UNIT-12

Loan & Debt in Islamic Banking

Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Explain the Characteristics of Loan & Debt in Islamic Banking
- ✓ Recognize the Husnal Qadha (Gracious Payment of Loan/Debt)
- ✓ Explore the use of Security / Guarantee(Kafalah) of Loans in Islamic financial system

Unit 12

Loan & Debt in Islamic Banking

Introduction

Conventional banks receive money from depositors and lend it to borrowers on the basis of interest. In other words, their business relates to loaning based on interest in one way or the other. The superstructure of Islamic banks is based on profit/loss sharing (PLS) or modes that culminate in debts that do not carry interest. They mobilize deposits generally on the basis of profit/loss sharing, with the exception of a small portion comprising current deposits that are generally treated as loans and in some cases Wadi'ah/Am¯anah (trust). On the assets side, Islamic banks use PLS as well as debt-creating modes based on trading and leasing activities. Practically, a large part of their assets is based on modes that generate debt.

In Shar¯ı´ah, loaning is a virtuous act that does not provide for any compensation for the use of lent money.This implies that the person who takes a loan is obliged to pay only the principal and any demand for an excess would make the loan usurious. It is, therefore, important to discuss the Shar¯ı´ah rules relating to loans and debts and this chapter is dedicated to a discussion in this regard. Islamic financial institutions (IFIs) create debts as they provide a credit facility in the form of credit sale or lease of assets. Loaning may also be involved in some situations. Areas to be discussed include the objects of loans, the rules of loaning, the repayment of loans and debts, excess payment as gifts, security and surety, responsibilities of the sureties, assignment of debt or Hawalah, punishment to the debtor in case of his (wilful) default, instructions for the creditor and duties of the debtor, the sale of a debt for a debt, prepayment rebate and issues related to insolvency.

The Terms Defined

The terms used in the Holy Qur'¯an, Hadith and Fiqh in this regard are Qard, Salaf and Dayn. While the former two terms relate to the giving or taking of loans, Dayn comes into existence as a result of any other contract or credit transaction. The literal meaning of Qard is "to cut". It is so called because the property is cut off from lender's ownership when it is given to the borrower. Legally, Qard means to give anything having value in the ownership of any other by way of virtue so that the latter can avail himself of the same for his benefit with the condition that the same or similar amount of that thing should be paid back on demand or at the settled time. Jurists are unanimous on this legal definition.

The Shariat Appellate Bench (SAB) of the Supreme Court of Pakistan has quoted what Syed Mohammad Tantawi of Al Azhar (Egypt) considers about Qard and Dayn. He says: "Qard (as a term) is more particular than Dayn, as it is that loan which a person gives to another as help, charity or an advance for a certain time. _ _ _ A Dayn is incurred either by way of rent or sale or purchase or in any other way which leaves it as a debt to another. Duyun (debts) ought to be returned without any profit since they are advanced to help the needy and meet their demands and, therefore, the lender should not impose on the borrower more than what he had lent."

The word "Salaf" literally means a loan which draws forth no profit for the creditor.4 In a wider sense, it includes loans for specified periods, i.e. short, intermediate and long-term loans. Salaf is another name for Salam, wherein the price of the commodity is paid in advance while the commodity or the counter value is supplied in the future, as specified in the Salam contract that creates a liability for the seller. Qard is, in fact, a particular kind of Salaf. If the amount can be demanded at any time or immediately, it is called Qard or a loan payable on demand.

Therefore, loans under Islamic law can be classified into Salaf and Qard, the former being a loan for a fixed time and the latter payable on demand. Dayn is created as a result of any credit transaction in which one of the counter values is deferred.

Another term used for borrowing goods is 'A¯ riyah, which means to give any commodity to another for use without taking any return. In this sense, it is also a virtuous act like Qard. The borrowed commodity is treated as a liability of the borrower, who is bound to return it to its owner. In the address of the last pilgrimage, the holy Prophet (pbuh) said: "al 'A¯ riyah has to be returned, a surety must make good the loss on behalf of the assured and the debts payable must be paid".

The difference between Qard and 'A¯ riyah is that in the latter, exactly the borrowed commodity has to be returned while in Qard, the similar of the loaned commodity has to be paid by the debtor. In order to prepare for Ghazwa-e-Hunain, sometime after the conquest of Makkah, the holy Prophet (pbuh) took as 'A¯ riyah a number of camels and iron breast-plates from Safwan bin Umayyah. The holy Prophet (pbuh) assured him that 'A¯ riyah would be paid back in full. While giving back, some of the plates were found to be missing. The holyProphet asked him how he could compensate him. But Safwan, who had converted to Islam, waived the loss.

The English word "loan" seems to be the counterpart of the word Qard and "debt" that of Dayn. The loans/advances given by the present banking system are covered under any of these two categories. In Murabaha operations by IFIs, goods are sold and Duyun/debts are created, which ought to be returned without any profit over the amount of debt, as all conditions relating to Dayn would be applicable to them.

The legality of Qard is proved beyond doubt by the Sunnah of the holy Prophet (pbuh) and the consensus of the jurists. At the time of Ghazwa Hunain, the holy Prophet borrowed for the Islamic State forty thousand dirhams from Abdullah IbnRabi'ah (Abpwh). Loan advancing by way of Qard, according to the sayings of the holy Prophet, is more pleasing to Allah (SWT) than alms-giving. According to another Hadith, Qard is equivalent to half

Sadaqah (charity) (although it is received back in full).

In view of all these definitions and the Sunnah of the holy Prophet, it may be said that Qard is a kind of loan advanced for the benefit of the borrower and the creditor can demand it back any time. Ownership of the loaned goods is transferred to the borrower who can use, buy, sell or donate it as he wishes, like his other belongings. Salaf is used for a loan of fixed tenure, and in that sense it is closer to Dayn and both these types are the liabilities created on account of credit transactions for a fixed tenure. Loans may consist of any things that are valuable and their similar or substitute becomes payable immediately or on demand in the case of Qard and at the stipulated time in the case of Salaf and Dayn. Further, a Qard should not be conditional upon any other contract like Bai'

Illegality of Commercial Interest

Contemporary Shar¯ı´ah scholars have reached the consensus that modern commercial interest comes under the purview of Riba and no form of loan/debt based on interest is exempt from this prohibition. It is established from the available literature that the Riba prohibited by the Holy Qur'¯an included different forms which were practised by the Arabs of Jahiliyyah. Financing on the basis of Riba was a commercial profession of the rich at that time. The common feature of all these transactions was that an increased amount was charged on the principal amount of a debt. At times, this debt was created through a transaction of sale and sometimes it was created through a loan. Similarly, the increased amount was at times charged on a monthly/yearly basis, while the principal was to be paid at a stipulated date, and sometimes it was charged along with the principal. All these forms used to be called Riba.

All loans that embody any benefit over and above the principal as a precondition are void, irrespective of the fact that the condition embodies any gain in quantity or quality. Hanafi jurist Al-Sarakhsi says: "When the accrual of benefit is laid down in the loan contract as a precondition, it would be a loan carrying benefit, prohibited by the holy Prophet". Ibn Qudama in *Al Mughni*opines: "All jurists agree that any loan containing a condition giving effect to an increase in it is illegal _ _ _ it being immaterial whether the increase accrues in quantity or in quality". The jurists also agree that if a loan is tied to the condition of increase or any other benefit, it entails Riba, irrespective of whether it is in the form of money or not. Ibn Qudama reports from Ibn al-Munzar: "The jurists are unanimous on the point that any binding on the part of the lender upon the borrower entailing an increase or embodying a gift or a present above the principal is Riba".

It is reported that Ibn Abbas and Ibn Masud (Abpwth) forbade extending a loan entailing benefit because a loan contract is a contract of mutual kindness and closeness. Whenever it contains a clause to affect an increase above the principal, it kills the spirit of lending. There is no distinction in this increase whether it occurs in quantity or in quality, as, for example, if one person lends to another person debased coins in return for un-debased coins, or lends units of currency in return for "better units" in the future, the transactions will become illegal. If it is laid down in the loan contract that the borrower will rent out his house to the lender or he will sell something to him or will extend him a loan on another occasion, it becomes illegal because the holy Prophet (pbuh) has prohibited making a contract of sale involving another contract of loan as a condition, as the lender in this case binds one contract with another contract and this is not permitted.

Loaning and the Banking System

Deposits and investments with conventional banks and in government securities are covered under the definition of Qard because not only their principal is guaranteed, but also banks and/or the governments stipulate to pay a return on the deposits/investments that is either fixed or not linked with the outcome of their economic activities. Banks use the amount so mobilized as they wish and are fully liable for their repayment, even in the case of loss to the banks. Current accounts of banks are also categorized as loans because banks are as much liable to the current account holders as to the fixed account holders. On the assets side also, conventional banks' financing mostly takes the form of loans or debts for consumption durables or business activities like working capital finance, trade finance, project finance, BMR, micro and SME finance, government finance, etc. Direct intermediation by the investment banks for facilitating the corporate sector also sometimes takes the form of interest-based transactions.

The majority of writers on Islamic finance hold that banks in the Islamic framework will continue to work as intermediaries. Some Islamic economists have recommended that banks remain as intermediaries, but they should also act as traders or institutions dealing in tangible goods. They may adopt universal banking and holding company models having fully owned subsidiaries/mutual funds for various types of financing operations. Whatever may be their structure; Islamic banks should not be in a position to earn money from money and should be involved in real goods for the purpose of financing. As such, by using tradeand lease-based modes/products, they are creating debt and have to abide by the Shar¯ı´ah rules relating to Dayn.

Guidance from the Holy Qur'an on Loans and Debts

The Holy Qur'¯an provides guidance on various aspects of loans and debts. It says: "O ye who believe! When ye deal with each other, in lending or transactions involving future obligations for a fixed period of time, reduce it to writing. Let a scribe write down faithfully between the parties; let not the scribe refuse to write: as Allah has taught him, so let him write.Let him who incurs the liability dictate, but let him fear his Lord Allah, and not diminish, aught of what he owes. If the person liable is mentally deficient or weak, or unable himself to dictate, let his guardian dictate faithfully and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as you choose for witnesses, so that if one of them errs, the other can remind her. The witness should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contracts) for a future period, whether it be small or big: it is juster in the sight of Allah, more suitable as evidence, and more convenient to prevent doubts among yourselves, but if it be transaction which you carry out on the spot among yourselves, there is no blame on you if you reduce it not to writing. But, take witnesses whenever you make a commercial contract; and let neither the scribe nor the witness suffer harm. If you do (such harm), it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things. If you are on a journey and cannot find a scribe, a pledge with possession (may serve the purpose) _ _ _ "

The first part of the above verse deals with transactions involving future payment, while the second part guides on transactions in which payment and delivery are made on the spot. For credit transactions, the

Qur'¯an recommends witnesses and documentation, while for transactions performed on the spot, no written evidence is required except oral witnesses and even these oral witnesses can be dispensed with if the parties trust each other. Ibn Hazm considers the witnesses necessary in the case of credit transactions. They provide safeguards against disputes that may arise in the absence of documentation and witnesses and allow loan transactions for a fixed or known time period. Transactions involving advance payment such as Salam (whereby a price is paid in advance for a specified commodity to be delivered at an agreed time in the future) and Bai' Mu'ajjal (sale for a price to be paid in the future) are covered under this verse. Hence, the Qur'¯an guides one to commercial morality of the highest standard in the most practical manner, as man has been advised to do business as if all transactions are to be carried out as in the presence of God Almighty.

The Substance of Loans

The question of which things can be loaned is important for any discussion on the subject. Besides goods serving as Thaman, Qard can be given in all those goods that are Mub¯ah (permissible), have value and their similar is available, enabling repayment. According to the Hanafi school of thought, a loan should consist of fungibles only (similars of weight and measure).However, as we see in the Sunnah of the holy Prophet, Qard can also be taken of animals, which are not fungibles. The other three schools of thought allow it in terms of all such commodities that can be sold except human beings. However, the amount and value of loan should be known without any doubt.

According to the Maliki school, Qard is a loan of something "valuable" granted only as a favour and not by way of 'A¯ riyah or Hibah (gift) but to recover it in the form in which it was granted. The word "valuable" is specifically used to exclude that which is not valuable from the definition of Qard, and the word "favour" to show that the benefit is for the borrower alone and not for the lender. Under this definition, Qard may consist of anything that is valuable, be it merchandise, animals or similars of weight and that can be the subject of Salam.

Repayment of the Principal Only

Lending/borrowing is, indeed, unavoidable in human life, and, therefore, is permissible in Islam. Had it not been permissible, the holy Prophet would never have set an example of a borrower both for the Islamic State and for private purposes. However, borrowing should not be taken as a means for lavish consumption. In that sense, Islam discourages the act of borrowing. Besides, it has to be borne in mind that a loan must be paid. Debt is not forgiven, even for martyrs. Further, a loan whereby something in excess of the principal is exacted becomes unlawful, as it amounts to Riba. There is no exemption on the basis that a Qard transaction has taken place between a Muslim and a non-Muslim, an employer and an employee or a State and the people. Prohibition of Riba means that money can be lent without any expectation of return over the amount of the principal, and as such, every loan that draws forth or stipulates profit is unlawful.

The holy Prophet (pbuh) has said that after making a loan, the creditor must even refrain from accepting a present from the borrower unless exchange of such presents was in practice between the borrower and the lender before the advancement of the loan. However, some indirect benefits that have become customary that do not involve any cost for the borrower have been considered permissible. For example, jurists see no harm if it is agreed between the parties that the debt will be paid in some other country if it is in the interests of both parties. IbnZubair, for instance, used to accept sums of money from the inhabitants of Makkah to be paid in Iraq through drafts drawn upon his brother Mus'ab, who lived in Iraq. To this, Ibn Abbas and Ali (Gbpwth) did not make any objection.

Repayment of the Principal Only

Lending/borrowing is, indeed, unavoidable in human life, and, therefore, is permissible in Islam. Had it not been permissible, the holy Prophet would never have set an example of a borrower both for the Islamic State and for private purposes. However, borrowing should not be taken as a means for lavish consumption. In that sense, Islam discourages the act of borrowing. Besides, it has to be borne in mind that a loan must be paid. Debt is not forgiven, even for martyrs. Further, a loan whereby something in excess of the principal is exacted becomes unlawful, as it amounts to Riba. There is no exemption on the basis that a Qard transaction has taken place between a Muslim and a non-Muslim, an employer and an employee or a State and the people. Prohibition of Riba means that money can be lent without any expectation of return over the amount of the principal, and as such, every loan that draws forth or stipulates profit is unlawful.

The holy Prophet (pbuh) has said that after making a loan, the creditor must even refrain from accepting a present from the borrower unless exchange of such presents was in practice between the borrower and the lender before the advancement of the loan.However, some indirect benefits that have become customary that do not involve any cost for the borrower have been considered permissible. For example, jurists see no harm if it is agreed between the parties that the debt will be paid in some other country if it is in the interests of both parties. Ibn Zubair, for instance, used to accept sums of money from the inhabitants of Makkah to be paid in Iraq through drafts drawn upon his brother Mus'ab, who lived in Iraq.To this, Ibn Abbas and Ali (Gbpwth) did not make any objection.

Time Value of Money in Loans and Debts

While in trading of goods it is permitted that the credit price of a commodity be different from its cash price, no value can be assigned to the time given for payment of a receivable once its amount is mutually stipulated. This is because money is not regarded as a lawful commodity for homogeneous exchange except in equal sums. One hundred dollars have to be exchanged for one hundred dollars only. It has been explained that time valuation is approved by the Shar¯ı´ah in business and trade and not in Qard or Dayn, because the latter are considered virtuous acts from which one cannot take any benefit.

The Shar¯ı'ah does recognize a difference in value due to a time element, and does not prohibit realizing the time value of money in a business. What is prohibited is any claim to the time value of money as a predetermined quantity calculable at a predetermined rate not related to any real sector business. All currency notes (of various denominations) are factually homogeneous in that they all represent purchasing power (as dinars and dirhams did in the time of the holy Prophet) and are legal tender, their genus and 'Illah are also the same. Therefore, a person who is to avoid loaning on Riba cannot resort to the sale or lease of currency notes, as they are not subjects of sale and lease like common goods and assets. Similarly, government securities and bonds or savings certificates command value as gold or silver commands value and, therefore, are money. While gold or silver may serve as both Thaman and Mabi‘, bonds or currency notes reflect value only, as the latter have no value in the absence of the government authority and as such cannot serve as Mabi‘.

Instructions for the Debtor

The foremost duty of the debtor is to repay the loan in fulfillment of the promise or contract made with the creditor.Willful default or procrastination in payment of due debt has been equated by the holy Prophet to injustice. According to a Hadith, a debtor who is able to pay but does not repay the debt can be arrested and embarrassed. According to another Hadith, the greatest sin after Kab¯air, is to leave, after death, unpaid debt where there is no one to pay the same.In the case of Qard, the creditor has the right to ask for repayment even before the date of promise. In desperate circumstances when the debtor is really unable to pay, he should take the creditor into his confidence and regret his inability to pay the debt. The holy Prophet (pbuh) has warned that a believer’s soul remains encumbered with the debt until he pays. He also said that the best among people is he who is the best in payment of his liabilities. That is why, the holy Prophet did not offer funeral prayer for a Companion (Gbpwh) until his debt was taken over by someone else. The Shar¯ı´ah even allows punishment of a debtor who does not pay his debt, and if he defaults willfully, he can be arrested, punished and dealt with harshly.

The huge numbers of nonperforming loans (NPL) of banks at present in almost all countries of the world reveal that borrowers do not make serious efforts to fulfill their responsibility to pay their debts while they continue their lavish lifestyles. According to Islamic teachings, a borrower, while taking loans, must have a firm intention to repay, and if his intention is to blemish or to usurp the loan amount, God (SWT) will spoil him. Islam requires that a debtor should not only pay the debt in time, but also express thanks and pay gratitude to the creditor while repaying the amount. It is also desirable on the part of the authorities to make relevant laws and accounting and auditing standards to minimize the chances of nonpayment of loans or other moral hazard threats in present-day societies.

Instructions for the Creditor

The Holy Qur’¯an encourages creditors to give more time for payment, or even to waive the

loan amount, if the debtor is in dire straits.In a number of traditions, the holy Prophet (pbuh) has encouraged lending by indicating it a highly virtuous act, liked by Allah Almighty.He encouraged creditors to be polite to debtors and to waive a part of the loan. Abu Hadrad, a Companion, was unable to pay a loan that was due to another Companion Ka’ab Ibn Malik (Abpwth). When the latter insisted, the holy Prophet asked him to waive half of the debt, and when he was agreed on this, the debtor was advised to repay the remaining half from wherever he could arrange.

The majority of jurists, particularly the Maliki and Shafi‘e jurists, do not allow punishment or arrest of debtors who are really in trouble, and recommend giving more time. Imam Abu Hanifa is of the view that a person who does not pay his debt when it is due, should be put in prison for two to three months; after which, information should be taken about his capability to repay, and if he is really in trouble, he may be acquitted.

In the case of a debt with a settled due date, the creditor cannot ask for earlier repayment so long as the debtor does not transgress the terms and conditions. However, if the creditor is not inclined to give more time for payment, he cannot be compelled to do so and the debtor would then be required to pay one way or another. A number of instances in the early history of Islam lead us to the point that even a destitute debtor is not entitled to get more time as his right. He will not be remitted of the repayment of debt and whatever he earns over and above his normal food needs, should go towards repayment of the debt.

Husnal Qadha (Gracious Payment of Loan/Debt)

Repaying a loan in excess of the principal and without a precondition is commendable and compatible with the Sunnah of the holy Prophet (pbuh). Jabir (Abpwh) says that the Prophet

(pbuh) owed to him a debt; "he paid to me and gave me more than the principal". Similarly, the holy Prophet ordered to pay a better camel in repayment of a debt as a camel of the age that was borrowed was not available at the time of repayment.

However, gracious repayment of debt is a matter of individual discretion and cannot be adopted as a system, because this would mean that a loan would necessarily yield a profit. All references in the Fiqh literature that we find in favour of gracious payment of debt indicate that addition should not be a precondition, explicit or implicit. But if it is adopted by banks or the government as a system, it would envisage addition, both explicit (in the form of a customary rate) and implicit (an investor would expect that he would get some return that may be in the form of the GNP's nominal rate of growth, for example).

Current account deposits in Islamic banks are considered loans and the bank is bound to return their full amount on call. Banks' income from the business is pooled and allocated to various categories of deposits/liabilities on the basis of weightages, assigned in advance. Current accounts will carry no weightage. As resolved by the Islamic Fiqh Council of the OIC, the liability to return the loan (current deposit) will not be affected by the bank's solvency or otherwise, meaning that the bank will pay the amount of the deposit irrespective of its profit or loss. The predominant Shar¯ı´ah ruling, therefore, is that such accounts are not eligible for a share in profits, as they are not subject to risk and there shall be no return payable on them. The relationship between the depositor and the bank in the case of such deposits is that of a creditor and debtor. Banks may indicate in the account opening form that they will invest the funds deposited under current accounts at their own discretion in any of the Shar¯ı´ah-compliant modes. Further, they will be at liberty to take service charges from the current account holders.

A departure from the general view in this regard is that some Shar¯ı´ah boards have ruled that current accounts may be eligible for gifts but not for profits. The Shar¯ı´ah supervisory board of the Faysal Islamic Bank of Sudan, for example, sees it as permissible to give prizes for deposits that bear no risk and, therefore, cannot get dividends. Such gifts may be given without prior knowledge of the account holders, so long as the prizes are varied and made on a non regular basis, in order to help mobilize the funds and to achieve a just reward distribution between account holders and shareholders. Most Sharˉıˊah boards, however, do not favour such arrangements.

Another consideration is that a part of banks' income comprises non-fund income earned from currency transfers or other "customer services". As deposits in the current accounts are an important source of financial strength for banks, they can pass on a part of that income to such depositors as a gift provided no such prior inducement is given to such depositors and it does not take the form of a system of return or earnings on deposits.

Remitting a Part of a Loan and Prepayment Rebate

On the subject of remitting a part of the debt against early payment and other concessions to debtors, we come across three traditions of the holy Prophet (pbuh). Two contradictory (in meaning) traditions have been reported by Imam Baihaqi. Briefly these traditions are:

1. When the holy Prophet (pbuh) expelled Bani al Nadhir from Madina, he was told that debts were owed to some of them that had not become due; the Prophet said, "DhaʻawoowaTaʻajjloo" (remit a part of the receivable and take that earlier).
2. A Companion, Miqdad bin Aswad said that he gave someone a loan of a hundred dirhams. He needed money when the holy Prophet sent him along with a delegation. He asked the debtor to remit ten and pay ninety dirhams. He accepted and paid ninety dirhams. When the holy Prophet came to know, he said: "You got yourself and the other party involved in Riba".

To reconcile the above two traditions, jurists generally believe that the remitted amount (in the first tradition) related to an amount of Riba that was accrued to Jews of Banu Nadhir.

This they derive on the basis of details reported by the eminent jurist Wˉaqidi about the incident. He writes: "_ _ _ Abu Rafi'i Salam bin al Haqiq had to get 120 dinars from Usaid bin

Huzair. He agreed to get the principal of 80 dinars and remitted the excess". This means that the remitted amount in Banu Nadhir's case was that of Riba and not the principal. That is why Imam Malik, while giving the view of Ibn Umar and Zaid bin Thabit (Gbpwth) on this aspect, describes that there is no difference of opinion about the illegality of remitting a part of Dayn payable by anyone and getting the remainder. To Imam Malik, this is just like a person giving more time after a debt becoming due and increasing the amount of debt. It is Riba without any doubt.

The third tradition is reported by Bukhari, Muslim and others according to which the holy Prophet (pbuh) asked his Companion Kaʻab bin Malik to waive half of the debt payable by another Companion Abdullah bin Abi Hadrad while the former was pressing the latter to pay his debt; Kaʻab waived half of the debt. When Abdullah told that he had no resources to pay even half the debt, the Prophet asked him to arrange payment from wherever he could. Going into details and to resolve the issue, jurists have differentiated between the two categories of loans, i.e. Duyun Hˉalah (loans that have become due or could be called back at any time) and Duyun Mu'ajjalah (time of payment is settled between creditor and debtor and the debt is not yet due). Remission of a part in the former category (due loans) is allowed by almost all jurists on the rationale that in such loans, delay is not the right of the debtor.

It means that if a debt has become due and it has not yet been paid, the creditor can remit a part of the amount for early payment. In this respect, jurists also say that it should not be made a condition. Imam Malik has captioned a chapter, “If a person purchases on credit, it is not permissible to pay less before the due date” and quoted two traditions reported by Zaid b. Thabit and Abdullah b. Umar (Abpwth) not approving discounts on prepayment. Shah Waliullah, in *Musawwa*, referring to the above two and the tradition of Ka’ab b. Malik and Abu Hadrad (Abpwth), according to which the former waived half of the debt on recommendation of the holy Prophet, has observed that the former two instances relate to debt not yet due while the latter was due debt (Dayn al H¯alah). He also explains that time of repayment cannot be stipulated in the case of Qard, while in the case of a credit sale (and

Dayn), the payment time can be settled in the contract.

Some of the later Hanafi jurists distinguish between debts created as a result of Musawamah (bargaining on price) and those payable as a result of Murabaha–Mu’ajjal, wherein a profit margin is added by the seller keeping in mind the credit (payment) period.

They say that if the debtor in Murabaha–Mu’ajjal pays earlier than the due date or if the debt becomes due on his death, then the creditor will have to remit the part of debt relating to the remaining period as the profit margin was charged against the time given for payment. They allow this on account of benefit to both parties. The majority of contemporary Shar¯ı´ah scholars, however, do not allow remission for earlier payment in Murabaha operations by banks. The OIC Fiqh Academy, the Shar¯ı´ah committees of Islamic banks in the Middle East and Shar¯ı´ah scholars in general consider that it would be similar to interest-based instalment sales techniques.

The AAOIFI Shar¯ı´ah Standards also prohibit giving rebate to the client on early payment on a contractual basis, as under Murabaha, the price has to be fixed once and for all. However, if there is no commitment from the bank in respect of any discount in the Murabaha price, the AAOIFI standards allow the bank to give a rebate in the case of early payment at its sole discretion. Experts therefore recommend that the matter should be brought to the knowledge of the Shar¯ı´ah advisor, who may decide each case of rebate on merit.

Penalty on Default

The classical jurists were not generally in favour of pecuniary punishment or penalty to a debtor in case of a default in payment. They normally allowed harsh treatment or imprisonment.

In the resolutions passed in the early stages of Islamic banking evolution, the religious boards in Islamic banks also did not allow the provision of penalty clauses in Murabaha–Mu’ajjal agreements, giving an automatic right to the bank to impose fines so that Murabaha operations could not become a means of charging interest. According to the juristic rules of the Shar¯ı´ah, the case of a wilful defaulter is similar to that of a usurper (Gh¯asib) who is made to return any profit, along with the property, made by him on the usurped property. Therefore, Shar¯ı´ah scholars subsequently allowed imposing a penalty in cases of default by the banks' clients.

A heavy nonperforming portfolio and default on the part of the clients is a serious problem confronting financial institutions all over the world. This problem could be a threat to the success of the Islamic banking system. If clients do not honour their commitment in respect of timely payment of a debt created in an instalment sale, Murabaha or leasing, or do not pay the banks' share of profit in participatory modes, or do not deliver goods at the stipulated time in Salam and Istisna'a, it could cause irreparable loss to the system, the banks and financial institutions and ultimately to the savers and the respective economies.

Some of the classical jurists and almost all contemporary scholars allow punishment (T'azir) of such borrowers in the form of fines. In the opinion of some Maliki jurists, a delaying borrower should be obliged to pay for charitable activities. In view of the severity of the problem, all Shar¯ı´ah bodies like the Islamic Fiqh Council of the OIC, the AAOIFI, etc. have approved the provision of penalty clauses embedded in contractual agreements that keep a balance between the requirement in view of the severity of the problem and that of the Shar¯ı´ah conditions/principles to keep the fine difference between interest and a Murabaha profit intact. The penalty thus received has to be given to charity.

Banks can claim liquidated damages or compensation for a loss arising from default. However, the amount of compensation should be decided by the court or any independent reconciliation committee, keeping in mind the loss incurred by the bank in profit that it could have earned if it had invested the amount on a similar project during the delay period.

The penalty proceeds should be given to charity because penalties on default in repayment cannot become a source of income for the creditor. This implies that liquidated damages to be given to banks in cases of default on the part of the banks' clients should be based on actual loss. If required by any of the parties, the court may reasonably adjust the amount of compensation. The "actual loss" should not be the loss in terms of conventional "opportunity cost". It has to be proved by the bankers themselves to the satisfaction of the court or any arbitrator.

However, some Shar¯ı´ah boards allow Islamic banks to charge from the defaulter the rate realized by them on their Murabaha portfolio during a specific period. They also recommend that the financial condition of the client be taken into account.

In this context we will have to differentiate between Qard and Dayn, as jurists have approved imposing penalties in the latter case only. This means that in the case of a loan (Qard), the creditor should give more time,while if the liability to pay has emerged from any sale or exchange transaction and the client is deferring the payment through dilatory tactics, he can be required to pay a fine, which goes to charity, and even to compensate the bank for a loss through arbitration. According to this approach, the OIC Fiqh Council has differentiated between pure loan contracts and debt contracts involving the performance of certain obligations/acts by the clients, and decided that penalty clauses can be put into the original contracts or in a separate agreement in all financial debt contracts except where the original commitment is a loan meaning Qardal Hasan, as imposing a penalty provision in a loan contract is usury in the strict sense.

The OIC Fiqh Council also resolved that penalty provision should become null and void when a client proves that his failure to meet an obligation was due to a reason beyond his control, or when he proves that the bank, as a result of his breach of the contract, has incurred no loss.

Insolvency of the Debtor

If a debtor does not have enough money to pay his debt(s), he is termed insolvent/bankrupt

(Muflis) in Islamic commercial law. In such cases it must be ensured that the debtor is not resorting to fraudulent bankruptcy, in which case he can be pressed and even imprisoned for payment of debt. However, if a person is really in trouble and there is little chance of his ability to pay in the foreseeable future, he can be declared insolvent; all his assets will be sold and the proceeds distributed among the creditors on a pro rata basis. If some of the debts remain unpaid, he must be given time for easement. The State or the regulators of the financial system can play an important role in resolving such issues, as the holy Prophet did in the case of Ibn Abi Hadrad and Jabir bin Abdullah. Jurists differ regarding arresting such an insolvent debtor. According to Imam Malik and Imam Shafi‘e, he can be arrested only if there is the possibility that he has some hidden wealth.

If a commodity sold on credit is still with the insolvent buyer in the same condition, the seller has the first right according to a saying of the holy Prophet and according to the majority of the jurists. (Narrated Abu Huraira: “Allah’s Apostle said, ‘If a man finds his same things with a bankrupt, he has more right to take them back than anyone else’.”) Imam Abu Hanifa is in favour of the distribution of its proceeds among all other creditors.

Hawalah (Assignment of Debt)

Hawalah literally implies the transfer of something from one person to another or from one situation to another. Legally, Hawalah is an agreement by which a debtor is freed from a debt by another becoming responsible for it, or by shifting the responsibility from one person to another with the effect that a debtor is replaced by another debtor.

Hawalah may be restricted or unrestricted. In restricted Hawalah, the assignee has to pay from the asset or property of the assignor that is in the possession of the assignee. Unrestricted Hawalah is not restricted to payment being made from the assets/property of the assignor/transferor in the hands of the transferee–the assignor (debtor) does not act as creditor to the payer who undertakes to pay from his own funds and has recourse from the assignor provided that the payment was made by the order of the transferor.

Hawalah, or the transfer of debt, is different from the transfer of right in which a creditor is replaced by another creditor. As such, it refers to the endorsement or assignment of debt. The Muslim jurists encouraged the Hawalah contract and it was carried to Europe through Spain and Sicily during the crusades of the 12th century of the Common Era.

The contract of Hawalah, together with the contract of al-Suftajah, formed the basis of bill of exchange in Islamic commercial law. The term “Hawalah” also applies to a mandate to pay and denotes the document by which the transfer of debt is completed. In this sense, it also means a promissory note or a bill of exchange. A number of products/services provided by the banking industry today are forms of Hawalah, like cheques, drafts, pay orders, remittances, promissory notes, bills of exchange, ODs, endorsements, etc.

The difference between “sale of debt”, which is prohibited, and the “assignment of debt”, which is permissible, is that in the latter case, there is recourse to the assignor or the original debtor if the assignee does not pay the debt for any reason. In the sale of debt, the purchaser of the debt instrument has no recourse to the seller of the debt, and therefore, due to the involvement of Gharar and Riba, the sale of debt is prohibited, except in the case where it is subject to the rules of Hawalah.

Hawalah should take effect immediately – it must not be suspended for a period of time or concluded on a temporary basis nor must it be contingent on future unlikely events. However, the assignee will have to pay when the debt becomes due and it is permissible to defer payment of the transferred debt until a mutually specified date. Hawalah is a non-commutative contract and the assignee cannot take any remuneration for his service. Assignment of debt is, therefore, allowed at the nominal value of the debt/debt instrument with recourse to the original debtor or the assignor if the assignee defaults in payment of the liability. It is a binding contract and not subject to unilateral termination. According to the majority of jurists, the obligation to pay the debt would return to the assignor in the case of bankruptcy or death of the assignee.

No obligation of debt will be left without being paid if the assignee becomes bankrupt, dies, and so on. The Prophet (pbuh) is reported to have said: “Procrastination in paying debts by a wealthy man is injustice. So, if debt is transferred from your debtor to a trustworthy rich debtor, he should agree”. The observation made by the Prophet (pbuh) to accept Hawalah by a rich debtor is a recommendation, which is held by the majority of jurists. This Hadith also implies that Hawalah is valid when it is contracted as a result of mutual consent between the assignor and the assignee. Similarly, Wakalah is permissible for the payment of debt, i.e. a person can be appointed as agent to pay the debt.

Security/Guarantee (Kafalah) In Loans

As discussed above, a loan must be repaid. The lender can demand some security to which he may have recourse in the event of failure by the borrower to fulfil his obligation. The holy Prophet (pbuh) himself borrowed from a Jew against the security of an iron breastplate which was with the Jew at the time of his demise. Islam has laid down broad principles in this regard as well. In the Qur’¯an we come across: “If ye are on a journey and cannot find a scribe, RihnMaqbudah (a pledge) with possession (may serve the purpose)”. This is convincing proof of the fact that (i) a pledge is permissible, (ii) it makes no difference whether a person is on a journey or at home, (iii) transactions of this nature can take place even between a Muslim and non-Muslim.

Guarantee is covered under the term “Kafalah” in Islamic commercial law. There are two forms of guarantee: Kafalah, or surety-ship, and Rihn, or pledge/surety. The two pre-Islamic contracts used for guarantee or safe return of loans to their owners were approved by the holy Prophet (pbuh) and their elaborated applications were extended by later generations in order to avoid any iniquities to both parties in the contract of loan, especially to the creditor. Literally, Kafalah means to take on the responsibility for the payment of a debt or for a person's appearance in court. Legally, in Kafalah, a third party becomes surety for the payment of a debt unpaid by the person originally liable. The degree or scope of surety-ship should be known and should not come with preconditions. It is a guarantee given to a creditor that the debtor will pay the debt, fine or any other liability.

Rihn, or pledge, is also a security for the recovery of debt if the debtor fails to repay it. Kafalah and Rihn interrelate in the case of debt, but they have different functions. In the contract of Kafalah, a third party becomes surety for the payment of debt, but in Rihn, the debtor hands over something as a pledge to ensure the payment of debt. Mutual consent/agreement is the basis for the validity of both contracts, as in other business transactions. In addition, Rihn is also regarded as a trusteeship; the creditor has to hold the pledged property as a trust.

A creditor can also ask for personal surety from any third party. This creates an additional liability with regard to the claim. The creditor has the right to demand payment from the debtor and the surety and if the surety is obliged to pay the liability, the debtor is bound to pay the surety. If the debtor does not pay, the surety will have to pay the creditor and for that purpose he is entitled to get Zakat and even charity. If the guarantor agrees that the debt of the principal debtor would be remitted by him, its effect would be that of Hawalah, or transference of debt. If a delay is granted to the principal debtor for the payment of his debts, the delay is also granted to the surety. But a delay given to the surety is not a delay given to the principal debtor.

A surety agreement becomes enforceable by the offer of surety, provided the claimant is agreeable. It is also lawful to become the surety of a surety. There can be more than one surety at the same time for a single obligation, i.e. joint surety or joint guarantee; each one is liable only for his share of the debt. But if various people become sureties of a debt one after the other, each one of them is liable for the whole debt. If the jointly indebted people become surety for each other, each of them is liable for the whole debt.

A guarantee shall not be effective in the case of goods that are in trust in the hands of the principal debtor. For example, a person cannot furnish as guarantee goods that are pledged to him or assets that he has taken on lease.

A bank can call for the following types of guarantee to secure its loans:

- letters of guarantee;
- use of cheques (post-dated);
- promissory notes;
- freezing cash deposits;
- third party guarantees;
- Hamish Jiddiyah (earnest money taken from a prospective client to ensure the performance of any assignment or liability by him before execution of the formal contract);

- ‘Arb¯un (down payment taken as part of the settled payment taken after execution of the formal contract).

Whatever is valid as the subject of sale can become the subject of a pledge, which is encumbered to the extent of the debt. A share in jointly owned property can also be given as a pledge. The pledger is the owner of the risk and reward of the commodity pledged, as he is the owner, and has given possession only as a guarantee. Accordingly, if the pledge is destroyed/lost without negligence or any fault on the part of the pledgee, the loss is that of the pledger/debtor. The pledgee, being a trustee, cannot be held responsible for the loss of security, and therefore can recover from the pledger what has been lent to him.

Risk and Reward in Pledge

As indicated above, a pledger, i.e. a person owing a debt, is the owner of the risk and reward of the commodity pledged. The holy Prophet has said: “Pledge cannot be foreclosed, and it is from the pledger and for him is its Ghunm or accession and upon him is its Ghurm or loss”. Accordingly, if the pledge is destroyed/lost without any proven negligence of the pledgee, the loss is that of the pledger/debtor. The pledgee, being a trustee, cannot be held responsible for the loss of security, and therefore can recover from the pledger what has been lent to him. Any excess amount, e.g. over and above the loan amount, belongs to the pledger/debtor. According to a Hadith of the holy Prophet: “Pledge is to cover what it is for” that is, to cover the debt, and therefore security remains bound to the extent of debt. The words of the holy Prophet that pledge cannot be foreclosed, as given above, do not convey that the pledgee cannot sell it for recovering the debt. These words imply that the pledge should remain redeemable and not be appropriated wrongfully, as was the practice in those days. Imam Abu Hanifa also considers that pledge implies an encumbrance or charge (on property so pledged) to the extent of loan. Accordingly, a provision in the contract that in case of nonpayment of debt, the pledged commodity should be taken over by the pledge in place of the debt is not valid. When the duration of a pledge expires, and the debt becomes payable but not paid, the pledgee can apply to the court to have the pledged commodity sold and the debt recovered out of the sale proceeds. To avoid any possible trouble and expense, the creditors may have an irrevocable power of attorney to sell the security on behalf of the pledger to recover their dues from the proceeds and remit the extra amount, if any.

Benefits from Pledge

A Hadith of the holy Prophet (pbuh) guides us on this aspect of pledge, according to which a pledged animal can be used for riding and its milk consumed in return for what is spent (on it) and its maintenance rests with him who rides it and consumes its milk. This reveals that the pledgee has the right to benefit from the security as it is in his possession and he has to maintain it. No permission of the pledger is required in this regard. However, there is a difference of opinion among jurists as to who should derive benefit from a pledge or security.

Some of the Hanafi jurists hold that it is not at all permissible for the pledgee to benefit from the pledge, even with the permission of the pledger, for it amounts to Riba, but the majority of them maintain that benefit may be derived by the pledgee with the permission of the pledger, provided it is not so stipulated at the time of contract.

According to the Shafi'e school, it is the right of the pledger to derive benefit from the security, as he is the owner of it. The security should remain in the possession of the pledge except for the periods when it is made use of by the pledger.

According to the Maliki school, the pledger is entitled to benefit from the pledge and its accession. But it is also possible for the pledgee to have such benefit provided that (i) the loan for which security is given is not of the nature of Qard but has resulted from a sale transaction, (ii) the benefit for pledge is stipulated at the time of contract and (iii) that the period of such benefit is specified. Hanbali jurists allow use by the pledgee subject to the permission of the pledger.

Study of the arguments of various schools of Fiqh reveals that the difference of opinion is due to the fact that some jurists attach more weight to the possession by the pledgee, while others lay greater emphasis upon the ownership of the pledge. It is said that permission is necessary to derive benefit, while in certain cases it is not, and again no permission will give the right to benefit when the security is for a loan of the nature of Qard. The benefit is in return for the expenditure on maintenance. Some of the jurists say that the benefit should be in proportion to the expenditure, otherwise it would amount to Riba. This does not lead to any hard and fast rule, because the Prophet, while allowing benefit of the pledged animal, did not mention the minute aspect of equating expenses with the benefit. Putting any condition in the loan contract that the pledgee has the right to benefit from the pledge is not valid. However, to the extent that is possible, any extra income, i.e. over and above the expenses incurred, should go to the pledger.

On this analogy, an Islamic bank as a pledgee may derive benefit from a pledge in return for its maintenance by it. A house, for instance, requires maintenance and the bank can benefit by it on the above principle or charge the pledger a customary rate for its services or even take it on lease and give it to someone for something more. The rental over and above the customary rate of the bank's services should go to the pledger. Apart from pledge, an Islamic bank has the right of lien, i.e. the right to retain the property belonging to another until a debt due from the latter is paid. This is called a "possessory lien", which seems to be permissible under Islamic law on the analogy of a seller (in cash sales) who has been invested with a right to retain the property sold by him in his possession, until its price is paid to him. Mortgage, where only the interest in the property is transferred to the mortgagee and not its possession, has not been discussed in traditional books on Islamic law. However, contemporary scholars allow it on the basis of analogy.

Bai' AlDayn (Sale Of Debt/Debt Instruments)

Secondary market trading of debt and debt-based securities is possible through Bai' alDayn, as in the case of a variety of Malaysia-based Sukuk. However, JamhoorUlama do not accept this, even though the debt represented by Sukuk is supported by underlying assets. The traditionalMuslim jurists are unanimous on the point that Bai' alDayn with discount or premium is not allowed in Shar¯ı´ah. The overwhelming majority of contemporary Shar¯ı'ah scholars are also of the same view. However, some experts from Malaysia have allowed this kind of sale. They normally refer to the ruling of the Shafi‘e school, but they do not consider the fact that the Shafi‘ete jurists allowed it only in a case where a debt was sold at its par value.

Rosly and Sanusi (1999) have observed in this regard: “The trading of Islamic bonds at a discount using Bai‘ alDayn has been found unacceptable by the JumhurUlama’ including al-Shafi‘e. As such, the position of Malaysian Islamic bonds remains unacceptable among the Middle Eastern jurists, although some Malaysian jurists found this the opposite.” The OIC Islamic Fiqh Council, which has the representation of all Islamic countries, including Malaysia, has also approved the prohibition of Bai‘ alDayn unanimously without a single dissent.

Impact of Inflation on Loans/Debts

The Shar¯ı´ah scholars, Shar¯ı´ah courts, committees and boards of various Islamic banks have not accepted the principle of indexing loans and debts with any currency/basket of currencies or gold. The Federal Shariat Court (FSC) in Pakistan has discussed this issue in detail (paras 153–234 Judgement; 14th November, 1991). In this context, reference has been made to books like Hidaya, Al-Mabsut, Badaa‘i al Sanaa‘e, KitabulFiqh (Al Jaziri), and personalities like Imam Abu Hanifa, Imam Muhammad, Abu Yousuf, Ghazali, the celebrated jurist of the 13th Hijrah century, IbnAbidinShami, Pakistan’s Council of Islamic Ideology, papers read by prominent Ulama and economists in an international seminar on indexation held in Jeddah and to other eminent scholars of Islamic Shar¯ı´ah.

After quoting the well-known Hadith of Sahih Muslim regarding Riba on the exchange of six commodities, the FSC says: “Gold and silver (currency) have been counted among the six commodities about which it has been ordained that the transactions among these commodities must be like for like, equal for equal and hand to hand. If someone borrows Rs.100 from the bank, which have to be paid back after one year, and this amount, after indexation, becomes Rs.120 or so, it would fall into the category of Riba, as enunciated in the aforesaid Hadith and comes within the ambit of Riba Al-Nasiah as well as Riba Al-Fadl”.

The FSC also quotes from the renowned KitabulFiqh by Al Jaziri:

“Among the points relating to loan or debt is the requirement that the transaction should involve equality. In this way, if a measurable thing is lent, for example wheat, it is necessary to return the same quantity irrespective of increase or decrease in its price. The same rule is applicable to all those things which are lent or borrowed by counting”.

In this context, AllamaKasani says that if someone borrows on the condition that he will repay with some benefit over and above the loan, or someone borrows depreciated coins on the condition that he will repay the original coins, the transaction will not be considered legal. The relevant text of Al-Kasani is:

“As far as loan is concerned it is pertinent to mention here that it should not consist of any kind of benefit, if it be so it will not be legal, for example, if someone gave stagnant coins as a loan on the condition that the borrower would pay proper coins or give anything as benefit at the time of the payment of loan. This kind of transaction will not be considered as legal because the holy Prophet (pbuh) prohibited such kinds of loan which bring any kind of benefit. The principle in this respect is that any stipulated benefit in the transaction is Riba, for the reason that this benefit is not in compensation of anything. It is obligatory on every Muslim to prevent himself from actual Riba and the doubt of Riba".

IbnQudama has also discussed the question elaborately and stated that the borrower should return the same as he had borrowed, whether there may be an increase in the value or there may be devaluation: "The borrower should pay the same coins or currency, irrespective of any increase or decrease occurred in the currency".

The Shariat Appellate Bench of the Supreme Court of Pakistan has also discussed this issue. The senior most Judge of the Bench, Justice KhalilurRahman, in this respect says: "Riba/interest cannot be rationalized on the basis of indexation because all loans and debts are to be settled on an equal basis in terms of the units of loan or object. In the case of paper currency, exchange takes place by counting. If the debt contract amounted to Rs. 1000/- the creditor may claim only Rs. 1000/- by counting – no more, no less. The prohibition of Riba essentially requires that, generally speaking, all like-for-like exchange be executed on an equal basis in terms of the relevant units of exchange. If this does not suit someone, he is free to avoid such an exchange and to pursue an alternative permissible course of action. For example, instead of there being a loan to a needy person to fulfil his consumption or business need, there may be either a Bai' Mu'ajjal or a partnership arrangement between the resource-owner and the needy party. While the need of the latter may be fulfilled, concerns of the former may be accommodated through the margin added in the deferred price or automatically adjusted through the realized profits".

While explaining the term "Qard" according to Hanafis, Al Jaziri has given an interesting example: A purchases on credit 4 pounds of meat at qirsh 5 per pound (total amount payable 20 qirsh). If, at the time of payment, the meat's price falls to qirsh 2 per pound, even then A will have to pay 20 and not 8 qirsh. Similarly, IbnQudama has observed that all fungibles will have to be returned in the same quantity as borrowed, without consideration for appreciation or depreciation.

Lending in Islam is a generous/gratuitous act and the lender gives away the lent goods/money to the borrower for the period of the loan without any compensation in exchange. If the value of that loan decreases due to inflation, it is as if the lender has done a greater virtue. The Holy Qur'¯an encourages giving extra time to borrowers who are in difficulty or faced with financial constraint. Therefore, the Fiqh Council of the OIC has categorically ruled out as strictly forbidden the commonly suggested solution of indexation of a lent amount of money to the cost of living, interest rates, GNP growth rates, the price of gold or some other commodities, etc. However, one can lend in terms of gold or any other currency which is not considered vulnerable to inflation. In that case also, the debt liability cannot increase due to inflation.

An important consideration in this regard is that when a particular currency depreciates, its value decreases across the board; it makes no difference whether a person has lent it or is keeping it with himself in liquid form. If he lends it by indexing with gold, for example, in order to avoid a decrease in its value, it would imply that he has drawn benefit from the loan as the debtor would make good the deficiency in his amount of money while money kept in his own coffer would lose the value. Drawing this benefit from the loans makes it a non-Shar¯ı´ah-compliant contract.

The Islamic Fiqh Council of the OIC in its eighth session (21–27th June, 1993) resolved the following in respect of the impact of inflation on debts:

“The creditor and debtor may agree on the day of settlement – but not before – to the settlement of the debt in a currency other than the one specified for the debt, provided the rate of exchange applied is that applicable on the settlement date. Similarly, for debts due in installments in a specific currency, the parties may agree on the day of settlement of any instalment, to have it effected, in full, in a different currency at the prevailing rate of exchange on the date of settlement. The two parties to the contract may, at the time of contracting, agree to the settlement of the deferred cost or salary in a specific currency to be settled in single payment or in instalments in a variety of currencies or against a given amount of gold, the settlement may also be made as indicated in the above para. A debt contracted in a specific currency should not be recorded against the debtor in its counter value in gold or other currencies because such a practice would make it compulsory to the debtor to settle the debt in gold or the other currency as agreed upon for the settlement”.

Further Reading:

- ✓ ***Risk and Regulation of Islamic Banking edited by Mervyn K Lewis, Mohamed Ariff, Shamsher Mohamad***
- ✓ ***Islamic Banking and Financial Crisis: Reputation, Stability and Risks By Habib Ahme***