بسم الله الرحمن الرحيم

ANNOUNCEMENT

14th Shawwāl 1445 AH (23 April 2024)

Public Statement No. (5-2024) regarding

The Short-term Payment Facility from the Third Party

Commonly Known as Buy Now Pay Later (BNPL)

ALL PRAISE BE TO ALLAH, THE LORD OF ALL THE WORLDS. PEACE AND BLESSINGS UPON OUR PROPHET AND OUR MASTER MUHAMMAD, ALL HIS FAMILY AND HIS COMPANIONS, THEIR FOLLOWERS, AND FOLLOWERS OF THE FOLLOWERS TILL THE DAY OF JUDGMENT.

The Islamic Economics Forum ("**IEF**") announces the issuance of Statement No. (5/2024) regarding Buy Now Pay Later (BNPL) system, a common method of payment and short-term credit used worldwide. It has recently gained popularity in some Arab countries.

This Statement is a result of a high-level discourse conducted on the public platform of the Islamic Economics Forum, which has 620 persons as members. The Statement in Arabic was drafted by the Shari'ah Executive Committee, formed for this purpose, between 7th to 13th Shawwāl 1445 H. (corresponding 16th to 22nd April 2024) and approved in IEF's general session on 14th Shawwāl 1445 AH (corresponding 23rd April 2024). The Statement concluded:

" ***Consequently, the transaction in its current form contradicts the principles of Shari'ah, and it is not permitted for anyone to enter into it or assist in it.***

The Statement was issued originally in Arabic and over here you will find the English abridgment. In case of any difference, readers are advised to rely on the Arabic version.

BLESSINGS of ALLAH UPON OUR PROPHET MUHAMMAD, HIS FAMILY AND ALL HIS COMPANIONS

Dr. Abdulbari Mashal

Manager of Islamic Economics Forum

بسم الله الرحمن الرحيم

English Abridgment

Public Statement N°. (5-2024) regarding
The Short-term Payment Facility from the Third Party
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ALL PRAISE BE TO ALLAH, THE LORD OF ALL THE WORLDS. PEACE AND BLESSINGS UPON OUR PROPHET AND OUR MASTER MUHAMMAD, ALL HIS FAMILY AND HIS COMPANIONS, THEIR FOLLOWERS, AND FOLLOWERS OF THE FOLLOWERS TILL THE DAY OF JUDGMENT.

In line with the responsibilities of the **Islamic Economics Forum ("IEF")**[(1)] towards the broader aspects of the Islamic financial industry and the responsibility of the scholars to explain the unprecedented cases (*nawāzil*) and new trends of the industry; a comprehensive scholarly discourse was initiated on 22nd Rabīʿ al-Thānī 1444 H. (16th November 2022) and concluded on 8th Dhul-Hijjah 1444 H. (26th June 2023). The discourse resumed on 4th Jumada al-Ākhira 1445 H. (17th December 2023) and ended on 6th Shaʿbān 1445 H. (16th February 2024), focusing on third-party payment facilitation system commonly known as "***Buy Now, Pay Later***" (more commonly known with its acronym: **BNPL**).

BNPL is widely exercised in the global market, categorized as a short-term payment and credit facility, around which many questions and queries have arisen, particularly with its growing presence in certain Arab countries. In this statement, it shall be referred as "***BNPL Solution***".

This Statement summarises that scholarly discourse and presents its outcome, by describing the financial issue and outlines its Shari'a ruling. The Statement does not present Shari'a ruling on specific applications or aims to propose alternative financial solutions, structures or modes of financing.

(1) Islamic Economics Forum is a specialized knowledge-based international platform on social media which was founded by Mufti Khalid Hasani (Pakistan) on 1st February 2016 (What's App +923101109893). Its Arabic section is managed by Dr. Abdulbari Mashal (What's App +19199176595). The forum include in its Arabic section 620 members including Shari'ah scholars, experts, practitioners, economists, academicians, advisors, Shari'ah auditors based in 58 different countries. Also, the forum includes representatives of support organizations and various central banks.

Nevertheless, [the respective] Shari'ah committees are encouraged to interpret and enact the decisions outlined in this Statement in the respective applications.

Firstly: Description of BNPL Solution and its Modus Operandi

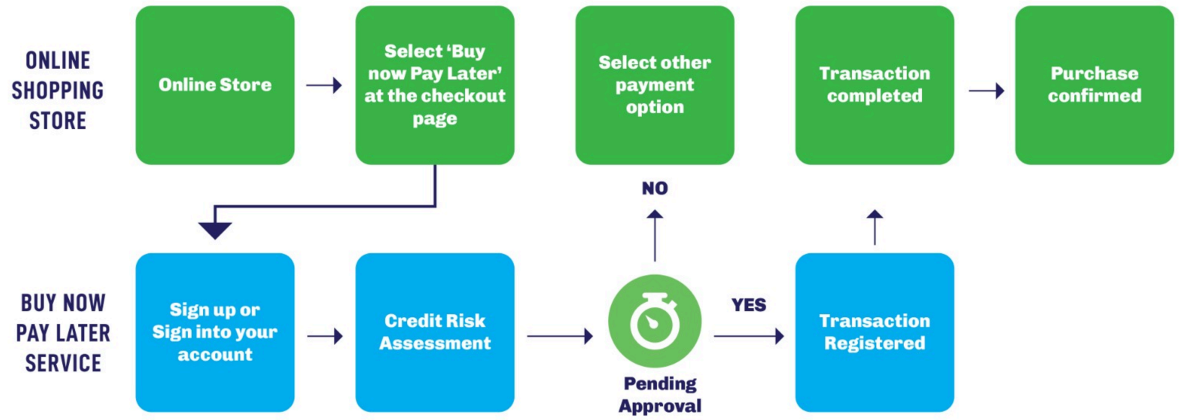
BNPL is a system that facilitates for a consumer (the "**Consumer**") to purchase goods instantly at the Points of Sale ("**POS**") and to pay the price to the Service Provider (the financier) either on deferred payment basis or in instalments over a span that could extend from weeks to months or even coming years. The Service Provider advances the purchase amount to the Merchant, the owner of the POS, after deducting a specified percentage for the Service Provider. This is done in accordance with a set of agreements that govern the relationship between the Service Provider and the Merchant on one side, and between the Service Provider and the Consumer on the other side.

Typically, BNPL agreements do not include any interest amount or fees levied upon the Consumer. The Service Provider's main revenue is derived from the discount rate deducted from what is paid to the Merchant upon advancing the sale price, which, in some retail transactions, could represent a rate of 18% or more if calculated on annualized basis. The discount amount in such agreements will be based on the amount of the transaction and the number of instalments.

Retail Merchants enter into such arrangements with Service Providers to provide a deferred payment option to their Consumers so that it encourages them to purchase without being liable to pay instalment interest. By larger number of Consumers willing to purchase via BNPL, the Merchants achieve an increase in their sales volumes. Further, listing of names of participating stores in BNPL, on the Service Providers' websites, has significantly broadened the customer base.

BNPL cannot be classified as other solutions of deferred payment that are available for Consumers, such as payment via credit cards, where the Consumer might incur additional cost in the form of interest on the purchase amount if the payment is settled in instalment.

The following is an illustrative image of the modus operandi of how BNPL works:



1. BNPL option is offered to Consumers who purchase from Merchants participating in BNPL.
2. Consumers can specify how they would like to settle (biweekly or monthly instalments) and can select a low upfront payment if they wish or if the system allows.

3. After Consumers' agreement to the terms of payment, the Service Provider either grants credit approval or declines the transaction within seconds.
4. If the provision of the service is approved and the purchase transaction between the Consumer and the seller is concluded, the purchase price remains outstanding upon the Consumer to be paid in instalments to the Service Provider in accordance with the terms previously specified in their respective agreements.

Although typically, the Consumer does not bear any interest on the purchase amount for the third party that advances the purchase price to the Merchant. Yet, there are some types of BNPL in which the interest amounts are charged to the Consumer.[2]

Secondly - Features of BNPL Solution

a) BNPL being an appealing solution to Consumers, it is likely that those Merchants who offer this payment option will achieve an increase in the total sales volume.
b) Pursuant to BNPL, the Service Provider does not charge interest amounts to the Consumers, but instead earns its revenue and profits from the Merchants by discounting the transaction amounts it eventually settles to the Merchants.
c) Some Service Providers offer longer-term facilities (ranging from months to years) at an interest rate to the Consumer, which is minimal compared to standard loans; because these facilities are partly supported by an additional discount given to the Service Provider by the Merchants, who are looking particularly for carrying out transactions of large size.[3]
d) The Service Provider in BNPL advances the purchase price to the Merchant upon the completion of the transaction or within a few days and it takes the credit risk (being extended to the Consumer) and collection of payments from the Consumer during the specified instalment period.
e) The Service Provider (acting as a payment processor and a financier) in BNPL assumes (bears) the risk of non-payment by the Consumer. To compensate for these risks, the Service Provider pays to the Merchant in advance a discounted purchase price (=transaction amount minus service fee) and then collects payments from the Consumer equal to the full purchase price without any deductions.
f) The difference between what BNPL Service Providers pay to Merchants and what they collect from Consumers represents the main source of revenue and profits for these Service Providers.[4]

Thirdly: The Differences between BNPL System and Unfunded Credit Cards

Despite the apparent similarities between the unfunded credit card[5] and BNPL system, but there are significant differences that exist in the perception and the Shari'a ruling. These are outlined as follows:

a) ***The contractual relationship between the Merchant and the Consumer:***

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[2] What Is Buy Now, Pay Later? – Forbes Advisor.
[3] https://corporatefinanceinstitute.com/resources/commercial-lending/bnpl-buy-now-pay-later/.
[4] BNPL (Buy Now, Pay Later) - Overview, Why, Risks (corporatefinanceinstitute.com).
[5] This is translation of Shari'a term: (*baṭāqa i'timān ghayr mughaṭṭā*). For payment cards, Islamic banks either offer *baṭāqa mughaṭṭā* (covered card) wherein the card limit is generated from sale of an underlying asset to the cardholder, or *baṭāqa i'timān ghayr mughaṭṭā* wherein the card limit is purely a loan extended by the card issuer and it is similar to standard credit card in that sense. The Statement is referring to the second type. [Translation Team]

In BNPL agreements, the Service Provider agrees with the Merchant to let the Consumer make the payment in instalments.

In unfunded credit cards, there is no such agreement between the Merchant (who accepts payment via unfunded credit card), and any of the banks involved in the card regarding the deferment of the price to be paid by the cardholder-cum-Consumer.

b) ***Method of calculating transaction fees:***

In BNPL system, the transaction fee, deducted from the Merchant out of the purchase price, is determined by looking at the duration of the financing and the instalments pursuant to the direct agreement between the Service Provider and the Merchant.

In unfunded credit cards, the interchange fee (to be paid by the Merchant) is determined pursuant to the agreement between the Merchant and his acquirer bank (which, in this capacity, is neither a lender nor a financier). There is a share in the interchange fee for the global card networks (schemes) and the banks involved in the service, with a portion going to the card-issuing bank for carrying out services of authorization and settlement[6].

c) ***The nature of transaction fees:***

Following the above, the sale in BNPL system takes place only by way of deferment (payment via instalments) that is pre-agreed, between the Service Provider and the Merchant, in terms of number of instalments and duration of payment. The percentage required for the Merchant to pay to the Service Provider is against that deferment. Thus, in case of a refund or cancellation of the transaction (between the Merchant and the Consumer), the Service Provider returns that percentage to the Merchant, reduced by a slight cost of refund equivalent to 2% of the refunded amount, as seen in some applications.

In the case of unfunded credit cards, the sale between the Merchant and the Consumer (the cardholder) is always on spot.

d) ***Fees and interest amounts due upon the Consumer:***

BNPL system contributes to a greater extent in increasing Merchant's sales compared to unfunded credit card; because BNPL provides better financing advantages for the Consumer in terms of period and fees charged to him, without imposing any interest amount on him beyond the purchase amounts, or sometimes imposing minimal interest amount.

In the case of unfunded credit cards, there are very high-interest amounts imposed on the Consumers upon using unfunded credit cards for payment.

Fourthly: The Shari'ah Ruling

Based on the reality of this case (*nāzila*), it is evident that the financier of the purchase assumes (bears) all the risks of the debt owed by the buyer.

The financier alone has the right to demand the instalments of this debt from the buyer, in exchange for a discount given by the Merchant to the financier.

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[6] It will be mentioned under the arguments of the Shari'a ruling section of this statement that the requirement of the approach of the Shari'ah Standard No. (61): Payment Cards is that what the card issuer receives from the interchange commission must be limited to the actual cost if the transaction is a loan.

This arrangement cannot be conceptualized to suggest a disintegration (*infikāk*) between the Merchant's relationship with the Service Provider on the one hand and the Service Provider's relationship with the Consumer on the other; as the tripartite process does not occur without the mutual consent [of all parties], and none of its dispositions can take place by agreement between two parties without the consent of the third party.

Despite being a tripartite arrangement, this process has no relation to Murabaha for the purchase promisor; as the Service Provider in this case is neither a buyer nor a seller of the goods, and the goods are not held at the risk of the Service Provider.

The discourse in the Islamic Economics Forum has indicated that, in this model, the revenue received by the intermediary Service Provider is contested by three jurisprudential characterizations(*takyīfāt*):

1. ***it is akin to the return stipulated on a loan by a third party who is not the borrower,***
2. ***it is like a discount in the sale of debt to a non-debtor for a lesser cash price of the same kind,***
3. ***it is akin to a fee for a guarantee with the right of recourse on the guarantee obligor,***

The income generated for the Service Provider in each of the above three characterizations is unanimously not permitted by the virtue of Shari'a due to realization of ribā.

First Characterization

- *This is because the essence of first characterization is paying a lower spot amount in the form of loan in exchange for obtaining a higher deferred amount. Muslims have unanimously transmitted from the Prophet Peace Be Upon Him that the stipulation of an increase in loan is the forbidden ribā[7].*
- *Further, Muslims have agreed to prohibit stipulation of any condition that drives a benefit to the lender [8], and this is prohibited by the generality of the Ḥadīth (ʿumūm al-Ḥadīth): "The Messenger of Allah Peace Be Upon Him cursed the one who consumes ribā and the one who pays it,". [9]*
- *There is no difference whether the increase over the loan amount is provided by the borrower or a stranger (ajnabī)[10] as long as payment of the increase is stipulated. Hence, the increase amount is subject to prohibition even if it is from a stranger and shall be subject to the expression "and the one who pays it."*

Second Characterization

- *It is a form of sale of debt to a non-debtor, which is also prohibited pursuant to agreement among the jurists due to involvement of ribā of debts (ribā al-duyūn), irrespective whether:*
  - *a) the price stands outstanding upon the buyer at time of the conclusion of the sale between the Consumer and the Merchant (thus it's a sale of the spot price to the Service Provider for a lesser cash price of the same kind), or*
  - *b) the price is due on spot upon the buyer at time of the conclusion of the sale (thus it's a sale of the spot price to the Service Provider for a lesser cash price of the same kind with the condition of deferring it upon the buyer) and by this it combines ribā faḍl (ribā by deferment) and ribā*

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[7] ʿTabīn al-Ḥaqāʾiq by al-ʿAynī (12:45).

[8] Tuḥfat al-Muḥtāj by Haytamī (5:46), Nihāyat al-Muḥtāj by al-Ramlī (4:225). Refer to Al-Mughnī by Ibn Qudāma (6:436) and Al-Mubdiʿ by Ibn Mufliḥ (5:342). For further reading on these maxims refer to Mawsūʿat al-Qawāʿid wa al-Ḍawābit al-Fiqhīya al-Ḥākima lil Muʿāmalāt al-Mālyia fī al-Fiqh al-Islāmī by ʿAlī Aḥmad al-Nadwī (2:319).

[9] Ṣaḥīḥ Muslim: Ḥadīth No. (1597).

[10] By *ajnabī,* or stranger, any party other than the contracting parties in a bilateral contract. Hence, anyone other than the creditor and the debtor will be a stranger in an indebtedness contract. [Translation Team].

nisāʾ (ribā by excess). As per Al-Subkī, the Muslim Ummah has agreed on the prohibition of ribā by excess if it is combined with ribā by deferment.[11]

Third Characterization

- *It is a form of guarantee against reward (ḍamān bi juʿl) wherein the reward is paid by the beneficiary of the guarantee (the creditor).*
- *The scholars have unanimously agreed on the prohibition of taking a reward for a guarantee, when there is a possibility (and not even certainty) of lending taking place. What shall be stand when the purpose of the guarantee, in our issue, is certainly lending from the Service Provider. The guarantee is occurring with the lending, and its occurrence is a condition for its acceptance.*
- *As per Ibn al-Mundhir, all scholars have not permitted guarantee against a reward (jaʿl) claimed by the guarantor.*[12]
- *The liability of guarantor is burdened by the debt, as the case with the liability of the principal, whereas the liability of obligor is burdened with the debt owed to the guarantor. Any increase that the guarantor stipulates for himself, in addition to the liability is established upon him, will turn the addition into ribā.*
- *As per Ibn Qudāma, it is not permitted "if a person said: guarantee me in exchange of a thousand", because the guarantor becomes obligated by the debt, and if he pays it, the paid amount becomes due to him by the obligor, thus it is like a loan, and if he takes a consideration for extending the loan, then the loan derives a benefit, which is not permissible*[13].
- *It is the same whether the return is stipulated for the guarantor from a) the creditor, b) the debtor, or c) a party stranger to them. Because the return on the guarantee is intended for the financier and derived to him.*
- *As per Al-Kharshī, the guarantee is invalidated if its essence is vitiated. Similarly, if the guarantor takes a reward for the guarantee (from the creditor or a stranger), then, upon calling the guarantee, the guarantor shall make claim of what he has settled in addition to the reward received by him, and that is not permissible because it is advancing loan with an increase (salaf bi-ziyāda)*[14].

Arguments and their Counterarguments

One may argue that the revenue by the Service Provider, in the form of discount given by the Merchant, can be looked at from different perspectives:

1. ***Argument 1:*** Discount is a commission for services, such as brokerage, promotion, or payment processing,
2. ***Argument 2:*** Discount is a result of the conciliatory settlement (*ṣulḥ*) of the Service Provider with the Merchant on the debt rebate (*waḍīʿa*) or price discount after the novation of the price to the Service Provider,
3. ***Argument 3:*** Discount is an increase to the loan from a stranger (a third party) and since it is not paid by the borrower, so it is not subjected to the prohibition of *ribā*,

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(11) Takmilat al-Majmūʿ by al-Subkī (10:26).
(12) Al-Ishrāf by Ibn al-Mundhir (6:230), al-Iqnāʿ fī Masāʾil al-Ijmāʿ by Ibn al-Qaṭṭān (3:1601).
(13) Al-Mughnī by Ibn Qudāma (6:441).
(14) Sharḥ Mukhtaṣar Khalīl by al-Kharashī (6:30).

4. ***Argument 4:*** Discount is an increase to the loan amount from a party other than the contracting parties, as if the benefit is stipulated for a party other than the contracting parties of the loan,
5. ***Argument 5:*** Discount is not a form of interest against the deferment, because the seller has sold for the same price on spot, and the financier has not increased beyond that price,
6. ***Argument 6:*** Discount is similar to the exchange commission that a credit card issuing bank retrieves from the Merchant, or
7. ***Argument 7:*** Discount is a stipulated benefit for the lender without prejudice to the borrower; this is why some jurists permitted *saftaja* (the bill of exchange) in which the lender benefits in terms of security of the way and the guarantee of his money.

All of the above arguments were refuted in the discourse, as follows:

a) 1Argument 1: Discount is a commission for services, such as brokerage,* promotion, or payment processing,*:

The argument that the amount claimed by the Service Provider is for brokerage (*samsara*) or promotion was discussed in general that the promotion of Merchant's business exists in all payment systems including direct interest loans and credit cards, and what shall be taken into account while giving the ruling is what actually the reality presents, not merely the resultant permissible benefits.

In reality, the increase is intended to be a return on the financing granted, especially since its amount is linked exactly to the increase and decrease of the tenure of the financing and the volume of the financing amount granted to the Consumer.

Meanwhile, the claim that these fees are for payment processing services (authorization and settlement), then, in conjunction with the three previous characterizations, those fees should be limited only to the actual cost, and any increase over the actual cost is *ribā* due to the prohibition of combining loan and sale (*salaf wa bayʿ*).

A more detailed answer is that the discount granted to the financier is taken into consideration in the condition of transferring the debt to the liability of the financier, along with all its associated risks and accelerating its payment to the Merchant. This main intent is supported by linking the discount amount entirely with the increase and decrease of the debt and its term of settlement. This makes the discount essentially in exchange for bearing the risk of that debt in terms of either a) lending from the start (*ab initio*), b) buying the debt, or c) guaranteeing it for the Merchant, while the financer, as a guarantor, continues to assume (bear) all its risks. This led the discourse in the Islamic Economics Forum to confirm the above-mentioned three characterizations.

Whereas the Service Provider bears the risk of the debt, in order for the mentioned discount to be appropriately categorized as a commission for marketing and payment processing, it is necessary to eliminate that act of discounting from the intend of claiming consideration for assuming the risk of the debt and exclusively charging it as a commission for marketing and payment processing.

The only possible way to do so is either

a. by retaining the risk of debt upon the Merchant, which is not actually the case in the current model, or
b. by restricting the discount only to the actual cost of the service.

This limitation aligns with the Prophetic prohibition of combining loan and sale (*salaf wa bayʿ*).

This is to prevent the subterfuge of concealing the return on the loan in the form of the sale price, which results in any increase over the actual cost of the service associated with debt as *ribā*.

It cannot be said that the relationships in the business model of BNPL system are by default disconnected between the marketing service, the follow-up of payments, and assuming [the risk] of the debt. This is because BNPL is an interconnected and combined system, and its features/services are contingent upon each other. It also cannot be assumed that:

a. the Merchant would have given the same discount to the Service Provider (financier of BNPL) if the Merchant continued to bear the risks of the debt,
b. the buyer (the Consumer) would have bought from the Merchant if the Service Provider had not borne the debt on his behalf towards the Merchant, or
c. the financier would have accepted to bear the risk of the debt, without a consideration of discount given to him.

Therefore, assuming of all the risks of the debt by the financier is evident and deliberate by all parties within the system. This assumption is explicitly outlined in the system and cannot be dissociated from it or from the intentions of parties.

b) Argument 2: Discount is a result of the conciliatory settlement (ṣulḥ) of the Service Provider with the Merchant on the debt rebate (waḍīʿa) or price discount after the novation of the price to the Service Provider,:

It is argued that the return results from the debt novation (*ḥawāla*) and conciliatory settlement (*ṣulḥ*) on the debt rebate (*waḍīʿa*) basis.

It was evident in the discourse that the claim of conciliatory settlement is not feasible with a prior commitment to the discount.

Furthermore, the absolute novation (*ḥawāla muṭlaqa*) here with the recourse right has turned to *ribā*; because, according to jurists, among the conditions for the permissibility of novation, is not changing the assigned amount, otherwise it leads to *ribā*.

The jurists have also agreed in the guarantee that if the guarantor settles with the creditor on an asset homogenous to the debt asset, (but) less than the guaranteed amount, then he puts up a claim to the debtor of what he has paid not with what he has guaranteed, otherwise, it falls into *ribā*.

As per Al-Kāsānī, if the guarantor settled for five hundred instead of the original guarantee amount of one thousand then he shall have recourse of five hundred not the thousand; because by paying the five hundred the guarantor does not own what was principal's liability (i.e., one thousand), since a conciliatory settlement does not constitute ownership acquisition (*tamlīk*), since it leads to *ribā*. Rather, it is relinquishment (*isqāṭ*) of the right partially (the unclaimed five hundred), and no recourse can be made to the waived portion.[15]

Meanwhile, if the guarantor had a conciliatory settlement with the creditor for a part of the debt and the creditor gifts the rest of the debt to the guarantor, then the guarantor may have recourse to the guarantee obligor of the entire one thousand; because the guarantor owns the entire principal, which is the thousand, part of it by settling it and part of it by way of gift from the creditor to the guarantor[16].

The gift in the above-mentioned case is not called a reward, rather it is like an unstipulated increase that the borrower gifts to the lender which is called ex-gratia payment (*ḥusun qaḍā'*).

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[15] Badā'iʿ al-Ṣanā'iʿ by al-Kāsānī (6:15).
[16] Al-Mabsūṭ by al-Sharakhī (20:59).

The same is the base for permitting the gift that the debtor voluntarily gifts to his guarantor upon the settlement.

However, if the gift was stipulated in the core of the guarantee, then the gift became a stipulated reward, and it is not permitted.

As per Al-Sarakhsī, if a man extends a financial guarantee to another person on the condition that the guarantor will receive a reward (*juʿl*); then the reward is void, as reported from Ibrāhīm al-Nakhʿī, because claiming such a reward is a bribe (*rashwa*) and indulging into bribe is prohibited. Further, the seeker (the obligor) of the guarantee will not receive any thing that is appraisable monetarily except a guarantee. Hence, no consideration can be demanded from him for merely extending the guarantee.

If the reward is not stipulated, then the guarantee is permitted. In case, the reward was stipulated in the guarantee; then the guarantee is also void.

Thus, it turns out that the stipulation of the reward shall transform the gift into a stipulated consideration for the guarantee and such a stipulation shall invalidate the guarantee.

As per Al-Sarakhsī, if reward was stipulated in the guarantee, then the guarantor shall not consent to guarantee without receiving his reward (i.e., fee for guarantee).

c) *Argument 3: Discount is an increase to the loan from a stranger (a third party) and since it is not paid by the borrower, so it is not subjected to the prohibition of ribā*,:

It is argued that stipulating an increase from a stranger is not considered *ribā*.

Firstly, no jurist from the early scholars has adopted such a view. Consensus has reached on the prohibition of the lender stipulating any increase on his loan whatsoever.

The maxim accepted by jurists is that *kullu qarḍ jarra naffʿan fa huwa ribā (*every loan that derives a benefit is *ribā*).

None of the scholars have exempted the conditionally stipulated increase on the loan, even if it comes from someone other than the borrower.

As per Ibn Abdul Barr, an increase on the loan is considered *ribā* by all scholars if such an increase is known, intended and stipulated[17]. On similar grounds, the statements of jurists in various schools of jurisprudence were made.

However, the jurists' statements where the increase was attributed to the borrower, does not imply to restrict *ribā* in the increase given by the borrower, because the referred restriction is for the commonly referred [case] (*makhraj al-ghālib*), it should not be taken in its divergent meaning (*mafhūm al-mukhālafa*).

Many Mālikīs have also explicitly stated the prohibition of adding an increase to the loan, even if it is from someone other than the borrower.

As per Ibn Nājī (in the commentary on Al-Risāla), it is not permitted to extend a rebate on the debt against acceleration of its payment (*taʿjīl*), or to postpone the debt for an increase in it. This implies prohibition of increase irrespective whether the increase was from the borrower or a stranger[18].

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[17] Al-Istidhkār by Ibn ʿAbd al-Barr (20:82).

[18] Sharḥ Ibn Nājī ʿalā Risālat al-Qirawānī (2:147), and similar view by al-Nafrāwī in al-Fawākih al-Dawānī (2:91) and Al-ʿAdwī upon Al-Risāla (2:165).

In addition, Ḥanafīs defined *ribā* as an excess of money against no consideration[19]. According to them, what shall be taken into account is the absolute increase for the lender in *ribā al-nasī'ah*, or for any contracting party in *ribā al-faḍl*, regardless of the party that is causing it.

Al-Saghīdī gave examples of approach to various ways of benefiting from loan in ribā of loans. This can take two forms:

a) lending ten dirhams for eleven or twelve dirhams and so on, and
b) when the lender benefits from the loan for himself or the benefit is driven to him[20].

Ḥanafīs also stated that it is prohibited to have a loan by stipulation[21] and by the stipulation it is intended to the condition associated with the loan contract. Such as the lender stipulates a benefit for himself, when he lends money and stipulates a benefit for himself[22].

Shāfiʿīs also mentioned similar thing wherein it would be *ribā* of loan by stipulating what shall be benefit to the lender[23].

d) *Argument 4: Discount is an increase to the loan amount from a party other than the contracting parties, as if the benefit is stipulated for a party other than the* contracting parties of the loan,**:**

Arguing that stipulating an increase from non-contracting party is analogous to the permissibility of stipulating benefits for others, so it is a flawed analogy (*qiyās manqūḍ*). Because an increase stipulated in the loan is a form of inherently prohibited *ribā*, whether it is taken or given by the contracting parties or outsiders.

Hence, the prohibition of paying the increase (being stipulated by the lender) to a stranger is analogous to the prohibition of taking the increase (that has been stipulated by the lender) from a stranger.

As per Ibn Nājī, it is not permitted for a loan to yield a benefit (i.e., a loan against a benefit), whether the benefit was for the lender or a stranger, because if the benefit was enjoyed by a stranger from the side of the lender, it is as if the lender himself is benefiting from the loan[24].

Therefore, it is prohibited to have a stipulated benefit for the lending entity, whether the benefit was from a stranger or for a party that is stranger to the lender.

e) *Argument 5: Discount is not a form of interest against the deferment, because the seller has sold for the same price on spot, and the financier has not increased beyond that price*,:

It is argued that the Merchant in the mentioned model sells at a price in the same way as the spot payment directly between him and the buyer, and that the Service Provider did not increase the price equivalent to the spot price.

This argument can be addressed that, regardless of the price at which the sale is made, the condition to be observed (while combining a service with a loan) is for the service to be at the actual

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[19] Badā'iʿ al-Ṣanā'iʿ by al-Kasānī (5:185), Al-Muḥīṭ al-Burhānī by Ibn Māzā (6:406), Al-Baḥar al-Rā'iq by Ibn Nujaym (6:135), Ḥāshiyat Radd al-Muḥtār by Ibn ʿĀbidīn (5:168-170).
[20] Al-Nutaf fī al-Fatāwa by al-Saghdī (1:485).
[21] Al-Baḥar al-Rā'iq by Ibn Nujaym (6:133), Ḥāshiyat Radd al-Muḥtār by Ibn ʿĀbidīn (5:166).
[22] Badā'iʿ al-Ṣanā'iʿ by al-Kasānī (7:395).
[23] Tuḥfat al-Muḥtāj by al-Haytamī (4:272), Al-Mughnī al-Muḥtāj (2:21).
[24] Sharḥ Ibn Nājī ʿalā Risālat al-Qirawānī (2:144), and similar view by Ḥashiyāt Al-ʿAdwī upon Al-Risāla (2:163), Ḥāshiyāt Bulghat al-Sālik by al-Ṣāwī (2:104).

cost, due to the prohibition stated in the Ḥadīth on combining loan and sale. Hence, merely selling at the standard price (*thaman al-mithl*) shall not eliminate the reasons for prohibition highlighted in this Statement.

f) ***Argument 6: Discount is similar to the exchange commission that a credit card issuing bank retrieves from the Merchant***, or*:*

It is argued that the payment facilitation fees are similar to the exchange commission retrieved by the issuing bank from the Merchant.

It is noteworthy that despite the Shari'ah acceptability of this commission originally (especially as it is a small commission not linked to the loan or its term, compared to the discount rates in BNPL system, and because it corresponds to a service), but if such commissions exceed the actual cost, claiming such commissions raises suspicion (*shubha*) for amount received by the card issuing bank. This is because the card issuing bank acts as a lender in the unfunded credit card, and it is required to avoid this suspicion according to the mandatory approach of the Shari'ah Standards, which requires fees to be restricted to the actual cost in every lending transaction [25].

g) ***Argument 7: Discount is a stipulated benefit for the lender without prejudice to the borrower***;

this is why some jurists permitted *saftaja* (the bill of exchange) in which the lender benefits in terms of security of the way and the guarantee of his money.Arguing that a stipulated increase for the lender is analogous to the stipulated benefit that is not prejudice to the borrower, such as the case of *saftaja*[26], so it is an analogy with differences (*qiyas maʿ al-fāriq*) in several aspects:

- The *saftaja* is an additional benefit and not an additional money, which is why the permitting scholars stipulated that it must be free from the responsibility (burden) of delivering the loan to the place of settlement.
- As per Ibn Qudāmah, if the drawer stipulated that value of bill of exchange is settled in another town or by drawing a bill of exchange to a town to which it will be beneficial for the drawer, then such an arrangement is not permitted.
- However, if there is no benefit for the drawer, then it is permitted because there is no increase in value or quality, so it does not vitiate the loan, such as the condition of the term payment[27].
- In BNPL system, the monetary increase, stipulated by the lender, is beneficial exclusively to the lender, unlike the benefit stipulated in the *saftaja*, which is in the interest of the lender as well as the borrower. The scholars justified the *saftaja* for this reason. As as per Ibn Qudāma, having benefit for both of the parties was considered as the underlying cause to permit *saftaja*.

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[25] Under the Basis for Shari'ah Ruling of permitting to charge a fee for services in case of absence of lending: (The basis of permitting not restricting the fees, as mentioned in this Item, with actual cost: These fees are against various services which are offered by the acquirer or card scheme network, such as intermediation in carrying out the operations and setting-off the payments, and these does not include lending. Hence, the credit granted to the cardholder in lending-based cards is from the issuer and not those entities. In case the card did not contain lending [from the issuer], then the fees that is charged by the issuer is against the services which is not matter of suspicion of lending against interest.). This implies that whatever amount of the interchange fee is driven to the issuer should be restricted to the actual cost.

[26] *Saftaja*, or *suftaja*, an olden-days' form of bill of exchange where the payer pays money in a place and his designated beneficiary receives the money in another place. This saves him the transport risk. [Translation Team].

[27] Al-Kāfī by Ibn Qudāma (3:175).

- Even if the *saftaja* fulfils these two conditions (non-monetary nature of the benefit and benefiting both parties), it is not permitted according to the majority of scholars, including the Ḥanbalīs in their relied upon position (*muʿtamadd al-madhhab*), because it contradicts the apparent meanings of the texts (*dhawāhir al-nuṣūṣ*) and the consensus that prevents the lender from stipulating a benefit for himself.
- Hence, the lender benefits by mitigating the travel risk (*khaṭar al-ṭarīq*)" [28], so this condition vitiates the loan, as the lender seeks to remove the travel risk from his money, which is an apparent benefit *(manfaʿa ḍāhira)*" [29].
- Those scholars who permitted such an arrangement considered people's need and necessity for it to preserve their money as a form of concession (*tarakhkhuṣ*), contrary to the original ruling in the case of making choices (*ikhtiyār*) and acting upon determination (*ʿazīma*).
- Hence, the *saftaja* does not fit into a principle to be applied, let alone have its branches judged by it, as they do not meet the conditions of the principle, nor the circumstances of necessity and the reasons for concession.

Among the benefits that Ḥanafīs prohibited from being stipulated for the lender, even if it did not produce an increase, is if someone placed a dirham with a grocer (*baqqāl*) on the condition that he may take a little of whatever and whenever he wants.

Because when the person passed on the ownership of the dirham to the grocer, he effectively loaned the paid dirhams to him, and he stipulated that he could take from the grocer whatever he wants of spices, legumes, etc., as he needs them gradually.

This provides a benefit, which is the retention of his dirham (i.e., its guarantee) and it satisfies his needs over time. If dirhams were in his own possession, it would have been spent immediately and would not have lasted.

The above picture of lending and graduation claim, therefore, becomes like a loan that yields benefit, which is proscribed[30].

If the person left dirhams with the grocer as a bailment deposit with no stipulated condition, it would not be prohibited, because the grocer would not assume (bear) its risk.

Therefore, the aspect that is agreed upon to be prohibited regarding the benefit stipulated for the lender is twofold: either

a. the benefit involves an increase in the amount or quality of the money, even from a stranger, or
b. the benefit is entirely for the lender or for a party stranger to the lender.

If we apply the above to our issue, the agreement between the Merchant and the Service Provider would be: *extend loan to the Consumer for the purchase price in this transaction, and the Service Provider will receive a percentage of it*.

Hence, this loan is contingent upon using its amount in a way that returns an increase to the lender. The borrower can only use the loan amount to buy from the Merchant so that the lender alone benefits from the purchase and obtains an increase over the amount paid to the Merchant.

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[28] Tabīn al-Ḥaqāʾiq by al-Zaylaʿī (4:175).
[29] Nihāyat al-Maṭlab by al-Jūwaynī (5:452).
[30] Tabīn al-Ḥaqāʾiq (6:30), Al-Bināya ʿalā al-Hidāya by al-ʿAynī (12:232).

Thus, the above arrangement must be prohibited because both conditions are existing: an increase in the numerical value (over and above the actual loan) and the benefit being exclusively derived for the lender.

Consequently, the transaction in its current form contradicts the principles of Shari'ah, and it is not permitted for anyone to enter into it or assist in it.

BLESSINGS of ALLAH UPON OUR PROPHET MUHAMMAD, HIS FAMILY AND ALL HIS COMPANIONS

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End of English Abridgement [31]

[31] *The English abridgment was prepared by Dr. Yousuf Azim Siddiqi, Dr. Syed Ehsanullah Agha and Suheyib Eldersevi.*