

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
 الحمد لله رب العالمين والصلاة والسلام على سيد المرسلين وعلى آله وصحبه أجمعين .

Analysis of Interest {Riba} In Islamic Law

Definition of interest and its characteristics

By

Dr. Mohammad Nawaz {al hassani}*

Abstract

Muslim jurists have defined interest {Riba} in their valuable classic books taking account of all that was relevant. However, the contemporary scholars are of the view that the meaning of riba is not clear and Islamic law has not defined riba comprehensively, therefore, it is necessary to define riba in a way that gives its clear picture. There is also the need to explain the Shariah standard of riba and its parameters and how it is different from the sale contract?

This article analyzes the definitions of interest {riba} made by classical scholars and tries to support the preferable definition of riba in the light of relevant texts of the Quran and Ahadith.

It also points out the different types of property where riba may be involved such as moveable or immoveable property and fungible {mithly} or non-fungible {qimi} property and usurious and non-usurious property. Besides, it explains the Shariah standard of interest. In short, this article is a humble attempt to give a comprehensive and exclusive definition of riba and elaborates how it differs from other excesses.

Key word: Interest [riba] comprehensive, exclusive definition and Shariah standard.

INTRODUCTION:

The banking system is working in all over the world and people realize the importance of banking in facilitating mankind by different ways.

However, the question arises: why there is a need to discuss {riba} interest?

* Author: Dr. Mohammad Nawaz {al hassani}, Professor of Islamic Law in department of Arabic and Islamic Studies, The University of Lahore. E-Mail: nawaz.hassani@gmail.com

There are three reasons requiring this discussion as given below:

1- We live in a global village and wherever we go, we meet people from different communities and religions living together, helping each other, participating in their affairs, respecting another for being the offspring of {Adam} {peace be upon him}.

The Muslims in all over the world, whether in minority or in majority are generally reluctant to involve their business in the element of interest {riba} because it is strictly prohibited in the Islamic law, and any business which involves the element of interest is considered harmful for Muslims according to the Islamic law. Therefore they always desire a system of financing and investment which is interest-free and in conformity with the Islamic law.

2- Two types of banking systems are Vogel in the world, the conventional system of banking and the Islamic system of banking. The Islamic system of financing varies from the conventional system.

This article is a humble attempt to guide the interested quarters in opting the best banking systems of banking for their financial activities and business transactions.

3- The conventional financial system considers interest as the backbone of banking. On the other hand, the Islamic financial system declares interest as a {Haram} prohibited because of being harmful to human society and business activity and the Muslims are enjoined to avoid usurious transactions.

This Article is the Need of the Society:

This article is the need of the society for the following reasons.

1. First, the basic difference between the conventional and the Islamic systems of banking is interest {riba}, so it is requirement of both systems of banking to remove any ambiguity from the minds of the persons going to study Islamic and conventional financing systems.
2. Every discussion related to any Islamic mode of financing and investment has some link with interest {riba}, so it is requirement of every Islamic mode of financing that the mind of a Muslim client is clear about the Islamic financing which is free from the involvement of {riba} interest.
3. Some contemporary scholars are confused about interest and wherever is an excess of profit in a sale contract they term it as interest {riba} though one or both exchanged properties are not usurious properties. They do not differentiate between profit and riba.
4. Some other scholars are, however, of the view that every excess is not riba and it is not prohibited even though it is involved in exchange of usurious properties. They hold the view that the excess causing exploitation is prohibited, so the minor excess which does not amount to exploitation, is not prohibited though it is in exchange of usurious properties.

5. Again, contemporary scholars who do not differentiate between riba and 'ghabanfahish' and they consider ghabanfahish also riba. However, the two are different from each other as discussed later.

Definition of Interest {Riba}

There are two meanings of interest {Riba} as follows:

a) Literal Meaning:

Riba literally means an excess, addition, increase, augmentation and growth.

Holy Quran used the word Riba in its literal sense in Surah al-Rum and says: {وما آتيتم من ربا ليربو في أموال الناس فلا يربو عند الله وما آتيتم من زكاة تريدون وجه الله فألئك هم المضعفون.¹

And [remember:] whatever you may give out in usury, so that it might increase through [other] people's possessions will bring [you] no increase in the sight of God- Whereas all that you give out in charity, seeking God's countenance, [will be blessed by Him] for it is they, they [who thus seek His countenance] that shall have their recompense multiplied.

Another verse of the Quran says: {ويربي الصدقات}² Allah Almighty increases the charities.

The Prophet {blessing of Allah and peace be upon him} said: {الذهب بالذهب والفضة بالفضة والحنطة بالحنطة والشعير بالشعير والتمر بالتمر والملح بالملح مثلاً يمثّل يدا بيد والفضل ربا من زاد أو استزاد فقد أربى {الآخذ والمعطي فيه سواء.³

Here, the word Riba is used in the meaning of an excess, increase and addition.

b- Technical Meaning of Interest {Riba}

There are different definitions of interest {riba} but only two definitions are given here from Hanfi school of thought.

First Definition of Riba:

Mohammad Ali al Thanvi al Qadri⁴ defined riba in the following words:

¹ Surah al Rum/ 39

² Surah al Baqarah/ 276

³ Refer to: Sahih al Bukhari/ hadith: 2177-2178, Sahih Muslim/ hadith:1585, Jamey al Tirmizi/ hadith:1241, al Nisai/al Sunan al Sughra/hadith: 4565,aLNisai/ al Sunan al Kubra/ hadith: 6113, Muatta al Imam Malik/ hadith:1324, Musnad al Imam Ahmad/ hadith: 10623-10678,

Riba is an increase without consideration, stipulated for one party in a contract of exchange.

The following ingredients of riba are drawn from this definition:

- a- The word ‘increase’ means interest {riba} whether this increase is an increase of property stipulated for one party or an increase of time period stipulated for one party in the delivery of consideration. The excess of time is a legal increase without consideration because time period is also money according to classical Hanafi jurists as well as according to contemporary economists.⁵
 - b- The word ‘without corresponding consideration’ means an excess given to one party without any indemnity.
 - c- The word ‘stipulated for one contracting party’ means this excess is made for one party as a contractual obligation and condition.
- If it is not conditional increase, then it is not riba. It is discussed later.
- d- The word ‘in the contract of exchange’ means that interest is involved in an exchange of property by property as barter trade. The point is discussed in detail later.
 - e- According to the Hanafi school of thought, riba is an increase without consideration, stipulated for one party in contract of exchange of property but it is not a contract in itself.

Observation:

This definition is not clear about the excess which is without consideration because it does not mention the criteria and parameter for being without consideration or being against consideration.

Second Definition of Interest {Riba}:

According to al HaskafiAlauddin, Riba is an increase without corresponding consideration according to Shariah standard, stipulated for one party in contract of exchange of properties.⁶

⁴ Mohammad Ali al Thanivi /Kashaf Istilahat al funun / Beirut: Shirkat al khiyat le al kutub /1:592.

⁵ It will be discussed later.

⁶ Al Haskafi Ala ud Din/ la Durre- al Mukhtar with Marginal notes by Ibn Abidin Mohammad Amin/ Istanbul: Dar Qahrman/ 1984/ 5: 168- 170. Refer also to Ibn al Hummam Abdul Wahid/Fath al Qadir with different marginal notes /Beirut: Dar Ihya al Turath al Arabi/ 6: 146, al Baberti Akmal al Din Muhmmad Mahmud/al Inayah with Sharh Fath al Qadir/ 6: 146, Marginal notes by Afindi Sadullah bin Easa on al Inayah/ 6: 146, al Kasani Ala ud Din/ al Baday wa al Sanay/ / Beirut: Dar al Kitab al Arabi / Second edition/1401-1981/5: 183, al Sarkhasi Shams al Aimmah/ al Mabsut/Beirut: Dar al Marifah/1406- 1986/12: 109, al Zailai / Tabyeen al Haqaiq/ 4: 87. Refer also Al Adavi/ Marginal notes on Sharh al khurshi/ 5: 56, Ibn RushdMuhammad bin Muhamma/ Bidayyat ul Mujtahid/ Egypt: Maktabah Mustafa al Babi al Halbi/ Fith edition / 1401-1981/ 2: 129, al Dasuqi Ibn Arafah/Marginal notes by al Dasuqi/ 3: 47, al Hattab/ Mawahib al Jalil/ 4: 346 al Qalyubi

Common Features of Both Definitions:

These are:

- 1- Riba is the name an increase in contract of exchange of property.
- 2- This increase is without corresponding consideration.
- 3- This increase is stipulated for one party in the contract of exchange of properties.

Difference between the two definitions:

There are certain differences between the both definitions.

The definition made by majority of Hanafi jurists is more appropriate than the one made by al Thanvi al Qadri for the following reasons:

1. The word 'According to Shariah standard' is found in the definition of riba made by majority but it is missing in the definition made by Ali al Thanvi. This means that the increase of riba is to be checked by Shariah standard and the Shariah standard may determine that this increase is without consideration. It is taking the property of another person without paying anything in lieu of it. It is taking property of the other person without his consent and whatever is taken from the other person without his consent is void: Quran says: {ولا تأكلوا أموالكم بالباطل.⁷}

Do not devour your each other properties wrongfully. There is another verse of Holy Quran: {يا أيها الذين آمنوا لا تأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض منكم.⁸}

O believers do not devour the properties of each other wrongfully unless it is business with your consent.

The Shariah standard for riba al fadl is exchange of weigh able or measureable property by homogenous with excess of property and Shariah standard for riba al nasia is exchange of property by homogenous or by homo-estimation in weight or measurement with excess of time.⁹ The definition of riba by al Thanvi is not clear about Shariah standard by which the increase in the exchange of properties is assessed whether it is with consideration or without consideration.

- 2- The definition of riba made by al Thanvi al Qadri is not clear regarding the property where riba can be involved while the definition made by majority of Hanafi jurists is clear in this respect that the Shariah standard is only weighable

wa Umairah/ Marginal notes on al Minhaj/ 2: 166, al Bajuri/Marginal notes on alaSharh Ibn al Qasim/ 1: 344, al Sharbini al Khateeb/ Mughni al Muhtaj/Agyp: Maktabah Mustafa al Babi al Halbi/ 1377-1958/2: 21,al Ramli, Nihayat al Muhtaj/ 3: 39, al Subki/Takmilat al Majmua /10: 48, Ibn Quadamah Abdullah bin Ahmad/ al Mughni/Beirut:Dar al Kitab al Arabi/ 1392-1972/ 4: 122, Ibn al Qayyim/ Ialam al Muwaqqein/ 2: 135.

⁷ Surah al Baqarah/ 188

⁸ Surah al Nisa/ 29

⁹ IbnAbdin/ Rad al Muhtar/ 5: 168-170

or measureable property exchanged by homogenous for riba al fadl while one of these is Shariah standard for riba al nasia and it means: riba al nasia is involved in exchange of weighable or measureable property by homo-estimation or in exchange of property by homogenous though both are homo-estimation or not, so riba al fadl is only involved in weighable or measureable properties exchanged by homogenous items and it is not involved in those properties which are neither weighable nor measureable such as property sold and bought by rod meter or counting as well as qimi property while riba al nasia able property is weighable and measureable items as well as all other properties exchanged by homogenous items with excess of time though these are fungible or non-fungible {qimi} properties.

Illustration:

1-The word increase in the definition of riba by al Haskafi, means:
the increase on the quantity of capital amount and it is tested by
Shariah standard discussed later.¹⁰

Types of Increase:

There are two types of increase and excess as follows:

Ibn al Arabi said: The excess over the consideration in cumulative contracts is of two types:¹¹

- 1- Commutative contracts whereby the lawgiver has given the choice to contracting parties to settle the amount of consideration. The consideration in contract related to these type of properties is of three types:
 - a. Consideration with excess according to habit of market such as cost plus stated profit sale {bay al Murabahah} It is unanimously valid in Islamic law.
 - b. Consideration with excess by which the people are defrauded in their habits. It is always less than one third of total value of commodity. It is also valid.
 - c. Consideration with excess by which the people are not defrauded in their habits. It is according to Hanafi jurists. It is disputed among the Muslim jurists and some of them hold that it is valid because it is trick a business. Majority of jurists hold that it is prohibited and the formula for this excess is being equal to one third of total value of property or exceeding to it and it is called 'ghabnfahish' also according to Malki jurists.¹² It is selling a commodity at an excessively high price which is equal to one third of total value of commodity or more.

¹⁰ This discussion is very important for those who want to know exact technical meaning of riba.

¹¹ Ibn al Arabi / Ahkam al Quran /1: 241

¹² Ibn al Arabi / Ahkam al Quran /1: 241- 243:

- d- Wherever the excess of 'riba al fadl' is involved the excess of 'ghabanfahish' is not involved.
 - e- The excess of 'riba al fadl' is involved in urgent or deferred payment sale while excess of 'ghabanfahish' is involved in urgent payment sale and it is not found in deferred payment sale because such excess is not called 'ghabanfahish'.
- 2- Commutative contract in which the law giver has specified the extent of consideration as usurious properties, the excess on the consideration in exchange of these properties is prohibited.

Increase on the cost of commodity without consideration is always interest {riba}. It is further divided into two types as below:

- a- An actual increase and it is increase in the property. For instance one sack of wheat is exchanged by one and a half sack of wheat and one hundred gram of gold is exchanged by one hundred and fifty gram of gold. This is in fact a material increase and this type of an excess is called 'Riba al fadl' provided the both exchanged properties are weighable or measureable besides being homogenous though the excess is from same property or from any other property as A sold one sack of wheat against one sack of wheat plus fifty rupee, so fifty rupee is an excess but it is not from the genus of wheat.
- b- Legally {Hukman} increase and it is increase in time period for the delivery of such properties where 'riba al nasia' may be involved. It is an immaterial increase, so it is declared prohibited. Such as, one person exchanging one sack of wheat which will be handed over after six months, against one sack of wheat handed over at the time of contract. Immediate delivery of commodity is better for the purchaser and is more valuable than the deferred delivery. On the other hand, deferred delivery is better for the seller. Similarly, immediate payment of price of commodity is better for the seller whereas, deferred payment of price is in the interest of the purchaser, and it is considered legal increase because time is money in the new financing theories as well as it is valuable also in Islamic classical law.¹⁵

This increase is termed legal excess by Ibn Aabidin Mohammad Amin who has defined riba in these words: Riba is an excess in fact or in law without consideration according to Shariah standard, stipulated for one contracting party.¹⁶

¹⁵ Refer to: al Sarkhasi/ al Mabsut/ 12: 111, al Kasani/ a Badaye wa al Sanaye/ 5: 225 / al Zalayi / tabyeen al Haqaiq/4: 78, Ibn Abidin/ Radd al Muhtar/ 4: 258, al Dusuqi Ibn Arafah /marginal note al Dusuqi/ 3: 165, al Zarqani/marginal note al Zarqani ala Khalil/ 5: 176, al Shatbi Abu Ishaq/ al Muwfaqat / 4: 41-42, Ibn Juzay/ al Qawanin al Fiqhiyyah/ 174, al Nowi / al Majmua / 6: 22/ al Sharbini al Khateeb / Mughni al Muhtaj/ 2: 78, Tuhfah al Muhtaj/ 4: 432, Ibn Taimiyyah/ Majmu al Fatawa / 29: 413,499, 525.

¹⁶ Ibn Abidin/ Rad al Muhtar/ 5: 170

- a- It is supported by the following scholars: 1- al Imam al Shafei said: Food stuff deliverable in the near future is more costly than the price of food stuff to be paid on a distant future date.¹⁷ 2- Al Nowi said: Five paid in cash is equal to six payable in future.¹⁸
- b- It generally, encourages a creditor to demand excess in the property. It is based on Jurisprudential maxim: {المظنة تقوم مقام المثنة} Whatever is most likely to occur, will be presumed to have occurred.¹⁹
- 2- The word 'stipulated' means: this excess is stipulated for either of contracting party as a contractual obligation.²⁰

The reason for this stipulation is to exclude an excess paid to the creditor without stipulation because it is valid due to the 'tradition. The Prophet {blessing of Allah and peace be upon him} sometimes give more to a creditor for his good behavior with the Prophet as narrated by Abu Hurairah {May Allah be pleased with him} that a person came to the Prophet {blessing of Allah and peace be upon him}: and requested for a debt and The Prophet {blessing of Allah and peace be upon him} gave him debt amounting to half of wasaq equaling 30 kg. Meanwhile, another person came to the Prophet {blessing of Allah and peace be upon him} and he demanded the payment of his debt obligatory on the Prophet {blessing of Allah and peace be upon him} and it was also half of Wasaq equaling to 30 kg, and the Prophet gave him 60 kg, and said: half of wasaq is against your debt and the other half is a gift from me.²¹

It was without any prior stipulation or contractual obligation and it is valid in the light of the verse of Holy Quran: There is no recompense for generosity without generosity.²²

- 3- The word 'Shariah standard' means: the standard declared by Shariah for differentiating between excess of riba which is without consideration and excess of profit which is against consideration.

There are two types of 'Shariah standards' one for riba al fadl and the other for riba al nasia.

- a- 'Shariah standard' for riba al fadl is an exchange of weighable or measureable property by homogenous. If there is an excess of property, it is riba al fadl, otherwise there is no riba al fadl.
- b- 'Shariah standard' for 'riba al nasia' has one of the two attributes mentioned in the 'Shariah standard' of 'riba al fadl'. These two attributes are:

¹⁷ Al Imam al Shafei / al Umm/ 3: 12

¹⁸ al Nowi / al Majmu / 6: 22

¹⁹ Abdul Wahab Khallaf / IlmUsool al Fiqh/1979 / tenth edition / 67

²⁰ Abu Bakr al Jassas / Ahkam al Quran/ Beirut: Dar al kitab al Arabi / 1: 65

²¹ It is narrated by al Baihaqi / al Sunan al Kubra / 5: 351/ hadith no: 10722

²² Surah al Rahman: 60

- c- Homogenous b- homo-estimation in weight or in measurement.
- i- If there is an exchange of property by homo-estimation in weight, then the excess of time is 'riba al nasia' though both are homogenous such as gold by gold and silver by silver or both are not homogenous but simple homo-estimation as gold by silver.
 - ii- If there is exchange of property by homo-estimation in measurement, then the excess of time is riba al nasia though both are homogenous as wheat by wheat, barley by barley, date by date or both are not homogenous but simple homo-estimation as exchange of wheat by barley.
 - iii- If there is an exchange of homogenous property with excess of time, it is also 'riba al nasia' though both are {mithli} fungible properties or both are valuable {Qimi} properties as animals.

Both these types of excesses are riba and both are prohibited because both are without consideration as Ibn Abidin mentioned in his definition of riba.²³

Shariah standard of interest:

'Shariah standard' of riba and the parameter for both types of riba which is an excess without consideration is as follows:

- a- Shariah standard of 'riba al fadl' is exchange of weighable or measureable property by homogenous. This 'Shariah standard' is also underlying cause of 'riba al fadl.

It means: if both exchanged properties are homo-estimation in weight or in measurement plus homogenous, then excess of property is riba al fadl because it is without consideration according to Shariah standard.

- b- 'Shariah standard' or parameter of 'riba al nasia' is the presence of one of two attributes mentioned in the 'Shariah standard' of riba al fadl and which are:

1- homogenous 2- homo-estimation in weight or in measurement.

- i- If both exchanged properties are homogenous, then the stipulated excess of time is riba al nasia whatever the property. It is {Mithli} fungible property or {Qimi} valuable property.
- ii- If both exchanged properties are homo-estimation in weight or in measurement, then the stipulated excess of time is riba al nasia though both are homogenous or homo-estimation in weight or in measurement.

This type of excess of time is without consideration according to Sharia standard and it is prohibited.

²³ Ibn Abidin/ Rad al Muhtar/ 5: 168-170

Question:

A question is arises on this definition of ‘riba al fadl’ that the exchange of one thousand of rupee by two thousand of rupee will be valid according to this definition as both exchanged properties are neither weighable nor measureable.

Answer:

This question can be answered in two ways:

1- First: there may be two situations:

- i- If the time period for the delivery of the amount is stipulated for either party, then it is ‘riba al nasia’ because both exchanged properties are homogenous.
- ii- If there is no delay in the delivery of the amount, then this contract is of an abnormal person and the contract concluded by an abnormal person is void though it may be a beneficial contract or totally harmful or both, because exchanging one thousand rupees by two thousand rupees at the spot is evidence of his abnormality.

2- Second: the paper currency is considered a substitute of gold and silver and whatever the rules of gold and silver, the same are applicable to their substitutes such as the paper currency. If both paper currencies are from same genus, then the excess of property and time both are prohibited due to riba al fadl and riba al nasia. If both are not from same genus such as dollar and rupee, then the excess of property is valid but excess of time is not valid because of riba al nasia.

NOTE: When wheat is bought by gold, by silver or by any currency with excess of property as well as with excess of time for either contracting party it is valid and there is neither riba fadl nor riba al nasia because these properties are neither homogenous nor homo-estimation in weight or in measurement. However when both exchanged properties are neither homogeneous nor homo-estimation in weight or in measurement then there is neither Riba al fadl nor Riba al nasia. If there is an excess of property more or less from the market value it may be called ghabnyasir or ghabnfahish but it is not riba al fadl. If there is an excess of time for the seller it is advance payment sale {bay al salam}. If there is excess of time for the purchaser then it is deferred payment sale {bay al muajjal} and these both sales are validated by the Quran.²⁴

Grounds for Definition of Riba:

There are two basic grounds for the definition of riba as given below.

FIRST, The verse of the Holy Quran: { ذلك بأنهم قالوا إنما البيع مثل الربا وأحل الله البيع وحرم الربا. } For they say, “Buying and selling is but a kind of usury” while God has made buying and selling lawful and usury unlawful.

²⁴ Surah al baqrah/ 282

The Makkan tribe Banu Saqif had argued that sale is similar to riba, upon which, Almighty Allah revealed the rule, saying Almighty Allah permitted the sale and prohibited the riba.²⁵

Question:

This was in fact the question raised by Banu Saqif asking: Why has Almighty Allah permitted the sale and prohibited riba when sale is like riba?²⁶ Allah Almighty provided the answer saying: Allah permitted the sale and prohibited riba²⁷

But this part of verse does not seem to be answer of the question raised by Banu Saqif because they already knew that Almighty Allah had permitted the sale and prohibited riba.²⁸ In spite of that, they raised question; Why Almighty Allah permitted the sale and prohibited riba, while both are similar. What they had in their mind was that profit in sale is an excess on principal amount and riba is also an excess on the principal amount, so, when both are similar, why sale is permitted and riba is prohibited?

²⁵ Surah al baqrah / 275

²⁶ This is 'tashbeehmaqlub' opposite similarity in Arabic literature and wherever is a tashbeeh in Arabic language there are three different things: one is Mushabbah, second is Mushabbahbihi and third is an common attribute between these two and it is similarity in attribute. Mushabbahbihi is more prominent in this attribute of tashbeeh and it is agreed upon and the tashbeehmaqlub is like saying the moon is like my beloved instead of saying: my beloved is like the moon.

Tashbeehmaqlub means: the attribute of tashbeeh is more prominent in riba than the sale contract because riba and profit both are extra amounts on the principal amount and riba as being extra amount is more prominent than the profit. If the sale contract is valid, the riba should also be valid.

²⁷ This form of question and answer is adopted to explain some delicate point and it has been done by many classical scholars. Among them is my respected teacher Ata Mohammad al Bandialvi who was great scholar of logic of his time. He had received education of logic from the chain of eminent scholars like AbdulHaq and FadlulHaqKhairAbadi on one hand and Lutf Allah Ali Ghari on the other {blessing of Allah be upon them}. This style of interpretation is adopted by al BaidaviUmer in his book of Tafseer titled; Anwar al Tanzil fi BiyanAsrar al Taweel and there is another book which interprets Sharah al Jama'i in Arabic grammar by question and answer titled: SuwalBasuwali.

²⁸ This verse was revealed after the conquest of Makkah though riba was declared prohibited after the fall of Khaiber and the Makkans knew prohibition of riba since long. When BnuSaqif, the creditors, demanded their debts with interest and BanuMughira, the debtors, refused to pay riba, then BanuSaqif argued: that the sale and riba are similar and a profit gained by sale is an excess on the principal amount, riba is also an excess on the principal amount and there is no difference between riba and sale, then they raised the question: Why did Almighty Allah permit the sale and prohibit riba? Attab bin Asid was the governor of Makkah at this time, and The case of BanuSaqif and BanuMughira was referred to Attab bin Asid and he wrote a letter to the Holy Prophet {blessing of Allah and peace be upon him} who was in Madina al Munawwarah at that time. On this occasion, five verses of Sura al Baqra were revealed explaining the rule of riba and issuing a warning of war with those people who were not accepting the prohibition of riba. Note: BanuSaqif embraced Islam after the conquest of Makkah.

ANSWER: The answer to this question is the divine proclamation that, the sale is permitted and riba is prohibited. This verse of the Quran implies difference between the sale and riba in two aspects:

- a- The first is of the rule, the rule of sale is the {Halal} permissibility while the rule of riba is the {Haram} prohibition.
- b- The second difference between sale and riba is of the excess found in both. Every excess in a sale contract is against consideration, whereas every excess found in riba is always without consideration. The first difference of rules is based on the second difference of excess.

The verse of the Quran quoted above while explaining that; the rule of sale is different from the rule of riba, is called exclusive clear {zahir}. The same verse of Quran while explaining that the sale is different from riba is termed as Nuss in Usool al Fiqh and Nuss means the text that clearly explains its purpose of revelation, and the purpose of it is to differentiate between the sale and riba and reject the assumption that sale and riba are similar because the excess found in sale is always against consideration, whereas the excess found in situation of riba is always without consideration. The first excess is called profit while the second excess is termed riba. The excess of sale is valid while the excess of riba is void. Since, Banu Saqif did not understand the difference between the sale and riba, they raised the question: Why sale is permitted and riba is prohibited while both are similar?

Almighty Allah answered the question by permitting the sale and prohibiting the riba because the sale contract carries an excess which is always against consideration while riba contract carries an excess which is always without consideration. There is another reason given below in foot notes because it is not easy for those who did not study marginal notes on Sharah al Jamei, written by Abul Rehman al Jamei such as marginal note of Abdul Ghafoor and Isam.²⁹

²⁹ The same verse indicate to this difference of excess found in both sale and riba and it is known by the word {al} at the start of word {riba} and {bay} in this verse. 'Al' is the component of Alif and Lam in Arabic language and there are many types of {al}. one of these is for introduction and when {al} gives the meaning of introduction, it is further divided into four categories. Two of these are for specifying the meaning of that particular word. For instance:

- a- Specification of the meaning of the word on the external-side as Holy Quran says: { فعصى } { فرعون الرسول } Pharaoh rebelled against the apostle {al Rasul}. Surah alMuzzamil / 16. The word {al} here specifies the apostle and the specific apostle {Rasul} is the Holy Moses {peace be upon him}. It is called {Mahud fi al Kharij}{المعهود في الخارج} and it is only because of {al} before the word of apostle {al Rasul}.
- b- Specification of the meaning of word in internal-side of the mind of person as the Holy Prophet {blessing of Allah and peace be upon him} said: { الحمد لله } and he intended by this word the specific 'hamd' praised by Almighty Allah for Himself as hadith says:²⁹ { لا أحصي } { ثناء عليك أنت كما أثنيت على نفسك } I cannot offer your praise with Hamd as you praised your own self. [Refer: Sahih Muslim/ Hadith: 489, Jamye al Tirmzi/ hadith: 3493, Sunan-e-

Second:

The hadith of Holy Prophet (blessing of Allah and peace be upon him) supports these two differences mentioned in the verse of Holy Quran and there are many traditions supporting each other in the same meaning, and one of these is as follows:

HADITH: A tradition of Holy Prophet {blessing of Allah and peace be upon him} says: الذهب بالذهب والفضة بالفضة والحنطة بالحنطة والشعير بالشعير والتمر بالتمر والملح بالملح مثلاً بمثل يدا بيد {والفضل ربا وإذا اختلف الجنس فبيعوا كيف شئتم إذا كان يدا بيد. Gold by gold, silver by silver, and wheat by wheat, barley by barley, date by date and salt by salt, equal to equal {in weight or in measurement} hand to hand and the excess is riba and when genus is different you may sell as you please but it should be hand to hand exchange.³⁰

Two points are highlighted in this hadith:

- 1- Shariah standard: It is exchange of property by homogenous or by homo-estimation in weight or in measurement. These two are known by the words of this hadith saying: gold by gold and silver by silver, till the end of hadith. It means both are homogenous.
- 2- Equal to equal, hand to hand. The word, equal to equal indicate to equality in quantity. If there is an excess of quantity, it is an excess of property and it is riba al fadl. The word, hand to hand indicates to equality in the delivery of both properties in same time. If there is an excess of time it is riba al nasia.

The last word is: {والفضل ربا} It means: an excess is riba whether this excess {wa al fadloribun} is related to the quantity of property {مثلاً بمثل} {equal to equal}. It is termed riba al fadl or this excess {wa al fadloribun} is related to hand to hand {يدا بيد} and it is always in time and it is called riba al nasia because this word is connected to both words {mithlun bi mithlin} and {yadun bi yadin} and it means: equal to equal in quantity and there is no excess in property, and it is hand to hand and there is no excess in time, so if there is an excess of property it is riba al fadl and if there is an excess of time in exchange of property mentioned in hadith it is riba al nasia. The Hadith explains: that there are two types of riba:

AbiDawood/ hadith: 879, sunan al Nasai al Sughra/ hadith: 169, 1100, 1130, Sunan-e- ibn-e-Majah/ hadith:3841, Muatta/ hadith: 497]. It is called mahud fi al zihn {المعهود في الذهن}.

Similarly here, the word {al} on the word riba and sale as 'al riba' and 'al bay' refers to specific meaning of meaning of bay and ribain the mind, This verse indicates by word [AL]that the excess found in bay is always against consideration, so it is permitted and excess found inriba is always without consideration according to Shariah standard though it is excess of property or excess of time, so it is made prohibited. [Ibn al Arabi/Ahkam al Quran/1:241]. Note: An excess is not necessary to be found in sale contract but when it is found in sale, then it is always against consideration. If there is no exchange of property by homogenous or by homo-estimation in weight or in measurement, then there is no excess without consideration.

³⁰ It is narrated by Imam al Bukhari and Muslim See: Sahih al Bukhari/hadith:2170-2175 and Sahih Muslim/ hadith: 4063

riba al fadl and it is excess of property and riba nasia and it is an excess of time³¹ and the rule of riba is explained by Holy Quran and it is prohibition. It applies to both types of riba.³²

Conclusion:

Therefore, we can conclude that:

1. The definition of riba is made clear by the verse of Holy Quran in the light of the Hadith.
2. The excess in contract of interest is always without consideration according to Sharia standard though it is in property or in time, while excess of profit in sale contract is always against consideration.
3. The Shariah standard is exchange of property by homogenous or by homo-estimation in weight or in measurement and it means: equality is required in the quantity and delivery at the same time for both properties.
4. The parameter and Sharia standard for riba al fadl is exchange of homo-estimation in weight or in measurement plus homogenous.
5. It means that both are homo-estimation in weight or measurement, and both are also homogenous.
6. The parameter and Shariah standard for riba al nasia is each one of two attributes mentioned as Shariah standard for riba al fadl. Both exchanged properties are homogenous or both are homo-estimation in weight or in measurement, and the excess of time is riba al nasia.
7. It means one of these two attributes is Shariah standard for riba al Nasia.
1- Homogenous. 2- Homo-estimation in weight or in measurement.
8. This is view of the Hanfi and Hanbli jurists.

³¹ Both types of riba are explained by the tradition of the Holy Prophet {blessing of Allah and peace be upon him}.

³² Some writers have discussed the types of riba and divided it in two types: 1- Riba al duyun which is riba al jahliyyah and it is riba al Quran. By this, they mean that it is prohibited by Quran and not by Hadith of Prophet {blessing of Allah and peace be upon him} 2- Riba al fadl and it is riba al hadith, By this, they mean that it is prohibited by Hadith and not by al Quran. However, I disagree with them because when Almighty Allah says that Allah permitted the sale and prohibited the riba He does not differentiate between these two types of riba in prohibition.

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