Al-Qard al-Hasan: A Practical Approach

by Mohammad Delwar Hossain

Islam allows loan as a form of social service among the rich to help the poor and those who are in need of financial assistance. Loan in Islam may be obtained in two ways: (i) Loan with condition of repayment, and (ii) gratuitous loan without any compensation or gift. However, Islam does not recognize any loan with interest for the benefit of the debtor. It only recognizes gratuitous loan or better known as al-qard al-hasan. Such loans have not been uncommon in human history among peers, friends and relatives. Kindness is encouraged in Islam. The Prophet (s.a.s) is reported to have said: the inmates of Paradise are of three types: one who wields authority and is just and fair; one who is truthful and has been endowed with power to do good deeds and the person who is merciful and kindhearted towards his relatives and to every pious Muslim, and who does not stretch out of his hand in spite of having a large family to support. [Sahih Muslim]

Definition of Qard al-Hasan

The word "qard" is derived from Arabic "qirad" which means 'to cut'. It is called qard, as it cuts certain part of the lender's property by giving loan to the borrower. Hasan is also an Arabic word, which originates from 'ihsan'. Ihsan means kindness to others. So, hasan is an act which benefits persons other than those from whom the act proceeds without any obligation. The term al-qard al-hasan means beneficial loan or benevolent loan, gratuitous loan, interest free loan, beautiful loan etc. M. Umer Chapra has given the definition of qard al hasan as: "Qard al-hasan is a loan which is returned at the end of the agreed period without any interest or share in the profit or loss of the business." Therefore, qard al-hasan is a kind of gratuitous loan given to the needy people for a fixed period without requiring the payment of interest or profit. The receiver of qard al-hasan is only required to repay the original amount of the loan.

Objectives of Qard al-Hasan

Islam emphasizes to make brotherhood among the Muslims. The main principle of brotherhood is to care and share each other. Qard al-hasan being a gratuitous loan can help the fellow Muslim brothers who need money but they do not have. Thus, qard al-hasan enhances brotherhood among the Muslims. The main objectives of qard al-hasan are:

a.To help the needy fellow people.

b.To establish better relationship among poor and the rich.

c.The mobilization of wealth among all people in the society.

d.To perform a good deed that is encouraged and appreciated by the Almighty Allah and His messenger.

e.To strengthen the national economy.

f.To facilitate the poor to create new jobs market and business ventures by using their merits, skills and expertise.

g.To establish a caring society.

h.To eradicate unemployment problem from the society.

i.It can be also a missionary work for daw'ah activities by giving qard al-hasan to the non-Muslims, who might be attracted by knowing the beauty of Islam.

j.It can remove social and economical discrimination from the society, and

k.Finally, obviously there is a great reward in the Hereafter for giving qard al-hasan.

Qard al-Hasan in Qur'an and Sunnah

In many places of the Holy Qur'an, Allah has mentioned and encouraged His creature for qard al-hasan by assuring better reward in this world and in the Hereafter. In the Qur'an Allah says,

1. **He who will give Allah qard al hasan, which Allah will double into his credit and multiply many times.** [Al-Baqarah (2): 245]
2. **If you give Allah qard al hasan. He will double it to your credit and he will grant you forgiveness.** [Al-Tagabun (64):17]
3. **And give Allah qard al hasan.** [Al-Maidah (5): 12]
4. **And give Allah qard al hasan, it will be increased manifold to their credit.** [Al-Hadid (57): 18]
5. **Who is he that will give Allah qard al hasan? For Allah will increase it manifold to his credit.** [Al-Hadid (57):11]
6. **Establish regular prayer and give regular charity and give Allah qard al hasan---.** [Al-Muzzammil (73): 20]

The sunnah of the Prophet (s.a.s) is also very clear on this issue. It is reported that the Prophet (saw) said, "in the night of the journey, I saw on the gate of heaven written, 'reward for sadakah is ten times and reward for qard al-hasan is eighteen times'. So, I asked the angel, how is it possible? The angel replied, "Because beggar who asked had already had something but a loanee did not ask for loan unless he was in need." [Ibn Hisham & Ibn Majah].

In another hadith reported by Abu Hurairah (R), the Prophet (s.a.s) said, "whoever relieves a believer from a difficulty in this world, Allah will relieve him from his difficulty and Allah will facilitate him in this world and world hereafter." [Muslim]

The above Qur'anic verses and ahadith directly and indirectly encourage the Muslims to give qard al-hasan and which will increase their credits in manifold and bring forgiveness for them.

Rules regarding al-Qard al-Hasan Transaction:

Al-qard al-hasan, being a contract ('aqd) between two parties requires same principles which are applicable for other Islamic transactions. These principles are as follows:

a.Both parties should be legally (shari'ah) capable to enter into the qard contract.

It is unanimously agreed by the four schools of law that to enter into a contract, parties will be baligh, 'aqil and rashid (major with sound judgment). The Mejelle has also incorporated the same principles. In the holy Qur'an, Allah says, "**Make trial of orphans until they reach the age of marriage; if then you find sound judgment in them, release their property to them.**" [Al-Nisa (4): 6]. This verse states that the age of marriage and the sound judgment is the age of majority, and thereby a major person is capable to enter into any transaction validly.

In a hadith, the Prophet (s.a.s) said, "The pen is raised for three groups (of people) that is, they will not be responsible for their actions: the insane until they become sane, those who are sleeping until they are awaken, and the youth until they reach puberty." [Ahmad, Abu Daud and al-Tirmidhi]

The above hadith makes it clear that a person, who has not attained the age of puberty , may not be a responsible party for al-qard al-hasan transaction.

b.Ijab (offer) and qabul (acceptance) of the qard must be clearly made before entering into the loan contract:

All four schools of thoughts agree upon that ijab and qabul should be clearly indicated in the contract, otherwise, the loan contract may create dispute in future. In the loan agreement, there should have clear expression, collation and conjunction of the ijab and qabul between the parties.

c.The date of payment must be specified:

It is also agreed among the Muslim jurists that the date of payment should be mentioned in the loan agreement. If no date is specified, the transaction may

lead to ambiguity and dispute in future among the lender and the borrower.

It was based on the loan agreement of the Prophet's (s.a.s) companions. When the Prophet (s.a.s) migrated to Madinah, he was informed that contracts of salam were made without stating specified time or amount, then the Prophet (s.a.s) said, "Whoever enters into a contract of salam should specify the date of delivery and the amount of subject matter."

d.The loan contract should be written down.

This ruling is based on a Qura'nic injunction. As Allah (s.w.t) says; "**O you who believe! when you deal with each other in transactions involving future obligations for a fixed period of time reduce them in writing.**" [Al-Baqarah (2): 282]

Muslim jurists, however, differ on this condition. Majority of the Muslim jurists opine that it is not obligatory but strongly recommended. The reason given by them is that if both parties agree not to write, then it is no longer an obligation upon them to write down. The wisdom behind the writing down is to avoid future dispute. On the contrary, minority of the Muslim jurists like al-Tabari are of the opinion that it is obligatory upon the parties to write down the contract. It is submitted that the majority's stand seems more reasonable as they have given the option upon the parties whether to write down or not.

e.Getting two witnesses.

The Qura'nic injunction is that there must have two male witnesses, if two men are not available, then one man and two women will have the same effect. As the Qur'an says:
"**And get two witnesses out of your own men and if there are not two men, then a man and two women.**" [Al-Baqarah (2): 282]

It is very essential for the loan contract to be complied with this Qura'nic requirement to avoid future disputes.

f.Administrative fee / Service charge:

A question may arise whether a charge of administration fee is allowed in Shari'ah and if yes, how much will be the charge. Now, it is a settled issue among the Muslim jurists that administrative fee or service charge for loan transaction is not against Islamic principles.

Dr. Irfan Ul Haq in his Ph.D. dissertation entitled, "Economic Doctrines of Islam" mentioned that " Banks are permitted to charge a minimum service fee to cover the cost of administrative fee". According to S.H. Amin, "Some charges are in fact legitimate fees and not interest by any standards but sometimes the line is hard to draw. For instance in Islamic law payment of expenses may be allowable if the fee is attributable to some identifiable out of pocket expense such as lawyer's fees but not general overheads of the bank." He further mentioned that to obtain some compensation for offering al-qard al-hasan facilities, the banks demand some charges and fees. These expenses incurred by banks on providing al-qard al-hasan are collected from the borrowers and the basis for the calculation of these expenses are laid down by the central bank.

In an article entitled "Islamic Banking for Social Justice" M. Azizul Huq, an executive vice president of Islamic Bank Bangladesh, said, "The Shari'ah does not permit and Islamic banks do not receive any income from interest-free loaning investment. The lending banks can, however, recover their administrative cost directly related to the investment as service charge. Islamic Development Bank Jeddah recovers service charge 2% to 3% on interest free loans. Alternatively, the cost can be reimbursed by third parties or the government. In Pakistan, the cost of interest for rural lending is reimbursed to the bankers by the government."

So, if al-qard al-hasan is given by any bank or other institutions, they may require service charge or administrative fee. However, there is no scope for an individual lender to demand this charge unless any amount incurred due to procedural requirements of the loan agreement, such as lawyer's fee, stamp duty etc.

g.Extra Payment:

It is very clear that in the loan agreement, there will be no condition for extra payment, otherwise, it will be riba . It is however, advisable for the debtor to give some sort of gift to the creditor as a sign of appreciation of his voluntary deed. In a hadith, Jabir bin Abdullah (R) reported that I had the right (of loan) on the Messenger of Allah, he had settled it and made additional payment to me. Again Abu Rafi' reported that the Prophet (saw) had borrowed a young female camel from someone and when he received zakat of camels, he ordered me to send a young female camel to the man as settlement of the loan. I said to him, "I could not find among the camels except a female camel

which is ready for pregnancy". The Prophet (s.a.s) said, "give it to him, indeed, the good person among you is he who settles loan with something better." [al-Muwatta of Imam Malik].

The statement "every loan which draws benefit is riba" is in fact not a hadith of the Prophet (saw) according to the hadith scholars as there is a doubt of its chain of narrators. Moreover, Muslim jurists have various opinions relating to extra payment over loan. The Hanafi, the Shafi'e and the Hambali's stand is that every loan with profit is forbidden if the profit is stipulated in the loan agreement, otherwise, the profit is permitted. According to Malikis, the borrower may pay more than the capital quantitatively or qualitatively at the time of the settlement of the loan provided that the loan was used for commercial purpose. They restricted the extra benefit from the loan if it was used for consumption purpose.

Indeed, the majority's view is more reasonable, it is up to the loanee whether to pay extra or not, regardless the loan was for consumption or commercial purpose. The only restriction is that there should not be any stipulation for extra benefit in the loan agreement.

h.Early demand to pay back:

Loan is a voluntary act by the creditor. However, it is not encouraged for early demand to pay back the loan from the debtor. In the Holy Qur'an Allah says,

i. **O you, who believe, fulfil your contract.** [Al-Maidah (5):1]
ii. **And fulfil your covenant, for every covenant will be inquired into.** [Al-Isra (17):34]
iii. **Then for having broken their covenant, We rejected them and caused their hearts to harden.** [Al-Maidah (5):13]
iv. **And so (We punish them) for the breaking of their covenant.** [Al-Nisa (4):155]

In a hadith the Prophet (s.a.s) said, "Muslims are bound by their conditions except a condition that changes halal into haram or haram into halal." [Al-Muatta of Imam Malik]

The Qur'anic and the Hadith injunctions indirectly provide that the creditor should not demand the loan amount from the debtor before the agreement matures or lapses. Muslim jurists, however, have given different views on

this matter. According to the Shafi'e and the Hambali jurists, the creditor can demand the settlement from the debtor before the expiry period as he wishes. They have given the reason that the loan is voluntary and it can not compel any party to abide it. The Hanafi and the Maliki jurists, on the contrary, are of the views that the creditor can not demand the loan amount back until the time for settlement mature. Their reason is the above stated hadith of the Prophet (s.a.s).

It is submitted that the latter view is more reasonable as being beneficial to the creditor and should be accepted.

i.Guarantors:

In the case of the al-qard al-hasan, there can be guarantors. The guarantors of the borrower may be any person or the property of the loanee that is collateral security, such as, mortgage, charge etc. In case of the borrower's failure to pay back the loan after the expiration of the time specified, his guarantor has to pay or the collateral security is to be valued for the repayment of the loan. But, Muslims should remember that a true believer should not delay to pay back his obligations. As the Prophet (s.a.s) said, "Deliberate delay of a rich borrower to settle the loan is injustice." [Sahih Bukhari & Muslim]

Conclusion:

Islam attempts to establish justice and eliminate exploitation in the society and prevents the accumulation of wealth in the hands of few people. Islam, therefore, absolutely prohibits riba as it is the root of all injustice in the human society. Al-qard al-hasan, on the contrary, being an interest free loan for humanitarian and welfare purpose may ensure the proper movement of wealth amongst all classes of people in the society. That is why, the Qur'an and the Sunnah have much appreciated and encouraged for the implementation of al-Qard al-Hasan in the Muslims society.

End Notes:

'Abdullah Yusuf 'Ali, in "The meaning of the Holy Qur'an" has translated al-qard al-hasan as beautiful loan.

M. Umer Chapra, "Towards a just monetary system" 1995, The Islamic Foundation, UK, p-68

See the Mejelle, articles-943, 947,966 etc.

According to Article-985 of the Mejelle, the time of puberty is proved by the emission of seed in dreams and the power to make pregnant and by the menstrual discharge, and power to become pregnant. Article-986 says the latest age for puberty for both male and female is fifteen years. All schools of law are also agreed with fifteen years as the latest age for attaining puberty.

The salam is a sale of unavailable goods. It is permitted in Islam as the Prophet (s.a.s) allowed the sale of future goods.

Ibn al-Athir, "Jami' al-Usul", vol. II, p-17, quoted by Razali bin Haji Nawawi, "Commercial transactions: Islamic Law Perspective", IIUM, unpublished Ph.D. thesis, p-201.

Irfan Ul Haq, "Economic Doctrines of Islam" International Institute of Islamic Thought, Herndon, Virginia, USA, 1996, P-130, 174.

S.H. Amin, "Islamic Law & Its Implications for Modern World", Royston Ltd, 1989, UK, P-139-146.

Ibid.

M. Azizul Huq, "Islamic Banking for Social Justice" Thoughts on Economics, Jan-March 1984, Vol.5 No.11, p-25, See also Dr. Ataul Hoque, Ed. "Readings in Islamic Banking" 1987, Islamic Foundation Bangladesh, p-167, Tajul Islam, Mechanics of Islamic Banking, p-174.

By the Qur'anic injunction and the Sunnah of the Prophet (s.a.s), riba (interest/ usury) that is any surplus amount over and above the principal amount is absolutely prohibited.

Razali bin Haji Nawawi, "Commercial transactions: Islamic Law Perspective", IIUM, unpublished Ph.D. thesis.

5.4. Nominal Versus Real Rate of Interest

Another controversy between modernist and conservative views on riba turns around its interpretation under inflationary and deflationary conditions. Modernists contend that although the Prophet was aware of the effect of inflation, there is no hadith on riba that considers the effects of inflation and deflation on loan transactions. In fact, Inflation reduces the real purchasing power of money, whereas deflation increases its purchasing power. Therefore, the proponents of modernists view suggest that in an inflationary economy, an interest rate which will correct the loss suffered by the creditor due to inflation could be justified by allowing an increase or interest to compensate for the loss of purchasing power of money. In support of this view, they argue that by means of the indexation of loans, i.e., by allowing interest up to the ceiling of inflation no real predetermined benefit is allowed to the lenders; rather this simply allows the lenders to retain the real value of their monetary asset intact. Inflation erodes the monetary asset of the lenders for no fault of their

own.
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Although Islam urges justice to the borrowers it does not approve of injustice to the lenders. Inflation undoubtedly does injustice to the riba-free lenders by eroding the real value of Benevolent Loan – a loan extended without either interest or profit sharing.
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The outright prohibition of
nominal interest indeed increases to cater for inflation would act as a disincentive to lend money which will have negative economic ramifications. So, it has been suggested that suitable interest and discount rate be devised to neutralise the effects of rising and falling prices.
The opponents of this view have, however, dismissed the arguments they set out on several grounds, maintaining that all kinds of increase related to loans transactions irrespective of nominal or real rate of interest, would be contrary to the Qur'anic injunctions against riba, and must be accepted as they stand. It is argued that the use of interest to neutralise inflation would tantamount to using a bigger 'evil' to fight a smaller one, and Islam does not encourage the introduction of new 'evils' to fight existing ones.
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The general verdict of the Muslim jurists has so far been against
indexation of loans as it involves an assured positive return on loans even though it is only in monetary and not real terms.
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Hence, the question of nominal or real rate of interest does not arise;
rather being riba any increase or interest should be considered unlawful. Moreover, the best conformity to the norm of socio-economic justice emphesised by Islam is price stability and not indexation of loans and assets.