

# Notes of Lectures on Fiqh

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### Lecture # 17 (Sunday 11 November 2001)

#### PAYING PAST WAJIB KHUMS FROM FUTURE INCOME

☀ When khums becomes wajib at the end of the year on your khums date, then khums should be paid out of the actual savings of that year, and not from your future income received after that khums date. However, Islam allows you to pay your past wajib khums fully or partly out of your future income only when you also pay khums on the khums amount paid out of that future income. (This is a common mistake committed in khums payment)

☀ For example, if your net savings on your khums date of 30 June was \$1000, then the khums of \$200 must come out of the same \$1000. But if you delay your khums and you want to pay that \$200 khums out of the income received in July, then you must also pay khums (\$40) on that \$200 immediately or on your next khums date. Hence, if you pay khums immediately from your July income, your total khums will be  $\$200 + \$40 = \$240$ . (Thus practically you have to pay 24% khums instead of 20% due to paying it from future earnings).

#### PAYING KHUMS WHEN YOU TAKE A LOAN (PRINCIPAL)

☀ When you take a loan, then there is no khums on that loan amount (Principal) even if it is kept unused with you for more than a year.

☀ If you pay loan repayment instalments periodically on your loan, then you have to pay khums on all instalments paid at the end of the year if the Principal remains unused with you for the whole year. However if you utilise or spend the Principal at any stage for your lawful and **necessary** purpose, then there is no khums on the loan instalments paid after that stage.

#### PAYING KHUMS ON LOAN REPAYMENT INSTALMENTS

☀ When you take a loan, then your loan repayments can be of two types: (a) yearly payments, (b) periodic payments during a year. There are different rules for khums on these two types.

☀ **Yearly Repayments:** If you take a loan (eg for house or car etc), and have used the loan, then in the **first year** of the loan period, you are allowed to pay your whole savings, if you wish, as part of your yearly loan repayment and hence pay no khums on such whole savings. But in the **second year or subsequent** years of your loan period, you can not pay your whole annual savings as part of your yearly loan repayment and hence khums **must** be paid on such annual savings.

☀ **Periodic Repayments:** If you make periodic (say monthly) repayments of your loan (such as mortgage loan for house), do you have to pay khums on such instalments on your khums date? This will depend upon whether your loan is a **Necessity** or a **Non-necessity**, as explained below:

☀ If your loan is a **Necessity** (eg buying home for your own use), then there is **no khums** on your periodic loan instalments paid. Even if you make additional lump sum repayment during the year to reduce your Principal, there is no khums on such lump sum repayments. (If the bank or lender allows

you to withdraw such additional lump sum repayments at any stage in future, then you have to pay khums immediately on such withdrawn amount if khums was not already paid)

✳️ If your loan is a **Non-necessity** (eg loan for buying a second home as investment, buying a vacant plot of land, or any loan which is not utilised in the first year of loan eg taking a loan for medical operation which is due after one year), then:

- (a) If the item/service purchased from the loan has been **consumed** within first year (eg medical treatment completed), then there is **no khums** on periodic loan repayments,
- (b) If the item (asset) purchased from the loan is still **existing** after one year (eg a second home or a vacant plot purchased), then **khums will be payable** on periodic loan repayments (or any additional lump sum repayments).

✳️ In case (b) above, if that Non-necessity item (asset) becomes a Necessity at any time, then there is no khums on periodic loan repayments made from that time onward (eg you build a house for your own use on the vacant plot, which was initially considered as non-necessity).

### **TAKING LOAN FROM A KAFIR**

✳️ If a kafir is giving you a gift or a loan with his own stated or unstated intention, then you are allowed to accept such a gift or loan with your own unstated and different intention. This is called the rule of **Istinqaz** in the terminology of fiqh.

✳️ According to all Mujtahids, taking a loan with interest (riba) is haram (sinful), but is such a loan batil (void) also? According to some Mujtahids, such a loan is batil and so you can not use the Principal loan amount. But according to Ayatullah Khui, Seestani, Khomeini, and Khamenei, the act of taking such a loan is haram but the loan itself is not batil.

✳️ According to Ayatullah Khui, Seestani and Khamenei, if a kafir bank is giving you a loan happily (even with its condition of interest), then at the time of transaction, you can accept it with the intention of **istinqaz** ie you are taking the money from a kafir and with no intention of taking the loan and with no intention of paying interest (even though you may actually have to sign the formal documents and may have to pay back loan with interest).

✳️ A loan from a kafir bank can be accepted with the intention of **istinqaz** even if there is no extreme necessity for such a loan (eg buying a second home, or buying a plot etc).

✳️ The same rule of **istinqaz** can be applied when borrowing and using money from a credit card issued by a kafir bank.