

## Studying Usury from the Jurisprudential and Legal Perspective in Iran

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**Abstract:** Usury is one of the subjects of which destructive effects should be recognized for all societies. Usury has harmful effects on economic and commercial relations whether it is given or taken in addition to legal prohibition and causes disorder in financial relations of people in a sound society. In this regard, it is necessary to prohibit receiving or paying any usury or performing usurious transactions. For this reason, Article 595 of Islamic Punishment Law of Iran has regarded perpetrator of this crime including usurer and broker as punishable in addition to prohibition of usury in Islamic Law. Considering importance of the subject, usury was studied from the jurisprudential and legal viewpoint in this study. Study of attitude of Shiite and Sunnite jurisprudences about usury indicates that Muslims have agreed on prohibition of usury at all times and all jurists. According to the obtained results, the Holy Quran has mentioned prohibition of usury for many times with different interpretations. The Holy Quran has mentioned prohibition of usury in five stages: Prohibition of usury for the Prophet (PBUH), disapproval of usury, telling the warning story of usury by the Jews, prohibition of gross usury and finally definite and general prohibition of usury.

**Key words:** Usury, usury in Quran, usury in narrations, effect, Islamic punishment Law of Iran

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### INTRODUCTION

Among the great religions, Islam is the only religion which has prohibited usury and all jurists, interpreters and Islamic scientists prohibited usury as the major sin during history and the principle of prohibition of usury has not been altered though there are differences of opinions about its classes and instances. According to the Quranic culture, usurers were regarded as fighters of God and the Islam's Prophet and usury was regarded as the most abominable sins among people.

By advent of Islam in Arabian Peninsula, Quran has prohibited usury in different verses while earning income through usury was so common among the Arabs that they were surprised and they believed that usury couldn't be excluded from the activities. For this reason, some researchers believe that there was no prohibition for usury with advent of Islam, therefore prohibition of usury was regarded gradual. Theory of gradualism of usury was first raised by Ismail Khalil, one of the Sunnite scholars in 1326 AH and many scholars raised this theory. After him, many scholars raised this theory.

In this study, the concept of usury from the viewpoint of Quran and narrations and views of the old and contemporary jurists were explained and there are other issues which we respond in this study by explaining constituent elements of usury based on Article 595 of Islamic Punishment Law of Iran and judicial precedent of the courts in confrontation with usury, mentioning how to

commit crime and participation and abetting in usury and also usurer jurisdiction are the other issues which this study seeks to answer.

**Part 1; usuary from the perspective of Quran and narrations:** In Holy Quran, the usurer has been combated by spending stages. In the first stage, there is emphasis on social needs and attempt to fulfill need of the poor without profiteering and only with pure intention of "nearness to Allah" has been emphasized. In the second stage, the usurers reproached the Jews because they ever committed this descend act despite the religious prohibition. In the third stage, it is prohibited despite gross prohibition of usury and double interest and its prohibition is regarded as cause of salvation and in the fourth stage, usurers are regarded as mentally disordered patients and insane people (Hosseini, 2003).

Unlike what the usurers imagined, God regards earning resulting from it as lacking blessing and even says that He will spoil it. Therefore, He prohibits usury with unprecedented severity and regards it as declaration of war against God and His Prophet and states that return to what has been obtained in this way is one of the conditions of belief.

The concept of usury: the word ribba with infinitive noun of ribba, rebva and raba means surplus value, growth and addition of property. In the Holy Quran, the word ribba and its derivatives sometimes mean growth and addition and sometimes mean the special or additional

transaction in special transaction, for example, God has permitted trade and prohibited usury (The Holy Baghareh Sura, Verse 275). God spoiled usury interest and increased the alms (The Holy Al-Baqara Sura, verse 278).

O ye who believe! Observe your duty to Allah and give up what remaineth (due to you) from usury if ye are (in truth) believers (Al-Baqara Sura)

Usury and its derivatives literarily mean growth and surplus value such as the known narration of Islam's prophet (PBUH) who says: if a person gives alms amounting to half of date out of the legally permitted earning, God will accept it at His will and develops it for its owner as one of you breed your pets until it grows as a mountain. The Sunnite mostly defines usury as special transaction or additional transaction, for example: the worst jobs are earning usury. One day, people will regard usury as legally permissible (Noori, 1987).

God will fill the stomach of the person who commits usury with fire of Hell. In jurisprudential term, the word "usury" sometimes means special surplus value and sometimes means the transaction which includes special surplus value. The Shiite jurists divide usury into two groups:

- Loan usury means stipulation of any surplus value or excess in the loan contract
- Transactional usury means transaction of two objects of equal quality among the things which can be measured or balanced along with surplus value

The Sunnite jurists divide usury into two groups: some divide usury into Riba an-nasiya: an excess (riba) charged for a loan in cash or kind and Riba al-Fadl: the simultaneous exchange of unequal quantities or qualities of a given commodity. Then, they divide transaction usury into credit usury and Riba al-Fadl and regard debt usury as one of the instances of Riba an-nasiya. Anyway, the sunnite jurists mean the debt (loan) usury by the and define Riba an-nasiya as sale and purchase of the usurious commodities and the commodities which can be measured and balanced along with surplus value and Riba al-Fadl means their sale and purchase along with cash surplus value (2012).

**Part 1; quality of usury prohibition in Holy Quran:** Some interpreters believe that prohibition of usury is gradual as prohibition of alcoholic drinking. These people believe that usury was extended Arabian Peninsula on the advent

of Islam so that it was not possible to prohibit it instantaneously, therefore the Supreme God has admonished usury by sending different verses and gradually prohibited it certainly and comprehensively. This theory was first mentioned by Ismaeil Khalil in addition to some teachings in Cairo. Then, Mohammad Abdollah Darraz published it in the book and then many scholars raised this theory by following him or doing independent research. Some people such as Makarem Shirazi; Tababatabai, Sabooni, etc., believed that usury has been prohibited in four or five stages as follows:

- Prohibition of usury for the Prophet (PBUH)
- The first verse about usury which descended from God is the sixth verse of the holy Al-Kosar Sura which says to the Prophet (PBUH) and bestow not favors that you may receive again with increase

**Disapproval of usury:** The Supreme God in verse 39 of the holy sura of Al-Room regards usury as undesirable act.

**Warning narration of usury committed by the Jews:** The Supreme God in this stage warns the Muslims to wait for legalization of such order with such consequences in verses 160 and 161 of the holy sura of Al-Nesa by telling the story of usury committed by the Jews and that they were punished in the world and will be punished in the after life.

**Prohibition of the gross usury:** The Supreme God in this stage prohibited the gross usury for the Muslims in Verses 130 and 131 of the holy Sura of Ale-Emran.

**Certain and general prohibition of usury:** In this stage, God in Verses 275, 279 and 278 of the holy sura of Al-Baqara certainly prohibited any usury and regards it as one of the instances of combat against God and His Prophet (PBUH).

According to theory of gradualism, God led the people to combat against usury which prevailed over the Arabian Peninsula since, the start of the prophetic mission based on mental and social conditions of the Islamic nation by sending different verses and eradicated usury from the Islamic society in the ending years of life of the Islam's Prophet (PBUH) by sending express and definite verses of Al-Baqara sura so that usury was regarded as one of the great sins in the last 100 years and since, the usury banking was common and capitalism prevailed in the Islamic countries and no one dared to get

close to it. But, if we believe that the principle of prohibition was instantaneous and quality of its execution was intensified based on provision of economic and social conditions, we also can use it in the present era and we can regard execution of usury order commensurate with economic and social conditions of gradual societies.

**Part 2: usury in narrations:** The narrations which relate to usury have been divided in different fields. In the book "Usury in the Islamic law", narrations about usury have been divided into ten groups:

- The narrations which include usury in the consumable credits and investment such as narration of the chief of the faithful (Hazrat Ali) quotes from God's Prophet: any borrowing and credit in favor of the lender will be regarded as usury and will be prohibited (Abu Hanifah)
- The narrations which believe that the person who permits usury deserves death and is regarded as unbeliever. Abi Basir says: I asked Imam (PBUH) about a person who commits usury consciously. He said: he shall be punished and if he repeats it, he will be punished and will be killed for the third time (Kafi)
- The narrations which regard usury as the dirtiest trades

Islam's prophet (PBUH) said: the worst business is usury (Shaeiri, 1984). The narrations which mention the reason for prohibition of usury, for example, doing good work, trade, sale and purchase and lending money to each other. The narrations which say that if usurer doesn't repent, his debt will be spoilt and if he repents, his property will be spoilt and he will become poor. Zarareh says: I told Imam Sadegh (PBUH) that God would remove usury and increment alms. However, it is seen that capital of the usurers is high. Imam (PBUH) said: what is more destructive than one dirham of usury which spoils religion of human and if usurer repents, his property will be spoilt and will become poor?

The narrations which mention that act of the usurer is not accepted and he will be worth a damn and his inside will be filled with fire of Hell. Islam's Prophet (PBUH) said: the person who commits usury, God will fill his inside with fire of Hell in the amount of the property which he has earned from usury and if he saves a capital through usury, God will not accept his act and will be damned by God and angels until he will hold karat of usury (Broojerdi, 1992). Some narrations mention that expansion of usury in a society destroys that society. Imam Sadegh (PBUH) says: when God wills to kill a tribe, He propagates usury among them. Islam's Prophet (PBUH) also said: when adultery and usury are manifested in a place, destruction will befall them.

The narrations which regard usurer, writer and its witness against sin as equal and damn all of them. Ali (PBUH) says: usurer, writer and witness all are equal. God's Prophet (PBUH) damned usury, usurer, seller and purchaser and witness.

### **Part 3; attitude of the islamic jurists toward prohibition of usury**

**Attitude of the shiite jurists:** Among the Shiite jurists, Sheikh Mofid in the book "Maghnae" (Sheikh, 1989) has regarded prohibition of usury as absolute and says: not knowing its orders leads to commission of usury. Sheikh Altaefeh (Sheikh Toosi) is the first jurist who has dealt with usury orders extensively. He regards clear orders of the legislator as the origin of usury orders and prohibits it.

Allameh Helli and Shahid and Jamaluddin (1975) also regarded prohibition of usury as necessity of religion and consensus of the Muslims and believe in absolute prohibition of usury like Zayn al-Din al-Juba'i al'Amili and they don't accept any exception. After them, writer of the Javaher (Najafi, 1981), writer of Vasilatolnejah (Esfahani, 1977) and writer of Orvato-ul-vosgha (Yazdi, 1920) express absolute prohibition of usury and some of them regard its prohibition as one of the requirements of the religion and even writer of Orvah regards the person who permits usury as unbeliever and deserving murder. The great contemporary jurists emphasize on absolute prohibition of usury and even they persist on it more. For example, Ayatollah Alozma Golpayegani Rahmatollah makes precaution even when some jurists disapproved some transactions which have apparent (not real) similarity to usury (Esfahani, 1977). Among the contemporary scholars, Shahid Motahari believed that prohibition of transactional usury has been regarded as preliminary step for prohibition that is it aims to prevent certain usury prohibition but he doesn't permit committing such usury. He even prohibits what most jurists permit in countables.

**Attitude of the Sunnite jurists:** Four religions of the Sunnites have believed in prohibition of classes of usury from the beginning. Ebne Roshd and Ebne Ghodameh and Khatib have agreed on this problem. The Muslims agreed on prohibition of usury at all times and all jurists of the religions have narrated this agreement.

**Chapter 2: punishment of usury in islamic punishment law:** In legal term, usury means acquisition of property or receiving the surplus price plus the price received by the usurer under any nominal contract by the contracting parties. In the Islamic Punishment Law, usury has not been defined by resorting to the nominal contract but it is

defined as any agreement between two or more persons for drawing up the contracts as sale or borrowing, settlement and other contracts which lead them to transact a commodity with condition of surplus with the same commodity which can be measured or balanced or surplus to the payable price and the said act should be punished. In issue of usury or resorting to the nominal contract based on provisions of the said article, the main and constituent element of this crime is based on abuse of a legal tool with intention to escape from a legal and canonical prohibition of usury. In other words, the usurer tries to give legal and correct form to the illegal goal by resorting to the nominal contract as sale or borrowing or gift.

### **CONSTITUENT ELEMENT OF USURY**

In this part, we study the constituent elements of usury including legal element, material element including material behavior, necessary conditions and circumstances, criminal result and also non-material element including basic malice and specific malice.

**Part 1; legal element:** The first part of the constituent elements of crime is the legal element. Act or omission of the human affairs whatever bad and blameworthy and harmful for social system is not punishable until judgment has been issued for it or has been stipulated in the law. Therefore, commission of crime and issuance of punishment judgment are dependent on express text of law and since crime is not committed without the presence of law, it is necessary to note that law is the necessary element of crime (Ali, 2013). The Constitution of Islamic Republic of Iran expressly stipulates about usury: The government has the responsibility of confiscating all wealth accumulated through usury, usurpation, bribery, embezzlement, theft, gambling, misuse of endowments, misuse of government contracts and transactions, the sale of uncultivated lands and other resources subject to public ownership, the operation of centers of corruption and other illicit means and sources and restoring it to its legitimate owner and if no such owner can be identified, it must be entrusted to the public treasury. This rule must be executed by the government with due care, after investigation and furnishing necessary evidence in accordance with the law of Islam. The legislator has not defined crime of usury in Article 595 and only relied on its instances but Paragraph 1 of Article 11 of the law for enforcement of principle 49 of the Constitution (enacted on 8 August 1984) has defined usury and stipulated its types: borrowing usury is the interest which the lender receives from the borrower according to the condition or procedure.

Transactional usury which is surplus which one of the parties receives from another party receives from another party in addition to consideration provided that the considerations can be measured or balanced or are of the equal material by common use or legally. The legislator stipulates in Article 595 of the Islamic Punishment Law based on the fourth principle of the Constitution of Islamic Republic of Iran and in order for the penal system of the country to get closer to the Islamic normative system: any agreement between two or more persons under any contract including sale, borrowing and settlement by virtue of which they transact a commodity with condition of surplus with the same material and receive the surplus price will be regarded as usury and crime and the perpetrators including usurers and broker between them will be sentenced to 6 month prison or 72 lashes and also the equivalent of the property under usury as cash punishment.

Usury is one of the crimes which cannot be forgiven and there is no need for complaint by the complainant to follow it and can be prosecuted once the judicial and law **enforcement officials are notified.**

**Part 2; material element: In order for a crime to have external existence, emergence of a material element is necessary because it is not sufficient to express thought for committing crime and if criminal policy of the country regards persons as criminal with intention to commit crime, the unforgivable inquisitions will be done on the conscience of the persons and persons will be punished without being harmful for society.**

**Usury also needs this element:** Among the material elements, receiving and paying usury have some components including: agreement or mutual consent of the parties, surplus condition, taking delivery and handing over the surplus value.

In this regard, in case agreement of the parties lacks one of the components mentioned above, the committed act will not be regarded as usury and will not be liable to regulations of Article 595 of Islamic Punishment Law.

**Surplus or additional condition:** One of the other components of material element of usury is paying and receiving surplus as property. For this reason, in case it is conditioned through agreement or a contract that the borrower's daughter would get married with the lender, the act committed by the parties will not be regarded as usury considering that the agreement is not financial and will not be liable to regulations of Article 595 of Islamic Punishment Law.

**Taking delivery and handing over the surplus value:**

Based on regulations of Article 595 of the Islamic Punishment law and words of the Islamic jurists, only agreement on performance of usurious transaction without taking delivery and handing over the considerations cannot be regarded as usury but usury will be considered to be committed when the borrower or the transacting party pays or receives the surplus of the borrowing or transaction subject to or from another party considering restriction of the result of crime under Article 595.

The final point in this part relates to start of usury. Considering that usury punishment is regarded as equivalent to the fifth degree imprisonment by discretionary punishment based on Article 19 of the Islamic Punishment Law enacted in 2013. Punishment for commencement of this crime includes imprisonment by discretionary punishment or slash or pecuniary penalty (sixth degree) to the amount which has been specified in Article 19 according to paragraph P of Article 121 of the Islamic Punishment Law. It is necessary to note that commencement of usury had not been criminalized before enactment of the Islamic Punishment Law, 2013. Therefore, only receiving surplus payment note such as cheque or promissory notes or draft or submission of the surplus property without receiving the price or property cannot be regarded as usury because no additional property or fund has not been received to regard the payable surplus price as usury until the fund of the cheque or promissory notes or the property specified in the draft is received and the committed act in such cases will be regarded as commencement of the usury.

**Part 3; nonmaterial element:** To commit crime, only bans and orders of the legislator are not enough. Criminal act or omission should be result of will of the actor. In other words, there should be a ratio between material act and mental states of the actor so that the perpetrator can be regarded as faulty. Committing crime is either retention of malice or criminal fault provided that the actor asks for such act or guesses that it will occur and is aware of violation of the bans and orders of the legislator. In this case, we say that the actor either committed the act intentionally or committed an error in it. To commit usury, it is conditioned that the parties agree over the additional price. Therefore, the prior agreement may be regarded as specific malice and usury is restricted to it but it is better to regard it as condition for usury.

As mentioned above, general intention is the conscious intention of the perpetrators by resorting to a legal and correct tool for escaping from prohibition of usury, i.e., intention to reach an agreement for performing

transaction or contract between the parties. Specific intention means acquisition of the surplus property from one of the considerations or the receivable price plus the payable funds by the parties. Intention to cause loss for the person who receives usury by resorting to nominal contract complements the mental element of crime. Acquiring interest or receiving the surplus price plus the payable price in borrowing is the specific malice of this crime. In fact, there should be causal relationship between the committed act and result, i.e., acquisition of property or interest which has been agreed.

**CONCLUSION**

Usury is one of the affairs which have been prohibited in all religions. Islam has conditioned that good faith and act and also good intention and means are necessary for earning and donating property and it has necessitated some bounds for incrementing wealth. Harmful effects of usury leave negative consequences not only in society but also in all individuals so that they are related to it. Undoubtedly, the income which is earned through the most malignant ways and turns into a loaf of bread and is put into stomach of the children of this society will lead to bad individual and social outcomes.

Among them, we mentioned attitudes of the contemporary jurists considering that there was belief in capitalism and banking industry to the Islamic countries and interests of the statesmen, craftsmen and tradesmen led to many discussions about usury and philosophy of its prohibition 100 years ago. The Muslim thinkers on the one hand found that the bank caused economic growth and prosperity by equipping different savings and converting them into productive capitals and brought employment and income for the people and also found that most bank transactions were based on borrowing or the accrued interest (usury) which are regarded as usury from the viewpoint of common Islamic jurisprudence and they saw a contradiction between economic growth and performance of Islam's orders. To solve this problem, abundant efforts have been made and we tried to refer to views of the contemporary jurists in this study and couldn't detail the facts due to lack of enough time for discussion. We also mentioned some facts about the crime from the legal viewpoint which included constituent elements of this crime in the Islamic Punishment Law. Usury in legal custom is based on abuse of a legal means with intention to escape from a legal and canonical prohibition. In other words, effort of the usurers is to give legal aspect to usury by resorting to a nominal contract as sale, borrowing, gift and the like. On this basis, it is useful

to perform the following actions not to provide the grounds for receiving or paying usury and other suspicious affairs in this field:

- Dealing with economic problems of people by establishing and developing interest-free funds and supervising on enforcement of the legal and canonical rules and regulations
- Supervising on facilities granted by the banks to the people which can be consumed in useful and constructive fields
- Actualizing the commissions received by the banks
- Allocating considerable share of the banks' balance to the interest free fund in real sense of the word
- Providing opportunities for attention of the courts to importance of usury and punishing the perpetrators
- Differentiating between punishment of the usurer and the person who receives usury and broker to enforce rules of justice and equity and severity of punishment for the person who receives usury and broker

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