

Islamic Banking System in the Light of Sharia and the Contemporary Fatwa

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Abstract

Banking, undeniably, is a landmark feature of modernization which casts its impact across the globe. The conventional banking is interest-based (Riba oriented); whereas, interest (Riba) is strictly prohibited in Islam. A majority of the Muslims feels restricted because of their sensitivity towards interest. A number of Islamic scholars and intellectuals have tried to augment a transformation of the conventional banking into an interest free banking system which is known as Islamic Banking. However, many Islamic scholars do not agree with it and oppose it. It develops a situation of ambiguity and ambivalence about Islamic Banking for the Muslims. This paper explores the religious and rational issues related to the evolution of Islamic Banking. This research concludes that the existing Islamic Banking is not entirely Islamic but it is a great step towards introducing interest free banking based on Islamic principles. This analysis has been made through the jurisprudential evaluation of the Islamic principles of trade and economy, permanent Islamic laws, and moral Islamic laws regarding financial matters. The research highlights the significance of Islamic Banking for synchronizing the Islamic religious and financial theory and practice. This is a qualitative study based on the teachings of the Holy Quran and Sunnah.

Keywords: Islamic Banking, Riba, Temporary Law, Permanent Law, Moral Law, Trade

1. Introduction

The Islamic Banking system exists not only in Pakistan but also in Europe, America, and in many other non-Muslim states in the form of Islamic Banking Window Operations. The conceptual basis of conventional banking model can be traced back to the medieval Roman Empire which got different forms over time but the current banking

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system is shaped after capitalistic model in the seventeenth century (Hoggson, 1926). The conventional banking system thrives on interestbased finance structure whereas Islamic banking concept uses a different set of tools and products. According to the Oxford Dictionary of Islam, “Islamic Banking is interest free banking inspired by Islamic Law. It includes Mudhrabah, Murahabah, Ijarah and Musharkah.”

In the last few decades, Islamic banking and finance is a growing market in the whole world, and during the last 15 years, its growth became double (Abdul-Rahman, 2011). The emergence of the Islamic banking among the already existing banking systems in the world, no doubt, is the result of sincere efforts of the contemporary Islamic scholars. But at the same time, the 9/11 incident and its aftermaths had a catalytic effect in diverting the attention of the modern world towards Islamic Banking. After 9/11, the Muslims became more mindful of the interest-based economy and it was imminent that a good number of Arab investors would withdraw their investment from the conventional banking system that would have negatively affected the American Economy. Therefore, the US think tanks realized that the Muslims want such a banking system that is free of interest. With the help of the Muslim Scholars of the world, the Americans laid the foundation of Islamic Banking Window Operation to avoid the withdrawal of huge money of the Muslim Investors from the US banks. In the last quarter of the 20th century, many theories of Islamic economics were brought forth in the institutions.

In practice, The Islamic principles of economics were used as the basis to establish Islamic financial departments (Islahi, 2008). According to the empirical values, Bourkhisa and Nabi (2013) examined that 72 % of the Muslims were not taking part in financial transactions because of their sensitivity towards interest; whereas they were financially capable enough to invest. This attitude invited Muslim intellectuals and scholars to bring a change in the trend of banking through Islamic law of business contracts (Ahmad, 1995). It is still a debate whether Islamic banking is interestbased or interestfree (Chong & Liu, 2009). Siddiqi (1983) also highlighted that Islamic banking is not free of issues. There are also contributions in academia which highlight the risk in Islamic Banking (Abedifar, Molyneux, & Tarazi, 2013).

In the contemporary era, banking system sustains as an inevitable soul of economic system but in Islamic domain, it stands on both poles:

permission and prohibition. Islamic Banks hold fatwa on permission. The contemporary fatwa on prohibition of Islamic banking seems rigid. Jamia Uloom ul Islamia issued fatwa for the prohibition of Islamic banking by criticizing the arguments for permission (Rufaqa, 2009). This research explores the nature of contemporary fatwa in order to analyze the role of Islamic banking in the light of Sharia.

Though it is a widely perceived notion that the present Islamic Banking system does not fully follow the Islamic principles, yet it seems plausible that this system may gradually evolve into a Banking System that fulfills all the conditions of an ideal Islamic Monetary System.

The present paper addresses a fatwa on Islamic banking that declared it impermissible and against the teachings of Islam. Written on very broad spectrum, this paper first challenges the outright declaration of Islamic banking as Un-Islamic. Then a discussion on Islamic principles of permissibility or impermissibility of a certain thing is presented followed by a mention of prosperity, scarcity and abundance of resources according to the teachings of Islam. Afterwards, the paper points to the rules of removal and diversion in the evolution of an institute. Perspectivebased Islamic principles of economics are defined afterwards. A necessary and a detailed discussion on the Islamic principles of trade and *riba* (interest) has also been included with conclusion and further research avenues in the last part of the paper.

As mentioned above, the present paper was initiated as a response to a fatwa that gained attention of the masses in Pakistan through electronic and print media in 2008. The fatwa stated that the then present Islamic Banking was illicit and *Haram* because the author of the fatwa was of the view that there was no difference between Islamic banking and the prevalent general banking. It was also reported in the news that the scholars from *Wafaqul Madaris Al'arabia* also rejected this form of banking as illicit. Consequently, after this fatwa, a disappointment about the Islamic banking prevailed in the society at all levels that had the following reasons:

1. The scholars who complemented this Islamic Banking system also belonged to the *madaris* that were affiliated with the *Wafaqul Madaris Al'arabia*; therefore, this fatwa in its basis was partly invalid because of some suspicious reasons which affected the decision as there is a famous proverb, "if the former is false then the latter will also be false¹".

2. If this fatwa from some scholars of Wafaqul Madaris Al'arabia was issued only by a few without consulting most of other scholars from Wafaqul Madaris Al'arabia, its explanation must have come through print and electronic media.
3. Understandably, if there had been some misreporting by the media, then it must have been cautioned and issued a warning and the fatwa must have been re-published. It never happened. Silence on this issue shows that this fatwa came forth after a superficial reading and is a casual statement.
4. This fatwa declares present Islamic Banking System Haram overall because it seems identical to the conventional banking system; whereas, Islamic banking cannot be declared Haram overall in general.
5. Things are declared "Haram" either in general or on the basis of research. The scholars are well aware of the fact that on the issues related to the concepts, the orders of prohibition (Haram) are applied in parts and not in general as a whole.
6. No law of the land, in itself, is ultimate in this world. The laws have been evolving and changing according to the contexts and times in this world. Therefore, in the above-mentioned fatwa, to present something as the ultimate/absolute law on the obvious things is shocking.
7. In the above-mentioned fatwa, the Islamic Banking System has been taken as the full Islamic system on the whole. Whereas, an average person knows that Islamic Banking System is not the complete Islamic System; it rather is a product and a part of that larger system.
8. This fatwa has fully neglected the optional and essential conditions necessary to issue a fatwa in general.
9. This fatwa neglects to consider the conditions and incidents; whereas, the sharia always considers the conditions and incidents of the time and space.
10. This fatwa has been released in a hurry. Some muftis and scholars have committed this blunder in the past as well; an obvious example of which is the access of the man to the moon. Landing on the moon, firstly, was declared a direct interference into the Divine things. But, when it was finally established that the man really had landed on the moon, the scholars had to refer back to their previously erratic conjectures by getting to the divine law that Allah has surrendered everything to the man.

11. Another bad thing about this fatwa is that it declared a thing forbidden and Haram, but the scholars haven't presented its alternate that is a normal case when a certain thing is declared prohibited.

This paper impartially addresses the above-mentioned points in the light of Shariah. This paper considers the necessity of the Islamic Banking and its importance in the present era with an historical perspective taking in account the concept of evolution of a system in attaining maturity. According to the Islamic teachings, Allah does not try human beings beyond their tolerance level. At the same time, Islam follows a certain method for inculcating a sense of good and bad, reward and punishment in its followers by telling what is prohibited simultaneously providing its alternative as to what is permissible. It seldom leaves the believers with prohibitions only. The following part of the paper will amplify these concepts.

After creating this universe, Allah Almighty deployed Adam as His vicegerent on this earth and at the same time, He gave a yardstick of tribulations beyond capacity in the Holy Book:

“and Allah does not try a person beyond his capacity” but at the same time, “he was guided for both the paths”³. The human being was told by Allah that he is not a slave of the fate rather his actions are deliberative. Allah also declared His will, “and He doesn't like the attitude of thanklessness for His slaves”⁴. Along with all this, He also indicated the vastness of His knowledge of the human beings, that some would be fortunate and others unfortunate: “So, some of them would be fortunate and some would be unfortunate”⁵.

Allah created good and evil and made them a yardstick of a human being's success and failure respectively. The same way, the division of day and night was also established. He said, “And the night has been made to take rest, and the day has been made for earning”⁶.

Counting on the above-mentioned realities, had the human being been ordered to stay indifferent to this world and its problems, this would have been like trying a person beyond his/her capacity. Therefore, Shariah not only forbade adopting a hermitic life style but also admonished the people who adopted it. “... and monasticism, which they invented; We had not ordered it for them”⁷. At the same time, the Quran also mentioned such people who deceive the fellow human

beings under the garb of a hermit and diverted the people from the right path.

“O People who believe, no doubt a number of the scholars and the monks gobble the property of people without justice and distract [them] from the path of Allah⁸”

The Holy Prophet Muhammad (PBH) also denounces the concept of hermetism as he said “there is no room for hermitism in Islam”⁹.

It is worth noting that when Shariah decrees man to abstain from an action, it always suggests an alternative also. Therefore, at one side Rahbaniah (hermitism) has been prohibited and on the other hand, man has also been prohibited to indulge in the worldly affairs overwhelmingly. “following a middle path is the virtue¹⁰”

So, it was declared: “In this way, Allah gives clarity to you through the verses [of revelation] that you might give thought, in this life and the Hereafter¹¹”.

This part of the paper introduces the concept of prosperity according to the teachings of Islam. The prosperity of a society is based on peace and economy. Both these issues are so important that Hazrat Ibrahim (AS) mentioned them in his prayer: “And [describe] when Abraham sought, “My Rub, establish this city as secure and bless the people of this city with fruits¹²”. Allah Almighty granted the prayers of Hazrat Ibrahim (AS) and blessed the Quraish as mentioned in the Surah AlQuraish: “Their habitual security [in] the trips of winter and summer¹³”. They were made to travel in summers and winters because economy depended on agriculture, trade and commerce.

Allah’s wrath comes in different forms on a defiant society and worst of these forms is economic deprivation. So, Allah mentions the same type of wrath as a result of staying away from His Zikr (remembrance): “And whoever turns away from My remembrance - indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind¹⁴”.

The same way, when a nation’s repentance and pray for forgiveness is granted, Allah promises prosperity and progressive economy as a reward of repentance. “And said, ‘Ask forgiveness of your Lord. Indeed, He is ever a Perpetual Forgiver. He will send [rain from] the sky upon you in [continuing] showers¹⁵”.

So the rain from the sky is a sign of fertility and vegetation as a result of which the economy certainly improves and the drought is vanquished. Rasool Allah's (SAWW) saying related to the hunger and poor economic conditions narrates that meager circumstances give birth to all types of evil that man perpetrates "Kufr¹⁶⁷".

When the people of the tribe Quraish disbelieved the prophethood of Hazrat Muhammad (SAWW), Allah reminded them of His blessings that were in the form of economic prosperity. As Makkah is not an agricultural land, the Quraish used to go on business expeditions twice a year. It has been mentioned earlier that the economy of a country depends on agriculture and/or commerce and trade. Agriculture was not possible for the Makkans and the conditions for the trade were not suitable either. It was quite plausible that the Quraish might have died of hunger and drought. But Allah made people love the Quraish and they were attracted towards them. So, the trade caravans of the Quraish used to travel to and from Yemen and Syria safe and sound and would earn profit enough to sustain satisfactorily. No economic system of the world can claim to eradicate full poverty. And if a system claims so, it is nothing more than a mere argument. This is all because Allah Almighty has mentioned the law of scarcity and plenty in the Holy Quran. Rasool Allah (SAWW) also set the outflow and inflow of Islamic treasury by various types of zakat for capital (dinnar and dirhum), animals, minerals, crops and running business (Al-Qaradawi, 1999). The world economy has followed this law by and large.

Having established the concept of prosperity in the teachings of Islam, the paper now will discuss the concept of evolution of human institutions that give people set of values to follow. The coming part of the paper will also give concept of trial, reward and punishment with respect to spending the financial resources.

It is appreciable that the banks and other financial institutions have started seeking guidance for carrying out their business affairs according to the principles laid down by Islam. This thing is in its initial phase and criticizing them at this stage is not a good idea because taking a step to avert prohibitions and Haram may not be immediately possible because of the inevitable circumstances. All the systems in this world have attained maturity after passing through evolutionary phases. Shah Wali Ullah Muhaddith Dehalvi, in his various seminal writings, has mentioned the Theory of Evolution as well. It can be assumed very

safely that all the systems of this world are the indications of the Evolution Theory.

Now let us have a look at the different teachings of the Holy Quran regarding the “Rizq”:

- i. “Have they not seen that Allah extends livings for those He wants and restricts livings for those He wants. Indeed, there are great signs for the people who believe”¹⁷.
- ii. “Say, “No doubt, my God extends livings for whom He wants and restricts it for whom He wants, but a number of the people do not understand.”¹⁸.
- iii. “And the reality is that your God extends provision for the people He wants and restricts it for the people He wants. No doubt, He is watching His servants in which situation they live.”¹⁹.
- iv. “Allah extends livings for whom He wants of His people and restricts for whom He wants. No doubt, Allah has entire knowledge of all the things”²⁰.

These verses show that scarcity and plenty of providence for the people is not because of the presence or absence of some economic system. It rather is from Allah almighty because, as declared in the Quran, this world is a place of trials and tribulations for the believers (Mominen): “Do people intend that they will be left without asking if they say “We believe” and they will not be tested? Although, indeed We have tested the people whole live before them, and Allah will certainly test who work with truth, and He will certainly put to test who work with false and lie”²¹.

Hence, it is obvious that trial of the people who enjoy the plenty of fortunes lies in their practices whether they spend this wealth as defined by Allah or not. Such people are asked to do many things like giving alms, charity, help, and donations to the needy people. In this way, both the haves and have nots are tried. It is mentioned in the Quran, “And co-operate in righteousness and piety”²². On the other hand, the deprived people are tried to check whether or not they thank and praise Allah in this condition. Whether or not these people hold fast, the virtues of patience, honesty, reliance on Allah, and a total submission to the will of Allah? As soon as a person violates these laws, the law of divine accountability comes in action and his good times are changed to bad times. Such changes of times and phases for a man are very obvious and universal. Allah's Messenger (ﷺ) says, “The person

who makes a mosque for God, He would make a house for him in the Paradise similarly”²³. “If you will be thankful then I will certainly extend favor for you”²⁴. So, a person who gets lost in the deluding joys and attractions of the world and forgets his duties falls a prey to various strife and sufferings.

After knowing the laws and rules of Allah Almighty about plenty and limitation, we ought to know the economic complexities prevalent in the society. Allah has placed more challenges than resources for testing the human beings.

Allah says, “Do people intend that they will be left without asking if they say “We believe” and they will not be tested?”

Consequently, dearth of resources and plenty of problems give rise to the economic problems. The trial of the human beings would not have been possible, had there been unlimited resources in this world. The trial is possible only if problems are more than resources. These problems have been there in all the eras of mankind but these have been different in nature. In order to fulfill the human needs in every era and period, different systems have been in place. Even in the time of unusual tribulations when the people altered the sharias and deviated from the actual shape of the religion, they had some alternate system. Sometimes, there have been additions and omissions to the actual religion but the prophets didn’t change these systems altogether fully after the announcement of prophethoods rather they presented the alternate of the things that had been against the Shariah of that time. Where the religion had deviations in the form of additions and omissions, they restored it to its pure form . In other words, the prophets adopted a method for reformation that was based on the two techniques: Azala (Removal) and Amala (Diversion).

Of these two methods of correction, mostly Removal remains in focus of the religious scholars and the masses. It is quite logical that after removing all the shortcomings and bad things, an alternate must be presented. This can be interpreted as the term individual identity a man has two inherent characteristics: good and evil. Therefore, one technique of correction is that all the bad characteristics are washed out of the man and the good characteristics are nurtured instead. This technique requires great effort; whereas, in Diversion technique lowly placed characteristics are diverted to good deeds and the result is positive. An example of the diversion is quoted by Syed Manazir Ahsan

Gilani (1990) that if a flood alert is issued in some locality and a great catastrophe is feared of the flood, the dams and barrages will have to be built so that excessive torrential rain water should be stored and used afterwards. But, if facility of such dams is not available, then it would be a folly to sit and see the disasters being incurred by the flood. Logically, a man should go for the Diversion method so that the flood should be channeled to a place where no water is available and the land is dependent on the rainfall for irrigation and is infertile due to non-availability of water. As a result, the impending catastrophe of flood after exercising Amala (Diversion) will become positive and fruitful.

If we talk about the qualities the human beings are granted by Allah Almighty, some qualities like love and kindness are categorized as good and some like anger are listed as evil. Allah has asked to shun the evil qualities but in some places instead of abolishing anger, He diverted its direction towards those who are the enemies of Islam. Both the examples have been elucidated here.

Allah described, “Muhammad is Allah’s Messenger; and the people who are with him are brave against the people who are nonbelievers, and they are merciful to believers”²⁵.

The mentioned Quranic verse clarifies how instead of abolishing altogether the anger, it has been diverted to the enemies of Islam. Same way, another evil quality of humans which is enmity, sometimes, has been omitted through removal and sometimes is channelized through diversion.

Allah says, “No doubt, Satan is your enemy; therefore, consider him as your enemy”²⁶.

The discussion on removal and diversion was necessary before an overarching example should be presented related to strategic management system reforms and then an exclusive individualized example should be presented that is related to Personal Management reforms and in the third step, the same rule should be evaluated in economic perspective that relates to the financial management system reforms.

Now let us see Removal and Diversion rules in Islamic Economic System. Example of the making of Pakistan is good case to cite here. The books on history are replete with the role of the Muslim League in making Pakistan. Let us look at some of these realities, it would be

fruitful. After the founding of Pakistan, Quid-e-Azam's two speeches are to be seen.

“ The Quran is a complete code of life, it provides for all matters: religious or social, civil or criminal, military or penal, economic or commercial: it regulates every act, speech and movement from the ceremonies of religion to those of daily life, from the salvation of the soul to the health of the body, from the rights of all to those of each individual, from punishment here to that in the life to come; therefore, when I say that Muslims are a nation, I have in my mind all physical and metaphysical standards and values” (NA Debates, 1949).

“You are free; you are free to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion, caste or creed—that has nothing to do with the business of the state”²⁷.

The first speech clarifies the objects of the Muslim League behind the creation of Pakistan. It is our dilemma that we value the extracts from the platform of Muslim League after 1940, but we neglect the evolutionary factors before 1940. It is a fact that since its inception and in early years Muslim League was not an Islamic party nor was it a big political party that would represent all the Muslims of united India by advocating their problems. It rather was a pressure group.

“The Muslim League successfully followed Sir Syed Ahmad Khan's policy of loyalty to the British rulers in politics; the league was dominated by interest groups of landlords, lawyers and the westernized Muslim elite who founded the league and they were quite rich. Khalid B. Saeed in “The political System of Pakistan” makes the observation about the founders of the league (Shafiq, 1987).

Hence it can be established that Muslim League in its initial period worked as a pressure group that represented upper class Indian Muslims rather than advocating the problems of all the Indian Muslims by large. These upper-class Indian Muslims introduced an economic system that took us to follow a capitalist economic system. Now in this context, if an alternate economic system, be it the Islamic Banking System, is being put forward, the Law of Removal will not work. Therefore, the Law of Conversion is the possibility that is ultimate which can be a first step towards removal. The argument that the prevalent Islamic Banking System is totally against Sharia and is illegal

could have been acceptable only in a context that we have available all opportunities and factors at the time of introducing this Islamic Economic System.

Now after the discussion of Azala and Amala, it is necessary to know that the teachings of Islamic economics are based on the concepts of unity and equality according to which all the human beings are equal by birth. No man is superior to another human being on the basis of colour, race, nationality or language. According to Islam, a person, whatever is his tribe or origin, has certain fundamental rights and every other human being also has the same rights and nobody is superior to him/her. Those fundamental rights are as below:

1. Right to protect life and property
2. Right to self-independence
3. Right of ownership
4. Right of equality

So, the above mentioned four fundamental rights of human beings are protected in Islamic teachings.

Islam is a universal religion; therefore, it protects the above mentioned four fundamental rights of a human being when we look at the Islamic teachings related to commerce and business. Three dimensions of Islamic teachings related to economics are worth-mentioning:

1. Those Islamic principles which are based on justice have the status of permanent and real laws and these are necessary to be followed and an Islamic government is responsible for their enforcement and protection.
2. Those principles which are based on Generosity and kindness and have ethical and persuasive origin.
3. Those Islamic economic principles which are related to unfavorable circumstances and expedience and become short-term laws.

The former of the above mentioned principles is the one which makes Islamic economic system better than other economic systems . It means that when a comparison is made between Islamic and other economic system, it is made on the basis of the first mentioned type of the principle.

Unfortunately, the three types of Islamic economic principles have been mixed so much in the writings that when an impartial economist goes through such writings, he is confused about what Islamic Economic Principles actually are and why an Islamic Economic System is better than other systems? Difference of opinion exists among the Islamic scholars on the economic principles related to the issues of tenancy, an individual's ownership of land and accumulation of excessive wealth. Some scholars declare these issues Islamic and some others declare these Un-Islamic. Had the Islamic Economic Principles and their types and inherent differences been studied deeply, there would have existed no difference and confusion about Islamic Economic principles. The paper explains these types with the help of examples so that the difference of these principles may be clarified.

I.I The Islamic Economic Teachings that have the status of the Real and Permanent Laws based on Justice:

According to the Islamic teachings, Riba (Sood or interest on an amount) is totally prohibited (haram) in any form or purpose no matter the borrower took this for "sarfi" point of view or "ghair-sarfi" point of view as riba is defined as: "that is a conditioned loan wherein time-period has been fixed and in this time period, more than the actual loan is demanded"²⁸.

HazratAli (RA) narrated a Hadith: "Every loan that has a purpose of interest is Riba"²⁹

The Holy Prophet Muhammad (PBUH) declared in his Last Haj Address:

"Riba (Interest) is Haram (prohibited) and first of all, I cancel the Riba that belongs to my uncle Abbas bin Abdul Muttalib"³⁰.

Now this emerged as a permanent law related to the prohibition of Riba based on reality and justice. This is one of the basic principles of Islamic teachings and this is the very law that will distinguish Islamic Economic System from the other Economic Systems that whatever the circumstance and conditions of loan are, Riba is prohibited. The Holy Quran mentions:

"Allah has permitted business (sale and purchase) and prohibited Riba"³¹

Now let us see the Islamic Economic Principles that have the status of ethical obligations based on Generosity and Kindness:

The first example in this context comes from the life of the Holy Prophet Muhammad (PBUH). When he had borrowed a loan and the lender would ask for the return of the debt, he used to return the actual amount alongwith some additional money but this additional money would not be settled in advance. He said: “Best of you are those who do better in paying the debt”³².

This quality of returning the loan in a better way is possible only when a person has the appreciated qualities of humanity and he has the ethical values to the best and is perfect as to the moral training and character since the lender does not asks for more than the actual amount of the debt but the borrower is returning extra amount all by himself that comes under “Ihsaan”. One must remember that this appreciated shape of paying the debt back is not the principle of Islamic Economic system. Rather this is a part of the Islamic Ethical Teachings. As a result, applying this ethical teaching on economic system as its fraction can be fatal instead of being an usher of progress and welfare. This doesn't mean that ethics are not the part of Islamic Economic System, rather in general if action of a person lacks ethical values, sometimes that is ignored but sometimes, he is cautioned to adopt ethical values as well and sometimes he is made to follow the ethical values also. In other words, it can be concluded that a general and specific relation is found among Islamic economic and banking system and ethics where Islamic Economic system is general and ethics are specific.

Second example relates to the quantity of profit. The limits of profit are not defined in Islam. If a person sells something for 100 rupees; whereas, its actual cost is one rupee and the subject matter is from valuable wealth and is not the part of non-valuable wealth, then 99 rupees are his profit because it has the characteristics of, “exchange of valuables with consent”³³.

Earning this much profit on an article can be an ethical crime as it is possible that this article may not be present in the market and the purchaser may need it badly but the Islamic Economic teachings are silent in such circumstances. The only exception to this is that market has gone short of this article because of hoarding.

1.2 Islamic Economic principles Related to Unfavorable Circumstances and Expedience and Become Short-term Laws:

Short term laws of convenience can be understood from the life of the Holy Prophet Muhammad (PBUH). He prohibited certain types of trade but those types of prohibitions may be temporary or permanent. If these faults or defects are present, such trade will be impermissible and vice versa. Imam Tirmizi (RA) has written a full chapter, "Meeting with the owner of the goods is not liked". Narrated Ibn Mas'ud: From the Prophet (ﷺ): "He prohibited meeting of the owners of the goods"³⁴.

Here the word "trade" is either used in the meanings of an object or subject that can be interpreted as either "to meet the subject matter" or "meeting the seller". It means that a trader coming into a certain city with his saleable commodities and a purchaser from within the city goes out to meet that seller and purchases the commodity before the seller could get into the city. Imam Tirmizi mentions a Hadith in this regard that the Holy Prophet Muhammad (PBUH) has prohibited to meet the business caravans out of city before they enter the city. The seller can terminate this transaction if he finds a large difference in the price of the commodities³⁵.

So, in the first Hadith, the Holy Prophet Muhammad (PBUH) prohibits, and this is based on law of convenience and is a short-term law. In the 2nd Hadith, the Holy Prophet Muhammad (PBUH) prohibits, and that again is based on the law of convenience and is an instantaneous law and not a permanent law of Islamic Economic system. In other words, the prohibitions made and taught by the Holy Prophet Muhammad (PBUH) are based on certain contemptible characteristics; if these evil conditions are absent then the trade would be permissible.

In Hadith, meeting a trader is prohibited due to the following reasons:

- a. Buying goods out of the city to detain them so that there should be a shortage of the goods in the city and consequently the price would go high.
- b. Buying the goods out of city for hoarding and creating a monopoly.
- c. Buying the goods out of the city to detain the trader outside the city to deceive him. Purchaser does this with a purpose that if the seller goes into the city with his saleable goods, he will be able to know the actual current market price.

It can be concluded from the above discussion that prohibition of *talaqqiulbuyu* (Meeting with the owner of the goods) and *talaqqiuljalab...* are not a permanent law of the Islamic Economic System, it is a short-term law instead. If the above-mentioned evils are not present, the trade will be permissible. Moreover, in the present age, a fast communication system prevents such a deceitful act with the seller coming from out of the city. On the other hand, it is also possible that the incoming seller himself is a hoarder and monopolist and stores the commodities out of the city to wait for shortage and a consequent rise in the rate of his hoarded commodities. There is another possible situation. The seller is unable to bring the commodity into the city and the commodity is perishable and cannot be hoarded for a long time. In such a situation, the law of prohibition of meeting would result in perishing of the commodity more than its usage. Sharia also considers the circumstances; therefore, we also find instances of time bound adjustments. For example, in the business of powdered milk, many companies collect milk from out of the city and then it is brought into the city for processing. It can be questioned that in such a case, the commodity being purchased out of the city is in different shape but when it is being sold in city, it has a different, transformed shape. The answer to this question is that in Hadith 'meeting with a trader means' not only means meeting with the seller but also with the subject matter.

Imam Tirmizi has added another chapter about this based on the Hadith narrated by Hazrat Abu Huraira (RA) when he quotes that the Holy Prophet (PBUH) said that no citizen should sell the commodities of a villager. In this Hadith, the non-permissibility is momentary and temporary and not the permanent one. It is quite possible that other citizens are likely to face problem of a higher profiteering as compared to a condition where the villager might have to head back to his home in hurry and would get a lesser profit. But, if the same villager gets a place in city where he can store his commodity, the ratio of his profit would increase that would have a negative impact on the consumers of the city. In this case, the reason of non-permissibility is present; if this reason is absent, the trade would be permissible.

The above discussion is made to enlighten the general masses that Islamic Economic Teachings have various categories. Some of these are orders of a permanent nature based on the Islamic tenets of justice and basic rights. Some of these teachings are based on kindness, generosity, and ethical/moral obligations; yet a few are momentary in nature based

on circumstantial adjustments. If we combine different debates about these three types of teachings, we may lose the real benefits of the Islamic Economic Teachings.

In a trade transaction, three elements are basic:

1. (*Aqad e Bay*) The Fact of the transaction that means one person sells something and the second person buys it.
2. Price
3. The article being sold

The article being sold has four types:

1. Barter trade: this involves article sold for another article as its price. For example, a person gives cloth and other person gives him grains as a price. This type of trade used to exist in early days of Islam when currency was not yet evolved.
2. Currency is exchanged with the currency only. For example, a person travelling to another country exchanges his country's currency with the currency of his destination country.
3. Seller gets price money in advance and decides that the article will be handed over to the purchaser on an agreed later date. This is a common practice in the modern times.
4. An article is sold for money. For example, a person purchases cloth and pays the price in form of money.

On the basis of price, trade has the following four types:

1. *Marabihat*: in such a trade, the seller sells his article at a price higher than his purchased price meaning thereby, he sells his goods at profit.
2. *Tauleut*: in such a trade, the article is sold at the purchase price; it is no profit no loss situation.
3. *Wadeeat* :in this type of trade, an article is sold at a price lesser than its purchase price.
4. *Musawimat*: in this type of trade, the purchaser and the seller both agree at a price of their own choice irrespective of the purchase price.

It is to be noted that the price for which a thing is purchased is called its cost price. If this is sold at a price higher than its cost price, it is called Sale price and the law says:

Sale= cost + profit

The loss and the profit are measured against the cost price. Therefore, all the above-mentioned trade types based on the price involve competitive market trends but the fourth situation that does not consider cost price and doesn't involve competitive market trends.

This section of the paper discusses barter trade. Today's financial world has been shaped as a result of an evolutionary process. This is incumbent upon every person, belonging to all the sections of the society and schools of thought, to discern the imminent changes and should give opinions on critical issues whenever they arise. In the due course of time, a system evolves and establishes itself. Only then, most of the people start tracing its evils whereas, they must have been reported at a time when this system is in the making. Those nations successfully pass through the milestones of evolution which have tolerance and freedom of expression; and have adopted civilized ways of argumentation. A person knows whether his opinion is right or wrong, not as a result of any fatwa (decree) released by the religious scholars of the country as this usually happens when all the corrective measures have been exhausted and there is no more chance of a dialogue.

During such evolutionary process, a time comes to fulfill the genuine needs, a person has to barter his goods. The people involved in barter trade do this according to a mutual agreement. This perhaps is a period of history when either the currency is not present or is not a wide-spread norm known everywhere. The seller, in a barter trade system, has to do the following things:

1. Search of a customer that would buy his surplus goods.
2. Ensure that the articles he needs are present with the potential customer.

This, of course, had been an uphill task. In such a situation, there had been a chance of Riba or interest; therefore, the Holy Prophet Muhammad (S A W) mentioned seven things. He said: "wheat for wheat, barley for barley, dates for dates, salt for salt, gold for gold, and silver for silver should be sold hand to hand and excess is Riba (interest)"³⁶. Ayub (2007) has mentioned that Islam stops from Riba for all loans of currency or barter things. In the same way, investment must be in Halal things or services whereas any investment contrary to the Islamic principles (e.g. pork or alcohol) is also Haram (impermissible).

Some scholars differentiate between Riba in the Holy Quran and Riba in Hadith and declare them two different types. In my opinion, this is not a remarkable research as Hadith is the explanation of the revealed book—the Holy Quran. Riba is declared prohibited not only in the Holy Quran but also in the primitive revealed books. Riba has been present in different periods of history, in different nations and in various shapes and forms. When the Holy Quran was being revealed in the Arab society, Riba was present and trade based on Riba was also in vogue. Allah Almighty declared the Riba as prohibited in the Holy Quran. The concept of Riba was not explained as it was present in the society and needed no explanations. Afterwards, the Holy Prophet (SAWS) explained it with the example of the Six Things. Hazrat Umer (RA) narrated that “the Holy Prophet (PBUH) departed from us and didn’t mention the chapters of Riba to us”³⁷.

This narrative does not indicate that the reality of Riba is limited to a very small scale only; it rather indicates that the Holy Prophet (PBUH) explained this concept with the help of the Six things. The same way, the scholars of jurisprudence have classified Riba under the category of “Brief” or “Short” (Mujmil) that indicates that “Brief” is an issue that hopefully cannot be discussed. Now after the Holy Prophet (PBUH), who is the interpreter, the number of the discussed chapters of Riba shall remain six only and there can be no addition. It doesn’t mean that the discussion about Riba is not exhaustive. As its impermissibility and prohibition is determined clearly in the Quran that ‘neither be cruel to others nor let others be cruel unto you (PBUH)’. The Holy Prophet³⁸ has explained this analogically that justice will be when you will exchange equal things on the same time and if you exceed then it will be Riba³⁹.

This is necessary to explain here that in the Muslim society, confusion about Riba prevails not only amongst the masses but also among the scholars. Many distinguished scholars have been listened explaining in a specific method. They first start about Riba with the verse of the Holy Quran: “Allah made trade permissible and made Riba/Interest impermissible.” Then they present the Hadith of the Six Articles, immediately after that they resent the order about a usurer. “And if you do not, then be informed of a war [against you] from Allah and His Messenger”⁴⁰.

After this they narrate the Hadith that a person dealing in interest is like a person who exhibits illicit relationship with his mother. If questioned, they explain hopelessly that “the Holy Prophet (PBUH) departed from us and didn’t mention the chapters of Riba to us”. Such practices of explanation reflect that they explain Riba but their explanation is not exhaustive. No doubt that the Holy Prophet Muhammad (PBUH) has condemned the usurer; one tradition narrates 73 types of interest and the lowliest one is being in illicit relation with one’s mother. One tradition says that one dirham of interest is worse than 36 times of fornication and in another tradition 33 times and in yet another 37 times⁴¹.

As far as Hazrat Umer (RA)’s narration about Riba that the Prophet (PBUH) left and didn’t explain Riba further is concerned, it may be according to his Ijtihadi opinion.

As a result of the discussion, the following points come forth:

1. Inclusion of this chapter in the preamble of Darimi indicates that issuing fatwa/decreed in case of Riba needs great care.
2. Hazrat Umer’s narration indicates that one incident can be viewed by a researcher from various possible angles as a result of which one incident may have different conclusions.
3. This Hadith also indicates that Hazrat Umer has his own Ijtihadi point of view about the explanation of Riba that the Holy Prophet (PBUH) passed away but didn’t explain much about the Riba rather than believing that it is (whereas this is not) a collective opinion of all the Ashab e Rasool (RA) and this Ijtihadi difference has many examples in Sharia. One example narrates that on way back from Ghazwa e Khandaq, the Holy Prophet (SAWW) ordered to move towards Banu Quraiza. One group of Ashab e Rasool offered prayers after they reached the destination and another group offered prayers on the way when the prayers time started. The Holy Prophet (PBUH) didn’t disprove any of those groups. It shows that one group of Ashab acted upon the words of Hadith and the other group followed the purpose of the Hadith⁴².

2. Conclusion:

To sum up the discussion on trade and Riba and the concept of Islamic banking based on the teachings of Islam, it can be said that at the time

of revelation of the Holy Quran, the barter trade was in fashion; therefore, the Holy Prophet (PBUH) explained Riba in an analogy of Six articles/goods. As the time passed on through many economic periods in history, an era came when silver and gold coins started being used for trading. Things became easier for the both buyers as well as sellers. Then a time came when man started using currency which is identical to goods. In order to make currency, some institutions were established to enforce certain laws to issue currency. Initially, it was established that for releasing currency a country must have a certain amount of gold. This was a great facility for man, as it was not easy to carry large number of gold and silver coins. But with this facility came a lot of never ending problems of plenty and scarcity of wealth (inflation and deflation). Inflation is such a gigantic issue that it has unsettled the economies of many developing nations. Inflation is such a necessary evil that neither it can be ousted nor it can be ignored. Hardly anybody especially the religious scholars have ever talked about it.

The paper discussed in detail how Islamic principles work in the field of economy, trade, and finance. The paper emphasizes on admitting the process of evolution in the budding field of Islamic banking. Many fataawa in the favor of Islamic banking are available and can be consulted for the details. It is necessary to mention that generally, the Islamic banks as well as the banks with Islamic banking windows seek guidance of the Shariah Advisory Boards and get fatwa for launching their products based on Islamic principles. Therefore, declaring a banking system as Haram or Un-Islamic out rightly is not correct and must be reconsidered.

Further Research Avenues:

The present paper recommends that it is necessary to research and discuss inflation and its impacts on economy in a corruption ridden society where inflation has impacts both on conventional as well as Islamic Banking systems.

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End Notes

- 1 "والتالي باطل بالمقدم مثله" محمود بن عبد الرحمن بن أحمد الأصفهاني، بيان المختصر شرح مختصر ابن الحاجب، ناشر الكتاب: جامعة أم القرى مكة المكرمة، جلد 1، ص 381
- 2 "ولا يكلف الله نفسا الا وسعها" القرآن 2:286
- 3 "وَهَدِيْنَاهُ النَّجْدَيْنِ" القرآن 90:10
- 4 "ولا يَرْضَىٰ لِعِبَادِهِ الْكُفْرَ" القرآن 39:7
- 5 "فَمِنْهُمْ شَقِيْحٌ وَسَعِيْدٌ" القرآن 11:105
- 6 "وجعلنا الليل لباسا وجعلنا النهار معاشا" القرآن 78:10
- 7 "ورهبانية ابتدعوها ما كتبناها عليهم" القرآن 57:28
- 8 "يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ كَثِيْرًا مِّنَ الْأَخْبَارِ وَالرَّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَعْبُدُونَ عَنْ سَبِيْلِ اللَّهِ" القرآن 9:34
- 9 "لا رَهْبَانِيَّةَ فِي الْإِسْلَامِ"
- 10 "وَحِزْبِ الْأُمُورِ أَوْسَاطُهُا"، فخر الدين الرازي، المحصول في علم أصول الفقه، مؤسسة الرسالة الطبعة: الثالثة، 1997 ج 4، ص 69
- 11 "كَذَلِكَ بَيَّنَّنَا اللَّهُ لَكُمْ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ" في التَّنْبِيْهِ وَالْأَجْرَةِ" القرآن 2:219
- 12 "وَأَذَّ قَالَ إِبْرَاهِيْمَ رَبِّ اجْعَلْ هَذَا بَلَدًا آمِنًا وَارْزُقْ أَهْلَهُ مِن" القرآن 2:126
- 13 "بِإِلْفِهِمْ رَحْلَةَ السَّمَاءِ وَالصَّنْبِفِ" القرآن 106:2
- 14 "وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيْشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَامَةِ أَعْمَى" القرآن 20:124
- 15 "فَقُلْتُ اسْتَغْفِرُوا رَبِّي إِنَّهُ كَانَ غَفُورًا رَّحِيْمًا عَلَيْكُمْ مَنَازِلَ" القرآن 71:10
- 16 أنس قال : قال رسول الله صلى الله عليه وسلم : " كاد الفقر أن يكون كفرا وكاد الحسن أن يغلب القدر، " مشكاة المصابيح، كتاب الاداب، 5051 ضعيف
- 17 "أولم يروا أن الله ينسط الرزق لمن يشاء ويقدر" إن في ذلك لآياتٍ لِّقَوْمٍ يُؤْمِنُونَ" القرآن 30:37
- 18 "فَلَنْ يَبْسُطَ الرِّزْقَ لِمَن يَشَاءُ وَيَقْدِرُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ" القرآن 34:36
- 19 "إِنَّ رَبَّكَ يَبْسُطُ الرِّزْقَ لِمَن يَشَاءُ وَيَقْدِرُ إِنَّهُ كَانَ بِجَوَادِهِ خَبِيْرًا بَصِيْرًا" القرآن 17:30
- 20 "الله ينسط الرزق لمن يشاء من عباده ويقدر له" إن الله بكل شيء عليم" القرآن 29:62
- 21 "أحسب الناس أن يتركوا أن وهم لا يؤمنون ولقد فتنا الذين من قبلهم" فلنعلم الله الذين صدقوا ونبعلم الذين الكاذبين القرآن 29:2
- 22 "تَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ" القرآن 5:2
- 23 "مَنْ بَنَىٰ مَسْجِدًا بَنَىٰ لَهُ فِي الْجَنَّةِ مِثْلَهُ" مسلم، كتاب الزهد والرفائق، باب فضل بناء المساجد، 7110
- 24 "لَنْ شَكَرْتُمْ لَأَزِيدَنَّكُمْ" القرآن 14:7
- 25 "مُحَمَّدٌ رَسُوْلُ اللَّهِ" وَالَّذِيْنَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ رَحِمَاءُ بَيْنَهُمْ" القرآن 48:29
- 26 "إِنَّ الشَّيْطَانَ لَكُمْ عَدُوٌّ فَاتَّخِذُوهُ عَدُوًّا" القرآن 35:6
- 27 CAPD, vol 2, August 11, 1947. p20
- 28 "و هو القرض المشروط فيه الاجل وزيادة على المستقرض" امام ابو بكر جصاص رازي، احكام القرآن، ج 1، ص: 429
- 29 "الله كل قرض جر نفعاً فهو ربا" المطالب العالیه از ابن حجر طبع بيروت ج 1، ص: 411، رقم الحديث 1373، بحواله مسند حارث كنز العمال از علی المتقی ج 6، ص: 238، حديث: 15516، الجامع الصغير از سيوطي ج 2، ص: 94
- 30 "الا ان كل ربا كان في الجاهلية موضوع عنكم كله لكم رؤوس اموالكم لا تظلمون ولا تظلمون و اول ربا موضوع ربا العباس بن عبدالمطلب كله" ابن كثير 1:
- 31 "مطبوع بمصر 1356. و ملحق حجة الوداع للدكتور حبيب الرحمن الاعظمي ج 3، ص 5
- 32 "وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا" القرآن 2:275
- 33 "وقال النبي صلى الله عليه وسلم " إن خيانتكم أحسنكم قضاء" البخاري، كتاب الوكالة، باب وكالة الشاهد والغائب جائزة، الحديث 2305
- 34 "مبادلة المال بالمال بالراضى" رد المحتار على الدر المختار، ناشر دار عالم الكتاب الرياض - ج 7 - البيوع - الكفالة، ص 3
- 34 "باب ما جاء في كراهية تلقي البيوع" عن ابن مسعود، عن النبي صلى الله عليه وسلم أنه نهى عن تلقي البيوع - جامع الترمذي، كتاب البيوع عن رسول الله صلى الله عليه وسلم، الحديث 1220
- 35 "عن أبي هريرة، أن النبي صلى الله عليه وسلم نهى أن يتلقى الجلب فإن تلقاه إنسان فابتاعه فصاحب البيعة فيها بالخيار إذا ورد السوق" جامع الترمذي، كتاب البيوع عن رسول الله صلى الله عليه وسلم، الحديث 1221
- 36 "عن أبي هريرة، قال قال رسول الله صلى الله عليه وسلم " التمر بالتمر والجنطة بالجنطة والشعير بالمشعير والمخج بالمشج مثل يمثلي إذا بيد فمن زاد أو استزاد فقد أربى إلا ما اختلفت أوائه" صحيح المسلم، كتاب المساقاة، باب الصرف وبيع الذهب بالورق نقداً، الحديث 1588 a
- 37 "قال عمر - أن رسول الله صلى الله عليه وسلم لم يفارقنا حتى يعهد إلينا عهدا الجدة والكلالة وأبواب من أبواب الربا" سنن سعيد بن منصور، جلد اول، دار الصمعي، ص 1190
- 38 "لا تظلمون ولا تظلمون" القرآن 2:279
- 39 "مثلا يمثل بيد والفضل الربوا"
- 40 "فإن لم تفعلوا فاذنوا بحزب من الله ورسوله" القرآن 2:279
- 41 "كنز العمال، جلد 2، ص 34 تا 45، مكتبة رحمانيه لا بور
- 42 "حديث بنو قريظه، سير اعلام النبلاء، علامه ذهبي، جلد 1، ص، 301