

one year. In this case Rs. 700 would become debt against the customer, and the A`hkam of riba will apply to this debt—not to the excess of these Rs. 700 over the spot price of Rs. 500. One may note that none of these arrangements have anything to do with adding a premium to an outstanding debt in lieu of a past sale—the example used by Br. Akram Khan to support his claim.

This concludes our replay to almost all issues raised by Br. Akram Khan except that of *riba alFadl*. The example of trading of currency notes confirms our earlier position in the "What is Riba?" paper that the distinction between *riba alFadl* and *riba anNasia* has no practical significance. If Allah *Sub`hanahu wa Ta`aala* gives *taufeeq*, we may try to address this delicate matter in the near future. But one point needs to be put on record without any delay: there is no misreporting or any other ambiguity in the A`hadith on riba. Of course, the possibility of some problems of interpretation may be looked into.



قرآن مجید کو سمجھ کر پڑھنا چاہئے

سمجھ کر پڑھنے کی اتنی تاکید کے باوجود مسلمان صرف بے سمجھے پڑھنے کو کافی سمجھنے لگے ہیں۔ معلوم نہیں کس زمانہ میں مسلمانوں میں یہ خیال پیدا ہوا کہ قرآن کا مطلب سمجھے بغیر صرف "شین قاف" درست کر کے پڑھنے کا نام ترتیل ہے۔ خصوصاً لڑکیوں کی تعلیم تو اسی پر ختم ہو جاتی ہے کہ انہیں قرآن مجید ناظرہ پڑھا دیا جائے۔ باوجودیکہ ہر مسلمان کو قرآن حکیم سے اتنی محبت ہے کہ وہ اس پر جان تک دینے کو تیار ہے، مگر ہمارے غفلت مآب استادوں نے ہماری ذہنیت کو تباہ کر دیا۔ آج کلام الہی کو بے سمجھے پڑھنے کا مادہ جتنا مسلمانوں میں ہے کسی میں نہیں۔ افسوس ہے کہ یہ استعداد والی قوم برباد ہو رہی ہے۔ اس کا نتیجہ یہ ہے کہ اس میں انقلابی روح فنا ہو رہی ہے۔

مولانا عبید اللہ سندھی
(بشکریہ انکار معلم لاہور)

and salt. But the linkage between *riba* and time is not defensible on three grounds.

First, a loan transaction has two basic characteristics: (1) the item given and that taken back are of the same general kind, and (2) the giver (lender in a loan transaction) is not a legal party to the use of the item on the part of the taker (the borrower). These two features of a loan transaction are time-invariant. Therefore, there is no basis to link *riba* with time.

Second, logically speaking, were it the case that time had any significance for *riba*, the length of time would also have been important. But, the Qur'anic A`hkam are absolutely clear that the length of the time lag in a loan is inconsequential in the assessment of *riba*.

Third, there is a general misgiving that time is important in loans only. This is not so. Take the case of an ordinary *ba`ey*—trading on spot or a cash sale. One observes in daily life that goods with speedier turnover have smaller profit margins than the goods with a slower turnover rate. In other words, time is always a factor in prices that sellers routinely charge. If the time factor is not critical in trading, why should it be accorded any juridical significance in the assessment of *riba* in loans?

Br. Akram Khan's equation of the difference between cash and credit transactions of commodities with *riba* (p.12) also needs reconsideration. Suppose a shopkeeper sells a pair of shoes for Rs. 500 to one client against cash payment, and he charges Rs. 700 to another person who agrees to pay after one year. The difference between Rs. 700 and Rs. 500 is not *riba*, because these are two separate transactions with each of them being subject to the A`hkam of Shari`ah independently of the other. Likewise, take the case of a shopkeeper citing Rs. 500 as cash price and Rs. 700 as deferred-payment price to the same customer. The difference would again not be *riba* because no actual transaction is taking place. Suppose the customer agreed to the Rs. 700 price for the good with a promise to pay after

Riba is a discrepancy which results form the contractual obligations of a party in the context of a direct exchange of items of the same general kind between two parties.

Br. Akram Khan is right when he says that we do not make riba specific to "loan" transactions. But there is a problem with his insistence that "There is no other possibility of a direct exchange of the items of the same general kind except when there is a loan transaction." (p.10) This is not so. Take, for example, the current practice of trading of currency notes.

It is well-known that around the Eid-alFitr time, in the open market a new pack of hundred 1-rupee notes sells of more than Rs.100. Likewise, a pack of hundred 2-rupee notes goes for over Rs.200. And, so on. Private money-changers also follow a similar practice in exchanging decomposed currency notes for new ones. All of these are cases of "trading" with rupee notes (of different denominations) at both ends of the exchanges.

Practically, these rupee-for-rupee trading exchanges are special cases of rupee-denominated loan transactions with the time lag (in the give and take-back process) being zero. In the light of the A`hkam of riba for rupee-denominated loans, it is only logical that rupees-for-rupees trading exchanges must be constrained to be on a one-to-one and equal basis. That this is not the case, implies that there is riba in "trading" of rupees for rupees. Hopefully, this illustration confirms the possibility of riba in trading—not a loan transaction.

As for the relation between time and riba, our definition is clear: time is not important for riba. This point of view is reconfirmed by the preceding illustration of riba in rupee-loans versus rupees-for-rupees trading. Nevertheless, since loans always have a time dimension and since the predominant impression is that riba is in loans, riba is generally linked to time. This impression is also reinforced by the A`hadith on riba whereby the deferment of neither the payment nor the delivery is permitted in the trading of gold, silver, wheat, barley, dates

conclusion drawn miss the basic point in the A`hkam on riba.

The A`hkam of riba define the rights and responsibilities of a lender and a borrower against each other on a reciprocal basis: whereas it is the borrower's right that he not be called upon to pay more than the sum borrowed by him, it is the lender's right to get his sum in full once he approaches the borrower on an agreed time.

Suppose a person deposited Rs. 1000 in a current account with the understanding that he will withdraw it after one month. This transaction is essentially a loan transaction. The depositor, the lender in this case, may pay Rs. 30 to a taxi-driver—a third party—to reach the bank. But once he reaches the window of the cashier, it is the bank's responsibility, as borrower, to return him Rs. 1000. If the bank requires the client to write a cheque and the bank itself charges some fees for the cheque, then practically the bank is paying Rs. 1000 minus the fees for the cheque. This is inadmissible according to the A`hkam of riba. In a technical sense, such a fee is negative riba.

The aforementioned position may be rationalized in another way too. The combined message of Ayah 278 and Ayah 279 of Surah *alBaqarah* is that a borrower must pay back the principal to the lender. It is well-known that an individual borrower cannot claim the expenses for his personal record-keeping and so on. Now, from the Shari`ah point of view, an order for an individual borrower carries over to an institutional borrower too. Therefore, there is no question of the bank—an institutional borrower in respect of its deposits—claiming, under any pretext, refund-charges on loans taken by them.

Finally, let us look at the twin issues of the relation between riba and loans and the relevance of time for riba. We reproduce here our proposed definition of riba in order to help the reader appreciate various points discussed hereunder.

time the camel is returned, say, after a few years, it grows both in age and size to the benefit of the lender. Thus, practically, the situation may be exactly the opposite of an ordinary loan in money or goods: in a loan of camel, the lender may gain at the expense of the borrower. Because violation of the principle of not personally benefitting from the act of lending might be unavoidable, the lenders of camels have not been obliged to follow the A`hkam of riba in letter and spirit.⁴

Incidentally, the Prophet (*SallAllaho `alaihay wasallam*) permitted the borrowing of one camel on the promise of returning two camels. On the other hand, one also finds that He (*SallAllaho `alaihay wasallam*) prohibited trading of animals for animals on a deferred payment basis. [*MISHKTAT alMasabi`h: Bab-ur-Riba*, `Hadith Nos. 16, 17] The message here is as follows. Two parties can go for either loaning or outright trading of camels, and be clear about their respective consequential rights and responsibilities. However, one cannot mix both the acts of trading and lending of camels into a single transaction, and leave blurred the line distinguishing the rights and responsibilities of one contracting party from those of the other. Indeed this is an example of the height of perfection in the A`hkam of riba in the Qur'an and Sunnah.

Br. Akram Khan also questions our classification of fees for cheque (charged by banks from their account holders) as riba. In his view, such a fee should be okay for two reasons: (1) it is not related to the amount of the cheque, and (2) it is legitimate charge for stationery and other services provided by the bank (p. 12). Both reasons stem from the traditional view that riba is prohibited because it related to the sum involved and that it is an unearned income. Both the reasons and the

4/ The legal significance of transacting the camel under the ambit of a "loan" is two-fold. First, if the camel dies because of some natural causes, the lender's claim for its return stands protected. Second, the ownership of the camel is transferred to the borrower for the period of the loan. Thus, if it were a she-camel, her off-spring born during the period of the loan would belong to the borrower—not the lender.

Quite clearly, when Allah *`Azza wa Jall* ordered that neither the creditors cause *zulm* to the debtors nor they be subjected to *zulm*, the unmistakable message was that both parties must avoid *zulm*.

Islamically speaking, *zulm* is done when any one of the parties in a *mu`amalah* (transaction) is denied its rights sanctified by Shari`ah. Thus, in interpreting the 279th Ayah, the following questions need to be asked. What were the rights of both the creditors and the debtors at the time of revelation of the Ayat 278-281? How did those rights arise?

Quite obviously, those rights were defined by the A`hkam in force at the time of the dispute. These A`hkam, in turn, were enshrined in Ayah 130 of Surah *Ale`Imran* and Ayat 275-277 of Surah *alBaqarah*. The 275th Ayah of Surah *alBaqarah* made it amply clear that the *ribawi* contracts negotiated before embracing Islam were to be honoured after deleting the *ribawi* clauses in them.—The issue of *riba* already given or taken was to be treated as closed in this regard. The matter was simply this much. There is no room here for being philosophic about *zulm*. By the way, one does not find a reference to "*zulm*" in the original A`hkam on *riba* given in Ayah 130 of Surah *Ale`Imran* and Ayat 275-277 of Surah *alBaqarah*. Does this not imply that the emphasis on "*zulm*", in the interpretation of the 279th Ayah, is misplaced?

In the paper under reference, the proposed definition of *riba* was said to cover all types of loan transactions except the camel-type loans. Br. Akram Khan wants to know the criterion for distinguishing camel-type loans from other types of loans.

This point may be clarified by nothing two things about camel-type loan transactions. First, while a loaned camel remains in the possession of the borrower, he is understood to look after the camel's food and other needs. Second, by the

riba. There was nothing unusual about the actual observance of these A`hkam by the Muslims until after *Fat`he Makkah* in 8 A.H.

Something in 9 A.H. or early 10 A.H. (but before *Hajjatul Wida`a*) it so happened that the settlement of an outstanding debt became disputed. The debt was contracted on the basis of *riba* between one family of Makkah and another from Banu Thaqeef before both of them embraced Islam.—The 278th Ayah reveals that both the parties were believers at the time of the dispute. The creditors demanded, but the debtors refused, the implementation of the *riba* part of the deal. Emotions ran high on both sides. The Governor of Makkah Sayyidena `Attab bin Aseed deemed it appropriate not to settle the dispute himself in the light of the then existing A`hkam on *riba*. He referred the matter to the Prophet (*SallAllaho `alaihay wasallam*). When the case came before the Prophet (*SallAllaho `alaihay wasallam*), then—instead of the Prophet (*SallAllaho `alaihay wasallam*) giving a decree—Allah *Sub`hanahu wa Ta`ala* decided the matter Himself. Thus, the Ayat 278-281 were revealed.

In order to see true position of the *zulm* point, it is pertinent to look at Ayah 278, Ayah 279 and their translation.

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُّوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُّؤْمِنِينَ ۚ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۖ وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ ۖ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ۝ (البقرة : ۲۷۸-۲۷۹)

O you! who claim to be believers! Fear Allah and give up whatever is left in lieu of *riba*—if you are indeed believers. [alBaqarah,,278] Watch Out! If you do not obey this order (and give up all outstanding *riba*), then there is a declaration of war against you from Allah and His Prophet. However, if you do *taubah* (repent along with the resolve to make amends for the past mistakes), you have a right to your principal only. Neither you inflict *zulm* on others, nor the others should do *zulm* on you.

dominant Fiqhi view whereby it is prohibited to concede a part of the debt in order to induce the borrower into an early settlement of accounts.³ Practically this means that the contractual obligations of the borrower are cleared by the lender conceding a part of his contractual claims. This is the opposite of the debtor giving extra to clear his contractual obligations. Now, if one calls the extra given by the debtor to be *riba*, should one not call the shortfall against the lender too *riba*? Indeed, in an accounting sense that too would be *riba*, *albeit* a negative one. This point is obscured as soon as one starts with the dictionary meaning of the word "*riba*"—the anchor of lexicographic-historic approach. Our approach allowed us to bring to fore this hidden aspect of *riba*, and to generalize it as a discrepancy. One may also think of some additional points in support of the methodology of the "What is *Riba*?" paper. But let us now look at other issues raised by Br. Akram Khan.

Br. Akram Khan questions our view that eradication of *zulm* is not the rationale (principle consideration) behind the prohibition of *riba*. He refers to Ayah 279 of Surah *alBaqarah* in this regard. In the 279th Ayah, the creditors at the time were told that neither they would do *zulm* nor be subjected to *zulm* in the settlement of the outstanding debts. The point is well taken. But the conclusion drawn about *zulm* does not follow.

The 279th Ayah was revealed as a part of Ayat 278-281 of Surah *alBaqarah*. The text of these four Ayat points to the existence of some contentious issue at the time. This was indeed the case. The A`hkam of *riba* were in force soon after *Ghazwae O`had*, as per Ayah 130 of Surah *Aale`Imran* and Ayat 275-277 of Surah *alBaqarah*—along with adjunct guidelines given by the Prophet (*SallAllaho `alaihay wasallam*) in order to rationalize trading practices with the Qur`anic A`hkam on

Economy Seminar (April 14-16, 1994 held at the Institute of Policy Studies, Islamabad.

3/ For details, see Justice Taqi Usmani's *Fiqhi Maqalat*, volume 1 (Karachi: Mainon Islamic Publishers, 1994, pages 100-114).

scale urbanization during the last few centuries. Incidentally, this was the period of palace intrigues in the Muslim heartland and colonial subjugation for the rest of the Muslim world.

Lack of intellectual challenges in both of the above instances justified the contentment of the Islamic scholars with seeing how the various Ayat supported the meaning of *riba* resulting from the lexicographic-historic approach. The *tafseer* of Tabri (224-310 A.H.), AbuBakr alJassas (305-370 A.H.), Fakhruddin Razi (544-606 A.H.), Qurtubi (died in 671 A.H.), Ibne Katheer (700-774 A.H.) and other pioneering *mufasserin* evidence this approach. Later scholars, including most of those in the present age, took their leads from these leading *mufasserin*. The popularity of this approach, however, did not mean the exhaustion of the option of defining "riba" by chronologically following the Ayat of the Qur'an in the light of the principles for interpreting oral texts.

Second, the prohibition of *riba* automatically entailed a strategy for the elimination of *riba* during the lifetime of the Prophet (*SallAllaho `alaihay wasallam*). What was this line of action? This crucial point has not been touched in the existing *tafseer*, *Hadith* and *Fiqh* literature on *riba*. Due to the reasons noted above, this critical issue always remained on the back-burner except after the World War II when Muslim countries started getting rid of the colonial yoke. Today the revival of the Islamisation agenda urgently calls for in-depth study of *riba* and reconstruction of the Islamic financial system. The lack of success in the efforts during the eighties points to the need for new initiatives. Unfortunately this would be difficult, if not impossible, if one continues to stick to the traditional lexicographic-historic approach.²

Third, the traditional approach has led to the wide-spread belief that *riba* is an excess. But one also comes across the

2/ A strategy for the elimination of *riba*, emanating from chronological study of the A`hkam of *riba*, is discussed in a paper read by the author at the Islamisation of

well as 'Hadith is to keep the total picture in view while not losing sight of their oral dimensions. Thus (1) the context (including both the issue at stake and the addressees of the message), (2) the choice of words by the speaker and (3) the communication style become relevant. Observance of the order of revelation becomes necessary automatically. We agree that this is not the customary practice in the case of *riba*.

Virtually all existing scholarly treatments of *riba* stick to the textual—rather than chronological—order of various Ayat on *riba* in the Qur'an. The argument starts and concludes with an enblock discussion of Ayat 275-281 of Surah *alBaqarah*.¹ Next, Ayah 130 of Surah *Ale`Imran* is interpreted with the help of Ayah 279 of Surah *alBaqarah* whereby Allah *Sub`hanahu wa Ta`ala* restricted the lenders to their principals only, and the case for (simple (as opposed to compound) interest is rejected. Finally, the commentaries on Ayah 161 of Surah *anNisaa'* and Ayah 39 of Surah *alRome* are practically silent on the link between these two and the aforementioned Ayat. The most likely reasons (*Wallahu a`alam*) for the popularity of this approach are as follows.

The process of the elimination of *riba* was completed during the blessed lifetime of the Prophet (*SallAllaho `alaihi wasallam*). Thereafter, the society remained by and large *riba*-free until the colonization of the Muslim lands by the hostile West. During the pre-colonial period, the main concern had always been with warding against deviations from the *riba*-free norms. This purpose was served very well by taking a lead from the dictionary meaning of the word "*riba*" and relating it to the pre-Islamic practices.

Major changes in the working of economies—especially in respect of institutionalized financial intermediation—were to come after the industrial revolution in the West and large

1/ Ayat 275-277 and Ayat 278-281 were revealed on two separate occasions, and both these sets of Ayat call for separate treatment.

SELECTED ISSUES IN RIBA

A Reply to the Comments of

Muhammad Akram Khan

on 'WHAT IS RIBA?'

*Sayyid Tahir**

In the February-March 1995 issue of *Hikmat-e-Qur'an*, Br. Akram Khan raised some important questions about "What is Riba?" published in the November 1994 issue. He also offered some fresh observations on the subject of *riba alFadl*. We propose to answer the less contentious issue raised by Br. Akram Khan at present, and take up the tricky subject of *riba alFadl* later on.

Br. Akram Khan has some reservations about the methodology of the paper. More specifically, he wants to know the reasons for our not following the traditional approach of looking at the concept of *riba* through its lexicographic meaning and then relating it to the historical context.

In the original paper we treated *riba* as a technical term in the Qur'an and `Hadith, and tried to bracket its meaning directly with reference to these two sources—without first committing ourselves to the dictionary sense of the word "riba". Our approach was (1) to draw the necessary conclusions with reference to the internal message of the Ayat on *riba* while following those Ayat in their order of revelation, and (2) to substantiate our conclusions with the `Hadith sources. In our view, the following points go in favour of this approach.

First, the correct approach for interpreting the Qur'an as