



Qard –The Good, The Fair, & The Ugly: From an Islamic Finance Perspective

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Abstract

Qard is the Arabic equivalent of “loan”. It is a term widely in use today by Islamic banks as well as conventional ones –especially if they operate in Arabic speaking jurisdictions. Qard and Qard Hassan are also employed by Islamic banks in particular as interchangeable. The variances of Qard as envisaged by the Islamic literature and their conformity to the Shari’a rules and premises, therefore, have been the subject matter of this investigation.

Keyword: Qard, Qard Hassan (QH), loan, deposit, Islamic banking

Introduction

An Overview

As Islamic financial entities eagerly strive to compete with their conventional counterparts, one of the result of such competition is the creation of, or attempting to create, a clear identity of Islamic banking. One chief area of demonstrating this is the products and services offerings of these institutions, which must emanate from or be formulated in line with the principles, rules, values and norms underpinning Islamic banking. This holds true in respect to financing products derived from contracts such as: Murabaha, Sarf, Ijarah, Salam, and Istisna’, etc., as well as with depository instruments that are governed by contracts like Mudaraba, Wakalah and others.

Qard is one of such key contracts underpinning the functionality of Islamic banks both on their asset-side (i.e. financing) as well as on their liability-side (i.e. deposit). For example, current accounts, which exist almost in all Islamic commercial banks –are unanimously believed by Shari’a scholars and Islamic Fiqh bodies to be governed by the Shari’a rules and principles of Qard. Similarly, some credit cards of Islamic banks are structured in whole or in part with the Shari’a rules and premises regulating Qard. Still, corresponding banking relationships, such as nostro account and vostro account, are said to be based on the same pillars of Qard. The popular name extensively used for a loan agreement as applied by Islamic banks all over the globe is “qardh hassan” –spelled differently.

The Issue

“Qard” is the Arabic broad synonym of loan, implying transferring of an asset by one party to another one who in turn undertakes to pay it back to the party that transfers it. Inevitably, it is well established in the operation of all commercial banks –Islamic and otherwise, given the fact that all of the funds available to banks are raised partly from the shareholders, and

partly from the depositors. The funds provided by the latter in whatever form of banking account fall into the definition of Qard –or lending, if the receiving entity is a conventional bank. But, if the receiving bank is rather a Shari’a compliant one, the nature of that deposit will be determined –if Qard or otherwise – depending on the contract used –either Qard, Mudaraba, Wakala, Musharaka etc...

On the other hand, “Qard Hassan” (or QH) literally means “goodly loan” –commonly perceived as a loan agreement whereby the borrower is legally bound to pay back to the lender no more than the initial loan –the principal amount. With the characteristic of paying or receiving –by the borrower or the lender respectively –no more than the original amount lent, QH therefore does qualify to be named “interest-free loan”.

In the Islamic literature, however, QH is perceived to include, besides the features of interest-free, other key characteristics, like moral and religious factors. The immediate apparent form of QH, as viewed by the mainstream in Islamic literature, is the loan facility provided by a real or legal person, such as an Islamic bank, to a needy fellow among retail customers –in particular.

But, how about a wealthy retail or corporate customer lending an Islamic bank by placing funds on an interest-free basis? Would that also constitute a QH Shari’a-wise, thus accruing to the depositor the religious benefits promised to QH-lender –including being a lender to God? If such a deposit qualifies to be QH Islamically, could this eventually result in cannibalizing or at least crowding out benevolence-based lending by solvent individuals to insolvent ones. The point is that in such a case many lenders perhaps may rather lend Islamic banks instead of real vulnerable people –in view of the associated repayment risk! If QH at Islamic banks –i.e. deposits, however, does not precisely mean QH in the broad Islamic literature, what these two QHs –the Islamic banking one, and the Islamic literature one –then have in common? and what set them apart? Assuming they are different indeed, should they be called differently, or that they may retain the same name? What could be the havoc of naming the two the same name? And if they are to be named differently, what should then they be labeled?

It is both relevant and important to note here that religious terms are special and exclusive. They are given to connote a particular meaning that may not be in precise agreement with the perception already in practice. Therefore there are views urging that such religious terms –which perhaps include QH –

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should be carefully preserved in their Islamic precise scope without alteration and modification. This is because such terms are key in providing the religion its peculiarity without which its identity may be lost. For instance, terms like: “Prayer”, “Fasting”, “Zakat”, “Hajj” “good”, “bad”, “purity” (*taharah*) etc., perhaps need adequate preservation in line with their religious connotation. This approach is believed to be endorsed by some leading Muslim scholars, including Ibn Taymiyah, among others [1].

But, what are the criteria –if any, and to what extent we should adhere to religious terms without deviation? And when we may relax them? On this, Albayanuni (1995) laid down some regulating foundations, saying: “If the term is a change to a previous Shari’a term, or a substitute for it, while there is no Shari’a impediment to the new terminology, then it is more preferred in such a case to apply the Shari’a terminology so as to be in agreement with the truer and wisest terms of the Shari’a –despite the permissibility to employ other terms sometimes as long as they do not overshadow the Shari’a terminology.”[2]

Objectives

So, this paper investigates the broad Islamic literature –both the Shari’a part as well as the moral one –so as to find out the chief characteristics of *qard* as perceived by the literature vis-à-vis the sort applied by Islamic banking and financial entities in this modern era. The purpose is to raise awareness on the religious term of “*Qard hasan*”, and find out if there is any convergence or divergence between it and *Qard* in general.

Methodology

This investigation is a combination of qualitative and descriptive methods. It focuses on the description of the term in order to have a proper understanding of *Qard* vis-à-vis *Qard Hassan* (QH) as well as their applications.

Given the religious involvement, Islamic references, including chiefly the Holy Quran and Sunnah, have been studied to find out the intended meaning and its application. Besides, Shari’a scholars’ interpretations in relation to the term and their views have been also carefully analyzed.

The Scope

The scope of this research paper is to study how the concept of “*Qard*” and “*Qard Hassan*” and related concepts in the context of Islamic banking and finance converge or diverge. But the paper doesn’t aim to study associated issues, such as the products derived from *Qard*, the efficiency or effectiveness of *Qard* dealings in Islamic banks, or any similar context other than the applicability of *Qard* on *Qard Hassan* and their interchangeability as to their modern applications from an Islamic banking standing.

Literature Review

Background:

“*Qard*” is the Arabic synonym of loan, which means an agreement to transfer the ownership of an asset, typically cash, by one party to another who in turn is obliged to return to the lender a similar asset. The AAOIFI defined it as “*The transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it.*” [3] The notion implies that by virtue of such a contract, the receiving party becomes the owner of the underlying asset and therefore enjoys the exclusive entitlement of doing with it whatever he may wish, against his binding undertaking to return to the giver a similar asset in the manner and time agreed by and between the two parties.

“*Qard Hassan*” (QH) on the other hand, is an Arabic phrase literally translated as “*goodly*” *Qard* (loan). It has the same characteristics of a *Qard* –as defined above, in addition to a religious or moral features. The term is popular amongst Shari’a scholars –ancient and present, and has been –and is indeed being –employed in modern Islamic finance with “*Qard*” interchangeably.

QH has been specifically referred to by the holy Quran in 6 different verses, namely: the verse: {*Who is it that will lend unto Allah a goodly loan, so that He may give it increase manifold?*}, [al-Baqarah, 245]; the verse: {*And Allah said: “I am with you. If you establish prayer and give Zakat and believe in My Messengers and support them and loan Allah a good loan.*}, [al-Maidah, 12]; the verse: {*Who is he that will lend unto Allah a goodly loan, that He may double it for him and his may be a rich reward?*}, [al-Hadeed, 11]; the verse: {*Indeed, the men who practice charity and the women who practice charity and [they who] have loaned Allah a goodly loan it will be multiplied for them, and they will have a noble reward*}, [al-Hadeed, 18]; the verse {*If ye lend unto Allah a goodly loan, He will double it for you and will forgive you.*}, [al-Taghabun, 17]; and the verse: {*So, recite what is easy from it and establish prayer and give Zakat and loan Allah a goodly loan. And whatever good you put forward for yourselves –you will find it with Allah. It is better and greater in reward.*}, [al-Muzzammil, 20]

A careful look into the foregoing verses may decipher some common factors including: (a) all verses declare that the borrower is the Almighty, and (b) the loan is labelled “*goodly.*” Moreover, 3 of the 6 verses have aligned this “*goodly loan*” with good deeds usually intended exclusively for the Afterlife. For instance, in the verse of surah al-Maidah, *goodly loan* has been aligned with prayer, Zakat, believing in the holy Prophet, and the like. Similarly, the verse of surah al-Hadeed, *goodly loan* is again associated with charity-giving practices. Then, in surah al-Muzzammil, the verse attached *goodly loan* to acts such as prayer and Zakat, quite similar to the verse of surah al-Maidah. These features seem to direct the meaning of *goodly loan* more towards altruistic deeds, as opposed to the kind of loan where the lender is not prepared to forgo it.

Broadly speaking, *goodly loan* /QH seems to be interpreted in 3 ways: The 1st interpretation is that QH is simply the synonym of *Qard*, with no differences. This sense is what is held widely today by majority of Islamic bankers, Islamic finance practitioners, researchers and even ordinary people. [4] Even the AAOIFI named it so as it states in relation to deficit of a Takaful operator that “10/8 *The Company may cover the deficit from project financing or Qard Hasan (interest-free or benevolent loan) debited to the account of the insurance fund.*” [5] Nay, quoting from Farooq, M. O. (2011), Sadr holds that the perception of Muslim jurists is to use the two terms interchangeably. These scholars view them as the same as far as the contractual and exchanged rights are concerned, but differentiate them with respect to the intention of the client. [6]

The 2nd interpretation is that *goodly loan* is broadly any payment for charity causes, where the lender wishes to just please Allah in exchange for His rewards in the Afterlife. This –according to Dr. Sambhali –may take the form of lending money or resources to a genuinely vulnerable person *with the pre-fixed intention to waive it* should the borrower fails to repay it on time [7].

This connotation of *goodly loan* seems to correspond partly with the implication of the Quranic verse that read {*And if there is a debtor who is insolvent from whom you owe a debt, extend to him until he can pay his debt. But your giving in charity to insolvent debtors in the form of clearing them of (writing them off) in whole or in part, is better for you than extending them the period and more rewarding.*}, [al-Baqarah, 280] [8]

It can also be encompassed by the broad concept of giving in charity. This is the view of some commentators of the holy Quran as well as some leading Muslim scholars. For example, Imam al-Qurtubi cited the saying of al-Kalbani on the verse: {*Who is he that will lend unto Allah a goodly loan, that He may double it for him and his may be a rich reward?*}, [al-Hadeed, 11], while explicating *goodly loan*, to mean paying in charity. Similarly, he quoted the wording of Imam al-Qushairi saying: “*Qard Hassan is when the charity-giver*” Likewise, Imam al-Tabrie in commenting on the same verse put it this way: “*who is it that would spend for the sake of Allah in this world, exchanging his payment for what Allah has –that is the goodly loan.*” [9]

In the view of Dr. Sambhali, *goodly loan* is to be extended in the name of Allah to support the needy and destitute people, maintaining the orphans and helpless widows, paying off the debt of poverty-stricken, travelers who lose their resources during their journey, lending money or resources to a genuinely needy person with the intention to forgo it if he cannot return the amount, as well as spending on one's own family. [10]

The 3rd interpretation is that *goodly loan* is a broad term that is not confined solely to interest-free loan, or even to giving in charity alone; rather the term comprises all good deeds including all acts of charity as well as benevolent deeds that may not take a monetary form. So, in this view, *goodly loan* obviously includes, as a matter of course, spending in charities and making contributions to Allah's causes. [11], as well as many benevolent acts such as building mosques, sponsoring orphans, building Islamic schools, publishing Islamic books in different languages, and building health centers to provide treatment to the poor and needy Muslims, .. etc. [12]

Moreover, Dr. Nabulsi went a step further on the connotation of *goodly loan* and includes as well any benevolent act in its broadest sense towards any of the creature of Allah, without reducing it to tangible items. Thus, this can take the form of "giving of your money, of your time, of your effort, of your experience, of your knowledge, of your status; you may help a sick person, you may help a widow, a wounded animal, you may help a creature, whoever he is—all of it is a goodly loan". [13] Perhaps, this is why—as we will see it, Dr. Nabulsi views QH as better than charity, given the broader scope of QH as he perceives it!

Accordingly, it is obvious that the term *Qard* has been mentioned by the holy Quranic in respect to *goodly loan* just in its metaphoric sense—not for the real meaning. That is because no one can think of lending Allah the Almighty anything. Besides, the term has been mentioned along with spiritual-driven good deeds, like prayer, faith, charity, etc. Yes, it is true that *goodly loan* may refer to giving money in the form of *Qard* (loan). However, that is just a tiny part of the large scope of good deeds encompassed by the term—according to Dr. Nabulsi—and therefore in no way "the part—i.e. *qard*—can be equal to the whole—i.e. *goodly loan* (or QH).

The origin of Qard:

The practice of giving *Qard* has been around for thousands of years. However, the first instances of it tracked back to Ancient Mesopotamia (known in Arabic as: "*Bilād ar-Rāfidayn*"—which presently occupies the area of: Iraq, and parts of Iran, Turkey, Syria and Kuwait.) [14]

Lending at interest, according to Chrissy Kapralos, was a point of contention when ethics and religion had closer relevance to state laws and culture, particularly during the Middle Ages. [15] During this period, people were used to lending a helping hand to their fellows for free. The subject matter did not have to be necessarily a monetary item, as it could have taken the form of goods, commodities, tools or appliances that could be returned after use.

Then *Qard* developed to be against interest. At this stage, it went through different phases: it was initially perceived as immoral and controversial, then went to become *simple* and finally to compounding. Thus, many people in the old days, given their religiosity and other factors, look to the act of charging interest against *Qard* as unacceptable morally. However, as charging interest continues and win acceptability, it becomes a custom, and then moved on and on to compounding—where the interest is not charged on the principal loan solely, but also on the interest itself. It is believed that the first written evidence of compound interest dates roughly 2400 BC, where the annual interest rate reached approximately 20%. [16]

However, the modern compounding interest is attributed to Italy in the 17th century. [17] This may be viewed as a natural development following the establishment of the first regulated bank in Italy back in the 16th century as a result of irregularities observed in the banks that were in operation before year 1587. [18]

This sort of interest is what has become the norm and mainstream in a large scale in the modern era, especially in 3rd party financing and investment vehicles. [19] Many new investors—especially youngsters—are advised to grow their money fast by putting it to compounded-interest-based financial mode. Despite the fact that it is true that such a platform could leapfrog money and make a person wealthy in a short period, compounding interest only works—according to the guru insurance expert and investment advisor—Hugh F. O'Rourke—provided you do not lose any money. It has to compound on the positive value that you attained in any prior year. If you lose money in a year, the next year you are not compounding; you are rather digging yourself out of the financial hole your money just fell into [20]. It may be further argued that many governments, especially of the Third World countries, suffer greatly and pay huge price, as a result of taking loans on the principle of compounded interest. [21]

The Shari'a Legality of Qard

The Shari'a legality of *Qard* is well established in the Prophetic Sunnah, particularly, including the Hadith in which the holy Prophet, pbuh, said: "God will place servant of Him under His shade on the day where will be no shade except His shade, who waits (patiently) (any debt) from a borrower who lives in straitened circumstances (poor or impoverished) or relinquishes (the debt altogether) for the debtor." [Ahmad] In a very similar Hadith, the holy Prophet, pbuh, reportedly said: "He who gives respite to someone who is in straitened circumstances, or grants him remission, Allah will shelter him in the shade of His Throne, on the Day of Resurrection, when there will be no shade except His shade." [Tirmidhi]

In a more explicit Hadith, the Apostle, pbuh, said: "Before you, there was a person amongst people to whom the angel came to seize his soul. So, he was asked: Have you performed any virtuous deed? He said: I do not know. He was asked: Try to ponder. He said: I do not know anything except I used to trade with people in the world and demand from them, so I would give extra time to the rich and forgive the poor. Thus, Allah made him enter Paradise." [Bukhari] Another narration says: "A person from amongst the people who lived before you was called to account by Allah on the Day of Resurrection. No good deeds were found in his credit except that he, being a rich man, had (financial) dealings with people and had commanded his servants to show leniency to those who were in straitened circumstances. Upon this, Allah, the Exalted and Majestic Said: 'I am more entitled to this attribute, so waive (his faults).'" [Muslim]

Muslim jurists agree that extending *Qard* by a lender is an act of compassion, as it brings benefits to the borrower, meeting his needs, and relieving him of distress. As such, they see it as meritorious (recommended religiously), evidently from the Hadith that the Prophet, pbuh, said: "Whoever relieves a believer of one of the distresses of this world, God will relieve him of one of the distresses of the Day of Resurrection. The slave is not in the help of his brother." [22] To this, al-Shawkani said: "In the virtue of loan, there are many hadiths beside the generalities of the Qur'anic and hadith texts ruling the virtue of helping, meeting the needs of a Muslim, relieving his distress, and uplifting his poverty comprehensively. And there is no dispute amongst Muslims regarding its legitimacy." [23]

Nonetheless, many Shari'a scholars argue that *Qard*—Shari'a-wise—may become obligatory, disliked, forbidden or just permissible, depending upon the circumstances and intentions. For instance, if the borrower is extremely insolvent, while the lender is very rich, then lending such a vulnerable might become obligatory; And if the lender is aware, or does believe, that most likely the borrower will spend the *Qard* in prohibited or discouraged goals, then lending that borrower is forbidden or discouraged, respectively; And if a merchant borrows, not for a particular need, rather to boost his business and earn more profit, then extending *Qard* to that borrower is merely

permissible, as it doesn't entail relieving distress –to qualify as a religiously meritorious act. [24]

Qard vs. Qard Hassan –are they one or different?

An ongoing debate in Islamic literature is whether interest-free loan -normally called Qard -is indeed the same as Qard Hassan/Goodly loan, or that they're different? This is a valid question as many Islamic banks and financial institutions do present among their products what they label as "Qard Hassan", whilst it is not quite clear whether the sort they offer truly reconcile with that of the Islamic literature or not, and if they are not, what set them apart?

Perhaps, among the factors that induced many scholars to view them as the same, is their perception on lending to people as lending to the Almighty. This may be derived from the Qudsy Hadith narrated by Muslim on the authority of Abu Hurairah – may Allah be pleased with him, saying: "Verily, Allah, the Exalted and Glorious, would say on the Day of Resurrection: O son of Adam, I was sick but you did not visit Me. He would say: O my Lord; how could I visit Thee whereas Thou art the Lord of the worlds? Thereupon He would say: Didn't you know that such and such servant of Mine was sick but you did not visit him and were you not aware of this that if you had visited him, you would have found Me by him? O son of Adam, I asked food from you but you did not feed Me. He would say: My Lord, how could I feed Thee whereas Thou art the Lord of the worlds? He said: Didn't you know that such and such servant of Mine asked food from you but you did not feed him, and were you not aware that if you had fed him you would have found him by My side? The Lord would again say: O son of Adam, I asked drink from you but you did not provide Me. He would say: My Lord, how could I provide Thee whereas Thou art the Lord of the worlds? Thereupon He would say: Such and such of servant of Mine asked you for a drink but you did not provide him, and had you provided him drink you would have found him near Me."

On the foregoing Hadith, the late Sheikh Abdullah bin Uthaimin, for instance, noted that "Rather, Allah added that to Himself first for boosting and inspiration, similar to His saying: "Who is it that would loan Allah a goodly loan"! "And "Who" here is to inspire, and "loan" is known; But, does the Almighty need it?! Obviously, he doesn't, but this is a kind of inspiration"! [25] Similarly, Dr. Khalid al-Sabt said –in reference to the same Hadith "And the same goes with people's needs, like: 'Such and such of servant of Mine asked you for a drink ... etc.' among the needs that people face." [26]

Indeed, *good deeds* have been named differently in the holy Quran and Sunnah. Sometimes they are phrased "sale", evidently from the Quranic verse that says: {Indeed, Allah has purchased from the believers their lives and their properties [in exchange] for that they will have Paradise.}, [al-Tawbah, 111]. Sometimes they are referred to as "loan", evidently from the many verses referred to in this research including this: {Who is it that will lend unto Allah a goodly loan?}, [al-Baqarah, 245]. Sometimes, they come as "sadaqah", as found in a Prophetic Hadith in which the holy Prophet, pbuh, said: "There is (compulsory) sadaqa (charity) to be given for every joint of the human body (as a sign of gratitude to Allah) every day the sun rises: To judge justly between two persons is regarded as Sadaqah, and to help a man concerning his riding animal by helping him to ride it, or by lifting his luggage on to it also regarded as sadaqah, and (saying) a good word is also sadaqah, and every step taken to one's way to offer the compulsory prayer (in the mosque) is also sadaqah, and to remove a harmful thing from the way is also sadaqah." [Sahih Bukhari] So, here the term "sadaqa" –which literally refers to money, is employed to mean various good deeds that do not necessarily involve money.

Now, a careful analysis of the foregoing texts may reveal that the aim was to explain the magnitude of *good deeds*, as well as the commitment of God to reward the doer. This is obvious in the case of "sale" and "loan", where the "Buyer" (Allah) -in the former, and the "Borrower" (Allah) -in the latter, makes Himself liable legally to honor His commitment in those two deals. That is why Allah further confirmed that by exclamation as to who is

more discharger of his commitment than Himself!, as He said: {And who fulfils his covenant (better) than Allah!}, [al-Tawbah, 111] [27]

It seems from the Hadith Qudsi "O son of Adam, I was sick but you did not visit Me..." [Sahih Muslim] and the previously quoted Quranic verses on *Goodly loan* that Muslim Fuqaha, and Ulama in general, mentally derived the following equations:

Lending to people = lending to Allah (by analogy onto the Hadith Qudsi); and

Lending to Allah = Goodly Loan (or QH), (by definition of the Quranic verse); and therefore: loan to people = Goodly Loan = Qard Hasan (by conclusion)

However, mere lending to people –*Qard*, cannot be classified as lending to Allah –Goodly loan. One argument is that Goodly Loan (or QH) must be intended for Allah the Almighty, while a normal Qard might be for the sake of Allah, and often for the sake of something else. For instance, the lender in an ordinary Qard may just wish to preserve and secure his fund [28]

Therefore, some scholars hold that "under the Shari'a, a loan is the payment of money to someone who may derive benefits from it and returns it by a substitute. Its purpose is to genuinely aid the borrower and relieve his distress by giving him the utilities of the loaned money free of charge for a period of time; It is not permissible to be a way to profit and augment the loaned capital. As to [the element of] "ihsan" (benevolence) in it, it is an excess of that [i.e. Qard]." [29]

Perhaps it may be agreed that QH is more towards its benefits in the Hereafter, rather than to their worldly fruits, whereas *Qard* is towards the benefits of this world –like more security and easy accessibility, than to the rewards in the Afterlife.

But, what about if the depositor (lender) wishes sincerely to empower the Islamic bank, by lending to it –via current account –to enable it to provide QH for individual vulnerable? Would his lending to the Islamic bank be qualified as QH?

Those scholars who argued that a Qard is better religiously than a charity have derived their argument on the following evidence, viz: The narration of Imam Malik, in Al-Muwatta on the authority of Ibn Umar, where he said: "A debt is of three types: a debt by which you seek to please the Almighty, so you will get the Pleasure of the Almighty; and a debt by which you want to please your fellow, so you will get the pleasure of your fellow; and a debt you advance just to take evil with good, that is usury." So, the hadith indicates that whoever lends a person for the sake of pleasing him, or showing his gratitude to him, is not rewardable.

Al-Sharwani (in his footnote on 'Tuhfat al-Muhtaaj' -by al-Haytami), stated that: "lending could be permissible –and not recommended." This is conceivable in the case where one gives the loan to a rich (solvent) person on the request of the lender – despite the rich's dispense to it, as in such a case, the loan is just permissible –and not necessarily meritorious, as by doing so one does not provide any relief for any distress. It could also be the case where the lender just wishes to serve his own interest, such as securing his money by lending it to a [solvent] borrower.

Qard vs. Charity -which one is religiously better?

Some scholars hold that religiously, a loan is better, and more rewardable, than a charity. Among their arguments is the Hadith that the holy Prophet, pbuh, said: "On the night on which I was taken on the Night Journey (Isra), I saw written at the gate of Paradise: 'Charity brings a tenfold reward and a loan brings an eighteen fold reward.' I said: 'O Jibriil! Why is a loan better than charity?' He said: 'Because the beggar asks when he has something, but the one who asks for loan does so only because he is in need.'" The assumption behind is that the borrower does not approach you for the loan unless he is in need. It is also true -the argument says, because the charity may end up in the hands of a wealthy person -who may not be in real need of it in the first place. It is obvious that the Almighty repeatedly mentioned the verse of lending a *goodly loan* in His holy book, connoting the virtue and reward accruing to a loan, and that He, Glory be to Him, is in-charge for the great reward thereof.

Dr. Nabulsi explains the wisdom that a loan is better than a charity, saying that "The secret is that not every person accepts charity, while every person if he is in need of money accepts a good loan, and his soul remains dear with a raised head. The circle of charity narrows, but the circle of good loans expands. Each person has a job, has a home, but forced to take a good loan. The good loan spread among the faithful brothers, their problems were solved; so the good loan is broader than charity." [30]

Nevertheless, some scholars believe that it is the otherway around -charity is better religiously than a loan, by first disqualified the foregoing Hadith as unauthentic. They also inferred from the Quranic verse *{And if there is a debtor who is insolvent from whom you owe a debt, extend to him until he can pay his debt. But your giving in charity to insolvent debtors in the form of clearing them of (writing them off) in whole or in part, is better for you than extending them the period and more rewarding.}*, [al-Baqarah, 280], that this Verse is a boost to do charity, and extending the period to the debtor insolvent. The verse implies an obligation to extend the period to the insolvent up to solvency, but still better than it is writing it off. [31]

It is said that the late Sheikh Abdullah bin Baz was asked about which is better -a charity or loan? He answered: "Charity is required, and the believer should strive in it and be keen to help the needy and it is better than loan. The believer should be keen on giving charity... So charity is better and greater in benefit, and a loan is useful and beneficial and a kind of charity." [32].

So, assuming the beneficiary of the loan and the charity is the same, religiously, the charity seems better than lending for the simple logic that the charity-giver forgoes the utility as well as the amount to the beneficiary, whereas the lender forgoes only the utility part, but retains the amount -as payable.

Nay, most of Fuqaha, as per Sheikh Al-Na'san, hold that charity is more rewardable by Allah than a loan. They referred to some Quarnic verses, including interestingly, the verse in which Allah said: *{Who is he that will lend unto Allah a goodly loan, that He may double it for him and his may be a rich reward?}*, [al-Hadeed, 11][33]

The argument that a loan keeps the borrower's head up, and that a charity humiliates the receiver, isn't strong enough. Certainly, a defaulting borrower who is chased by his creditors may not have his head up! Also, a needy fellow who got \$1 million as a charity, or via bank transfer, or directly gets his debts settled without his knowledge, or receives the item or service he needed without the knowledge of others, all of these could keep their heads up. So, the amount and the manner by which the charity is paid, may keep the charity-receiver's self-esteem intact.

Furthermore, we must consider the Islamic standing on debt, and how important is to avoid it as far as possible, given its impacts on one's deeds in the Hereafter, if he fails to repay it. This also holds given the burden he will, as a result, leave onto his heirs after his death. Similarly, if we assume that a person dies and left behind a debt! What is better: is it to write it off for the dead, or to extend the loan on the inheritors? Obviously, writing it off -i.e. forgoing it as a charity -is much better, and hence this shows the religious supremacy of a charity over a debt.

Some analysts rather look to the issue from 2 dimensions: - the standing of the giver, and that of the receiver. Accordingly, they differentiate the Shari'a ruling, as follows: "loan is not better than charity, for the lender; rather charity in his case is better than lending, as Allah said: *{And if there is a debtor who is insolvent from whom you owe a debt, extend to him until he can pay his debt. But your giving in charity to insolvent debtors in the form of clearing them of (writing them off) in whole or in part, is better for you than extending them the period and more rewarding.}*, [al-Baqarah, 280] Al-Jassas, in his book Ahkam al-Qur'an, said: "It means -and God knows best: Giving alms to a borrower -by forgoing it [i.e. writing it off] -on the insolvent is better than extending him time. As to the borrower, if he hopes to fulfill it, then no Shari'a issue that taking a loan is better than

asking for a charity, as that preserves his dignity and saves him from the humiliation of begging, to which the holy Prophet, pbuh, said: *"If one of you would keep begging (of people) until he meets Allah (on the Day of Resurrection) his face will be without a shred of flesh."* [Bukhari & Muslim] [34]

Modern Applications of Qard –Islamic banking-wise

It is well known that all banking accounts at conventional banks take one form, i.e. Qard. In Islamic banking, however, the matter is different, as not all banking accounts are build on Qard. This is obvious with investment accounts -i.e. all fixed deposits and some saving accounts, which are structured either on the contract of Mudaraba or Wakala, among others. Nevertheless, some saving accounts are of current account nature -i.e. Qard-based, rather than investment. On this, Qaed (2014) holds that generally, Islamic financial institutions structure saving accounts on either Qard, wadiah yad damanah or mudarabah. [35] Ruslan (2021) gave more details saying that "This type of savings does not benefit like conventional banks because it is in the form of a deposit and can be withdraw at any time. However, banks are not prohibited from giving some kind of bonus or gift to their savers." [36]

Perhaps the key feature differentiating between a Mudarabah-based saving account and the so-called amanah-based (or yad dhamana-based) account is the authorization by depositors to the Bank to invest the funds on their behalf, and for their benefits, against a share in the profit.

As such, the Qard being offered by Islamic bank is primarily current account, whether the bank is the receiver or depositor - such as in placement at a corresponding bank for international transfers and payments, including Letter of Credit. As above hinted, some saving accounts, such as those whose owners do not authorize the bank to carry out any investment operation, as Shari'a scholars have grouped them under Qard. The Shari'a reasoning here is that if the fund is placed with the bank for the sole purpose of saving and accumulation, then it is more of Wadiah -which is basically viewed as a trust, although may turn Qard if the trustee uses it without the sanction of the principal (depositor).

Interestingly, today, the QH is also rightly deemed as a manifestation of the corporate social responsibility (CSR) owing to the close association between the key goals of QH and CSR, including helping poor people in society. [37]

From the perspective of structure and intention of the lender, Qard might be classified into 3 types, viz-: Either the lender lends freely on a moral ground, intending purely to please the Almighty -which may be labelled "good"; or he lends freely (to a real or legal person) in order to gratify non-monetary personal wishes -which can be called "fair", or he lends for the purpose of capitalizing on it and generating personal or material gains out of it -which we might call "ugly".

The grouping of Qard into the foregoing types is derived from the narration of Imam Malik from Ibn Umar, may Allah please him, that a man came to him and said, "Abu Abdul-Rahman, I gave a man a loan and stipulated that he give me better than what I lent him." Then A. Ibn Umar said, "That is usury." Abdullah said, "Loans are of three types: A free loan which you lend by which you desire the pleasure of Allah, and so you have the pleasure of Allah; A free loan which you lend by which you desire the pleasure of your companion, so you have the pleasure of your companion; And a free loan which you lend by which you take what is impure by what is pure, and that is usury." He said, "What do you order me to do, Abu Abdul-Rahman?" He said, "I think that you should tear up the agreement. If he gives you the like of what you lent him, accept it. If he gives you less than what you lent him, take it and you will be rewarded. If he gives you better than what you lent him, of his own good will, that is his gratitude to you and you have the wage of the period you gave him the loan." [38]

Interest-free Qard (The Fair):

As previously stated, among key modern applications of interest-free Qard with institution come loans in the form of

deposits at Islamic banks in particular –and at banks in general. This specifically takes the shape of current account -often called demand/ deposit in banking terms. The same holds irrespective of the position of the bank -whether a borrowing one -i.e. receiving from customers, or a lending one -i.e. giving to customers. It likewise applies whether the financing bank put the fund with the treasury of another bank -typically termed as *placement*, or receives it from the treasury of another bank - often referred to as *acceptance*.

The foregoing is the Shari'a view of many contemporary Shari'a scholars, researchers, and Fiqh academies. But, Dr. Hatim (2013) elaborates further by highlighting that these loans are different from deposits [Wadi'ah] –Shari'a-wise [39], for the reason -previously mentioned, that . The Bank receiving the deposits owns the amount and, in turn has the liability to repay it. [40] This is also the view of the International Islamic Fiqh Academy (1995) as it stated that: "(a): Demand deposits (current accounts), whether they are with Islamic banks or interest-based banks, are loans from a jurisprudential perspective, as the receiving bank is liable and obligated under the Shari'a to return them on demand; this holds even though the bank (the borrower) is well-off. (b): Bank deposits are divided into two types according to the reality of banking:

- Deposits for which interest is paid, as is the case in interest-based banks. These are usurious loans -hence prohibited, be it they are of the type of demand deposits (current accounts), term deposits, deposits with notice, or savings accounts.
- Deposits that are placed to banks that actually adhere to the provisions of Islamic Sharia with an investment contract on a share of the profit, are Mudaraba capital, and the provisions of Mudaraba in Islamic Fiqh apply accordingly, including the inadmissibility of the Mudarib (bank) guaranteeing the Mudaraba capital. [41]

In practice, Islamic banks have incorporated this rule into their banking terms and conditions. For example, the Shari'a Supervisory Board of Dubai Islamic Bank defines current account, in its banking general terms and conditions, as follows: "It is a *Qard Hassan* call account on which the rules of *Qard* contract applies, including the compulsion of guaranty and returning its equivalence, and it does not participate in the investment profit, nor bearing the risks." [42]

Similarly, in its banking general terms and conditions, Meethaq Islamic Banking -the Islamic window of Bank Muscat, defined its current account as "the account opened by customer on interest-free loan basis where capital is guaranteed and Bank invests with its own discretion." [43]

Such an interest-free *Qard* is named "fair", deriving the name from the Quranic verse that says: "And if ye do not, then be warned of war (against you) from Allah and His messenger. And if ye repent, then ye have your principal (without interest). Wrong not, and ye shall not be wronged." [al-Baqarah, 279] [44] So, here, the holy Quran clearly describes the two contracting parties as either wrongdoer (he who charges the interest) or wronged (he who is charged the interest). It follows that the one -and only way -to be fair and just, far away from wrongdoing or being dealt unfairly is for the lender and borrower to conclude the deal without interest.

Although, some researches hold that both current accounts and saving accounts are QH, [45], the finding of this paper is that interest-free *Qard* despite being "fair", including specifically most of current accounts in Islamic bank, does not, however, qualify as QH. That is because most of Islamic banks do not provide this sort of *Qard* to a real needy fellow; rather they offer it mostly to the "eligible" customer -who might not be truly a needy person. Also, the lending bank usually does not have a second thought of waiving it, evidently that it collects from the borrower all necessary securities along with the right and ability to recourse and liquidate those securities should the borrower fails to pay back.

Interest-based Qard (The Ugly):

This is the sort of loan that is popularly provided by conventional banks and financial institutions. It is the conditionality of the interest -rather than the amount -that invites the Shari'a prohibition. Accordingly, the amount of interest, whether small or large, does not make any difference as to the Shari'a ruling. However, it may be perceived that a lender who charges a substantial amount of interest, in abusing a poor fellow, may not be punished equally with a lender who is granted a tiny amount of interest from a bulldozer-sort of a financial institution, despite the two lenders being wrong. also, it may be said that an inters-lender who actually consumes the interest may not be punished equally with an interest-lender who rather disposes the interest in charity.

Interest-based Qard is here labelled "ugly", again by inferring from the Quranic verse that says: {*O you who have believed, do not consume usury, doubled and multiplied*}, [Al-Imran, 130] [Sahih International] Commenting on this verse, Ibn Attia, in his book: al-Muharrir al-Wajeez, noted that the term "multiplied" in the foregoing verse refers to the compounding year after year as they used to do, thus indicating the "heinousness and ugliness of their act." [46]

Interestingly, some analysts conclude that simple interest - as opposed to *usury* or compound interest -is permissible in Islam. [47] however, the Jeddah-based Islamic Fiqh Academy states the following: "Banking interest on deposits is among the usury, that is forbidden by Sharia in the Qur'an and the Sunnah, which has been also supported by resolutions and fatwas since the 2nd Islamic conference of the Islamic Research Academy held in Cairo in Muharram 1385 AH /May 1965 AD, attended by eighty-five Fuqaha from the Muslim Ummah among its senior scholars, with the representatives of thirty-five countries of the Muslim World, which stipulated in its first clause that "interest on all types of loans is the prohibited usury." [48]

Charity-driven Qard (The Good):

Charity-driven *Qard* is basically the sort of loan where the lender in principle intends to please Allah by extending the *qard* to the borrower to help him as the latter may be in need of it. Here, the lender gives the *qard* on a benevolent basis and for the purpose of pleasing Allah, with his intention that the borrower will pay no more than the amount lent, if he can, or be waived of it if he can't. The element of *charity* here lies in the fact that the lender forgoes the utility and benefits of the loan to the needy borrower freely in this world for a given period, and possibly the loan itself, against expected compensations from the Creator on the Day of Judgment.

What distinguishes this sort from the 2nd type –interest free *qard* –is that here the lender provides the loan to a needy borrower, and will potentially forgo it should the borrower faces difficulties to repay. The lender may have this in mind while lending, or he may eventually decide to do so. But if the lender won't forgo it, despite the extension of grace period till the insolvency of the borrower, then this may show that the charity element of this loan is only to the extent of the utility of the loan –not the loan itself. Obviously, such a charity cannot be equated to the sort where the charity-giver forgoes both the utility and the amount itself –which is more applicable to the definition of *qard hasan*.

Accordingly, it is perhaps advisable to give *qard*, if any, as QH, especially to vulnerable individual borrowers in helping them to meet basic needs, with the readiness to forgo it if the borrowers found it difficult to repay. Even, Mr. Templar (2012) holds that "Never lend money [presumably interest-free] unless you are prepared to write it off." [49] He wisely argued that if you lends and then get your money back, you can consider this as a bonus. But, if you don't get it, well, you were already prepared for that in the first place.

The particular virtue of forgoing loans whose debtors are unable to repay has been highly appreciated in Islam. For instance, the Prophet, pbuh, says: 'From among the people preceding your generation, there was a man whom the angel of death visited to capture his soul. (So his soul was captured) and he was asked if he had done any good deed.' He replied, 'I don't

remember any good deed.' He was asked to think it over. He said, 'I do not remember, except that I used to trade with the people in the world and I used to give a respite to the rich and forgive the poor (among my debtors). So Allah made him enter Paradise.'" [Bukhari] Also, Abul Yasar told of hearing the holy Prophet, pbuh, saying: "Whoever gives respite to an insolvent person or remits a part of his debt, Allah will shade him on the Day of Judgment in the shade of His Throne, on a day when there will be no shade but His." [Sahih Tirmidhie]

The grouping of *charity-based Qard* as "good" is indeed derived from the above Hadith, as well as from the Quranic verses that describe this sort of deeds with the term 'goodly'. Although *interest-free Qard* isn't bad Shari'a-wise, Islamic literature often uses the term "Hassan" (literally good) on acts and deeds that entail noble qualities that are not exhibited by ordinary good deeds. For example, the holy Quran noted that: {Allah commands justice and the doing of good}, [al-Nahl, 90] [A. Yusuf Ali], implying that the *good* here advocated is something above justice. Similarly, the holy Prophet, pbuh, in a long Hadith, said, in answering the question: what is Ihsan (i.e. perfection or Benevolence)?: "Ihsan is to worship Allah as if you see Him, and if you do not achieve this state of devotion, then (take it for granted that) Allah sees you." [Bukhari] This come after stating the pillar of Islam and Iman, to indicate that Ihsan is a further higher quality.

Concluding remarks

Contrary to the overwhelming perception prevailing in the Islamic finance sector, *Qard* is not precisely the same as QH. The fact remains that the former refers to just lending, although in Islamic finance, the term is used to indicate the omission of interest in the contract. Similarly, QH is not simply interest-free Qard, as removing interest does not qualify a Qard to be QH.

Perhaps, to avoid eclipsing the morally-driven-charity-based QH with the non-charity-based-though Shari'a-compliant one, Islamic financial entities, scholars & researchers may exclude QH for truly benevolent-driven loan, such as in case Islamic banks provides interest-free loan to needy and vulnerable fellows without charging any sort of fee -whatsoever under whatever name. The kind of interest-free Qard, which are not driven by charity cause, such as current account at Islamic bank, and the like, may be named "*Fair Qard*" or something like that.

Shari'a scholars, in particular, shouldn't take lightly new concepts ore names that are labelled with classical Islamic terms without actually ensuring that the particular features envisaged in religious terminologies is demonstrated in the new concept. This is especially true with terms that imply moral connotation or value, such as the Hereafter and Heavenly rewards.

In particular, the enterchangeable use of the two terms could eventually deny the people of their collective benefits. For example, applying charity-based Qard on *interest-free Qard* may result that a potential QH lender would rather lend an Islamic bank, rather than a really needy insolvent man, owing that lending an Islamic bank will bring him the moral and religious benefits, but with no repayment risk, compared to lending a truly poor fellow, which despite having the moral and religious benefits, would guaranteeing him huge repayment risks.

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