

Intellectual Dialogue On Islamic Banking

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Islamic scholars in Pakistan can be divided into three schools of thoughts as for as their opinions about Islamic banking is concerned. First school represented by Dr. Fazlurrehman made difference between riba (Usury) and commercial interest. This school does not consider commercial interest as Riba. So in their opinion the conventional banking which is normally dealing with commercial interest is not repugnant to the teaching of Islam and there is no need to Islamize it. Second school of thought represented by Mufti Taqi usmani, Prof. Khurshid Ahmed and others is of view to islamise the conventional banking system. Banking is inevitable for the businessman, traders, industrialists, importers and exporters. So they want to strengthen the Islamic banking. They think that the bank is an institution which regulates or facilitates the financial activities in the society. This school of thought is of view that we can use the tool of banking system in our own interest by modifying it in accordance with the teachings of Islam. So they try to advocate and plead Islamic banking which they called interest free banking. On the other hand, Mufti Rashid Ahmed and Mufti Dr. Abdul Wahid, considers the Islamic banking as a way out for the Muslims who are in the grip fo banking system. But they do not declare the prevailing Islamic banking system as an Islamic system. They have presented some suggestions before the scholars and bankers to make the system to some extent admissible. Third school of thought regarding the Islmic banking totally negates the Islamic banking. They consider that there is no dissimilarity between conventional banking and Islmic banking. Bank is an institution which is come into being to regulate the finance and capital in support of capitalism . Bank is not a tool which can be used to established an Islamic financial system but banking is a system which controls the capital in the local and national market and links it to the global market. They claim the Islmic banks do not succeed to eliminate Riba in reality. If it is assumed the Islamic banks succeed in it then it is a zero interest banking rather an interest free banking. This school of thought negates the Islamization of knowledge (western knowledge).

Islam is a way of life and not like other religions just deals with believes, prayers and personal matters. The Quran and the life of the prophet Muhammad (SAW) and his companion have given Muslims a detailed manual to live every aspect of our lives. Therefore it makes sense that our monetary dealings should also be governed by it (Islam). Every Muslim knows that Riba (usury and

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interest) is prohibited in our religion so he tries to avoid it. But the banking system has gained the status where no one whether he is a business man or trader or industrialist or a common man, can avoid this institution.

Interest is the nucleus of the banking system. Then in 1980s, the Islamic banking was introduced. It was claimed that the Islamic banking is to carry out gainful and commercial activities in compliance to the Islamic values. The Islamic banking was presented as interest free banking which carried out the business on the basis of profit and loss sharing.

In recent years many Islamic banks were documented in Pakistan to fulfill the needs of Pakistani Muslims to run their business and industries according to the teachings of Sharia. Not only full-blown Islamic banks have been recognized but the conventional banks also started Islamic banking. It is interesting that some western banks like Citibank and Standard Chartered bank also launched Islamic banking. These banks are of view that the Muslims who were reluctant to have any dealing with the conventional banking because of interest based transactions, are now being attracted by the Islamic banking. This is indicated by the overwhelming growth of their branches.

Islamic Banking in Pakistan

In 1956 first time Islam is defined as state religion in constitution and all rules and regulations are built according to the defined rules of Quran and sunnah. After that in 1962 the Council of Islamic Ideology was developed. Third constitution was passed in 1973 in which legislation regarding Islamic principles was allowed, also federal Shariat court has been established.

In 1980 the council of Islamic Ideology gives a comprehensive report on elimination of interest that was regarded as first detailed work in the world on this topic.

In 1985 commercial banks started interest free rupee saving account, these procedure are declared un islamic by federal Shariat Court.

Finally meezan bank was established in 1997 and performs its duties as first Islamic Bank of Pakistan.

In Almeezan investment bank the shariah supervisory board is formed led by Justice RT. Taqi Usmani as a chairman.

State bank of Pakistan issued liscence of Islamic bank to meezsan bank in 2003 SBP coordinate for designing Musharkah based export refinance scheme also efforts have been made for developing instruments like Ijara etc.

Islamic Economics division of the research department had been merged with Islamic banking division of banking policy department to establish Islamic banking department (IBD).

Current position of Islamic Banks in Pakistan

1. Meezan Bank Limited
2. Albaraka Islamic Bank
3. BankIslami Pakistan Limited
4. Dubai Islamic Bank Pakistan Limited
5. Emirates Global Islamic Bank Limited
6. First Dawood Islamic Bank

Above mentioned are the banks have been declared full fledged Islamic banks and there are twelve other banks, have been granted licenses to function enthusiastic Islamic banking branches.

Fundamentals of Islamic Financing

In pursuant to the judgment of the supreme court on Riba dated December 23, 1999 the commission for Transformation of Financial System was set up in the State Bank of Pakistan. The commission gave approval for the essentials of Islamic modes of financing on the basis of Musharaka, Mudaraba, Murabaha, Musawama, Leasing, Salam and Istisna. The Sharia board also gave approval of these financial modes in order to circulate the business of Banks conducting Islamic banking in Pakistan. Details of these essentials are given below.

1. Murabaha

It is the most frequently exercised mode of Islamic financing which is practically implemented in financial institutions and in other financial transactions.

It is defined as:

“Murabaha is particular kind of sale where the seller expressly mentions the cost of the sold commodity he has incurred, and sells it to another person by adding some profit” (1)

For financial transactions by using Murabaha, it is very important that all conditions of sale defined by the Islamic jurists should be fulfilled.

For example:

- I) Before sale, the commodity of sale has to be in the possession of vendor.
- II) If the sale is attributed to a future date or event, it will be regarded as void and if parties want to effect sale, a fresh sale contract is required.
- III) Price should be certain for the validity of the sale
- IV) The delivery of the commodities must be certain etc.

Now we can explain financial transactions by using Murabaha in following points

- 1: On the time of sale the cost of goods sold is expressed in mudaraba and sells the commodity by adding profit with the mutual consent of both parties
- 2: Cost include all expenses like carrying charges and other taxes etc, but the administrative expenses like salaries of staff and rent are not included.
- 3: The validity of Murabaha depends on the fact that parties should know about the exact cost otherwise Musawama is used.
- 4: Most preferred way is that the financier himself purchase commodity but due to non applicability of the concept, they can also higher agent for purchasing commodity on their behalf.
- 5: Commodity should be purchased from the third party
- 6: Payment can be made on deffered basis with the mutual consent of both parties.

So, we can conclude by saying that this Islamic instrument is not a loan that bears interest but it practiced as a sale of commodity by adding some agreed profit whose payment can be made in some future date.(2)

Ijara:

“It is also a term used in Islamic Fiqh, which means to give some thing on rent”

Ijara has two different types :

1: If a person provide services and wage is given as compensation, in this sense employee is called Mustajir and the employee is called Ajir.

2: Other type is regarding the usufruct of assets and properties. So iJara means “to transfer the usufruct of a particular property to another person in exchange for rent claimed from him”. (3)

For this concept the term Leasing is used in English, lessor is called Mujir and the lessee is called Mustajir and the rent payable is called Ujrah.

Now we briefly explain some basic Islamic rules for second type of Ijara

1: For valid lease contract property must be in the possession of lessor.

2: The liabilities rising from owner ship of property shall be born by lessor.

3: Lease asset is only used for purpose mentioned in lease contract.

4: Damage to the leased asset by misuse or negligence must be born by lessee.

5: Properties of two or more persons can be leased out and the leasing amount is dispersed according to the respective share in the property.

6: Rent amount must be fixed, but it is permitted that for different phase, different rent is fixed.

7: If the rent is not paid on agreed time the lessee can be accountable to pay price calculated in approved rate. (4)

So these concepts are used for financing of this type.

Salam:

As it is known very well, according to the jurisprudence of Islam it is compulsory for the validity of contract that the physical ownership is necessary for the seller. But it has two exceptions based on some defined conditions we will discuss both separately.

Salam:

“A sale where by the seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advanced price fully paid at spot”.(5)

Holy prophet (PBUH) allowed Salam on following circumstances: (6)

- 1: Full payment should be made from the end of buyer because salam is allowed with keeping in mind the unavailability of finance of the seller like farmers.
- 2: Salam is available for those supplies for which quality and quantity can be differentiated separately
- 3: It is compulsory to mention in the contract regarding accurate date and place of delivery.
- 4: Contract is not applicable on particular field or commodity such as particular land of rice or fruit because particular field can be destroyed.
- 5: While contracting, the quantity of commodity must be clearly specified leaving no ambiguity in the mind of any party.

So salam is beneficial for both parties, seller enjoys advance payment while buyer take the benefit of price lower than the spot rate.

Istisn'a:

Istisna is a mode of finance it is defined as:

“Kind of sale where a commodity is transacted before it comes into existence”. (7)

We can say in current era of global business a party orders to manufacture a product and for this some time he/she have to pay advance payment.

The important point in the case of Istasna that the manufacturer uses its own material for production otherwise the contract will be of Ijara rather than Istisna.

Also it is important to fix the price with the approval of concerned people and specification of product should also be settled.

There are some differences between Istisna and Salam:

- 1) In Istisna manufacturing of commodity is necessary
- 2) In salam full price is paid in advance but in Istisna there is no such condition
- 3) Delivery time is important time of Salam and not of Istisna

Musharakah:

The term of Musharakah is used in Islamic mode of financing it comes from word Sharikah, that means sharing. It can be separated into two kinds.

1) Sharikah ul Milk

It refers to combined ownership of the property by two or more parties; it has two ways.

1. At the option of parties, such as jointly purchase of equipment.
2. It comes automatically for example heir's ownership of property after the death of concerned person.

2) Sharikah Ul Aqd:

It means partnership by mutual contract

It has further three sub divisions:

1. Sharikah -ul-amal
2. Sharikah -ul-amwaal
3. Sharikah -ul-wajooh (9)

We can explain some rules of Musharakah on over all basis as under.

- All the valid conditions of sale should be present in the Musharakah for its validity.
- Investment comes from all parties

- Percentage of profit should be determined when contract is made
- Lumpsum amount is not allowed in Musharakah
- Ratio of profit distribution is a contradictory point in Musharakah.
- According to Imam Malik and Shafi profit is shared according to the percentage of investment. According to Imam Ahmad profit sharing ration can be different from investment. Imam abu hanafia make a coordination between the both point of views. According to him if the partner will remain sleeping through out the contract the profit should not exceed from its investment.
- On the point of loss all the Islamic jurists are given one view that loss will be distributed according to the share of investment.
- Any partner can exercise its right for the termination of contract.
- If the partner dies or insane then the contract is automatically terminated.

Mudaraba

Mudaraba is a special kind of partnership, where one partner gives money to another for investing it in a commercial enterprise. The investment comes from the first partner who is called Rabul Mall and the management is exclusively done by Mudarib.

- I) Rabul Mall may specify a specific business and Mudarib have to do that business.
- II) Rabul Mall can contract with more than one person
- III) Islam has not specify the percentage of profit it depends upon the parties mutual consent, but it is prohibited strictly to allocate lump sum amount to any party.
- IV) Any party can terminate the contract only condition is a notice to other party. (10)

Opinions of Sharia Scholars regarding Islamic Banking

First category of those who make difference in commercial interest and usury. This group of Scholars such as Fazlur Rehman and Maulana Jafer Shah Phalwari wants to develop the economy of

Muslim states and for this purpose when they saw that Muslim countries grow to be suppressed to west in their economic field due to the increasing development of the west in trade and commerce. They are cognizant regarding the truth that banking is unavoidable in the field of commerce, trade and industry etc. at national level as well as internationally. This is the reason they are in favor of commercial interest regarding its permissibility and declare that only usury is illegal (haram) because industrialization and economic growth will face irresolvable troubles by rendering illegal (Haram) to commercial interest that's why regarding the term of "Riba" they only include usury firmly prohibited in Quran and sunnah and exclude commercial interest from this prohibition as it is being perceived from the western conception of interest. Therefore, they concluded that the prohibition of Riba was confined to usury while commercial interest was permissible in Shariah.

. But as discussed earlier the Shariah does not consider such difference. Any addition which is made in any lending either commercial or non commercial is Riba and prohibited in Islam.

Second category of those who aim to Islamize the banking system and to make the financial transactions according to Quran and Sunnah. Major and huge number of Islmaic scholars of Pakistan including Mufti Taqi Usmani, Mufti Rafi Usmani, Maulana Gohar Rehman , Prof. Khursheed Ahmed and others are of view that if interest is eliminated from the banking transactions, that will be admissible for Muslims. Because the only thing which is objectionable in the traditional banking is that its nucleus is interest. This is interest base banking. These scholars think interest free banking is the Islamic bankijng.; They introduce and advocate the various instruments which are considered to replace the interest based instruments. For that purpose they presented Mudarabah, Sharikah, Musharkah, Ijarah, Murabaha, Bay al, Muajjal and Istisna etc to transfer traditional and conventional banking into Islamic banking. They do research to find out the solutions to the problems facing the Islamic banks. Solving these problems they did not follow their school of thought strictly which they belong to but they tried to solve the problems with the help of text of different schools of thoughts like Hanfi, Maliki, Shafii, Hanbali,

and Jafaril. In some cases such as the implementation of fine on defaulters, they argued with Maliki opinion which is not admissible for Malikis.

This group of scholars wants to make the economic activities free from interest and to achieve this purpose they established research institutions such as CIE in Karachi. A large number of scholars are serving as Shariah Advisors in banks to examine various transactions and contracts and give their opinion in the light of the Shariah.

Mufti Muhammad Taqi Usman said about prevailing Islamic Banking in Pakistan.

“Islamic banking must be viewed as an evolving system and it has shown tremendous growth in last 4 years. He emphasized that financial engineering in the light of principles of Shariah governance structure and conceptual development of Islamic banking are the need of the hour if we really want to take advantage of the potential of market. The rise in Islamic banking, investments, Takaful and Shariah compliant businesses during the past four decades confirms a desire from the people to go for Halal and avoid Haram in their financial matters.” (11)

Third category is of those Islamic scholars who totally reject the Islamic banking. They are of the view that there is no distinction between Islamic banking and conventional interest based banking. After examining and analyzing the transactions, forms and brochures of Islamic banks they came to a conclusion about the Islamic banking. Then on 28th of August 2008 a meeting of Muftis and scholars from all provinces of Pakistan was held in Jamia Farooqia Karachi. Maulana Saleem ullah khan president wafaq ul madaras Pakistan presided the meeting. The participants unanimously gave fatwa that the prevailing Islamic banking is non Islamic and prohibited in the shariah. So the transactions which are made with those banks considering these are Islamic and permissible, are prohibited and Haraam.

Their status in the light of Shariah is that as the other interest based banks have.

Mufti Rafiq Ahmad Balakoti from Jamia Uloom-e-Islamia banori town Karachi argued for the Fatwa mentioned above.

Main arguments are as under: (12)

- 1) The promoters and the people related to Islamic banking believe that real basis of Islamic banking are Sharikah and Mudarabah. Murabsha and Ijarah were adopted temporarily and conditionally till the other instruments of Islamic financing will be polished and practically introduced. Murabaha and Ijarah are not permanent modes of Islamic financing. These are permissible in Shariah only to the extent of need. Their use in financing is only a Healah that cannot be the basis of a system which is banking system. Now the Islamic banking is majorly relying on Murabaha and Ijarah.
- 2) There is no resemblance between Murabaha described in Fiqh (Islamic law) and Murabaha executed in Islamic banking. It is essential for Fiqhi Murabaha that the cost and price to be determined in the beginning. While in Murabaha which is being practiced in banking, the bank does not make payment in advance or there is no certainty about the cost. So such Murabaha does not come under the definition of Murabaha described in the Fiqh. So to name such transaction Murabaha is dishonesty and prohibited in Shariah.
- 3) To Islamize some useful financial techniques, many terminologies of Shariah have been distorted. Contrary to the principles, weak and such opinion which are forgiven are relied upon. Prohibited Talfeeq (Amalgamation of various opinions of different schools of thoughts) has been taken for granted. This is batil unanimoously. They have relied on un-preferred opinion of Ibne Dinar Maliki to impose the fine on defaulters of Islamic banks.
- 4) Ijarah which is the main instrument of Islamic financing is not targeting the transaction of leasing but the goal is the transaction of buying some thing. So this is a sale deal conditioned with leasing which is against the Shariah.
- 5) Account holders of Islami banks have to fill the form which binds to abide by the formalities of state bank of

- Pakistan which are subjected to be changed time by time. To bind the client to unknown announcements and conditions in advance is unislamic. Such contract is voidable in Shariah.
- 6) The concept of Legal person and its limited liability is fully functional in Islamic banking. Bank as a legal person is enjoying the maximum opportunities of profit making with minimum liability exploiting the interest of investors.
 - 7) There are large number of common people and intellectuals who had made transactions with the traditional banks and Islamic banks but they could not find any difference between the both . According to them both are practicing the same techniques of financing. Only difference is use of different terminology. Their goals and objectives are the same.
 - 8) The scholars relating to Islamic banking confessed that the transactions of Islamic banks are not purely interest free and permissible in Shariah. According to the principles of Shariah such transactions is prohibited. The minimum injunction is that such transactions is doubtful and should be avoided. Moreover Dr. Javed Abkar Ansari criticizes Mufti Taqi Usmain that his book *Islam Aur Jadeed Maeeshat-o-Tijarat* provides a wholesale endorsement of capitalism. (13) He further says “ the need of systematic abolition of interest is not seen in his book as a prerequisite for the Islamisation of bank depository or lending practices- indeed the book does not call for an abolition of the money market but bases its recommendations essentially on the existing practices of Islamic banks which function exclusively within interest based financial system”.(14) He argues that Islamic economics theory reformed the capitalism by introducing Zakat and Shariah compliant financial contracts. It resulted in providing Islamic Justification to the capitalism.

We can say that Islamisation process in banking sector took place in 1980s. Dr Nijatullah Siddiqui, Prof. Khurshid Ahmad and Dr. Umar Chapra had provided theoretical material for this process in

1970s. The movement to eliminate interest from our economy started in 1979 PLS (Profit Loss sharing) accounts were launched. Some other financial institutions like House Building Finance corporation and agriculture development bank started functioning on the basis of hire and purchase contracts and mark up. Islamisation of financial sector aimed to eliminate Riba completely. Federal Shariat Court's decision to eliminate Riba from all government or non government financial institutions. The court had given deadline to the government for totally elimination of Riba. But the government of Pakistan went for appeal against that decision. The reconstituted Federal appellate Bench referred the case back to FSC for reconsideration. Now the government has issued permits to establish Islamic banks. The conventional interest based banks have been allowed to start Islamic banking.; In 1980's the intention was to eliminate interest from the economy and now the intentions is to run Islamic banking and interest based banking side by side. The people have choice to have deal with Islamic banks or with conventional banks. Supporters of the Islamic banking lead by Mufti Usmani and others say that it is a transitional period. When the Islamic banks are to be established on solid grounds, these banks will replace the conventional banking. But he others are of view that Islamic banking in a net to trap those Muslims who avoid banking because of Riba. Islamic banking in a net to trap those Muslims who avoid banking because of Riba. Islamic banking resulted to give Muslims money which was free from the banking system in the control of global vapitalism through the banks. To strengthen their arguments they say that City bank and standard Chartered Bank have started Islamic banking. These banks have started Islamic banking to capture the market of those Muslims who are not in the network of the conventional banking. Dr. Ansari says "The Islamic finance movement also paves the way for the subordination of Islamic world to global capital."

Islamic scholars have introduced Shariah complaint instruments for Islamic financing Mainly Ijarah and Murabaha are being used for financing while these are not permanent modes of financing in Shariah. Permanent modes like Mudarabah, Sharikah and Musharakah are not been functional in Islamic banking. Suppose dealing of individuals with Islamic banks is legitimated in Shariah, legitimacy of Islamic banking remains doubtful because these

banks are also controlled by IMF and World Bank through the State Bank. Islamic banking can be justified in the light of Shariah as an alternative to the interest base banking for those individuals who have no choice to avoid banking. Islamic banking should be taken as a way out for those who are in the grip of banking system. Financial institution based on Islamic justice having religious norms Iman, Islam, Taqwa and Ihsan functioning in accordance with Shariah free from global capitalism can satisfy innersole of Muslim society and fulfill the financial needs.

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