

QUR'AN, HADITH AND RIBA CONNOTATION

A critique on Paper, “*Riba, Interest and Six Hadiths: Do we have a Definition or a Conundrum*”? by Dr. Mohammad Omar Farooq; *Review of Islamic Economics*, Vol. 13, No. 1, pp. 105-141, 2009.¹

Muhammad Ayub²

Abstract:

The Qur'an categorically prohibits *riba* and provides a comprehensive principle with regard to its connotation so that the divine tenet could be appropriately implemented. Qur'anic verses on *riba* pertain to loans and debts. The Hadith extends the point in the Qur'an to cases that fall in the domain of trading but are, technically speaking, special cases of exchange. Hence, Hadith further explained the term with practical manifestations for effectively taking care of the strict commandment by the Qur'an. For centuries, it was believed that the rental for the use of money in any form or any amount is *riba*. But the circumventors adopted stratagems time to time to circumvent the divine prohibition and offered different arguments and rationale for validity of interest. A number of scholars have been interpreting *riba* in a manner which is radically different from the understanding of the majority of the Islamic scholars throughout the history of Islam and also sharply in conflict with the categorical statements of the Holy Prophet (pbuh). After lengthy discussions and debate, general consensus was achieved in 1970s and efforts were started to introduce *riba* free financial system in the light of academic leadership of Fiqh Council of the OIC as also of Rabi'ah al-Islami, supplemented by AAOIFI. In the meantime the problem created by the conventional interest based system became so severe that even some of the Western economists and finance experts emphasized the need for any value based / ethical

¹ A similar article, “*The Riba-Interest Equation and Islam: Reexamination of the Traditional Arguments*” by Dr. Farooq was published in the *Global Journal of Finance and Economics*, Vol. 6, No. 2, September 2009, 99-111; and the *Journal Transnational Dispute Management*, Sep. 2007; Vol. 4, No. 5. In this paper the author referred to the Nobel Laureate Milton Friedman saying, “...I do not believe there is any merit to the argument that an interest-free economy might contribute toward greater economic stability. I believe indeed it would have the opposite effect.” (Electronic copy available at: <http://ssrn.com/abstract=1579324>).

² The Editor of the JIBM and Director Research & Training at the Riphah Centre of Islamic Business, Riphah International University, Islamabad.

alternative to the present system. But, still there are a few scholars among the Muslims who continue raising the issue of definition of *riba* and whether the commercial interest is covered under *riba*. In recent years, Dr. Mohammad Omar Farooq is the most vocal among them, writing a number of articles for Journals and as also discussing on IBF Net to highlight the lack of any solid explanation of the term *riba*. Below is a critique to one of his articles published in a London based academic journal of repute to highlight the issue of defining *riba* in the light of different Ahādith with reference to six Ahādith discussed by Abdulkader Thomas in his book. The critique may indirectly cover most of his similar write-ups on the subject.

Key Words: Qur'an, Hadith, *Riba* connotation, *Riba al-faḍl*, *Riba al-nasa*, Interest, Usury, Six commodities, 'Illah.

1. Introduction

Difference of opinion has been there regarding the meaning of *riba* or what constitutes *riba* which must be avoided for conformity of the economic activities to the tenets of the Sharī'ah. While some jurists of the last century and some 'broad-minded' Muslim scholars had been of the opinion that commercial interest is not *riba* prohibited by Islam, many pious and devoted Muslims have the confusion that any prefixed return in all types of transactions is *riba* and therefore prohibited. Verses 278, 279 of Surah Al-Baqarah not only describe the prohibition of *riba*, but also give a comprehensive principle for determining whether a transaction involves *riba* or not. According to this principle, the Holy Prophet (pbuh) declared as void all accrued amounts of *riba* at the time of the conquest of Makkah. The declaration implied that nobody could claim any interest on loans advanced by him³. Similarly, many Ahādith of the Holy Prophet (pbuh) pertain to various aspects of *riba* like prohibition, severity of its sin and its forms and nature of usurious transactions. A principle is derived from the primary source of Qur'an and Sunnah that all increases in one's wealth or benefits accruing to a person without free consent of the counter party and without any labour, risk, or expertise are prohibited (Ayub, 2007: pp. 52, 53). On the basis of this principle, one can think about any kind of transaction, business and / or the return being *halāl* or *harām*. Hence, the subject matter and nature of any transaction are vital to find out its Sharī'ah position. Trading (sale / purchase) and leasing of assets involves risk taking and value addition, so the return / profit / rental is

³ See for details: SAB Judgment, SLR, 2000; Justice Taqi Usmani's Part; Paras. 11-24.

halāl. In absence of these attributes, the return would be *harām*. But if the subject matter is money or monetary units, the nature of transaction will decide the Sharī‘ah position. While lending has been declared as a non-commutative contract and virtuous act (not a business), any business transactions involving any goods serving as medium of exchange have been subjected to specific and well-defined rules covered under *bai‘ al-ṣarf* and *riba al-faḍl*. Hence, while machinery, a house or an aero plane can be leased, money cannot be leased and any rental sought would be *riba*.⁴

Until about 1570, most of the lending in the world was based on profit share, says Mohamed Ariff, professor of finance at Bond University. After about 500 years, Islamic finance is “Undergoing something of a renaissance”. Professors Kerrie Sadiq and Ann Black of the Queensland University of Technology wrote in a paper published in April 2012, “Given such statistics,..” It is suggested that Islamic finance...can contribute to global financial stability. “It is projected by 2020, the Muslim world will be doing 50 per cent of its banking with Islamic institutions”.⁵

Hence, with regard to the modern business and financial system a consensus was achieved in 1970s / 1980s by the jurists in general and all relevant forums including Majm‘a al-Fiqh al-Islami of Rabitah al Islami (Makkah), or of the OIC (Jeddah), Majm‘a al-Buhuth al Islamia, Cairo, 1965 etc that today’s commercial interest is definitely *riba*. According to this consensus, Islam accepts no distinction between ‘reasonable’ and ‘exorbitant’ rates of interest and thus what came to be regarded as the difference between *usury* and interest; or between returns or bonus on loans for consumption and those for production purposes and so on. Not only Islam, the institution of interest is repugnant to the teachings of all revealed religions and from the pure religious point of view in general there had been never two views about its prohibition. Similarly, none of the revealed religions has accepted ‘interest’ as the cost of using capital as commonly understood in conventional economics. The well-known author J.L. Hanson expressed in his “*Dictionary of Commerce and Economics*”

⁴ Hence, the principle is that corpus of the commodity / asset to be leased should remain intact- its form should not undergo a visibly major change. Anything which cannot be used without consuming its corpus or the use of which results in a visible change in its corpus, cannot be leased out, e.g. money, yarn, wheat, etc. The rationale of this principle is that the lessor would be in position to bear ownership risk only if its corpus remains intact.

⁵ Mike Seccombe (2012); Jesus Saves, Moses Lends, Muhammad Invests; Cf: JIBM, Vol. 1; No. 2; <http://www.theglobalmail.org/feature/jesus-saves-moses-lends-muhammad-invests/297/>

that “*Usury*; A term now restricted to the charging of a very high rate of interest on loan, but formerly used in connection with interest whether the rate charged was high or low. The medieval church, following the law of *Moses* and the writings of Aristotle and other Greek philosophers, condemned the payment of interest on a loan as usury and unjust.” (Pp: 470).

Although a number of writers still keep on saying that the present day interest is not *riba*, but generally, no notice is taken of such writings because of the lately achieved consensus of the Islamic scholarship regarding its prohibition and, therefore, efforts are underway to introduce the alternative system based on risk and reward sharing. However, the remarks made recently by the renowned scholar Dr. Mohammad Omar Farooq in the paper published in *Review of Islamic Economics*, the London based Journal of repute, IBF Net and at some other forums, and casual observations by a few others, necessitated a rejoinder to all such writings that might lead to further deepening of the myths and confusions of common man and thus cause harm to the need and call for transformation of the global financial system. Further, Dr. Farooq has expressed harsh view about Hadith that, if applied to other tenets of the Shari‘ah, may cause serious doubts about the primary source of the Shari‘ah. While affording all respect to the learned author, this paper is a critique of views expressed by Dr. Farooq.

The next section briefly analyzes the objectives, methodology and observations / arguments given by the author. The section three is on the themes of Ahādith that Abdulkader Thomas considered define *riba* and other Ahādith quoted by Dr. Farooq to substantiate his view point. Issues raised by Dr. Farooq or the arguments will be discussed while discussing the relevant themes. The last section concludes the rejoinder giving the factual position with regard to the definition / connotation of *riba*. Quotations from the paper under review have been given in the *italics*.

2. Objective, Methodology and Sources of the Paper under Review

Before discussing the arguments and the view point of the author it is pertinent to keep in view main features of the paper particularly the objectives, the methodology and the main sources from which he has taken the arguments. Author’s real objective for writing the paper is not clear; to him, as ‘*the orthodox uses Hadith to define riba*’, ‘*there seems to be more of a conundrum than a definition*’ (p.137). Detailed study would

reveal that the objective of the paper itself seems to be ‘conundrum’ as can be observed from following quotations from the paper:

- a) *“The limited purpose of this essay is to explore whether the commonly cited Hadiths to define riba hold up as claimed”.*
- b) *“Using the broadened definition, the orthodox consider modern interest in all its forms to be prohibited. In this paper, we examine those six Hadiths to understand better the claim that they define riba”* (p.108). The writer has discussed six Ahādith in assessing the assertion that *riba* is defined by certain ‘authenticated’. He has added several other narrations to analyze those Ahādith.
- c) Referring to the book edited by Abdulkader Thomas and comments by Sh. Yusuf Talal DeLorenzo on that book, Dr. Farooq says, *“Thus, when a claim that some authenticated Hadiths ‘allow us to define this forbidden thing’ comes from such an expert, it is worthwhile exploring it, particularly so as since it also represents the typical view that riba is defined by Hadith.”* Rather, it seems to be a rejoinder to Thomas as he says, *“Thomas’ book deserves special attention because the author elevates the controversy about interest to the level of belief and disbelief. “Riba is part of a broader problem of belief and behavior. Refusing to combat riba is akin to disbelief (pp.107-111). Discussing the aspect of ‘illah (effective cause of prohibition of riba), he again questions: Whether it leads to a congruent definition or not, just as Thomas boldly claimed.*
- d) *“Lest it is misunderstood, the purpose of this essay is not to argue that interest in modern banking is permissible in a blanket manner; rather, it is to illuminate the challenge in defining riba based on Hadith and the anomalous outcomes that traditional scholarship has produced.”*
- e) Criticizing the use of the Hadith as a source of Sharī‘ah tenets is one of the objectives of the author. For this purpose, he has also discussed the issue of wine prohibition although it has no relevance with the title of the paper. He says, *[According to Hadith -29, when the verses related to riba were revealed, the Prophet recited those and then he prohibited the trade of alcoholic liquor. Something else is wrong here].* One may ask him as to why he has discussed the wine issue in a paper dealing with *riba*? As the Messenger of God and a head of the newly established state where increasingly a large number of Muslims were entering into the fort of Islam and many areas added in its territory, the Holy Prophet

(pbuh) might have observed that some people were still using intoxicants or involved in its trading. To him, there are several myths or misperceptions about Hadith, and while discussing these myths he says, “*It is important to note that a Hadith being ṣaḥih (authentic) does not necessarily mean that it provides definitive (or certain) knowledge..... only mutawatir bi’l-lafẓ (that contain exact words in each chain) belongs to this category of Hadith that yields certainty of knowledge.*” (p.109) Referring to his own paper (Farooq, 2008b) he claims, “*the scholars also generally agree and acknowledge that even authentic (ṣaḥih) Hadiths yield only probabilistic knowledge*” (p. 111).

As regards the sources from which the learned author has intensively referred include the study / book by late Iqbal Ahmad Khan Suhail⁶ (1884-1955), MA, LLB, Advocate, a poet and a politician who authored the book in Urdu in 1936, English translation of which was published in 1999; article by a Pakistani official Fazlur Rahman (1919-1988)⁷ [*an eminent scholar of the twentieth century* according to the author], written in 1960 and the book by Abdullah Saeed published from New York in 1996.⁸ His aggressive approach is clear from the way he has reported from Suhail, e.g. with regard to narration ‘*No riba in spot transactions*’:

[However, if taken literally, as Iqbal Ahmad Khan Suhail opines in his book: “these narrations demolish the self invented castle of riba al-faḍl” (Suhail, 1999: 8)].

⁶ Dr. M. Tahir Mansuri, has reviewed that book (published in Islamic Studies, IRI, Islamabad; Vol 40, No.1; Pp 163-165). As indicated by Dr. Tahir, a considerable part of the book is devoted to prove that there is no *riba* in Dar al Harb; ... he differentiates between usury and interest, holding the former lawful and the latter unlawful; ... the viewpoint of the author is departure from the consensus (*ijma'*) of the jurists; ... his assertion that at the time of revelation of Qur'an, loan transactions were only for consumption is factually incorrect.

⁷ Fazlur Rahman; *Riba and Interest; Islamic Studies* (Karachi) 3(1), Mar. 1964:1-43; He, *inter alia*, concluded that “*Riba* is an exorbitant increment whereby the capital sum is doubled several-fold, against a fixed extension of the term of payment of the debt” .. and that “As long as our society has not been reconstructed on the Islamic pattern outlined above, it would be suicidal for the economic welfare of the society and the financial system of the country and would also be contrary to the spirit and intentions of the Qur'an and Sunnah to abolish bank-interest”.

⁸ Abdullah Saeed is a Maldivian scholar who holds PhD in Islamic Studies from the University of Melbourne, Australia; it is strange that he teaches, in addition to other subjects, Islamic Banking and Finance, the discipline which he does not believe in, or may not feel need for which.

A lot of discussion is available in traditional and contemporary literature discussing the apparent contradiction in such narrations and the consensus of the Islamic scholarship on *riba al-faḍl*. But, the author does not seem to be inclined to benefit from such material. Similarly, referring to Hadith (also indicating it as *ṣahih*) that “*The Prophet purchased food grains from a Jew on credit and mortgaged his iron armor to him*”, he makes a provocative statement, “*However, if deferment or credit-based transactions (nasiah) does involve riba, where the latter is categorically prohibited in the Qur’an, then how did the Prophet engage in purchases with provision for deferred payment?*” He has quoted making extra payment on the loan / debt amount by the Holy Prophet (pbuh) and the Companions (ra) without referring to the general consensus of *jamhūru ‘ulamā* that this practice has not only been permitted, but also liked by the Holy Prophet. The author says (p.112):

[However, it is well-known and supported by many Hadiths that the Prophet had entered into credit-purchase transactions (nasiah) and also that he paid more than the original amount. Also, “Ṣahabah have paid more than the original amount at the time of repayment and the Prophet approved of it” (Suhail, 1999: 84)].

He has quoted from Suhail also for referring to other great jurists like Shah Waliullah Muhaddith Dehlawi, who is reported to have said, “Remember that *riba* is of two kinds: One is *haqīqī* and the other that is subject to it. *haqīqī riba* is only on loans. The other *riba* is called *riba al-faḍl* ... and is akin to primary *riba*. ”⁹

It is further important to note that the latter two authors (Dr. Fazlur Rahman and Abdullah Saeed) relied directly or indirectly on the book by Iqbal Ahmad Khan Suhail, Rashid Rida and Mufti Abduh. Abdullah Saeed has been reported to believe, that “*None of the authentic Hadith attributed to the Prophet in relation to riba appears to mention the terms, ‘loan’ (qarḍ) or ‘debt’ (dayn). This absence of any reference to loans or debts in riba-related Hadith led a minority of jurists to contend that what is actually prohibited as riba is certain forms of sales, which are referred to*

⁹ Following definition of *riba* has been reported from him: “*Riba* is a loan with the condition that the borrower will return to the lender more than and better than the quantity borrowed.” The term *riba* is, however, used in the Sharī‘ah in two senses. The first is *riba al-nasiah* and the second is *riba al-faḍl*. Waliyullah, 1953, vol. 2 pp. 474-75, Cf. Kazi Omar Faruk; Riba in Islamic Sharī‘ah; <http://kaziomarfaruk.wordpress.com/2010/08/08/riba-in-islamic-Sharī‘ah-and-its-impacts-in-the-society/>

in the Hadith literature” (Pp. 115, 116). It simply implies that no *riba* exists in modern banking and finance which hardly can be believed.

2.1 Contentions and Arguments by the Author

The observations and arguments of the author which deserve to be discussed include the following:

- a) The Qur'an categorically prohibits *riba*, but does not define it.
- b) The commonly-cited Ahādith to define *riba* do not hold up the claim – *“for what is not defined by the Qur'an, definitions are generally sought from the Sunnah/Hadith. Apparently, the same is claimed in this case of riba”*.
- c) At the time of the revelation about *riba*, the only type of *riba* known was *riba al-jāhilīyyah*; he qualifies it to be doubled and redoubled; hence *usury or usurious/exploitative transactions would be prohibited*.
- d) The Qur'anic prohibition can be easily understood in the case of *riba al-jāhilīyyah*, and its rationale is also obvious: *“It is important to note here that based on (a) riba al-jāhilīyyah and (b) injustice/exploitation as the hikmah (wisdom), usury would be prohibited, but interest in all its forms as it exists in modern economy and finance can't be necessarily categorized as prohibited”*.
- e) Use of Ahādith to define *riba* and justify the broadened scope in terms of the *riba*-interest equation - leads to the traditional position that all forms of interest are prohibited. *“ .. gradually, based on Hadith, the scope of riba was widened and two types were identified: riba al-faḍl (primarily related to sales transactions), and riba al-nasiah”*.
- f) He has also referred to the anxiety shown by the second Caliph 'Umar (ra) that the Holy Prophet (pbuh) passed away before explaining the details of prohibition of *riba*.
- g) There is no *ijma'* (consensus) with regard to the definition of *riba* and that modern commercial interest is *riba* (to him, *riba*-interest equation is a myopic reductionism); *Fixed or guaranteed rate of return, at least for public debt, is no longer un-Islamic*.(Farooq, Sep, 2009)
- h) Criticizing all eminent scholars including, *inter alia*, Sayyid Abul Ala Mawdudi (late) M. Nejatullah Siddiqi, Umer Chapra, M. Taqi

Usmani, etc he has discussed the issue of rationale for prohibition of *riba*.

- i) In another article (2007), Dr. Farooq criticizes the Islamic finance in vogue and particularly the '*Power alliance of wealth and shari'ah scholarship*'.

Referring to the difference of opinions among the Muslims on various issues like *tarāwih* prayer of Ramaḍan, saying *āmen* aloud in prayers, the author has also indicated the difference of opinions with regard to '*illah* for the prohibition of *riba* and the use of *qiyās* (analogical reasoning/deduction) in using Ahādith for determining *riba*'. The most intriguing point for the author in this regard is the opinion of Maulana Mufti Taqī Usmani that '*Illat (the basic feature) on which the prohibition is based is the excess claimed over and above the principal in a transaction of loan, and as soon as this 'illah is present, the prohibition will follow regardless of whether the philosophy of the law is or is not visible in a particular transaction. To Dr. Farooq, here 'illah is categorically delinked from hikmah or underlying wisdom/rationale. (Pp.131, 132).*

3. The Theme of Six Ahādith and Authenticity of Hadith as a Source of Sharī'ah

Below we discuss the author's views that he has expressed about the theme of six Ahādith referred by Abdulkader Thomas. Some other narrations that Dr. Farooq has discussed in this context would also be included in the analysis. But before discussing those specific Ahādith, we would analyze author's views about the institution of Hadith (as a source of Sharī'ah tenets).

3.1 Hadith as a source of Sharī'ah tenets

The implied message and finding from the paper under review for anyone who reads it is that the Hadith is not an authentic source of Sharī'ah. It could strengthen anti-Hadith propaganda and the Muslims who do not have deep knowledge about the sources of Sharī'ah and the hard and sound work done by *muhaddithīn* in preservation of the Sunnah of the Holy Prophet might get the false impression that Qur'an should be sufficient for interpreting and implementing Islamic tenets in human socio-economic activities; and where Qur'an is not explicit on any matter, one is free to undertake any activity. According to the main principle of Islam, when Muslims obey the Prophet (pbuh), they actually obey Allah (4:80) because the Prophet (pbuh) used to judge all matters according to

the Book of Allah (5:48). Muslims need to know what the Holy Prophet did or advised; the importance of Sunnah and in turn Hadith is obvious. Can ‘fewer than a dozen Hadith’ suffice to explain and guide to the Islamic systems of beliefs, worships, society, economics, the life hereafter, etc? It is a pertinent aspect that the author should keep in mind while questioning authenticity of Ahādith *per se*.

The author contends that only a few *mutawatir* Ahādith out of all including Ṣaḥīḥ Ahādith, yield probabilistic knowledge. Although he opines that all remaining *Ahādith can be used for guidance and solutions, if properly authenticated in terms of both chains and contents, and provided these are not used to formulate laws, codes or dogmas that are too rigid or harsh, especially pertaining to people’s life, honour and property* (p.109); but virtually he does not seem to have acceptance of even any Ṣaḥīḥ Ahādith as declared by the eminent *muhaddithīn* and the jurists. It had been viewpoint of a few who did not feel need of Hadith as a source of Islamic Sharī‘ah (the most renowned among them in the recent past was (late) Ghulam Ahmed Parwez¹⁰ who authored articles and books on the subject and initiated a movement in this regard).

Muhaddithīn worked very hard to find out the authentic Ahādith. In order to facilitate the general public in later generations they even edited separate books of fabricated narrations so that people could know them as “*maūḍū‘āt* and reject them. Thus, they cleared the Hadith of the from fabrication and lies and what left for us is the treasure in the form of authentic Ahādith, differentiated from the non-authentic, so that we could deal in our lives in the light of the tenets of the Sharī‘ah. Their being *fard* or *ahād* does not necessarily mean that the same are weak or not authenticated. The well known Hadith [Acts are to be judged / evaluated by their intentions – only ‘Umar bin al Khatab narrated from the Holy Prophet] is ‘*fard*’. But it is so famous and authentic that it found its way in all known books of Hadith.¹¹ The criterion in respect of such Ahādith is not the number but the credentials of the individual narrator (Kamali, p. 169). Hashim Kamali concludes after a lengthy discussion with examples:

¹⁰ Ghulam Ahmed Parwez (1903-1985) was founder of the *Tolu‘-e-Islam* Movement, and of anti-Hadith movement of 20th century; the main objective of which was to propagate his belief about Hadith. He authored a large number of books and articles, but as the same were against the consensus views of Muslims, the same are no more an active part of literature on Islam and Islamic systems.

¹¹ Kamali, Mohammad Hashim (2005), *A Textbook of Hadith Studies*; p. 164. I have not referred to celebrated scholars like Maulana Mawdudi, Nadvi, etc because the author is not inclined to accept their arguments / opinions.

[Thus it would follow that a Ṣaḥīḥ Hadīth may be an *ahād*, *mashhūr*, or a *mutawatir*. (p. 169). The main element in rejecting such narrations could be that the same are in contradiction to Qur'an and other Ṣaḥīḥ Ahādīth; and the *'ulamā* have done a commendable work in this regard to single out the problematic narrations. According to *ahnāf*, action upon an *ahād* Hadīth becomes obligatory if it fulfills the three condition set in this regard. (Kamali, 174, 175)

As indicated by Imran Ahsan Khan Nyazee, "there is a general agreement of the Muslims about the acceptance of *khābar wāḥid* in matters of *fiqh*".¹² There may not be sufficient indications in the Holy Qur'an to formulate the procedures and rules for application. Qur'an guides to the principles on the basis of which the Holy Prophet (pbuh) guided the mankind how to behave in their socio-cultural-economic activities. *Riba* is like the prohibition of pork, liquor, gambling, adultery etc, none of which have been defined in the Qur'an, but which were known and understood by the people as also explained by the Holy Prophet (pbuh). As the time passes and new issues, products, transactions and activities emerge, the jurists have to define various terms and decide Sharī'ah position for guidance of the common man in the light of explanations given in Hadīth. Dr. Farooq on one hand suggests for using '*ahād* Hadīth' (in his words), but believes on the other hand that Ṣaḥīḥ Ahādīth do not lead to any firm knowledge. A lay man or even scholars who are not much aware about the Sharī'ah and its sources will not be inclined to use Hadīth knowing that the same do not give a firm knowledge.

The author has termed even some *mashhūr* Ahādīth as '*ahād*' to prove his personal surmises. For example, under theme three, he has also quoted a Hadīth from Ṣaḥīḥ Bukhari, "*The Prophet purchased food grains from a Jew on credit and mortgaged his iron armor to him*". He has expressed many doubts in this regard by saying that the narrations on the subject are '*ahād*' and not '*mutawatir*'. He also participated in discussion on the IBF NET (Digest Number 2378) with regard to the debts incurred by the Holy Prophet (pbuh) as in the above Hadīth and contended the following:

"we have to look at the acceptability of these reports about the Prophet's getting into debt (Why?), being indebted to a non-

¹² Nyazee, Imran Ahsan Khan (1998 – 2010); Outlines of Islamic Jurisprudence; Advanced Legal Studies Institute, Islamabad, Pakistan; p. 159. Nyazee has very ably refuted the arguments given by scholars like Rashid Rida; see the book: "*The concept of Riba and Islamic Banking*" 1995, Islamabad.

Muslim (Why, in light of so many rather wealthy individuals in the community as well as among those who were close companions) and also dying in debt (while he himself has made dua / supplication, seeking refuge from Allah from debt and also warned his followers regarding the consequences of indebtedness and especially dying with unpaid debt)? ... I find no reason to give any credibility to these reports about the Prophet getting into debt to a non-Muslim and then dying in debt, while accepting such report would also be tantamount to entertaining that his actions were against his words and guidance (nauzuobillah)."

This author also took a humble part in the IBF Net discussion on the subject and contended that the Hadith referring to credit purchase by the Holy Prophet is *ṣahih* as per the strictest standards set by the *muhaddithīn*. It is reported in *Ṣahih Bukhari, Muslim, Musnad Ahmad, Ṣahih Ibn Habbān* and other major books of Hadith.¹³ Ibn Hajr ‘Asqalani and many other *muhaddithīn* also termed it as *ṣahih*. There could be confusions / faults in analyzing such Ahādith due to presumptions or lack of deep knowledge as many of us do today. We must understand and try to analyze such narrations in the light of efforts made by the great *muhaddithīn* including, *inter alia*, Hafiz Ibn Hajr ‘Asqalani.¹⁴

Further, it is not strange in any way that the Holy Prophet (pbuh) purchased on credit from a Jew and pledged his iron breastplate. As details given by Ibn Hajr with different chains of narrations, the breastplate remained with the Jew and Caliph Abu Bakr (ra) redeemed that by paying the debt and gave it to Caliph Ali (ra). The objection: [Why (the credit from a Jew), *in light of so many rather wealthy individuals in the*

¹³ One may like to see in a number of chapters in Bukhari, particularly, in *Kitab al-Rahn in Fathul Bāri, Sharah of Ṣahih Bukhari by Ibn Hajr*, Vol.5, Pp: 173-176 (Dar us Salam Riyadh and Damascus).

¹⁴ The importance of *Fathul Bāri* can be judged from the following: Maulana M. Taqi Usmani who completed the *Sharah of Ṣahih Muslim* (as left incomplete by Maulana Anwar Shah Kashmiri (rh) and also authored "*In‘ām ul-Bāri fī Sharah Ṣahih al-Bukhari*", says about the value of work done by Hafiz Ibn Hajr in authoring *Fathul Bāri*, "This is the age of technology, maktabas and libraries. I tried my best over 19 years to add on what *Hafiz Ibn Hajr* had included as '*toruq*' in *Sharh of Ṣahih Bukhari*, but his work done centuries ago is so comprehensive that I could not add anything noticeable to that" (*In‘ām ul Bāri* Vol 1, Pp. 137, 38). Mufti Taqi has also mentioned that after writing a part of *Fathul Bāri*, *Ibn Hajr* used to call a general meeting of his contemporary jurists to discuss, and amend if needed, about explanation of the great compilation by Imam Bukhari.

community as well as among those who were close companions] carries no weight. Ibn Hajar has discussed this aspect as well. Unlike present rulers and so called religious leaders who consider *māl* of others / State their *māl*, the Holy Prophet (pbuh) is not expected to extract others' belongings.

The Hadith under discussion and its various parts have been narrated by at least 3 companions of the Holy Prophet: 'Aaisha, Anas, Jabir (ra) with many chains of narration and reported by many *muhaddithīn* in more than one chapter in a number of books. Hence, it is '*mutawatir*'; in no way '*ahād*' as perceived by the author. According to Nyazee (p. 158), a Hadith narrated by one or two Companions, and by a large number of the *tāb'ieen* comes under the category of '*mashhūr*'. Besides, it is not against any tenet of the Holy Qur'an; rather, it is explanation of the verse 2: 283 of Al-Baqarah that guides about credit business, debts, *rahn* and writing the debt receipts and taking witnesses. Credit sale / purchase is not prohibited in Qur'an; hence the issue raised by the author: "*However, if deferment or credit-based transactions (nasiah) does involve riba, where the latter is categorically prohibited in the Qur'an, then how did the Prophet engage in purchases with provision for deferred payment*" (p.112) is not relevant. This is why, he himself accepts that "this type of mortgaging or using pawnbroker's service is recognized as Islamically valid and acceptable.

Muslims fully believe in supplication by the Holy Prophet (pbuh) as referred to by Dr. Farooq, but how that supplication reported in Hadith (almost all of which are doubtful according to the author) can be used to prove some thing against the Holy Qur'an, text of which is absolutely clear. There is nothing in Qur'an against incurring debt. Sharī'ah has accepted loan / debt as an economic reality. Qur'an and Sunnah encourage Muslims to give *qard*, which has been equated with *ṣadaqah* or charity and in some cases even better than *ṣadaqah*. Many Companions and the Prophet himself borrowed as evidenced in many sources, both in cash and kind – dates, camel, dirhams and dinars. It is all in Hadith that the 'Ummah has been advised to avoid debt as far as possible and about other aspects of debt. As Messenger of Allah, he educated the 'Ummah under instruction of the Law Giver (swt). It is strange that the author accepts this Hadith as *ṣahih* with regard to *sanad* but not accept its *matan*. It has been narrated through many *toruq* by three Companions. Even if we say that it is not '*mutwatir*', as desired by Dr. Farooq, we need to accept it because it is not against any verse of the Holy Qur'an.

The author is absolutely right in saying that the available information in Hadith must be used for 'practical guidance' in our contemporary time.

Accordingly, the Hadith under discussion is a source of understanding and resolving many issues of present day life. Ibn Hajr has derived following conclusions from it (discussing in chapters on sales and *rahn*); including:

- a) Credit purchase is allowed – so incurring debt in case of need is allowed;
- b) Purchasing credit for genuine need is allowed and not against *tawakkul*;
- c) Holy Prophet did not hoard the provisions of life – ‘*zakhīrah*’;
- d) Muslims can do business with non Muslims (*kuffār*);
- e) Dhimmi can own *māl* in an Islamic state;
- f) Muslims can pledge their armor / sword with any non Muslim /Dhimmi,
- g) It is possible that the cereal might not be available with any Muslim trader at that time in the market,
- h) Holy Prophet (pbuh) might have thought that if he purchased from any Muslim, he might not accept the price.¹⁵

As regards supplication of the Holy Prophet seeking refuge of Allah (swt) from debt burden and advice to ‘Ummah, the jurists and scholars have explained that such debt has to be avoided that one might not be able to pay. The words used in the supplication are “*Ghalabatiddayn*”; or “*Maghram*” in some supplications. Both words refer to the situation in which one is overburdened, not able to repay and so could be sinner by swearing, telling lie, etc. It is well established that Holy Prophet (pbuh) took credit a number of times, pledged security for that and paid back. In the case under reference, the armor was of value more than the price of 20 / 30 *Sā’* of barley. It implies that Holy Prophet purchased on credit and provided full surety even to a non Muslim that the price would be paid. It implies that the supplication by the Prophet (pbuh) and case in reference are not contradictory, particularly for the reason that Holy prophet took loans at some other occasions as well.

The above discussion should not lead to the result that Islam encourages incurring debts. We have guidelines and solid principles given by Islam – emphasis on repayment; ban on sale of debts, short selling,

¹⁵ Holy Prophet and even the Pious Caliphs were absolutely careful in taking anything from others. Abu ‘Ubaid reports in *Kitab al Amwal*: ‘Umar (ra) wanted to borrow 400 Dirhams from Abdul Rahman ibn ‘Auf; he replied: You have *baīt ul-māl*, why don’t you borrow from *baīt ul-māl*; ‘Umar (ra) replied: If I borrow from *baīt ul-māl* I, in case of my death, you and other Muslims would say to waive the debt and in that case my virtues would be reduced; while I know that you love *māl* and will get back your money from my inheritance (*Kitab al Amwal*, Hadith 664).

separation of risk from ownership and transfer to others; prohibition of *gharar*, *maisir* / *qimār*, etc. Islamic finance could be a better example to be followed by the financial world today. Hence, this author could not get any point as to what practical aspect or issue one may get by saying that the Hadith under discussion is not *ṣahih* with regard to “*matan*” although *ṣahih* with regard to *sanad*.

Discussing about authenticity of Hadith is not covered under the caption of this critique. So we shall discuss only those aspects that directly or indirectly deal with *riba*. Detailed study of classical and current literature on Islamic economics, business and finance would reveal that Islamic banking and finance is based on precise and pertinent principles, including, *inter alia*, the following:

- a) Financial intermediaries must not deal in money; their business should be exchanging real assets or papers representing them – Not the notional assets or debts (as the case of financial swaps and other derivatives);
- b) Owner of an asset has both risk and reward of that asset; risk not to be separated from the real transactions;
- c) Effectiveness and sanctity of properly executed contracts: e.g. in case of a sale agreement, delivery has to be given and possession taken;
- d) Business risk taking and sharing - not risk transfer; too much risk / deliberately injected risk in a transaction incurs a ban;
- e) Ban on short selling and selling onward before taking possession;
- f) Finance to increase ability to create wealth in the real sectors of production and exchange.¹⁶

The above principles and features of Islamic finance have been derived by the jurists from the relevant Ahādith of the Holy Prophet (pbuh) and have to be used for formulating practices of the Islamic finance institutions (IFIs). Thomas may not be right in saying that *riba* is defined by Hadith, but he is right in saying that:

“The Qur’an does not explicitly define *riba* as one type of transaction or another. ... The efforts of the *fuqahā* or judicial scholars like Sh. Zuhayli and the examples of the Hadith allow us to determine a clear idea of what is *riba*” (2006: 127).

¹⁶ For further details, Pl. see *Journal of Islamic Business and Management* (JIBM) www.jibm.org Vol. 1; No, 2 (June, 2012); Editorial.

3.2 Hadith as a source for defining *riba*

The above discussion reveals that *riba* has to be defined, like other specific terms used in the Qur'an, and applied to any transactions / businesses or issues keeping in view the whole set of information available in the classical books of Hadith and Islamic jurisprudence. The word '*riba*' with the meaning of prohibited gain has been explained in the Holy Qur'an by juxtaposing it against (profit from) sale. It can be derived from its explanation that all incomes and earnings, salaries and wages, remuneration and profits, usury and interest, rent and hire, etc. can be categorized either as:

- a) Profit from trade and business along with its liability that is permitted; or
- b) Return on cash or converted form of cash without bearing liability in terms of result of deployed cash or capital that is prohibited.

On the basis of above classification, we can categorize the present day transactions with regard to their permissibility. The verses of Surah al-Baqarah (2: 274-281) differentiate business from the charity on the one hand and trading and usurious activities on the other hand, permitting the trade and its profit, and prohibiting *riba*. It implies that whatever is sought over and above the principal of a loan or a debt is *riba* and therefore prohibited. Similarly, as we know from Hadith, the Holy Prophet (pbuh) practically explained the tenet of Qur'an and categorically prohibited any increase sought over and above the principal of a loan or a debt, due to being *riba*. While Islam encouraged *qard al-hasan* or loaning free of any charge, it prohibited the business of exchanging the monetary units and other goods of same '*illah*' (effective cause of prohibition) except for hand to hand (in case of heterogeneous goods) and hand to hand as also equal for equal (in case of homogeneous items of exchange). It is to ensure that when one party to exchange is giving resources / purchasing power to the other along with opportunity to use, the other party should also give in exchange the stipulated resources forthwith so that the other also could use the same at his / her discretion. If monetary units are not exchanged simultaneously, a person can take benefit by use of a money/currency which he has received while he has not given its counter value from which the other party could derive benefit. This helps us in deciding about the financial transactions in modern age.

No differentiation can be made between a low and a high rate of interest expressed on fixed or floating percentage of the principal or with regard to the purpose of the loan, i. e. for consumption or production.

‘Rate’ is a relative term and based on the principle given by the Holy Qur’an, any addition over the amount of debt *per se* is prohibited irrespective of the rate. The common feature of all *riba* based transactions was that an increased amount was charged on the principal amount of debts. At times the debt was created through a transaction of sale and some time it was created through a loan. Similarly the increased amount was at times charged on monthly / yearly basis, while the principal was to be paid at a stipulated date, and some time it was charged along with the principal. All these forms used to be called *riba*. Hence, all loans that embody any benefit over and above the principal as a precondition are void irrespective of the fact that the condition embodies a rate low or high or any gain in quantity or quality.¹⁷

There are a few deviations, and had been the difference of opinions, but the collective wisdom reflecting *ijmāʿ* has the capability to be nearest to the Divine will. The human beings may or may not be able to understand the real meaning, rationale or objective of any tenet given in Qur’an fully and at all the times. It is also possible that any aspect not clear today could be understood by the human mind in future. Ṣaḥīḥ Ahādīth are supreme source of understanding Qur’an and Muslims are fortunate in this regard that not only the text of the Holy Qur’an but also its explanation has been preserved with God-given *taufīq* and tremendous efforts by the *muhaddithīn*. We cannot interpret and understand the tenets of Islam without reference to the rich work of our predecessors who had ample ability to decide the issues on merit and in the light of Shari’ah texts.

The Federal Shariat Court of Pakistan, in its judgment on the case of *riba* declared after a thorough analysis of all such arguments the following:

“As regards the interpretation and nature of the word *riba*, the Court, keeping in view the texts of the Holy Qur’an and the Sunnah, examined and analysed in detail the relevant writings of jurists, scholars and economists and concluded that *riba* includes both ‘usury and interest’ as known in English terminology. (Para: 71). In other words, wherever there is money from the one part and there is only grace period or deferment of the repayment of loan on the other, and for that a return is stipulated, it is *riba*. (Para: 78).

¹⁷ For details, pl. see Ayub, 2007, Chapter 3.

The Court observed that there is an *ijma'* (consensus) of the '*ulamā*' of the 'Ummah on the illegality of interest".

The Shariat Appellate Bench of the Supreme Court of Pakistan also discussed all arguments that are given in favour of interest and decided the following:

- a) All prevailing forms of interest, either in banking transactions or in private transactions falls within the definition of *riba*.
- b) Any interest stipulated in government borrowings acquired from domestic or foreign sources are *riba* and clearly prohibited by the Holy Qur'an.
- c) The present financial system, based on interest, is against the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

3.3 Hadiths Theme – I: 'No riba in spot transactions' or 'No riba except in deferment/credit'

What the author intends to prove from the narrations on the above theme is evident from the following: [*Notably, this Hadith in all its variations is quite categorical that there is no riba in hand to-hand or spot transactions. Thus, any otherwise-permissible transaction or spot transaction can not involve riba*]. This Hadith at least implies that all such transactions where increase / excess is charged on account of deferment of the counter value as debt would involve *riba*. Modern commercial banking financing and banks' liability and assets side transactions are covered under this prohibited category, i.e. *riba al-nasiah*. With regards to *riba al-faḍl*, the words, "*There is no riba in hand-to-hand [spot] transactions*" simply mean that, for example, gold can be exchanged with silver on spot basis or wheat for barley and *riba* would be involved only if one of the counter values is deferred.

Well-known Hadith on exchange of six commodities and the other traditions about exchange of low quality dates with lesser amount of the better quality dates deal with *riba* in exchange transactions and have far-reaching implications in respect of business activities in Islamic framework. Later jurists have extended the scope of this kind of *riba* to other commodities on the basis of analogical reasoning (*qiyās*) and the '*illah* (effective cause) of prohibition.

Exchange rules are different for different contracts and types of assets. Assets could be consumables, durables, monetary units or medium of exchange like gold, silver or other currencies, shares representing pool of

assets, etc. Goods other than monetary units are traded on market based pricing. Gold, silver or any monetary units (*athmān*) are governed by specific rules that have been discussed by jurists under the caption of *bai' al-ṣarf* (sale of *athmān*). Usufruct and services are covered by rules of *ijārah* or *'ujrah* (leasing/hiring of services). Loans and debts are governed by the rules relating to their repayment and assignment.

3.4 Hadiths Theme – II: In case of loan, no excess is to be accepted by the lender

In this context the author has discussed the narrations to mean that a lender should not accept any excess (even in the form of gift) as part of, or with the repayment of the principal. As contended by him, three of narrations on the subject are secondary sources (*Mishkat*, Bukhari's *Tārikh* (history) and Ibn Taymiyyah's *al-Muntaqa*) while the fourth one narrated in Ṣaḥīḥ Bukhari is an *athar* (statements of or reports from the Companions themselves). This to him is at odds with Prophetic practice insofar as he himself offered extra and the lender accepted it; "*how must one reconcile the fact that, in another Hadith, both the receiver and payer of the riba are considered equally guilty*" (referring to Hadith narrated by Abu Sa'id al-Khudri (ra) in Ṣaḥīḥ Muslim about six commodities). It to him is also in contradiction with other Hadiths where the Prophet approved of extra payments in settlement of debts. There are also cases where settling of in-kind borrowing involved better quality than the original. In this context, he has referred to five narrations all implying that giving or taking an addition is allowed. Referring to a plausible explanation of paying extra, he makes an interesting comment: [Some argue that such voluntary extra payment is all right, but not if such extra is stipulated by the lender. However, the reason such argument is invalid is **because riba al-jāhiliyyah, the type indicated in the Qur'an, was not based on stipulated excess. Indeed, riba related Hadiths do not use the term 'loan' (qard) or 'debt'**] (p. 115, emphasis added). This view is *prima facie* incorrect because *riba* in the form of stipulated excess has been excluded from the (*riba al-jāhiliyyah, as perceived by the author*) as indicated in the Holy Qur'an. Below we discuss the issue of *riba al-jāhiliyyah* and the present day interest based system.

3.4.1 *Riba al-jāhiliyyah* and the Commercial Interest

Dr. Farooq's contention: "*Based on the historical practices during the period of revelation, what is definitely prohibited in the Qur'an is known as riba al-jāhiliyyah;*" and that "...it consisted of the doubling and redoubling [of money or commodities], and in the age [of the cattle]", cannot be substantiated from the history and nor from the principle laid down in the Holy Qur'an [But if ye turn back, ye shall have your capital sums: Deal not unjustly, and you shall not be dealt with unjustly.] (Qur'an, 2: 279). *Riba al-jāhiliyyah* according to all such scholars who have been writing in favour of interest was that the lender asked the borrower at maturity date, if he would settle the debt or swap it for another larger debt of longer maturity period. The difference between the maturity value of old and new debt amounted to *riba*.¹⁸ They say that if some charge is added to the loan in the very beginning, it will not be *riba*. This is, however, not correct as a number of forms of *riba* were prevalent in the pre-Islamic period including addition over the loans as also the debts and all of them were prohibited by Islam. It is also misunderstood on the basis of Verse 3:130 that refers to 'doubling and redoubling'. It needs to be noticed that while the author stresses too much on the verse 3: 130 'Devour not *riba* doubled and redoubled'; he does not discuss or explain the meaning of verse 2: 279 that categorically prohibits each and every kind of additions to the principal sum lent (*ra'as al-māl*).

As regards the characteristic of doubling, the 'rate' is a relative term and any rate, over the time, doubles and redoubles the principal; hence any addition over the amount of debt *per se* is prohibited irrespective of the rate.¹⁹ '*Dāera' -e-Maārif-e-Islamia* (Encyclopedia of Islam) has given a convincing argument to clarify this confusion in the following words: Allah says in Surah Al-Mā'idah "and sell not Signs of Allah for a low price" (5:44). Would it mean that selling the Signs of Allah for a high price is permissible? Definitely not! Similarly, the verse 3:130 will not permit one to charge any rate or any thing over and above the principal of a receivable.²⁰ The contention that only doubling and redoubling in a

¹⁸ In addition to the article under review, also see: Ahmad, Qadeeruddin, What is *riba*? The Journal of Islamic Banking & Finance, The International Association of Islamic Banks (Asian Region), Karachi; Jan-March, 1995.

¹⁹ See for details: SAB: Pp.557-564, S H. Zaman, Islamic Culture, January, 1966, Pp.8-12.

²⁰ Daaera-e-Maarif-e-Islamia, University of the Punjab, Lahore, 1973, Vol. 10, p. 172.

specific form is *riba*, could mean that in the present age, no *riba* exists in any well-known country of the world that is *prima facie* incorrect.

It also needs to be noticed that wherever it is mentioned that 'there was only one kind of *riba* known in the pre-Islamic period, it referred to **one category**, i.e. *riba al-nasiah* (effected through increase in debt amount in compensation for time given for payment of the amount) and not one specific nature of transaction. Many types of deals / transactions were covered under this category. Two types of transactions – debt ensuing from a loan or from a credit sale, had always been there and both were included in *riba* if increase was sought on the principal amount of the loan or the price in credit sale. On prohibition of this kind of *riba*, all major religions namely Islam, Christianity, Judaism and Hinduism are unanimous.²¹ The categories as we notice in the Hadith and *fiqh* books namely ***riba al-nasā'*** (effected through deferment of payment in sale, as of gold for silver or Dollar for Riyal) and *riba al-faḍl* (effected through increase without deferment, as exchange of gold for gold, dates for dates, etc) are excluded from this category (also prohibited in Islam on the basis of well-known Hadith mentioning six commodities).²² It may imply that the latter two categories were not considered *riba* in pre-Islamic society of 'Arab.

'*Dāera' -e-Maārif-e-Islamia* has mentioned five types of transactions involving '*riba*'.²³ The element of interest involved in loan / debt transactions of the banks and financial institutions and the borrowing governments, has been considered as *riba al-nasiah* by the '*Dāera*' and overwhelming majority of the scholars and even some of those who had been favouring interest like Qadeeruddin Ahmad (late) who indicated that "the prohibited *riba* was related to loans only and that refers to the monetary benefit that accrues on a debt".²⁴ Even the learned author of the paper under review himself concedes this when he says: [*Commentators describe a pre-Islamic practice of extending delay to debtors in return for an increase in the principal (riba al-jāhiliyyah). Since this practice is recorded as existing at the time of the revelation, it is one certain instance of what the Qur'an prohibits (importance added)*]. Here the '**increase in**

²¹ For details please see (i) Anwar Iqbal Qureshi, 1967, pp. VIII-XXVII; (ii) James Hastings, Encyclopedia of Religions and Ethics, Vol. 12, pp.548-558.

²² Al-Zuhayli, Wahbah; Tr. El-Gamal; Vol 1, 2003; p. 342.

²³ '*Dāera' -e-Maārif-e-Islamia* (Urdu), University of the Punjab, Lahore, 1973, Vol. 10, pp.170-171.

²⁴ Ahmad, Qadeeruddin, *What is riba?* 'Journal of Islamic Banking and Finance', IAIB (Asian Region), Karachi; Jan-March, 1995, Pp. 7, 8.

the principal' is unconditional meaning any addition over the principal of the loan / debt. Regarding this type of interest, *Dāera'* clearly points out that for the last 1400 years none of the *fuqahā* has expressed his difference of opinion.²⁵ The exegetists and other scholars who also term *riba al-nasiah* as *riba al-Qur'an* or *riba al-jāhilīyyah* have defined it as any loan / debt in which debtor is made liable to pay an addition to it for any stipulated time period.²⁶ The *fuqahā* are unanimous that every increase on debt or loan capital that is stipulated between the parties in a loan transaction is *riba al-nasiah* and is prohibited according to Holy Qur'an irrespective of its rate - low or high.²⁷ It is what the author has referred to the belief of a number of Companions: "*Ibn Abbas, one of the major companions of the Prophet and earliest of the Islamic jurists, and a few other companions (Usamah ibn Zayd, Abdullah ibn Masud, 'Urwah ibn Zubayr, Zayd ibn Arqam)* "considered that the only unlawful *riba* is *riba al-jāhilīyyah*" (Saleh, 1986: 27)".²⁸

Hence the difference, if any is with regard to the latter two categories. The same is the case of Imam Ahmad ibn Hanbal (it pertains to category of *riba al-nasiah*) as Dr. Farooq has quoted from Vogel and Hayes, "*Hence Ibn Hanbal, founder of the Hanbali school, declared that this practice - 'pay or increase' - is the only form of riba the prohibition of which is beyond any doubt. (Ibn Qayyim al-Jawziyyah, 1973, 2: 153-154, cited by Vogel and Hayes, 1998: 72-73)* (emphasis added). The words, '**pay or increase**' used both by Hayes (Pp.73, 303) and Imam Hanbal (as reported by both Hayes and Dr. Farooq) in no way reflect the feature of

²⁵ *Dāera'*, Op. cit; p. 176.

²⁶ Jassas, Abu Bakr, Ahmad b. Ali, *Ahkamul Qur'an*; Matba'al Bahiyyah al Misria, 1347 AH. Vol. 1, pp.557-558.

²⁷ i) Ibn-e-Hazm, *al-Muhallah*, Vol.8; Egypt, 1350 AH. pp. 77, 467-68; ii) *Dāera*, op. cit, pp. 172-186.

²⁸ It is interesting to note that while he has referred to Dr. Nabil A. Saleh, he has not quoted the view point of Saleh with regard to modern commercial interest: [Dr. Saleh, while contradicting the viewpoint of Rodinson and Schacht says: "If, then, the reason for prohibition of *riba* was neither political retaliation nor expediency, nor a simple replications of a tenet taught by another religion, nor the result of a distaste for commerce, it was probably .. the outcome of a noble wish to grant protection to the weak against exploitation and at the same time to encourage investors and labourers to combine their resources in joint ventures such as *mudārabah* partnerships.... instead of having recourse to lending money for profit, which was often considered as being ruinous for the borrower, immoral for the lender and therefore unlawful under Shari'ah teachings" (Nabil A Saleh,; 1986, Pp.10, 11). Review on the book of Nabil may be seen at http://islamiccenter.kau.edu.sa/english/journal/issues/Pdf/3/03-Nabil_17.pdf; It clearly reveals that to him present day commercial interest is *riba*, so prohibited.

doubling / redoubling; rather the same refer to any increase in receivable in exchange for more time for payment - *riba al-nasiya*. Difference of opinion, if any, pertained only to *riba al-faḍl*; and that too in case of things other than six commodities indicated in the well-known Ahādith on the subject. Ibn Qudamah, the most renowned jurist of Hanbali Fiqh, concludes in '*Al-Mughni*' that the correct view is that both kinds of *riba* are prohibited as believed by the *jamhūr 'ulamā*.²⁹

Exegetist Ibn Jarir Tabri, while explaining the verse 2: 279, says that the creditors are entitled to only original amount of debt without any addition or profit.³⁰ Further, he explains one form of *riba* resulting from credit sale prevalent in pre-Islamic times: If the debtor was unable to pay in time, he had to pay better animal or extra amount of money or any object of the debt (*tad'if*)³¹, **meaning that doubling was not the only form of loan transactions**. This is evident from the quotation given by Dr. Farooq himself as he reports from Zayd b. Aslam and Imam Ahmad. This 'increase' means anything above the principal debt and not merely doubled or redoubled amount. The Federal Shariat Court (Pakistan) analyzed this argument in its judgment on *riba* and observed the following:

The Court also took into account the viewpoint of some people that it is the interest doubled and redoubled which is prohibited. After discussing the issue at length, the Court decided, "The case is, therefore, not that only exorbitant or excessive rate of interest is prohibited but it includes a small percentage also. The word *riba* as used in the Qur'an is absolute in terms and no attribute or qualification as to its quantity is to govern it, nor it has any credence." (Para: 95). The Court also decided, "It may, therefore, be stated that *riba* forbidden in the Qur'an and Sunnah includes interest due on the loans taken or given for commercial or productive purposes by banks or other financial institutions".³²

It is pertinent to indicate that anxiety shown by the Caliph 'Umar (ra) also pertained to *riba al-faḍl*. Below, we discuss this point raised by the learned author.

²⁹ One may see details in *Al-Mughni*, Vol.6, Hajr lilṭabaah.; Cairo, 1988 and 1992, Pp. 51-59.

³⁰ Tabri, Muhammad Ibn-e-Jarir, *Jamia al-Bayan 'An Taweell-e-Aayatil Qur'an*, Darul Maarif. Egypt. V 01.6, pp.26,27; Also see Ziaul Haque, *Islam and Feudalism*, 1985, pp. 38-41.

³¹ Tabri, op. Cit.vol.6, pp. 7,8 and Vol.7, pp. 204, 205.

³² See in the '*History of the State Bank of Pakistan*', Vol.3, (1988-2003); Chapter 14; p. 832.

3.4.2 Confusion: Caliph ‘Umar’s Doubt / Anxiety about *Riba*

Dr. Farooq has also indicated that ‘*even second Caliph ‘Umar, one of the closest Companions of the Prophet, regretted about the insufficient guidance on this matter from the Prophet*’. However, if we review the entire material on the issue, it clarifies the position. ‘Umar the Great (ra) had not even the slightest doubt about prohibition of *riba al-nasiah* that is involved in all types of modern commercial laws.³³ The ambiguity expressed by him related only to *riba al-faḍl* in the commodities other than those mentioned by the Holy Prophet (pbuh). It has no similarity or concern with the simple act of lending money or the present institutionalized form of interest. The book of Hadith that reports the doubt of Caliph ‘Umar also reports from him that “Certain forms of *riba* are quite clear and explicit and we have no doubt about them”.³⁴ Research scholar Dr. Ziaul Haque quotes from Kanzal-Ummal: [‘Umar ibn al-Khaṭṭab said in an address that the people were confused as to the different forms of *riba*. He told them that some of its forms which were common in the agricultural districts of Egypt, were well known: advancing of loans in the form of younger animals to be repaid after some time in the shape of older animals or sale of green crops/raw fruits for grains or ripe fruits; or the sale of gold on credit to be repaid in silver].³⁵ This reveals that Caliph ‘Umar had clarity of mind even in respect of many barter transactions. Dr. Ziaul Haque is of the view that controversy arose as to the actual meaning of that *riba* which accrues in buying and selling of various goods. After territorial conquests of Islam, the regions having more developed agriculture like Egypt, Syria, Persia and Mesopotamia had deep-rooted usurious and speculative agricultural practices which extended from loans/credits to sales/exchange of many types.³⁶

On this basis the scholars believe that there was no ambiguity or confusion about interest involved in lending and borrowing of money or the loan agreements during the period of Companions and the early jurists. ‘Umar the Great knew very clearly the Qur’anic prohibition of charging interest for the loan of money. The case of enlargement of its scope, if exists as opined by the author, relates only to *riba* involved in mutual

³³ SAB, SLR (2000): Pp.539-543.

³⁴ Allauddin al Muttaqi, Kanzul Ummal, No.4969; Also see ‘*Dāera*’, op. cit, pp.176,77.

³⁵ Ziaul Haque, Islam and Feudalism: The Economics of *Riba*, Interest and Profit; Lahore, 1985; P.30.

³⁶ *ibid*, pp.21, 22.

exchange of commodities. It needs to be mentioned that he has not quoted observations of scholars showing clarity to Caliph ‘Umar and consensus of the whole ‘Ummah on prohibition of interest on debt and referred only to the confusion.³⁷

It may be noted that if we accept that only the stated form of *riba* was there, even then the conventional system of time-based compounding of debt clearly falls in that category. Interest on loan/ deposits as in case of conventional banks’ operations is rather worse than the form of *riba* which was charged only when the borrower was not able to return the loan at maturity, as the present day interest is charged in both the beginning when the transaction is executed as well as in case of over-due.

3.5 Hadiths Theme – III: Extending a gift to the creditor [Whoever pays more or takes more has indulged in *riba*.]

Analyzing Ahādith on this theme Dr. Farooq contends that “*a lender should not accept any excess (even in the form of gift) as part of, or with the repayment of the principal*”. He has quoted many narrations in this regard. What he wants to make out is that “*reports that disallow lenders to accept any extra amount are at odds with the Prophetic practice insofar as he himself offered extra and the lender accepted it Why would the Prophet forbid lenders to accept any extra, while he paid extra?*” He refers in this context to the Hadith regarding six commodities, “*...He who made an addition to it, or asked for an addition, in fact dealt in riba. The receiver and the giver are equally guilty.*” to derive his view about contradiction in Hadiths and may be, permissibility of interest.

Repaying a loan in excess of principal but without any explicit or implicit pre-condition is established from the Sunnah of the Holy Prophet (pbuh) as a number of instances rightly given by the learned author. It is actually in line with the immense emphasis in Sharī‘ah on the duty of the debtor to repay the debt in time and without any procrastination. It is in this context that the Holy Prophet (pbuh) said, “Best of you are the best in returning your debts”. But it’s not contradictory with prohibition of

³⁷ ‘Dā‘era’, op.cit, pp.174-177; It is pertinent to observe that even according to the “narrowed” scope of Rib a, which is not accepted by the *jamhur* ‘Ulamā, payment or receipt of excess as explicit or implicit condition is included in *riba*. Moreover, giving up the doubtful acts or transactions is recommended by the Holy Prophet in the following words: (دع ما يريبك إلى ما لا يريبك) as reported by Muhammad Amin al Shanqiti, Adwa-ul-Bayani Idahil Qur’an-e-bil Qur’an, Al-Matbi’alAhlih, Riyadh; Vo1.1, p.320.

interest. Similarly, such references do not allow to legalize payment of interest on loans or to frame a system of extra payment over the principal as gift. If the excess amount has been stipulated or becomes a condition of the loan contract, it will turn the contract into a usurious one. It is according to the *fiqhi* principle of '*al m'arroof kal mashroot*'.³⁸ Imam Bukhari, while captioning a chapter on gracious repayment of loan in his *ṣahih* reports from Ibn 'Umar that excess payment is permissible if not stipulated or does not become a part of the contract. An institutionalized form of gift and the practice with preconceived notion of addition, even if un-determined will involve *riba*.³⁹

Therefore, if any transaction of loan involves explicit condition in the form of customary rates as in banks, or implicit condition e.g. in the form of return equivalent to GNP's nominal growth rate, it will be against the accepted Sharī'ah principle. We reproduce below two transactions as reported in Hadith literature in favour of the above viewpoint:

- a) As reported by Imam Bukhari, Abu Burdah says, "Abdullah b. Salam said to me, "You live in a country **where *riba* is rampant**; therefore, if someone owes you something and he offers you some amount of barley, fodder, etc. as a gift, don't accept it as the same amounts to *riba*". (as quoted by the author as well) The writers of '*Dāera*' interpret this piece of advice in the way that such gifts might have become so '**Customary as to become a part of the contract**'.⁴⁰
- b) A person owed someone 20 *Dirhams*. The debtor presented a number of gifts to the creditor from time to time-who used to sell them in the market. When the sale proceeds of the gifts reached 13 *Dirhams*, the creditor asked Abdullah ibn Abbas about the *Sharī'ie* position of the contract. He advised the creditor not to take more than 7 *Dirhams*.⁴¹

A related issue is that of the well-known dictum '*Jarra*' meaning that all loans from which any benefit is derived and sought with explicit or implicit consent of the creditor – if creditor wishes or there is expectation that the debtor may pay more - it will become usurious. It conveys the benefit that accrues as the result of an active pursuit or hunt for it; and

³⁸ '*Dāera*'. op.cit pp. 173-74.

³⁹ Bukhari, *ṣahih*, *Kitabul Istiqrād*.

⁴⁰ Bukhari, *ṣahih*, Chapter on Manaḡib-e-Abdullah b. Salam; Noor Muhammad (Publisher), Karachi, 1961, 539; *Dāera*' op cit, p.173.

⁴¹ As reported by '*Dāera*', op.cit, p.174.

applies to those benefits which are intentionally sought and recovered from the debtor according to a plan, custom or as a condition of the transaction. Thus, we will have to differentiate between the two cases of payment by the debtor, one out of his free will and the case where it becomes customary that some gift or extra amount is paid to the creditor. While there was no such custom in reported cases where the Holy Prophet (pbuh) or the Companions (ra) paid extra, the customary practice has been reported in the other case, so prohibited to receive / offer gifts. So, the author is not correct in perceiving that “*there is no provision to differentiate between loans with ‘stipulated’ excess and voluntarily paid extra*”(p.113).

It is also pertinent to note that the features of the present banking and financial system, wherein the return / benefit is sought and recovered as a plan, are such that the ‘commercial interest’ is not covered under the category of ‘gift’. We can safely conclude, therefore, that any addition to the principal amount of loan even as a gift, taking the form of a system shall fall under purview of *riba*.

3.6 Hadith Theme – IV and V: Barter/Trade except spot transactions or likes (in quality or quantity) of certain commodities is prohibited

Under this heading the author intends to criticize the well-known narrations about exchanging six fungible (*mithly*) commodities that pertain to *riba al-faḍl* and that could be used as money / medium of exchange. He has reported Ahādith from a number of Companions, mostly taking evidence from Iqbal Suhail (see at pp.119-123), about exchange procedure of these commodities. But he has mixed the concept of barter trade with mutual exchange of gold, silver, wheat, barley, dates and salt wherein the same item or the genus with same ‘*illah*’ is the counter value of exchange. While barter might take place mainly in case of heterogeneous goods (though in broader sense, exchange of items of the same kind could also be termed as barter), the Hadith under review pertains mainly to *mithly* goods in terms of their genus and / or ‘*illah*’ and the features of this prohibited exchange are different from the barter trade in general that is permitted in Sharī‘ah.

In respect of many such narrations, the author claims that some part(s) of Hadiths were added by any narrator in the chain of narrators. [*However, as Suhail (1999: 63-69) has convincingly shown in his book What is riba? the addition is not from the Prophet.* (p.119 and at other places)] Actually, the derivation by Suhail is based on his presumption / surmise: [*as the*

Holy Prophet lived a simple life, so he did not accept the transaction by Bilal (ra) for taking one measure of better dates with inferior dates; Suhail, p 55]. He assumed this simply to make out that addition taken in exchange of similar goods is not *riba* and to reject the explanation provided by other Ṣaḥih Hadiths. Readers can judge how convincing it is. Should one believe in Ṣaḥih Hadith of the Holy Prophet (pbuh) or on the surmise of ‘broadminded’ authors? It is strange, rather *prima facie* incorrect, that to Mr. Suhail, Shah Waliullah Muhaddith Dihlawi (rh), *too, mentioned the same reason for non-permissibility of muratalah.*(p.55) *Murātilah* has nothing to do with exchange of dates for dates as the case under discussion [Bilal (ra) exchanging for the Holy Prophet two *sā’* of lower quality dates with one *sā’* of better dates]; *murātilah* a sub-set of *bai’ al-ṣarf*, refers to exchanging gold / silver; different from *bai’ al-ṣarf*, a broader term, which means exchanging gold / silver or any currencies with other *athmān*. In both cases only hand to hand exchange is allowed. Referring to Shah Waliullah in this context is his illogical assumption. It is further interesting to note that Dr. Farooq has added the words [this type of transaction, namely] with *murātilah* out of his own surmise (p.123); the same are not written in Suhail’s manuscript.

Dr. Tahir Mansuri, in his review on the book by Iqbal Suhail, rebuts Suhail’s assertion in the following words:

“He also asserts that the words of *riba* occurring in the narration of ‘*Ubadah ibn Samit* such as “*Man zada aw istazada fa qad arba*” (whoever increased or sought an increase committed *riba*), are the addition from the narrator and not from the Prophet (pbuh). The author holds the same opinion regarding all other Ahādith in which the words: “whoever increased or sought increase” have occurred. While attributing this part of Hadith to the narrators, **the author has not provided any proof or authority for this.** ... There is no disagreement among the jurists that *riba* also takes place in the barter transaction of two commodities of the same kind. The prohibition of *riba al-faḍl* is established by a large number of authentic Ahādith. There is no basis for the claim that these Ahādith do not have legislative status, nor in there any persuasive evidence to show that the words “*Man zada aw istazada fa qad arba*” occurring in these Ahādith are additions of the narrators of those traditions and not those of the Prophet (peace be on him)”.⁴²

⁴² Mansuri, 2001, Pp. 163-165.

As regards the view point of Iqbal Suhail, with regard to prohibition of *riba al-faḍl*, Dr. Tahir Mansuri says:

“There is no disagreement among the jurists that *riba* also takes place in the barter transaction of two commodities of the same kind. The prohibition of *riba al-faḍl* is established by a large number of authentic Ahādith. There is no basis for the claim that these Ahādith do not have legislative status, nor is there any persuasive evidence to show that the words “*Man zada aw istazada fa qad arba*” occurring in these Ahādith are additions of the narrators of those traditions and not those of the Prophet (peace be on him)” (p. 164).

Similar to Mr. Iqbal Suhail, Dr. Farooq has untenably assumed the accretion or insertion in narrations [*Any reference to riba involving prohibited transactions in Khaybar must have been a later accretion or insertion because, according to authentic Hadiths, the last revelation in the Qur'an was about riba*]. Referring to the conquest of Khaybar and the last revelation about *riba*, he contends that “*no riba-related prohibitive injunction could be connected to the incidents in Khaybar*”. As regards the time of prohibition of *riba*, although some indications of displeasure against it were given in the Makkah period, but the express prohibition was imposed sometime before the battle of 'Uhad in year 3 A. H.⁴³ The Holy Prophet (pbuh) declared at the time of conquest of Makkah, “Every form of *riba* is cancelled; capital indeed is yours which you shall have; wrong not and you shall not be wronged. Allah has given His Commandment totally prohibiting *riba*. I start with the amount of *riba*, which people owe to my uncle Abbas and declare it all cancelled. He then, on behalf of his uncle, cancelled the total amount of *riba* due on his loan capital from his debtors”.⁴⁴ Final and repeated prohibition, that also resolved the of issue of payment of accrued *riba* between Banu Thaqif and Banu 'Amr Ibn-al-Mughirah of Taif, came in year 10 AH about two weeks before the passing away of the Holy Prophet (pbuh).

Author's assertion here is: “....why did other Hadiths of the same incident make no reference to *riba*? In some cases, the narrator of a Hadith reports only a part of the whole narration, may be because of the reference to the context. But, the author has used such narrations to create

⁴³ Ibn Hajar Al-Asqalani, Fathul Bari, (commentary of Ṣaḥih al-Bukhari), Makkah, 1981, Vol. 8, p. 205; Also see: SAB Judgment, SLR, 2000; Justice Taqi Usmani's Part; Paras. 11-24; and Ayub, 2007, Chapter 3 (2.1.1).

⁴⁴ Tafsir Al-Khazin, vol.1, p.301.

confusion in Ahādith although the same might be categorized as authenticated by the jurists in general. For example, the rules of exchange of gold, silver or monetary units are well known - an exchange of gold for silver, etc is *riba* except hand to hand (or spot) transaction and there is almost consensus in this regard among the jurists. Similarly, in order to create doubt, the author has raised such point referring to narrations from Ṣaḥih al-Bukhari, like “*The Prophet forbade the selling of gold for gold and silver for silver except if they are equivalent in weight, and allowed us to sell gold for silver and vice versa as we wished...with his personal observation that there is no mention of spot/hand-to-hand restriction*” (pp. 117-118) as in other narrations on the subject to prove that as the condition of spot or *hand to hand* exchange is not indicated here, all such narrations might not be correct to give sound verdict. On the other hand, referring to a narration from *Mu’waṭa* Imam Malik, “*an exchange of gold for silver is riba except hand to hand (or spot) transaction*” he opines that there is *no mention of equivalence in weight as a restriction*. It is absolutely clear that gold cannot be exchanged for the equivalent weight of silver and hence, there might not be need to mention the equivalence in weight. But the author has raised the issue just to make a point.

An eminent research scholar, Professor Dr. Murat Çizakça, in his book, “*Islamic Capitalism and Finance*”, describes the prohibition of *riba al-faḍl* in the following words:

“..... since it is nearly impossible to measure the exact value of the goods exchanged in barter, any such transaction may involve an element of unjustified enrichment. It is probably based upon such concern that Prophet Muhammad (pbuh) discouraged barter while encouraging monetized trade. ..The Prophet does not prohibit the barter of like-objects outright but makes it entirely unpractical and almost meaningless”.

As regards exchange of the items of the same genre, say, silver for gold, which is permitted subject to prompt delivery, Professor Murat contends that “there could be change in relative value of goods in question if deferred payment is allowed. Since this would lead to an unjustified enrichment for one of the parties, prompt delivery condition is imposed.”⁴⁵

⁴⁵ Murat Çizakça; “*Islamic Capitalism and Finance: Origins, Evolution and the Future*” INCEIF, Kuala Lumpur, Malaysia; p. 43 – 45.

3.7 Hadith Theme – VI: Transactions involving products (or commodity money) of composite but separable components

Under this heading, the author has discussed the Hadith reported in Ṣaḥīḥ Muslim on sale of a necklace of gold and pearls wherein the Holy Prophet advised that “jewellery must not be sold until the contents have been valued separately.” The jurists have discussed separation of various items like iron sword with gold handle to explain the rules of *bai‘ al-ṣarf* and to avoid the doubt of *riba al-faḍl* as far as possible. But, as usual, here also the author appreciates Suhail for his unique observation (out of his surmise that the *mujahids* were carelessly selling the booty from Jews of Khybar,) that “no Hadith about this particular incident or transaction is traceable to *riba*” (P, 126). It is against the established view of all *muhaddithīn* and jurists who relate the incident to *riba al-faḍl*. Further, the author rejects the Hadith under discussion as the same is not *mutawātir* according to his criteria. Issues relevant to this theme have already been discussed.

4. The Issue of ‘Illah in Prohibition of Riba

Qiyās is no doubt a secondary source for resolution of the new issues by analogical derivation on the basis of ‘*illah*’ as also *hikmah* from the principal texts (*nuṣuṣ*) of the Sharī‘ah and the consensus decisions already made by *jamhūr ‘ulamā*. Jurists have used *qiyās* with regard to *riba al-faḍl* particularly for exchange of commodities other than the six commodities identified by the Holy Prophet (pbuh). The author reports the following question by *zāhirīes* (a sect of *muhaddithīn* who emphasize acting upon the apparent meaning of authentic Ahādith without any *t’awīl*; *Ibn Hazam*, the author of great book “*Al Muhalla*” is the most eminent of them]: “Why only these ‘six commodities’ were named? There were other things also that were bartered in ‘Arabia both in kind and on credit, such as, camel, sword, armour, clothes etc.” Similarly he says, ‘Why the Holy Prophet did not mention the (edible things) like meat, vegetables, fruits, milk?’

Despite much difference about ‘*illah*’ for prohibition of *riba* among classical *fiqh* schools, the contemporary jurists have reached the decision that edibility and being a monetary unit (*thamaniyah* - the word ‘*valuability*’ as used by the author and Suhail does not seem to be proper translation) are sufficient to determine the nature of any contract. It conforms to the views of eminent *muhaddith*, the commentator of Ṣaḥīḥ Muslim, Imam al-Nawawī. Accordingly, the Islamic Fiqh Council, AAOIFI and other relevant bodies have taken decisions regarding all

modern day commercial transactions including FOREX business and the financial derivatives. The most of the transactions in the financial system in vogue are covered under *riba al-nasiah* or *ribal al-faḍl* (in exchanging gold / silver / monetary units). As regards the edible goods or '*arūḍh*', these are exchanged with money. Hence, it should not be a big issue these days because of the mone-based exchange, but the author has discussed the aspect of '*illah*' in detail and made effort to raise objections out of his surmises.

Referring to *measurability* and *weighability*, the two '*illahs*' according to *ahnāf*, Dr. Farooq reports Suhail making much uncalled for comments, "*The logic here is this: all crows are forbidden and all crows are black, so the black colour is the reason for prohibition!* (Suhail, 1999: 88).

The characteristic of being fungible (*mithly*), meaning that the same are available generally in the market and could be used for payment, seems to be the best feature determining the prohibition, as Malikis opine with regard to gold and silver (unit of account and store of value – having the property of being currency (*thamaniyah*) or the medium of exchange. Accordingly, I made a humble effort while writing "*Understanding Islamic Finance*" (John Wiley; 2007) to reflect a consensus opinion among the contemporary jurists in the following words:

"According to the rules of exchange of monetary units (*bai' al-ṣarf*), if any article of the species of price is sold for an article of the same kind, the exchange must be at the spot (without delay) and the articles must be equal in weight. In this context, the jurists have held lengthy discussions keeping in view the two types of '*illah*' that play effective role in the exchange: one, unit of value (*thamaniyah*) and the other, edibility. The commentator of Ṣaḥīḥ Muslim, Imam al-Nawawī has summarized these rules in the following way:

- a) When underlying '*illah*' of the two goods being exchanged is different, short fall/excess and delay both are permissible, [e.g. exchange of gold for wheat or Dollar for a car].
- b) When commodities of exchange are similar, excess and delay both are prohibited, [e.g. gold for gold or wheat for wheat, Dollar for Dollar, etc].⁴⁶

⁴⁶ The nature of transaction must be kept in view; this prohibition is for the business or sale transactions. Non-remunerative contracts ('Uqūd -e- Ghair Mu'āwaḍah) like *qard* and *dayn* are exempt from this rule.

- c) When commodities of exchange are heterogeneous but the ‘*illah* is same, [as in the case of exchanging gold for silver or US Dollar for Japanese Yen (medium of exchange) or wheat for rice (the ‘*illah* being edibility)], then excess/deficiency is allowed, but delay in exchange is not allowed.

In the present scenario, the major ‘*illah* on the basis of which one may apply the rules of *riba* to other commodities by analogy is their being of the nature of money. There is consensus among the scholars that rules of *riba* would apply to anything that serves the functions of money. It may be gold, silver, any paper currency or IOUs”.⁴⁷

It is absolutely clear that as the commodities like camel, hides / skins / leather, meat, vegetables, fruits, milk, etc are not fungible; they cannot serve as money; rules of *riba al-faḍl* will not be applicable in their mutual exchange.

As regards the issue of ‘*illah* and *hikmah* (rationale), the issue that Dr. Farooq intended to discuss is: [should one accept the tenet for prohibition of *riba* taking it as a commandment of the Almighty without finding out the rational (*hikmah*) for the same, or he / she should know the rationale first and then obey the order]. The fact of the matter is that all tenets of the Shari‘ah are based on solid rationale(s). It is human beings who may or may not understand; it is also possible that *hikmah* for a specific issue might not be clear at a specific time, but the human beings might understand the same in future / coming times. The renowned juristic schools are unanimous that God’s commandments have to be accepted regardless of whether the human beings are able to understand the rational at a particular point of time or not. For example, it could be much difficult to believe in the past that, as described in Surah al-Kahf (18:49), on the Day of Judgment (*qiyāmah*) everyone would see before him / her whatever big or small he / she did in the life; but the ability in the form of computer chip as we see today, tends to prove that when man is able to preserve data / records so judiciously, the Creator, the Almighty, has unlimited power / authority to keep record of every one of His creature for its accountability. So it is easier and more rational to believe the Qur’anic verse. In the write-up of Maulana Taqi Usmani, Dr. Farooq has not taken notice of the words ‘visible in a particular transaction, [‘... *regardless of whether the philosophy of the law is or is not visible in a particular transaction*]. It simply means that *hikmah*, *ẓulm* (injustice) might not be

⁴⁷ Ayub, 2007;Chapter 3, p. 58.

visible to a person for any particular transaction at a particular time for any reason, but the man must accept the commandment of God because all His commandments are based on solid *hikmah*.

Although the problems created by interest have become quite visible, many people are still not able to understand, or they do not try to understand, that the interest based system in vogue leads to injustice to any of the parties to contracts – the financiers or the fund users; and that is the ultimate rationale for its prohibition as per Islamic principles. Dr. Farooq has rightly referred to the verses of Qur'an that categorically call for justice as one of its hallmark principles and values. It is, however, strange that he is unable to understand that to remove injustice with any of the parties, interest has to be removed / replaced with any suitable institution. Keeping in view all relevant texts and the principles of Islamic law, the convincing rationale is that of (distributive) justice because the prohibition of *riba* is intended to prevent the accumulation of wealth in a few hands, that is, it is not to be allowed to "circulate among the rich" (Holy Qur'an, 59:7). To qualify injustice, some wrongly differentiate between interest and usury. The distinction between 'usury' and 'interest' in this context is meaningless. Any rate i.e. above zero, would lead to exploitation in the long run as it can be witnessed in the case of developing countries where all economic problems happen to be the direct result of interest based system –heavy budgetary deficit, inflation along with recession, high debt servicing, low level of savings and unemployment. What might be considered a reasonable rate today may be regarded as 'usurious' tomorrow? And what may be 'usurious' today, may be treated as just 'interest' tomorrow because of inflation rate prevailing in an economy. The distinction between interest and usury is made just to deceive mankind and allow the same old robbery in a more presentable form⁴⁸. Therefore, the major purpose of *riba* prohibition is to block the means that lead to injustice with any of the parties and ultimately the accumulation of wealth in the hands of a few, whether they are banks or individuals. Hence, as contended by Dr. Farooq (p. 137), the principle of "no excess over the principal (of a loan or a debt)" as advised by the Qur'an is viewed in line with the consideration of "*Deal not unjustly, and ye shall not be dealt with unjustly*", both of which have been indicated in the same verse.

Law has to be enforced keeping in view the available facts and testimony by the witnesses. Similarly, a transaction (sale, for example) has

⁴⁸ Ayub, 2007; Pp. 54-57.

to be enforced keeping in view the ‘Offer & Acceptance’ by the parties – none can say to the judge that he / she was making fun, was not serious while entering into the transaction, so he would not give or get delivery of the subject matter or make the payment. Both groups – Hanafi, Shafi‘i / Maliki and Hanbali – are positive and reach the same ultimate result. While the real *hikmah* is best known to the Almighty, the matters among the people will be decided on the basis of the law and proved by the evidence. Referring to the great jurist *Al-Shaṭībī*, reported by the author as saying, “*one should not look to the motives and objectives of the injunctions. A believer should surrender himself to the will of God. The divine injunctions, are, in fact, the manifestation of the divine will*”, Dr. Farooq terms it as a “*religious dogmatic mindset*”. It is his personal view against that of the *jamhūr ‘ulamā* and the scholars and public in general.

The general view of the conventional economists has been that interest plays an important role in promoting savings, investments and economic development. However, as many renowned economists differ, it is not the case in real sense and the ground reality indicates the reverse. The level of savings in an economy is determined by a large number of factors - the rate of return on savings being just one determinant. Income level in any economy, pattern of income distribution, rate of inflation, stability in the economy and fiscal measures of the Government are much more important than the role of interest in savings and investment. Similarly, the conventional view that borrowing enhances productivity and capacity to repay is not true. Many economists have been pointing out for long the harmful impacts of the institution of interest on the national and global economies.⁴⁹

Wayne A.M. Visser and Alastair McIntosh of the Centre for Human Ecology have described the extensive history of the critique of usury and come to the conclusion that the present global economic system is more usurious / interest-based than ever before. In their opinion, the reasons cited in the critique of usury seem more pressing and relevant now than ever. “In particular, it is the belief of the authors that individuals or organisations in the West with money to invest, especially those which like to consider themselves as being ethical, might have rather more to learn from Islam than is generally acknowledged. But first, society needs

⁴⁹ For details: See: James Robertson, *Future Wealth: A New Economics for the 21st Century*, Cassell Publications, London 1990, p.130,131; Ayub, 2007; Pp. 54-57.

to be re-conscientised to the relevance of the age-old usury debate in modern times”.⁵⁰

As regards Dr. Farooq’s criticism on the Islamic finance in vogue and particularly the ‘*power alliance of wealth and shari’ah scholarship*’ this author as also all well-wishers of Islamic finance movement accept that there is urgent need for reforms, and measures have to be taken forthwith. But, the failures or the idiocy of any of the stakeholders particularly the product developers, Sharī’ah advisors and the practitioners should not lead to the notion that interest is not prohibited. A misdeed practised by an individual, a nation or even by majority of the human beings will not become morally acceptable; neither is such reasoning compatible with Islamic principles. Otherwise it would mean that the issue is taken up from the opposite angle with intention of changing the tenets of the Qur’an and Sunnah to make them compatible with one’s own whims and perception.

5. Conclusion

The Holy Qur’an and the Sunnah have explained the connotation of *riba*. Qur’anic verses on *riba* pertain to loans and debts. The Hadith extends the point in the Qur’an to cases that fall in the domain of trading but are, technically speaking, special cases of exchange. The jurists have further explained *riba* in the light of the relevant Ahādith of the Holy Prophet (pbuh) to decide Sharī’ah position of business and financial practices at any times. According to this principle, any increase over the principal amount of a loan/debt against nothing but time is *riba*. As a logical corollary to this, the Sharī’ah has prohibited all benefits accruing to a person without any labour, risk, or expertise. Any person who wishes to earn profit on his investment must bear the loss or damages accruing to the business where his capital has been used. Thus we conclude this critique with the following points:

- a) Qur’an gives a solid principle on the basis of which validity of the transactions can be decided;
- b) Ahādith help in defining *riba* and its application to business and financial transactions; Abdulkader Thomas may not be right in saying that *riba* is defined by (six) Hadith, but he is right in saying that the efforts of the jurists and examples / instances discussed in Ṣaḥīḥ Ahādith guide us to determine a clear idea of what is *riba* and which type of transactions are covered in its purview;

⁵⁰ Wayne A.M. Visser and Alastair McIntosh (1998), pp. 175-189.

Also: http://www.alastairmcintosh.com/articles/1998_usury.htm#_ednref3

- c) At the time of the revelation of Qur'an, many types of *riba* based transactions were prevalent; increase on debts ensuing from a loan or from a credit sale took a number of forms – all covered under *riba al-nasiah*;
- d) *Riba al-faḍl*, and if we categorize it further, *riba al-nasā* is also prohibited to ensure prompt delivery by the both parties to an exchange of the stipulated counter value(s) of fungible (*mithly*) goods useable as medium of exchange, as the deferment from any party could lead to an unjustified enrichment for one of the parties and loss for the other;
- e) Anxiety shown by the second Caliph 'Umar (ra) pertained only to exchanging other than six commodities as indicated by the Holy Prophet (pbuh) and required giving up even the doubtful exchanges or transactions to avoid *riba*;
- f) *Ijma'* with regard to the definition of *riba* is genuine and accepted by all jurists / scholars, except few whose views have been fairly rejected by the *jamhur 'ulamā*;
- g) The ultimate rationale for prohibition of *riba* is removal of injustice; the principle of “no excess over the principal (of a loan or a debt)” as advised by the Qur'an is viewed in line with the consideration of “*Deal not unjustly, and ye shall not be dealt with unjustly*”; the difference with regard to '*illah*' is just for application / implementing the prohibition; the '*illah*' of excess claimed over and above the principal is certainly based on the *hikmah*; but that would be decided keeping in view certain parameters;
- h) Deficiencies or lack of proper care in Islamic banking practices should not mean that interest is not prohibited as per principles of the Sharī'ah.

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