



In the name of the Allah, The Beneficent, The Merciful

The current economic downturn, which is being described as the worst recession for the last hundred years, has left a significant number of Muslim businesses struggling to survive. Ordinarily, these businesses strive to operate in an Islamic manner, and have no bank lending whatsoever. They finance their outgoings from the income generated from customers. However, the current economic downturn has left them unexpectedly and very suddenly in a situation where new orders have dried up and existing customers who owe money are paying invoices late or even not at all. This has a knock on impact on the ability of these businesses to pay their own suppliers money that they owe to them and to meet other running costs.

These businesses are typically well established and have very good order books. However, in the short term, there is a real danger that if they are unable to source additional short term cash flow, their businesses would not be able to honour the debts they owe to others, and therefore fail.

These businesses do have assets they could normally sell to raise cash. However, owing to the credit crunch there are no sellers to buy properties etc which could easily have been sold a year ago. Furthermore there are currently no viable Islamic finance providers that can provide Shariah compliant cash flow to meet their needs and they have also exhausted their own funds / interest free loans from family and friends etc.

In some cases the situation, which is ultimately down mostly to external factors, not their own carelessness, is so severe that there is a literally a choice between failing, and therefore not meeting debt obligations, or resorting to taking the minimum amount of interest based finance needed to keep afloat, with the intention of repaying this debt as soon as their cash flow situation improves.

Would the Shariah provide some concession in terms of taking interest based finance in this scenario? Would it be comparable to the Shariah concessions permitting Muslims to consume haram food when it is the only option available when suffering from extreme hunger?

Jazakallah for replying quickly - there are a few people waiting urgently for a response.



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الجواب جامدًا و مطلبًا و منه الصدق و السوابج

It is a well established precept within Islamic law that receiving and paying interest are both definitively unlawful – *harâm* and this does not require any elucidation here. Suffice to say that the Holy Qur'an uses unparalleled terms of condemnation in relation to *riba* and, according to reliable Hadith reports [Bukhâri, Muslim, Abu Dawud, etc], both parties to the contract are deserved of the curse of Allah swt. The unlawful nature of paying or receiving interest is without question. However, the question remains as to when one is compelled to resort to a usurious loan, does Islam allow any dispensation, and if so, what level of need must exist in order that such action be justified?

There are three words used by classical jurists to refer to levels of need which effect a change in the normative ruling: *idhtirâr* – compulsion, *dharûrah* – necessity, and *hâjah* – need. *Idhtirâr* is normally used to indicate a state of compulsion wherein one's life or limb is at risk. The definition of *dharûrah* offered by some jurists, such as Ahmad al-Hamawi¹ and al-Suyûti², makes it synonymous with and restricted to the concept of *idhtirâr*. However, in truth, the cases usually mentioned under the concept of *dharûrah* include many that do not reach the level of compulsion normally associated with *idhtirâr*. Thus, *dharûrah* refers to a wider concept of need of which *idhtirâr* may be deemed to be a constituent. *Hâjah* is generally associated with a lesser degree of need than *dharûrah*. According to al-Suyûti³ and al-Hamawi⁴, *hâjah* is like the hungry person who, if he fails to find something to eat, will not die as a result but will have to suffer hardship. Such level of need does not permit that which is *harâm* but effects dispensation in modes of worship, such as the non-observance of [obligatory] fast. Only *dharûrah* [which they both consider to be synonymous with *idhtirâr*] can effect dispensation in that which is *harâm*. However, this position is not borne out by many of the cases usually mentioned under the concepts

¹ Ahmad bin Muhammad al-Hamawî (Karachi, Idarah al-Qur'an wa al-uloom al-Islamiyyah, 1998) *Ghamz 'Uyûn al-Bsâir*, 1:252.

² Jalâl al-Dîn 'Abdurrahmân, al-Suyûti (Beirut, Dar al-Fikr) *Al-Ashbâh wa al-Nazâir*, 114.

³ Ibid.

⁴ *Ghamz 'Uyûn al-Bsâir*, 1:252.

of *dharûrah* and *hâjah*.⁵ The word *dharûrah* is also widely used by Muslim jurists to convey a variety of needs. It has been used severally to connote *haraj* – constraint⁶, *'umûm al-balwâ* – public predicament⁷, *ta'âmul* - prevalent practice and *'urf* – custom⁸ and personal need⁹. However, when used in a more restrictive sense it conveys a heightened sense of need beyond that associated with *hâjah*. However, it is difficult to demarcate in any definitive way as to what level of need constitutes *dharûrah* in contradistinction to *hâjah*. This is primarily because hardship, which gives rise to need, is a subjective concept influenced by several endogenous and exogenous factors.

ففي الموافقات في أصول الأحكام: سبب الرخصة المشقة والمشاق تختلف بالقوة والضعف وبحسب الأحوال وبحسب قوة العزائم وضعفها وبحسب الأزمان وبحسب الأعمال. (النوع الخامس في العزائم والرخص والنظر فيه في مسائل، المسئلة الثالثة، 218:1)

The cause of concession is hardship, and hardships differ in accordance with strength and weakness, and depending on the existing circumstances, the strength and weakness of peoples resolve, the eras and deeds.

That said, Ibn Nujym has recorded from al-Qunyah and al-Bughyah the permissibility of acquiring a usurious loan for the needy person (*al-muhtâj*) as follows:

ففي البحر الرائق: وفي القنية من الكراهية يجوز للمحتاج الاستقراض بالربح. اهـ. (كتاب البيوع، باب الربا، 126:6)

It is recorded in al-Qunyah in the Chapter of Abomination: It is permitted for the needy person to acquire a loan with an increment.

وفي الأشباه والنظائر: وفي القنية والبغية: يجوز للمحتاج الاستقراض بالربح. اهـ (الفن الأول في القواعد الكلية، النوع الأول، القاعدة الخامسة: الضرر يزال، القاعدة السادسة من الخامسة: الحاجة تترل مثلثة الضرورة، 267:1)

It is recorded in al-Qunyah and al-Bughyah: It is permitted for the needy person to acquire a loan with an increment.

Al-Hamawî explains this as follows:

⁵ قال (ولاجوز بيع شعر الخنزير) لأنه نجس العين فلا يجوز بيعه إهانة له، ويجوز الانتفاع به للخرز للضرورة فإن ذلك العمل لا يتأتى بدونه، ويوجد مباح الأصل فلا ضرورة إلى البيع. (الهداية، كتاب البيوع، باب البيوع الفاسد) (و) هو (يوجد مباح الأصل فلا حاجة إلى بيعه) فلم يكن بيعه في محل الضرورة حتى يجوز، وعلى هذا قال الفقيه أبو الليث: فلو لم يوجد إلا بالشراء جاز شراؤه لشمول الحاجة إليه. وقد قيل أيضا إن الضرورة ليست ثابتة في الخرز به بل يمكن أن يقام بغيره. وقد كان ابن سيرين لا يلبس خفا خرز بشعر الخنزير، فعلى هذا لا يجوز بيعه ولا الانتفاع به. وروى أبو يوسف كراهة الانتفاع به؛ لأن ذلك العمل يتأتى بدونه كما ذكرنا، إلا أن يقال: ذلك فرد تحمل مشقة في خاصة نفسه فلا يجوز أن يلزم العموم حرجا مثله. (فتح القدير، كتاب البيوع، باب البيوع الفاسد)

⁶ (وبول انتضح كرؤوس إبر) وكذا جانبها الآخر وإن كثر بإصابة الماء للضرورة. (الدر المختار، كتاب الطهارة، باب الأنجاس)

⁷ وفي الفيض: طين الشوارع عفو وإن ملأ الثوب للضرورة. (رد المختار، كتاب الطهارة، باب الأنجاس)

⁸ (ولاجوز بيع بيضة عند أبي حنيفة رحمه الله، وعندهما يجوز لمكان الضرورة. (الهداية، كتاب البيوع، باب البيوع الفاسد) والوجه قول محمد للعادة الضرورية. (فتح القدير، كتاب البيوع، باب البيوع الفاسد)

⁹ قال في خزنة الروايات: العالم الذي يعرف معنى النصوص والأخبار وهو من أهل الدراية يجوز له أن يعمل عليها وإن كان مخالفا لمذهبه اهـ. قلت: لكن هذا في غير موضع الضرورة، فقد ذكر في حيز البحر في بحث ألوان الدماء أقوالا ضعيفة، ثم قال: وفي المعراج عن فخر الأئمة: لو أفتى مفت بشيء من هذه الأقوال ف مواضع الضرورة طلبا للتيسير كان حسنا. (رد المختار، مقدمة) وفي تقريرات الرافعي: في مواقع الضرورة – أى بأن طالت عدتها فعالت فرجها بدواء حتى رأته صفرة مثلا فهي حيز وإن لم يكن في أيام حيزها.

وفى غمز عيون البصائر: قوله: يجوز للمحتاج الاستقراض بالربح، وذلك نحو أن يقترض عشرة دنانير مثلاً، ويجعل لربها شيئاً معلوماً في كل يوم ربحاً. (الفن الأول فى القواعد الكلية، النوع الأول، القاعدة الخامسة: الضرر يزال، القاعدة السادسة من الخامسة: الحاجة تنزل منزلة الضرورة، 1:267)

It is permitted for the needy person to acquire a loan with an increment. And that is that he acquires ten dinars for example and apportions some known amount each day for the creditor as an increment.

The level of need referred to here is apparently a heightened need – that which reaches the level associated with the restrictive sense of *al-dharûrah* as this statement has been entered under the maxim:

"al-hâjah tunazzalu manzilah al-dharûrah, 'âmmatan kânat aw khâssah"
al-hâjah is elevated to the level of al-dharûrah, whether it is general or specific.

Thus, in the current volatile economic climate, there may be circumstances where dispensation is allowed in resorting to an interest bearing loan.

However, given the gravity of such action, and the need to ensure one really has no other option open to them, it is vital for any person in this predicament to seek the counsel of a reliable scholar whilst providing all the necessary details of their personal circumstances in order that the scholar concerned may advise as to whether dispensation does indeed exist in that particular case.

It is not appropriate for us to issue a general fatwa in this instance.

And Allah knows best.

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