



# DARUL IFTA – DEPARTMENT OF ISLAMIC JURISPRUDENCE

A Division of Jamiah Qasimul Uloom

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|                  |                 |             |                       |            |                       |            |
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| <b>Inquiry#:</b> | <b>Category</b> | Debts/Zakat | <b>Date Received:</b> | 06/19/2020 | <b>Date Answered:</b> | 12/31/2020 |
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## 2 QUESTION

“– Is taking osap permissible?”

– How to navigate the following while taking osap:

- paying Zakat
- doing udhiya/Qurbani
- going to hajj/umrah

We'd also like to request a general reminder on the importance of being vigilant in trying to avoid paying interest in the beginning of the fatwa.” [sic]

## 3 CONCISE ANSWER

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب و الله التوفيق

OSAP is a government program that finances students' tuitions. It consists of a grant (which is not paid back) and a loan (which may have to be paid back with interest).

- 1) **Ruling of OSAP** – Under general circumstances, it will not be permissible to take the OSAP loan when paid back with interest. It will be permissible:
  - a. To opt for the grant as interest is not involved.
  - b. To take the loan if a person is confident they will pay it back before the interest period begins.
- 2) **Dispensing Zakat** – The original Hanafi position states that both immediate and long term loans will be deducted from liable assets when calculating Zakat. According to the



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other opinion, individuals who take long term loans can deduct the loans due within the next 12 months only, unless they are destitute.<sup>1</sup>

- a. Thus, individuals who have taken long-term loans can deduct the expected loan due within the next 12 months.
  - b. In a situation where the lender can demand the loan be paid back at any given moment, the entire sum will be deducted when calculating Zakat liable assets.
- 3) **Receiving Zakat** – A person is eligible to receive Zakat if they own less than the quantum (nisab)<sup>2</sup> after deducting debts from those assets which are in excess of their basic needs.
- 4) **Sadaqat al-Fitr and Udhiya (Qurbani)** – Sadaqat al-Fitr and Udhiya (Qurbani) are incumbent if a person owns the nisab or more after deducting debts from those assets which are in excess of their basic needs. Sadaqat al-Fitr and Udhiya (Qurbani)<sup>3</sup> may be incumbent upon a person although Zakat may not be. See detailed answer.
- 5) **Hajj** – Hajj is mandatory on those who possess sufficient means to perform Hajj after subtracting personal expenditures and due debts from their assets.

<sup>1</sup> This refers to individuals who are financially struggling and do not have enough funds to meet basic needs.

<sup>2</sup> 612.36 g of silver or 87.48 g of gold or its equivalent in value

<sup>3</sup> The nisab of Udhiya (Qurbani) differs from the nisab of zakat in such that along with zakat liable assets, those assets which are not in daily-use will also be counted towards the nisab of Udhiya (Qurbani), as opposed to the nisab of zakat where only zakat liable assets are counted towards determining zakat. In terms of Zakat, there are two types of assets: Zakat liable assets and Non-zakat liable assets. Zakat liable assets are those assets on which Zakat is payable. For assets to be zakat liable, four conditions must be met:

- 1- It has to be al-mal al-nami (assets which have intrinsic value (i.e, silver/gold), assets intended for trade, and monetary wealth)
- 2- Assets must be in excess of basic personal needs and debts
- 3- Assets must be equal to the quantum (nisab) of Zakat or over it, i.e meet the minimum amount of zakat liability
- 4- A lunar year must pass on these assets



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## 4 Detailed answer

### 4.1 WHAT IS OSAP?

OSAP (Ontario Student Assistance Program) is a program that helps students financially with their yearly tuition, books, and living expenses (for full-time students). The funding consists of a grant which the student keeps and a loan which the student must return. Upon completing studies, loans are to be paid back to the National Student Loans Service Centre (NSLSC). OSAP provides a 6-month grace period in which students are not required to repay their loans.

However, interest is charged during this 'grace period' on the provincial portion of the loan. In other words, the interest accumulated is based on the provincial part of the loan, not the federal part of the loan. Once the grace period has ended, the federal portion of the loan will also be charged with interest. Thus, the first six months post-graduation, interest is accrued, but this interest increases substantially after six months. Therefore, the accumulation of interest is considerably lower during the grace period and increases after that.

The federal student loan interest rate is 2.5% plus prime, which refers to the average bank prime rate, which frequently fluctuates. The Ontario student loan is 1.0% plus prime, which is charged upon the completion of studies.

### 4.2 RULING OF OSAP

Students who possess the financial stability to pay off their OSAP loan before the grace period are permitted to take the credit because no interest is owed before starting of the grace period. However, if a student fears that they will not be able to pay off their tuition and will be forced to pay interest on their loan, it will be impermissible to take OSAP. Students have the option of opting out of the loan and only accepting grants or applying for bursaries. If students cannot financially support themselves, it would be best to take the grant and pay the rest of their tuition. Seeking education is essential, but options other than interest-based loans should be sought out.

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Students who have taken the loan should find feasible options to pay off the loan, such as:

- working a part-time job, or
- borrowing money from a family member and paying them back gradually without interest.

If this is not possible, they should try to pay off the loan as soon as possible, limiting the increase of interest while asking Allah for forgiveness (*tauba*). The muslims of Ontario should collectively work to establish institutions that can help students who need financial support and provide non-interest-based options.

The Quran has an absolute ban on usurious loans in which profit is accumulated on the loan. The interest applied to OSAP loans falls in this category. The principle of jurisprudential law states, "Any loan that gives benefit to the lender is Riba." This principle is also substantiated by a prophetic tradition in which the Prophet prohibited even offering a gift after the loan has been contracted.

عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ، عَنْ أَبِيهِ، لَدَيْتُ الْمَدِينَةَ فَلَقَيْتُ عَبْدَ اللَّهِ بْنَ سَلَامٍ رَضِيَ عَنْهُ فَقَالَ أَلَا تَجِيءُ فَاُطْعِمَكَ سَوِيْقًا وَتَمْرًا، وَتَدْخُلُ فِي بَيْتِ ثُمَّ قَالَ إِنَّكَ رَضِيَ الرَّبِّ بِمَا فَاشٍ، إِذَا كَانَ لَكَ عَلَى رَجُلٍ حَقٌّ فَأَهْدِي إِلَيْكَ جَمَلًا تَيْنًا، أَوْ جَمَلًا شَعِيرًا أَوْ جَمَلًا قَتًّا، فَلَا تُخْذُهُ، فَإِنَّهُ رِبَاٌ. [ ب مناقب عبد بن سلام رضي عنه، كتاب مناقب الأنصار، صحيح البخاري ]

*It has been narrated by Abu Burda:*

*When I came to Medina, I met Abdullah bin Salam. He said, "Will you come to me so that I may serve you with Sawiq (i.e. powdered barley/porridge) and dates, and let you enter a (blessed) house that in which the Prophet ( ) entered?" Then he added, "You are in a country where the practice of Riba (i.e., usury) is prevalent; so if somebody owes you something and he sends you a present of a load of chopped straw or a load of barley or a load of provender then do not take it, as it is Riba."*

*[Sahih al-Bukhari]*



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Some jurists have given concession to acquire interest-based loans in certain circumstances. Mufti Khalid Saifullah explains this exception to be based on the grounds of a dire necessity (*dharurah*). He clarifies that this exception is premised on three principles:<sup>5</sup>

1. The interest-based loan may not be acquired only to increase living comfort.
2. It is for a basic necessity (*dharurah*)<sup>6</sup>: food, shelter, clothing, and anything which a person cannot live without. Interest-based loans will be permissible to acquire for such necessities.
3. Interest-based loans can be acquired for a dire need; such as a father acquiring an interest-based loan to marry off his un-married daughters.<sup>7</sup>

### 4.3 BASIC NEEDS (AL-HAJAT AL-ASLIYYAH)

Jurists have not specified a particular context that defines basic needs (*al-hajat al-asliyyah*). Rather, this is a normative issue that changes with societal development. An example would be the need of a conveyance developing from Prophetic times until the 21<sup>st</sup> century. Prior to cars, camels/donkeys were primary modes of traveling. Needs for a family to function adequately have also modernized; basic household items such as ovens, refrigerators, heating systems, air conditioning, etc. could be referred to as basic needs in first world countries.

One of the conditions for the obligation of Zakat is wealth being more than the basic needs of a person. Books of fiqh refer to basic needs as all things that are impossible or difficult for a human being to live without. From this it can be understood that basic needs include all that which protects a person from devastation or destruction.

<sup>5</sup> Halal wa Haram, pg.371 (Kutub Khana Naeemia)

Mufti Khalid mentions in *Kitab al-Fatawa*, vol.10, p.44, that a person unable to acquire a non-interest based loan for higher education would be given the dispensation to acquire an interest based loan in that situation.

<sup>6</sup> Jurists have differentiated between necessity (*dharurah*) and need (*hajah*). The former, if not fulfilled harm will befall the person. The latter, if not fulfilled, difficulty will befall them. In other words, necessity is more significant than *Hajah*, but *Hajah* is at times treated as a necessity. (al-Ashbah wal-Nadha'ir, pg.78)

<sup>7</sup> This example may vary depending on culture and regions.



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Basic needs are of two types:

- **1- (الحاجة الأصلية الحقيقية)** : Those basic needs which are essential for human survival and protect from direct harm, such that a person's life or assets can be harmed or life can become difficult to sustain in its absence. For example, essential expenses for themselves and their family, essential household expenses, and essential clothing for summer and winter, etc.
- **2- (الحاجة الأصلية التقديرية)** : Those basic needs which protect a person from constant worry. For example, settling of debts owed, equipment required for work, etc.<sup>8</sup>

Basic needs can differ based on individuals and regions. An example of individual basic needs are cars bought for transportation from home to work and vice versa, whereas cars bought just for leisure would not be considered a basic need.

An example of a regional basic need would be an infrastructured area where there would be a need for a car to drive, as opposed to an area where there is no such infrastructure (cars would not be considered a basic need in such areas).<sup>9</sup> Although one thing may be a basic need for one person or one area, it may not be a basic need for others.

There is no quantitative measure to define 'basic needs'. There is scope to include and exclude certain things depending on person and context while keeping true to the concept of 'basic' (*asli*) and 'need' (*hajah*).<sup>10</sup>

In summary, Shariah has prohibited taking interest-based loans and paying it back. For this reason, taking interest-based loans for educational purposes will be impermissible under general circumstances. Although, a student who does not have the financial capacity to seek education, a non-interest-based loan is not available to them, and there is a high possibility of missing out on

<sup>8</sup> يراجع فتاوى دار العلوم زكر لمزيد التفصيل ص: 122 ج: 3

<sup>9</sup> Jadeed Fiqhi Mabahith

<sup>10</sup> Fatawa Darul Uloom Zakariyya pg:122, vol:3



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intended education, they should consult a credible scholar in this situation and act on their advice.<sup>11</sup>

It is advisable to try and stay within one’s financial capacity when applying for a program.

#### 4.4 PROHIBITION OF USURY IN ISLAM

Islam sternly forbids and condemns all forms of Riba (usury). It is one of the only two major sins which Allah has waged war against.<sup>12</sup> It is a destructive sin which appears harmless but Allah explicitly promises in the Quran that He will destroy all money earned through interest and wipe away all blessings from such wealth while increasing the wealth spent in charity.

Allah (*Subhanahu wa Ta’ala*) says:

الَّذِينَ كُنُوا الرِّبَا لَمْ يَكْفُرُوا إِلَّا كَمَا لِيُقَوْمٌ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ كَمَا قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا  
وَأَحْلَأَ اللَّهُ لِلْبَيْعِ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَلْيُتَّقِ اللَّهَ وَارْتُدَّ إِلَىٰ مَا سَلَفَ وَأَمْرُهُ إِلَىٰ اللَّهِ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ  
فِيهَا خَالِدُونَ سورة البقرة (275)

*“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, “Trade is [just] like interest.” But Allah has permitted trade and has forbidden interest. So, whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] – those are the companions of the Fire; they will abide eternally therein.” (Sahih International)*

This verse explains the severity of punishment for those who consume usury. On the day of judgment they will stand like the one confounded by the touch of the devil, which indicates that consumers of Riba will be identified on the day of judgment with their maniacal behaviour.

<sup>11</sup> Naye Masail Aur Fiqh Academy Ke Faisle (1989-2017) – Islamic Fiqh Academy (India), pg.247

<sup>12</sup> The other major sin which Allah has waged war against is being hostile towards a pious worshipper of Allah as mentioned in the hadith of Sahih al-Bukhari.





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Allah (*Subhanahu wa Ta'ala*) says:

لَا يُهَا الَّذِينَ آمَنُوا لَتَمُنَّوْا ۖ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُمْ مُؤْمِنِينَ (سورة البقرة 278)

*“O you who have believed, fear Allah and give up what remains [due to you] of interest, if you should be believers.” (Sahih International)*

Allah (*Subhanahu wa Ta'ala*) says:

لَا يُهَا الَّذِينَ آمَنُوا لَا ۖ كُلُوا الرِّبَا ۖ أَضْعَافًا مُضَاعَفَةً ۖ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ (سورة آل عمران 130)

*“Oh you who believe! Do not consume interest compounded over and over, observe your duty to Allah, that you may be successful.” (Sahih International)*

Abu Hurairah (May Allah be pleased with him) said:

The Prophet ( ) said, *“Avoid the seven destructive things.” It was asked: (by those present): “What are they, O Messenger of Allah?” He replied, “Associating anyone or anything with Allah in worship, practicing sorcery, killing of someone without a just cause whom Allah has forbidden, devouring the property of an orphan, **eating/consuming of usury**, fleeing from the battlefield and slandering unaware chaste women who are good believers.” [Sahih al-Bukhari and Muslim].*

It was narrated from 'Ata' bin As-Sa'ib, from Ash-Sha'bi who said: ***“The Messenger of Allah [Sallallahu Alaihi Wa Sallam] cursed the one who consumes Riba, the one who pays it, the one who witnesses it, and the one who writes it down, the woman who does tattoos, the woman who has it done, and forbade wailing (in mourning), but he did not say that its doer<sup>13</sup> is cursed.” [Sunan an-Nasa'i].***

<sup>13</sup> The doer here who was not cursed by the prophet (peace be upon him) is the wailer only.



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Imam al-Qurtubi reports that Ibn Bukair mentions that a person came to Imam Malik ibn Anas and said: Oh Abu Abdullah! I saw a drunk person jumping in an attempt to grab the moon, so I said to myself: My wife is divorced if there is anything more evil that goes into the stomach of the son of Adam than alcohol. Imam Malik replied: Go back until I look into this issue. He came back the next day and Imam Malik told him again to return until he looks further into it. He entered the next day and Imam Malik told him: Your wife is divorced. I carefully read the book of Allah and the Sunnah of his Prophet (peace be upon him) and I couldn't find anything more evil than usury in them because Allah declared war on usury.

Imam al-Sarakhsi said in “المبسوط”: And Allah Almighty mentioned five punishments for the one who consumes usury:

1) Derangement – Allah Almighty said: *“They do not stand except like the standing of a one who is bewitched by the touch of Satan.”*

2) Obliteration – Allah Almighty said: *“Allah destroys interest.”* It has been said that this verse refers to the blessing (in the wealth) and deprivation from enjoying it themselves and their children after them.

3) War – Allah Almighty said, *“then be informed of a war [against you] from Allah and His Messenger”.*

4) Disbelief – Allah Almighty said, *“give up what remains [due to you] of interest, if you should be believers.”* Allah Almighty also said, *“And Allah does not like every sinning disbeliever.”* This means ‘disbelieving’ by regarding usury as lawful and ‘sinful’ by consuming usury.

5) Eternity in Hell – Allah Almighty said, *“But whoever returns to [dealing in interest or usury] – those are the companions of the Fire; they will abide eternally therein.”*



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### 4.5 OSAP LOAN AND DISPENSATION OF ZAKAT

Hanafi jurists have two opinions on this issue:

- All long-term/short-term loans will be deducted from total assets when calculating Zakat, regardless of length and amount of loan.<sup>14</sup>
- Long term loans due beyond 12 months will **not** be deducted when calculating Zakat, regardless of length and amount of the loan. Only loans due or intended to be paid within the next 12-month period will be deductible.

The first opinion will be applicable to an individual who is genuinely in need. This refers to someone who is immersed in debt and has a significant financial strain on them which cannot be paid off in the near future.

As for the one living in financial comfort, the second opinion will apply, i.e. they will only subtract the loan due in the next 12 months when calculating Zakat. This is the moderate opinion because if Zakat were to be dropped from the affluent individual, this would lead to depriving the poor of their rights, which is against the objectives and higher purposes of the Shariah (*maqasid al-shariah*).

When deducting the loan from Zakat liable assets, only the principal loaned amount will be subtracted, not the interest accrued on it. In conclusion, due debts and basic needs will not be included in Zakat calculation.

<sup>14</sup> See endnotes for an Arabic and English summary of the Hanafi position on long-term debts and Zakat



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### 4.5.1 Case scenario:

If a person's total Zakat liable assets are \$20,000, the total Zakat due would be \$500. The Zakat eligible total is divided by 2.5 % and 2.5 % of \$20,000 is \$500.

If the individual, however, has a loan at the time of dispensing Zakat, they will deduct the amount of the loan from the total Zakat liable assets. For example, their total Zakat liable assets are \$20,000 and loans are \$3000, the total Zakat liable assets would then be \$17,000 and they would discharge \$425 for their yearly Zakat.

## 4.6 ELIGIBILITY FOR STUDENTS TO RECEIVE ZAKAT

A person is eligible to receive Zakat if they own less than nisab after deducting debts from those assets which are in excess of basic needs.<sup>15</sup>

For instance, a person who owns only one car that they need will not include this car in their calculations to determine their eligibility to receive Zakat, because it falls under the basic needs of this person. Unlike a person who owns two cars and only needs one will include the other car in the calculation of their assets to determine eligibility to receive Zakat, because it is in excess of basic needs.

### 4.6.1 Case scenario 1 (can't receive Zakat):

Zaid owns two cars. Each car is worth \$15,000; one car is used for daily needs and the other is for leisure. Zaid acquired an OSAP loan of \$10,000 and is wondering if he can receive Zakat. Since one car is not used for his needs, he can sell that car and pay off his loan. Hence, Zaid will subtract his loan (\$10,000) from the price of the car he uses for leisure (\$15,000) to determine his

<sup>15</sup> وقال في الأصل (٩٣/٢): قلت: رأيت رجلا له مسكن وخادم يساوي عشرة آلاف درهم وعليه دين خمسة آلاف وله ألف درهم أجل له أن يقبض الصدقة؟ قال: نعم، انتهى. وقال القدوري في المختصر (ص ٥٩): والغارم من لزمه دين، انتهى. وقال السرخسي في المبسوط (١٠/٣): وأما قوله تعالى والغارمين فهم المدينون الذين لا يملكون نصا فاضلا عن دينهم، انتهى-



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eligibility to receive Zakat. Zaid would then be left with \$5000, after paying his OSAP, which is above the nisab of Zakat as of current date. Therefore, he will not be eligible to receive Zakat.

### 4.6.2 Case scenario 2 (can receive Zakat):

Zaid owns one car worth \$10,000 which he uses for daily needs. Zaid acquired an OSAP loan of \$10,000 and is wondering if he can receive Zakat. This car is considered a basic need and therefore he will not subtract his OSAP loan from the value of his car when calculating eligibility. Hence, Zaid is eligible to receive Zakat because he would own less than nisab. This is assuming he has no other assets which are in excess of his basic needs.

One thing that must be borne in mind for the obligation of giving Zakat is that all wealth is not Zakat liable. It must be wealth which has the ability of growth (*al-mal al-nami*). If it doesn't have the ability to grow, Zakat will not be obligatory on such wealth. Wealth which has the ability of growth are assets intended for increasing wealth. Zakat is only payable on those assets that are acquired for the purpose of generating wealth or has intrinsic value (such as gold and silver). Examples of this type of wealth include: cash savings, inventory of goods used for trade or sale, gold and silver, or securities that have the potential for appreciation in value, etc.

An individual who owns assets in excess of basic needs (that are not considered liable for Zakat) may not have to dispense Zakat but they may still have to dispense Sadaqat al-Fitr and Udhiya (Qurbani). This individual is also not eligible to receive Zakat because they are not considered poor.

For example, if they have multiple properties with no intention of selling, these properties are not assets intended for increasing wealth. Hence, this wealth is likely to pass the threshold of Sadaqat al-Fitr and Udhiya (Qurbani) obligation but since it is not *al-mal al-nami*, these assets will not be calculated in Zakat liable assets.



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## 4.7 LONG-TERM LOAN AND ITS IMPLICATION ON HAJJ AND UDHIYA (QURBANI)

Hajj is mandatory on those individuals who possess the sufficient means to perform Hajj after subtracting personal expenditures and due debts. Personal expenditures include expenses for dependants remaining at home, such as rent, food, and clothing. This is highlighted in the verse of the Quran as follows:

*“Pilgrimage to the house is a duty owed to Allah by all who make their way to it.”*

Anas (may Allah be pleased with him) says that a question was posed about the meaning of the words, ‘make their way to it’ and the Prophet said, *“Provisions and means of transportation.”*

Hajj is similar to Zakat in terms of its legal implication. In other words, once a person has enough money to perform Hajj, it becomes incumbent upon them.

### 4.7.1 Case scenario:

The cost of Hajj is \$10,000. Someone owns this amount but have a debt of \$2000, they must pay off their debt before calculating for Hajj. Hajj would be compulsory if they have \$10,000 after paying off the debt and calculating expenses for personal needs.

Similarly, if a person is financially stable enough to perform Hajj and their OSAP loan is still pending, they must first pay off the loan. Once the loan is paid off and the remainder is sufficient for Hajj, Hajj becomes obligatory in such a case. Hajj will not be fardh (mandatory) if the remaining funds are not sufficient to perform Hajj.

As for Udhiya (Qurbani) and Sadaqat al-Fitr, the nisab is the same as Zakat, i.e. two hundred dirhams of silver or 20 dinars of gold.<sup>16</sup> However, the difference in Zakat is that you will only count those assets that have the ability to grow or have intrinsic value i.e., gold and silver or trade goods

<sup>16</sup> 612.36 g of silver or 87.48 g of gold or its equivalent in value.



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whose values is equivalent to the nisab of wealth. But these two conditions are not applicable in Sadaqat al-Fitr and Udhiya (Qurbani).

For example, an individual owns multiple vacant properties which are not used for business. These properties will be taken into consideration when calculating Udhiya (Qurbani) and Sadaqat al-Fitr eligibility, but they will not be taken into consideration when calculating Zakat.

In conclusion, if a person has taken an OSAP loan and they own the nisab amount of Sadaqat al-Fitr and Udhiya (Qurbani) after deducting the one-year loan installment from their assets which exceed basic needs, they will give Sadaqat al-Fitr and perform Udhiya (Qurbani).<sup>1</sup>

and Allah All-Exalted knows best

و تعالی أعلم لصواب

Written by **Israr Ahmed** and **Nazir Ahmad**, may they and their parents be forgiven

حرره العبد إسرار أحمد بن عبد الواحد و نذیر بن فضل غفر

لهما ولوالديهما

Checked by Mufti Adam Koya, Mufti Abdullah Momla, Mufti Amanullah al-Husaini, Mufti Zakariyya Panchbhaya, Mufti AbdulMannan Mulla, Abrar Ahmed Koya

صححه وحققه المفتي آدم كو ، المفتي عبد موملا، المفتي

أمان الحسيني، المفتي زكر نجبها ، المفتي عبد المان ملا،

أبرار أحمد كو

December 31, 2020

جمادى الأولى، 1442

<sup>1</sup> عن أبي هريرة رضي عنه عن النبي صلى عليه وسلم قال: اجتنبوا السبع الموبقات، قالوا: رسول وما هن؟ قال: الشرك لله، والسحر، وقتل النفس التي حرم إلا لحق، وأكل الر ، وأكل مال اليتيم، والتولي يوم الزحف، وقذف المحصنات الغافلات. متفق عليه

عَنِ الشَّعْبِيِّ، قَالَ لَعَنَ رَسُولُ اللَّهِ صَلَّى عَلَيْهِ وَسَلَّمَ آكِلَ الرِّ وَهُوَ كَلُّهُ وَشَاهِدَهُ وَكَاتِبَهُ وَالْوَائِمَةَ وَالْمُوتَشِمَةَ وَهَيَّ عَنِ اللَّتَّوحِ وَمَهْيُثْلَ لَعَنَ صَاحِبَهُ. سنن النسائي



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قال القرطبي في تفسيره: ذكر ابن بكير قال: جاء رجل إلى مالك بن أنس فقال: أ عبد ، إني رأيت رجلا سكرًا يتقافز يريد أن خذ القمر، فقلت: امرأتي طالق إن كان يدخل جوف ابن آدم أشر من الخمر. فقال: ارجع حتى أنظر في مسألتك. فأ ه من الغد فقال له: ارجع حتى أنظر في مسألتك فأ ه من الغد فقال له: امرأتك طالق، إني تصفحت كتاب وسنة نبية فلم أر شيئاً أشر من الر ، لأن أذن فيه لحرب.

وقال الإمام السرخسي في المبسوط: (وقد ذكر تعالى لاأكل الر خمساً من العقوت:

أحدها: التخبط قال تعالى: {لَا يَشْفُقُونَ إِلَّا كَمَلِيْقَوْمٍ الَّذِي يَخْبِطُهُ الشَّيْطَانُ مِنَ الْمَسِّ}

والثاني: المحق قال تعالى: {يَمْحَقُ الرَّاسُ الْهَلَكَ وَالِاسْتِصْصَالَ، وَقِيلَ: ذَهَابُ الْبِرْكَةِ وَالِاسْتِصْصَاعِ، حَتَّى لَا يَنْتَفِعَ هُوَ بِهِ وَلَا وَلَدُهُ بَعْدَهُ.

والثالث: الحرب. قال تعالى: {فَأَذْنُؤُا بِحَرْبٍ مِّنَ الرَّسُولِ}

والرابع: الكفر قال تعالى: {وَذَرُوا مَا بَقِيَ مِنَ الرَّسُولِ إِنْ كُنْتُمْ مُؤْمِنِينَ} وقال تعالى: {وَأَسْ لَا يُحِبُّ كُلَّ كَفَّارٍ أَثِيمٍ} أي: كَفَّارٌ ستحلل الر أثيم فاجر كل الر ،

والخامس: الخلود في النار. قال تعالى: {وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ}

### مسألة الزكاة في الديون المؤجلة

مسألة الزكاة في القروض الطويلة الأجل من المسائل الشائكة التي تعددت فيها وجهات النظر وتنوعت فيها الآراء، والموضوع ذو شأن، ولا يغيب عن المطلاع على المعاملات المعاصرة حجم هذه المسألة وأهميتها و ثيرها في أهم ركن من أركان الشريعة، وقد مست الحاجة عند الناس إلى معرفة هذه المسألة إذ قد تشابكت المعاملات المالية والقروض المؤجلة في هذا العصر إلى درجة أنه كاد أن يكو شيئاً واحداً غير منفك عن بعضهما، سواء كانت القروض تجارية أو صناعية أو زراعية أو سكنية أو تعليمية، إلى غير ذلك من أنواع القروض المعمول بها في هذا العصر.

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### The Implication of Long-Term Loan on Zakat

The issue of Zakat in long-term loans is one of the complicated subjects in which there are many points of view, varied opinions, and the topic is critical. A person familiar with contemporary financial dealings does not lose sight of the size of this issue, its importance and its impact on one of the essential pillars of Sharia, i.e. Zakat. As the financial trades and long-terms loans have become so intertwined in this era, they are almost considered inseparable, whether these are commercial, industrial, residential or educational loans, in addition to all other types of loans in force in this era.

وبما أن مسألة زكاة الديون المؤجلة من المسائل التي كثرت فيها اجتهادات الفقهاء لعدم وجود نصوص قاطعة، لا بد من رد كل قول إلى محله حتى يرتفع الالتباس في المسألة وحتى يتم التوفيق بين الأقوال الواردة فيها، فيتوجب على الباحث اختيار أنسب أقوالهم نظرا إلى رعاية حق وحق العباد، ولأنه لا بد من مراعاة مصلحة الطرفين معا؛ أي مؤدي الزكاة وآخذها، ولا بد من إيجاد حل متوازن ومعتدل حتى لا يضر ي من الطرفين.

And since the issue of Zakat on long-term loans is one of the issues in which there are numerous scholarly opinions due to lack of conclusive texts. Each opinion should be applied accurately, in order to reconcile between the opinions, and remove any confusion within the matter. Hence, the researcher must choose the most appropriate of their statements in consideration of the right of Allah and the right of the servants. Because it is necessary to consider the interests of both parties, i.e. dispensers of Zakat and its recipients. A balanced and moderate solution must be found so no harm may be caused to either party.

ويبان ذلك أن الفقهاء الحنفية ذهبوا في ذلك ثلاثة مذاهب

ملحوظة: الواقع أن الفقهاء الحنفية إنما ذكروا قولين في مسألة الديون المؤجلة خاصة، وهما المنع وعدمه لاستقلال من غير التفات إلى مسألة المهر المؤجل، لكن المتأخرين قاسوا عليه، فأصبحت عند المتأخرين ثلاثة آراء في المسألة:

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**المذهب الأول:** أنه لا فرق بين المعجل والمؤجل من الدين في الزكاة، فكما يخصم المعجل منه في الزكاة، كذلك يخصم المؤجل منه فيها، وهذا ما ذهب إليه الإمام محمد في ((الأصل)) حيث جعل الدين مانع الزكاة مطلقاً من غير تفصيل فيه بين المعجل والمؤجل، وعزاه إلى الإمام أبي حنيفة في موطأه، وهذا ظاهر المذهب وهو ما أخذ به المتقدمون من أئمة الحنفية أيضاً.

In elaboration, the Hanafi jurists adopted three opinions in this regard:

1. The first opinion is that there is no difference between the immediate and the long-term debt in Zakat, just as the immediate loan is deducted from Zakat liable assets, similarly, the long-term loan is also deducted from it. This is the opinion that Imam Muhammad adopted in his book (Al-Asl) in which he determined the loan to be deductible from Zakat without differentiating between the immediate or the long-term loan. He also attributed this view to Imam Abu Hanifa, which is the official position of the hanafi school, and it is also what the earlier hanafi scholars adopted.

**المذهب الثاني:** أن الدين المعجل مانع عن الزكاة وأما المؤجل فلا يمنع الزكاة، وهذا القول، على الظاهر رجحه سراج الدين الأوشي في الفتاوى السراجية بعد نقله الخلاف في الدين المؤجل بين المنع وعدمه، ونسبه إلى فخر الأئمة السرخسي نه نقل عن مشايخنا هذا القول إلا أن المذكور في الفتاوى السراجية المطبوعة على هامش التا رخانية نسبة القول السابق إلى مجد الأئمة السرخسي لا فخر الأئمة السرخسي فليتنظر، وبهذا القول أخذ بعض المتأخرين. (هذه الإفادة الأخيرة عن الاختلاف في نسبة القول إلى قائله مأخوذة من فتوى المفتي زبير بت حفظه )

2. The second opinion is that the immediate loan prevents the obligation of Zakat, and the long-term loan does not prevent the obligation of Zakat. This second opinion was preferred by Siraj al-Din al-Ushi in his book (Al-Fatawa Al-Sirajiya) after he mentioned that scholars disagreed amongst them between these two stances; which are long-term loan being preventive or long-term loan being non-preventive of Zakat's obligation. And he reported that Imam al-Sarakhsi quoted this preferred opinion as to be the opinion adopted

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by our jurists. Although this second opinion has been attributed to al-Sarakhsi in the published prints of al-Fatawa al-Sirajiya which were printed separately, however; this second opinion has been attributed to al-Imam al-Sarkhaki in the edition of al-Fatawa al-Sirajiya published as a footnote to al-Fatawa al-Tatarkhaniya. This second opinion was also adopted by some of the later Hanafi jurists. (This assertion about the different reports regarding attribution of this second opinion to its opiner has been taken from the fatwa of Mufti Zubair Butt, may Allah preserve him)

وبعض علماء المعاصرين الذين أخذوا بهذا القول، حددوا دائرة المعجل لديون المطلوبة في الشهر، وجعلوا الشهر مداره لِمَا أن المعاملات العقديّة في العصر الحاضر تتم على هذا النمط؛ كأجرة الدار، و مين السيارة، وفاتورة الجوال ونحو ذلك، فإن التقاضي فيها يكون شهر ، وما عدا الشهر الحالي ليس ممتيقن ولا بت في الذمة فلا يطرح من الزكاة، ويدخل في المعجل أيضا الدين الذي لم تضرب له مدة حلول المطالبة والاستزاد وإن مضى على وقت الأخذ زمن طويل ولا يغلب على ظنه أن الدائن لا يطالب به على الفور متى ما أراد وبدأ المطالبة.

And some of our contemporary scholars who have adopted this opinion have determined the scope of immediate loan as that which is required to be paid in a month. They confined immediate loan as that which is due within a month since financial transactions in the present era are carried out in this manner, such as house rent, car insurance, mobile bill, etc. Also, the loans for which a specific date hasn't been set are considered as immediate loans.

**المذهب الثالث:** قياس مسألة الديون المؤجلة على المهر المؤجل؛ وذلك أن المهر المؤجل لا يطالب به في العادة، فالمهر المؤجل غير المطالب به لا يخصم من مال الزكاة، وما يطالب به يخصم من الزكاة، فكذلك ما لا يطالب به من الديون المؤجلة لا يخصم في الزكاة، وما يطالب به يطرح من الزكاة.



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ووقعت في كتبنا في نفس مسألة المهر المؤجل ثلاثة أقوال:

القول الأول فيه كما هو في الديون المؤجلة والمعجلة، وهو أن لا فرق بين المؤجل منه والحال.

والقول الثاني أن المؤجل لا يمنع بخلاف المعجل.

هذا القول والقول الآتي هو المأخوذ به في قياس مسألة الديون المؤجلة على المهر المؤجل عند من قالوا لقياس. فقياس مسألة الديون

المؤجلة على المهر المؤجل مركب من القول الثاني والثالث من الأقوال في المهر المؤجل، وبيان وجه التركيب وتقدير المطالبة لسنة

بناء على المهر المؤجل في الفقرات الآتية.

والقول الثالث أن الزوج إن كان على عزم الأداء يخصم منه وإلا فلا.

3. The third opinion is basing the ruling of long-term loans on the ruling of deferred dowry.

This is because deferred dowry is usually not demanded, and since it is not demanded, it isn't deducted from Zakat. Similarly, long-term loans which aren't demanded, aren't deducted.

There are three opinions in our books on the issue of deferred dowry.

A) The first view is the same as in immediate and long-term loans, which is that there is no difference between the immediate and the long-term loans.

B) The second opinion is that a long-term loan is not deductible, unlike the immediate loan.

This opinion and the one that follows, are the basis for the argument made in long-term loans, i.e. deduction of next 12 lunar months loan, according to the scholars who adopt this opinion.

Thus, the ruling of long-term loans is a combination of the last two opinions which are mentioned for the deferred dowry. The explanation of how the ruling is composed of these two opinions, and the determining of the "demand" period as 12 months based on the deferred dowry comes in the following paragraphs.



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C) The third opinion is that if the husband has the intention to pay the deferred dowry, it is deductible from Zakat. Otherwise, it will not be deductible.

وعند مل القولين الأخيرين في المهر المؤجل يتبين أنه لا فرق بينهما، لأن السبب في عدم حسم المهر المؤجل هو أنه في العادة لا يطالب به ولا الزوج يعزم على أدائه عادة ولا يتوقع منه ذلك، فالمدار هو على العادة، وبهذا التوجيه يمكن ارتفاع التعدد في الرأيين.

When you ponder upon these last two opinions in deferred dowry, it becomes clear that there is no difference between them, because the reason for not deducting the deferred dowry is that it is normally not demanded, and neither does the husband intend to pay it usually, nor is he expected to do so. Through this explanation, the multiplicity of the two views would be lifted.

وقدروا المطالبة لسنة الزكوية وهو الحد المضروب للمطالبة، فالدين الداخل في السنة الزكوية يطرح من الزكاة وما بقي مما لا يطالب به في السنة الزكوية لا يطرح، وهذا التقدير للمطالبة لعام الزكوي لما تقدم في القول الثاني من المهر المؤجل أنه ليس مانعا للزكاة، وتعليل ذلك "لأنه لا يطالب به في العادة والعرف"، وعند ملاحظة هذا التعليل يستخرج أصل التقدير لسنة، وهو أن ما جاوز القسط السنوي المستحق لا يطالب به في نفس السنة عادة وعرفا، فالقدر الذي لا يطالب به من الديون الكبيرة في نفس السنة لا يسقط في الزكاة وما يطالب به يسقط في الزكاة.

The “demand factor” period was estimated to be a lunar year, as mentioned in the second opinion in deferred dowry, which is due to deferred dowry not being deductible from the Zakat liable assets. The reason for that is “because it is not demanded according to the customary practice”, and upon observing this reason, we can extract the reason for determining the “demand factor” one lunar year. Therefore, the loan which exceeds the annual instalment is not demanded in the same year, thus the amount which is not demanded from the loans in the same year will not be deducted from the Zakat liable assets, and that which is demanded will be deducted.



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وقد حقق المفتي يوسف شبير في فتواه أن القول المفتى به عند الأحناف هو القول الأول؛ أي لا فرق بين المؤجل والحال وهو الراجح، وأسند ذلك لتقول المتضاربة من كتب العلماء الحنفية، وحقق أن الخلاف المنقول في الدين المؤجل إنما هو المنع وعدمه كما ذكر عن سراج الدين الأوشي فيما مضى وليس هناك رأي لث فيه، وأما الخلاف في الصداق المؤجل والآراء الثلاثة فيه، فذكره الفقهاء مستقلاً ولم يكن التنصيص في هذه المسألة شاملاً للدين المؤجل بل كان على حدة منه، فافتزقا.

Mufti Yusuf Shabbir substantiated in his fatwa that majority of Hanafi scholars adopted the first ruling. That is, there is no difference between the long-term and the immediate loan, i.e. both are deductible, and that this is the most preferred opinion, which he substantiated with numerous references from Hanafi works. He established that the difference of opinion narrated in the books for long-term loans only pertains to them being deductible and non-deductible, as we mentioned earlier from Siraj al-Din al-Ushi, and there is no third opinion in this matter.

As for the three different opinions regarding deferred dowry, the jurists mentioned it separately, and the stipulation in deferred dowry was not inclusive of long-term loans, instead was separate from it. Thus, it is concluded that they were two different issues.

وصار في الدين المؤجل قولان، وفي الصداق المؤجل ثلاثة آراء، ولكن المتأخرين قاسوا مسألة الدين المؤجل على الصداق المؤجل. وأما القول الثاني الذي فيه يمنع المعجل الزكاة ولا يمنعها المؤجل، فليس من صحيح المذهب ولا عبرة بتصحيح القهستاني عن الجواهر.

Two opinions emerged in long-term loan, and three opinions regarding the deferred dowry. But the later scholars based the issue of long-term debt on deferred dowry. As for the second opinion in which immediate loan is deductible but not the long-term loan, that is not the original position of the Hanafi school, and al-Quhustani's preference of the second opinion doesn't carry weight against the original position.

والحاصل أن المفتي يوسف شبير - رعاه - حقق من كتب الحنفية أن الدين مانع عن الزكاة سواء كان معجلاً أو مؤجلاً وأنه هو

أصل المذهب إلا أنه استثنى صورة واحدة وهي ديون البنوك المؤجلة، وقال إنها غير مانعة عن الزكاة لأن البنوك لا تطالب بما قبل الميعاد

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بل لا تستطيع أن تطالب بها قبل الميعاد. وأصل هذا أن الديون غير المطالب بها قبل حلول الأجل لا تمنع الزكاة، وهذا لا ينطبق على ديون البنوك فقط بل أكثر الديون المعمول بها في هذا العصر على هذا الوجه ن الدائن لا يطالب به أو لا يستطيع أن يطالب به ويلحق المدينون قانونيا إذا كان الإقراض بشكل رسمي وتم تعيين مدة التأجيل والأقساط ولم يحل الأجل. وكذلك يُدعم هذا ن المعاصرين من الحنفية أخذوا بقول المالكية في تصحيح جيل القروض، لأنه عند الحنفية يصح جيل كل الديون إلا القرض فإنه لا يصح جيله، وعند الأخذ بقول المالكية يندفع هذا الإشكال أيضا.

The conclusion is that Mufti Yusuf Shabbir – may Allah preserve him – established from the Hanafi books that loans prevent Zakat, whether they are immediate loans or long-term loans, and that it is the original position of the Hanafi scholars. However, he excluded one scenario where long-term loans will not be deducted., which is that deferred loans from banks are not deductible, because banks do not demand it before the agreed maturity date. Rather, banks cannot demand it before the agreed maturity date. This scenario does not apply to bank loans only, because the principle is, any loan which cannot be demanded before the maturity date will not be deducted.

Instead, most of the loans today are sealed in a way that the creditor does not demand it or cannot demand it before the maturity date and cannot prosecute the debtor legally if the loan was agreed on with a specific maturity date. This is also supported by the fact that the contemporary Hanafi scholars adopted the Maliki position<sup>1</sup>; as the lender is not allowed to demand the loan before the maturity date.

ومحصل الكلام أن من حصل على القرض الطويل الأجل إذا كان في حاجة أصلية، وقد استقرض بسبب صعوه المالية حتى يتمكن من تحمل النفقات اللازمة لتموين نفسه وأهله، وليس في الحسبان الرفاهية والتنعيم، ويتأكد هذا الوضع له لقرينة أيضا، فإنه مشروع في حقه أن يفتي له لقول الأول؛ أي يحسم الدين المؤجل من الوعاء الزكوي لبضع سنوات حتى يستمكن من تعزيز أسس اقتصاده ومعيشته، فإن الأيسر في حق هذا الصنف من الناس أن يفتي لهم بهذا القول.

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The conclusion of the discussion is that whoever obtained a long-term loan, if they are in genuine need, and have borrowed due to their financial difficulties, so that they can bear the expenses necessary to provide for themselves and their family, and are not taking it for extravagance. It is permissible for such individuals to deduct all loans in their entirety from their Zakat liable assets. It will be permissible to do so until they strengthen their financial status and livelihood.

ومن استقرض قروضا طويلة الميعاد يبغي الكماليات بذلك ووسائل الترفيه والتوسعة في أ ث المنزل ونحوه وليوسع في تجارته أوسع من الواسع ويزيد في المال حسب الرغبة مع كونه كثيرا مسبقا، والحال أن الغالبية من المقترضين قروضا طويلة المدى من هذا الصنف، وأكثرهم يقدعون أعمارهم في الديون لكون الديون كبيرة إلى درجة أنها تحيط مواهب الشخصية طوال الوقت، فإن أعدل الأقوال في حقهم أنهم إن لم تكن حياتهم تتأثر خراج الزكاة عن جميع أموالهم فهذا أحسن وإلا فالقول الثالث ن يقص دين السنة ويترك الباقي، لأنه أصبح البيع لتقسيط من أبرز طرق المعاملات الاقتصادية ويتم التعامل لديون على أوسع نطاق، ومن المعلوم أن أكثر هؤلاء يقدمون على حصول هذه الديون مع وفرة الأموال لديهم ليستثمروها، وقد تيهم أرح أكثر بكثير من الأقساط التي يدفعونها شهر أو سنو من الدين، فليس كل الدين مطالب في الحال، والدين غير المطالب به لا يطرح، وعلى ذلك لو أبرا هؤلاء عن أداء الزكاة تماما لأدى ذلك إلى حرمان الفقراء عن حقوقهم.

Individuals who have borrowed long-term loans to seek luxuries, means of entertainment, and to grow their businesses in highly scalable way, leveraging the loans to maintain ever profitability and affluence, many of such individuals stay mired in debts all the time. The appropriate ruling for such individuals is that if their lives are not affected at all by paying Zakat without deducting any amount of the loan, then it is better to do so. Otherwise, the third opinion should be taken, which is to deduct the loan to-be-paid within the next lunar year and pay Zakat for the rest.

Since most businesses nowadays take on debts, it has become one of the most important ways to finance businesses, and debts are utilized on the widest scale. Also, many individuals apply for these debts while having an abundance of wealth to profit more, while their monthly installments to pay

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back the loans are lesser than the profits. Therefore, if they were acquitted from paying Zakat completely, this would deprive the poor of their rights.

وهذا القول هو الأوفق بمقاصد الشريعة أيضا لهذا الصنف، لأن العلة في وجوب الزكاة هو فراغ المال عن الحاجة الأصلية وهي متحققة في هذا الصنف، إذ يعتبر هؤلاء في العرف أغنياء على رغم أنهم اقتترضوا أموالا طائلة تستغرق جميع أموالهم، ولا تؤثر هذه الديون على مستوى معيشتهم سلبيا، ويدخل في هذا الحكم أصحاب الطبقة المتوسطة من الطبقات الاجتماعية أيضا إذ مستوى معيشتهم لا تتأثر سلبيا. وعليه، فإن تبني الرأي القائل بخصم جميع المال المستغرق في الدين قبل إخراج الزكاة وإعفاء هؤلاء الأثرء من دفع الزكاة لا يتفق مع طبيعة الشريعة ومقاصدها.

This opinion is the most compatible with the objectives of Shariah for this category because the reason for the obligation of Zakat is ‘additional wealth that is more than their basic necessities’. These individuals are considered wealthy by the norm, despite borrowing large amounts of money equivalent to or more than their wealth, and these debts do not affect their standard of living negatively. This ruling also applies to people from the upper-middle class, as their living standard is also not affected negatively by paying Zakat in general. Thus, adopting the first opinion and relieving such people of the obligation of paying Zakat completely would not coincide with the nature of Shariah, and its objectives.



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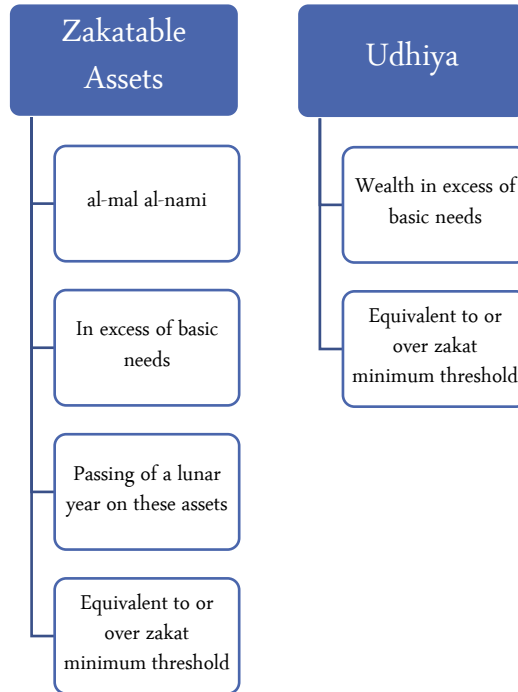
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Difference between conditions for obligation of Udhiya (Qurbani) and Zakat





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والكلام في المهر المؤجل

رجح حكيم الأمة مولا أشرف علي التهانوي القول الثاني وهو: أن المعجل يمنع والمؤجل لا يمنع ثم عند الإجابة عن سؤال آخر رجح عن الترجيح السابق ورجح القول الثالث وهو أن الزوج إن كان له عزم الأداء يمنع وإن كان لا، فلا (راجع إمداد الفتاوى لذلك ص 40 ج 2)

الكتاب: بدائع الصنائع

ومنها أن لا يكون عليه دين مطالب به من جهة العباد عند فإن كان فإنه يمنع وجوب الزكاة بقدره حالاً كان أو مؤجلاً، ... (ولنا) ما روي عن عثمان أنه خطب في شهر رمضان وقال في خطبته: ألا إن شهر زكاتكم قد حضر فمن كان له مال وعليه دين فليحسب ماله بما عليه ثم ليترك بقية ماله، وكان بمحضر من الصحابة ولم ينكر عليه أحد منهم فكان ذلك إجماعاً منهم على أنه لا تجب الزكاة في القدر المشغول لدين، وبه تبين أن مال المديون خارج عن عمومات الزكاة؛ ولأنه محتاج إلى هذا المال حاجة أصلية؛ لأن قضاء الدين من الحوائج الأصلية. والمال المحتاج إليه حاجة أصلية لا يكون مال الزكاة...

الناشر: دار الكتب العلمية

الطبعة: الثانية، 1406هـ - 1986م

ج: 2 ص: 6

الكتاب: البناية شرح الهداية

م: (ومن كان عليه دين يحيط بماله فلا زكاة عليه) ش: هو قول عثمان بن عفان، وابن عباس، وابن عمر، وطاوس، وعطاء - رَضِيَ اللهُ عَنْهُمْ -، والحسن، وإبراهيم، وسليمان ابن يسار، والزهري، وابن سيرين، والثوري، والليث بن سعد، وأحمد بن حنبل - رَجَمَهُمُ اللهُ - . قال مالك - رحمه الله - : يمنع وجوب الزكاة في الذهب والفضة لا في الماشية. م: (ولنا أنه) ش: أي أن المال م: (مشغول بحاجته الأصلية) ش: لأنه صاحبه يحتاج إليه لأجل قضاء الدين، وقضاؤه لا يكون إلا من المال العين والحاجة وإن كانت صفة محض غير أنهما. تستدعي محتاجاً إليه وهو المال، فاستقام وصف المال به، وفي "المنافع":



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مال المديون مستحق لحاجته وهي دفع المطالبة والملازمة والحبس في الدنيا والعذاب في الآخرة، وقد تعين هذا المال لقضاء هذه

الحاجة فأشبهه ثياب البذلة والمهنة وعبيد الخدمة ودور السكنى

الناشر: دار الكتب العلمية – بيروت، لبنان

الطبعة: الأولى، 1420 هـ – 2000 م

ج: 3 ص: 300

الكتاب: المحيط البرهاني في الفقه النعماني فقه الإمام أبي حنيفة رضي عنه

ما يمنع وجوب الزكاة أنواع، منها الذي قال أصحابنا رحمهم : كل دين له مطالب من جهة العباد يمنع وجوب الزكاة، سواء

كان الدين للعباد، أو لله تعالى كدين الزكاة.

فأما الكلام في دين العباد، فنقول: إنما منع وجوب الزكاة؛ لأن ملك المديون في القدر المشغول لدين قص، ألا ترى أنه يستحق

أخذه من غير مضار لا رضا، كأنه في يده غضب أو وديعة؟ ولهذا حلت له الصدقة، ولا يجب عليه الحج، والمملك الناقص لا يصلح

سبباً لوجوب الزكاة.

الناشر: دار الكتب العلمية، بيروت – لبنان

الطبعة: الأولى، 1424 هـ – 2004 م

ج: 3، ص: 293

الكتاب: الدر المختار

(فارغ عن دين له مطالب من جهة العباد) سواء كان لله كزكاة وخراج أو للعبد، ولو كفالة أو مؤجلاً، ولو صداق زوجته

المؤجل للفراق ونفقة لزمته بقضاء أو رضا، بخلاف دين نذر وكفارة وحج لعدم المطالب

الناشر: دار الفكر – بيروت

الطبعة: الثانية، 1412 هـ – 1992 م

ج: 2

ص: 261



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الكتاب: فتاوى النوازل

والدين المطالب من جهة العباد يمنع وجوب الزكاة، كدين العباد، مؤجلا كان أو حالا، لأن تعالى أ ح الزكاة للمديون صدقة لقوله تعالى: والغارمين، وبين من تجب الزكاة عليه وبين من تباح له تضاد وتنافي، والمال المستحق لحاجة الأصلية ككتب الفقه وآلة المحترفين والعشر والخراج ونفقة الزوجات والأقارب من ديون العباد. وكذا المهر وقيل: إن كان مؤجلا لا يمنع الزكاة.

(كتاب الزكاة)

الناشر: دار الكتب العلمية

الطبعة: الأولى، 1425 هـ، 2004م

ص: 136

الكتاب: الفتاوى الهندية

(ومنها الفراغ عن الدين) قال أصحابنا - رحمهم تعالى -: كل دين له مطالب من جهة العباد يمنع وجوب الزكاة سواء كان الدين للعباد كالقرض وثن البيع وضمان المتلفات وأرش الجراحة، وسواء كان الدين من النقود أو المكيل أو الموزون أو الثياب أو الحيوان وجب بخلع أو صلح عن دم عمد، وهو حال أو مؤجل أو لله - تعالى - كدين الزكاة... وكذلك المهر يمنع مؤجلا كان أو معجلا؛ لأنه مطالب به كذا في محيط السرخسي. وهو الصحيح على ظاهر المذهب. (الباب الأول في تفسير الزكاة وصفتها

وشرائطها)

الناشر: دار الفكر

الطبعة: الثانية، 1310هـ

ج: 1، ص: 172

الفتاوى الخانية:



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الدين يمنع الزكاة إذا كان مطالباً من جهة العباد كالقرض وثن المبيع وضمان المتلف وأرش الجراحة ومهر المرأة، كان الدين عن النقود أو من المكييل أو الموزون أو الثياب أو الحيوان، وجب بنكاح أو خلع أو صلح عن دم عمد، وهو حال أو أجل. فإن كان المال فاضلاً عن الدين كان عليه زكاة الفاضل إذا بلغ النصاب. (كتاب الزكاة، فصل في مال التجارة)

الكفاية شرح الهداية:

(قوله: والمراد به دين له مطالب من جهة العباد) كالقرض وثن المبيع وضمان المتلف وأرش الجراحة ومهر المرأة، كان الدين عن النقود أو من المكييل أو الموزون أو الثياب أو الحيوان، وجب بنكاح أو خلع أو صلح عن دم عمد، وهو حال أو مؤجل. (كتاب الزكاة)

الكتاب: حاشية الطحطاوي على مراقي الفلاح شرح نور الإيضاح

قوله: "فارغ عن الدين" أي الذي له مطالب من جهة العباد سواء كان لله كزكاة وخراج أو للعبد ولو كفالة أو مؤجلاً ولو صدق زوجته المؤجل بخلاف دين نذر وكفالة لعدم المطالب

الناشر: دار الكتب العلمية بيروت - لبنان

الطبعة: الطبعة الأولى 1418هـ - 1997م

ج: 1، ص: 714

الكتاب: النهر الفائق شرح كنز الدقائق

(فارغ) عن الدين لأن المشغول لحاجة الأصلية كالمعدوم وأراد به ماله مطالب من جهة العباد سواء كان حقاً لله تعالى كدين العشر والخراج وزكاة السائمة والتجارة لما أن للإمام أخذها من الآبي جبراً بعد تعزيره أو للعبد أصاله كان أو كفالة حالاً كان أو مؤجلاً ولو صدق الزوجة

الناشر: دار الكتب العلمية

الطبعة: الأولى، 1422هـ - 2002م

ج: 1، ص: 414



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الكتاب: تبين الحقائق

ولا فرق في الدين بين المؤجل والحال

ج: 1، ص: 254

الكتاب: البنائة شرح الهداية

وفي "المحيط" مهر المرأة بمنع مؤجلا كان معجلا

الكتاب: بدائع الصنائع في ترتيب الشرائع

ذكر القدوري في شرحه مختصر الكرخي أنه يقوم وفي القيمتين من الدراهم والد نير حتى إنها إذا بلغت لتقوم للدراهم نصا ولم تبلغ لد نير قومت بما تبلغ به النصاب.

وكذا روي عن أبي حنيفة في الأمالي أنه يقومها نفع النقدين للفقراء... وجه قول أبي حنيفة أن الدراهم والد نير وإن كان في الثمنية والتقوم بهما سواء، لكننا رجحنا أحدهما بمرجح وهو النظر للفقراء، والأخذ لاحتياط أولى ألا ترى أنه لو كان لتقوم حدهما يتم النصاب و لآخر لا فإنه يقوم بما يتم به النصاب نظرا للفقراء واحتياطاً؟ كذا هذا.

الناشر: دار الكتب العلمية

الطبعة: الثانية، 1406هـ – 1986م

الهداية، كتاب الزكاة، ب زكاة المال، فصل في العروض

ثم قال: (يقومها بما هو أنفع للمساكين) احتياطاً لحق الفقراء. قال رضي عنه: وهذا رواية عن أبي حنيفة. وفي الأصل خيره لأن الثمنين في تقدير قيم الأشياء بهما سواء. وتفسير الأنفع أن يقومها بما يبلغ نصا .

الكتاب: البنائة شرح الهداية

(ثم قال - رحمه الله -) ش: أي القدوري أو محمد - رحمهما - م: (يقومها بما هو أنفع للمساكين احتياطاً لحق الفقراء) ش:

أي يقوم العروض التي للتجارة لذي هو أنفع للفقراء، وهو أن يقومها نفع النقدين، وبه قال أحمد؛ لأن المال في يد المالك في

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زمان طويل وهو المنتفع فلا بد من اعتبار منفعة للفقراء عند التقويم، ولا بد أن يقوم بما يبلغه نسا حتى إذا قومت لدراهم تبلغ نسا ، وإذا قومت الذهب لا تبلغ نسا تقوم لدراهم و لعكس كذلك. فإن قلت: في خلافه نظر للمالك وحقه يعتبر، ألا ترى أنه - صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ - نهي عن أخذ كرائم الأموال في الزكاة واشترط الحول فيها. قلت: المالك أسقط حقه لاستنماء مدة الحول فيوفر حظ الفقراء لتقويم لأنفع مراعاة للحقين بقدر الإمكان.

الناشر: دار الكتب العلمية - بيروت، لبنان

الطبعة: الأولى، 1420هـ - 2000 م

ج:3، ص384

الفتاوى السراجية على هامش الخانية

الدين المؤجل قال بعضهم: يمنع. وذكر فخر الأئمة السرخسي رحمه عن مشايخنا رحمهم أنه لا يمنع. (كتاب الزكاة) وقد نقل العلامة عالم ابن العلاء الأنصاري في الفتاوى الثا رخانية عن "الفتاوى السراجية" ما نصه: الدين المؤجل قال بعضهم: يمنع الزكاة. وذكر مجد الأئمة السرخسي رحمه عن مشايخه أنه لا يمنع. فأنسب هذا النقل إلى مجد الأئمة السرخسي رحمه بدل فخر الأئمة السرخسي رحمه . فلتأمل. (كتاب الزكاة، ما يمنع وجوب الزكاة)

البحر الرائق

أطلقه، فشمّل الحال والمؤج ولو صدق زوجته المؤجل إلى الطلاق أو الموت. وقيل: المهر المؤجل لا يمنع لأنه غير مطالب به عادة، بخلاف المعجل. وقيل: إن كان الزوج على عزم الأداء منع، وإلا فلا، لأنه لا يعد ديناً. كذا في غاية البيان. (كتاب الزكاة)

حاشية الطحطاوي على الدر المختار

(قوله المؤجل) وقيل: المهر المؤجل لا يمنع لأنه غير مطالب به عادة بخلاف المعجل. وقيل: إن كان الزوج على عزم الأداء منع وإلا فلا، لأنه لا يعد ديناً. بحر عن غاية البيان. وفي القهستاني: والصحيح أن المؤجل غير مانع كما في الجواهر. (كتاب الزكاة)

العالمية:

وذكر البزدوي في شرح الجامع الكبير: قال مشايخنا رحمهم تعالى في رجل عليه مهر مؤجل لامرأته وهو لا يريد أدائه: لا يجعل

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|------------------|-----------------|-------------|-----------------------|------------|-----------------------|------------|
| <b>Inquiry#:</b> | <b>Category</b> | Debts/Zakat | <b>Date Received:</b> | 06/19/2020 | <b>Date Answered:</b> | 12/31/2020 |
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مانعا من الزكاة لعدم المطالبة في العادة. وإنه حسن أيضا. هكذا في جواهر الفتاوى. (كتاب الزكاة، الباب الأول في تفسيرها وصفتها وشرايطها)

الفتاوى البزازية على هامش العالمكبرية

والمهر المؤجل إن كان الزوج لا يريد الأداء، لا يمنع وجوب الزكاة على الزوج. والحاصل أن كل دين له مطالب من العباد يمنع، سواء كان لله تعالى، كالزكاة والعشر والخراج، أو للعباد، كالثمن والأجرة ونفقة المحارم.

وما لا مطالب له، كالنذر والكفارة والحج لا يمنع. (كتاب الزكاة)

الكفاية شرح الهداية

وذكر الإمام البزدوي رحمه في جامعه عن البعض: دين المهر لا يمنع إذا لم يكن الزوج على عزم الأداء لأنه لا يعد ديناً. وفي طريقة الشهيد: الدين المؤجل هل يمنع؟ لا رواية فيه. إن قلنا: لا، فله وجه، وإن قلنا: نعم، فله وجه. كذا ذكره الإمام التمر شي رحمه. (كتاب الزكاة)

وفي التا رخانه

وقيل في دين المهر: إنه يمنع وجوب الزكاة كسائر الديون. وفي الفتاوى العتبية: معجلاً كان، أو مؤجلاً، وقيل: إن كان من نية الزوج أنها متى طالبته تلقاها بلطف ويعددها أنه متى صادف مالا لا يبطل حقها، يمنع وجوب الزكاة، وإن كان من نيته متى طالبته تلقاها لإنكار ويضربها لا يمنع وجوب الزكاة. (كتاب الزكاة، ما يمنع وجوب الزكاة)

بدائع الصنائع

وعلى هذا يخرج مهر المرأة، فإنه يمنع وجوب الزكاة عند، معجلاً كان أو مؤجلاً، لأنها إذا طالبته يؤخذ به. وقال بعض مشايخنا: إن كان المؤجل لا يمنع لأنه غير مطالب به عادة. فأما المعجل فيطالب به عادة فيمنع. وقال بعضهم: إن كان الزوج على عزم من قضاءه يمنع، وإن لم يكن على عزم القضاء لا يمنع لأنه لا يعده ديناً، وإنما يؤخذ المرء بما عنده في الأحكام. (كتاب الزكاة، فصل في شرايط الفرضية)



## DARUL IFTA – DEPARTMENT OF ISLAMIC JURISPRUDENCE

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البنایة شرح الهدایة

وفي "المحیط" مهر المرأة یمنع مؤجلا كان أو معجلا. وقیل: المؤجل لا یمنع. وقیل: إن كان الزوج علی عزم قضاءه یمنع وإلا فلا، إذ لا یعد دینا فی زعمه. (كتاب الزكاة)

خلاصة الفتاوى كتاب الزكاة ج 1 ص 240

دين العباد من وجوبها إلا المهر المؤجل إذا كان الزوج لا يريد أداءه

الأشباه والنظائر كتاب الزكاة ج 1 ص 450

قوله إلا المهر المؤجل في شرح الجامع الصغير للتمر شي ذكر البزدوي في جامعہ عن البعض دين المهر: لا یمنع إذا لم يكن الزوج علی عزم الأداء لأنه لا یعد دینا وفي الإسيبياني: یمنع مؤجلا كان أو لم يكن

غمز عيون البصائر كتاب الزكاة ج 1 ص 451

وفي طريقة الصدر الشهيد الدين المؤجل هل یمنع؟ لا رواية فيها ان قلنا لا فله وجه وان قلنا نعم فله وجه

البنایة في شرح الهدایة ج 5 ص 552

وهو أن يملك ما فضل عن حاجته الأصلية ما يبلغ مائتي درهم من أي مال كان