is somehow linked with Islamic banking transactions?

93. The answers of the State Bank to these questions are as follows:

- 1. How many contemporary Islamic countries are dealing in Islamic Banking, Islamic Financial System and how these systems are being operated generally?**

In terms of jurisdictions, Islamic finance is present in almost 90 countries across the globe, with about 50 Muslim countries²²⁰. In a majority of Muslim countries, Islamic banking system is operating in parallel to the conventional banking system.

- 2. How many International banks and financial institutions are indulged in Islamic banking/Islamic Financing in different forms to provide Riba free services for their customers?**

²²⁰Diversification of Islamic Financial Instruments www.comcec.org

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The Islamic financing industry comprised of a total of 1,526 Islamic financial institutions offering Shariah compliant products & services in different sectors like banking, capital market, takaful, etc. (ICD-REFINITIV Islamic Finance Development Report 2020²²¹)

3. What is the response of International Financial Institutions like World Bank, IMF, Asian Development Bank, IDB etc., towards Islamic Banking purely from economic point of view? Do they provide financing on Islamic principles?

During the last few years, International Financial Institutions like the World Bank (WB), Asian Development Bank (ADB), Islamic Development Bank (IsDB) have extended financing by using a variety of Shariah compliant mechanism for infrastructure, capital market, financial market related projects in various jurisdictions. Some examples are as under²²²:

1. IsDB and WB signed in October 2015 a Deep Dive Initiative (DDI), a strategic partnership framework aimed at scaling-up development assistance in common member countries. In 2016, combined financing reached USD 2.4 billion (USD 910 million from IsDB and USD 1.5 billion from WB) for eight projects in agriculture (Cameroon, Sahel), agriculture

²²¹ https://icd-ps.org/uploads/files/ICD-Refinitiv%20IFDI%20Report%2020201607502893_2100.pdf

²²² (Source: K4D Helpdesk Report, September 2017,
<https://gsdrc.org/wp-content/uploads/2017/10/165Sharia-compliantinvestmentsininfrastructureanddevelopmentcapitalfinancing.pdf>

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and infrastructure (Indonesia), energy (Palestine, Pakistan), and water (Kyrgyzstan and Mali).

2. IsDB has also worked with the ADB to establish a Shariah compliant equity fund under the name of Islamic Infrastructure Fund (IIF), with the goal of “facilitation of mobilization of public and private sector equity funds and attracting foreign investment” in the twelve common member states (Afghanistan, Azerbaijan, Bangladesh, Indonesia, Kazakhstan, Kyrgyz Republic, Malaysia, Maldives, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan).
3. IsDB Group also provided funding through its members: International Islamic Trade Finance Cooperation (ITFC), Islamic Solidarity Fund for Development, Islamic Cooperation for the Development of the Private Sector (ICD). Between October 2015 and December 2016 ICD delivered USD 824 million for private sector development, financing 38 projects in 23 countries.
4. **Is there any example in the world that the international financial transactions of a sovereign state with the International Financial Institutions is somehow linked with Islamic banking transactions?**

Most of the transactions of the sovereign state with international financial institutions are based on conventional modes of financing. However, in some cases finance is provided for certain project by

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International financial Institutions like Islamic Development Bank through Shariah compliant modes.

One such project is an infrastructure-related project in Pakistan that was co-financed by Islamic Development Bank and focused on reconstruction of the Kashmir region, which was at the epicenter of a devastating 2005 earthquake. Working with Earthquake Reconstruction and Rehabilitation Authority (ERRA), an authority established by the Pakistani government, Islamic Development Bank first provided USD 80 million in soft loans for the purpose of construction of 30,800 homes in various parts of the region. During the second phase of the project, which commenced in 2007, Istisna financing worth USD 127 million was provided for construction of further 57,500 homes. Under the third phase, USD 93 million was invested in constructing roads, bridges, and health facilities, and in electricity generation²²³.

94. Similarly, the scene at international level regarding Islamic Banking is encouraging. According to the Islamic Finance Development Report 2020 published by the Islamic Corporation for the Development of Private Sector (ICD). The Islamic Banking Assets of Iran are worth 641 billion US Dollars with 41 functional Islamic Banks, which is highest in the world followed by Saudi Arabia USD 477 billion, having 16 Islamic Banks and Malaysia USD 297 billion with 36

²²³ (Source: K4D Helpdesk Report, September 2017.
<https://gsdrc.org/wp-content/uploads/2017/10/165Sharia-compliantinvestmentsininfrastructureanddevelopmentcapitalfinancing.pdf>)

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Islamic Banks. Together the top three countries viz. Iran, Saudi Arabia and Malaysia comprise 63% of the total Global Islamic Banking Assets as in 2019. Other countries among top ten with respect to Islamic Banking Assets are UAE (USD194 billion, 24 Islamic Banks), Kuwait (USD 125 billion, 7 Islamic Banks), Qatar (USD 123 billion, 6 Islamic Banks), Bahrain (USD 87 billion, 33 Islamic Banks), Turkey (USD 49 billion, 6 Islamic Banks), Bangladesh (USD 41 billion, 25 Islamic Banks) and Indonesia (USD 38 billion, 32 Islamic Banks). This is a strong international evidence in favour of Islamic Banking that there remains no reason to apprehend in adopting Islamic Banking in Pakistan.

The share of Islamic Banking Assets of Bahrain is 111% of its GDP which is highest Islamic Banking Assets to GDP ratio in the world followed by Iran (79%), Kuwait (37%), Qatar (31%) and UAE (24%).

95. The share of Islamic Banking to Total Banking of Iran and Sudan is 100%, i.e., all banks in these countries are Islamic Banks, followed by Saudi Arabia (63%), Brunei (57%) and Kuwait (49%).

96. When these petitions were filed, the ground reality of Islamic Banking was totally different from today. Presently, the concept and practice of Islamic Banking is not only available in the countries, which are member states of OIC, but many International

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Banks owned by western economies have started embracing and introducing Islamic Banking progressively. Some of the western banks that have established dedicated Islamic banking subsidiaries or have substantial dealings in the field include, Citibank, Bank of America, Commerzbank, Deutsche Bank, Merrill Lynch, ABN AMRO, BNP Paribas, Pictet & Cie, UBS, Standard Chartered, Barclays, HSBC, Royal Bank of Canada, American Express, Goldman Sachs, Kleinwort Benson, ANZ Grindlays and Flemings. In addition to that a growing number of western investment companies are now offering Islamic investment products to the investors worldwide.

97. Traditionally, the IMF has focused on conventional banking systems and has never supported the use of Islamic banking systems. Since its increased engagement with Middle East and North African (MENA) countries, the IMF considers Islamic banking to be progressively important. Having previously warned against the complexities of the Shariah rules, IMF now wants to consistently apply Islamic banking rules in its functions and encourage their application in the global financial markets. The World Bank and the IMF view the growth of Islamic banking as an effort to encourage inclusion, stability and strength of the financial markets so that newer and resilient funding sources can be created. [Ref: The role of Islamic Finance in

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enhancing financial inclusion in Organization of Islamic Cooperation (OIC) countries, Policy Research Working Paper 5920; can Islamic Banking increase financial inclusion? IMF working paper WP/15/31 2005; IMF working paper cooperation and Islamic Banking: we can learn from each other 2013 WP/13/184].

98. There are a total of 520 Islamic banks in the world out of which 301 are full fledge Islamic banks and 219 are just windows. The total numbers of Islamic banks by type are as follows; 418 commercial, 58 investment, 25 whole sale and 19 specialized. [Ref: ICD-REFINITIV, Islamic Finance Development Report 2020 Progressing Adversity].

99. There are currently 12 countries that are systemically important to the Islamic Financial Services Board (IFSB) and the IMF in terms of Islamic banking systems. These countries include: Iran, Sudan, Saudi Arabia, Qatar, Brunei, Jordan, Djibouti, Bangladesh, UAE, Malaysia, Bahrain and Kuwait. These countries have at least 15% of their total financial banking assets in Islamic Banking. Islamic financial assets are mostly concentrated in the banking sector because it has systematic importance. However, currently Islamic banks account for only 1% of global banking sector which equals \$1.6 trillion. This 1.6 trillion represents 15% of the total banking sector in 14 Islamic countries of which Iran and Sudan are the only ones with the entire

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banking system in compliance of Islamic law. The market share in most of these countries has increased over the period of time further deepening Islamic finance principles. This however, is not only limited to countries that have few Islamic banks despite a booming Muslim population. Countries in Africa, such as Algeria, Egypt, Mauritania, Mauritius, Nigeria, Senegal, Tanzania and Tunisia. The Middle East and central Asian countries are as follows: Afghanistan, Iraq, Kazakhstan, Lebanon Pakistan and Oman. Indonesia and Singapore lie in South East Asia. The last report of the IFSB in 2018, which tracks down 36 countries, has shown that Islamic banks have increased their market share in 19 countries while in seven they have remained constant. The largest jurisdiction for Islamic banking is in Iran which accounts for 34.4% of global Islamic banking industry. It is followed by Saudi Arabia at 20.6%, UAE 9.6%, Malaysia 9.1%, Kuwait 6%, Qatar 6%, Pakistan 1.2%, Sudan 1.5%, Bahrain 1.7%, Indonesia 1.8%, Bangladesh 1.9%, Turkey 2.6% and Brunei 0.5% [According to Islamic Financial Services Industry Stability Report 2018 and IMF working papers, *ibid*].

100. Mr. Ahmed Ali Siddique a Banker and Expert of Islamic Banking from IBA gave us a detailed presentation on the status of Islamic Banking in Pakistan to demonstrate that Islamic Banking is

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exponentially expanding in Pakistan on the basis of empirical data.

The crux of his presentation is as follows:

Islamic banking is gaining regular market share in many countries especially Iran and Sudan. Furthermore, both of these countries have achieved 100% market share for Islamic banking as per Islamic Finance Services Board (IFSB) report 2020²²⁴. In the same realm, Pakistan is approaching fast towards adopting Islamic financial tools. The following Islamic banks are actively working towards Islamic banking in Pakistan:

Meezan Bank

Bank Islami Pakistan

Dubai Islamic Pakistan limited

Al Barakah bank

MCB Islamic bank

101. In Pakistan AAOIFI standards are being adapted through SBP and ICAPS committee. Till date more than 125 standards have been published by the global Islamic financing standards authority. The standards are as follows: 61 shariah standards, 40 accounting standards, 14 governance standards, 7 auditing standards and 3 codes of ethics. Out of these Pakistan has implemented 16 codes. At SBP a

²²⁴ IFSB report 2020

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number of regulations and guidelines have been issued for Islamic banking institutions and a robust framework is present that can help speed up the conversion process towards Islamic financial system²²⁵.

16 AAOIFI shariah standards have been adopted. One SBP shariah standard has been issued, Comprehensive framework for Islamic banking institutions was issued in 2018 and last but not least, shariah compliant Islamic alternative to discount window and Islamic Open Market Operations (OMO) introduced in December 2021.²²⁶ During the period 2002-2021, four conventional banks were successfully converted to Islamic banking operations: Societe generale, HSBC Pakistan and KASB Pakistan. Moreover, Faisal bank has successfully converted 95% of its operations to Islamic banking till date and is in the process of full conversion. In Pakistan around five banks are complete Islamic banks while 17 banks are operating at least one Islamic conventional branch. Coming towards the branch network of Islamic banks participants are around 3583, asset base of Islamic bank in Pakistan is 479 billion Rupees²²⁷. Furthermore the deposit base of Islamic bank in Pakistan is 3822 billion Rupees. The growth rate Year on Year (YoY) of asset base is around 32%. Currently, the share of Islamic bank in Pakistan in the overall banking system stands at 18.7%.

²²⁵ June 2021, SBP IB Bulletin

²²⁶ <https://pkrevenue.com/sbp-introduces-shariah-compliant-omo-injections/>

²²⁷ IFSB report 2020

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Mr. Siddique along with other banking and Finance experts shared the following data with us regarding success of Sukuk and their usage in government borrowings. According to these experts Sukuk has emerged as an internationally accepted Shariah Compliant alternative to Government borrowing

102. According to International Islamic Finance Market (IIFM) Sukuk Report 2021, during the period from 2001 to Dec 2020 approx 11,053 Sukuk were issued Globally with a worth of over USD 1.42 Trillion. These Sukuk are issued by a total of 36 countries, comprising not just Muslim majority countries like Malaysia, Turkey, Bahrain, UAE, Oman, Indonesia and Pakistan but also include Western countries like USA, UK, Japan, Germany etc. A large number of these Sukuk are issued by Government to generate Shariah Compliant funding.

103. According to these experts successful efforts were made at Ministry of Finance with the help of Government of Pakistan in developing alternative mechanism for raising Shariah Compliant financing for public debt instead of Interest based options. For example in September 2008, local currency GoP Ijarah Sukuk program was started with the issuance of first Government Ijarah Sukuk (GIS 1)

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During the period from 2008 – March 2022, the government has issued Sukuk based on Ijarah worth PKR 2,521 bn. The option is present at Ministry of Finance and it is needed that this option be used regularly for conversion of public debt into Shariah complaint mode.

104. We have examined the above mentioned facts provided by the experts and we have concluded that now in Pakistan a comprehensive framework exists for Sukuk and regular issuance of Sukuk can be used to convert the financial system to Shariah compliant and interest free mode at the Government Level. A gradual target can be set by Govt to convert the entire borrowing to Islamic modes in next few years and stop issuance of interest-based instruments. Therefore, to eliminate Riba completely we direct that all Public Sector entities to start dealing only in Interest-free Shariah-compliant modes which are approved by the State Bank of Pakistan.

Determination Point-VIII

Whether the interest or Riba becomes permissible if the transaction are undertaken or made in the name of business

105. The counsel of UBL also argued that the present day banking is a business and the word (عِصْرَة) used in verse 2:275 of Surah Baqarah includes sale, business, trade, investment, bargaining, etc., therefore, the present banking business is also covered by term (عِصْرَة).

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Since the Shariat Appellate Bench noted these arguments in the remand order while remanding the case, we have made it a point of determination to decide while doing the re-determination of the case.

106. Although these were the very first arguments used, raised and advanced by the Mushrekeen of Makkah that practice of charging interest on a loan is also a business, therefore, nothing is wrong in it. But Quran categorically and clearly separated the two. The verse 275 of Surah Baqrah reads as follows:

الَّذِينَ يَأْكُلُونَ الرِّبَا وَلَا يَقُولُونَ إِلَّا كَمَا يَقُولُ الَّذِي يَتَحَبَّطُهُ الشَّيْطَنُ مِنَ الْمَسْنَى ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَخْلَى اللَّهُ الْبَيْعَ وَحْرَمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَأَنْتَهَى فَلَمَّا مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْنَابُ النَّارِ هُمْ فِيهَا خَلِدُونَ ۚ ۲۷۵

جو لوگ سود کھاتے ہیں، (قیامت کے دن) اس شخص کی طرح کھڑے ہو نگے جسے شیطان نے چھو کر باولا کر دیا ہو۔ یہ سزا اس وجہ سے ہے کہ وہ کہتے ہیں، تجارت بھی تو آخر سود جیسی ہے۔ حالانکہ اللہ نے تجارت کو حلال کیا ہے اور سود کو حرام المذاجس شخص کو اس کے رب کی طرف سے یہ نصیحت پہنچ اور آئندہ کے لئے وہ سود خوری سے بازا آجائے تو جو کچھ وہ پہلے کھاچکا وہ کھاچکا۔ اس کا معاملہ اللہ کے حوالے ہے اور جو (اس حکم کے بعد) پھر اسی حرکت کا اعادہ کرے وہ جہنمی ہے جہاں وہ ہمیشہ رہے گا۔

107. Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury) , " whereas Allah has permitted trading and forbidden Riba (usury) . So whosoever receives an admonition from

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his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to Riba (usury)], such are the dwellers of the Fire - they will abide therein."

The opening sentence of the verse contains the argument of those people who indulged or involved in taking *Riba*. They used to equate *Riba* with trade or business (*Bay*).

بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا

کہ وہ کہتے ہیں، تجارت بھی تو آخر سود جیسی ہے۔

Same arguments were forwarded by the counsel of a bank after almost fifteen hundred years. The answer to this argument is unequivocally stated in the Holy Quran as:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

حالانکہ اللہ نے تجارت کو حلال کیا ہے اور سود کو حرام

108. The bare reading of the verse tells us that (ﷺ) sale is permissible and (ر.) *Riba* is prohibited, one is permitted (*Halal*) and other is prohibited (*Haram*). This is one of the basic Ayah or Hukam upon which all or any banking transaction is analyzed separately and individually, by the Islamic jurists on the analogy (*Qiyas*) of permissible and non-permissible sale (ﷺ) transactions according to

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injunctions of Islam, i.e., Quran and Sunnah. Therefore, we have decided this point against the respondents. All or any transaction undertaken by a bank if it involves interest or Riba at any percentage less or more , in any form simple or multiplied or compound is prohibited and haram. Banking itself per se is neither permissible nor impermissible according to the Injunctions of Islam in the light of the Quran and Sunnah, it is actually the nature of transaction which it undertakes that makes it permissible or impermissible according to the Injunctions of Islam. If its transactions are Shariah compliant then it is permissible and if they are not Shariah compliant or have doubts in them of being Shariah compliant then such transactions are impermissible and against the Injunctions of Islam.

109. At the time of the advent of Islamic Banking, the basic presumption about the banking system which was then prevalent was fundamentally wrong, that it is not manageable without interest based transactions. The Interest-free banking or the Islamic banking is an evident proof of the reality to be otherwise.

Determination Point-IX

Whether mechanism of indexation and inflation should be adopted by the banking sector in Pakistan to balance the inherent imbalance in the economic transactions.

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110. Paragraph-15 of the Remand Order is related to the fiscal question relating to inflation and indexation, which were discussed before the Shariat Appellate Bench and the Shariat Appellate Bench made certain observation upon them, which are present at page-734 of the judgment and same are reproduced by the Hon'ble Shariat Appellate Bench of the Supreme Court in para-15 of the review order.

- a) Whether a loan should be indexed or not or the debtor must pay an additional amount equal to the increase in the rate of inflation during the period of borrowing.
- b) Similarly, whether the loan should be tied up with gold or with any other hard currency like dollars, etc.

These questions and many other similar questions are discussed academically whenever the question of inflation or indexation comes under discussion.

111. Hence, we are of the considered view that at the moment these questions do not come under the precinct of jurisdiction of this Court because presently there does not exist any law which contains this issue therefore discussing this issue is irrelevant and outside the scope of this court. It is a matter to be decided by the relevant authorities like the regulator of the banking sector, i.e., State Bank of Pakistan or the Government or the Parliament. So far as our jurisdiction is concerned, it is subject

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to Article 203-D of the Constitution to review and decide the repugnancy of any law in relation to injunctions of Islam as contained in Quran and Sunnah. At present, there does not exist any law, regulation or SRO of State Bank, etc., which deals with the question of indexation; therefore, we consciously refrain to answer the question of indexation and all the related questions in this regard, which are connected to the effect of inflation of money over the borrowed amount during the period of borrowing. This is outside the scope of the jurisdiction of this Court at the moment.

112. The Federal Shariat Court while deciding a Shariat Petition as is in the case which is pending before us, is required to decide the question, i.e., whether or not the law or provision of law impugned before it is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah. For clarity the relevant Articles of the Constitution which define the term law and contemplate the power, jurisdiction and function of Federal Shariat Court are reproduced herein below:

The term 'law' given in clause (c) of Article 203B in Chapter 3-A of Part-VII of the Constitution reads as follow:

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(c) "law" includes any custom or usage having the force of law but does not include the Constitution, Muslim personal law, any law relating to the procedure of any court or tribunal or, until the expiration of [ten] years from the commencement of this Chapter, any fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and procedure; and"

Article 203D reads as under:

203D. (1) The Court may, [either of its own motion or] on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet (SAW), hereinafter referred to as the Injunctions of Islam.

(A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated [in the Federal Legislative List], a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government

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adequate opportunity to have its point of view placed before the Court.

(2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:

- (a) the reasons for its holding that opinion; and
- (b) the extent to which such law or provision is so repugnant;

and specify the day on which the decision shall take effect

Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.

(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam,

(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect

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on the day on which the decision of the Court takes effect."

113. As per the Constitution, drafting and formulation of laws is the prerogative of the Parliament or the Provincial Assemblies as the case may be according to their respective jurisdictions. In a constitutional democracy, the Parliament is supreme body to legislate and same is the legislative scheme of our Constitution.

114. We are of the opinion that these points are to be decided by the Parliament or by the State Bank of Pakistan being the relevant authority of the banking sectors in Pakistan. Constitutionally, the Parliament is supreme to legislate any law as per requirement within the parameters set out by the Constitution. In this regard, our decision will contain the reasons for the Parliament to legislate laws according to the Injunctions of Islam.

115. We further hold that to give a policy guideline to the government or to any sector in order to mould that sector in accordance with the principles of Islam is not job of Federal Shariat Court. This is the obligation and duty of the Parliament to follow the guiding principles by itself keeping in view the Islamic provision of the Constitution like Article 2-A and 227 in addition to the overall

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framework of the Constitution or to seek the assistance of Council of Islamic Ideology of Pakistan.

Determination Point-X:

Whether the charging of interest by banks on loans given by them to their customers is *Riba* or not; and whether the charging of interest by the depositors of a bank upon their deposits in the bank is *Riba* or not according to the Injunctions of Islam?

116. Apparently, these are two questions but since both are intertwined they should not be separated. The banks normally have two sides of transactions; on one hand they accept money from the public and deposit that money, in return banks payback some amount to savers or depositors on their savings. While on the other sides the banks lend money to businessmen and entrepreneurs who pay interest to the banks at some higher rate than the rate paid by the banks to its depositors or account holders. In general terms the amount paid by the banks to the account holders is normally called interest. From the *Shari'ah* perspective in the light of Injunctions of Islam these two payments i.e. one which the banks charged upon given loans to the entrepreneurs and businessmen etc. and the payment made by the banks to its borrowers against their deposits in the bank are two different kinds of transactions and are therefore, governed by different

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rules of *Shari'ah*.

117. The banking interest charged by the bank upon extending any kind of loan to any kind of its customer does fall within the definition of *Riba*. We have already discussed all the aspects this type of transactions in detail while concluding some previous points of determinations. We have already discussed that:

- 1) It is a historical fact that the practice of extending commercial loans was very much known and in practice not only in Arabia at the time when this prohibition was revealed but in all the other existing civilization of that time and there is a consensus that the prohibition of *Riba* is absolute. The money provided by the conventional banks to their customer is undoubtedly a loan, and at the time of return of principal amount by the customer to the bank any increase in that principal amount does fall in the category of *Riba Al-Naseah* or *Riba al-Quran*.
- 2) Secondly, we have already examined at length that how, when and why the term interest was created or coined to make a so-called legal exception to the charging of absolutely prohibited usury. It is quite evident that there is

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no difference between *Riba* and interest. According to principles of Islamic Jurisprudence *Riba* cannot be legitimized by giving it a different name than usury, and on the basis that since the rate of interest which is charged upon a loan is low and reasonable or it is acceptable to the borrower, therefore, it is not usury and cannot be termed as *Riba*. According to the Injunctions of Islam *Riba* is absolutely prohibited irrespective of the rate of interest whether it is as low as 1% per annum or even less than it. Similarly, the consent of any party while doing an action or activity which is prohibited and forbidden in *Shari'ah* does not make it legal or permissible.

118. The legal status of the money deposited by the account holders of a bank in the bank needs to be analyzed in the light of *Shari'ah*. According to *Shari'ah* the money which is kept in a bank deposit is covered by either one of the following types of transactions which is approved by the Shariah for the purpose:

- i) A person gives his money to the bank either for keeping it safely, in a safe custody as *amanah* (أمانة), or
- ii) Secondly he gives it to the bank as a *Qard* (قرض).

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Both types of transactions have different implications. Due to following reasons *Shari'ah* considered the bank deposits as *Qard* (قرض) not as *amanah* (أمانة) because:

- i) The repayment of the deposited money to the depositor is guaranteed and the bank has full freedom to use it, spent and invest in any manner which the bank decides in accordance with Shariah. It means that it is not given by the customer to the bank only and solely for keeping that money in a safe custody.
- ii) According to Shariah the person who takes loan (*Qarz*) stands responsible for any loss or damage i.e., the risk transfers from the depositor to the bank which does not happen if it is considered as *amanah*. According to *Shari'ah*, in *amanah* the risk does not transfer.
- iii) According to Shariah in *Qarz* any equivalent of the item which was given in loan can be returned; whereas, in case of *amanah* one has to repay exactly the same thing which was put under his custody for protection as *amanah*.

119. In the light of all three situations mentioned above the

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deposits made in the banks are considered as *Qarz* given by the depositors to the banks and the charging of interest upon the deposit, under any name, is *Riba*; hence, prohibited. Overwhelming majority of the jurists in the Islamic world have consensus over it. 'The International Islamic *Fiqh* Academy' (IIFA)²²⁸ resolved regarding '**Usury-based Bank Transactions and Dealing with Islamic Banks**' in the following manners:

"Having examined different studies submitted to the Academy concerning contemporary financial transactions,

Having discussed in depth all aspects, highlighting that these transactions have a negative impact on the international economic order and stability, especially with regard to third-world countries,

Having recalled the destructive effects of the said system, due to its deviation from directives of the *Qur'an*, which clearly prohibits *Ribā* (usury), be it total or partial, commands us to repent from it, permits us to recover only the loan principal, no more and no less, whether it is a large amount or a small one, and warns us of the retributions of Allāh and His Prophet (PBUH) against usurers,

Resolves

First: Any increase or interest on a matured debt in exchange for an extension of the maturity date, and in case the borrower is unable to pay and the increase (or interest) on loan at the inception of its agreement are both forms of usury, which

²²⁸ IIFA: '*The International Islamic Fiqh Academy*' (IIFA) was established in 1401H/ 1981, and it is a universal scholarly organization and a subsidiary organ of the Organization of Islamic Cooperation (OIC). Its members are eminent Muslim jurists, scholars, and intellectuals who specialize in jurisprudential, cultural, scientific and economic fields of knowledge from different parts of the Muslim world.  <https://iifa-aifi.org/en>

are therefore prohibited in *Shari'ah*.

Second: An alternative that ensures cash flow and financial support for economic activities in a form acceptable to Islam is trading with each other in conformity with *Shari'ah* provisions.

Third: The Academy emphasizes the call to the governments of Muslim countries to encourage financial institutions that operate in accordance with the principles of *Shari'ah*, in order to meet the needs of Muslims, so that a Muslim will not have to live in a contradiction between the requirements of his faith and the realities of life.”²²⁹

The above mentioned ruling of Islamic law, Shariah is based upon a long *Hadith* which states as follows:

«حَدَّثَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ، قَالَ وَإِنَّمَا كَانَ دِينُهُ
الَّذِي عَلَيْهِ أَنَّ الرَّجُلَ كَانَ يَأْتِيهِ بِالْمَالِ فَيَسْتَوْدِعُهُ إِيَّاهُ فَيَقُولُ الزُّبَيرُ لَا
وَلَكِنَّهُ سَلَفُ، فَإِنِّي أَخْشَى عَلَيْهِ الضَّيْعَةَ، وَمَا وَلِي إِمَارَةً قَطُّ وَلَا حِبَابَةَ
خَرَاجٍ وَلَا شَيْئًا، إِلَّا أَنْ يَكُونَ فِي عَزْوَةٍ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
أَوْ مَعَ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ عَبْدُ اللَّهِ بْنُ
الْزُّبَيرِ فَحَسِبْتُ مَا عَلَيْهِ مِنَ الدِّينِ فَوَجَدْتُهُ أَلْفَيْ أَلْفِيْ وَمَائَتَيْ أَلْفِيْ

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”ہم سے اسحاق بن ابراہیم نے بیان کیا: --- بیان کیا کہ ان پر جو انسارا
قرض ہو گیا تھا اس کی صورت یہ ہوئی تھی کہ جب ان کے پاس کوئی شخص اپنامال لے کر
امانت رکھنے آتا تو آپ اسے کہتے کہ نہیں البتہ اس صورت میں رکھ سکتا ہوں کہ یہ میرے
ذمے بطور قرض رہے۔ کیونکہ مجھے اس کے ضائع ہو جانے کا بھی خوف ہے۔ زیرِ کسی علاقے
کے امیر کبھی نہیں بنے تھے۔ نہ وہ خراج و صول کرنے پر کبھی مقرر ہوئے اور نہ کوئی دوسرا

²²⁹ Resolution No. 10 (10/2) regarding: 'Rulings on Usury-based Bank Transactions and Dealing with Islamic Banks', passed in 2nd Session in Jeddah, Saudi Arabia, on 10-16 Rabi Rabi' al-Awwal 1406H / 22-28 December 1985. For English version <https://iifa-aifi.org/en/32234.html> and Arabic version: <https://iifa-aifi.org/ar/1598.html>

²³⁰ Sahih al-Bukhari, 3129 <https://sunnah.com/bukhari:3129>

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عہدہ انہوں نے قبول کیا، البتہ انہوں نے رسول اللہ ﷺ کے ساتھ اور ابو بکرؓ، عمرؓ، عثمانؓ کے ساتھ جہادوں میں شرکت کی تھی۔ عبد اللہ بن زیرؓ کہتے ہیں کہ جب میں نے اس رقم کا حساب کیا جو ان پر قرض تھی تو یہ بائیس لاکھ بنی۔²³¹

Az-Zubair would say, “No, (I won't keep it as a trust), but I take it as a debt, for I am afraid it might be lost.” Az-Zubair was never appointed governor or collector of the tax or Kharaj or any other similar thing, but he collected his wealth (from the war booty he gained) during the holy battles he took part in, in the company of the Prophet, Abu Bakr, ‘Umar, and ‘Uthman. (‘Abdullah bin Az-Zubair added:) When I counted his debt, it turned to be two million and two hundred thousand.²³²

In another resolution passed by the International Islamic Fiqh Academy of OIC regarding 'Bank Deposits (Bank Accounts)', it is resolved that:

"Having examined the research papers submitted to the Academy concerning Bank Deposits (Bank Accounts),

Having listened to the discussions on the subject,

Resolves

First: Call deposits (current accounts) whether at Islamic banks or usury-based banks, are considered as loans in the *Shari'ah* perspective, since the bank receiving these deposits is answerable for their safety and is *Shari'ah*-bound to returning them on call. The ruling applicable to the loan is not affected by the bank's (borrower) solvency or otherwise.

²³¹ Urdu Translation ↗ <https://bit.ly/3Dy4IO4>

²³² Sahih al-Bukhari, 3129 ↗ <https://sunnah.com/bukhari:3129>

Second: Bank deposits are of two categories depending on the type of actual banking operations:

1. Deposits for which interest is paid, as in the case of usury-based banks, being usury loans, are prohibited whether they are called deposits (current accounts) or termed deposits, notice deposits, or savings accounts.
2. Deposits placed in banks, which are seriously *Shari'ah*-compliant through an investment contract for a profit share, are considered as *Mudārabah* capital, and are therefore subject to the rulings applicable to *Mudārabah* (*Qirad*), including the ineligibility for the *Mudārib* (bank) to guarantee the capital of the *Mudārabah* transaction.

Third: The guarantee for call deposits (current accounts) are attributable to the debtors (bank shareholders) as long as they have the exclusive benefit of the profits from their investment. Depositors in investment accounts are not called upon to participate in guaranteeing these current accounts, as they are associated neither in the borrowing nor in the profits due.

Fourth: Mortgaging of deposits, whether call accounts or investment accounts, is permissible, and mortgaging against their amounts can only take place through an arrangement precluding the account holder from having access to it for the duration of the mortgage. In case the bank operating the current account is itself the mortgage, the amount must be transferred to an investment account in such a way that the guarantee is no longer applicable to the conversion of the loan into a *Qirad* (*Mudārabah*) and the profits arising from the accounted are credited to the account holder so as to prevent the mortgagee (creditor) from benefiting from any increase in the mortgage value.

Fifth: Retention on the accounts is permissible if

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agreed upon by the bank and the customer.

Sixth: The principal norm as to the legitimacy of these transactions calls for trust and honesty in disclosing data in a manner that would eliminate ambiguity or deception, and that would reflect reality in a way consistent with *Shari'ah* provisions. Rather, this is more of a duty for banks to the accounts they manage since their activities are based on their presumed credibility and to avoid misleading the involved parties.

Indeed, *Allāh* is All-Knowing.”²³³

These are the reasons the interest taken by the depositors on their deposits in a bank is considered as Riba charged upon Qarz hence completely prohibited. Therefore to avoid Riba and make the deposits of the customers of a bank as Shariah-Compliant transaction the Islamic banks undertake their operations in accordance with any form which is approved by the *Shari'ah*. According an official explanation of the State Bank of Pakistan:

“Islamic banks accept the deposits either on profit and loss sharing basis or on *qard* basis. These deposits are deployed in financing, trading or investment activities by using the *Shari'ah* compliant modes of finance. The profit so earned by the bank is passed on to the depositors according to the pre-agreed ratio which, therefore, cannot be termed as interest.”²³⁴

²³³ Resolution No. 86 (3/9) regarding: ‘Bank Deposits (Bank Accounts)’, passed in 9th Session held in Abu Dhabi, United Arab Emirates, on 1-6 *Dhū al-Qi'dah* 1415H/ 1-6 April 1985. For English version ↗<https://iifa-aifi.org/en/32511.html> and Arabic version: ↗<https://iifa-aifi.org/ar/1992.html>

²³⁴ See answer of Question No. 14, ↗<https://www.sbp.org.pk/IB/FAQ.asp> retrieved of 01-04-2022.

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On investment side to avoid involvement of Riba in the transactions some of *Shari'ah*-compliant modes which an Islamic Bank normally use are mentioned herein below:

- a) *Mudārabah* (المضاربة)
- b) *Musharakah* (المشاركة)
- c) *Ijarah* (الإجارة)
- d) *Murabahah* (المراجحة)
- e) *Bai Salam* (بيع السلم)
- f) *Bai-Muajjal* (بيع مؤجل)
- g) *Istisna'a* (Pre-production sale) (استصناع)
- h) *Muzaraah* (المزارعة)
- i) *Musaqah* (المساقة)
- j) *Agency* (الوكلة)
- k) *Service charges* (رسوم الخدمات)
- l) *Qard-i-Hasan* (القرض الحسن)
- m) Buyback Agreement²³⁵ (عقد إعادة الشراء)
(subject to certain conditions)
- n) Hire-purchase (شراء الايجاد)
- o) Sale on installments (البيع بالتقسيط)
- p) Developmental charges (المشاركته في راس المال)
- q) Equity participation
- r) Rent sharing (المشاركة الإيجارية)
- s) Sale and purchase of shares in such companies which have tangible assets. (بيع وشراء أسهم الشركات ذات الممتلكات)
(الملموسة)
- t) Purchase of trade bills (شراء فاتوره التجاره)
- u) Financing through *Auqaf*. (التمويل بالأوقاف)

²³⁵ *Subject to certain conditions.

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v) *Sukuk* (الصكوك)

Since financial activity is an ever evolving phenomenon; the different modes of financial and economic actions must be made to conform to the guiding principle of Islamic financial principles. This means that all and every financial transaction must be completely free from *Riba* (الربا), *al-Gharar* (الغرر) (uncertainty), *al-Qimar* (القمار) (gambling) and *al-Maysir* (الميسر) (unearned income).

120. To understand it completely we have to understand the term 'interest' also as it is being used now a days. Although this matter is resolved completely by the State Bank of Pakistan when it differentiated between 'Islamic Banking' and 'Conventional Banking'; and when it regulates the two different types of Banking, mostly by two different types of guidelines and regulations. In addition to that, on its official website, the State Bank of Pakistan clarifies this issue publically in an answer to a specific question as:

"Question No. 2) What is interest? Is there any difference between 'interest' and 'Riba'?"

Answer: "The origination of term 'interest' dates back to 17th century with the emergence of banking system at global level. Interest means giving and/or taking of any excess amount in exchange of a loan or on debt. Hence, it carries the same meaning/value as that of *Riba* as defined in the previous question. Further, it is

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narrated that “the loan that draws ‘interest’ is ‘Riba’.”

There is consensus among the Muslim scholars of all the *fiqhs* that interest is Riba in all its forms and manifestations.”²³⁶

[Emphasis added]

The same opinion that interest is Riba was affirmed by decisions of numerous conferences, including but not limited to:

- i. 1st Conference of Islamic Banks, Dubai;²³⁷
- ii. 2nd Conference of Islamic Banks, Kuwait,²³⁸
- iii. The Islamic Fiqh Academy', under OIC;²³⁹
- iv. The Islamic Fiqh Academy', under Muslim World League;²⁴⁰
- v. 'The International Islamic Fiqh Academy';²⁴¹

121. After hearing the detailed argument of the parties on this point and going through all the material given by the experts during the hearing of this case and examining the relevant classical Juristic opinions and literature, we are of the considered view that banking interest is Riba in all its forms and manifestation. There is consensus of jurists that a loan that draws any additional amount which is normally called as interest is Riba; be it the amount taken by the banks from

²³⁶ See answer of Question No. 2, <https://www.sbp.org.pk/IB/FAQ.asp> retrieved of 01-04-2022.

²³⁷ Held at its headquarter, Dubai, UAE, from 20th to 22nd May 1979.

²³⁸ Held in March 1983, Kuwait.

²³⁹ In its 2nd conference, held at *Jeddah*, Saudi Arabia, from 10th to 16th *Rabi-ul-Thani*, 1406H/22nd to 28th Dec. 1985.

²⁴⁰ In its 9th Session, held at Complex of 'The Muslim World League', *Makkah al-Mukarramah*, Saudi Arabia, from 12th to 19the *Rajab* 1406H.

²⁴¹ 9th Conference, held at *Abu Dhabi*, UAE, from 1st to 6th *Zul-Q'adah*, 1415H/ 1st to 6th April 1995.

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their customers upon lending them loan for any purpose or be it the payment made by the banks to its customers against their deposits which they maintain with the banks.

Determination Point-XI

Whether Pakistan will have to obey its international commitments on payment of interest or Riba on international loans already taken, and how to deal with the future foreign borrowing of the Government in accordance with the Islamic Injunctions?

122. This is a very relevant question which was raised before us in different forms. We have thoroughly examined it from all aspects. The international commitments of any country are generally governed by the principles of international law. International law is also called the law of treaties being based on international, multilateral or bilateral treaties, agreements commitments etc. between two or more sovereign states or international bodies. According to the principles of Islamic Jurisprudence also the international law is considered as law of treaties. Although, it is a very vast subject, for the sake of brevity we would limit ourselves by relying on the fact that all the contemporary authors discuss Islamic international law in the context of modern

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international law theory.²⁴² The legal basis of the Islamic International law and international commitments are based upon all international treaties and agreements executed by the Holy Prophet (SAW) himself; and subsequently by the Khulafia-i-Rashedun. The governing basis of these treaties are derived from the following Aayat of the Holy Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُهُودِ

O ye who believe! fulfil (all) obligations

اے ایمان والو! اپنے اقراروں کو پورا کرو۔ (القرآن، سورہ مائدہ: 1)

وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْوُلًا

and fulfil (every) engagement, for (every) engagement will be enquired into (on the Day of Reckoning).

اور عہد کو پورا کرو کہ عہد کے بارے میں ضرور پرسش ہو گی۔

There are some Ahadith on this subject which categorically stressed upon the mandatory obligation of Muslims regarding the fulfillment of their commitments and promise be it personal or international. According to one Hadith mentioned in kitab al-Aqdiyah of Sunnan Abu Daud:

²⁴³ وَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

ترجمہ: رسول اللہ (صلی اللہ علیہ وآلہ وسلم) نے فرمایا کہ مسلمان اپنی شرائط پر رہیں۔

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Prophet (SAW) said “the Muslims are bound by their
commitments ”

Based on this Hadith and many other Ahadith²⁴⁴ which explain the mandatory nature of promises and commitments for the Muslims, the Muslim Jurists have formulated a maxim which generally provides the basis of Islamic International Law.

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»

“Muslims are bound by their commitments.”

123. This principle which is based on the above mentioned Hadith precisely gives us the guidance to deal with the issue under consideration. This principle of Islamic law makes international commitments binding and mandatory upon the Muslims. Same is the case of all and any international financial commitment made or executed by Pakistan. They will all remain binding on Pakistan as it is an Islamic State. According to the Injunctions of Islam Pakistan will have to fulfill all of its commitments in this regard no matter what. The only permissible way out from these commitments would be by way of mutual consent and mutual agreement. Under Islamic Law a contact can only be renegotiated through mutual agreement of the parties.

²⁴⁴ صحيح مسلم، كتاب الامارة، باب 13- باب الأَمْرِ بِلُزُومِ الْجَمَاعَةِ عِنْدَ ظُهُورِ الرُّفَتَنِ وَتَحْذِيرِ الدُّعَاءِ إِلَى الْكُفَرِ، حديث نمبر: 1484؛ سنن أبي داود، كتاب الجهاد، باب فِي إِلَامِ مَنْ يَكُونُ بَيْنَهُ، وَبَيْنَ الْعَدُوِّ عَهْدٌ فِي سِيرَةِ الْأَنْبَيْرِ، حديث نمبر: 2759.

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With this backdrop presentations were given to us, which were based, *inter alia*, on REFERENCE GUIDE: ISLAMIC FINANCE FOR INFRASTRUCTURE PPP PROJECTS, Prepared by World Bank Group , PPAF and IsDB 2019,²⁴⁵ made by different financial and banking experts, they argued before us that some of the Shairah-Complaint mode of financing can be used to convert the interest based debt of Pakistan into Shariah-Complaint Mode of Financing . The Guide outlines some Islamic finance structures that are used to finance Infrastructure projects including:

1. Istisna Based Financing

Istisna is a sale contract pursuant to which the seller undertakes to (i) manufacture/build certain specific assets for an agreed price and in accordance with agreed specifications and (ii) deliver such assets to the purchaser at an agreed time.

2.Istisna – Ijarah based financing

An istasna -ijarah structure is the combination of two separate structures (an istisna and an ijarah) in one transaction. An istisna (manufacture/build) contract is generally used for the construction phase, when the underlying assets are procured. An ijarah (leasing)

²⁴⁵ <https://ppp.worldbank.org/public-private-partnership/library/reference-guide-islamic-finance-infrastructure-ppp-projects>

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contract is put in place for the operation phase, when the assets are ready for their intended purposes.

3. Wakalah – Ijarah based financing

Under a wakalah-ijarah structure, the project company is appointed as the Islamic financiers' agent (or wakil) in accordance with the terms of a wakalah (agency) agreement. A wakalah (agency) agreement largely fulfils the same function as an istiana agreement under an istisna-ijarah-based structure, although being a wakalah (agency) agreement, the contractual relationship between the Islamic financier, as principal (or muwakkil), and the project company, as agent (or wakil), is different. The project company procures the construction, development, and delivery of the project assets identified in the wakalah (agency) agreement as agent for the Islamic financiers

4. Muskarakah- Istisna- Ijarah based financing structures:

Under this structure, the musharakah (project) will need a manager to implement the musharakah business plan. Pursuant to a musharakah management agreement, both mushārakah partners (the project company and the Islamic financiers) will appoint the project company as a manager of the musharakah to implement the musharakah business plan. The project company, in its capacity as the manager of the musharakah, will enter equipment procurement

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contract or construction contract(s) with EPC/construction contractor(s) and other parties to complete the project in accordance with the musharakah business plan.

The musharakah manager will ensure that the project is implemented within the estimated parameters of project costs in accordance with the musharakah business plan. The Islamic financiers will lease their undivided share in the musharakah to the project company by entering into a lease agreement.

124. According to the arguments of some experts and practitioners for future foreign borrowing at national level numbers of possibilities are available to follow the Shariah-Compliant modes of Islamic Financing. At the sovereign level Pakistan is already utilizing the Islamic Finance Facilities from international banks and the country has also successfully issued international Ijarah Sukuk. At present the International monitory institutions and international banks acknowledge the different modes of Islamic finance. We have noticed from the Islamic Finance literature provided to us by different experts that major international banks and multi-lateral agencies including IMF, World Bank, Asian Development Bank etc. accept Islamic finance as a key area and are offering different Shariah-compliant solutions as well. Resultantly, there are many options available for Government of

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Pakistan to convert its international borrowing to Shariah Compliant

modes, Some of these options include:

- i. Regular issuance of International Sukuk
- ii. Islamic Project Financing / Infrastructure financing based on Musharakah , Ijarah & Diminishing Musharakah
- iii. Commercial financing from International Bank using Murabaha and Commodity Murabaha structures.
- iv. Working Capital & Trade Finance lines on Murabaha & Salam.
- v. Conversion of existing financing like China Pakistan Economic Corridor (CPEC) to Islamic mode.

125. According to IMF, Sukuk are well-suited for infrastructure financing because of their risk-sharing property and could also helpful financing gaps. Government can use different type of Sukuk structures with an aim to develop the necessary infrastructure, meeting budget needs and paying off conventional debts the increased sovereign issuance Sukuk must be underpinned by sound public financial management.

Sukuk can be issued by the government aimed at meeting following needs:

1. Funding for Government Need
2. General Financing
3. Project Sukuk
4. Infrastructure Sukuk
5. Budget Financing
6. Conversion from Debt
7. Shariah Compliance

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8. Promotion of IFI
9. Alternative & Green Energy
10. Sustainable Growth Project

According to these experts in the financial world of today, Sukuk has emerged as an internationally accepted Shariah-Compliant alternative to government borrowing. Therefore, these experts of Islamic Finance and Interest Free Banking or Islamic Banking are of the view in the light of there through experience and study of application of such experience in the different parts of the Muslim World that in order to convert the interest based debt, different type of Sukuk issuance can be initiated by Pakistan Government through Ministry of Finance. They also suggested that following are some different types of Sukuk available for the Government:

- a) Issuance of International Ijarah Sukuk for general funding needs & conversion from interest-based borrowing to Islamic finance.
- b) Issuance of Project Financing Sukuk based on Istisna & Ijarah.
- c) Issuance of Salam & Murabaha Sukuk for financing imports like Oil.
- d) Green Sukuk for clean Energy.
- e) Environmental, Social and Governance (ESG) Sukuk for Sustainable growth projects like health, sanitation, water, sustainable cities and clean infrastructure.
- f) Wakalah & Musharakah based Sukuk for new project financing.

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126. Apart from Sukuk these Islamic Banking and Islamic Finance experts explained that the following Shariah-Compliant Modes are available for future foreign borrowing:

- a) Islamic Project Financing / Infrastructure financing based on Musharakah , Ijarah & Diminishing Musharakah
- b) Commercial financing from International Bank using Murabaha and Commodity Murabaha structures.
- c) Working Capital & Trade Finance lines on Murabaha & Salam.
- d) Conversion of existing financing like China Pakistan Economic Corridor (CPEC) to Islamic mode.

127. For financing of infrastructure projects & other development project, the government can obtain Islamic Project Financing/Infrastructure financing on bilateral basis as well as on the basis of Syndicate arrangements on the Shariah Compliant modes for long term projects like Road, Motorways, Dams, Infrastructure development, hospitals, housing projects etc. Musharakah-Ijarah & Diminishing Musharakah based solutions are present in the market and are being used by local banks and as well as international banks and DFIs to invest and finance long term projects in the country on Shariah compliant modes. International Finance Corporation (IFC – World Bank) and Asian Development Bank has shown keen interest and IFC has participated under Islamic modes already in Pakistan.²⁴⁶

²⁴⁶ Islamic Banking Opportunities Across Small and Medium Enterprises. Pakistan <https://openknowledge.worldbank.org/handle/10986/26098?show=full>

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Similarly, Islamic Development Bank Jeddah has also provided Shariah Complaint financing in Pakistan for longer term projects.²⁴⁷

128. Regarding, commercial financing options from International banks in the past, the Government of Pakistan has taken commercial financing on Islamic modes from international market for Reserve requirement, loan repayment and other needs. The common mode used for short-term and medium-term financing are Murabaha & Commodity Murabaha. The modes can be used to convert the conventional financing by Government of Pakistan.

129. Pakistan can use Working Capital lines and Trade Finance lines on Shariah Compliant basis to finance import of Oil, LNG and commodities under Murabaha financing facilities and Salam based financing. IDB Jeddah has extended Murabaha based Trade lines to Ministry of Finance in the past as well. These lines can be used to shift toward Islamic modes.

130. These experts also proposed that conversion of financing under CPEC to Islamic mode is not only possible but feasible too. According to these experts the CPEC loan can be restructured as Islamic Syndicate or Islamic Project Financing. Further according to them China has already shown keen interest for Islamic Financing

²⁴⁷ <https://www.isdb.org/pakistan>

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alternatives for the development projects. As a proof in this regard, the establishment of a dedicated AIFDC (Academy of the Islamic Finance Development in Countries along “Belt and Road”) in April 2017 reflects the keen interest of China in financing the development of such projects through Shariah- compliant sustainable modes.²⁴⁸ According to some Islamic Finance experts:

“This Academy acts as a repository of knowledge for issues and undertakes studies on contemporary issues in the Islamic financial industry. Moreover, AIFDC contributes to provide a platform for practitioners, scholars, regulators, and academicians to have greater engagement via research and dialogue in countries along “Belt and Road” with the aim to promote innovation and dynamism and thus extend the boundaries of Islamic finance.”²⁴⁹

131. In support of their claims they produced many financial reports of the world renowned financial institutions and statistics verified by reputed financial institutions. All data which was presented and relied upon was verifiable through the respective websites of these institutions including World Bank, IMF, ADB , and IsDB etc. including the Chinese Initiatives for adoption of Shariah-Compliant Mode of Financing for projects associated with the Belt and

²⁴⁸ https://aifdc.xisu.edu.cn/OVERVIEWS/about_AIFDC.htm

²⁴⁹ Ibid. and Rise of Islamic Finance on China’s Belt and Road. <https://thediplomat.com/2019/02/the-rise-of-islamic-finance-on-chinas-belt-and-road/>

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Road Initiative (BRI) anywhere in the area where BRI project has its foot print.

132. After deliberation on the issue, and hearing the submissions made by the financial and banking experts and reviewing the reply of the State Bank of Pakistan we are of clear view that:

Firstly, according to the Injunctions of Islam Pakistan is bound to fulfill all or any financial obligation regarding foreign debt. However, according to Islamic Injunctions if it wants to convert those obligations from Riba based transaction to the Shariah-Compliant mode, then it is also possible but only with the mutual consent of the parties.

Secondly, for future foreign borrowing there are enough Shariah-Compliant modes available in the international financial market which can be used and which are well recognized by the International Banks and Financial Institutions. Hence any argument that Islamic mode of financing or Shariah Complaint modes for international borrowings are not available does not have any factual backing. However, which Shariah-compliant mode is to be adopted completely depends upon the Government of Pakistan.

Determination Point-XII:

Whether the Federal Shariat Court should give timeline to the Government to take necessary steps for formulation of

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legislation which can provide enabling legal framework necessary to transform the Conventional Banking System into Riba-Free or Islamic Banking System.

133. During the argument the Attorney General for Pakistan requested that the court must show restraint in giving any timeline for the implementation of its decision. We gave this request of the Government a serious thought. We are of the view that the following provision of the Constitution of Pakistan is very much clear on this point:

“203 D.

(2) -----

- (a) the reasons for its holding that opinion and**
- (b) the extent to which such law or provision is so repugnant;**

and specify the day on which the decision shall take effect”

[Emphasis added]

Hence it is a constitutional requirement. We are of the view that this provision of the Constitution is linked with and associated to one of the important principles of Shariah which is known as Tadarruj²⁵⁰ (التدريج) or the Principle of Gradualism. This Principle is based on number of Verses of the Holy Quran and Sunnat al-Nabawi (SAW). The foundation of this principle is drawn by the jurists from the manner in which some Hukm I Shari, were revealed in gradual

²⁵⁰ Siyāsat al-tadarruj fī taṭbīq al-ahkām al-shar’īyah by Zībārī, Iyād Kāmil Ibrāhīm

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manner or in stages. The most famous one in this regard is the revelation of Hukm for the Prohibition of Khumar (Alcohol drinking) which revealed in three stages. Another important Hukm which revealed in stages is the Hukum of Prohibition of Riba which we have already discussed at length in this judgment earlier. In addition to number of verses of the Holy Quran from which the Jurists have drawn this principle of gradualism, the revelation of the holy Quran itself over a period of twenty three years is also presented as an evidence for application of Shari'ah step by step in accordance with the circumstances and ability of the recipients. We are also aware of the fact that a lot of many jurists are of the view that the Principle of Gradualism or Tadarruj (التدريج) for implementation of Shariah rulings should be used and applied with caution and care which is called ratiocination²⁵¹ and accordingly it should be implemented in a well-ordered manner.

134. Constitutionally Pakistan is an Islamic State and implementation of Islamic Injunctions is our Constitutional duty. Moreover it is our fundamental belief that Islam is complete and comprehensive code of life and it is applicable for all times to come. The beacon of our guidance is the Holy Quran and Sunnah of our Prophet Muhammad (SAW). The Principle of gradualism (Tadarruj)

²⁵¹ Principles of Islamic Jurisprudence . Hashim Kamali

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was practiced by the Prophet Muhammad (SAW), and by his companions and their successors. The principle of gradualism has always been considered by the Islamic jurists as an effective strategy to implement any policy in a society particularly regarding implementation of Shar'ah ruling.

Hence we are of the view that under the prevalent circumstances it is appropriate and suitable for us to set a time line for complete implementation of our decision which is also a Constitutional requirement as discussed herein above, at the same time we also hold that:

- i. The concept of Gradualism should not be used by the Government as a cause to delay the implementation of our ruling as unfortunately we have witnessed in the past in this very case of Prohibition of Riba, wherein the Government sought additional time for transformation of economy from the Shariat Appellate Bench of the Supreme Court and two years' time was granted to the Government. Resultantly, almost two decades have passed after that grant of time and still the final goal of complete elimination of Riba is still very distant. Hence intentional delay is not permissible under the garb of gradualism. Therefore, the initial steps should immediately be started to achieve the ultimate goal in such a

manner that the target should completely be achieved within the set time period.

ii. The process of Gradualism should be applied subject to observation of the following Principle :

a. Jurisprudence of priorities (Fiqh Aulawiyyat)

(فقه الاولويات) or (Principle of priority) must be observed.

In the Islamic jurisprudence of priorities, actions have their hierarchies according to their levels of significance and importance .This means that, there are certain obligatory actions which are preceded by certain action which are considered as secondary in nature. The arrangement of priorities is an objective analytical process according to the amount of the positive and negative effects of certain decisions or actions. The jurisprudence of priorities weighs the factors of urgency, importance and effects in making decisions between available choices.

b. Fiqhul Waq'i (فقه الواقع) (Jurisprudence of reality) is an

Islamic Jurisprudence to understand the contemporary problems. Fiqh al-Waq'i is a discipline that discusses the current state of jurisprudence in terms of factors and realities that affect the community, state. It helps

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in protecting the ways to protect the progress of
Muslims at the present and future.

c. Faqh ul-Maalat (فقه المَالَاتْ) (Jurisprudence of prospects)

or (consequences of an action) must be applied under
the disciplines of maqasid al-Shariah (objectives of
Islamic law), and with reference to a realistic
understanding of actual issues and realities, thereby
ensuring its application is in line with Islamic principles.

The application of maalat is helpful in constituting
practical and realistic approach in the application of
Islamic rules

iii. It is very important to understand that in the contemporary
world Gradualism is the way or a strategy for achieving the
goal of Shariah; it is not the goal itself. The purpose and aim
of adopting Gradualism is to establish the Shariah rulings in
every sphere of life in a planned way.

iv. In the context of this case the purpose of granting time will
provide space to the Government to completely and wholly
implementation of Prohibition of Riba by taking practical
steps. The concept of Gradualism is only related to the
implementation procedure of a Hukm al-Shari'.

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135. Now keeping in view the actual reality and the prevalent economic condition of the country which is a Sharia requirement before taking such a decision in accordance with the principles of Fiqh ul-Waq'i (Jurisprudence of reality) and also to adopt the approach of gradualism for the study transformation of the conventional interest based system to an Interest-free System which is in accordance with the Islamic Principle of Gradualism Tadarruj which is much required while dealing with fiscal matters. Above all to avoid any adverse effect over the economy that is also necessary to keep in mind according to the principles of Faqh ul-Maalat (Jurisprudence of prospects) or (consequences of an action).

136. Now the question arises how much time will be needed to transform the conventional interest based system into a Riba-free economic system. We asked from the Attorney General for Pakistan as well as from the counsel of the State Bank of Pakistan to answer this question that how much time will be needed to transform the conventional interest based system into Riba-free economic system completely, in light of the current economic situation and international economic commitments of Pakistan. In response the Attorney General for Pakistan made a commitment that after consulting the Governor of the State Bank of Pakistan as well as the Finance Minister alongwith other relevant authorities in the Government of Pakistan, he would let

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this Court know the answer of this question. However, despite the lapse of several dates of hearing he did not answer our question. Instead he reiterated his earlier request for not setting any time limit for elimination of Riba. Consequently, we asked this specific question from different experts, practitioners and scholars. Dr. Wiqar Masood a Former Federal Secretary Finance Division Government of Pakistan having a vast first-hand experience economics and fiscal policy management of the Government was of the view that there are certain aspects of our conventional banking system which can be converted to Interest-Free Banking without any delay as all the necessary legal framework is already available like the deposit side of the banks, at the same time some other aspects like borrowing side of the Government though they are feasible and practical but will need time. According to his opinion five years' time is reasonable to implement the Riba Free banking completely. Same question was put to an Expert, Mr. Ali Ahmed Siddique who is a renowned academician of Islamic Banking associated with IBA Karachi and also a Banker. He also acknowledged that this process of transformation will need some time but it is not impossible. He gave the example of Faisal Islamic Bank which almost converted from conventional bank to a successful Islamic Bank in five years. On this analogy he also suggested that five years' time will be sufficient for this transformation. Similarly, a Jurist Consult Professor

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Dr. Attiqe us Zafar an expert of Islamic Economics, who remained Professor in International Islamic University Islamabad, and is also author of some relevant books and articles was of the view that seven years' time will be more than enough for this transformation. Another Jurist Consult Dr. Muhammad Ayub a former director of the State Bank of Pakistan was of the view that keeping a realistic approach in mind, this transfer will require reasonable time. Some experts were of the view that in light of our international commitments ten years' time is appropriate for complete transformation of the economy from an interest based conventional economy to a Riba-free economy. On the contrary, some experts were of the view that three years' time is enough because much of the work has already been done. They argued that the existence of Legal framework in the form of relevant Laws, Directives and the Guideline of the State Bank of Pakistan to support and promote Islamic Banking is already available. Existence of Shariah Standard for Audit and Accounting approved by the State Bank of Pakistan and above all the existence of number of full-fledged Islamic Banks in addition to many conventional Banks with branches or windows of Islamic Banking is ample evidence that this transformation can be completed very easily within three years.

After listing to the experts in addition to the failure of the Attorney General for Pakistan in providing an answer to our question i.e. how

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much time would be required for the transformation of our economy, we have decided to decline the request of the Attorney General for Pakistan as well as of the counsel of the State Bank of Pakistan with regard to not setting any timeline for complete elimination of Riba from the country. We also hold that the setting of the timeline is the requirement of the Constitution which also fulfills the requirement of Shariah as in some situation time is required for proper implementation of a Shariah ruling.

137. Now we will examine every law or provision of law which are challenged before us through these Shariat Petitions:

I. THE INTEREST ACT, 1839 (XXXII of 1839)

The law states as follows:

"An Act concerning the allowance of Interest in certain Cases.

Preamble. Whereas it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV, Chapter 42, section 28, concerning the allowance of interest in certain cases;

Power of Court to allow interest. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain

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time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: provided that interest shall be payable in all cases in which it is now payable by law."

[Emphasis added]

138. This is the fundamental law which was an initial attempt to introduce the charging of 'interest' in the legal system. Through this law by legitimizing the payment of interest upon a loan or sums certain payable at a certain time or otherwise the concept of charging interest inculcated in the legal system. This concept later on leached to different statutes like the Negotiable Instruments Act and different sections of Code of Civil Procedure etc. which we will examine later on. It is very unfortunate that such a law which is not even the legacy of British Raj but of East India Company is not yet repealed despite the

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existence of Art 38 (f) in our Constitution. This law is an ideological burden which we inherited from our colonial past. It has deep rooted impact on the whole legal system which we inherited from the British era.

139. This is the law which initially vested a right and conferred powers upon the court to grant 'interest' upon any debt or sums payable and linked its calculation with the banking interest approved rate set by the government. This is the basic difference which makes such payment a category of Riba not compensation. The linking of such amount which is payable with time or delay in making payment makes it a form of Riba al-Nasia. Which mean until certain period the debtor has to pay certain amount and after the lapse of certain time he has to pay more amount. Moreover, on the other hand fixing it with the prevalent rate of interest in certain percentage also puts it in the category of Riba instead of compensation, for, the compensation of any damage done depends upon the nature of damage hence changes from case to case, especially when it is awarded by a court then it should be equitable not fixed.

140. For the reasons already discussed in detail we would hold that the Interest Act, 1839 is repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (SAW).

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141. The repugnancy of this law with the injunctions of Islam was also discussed at some length in a case titled Habib Bank Limited v. Muhammad Hussain and another (P L D 1987 Kar. 612,) in addition to that Council of Islamic Ideology has already recommended that this law is to be repealed.

II. THE GOVERNMENT SAVINGS BANKS ACT 1873 (ACT NO.V OF 1873).

Section 10 of this Act is challenged before us which provides the payment of saving to the nominee of a person after his death. This section protects the right of the executor of deposit.

Section 10, reads as under:--

"S.10. Any deposit made by, or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon."

[Emphasis added]

142. The above provision of law provides for payment of saving in the banks together with interest accrued thereon to the nominee of the account holder. With the existence of a phrase " together with the interest accrued thereon" in the above said section of law makes it clearly Riba which is prohibited for all the reasons discussed earlier we

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have declared this section of the law as repugnant to the Injunctions of Islam. We also direct that such deposits should be made in accordance with Sharaih-Compliant banking deposits modes approved by the State Bank of Pakistan so that the purpose of the law may not be botched.

III. The Negotiable Instruments Act, 1881.

The Sections 78, 80, 114 and 117 (c) of the Negotiable Instruments Act, 1881 are challenged. We examined them and declared that so far as any Promissory Note or Bill of exchange or any other kind of negotiable instrument are concerned, we have to see the purpose of their creation, if the transaction made through any negotiable instrument is based on interest then the creation of such negotiable instruments are considered as repugnant to the injunctions of Islam as laid down in the holy Quran and Sunnah because they secure an interest based transaction. If any negotiable instrument is based on any State Bank of Pakistan's approved Shariah-compliant transaction then it is not against the injunctions of Islam; Government is also directed to take measurey amendments in the above mentioned Sections to serve this purpose and remove the ambiguity regarding presence of interest.

IV. The Land Acquisition Act, 1894.

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143. Section 28, 32, 33 and 34 of the Land Acquisition Act 1894 are challenge and after thorough examination we declare that the increase or addition in the form of interest under section 28 and 34 over the debt payable in the form of compensation by the acquiring authority to the land owners is clearly Riba hence prohibited being against the injunctions of Islam. The section 32 talks about the investment of the Government in respect of acquired land of a person who has no alienable right attached to that land. The government is empowered by virtue of this section either to invest in that land or in other approved securities as the court may direct. For section 32 we declare that in such a situation the Government must invest in any of the State Bank of Pakistan 's approved Shariah-compliant instruments. Similarly in section 33 the word "interest" should be declared and the money be invested in the State Bank of Pakistan's approved Shariah-compliant instrument. The Section 34 itself differentiate between the interest payable on the amount of award and the amount awarded as compensation so we declare that the amount which is payable as "interest" according to this section is repugnant to the injunction of Islam. However, the payment of award must comply with the fundamental principles of Islam which is relevant for payment of award in land acquisition. The amount awarded as compensation must not be equated with the banking interest rate in any respect.

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V. Code of Civil Procedure, 1908

Following provisions of the Code of Civil Procedure were examined by us:

Section 2(12), 34 , 34-A, 34 B, 35 (3) and 144 (1);

Order XXI. Rule 11 (2)(g);

Order XXI Rule 38

Order XXI, Rule 79 (3)

Order XXI, Rule 80 (3)

Order XXI, Rule 93

Order XXXIV, Rule 2(1) (a) (i), (iii) (c) (i) and (ii);

Order XXXIV, Rule 2(2);

Order XXXIV, Rule 4;

Oder XXXIV, Rule 7 (1)(a)(i) and (iii) (c) (i) & (ii);

Order XXXIV, Rule 7 (2);

Order XXXIV. Rule 11;

Oder XXXIV, Rule 13 (1);

Oder XXXVII, Rule 2;

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Order XXXIX, Rule 9;

144. For the reasons discussed herein before the word 'interest' wherever appearing in these provisions is declared repugnant to the injunction of Islam hence shall be deleted accordingly.

145. The word 'interest' wherever appears in the meaning of banking interest will be deleted and wherever appears in the meaning of payment of compensation for causing any damage shall be substituted with appropriate phrase clearly conveying the meaning of payment of compensation of actual material damage which cannot be awarded at some fixed rate linked with banking interest or at some fixed percentage.

VI. COOPERATIVE SOCIETIES ACT, 1925.

The provision of section 59(2)(e) of the Cooperative Societies Act, 1925, has been challenged before us which talks about the interest (or return) due on any amount payable. In addition to that the Sections, 33 A, 71 (2) (m) (ee) are also challenged which talk about the payment of the principal and interest on debenture issued by the registrar of societies. Similarly, Section 50 also contains the reference of 'interest' in it. We examined all these provisions and for the reasons already discussed in detail we declare all those provisions of law which contain the word interest as repugnant to the Injunctions of Islam as

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laid down in the Holy Qur'an and Sunnah of the Holy Prophet (S.A.W.), and the Government is directed accordingly to delete the phrase "interest (or return), if any, due on such amount" and the word "interest" from the impugned sections.

VII. THE COOPERATIVE SOCIETIES RULES. 1927.

The above Rules have been framed by the Government as empowered under the Co-operative Societies Act, 1925, to regulate the proceedings etc. under the Coorporate Societies Act, 1925. Rules 14(1)(h), 22 and 41 along with appendices 1 to 4 have been challenged before us.

Clause (h) of sub-rule (1) of rule 14 of the Cooperative Societies ' Rules, 1927, inter alia, provides for maintaining register of "interest account". Rule 22 relates to the deduction of "all accrued interest" which is overdue from the gross profits of the year before the net profits are arrived at and. Further it provides that all accrued interest, that has been so deducted from the profits of the year and is actually recovered during the subsequent year may be added to the profit of the subsequent year. Rule 41, inter alia, provides proving of interest by a creditor up to the date of the Registrar's order for winding up and fixation of the rate of interest by the Registrar in liquidation

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proceedings. Appendices 1 to 4 set out certain forms containing mention of the term 'interest'.

146. In view of the detailed discussion above, the provisions of interest, challenged before us, as quoted above, along with four appendices and as a consequence under these Rules any impugned circular made thereunder contains the provision of word 'interest' are held to be repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (S.A.W.).

(VIII) THE STATE BANK OF PAKISTAN ACT, 1956.

Vide Shariat Petition No.17-I of 1990 sub-section 1 of Section 22 of The State Bank of Pakistan Act, 1956 was challenged, which empowers the State Bank of Pakistan, to notify the standard rate showing its readiness to buy or re-discount bills of exchange or other commercial papers for purchase on the basis of interest under the aforesaid act. The said section states:

Section. 22 (1).--The Bank shall make public from time to time the standard rate at which it is prepared to buy or re-discount bills of exchange or other commercial papers eligible for purchase on the basis of interest under this Act.

147. Upon which, earlier the Federal Shariat Court duly deliberated and declared this section on the basis of interest as repugnant to the Injunctions of Islam as laid down in the Holy Quran

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and Sunnah of the Holy Prophet. The same was upheld by the Shariat Appellate Bench.

The subsection (1) of Section 22 of the State Bank of Pakistan Act, 1956 was subsequently substituted by Section 5 of the Ordinance 110 of 2002, (w.e.f. 04-11-2002). Now after this substitution section 22 reads as follows:

“(1) The Bank shall make public from time to time the standard service charges at which it is prepared to provide financial accommodation to the borrowing entities.

(2) In respect of finance provided by the Bank it may determine, from time to time, the terms and conditions either generally or specially”

148. In the light of the above mentioned amendment the wording of the Section 22 of The State Bank of Pakistan Act 1956 is completely changed. The word interest is no more there on the basis of which the same section was declared as repugnant to the Injunctions of Islam. Before us no argument was forwarded by the petitioner on the substituted section 22 of the State Bank of Pakistan Act, 1956. We have examined this amended section and decided that, the Shariat Petition No. 17-I of 1990, due to this amendment in the section 22 has become infructuous. Hence it is disposed of accordingly. However we have taken special notice of this amendment made in Section 22 of the State

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Bank of Pakistan Act, 1956. It legally empowers the State Bank of Pakistan to introduce Interest-Free Banking in Pakistan.

**(IX) The West Pakistan Money-Lenders' Ordinance,
1960**

We have examined this law completely. This law pertains to money-lending and money-lenders and the activity of lending money on interest. This law defines the term 'interest', 'money-lending' and 'money lender' in such a manner that they unequivocally fall within the category of Riba as we have discussed in detail as supra. Hence, we have to declare that this complete law is against the injunctions of Islam as laid down in the holy Quran and Sunnah.

(X) The West Pakistan Money-Lenders' Rule, 1965,

These Rules are made under The West Pakistan Money-Lenders' Ordinance, 1960 therefore for the reasons stated herein before regarding the repugnancy of the West Pakistan Money-Lenders' Ordinance, 1960 from Islam, these Rules are also declared repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (S.A.W).

**(XI) The Punjab Money-Lenders' Ordinance, 1960 (W.P
Ordinance XXIV of 1960)**

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After the break-up of One-Unit all the four provinces promulgated the same Ordinance, nothing was changed in that law so it did contain the same provisions which were against the Injunctions of Islam; but in Punjab Province during the pendency of the case before us that law was repealed with the promulgation of The Punjab Prohibition of Private Money Lending Act 2007 (Act VI of 2007) dated 30 June 2007 rendering the Shariat Petition challenging this law as infructuous, hence the Shariat Petition No.67-I of 1991 is disposed of accordingly.

(XII) The Sindh Money -Lenders' Ordinance, 1960

This law is a copy of the West Pakistan Money-Lenders' Ordinance 1960 only with a change in the nomenclature which was done on the break-up of the One-Unit hence it is also declared as against the Injunctions of Islam as laid down in the Holy Quran and Sunnah for the reasons already discussed herein before.

(XIII) The N.W.F.P. Money-Lenders' Ordinance, 1960

This law was challenged which was against the Injunctions of Islam. For all the reasons we have given while deciding the West Pakistan Money-Lender Ordinance 1960 because it is the same law only its title was changed after the breakup of the One Unit. During the pendency of this Shariat Petition No.66-I of 1991, this law was

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substituted by another law called “The Khyber Pakhtunkhwa Interest of Personal Loans Prevention Act 2007,” which repealed certain provisions of law titled “The N.W.F.P. Money-Lenders’ Ordinance, 1960.” Then afterwards, once again “The Khyber Pakhtunkhwa Interest of Personal Loans Prevention Act 2007.” was further substituted by “The Khyber Pakhtunkhwa Prohibition of Interest on Private Loan Act 2016.” This law vide its section 18 repealed the earlier promulgated law i.e “The Khyber Pakhtunkhwa Interest of Personal Loans Prevention Act 2007 (Khyber Pakhtunkhwa Act No. III of 2007)”, technically it was reviving of the provision of The N.W.F.P. Money-Lenders’ Ordinance ,1960 which were earlier repealed by The Khyber Pakhtunkhwa Interest of Personal Loans Prevention Act 2007 (Khyber Pakhtunkhwa Act No.III of 2007). Hence we have examined and hereby declare The N.W.F.P. Money-Lenders’ Ordinance, 1960 as against the Injunctions of Islam for all the reasons mentioned herein before.

(XIV) The Balochistan Money-Lenders’ Ordinance 1960

This law was challenged in the Shariat Petition No.65-I of 1991. But during the pendency of the case this was repealed by The Baluchistan Prohibition of Private money Lending Act 2014 (Act. XXV

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of 1014) rendering the Shariat Petition as infructuous hence it is accordingly disposed of.

**XV. THE AGRICULTURAL DEVELOPMENT BANK RULES
1961.**

The provisions of Rule 17 of the Agricultural Development Bank Rules, 1961, as challenged read as under:--

"Rule 17. Interest fees commission and incidentals.--(1)

Loans shall be granted by the Bank at such rate or rates of interest as the Board may from time to time specify.

(2) In specifying the rate or rates of interest under sub-rule (1), the Board may also specify a higher rate of interest which the Bank shall charge in the event of default of repayment of loan or any installment thereof, not being a default due to any natural calamity.

(3) In addition to interest, the Bank may also charge such commission and incidental charges as the Board may from time to time specify.'

[Emphasis Added]

The Agricultural Development Bank Rules, 1961, have been framed under the industrial Development Bank Ordinance IV of 1961.

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The Agricultural Development Bank is constituted for the development of agriculture and cottage industries in rural areas.

Rule 17, as quoted above, *inter alia*, empowers the Bank to charge interest as specified by the Board constituted under the Ordinance. The said Board has got powers to specify a higher rate of interest which the Board shall charge in the event of default of repayment of loan or any installment thereof.

149. For the reasons discussed earlier on the question of interest and Riba, the provisions of sub-rules (1) and (2) of Rule 17 are declared repugnant to the Injunctions of Islam and be deleted. The words "in addition to interest" in sub-rule (3) of Rule 17 be also deleted.

XVI. THE BANKING COMPANIES ORDINANCE 1962.

Section 25 (2) (a) and (b) of the said Ordinance, is challenged before us. These are very noteworthy provisions of law involved in this case relating to elimination of Riba from our economic system. Section 25(2) (a) states:

"25 (1)-----

25 (2). Without prejudice to the generality of the power conferred by sub-section (1), the State Bank may give directions to banking companies either generally or to any banking company or group of banking companies in particular.—

(a) as to the credit ceilings to be maintained, credit targets to be achieved for different purposes, sectors and regions, the purposes for which advances may or may not be made, the margins to be

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maintained in respect of advances, the rates of interest, charges or mark-up to be applied on advances and the maximum or minimum profit sharing ratios; and

(b) ----- ."

[Emphasis added]

The Clause (a) of subsection (2) of section 25 relates to giving of directions by the State Bank of Pakistan to banking companies relating to the rates of interest or mark-up to be applied on advances.

150. In the light of foregoing detailed discussion and reasons mentioned therein, the provisions of Section 25(2)(a) relating to interest and mark-up are held to be repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (S.A.W.).

We have taken notice of section 25 (2) (b) of the Banking companies Ordinance, 1962 which states as under:

25(2). Without prejudice to the generality of the power conferred by subsection (1), the State Bank may give directions to banking companies either generally or to any banking company or group of banking companies in particular---

(a) -----

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(b) prohibiting the giving of loans, advances and credit to any borrower or group of borrowers on the basis of interest either for a specific purpose or for any purpose whatsoever; and each banking company shall be bound to comply with any direction so given."

[Emphasis added]

151. The State Bank of Pakistan by exercising the power so conferred upon it by virtue of Clause (b) of Sub-Section 2 of Section 25 can prohibit advancing of loan on the basis of interest which can be a key step to eliminate Riba from Pakistan. Meaning thereby that Section 25 (2)(b) is the enabling section of law empowering the State Bank of Pakistan to introduce Interest-Free Banking in Pakistan without any delay.

XVII. THE BANKING COMPANIES RULES. 1963.

The provision of the said Rules, as challenged before us, reads as under:---

(2) Interest on foreign approved securities shall on realisation be credited, if so desired by the banking company concerned, as soon as possible, to an account at the place where the office of the National Bank of Pakistan holding the securities under sub-rule (1) of rule 5 is located, subject to the usual charges; and, in other cases, such interest shall be remitted by the office of the National Bank of Pakistan to the

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principal office of the State Bank at the prevailing rate of exchange, after deducting the usual charges.

(3) The principal office of the State Bank shall credit, as soon as possible, the current account of the banking company maintained with it with the interest realised on rupee securities, subject to the usual charges, and with the amounts, if any, remitted from abroad by the office of the National Bank of Pakistan under sub-rule (2)."

The Rule 9 which is challenged before us talks about the interest on deposits. We have examined the Rules since, they pertain to interest on deposits therefore in the light of discussion already made herein before we declare them to be repugnant to the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah of the Holy Prophet (S.A.W). It is directed that the subject rule shall be deleted.

XVIII. THE BANKS (NATIONALIZATION) PAYMENT OF COMPENSATION RULES, 1974.

Rule 9 of these Rules is challenged before us which talks about the "Payment of interest". In the light of our detailed discussion regarding interest, already made above in this judgment, the provisions of rule 9 referring to interest are held to be repugnant to the Injunctions of Islam in accordance with the holy Quran and Sunnah. We further direct that the provisions of the rule 9 should be redrafted and reframed so that the returns of the profit relatable to the shares

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shall be managed through any State Bank of Pakistan's approved Shariah-Compliant Mode of financing and investment.

XIX. Section 24(6) and (8) of the House Building Finance Corporation Act, 1952

In the Shariat petition No.01/L/2008 the petitioner challenged Section 24(6) and (8) of the House Building Finance Corporation Act, 1952 being repugnant to the injunctions of Islam. During the pendency of the said Shariat Petition the legal status of the House Building Corporation was changed and it became The House Building Finance Company Limited, which was incorporated on June 13, 2006 under the Companies Ordinance, 1984. Consequently, the House Building Finance Corporation Act, 1952 was repealed by the House Building Finance Corporation Act 2018., rendering that specific Shariat Petition No. 1/L/20082 infructuous hence, it is disposed of accordingly.

**The Defense Saving Certificate Rules, 1967 , and
The Special Savings Certificates Rules, 1990**

In Shariat Petition No.8/I/1992, following provisions of the Defense Saving Certificate Rules, 1967 have been challenged: Rules 44, 44-A, 45, 46, 47 of the Defence Saving Certificate Rules 1967.

Similarly, in Shariat Petition No S.P.NO.7/I/1992, Rules 6,7,8,9,10,11 and 12 of Special Savings Certificates Rules, 1990 are under challenge.

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In this regard, a questionnaire was formulated which, inter alia, included the following two questions:

“Question No.9 Does interest occurring on provident fund
or saving bank to come under Riba?

This questionnaire was widely shared with Ulema and Scholars and a number of them responded, including Dr. Nijatullah Siddiqui (Internationally renowned scholar of Islamic banking and Islamic finance), Maulana Gohar Rehman, Dr. Saeed Ullah Qazi (Expert of Islamic Economics), Dr. Maroof Shah Sherazi (A scholar who Translated the Tefsir of Syed Muhammad Qutab, Fi Zill al-Quran), Dr. Zaman Akhtar (Expert Islamic Economics) etc.

The above mentioned scholars unanimously are of the view that the Defence Saving Certificate comes under the purview of Riba, therefore, the impugned Defense Saving Certificate Rules, 1966 and The Special Savings Certificates Rules, 1990 are repugnant to the Injunctions of Islam. We have also examined these Rules and we are of the opinion that they are repugnant to the injunctions of Islam as contained in the Holy Quran and Sunnah because the amount charged upon them is clearly Riba for all the reason stated herein before.

We further concur with the afore-stated view of the Islamic Scholars, particularly, the opinion of Dr. Najat Ullah Siddiqui which is more relevant here because it states the way forward also. The opinion states as follows:

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“....Saving Bank account or other similar scheme should be regarded as Riba. It should also be noted that before savings can be mobilized through instruments based on assuring in which case the above mentioned scheme becomes redundant”

Therefore, if the Federeal Government wants to continue with this scheme then the Federal Government is directed to make it clear that the amounts so deposited in the National Savings through Defence Saving Certificates and The Special Savings Certificates Rules, 1990 are invested in any of the Shariat-Compliant Mode duly approved by the State Bank of Pakistan. The Federal Government is further directed to amend the impugned Rules accordingly.

The Mahana Amdani Account Rules.1983

Vide Shariat Petition No.9-I of 1992, Rule 9 of the Mahana Amdani Account Rules was challenged. The said Rule is reproduced hereunder:

“9. Profit; - A deposit in an account shall earn profit in every cycle of five years as shown below: -

<i>On completion of</i>	<i>Rate of profit per Rs. 100</i>
<i>1 year</i>	<i>Rs. 12</i>
<i>2 years</i>	<i>Rs. 25</i>
<i>3 years</i>	<i>Rs.40</i>
<i>4 years</i>	<i>Rs.70</i>
<i>5 years</i>	<i>Rs.100</i>

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We have examined the above mentioned Rules and concluded from the wording thereof that in the absence of any Shariah-Complaint contract or arrangement between the depositor and the National Savings in accordance of which the payments are made by the National Savings to the depositors is Riba. Therefore, the said Rule, in the absence of any explicit Shariah-Compliant contract or arrangement renders them repugnant to the injunctions of Islam. Further it is worth mentioning that during the pendency of the above-referred Shariat Petitions, the Mahana Amdani Account Scheme has been discontinued with effect from 17th May, 2003. And thus, Shariat Petition No .9-I /of 1992, became infructuous hence disposed of accordingly.

XX The Legal Practitioner and Bar Council at 1973.

The Section 61(2)(c) of Legal Practitioner and Bar Council at 1973 Section 61(2)(c) is also challenged. This section states as follows:

Section 61 (1) -----

(2) Where any such arrangement as has been referred to in sub-section (1) has been made by a Bar Council,--

(a) -----

(b) -----

(c) all sums received as premia under clause (b) and any interest or profit accruing thereon shall be credited into the Group Insurance Fund of the Bar Council;

[Emphasis added]

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We have examined the impugned Section and hold that in this Section phrase “any interest” is used as optional or alternative to the profit in the accruing scheme on premium deposit. So the presence of word ‘any interest’ in the sense in which it occurs in this clause is held against the Injunctions of Islam, which needs to be deleted and the clause be so amended that the amount of premium so collected must be invested in any of the State Bank of Pakistan’s Shariah-Complaint mode.

XXI The Employees Old Age Benefits Act, 1976.

The court by taking notice in 1992 decided to examine another law namely The Employees Old Age Benefits Act, 1976. But subsequently that law was also amended firstly in 2002 through Ordinance No XLVI and then in 2006 vide The Employees Old Age Benefits (Amendment) Act, 2006 then lastly in 2008 through The Employees Old Age Benefits (Amendment) Act, 2008. These amendment changed the nature of this law to a large extent therefore we have decided to withdraw our earlier Notice mentioned above.

Different Insurance Laws:

This Court took Suo Moto Notice under Article 203 D (1) of the Constitution in 1992 to examine the different provisions of the following Laws:-

1. The National Insurance Corporation Act, 1976.
2. Life Insurance Nationalization Order, 1972.
3. War Risks Insurance Ordinance, 1971.
4. Federal Employees Benevolent Fund and Group Insurance Act 1969.

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5. War Risks Insurance Ordinance, 1965.
6. Pakistan Insurance Corporation Act, 1952.
7. The Riots and Civil Commotion Risks Insurance Ordinance, 1947.
8. War Injuries (Compensation) Insurance Act, 1943.

Out of the above mentioned laws two laws namely, The National Insurance Corporation Act, 1976 and Pakistan Insurance Corporation Act, 1952 were subsequently repealed by the Insurance Ordinance, 2000 and Insurance Corporation (Re-organization) Ordinance, 2000 respectively during the pendency of these petitions rendering the respective Petitions SSM. No.11/I/1992 and No. SMM No. 4/I/1992, infructuous, while all other laws listed hereinabove were examined by us and we are of the view that the word 'interest' wherever occurs in the different provisions of these laws is against the Injunctions of Islam as laid down in the Holy Quran and Sunnah for the reasons discussed herein before. Hence the same should be deleted or alternatively changed where ever possible with any of the Shariah-Compliant Mode which is approved by the State Bank of Pakistan.

Regarding the occurrence of the word 'insurance' in different laws, we are of the view that the concept of 'insurance' *per se* is not un-Islamic. Its prohibition and permissibility in Shariah depends upon the modes of business in which an insurance company is involved to generate profit for itself and its customers. If an insurance company is involved in those type of modes which are linked with or based upon those activities which are prohibited in Islam like Riba, al-Gharrar or al-Qimar, then insurance services given by such a company are prohibited according to the Injunctions of Islam. Otherwise, if an

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insurance company is involved in any of the Shariah-Compliant business modes to generate profit for itself and for its customers then it is permissible according to the Injunctions of Islam. The Islamic concept of insurance is called Takaful. The word “Takaful” originates from the Arabic word “Kafalah” which means ‘To Guarantee, Guardianship, Foster care and protective care etc.’²⁵², the Takaful companies undertake business in accordance with the Sharaih-Complaint Modes which are free from Riba, al-Gharar and al-Qimar. The concept of Takaful is based on Islamic Injunctions. The concept of Takaful and its basis in a very elaborative way is discussed in one of the Resolution (No. 200 (6/21)²⁵³ of International Islamic Fiqh Academy (IIFA) of OIC, Jeddah titled '***Shari'ah Rulings and Standards for the Foundations of Cooperative Insurance***', explaining conditions of permissibly of Insurance in Islam. This Resolution contains the full reference of Ahadith which provide the basis of Takaful business in Islam.

In Pakistan SECP Takaful Rules are available for registration of Takaful Companies which do business of Takaful in accordance with the Shariah-Complaint Mode. In consequence thereof many Takaful companies are registered with Security and Exchange Commission of Pakistan (SECP) under the Takaful Rules.

²⁵² Qamoos al-Maani', Qamoos Arabi anglezi.

²⁵³ Resolution of IIFI, <http://iesjournal.org/english/Docs/197.pdf>

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152. Finally, to conclude after thoroughly going through the elaborate data and plenty of relevant literature regarding Interest-free Banking in Pakistan and in contemporary Muslim countries provided by the parties and experts from all across the country and of course after giving a patient hearing to the counsels of the parties, Attorney General for Pakistan and Advocate Generals and listening to the exhaustive arguments forwarded by the economists , financial experts and religious scholars, Ulumas, Mufties and Jurist Consults, one point emerged with consensus that the ground reality regarding the acceptability, practicality and feasibility of Islamic Banking or Interest-Free banking is completely different from what it was two decades ago, especially after the announcement of the Remand Order in this case by the Honorable Shariat Appellate Bench of the Supreme Court on 24.06.2002.

153. The speedy proliferation and exponential growth of Interest-free Banking not only in Pakistan but in the whole Islamic World and even worldwide is a reality that has established that Interest-free Banking system is not only practicable but feasible too. With this backdrop based on facts, we do not agree with the apprehensions shown by the Federal Government that introduction of

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Interest-free Banking in the economic system of Pakistan may have a negative impact on the overall economic system of Pakistan.

154. Moreover, as was noted by us that legal and statutory framework backed by the State Bank of Pakistan for embracing the Interest-free Banking in Pakistan is already available, in furtherance of which the existence of Section 25 (2) (b) of the Banking Companies Ordinance, 1962 and Section 22 of the State Bank of Pakistan Act 1956 pave the way for complete elimination of Riba from the economy. Needless to say elimination of Riba from our economic system is our religious as well as our constitutional duty; hence it has to be eliminated from Pakistan.

155. One of the basic goals of an Islamic State like Pakistan is to have an equitable economic system free from exploitations and speculations. The Islamic economic system is an equitable, asset based and risk sharing economic system. It promotes and encourages the circulation of money in a society. It sternly discourages the accumulation of wealth in a few hands. Islamic economic and finance system is based on real economic activities which prohibits Riba (الربا), al-Gharar (الغرر) (uncertainty), al-Qimar (القمار) (gambling) and al-Maysir (الميسر) (unearned income) as per Injunctions of Quran and Sunnah of the Holy Prophet (S.A.W). The prohibition of Riba is the

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corner stone of the Islamic economic system. Therefore, we have decided that every loan which extracts any additional amount upon the principal from the debtor is Riba, hence, any transaction that contains Riba even at a slightest level, falls within the category of Riba thus prohibited. Furthermore, all the prevailing forms of interest, either in the banking transactions or in private transactions fall within the definition of Riba.

156. We hereby declare that the prohibition of Riba is complete and absolute in all its forms and manifestations according to the Injunctions of Islam in accordance with the Holy Quran and Sunnah. Therefore, for all the detailed reasons deliberated herein before in this judgment the charging of any amount in any manner over the principal amount of a loan or debt is Riba which is completely prohibited according to the Quran and Sunnah of the Holy Prophet (SAW).

157. Hence, for the reasons already recorded earlier in this judgment we have further decided that:

- i. The Banking interest in all its forms is Riba, thus the complete and absolute prohibition of interest does not change:
 - a) with the change in the purpose of taking loan, whether the loan is taken for commercial,

productive or industrial purpose etc. or is taken for personal needs; or

- b) with any change in the percentage at which the interest is charged on a loan whether it is low or high ; and
- c) with any change in the method of calculating the amount of interest upon a loan whether it is calculated as simple interest or doubled or multiplied interest upon a loan.

- ii. Any transaction of money for money of the same denomination and value where the quantity on both sides is not equal, either in a spot transaction or in a transaction based on deferred payment is Riba.
- iii. A barter transaction between two weighable or measureable commodities of the same kind, where the quantity on both sides is not equal, or where the delivery from one side is deferred is Riba.
- iv. A barter transaction between two different weighable or measurable commodities where delivery from one side is deferred is Riba.
- v. Any change in the status of the borrower or lender does not affect the absolute prohibition of Riba. Riba remains prohibited absolutely, irrespective of the fact of what so ever name it is called.

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158. Thus, we also hold that any interest stipulated in the Government borrowings acquired from domestic or foreign sources is Riba and clearly prohibited by the Holy Quran and Sunnah; therefore, for future the Government is directed to adopt Shariah-Compliant Modes while borrowing either from domestic or from foreign sources. Here we would like to refer to the constructive, encouraging and positive approach of the International Financial Institutions like IMF, Asian Development Bank and the World Bank to utilize Shariah-Compliant, Riba free financing Modes for their financing modes being more productive and economically feasible. Additionally, another fact is also relevant here that according to some submissions before us, the Peoples' Republic of China is also willing to utilize the Islamic mode of financing for the CPEC projects, needless to mention that we are already utilizing Riba-Free Shariah-Compliant mode of financing while dealing with Islamic Development Bank and with some of the Islamic Countries.

159. We are of considered view that all those laws or the provisions of laws, which are under challenge before us, which contain the word 'interest' within the meaning of banking interest is Riba, hence prohibited and any payment of extra amount in addition to due payment due to a delay, which is considered and calculated as interest over that amount also falls within the category of Riba, hence

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prohibited being repugnant to the injunctions of Islam according to the principles as laid down in the Quran and Sunnah. All the prevailing forms of interest either in the banking transactions or in private transactions do fall within the definition of Riba. Therefore the Government is directed to delete the word 'interest' wherever it is used in the impugned provisions of law in this sense as already decided by us after examination of each impugned law as discussed supra.

160. Further, in addition to that the word 'interest' in which ever law it is used within the meaning of banking interest or any increase on the due payment due to delay is Riba, hence is directed to be deleted.

161. Following are the laws the provisions of which were discussed in the judgment and held repugnant to the injunctions of Islam to the extent as elaborated in the judgment:

1. Interest Act 1839 held completely repugnant to the Injunctions of Islam.
2. Section. 10 of The Government Saving Banks Act 1873.

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3. Section 78, 80, 114, 117 (c) of the Negotiable Instruments Act, 1881. So far these sections are used to support or facilitate any interest bearing transaction.

4. Sections 28, 32, 33, and 34, of the Land Acquisition Act 1894 , so far the word 'interest' used in these sections within the meanings of banking interest.

5. Code of Civil Procedure, 1908

Following provisions of the Code of Civil Procedure were examined by us:

Section 2(12), 34 , 34-A, 34 B, 35 (3) and 144 (1);

Order XXI. Rule 11 (2)(g);

Order XXI Rule 38

Order XXI, Rule 79 (3)

Order XXI 80 (3)

Order XXI Rule 93

Order XXXIV, Rule 2(1) (a) (i), (ii). (iii). (c) (i) and (ii);

Order XXXIV, Rule 2(2);

Order XXXIV, Rule 4;

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Oder XXXIV , Rule 7 (1)(a)(i) & (ii) and (c) (i) & (ii);

Order XXXIV, Rule 7 (2);

Order XXXIV. Rule 11;

Oder XXXIV , Rule 13 (1);

Oder XXXIV, Rule 2;

Order XXXIX, Rule 9;

Wherever the word 'interest' appears in these provisions is declared repugnant to the injunctions of Islam hence shall be deleted and be amended appropriately.

6. Provision 59(2) (e) The Cooperative Society Act ,1925

7. Rule 141(h), 22,41 along with appendice 1to4 of the Cooporative Societies Rules 1972.

8. Complete law The West Pakistan Money-Lenders' Ordiance 1960

9. Complete The West Pakistan Money-Lenders' Rules 1965.

10. The Sindh Money -Lenders' Ordinance ,1960

11. The N.W.F.P Money-Lenders. Ordinance ,1960

12. Rule 17 of The Agricultural Development Bank Rules 1961.

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13. Section 25 (2) (a) of The Banking Companies Ordinance 1962.

14. Rule 9 The Banking Companies Rules 1963.

15. Rules 9 of The Banks (Nationalization) Payment of Compensation Rules 1974.

Resultantly, these laws or provisions of the laws will cease to have effect as on and from Ist. of June, 2022.

The Federal Government as well as the Provincial Governments are directed to complete the necessary legislative amendments in the impugned laws in order to bring such laws or provisions of the laws into conformity with the injunctions of Islam by 31st of December 2022. Although it is the universal principle of law that law does become effective retrospectively but to avoid any possible ambiguity we categorically made it clear that all such laws will take effect prospectively.

162. Attorney General for Pakistan made a statement that to complete transformation of economy into that of Interest-free Banking needs time and we gave a serious thought to that request. In addition to that we also noticed the fact that, earlier even after the announcement of the Judgment by the Shariat Appellate Bench of the

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Supreme Court in 2001 two miscellaneous applications (Nos. 1480 and 1485 of 2001) were filed in the Review Petition with a composite prayer for suspension of the operation of the judgment and extension of time for its implementation. In consequence of which the Hon'ble Supreme Court of Pakistan extended the time period for implementation of the judgment till 30th June, 2002. Needless to mention that even after the final disposal of the Review Petition almost two decades have passed. If the Government still needs time for complete transformation of the economy from interest based to interest-free economy then this request is bound to be seen and considered with many trepidations. Yet we are mindful of the practicalities; therefore, we asked this questions from the experts who appeared before us; and we noted that one thing was common in the response of all the experts and the practitioners that this transformation will need time. However, regarding how much time is required all the experts differed. We also noticed one more thing common in their approach to the issue of complete transformation of the economy, that some aspects of the economy are able to be converted into Riba free economy almost instantaneously like conversion of deposit side of the banking as it has all the legal framework available to convert the banking completely. For this they relied on the existence of Section 25 (2) (b) of the Banking Companies

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Ordinance, 1962 and Section 22 of the State Bank of Pakistan Act 1956 along with some other legislative steps taken by the State Bank of Pakistan, in addition to number of directives and policy guidelines of the State Bank of Pakistan. Whereas on the loans lending side of the Banking, although numerous Shariah-Compliant products and instruments approved by the State Bank of Pakistan are available but the complete transformation of economy will take some time. In this regard Strategic Plan for Islamic Banking Industry 2021-25 of the State Bank of Pakistan was also referred many times, according to which 30 percent of the banking industry of Pakistan has to be converted to Islamic Banking and that target has almost already been achieved. In addition to that the counsel of the State Bank of Pakistan categorically stated that "if someone wants to do business with banks hundred percent in accordance with the Interest-free Shariah-Compliant modes then it is possible for him without any hindrance."

[Emphasis supplied]

163. Hence, after considering all these arguments and noting all the practical aspects we are of the view that five years period is reasonably enough time for the implementation of our decision completely i.e convert economy of Pakistan into, equitable, asset based, risk sharing and Interest-Free Economy. Therefore we would specify the 31st day of December, 2027 on which the decision shall take effect by way of complete elimination of Riba from Pakistan.

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164. As a corollary to the above discussion we are hopeful that the Federal Government shall comply with the mandatory constitutional requirement of Article 29 (3) regarding the submission of annual report before the National Assembly and the Senate on the observance and implementation of the Principles of Policy specifically as stated in Article 38 (f) of the Constitution of Pakistan 1973, regarding complete elimination of Riba within the above stipulated period. This is an inbuilt Constitutional mechanism to ensure the observance and implementation of the Principles of Policy which empowers the Parliament to keep an eye on the working of any Government, had that constitutional duty been observed and complied with, many things in our polity would have been different, and Riba would have been eliminated from Pakistan much earlier in compliance of Article 38(f) of the Constitution. Hence, Article 29(3) of the Constitution shows us the constitutional way to ensure the achievement of the target of complete elimination of Riba from the country in a gradual and steady manner, therefore, we rely on the same Article 29(3) of the Constitution to ensure the complete implementation of our judgment.

165. The Shariat Petitions to the extent stated above, are accepted and disposed of accordingly.

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166. Now before parting we would like to bring on record our deep appreciation for all those experts, subject specialists, jurisconsults, Ulema, scholars, economists, finance experts, Chartered Accountants, former Bureaucrats and Bankers, etc., who unceasingly and persistently kept on pursuing this case for decades selflessly and with all sincerity. Their valued input, expert opinions and highly professional knowledge helped us to follow all possible aspects of this case and multiple issues involved therein. All verbal presentations made before us and the written submissions submitted from all across the country were invaluable contributions for assistance in this case.

MR. JUSTICE DR. SYED MUHAMMAD ANWER

**MR. JUSTICE MUHAMMAD NOOR MESKANZAI,
CHIEF JUSTICE**

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

Announced in Open Court
On 28-04-2022 at Islamabad.
*Mubashir Akhlaq/Mujeeb ur Rehman/**

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Justice Muhammad Noor Meskanzai, Chief Justice:- I have

gone through the laborious and scholarly judgment rendered by my learned brother Hon'ble Mr. Justice Dr. Syed Muhammad Anwer and, am in full agreement with his all findings, and, would also like to ink few lines on the question of jurisdiction.

1. In response to Questionnaire prepared in pursuance to Court's Order dated 03.06.2013, the State Bank of Pakistan through its Counsel filed comments/preliminary submissions on 18.06.2015, the jurisdiction of this Court was contested on the following grounds:-

- "i) Determination of the jurisdiction of this Hon'ble Court and the maintainability of the petitions before it with reference to Articles 29, 30(2), 38(f), 81(c), 121(c), 161 and 260 of the Constitution of Pakistan, 1973 (the 'Constitution'), Reference may kindly be made to paragraph 12 of the judgment in Civil Shariat Review Petition No.1 of 2000 and connected matters (PLD 2002 SC 800).*
- ii) Since Articles 29, 30(2) and 38(f) contain a non-justiciable policy framework that contemplates gradual but expeditious elimination of riba by the state can this Hon'able Court constrain the exercise of policy implementation by the State? Are matters contemplated by the Constitution as extant realities to be dealt with by the State according to non-justiciable policy decisions regarding implementable possibilities not beyond the jurisdiction of this Hon'able Court?*
- iii) Since it is clear that the Constitution contemplates the payment of an amount described as 'interest' on monetary obligations can this Hon'able Court make negatory the provisions of the Constitution that contain such contemplation?*
- iv) Is the Constitutional scheme for the elimination of riba and the payment of interest not beyond the jurisdiction of this Hon'able Court in terms of Article 203B(c) read with Article 203D that*

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expressly exclude consideration of any part of the Constitution by this Hon'able Court?

v) *What is the distinction contemplated by the Constitution through use of the term 'riba' in Article 38(f) and 'interest' in Articles 81(c), 121(c), 161 and 260 thereof?"*

2. On 24.09.2018 Mr. Anwar Mansoor Khan, learned Attorney General for Pakistan while arguing the case proposed that the matter of jurisdiction and interpretation of Riba/Interest be decided at the first instance. In this respect the relevant portion of Order Sheet dated 24.09.2018 is reproduced:-

"Learned Attorney General for Pakistan is present in the Court. He has advanced his arguments on certain aspects of the remand order of the Hon'ble Supreme Court. He has agitated that before proceeding further, the questions, which are common in all connected shariat petitions, such as jurisdiction and interpretation of the words Riba and Interest, may be decided at the first instance before hearing the arguments of the parties discussing law individually and separately, which have been assailed in these shariat petitions. Further states that he does not want to add anymore point for arguments except the one which has already been submitted by Mr. Salman Akram Raja, ASC on behalf of the State Bank of Pakistan."

3. On 19.02.2019 Mr. Salman Akram Raja, Advocate for the State Bank of Pakistan concluded the arguments on the point of jurisdiction and the matter was adjourned for arguments of the learned Attorney General for Pakistan on the point of jurisdiction. On the next date of hearing i.e. 19.03.2019, Mr. Anwar Mansoor Khan, learned Attorney General for Pakistan, after arguing the case at length in

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respect of jurisdiction conceded to the jurisdiction of this Court. For ready reference, the relevant portion of the Order Sheet is reproduced:-

"Mr. Anwar Mansoor Khan, learned Attorney General for Pakistan has submitted his arguments at length in respect of jurisdiction of this Court. At one stage, he has rather stated that he does not challenge jurisdiction of this Court in this matter."

Emphasis supplied

4. This Court, in view of subsequent developments in Banking Sector, reframed a Questionnaire and circulated the same to the parties. Since, after the retirement of a Hon'ble member of the Bench hearing the matter, the present Bench remained seized of the matter, and again heard Mr. Salman Akram Raja, Advocate on the point of jurisdiction. Mr. Qaiser Imam, Advocate representing Jamat-e-Islami also argued on the point of jurisdiction. However, on 03.02.2021 Mr. Khalid Javed Khan, learned Attorney General for Pakistan appeared and by referring the Order dated 19.03.2019 submitted that though the then learned Attorney General for Pakistan has conceded to the jurisdiction of this Court, however, to his conscience, the question of jurisdiction is yet debatable, therefore, he sought permission to file an application. At this juncture, it is pertinent to address the complicated issue of divergent opinion of the office of Chief Law Officer of Pakistan regarding a law point i.e. jurisdiction of this Court. Mr. Anwer Mansoor Khan, the former Attorney General of

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Pakistan had conceded to jurisdiction of this Court. However, on assumption of charge of office, his successor Mr. Khalid Javed Khan took a new position i.e. plea of lack of jurisdiction, for which he sought permission to make an application. We were aware of the view point of former Attorney General and admittedly there was divergence of opinion among the two Chief Law Officers of the same office on a law point. However, since it was not an admission of a fact but an opinion on the legal point pertaining to jurisdiction which being a law point could be agitated at any stage. It is a well entrenched principle of law that jurisdiction could not be conferred by consent if the forum otherwise lacked jurisdiction. Above all, being a law point principle of estoppel also does not operate and apply against such stand and stance. Reliance is placed on PLD 1980 SC 22 M. Yamin Qureshi Vs Islamic Republic of Pakistan, relevant at Page 35 F is reproduced:-

"It is interesting to observe that during the conduct of this case the learned Attorney-General for Pakistan was assisted, amongst others, by Mr. Irshad Hassan Khan, who is at present appearing before us as Deputy Attorney-General for Pakistan, and has attempted to argue that the scope of the appeal before the Tribunal would be limited by the same considerations as were spelt out by the Supreme Court in the case of Saeed Ahmad Khan in regard to the power of judicial review available to the High Court in respect of orders of the kind we are discussing here. Mr. Irshad Hassan Khan submitted, on the authority of Government of West Pakistan v. Mian Muhammad Hayat (P L D 1976 S C 202), that as a counsel he was not bound by the admission made in a previous case on a question of law. This submission is, indeed, correct, and we do not

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wish to decide this point on the basis that in a previous case the wide scope of the appeal had been conceded by the learned Attorney-General."

Though the petitioners opposed the permission for filing of application but since it was a legal and permissible request, therefore, was granted.

5. In his application, he raised following objections. Relevant objections are reproduced:-

"That it is stated at the outset that while submissions are made on behalf of the Federal Government in respect of the question of jurisdiction of this Hon'ble Court under the Constitution, there is absolutely no question or reservation whatsoever by or on behalf of the Federal Government of any of its functionaries including the undersigned about the solemnity and binding nature of the obligation and commitment of the State to ensure that all laws in the country are brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah and that no law can be enacted or sustained which is repugnant to such Injunctions. It is once again reiterated that the Parliament and the Federal Government are fully committed and bound to ensure that all laws are consistent with and brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

That the issue is whether such obligation of bringing the laws in conformity with the injunctions of Islam is to be achieved and carried out primarily and most effectively through the Parliamentary legislative process as envisaged for lawmaking by the Constitution of Pakistan or through the adversarial machinery as provided for adjudication of disputes through the Courts established by or under the Constitution which defines and delineates the jurisdiction of all Courts including this Hon'ble Court. It may be added that the Constitution categorically provides that the sovereignty belongs to the Almighty Allah alone and the State shall exercise its powers and authority through the chosen representative of the people.

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That it is the humble endeavor of the Federal Government to persuade this Hon'ble Court that while all the institutions of State are fully bound by and committed to the obligation of bringing all laws in conformity of injunctions of Islam as also enshrined in Article 2A, 31 and 227 of the constitution, the most democratic, effective and sustainable means of fulfillment of this obligation is through the parliament which is highest forum for making, amending and repealing the laws. Parliament is the representative of the true will of the people of Pakistan who are the real owners of the country. The parliament and other institutions including the Council of Islamic Ideology and other relevant institutions are engaged in a collaborative process and may be accorded larger margin to fulfill their obligation of bringing the laws in conformity with the injunctions of Islam in a more representative, holistic and effective manner so that sustainable results are achieved and all laws are in conformity of the mandate of the Constitution as reflected in Article 227.

That insofar as legal and constitutional issue of the jurisdiction of this Hon'ble Court is concerned, the Hon'ble Supreme Court of Pakistan (Shariat Appellate Bench) was pleased to pass judgment in Civil Shariat Review Petition No. 01 of 2000 and connected matter (PLD 2002 SC 800) and remanded the matter with the direction vide Para 18 in the following terms: 'In the light of the forgoing discussion, we are of the considered view that the issue involved in these cases require to be re-determined after thorough and elaborate research and comparative study of the financial systems which are prevalent in the contemporary Muslim countries of the world. Since the Federal Shariat Court did not give a definite finding on all the issues involved the determination whereof was essential to the resolution of the controversy involved in these cases, it would be in the fitness of things if the matter is remanded to the Federal Shariat Court which under the Constitution is enjoyed upon to give a definite on all issues falling within its jurisdiction'.

That it is submitted that question relating to jurisdiction as well as maintainability of petition were raised before the Hon'ble Supreme Court (Shariat Appellate Bench) in review proceedings with the submission that these were not dealt with by the Federal Shariat Court as well as the Shariat Appellate Bench, inter alia with reference to the provisions of Article 29, 30(2), 38(f), 81(c) and 121(c) of the Constitution. Reference was also made to Article 161 and 260 of the Constitution which

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remained unexamined vis-à-vis the question of jurisdiction and maintainability of petition.

That this Hon'ble Court which is constituted under Article 203-C of the constitution has power, jurisdiction and functions as conferred under Article 203-D which provides that this Court may examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet. Article 203-B(c) provides that the Chapter 3A, law does not include the Constitution. Thus, it is the constitutional mandate that Federal Shariat Court does not have jurisdiction to examined any provision of the Constitution itself in terms of Article 203-D.
“

6. Mr. Salman Akram Raja addressed quite lengthy arguments, however, the submissions solely relevant for the purpose of jurisdiction are referred to. To supplement his written submissions, he submitted “My contentions are two folds: (1) to assist this Court as best as we can and I endeavor to do that, place the material and I remain available for any further questions, queries. One of the issues that framed in 2002 by Shariat Appellate Bench is the relationship between Article 38 of the constitution and the jurisdiction of this Court. So Article 38 of the Constitution which is in Chapter No.2 titled Principles of Policy reads as follows:

Article 38 (f):

The State shall eliminate riba as early as possible. He stated that this is the command of Constitution and this is a non-justifiable command. The elimination of riba as my lordships have seen, we are

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making very sincere efforts, 40 percent growth has been achieved and we hope this process will continue further but if this will be made a part of a judicial order as was done in 1999, do it in two years, do it in three years, that will not be possible." He contended that the harmony which the Constitution requires between its non-justiciable part and its justiciable part should be retained. So that is the only way for all of us to progress without there being some kinds of judicious timeline imposed on the process as done in 2000 when the original judgment was given which was reviewed in 2002.

7. In continuity with the contents of application Mr. Khalid Javed Khan, learned Attorney General for Pakistan contended:-

I am very grateful for this opportunity, the Court has now heard the State Bank of Pakistan's counsel and your lordship I hope that they have been able to address all the quarries raised by this Court. In this context if I may refer to my written submission in this respect that this Hon'ble Court does not have jurisdiction. I have two fold submissions, first related to the jurisdiction in terms of Article 203-D of the Constitution of Pakistan the instant case falls outside the jurisdiction of this Hon'ble Court and the second alternate submission is that even if this Hon'ble Court has jurisdiction in this particular case it would be more appropriate if the other institution and State is allowed to do their job. The State includes Parliament and

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other institutions and opportunity to bring the fiscal laws in conformity with the Holy Quran and Sunnah.

It was maintained that there is no dispute or question about the obligation of all the state institutions to bring all the laws in conformity with the injunctions of the Holy Quran and Sunnah, so the only issue is how to go ahead and why I submit that this Hon'ble court may not be the most appropriate forum for discharge of this obligation is primarily based on the principle that this is a Court and all courts in Pakistan and in common law World are primarily engaged in adjudicatory exercise except for Article 184 (3) where the jurisdiction of the Hon'ble Supreme Court is inquisitorial, our system is based on adversarial system where two parties contest and neutral institution decide the matter, where the obligation to bring all the law in conformity with the Injunctions of the Holy Quran and Sunnah are unanimously acceptable obligation of all state institution and the Parliament is the best forum.

He further submitted that the word 'interest' has been used in many Articles of Constitution and the Constitution cannot be examined by this Court as per the very Chapter that clothes this Court with jurisdiction, hence on such analogy this Court cannot exercise

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jurisdiction and this was the stance of the then Attorney General for Pakistan Makhdoom Ali Khan before the Appellate Shariat Bench hearing the Review Petition. It was further contended that without prejudice to first point even if this Court has got jurisdiction, it will be more appropriate to refrain from exercising jurisdiction by showing restraint and enabling the forum i.e. Parliament meant for the purpose to do their job of Islamization as per their Constitutional mandate, this submission was made at the strength of famous American Case Marbery v. Madison delivered by the strongest Chief Justice in the year 1789.

8. Mr. Anwer Mansoor Khan appearing as amicus-curie argued the matter on various aspects, however, on the point of jurisdiction, he stuck to his gun by reiterating his stance as taken on 19.03.2019 before this Court.

9. Mr. Dr. Zaheer-ud-Babar Awan, Amicus-Curie contended that the jurisdiction vested to this Court by virtue of Chapter 3-A of the Constitution leaves no room for doubt that no other institution is clothed with such high power. At the mandate of the Constitution, suo moto powers have been bestowed upon this Court for specific purpose to ensure that no law running contrary to the Injunctions of Islam

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prevails in the Country and even if the same is not challenged by any party, the Court itself is bound to take suo-moto notice to ensure that the existing laws are brought in conformity with the Injunctions of Islam. Hence, this Court is fully vested with the jurisdiction to decide all those petition, which were pending, decided and went to the Appellate Forum and are pending now after remand, so, no exception can be taken to the jurisdiction of this Court.

10. Mr. Qaiser Imam, Advocate argued that it is very important to note that through the instant petitions, the petitioners have neither requested the Court to pass any sort of direction to implement Article 38(f) of the Constitution nor have sought for any relief for implementation of any provision of Chapter 2 of Part 2 of the Constitution. The petitioner is mindful that any provision provided in Principles of Policy cannot be judiciously determined and further cannot be a ground to invalidate any provision of law. This argument as raised by the other side is completely misconceived for the reason that the petitioners have invoked the original constitutional jurisdiction of the Honorable Court to strike down certain provisions of subordinate legislation which are against the Injunctions of Quran and Sunnah. This jurisdiction whereby this Court has been empowered to strike down or invalidate any law cannot be mixed with

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any type of directory jurisdiction. While concluding his arguments, it was submitted with clarity and in unequivocal terms that the petitioners have not challenged any provision of Constitution either directly or indirectly. In this respect his written arguments are available on record.

Professor Muhammad Ibrahim and other petitioners adopted the arguments of Mr. Qaiser Imam, Advocate.

11. We have considered the arguments and have given our serious thoughts but have not been able to persuade ourselves to subscribe to Mr. Salman Akram Raja and the learned Attorney General on the question of jurisdiction for multiple reasons:-

Firstly, because the scheme of Constitution for Islamization of Laws cannot be overlooked and ignored. It starts with preamble followed by Articles 2, 2-A, 31, 227 which ensure that State shall enable its subjects to order their lives in the individual and collective spheres in accordance with teaching of Islam as set out in Holy Quran and Sunnah. It is an undisputed fact that Islamic way of life is absolutely incomplete and impossible without an economic environment/culture and society free from Riba, usury and interest. Again this fact is also not disputed that while framing Constitution, the menace of Riba was realized as an economic evil and mischief and thereby assurance of its

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elimination was given in the Constitution. So the commitment of the State with its subjects regarding Islamization of Laws guaranteed in clear and unequivocal constitutional terms have to be honoured, respected and given effect to. That is why the Part IX of the Constitution and other relevant Articles were introduced in the Constitution which contain a scheme and provide a procedure for Islamization of Laws. The subsequent introduction of Chapter 3-A in part VII of the Constitution puts a seal of certainty to relevant Article by empowering this Court to take *Suo Moto* Notice of any Law including fiscal laws by judging the same at the touchstone of Islamic Injunctions, besides entertaining Shariat Petition. The view finds support from judgment reported in PLD 1980 SC 160 B.Z. Kaikaus Vs President of Pakistan, relevant at page 180, para 24 reproduced:-

"24. As regards the 1973 Constitution, as pointed out by the learned counsel for the respondents, it also contains a scheme and procedure for Islamisation of the laws and lays down the guiding principles and the method to be adopted in that respect. Reference may be made to the Preamble of the Constitution and Articles 1 to 5, 8 to 40 and 227 to 230. In pursuance of these; provisions the State has promulgated Offence of Zina (Enforcement of Hadd) Ordinance VII of 1979 ; Offence of "Qazf" (Enforcement of Hadd) Ordinance VIII of 1979 ; and Zakat and Usher (Organization) Ordinance XXIX of 1979. It has set up a Shariat Bench in each High Court of a Province and an Appellate Shariat Bench in the Supreme Court giving them power to strike down any relevant law which may be in conflict with or against the Sharia. See Articles 203-A to 203-E of the Constitution as added by the President's Order No. 3 of 1979 which should be read with the relevant rules which authorize the superior Courts to avail of the services, suggestions, and the views of "the learned" in the Islamic Law, on

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any relevant point coming up before them. By the time this judgment has been completed, the pattern 'as further been change; now there will be a Federal Shariat Court instead of a Shariat Bench in each High Court."

Secondly, so far as the word "Riba" in Article 38(f) and "interest" used in Article 81(c), 121(c), 161, 260 of the Constitution and thereby the bar of jurisdiction as claimed is concerned, this argument is misconceived and misplaced for the reasons that not a single constitutional provision has been challenged before this Court in the petitions sought to be decided through this judgment. The word 'Riba' used in Article 38(f) has been admitted a menace, economic evil and stands ensured to be eliminated as soon as possible. There is no controversy regarding prohibition i.e. *Hurmat (حُرْمَة)* of Riba. So merely because these words or terms are available in Constitution and despite having not been challenged, an implied inference of bar should be deduced does not appeal to a prudent mind. The Law stands settled on the subject *that* any subordinate legislation or a Law even if validated or protected under Constitution cannot get itself out from its test of repugnancy at the touchstone of Injunctions of Islam i.e. Holy Quran and Sunnah simply because of its protection or validation, reliance is placed on PLD 1986 SC 360 Government of N.W.F.P. through Secretary, Law Department Vs. Malik Said Kamal Shah, relevant at page 466 is reproduced:-

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"We do not think that any such bar in fact exists so far as the new Constitutional dispensation is concerned. An entirely new power was conferred on the Specified Courts or benches thereof. A test of repugnancy i.e. Injunctions of Islam was prescribed. This empowerment had its own inhibitions and limitation, and, but for these, it transcended all constitutional protections and safeguards. For example all laws, but not the Constitution, Muslim Personal Law, any law relating to the procedure of any Court or Tribunal" or, any fiscal law or law relating to the levy and collection of taxes and fee or banking or insurance practice and procedure" could be tested on this standard "notwithstanding anything contained in the Constitution". To apply this test of repugnancy to the Constitution or a provision thereof is one thing and to apply this test to any other law, validated, continued or protected under the Constitution is another. The first is prohibited, the second is not."

Emphasis supplied.

Thirdly, Chapter 3-A in Part VII of the Constitution was introduced in the Constitution initially in the year 1980 through President's Order 1 of 1980 Constitution (Amendment) Order, 1980 dated 26th May, 1980, with the strongest words ever used in the Constitution by giving an overriding effect to this provision, which reads as under:

203-A. Provisions of Chapter to override other provisions of Constitution: The Provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution.

The definition clause 203B defines Law as under:-

(c) *"law" includes any custom or usage having the force of law but does not include the Constitution, Muslim Personal Law, any law relating to the procedure of any Court or Tribunal or, until the expiration of [three] years from the commencement of this Chapter, any fiscal law or any law relating to the levy and*

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collection of taxes and fees or banking or insurance practice and procedure;

Thereafter following three amendments were made whereby the period for challenging the fiscal laws were extended. For the sake of ready reference the same are reproduced:-

President's Order No. 7 of 1983 Dated 19th May 1983

Amendment of Article 203-B of the Constitution.

In the Constitution, in Article 203-B, for the word "three" the word "four" shall be substituted.

President's Order No. 2 of 1984 Dated 26th April 1984:

Amendment of Article 203-B of the Constitution.

In the Constitution, in Article 203-B, for the word "four" the word "five" shall be substituted.

President's Order 14 of 1985 Dated 2nd March 1985

Revival of The Constitution of 1973 Order, 1985:

203B. *In Paragraph (c), for the word "five" the word "ten" shall be substituted.*

The last amendment contemplating 10 years with effect from 26th May, 1980 exhausted on 26.05.1990. The perusal of above consecutive amendments regarding point of time reveals that in their wisdom the legislature was clear and satisfied that after exhaustion of the stipulated period there will be no problem in challenging the fiscal law or any law relating to the levy and collection of taxes and fees or banking or insurance practice and

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procedure, as the new means and ways would be sorted out to curtail the economic laws by bringing the existing laws in conformity with the Injunctions of Islam. In view of the clear, unambiguous and plain language what sort of bar could be placed on the unprecedented power of this Court for judging/testing the repugnancy of any subordinate legislation on the touchstone of Islamic Injunctions. All the laws challenged before us are subordinate legislation to the Constitution, so by no stretch of imagination an implied bar can be pleaded to oust an express, clear and plane jurisdiction, the supremacy, preeminence and dominance of these provisions are established and upheld.

Reliance is placed on PLD 1989 SC 771 Ahmad Vs. Abdul Aziz, relevant at page 791 is reproduced:-

"The jurisdiction conferred by Chapter 3-A of Part VII of the Constitution transcends the other provisions of the Constitution. Article 203-A reads as hereunder:--

"The provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution."

The supremacy and the pre-eminence of the provisions of Chapter 3-A of Part VII has been placed by this Article beyond any doubt. It is therefore, not possible on any reasoning to subordinate the provisions of this Chapter to another provision of the Constitution viz. Article 2-A."

Fourthly, the request of learned Attorney General for showing restraint and leaving the matter for Parliament as per his

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second limb of argument is not conceivable and loses legal significance. In fact, by making this submission, the learned Attorney General clearly conceded to jurisdiction of this Court and in the wake of this submission the impact of first objection on jurisdiction stands diluted. After 26 April 1990 the bar regarding financial institution does not exist, nor any subordinate legislation regarding fiscal laws can be claimed to be immune from examination within the powers exercisable under Article 203-D of the Constitution. It cannot be inferred that legislature was not alive with the consequences of the introduction of Chapter 3-A in Part VII of the Constitution rather it can genuinely be maintained that a specific, onerous, noble respectable, highly prestigious jurisdiction was conferred upon this Court with clear aim, unambiguous object and pragmatic approach to get the Islamic Republic of Pakistan free from the laws that are enforced and applicable but run contrary to Injunctions of Islam, particularly a law that has been declared " A WAR AGAINST ALLAH AND RASOOLULLAH S.W.A.S". Reference in this respect is placed on the following Ayaat of Holy Quran:-

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يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَلَا رُبُّا مَا بَقِيَ مِنَ الرِّبَا وَإِنْ كُنْتُمْ مُّؤْمِنِينَ
فَإِنْ لَمْ تَفْعُلُوا فَأَذْنُوا بِحَزْبٍ مِّنَ اللَّهِ وَرَسُولِهِ وَإِنْ شُبِّثْمُ فَلَكُمْ رُّغْوُسُ
أَمْوَالُكُمْ لَا تَنْظِلُمُونَ وَلَا تُنْظَلُمُونَ ٢٧٨
٢٧٩

O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.

If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.(2:278,279)

Therefore, the contention that this Court lacks jurisdiction or on account of some exigency should remain reluctant and refrain to exercise jurisdiction would be a better legal option, such a contention cannot be countenanced on any cannon of Constitutional construction and interpretation. Even otherwise, the basic principle regarding jurisdiction is that the Courts do have jurisdiction unless it is barred expressly or by necessary implication. The practice of Superior Court has been that they have preferred assumption of jurisdiction instead of abdication of jurisdiction. Reliance is placed on PLD 1989 FSC 50 Sajjad Hussain and 2 others Vs. The State, relevant at page 54 is reproduced:

“10. Learned counsel tried to impress that as the Supreme Court has been specifically prevented from exercising its

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authority and jurisdiction in the Tribal Area, this Court should also set a self-imposed limit on its territorial jurisdiction in line with the Supreme Court of Pakistan. When told that under the rule of interpretation assumption of jurisdiction is always preferred to abdication of jurisdiction and no superior Court would easily concede to the ouster of its jurisdiction, the learned counsel had no answer to it. To quote Zafar Hussain Mirza, J. in Benazir Bhutto v. The Federation of Pakistan (PLD 1988, SC 416) at page 602:-

"The ouster of jurisdiction of the Courts must be couched in express terms or must arise by necessary implication."

11. *In the present case as would be shown hereafter no such legislative intent can be spelt out from the charter under which this Court was created."*

12. Resultantly, the objection that this Court lacks jurisdiction is repelled and rejected. It is held that this Court for all intent and purposes is well within its jurisdiction to decide the respective Shariat Petitions remanded by the Hon'ble Shariat Appellate Bench of Supreme Court of Pakistan.

MR. JUSTICE MUHAMMAD NOOR MESKANZAI
Chief Justice

Announced in Open Court
On 28-04-2022 at Islamabad.
*Imran/**