

Canonical and Legal Barriers to Debt Buying in Iran

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ABSTRACT

Objective: Usage of high capacities of canonical contracts by designing and creation of modern financial tools on the basis of holy Sharia of Islam is one of the fundamental measures and solutions in realizing economic and commercial development and dynamicity, especially in Islamic countries. Span, progress and complexity of economic relations and modern commercial trades have resulted in various emerging issues which reveal the necessity of research in raised jurisprudential and legal problems about these new topics. **Methodology:** In this paper we are intending to explain reasons for inefficiency of debt buying contract in Iran and to find its canonical and legal barriers. Especially that investigations reveal that this legal entity is interested by businessmen and banking system of Iran in order to provide short-term liquidity. **Results:** So, there is no doubt that any measure in order to clarify its vague angels and its drawback and defects can be useful. **Conclusion:** In this way, removing these barriers and problems will cause that businessmen, banks, and financial and credit institutions can exploit this financial tool without worrying.

1. Introduction

This fact is not secret to anyone that today, progress and prosperity of each country in various cultural, political and welfare fields is directly related to economic issues. On one hand, a strong and dynamic economy requires efficient financial tools and accorded to modern requirements and progresses. This issue is more important in Islamic countries because of ascendancy of canonical regulations on all of current affairs of society; on the other hand, today, these financial tools are mainly in hands of banks (Bidabad, 2014). Banks as one of the most important organs involved in economy and business of each country, require modern solutions to absorb capital and providing liquidity due to span and very rapid progresses in today's complex societies. This will be possible by eliminating inefficient financial tools and removal of defects and enhancing of existent financial tools as well as creativity in creation of new financial tools. Unfortunately, conducted investigations reveal that banking system of Iran after approval of banking without usury act has not been successful in various areas of banking, especially in the field of financial tools as good as an Islamic banking system (Choksy, 1988). One of these cases is debt buying which is capable as a potential financial tool to provide short term liquidity; but banking system and businessmen in Iran face serious challenges to use this financial tool. In this paper we intend to answer this question that why this useful legal entity could not reach it's considered goals in banking system and commercial trades of Iranian businessmen as it should be? Also, we will review advantages and opportunities that will be provided to businessmen if problems and defects of this contract remove (Mashayekhi and Mashayekh, 2008).

2. Materials and methods

2.1 Part One

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This research is adjusted in three parts: in part one, we will address general subjects, concepts and definitions around debt buying, in part two, we will discuss usury concept as one of the most important canonical barriers for debt buying and analyze jurisprudents' opinions about it, and in part three, we will criticize this contract's legal problems and barriers in Iran's banking system (Ostadi and Ashja, 2014).

2.1.1 Debt buying

In this section, before addressing present definitions, it's necessary to mention that debt buying has the same meaning and nature as debt selling, discounting or demand selling, but since debt buying is being used instead of debt selling or commercial papers' discounting in the current banking system of country, we will represent definitions only for debt buying.

2.1.2 Debt buying definition and function

Debt buying or as French people say, a'Forfait (a trade), is buying a debt which is specified in a commercial paper, like a bill or a promissory note, from the creditor based on a non-refundable foundation, meaning that the buyer which is known as debt buyer, guaranties that if he can't take the claimed money from the debtor, disclaim his referral right and retire it.

But debt buyer would only proceed to buy a commercial paper, if there were a suitable guaranty for him from a reliable bank. This guaranty is in commercial paper's text as a guaranty constraint, or as a separate bank letter of guarantee, which ensure on-time and precise fulfillment of all commitments under commercial paper. Of course, buying a commercial paper by a debt buyer, would be along with discounting. Debt buyer may be a bank, a financing center or a discounter firm (Mersadi Tabari, 2010).

2.1.3 Debt buying definition in Iran law

In Iranian lawyers' view, debt buying is a contract which based on it, debtor's deferred debt is bought from him in cash, lower than its nominal value.

Debt buying is a contract whereby a third party, buys debtor's deferred debt in cash, lower than its nominal value from creditor.

Debt buying is a contract whereby a person's not-matured debt due to a real transaction to another person, is bought at a price lower than its value at maturity. In another word, based on provisional regulation of commercial securities and documents (debt buying), banks can discount commercial securities and documents at a price lower than its value, at maturity. Based on this, debt buying in banks, is that the bank as a third party (contract party), buys a debt from creditor (other contract party), which he owns because of goods' credit selling to another person (debtor) and has taken a commercial paper for it. In this way, a debt buying would have two parties: 1. Debt seller 2. Buyer (bank).

Fundamental economic and legal function of this contract is that the creditor can convert the debtor's commitment which is for the future, to cash money immediately by selling it to a debt buyer. Of course, debt buyer, buys a commitment based on a non-refundable basis, only when a third-party guaranty it.

Debt buying method is used in two types of trades: in a financial trade to receive long-term financial liquidity facilities, and in an export trade to facilitate the cash flow of an exporter who gave some time as respite to foreign buyer to pay (buying price).

2.1.4 Literal meaning of discount

Discount's meaning is reduction, disregard and ignore, and among these, the first one is relevant to our discussion. Discount word is also used for the interest of loaned money and for the paid money for payment of bill or promissory note before its maturity. This usage is closer to economic and idiomatic concept of discount.

There is another definition for discount: it's an action whereby the customer, gives a bill document to bank and receives its cash with reduced amount for commission and belonging interest until maturity, instead (Davarzani et al., 2010).

2.1.5 Economic idiom of discount

Discount in economics, is a trade to sell the right to receive illiquid money instead of lower cash money, and the difference between them is called descent. It's necessary for this definition to calculate present value of illiquid money. In this sense, discount is equal to "al-khasm" in Arabic and "escompte" in French (MolaKarimi, 2011).

Discount is equal to "Forfeiting" in international law which means "losing" or "giving up" the right.

In other word, discount in economic idiom, is an act whereby the customer, gives his bill document to bank and instead of that, receives its cash with reduced amount for commission and its interest until maturity. Therefore, whenever bill's owner needed cash money, he can go to the bank. In this situation, the bank reduces an amount of bill's money, and pays the rest of it in cash to the owner. This measure of the bank is called "discount".

2.1.6 Discount Channel

Facilities that central bank provides about discounting loans for banks, is called discount channel or discount window (Mousavi, 2002).

2.1.7 Forfeiting

Forfeiting or discounting commercial papers, is a way to discount deferred commercial papers such as bill, promissory note, letter of guarantee or deferred letter of credit, in order to receive cash money from a financial and credit institution, or to sell it with a price lower than nominal value, to the institution, and this institution would give up the right to ask it from primary owner (Edwards, 1990).

2.1.8 Differences between discount and debt buying

1. Debt buying is only related to buying contract, but there are other contracts like settlement agreement for discount.
2. Discount is usually related to money debt but debt buying is related to money debt as well as commodity debt.

3. Legally, there are constraints in debt buying such as being real, whereas discount is a general idiom.
4. Economically there are constraints such as short maturity for discount, whereas debt buying is general (Biglou et al, 2013).

2.2 Part two

Based on surveys, the most important and significant barrier to debt buying contract, is taint of usury and various comments and disagreements about it. In this part, we will present concepts and definitions about the usury (Guder, 2008).

2.2.1 Literal meaning of usury (interest)

Usury (“Reba”) literally means extra, increase and growth. There were various types of usurious trades in early Islam and the time of inspiration of the holy Quran, which Arab people called it “Reba”, as follows:

- a) Someone, sells a certain object, with the condition that the buyer pays the cost on due date.

If the buyer couldn’t pay the trade money on due date, he would have more time, provided that payback some extra money.

- b) Someone, loan a certain money to another one with the condition that the borrower pays an extra money, called “reba”, in addition to the principal, after expiring the payback time.

- c) Debtor and creditor has agreed about fixed rate of “reba” in a certain time. If the debtor couldn’t pay back the loan in adjusted time, he would be obligated to pay another “reba”, more than previous determined rate.

Holy Quran’s verses, has clarified in four “suras” (“Roum” verse of 39, “Baghara” verse of 275, 276, 278 and 279, “Ale-Emran” verse of 130, “Nesa” verse of 161), that excess more than the principle of money, is “reba”. But certainly, every excess is not “reba”. The excess which is mentioned in holy book, is one kind of excess that is known as “reba” with respect to all regular conditions (Ali, 2011).

2.2.2 Usury definition

Simplest definition for usury which is also a comprehensive and impediment one, is that, any excess on debt if it was determined and set since before. This definition’s components are presented in a collective and organic relationship as follows:

A. Establishment of a real debt

The concept is to transfer ownership of debt based on debtor-creditor legal relationship from creditor to debtor, and it’s like that if the creditor is independent from debtor.

B. Independence of creditor from debtor

The concept is that the creditor and debtor shall be completely independent from each other. Otherwise, although in classic view, borrowing will take place, but from the point of legal view, the debtor-creditor relationship shall not arise. In other word, in legal concept, debtor-creditor relationship doesn’t essentially become true.

C. Condition of excess receiving

Condition of excess receiving is also one of main elements of usury. Its concept is that, if there were no condition or term about excess receiving, in other word, if debtor pays an extra amount more than main debt, with consent and out of contract’s contents, it’s a good act in legal view and the extra money is not usury (Bidabad and Allahyarifard, 2008).

2.2.3 Conditions of usurious buying

This idea is not true that buying and selling every object with excess of one to another, is illegal and invalid, rather the buying is only usurious and prohibited by lawyer, if it has both following conditions, and otherwise it’s not an example of usurious trade:

1) Unity of commodities

The first condition for usury is similarity of both kinds e.g. wheat or rice. And if, each one of these kinds were dealt in exchange for itself, it shall not be more than the other one, to prevent from being usury. However, if for example some rice was dealt in exchange for wheat, excess of one to another, is not prohibited.

Therefore, selling 10 kilos of rice in exchange for 20 kilos of wheat, is correct and valid, however, there are some doubts about correction of this trade on credit sale. The main criterion for homogeneity of commodities, is the custom. Meaning that, trade of each two commodities’ known to custom as homogeneous, is an example of usurious and illegal buying if there were differences in their amount. Based on homogeneity assumption of commodities, it doesn’t matter if one of them is high-quality or other one is not, or both of them has same quality.

2) Being measurable or weighable

The idea is that, usurious trade will become true if both commodities is weighable or measurable as well as being homogeneous. Hence, for countable objects which were dealt in numeric or counting form, usury is not relevant. Customs or local traditions of trade place, is the criterion for being measurable or weighable.

If a commodity was based on weight in one place, and based on measure in another place, and even based on number in somewhere else, the criterion is the local custom of that place. Although today it’s less prevalent to deal like this and along presence of the money as the power to buy and pay for an object, homogeneity of objects is less occurred. However, in big trades between governments as clearing agreement, object and price may both be commodities, which are often non-homogeneous in these types of trades.

2.2.4 Usury case

Usury case is two objects that one of them is more than another one, based on weight or measure.

Object criterion here is something that could be named. So, date, currant, wheat and barley are objects and based on common sense, meats are considered as animals here.

2.2.5 Usury types

Honorable Islamic lawyers, divides usury into two types of loan usury and trading usury.

1) Loan usury

Loan usury is most common type of usury in past and present ages, which has existed in various societies.

In a way that, the person requests loan for financing consumable or investing costs, and commits under the contract to pay back whatever has received, with excess. In fact, loan usury, is an excess which was mentioned in loan contract, and such usury is illegal based on Quran and Islamic tradition. Imam Sadeq (AS) has stated about such usury that:

“There are two type of excess, lawful one and sinful one. Lawful excess is that the person lend to his brother and hope to receive more than what he had gave, on payback date, without any promises between them. So if he received more, without any condition, it’s true for him but doesn’t have any oblation near god. This is what god says in Quran that: “it shall not increase with Allah”. But sinful excess is that someone lend something and lay down certain condition that the debtor should payback more than what he has received. That’s sinful usury.”

There are another narratives with this concept. As it’s clear from this one and jurisprudents has declared, excess in debt is usury and illegal only if it has been laid down as a condition.

In this case, Ayatollah Khomeini states that:

“Indeed, conditional excess is illegal and without condition not only is legal, but also it’s recommended for debtor to pay more than what he had received, because of good behavior.

Saheb Javaher has claim of consensus on this subject. Conditional excess is on the other side. Some narratives mention generalization and some of them imply to specification that setting conditions of any excess to borrowed wealth or other than that, even edictal excess, is usury and illegal.

Mohammad Ebne Qays quotes a valid story from Imam Baqer that he said: Anyone who lends Dirhams to someone else, shall not lay down condition to pay back other than the same he received, but if something better was returned, he may accept it, however do not set condition for any excess in exchange for lending Dirhams, animals or anything.

Ayatollah Khomeini states that: excess condition in debt is not legal and it doesn’t matter if it’s objective like ten Dirhams to twelve Dirhams or a job like sewing clothes for debtor or using a benefit like a same mortgage in creditor’s hand or a quality like lending broken Dirhams and set condition to return whole Dirhams.

2) Trading usury

In Shia Imams’ tradition, a certain type of usury is prohibited namely “trading usury”. This type of usury was more common in past times when barter trading was prevalent, so significant share of usury topics in old religious jurisprudence books were dedicated to this.

Now that most of trades are monetary, trading usury is less projected, however it comes to matter in some cases (MolaKarimi, 2011).

Ayatollah Khomeini defined trading usury and its conditions as: trading usury is that one of two similar commodities, has sold with excess in exchange for other one, such as selling three kilograms of wheat in cash in exchange for three kilograms of wheat on credit. It’s probable that trading usury shall not be only for buying, but it is also for other trades like settlement contract. First, the object and its price is materially similar based on custom view. So trading some of anything that was relevant to that wheat, rice, date or grapes in custom view, and votes to sameness of them, in exchange for some of it with excess, is illegal, even if they were different in quality and characteristics. Second, both the object and its price is weighable or measurable commodities, so there is no usury in anything that is sold by counting or observation (Paulus, 2011).

2.2.6 Usury prohibition reasons

Hesham Ben Hakam asked Imam Sadeq (AS) about usury prohibition reason, and His holiness stated: if usury was legal, people would abandon necessary business and trading. So, the God prohibited it to make people turn to lawful acts from sinful ones and from usury to business and trading.

Imam Reza (AS) had wrote a reply to a letter from Mohammed ben Sanan whom asked him some questions about usury, that:

The reason of prohibition of usury is that God almighty prohibited it because it’s would ruin wealth. Because if human buy one dirham in exchange for two dirhams, price of one dirham is one dirham, and the price of another dirham is nothing (and unjustifiable). So anyway, usurious buying and selling has damage for both buyer and seller.

God almighty has prohibited usury for people because it’s destructive... and the reason of prohibition of usury on credit, is that it would ruin good acts and wealth, and make people tend to jobbery and abandon the loan, while loan is one of good works, and usury also brings immortality and cruelty and would result to losing wealth.

By attention to usury subject, there are three types of reasons for prohibition of usury:

- 1) Explicit prohibition and blaming this ungraceful phenomenon by sacred lawgiver of the holy Quran.
- 2) Anecdotes and narratives from Imams about this subject
- 3) Impacts and consequences of this blamed act in society, such as spread of cruelty and misuse of capitalists from financial demands of needy people, economic disorder, social gap creation, social depression and ruining economic producers and incentives for working and healthy commercial competition and void devouring, because the person adds to his wealth without doing any work and only due to his capital, and etc.

It’s necessary to say that the most important reason for prohibition of usury is the holy Quran, because based on our Islamic catechesis, prohibition or direction to any work by God in holy Quran, is an ultimatum for every people and there is no need for another reason or logic, whether we understand its interest or actual reason , or not.

2.2.7 *Difference between usury and interest*

One of other expressions that is mainly assumed equivalent to usury, is interest. Based on definition, interest is: proportion of capital yield on capital value, so in a simpler statement, the interest is same as capital yield or capital profit. Such component is basically different from usury based on definition, and it's not sinful.

However, in Islam religion, any predetermined loan money's interest is sinful (by any name). Now with respect to this thought, since there is explicit order to exclude money from capital in Islamic holy law, it can be considered as a type of capital.

By the way, money is highly capable to be switched to real and physical capital. So, based on accepting this term, it's utterable that yield and interest of money is accepted in Islam and it's something different from usury.

2.2.8 *Juridical opinions about debt buying*

Studies suggests that there are various opinions and views about debt buying which can be classified in six groups:

First theory is that, debt buying is absolutely illegal and there is no distinction between buying from debtor or other, or between matured debt buying and not matured one. Sheikh Tousi has attributed this quote to Shafei, and didn't mention any reason for it.

Second theory is accepted by many jurisprudents, such as Saheb Hadaegh, Saheb Sharaye and Yahya ebne Saeid, and this theory, accepts distinction between matured and not matured, and consider present (matured) debt buying as legal and not matured one as illegal. They also believe that if debt is not matured, the creditor doesn't own anything in debtor's hand yet.

Third theory is that debt buying by debtor is legal, but by a third party is illegal, and "Ebne Edris" in "Saraer" and Ayatollah Khomeini in his new award, have chosen this opinion.

Fourth theory, which have been selected by many jurisprudents is that, not matured debt buying based on present price (in cash) is legal, whether is sold to debtor or a third party, but debt buying on credit or based on not-matured price is illegal. "Mohaghegh dar Jameol Maghased", "Shahid Darlame" and "Moghadasse Ardebili" are among people who accepted this opinion, although Moghadasse Ardebili has utterly permissioned selling to debtor on credit.

Fifth theory is accepted by Sheikh Tousi, Ebne Baraj and Shahid in Darousit, and is that, debt buying to less price is legal, but the buyer can't receive more than what he paid to creditor, from the debtor and the debtor would be exempt from rest of debt.

It's worth to notice here that between mentioned opinions, this one is the weakest one and the reasons provided for verity of this theory are not persuasive. Likewise, there is this question in mind that what kind of buying is this?

If debt buyer is only allowed to receive as much as he paid before, what incentive and tendency exists for parties to do this trade? Since usually there are gain and loss, and price difference anywhere trading and buying is proposed and in fact, these ones create incentive and tendency to deal between buyer and seller. Indeed, buying characteristics necessitate in this way, but these characteristics which has mentioned above, doesn't match with presented properties and conditions in this theory, and they are somehow similar to loan contract or money order which is completely different with Buying contract. Sixth theory which is accepted by many contemporary jurisprudents and many other old ones, is that debt buying is absolutely legal and the buyer is the owner of whole bought debt.

Among what has brought about jurisprudents' opinions, some points are noticeable, first that among all these mentioned opinions, the sixth one is accepted by most of Ja'fari jurisprudents and it's also the writer's chosen theory, because it seems that it's more compatible with today's realities. Second, debt buying contract's basis and regulation in Iran banking system has been established based on this theory (MolaKarimi, 2011) and is also accepted by Guardian Council.

Thus, luckily the canonical problem of this contract (debt buying) has been completely solved by respectable jurisprudents and this means that if legal weaknesses and emptiness of bank regulations about debt buying become fixed, this useful financial instrument can be used without any concern from canonical view, in order to short-term financing, along establishment of a powerful monitoring system by central bank and other linked banks.

3. Discussion and results

3.1 *Part Three*

3.1.1 *Theoretical objections about debt buying validity in Iran law*

A) One of the most important characteristics of sale object in buying contract, is being specific. In other word, object of sale in buying contract, has to be identical. While, debt is not identical, so it can't be object of sale. This problem has got reversal answer as well as resolvent answer, that is as follows:

Reversal answer: If debt buying is not true because of not being identical, and non-identical things couldn't be object of sale, so forward contract ("Salaf") wouldn't be true either because it's also a contract on general property. While none of jurisprudents has such opinion.

Resolvent answer: Jurisprudents' statement about definition of buying is "owning an identical object in exchange for something definite" and apparently this identical object is applied in return of definite to exclude rent from this definition, because if it was "owning a gain in exchange for something definite", it would be definition of rent and not buying. So, they defined it as "owning an identical object in exchange for something definite" in order to change it from rent definition. Hence, some people bring this discussion in a way that, could the object of sale be a gain? Or it should be just an identical object.

The meaning of identical, is something that include a three-dimensional object if it became existed in real. One approach here is that, in rational thought, object of sale doesn't have to be identical.

The reason for this subject is that, even jurisprudents denied necessity of being identical for object of sale, and they considered it as buying contract even it was not identical. On the other hand, we know that the object and its price in buying contract, are distinct only due to contract's parties and what exists in real world, is that each one of them can be the price of the other one and as a result, the object can be the price of it and the price also can be the object

of sale, so as it's not necessary for price to be identical, it's not necessary for object of sale too, because there is no difference between them based on being object and price, and exchange of them.

B) Generic commodity in debt is not property and can't be considered as supplied thing for the owner, because it essentially doesn't exist.

C) Ownership is based on measurement and measurement needs to be existed, and generic commodity in debt whether it was generic before sale contract (like debt) or became generic in debt after that, doesn't exist to be owned.

The Answer: Ayatollah Khomeini states that this issue, is also comes true for common generic and specific generic, with assumption of fixity. Generic won't stop being generic with any assumption. In Specific generic, what externally exists, are certain and distinct ones which can't be applied to many, so specific generic is a matter that is true for every one between specified ones.

The author of "Mesbahol-Feghaha" states four quadruplet levels of ownership to explain this answer, as follows:

Actual ownership;

(Human's ownership to himself and his body, actions and conscious)

External ownership;

(Rational credit ownership)

The fourth level, is gained its credit rationally and may be known valid by lawgiver based on interests that is rationally considered for it.

It's probable that sometimes the lawgiver knows ownership of someone on something valid, while rationality doesn't know it as valid such as some cases of heritage. This type of ownership, is not out of measurement to be dependent on being materialized in real world, to be existed. Ayatollah khoeei brings an example about this level of ownership that, general poor person and natural poor person owns obligatory alms and quint, although it may not exist outside yet.

As well, in case of generic commodity in debt ownership validity in forward sale and other contracts like that (e.g. debt buying), consensus is relevant. Finally, he states that, such ownership in our discussion, is the fourth level of ownership which its consolidation is due to credit, so it's not necessary for generic commodity in debt, to be existed, because as stated before, it's not a measurement. As a result, generic commodity in debt is not absolutely extinct, but also exist in reality world, and their place is sometimes conscious and sometimes real universe, and being existence is enough to being owned. So there is no need to know sale trade as an agreement to solve this issue. (Davarzani et al., 2010)

D) Another problem for this type of trade in order to be a sale trade, is that one of substitutes shall be object and the other shall be price, and if both of them were commodity or both sides were money, the sale is not true. Sheikh Ansari states about distinction of seller and buyer that: if one of substitutes is something that is usually known as price (such as dirhams, dinars or coins) in this case, customer is the person who gives Dirhams, Dinars or coins.

But if any of substitutes is not of this type, it should be investigated that which one has replaced the price, and if none of them were due to this purpose, or both of them were due to this purpose, and there were no conversation between seller and buyer about it, there are several probabilities in this trade:

1. Each one of them is seller or buyer, based on some assumption, however their special rules is cancelled.
2. Each one who first gives the object, is seller and the other one who receives it, is customer.
3. This trade is settlement.
4. This trade and opposition is independent and shall not be included in regular titles of trades, and second possibility is probable.

Esfehani states about it that: based on real and fixity, nature of each contract formed by causality from one side, and acceptance from the other side, so it's not rational based on fixity that one side is seller based on one assumption, and the other one is customer based on another assumption, and if both of them were caused to be ownership, this trade is not settlement either, because settlement is one of contracts and each contract includes offer and acceptance, and if we say the trade is independent, operative reasons won't be included to these irregular contracts.

Irvani states about it that: seller is the one whose primary intention of trade, is value of his property, and doesn't consider identical characteristics. And the buyer is the one whose primary intention of trade is identical characteristics of seller, and if both sides' primary intention to trade was characteristics of substitutes, this trade is not sale and none of them are not seller or buyer. Although this trade is not sale, it's true and applicable and the reason for its validity is the verse "fulfill contracts" and the verse "trade by mutual consent" in Quran.

Result of Irvani's objection to Sheikh is that, it's inferred from sheikh's statement that if one of parties used buying in contract's text and the other one, used partnership, in this case, seller and customer would not be mistaken with each other, but it's not all of the subject, because distinction between seller and buyer, in level and position, is due to the text and we have to clarify themselves and their duties before knowing their used term. Distinguishing them in that stage is conscience matter and what I obtained by scholarship in special cases, is that: seller is the person who present characteristic of his property and waive it to receive the substitute, and his intention is just his property. What we observe that he often, receive just in cash, is not because his intention belongs to influence, but it's because of easy transportation of it and convenience of preparing stuff by cash money.

Khoeei states that, the Sale would become true if two things were available:

1. One of substitutes was commodity and the other one was cash, which in this assumption, the one who gave commodity is seller and the one who gave cash money, is customer.
2. In case both substitutes were money or both were objects, seller is the one whose intention is preserving his property and the customer is the one whose intention is to satisfy a need, and if there were none of these terms in the trade, this trade is not sale and doesn't involve in its special rules.

Perhaps, parties' intention is not important in trade's truth and what forms the nature and truth of the trade, is quality of its text and the written titles in it, and in custom point of view, if one of parties, transfer ownership of his property to someone else in exchange for the price, he would be the seller, even if he needed characteristic of the price too and he intended to gain that; and the one who accepted the ownership, is the customer, even if his intention wasn't gaining a characteristic of sale object and was preserving his property, hence many of jurisprudents has not accepted this point of sale definition which present sale's nature.

Ayatollah Khomeini states that: as proof, the one who gives price or object for requirements, is seller and the one who takes it or gives the object by acceptance intent, is customer. If substitutes were both commodity or cash money, and none of them doesn't have offer or acceptance intention and the property has been transferred, rationally this trade is sale.

Perhaps, this statement is not complete because rationally if two property were exchanged without offer and acceptance intention, this trade is called swap and not sale, and rationally there is no sale, without seller and buyer. The result of previous discussion is that, sale truth is abandoning ownership or excess in exchange for the substitute and acceptance of other party.

In fact, about debt buying, it is sale trade because although substitutes are usually in cash and none of parties intention is not characteristic, but someone transfers his debt's ownership to another one, and he accepts it, it would be truly sale trade, but if the same trade was swap, it's not sale anymore and doesn't have its special rules (Mousavi, 2002).

3.1.2 Survey on present problems and defects in bank regulations of debt buying

By overview of bank contracts and regulations of debt buying, these points could be denoted as problems and objections:

1. Lack of necessary and detailed knowledge of people involved in bank network of country about debt buying
2. Weakness of regulations about banks and juridical institutions dealing with delinquent people (who used this facility by fake documents or collusion)
3. Lack of uniform regulations and circular notes between current banks of the country
4. Risk of fakery and misuse by jobber people in order to use these bank facilities. (collusion between creditor and debtor)
5. Risk of reduction in liquidity and bankruptcy danger for banks
6. Decrease in people's general trust
7. Lack of an accurate, suitable and efficient monitoring system and procedure, and banks' personalized performance about setting up debt buying.
8. Lack of efficient and effective expertise activities by legal and canonical experts about the discussed subject.

Despite above serious legal problems, several advantages in Murabaha, Istisna, and debt buying, triple contracts' several advantages, which some of them are mentioned below, has emphasized on continuation of applying debt buying contract in Iran law;

1. Diversification of Islamic financial instruments and reduction of fakery; fakery's meaning here is that sometimes gainers of facilities are not compatible with whatever is in contract. For example, people try to receive facilities based on Mudaraba contract but in fact they consider loan contract.
2. Fixing weaknesses in other contracts
3. Suitable capacity to satisfy new needs
4. Approximation of nonusurious banking system to International Islamic banking.

We can understand finely from previous discussion that why legal scientists and involved people to monetary and bank system of the country know debt buying as double-edged sword. It means that if this financial instrument has been used correctly, it can be very useful in Liquidity securement and facilitating commercial trades of businessmen and banks, as well any negligence or malfunction can create very serious and sometimes irrecoverable damages to banking system, monetary network, economy of country and businessmen.

4. Conclusion

- Based on what stated before, it became clear that debt buying is able to be as a useful and helpful financial instrument in order to secure liquidity in banking and commercial cycles, because of a mechanism which secure bank's profits and benefits, and presenting fast services and easiness of executive operations and control actions.
- The most important barrier in this contract is usury alloy. But it seems that the greatest challenge and barrier for optimum usage of this financial instrument, is usury concept misunderstanding about debt selling to less; it's noticeable that usury is a very complicated matter which God almighty, knew it as war with him, so every economic activity shall not be easily related to this phenomenon, because it may block useful and lawful ways in commercial trades field, and it's also not true to ignore usury with legal tricks. In fact, based on what stated about usury concept, it becomes clear that debt buying is professionally and thematically out of usury inclusion. And if the debt was money or bill, dealing with less money would be lawful based on ja'fari jurisprudent's opinion and isn't like usury because it's countable and the usury is only for measurable or weighable objects.
- Fixing control weaknesses and legal emptiness of this contract by concerned officials, would be one of most effective measures to improve effectiveness of this financial law's instrument. It's obvious that further researches and studies in this field would provide amendment of current regulations and rules about debt buying contract and guaranty more efficiency for this financial tool.

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