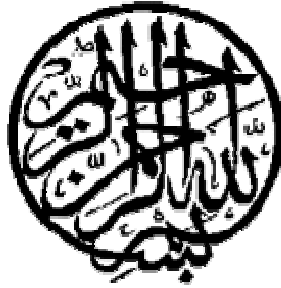


DISTINGUISHING THE LEGAL PROHIBITION OF RIBA IN ISLAM

A basic overview between the effective causes and the rationale (*'illat wa al-hikmat al-hukum*)

By Mehdi Kader



In the Name of Allah, The Merciful and Compassionate.

All praise is due unto Allah Exalted.

We praise Him, seek His help, ask for His forgiveness, and rely solely upon Him. Whoever He guides cannot be misguided. And whomever He misguides cannot be guided.

I bear witness that there is none worthy of worship but Allah Exalted.

He is One with no partners, and I testify that Muhammad is His Messenger.

Riba, whether it is called interest, usury or by any other name, has always been the subject of great controversy. At its core, is the idea of an additional payment demanded by the supplier of a money loan. Muslims have always agreed that *riba* is prohibited in Islam, and they are not alone. The Codex Hammurabi (article 93 issued c. 1750 B.C) forbade compound interest. King Bocchoris of the Egyptian 24th Dynasty (c. 730-c. 715 B.C.) also forbade the taking of interest in

excess of the principle. The Jews in the Hebrew Bible¹ are likewise prohibited from dealing in usury.² St. Thomas Aquinas of the Catholic Church likewise argued its unlawfulness and the Second Lateran Council condemned the practice of usury.

Hence, in Islam, until recently, the prohibition of *riba* has generally been an accepted norm amongst the Muslims.³ But what constitutes *riba* has remained an issue of divisiveness amongst scholars and has been a subject of deliberation and debate. Unsurprisingly, there are many differences in interpretation which have surfaced. This overview is a modest effort to clarify a few of the issues involved in the debate. A detailed exposition of the effective causes (*illah*) and rationale (*hikmah*) for the prohibition of *riba* would require a multitude of pages and a calibre of scholarship this author could never achieve. However, with the permission of Allah Exalted, we hope to achieve a coherent and brief overview of some of the more accessible points behind the prohibition that may benefit the reader, *inshallah*.⁴

When examining Islamic rulings, a distinction must be made between the rationale of personal practices (*ibadat*) and civil practices (*mu'amalat*). In the former, the basic norm is submission by devotion without need of explanation. This is the realm of devotion and faith

¹ See The Old Testament, Exodus XXII:25, Leviticus XXV:36, 37. The prohibition is between and among Jews but does not extend to non-Jews (*goyim*), of whom it is permissible to charge usury.

² Saleh (1992), p. 11-12

³ Meaning that even if a Muslim did engage and practice transactions on *riba*, they accepted its unlawfulness.

⁴ Disclaimer: The term 'Islamic banking' is now commonly understood as a form of 'interest-free' banking and finance. It is an alternate banking system void of interest based transactions and services, stemming from the legal prohibition of *riba* according to Islamic Law. This has become a topic of hot debate surrounding a number of issues. In this short overview, we shall not be tackling the issues of contemporary Islamic banking. Furthermore, this is not an attempt to discuss the nature of commercial interest and *riba* nor we shall discuss neither the differences of opinion within the *fiqh* nor *fatawa* of the legal schools of jurisprudence. The subject matter will not address contemporary issues such as the validity of mortgages, credit cards etc.

and is expected to be performed as such. This has been a traditional starting point of for Muslims; rationale is required for neither faith nor religious imperatives. Imam Razi clearly states this whilst discussing the prohibition of *riba*:

'The prohibition of *riba* is textually proved.⁵ It is not necessary for mankind to know the rationale of duties. Therefore, the prohibition of *riba* must be regarded as definitely known even though we do not know the rationale for its prohibition.⁶

However, Imam al-Shatibi has pointed out that the legal injunctions of the *mu'amalat* are generally founded upon their underlying principle (*ta'lil*), effective cause (*illah*) and benefit (*maslahah*). Here, rational analysis, enquiry and evaluation are permitted of the Sacred Law.⁷ Many who have attempted to validate *riba* today have not paid attention to the *illah* and the *hikamah*, or rationale behind the original ruling; arguing instead that their own conclusions and modern circumstance have undergone such radical change that the *maslahah* of the community will be better served by the formal legalisation or acceptance of *riba*. Such advocates forget the essence of the Sacred Law (*Shari'ah*):

'The position of the *Shari'ah* in the area of *mu'amalat*, especially with regard to illicit gain (*riba*), hoarding and risk-taking (*gharar*), are predicated on the prevention of

⁵ Textually proved in the words of the Qur'anic prohibition.

⁶ Razi (1938), Vol. VII, p. 94

⁷ Kamali (2003), p. 78

conflicts, exploitation and injustice among people. These are not, in other words, founded on devotional (*ta'abbudi*) principles but on rational causes. This is an important *Shari'ah* principle that is sometimes neglected by those who maintain that the intellect and human reason have no place in the *Shari'ah*. Many problems in the fields of Islamic economics, banking and finance arise from this inability to understand the proper role of reason in the *Shari'ah*.⁸

In our subject of study we shall firstly attempt to put in perspective the linguistic understanding of the word *riba*, followed by the legal understanding of the term and finally by describing the purpose of legal rulings in Islam.

Why is definition important, and what actually constitutes *riba*?

It has been argued that contemporary interest-based commercial transactions are the product of modernity or at least of the last few hundred years of modern business practice and hence not within the jurisdiction of legally being classified under the rubric of '*riba*' as identified in the Qur'an. Most advocates and appellants who favour or

⁸ Ibid., p. 77-78

argue this position build their position upon a series of differing arguments all of which, consider 'interest' as in vogue of modern business transactions, to be outside the legally prohibited '*riba*' in Islam.⁹

The first line of argument takes the form of interpreting the word *riba* as revealed in the Qur'an. The argument centres on the proposition that the term *riba*, had not been interpreted or explained by the Messenger of Allah (peace and blessings be upon him) prior to his death, and as such there is no actual definition of *riba* in the neither Qur'an nor the Prophetic traditions (*sunnah*). It is argued that since the verses of the Qur'an which prohibit *riba* were revealed to the Prophet (peace and blessings be upon him) in his last days, that there existed not the time for explication of the verses and hence they remain until this day amongst the *mutashabihaat*¹⁰ and the exact nature of *riba* is unknown. Proponents of this argument contend; that given this ambiguity and the transformation of the modern banking systems since the seventeenth century into a system alien to seventh century Arabian understanding, that the prohibition and principle of *riba* be restricted to the transactions expressly mentioned in the Hadith literature.¹¹

What is significant to remember when consulting the Qur'an however, is that the Qur'an is not considered a body of legal text such as the *Mukhtasar* of Sidi Khalil, or Imam Burhan al-Din al-Marghinani's *Hidayah*. One would be hard-pressed to find any legal definitions of prohibited actions in the Qur'an itself. For example, what is meant by

⁹ Usmani (2001), p. 1-2

¹⁰ Those verses of ambiguous meaning.

¹¹ Usmani (2001), p. 1-2

words such as *khamr*, *qimar* or *zina*, which are all prohibited in the Qur'an?

What is to be understood of ethico-religious concepts of the Qur'an such as *kufr* and *iman*.¹² Similarly we do not find defined and detailed explanations of what constitutes, or how to perform the obligatory religious duties such as prayer (*salat*), fasting (*sawm*), alms-giving (*zakah*), the pilgrimage to Mecca (*hajj*) or Jihad. Clearly then, despite the lack of legal definitions in the Qur'an, the applications of these actions are not based upon contextual, relative or individual interpretations.

Some of the meanings of words in the Qur'an were too obvious to require a definition, as was the case with *riba*.¹³ The term *riba* as used in the Qur'an, 'is derived from the root r-b-w, which is used in the Qur'an twenty times.¹⁴ Of these the term *riba* is used eight times.¹⁵ The root r-b-w has the sense in the Qur'an of 'growing',¹⁶ 'increasing',¹⁷ 'rising', 'swelling',¹⁸ 'raising',¹⁹ and 'being big and

¹² See Izutsu (2002)

¹³ Definitions are found however among Arabic linguists, such as Ibn Manzur's *Lisan al-'Arab*: 'The grammatical declination of the noun *riba* is *yarbu-rubuwwan-riba'n*. Raba (the past simple verb) means: increased and grew. The inflectional *arbaytuhu* (first person pronoun and objective included) means, "I increased it." In the Holy *Quran*, "*yubre* the charities" means, "increase the charities." From here, the forbidden *riba* was taken. God the Great said, "The *riba* you perpetrate (*leyarbuwa*) to augment people's money does not *yarbu* (grow) with God." Abu Ishaq said, "*yarbu* means that man pays something in order to be compensated for more than he paid." In most interpretations, this is not forbidden. But, there is no reward for the one who increased what he took. He said, "*riba* is of two kinds: one is forbidden. Every loan that is returned with an increase, or for which a profit is gained, is forbidden. The permissible *riba* is to donate money, asking God for more than the money you gave away, or to give it as a gift so that you would be given even more." – translated Ruba Alfattouh, Abdulkader Thomas, and Najwa Abdel Hadi (2005), 'Riba in *Lisan al-Arab*', from Abdulkader, Thomas ed. (2005), *Interest in Islamic Economics: Understanding Riba*, pp. 10-13, (Routledge: New York)

¹⁴ Qur'an: 2:265,275,276,278; 3:130; 4:161; 13:17; 16:92; 17:24; 22:5; 23:50; 26:18; 30:39; 41:39; 69:10.

¹⁵ Qur'an: 2:275,276,278; 3:130; 4:161; 3039.

¹⁶ Qur'an: 22:5

¹⁷ Qur'an: 2:276; 30:39.

¹⁸ Qur'an: 13:17

¹⁹ Qur'an: 17:24; 26:18

great'.²⁰...These usages appear to have one meaning in common, that of 'increase', in a qualitative or quantitative sense.²¹ Supplementary details pertaining to the legal injunctions of *riba* were tackled by the jurists (*fuqaha*) although the base meanings were never understood differently or disputed.

Furthermore, from the commentaries of the Qur'an, the exegetes clearly demonstrated that the understanding of what constituted *riba* were clear. The first verse which unequivocally prohibited *riba* is:

'O ye who believe! Devour not *riba*, doubling and quadrupling (the sum lent). Observe your duty to Allah, that ye may be successful.'²²

Imam Tabari (d.310/923) commentates upon this verse:

'The way pre-Islamic Arabs used to consume *riba* was that one of them would have a debt repayable on a specific date. When that date came the creditor would demand repayment from the debtor. The latter would say, "Defer the repayment of my debt; I will add to your wealth." This is the *riba* which was doubled and quadrupling.'²³

Qadi Abu Bakr Ibn al-'Arabi (d.543/1148), confirms this in his commentary of the Qur'an (*tafsir*):

'*Riba* was well known among the Arabs. A person would sell something

²⁰ Qur'an: 16:92

²¹ Saeed (1996), p. 20

²² Qur'an 3:130. All Qur'anic quotations henceforth are from Pickthall (1992), with the substitution of 'usury' for the Arabic '*riba*'.

²³ Tabari (1986), Vol. IV, p. 59

on a deferred payment basis. Upon maturity the creditor would say: "Will you pay or will you add an amount to the debt?"²⁴

Although the understanding of the term *riba* is understood in terms of incremental growth; other arguments raised questioned not the linguistic understanding but rather the nature of loan transactions. Hence, a common argument advanced seeks to differentiate between consumption loans and commercial loans. It is argued that the usage of the word *riba* in the Qur'an is restricted in its implication to the oppression of the poor by increasing the amount charged upon consumption loans undertaken to meet their daily needs.

The argument suggests that the prohibitive agenda of the Qur'an against *riba* is built upon humanitarian concerns, since to charge heavy rates of usury upon such people is but another form of the rich exploiting the poor, something which the Qur'an sought to prevent such social injustices. This is not the case with regards to modern commercial loans however, where the debtors are not the poor, in fact, they are more likely to be the wealthier and undertake loans in order to generate increasing profits. Hence, those undertaking such commercial and productive loans are not oppressed by increased charges by the creditors and hence do not constitute the underlying philosophy or *hikamah* of the prohibition of *riba* as addressed in the Qur'an.²⁵

This argument is further advanced by another; that the Qur'anic prohibition of *riba* refers to what is specifically *riba al-jahiliyya*, which

²⁴ Ibn al-'Arabi (1972), Vol. I, p. 241

²⁵ Usmani (2001), p. 3-4

is a loan transaction in which there is no additional amount charged to the agreed loan but, if the debt could not be repaid upon maturity, the creditor would accommodate the debtor with additional time to meet the payment but at an additional charge. Hence, if the increased charge is acknowledged and stipulate at the time of the initial loan agreement, it would not constitute *riba* as prohibited in the Qur'an. Rather, it does however, constitute what is known as *riba al-fadl*, which is prohibited in the *sunnah* and carries the legal ruling of being reprehensible (*makruh*) and not illegal (*haram*)²⁶ and as such, it is argued that the nature of the prohibition indicates leniency during necessity.

Due to such necessity, a final argument is advanced which acknowledges that modern-interest based transactions falls under the prohibition of *riba*, but that the commercial interest is the bedrock of modern economics worldwide and that to remove oneself from interest-based transactions and with the abolition of interest transactions would be tantamount to economic and financial suicide for Islamic banks and states. The nature of *Shari'ah*, and the recognition that hardships require facilitation, should therefore be applied in these interest-based transactions such as in the case of eating pork by necessity of starvation or alcohol due to extreme thirst.

The aforementioned arguments centre upon two significant concerns: firstly, are commercial interests of the modern financial system covered by the Qur'anic prohibition of *riba*? Secondly, if they do fall into the prohibition, may they be accepted based upon 'necessity'-the legal principle that hardships necessitate facilitation?²⁷ Justice Taqi Usmani has answered and rebuffed all of the aforementioned

²⁶ Ibid., p. 4

²⁷ Ibid.

arguments in a precise and coherent manner, and we would direct the reader to his work for detailed answers.²⁸ In this overview, we shall restrict ourselves only to the underlying problems of these arguments, that is, the false premises and basic assumptions which they have been built upon.²⁹

Ratiocination of the Prohibition: Why is *riba haram*?

²⁸ Specifically, ‘*The Text of the Historic Judgment on Riba: Given by The Supreme Court of Pakistan 23rd December 1999*’; we would also recommend the reader to: Siddiqi, M. Nejatullah’s ‘*Riba, Bank Interest and the Rational of its Prohibition*’, both of which have proven to be extremely valuable to the writing of this overview.

²⁹ The following discussion surrounding these two points have been paraphrased from Usmani (2001), pp. 79-93, please consult this work directly for a more comprehensive and detailed analysis.

What is the reason behind the prohibition of *riba*? We are not given the reason in the form of a direct statement in the Qur'an as Imam Razi has clearly stated,³⁰ but a number of reasons may be inferred from the Qur'anic verses when read in their context. Beginning with the verses of *Surah al-Baqarah*,³¹ which establish a number of relevant points: namely that *riba* is categorically prohibited, it is constituted by what is over and above the principal, it is unjust (*thulm*), that *riba* is destined to destruction (*mahq*), and *riba* demeans and diminishes individuals who indulge in it.³²

'Those who swallow riba cannot rise up save as he arises whom the devil has prostrated by (his) touch. That is because they say: Trade is just like riba; whereas Allah permits trading and forbids riba. He unto whom an admonition from his Lord comes and (he) refrains (in obedience thereto), he will keep (the profits of) that which is past, and his affair (henceforth) is with Allah. As for him who returns (to riba)- Such are rightful owners of the Fire. They will abide therein. Allah has blighted usury and made almsgiving fruitful. Allah loves not the impious and guilty. Lo! Those who believe and do good works and establish worship and pay the poor-due their reward is with their Lord and there shall no fear come upon them neither shall they grieve. O you who believe! Observe your duty to Allah and give up what remains due to you) from riba, if you are (in truth) believers.

³⁰ See page 2.

³¹ The second chapter of the Qur'an, 'The Heifer'.

³² Nejatullah (2004), p. 36

And if you do not then be warned of war (against you) from Allah and His messenger. And if you repent, then you have your principal (without riba). Wrong not and you shall not be wronged. And if the debtor is in straitened circumstances, then (let there be) postponement to (the time of) ease; and that you remit the debt as alms giving would be better for you if you did not know.'³³

The Qur'an further informs us that *riba* is a corrupting element in society:

'See they not that Allah enlarges the provision for whom He will, and straitens (it for whom he will). Lo! Herein indeed are portents for folk who believe. So give the kinsman his due and to the needy, and to the wayfarer. That is best for those who seek Allah's countenance. And such are they who are successful. That which you give in riba in order that it may increase in other people's property has no increase with Allah; but that which you give in charity, seeking Allah's countenance, has increase manifold. Allah is He Who created you and then sustained you, then causes you to die, then gives life to you again. Is there any of your (so called) partners (of Allah) that does aught of that? Praised and exalted be He above what they associate with him. Corruption does appear on land and sea because of (the evil) which men's hands have done, that He may make them

³³ Qur'an 2:275-280

taste a part of that which they have done, in order that they may return.³⁴

Significantly, there is an explicit association between the charging of *riba* with corruption (*fasad*). It has been inferred by many scholars that this implication of *fasad* in society resulting from men's own behaviour, may be read as the sub-message of the verses above- that the charging interest is one of those behaviours which corrupt society.³⁵ Furthermore, many scholars believe this verse to have been the first time chronologically, that *riba* was mentioned in Qur'an. As such, it was befitting that it served to highlight the negative social role of *riba* before the practice was prohibited, as was with the case of alcohol. But even if the charging of *riba* is related to *fasad*- how does this help with a deeper understanding of why *riba* is prohibited? By analysing some of the verses in which the word *riba* has occurred in the Qur'an, it will help to shed light upon what is meant by the aforementioned verse and its dimensions.

Most saliently in this context are the recurrent themes and consequences related to the concept of *fasad*, such as:³⁶ the 'destruction of crops and people',³⁷ 'severing the ties of kinship',³⁸ dividing people into classes and discriminating between them,³⁹ 'shedding bloods',⁴⁰ giving people less than full measure and wronging

³⁴ Qur'an 30:37-41

³⁵ Nejatullah (2004), p. 42

³⁶ Ibid.

³⁷ Qur'an 2:205

³⁸ Qur'an 47:22

³⁹ Qur'an 28:4

⁴⁰ Qur'an 2:30

them in their goods,⁴¹ arrogance borne of enormous wealth⁴² and sexual perversion⁴³.

Another reason which may be inferred, relates to the unlawful appropriation of the property of others (*akl bi'l batil*). This is indicated in the verse wherein the Jews are admonished for '*taking usury when they were forbidden it, and of their devouring people's wealth by false pretences*'.⁴⁴ Here, there is the implication of a generic connection between *riba* and the improper appropriation of another's property. Furthermore, the Qur'an correlates the usurpation of other people's wealth without any justification, to more serious crimes such as hoarding⁴⁵ and in another verse, seemingly akin with murder.⁴⁶

Such correlations between the dimensions of *fasad* and *akl bil-batil* to *riba* clearly demonstrate the detrimental consequences of *riba* within society.⁴⁷ As it has been written of *riba*: '*It represents the unjustified creation of instantaneous property rights: claimed outside the legitimate framework of recognized property rights which, as soon as the contract for lending upon interest is concluded, a right to the borrower's property is created for the lender.*'⁴⁸ Thus, although we may be able to identify and infer sinister correlation of themes and results associated with dealings of *riba*, these still do not answer specifically why it is *haram*.

The effective causes of *riba* and the rationale of injustice

⁴¹ Qur'an 11:85, 26:183

⁴² Qur'an 28:77

⁴³ Qur'an 29:28-30

⁴⁴ Qur'an 4:161

⁴⁵ Qur'an 9:34

⁴⁶ Qur'an 4:29

⁴⁷ Nejatullah (2004), p. 43

⁴⁸ Khan & Mirakhor (1987), p. 4

The Qur'an identifies a defining reason for prohibiting *riba* is its being unjust, *'Wrong not, and ye shall not be wronged.'*⁴⁹ The Qur'an states that taking an excess in amount of the principal is to wrong and unjust, whilst simultaneously recognising the right of the creditor to the principal without any decrease as another form of injustice.⁵⁰ The Arabic word *illah* can mean many things, but in the context of this study and within Islamic jurisprudence (*Fiqh*) and in the science of legal methodology (*Usul al-Fiqh*), it refers to a particular effective cause of the legal ruling,⁵¹ or, *illat al-hukum.*⁵²

Analogical reasoning (*qiyas*), requires that there should be a common *illah*. This *illah* is what connects both elements of the analogy in order to arrive at sound analogical reasoning, that is to say, between the object of the analogy and its subject.⁵³ *'When the effective causes of mu'amalat-related prohibitions are properly ascertained, they serve as basic indicators of the continuing validity of the transaction in question, which means that the prohibition in each case stands or falls, as the case may be, in accordance with its effective cause.'*⁵⁴ The original Qur'anic prohibition of *riba* was limited to loan agreements, but was later extended by several hadith (and subsequently broadened by *qiyas*) to include the exchange of currencies and denominated articles, which became property susceptible of *riba (mal ribawi).*⁵⁵

⁴⁹ Qur'an 2:279

⁵⁰ Nejatullah (2004), p. 45

⁵¹ Kamali (2005), p. 112

⁵² Saleh (1992), p. 18

⁵³ Ibid.

⁵⁴ Kamali (2003), p. 78

⁵⁵ Saleh (1992), p. 43

Even though all the legal schools of jurisprudence (*Madhahib*) were in agreement in extending the prohibition of *riba* to all sorts of transactions which involve the exchange of countervalues and widened the prohibition of *riba* beyond the six articles mentioned in the hadith⁵⁶ on the ground of analogy (*qiyas*); divergences remained as to the practical interpretation of the hadith, which was rooted in their differing views of *illah*.⁵⁷

An example of the prohibitive hadith is:

‘It is reported that the Companion Bilal (d. 20/641) brought *barni* [this is a type of good quality date] for the Prophet. The Prophet said: “From where is this?” Bilal replied: “We had inferior quality dates so I exchanged two measures of them for one measure.” The Prophet said: “This is exactly *riba*. This is exactly *riba*. Do not do this. If you wish to buy good quality dates sell the dates for something else [in some versions, dirhams] and then buy dates for; that.”⁵⁸

Despite the aforementioned hadith and the discussions of the jurists however, a general acceptance of the consequential and ‘...potential injustice, appears to be the most plausible explanation for the

⁵⁶ The best known version runs as follows: ‘*The Prophet said: Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt should be exchanged like for like, equal for equal and hand-to-hand [on the spot]. If the types of the exchanged commodities are different, then sell them as you wish, if they are exchanged on the basis of a hand-to-hand transaction.*’ – Muslim, *al-Jami’ al-Sahih*, Vol. V, p. 44, cited in Saeed (1996), p. 31

⁵⁷ Saleh (1992), p. 43

⁵⁸ Muslim, *al-Jami’ al-Sahih*, Vol. III, p. 48, cited in Saeed (1996), p. 33

prohibition of the deferment of one countervalue in a barter transaction involving any of the six commodities mentioned in the hadith.' This is because 'a person in need may prefer to obtain a certain quantity of dates immediately in exchange for a larger quantity later, the increase being in recognition of the deferment. The buyer may not have the ability to repay on time, and the seller may charge more to extend the time of repayment.'⁵⁹ This is specifically the type of *riba* prohibited in the Qur'an, wherein the debtor becomes entrapped into debt. Ibn Qayyim elucidates this point:

'Had the sale of these commodities [wheat, barley, dates and salt] been allowed on a deferred payment basis [in a barter exchange of the same type of countervalues], no one would have sold them unless at a profit. If so, the seller would then have desired to sell them on an on-the-spot basis for the greed of profit. This would have raised the cost of food for the needy, hurting them severely. Most people do not have dirhams or dinars, particularly those living in isolated areas or deserts. Hence, they exchange: food for food...Had it been allowed, it could have led to the form of pre-Islamic *riba* which is represented in their saying: "Either you pay or add to the debt". One measure could become ultimately many measures.'⁶⁰

Since many believe that the *illah* for prohibiting *riba* is on account of injustice (*thulm*)⁶¹ it follows then, and is argued by some, that there is no injustice at all in charging *riba* from a rich person who has borrowed money to earn huge profits therewith. Since the basic *illah* of

⁵⁹ Saeed (1996), p. 33

⁶⁰ Ibid.

⁶¹ The Qur'an reads: '*And if you repent (from charging interest) then you are entitled to your principal. You neither wrong nor be wronged.*' -Al-Baqarah 2:279

the prohibition is missing in the commercial interest charged by the banks and the financial institutions, it cannot be held as prohibited. A second argument suggests that the term *riba* as used in the Qur'an is in reference to usurious loans of excessive interest rates charged by the creditor(s). This suggests the exploitive nature of the transaction, and hence reflects the principle of prohibition upon such grounds. However, given that the contemporary rates of interest charged in modern banking are neither excessive nor exploitive, it is incorrect to classify it as *riba*.⁶²

After consideration of this argument however, we find the argument is based upon two mistaken assumptions: firstly, that the underlying *illah* of the prohibition is *thulm*, and secondly, that there is no *thulm* in the modern interest based transactions or at least there may be some interest-based transactions which have no element of *thulm*. In considering these two assumptions separately it becomes clear.⁶³

The difference between the effective cause and the rationale

To begin, the assumption that *thulm* is the underlying *illah* of the prohibition of *riba* is in fact, to confuse the *illah* with the *hikmah* of the prohibition. Within the principles of Islamic jurisprudence the two are not synonymous, and there are significant differences between the *illah* and the *hikmah* of a particular legal ruling (*hukum*).⁶⁴ If the *illah* is the effective cause of a matter without which a particular *hukum* cannot be applied to it; this differs significantly from the *hikmah*,

⁶² Usmani (2001), p. 2-3

⁶³ Ibid., p. 68-69

⁶⁴ Ibid., p. 69

which is the wisdom 'taken into account by the legislator while framing the law or the benefit intended to be drawn by its enforcement.'⁶⁵

This principle therefore, necessitates that the applicability of a particular law is dependant upon the *illah* being present and not on the *hikmah*. A common *illah* must be demonstrable, rather than a common *hikmah* being present. In other words, if the *illah* is present in a particular situation without the *hikmah*, the *hukum* would still be applicable. Hence, the utilisation of *qiyas* in such instances requires the following conditions are met:

1. The *illah* should represent the compelling factor which has motivated or is intended by the legal rule; it should be plain and consistent.
2. The same *illah* should appear in both elements of the analogy, object as well as subject. A mere resemblance-between attributes is not sufficient.
3. The *hukum* governing the object of the analogy should be of general application and not restricted to a specific case.⁶⁶

To illustrate, the Qur'an has prohibited the drinking, sale of, and dealings in liquor (*khamr*); the *illah* being intoxication; and the *hikmah*, that liquor instils enmity and hatred between people and prevents people from remembering Allah:

'The Satan definitely intends to inculcate enmity and hatred between you by means of liquor and

⁶⁵ Ibid.

⁶⁶ Saleh (1992), p. 18

gambling, and wants to prevent you from remembering Allah. So would you not desist?⁶⁷

The *illah* by *qiyas*⁶⁸ will therefore apply to all forms of alcoholic drinks (*nabidh*) and also substances which result in intoxication, such as narcotics. Hence, confusing the *hikmah* of the prohibition with the *illah* may result in misguided reasoning. For example, it may be argued that there those who drink alcohol and yet have no enmity with others, or perhaps (if a Muslim), has never as a result of drinking, neglected his religious duties such as prayer (*salat*) etc., and as such should be allowed to use liquor since the *illah* of the prohibition are absent and therefore should render alcohol permissible. But such an argument cannot be accepted since the consequences of enmity and hatred are not to be misconstrued as the *illah* of the prohibition. Rather, Allah Exalted in the Qur'an enlightens the reciter with the consequences which liquor and gambling often result in. These are from the *hikmah* and not the *illat al-hukum*, because the *hukum* is not dependent upon the results.⁶⁹

In this manner, Allah Exalted has mentioned *thulm* as part of the *hikmah* prohibiting *riba*. Thus, the *illah* is the '*excess claimed over and above the principal in a transaction of loan, and as soon as this illah is present, the prohibition will follow regardless of whether the philosophy of the law is or is not visible in a particular transaction.*'⁷⁰ Furthermore, to those who argue that *thulm* be the *illah* of the legal ruling; the natural ambiguity in the definition and application of the term *thulm* especially within relative and contextual circumstances,

⁶⁷ Qur'an 5:91

⁶⁸ There are also Hadith which demonstrate this also.

⁶⁹ Usmani (2001), p. 70-71

⁷⁰ Ibid., p. 71

make it redundant as a viable *illah* as the very nature of an effective cause requires that it cannot be susceptible to doubts and disputes.⁷¹

But the *hikmah* of the *hukum* prohibiting *riba* cannot be limited to *thulm* alone. Indeed, as a mercy upon mankind:

‘...the Holy Qur'an and Sunnah gave a specific command or prohibition in these areas, they did not rely on the rational assessment of the people, nor did they leave these transactions at the mercy of human reason to decide whether or not they have an element of *zulm*. If the Holy Qur'an and the Sunnah intended to entrust such a decision to the human intellect alone, they would have not revealed such a long list of commands and prohibitions; they would have rather issued one single command that all people must avoid *zulm* in all their transactions.’⁷²

Because human reason cannot claim the power to reach absolute truth, and is subject to many limitations such as, the confusion of reason with desire; human reason must be guided by divine revelation, and only here can the final judgement of what constitutes *thulm* lie. Because of human limitations, sometimes injustice is disguised as a form of justice, and thus:

‘...the question whether these transactions have an element of injustice is not left to be decided by human

⁷¹ Ibid., p. 72

⁷² Ibid., p. 75. The author uses ‘*zulm*’ as opposed to our transliteration ‘*thulm*’.

reason alone, because the reason of different individuals may come up with different answers and no absolute conclusion of universal application may be arrived at on the basis of pure rational arguments. The correct principle, therefore, is that once a particular transaction is held by Allah to be haram, there is no room for disputing it on the basis of pure rational argumentation because Allah's knowledge and wisdom encompasses all those points which are not accessible to ordinary reason. If the human reason was fully competent to reach the correct decision unanimously in each and every issue, no divine revelation would be called for.⁷³

The verse in the Qur'an which refers to *thulm* in the context of *riba*⁷⁴ prior to mentioning *thulm*, explicates the standard of that which constitutes the practice of *riba* –the claiming of any additional amount over and above the principal. The verse proceeds to confirm both the entitlement of the creditor to be paid back his principal, and the debtor being bound to pay back the full amount of the loan. At this point the element of *thulm* is made clear; should the debtor not repay the principal, this will be an injustice against the creditor, and if the creditor should attempt to claim anything more than the principal, this shall be an injustice to the debtor. As is clear, what constitutes *thulm* is not left to the assessment of either party to decide; rather it has already been decided. This means that any attempt thereafter to

⁷³ Ibid., p. 77

⁷⁴ Qur'an 2:279

consider the permissibility of *riba* on the basis of human assessment is fallacious as it would deny the very logic of the Qur'anic verse.⁷⁵

The nature of money and loans and *riba*

What then is the rationale of the prohibition of *riba*? As we have already mentioned, there is no definitive answer to this question although there are signs and symptoms of the effects of *riba* which may help one understand possible reasons for its prohibition. We would like to focus on two theoretical issues of the prohibition which

⁷⁵ Usmani (2001), p. 78

have been advanced by Justice Taqi Usmani, namely, the nature of money and the nature of a loan.⁷⁶

With regards to the nature of money, a major flaw in the understanding of the prohibition is built upon false assumptions with regards to the nature of money- that it is treated as though it were a commodity itself. Hence, it is widely accepted that one should be able to sell money for a higher price than its face value; just as a trader might sell another commodity for a higher price than its cost. According to such logic, one may also lend money and can claim interest thereupon.

However, according to Islamic principles, this presumption is built upon fallacious reasoning because money and commodity have different characteristics and as such, cannot be treated similarly. Imam Al-Ghazzali (d.505 A.H.) has explicated this point clearly:

'The creation of dirhams and dinars (money) is one of the blessings of Allah.... They are stones having no intrinsic usufruct or utility, but all human beings need them, because every body needs a large number of commodities for his eating, wearing etc, and often he does not have what he needs and does have what he needs not.. Therefore, the transactions of exchange are inevitable. But there must be a measure on the basis of which price can be determined, because the exchanged commodities are neither of the same type, nor of the same measure which can determine how much quantity of one commodity is a

⁷⁶ Ibid., p. 79-80; the following discussion surrounding these two points may be found in Usmani (2001), pp. 79-93, please consult this work directly for a more detailed analysis.

just price for another. Therefore, all these commodities need a mediator to judge their exact value...

Allah Almighty has, therefore, created dirhams and dinars (money) as judges and mediators between all commodities so that all objects of wealth are measured through them... and their being the measure of the value of all commodities is based on the fact that they are not an objective in themselves. Had they been an objective in themselves, one could have a specific purpose for keeping them which might have given them more importance according to his intention while the one who had no such purpose would have not given them such importance and thus the whole system would have been disturbed. That is why Allah has created them, so that they may be circulated between hands and act as a fair judge between different commodities and work as a medium to acquire other things....

So, the one who owns them is as he owns every thing, unlike the one who owns a cloth, because he owns only a cloth, therefore, if he needs food, the owner of the food may not be interested in exchanging his food for cloth, because he may need an animal for example. Therefore, there was needed a thing which in its appearance is nothing, but in its essence is everything. The thing which has no particular form may have different forms in relation to other things like a mirror which has no color, but it reflects every color. The same is the case of money. It is

not an objective in itself, but it is an instrument to lead to all objectives...⁷⁷

Imam Ghazzali continues to explain that whosoever effects the transactions of interest on money is throwing away the blessing of Allah and is committing injustice, because money is created to facilitate other things, not for itself. Therefore *'...the one who has started trading in money itself has made it an objective contrary to the original wisdom behind its creation, because it is injustice to use money for a purpose other than what it was created for... If it is allowed for him to trade in money itself, money will become his ultimate goal and will remain detained with him like hoarded money.'*⁷⁸

Therefore, to summarise the differences between money and commodity:

Firstly, money is deemed to have no intrinsic utility and as such can only be used in the acquisition of goods or services. A commodity does have intrinsic utility and can therefore be utilised directly without the need of exchange. Secondly, whilst commodities may be of differing qualities, the quality of money is only as a measure of value or medium of exchange.⁷⁹

Imam Al-Ghazzali clearly warned that when money is exchanged for money, it should never be made an instrument of generating profit by such an exchange.⁸⁰ Indeed even today, many economic scholars have admitted the dire consequences of the financial system based on the trade in money; that is, by not restricting money to be used for its

⁷⁷ Cited in Usmani (2001), p. 80-83

⁷⁸ Cited in Usmani (2001), p. 80-83

⁷⁹ Usmani (2001), p. 80

⁸⁰ Ibid., p. 85

primary function, which is as a medium of exchange, grave consequences have followed.

The second point advanced by Justice Taqi Usmani regarding the rationale of the prohibition of *riba* is the nature of loans. In the secular capitalist system loans are commercial transactions intended to yield a fixed income to the lender. Such a loan is not recognized in Islam since 'loans as income-generating transactions' are not authorised by the Qur'an or Sunnah. Rather a loan should be facilitated by lenders who do not intend worldly returns through them, preferring either to lend money on humanitarian grounds to achieve a reward in the Hereafter, or to set aside their money safely through another.⁸¹

This is predicated by the basic philosophy underlying the nature of a loan, that the one offering a loan to another may intend either: (a) to loan as an act of sympathetic or (b) to loan in order to safeguard his principal or (c) to loan as an advancement of money in order to share the profits of the borrower. In the first two cases, (a) and (b), the financier shall not be entitled to claim any additional amount over and above the principal, because of the intention. However, if the intention was to share in the profits of the borrower, case (c), the element of risk shall be present, i.e. the financier shall have to share in a loss also, if the debtor suffers a loss.

Consequently, if the objective is to generate income from such a loan; it cannot be served by such a transaction, rather necessitating a joint venture with a joint stake in the business whereby both will share the outcome on a fair basis.⁸²

⁸¹ Ibid., p. 89

⁸² Ibid., p. 90

Conversely, the intent of sharing the profit on the basis of an interest-based loan will signify the financier desires to ensure his own profit, but not share in the risk of the borrower. As such, were the business of the borrower to fail, he will bear the entire loss of the business alongside the interest payments to the lender. This effectively means that the profit (via *riba*) of the financier is guaranteed at the cost of the borrower's loss which is unfair.⁸³

It may also work against the interests of the financier, should the business of the borrower earn large profits, '...the profit of the financier will be restricted to a fixed rate of return which is governed by the forces of supply and demand of money and not on the actual profits produced on the ground.'⁸⁴ Hence, profit is secured by the borrower at the expense of the financier, which again is unfair. The consequences of financing a business on the basis of *riba* will inevitably create an unbalanced atmosphere, of potential injustice to either side. This is from the *hikmah* for which the *Shar'iah* did not approve a *riba*-based loan as a form of financing. Consequently, if such *riba*-based loans are banned:

'...the role of 'loans' in commercial activities becomes very limited, and the whole financing structure turns out to be equity-based and backed by real assets. In order to limit the use of loans, the *Shar'iah* has permitted to borrow money only in cases of dire need, and has discouraged the practice of incurring debts for living beyond one's means or to grow one's wealth.'⁸⁵

⁸³ Ibid., p. 90-91

⁸⁴ Ibid.

⁸⁵ Ibid., p. 91-92

To summarise; the nature of a loan transaction in *Shari'ah* is designed to establish the principle that incurring debt should not be taken as a natural act in life, rather it should be considered a last resort in economic activities. The Islamic strategy to achieve economic welfare is rooted in the imperative of human welfare and as such, '...it is a manifestation of fraternity and co-operation that the Shari`ah forbids usury (*riba*) and profiteering (*ihhtikar*) on the one hand, and encourages the giving of benevolent loans (*qard hasan*) to those in need.'⁸⁶

As such, and given the prohibition of *riba*, few will be agreeable to advance a loan without a return for unnecessary expenses of the borrower or for unnecessary expenses incurred through loans.⁸⁷ In allowing *riba* on advancing loans is to create a form of profitable trade, '*...whereby the whole economy turns into a debt-oriented economy which not only dominates over the real economic activities and disturbs its natural functions by creating frequent shocks, but also puts the whole mankind under the slavery of debt.*'⁸⁸

Overall, both points discussed highlight the effects of *riba* have, not withstanding other factors such as the persistent tendency in favour of the rich, and the adverse effects on the production and allocation of resources as well as on the global and domestic distribution of wealth.⁸⁹

⁸⁶ Kamali (2002), p. 136-137

⁸⁷ Ibid., p. 92

⁸⁸ Ibid.

⁸⁹ Ibid., p. 93

'The pervasive role of interest in the economic system results in the systematic transfer of money from those who have less to those who have more... It is partly because those who have more money to lend, get more in interest than those who have less; it is partly because those who have less, often have to borrow more; and it is partly because the cost of interest repayments now forms a substantial element in the cost of all goods and services, and the necessary goods and services looms much larger in the finances of the rich.'⁹⁰

Conclusion

In an attempt to highlight a few of the issues involved in the debate surrounding the prohibition of *riba*, we have given a brief overview of the *illah* and the *hikmah* for the prohibition of *riba*. We have attempted to demonstrate the phenomenon of *riba* and its effects upon production in creating wide discrepancies between the supply of money and the supply of real goods as a result of using money as a production good yielding daily profit rather than a medium of exchange and a measure of value. This creates an imbalance of the monetary system since money cannot become the object of profitable trade without severe trade-offs. Money is not a tradable commodity⁹¹ since it is neither consumption good nor a production good but merely a medium of exchange. Over nine hundred years ago, Imam al-Ghazzali, elucidated and predicted the results of such irregular trade:

'Riba is prohibited because it prevents people from undertaking real economic activities. This is because when

⁹⁰ Cited in Usmani (2001), P. 97

⁹¹ When exchanged for money of the same denomination.

a person having money is allowed to earn more money on the basis of interest, either in spot or in deferred transactions, it becomes easy for him to earn without bothering himself to take pains in real economic activities. This leads to hampering the real interests of the humanity, because the interests of the humanity cannot be safeguarded without real trade skills, industry and construction.⁹²

We propose that the *hikmah* has been clearly articulated above and in the preceding discussions. The *illah* has been identified and has been discussed by the *fuqaha* and continue to be so. Although for many people there are other points of consideration, discussion, clarifications and corrections; we would argue that the aforementioned points are sufficient to expose the dangers of *riba* and some possible aspects as to the rationale for its prohibition.

Ultimately, we would remind the reader of Imam Razi's words:

'The prohibition of *riba* is textually proved. It is not necessary for mankind to know the rationale of duties.'⁹³

It is not the place of the servant to ask 'why' but rather to obey. In this light, perhaps the greatest *hikmah* in the prohibition of *riba* is not rational but devotional, a test of faith (*iman*). The lack of a clear understanding of the rationale by many people should perhaps be taken as a blessing from Allah Exalted, for it provides an opportunity to the Muslim to submit voluntarily to the Will of Allah Exalted, which is the very essence of the word 'Islam', and Allah Exalted knows best.

⁹² Usmani (2001), p.88

⁹³ Razi (1938), Vol. VII, p. 94

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