

## **Book Review: The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan written by Justice Muhammad Taqi Usmani**

On 14 November 1991, the Federal Shariah Court (FSC) of Pakistan gave its judgement that interest in all its forms is *riba* and strictly prohibited by the holy Quran and Sunnah. The Supreme Court (SC) of Pakistan gave the verdict on 23 December 1999 to uphold the FSC judgement confirming the rejection of the interest-based economy of Pakistan. The SC suggested some measures and parameters to the government for expunging interest from the economy and financial sector of Pakistan by 30 June 2001. The Text of the Historic Judgment on Interest Given by the Supreme Court of Pakistan is a book to provide an overview on prohibition of *riba* and it is a landmark verdict given to uphold the above mentioned principle. The book consists of the text that was originally written by Justice Muhammad Taqi Usmani, who was the member of Shariah Appellate Bench together with Justice Khalil-ur-Rahman, Justice Munir A Shaikh and Justice Wajeehuddin Ahmad. The judgment contained a comprehensive discussion on *riba* and the other main issues involved in the abolition of *riba* in the economy of Pakistan.

Generally, the prohibition of *riba* is commonly known among many people. However, not everyone has a clear understanding on how it started and why is it prohibited. Most people know that *riba* is prohibited and the practice of it will not lead in favor of Allah SWT. However, the implementation of non-*riba* transactions is hardly practiced in our modern financial system. In general, this book will answer the earlier questions by providing the reader with evidences as well as relevant examples which are associated with the current practice in our modern financial era.

On the whole, the book provides the reader an insight into the interpretation of *riba* according to the Al-Quran and Sunnah. Firstly, as this book is supported by relevant Quranic verses and evidence, therefore, it delivers clear understanding on *riba* based on the several Quranic verses. The first Quranic verse that mentions *riba* is Surah Al-Rum verse 39. It was took place in Makkah and the verse stated that when people practice *riba*, even though it (*riba*) will increase their wealth, in sight of Allah SWT it (*riba*) did not change anything. In contrast, if they pay for Zakah, it will be rewarded by Allah SWT. The book mentions that this simply means that the practice of *riba* is not in favor of Allah SWT. Despite this, there are a few comments from other scholars that the *riba* stated in the verse is referring to usury or interest. It said that it is meant as gift offered by someone with the intention of having greater returns later.

After that, the next verse in regards to *riba* is Surah Al-Nisaa verse 161, however, the exact time of the verse is difficult to ascertain. The previous verse before Surah Al-Nisaa verse 161 mentioned about the list of evil deeds of Jews. They used to take *riba* which was prohibited for them. Most of the Jews had left Madinah after 4th year from Hijrah. It is believed that *riba* in the verse was referring to usury or interest because it was really prohibited for the Jews. This prohibition is still contained in Old Testament of the Bible and among the verses are Deuteronomy 23:19, Psalms 15:1, 2, 5, Proverbs 28:8, Nehemiah 5:7, Ezekiel 18:8,9, and Ezekiel 22:12.

Next is Surah Ali Imran verse 130, the verse was revealed sometime in the 2nd year after Hijrah because the context of it refers to the battle of Uhud. This verse contained a clear prohibition for Muslim and it is said to be the first verse in express terms to forbid the practice of *riba* for Muslims. In the event of Uhud battle, the invaders of Makkah had to finance their army by taking usurious loans and this may induce Muslims to do the same thing too. It may induce the Muslims to arrange for arms on the same pattern by taking usurious loans from the people. In order to prevent them from this approach the verse was revealed containing a clear-cut prohibition of *riba*.

Subsequently, the last verse with regards to prohibition of *riba* is verse 275 – 281 of Surah Al-Baqarah. This verse was revealed after the conquest of Makkah, which based on when the tribe of Thaqif had claimed the amount of *riba* outstanding toward Banu Mughirah. Among the snippets of the verse that indicated the seriousness of *riba* prohibition are the exclamation that those who practice *riba* will not stand on their own unless being possessed by the Devil and they will claim that trading is similar to *riba* which is in contrast with the order of Allah in permitting trade. Besides, the people who are ignoring the prohibition of *riba* even after acknowledging on it will be in put in hellfire and they will remain there forever. On top of that, for those who still insist to disobey, they will counter the declaration of war from Allah and His Messenger. This explanation is more than sufficient to demonstrate the high degree of intensity in *riba* prohibition.

Another point that has been discussed in this book is on the meaning of *riba*. Actually, there is no specific elaboration on *riba* that had been recorded, however, according to Imam Abubakar al-Jassas, *riba* that is known and practiced by the Arabs was that they used to advance loan for a certain term with an agreed increase on the amount of the principal advanced. He also mentioned that *riba al-jahiliyyah* is a loan given for stipulated period with a stipulated increase on principal payable by the loanee.

In the other hand, according to Imam Fakhruddin al-Raazi, *riba al-nasihah* is also one type of *riba* practiced by the people of Jahiliyyah when they used to give money with a condition that they will charge a particular amount monthly and the principal will remain due as it is. Then on maturity date, they demanded the debtor to pay the principal. If he failed, they would increase the term and payable amount.

There is an argument about *riba al-jahiliyyah* on whether the practice of Arabs is the *riba* stipulated in Quran or not. The *riba* stipulated in Quran is the transaction in which no increase used to be stipulated at the time of advancing a loan. However, if the debtor could not pay the principal amount at the time of maintaining, the creditor used to offer two options either to pay principle or to increase the amount in exchange of additional terms. Here, we can conclude that *riba al-jahiliyyah* is the *riba* related to loan or debt transaction.

Another type of *riba* that occurs during commercial transactions is called *riba al-fadl*. *Riba al-fadl* is referring to certain barter transactions which might lead the people to indulge in *riba*. This was illustrate in the hadith, “*Gold for gold, silver for silver, wheat for wheat, barley for barley,*

*date for date, salt for salt, must be equal on both sides and hand to hand. Whoever pays more or demands more (on either side) indulges in riba*". Here, we can identify that the Prophet (pbuh) mentioned about the six *ribawi* items which are gold, silver, wheat, barley, date and salt together with the conditions to transact it. The Prophet (pbuh) felt that, given the commercial atmosphere at that time, the Arabs used the mentioned *ribawi* items as a medium of exchange to purchase other things. Therefore, the Prophet (pbuh) foresaw that certain deal might lead to *riba* and hence to be in line with Islamic teaching, certain conditions on transaction involving the *ribawi* items must be met.

Next, the book also mentioned about the cause (*illat*) of the prohibition of *riba*, namely, *zulm* (injustice). It stated that *riba*-based loans have a persistent tendency in favor of the rich and against the interests of the common people. It carries adverse effects on production and allocation of resources as well as on distribution of wealth. Among the effects are evil effects on allocation of resources, evil effects on production, evil effects on distribution, and expansion of artificial money and inflation. However, due to the complexity of our modern system, this book also mentioned about the doctrine of necessity in regards to *riba*.

During the judgment, there was an issue brought up by Mr. Siddiq AlFarooq, the Managing Director of House Building Finance Corporation (HBFC), who argued about the Quran allowing to eat pork in the case of extreme hunger. The idea was that the *riba*-based system has now become a universal necessity and no country can live without it. As a matter of fact, a country saddled in debts and projects depending solely on loan will definitely invite *riba* in the picture. Therefore, the practice of *riba* is inevitable since it is globally practice and thus it should be allowed because of necessity.

There are certain criteria expounded by the Muslim jurists in the light of the Quran and Sunnah to determine the magnitude of necessity and the extent to which a Quranic command can be relaxed on the basis of an emergent situation. Therefore, before deciding an issue on the basis of necessity one must make sure that the necessity is real and not exaggerated by imaginary apprehensions and that the necessity cannot be met with by any other means than committing an impermissible act. When analyzing the case of *riba* in the light of the above principles, there is a great deal of exaggeration in the apprehension that the elimination of interest will lead the economy to collapse. For a realistic analysis the consideration of domestic transactions and the foreign transactions must be done separately. On top of that, the alternatives of *riba* financing through profit and loss sharing and *musharakah* financing has also been mentioned in the book. Therefore, to position the practice of *riba* in line with eating pork during the case of extreme hungry under the flagship of necessity is not acceptable.

Another issue that has been discussed is the major difference between the secular capitalist system and the Islamic principles. Under the former system, loans are purely commercial transactions meant to yield a fixed income to the lenders. On the other hand, Islam does not recognize loans as income-generating transactions. They are meant only for those lenders who do

not intend to earn a worldly return through them. Instead of that, in Islamic concept the money will be offered either on humanitarian grounds to achieve a reward in the Hereafter, or merely to save their money through a safer hand. As far as investment is concerned, there are several other modes of investment like partnership which may be used for that purpose. The transactions of loan are not meant for earning income.

By taking everything into account, the book is a must-read book to know the basis about *riba* in detail. The case that was brought into the Supreme Court of Pakistan definitely had brought lots of wisdom to enable further research and write up in regards to *riba*. This book, for instance, serves many people in providing better understanding by providing interpretation of ‘*riba*’ term according to Quran and Sunnah, basis of *riba*, consumption loan and commercial loans, classification and types of *riba*, elaboration about *riba al-jahiliyyah* and *riba al-fadhl*, modern financial system and the necessity of it and *riba* in modern financial system. These perhaps can benefit the *ummah* at large in understanding and practicing the right order.