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Demystifying *Ribā* through the Methodology of Muslim Jurists

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Abstract

In the post-colonial world when Muslims tried to restructure their public life in accordance with the sharīʿah, they developed a new discipline known as Islamic economics one of the central constructs of which is prohibition of ribā. *Unfortunately, the discussion among modern academic circles assumed a wrong methodology, which resulted in mystification of this concept and, hence, in a number of unsettling questions. This paper explains the nature of the mistake committed by modern Muslim scholars and economists. It also outlines the structure of correct methodology, which was laid down by premodern Muslim jurists for understanding the concept of* ribā *and all other legal terms. The paper develops a consistent analytical framework for addressing majority of the questions on the subject of* ribā *and attempts to rectify the mystification created around this concept.*

Keywords

ribā, interest, loan, *bayʿ*, Islamic economics, Islamic legal theory, financial regulations of Islam.

1. Introduction

After losing their political rule to the imperial powers, Muslim societies faced the widespread dominance of interest-based banking system. According to the majority of Muslim scholars and jurists, bank interest (*ribā*) was not allowed, but Muslim societies got engaged in it due to growing spread of interest-based banking in modern societies and the non-availability of interest-free banking.

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Muslim scholars and economists demanded its alternative soon after Muslims got independence from their foreign masters. Commitment to follow religious teachings in the public affairs of life and liberty from the colonial oppressors provided the required room, which resulted in what is now known as Islamic economics in general and Islamic finance/banking in particular.

One of the central concepts of Islamic banking is prohibition of *ribā*, which unfortunately and surprisingly remained controversial among Muslim economists and scholars. Different perspectives about the meaning of *ribā* prevailed in the twentieth century. Majority view holds that both usury and bank interest are equally impermissible in Islam while business profit is allowed.[1] Contrary to the majority view, some modern Muslim scholars dispute that the Qur'ānic term *ribā* includes interest paid and charged in the banking system.[2] To them, replacing bank interest with anything else is tantamount to obstructing natural operation of economy and creating inefficiencies because interest is the just reward of capital reflecting its marginal productivity.[3] According to this perspective, there is no need to have anything distinct like "Islamic banking" to begin with because the existing

[1] For detailed arguments of this position, see Abū 'l-A'lā Maudūdī, *Sūd* (Lahore: Islamic Publications, 2000), 110–12; M. Umer Chapra, "The Nature of *Ribā* in Islam," *Hamdard Islamicus* 7, no. 1 (1984): 3–24; Muḥammad Shafī', *Mas'alah-i Sūd* (Karachi: Idārat al-Ma'ārif, 1996), 43–47; Muhammad Ayub, "What is *Riba*? A Rejoinder" *Journal of Islamic Banking and Finance* 13, no. 1 (1996): 7–24; Muhammad Taqi Usmani, *The Historic Judgment on Interest Delivered in the Supreme Court of Pakistan* (Karachi: Idārat al-Ma'ārif, 1999), 12–16; Mohammad Nejatullah Siddiqi, *Riba, Bank Interest and the Rationale of Its Prohibition* (Jeddah: Islamic Research and Training Institute, 2004), 45–48; and Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (Cambridge: Cambridge University Press, 2006), 46–52. Within this category, there are further two approaches. One approach that represents traditional *'ulamā'* emphasises the resurgence of only those business contracts that were approved by the early Muslim jurists. It proposes profit-and-loss sharing (PLS) as an ideal alternative to *ribā*. Though it does not deny the permissibility of other than PLS-based financing instruments such as *murābaḥah* and *ijārah*, yet it affirms that equity-based financing method is the primary means of achieving desirable economic objectives. The second approach is pragmatic one. It justifies a more liberal and flexible stance on structuring *sharī'ah*-compatible transaction forms that looks for financial engineering to meet all demands of modern banking customer.

[2] Muḥammad Rashīd Riḍā (d. 1935) was among the foremost proponents of this theory. See his *al-Ribā wa 'l-Mu'āmalāt fi 'l-Islām* (Cairo: Dār al-Mānar, 2007). Also see Sayyid Yaqub Shah, "Islam and Productive Credit," *The Islamic Review* 47, no. 3 (1959): 34–37; Fazlur Rahman, "*Ribā* and Interest," *Islamic Studies* 3, no. 1 (1964): 1–43; Timur Kuran, "On the Notion of Economic Justice in Contemporary Islamic Thought," *International Journal of Middle East Studies* 21, no. 2 (1989): 171–91; Izzud-Din Pal, "Pakistan and the Question of *Riba*," *Middle Eastern Studies* 30, no. 1 (1994): 64–78; and 'Abd al-Karīm Atharī, *Sūd Kiyā Hay?* (Mandī Bahā' al-Dīn: Anjuman-i Ishā'at-i Islām, 2008), 8–12

[3] Constant J. Mews and Ibrahim Abraham, "Usury and Just Compensation: Religious and Financial Ethics in Historical Perspective," *Journal of Business Ethics* 72, no. 1 (2007): 1–15.

system is already Islamic. Finally, on the other extreme are Muslim socialists who develop their version of Islamic economics based on socialist policy package.[4] Since socialism considers wage as the only legitimate reward of a factor input, the scope of *ribā* is much wider than usury and bank interest according to these scholars. It is believed by some[5] that rental earnings on an asset is also included in *ribā* because rent is similar to interest earnings as both are the prices of capital determined by similar market forces. Others are of the view that not only bank interest but also trade or merchant profit is banned under the category of *ribā*.[6] They argue that as lender is forbidden the right to charge interest from poor borrower, so should be the rich industrialists and landlords from appropriating lion's share of value-added on the name of profits. They assert that loaning *ribā* (*ribā 'l-qarḍ*) covers money lenders and hoarders who charge against time while *ribā* of excess (*ribā 'l-faḍl*) is the domain of landlords, merchants, and middlemen who exploit poor workers and make unequal exchanges. These differing perspectives are shown in figure 1. Because this last perspective about *ribā* has gained very little popularity among Muslim scholars and masses as compared to the first two, we exclude its analysis from the scope of this paper, though it would be analysed indirectly.

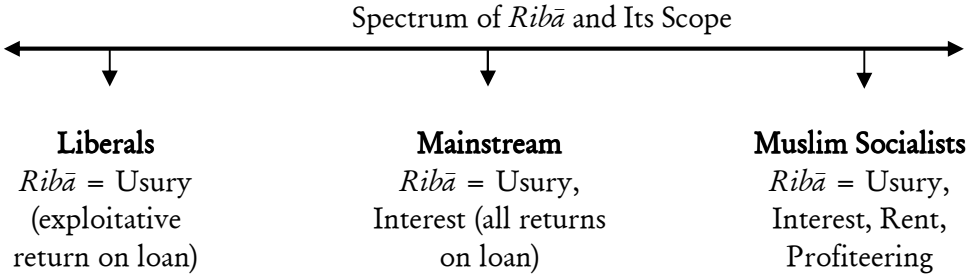

Figure 1: *Ribā* and its scope as per modern Muslim scholars

The above differences have left scholars divided on several important questions that demand straightforward answers. Those questions include the following ones:

1. Is bank interest prohibited in the light of the Qur'ān and the *sunnah*? If yes, how?

[4] See Ghulām Aḥmad Parvaiz, *Niẓām-i Rubūbiyyat* (Lahore: Idāra-i Ṭulū'-i Islām, 1978).
[5] Rafī' Allāh Shihāb, *Kirāyah-i Makānāt kī Shar'ī Ḥaithiyyat* (Lahore: Kitāb Ghar, 1981).
[6] Ziaul Haque, "The Nature and Significance of the Midieval and Modern Interpretations of *Riba*," *The Pakistan Development Review* 32, no. 4 (1993): 933–46.

2. Whether the Qur'ānic term *ribā* includes all kinds of interest rates or it relates only to the excessive interest rates?
3. Whether the scope of *ribā* extends to the interest charged and paid on business transactions in the banking system or is restricted to the interest charged on consumption loans only?
4. Does Islam allow loan transactions? If yes, how and in what form?
5. Is paying interest a lesser evil as compared to charging it?
6. Is borrower always *maẓlūm* (a losing party) in an interest bearing loan transaction?
7. Does Islam allow indexation of loans on the grounds of inflation?
8. Is credit-sale with higher deferred price as compared to the spot price allowed?
9. Does Islam approve of "time value of money," especially when charging higher deferred price is allowed in a credit sale?
10. Are future currency contracts permissible in Islam?
11. How and to what extent is *salam* transaction permissible?

These are but a few questions. We show in this paper that whatever confusion prevails among contemporary scholars on this subject is the outcome of following an inadequate methodology for determining the meaning and scope of *ribā*. In fact, this methodology has mystified the nature of *ribā*, which is otherwise clear when viewed from the methodological view point of the eminent Muslim jurists of the past. The mystification is such that not only it results in confusing answers to these questions but it also begets confusing questions. Unfortunately, the confusion has built up to the extent that the Federal Shariat Court of Pakistan has been struggling to come up with a definition of *ribā*. It is in this background that this paper attempts to explain: (1) the contemporary Islamic economists' methodology of interpreting and classifying *ribā*; (2) why this methodology is wrong and insufficient; (3) the methodology of understanding *ribā* on the pattern of Muslim jurists of the past; (4) that the methodology given by the Muslim jurists is coherent and compact.

The reader will encounter a number of arguments in this paper that are advanced by those who justify bank interest. Since the paper deals with the legal substance and not with the economic merits of arguments, hence we will restrict ourselves to the legal analysis of those arguments and leave aside their economic analysis and rationale, which require an altogether different methodology. Any legal system has three aspects: (1) *what*: the legal rulings (i.e., *aḥkām*); (2) *how*: the rules of deriving those legal rulings (i.e., *uṣūl al-fiqh*);

and (3) *why*: the underlying rationale(s) and wisdom behind the legal rulings (i.e., *ḥikmah*)

It is important not to mix these aspects. The present study deals with the first two aspects of the issue of *ribā*. Moreover, the classification of *ribā* discussed in this paper is primarily based on the methodology of Ḥanafī jurists for ensuring analytical consistency. We presume that a school of law represents an internally coherent system of interpretation and that mixing up the views of the various schools results in inconsistencies.[7] However, views of the other schools have been briefly mentioned in the footnotes wherever required. Finally, the paper does not attempt to show that the Ḥanafī jurists' approach is superior to all others, rather it explains that the classical jurists' approach (whether Ḥanafī, Mālikī, Shāfi'ī or Ḥanbalī) to understanding *ribā* is superior to that of the modern scholars. The methodology of these jurists share several common results that are important in order to answer the above questions.

Following section outlines the method adopted by modern Muslim scholars and economists. The next section discusses problems in this methodology and develops the skeleton for the methodology that is then applied in the coming section, which details out the general rules of *ribā* alongside their resulting implications. The last section concludes the paper by giving a comprehensive definition of *ribā* based on discussions in sections three and four.

2. Outline of the Mystifying Methodology

Imran Ahsan Khan Nyazee explains that the methodology adopted by modern scholars for determining the meaning of *ribā* is the same, though they disagree in their conclusion regarding whether or not bank interest is *ribā*.[8] The fundamental problem of their methodology lies in overlooking the inherent link between the Qur'ān and *sunnah*. This methodology of interpreting *ribā* was initiated by Muḥammad Rashīd Riḍā (d. 1935), which goes as follows:[9]

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[7] For details, see Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihād* (Islamabad: Islamic Research Institute, 1994), 9–12.

[8] Nyazee, *The Concept of Ribā and Islamic Banking* (Islamabad: Institute of Advanced Legal Studies, 1995), 11–19. Imran Ahsan Khan Nyazee (b. 1945) is a well-known scholar and a prolific writer on the subject of Islamic law and is a former Professor of law in International Islamic University, Islamabad. His major works include *Theories of Islamic Law; Islamic Jurisprudence; Islamic Law of Business Organization;* and *The Concept of Ribā and Islamic Banking*. He also translated some of the classical texts on Islamic law and jurisprudence, including: *Hidāyah* of Marghīnānī; *Bidāyat al-Mujtahid* of Ibn Rushd; *Amwāl* of Abū 'Ubayd; and first two volumes of *Muwāfaqāt* of Shāṭibī.

[9] Riḍā, *al-Ribā wa 'l-Mu'āmalāt fi 'l-Islām*, 69ff.

Ribā is classified into two categories, *ribā* of the Qur'ān (also equated with *ribā 'l-nasī'ah*, i.e., interest on loan transaction) and *ribā* of *ḥadīth* (equated with *ribā 'l-faḍl*, i.e., interest on exchange transaction).

Riḍā begins with literal meaning of the word *ribā* (excess) and then traces some *ribā*-based transactions practiced by Arabs during the time of Prophet (peace be on him). Riḍā, relying on some commentators of the Qur'ān, asserts that the Qur'ānic verse regarding *ribā* deals with a specific practice of Arabs known as credit-sale where the payment of price is deferred to a future period while delivery of goods takes place on spot. Because a seller is allowed to charge whatever price he wants in a sale transaction, no *ribā* is involved in the original price negotiated between the two parties—any excess in future price becomes part of the price. However, they used to increase the price excessively whenever the debtor would be unable to settle his debt obligations at the end of payment period. The debtor was given the option, "Will you pay the debt or increase the amount in lieu of delay?" For Riḍā, it was this excessive rate (doubling and multiplying) of interest in debt-based transactions added to the original sum at the end of payment period which was prohibited by the Qur'ān (he called it *ribā 'l-jāhiliyyah*).[10] From this, he concluded that the bank interest is not the same *ribā* that was deemed impermissible by the Qur'ān because (a) it is neither doubling and redoubling of rates (b) nor the excess is stipulated in the initial period of the banking transaction—he assumes that the initially added interest is part of the principal or original sum just like the original sum in case of credit-sale. Hence, for Riḍā, only compound interest is prohibited.

Other scholars, supporting Riḍā's view, added that business loans were not common among Arabs as theirs was a subsistence economy; loans were largely taken by poor people for consumption purposes on interest and whenever they were unable to repay them at due time, excessive interests were added to the original sum. Hence, it was this type of interest that was declared prohibited by the Qur'ān and it has nothing to do with the modern commercial loans, which are mutually beneficial for both parties.[11]

Having ascribed this meaning to the Qur'ānic word *ribā* on the basis of some historical traces, Riḍā then explains the form of *ribā* declared impermissible in the *sunnah* as a distinct prohibition from that of the Qur'ān. He calls it *ribā 'l-faḍl* which emerges in the exchange of two counter values of

[10] Period before the advent of the Prophet (peace be on him) is referred to as *jāhiliyyah* (i.e., the period of uncivilised state of affairs).

[11] Fazlur Rahman, "*Ribā* and Interest," 7–8.

the same or different species and hence also called *ribā 'l-buyū'*.[12] The position of Riḍā, which may be termed as *minority view*, is summarised in figure 2.

Thus, Riḍā dichotomised the two concepts of *ribā*, one attributed to the Qur'ān and another to the *sunnah*. He finally declared the first one as real or explicit *ribā* while latter as lighter or implicit *ribā*.

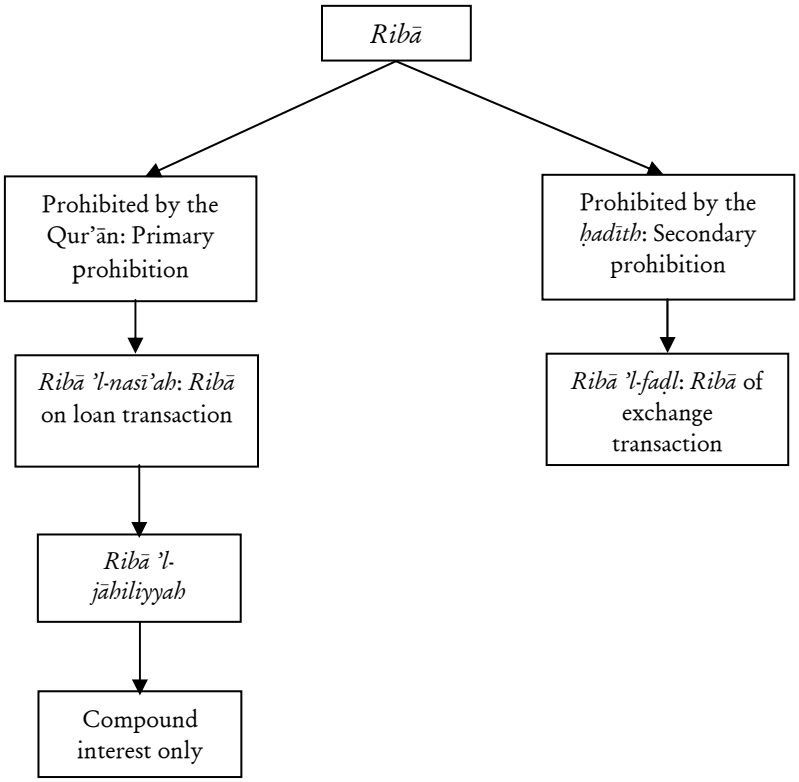

Figure 2: The minority view about classification of *ribā*[13]

Though the majority of contemporary scholars did not agree with the conclusion drawn by Riḍā about legitimacy of bank interest, however they adopted his methodology of classifying *ribā*. The only difference in their opinion is that *ribā* of the Qur'ān includes all rates of return on loan and it is not merely restricted to the compound interest of *jāhiliyyah*. To them, business loans were a part of Arab's economy and any contractual return to

[12] In this regard, a *ḥadīth* reads, "The Prophet said, 'While exchanging gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt, exchange like for like, in equal measure, and exchange from hand to hand. If these species differ, then sell as you like as long as it is from hand to hand.'" Muslim b. al-Ḥajjāj, *Ṣaḥīḥ*, Kitāb al-musāqāh, Bāb al-ṣarf wa bay' al-dhahab bi 'l-wariq naqdan.

[13] Adopted from Nyazee, *Concept of Ribā.*

lender is unfair because this is tantamount to refusing to share business risk with the borrower. We can depict their views in figure three.

Because the *sunnah* is not linked with the Qur'ān in this methodology, both the minority and majority Muslim economists have struggled to explain as to why someone would engage in exchange transactions of the forms mentioned in *ḥadīth*. Some opined that these transactions are declared impermissible because they may open the path for the "real *ribā*" (i.e., *ribā* of the Qur'ān).[14] Others assumed that it was meant to discourage the practice of barter exchange and promote market exchange through a medium of exchange.[15] Yet another view argues that it eliminates the possibility of benefiting from asymmetric information of the contracting parties.[16] The truth is that none of these explanations makes the point.

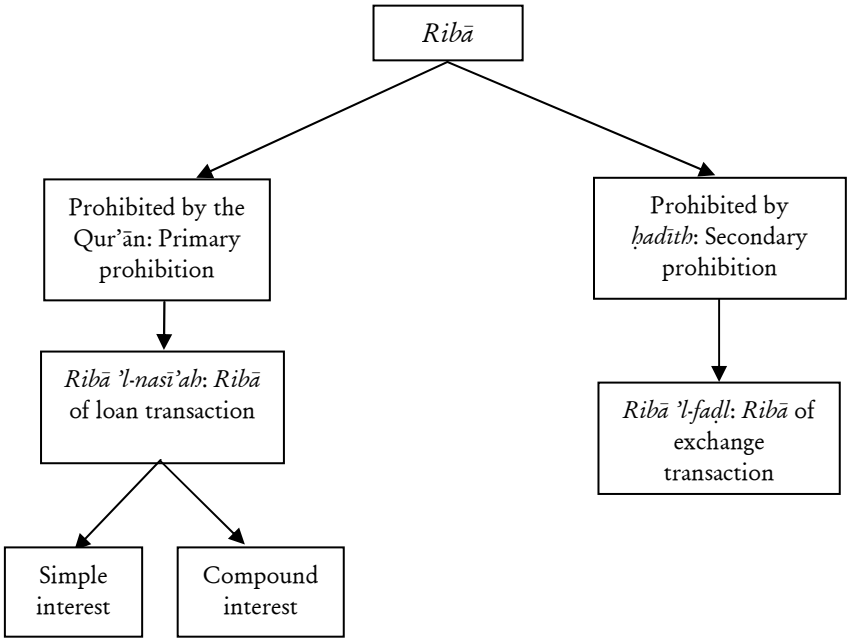

Figure 3: The majority view about classification of *ribā*[17]

2.1. *The Nature of Debate within Minority and Majority Schools*

The debate that has taken place within the followers of this mystifying

[14] Maudūdī, *Sūd*, 118–19.
[15] Chapra, "Nature of *Ribā* in Islam," 3.
[16] Siddiqi, *Riba, Bank Interest and the Rationale of Its Prohibition*, 49–50.
[17] Adopted from Nyazee, *Concept of Ribā.*

methodology on the issue of why or why not bank interest is *ribā* may briefly be summarised here. As explained above, Riḍā asserted that bank interest was not included in the Qur'ānic concept of *ribā* of debt because it was different from the *ribā* that was charged by Arabs on credit-sale transaction by doubling and multiplying the price whenever the debtor was unable to settle his debt at due time and asked for relaxation in payment period.[18] Riḍā explained that the Qur'ānic verse "Allah has permitted *bay'* and prohibited *ribā*"[19] referred to this *ribā*. To strengthen his case, he argued from the verse: "O Believers! Do not devour *ribā* doubled and multiplied and fear God so that you may prosper."[20] This verse complements the former verse in the sense that what was implicit in the first verse was made explicit in the latter—both verses referred to the practice of doubling and multiplying of interest and none of them forbad the bank interest.

How do the majority of scholars respond to this argument? For example Usmani notes the Qur'ānic verse:

> O you believers! Fear God and give up *ribā* that remains outstanding if you are true believers. Behold! If you do not obey this commandment, then God declares war against you from Himself and from His Prophet. But, if you repent (from *ribā*), then *you are entitled to only your principal amounts*. Neither should you inflict harm to others, nor others should do harm to you.[21]

The argument is based on the emphasised words '*you are entitled to only your principal amounts (ra's al-māl)*'. He infers from these words that the rightful entitlement of lenders is the original sum advanced; he cannot charge any increase whether small or large (doubled and tripled). To him, the verse (3:130) forbids a severe form of *ribā* where interest is multiplied, but it does not restrict *ribā* to this specific form. Hence, bank interest falls within the purview of the Qur'ānic verse "Allah has permitted *bay'* and prohibited *ribā*."[22] They are also of the view that charging interest on commercial loans was also practiced by Arabs.[23]

Does the above analysis of mainstream scholars guarantee the prohibition of bank interest? We are afraid it does not. Their arguments rest on two assumptions:

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[18] Riḍā, *al-Ribā wa 'l-Mu'āmalāt fī 'l-Islām*, 69–70.
[19] Qur'ān 2:275.
[20] Ibid., 3:130.
[21] Ibid., 2:278–79.
[22] Ibid., 2:275.
[23] For details, see Shafī', *Mas'alah-i Sūd*, 106–120 and Siddiqi, *Riba, Bank Interest and the Rationale of Its Prohibition*, 38–40.

(1) The verses (2:278–79) address the issue of loan-transaction.

(2) *Ra's al-māl* (principal amount) can only refer to the original principal advanced in loan.

Both of these assumptions are problematic. Following submissions can be made against them:

(a) If the meaning of the verse is to be determined with reference to historical practices, one can equally claim, just like Riḍā, that the verse is not about loan transaction but about credit sale. In that case, *ra's al-māl* is not referring to the principal amount lent; rather, it is the deferred future price of the goods sold. On which *legal* grounds or facts can this claim be dismissed?

(b) Further, this deferred price might include increase over and above spot price. Hence, the future price could consist of two components: spot price plus some additional profit. The sum of these two would constitute *ra's al-māl* (principal amount) in this transaction (i.e., principal amount in credit sale (*ra's al-māl*) = spot price + extra profit)

Whenever a debtor was unable to repay full amount, further multiplied increase was added to this original sum, Riḍā called it interest. This would increase the due amount to: total amount after increase added due to delay, which is interest in addition to *ra's al-māl.*

Using this structure, one can then argue that the initially added interest in a loan transaction is equivalent to initially added "extra profit," which becomes part of *ra's al-māl*. Therefore, entitlement to the *ra's al-māl* means entitlement to the simple interest, as claimed by Riḍā.

(a) The only *legal* justification for ascertaining that the verse is about loan transaction is based on the words "*ra's al-māl*" (principal amount). But how can it be settled that *ra's al-māl* here means *ra's al-māl* of a loan transaction? This question is important because a number of transactions constitute a component of *ra's al-māl*. For example, there is *ra's al-māl* both in *muḍārabah* and *mushārakah* contracts. How to exclude these forms of *ra's al-māl* from the purview of the Qur'ānic verse? If someone says, "This verse is about loan, so *ra's al-māl* refers to that of loan contract and not of *muḍārabah* and *mushārakah*," he is clearly arguing in circularity. The argument goes like this:

Q: How do we know that the verse is about loan contract?

A: Because the verse talks about *ra's al-māl.*

Q: How do we know that *ra's al-māl* here refers to that of loan?

A: Because the verse is about loan contract!

A circular argument is no argument.

(b) Muslim Socialists could maintain that *ra's al-māl* means principal amount of all business contracts. Therefore, it is not legitimate to charge any excess over and above principal amount, no matter it is *muḍārabah*, *mushārakah* or *ijārah*.

Not only that the analysis of mainstream scholars does not necessarily imply the prohibition of bank interest, it leads to a set of unsettling arguments that have left Islamic economists bewildering about some basic issues. For example,

(1) Even if it is agreed that *ra's al-māl* means principal amount of a loan transaction, does it mean "nominal" amount or the "real" (inflation adjusted) amount? Again, what are the *legal* grounds to settle this issue? Because there are no clear-cut legal grounds available in this methodology, we see scholars are divided on this subject matter—some allow indexation of loan against inflations while others do not.

(2) What about the question of "time value of money?" This question poses challenge for Islamic economists because they, as a rule, approve the practice of charging higher price in credit-sale and *murābaḥah*.

(3) The Lawgiver has allowed *salam*, what are the *legal* grounds for not extending this permission to currency *salam* (future currency contracts)?

Undoubtedly, majority view has addressed these issues, but the answers do not seem to be stemming out of a coherent analytical legal system. This approach is often found mixing up legal analysis with economic analysis. This missing coherent analytical legal system is the root cause of most of the mystification that has prevailed all over. It is an unfortunate state of affairs and it is high time to demystify things.

3. Methodological Assumptions of Premodern Muslim Jurists (*Fuqahā'*) for Understanding *Ribā*

To understand the method used by the eminent premodern Muslim jurists for understanding *ribā*, three methodological issues (*MI*) need to be clarified. They are explained by Nyazee in detail.[24]

[24] Nyazee, *Concept of Ribā*, 35–36.

1) Link between the Qur'ān and Sunnah

The methodology adopted by the modern Muslim scholars and economists is misleading because it delinks the Qur'ān and *sunnah*. It assumes that the meaning of *ribā* is different in the Qur'ān and *sunnah*, which is not the case. To explain the nature of error made by both the groups, it should be noted that Muslim jurists (*fuqahā'*) classified *ribā* in the category known as *mujmal* (unelaborated)[25] whose meaning and scope cannot be determined without explanation (*bayān*) of the Lawgiver (*Shāri'*). The famous *ḥadīth* (as given in footnote 1) that explains different usurious transactions actually *does not add* something to the Qur'ānic word *ribā*. Rather, it *defines* its meaning and scope. Thus, while to the contemporary scholars the meaning of *ribā* is known independent of *ḥadīth* and they see *ḥadīth* as adding some more cases to the Qur'ānic concept of *ribā*, the jurists say that *ḥadīth* is the definition of the term *ribā* used by the Qur'ān. Thus, *ribā 'l-nasī'ah* and *ribā 'l-faḍl* both are included in the Qur'ānic concept of *ribā*.

2) Relationship between Loan and Bay' (Exchange)

Loan is also classified as a form of exchange transaction (*bay'*)[26] by Muslim jurists. The scope of this paper does not allow detailed analysis of this assertion.[27] For descriptive purposes, it can be seen that a loan of Rs X is an exchange of Rs X today with Rs X after time deferment (and with Rs X + Y if interest payment of Rs Y is included). Figure 4 depicts this nature of loan transaction by illustrating a loan transaction between Mr. A and B:

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[25] *Mujmal* is a term used by Muslim jurists to refer to a Qur'ānic term that begs its explanation through the words of Lawgiver (i.e., God and His Prophet [peace be on him]). One cannot interpret *mujmal* either by looking its meaning in the dictionary nor can its meaning be determined through historical practices at the time of revelation of the Qur'ān. *Mujmal* can be elaborated only by the Lawgiver. Another example of *mujmal* is the Qur'ānic term *ṣalāh* (prayer) which cannot be interpreted literally.

[26] *Bay'* means *exchange* of counter values, and is not restricted to *sale* of goods/services. Abū Bakr b. Mas'ūd al-Kāsānī (d. 587/1191), the illustrious Ḥanafī jurist, defines *bay'* as "exchange of property with property" and then elaborates that the concept includes not only ordinary sale but also barter, exchange of currencies, advance payment and many other forms of exchange. *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, ed. 'Alī al-Mu'awwaḍ and 'Ādil 'Abd al-Mawjūd (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 6:532-33. Abū 'l-Ḥasan 'Alī b. Abī Bakr al-Marghīnānī (d. 593/1197), author of the authoritative Ḥanafī manual *al-Hidāyah*, also explicitly asserts that *qarḍ* (loan) begins as an act of charity but becomes an exchange transaction in the end. *al-Hidāyah fī Sharḥ Bidāyat al-Mubtadī* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, n.d.), 3:60

[27] See Nyazee, *Concept of Ribā*, 45–46.

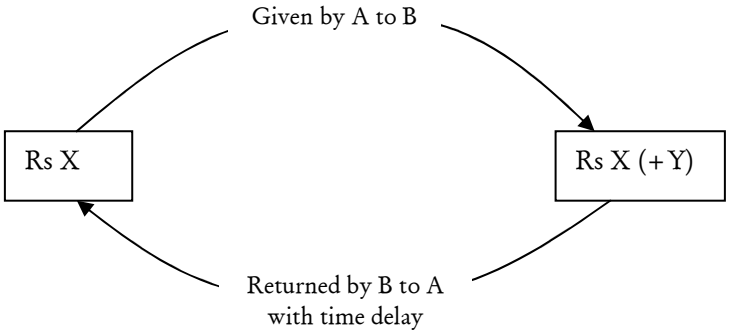

Figure 4: Nature of loan transaction

3) Skeleton of a Coherent Legal System

A coherent *sharīʿah*-based legal system consists of a set of general rules, called *ʿazīmah* by the jurists, supplemented by some exemptions to these laws, called *rukhṣah*. In the words of Nyazee,

> *ʿAzīmah* (lit. determination, resolution) is applied to mean a rule that is applied initially and for itself. Such rules form the backbone of the law. As against this, there may be a rule that goes contrary to the requirements of the initial rule, but is permitted by the law. This rule is considered to be a *rukhṣah* (exemption) from the initial rule.[28]

This classification of *ʿazīmah* (the higher or first order rules) and *rukhṣah* (the lower or second order rules) is important for several reasons.

First, it explains the order in which the rules have to be applied.

Second, it explains why sometimes two opposing cases may be allowed within a given skeleton of law.

Third, the order of rules implies that an exception cannot be extended using any method of argument, whether analytical or analogical. On the other hand, extension of first order rules is legitimate by these methods. In other words, it is not allowed to build a sub-legal system based on exemptions because otherwise it starts negating the primary provisions and objectives of the law—an exemption from the general rule must remain an exemption.

Fourth, because of the logical hierarchy in the operations of *ʿazīmah* and *rukhṣah*, it is clear that an exemption from a rule cannot be used to nullify or change the *sharīʿah* status (*ḥukm*) of any other case that is derived from the

[28] Ibid., 49.

general rules. Alternatively put, an exemption (a lower order rule) cannot prevail over the higher order rules.

Fifth, because all rules and exemptions are derived from *nuṣūṣ* (the Qur'ān and *sunnah*), hence the only justifiable exemptions are the ones, which are given in *nuṣūṣ* (i.e., stated by the Lawgiver Himself).

We call these *nuṣūṣ* the "facts" of the *sharī'ah*-based legal system in this paper. Given these "legal facts," the task of a jurist is to derive those general rules (*'azīmah*) from the facts, which render these facts internally consistent and extendible on the one hand and highlight the exemptions (*rukhṣah*), if any, on the other.[29] Finally, the general rules and exemptions generate some implications, called *aḥkām*. This skeleton of a *sharī'ah*-based legal system is illustrated in Figure 5. We apply this skeleton in this paper to elaborate *ribā*.

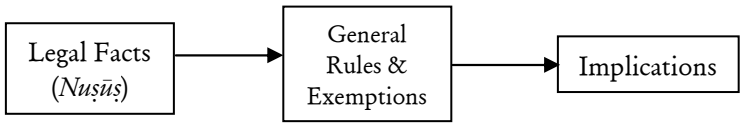

Figure 5: Skeleton of coherent *sharī'ah*-based legal system

[29] The Ḥanafīs use the methodology of *istiḥsān* (juristic preference) for ensuring harmony and analytical consistency within the law when general rules and legal facts seem to contradict. If something appears prohibited in the light of the general principles of law, but has been explicitly permitted by one of the texts (i.e., legal facts), the Ḥanafī jurists take the position that it is permissible as an exception to the general principle. They use the rule, "prohibited under *qiyās* but permissible under *istiḥsān*" for this purpose. Exceptions to the general principles are made on the basis of the text, consensus, necessity or some other "covered principle" (*qiyās khafī*), which needs to be uncovered. Muḥammad b. Abī Sahl al-Sarakhsī is worth quoting here: "This [*istiḥsān*] is the evidence coming in conflict with that apparent principle (*qiyās ẓāhirī*), which comes into view without one's having looked deep into the matter. Upon a closer inspection of the rule and the resembling principles, it becomes clear that the evidence that is conflicting with this apparent principle is stronger and it is obligatory to follow it. The one who chooses the stronger of the two evidences cannot be said to be following his own personal caprices." Muḥammad b. Abī Sahl al-Sarakhsī, *Tamhīd al-Fuṣūl fī 'l-Uṣūl*, ed. Abū 'l-Wafā' al-Afghānī (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 2:200–202. Another important point made by al-Sarakhsī is that when the jurist uses *istiḥsān* and prefers the stronger rule, he *abandons* the weaker one and as such it is not permissible for him or his followers to follow the latter. He goes on explaining that when *istiḥsān* is carried out on the basis of a concealed or covered principle (*qiyās khafī*), the established rule does not amount to be an exception but becomes a general principle in itself. Interestingly, not only the Ḥanafī jurists but also the Mālikī jurists explicitly employ the principle of *istiḥsān* for resolving the apparent anomaly found in the legal facts where one set of *nuṣūṣ* prohibits a loan transaction and another set of *nuṣūṣ* allows it. They hold that it is prohibited as an exchange transaction but allowed as an act of charity.

The relevant "legal facts" used by premodern Muslim jurists to derive general rules and exemptions are quoted at the relevant places in this article. We are now in a position to take on the issue of derivation of the general rules and the implications from those "facts."

4. Underlying Rules behind the System of *Bay'* in Jurists' Methodology

Our intention in this paper is to reveal that the apparently large and complicated system of legal injunctions (*aḥkām*) is reducible to a few set of rules derived from fewer legal facts. We propose that a majority of *aḥkām* (legal injunctions or provisions) governing economic transactions (*buyū'*) can be derived from three broad rules:

1. Rules of *ribā* mentioned in the *sunnah*. This is not a single rule, rather a set of rules as explained below.
2. Rule about the sale of goods not possessed by a person.
3. Rule about exemption that an exemption is to be treated as exemption.

Before explaining these rules, we first explain the context of the Qur'ānic verses that underlies the jurists' methodology of *ribā* to clarify the misconception that the relevant verses of *Sūrat al-Baqarah* are about loan transaction and not exchange (*bay'*).

4.1. *The Context of the Verses of Sūrat al-Baqarah*

The Qur'ān states that the disbelievers said, "Verily, *bay'* (sale) is just like *ribā*." In response to this, it was said, "Allah has permitted *bay'* and prohibited *ribā*." To understand why the disbelievers said this, consider these three transactions:

(a) A gives B 100 grams of gold in exchange of 110 grams of gold to be paid after one year. This is primarily a *sale* contract as explained previously (i.e., exchange of 100 grams gold with 110 grams gold with time lag) and involves *ribā* (how, this will be explained in the next section but take it for granted for the moment).

(b) A asks B for 100 grams of gold in exchange of, say, 500 kg wheat at spot. This is a legitimate regular sale contract.

(c) A demands from B 110 grams of gold in exchange of 500 kg wheat for payment of price after one year: this is credit sale contract with higher deferred price as compared to spot price and is also legitimate (this is explained in section 4.3).

The credit sale was a common practice among Arabs and, therefore, they were confused as to why the transaction (a) is impermissible and (c) is permissible while the two are quite similar in nature (i.e., both are credit sales and both involve access payment). In (a), 10 grams of additional gold are paid as counter-value for 100 grams of gold for a delay of one year and similarly 10 grams of gold are paid for a delay of one year in transaction (c). It is for this reason that disbelievers said, "*Verily sale is just like ribā!*" That is, transaction (c) (i.e., the credit sale) is similar to the transaction (a). The technical reason for allowing transaction (c) and forbidding (a) is the similarity of genus which is explained by the *sunnah*. This is explained in the next sections in detail, but the important point to note here is that the assumption that the Qur'ānic term *ribā* is not about sale contract, rather it is about debt, is not implied by these verses. Thus, the verse says that Allah has approved all forms of *buyū'* (exchange transactions) except those which involve *ribā*.[30] The natural question then arises: what is this thing called *ribā*? Has the Qur'ān given any definitive description of *ribā*?

One may make one of the two assumptions here. First, the concept of *ribā* was largely a sort of common knowledge for everyone and, hence, it required no *legal* description by the Qur'ān. That common knowledge is traceable by an examination of historical record of Arabs which provides *sufficient legal* foundations for determining the meaning of *ribā*. As far as the details of *ribā* in the *sunnah* are concerned, they were additions over and above to that common knowledge of *ribā* and most of these additions were unknown to the Arabs. The liberals and mainstream scholars share this assumption and we believe that this assumption constitutes what we called the "mystifying methodology."

Second, some forms of *ribā* may be or actually known to the Arabs but these do not set the *legal* standard against which the Qur'ānic concept of *ribā* is to be determined. As it is a legal term, its meaning has to be sought from the Lawgiver. In technical sense, the jurists call it *mujmal* (unelaborated) for which elaboration (*bayān*) is sought from the Lawgiver. This elaboration of the legal meaning of the Qur'ānic term *ribā* is given by the *sunnah*. After this elaboration by the Lawgiver, its meaning is determined definitively and it

[30] Al-Sarakhsī interprets this verse as the following: "Trade is of two kinds: permitted (*ḥalāl*), which is called *bay'* in the law; and prohibited (*ḥarām*), which is called *ribā*. Both are types of trade. Allah informs us, through the denial of the disbelievers, about the rational difference between sale (*bay'*) and *ribā*, and says, 'That is because they said, "Sale is like *ribā*."' He, then, distinguishes between prohibition and permission by saying, 'And Allah has permitted sale and prohibited *ribā*.' Through this, we came to know that each one of these is trade, but only one form is permitted." Al-Sarakhsī, *al-Mabsūṭ*, ed. Ḥasan Ismā'īl al-Shāfi'ī (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 12:1–2.

becomes *mufassar* (elaborated). This is the methodological assumption that the jurists use not only for defining *ribā* but also for other legal terms of the Qur'ān, such as *ṣalāh*, *zakāh*, and so on.[31] Thus, according to this second assumption, the practices and concepts of Arabs may be referred by the Qur'ānic concept *ribā* but it is not the benchmark against which we assign legal meaning to the Qur'ānic terms. For example, the Arabs had some concepts about how to offer *ṣalāh* (prayer), but this information does not *define* the legal meaning of the Qur'ānic term *ṣalāh* nor is this concept *limited*

[31] The famous Ḥanafī jurist Abū Bakr al-Jaṣṣāṣ al-Rāzī (d. 370/980) says, "In the law (*sharī'ah*), it (*ribā*) is applied to meanings in which it was not used in the language. This is indicated by the fact that the Prophet (peace be on him) termed *nasā'* as *ribā* in the tradition of Usāmah b. Zayd (God be pleased with him). He said, 'Verily, *ribā* is in *nasī'ah*.' 'Umar b. al-Khaṭṭāb, (God be pleased with him) said that *ribā* had different forms and out of these *salam* in teeth, that is, in animals, is not concealed. 'Umar also said that the verse of *ribā* was one of the last to be revealed, and the Prophet (peace be on him) was taken away before he could elaborate the details for us. Therefore, give up *ribā* and the suspicion of *ribā*. It is established from this that *ribā* became a technical term, for had it been governed by its original meaning in the language, it would not have been obscure for 'Umar, who was fully aware of the names used in the language, being a native speaker. This (the conversion of the word into a technical meaning) is also indicated by the fact that the Arabs were not aware of the sale of gold for gold and silver for silver with a delay (*nasā'*) as *ribā*, but this is *ribā* in the technical meaning. If this (meaning of *ribā*) is as we have explained it, then, it became like all the other unelaborated (*mujmal*) words that are in need of an elaboration (*bayān*). These are terms that have been transferred from the language to the law and assigned meanings to which the word was not originally applied in the language, like *ṣalāh*, *ṣawm*, and *zakāh*. Such words are in need of a *bayān* and it is not proper to employ them in legal reasoning for the prohibition of any of the contracts, unless an evidence has been adduced to show that such a meaning is employed by the law. The Prophet (peace be on him) elaborated on many occasions the intention of Allah in a verse, by way of an explicit statement or in response to a query (*tawqīf*), and through these he has indicated the evidence (*dalīl*). The (legal) meanings are, therefore, not lost to those who have knowledge when they employ legal reasoning. . . . In the technical sense, the word *ribā* is assigned several meanings. The first is the one that was prevalent among the people of the *jāhiliyyah*. The second is excess in the same species out of things measured and weighed, according to the view expressed by our (Ḥanafī) jurists. . . . The third is *nasā'* (delay), which is of several types." Aḥmad b. 'Alī al-Rāzī al-Jaṣṣāṣ, ed. Muḥammad al-Ṣādiq al-Qamḥāwī, *Aḥkām al Qur'ān* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1992), 2:183–84. Al-Sarakhsī is also worth quoting here: "*Mujmal* is the word the meaning of which is not understandable except by asking the one who used this word. . . . An example of *mujmal* is the saying of the Almighty: "He prohibited *ribā*" as *ribā* literally means excess but we know that this is not meant here because sale has been permitted for the purpose of excess. Rather, *ribā* here means prohibition of a sale due to an excess without a counter-value stipulated in the contract; and this excess is either in the form of increase in measure or by way of delay. . . . It is obvious that this elaboration is not known by literal analysis. Rather, it needs a separate source. Hence, it is *mujmal* with respect to its intended meaning. The same is the case of *ṣalāh* and *zakāh*. They are also *mujmal* because their original literal meaning is prayer and growth, but because of their use in specific legal acts, their intended meaning cannot be gathered from their literal analysis." al-Sarakhsī, *Tamhīd al-Fuṣūl fī 'l-Uṣūl*, 1:168–69.

to this information set. Similar is the case with *ribā*. The Arabs might have been aware of some forms and practices of *ribā* but that does not constitute the legal definition of *ribā*. When the jurists classify a term as *mujmal*, they mean that this term is a *technical legal* term and its meaning should be determined with reference to the words of Lawgiver Himself, neither by the linguistics (dictionary) nor by the historically known social concepts and practices that hover around that technical term. It should be emphasised here that considering *ribā* as *mujmal* does not mean that the Arabs did not know the meaning of this word at all. Nor does it mean that the pre-Islam Arabs did not identify certain transactions as *ribā*—in fact they did and the jurists did consider it part of *ribā*.[32] It only means that the meaning of *ribā* in Islamic law is not limited to, and is not based on its usage in the pre-Islam Arabia. The Qur'ān and the *sunnah* added several shades of meaning to this concept. That is why, it became a "technical term" of Islamic law. Hence, its meaning and scope cannot be determined by its dictionary meaning or its practice and understanding by the pre-Islam Arabs. Rather, it must be determined by the Qur'ān and the *sunnah*, like any other legal term such as *ṣalāh* and *zakāh*. Just as we cannot classify concept *ṣalāh* as *ṣalāh* of the Qur'ān and *ṣalāh* of *ḥadīth*, similarly we cannot dichotomise *ribā*. Once it is established that the meaning of *ribā* must not be gathered from pre-Islamic usage and practices but from the Qur'ān and the *sunnah*, the next question is: how to explain the various usages of *ribā* in the Qur'ān and the *sunnah*? The answer, as per the well-established methodology of the jurists, is to consider the *sunnah* as the elaboration of the *mujmal* verses of the Qur'ān. This methodology is employed by the jurists for determining the meaning and scope of *ṣalāh* and *zakāh* as well as *ribā*. Let's follow through the path of righteous ones here and have its blessings.

4.2. *General Rules of Ribā When Transacted Species are Same*

Keeping these in mind, one has to understand the classification of *ribā* in the system of Muslim jurists. Because the *sunnah* defines *ribā*, note the words of *ḥadīth*,

> When you exchange gold for gold, silver for silver, wheat for wheat, rice for rice, dates for dates, and barely for barely, then exchange like for like (in equal measure) and exchange them hand to hand (at spot), else it will be *ribā*.[33]

To understand what it says, consider these transactions:

1) exchange of 1 gram gold for 1 gram gold on spot;

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[32] See al-Jaṣṣāṣ, *Aḥkām al-Qur'ān*, 2:183–84.

[33] Muslim, *Ṣaḥīḥ*, Kitāb al-buyū', Bāb bay' al-ṭa'ām bi Mithlih.

2) exchange of 1 gram gold for 2 grams gold on spot;

3) exchange of 1 gram gold at spot for 1 gram gold with delay;

4) exchange of 1 gram gold at spot for 2 grams gold with delay.[34]

As per the *ḥadīth*, the first transaction is allowed; the second one is disallowed because it involves excess in measurement/quantity (called *ribā 'l-faḍl*); the third transaction is also impermissible because the *ḥadīth* says that the exchange of homogeneous goods is allowed in equal measurement provided it is *on spot*; therefore, this transaction involves the *ribā 'l-nasī'ah* (i.e., *ribā* of delaying); finally, the fourth transaction involves both types of *ribā*. These transactions provide two guiding rules (R):

R 1.1) Goods of the same species cannot be exchanged immediately unless their measurement (in terms of weight or volume) is same.

R 1.2) Goods of the same species cannot be exchanged with time lag, even with same measurement.

4.2.1. Implications

Five important implications (*I*) should be noted.

I. 1) Impermissibility of Market for Loanable Funds

Application of rule 1.2 gives the important implication that loan, with or without interest, is prohibited in Islam because, as explained above, a loan is an exchange of homogeneous goods with time lag. Does it mean that loaning is not allowed in Islam under any circumstances? Of course, this implication of the general rule is at odd with a number of legal facts (*nuṣūṣ*), which promise reward for offering loan to the needy ones. How to reconcile these apparently contradictory legal facts now? This is where the concept of *rukhṣah* (exemption) is activated by the jurists. Though loaning is against the general rule (*'azīmah*) given by the Lawgiver, yet it is allowed by Him as an exemption from this prohibition if it takes the form of benevolent giving (*tabarru'* or *ṣadaqah*).[35] Loan is classified as *tabarru'* if:

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[34] One can simply substitute "Rs." for "gram gold" in these transactions if Rs. (currency) is treated as substitute of gold and silver currency.

[35] The famous Ḥanafī manual *Hidāyah* explains the position of a loan transaction in the following words: "It is an act of charity in the beginning and that is why it is not valid from a person who does not have the capacity to do charity, such as a minor or a guardian (of a minor). However, at the end, it becomes a contract of exchange because it turns into exchange of dirhams with dirhams with delay, and that is *ribā*." See al-Marghīnānī, 3:60. The commentators explain, "This necessitates invalidity of loan but the *sharī'ah* has recommended it and the whole

(a) it is out of the intention of benevolence to the other person (i.e., the lender consciously bestows upon the borrower the benefits associated with his asset);[36]

(b) no increase in its value is stipulated, else it would cease to be benevolent and would involve *ribā 'l-faḍl*; and

(c) no contractual time limit is stipulated, the lender can ask for his asset anytime he wants.[37] Stipulating (legal) time constraint in loaning activity makes it a business transaction as per the application of general rules of *sharī'ah* and, hence, unlawful because in that case it is simply the exchange of homogeneous goods with time delay, which is not allowed, whether or not interest factor is included. Moreover, making the time period binding would imply that the lender is forced to do, or to continue with, an act of charity. This is against the very nature of charity.

In short, this principle implies that Islamic law does not permit the "market for loanable funds." It sees loaning as an act of benevolence, especially in favour of one's relatives.[38] Stated alternatively, loan is purely a social transaction (a means of tying and strengthening social bonds) in Islam and not a business. It was in this social transaction capacity that the institution of loan prevailed for thousands of centuries not only in Muslim societies but also in other civilisations of the world until the emergence of capitalism in the fifteenth century.[39] Note that this important result (impermissibility of the market for loanable funds) does not follow directly from the classification of modern scholars of Islamic economics, as the majority view allows interest-free non-benevolent loans as a general rule and not as an exemption.

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ummah agrees on its validity; hence, we hold that it is valid but not binding (and can be terminated at will by any party)." Akmal al-Dīn Muḥammad b. Maḥmūd al-Bābartī, *al-'Ināyah sharḥ 'alā al-hidāyah* (Būlāq: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1316 AH), 5:273. The same position is upheld by Mālikī jurists. Thus, the famous Andalusian Mālikī jurist Abū Isḥāq al-Shāṭibī (d. 790/1388) says, "There are many examples of *istiḥsān* in the law, such as loan, which is *ribā* in reality because it is exchange of dirham with dirham with delay; but it has been permitted because it benefits and facilitates the needy." Ibrāhīm b. Mūsā al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. Abū 'Ubaydah Mashhūr b. Ḥasan (al-Khobar: Dār Ibn 'Affān, 1997), 5:194–95.

[36] Jurists apply the rules of *'āriyah* (commodate-loan) on these transactions because it is the nearest match for *qarḍ* and the only way to legally justify a *qarḍ* transaction. Al-Kāsānī, 10:600.

[37] In much the same way as time period cannot be stipulated in a contract of *'āriyah* because no one can be compelled to do or continue with an act of charity (*tabarru'*). Al-Marghīnānī, *al-Hidāyah*, 3:60. In other words, making the condition of time-period binding changes the nature of the transaction and it no longer remains *tabarru'*.

[38] This has some income distributional as well as social consequences.

[39] For an analysis of the idea of "debt as a social construct" and the transformation of this social construct to the impersonal market form, see David Graeber, *Debt: The First 5,000 Years* (New York, NY: Melville House Publishing, 2011, 308–60.

This implication answers one of the important arguments in favour of bank interest given by some economists. The argument says that interest should be allowed in *sharī'ah* because interest is the price of capital and without interest the market for loanable funds cannot be equilibrated. Because we are not dealing with the economic merit of arguments in this paper, we ignore its economic substance and comment on its legal merit only. It is clear from the above implication now that this argument has no *sharī'ah* basis because *sharī'ah* does not allow market for loanable funds to begin with, let alone equilibrating it from *sharī'ah* perspective.

Before moving on to the next implication, the important implication and exemption regarding loan transactions be noted:

> I 1.1) A loan transaction is prohibited, whether or not interest factor is added to it.
>
> I 1.2) A benevolent interest-free loan is recommended as an exemption to the general rules of *ribā* by the Lawgiver.

I. 2) Impermissibility of Bank Interest

All forms of bank interest, whether simple or compound, are prohibited by Islam as per Rules 1.1 and 1.2. Similarly, the fact whether loan is made for business or consumption purposes makes no difference to this result. There remains no confusion about these conclusions if the *sharī'ah* rules are applied with consistency. In fact, the practice of charging interest by the bank includes both kinds of *ribā* and it, therefore, may be stated that it is the most comprehensive form of *ribā*! This can be verified from the figure 6, which depicts detailed structure of *ribā*-based transactions in case of homogenous goods (leaves aside heterogeneous goods for the moment).

I. 3) False Dichotomy between "Giving and Taking" Ribā

The recipient of *ribā* is not always the lending party as is usually perceived. It can be seen from above examples that in case of transaction (2) the lender is the beneficiary of *ribā*, but in transaction (3) *ribā* is received by the borrower, and finally both are its recipients in transaction (4). Hence, opinions such as "taking *ribā* is a greater evil than giving it and, hence, paying interest to the bank is a lesser evil" are based on the fallacious assumption that it is only the bank that receives interest in a typical interest-bearing loan transaction. This wrong assumption is the outcome of using the wrong methodology outlined in section two.[40]

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[40] This false dichotomy is also not consistent with a number of "legal facts" (*nuṣūṣ*). For example, in a *ḥadīth* the Prophet (peace be on him), after explaining the rule of exchange among

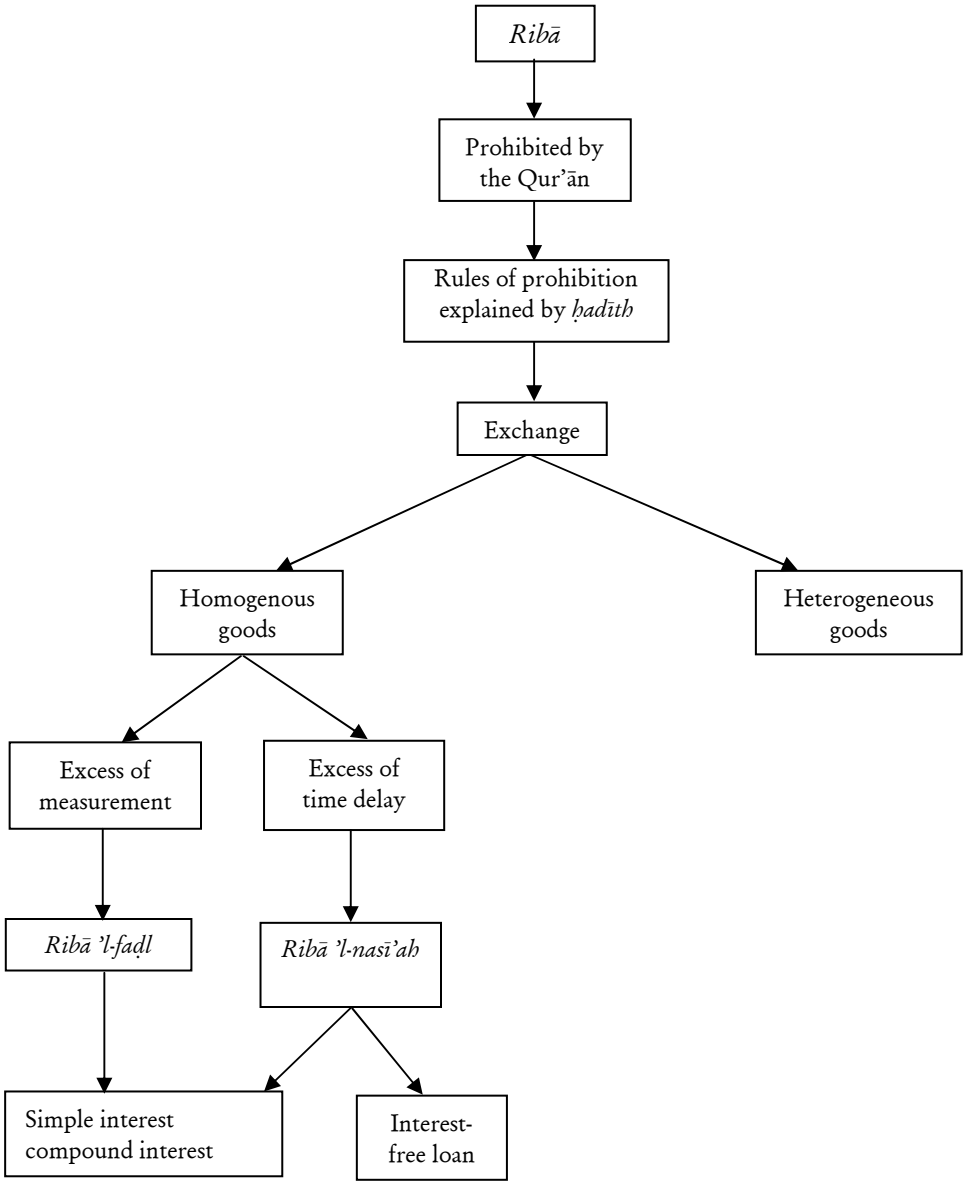

Figure 6: Classification of *ribā* in the exchange of homogenous goods

six goods, said, "Whosoever paid more or demanded more, indulged in *ribā*." Muslim, *Ṣaḥīḥ*, Kitāb al-musāqā, Bāb al-ṣarf wa bay' al-dhahab bi 'l-wariq naqdan. Both are treated equally because both are the participants of "market for loan" which is not allowed.

I. 4) Mutually Beneficial Ribā is Prohibited

The view that bank interest realised in transaction (4) is or should be permitted (as claimed by liberal Muslim scholars) is implicitly based on the assumption that "two wrongs make one right"—that is, it assumes that mutually enjoyed *ribā* of the lender and borrower can make this transaction acceptable while the matter of fact is that each of them is separately prohibited to begin with.

I. 5) Irrelevance of Time Value of Money

Following the wrong methodology has resulted in another confusing argument that the bank interest should be allowed because of "time value of money." This argument is based on the presumption that Rs. 1 today is worthier than Rs. 1 tomorrow. Why? Economists believe that this is due to the subjective time preferences of an individual. A rational (i.e., self-interested utility maximising) economic agent is said to have positive time preferences in the sense that consumption today is preferred to consumption tomorrow because the latter is uncertain, which makes him impatient, thus he wants to have it today than tomorrow. Another reason for having this positive time preference emerges from the institutional arrangements: if I have the option of earning some interest (say Rs. Y) on Rs. 1 by putting it in a bank account today, why should I lend it to someone for free? Putting Rs. 1 in a bank account will make it "Rs. 1 + Rs. Y" for sure (assuming away bank insolvency), say, after one year while lending it to someone will leave it worth Rs. 1. Hence, Rs. Y (which may be expressed in percentage) is the price that should be paid to the lender for a loan of one year, else it would be unfair with him. This argument is more of economic than legal in its substance, however, some comments can be made here to evaluate its legal substance in the light of preceding discussion.

The relevant part of the proposed argument is the second one (the institutional arrangement) because the first one is merely a *subjective* feeling, which may differ from person to person (as a matter of fact, not everyone prefers to consume more today than tomorrow). The argument presumes that *there exists* and *should exist* a well-established legally functional market for loan, which coordinates interest-based loan transactions. But just recall "I.1" that Islam does not approve of the market for loan to begin with. Eliminate this institution of market for loan, and the argument disappears. The point is that the concept of "time value of money" conceived in this economic sense is alien to the discussion of *ribā*. Its validity presumes that there exists a legal institutional market for loanable funds where money is growing continually and, therefore, an individual always has the option of putting his money in

that market. Not only that this assumption is invalid from the point of general rules of *sharī'ah* as explained, it is also in contradiction with the ontological structure of the universe and economic facts.

The above is not the only format of this argument, it is phrased in some other shades as well. For example, it is stated that money could buy benefits and had the lender not lent it he could have benefitted himself. This implies that lending is an act of sacrificing the benefits associated with money. Therefore, the lender should be compensated for this sacrifice and interest payment is exactly that reward. This reward makes sense given that the borrower takes benefit out of money. The argument is valid to the point that money is beneficial to the lender and that if he makes the choice of not lending it, he can benefit from it. Moreover, it is also true that the borrower enjoys the benefits associated with the money. None of these facts is denied by the *sharī'ah* rules. But these facts alone cannot formulate the required case for this argument; it requires a *moral* statement in its premise to derive the desired conclusion. To see this, note that the argument does not end here, after quoting these *facts* it then makes a *moral* assertion: "it is morally (and hence legally) right if money is lent for reciprocal benefits." Addition of this moral statement is necessary for validating the conclusion that "interest is the just reward for lending." But this moral assumption contradicts the general rules of the *sharī'ah*, which are laid down above. Seeking reciprocity in loan is exactly what that changes its status from *tabarru'* to loan as a business transaction and, hence, it becomes nothing but *ribā*. The argument here is quite straightforward: The owner of money is granted the right of benefitting from his money by *sharī'ah* rules; he is given the option of making a *conscious* choice of transferring the benefits associated with his money to another person as an exception to the general rules by the *sharī'ah*, but there is neither any general rule nor any exemption from the Lawgiver that assigns him the right of lending money in the name of the so-called "mutual benefits" (refer to I. 4 above). Legally speaking, this involves both *ribā 'l-faḍl* (because the homogeneous goods are exchanged at different rates) and *ribā 'l-nasī'ah* (because time stipulation is invoked—the lender asks for the excess of measurement for parting with the benefits of his money for a *specified time*).

Another variant of this argument comes with the heading of "effects of inflation on money." We deal with it in the next section.

4.3. *General Rules of Ribā when Transacted Species are Different*

What about the exchange of heterogeneous goods? The last words of the *ḥadīth* are as follows: "If these species differ, then exchange as you like as long as it is from hands to hand."

They give an immediate rule:

> *R 1.3) Goods of the different species can be exchanged with difference in measurement.*

This rule says that such goods can be exchanged at different rates as far as measurement is concerned. In other words, *ribā 'l-faḍl* does not apply in case of heterogeneous goods. Is *ribā 'l-nasī'ah* (prohibition of time delay in payment) also not applicable in this case? Apparently, it seems that it is not because of the words of *ḥadīth*, "exchange should be on spot." This has an odd implication that credit sale (sale of goods against money where payment is deferred to future time period) is not permissible under the *sharī'ah* rules. This is so because credit-sale is an exchange of heterogeneous goods with time lag. But the legal facts reveal that the Lawgiver has allowed credit-sale.[41] How to explain this? Is credit sale also an exemption to the general rule, like a loan transaction? The answer is: "No, it falls within the general rules."

To see how credit-sale is permissible within general rules, one needs to dig deep into the issue of the underlying cause (*'illah*) that the Muslim jurists derived from the *sunnah* to understand the system of *ribā.* The relevant question facing jurists was: Is prohibition of *ribā* restricted only to the six goods named in the *ḥadīth* or is it extendible to other goods? The answer of the jurists is, yes, it is extendible and for this extension they derived the underlying cause due to which *ribā* was declared prohibited by the Lawgiver. Keeping aside the technical details and arguments, it should be noted that some of the goods are measured in terms of weight while others are measured in terms of volume. In the *ḥadīth* under discussion, gold and silver were weighable while the other four items were volumeable at the time of Prophet (peace be on him).[42] Based on this classification, the jurists derived two further rules:

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[41] The validity of credit-sale is inferred from many facts. These include the general permissibility of sale transactions such as the words of the Exalted, "Allah has permitted sale" (2:275). The jurists hold that all sales are permitted except those which have been prohibited specifically, such as sales involving uncertainty (*gharar*) or which stand prohibited by the operation of other principles of law, such as the prohibition of *ribā*. The analysis in text explains that credit sale does not fall under the prohibition of *ribā*.

[42] This is the Ḥanafī position. The other schools classify these six items in different ways, but interestingly all classify them into two categories. The below table summarises their positions:

School	Position on Gold and Silver	Position on other Four Items
Ḥanafī	weighable (*mawzūnāt*)	volumeable (*makīlāt*)
Ḥanbalī	weighable (*mawzūnāt*)	volumeable (*makīlāt*) and countable (*ma'dūdāt*)
Shāfi'ī	currency (*thaman*)	edibles (*maṭ'ūmāt*)
Mālikī	currency (*thaman*)	storable edible items (*muqtāt*)

R 1.4) when species are different but their method of estimation is the same (such as gold vs silver or wheat vs rice), unequal quantities can be exchanged, provided that the exchange is immediate;

R 1.5) when species are different and their method of estimation is also different (such as gold vs wheat), unequal quantities can be exchanged with time delay.[43]

Thus, the credit sale is allowed due to the application of Rule 1.5. To see this, consider these combinations of transactions:

1) Exchange of 1 gram gold at spot for 2 gram silver on spot (method of estimation same)
2) Exchange of 1 gram gold at spot for 2 gram silver in future (method of estimation same)
3) Exchange of 2 kg wheat at spot for 1 gram gold/silver on spot (method of estimation different)
4) Exchange of 2 kg wheat at spot for 1 gram gold/silver in future (method of estimation different)

The first transaction is allowed but the second is not because when species are measured by same method (i.e., "weight" in this case), then difference in the measurement (*faḍl*) is allowed but deferment (*nasī'ah*) is not permissible. The third and the fourth transactions are allowed because here not only the transacted species are different but also their method of measurement (one was measured in "weight" while the other in "volume").

The net result is that all the four schools agree on the applicability of the rules of *ribā* on gold and silver (though for different reasons) and they come up with the impermissibility of loan transaction. For the Ḥanafīs, they are also applicable on all items that are either weighed or volumeable (whether they are food items or not, does not matter); the Ḥanbalīs agree with the Ḥanafīs but add a third category of the counted items; for the Shāfi'īs, the rules of *ribā* are applicable on food items (whether they are weighed, measured or counted does not matter); the Mālikīs agree with the Shāfi'īs but add a proviso that these food items must be such that people generally prefer to store them. These differences have interesting implications for extending the rules of *ribā* to cases other than the six items specifically mentioned in the traditions. For details, see Nyazee, *Concept of Ribā*, 83–88.

[43] Interestingly, although the four schools have determined different *'illah* (cause) for the operation of *ribā* on gold and silver, yet a loan transaction even if interest-free remains prohibited for all the four schools. Thus, for the Ḥanafīs and the Ḥanbalīs gold and silver must be exchanged on spot because they are weighable items, the Mālikīs and the Shāfi'īs deem it necessary because gold and silver are currency items. Resultantly, despite disagreement on the *'illah* of *ribā*, all the four schools agree that a loan transaction is prohibited as an exchange transaction and permitted only as an act of charity.

In short, when both of the similarity factors (i.e., species and method of measurement) are found, then both *faḍl* (excess of measurement) as well as *nasī'ah* (excess of time delay or time deferment) are prohibited. When similarity of measurement is found alone, then *faḍl* is allowed but *nasī'ah* is prohibited. Finally, when none is found, both *faḍl* and *nasī'ah* are allowed. Figure 7 depicts all of these rules completely (discussion about the last layer of boxes on the right-hand side of this figure is coming next).

The preceding discussion shows that the *ḥadīth* explaining the nature of *ribā* was not about the *actual practices* of Arabs that begged some economic explanations with which Muslim scholars have been struggling. Rather, it stipulated the rules of exchange. It says, "If at all you make exchange transactions, here are the governing rules." Thus, all transactions that correspond to these general rules are allowed while those in contradiction with them are prohibited (however, some are exempted by the Lawgiver).

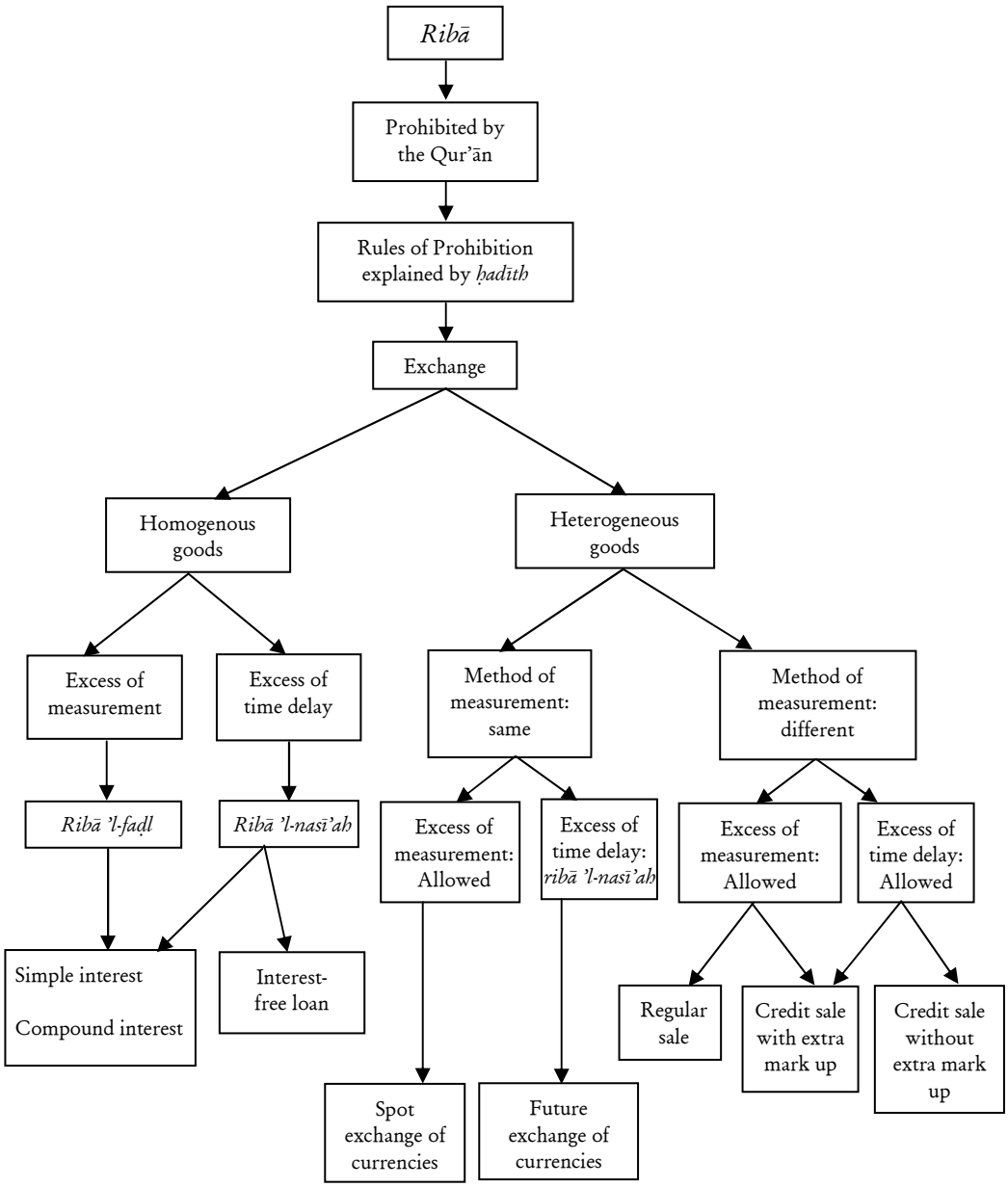

Figure 7: Classification of *ribā* in the method of premodern Ḥanafī jurists

4.3.1. Implications

Following implications are derived from the above rules. It is important to note that the first two transactions mentioned in sub-section 4.2 belong to the case when method of estimation of the heterogeneous goods is same while the latter two cover the cases when their method of estimation is different.

I. 6) Placement of Regular and Credit-Sale

Transaction (3) is categorised as regular sale transaction (usually termed *bayʿ*) by the jurists. On the other hand, transaction (4) covers credit sale, which may take two forms: with or without extra profit margin as compared to the spot sale. Because both measurement as well as payment time differential are allowed in this case, hence credit sale of both forms is allowed.

I. 7) Placement of Currency Exchange

The remaining two boxes are relating to the exchange of currencies (termed as *bayʿ al-ṣarf* by the jurists). A detailed description of these requires an appreciation of some more technical classifications[44] made by the Muslim jurists. However, they are beyond the scope of this paper. Suffice to say that the jurists divided all tradeable species into two: (a) currency items, which are used as means of exchange; they included gold and silver (though other goods may also be treated as currency in this system) and (b) non-currency items, (goods that are exchanged, and are not medium of exchange). They roughly included all but gold and silver.[45] Given this division, the jurists broadly mention four types of transactions (*buyūʿ*):

(1) Non-currency item in exchange of non-currency item—called barter exchange.

(2) Spot or delayed currency (say gold) in exchange of spot non-currency (say wheat) item.

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[44] These include the terms *ʿayn*, *dayn*, and *thaman*. For an elaboration of the meaning of *ʿayn* and *dayn*, see Nyazee, *Concept of Ribā*, 54–57.

[45] The jurists treat gold and silver as *thaman* (price/currency) in exchange with all other items. Even when they are exchanged with each other (as in the contract of *ṣarf*), both of them are treated as *thaman*. That is why they are called *thaman muṭlaq* (absolute *thaman*). Fungible items (*mithliyyāt*) are deemed *thaman* if they are exchanged with non-fungible items (*qīmiyyāt*). When a fungible item is exchanged with another fungible item, such as when wheat is exchanged with barley, the parties are at liberty to consider any one of them as *thaman* but they have to specify it in the contract. For details, see al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 7:216–17.

(a) If both of them (gold and wheat) are exchanged on spot, it is called regular sale of goods, and

(b) if the currency price (gold) is delayed, this is called credit sale.

(3) Delayed non-currency item (say rice) in exchange of spot currency item (say gold). Here, the price of the good is paid on spot while its delivery is delayed. This is called *bay' al-salam* (advance payment) by the jurists.

(4) One currency (gold) in exchange of another currency (silver)—known as *bay' al-ṣarf.*

Rules regarding the first two have been discussed above. Here, we have to make some submissions regarding this fourth type of transaction. Because this transaction comes under the umbrella of "different species with same method of measurement," it is clear from figure 7 that the excess of measurement is allowed in this transaction while time deferment is not. This gives two further rules under rule (1.4):

1.4a) If different currency items (such as gold and silver) are exchanged, then it is allowed to exchange them at any rate;

1.4b) if different currency items (such as gold and silver) are exchanged, then it is not allowed to exchange them with time deferment.

If it is accepted that modern currencies are just substitutes of gold and silver, then two further important results emerge from this discussion:

I 7.1) Future Currency Contracts are Prohibited

Rules (1.4a) and (1.4b) imply that the spot currency transactions are allowed while their future contracts (known as *currency salam* in Islamic finance literature) are prohibited in Islam as they come under the purview of *ribā 'l-nasī'ah*.

I 7.2) Indexing of Loans is Prohibited

Indexing the value of the currency loans against some underlying assets (say gold) on the ground of inflationary pressures is not allowed. It is often argued that since the value of currency decreases over time due to the presence of inflation, hence an extra-payment equal to the rate of inflation, over and above the original sum given in loan, should be allowed in favour of the lender to keep his purchasing power. Again, because the economic merit of this argument is beyond the scope of discussion in this paper, we restrict only to its legal merit. If it is accepted that one rupee is legally nothing but equivalent of 1 unit of gold or silver (whatever that unit be), then Rules 1.1 and 1.2

(governing the loaning contract in gold or silver currencies) should automatically become operational. Those rules imply that (a) loaning in the form of currency item is allowed if and only if *equal measurement* (whatever the unit of measurement) is returned; else it would be *ribā 'l-faḍl*; and (b) it is a loan made out of benevolence and not business intention (having time stipulation); else it would be *ribā 'l-nasī'ah*. Hence, adding an extra amount to loan transaction in the name of "indexation" is but both, *ribā 'l-faḍl* (because of the excess of measurement) and *ribā 'l-nasī'ah* (because the increase is time bound).[46] Again, let simplicity and sanity prevail.

I. 8) Placement of Salam

To see how the jurists accommodated *salam* in this scheme, note that there is nothing in the set of rules 1 (from 1.1. to 1.5) which forbids it. However, according to rule 2 (given at the start of this section), selling what one does not possess is not permissible and this is exactly what a *salam* transaction involves. Thus, a *salam* transaction should not be allowed as per the general rules of *sharī'ah*. We are once again faced with the same issue: *salam* is permitted in the "legal facts;" how and where to place it in the legal skeleton of the *sharī'ah*? Is there another general rule, which governs its permission as we saw in case of credit sale or is it an exemption from the general rule just like loan? The jurists' answer is the following: *Salam* is permitted as *rukhṣah*—exemption from the general rules—by the Lawgiver.[47] Because it is an exception, as per rule 3, it would be allowed only as "one of its kind" (*sui generis*) and cannot be

[46] The last two implications are based on the widely accepted assumption that modern currencies are just like gold and silver currencies and should be treated as their substitutes. See Ghulām Rasūl Sa'īdī, *Sharḥ Ṣaḥīḥ Muslim* (Lahore: Farid Book Stall, 1998), 4:350–361; and Muhammad Taqi Usmani, *Islām aur Jadīd Ma'īshat-o Tijārat* (Karachi: Ma'ārif-i Islāmī, 1999). Changing this assumption can change the implications. The alternative to this view is to accept that modern money is a promise of payment, which implies that it is an acknowledgement of debt. In that case, Islamic rules of *ḥawālah* (endorsement) transaction will be applicable. Accepting this position can allow the indexation of loans since money is now treaded as *value of something which it promises* and, therefore, a loan can be linked to the underlying promised asset. However, accepting the premise that "modern money is debt" leads to the result that exchange of currencies is not allowed even on spot because of another general rule of the *sharī'ah*, namely, "prohibition of exchanging debt for debt" (*bay' al-kāli' bi 'l-kāli'*). The prohibition is reported in by many scholars of *ḥadīth*. For instance, see 'Alī b. 'Umar al-Dāraquṭnī, *Sunan*, Kitāb al-buyū', Bāb nahy 'an bay' al-kāli' bi 'l-kāli'; Muḥammad b. 'Abd Allāh al-Ḥākim, *al-Mustadrak 'alā 'l-Ṣaḥīḥayn*, Kitāb al-buyū', Bāb nahy 'an bay' al-kāli' bi 'l-kāli'. Thus, one cannot maintain both of these positions simultaneously; either he has to allow indexation of loans or he has to allow exchange of currencies. For details, see Nyazee, *Concept of Ribā*, 96–114.

[47] The jurists cite traditions of various Companions who report that the Prophet (peace be on him) prohibited them from selling what they did not possess but gave exemption for *salam*. Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 7:101–02.

used as justificatory mode for deriving more comparable transaction forms (e.g., currency *salam*). An exception to the general rule remains exception and does not turn into a rule for other cases because then it ceases to be an exception and creates a situation of self-contradictory general rules, which is not acceptable in any legal system. Thus, *salam* transaction is allowed as an exception for those transactions where (a) a currency item is exchanged against a non-currency item and (b) non-currency item is deferred while the currency-item has been paid at spot.[48] This is what the exception is all about; one cannot extend this exception to the transaction types where currency items are exchanged with each other because that would violate condition (a) of the exception case.[49]

Figure 8 shows a map of interplay among legal facts (*nuṣūṣ*), general rules, exemptions, and the derived implications related to *ribā* and *bayʿ* that are discussed in this paper. This diagram shows that a rather complex looking system of *aḥkām* (implications) showing up at the ending layer boxes of figure 8 emerge out of a set of general rules, which are derived to make underlying legal facts compatible with each other.

[48] Some other conditions are also applicable for the validity of this transaction but they do not relate to our subject matter here. For their details, see al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 7:103ff.

[49] A misconception prevails regarding the nature of *ribā* due to a tradition, "there is no *ribā* except in *nasīʾah* (deferred payment transactions)." These words of Ibn ʿAbbās constitute reason that can explain the adoption of wrong methodology by the contemporary Muslim scholars. It is inferred from this tradition that the primary form of *ribā* deals with loan transaction, which is *ribā ʾl-Qurʾān*. However, several points invalidate this inference as indicated by al-Sarakhsī. See al-Sarakhsī, *al-Mabsūṭ*, 12:11–12. First, the words of the *ḥadīth* are quoted from Ibn ʿAbbās who initially had this opinion but he reverted from this position later on when the *ḥadīth* of *ribā* was brought to his knowledge by Abū Saʿīd al-Khudrī. Second, the *aḥadīth* of *ribā* are quoted by several Companions of the Prophet (peace be on him) through several sources. Therefore, they cannot be ignored out rightly in favour of this isolated narration. Third, hence, it is necessary to place these words of Ibn ʿAbbās appropriately within the legal structure of the *sharīʿah*. Thus, al-Sarakhsī points that the words relate to the exchange of heterogeneous goods measured similarly, because in that case there is no *ribā* except in deferment.

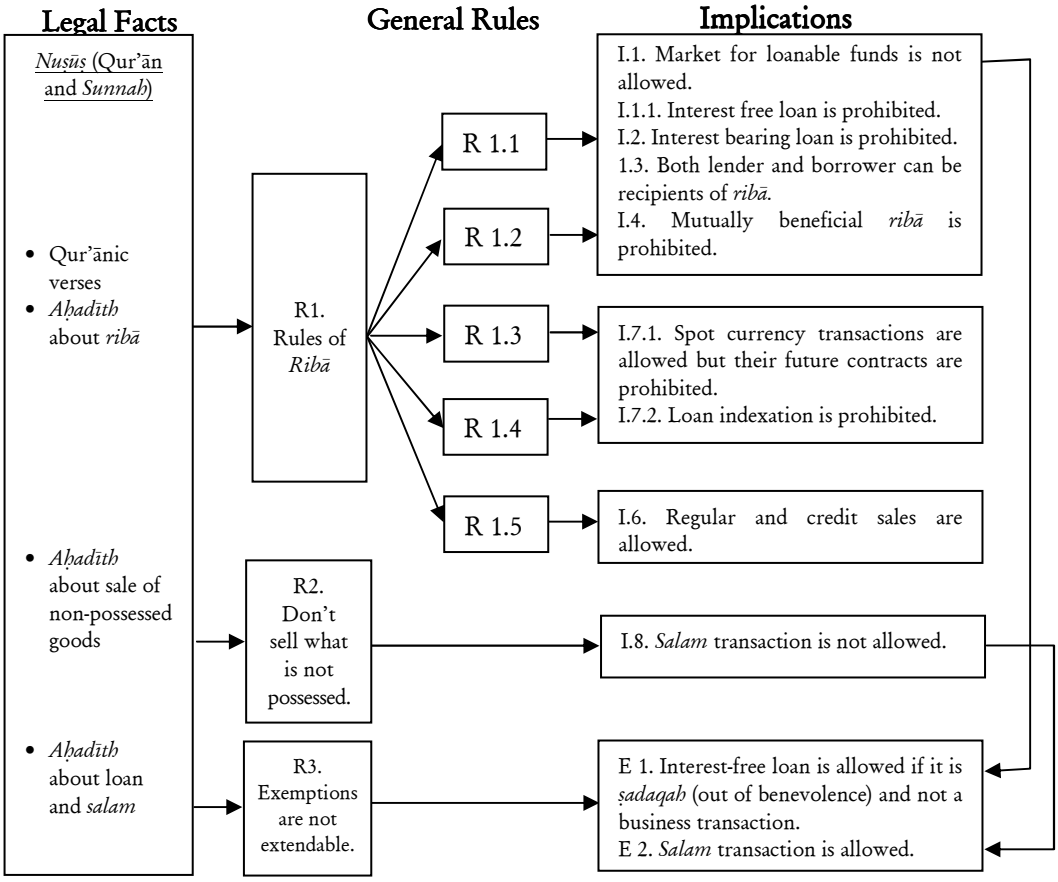

Figure 8: The interplay of legal facts, general rules, exemptions, and implications in the premodern jurists' methodology

5. Conclusion: The Definition of *Ribā*

We conclude this paper by elaborating a comprehensive definition of *ribā* that can be inferred from the discussions in this paper. Let's quote it from al-Sarakhsī:[50]

> *Ribā* in its literal meaning is excess . . . and in the technical sense (in the *sharī'ah*), *ribā* is the stipulated excess without a counter-value in *bay'* (sale).[51]

Let's explain it noting several points about this definition:

(1) Muslim jurists do not introduce the word loan in the definition of *ribā* because they categorise loan transaction under exchange (*bay'*). Not appreciating this point resulted in the misconception that since the *fiqh* conception of *ribā* does not deal with the subject of bank loans, it needs to be inferred directly from the Qur'ān.
(2) *Ribā* is *excess*, either in the form of quantity (*qadr*) or in the form of benefits of delay (*nasā'*). The first is called *ribā 'l-faḍl* while the latter is called *ribā 'l-nasī'ah*.
(3) This *excess* is without any counter-value permitted by the *sharī'ah*. Thus, the excess of quantity paid in lieu of time delay in case of interest-bearing loan is not allowed because these two cannot be the legitimate counter-values (see I. 4).[52] For a substance to be counted as counter-value, it must be recognised by the general rules of the *sharī'ah* to begin with.[53]
(4) The excess is stipulated in exchange. If the excess is granted voluntarily, it would not be *ribā*.

We started off with specific questions in the introduction. The appendix lists down the answers to these questions in the light of the above definition of *ribā*. It can be seen that once the discussion about *ribā* is placed on the right track, right and clear cut answers start emerging automatically.

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[50] الربا:هوالفضل الخالی عن العوض المشروط فی البیع .

[51] Al-Sarakhsī, *al-Mabsūṭ*, 12:109.

[52] That is why, the definition of *ribā* in *al-Durr al-Mukhtār*, a later Ḥanafī text, is given as follows: "*Ribā* is an excess without any counter-value recognised by *sharī'ah*, in favour of one of the parties in a transaction." Muḥammad Amīn b. 'Ābidīn, *Radd al-Muḥtār 'alā 'l-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, ed. 'Ādil Aḥmad 'Abd al-Mawjūd and 'Alī Muḥammad Mu'awwaḍ (Riyadh: Dār 'Ālam al-Kutub, 2003), 7:398–401.

[53] For example, if a female sells her body in exchange of mangoes, this would not be legitimate. Nor will it be legitimate if A lends Rs 1,000 to B on the condition that B will repay Rs 1,000 plus a swine.

Appendix: Questions and their Answers that Follow from the above Analysis

No	Questions	Answers
1	Is bank interest prohibited in the light of the Qur'ān and the *sunnah*?	Yes, it is prohibited, because it is violation of rules 1.1 and 1.2.
2	Whether the Qur'ānic term *ribā* includes all kinds of interest rates or it relates only to the excessive interest rates?	It includes all forms of interests. This is a necessary implication of rules 1.1 and 1.2.
3	Whether the scope of *ribā* extends to the interest charged and paid on business transactions in the banking system or it is restricted to the interest charged on consumption loans only?	It extends to all kinds of loans, commercial or consumption, as shown by the application of rules 1.1 and 1.2.
4	Does Islam allow loan transactions? If yes, how and in what form?	Loan is against the general rules of Islam. However, it is permitted by the Lawgiver as an exemption to the rule if it takes the form of *tabarru'*.
5	Is paying interest a lesser evil as compared to charging interest?	No, it is not. The assumed dichotomy is wrong, as it has been clarified by I.3.
6	Is borrower always *maẓlūm* (a losing party) in an interest-bearing loan transaction?	No, the borrower can also be the receiver of *ribā* as per rules 1.1 and 1.2 (see I.3).
7	Does Islam allow indexation of loans on the grounds of inflation?	No, it does not. The demand for loan indexation is invalidated by rules 1.4a and 1.4b.
8	Is credit sale with higher deferred price as compared to the spot price allowed?	Yes, it is validated by the application of rules 1.4 and 1.5.
9	Does Islam approve of "time value of money," especially when charging higher deferred price is allowed in a credit sale?	No, it does not. In fact, the concept is alien to the subject matter of *ribā*, provided both the concept of time value of money and rules of *ribā* are used appropriately.
10	Are future currency contracts permissible in Islam?	No, they are not. It is violation of rule 1.4b.
11	How and to what extent is *salam* transaction permissible?	Rule 2 implies that *salam* is against the general rules of the *sharī'ah* but allowed as an exemption by the Lawgiver, hence, should remain exemption as per rule 3.