

## Interest in Sharia: legal consequences and penal aspects in Sharia

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As Sharia law deals with what is lawful and unlawful or permitted and prohibited acts pertaining to all the major aspects of life - and that includes commercial law covering businesses and private transactions, *riba* or (interest)<sup>1</sup> has been one of the most widely known and discussed subjects. This paper, without going into the core subject of what constitutes interest, will directly engage with the *penal aspect* of *riba* in Islam i.e. the penal consequences and what type of punishments it may carry or has been prescribed by Sharia.

There has been extensive discussion on the topic of interest or usury known as *riba* in Sharia, yet little has been discussed, at least outside the academic context, on the other aspect - the Shar'ī (Islamic legal) consequences of committing *riba* offences, notably the punishment and the Islamic penal code surrounding the involvement in the act of undertaking *riba* transactions. While there has been no question on the theological / spiritual consequences for those committing Islamically major criminal act such as involvement with *riba* – whose unlawfulness with absolute certainty been stipulated in the Quran<sup>2</sup>, the extent of punishment and penalty applicable to those committing *riba* related offenses has been debatable (or subject to lengthy discussion). The debate has been more in the specifics of setting practical punishment terms and limits in organised format of penal code/legislation that defines the type of punishment, fines etc to be imposed on participants in acts of major Sharia crime (acts classified as crime by Sharia) such as murder, theft, adultery, *riba*, drinking etc.

In Sharia, major acts of crime that are seen to have effects in the public sphere outside the theological sphere, i.e. impacting the public good or public order (which includes public image of

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<sup>1</sup> Definition of what constitute as interest, the correct translation for *riba* i.e. usury, interest, its principles and types etc., is a separate topic and is outside the scope of discussion of this piece. Such issues have been extensively covered elsewhere in various literatures. An excellent source is “An Introduction to Islamic Finance” by Muhammad Taqi Usmani, published by Kluwer Law International, 2002 (various/similar versions are widely available online). In the simplest form, in modern day context it generally means interests paid on loan or monetary instruments on top of the principle. For simplicity and inclusiveness as well as taking into account of nuances, the original Arabic word ‘*riba*’ has been used more often in this paper.

<sup>2</sup> “...and Allah has permitted trade and forbidden interest” Quran 2:275

Islamic faith from Sharia's perspective) or affecting/causing damage or injury to the rights or welfare of fellow citizens, have been proscribed with set punishments/and or fines/set penalties. Those punishments can then be categorised as being both specific and exclusively belonging to the rights of God i.e. being the sole prerogative of Allah to set the type of punishment and limits, therefore no judicial or theological discretion or waiver can be applied.<sup>3</sup> These type of punishments can be classified as *Hudud*, an Arabic term, literally meaning limit, technically meaning punishment and deterrent for others<sup>4</sup>, therefore enabling to keep such Islamically defined criminal actions off limits.

The other type of Sharia offenses, financial or otherwise that do not carry specific punishment other than being left to the discretion of the authorities of the day is known as *Ta'zir*, (literally meaning chastisement, reprimand etc) which would be touched upon later.

In the case of riba (or usury/interest as it is often known), as far as Sharia is concerned, there are two consequential aspects to it:

A) Faith-wise/spiritual/theological consequences and potential subsequent heresy for outright denial of unlawfulness of riba or through deliberate repeated engagement by taking it as lawful in violation of the core Quranic Riba statement, hence potentially placing it in the second category below – potentially leading to face specified Islamic punishment for heresy, (which would be discussed later). There is a unanimous consensus belief about the gravity of sin and unlawfulness of riba with dire theological/spiritual consequences of committing riba-related offences. The extent of the spiritual effect of offences such as engaging in transactions involving interest/usury at the minimum and making income from interest at the heart of the trade, could result in inflicting a lasting damage to one's faith value and Muslim creed, hence affecting the overall sound state and mind of being a Muslim. *'...Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest.'*<sup>5</sup>

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<sup>3</sup> Ibn Abidin, *Rad al-Mubtar ala dur al-mukhtar*, vol 4 (2<sup>nd</sup> edn, Dar al-Fikr 1992) 3

<sup>4</sup> Ibid

<sup>5</sup> Quran, 2:275 (Saheeh International tr, Al-Muntada Al-Islami, 2004)

B) The second Sharia aspect to *riba*, is the public legal consequences outside the spiritual/theological sphere, i.e. punishments, fines etc that are applicable in practical/public legal sphere, handed out by the courts/authorities.

Focusing on the second aspect (point B), the Islamic legal consequences in terms of issuing punishment or penalty for strict *riba*-related offenses, falls in to the category of those type of punishments (including penalty and fines) that has been left to the discretion of the authorities of the day (e.g. judges, regulators etc) to determine or set the level of punishments or fines through legislation/codification or judicial judgments, as circumstances deems fit. For such offenses where Sharia did not impose specific punishment is termed in Islamic law as *ta'zir* - where determining the type of punishment or imposing fines has been delegated to the judge or responsible authority<sup>6</sup>. This type of non-specified punishment<sup>7</sup> for major Islamic offences stands alongside the first type of prescribed punishment, *Hudud* as mentioned earlier - whose punishment has categorically been specified with clearly defined terms and limits including any financial penalties in the Quran. That is not to say the severity of the *ta'zir* related crime whose punishment is non-specific and discretionary is necessarily lesser in terms of both theological and legal consequences than those of *Hudud* related crimes that comes with fixed punishments such as adultery, murder, drinking, theft, chastity-damaging libel etc. It is not, as *riba* is included among the seven most major destructive crimes by Prophet Muhammad.<sup>8</sup> Therefore major offences that comes with *ta'zir*, e.g. *riba*, just falls into the category of Sharia crimes (religious offences in terms of both theological and practical legal consequences) where the specific terms of the punishment has been deliberately left out, hence providing a much wider remit for the judicial authorities of the day to exercise their discretion, depending on the situation and circumstances, with the maximum level of punishment being the death penalty/execution (in the very unlikely scenario which rarely has ever been used). However, that maximum level/remit of discretionary judicial punishment is the only punishment or consequences which has been referred to in the Quran (but only in terms of setting the widest remit for exercising judicial discretion as opposed to being specific similar to *hudud*). That maximum level of discretionary

<sup>6</sup> Ibn Abidin (n3) 62

Also al-Kasani (d. 586 AH) explains more elaborately in *Badai' al-Sanai' Fi Tartib al-Sharai*, vol 7, (2<sup>nd</sup> edn, Dar al-Kutub al-Ilmiyah 1986) 63

<sup>7</sup> I used the word punishment for the purpose of simplicity, although, given the nuances, the main objective of the non-specified punishments i.e. *ta'zir* is not to punish but to reprimand (known as *ta'dib*) as explained by al-Kasani in his above magnum opus, vol 7, pp 64

<sup>8</sup> Muhammad b. Isma'il al-Bukhari, *Sabih al-Bukhari*, vol 4 (Ra'id ibn Abi Alfah ed, 3<sup>rd</sup> edn, Dar al-Hadara li al-Nashr wa al-Tawzi' 2015) para 2766

punishment is the furthest end of the remit, which is the death penalty/execution as stated in the Quran ".....and so if you do not (refrain from or leave usury and continue to engage in such) then be warned of the war from Allah and his Messenger"<sup>9</sup>. Such maximum level of punishment is applicable to repeated offenders deliberately or recklessly justifying or self-legitimising interest and usury related activities through unlawful practices, a position taken by mainstream traditionalists and Quranic exegesis experts such as Ibn Kathir<sup>10</sup>, al-Tabari<sup>11</sup>, and al-Jassas, though the latter sets out a much higher benchmark to the extent of very difficult to achieve - only to be taken when public socio-economic order and security are at significant risk<sup>12</sup> - an act seen to be similar to heresy or treason in Sharia, the latter two seen to be placing the public order/public good at risk, which is seen as destabilising factor, as far as Sharia is concerned. Such punishment/sentences have rarely been handed out in Islamic history and if so, usually when acts and conducts evolves into phase of heresy/blasphemy issue – again this rarely has been exercised by the courts in both classical Umayyad and Abbasid era and their successor Ottoman era as well as modern successor Muslim nation states.

In modern day Islamic/Sharia laws of Muslims states such as Saudi Arabia and states in the wider Middle East, Asia, and Africa, as far as the interest/riba related offences are concerned, the non-specific punishments i.e. ta'zir have not been systematically or comprehensively legislated/not codified fully<sup>13</sup>. Instead it has been partially codified or in some cases been left to the courts or Sharia supervised financial regulators to decide upon the punishments and fines through regulations or decrees or judgements as per circumstances. Examples of regulations on penalties include such as those of Saudi Arabia, depending on the type of financial crime arising from interest-based transactions, notably using sophisticated tools to circumvent the rules amounting to technical abuse, one can face imprisonment for period ranging between 3 – 12 months<sup>14</sup>. In practice as per qadaya (case laws/Sharia court judgements) in countries such as Saudi Arabia, UAE, Kuwait etc, the court or regulator's practice generally prefer to order refund of the interests/and or impose fines/financial penalties or imprisonment (less frequent) or both

<sup>9</sup> Quran, 2:279

<sup>10</sup> Abul Fida Ismail b. Umar b. Kathir, *Tafsir Ibn Kathir*, vol 1 (Dar al-Kutub al-Ilmiyah, 1419 AH) 553

<sup>11</sup> Muhammad b. Jarir al-Tabari, *Tafsir al-Tabari*, vol 2, (Bashar Ma'ruf and Isam al-Harastani eds, Muassasah al-Risalah 1994) 176

<sup>12</sup> Ahmad b. Ali Abu Bakr al-Razi Al-Jassas, *Ahkam al-Quran*, vol 2 (Dar al-Ihya' al-Turath al-Arabi, 2000) 192

<sup>13</sup> Joseph E. Lowry 'Law' in Dwight Fletcher Reynolds (ed), *The Cambridge Companion to Modern Arab Culture* (Cambridge University Press, 2015) 89

<sup>14</sup> Commercial Court Law 1350 AH (Art 149) (KSA)

in cases where one is found guilty of financial irregularities (and that includes offenses such as dealing with interest), in accordance with the legislation/qanun/executive orders or as per regulations set out by the Sharia-supervised or Sharia-compliant financial regulatory authorities (similar to UK's FCA, US' SEC, Germany's BaFin, albeit these regulators are based on statutory secular laws or civil codes driven solely by political or economic factors).<sup>15</sup>

Summing up, riba or interest related offences has been designated by Sharia as a major crime but whose punishment in specific terms has been *left out* of the Quranic text (other than setting the maximum remit of discretionary punishment penalty being execution which is rarely ever applied and if so, usually in the case of acts and conducts becoming intertwined with heresy/blasphemy issue or becomes a national security issue by potentially dislodging the Islamic economic order and by extension placing national security at risk). Instead, for Sharia crimes such as riba, the discretionary/judicial punishment has been delegated to the authorities/judiciary/courts of the day to determine the level and type of sentences such as imprisonment, fines/financial penalties or combination of both, all of which are defined as ta'zir, in accordance with the situation and circumstances as per guidelines or regulations set out by the government or judicial authority of the day with the Sharia framework.

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<sup>15</sup> The regulators/authorities in discussion are led by Sharia principles or are Sharia supervised where economic and political factors are not the main determining guiding principles (though it may often coincide with Sharia norms or included in conformity).