

Stipulation of Excess in Understanding and Misunderstanding *Riba*: The Al-Jassas Link

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Abstract

An essential condition in the orthodox definition of *riba* is stipulated excess in a loan or debt. This essential condition is traced to al-Jassas. Understanding this issue of stipulated excess is critical to understanding *riba*. In this paper the stipulated excess in connection with al-Jassas as well as its implication for defining *riba* and prohibition of interest is examined. A critical examination of the subject shows that pre-Jassas discourse about *riba* did not include stipulated excess as an essential condition and al-Jassas' changing of the conditions in defining *riba* is not corroborated by the textual evidences he used.

Keywords

Riba, Interest, Usury, Al-Jassas, Islamic finance, Islamic banking, Islamic economics, Qarḍ, Qarḍ al-Ḥasanah

Introduction

Islamic banking and finance movement is based on the traditional position that interest is *riba* and vice versa. As this paper pertains to challenges in defining *riba*, the original Arabic term will be used throughout this paper. Since *riba* is categorically prohibited in the Qur'an, it is argued therefore that interest is prohibited. Gradually, the prohibition of interest has evolved into an orthodox position, even though there is no *ijma* (consensus) on this. One of the essential conditions in the orthodox definition of *riba* is stipulated excess in a loan or debt. That this is an essential condition of defining *riba* is traced to Abu Bakr al-Jassas (d. 370 AD/981 AH). Understanding this issue of stipulated excess is critical to understanding *riba*. In this paper, the issue of stipulated excess in connection with al-Jassas as well as its implication for defining *riba* and prohibition of interest

is examined. Pertinent research here shows that the claim of stipulation of excess as an essential condition for defining and understanding *riba* is tenuous at best.

***Riba* in the Qur'an: Pre-Jassas Understanding**

Islam's position regarding justice is unequivocal and universal. It sets the highest standard in this regard:

O ye who believe! Stand out firmly for justice, as witnesses to Allah, *even as against yourselves*, or your parents, or your kin, and *whether it be (against) rich or poor*: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. [4/an-Nisa/135]¹

While the Qur'anic message of justice and egalitarianism is categorically on the side of protecting the weak and vulnerable, the entire notion of justice in this regard is supposed to be blind, whether dealing with the rich or the poor. As part of this quest for justice, Islam is against all kinds of exploitation of humans by other humans, whether at the level of individual, group or institution. Therefore, anything, including Islamic economics, finance or banking, that takes exploitation as a serious and fundamental concern, cannot be belittled or ignored. In case of the prohibition of *riba*, this perspective of justice is essential.

According to the Qur'an,

O Believers! Do not consume *riba*, doubling and redoubling, and fear God so that you may prosper. [3/ale Imran/130]

So, what kind of exploitative conditions or transactions were in vogue during the time of Qur'anic revelations specific to *riba*? Drawing upon Tabari, Abdullah Saeed enunciates:

Explaining the meaning of the term used in verse 3:130, Tabari (d.310 AH), the well-known commentator on the Qur'an, says:

¹ Translation of the Qur'anic verses is from A. Y. Ali, *The Holy Qur'an: Text, Translation and Commentary* (New York, 1988), unless otherwise noted.

Do not consume *riba* after having professed Islam as you have been consuming it before Islam. The way pre-Islamic² Arabs used to consume *riba* was that one of them would have a debt repayable on a specific date. When that date came the creditor would demand repayment from the debtor. The latter would say, 'Defer the repayment of my debt; I will add to your wealth.' This is the *riba* which was doubled and redoubled.³

The way in which *riba* was doubled and redoubled in the pre-Islamic period is expressed by the son of Zayd b. Aslam⁴ (d.136 AH) as follows:

Riba in the pre-Islamic period consisted of the doubling and redoubling [of money or commodities], and in the age [of the cattle]. At maturity, the creditor would say to the debtor, 'Will you pay me, or increase [the debt]?' If the debtor had anything, he would pay. Otherwise, the age of the cattle [to be repaid] would be increased... If the debt was money or a commodity, the debt would be doubled to be paid in one year, and even then, if the debtor could not pay, it would be doubled again; one hundred in one year would become two hundred. If that was not paid, the debt would increase to four hundred. Each year the debt would be doubled.⁵

The injustice and exploitation involved in such *riba*-based transactions are obvious, and hardly require any further explanation or rationalization. This type of *riba* is known as *riba al-jāhiliyyah*, and according to some

² The expression 'pre-Islamic' appears in this essay only in quotations from others. When various authors use 'pre-Islamic', they basically mean before the period when Muhammad became a prophet. Thus, it could be described as pre-Muhammad. From the Islamic viewpoint, there is no 'pre-Islamic' period in human history, as Islam began with Adam and Eve and continued through the prophets all the way to the last Prophet and Messenger, Muhammad—as illustrated by the following verse:

The same religion (deen) has He established for you as that which He enjoined on Noah—the which We have sent by inspiration to thee—and that which We enjoined on Abraham, Moses, and Jesus: Namely, that you should remain steadfast in religion, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which you call them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him). [42/ash-Shura/13]

The only reason it is mentioned here is because it appears in some quotes and such usage also inadvertently lends credence to the position of those who suggest or hold that Islam began with Prophet Muhammad and use Islam and Muhammadanism interchangeably.

³ Tabari quoted in A. Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation* (New York, 1996), 22. Hereinafter A. Saeed.

⁴ Ibn Hajar quoted in A. Saeed, 22.

⁵ Tabari quoted in A. Saeed, 22.

Islamic scholars, such as Imam Ahmad Ibn Hanbal (d. 241/855), only such *riba* is undoubtedly unlawful from the Islamic viewpoint.

The Qur'an vehemently condemns *riba*, but provides little explanation of what that term means, beyond contrasting *riba* and charity and mentioning exorbitant 'doubling'. Commentators describe a pre-Islamic practice of extending delay to debtors in return for an increase in the principal (*riba al-jāhiliyyah*). Since this practice is recorded as existing at the time of the revelation, it is one certain instance of what the Qur'an prohibits. Hence Ibn Hanbal, founder of the Hanbali School, declared that this practice—'pay or increase'—is the only form of *riba* the prohibition of which is beyond any doubt.⁶

Subsequently, *riba* was categorized as either *riba al-nasi'ah* (related to deferred payments) or *riba al-fadl* (related to exchange of commodities), and the latter was added primarily on the basis of hadith (prophetic narrations). Gradually the scope of *riba* in Islamic jurisprudence was extended in modern times to include all forms of interest (high or low rate, nominal or real, etc.) and *riba al-fadl*, based on *qiyas* (analogical deductions), was extended to more than six commodities.⁷

However, in earlier pre-Jassas sources, all the discussions about *riba* consistently indicate that there was no stipulated excess. Imam Malik (d. 179 AH) in his *Muwatta* uses the same definition.

Malik related to me that Zayd ibn Aslam said, '*Riba* in the *Jahiliyya* was that a man would give a loan to a man for a set term. When the term was due, he would say, "Will you pay it off or increase me?" If the man paid, he took it. If not, he increased him in his debt and lengthened the term for him'.⁸

Imam Shafi'i (d. 204 AH) echoes Imam Malik in describing *riba* as experienced earlier.

And *al-riba* (may be found) when a man is indebted to another, and the debt is due, and [the second: the lender] says [to the first: the debtor]: Would you pay the debt

⁶ Ibn Qayyim al Jawziyya quoted in F. Vogel and S. Hayes, *Islamic Law and Finance: Religion, Risk and Return* (The Hague, 1998), 72-73. Hereinafter F. Vogel and S. Hayes.

⁷ There is a pertinent hadith reported in Musnad Ahmad Vol. 5, #21876, that is quite interesting. 'Usama Ibn Zayd narrated that the Prophet said: "There is no *riba* except in loans." Or said, "in *nasiyah* (deferment)." [*La riba illa fi al-dayn; aw qala: fi nasiyah*]. If *riba* is only in loans or debts, then it can be argued that *riba* cannot be in any kind of spot transactions, as indicated by those hadith pertaining to *riba al-fadl*.

⁸ Imam Malik, *Muwatta*, #1361.

(*dayn*) or pay [in addition] *riba*? Payment would be postponed, [in the latter event,] but the debt would grow larger.⁹

That the same view prevailed in the reports of al-Tabari almost a century after al-Shafi'i has already been shown above. Almost two centuries later, al-Baghawi (d. 510) repeats the same understanding in his Qur'anic commentary on verse 277 of al-Baqarah as he narrates a tradition from Ikrimah (d. 107 AH) and Ata (d. 117 AH),¹⁰ which offers the same definition in the sense of which *riba* was used:

Regarding the word of God: 'O believers! Fear God and forgo what remains of *al-riba*', 'Ata and 'Ikrimah said that this verse revealed in connection with [the dealings] of al-'Abbas ibn 'Abd al-Muttalib and Uthman bin 'Affan, may Allah be pleased with them. These persons used to make advance deals about dates in advance before the ripening of the crop [i.e., they used to buy dates in advance with cash or with dates]. After the ripening of dates the owner would say that if you two exercise your right, nothing would be left for the sustenance of my family; would you agree to take only half of the agreed quantity and leave the remaining half which I will pay in double quantity next season. So they agreed to this. When the appointed time came, they demanded the increase. When the Prophet heard about it, he prohibited it and the said verse was revealed.¹¹

Saeed further refers to Zamakhshari (d. 549 AH)¹² and Baydawi (d. 691 AH) in the same way.¹³ He also mentions Ibn al-Arabi (d. 543 AH) in the same vein.

Riba was well known among the Arabs. A person would sell something on a deferred payment basis. Upon maturity the creditor would say [to the debtor]: 'Will you pay [as agreed] or will you add an amount to the [original] debt?'¹⁴

⁹ Imam Al-Shafi'i, *Al-Shafi'i's Risala: Treatise on the Foundations of Islamic Jurisprudence*, tr. M. Khadduri (2nd edn. Cambridge, UK, 1987), 191. By the time of Imam Shafi'i, based on certain practices, there have already been other transactions that were identified as *rib-awi* and he argues in favour of the broadened scope of prohibition. Shafi'i mentions this on the same page. However, in describing *riba al-jahiliyyah*, he echoes Malik, and there is no mention of any stipulated excess.

¹⁰ These dates are taken from A. Shafaat, *Riba in the Qur'an: A Detailed Examination of Relevant Verses* (2005). Hereinafter A. Shafaat (2005a).

¹¹ Tafsir al-Baghawi quoted in I. Suhail, *What is Riba?* (New Delhi, 1999), 97. The translation, with slight modification, is also taken from Suhail.

¹² A. Saeed, 22.

¹³ A. Saeed, 22.

¹⁴ Ibn al-Arabi quoted in A. Saeed, 23.

Jalaluddin Suyuti (d. 911 AH), one of the most prominent commentators of the Qur'an, almost four centuries after al-Baghawi, repeats the same understanding of *riba al-jāhiliyyah*. On the authority of Faryab, Suyuti comments:

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.¹⁵

In summary, Imam Malik (d. 179 AH), Imam Shafi'i (d. 204 AH), Ibn Hanbal (d. 241 AH), Tabari (d. 310 AH), al-Baghawi (d. 510 AH), Ibn al-Arabi (d. 543 AH), Zamakhshari (d. 549 AH), al-Baydawi (d. 691 AH), and Jalaluddin Suyuti (d. 911 AH), have all described *riba al-jāhiliyyah* in the same manner and it is consistently without any 'stipulated' excess.

Change of Definition since Al-Jassas

How did this 'stipulated excess' become part of the definition of *riba*? Well, something seems to have changed altogether in understanding *riba al-jāhiliyyah*, beginning with Abu Bakr al-Jassas (d. 370 AH). He was a prominent Hanafi jurist and the author of *Ahkam al-Qur'an*, a well-known Qur'anic exegesis with a juristic/legalistic bent. His *riba*-related commentary in *Ahkam al-Qur'an* is now available online in English translation by a reputed Pakistani jurist, Imran Ahsan Khan Nyazee.¹⁶

Nyazee clarifies the significance of al-Jassas's commentary in his introduction to the translation: [a]lmost all jurists have quoted al-Jassas to say that the Arabs in the early days used to undertake loan transactions with interest.¹⁷ While Qur'anic exegetes may not have referred to al-Jassas, many later jurists have, and in regard to the issue of *riba al-jāhiliyyah*, his commentary has earned a special place. After all, as the very title of al-Jassas' exegesis, *Ahkam al-Qur'an* (Laws of the Qur'an), indicates, his commentary is from a juristic angle. Now that a translation of the relevant part from his commentary is available in English, the readers without any

¹⁵ A. Shafaat (2005a).

¹⁶ The translation, 'Excerpt on *Riba* from *Ahkam al-Qur'an*', is available from <http://www.nyazee.com/islbanks/riba/riba.html>. Opening the document requires a password, which is provided by the author/webmaster. Type in 'nyazee' to open the document.

¹⁷ Ibid.

background in Arabic can consult the document online. Given the importance and relevance of his work, let us take a closer look. As al-Jassas observes:

The *Riba* that the Arabs knew and used to practice was *qard* (loan) of *dirhams* and *dinars* for a period with an excess over what was loaned and upon which they have agreed; they were not aware of the spot sale when it carried an excess in the same species. This (the giving of loan on interest) was well known among them, and because of this Allah said:

That which ye lay out for increase through the property of (other) people will have no increase with Allah; but that which ye lay out for charity seeking the countenance of Allah (will increase); it is these who will get a recompense multiplied. [30/ar-Rum/39]

He thus informed them that this *stipulated excess* [*al-ziyadah al-mashrutah*] was *riba* in the substance of the wealth, because there was no counter-value available from the side of the lender. The Exalted said: 'Devour not usury, doubled and multiplied' [3:130-131] to indicate the manner in which the stipulated excess was doubled and multiplied.¹⁸ [My emphasis.]¹⁹

First, according to al-Jassas: '... *riba* became a technical term in Islamic law and its meaning had to be explained through the Sunnah. In other words, it is *mujmal*—that is, in need of elaboration (*bayan*) from the Sunnah'.²⁰ Quite remarkably, however, after citing verse 2:275 ('...Allah has permitted trade and forbidden *riba*'), al-Jassas immediately jumps to Qur'anic verse 30:39 on the basis of which, even before referring to any sunnah or hadith, he draws a conclusion about 'stipulated excess' (which is to be understood by posterity as interest). What is even more remarkable is that the verse he refers to is from a chapter (al-Rum) that is a Makkan surah (revealed during the Makkan period). It is established that the verse of prohibition of *riba* was either during the very late stage of Qur'anic revelation, or according to some hadiths, these *riba*-related verses of prohibition were the very last of the revealed verses.²¹ Thus, whatever was meant in that verse, it cannot be taken as something implying prohibition. 2:275

¹⁸ A. Al-Jassas, 'Excerpt on Riba from *Abkam al-Qur'an*' (2000), 3-4. Hereinafter A. Al-Jassas.

¹⁹ All emphases are mine, unless otherwise noted.

²⁰ I. Nyazee, introduction to A. Al-Jassas. Hereinafter I. Nyazee.

²¹ For details about the contradictions of these hadith, please refer to M.O. Farooq, "Islamic Law and the Use and Abuse of Hadith," accessed on August 15, 2006, from <<http://muamalat.net/modules/AMS/article.php?storyid=17>>.

categorically prohibits *riba*, but 2:275 and 30:39 neither together nor separately give us any basis to draw conclusions about 'stipulated' excess.

Secondly, the verse in question refers to what 'you lay out' or 'give' as *riba*. Here are some other translations:

Pickthall: '*That which ye give in usury* in order that it may increase on (other) people's property has no increase with Allah; but that, which you give in charity, seeking Allah's Countenance, has increase manifold'.²²

Asad: 'And [remember:] *whatever you may give out in usury* so that it might increase through [other] people's possessions will bring [you] no increase in the sight of God.' [30/ar-Rum/39].²³

The entire discourse about *riba* is focused on the prohibition primarily due to injustice and exploitation by the lenders. This verse addresses the givers (payers) of *riba*; alternatively, it refers to *riba*-based lending or transactions, though the latter meaning is not apparent. Also, the verse in itself says nothing from which any 'stipulated excess' can be identified or inferred. Then, still without referring to any hadith or sunnah, al-Jassas draws the conclusion: 'Their dealings in *riba* were nothing more than the lending (*qard*) of *dirhams* or *dinars* with a stipulated excess for a period'.²⁴

It should be noted that there are those who argue that voluntary extra payment in case of a loan without any 'stipulation' of excess is permissible based on hadith, such as:

Narrated Jabir bin Abdullah: I went to the Prophet while he was in the Mosque. (Mis'ar thinks that Jabir went in the forenoon). After the Prophet told me to pray two Rakat, he repaid me the debt he owed me and *gave me an extra amount*.²⁵

However, if that is so, then it is also contradicted by other hadiths: 'Every loan that attracts a benefit/advantage is *riba*'.²⁶ Without getting into the

²² Pickthall, M. W. *The Meaning of the Glorious Qur'an* (Chicago, US, 1996).

²³ Asad, M. *The Message of the Qur'an* (Watsonville, US, 2003).

²⁴ A. Al-Jassas, 4.

²⁵ Imam al-Bukhari, *Sahih al-Bukhari*, tr. M. M. Khan (n.d., Madinah), Vol. 3, #579.

²⁶ (a) Al-Asqalani, al-Hafiz Ahmad Ibn Hajar quoted in E. H. Khalil, 'An Overview of the Sharia's Prohibition of *Riba*', in A. Thomas, *Interest in Islamic Economics: Understanding Riba* (London, 2006), 67.

(b) A similarly reported narration from Ibn Abidin quoted in Suhail, p. 83.

Suhail adds: 'It seems that it is a saying of a *faqih* because *Radd al-Muhtar* records the following—it is said in the book *Al-Ashbah* [wa'l naza'ir?] that every loan earning a profit is

issue of authenticity of any such narration, advocates of Islamic finance and banking commonly use such hadith.²⁷ If this hadith is valid, there is no room for differentiating between loans with 'stipulated' excess or voluntarily paying extra.²⁸ How can *all* loans accruing a benefit to the lender be *riba*, and gratuitous loans not be?

Thirdly, after drawing the above conclusion, al-Jassas delves into a good number of hadith, without providing citation or source for any of them, a protocol (of not giving citations for hadith, other than the chains) which is quite common for classical exegetes. Thus, classical commentaries often

unlawful).’ [p. 83, n21] Thus, *Radd al-Muhtar*’s author Ibn Abidin (d. 1252 AH) does not attribute it to any hadith, but to another book of *fiqh*. *Al-Ashbah wal naza’ir*, is a book authored by Zayn al-Din Ibn Najim al-Misri al-Hanafi. The book is dated 974 AH. (c) A document by HSBC al-Amanah refers to al-Suyuti for this hadith: [*Al-Jami’ al-Saghir*, V.2, P.94]. Notably, Suyuti is a Qur’anic exegete, not a source or compiler of hadith.

According to Vogel and Hayes, This hadith, not in any of the six chief collections, is related by the most respected scholars on the authority of Companions, not the Prophet. As a Prophetic hadith, scholars reject it as false. See Muhammad b. ‘Ali al-Shawkani (d. 1839), *Nayl al-Awtar* (Cairo, n.d.), 5:262.

²⁷ See Ust Hj Zaharuddin Hj Abd Rahman, ‘A Look At Issue Of Riba’, August 24, 2005, RHB Islamic Bank. <<http://www.rhbislamicbank.com.my/articles/2005/08-24.htm>>; Guidance Financial, Canonical Shariah Contracts applied to Modern Finance, slide 23, <http://www.guidancefinancial.com/pdf/Canonical_Sharia_Contracts_Applied_to_Modern_Finance.ppt>.

Even Mufti Muhammad Taqi Usmani quoted this in The Text of the Historic Judgment on Interest, item #101 [1999; exact date: 14 Ramadan, 1420; http://www.albalagh.net/Islamic_economics/riba_judgement.shtml], while acknowledging that this is a disputed hadith at best [#102-#103].

One of the problems with many Islamic scholars, jurists and exegetes is that when they want to prove something, they do not hesitate to go to the furthest extent to dig up most obscure sources. For example, Usmani cites this hadith not from Bukhari, Muslim, Ibn Majah, an-Nasai, Tirmidhi, Abu Dawood, Musnad Ahmad, Muwatta, Hakim, or even Daraqtuni. He cites from the Musnad of Harith ibn Abi Usamah, attributing the chain through Hadrat Ali. [#99] Usmani acknowledges that many scholars have rejected this hadith as weak. ‘It is true that certain critics of the hadith have not accepted this tradition as authentic, because one of its narrators, Sawwar b. Musab, is held to be unreliable’. [#101] Then, he comes up with another source in Bayhaqi, which he argues to have more acceptability: ‘Every loan which derives a benefit is a kind of *riba*’. Note that this is somewhat different. While Musnad of Harith categorizes it as ‘*riba*’, Bayhaqi’s report says: ‘it is a kind or sort of *riba*’. [...*fa-huwa wajhu min wujuhir riba*]. Of course, even the report in Bayhaqi is solitary [*abad*], a probabilistic [*zanni*] source.

²⁸ This is just another fundamental problem that there are so many hadith that are contradictory and many jurists or commentators have a tendency to be conveniently selective in using hadith as textual evidence.

would include hadith that would not be found in any hadith collections, let alone in *Sihah Sitta*, the six collections that are regarded most highly. Of course, there is no discussion by al-Jassas whatsoever about the authenticity status of the hadiths he quoted. In this context, it is noteworthy that let alone other types of hadith, even *sahih* (authentic) hadith, unless those are *mutawatir* (*mutawatir bil lafz*, to be specific), yields, according to Islamic scholars, only *speculative* or *probabilistic* knowledge.²⁹

Although by the time of al-Jassas' death (370 AH), almost all the notable works of hadith were in circulation—Imam Malik (Muwatta, d. 179 AH), Ibn Hanbal (Musnad Ahmad, d. 241 AH), Bukhari (d. 256 AH), Muslim (d. 261 AH), Ibn Majah (d. 273 AH), Abu Dawood (d. 275 AH), Tirmidhi (d. 279 AH), and Nasai (d. 303 AH)—it is understandable that he does not refer to any of those collections for the hadiths he cited. For this omission al-Jassas cannot be singled out, because connecting the entire spectrum of Islamic discourse to hadith collections was not firmly and widely established until another one or two centuries after al-Jassas. In addition, even after the norm of referring to hadith collections was well established, many exegetes continued to cite hadith on their own, without referring to any of the known collections of hadith. Yet, while al-Jassas can be excused for this, once the connection of Islamic discourse to hadith collections was established, there is no excuse for others, including generations closer to ours, not to take a closer look at how al-Jassas arrived at the conclusion about the 'stipulated excess', especially using hadith.

Interestingly, Mawdudi, writes about *riba al-jāhiliyyah*: 'Abu Bakr al-Jassas, based on his own research, mentions . . .'.³⁰

It is interesting because Mawdudi seems to be satisfied with that research and analysis of al-Jassas to the extent that he does not take any issue with his works at all. Nor does he take any pain to explain what is the merit of al-Jassas' 'research' that shows a break from earlier reports, including that of Qatada and Mujahid from Tabari, which Mawdudi himself included in his presentation about *riba al-jāhiliyyah*. Merely referring to al-Jassas for this purpose and assuming that his unscrutinized conclusion merits more than the earlier reports cannot be regarded as acceptable.

²⁹ See M. Z. Siddiqi, *Hadith Literature: Its Origin, Development & Special Features* (Cambridge, UK, 1993), 110. Also, Farooq, 'Riba, Interest, and Six Hadiths: Do We Have a Definition or a Conundrum'.

³⁰ S. A. A. Mawdudi, *Sood o Adhunik Banking*, tr. A. Prokashoni (Dhaka, 1987), 86-87. Hereinafter S. Mawdudi.

What is most remarkable is that not only did al-Jassas not refer to any of the earlier reports or narrations that lack any indication of any 'stipulated excess', but he also really does not offer any solid corroboration as to how he arrived at the presence of 'stipulated excess' from whatever sources he cited. Thus, Saeed reflects on the earlier reports and the contrasting, uncorroborated view of al-Jassas:

These [earlier] reports indicate that the *riba* as practised in the pre-Islamic period (*riba al-jāhiliyyah*) involved adding an amount to the principal against an extension of the maturity of an existing debt due to the debtor's inability to repay on time. None of the reports quoted by Tabari, one of the earliest exegetical sources available to us, suggest that any increase was added at the time the debt was contracted. All reports available suggest that the increase in the debt occurred *after* the contract was concluded *and* at the maturity date and was due to the inability of the debtor to meet his obligation. These reports refer to the inability of the debtor to meet his obligation. These reports refer to debts but do not reveal whether they were result of loans or deferred payment sales. A contrasting view was expressed by the Hanafi jurist Al-Jassas (d. 370)...³¹

As al-Jassas' assertion is not supported by historical evidence or reports and, furthermore, is not in line with earlier reports quoted by Tabari, his interpretation may be regarded unreliable.³²

Ahmad Shafaat, the author of '*Riba in Pre-Islamic Arabia*', mentions:

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.³³

Two centuries after al-Jassas, there were attempts to synthesize the understanding of *riba al-jāhiliyyah* and the expanded scope of *riba* (such as *riba al-fadl*). We can see an example in the works of Imam Fakhruddin al-Razi, as explained by Shafaat:

³¹ See footnote 18.

³² A. Saeed, 23.

³³ A. Shafaat (2005a).

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 . . . also transferred to the *riba* of *Jāhiliyyah*.

About two centuries after al-Jassas, Imam Fakhr al-Din al-Razi (d. 606 AH) 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*. v.4 p. 448).³⁴

Contemporary scholars who are proponents of Islamic (i.e., interest-free) banking and finance draw on al-Jassas in defining *riba*.³⁵ Thus, we see Sayyid Abul 'Ala Mawdudi define it as the following:

Abul Ala Maududi defined *riba* as: 'predetermined excess or surplus over and above the loan received by the creditor conditionally in relation to a specified period.' This definition entails the following three elements: (a) excess over and above the loan capital; (b) determination of surplus in relation to time; and (c) stipulation of this surplus in the loan agreement.³⁶

Nyazee, following another Hanafi jurist, al-Sarakhsi (d. 490 AH)—who also followed the definition of al-Jassas, states: '*Riba* in its literal sense means excess . . . and in the technical sense (in the Shariah), *riba* is the stipulated excess without any counter-value in *bai'*'³⁷ [sale]'.³⁸

Muhammad Taqi Usmani, the author of *An Introduction to Islamic Finance*, a Shariah expert much sought after by Islamic financial institutions, and also the primary author, on behalf of the Supreme Court of Pakistan, of *The Text of the Historic Judgment on Interest*, defines *riba* as the following:

³⁴ Ibid.

³⁵ S. Mawdudi, 87

³⁶ Quoted in E. R. A. E. Ali 'Riba and Prohibition in Islam', 2-3.

³⁷ The word is transliterated either as *bai'* or *bay'*. For consistency throughout the essay, only *bai'* has been used.

³⁸ Al-Sarakhsi quoted in Nyazee, 2000, 24.

We have already discussed the meaning of the term *riba* as understood by the Arabs and as interpreted by the Holy Prophet, and his noble companions, and that it covered *any stipulated additional amount over the principal in a transaction of loan or debt*.³⁹

Muhammad Nejatullah Siddiqi, one of the leading and pioneering Islamic economists, explains:

The majority of scholars, however, thinks that it covers the interest *stipulated* at the time of the contract in case of loans as well as the subsequent increases in case the loan or the debt arising from sale of credit is rolled over because the debtor does not pay it at the time stipulated in the contract.⁴⁰

Munawar Iqbal, an Islamic finance expert with the Islamic Development Bank (co-authoring with a Western expert, Philip Molyneux) writes:

[*R*]iba can be defined as 'anything (big or small), pecuniary or non-pecuniary, in excess of the principal in a loan that must be paid by the borrower to the lender along with the principal as a *condition*, (*stipulated or by custom*), of the loan or for an extension in its maturity'.⁴¹

Mohammed Obaidullah, an associate professor at the Islamic Economics Research Center, King Abdulaziz University in Jeddah, Saudi Arabia, and the editor of the *International Journal of Islamic Financial Services*, writes:

Riba exists in every debt, which carries a *stipulation* binding the debtor to pay to the creditor any sum of money in excess of the principal sum of the debt.⁴²

Siddiqi, Iqbal and Obaidullah use the terms 'stipulation' or 'stipulated' in their definition without identifying the original source. However, those who have referred to original sources, such as Mawdudi and Usmani, have gone back only as far as al-Jassas. In defining so, Mawdudi as well as Usmani refer to al-Jassas, as usual, without raising any question about al-Jassas' arriving at that condition of 'stipulated excess'.⁴³

³⁹ Item #73.

⁴⁰ M. N. Siddiqi, '*Riba, Bank Interest, and The Rationale of Its Prohibition*' (2004), 38.

⁴¹ M. Iqbal and P. Molyneux, *Thirty Years of Islamic Banking: History, Performance and Prospects* (Basingstoke, UK, 2005), 7.

⁴² M. Obaidullah, *Islamic Financial Service* (Jeddah, 2005), 44.

⁴³ Supreme Court of Pakistan, #40-41.

So there we have it, the definition of *riba* that is based on 'stipulated excess', tracing back only up to al-Jassas in the fourth century AH. It is quite remarkable that many among the later scholars and authors refer to al-Jassas, without raising the question as to what is the basis for him to draw the conclusion of 'stipulated excess', especially ignoring the earlier reports that do not indicate any such 'stipulated excess' at all. Indeed, as we have already mentioned, even many exegetes after al-Jassas, such as al-Baghawi (d. 510), Ibn al-Arabi (d. 543), Zamakhshari (d. 549), al-Baydawi (d. 691) and Jalaluddin Suyuti (d. 911) have defined *riba al-jāhiliyyah* without any mention of 'stipulated excess'.

In terms of the history of Islamic discourse, al-Jassas' view of interpreting *riba al-jāhiliyyah* in terms of 'stipulated excess'—a view without any historical corroboration and also contradicted by earlier works—became the basis of subsequent expansion of the definition of *riba*, used by the orthodoxy behind the Islamic banking and finance movement. Those who believe that interest is *riba* and thus subject to blanket prohibition routinely refer to al-Jassas, but they neither provide the corroboration for the view of al-Jassas nor raise any question about it.⁴⁴ It is important that all those who base their definition referring to al-Jassas should produce the corroboration, as his source and basis of his definition simply do not follow from his commentary in *Abkam al-Qur'an*.

Fazlur Rahman, one of the most eminent twentieth century scholars of Islam, shed light on two contemporary opinions about the nature of the *riba al-jāhiliyyah*:

Abul A'la Maududi[,] the chief of the Jamaat-i Islami assumes that for the first term the credit was granted free for interest but one fails to understand how this is intelligible in a social set-up such as the commercial Meccan society or the Jewish Medinese society, where the *riba* system was quite normal. How could the usurers, who were keen on doubling and redoubling their capital, forgo the initial interest by way of charity so to say?

Mufti Muhammad Shafi expresses an opinion contrary to that of Maududi. He says, 'The prevailing practice in Arabia was that a certain amount of money was advanced for a fixed period at a fixed rate of interest. If the debtor paid the loan within the prescribed time the matter was settled on the payments of interest otherwise he had to pay more interest'.

⁴⁴ See for example, A. Al-Amin, 'Shariah Rulings (Hukm) on Contemporary Banking Transactions with Interest' (Jeddah, 2000), 17.

However, the . . . statement of Zayd b Aslam, which is recorded not only by Malik but also by al-Bayhaqi, Razi and other *Muhaddithun* and *fuqaha*, shows that the initial interest itself was not usurious and was, therefore, not considered *riba*.⁴⁵

Thus, al-Jassas became the fault-line between the earlier reports that do not indicate any 'stipulated excess' and many—though not all—later scholars who embraced the definition on the basis of 'stipulated excess' by referring to al-Jassas,⁴⁶ even though there was no tenable corroboration from him. He did not even bother at all to explain the earlier reports, if he felt that he disagreed with those.

Interestingly, Ibn Qayyim (d. 751 AH), almost 350 years after al-Jassas, ignores his view and approaches the issue of *riba* in light of the pre-Jassas understanding of *riba al-jāhiliyyah*, such as Tabari before al-Jassas, and Zamakhshari and Ibn Kathir⁴⁷ after him:

⁴⁵ F. Rahman, 'Riba and Interest', *Islamic Studies* (1964), 4-5. *Muhaddithun* means traditionists, *fuqaha* means jurists.

⁴⁶ This discussion and analysis would not be thorough if the pertinent, available information, though generally not mentioned by others, is not taken into consideration. For example, the following statement appears in the Bukhari: 'Ibn Umar said concerning loans for a fixed time, "There is not objection to it, even if the debtor gives more than he owes if the creditor gives more than he owes, if the creditor has not stipulated it"'. [Vol. 3, p. 346] One possible reason, and rightly so, that this is not pertinent here, in lieu of al-Jassas, is because this is not a hadith. It is simply a juristic observation of a companion presented without any chain, except on the authority of Bukhari himself. Also, in this statement, Ibn Umar does not provide any evidence from the Qur'an or the Prophet for this juristic statement.

Indeed, there are several similar juristic statements—these are *athar* (a saying from a companion of the Prophet), not hadith—in regard to 'stipulation of excess' in Muwatta of Imam Malik. See Book 31, #1370-72. None of the abovementioned items from Muwatta reaches the Prophet. None of these refers to either the Qur'an or any statement or action of the Prophet as reference. Notably, in sharing such juristic observations, in many cases the companions refer to specific verses in the Qur'an or Prophetic statements or actions. But in regard to such 'stipulated excess', there is no such reference, other than sharing their own juristic observations only. Of course, if their independent juristic positions, without any reference to the Qur'an or the Prophet, are taken as binding textual evidence, then it is a different matter. Otherwise, Muslims have compelling reasons to insist that Islamic laws and codes must be grounded in the primary sources: the Qur'an and the Sunnah (hadith).

⁴⁷ In his commentary on 2:280, Ibn Kathir explains: 'During the time of Jahiliyyah, when the debt came to term, the creditor would say to the debtor, "Either pay now or interest will be added to the debt"'. Translation of Ibn Kathir's Tafsir is now available online from <http://www.geocities.com/tafsir_ibn_kathir/>.

In the pre-Islamic period, *riba* was practised by giving extra time to repay a debt and adding a charge against this extension [thus, increasing the amount of debt] until one hundred becomes thousands. In most of the cases, only a needy individual would keep doing so as he would have no choice but to defer the payment of the debt. The creditor agreed to defer his demand for repayment of the debt, and waited so that he might gain more profit on the principal. On the other hand, the debtor was forced to pay the increased amount to ward off the pressing demands of the creditor and the risk of the hardships of prison. Thus, as time passes and the loss of the debtor went on increasing, his troubles multiplied and his debt accumulated until all his possessions and belongings were lost to the creditor.⁴⁸

Abdullah Saeed further explains:

The institution of pre-Islamic *riba* had a propensity to lead the debtor into more debt. The more calamitous his situation, the more he plunged into debt. Hence the well-nigh impossibility of repaying the debt, with the possible consequences being slavery or bonded labour.⁴⁹

Now that al-Jassas' commentary is available in English and accessible online, a wider readership can access the entire relevant portion for themselves; they can thus determine whether there is any independent corroboration by him in his commentary to warrant or justify an unexplained break from the earlier reports and understanding about *riba al-jāhiliyyah*, redefining it with 'stipulated excess' as an essential condition.

***Riba*-Related Hadiths in al-Jassas' Commentary**

Al-Jassas' commentary on *riba* began with two verses from the Qur'an—2:275 (the verse of prohibition) and 30:39—neither of which states nor implies any 'stipulated' excess. As al-Jassas points out, because the verses in the Qur'an are unelaborated (*mujmal*), i.e., undefined by the Qur'an, it requires elaboration or elucidation (*bayan*), which is done primarily through hadith/sunnah as textual evidence (*dalil*).

Interestingly, even though it is obvious that the two quoted verses do not state or imply any 'stipulation' of excess, and it requires additional elaboration from hadith/sunnah, al-Jassas already draws the conclusion about 'stipulation' *before* any discussion about evidence from hadith/sunnah.

⁴⁸ Ibn Qayyim, quoted in A. Saeed, 28.

⁴⁹ Ibid.

Since the elucidation, however, is supposed to be from hadith/sunnah, let us take a closer look at what al-Jassas presented in his commentary.

a. *Umar's Reference to Salam in Animals*

Umar said that *riba* has many different forms and an obvious one is *salam* in animals.

Salam is a form of transaction involving 'advance payment for goods which are to be delivered later'.⁵⁰ Notably, as aforementioned in this essay, al-Jassas does not provide any citation or reference for this or other hadiths in his commentary. This particular statement of Umar is interesting. It was he who apparently expressed concern about the Prophet's not leaving adequate guidance about *riba*.

Umar ibn al-Khattab said: 'There are three things. If Allah's Messenger had explained them clearly, it would have been dearer to me than the world and what it contains: (These are) *kalala*, *riba*, and *khilafa*'.⁵¹

Umar's statement, seeking additional guidance, has been widely used by all sides of this issue of *riba*. In another statement, however, Umar went much further: 'Indeed, the last of what was revealed is *ayah al-riba*; the Messenger of God was taken in death before he explained it. *So shun (what is clearly) riba as well as (what is in) doubt (fa da'u al-riba wa al-ribh)*'.⁵² Based on this statement, later scholars have taken a stricter and more restrictive stance in defining *riba* and establishing its scope.

Two points can be made here. First, there is an obvious contradiction in regard to the preceding hadith as to what verses were the last revealed in the Qur'an. According to another hadith, also from Sahih al-Bukhari, the last verse revealed was about a different matter.⁵³ Second, while Umar

⁵⁰ Al-Baraka Bank, Pakistan. 'Glossary', from: <<http://www.albaraka.com.pk/glossary/index.html>>.

⁵¹ Ibn Majah, *Sunan Ibn Majah*, tr. M. T. Ansari (New Delhi, 2000), Book of Inheritance, Vol. 4, #2727. Ibn Majah adds: 'According to al-Zawa'id, the authorities of its *isnad* are reliable, but it has *munqata* chain of transmission', 113; *isnad* means chain of narration, *munqata* means an interrupted, broken or discontinuous chain.

⁵² Ibn Majah, *Sunan Ibn Majah*, #2267.

⁵³ Narrated Al-Bara: The last Sura that was revealed was Bara'a, and the last Verse that was revealed was: 'They ask you for a legal verdict, Say: Allah's directs (thus) about those who leave no descendants or ascendants as heirs'. (4.176) [Sahih al-Bukhari, Vol. 6, Book 60, #129].

seems to have been concerned about inadequate guidance from the Prophet about *riba*, in this statement he seems to be quite at ease in identifying one of the not so obvious forms of *riba* as obvious.

Islamic scholars, however, including Imam Malik, have not drawn such categorical conclusions from the statement of Umar that *salam* in animals is *riba*, an argument that is offered by al-Jassas in his commentary on *riba*. According to Malik, there are three specific cases where *salam* may involve *riba*; generally, however, animals do not involve *riba*; 'Yahya related to me from Malik from Ibn Shihab that Said ibn al-Musayyab said, 'There is no *riba* in animals except...'.⁵⁴

A contemporary scholar from Islamic University in Madinah explains:

The people of knowledge differ concerning the ruling of selling animals for animals on delayed payment. This is due to contradiction of the evidences. It has been reported that the Prophet (SAW) commanded 'Abdullah bin 'Umar, to buy one camel for two camels to be given later. That was due to a need to do so. Likewise, it is related that he (SAW) prohibited selling animals for delayed payment. Allah knows best, but it seems that what is closest to the truth is that selling animals for animals on delayed payment is prohibited if there is no pressing necessity that calls for such a transaction. However, if the animals are present at the time of the transaction, then it is permissible to trade them, whether one type is superior to the other or not, as has been mentioned in the Sahih.⁵⁵

Regardless of the problems with Umar's statement about *salam*, what matters for our subject here is how this hadith about a trade establishes a general case of 'stipulation' of excess in loans as well. The fact is that it does not do so.

b. *The Hadith about 'Excess is riba'*.

The next hadith cited by al-Jassas is as following: 'Wheat for wheat, like for like, from hand to hand, and the excess is *riba*; barley for barley, like for like, from hand to hand, and the excess is *riba*'.

Once again, the specific source of this hadith is not given. Since there are so many variations of this hadith available (with so much discrepancy

⁵⁴ Imam Malik, *Muwatta*, tr. M. Rahimuddin (Lahore, 1985), Kitab al-Buyu, Chapter: What Is Not Permitted in the Sale of Animals, #1346.

⁵⁵ Quoted from Shaykh Abu Bakr Jabir al-Jaza'iry's, *Minhaj al-Muslim*; from Islaam Web site: <<http://www.islaam.net/main/display.php?id=1231&category=7>> Accessed on 5 April 2007.

in terms of the details), it is important that the specific chain of narration is identified and evaluated. However, let us look at some of the other variations.

See for example the following, from 'Ubada ibn al-Samit:

The Prophet (p), said: 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt—like for like, equal for equal, and hand-to-hand; if the commodities differ, then *you may sell as you wish, provided that the exchange is hand-to-hand*.'⁵⁶

In many hadith, is it just 'like for like', or 'hand to hand', or 'equal for equal', or is it a combination? The same theme of hadith contains too many variations. However, notably in the above variation, 'if the commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand'. Now let us consider the next one.

Narrated Abu Bakra: Allah's Apostle said, 'Don't sell gold for gold unless equal in weight, nor silver for silver unless equal in weight, but *you could sell gold for silver or silver for gold as you like*'.⁵⁷

According to the above hadith from al-Bukhari, if commodities differ, you can trade as you like, and no condition of 'hand to hand' or on the spot. So, is *riba* applicable only to transactions involving excesses of the same commodity, or when commodities differ? When commodities differ, is hand-to-hand a condition? Since al-Jassas did not provide the full text of that citation, it is difficult to ascertain the exact text of the narration he is referring to. But when one puts together all the variations of these hadith, the definition is not as clear as it is claimed.⁵⁸ Regardless, did this hadith cited by al-Jassas state or imply 'stipulated' excess, especially in case of loan transactions?

c. *Riba is only in Nasi'ah (Deferment)*

Al-Jassas shares the following hadith, once again, without any citation:

⁵⁶ Imam Muslim, *Sahih Muslim*, tr. A. H. Siddiqi (Lahore, 1982), Kitab al-Musaqat, Bab al-sarfi wa bay'i al-dhahabi bi al-waraqi naqdan, #3853.

⁵⁷ Imam al-Bukhari, *Sahih al-Bukhari*, Vol. 3, Book 34, #383.

⁵⁸ M. O. Farooq, '*Riba*, Interest, and Six Hadiths: Do We Have a Definition or a Conundrum'.

The Prophet said in the tradition of Usamah ibn Zayd, which was related to him by Ibn Abbas, that *riba* exists in *nasi'ah* alone, and in some versions it is reported as, 'There is no *riba*, except in *nasi'ah*'.⁵⁹

This is a well-known hadith. From Usamah ibn Zayd: 'The Prophet, said: "There is no *riba* except in *nasi'ah* [waiting]"'.⁶⁰

After mentioning this hadith, al-Jassas comments: 'This proved that the term *riba* in the *shar'* is sometimes applied to *tafadul* and at other times to *nasa'*'.⁶¹ However, if the Prophet was one of the best communicators as regarded by Muslims, which he certainly was, this kind of categorical statement—'There is no *riba*, except in *nasi'ah* (deferment)'—cannot be interpreted as al-Jassas did, to the effect that this hadith 'proves' that sometimes the *riba* is in *tafadul* and sometimes in *nasi'ah*. As this hadith does meet the general standard of authenticity, either we must accept the hadith as it states, or we must offer other tenable explanations, but not use such categorical hadith against its own literal meaning.

Then, al-Jassas offers the information that Ibn Abbas, who reported this hadith ('[t]here is no *riba*, except in *nasi'ah*') later retracted from the above statement. Al-Jassas mentions: 'Jabir ibn Zayd said that Ibn Abbas withdrew his opinion about *sarf* (i.e., money exchanges) as well as his view of *mut'ah* (i.e., temporary marriage)'.⁶² We will shortly return to Ibn Abbas' alleged retraction about his view on *riba an-nasi'ah*. However, let us point out that al-Jassas' claim that Ibn Abbas retracted his views about *mut'ah* is incorrect, as indicated in the hadith cited below.⁶³ Al-Jassas, at least in this case, selectively cited sources, without taking into consideration other sources that are often more compelling than those which he used.

Al-Jassas' assertion that Ibn Abbas changed his view about *mut'ah* is contradicted by the following in Sahih Muslim:

Urwa b. Zubair reported that 'Abdullah b. Zubair stood up (and delivered an address) in Mecca saying: 'Allah has made blind the hearts of some people as He has deprived

⁵⁹ A. Al-Jassas, 5.

⁶⁰ Imam al-Bukhari, *Sahih al-Bukhari*, tr. M. M. Khan (n.d., Madinah), *Kitab al-Buyu, Bab Bai' al-dinari bi al-dinar nasa'an*, #386; also *Muslim*, #3878; *Musnad Ahmad*, Vol. 5, #21801.

⁶¹ A. Al-Jassas, 5. *Shar'*, refers to Shariah, traditionally understood as Islamic law; *tafadul* means extra and *nasa'* means deferment.

⁶² A. Al-Jassas, 5.

⁶³ Imam Muslim, *Sahih Muslim*, #3261.

them of eyesight that they give religious verdict in favour of temporary marriage, while he was alluding to a person' (Ibn 'Abbas). Ibn Abbas called him and said: 'You are an uncouth person, devoid of sense. By my life, Mut'ah was practised during the lifetime of the leader of the pious' (he meant Allah's Messenger), and Ibn Zubair said to him: 'just do it yourselves, and by Allah, if you do that I will stone you with your stones'.

As historically established, Abdullah Ibn Zubair (d. 692 AD or 72 AH) assumed caliphate in Hijaz, challenging Yazid. If Ibn Abbas held his view even during the rule of Ibn Zubair, there is really no substantiation of his changing the view, unless such change can be specifically placed during the period before 68 AH when Ibn Abbas died and during the rule of Ibn Zubair.

Another report in Musnad Ahmad by Ibn Hanbal contradicts the assertion of al-Jassas.

Ibn Abbas narrated: 'The Messenger of Allah gave us the order to practise Mut'ah; it existed, Urwah ibn Zubayr said, "Abu Bakr and Umar stopped this", Ibn Abbas responded saying "I'm telling you what Rasulallah (s) deemed halal and you're telling me what Abu Bakr and 'Umar did, I see that you shall be destroyed"'.⁶⁴

While the above two narrations pertain to *mut'ah*, not *riba*, the significance of these narrations is that both of the assertions relate to the same hadith of Ibn Abbas. Al-Jassas claimed that Ibn Abbas changed his view about *riba* and *mut'ah*, while the above shows that at least in case of *mut'ah*, he did not.

The burden of proof that Ibn Abbas changed his view rests on those who claim so. There is no such convincing proof, and al-Jassas did not provide any.

But what about Ibn Abbas' view about *riba*, which al-Jassas also claimed he had retracted? Interestingly, another leading classical Hanafi jurist, al-Sarakhsi (d. 483 AH), a century after al-Jassas, writes in his famous work *al-Mabsut*, 'Even if the retraction is not established from him, the consensus (*ijma'*) of the *tabi'un* after him, annuls his opinion. This is what we mean when we say that this opinion is not to be relied upon'.⁶⁵ Readers should

⁶⁴ Ibn Hanbal, *Musnad Ahmad* (Beirut, 1993) Vol. 1, 438, #3120.

⁶⁵ I. Nyazee has translated the *riba*-related portion of al-Sarakhsi's *Al-Mabsut*. See <http://www.nyazee.com/islbanks/riba/riba.html>, p. 7. *Tabiun* refers to the generation succeeding the companions of the Prophet. A *tabi'i* (pl. *tabiun*) is someone who has met or interacted with the companions of the Prophet.

note how the author, al-Sarakhsi, dismisses the position of Ibn Abbas, which was also that of many others. Moreover, if the retraction by Ibn Abbas is 'not established', is it appropriate for a jurist like al-Jassas to simply have claimed as such? Furthermore, al-Sarakhsi dismisses Ibn Abbas' position on the basis of *ijma* (consensus). But was or is there an *ijma* on this? The simple answer is: no, because there is no *ijma* on the definition of *ijma*.⁶⁶ Indeed, as a sort of historical revisionism, there has been a tendency to bring the view of Ibn Abbas in line with the orthodox view.

One can argue that al-Jassas can be excused for such unfounded claims as, at the time of his writing, he did not have the broad sources of research and information available to the later generations. However, even in our own time, that it is repeated so routinely and in the same manner as al-Jassas did is inexcusable. For example, Mawdudi mentions this referring to Hakim that not only Ibn Abbas retracted, but also kept repenting and seeking forgiveness from God for this earlier error.⁶⁷ A more interesting case involves a paper authored by Hassan Abdullah al-Amin, published in 2000 by the Islamic Development Bank, where he wrote, '[i]t is said that Ibn Abbas retracted this exemption of *riba al-fadl*'.⁶⁸ Al-Amin made this one-sentence statement about the retraction referring to al-Subki's (d. 771 AH) research on this matter.⁶⁹

The reason it is interesting is because al-Subki is one notable scholar who had comprehensively researched this matter of Ibn Abbas' retraction, and apart from mentioning that there are some who have reported this retraction, he also presented other views contesting and contradicting such claims. While al-Subki leaned toward the views that Ibn Abbas retracted, he was also careful and thorough in presenting the reports disputing the retraction claims.

Zaki al-Din Badawi writes: 'The claim of retraction by Ibn Abbas... became well known, so much so that some of the commentators mention it in a way that it is an established assumption'.⁷⁰ However, the reality is

⁶⁶ A. Hasan, *The Doctrine of Ijma': A Study of the Juridical Principle of Consensus* (New Delhi, 2003).

⁶⁷ S. Mawdudi, 96. It is unfortunate that while referring to the 'research' of al-Jassas, Mawdudi himself was not careful and thorough in his own research in this regard.

⁶⁸ A. Al-Amin, 'Shariah Rulings (Hukm) on Contemporary Banking Transactions with Interest', 25.

⁶⁹ Al-Subki. *Takmilat al-Majmou, Sharh al-Muhathab*, Vol. I, 31-34.

⁷⁰ A. Badawi, *The Theory of Prohibited Riba*, tr. I. A. K. Nyazee, (1964), 112. Accessed 15 May 2007, <<http://www.nyazee.com/islbanks/riba/riba.html>>

that it is not. After mentioning several reports (*athar*) in support of the retraction, which he himself preferred, al-Subki also presents several reports that contradict it.

Ibn Hazm, however, has narrated a report from Said ibn Zubayr that he [Ibn Abbas] said: '*Riba* is not found at all in "here you are" and "here you are" [from hand to hand]'. Said ibn Jubayr took an oath to the effect that he [Ibn Abbas] did not retract this view till he died.

Ibn Abd al-Barr has recorded from Ibn Uyaynah from Farat al-Qazzaz, who said: 'We went to Said ibn Jubayr to visit him [in his illness], and Abd al-Malik ibn Mubashsharah al-Darrad said to him: 'It appears that Ibn Abbas changed his view about *sarf*.' Said replied: I met him thirty-six days before he died, and he maintained the view, and he did not withdraw it'''.⁷¹

The soundest position is that there is no conclusive or incontrovertible evidence that Ibn Abbas retracted his view. Thus, there are many scholars of later generations who have not been convinced by this idea that Ibn Abbas changed his view, and they continue to refer to Ibn Abbas' view on *riba* as he originally stated.

Moreover, that *riba* is only in *nasi'ah* was a position not only held by Ibn Abbas. Other notable companions have held the same view as well, among them Urwa Ibn Zubayr and Zayd ibn Arqam.⁷²

Regardless of all these hadith mentioned by al-Jassas so far, do we get any proof that 'stipulation' of excess is an essential condition of *riba*? The answer is no. The next hadith in al-Jassas' works is revealing.

d. *Buying back Something from the Original Buyer at a Lower Price*

Among the categories of *riba*, as implied by the verse, is the buying of what is sold at a lesser price prior to (the time) of payment of the price. The evidence that this is *riba* is the tradition Yunus Ibn Ishaq from his father Ibn 'Aliyah, who said:

I was visiting A'ishah when a woman said to her: 'I sold a slave girl that I owned to Zayd ibn Arqam for a period at eight hundred *dirhams*. He, then, intended to sell her, so I bought her for six hundred.' She said: 'The sale you made was improper and the

⁷¹ A. Badawi, *The Theory of Prohibited Riba*, 114-115, quoting Al-Subki, *Takmilat Majmu'*, vol. I, 36. Subki mentioned that the first report of Said ibn Jubayr is with *isnad* that is agreed upon for authenticity. The second report was broken in *isnad*.

⁷² N. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking* (Cambridge, UK, 1986), 26-27.

purchase you made was improper. Give my message to Zayd ibn Arqam that his *jihad* with the messenger of Allah may stand annulled if he does not repent.' The woman said: O Umm al-Mu'mininun, what is your view if I take only my original sum.' She (A'ishah) said: 'Those who after receiving direction from their Lord, desist, shall be pardoned of their past; their case is for Allah (to judge).' [the last sentence is a part of the verse 2:/al-Baqarah/275].

Her reciting the verse, in response to the question, 'what is your view if I take only my original sum,' is evidence that this transaction amounted to *riba* in her view.⁷³

This hadith, once again without any reference from al-Jassas, merits special attention. First, this is not a report about something that the Prophet has said or done. Rather, it is a report about the companions and their interpretation and understanding. Secondly, it does not really clarify why this

⁷³ A. Al-Jassas, 6. Also notable is how the orthodoxy uses such narration without any proper authentication. Mufti Muhammad Shafi has referred to this same narration, referring to *Kanz al-Ummal* (or *Kanzul Ummal*), a source (i.e., al-Muttaqi al-Hindi) six centuries after al-Jassas, and even then without giving any other reference—other than *Kanz al-Ummal*. Accessed 5 March 2007, from Jamiat Web site: http://www.jamiat.co.za/library/question_of_interest.htm.

Noticeably, Mufti Shafi does not even bother to report an earlier source, al-Jassas, because one of the problems with many such narrations is that once such narrations are reported in some reputable sources, many among the subsequent generations refer to these as authoritative, without their own due diligence. *Kanz al-Ummal* is based on a book by Suyuti (d. 911 AH). The book contains about 50,000 traditions *with no Isnad*, most of which, according to the scholars, are not authentic. Suyuti gathered them in his book as an index only. On the As-Sunnah Foundation website, the following comments are made in regard to *Kanz al-Ummal* in response to question (#1). 'Al-Muttaqi did not give [grades] but only sources. Whether he gives or does not give sources, there is no authentication unless he explicitly states so, as he sometimes does, but more often not. Therefore, the ahadith need gradings before being used as evidence whether in *fiqh*, "*aqida*, or *akhlaq*". From: <<http://www.sunnah.org/fiqh/usul/Ahadithcience.htm>>. Accessed 7 March 2007.

M. M. Azami, a noted modern scholar of hadith writes in *Studies in Hadith Methodology and Literature* (Burr Ridge, US, 1977): 'As the collection contains all sorts of ahadith and *Suyuti's judgments on the authenticity of hadith is not sound*, therefore the book is not useful for general reading'. [p. 115] Later scholars' use of any hadith without *isnad* is not just questionable, but also unacceptable. The particular reason for such lengthy comment here is merely to underscore the point that while hadith is a veritable and indispensable treasure for Muslims, just at the mention of a hadith in support of a position, dogma or law, Muslims commoners should not be awed. Rather, they should educate themselves adequately and feel duty bound to do their own due diligence. Muslims should also demand better quality works from the scholars, as they do look up to the scholars for their guidance and contribution.

sale was improper in A'ishah's view. She does, however, take a rather condescending and condemning view of Zayd ibn Arqam. Did Zayd willfully disobey or ignorantly misapply the teachings of the Prophet? Who is this Zayd ibn Arqam? In A'ishah's comment it is clear that there was something notable about Zayd's participation in battles; and indeed, there was. He participated in seventeen of the expeditions out of a total of nineteen led by the Prophet Muhammad himself. Thus, Zayd ibn Arqam was definitely no stranger to this community of the companions. He also had narrated a good number of hadiths recorded in all major collections.

Abu Ishaq said: I asked Zayd b. Arqam: In how many military expeditions have you participated with Allah's Messenger? He said: In seventeen (expeditions). He (Abu Ishaq) said: Zayd b. Arqam reported to me that Allah's Messenger had led nineteen expeditions. And he performed Hajj only once after Migration, and that was the Farewell Pilgrimage. Abu Ishaq also said: The second (Hajj) he performed at Mecca (before his Migration to Medina).⁷⁴

Was there something more relevant in his background than just being an eminent companion who participated in almost all the battles led by the Prophet himself?

Abu Minhal reported: My partner sold silver to be paid in the (Hajj) season or (in the days of) Hajj. He (my partner) came to me and informed me, and I said to him: Such transaction is not desirable. He said: I sold it in the market (on loan) but nobody objected to this. I went to al-Bara' b. 'Azib and asked him, and he said: Allah's Apostle came to Medina and we made such transaction, whereupon he said: In case the payment is made on the spot, there is no harm in it, and in case (it is sold) on loan, it is usury. You better go to Zayd b. Arqam, for he is a greater trader than I; so I went to him and asked him, and he said like it.⁷⁵

As the above report suggests, Zayd ibn Arqam was not only known for his knowledge of business transactions and *riba*, but other companions also regarded him as much greater in regard to such questions. Bara b. 'Azib did not refer the person to A'ishah, but to Zayd. Thus, one cannot presume that Zayd was either an ignoramus about such matters or someone who did not care about what the Prophet taught. Hence, is there really a basis for A'ishah's condemning comments about Zayd that unless he repents, she *prayed*, may all his battles he had fought with the Prophet be annulled?

⁷⁴ Imam Muslim, *Sahih Muslim*, Book 7, #2881.

⁷⁵ Imam Muslim, *Sahih Muslim*, Book 10, #3859.

Thirdly, Zayd himself was involved in this transaction, where as reported by al-Jassas, A'ishah repudiates and harshly condemns Zayd. Obviously, Zayd considered this transaction as valid. If Zayd's action and position are taken as valid, then al-Jassas stands repudiated, because in this particular case, the opinion of someone like Zayd who was considered an authority by others like Bara bin 'Azib in regard to business transactions is more meritworthy than Aishah's, who definitely was not known for any expertise in the area of business transactions. Notably, it is not merely reporting what the Prophet said or did, as reported by two companions; rather it is about how they understood and applied what they knew and understood and how they applied it in conscientiously reaching their conclusion.

Why did al-Jassas selectively choose such a statement that condemns Zayd, while other companions used to refer to him for transaction-related matters? Indeed, Zayd held views similar to Ibn Abbas in regard to *riba*.⁷⁶ Thus, Ibn Abbas was not alone in his view, and Ibn Abbas' change of view in this regard, as argued by al-Jassas, is untenable.

What is most relevant here is that the specific transaction that is regarded by al-Jassas as impermissible, because A'ishah did not agree with it, was regarded as acceptable by someone who used to be a greater expert on this. From the same hadith that is used by al-Jassas to draw the conclusion about *riba* is contradicted by the position of Zayd, and if Zayd's view is duly considered, then the conclusion of al-Jassas about 'stipulation' of excess being an essential characteristic of *riba* would not be warranted. Also, if the transaction is analysed in detail, something else stands out.

Let us recap the transaction. A woman sold a slave⁷⁷ to Zayd for a period at eight hundred *dirhams*. He then intended to sell her, so the woman bought the slave back for six hundred. Since the underlying object can be any object that could be sold for fixed duration, let us consider any other asset. In reality, the transaction amounted to a lease. Suppose asset X was

⁷⁶ N. Saleh, *Unlawful Gain and Legitimate Profit in Islamic Law: Riba, Gharar and Islamic Banking*, 27.

⁷⁷ In my writings, while referring to such traditions containing reports about trading of slaves, I must mention that I believe slavery is incompatible with Islam and unlike those who approach this issue merely from a legalistic perspective, I believe Islam upholds the fundamental dignity of all human beings, and therefore prohibition of slavery was the norm, even though in an abolitionist track, it was expected that slavery would gradually disappear. M.O. Farooq, 'Fundamental Human Dignity and the Mathematics of Slavery' (unpublished, 2006), accessed 5 January 2007 on: http://www.globalwebpost.com/farooqm/writings/islamic/slavery_math.html.

leased by the woman to Zayd for twelve months for eight hundred dirhams. After six months, for whatever reason, Zayd wanted to get out of the lease. Obviously, there was no specific stipulation of such provisions. Thus, when he wanted to get out, in any such business transaction, there must be some kind of discounting for the six months the asset has been used. Thus, Zayd offered six hundred *dirhams* and the woman agreed to take it. This is a follow up transaction, mutually agreed upon by both parties. The woman benefited from the transaction and so did Zayd. As al-Jassas argued—‘what is your view if I take only my original sum’, is evidence that this transaction amounted to *riba* in her (A’ishah’s) view—the *riba* arose because she originally sold at eight hundred dirhams, but bought back at six hundred *dirhams*, thus there is something extra which, in A’ishah’s view (and accepted by al-Jassas) is *riba*. Whether one accepts the position of A’ishah or of Zayd—and here there are better reasons to accept the position of the latter—let us note that there was no ‘stipulation’ of any excess in the transaction.

e. *Early Payment in Case of Credit-Sales or Loans Transactions Cannot be Discounted*

It is related by Sufyan from Humayd from Maysarah, who said: ‘I asked Ibn Umar, “if a man owes me a debt after a period, and I tell him to pay it sooner for which I will lessen the amount he owes”. He said, “this is *riba*”’.⁷⁸

Once again, this is not a narration reporting what the Prophet said or did. Instead, similar to the previous hadith involving views of Zayd vis-à-vis A’ishah, this pertains to the view of Ibn Umar. The actual transaction is somewhat similar in the sense that Zayd’s transaction involved something similar to lease, while this is purely a loan. Indeed, one could also bring Zayd’s position as competing against Ibn Umar’s. However, Ibn Umar’s position would be valid in our contemporary context and language, if the time value of money is not recognized.

Of course, there are notable Muslim jurists of our time who hold that there is no time value of money in Islam. For example, Mufti Muhammad Taqi Usmani asserts: ‘[I]n *Shari’ah*, there is no concept of time value of money’.⁷⁹ However, there are many Muslim economists who disagree with

⁷⁸ A. Al-Jassas 2000, 7.

⁷⁹ T. Usmani, *An Introduction to Islamic Finance* (The Hague, 2002), xvi.

such an assertion. Zayd ibn Arqam's position, which is not incontrovertibly contradicted by any specific verse from the Qur'an or sahih hadith, is closer to the understanding of those who recognize that there is time value of money.

Indeed, there are other narrations that specifically allow such price reductions (discounts) for early payment.

Such reduction is allowed by some jurists pursuant to the story reported by Ibn Abbas that the Prophet (pbuh) ordered the expulsion of Al-Nadeer (Jewish Clan) but some of them said: 'Prophet of God, you ordered that we should be driven out but there are debts due to us and the time of their payment is still away'. The Prophet (pbuh) told them: 'Reduce the debts and claim them before their due time'.⁸⁰

It should also be noted that leading scholars, such as Ibn Taymiyah, have held that the lenders should be able to recover the original value of the loan. Allowing the lender to recover the original (or inflation-adjusted) value is relevant for the *nominal* versus *real* distinction. In economics, nominal values are measured or reported at current prices, while real values are measured or reported at constant (or inflation-adjusted) basis. In accordance with Ibn Taymiyah's view, there cannot be any blanket prohibition of interest. That is, nominal interest that includes only inflation premium would not be prohibited. In that case, it cannot be said that interest is prohibited, but real interest is prohibited.

Ibn Taymiya, an independent Hanbali whose views have often been approved by legal modernists [also]... believed that the lender should recover the original value....

It would be possible to argue with some force that Ibn Taymiyah's view is the one which ought to be adopted, because the lender is not engaging in *riba*—he is not making a real profit out of the transaction. If he could not recover for losses sustained as a result of inflation, he would be much less inclined to grant a gratuitous loan.⁸¹

⁸⁰ Al-Haythami quoted in R. Saadallah, 'Concept of Time in Islamic Economics', *Islamic Economic Studies* (1994), 85-86. *Majma' al-Zawa'id wa Manba' al-Fawa'id* is a 10-volume secondary hadith collection written by Nur al-Din 'Ali ibn Abi Bakr al-Haythami (735-808 AH) and printed in Cairo 1352-1353 AH. It contains those hadiths uniquely reported by Ahmad ibn Hanbal in his *Musnad Ahmad ibn Hanbal* and by al-Tabarani, among others.

⁸¹ W.M. Ballantyne, *Commercial Law in the Arab Middle East: The Gulf States* (London, 1986), 125-6.

It should be noted that in this essay, we are not scrutinizing the cited hadiths from the viewpoint of authenticity (whether *sahih* or not), as al-Jassas did not get into such discussion and he also selectively used certain reports to formulate and support his viewpoint. However, if the preceding report is valid, then al-Jassas' view stands contradicted, and the positions developed on the basis of those selective textual sources are not strong enough to discard the previous understanding of *riba al-jāhiliyyah* during the pre-Jassas period.

Al-Jassas discussed a few more hadiths (or more appropriately, early juristic opinions of companions and the *tābi'ūn* (the successors), but those do not add anything more or substantively different than what we have discussed above.

The bottom line is that al-Jassas is referred to as the earliest jurist/exegete, who broke away from the previous understanding of *riba al-jāhiliyyah*, and included 'stipulation' of excess as one of the defining conditions of *riba*. As discussed above, his commentary does not provide any solid corroboration of his view, even though many among the later scholars and others are prone to refer to him, as it better fits their own positions.

Conclusion

We have already seen that the understanding of *riba al-jāhiliyyah* during the pre-Jassas period did not identify any 'stipulated' excess. Instead, *riba* used to occur at the time of payment through increase in the capital owed. If injustice and exploitation, as mentioned in the Qur'an, are relevant, then it seems that an essential aspect generally overlooked in this discourse is that in case of profit-oriented financing, it is not the stipulation of excess over the principal that is the source of exploitation or vulnerability of the borrower; instead, it is the lack of stipulation as part of the full disclosure in the contract. Indeed, when a borrower knows what would be the total amount to repay the borrowing, he can assess the contract and make the decision voluntarily whether to enter into such a contract. In absence of a stipulation of predetermined excess (rate or lump-sum), the borrower does not know what kind of excess would have to be faced, if the debt is not settled at the end of the contract period. Of course, any exploitative or usurious stipulations would stand prohibited due to injustice or harm to which one of the parties could be exposed.

Apart from the missing corroboration in case of al-Jassas, this stipulation issue is misplaced, due to a confusion involving general financial contracts and benevolent, interest-free contracts (*qard al-Hasanah*). If anyone wants to *help* another through lending, the idea of excess (in the form of interest) does not necessarily make any sense. Similarly, in cases of benevolent or charitable lending, there should not be any stipulation of excess, especially for needy people forced into a situation to borrow and without any expected ability to repay. Such a contract would be null and void from the Islamic viewpoint. Any act of benevolence to help others just for the sake of Allah must be free from any stipulated excess. However, erroneously, this matter of stipulation or excess in case of charitable financing/loan has been expanded to profit-oriented financial contracts or transactions, where both parties may or do benefit.

If the stipulation of any excess in the loan agreement is a constituent element to identify *riba*, then interest-bearing debt instruments would be considered prohibited in Islam. However, quite ironically, as in the case of *riba al-jāhiliyyah*, discussed above, the exploitation element does not come from the presence, but a lack of stipulation, of a predetermined excess in the contract. That is why in exploitative situations, at the time of settlement of debt, if the borrower is unable to pay, he is given an option to defer, but the principal owed is doubled or quadrupled, at the mercy of the lender, while the borrower is exposed to utter ruin.

It is obvious that if it is the matter of stipulation itself, then it can hardly be sensibly or rationally argued that whether in terms of excess in value or deferment of time, stipulation would be unfair or exploitation. Indeed, it would be just the opposite; fair contracts should include full disclosure of all the pertinent terms.

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