RIBA, ITS MEANING AND APPLICATION

Q: 6- Respectable Mufti Saheb: Kindly forgive me on intruding on your precious time and specially during the Holy Month of Ramadan when you will be too busy. Also please forgive me in addressing this letter in English as perhaps I may not be able to express myself more cleanly in Urdu.

You have been making research on various Islamic laws and principles which remain not clean in minds of people like me who have no knowledge or study of matters. As a learned Scholar and having vast experience and knowledge of both Islamic Laws and practices of modern period, I hope to get a reply of my query from you. Matter is the same old one - What is the position of Bank interest or profit - by whatever name it is called according to Shariah. To express whatever I understand I give below my feelings:

1. Authentic definition of Ward which has been declared by Allah and Holy Prophet saw. in Qur'an as Haram"?

2. As far as I can see the charges of profit or interest one expects to get in return of his providing money to a needy person to fulfill his requirement of daily needs in the absence of any source to fulfill these is Riba' but any such return on money used for business, to earn more money should not come under the definition of Riba.'

3. Generally it is said that if rate of profit is fixed it comes under definition of Riba' and becomes Haram' but if it linked with profit earned, it is not Riba. In my humble opinion this position is different. For example A' has got Rs. 100,0001= and he constructs a shop and gives it on fixed monthly rental for business. Or if he gives Rs. 100,0001= in cash for another business. What is the difference as far as A' is concerned. He is parting with his money, in one case he is giving it in kind and in another case in cash. Why return in both the cases be distinguished? Shop's rent is not dependent on profit or loss to the Shopkeeper. If rent paid for shop is 'rental for shop why fixed return on cash is not 'rental of money'?

This letter is just to clarify the position and correct my thinking and in no way to convert Haram into Halaal. After all after 15 Centuries, our concept should be clear at least on basic principles of our faith and we should not find excuses for justification of our (mis) deeds.

I shall be grateful to have your considered opinion for my guidance at your earliest convenience. (M. A. Siddiqui, Operations Director, Matiari Sugar Mills Limited)

A: I received your letter dated 27th January 1997 and apologize for the delay in replying it. It was due to my overwhelming involvements both here and abroad. I hope you will forgive me for this delay. The questions you have posed have been discussed thoroughly in a number of books written on the subject both in Urdu and English. If you wish to benefit from Urdu writings I would advise you to read the following books:

"The Questions of Interest : Mufti Shafei Rah.
"Islam & Modern Business: Mufti Taqi Usmani"

You may also benefit from the book of Dr. Anwar Iqbal Qureshi, titled `Islam and the Theory of Interest".

I think if you want to be very clear on this point you should at least study these books. However, I am giving here very brief answers to your questions:

1) The legal definition of any prohibited act is seldom given in the Holy Qur'an itself. For example, wine has been prohibited but no definition of wine has been given. Similarly, adultery, telling lies, backbiting and bribery have been prohibited by the Holy Qur'an but the definitions of these acts have not been provided. Reason for it is that all these concepts were too clear in the minds of the addressees to need any such definition. The same is the case of Riba. The concept of Riba was widely recognized among the addressees of the Holy Qur'an and it is that concept which is reflected in the legal definition provided for Riba either in the Hadith or in the later literature of Islamic jurisprudence. According to this definition any transaction of loan where the payment of an additional amount on the principal is made conditional to the advance of such loan is called Riba.

2) There is no distinction in Shariah between advancing a loan to a needy person or advancing it to a business concern. The principle is that the person who advances money to another person should clearly decide whether he wishes to assist him or he wants to share in his profits. In the former case, he should withdraw from any claim of additional amount (in the form of interest) while in the latter case he should share his loss also. It is not permitted by Shariah that he claims profit but does not agree to share his loss.

Another point which needs attention here is that the distinction between a needy and a rich person in commercial matters is totally irrelevant. If a shopkeeper sells a commodity to a poor person with a margin of profit which is not excessive nobody can say that this transaction is Haram because of the poverty of the purchaser. One can say that it would be more advisable for the Shop keeper to give him the commodity either as a charity or at cost without charging a profit but it cannot be said that the marginal profit charged here is not Halaal. If charging an additional amount on a loan is not in itself Haram then the same analogy should have been applied here meaning thereby that if a creditor charges a marginal interest on the loan he has advanced to a poor person it should not be condemned or declared as Haram, but even the modernists who hold the commercial interest as Halaal admit that this kind of transaction is Riba and prohibited by the Holy Qur'an. It proves that the basis of the prohibition is not linked to the poverty of the debtor. Had it been so, charging profit from a poor person would also have been declared as Haram. Therefore, the only basis for distinction between a sale and a transaction of Riba is that the former relates to commodity while the latter relates to money.

3) There are several differences between interest and rent. The basic principle of Shariah is that profit is justified where a person has undertaken the risk of the thing given to another person. In a transaction of loan, after advancing money, the creditor does not take any risk of the money because if the money is lost in the hands of the debtor after he has taken delivery thereof the

debtor is bound to repay the loan. As the creditor did not take any risk of it, therefore he cannot charge additional profit thereon. While, in the case of a property leased out to the Lessee, the Lessor has taken the risk of the property, If the property is destroyed, he will bear the loss, therefore, it is justified for him to charge rent from the Lessee. Another difference is that the property is always subject to depreciation while money does not depreciate. Therefore, charging of rent in the first case is justifiable while it is not so in the later case.

I hope that these brief answers will at least explain the basic concepts. However, for greater details you should study the books I have referred to above.

Contemporary fatawaa