

transaction³. If we accept the explanation given above we do not have any difficulty in explaining the *hadith* which says that the *riba* is in case of loan. The only difficulty remains is that we have to accept that some of the words in the *ahadith* pertaining to *riba al-fadl* have been misreported by some reporter of the *ahadith* and have continued to be so reported upto this day. Of course, this is a position which is not very easy to concede by the orthodox scholars. But it will close the chapter on *riba al-fadl* and thus remove a lot of confusion in this area.

Third, the author's assertion that time is immaterial is also not tenable if we look into to original practice of *riba* among the Arabs of the Prophet's (pbuh) time. In those days, the usual practice of *riba* involved extension of repayment period in lieu of an increase in the amount of the debt. If we say that the question of time is immaterial we shall, unwittingly, open a door wide open for *riba* to get into the economy. For example, the most common form of *riba* being practised these days by the business community is in the form of a difference in the cash and credit prices of commodities. The difference in the prices is made because of the time involved. If we say that time is immaterial, we can then never close this door of *riba*. Once we do that, there does not remain any difficulty in accommodating the bank *riba* on commercial loans.

Four, Dr. Tahir has used the term "camel-type" loans several times. It is not clear what he means by this. What is the criterion to distinguish the camel-type loans from other types?

Five, Dr. Tahir has said that the bank fee for cheque books is also a type of *riba*. I think it is an extreme position. Firstly, it is not related to the amount of the cheque. Secondly, it can be a legitimate charge for the stationery and other services provided by the bank.

Six, Dr. Tahir thinks that the justification for the

³ Ibid, *hadith* 122-123.

tried to interpret these *ahadith* in terms of exchange of non-financial assets (such as commodities, cereals, etc.) in equal quantities and at the spot. *Riba al-fadl* arises, it is argued, whenever the exchange is unequal or one of the parties delays the delivery. For example, if a person has to exchange wheat for wheat then the exchange should be in equal weight and it should also be simultaneous. If the exchange is not simultaneous then it is not allowed as it will involve *riba*. This position gave birth to an obvious question : why should the two persons like to enter in such an exchange? The answer came: one of them, having a higher economic power may like to coerce the other to give a higher weight on the pretext of quality or some other characteristics. Thus it may allow someone with a greater economic power to exploit the weaker one. The Prophet (pbuh), it is argued, tried to foreclose this back-door of *riba* by prohibiting even this type of transaction.

The fact is that all this theory of *riba al-fadl* is quite involved and laboured. It has been developed to accommodate the text of some *ahadith*. There is no doubt that the *ahadith* which are the source of *riba al-fadl* are authentic and have been reported by the most authentic compilers of *hadith* like Imam Bukhari and Imam Muslim (*rahmatulla alaihim*). But if we look into these *ahadith* rationally it seems there may have crept some misreporting into them. It seems (Allah knows the best) the *condition of spot delivery of both the commodities* has been mistakenly reported by the reporters of the *ahadith*. The first condition that the exchange should be of equal weight makes a lot of sense in a loan transaction. If one borrows wheat, he should return the same quantity of wheat, no more no less. It is in line with the general principle of *riba* which forbids the exchange of unequal amount of money in a loan transaction. The idea seems to be that the Prophet(Pbuh) tried to elaborate the concept of *riba* by saying that *riba* will arise in all loan transactions, even though it may be a loan of commodities. That is why we find in one of the *hadith* that the *riba* is in a loan

obligations of a party in the context of a direct exchange of items of the same general kind between the two parties."

He further says that "time factor is not emphasised in this definition because the time lag is immaterial for the basic nature of the transaction in which *riba* may arise, namely a loan-type transaction."

This definition and its explanation by the author does not make *riba* specific to loan-transaction. This is an unusual position.

Riba arises only when a loan transaction takes place. The author himself uses the expression "direct exchange of items of the same general kind." There is no other possibility of a direct exchange of the items of the same general kind except when there is a loan transaction. The explanatory remarks by the author that time is immaterial has made the whole definition quite problematic. If time is immaterial, then loan cannot take place. In fact, the exchange of items of the same general kind is meaningless if there is no time lag. For example, it is absurd to say that A will like to exchange Rs.100 with B for another Rs.100 at the same moment of time. If such a transaction takes place for reason of efficiency, for example, there cannot be a discrepancy in exchange. Hence there can never be a possibility of *riba*.

I am aware of the difficulty of Dr. Tahir arising out of the concept of *riba al-fadl*. The concept of *riba al-fadl* is derived from the *ahadith* of the Prophet (pbuh). The *ahadith* dealing with *riba* also mention the exchange of six items.¹ It is stated in these *ahadith* that the exchange of these six items should be in equal quantities and also on the spot.² This second condition of exchange on the spot has made the scholars of Islamic law think very deeply about this question. Almost everyone has

1 The six items are : gold, silver, wheat, barley, dates, and salt.

2 For example, see Muslim b. al-Hajjaj: *al-Sahih, Kitab al-Muza'arah, hadith 94*, Beirut : 1334 Ah.

WHAT IS RIBA?

Comments on Sayyid Tahir's Paper

Muhammad Akram Khan

Dr. Sayyid Tahir's Paper "What is *Riba*?" (Hikmat-e-Qur'an, Nov. 1994, Pp.59-64) is a valuable contribution on a difficult subject. The definition of *riba* has attracted the attention of several scholars in view of the confusion created by some people who think that *riba* and the prevalent interest on commercial loans are two different things. Dr. Tahir has adopted an innovative approach to define *riba*. He has arrived at conclusions which are supported by the majority of the scholars of the Muslim Ummah. But his approach and methodology needs some further consideration. In this note we shall try to highlight some of the problems that Dr. Tahir's approach may create as well as some issues which still need thinking.

First, Dr. Tahir has discarded the traditional approach which looks at the concept of *riba* through its lexicographic meanings then relates it to the historical context. He has not said why he does not like this traditional approach? It is very unusual to try to define a concept without looking into its original and primary meanings as understood by the people of that language. We can sometime do so provided we have strong reasons to demonstrate that the lexicographic meaning or the historical context takes you to a meaning which cannot be defended otherwise. But if you have to arrive at the same conclusions as traditionally accepted there is no reason to adopt a more circuitous route. At least an ordinary reader likes to know the rationale of a different approach.

Second, the definition given by Dr. Tahir is quite complicated. It says :

"*Riba* is a discrepancy which results from the contractual