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Analysing the moral aspect of qard: a shariah perspective

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Abstract

Purpose – This paper aims to explore the moral aspect of qard (loan) from shariah perspective, and attempts to examine whether each interest-free qard is qualified for the Quranic term qard hasan (loan *par excellence*)? Also, the study attempts to establish the key constituents of qard hasan in the light of the primary sources of shariah, and seeks to define the legal status of the interest-free qard which fails to qualify for the "term" qard hasan.

Design/methodology/approach – This study uses both the primary and secondary sources of shariah to examine the desired character of qard hasan. It employs pure qualitative paradigm to analyse and interpret the data.

Findings – This study finds that in between the qard hasan and qard ribawi, there exists a third category of qard too, which neither qualifies for the former nor does fit under the definition of later.

Originality/value – The findings presented in this paper illuminate the blurred line of contemporary understanding of qard hasan. The study adds original value to the corpus of contemporary literature on qard; as it collects and enumerates the ten vital conditions of qard hasan, without which, even an interest-free qard holds no virtuous sanctity in the sight of shariah.

Keywords Charity, Interest-free loan, Qard, Qard al-hasan, Qard al-ribawi, Sadaqah

Paper type Research paper

Introduction

That economic agents are interdependent to fulfil their socio-economic needs is a widely accepted phenomenon. According to Ibn Khaldun, "individual human beings cannot by themselves satisfy all their needs. They must cooperate for this purpose in their civilization" (as referred by Chapra, 2008, p. 25). From amongst a myriad of interdependencies, time and again, one's need for repayable monetary assistance from others could be an indispensable reality. Though, with the emergence of numerous institutions offering tailor-made financial services to rank and file, there might be a plethora of scope for the needy to avail of one. However, often, due to either the lengthy and cumbersome formalities or the heavy cost involved in their processes, individuals shy away from benefitting from them. Similarly, for Muslim masses, over and above, the element of shariah-repugnance in conventional financial schemes and products constitutes a crucial factor in avoiding their subscriptions (Cheraghlou, 2013). In this context, the moral and spiritual excellence of interest-free loan extended by individuals in informal settings, on the basis of volunteerism, can hardly be overstated.

The *shariah*, which aims at fostering a value-based and cooperative society, exhorts the believers to be kind, compassionate and caring to their fellow beings in general, and

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to the needy in particular (*Quran*, 93: 9-10). To this end, the extensively reiterated shariah-concept of *infaq* (pious spending) encompasses various aspects of monetary dispensation on the basis of volunteerism. Precisely, according to Zaman (1991, p. 60), "the *Quran* gives highest priority to *infaq* after its emphasis on prayer (*salat*)". Provision of interest-free *qard* (loan), particularly for consumption purposes, falls under the umbrella term "*infaq*" (Ahmad, 1991). In fact, the high merit of an interest-free *qard*, extended to the pleading individuals on humanitarian grounds, has been underlined by shariah in several counts. From the *shariah* perspective, dispensation of an interest-free *qard* with the sincere intention of earning Allah's pleasure, amounts to a high-level supererogatory charity, and is touted to fetch a higher recompense in Hereafter (Ibn Maja, 1999).

Provision of interest-free *qard* while, on the one hand, reflects the altruistic nature of the lender, on the other, it strengthens the bond of mutual brotherhood between the lender and borrower. In this way, along with cost-effective assistance of needy, the ancillary objective of shariah, namely, the promotion of social cohesion and harmony' is also achieved (Ahmad, 1991, p. 43). Additionally, through this process, smooth rotation of money is maintained among the different economic agents in a harmonious and constructively efficient manner. Consequently, in addition to other positive implications, this helps cultivate the environment of overall socio-economic and socio-religious integrity and prosperity in a given society (Siddiqui, 1996).

In view of *shariah*, charging any stipulated excess over the given sum of *qard* is tantamount to *riba*, which is rigorously proscribed in the corpuses of *Quran* and *Sunnah*. In the literature of *fiqh* (Islamic Jurisprudence), such a *qard* is defined as *qard ribawi* (Ibn Qudama, 1997a, 1997b). Notably, *qard ribawi* constitutes the backbone of conventional system of finance.

Compared to *qard ribawi* is interest-free *qard*. In an interest-free *qard*, practically, the lender seeks to discard the theory of time value of money and forgoes any direct pecuniary benefit out of the loaned amount. The motivation for dispensation of this variant of *qard* may be spurred through divergent factors. From a materialistic point of view, the factor may include lender's aspiration of earning a good reputation, seeking his/her admiration, eliciting the loyalty of the borrower or gaining some other reciprocal benefits from the borrower at a future point of time.

However, other than these materially oriented factors motivating the lender to advance an interest-free *qard*, there exists a purely religious and spiritual dimension of it too. According to this theory, a *qard* is not confined to the boundaries of worldly transaction only, but it transforms into a virtuous deed securing the token of appreciation for the lender in hereafter. The inspiration for this form of *qard* comes from a sincere urge to attain pleasure of Allah Subhanahu Wa Ta'ala (SWT) by extending a helping hand to his servant in need (Zaman, 1991, p. 94).

Perhaps, experts in *shariah*-affairs would unreservedly agree that the merit of these two forms of interest-free *qard* can never be equal in the sight of *shariah*. As, in the light of Islamic teachings, the second form of interest-free *qard* would undoubtedly earn *hasanat* (virtues) for the lender and, thus, should qualify for the definition of *qard hasan* (loan par excellence) (Al-Misri, 2001).

Nonetheless, as the first form of outlined interest-free *qard*, apparently, does not fulfil the essential features and criteria of sincerity required by *shariah*, the same would fail to garner any spiritual sanctity in the light of the famous *hadith* "actions are judged by

intentions" (Bukhari, 1999). In fact, the basic criteria of securing acceptability of a deed in *shariah* have been unequivocally explicated in another *hadith*, which affirms "Allah is pure of all faults and accepts only that which is pure (of insincerity and haram)" (Muslim, 1999). Here, it is noteworthy, that to acquire the status of *qard hasan*, a *qard* requires being in line with some other essential *shariah*-guidelines as well. These guidelines, however, are not readily available in one place, instead, are scattered in different pages of *Quran* and *Sunnah*. This paper aims at exploring, assembling and organizing them in a systematic order.

Arguably, in view of the above discussion, the first form of pointed out interest-free *qard* falls short of meeting the requirement of *qard hasan*, as it lacks the essential prerequisite of pure intention. However, despite the pointed lacuna in this form of *qard*, the same still does not involve explicit or implicit *riba*. Thus, this category of *qard* conspicuously differs from both: *qard ribawi* and *qard hasan*. Nonetheless, this form and aspect of interest-free *qard* has received scant attention of scholars, and been scarcely discussed in the available literature.

Therefore, with the identification of this third category of *qard* which exists between the two forms of widely known *qard* (*qard hasan* and *qard ribawi*), there must be a precise and cogent description of this third form of *qard* too. Moreover, a survey of available fiqh literature delineating the possible forms of a *qard* would reveal that there exist, possibly, more than these three kinds of *qurud* (plural of *qard*). This paper attempts to highlight these different variants of an interest-free *qard*, along with endeavouring to analyse their legal status in *shariah*.

Qard, its nature, legal status and related jurisprudential principles

Qard (loan) constitutes an integral component of conventional banking and financial system. A profit-seeking financial institution can hardly function without provision of accepting and advancing *qard*, though, under different names, garbs and forms. Whereas, the involvement of *qard* is evidently central in almost all interest-based financial instruments, Islamic financial institutions (IFIs) strive hard to avoid the usage of the term "qard" for their products. To IFIs, the basic reason behind this abstention from the term "qard" is informed by their fear of involving in *riba*. Remarkably, from *shariah* perspective, *qard* "otherwise an instrument of virtuous merit, becomes a delicate issue if advanced with the objective of acquiring any material gain through it". As a matter of fact, Islamic jurisprudence of *qard* hardly leaves any scope of claiming a pecuniary or non-pecuniary benefit out of the instrument structured on the underlying contract of *qard* (Dusuki and Abdullah, 2011). The essence of this strict jurisprudential ruling of *qard* is rooted in the *shariah* dictum "any qard which seeks benefit is tantamount to riba" (Ibn Qudama, 1997a, 1997b, p. 437). In view of this and similar traditions, jurists have inferred that a *qard* cannot be employed as a means of worldly benefit or as an instrument of business for the lender (Zuhayli, 2003).

Literally, *qard* is translated as "to chop, to cut off, or to crop" (Ibn Manzur, 2002). In juristic terminology, *qard* implies on lending of any valuable object to the borrowing party with the provision of equal repayment. From linguistic point of view, as allotment of a *qard* removes the ownership of the given property from the lender, it is called so (Al-Jazayri, 2000).

While defining the *qard*, jurists from all major *sunni* schools of jurisprudence agree on its essential features with slight differences in the related details. According to *hanafi*

definition, a *qard* is a legal contract of transferring the ownership of a fungible property to the borrower, in which the lender delivers the object with the condition of receiving its equivalent in the later point of time (Al-Jazayri, 2000). For other three schools, the scope of *qard* is not confined within the ambit of fungible property only, but, along with fungible properties, all tradable goods and animals are also covered under the definition of *qard* (Zuhayli, 2003). According to AAOFII (2010, p. 347), *Shari'ah* Standards, "Qard is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it".

In the view of *shariah*, the underlying contract of *qard* is always of voluntary nature, and it falls within the precepts of *tabarruaat* (benevolence) (Nawawi, 2009). The distinct element of benevolence in a *qard* has found special emphasis in Islamic jurisprudential references. For instance, the Mawsuah Fiqhiyyah (1995) defines a *qard* as "giving a valuable (out of benevolence) to the one who would benefit from it and return its equivalent".

Technically, there is a *minute* but fundamental difference between the definition of a *qard* and that of a sale. Whereas a *qard* denotes "giving an object of value against an equivalent substitute for a term" (Dusuqi, 1,230 AH: iii/222), a sale is "the exchange of property for another" (Ibn al-Humam, 1315 AH: vi/247). In other words, according to Kharofa (2002, pp. 65-66):

> […] in the sale, the ownership of the sold object is transferred, and the substitute is an amount of money or any other object. But, in the loan, the ownership of the loaned object is transferred provided the equivalent is returned.

From the prism of *shariah*, arguably, a *qard* is neither an absolute gift nor a sale, but, it falls in between, and combines between the characteristics of both; a gift and that of a sale (Mawsuah, 1995).

Though, on the surface, it appears that the inherent characteristics of another jurisprudential term, "aariyah" (gift of usufruct) are analogous with that of *qard*; however, they differ in essence. Whereas, in a *qard*, the ownership of the given object (*ain*) is transferred to the borrower, in "aariyah" it is not the ownership, but the usufruct of the object which is transferred (Fatawa Hindiyyah, 2000). Nonetheless, the nature of both the instruments; *qard* and *aariyah* are of benevolence. Also, the intrinsic features of *aariyah* are identical with the features of another jurisprudential term, "minha" (gift of usufruct).

The essential features of *qard* are closely comparable with some other voluntary contracts too. These include, primarily, *wadiah* (a deposit contract), *hadiyyah* (a gift extended with the intention of spiritual reward), *hibah* (a gift with or without any specific intention), *atiyyah* (honorary gift) and *nihlah* (gift). However, a *qard* differs with *wadiah* in the sense that the nature of the former constitutes a contract of *daman* (liability), and it combines between *tabarru* (benevolence) and *muaawadha* (equivalent repayment); however, the latter is merely a contract of *amanah* (deposit in trust) (Fatawa Hindiyyah, 2000). In principle, the legal implications of an *amanah* contract involve the mandatory requirement of safe keeping the given object. And, it is impermissible for the *amin* (the trustee) to benefit from the deposited object (*amanah*) in any manner. In contrast, a contract of *daman* (*qard* is a form of it) provides the *damin* (guarantor) full flexibility to consume the given object with the condition of repaying its equivalent (Habil, 2010).

Additionally, a *qard* is different from *hadiyyah*, *hibah*, *atiyyah* and *nihlah* in the sense that unlike the *qard*, all these terms imply on the voluntary transfer of ownership to the donee without any consideration or condition of their repayment (Al-Kasani, 2003).

Qard is synonymous to the Arabic term *salaf* (prepayment), and often both are used interchangeably (Zuhayli, 2003). However, Ayub (2007, p. 492) underlines the minute technical difference between the two as he points out:

> Loans under Islamic law can be classified into *salaf* and *qard*, the former being a loan for a fixed time and the latter payable on demand. *Qard* is, in fact, a particular kind of *salaf*.

Though, at times, another Arabic term "dayn" (debt) is confused with *qard*; however, it is completely different from the latter (Usmani, 2008). In fact, unlike a *qard* which involves direct lending and borrowing process, a *dayn* implies on any contractual liability arising out of a loan, deferred-payment sale or due to benefiting from "services of a particular thing or person" (AAOFII, 2010, p. 53). Discussing the differences between *qard* and *dayn*, the AAOFII (2010, p. 53) Shariah Standards, further explain:

> The relationship between a loan and a debt is that the latter is more general than the former, since every loan is described as a debt but the converse is not true. Not all debts originate from a loan. In this sense, a loan is but one cause of the creation of debt.

The Islamic legitimacy of *qard* is rooted in both the primary sources of *shariah*, i.e. *Quran* and *Sunnah*. With reference to *Quranic* approval to *qard*, in general, the classical jurists have referred to *al-Baqarah*, verse 245, which holds:

> Who of you will lend Allah a loan par excellence which He will return after multiplying it for him manifolds (Al-Misri, 2001).

In terms of locating the legitimacy of *qard* in *Sunnah*, jurists have cited the reference of the prophetic story in which he himself borrowed a camel from a certain person (Mawsuah, 1995).

In the literature of *fiqh*, *shariah* jurists have drawn an analogy between the contract of *qard* and a deferred-payment sale. For instance, Zuhayli (2003) identifies analogous affinities between the contract of a *qard* and that of a deferred-payment sale. Nonetheless, he underlines three technical *differences* between the two kinds of contracts. First, in a sale contract if both the subject matter and its consideration involve *ribawi* commodities (gold, silver, wheat, barley, dates, salt and alike), deferment of payment/consideration from one side would be unanimously tantamount to *riba*. However, if the same contract is executed on the premises of *qard*, this ruling would be relaxed and the contract would acquire validity. For instance, if A enters in a sale-contract of one ounce of gold against the same amount with B, with the stipulation that either of the parties would defer its delivery on the spot, the contract would be nullified due to involvement of *riba* in it (Al-Murghinani, 2006). However, if this very transaction is made under the contract of *qard*, it would be allowed despite having deferment of delivery from one party. To explicate the point further, as the sale of gold and silver falls within the ambit of *bay al-sarf*, it is necessary that both the parties hand over their respective counter-values on the spot (Ibn Qudama, 1997a, 1997b). Nonetheless, the same transaction is permissible, if executed under the contract of *qard*. Second, in a contract of *qard*, exchange of known with unknown goods is permissible, whereas in a deferred-payment sale exchanging a good with equivalent

but unknown object is impermissible. And, third, in a contract where both the subject matter and its consideration are identically alike, it would be impossible to exactly determine as which party is seller and which is buyer. In this case, the deferred contract would be impermissible on the ground of prohibition of selling something which is not in the possession of seller at the time of contract. However, this critical point is overlooked in the contract of *qard*, while one party advances loan on the condition that the receiver would repay its equivalent once he manages to procure the same (Zuhayli, 2003, p. 369).

In view of *shariah*, providing *qard* to a needy is a highly charitable deed, and, hence, with the objective of facilitating charitable behaviour in the society, certain *qard*-related *fiqh* rulings have been deliberately relaxed. To this end, Zuhayli (2003, p. 369) explicates "the reason for this relaxation of the rules for loan is to facilitate and promote charitable behavior". Moreover, he further explains "this is also why loans are forbidden if they do not serve such a charitable cause, e.g. if the lender gets some benefit out of extending the loan". In a similar manner, Ahmad (2011, p. 32) further elucidates:

> Note that while exchange of the same specie over a period of time is prohibited (as it would constitute riba of delay), a loan (qard) in which an equal amount is repaid in the future is allowed. Qard falls under a charitable contract and as such no benefit can be derived by the creditor. It is excluded from the rules of riba due to its charitable nature.

Remarkably, deferring the delivery of counter-value in a sale of same genus commodities is tantamount to *riba*. This jurisprudential-ruling has been deduced in the light of the prophetic *hadith* in which the Prophet (pbuh) commanded that:

> […] (when) gold is exchanged for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt (both the counter-values must be) equal and (delivered) on the spot (Muslim, 1999).

As far as the legal status of a *qard* is concerned, from *shariah* point of view, its *hukm* (legal status) varies as per the different contexts and situations. In a general situation, giving a *qard* is a *voluntary practice*, the lender would be rewarded for it, but, there is no reproach upon him he chooses to skip the call (Ibn Qudama, 1997a, 1997b).

Apart from the general situation, *the legal status (hukm) of* a *qard* has been classified into the following four categories:

(1) *Wajib (mandatory)*: Giving a *qard* becomes obligatory if the borrower is in a desperate need (such as in starvation), and the lender has the means to provide for him.

(2) *Haram (strictly prohibited)*: It is *haram* to deliberately advance a *qard* to a borrower who is determined to utilize the proceeds in a *haram* (such as purchasing alcohol or *committing* adulatory with the usage of the fund).

(3) *Makruh (reproachable)*: Giving a *qard* to a borrower who is known to use the fund in *makruh*, such as *indulging in israf* (spending extravagantly) is reproachable.

(4) *Mubaĺ (permissible)*: Advancing a *qard* to a borrower who is already well-off and does not need the fund for his basic necessities is *mubah*. For instance, it would be *mubah* to extend a *qard* to an entrepreneur who needs the fund to expand his business (Al-Misri, 2001; Mawsuah, 1995).

In general, although giving a *qard* is a voluntary practice, if advanced, *there must not involve* any stipulated benefit over the principal. Ibn Qudama (1997a, 1997b, p. 436) notes:

> […] since the contract of qard lies on the premises of benevolence and spirituality, stipulating any form of benefit over it would run contrary to the very essence and spirit of qard.

Stipulating an excess over the given amount of *qard* is tantamount to *riba* (Al-Jazayri, 2000). According to Ibn Qudama (1997a, 1997b, p. 436), "there is a consensus among *shariah* jurists that a *qard* with stipulated excess over principal is *haram* (severely prohibited)". This assertion by Ibn Qudama suggests that there has been an *ijma* (juristic consensus) among the classical jurists on the prohibition of stipulated excess over the lent amount.

From the above discussion, one must not deduce that it is only stipulated excess which is prohibited in *qard* and, thus, seeking unstipulated benefits from the borrower should be acceptable in all situations. In fact, according to the majority of jurists, benefitting from the borrower in any form, at least, during the term of the *qard* also constitutes *riba*, if this has not been a usual practice between them previously (Ibn Qudama, 1997a, 1997b; Zaman, 1991). This ruling is based on the prophetic *hadith* which asserts that:

> […] if any one of you extends a *qard* and then (the lender) is offered a gift or a ride on an animal (by the borrower), he should neither accept the gift nor ride except if this has been a usual practice between the two (Ibn Majah, 1999).

Furthermore, in a society where it is commonly understood that, though unstipulated, the borrower is necessarily obliged to return an extra, in such an environment accepting any excess over the principal would also amount to *riba*. This position is supported by the report in which Zir ibn Hubaish submitted to Ubay ibn Ka'ab (the companion) that, "I am planning to visit Iraq". On this, Ubay warned him:

> […] you are travelling to the land where *riba* is very common. If you lend someone therein, and at the time of repayment the borrower brings you a gift along with the principal, take your principal and return back the gift (Ibn Qudama, (1997a, 1997b, p. 438).

Similarly, in another report quoted in Bukhari (3814), the companion, Abu Burdah narrated that when he came to Madinah and visited Abdullah bin Salam, the latter advised him to be highly mindful while making a transaction of *qard*, and said:

> You are in a land where practices of *riba* are wide-spread. Hence, if one who owes you a *qard* attempts to gift you even a straw or barley or flour, do not accept it, as this amounts to *riba*.

Qard or qard al-hasan?

With the evolution of Islamic banking and finance as a distinct discipline of research, most forms of classical Islamic transactional modes have attracted fresh scholarly interest. In this context, due to being *shariah*-compliant deposit and financial instrument, the concept of *qard* has also witnessed some lively discussions. However, in most of the recent works, *qard* has been divided into two categories, namely, *qard hasan* (loan *par excellence*) and *qard ribawi* (interest bearing loan). For example, Farooq (2011, p. 1) points out:

> From the traditional viewpoint Qard or loan is Ribawi, meaning that Qard is subject to the prohibition of Riba. Therefore, the only valid Qard would be Qard al-hasan that does not accompany any stipulated benefit to the lender.

However, contrary to this categorisation of *qard* into two types, this paper seeks to argue that there lies a third kind of *qard* too, which neither qualifies for *qard hasan* nor does constitute *qard ribawi*.

To begin with, it is essential to note that the genesis of the term "*qard hasan*" is rooted in the *Quranic* verses in which believers have been exhorted to dispense their fortunes for the cause and sake of Allah (SWT). As, *Quran* urges:

> Who of you will lend Allah a loan par excellence which He will return after multiplying it for him manifolds (2/245).

Taking into account the text and context of this and similar verses in the Quran, it has been widely argued that by the term "qard hasan" specifically "sadaqah" (charity) is meant (Qurtubi, 2003). This interpretation of the "term" has found almost unanimity among the major *Arabic* exegesis writers, and is based on the understanding of the early generations of Islamic scholars. In view of this unanimity of scholars, there hardly seems any scope for differing with the given interpretation of the verse.

However, as it has not been hinted either within the *Quranic* text or in the Prophetic traditions as which form of *sadaqah* is meant through the specific term *qard hasan*, it would be inapt to confine the meaning of this verse within the boundaries of any specific form of charity. Arguably, in the absence of any explicit specification, it may be appropriate to believe that the term "qard hasan" essentially, encompasses all possible forms of charitable deeds performed with pure intention of earning reward from Allah SWT. This is in view of the proposition that *sadaqah* is not restricted to pecuniary dispensation only, but it covers a variety of other ways and forms too (Qurtubi, 2003), as the prophetic *hadith* explains "every good deed is (a form of) charity" (Muslim, 1999).

Broadly speaking, in the literature of shariah, almost all forms of charitable activities are covered under the three key concepts, namely, *sadaqah*, *infaq* and *irfaq* (anything of charitable nature). The term "*infaq*" is, in its *Quranic* application, more comprehensive than the term "*sadaqah*" in one sense, and narrower in another. *Infaq*, in its broader sense encompasses *sadaqah* too into its fold. However, compared to *infaq*, the term "*sadaqah*" assumes broader scope in implying on the benevolent expressions, gestures and actions along with covering the pecuniary spending. Though, at occasions, in *Quranic* usage, both the concepts have been employed interchangeably, they differ in their terminological and essential implications. According to Zaman (1991, p. 57) "the concept of *sadaqah* in spite of its narrowness has a moral superiority over *infaq* in as far as it involves ethics and courtesies in addition to material giving". So far, as the Islamic concept of *irfaq* is concerned, it represents the philanthropic nature of economic activities, and may be regarded as the antithesis of selfishness and avarice (Tag el Din, 2002).

Interestingly, in view of *shariah*, a repayable *qard* (subject to fulfilment of specific criteria) commands a high merit of excellence, and represents all these three concepts, namely, *sadaqah*, *infaq* and *irfaq*. The merit of a *qard* advanced to ameliorate the hardship of borrower could be assessed in the light of the prophetic tradition propounding:

> […] whosoever helps out a believer in need, would receive special assistance of Allah in the day of judgment, and whosoever relieves a Muslim of his burden would be assisted by Allah in this world and Hereafter in a similar term (Tirmidhi, 1999).

Moreover, in a similar context, the Prophet (pbuh) related that:

> […] on the night of my ascendance to Heaven, I noticed on the gate of Paradise written that a *sadaqah* would be rewarded ten times while a *qard* would carry its reward eighteen times. On seeing this, I asked Jebril about the reason behind this discrepancy. He replied: this is so because it is not necessary that the beneficiary of a *sadaqah* was in need of the same at the time of receiving the same, however, when anyone asks for a *qard* (particularly, for consumption purpose) he/she does not do this except out of a desperate need (Ibn Maja, 1999).

In the light of the above-mentioned *hadith*, it is established beyond doubt that *qard* constitutes a form of highly recommendable charity. However, the critical point that begs elucidation here is the sweeping usage of the term "qard hasan" for all interest-free loans. In this context, the question that arises is not restricted only to whether an interest-free loan does qualify for the term "qard hasan" as mentioned in the *Quran*, but it also seeks clarification on whether all interest-free loans are fit to be called so. To address the first question, it is essential to note that in *Quranic* term "qard hasan" denotes *sadaqah*, and there is unanimity amongst the scholars that an interest-free *qard* extended to help the borrower for the sake of Allah is also a form of *sadaqah* (Qurtubi, 2003). However, whether each interest-free loan amount to *sadaqah* is subject to further scrutiny.

As discussed above, technically, the given terms and conditions of a loan-contract would define whether a *qard* (loan) is *qard hasan, qard ribawi* or other than these two. Depending on a specific context and situation, this third category of *qard* may be described as "qard" (without qualifier), *qard haram* (which is not *ribawi* but facilitates a *haram*), *qard makruh* (which is for reproachable purposes) or *qard mubah* (which is not meant to ameliorate the hardship of the borrower but, for instance, to expand a business).

Notably, the only form of *qard* which is permitted in *shariah* is interest-free one. Ayub (2007, p. 492) explains "in Islamic law, all loans have to be virtuous, as seeking any benefit out of loaning amounts to riba". However, it is vital to note that whereas every *qard hasan* is necessarily interest-free, but it is not necessary that every interest-free *qard* is *qard hasan*. In fact, an interest-free loan in itself does not command any intrinsic virtuous-worth unless it is advanced in compliance with the set guidelines of *shariah*.

Essentially, according to the moral code of conduct prescribed by *shariah*, along with being interest-free, a *qard* further requires fulfilling certain prerequisites to qualify for the merit of *qard hasan*. To this effect, the first and foremost condition involves ensuring that the given object of *qard* in itself constitutes *halal*, i.e. it must not be intrinsically *haram*, e.g. swine, intoxicants, liquor. Additionally, it is also essential that the property or the object advanced in the *qard* was earned through legal means. To this end, the following *Quranic* admonishment covers the subject:

> Believers! Spend (in the Way of Allah) out of the good things you have earned and out of what We have produced for you from the earth, and choose not for your spending the bad things (2/267).

This criterion is further elaborated by the Prophet (pbuh), as he is reported to have observed "Allah is pure of all faults and accepts only that which is pure (of insincerity and haram)" (Muslim, 1999).

The other vital conditions of *qard hasan* involve the sincerity of intention, which must not be adulterated with other mundane motives and objectives. This condition is substantiated by the *hadith* narrated by Abu Umamah as he reports:

> […]a person came to the prophet and asked his opinion about the one who struggles in the way of Allah for both; reward from Allah and fame among the people, the prophet replied such a person would receive nothing from Allah SWT. He repeated the question thrice and the prophet replied the same for three times and added: Allah SWT does not accept except what is performed with all sincerity, and exclusively for His pleasure (Al-Nasai, 1999).

Along with these conditions, lender's commitment to not cause harassment to the borrower with taunts or teasing constitutes the nucleus of *qard hasan*. In fact, these features of *qard hasan* are analogous to the conditions attached to any reward-worthy deed of charity, and have been deduced in the light of *Quranic* verse which admonishes the believers to not undo the merit of their charitable deeds by resorting to show off or taunting. The verse goes:

> Those who spend their wealth in the way of Allah and do not follow up their spending by stressing their benevolence and causing hurt, will find their reward secure with their Lord (2/262).

Quran further elucidates:

> Believers! Do not nullify your acts of charity by stressing your benevolence and causing hurt as does he who spends his wealth only to be seen by people and does not believe in Allah and the Last Day. The example of his spending is that of a rock with a thin coating of earth upon it: when a heavy rain smites it, the earth is washed away, leaving the rock bare; such people derive no gain from their act of charity (2/264).

Essentially, for a *qard* to be counted as *qard hasan*, it must be espoused with the above-discussed features. The key constituents and integral attributes of *qard hasan* – of which even if a single component is missing, the given *qard* would either become *qard ribawi* or lose the merit of excellence – are scattered within various verses of *Quran* and prophetic traditions, and could be summarised in the following ten points:

(1) The subject matter of *qard* must be generically *halal* in itself. Hence, things like intoxicants, pork, gambling devices, etc. could never be the object of *qard hasan* (*Quran* 2/267).

(2) The subject matter must have been acquired through legal means, and be in complete ownership of the lender (*Quran* 2/267).

(3) Through the *qard*, acquiring pleasure of Allah must be the primary aim, and any intention of show off be completely shunned (Al-Nasai, 1999).

(4) Advancement of loan must not follow boasting, taunting or harm from the lender to the borrower (*Quran*, 2/264).

(5) The contract of *qard* must not stipulate any excess or reduction over the principal (Ibn Qudama, 1997a, 1997b).

(6) The contract of *qard* must not stipulate fulfilment of any other contract for the execution and culmination of the former. As, the prophetic tradition holds "it is impermissible to extend a loan on the condition of another sale contract" (Abu Dawood, 1999).

(7) During the period of *qard*, the borrower should not be obliged to provide any kind of service to the lender except if it has been the common practice between them (Ibn Qudama, 1997a, 1997b).

(8) The *qard* must not be advanced for purposes which fundamentally contradict principles of *shariah*. For instance, extending *qard* for establishment of casino or interest-based system of finance would never carry any virtuous worth, and instead would be a sinful act. As the *Quranic* verse goes:

> Help one another in acts of righteousness and piety, and do not help one another in sin and transgression (5/2).

(9) The *qard* must not be advanced deliberately to an individual who is intending to employ the fund for causing harm to an individual or the society at large. This ruling is drawn in the light of the Prophetic tradition "la dharara wa la dhirar" (there should be no (intentional) harm or reciprocation of harm) (Ibn Majah, 1999).

(10) If the borrower is in a genuine financial crisis and does not have means to repay the loan on time, he/she should be provided relaxation and must not be punished in any way. As *Quran* (2/281) instructs:

> But if the debtor is in strained circumstances, let him respite until the time of ease.

In view of these points, a *qard* which does not involve *riba*, but is advanced either out of ill-gotten fortune or without sincerity of intention or is followed by teasing and taunting or is dispensed with the objective of acquiring some material gain in long term, would not qualify for *qard hasan*. Notwithstanding this, it does not necessarily mean that such a qard would automatically turn into *qard ribawi*. Instead, the same would constitute a separate category and, thus, should be termed as *qard* without suffixing the signifiers' *hasan* or *ribawi* with it. Furthermore, an interest-free *qard* which explicitly facilitates a *haram* or *makruh* would be suffixed with these terms, respectively, instead of being categorized as *qard hasan*, or *qard ribawi* or *qard*.

From the above, it could be easily concluded that a *qard* if discharged with the fulfilment of certain pre-requisites would automatically constitute *qard hasan*. However, if a contract of interest-free *qard* does not abide by the given guidelines, it would be classified according to its own specific context.

Arguably, this analysis may provide a *shariah* framework of *qard* for both: the formal and informal financial entities. It may also help demystifying the true nature and characteristics of a *shariah*-recommended practice of *qard*. From the socio-economic perspective, the implications of this framework of *shariah*-compliant *qard* would be realised by appreciating its moral and spiritual link, which tends to promote the environment of altruism, volunteerism, solidarity and social-cohesion among the individuals. Perhaps, by emphasizing on the religious and spiritual significance and excellence of *qard hasan*, the practices of *qard*, particularly, in informal settings, may be promoted at a greater level and that too in a most cost-effective manner. Additionally, given the *shariah-ban* on financing any activity which is envisaged, by and large, as inimical to the overall socio-religious health of the society, proper application of the concept of *qard hasan*, may dictate the *shariah*-desired socio-economic tendencies in the masses at large.

Last but not least, it has long been argued that the gradual expansion of the role of *qard hasan* in an Islamic economy is necessary to fill the gap between the demand and supply of money in a *shariah*-compliant and harmonious way (Siddiqui, 1994). In the similar fashion, this author tends to argue that, in dispensation of a *qard*, observing the *shariah*-requirements of *qard hasan* would be necessary to maintain and reinforce the moral and spiritual precepts of the practice.

Conclusion

In an economically active society, *qard* constitutes an indispensable instrument of cooperation. It is demanded and provided in various garbs and forms depending on the values, ethos, orientation and norms of the institutions functioning in a given society. In view of *shariah*, extending *qard* is a charitable deed, and it cannot be employed as a product of profitable business. While *shariah* accords a high spiritual sanctity to the advancement of a *qard*, it attaches specific conditions with it too. According to the *shariah* prescriptions, the contract of *qard* must ensure that along with being interest-free, it is based on sincerity of intention and does not infringe the fundamental principles of Islamic teachings. And if the contract of *qard* abides by the *shariah* regulations, it would automatically qualify for the umbrella term *qard hasan*, as mentioned in *Quran*. However, if a *qard* falls short of fulfilling the given criteria in letter and spirit, it would be classified into other categories as per the given context and situations. In fact, this third category of *qard* would be different from the two forms of widely known *qurud*: *qard hasan* and *qard ribawi*.

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