

## **In-Limbo; the In-practice Islamic Banking System, in full Conformity with *Sharī‘ah* Standards or...**

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### **Abstract:**

*In fact, Religion Islam is a complete code of life and its teachings are forever. They leave undying brunt on human beings directly or indirectly towards its spiritual as well as material purification (Tazkia) if put into practice appropriately according to the Sharī‘ah’s teachings i.e. the noble Book, Qur’an and Sunnah. ‘An interesting irony that every dollar note has the admission: “In God we trust”, but when it comes to develop theories to earn dollars or to distribute or spend them, trust is placed only on human ideas based on personal assessments; God is held totally out of picture, as being irrelevant to economic activities’.[Taqi Usmani].*

*The introduced Islamic Banking System is one of the positive steps taken by religious scholars in order to pull out the humanity in general and Muslims specifically from manmade unsound, Interest-based Financial System. The statistic proves that the introduced Islamic banking system has a rapid growth in the market for the last two decades but still, a number of doubts have been created regarding its theory, framework and practices that this system is not in full conformity with Sharī‘ah. Some scholars give the impression that the Islamic banking system and conventional banking system is of same nature but of different names only and the interest presently occurred in these financial institutions is not forbidden in Sharī‘ah because it is for business purposes. Such miss representations not only dishearten the entry of new one to this sector but also craft mystification and perplexity in the minds.*

*Keeping in view the above scenario, need is felt to assess, evaluate and analyze the situation with special stress to mentioned perceptions.*

*The present study investigates different aspects and dimensions of these perversion and unmapped areas in the context of Sharī‘ah and ground realities in order to know the extent of validity of these perceptions and give real picture to the public in general and enhance the satisfactory level of the enlisted Islamic Banking customers in particular.*

**Key words** Emerald: International Publisher, *Sharī‘ah*: Islamic code of life, *Riba*: Interest

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### **Background of the Study:**

It is uttered by religious scholars that Islamic economics was ignored by mainstream economists in the world. The mentioned statement justification may clear from the behavior and trend of the American Economic Association (AEA) which is most popular, admired and largest association of the economist of America.(1) This association publishes different journal; two journals among them are more popular and widely read. Most of these are used for references named; *the journal of Economic literature* and *the journal of economic perspective*. (2) The keyword 'Islam' was searched in titles and abstracts of these journals from 1999 till October 2012, the results showed only three records.(3) This clearly reflects the message that how the Islamic economics was deemed not to be the inclusive component of world economies. As a result of this approach the man made ideas were become the building stones and the God commands and orders were totally ignored which leads the economies to miserable condition and the world faced severe and harsh downfall and disaster in last ten years especially the financial crisis in 2008 is one of the unforgettable example called Global Crisis.

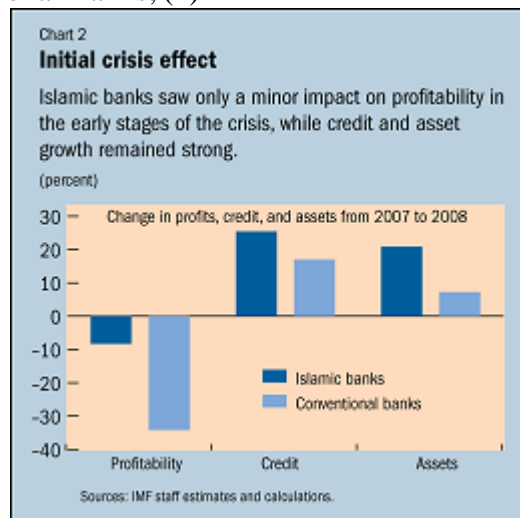
The reason behind is very clear and apparent that western economist are well known to the fact that Islamic Economics is not any theory or ideology but sound and firm principles and guidelines for leading smooth life which not only discourage the man made theories and ideas based on shaky and wobble theories or interest but also give the right and clear picture to the world that true and eternal religion is only and only Islam having everlasting teachings for all fields of life. This was the actual fear; stop them to explore Islamic teachings in economic activities.

Secondly, the well known features of the conventional economics via which the layman is being attracted to the system, are already not only existed in Islamic economics but considered the most fundamental and basic areas of Muslim state like poverty alleviation, *zakat* system in order to maintain the wealth flow and proper distribution, *waqaf* and charity for the purpose of enhancing the living standard. In short, there is nothing new in conventional economic system that becomes the competitive factor against Islamic financial system. It is pertinent to say that the only approach which was used to restrict the Islamic financial system or *Shari'ah* teachings to be the element of world economies is the consideration of Islamic financial model is favorable for Muslims only, not for non-Muslims. Obviously this approach is not in accordance with ground realities.

### **Mainstream Economist proclivity to Islamic Financial System**

It seems in last few years that the western economist's mentality towards Islamic financial system is almost changed because of different reasons. One of them is the durability and firmness of Islamic financial system because of asset back financing and the other reason is the financial crisis in 2008 which leads the

economies to tremendous downfall and misery but comparatively the performance of Islamic Banks and Islamic Financial Institutions were appreciative and showed a power and strength against global financial crises. Different research institutions proved it by different ways that asset back financing is the key to success in these severe situations. According to IMF staff estimates and calculations shows that Islamic banks observe a very minor impact on profitability in crisis, the below graphs reflects the picture of profit, credit and assets of Islamic Banks and Conventional Banks; (4)



Some experts also high light the factors behind the proclivity of mainstream western economist towards Islamic Financial System, to attract the wealth of Muslim in general and the Gulf Money in particular. So whatever the factor there behinds, it's really play a vital role in inclination of them towards Islamic Model. This tendency became the cause of awareness of Islamic Teachings and ideology and the people realize the fact that *Sharī 'ah's* teachings and directions are not only for the guidance of Muslims but for the all human beings, living anywhere in the universe and it gives the right fruits and pleasures to all with condition of proper execution and implementation of these *Sharī 'ah's* commands and directions according to the prescribed way and tone.

In the light of above scenario, it is observed that some other widely readable journals started publishing articles with titles 'Islamic'. For strengthening the statement, the example is quoted of well-known, reputable International publisher named Emerald has released some Islamic journals like 'the international journal of Islamic and middle eastern finance' and 'the journal of Islamic accounting and business research.(5) In fact these journals play a vital role in enhancing the Islamic financial model but still there are reservation on it by different experts at different angles, to discuss these reservation is diversion from the study.

### **Islamic (Interest-free) Financial Institutions, a Utopian Flash...**

Circumstances depict that in the past few centuries Muslim *Ummah* [Community] has been politically destabilized, dominated and confined to only mosques and *Madāris* [Religious Institutions]. They have been kept aloof of political and economic activities, and consequently, eliminating the role of religion in these affairs terming it as irrelevant to them. Moreover, under the influence of Secular rulers, having the slogan that all the state affairs except the particular religious worship practices are not absolutely binding to religion and should be run through own will, Muslim states, too, abandoned following religious norms in trade and economy resulting in a mere ideological status associated to religious economic teachings without any practical shape.

There was a time when it was claimed that establishing *Islāmic* financial system or *Islāmic* bank is utopian idea which cannot be brought into practice. The people believe that no financial system can work without the element of interest and it was considered that prohibition of *Ribā* is totally impractical in the context of modern society. It was claimed that the prohibition of *Ribā* has been driven from the teachings given some 1400 years ago and in the present, modern world it is not possible at all to based the financial institution on something else than *Ribā*. Different scholars raised this issue in different words. *Amr Mohamed El tiby* states; (6)

“One of the main issues that concerned Muslim scholars was how to eliminate *Ribā* from their lives and how they could make their financial dealings complaint with their shari’ah.”

It is wrong to say that Conventional Banking system came into being in a jiffy. But to reach this state of condition took 400 years after this, these Banks got firmness and strength and become concrete and well established and chain up the whole world in its curse web and clamp whole. In secular system of Govt. interest is considered as the backbone of economy and the system revolves around it whereas almost all the divine religions forbid interest. Besides Islam, Christianity and even Jewish teachings in Bible have a clear message about its prohibition. Leviticus narrates;

“If your brother becomes poor and cannot maintain himself with you, you shall support him as though he was a stranger and a sojourner, and he shall live with you. Take no interest from him or profit, but fear you’re God, that your brother may live beside you. You shall not lend him your money at interest, nor give him your food for profit.” (7)

The only legitimate shape of interest according to Jewish religious Books is the one enacted while a Jewish deals with non-Jewish. As a result the capitalist investor wants to build their system of economy on interest.

### **Earlier Efforts at glance**

The establishment of Islamic financial institutions seemed difficult but not a

dream or imagination. By the efforts of Jurists of *Ummah*, it has been translated into a reality, not only in a small area but in a large number of countries, both Muslims and non Muslim. The main groups who came forward for this purpose were the Dar-ul-Mall Al islami based in Geneva, Al-Barakaha, Al-Rajih based in Saudi Arabia and Kuwait Finance House- based in Kuwait. These are main groups and they have established a large number of Financial Institutions and Islamic Banks in different parts of the world. To move towards establishing Islamic Financial Institutions went on progressing and now, for the present these countries in which one can easily find the Islamic banks and financial institutions. Among the Muslim countries there is Pakistan, Bahrain, Dubai, Kuwait, Abu Dhabi, Saudi Arabia, Iraq, Qatar, Iran, Jordan, Philistine, Yemen, Libnan, Malaysia, Indonesia, Bangladesh, Turkey, Al-Bania, Brunei, Egypt, Senegal, Sudan, Niger, Tunisia, Djipute, Gonia, and Mauritani. The non-Muslim countries which have Islamic financial system or financial institutions are UK, USA, Canada, Luxemburg, Switzerland, Denmark, South Africa, Australia, India, Srilanka, Sypris, Bahamas, Virgin island Cayman island. It is not wrong to say that presently there is no country on the earth, not having any Islamic financial institution or any Islamic window or any product offered according with *Sharī 'ah* compliance.(8)

#### **Gray Areas exist or Misrepresentations, in the Context of *Sharī 'ah***

There is strong claim that all the products and activities of the Islamic banks are in full conformity with *Sharī 'ah* standards and all the performances of these Islamic banks are properly supervised by *Sharī 'ah*'s Board. The *Sharī 'ah* board of each Islamic bank is consists of religious scholars and economic experts having strong command on the financial tasks. They observe the transaction thoroughly in the light of Quran and Sunnah and used to compare the products and transactions with *Sharī 'ah* standards in order to avoid any interest factor or contradiction with *Sharī 'ah*'s teaching thereon.

When it was searched to know that whether the practice is going on in the Islamic banks or Islamic financial institutions according their claim or it is just show to the people that they are performing according to the Islamic teachings. For the said purpose, meeting was conducted with number of *Sharī 'ah* advisors of different banks and financial institutions and different visits were taken to Islamic banks like Meezan Bank, Bank of Khyber, the findings were very positive and favors the bank's claim.

Beside that there are also loopholes in the in-practice Islamic banking system that restrict one to say that whatever is going on there, are hundred and ten percent according to the *Sharī 'ah*. But here it needs to mention the hidden message that these loopholes are not up to that extent that one give *fatwa* of *haram*. The moderate gateway is very clear and there is dire need to forward step of *Sharī 'ah* board members to asses and analyze these areas and come with possible solution

in order to eradicate these flaws and loopholes.

One of the issues which was raised by different religious scholars is that how the profit is distributed in these Islamic banks in which the time specification is not known while transacting on the basis of *Mushārah* and in *Sharī 'ah*, the time frame is essential for any transaction that should be specific to avoid *Gharar* (Uncertainty). A number of Allah's messenger's sayings about *Gharar* are there about impermissibility. This was one of the flaws that lead the system beyond the *Sharī 'ah*'s boundaries but settled down up to more extent along with gray elements needs to eradicate. The detail is as under;

In *Islāmic* banks it is practicing that the people invest in it for different time period. The investors are generally the account holders. The process of depositing and drawing is continue and it is not only difficult but seems impossible to restrict all account holders to deposit and draw the cash in one particular day and afterward, no one will be allow to deposit in *Mushārah* account, this is because every person has its own way of leading life and priorities of spending money and on daily basis anybody may need the money today and on next day it may not. The procedure introduced for this purpose is the profit and loss distribution will be based on daily product, means that after the end of business cycle, the profit of the entire capital will be calculated and then the profit will be divided by the number of days in order to calculate the per day profit of the *Mushārah* period. Afterword, each account holder will receive the own share of profit according to the days proportion of his capital remain there in Bank. It is pertinent to mention the statement of *Sharī 'ah* Expert and introducer of Islamic Banking, Mufti Taqi Usmani;(9) "It is not necessary that all the assets must be in liquid form at the time of final profit and loss distribution. It can be calculated by the evaluation of assets." (10)

For example a deposit of Rs. 300 earns Rs.30 in one month i-e 30 days time period. This means that by spending Rs.300 gives the profit of Rs.1 and by spending Rs.1 gives the profit of Rs.0.00333, calculation are as under;

A deposit of Rs.300 = Rs.30 profit per 30 days

Per day profit =  $30/30 = \text{Rs. } 1$

A deposit of Rs.1 =  $1/300 = \text{Rs. } 0.00333$

With respect to above supposition, anybody deposited Rs.1 for fifteen days then the profit of Rs.1 for 15 days will be given to him;

$15 * 0.003333 = \text{Rs. } 0.04995$

Likewise if he deposited Rs.10 for this period of time, he will receive the profit of;  $0.04995 * 10 = \text{Rs. } 0.4995$

This is how the profit is distributed among the parties with respect to their deposited amount remains in the bank for specific time period in days. (11)

The question mark is still there, how the calculation will be possible for the time

period less than a day i.e. in fraction time period. In this situation there seems ambiguity and one has to assume at one stage which is prohibited, need to revise the procedure in order to get the solution according to the *Sharī 'ah* principles.

### **Proliferation of John Calvin (1509-1564) <sup>(12)</sup> Perception**

The other fabrication and twisting through which confusion is created in the minds about impermissibility of interest and to reduce the hatred intensity of Muslims, some people forwarding the perception of John Calvin saying that the interest presently occurred in these financial institutions is not forbidden in *Sharī 'ah* because it is for business purposes.

The founder of Protestants John Calvin was the first who point out that in religious books, Interest is forbidden and come with separate view, declare that interest prohibited is not that interest which is involved in Business affairs but the interest taken from poor people is actually forbidden, gradually this ideology work a lot and almost 99% Jewish and Christians accept this perception and only 1% deny that concept and they established their own setup. When this Banking System in *Islāmic* Countries came to start, the religious scholars declare it unlawful and deemed against the *Sharī 'ah*. In spite of it, there is also school of thought that not only favors this John Colin concept but also started struggle to propagate this wrong ideology. The same movement also gets started here in Pakistan as well but with the blessing of Allah, and by the struggle of religious scholar of this *Ummah*, they stood against it and defeated them very badly.

In Egypt first time a resolution was passed regarding its impermissibility and unlawful. Afterward the struggle and efforts were continued on every platform in different Muslims countries. In Pakistan, council of *Islāmic* ideology <sup>(13)</sup> established and here too the same issue rose in Pakistan in order to declare the interest involved in business affairs is lawful but the stance of religious scholar of this *Ummah* was remains vindicated and by the blessing and grace of Almighty Allah, this concept didn't flourished in Muslim countries as in Jewish and Christian it credited in past.

The Holy Quran states in Surah Al-Nissa, "*That they took usury though they were forbidden and they devoured people's wealth wrongfully; we have prepared for those amongst them who reject faith a grievous chastisement.*" <sup>(14)</sup>

The clearest message is derived from the sayings of Allah's messenger Muhammad peace be upon him at occasion of his last sermon on the ninth of Dhul Hijah;

*"ALLAH has forbidden you to take usury (interest), therefore all interest obligation shall henceforth be waived. Your capital, however, is yours to keep. You will neither inflict nor suffer any inequity. Allah has Judged that there shall be no interest and that all the interest due to Abbas ibn 'Abd'al Muttalib (Prophet's uncle) shall henceforth be waived...* <sup>(15)</sup>

The history reveals that here the interest due to *Abbas ibn Abd'al Muttalib* was not only non-business interest but it includes such transaction which were whole sole for business purposes. So the statement which leads to impression and making confusion in the minds is totally counterfeit and phony.

### **Conclusion**

In the context of current scenario where the economic race is going on, challenges faced by or facing these Islamic Financial Institutions and different objections raised by different religious scholars, economists with different dimensions and intensity is the shining and transparent message that these institutions are in right direction in order to accomplish their individual and collective goals and objectives and by grace of Allah, in near future, the economic market will be captured by these Islamic Financial institutions till the time of proper execution and implementation of *Sharī 'ah's* teachings.

The issues discussed above regarding Islamic Financial institutions, aiming to know whether these institutions are working within the *Sharī 'ah's* boundaries or there any violation exists. The study focused to Profit and loss distribution and legitimacy of interest in business affairs. From the above mentioned statements it is quite clear that the economic activities and performances of these institutions are not opponent to *Islāmic* teachings at all, beside that, it will be exaggeration if someone claim that all the activities of them are totally in conformity with *Sharī 'ah's* standard and there is no violation directly or indirectly in the in-practiced system because the fact beyond this is very clear as the Islamic Financial System is at adult stage, need a time to mature and efforts to survive.

Conclusively, one sentence statement of the study; the In-practiced Islamic Financial institutions are not in full conformity with *Sharī 'ah*, having loophole effecting the spirit of *Sharī 'ah*, need to improve but diversion not to that extent which makes the financial transaction impermissible [*Haram*]



## **References:**

1: The American Economic Association (AEA) is a learned society in the field of economics, headquartered in Nashville, Tennessee. It publishes one of the most prestigious academic journals in economics: the American Economic Review. The AEA was established in 1885 by younger economists trained in the German historical school; since 1900 it has been under the control of academics.

2: The Journal of Economic Perspectives (JEP) is an economic journal published by the American Economic Association. The journal is very broad in its scope. According to its editors its purpose is:

1. to synthesize and integrate lessons learned from active lines of economic research;
2. to provide economic analysis of public policy issues; to encourage cross-fertilization of ideas among the fields of thinking;
3. to offer readers an accessible source for state-of-the-art economic thinking;
4. to suggest directions for future research;

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9: Muhammad TaqiUsmāni, born in 1943. He is well known contemporary Islāmīc Scholar from Pakistan. Also worked as a Judge from 1981 to 1982 on the Federal Sharī ‘ah Court of Pakistan and expert in Islamic finance, Muhammad TaqiUsmāni [18<sup>th</sup>August2014]  
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12: John Calvin, born on 10<sup>th</sup> July 1509 in the Picardy region of France. His occupation was pastor and author and died on 27<sup>th</sup> may 1564 at Geneva. [18<sup>th</sup>August2014] Lockwood, Kim, Big John: The Extraordinary Adventures of John McKinley, 1819–1872, State Library of Victoria, 1995.

13: Council of Islamic Ideology: it is one of constitutional body of Government of Pakistan. This body is responsible for legal advising regarding Islamic issues to the Government and parliament.

14: Al-Nissa: 161

15: Imām Bukhāri [2004], Sahih al. Bukhari'' Hadith# 1623, 1626, 6361, Imam al-Tirmidhi has mentioned this sermon in Hadith nos. 1628, 2046, 2085