

94823 - He has been sentenced to prison. Can he take a riba-based loan to get out of it?

the question

I am thirty years old and I entered Islam six years ago after a bitter struggle with kufr. I was living in France, and I returned to my homeland for good and started a small business, but it did not succeed. I incurred debts of 25,000 dollars and I cannot pay them off. The bank offered me a loan on the basis that I pay it off in three years with interest of 30 per cent. Some of the brothers advised me to keep away from riba because it is disobedience towards Allah, but some men with religious knowledge said: If it is a case of necessity, then there is nothing wrong with that. Today I have been threatened with imprisonment if I do not pay the debts I owe, and I am confused about what to do, whether to accept the loan or spend nine years in prison. The sentence was passed two months ago and I only have one month left. I hope that you can advise me.

Detailed answer

Firstly:

To start with, we congratulate you for entering Islam, and we ask Allah to make you steadfast in adhering to the truth, and to increase you in guidance. You should understand that the Muslim will be tested to find out whether or not he will be sincere in adhering to the faith, and if he is tested, Allah will expiate his bad deeds thereby and raise him in status, but it is essential for him to seek reward for his calamity with his Lord and not get upset or angry, rather he should be patient and seek reward.

The calamity that has befallen you with regard to your wealth is a test from your Lord, and what you have faced of people's refusal to help you is another test. Be patient, for you are following the truth; adhere to the path of piety for Allah has promised those who are pious and fear Him that He will grant them a way out from their difficulty and He has promised them provision by His bounty. Allah says (interpretation of the meaning):

“And whosoever fears Allah and keeps his duty to Him, He will make a way for him to get out (from every difficulty).

3. And He will provide him from (sources) he never could imagine”

[al-Talaaq 65:2-3]

“and whosoever fears Allah and keeps his duty to Him, He will make his matter easy for him”

[al-Talaaq 65:4]

“and whosoever fears Allah and keeps his duty to Him, He will expiate from him his sins, and will enlarge his reward”

[al-Talaaq 65:5]

Secondly:

You should understand that riba is something that is definitively forbidden in sharee’ah, and it is a major sin.

See the answer to question no. [22339](#) for an explanation of the prohibition on riba.

Thirdly:

You should understand that it is permissible to do the things that are forbidden in sharee’ah if the Muslim is excused due to being forced to do them or being compelled by necessity.

Allah says (interpretation of the meaning):

“But if one is forced by necessity without willful disobedience nor transgressing due limits, then there is no sin on him. Truly, Allah is Oft-Forgiving, Most Merciful”

[al-Baqarah 2:173]

“He has explained to you in detail what is forbidden to you, except under compulsion of necessity”

[al-An'aam 6:119]

But we should point out three things here:

1 – Necessity with regard to riba has to do with the borrower not the lender. There is nothing that makes the lender compelled to lend a loan with riba, unlike the need for a loan, for the borrower may find that all doors are closed to him and he has no choice but to take a loan with riba interest.

According to a fatwa issued by the Islamic Research Council in Cairo during its second conference held in Muharram 1385 AH (1965 CE) it says:

Interest on all types of loans is all haraam riba, and there is no difference what the loan is called. A lot of interest or a little is still haraam, and giving loans with riba is haraam and is not made permissible by need or necessity. The same applies to borrowing with riba. It is all haraam unless there is a necessity, and every person is responsible for deciding whether his case is in fact one of necessity. End quote.

It says in al-Mawsoo'ah al-Fiqhiyyah (6/167):

It is permissible for one who compelled by necessity to engage in a riba-based transaction, and the lender is sinning but the borrower is not in that case. End quote.

2 – The reason for the borrower who borrows money involving riba doing this haraam action should be necessity, not a need that he can do without. Necessity has to do with harm that will affect his religious commitment, physical well-being, reason, honour or wealth – which are called the “five essentials” – and not just hardship that can be put up with, rather it should be a case of necessity that may cause him to die or lose one of his limbs or physical faculties or be imprisoned for a long time or develop a chronic illness.

Abu 'Abd-Allah al-Zarkashi (may Allah have mercy on him) said:

Necessity means that if he does not consume the forbidden thing he will die or nearly die, such as one who is forced to eat or wear clothes in a case where if he remains hungry or

naked he will die, or lose a limb or physical faculty. This is what makes consuming the haraam thing permissible.

Need refers to a hungry person who, if he does not find something to eat, will not die, but he will suffer hardship. This does not make the haraam thing permissible.

Al-Manthoor fi'l-Qawaa'id (2/319).

In Nazariyyat al-Daroora al-Shar'iyyah (p. 67, 68) it says:

Necessity is that which places a person in danger or severe hardship such that he fears that he may lose his life or be harmed with regard to his physical well being, honour, mental well being, wealth and the like. In that case it becomes permissible for him to commit a haraam deed, or to refrain from or delay an obligatory deed so as to ward off harm that he thinks most likely to befall him, within the limits of sharee'ah. End quote.

3 – The harm that will befall you if you do not pay should be definite or most likely to happen, and it should not be imaginary.

Many people are indulging too much in riba-based loans, and they regard buying a house or car, or changing the furniture, or buying a cell phone as necessities, and they started to deal with riba-based institutions on the basis of such excuses, and they have found people who will issue fatwas to them concerning these things.

Similarly, many people do not understand what is meant by necessity, so they start to look for riba-based banks and institutions so that they can borrow with riba interest, without looking for permissible ways of getting the money they need. Among the ways that Islam has permitted the one who does not have money to get it is by doing permissible work, or borrowing from someone without riba, or buying a product by instalments and selling it for cash. It should be noted that many of these people may be entitled to zakaah, and there is nothing wrong with them asking for it from the institutions that collect zakaah from the Muslims.

What we think with regard to your case is that if you can get the money in a way that is permissible according to sharee'ah, then you have no excuse for taking a riba-based loan. If you can pay the money that you owe in instalments, then you also have no excuse. But if you cannot get the money in a permissible manner, and not paying the money will result in you being imprisoned, then we hope that you will be one of those who are excused and compelled by necessity to engage in riba, and there will be no sin on you, rather the sin will be on the one who lends you money on the basis of riba, and on those who knew of your situation and did not help you when they could.

You should understand that the scholars say that necessity should be evaluated properly. What this means in your case is that it is not permissible for you to take from the bank anything but the amount that will save you from harm. It is not permissible for you to take more than that. We must also point out that if you can afford it after that, you must hasten to pay the bank back if by doing so you will spare yourself from paying all or some of the interest.

We ask Allah to help you to fear Him and do righteous deeds, and to make you independent of means by His bounty, and to save you from sin, and to make you steadfast in adhering to the truth, and to increase you in guidance.

And Allah knows best.