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TAWARRUQ AS A RETAIL MODE OF FINANCING IN ISLAMIC BANKING: AN ANALYTICAL STUDY

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ABSTRACT

The Islamic banking has a big challenge in front to introduce such 'Halal Financial Products' that could be used as a best alternative to conventional interest based financial products. However, it is also necessary to keep shariah rulings ahead in devising such financial products. In many countries of the world 'Tawarruq' has been introduced as a mode of retail financing. In this paper the juristic analysis has been presented to view its permissibility or non-permissibility according to the rulings of salient Islamic scholars. The particular emphasis of the papers is to examine the views of jurists on this method of finance and its economic consequences on the macro economics. The study concludes that though many Islamic scholars have reservations on adopting this method of financing, however if all its conditions are fulfilled it is permissible and can be used as an alternative to interest based retail financing. Further research is needed to improve its practical output.

Keywords: *Islamic Banking, Tawwaruq, Financing, Islam*

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Introduction

In the recent past many islamic modes of financing have been introduced in the money market. Among these various modes of finance tawwaruq is getting popularity in the banking market. Especially in Arab countries, UAE and Malaysia it has been used widely. Traditionally, the method of Tawwaruq is very simple. Using this method a person who needs a loan can meet his loan requirement by buying and selling a particular item. This procedure is permissible if it is followed in keeping with all its conditions and most of the scholars allow it.

Over the past few decades, Islamic financial institutions in some Islamic countries have also started using this method for providing loans. Many scholars have expressed their reservations about the Tawwaruq-based products of Islamic financial institutions, especially in the absence of a specific object and the absence of real ownership and possession. Where there is no real transaction and the transfer of ownership is limited to paper, then all this economic activity becomes a mere mirage with no real economic benefit. In this case, most jurists have declared it illegitimate.

Moreover, Islamic financial system is an asset based system. Islamic financial system does not favor any method based on mere speculation. Islam encourages positive activities based on real assets in the economy. Any mechanism which does not play any real role in the economy but exists only on paper, is not supported by Islam. In the light of this principle, the method of Tawwaruq, in which the actual purchase and sale of real assets is carried out, not only has scope, but also needs to be encouraged in comparison with interest, but on the contrary, the method of Tawwaruq In which there is no real economic activity, it must be avoided.[1] Those Islamic financial institutions which comply with all its conditions should be encouraged and those who violate its members and conditions should not be rejected outright because of their misconduct.

Islamic banking and Islamic financial institutions are in their evolutionary stages in Pakistan. Traditional and Islamic financial institutions are working against each other in Pakistan. In this case, Islamic financial institutions need such financial products through which they can maintain their existence in comparison with the conventional usurious financial system. The traditional usurious banking system provides several loan facilities to its clients. In order to compete with them, Islamic financial institutions need to issue interest-free loan products. The article under review examines the Tawwaruq procedure as a product of debt issuance and discusses its concept and practical procedures. The purpose of this article is to clarify the ideal method of Tawwaruq and to examine its systematic use in modern Islamic financial institutions, to bring out its current practice and to clarify its Shariah status.

Meanings of Simple Tawwaruq

The word Tawwaruq is not found in the conventional Arabic dictionaries. It is said that it is derieved from the word Al-Waraq, which means silver coins. The term Tawarruq is derived from the word al-warq or al-waraqa, which means minted dirham or any silver that issued to serve as a medium of exchange, in this concept; it is designated to someone who has an abundance of silver coins. [2] In the economics context, tawwaruq means a sale whose purpose is not to use the thing for personal use or to earn profit, but simply to get cash. For example, if a person needs cash, he should buy something on loan at a higher price and sell it at a lower price. It requires that the thing be sold to a third party and not to the person from whom it was purchased. Faqhi Tawarq is permissible according to the public jurists, however, Ibn Taymiyyah and Ibn Qayyim called it illegitimate based on the saying of Umar bin Abdul Aziz:

بان التورق اخية الربا

"Tawwaruq is the cause of interest".

Maulana Taqi Usmani writes that Allama Ibn Qayyim quoted the saying from Umar Ibn Abdul Aziz that "Tawwaruq is the cause of riba", it shows that this word has been used in this sense since the first century. But it is strange that those lexicographers who compiled the terms of the jurists such as Fayyumi and Mutarzi etc. did not mention this word, although Allama Fayyumi mentioned the form of Tawwaruq but called it Aina.[3] Apart from Hanbali, the popular jurists have mentioned it as a form of “Ainah". While Hanbalah have said that if he sells the goods to the person from whom he bought them, then it is ``Aina" and if he sells it to a third party, it is “Tawwaruq”. Hafiz Zulfiqar Ali explains the difference between Tawwaruq and Biya Aina by different jurists and writes that if the forced person sells the thing to the seller, it is Biya Aina and if he sells the same thing to someone else, it is Tawwaruq.[4] The general jurisprudential Tawwaruq procedure can be understood with the help of the following:

1. A person who is in need of a loan (MaTawwaruq) buys from a merchant a commodity on loan, the value of which has increased due to the payment of the loan.

2. The ownership of the item is transferred to the borrower on the loan repayment agreement.

3. After passing on ownership, the mortgagor sells the thing to another trader for cash (less than its purchase price).

4. By paying cash, the other trader acquires ownership of the item.

The jurists mention Biya Tawwaruq in the discussion of Biya Aina, Prohibited Biya and Usury. In the same way, Allama Ibn Qayyim's tendency is towards the illegitimacy of Tawwaruq, he says with reference to his teacher Allama Ibn Taymiyyah that he did not allow it many times in my presence and said that the reason why usury is forbidden is the same. The thing is also found in Tawwaruq, but the difficulty of buying and selling in Tawwaruq is different, so when something with less harm is forbidden by the Sharia, then something with greater harm should be forbidden in the first place.[5] Maulana Taqi Usmani has stated the Shariah status of Tawwaruq in the form of the following points with respect to different jurisprudential schools:

1. There are two hadiths from Imam Ahmad bin Hanbal in the justification of Tawwaruq, of which the most obvious tradition is the one of justification which has been adopted by Hanbali researchers. While Imam Ibn Taymiyyah and his student Hafiz Ibn Qayyim have adopted its illegitimacy.

2. According to the Shafi'i jurists, Tawwaruq is also permissible because when they have called clear pledge of allegiance as permissible, then Tawwaruq will be permissible in the first place according to them.

3. Malikiyyah has taken strict measures regarding the sanctity of Bai'Aina, but for the realization of Bai'Aina, they have set a condition that the goods should first be returned to the seller, if this does not happen and a third party buys the goods, now There will be no sanctity.

4. Some of the later Hanafis who call Tawwaruq Ainah have called it makrooh, but the Mukhtar view is that of Ibn Al-Hammam that Aina is a maqeeq when the goods are sold to the first seller. If Jupiter sells those goods in the market, it is permissible without complaint, but the contrary is the first. The same view has been adopted by Jumhur Hanafia.

5. According to the opinion of Mukhtar of Arba'ah religions, Tawwaruq is permissible, but giving a loan without getting any benefit is better than it.[6]

Methodology of Systematic Tawwaruq in Islamic Banking

According to the research of Zameer Iqbal and Abbas Mirakhor, organized Tawwaruq is found in the Middle East and especially in Saudi Arabia. Both authors explain the Tawwaruq method of summaries:

Tawwaruq, also known as Reverse Mudarabah, is a method of borrowing money through two separate contracts. In a specific Tawwaruq contract, a person buys an asset or certain items on loan from a seller and it is agreed that he will pay their price in future installments or in a lump sum. Once an asset is purchased, the asset is immediately sold to a third party at a

cash price that is less than the purchase price. In this way, the way to borrow money through two legally valid contracts is taken out.[7]

In Islamic banks, the Tawwaruq procedure is described with the help of the following:

1. An Islamic financial institution obtains a certificate of ownership of an item from a merchant (a) in exchange for cash.

2. The Islamic financial institution sells this document to a third party (who needs the loan) in installments at an additional cost.

3. The third party authorizes the Islamic financial institution to sell the document as its attorney. The Islamic financial institution as a third-party agent sells the certificate on the spot to another trader at a reduced price in cash.[8]

Each Tawwaruq results in a new loan and the amount of Tawwaruq's debt is always greater than the cash that the Tawwaruq receives from the third party. So in the above examples, the cash received by the customer (who wanted the loan) in the first instance and the bank in the second instance will be less than the loan that must be repaid after a fixed period. The amount of debt that is now there is greater than the amount of cash that has been received and this has a negative effect on the level of the overall economy. Debt securities resulting from Tawwaruq are exchanged several times. In general, Tawwaruq deals are based on guesswork that has no relation to the real assets and real deals that were initially associated with them. It may be that initially the customer has taken the loan to buy something and invest it in the business or the bank has given the money received from the account holders to someone who will invest it in some productive activity, but when the loan comes If the payment is made, these initials are of no importance and a long chain of issuing certificates upon certificates begins. The core of the entire process consists of real assets, but the rest of the building is paper.

In Pakistan, only Faisal Islamic Bank has started using Tawwaruq as debit card retail financing, however, in Malaysia and some Arab countries, it has been used for the past decade. Islamic Bank of Britain is a pioneer in adopting the Tawwaruq method. Islamic financial institutions from some Gulf countries are also following it, while it was initiated by the National Commercial Bank in Saudi Arabia. The jurists who are convinced of Tawwaruq through banks say that there is justification in advocacy and when the client acquires wealth for the purpose of Tawwaruq.

Hafiz Zulfiqar Ali while explaining the method of Tawwaruq in Islamic banks writes that most of the time this (Tawwaruq) deal is done in the world market in the deals of metals like zinc, bronze, nickel and copper etc. This is the case when a customer who needs cash. It tells the Islamic

bank that it is ready to buy metal of that type, which is usually in another country, on borrowed installments. This transaction is done per unit of metal. whose weight and price are fixed and it is also decided in advance that after the transaction is completed the bank will act as the customer's advocate to sell it further and deposit the amount in his account. Which he will be able to take out and fulfill his need. Obviously, the bank has to charge a higher price in case of borrowing and sell at a lower price. The difference between the two deals will be the bank's profit.

In Islamic banking, this method of Tawwaruq can be understood with an example, suppose that a bank has sold a person's one hundred thousand dollar loan in installments, then he, as his lawyer, has to pay ninety five thousand dollars to him. I will sell and deposit the money in his account, with which the person will fulfill his financial requirement. The bank will receive $100,000 in installments. In this way, the bank will gain five thousand dollars. This type of Tawwaruq differs from the normal form of Tawwaruq in several respects:

In this the seller i.e. the bank acts as an intermediary between the buyer and the seller. Whereas in the first type the seller has no intermediary role.

In this type of Tawwaruq, the person in need of cash receives the money himself from the bank to which he is now indebted, while in the first mentioned type of Tawwaruq, he receives the money himself from the end buyer. There is no involvement of the first seller.

In Islamic banks, Tawwaruq is a combination of two types of lending and cash. Which in reality is subject to each other, this is not the case in jurisprudence.

In jurisprudential Tawwaruq, the item is likely to be sold at a higher or higher purchase price, but in the customary Tawwaruq of banks, it is decided to sell it at a lower price.

Contemporary Fatwas on Tawwaruq in Banking

1. **Dar al-Ifta, Jamia Uloom Islamia Allama Muhammad Yusuf, Banuri Town**: A large group of scholars and muftis, including this financing issue, did not recognize many of the transactions done for the financing purpose of the prevailing Islamic banks as being against the Shariah. What has happened, and has given a fatwa that it is illegal to get these financial services from Islamic banks. Therefore, including this matter, it is important to avoid other financial matters of prevailing Islamic banks.[9]
2. **Dar al-Iftaw Jamia Tur Rasheed, Karachi:** .. (Tawwaruq) In the above case, since the bank becomes the buyer's advocate after selling the metal on loan, so it should be seen that while selling the metal, if this is a condition. If it is determined that the bank will sell

it later as a lawyer, then this case is not correct and even if it is not determined as a condition, it should be avoided because even in this case, resentment is definitely found, yes, if without the bank's intervention. If the buyer is unable to sell the metal, then the case of debt will be valid.

3. **Islamic Jurisprudence Academy India:** On February 2010, in the four-day seminar organized by the Islamic Jurisprudence Academy in Bharuch, Gujarat, India, after considering various forms of Tawwaruq, it was agreed that it is invalid.
4. **Majlis Majmaal al-Fiqh al-Islami:** Majlis al-Jamaja al-Fiqh al-Islami had previously given conditional permission for Tawwaruq, but due to banks not adhering to these conditions, through a resolution (supported by the signatures of fourteen scholars and scholars) now Tawwaruq has been declared illegal in banks.[10]

Economic impact of systematic Tawwaruq

Dr. Najatullah Siddiqui explains his point of view on the economic effects of Tawwaruq and writes that why did the jurists allow Tawwaruq at least from the beginning of the second century of Hijri? There are many reasons for this, for example, at that time it was easy to see the benefits of Tawwaruq at the individual level, but the effects on the economy of Tawwaruq as a whole were not clear. Because we didn't have the skills to analyze it that we have today. Similarly, in this era, debt did not play such a big role in the economy as it does today; Trading on the basis of debt instruments was very rare. There were no markets as there are today, and the economy was affected by crop failure, famine or large population changes, not by the financial sector. Debt-based investments were of secondary status, interest-based loans existed but did not play a primary role. Trade, industry and agriculture were generally invested on the basis of personal capital and partnership.[11]

In some situations, real assets: land, real estate, raw materials, products or agricultural commodities etc. are backed by the Sanad loan and in some situations it is not. Our position is that the proliferation of credit certificates that are not backed by real assets and their increasing volume in the economy is dangerous. At the same time, in our opinion, the benefits that can be expected from such certified loans are individual and minimal. Compared to them, the loss at the collective level is more significant and certain. Therefore, these financial instruments and practices should be declared un-Islamic, which result in the proliferation of debt securities that are not backed by any real assets. An example of this in contemporary Islamic finance is Tawwaruq, although some other methods may also lead to this result.[12]

It is evident from the above discussion that critics of Tawwaruq say that some Islamic banks actually lend money on interest through Tawwaruq. And the procedure is that the bank buys an asset from a broker for cash and a specified amount and then sells it on credit to its customer. The customer then sells the asset again for cash. This transaction takes place immediately and neither party needs the asset. Thus the person in need of money gets the money immediately, while the bank gets the extra money from the paid amount in fixed installments, and the whole transaction is done in such a way that it looks like a meaningless formality.

Conclusion

Tawwaruq is used in many Islamic banks but has not gained widespread acceptance and has faced considerable resistance in implementing it in practice. Technically, this practice is permissible from a Shariah point of view, but many scholars have criticized its widespread use. According to them, this would open the way for interest-based money to be borrowed, while not generating any real economic activity, as the same asset is likely to be borrowed by many borrowers. Should be sold. This procedure becomes even more objectionable to scholars where the borrower sells the asset back to the original seller. It is clear from the above discussion that most of the jurists are not convinced of the legitimacy of Tawwaruq and similarly most of the economists are also dismayed by its negative effects on the economy. Therefore, it can easily be concluded that introducing Tawwaruq in Islamic banks will be detrimental to the economy, so it is not right to encourage Tawwaruq. However, this question definitely arises that should the world declare Tawwaruq absolutely illegitimate or are there some exceptions, if found, Tawwaruq can be declared permissible? In the opinion of the authors, it is not right to declare Tawwaruq as impermissible in general and it should be allowed in cases of extreme necessity. But this is an extreme solution that even microfinance institutions should adopt only when forced to continue looking for real alternatives. And if a person is trapped in the cycle of usury, then it seems correct even if Islamic banks adopt this method to get him out of this difficulty. Therefore, we can say that the permission of Tawaruq is conditional, i.e. if a person needs money and it is not possible to obtain the money in a legitimate way, and there is no similarity of usury in the contract, and the person sells the thing only after taking possession of it. It is allowed otherwise it is not. It is also worth noting here that in Tawwaruq, although the customer's objective is to get cash, nevertheless, a genuine purchase and sale takes place. Assets are also bought and transferred, an economic movement takes place, and in the course of this buying and selling, if any damage occurs to the assets, the responsibility lies with the one who owns the assets at that time. , i.e. first the bank, then the client and lastly the end buyer. Therefore, the negative intensity of this

matter is not the same as that of real usurious transactions, especially when it is seen in the context of Muqasad Shari'ah, sometimes there is a positive aspect in it, as in the above examples. has been described. According to the authors, if all the conditions of Tawwaruq are fulfilled, the contract will be valid, but such acts should not be widely allowed as it has a strong possibility of various mischiefs.

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