Judgment of Federal Shariat Court

Background, Introduction and Recommendations

Issue Brief

As per Article 38(f) of the Constitution of Pakistan, it is the responsibility of the state of Pakistan to expedite elimination of "riba", i.e. "interest/usury", as soon as possible. Upon creation of the Federal Shariat Court (FSC) in 1980 via an SRO (Statutory Regulatory Ordinance), economic laws were excluded from its ambit for a period of ten years. A soon as that period expired, the FSC was approached for ending the ongoing interest-based system in the country. The honorable court declared usury to be forbidden and contrary to Islamic teachings and the aforesaid constitutional requirement.[1]

The Shariat Appellate Bench of the Supreme Court of Pakistan upheld that order in 1999.[2] However, in 2002, in its verdict pertaining to a review petition of this order, the matter was remanded back to FSC.[3] The judgment in this case was announced on April 28, 2022 (26th Ramadan 1443), which was hailed as extremely important by all sections of the country. Institute of Policy Studies organized a consultative meeting on April 29 to deliberate upon this important judgment, its possible effects and future course of action.[4] A brief introduction of the judgment and recommendations presented in the meeting are given below as brief points:

- On April 28, 2022, the FSC announced judgment regarding the riba (interest) case which was pending for the past two decades. The first 47 pages of the 318-page judgment consist of information pertaining to all the 86 relevant cases that have been consolidated into this single case. Additionally, the document also contains details of petitioners, their lawyers and amici curiae.
- Details of court hearings are given on page 48. According to these details, case hearings were conducted on 58 different dates. The first hearing took place on June 3, 2013, whilst the last one was conducted on April 12, 2022.
- The three-member bench comprised Justice Muhammad Noor Meskanzai (Chief Justice), Justice Dr. Syed Muhammad Anwer and Justice Khadim Hussain. The judgment has been authored by Justice Dr. Syed Muhammad Anwer whereas Chief Justice Noor Meskanzai has penned an additional note.

[1] PLD 1992 FSC 1
[2] PLD 2000 SC 225
[3] PLD 2002 SC 801
[4] Participants in the consultation included former Secretary Finance and former Special Assistant to the Prime Minister on Economic Affairs, Dr. Waqar Masood, Dr. Salman Syed Ali of Islamic Development Bank, Dr. Muhammad Ayub of Riphah International University, Joint Chief Economist of the Planning Commission, Zafar-ul-Hassan Almas, former Vice President of International Islamic University, Dr. Tahir Mansoori, Dean of Social Sciences at Riphah International University, Dr. Atiqul Zafar Khan, Executive Vice President of Meezan Bank, Farhan-ul-Haq Usmani, Chief Executive Officer of Pak-Qatar Family Takaful, Azeem Pirani, leader of Tanzeem Islami Pakistan, Hafiz Dr. Atif Waheed, members of Jamaat-e-Islami's team of lawyers in the case against riba, Saifullah Gondal Advocate, Dr. Anwar Shah of Department of Economics, Quaid-i-Azam University, Dr. Ghazala Ghalib of International Islamic University, Amina Sohail, legal expert, Qanat Khalil, chartered accountant, financial law expert Imran Shafiq Advocate, Ahsan Shafiq of an economic affairs organization in Turkey, and others. The consultative meeting was chaired by Khalid Rahman, Chairman, Institute of Policy Studies.

A brief history of the case is as follows:

- The FSC announced its verdict regarding abolishment of interest on November 14, 1991. Afterwards, the Shariat Appellate Bench of the Supreme Court upheld the judgment on December 23, 1999.
- Verdict of FSC in November 1991 and subsequent judgment of Shariat Bench in December 1999 clearly mentioned that riba is impermissible in all its forms. Additionally, those eight laws repugnant to the Islamic injunctions were identified and were ordered to be eliminated by March 31, 2000 (paragraph 2 of the latest verdict).
- Furthermore, a list of 17 laws pertaining to interest was also provided with recommendation for abolishment that fell under the definition of riba as per Quranic description (paragraph 3).
- Along with that, the Shariat Appellate Bench, in the light of three holistic points of the 1999 verdict, explained that a loan in any shape/form, if it exceeds the original amount in an agreement, will fall under the definition of riba and hence is impermissible (paragraph 4). Moreover, in conformity with Pakistan's Constitution, the government must take all measures that are imperative to render the economy interest-free. In this regard, some recommendations were also presented to the government for improvement of the economic system and creation of some new rules and institutions (paragraphs 5 and 6) so that the financial system (including international dealings and affairs with the State Bank of Pakistan [SBP]) can be aligned with Shariah.
- Meanwhile, in 2000 an appeal of reconsideration of the verdict was filed in the Shariat Appellate Bench by UBL on which the Shariat Appellate Bench announced its judgment on June 24, 2002, in which along with deeming the previous verdict null and void, the FSC was advised to reconsider the case afresh and to provide judgment (redetermination) in the light of some identified and concomitant issues (paragraph 8).

Constituents of Judgment

- After giving the background of the case, the FSC has rightfully expressed concern that the case had been facing repeated delays over the past two decades. However, overlooking the reasons for this delay, the court has identified a critical and positive angle, e.g. evolution/improvement in the financial and banking system during those 20 years has rendered most of the questions and points trivial, in fact unrelated to a significant extent, which were raised whilst petitioning against the 1991 judgment and 1999 verdict of Shariat Appellate Bench. On the other hand, guidance provided in decisions of the Shariat Court and Shariat Appellate Bench have practically helped in transformation of the financial system to an interest-free base. Therefore, as compared to 2000, Islamic banking is a reality today and even beyond Pakistan and the Muslim world, its trials are commonplace in non-Muslim world. The SBP itself is playing a crucial role regarding Islamic banking under the guidance of Shariah Board (paragraph 9).
- Along with that, the current judgment, while commenting on the two previous verdicts, termed them as very valuable academic and legal document that were not only appreciated in Pakistan but also abroad. Consequently, this provided opportunities of further progress in academic discourse and its application in this field. (paragraph 9)
- In this holistic backdrop, it has been elucidated in the judgment that a majority of the questions raised in the petition for reconsideration consists of the points and arguments that were raised earlier during the proceedings of the cases in 1991 and 1999 or have been presented once again with minor differences in language and expression. A majority of them have been debated extensively in the previous verdicts. Examples of six such questions have been given in the judgment as well (paragraph 9).
- It has been made clear in the verdict that apart from a few individual opinions, there has been general consensus among the Muslim Ummah regarding injunctions of the Qur'an and Sunnah. And this consensus is not limited to any specific period or area. In this regard, while giving the example of an ayat of the Qur'an (Al Imran: 130) it was mentioned that over 100 tafaseer were scrutinized in context of this single point (paragraph 10). The verdict also constitutes a list of those 100 tafaseer from different time periods, languages, areas, and various schools of thought.

- The second aspect of criticism and questions comprised doubts and possibilities/repercussions such as the proposed interest-free Islamic banking system is impractical in nature, its implementation will cause the downfall of the entire banking system, etc. The verdict states that advancements in Islamic banking and financial sector have rendered these concerns obsolete (paragraph 10).

- The third facet of questions consisted of the criticisms rooted in the opinions of those scholars who can be considered exceptions to the collective thought of the Ummah. On the other hand, the petitioners (in 1991 and 1999) had not produced original texts of those scholars in the court, rather they presented those opinions via secondary sources, which in most instances are based on personal opinions of the writer rather than those of the referred/quoted scholar. The court elucidated that despite orders to produce original texts in the court, the same was not done this time as well (paragraph 11). Additionally, the court remarked that importance/relevance of those personal opinions has been greatly reduced, even eliminated, by the practical experimentations of Islamic banking.

- There were some questions which although were raised by the Shariat Appellate Bench while referring the case for redetermination, however, discussion on those points was deemed inconsequential by the petitioners (paragraph 11).

- The fifth type of queries were those which were raised for the first time and on which the court has deliberated in great detail. Whereas the sixth type of questions was the one in which the Shariat Appellate Bench, in its order for review, had directed for the names of some scholars to be put forward for their opinions. Generally, they are those scholars whose opinions are an exception. No particular texts of those scholars were identified by the petitioners. As per the judgment, the petitioners were again provided an opportunity to produce proper documents (original text) with their references. However, no such document has been submitted to the court. Conversely, the National Bank of Pakistan, in its response, elucidated its progress on Islamic banking which was an indication that there has been a significant transformation in the bank's former stance.

- However, in response to the same question, the State Bank of Pakistan provided some details with reference to seven different scholars although most of them were also not based on original sources. (Some interesting examples have been mentioned in the judgment's paragraph in this regard). In this regard, whilst commenting on the SBP, the court also mentioned that the SBP was refuting its own stance of its practical role in Islamic banking through these arguments (paragraph 14).

- It has been mentioned in the decision that despite that, the court has scrutinized the opinions of those scholars on its own accord. The court has identified them in the shape of four points and has encompassed those points in its judgment (paragraph 12).

- In paragraph 15, the court has provided a list of more than 40 lawmakers, scholars, experts and professionals and have thanked those who have aided in the judicial proceedings in any form.

Identification of Imperative Questions

- After a detailed account of the background and subsequent analysis, the court mentioned those 12 questions that were set by the court for itself for the resolution of the issue at hand. These 12 questions are mentioned on page numbers 80 to 82 of the judgment (paragraph 16).
    - The first question pertains to jurisdiction of the Federal Shariat Court.
    - Next four questions constitute the argumentation regarding definition of riba and subsequent deliberation in its light whether riba is only related to compound interest, loan at exorbitant interest rates and loans acquired solely for personal reasons.
    - The sixth and seventh questions are about practicality of Islamic banking model in contemporary times and assessment of its present operations implemented across the world.
    - Question eight discusses the status of commercial loans and question nine debates issues of inflation and indexation.
    - Question ten covers arguments pertaining to any difference between paying interest on

bank loans and banks' payment of interest to depositors.

  - Question 11 pertains to interest liabilities of Pakistan under international agreements and ways to settle those outstanding commitments post-judgment.

  - Question 12 contends whether a time period should be fixed for implementation of the judgment (paragraph 16).

- All the aforementioned questions have been argued in detail covering 178 pages (paragraphs 17-136; page numbers 82-260). Critical points have been clarified through discussion on each of the questions from both the academic and legal perspective.

- Paragraph 155 of the judgment identifies the objectives and complete ambit of Islam and its economic system full benefit and blessings of which cannot be realized without taking the necessary measures. This serves as a reminder that abolishment of interest from banking is merely one step in this direction. To adopt the Islamic economic system in its entirety, several other measures in different spheres are necessary.

- Subsequent paragraphs contain other points of judgment. These paragraphs cover the following topics.

  - 156 (Riba being repugnant to the Qur'an and Sunnah)

  - 157 (Interest on government loans is also "riba" and is haram)

  - 159 (It should be expunged from all the laws which mention "interest")

  - 161 (Individual ruling on more than 20 laws which were part of appeals under consideration or were discussed under special status. It has been advised to completely change some of them and to partially alter others)

- In paragraph 163, a timeframe of five years has been decided for complete elimination of interest from the economy and December 31, 2027, has been fixed in this regard.

- In paragraph 164, in the light of Article 29(3) of the Constitution, hope has been expressed that every year the federal government will present a report in the National Assembly and Senate delineating progress towards the complete elimination of riba.

- The Chief Justice has given his in-depth views about the ambit of the Federal Shariat Court in his remarks in the last about 20 pages.

Agenda for Future Action

- The judgment of the Federal Shariat Court has rightly been declared as historic. It has been particularly lauded in the religious quarters irrespective of sect. Taking further forward the previous verdicts, in this judgment the definition of riba and its status has been specified in a clear-cut manner through academic and legal arguments. The court has done its job. Now working out details of the proposed system and a strategy for its implementation are the responsibility of other people, institutions, and above all, the governments.

- Keeping in view the domestic and global political and economic scenario, the concern holds water that beneficiaries of the present economic system would not stay silent. They will resort to various tactics to make the agreed issues controversial once again in order to delay the practical steps. Protection of the judgment and practical steps in this regard are major challenges.

- It is necessary to work in diverse spheres to meet these challenges. One important area pertains to law. Consideration is needed as to which legal points can be utilized for efforts to delay or at least muddle the whole process. On the other hand, in the wake of the present ruling, can the formulation of such a comprehensive law be considered through which future governments can be bound. A similar topic is to combine different laws on related themes into comprehensive laws.

- In the legal sphere, another task is to critically scrutinize different angles of the verdict which might be liable to ambiguity and frailty; and if there are such aspects, how to improve them legally without affecting the current progress. On the other hand, to expedite the process of implementation of the judgment, it is essential to

identify necessary improvement in present laws and regulatory mechanism and to make efforts in this regard. This task necessitates a proactive approach and will require inevitable collaboration of active experts in legal as well as economic spheres.

- It is noteworthy that during hearing of the case, resonance of opinion was observed among more or less all schools of thought. It is important not only to maintain this harmony but also to carry it forward on the basis of the matter under discussion. In the present atmosphere of political polarization, this task is even more vital so that post-judgment strategy and concomitant actions don't fall victim to vacillations of alliance/animosity for/against political groups. Likewise, associating the success of this verdict to the success of any single group must be avoided.

- The reality has to be accepted that generally there is a dearth of literacy regarding Islamic financial system. On the other hand, the responsibilities and tasks of different government institutions have to be specified. This situation warrants the need for a comprehensive awareness and advocacy campaign. All sections of the populace, especially the business communities, are important in this regard, however policymaking institutions and think tanks have a unique importance. Additionally, institutions and individuals associated with the financial sector will have to be targeted.

- It should be understood that even in a small institution a management change warrants a huge exercise. To take the entire established economic system in the country through this exercise is indeed a major task. In this context, the matter linked to awareness and advocacy is orientation and training of related individuals and institutions. Without this, the ability to change any established ongoing system cannot be achieved.

- Any movement for awareness and advocacy has the objective to sustain positive pressure on the government along with providing relevant support because the final stage of any decision (action or inaction) requires strong political will at the government level. Strong political will is not possible without public pressure and agreement of experts.

- The progress so far on experimentation linked to Islamic banking is commendable, however it must be recognized that there are also many reservations about it. Analysis of those reservations will require cooperation of experts in tandem with extraordinary efforts in the academic and research arena. New products have to be introduced and this process mustn't be limited to the general domain of banking but should also expand to other sectors of the economy such as agriculture, micro-finance, industry, trade, etc. In this regard, it is necessary to learn from experiments within the country (such as Akhuwat) and abroad (in Malaysia and other countries).

- It needs to be reiterated again and again that elimination of interest and that too from within the banking sector is only a small portion of Islamic economic system. This aspect should also be kept in mind that banking, on a fundamental basis, targets only profit maximization. Hence, the welfare-oriented objectives associated with Islamic economic system are neither its primary objective nor probably can be. In this backdrop where it is imperative to ensure effective implementation of the court's ruling, it is also necessary to take steps in other spheres to achieve objectives and requirements of complete Islamic economic system. The quintessential among these is effective implementation of the system of zakat for which there are repeated and direct instructions in the Holy Qur'an. Other injunctions about social security and the rationale for their implementation in social life demands significant work in academia, research, legal and political arenas. Paragraph 155 of the judgment signifies this aspect.

- Moving further, it has to be reiterated that Islamic economic system can't be established in isolation. This economic system is a part of the collective system of Islam which is intertwined with Islam's legal, judicial, educational, political policies along with social and moral behaviors. As long as there is absence of reformation in all those aspects, actions taken in the economic sphere won't be fruitful in their entirety. An aspect closely associated with it is governance. The best of laws and policies bear fruit only if implemented in their true spirit. In this regard, the national situation is not exemplary by any means. The dilapidation of societal moral fabric is both a sign and a cause of

this situation. Governments, political leadership, reformative and religious organizations and intellectuals along with every section of the society will have to play its role.

- Despite the aforementioned issues, the Shariat Court's judgment on interest has provided a new space and opportunity with clarity. Such space keeps expanding spontaneously through pragmatic actions taken in the true spirit. It will be necessary to move forward with the same passion.
- As far as transformation of banking into interest-free system within five years is concerned as per the verdict, Faysal Bank is a prime example which has made its entire global operations free of interest in the same time frame. As a first step in this regard, a ban should be imposed on opening of any new bank branch that is based on conventional banking. Besides, annual and semi-annual targets should be set for conversion of the present branches to non-interest base.
- Parliament has the constitutional right to oversee the government's progress on different issues. In fact, it is part of its most important responsibilities. In this context, it is the duty of Parliament and all its members to ensure annual report on the performance of the government and concomitant discussion in accordance with this decision regarding the elimination of interest.

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