Usury in banking through a systemic approach

Soudabeh Dehgani  
MA Graduate of Jurisprudence and Principles of Islamic Law, Payam Noor University of Kashan, Iran  
Dehghani.soudabeh@gmail.com

Seyyed Mostafa Managheb  
Doctor of Theology and Islamic Education Department of Payam Noor University of Kashan, Iran

Abstract

Interest or usury is a phenomenon represented in the conventional economic banking activities in the form of an economic law; Interest rates are considered as an indicator of standard practice in the banking and financial calculations. Certainly not only Shia scholars but also all Islamic scholars have prohibited Usury making this verdict one of the necessities of Islam. In Islam, offering and receiving the interest is banned. Accordingly, banking and financial operations should be interest (usury) free. Usury’s prohibition is a tool that limits the income; thus, it is effective in modulating wealth. Many differences of wealth in capitalist countries, are due to the possibility of usury and the incomes derived from it. In this regard, Iran’s interest free banking system, attempts to find legal ways for mobilization and allocation of resources; the consequences are seen in interest-free banking laws and procedures.

Keywords: interest, banking operations, deposits, loans, interest, debt.
Introduction

All Muslims consider the prohibition of interest as one of the main pillars of Islamic economics. Getting any kind of excess (interests) per loan is usury and forbidden so there is no distinction between consumption and investment loans; emergencies and necessities that cause an ignorance of Islamic laws are not possible in the current banking transactions; activities such as current account services, payment of checks, transfer of funds, receipt of promissory notes and bills in which the contract is interest free are legal. Time deposits, loans and time credits which are based on interest in loans are forbidden.

Through the prohibition of usury, Islam, wants to show the values of the work and efforts; the only legitimate income is the one which is obtained through working. Usury causes the owner of money not to use his/ her manpower and results in the creation of recession. It is one of the aspects of capitalism i.e. some people consider the investor as the one who is working and using the money not the owner of the money. For this reason inequality is created; some people do not work and earn money, or some are unemployed but earn money without any work and effort. Usury prevents charity and doesn’t let the poor people use others’ capital; it makes use of the needs of others. Islam wants to do charity to provide for the needs of other people. This has been mentioned in many hadiths. According to Islam, the receiver of usury is oppressor and the usury receiver is the oppressed; the prohibition of usury is to support the oppressed. The phenomenon of usury in the field of economy does not let the capital owner to do any economic efforts but it takes advantage of the capital, makes the owner to commit the sin of usury.

Objectives of the study:
The most fundamental issue related to usury, is the analysis, philosophy, and the reason for the prohibition of usury. Basic and important questions are raised in this case. Why interest is forbidden in banking transactions and loans as well as in deposits? What is the reason?

Significance of the study:
With regard to the prohibition of usury in Islamic jurisprudence, the creation of interest-free banking system, has been the main concern of Islamic scholars and jurists. However, about a hundred years ago, some have tried to differentiate between (interest) and (usury), and stop this prohibition.

Method of This research is descriptive, library and archival.
The subject of usury:
(A dirham of usury is more severe than seventy incestuous adultery to God.)\(^1\)
Riba (Usury) literally means to increase. The common meaning of Riba (usury) which is a forbidden act in Islam is to take an added amount in a transaction\(^2\).

The legal definitions of usury
1. loan usury
2. Transaction usury

\(^1\) Vassael Shiite vol. 12, p. 422.
\(^2\) Of course, this definition is allowed only in transaction usury, otherwise in borrowing there is no buy or sell.
(Professor martyr Morteza Motahhari)
1. Loan usury: This is the one in which, a person loans a good or money to someone and asks for an extra amount when the borrower is returning the money or the good. This kind of usury, is more important and a lot of people are involved in it.

2. Transaction usury: it doesn’t involve any kinds of debt, but it involves transactions and mostly is realized in barter trades.

Transaction usury is also called barter usury in which goods or services are directly exchanged for other goods for instance wheat is exchanged with wheat. That’s why most of verses of the Quran that refer to the inhibition of the usury, observe the loan usury (1).

Sahib Javaher says: forbidden usury is realized through the two cases:

1. The transaction of two similar goods under the condition that one party is provided with extra amount.

2. Loaning goods to someone else under the condition of additional reimbursement.

It’s been stated in a prophetic hadith that:

A person who loans to his Muslim brother, receives goodness in the weight of Mount Uhud - one of the Razavi Mountains (heaven) and Toor Sina for one Dirham that he has given. If he copes with his brother in returning of the money, he will pass the Sirat like a blazing lightning, without reckoning and punishment. And if someone doesn’t loan money to his Muslim brother who is in need, won’t go to heaven on the day Allah Almighty is rewarding the righteous.

The reward of loaning is well stated in the above hadith. Sharia has praised lending and loans. Both transaction usury and loan usury, including money and goods are forbidden in Islam.

Perhaps the prohibition of transaction usury is to respect the prohibition of loan usury i.e. in order to prevent the loans to turn into a kind of buying and selling, such prohibition is created.

Is usury an oppression outside the scope of religion?

Usury in Islamic jurisprudence is a complex issue. Nothing is more forbidden than usury in Sharia. But some have tried to create confusion about the nature of usury, so that they can broke its prohibition. But the Quran clearly resisted those who disagreed the prohibition of usury in the first place and said: "حَلَّلَ اللَّهُ الْبِيعَ وَحَرَّمَ الْرِّبَا" and told them: ""اِنَّ الْبِيعَ مِثْلَ الْرِّبَا...". Though different patterns and practices introduce fresh ideas and develop the idea of Islamic banking. In the long term it prevents the invention of a single universal pattern that can be implemented across the Muslim world.

With the expansion of banking industry, the Muslim thinkers thought of a way to use this phenomena, but most of the banking activities rely on interest of loans. At first, it was attempted to justify normal banking operations. But in practice, no argument was accepted by scholars. Hence, some Islamic scholars sought to design a bank based on Islamic transactions. Now interest-free Islamic banks are around the world. Although Islamic banks are in common in the removal of usury from banking operations and its replacement with authorized transactions, they are different in the types of contracts used for the equipment and allocation of resources. This difference has caused the formation of diverse patterns of Islamic banking. (4)

3 A path in the other world which is dangerous and sinners cannot make it.

4 من أقرض اخاه المسلم كان بكل درهم أقرضه وزن الجيل أحد من جبال رضوئ وطور سيناء حسنات، وأن رفع به في ظلبه تعدى به على الصراط كالبرق الخاطف اللامع بغير حساب ولا عذاب من شكر الاتهاء اخوه المسلم فلم يقرضه حرام الله عزوجل عليه الجنية يوم يجزى المحسنين
Concerning the need for interest-based banking, Doctor Qani Najad says: “In interest-based banking system, the economy has a very important function and the removal of interest leads to the impossibility of calculating the cost of production, poor allocation of resources, low economic efficiency, wasting an important part of capital resources, and generally, reduces the levels of the welfare in society”. Principles of Islamic Economics (University Cooperation office) ((the study and teaching of Humanities Books)) printing, 1992, Mehr poulication (Qom)

Usury and approaches of banking systems:
Although banks follow the same principles, but in operation, they implement different approaches. It means that, banks, due to the size and variety of their transactions, have their own systems. It’s not possible to remove banks and even if they are removed, how they can be compensated for? Banks act as an interface between the collection of capital on the one hand and unleashing human resources on the other hand. But at the same time it can’t be denied that the banks have made a number of people to use their money including the share owners and the people who have money but can’t invest it (or if they invest their money they will use it in small businesses). Banks, here, have a connector role. So with the removal of banks a wide scope of economics can be stopped.

Necessary cases affecting banking, especially in the modern age are:
A. The capital will not be stagnant; it will be in circulation. Bank attracts the small investments as savings or fixed deposits and allocates interests or permissions and collects the capitals and gives them to people who are inclined to do (commercial, agricultural, industrial) activities and then bank receives profits instead. Bank, in this sense, is an interface or intermediate.
B. The issue of changing the money

Banking Awards:
National Savings Fund gives awards or prizes to those who have opened an account through lotteries, What about these awards? Bank gives the award to those who have opened accounts and the bank have used their money in the investments; this kind of use is usury. The nature of awards is problematic if we are certain that this award is obtained through usury. Of course, no one can be certain that the award given by bank is bought through the interest. Because the bank also has Halal money. Thus, from this point of view the reward is not problematic. When the legislator is taking things easy for us, we shouldn’t restrict ourselves. Therefore, the prize is not exchangeable and it is a gift in nature. If one assumes that the Bank is created because of the interests, all of the money he/she receives is considered usury. But the principal is not usury, it is Halal.

Bonds:
Bonds are sheets that the government gives to banks. The customer buys them and every six months can receive the interest, it is clearly usury.

Deposits:
Deposits are the things that the bank give benefit for them, whether they are savings or deposits. If deposits are in the form of contracts they will be problematic (for the payment of dividends by
the Bank) -even implicit contract-. If the contract is explicit, it is definitely usury. If the contract is implicit i.e. the bank gives a certain amount of profit to savings and deposits, it is also Usury. But regarding the fact that the bank should give an extra amount - if it does not, nobody claims for their right-, we may realize that the profit is okay. But apparently this assumption is other than what is actually implementing. The question is, what is the idea of Sharia about the deposit? If the bank bestows profits to people in a deposit account - explicit or implicit- then the profit is Haram and forbidden. Therefore now the deposits which are provided by bank are forbidden. This prohibition has two aspects: first from the aspect of usury and then from the aspect of the fact that people are committing a sin. Because the individual is being both a usurer and is promoting usury (5).

Giving loans:

One of the important activities of banks is giving loans to applicants. Loans are money that banks pay applicants under certain conditions and for certain purposes such as construction, agriculture and industry. In contrast, the bank receives interests, and it is not possible except through a usury deal. The interest on these loans are usually insignificant, and the goal of banks is entrepreneurial. This use of capital, whether the profit is high or low, is accompanied with diversion and not permissible. Banks divide benefits which are obtained from the operations with proportion to the duration of the agreement and the amount of money, in accordance with the interests of the bank's shares, after deducting the costs and honorarium fees between the owners of deposits. Although the amount of profit is unknown in these accounts; the extent and variety of transactions, ensures that an appropriate profit will be obtained. So the bank can calculate the expected interest rate at the beginning of the year as provisional profit. The solution, is that a cooperative fund of loans should be made and partners lend their extra money as a loan to the fund. They should have the right to have a certain proportion of their loans, and interests should be calculated in accordance with the normal rate. After that, the owners of capital should represent to divide the profit in proportion to interest payments at the end of the year. In this case the borrower has actually paid only the cost of the bank and no one is involved in usury. This solution seems plausible, as ((Mr. Beheshti)) states: all people should consider that these interests are formal and not real. It means that this process is similar to usury but it’s not really usury in nature. These loans (creditors) can be called commercial loans. It must be said that the credit loans are just needed by businessmen and not needed by people who have an agrarian or industrial design. These loans are not necessary. A person who sells goods on credit, takes profits after an appropriate amount of time. Why he/ she should establish a vein deal? (6)

As it is stated in all economy and banking books, one of the goals of banking system and monetary policy, is the stabilization of general rate of pricing. If the banking system achieves this goal or come close to achieve this goal, the changes in general price levels will be equal to zero or will have a systematic and logical growth which is predictable for banks. Consequently, (certain income preset) will be easily obtainable. For banks and depositors who don’t want to buy or sell certain goods and only want to earn money, credit or term deposit the long-term goals are not important, but price changes in the general level of prices and devaluation are important; the relative changes are not important. Finally it can be said that the usury is true where the
lenders (loan usury) receive an extra of the capital, but if they discount, and receive a loan sooner than the due date with less money, it will be considered usury and oppression. (7)

Comparative views

Interest has been stated in some sacred verses; as:

“and if you repent, then you shall have your capital; neither shall you make (the debtor) suffer loss, nor shall you be made to suffer loss.”

So not giving the capital to the creditor is oppression. It seems that from the perspective of the Holy Quran, profit-taking of the loans is oppression. We Know that oppression and injustice means taking something without permission and license, -natural license and not legal. In fact, justice means giving something to someone who deserves and needs it. Oppression violates the rights of others. The Qur'an considers usury as abusing the borrower's rights and regards it as an illegitimate act.

The context in which the order of Imam (RA) must be adhered is as follows; is the oppression of usury derivative of its prohibition? Or apart from the Sharia, is usury still an oppression and injustice? i.e. if we disregard the divine law, is usury an oppression when someone gives a usury loan to someone else based on a contract and the other party accepts the terms and is content with them? This fact is unclear. Some economists believe that usury is divided into extreme and moderate. They say that a usury is oppression if it harms the general economy and eliminates economic balance.

The theory of Dr. Qani Nejad about the differences of usury and banking interest

((What is forbidden in Islam as interest is the real, fixed income, of the lender. It happens when, first, the inflation rate is zero for a long time and second, the prices do not have an important long term volatility. And this is only imaginable in traditional economy of societies. in these communities, due to the fact that exchanges of money are on the sidelines of production of the main activities and also due to the slow social and economic movements and technological developments, changes in relative prices as well as price levels are insignificant, even in the long run. Only under such conditions the nominal and real money are supposed as one.)). Dr. Qnai Nejad on several occasions, and banking investment of activities has stated that lending and deposit are new concepts and entirely inconsistent with the financial relationships of the old era. He claims: ((banking system is deposit-based and relies on the efficient management of liquidity and a part of it, is created by credit and money of the banking system. economically and legally, Deposit, cannot be equated with lending; the depositor does not loan the bank. But gives the savings to bank and asks for it whenever he/she wants. Banking operations are not lending the existing deposits, but the banker makes credit money with his /her own responsibility and attempts to set the liquidity by considering multiple factors.)) (8)

Conclusion: As described above, the interest on all banking transactions, can lead to injustice, poverty and economic dislocation of the majority. Interest in the form of a banking activity, in today's economy, is not a purely monetary phenomenon, but varies depending on the scarcity of
capital (savings) and what is forbidden in Islam or even outside of divine law (fixed or predetermined yield) and the rate of return on financial transactions are not forbidden. So, the interest is wrong because it takes another person's property; and the other party is not satisfied, though the original contract is agreed to the terms of the agreement; it is not valid by the legislator.

In short, if the license for interest is cunning, the prohibition of usury remains. The change in the form of interest does not change the fact. And the corruption and brutality of interest is the reason for the prohibitions.

Suggestions:

Finally, we can say: If the profit doesn’t conform to the shape of extortion and the law of supply and demand is not abused, and if the government is monitor the conditions or provides interest with a low profit, the interest, Not only does not weaken or destroy the poor [but] causes, this class to be more powerful by virtue and receive wealth with a small profit. All of this should be allowed by the legislator, and the interest rate should be monitored.
References

Usury, martyr Motahari-IV / Persian date Dey 1371 (1992) Publisher: Sadra (With the permission of the Supervisory Council Publication of Professor martyr Motahari)

Sheikh Hurr Ameli, Vasael Shiite, Bi na

Usul al-Kafi, Tazhib

Mosa Qani Nejad ((difference between usury and interest)), review, No. 12 p. 323-320 (summarization)


Ibid

See Practical Treatise emulation, banking transactions

Mosa Qani Nejad ((difference between usury and interest)) review (12).

Other references

Mohammad Hossein Ebrahimi (interest and debt in Islam), Islamic Propagation Office - Tahrir ul-Vassileh, vol. 1, p. 496, issue 3 –

Theoretical studies (the banking system) by Mohsen Khan, Abbass Mir Akhour, translated by Mohammad Reza Bigdeli, banking institution of Iran, 137, pp. 51 - see catechism comprehensive of Ayatollah Fazel