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The need for evolution in the General legal Criteria of Contracts in accordance with the evolution of the economy

Mohammad Hadi Rostami^{1*}, Ahmad Karimi Sonbol Abadi², Amir Ali Khodaye³

1. PHD candidate in jurisprudence and private law, faculty of law, University of Shahid motahari, Tehran, Iran

2. M.Sc. in Private Law, Faculty of Law, University of Qom, Qom, Iran

3. PhD candidate in private law, faculty of law, University of Tehran College of Farabi, Qom, Iran

Abstract

Religion of Islam is religion of evolution and calls for development of contracts. Criteria of contracts and financial instruments are subject to evolution. Contract is a commitment. Commitment is achieved in matters which are associated with maximum performance, technology and benefits. Being revocable or not recoverable should be given to Expert Custom of every time. Each Valid contract has some degrees of impairment. When impairment of a contract increases to a certain extent, it is named corrupt. Each contract may be valid in one time and invalid in another time. The validity of a contract is based on efficiency and benefit. Validity of a contract is also based on consent. Islam recommends maximum satisfaction. Maximum satisfaction is achieved when all rates get close to equilibrium rates. Foolishness also has numerous degrees. We cannot call a person legally fool or grown. Foolishness and growth have numerous degrees. Every person may be legally fool in some contracts and grown in others. The causes of prohibition of usury, is indicator for other contracts. Each transaction or activity has these causes is forbidden though has not the name of usury and each has not them is not forbidden. Islam does not tolerate any harm. With the advancement of technology, the losses became very complex and very difficult to prove. But every harm must be compensated.

Keywords: Contracts, Necessity, Validity, Growth, Foolishness, Usury, Losses

1. Introduction

The Holy Lawgiver has adopted signature approach in considering the transactions. Every transaction that is named transaction by customary usage ('Urf) and intellectuals is accepted. This agreement is not absolute, but it must be accompanied by some principles and criteria. These principles could be divided into two common and private legal criteria groups. Islamic tradition is the tradition of evolution. The Islamic tradition doesn't put the contractions in the frame of today's contraction frame, but calls the scientists for the evolution of the basis or conditions of contractions and agreements and inventing of new financial tools. The evolution of contracts means increasing the efficiency, interest, satisfaction and closing the rates to the balance rate. Islam insists on the step by step method and it is necessary for intellectuals to develop the transactions and their conditions step by step. Imami jurisprudence is the evolutionary jurisprudence and because of it, the path of Ijtihad is open. Retrogressive view and dogmatic attitude to agreements is far from easy and allowed Sacred Realm Sharia. In the minds of anyone who is familiar with the customary usage ('Urf)s and be free of temptations, such a subject will not pass that sharifeh verse 1 of karimeh Sura *أَوْفُوا بِالْعُقُودِ* (fulfill your obligations) in place of stable legislation till resurrection is transferred, is limited in the bound of complex and routine transactions that time (Imam Khomeini, 1995, No.1, P.26).

Given the evolutionary nature of Islam, the word agreement in the sharifeh verse 1 of karimeh Sura *أَوْفُوا بِالْعُقُودِ* (fulfill your obligations), the appointments, treaties and transactions are in accordance with the applicable society development and it can be argued the difficulty of following public in credible doubt that if it is doubtful that an agreement is according to the evolution of society, not followed the verse generality (Haeri, 1423, Vol.1, P.184-186). The revealed economic agreements are as God agreements that call the man to perfection in faith, practice, knowledge and technology. This is a commitment agreement. Commitment is achieved in affairs which are accompanied by maximum efficiency, technology and benefits. Therefore, the belief that "ال" is for material and "عهد" covenant doesn't imply to a particular covenant, but only supervises the material of covenants (Mosavian, 2010, P. 64), is a non-evolutionary belief.

2. General Juristic Rules of Contracts

General juristic rules are general juristic rules that must be in all of the contracts.¹ These justice rules are divided into three groups:

¹Contraction legal situations include: accuracy, influence, lack of influence, termination ability, and permits necessity. Influence means having the effect and lack of influence means inefficacy. Signing a contract is revocable rights in the world, there are effective credit but it can be terminated, ended its existence; such as a sale contract where the seller or the buyer is gull that because of this reason one can terminate the aforementioned contract. Revocable contract is of the types of effective signing which until the termination has legal effects. Necessity and permits are two legal signing statuses that cannot be changed by the will of the parties and the parties cannot change necessity contract to permitted contract and convert none of necessity contract to permitted contract. Inserting the contract is permitted, during the necessity contract does not make it necessary, but only makes the signing non-closure from conditional against (behalf) party. Invalidity is the description of an agreement that has not any existence and effect in the legal world. The contract is canceled if it is without essay intent of one of the two parties or without the comprehensive terms issue or it is illegal or lacking of the specific conditions of the contract. The absence of a valid consent does not void the contract, but it is become blunt.

Some of them are related to the self-deal such as: The validity principle, necessity principle, accuracy of possession principle, lack of eating property to idleness, lack of usury, lack of betrayal and loss and the prohibition of gambling.

Some of them are related to parties to the transaction such as maturity, growth, permit, authorization, understanding the nature of the transaction and intention.

Some of them are related to the transaction such as the property with economic value, be known, delivery Capability.

In what follows seven of the general legal principles is analyzed that includes the contract necessity principle, the contract validity principle, the possession validity principle, prohibition of eating property to idleness, prohibition of usury, prohibition of loss and prohibition of betrayal. In relation to each of the criteria, it is referred to the need to create an evolutionary process. Society economic development process requires development of principles and criteria in the contracts.

3. The contracts necessity principle

The initial principle in signings is the necessity of them. Why? The sharifeh verse 1 of karimeh Sura **أَوْفُوا** بِالْعُقُودِ (fulfill your obligations), implies the need for contracts. The word **العقود** (obligations) is common and includes all contracts. According to this verse, it is necessary to be committed in all contracts (Naeni, 1994, and P.31). But, why some of contracts are allowable? Who are responsible for licenses and necessity of contracts? Is it possible that a contract in a period of time changes from necessary to permutable or vice versa? What is the cause of such change? Necessary permits and permits licenses, are two contract legal situations that cannot be changed by the willing of the parties; it means that none of the parties couldn't change none of the necessity agreement to the permitted one and none of the permitted agreement the necessity one.

Insert the permitted agreement, meanwhile the necessity agreement, doesn't make it necessary; but, only makes it non closure from the conditional against (behalf) (Shahidi, 2000, Vol. 2, P. 22).

Permitting or necessity is determined by the customary usage ('Urf) anytime. Jurists in the past knew bonus and contraction as the permitted agreement (Mosavian, 2010, P. 229), but, today customary usage ('Urf) considers it as necessary. Also mudarabah had known as permitted agreement that each of doer and owner, in every stages of the agreement could close the agreement (Mohaghegh Helli, 1408, Vol. 2, P. 1419), but, this issue is also related to the conditions of time which customary usage ('Urf) should clear its situation. It is not possible to permit an agreement according to the early Islamic conditions and then expand it to the other times. It is said in the past that if during the mudarabah agreement, bets will be void if need be (Mosavian, 2010, P. 238), but, this issue is also a customary usage ('Urf) affair and not juristic, the expert customary usage ('Urf), according to the conditions determines that if an agreement could be permitted. The permit of important transactions causes uncertainty and stops their employment. It is possible that economic conditions or the type of activity causes both sides of parties couldn't disrupt the agreement or unfinished operation. This makes jurists and lawyers say if the unfinished operation, causing loss, it must be finished or compensate the loss or operator deprived of wages. In such cases, it is better that bear the necessity and permits to customary usage ('Urf) rather than insist on permit and try to prepare the compensation for the loss through some ways. They also said that in the participation contract if the partnership shares of the partner that terminated the contract be little or termination of partnership and division, resulting in financial loss to other partners, other partners can prevent the division and purchase one share or sell one (Khomeini, 1421, vol. 1, pp. 579-580). In such cases it is also better given the necessity and permit to expert customary usage ('Urf).

In every agreement, parties should know the quality grade of the property that they must transfer to the opposite side; Do they abandon property or not? In the sale contract, interest of the parties requires that the vendor of sales and customary usage ('Urf)er of price, abandon their interest completely. If the sale,

provided that condition of authority to terminate the transaction (Shart Khiaar) is lifelong, this condition is contrary to the nature of sale and corrupt. Because in customary usage ('Urf) and habit, the contract of sale is created for the permanent transfer and society's economic objectives would not be possible without it. If someone transfers a property to someone else gratuitously and lifetime to distinguish authority to terminate the transaction (Shart Khiaar) right, He must done this purpose meanwhile of peace contract and not from sale contract. The unnamed contract occurs between the parties that are unclear that it is included in necessary contracts or permitted ones. As an example, deed contract is signed between the two parties for garden or agriculture and according to it, one of parties committed that give a defined amount of the crop to the other party and this party ignores his common share. Is this contract either necessary or permitted? Accompanying (Presumption of Continuity) (Istishab) of the deed contract and as a result considering it as necessary cannot be done. Accompanying execution is branch of the existence of the former certainty and doubt in the survival of the subject or former sure sentence (Shak Lahagh), but sure and doubt which is created in the human conscience, not created it artificially. Here, this sure or doubt is not created, but, customary and custom, at the time of deed contract signing, see his interest in this contract.

When there is doubt about the necessity or permitting of a contract, and it is impossible to remove the doubt, is it right to consider the necessity of that contract?

Customary and custom at the time of applying a contract knows that the necessity or permitted contract is signing and there is no time for doubt. But, if a case is found that after contraction, there was a doubt about the necessity or permitted, the same Istishab would be the effect of the current contract and the interest is in the retention of effects that is resulted from the contract. In spite of this, should differentiate between continuous and non-continuous contracts such as sale. In non-continuous contracts the rule is the same as mentioned unless there is a doubt in certainty which is not in the path of Istishab. The continuous contracts are also two types:

A) The contracts that have not a definite period, such as the labor contract that the worker's death led to the breakup of the labor contract.

B) The contracts that have a definite period, these contracts are subjected to the doubt that if it is abolished by the death of one of the parties? In this case, Article 497 of the Civil law considers the interests of customary and says leases would not be cancelled because of the death of landlord or tenant. Each of the necessity and permit are of two types: Right and Edictal. In the right necessity, the parties could agree and for a limited time eliminate it, for example the Parties of sale could eliminate the necessity of sale for a limited time by condition of the option, but, this is not possible for unlimited time. In the edictal necessity, willing of the parties cannot instable it even for a limited and temporary time such as the marriage necessity, sponsorship contract that they cannot be condition of the option. In the right permit, the parties are right to change it to the necessity, for example in the attorney ship contract if the condition is no elimination of the lawyer during an irrevocable contract, will eliminate the permit. None of the parties could change the permit to the necessity in the edictal permit. All of these affairs are on the basis of the interests of the customary and the society. The interests of the customary may be changed according to the changes that are formed in the economic.

4. The validity of contracts principle

Islam permits all of the intellectual contracts with respecting some criteria and principles, but also calls the scholars to design new financial tools and developing the contracts in accordance with age and day. The validity of contracts principle has a significant effect on the developing of the banking knowledge. The sharifeh verse *يا ايها الذين آمنوا اوفوا بالعقود* wants believers to be honest in accordance with everything which is called contract in custom and to give it effect. Therefore, every new contract created during the time, till the time that is in agreement with the common conditions of transactions and there is not the specific reason against it, is right.

But is any contract right or corrupt?² Is there any interval between right and corrupt? Usually it is thought that any contract is right or corrupt. It is said *صححت بهم عن اى تام الاجزاء و الشرايط* -Sihat has not different meaning and the difference is because of different purposes which are existed in different sciences, but, Sihat everywhere means totality (Akhond Khorasani)- But does every contract has the total components and conditions or lacks them? Is it impossible to consider a proper contract that has not some of components and conditions totally? Sihat in contracts have some degrees. None of the contracts have absolute Sihat (total components and conditions), but, every contract has some degrees of depletion. But, when is a contract corrupt? When the degrees of depletion of a contract increase, it is called corrupt. How could determine this defined limit? It is proper if it has the minimum of components and conditions. This minimum is defined by customary. The customary of the society is divided into: traditional customs, professional customs, and improved customs. Which of the customs is the scale of fiqh (jurisprudence) principles? The professional custom could find that if a contract has enough components and the minimum level of Sihat (totality) or not. After specifying the minimum necessary components, it could be defined as obeying the Sihat (totality) principle. Sihat and corrupt have the intensity and weakness of dreamy and hopefully contracts, and is an affair with priority. This case is also true for the natural affairs. Initially meat becomes corrupt in some degrees, and this corruption increases gradually till it becomes completely corrupt. When meat begins corruption, each stage of corruption is harmful for the nature of some people and its eating is haram (forbidden). But, the stage of corruption that is harmful for most of people, should be announced as haram (forbidden). Transactions are also the same. Each contract has some degree of corruption, when the corruption degree exceeds of a defined value, it is announced as corrupt. Determination of this limit is done by the professional custom. In the improving society, the degrees of corruption of contracts must be reduced and a portion of the existing contract that has the lowest degree of Sihat (totality) must be removed. After the customary authentication of the contract, if there is doubt about the Sihat (totality) of the contract, the contract is proper (Imam Khomeini, 1986, Vol.1, P. 113). But, as the traditional customary, causes the prohibition of the evolution trend, the professional customary must be placed instead of it.

Voidable contracts are recognized in the law of the European countries, but, In Iranian law, exchanging of a proper contract to voidable is supervising. Some of law scholars believe that the proper contracts because of possessing the basic conditions of Sihat (totality) are effective; changing their postural judgment is refused (Shahidi, 2000, Vol. 2, P. 24). But the proper contracts may become cancelled gradually. This issue may be formed before or after the contract. The cancellable contracts, are among the proper contracts and till the time that is not cancelled by any parties has the right effect. If cancelling or none cancelling of a contract is done by the parties or by the government? This issue depends on the amount of the effect of the contract on the social discipline. If applying a contract hurts the social discipline, it can be canceled by the law or government. If applying this contract doesn't hurt the social discipline, it can be cancelled by either side of parties.

²In the Iranian law, the writers of Imami jurisprudence followers have used the cancelled contract and the corrupt contract with the same meaning, but, the Hanafi jurisprudences believe that the cancelled contract is that one which its basics are not provided and it is illegitimate to principle, such as gambling and the marriage of mad; but, the corrupt contract is a contract that has the basic principles and it is legitimate, but, there is some damage in one of its basis that has not the necessary conditions. In this case, they say (it is legitimate with respect to the origin but, illegitimate with respect to its conditions). Such as the sale that interest is not known in it (Encyclopedia of Gamal Abdel Nasser, c 1, p. 192).

5. The accuracy of possession principle

The jurists use of the generality of the hadith *الناس مسلطون على اموالهم* (people are dominant to their properties) for the accuracy of possession principle in properties (Hoseini Maraghi, 1418, Vol. 2, P. 7). But domination of the properties, especially the large properties has some conditions. Sharifeh verse *وَلَا تُؤْتُوا السُّفَهَاءَ اَمْوَالَكُمُ الَّتِي جَعَلَ اللهُ لَكُمْ قِيَامًا* (do not give the (orphaned) fools your wealth with which Allah has entrusted you for (their) support) (AN-NISA (WOMEN) surah, verse 5)³ says The fools, are not allowed to possession their properties. All of the humans form a unite society that the world's wealth belongs to it and it is necessary for every people that keeps this wealth (and grow it) and shouldn't allow the fools that waste and splurge their wealth (Tabatabaee, Almizan translation, Vol. 4, P. 271). The full is someone who has not enough efficiency for doing a job or capturing a property. There are very persons who are in the peak of moral development, but, are fool in economic affairs. Foolish possession, is a possession that is not compatible with the evolution and development of the society, and doesn't consolidate society and economic.

Foolish is an issue with degrees. A person may be adolescent for simple contraction or running a small factory, but, is foolish for doing complicated transactions and running a big factory. Buyers or heirs of a factory could take the responsibility of running the factory that no foolishness of them approved. Foolishness is a non-existence affair. No foolishness needs reason. Every property is possessed to a person whose growth (with respect to volume and importance of that property) approved. *فَاِنْ اَنْتُمْ مِّنْهُمْ*⁴ *رُشْدًا فَادْفَعُوا اِلَيْهِمْ اَمْوَالَهُمْ* . Some of jurisprudence books do not point to the degrees of growth and do not present any method for the growth improvement. The manufacturer, who does not have sufficient profitability, is listed in the foolishness. The government must determine a guardian for his factory and teaching him, but, promote him for investment expansion by paying a several milliard loan.

Some type of possessions, in some conditions may be correct and in the more developed conditions, may be foolishness. Using of natural sources, everyday becomes more efficient and the old capturing, may be called foolishness. Production procedures, becomes more complicated every day and the old procedures, seems to be foolishness.

Civil law, article 1210 dictates: It is impossible to incapable someone after reaching to the puberty age because of madness or lack of growth, unless his insanity or lack of growth is proven. But, according to the note 2 of this article, the properties of a minor who becomes puberty could be given to him if his growth has been proved. General Board of the Supreme Court dated 1985, issued a unity procedural vote that Article 1210, know the Civil law as the supervisory involvement in any matters related to offenders, except in the case of finance that according to Note 2 of the written judgment, require proof of growth. The detection of the growth is done by comparing actions of the person with the rational actions of others. Therefore, the actions of a heir of a factory must be measured with respect to customary of successful and reputed manufacturers. If the professional custom, detect his actions as the actions of standard rational persons, this person is adolescent (Rashid), otherwise he is foolish (Taheeri, 1997, Vol.1, P. 132).

If an actual or legal individual or government, gives their property to possession fools and fools loses that wealth or wasted it, since the fools has not the ability of judgment, understanding and separation, should not be responsible for the financial loss. Here steward (fools), is a fortiori due to (owner), and for this reason the responsibility rests with the steward (Safaei, 1969, p. 241).

³do not give the (orphaned) fools your wealth with which Allah has entrusted you for (their) support

⁴If you perceive in them right judgment, hand over to them their wealth(AN-NISA (WOMEN) surah, verse 6)

The principle of consent

The sharifeh verse 29 of surah (AN-NISA (WOMEN)) " يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ " تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا". Believers, do not consume your wealth among yourselves in falsehood, except there be trading by your mutual agreement. And do not kill yourselves. Allah is the most merciful to you. It points to false property capturing. The purpose of capturing is the absolute possession. The satisfied business is against false property capturing. The traditional custom, believes that the lowest amount of satisfaction is enough for Sihah (totality) of contracts. Sihah (totality) of contracts according to the lowest amount of satisfaction will pull the society toward the lowest limit of general well-being. Satisfaction has uncountable degrees. In the evolutionary society, the level of the minimum satisfaction that is required for the Sihah (totality) of the contract must be increased gradually. The traditional custom doesn't propose methods for increasing the satisfaction in agreements. In each contract, both sides of the parties would be satisfied. Usually in each contract, either side of the parties will attempt to reduce the satisfaction of the other side and increases his satisfaction. The balanced rates cause acquiring of the maximum satisfaction. Each valued affair has only one balanced rate. The economic will reach to the complete balance that all of the other rates are balanced. The general principle about the no countable rates in the economic is "The same amount that a rate is more than balanced rate, some of the other rates, would be lower than the balanced rate". In this case, the satisfaction of some others will be reduced. Economic, has many markets with no many goods and services. If the rate of a good or service is greater than the balanced rate, at least there is one good or service that its rate is lower than the balanced rate. Balanced rates reach the economic to equilibrium. Whenever a rate gets far from the balanced rate, the economic will be out of equilibrium at the same amount. In this case, the total satisfaction also will be reduced. When the satisfaction becomes less than balanced satisfaction, a degree of false will be formed; this false is relative and doesn't cause the absolute false. But, when the absolute false will be formed? Is every degree of satisfaction enough for absolute satisfaction? If every time -that the level of satisfaction gets very far from the balanced satisfaction- is the absolute invalidity formed? Who are responsible for determining the distance? Does the clause لا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ (Verse 29 of surah (AN-NISA (WOMEN))) do not consume your wealth among yourselves in falsehood. Prohibit only the absolute invalidity or it prohibit also from relative invalidity? The sharifeh verse means and prohibit of every degree of invalidation, although, not lead to absolute invalidation.

On wages, the equilibrium rate as the productivity of workers. From the sharifeh verse وَلَا تَبْخَسُوا النَّاسَ (From verse 85 of surah AL-ARAF (THE HEIGHTS)) do not diminish the goods of people. The necessity of determining the wage according to the efficiency is understood. Bokhs (Cheap) from تَبْخَسُوا means getting distance of wage from the efficient value. The sharifeh verse prohibits of every degree of Bokhs (cheap). Is every degree of Bokhs (cheap) unlawful? When the wage is lesser than efficiency, a degree of invalidation is formed and sharifeh verse prohibits it. Whatever, this distance getting more, the degree of invalidation increases and also its prohibition becomes more intensive? But, does the increment of relative invalidation degree causes the absolute invalidation? In which step of invalidation, does the absolute invalidation form? Is the invalidation because of the worker's compulsion? The sharifeh verse implies respect to any degree of Bokhs (cheap). Efficiency determining of every worker with different skills is very difficult. Workers have different experience, intelligence, education, experience, consciousness, motivation, teamwork, courage, tirelessly and risks. When his work is combined with the machine work, determining the efficiency value becomes more complicated. When the rate of wage gets distance from the equilibrium rate, the labor market loses its stability. Traditional custom is not interested in the issue that out of balance of a market causes out of balance of other markets. At this time, the economy will not be in balance. At this time, the economy cannot be accompanied by the maximum satisfactory. Discontent in a market, is equal to the total distance rates of balance rates.

On commodity prices, the balanced rate appropriate to the actual utility, production costs, scarcity, demand and so on. Non-optimal allocation of resources and changes in the volume of goods makes their price far from equilibrium rates. Improper preferences, rituals, traditions, culture, customs, luxury, pride and achievement rates also prevents waste balance. Economic logic does not insist that when the rate of a product or service is greater than the equilibrium rate, there will be at least a product or service that its rate will be lower than the balance rate. Traditional practices, does not provide a way to determine the equilibrium rate. Non-equilibrium prices cause an imbalance in the economy. This causes dissatisfaction.

6. Prohibition of usury

The most important problem that challenges the traditional banking and suggests the necessity of Islamic banking is the question of the sanctity of usury. Usury is of grave sins. Loan usury is the most common type of usury. The consumer for financing for Consumption affairs or investment demand to the borrower, and during the agreement of borrowing the borrower undertakes to what is in the contract with the excess return. Quran promises the usurious to the war against God and the Prophet. Usurer is like as a person whom the devil has transhipped him and getting out him of balance. Blessings have been taken from usury. Usury causes people perishing.

7. Usury a measure for the invalidity or inaccuracy of contract

Loss of usury is an indicator of invalidation of other contracts. If damages of usury are found in a contract, the contract is void. Imam Reza says about the ban on usury that usury swept away the good work, destruction of property, interest tends to and drop borrow money (of good deeds). Usury causes corruption, oppression and loss of wealth (Ameli, 1413, Vol. 18, P. 121). Therefore, each contract that is not an evidence of good action, doesn't cause an increase in property or wealth, or free of profit-seeker and at the any rate (the rate of goods, wage rates, interest rates, rental rates, exchange rates, etc.)⁵ That is accompanied by injustice has the indexes of prohibition of usury. The prohibition of usury from boner (out of moderation)⁶, cruelty⁷ and reduce productivity and production.⁸ These cases are found in each transaction will make it invalid. To combat usury must determine the causes of the prohibition of usury and then the degrees of the existence of those causes in each activity at first, to declare the correctness or the invalidity of a contract according to that. Any contract or economic activity creates a measure of the benefits or damages. When the distance between losses and the benefits exceeds of a certain limit, it can be declared unlawful, and when the distance between interests and losses exceeds of a certain limit, it can be declared correct. In respect of usury where prohibition of usury can not be found, it couldn't be known as usury. Conversely, where the cause is found, then it is unlawful, even though his name is not usury. There is usually some indifferences about this issue. For example, certain Islamic economists do not

⁵ Do not least the people's rights. This verse is stated three times in the Qur'an (AL-E-IMRAN (THE FAMILY OF 'IMRAN), verse 85, HUD (HUD), verse 85, AL-SHUARA (THE POETS), and verse 183). Low insertion of the right is at the time that the right indicator, is specified. The best indicator to the right of everyone is the efficiency of him.

⁶ الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ (from their tomb) except as he who rises in madness that Satan has touched. (AL-BAQARA (THE COW), verse 275)

⁷ The sharifeh verse وَلَا تَظْلِمُونَ وَلَا تُظْلَمُونَ; neither will you do not harm nor will you be harmed. Knows the prohibition of usury is because of oppression.

⁸ Most of hadith, know the prohibition of helpful activities and supplying of the necessary needs as the cause of the prohibition of usury.

determine in productive investments loans that paying certain interest on loans subject to interest rates above the rate of interest which is higher than interest rate.

8. The prohibition of usury (riba) tricks

With the advancement of societies and complex trading conditions, the possibility of tricks increases for showing legality and juridical of the invalid activities. An example comes to check whether this example is based on a gimmick or the nature of the problem has changed:

If Ahmad gives Mansour a loan of one hundred million with the proviso that Mansour pays him one hundred twenty millions by the installment, it is usury and unlawful. But, Mansour could sell his land to Ahmad with the price of one hundred million, and then hire that land with possession condition such that after paying the rent of the value of 120 million from Mansour to Ahmad, Ahmad gives the possession of the land to Mansour (Mosavian, 2010, P.171).

It is not evident that what differences are there in the nature of these two contracts from the viewpoint of the existence or inexistence of the causes and damages of usury? In the first case, which of the damages to the persons or economic will be formed that the second case is free of it? In the first case, who is ruthless and who is oppressed? Which cause is there in the first case that enters the two parties to the hell, but, there isn't it in the second case?

If this contract is done really and seriously then it is correct and valid (Mosavian, 2010, P. 171). But, the distance between unlawful (Haram) and Lawful (Halal) is high. Unlawful is something that causes disruption and lawful is something that causes benefits. Changing the purpose, for passing this distance and changing the disruption to benefit is not enough.

Although it is usury trick, If this contract is done really and seriously, but it has not the wisdoms of usury (Mosavian, 2010, P. 171). But, what is the real purpose? Is the real purpose for sale or for transferring? Someone who sells his land and then hires it with the possession condition, has not the real purpose for transferring, because if Mansour doesn't hire the land, then Ahmad doesn't satisfied by keeping the land and if Ahmad doesn't rent out the land, Mansour doesn't satisfied. Younes Sheybani says Imam Sadiq that a man sells a commodity and the buyer is sure that the seller will buy again that commodity from him. Imam says If the buyer, doesn't buy that commodity, does the seller return it? Younes says, yes. Imam says it is prohibited (Ameli, 1413, Vol. 1, P. 42). Ayatollah Makarem Shirazi also believes that someone who sells his home by conditions for escaping of usury, while 1 to ten thousands, has not the purpose of selling it, has not the real purpose for doing the contract (Mosavian, 2010, P. 172).

In the other example, a manufacturer called Ahmad requires that to buy raw materials by credit and installment. The owner of raw materials is not ready for selling by installment. A person called Mansour buys the raw materials by cash and sells them to Ahmad by installment. If Mansour doesn't know the market of raw materials, he won't repeat such a contract and his main goal is borrowing it to Ahmad, in this case, the real purpose is not evident, because, after buying the raw materials by Mansour, if Ahmad refuses of buying it, then Mansour will protest.

In the other example, a man borrows to the other man, and in addition to it, sells something to him at a price higher than customary. Imam Hadi says such that people don't contract is unlawful (Ameli, 1413, Vol. 18, P. 163).

In the other example, someone buys a commodity by credit and then sells it to the same person at a lower price for achieving the cash money. In such contracts, if the parties in the first contract have the purpose of the second contract, there is not real purpose for the first contract.

Although, there is a scale for detecting non permitted tricks is the lack of serious purpose, but, sometimes in spite of the real purpose for contract, the customary doesn't see any difference between usury and it. In such case also the contract is usury (Mosavian, 2010, P.184-185).

9. Loss Prohibition

Loss is in contrast to benefit. Loss is against interest. Loss is defect of right. Loss is true in bad conditions. In Islam, the contracts are accepted that don't causes the loss for other person or the society. The loss contract causes invalidation of it. Loss may be because of an individual's action or two party's action. Loss may be accompanied by some benefits for whom that cause the loss. Loss could be intentionally or unintentionally. Quran, hadith and wisdom prohibits loss. Even mother hasn't the right to hurt her child

(لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ) a mother shall not be harmed for her child, neither a father for his child (verse 233, surah AL-BAQARA (THE COW)).

Loss causes guarantee and responsibility. The contract accompanied by loss is unlawful (Haram) and associated with liability and guarantee. An example is the environmental polluter industries financed by the bank.

Loss has some degrees. Some of the loss degrees are passable. When the loss exceeds of a certain limit, causes the cancelling of the contract. Who is responsible for determination of the loss? Some of the contracts as Agiotage for persons have benefits but, will harm the society. Are such contracts harmful? Many of contracts beneficiate individuals, but, cause the reduction of the purchasing power of a section of the society. Are such contracts harmful and invalid?

The current right or wrong that causes loss does not matter, but, relating the loss to the individual, is important, whether he has physical benefit in his activity or not and whether he has spiritual benefit in his activity or not. A person who builds a workshop or factory that is useful to society, even if he has not any fault; he is responsible for losses caused to workers or the society. If a person or a place is harmed by the factory pollutions, it must be offset by the manufacturer. But, what plans are predicted by the Islamic law for compensation of such losses? If the amount of the losses of each factory isn't specified, what must be done? If a mother eats a fish polluted by factory's sewage and her fetus becomes disabled, how could compensate it? Is every factory is responsible independently? One who becomes ill because of the pollution caused by traffic, which is responsible? Is every driver responsible independently? How could drivers compensate it? Are the automobile manufacturers also responsible?

Losses as a result of industrial development and the effect of helpful economic activities which is considered as negative external effects should be completely compensated. Spread increasing from day to day of developments in social life and industry development and improving communications in the economic fields in the internal and external levels caused that a legal system which is based on the past needs, doesn't respond and considering the necessity of change in the legal rules and principles. Changes and development in life, requires changes in legal rules. The lack of distance between legal system and needs of the society is a required issue (Katoozian, 1999, P. 639). The laws and conditions of the legal rights must be such that infringer fails to misuse of the conditions and the losers could claim the compensation of their losses easily from culprit. The pure responsibility could be effective (Jafari Tabar, 1996, P. 45). Inequality of plaintiff and defendant in a quarrel adds its complexity and proof of guilt is so difficult that sometimes it seems impossible (Katoozian, 1999, P. 638). The consumer is weak against the big economic manufacturers. The proof of guilt in the various cases is encountered to some difficulties and in most cases, the consumers; don't know the sellers and makers. The pure responsibility is a guarantee for the health of commodities and assurance of the correct production behavior of makers. This responsibility has the support face and the predictable excuse of innocence and lack of knowledge of the defect and even recklessness of defendant, is not accepted (Katoozian, 1999, P. 33). In this type of responsibility, although there is no need for approve of guilty, but, approve of the existence of defect in the production and its relation with damage in good is a condition that this also seems to be hard in most of times. In the pure responsibility, it is assumed that the commodity supplier is responsible for keeping commodity from unusual risks in every condition including contract and non-contract relation (Katoozian, 2005, P. 19). The pure responsibility was common by a file which being raised in an US court as follows.

The Biuk factory sells an automobile, the buyer transfers it to someone else, and one of the wheels of automobile separates during driving the car, the car overturned and the plaintiff is damaged, and then the poor quality of the wheel is approved. Although, the wheel was not made by the Biuk Company and there was no reason for the awareness of Biuk Company of the wheels defect, but, because the Biuk factory could find the defect by conventional precision, the quarrel was suggested as imprudence (Katoozian, 2005, P. 15). In this type of responsibility, it is enough that the plaintiff proves that the released commodity had some defect which loss is caused by it (Katoozian, 2005, P. 33). Where, the basis of responsibility is the pure responsibility, the producer and seller of commodity trying to come remedy on their own and for avoiding of the probable losses, necessary measures considered and get away from the loss; scientific and efficient management has found meaning and the sensitivity of producers in the production management is reinforced. One of the benefits of the pure responsibility is the accuracy in production and making goods based on scientific principles and practical experience and the use of continuous monitoring and useful and, therefore, prevents the waste of public funds. Because it is assumed that a single error has occurred between them, better than others succeed in knowing the real wrongdoer. Eventually the guarantee and responsibility sets on its own place and this are more close to justice (Katoozian, 2005, P. 35). In the case of unknowing the loss factor in the production plants, the most qualified person to handle the losses is the person who employed others and is profited by their wages. This person has benefited of creating a dangerous environment for economic activities and in comparison to consumers is preferred for bearing the loss.

11. Gharar Prohibition

Gharar means danger, deceit, to die placement, is deceiving. The transaction in which there are some types of gharar is said Gharar transaction. Gharar is due to lack of sales, insufficient sales, the uncertainty of materials of sales, the uncertainty of sales type, indetermination of the exact amount of the sales. Which group is responsible for determining gharar, the traditional or the professional customary? Does rational accuracy can be considered in detecting gharar? Gharar has some degrees. By intellectual accuracy perhaps couldn't find a transaction that is clear completely and there is no danger in it (Mosavian, 2007, p. 129). But, what level of risk makes the transaction as gharar one? Is any kind of risk of gharar type? Is high risk as gharar? Are transactions such as insurance, futures and transaction options with respect to the no clarity of interest and loss of the gharar type and invalid? Is there any difference between gharar and risk subjects? If the risk and uncertainty because of ignorance and uncertainty are in the basis of the contract, it is of gharar type, and if it is caused by ambiguity and ignorance with respect to the future of the property, it is not of gharar type. For example someone who buys a home by getting housing facilities from a bank, If has some ambiguity about the size, delivery time, and price of home, the contract is gharar type and is invalid, but, if the ambiguity is related to the change of the price of the property in the future, although buying such home has risk and danger, but, it is not of gharar type. Every gharar is risk, but, every risk is not gharar (Baharvandi, 2009, P. 14).

12. Conclusion

A significant change in economic conditions requires that the principles, criteria and legal norms also be developed. Stagnation of legal and justice rules, is a barrier for the realization of that development. Legal rules must simplify the circumstances for this development. Being a jurisprudence and legal school as the leader means that not only coincided with a change, but by the continuous self-development, leading to the development of the economy.

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