

ABDULLAH SAEED,
**Islamic Banking and Interest: A Study of Prohibition
of Interest and its Contemporary Interpretation**
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Reviewed:

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The book is made up of an introduction, a conclusion and eight chapters. The first chapter deals with the historical development of Islamic banking. The second chapter discusses the prohibition of *riba* in the Qur'an, *Sunnah* and Islamic law (*fiqh*). Chapter three deals with the modern interpretation of *riba*. Chapter four examines the profit and loss sharing system: *mudarabah* and *musharakah*. Chapter five examines *murabahah*. Chapter six discusses the banker-depositor relationship. Chapter seven examines the legal opinions of different religious supervisory boards and chapter eight deals with *ijtihad* and calls for new interpretation of *riba*.

The author mentions that chapter two was published earlier with some changes in the *American Journal of Islamic Social Sciences* (Winter 1995) under the title: "The Moral Context of the Prohibition of *Riba* in Islam Revisited" and that chapter five was published in the *Journal of Arabic, Islamic and Middle-Eastern Studies* (Vol.1,1993) under the title "Islamic Banking in Practice: A Critical Look at the *Murabaha* Financing Mechanism".

Riba in Qur'an

Based on some Qur'anic verses from *Surah al-Baqarah*, the author argues that the rationale of the prohibition of *riba* is the exploitation of the economically disadvantaged by the relatively affluent money-lenders and that the contemporary Muslim scholars should permit interest in view of the difference of circumstances between our time and earlier times. According to him, the institution of pre-Islamic *riba* used to worsen the

situation of the debtor by adding extra loans to his burden of unpaid loans, thus plunging him into more debts with the possible consequences of slavery or bonded labor (p.28). He argues that the more debtor is in need the more loans he incurs and that it was in the interest of the lender that the debtor becomes unable to repay his loans so that he can enslave him or repossess his land or any other assets presented as collateral. There was no legal protection for the debtor who cannot afford to repay his loans. Unlike nowadays, debtors could not rely on stable incomes from their employment or trade to repay their debts. Employment and income were uncertain and the majority of people were struggling on a daily basis for their survival. The economy was mainly an economy of subsistence and basic needs. Today, debt is not necessarily associated with poverty. This is particularly true of large scale borrowing for the production of goods and services or for the purchase of durable goods. Moreover, there are laws to protect borrowers, particularly small scale ones when they default on their debts. The debtor may neither be enslaved nor forced into bonded labor. Besides, transferring debts from parents to children does not exist today because the debtor can declare bankruptcy which is also a well known institution in Islam.

What the author argues here is right in justifying debts but not interest. He criticizes the Muslim scholars (*fuqaha'*) for their interest in the text rather than the rationale of the law. I suggest that he should go back to the books of *usul al-fiqh*, new or old, to find out how the Muslim scholars assigned great significance to the rationale behind shari'ah judgments and their beneficial as well as their harmful repercussions (*masalih* and *mafasid*), though the degree of this significance may differ from one *faqih* to another.

Riba in Sunnah

The author claims that none of the authentic *ahadith* attributed to the Prophet in relation to *riba* mention the terms loan (*qard*) or debt (*dayn*) (p.30) and that all these *ahadith* are related to *riba* of sales. Besides, the prohibition of *riba al-fadl* is not comprehensible. The truth is that these *ahadith* confirm the prohibition of the interest on loans (*riba al-qurud*) as a mean of blocking the ways of evasive devices (*sadd al-dharai'*) and as I explained in other places.

Riba in Fiqh

The author criticizes the scholars for saying that money should not be earned without risk. He argues that to say Islam extols risk is debatable, for there are a number of contracts which can be conducted without risk. A clear example of this is *murabahah* where the profit is predetermined. He also gives the example of wages and rents which are predetermined. To prove his point that Islam does not extol risk he mentions *al-qada' wa al-qadar* (divine will and decree), *tawakkul* (reliance on God), *sabr* (perseverance) and *shukr* (gratitude) which help toward realizing the person's peace of mind (p.124). But the author rejects the concept of risk as a justification for interest and I do not know what he would have done, had he written his thesis on risk, which is needed in every society both economically and for development purposes- rather than interest? Will he look for other new factors opposite to peace of mind to prove his claim?

The author says that the *fuqaha'* prohibit *riba* but use different *hiyal* (legal stratagems) that help creditors extract higher rates of return compared to prevailing rates of interest and pretend that they are not lending at interest, but buying and selling at profit. In reality, these transactions are but fictitious. He contends that emphasizing the legal form and ignoring the moral consequences of the prohibition of *riba* can lead to a *shari'ah* injunction devoid of meaning (p.39). He gave some examples of *hiyal* and mentions al-Khassaf (d.261 AH), Abu Yusuf (d.182 AH) and Muhammed al-Shaybani (d.189 AH) among Hanafi scholars who wrote about *hiyal*. He also mentions some Shafi'i scholars like al-Sayrafi (d.330 AH), al-Amiri (d.416 AH) and al-Qazwini (d.440AH) (p.38).

This was not true for the majority of scholars. In fact, a large number of them launched a war against such practices. Among these are Ibn Batta, Ibn Taymiyyah and Ibn al-Qayyim to mention but a few. Besides, there is a need for a proper examination of the writings mentioned by the author, as to whether they really contain such claims, because I am very surprised to see Abu Yusuf and Muhammed Al-Shaybani among them or that al-Khassaf who wrote about *Awqaf* could have written about such *hiyal*. *Hiyal* exist in Islam like any other religion but religion is supposed to reduce rather than encourage them.

Riba in Contemporary Fiqh

The author mentions the stance taken by Ma'ruf al-Dawalibi in differentiating between consumption loans and production loans and the refute of this by some scholars that productive loans were in existence also at the time of the Prophet (pbuh). However, he denies this fact, and tries to corroborate the arguments advanced by al-Dawalibi. A response to this could be found in my paper on *Riba al-Qurud* (Interest on Loans) published by the Scientific Publishing Centre, King Abdul Aziz University, 1410 AH.

Mudarabah in Islamic Banks

The author mentions many modern attempts made by Islamic banks to guarantee the capital they advance to investors on the basis of *mudarabah* and thinks that they are similar to interest, whether the guarantor is the *mudarib* or someone else. Sometimes, they even guarantee the return on the capital by using many forms of *hiyal* (stratagems) (p.59).

Musharakah in Islamic Banks

The author notices that the use of *musharakah* mode of finance is very limited (p.69). Besides, it is inadequate and involves many difficulties (p.71). He also notices that its practice is not done properly but also in a fictitious way (pp.67,69).

Murabahah in Islamic Banks

The author notices the overuse and dominance of this mode of finance in the operations of Islamic banks and gives the reasons (p.78). He asks: why it is not allowed to take interest on loans because of time when it is allowed to take higher rate of profit from a deferred sale because of time?. The dispute among contemporary scholars is not about this matter, but about other matters explained in many specific writings on *murabahah*.

Religious Supervisory Boards in Islamic Banks

The author observes that these boards prohibit manifest interest and allow hidden forms of it through modes of finance such as *murabahah*, reciprocal loans and prizes for depositors, etc. as well as through debt factoring companies which repays the loans to the banks and recover the debts from the debtors at a percentage commission out of the amount of the loans. This is in addition to the fact that the Islamic banks receive some forms of returns in the name of compensations for the damages which arise due to the non-repayment of debt on time (p. 111).

The author refers especially to the *fatawa* issued by the religious supervisory boards of Kuwait Finance House and Jordan Islamic Bank. He also quoted the *fatwa* of al-Barakah Seminar, 1403H, which stipulates that "any new contract which is not mentioned in *fiqh* shall be acceptable from the *shari'ah* viewpoint as long as it is not in conflict with any *shari'ah* evidence from the Qur'an, *Sunnah*, *Ijma'* or *Qiyas*, and which is beneficial to people and does not contain any significant harm".

The author observes that the religious supervisory boards do not rely on this principle when determining what is Islamic or otherwise in Islamic banking and finance. Instead they tend to follow earlier jurists despite the fact that their views are centuries old and they lived in different circumstances (p.118). He also observes that these religious supervisory boards sometimes base their *fatawa* on weak *ahadith*. A response to this would be that the matter is more complex than what he claims. The *hadith* might be weak but the scholars may vigorously accept it.

General Criticism

The author adopts the Western points of view and makes them the criteria with which he judges the Islamic points of view. Interest for him is as perceived by the Western man, thus, accordingly, it should be allowed in Islam. He did not criticize the theories of interest as he criticized the views of the Muslim scholars. In fact, he took interest as the basis and the criterion at the same time. It is true that the Western societies are developed but to say that financing with interest is behind this development, need to be proven.