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A comparative study of the legitimacy of employment in a bank from the perspective of Islamic law and jurisprudence

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Abstract

Islamic banking, due to its nature, requires a specific type of supervisory methods in order to comply with the banking system's activities with the principles and laws of Sharia. This study attempts to justify the necessity of Sharia supervision in the banking system with jurisprudential principles such as the rule of negation of gharar, prohibition of usury, non-harm, protection of public interests, and lack of infallibility of rulers, and to emphasize and examine the necessity of Sharia supervision in this regard through various legal documents such as Articles 2, 4, and 71 of the Constitution, as well as the existential philosophy of approving the Law on Banking Operations Without Usury and other related regulations. International Islamic financial institutions have presented solutions for the implementation of the aforementioned institution in the banking system of Islamic countries, which have been implemented in most countries with an Islamic banking structure. In Iran, too, over the past few years, we have witnessed the relative consolidation of a supervisory, executive, and legislative position for the Sharia supervisor; however, the country's banking system is still at the beginning of the path to implementation and the results of Sharia supervision. Removing obstacles and providing solutions for implementing Sharia supervision requires examining the jurisprudential foundations, explaining the solutions, and training in its implementation, which is also the purpose of this research. The above issue has been discussed and examined in this research, relying on the descriptive-analytical method from a jurisprudential and legal perspective.

Key Words: legitimacy, employment, bank, jurisprudence, Islamic law

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Introduction

The discussion of the illegitimacy of usury and usury transactions and its destructive effects on the economy of the Islamic society is fully evident in light of the verses and narrations, but is the issue of the legitimacy of banking and earning income in this way justified in light of these verses and narrations and the jurisprudential sources of various Islamic schools of thought and laws? One of the necessities that immediately became part of the Islamic regime's agenda after the victory of the Islamic Revolution in Bahman 1978 and, subsequently, the change of the country's political system to an Islamic Republic, the drafting of a constitution, and the formation of various institutions was the gradual change of the country's banking system to interest-free banking, which began through an 8-stage process with the nationalization of banks by the Revolutionary Council in June 1979, and with the approval of the Interest-Free Banking Law in 1984 and its amendment in 1989. 69, carried out (Mirjalili, 1372, 73). This indicates that carrying out banking transactions and earning income through employment in banks has been a matter of concern and concern for a large number of Muslim employees working in the banking system of Islamic countries since ancient times, and in fact, since the establishment of money changers and early banks. In this regard, the legislators of these countries have always tried to enact laws governing banking operations. They should observe the principles and foundations of jurisprudence and the conditions and characteristics of Islamic employment and provide appropriate responses to these occupations. This research attempts to express the views of jurists and scholars of various Islamic sects and schools of thought regarding banking and the conditions of Islamic banking without usury, and the legitimacy or illegitimacy of earning income through employment in banks, as well as to examine and compare the banking systems of Iran and several Islamic countries, and to analyze and analyze these issues. With regard to According to the opinions and views of Islamic jurists, Islamic banking, which is not usury, as opposed to traditional banking, and also earning income through employment in Islamic banks, has been accepted to a large extent and under specific conditions.

Islamic Banking

In the field of Islamic banking, the books Islamic Banking by Shahid Sadr and Banking Without Riba by Najatullah Siddiqui are some of the first books that have been written in this field. However, over time, establishing an Islamic banking system without riba has always been the dream of every Muslim. Perhaps for this reason, with the establishment of the Islamic Republic, the first resolution of the Revolutionary Council in this regard was approved approximately three months after the victory of the revolution and with the aim of promoting banking activities towards Islamization, and the Council of Money and Credit took steps to eliminate interest from the banking system with another resolution on 10/3/1358. In this resolution, interest was guaranteed in the banking system and wages were foreseen for attracting savings and granting credit. Accordingly, banks were allowed to pay a guaranteed interest of at least 7 percent for attracting sight deposits (settlement) and at least 8.5 percent for attracting term deposits. It was also stipulated that at the end of the year and in the event of higher interest, the excess over the guaranteed minimum would be distributed among depositors. In relation to bank credits and facilities, it was also stipulated that the bank would pay a wage to real and legal persons, the amount of which would vary depending on the circumstances. There were various differences, take.

Considering the problems and objections that the last approved law had, it was stipulated in the commentary of Article 54 of the 1360 Budget Law that:

The government is obliged to carry out the necessary studies as soon as possible from the date of approval of this law, to eliminate usury from the banking system and reform the banking system, and to submit the relevant bill to the Islamic Council of Ministers, and in any case, these studies and reviews and the submission of the bill should not exceed 6 months. (Ziaei, 1372, (951) For this purpose, after detailed studies by a number of jurisprudential and economic experts, the bill "Abolition of Interest and Compliance of Banking Operations with Islamic Standards" was finally submitted to the Islamic Council, which was approved under the title of "Law on Interest-Free Banking Operations" and, after approval by the Guardian Council based on its conformity with the provisions of Islamic law, was implemented from the beginning of 1363.

Bank

Bank is a very ancient concept, and the history of the first banking operations or the beginning of banking dates back to before the birth of Christ, when temple guardians, in order to help people protect their property from theft and looting, which were very common at that time, took on the responsibility of protecting and safeguarding their property, initially as a charity and later by receiving a small wage. The temple authorities later realized that some of these deposits, which had remained unclaimed for a long time, could be made available to the needy as loans. These deposits were initially made available to the needy free of charge and in the form of loans. Later, as the scope of loans expanded, they were made available to the beggars in the form of various loans against interest. It was believed that this method would both meet the needs of the poor and needy and provide income for the administration of the temple, thereby helping both God and His people.

From that date onwards, gradually, with various initiatives taken by money changers and early bankers, such as the Bank of Barcelona

in Spain, the Bank of Italy, the Bank of Amsterdam in the Netherlands, the Bank of Stockholm in Sweden, and the Bank of France, in the context of expanding banking activities, the popularity of new-style banks developed, such that at the end of the eighteenth century

and in all European countries, numerous banks similar to the above banks were established. (Totunchian, 1375, 283)

Currently, the bank is one of the main components of the economy, especially in the capitalist economy, and it carries out various activities in different structures, and in most cases, these activities are organized based on the interest system.

That is, on the one hand, it absorbs the monetary savings of individuals in the form of current and savings deposits and pays them interest in proportion to the time they have been at the bank's disposal, and on the other hand, it lends to those who Those who wish to use bank resources shall place the bank's deposits at their disposal by taking the necessary guarantees and shall benefit from them in proportion to the period of use and the prevailing rate. Whereas a bank, in this law (interest-free banking), is an institution that in some cases, such as an investment company, makes actual investments. In some similar cases, charitable institutions act in support of the poor and the disadvantaged, and sometimes, such as Lottery, through a lottery, gives prizes to lucky customers and in some cases, such as investment companies, buys and sells stocks, discounts debt instruments and carries out financial transactions. While the bank in the conventional economy, as mentioned, is a profit-making institution and its most basic activity is focused on the money market and attracting deposits from depositors and lending to borrowers. In other words, the conventional bank, on the one hand, has surplus funds It attracts its customers according to their needs and, on the other hand, makes these funds available to real and legal applicants by obtaining sufficient guarantees. It is not important for the bank how and in what order the recipient uses the loan and credit. Therefore, in this system, the most important issue is to attract as many bank deposits as possible and convert them into loans and credit, and in return for obtaining the necessary collateral and assurance of return, in The bank has the right

to decide for itself the borrowers and is not interested in the context and technical and economic justification in which the bank customer uses the loan received. While in banking, according to the Law on Interest-Free Banking Operations, as noted in the review of the law, bank deposits are divided into two main groups:

A - Sight credit deposits in which the depositor places his funds in the ownership of the bank, provided that the principal is returned upon demand. The deposit is returned to the account holder.

Investment deposits in which the bank, as an agent, receives the depositor's funds and uses them in economic and profitable activities, and after deducting the agent's fee, returns the profit from the economic activity and the principal to the depositor.

In this type of banking, the bank does not act as an intermediary for funds, but in some cases it directly invests, and in some cases in the form of a legal partnership, Civil partnership, Mudaraba, agriculture and musaqat enter into economic activity as partners and in some cases by concluding contracts of installment sale, advance, lease with possession and foreclosure enter into a real transaction and not in the monetary sector, but in the real sector of the economy. Whereas in conventional banking, due to the importance of loans and its prominent role, in the definition of a bank in the general sense or commercial and merchant banks in the specific sense, the words loan2 and loan origination3 are always included as inseparable components of the definition, Therefore, despite the nominal similarity of deposits in the two usury and non-usury systems, there is a substantial difference between the two, and this is also due to this point. In the usury system, a deposit is a kind of loan from the customer to the bank, with a predetermined interest rate, while in the non-usury system, a deposit is a kind of use of the customer's funds through partnership, agency and trust, and without any predetermined interest or profit.

Interest Rate

There are many definitions and theories regarding the interest rate, which we will present a few examples of: Time Preference Theory; According to this theory, people always prefer current consumption to future consumption. Therefore, for someone to give up their current use to someone else, they are entitled to a reward, which in the case of money is called interest. In other words, interest is the income that a person receives in exchange for postponing the use of their resources.

Opportunity cost theory; In this theory, since the issue of scarcity is considered a reality in economics, this scarcity itself creates an opportunity cost, and interest is the cost that individuals pay to gain the opportunity and possibility of using other people's resources.

Theory of marginal efficiency of capital; In this theory, money is considered as capital, and considering that capital is one of the main factors of production and the borrower can use the capital of others to work and produce and earn profit, in fact, interest is a share of the profit that is paid to the capital factor.

Theory of Price; According to this theory, money is also a commodity like other economic goods and has a price in the market, and this price is the interest that the borrower pays to the owner of the money to obtain the possibility of using it. The above definitions are mostly presented in the category of microeconomics and are open to discussion and examination in this field, but it seems that the interest rate also has a general and macro concept that is different from its micro concept. It is sufficient for this purpose to refer to the models commonly used in the teaching of basic macroeconomics. In the IS-LM models commonly used in conventional economics, IS is defined as the combinations indicating equilibrium in the goods and services market, and LM is defined as the points indicating equilibrium in the money market. Considering that each market consists of two components: supply and demand, if we consider the market for money in terms of its supply and demand, the interest rate, as a macro variable determined in this market, transfers the effects of monetary policies to the goods and services market through the transmission mechanism, and in this equilibrium, Markets play a significant role. In other words, if we look at the issue from this angle, the interest rate is no longer a micro variable, but rather a macro variable that is determined by macroeconomic policies. In this regard, it can be said that the interest rate, like many macroeconomic variables such as the budget deficit, exchange rate, and government spending, does not have a micro-origin and should be examined, analyzed, and analyzed at a macro level. Considering that in principle, the implementation of fiscal policies is difficult due to long delays in diagnosing and identifying the problem, deciding on the type of policy necessary to eliminate the problem, and finally the long time required to implement the policy, and political and economic considerations It has no advantage over monetary policies, and most monetary policies are the control of the supply and demand of money, which can play a significant role in controlling and suppressing inflation. There is ample empirical evidence at the international level that monetary policies are successful in controlling inflation and, as a result, in reducing and bringing the real interest rate to zero. Thus, if we look at the issue, interest rates will be different from usury. However, this view, and even the views presented in the field of microeconomics, raise other jurisprudential and evaluative issues that economists cannot comment on. Such as whether the opportunity cost of money is compatible with Shariah rulings. Or whether a loan for use in production is different from a loan for consumption from a Shariah perspective.

The theory of Islamic banking participation Given the great similarity between usury transactions and sales-based transactions, many Islamic banking thinkers, in strong opposition to the presented method, have proposed a third solution based on the participation of depositors and investors in profits and losses, relying on sales-based transactions. One Islamic banking thinker even considers some employment contracts to be haram. Mohammad Nejatullah Sidiqi writes: "I prefer that deferred sale be removed from the list of permitted banking methods. Even if we approve it in legal form with permission, we still have legal rules that whatever leads to haram is haram itself. It is recommended that this rule be applied in this case in order to save interest-free banking from internal distortion." Some Islamic banking thinkers have proposed limiting sale-based operations, which are usually highly prevalent in the banking system. There is, have presented the method of sharing profits and losses. Ziauddin Ahmed, in articles supporting

Siddiqui's view, states: "The most important advantage of Islamic banking, compared to usury-based banking, in terms of social objectives -

Islamic economics, is the basis of sharing profits and losses instead of a fixed rate of capital cost." Therefore, Many Muslim economists have turned their attention more to sharing methods.

Jurisprudential criteria related to the penalty for late payment

The discussion of usury is not specific to debt arising from a loan contract; rather, it also includes debt arising from credit sales, advances, usurpation, leases, etc., and in none of them does the amount of debt change due to the passage of time. Therefore, in the discussion of the loan contract, the impermissibility of postponing the current price for more than that is raised. The Imams say in this regard: The impermissibility of postponing the current price is not a matter of debate, but rather the absolute nature of the religion; Because, just as there is excess in a loan, there is usury, and the evidence for this, in addition to the truthfulness of usury, are the narrations that were revealed on the occasion of the revelation of "Ahl al-Bay' and the prohibition of usury," according to which the verse about excess wealth was revealed in return for delaying the debt at this time, and the narrations according to which Imam al-Baqir7 adhered to the verse about usury in delaying and hastening the debt. The excess mentioned in usury includes any type of financial excess, provided that its benefit reaches the lender or someone else; Therefore, if a loan stipulates that the borrower will help a needy person, or spend money on a mosque or funeral, or repair a mosque, these are excessive conditions and usury. Only non-financial matters or financial matters that are unconditionally obligatory on the borrower can be mentioned as conditions in a loan; for example, "I will lend you; On condition that you pay your zakat, or pray, or pray for me. If the borrower stipulates that he will sell his goods cheaper or rent his house cheaper, this is excessive financial gain and usury. One of the main discussions in this field is the discussion of the tricks of usury, about which there are different views. The jurists have discussed the validity of a bargain sale (sale at an unrealistic price) accompanied by a loan. If, in the bargain sale, a person conditions the loan, is it permissible? Just as if, in the context of a loan, he conditions the gift of money to the person, this is usury, although the terms of the condition are those of a gift, but if he gives the person an amount and conditions the loan to the person in the context of the gift, is this also usury?

Financial fines for the crime of delay

In the opinion of the people of the past tradition, according to a hadith from the Prophet of Islam,6 delaying a debtor who is able to pay his debt is a crime and a punishment. This theme has also been narrated from the Prophet in the Shiite books of hadith.22 According to the Quran,23 a debtor who is unable to pay his debt is given a period of time to pay it when he is able; However, the debtor is obliged to pay the debt on time, and failure to pay is a crime and is subject to criminal prosecution, and the judge can punish him. Punishment can take various forms, including financial, physical, or otherwise. The judge may, after warning, order imprisonment or payment of a sum as a financial penalty, or order that something from his property be sold, and the applicant's property be paid. If the financial penalty is valid and paid, the amount is not given to the applicant; Rather, it is transferred to the Treasury; therefore, it cannot be ruled absolutely with the details mentioned: Anyone who does not pay his debt must pay a fine; because one. may be unable to pay.

Financial penalties, assuming the acceptance of its principle regarding the debtor is capable, require a ruling from the judge. The financial penalty is not paid to the bank and the applicant; but is deposited to the Treasury. It may be said that since banks are state-owned, the fine amount is ultimately deposited in the treasury, and the judge can generally pass a ruling or law that the delay in paying the debt of the crime, and its punishment, is such and such an amount; but it should be noted that the previous theory is not specific to state-owned banks; because the owner of the theory does not believe in any difference in this matter; In addition, if this theory is correct, the penalty for late payment of damages is deposited into the state treasury, and if the bank is private, it cannot receive the funds; therefore, the proposed theory cannot correct the late payment penalty of banks (Lazmi, 2013:3).

Late payment penalty, compensation for the decrease in the value of money

The existence of annual inflation causes the value of money to decrease. Failure to pay a debt on time results in a decrease in its value. In exchanges involving paper money, the transaction is based on the real price and value of the money, not on the nominal amount; therefore, the equivalent of the real demand value of the person must be returned, and from the time it matures until the debt is paid, its real value decreases, and the debtor must pay the real amount.

In this regard, it should be said: 1. The amount of inflation may be high or low. The amount that banks charge as a penalty is consistent with this theory if it is within the inflation rate of that year; however, in the past, banks used to calculate the penalty as six percent more than the interest on the facilities in that sector, and this amount has no relation to inflation. Two. From a jurisprudential point of view, calculating the decrease in the value of money by the rate of inflation in debt is not approved; because custom considers it excessive in low inflation and rules it as usury. In fact, in low inflation, the custom considers the amount paid to be the original demand; for the same reason, the bank does not calculate the decrease in the value of money in paying its debts to the people. It is also not calculated in paying the debts of the government to employees. According to Article 522 of the Code of Procedure of Public Courts and the Revolution in Civil Affairs approved in 1379, inflation in the payment of past debts is calculated in the event that the real value of the debt has decreased significantly and the debtor is unable to pay. That article states:

In claims that are subject to debt and are of a common nature and that the debtor has refused to pay, despite the creditor’s demand and the debtor’s ability to do so,

in the event of a significant change in the annual price index from the time of maturity to the time of payment and after the claimant’s demand, the court shall calculate and adjudicate in accordance with the proportional change in the annual index determined by the Central Bank of the Islamic Republic of Iran, unless the parties agree otherwise.) Zadeh, (1396:104).

Jurisprudential-Legal Analysis of Bank Late Payment Penalties In Iran

like most countries, special laws have been enacted to prevent the adverse effects of delaying payment of debts. Some of these laws are related to debtors who are unable to pay their debts for various reasons, while others are related to debtors who, while able to pay, are unable to pay their debts for various reasons, thus creating problems for society and the debtors. The laws related to the second part, known as “delayed payment penalties” and “delayed payment damages”, have been the subject of much debate and discussion for similar reasons as “usury” and have been used for a long time. It has undergone many changes and developments. In this article, the evolution of this section of the laws and the latest status of the approved laws are explained and examined from a jurisprudential perspective, and it is shown that, although they are compatible with some jurisprudential opinions of the cited references and incompatible with some, they are based on acceptable jurisprudential documents. One of the important issues in long-term contracts such as credit sales and loans is the debtor's refusal to pay the debt on time, and this phenomenon, although sometimes justified and defensible, It has numerous adverse effects, the most important of which are the loss of public confidence, the reduction of long-term transactions, the reduction of good credit, the burden of collateral and guarantees in financial contracts, and the reduction in the volume of exchanges and public welfare. This is despite the fact that today an important part of transactions, especially at the wholesale level, is long-term sales. In most human societies, especially in developed countries, laws and solutions have been established to solve problems and reduce the adverse effects of debt payment deferral, which are classified into two groups, while being diverse. The first group is related to debtors who are unable to pay their debts for reasons such as bankruptcy and other events, and the second group is related to various debtors who, despite being able to pay their debts, violate their commitments and refrain from paying their debts. In Iran, special laws such as the Bankruptcy and Insolvency Law are in place to identify and solve the problems of the first group, and special laws called "Penalties" are also in place to prevent violations and punish violators of the second group. "Delayed payment penalty" and "delayed payment damages" have been established in various cases, such as the Civil Procedure Code, the Check Law, and the Law on the Procedure for Receiving Bank Claims. After the victory of the Islamic Revolution, and due to the sensitivity of the people and officials of the regime to the Islamization of laws and the great similarity of the titles "delayed payment penalty" and "delayed payment damages" with the title "usury", which is one of the most forbidden in Islamic jurisprudence, the field of many discussions about the relevant laws has been provided, so that this It has discovered many laws of evolution and ups and downs (Mehran Far, 2008:141).

The problem of late payment in Iranian laws

In addition to the bankruptcy and foreclosure laws that have a special place in the Iranian Civil Code and Civil Procedure Code and are in the case of debtors who are unable to pay their debts, there are also other laws entitled "late payment penalty" and "late payment damages" in the laws related to banks and the Check Law and the Procedure Code. A historical study of these laws shows that they have undergone many changes and developments in accordance with social conditions, especially after the Islamic Revolution. Accordingly, this section of the article is presented in several parts (Ebadi, 2010:93).

Delayed payment in the laws of Iran before the Islamic Revolution

Articles 221, 228 and 230 of the Civil Code (approved on 18/2/1307) govern the default of the parties, including the postponement of payment of debt.

Article 221 states: If someone makes a commitment to act on an order or makes a commitment to refrain from carrying out an order,

in the event of a default, he is liable for the damages of the other party, provided that compensation for the damages is expressly stated or the commitment is expressly stated in the contract or is subject to a guarantee according to the law.

Article 228 also stipulates: If the subject matter of the obligation is a cash payment, the judge may, in accordance with Article 221, order the debtor to pay damages resulting from the delay in paying the debt.

Article 230 also states: If it is stipulated in the transaction that in the event of the defaulter's failure to pay an amount as damages, the judge may not order him to pay more or less than what is required.

Articles 709 to 726 of the Code of Civil Procedure (approved in 1318) Details Breach of contract, in particular, damages resulting from delay, are more clearly defined; some of these articles are:

Article 719: In claims that involve cash consideration, whether relating to transactions with the right of return or other transactions, whether borrowing or not, the damages for late payment shall be equal to twelve percent (12%) of the amount of the contract, per annum and if in addition to this amount, a contractual amount has been paid as consideration for the obligation, or as compensation, or as rent, or any other title, in no case shall it exceed twelve percent per annum in relation to the period of delay. However, if the amount of damages is less than twelve percent, the same amount as agreed shall be awarded.

Article 720: Damages for late payment do not require proof, and the mere delay in payment is sufficient for the claim and the award.

In addition to the Civil Code and the Code of Procedure, the Law on Registration of Documents and Properties, approved on 12/26/1310, through Articles 34 to 36 and its explanatory notes, raises the issue of late payment, damages for delay, and the aspect of obligation; in Article 36 of the Law on Registration of Documents and Properties It is stated: "Damage for late payment, if claimed in the courts of justice, shall be covered by Articles 42 and 44 of Law 110 on Expedited Trials, and if recorded by the Registry, it shall be twelve percent per annum from the decision, and the entire amount shall be given to the applicant."

Iranian Laws After the Revolution

After the Islamic Revolution and the attention of the people and officials to the implementation of Islamic laws and the repeal of laws that contradicted jurisprudential principles,

several steps were taken regarding the issue of late payment, the most important of which are as follows:

-1. The repeal of laws and regulations related to the damages of late payment before the revolution. With the victory of the revolution, there have been inquiries from the authorities of the Islamic faith, especially Imam Khomeini, which have led to changes in the laws. In one of these requests, the Islamic Association of Employees of the National Records and Property Registration Organization has asked the Imam:

Respectfully submits, as members of the Islamic Association of Employees of the National Records and Property Registration Organization, when implementing the provisions of Articles 36 and 37 of the Regulations for the Execution of Official Documents, a photocopy of which is attached, they question and declare their Sharia duty for not being in accordance with the spirit of the Constitution and the sacred provisions of Islam: The applicants are demanding damages for late payment (12 percent per year) from their debtors and we cannot avoid the implementation of the above provisions. What is our legal obligation? We request the Islamic Association to guide us in this matter." The Imam replied: "By the grace of God, the amount taken for late payment is usury and forbidden." (Mehrpour, 1371:192) Gradually, the issue went beyond individual inquiries and was referred to the Council of Guardians, which is the reference for decision. The appeal was made against the pre-revolutionary laws, and this council declared the laws related to the collection of late payment damages illegitimate in several letters. Here are two examples of the Guardian Council's responses to the Supreme Judicial Council; (ibid.: 193).

The Honorable Supreme Judicial Council – Opinion dated 12/4/1364, Considering that numerous appeals are made to the Guardian Council regarding the ruling on late payment damages, and considering the decisions of some of the banks' complaints Claiming damages for delayed payment The issue was raised in the official session of the jurists of the Guardian Council and was considered in the following explanation: Claiming damages in excess of the debtor's debt as damages for delayed payment, as Imam Muddallah al-Ali has also explicitly stated in this phrase (what is taken into account for delayed payment of debt is usury and forbidden), is not permissible and the rulings issued on this basis are not legitimate. Therefore, Articles 719 to 723 of the Code of Legal Procedure and other cases Which may be separately contained in the laws in this regard is contrary to the Islamic law and is not enforceable.

The Law on the Procedure for Receiving Bank Claims

As it was passed, the Guardian Council's opinion based on the permission to receive late payment penalties as a condition of the contract, to a large extent, solved the problem of banks, but the banks claimed that the failure to receive late payment penalties from past debtors, some of whom had taken large loans and had delayed their repayments on time, had created numerous financial problems and caused great damage to the banking system. The Guardian Council's opposition to the collection of late payment penalties Such irregularities led to the issue being placed on the agenda of the Assembly for Determining the Interests of the System. In December 1368, the Assembly approved a bill entitled the Law on the Procedure for Receiving Bank Claims, which was approved by the Supreme Leader on 13/12/1368 and put into effect. This resolution, which was carried out as a solution to the problem of the system in accordance with Article 110, Clause 8 of the Constitution, obliged bank borrowers to pay damages for late payment in addition to the principal and subsidiary debt, and the courts were also obliged to issue rulings based on this resolution. (Mehrpour, ibid.: 198) Permission to receive late payment damages for check holders according to the inflation rate As mentioned, according to the approval of the System Interest Assessment Committee dated 10/3/1376, check holders can receive late payment damages from the date of the check's maturity until the time of its arrival, based on the inflation rate announced by the Central Bank of the Islamic Republic of Iran, and this approval was approved by the Council of Ministers in the latest amendment to the Check Law (dated 6/2/1382). The Guardian Council decided; (Official Gazette, page 2, dated 2003/07/09) This law did not require a special jurisprudential document until it was approved by the Assembly for the Determination of the Interests of the System and could be considered as a provincial decree and one of the proofs of Article 110, Clause 8 of the Basic Law (Resolving the Problems of the System). However, since it was approved by the Guardian Council, it requires a special jurisprudential document and must not conflict with the provisions and primary titles of Islamic law. It is obvious that the ratio According to the initial rulings and titles, having a check as a specific debt document is not relevant and does not create a difference in the Sharia ruling. In general, the applicant or the right to receive an excess of the debt amount as a damage for late payment is subject to the rate of inflation or not, and the type of debt document, check or promissory note or any other document, does not affect the Sharia ruling. Based on this, we will examine the jurisprudential document of this law together with the general law. The permissibility of receiving damage for late payment at the rate of inflation Inflation According to Article 522 of the Code of Civil Procedure, if the claimant claims his debt and the debtor, despite having the means, refuses to pay it, if the inflation rate is high, the claimant can receive damages for late payment equal to the inflation rate. We will examine the jurisprudential document of this article and Article 4 of the Check Law in two stages; in the first stage, we will examine the degree of compliance of these articles with the jurisprudential opinions of the jurists, and in the next stage, we will explain the jurisprudential document of the articles of the law. Let's see.

First stage: The degree of compliance of Article 552 of the Code of Civil Procedure and Article 4 of the Czech Law with the opinions of the imitation references In recent years, on the one hand, most of the loans and long-term transactions are based on common money, and on the other hand, due to high inflation, the real value of debts is decreasing, many questions are raised for ordinary people and legislative and judicial centers, and many uses are made of imitation references, which are apparently possible They may be different, but in terms of content, they all come down to this: "In conditions of high inflation, when the real value and purchasing power of the debt decrease, does the borrower have the right to demand an amount greater than the nominal amount of the debt to compensate for the decrease in the value of his loan?" The scholars of Taqlid have answered this question based on their jurisprudential principles, which are mentioned below:

Ayatollah Sistani: "As long as money has not completely lost its value, the standard for guarantees and debts is the same amount of money as it was before and The decrease in value does not lead to an increase in collateral and indebtedness; (Rasa Information Base, 1383)

Ayatollah Fadhil Lankarani: No, none of the aforementioned reasons are permissible to compensate for the decrease in the value of money. In their view, money is a metaphor, and the recipient is the guarantor of what he has received, not the guarantor of purchasing power, etc.; (Ibid.)

Ayatollah Tabrizi: "If a person owes another an amount of common money, whether by way of a loan or otherwise, the claimant can only claim that amount. He has no right to demand more than that, and the decrease or increase in the purchasing power of money has no effect on the aforementioned ruling, by Allah, the All-Knowing"; (Judiciary Judiciary Research Center, 1381:64)

Ayatollah Moussa Ardebili: “The discussion of likeness and value does not include intermediate goods (money), but if someone has, for example, a hundred Tomans on his account for any reason, as long as the value of the money has not changed drastically, he is indebted to it, and if it does change drastically, the value must be taken into account.

Ayatollah Nouri Hamedani: “Since banknotes are matters of credit, they are outside the scope of analogies and values, which are matters of reality. However, in some cases, such as when the repayment period is long and the difference between the current and past values is glaring, the current value is calculated.”) (Atla’arsani Rasa Database, 1383).

Ayatollah Makarem Shirazi: “The issue has two forms: At one time, a person willingly gives a loan to another and knows that in this If the inflation rate increases and at the same time he has agreed to this, such a person does not have the right to receive a higher amount because he has done it himself. The second case is that a person has caused damage to someone or is in debt and the time to pay the debt has arrived and he delays it for a long time, so that the inflation rate increases, in this case the payment of the debt and compensation for the damage will not be valid unless the average inflation rate of various things is taken into account (ibid.).

Conclusion

"Bank" as an institution that influences the socio-economic relations of human societies in the present era has a high status; therefore, issues related to this field such as "Bank and its nature", "Money and its role in the economy and trade", "Usury and its difference from profit", "Conventional and Islamic banking", "Banking services provided such as documentary credit", etc., under the title of "Banking Law", which is considered an important subset of economics and commercial law (both domestic and international), are also of great importance. On the other hand, the necessity of pathologically analyzing the Law on Banking Operations Without Usury (Interest) (1983) after four decades of its implementation has provided the basis for presenting different opinions from experts and scholars in this field: Has the country's banking system been successful in implementing and enforcing the aforementioned law or have the banking operations carried out deviated from the Sharia and legal path for various reasons and become "quasi-usury"? Given that the main focus of "Islamic/Non-Ribat Banking" is the issue of usury and its Shariah prohibition, the need for fundamental attention to this issue by the highest authorities of taqlid and jurists is felt more than ever before. Therefore, seminaries, along with the country's universities, as the two main authorities for producing thought in society, are obliged to provide the necessary Shariah and scientific answers to the questions and ambiguities related to the above issues by conducting original and fundamental research. In the present study, an attempt is made to address the various aspects of the issue and present the opinions of experts in the field of banking law (including scholars from the seminary and the university), to the extent that the opportunity and possibility are available, to dissect the importance of the issue and propose solutions to the current problems related to Islamic banking so that they can be used in the amendments to the aforementioned law that are being considered by the Islamic Consultative Assembly and the government. Therefore, after the introduction, in the general section, the subject of the bank and its importance in the present era, as well as the high position of the Imamiyyah/Ahl al-Bayt (AS) jurisprudence as a divine repository and consolidation of fundamental issues related to and influencing contemporary law, will be evaluated and considered. Then, in the next section, attention will be paid to the objections and criticisms raised regarding the performance of the banking system in implementing Islamic banking within the framework of the Usury-Free Banking Operations Law; finally, after summarizing the results of the present study, reform proposals will be presented for the benefit of officials and those interested in this important area of law.

References

1. Agha Mahdavi, Asghar (2015), Another Look at the Rule of No Harm, Two Specialized Quarterly Journals, Journal of Jurisprudence, 6, 123-141.
2. Abuei Mehrizi, Hassan (2010), The Principles of the Rule of No Harm from the Perspective of Imamiyya Jurists, Kawseh Nameh of Humanities, 1, 41-82.
3. Akhavan Kazemi, Bahram (2012), Supervision in the Islamic System, Tehran: Islamic Culture and Thought Research Institute.
4. Isfahani, Mohammad Hossein (2012), Marshes of Makaseb, Vol. 1, Qom: Majma' al-Dhakhayr al-Islamiyya.
5. Anvari, Hassan (2002), Farhang Bozorg Sokhan, Vol. 8, Ch. 5, Tehran: Sokhan.
6. Pirniakan, Amir Lotfollah (2019), The Concept and Types of Supervision and Control in Iranian Law, Quarterly Journal of Interdisciplinary Legal Research, 1, 67-79.
7. Taghizadeh, Khadija (2012), Islamic Banking in Some Countries of the World, Monthly Review of Economic Issues and Policies, 6-7, 47-80.
8. Tohidi, Mohammad; Fattahi, Alireza (2019), Extracting Components of Sharia Supervision Promotion in the Iranian Capital Market Based on International Standards (Case Study: AAOIFI and IFSB International Standards), Quarterly Journal of Stock Exchange and Securities, 47, 154-181.
9. Tohidi, Mehrdad; Shahi, Mohammad Sharif; Ahmadi, Mohammad Sadeq; Daikarimzadeh, Saeed (2019), Analysis of Legal Aspects of Central Bank Supervision over the Banking System in Iran, Private and Criminal Law Research, 45, 87-113.

10. Jafari Langroodi, Mohammad Jafar (2007), Detailed in Legal Terminology, Tehran: Ganj Danesh Library.
11. Johari, Ismail bin Hamad (1407 AH), Al-Sahah Taj al-Laghah and Al-Sahah al-Arabiya, Vol. 2, Beirut: Dar al-Ilm.
12. Habibnejad, Seyyed Ahmad; Ameri, Zahra (2014), Principles of Supervision in the Constitutional System of the Islamic Republic of Iran, Political Science Quarterly, 65, 7-32.
13. Hurr Ameli, Muhammad bin Hassan (B.A.), Details of the Means of the Shia to Obtain Sharia Issues, Vol. 10, Qom: Al-Bayt Foundation for the Revival of Heritage.
14. Hosseinnejad, Seyyed Mujtaba (2018), A Study of the Nature, Principles, and Objectives of Supervision and Inspection in Shia Jurisprudence, Sixth National Conference on Sustainable Development in Educational Sciences and Psychology, Social and Cultural Studies, Tehran.
15. Hakimi, Mohammad Reza; Hakimi, Mohammad; Hakimi, Ali (1994), Al-Hayyah, Chapter Fourteen: Usury, Sahq, Jabbar, Vol. 5, Tehran: Islamic Culture Publishing Office.
16. Khomeini (Imam), Seyyed Ruhollah (2006), Translation of Tahrir al-Wasilah, Translation: Institute for Compilation and Publication of Imam Khomeini's Works, Tehran: Institute for Compilation and Publication of Imam Khomeini's Works.
17. Dehkhoda, Ali Akbar (2006), Dehkhoda Dictionary, Tehran: Institute for Printing and Publication of the University of Tehran.
18. Rezaeizadeh Barvati, Mohammad Javad; Abrahimi, Mehdi; Bahadori Jahromi, Mohammad (1400), The Needs of Sharia Supervision of the Jurists of the Guardian Council in the Constitutional Law System of the Islamic Republic of Iran, Research on Islamic Law, 54, 583-604.
19. Rouhani, Ali; Banitaba, Mehdi (2016), Pathology of the Banking System, 7 Sharia Supervision of the Central Bank, Deputy for Economic Research of the Islamic Consultative Assembly.
20. Shairi, Mohammad bin Mohammad (B.A.), Jame' al-Akhbar, Najaf: Al-Mutabah al-Haydriya.
21. Saduq (Sheikh), Muhammad bin Ali bin Babuyyah (1425 AH), The Causes of Laws, Qom: Maktaba al-Dawri.
22. Saduq (Sheikh), Muhammad bin Ali bin Babuyyah (1378 AH), Ayoun al-Reza (AS), Tehran: Jahan
23. Saduq (Sheikh), Muhammad bin Ali bin Babuyyah (1413 AH), Man la-Ihazrah al-Faqih, Vol. 3, Qom: Al-Nashr al-Islami Publishing House.
24. Amili (First Martyr), Muhammad bin Makki (1308 AH), Al-Quwad and Al-Fawaid, Lithographic printing, Bina.
25. Alidoost, Abul-Qassem (1382), The Rule of Negation of Gharr in Transactions, Islamic Economics, 9, 89-106.
26. Amid Zanjani, Abbas Ali; Musazadeh, Ebrahim (1389), Supervision of Government Practices and Administrative Justice, Tehran, Tehran University Printing and Publishing House.
27. Faqihi, Seyyedah Fatemeh; Asakira, Zainab (1400), Legal Analysis of the Effects of the Guardian Council's Legal Supervision of Laws and Regulations, Islamic Government, 99, 5-28.
28. Qummi, Ali ibn Ibrahim (1404 AH), Tafsir Qummi, Vol. 1, Qom: Dar al-Kitab.
29. Kulayni, Muhammad ibn Yaqub (1428 AH), Al-Kafi, Vol. 5, Beirut: Manshurat al-Fajr.
30. Majlisi (Allamah), Muhammad Baqir (1403 AH), Bihar al-Anwar al-Jami'ah for the News of the Pure Imams, Vol. 103, Vol. 2, Beirut: Al-Wafah Foundation.
31. Mortezai, Seyyed Ahmad (1390), Consent-Based or Inquiry Supervision, a Jurisprudential and Legal Study of the Guardian Council's Supervision of Elections, Qom: Imam Khomeini Educational and Research Institute.
32. Moeen, Muhammad (1360), Farhang al-Farhi, Vol. 2, Vol. 4, Tehran: Amir Kabir.
33. Moussavian, Seyed Abbas (2011), The Role of the Specialized Jurisprudential Council in Improving the Legitimacy and Efficiency of Islamic Banks, Special Issue on Islamic Banking, 16-23.
34. Meysami, Hossein; Qalich, Vahab (2010), Sharia Supervision and Sharia Risk in Islamic Banking: Implications for Planning the Development of the Banking System, Economic News, Special Issue on Islamic Banking, 130, 3-12.

35. Meysami, Hossein (2011), A Comparative Study of Supervision Patterns of Islamic Institutions in Countries, Economic News, Special Issue on Islamic Banking, 56-61.
36. Nazarpour, Mohammad Naghi; Yousefi Sheikh Rabat, Mohammad Reza; Ebrahimi, Maymant (2014), Indicators of Usury Prohibition in the Performance of Usury-Free Banking in Iran (Case Study of Facilities Granted by Branches of Tejarat Bank of Mashhad Moghaddam), Economic Studies and Policies, 10/2, 67-94.
37. Nawabi Moghadam, Zeinab; Zare, Ali; Yousefi Sadeghloo, Ahmad; Jamali, Jafar (1401), Jurisprudential and legal study of conflict of interest in non-governmental banks, Islamic Jurisprudence and Law Studies, 26, 359-386.