

## Federal Shariat Court's Interest Prohibition: A Fig Leaf for Capitalism's Ugly Side

### The Question

On 28th April this year, the Federal Shariat Court (FSC) once again declared that *riba* (banking interest) was prohibited according to the injunctions of Islam and so it should be eliminated from the country within five years. The ruling established two clear sides; Islamists that became jubilant as they see this as a step towards the Islamization of our country and the Liberals that were critical considering this a regressive and impractical measure that will take the country backward and undo whatever economic development that has been achieved. Which side is right?

Prior to answering this, let's refresh a brief history of the FSC, its role, and its rulings regarding the prohibition of *riba*.

### Riba and the attempts to abolish it:

First and foremost, it is ironic that the elimination of *riba* from the economy is, contrary to common knowledge, a constitutional requirement under article 38F which states, "The state shall eliminate *riba* as early as possible". However, the first practical steps in this direction were taken when the FSC was formed in 1980 via a Statutory Regulatory Ordinance (SRO). Ironically, upon its creation, its wings were clipped by permanently restraining it from judging in matters of the Constitution, Muslim Personal Law, or any law relating to the procedure of any Court or tribunal. Moreover, any fiscal law or any law related to the levy and collection of taxes and fees or banking (*riba*/interest) or insurance practice and procedure were excluded from its ambit, originally for two, then another three, and finally for a total period of ten years. Knowing well that if it's not restrained, the natural outcome would be the abolishment of *riba*, thereby jolting the economic system, so these laughable delaying tactics were made part of the constitutional amendment 203B. There can be no better proof that whenever humans are given the right to make laws, they will always safeguard their personal interests even if that means going against clear injunctions of Allah (swt)!

As soon as the 10-year time bar expired, the FSC took up the case and announced its verdict regarding the abolishment of interest on 14th November 1991. It was decreed that the provisions of interest in a number of fiscal laws came under the definition of *riba*, and thus these legal provisions were repugnant to the Shari'ah. The court gave the government time till 30 June 1992 to eliminate all such provisions and make the economy *riba*-free. This decision was challenged in the Supreme Court's Shari'ah Appellate Bench (SAB) and was stayed till 23rd December 1999 when finally SAB upheld the FSC's 1992 judgment, giving the government till 31st March 2000.

In the meanwhile, an appeal of reconsideration of the verdict was filed in the SAB by United Bank Limited on which the SAB announced its judgment on June 24, 2002, in which along with deeming the previous verdict null and void, the FSC was advised to reconsider the case afresh and to provide judgment (redetermination) in the light of some identified issues. Since then, till around 2020, the case was held in abeyance for almost two decades by the various governments, only to be taken up by the FSC itself, in form of 7 questions with the objective to assess the performance of the government for the elimination of interest.

### The 'unanswerable' questions

The questions were related to the performance of Islamic Countries in promoting Islamic Banking, Islamic Financial System, and how these systems operate. And then came the landmark decision, declaring that the prohibition of *riba* is complete and absolute in all its forms and manifestations according to the Injunctions of Islam in accordance with the Holy Quran and Sunnah. Following the announcement of the FSC decision, Miftah Ismail, the then Finance Minister, welcomed the decision in a tweet and sought "guidance and clarification from the FSC about the process, steps, and timeframe to implement this decision." This now brings us to the most important part of the discussion. Can a zero-interest policy be implemented within the capitalist economic system? The capitalist economic system, like other known non-Islamic economic systems, has two distinct roles of interest, in addition to being a source of income for those with capital. These two

roles also form the basis of all subsequent questions raised by the FSC and therefore it is important to understand them thoroughly.

- Firstly, the interest rate, also called the policy rate is used to regulate the money supply; an increase in the policy rate would lead to more savings, thereby a cap on the money supply resulting in an expected decrease in inflation. Conversely, a lower policy rate would lead to more spending and investment and also more borrowing from banks creating a larger supply of money and consequently 'too much money chasing too few goods', called inflation. Such boom and bust cycles are common all over the world and it's the prime responsibility of central or state banks to bring stability by constantly adjusting the policy rate. In Western economies, just the announcement of a new policy rate is eagerly awaited and a downward adjustment is hailed by businesses and the stock market while an upward adjustment is welcomed by banks and other lending organizations.

- The second role of interest in a capitalist economic system is to serve as a tool for financing all kinds of economic activity. Paradoxically, a zero interest rate would mean a lot of cheap money available for businesses; however, practically it ends up in declining economic activity because there would be no monetary attraction for lenders to make their money available.

Another issue raised by the FSC is that the interest rate is partly utilized in offsetting inflation which is an integral part of this economic system. So even a child understands that if someone lends you say Rs.100 today, after a few years the same amount will not be worth the same, as its buying power will have reduced significantly. Some scholars have tried to justify interest in the garb of such inflation, instead of coming up with a solution for such cruel currency depreciation which happens primarily because of the endless minting of coins and printing of currency notes by governments whenever they are in need of money.

Another question raised by the FSC was regarding the financing of mega projects which require the private sector to step in; however, they often raise money through bank loans. Similarly, smaller businesses too, are financed by bank loans taken by private business entities and thereby generate wealth for the economy. If interest is abolished, how will mega projects be financed?

International contracts, especially those which have already been concluded are another topic that is raised by the FSC. Lastly, International Trade is brought up as an issue that needs addressing. Now anyone who would read the 1100-page detailed judgment and the discussion around these topics would quickly realize that actually none of the issues has been convincingly addressed. That's actually not surprising at all because remaining inside the capitalist economic system, and trying to escape interest is just like tying someone's hands and feet and expecting them to swim across a river. If you want them to survive, the shackles need to be torn apart just like the current capitalist economic system needs to be done away with if we want to have an interest-free economy.

### **Islam's economic model:**

Before understanding how Islam deals with the above problems, it is important to appreciate the fact that Islam provides us with a complete system to govern our personal and collective lives. The ruling system based on sovereignty belonging to Allah (swt) alone; the social system, based on the segregation of genders in general, the penal system based on implementing the hudood of Allah (swt) are just a few examples to mention. Similarly, Islam's economic system is a detailed and unique method to govern all kinds of economic transactions. The underlying principle is to avoid stagnation of wealth in a few hands. Zero interest is just one of the tools. Unfortunately, the destruction of the Khilafah at the hands of the British colonialists and the resulting weakened understanding amongst both scholars and general people has led to ignorance about such concepts among the Ummah. This, however, cannot be a justification for accepting foreign solutions and forgoing those from Islam. The results of this policy are visible in form of an extreme rich-poor divide, not only in Muslim countries but even more in those Western countries which are champions of the capitalist economic system. Coming to the Islamic economic system, one of its fundamental tenants is that currency needs to be backed by gold and silver, unlike the currently prevalent fiat currency, which does not mandate any backing whatsoever and hence can be printed endlessly, causing spiraling inflation, such as what Pakistan has witnessed in recent years. Although using fiat currency for buying and selling products or services isn't prohibited for Muslims; the Islamic state can only issue currency that is backed by gold and silver. This is mandated because the criterion (nisaab) for Zakah, blood money (diyat), the minimum stolen amount that would be considered theft,

and so on, are all tied to specific amounts/weights of gold and silver. The fact that the Shari'ah textually connected gold and silver to the Shari'ah rules when these rules were related to currency is evidence that the currency can only be from gold and silver alone. Furthermore, the rules of currency exchange – which is a purely monetary transaction – addressed gold and silver exclusively, further strengthening the evidence. The Prophet (saw) said, «وَبِيعُوا الذَّهَبَ بِالْفِضَّةِ وَالْفِضَّةَ بِالذَّهَبِ كَيْفَ شِئْتُمْ» **“Sell gold for silver as you please”** (reported by Bukhari from Abu Bakra, and Muslim reported similar to it through Ubada Bin Al-Samit).

The hadith above is specifying gold and silver as money, and making them alone the measures of monetary value and the basis for all other transactions to be carried out. Though it might sound radical now, after a 100 years of capitalism, this was actually the standard worldwide not so long ago. For most of humankind's history, till 1971, when US President Nixon abruptly and unilaterally abolished the Bretton-Woods agreement, currencies were always tied to gold either directly or through the dollar. It goes without saying that the sole beneficiary of this abolishment was the US government as all countries by then had already moved away from gold and most had pegged their currencies to the US dollar. A bi-metallic currency is almost inflation-free as it's free from manipulation by central banks and governments, hence solving one of the biggest problems currently faced by most economies today. Another unique feature of Islam's economic system is that the State is the one undertaking mega-projects instead of the private sector, hence removing the need for funding by banks. Private ownership of certain resources, particularly energy ones, is strictly prohibited in Islam. The Prophet (saw) said, «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ فِي الْكَلِّ وَالْمَاءِ وَالنَّارِ» **“The Muslims are partners in three things: vegetation, water, and fire.”** (Sunan Abī Dāwūd 3477 reported through Abu Khidash).

Similarly, the private ownership of important infrastructure and sensitive services is also not permissible. This in turn grants economic independence to the state in form of revenues and saves the population from exorbitant taxation as is common under the capitalist economic system. With regards to small businesses dependent on external financing, Islam solves that problem through partnerships instead of interest-based investors. As for those international contracts which have already been made like those with the IMF and in the case of CPEC, the FSC judgment quotes a Hadith but incompletely, omitting the part where the exception for the fulfillment of contracts is clearly stated: The Prophet (saw) said, «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ شَرْطًا أَحَلَّ حَرَامًا» **“Muslims are bound to the conditions they make, except one that makes forbidden what is permissible and lawful what is forbidden.”** (Al-Tirmidhi 1352, Ibn-e-Majah 2353).

From the above, it should be clear that the attempts at abolishing *riba* by the FSC are insufficient at best. They are nothing more than granting a life-line to the already struggling capitalist economic system which has been widely rejected by Muslims as exploitative and cruel. If the FSC and government are serious in their claim and resulting concerns, the above can serve as a template for where to start. However, it must be highlighted that even the complete Islamic economic system is not allowed to be established in isolation. The economic system is a part of the collective system of Islam which is intertwined with Islam's legal, judicial, educational, and political policies along with social and moral behaviors. As long as the other systems are absent, the economic system won't be fruitful in its entirety. Moreover, had Pakistan truly been an Islamic state, the process would have been completely opposite, i.e. those in favor of interest would have been the ones with the burden of proof that interest is justifiable in the light of Quran and Sunnah. The discussion above seriously begs the question, “What are we trying to achieve by such delayed, half-hearted efforts, and that too in patchwork?” Is this an attempt to pacify the growing demand by Muslims to return to the Islamic way of life by providing a fig leaf to hide capitalism's ugly side?

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