

Research Article

THE NATURE AND EFFECTS OF DEADLINE ON DEBTS IN ISLAMIC SHI'ITE JURISPRUDENCE

ABOLFAZL AMANI MEHTARLO¹, ESMAT AI-SADAT TABATABAEI LOTFI^{2*}, NASRIN KARIMI³

¹Ph.D. Candidate, Department of Fiqh (Jurisprudence) and Principles of Islamic Law, Qom Branch, Islamic Azad University, Qom, Iran

²Corresponding Author, Assistant Professor, Department of Fiqh (Jurisprudence) and Principles of Islamic Law, Qom Branch, Islamic Azad University, Qom, Iran

³Assistant Professor, Department of Fiqh (Jurisprudence) and Principles of Islamic Law, Qom Branch, Islamic Azad University, Qom, Iran

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ABSTRACT

Debt (*dayn*) is one of the serious topics in Islamic finance. Generally, any claimable obligation on the part of a person is called debt, whether financial or otherwise. Debts may result from contracts or compulsory responsibilities. The element of time is important in debt as it may be in favor of the debtor or the creditor. Sometimes it is considered as a part of the price or merchandise and it can be accelerated through price reduction. Therefore, it is necessary to discuss the role of time in debt issues. Here the nature and effects of time are studied from the Islamic Shi'ite point of view which the Iranian Code of Law is based on it. Furthermore, the legal consequences of delay in payment, the death, and bankruptcy of the debtor before reaching the deadline are studied. According to most jurists, the two latter can change the deferred debt to a present debt. This can lead to several important legal issues and might have effects on legal decisions.

Keywords: Debt, Present Debt, Deferred Debt, Deadline, Creditor, Debtor

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INTRODUCTION

This paper looks upon the issue of debt in the contexts of Islamic economics and finance, which shades on the economy of a wide range of Muslim societies and governments.

Due to the growing market of Islamic finance and the role it can play in the development of the related financial system economies, a deep study of the main foundations of this finance rooted in Sharī'ah (Islamic law) seems necessary. Many authors and researchers have looked upon Islamic finance and its various aspects regarding household and governmental economy in the recent years. However, as Ibrahim and Alam (2017) put it, "While there are some promising theoretical and empirical findings pointing to positive contributions of Islamic finance, there is still a need for Islamic finance to distinguish itself from the conventional finance and to further demonstrate its real effect." One of these aspects that needs yet to be studied is the issue of debt.

Debt has risen substantially in developing countries and the waves of global debts has usually ended with financial crises in many emerging and developing economies. (Kose and others 2020; xvii, 5)

The issue of debt in the Islamic literature goes back in history as the Quran, the main Islamic text, used as a source for Islamic law. The topic Debt is discussed many times in Quran in under the Arabic words *Dayn*, *Gharz*, *maghram* and *gharemin*.

One of these verses is the 282nd verse of the second surah of Quran, Baqareh, which is also the longest verse of the Quran, famous as the verse of *dayn*, *tadayun*, *mudayeneh* or *gharz* (Quran, 2:282). This verse, recommends writing down and recording the agreement on debts, on contracting a debt for a specified term, to avoid future dispute.

There is also a word prohibiting prosecuting poor debtors and postponing the demand for repayment (Quran, 2:280).

It is understood from these verses that the defined period of time agreed for repayment of the debt is an essential part of the debt contract.

Other verses note the prohibition of taking usury (Quran, 2: 278,279).

The other primary Islamic source which could be looked upon about debt is the Sunnah (the traditions or known practices of the Prophet

Muhammad -pbuh). There are many narrations from the prophet about the importance of repaying the debt and other related recommendations. (Zainol and others 2016) mention some examples of these records)

The third source on Islamic economy is the view of Islamic scholars and their analogic studies based on these two sources and in response to the issues of the contemporary Islamic societies.

One of these books is "Our Economy" (*Iqtisauna*) by Mohammad Bagher Sadr which is seen as the first comprehensive analytic book in Islamic economy written by an Islamic viewpoint. Al-Sadr proposes a theory known as *mintaqat faragh* which claims the traditional Islam has left in an area of vacuum for the legitimate authorities to contend with, through a process of *ijtihad* (original thinking) and *ikhthiyar* (discretion). According to this theory, the legitimate ruler is permitted to enact laws about social issues according to Islamic basic principles and due to the requirements of time (Al-Sadr, 1983).

Muhammad Baqer as-Sadr talks about issues of debt in general and in comparing the Islamic economy to the Marxist economy and with reference to the prohibition of usury (Al-Sadr, 1983).

Other studies focus on the issues of Islamic banking. Mallat for example, refers to Egypt's civil laws and the Iranian civil code on debt on his book about Islamic banking in the view of Muhammad Baqer as-Sadr (Mallat 1993: 160, 162, 168, 173).

The remarkable pace of the Islamic finance and following that, the rapid growth of the Islamic debt market, including both foreign and domestic, has been the intention of many other studies on the issue of debt according to Islamic point of view; and with an eye on the contemporary issues of Islamic finance in its attempt to comply with the shariah rules on one hand and the world economy on the other.

As an example, In *Understanding Islamic Finance*, Ayub (2007) introduces all the essential elements of this growing market. One chapter of this book discusses the issue of loans and debt in Islamic commercial law (Ayub, 2012).

Harrison and Ibrahim (2016) also explore the characteristics and performance of Islamic finance and banking and offer a comprehensive

theoretical framework for Shariah governance in Islamic financial institutions.

As to where a debt agreement is a kind of contract, the study of debt should be conducted within the study of Islamic laws about permissible and correct contracts according to Islamic shariah. One of the influential issues in legal contracts is the determination of time and duration of the contract. This study tries to focus on the issue of time on debt contracts according to Islamic law. While there are sources on debt, and sources on contracts and the issue of time in them, there are less studies that have comprehensively studied the two subjects, that is the issue of debt and the topic of time or deadline and its effects on debt, together.

In Islamic Law, contracts can be divided into different titles regarding the time. In some contracts, the deadline (*ajal*) or the duration is one of the basic elements of the contract, and failure to mention it will invalidate the contract. Contracts such as *Bay' Salam* (pre-sale or contract for delivery with pre-payment), *ijarah* (lease contract), *mozariah* (contract for agricultural purposes, and crop-sharing) follow this rule. In some other contracts, observance of the deadline is compulsory, so its violation causes the right to terminate the contract or pay compensation, etc. Among the affairs in which the issue of duration is important is debt that means a general financial commitment as a person's responsibility (Mousavi Sabzevari, 1995: v21/ 21) or an obligation for the person to perform an act in a certain time in favor of another for some reason. Many jurists consider the element of time and the so-called deadline as the necessities of the debt and believe that the time and duration are definite matters in debt (Al-Najafi, 1990: 345). Debt is actually categorized based on the due time of payment in the shi'ite jurisprudence. These categories are explained in this essay. Also, in this study, the nature and issues of duration and deadline in debts are discussed, and then the related legal consequences are examined. The paper focuses on the nature and legal consequences of time on debt from the Islamic Shi'ite jurisprudence. The questions addressed in this study are whether or not the creditor has the right to claim the long-term, i.e. deferred debt before the deadline reaches; in what circumstances the differed debt may change to the present debt; what is the effect of the creditor or debtor's death or his bankruptcy on debt; what are the legal consequences of delay in payments. These are the questions with less specified answers which this study tries to shed a light on.

• The Nature of Debt

Debt is a general finance charge which is proved to be a person's duty to pay to another for some reason. The responsible person is called the debtor and the other is called the lender or the creditor. The reason for a person to be in debt may be due to some affairs such as owing, credit transaction, presale, etc. (Mousavi Khomeini 1986: v1/647). Debt can be defined as a general issue which is not determined unless it is paid and fulfilled (Mirzaye Qomi, 1992: v3/127). In legal definition, debt is a person's commitment to pay, to do or not to do something. In the legal description, the commitment of a person to another's favor, from the creditor's point of view is called demand and from the debtor's point of view, is called debt (Jafari Langaroudi, 1997: 316). Contemporary jurists believe that all of the commitments such as transferring the finance or ceding it, doing or leaving an action are debt. In Imami jurisprudence, debt is the right of a person to ask someone who this right is against his favor to transfer the debt, do or leave a certain action (Jafari Langaroudi, 2001: 62).

The following definition can be summarized from the jurists' opinion about debt: any obligation that a person can claim is called debt. A pledge whereby the person who the pledge is in his favor can claim it from the committed, such as a pledge to do or leave an action, a pledge to transfer or to pay and a pledge to submit the certain or general goods.

According to the above discussions, it can be said that the commitment is more general than debt, in other words, every debt is a commitment, but some commitments are not debt.

• Types of Debt

In the Islamic law, there are three kinds of debt considering the time of its payment. A debt that its payment is deferred and subject to a due date or a definite event in the future is called a deferred debt. The debt that its paying time has reached and should be paid immediately is the present debt. A debt whose end and termination depends on an event or a time in the future is called a "temporary" debt. The "deferred debt" is used against the "present debt", and the "temporary debt" is used against the "permanent debt" (Katouzian, 1995: 126). In the deferred debt the execution of the obligation is postponed, while in the present debt it is possible to execute it at the time and the creditor has the right to claim. In the temporary debt the deadline determines the end of the execution and the due date cancels the commitment. On the contrary, there is no end conceived for the permanent debt, such as a commitment that one undertakes towards another if s/he abandons a particular action. The temporary debt is not discussed in this essay.

✓ Present Debt

Jurists acknowledge the time element as necessary in debt, while it is mentioned in the religious jurisprudence texts on the divisions and types of debt; that debt can be present or deferred. The present debt means a debt that doesn't have a special time for paying and the deferred debt is the opposite of it (Mousavi Sabzevari, 1995: v21/158). Extra explanation on the deferred and present debt can be found in the text below:

The present debt is a debt which the creditor has the right to take at any time and the debtor must pay it if he has the ability. Therefore, a debt which its deadline has reached is still a debt. Although its time has come and there is no deadline considered for it after this, but since it had a due time at its arrangement and the beginning, acknowledging it as a debt is still correct. On the other hand, it is not possible to abdicate the description of debt from the present debt and this is another reason for calling a present debt as a real debt (Al-Najafi, 1990: v24/345; Hosseini Ameli, 1997: v5/29).

However, the opposite view of the above-mentioned opinion has also some advocates between the Islamic jurists. First, they say that the verity of the title of debt to a debt whose time has come is doubted.

The opponents secondly refer to a narration from Talhe ibn Zeid from Prophet Mohammad who said: "Debt cannot be sold to debt" (Tousi 1987: 162). This narration can only be correct if we consider the mentioned debt as the deferred debt because there is no limit in the sale of the present debt. (Fazel, 1984: v24/346; Ghazali and others, 1994: 205)

Still some of the lexicographers consider the use of the word "debt" for present debt to be permissible. Based on that we could say that here the two words of debt refer to both the previous deferred debt that its due time has reached (and has turned to a present debt) and the deferred debt that hasn't reached its deadline yet. Therefore, whenever we consider the nature of the debt to be timed or deferred, it is both the debt that its deadline has not yet come to pass (deferred or long-term debt) and the debt that has reached its deadline (present debt), both of which are subject to the prohibition of the quote of Prophet (peace be upon him) who said: "Debt cannot sold to debt" (Tabatabaei, 1998: v2/50)

✓ Deferred Debt

Deferred debt is a debt that the creditor is not entitled to claim and is not obligatory for the debtor to pay it unless the due date expires and the due time has elapsed (Mousavi Sabzevari, 1995: v21/158). Even if the creditor provisions on the debtor that in the case of delay in paying the installments, he should pay the other installments earlier, it is not obligatory for the debtor to do so. However, according to most of the jurists, complying with the deadline conditions in debt is not a proviso and the debtor can pay the debt earlier on his own will (Moghnieh, 2000: v3/11).

• The Nature of Deadline in Debt

It can be deduced from the jurisprudence sources that the deferral of debt can be due to a condition and sometimes a provision or as a consideration. In most cases, the deferred debt is often due to a condition which here it means an obligation or agreement. This obligation and agreement may be settled with the principal contract, or the debt payment can be deferred within a subordinate contract after the original contract and fixing the debt as the responsibility of the debtor. There is disagreement among jurists about delaying the present debt (Makki Al-Ameli, 1990:125).

However, the debt referrals are not always due to a condition. Sometimes the deadline is descriptive and can cause debt to be deferred and provisioned. Therefore, it can be said that although the postponement often causes the deferral of debt in an obligatory or conditional way, it may also be regarded as a part of change and exchange in a provision. Katouzian refers to both kinds of these deadlines in his book. He explains that in most cases, the deadline set by the parties to fulfill the obligation are subsidiary, which means that failure to do so does not eliminate the origin of the debt and only gives the creditor the right to claim damages arising from the delay. (Katouzian, 1995: 122,123,136)

According to what has been said, whenever we can analyze and break down the deferred debt into two legal entities of debt and deferral right, it turns out that the deadline as a provision and sub-contract has created a right for either or both of them. The element of due date in this case means giving the customer the right to delay the payment, but sometimes the due date may create a right for both parties (the creditor and the debtor). In this case, the due date means giving the customer the right to delay the payment and the creditor the right to retain the promised property. Sometimes, the due date is purely for the benefit of the creditor, to give him the right to retain the property. Sometimes the due date may be considered as a part or change of exchange, a description or provision. In this case it is not possible to analyze the change or exchange to two legal entities, and the deadline is a part of the price and the priced (*thaman* and *muthaman*), rather than in sense of creating a right.

• The Legal Effects of Deadline in Debt

✓ Deadline as Prevention for the Claim before the Due Date

The differed debt is usually to the benefit of the debtor so that the creditor cannot claim the debt before the payment time arrives. In this case, the obligation to wait is imposed on the creditor, but the debtor can renounce the privilege he has and pay the debt before its due date (al-Najafi, 1990: v23/115). However, the popular view in the Islamic jurisprudence is that if the buyer pays for the property earlier, it is not obligatory on the seller to receive it. It is argued that the creditor also has a right in the deadline (Karaki 1993: v5/41) and some have added that the creditor does not have to accept the debtor's offer (Helli 1993: v13/47).

It is not an established view in law to declare the deferral to the benefit of the creditor. But, sometimes the deferral may be to the creditor's interest. For example, a loan agreement may stipulate that the debtor cannot pay the debt before the due date and disrupt the creditor's investment. In the loan contracts which have a benefit for the creditor, it appears that delaying is for the benefit of both parties and that neither party has the right to violate it (Katouzian, 2017: v1/275). So, the condition of the deadline in the differed debt may be for the benefit of the debtor or the creditor, or both. In the first two assumptions, the benefited party may refuse his/her special right. However, in the latter case, the repeal of the deadline condition requires the consent of both parties. In other words, when the obligation's due time is to the benefit of both parties, the debtor has no right to execute the obligation before it comes. However, if it is only to the interest of the committed person, he can refuse this privilege and pay off the debt sooner.

In examining the prohibition of claiming the debt before the due date, there are several questions, including:

Does the deadline delay the owner's right to claim his property or even terminates it during the delay time? Does the deadline remove the

obligation of the debtor to pay the creditor's claim or is the deadline's effect something else?

Muhaqiq Thani hold the possibility for the customer to abandon the deadline: "Since the opportunity to pay with delay has been settled in a binding or irrevocable contract, the deadline cannot be cancelled" (Karaki, 1993: v41/56). Two views can be deduced from this:

The first theory is that the purpose of Muhaqiq Thani is to say that the deadline is a verdict and that a verdict cannot be overturned. The Second Theory is that perhaps, in the opinion of Muhaqiq Thani, the deadline creates a right, but since the creation of the right took place during the binding contract it cannot be terminated (Rouhani, 1997: v6/466-467).

➤ Voluntary Payment of the Debt before the Due Time

The effects of the deadline are limited to execution of the obligation, not its creation. The due date is a custom that delays the implementation of the commitment. And the difference between the deferred and the suspended debt is that the suspended commitment cannot take place before the condition occurs, but the deferred debt is an existing debt. Therefore, if the debtor repays its deferred debt early, s/he is not entitled to refund it because he has actually abandoned his concession and paid off the existing debt.

The question that remains is, if the debtor repays the debt (earlier) on his own will but mistakenly, considering it as a present debt, is it possible to refund it? Or is it that since the existing debt is repaid, it cannot be reclaimed? (In the French law, the general and prevailing opinion is the impossibility of extradition, and Article 1186 of the French Civil Code expressly prohibits it. Egyptian civil law (1949) provides that the debtor can claim to get the interests of what he has paid before the due date from the creditor. (Al-Sanhouri, 1958: v3/103-104)

On this case, according to the Iranian civil law, it seems that the creditor does not have any right to keep what has been paid. The deadline does not only delay the creditor's right to claim, the deadline abandons the right to dominate the debt and benefit from it before the due time. So we cannot say that his receiving the payment is permissible; hence it would be retrievable. Thus, if the creditor receives it earlier accidentally or by a mistake, he cannot seize the subject of the obligation, contrary to the contract. What gives this act legitimacy is the debtor's consent to withdraw from the privilege and, in our view, such will is wrong based and ineffective. As a result, the debtor should be empowered to reclaim what he has paid early and inappropriately. (Katouzian 1995: 130-131)

➤ Change of Present to a Deferred Debt on creditor's demand

One issue in the deferred debt is the creditor's demand for early payment against decreasing the debt amount or extending the deadline. On this, there are some narrations from Imam Baqir and Imam Sadiq:

[They were] asked about a person who is under a debt to be paid until a specified time (*ajal musammā*) and the creditor comes to him and says: give me a portion of what you owe me in cash now and in return, I will give up the rest or says: give back some of my lend in cash and instead I will increase the delay time. The answer was that "there is no problem so long as the creditor doesn't increase the amount of the capital (Ra's al-mal); God says: "Fa lakum Ru'usu Amvalakum La Tazlimuna Va La Tuzlamun, [in English:] you will have your capital without being wronged or having done wrong to others." (Quran, 2:279) (Boroujerdi 2008: v23/782-783).

Another narrator says, "I asked from Imam Sadiq about a person who has a debt to another, and he is told before the deadline: Give half of the debt sooner than the deadline and in its place, I would not take the other half from you; is this correct and halal? The Imam answered: yes" (Boroujerdi, 2008: v4/23).

Based on these narrations, on the condition of the claim for early payment of a portion of debt, discount is allowed both as the decrease in the amount or the extension of the deadline.

✓ **The Necessity of the Payment of Debt after the Deadline**

The debt can become present in two ways: One is contractual and the other is coercive. The debt may become present by contract. When the deadline is due, it turns to a present debt. For example, in a sales contract there is a due date for giving the sold item or payment of the price. At the coming of the due date, the committed should fulfill the covenant. Debts can also become present coercively, such as the debts of the deceased person.

In contractual case, when the time expires, the debt of obligated becomes present, so the creditor can claim all of his legal rights in relation to the committed. Therefore, if the debt has a due time and the debt has been pledged, the creditor can take his demand from the mortgage when the time expires, or the vendor can claim the guaranteed after the due date from the sponsor. If the committed does not fulfill the obligation, the obligator has the right to abolish (Baaboyeh Qomi 1995:383).

The necessity of paying the debt after the deadline has been emphasized by Islamic jurists. They hold that the creditor can claim the present and deferred debt upon the deadline and it is obligatory on the debtor to fulfill his commitment and pay the debt, even if he has to pay with all that he owns, except for some exceptions. The author of *Manahil* justifies this with several reasons, some of which are as follows:

- 1- If it is not obligatory, it is necessary to leave the debt, which is to the disadvantage of the creditor and the consecutive is invalid and the precedent too. The invalidity is due to the general principle of no loss (*la zarar wa la zihar*).
- 2- If it is not obligatory, the owner of the debt will not have dominance on his property that he has given as a debt. The consecutive is invalid, so the precedent will be invalid too and the invalidity of the consecutive is due to the principle of sovereignty (reading people have domination over their properties).
- 3- The factors attributable to the necessity of debt repayment and the stipulation of some of the seniors confirm that the general reasoning justify the necessity of debt repayment (Tabatabaei, 1827).

✓ **The Delay in Fulfilling the Commitment or Paying the Debt and Claim for Compensation**

After the deadline reaches, the payment of the debt or the delivery of the sold item is feasible due to the effects of the deadline, and the debt includes both monetary and non-monetary obligations (for example, delay in the delivery of the sold item that is the duty of the seller or delay in the paying the price that is the buyer's duty). The contracting parties may seek compensation for delays in fulfilling the obligation or payment of the debt through the provision of the contract; though, this brings suspicions on usury which is subject to the argumentative discussions and criticism. Therefore, it can be stated that another effect of the deadline is that, if the parties fail to fulfill the obligation within the prescribed deadline, they can claim damages after the deadline, based on the terms of the contract, as the executional guarantee. The condition in the contract is originally correct, as the jurisprudential rule of "*al-mu'minuna 'inda shurootihim*" (the believers fulfill their contracts and obligations (based on a hadith) confirms the matter.

Given the difference between obligations in terms of the effects of delay in paying the debt and the possibility of usury in monetary obligations, the legitimacy of claiming damages in these two types of obligations is examined separately:

Considering the possibility of usury in monetary obligations, the legitimacy of claiming damages in monetary and non-monetary commitments are examined separately:

➤ **Expiration of due date and the Claim for Compensation in Non-Financial Liabilities**

Article 220 of the Civil Code of Iran emphasizes both the enforcement of the contract and the commitments the contractors are obliged to by the terms of the contract. Katouzian states: According to Article 515 of the Code of Civil Procedure (of Iran), damages due to non-compliance

and damages due to delay in the fulfillment of obligations which both arise from the breach of contract can be claimed (Katouzian, 2006: v4/235). Imami also states that: If compensation is specified in the contract, it stipulates that it will be obliged to compensate in case of delay or failure to perform the contract (Imami, 1998: v1/246).

➤ **Claim for Indemnification in Monetary Obligations**

Claiming Compensation on monetary obligations, arising from non-payment of debt at the expiration of the specified period is of dispute. Whereas after the expiration of the specified period, assuming that the client has not paid the price and that s/he has violated the rules, according to Article 230 of the said Civil Code of Iran, he is entitled to payment of the original price and under Article 522 of the Civil Procedure Code of Iran, he is entitled to paying indemnification. The Article refers to the compensation of delay in the payment of debt in cash being calculated by the central bank index since the claim. The claim of the indemnification mentioned above may lead to usury which is forbidden according to jurisprudential principles. But some believe that the indemnification is permissible provided that it is expressed as a terms of the contract.

• **Extra time after the payment deadline**

Extra time can be given for any debt, whether the debt is due to a contract or a compulsory warranty, or it is a matter of obligation to pay money or a task that the debtor has undertaken, as it is stated in Article 652 of the Civil Code of Iran:

"Due to the circumstances and conditions, the judge may give more time to the debtor or may suggest instalment payment." Conditions and circumstances are a more general concept than the "debtor status" and include the devaluation of money, economic crises, the good will of the debtor, and the intentions of both parties of the contract which add to the discretion of the judge (Katouzian, 1995: v4/61, 143). The giving of time to the debtor by the judge is either due to the inability of the debtor to accomplish it (Article 277 of the Civil Code), or due to the observance of the common intention of both parties and the modification of the contract.

The basis for giving a deadline in Article 277 is to observe the debtor's conditions and to reduce the financial pressure on him. For this reason, the law has described the deadline as "fair", but in this case, the judge's authority must be used with caution and must be limited (Katouzian, 1995: v4/61-69).

Following the above discussions, there remains one question: Does giving the extra time in payment turns present debt to a deferred?

The author of the *Manahil* investigates the issue in two ways:

A. If the present debt is delayed, it does not become a deferred debt and it can be claimed at any time. This is justified for several reasons:

- 1- The consensus of the jurists on this issue.
- 2- The fidelity to give more time is not obligatory but is recommended, as the author of Masalek and Riyadh hold.
- 3- The statement in the *Tazkerah* says that the delay to pay the debt is a kind of excess in the contract and does not add to the contract, just like the right of pre-emption.
- 4- What is referred to in the *Tazkerah* is that the delay of the degradation (reduction) is after the establishment of the contract and does not add to the contract.
- 5- The agreement for deferring the present debt is not a contract and therefore, it is not enforceable.

B. If the present debt is agreed to be a deferred debt, the debt will not be deferred. However, it is better for the creditor to keep his promise. In the book of Sharaye', the narration "if he postpones the present debt, the debt is not deferred" is interpreted as this view. (Haeri Yazdi, 2005:70)

• **The legal abolishment of time in Debt**

In payment commitments, the time for paying the debt may be abolished in the two following cases: the death of the debtor and his bankruptcy. Here, these two issues are studied according to Shi'ite jurisprudence.

✓ **Death of the Debtor or the Creditor**

If the debtor dies, will his deferred debts become present or not? The jurists have different views on this issue. Some hold that it will not become present, so it is not permissible for the heir to claim the debts until the end of the term. This is the most famous view.

The second view is that his debts will become present, so it is permissible for the heirs of the creditor to claim those debts after debtor's death and it is not necessary for them to wait until the deadline expires. Also the heir of the debtor do not have the right to refuse to pay it. (Haeri Yazdi, 2005:70) The payment will be deducted from the principal of debtor's property. According to the Iranian law (Article 231 of the Hesbia Code) "The deferred debts of the dead debtor, turns into present after the death".

The change of deferred debt to present is based on several reasons mentioned by jurists:

- 1- The change of the deceased's debt to present is to divide the bequest between the heirs as soon as possible; avoiding indulgence in its seizure by the heirs or possessors of the property. Here, of course, the change of the deferred debt into present debt, without reducing it, is a disadvantage for the heirs and does not seem fair. This issue is more evident especially when the time of paying the debt is too long (Katouzian, 1995: 140-141).
- 2- As stipulated in the Article 705 of the Iranian Civil Code, the deceased warranty becomes a present after the death. Accordingly, by death of the warrantor, the deferred debt of the person warranted for, becomes present and there will be no deadline for the debt. Imam Khomeini states in *Tahrir al-wasilah*: If by the permission of the debtor, a person warranties to pay the deferred debt of the debtor and dies before the expiration of the time, the debt becomes present and the heirs cannot demand the money paid before the time reaches (Mousavi Khomeini, 1995: v3/47).
- 3- Other jurists have stated similarly that, if the bail is deferred, by the death of the warrantor, the debt becomes present and the heirs do not have the right to refer to the subject of the warranty before the time is reached. Because the principle is that the time remains (Helli, 2000: v2/559).
- 4- Other jurists believe that by the death of the warrantor before the expiration of the time, if the debt is paid from the bequest, the heirs have the right to refer to the subject of the debt only after the time reaches. This is because the debt has not been become present in respect to the subject of the warranty (Tousi, 1987: v2/324).
- 5- Also when the mortgagor dies and the debt is deferred, it becomes present because the time will be cancelled by the death of the debtor. Then the creditor can either claim the debt from the heir of the mortgagor or wait until the end of the time (Tousi, 1987: v2/199).
- 6- Accordingly, some jurists have argued that the deferred debt becomes a present debt by the death of the mortgagor because the debt depends on the debtor (Al- Faqani, 1421(824H): 333). Most of the jurists hold that when the debt becomes present, the mortgaged can sell the item of the mortgage provided that he has a sales attorney (Feyz Kashani, 1980: v13/140).
- 7- In the case of remittances, jurists also believe that the deferred debt cannot become present by the death of the assignor, because the time is to the debtor's benefit. However, when the assignee dies, the debt becomes present because the deferred debt becomes present by the debtor's death (Tousi, 1987: v2/317; Helli, 1993:576).
- 8- According to the trusted narration of Sukuni from Imam Sadiq from his father Imam Baqir: If the man has a differed debt and he

dies, the debt will become present (Horr Ameli 1995: v2/section12-the discussion on debt/sayings 3,13,97). But it does not become present due to death of the creditor. This is because the emergence of the debt due to death is fundamentally contrary to the rule, and in such cases, it should be limited to what is mentioned in the narration (the debtor's death). (Irvani, 2007: v2/241)

It should be mentioned that the death of the creditor, does not change the deferred to present debt. This is discussed by jurists as follows:

- 1- If the creditor dies, the time remains and his heirs should not claim the debt before the time reaches (Rouhani 1997: v2/329).
- 2- If the debtor dies, his debts which were legal become real and get assigned to his/her property, whether the time is reached or not. However, if the creditor dies, the time will remain as it was and the heir should have to wait until it overs; because there is no reason for the deceased's debtor's debt to become present (Imami 1998: 99-100). This is also because of the principle of freedom from duty to pay the differed debt immediately.

✓ **Debtor's Bankruptcy**

According to the Article 421 of the Business Law of Iran, the bankruptcy of the merchant makes his deferred debts present. The judgment requires that any deferred debt, whether the time is to the debtor's benefit or the creditor's, to become present as a result of the bankruptcy judgment. However, the tone of the sentence that speaks of a discount to bankrupt's interest suggests that the article is about a case in which the time is to the benefit of the bankrupt.

CONCLUSION

Debt is the person's obligation to pay, perform, or leave an act at a certain time in favor of another for some reason. There subject of debt is discussed among other legal matters in the Islamic Shi'ite jurisprudence. One issue on the subject of debt is the matter of time. The study shows that the element of time and deadline are considered as inherited in the concept of debt, even if the debt is present (i.e. the time of its payment has reached). Therefore, the issue of time and deadline plays an important role in the debt discussions. The legal effects of the deadline can vary due to the nature of debt and the way the element of time is integrated with it. The time and deadline are sometimes regarded as a part of the consideration (price and priced), but usually, they are considered as terms of the debt contract. In this case, it creates a right to delay the accomplishment of the obligation or payment of the debt, which is mostly for the benefit of the debtor. When the due time reaches, the debtor must pay or perform what he has committed. In non-monetary commitments, the delay in performance might lead to paying compensations. However, in monetary commitments, this is a subject of dispute, as it can be regarded as usury which is forbidden according to Islamic law and Shari'ah. But the Iranian Code of Law, (which is based on the Shi'ite jurisprudence rules) has justified some indemnification, as to bind people to their monetary commitments. In some cases, according to the debtor's status, economic situations, etc., extra time may be given to the debtor. Whether giving extra time, turns a present debt to a deferred one or not, is discussible, since the time is not a part of the contract, but rather it is a condition in the favor of the debtor. Thus it is not binding and it does not abolish the right of the creditor to claim on. That the differed debt may turn to a present debt, by death or bankruptcy of the debtor or by the early payment, are among issues that can have different legal consequences. Considering the prevalence of lending and debt contracts today and the importance of time in them, the suggestion is to pay more attention to the impact of time and deadline. Next studies can focus on the points of conflict and try to analyze through to reach an efficient consensus on the issue.

Declarations

On behalf of all authors, the corresponding author states that there is no conflict of interest.

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