



A Simple Introduction to Islamic Finance

Part 1:

How to Avoid Riba (Interest) in Modern Financial Dealings

A selection of ideas from the Ph.D thesis submitted to the University of Manchester by Shehzada Dr Abdeali Bhaisaheb Saifuddin bin Syedna Khuzaima Qutbuddin Saheb (RA). His Ph.D was completed in 2003 with the raza and doa mubarak of Syedna Mohammed Burhanuddin RA.

A summary of the previous article...

Riba is unequivocally prohibited

"God has made trade *halaal* but *riba haraam*"

Quran 2:275

"O believers, do not consume *riba* multiplying it manifold"

Quran 3:130

"God has damned (*la'ana*) *riba*, its consumer, its giver, its buyer, its seller, its registrar, and its two witnesses"

Rasulallah SA (Daaim al-Islam v2, p37, 83)

"*Riba* is one of the major sins"

Maulana Ali AS (Mukhtasar al-Athar v.2)

However, our Aimmat Tahereen and Duat Mutlaqeen have successfully dealt with *riba* by converting it into a trade transaction

Imam Ja'far al-Sadiq AS commended two parties for engaging in a transaction that converted *riba* into trade. **Syedna Qasim Khan Zainuddin RA** (31st Dai-I-Mutlaq) borrowed money from a Hindu moneylender by employing transaction that converted *riba* into trade. **Syedna Taher Saifuddin RA** (51st Dai-I-Mutlaq), in his testimony in the Chandabhai Gulla Case of 1917, stated that his father **Syedna Mohammed Burhanuddin** (49th Dai-I-Mutlaq) and grandfather **Syedna Abdul Qadir Najmuddin RA** (47th Dai-I-Mutlaq), as well as his immediate predecessor **Syedna Abdullah Badruddin RA** (50th Dai-I-Mutlaq) all borrowed by employing a similar approach of converting a *riba* transaction into a trade transaction.

A summary of the previous article continued...

*This is because of the concept of Shariat Samha -
Shariat is tolerant, flexible and liberal*

For example, *wuzu* before prayer with water is mandatory. However, if no water is accessible, or for health reasons water cannot be used, then the individual may substitute *wuzu* with *tayammum*, a simplified ablution performed with clean dry soil

“Fleeing from haraam to halaal”

*“Fleeing from haraam to halaal is a good thing to do....
it is fleeing from baatil (wrong) to haqq (right).”*

-Imam Ja'far al-Sadiq AS

*In essence, our deen has an answer to every
problem - every complex issue faced by man
and every technical subtlety of our lives.*

A table of contents for this article...

Section 1

What exactly is *riba* and why is it *haraam*?

Section 2

How can we transform a *riba* transaction, which is *haraam*, into a trade transaction, which is *halaal*, through the '*Ina* contract?

Section 3

Are there instances of Aimmat Tahereen and Duat Mutlaqeen endorsing '*Ina* and employing the '*Ina* contract?

Section 4

How can the '*Ina* contract be applied in the world of modern banking?

Section 1 -

What is *riba* and why is it *haraam*?

A definition and some examples...

Riba, is generally translated as 'interest' or 'usury.' It is synonymous with the charging of interest on loans. Any difference in the exchange of the item (counter value), that is, an increase from within itself, is defined as riba.

Imam Mohammad al-Baqir said,
"Every loan that reaps a [material] benefit is *riba*."

Source: *Daaim al-Islam* v.2, p.61.

What does the definition mean? Here are some examples:

1. If gold is exchanged for gold, then the quantities have to be the same, even if the quality of gold differs, otherwise it would be interpreted as *riba*
2. If wheat is exchanged for flour, then the weight of the wheat and flour should be the same, otherwise it would be interpreted as *riba*
3. If gold is exchanged for silver, a quantitative disparity would be permitted as they are two different substances. Thus exchanging 1gm of gold for 100gm of silver is permitted and does not constitute *riba*

Section 1 -

What is *riba* and why is it *haraam*?

Who says...?

The prohibition of riba is unequivocal in our deen and is strictly condemned in the Quran and by our Awliyaullah and Hudaat Kiraam. Thus it is this increase in wealth from within itself, riba, no matter how small, which is haraam. Mukhtasar al-Athar v.2, Dhikr al-Sarf

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

"God has made trade *halaal* but *riba haraam*"

Quran 2:275

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً

"O believers, do not consume *riba* multiplying it manifold"

Quran 3:130

"God has damned (*la'ana*) *riba*, its consumer, its giver, its buyer, its seller, its registrar, and its two witnesses"

Rasulallah SA. Source - *Daaim al-Islam* v2, p37, 83

"Riba is one of the major sins"

Maulana Ali AS: Source - *Mukhtasar al-Athar* v.2 Dhikr al-Sarf

Section 1 -

What is *riba* and why is it *haraam*?

The reasoning...

Riba is prohibited for the following reasons:

- 1) To protect the borrower from the lender
- 2) To prevent exploitation of the weak and needy by the strong and wealthy
- 3) To preserve social equity and welfare

The relationship between *riba*, oppression and exploitation has been proven from ancient Mesopotamian to Babylonian times, from the Judeo-Christian age to pre-Islamic Arabia, from the *zamindari* system in ancient India to modern-day moneylenders.

Therefore our *deen* prohibits *riba* on account of its **exploitative** and **oppressive** potential in unequivocal terms.

Section 2 -

The '*Ina* Contract

How to transform a *riba* transaction into a trade transaction...

Why doesn't Fatimi Tayyibi law allow simple, un-exploitative interest on debt?

- 1) Simple, un-exploitative interest on debt is categorically *haraam*
- 2) Allowing interest in any form increases the potential for exploitative practices to flourish within the gambit of the law, as historically observed.
- 3) The adjustments that need to be made to a *riba* contract, and the contractual arrangements of the '*Ina* that need to be brought into play to make it *halaal*, automatically restrict the over-reaching exploitative tendencies of *riba*, at the same time allowing the benefits of financial and transactional flexibility to be reaped safely.

Section 2 -

The '*Ina* Contract

How to transform a *riba* transaction into a trade transaction (continued)...

A man asked Imam Ja'far al-Sadiq AS whether it would be lawful to exchange a thousand dirhams and a dinar for two thousand dirhams. Money against money. The Imam replied yes, it is permissible when an instrument of sale is applied (i.e. the '*Ina* contract). The questioner objected. This was obviously 'fleeing from *riba*.' The Imam said, "Fleeing from *haram* to *halal* is a good thing to do....it is fleeing from wrong (*baatil*) to right (*haqq*)."
The venerable Imam - accepted as the last word in Islamic jurisprudence - did something more than endorse this transaction where an instrument was used...He commended the two parties to engage in it!

Source: *Daaim al-Islam* v.2, pp.38-40; also *Mukhtasar al-Athar* v.2,

Imam Ja'far al-Sadiq AS approved a device called the '*Ina* contract' which allowed lenders to charge the equivalent of interest, keeping within the moral and technical bounds of our *deen* and Shariat.

Section 2 -

The '*Ina* Contract

How does it work?

A parallel to the nikah contract

Explaining Imam Ja'far al-Sadiq's *amal*, Syedna Qadi al-Nu'man RA likens it to a *nikah* contract when he says that "this is the same as a man, who agrees with a woman to have illicit sexual relations, but then realization [of the sinful nature of their intentions] dawns on them, and they marry each other by executing a sound *nikah* contract, and thus their sexual encounter becomes *halaal*." Source: *Daaim al-Islam* v.2, p.62

Our *deen* allows contractual arrangements to be applied to transactions which are otherwise legally and morally acceptable (those transactions which do not involve exploitation, duress, unjust enrichment or fraud) by converting elements of a *riba* contract to legally acceptable contracts such as sale contracts.

Source: *Daaim al-Islam* v.2, p.62

Section 2 -

The '*Ina* Contract

How does it work? (cont.)

An Excerpt from Syedna Taher Saifuddin's RA Testimony

Attorney-General: "May I take it that Dais are just as much entitled to lend money at interest as to borrow money at interest?"

Syedna Taher Saifuddin RA: "Yes, according to that book [referring to *Da'a'im al-Islam*]...by that I mean that according to our books it would be lawful to take interest by giving in exchange for it an article of a nominal value. The illustration I give is this. Supposing I was entitled to receive Rs. 1,000 by way of interest from the borrower. I would give the borrower a watch and stipulate with him that the Rs.1,000 would be for price of the watch."

Source: Syedna Taher Saifuddin's Testimony in the Gulla Case of 1917 on Debt, Interest, and Contractual Arrangements (Suit No. 941 of 1917 in the High Court of Judicature at Bombay)

The contractual arrangement explained here by Syedna Taher Saifuddin is a simplified version of the '*Ina*. This simplified form of '*Ina* was employed by Syedna Taher Saifuddin and Dais before him as being more practical in modern times because legal protection afforded to the creditor was greater than had been the case in earlier times. The moral acceptability of such transactions leads to this simplification of the '*Ina*.

Section 2 -

The '*Ina Contract* Hypothetical examples..

Situation 1: When you have to receive interest

- You want to place INR10,000 into a fixed-deposit account for a term of 1-year
- Your bank offers you a 5% rate of interest
- But you cannot receive interest as it is *haraam*

So what do you do?

Solution: Employ the '*Ina contract*

- At that time of fixed-deposit maturity, sell a token good (i.e. pen) to the bank
- Set the price of pen as the amount of interest generated (i.e. 5% of 10,000 = 500)
- Sell the pen to the bank manager with a simple verbal statement: "My religious principles require me to present this pen to you in exchange for the 500 rupees I have received from the bank. Please accept this on my behalf."

Section 2 -

The '*Ina Contract* A further explanation...

Situation 1 Solution Explanation

- By employing this simple mechanism you can withdraw your principal (INR10,000) and a profit (INR500) from the bank while successfully avoiding interest - as you converted the *haram* interest income into a *halal* trading income (by selling the pen).

Situation 2: When you have to pay interest

- In the instance where you are making an interest payment for a loan, the process would be simply reversed (with a slight modification).
- First, you would make a token 'gift' to the bank (such as a pen)
- Then using *the* '*Ina contract* you would 'buy back' the same pen from the bank in consideration for the interest paid.

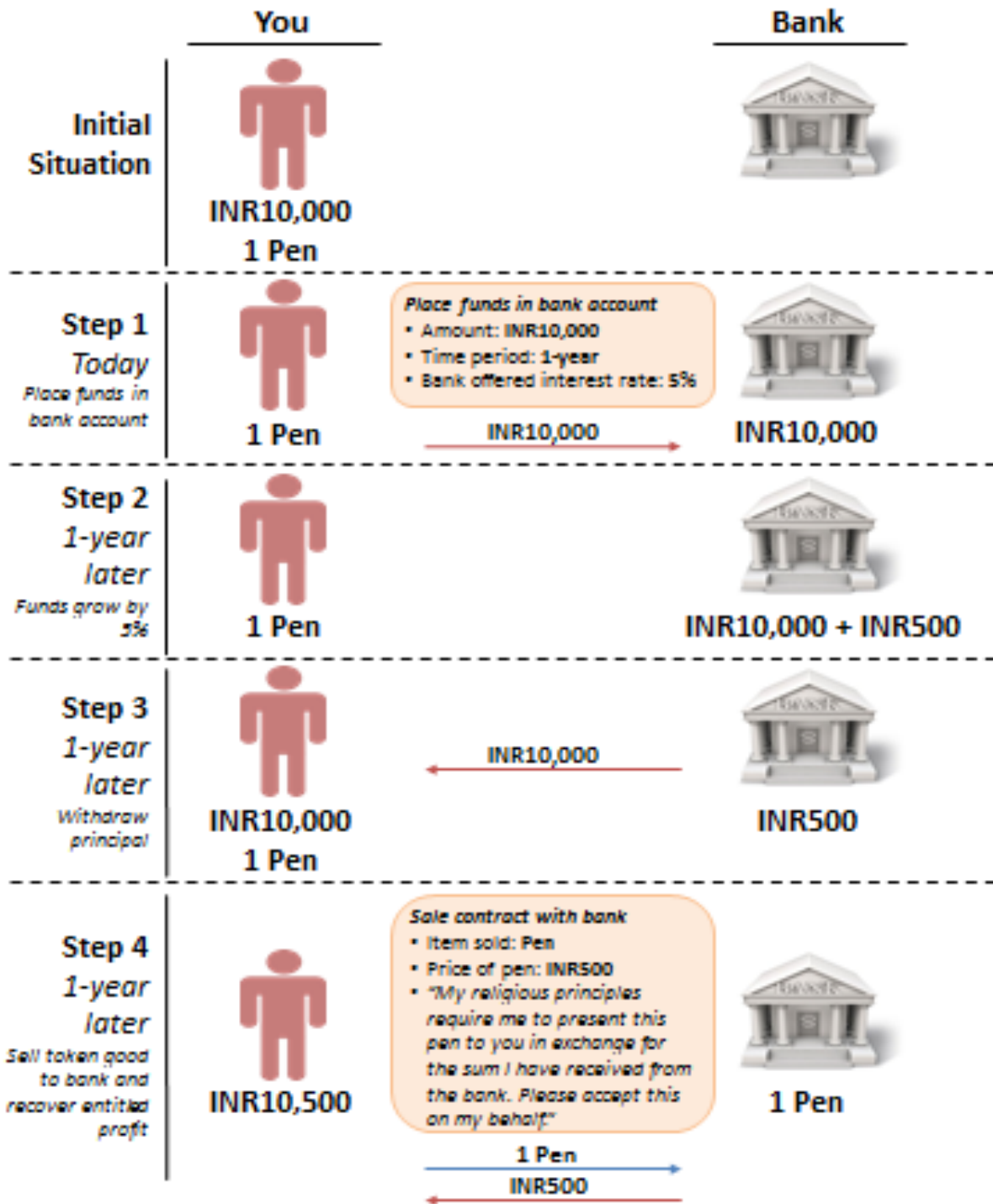
Varied Applications

- Furthermore, this principle can be applied to any number of financial transactions of varying complexity to achieve the same result: engage in an '*Ina contract*, to convert *haram* interest into *halal* trade.
- Therefore an '*Ina contract* need not be executed on each and every date that interest is paid or received but can be done on an annual or periodic basis aggregating the payments over that time period into a single '*Ina contract*
- For example, the '*Ina contract* could be effected at the time of your annual account review with your relationship manager.

Section 2 -

The 'Ina Contract

The mechanics of the 'Ina contract...



Section 3 -

Past Precedents - Aimmat and Duat

Imam Ja'far al-Sadiq AS...

"A man queried Imam Ja'far al-Sadiq AS whether it would be lawful to exchange a thousand dirhams and a dinar for two thousand dirhams. Money against money. The Imam replied yes, it is permissible when an instrument of sale is applied (i.e. the '*Ina* contract)"

Source: *Da'a'im* v.2, pp.38-40; also *Mukhtasar al-Athar* v.2

"It is related from him [Imam Ja'far al-Sadiq] that he was asked about a group who bought and sold through '*Ina*: as they close the deal, they introduce a trade transaction in it. He said, 'Why did they do this?' The questioner replied, 'because they despise *haraam*.' He said, 'Whosoever intends *halaal*, then there is no objection."

Source: *Daaim al-Islam* v.2, p.62.

Section 3 -

Past Precedents - Aimmat and Duat

Syedna Qadi al-Nu'man RA & Syedna Qasim Khan Zainuddin RA ...

"... they [the Ahl al-Bayt] have permitted transfiguration in debt [contracts] according to the permitted [criteria], if the contract is [drawn up] as required [by law]. If a man is owed money from another which is due for payment, and the latter says to him, 'I cannot find that with which to settle your debt; but sell me something on credit, which I will again sell, and then settle your debt from it.' They then do this; there is no objection to it."

Source: Syedna Syedna Qadi al-Nu'man RA wrote this *ziker* in

Mukhtasar al-Athar v.2

Syedna Qasim Khan Zainuddin RA borrowed money from a Hindu moneylender on interest. He employed a contractual arrangement prescribed by Fatemi Tayyibi law

Source: Syedna Taher Saifuddin RA wrote this *ziker* in *Risalat Mafatih*

al- Yaquta al-Hamra

Section 3-

Past Precedents - Aimmat and Duat

Syedna Taher Saifuddin RA ...

In court testimony, the 51st Dai-I-Mutlaq Syedna Taher Saifuddin RA said that he himself employed the 'Ina contract to make interest payments halal.

Additionally, he said that the 31st, 40th, 43rd, 47th, 49th and 50th Dai-I-Mutlaqs all employed the contractual arrangements prescribed in Da'a'im al-Islam to make interest-based transactions halal.

In his testimony, he further clarified that, "what I said should not be taken as regards Mullaji [only] but as regards a general answer." In other words, Syedna Taher Saifuddin said that the practice of 'Ina can be applied by everyone (i.e. Mumineen)

Finally Syedna Taher Saifuddin did not merely borrow; he advanced money against interest as well after employing the contractual arrangement. He was asked by the opposing attorney in the landmark case, "May I take it that Da'is are just as much entitled to lend money at interest as to borrow money at interest?"

Syedna Taher Saifuddin replied, "Yes, according to that book [referring to the Da'a'im]

Source: Syedna Taher Saifuddin's Testimony in the Gulla Case of 1917 on Debt, Interest, and Contractual Arrangements (Suit No. 941 of 1917 in the High Court of Judicature at Bombay)

Section 3 -

Past Precedents - Aimmat and Duat Syedna Mohammed Burhanuddin RA ...

Syedna Burhanuddin RA gave *raza* for a co-operative banking proposal to be run by Dawoodi Bohra community members.

Syedna Burhanuddin gave *raza* for a lease-to-own fund to enable Mumineen to take residential mortgages to buy homes in the U.S.A.

Syedna Burhanuddin not only gave *raza*, but himself personally guaranteed a bank loan taken by the Dubai Jamaat for 3 million UAE Dirhams to finance the construction of Saifee Masjid in Deira, Dubai.

It goes without saying that Syedna Mohammed Burhanuddin would have only granted his *raza* for each finance proposal if it was **permissible**, and properly employed the '*Ina contract* in neutralizing the interest element from each transaction.

Section 4 -

Modern Day Applications

How can the '*Ina* contract be applied?

The most common and popular banking products used in today's financial environment are the current account, savings account and the fixed-deposit account. Various types of loans are also available for residential housing, business working capital and other purposes. Opening and maintaining these accounts with a bank is akin to a lender-borrower relationship: the customer can be either the creditor (lender, in the case of deposits) or borrower (in the case of loans). Thus the '*Ina* contract can be applied to convert any interest accrued from maintaining these accounts into profit from trade.

Section 4 -

Modern Day Applications

1) Current Account; 2) Savings Account

The Current Account

- The Current Account is a form of demand deposit where withdrawals are allowed any number of times. Often, no interest is payable by the bank on the Current Account, although increasingly banks do provide interest at minimal rates to attract customers. This constitutes *riba* and is *haram*.
- If interest is offered and accepted on the deposit, two conditions need to be met:
 1. The intent for the principal deposited should be:
 - depositing the amount as safekeeping, or
 - giving it as an interest free loan to the bank
 2. Any interest accrued should be received with the application of the '*Ina* contract to dissipate *riba* elements and convert it into trade

The Savings Account

- In a savings account, a limited amount and frequency of withdrawals is permitted by the bank per specified period. A nominal rate of interest is paid, compounded at intervals. The same principles and contractual arrangement applied in the interest paying Current Account may be applied, by which the transactions would be considered permissible.

Section 4 -

Modern Day Applications

3) Fixed Deposit Account; 4) Other Deposit Account; 5) Overdrafts

The Fixed Deposit Account

- The fixed deposit account is where an amount is deposited for a fixed period of time, and interest is collected on it on a compound basis at specified intervals. The depositor agrees not to withdraw the amount for the specified time. Here too the principle of intent to provide an interest-free loan, coupled with the use of 'Ina at the time of interest payment, which could be used to make the transactions permissible.

Other Deposit Account

- There are many other types of deposits accounts, such as recurring deposits, cumulative accounts, annuity-providing accounts, reinvestment deposits and so on. They all have similar dynamics and the principles mentioned here together with the simplified 'Ina procedure should make them permissible.

Overdrafts

- In overdraft facilities, there is usually a limit fixed as to the amount to which the account may be overdrawn at any given time. There are fixed or variable interest rates agreed on these accounts. The account holder can overdraw on his account up to the pre-agreed limit as and when he wishes, and can repay as and when he wishes, subject to agreed limits.
- In connection with paying interest, the borrower must make use of the reverse 'Ina instruments.

Section 4 -

Modern Day Applications

6) Term Loans; 7) Mortgages & Secured Loans

Term Loans

- Term loans are for periods of one year or longer, and may go up to ten years. They are generally advanced for new projects, or expansion and diversification plans. Interest may be on fixed or variable interest rates which are pre-agreed.
- If the simple *'Ina* arrangement is executed in connection with the interest payments, the remaining terms would be acceptable to Fatimi Tayyibi law.

Mortgages & Secured Loans

- Mortgages and secured loans are usually secured by a first charge on the immovable and movable assets of the lender. Depending on the credit-worthiness of the borrower, banks occasionally demand additional collateral or third party guarantees. In other respects, they are substantially similar to term loans. Interest may be on fixed or variable pre-agreed interest rates.
- If the simple *'Ina* arrangement is executed in connection with the interest payments, the remaining terms would be acceptable as per Fatimi Tayyibi law.

In the future...

We will continue to communicate to Mumineen with clarity. We will provide advice on the use of specific banking and investment products like deposit accounts, loans, bills of exchange / discounted notes, lease finance, equity and equity-linked securities, debt instruments and insurance products. [For more information, or if you have any questions, please write to info@fatemidawat.com.](mailto:info@fatemidawat.com)

Over the next few weeks, we will publish specific detailed guidance on:

1. Debt,
2. Insurance,
3. Equities,
4. Derivatives,
5. Other modern financial transactions in the light of the principles of Fatemi Tayyibi finance