

JQSS: (Journal Of Quranic and Social Studies)
ISSN: (e): 2790-5640 ISSN (p): 2790-5632
Volume: 3, Issue: 2, July-December 2023. P: 49-58

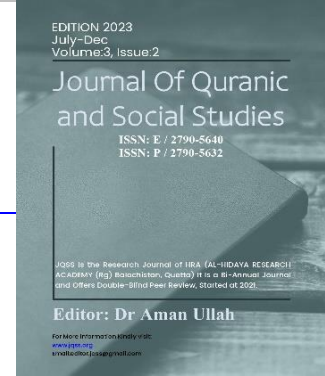
Open Access: <http://jqss.org/index.php/JQSS/article/view/103>

DOI: <https://doi.org/10.5281/zenodo.10357383>




Article History:	Received	Accept	Published
	24-11-2023	20-12-2023	22-12-2023



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Role of the federal Sharia court in the elimination of interest from Pakistan's economy

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How to Cite: Niamat Ullah and Dr. Sahibzada Baz Muhammad and Fehmida Baloch (2023). Role of the federal Sharia court in the elimination of interest from Pakistan's economy, (JQSS) *Journal of Quranic and Social Studies*, 3(2), 49-58.

Abstract and indexing



Publisher
HRA (AL-HIDAYA RESEARCH ACADEMY) (Rg)
Balochistan Quetta





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Journal of Quranic
and Social Studies
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Volume:3, Issue:2, 2023

DOI:10.5281/zenodo.10357383

www.jqss.org

ISSN: E/ 2790-5640

ISSN: P/ 2790-5632

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Abstract

The Islamic Republic of Pakistan, whose constitution binds all institutions to the revival of the Islamic system, follows a 20-year legal battle by the Federal Sharia Court to rid the country of usurious economy and the recent decision to abolish usury by 2022. It has entered the next phase in which judicial, constitutional, administrative and interest barriers are in place, which require concerted and serious efforts to overcome. Instead of getting entangled in legal gimmicks and tricks during the five-year grace period given by the Federal Shariat Court, according to the correct Islamic thought and leadership, the government and related institutions will not repeat the mistake that was made in the 90s and which resulted in financial and They are still suffering in the form of economic difficulties. Therefore, the elimination of interest from the economic system of Pakistan is very necessary so that the inhabitants of this Muslim country can achieve the goals of establishing their state.

Keywords: Roll, Federal, Sharia Court, Elimination, Interest, Pakistan, and Economy.

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Definition of Usury

Usury is called Riba in Arabic, which literally means to increase, to grow, and to rise. In Shariah terms, interest is lending money to someone with the condition that he will take some more money at the time of return. Famous muslim scholar Abu Al Qasim Asfahani defined usury as under:-

(1). "وجه دُون وجهه على بالزيادة الشرع في خصّ لكن المال رأس على الزيادة الربا".

Translation: Excess on real wealth is called riba, but in Shariat not every excess is called riba, but the excess that is conditional is usury.

Formation & Jurisdiction of Sharia court

The Federal Sharia Court came into existence in 1980. It is clearly written in the Constitution of Pakistan that the Federal Sharia Court will decide whether a law is in accordance with Islam or not on the basis of Quran and Sunnah. There is scope in Sharia sources that Sharia scholars and Muslim jurists can clarify the position of Sharia on an issue which gets legal status too. Dr. Yousaf says that:

"under the President's Order No 01 of 1980. Through this order, Chapter 3 (A) was added to Part No. 7 of the Constitution of Pakistan, 1973, in which all matters related to the Federal Sharia Court were mentioned".(2)

This institution is backed the Constitution of the country . The Preamble of the Constitution of Pakistan has made it clear that only Allah Almighty is the source of power in the universe and the people of Pakistan shall use the powers delegated by Allah Almighty as a trust within the limits set by Him. Dr Aftab Hussain wrote that;

"Article 2A of the Constitution makes it clear that the rules and regulations specified in the Objective Resolution are an integral part of the Constitution".(3)

It is also mandatory that three of the 8 judges of the Federal Sharia Court must be scholars of Islamic studies and Sharia, who have a high degree of expertise in Islamic laws and Sharia. All judges of this court are appointed for a term of 3 years. The term of appointment of any Munsif may be extended at the discretion of the President of Pakistan.

The Federal Sharia Court of Pakistan has the authority to review any law on its own, on the application of any citizen or the Government of Pakistan Federal and Provincial. This jurisdiction is available to clarify the point that any law contemplated or applied is not inconsistent with Islamic Shari'a. Appeals against the decisions of the Federal Sharia Court can be filed in the Appellate Bench Office of the Supreme Court of Pakistan.

Ban on Federal sharia court

After the establishment of the Sharia Court, the Islamic Ideological Council repeatedly reminded the Zia government about the elimination of usury from the economy. In 1980, Instead of taking concrete measures to prevent usury, President Zia-ul-Haq imposed economic restrictions on the Sharia Court & Prohibited from hearing all the economic cases for ten years through Presidential Ordinance. Dr, Tanzil Ur Rehman wrote that:

"President Zia's 10-year ban on Sharia court in financial matters tied the hands and feet of the Sharia court".(4)

Renowned Hearing of federal Sharia Court in 1990

In 1990 after completion of ten year constitutional ban of hearing economic cases, a person, Mahmood-ul-Rahman Faisal, filed an application in the Federal Sharia Court to declare the current usury system of economy un-Islamic and ban it and instruct the government to eliminate the scourge of usury from Pakistan's economic system. The court jointly heard 114 other cases similar to this case.

A Precise fifteen point Questionnaire

The federal sharia court prepared a Questionnaire for jurists, experts and general public on religious rulings and laws related to usury:-

"In order to deal with the above Sharia petitions, the court prepared a questionnaire on controversial financial laws and sent them to eminent scholars, intellectuals, economists and bankers at home and abroad to inform them of their views"(5)

The Federal Sharia Court asked fifteen points as under:-

1. What is the authentic definition of 'Riba' in the light of Tafseer? Is there any difference between riba, usury and interest?
2. Does riba also apply to the interest charged by banks and financial institutions on loans given for commercial and productive purposes.
3. What is the definition of debt?
4. Does sale, which has been declared halal in the Qur'an, have anything to do with interest-based transactions of banks, and can sale be applied to them?
5. What is Raba al-Fazl?
6. What is the reason for the sanctity of usury? And what are its moral and legal implications in the opinion of the scholars of Quran and Sunnah and different schools of thoughts?

7. what is the significance of the opinion of the contemporary scholars regarding the Islamic or non-Islamic status of a matter in the presence of the clear rules of the Qur'an and Sunnah?
8. Does the sanctity of usury will also apply to non-Muslim citizens of an Islamic state? contemporary scholars regarding the legality or in the light of Islam & illegitimacy of indexation due to devaluation and the purchase price of currency in terms of debt, your opinion. What is it?
9. -What is the meaning of 'Ras Al-Mal' mentioned in the Qur'an?
10. Are the forms of mudarabah and musharakah etc. being used by contemporary Islamic banks to give fixed profits, are those objectives in accordance with the Shari'ah?
11. What are the objectives of Islamic finance? Are these objectives being fulfilled by the modern methods of Islamic financing?
12. What is the Shariah alternative to discount on bills?
13. Is the Policies & preferential treatment given by banks to current accounts in accordance with Shariah?
14. If interest-based matters and laws are declared un-Islamic, then what should be done about the loans that were taken from countries?
15. what is status of internal & external loans & their dealings to the extant of Islamic teachings.

In this case, the Sharia court heard bankers, economists, government representatives and scholars in detail and all important discussions related to the subject were taken into consideration and written and oral that:

"The federal sharai court received statements and delivered his historic judgment of 157 pages in October 1991".(6)

The judges included in the federal sharia court bench were Justice Tanzil-ur-Rehman as Chief Justice, Justice Fida Muhammad Khan and Justice Ubaidullah Khan.

A total of 115 petitions were filed in the court challenging the provisions contained in various laws regarding interest while the court itself took notice of three laws. In its decision, the Shariah court not only defined usury as a standard that could be used to review the usurious matters found in the prevailing economic system and the usurious provisions mentioned in the constitution and constitution, but also by examining all the prevailing usurious laws (22 laws) and banking. He also declared all usurious transactions as haram and asked the federal government and all provinces to change the relevant laws by June 30, 1992 and also said that from July 1, 1992 all usurious laws will become unconstitutional and all usurious businesses will be un-Islamic and will be prohibited.

1999 Decision of the Sharia Bench regarding Interest

In early 1999, a Shariat Appellate Bench was constituted in the Supreme Court of Pakistan which heard these appeals continuously for several months. In this five-member bench, Mr. Justice Khalilur Rahman Khan participated as the chairman, while Mr. Justice Wajihuddin, Mr. Justice Munir A. Shaikh, Mr. Justice Mufti Maulana Taqi Usmani and Mr. Justice Dr. Mahmood Ahmad Ghazi were included as members. In order to get guidance on the important jurisprudential, economic, social, legal and constitutional issues discussed in the case during the hearing, the honorable court appealed to the lawyers of the parties and also to the experts in science and art to refer the issue under discussion & Assist the court. In this regard Mufti Taqi Usmani wrote that,

"Many eminent researchers and jurists of the Islamic world, including Pakistan, assisted the Supreme Court and expressed their opinions"(7)

The suggestions were benefited in writing and verbally and copies of important passages from the rich collection of modern and ancient economic books and journals were brought on the court record.

After scrutinizing all this material and hearing the arguments of scholars and lawyers, the Sharia Appellate Bench of the Supreme Court declared the decision of the Federal Sharia Court to be generally correct and all other usurious laws, including modern banking, are to be adjusted in the light of the teachings of Islam. The court ruled the government of the day to replace all un-Islamic laws with new laws by June 2001 and make banking and other economic activities free of interest.

Dissolution of Sharia Bench in Musharraf era

Before June 2001, the first government filed a petition before the Shariat Bench requesting the Supreme Court to grant two more years to abolish the usury system. Dr. Khalid Karim wrote that;

"Apparently, this application was an injunction application which was filed by UBL before June 2001."(8)

So, on the basis of this petition, the court approved the petition and gave one year instead of two years and directed that the required constitutional and administrative measures should be completed by June 2002.

In the meanwhile A new sharia Bench was constituted by the then Chief Executive President Gen Musharraf. Mr. Allama Khalid Mahmood and Mr. Rashid Ahmed Jalandhri were included in the bench. Thus, in the bench which heard the revision petition, only Justice Muneer A. Shaikh was left among the participants of the previous bench and all the other gentlemen were appointed as new judges.

After a brief hearing of a few days, the bench constituted for review hastily delivered its decision on June 24, 2002, annulling the decision of the Sharia Appellate Bench on December 23, 1999 and the decision of the Federal Sharia Court on November 14, 1991 and re-opening the case.

Orders were issued to send it again to the Federal Sharia Court for hearing. Attempts to restore the Islamic economic system have been thwarted by a judicial bench set up by a dictator, and the judicial audacity to abolish it completely. At this point Dr Israr Ahmed said;

This Sharia court of Parvez Musharraf has multiplied the long efforts and hard work of the previous half century by zero and brought the matter to the point where it is still the first day."(9)

Second period of Efforts for abolition of interest

The second phase of anti-usury efforts begins in 2012. It was decided at the central level of the Islamic Organization that the anti-usury case in the Federal Shariat Court has been pending since 2002 remanded by the Supreme Court of Pakistan, so efforts should be made to get it fixed for hearing. Dr, Imran Ehsan wrote that;

"Therefore, on 4 August 2012, an application titled Application to Fix for Hearing Khalid Mahmood Abbasi an important leader of the Islamic organization vs Federation of Pakistan by Supreme Court lawyer Kokab Iqbal was filed in the Federal Shariat Court."(10)

in this petition the anti interest previous efforts of the Supreme Court were mentioned. so, the steps taken by federal sharia court and The sharia bench of Supreme Court of Pakistan in 1999 and 2002 were highlighted. it was further requested in the petition that;

"It is respectfully requested to the Hon'ble Court that the case on this most important issue (PLD 2002, SC 800) be ordered to be fixed for hearing before this Hon'ble Court at the earliest".(11)

So, after several objections, the Supreme Court heard it in 2013 and then by two judges of the Supreme Court in 2015, after court delaying tactics. And finally sent it once again to the Federal Sharia Court for hearing in 2017.

Now the case of interest is once again in its very early stage before the Federal Sharia Court and in it, through the decision of the PCO Court of 2002, many has re-opened the debates which have been discussed in detail in the two previous cases and decided with great clarity' and has also introduced many new debates which have been brought up in this case. It is a failed attempt to take it to a new dimension. The government of Pakistan is bound by its constitution to abolish usury, which the government has repeatedly promised. Now the Federal Sharia Court has started hearing the case for review for the third time.

Federal sharia court historic rulling agaisnt Usury 2022

The Federal Shariat Court on Thursday has ordered the federal government to completely eliminate interest in the country and implement a riba-free banking system within five years.

The Federal Shariah Court has given a verdict on the petitions pending for 19 years related to the usurious system in Pakistan, in which it has ordered the abolition of interest or riba from June 1, 2022.

Chief Justice Syed Muhammad Anwar pronounced the decision on the applications related to Sudi Nizam A system of Riba, on Thursday, April 28, 2022. He wrote in the judgment that:

'Interest Act in force since 1839 is completely contrary to Islamic Shari'ah, and all other laws facilitating usury and provisions of various laws are declared illegal".(12)

It was further said in this decision that.

"Government paying interest on internal or external loans amounts to riba, so steps should be taken to make internal and external loans and transactions interest-free."(13)

In this regard, the Shariah Court mentioned the International Monetary Fund (IMF), the World Bank, and other international economic institutions and banks, and the Federal Shariah Court ruled to make the system of transactions with such institutions free of interest.

The Federal Shariah Court also asked for data on Islamic banking in Pakistan, the study of which concluded that

"An interest-free banking system is possible. Disagree with the argument."(14)

The federal sharia court rulled against the menace of usury that ;

"Elimination of usury from the economic system is a Shariah and legal obligation, which must be fulfilled in every possible way."(15)

The court led the way towards a riba-free system by directing the government to take internal and external loans under an interest-free system. Heard all the parties and their lawyers. The court declared that interest-free banking is viable banking. The Federal Shariat Court in its decision gave a five-year deadline to take effective measures to combat usury and eliminate all aspects of the usurious system from the economy. According to the strategic plan of the State Bank of Pakistan, thirty percent of banking has been transferred to the Islamic system, so five years is sufficient for the full implementation of the Islamic and interest-free banking system, so the government should abolish all interest-bearing systems by December 31, 2027.

It is also clear from the remarks of the Federal Shariah Court that the government will ensure the implementation of the court decision. It is a religious and constitutional duty of the government to abolish riba. An interest-free economic system is actually a workable method of Islamic economic system, it will distribute the wealth fairly in the country. I do not agree with the position of the Federation in which it said that this is not a workable system. The court declared that;

"riba-free banking is also taking place in the country, the law of State Bank of Pakistan also allows interest-free banking."(16)

As Interest is the main reason for the distortion in various sectors of Pakistan's economic system. The federal sharia court Highlighted the importance of this historic ruling that;

"We are of the unanimous opinion that all existing forms of riba are prohibited, wherever the word interest appears in the laws of the country, it should be abolished.(17)

Conclusion

The abolition of usury is the constitutional responsibility of the government because the three constitutions of Pakistan: the first constitution of 1956, the second Ayub Khan constitution of 1962, and the third constitution of 1973, guaranteed and determined that the government of Pakistan To eradicate the scourge of usury from the economy, the government will do away with riba as soon as possible.

The Shariah responsibility is because in the Holy Qur'an, the insistence and continuation of the interest system has been declared as a war with Allah and the Messenger. There is no justification for any Muslim ruler to disobey anti-usury efforts.

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