

7. COMMERCIAL INTEREST AND USURY

In the 17th century, two new technical terms of interest emerged after the establishment of banking system. They were commonly divided into:

1. **Commercial Interest:** Interest paid on loan taken for productive and profitable purposes.
2. **Usury:** Interest paid on loan taken for personal needs and expenses.

The Background of Both Types

The present day banking system, which has given interest moral and legal license, is the backbone of the prevalent form of capitalism.

When Muslim countries became subjugated to the west in their economic fields, some westernized Muslims in the 19th century saw the increasing progress of the west in trade and industry and on the other side saw the shattering economic condition of fellow Muslims states. They also became conscious of the fact that banking is inevitable in the field of trade and industry not only on national level but also internationally. This prompted them to say that only usury is illegal but not commercial interest because rendering commercial interest illegal would pose irresolvable problems to their industrialization and economic progress. They only included usury in the term Riba as categorically prohibited in the Quran and Sunnah and freed commercial interest from it calling it totally different from the western concept of interest. Therefore, it was concluded that the prohibition of Riba was restricted to usury while commercial interest was perfectly Islamic.

There are two schools of thought on this issue. A detailed analysis of their arguments is discussed as follows:

1. First School:

This school presents two arguments to support their point that only usury (not commercial interest) is prohibited in Islam:

Argument 1

“Riba as practiced during the days of the Prophet (Allah bless him and give him peace) was only Usury.”

Counterargument

This claim is groundless since Islam, when prohibiting something, does not only prohibit the prevalent form but all forms that might arise in future. The changed state does not change the ruling for example, the Quran has prohibited the following:

- a) Liquor (Khamar): During the time of the Prophet (Allah bless him and give him peace) its form and the way of production was totally different from that of present day liquor but the ruling remains unchanged even though the form has changed.
- b) Pork (Khinzeer): Irrespective how clean the present day breeding of pigs in hygienic farms may be, pork will stay prohibited and cannot be rendered permissible.
- c) Immorality (Al Fahsha): Although many sophisticated ways have been developed to engage in immoral behaviour since the time of the Quranic revelations prohibiting it, the ruling stands forever.

The same applies to interest and gambling. By claiming that it was in a different form during the Prophet's (Allah bless him and give him peace) time does not change its ruling. It remains unchanged just as in case of Khamar, Khinzeer and Al Fahsha.

Argument 2

“Commercial interest did not exist in the days of the Prophet (Allah bless him and give him peace).”

Counterargument

This claim is also wrong. If one studies the Islamic and pre-Islamic history of Arabia, it will be evident that the interest type at that time was not restricted to usury but loans were granted for commercial and profitable purposes. To quote some examples:

- a) “The tribe of Umro bin Aamir used to take interest from the tribe of Mughairah. At the advent of Islam, Mughairah owed heavy interest to Umro bin Aamir.” In this narration, the transaction of interest between 2 tribes of Arabia have been pointed out who actually operated as trading companies; both tribes were very wealthy. Could it be that 2 wealthy tribes transacted interest just for personal need and expenses? The interest was simply commercial!
- b) The history of the city of Ta'if tells us that it was only second to Makkah in trade (their main exports being liquor, raisins, currants, wheat, wood etc) and industry (major being leather and dyeing). The tribe of 'Saqeef' (Jewish tribe) advanced cash on interest, not only to the natives of Ta'if, but the business community of Makkah as well such as the tribe of Mughairah who were their permanent customer. This advancement, which was not only restricted to cash but also to commodities between the wealthy tribes of Taif and Makkah who were usually traders and businessmen, was only for their commercial purposes and not for their consumption and personal needs. One of the ways of receiving interest was to double the principle amount plus interest in case of a non payment of loan and this practice was applied to both cash as well as commodities. They had become accustomed to it.

At the time of signing the peace treaty with the people of Ta'if, the Prophet (Allah bless him and give him peace) imposed the following conditions: i) Total elimination of interest based transactions. ii) Giving up of interest owed to and from them.

- c) The practice of making 2 trade trips, one to Yemen in winters and the other to Syria in summers was started by the tribe of Quraish of Makkah. These trips proved to be very profitable especially since being custodians of the Kaa'ba, the Quraish were looked at with respect, granted special concessions, and protected in transit which was a necessity at that time. In this way business and trade became their only means of livelihood. Investment became the order of the day in which women also took part and its circulation flourished and multiplied. With this background in mind, one can easily visualize that the city of Makkah more or less became a clearing house and a banking city. It was only natural that interest was available. Since they advanced cash for commercial purposes and charged compound interest in the case of default by the traders, and this earning of interest was their trade, they argued when the Quran rendered interest illegal, that the transaction of interest based loans is a type of trade in which the return on capital can be earned as in the case of rent received from assets. They could not differentiate between excess in the shape of profit during a trade and excess in the shape of interest at the time of the repayment of a loan.
- d) Therefore in pre-Islamic days, we see that Syedna Abbas bin Abdul Muttalib and Syedna Khalid bin Waleed formed a company with joint capital whose prime business was cash advancement on interest. Similarly, Syedna Usman was one of the wealthy businessmen who lent money on interest. There were many other traders dealing full time in interest extending a network of interest based transactions.
- e) The way Syedna Zubair bin Awwam, who was famous for his trustworthiness, operated was quite similar to that of the modern banking system. People used to deposit with him their capital as an Amanah (trust or security). However, Syedna Zubair used to make it clear to the depositors that he would accept the deposits as a 'loan' and not as 'security' (Amanah). Because he knew that he will not be fully liable according to the Shariah in case these Amanahs got destroyed but in case of having them as a loan, he will be fully liable to pay them back. He was afraid that in case of losing any deposited amount, his image as the trustworthy caretaker would be damaged. He therefore used the term 'loan' for such deposits to ensure guaranteed payment so that he could enjoy everyone's confidence in him. Another reason for using the word 'loan' was to legalize trading and earning profits on such deposits. Because if he got those deposits as an Amanah, he could not utilize it for his business, as it is not permissible in the Shariah to use an Amanah. This clearly shows that borrowing in those days was not only for consumption purposes but for commercial purposes. Syedna Zubair left a will with his son Syedna Abdullah bin Zubair before he died to sell his property to repay the loan, if required. The total amount calculated after his death for repayment by his son was 22 lacs. It is obvious that a rich Sahaba such as Syedna Zubair did not owe this loan of 22 lacs out of any need; rather it was an investment of securities that was circulating in trade.

Another Clear Argument

Syedna Abu Hurairah narrated that the Prophet (Allah bless him and give him peace) said, "He who does not abandon Mokhabara, will be caught in a war against Allah and His Prophet (Allah bless

him and give him peace).” In this narration the Prophet (Allah bless him and give him peace) has rendered Mokhabara illegal just like Riba and has declared a war against those who indulge in it just like Riba.

What is Mokhabara?

It is actually a division of the crop by agreement between the landlord and cultivator in which the landlord gives his land to the cultivator for cultivation purposes in order to get his pre-agreed amounts of the crop irrespective of whether the production is low or high. For example, A lends his land to B for cultivation on the condition that he will get a predetermined portion on each crop, for example 5 tons. Such a transaction is called Mokhabara.

The Prophet (Allah bless him and give him peace) had called Mokhabara a form of Riba. Now one should think over whether he referred to usury as the form of Riba or he referred to commercial interest. It is similar to commercial interest as both Mokhabara and commercial interest are used for productive businesses. Whereas in the case of usury, the borrower uses the loan for personal use and not productive purposes.

To sum up, the Prophet (Allah bless him and give him peace) included Mokhabara in Riba yet it has no similarity to usury, rather is similar to commercial interest. The fact that during the Prophet’s (Allah bless him and give him peace) time, dealing in commercial interest was common is proven and also that this form is prohibited.

2. Second School:

This group present two arguments justifying their point of view that are mentioned below:

Argument 1

The factor leading to the prohibition of Riba is that if a borrower faces a loss, he still has to pay an excess amount over the principal, which is basically an exploitation of his need whereas the lender gets an increase on his surplus capital without any effort which is unjust. But this factor is not found in commercial interest since both the borrower and the lender get profit; the borrower on the amount he has circulated in his business and the lender in the shape of interest over his principal amount. Therefore, no one faces unfairness or injustice in this transaction.

Counterargument

This argument is quite appealing and attractive at face value as it is based on the assumption that no one suffers in case of commercial interest. But after analysis, it is proven that the Quran has not only prohibited that one party faces a loss and the other gets profit but has also prohibited one party getting confirmed profit and the other party unconfirmed profit from the same investment as we have studied above in the case of Mokhabara.

Argument 2

This argument is based on the Quranic verse, “O believers do not devour one another’s possession wrongfully; rather than that, let there be trading by mutual consent” (Al Nisa, verse 29). In the above verse, Quran has prohibited “wrongful devouring” which will only arise if the consent of one of the parties is absent and naturally the party who is devouring consents, the other party never consents; he only gives in since he has no other option. So we come to the conclusion that if the consent and satisfaction of both parties is present in a deal, it cannot be called “wrongful devouring.” According to this logic, commercial interest is permissible since the mutual consent is present of both parties whereas Riba is prohibited only when one party is getting the excess out of his selfishness and the other party is encountering the loss, as he has no other alternative.

Counterargument

This argument is of superficial nature. Mutual consent is not the criteria to render anything prohibited or not in Islam. Would the act of adultery be allowed if the condition of mutual consent is fulfilled? Similarly, there are many transactions in business, which are rendered illegal even with mutual consent. For reference see “Abwab ul Buyu al Batila” where Muhaqila and Talqi al Jalab are forms of Bai where the mutual consent and satisfaction is present and is prohibited by the Prophet (Allah bless him and give him peace). Similarly, mutual consent is present in commercial interest and gambling too but in spite of that, it has been prohibited. Therefore no such criteria exist in the legality of any transaction that both parties must approve; rather the approval should be on the transaction which has not been prohibited by the Shariah. To quote the words of Quran “Except the legitimate business...”