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Compensation of the decline of currency's value in a loan contract

ABSTRACT

Currency now an integrated part of our life, has gone through various changes since the days of Hazrat Yousuf (a.s.). The present day currency differs from the original mode of transactions through dirham and dinar, during the days of Prophet Mohammad(s.a.w.w.). The difficulty in our era is how to apply the shariah laws on the present day currency also know as fiat money. Here is an explanation in the light of Quran and Sunnah.

This topic is to investigate the ruling of increase and decrease in a loan (or Qard) due to decrease of a currency's value.

As it is evident that the main topic comprises of two sub-topics:

1. Loan 2. Currency

Although the word "Riba" (usury) may not be seen in the main topic, however it is obvious that whenever a Muslim talks about "Loan" the subject of Riba is automatically there, because Shari'ah has absolutely forbidden a specific type of Riba.

The topic of this article indicates that whenever a loan is given or taken, in the present time where Fiat Money (paper money) is widespread throughout the world and whose value keeps changing, how the matter should be resolved so that the lender gets his right without wronging and without being wronged. If the value of currency goes down it would harm the lender and if it goes up the debtor would suffer loss.

we shall discuss "loan" first and then "currency" so as to do justice to the topic.

Loan (or Qard):

As per Islamic law the loan can be defined as:

“هو تمليك عين على وجه ضمان المثل أو القيمة فلا معاوضة للعين بها.”

"Loan means giving ownership of one's property against a guarantee to the effect that the latter will pay its equivalent or its price. The original property is not supposed to be returned" (1)

One of the characteristics of loan is that it is not necessary to return the exact loaned commodity. However, in the case of Ariyah¹, the exact borrowed commodity has to be returned to its owner, not any replacement. Therefore the property being transferred in a loan can be called mithli² (if it can be returned in kind) or qimi³ (if it does not have an exact replacement). In case the loaned commodity is Qimi (does not have

¹Al-'Ariyah means giving someone the possession (not the ownership) of a particular piece of property, the substance of which is not consumed by its use, without anything taken in exchange, and if exchange is taken it is called Ijara (lease/rent).

²Mithli (Fungible goods): Goods that can be returned in kind, i.e. gold for gold, silver for silver, wheat for wheat, etc.

³Qimi (Non-fungible goods): Goods that do not usually have an exact replacement and cannot be returned in kind, i.e. sheep and currency of our days.

an exact replacement) it is necessary to return actual cost of the thing given as loan.

As the word "currency" happened to come in our topic, we would use the word Qimi. However, some scholars have opposed it and say that the property (such as currency notes) being transferred in a loan is Mithliand not Qimi. We leave this discussion for another time.

Islam has mentioned great reward for giving loan (or qadr). For example the holy Quran says:

مَنْ ذَا الَّذِي يقرض الله قرضًا حسنًا فيضاعفه له وله أجر كريم ﴿١١﴾

‘Who is it that will lend Allah a good loan, that He may multiply it for him and [that] there may be a noble reward for him?’

(2) [Surah Hadid 57: Ayah 11]

In a hadith, the Prophet of Islam says:

مَنْ اقْرَضَ مَلْهُوقًا فَأَخْسَنَ ظَلَمَتْهُ اسْتَأْتَفَ الْعَقْلَ وَ أُعْطَاهُ اللَّهُ بِكُلِّ دِرْهَمٍ أَلْفَ قِنْطَارٍ مِنَ الْجَنَّةِ.

‘Whoever readily lends [money] to a troubled person and is kind in the request after doing so, (his sins are forgiven and) he should start over his Amal; and Allah (s.w.t.) will give him for every dirham one thousand qintars[a substantial weight of gold varying between 45 and 245 kilos (ed.)] in Heaven.’

(3) [Thawab al-A'mal, p. 341]

The Prophet (s.a.w.w) also said:

مَنْ احتاج إليه أخوه المسلم في قرض وهو يقدِر عليه فلم يفعل حَرَّمَ اللَّهُ عَلَيْهِ رِيحَ الْجَنَّةِ.

‘If one’s Muslim brother needs a loan from him and he is able to lend him but does not do so, Allah (s.w.t.) will prohibit for this person the smell of Heaven.’

(4) [Amali al-Saduq, p. 350]

On the other hand, the borrower is also bound to repay the loan at the given time. Prophet Muhammad (s.a.w.w.) said:

كَأَنَّ لَا يَحِلُّ لِرَقِيْمِكَ أَنْ يَمْطَلَكَ وَ هُوَ مُؤَيَّرٌ فَكَذَلِكَ لَا يَحِلُّ لَكَ أَنْ تَعْسِرَهُ إِذَا عَلِمْتَ أَنَّهُ مُعْسِرٌ.

‘Just as it is not permitted for the one indebted to you to delay repaying you when he is well-off, so it is also not suggestive for you to put him in difficulty [by demanding repayment] when you know that he is straitened.’

(5) [Thawab al-A'mal, p. 167]

When we see loan from this point, we realise the importance and worth of Qard in Islam.

It is also important to say that the laws the Prophet (s.a.w.w.) has mentioned regarding Qard, one of them is to take in return only the equivalent of what was given as a loan. Any increase or decrease in this regard (or expecting any kind of gift or any other favour from the borrower) is strictly forbidden by Shari'ah. Therefore it is important only to repay the actual loaned commodity in kind or its equivalent. The demand of increase in Qard is called Riba. Though sometimes it is also called 'interest' which I strongly advise to review.

Another important point about Qard is its time of repayment. Great emphasis has been laid on adhering to the date of repayment set in a loan contract. Allah the Almighty says in the Holy Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

'O you who have faith! Fulfil your contracts.'

(6) [Surah Al-Maaida 5: Ayah 1]

On the other hand the lender has been advised to take it easy if the borrower delays repayment. Allah (s.w.t.) will reward the lender abundantly for his leniency.

Thus we draw the following conclusions about the loan:

1. Giving a loan has a great reward and Allah (s.w.t.) has referred it to Himself (Who is it that will lend Allah a good loan).
2. It is necessary to fix a schedule for loan repayment.
3. Unnecessary delay of repayment is prohibited.
4. Being lenient to the borrower who is unable to repay in time, has a great reward.
5. Money given as a loan is called Qimi not Mithli.
6. It is yet to be discussed, in case the price of the commodity goes up or comes down.
7. If the debtor does not repay as per schedule without any legal excuse, the lender may go to the Hakim-e-Shar'e (religious judge) and Hakim-e-Shar'e may force him to repay. Otherwise the debtor might face disciplinary and criminal proceedings.

8. Qard (loan) is a natural requirement of human society and it solves many problems.
9. The lender has no right to demand anything such as money, work, etc. in return against the loan. He can only demand what he lent. Even the smallest condition such as car-washing or short work can change this holy act into a Rabawi (usurious) loan, and a goodly loan which bears a great reward, will become equal to raging a war against Allah (s.w.t.).

At this point the topic of Qard is closed for the time being.

The second point of the topic is currency.

Currency is a means of exchange and it has been defined as: 'Anything (any form of money that is in public circulation) which can be used easily for the exchange of goods is called currency. Currency is also called 'money' alternatively. But as our discussion is about loan, so we only discuss a specific form of currency which is called Fiat Money as this means of barter keeps increasing and decreasing (in value).

Currency or money came into existence to meet the economic requirements and there are a few examples of it in the Quran.

وَشَرَوْهُ بِقَمِيصٍ ذَرَاهِمَ مَعْدُودَةٍ ﴿٢٠﴾

"And they sold him for a cheap price, a few dirhams."

(7) [Surah Yusuf 12: Ayah 20]

فَاتَّبِعُوا أَحَدَكُمْ يَورِثُكُمْ يَوْمَ تَأْتِي سَأَلَ إِلَى الْعَذِيبَةِ فَلْيَنْظُرِ إِلَيْهَا أَرْسَلْنَا قُلُوبَنَا بِبُرُوقٍ وَمِنْهُ

'So send one of you to the city with this money. Let him observe which of them has the purest food, and bring you provisions from there.'

(8) [Surah Al-Kahf 18: Ayah 19]

Judging from that, we can say that some form of currency was present in the time of Companions of the Cave and Prophet Joseph.

Fiat Money: A legal paper or coin whose value by trust is greater than its own value and some authorized institute has guaranteed its value or purchase power but it is not backed up by any physical commodity.

Various forms of currency in the near future will be seen as Bitcoins and Electronic Money, after we have used the paper money (legal tender).

The characteristics of this currency are:

1. Its value is based on trust only.
2. The issuing authority can revoke its trust at any time.
3. It is not backed up by anything as it was backed up by gold or silver or other valuables in the past till 1973. This type of money is all about trust.
4. To give value to our Pakistani currency notes (any currency note of Rs.10 or more) these words are inscribed on it: "The State Bank of Pakistan will pay to the bearer 'on demand' (the face value of the note in rupees)". It also says that "(the note) was issued with the guarantee of the government of Pakistan" and that it's the property of the government.

It is important to make clear that this paper has no personal value or status, or the coins that are issued, their personal value is several times lower than the value given to them by trust. For example the personal value of a Rs.50 note may not be more than Rs.10, or that of a Rs.1000 may not be more than Rs.100, but when a trustworthy institute such as State Bank of Pakistan gives it a specific value then its value becomes legal tender.

5. The actual purchase power of this currency has no connection with the value given to it by a trustworthy institute (such as notes of Rs.100, Rs.1000 and Rs.5000). Its purchase power is related to the inflation and several other economic affairs. Therefore, Rs.500 note may sometime buy 500kg of wheat and some other time may buy 450kg. So this currency has an apparent value which is decided by a trustworthy institute, but actually the real value of currency is its purchase power which determines its real price.
6. The world political, economic and many other elements together influence on the purchase power of currency due to which its value sometime goes up or comes down and sometimes it totally loses its value like during Iraqi Attack on Kuwait or like Iraqi Dinar during Saddam's time and the currency of Lebanon in mid-1970.

I must explain this point that the mode used as currency exchange during initial time of Islam was not Fiat Money; instead it was made of gold or silver which actually had its own value. Although it was

influenced by ups and downs of Market yet it didn't had much effect on its purchase power, so the value and purchase power used to remain unchanged or modestly changed.

So between dirham & dinar and Fiat Money there are similarities and differences:

Similarities:

1. Both are used for trade.
2. Both are considered the property of the bearer.
3. Human societies regard 'both' as valid and use them in their daily lives.

Differences:

1. Original currency such as dirham and dinar has its own value whereas the value of Fiat Money is by trust.
2. Original currency may be influenced by ups and downs of Market, up to some extent, but its value never becomes zero whereas Fiat Money is greatly affected by ups and downs of Market and economy and its value may become zero.
3. Dirham and dinar have their value even if they lose their shape unlike Fiat Money which if gets burnt or damaged may lose its value.
4. The bearer has the ownership of dirham and dinar unlike Fiat Money, which is the property of issuing authority.
5. No one can deprive dirham and dinar of their value whereas the issuing authority of Fiat Money can deprive it of its value or can make it valuable for a specific period of time and disvalue it after that; like in different countries, in different periods of time, currency notes keep changing.

In the light of these points we conclude that the currency 'dirham and dinar' and the Fiat currency are two different things as far as their nature is concerned, although apparently they perform the same task.

Here are a few questions that arise in mind:

1. Does Shari'ah accept this currency?
2. Will the same rule apply on currency notes that applied on dirham and dinar; or due to change of nature the rules will be different, although both perform same act? As dirham and dinar were Ayn

(objects of material value) and were owned by people, will the currency note be considered property or only its purchase power will be the property of its owner and the notes themselves would be the property of the issuing authority, as per Shari'ah?

3. Can the currency notes be inherited like dirham and dinar and other things; or the currency note is the property of its issuing authority, and only its purchase power is transferred in inheritance and the currency notes are transferred supplementally? Or the electronic money in the banks?
4. Therefore, will the same rules of Zakat apply on currency notes that are applied on dirhams and dinars?
5. For example if at the time of a woman's marriage back in 1960 ten dinar and ten dirham were fixed as Mehr, it was necessary to pay the same if they were to be paid today. Now suppose that the fixed amount of Mehr was Rs5,000 back in 1960 and the husband wants to pay it today, is he obliged to pay Rs5,000 or actually the purchase power of that money is the Mehr. And therefore the Mehr will be paid according to the purchase power of that money.
6. Another example is that if someone in 1960 was forced to pay a fine of Rs 100,000 which he could not pay, now today is he obliged to pay the same amount of Rs 100,000 to be released of his liability or he has to pay according to the purchase power of Rs 100,000 that was in 1960 to be released of his liability?

A large number of scholars seem to support this theory that the current currency is itself credible and if someone pays this number that was once fixed as Mehr or was fixed as fine, he will be considered released of his liability.

Then comes the question that if someone wants to repay the loan taken in 1960, can he be released of his liability by paying this amount today by cash or cheque, etc.?

Allah (s.w.t.) says in the Quran:

فَلَنْ لَّمْ تَقْتُلُوا فَأَذْنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ ۚ وَإِنْ تُبْتُمْ فَلَكُمْ زُكُوفُ أَمْوَالِكُمْ ۖ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾

‘And if you do not, then be informed of a war from Allah and His apostle. And if you repent, then you will have your principal, neither harming others, nor suffering harm.’

(9) [Surah Baqarah 2: Ayah 279]

This Ayah clearly explains three points:

1. The principal amount belongs to the owner.
2. Do not oppress others.
3. Do not get oppressed.

In Surah Baqarah verse 279, Allah (s.w.t.) gives one guarantee to the repentant of Riba and draws attention to two points. He guarantees that the principal amount is your right and you can have it back. But the same question arises here that Rs 100,000 owed in 1960 is the principal amount or its purchase power?

Ten dinar or ten dirham are themselves principal amount with a minor change in value at times.

If Rs 100,000 are intrinsically considered as principal amount then when the lender will receive them (many years later), he is generally considered oppressed because back in 1960 he could have bought many things with this amount which he cannot buy with today's Rs 100,000. So it will be an oppression just to repay him numbered Rs 100,000. On the other hand as the debtor could have utilized the purchase power at that time, it is unlikely for him to be oppressed. So we need to determine what the principal amount is. Is it the value of the note inscribed on face of it (say 1000) or the purchase power hidden inside it?

In opinion of this humble servant, the **principal amount**, actually, is the **purchase power** that keeps changing due to time, place, circumstances and various other factors, and most of the currencies of the world are influenced by it. Therefore, in a (long term) loan contract, due to devaluation of currency, it is necessary to act in a manner that the owner gets his principal amount without being oppressed and the debtor also does not suffer any harm so that the justice system is established on Allah's earth.

It is also important to pay attention to this point that in case of increase in buying & selling rate of currency the lender is apparently getting extra but actually it is the principal amount; therefore it will not be considered as Riba (usury) because Riba occurs when the lender imposes condition on the debtor to make extra payment over the principal amount or do a job for him in return. However, if he only asks for the principal amount, it is

his right and he will deserve the reward of Qard ul Hasana (a goodly loan), Insha’Allah.

Yes, if we develop Islamic currency, a sample of which is available with this humble servant, we can avoid difficulties of today's currency.

