بِسۡمِ ٱللَّهِ ٱلرَّحۡمَٰنِ ٱلرَّحِيمِ

THE SHAR'EE RULING REGARDING THE PREVAILING ISLAMIC BANKING SYSTEM

Part 1

As the prevailing system of "Islamic banking" began to spread, many senior Ulama of Pakistan scrutinized its contracts, documents, procedures, and principles in the light of the Quraan, Sunnah and the rulings of the Jurists. Hazrat Shaykhul-Hadith Maulana Saleemullah Khan Sahib (Rahimahullah) - who was regarded as one of the most senior Ulama of Pakistan at the time and was also a senior teacher of Mufti Taqi Usmani Saheb - was deeply disturbed by their findings.

Consequently, in August 2008, a special conference of 29 Senior muftis from across Pakistan was convened under **his auspicious guidance** to arrive at a decisive Shar'ee ruling on the matter. After examining the system from a Shar'ee perspective, they unanimously concluded:

"The prevailing system of so-called "Islamic banking" is, without a shadow of doubt, contrary to the Shari'ah and the teachings of Islam. Consequently, it carries the same ruling of prohibition as conventional interest-based banks*…. Accordingly, it is necessary upon Muslims to abstain from dealing with the so-called Islamic banks, just as they are required to abstain from all other practices that are haram and contrary to the Shari'ah."* (Extracted from: "Murawwajah Islami Bank aur Digital Tasweer ki Ḥurmat…," Bayyinat, https://www.banuri.edu.pk/bayyinat).

The reasons why these senior Muftis declared the prevailing Islamic banking system to be contrary to the Shari'ah and essentially identical to conventional interest-based banking becomes absolutely clear when its actual practices are examined. Insha Allah, in this series, some of these practices will be presented by way of examples.

CHARGING A PENALTY ON LATE PAYMENT

If a person delays paying his debt to a conventional interest-based bank, the bank charges him extra interest as a penalty. The longer he delays payment, the more the amount he owes increases.

Since Islamic banks attempt to imitate conventional banks, they face a so-called "problem": how can they also penalize a customer for late payment**, as conventional banks do,** without calling it interest?

To solve this so-called "problem," Mufti Taqi Saheb writes: *"For this purpose it was suggested that the client, when entering into a murabahah transaction, **should undertake that in case he defaults (delays) in payment at the due date, he will pay a specified amount to a charitable fund maintained by the bank.**" (Introduction on Islamic Finance, pg.96).*

In light of the Shari'ah, there are **several issues** with this arrangement:

- In this case, the client owes the money and is therefore the debtor, while the Islamic bank is owed the money and is therefore the creditor. If the customer delays payment, the Islamic bank charges him an extra amount as a penalty. Thus, an extra amount is taken from the debtor and given to his creditor (bank). This is pure ribaa (interest). Ribaa is **any extra amount (taken**

in a sale or debt) without giving anything in return for it. *(Badaʾiʿ al-Ṣanaʾi, 7/396)*. This is the precise nature of this penalty given on late payment.

- The fact that the bank gives the penalty money to a charity of its choice does not change the nature of the payment. **The debtor is under force to pay this extra amount to the creditor (the bank) because of late payment**. What the bank does with the interest thereafter is entirely a different matter. Giving it to charity does not change the fact that the extra amount was **taken from the debtor as a penalty for late payment**.
- **The end being good does not justify a haram deed.** If a man steals from the wealthy in Umhlanga with the intention of giving all the stolen money as charity to the poor and needy in Phoenix or Umlazi, it does not render the act of stealing permissible. Similarly, if a man gambles with the intention of giving all the money he wins to charity, without keeping anything for himself, the gambling does not become Halaal. In the same way, the bank giving the money in charity does not make the interest-dealing Halaal.
- Furthermore, the condition that *"no part of this amount shall form part of the income of the bank" (Introduction on Islamic Finance, pg.96)* is also irrelevant. It does not make the charge permissible. Whether the bank keeps the money as income or gives it away does not change the nature of the charge itself. The question is: **What is this extra amount being charged for?** It is taken from the debtor because he paid his debt late. **Therefore, the Shar'ee definition of ribaa aptly applies to this late-payment penalty.**

From the above it becomes clear that **the whole exercise is to bring the Islamic banking system on par with Western conventional interest-based system,** so that just as a conventional creditor charges an interest penalty on late payments, the Muslim creditor too may charge in exactly the same manner, albeit with some cosmetic changes. In reality, however, **the extra charge remains nothing but ribaa.**

Ribaa is such a grave sin that Allah Ta'ala issues a declaration of war against those who perpetrate it. Allah Ta'ala says:

"And if you do not (desist from interest), then be informed of a war (against you) from Allah and His Messenger (sallallahu 'alaihi wasallam). But if you repent, you may have your capital amounts – (thus) you do no wrong, nor are you wronged." *(Surah Al-Baqarah, Ayah 279)*

To be continued Insha Allah…

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