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### **Emerald Article: Exploitation, Profit and the Riba-Interest Reductionism**

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# Article Title Page

## Exploitation, Profit and the *Riba*-Interest Reductionism

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### Structured Abstract:

**Purpose** - To provide a critical appraisal of the theme of *zulm* (injustice/exploitation) in light of the Islamic finance literature and the general attitude and approach of the Islamic finance industry and its advocates toward.

**Design/methodology/approach** - Based on an expanding theoretical and empirical knowledge base about Islamic finance and banking movement, and the emerging understanding about the role of profit and corporate behavior, a critical analysis of the role of *riba*, interest and profit in widespread injustice and exploitation is presented.

**Findings** - On the basis of the behavior of the Islamic finance industry, it seems that the industry's current practices are either neutral to the issue of injustice/exploitation or mirrors the tendencies of the conventional finance. Furthermore, when comparing the exploitative role of interest and profit, the latter seems to be more consequential than generally understood and acknowledged.

**Research limitations/implications** (limit 100 words)

Islamic economics/finance literature should have more empirical research in identifying and understanding the nature of exploitation in the contemporary world and in how the current practices or tendencies are minimizing or abetting the challenge of exploitation.

**Practical implications** - The larger goal of the Islamic finance and banking movement should be to be in harmony with the *maqasid* of Islam to minimize *zulm* (injustice/exploitation) in the society.

**Social implications** - The larger goal of the Islamic finance and banking movement should be to be in harmony with the *maqasid* of Islam to minimize *zulm* (injustice/exploitation) in the society.

**Originality/value** - While the literature of Islamic economics and finance is rather robust, this might be the first work that critically examines the *riba*-interest reductionism, especially to focus on its implication for attention of the industry being away from exploitation in general and the relationship between profit and exploitation in particular.

**Keywords:** Islam, Islamic finance, *Riba*, *Zulm*, Exploitation



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# Exploitation, Profit and the *Riba*-Interest Reductionism

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## I. Introduction

The Islamic banking and finance (IBF) movement, now comprising of institutions in almost all the Muslim-majority countries and also in many other countries in Europe and North America, is a major Islamic phenomenon that is gathering momentum steadily. The main motivation behind this pursuit of a banking system, distinguished from the conventional banking system, is the Islamic prohibition of *Riba*, which is traditionally equated with interest in a blanket manner. The primary rationale given by the proponents of Islamic economics and finance is that interest represents *zulm* - injustice and exploitation. Since Islam stands for justice and is against all kinds of exploitation, the traditional argument is that interest in all its forms is an abomination and prohibited. Therefore, the goal of IBF is to reorganize economics and finance away from interest-bearing arrangements and on an alternative basis consistent with Islamic norms and guidelines.

In this paper, the assumed relationship between interest and exploitation is critically examined. By drawing on the literature about exploitation on the one hand and the Islamic literature about economics, finance and law on the other, we scrutinize whether the traditional arguments about the connection between interest and exploitation hold up. Through exclusive focus on interest as the prohibited *riba*, the relationship between profit and exploitation is generally ignored, which is explored in this paper. Furthermore, we seek to evaluate whether the concern about exploitation expressed by the proponents of Islamic economics and finance is serious and substantive.

## II. Interest is unjust and exploitative: A Common and Traditional Argument

In the context of a categorical prohibition of *riba*, the Qur'an provides a fundamental rationale: "if you turn back, you shall have your capital sums: *Deal not unjustly, and you shall not be dealt with unjustly*".<sup>1</sup> Those who equate interest with *riba* invoke this same verse (and a few more) and conclude that interest is unjust and exploitative. It is important to note that in the traditional literature about Islamic economics and finance *riba* should be read as "interest."<sup>2</sup>

Syed Nawab Haider Naqvi, former director of Pakistan Institute of Development Studies and an eminent Muslim economist, asserted that "the abolition of *riba* is one ... element of a comprehensive Islamic reform to establish an exploitation-free economic system".<sup>3</sup> However, Naqvi is quite cautious in equating interest in all forms with *riba*.

Sayyid Abul Ala Maududi, the founder of Jamaat-e-Islami, a leading, revivalist Islamic party, and a renowned authority on Islamic institutions and traditions, had a profound impact on the development of IBF movement. Among his notable books is "Sood" (Interest), in which he equated interest with *riba* and

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<sup>1</sup> "... *La tazlimuna wa la tuzlamun*," Qur'an 2/al-Baqarah/279.

<sup>2</sup> Farooq, M. O. (2009a). "Riba, Interest and Six Hadiths: Do We Have a Definition or a Conundrum?" *Review of Islamic Economics*, Vol. 13 No. 1, pp. 105–142.

<sup>3</sup> Naqvi, S. (1981). *Ethics and Economics: An Islamic Synthesis*, The Islamic Foundation, Leicester, UK, p. 124. All emphases have been added by this author, unless mentioned otherwise.

attempted to expose the evils of interest and articulate an alternative, interest-free framework. His views about interest are aptly summed up by Khurshid Ahmad: "The main reason why Islam abolishes *interest* is that it is oppression (*zulm*) involving exploitation."<sup>4</sup>

Mohammed Nejatullah Siddiqi is a pioneering Islamic economist and the winner of King Faisal Award for his contribution to the field of Islamic economics and finance. According to him, "What is unethical about *riba*/interest to revoke such a response to interest-based banking from the Islamic civilization? The Quran (2:279) characterises it as unfair, as implied by the word *Zulm* (oppression), exploitation, opposite of *adl* (i.e. justice)."<sup>5</sup>

Mosad Zineldin, the author of a book on Islamic or interest-free banking observes: "The most important, and yet the most difficult, issue relates to the Islamic position with respect to the abolition of *riba* (i.e., usury, a positive rate of interest). It is important because the Islamic *commandment to abolish it signifies a distinctive socio-economic philosophy, which abhors social exploitation in all forms*, including 'unbalanced' and iniquitous financial relationships. It is difficult because the abolition of *riba* is in fact a signal for not only a financial rearrangement, but, even more fundamentally, for a restructuring of the entire economic system along Islamic lines."<sup>6</sup>

One of the leading Islamic economists, Umer Chapra, asserts: "All leading jurists throughout Muslim history have ... without exception, held justice to be so indispensable ingredient of *maqasid al-shari'a*."<sup>7</sup>

Muhammad Taqi Usmani is one of the leading Islamic experts serving on the Shariah expert boards of almost a dozen Islamic financial institutions (IFIs) around the world. According to him: "[T]he concept of Islamic banking was based on an economic philosophy underlying the rules and principles of Shari'ah. In the context of interest-free banking, this *philosophy aimed at establishing distributive justice free from all sorts of exploitation*."<sup>8</sup>

A well known contemporary scholar of Islamic law, Imran Ahsan Khan Nyazee, who also believes in the *riba*-interest equation claims: "*Riba* is the most important issue of Islamic law in the modern world. It can, and does have, important consequences for the lives of each citizen. Indeed, if *riba* can in its various manifestations is prohibited, it can alter the entire structure of the system of distributive justice prevalent today."<sup>9</sup>

An Islamic finance expert and professional, Abdulkader Thomas, affirms: "With its inimitable and characteristic economy of words, the *Quran* clearly identifies *riba* ... as an injustice, an economic evil, an impediment to spiritual growth, and a threat to the welfare of society. ... Throughout the *Quran*, the theme of justice, including economic justice, echoes resoundingly."<sup>10</sup>

On a somewhat nuanced note, Mahmud El-Gamal (Chair of Islamic Economics, Finance, and Management, Rice University) clarifies: "The prohibition of *Riba* is not only about exploitation."<sup>11</sup> However,

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<sup>4</sup> Ahmad, K. (Ed.) (1980). *Studies in Islamic Economics*, The Islamic Foundation, Leicester, UK, pp. 253-254.

<sup>5</sup> Siddiqi, M. N. (2000). "Evolution of Islamic Banking and Insurance as Systems Rooted in Ethics," Takaful Conference, April 2000, New York, available at: <http://www.takaful.com.sa/m4sub4.asp> (accessed 28 July 2011).

<sup>6</sup> Zineldin, M. (1990). *The Economics of Money and Banking: A Theoretical and Empirical Study of Islamic Interest-Free Banking*, Almqvist & Wiksell International, Stockholm, p. 49.

<sup>7</sup> Chapra, M. (2006). "Why has Islam prohibited interest? Rationale behind the prohibition of interest," in Abdulkader Thomas (Ed.), *Interest in Islamic Economics: Understanding Riba*, Routledge, pp. 96-111.

<sup>8</sup> Usmani, M. (2002). *An Introduction to Islamic Finance*, Kluwer Law International, Hague, p. 113.

<sup>9</sup> Nyazee, I. A. K. (2000). "The Concept of *Riba* and Islamic Banking", available at: <http://www.nyazee.com/islbanks/riba/riba.html> (accessed on 8 July 2008), p. 2.

<sup>10</sup> Thomas, A. (Ed.). (2006) *Interest in Islamic Economics: Understanding Riba*, Routledge, pp. 2-3.

<sup>11</sup> El-Gamal, M. (2000). "An Economic Explication of the Prohibition of *Riba* in classical Islamic Jurisprudence", in *Proceedings of the Third Harvard University Forum on Islamic Finance*, Cambridge: Center for Middle Eastern Studies, Harvard University, 2000, pp. 31-44.

as corroborated above, throughout Islamic literature about economics and finance, the connection between interest and exploitation/injustice is regularly and consistently made. Often, the prohibition is explained in terms of *zulm* (as manifested in injustice, exploitation, etc.) as the primary reason.

However, what is the exploitative dimension of interest as an allocative mechanism of capital in a modern economy? And, how genuine and adequate is the concern of the proponents of Islamic economics and finance about exploitation in general?

### III. *Riba*, Exploitation and the Qur'an

Islam's position regarding justice is unequivocal and universal. It sets the highest standard in this regard.

O you who believe! Stand out firmly for justice, as witnesses to Allah, *even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor*: for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.<sup>12</sup>

While the Qur'anic message of justice and egalitarianism is categorically on the side of protecting the weak and vulnerable, the entire notion of justice in this regard is supposed to be blind, whether dealing with the rich or the poor. As part of this quest for justice, Islam is against all kinds of exploitation of humans by other humans, whether individuals, groups or institutions. Therefore, anything, including Islamic economics/finance/banking, that takes exploitation as a serious and fundamental concern, can't be belittled or ignored.

According to the Qur'an, "O Believers! Do not consume *riba*, doubling and redoubling, and fear God so that you may prosper."<sup>13</sup>

So, what kind of exploitative conditions or transactions were in vogue during the time of Qur'anic revelation specific to *riba*?

Explaining the meaning of the term used in verse 3:130, Tabari (d.310/923), the well-known commentator on the Qur'an, says:

Do not consume *riba* after having professed Islam as you have been consuming it before Islam. The way pre-Islamic<sup>14</sup> Arabs used to consume *riba* was that one of them would have a debt repayable on a specific date. When that date came the creditor would demand repayment from the debtor. The latter would say, 'Defer the repayment of my debt; I will add to your wealth.' This is the *riba* which was doubled and redoubled.<sup>15</sup>

The way in which *riba* was doubled and redoubled in the pre-Islamic period is expressed by the son of Zayd b. Aslam (d.136/754) as follows:

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<sup>12</sup> Qur'an 4/an-Nisa/135

<sup>13</sup> Qur'an 3/ale Imran/130.

<sup>14</sup> The expression "pre-Islamic" appears only in quotations from others. When various authors use "pre-Islamic", they basically mean pre-Muhammad or pre-Qur'an period. From the Islamic viewpoint, there is no "pre-Islamic" period in human history, as Islam began with Adam/Eve and continued through the prophets all the way to the last Prophet and Messenger, Muhammad. [Qur'an 42/ash-Shura/13]

<sup>15</sup> Saeed, A. (1996). *Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation*, E. J. Brill, New York, NY. p. 22, quoting Tabari, A. (1986), *Al-Jami al-Bayan fi Tafsir al-Qur'an*, Dar al-Ma'rifa, Beirut, Vol. IV, p. 59.

*Riba* in the pre-Islamic period consisted of the doubling and redoubling [of money or commodities], and in the age [of the cattle]. At maturity, the creditor would say to the debtor, 'Will you pay me, or increase [the debt]? If the debtor had anything, he would pay. Otherwise, the age of the cattle [to be repaid] would be increased ... If the debt was money or a commodity, the debt would be doubled to be paid in one year, and even then, if the debtor could not pay, it would be doubled again; one hundred in one year would become two hundred. If that was not paid, the debt would increase to four hundred. Each year the debt would be doubled.'<sup>16</sup>

The exploitation and injustice of such *riba*-based transactions are obvious, and hardly require any further explanation or clarification. This type of *riba* is known as *riba al-jahiliyyah*, and according to some Islamic scholars, such as Imam Ahmad Ibn Hanbal (d. 241 AH), only such *riba* is unlawful without doubt from the Islamic viewpoint.

The Qur'an vehemently condemns *riba*, but provides little explanation of what that term means, beyond contrasting *riba* and charity and mentioning exorbitant 'doubling.' Commentators describe a pre-Islamic practice of extending delay to debtors in return for an increase in the principal (*riba al-jahiliyya*). Since this practice is recorded as existing at the time of the revelation, it is one certain instance of what the Qur'an prohibits. Hence Ibn Hanbal, founder of the Hanbali school, declared that this practice - 'pay or increase' - is the only form of *riba* the prohibition of which is beyond any doubt.<sup>17</sup>

Subsequently, *riba* was categorized as either *riba al-nasia* (related to deferred payments) or *riba al-fadl* (related to exchange of commodities), and the latter was added primarily on the basis of Hadiths (prophetic narrations). Gradually the scope of *riba* in Islamic jurisprudence was extended in modern times to include all forms of interest (simple or compound, low or high, nominal or real, etc.) and *riba al-fadl*, based on *qiyas* (analogical deductions), was extended to more than six commodities - barley, date, wheat, salt, gold and silver - covered by the prohibition of *riba*.

#### IV. Interest and the Exploitation Argument

The orthodox view behind the IBF movement - that, interest in all forms is prohibited - is based on a definition of *riba* that is much more expansive than *riba al-jahiliyyah*. The expansion of meaning is based primarily on hadith, even though, contrary to common claims, no clear definition can be established to justify the *riba*-interest equation.<sup>18</sup> This creates a new challenge of rationalizing the broadened definition, especially in terms of the exploitation argument. While exploitation and injustice involving *riba al-jahiliyyah* are obvious and undeniable, the same is not true of interest in general, and the traditional arguments against it, when examined in light of our contemporary context, do not seem to hold.<sup>19</sup>

Let's take one such common/traditional argument offered by the orthodoxy as a rationale for the prohibition of interest.

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<sup>16</sup> Ibid.

<sup>17</sup> Vogel, F. and Hayes, Samuel III. (1998). *Islamic Law and Finance: Religion, Risk and Return*, Kluwer Law International, Hague, pp. 72-73, quoting Ibn Qayyim al-Jawziyya, d. 1350, *I'lam al-muwaqqqa'in 'ala rabb al-'alamin*, ed. Taha 'Abd al-Ra'uf Sa'd, Beirut: Dar al-Jil, 1973, 2:153-4.

<sup>18</sup> Farooq, 2009a, op. cit.

<sup>19</sup> Farooq, M. O. (2009b). "Islam and the Riba-Interest Equation: Reexamination of the Traditional Arguments", *Global Journal of Finance and Economics*, Vol. 6 No. 2, pp. 99-111..

The lender is very likely to be wealthy and the borrower poor. If interest is allowed, the rich will exploit the poor, and this is against the spirit of mercy and charity. (This is the social aspect of the prohibition of interest).<sup>20</sup>

The observation that the "lender is very likely to be wealthy and the borrowing poor" is based on stereotyping of the lending-borrowing process at the personal level. In the institutional context, savers as surplus units are lenders to the banks and financial institutions, as these deposits are treated as liabilities of the banks on their balance sheets. Many of these savers are not necessarily rich. Indeed, until savers have sufficient capital to invest in the capital market (long-term securities, such as bonds, stocks or mutual funds), which includes many younger or not-so-well-off people, they stick to the savings accounts of the banks. Based on US data in 2001, top 1% income class constitutes 44.1% in stocks/mutual funds investments; next 9% income class constitutes 40.4%; and bottom 90% income class constitute 15.5%. In terms of bank deposits (all categories included), top 1% provide 21.7% of bank deposits; next 9% provides 35.5%; and bottom 90% provides 42.8%.<sup>21</sup> Thus, stereotyping lenders as rich and borrowers as poor is not supported by the changed reality of our modern times. "Today ... debt is not necessarily associated with poverty."<sup>22</sup> Indeed, the poor has little access to credit/debt from conventional financial institutions. Such access generally begins with adequate income and/or collateral. Of course, greater or substantive access to the organized debt/capital market through the primary market is limited to those who are already well-to-do individuals.

The burden of foreign debt is often cited as an example of the interest-based exploitation. Indeed, external debt of the developing countries (or, less developed countries) has been a frequently discussed issue in the relevant literature and policy discourse. "Total debts amassed by the world's poorest countries shot up from \$25bn in 1970 to \$523bn in 2002, resulting in endless misery and widespread poverty as many of these economies spiraled out of control."<sup>23</sup> Even though there are LDCs that have experienced declining ratios of external debt to GDP, the total debt continues to rise for most such countries, creating enormous, and often unbearable, debt burden. Many critics from both conventional and Muslim background take a rather strong negative view about such indebtedness, while many also view such debt as "instrument of exploitation."<sup>24</sup> As George Ann Potter aptly articulated: "Debt is a direct expression of the unjust global economic order which is the result of a long history of slavery, exploitation and terms of trade which are detrimental to the poor."<sup>25</sup> High interest rate is also identified as an important factor adding to the debt burden. As Jacob Viner points out: "Our conservatives ... are hostile to the idea of American capital serving foreign industries, and our liberals tend to oppose foreign investment as an instrument of exploitation of foreign peoples. Our interest rates are comparatively high, and our bankers' commissions are superlatively so."<sup>26</sup>

There are also Muslim economists who critique such burdensome external debt and see it as an instrument of exploitation and point their finger at high interest rate. However, they go one step further and blame not just indebtedness, but interest as an instrument itself.

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<sup>20</sup> Al-Qaradawi, Y. (undated). *The Lawful and the Prohibited in Islam*, Hindustan Publications, New Delhi, India, p. 266.

<sup>21</sup> See Table 6 in Wolff, E. "Changes in Household Wealth in the 1980s and 1990s in the U.S." in Edward N. Wolff (Ed.), *International Perspectives on Household Wealth*, draft, forthcoming, Elgar Publishing, available at: <http://www.econ.nyu.edu/user/wolffe/WolffWealthTrendsApril2004.pdf> (accessed 29 July 2010)

<sup>22</sup> Saeed, op. cit., p. 29.

<sup>23</sup> Madslieen, J. (2005). "Debt relief hopes bring out the critics," *BBC News*, June 29, available at: <http://news.bbc.co.uk/2/hi/business/4619189.stm> (accessed 28 July 2010).

<sup>24</sup> Potter, G. (2000). *Deeper than debt: economic globalisation and the poor*, Latin America Bureau, p. 130.

<sup>25</sup> *Ibid.*, p. 129.

<sup>26</sup> Also see, Viner, J. (1951), *International Economics: Studies*, Free Press, p. 135.



Foreign debts based on interest have done irreparable harm to the poor nations of the world. Issa Abdouh ... focuses attention on this role of interest and Mawdudi ... describes interest as the greatest instrument of exploitation at the international level."<sup>27</sup>

While such critique is in line with the "lenders are rich and borrowers are poor" and rich lenders exploit the poor borrower arguments, blaming interest per se, instead of high interest rate, suffers from a pivotal weakness. Except in cases of "odious debts" (external debt incurred often by unrepresentative governments for purposes not necessarily in best interests of the nation), the reality is that even at zero interest rate, which would be *Qard Hasan* or Islamically acceptable loan, debt can be amassed by the borrowing parties and used as an instrument of exploitation by the lenders. For capital-poor or revenue-poor countries, high indebtedness can be financially unsustainable even at zero interest rate. The needy parties who might not be able to repay their debts are zakat- or aid-eligible, but borrowing simply exposes them to exploitation. Thus, even though interest can make the burden much greater, those who want to use their resources to exploit others, they don't need to turn to interest as an instrument to exploit others. They can make the borrowers captive even at zero interest rate. Unfortunately, Muslim critics often disproportionately or exclusively focus on interest as *the* instrument of exploitation, which in reality may not necessarily be so.

In connection with interest-based transactions, there is another important twist to this "lenders are rich and borrowers are poor" argument, especially when it comes to the actual practices of the IFIs. Either required by the central banks of the respective countries to maintain certain level of reserves with the central banks or due to lack of appropriate investment opportunities, many IFIs deposit their funds in interest-bearing accounts, even in foreign countries, for which Shariah-experts have provided the necessary fatwa of *Shari'ah*-compliance based on the rules of necessity (*darurah*).

Scholars in Islamic finance and banking have invoked necessity to permit exceptional relaxations of rules. They have issued fatwas (opinions) allowing Islamic banks to deposit funds in interest-bearing accounts, particularly in foreign countries, because these banks have no alternative investments at the necessary maturities. Typically, however, they place conditions on such fatwas, such as requiring that the unlawful gains be used for religiously meritorious purposes such as charity, training, or research. Such fatwas are particular to the circumstances in which they are issued.<sup>28</sup>

Many Islamic banks have been explicitly and openly earning interest on their excess funds, often invested in safer, debt or debt-like instruments overseas. Even Islamic Development Bank (IDB), a "multilateral development financing institution, established to foster social and economic development" in its 55 member countries, follows this practice.

Some Islamic institutions have steadfastly refused to receive interest, whereas others, including the Islamic Development Bank and the Faisal Islamic Bank of Egypt (FIBE), have always placed their excess funds in interest-bearing accounts, usually overseas. ... The Saudi Arabian Monetary Agency (SAMA) acts as the depository institution for IDB funds. One occasional source of controversy has been the fact that those funds were receiving interest - in fact becoming the main source of profits for the bank. The bank's charter expressly permits it to invest excess funds 'in an appropriate manner', and the criterion of overriding necessity (of development in the Islamic world), in addition to the lack of suitable investments has been repeatedly used to defend the policy.<sup>29</sup>

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<sup>27</sup> Khurshid Ahmad. (ed.) *Studies in Islamic Economics: A selection of papers presented to the First International Conference on Islamic Economics*, International Centre for Research in Islamic Economics, King Abdul Aziz University, 1980, p. 256.

<sup>28</sup> Vogel and Hayes, op. cit., pp. 38-39.

<sup>29</sup> Warde, I. (2000). *Islamic Finance in the Global Economy*, Edinburgh University Press, pp. 50, 144.

Thus, when simply extended from an argument against *riba*, the traditional argument against interest - poor borrowers are vulnerable to exploitation by rich lenders - doesn't hold. One of the vital problems of most Islamic laws is that they are rarely supported by empirical data.<sup>30</sup> All these traditional arguments against interest are generally polemical at best. Actually, Islamic finance and banking is probably the only field where the pertinent Muslim experts and scholars seem to apply themselves from an empirical perspective. There are many empirical works on the performance as well as other issues pertaining to Islamic finance and banking. However, there is hardly any empirical work done by these scholars of Islamic economics and finance in support of their claim that interest in *all* its forms is exploitative and makes either the borrowers or the society in general worse.

Indeed, the modern experience of microcredit, as pioneered by institutions such as Grameen Bank is interest based and yet it has helped in alleviation of poverty of millions of people. While there are criticisms against such microcredit institutions and there is also skepticism about its efficacy, after many decades of condemning Grameen Bank as *ribawi*, even Islamic finance industry has also conceded that microfinance can be an important component of the overall development and poverty alleviation strategy and has embraced microfinance through models Islamically adapted from Grameen types. Thus, all interest-bearing transactions are not necessarily exploitative and this is corroborated by fact. In case of Grameen Bank like projects, interest-based credit has provided an escape for millions of people from the chokehold and exploitation of village loan sharks.

## V. Definition and Matrix of Exploitation

Let's consider various situations where exploitation is alleged. For examples, what makes a contract or transaction unfair? Do big-time college athletic programs "reek of exploitation", as claimed by the President of Stanford University? Does the legalization of human organ sales involve exploitation? While Muslim scholars may have specific *fatwa* (juristic opinions) on any such issue or problem, it is important to note that Muslim scholars do not really have a clear and consistent theory of exploitation to help understand, analyze and address the situations where exploitation allegedly occurs.

Generally, the subject of exploitation is dominated by Marxian or neo-Marxian theories.<sup>31</sup> Since the Marxian approach to exploitation, built on the concept and measurement of the "surplus", is widely known, it is not necessary to explore in detail in this essay.<sup>32</sup> Alan Wertheimer, a scholar of political theory, law and ethics, offers a broader non-Marxian framework to analyze the issue of exploitation in a book, *Exploitation*.<sup>33</sup> In operationalizing the notion of exploitation, Wertheimer offers the following typology.

	Mutually Advantageous	Harmful
Fair	A	B
Unfair	C	D

Based on the above typology, there are four different scenarios. Transactions or contracts that are mutually advantageous *and* fair or unfair; transactions or contracts can also be harmful (to at least one party) *and* still it could be fair or unfair. What a society has the most interest in is to prevent or eliminate transactions or contracts that are both harmful and unfair (Type D) to at least one party. For

<sup>30</sup> Farooq, 2011; see the chapter "The neglected empirical foundation of Islamic law."

<sup>31</sup> O'Hara, Philip. (2008). "Exploitation and surplus," in John B. Davis and Wilfred Dolfsma (Eds.), *Companion to Social Economics*, Edward Elgar, pp. 649-665.

<sup>32</sup> An excellent summary is provided at Reference.com, available at: <http://www.reference.com/browse/wiki/Exploitation> (accessed 28 July 2010).

<sup>33</sup> Wertheimer, A. (1996). *Exploitation*, Princeton University Press.

example, *riba al-Jahiliyya* is both harmful (to one party) and unfair. Thus, its prohibition by Islam is quite obvious. In the Qur'an God has even declared war against those who practice such type of *riba*.<sup>34</sup> This is further reinforced by a fundamental precept of Islam, as enunciated in a hadith: "Let there be no harm nor reciprocating harm" [*la darar wa la dirar*].<sup>35</sup>

The Islamic orthodoxy that equates *riba* with interest and regards interest in *all* forms prohibited have not been able to offer any defensible rationale or empirical evidence that even in the case of mutually-agreed, fully disclosed, profit-oriented loans in a competitive, regulated environment, interest is harmful to one party or that it is unfair. Indeed, in a competitive, regulated environment, interest-based transactions are generally mutually advantageous and fair. Though repudiated by the orthodoxy, the grand mufti of al-Azhar, Shaikh Tantawi's fatwa on this issue went one step further. He argued that interest-bearing bank deposits are more Islamic than what is offered as Shariah-compliant products.

In 1989 [Tantawi] declared that interest on certain interest-based government investments was not forbidden *riba* (because the gain is little different from the sharing of the government's profits from use of the funds or because the bank deposit contract is novel), thus joining the thin ranks of prominent religious figures who have issued fatwas declaring clear interest practices permissible. ... Later he went even further, saying that interest-bearing bank deposits are perfectly Islamic, and more so than 'Islamic' accounts that impose disadvantageous terms on the customer. Laws should change the legal terminology used for bank interest and bank accounts to clarify their freedom from the stigma of *riba*.<sup>36</sup>

Generally, any stipulation of increase or excess over the principle - i.e., interest - is considered as *riba* in the context of debt instruments. As Maududi defined, *riba* is:

'predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period.' This definition entails the following three elements: (a) excess over and above the loan capital; (b) determination of surplus in relation to time; and (c) *stipulation of this surplus in the loan agreement*.<sup>37</sup>

The above definition simply reflects the way classical Hanafi jurists, such as al-Sarakhsi (d. 490 AH), had defined *riba* earlier. "Riba in its literal sense means excess ... and in the technical sense (in the Shariah), *riba* is the *stipulated excess* without any counter-value in *bay* [sale]."<sup>38</sup>

However, there is a difference in nuance in the above two definitions. Al-Sarakhsi's definition focuses on sales (exchanges) without any mentioning of loan. Maududi's definition focuses on loans, which is more directly related to interest in a modern economy. However, there are two aspects that are common to the above definitions: (a) "stipulation" of excess and (b) no reference to any injustice, unfairness or exploitation. Here, stipulated or predetermined excess in loan or exchanges - without any counter-value - is assumed to be unfair, harmful and exploitative.

As we have mentioned above, there is no theory of exploitation offered by the Muslim scholars and jurists. God is Just. His revelation, thus, is just, and its implementation guarantees prevention of *zulm* or exploitation. Therefore, there is no need to discuss the issue of injustice or exploitation separately. What the jurists and scholars need to focus on is knowing what the divine dictate is and identifying its criteria and scope of application, and then applying or implementing it. That takes care of any underlying problem of injustice or exploitation!

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<sup>34</sup> Qur'an 2/al-Baqarah/279.

<sup>35</sup> Ibn Hanbal, *Musnad Ahmad*, Vol. I, #2870.

<sup>36</sup> Vogel and Hayes, *op. cit.*, p. 46.

<sup>37</sup> Quoted in Ali, E. R. A. (undated). "Riba and Prohibition in Islam", International Islamic University, Malaysia, available at: [http://www.cert.com.my/cert/pdf/RIBA\\_AN2.PDF](http://www.cert.com.my/cert/pdf/RIBA_AN2.PDF) (accessed 24 July 2009), pp. 2-3.

<sup>38</sup> Nyazee, *op. cit.*, p. 24, quoting al-Sarakhsi's *Mabsut*, Vol. 12, p. 109. Actually, this type of definition of *riba* was introduced by another Hanafi jurist/exegete Al-Jassas (d. 370 AH). See footnote #41 below.

One real problem with this commonly-held perspective is that, while from the Islamic perspective, the Qur'an provides certainty of knowledge in regard to verses that are legal in nature (*muḥkam*), the Qur'an rarely defines any term and the human understanding of the Qur'an in regard to its definition and scope or context of application is not infallible. It is important to note that beyond the Qur'an, hadith (mostly *ahad* or solitary) yields only *probabilistic* knowledge.<sup>39</sup> There is no consensus on the definition about *Ijma* (consensus) itself and it is an overused and sometimes even misused doctrine and tool.<sup>40</sup> The other foundation of Islamic *fiqh* (law) is *qiyas* (analogical deduction), which also yields only *probabilistic/speculative* knowledge.<sup>41</sup>

Thus, the premise or approach that merely knowing, identifying and applying the Islamic guidance automatically *ensures* that the laws, codes, instruments, structures, etc. address injustice and exploitation is simply presumptuous. Let's keep this presumption in perspective and briefly examine the issue of "stipulation of excess" and the lack of any "counter-value".

There is a reason why, compared to definitions by earlier jurists, more recent definitions focus on interest-bearing transaction. This is because barter transactions are less common now, and there is a simplistic tendency to equate *riba* with interest. For illustrative purpose, let's focus on the more recent definitions that have been influential in the emergence of the Islamic finance and banking movement.

#### a. The Stipulation of excess

The stipulation of any excess in the loan agreement is a constituent element to identify *riba*, and therefore interest-bearing debt instruments are considered prohibited in Islam. However, quite ironically, as in the case of *riba al-jahiliyyah*, discussed above, the exploitation element comes from not the presence, but a lack of stipulation, of a predetermined excess in the contract.<sup>42</sup> That's why at the time of settlement of debt, if the borrower is unable to pay, he is given an option to defer, but the principal owed is doubled or quadrupled, at the mercy of the lender.

There are two opinions about the nature of the *riba al-jahiliyyah*.

Abul A'la Maududi the chief of the Jamaat-i Islami assumes that for the first term the credit was granted free for interest but one fails to understand how this is intelligible in a social set-up such as the commercial Meccan society or the Jewish Medinese society, where the *riba* system was quite normal. How could the usurers, who were keen on doubling and redoubling their capital, forgo the initial interest by way of charity so to say?

Mufti Muhammad Shafi expresses an opinion contrary to that of Maududi. He says, 'The prevailing practice in Arabia was that a certain amount of money was advanced for a fixed period at a fixed rate of interest. If the debtor paid the loan within the prescribed time the matter was settled on the payments of interest otherwise he had to pay more interest.'

However, the ... statement of Zayd b Aslam, which is recorded not only by Malik but also by al-Bayhaqi, Razi and other *Muhaddithun* and fuqaha, shows that the initial interest itself was not usurious and was, therefore, not considered *riba*.<sup>43</sup>

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<sup>39</sup> Farooq, 2011; see the chapter "Islamic law and the use and abuse of hadith".

<sup>40</sup> Farooq, 2011; see the chapter "The doctrine of Ijma: Is there any consensus?"

<sup>41</sup> Farooq, 2011; see the chapter "Qiyas (Analogical Reasoning) and Some Problematic Issues in Islamic law."

<sup>42</sup> Farooq, M. O. (2007a). "Stipulations of Excess in Understanding and Misunderstanding Riba: The al-Jassas Connection", *Arab Law Quarterly*, Vol. 21 No. 4, pp. 285-316.

<sup>43</sup> Rahman, F. (1964) "Riba and Interest", *Islamic Studies*, Vol. 3 No. 1, March, pp. 1-43.

The reference to, among others, Imam al-Razi is particularly important and relevant. In his well known Qur'anic exegesis, in the context of these *riba*-related verses and under the heading "The horrific image of usury", he stated: "... *riba al-nasihah* was the more widely known in the pre-Islamic known in the pre-Islamic days. People would advance money for a fixed term *in return for an agreed monthly fee*, keeping the original amount unchanged. At the end of the fixed term, the borrower would either pay back the original loan in full or be granted an extension with higher monthly payments."<sup>44</sup> Obviously, a pre-agreed or stipulated return not only was not unknown, but according to al-Razi rather "widely known".

In either case, for profit-oriented financing, it is not the stipulation of excess over the principal that is necessarily the source of exploitation or vulnerability of the borrower; of course, *if* the issue of exploitation has anything to do with the prohibition. Indeed, when a borrower knows what would be the total amount to repay the borrowing, he can assess the contract and make the decision voluntarily whether to enter into such a contract. In absence of a stipulation of predetermined excess (rate or lump-sum), the borrower doesn't know what kind of excess would have to be faced, if the debt is not settled at the end of the contract period. Knowing and accepting the terms of a contract are not sufficient to ensure fairness, but they are necessary conditions.

Tracing the historical background of "stipulated excess" in Islamic discourse, Abdullah Saeed points out that Qur'anic commentaries as well as Prophetic narrations in Tabari (d. 310 AH), Ibn al-'Arabi (d. 1148 AH) etc. did not associate *riba al-jahiliyya* with any stipulated excess.

These reports indicate that the *riba* as practised in the pre-Islamic period (*riba al-jahiliyyah*) involved adding an amount to the principal against an extension of the maturity of an existing debt due to the debtor's inability to repay on time. None of the reports quoted by Tabari, one of the earliest exegetical sources available to us, suggests that any increase was added at the time the debt was contracted. All reports available suggest that the increase in the debt occurred *after* the contract was concluded *and* at the maturity date and was due to the inability of the debtor to meet his obligation. These reports refer to debts but do not reveal whether they were the result of loans or deferred payment sales.<sup>45</sup>

So, how did this "stipulated excess" become part of the definition of *riba*? According to Saeed, almost two centuries after Tabari,

A contrasting view was expressed by the Hanafi jurist Jassas (d. 980 AH): 'The *riba* which the Arabs knew and practised meant lending money [dirhams and dinars] with a specified maturity at an agreed upon increase over and above the sum borrowed.'

As Jassas' assertion is not supported by historical evidence or reports and is, furthermore, not in line with earlier reports quoted by Tabari, his interpretation may be regarded as unreliable. The view of the current study regarding the fundamental nature of pre-Islamic *riba*, therefore, remains valid. ... The term *riba* as used in these (2:274-8) verses does not differ from its earlier usages in the Qur'an, according to early exegetes such as Tabari (*Jami*, III, pp. 67ff) Zamakhshari (d. 1144 AH; *Kashshaf*, pp. 179-80), and Ibn Kathir (d. 1373 AH; *Tafsir*, I, pp. 334-6). Tabari, for instance, interpreted *riba* in these verses, with reference to what was practised in the pre-Islamic period, saying:

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<sup>44</sup> Qutb, S. (2000). *In the Shade of the Qur'an*, Islamic Foundation, Leicester, UK, Vol. 1, pp. 387-388; emphasis added.

<sup>45</sup> Saeed, op. cit., p. 23.

'God has forbidden *riba* which is the amount that was increased for the capital owner because of his extension of maturity for his debtor, and deferment of repayment of the debt.' (*Jami*, III, p. 69).<sup>46</sup>

Jassas' view of interpreting *riba al-jahiliyyah* in terms of "stipulated excess" - a view without any corroboration<sup>47</sup> and also contradicted by earlier works - became the basis of subsequent expansion of the definition of *riba*, used by the orthodoxy behind Islamic banking and finance movement. Those who believe that interest is *riba* and thus prohibited routinely refer to al-Jassas, but neither provide the corroboration for the view of Jassas nor raise any question about it.<sup>48</sup>

Interestingly, Ibn Qayyim (d. 751 AH), almost 350 years after al-Jassas, ignores the view of al-Jassas and approaches the issue of *riba* in light of the pre-Jassas sources, such as Tabari, Zamakhshari and Ibn Kathir:

In the pre-Islamic period, *riba* was practised by giving extra time to repay a debt and adding a charge against this extension [thus, increasing the amount of debt] until one hundred becomes thousands. In most of the cases, only a needy individual would keep doing so as he would have no choice but to defer the payment of the debt. The creditor agreed to defer his demand for repayment of the debt, and waited so that he might gain more profit on the principal. On the other hand, the debtor was forced to pay the increased amount to ward off the pressing demands of the creditor and the risk of the hardships of prison. Thus, as time passes and the loss of the debtor went on increasing, his troubles multiplied and his debt accumulated until all his possessions and belongings were lost to the creditor.<sup>49</sup>

Apart from this missing corroboration, this stipulation issue is misplaced, due to a confusion involving general financial contracts and benevolent, interest-free contracts (*Qard Hasan*). If anyone wants to help another through lending, especially when the borrowing party might not be able to repay (or, repay at the pre-agreed date), the idea of excess (in the form of interest) does not necessarily make any sense. Similarly, in such case of benevolent or charitable lending, there must not be any stipulation of excess. Such a contract would be null and void from the Islamic viewpoint. However, erroneously, this matter of stipulation or excess in case of charitable financing/loan has been expanded to profit-oriented financial contracts or transactions, where both parties may or do benefit – a Type A transaction, as per Wertheimer's matrix of exploitation.

It is obvious that if it is the matter of stipulation itself, then hardly anyone can sensibly or rationally argue that whether in terms of excess in value or deferment of time, stipulation would be unfair or exploitation. Indeed, it would be just the opposite. Fair contracts should include full disclosure of all the pertinent terms. However, there is another related aspect of the orthodox definition: lack of any counter-value.

#### b. The lack of any counter-value

In the literature pertaining to *riba* and interest, it is commonly argued that stipulation of excess constitutes *riba*, when it is without any counter-value. This specific issue of lack of a counter-value is articulated and rationalized as following. Referring to al-Razi, an eminent authority of 12th century, al-Qaradawi asserts:

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<sup>46</sup> Saeed, op. cit., pp. 23-24, quoting Jassas, *Ahkam al-Qur'an*, I, p. 465.

<sup>47</sup> Readers can read the translation of al-Jassas' commentary on *riba* in his exegesis. The translation is by Imran Ahsan Khan Nyazee, a Pakistani scholar of Islamic jurisprudence. It is available online. See the bibliography. Jassas' commentary is interesting as it does not refer to any earlier commentaries (Tabari, Zamakhshari or Ibn Kathir) on or understanding about this issue. It does not even document with proper citation any of the narrations that it presents as "hadith". The translator did not add the citations either.

<sup>48</sup> See for example, Al-Amin, op. cit., p. 17.

<sup>49</sup> Saeed, op. cit., p. 28, quoting Ibn Qayyim, *A'lam al-Muwaqqi'in*, II, p. 154.

The taking of interest implies appropriating another person's property without giving him anything in exchange, because one who lends one dirham for two dirhams gets the extra dirham for nothing. Now, a man's property is for (the purpose of) fulfilling his needs and it has great sanctity, according to the hadith, 'A man's property is as sacred as his blood.' This means that taking it from him without giving him something in exchange is haram.<sup>50</sup>

One can argue that, in trade, taking something from someone without giving something in exchange is *haram* (prohibited). However, the argument is misleading and erroneous. When a non-charitable transaction is involved, both the parties know what the lending and borrowing entail. The borrower is borrowing for some commercial or personal benefit and the lender is lending for profit motive. In such non-charity context, the lender is giving up or foregoing the *purchasing power*, a part of the lender's accumulated capital, for a specific period. In other words, the lender is 'renting out' the purchasing power of his/her capital for a specific period of time and interest constitutes the 'rent' that is paid by the borrower. Even without taking into consideration the time value of money argument (and many Islamic jurists and scholars flatly deny the time value of money),<sup>51</sup> why would a profit-orientated lender lend at zero interest or return, even in case of borrowers without any problem with their ability to repay? Actually, it is not just the time value of money, the very notion of opportunity cost is also being denied here. We will ignore here the issue of nominal vs. real interest. Also, such traditional arguments deny money any other function than being a purely medium of exchange, even though the contemporary IFIs rarely function in an economic/monetary environment or system, where money functions only and strictly as a medium of exchange.

So, contrary to the traditional argument, in case of the extra *dirham* paid to the lender, it is the agreed/stipulated compensation to the forgone purchasing power for the fixed duration. The lender is getting compensation for transferring for a specified duration something (the purchasing power); it is *not* something for nothing. In this context, the claim of a lack of a counter-value in an exchange is not valid.

That's why assuming that the very definition, based on fallible human interpretations (yielding only probabilistic knowledge), automatically addresses any underlying issue of injustice or exploitation is presumptuous.

From an Islamic perspective, any exchange or transaction that is based on mutual consent, without (a) any coercion/deception, (b) involving any prohibited products (e.g. alcohol) or practice (e.g., *zulm* or exploitation), and (c) any vulnerability to one of the parties due to a situation of compulsion (poverty/need) that makes one eligible for Zakat (aid), should be regarded as valid. *Riba*, as explained in the context of *riba al-jahiliyyah*, would be invalid, because it generally involved the condition (b) and (c), which made at least one party vulnerable to bankruptcy, total financial ruin, and even enslavement. This is Type D in Wertheimer's typology, where the transaction is both unfair and harmful to at least one of the parties. In that context, one can easily understand and appreciate the wisdom and value of the stern position of Islam against *riba*. However, modern interest-based transactions, in a regulated, competitive environment, where the borrowers are not of the type who should be getting aid (or zakat), do not violate any of the aspects that would make such transaction invalid.

O you who believe! do not devour your property among yourselves falsely, except that it be trading by your *mutual consent*; ... surely Allah is Merciful to you.<sup>52</sup>

Abu Said Khudri is reported as saying:

Allah's Messenger (pbuh) said, '*A transaction is valid as a result of mutual consent.*' [Innamaa al-

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<sup>50</sup> Al-Qaradawi, op. cit., p. 265.

<sup>51</sup> Usmani, op. cit., p. 13.

<sup>52</sup> Qur'an 4/an-Nisa/29.

*bay'u 'an taraadi*; according to al-Zawaid, its isnad is sahih and its authorities are reliable (and authentic). Ibn Hibban transmitted it in his Sahih.]<sup>53</sup>

In a book *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*, the authors make the following case:

We argue that the Quran does not mandate equity over debt financing, and allows *transactions that are mutually beneficial*. The usury verse is not the only verse in the Quran on business. Much more prominent in the Quran is the command to engage in honest business, in particular to give 'full measure'. Specifically, the Quran says, 'Woe to those that deal in fraud; those who, when they have to receive by measure from men, exact full measure- but when they have to give by measure or weight to men, give less than due' (Quran 83:1-3). This command requires that both parties to any business transaction pay the full and fair values of what they are purchasing. Failure to do so is a profound violation of Quranic commercial principles. *Debt financing, when done in accord with this principle is permissible*. When the lender gets more than he is entitled to, he commits the sin of usury. When he gets less, he is engaging in charity. But charity is a voluntary act, and not one required in business transactions.<sup>54</sup>

## VI. Exploitation as rhetoric and the real world exploitation

In regard to interest, as in some issues, Islam has become a victim of overly legalistic approach, where form has overtaken the spirit and substance. If exploitation is truly a concern, and it definitely should be, then it is important to note that the *riba*-interest equation actually suffers from a myopic reductionism. In the Islamic literature on interest-free economy and finance, one finds animated polemics about exploitation caused by interest, but little in terms of the structures and processes of exploitation in general. Ironically, as much as the exploitation argument is polemically invoked in the pertinent Islamic literature, focused attention to or studies of exploitation is rather absent. Khurshid Ahmad's 1980 book includes a rather comprehensive bibliography of Islamic economics, finance and banking. The bibliography, *Muslim Economic Thinking: A Survey of Contemporary Literature*, by M. Nejatullah Siddiqi in that book includes 700 entries under 51 subcategories over 115 pages, and exploitation or economic exploitation is not one of those categories<sup>55</sup>. Indeed, a rather comprehensive index at the end of the book does not include exploitation or injustice at all. The same is true about Khan's book (221 pages) on annotated sources for Islamic economics.<sup>56</sup>

A more recent work by Mohammad Nejatullah Siddiqi (2004), *Riba, Bank Interest, and The Rationale of Its Prohibition*, is no different in this regard.<sup>57</sup> Even though it emphatically makes the same connection between interest and exploitation, its rather detailed index does not include exploitation as a separate entry.

Of historical note is the fact that the word "exploitation" – that is, exploitative, in a negative sense - has no equivalent in Islamic discourse until modern times. The word that is used as equivalent is *istighlali*, which

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<sup>53</sup> Ibn Majah. *Sunan Ibn-i-Majah*, trans. by Muhammad Tufail Ansari, New Delhi: Kitab Bhavan, 2000, Vol. III, #2185, p. 306.

<sup>54</sup> Hathout, Maher et al., *In Pursuit of Justice: The Jurisprudence of Human Rights in Islam*, Muslim Public Affair, 2006, the excerpt obtained from online, <http://www.islamicvoice.com/March2006/Islam&Economy/index.php>.

<sup>55</sup> Siddiqi, M. N. (1981). *Muslim Economic Thinking: A Survey of Contemporary Literature*, International Centre for Research in Islamic Economics, King Abdul Aziz University, 1981.

<sup>56</sup> Khan, M. (1983) *Islamic Economics: Annotated Sources in English and Urdu*, Islamic Foundation, Leicester, UK.

<sup>57</sup> Siddiqi, M. N, (2004). "Riba, Bank Interest, and the Rationale of its Prohibition", Visiting Scholars Research Series, Islamic Development Bank, Jeddah.



means being exploitative. This word does not occur in any hadith whatsoever.<sup>58</sup> The word *zulm* covers any injustice, and since exploitation – in the sense of being exploitative - is a form of injustice, it is covered too. However, there is no separate word equivalent in Islamic discourse for being exploitative.

Thus, while, taking the cue from the Islamic polemicists, anti-exploitation rhetoric in the IBF literature is commonplace, no specific empirical or focused studies on economic exploitation is listed in such bibliographic works. In reality, I am not aware of a single book or paper to date by the advocates of Islamic economics and finance that has dealt with exploitation as a focused theme. Indeed, the background of the IBF Movement and the record of the IFIs to date are not consistent with their anti-exploitation rhetoric.

Most IFIs originated with the capital contribution of wealthy individuals of countries that already have a very high concentration of wealth in the Muslim world, a reality that is contrary to the Qur'anic guidance that wealth should not: "... (merely) make a circuit between the wealthy among you."<sup>59</sup> Several of these IFIs are in international off-shore centers, not in areas of the Muslim world that are really suffering from serious capital-deficiency on the one hand and poverty and exploitation on the other.

IBF Movement also was expected to contribute toward broader economic development. "An interest-free Islamic system of financial intermediation will be more just and fair. This will make it more conducive to growth and development as all members of society will be assured of a fair treatment."<sup>60</sup> However, instead of focusing on poverty alleviation and development, many IFIs, similar to the case of Egypt, have shown a bias toward the urban and the rich. "... [M]ost of the activities of Islamic banks have been in large cities as opposed to the countryside, where they are most needed; and that their main customers were likely to be well-to-do, and not the poor or the lower middle class."<sup>61</sup> Usmani, with his personal and direct experience with several dozen of Islamic banks in the capacity of a Shariah expert echoes: "Unlike the conventional financial institutions who strive for nothing but making enormous profits, the Islamic banks should have taken the fulfillment of the needs of the society as one of their major objectives and should have given preference to the products which may help the common people to raise their standard of living. They should have invented new schemes for house-financing, vehicle-financing and rehabilitation-financing for the small traders. This area still awaits attention of the Islamic banks."<sup>62</sup> It should be noted that these incisive comments of Usmani are not from the earlier decades of 70s or 80s, when it was popular to argue that these institutions were in their infancy, but reflects a more contemporary period in the 21st century.

Another pertinent issue is the investing behavior of the rich. The capital flight, away from where capital is needed most and to safe financial havens of the West or offshore facilities elsewhere, is often due to such investing behavior of the rich. They feel constrained by various structural factors in their own economies to feel comfortable to take risk.

Short of special political conditions, it seems that Islamic banking suffers the structural effects of incurring greater risk for domestic lending than the conventional banks. In the absence of major economic reform and consequent reduction in monitoring costs, which would benefit Islamic more

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<sup>58</sup> Now there is a searchable database *al-Marja'a al-Akbar for the Islamic Heritage* that contains *all* the hadith collections. It is published by El Ariss in DVD format [<http://elariss.com/index.php?c=9&lang=en>]. The hadith collections included for this particular search included: *Sahih al-Bukhari*, *Sahih Muslim*, *Sunan Abu Dawud*, *Sunan at-Tirmizi*, *Sunan an-Nasai*, *Sunan Ibn Majah*, *Muwatta Malik*, *Musnad Ahmad*, *Sunan ad-Daraqutni*, *Sunan al-Kubra al-Baihaqi*, *Sunan al-Darimi*, *Sahih Ibn Khuzaima*, *Sahih Ibn Hibban*, *Musannaf ibn Abi Shaibah*, *al-Mustadrak* as well as dozens more secondary collections. The word *istighlal* does not occur in any hadith – narrations from the Prophet or anything reported in connection with his acts or approval/disapproval.

<sup>59</sup> Qur'an 59/al-Hashr/7.

<sup>60</sup> Siddiqi, M. N. (1983). *Issues in Islamic Banking*, The Islamic Foundation, UK, p. 113.

<sup>61</sup> Warde, op. cit., p. 174.

<sup>62</sup> Usmani, op. cit., p. 115.

than conventional banks, it may be more interesting to view the former (and conventional) banks, too, for that matter) as vehicles for mobilizing overseas investment or 'capital flight'.<sup>63</sup>

But it also has to do with the reality that many of the leading financial patrons of the IFIs are interested in Shariah compliance only in a legalistic sense - without really any concern for injustice or exploitation.

In most respects, the investment behaviour of the estimated 200,000 high net worth individuals from Saudi Arabia and the Gulf is little different from that of their counterparts elsewhere. Their aim is to generate income and wealth from their assets which benefits their families and themselves, where the funds are invested being a less important consideration. How funds are invested is for many more crucial than where, as most Saudi Arabian and Gulf citizens like Muslims elsewhere, are concerned about deriving income from interest, even though for the majority this concern does not translate into positive action. Some cleanse or purify interest income by donating it to charitable causes; others invest part of their funds in a sharia-compliant manner to ease their conscience, while investing the remainder conventionally. In this respect, Islamic investors are little different to Western ethical investors, who tend to adopt a partial approach rather than deploying all their funds ethically.<sup>64</sup>

Thus we see that the concern and commitment of the major players in the IFIs about injustice and exploitation is rather dubious. Some proponents of interest-free (or Islamic) finance regard the matter so revolutionary, like the anti-*riba* challenge was to the Qurayshi dominance during the time of the Prophet, that current movement for interest-free economy and finance is to be the same toward the dominant economic and financial powers of our time.

The revolution inherent in the attack on *riba* is broad and has policy implications beyond the personal morality issue. ... In Makka at the time of the Prophet, this revolution meant that the Quraysh, the dominant merchant tribe of the time, had to change their habits and share their dominant financial role. In our modern Islamic world, whether in the Arabian east or in America, interest-free or *riba*-free finance pose the same challenge.<sup>65</sup>

If that prognosis is valid, the Islamic economics and finance should be bitterly opposed by the global powerhouses of finance or capitalism. On the contrary, it is now established that the major financial institutions/corporations of the world are offering similar services, without either making any substantive changes in their products except in form or adapting their existing products and services to be offered to their conventional clients.

Indeed, as Islamic finance generally denies the time value of money in theory, but embraces it in practice, helps to explain the growing western fascination with "interest-free" banking. These western financial powerhouses are becoming the patrons or partners of the Islamic financial institutions. It is not because the conventional western banks are now convinced about the claimed superiority of Islamic finance/banking in general, and Islamic financial products in particular, but because from their perspective they don't find *any* substantive difference between their conventional banking and the current practice of Islamic banking, which has shifted away from profit-loss sharing (PLS)/Risk-sharing-based transactions.<sup>66</sup> With basically comparable performance of Islamic banks, it is just another vast untapped market for the western conventional banks to penetrate. In this regard, they also have serious comparative advantage in terms of credibility, experience, and capitalization.

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<sup>63</sup> Henry, C. and Wilson, Rodney (Eds.). (2004). *The Politics of Islamic Finance*, Edinburgh University Press, p. 125.

<sup>64</sup> Henry and Wilson, op. cit., p. 126.

<sup>65</sup> Thomas, A. (2006). (Ed.), *Interest in Islamic Economics: Understanding Riba*, Routledge, p. 132.

<sup>66</sup> Farooq, M. O. (2007b). "Partnership, Equity-Financing and Islamic Finance: Whither Profit-loss Sharing?" *Review of Islamic Economics*, Vol. 11, Special issue, pp. 67-88.

You're a pious Muslim with a few million in oil dollars to invest. So would the perfect Islamic bank for you be Citigroup, perhaps? HSBC?

Actually, yes. Giant Western banks - or, rather, their Islamic subsidiaries - are leading the market for financing that complies with Qur'anic laws forbidding lending money for profit, or sponsoring un-Islamic activities such as gambling or smoking.<sup>67</sup>

Indeed, the global powerhouses of finance are now dominating the Islamic financial market and they have become the avid patrons of this niche. Is this due to a "challenge" or even "potential challenge", especially in a revolutionary sense, to the dominant powers in finance in our time?

## VII. Profit and exploitation

It should be noted that the principle of justice is not relevant merely to financial contracts or transactions, but to all commercial transactions as well. The reality is that, while the pervasiveness of exploitation that has existed and continues to exist in the world is due more to the pursuit of greed and profit in general, pertinent Islamic literature is preoccupied with interest as the source of exploitation and focused primarily on the financial sector.

For example, just consider the case of the British East India Company. It was a joint stock company that received its royal charter from the British crown in 1600. In one and a half century, the "Company transformed from a commercial trading venture to one which virtually ruled India as it acquired auxiliary governmental and military functions, until the Company's dissolution in 1858."<sup>68</sup> The world knows the rest of the story, as that Company's role ultimately led to complete subjugation and colonization of South Asia. This entire British venture, driven by the quest for power and profit, serves as one glaring example of exploitation. What role did "interest" play in this as well as other ventures to colonize? While the colonial period is gone, during the post-colonial period, especially in the era of globalization led and controlled by the corporate multinationals, exploitation in different forms is as rampant as before. However, what role is interest playing in causing or facilitating such exploitation around the world? It is important that any pertinent explanation must not be limited to merely polemics.

Through almost an exclusive focus on the presumed interest-exploitation connection, the proponents of Islamic economics and finance have entrapped themselves into a seriously myopic reductionism. Indeed, global financial and corporate power houses of the world that also play a vital role in worldwide exploitation are becoming the patrons of Islamic banking industry, and these IFIs have no concerns about exploitation in this context, because their focus is actually on rendering the world interest-free, not exploitation free.

As Joel Bakan in *The Corporation: The Pathological Pursuit of Profit and Power* and Daniel Litvin in *Empires of Profit: Commerce, Conquest and Corporate Responsibility* have demonstrated, one can find a compelling portrayal and understanding of exploitation, where the driving force behind such exploitation is not "interest", but the unbridled quest for power and profit to dominate and exploit others.<sup>69</sup>

The idea that some areas of life are too precious, vulnerable, sacred or important for the public interest to be subject to commercial exploitation seems to be losing its influence. Indeed, the very

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<sup>67</sup> Matthews, O. (2005). "How the West Came To Run Islamic Banks," *Newsweek*, October 31, available at: (accessed on 27 June 2009)..

<sup>68</sup> Wikipedia. "East India Company," available at: [http://en.wikipedia.org/wiki/British\\_East\\_India\\_Company](http://en.wikipedia.org/wiki/British_East_India_Company) (accessed August 30, 2009).

<sup>69</sup> Also see Hannah McCann. Review of Jonathan Neale *What's Wrong with America?* Vision, London 2004, <http://www.anu.edu.au/polsci/arpe/Vol5/McCann.htm>; .A. Waller Hastings. Historical Background - European Colonization and the Colonial and Postcolonial Worlds, September 5, 2003, <http://www.northern.edu/hastingw/colonialhistory.htm>.

notion that there is a public interest, a common good that transcends our individual self-interest, is slipping away. Increasingly, we are told, commercial potential is the measure of all value, corporations should be free to exploit anything and anyone for profit, and human beings are creatures of pure self-interest and materialistic desire. These are the elements of an emerging order that may prove to be as dangerous as any fundamentalism that history has produced. *For in a world where anything or anyone can be owned, manipulated, and exploited for profit, everything and everyone will eventually be.*<sup>70</sup>

Indeed, IBF movement does not seem to have any clue about the global corporate powerhouses and their ever widening reach in terms of power and exploitation. They are even welcoming and hailing the involvement of these global financial corporations in Islamic finance, by which these IFIs are making themselves vulnerable to be the facilitators of "The Pathological Pursuit of Profit and Power."

In *Empires of Profit: Commerce, Conquest and Corporate Responsibility*, author Daniel Litvin portrays a picture of the multinational corporations that is somewhat balanced. Even colonialism has brought certain benefits to the respective colonies. Even those multinationals that run sweat-shops in various poor countries may benefit the child labor - relatively, because those children might be worse off without such sweat-shops. However, Litvin also points out the fact that "these firms - arrogant, imperialistic, and corrupt - were often malevolent forces in their host countries: they arranged assassinations, waged wars and exploited native workers."<sup>71</sup>

In this context it is worthwhile to note the close connection between poverty and exploitation. The vast majority of people who are part of the global poverty are greater victims of or vulnerable to exploitation due to poverty. At the same time, exploitation can be an important factor behind keeping people in persistent poverty.

Exploitation is a concomitant of poverty. It is a corollary of poverty. Poverty and exploitation are closely linked. Poverty is a temptation to exploitation. If poverty is the action, exploitation is the reaction. So long there is poverty exploitation will persist.<sup>72</sup>

As Pusey explains the broader dimensions of the relationship between poverty and exploitation in gender related contexts:

While men and women are both affected by globalization, their experiences are distinct because of their gender roles and inequality. The loss of livelihood as a result of the rampant privatization and destruction of natural resources for profit and largely unchecked power of corporate entities (including transnational corporations (TNCs) and multinational corporations (MNCs) have increased poverty and the gap between the rich and the poor. This impacts most acutely on women, particularly rural women, as poverty and marginalization fuel violence against women. Poverty has been an increasing factor in forcing women to enter new exploitative labour markets where they face new risks of violence (such as low-wage, unprotected industries like garment making throughout South-East Asia; moving from rural to urban areas or from countries with depressed economies to wealthier economies to work as either documented or undocumented migrant workers in poorly paid and unprotected industries and workplaces) and it increases women's vulnerability to trafficking and subsequent risk of violence.<sup>73</sup>

Plainly speaking, poverty invites or lures exploitation, and exploitation keeps people in poverty. The relevance of Pusey's observations to the theme of this paper is that the widespread vulnerability to exploitative labour markets throughout the world, including the Muslim world, may or may not have

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<sup>70</sup> Bakan, J. (2004). *The Corporation: The Pathological Pursuit of Profit and Power*, Free Press, p. 139.

<sup>71</sup> Litvin, D. (2004). *Empires of Profit: Commerce, Conquest and Corporate Responsibility*, Texere.

<sup>72</sup> Ghose, S. (1996). *Socio-Political Dynamics*, Northern Book Centre, p. 136.

<sup>73</sup> Pusey, L. (2008). "Applying the due diligence principle in Asia Pacific," in Benninger-Budel, C. (Ed.) *Due Diligence and its Application to Protect Women from Violence*, Brill, pp. 139-156.

anything to do with interest. This is demonstrated by the globally acknowledged success of pioneering initiatives such as Grameen Bank that are based on interest-based framework and particularly focused on women. Desires and visions to bring end to or alleviating poverty needs to be matched by understanding of the nature, cause and scope of poverty so that appropriate and relevant interventions can be made. Unfortunately, the legalistic approach to issues like *riba* and interest glosses over the problems in the real world and naively assumes that elimination of interest means the elimination of *riba* and thus elimination of *zulm* and exploitation as well. Another word, build a framework that avoids interest and the issues of *zulm*/exploitation needs or merits no separate or focused attention.

Dr. Syed Nawab Haider Naqvi, a leading Pakistani economist with a PhD from Princeton, former Director, Pakistan Institute of Development Economics, Islamabad (1979-1995), and author of *Ethics and Economics: An Islamic Synthesis*, undertook an empirical research based on Pakistan data. His findings about the role of interest and profit is quite illuminating.

It has been widely noted by Muslim economists that the rationale (*'illat al-hukm*) of the prohibition of *riba* is not just the mathematical formula per se used to compute it; it is rather the alleged adverse consequences of it on the distribution of income and wealth. This is a correct position to take because, contrary to the Nozickian non-consequentialism (Nozick, 1974), Islam evaluates the correctness (or their opposite) of specific policies in terms of the acceptability of their consequences from the moral, economic, and social points of view. However, such an assertion is essentially a refutable hypothesis, which needs to be examined from the theoretical and empirical points of view.

Here I examine this argument, using Pakistani data, ... The situation in other Muslim countries can be examined likewise. It should be clear that the information given in the table does not unambiguously verify the hypotheses noted above. Instead, it shows that *both the profit and interest incomes* - as well as all other types of incomes identified in table - *accrue more to the rich than to the middle-income and lower-middle-income groups*; while the lowest of the low-income group gets nothing of interest and next-to-nothing of profits. The reason is that the initial distribution of income is highly unequal ... . Thus those who have more already shall be given even more! The table even makes clear that, relatively speaking, *interest income is more important than profit income for the low-income and lower-middle-income groups* (in the Rs 1001 to Rs 4000 range) and the reverse is the case for the high-income group (in the Rs 4000 and above range).<sup>74</sup>

Even though this is based on just one country, the results of Naqvi's research are quite contrary to the popular perceptions and claims. If both profit and interest incomes accrue more to the rich, then focusing exclusively on interest is misplaced. Also, if interest income is more important to the lower income groups, and profit (not interest) is more important to the high-income group, then the common and popular claims by the proponents of Islamic economics and finance require much closer scrutiny and further empirical examination.

A relevant aspect of this discourse is how do the rich become rich and then richer. It should not take a rocket scientist to figure out that while most rich people's journey may begin with labour income, rarely people become rich through labour income, or labour income only. It should not be surprising that "...the average person gets most of their income from salaries and wages."<sup>75</sup> Beyond the realm of labour income, the accumulation of wealth by the rich occurs primarily through investment income, which can be entrepreneurial investment or financial investment. Gradually, income from financial investment becomes

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<sup>74</sup> Naqvi, S. S. H. (2000). "Islamic Banking: An Evaluation," *IJUM Journal of Economics and Management*, Vol. 8 No. 1 available at: [http://www.financeinislam.com/article/1\\_35/3/414](http://www.financeinislam.com/article/1_35/3/414) (accessed on 8 August 2008).

<sup>75</sup> Kruegger, G. and Foster, M. (2009). "How the Rich Make Money," Biggsuccess.com, April 27, available at: <http://biggsuccess.com/2009/04/27/how-the-rich-make-money/> (accessed August 24, 2011).

more important. This is even truer for the richest.<sup>76</sup> Rules and regulations are generally made by the rich or those who are patronized by the rich and these rules, regulations and loopholes are stacked in favour of the rich, earning more from investment income, much of which is unearned.<sup>77</sup> The pursuit of profit by the rich through investment income has now global access aided by globalization.<sup>78</sup>

Does this mean that interest has no role in exploitation? No, interest may have some role in exploitation. Indeed, usurious transactions can still be observed, for example, in USA in certain areas of consumer finance. Internationally, the debt burden can also be linked partially to the problem of interest, compound or higher rate of interest to be specific, as discussed earlier in this paper. However, the problem in both cases often relates to borrowing beyond one's capacity and sometimes the terms of borrowing are predatory in the sense, for example, that the initial terms (if paid within certain stipulated period is very attractive, but if not paid within that period, the interest rate can jump to an exorbitant rate).<sup>79</sup>

However, the ongoing exploitation of human beings by others (individuals, groups, institutions) is a much larger story than interest. The myopic reductionism involving *riba*-interest equation and the search for exploitation primarily within that equation are causing the Islamic economics/finance movement to miss the mark in a big way. It is no wonder that some countries in the Muslim world that stand squarely on the foundation of tyranny and exploitation, especially of the migrant labour, have been the primary source of capital for the Islamic banking movement. The exploitation and abuse of the migrant workers are all too well known and documents,<sup>80</sup> but the very same Shariah scholars and experts who are serving and guiding the Islamic finance industry are muted when comes to such exploitation, while routinely invoking the anti-*zulm* verses from the Qur'an. It is also not surprising that the Islamic movements that have been spearheading the Islamic banking/finance movement are patronized by some of these tyrannical regimes and the movements are silent against them as far as the relevant exploitation is concerned.

One of the fundamental quests of Islam is to take a stand against injustice and exploitation. However, the reductionism of *riba*-interest equation, which buttresses the Islamic finance/banking movement and provides its basic rationale while it completely ignores the larger picture of exploitation, should be a matter of serious concern.

One of the economic principles laid out in the Qur'an is that the wealth should not get too much concentrated. "What God has bestowed on his Messenger (and taken away) from the people of the townships, - belongs to God, - to his Messenger and to kindred and orphans, the needy and the wayfarer; *In order that it may not (merely) make a circuit between the wealthy among you. ...*"<sup>81</sup>

The reality of the Islamic finance is, of course, otherwise. "The ownership structure of the Islamic financial industry is highly concentrated. Three of four families own a large percentage of the industry. ... This

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<sup>76</sup> Zrahiya, Z. (2011). "Richest earn mostly from investing, thus pay low taxes," *Ha'aretz*, August 21, available at <http://english.themarket.com/richest-earn-mostly-from-investing-thus-pay-low-taxes-1.379743> (accessed August 25, 2011).

<sup>77</sup> Kennedy, D. (2010). *Loopholes of the Rich: How the Rich Legally Make More Money and Pay Less Tax*, John Wiley and Sons; Braun, D. (2010). *The rich get richer: the rise of income inequality in the United States and the world*, University of Michigan.

<sup>78</sup> Isaak, R. (2005). *The globalization gap: How the rich get richer and the poor get left further behind*, Prentice Hall.

<sup>79</sup> Lee, M. (2003). *Predatory Lending: Toxic Credit in the Global Inner City*, Inner City Press; Lexis Publishing. (2001) *Predatory Lending: Recent Initiatives to Define and Eliminate Lending Abuse*, Lexis Publishing; Squires, G. (2004). *Why the Poor Pay More: How to Stop Predatory Lending*, Greenwood Publishing Group, 2004; Crossney, K. (2006). *The Paradox of Predatory Lending: An Examination of Mortgage Lending in Philadelphia, Pennsylvania*, ProQuest, 2006. For predatory behavior in international lending, see Krugman, P. (Ed.) (1986). *Strategic Trade Policy and the New International Economics*, MIT Press, p. 127.

<sup>80</sup> Shelley, T. (2007). *Exploited: Migrant Labour in the Global Economy*, Zed Books; Human Rights Watch. (2009). *The Island of Happiness: Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi*, Human Rights Watch.

<sup>81</sup> Qur'an 59/al-Hashr/7.

concentration of ownership could result in substantial financial instability and possible collapse of the industry if anything happens to those families, or the next generation of these families change their priorities. Similarly, the experience of country-wide experiments has also been mostly on the initiatives of rulers not elected through popular votes."<sup>82</sup>

### VIII: The Qur'anic Principle of Justice Undermined

*Qiyas* (analytical reasoning) is the fourth source of Islamic law. The core process of *qiyas* involves finding *illah* (effective or efficient cause) that can be used to identify broadened scope of a particular permission or prohibition in Islam. The *Text of the Historic Judgment on Interest* by the Supreme Court of Pakistan is an important legal pronouncement, a relevant part of which was authored by Justice/Mufti Muhammad Taqi Usmani. It is illustrative of how such scholars sometimes inadvertently undermine the Qur'anic principle of justice, while they invoke it in arguing for the prohibition of interest. Usmani is one of the leading religious experts on Islamic finance and much sought after by Islamic financial institutions for their Shariah Boards. In the *Historic Judgment*, he identifies "excess over principle" as the *illah* for the prohibition of interest and argues that *zulm* (injustice) can't be used as an *illah* (efficient cause). In that *Historic Judgment* he distinguishes between *'illah* and *hikmah* (underlying rationale/wisdom). Mufti Usmani did not probably realize that this distinction as well as the way the argument is made for this distinction undermines the very Qur'anic concept of justice (*'adl* or *qist*).

... after prohibiting the transaction of *riba*, the Holy Qur'an has mentioned the *Zulm* as a *Hikmat* or a philosophy of the prohibition, but it does not mean that prohibition will not be applicable if the element of *Zulm* appears to be missing in a particular case. The *Illat* (the basic feature) on which the prohibition is based is the excess claimed over and above the principal in a transaction of loan, and as soon as this *Illat* is present, the prohibition will follow regardless of whether the philosophy of the law is or is not visible in a particular transaction.<sup>83</sup>

Any relative term which is ambiguous in nature cannot be held to be the *Illat* of a particular law because its existence being susceptible to doubts and disputes, it would defeat the very purpose of the law. *The Zulm (Injustice) is a relative and rather ambiguous term the exact definition of which is very difficult to ascertain. Every person may have his own view about what is or what is not Zulm.*<sup>84</sup>

If the above assessment of the notion of justice/fairness (*adalah*) is correct, then basically the pristine Islamic concept of justice as mentioned in the Qur'an does not really have any functional relevance. The Qur'an categorically calls for justice as one of its hallmark principles and values.

"O you who believe! *stand out firmly for justice*, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest you swerve, and if you distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do."<sup>85</sup>

"O you who believe! *stand out firmly for Allah, as witnesses to fair dealing*, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do."<sup>86</sup>

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<sup>82</sup> Iqbal M. and Molyneux, P. (2005). *Thirty Years of Islamic Banking: History, Performance and Prospects*, Palgrave, 2005, p. 122.

<sup>83</sup> Supreme Court of Pakistan. (1999). *The Text of the Historic Judgment on Interest*, available at: [http://www.albalagh.net/Islamic\\_economics/riba\\_judgement.shtml](http://www.albalagh.net/Islamic_economics/riba_judgement.shtml) (accessed 28 July 2011), Section 120.

<sup>84</sup> Supreme Court of Pakistan, op. cit., Section 121.

<sup>85</sup> Qur'an 4/an-Nisa/135.

<sup>86</sup> Qur'an 5/al-Ma'ida/8.

The Qur'anic call to stand for justice presumes that people know and understand what justice is. Islamic scholars themselves explain the concept of justice (*adl* or *qist*) as "universal justice."<sup>87</sup> When the Qur'an refers to justice in the context of the humanity [*an-Nas*], it can't be taken in a parochial sense.

We sent aforetime our apostles with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that the mankind may stand forth in justice ...<sup>88</sup>

How can the mankind stand forth in justice, especially in a universal sense, if it is so relative? If justice (or injustice) is such an elusive, ambiguous or relative thing, then basically such a clarion call is rendered vacuous. In other words, Muslims could polemically argue that interest is unjust and exploitative and the non-Muslims could disagree, while neither side has to be incorrect. How can we then make the world understand the issue of justice, for example, in the context of Israel and Palestine, if justice is so relative? How can we expect to explain to the world or persuade it that interest is unjust and exploitative? It's all relative! Curiously, even Mufti Usmani also seems to recognize this notion of "universal justice", as it is the title of one of his speeches, presented not just before Muslims, but at the 1999 Parliament of the World's Religions.<sup>89</sup> Do Muslims understand justice in Islam as universal when they are at such Parliament, and not universal, when they are not? Well, Muslims can't claim that Islam stands for universal justice and then turn around and assert that justice is relative so much so that "*Every person may have his own view about what is or what is not Zulm.*" Mufti Usmani in writing the *Historic Judgment* and others sharing his view about such relativity may not have thought of such ramifications.

One of the best articulators of centrality of justice in Islam is Ibn al-Qayyim.

The principles and fundamentals of the Sharia concerning the injunctions and the good of humankind in this life and the next are all based on justice, mercy, the good of man, and wisdom. Every situation in which justice succumbs to tyranny, mercy to cruelty, goodness to corruption, wisdom to foolishness, has nothing in common with the *Sharia*, even if it is the result of an allegorical interpretation [*tawil*]. For the *Sharia* is the justice of God among His servants, the mercy of God among His creatures, His shadow upon His earth, and His wisdom, which is both the proof of His own existence and the best witness to the authenticity of His Prophet.<sup>90</sup>

Unless there are reasons to take issue with Ibn Qayyim's perspective, to approach legal issues in Islam without taking into consideration the matter of justice can very well be counter-productive and in some cases may produce results that are just opposite to what is intended by Islam. Quite legitimately, there can be a lively discourse about how to better incorporate the equity perspective into formulation of laws and pertinent legal analysis, but there is simply no room or basis to delink the legal issues, including the determination and application of *illah*, from justice. Notably, it is in application of this *illah*, the identification of what is *ribawi* and what is not rather dramatically falls apart. How divergent are the results of applying *qiyas* in categorizing something as *ribawi* or non-*ribawi*? Abdullah Saeed provides an illuminating portrayal.

Since the hadith did not provide any reasons for the prohibition concerning these six commodities, jurists had to resort to *ijtihad* to identify the 'illa. On the basis of certain terms used in some versions of hadith, they arrived at 'illas which naturally differed amongst the schools of law. The 'illa of gold and silver, according to the Hanafis, is that the commodities are 'weighable'

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<sup>87</sup> Kamali, M. H. (2002). *Freedom, Equality and Justice in Islam*, The Islamic Texts Society, publisher's Introduction; Osman, F. (2006) *Contemporary Issues: An Islamic Perspective*, Pharos Foundation. Also, see Badawi, J. (2005). "Muslim and Non-Muslim Relations Reflections on Some Qur'anic Texts," available at: <http://islamonline.net/english/Contemporary/2005/04/Article01.shtml> (accessed 15 July 2009).

<sup>88</sup> Qur'an 57/al-Hadid/25.

<sup>89</sup> Council for A Parliament of the World's Religions. 1999 Parliament of the World's Religions, Item #PWR99-094, <http://www.conferencerecording.com/aaaListTapes.asp?CID=PWR99>.

<sup>90</sup> Ramadan, T. (2004). *Western Muslims and The Future of Islam*, Oxford University Press, quoting Ibn Qayyim, *Ilam al-muwaqqiin an rabb al-alamain*, vol. 3, Cairo, p. 1, p. 42.



or 'measurable' while for Malikis, Shafi'is and Hanbalis, the 'illa is that they are 'currency'. As for wheat, barley, dates, and salt, the 'illa is that they are 'weighable' or 'measurable' and that they belong to the same genus (Hanafis); are storable nourishment for mankind (Malikis); are foodstuffs (Shafi'is); or are foodstuffs while are measurable or weighable (Hanbalis).

Based on the 'illa, there could be a host of commodities susceptible to *riba*. Differences among the scholars of law on the nature of 'illa often led to irreducible consequences. Eggs, for instance, could be exchanged one for two, according to the Hanafis, as they are not weighable or measurable, but would not be allowed according to the Shafi'is, as they are foodstuff. Malikis, like the Shafi'is, would allow such a transaction because an egg is not a foodstuff which is storable for a reasonable length of time, like what.<sup>91</sup>

Claiming that interest is prohibited because of the Qur'anic prohibition on the basis of "no excess over the principal", but delinked from "Deal not unjustly, and ye shall not be dealt with unjustly" - both in the same verse - is an eye-opening illustration of a mechanical and legalistic approach, where it is expressly asserted that the jurists' task is to apply *illah* without any regard to rationale or wisdom. As Mohammed Ariff eloquently asserts "The bottom line is that," beyond the divine injunction, "Muslims need no 'proofs' before they reject the institution of interest."<sup>92</sup> Such indifference or even antipathy toward rationale (*hikmah*) is rather deep-rooted. Saeed explains:

Since almost all exegetes belonged to schools of law, and rationales were generally ignored in these schools, the exegetes did not seem to find it an attractive option to interpret the meaning of *riba* in the light of its rationale, particularly a rationale based on the second statement, '*la tazlimuna wa-la tuzlamun*.' The attitude of the exegetes towards the statement, '*la tazlimuna wa-la tuzlamun*', is indicated by Razi's [d. 1209 AH] view on the rationale of the prohibition of *riba*. He says: 'The prohibition of *riba* is proved by a text [of the Qur'an]. *It is not necessary for mankind to know the rationale of duties*. Therefore, the prohibition of *riba* must be regarded as definitely known even though we do not know the rationale for its prohibition.'<sup>93</sup>

The position of al-Razi is understandable, because the Qur'an is explicit and categorical about the prohibition of *riba*, regardless of the rationale we can identify or not. However, when contemporary scholars and experts assert the same type of attitude about rationale, it is tantamount to indifference or even antipathy, because unlike *riba*, the prohibition of interest is based on subsequent interpretation, which is probabilistic. More importantly, contrary to the popular perception and traditional claim, the meaning or definition of *riba* is not *mufassar* (self-explained or obvious); rather, it is *mujmal* (ambiguous, non-definitive and thus requiring human interpretation). As Kamali clarifies:

The *Mujmal* turns into the *Mufassar* only when the clarification that the Lawgiver provides is complete; but when it is incomplete, or insufficient to remove the ambiguity, the *Mujmal* turns into a *Mushkil*, which is then open to research and *ijtihad*. An example of this is the word *riba* which occurs in the Qur'an (al-Baqarah, 2:275) in the form of a *Mujmal*, as when it reads: 'God permitted sale and prohibited *riba*', the last word in this text literally meaning 'increase'. Since not every increase or profit is unlawful, the text remains ambivalent as to what type of increase it intends to forbid. The Prophet has clarified the basic concept of *riba* in the Hadith which specifies six items (gold, silver, wheat, barley, salt and dates) to which the prohibition applies. But this explanation is insufficient for detailed purposes in that it leaves room for reflection and enquiry as to the

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<sup>91</sup> Saeed, op. cit., p. 34; also see Obaidullah, M. (1999). "Financial Options in Islamic Contracts: Potential Tools for Risk Management," *KAU Journal of Islamic Economics*, 11, pp. 3-26, p. 7.

<sup>92</sup> Islamicity. "Islamic Banking," undated, available at: [http://www.islamicity.com/finance/IslamicBanking\\_Intro.asp](http://www.islamicity.com/finance/IslamicBanking_Intro.asp) (accessed 28 July 2009).

<sup>93</sup> Saeed, op. cit., p. 27, quoting Al-Razi, *Tafsir*, VII, p. 94.

rationale of the text with a view to extending the same rule to similar commodities. The Hadith thus opens the way to further *ijtihad* and analogy to the goods that it has specified.<sup>94</sup>

Lest it is misunderstood, the argument that while knowing *hikmah* of a commandment/prohibition, it may not always be ascertained, and that is correct because unless it is explicitly stated in the Qur'an or explained by the Prophet, *hikmah* is generally identified as part of human understanding and interpretation. However, the same argument also applies to *illah*, as it is also based on human interpretation and thus probabilistic.

Therefore, it is not adequate or appropriate to say that something is *haram* even though the very reason mentioned in the Qur'an – i.e., *zulm* or exploitation – cannot be established or determined. At least, if this is denied, then *illah* should also be treated consistently. Furthermore, if none of these matters, at least as Muslims there should be genuine sensitivity to *zulm*/exploitation as it occurs in the real world. Unfortunately, while many exponents of Islamic finance and banking routinely offer pious statements about Islam's prohibition of *riba* (and interest, as part of the *riba*-interest reductionism) based on the injustice and exploitation argument, when it comes to the application or the reality, suddenly the issue of injustice and exploitation becomes immaterial or irrelevant.

Ruth Sample has given a definition of exploitation that might be illuminating. "... [E]xploitation is taking advantage of another's vulnerability in a way that fails to respect the personhood of that being."<sup>95</sup> Indeed, the examples of *riba*-related examples in early Islamic sources corroborate that the practice of *riba* was dehumanizing not just in concept, but often in reality. Merely legalistic approach to exploitation is unable to capture the relevant and substantive dimensions *zulm* or exploitation, as reflected in *riba*.

## IX. Conclusion

So, why is it easy to understand the rationales for the prohibition of *Riba*, but not the rationales for the blanket prohibition of interest? Why have the evolving IFIs, contrary to their own polemics, marginalized the equity-based, risk-sharing modes and have embraced debt-like instruments as the mainstay?<sup>96</sup> Why are these institutions still concentrating on short-term products rather than on long-term products, where the latter is more important for production-oriented projects for development? Why is the Islamic banking movement facing an increasing need to resort to *Hiyal* (legal stratagem) to claim Shariah-compliance of its products? Why and how are the conventional western banks not only penetrating, but also becoming backers and even financiers of this "Islamic" niche?

Some common explanations offered by the Islamic banking movement are that (a) the problems and challenges are part of its learning curve, and (b) Islamic banking and finance can't operate in its essence in a society and environment that is not Islamic. This essay's limited scope will not allow us to examine those explanations here.

However, there is another explanation that seems to be more relevant and applicable, and that's the one explored here. That the *Riba*-interest equation in a blanket manner is not tenable from Islamic viewpoint and, maybe, that explains why the traditionally offered rationales for prohibition of interest do not hold up. Through the *Riba*-interest equation, it is not just that the IFIs have entrapped themselves into a situation where they often have to resort to *Hiyal* [legal stratagem, trick or even gimmick] to maintain an Islamic veneer, but also that they have to adopt things (e.g., fixed rate of return; or a mark-up that is indexed, pegged, benchmarked to the interest rate) that they have otherwise rejected as Islamically unacceptable.

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<sup>94</sup> Kamali, M. (2003). *Principles of Islamic Jurisprudence*, Islamic Texts Society, Cambridge, pp. 99-100.

<sup>95</sup> Sample, Ruth (2003). *Exploitation: What it is and why it's wrong*, Rowman and Littlefield, p. 164.

<sup>96</sup> Farooq, op. cit., 2007b.

Interest can be *riba* (and thus prohibited in certain situation), if it has an exploitative element or dimension. Indeed, in such case, a more relevant equivalent of *riba* is usury. Also, the relationship between *riba* and exploitation/injustice is evident, but the relationship between *riba* and commercial bank interest (in a competitive environment and under government regulation that protects the borrowers) is not. In any case, if one is to generalize about the prohibition of all interests (commercial and non-commercial, nominal and real, simple and compound), then we have to come up with better and more convincing rationales. Furthermore, the discourse has to be elevated from a polemical level to a more substantive level, supported with empirical analysis, especially surrounding claims about the deleterious effects of interest on, for examples, western economies and elsewhere.

Finally, while the traditional rationales for prohibition of interest are indicative of an anti-exploitation concern, the reality is that the intellectual and theological framework, within which the interest-free economy/finance movement places exploitation, does not really show a genuine and adequate understanding of the extent and nature of the ongoing exploitation in the contemporary world. Starting from a focus on exploitation may lead us to the goal of eliminating or at least limiting the role of interest in the economy and if so proven, appropriate steps in a comprehensive manner must be taken. However, preoccupation with interest, as evidenced by the *riba*-interest reductionism, leads to mechanical and legalistic approach to remove interest, while the broader and harsh reality of *zulm*/exploitation remains untouched. Regardless of the debate about *riba*-interest equation, beyond the orthodox discourse of Islamic economics and finance focused on freedom from interest, due to the categorical prohibition of *riba* in the Qur'an there is a critical need for a more refined and substantive discourse about freedom from *zulm*/exploitation.

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