



Sharia Solutions to Minimising Personal Bankruptcy Cases in Malaysia: A Juristic Analysis

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Abstract

This study aims to analyze sharia principles in the practice of loans and debts to minimize bankruptcy cases among the public. Some elements in sharia may have an impact on changing the behavior and attitude of debtors. First, sharia prohibits individuals from taking loans for luxury goods although this is permissible in sharia. Second, people are urged to be careful in spending their money and be careful not to give in to lust. Lastly, there is genuine concern within sharia for the repayment of loans and debts. In addition, sharia also advises creditors to extend the repayment period without charging interest if the debtor is in trouble. For Islamic financial institutions, Sharia regulates profit and loss sharing contracts. Furthermore, various types of charity, for example zakat, alms, and waqf, can be used in Muslim societies to protect debtors from bankruptcy. This study adds new knowledge in Islamic financial literacy, which will contribute to improving people's financial well-being.

Keywords: *Sharia principles, attitudes of debtors, behaviours of debtors, Islamic financial institutions*

Introduction

Bankruptcy is a legal status engaging an individual or business entity that cannot repay the debts it owes to the creditors (Ann-Yew, 2017; Faizal, Diana Rose; Mohd Ashhari, 2015).

According to the Malaysian Department of Insolvency (2021), Malaysia has an alarming number of bankruptcy cases. As shown in table 1, from January 2017 to June 2021, the total number of insolvency cases in Malaysia was 58,795. Most importantly, individuals aged 35 to 44 years have the highest number of insolvency cases, with 21,355 cases representing 36.32% of the total bankruptcy cases (Malaysia Department of Insolvency, 2021).

Malaysia's government considers bankruptcy a serious issue, especially among the youth. Bankruptcy causes serious trouble to the personal life of the bankrupt and at the same time is a loss to the country. Bankruptcy involves closing down the business, deactivating the bank account, putting restrictions on the withdrawal of money and opening a new account. Moreover, a bankrupt entity is not allowed to obtain a new loan. Apart from that, bankruptcy provides a negative image of the person in society. Therefore, the Ministry of Finance in Malaysia is taking initiatives to resolve this problem with the Malaysian Department of Insolvency and Credit Counselling and Debt-Management Agency. In this regard, creating financial awareness among Malaysian youth is a significant initiative (Carvalho, Martin; Hamdan, 2015; Hilmy, Mohd, & Fahami, 2013; Malaysia Department of Insolvency, 2021).

To this end, several studies have discussed the conventional financial awareness among the youth (Brown, Grigsby, van der Klaauw, Wen, & Zafar, 2016; Idris, Krishnan, & Azmi, 2013; McCormick, 2009; Nga, Yong, & Sellappan, 2010). However, there is a dearth of Islamic financial awareness. Therefore, this study attempts to investigate Islamic awareness principles by examining the primary and secondary sources of Sharia. This is because it would be more appropriate to implement Islamic financial literacy awareness among the Malay youths who are Muslims. This is due to the fact that religion plays an important role to change the behaviour and attitude of people (Amin, Abdul-Rahman, & Abdul Razak, 2014; Baele, Farooq, & Ongena, 2014; Bekele, Chowdhury, & Rao, 2016; Chunping, Li, & Lingwei, 2016; Shyan Fam, Waller, & Zafer Erdogan, 2004). Amin et al. (2014) found that religion influences a customer's choice of Islamic mortgage. Moreover, Baele et al. (2014) concluded that religion significantly influences the borrower to repay the loan. Besides, in the context of Indonesia, Bursztyn et al. (2019) found that implementing sharia-based awareness remarkably improved the loan defaults and late payments among the borrowers. Therefore, it is pertinent to examine how sharia may influence the financial behaviour of Muslim Malays.

This article illustrates the current status of bankruptcy in Malaysia and analyses the role of sharia in minimising bankruptcy cases among Muslims. The paper adopts a qualitative approach by using the inductive method to review the primary sources of the sharia, i.e. Quran, Sunnah, juristic opinion of the classical scholars related to bankruptcy and debt-management. It then performs a textual analysis of the sharia principles in the present-day financial context on how sharia can contribute to reducing bankruptcy in Malaysia.

It is expected that the paper's findings would help financial institutions, government, and regulatory bodies use religious motivation in their credit awareness programmes and implement pertinent policies to minimise bankruptcy. Finally, it will contribute to the socio-economic development of Malaysia by enhancing the financial well-being of the people. The outcome of this study is directly related to public affairs as it makes some policy recommendations for creating awareness among the public for improving their personal finances. Moreover, the study would educate the Muslim population in Malaysia and non-Muslims on managing their loans and debts. This might be very effective during and after the covid-19 pandemic when almost half of the country's households struggle to manage their finances due to loss of jobs or salary cuts (Morgan & Trinh, 2021). The study findings are highly relevant when the country's household debt has reached the highest level with the household debt to gross domestic product (GDP) ratio of 93.3 per cent at the end of 2020 (Bank Negara Malaysia, 2020).

The paper starts with the literature review that includes the definition of bankruptcy, statistics of bankruptcy in Malaysia and the concept of loan, debt and bankruptcy in the sharia. After that, the methodology, findings and discussion are provided. It then discusses the procedures to implement the sharia principles to minimize bankruptcy and its challenges.

Literature Review

Bankruptcy in the Conventional Law

'Bankruptcy' is derived from '*banca rotta*', which denotes broken bench. In the ancient Italian custom, creditors would gather to break the debtor's workbench to end his debt. If the debtor did not pay his debt, he was considered as refusing to pay the debt. Therefore, the creditors were permitted by law to enter the workplace or house of the debtor and break his workbench. According to Roman law, the debtor's assets should be liquidated to pay the creditors. However, this law was later amended by allowing the debtor to voluntarily give up his assets to the creditors through an application to the court (Beraho & Elisu, 2011).

In English law, bankruptcy used to be considered a criminal offence in the past. The bankruptcy law was quite strict in England, where the debtor had minimal means after the declaration of bankruptcy. Therefore, if someone was declared bankrupt due to job loss or sickness, he used to be in a problematic situation. However, the bankruptcy law is amended in the modern-day, and it has been flexible for the debtors. At present, a person is declared bankrupt by a court order through filing a petition by the creditor or the borrower. A debtor can make his own petition based on the reason that he is unable to pay his debt. After a person is declared bankrupt, his matter is managed by a trustee who will sell the assets of the bankrupt person and will pay the creditors. An individual declared bankrupt is not allowed to borrow from

anyone except that he informs the lender that he is bankrupt. Furthermore, he is not eligible to be a company director (Beraho & Elisu, 2011; Di Martino, 2008; Reuters, 2021).

Statistics of Bankruptcy Cases in Malaysia

According to the Malaysian Department of Insolvency (2021), Malaysia has an alarming number of bankruptcy cases. Until June 2021, the total number of insolvency cases in Malaysia was 292,447. From 2017 to June 2021, the court administered 58,795 insolvency cases. In the first half of 2021, there were 3,684 cases registered for bankruptcy. It means that, on average, 614 cases per month and 20 cases per day are registered for insolvency.

Table 1: Bankruptcy cases based on age group from 2017 to June 2021

Age Group	2017	2018	2019	2020	2021	Total	Percentage
Below 25 years	80	139	54	21	11	305	0.52
25-34 years	4,785	4,139	2,603	1,741	627	13,895	23.63
35-44 years	6,241	5,958	4,574	3,150	1,432	21,355	36.32
45-54 years	4,628	4,022	3,087	2,211	984	14,932	25.40
55 years and above	2,354	2,106	1,707	1,204	623	7,994	13.60
No information	139	118	26	24	7	314	0.53
Total	18,227	16,482	12,051	8,351	3,684	58,795	100

Source: Malaysian Department of Insolvency (2021)

Table 1 shows the bankruptcy cases based on the age group. Individuals aged between 35 to 44 years have the highest number of insolvency cases, with 21,355 cases representing 36.32% of all the age groups. This is followed by those aged between 45 to 54 years, with 14,932 corresponding to 25.40%. Individuals aged between 25 to 34 years rank third, with 13,895 cases representing 23.63% (Malaysian Department of Insolvency, 2021). It means that more than 59% of bankruptcy cases fall between the age group of 25 to 44 years. Moreover, almost one-fourth of the bankruptcy cases involve individuals aged 25 to 34.

Table 2: Bankruptcy cases based on race in Malaysia

Race	2017	2018	2019	2020	2021	Total	Percentage	Percentage of the race to the total population
Malay	10,558	9,563	7,081	4,883	2,197	34,282	58.31	69.8
Chinese	4,319	3,961	2,829	2,055	890	14,054	23.90	22.4
Indian	2,068	1,701	1,039	581	304	5,693	9.68	6.8
Others	1,282	1,257	1,102	807	286	4,734	8.05	1.0

Non-Citizens	0	0	0	25	7	32	0.05	NA
Total	18,227	16,482	12,051	8,351	3,684	58,795	100	100

Source: Malaysian Department of Insolvency (2021); Department of Statistics Malaysia (2021)

Table 2 shows the proportion of race in bankruptcy cases from 2017 to 2021. Malays recorded the highest number, with 34,282 cases (58.31%). Chinese and Indian rank second and third with 14,054 (23.90%) and 5,693 (9.68%) cases, respectively (Malaysian Department of Insolvency, 2021). It appears that the percentage of bankruptcy cases somehow follows the percentage of the races in the total population of Malaysia. Malays, with the majority of the population, record the highest number of bankruptcy cases in the country. However, compared to their percentage in the total population in Malaysia (70 per cent approximately), their bankruptcy rate is lower (Department of Statistics Malaysia, 2021).

Table 3: Bankruptcy Cases based on Gender

Gender	2017	2018	2019	2020	2021	Total	Percentage
Male	12,552	11,760	8,923	6,116	2,749	42,000	71.43
Female	5,775	4,722	3,128	2,227	934	16,786	28.55
Unknown	0	0	0	8	1	9	0.02
Total	18,227	16,482	12,051	8,351	3,684	58,795	100.00

Source: Malaysian Department of Insolvency (2021)

Table 3 shows the bankruptcy cases for the last five years based on the genders. It shows that males have almost three times higher bankruptcy ratio than females on average. While males have 42,000 cases from January 2017 to June 2021, females have 16,786 cases. The number of bankruptcy cases has dropped gradually for the last five years, both for males and females.

The Concept of Debt, Loan and Bankruptcy in the Sharia

Before discussing the sharia solutions for bankruptcy, it is essential to understand the concept of bankruptcy in sharia. Bankruptcy is the consequence of a debt or loan transaction. Therefore, it is essential to define the concept of debt and loans in sharia before defining bankruptcy.

Debt and Loan (Qard) in the Sharia

The Arabic word that denotes the concept of debt is *dayn*. The word *dayn* means something which is not present whether it has a maturity date or not (Al-Fayruzābādī, 2005). The word *dayn* also denotes subjugating someone for obedience. It also means a loan when a person borrows money from another or when a person purchases something with deferred payment (Ibn Manẓūr, 1960).

Technically, from a broader sharia perspective, *dayn* is a comprehensive term that includes any liability on a person, whether it is monetary or otherwise. Therefore, if a person misses a compulsory religious obligation, i.e. prayer or pilgrimage, then it is considered debt on him. Moreover, if someone destroys someone else's property, then providing compensation for that property is a debt on the person (Wazārah al-Awqāf wa al-Shu'ūn al-Islāmiyya, 1983). However, the majority of scholars define *dayn* as a financial liability. According to Ibn Abidin (2003), *dayn* is any type of liability established upon a person through a contract or through consuming an asset, and what is found in his liability by his borrowings. So, *dayn* is more general than *qard* (loan). Ibn al-Humām (2003) elaborates that *dayn* includes any type of liability which is established upon an individual which might be compensation for destroying someone's property, or a loan that he has taken from someone, or a payment from a deferred sale contract, or payment against benefiting a usufruct, i.e. dowry for marriage or rental for a leasing contract. On the other hand, Ibn 'Arabī (2003) defined it in a narrower perspective. He stated that *dayn* is when in a transaction, any of the subject matter is delivered on the spot while the other is deferred.

In the context of this study, it is more appropriate to use the word *dayn* to mean any financial liability as we concentrate on the bankruptcy cases that occurred as consequences of non-fulfilment of financial liabilities such as the debt created as a consequence of a sale contract of *murābahah*, *bay' bithaman ājil*, or *ijārah* and unsettled profit acquired through *mushārahah*, *muḍārabah* or *wakālah*.

Another term used in the Qur'an to describe an indebted person is *al-gharīm*. It means a person who has failed to repay his debt. According to Hanafi jurists, *al-gharīm* is the one who has a debt, and his existing wealth does not reach the amount of *niṣāb*¹ after deducting for the debt. This person is eligible to receive *zakāh* as he is considered poor (AL-Kasani, 1986).

In the Quran, there is another term - *Qard* or loan. The Quran says: "*Whoever among you will lend Allah a good loan, He may return it after multiplying it manifold; Allah alone can increase and decrease (wealth), and to Him you shall return*" (2:45). A person in need can incur *qard al-*

¹ *Niṣāb* is the amount of wealth which is used to measure a Muslim person's eligibility to pay zakat. The value of 87 grams of gold or 612 grams of silver is the *niṣāb* amount.

ḥasan or a good loan. The ‘good loan’ in this *ayah* is a loan without interest. The purpose of this loan is to provide humanitarian assistance to those in need and strengthen them financially to help meet their essential requirements. *Qarḍ* is usually given to a person (a household), but it can also be used for humanitarian or individual welfare purposes (Biplob, Hossain; Abdullah, 2019). The word *dayn* is a general term that includes all types of financial liabilities. Therefore, *qarḍ* is one kind of *dayn*, but not all types of *dayn* are *qarḍ*. A *dayn* can take place when someone purchases an asset with deferred payment. On the other hand, a *qarḍ* or loan occurs when an individual borrows money from someone.

Bankruptcy in the Sharia

The Arabic word for bankruptcy is *iflās*, and the bankrupt person is called *mufliṣ*. According to Arabic linguistic scholar Al-Fayumi (1990), *iflās* means for a person when he becomes in a state of no money. From the Fiqh scholars’ perspective, bankruptcy is when the property of the debtor is not sufficient to cover his debt. If a person faces this situation, then he is declared bankrupt (International Islamic Fiqh Academy, 2012). According to Ibn Qudāmah (1997), a person with some wealth can be termed bankrupt if his debt is more than his wealth. This is because his wealth should be spent to pay the debt. Therefore, his wealth is similar to non-existent. Scholars use the term “*taflīs*” when the judge declares the debtor as bankrupt by preventing him from spending his property. So, *taflīs* is the consequence of *iflās* (Wazārah al-Awqaf wa al-Shu’ūn al-Islāmiyyah, 1983). Compared to the Malaysian definition of bankruptcy, sharia defines bankruptcy more stringently. This is because sharia does not consider any minimum amount of debt for declaring someone bankrupt. At the same time, Malaysian law requires that the minimum amount of debt should be MYR50,000 for declaring a person bankrupt. Therefore, it can be deduced here that sharia is more concerned with protecting the rights of the creditors.

The majority of fiqh scholars from the four schools of thought agreed that when the debt is matured, and the debtor is unable to pay the debt, the judge should declare the debtor as bankrupt if the creditors seek repayment (Wazārah al-Awqaf wa al-Shu’ūn al-Islāmiyyah, 1983). The following prophetic narration describes that the Prophet Muhammad (SAWS) sold the asset of his companion Muadh (RA) to settle his debt: “*Ibn Ka’b ibn Mālīk narrated from his father that the messenger of Allah (SAWS) seized the property of Mu’adh and sold them to repay the debt that he (Mu’adh) possessed*” (Al-Dāruqutnī, 2004)².

² Book: al-Aqdiyyah wa al-Aḥkām, Chapter: al-Shuf’ah, Hadith no. 4551

Methods

Given the objective of this research, it adopts a qualitative approach. Qualitative research is employed to get expressive information which cannot be achieved in quantitative data, i.e. beliefs, values, feelings and motivations that shapes the behaviours. It is often used for generating ideas for improvements (Berkwits & Inui, 1998; Qualitative Research Consultants Association, 2017). In the context of this study, primary sources of the sharia and several classical Islamic works of literature in the field of Islamic jurisprudence are reviewed. The sources of the sharia can be divided into two types which are (1) primary sources and (2) secondary sources. The primary sources are the Quran, Sunnah, Ijma and Qiyas (Al-Zuhaylī, 1986). This study adopted an inductive approach to review the texts of the Quran and Sunnah to find out any sharia rulings related to debt and bankruptcy. After getting the related texts, the commentaries of the Quran and Sunnah are read for a better understanding of the texts. Moreover, this study reviewed the opinions of the classical scholars of Islamic jurisprudence from the four school of thoughts, namely, Hanafi, Maliki, Shafi'i and Hanbali. Manuscripts of the scholars starting from the ninth century have been reviewed in order to derive the Sharia rulings for debt, bankruptcy, borrowing and lending practices. After the data is collected from the primary sources of the Sharia and manuscripts of the classical scholars, they are analysed thematically. Thematic analysis is a procedure in which the data gathered are read multiple times to find out the common issues, the main themes that summarise all the opinions gathered. (Fereday, 2006; Brikci and Green, 2007). In this study, the data gathered are divided into three main themes, which are (1) Sharia guidelines for the debtor, (2) Sharia guidelines for Islamic financial institutions, and (3) Sharia guidelines for the society.

Results and Discussion

The sharia prescribes several rulings for the debtor, creditor, Islamic financial institution and the society to minimise bankruptcy cases. It sets principles to motivate the debtor to pay back his debt. On the other hand, some sharia principles are directed to the creditor to be flexible with the debtor. Apart from that, sharia sets principles for the society, government and Islamic financial institutions to reduce bankruptcy issues. This section elaborates what sharia prescribes to reduce the number of bankruptcies among young adults.

Sharia Guidance for the Debtor

Sharia motivates the debtor to be sincere in paying back the loans. It suggests that in order to avoid financial distress, loans should not be taken for luxury, which is excess to needs. The Quran and Sunnah condemn the wastage of wealth, which is consuming wealth more than one's

needs. Allah says: *“O children of Adam! attend to your embellishments at every time of prayer, and eat and drink and be not extravagant; surely He does not love the extravagant”* (al-A’rāf: 31). Even though this *ayah* specifically mentions the wastage of food and drink, it provides a general rule for the consumption of wealth. Similarly, Jabir ibn Abdullah narrated that: Allah’s Messenger (peace be upon him) said: *“There should be a bedding for a man, a bedding for his wife and the third one for the guest, and the fourth one is for the Satan”* (Muslim, 2006)³. This narration denounces the action of having an excessive number of accommodations which is more than one’s need. In the commentary of the Hadith, Al-Nawāwī (1994) mentions that whatever exceeds the need is for pride, show and amusement of the worldly life. Whosoever has this characteristic is reprehensible, and every reprehensible action is related to the Devil.

Therefore, it might be appropriate to make an analogy based on the aforementioned hadith that it is not recommended in the sharia to use an excessive number of materials i.e. vehicles and houses without any real purpose. In the same way, it is not encouraged to assume loans and debts to purchase such goods, i.e. houses, vehicles for the purpose of luxury, but not to fulfil needs. This is because consuming properties for luxury is disliked in Islam and assuming debt to achieve those properties is discouraged.

Debt is not desirable in Islam as indicated in the Prophet’s continuous prayer to Allah SWT to seek refuge from debt by saying, *“O Allah, I seek refuge with you from all sins, and from being in debt.”* Someone said, *O Allah’s Messenger (SAWS)! (I see you very often you seek refuge with Allah from being in debt. He replied, “If a person is in debt, he tells lies when he speaks, and breaks his promises when he promises.”* (Al-Bukhārī, 2002)⁴. The Prophet (SAWS) used to pray to get rid of debt because it may lead to sins like telling lies, etc. In another narration, the Prophet (SAWS) used to pray: *O Allah! I seek refuse from you from worries, sadness, disability, laziness, stinginess, cowardness, burden of debt and oppression of people* (Al-Bukhārī, 2002)⁵. Laziness, cowardice and other characteristics mentioned in the hadith are not desirable. In the same way, debt is not desirable in sharia. However, people may borrow in the case of need, provided that it is not for luxury.

Aside from that, the debtor should also control his spending behaviour. A significant number of Malaysian youths become bankrupt due to over-spending (Agensi Kaunseling Dan Pengurusan Kredit, 2014; Faizal, Diana Rose; Mohd Ashhari, 2015). The sharia has provided

³ Book: *Libās wa al-zinah*, Chapter: *Karāhah mā zāda ‘alā al-ḥājah min al-firāsh wa al-libās*, Hadith no: 2084

⁴ Book: *al-Istiqrād wa adā al-duyūn wa al-ḥajr wa al-taflīs*, Chapter: *Man ista’ādha min al-dayn*, Hadith no: 2397

⁵ Book: *Jihād wa al-siyar*, Chapter: *Ghazā bi sabiyin li al-khidmah*, Hadith no: 2893

principles for Muslims on how to consume. Firstly, it has set an objective for the spending which is fulfilling the needs but not desires. Secondly, it has provided the priorities to fulfil the needs. Finally, it has prohibited wastage (Hossain, 2014).

M. Fahim Khan (2013) states that human beings desire to possess different types of wealth, i.e. cars, houses, computers, etc. However, not all of his desires are needs. Some of his desires are needs, while others are luxuries. However, a Muslim is advised to make wise decisions by purchasing on meeting needs only. A man needs to be rational to justify his needs for his well-being and keep his emotions aside. The desires which are not needed should go unsatisfied. A rational consumer should prefer the needs over his desires in order to fulfil his well-being. Sometimes a person spends excessively or beyond his need to follow his desires. Islam always forbids overspending, which is strongly discouraged by the *ayah*. In this regard, Allah says, “O children of Adam, wear your beautiful apparel at every masjid, and eat and drink but be not excessive. Indeed, Allah does not like the excess.” In this *ayah*, Allah uses the word *isrāf*, which means excessive or beyond the limit (Biplob & Abdullah, 2021).

After setting the goals of going for needs, a rational man should follow the hierarchy of needs. He should satisfy the top level of needs first, followed by the secondary needs. In this regard, *Maqāṣid al-Sharīa*'s level of needs might be referred to (M. Fahim Khan, 2013). According to the *Maqāṣid al-Sharīa*, the needs are divided into three levels: *ḍarūriyyāt*, *ḥājjiyyāt* and *taḥsīniyyāt*. *Darūriyyāt* are the needs that are indispensable for human beings, such as food, shelter, medication, etc. Human beings must satisfy this category of needs. Human life is not sustainable without the *ḍarūriyyāt*. The absence of *ḍarūriyyāt* poses threats to the existence of human life. Therefore, a Muslim consumer should satisfy these needs first (Al-Shāṭibī, 1997).

The second category of needs is termed *ḥājjiyyāt*. A man can survive without *ḥājjiyyāt*, but his life will be full of hardship, such as transportation (Al-Shāṭibī, 1997). After fulfilling the first level of needs, he should satisfy the *ḥājjiyyāt*. However, if his money is finished by meeting the *ḍarūriyyāt*, then he should wait to fulfil this need.

The third level is called *taḥsīniyyāt*. *Taḥsīniyyāt* completes the needs of a man. Anything that contributes to the well-being of the person comes under this category, such as cleanliness (Al-Shāṭibī, 1997). This should be chosen after fulfilling the first and second categories. It is not wise to spend for this category before the first and second categories (M. Fahim Khan, 2013).

After providing suggestions to avoid debt, the sharia offers spiritual tools to overcome debt. Firstly, while making any debt obligation, a person should have a sincere intention to fulfil the obligation. The sharia condemns a group of people who borrow from people with the intention to consume their money wrongfully. This type of people seek money from people by presenting artificial needs, and after getting the money, they consume it without intending to repay it. It is narrated from the Prophet (SAWS): “Whosoever takes people’s wealth with the

intention to destroy it then Allah SWT destroys that person (Al-Bukhārī, 2002)⁶. On the commentary of the above narration, Al-‘Asqalānī (1971) states that when a person assumes a loan with the intention to pay it back, Allah SWT provides for him the opportunity to pay it back. On the other hand, when the debtor does not intend to pay it back, then Allah SWT may punish him in this world by destroying him or his wealth. Furthermore, he will be punished for his action in the Hereafter. This hadith contributes to developing the good character of a debtor.

Furthermore, after having incurred debt due to fulfilling someone’s needs, he is advised to supplicate to Allah that He will provide him with the opportunity to pay back his debt. In a narration, ‘Ali ibn Abī Ṭālib (RA) said to someone who complained to him about his debt: *“Shall I not teach you a prayer which the messenger of Allah (SAWS) [taught me]? If you have a mountain of debt, Allah SWT will pay it for you.”* He said: *you say “O Allah please make for us your permissible provisions sufficient from the non-permissible income. Enrich us with your bounties from others”* (Al-Tirmidhī, 1996). The above narration further clarifies that the sharia provides spiritual support for a person to pay his debt.

Punishment for a Solvent Debtor

Along with the punishment in the Hereafter, there is worldly punishment for a solvent debtor. When a person intentionally procrastinates to fulfil the debt obligation while having the ability to do so, the person is considered unjust and worthy of punishment in this world and the Hereafter. The Prophet (SAWS) said in this regard: *“Procrastination by the solvent debtor deserves him punishment and his dignity been compromised”* (Abū Dāwūd, 1997)⁷. Hasan et al., (2018) mentioned that based on the hadith, it unanimously agreed by the sharia scholars that the solvent debtor could be put into prison for denying the payment of debt. The solvent debtor should be arrested and imprisoned until the debt is settled. Referring to the prophetic narration, Muslim jurists also remark that it is allowed in sharia to force the debtor to pay his debt using harsh words.

Muslim jurists also allow the solvent debtor to be beaten if he does not pay the debt. According to Ibn Taymiyyah (1987), whosoever is capable of paying his debt but refuses to pay, he should be compelled to pay the debt through beating and imprisonment. The scholars from the Maliki, Shafi'i and Hanbali School agreed on this. No disagreement is known on this issue. Therefore, a solvent debtor should be punished until he repays the debt. Otherwise, the judge

⁶ Book: al-Istiqrād wa adā al-duyūn wa al-ḥajr wa al-taffīs, Chapter: Man akhadha amwāl an-nās yurīdu adaha, Hadith no. 2387.

⁷ Book: al-Aqdiyah, Chapter: al-Ḥabsu fi al-dayn wa ghayruhu, Hadith no: 3628

should be able to dispose of his property to settle his debt. This is a form of removing harm from the creditor. This is permissible based on the major legal maxim of the sharia "harm shall not be inflicted nor be reciprocated" (Ibn Nujaym, 2005).

Sharia Advice for the Creditor

The sharia places great concern on the repayment of debt for the debtor, while also recommending the creditor to practice tenderness with the debtor when the debtor is in genuine difficulty. Tenderness can be practised by extending the deadline for the debt or forgiving full or partial payment of the debt.

When the debtor does not have solvency, then sharia advises the creditor to extend the due date. It is strongly recommended for the creditor to extend the deadline of payment when the debtor is in difficulty. Allah SWT says: "*And if the creditor is in a hard time (has no money) then grant him time till it is easy for him to repay (2:280).*" In a prophetic narration, if a believer practices tenderness with his fellow Muslim believer, then Allah SWT will be tender with him on the Day of Judgement. The hadith reads: "*He who removes from a believer one of his difficulties of this world, Allah will remove one of his troubles on the Day of Resurrection; and he who finds relief for a hard-pressed person, Allah will make things easy for him on the Day of Resurrection*" (Muslim, 2006)⁸. Extending the deadline for the debtor is a form of tenderness by the creditor, which is encouraged. This is another mechanism through which bankruptcy can be avoided. This is a voluntary action by the creditor through which it may happen that the debtor may have enough funds to pay the loan at a later date.

Ibn Taymiyyah (2005) recommends that if the debtor is insolvent at the time of maturity, the creditor should postpone the debt until the debtor becomes solvent to pay the debt. If the debtor is solvent at the time of maturity, then the creditor should not restructure the debt, but the most appropriate practice should be to liquidate the assets to pay off the loan. Concerning the above-mentioned *ayah* (2:280), Al-Qurṭubī (2003) relates the verse to the occasion of Banu Thaḳīf as a creditor who asked for debt settlement from Banu Muḡhīrah, who was the debtor. Banu Muḡhīrah expressed that they are in a state of difficulty as they do not have anything to pay back the debt. They requested to delay the payment of the debt to the next harvesting season. On this occasion, Allah SWT revealed the above *ayah* advising the creditor to extend the maturity date.

Furthermore, it is recommended for the creditors to forgive the debt if the debtor has no money to pay. Allah SWT says: "*But if you remit it by way of charity that is better for you, if you*

⁸ Book: al-Dhikr wa al-du'ā wa al-istighfār, Chapter: Faḍl al-ijtimā' 'alā tilāwah al-qur'ān wa' alā al-dhikr, Hadith no: 2699

did but know" (2:280). According to Ibn Kathīr (2000), Allah SWT advises the creditor to be patient with the debtor who is in difficulty and is unable to pay. This is opposite to the practice of the pre-Islamic era when the debtor was in difficulty, and then he would be given a choice between either settling the debt on the spot or paying interest on the debt amount. Afterwards, Allah recommended forsaking the debt. The *ayah* denotes that it is better if you forgive the debt in full.

Following the *ayah*, several prophetic traditions denote that it is a recommended practice to relieve the debtor when he is in difficulty. Abū Huraira reported: The Messenger of Allah SAWS, said, "A man would give loans to the people, and he would say to his servant: If the debtor is in hardship you should forgive the debt that perhaps Allah will relieve us. So when he met Allah, then Allah relieved him" (Muslim, 2006)⁹.

The above tradition is a spiritual motivation for the creditors to forgive the insolvent debtor. Instead of declaring a person as bankrupt, the creditor has the option to free him from bankruptcy either through giving time or forgiving him from the obligation. It might be difficult for financial institutions to forgive the debtors as they need to work for the best interest of the depositors. Therefore, the financial institutions may have provisions where they may forgive a person when his insolvency is due to a reason which is beyond his control, i.e. accidents, sickness, etc. In this regard, the sharia imposes that it should be proven in the court that the debtor is in a state of difficulty by providing evidence and the debtor making an oath to that effect (Ibn Taymiyyah, 1987).

Sharia Guidance for Islamic Financial Institutions

Using equity-based contracts by Islamic financial institutions is another step to minimise bankruptcy. In equity-based financing, i.e. *mushārahah*, *muḍārahah*, the financial institution and the client share the profit and loss (Mirakhor, Abbas ; Zaidi, 2007). If a client takes financing to increase the working capital of his business and faces loss in his business, the financial institution should share the loss with the client. In this case, the client should not be bankrupt. Unfortunately, most Islamic financial institutions rely heavily on debt-based financing in order to minimise their risks (Abdul-Rahman, Aisyah; Nor, 2016; Dar & Presley, 2000; Farooq, 2017). This ultimately leads to many bankruptcy cases. Even in some cases when equity-based financing is used, Islamic financial institutions put a lot of terms and conditions on the clients which change the equity feature of the contract to debt. The customer is considered defaulted and declared bankrupt when he does not want to proceed with the *mushārahah* contract in the *mushārahah*

⁹ Book: Musāqah wa al-muzārah, Chapter: Faḍl inzār al-mu'sir, Hadith no: 1562

mutanāqishah home financing, for example. However, *mushārahah* is not a binding contract in sharia. Any partner in a *mushārahah* contract is permitted to opt-out from the *mushārahah* at any time (Abdullah, 2016).

Apart from this, Islamic financial institutions need to make their utmost effort while evaluating the creditworthiness of a client. Bankruptcy may happen due to poor examination of the client's creditworthiness (Akkizidis, Ioannis;Khandelwal, 2008). Therefore, it is the responsibility of the respective financial institution and its financing officer to ascertain the appropriate solvency status for the client. The Prophet (SAWS) warned us in this regard that "Every one of you is a shepherd and is responsible for his flock" (Al-Bukhārī, 2002)¹⁰. Similarly, Islamic financial institutions should be responsible while marketing an Islamic financial product. It is not acceptable for an Islamic financial institution to persuade a client to take financing beyond his financial reach. The golden rule should be followed here: "treat others as you like to be treated." This principle can be comprehended through the prophetic narration, which reads: "None of you will have faith until he loves for his brother what he loves for himself" (Al-Bukhārī, 2002)¹¹. Therefore, the financial institution should put itself in the client's shoes while marketing a financial product to determine whether the client can afford this type of product.

Sharia Guidance for the Society

Islam has prescribed *zakāh*, a mandatory charity upon the rich to donate 2.5% of their wealth to be given to any of the eight types of recipients (Abu Bakar & Abdul Rahman, 2007; Dhar, 2013). Among those eight types of recipients, there is the debtor. The following *ayah* describes the recipients of *zakaat*:

Zakāh expenditures are only for the poor and for the needy and for those employed to collect [zakāh] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveller - an obligation [imposed] by Allah. And Allah is Knowing and Wise. (Al-Quran, 9:60).

In the above *ayah*, Allah SWT declares that *zakāt* can be given to a person who is in debt and does not have any means to fulfil his commitment. The Arabic term used in the *ayah* is *al-gharīm* which means, according to Al Qurtubi (2003), the one who is overburdened with debt and undoubtedly is not able to pay it. If a person has some wealth, but it is not enough to pay his debt, he is considered as *al-gharīm*. Besides, if a person does not have any wealth to pay back the debt, then he is a *faqīr* (poor) and *gharīm* (indebted) at the same time. However, sharia

¹⁰ Book: al-Jum'ah, Chapter: al-Jum' ah fi al-qurā wa al-mudun, hadith no. 893

¹¹ Book: al-Īmān, Chapter: min al-īmān an yuḥibba li akhīhi ma yuḥibbu li nafsihi, hadith no. 13

stipulates that the debt taken should be for lawful purposes, for instance, buying a house, paying a medical bill, etc. (Shawish, 2015).

Al-Qurṭubī (2003) also stated that *zakāt* funds should be used to pay the debt of a deceased. This is because the liability persists even after the death of the debtor. He provides the following prophetic narration to support his position:

By Him in Whose Hand is the life of Muhammad, there is no believer on the earth with whom I am not the nearest among all the people. He who among you (dies) and leaves a debt, I am there to pay it and he who among you (dies) leaving behind children I am there to look after them. And he who among you leaves behind property that is for the inheritor whoever he is (Muslim, 2006)¹².

This hadith says that the Prophet (SAWS) is the closest one to a believer. Therefore, he will pay the debt of the person who died, and he has debt. It means that it is allowed to pay the debt for a person who has passed away.

Along with *zakāt*, voluntary charities, i.e. *ṣadaqah* and *waqf* can be given to the indebted person who cannot fulfil his debt (Ibrahim, Sherif, Ibrahim, & Sherif, 2008). Bensaïd et al., (2013) recommend that it is the duty of the Muslim society to pay for the children who have inherited debt from their parents and should remove other types of financial difficulty from them. Society's role cannot be overlooked in this matter. The following hadith shows an example of that:

Imam Muslim recorded from Abu Sa'id al-Khudri (RA) that a person faced loss in his fruit business and his debt extended. The Prophet SAWS told them "donate for him" then the people started to donate for him. However, their donation still did not fulfil all the obligations. Then the Prophet SAWS told the creditors: "take whatever you have got and you do not have more than that" (Muslim, 2006)¹³.

It is clear from the above hadith that when a debtor is in genuine difficulty, then Muslims are encouraged to make voluntary donations to remove the burden of debt from the debtor. In the present-day context, donation-based crowdfunding initiatives can be taken to collect donations to help those who are overburdened with debts due to genuine reasons. Alternatively, a cash *waqf* fund may be established by the Islamic financial institutions to help people overburdened with debt due to valid reasons. However, there should be criteria to prove that the person is in genuine difficulty so that people do not abuse the facility.

¹² Book: al-Faraid, Chapter: Man taraka mālan faliwarathatihi, Hadith no: 1619

¹³ Book: Musāqah wa al-muzāra'ah, Chapter: Istiḥbāb al-wad' min al-dayn, Hadith no: 1556

Another way of removing bankruptcy is that a Muslim pays the debt of his Muslim brother. As discussed in the hadith narrated by Jabir, a person passed away, and the Prophet (SAWS) did not perform the funeral prayer for him. After that, Abū Qatādah took charge of the debt, and the Prophet (SAWS) prayed for him. This is an instant wherein bankruptcy can be removed through donations from fellow Muslims.

Conclusion

In conclusion, sharia offers several solutions to minimise bankruptcy; firstly, concerning the debtor, sharia emphasises that he should pay the debt. Delaying debt payment for a solvent debtor is termed a major sin. The solvent debtor may be punished for his procrastination in paying the debt. The severity of debt is that the Prophet Muhammad (SAWS) did not perform the funeral prayer for a person who died while in debt. A person's sins may be forgiven except the sin of debt. The person who is borrowing should do it with the intention to repay it. In order to avoid the burden of debt, sharia discourages a person from assuming loans for luxuries. Debt should be taken to fulfil needs. The sharia provides a guideline to stop unwise spending as financial distress occurs due to over-spending. According to the sharia framework, a person should spend to fulfil his needs but not his desires. Any expenditure which is not a need is considered waste and is not recommended. He should spend for the top level of needs first, which is termed *darūriyyāt*, followed by *hajjiyyāt* and *taḥsīniyyāt*.

From the lender's perspective, sharia recommends the lenders extend the deadline when the debtor is in difficulty. It is praiseworthy to forsake a portion of the debt or the entire debt. In relation to Islamic financial institutions, they are urged to provide equity-based financing to clients. In this way, the financial institution can share the risk of loss of a client's business. Also, Islamic financial institutions should be responsible for determining a client's creditworthiness while marketing a financial product.

For the Muslim society, the sharia prescribes *zakāh*, a compulsory donation given to a person who cannot pay his debt. Moreover, sharia recommended voluntary payment of debt on behalf of the debtor or any kind of voluntary charity. Donation-based crowdfunding can be a good option. Besides, cash *waqf*, a type of perpetual charity fund, can be established by financial institutions and the government to help those who are overburdened with debts, provided that some criteria are set to avoid the misuse of funds.

Further studies should be done on how sharia solutions can be implemented by the government, credit counselling agencies, financial institutions and society. In particular, in-depth research should be done on how Islamic financial institutions and *zakāh* management authorities can collaborate to help the bankrupt. Along with this, further research should be

conducted on the possibility of establishing a cash *waqf* fund by Islamic financial institutions to assist the bankrupt.

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