

**A JURISTIC STUDY OF *QALB AL-DAYN* IN
ISLAMIC BANKS FROM *SHARĪ'AH*
PERSPECTIVE**

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Abstract:

The purpose of this study is to address *qalb al-dayn* (debt restructuring) from classical and contemporary *Sharī'ah* points of view and to analyse the views of *Sharī'ah* scholars regarding the practice of *qalb al-dayn*. The study follows a qualitative research approach where it applies comparative and descriptive analyses methods to explore the thoughts and opinions of classical and contemporary scholars. The study finds that scholars have diverse opinions regarding the application of *qalb al-dayn* where most of the scholars do not allow to apply *qalb al-dayn* at all and some other scholars allow applying *qalb al-dayn* for solvent debtors only with some rigorous restrictions. The majority of scholars agree that the application of *qalb al-dayn* is not permissible for an insolvent debtor. To overcome those issues, Islamic banks may strictly use a rescheduling of a financing facility instead of restructuring a facility while following the guidelines provided by the scholars. The paper provides beneficial insights to the researchers, the Islamic banks, and their customers to avoid the issue of *qalb al-dayn*, particularly in debt-based financing, and to establish justice among the society and Islamic banks.

Keywords – Debt, *Qalb al-dayn*, *Faskh al-dayn*, *Sharī'ah*, Islamic banking, Debt rescheduling, Debt restructuring

1. Introduction

The Islamic banking system is unveiling useful *Sharī'ah* compliant products and services. The nature of those products varies from one another and can either be equity-based or debt-based. According to some researchers¹, the current practice of Islamic banks is more towards debt-based financing, where the equity portion is very small. The debt-based financing in Islamic banks is mostly provided through *al-murābahah* (cost plus profit sale), and *al-tawarruq* (monetization), *al-ijārah* (leasing), *al-mushārah al-mutanāqishah* (diminishing partnership), *bay' al-mu'ajjal* (sale with deferred payment) and *al-qard al-ḥaṣan* (benevolent loan)². The financing products based on those contracts allow a customer to pay the price/rent within certain installments and subsequently the customer falls under an obligation of debt. It is important to mention that *Sharī'ah* does not prohibit being indebted. But it warns debtors to be careful about the payment and also forbids having any kind of interest (*ribā*) while entertaining any kind of loan or debt transaction.

Providing debt-based products by Islamic banks and subsequently, collection of that debt from customers may lead to inconvenient events, especially, when there is a loan default or financial stress faced by a customer. Conventional banks have several methods to deal with this kind of issue, such as debt rescheduling and restructuring³. In such practice, the debtor/customer has to pay an extra amount of money to reschedule or restructure the loan and to pay the debt at a later time. Such prohibited practice is also narrated by scholars like al-Alūsī, where they mention that during the era of ignorance (*ayyām al-jāhiliyyah*) the people were used to take a loan, and once it was due, the usurious creditor used to say to the debtor: "Pay me an extra amount (from the money has been lent from me), I will extend the period of payment"⁴.

2. Problem Statement

When it comes to Islamic banks, the study proves that rescheduling and restructuring of financing facilities resemble the concept of *qalb al-dayn/faskh al-dayn* (debt restructuring) which invokes some *Sharī'ah* issues⁵. *Sharī'ah* scholars (Imām Mālik⁶ and Ibn Taymiyyah⁷) discuss the concept of *qalb al-dayn* and its forms from the practice of the people during their time. According to Imām Mālik⁸ and Ibn Taymiyyah⁹, the practice of *qalb al-dayn* leads to *ribā* (interest) which is impermissible in *Sharī'ah*¹⁰. In this regard, contemporary scholars also do not allow

practicing *qalb al-dayn* in general¹¹, however, due to the current financial system, some scholars allow the practice of *qalb al-dayn* for some *mūsir* (solvent debtor) with some strict *Sharī‘ah* guidelines¹².

3. Research Objectives

Based on the above matter, there is a dire need to study *qalb al-dayn* by looking at the opinions of classical and contemporary scholars and uncover the best opinion which assists Islamic banks to continue their smooth performance and efficiency while providing the best financial facilities and services which are *Sharī‘ah* compliant and compatible with the current financial markets’ trends. Therefore, the objective of this study is to address the concept of *qalb al-dayn* from classical and contemporary *Sharī‘ah* points of view and to analyse the views of *Sharī‘ah* scholars regarding the practice of *qalb al-dayn*. Moreover, the study also aims to recommend some solutions to the issue which benefit the customers of Islamic banks, the practitioners and the academicians.

4. Literature Review

4.1. Debt (*Dayn*)-based Financing in Modern Islamic Banking System

Borrowing and lending money or other property is allowed in Islam based on the necessity of an individual and organization. Additionally, Islam also provides guidelines for borrowing and lending. Regarding the Quranic approval to *dayn*, in general, scholars refer to *sūrah al-baqarah*, verse 282, which holds:

“O you who believe, when you transact a debt payable at a specified time, put it in writing”¹³.

Borrowing money from an individual or a financial institution is also one way to fulfill the necessity of someone. Two terms are generally used in the context of borrowing and lending in Arabic which are *qarḍ* (loan) and *dayn* (debt). *Dayn* (debt) refers to liability on someone who has to pay the debt at a later time and the liability may incur in many ways and it does not involve any profit. Whereas *qarḍ* (loan) is simply defined as a loan that does not involve interest (*ribā*) and the loan is extended out of goodwill¹⁴.

Linguistically, *dayn* is used for several meanings: debt, the price of goods, sale with deferred payment, something which is delayed in its maturity time, and something which is not in the presence¹⁵. The

comprehensive meaning of *dayn* (debt) can cover any kind of liabilities of a person either the liability of a person towards Allah Almighty or towards a human being and the liability can be compensated either by property or any other way. Ibn Nujaim¹⁶ explained *dayn* as an obligation of rights on someone's liability. Whereas the specific meaning of *dayn* (debt) can be found in Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), *Sharī'ah* Standard No. (4)¹⁷, it states:

“A debt is any liability that is not in terms of a specified or defined item, whatever the cause of its establishment, i.e. whether its origin is in cash or in a commodity, or in a particular described benefit such as the benefit of using particular things or services of persons. For instance, the consideration in deferred sales and loans is described as a debt”.

Therefore, the debt (*dayn*) is referred to the liability of a person towards creditor or financier which is incurred from any financial contracts such as *tawarruq*, *murābahah*, *ijārah*, and *qard* with a financial institution or a person.

In the modern Islamic banking system, there are several types of products and services in the market to cater to the needs of the customers¹⁸. The products and services must meet the *Sharī'ah* requirements before being offered to customers. *Ribā* (interest), *gharar* (uncertainty), and *maisir* (gambling) are some prohibited actions that the contracts must be free of¹⁹. Fulfilling these requirements allow the product to be served to the customers.

The current products in Islamic banking have differences in their natures. The current practice of Islamic banks shows that normally the customer asks the bank to purchase a specified product from a third party and later the bank buys that product, and the customer purchases it from the bank paying the price in certain installments. *Murābahah* (cost plus profit sale) and *tawarruq* (monetization) are among the most practiced contracts in Islamic banks that allow the customer to purchase a property i.e., car, house, through an Islamic bank²⁰. And these contracts also allow the customer to pay the price of their purchased property in certain installments e.g., 5 to 20 years with a marked-up price based on their mutual agreement at the time of execution of the contract. In addition, *ijārah* is a lease facility that is also a *Sharī'ah* compliant product, and it is also used very commonly in most of the Islamic banks. *Ijārah* in the Islamic banks also offers to -rent to own- a facility where the customer pays the rental for a certain period and later the customer owns it²¹.

The above-mentioned debt-based products in Islamic banks have advantages and disadvantages for the customers. The customers can buy their desired property and fulfill their needs using those Islamic banking facilities which are considered as an advantage to the customers. On the other hand, the customers are being in debt to the banks for a period of time to pay the prices of their purchased properties. In such a case, the customers have to continue paying the debt to the banks regardless of their financial hardship. Mehmet Asutay²², and Asyraf Wajdi Dusuki²³ claimed that debt-based financing is more practiced in Islamic banks instead of equity-based financing. Mansor Jusoh and Norlin Khalid²⁴ also find that most of the Islamic banks in the world are depending on debt-based financing products leaving the profit and loss sharing products as the least used mode of financing instruments.

Therefore, the customers who are entertaining such debt-based financing from Islamic banks are required to fulfill their installments based on their agreement. However, some customers may not be able to pay the installments on their scheduled time hence the banks send reminders to them. In the case that the customer is not able to pay the installments, the bank has the right to take any legal action²⁵. But if the customer comes to the banks seeking assistance for this hardship, the bank may allow the customer to reschedule or restructure (*qalb al-dayn*) his facility. The restructuring of financing facilities in the modern banking system has a similarity with the concept of *qalb al-dayn* in classical practices²⁶.

4.2. *Qalb al-Dayn* in Islamic Jurisprudence

Islam allows debt to support a person to fulfill his needs, but at the same time provides boundaries not to be exceeded like *ribā*²⁷, terms intentionally delaying payment (*mumāṭalah*) as injustice²⁸, and so on. It also encourages the creditor to give some time for a debtor to repay his debt when he is struggling with financial stresses (*i'sār*). In this regard, Allah Almighty says: “*If there is one in misery, then (the creditor should allow) deferment till (his) ease*”²⁹. Islam cares for the rights of both creditors and debtors; that is why Islam necessitates parties to register a debt agreement.

When a debtor fails to repay the debt to the creditor, he may ask the creditor to allow him to prolong the tenure. In some cases, creditors may not allow the debtor to delay the payment and they may impose the debtor to restructure the debt and demand more than the required amount of debt which is prohibited and is called *ribā al-jāhiliyyah* (interest during the era

of ignorance)³⁰. *Qalb al-dayn* is a phenomenon where the debtor is unable to pay the debt on time and the creditor obliges another debt on the liability to a debtor to repay his existing debt. Therefore, the debtor is required to pay the existing debt and the new debt with a higher amount than the existing debt³¹.

Qalb al-dayn is a term announced by Ibn Taymiyyah³² and it was used by other Ḥanbalī scholars. Shihāb al-Dīn al-Qarāfī³³, Aḥmad Ibn Muḥammad al-Dardīr³⁴, and several other Mālikī scholars used another term, which is *faskh al-dayn bi al-dayn* (debt revocation). It was discussed when contemporary Islamic financial institutions started exploring and innovating more products and facilities which can conform to the *Sharī'ah* rule.

The term *qalb al-dayn* consists of two words. One is *qalb* and the other is *dayn*. The word *qalb* means pure and noble of something derived from the human heart called *qalb* in the Arabic language as a noble and pure part of the body. Another meaning of *qalb* is, reversal, inversion and to turn over i.e., turning something over from one side to the other side, for example turning over of a cloth³⁵. According to Al-Rāghib al-Iṣfahānī³⁶, the reason for calling the heart as *qalb* in Arabic is because of its frequent turning over. The word *qalb* itself means soul, knowledge, and bravery. The meaning of *dayn* is mentioned in the earlier section.

Usāmah Ibn Ḥamūd al-Lāḥim³⁷ explains *qalb al-dayn* as the establishment of new debt on a debtor either it is from the same genre of the existing debt or something different. ‘Abd al-Raḥmān al-Aṭram³⁸ adds the reason for the creation of a new debt, which is to accentuate payment of the existing debt.

According to the above definitions, there should be two debts for the same debtor and the new debt can be the same as the existing debt or can be something different. Additionally, the purpose of the new debt is to repay the existing debt. Meanwhile, Nazīh Ḥammād³⁹ defines *qalb al-dayn* as the creation of a new debt which is a deferred payment basis over an existing debt which is also on the liability of the debtor, after the debt is due. The new debt with an increment of quantity or quality can be of a different genre or the same.

This definition shows that the new debt will replace the existing debt which is on the liability of the debtor, and it specifies the occurrence of the new debt as after the due date of the existing debt. The definition also adds that the new debt has an additional portion in quantity and characteristics from the same genre of the existing debt, which clearly proves that this new debt is leading to *ribā*. This is what Imam Malik exemplified with buying a stuff from the creditor and paying it later with

a higher price which leads to an additional amount to the borrower to pay to the creditor using the *hīlah* (trick) of purchasing stuff as mentioned in section 4.3.1.2 Besides, the Sharī‘ah Advisory Council (SAC) of The Securities Commission Malaysia (SCM)⁴⁰ also defines *qalb al-dayn*, it states:

“The term *qalb al-dayn* refers to the conversion of existing debt into a new debt such as in the following situations:

- (i) Restructuring of debt/amount payable via an extension of the payment period which results in an increase of the original amount payable without terminating the existing contract; or
- (ii) Restructuring of debt/amount payable via termination of the existing contract and entering into a new contract with a new amount payable and an extended payment period.”

It is mentioned in the above definition by SCM⁴¹, that an additional amount is added on top of the original amount to extend the payment period of the existing debt and without terminating the existing debt. In this case, it is similar to the Arab saying before *ribā* was prohibited, they used to say: “Increase in the asset (which is on the liability of the debtor) for me so that I will increase the period of payment for you”⁴². In the second scenario, the termination of the existing contract and entering into a new contract with a new amount and a new payment period may raise the issue of *ribā* also. The existing contract has a certain amount payable, and the new contract will increase that amount to a higher amount for the debtor to pay, which is considered as *ribā*.

However, the definition of *qalb al-dayn* by Nazīh Ḥammād⁴³ is a more comprehensive and reliable definition, where he includes the important issues of *qalb al-dayn* and gives a clear picture of how *qalb al-dayn* works. Moreover, the definition of SAC of SCM also pointed out that *qalb al-dayn* can either take place by terminating the existing debt or without terminating it. This gives room to the customer to restructure the existing debt before or after the debt is due. In a short word, *qalb al-dayn* is referred to as an execution of a new debt contract over an existing debt contract, by cancelling the existing contract and increasing the amount of the new debt contract to prolong the existing debt. The real picture of *qalb al-dayn* can be seen through the diagram below:

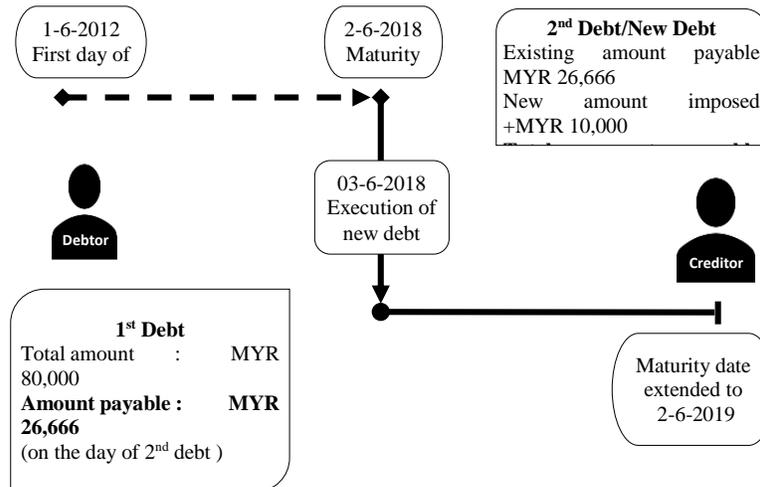


Diagram 01: *Qalb al-Dayn*
Source: Authors' own

Faskh al-dayn bi al-dayn (debt revocation): Mālikī school use this term which is similar to *qalb al-dayn*. Al-Dardīr⁴⁴ and al-Qarāfī⁴⁵ from the Mālikī school, use this term in their books and explain several forms of *faskh al-dayn bi al-dayn*, mentioning *Sharī'ah* rules based on the forms. Muḥammad Ibn 'Abdullāh al-Kharashī⁴⁶ explains that the term *faskh al-dayn bi al-dayn* is to cancel the liability of a debtor and to replace the debt with the same genre of debt to a deferred debt. In other words, to revoke the liability of a debtor and to replace it with a different genre to a deferred debt, for example, cancellation of debt (money) with a deferred debt (money), e.g. ten ringgits to fifteen ringgits or cancellation of debt of money to replace it with goods in a deferred debt. 'Alī Muhyī al-Dīn al-Qarah-dāghī⁴⁷ describes *faskh al-dayn bi al-dayn* as to cancel a deferred (debt) contract with a deferred price or cash price.

The definition of al-Kharashī and al-Qarah-dāghī, explains that *faskh al-dayn* also works like *qalb al-dayn* i.e. by cancelling the existing debt and creating a new debt where it can be more than the existing one.

4.3. The Legality of *Qalb al-Dayn*

Ibn Taymiyyah⁴⁸ and Ibn Qayyim⁴⁹ and other Mālikī scholars like al-Dardīr⁵⁰ and al-Kharashī⁵¹ explain the rules of *qalb al-dayn* in their books. The Mālikī and Ḥanbalī schools are the two schools that highlight

qalb al-dayn. On the other hand, the Ḥanafī school and Shāfi‘ī school do not discuss *qalb al-dayn* explicitly. Therefore, the study considers their rulings on other related issues to explore the closest explanation for *qalb al-dayn*.

4.3.1. Classical Views of Scholars

4.3.1.1. Ḥanafī School:

Based on the study on Ḥanafī school, it seems like, they do not mention *qalb al-dayn* as a term in their *fiqh* book. But it can be explored from their other rulings for different issues like the rules of a selling contract after debt and vice versa.

According to Ibn ‘Ābidīn, it is valid but *makrūh* (reprehensible) to buy something at a higher price in a sale contract after having a debt with the same person but without having any condition of sale prior to the debt contract. Al-Karkhī and Muḥammad have no objection on this issue, however, Ḥalwānī has an opposite view on that. According to Ḥalwānī, it is prohibited (*ḥarām*) as it may result in saying that if the debtor does not buy from the creditor, the debtor may need to pay the debt immediately. Besides, Khuwāhar Zadah explains that such kind of contract can be considered as permissible or impermissible based on the conditions attached to the contract. So, if there is a condition of benefits in the contract, it will be regarded as *makrūh* (reprehensible). On the other hand, if the benefit comes without having a condition for it, the contract will be considered permissible⁵².

Ibn ‘Ābidīn also mentions that a debt contract can be placed after a sale contract. According to Khaṣṣāf, such a transaction is allowed. Muḥammad Ibn Salamah opines the same in this matter but other scholars from Balkh disliked this and regard this scenario as debt which leads to benefits (interest) because without having that debt, the debtor will not bear the higher price. Some other scholars opine that it is *makrūh* (reprehensible) when the contract session (*majlis al-‘aqd*) is one, otherwise, it is allowed and that is because of having both (debt and sale) in one session leads to assuming that the benefits are a condition of that debt. Al-Ḥalwānī issues a *fatwa* (resolution) following Khaṣṣāf’s opinion. Ibn Salamah opines that this is not debt that leads to benefits, but it is a sale (*bay‘*) that leads to benefits and that is a loan⁵³.

In a nutshell, the Ḥanafī school even though does not explain *qalb al-dayn* in a specific way but their discussion on the rules of debt and other issues show that if the debt contract stipulates any kind of benefits whether it is in the shape of the sale contract or any other form, it will be impermissible. However, if the benefits or extra charges come without any conditions, it will be permissible.

4.3.1.2. Mālikī School:

The Mālikī school uses a different term of *qalb al-dayn* which is *faskh al-dayn bi al-dayn*. The term garnered a lot of attention among Mālikī scholars as many of the scholars mention it in several chapters of their books⁵⁴.

Imām Mālik says for a person who lends his 100 *dīnār* to someone for a deferred period when the debt is due, the debtor says to the creditor: sell that good to me which is of the price of 100 *dīnār* on cash, but I will pay you 150 *dīnār* on a deferred basis. He says this type of contract is invalid and the scholars prohibited such a contract. The reason for this contract being *makruh* is, the increase in price to prolong the payment, which is similar to the ḥadīth, where Zaid ibn Aslam mentioned that the *ribā* was in the era of *jāhiliyyah* (the pre-Islamic period) that a person has the right (debt) over another person for a fixed date. When the debt is due, the creditor says to the debtor whether you pay me now, or you pay me more (interest). So, if the debtor pays, the creditor receives, and the deal is done, otherwise, the creditor increases the amount and prolongs the tenure⁵⁵.

Scholars from the Mālikī school (al-Kharashī, al-Dardīr, al-Ṣawī, and al-Dusūqī⁵⁶) explain *bay' al-kāli' bi al-kāli'* (bilaterally deferred sale) under *al-buyū' al-fāsīdah* (invalid sale) in their books. They mention that *faskh al-dayn bi al-dayn* (debt revocation) is the most invalid sale which is also regarded as *ribā al-jāhiliyyah* (interest of the pre-Islamic period).

Based on the study from the Mālikī school, it shows that they demonstrate the ruling of *bay' al-kāli' bi al-kāli'* (bilaterally deferred sale) and classified it into three categories: 1. *faskh al-dayn bi al-dayn* (debt revocation), 2. *bay' al-dayn bi al-dayn*, (sale of debt for debt), 3. *ibtidā' al-dayn bi al-dayn* (simultaneous debt for debt sale). Most of the Mālikī scholars consider *faskh al-dayn bi al-dayn* as an impermissible sale.

4.3.1.3. *Shāfi'ī School:*

Just like the Ḥanafī school, Shāfi'ī school also does not emphasize on *qalb al-dayn (faskh al-dayn bi al-dayn)* in particular. 'Iṣām Khalf al-'Inzī⁵⁷ noted some of the reasons:

1. The Shāfi'ī school allows *bay' al-ṭnah* with the status of *karāhah*⁵⁸ and *qalb al-dayn* is the opposite of *bay' al-ṭnah* as described by the Ḥanbalī school⁵⁹.

2. According to the fundamental (*uṣul al-fiqh*) of the Shāfi'ī school⁶⁰, *sadd al-dharā'i'* (prohibition of what may lead to committing sins) is not a source of ruling unless it certainly leads to the prohibited action (*ḥarām*), then it will be regarded as *ḥarām*. Otherwise, it will not be considered as *ḥarām* and particularly, if it is in deferred sales, and *qalb al-dayn* is one of them.

3. In the Shāfi'ī school, the legal maxim⁶¹: whether the form of contracts or the meaning should prevail or not does not fit with all the branches of the *Sharī'ah* ruling. The application of this maxim varies from branches to branches of *Sharī'ah* issues and this is the reason why Shāfi'ī school does not prohibit many *Sharī'ah* issues as they look into the form of that contract, not the meaning or intention. Regarding *qalb al-dayn*, which requires to conclude a new sale contract between the creditor and debtor not stipulated before in the first contract leading to the allowing of such contract based on their fundamental reasoning⁶².

In conclusion, Shāfi'ī school does not elaborate on *qalb al-dayn* because of the aforementioned reasons and those reasons may lead the Shāfi'ī school to allow *qalb al-dayn* as they allowed *bay' al-ṭnah*.

4.3.1.4. *Ḥanbalī School:*

The Ḥanbalī school prohibits *qalb al-dayn* just like the Mālikī school in disallowing *faskh al-dayn bi al-dayn*. In the Ḥanbalī school, Ibn Taymiyyah came out with the term *qalb al-dayn* and it has been used by other scholars⁶³. Ibn Taymiyyah says: it is prohibited for the creditor not to allow the insolvent debtor to make the payment in another later period and opt for *qalb al-dayn*. When the creditor says to the debtor: either you do *qalb al-dayn* or I will bring you to the court. The debtor is in the fear of being prosecuted by the judge despite not yet being proved in the court of law, but the reality is, he is insolvent. Hence, the debtor goes for *qalb al-dayn*. According to scholars, such kind of transaction is prohibited (*ḥarām*) and it is not obligatory (to fulfill). This is because he is under duress by the creditor. It will be a mistake to say that it is permissible

according to some scholars to apply *qalb al-dayn* on an insolvent debtor by using any kind of trick (*hīlah*), but the actual dispute among scholars is regarding optional transactions like *bay' al-tawarruq* and *al-ṭmah*.

Ibn Taymiyyah⁶⁴ also explicitly highlights that some transactions are prohibited by the consensus of scholars. One of them is to apply *qalb al-dayn* on an insolvent debtor. This is because it is obligatory to allow the debtor to pay when he is able. It is not allowed by the consensus of scholars, to increase the payment from the debtor by using any kind of contract or something else.

Ibn Qayyim⁶⁵ adds that when the creditor believes that he is allowed to ask the debtor for *qalb al-dayn* and say either you have to pay the debt, or you have to increase the debt and the tenure, then this creditor is considered as an atheist. It is obligatory for him to repent, otherwise, he will be executed, and his property will be taken to the treasury.

Based on the above study, it is understood that the Ḥanbalī school of thought explores *qalb al-dayn* and they describe issues regarding *qalb al-dayn*. It can be concluded that according to most of the Ḥanbalī scholars, *qalb al-dayn* is regarded as a prohibited (*ḥarām*) contract because the creditor should give the debtor some time to repay his debt and not to ask for more than the amount payable due to delaying payment. Asking for more is the manifestation of *ribā*.

4.3.2. Contemporary Views of Scholars

Contemporary scholars annotate *qalb al-dayn* based on the situation of debtors and forms of *qalb al-dayn*. They argue about *qalb al-dayn*, whether it can be imposed on a solvent debtor or insolvent debtor.

According to Muḥammad al-‘Alī al-Qarī⁶⁶, ‘Abdullāh Sulaimān al-Manī⁶⁷, and Bahrain Islamic Bank⁶⁸, the prohibition of *qalb al-dayn* does not apply to an individual solvent debtor or a company who has strong solvency and has enough asset/property to pay back the current debt without *qalb al-dayn*. But he or the company prefers *qalb al-dayn* intentionally to ease his current debt without any duress on him. On the other hand, it will not be permissible to apply *qalb al-dayn* on an insolvent or those who delay payment, as it will be the prohibited (*ḥarām*) version of *qalb al-dayn* or it may lead to paying extra installments which are not allowed in *Sharī‘ah*⁶⁹. However, The Shariah board of Bahrain Islamic bank also allows rescheduling the tenure of a debtor who is facing difficulties with the condition of not taking any extra charges from the debtor. Al-Qarī⁷⁰ and al-Manī⁷¹ also do not allow to apply *qalb al-dayn* on insolvent debtors (*mu‘sir*) as the creditor should give them some more

time to repay the debt, instead of enforcing another debt on them. In addition, al-Manī⁷² does not recommend applying *qalb al-dayn* for those who like to have debt for a lavish, luxurious lifestyle even though some of them own assets to pay the debt, but are not willing to utilize their property properly.

‘Abd al-Bārī Mash‘al⁷³ does not allow *qalb al-dayn* (debt restructuring) for an insolvent debtor. According to him, it is impermissible to conclude a *tawarruq* contract with a condition that the customer must pay his existing debt which is generated from any other *Sharī‘ah* concepts e.g. *murābahah* or *istiṣnā‘* with the same financial institutions, where the customer is facing payment difficulties. This kind of agreement is called *qalb al-dayn* or *faskh al-dayn bi al-dayn* which leads to *ribā al-jāhiliyyah*. Similarly, Muḥammad Taqī al-Usmānī⁷⁴ opines that *qalb al-dayn* can be permissible with the status of *karāhah* (not recommended) however it should be totally impermissible following the opinion of Mālikī and Ḥanbalī school.

Aznan Hasan⁷⁵ opines that the solvent debtor who refuses to pay the debt, should be imposed on certain punishments as procrastination (*mumāṭalah*) is a sin and injustice. But, if someone is not insolvent (*mu‘sir*) but he has temporary financial distress (*ta‘tthur*), the bank may grant favour to him. This excuse, however, should not be generalized as a precedent as it will have an impact on the overall performance of the financial institution. Hence, *qalb al-dayn* may be the best solution for such a situation. Looking at the benefits for the bank and the client, *qalb al-dayn* should be allowed to the debtor who is facing such an issue to protect him from the declaration of bankruptcy and to recover back the debt from the client within certain parameters.

AAOIFI⁷⁶ states in the *Sharī‘ah* Standard no. (8): *Murābahah*:

“5/7 It is not permissible to extend the date of payment of the debt in exchange for an additional payment in case of rescheduling, irrespectively of whether the debtor is solvent or insolvent.

5/8 When there is a default in payment by the customer with regard to installments of the selling price that are due, the amount due is just the amount of the unpaid selling price. It is not permissible for the Institution to impose any additional payment on the customer for the institution's benefit. This provision is, however, subject to item 5/6.”

Similarly, the resolution of International Islamic Fiqh⁷⁷ and Islamic Fiqh Council⁷⁸ state that *faskh al-dayn bi al-dayn* is considered as prohibited in *Sharī'ah*. *Faskh al-dayn bi al-dayn* is something that increases the debt on the debtor's liability in exchange for increasing the tenure or any other means. The application of *faskh al-dayn bi al-dayn* takes place by a transaction between creditor and debtor by creating a new debt on the debtor to pay the existing debt full of it or partial. Be the debtor solvent or insolvent. To conclude the new debt, the debtor needs to buy an asset from the creditor with a deferred payment then the debtor needs to sell it back on cash to the creditor to pay the previous debt fully or partially.

‘Abd al-Sattār⁷⁹ stipulates three conditions for *qalb al-dayn* to be applied to have new financing. The existing and new contract should fulfill three conditions as below:

1. The new debt contract should not have a relation with the existing contract which is facing difficulties.
2. The debtor (customer) should face difficulties in the liquidation of his assets to repay the debt but at the same time, he is not insolvent.
3. The profits of the new contract should not exceed the profits of the existing contract. This is to avoid the consideration of the extra amount as a late settlement of the existing debt.

Nazīh Ḥammād⁸⁰ classifies *qalb al-dayn* into six forms.

1. Deferment of a due debt for a debtor, by increasing the amount of debt to prolong the tenure.
2. Same as the previous form but there will be a new contract (this new contract is not really in their intentions), which leads them to achieve their goal of having an additional amount in the new contract with a new payment period.
3. Selling the existing debt, which is already due, to the same debtor with a deferred price that is different from the existing debt (with something permissible to sell at a deferred price).
4. Substitution of the debt with *salam* contract where the debt turns to the capital of *salam*. This substitution is in exchange for the specified commodity of the debtor, to a deferred period.
5. Substitution of the debt which is due with usufruct of an asset e.g. house, shop, car, that belongs to the debtor to a specific period e.g. 1 year or 5 years.
6. Selling the debt after its due date, to the same debtor with an asset where the possession takes place later like property, absent goods, and unripe fruits which are not yet ready to harvest.

Based on the above classification, Nazīh Ḥammād⁸¹ opined that the first two forms from the above, do not comply with the *Sharī‘ah*, as both forms lead to interest (*ribā*) by increasing in the quantity or quality of the existing debt. However, the other four forms have some arguments among scholars where he opined that these four forms can be considered as *Sharī‘ah* compliant. He also added that the debtor may get any cash financing in exchange for something deferred e.g. using *tawarruq* or *salam* or *istiṣnā‘* or any other *Sharī‘ah* concepts, to pay back his existing debt, when he is not capable of paying on the due date, even though that financing requires to pay more than his existing debt. However, this method can be followed with a condition that, this extra amount must not go to the same financial institution that has his existing debt or there should not be any link or trick (*ḥīlah*) which leads to *ribā*.

The summary of the above-mentioned opinions of scholars and the resolutions of Islamic institutions is illustrated in the table below:

Scholars/ Resolutions	<i>Mu‘sir</i> (Insolvent)	<i>Mūsir</i> (solvent)	Conditions/Remarks
Muḥammad ‘Alī al-Qarī (2003)	Not Allowed	Allowed	It is obligatory to give some time to the insolvent debtor. While for a solvent debtor, who can pay, the new contract is not considered as <i>qalb al-dayn</i> .
‘Abdullāh al- Manī‘ (2011)	Not Allowed	Allowed	1. Without being forced/duress. 2. Has enough property. 3. Not used to living a lavish life.
‘Abd al-Barī Mash‘al (n.d.)	Not allowed		The condition of settling the existing debt by the new debt for the customer in financial difficulties is not allowed as it is <i>qalb al-dayn</i> .

Muḥammad Taqī al-Usmānī (2015)	Not Allowed (<i>Karāhah</i>)		It is recommended to avoid such a contract.
Hasan et al. (2016/2018)	Not Allowed	Allowed for solvent and <i>muta'atthir</i> (temporary financial difficulties in liquidation)	<ol style="list-style-type: none"> 1. The two contracts should be separated. 2. The new contract should not stipulate to settle the existing contract. 3. The debtor should entertain freely the proceeds of a new contract.
'Abd al-Sattār Abū Ghuddah (n.d.)	Allowed for <i>muta'atthir</i> (temporary financial difficulties in liquidation)		<ol style="list-style-type: none"> 1. New debt has no relation to existing debt. 2. The debtor is not insolvent but facing difficulties in the liquidation of his assets. 3. The amount in the contract should not exceed the existing contract.
Nazīh Hammād (2011)	Has classified <i>qalb al-dayn</i> into six (6) categories. Two of those categories are impermissible and the rest 4 categories are allowed according to him. In those four (4) categories he did not differentiate between <i>mūsir</i> and <i>mu'sir</i> .		
Resolutions of Islamic Financial and Non-Financial institutions			
Sharī'ah Resolution of the Bahrain Islamic Bank (2013)	Not Allowed	Allowed	<ol style="list-style-type: none"> 1. Should have strong solvency 2. Not delaying in payment 3. No extra charges

AAOIFI (2015)	Not Allowed	“It is not permissible to extend the date of payment of the debt in exchange for an additional payment in case of rescheduling, irrespectively of whether the debtor is solvent or insolvent”.
International Islamic Fiqh Academy (2006)	Not Allowed	It (<i>qalb al-dayn/faskh al-dayn</i>) increases the debt on the debtor’s liability in exchange for increasing the tenure or any other means.
Islamic Fiqh Council (2006)	Not Allowed	It (<i>qalb al-dayn/faskh al-dayn</i>) increases the debt on the debtor’s liability in exchange for increasing the tenure or any other means.

Table 01: Scholars’ Views and Resolutions on *Qalb al-Dayn*
Source: Authors’ summarization of views and resolutions

5. Methodology

A qualitative research approach is adopted to ascertain in-depth information and to fulfil the objectives of this research. Qualitative research assists a researcher in describing and interpreting a phenomenon⁸². Describing the scholars’ opinions on *qalb al-dayn* and interpreting it with the current practice in the modern banking system correspond with a qualitative research approach through the available data in documents i.e., classical books and other current available literature. Hence, to achieve the objectives of this research, a qualitative research approach suffices. The data of this research is collected from several sources such as classical fiqh books of four schools of thought, modern Islamic finance-related books, articles, conference papers, *Sharī’ah* standards, and resolutions. Moreover, the research follows the descriptive analysis method to address the subject matter and to find the rationale behind the legality of *qalb al-dayn* and its current practice. The

comparative analysis method is also applied to compare and contrast the views of *Sharī'ah* scholars on the subject matter.

6. Discussion

Qalb al-dayn is being discussed by the classical and contemporary scholars based on their understanding and their school of thought (*madhhab*). It is worthy to note that most of the scholars strive to close all the doors of *ribā* as *Sharī'ah* clearly prohibits it. In such a case, they assume and predict many phenomena that might happen in the financial transaction either through debt or sale contract, and based on that they provide some *Sharī'ah* resolutions. Regarding *qalb al-dayn* in the classical studies, Imām Mālik, al-Kharashī, al-Dardīr, al-Ṣāwī, al-Dusūqī from Mālikī school and Ibn Taymiyyah, Ibn al-Qayyim from Ḥanbalī school scrutinize the issue of *qalb al-dayn* while Mālikī school use a different term which is *faskh al-dayn bi al-dayn*. Both schools similarly conclude that the practice of *qalb al-dayn* leads to *ribā al-jāhiliyyah*. On the other hand, Ḥanafī and Shāfi'ī school have a little discussion on the matter. Looking at their discussion on debt issues it seems that Ḥanafī school has different opinions among the scholars however, they emphasize the issue of any benefits that come from debt contract. Many of the Ḥanafī scholars opine that if the benefits from a debt contract come through a condition on the contract it will be regarded as *ribā* otherwise the benefits are permissible. Shāfi'ī school does not explicitly mention any rules for *qalb al-dayn* in the fiqh book, however, since Shāfi'ī school allows *bay' al-'inah*, and prioritizes the form of contract over its meaning or intention, *qalb al-dayn* can be considered as permissible.

Since Islamic banks offer debt-based financing, some customers are unable to attend to their liabilities of paying the installments due to financial hardship. In such a case, Islamic banks offer either restructuring or rescheduling of the financing facility. The example of the concept of *qalb al-dayn* from the contemporary practice of Islamic banks can be seen through the practice of restructuring of financing facilities. The restructuring of financing facilities is done through executing a new financing contract over the existing contract, where the debtor must pay the capital of the current financing facility in an extended tenure and also an additional amount that incurs from the new financing contract. Thus, it has the similarity with the concept of *qalb al-dayn* where a debtor must pay an additional amount to extend the period of the loan⁸³.

The contemporary scholars have diverse opinions and arguments on the legality of *qalb al-dayn* especially the mechanism that is used in

modern Islamic banks where some of them classify the debtors into solvent and insolvent and provide the ruling based on their situation. On the other hand, other scholars do not differentiate between solvent and insolvent to show their views on the matter. The contemporary scholars and Islamic financial and non-financial institutions (‘Abd al-Bārī Mash‘al, Muḥammad Taqī Usmānī, AAOIFI, International Islamic Fiqh Academy and Islamic Fiqh Council) consider *qalb al-dayn* as impermissible like Ḥanbalī school without differentiating the debtors. This is because it is tantamount to *ribā* where the creditor is increasing the debt by extending the tenure of the payment which is happened in the restructuring of financing facilities in modern Islamic banks⁸⁴. The majority of scholars from those who differentiate the debtors also do not allow *qalb al-dayn* from insolvent debtors due to the fact that the Quranic verse: “*If there is one in misery, then (the creditor should allow) deferment till (his) ease*”⁸⁵ commands to allow them ample time to pay back the debt. Thus, imposing an extra amount for allowing them to pay later is considered as an action opposite of Quranic guidelines. The same group who allows for solvent debtors to practice *qalb al-dayn*, which is the restructuring of financing facility in modern Islamic banking, thinks that a contract in the facility is considered as a new contract that must be separated from the existing one, thus it is not *qalb al-dayn*.

According to the researcher, consideration of the situation of a debtor is necessary for the creditor while asking for repayment based on the Quranic verse (2: 280). Moreover, *qalb al-dayn*/the restructuring of financing facility should be avoided by the Islamic banks as it might lead to *ribā* through a new contract on the same subject matter of the contract. In other words, that new contract is a kind of trick to expand the tenure and charge for a higher amount for the same subject matter. Therefore, the researcher concludes that *qalb al-dayn* can be totally avoided by rescheduling a financing facility process. In such a facility, the tenure will be extended while keeping the original amount of the debt and the debtor will pay a lesser amount for the monthly installment throughout the extended tenure.

7. Conclusion

Sharī‘ah allows to incur debt (*dayn*) and it has set the principles and guidelines to follow. However, incurring more debts leads to many issues and challenges to the debtor and creditor as well. The practice of *qalb al-dayn* was famous among the people of ignorance (*ayyām al-jāhiliyyah*) once the debtor was failed to fulfill his promise to pay the debt and as a

result, the creditor stipulates to pay extra to allow him some more time which is tantamount to *ribā* (interest) in *Sharī'ah*.

Based on the study, it is proven that according to the Mālikī and Ḥanbalī school, *qalb al-dayn* is not allowed. The reason is, the creditor stipulates interest (*ribā*) in exchange for increasing the loan/debt period for the debtor, while the debtor is unable to pay, and he is forced to pay an additional amount to extend the loan/debt period. That is what is prohibited in the al-Qur'ān which says to grant the debtor some time to repay the debt amount. In the Ḥanafī school, it is allowed to receive any extra amount without stipulating that extra portion in the debt contract allowing the debtor to pay the additional amount. The Shāfi'ī school allows *bay' al-ṭinah* and may result in allowing *qalb al-dayn* as it is not stipulated in the transaction and the structure of the transaction is valid.

The contemporary scholars also have the same opinion of *qalb al-dayn* to be prohibited when it comes to an insolvent debtor, and there is no dispute among them. However, looking into the benefits of Islamic financial institutions and their customers, some of the scholars allow *qalb al-dayn* with certain conditions.

1. One of the conditions is that the debtor must be solvent in his financial status.
2. Second, he has the capacity to pay back the debt to the bank without incurring another debt to pay for the current debt.
3. Third, the debtor is a solvent and has the capacity to pay the current debt, however, he is encountering a temporary liquidity problem (*ta'tthur*) where he requires an additional amount of money to purchase some goods or machinery items which allows him to operate his business smoothly, thus he needs additional financing from the bank. In such a situation, the scholars allow to apply *qalb al-dayn* on the debtor considering it as a top-up (additional financing) on the current debt which benefits both the bank and the debtor in a sense that the bank can continue to provide financing efficiently and avoid any kind of disruption in the continuity of the transaction. At the same time, the debtor can acquire the required amount to continue his business and he can protect himself from defaulting on his debt or facing any kind of legal action since he is capable to pay both of the financing facilities together.

According to the researchers, *qalb al-dayn* is among the non-*Sharī'ah* compliant activities which Islamic banking institutions must avoid from their practices e.g. restructuring of financing facilities and they should be more careful from involving in *ribā* directly or indirectly. Additionally, to avoid the non-*Sharī'ah* income, the IFIs should not charge an extra amount to reschedule the payment of a customer. It also

should be noted that the IFIs should separate the facilities they are providing to the same customer so that it will not be meant that the increase in the price of a new contract to prolong the existing tenure. Moreover, to ensure that the contract does not conflict with *Shari'ah* rules while processing the application, it should be noted that the IFIs must consult with the respected *Shari'ah* board when the debtor applies for such facility. In addition, Islamic financial institutions need to move more towards equity-based financing instead of depending on debt-based financing.

8. Policy Implications:

Regarding the policy implications of this study, the findings of this study will assist the authority and *Shari'ah* supervisory board to issue guidelines and *Shari'ah* resolutions on the subject matter. The executives and employers will have a profound understanding of *qalb al-dayn* and to compare and contrast the concept and practice and to identify the issues and the customers and stakeholders will be aware and guided to perform their duty accordingly to avoid any circumstances related to the subject matter. Moreover, the researchers might find it interesting to explore and recommend *Shari'ah* compliant alternatives of *qalb al-dayn*.

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