

*Full Length Research Paper*

# Islamic banking in Pakistan: Fiqa-e-Jaferia offers optimization

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Islamic banking is an initiative of State Bank of Pakistan (SBP) and Shariah scholars for purifying the financial and economic system of Pakistan from interest (Riba). The framework of Islamic banking guides banks to customize their policies and product mix in conformance with Shariah standards. Despite targeting a noble cause of eliminating interest (Riba) from the economy of Pakistan, the existing practices of Islamic banks and certain aspects of the framework of Islamic banking face logical objections. Due to inappropriate operational measures, Islamic banks are yet criticized for not having embraced Islam completely. Islamic banks are found adopting Islam in parts and chunks. Islamic banks are epitomized by certain sect instead of Islam and further, they are not imbued to alleviate poverty from mass root level being mere commercial enterprises. Fiqa-e-Jaferia explains Islam based on the Holy Quran and teachings of Prophet Muhammad (SAAW) explained by Imams in his Ahl-e-Bait (AS). By now, the Islamic banking framework and Islamic banks are not benefited by the input and support of Fiqa-e-Jaferia. The study discovered that the aforementioned objections on Islamic banking can be rectified through incorporating guidance of Fiqa-e-Jaferia. In January 2008, this study joined an Islamic bank that was functioning as per Fiqa-e-Hanafi to observe and experience the norms and practices in Islamic banks. It investigated and interpreted the root cause of short comings in Islamic banking rendering it objectionable. Since January 2008 to date, the study compared the two major fiqas that are Fiqa-e-Jaferia and Fiqa-e-Hanafi with the intention of contributing a consensus on Islamic banking for strengthening this noble cause. In the light of Fiqa-e-Jaferia, the study has identified Kibor Halal for SBP and number of opportunities for SBP, Islamic banks and stakeholders for optimizing the framework and practices of Islamic banking. The study recommends a solution to resolve all objections on Islamic banks and Islamizing the entire banking industry within three steps. It recommends engaging SBP, banks and their clients in a double tier master slave relationship such as Slave 1 (bank) – Master (SBP) – Slave 2 (client) to get the entire banking functions Halal with a little modification in the mechanism of banking. It invites divergent Muslim scholars and SBP to reach a consensus considering Islamic banking as a national cause instead of keeping it as a mere commercial movement. It offers opportunities for further research, development and unity among divergent sects to strengthen both Islamic banking and Pakistan. The ultimate milestone is recommended to be an Islamic financial system seeking interest free economy, implementing real spirit of Islamic financial culture shielded from capitalistic and satanic intentions and norms.

**Key words:** Islamic financial system, interest, Holy Quran, Shariah, Islamic banking, Pakistan.

## INTRODUCTION

State Bank of Pakistan (SBP) has initiated penetration of an alternate banking system whose products and practices are customized in conformance with the rulings

of Islam. This alternate approach of banking is called Islamic banking. The intention and purpose of penetrating Islamic banking in the economic system of Pakistan is to

purify its economy from the curse of interest (Riba) that is forbidden in Islam. To achieve this noble cause, SBP with the help of Shariah scholars have contributed a framework for Islamic banking that is based on Islamic modes of finance (State Bank of Pakistan [SBP], 2011). SBP is encouraging the evolution of Islamic banking through its framework by advising conventional banks to adopt and run Islamic banking practices as a window operation parallel with their interest based conventional practices and supporting the Islamic banks that completely adopt the Islamic banking framework.

The existing framework of Islamic banking by SBP is based on the *Fiqa-e-Hanafi* that is a school of thought in Islam. *Fiqa-e-Hanafi* school of thought is generally known as the Sunni perspective of Islam. Islam is interpreted in various schools of thoughts and the alternate major school of thought is *Fiqa-e-Jaferia*. *Fiqa-e-Jaferia* is generally known as the Shia perspective of Islam. The study discovered that the noble cause of eliminating interest from the economic system of Pakistan shall be strengthened if the support of the alternate major school of thought that is *Fiqa-e-Jaferia* advocates the same. The existing framework of Islamic banking is though a commendable endeavor of SBP. However, it lacks the input and support of *Fiqa-e-Jaferia*.

*Fiqa-e-Jaferia* and *Fiqa-e-Hanafi* are both the major schools of thought forbid interest (Riba) based on Holy Quran (Al-Quran 2: 275, 276, 278, 279; 3: 130; 4: 161; 30: 39) and Sunnah. Despite same belief on interest (Riba), the noble cause of Islamic banking is yet not strengthened by a consensus among the religious elites in Pakistan. It is a fact that Islamic banking is questionable in view of a majority in Pakistan. SBP itself has set a slow speed for penetrating Islamic banking in Pakistan. This lack of vigor in accelerating evolution of Islamic banking in Pakistan is evident that confidence in the Islamic banking is yet at an embryonic stage. Islamic banking still needs to prove that it shall ensure a safe and effective transition for Pakistan's economy from conventional interest based curse to a pure Islamic financial solution. The absence of a consensus on Islamic banking among various *fiqas* and the lack of vigor in penetrating it need attention. This study perceives that consensus among the major sects on the Islamic banking framework shall automatically trigger a vigorous movement towards an interest (Riba) free economic system. The study further finds it pragmatic to reach a consensus on Islamic banking as all the sects describing Islam condemn and forbid interest (Riba).

The study identified that contributing the *Fiqa-e-Jaferia's* perspective on interest (Riba) shall help SBP, scholars of *Fiqa-e-Hanafi* and all stakeholders in strengthening the noble cause of eliminating the curse of interest (Riba) from Pakistan. The study discovered that the contribution of *Fiqa-e-Jaferia* on interest (Riba) can help SBP in optimizing the existing framework of Islamic banking ensuring a high degree of confidence both

among financial institutions and their potential customers. This can enhance the confidence in Islamic banking for accelerating evolution of an economic system immune from interest. Further, the input of *Fiqa-e-Jaferia* in Islamic banking can serve Pakistan as a foundation for unity among Muslims in Pakistan. The existing era and circumstances in the Muslim world desperately requires unity and consensus among Muslim scholars. Reaching consensus on a non-debatable subject like interest (Riba) is indeed pragmatic. It is true because *Fiqa-e-Jaferia* is the source of origin of all other *Fiqas* explaining Islam as Imam Abu Hanifa (RA) the founder of *Fiqa-e-Hanafi* and teacher of founders of other *Fiqas* was a pupil of Imam Jaffer Sadiq (AS) (Majlisi, 1987c).

### Significance of incorporating *Fiqa-e-Jaferia*

The Holy Prophet Muhammad (SAAW) said, "I am leaving two equally weighing items (sources) among you, the Holy Quran and my Ahl-e-Bait (AS) (specific family members). They shall not get separated from each other unless they reach me on the pond of Kausar" (Majlisi, 1966a). *Fiqa-e-Jaferia* is in fact *Fiqa-e-Ahl-e-Bait* (AS) that Imam Jaffer Sadiq (AS) explained and preached on getting temporary salvation from the atrocities of Bani Umayyah when Bani Abbas were struggling against Bani Umayyah to take over government. *Fiqa-e-Ahl-e-Bait* (AS) got famous with title *Fiqa-e-Jaferia* due to the name of its founder.

Imam Jaffer Sadiq (AS) was the eldest son of Imam Muhammad Baqir (AS). Imam Muhammad Baqir (AS) was the eldest son of Imam Ali Zain-ul-Abidin (AS). Imam Ali Zain-ul-Abidin (AS) was the son of Imam Hussain (AS). Imam Hussain (AS) was the son of Imam Ali bin Abu Talib (AS) by birth and in Shariah principles, Imam Hussain (AS) is declared son of the Prophet Muhammad (SAAW). These Imams among Ahl-e-Bait (AS) of Prophet Muhammad (SAAW) were in fact the Divine's apostles in form of Shariah scholars for leading and guiding the Muslims of all ages. The Holy Prophet Muhammad (SAAW) gifted his (SAAW) Ahl-e-Bait (AS) (specific family members in form of Imams) as leaders and guides for his entire ummah as per the direction of Allah. The teachings of Ahl-e-Bait (AS) are not restricted for a specific sect or group, rather, they are meant for the entire mankind. *Fiqa-e-Jaferia* therefore provides authentic explanation of the final religion of Allah that is Islam for being the direct contribution of Ahl-e-Bait (AS) in conformance with the Holy Quran (Majlisi, 1987b). The sources of Shariah for *Fiqa-e-Jaferia* primarily consists of the Holy Quran and Hadith authenticated by Imams among Ahl-e-Bait (AS). Wisdom and Ijma are the secondary sources for interpreting Shariah orders in *Fiqa-e-Jaferia*. Unlike *Fiqa-e-Hanafi*, *Fiqa-e-Jaferia* forbids Qayyas as defined above under definition of key terms (Seestani, 2000).

Fiqa-e-Jaferia is the root of all other fiqas explaining Islam (Kolaini, 1998). It is a historical fact that all alternate fiqas explaining Islam were derived after the emergence of Fiqa-e-Jaferia. Hazrat Noman bin Sabit Abu-Hanifa (RA) the founder of Fiqa-e-Hanafi remained the pupil of Imam Jaffer Sadiq (AS) for two years. The rest of all the fiqas explaining Islam evolved after Fiqa-e-Hanafi (Majlisi, 1987b). The Holy Prophet Muhammad (SAAW) clarified for the entire mankind stating, "The example of my Ahl-e-Bait (AS) is like the ship of Hazrat Noah (AS). The one who shall embark, will survive and those who shall disagree with them will face eternal failure" (Majlisi, 1966a). The Holy Quran also certifies that the Ahl-e-Bait (AS) are immune from errors and sins (Al-Quran 33: 33). As the existing practices of Islamic banking in Pakistan are yet in the phase of evolution towards a real interest free Islamic financial system, research and development to ensure complete conformance and compliance with the Islamic source is incumbent on all scholars and stakeholders. It is true that the voyage of Islamic banking has not yet been benefited by the beacon of Ahl-e-Bait (AS) and therefore, it is facing objections and criticism for being mere imitation of the same interest based system. It is not justified to entertain Islamic banking as a property of any particular sect. Therefore, it is important for SBP and all stakeholders of Islamic banking to neutrally entertain the input of Fiqa-e-Jaferia in the noble cause of eliminating interest (Riba) from Pakistan keeping aside all sorts of nepotism.

All fiqas describing Islam declare interest (Riba) a felony sin. Therefore, reaching consensus among fiqas for the elimination of interest (Riba) is pragmatic. The nepotism and lack of communication among fiqas shall lead Pakistan nowhere but to chaos as it is currently facing sectarian violence and bloodshed. To eliminate the sectarian distances among diversified Muslims, teachings of Ahl-e-Bait (AS) are the source to unite Muslims on the noble cause of eliminating interest (Riba). Islam is not the property of its followers or sects. The ownership of Islam is only and only with Allah. It is unfortunate and regretful that like mosques existing Islamic banks in Pakistan are yet being recognized as Barailvi and Dayobandi setups. In principle, Islamic banking should not be epitomized by the traits and predilections of sect in Islam. As order of Islam on interest (Riba) in all fiqas describing Islam is Haram, the existing diversification among Muslims and nepotism prime the need to reach a consensus on elimination of interest (Riba) from the economy of Pakistan considering it a national cause. Elimination of interest (Riba) cannot be achieved as long as it is believed to be an affair limited to certain sects or fiqas. It requires all Muslims to get together like they got together to achieve Pakistan before 1947. With intention and objective for uniting Muslims for the said noble purpose, the study contributes the teachings of Fiqa-e-Jaferia on the existing framework of Islamic banking, practices of

Islamic banks and views of its critics. The purpose of this study is to mitigate the distances among various sects and invite them to think and work together in the light of guidelines contributed by Ahl-e-Bait (AS) of our Prophet Muhammad (SAAW) on the subject of interest (Riba).

## METHODOLOGY

This is an empirical, longitudinal, comparative, theory based and conceptual study that has been conducted from January 2008 to date by joining an emerging Islamic bank in Pakistan for closely observing, practicing and exploring the existing Islamic banking standards, norms, regulations and creed. The selected Islamic bank had adopted and customized banking products in line with Fiqa-e-Hanafi Barailvi school of thought. The study interpreted the key terms of Islamic banking considering the guidelines of State Bank of Pakistan (SBP) as the primary source of knowledge. In this context the study accessed various relevant websites and Islamic scholars without any bias towards any sect who were practicing Islamic banking being professional bankers.

The study set the Islamic banking products and services as its units of analysis. It simultaneously reviewed and learnt the alternate interest oriented conventional banking products. The study also analyzed the Islamic banking products that are yet not being offered by the Islamic banks in Pakistan but supported in the framework contributed by SBP.

The study compared and analyzed the Islamic banking practices customized as per Fiqa-Hanafi with the teachings of Fiqa-e-Jaferia approaching its authentic sources and selected Shia scholars. The details pertaining to the selected units of analysis contributed as the data for this study. The study analyzed and concentrated on every unit of analysis by focusing on the perspective of Fiqa-e-Jaferia about the same. However, for this manuscript, the study limits its scope to the in depth analysis of only the basics of usury, its forbiddance in Islam and debt based banking products. The study employed deduction and induction methods for presenting the holistic view of framework of Islamic banking in the light of Fiqa-e-Jaferia for making recommendations.

Later, the study shared its contribution and idea with SBP, known senior bankers in access and Shia scholars. The study shares their views/remarks onwards in discussion and forecasted implications at the end. The study utilized the remarks of bankers to improve its initial idea and optimized the proposed framework.

## Definitions of interest (Riba/Usury) in Fiqa-e-Jaferia

It is important to share the concept of interest (Riba) in the light of Fiqa-e-Jaferia. Interest (Riba) may exist in the legal financial matters of debt (Qard), sale (Bae) and/or unethical/illegal exaction in any Financial Deal (Mali Istehsal). Islam not only permits, but also encourages both the debt (Qard) and sale (Bae), provided such matters are executed and committed for legal and valid reasons and items among Muslims that are adult (Baligh) and wise (Aqil) to make decision about their financial matters. Islam also permits same contracts/deal among Muslims and non-Muslims but again for valid and legal items only. The detail of validity and legality of items for sale (Bae) is declared out of the scope of this article. Fiqa-e-Jaferia defines interest (Riba) in the following ways:

### ***Interest (Riba) in debt (Qard)***

With reference to Sadooq (1996), Araki (1994), Najfi (2000), Seestani (2000) and consensus among Shia scholars in matters of debt, interest (Riba) is defined as charging or demanding more than the principal amount provided for debt services. For example, a person A lends Rs. 1,000/- to person B then as per principles of debt in Islam only Rs. 1,000/- (principal amount) must be returned preferably within the mutually agreed time period. In case payment is not made within the mutually agreed time period, even then, no penalty, surcharge, markup, fine or additional amount exceeding the principal amount that is Rs. 1,000/- in the mentioned case can be charged. Further, in case of returning the debt in installments over a long span of time, the sum of all the installments must not exceed the principal amount. Any amount exceeding the principal amount that may be predetermined for any fixed time period in any mode of return, lump sum or in installment is called interest (Riba). This form of interest in debt contracts gets worse when with the passage of time, the additional surcharge or markup or fine or interest is accrued due to lapse of time and/or non-payments of the due principal amount within the stipulated time. Such interest (Riba) is termed as compound interest and is forbidden (Haram) as per Fiqa-e-Jaferia. In summary, Fiqa-e-Jaferia strictly forbids interest (Riba) in debt and does not entertain the satanic concept of the time value of money. As per Fiqa-e-Jaferia, value of money is not at all variable and passage of time can neither appreciate it nor depreciate it. Fiqa-e-Jaferia states both the interest (Riba) in debt and its root cause that is the time value of money forbidden (Haram).

In the deals of debts, Fiqa-e-Jaferia does not declare mutually agreed additional amount over principal amount of debt as interest (Riba) provided the contract establishes between the following relations:

- i. A Muslim master (Aqa) and his/her slave (Ghulam).
- ii. A Muslim couple, that is, husband and wife.
- iii. A Muslim father lends to his son.
- iv. Any Muslim lends to a non-Muslim and charges additional amount over the principal amount.

As per Fiqa-e-Jaferia, any additional amount over principal amount exchanged among the aforementioned relations is declared Hadya and is not interest (Riba). Further, if a Muslim X lends another Muslim Y and does not charge or demand any additional amount, but in return the Muslim Y gifts an additional amount with his/her own will without any compulsion, coercion, force or demand from Muslim X, it is considered Hadya.

Various references explaining Hadith and Islamic interpretations of Sunni school of thought on interest (Riba) connoted similar understanding of the concept especially under title Riba-An-Nasia (interest/usury in lent money) (Riba, 2011). However, Sunni references on interest (Riba) utilized by this study, mostly stating examples

of lending and borrowing money and condemning interest (Riba) instead of defining it in depth.

### ***Interest (Riba) in sale (Bae)***

With reference to Sadooq (1996), Araki (1994), Najfi (2000), Seestani (2000) and consensus among Shia scholars in the deals of sale, interest (Riba) is defined as committing willful and/or deliberate fraud or cheating in weighing and/or measuring or calculating the items that are being sold. For example, if person A buys a dozen eggs from person B, such sale transaction is permitted in Islam. However, if seller B willfully provides eleven eggs to buyer A by cheating him/her while charging the price for 12 eggs, the additional amount of one egg received by fraud or cheating is called interest (Riba) and is prohibited (Haram) in Fiqa-e-Jaferia. Similarly, suppose persons A and B mutually agree on sale of a cloth at the rate of Rs. 100/m. If seller A measures 1.75 m in actual by cheating buyer B and collects Rs. 200/- after providing cloth lesser in size than 2 m, the Rs. 25/- out of Rs. 200/- received by the seller A through cheating is interest (Riba) that is prohibited (Haram). Similarly, in any transaction of sale, if the buyer cheats by getting more than s/he actually pays for, the additional items received by paying less by cheating or fraud will be interest (Riba) and forbidden (Haram).

Islam as per Fiqa-e-Jaferia permits sale of any item on credit (Bae-i-Ghair Muajal), provided the amount of profit charged is not accrued in the delayed or deferred payment. In case the amount of profit is increased due to delayed or deferred payment in transaction of credit sale of any item, Fiqa-e-Jaferia forbids accruing the profit in deferred payment finding it interest (Riba). For example, consider a case where seller A offers a clock with actual sale price on the spot (Bae-i-Muajal) as Rs. 1,000/- only such that Rs. 800/- is the cost while Rs. 200/- is the profit. Buyer B requests a credit sale deal for the same clock promising that it shall pay the price in three months. Seller A in response demands or conditions that for selling clock on credit the price of the clock shall be Rs. 1,150/- because its profit shall accrue at the rate of Rs. 50/- per month. Fiqa-e-Jaferia does not permit accruing the profit in credit sale transactions and declares accruing profit in credit sale deals interest (Riba). Fiqa-e-Jaferia declares all sorts of deferred payments of any item Halal only if the deferred payments are not causing increase in price or profit. In case the price is accrued due to delayed or deferred payment, it is forbidden (Haram).

Various references explaining Hadith and Islamic interpretations of Sunni school of thought on interest (Riba) connoted similar understandings of the concept especially under title Riba-Al-Fadal (interest/usury in exchange of items) (Riba, 2011). This study discovered that Sunni references utilized by this study inherited the feature of providing examples of exchange of specific items like wheat, date, barley etc. from which definition of

interest (Riba) was required to be extracted intellectually.

### ***Interest (Riba) as exaction in legal financial matter (Mali Istehsal)***

Interest (Riba) is primarily equivalent to the exaction in any financial matter that either party may commit to earn undue benefit in unethical and illegal way for which Allah has promised severe chastisement (Al-Quran 4: 161). Any financial affair may fall the victim of interest (Riba) if either side commits exaction. As per Fiqa-e-Jaferia, all exactions are interest (Riba) in any financial deal and forbidden (Haram). The study explains its perception by sharing certain examples of exactions that Fiqa-e-Jaferia declares interest (Riba):

Example 1: A person X provides his house on rent to person Y for residential purpose at the rate of Rs. 20,000/- per month. As per Fiqa-e-Jaferia, such financial matter is permitted (Halal). After a year, person X forces Y to increase the monthly rent at an annual fixed rate without bringing any value addition or service in his house. Fiqa-e-Jaferia finds such coercive demand for increasing the rent an exaction in the financial matters and declares this undue increase in rent without value addition in services or product quality a type of interest (Riba). However, if rent is increased after ensuring value addition or improved service in the house by person X, then rational increase on which both X and Y mutually agree will not be interest.

Example 2: In extreme winters, the air travel route from Chitral to Peshawar becomes uncertain due to weather conditions. Further, lack of seats in the small size air craft is a constraint that demands passengers to get their seats reserved in advance despite uncertain flights. One fine morning the weather forecast remains conducive for an afternoon flight. After confirming this news, a person X in Chitral reserves a seat despite having no need to travel to Peshawar, spending Rs. 5,000/- with a travel agent at a ticket booth. The person X waits on the airport to find passengers without reservation but real need to travel to Peshawar. By chance, person X finds a needy passenger and offers him his reserved seat for Rs. 6,000/- while its market price was only Rs. 5,000/- in collaboration with ticket agent on the booth. This means person X and ticket agent mutually intend a corrupt sale transaction. Such exaction of Rs. 1,000/- in the actual price of the air ticket/seat exploiting the need of a genuine buyer is interest (Riba) and forbidden in Islam and even in common ethics.

Example 3: A drug store possesses stock of inhalers for asthmatic patients whose supply is short in the market. An asthmatic patient desperately needing such inhaler approaches that drug store. The actual market price of the inhaler is Rs. 300/- only. The shopkeeper however takes advantage of the situation adding an undue profit of

Rs. 200/- in the actual price of life saving inhaler and sells a single unit for Rs. 500/- instead of Rs. 300/-. Such exaction of Rs. 200/- in the actual market price of inhaler is interest (Riba) and forbidden (Haram) in Islam.

Example 4: A lady intends to sell her ornaments to a goldsmith. The gold in the ornaments is weighed and its value is determined Rs. 200,000/- by the goldsmith as per the current gold rate. However, the goldsmith offers only Rs. 180,000/- for exchanging same weight of the gold in the ornaments mentioning the excuse that the service and labor charges had to be deducted. Fiqa-e-Jaferia finds imposing such penalty in the price of gold or silver or any other commodity an unethical exaction in financial deal and declares the amount deducted due to exaction an interest (Riba) and forbidden (Haram).

The study perceives that exaction in the financial matters from either side shall spoil the matter with interest (Riba). Charging extra amount over principal amount of debt and gaining extra benefit through cheating in any sale deal are in fact exactions. Fiqa-e-Jaferia forbids all sorts of exactions in the financial matters among Muslims declaring them interest (Riba) (Sadooq, 1996; Araki, 1994; Najfi 2000; Seestani, 2000; consensus among Shia scholars). Sunni references accessed by this study in various random searches without any biasness towards any specific source depicted similar connotations and interpretations of the concept of interest (Riba) under title Riba-Al-Quran (Riba, 2011).

### **Criticism of interest (Riba) in Fiqa-e-Jaferia**

As per Fiqa-e-Jaferia, Islam declares even a single penny earned through interest (Riba) based deal greater than the sin of committing more than forty times the sexual intercourse with mother or sister or any such woman in relation with whom marriage is prohibited (Sadooq, 1996; Consensus among Shia scholars).

### **Ruling of sentence for interest (Riba) in Fiqa-e-Jaferia**

According to Fiqa-e-Jaferia, the individual committing a deliberate transaction of debt or sale or any exaction for charging interest (Riba), must be advised to immediately abandon such practice preferably through Islamic court. In case the person does not abandon the interest (Riba) based practices despite first advice, s/he must be warned at the second stage. Despite the two advices or warnings, if an individual still commits interest (Riba) based business the Islamic court should accomplish trial of the accused. If the Islamic court declares him/her guilty announcing death sentence, the Islamic authorities shall be liable to sentence him/her to death in public using a sharp sword to ensure an immediate death (Sadooq, 1996; Consensus among Shia scholars).

### Clarification of misconceptions about interest (Riba)

The concept of interest (Riba) mentioned under definition of interest (Riba) in *Fiqa-e-Jaferia* is clear and straight. Nevertheless, the majority in Pakistan usually associates various self-perceived connotations with the concept of interest (Riba), for example; interest (Riba) is believed to be existing when percentage of surcharge or profit is fixed or predetermined, or interest (Riba) is said to be any amount that is not earned through hard work. It is generally termed as *Baghair Mehnat Ki Kamai* in Urdu language. In this context, an amount received as rent of some item is sometimes also mistakenly perceived interest (Riba).

This study did not find the authentic sources of knowledge explaining *Fiqa-e-Jaferia's* perspective on interest (Riba) supporting any of the mentioned connotations associated with interest (Riba). These connotations are exaggerations that have no authentic clue in the Holy Quran and the Hadith authenticated by the Imams from *Ahl-e-Bait (AS)*. It is further commonly stated that there exists 70 different definitions of interest (Riba). However, this study declares that in the primary sources of knowledge it did not find further definitions of interest (Riba) other than what it has mentioned in previous section. It is true that in form of exaction in legal financial matters, any financial transaction may fall victim of interest (Riba) for cheating or fraud or exploitation. Hence, multiple instances of interest (Riba) may come into existence and therefore Muslims must remain honest and careful in routine financial matters. Next this study presents the summary of framework of Islamic banking contributed by State Bank of Pakistan (SBP) to immunize banking from interest (Riba).

### The framework for Islamic banking by SBP

State Bank of Pakistan (SBP) has contributed to the Islamic modes of finance categorized for different types of businesses that an Islamic bank or financial institution may adopt to develop Shariah compliant Islamic product mix. This framework of Islamic financial modes is designed to help banks in molding products for doing Shariah compliant business in form of participatory, debt and/or other Islamic contracts with customers. For participatory modes of businesses like sales or partnerships, the financial modes like *Mudaraba*, *Musharaka*, diminishing *Musharaka*, equity participation in the form of shares in a corporate entity, *trade*, *Ijarah* or *Ijarah wa Iqtina*, *Murabaha*, *Musawamah*, *Salam*, *Istisna*, *Tawarruq* may be adopted by the Islamic banks. As Islam permits and encourages exchange of debt without interest among Muslims, the mode of *Qard* is also included in the framework. This study however discovered that Islamic banks in Pakistan are inclined to adopt *Qard* based business in general practice as it restricts their quest for

profit earning for very strict forbiddance of interest in the matters of *Qard*. For certain other businesses Islamic financial contracts of *Wakalah*, *Assignment of Debt* and *Kafalah* are also supported in the framework of Islamic banking by SBP. The study acknowledges that for all the mentioned Islamic modes of finance, *Fiqa-e-Jaferia* declares them Halal and elucidates these all very well. The definitions and details of the mentioned modes of finance by SBP constituting the Islamic banking framework are declared out of the scope of this study as they are available on SBP's website (SBP, 2011). The framework though provides sufficient Islamic modes of finance, the Islamic banks in their practices seem oriented towards certain parts of this framework only. This real picture projects Islamic banks like individuals who have not entered into Islam completely for seeking, accepting and adopting only as much as goes in their favor for avoiding complete Islam. What makes Islamic banks accept Islam in parts or chunks? Does the framework suggested by SBP encourage Islamic banks to be Islamic in pure sense? The study focuses and analyzes the SBP's framework for Islamic banking in the light of *Fiqa-e-Jaferia* to verify its status and standing of *Fiqa-e-Jaferia* about the existing practices.

### *Fiqa-e-Jaferia and SBP's existing framework for Islamic banking*

The primary sources of *Fiqa-e-Jaferia*, the Holy Quran and Hadith authenticated by Imams from *Ahl-e-Bait (AS)*, substantiate all the Islamic modes of finance that SBP has customized to formulate the framework for Islamic banking. Certain scholars of *Fiqa-e-Jaferia* have however declared *Tawarruq* as *Makrooh* (disliked). The rest of all the Islamic modes of finance mentioned in the framework of Islamic banking are Halal for all Muslims who are adult and wise enough to make decision relevant to their wealth (Sadooq, 1996; Araki, 1994; Najfi, 2000; Seestani, 2000). These Islamic modes of finance must be used for Halal business and trade. For example, if partnership (*Musharaka*) is initiated for mutually investing in a factory producing alcoholic drinks, such misuse of Islamic mode of finance is forbidden (*Haram*). SBP and Shariah scholars by contributing the framework of Islamic banking have encouraged Islamic banks to customize their products and services using Islamic modes of finance in line with Shariah rulings for eliminating interest (Riba) from the economy of Pakistan. *Fiqa-e-Jaferia* finds this positive intention commendable. *Fiqa-e-Jaferia* facilitates Muslims with Islamic modes specifically meant for agriculture business like *Muzaria*, *Musaqat*, *Mugharisa*, etc., that can be used to enrich the existing framework of Islamic banking as these shall help banks in offering services to farmers in Pakistan in which agriculture serves as backbone for its economy. The study declares details of such additional Islamic modes out of scope.

In comparison with the framework of Islamic banking, the theme behind the practices of Islamic banking is to invest in Halal business using Islamic modes of finance like Ijara, Musharaka, Mudaraba, etc., instead of lending or borrowing for seeking interest (Riba). That is how the Islamic banks in Pakistan perceive they are eliminating interest (Riba) in contracts with their clients (B2C) using various Islamic modes. In terms of interbank (bank to bank) treasury businesses (B2B), the Islamic bank in their practices is yet to reach an un-objectionable solution. For these mentioned facts, it is a rational objection that Islamic banks have not yet embraced Islam completely. For example, nevertheless the framework of Islamic banking include the mode of debt (Qard), majority of the Islamic banks in their actual exercise prefer not to adopt and offer any product based on interest free debt services. Further, the existing mechanism for B2B is vulnerable to logical criticism by the critics of Islamic banking. Fiqa-e-Jaferia finds the efforts of the Islamic banks both in B2C and B2B dimension of businesses encouraging with room for optimization. The customization that SBP and Shariah scholars have so far contributed in form of framework of Islamic banking is remarkable at its place however it is fact that yet a smooth solution leading to interest (Riba) free economy is a dream.

The basic tactic for Islamizing the existing banking business is not to lend but to invest. The Holy Quran advises to embrace Islam completely. Islam does not prohibit lending, rather, it encourages the rich Muslim to lend to the poor Muslim on easy and conducive terms without seeking interest (Riba). As Islamic banks in their practice avoid lending and adopt only the investing modes in Halal businesses, Fiqa-e-Jaferia finds such practices of Islamic banks an incomplete compliance of the teachings of Islam because Islam encourages lending event the poorest in society without seeking interest (Riba) while Islamic banks refrain from such good practice. This gap in the practices of Islamic banks requires immediate attention. It is regretful that to keep the owners of the Islamic banks satisfied, the machinery of Islamic banks embraces Islam in parts/chunks that suits them and avoid adopting a complete Islamic financial system that ensures products customized by adopting all possible Islamic modes and guarantees poverty alleviation among masses. The existing framework of Islamic banking though includes adequate modes of Islamic finance, but it does not guarantee that it shall encourage the Islamic banks adopt Islam completely both in their product mix and purpose of existence. This capitalistic approach under the pretext of risk management in the exercise of Islamic banks serves as an obstacle to the growth of real essence of an Islamic financial system that target enabling poor to be rich. These weaknesses in the intentions and approach of Islamic banks do not guarantee that poor is enabled to be rich because Islamic banks are mere commercial enterprises and not pure servants of real Islamic economy.

Islamic banks therefore need to enter into Islam as demanded by the Holy Quran and Sunnah.

In light of Fiqa-e-Jaferia, this study has identified certain possibilities to improve the mechanics of operating Islamic banking. For completely purifying economy from interest (Riba) and also for defending the existing practices of Islamic banking where applicable, the study contributes its recommendations in the light of Fiqa-e-Jaferia. The gaps in the adopted procedures of Islamic banking are in fact opportunities for optimizing the framework of Islamic banking that this study shares in further discuss. The study is optimistic that the identified opportunities shall not only help purifying the Islamic banking practices from interest (Riba) but further, these are in fact open invitation to scholars of all sects to mutually conduct further research on Islamic financial systems.

## **OPPORTUNITIES TO OPTIMIZE THE ISLAMIC BANKING FRAMEWORK AND OPERATIONS**

### **Kibor is Halal and its misuse is Haram**

Kibor is the predetermined rate of interest (Riba) based on which the banks set their rate of profit. The value of Kibor is set considering the activities in the money market and certain economic parameters. In perception of masses and scholars, Kibor is considered Haram for being the rate of interest. Islamic banks are obliged to adopt this threshold of interest (Riba) for setting profit margins for business. Therefore, critics of Islamic banking view using Kibor as a baseline for setting profit margins for Islamic banking an acceptance of a forbidden (Haram) in the economic system. In result the critics of Islamic banking declare Islamic banking a pseudo drama because Islamic banking is suppose to purify economy from interest (Riba) instead of accepting and relying on its foundation (Kibor). As Islamic banks imitate similar functions, critics urge that pure Islamic banking must be distinguished and immune from all the conventional interest based tools, tactics and creed. Reliance on a Haram benchmark (Kibor) is considered a disgrace for Islamic banks even by certain scholars who do not advocate Islamic banking.

On the other hand, the advocates of using Kibor as the baseline for Islamic banking business defend their practice based on three arguments: 1) using Kibor as baseline is a norm in banking and at this embryonic stage of existence Islamic banks cannot function without practice based on three arguments: 1) using Kibor as baseline is a norm in banking and at this embryonic stage of existence Islamic banks cannot function without adopting the Haram benchmark, 2) using a forbidden (Haram) as benchmark is not prohibited in Islam for Halal purpose. Like if a person intends to choose color for his office walls, she/he may adopt the color of alcohol for

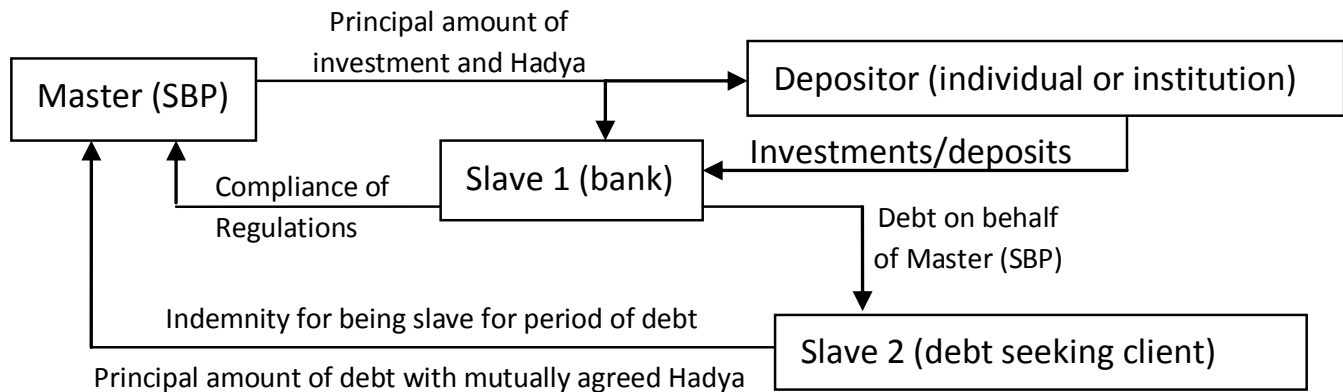


Figure 1. Model of Debt Based Islamic Banking.

painting the office walls. Such adoption is valid and not forbidden (Haram) while alcohol is forbidden (Haram) and dirt (Najis). Critics however do not accept this argument finding it an irrelevant example with financial systems, and 3) Sunni scholars are further working on Ibor to replace Kibor with an Islamic solution for fixing the objections relevant to Kibor. However, neither consensus has been reached on Ibor nor is it mature enough to be relied on. As long as Ibor is not ready, Kibor is the only alternate for Islamic banks. The study declares details of work on Ibor out of its scope.

Fiqa-e-Jaferia helps in resolving the moot on misperception on Kibor. The study observed and experienced that SBP and its regulated commercial banks are already engaged and function in a master (SBP) – slave (banks) relationship following the regulations of SBP. SBP is obeyed by the banks considering it their master being a regulator. Indeed SBP exercises its executing powers delegated by the law of Pakistan as being the master of all banks. However, this era has replaced the word master with new title regulator, but functionality certainly proves existence of a master (SBP) – slave (banks) relationship. As per Fiqa-e-Jaferia, markup or amount exceeding the principal amount of debt among master and slave is Hadya and not interest (Riba) as explained earlier under the definition of interest. Therefore, as per Fiqa-e-Jaferia, Kibor utilized by SBP to demand access amount in return from slave banks bound by its regulations and orders is not interest (Riba), rather, by default, it is Hadya. Fiqa-e-Jaferia therefore declares Kibor Halal for SBP in all debt deals only with the banks it regulates finding it Hadya. That is, how Fiqa-e-Jaferia clarifies that the Kibor is Halal benchmark instead of Haram and this is how the aforementioned criticism on Islamic banking stands void. Further, the efforts of scholars for replacing Kibor with Ibor also stand unnecessary and void. Fiqa-e-Jaferia however reserves its concern over the parameters based on which value of Kibor is calculated. It explains its reservation under the proposed solution given in Figure 1.

It is regretful that conventional banks set Kibor as benchmark to define the interest rates for lending money to clients or businesses. Fiqa-e-Jaferia declares such misuse of Kibor for all the banks Haram. Similarly, banks use Kibor for interbank treasury business. In the light of Fiqa-e-Jaferia, such misuse of Kibor is Haram among the peer or competitor banks. Fiqa-Jaferia condemns the mentioned misuse of the Halal benchmark (Kibor) by the banks and urges an immediate solution of this issue.

### Proposed optimization in Islamic banking

Having explained the status of Kibor as per Fiqa-e-Jaferia, this study recommends a three steps solution to the problem of misusing Kibor as rate of interest by the banks for Islamizing the entire operations of banking industry in Pakistan. The pre-existing master (SBP) – slave (banks) relationship among SBP and its regulated banks are better formalized in the laws of Pakistan by the legislative assembly. However, this step is optional as a master (SBP) and slave (banks) relationship is evident in functionality and processes. While seeking feedback on the proposed solution, bankers (Asad, 2011) questioned how the perceived master (SBP) – slave (banks) is correct / valid as SBP has no equity in the commercial banks and further the banks are independent financial institutions. The study explained that Islam as per Fiqa-e-Jaferia considers a person or entity as the master provided it has any of the two types of rights in his/her/its relation with slaves that this study explains further.

### Primary right to be master

The right to pass order/directive for getting work performed, or ensuring obedience or simply sincerity with the cause of master. It is true that SBP regulates all commercial banks through its directives, orders, policies and prudential regulation. Therefore, as per Fiqa-e-Jaferia,



this study perceives SBP a master of all the banks it regulates.

### ***Secondary right to be master***

This is the right to sell or buy the services of a person or entity. This right was considered primary in the ancient eras when slavery of mankind was an acceptable social practice. However, in this era as per findings and perception of this study, the right of selling and/or buying the services of a slave is secondary as the slavery of human is no more an acceptable social practice. Nevertheless, it is true that SBP is authorized to take over the management and operations of any commercial bank in nontrivial circumstances or solid evidence of corruption. Under such non-trivial scenario, SBP reserves the right to sell the shares of the commercial bank to recover and safeguard the money of the masses.

As SBP reserves both the rights required to be master, therefore, this study perceives SBP as a master of all the banks in Pakistan that it regulates. It is a fact that banks have to ensure compliance of all SBP's regulations and can never seek liberation from SBP's directives. This fact confirms that SBP holds the primary right of being master in all times. Further, under nontrivial scenario of corruption in the bank, SBP reserves the second right of taking over the bank's command and even sell its shares to recover public money. Therefore, perceiving the regulated banks as slave of the regulator (SBP) is rational. The study declares that in the existing and traditional interaction of SBP and its regulated banks, it finds all the rights and requirements of a master – slave relation among business entities (SBP and banks) fulfilled.

The study asserts that Kibor should be the measure of the least amount of value to which the Pakistan's economy must rise annually ensuring tangible and intangible growths in all sectors instead of being a mere ratio of interest. As Islam seeks intentions behind actions and reactions, the study advises that intention behind setting Kibor must be defining the threshold value of the desired rise in economy of Pakistan instead of quantifying magnitude of prevailing and expected interest. The study recommends that the value of Kibor should not be measured on the basis of demand and supply of money seeking interest (Riba) that factually produces nothing. Rather, value of Kibor must be set considering the desired and required rise in the GNP of Pakistan seeking both tangible and intangible productivity.

Provided the aforementioned conditions are ensured in intentions, the misuse of Kibor can be easily addressed in banking. First, banks should be ordered to stop lending all sorts of debts seeking interest to individuals as well as businesses in future with immediate effect. As a second step, banks should be advised to offer debt services on behalf of SBP only to those individuals and businesses who willingly embrace the indemnity bond accepting the

slavery of SBP for the period of debt. The proposed solution states that banks (slaves of SBP) shall lend on behalf of their master (SBP) to only those clients who are willing to be slaves (clients) of SBP. Bankers inquired that slavery can be adopted with will by individuals for seeking services or debt seekers (Asad, 2011). The study contributes that Fiq-e-Jaferia authorizes government and its bodies to facilitate masses (Ra'aya) declaring them slaves for their betterment and prosperity as Hazrat Yusuf (Joseph) (AS) reportedly did while facilitating masses during starvation and famine at last stages when masses had nothing to pay for grains (Al-Quran, 12). Figure 1 depicts the proposed idea.

The double tier master – slave relationship proposed in Figure 1 shall automatically eliminate the misuse of Kibor. The depositor which may be individual or an institution shall invest deposits with/in the commercial banks in the account of SBP with its slave bank. That is how in actual state will own and govern all the investments that is a prerequisite required for a central Islamic financial system. This should upgrade Pakistan's fiscal creed to the level required for a welfare state where investments of masses and institutions are provided guarantee by the state. In effect such secure investment atmosphere should invite more foreign investment as well. The slave 1 (bank) shall facilitate only slave 2 (client) of its master (SBP) on its behalf providing debt. Slave 2 (client) shall return debt with Hadya only to the master (SBP) in easy installments. In acknowledgement of service on its behalf, the master (SBP) shall provide share in Hadya and the complete principal amount to slave 1 (bank) after receiving it from slave 2 (clients) in regular installments. In the scenario depicted in Figure 1 where banks no more lend to independent businesses or clients seeking interest (Riba) but lend only to the slaves (clients) of their master (SBP) on its behalf, the primary business of all banks shall no longer be Haram that was provision of interest seeking debt. Rather the primary business of slave banks shall be to facilitate their master (SBP) for strengthening the economy of Pakistan by keeping it shielded from interest (Riba) and supported through interest (Riba) free PAK Hadya. As a side effect, this model shall mold the inter treasury business among banks Halal through investments modes instead of lending and borrowing. The study discusses this aspect in details later.

The study quotes a tradition in support of its proposed solution in Figure 1. Shahab bin Abd-e-Rab quoted that Imam Jafer Sadiq (AS) informed that a companion once requested the Holy Prophet Hazrat Muhammad (SAAW) to help him due to his financial crisis. Hazrat Muhammad (SAAW) asked the companions present in his (SAAW) gathering who shall lend him (SAAW) to help this needy person? In response, a companion offered four baskets of good quality dates for a certain period. Hazrat Muhammad (SAAW) accepted the dates from a second companion as debt and lent them to the first needy

companion. After the stipulated period, the second companion requested return of his dates or equivalent amount. Yet, the first companion had not returned the debt to Hazrat Muhammad (SAAW). Hazrat Muhammad (SAAW) inquired for further debt from the present companions. Another companion offered eight baskets of dates as debt to Hazrat Muhammad (SAAW) more than the amount he (SAAW) had borrowed. Hazrat Muhammad (SAAW) borrowed dates in greater amount from his (SAAW) third companion and provided all the eight baskets of dates to the second companion (Sadooq, 1996). The four additional baskets of dates were explained to be the Hadya awarded by the prophet Muhammad (SAAW) to his (SAAW) follower as being his governor.

The study quotes another example in support of its proposed solution in Figure 1. Ali bin Jafer inquired Imam Musa bin Jafer Sadiq Al-Kazim (AS) a master, who lends his slave ten Dirhams at a condition that his slave shall earn and produce for the master ten Dirhams every month in return through some Halal business. In this light of Fiqa-e-Jaferia, Imam Musa bin Jafer Sadiq Al-Kazim (AS) explained that such deal between master and his slave is valid and Halal (Sadooq, 1996).

The study suggests that the term Kibor better be titled as Pak profit rate (PPR) among master (SBP) and its slaves (clients) as all the debts provided on behalf of SBP by its slave banks to slave clients shall seek Hadya instead of interest (Riba). The study anticipates that its proposed solution should be acceptable to SBP, its regulated banks and masses because it is true that all banks are already committed to respect and abide by the regulations of SBP and further masses in need of debt should have no objection to time bound slavery which is not intended for selling or purchasing humans, but in fact intended to facilitate the masses. It is further recommended that the ratio of profit under title PPR must be kept unfixed and should remain nominal but in line with the desired growth in the GNP of Pakistan. The study perceives that the desired growth rate of the GNP of Pakistan should fluctuate as its parameters change their value in actual practice. Therefore, proposed PPR will likely be fluctuating which makes it Islamic because in essence Hadya should not be fixed. Especially for the poor, PPR must be nominal or better be waived off after recovery of principal amount. If accepted and adopted this solution may be new in the history of Pakistan but it is already a well tested approach in certain Islamic countries like Iran, Arab countries etc. Further, this solution is not limited to Islamic banks rather it is proposed to Islamize the entire banking industry in Pakistan.

It is worth recalling that the decision of the Supreme Court of Pakistan in the late 1990s also declared the banking system of Pakistan immune from interest (Riba) against its earlier decision in which it commanded the central bank to abandon interest based economic system latest by year 2000. The Supreme Court of Pakistan

countered its own decision by declaring the conventional banking system immune from interest (Riba). Apparently, this decision was considered the result of international and political influences of the then government. Scholars never agreed with that decision of the Supreme Court of Pakistan. However, the significance and two years long working of the Supreme Court should not be neglected just for the opinion of certain scholars who did not prove themselves unbiased and also lack research. As this study has identified Kibor Halal only for SBP, the mentioned decision of Supreme Court seems rational. The study however, does not find the conventional banking practices immune from interest (Riba) and completely Islamic, unlike the Supreme Court declared. The study analyzed that in the light of its inference that Kibor is Halal for SBP, a little customization of banking operations and workflow as suggested in Figure 1 shall help entire banking industry Islamic easily.

### **FORCED CHARITY IS AGAINST THE HOLY QURAN**

The framework of SBP for Islamic banking permits imposing a charity in case of delayed payment or no payment from the business partner/client under various modes of financing like Mudaraba, Murabaha, Musharaka, etc. Although, the amount collected as charity is not the income of a bank as it is bound to declare and provide it to deserving entity every year, but still this approach resembles the same coercive approach of recovery of the conventional banks. Hence, this practice is not a graceful symbol for Islamic banking. SBP has included permission for imposing forced Charity to ensure that Islamic banks can ensure due recovery from their business partners in time. It is bitter but true that being similar in approach of conventional banks for recovery, Islamic banking is viewed as a pseudo drama by the masses.

Fiqa-e-Jaferia finds the permission for imposing a charity in Islamic financial modes of business against the Holy Quran which states there is no compulsion in the religion (Al-Quran, 2:157). Further, Fiqa-e-Jaferia does not entertain any Hadith as well as Ijma of any scholars that is striking with the verse of the Holy Quran having straight and clear meanings. In summary, Fiqa-e-Jaferia declares imposing the condition of charity Haram.

The study invites SBP to bring necessary conceptual reform in its regulations that permits charity against the clear dictate of the Holy Quran. The study acknowledges that the bank reserves the right to recover its principal amount along with profit (if exists) from the business partner without any penalty, charity or surcharge due to delay. In case of delayed payments from the business partner, first of all, the Islamic bank must approach the business partner/client without any coercion to investigate the reason/s for the delay in payments. For valid reasons in delay, Islamic bank better provides extension

to its business partner/client up to an affordable limit provided the delay in payments does not occur due to the slackness or mistakes of the partner/client. On the other hand, in case the Islamic bank finds that the delay in due payments is being caused due to an inappropriate reason or the delay itself is getting unaffordable for bank's business, as per *Fiqa-e-Jaferia*, the bank reserves the right to seize further investment in the business due/committed in remaining installments for financing, to cancel the business contract through formal notification and approach the Islamic court to claim recovery of the invested principal amount along with due profit (if loss has not occurred) without any forced charity or penalty.

In case of delayed payment, *Fiqa-e-Jaferia* does not authorize SBP and the Islamic banks to charge extra from business partner/client under any title. This is rational because Islamic banks are not authorized to sentence, punish, harass or threaten the business partner/client. *Fiqa-e-Jaferia* authorizes Islamic bank to cancel the contract after necessary non-coercive investigation and extension (where applicable) and approach the Islamic court for recovery. This is important as in a Muslim society recovery of due amount is the privilege and responsibility of Islamic court only. Further, SBP despite being the master of economy and banks in Pakistan has no right to award the privilege of the Islamic courts to any bank. Indeed such action is against the principles of justice (*Adal*) that the privilege of one institution is awarded to another. No unjust action or measure can ever be Islamic.

The study finds the negation of forced charity in *Fiqa-e-Jaferia* an opportunity for SBP and Islamic banks to optimize the existing framework of the Islamic banking. Abandonment of forced charity shall enable Islamic banks not to imitate the approach of conventional interest (*Riba*) pro banks for recovery. Islamic banks would be found distinguished in their approach for recovery. Such reform shall help in improving the image of Islamic banking in the society.

In case the solution recommended by this study depicted in Figure 1 is accepted and adopted, the master (SBP) shall have the right to demand more *Hadya* from its slave 2 (client). The study suggests that master (SBP) should decide demanding an increase in *Hadya* on case to case basis considering the background of its slave (client). In form of the solution proposed in Figure 1, the study has in fact contributed the key to the objection on forced charity that Islamic banks impose as per the current framework imitating conventional banks.

### **Intentions and terms of agreements supersede titles**

Islamic banks are adopting the similar conventional banking products after purifying them from interest (*Riba*) using Islamic modes of finance recommended in the framework for Islamic banking by SBP stressing on

Arabic titles in the contract documents. For example, a conventional bank leases a new car to any client at Kibor plus 4% interest rate. Contrary wise, an Islamic bank offers a new car to its client on Kibor plus 4% profit margin using *Ijara* Islamic mode. The study observed that scholars in Islamic banks are pretty conscious in preparing documentation of contracts for clients. Like certain scholars were found keeping view if the title '*Ijara*' is not used replacing the conventional term car leasing, the contract shall not be purified from interest (*Riba*).

*Fiqa-e-Jaferia* accepts the importance of titles in financial matters, but it finds the use of alternate synonyms in foreign languages acceptable. *Fiqa-e-Jaferia* considers the terms of agreement and intentions of the business partners/clients primary for purifying any business deal from interest (*Riba*) while titles are of secondary importance (Seestani, 2000). For example, if leasing is the alternate word for *Ijara* in English, to *Fiqa-e-Jaferia*, car leasing and car *Ijara* are equally acceptable terms as long as terms of the contract between the bank and the client and their intentions are immune from interest (*Riba*).

Therefore, *Fiqa-e-Jaferia* does not declare titles as the primary requirement for molding any business to Islamic, rather the intentions of the business partners and the terms of contracts which may be written in any language must be immune from the conditions demanding or leading to interest (*Riba*) and impurities like forced charity.

In routine practices, Islamic banks emphasize on using Arabic terms for setting the nomenclature of their products and agreement contracts to ensure customer's satisfaction. This helps in projecting the sense of real conformance of Islamic orders while exercising the financial business. *Fiqa-e-Jaferia* finds such exercise valid and logical. However, *Fiqa-e-Jaferia* provides the flexibility of expressing the banking products and their relevant agreements by using synonyms in alternate languages (like English or French, etc.) where needed or applicable. Like House Financing Product that is generally termed House Diminishing *Musharaka* in Islamic banks, may be simply termed as Housing Finance provided the intentions and terms of contract remain shielded from interest (*Riba*). However, *Fiqa-e-Jaferia* permits using Arabic titles for promoting Islamic banking products and may be continued as required.

The study learnt that as per *Fiqa-e-Jaferia*, most of the conventional banking products are Halal excluding that of lending debts for seeking interest (*Riba*). The study is confident that if the solution proposed in Figure 1 is adopted, entire banking operations, norms and functions shall enjoy the status of being Halal. Then the banking industry shall require ensuring in rules and regulations that the poor finds it possible to get rid of poverty through easy lending schemes. Rest titles and tags may even be adopted using French or German. For *Fiqa-e-Jaferia*, intentions matter first and later the titles.

### **Bank to bank debt seeking interest (Riba) is forbidden (Haram)**

Bank is a business that needs to maintain adequate liquidity of funds all the times. For this purpose, every bank maintains a department called treasury that not only ensures adequate amount of required funds in liquid state, rather it uses the additional available liquidity for making spontaneous and exponential financial benefits for the bank by lending the additional amount to competitors banks or other financial institutions at a well negotiated rate of interest (Riba) usually for fixed but short span of time. Maintaining liquidity is Halal in Fiqa-e-Jaferia for all businesses including banking. However, generating interest (Riba) by borrowing and lending adequate liquid amount among the banks is forbidden (Haram).

Like conventional banks, the Islamic banks uses Tawarruq for generating profit through a common product called commodity Murabaha most of the times while dealing with other conventional and Islamic banks. Under certain circumstances for the same purpose the Islamic banks may adopt Musharaka and Kafalah modes of Islamic finance as well.

According to Fiqa-e-Jaferia, Tawarruq is Makrooh (Sadooq, 1996). As Tawarruq based businesses are mere imitations of the inter treasuries lending and borrowing of money seeking interest (Riba), this study suggests that Islamic banks should not adopt Tawarruq. It views adopting Tawarruq based business among treasuries for seeking so called profit an act similar to the misdeed of the fishermen of Bani Israel who dug holes near the bank of the river to cheat Allah but later they were cursed being monkeys. Fiqa-e-Jaferia does not appreciate the existing practices of Tawarruq.

A question arises, how will the Islamic bank maintain needful liquidity? The answer is simple. According to the regulations of SBP, no bank is authorized to utilize 100% of its retained deposits. Banks are usually permitted to utilize a maximum of up to 70% of their retained deposits. This thrifty use of the deposits itself guarantees that banks maintain needful liquidity. Fiqa-e-Jaferia acknowledges that every business needs to maintain liquidity for its recurring expenses, contingency and safety. Most businesses maintain liquidity without dealing with treasuries of their competitors. This study quotes a real example of a small business of a grocery shop in sector (mohala) Gharibabad of city Rawalpindi. The shopkeeper provides required grocery items like soap, shampoo, rice, wheat, sugar, etc., to certain clients on credit sale living in the neighborhood of his shop without demanding a single paisa extra on any item for deferred payments. Most credit clients pay off their due installments in the beginning of every month. That is how they remain entitled for getting further items on credit during the entire month. The shopkeeper just maintains a simple register on which both the shopkeeper and the

credit client sign against every transaction and commits a tentative date for due installment. The mentioned shopkeeper is himself not a rich person but still maintains liquidity for his business despite providing rashin to multiple houses through his small business. The study inquires why the capitalistic banks cannot maintain liquidity when an ordinary small shopkeeper can maintain it without seeking interest (Riba) against various deferred payments from neighbors in the same era victimized by interest, unleashed inflation and undue taxation.

The study interprets that the regulations of SBP restricting investment of deposits not more than 70% in fact help banks to be thrifty enough for maintaining needful liquidity. Therefore, the major challenge for and concern of the Islamic banks is in fact not to maintain liquidity, rather, it is to utilize the access liquidity for generating exponential financial gains as the conventional banks do by forbidden (Haram) interest (Riba) seeking lending and borrowing among treasuries of competitors. As per the findings of this study eminent scholars of Fiqa-e-Hanafi also find Tawarruq based exercises inappropriate. Further, the scholars of Fiqa-e-Hanafi keep grave concern over the mechanism of conducting Commodity Murabaha. In the existing scenario, the solution to the lust for making money from the access liquidity (money) has no solution but piousness (Taqwaa).

This study however has already contributed a solution to this problem that it has proposed earlier in Figure 1. In a double tier relationship as slave (client) - master (SBP) - slave (banks) setup, banks shall stop lending for seeking interest (Riba) to general clients. Banks being slave of SBP shall lend on behalf of their master (SBP) to its slave (clients) only. This is how the primary business of the bank gets Halal. In effect investment in or with a bank whose primary business happen, interest (Riba) free becomes permissible. Hence, treasuries of banks can then invest (Sarmayakari) with each other for short and long term periods instead of lending or borrowing and seeking interest. Consequently, interbank treasury dealings shall be Halal.

If all banks stop lending interest (Riba) seeking loans, the rest of all the products of the banking shall be Shariah compliant. Under such scenario, inter-bank investments (Sarmayakari) of funds shall automatically get permitted (Halal) as banks will be engaged only in Halal primary business for abandoning interest seeking loans. Then treasuries of the banks may use different modes of investment (Sarmayakari) with each other and their mutual treasury to treasury investments shall no longer be lending and borrowing for seeking interest (Riba). Banking can indeed survive and even flourish using alternate financial services and products other than lending for seeking interest (Riba). It is true that the solution that this study has proposed caters possibility of lending on behalf of master and seeking Hadya which ensures no loss. The study suggests that banks should also provide interest free small loans if they retain

adequate liquidity to ensure that banking system helps poor in getting rid of poverty, which is the real essence of Islamic financial system that is yet not being ensured even by the Islamic banks.

### **Imitation of conventional banking and capitalism**

According to Fiqa-e-Jaferia, an economic setup, where the rich finds it easy to get richer while the poor finds it difficult to change his/her status, can never be Islamic (Majlisi, 1966a; Sadooq 1996). Once during the reign of Hazrat Muhammad (SAAW) in the city of Medina, at the day end in the Bait-ul-Maal, there remained certain Dirhams only for the reason that help seekers during that day were too few. Resultantly, the holy prophet Hazrat Muhammad (SAAW) could not sleep during the entire night and remained restless considering that the right of some poor was left in the Bait-ul-Maal. This example portrays the spirit of real Islamic economic system. On the other hand, in the prevailing capitalistic economic system that is being manipulated through conventional banking, the inverse of the mentioned scenario is desired and being maintained. Desire for keeping liquidity in access and further generating interest (Riba) from it subjugates the mind and soul of bankers. Resultantly, they remain disabled and crippled to understand and adopt the real essence of Islamic economic system in which the rights of the micros take precedence over the weight of macros. Current practices of Islamic banks are yet not promising and ensuring the same scenario as Hazrat Muhammad (SAAW) ensured while managing Bait-ul-Maal during his (SAAW) reign.

It is bitter but true that the existing Islamic banking structure is an imitation of the conventional banking norms and practices apparently adopting Islamic modes of finance. This fact projects Islamic banks as the advocates of same capitalistic economy. Majority therefore views Islamic banking as a pseudo drama. This misperception among masses needs to be effectively addressed by taking concrete measures.

The mechanism for providing financial services by the Islamic banks to their clients (B2C) has been purified from interest (Riba) by using Islamic modes, but still the creed, behaviors, attitudes and bank to bank dealings require divorcing pro-interest (Riba) habits. Adopting apparent Islamic modes is indeed not sufficient for being Islamic. The intentions, policies, procedures and products mix must ensure that banks are ready to drag poor out of poverty. It is an alarming truth that the intentions and operational tactics behind Islamic banks can yet be found capitalistic same as that in conventional banking system. This study is confident that the mentioned weakness in the Islamic banking can be addressed by considering its proposed solutions as mentioned above and also by working for a revolution in attitudes and perceptions of the capitalists such that they are transformed to real Islamic values and standards.

### **Taxation and Islamic banking**

Banks are the cat paws of governments to impose and implement tax whether fair or unfair. Currently, Islamic banks stand in the same category. Like in Pakistan, deducting 0.3% tax on every cash outflow exceeding the limit of Rs. 25,000/- per day is an un-Islamic and unjust taxation. The irony of fate is that all Islamic banks are bound to follow this satanic rule like puppets without any margin. According to Fiqa-e-Jaferia, Islam permits tax only and only on the savings or profit earned and maintained by the individuals. Imposing tax on the earning, income, salary or wages of individuals had never been Sunnah. The Holy Prophet Hazrat Muhammad (SAAW) and his (SAAW) predecessors always charged or demanded tax on the savings or profits of masses (Majlisi, 1966a; Majlisi 1987b). They never imposed tax on earnings of Muslims. Again, for Fiqa-e-Jaferia, titles and ratios in the system of taxation are secondary. The primary factors in taxation for Islam are who is being taxed (Muslims or non-Muslim) and what is being taxed (profit or saving only). Fiqa-e-Jaferia does not permit to include tax in the price of any item as tax has to be only and only on the profit or saving. Islamic banks are yet not Islamic in managing taxation for their business, clients and employees. Islamic financial institutions are unfortunately crippled before the taxation system which has not yet never realized the significance and benefits of the Islamic values and principles for taxation in the history of Pakistan.

A real Islamic bank must have the courage and commitment to enter into the Islam completely. Adopting Halal tools for business is not just the end. Rather it's the beginning towards the journey to implementing the right. Unfortunately no government in the history of Pakistan has realized the importance and significance of keeping the taxation Islamic.

Therefore, most of the statues defining and imposing taxation in Pakistan are not in concurrence with Quran and Sunnah. An Islamic institution must not blindly deduct or impose tax on the wealth of its clients or employees. It is regretful that not even a single Islamic institution dares to guide and advise the government about Islamic taxation.

The solution to this problem is in the hands of religious scholars especially those who are associated with the Islamic banks. It is the religious and moral responsibility and obligation of the Shariah scholars of all fiqas to advise the government to ensure Shariah compliance in the tax ordinance as well so that Islamic banks may not be used as cat paws for implementing undue taxation dictated by external powers. It is incumbent because under the ideology of Pakistan, we as a nation promised Allah to define and implement all our systems in compliance with Quran and Sunnah. The study is optimistic and expects that in future Shariah scholars associated with Islamic banks shall persuade governments to Islamize the taxation system as well.

## CONCLUSION

The study concludes that imitating the conventional banking standards in Islamic banking is not at all healthy for its growth, recognition and acceptability among Muslims as it projects the Islamic banking as a pseudo drama.

Reforms need to be adopted immediately such that Islamic banking targets providing a completely interest free economic system which help in getting rid of poverty. Banking policies, procedures, product mix, practices, attitudes of bankers and their intentions must target enriching poor in the society by lending them for initiating small businesses to ensure real spirit of Islamic financial system.

By working on the identified opportunities highlighted by this study, the framework of Islamic banking and practices of Islamic banks can be optimized by abandoning capitalistic creed, encouraging and training the depositors to place money in banks in the account of SBP only with intention of investment only, lending debts on behalf of master (SBP) seeking Hadya instead of interest (Riba), charging Hadya as per PPR which must be unfixed and fluctuating as the growth rate of GNP of Pakistan shall require on daily basis, abandoning forced charity as SBP may charge more or less Hadya in cases of default or willful breach of debt contract by slave 2, abandoning imitation of conventional banking practices where necessary, refraining from deducting non-Shariah compliant taxes from the investments, deposits and Hadya of masses and entertaining the poorest in the society preferably with Qard Hassan (Debt in which return condition may be waived off).

Abandoning interest (Riba) is required, but banning lending is not any solution in the existing practices of Islamic banks. Adopting the proposed solution in Figure 1 by formalizing a double tier master slave relationship among SBP, its regulated banks and clients shall make the transition to Islamic banking conducive for the entire banking industry. This in effect shall make interbank treasury dealing Halal as well.

## Forecasted implications

The study shared its proposed idea with SBP and selected banker and learnt that in the existing banking practices, SBP does not hold any account in the commercial banks that it regulates for the purpose of seeking depositor's investments. This gap requires fundamental change in the role, regulations and practices. Currently, SBP just acts as a regulator and not an agent of government as being a monitor of the investments of masses in commercial banks. The proposed solution in this study invites SBP to improvise its role, regulations and creed for national interest. The bankers acknowledged that such a setup in which banks starts

deposits on behalf of SBP shall be pragmatic as long as it guarantees financial profits to banks in form of Hadya. Hence, such a fundamental level change is possible, provided SBP agrees to undertake greater responsibility.

The study forecasts that bankers shall have to be educated and trained which is achievable. After meeting certain senior bankers, the study remained successful in convincing just after little exchange of arguments. However, it anticipates that while educating conventional bankers is pragmatic, motivating them to bring change in their interest (Riba) seeking attitudes will be a consistent challenge for the implementation of this study. With assumption that the model of the study is adopted, masses and depositors shall be required to be educated. This will take time and effort which is necessary for achieving the noble cause of elimination of Riba/Interest from Pakistan. Print and electronic media can be utilized to spread awareness. Cost of training nation may be distributed among all individuals in their earnings at a nominal rate.

The study anticipates that another implication in the implementation of its proposed solution will be the probable objection by human rights advocates. As per the latest standards of humanity and employment, no human can be treated as a slave in this era. In the modern shape of employment, a human as being an employee reserves the right to resign while slaves never had such right in ancient times. In case the proposed model of this study is adopted by banking industry, this implies treating a human as a slave shall have to be legal which is against the current human right standards. The study asserts that in an Islamic estate the Shariah rules should be given precedence over all latest norms, standards and technologies. Islam states slavery by will Halal with certain conditions and right of the slaves (Al-Quran, 12). Hence, the modern standard of human rights cannot be given precedence on Islamic law. Critics are requested to explore the facts that Islam declared slavery Halal giving rights to slaves that caused welfare of poor masses who were not intellectual enough to be independent in their decisions and affairs in the society. Further, this study has proposed to revive the option of slavery by will between SBP that represents government of Pakistan and individuals in need of support through debts. This will be a master – slave relation between a government organization and individuals instead of merely individuals. This feature makes it very safe and beneficial for individuals as the entity in form of master shall be government itself who should be committed with the welfare of masses even under worst situation. In case an individual having signed the bond of slavery by will with the SBP fails to return the debt or Hadya or both, master (SBP) reserves the right to waive it off or to utilize its slave in any project or organization of government to help him recover the loss and get enables to return the debt. Similar scheme was practiced by Prophet Joseph (Hazrat Yusuf (AS)) at the worst stage of famine for giving food

and grains to poor masses by simply fastening them in the bond of slavery by will of his government for their welfare. Modern human rights advocates are requested to acknowledge the fact that practices of prophets cannot be challenged.

The study is confident that its proposed solution is in line with Quran and Sunnah and also enables banking practices to continue and liaise with international standards. However, the biggest challenge is to convince scholars of divergent sects to sit together and form a team to improve Islamic banking. In an unofficial statement, SBP acknowledged the challenge of convincing the existing Shariah scholars engaged in Islamic banking to consider the views of alternate Fiqas on Islamic banking (Kardar, 2010). The study is hopeful that its proposed solution will someday bring divergent Islamic scholars to think and act together for the noble cause of purifying Pakistan's economy from Riba.

The study acknowledges that implementation of its proposed solution in Pakistan faces the challenge of sectarian diversity. However, the study is confident because similar solution has been successfully implemented to Islamize the economy of Iran and certain Arab countries. Further, history is evident that a couple of centuries ago, the Boolean algebra and binary arithmetic were considered bookish knowledge. However, with the evolution of technology, computer science has changed the entire world into a global village. The fact is that computer science runs on Booleans algebra and binary arithmetic which was considered mere ideas of bookish stuff in the past. The study is therefore hopeful that in future research endeavors, banks and researchers shall advance towards better Islamic models of banking business considering the input of this study.

## FUTURE RESEARCH

This study highlights opportunities for optimizing the existing Islamic banking framework and operations. Testing mentioned opportunities shall itself trigger new endeavors of research and development in the field of Islamic banking. It has tried to bridge the gap between the different sects because in fact, all fiqas representing Islam intend and support the noble cause of elimination of interest (Riba) from the economy of Pakistan. It is confident that broad mindedness and nepotism free

thinking shall bring the unity among Muslims for this noble cause and shall enable various sects shake hands for further research in Islamic banking together with peace, unity and brotherhood.

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