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## Bankruptcy in Ja'farī Jurisprudence

*Caferî Hukukunda İflas*

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**Abstract**

The study examines bankruptcy in Islam from the perspective of the Ja'farī school of jurisprudence. To this end, it first describes the meaning of the term 'iflās' (bankruptcy). Then, considering the connection between 'i'sār' (insolvency) and iflās, the article elucidates the relationship between iflās and i'sār as well as the differences between them. However, the main issues the paper deals with are the conditions required for the issuance of the bankruptcy judgment and its effects on the debtor and the creditors. Meanwhile, it seeks to show that the provisions of Islamic and Shiite bankruptcy laws are debtor-friendly. Moreover, the article explores the Shiite resources in order to demonstrate the similarities between Islamic bankruptcy and the prevailing laws in Western countries.

**Key Words:** Islamic Law, Ja'fari Jurisprudence, iflās, i'sār, bankruptcy, Shiite Law

**Öz**

Bu çalışma, Ca'ferî fikhî perspektifinden İslam'da iflâs hususunu incelemektedir. Bu amaçla, öncelikle 'iflâs' teriminin anlamı açıklanmaktadır. Ardından, 'i'sâr' ve iflâs arasındaki bağlantı göz önünde bulundurularak, iflâs ve i'sâr arasındaki ilişki ve aralarındaki farklar açıklığa kavuşturulmuştur. Bununla birlikte, makalenin ele aldığı ana konular, iflas kararının verilmesi için gerekli koşullar ve bunun borçlu ve alacaklılar üzerindeki etkileridir. Aynı zamanda iflâsa dair İslâmî ve Şîî fikhî hükümlerin "borçlu dostu" olduğu gösterilmeye çalışılmıştır. Ayrıca makalede, İslam'daki iflâs anlayışı ile Batı ülkelerinde geçerli yasalar arasındaki benzerlikleri ortaya koymak için Şîî kaynaklar incelenmiştir.

**Anahtar Kelimeler:** İslam Hukuku, Caferî Hukuku, İflâs, i'sâr, Şîî fikhî

**Introduction**

The study of Islam as a system of law is a subject that has recently caught the attention of Western lawyers and jurists. Although many significant books, articles, and studies have been drawn up on the Islamic law, the Shiite school of jurisprudence, which is of great interest, has been disregarded and not widely appreciated by a majority of the writers and researchers of the field.

Shi'ah is divided into numerous sects. The most important of sects of Shi'ah are *Ithnâ 'Asharîs* (the Twelver), Zaydis, and Ismailis. Since the founder of the *Ithna Ashari* Shiite school of law is Imam Ja'far al-Sadiq (6<sup>th</sup> Imam), the Twelvers are also called the followers of the Ja'farī sect. To clarify the reason why *Ithnâ 'Asharî Shia* called *Ja'farī*, it is mentioned that the Islamic nation divided into two sects after the death of the Prophet of Islam: Followers of the caliphs and followers of Imam Ali (who was the fourth Caliph as well). However, the four Sunni schools (Hanafî, Malikî, Shafi'î, and Hanbali) were also established in the era of Imam Sadiq and later. As each of the Sunni schools named after its chief and founder, the name of the Shi'ah school leader at that time,

Imam Sadiq, was considered for this sect of Shi'ah<sup>1</sup>; therefore, Ja'fari school or Ja'fari *fiqh* is the school of jurisprudence in *Ithnā 'Asharī* Shi'ah.

Apart from religious and moral aspects, Islam contains a system of law which in various ways can regulate the relationships of individuals, the society with individuals, and the government with the society and individuals. These three dimensions of Islam together are called Shari'a. Knowledge of Shari'a can be divided into two kinds: Knowledge of basic principles (*ilm al-usul*) and science of branches of Islam (*ilm al-Furu*). The second is also called *ilm al-fiqh* (jurisprudence) which concerns the rules taken by the jurists from the principles of Islam. In fact, the moral rules, the rules on the worship of God, and, also, the rules on social relations and legal rules are driven from *ilm al-fiqh*. Islamic jurisprudence deals with all aspects of human life such as worship, transactions, social relation, marriage, divorce, legal issues, war, government, judgment, and punishment. However, the whole jurisprudential issues can be classified into acts of worship and transactions. The latter subdivided into contracts, unilateral obligations (one-party contract), and miscellaneous rulings.

One of the topics which has been a hotbed for debate in the Islamic law is bankruptcy which comes under the category of transactions. The current study attempts to discuss some features of bankruptcy in Islamic law and highlight the importance of the subject by examining the Ja'fari Shi'ah sources and texts. Thus, the term "Shi'ah law" in any part of this examination should be referred to as the *Ithnā 'Asharī* Shi'ah law.

To begin the discussion, we must note that the jurists of Islamic schools of law, including those of Shi'a ones, resorted to a *hadith*<sup>2</sup> to demonstrate the importance of Islamic rulings and regulations on bankruptcy. According to this *hadith*, the Prophet Muhammad has ruled on the bankruptcy of one of his companions (*Sahabi*) and executed the judgement. In his "*Al Sunan al-Kubrā*" al-Bayhaqi<sup>3</sup> explained that Mo'adh ibn al-Jabal was a young man who had fallen deeply in debt and his possessions were less than his debts. The Prophet sold all Mo'adh's possessions and returned the sale money to his creditors.<sup>4</sup>

This paper presents a multi-step approach to key bankruptcy issues in the Shiite jurisprudence. The first step illuminates the literal meaning of *iflās* (bankruptcy) as

<sup>1</sup> The time of Imam al-Sadiq has been a turning point in the Shiite movement and very receptive to this school since this era was a period in which different schools and sects were at the forefront. Imam al-Sadiq witnessed during the transition period between the fall of the Umayyad Caliphate and the establishment of the Abbasid Caliphate. Such a time period created more freedom for Imam al-Sadiq to put forward the Shiite thought and spread the Islamic sciences. He was able to educate a large number of scholars and jurists.

<sup>2</sup> In Shi'ah law, a *hadith* refers to the report of statements or actions of the prophet of Islam and Imams or of their unspoken approval or criticism of something said or done in their presence (see Al Mirzā al-Qummī, *Al-Qawānīn al-muḥkama fi-l uṣūl al-fiqh*, vol. 2, (3 ed., Beirut: Dar Al Mahajjah Al Bayda, 2011), 338).

<sup>3</sup> Al Bayhaqi (d. 1066 (458 AH) was a famous Shafi'i jurist.

<sup>4</sup> See Abū Bakr Aḥmad ibn Ḥusayn Ibn 'Alī ibn Mūsa al-Khosrojerdi al-Bayhaqi, *Al Sunan al-Kubra*, vol. 7, (3 ed., kitab al-tafis, Beirut: Dar al-Kutub al-Ilmia, 2003), 80. It should be noted that the above hadith has been quoted by the Shiite jurists (see Jamal ad-Din Hasan ibn Yusuf ibn Ali ibn-i Mutahhar al- Hilli, *Tazkira al-Foqaha*, vol. 14, (Qom: Aal al-Bayt li Ihya al-Turath, 2002 /1423 AH), 7.

well as technical one in the Ja'farī jurisprudence. The second step examines the relationship and differences between *iflās* and *i'sār*. The third step outlines the conditions required for issuing a bankruptcy decision and legal consequences of it for both parties, the debtor and the creditor. Finally, in the conclusion, the crucial role of Shiite jurists in the evolution and development of bankruptcy provisions is considered, and the similarities in some aspects, between Shiite law and the laws of most Western countries are set forth.

### 1. Definition of Iflās

In the Arabic dictionaries, *iflās* (rooted in the word *falasa*) is equivalent to bankruptcy. *Falasa* forms the root of many other words such as: *fallasa*, *mufallas*, and *muflis*. *Fallasa* means the Judge made a decision on the bankruptcy of someone.<sup>5</sup> *Mufallas* refers to a man who went bankrupt or, a human or any living creature whose skin looks like a fish's scales.<sup>6</sup> *Muflis* is a person who is bankrupt; a penniless man who is poor and broke,<sup>7</sup> and a person who has lost his properties and little money is left to him.

According to Allamah Ḥilli (d. 12/18/1325), *iflās* is rooted in *fulus*, which means the last money remained for a person.<sup>8</sup> It is claimed, however, that the word *falasa* refers to a person who has reached a situation where no money is left for him.<sup>9</sup>

Therefore, in general, the Islamic term “*iflās*” encompasses two concepts: First, change of financial state: Simply because a person who had dirhams and dinars (valuable currencies) becomes a man with few coins (*fulus*). In other words, that person happens to have almost nothing after losing his valuable properties. Second, a person with no money: when no coin (no *fulus*) is remained for him.<sup>10</sup>

Balaghi states that the letter “*hamza*”<sup>11</sup> at the beginning of the word “*iflās*” is used for deprivation or dispossession of someone's money.<sup>12</sup>

It is also worth mentioning that the conjugation form ‘*afala*’ in the Arabic language is used for meanings having to do with ruling and judgment. Hence, the statement *afala Al qaḍi fulanan* indicates that the judge ruled for the bankruptcy of so-and-so.<sup>13</sup>

<sup>5</sup> See Sayyid al-Khuri Shartuni, *Aqrab al-Mawarid fi-Fusih al-Arabiya Wa al-Shawarid*, (Qom: Manshurat maktaba ayatollah al-uzma al-marashi al-najafi, 1983/1403 AH), 942.

<sup>6</sup> Muhammad Bandar Rigi, *Farhang jaded Arabi - Farsi*, the translation of the book Monjad al-Tullab, (Tehran: Intesharat Islami, 2010/1389 Sh.), 510.

<sup>7</sup> See Baalbaki – Munir, Baalbaki – Rohi, *Al-Mawrid al-Waseet*, Concise Dictionary, English – Arabic & Arabic – English, 709 (13 ed., Beirut: Dar el-Ilm Lilmalayin, 2007), 709.

<sup>8</sup> Allamah Hili (amāl ad-Dīn Hasan ibn Yusuf ibn 'Ali ibn-i Mūtahhar al-Ḥilli), *Tahrir al-Ahkam*, Research by Ibrahim Al Bahadori, vol. 2, (Qom: Al-Imam al-Sadiq Establishment, 1999 /1420 AH), 507.

<sup>9</sup> Al-Fayruzabadi, *Al-Qamus al-Muhit*, (8 ed., Beirut: Al-Risala Establishment, 2005), 563.

<sup>10</sup> *Muflis* is a person suffering from financial difficulties and debts and his property is insufficient to cover his debts: (Qutb al-Din al- Kaydarī, *Isbah al-Shi'ah bi Misbah al-Shariah*, Kitab al-Tafis wa al Hajr, (Qom: Muassisa al-Imam al-Sadiq, 1995/1374 Sh), 293.

<sup>11</sup> *Hamza* (ء) is a letter in the Arabic alphabet and represents the glottal stop. It can be seen under the consonant alif in the word *iflās* (إفلاس).

<sup>12</sup> Seyyid Abd al Hujjat Balaghi, *Hujja al Tafasir wa Balagh al-Eksir* vol. 2, (Qom: Hikmat Publications, 1966), 560.

<sup>13</sup> Abū l-Futūḥ al-Rāzī, *Rawz al-Jinan wa Ruh al-Jinan fi Tafsir al-Quran* vol. 1, (Mashhad: Islamic Research Foundation of Astan-e Quds Razavi, 1988), 180.

## 2. The Meaning of *iflās* in the Ja'farī Jurisprudence

The word *muflis* (bankrupt) has been used, not differently from its lexical definition, in the Shiite jurisprudence. Kaydari a thirteen - century (7th century AH) Shiite scholar<sup>14</sup> notes the *muflis* is a man who is in debts to others while his property is less than his debts. Another Shiite scholar, Mohaqiq Karaki, also, gives the same definition and describes *muflis* as a debtor whose wealth does not cover his debts. He also adds that the concept *muflis* refers to a person whose property is less than his debts or a person who has no financial value<sup>15</sup>

In Islamic law, the judicial procedure to make up a bankruptcy decision is called "*taflis*"; likewise, the person declared bankrupt is named "*mufallis*". The Arabic sentence of "*Fallasahu al qaḍi taflisan*" means the judge issued a decree on someone's bankruptcy.<sup>16</sup> Khomeini, one of the contemporary Shiite scholars, defined the *muflis* as the debtor whose assets are less than his debts so that the court forbids him to take possession of his property. This occurs when the judge prevents a bankrupt or *mufallis* to exercise control over his assets because of the insufficiency of his properties to cover his debts.<sup>17</sup>

Muhammad Hasan al-Najafi declared, in his *Jawāhir al-kalām*, that the term *taflis* sometimes indicates the situations when the judge prohibits the debtor from taking control of his properties.<sup>18</sup> In brief, for the Shiite scholars, *taflis* refers to the cases in which the judge prohibits the debtor from taking control of his properties and exercising the right of disposal on them. Because his debts exceed his properties, and he refuses to repay his debts.<sup>19</sup>

It is notable that *Ibn Rushd* (Averroes), an Andalusian Maliki scholar, says that the word *iflās* in Islam has two meanings:

- The situation in which the debt takes up the debtor's assets so that his property is insufficient to cover them.
- No property or asset to be attributed to the debtor.<sup>20</sup>

The latter situation is described in the second volume of *Masnavi* (the poetry book) by Rumi<sup>21</sup> in the story of a bankrupt and penniless man:

*The people at the courthouse swore that he  
Was bankrupt and a vile monstrosity.*

<sup>14</sup> Kaydari, *supra* note 10 at 293.

<sup>15</sup> Nur-al-Din Abu'l-Hasan Ali b. Ḥosayn b. Abd-al-Ali al-Karaki, *Jami al-Maqasid fi Sharh al-Qawaid*, vol. 5, 223 (n.d.).

<sup>16</sup> Id, at 222.

<sup>17</sup> Sayyid Ruhollah al-Musavi al-Khomeini, *Tahrir al-Wasilah*, vol. 2, (2 ed., Qom: Dar al-Ilm publications, n.d.), 18.

<sup>18</sup> Muhammad Hasan al-Najafi, *Jawāhir al-kalām fi sharḥ shārā'ic al-'islām*, vol. 25, (Beirut: Dar Ihya al-Turath al-Arabi, 1981), 278.

<sup>19</sup> For more details, see Muḥammad Ja'far Ja'farī Ja'farī Langarūdi, *Encyclopedia of Islamic Sciences -Judicial*, vol. 1, (Tehran: Ganj-e Danish Publication, 1985), 529.

<sup>20</sup> Muhammad ibn Rushed Qurtubi, *Bidayat al-Mujtahid wa Nihayat al-Muqtaṣid*, vol. 2, (6 ed., Beirut: Dar Al Marifa Publication, 1982), 284.

<sup>21</sup> Jalāl ad-Dīn Muhammad Rūmi Balkhī (d. 1273). He more widely is known as Rumi in some countries, and as Mawlana or Mevlana in others.

All of the men the judge consulted said,  
 'Sir, wash your hands of this broke rogue instead!  
 The judge said, 'Take him round the town - proclaim:  
 "This is Bankrupt rogue deserving blame!"  
 The drums to spread the news on every street!  
 Let no one give him credit at his store,  
 Nor lend one penny to him anymore;  
 His bankruptcy is proven now to me -  
 He owns no cash nor goods, as all can see<sup>22</sup>

### 3. Differences Between Iflās and I'sār

*I'sār* is an Arabic word derived from the word *Asara*<sup>23</sup> and means poverty, distress, or indigence. Moreover, it also refers to 'a state or condition of having little or no money'.<sup>24</sup>

The person who is in such a state or condition is called *mu'sir*. In addition, the word *mu'sir* means destitute, poor, and refers to a person who is living in straitened circumstances.<sup>25</sup>

Most legal dictionaries have translated the word *i'sār* into 'insolvency'.<sup>26</sup>

In many countries such as Switzerland, Germany, Britain, the United States, and France, insolvency and bankruptcy are dependent concepts. Insolvency is a financial condition where a person is unable to meet the financial obligations to have the due payment, while bankruptcy is a legal process in which a person or an entity's insolvency is declared by the court and the court issues orders on the dissolution of the entity. The bankruptcy rules apply to both traders and non-traders.

However, in Arab countries as well as in Iran, bankruptcy rules just apply to the traders. On the other hand, the legal term *i'sār* is to explain the status of non-merchant debtors and is regulated by the civil law. *I'sār* assumes that the debtor's possession is insufficient to meet its outstanding debts. It is important to note that the laws in Arab countries, like Egypt, consider *i'sār* as a system.<sup>27</sup> Some Arab countries, including the UAE and Jordan, however, take *i'sār* as a principle of differentiation between the trader

<sup>22</sup> See Jalalu'l-Din Rumi (Maulana), *The Masnavi: Book Two*, trans. Jawid Mojaddadi, 40-41 (New York: Oxford University Press, 2007). The proclamation of the bankrupt mentioned in the poems of Rumi is to alert people not to make a deal with such a person. In Islamic jurisprudence, the proclamation of a bankrupt is to be known by the people. No one should deal with the bankrupt unless he accepted to drop the lawsuit against him. Thus, after proclamation, the court does not hear the claim of anyone knowing of his bankruptcy. See Abu al-Salah al-Ḥalabī, *Al-Kafi fi al-fiqh*, (Isfahan: Maktaba al-Imam Ali al-Aamma, 1983), 341.

<sup>23</sup> *Asara*: To be difficult, hard, to be in distress (See Wehr, (4 ed., Wiesbaden: Otto Harrassowitz, 1979), 716.

<sup>24</sup> See Id; also, *Al-Mu'jam al-Wajiz*, Majma' al-Lughah al-Arabiya, (Cairo: Majma' al-Lughah al-Arabiya - Wizara al-Tarbiyah wa al ta'lim, 1994), 418.

<sup>25</sup> See Saani, Mahmoud Ismail & Nasif Mustafa Abd al-Aziz & Mustafa Ahmad Suleiman, *Maknaz al-Arabi al-ma'asr*, (Beirut: Maktiba Lebanon Nashiroun, 1993), 102; also, Wehr - Hans, *supra* note 23.

<sup>26</sup> See, for example, Faruqi - Harith Suleiman, *Faruqi's Law Dictionary, Arabic - English*, (2 ed., Beirut: Librairie du Liban Publishers, 2001), 51; Karam - Abd al-Wahid, *Glossary of Terms of Sharia and law - Arab French English*, (Beirut: Muassisa al-Risala, 1997), 41.

<sup>27</sup> See Articles of 249-264 the Civil Law of Egypt.

and the non-trader so that their Civil laws do not encompass the words *i'sār* or *musir* (which rooted in *i'sār*). The word *muflis* rooted in *iflās* is also used by them to give the same meaning as that of the *mu'sir*. These countries have some provisions in their civil laws related to interdiction upon *muflis*.<sup>28</sup> What is noteworthy is that the Arab countries' legislators have used the word *iflās* as a legal term for the bankruptcy of the merchants and traders.<sup>29</sup>

On the other hand, in Iran, where the legal system is under the influences of the Shiite jurisprudence, *i'sār* is used to give the same meaning, and the term *muflis* is also employed instead of *m'usir* in the Civil Code of Iran;<sup>30</sup> however, no provisions is provided on interdiction (*hajr*) upon insolvent.<sup>31</sup>

The Persian Dictionary of Dihkhuda, describes *i'sār* as the inability of a legal or a real person from repaying their debts or the costs of non-commercial proceedings of the court.<sup>32</sup> The same concept can be comprehended from the Iranian Civil Procedures Law, which describes the state of *i'sār* as the non-trader parties' temporary inability to pay the costs of proceedings, in whole or in part, due to of insufficiency of assets or not having access to his property. Also, in this law, only non-trader subjects are called *mu'sir*.<sup>33</sup> However, in the new legislation passed by the parliament and approved by the Expediency Discernment Council of Iran, *m'usir* encompasses a wider meaning and refers to real persons who are not able to pay their debts due to lack of funding. Obviously, the debtor may have certain personal properties, which are exempt from debt collection (*mustasniyāt al-dayn*).<sup>34</sup> Article 15 of the same legislation provides: 'The petition for *i'sār* from traders and legal persons shall not be accepted. They must apply for bankruptcy if they claim to be *mu'sir* (insolvent)'.

In the Ja'farī school, the jurists provided no definition for *i'sār*, even though, they defined *m'usir*. Some of these jurists<sup>35</sup> have proposed a brief definition for *i'sār*. For instance, Shahīd al-Thānī defines *i'sār* as follows: 'It is one's inability to perform the right (to settle his debts) because he owns no property other than his home, his clothes which fit his condition, his riding animal, and his servant'.<sup>36</sup>

Shahīd al-Thānī, in his other book, has defined *i'sār* differently and stated that: '*I'sār* is that the debtor does not have the money to pay the price of *Umm al Walad* (the

<sup>28</sup> See Articles 401- 413 of the Civil Transactions Law of UAE, Articles 375- 386 the Civil Law of Jordan,

<sup>29</sup> Varshekastegi is the word equivalent to bankruptcy in Iranian laws. Article 412 of the Commercial Code of Iran states: 'The bankruptcy of a merchant or a commercial company arises upon suspension of payment of sums due by them.

<sup>30</sup> Except Article 729 in which the word *mu'sir* is used.

<sup>31</sup> For more details see Heshmatollah Samavati, *An Analytical Study of I'sār in Iranian Law*, (3 ed., Tehran: Kamlan publication, 2012), 22-30.

<sup>32</sup> Dehkhoda Dictionary, vol. 2, (2 ed., Tehran: Tehran University Press, 2000), 2945.

<sup>33</sup> See Articles 504 and 512 of the Iranian Civil Procedures Law

<sup>34</sup> Article 6 of the Implementation of Financial Convictions Act 2015.

<sup>35</sup> In this article, we were to define *i'sār fi al-dyan*: inability to pay the debt or insolvency, even though, *i'sār* is of two different kinds: *i'sār* in the financial rights of God, and *i'sār* in the rights of people (such as *i'sār al-dayn*).

<sup>36</sup> Zayn al-Dīn b. Nūr al-Dīn 'Alī b. 'Aḥmad al-'Amilī al-Juba'ī (Shahīd al-Thānī), *Al-Rawda al-Bahiyya fi Sharh al-Lum'a al-Dimashqiya*, vol. 2, (13 ed., Qom: Majma al Fikr al-Islami, 2016/1437 AH), 84.

mother of the son)<sup>37</sup> even if he has some properties that would be exempted in the repayment of the debt (*mustasniyāt fi wafa al-dayn*).<sup>38</sup>

Sha'arānī (in his commentaries on the book of *Sharh al-Kāfi* written by Mulla al-Mazandarani<sup>39</sup>) describes *i'sār* as follows: *I'sār* is claiming a right from a debtor who is in difficulty and shortage. *I'sār*, also, means poverty, destitution, and need; and *m'usir* refers to an extremely poor man, a person without food, clothes, and other stuff.<sup>40</sup> Moreover, some jurists believe that *i'sār* is the state of having no money or asset. From their perspective, *m'usir* is a person who has no money or property.<sup>41</sup> Najafi has the same view and states: '*M'usir* is a person who owns nothing.'<sup>42</sup>

In conclusion, it can first be mentioned that *i'sār* (insolvency) is a state or condition of the debtor and had a broader and more comprehensive meaning than *muflis* (bankrupt). Contrary to *iflās*, *i'sār* may not only occur in relation to debts, and a person may also become a *m'usir* in respect of the right of Allah. Secondly, a *muflis* seems to be a person who was rich and wealthy before becoming poor. On the other hand, the *m'usir* might have been broken and insolvent in the past and at present.<sup>43</sup> Thirdly, as a general rule applicable to *m'usir* and *muflis*, Allah in the Quran (2:280) commands that 'If [the debtor] is in straitened circumstances, [grant him] a delay until when he is convenient.' Thus, unlike the violent attitudes and practices against debtors in Ancient Greece and Rome, Islamic rulers and courts, in compliance with the Quranic order, have made an effort not to make rigid decisions on the bankrupt debtors.

#### 4. Conditions Required for Issuance of the Bankruptcy Judgment

There should be prerequisites for the issuance of bankruptcy judgments.<sup>44</sup>

##### 4.1. The Competent Persons for Filing a Bankruptcy Case

Those who can apply to the court for imposing an interdiction on the bankrupt and for issuing a judgment of *taflis* are:

1. *Creditors* - All the creditors or some of them may demand the court to issue an order of interdiction on the debtor. As noted before, if the debtor's property does not

<sup>37</sup> *Umm al-walad* refers to a slave woman who has given birth to her master's child.

<sup>38</sup> Zayn al-Dīn b. Nūr al-Dīn 'Alī b. 'Aḥmad al-'Amīlī al-Jubā'ī (Shahīd al-Thānī), *Masalik al-Afham fi Sharh Shara'i al-Islam*, vol. 3, (Qom: Muassisa al-Ma'arif al-Islamiah, 1993/1414 AH), 170.

<sup>39</sup> Died 1675/1086 AH.

<sup>40</sup> Mohammad Salih al-Mazandarani, *Sharh al-Kafi*, vol. 11, (with the commentaries of Abu al-Hassan al-Sha'rani, Tehran: Maktiba al-Islamia, n.d.), 165.

<sup>41</sup> Mohammed bin Hassan bin Yusuf bin Ali bin al -Mutahar al Hilli, *iqāh al Fawaid fi Sharh Mushkilat al-Qawaid*, vol. 1, (Qom: Muassisa Ismailian, 1967/1387 AH), 361.

<sup>42</sup> Najafi, *supra* note 18, vol. 34, 281.

<sup>43</sup> There are some other differences not mentioned here in order to avoid prolonging the article.

<sup>44</sup> Allama Hilli summarizes these conditions as follows: indebtedness, judgment of the court on existence of the debts, the debts are due to be paid off, the assets of the debtor are insufficient to cover the debts, and the application of creditors or some of them to the court requesting to prevent the debtors to dispose his assets. See Allama Hilli, *supra* note 4 at 6.

cover his debt, all or some of the creditors can request from the court for the interdiction on the debtor, unless the debtor is under the custody of the court, such as orphans and those ones who are suffering from mental illnesses.<sup>45</sup>

Two points should be considered here: First, the application for *hajr* or interdiction is indispensable, otherwise, the bankruptcy claim would not have any consequences. Second, if the amount claimed by creditors is less than the assets of the debtor, the court may issue a bankruptcy decision provided that the creditors' claim is right.<sup>46</sup>

2. *Debtor* – The debtor can apply to the court for having a decision made by the judge on his bankruptcy. Of course, the application for bankruptcy decision by the debtor is a matter of dispute among the jurists. Allamah al-Ḥillī drawing on a *hadith* hold that the debtor can ask the judge to declare him bankrupt. On the contrary, Najafi states that if a debtor asks the court for the imposition of *hajr* (interdiction) upon himself, the judge disregards his application.<sup>47</sup> He explains that the *hadith* adopted by *Allamah al-Ḥillī* is received from non-Shi'ah scholars and should not be taken into account. In this regard, some scholars also believe that such application is a non-litigation affair (*al-Umur al-Hisbiya*)<sup>48</sup> and can be brought into court by debtors as well as creditors.<sup>49</sup>

The Sunni jurists also believed that the debtor could not apply to the court to have the decisions made on his bankruptcy status. In contrast, *Shafi'i* admitted that such an action is permissible.<sup>50</sup>

3. *Ruler or Judge*: Both ruler and judge can decide on the issue of interdiction or bankruptcy of the debtor. According to some jurists, if the judge concludes that the debtor is not in a position to pay back his debt, he can issue a bankruptcy decision, even though, some other scholars do not consider such a right to him.<sup>51</sup>

#### 4.2. Debt-Relevant Prerequisites

The debtor's debt must meet the following conditions:

1. *The existence of debts is proven in the court*- The issuance of the interdiction order by the judge is not possible if the existence of a debtor's debt is not proven in the court. In other words, if the judge has not concluded that the debtor is a bankrupt, he should not issue the bankruptcy judgment. That is because the basic rule in Islamic jurisprudence is that the debtor can pay his debt unless proved otherwise. Another rule is that the owner has the right to freely control his properties. Of course, the

<sup>45</sup> See Khomeini, *supra* note 17, at 18.

<sup>46</sup> See Ja'fari Langarūdi, *supra* note 19, at 529.

<sup>47</sup> Najafi, *supra* note 18, vol. 34, at 281.

<sup>48</sup> The term "*al-Umur al-Hisbiya*" is a term used by the Shiite jurists to refer to things that everyone has learned from the Islamic law that they are asked to do, but no particular person or authority has been appointed to do so. In other words, these are things that Islam does not satisfy by negligence in any way and must be done if they have no legitimate authority to take responsibility. They are not linked to the existence of legitimate authority and are determined by the courts.

<sup>49</sup> Ja'fari Langarūdi, *supra* note 19, at 591-592.

<sup>50</sup> Khaṭṭāb, Tolba Wahbah, *Ahkam al-Iltizam bayn al-Sharia wa al-Qanun*, (Cairo: Dar al-Fikr al- Arabi, 1983), No. 140 quoted from Husain Ali Ahmadi, *Igray-e Ta'ahhud-e Qarardadi*, (Tehran: Berahmand Publications, 1997), 210.

<sup>51</sup> See Irfani – Mahmud, *Commercial Law*, vol. 3, (3 ed., Tehran: Jahad-e Daneshgahi publications, 1991), 275.

means of proof in the bankruptcy such as the confession, witnesses, and the judge's knowledge are the same as other lawsuits.

2. *Insufficiency of the debtor's assets to repay his debts* - The debtor's assets must be insufficient to cover his debts. In process of collecting the over-due debts, the priority must be given to the assets including movable and immovable properties as well as receivables before his debts.

The creditor must first ask the debtor for the payment. When the debtor refuses to clear the debts, then the court undertakes the issue and may order his property to be put up for sale. When the property is sold the creditors are repaid. In addition, the court may arrest him if it sees it necessary. In such a state, since the court has not yet issued an interdiction order, the debtor can dispose of and control his property.<sup>52</sup>

The authentic and reliable hadith books emphasized the issue of the debtor's imprisonment. For example, a hadith states that Imam Ali had confined debtors until their bankruptcy decision made up.<sup>53</sup>

In this regard, Khoei also adds 'When the debtor declines to pay such a debt proven in the court, the judge may imprison the debtor and force him to pay his debts. However, if the debtor was insolvent, the judge cannot do that until he comes to be able to pay his debts'.<sup>54</sup> *Amili*, a prominent Shiite jurist, has a different interpretation of the mentioned hadith on the debtor's imprisonment. He explains that the debtor's detention attributed to Imam Ali in this hadith might have happened in one of two ways:

- a) Imam Ali might have ruled on the imprisonment of debtors because there were witnesses bearing testimony on the solvency of the debtor, or he personally discovered that the debtor had enough assets to cover his debts or the subject of the claim was a property and not a debt. In such situations only, he kept the debtors in prison until the witnesses testify that they were bankrupt.
- b) Imprisonment in this hadith does not refer to the actual imprisonment but means putting the debtor under surveillance and control and to not let him leave. In other words, the judge keeps the debtor under control while investigating his financial status. Because imprisonment is a kind of punishment that cannot be imposed on someone until the crime is proved.<sup>55</sup>

<sup>52</sup> Ja'fari Langarūdi, *supra* note 19, at 591-592.

<sup>53</sup> The Report (*Hadith*) is as follows: "Ali locks up the debtor, but when he finds out the debtor is bankrupt and in need, Ali lets him go until he earns money". See Al Sheikh Al Tūsi, *Al Tahdhib al-Ahkam*, vol.6, (Tehran: Dar al-Kutub al-Islamia, 1987), 196 ; Al Sheikh Al Saduq, *Man lā yahduruhu al-Faqih*, vol. 2, (Qom: Jamia Mu-darresin, 1992), 28; Al Sheikh Al Tūsi, *Al Istibsar*, vol. 3, (Tehran: Dar al-Kutub al-Islamia, 2012), 47.

<sup>54</sup> Abu al-Qasim al-Mousavi al-Khoei, *Mabani Tikmila al-Minhaj* -Kitab al-Qaza, (2 ed., Qom: Al Ilmiyah publication, 2018), 24.

<sup>55</sup> Muhammad Jawād al-Housaini al-Amili, *Miftah al-Karama fi Sharh Qawaid al-Allama Hilli*, vol. 10, (old edition, n.d.), 75.

3. *Due quality of the debts*<sup>56</sup> - If the debt is not due for repayment yet, the creditor has no right to file a bankruptcy claim, even if his property at the time, is not sufficient to cover his debts.<sup>57</sup> That is because the creditors are not entitled to claim their debts when the payment due dates have not yet arrived. Moreover, *iltiwā'* (i.e., the debtor's refusal to repay his debts), which is a main element of a bankruptcy claim, does not apply to undue debts.<sup>58</sup>

## 5. The Effects of Legal Consequences of the Bankruptcy Decision

The legal consequences of the court decision should be examined in two categories: First is the consequences related to debtors and second is the consequences related to creditors.

### 5.1. The Effects of The Bankruptcy Decision on the Debtor

1. Following the issuance of a bankruptcy decision, a debtor is forbidden to take possession of his property. Moreover, the preliminary disposition of property by the debtor (e.g., the termination of agreements bound before interdiction or approving an authorized contract bound before the court's order on the debtor's assets) is not permissible and prohibited by the Islamic law.

The prohibition, of course, does not include non-financial rights (such as marriage and divorce and remission of the retaliation) since such legal actions are not in contrast with the rights of creditors.<sup>59</sup>

Kaydarī<sup>60</sup> stated that after *hajr* (interdiction) on the bankrupt, he will be forbidden to dispose of his property and this may violate some creditors' rights such as sale, gift (*hiba*), *i'taq* (the act of granting freedom to a slave), *mukatiba* (the contract of manumission), and *waqf*<sup>61</sup>.

<sup>56</sup> In Islamic finance "due debt" is a debt (*dain/ dayn*) that is to fall due immediately or that is payable on the creditor's demand, whether on its original due date or if it has been rescheduled and deferred to a different maturity date, on its rescheduled due date (See <https://www.financialencyclopedia.net/islamic-finance/d/due-debt.html>). Further, in the Dictionary of Islamic Legal Terminology, "due debt" is referred to as the debt that its maturity has reached. See Qal'aji, Muhammad Rawwas & Qunaybi, Hamid Sadiq, *Mu'jam Lughat al-Fuqaha (Arabic - English)*, (2 ed., Beirut: Dar al-Nafa'is, 1988), 322.

<sup>57</sup> Khomeini, *supra* note 17, at 18.

<sup>58</sup> Ja'fari Langarūdi, *supra* note 19, at 597.

The Arabic word '*iltiwa'*' means inflexion, twistedness, curvedness, curve or turn; bent part, and bending. However, this word in the Shiite law refers to refusal or denial. For example, a hadith narrates that Imam Ali ordered the bankruptcy of a person when he refused to pay his debts to the creditors, and he was obligated to divide his assets among the creditors according to their shares (see Shaikh al-Hur al-Amili, *Wasa'il al-Shi'a*, vol. 18, (2 ed, Qom: Muassisa Aal al-Bayt li Ihya al-Turath, 1993), 416.

<sup>59</sup> Regarding the remission of *al-Qisas* (retaliation), there are different views among the Shiite jurists. By considering this reason indicating that '*the person who has the right to retaliation can forgive his right*', such a right is permitted and recognized for the debtor. However, some Shiite scholars, as well as some of Sunni jurists, have considered it as unauthorized because, instead of forgiveness, the debtor can pay his debts after receiving *Diya* (money obtained at the cost of a life; the financial compensation paid to the victim or heirs of a victim in the cases of murder, bodily harm or property damage). See for details, Shahab al-Din Mar'ashi Najafi, *Al Qisas ala daw' al Quran wa al-Sunna*, vol.2, (Qom: Ayatollah Mar'ashi Najafi Library, 1998), 422.

<sup>60</sup> Kaydarī, *supra* note 10 at 293

<sup>61</sup> *Waqf* is an inalienable charitable endowment under Islamic law, which typically involves donating a building, plot of land or other assets for religious or charitable purposes with no intention of reclaiming the

Hence, if the bankrupt's property is transferred or he disposed of his property, it would not be legally effective. However, the disposition of his property that is not to violate the right of creditors, including *khul*,<sup>62</sup> divorce, the forgiveness of reprisals, and the purchase of goods by putting the price on his own account, is valid. If the bankrupt commits a crime that the court forces him to pay *arsh* (indemnity; blood money), as much as the value of *arsh* is concerned, the victim will join the queue of creditors.<sup>63</sup>

Since the bankrupt is forbidden by the court to dispose of his assets, he is not allowed to enter into some contracts such as *bai* (the sale agreement), *hiba* (gift), and *rahn* (security or pledge agreement). Some other jurists believe that such a disposition is null and void because of the court order and the rights of creditors over the bankrupt's property.<sup>64</sup> In his book "*Al-Mabsūt fi fiqh al-Imāmīyya*", Sheikh Tūsī, considered the nullity of such deals as a stronger *fatwa* (i.e., legal opinion issued by Islamic jurists) among the others.<sup>65</sup>

The debtor, however, can take actions against third parties. If he wins the case and he gains some money, it will belong to his creditors, provided that the reason for his right on that money exists before the bankruptcy decision.<sup>66</sup> Thus, the prohibition does not contain the disposition of the debtor's assets after the issuance of the interdiction order by the court.<sup>67</sup>

2. The property of a debtor is as security for his debts to the creditor. Concerning the debtor's property, there are two types of securities: General security and specific securities. The general security is general protection through which the creditor can maintain his rights with his debtor. Accordingly, all debtor's funds are guaranteed to pay his debts, and that all creditors are equal in this security, except for those who have specific securities. Therefore, when the court's judgment is issued, the judge will keep the existing assets of the debtor as security of his due debts for all creditors. On the other hand, the specific security is a particular property is allocated by the debtor to repay a creditor's debt, so such creditor has the preference right over that asset (as

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assets. Article 55 of Iran's Civil Code inspired by Shi'i jurisprudence defines *waqf* as 'an endowment consisting of the surrender of a property and the devotion of its profits to some purposes'.

<sup>62</sup> *Khul*, also called *khula*, is a procedure through which a woman can divorce her husband in Islam by returning the dower (*mahr*) already received from her husband or any other amount as agreed between the husband and wife. Regarding a woman who becomes bankrupt (*Al Mukhtalia Al mufallisa*), it should be noted that she is not allowed to give any property to her husband (*baql*) in order to divorce him when the creditors have right to such a property. Such action is *fāsīd* and can be voided (See Muhammad Taqi al-Bahjat, *Jami al-masā'il*, vol. 4, (Qom: Daftar-e Hazrat-e Ayatollah Bahjat, 2007), 195. However, if the given property is free from the creditors' rights, the *baql* is correct (See Muhammad Jawad Mughniyyah, vol. 6, (Qum: Ansarian Printing and Publishing Establishment, 2001/1422), 21.

<sup>63</sup> See Ibn Zuhra al-Ḥalabī (d. 585 AH/1189 CE), *Ghunya al-Nuzu ila Ilmi al-Usul wa al-Furu*, vol. 1, (Qom: Al Imam al-Sadiq Foundation, 1997), 247.

<sup>64</sup> See Amid al-Din Abd al-Muttlib, *Kanz al-Fawaid fi hal Mushkilat al-Qawaid*, vol.1, (Qom: Daftar-e Entesharat-e Eslami wabaste be Jammi-e Mudarresin Howzeyle ilmia Qom, 1996/1416 AH), 550.

<sup>65</sup> Sheikh Tūsī, *Al-Mabsūt fi fiqh al-Imāmīyya*, vol. 2, (Tehran: al-Maktabat-ul-Murtazawīyyah li Ihya al-Athar al-Ja'fariyyah, 2008), 272.

<sup>66</sup> Ja'fari Langarūdi, *supra* note 19, 600; Irfani, *supra* note 51, at 286.

<sup>67</sup> Hairi Shah Bagh, *Sharh-e Qanun-e Madani*, vol. 2, (Tehran: Ganj-e Danish Publications, 1998), 1141.

if a creditor with the bankruptcy option<sup>68</sup> wishes to use his option for reclaiming the sold object).

3. Unlike the rules related to bankruptcy in the Commercial Code of Iran, which are applicable only to traders,<sup>69</sup> the issuance of the bankruptcy judgment in Shi'ah law does not convert the undue debts into due and payable debts.<sup>70</sup> The famous fatwa among the Shiite jurists is to confirm the above-mentioned rule. Some Scholars, of course, by drawing a jurisprudential analogy (*qiyās*) between debts of a deceased person and debts of a debtor, suppose that the undue debts are converted to the due debts after *taflis*; however, such a *qiyās* is to be considered as an "analogy with a discrepancy" (*qiyās ma al-fāriq*), which treats two different subjects (the debts of the deceased person and the debts of the debtor) on the same footing and thus it is invalid.<sup>71</sup>

### 5.2. The Effects of the Bankruptcy Judgment on the Creditors

1. The properties of the debtor are considered as security for his debts to the creditors.

2. In cases where the creditor has the bankruptcy option (*khiyar al-taflis*), he can return his specified (moveable or immovable) property (*ayn al-māl*) after the termination of the contract. Even if such creditor appears after the division of property among the creditors, he has a right to return his *ayn al-māl* by invoking the bankruptcy option after proving the existence of such a right.

3. The judge orders the sale of the debtor's property after determining the number of the creditors of the bankrupt, the amount claimed by each creditor, and the amount admitted by the court. In other words, the court puts all the debtor's assets for the sale, all of which can be sold, except for the assets which the court is not allowed to sell, including the debtor's home (*mustasniyat al-dayn*).<sup>72</sup> Then the court divides the obtained amount among the creditors. However, at the time of sale, certain assets may not be suitable to be sold because of the market conditions or other reasons. In this case, the court can give them the opportunity to rent and divide the rent amount among the creditors.

4. As soon as the bankrupt's assets are divided, the interdiction upon the bankrupt is resolved. In this regard, Sheikh Bahaei said, '... my fatwa (*al-aqrab*) is that just the division of debtor's assets among the creditors puts an end to the interdiction and the creditors then cannot make the bankrupt work for them. The debtor cannot be

<sup>68</sup> This option in Islamic jurisprudence called *khiyar al-taflis*. If a contract includes the bankruptcy option, it is the choice of the contractor to either accept or reject the contract. In fact, the contractors can use the bankruptcy options to cancel the contract at any time without any obligations. Article 380 of the Iranian Civil Code describes this option as follows: 'In the case of the bankruptcy of the buyer, if he has retained in his possession the actual object of the sale, the seller can reclaim it and he can keep the object sold if it has not yet been handed over'.

<sup>69</sup> As we know Iran is a country where the Shiite law is the source of most of its legislation. According to Principle 4 of the constitution of the Islamic Republic of Iran, all civil, criminal, financial, economic, and political provisions should conform to the standards of Islamic [Shiite] law.

<sup>70</sup> See Ḥalabī, *supra* note 22, at 342.

<sup>71</sup> For more details, see Ja'fari Langarūdi, *supra* note 19, at 613.

<sup>72</sup> For details, see Muhammad Jawad Mughniyyah, *Fiqh al-Imam Ja'far al-Sadiq*, vol. 4, (2 ed., Qum: Ansarian Printing and Publishing Establishment, 2000/1421 AH), 144.

compelled to accept a gift or *hiba* or to take a loan for the creditors if he receives any gift or *hiba* or if he gets into a business. In addition, the creditor cannot force a female bankrupt to get married so that he can take her *mahr* (a dower). And it is not permissible to detain the debtor after distributing his assets among the creditors; however, it is necessary to give him time. May God make him wealthy.<sup>73</sup>

Hence, bankruptcy releases the debtor from his personal liability for his debts and he is no longer legally required to pay any debts that are discharged. In other words, the creditors are prohibited from any attempt to collect on the discharged debts. As the poet says:

'Your love dropped my right upon you  
As bankruptcy drops the right of the creditor'  
(لقد اسقطت حقي عليك صبايتي كما اسقط الافلاس حق غريم)<sup>74</sup>

It is not, though, fully admitted to the Shiite jurists that interdiction on the debtor is resolved only by dividing the bankrupt's assets among the creditors. Kāshānī mentions two views in this regard. According to the first view, which supports the Amili's fatwa, when the division of the bankrupt's property is done, *hajr* (interdiction) comes to an end. That is because interdiction is for the benefit of the creditors and to assist them to reach their rights, the creditors have their rights after the bankrupt's assets are divided. The second view believes that *hajr* still remains after division, except the decision of the court is issued in this regard. The reason behind this theory is that as the *hajr* of the bankrupt comes to exist by the decision of the court; therefore, like *safih* (spendthrift or incompetent person), it requires the court's decision. Such matters require reasoning and *ijtihad*.<sup>75</sup>

5. The bankrupt's admission in respect of his property and against the interest of the creditors is ineffective. However, if he admits that a specified object, such as a particular car (*ayn min al-a'yān*) which he has in possession, belongs to another person, there is no doubt that this admission would take effect on his own right. Hence, when the interdiction on the bankrupt is resolved, he is under obligation to return the object (*ayn*) to the person admitted to being the owner of the object. In this way, it has no effect on the creditors, and based on the admission of the bankrupt, the *ayn* cannot be submitted to another person.<sup>76</sup>

The Shiite scholars note that if a debtor admits a debt and declares that such debt was on his shoulder before the interdiction, his admission would be acceptable

<sup>73</sup> Baha' al-Din Muḥammad ibn Ḥusayn al-Amili, *Jami'-i Abbasi al-Mohasha*, vol. 2, (Tehran: Muassisa Manshurat al-Farahani, n.d.), 224.

<sup>74</sup> Abu Umar Ibn Abd al-Rabbih, *Al Iqd al-Farid*, vol. 2, (Beirut: Dar al-Kutub al-'ilmiya, 1983), 3. It is interesting to note the above-mentioned poem has, also, been translated as follow:  
'My Love for you has invalidated my right to what you owe me  
As bankruptcy invalidates the right of a creditor'  
See *the Unique Necklace (Al-Iqd al-Farid)* by Ibn Abd Rabbih, trans. Issa J. Boullata, vol. II, (Reading: Garnet Publishing, 2009), 299.

<sup>75</sup> Al Fayḍ al-Kāshānī, *Mafātih al-shara'i*, vol. 3, (Qom: Majma al-dhakhayer al-Islamia Ayatollah Mar'ashi Najafi Library, 1981/1401 AH), 157.

<sup>76</sup> See Hairi Shah Bagh, *supra* n. 66 at 1141.

and the person whom the admission was in his favour would be treated as the other creditors.<sup>77</sup>

6. At the time of the division of the bankrupt's assets among the creditors, the court must consider the properties not liable to be distraint for debt (*mustasniyāt al-dayn*). In the Ja'fari jurisprudence, such properties include a house where the bankrupt is dwelling, the servant, the expenditure of the bankrupt, the sustenance of his family, the cost of burial, his horse or any other animals he uses to ride (according to some Shiite jurists: the animal he uses for jihad), and his winter and summer clothes.

Shahīd al-Thānī asserted that Allama in his book "*Tazkira*" wrote that the clothing of the bankrupt should be appropriate for his current status, not for the time when he was wealthy;<sup>78</sup> however, some scholars extended this rule to all other items of *mustasniyāt al-dayn* such as home and horse.<sup>79</sup>

In the case that a creditor has a bankruptcy option (*khiyar al-tafīs*) and intends to cancel the transaction and return the sold object (*ayn al-māl*), if such *ayn* is included in the *mustasniyāt al-dayn*, it cannot be taken back.<sup>80</sup>

7. The Shiite scholars believe that through the imposition of bankruptcy rules, practical equality is done among the creditors. At the same time, the compassion towards the debtor is not completely forgotten and is shown by an allotment of some money (*nafaqa*) to him and his family who are under his maintenance.<sup>81</sup>

8. If someone has given specified goods to the bankrupt, he is more entitled to his property than all other creditors, provided that the given commodity is available. However, if it is no longer obtainable, the owner will join the bankruptcy process for the value of that property.<sup>82</sup>

9. After the division process, if there is a new creditor whose name is not included on the list of creditors, the court has to cancel the procedure and perform a new division process after adding the new creditor's name to the list.<sup>83</sup>

### Conclusion

The examination of *iflās* in the *Ithnā 'Asharī* Shi'ah law revealed that some aspects of these issues need to be further investigated in light of their historical background. One should not look at Islamic law as merely a divine law as the Shi'ah law has a historical background created by the Shiite jurists. Besides the Quran and *Sunna* of the prophet of Islam and the twelve Imams, the Shiite jurists have played an important

<sup>77</sup> See Ali ibn Muhammad al-Qomi, *Jami' Al Khilaf wa al-Wifaq bayn al-Imamiyah wa bayn Aimmah al-hijaz wa al-Iraq*, (Qom: Zamine sazan-e Zuhoor Imam Asr publications – Pasdar-e Islam, 2001), 302; Kaydari, *supra* note 10, at 293.

<sup>78</sup> Shahīd al-Thānī, *supra* note 38, at 123.

<sup>79</sup> Kāshānī, *supra* note 75, at 156.

<sup>80</sup> Khomeini, *supra* note 17, id, at 20.

<sup>81</sup> Muḥaqqiq al-Ardabilī (1991/1412 AH), *Majma' al-fa'idat wa al-burhan fi sharh al-Adhhan*, vol. 9, (Qom: mu'assisa al-Nashr al-Islami, 1991/1412AH), 266.

<sup>82</sup> Tūsi, *supra* note 64, at 266.

<sup>83</sup> Kaydari, *supra* note 10, at 295.

role in developing the body of legal rules through their interpretation of the Quran and *hadiths*.<sup>84</sup>

The study discovered that how the Ja'farī jurists have been to find out the right meaning of *hadiths* and how they were to provide specific rules on bankruptcy according to their understanding of the general principle of the Shi'ah law.

The provisions of the Shi'ah law indicate the similarity between this law and the modern laws of most Western countries in two aspects: First, the bankruptcy regulations in the Shi'ah and Islamic laws are more in favor of the debtor. In other words, these rules and regulations are *debtor-friendly*, as observed in the current laws of the USA and France. Second, like the laws of mentioned countries and other European countries, these rules are generally applicable and include traders and non-traders.

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<sup>84</sup> plural of hadith

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