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Part I

RIBA IN PRE-ISLAMIC ARABIA

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As noted in the previous chapter, when the Qur`an and the Hadith talk about something without defining it, this is most probably because its meaning was well understood in the pre-Islamic time and the Qur`an and the Hadith use it in primarily the same sense. We also showed that the Qur`an and the ahadith, especially the authentic ones, do not define *riba*. Hence they, in all probability, use the term in the same sense in which it was generally understood in the pre-Islamic time. It is now important for us to determine what the sense was in which the term *riba* was understood in that time.

The earliest documented statement about *riba* in pre-Islamic time is found in the Muwatta of Imam Malik:

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Malik related to me that Zayd ibn Aslam said, "*Riba* in the Jahiliyyah was that a man would have a debt (*haqq*) on a man for a set term. When the term was due, he would say, 'Will you pay it off or increase me (*ataqdi aw turbi*)?' If the man paid, he took it. If not, he increased him in his debt (*zada hu fi haqq hi*) and lengthened the term for him." (Muwatta 1180)

This does not look at all like the usual definition of *riba* as an increase in the amount of loan specified as a condition at the time of lending. Here the word *riba* (in the form *turbi*) is used not in connection with the original agreement under which the loan was given but in connection with the increase imposed if the loan is not paid when due.

Imam Malik (d. 179) wrote his Muwatta around the middle of the second century. Later documents in the second to fourth century also mention similar understanding of *riba* in the time of Jahiliyyah. Indeed, Imam Shafi'i (d. 204) defined the Islamic concept of *riba* exactly as Imam Malik defined *riba* in the pre-Islamic times. Thus Shafi'i says: "And *al-riba* – (this is) that a man has debt (*al-dayn*) on another and on the due date he says (to the debtor): Would you pay or increase the debt? So he would postpone the payment and increase his debt"^[i]. Later, Imam Ahmad ibn Hanbal (d. 241) defines *riba* in a similar way. Still, later in the *Tafsir* of Ibn Jarrir al-Tabari (d. 310) it is related on the authority of Mujahid:

"In the days of Jahiliyyah one man would owe a debt to another. Then he would say to his creditor, "[I offer to] you such and such and you give me more time to pay."

Ibn Jarir also quotes another early authority, Qatadah, to explain the *riba* in pre-Islamic Arabia:

"From Qatadah: The *riba* of Jahiliyyah was a transaction whereby a person would sell something for a payment to be made at a specified future time. Then when the time of payment came and the buyer did not have the necessary amount, the seller would increase [the amount due] and give him more time."

Baghawi (d. 510) in his *tafsir* on Qur'an 2:277 quotes a tradition from 'Ata (d. 117) and 'Ikrimah (d. 107) which actually gives a case of *riba* in exactly the sense implied in the above definitions:

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Regarding the word of God: “O believers! Fear God and forego what remains of *al-riba*”, ‘Ata and ‘Ikrimah said that it was revealed concerning al-‘Abbas ibn ‘Abd al-Muttalib and ‘Uthman bin ‘Affan who bought some dates (not yet harvested). When the time came for harvesting, the owner of the dates said to them: “If the two of you took what is owed to you, I would not have enough for my children. So would you take half and delay the delivery of the remaining half and I double it for you?” So they acted accordingly and when the agreed time came they asked for the increased amount. This reached the Messenger of God, so he prohibited them. Then God Most High sent down this *ayah*. So they heard and obeyed and took only the capital amount.

Much later, al-Suyuti (d. 911) is still defining the *riba* of Jahiliyyah in similar terms. Thus he says on the authority of Faryabi:

"They used to purchase something with the payment deferred to a future time. Then on the due date [the sellers] used to increase the due amount and extend the time of payment."

As in the definition in the Muwatta, so also in all these other definitions it is a question of extending the time for payment and not the conditions under which the original loan was given. Several of these other definitions speak of a debt that arose when a person bought something on deferred payment.

At the time the loan becomes due, there can arise two types of situations:

1) The borrower can return the loan but prefers not to, because he sees some advantage in keeping the loan for a longer period. In this case, his keeping the loan would be equivalent to returning the loan (along with any increase) and then borrowing it again on similar terms on which he borrowed the first time. Thus in this case the increase required for the extension may not be considered *riba*.

2) The borrower finds it impossible or very difficult to pay the loan. In this case, any increase imposed would be *riba*, because it is not a part of the original terms of the loan and the loan cannot be returned to start, in theory, the transaction all over again. Also, the lender could impose very severe conditions, even doubling or tripling the loan. Of course, such excessive increase repeated a few times would today create the risk of the loan being never paid back, but in earlier times this risk was minimal because the debtor and his family could be reduced to working for the lender for years and even become his slaves.

The definitions of *riba* given above assume the second situation. In fact, some of them explicitly state that the debtor was not able to pay the loan on the due date. Hence the oldest definitions of *riba* in the time of Jahiliyyah have the following sense: *riba* is increase on the amount of loan imposed in exchange for an extension in its term when the loan is impossible or very hard to pay at the due date. In view of the fact that many definitions of *riba* talk of sales with deferred payments, it appears that most of those who would find it hard to pay the loan and therefore had to pay *riba* would be relatively poor people who had borrowed a loan to buy some necessities of life or get out of some other type of financial difficulty.

Our conclusion above is based on sources that quote relatively early authorities:

Malik quotes Zayd bin Aslam who died in 136

Al-Tabari quotes Mujahid who died in 104 or 105 and Qatadah who died in 117

Shafi'i does not quote a source but he himself is relatively early, as he died in 204

Al-Suyuti quotes Faryabi who died in 212

But some later Muslim scholars give us a completely different definition of *riba* in pre-Islamic Arabia. Thus Imam Abu Bakr al-Jassas (d.380) in his *Ahkam al-Qur'an* states:

"And the *riba* that the Arabs knew and practiced was a loan of dirhams or dinars for a certain term with an increase on the amount of loan on which they mutually agreed."

This definition by al-Jassas in the fourth century is fundamentally different from those reported from earlier authorities. In the definitions reported by Malik, al-Tabari, and al-Suyuti from much earlier sources the focus is on the increase in the outstanding loan when it could not be paid, on due date; there is no mention of the terms of the original loan. In contrast, in the definition given by al-Jassas the focus shifts to the terms of the original loan; no mention is made of what happens at the time the payment is due. Moreover, in the earlier reports the loans mentioned arose out of sales with deferred payment, whereas in the definition given by al-Jassas the loans are said to be cash advances.

The best explanation of the difference between the definition given by al-Jassas and those reported from earlier sources seems to be that the understanding of *riba* changed at some point in the history of Islam and this changed understanding was in due course was also transferred to the *riba* of Jahiliyyah.

About two centuries after al-Jassas, Imam Fakhr al-Din al-Razi (d. 606) tried to combine the two definitions:

"As for the *riba al-nasi`ah*, it was a transaction well-known and recognized in the days of Jahiliyyah, i.e., they would advance money on the basis that they will take a specified amount every month and the principal will remain due. Then on the date the debt became due, they demanded the debtor to pay the principal. If payment became impossible (or hard), they would increase the term and the payable amount. So this was the *riba* people practiced in the time of Jahiliyyah." (A similar statement is given by 'Adil al-Dimashqi in his *Tafsir*

al-Lubab.)

This definition has two parts: One is about the premium added to the loan as a condition specified in the beginning. This is called *riba al-nasi`ah*. The other is familiar to us from several other sources and deals with increase imposed if the loan could not be paid on the due date. The definition ends with the words: "So this was the *riba* people practiced in the time of Jahiliyyah". These words are somewhat vague. They could be applied to the second part of the definition, the one dealing with what happened when the loan became due. Or, they could be applied to both parts, including the part dealing with *riba al-nasi`ah*. Comparing with the reports from earlier authorities we see that even if Razi himself included in *riba* of Jahiliyyah the increase stipulated when the loan was first advanced, this is a secondary development. Originally, the understanding of *riba* in pre-Islamic Arabia and *riba al-nasi`ah*, which is a term derived by *fuqaha* from some ahadith were different.

We may here note Usmani's explanation of the difference between the two definitions of *riba* of Jahiliyyah mentioned above. According to him, they are telling us two different practices of *riba* in the days of Jahiliyyah. However, this suggestion should be rejected for the following reasons:

First, Usmani himself recognizes that at least in case of deferred sales *riba* was increase imposed when the loan could not be paid at due date. Thus regarding the statement of the non-believers that "trade is like *riba*" (Qur`an 2:275), Usmani makes the following comments:

"Their objection was that when we increase the price of commodity in the original transaction of sale because of its being based on deferred payment, it is treated as a valid sale. But when we want to increase the due amount after the maturity date, when the debtor is not able to pay, it is termed as *riba* while the increase in both cases seems to be similar. This objection of the non-believers of Makkah has been specifically mentioned by the famous commentator Ibn Abi Hatim [d. 327] on the authority of Sa'id ibn Jubayr:

"They used to say that it is all equal whether we increase the price in the beginning of the sale, or we increase it at the time of maturity. Both are equal. It is this objection which has been referred to in the verse by saying "They say that the sale is very similar to *riba*."

The same explanation is given in *al-Bahr al-Muhit* by Abu Hayyan and several other original commentators of the Holy Qur'an." (51-52)

Notice Usmani's own high-lighted words explaining the non-believers' statement. In these words Usmani is clearly recognizing that at least in case of a sale with deferred payment the term *riba* was applied not to increase stipulated at the time the loan was advanced, but the increase imposed when the loan could not be paid on due date. Usmani's claim is that in pre-Islamic times this applied only in case of sales but not in case of cash loans. This he bases on the statements of al-Jassas and al-Razi. But, apart from the fact that the statement by one of them is somewhat vague, we cannot give to their statements, made in the fourth and sixth centuries, the same weight as the statements by Imam Malik, Ibn Jarir etc who quote four different early authorities, from Mujahid around the end of the first century to Faryabi around the end of the second century. Some of these much earlier authorities define *riba* as the increase imposed when a loan cannot be paid at maturity without specifying whether the loan was in the form of deferred sale or a cash advance.

Second, in the usage of every word there is often some variation, but there is also a primary usage that comes to mind when the word is spoken without further indications of any special sense different from the primary usage. For example, recall the following hadith from Chapter I:

“To cheat the easy-going customer (*mustarsil*) is *riba*.”

Here the term *riba* is used in the sense of “any unjustified gain”. But this is clearly not the primary meaning that would come to mind when the word *riba* is heard. Similarly, it is possible that sometimes the word *riba* might have been used in pre-Islamic times to refer to interest originally charged on a loan, as suggested by the statements of al-Jassas and al-Razi. But in view of the other, earlier, definitions this should not be considered the primary meaning of the word in pre-Islamic Arabia. In view of those definitions, when an Arab in pre-Islamic times heard the word *riba*, the first thing that would come to his mind would be an increase imposed when the loan could not be paid on due date.

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Muhammad bin Idris al-Shafi'i, *al-Risalah*, Dar al-Turath, al-Qahirah, 1979, p. 234.

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