

Jurisprudential and legal study of state-owned banks

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ABSTRACT: Banks, using their hundreds of years of experience and using their extensive branches, are the best and smoothest tool to achieve this goal. With the help of various deposit accounts, banks attract funds in excess of consumer and investment needs of individuals and institutions, and provide them to economic enterprises in the form of short-term and long-term loans and credits. However, the basis of the work of world-renowned banks, whether in attracting deposits or giving loans and credits, is (interest system), which according to the great jurists of Islam is usury and forbidden. The growing necessity of banking transactions and the important position of the bank in preparing savings and leading them to useful, productive and productive economic efforts, has made Muslim thinkers think of finding a solution to implement the banking system. The result of this thought can be presented in four groups: the first group, while acknowledging the usury of bank interest, has considered it permissible out of necessity and need. The second group, in terms of thematics, is unfamiliar and There is a fundamental difference between usury and bank interest. The third group, relying on the exceptions to the ruling on usury, equates them to bank interest. Islam and interest-free banking are the result of their efforts in many Muslim countries. Formation of conventional banks in the world is a government-run bank. In these banks, the main resources of the bank are formed through people's deposits, and in terms of the type of work and legal relations, they are no different from private banks, that is, they provide financial resources to economic owners and use them, then part It is given to depositors and the rest is deposited in the state treasury as bank interest. The purpose of establishing such banks in some countries is to prevent the exaggeration and oppression of private banks in receiving and paying bank interest. This means that private banks typically charge higher interest rates than business owners and, on the other hand, pay less interest to depositors in order to make more profit. To solve this problem, in some countries, state-run banks were formed. At the same time, it should be noted that the interest paid by these banks to depositors should not be less than competing institutions, otherwise people will withdraw their deposits from these banks in a short time. You will go to private banks, non-bank monetary institutions, informal monetary markets, foreign banks or buy and hoard essential goods.

Keywords: Jurisprudence, Usury, Bank, Government

INTRODUCTION

More than 20 years have passed since the implementation of the law on interest-free banking operations in Iranian banks. This new method of banking, during this period, has always faced many problems and issues that have been able to solve them to a large extent and while paving its way, has been able to go to a relatively desirable level of performance and efficiency to the point that As a new banking system at the international level. The interest-free banking system in Iran, at least in terms of paying attention to the issue of usury in Islam and trying to implement its elimination from banking relations and transactions, is of great importance and a very high position for scholars, thinkers and religious people inside the country and Other Muslim nations have benefited. This high status and serious situation causes us to pay attention to the substantive and executive pathology of the interest-free banking method from different angles and with sufficient attention from time to time. Especially in the current situation, after

the transition from the difficult economic, political and military conditions of the early Islamic Revolution and the consolidation of the pillars of the system and the strengthening of the country's economic foundations, increasing interaction with world economic markets forced us to design and implement a series of measures and Has taken corrective measures in the structure and function of various components of the country's economy. On the one hand, it has the necessary ability to meet the evolving needs of the people inside the country, and on the other hand, it has the opportunity to be present in the arenas and international monetary and financial markets, according to the existing requirements and regulations. It is hoped that in the shadow of holding such conferences and paying more attention to the pillars of the system and the authorities, by creating and regulating the position, duties and correct functions for the banking system in the Fourth Development Plan, we can overcome many shortcomings and doubts about performance. Eliminate the banks, from the religious and economic aspects. To examine the method of interest-free banking and explain the relationship between the bank and depositors and customers in it, pay special attention. Naturally, this method of banking operations will be introduced and implemented in a society in which we encounter Muslims who believe in God and the Prophet (PBUH) and the Resurrection and the Resurrection and live in an atmosphere full of the teachings of the religion of Islam. In such a society, the Islamic Ummah is a religious partner and brother in all matters, and according to the principle of social responsibility, they are also responsible for others. One of the explicit prohibitions of Islam is usury, and because usury is the greatest sin after polytheism, and even the religious tricks related to usury have been banned, the sensitivity of every Muslim to usury should be limited. It should be kept high and never engage in any action that even raises suspicion of usury, and that is why paying attention to the proper functioning of Islamic banks is of paramount importance. As we know, in usury banking, every depositor, regardless of what he spends on this deposit, only thinks about the usury income from his deposit. If in Islamic banking, each depositor can and should participate in the activities of their community.

Problem Statement:

In any country, on the one hand, there are experienced and capable people who do not have the necessary capital for economic efforts and endeavors, and on the other hand, there are people who, despite the appropriate assets and capital, have the necessary power or interest for useful efforts. And have no offspring and no producer; Therefore, it is necessary to have institutions that can connect these two groups and put cash and human capital on the path of economic growth and prosperity. Banks using several hundred years of experience and using branches Extensive tools are the best and smoothest tool to achieve this goal. With the help of various deposit accounts, banks attract funds in excess of the consumption and investment needs of individuals and institutions, and provide them to businesses in the form of short-term and long-term loans and credits. However, the basis of the work of world-renowned banks, whether in attracting deposits or in lending and credit, is (interest system), which according to the great jurists of Islam is usury and forbidden.

The growing necessity of banking transactions and the important position of the bank in preparing savings and leading them to useful, productive and productive economic endeavors, have made Muslim thinkers think of finding a solution to implement the banking system. The result of this thought can be presented in four groups:

The first group, while acknowledging the usury of bank interest, has considered it permissible out of necessity and necessity.

The second group, on the subject of thematics, has introduced ignorance and the essential difference between usury and bank interest.

The third group, relying on the exceptions to the ruling on usury, has equated them to bank interest.

The fourth group, rejecting the three attempts to design a banking system based on Islamic contracts, has concluded that the phenomenon of Islamic banking and interest-free banking, in many Muslim countries, is the result of their efforts. Its capital is from the treasury and belongs to all Muslims in the region. It is out of the type of forbidden usury, the sanctity of which is definite in the book and tradition. The bank is an economic institution, which is established by social needs and requirements. It is demanding, and it is working to turn the economic movement in the country, and it has not been created for profit or profit. This profitability and profitability is a subordinate thing that is considered as its accessories. But its main task is to work to organize the country's economy. Those who deposit their capital in the bank, the bank works with their capital, and pays them a calculated and guaranteed share. And in the case of Mudaraba, the agent can guarantee the owner's share - according to the custom of the day - and in the end, even if the profit is more, it means, and the profit that the bank receives is closer to the wage and the account Inflation and depreciation of money, especially in the long run, are considered and the conditional sale is basically done in the housing bank.

Therefore, state-owned banks cannot be considered as an exploitative institution and have not been created for profit or profitability and are considered a social necessity that can be sustained by this system and can be used to organize the country's economy. , Be active. Hence, bank profits - of course state-owned banks whose capital is from

the treasury - cannot be credited to Muharram usury; Because none of the corruption of usury, which is necessarily equal to usury in this case, does not exist and is like usury in the family, which is not based on usury. To examine this as well as his writing, we must first have a brief history of how banks were formed. Describe the goals of bankers, the position of the bank in the economy and the types of banks in the world, then critique the discussions.

Some scholars trace the origins of banking to the temples of Rome, Greece, Babylon, and China, dating back thousands of years. The conditions prevailing at that time, the constant wars and conflicts between independent states and cities with each other and with foreign governments and the lack of sufficient security made all people, even those who did not have religious beliefs, the temple the safest place to keep precious property and know their worth, so that in densely populated cities, part of the temples were dedicated to this work. Temples first kept valuables in exchange for gifts given to them by property owners, and then charged their owners a commission equal to the value of the assets. It did not take long for the temple owners to lend and use the stored assets to the needy and merchants, first out of benevolence, then for profit. For example, in the temples of Babylon (two thousand years BC) according to official rituals, property and assets deposited in the temple, with twenty percent annual interest was lent to borrowers and in addition, equivalent to one-sixtieth of the value of deposits, it was taken from their owners as maintenance fees.

The remarkable profits of the temples from these efforts and endeavors gradually aroused the competition of those with the temple, and in spite of the great difficulties which at first existed in gaining public attention and trust, private institutions, such as today's banks, began to operate. These institutions attracted people's deposits and issued receipts. Due to the trust of the people, these receipts were gradually exchanged between the people instead of money, and sometimes after a long time, they were returned to the mentioned institution to become money. As a result, they found that a significant portion of deposits always remained stagnant, which could lead to significant profits by borrowing. After a short time, they discovered that loans could be repaid with the same receipts that had been universally accepted, and this brought about a significant change in banking: It paved the way for the emergence of paper and credit money.

The other two: enabled banks to create money in society, and the dream that alchemists had been waiting for centuries to one day turn copper into gold, they turned paper into gold and gold money with the tip of a pen. Then, banks were able to expand. Extend your business from lending your own property and the deposits of others to more banking services such as in-house and out-of-country transfers, letter of credit generators and some current account services.

With the influence of Christianity in European countries and the domination of the church over the affairs of society, due to the strict strictness of the church lord against usury and interest, the profession of money changers and banking flourished to a large extent and only Jews, who according to Jewish teachings, received interest from others. The Jews were allowed, the main operators of such institutions, and this situation continued, more or less, until the sixteenth century in Europe. In that century, the weakening of the foundations of the church, on the one hand, and the flourishing of trade and commerce, which required a great deal of capital, on the other, prompted the church owners to offer a new interpretation of usury in the teachings of Christ. To formally invalidate the law prohibiting interest in the civil laws of European countries. Since then, we have seen the formation of large and organized banks in Europe and then in other countries. Today, banks are one of the largest economic institutions in the country and banking efforts are one of the most profitable economic efforts of the present era. Today, banks such as Ava America, Mitsubishi Japan, and Barkley UK, with more than one hundred and eighty thousand employees and a very large financial resources, have profits and wealth of several billion dollars, so that the profit of each of them with income. All third world countries are equal.

Banking goals

It turned out that banking institutions were formed from the very beginning with the intention of making a profit and continued their work with the same motivation, and today, they are still considered as the highest economic institutions in terms of profitability. Therefore, in all countries of the world, the request to establish monetary institutions, especially banks, shows a significant figure. In Iran, too, upon seeing the first signs of popular savings due to oil revenues, many monetary and banking institutions were formed; So that between 1357-1377, various domestic and foreign banks appeared in Tehran and big cities.

The position of banks in the economy

The most important role of banks and monetary institutions in line with socio-economic necessity is to prepare stray and inefficient savings and lead them to useful and productive economic efforts. In this way, banks play an important role in the growth and prosperity of societies, but this does not mean that the motivation of their founders and how they work and strive for profit is not one of the places where the master of knowledge mixes the discussion. He thinks that any economic institution that is formed to meet social needs will not be aimed at making a profit. While

the reality of society shows that the most profitable jobs are these jobs. In the capitalist system, the more work and effort is needed, the higher the degree of profitability will be. Therefore, today institutions such as banks, insurance companies Communications bring the highest profits to their shareholders. The most important thing about banks is that if banks do not think about profitability for depositors, they can not play their economic role (dragging stagnant savings to the driver and producer capital). To play; Because most depositors make deposits with the motive of achieving bank interest and interest, and if the bank can not meet this demand, the level of deposits will decrease. So a successful bank must not only think about profit, but also about making a profit for depositors.

Types of banks (commercial banks)

Mentally, banks can be divided into three general groups in terms of management and capital formation:

1- Private banks:

The main capital and resources of these banks are mostly public deposits, in which people provide large and extensive financial resources for the bank by depositing. The bank provides them to economic owners to use in economic plans and affairs. The legal form of these banks in the world, whether in attracting deposits or lending, is based on (interest system); That is, the bank lends its resources to the economic operator in the form of interest-bearing loans, and at the time of the contract and apparently, regardless of success or failure, the mentioned effort takes back the principal and sub-loan, then part of it. It pays the depositors and the rest, which is in fact the difference between the interest received and the payment, forms the profit bank.

2- Banks with government management:

Formation of conventional banks in the world is a government-run bank. In these banks, the main and main resources of the bank are formed through people's deposits and in terms of the type of work and legal relations, they are no different from private banks, that is, they provide financial resources to economic owners and use them, then part It is given to depositors and the rest is deposited in the state treasury as bank interest. The purpose of establishing such banks in some countries is to prevent the excesses and oppression of private banks in receiving and paying bank interest. This means that private banks typically charge higher interest rates than business owners to make more profit, while depositors pay lower interest rates. To solve this problem, in some countries, state-run banks were formed. At the same time, it should be noted that the interest paid by these banks to depositors should not be less than competing institutions, otherwise in a short time people will withdraw their deposits from these banks. And take them to private banks, non-bank monetary institutions, informal monetary markets, foreign banks, or buy and hoard essential goods.

3. Banks with government capital:

The third type of banks that can be considered is to form a bank with the capital and financial resources of the government (treasury) and by leaving it to the economic owners, to provide the financial needs of the economic efforts of individuals and the private sector. It seems that the master of knowledge is trying to make their bank interest permissible, in addition to the problem of usury that we describe, there are several basic problems (of course, it is also possible that they mean government-run banks that we are examining). It seems to be nothing more. Today, in this vast world with a variety of economic systems, there is no country whose government invests its funds in a bank to provide loans and credit to the private sector, but the opposite is true in most countries. In order to implement large-scale economic infrastructure projects, governments use various ways and methods to attract the savings of the people (private sector) and sometimes, even if they were not satisfied with it, they resort to borrowing from abroad. For example, one of the criticisms of the government of the Islamic Republic of Iran is that on the one hand it calls for privatization and on the other hand, by using bank credits, it draws a large part of private sector capital to the government's economic plans. So such a bank that the master is trying to justify his interest is just an idea.

The other two: If such a bank is formed one day, it will not be able to fulfill the socio-economic requirements expected of banks (preparing stray savings and turning them into useful and productive economic capital), because in such a bank There is no place for people's deposits. Therefore, the term such an institution can not be called a bank. If we mean the master of the second type of banks, we have said that the nature of their transactions is the same as that of private banks, with the difference that because they do not care much about the bank's own interest, perhaps one or two percent of loan applicants will benefit less (because the interest difference And payments in private banks are very rare (more than three percent), but the interest paid to depositors can not be less, otherwise the bank loses its public resources.

We now turn to Master's citations. To prove his point, he gave several reasons for the permissibility of the interest of state-owned banks, the most important of which is the issue (extending the exceptions of usury) to usury between

the government and the people. In addition, there are other reasons that are addressed as much as the capacity of the article.

Possibility of extending usury exceptions

After explaining the reason for the exception of cases of forbidden usury, such as usury between father and son, usury between husband and wife, the master states that: Usury is realized if the party to the transaction, to whom profit is added or profit from it is harvested, not in your possession. In family life, everything is available to everyone and everyone is a partner in collective life. Therefore, the benefit that is given or taken from one of the family members, does not go out of the family environment, everyone gets income and in fact, it is available to everyone and is transferred from this bag, or from one pocket to another.

This reasoning removes the above-mentioned exceptions from the sanctity of usury, not specifically, because usury is if another person takes this profit and it is out of the control of the profiteer, and all the corruptions of usury are on the same type of usury.

He then writes in a prominent position: Therefore, bank profits - of course state-owned banks, whose capital is from the treasury, cannot be credited to the Muharram usury; Because none of the destructive consequences of usury, which are necessarily equal to usury, exist in this case, and it is like usury in the family, which is not in the basis of usury.) They consider the secret of usury to be the absence of usury corruption in this idea. Therefore, it is necessary to first examine the presence and absence of usury corruption in the transactions of such a bank. One of the important corruptions of usury is that in raising capital according to it, the economic owner (trader or producer), regardless of economic function, is obliged to repay. The principle and sub-principle of bank lending is that it creates a variable (exogenous) in the economy, income outside the functioning of the real sector of the economy is formed, which itself has bad effects, such as: inflation, unfair income distribution and boom periods and follows the recession. In addition, it causes the opportunity to think and think correctly from the economic owner, which the professor himself says about this:

Usury disrupts the health of society and upsets the economic balance of the country. The usurer takes the opportunity of thought and action from the worker. He is constantly thinking of providing large profits to the usurer as soon as possible so as not to cause him trouble. Therefore, he does not act with a free mind and does anything, and he may not have thought of doing low-paying jobs in a hurry, and therefore, he loses his existence, especially the weak and young people. In embarrassment and in order to preserve their prestige and reputation, they sometimes turn to things that are not very profitable, and because they have to pay a fixed and fixed profit, they may pay from the capital they have and gradually destroy themselves and their existence. Ruin.)

The corruptions for which Islam forbids usury are present in all types of banks that follow the usury system, that is, banks, whether they are public or private, or whose capital consists of people's deposits. Or from the treasury, as long as they operate according to the system of interest, they will pursue the corruption of usury, that is, as long as they provide financial resources as loans and credits to the merchant and producer, and by ignoring his function, the principle. And they demand a loan, all those corruptions will be realized. In other words, in the interest rate system, the only difference that can be made between a private and a state-owned bank is the lack of interest rates. Interest rates on state-owned banks are expected to be a few percent lower; But because the producer or trader, regardless of his function, undertakes to repay the principal and interest of the loan, they are all equal, and in fact, it is this nature that has led to usury, oppression, and the loss of all property. It would have been absolutely forbidden, otherwise God could have made low interest rates lawful and high interest rates usury and haram.

Therefore, the way to get rid of usury corruption is not to reduce interest rates by governmentalizing the banks, but only the way to save, overthrow the interest system and involve the owner of the capital and the bank in economic projects and get the appropriate profit with the operation of the firm. In this case, neither in individual relations nor in the whole society, income outside the real economy is not formed and its bad effects do not follow. The result is that the master criterion in the spread (absence of usury corruption in the mentioned bank interest) it is distorted. In addition, in terms of jurisprudential criteria, the promise has some problems. For further explanation, it is necessary to quote the whole sahih that is documented by him: (On the authority of Abi Ja'far (AS)) he said: Licking between a man and a child and between a slave and between a slave and You are not among the people of usury, but the usurer is between you and your possessions, did you say: Do the partners see us and do you see usury? This is because Abdak Lis is like Abdak and Abd Ghirak.) He writes:

In our sentence (Enma al-Raba Fima Bink and between the property owners), it is obligatory and its purpose is the property of the party to the transaction and it does not mean the person, so that it is related to (slave), so this is a general explanation for all three exceptions.

In response, we say: First, that, according to the context before and after the reason and reason mentioned, the meaning of (us) in that sentence is person, not property, something that made the master turn away from this unity

of context, It is seen that if the above sentence carries the true meaning, it is not compatible with the examples included in the narration itself; Because man does not own his wife and children. On the other hand, if we take (us) to mean property, the problem remains; Because man does not own the property of his wife and child; Therefore, in authentic narrations such as Sahih Ibn Hamza and Ibn Sinan, the father is allowed to seize his son's property only under certain circumstances.

Guarantee of Mudaraba profit

Those who deposit their capital in the bank, the bank works with their capital and pays them a calculated and guaranteed share, and we know about Mudaraba that the agent can guarantee the owner's share - the custom of the day. And finally, if there is more profit, it also means it.) First, if this method is correct, it is not exclusive to the state bank, private banks can also use this method. Sayyid Yazdi in Arwa al-Wathqi, in the correct conditions of the contract of Mudaraba, writes: Al-Khamis, if the umbilical cord is common among them, then they should make it for a certain amount, and the rest is for the rest, and the rest is for the rest. It is necessary for the profit of Mudaraba to be common for both parties, so it will not be correct if a certain amount is set for one party and the rest is from the other, or the rest is divided between the two parties.

The jurists who have a margin on Arwa unanimously accept this fatwa of Sayyid, especially where there is a possibility of loss or low profit from that certain amount. It is interesting that this statement of the master is inconsistent with their other statement in the first part of this article. Where, after expressing the nature and corruptions of usury, he writes in the position of describing and expressing the superiority of the Mudaraba contract, he writes: If a fixed profit is not prescribed in Mudaraba and he has to pay only the common share of income, , Is gone from the pocket of the employer [owner of the capital], so the mind of the worker [agent] is completely at ease and chooses the best and most worthy works with confidence and free thought.) In addition, if the agent (owner) is built Economic work) guarantees the profit of Mudaraba, will be no different from the nature of usury, and all the corruptions that the master himself has considered for usury will come true. In the narration, it has been narrated from the Commander of the Faithful (pbuh) that he said:

If the owner of the capital stipulates that the agent guarantees the principal of the capital, he receives only the principal of the capital and has no share in the profit. And the owner of the capital will not have any share in the profit. And this is the subject of another narration of Imam Sadeh (AS) which the owner of the means has quoted in the chapters of Mudaraba.

Fees with compensation for devaluation

The interest that the bank receives is closer to the wage, and the account of inflation and the devaluation of money, especially in the long run, is meant. That is, the interest that the borrower borrows from the borrower is actually a combination of: percentage as Bank fees and interest to compensate for the devaluation of money. For example, a person who borrows one million tomans from a state-owned bank for one year, if the inflation rate in the country is twenty percent and the average bank commission rate is two percent, the bank is entitled to one million two hundred and twenty thousand tomans at the end of the year. Take him. In this case, the bank has only kept the value of its capital and has not received any interest or interest. First of all, this method is not specific to the state-owned bank. If, from a jurisprudential point of view, taking a percentage as a commission and a percentage to compensate for the devaluation of money due to inflation are not examples of usury, just as state-owned banks can use this method, private banks can also use it. That is, the central bank, with the tools at its disposal, determines and stabilizes the interest rate of bank loans at that level, so that all banks, public and private, based on the mentioned rate, which is a combination of commission rate and inflation rate, to the applicants, Lend and give credit. The other two, although equal to the fatwas of the jurists, getting a real fee for giving a bank loan is not an example of usury; But the question of whether or not usury is compensating for the devaluation of money (due to inflation) needs to be debated, especially given that most authorities, such as Imam Khomeini, clearly consider usury.

Sale condition:

This section of the phrase is the most ambiguous part of the article: It seems that his opinion on how to give a bank loan in a housing bank is interest-free banking in the Islamic Republic of Iran, in which, usually to one of the The following two methods are used: A person who has a semi-finished land or building and goes to the bank to build or complete it.

A. The bank enters into a transaction with him or in partnership; That is, he shares with him the cost of building, or completing, and in the end, sells his share to him in installments.

B. Or the bank buys the land or a semi-finished building and builds it. After the work is completed, it gives the said building to the first owner equal to the contract (lease on condition of ownership). So that if he acts in accordance

with the contract during the lease period, in the end, the mentioned building will become his property. If this is the intention of the master, first of all, this issue has nothing to do with bank interest and there is no usury or interest at all, but two real transactions have been made in a row and it may have been profitable for the owner of the capital and this In nature, it is different from usury, and in principle, the meaning of the narrations is also: (Usury is forbidden for people to turn to real businesses and transactions. This is what the scholars of Islamic economics mean is that banks, not only in the housing sector Instead of lending and taking interest, they should turn to profitable real transactions in all sectors. This method, like the previous methods, is no longer reserved for state-owned banks - banks whose capital is from the treasury - and all banks, including Private, with government management and with government capital can use it.

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