

## ***The Necessity of Debt and Transaction Recordation from the Viewpoint of the Qur'ān***

Mardīyah Pīlehvar<sup>1</sup>\*, 'Abdullāh Umūdfard<sup>2</sup>

1 Assistant professor, the Department of Jurisprudence and Islamic Law Principles, Islamic Azad University of Hamidan, Hamidan, Iran.

2. Associate professor, The Department of Jurisprudence and Islamic Law Principles, the University of Qom, Qom, Iran.

(Received: October 7, 2017; Revised: December 5, 2017; Accepted: December 14, 2017 )

### ***Abstract***

*The execution and recordation of transaction and debt deeds is one of the main solutions to bring organization into the Iranian judiciary. To this end and in order to guarantee people's rights and reduce the disputes, the notary public offices undertake the important task of executing the transaction and debt deeds.*

*The study at hand aims at investigating the qur'ānic viewpoints on the necessity of recording the debt and transaction deeds and wants to find the qur'ānic solutions for the recordation of these deeds. Relying on the opinions of outstanding Imāmīte jurists, this study has found out that although some scholars have ruled for the desirability of the debt recordation, the majority of scholars have relied on the imperative sentence "reduce them to writing" (Qur'ān 2:282) to rule for the general obligation of the debt recordation. It has been even deemed necessary not to forget recording the small non-cash deals because the advantage of deed execution is that it guarantees the implementation of justice in society and the establishment of a healthy economy. According to the common opinion, the scribes and witnesses should be secure and immune. Any act that harms them should be avoided, because causing damages to them means disobedience of God and leads to wickedness in transactions.*

### ***Keywords***

*Debt recordation, Debtor, Deed scribe, Deed execution.*

---

\*. *Corresponding Author, Email: pilehvar.ma@gmail.com*

### **Introduction**

*One of the most comprehensive verses of the Qur'ān that entails many religious rules is the verse 282 of the Cow chapter. This verse is in fact the guideline for the execution of non-cash transaction deeds and entails many jurisprudential rules and points whose main aim is to prevent disputes among the Faithful and to protect people's rights. In this Noble verse, the Sublime God says, "O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as God Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord God, and not diminish aught of what he owes. If the party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (For evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is juster in the sight of God, More suitable as evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear God; For it is Good that teaches you. And God is well acquainted with all things. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another, let the trustee (faithfully) discharge his trust, and let him Fear his Lord conceal not evidence; for whoever conceals it, his heart is tainted with sin. And God knoweth all that ye do."*

*Prevention of disputes among people is logically considered to be part of the judiciary duties. Therefore, among the main concerns of the judicial policy in every country are the establishment of methods and systems that maximally reduce the disagreements among people and make it possible for them to appeal to institutions that, in case of disagreement and non-fulfillment of debt and liability, do not need to prove the reasons for the occurrence of the transaction or debt and*

*simply make possible forcing the transgressor to perform the content of the liability or obligation. Therefore, with regard to the legal issues, the complete use of the initial recordation of all debts, liabilities, and transactions as well as the execution of formal deeds and the enforcement of debt payback and liability performance is recommended. It is because of this that for many years, notary public offices have performed their legal responsibility of formalizing the legal relationships of people in the form of executed deeds and have established the rights and ownership of all people. The study at hand aims at investigating the qur'ānic viewpoints on the necessity of deed execution in business transactions.*

### ***Rules of non-cash transaction recordation and attestation***

#### ***The permissibility of non-cash transaction***

*From the first part of the noble verse which says "When ye deal with each other, in transactions involving future obligations in a fixed period of time", it can be inferred that borrowing and doing term transactions is permissible.*

*The payback of the debt is sometimes instant (in which the debtor should pay the debt back whenever the creditor asks for it) and sometimes it is term (in which the payback time is specified). The reason for the specification of a time for the payback is to prevent risks and disputes. Observation of the payback time is necessary in the term and forward deal for both sides of the transaction, but in the debt contract the debtor can pay the debt back before its term and the creditor should receive it. As stipulated by the consensus and common-law, early payback does not mean that the debt contract is canceled (Jawādī Āmūlī, 2007, vol. 12: 617).*

*Ibn 'Abbās has said that the foregoing verse regards the forward sale or futures trading, but the majority of Ḥadīth transmitters, interpreters, and jurists believe that this rule is general and is true for all legal deals including term, futures, debt, and other liabilities (Ṭabrisī, 1993, vol. 2: 681). Concerning the fact that this verse implies the permissibility of borrowing, it automatically indicates the lawfulness of lending as a type of cooperation and chastity, as*

*borrowing is among the affairs that people need in their lives. And of course borrowing in unnecessary situations is detestable (Khazā'ilī, 1982: 271).*

### ***The necessity of debt recordation***

*The verse orders its addressees to write and record the debt. It is certain that the imperative phrase "reduce them to writing" means desirability of debt recordation. The reason for this is that the protection of property is one of the five interests that the Muslim legislator has greatly taken into account (Feīḍ, 1991: 57; Qurṭabī, 1991, vol. 3: 377).*

*Lack of debt recordation leads to disputes and even it is possible that the debtor forgets, denies, or dies - which endangers the payback – and so, it has been ordered to carefully write and record the debt (Fāḍil Miqdād, 2005, vol. 2: 47; Fāḍil Jawād, 1988, vol. 3: 57). The order to record the debt is in the interests of the creditor, debtor, and witness. It is in the interests of the creditor because his right will be based on the evidence and witnesses and so, it will not be obviated. It will be in the interests of the debtor because there will be no way for him to deny the debt and so, prevent him from being afflicted with the otherworldly difficulties and punishment. Finally, it is in the interests of the witness because when the debt is recorded in a deed, his attestation will be robust and he will not forget the content of the deal and will use the deed to remember the agreement (Ṭabrisī, 1993, vol. 2: 681). Muslim scholars have taken the recordation order in this verse to imply desirability. Shaykh Ṭūsī has said in this regard, "The scholars of our time have consensus on this stance (the desirability of the writing)" (Ṭūsī, 1991, vol. 1: 371).*

*But some believe that in the light of the reason mentioned in the verse, the order in the verse is a guidance to interests and does not imply legal obligation (Khazā'ilī, 1982: 272), because written documents can be more accurate and easier to use when justice is sought, and more clear when attestation is made, and more trustable when psychological issues are concerned. They also remove doubts. Therefore, the assertion of reason is an evidence for the guiding role of the order in the verse and weakens its implication as obligation (Jawādī*

*Āmūlī, 2007, vol. 12: 618). However, as the guiding decree depends on the referent, if the referent has indispensable interests, it aprioristically implies the obligation of the referent of the order, and the mentioning of debt in this verse is in this mode (Gurjī, 2004: 40). Irrespective of the inference of the desirability ruling for the debt recordation, according to the common opinion of the Shī'a jurists, there is no doubt that these days having a complete system for the recordation of the transaction and liability documents that includes all activities and transactions and helps maintain the records of debts and liabilities removes a lot of grounds that might lead to disputes among people. As a result, in the present conditions, the predication of the foregoing verse and the necessity caused by the present needs of the Islamic society necessitates such a system to satisfy the public interests, protect people's rights, safeguard the values, and help realize the human goals.*

*It can be understood from the imperative of this noble verse to write and record the contracts and debts that these written contracts should have legal weight and should be used as confirmatory evidence to settle disputes or nullify denials. It is because of this that the law has considered a special value for the deeds that have been executed based on legal regulations and has deemed them valid as long as the opposite has not been proved. The reason is that if the Qur'ān had ordered writing the debts but the respective deeds were void of religious and legal validity, the recordation obligation would be meaningless.*

### ***The necessity of attestation in non-cash transactions***

*"... get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her."*

*This part of the verse implies requesting two witnesses to attest, and as attestation has two stages, namely the serving stage when the witness attends the transaction place and the testifying stage when he appears for attestation, it is evident that the verse refers to the serving stage (Gurjī, 2004: 44). Of course, the phrase "such as ye choose" indicates that it is the arbitrary justness of the two witnesses in deed execution and in the serving and testifying stages of attestation that is needed for*

the debt confirmation, and the real justness of the two witnesses is not intended (Jawādī Āmūlī, 2007, vol. 12: 627). The reason is that if the real justness was the criterion, the verse should have been "those who are really approved". However, as we cannot find out which witness satisfies God, we have to rely on witnesses who are approved by ourselves, that is, the ones that are religious, trustable, and outwardly righteous (Ṭabrisī, 1994, vol. 2: 685).

The order of the verse indicates obligation. However, due to the order to record, the order to attestation should also be taken to mean recommendation (Ibid.: 626). In fact, the verse wants to emphasize the benefit of having witnesses in contracts.

These witnesses should be two just Muslim men or a man and two women. The maturity condition can be inferred from the words *rijāl* (men) and *Islam*, and the validity of justness can be obtained from the phrase "such as ye choose". This part of the verse implies that the witnesses should be from men and women whose religiosity is accepted by people and this positive image is a sign of their justness. Attestation has been introduced to strengthen the debt recordation and prevent disputes among the Faithful in such issues, because it is possible that the payback of the business debts can be taken to the courts and the qualitative and quantitative use of the apparent meaning of the deed wordings cannot totally remove the doubts. Therefore, it has been ordered to have two witnesses so that two just people sign the approval text or recordation of the debt or memorize it so as to promptly prevent disputes and destruction of property. From the viewpoint of the *Qur'ān*, the reason for the necessity of having two women for attestation is to prevent mistakes and forgetfulness so that if one forgets, the other one can remind her. Of course, some believe that this part of the verse refers to the point that if one of the witnesses is missed, the attestation by the other one is permissible and since attestation is related to financial issues, it can be proved by the attestation of one witness along with the avowal of the creditor (Mudīr Shānechī, 2006: 179). According to the phrase "The witnesses should not refuse when they are called on (For evidence)", if two witnesses are asked to attest to confirm the debts, they are not allowed to reject this request. Some have hold that this verse

*implies that serving the attestation is a general obligation, but if there are limited witnesses, it becomes an imperative obligation (Khazā'īlī, 2004: 275). Some other scholars have taken this phrase to refer to the testifying stage (Ṭabrisī, 1993, vol. 2: 685; Jawādī Āmūlī, 2007, vol. 12: 628). If this view is taken, it will be necessary to use a common word in both meanings and this use is deemed forbidden by some legist notables. From the viewpoint of these scholars, when a word is used by its user to imply a certain meaning, there will be no room for the other meanings of the word and so, the simultaneous reference to two meanings in one word is impossible (Fāḍil Miqdād, 2005, vol. 2: 54; Muẓaffar, 1984: 70; Khurāsānī, 1994: 53). The author of this article believes that the first possibility is stronger, because even those who believe in the permissibility of using a word in more than one meaning consider the secondary usages to be figurative (Muntaẓirī, 1994: 63). Of course, if there is no one other than the two witnesses, attestation will be an imperative obligation for the witnesses. The witness of the deals and contracts should be trustworthy, just, reliable, preferably mutually agreed upon, and available so that he can attend the court when attestation is needed.*

### ***The Impermissibility of negligence in the recordation of minor debts***

*"Disdain not to reduce to writing (your contract) for a future period, whether it be small or big".*

*The outer meaning of this part of the verse implies that no matter how small the debt is, people should not disregard the execution of a deed (Mudīr Shānechī, 2006: 178). Some have asserted that this sentence addresses the witnesses, that is, it asks them not to be distressed over writing their attestation rightfully (Ṭabrisī, 1993, vol. 2: 106). It is evident that this is an act of prevention and does in no way imply corruption in the deal (i.e. lack of writing down the deal) (Gurjī, 2004: 46). The phrase "for a future period" means the time on which the two transaction parties have agreed (Ṭabrisī, 1998, vol. 1: 154).*

*The health of the economic relations that is intended by Islam requires the two parties not to forget writing a deed for the small debts*

and so, the *Qur'ān* says that people should not get tired of writing down the small or large termed debts; perhaps small issues in the deal or seemingly unimportant conditions of it that are neglected and are considered as waste of time and energy by the transaction parties lead to later disputes and quarrels and consume money and time.

### ***The Lack of the necessity of cash transaction recordation***

*"but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract"*

According to this part of the verse, as cash transactions do not raise doubts, lack of recordation is not problematic, though it is desirable to have witnesses in cash transactions (Ṭabrisī, 1993, vol. 3: 206; Mudīr Shānechī, 2006: 178).

In his *Tafsīr kabīr*, Fakhr Rāzī takes the intention of this order to be a recommendation to take a precautionary measure (Fakhr Rāzī, 1999, vol. 7: 90).

The word *Ḥāḍirah* (on the spot) in this verse refers to cash transaction which prevents disputes and removes doubts about the quantity and quality of the things exchanged as well as the conditions and features of the deal, and the truth is that since this issue regards the worldly interests, the assertion is in a recommendatory mode (Khazā'ilī, 1982: 276).

### ***The reason for writing down the debt and attestation***

*"it is juster in the sight of God, More suitable as evidence, and more convenient to prevent doubts among yourselves"*

In this part of the verse, God has noted three advantages of writing that show the reasons for debt recordation.

1. Writing is more just because it prevents violation of rights and is a guarantee for execution of justice.
2. It is effective in attestation because written documents remain longer than memorized scenes, attestation based on them is easier, and the witnesses have more courage to testify them.



3. *Writing the debt helps prevent doubts and thwarts pessimism in the society.*

*Therefore, the written recordation of debts and transactions is one of the ways to establish social justice. As the Sublime God has said "stand out firmly for justice", contract recordation is a way to prevent oppression in the society and the executed deeds can be used as valid evidences by the judges at the times of hostility.*

### ***The rules and conditions of the debt scribe***

#### ***Justness of the scribe***

*"Let a scribe write down faithfully as between the parties"*

*Justice has been used in two meanings in the Islamic jurisprudence. The first one is the attributive justice, i.e. an attribute or faculty of the avoidance of cardinal sins and perpetration of the minor sins. This interpretation of justice is the condition noted in many Islamic law issues and questions such as judgment, attestation, narration, etc. The second meaning of justice is the practical one, that is, the fairness and justness that is in fact the execution of justice. This interpretation of the justice has been emphasized in judgment.*

*Both meanings could be inferred from the word 'adl (justice) in this noble verse. If we take it as the attribute of the scribe, it means that a just scribe should write the debt. If we adopt the second interpretation, it means that the scribe should write justly. Some believe that the intention of the phrase is to make justice execution a religious obligation rather than inclusion of the justice attribute in writing (Gurjī, 2004: 42). Nonetheless, some others have taken it as an attribute of the scribe and hold that the scribe should be trustworthy so that he does not add anything to the right or obviate anything from it, and does not write anything against the agreement of the two parties (Khazā'ilī, 1982: 272). Shaykh Ṭūsī says, "This verse does not want to express the attributes of the scribe, but rather, it wants to assert that the text should be away from any impurity and doubt" (Ṭūsī, 1911, vol. 1: 372). Āyatullāh Jawādī Āmulī says in this regard,*

*Religiously speaking, it is only imperative that the text be just,*

*and the justness of the scribe is not necessary; that is to say, both parties of the contract should try to execute a just deed and of course the scribe should observe justice in the deed execution, because this text is a means to establish justice and if it is executed oppressively, it will be against its purpose" (Jawādī Āmūlī, 2007, vol. 12: 620).*

*Of course, it can be said that the text should be just, i.e. it should be based on the religious rulings and should be agreed upon by both parties of the transaction, and this will be realized if the scribe is just. Therefore, in order to establish more confidence and prevent possible interferences with the contract by the two parties, a scribe should justly write the debt deed. As a result, notaries – as the trusted figures of this arena – should follow justice and fairness in the fulfillment of their duty, i.e. deed execution and recordation (Shahrī, 2010: 191). From the viewpoint of the author, this part of the verse does not have two possible meanings. Rather, it intends to assert that the scribe should write justly. Therefore, justness is an attribute of the free agent – i.e. the scribe – not the text he has written. And of course, a just scribe executes a deed that is correct, faultless, and agreed upon by both parties of the contract. If a scribe is not just, there will remain the possibility of shortcomings in his execution of deeds.*

### ***The impermissibility of scribe's refrainment from debt recordation***

*"let not the scribe refuse to write: as God Has taught him, so let him write."*

*It is evident in this part of the verse that the scribe cannot refuse writing down the debt, because his refusal has been prohibited. Some have said that the debt recordation is a general obligation for those who have been asked to write it and this act is among the instances of cooperation based on righteousness and piety, and the distortion of debt recordation will distort the social system (Ṭūsī, 1911, vol. 1: 137; Ṭabrisī, 1998, vol. 1: 153).*

*Ṭabrisī has taken the phrase "so let him write" as an order to the scribe to write down the deed according to the regulations and has expressed it in the form of an imperative to accentuate its content, because when the performance of something is ordered and its*

*abandonment is prohibited, the importance of the act is clarified (Ṭabrisī, 1993, vol. 2: 685).*

*With regard to the phrase "as God Has taught him", the verse can possibly have two meanings. First, since God has favored him and taught him, it is upon him to write down when He asks him. This way, this act will be a religiously desirable one. Second, in this verse, God has ordered the scribe to write based on the Islamic jurisprudence and law, in a way that the text is not against religious requirements and does not cause harm and damage to one of the two parties of the transaction. According to this possibility, the act will be religiously obligatory (Fāḍil Miqdād, 2005, vol. 2: 48).*

*All in all, this verse implies that the scribe of a deed who has justness and knowledge should not refuse writing and recording transactions and deeds. In the light of this point, it can be asserted that the satisfaction of such public needs is a general obligation for anyone who has the needed specialty and insight; an obligation that should not refuse. Therefore, notaries – who have accepted the general obligation of the deed recordation and execution upon adoption of this job – are obliged to execute the deeds based on the knowledge of transaction rules and are not allowed to refuse the execution of those deeds. The reason is that the execution of deeds and the recordation of transactions is a qur'ānic duty and notaries should perform their occupational duties with thorough skills and capabilities obtained from comprehensive knowledge of all related jurisprudential and legal issues.*

### ***The wage of the scribe***

*As previously mentioned, the scribe is not allowed to refuse debt and transaction recordation. Now, the question is that if the scribe is allowed to ask for a payment for his recordation. If he is allowed, who should pay him? There are various opinions about the permissibility of receiving wage for the performance of an imperative or general obligation. Some have taken it absolutely unlawful (Hillī, 1990, vol. 23: 40; Āmilī, 1991, vol. 2: 9; Ardibīlī, 1982, vol. 8: 89), while some others have ruled for its absolute permissibility, and still others have*

*differentiated between general and absolute obligations (Anṣārī, 1993, vol. 2: 135). All in all, those who believe in prohibition have relied upon three reasons, namely consensus, inconsistency of receiving wage with sincere devotion of the performer, and the impossibility of the existence of two simultaneous meanings. All three reasons have been criticized by notable scholars such as Shaykh Anṣārī. In his opinion, receiving wage for the performance of an act which is an absolute obligation is unlawful, but receiving wage to do an act which is a non-imperative general obligation such as medicine is permissible.*

*Those who have considered this act a general obligation assert that the wage of a scribe and his expenses should be paid by the public treasury, because this treasury should be used for the interests of the Muslims and this act is one of those interests. If there is no money in the public treasury, the scribe can ask the person who has requested the deed execution to pay his wage, because it is essentially believed that offering advantages (here, the act of writing) for free is not obligatory (Fāḍil Miqdād, 2005, vol. 2: 48).*

*Of course, Shaykh Anṣārī deems permissible the reception of wage for non-imperative general obligations and believes that there is no reason for the impermissibility of receiving wage for the conduction of the obligations other than the consensus claimed by Muḥaqqiq Thānī. This consensus is also weak when we notice the disagreements among the scholars about the foregoing issue (Anṣārī, 1993, vol. 1: 187).*

*Some scholars like Abū ‘Abdullāh Qurṭubī hold that the order to recordation is a recommendation and reception of wage for it has no problems (Qurṭubī, 1991, vol. 3: 385), but Shaykh Ṭūsī believes that reception of wage for such an act is impermissible (Ibid., vol. 1: 371).*

*Khazā’ilī asserts that when the payment of this wage from the public treasury is not possible, the scribe's wage should be paid by the creditor, because the execution of deed is in his interests and in case the scribe is paid, he should provide the pen and ink himself, but the cost of paper is upon the creditor who will use it (Khazā’ilī, 1982: 273).*

*Nonetheless, Fāḍil Miqdād holds that the pen and paper should also be supported by the public treasury and if there is no money in the treasury, the pen should be provided by the scribe and the paper by the*

creditor, and nothing is upon the debtor (Fāḍil Miqdād, 2005, vol. 2: 48), and Shaykh Ṭūsī, too, considers the provision of the paper a duty of the creditor (Ibid.).

The payment of wage to the scribe is not only acceptable, but it is congruent with the legal and humanistic principles. In order to prove the legality of the reception and payment of wage in the Qur'ān we can refer to the verse 26 of the Story chapter which narrates how prophet Shu'ayb recruited and paid the wage of Moses. The word *ajr* and its derivations have been used to mean the payment and reception of wage in different chapters of the Qur'ān; these payments refer to worldly and otherworldly wages, and can be used to prove the legality of receiving one's right, e.g. his property or the wage of a job done.

Numerous Islamic traditions that narrate the repeated recommendations of the Blessed Prophet (s) to pay the wage of the laborers and the recommendation of Imām Ṣadiq to pay the wage of a laborer before his sweat is dried also confirm this right (Ḥurr 'Āmilī, 1995, vol. 3: 246-247).

Moreover, the necessity of respecting other people's acts is an absolute jurisprudential issue with robust bases. In jurists' opinion, when a person follows the order of another person and does an act that is commonly accompanied by wage or performs an act that he habitually does, he should be paid a wage, unless it becomes clear that he intended to volunteer for it; in this case, in the light of the "non-volunteering principle", the confirmation of the volunteering intention is with the person who benefits from the acts of other people (Najafī, 1943, vol. 37: 38; Ḥillī, 1990, vol. 2: 382; Mūsawī Khumeinī, 2000, vol. 2: 373). Therefore, the notary public offices that are ready to do the recordation act and undertake this act due to the order of the customers can receive wage according to the common law. Intellectually, too, the payment of wage is an axiomatic issue and the refusal of its payment will lead to the distortion of social system. Intellectuals' practice, too, clearly refers to the payment of wage for a job. This practice is at such a level of self-evidence that it can be considered as the backbone of social organization.

The foregoing discussion leads us to the point that at the first stage,

*the scribe' wage should be supplied by the public treasury. If it is not possible to pay this wage from the public treasury, it is upon the creditor to pay it because the transaction and debt recordation is in his interests and can lead to the protection of his rights. However, if it is asked that why unlike the judges' salary, the scribes' wages are not exclusively paid from the public treasury, it can be said that in the scholars' opinion, the judges rely on Irtizāq (earning sustenance) which should be supplied by the public treasury, and there is a difference between Irtizāq and the scribes' wages; the former is according to the needs of the person who does a job but the latter is according to the worth of the job done and should be paid by the beneficiary.*

### ***The scribe and the witness should not be damaged***

*"and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you"*

*In this verse, the verb yuḍārru (suffer harm) is in the simple present tense and mufā'ilah verbal mode, and the spellings of its active and passive forms are the same. Therefore, the verb of this part of the noble verse can be passive or active. If the verb is taken to be active, the meaning of the verse is that the scribe and the witness should not harm the creditor or the debtor through refusal to record or attest or by addition or obviation of a part of the debt. The reason is that it is more appropriate to interpret the word fusūq (wickedness) in this verse as pertinent to a person who has not acted upon justice and has distorted the text (i.e. the witnesses or the scribe) (Ṭabrisī, 1993, vol. 3: 207). In case the verb is taken in its passive mode, the verse will mean that no harm should be done to the scribe and the witnesses and if anyone does so, he has violated the divine order.*

*The majority of interpreters believe that no harm should be done to the scribe or witness. For example, when the scribe cannot write the deed for a reason, they should not force him to write it down or they should not force the witness to attest (Khazā'ilī, 1982, vol. 1: 286; Mudīr Shānechī, 2006: 179). The Glorified God has considered affliction of harms onto the scribes and witnesses who have expressed the right and the just a wicked act. The reason is that this harm violates*

people's rights and is the disobedience of God's orders. Therefore, the Sublime God grants the scribes and witnesses immunity and security and repeatedly asks people to avoid afflicting harms on these establishers of the right and justice.

### **Rules related to the debtor or the debtor's guardians**

#### ***Signing the deed on behalf of the debtor***

*"So let him write. Let him who incurs the liability dictate, but let him fear His Lord God, and not diminish aught of what he owes."*

*In this part of the verse, God orders the debtor to dictate, to be pious, and to avoid deletion of anything from the debt. Some believe that the debtor should sign the deed, and this is in fact his written acknowledgement and since he has signed it, he cannot rely on the pretext that someone else has written it to avoid taking the responsibility for it (Mudīr Shānechī, 2006: 178). In fact, the debtor's signature on the debt record is equal to his confession and he should observe piety to prevent flaws and violation of the creditor's right (Ṭabrisī, 1998, vol. 1: 153). Ordering the debtor to observe piety and prohibiting him from "reduction" in the deal is due to the fact that the creditor is perhaps not skilled and the debtor might exploit his lack of knowledge and information. Therefore, the debtor has been prohibited from the reduction of the right and whenever one does so, he has committed an unlawful act (Khazā'ilī, 1982: 273) and since the main party of a debt is the debtor (in fact, debtor has been mentioned as a person against whom the right stands), it is he who has been considered as responsible for the dictation of the debt, has been ordered to be pious, and has been prohibited from introducing reduction and flaws in the deal (Jawādī Āmūlī, 2007, vol. 12: 624). The execution of deed and the addition of the signature of the debtor is not only in the interests of the creditor, debtor, and witness, but also produces a document that is valid and religiously authoritative in courts of law, because if the handwriting and signature of the debtor is not valid and effective, its writing and dictation is useless, for it is not correct for the divine legislator to insist on the debt recordation but does not consider the debtor's signature and writing authoritative in the court. Therefore, as the debtor's*

handwriting and signature is a logical common-sense proof, it will be a religious proof, too, and in the opinion of some scholars, it can be used as an axiomatic knowledge or strong presumption, one that has been approved by the legislator, too (Jawādī Āmūlī, 2007: 618).

### **Signing the deed by the debtor's guardian**

*"If they party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully"*

In the Islamic law, the word *Safīh* (fool) is the opposite of *rashīd* (right-minded). The former describes a person who is not able to manage his financial affairs. Many interpreters, including the owner of *kanz al-irfān* (Fāḍil Miqdād, 2005, vol. 2: 41), have taken the word *ḍa'if* as weak-minded. Therefore, it involves both children and feeble-minded adults. However, some hold that the word *walyy* in this verse refers to the commonly-used *walyy* (guardian). Therefore, we can assert that the verse includes the people who are physically weak; this way, the term will cover the fool as well as the illiterates who cannot sign the deed (Gurjī, 2004: 44), or the people who are not familiar with the language of the other party of the deal. In the latter situation, the legal representative or translator of the person signs the deed on behalf of him. Moreover, it can be construed from this noble verse that a translator should be trustworthy, because the signature of the translator is bound to be just. Therefore, the translator should completely transmit the intentions of the main writer (Khazā'ilī, 1982: 274).

Some have asserted that the word *walyy* here means the guardian of the debt (i.e. the creditor) who has been ordered to sign the deed in case the debtor is unable to do so, and this will be binding for the debtor (Jaṣṣāṣ Rāzī, 1994, vol. 1: 591; Ṭabrisī, 1993, vol. 2: 685).

To oppose the foregoing assertion, it has been said that how it is possible that the creditor's word is accepted; if his word was valid, then there would be no need to the recordation of the debt and the attestation of the witnesses (Fakhr Rāzī, 1999, vol. 7: 94). Since the main signature of the deed is the debtor's signature, when a deed is accompanied by his signature, it will be impossible to deny its content. The scribe has to



*write the amount of debt without any reduction in the deed according to the signature of the debtor. As the recordation of transactions and financial contracts is necessary for everyone, this responsibility has been delegated to the guardian of three types of people: those who are fool and cannot organize their financial affairs; those who are weak-minded such as children, the senile elderly, the simple-minded, the crazy, the deaf and dumb; and those who are not able to sign. Of course, the guardian should observe justice in signing the deed and acknowledging the debt of those who are under his guardianship, do not try for more than their right, and do not move against their interests.*

*One of the principles for the correctness of deeds and contracts is the consent of the transaction parties and the absence of compulsion and duress. This is an axiom and accepted premise acknowledged by the intellectuals which has been also stipulated in the Noble Qur'ān "Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will" (Qur'ān 4:29). Therefore, signing the deed after it has been read by both parties of the transaction or their legal representatives will be the reason for their consent. As a result, it will not be accepted if a signatory or signatories claim that they have been under duress and compulsion or they have not read or understood the content of the deed, unless this claim is proved via the presentation of required evidences (Shahrī, 2010: 162).*

*In addition, when the two parties of the transaction or one of them is blind or illiterate, each of them should bring a person he trusts along with the introducer. This trustee should read the deed to the respective transaction party and make him understand. This issue as well as the consent of the blind or illiterate party should be recorded in the registry book and signed by the trustee. With regard to the illiterate people who are deaf and dumb, the trustee should be a person who can make them understand through body language and this should be recorded in the registry book.*

### **Conclusion**

*In the verse 282 of the Cow chapter, the Sublime God asks the Faithful in particular and all Islamic society in general to write the*

*characteristics and conditions of the debt in a deed and to take witnesses for it. However, it does not consider any prescriptive prohibition for the lack of writing the immediate, regular transactions that are usually cash deals in which no fraction of the debt or liability is postponed for a later time.*

*One of the uses of the written deed is the prevention of numerous disputes in society. In other words, the solution offered by the Qur'ān for the management of the debts and liabilities among the Faithful and in the society is the execution of written deeds for such issues and adoption of witnesses or legal oral testimonies. From the qur'ānic viewpoint, the essential concern is the writing and legal weight of the debt, and the inclusion of oral testimony is recommended for the confirmation of it. Therefore, when the oral testimony and written deed are compared, the latter is prioritized. In the light of the qur'ānic order of the just writing in order to gain the confidence of the two parties, the scribe should take into account justness and fairness in the execution and recordation of the deed. Besides, the idea that the scribe cannot refuse writing and executing the deals can imply that undertaking jobs that satisfy people's general needs such as deed recordation is a general obligation for anyone who has sufficient expertise. With regard to the wage of the scribe, it can be said that although there exist disagreements among the scholars, according to the qur'ānic verses and narrations that include the intellectual reasons and the intellectuals' practice, wage payment is necessary, and as the main party in the debt is the debtor, he has the responsibility to dictate the debt, observe piety, and avoid shortcomings. With regard to the transactions of the crazy and the weak-minded people as well as any person who is banned from possession, the duty of recording the financial transaction and contracts of these people is delegated to their guardian, where guardian can be the compulsory guardian, legal guardian, or legal representative. The necessity of attestation in the contracts is legislated to strengthen the recordation and execution of debts and prevent and remove disputes from the Faithful, and the witnesses in the serving or testifying stages of attestation should not refuse to accept the request for attestation. In other words, serving the*

attestation or testifying it is an imperative obligation for the witnesses if there is no one else to do so. Otherwise, it is a general obligation.

Moreover, the healthfulness of the economic relations intended by Islam makes it necessary to write down the small debts into a deed, since these small contracts can also be a source for disputes and lead to a waste of time and money. According to the common view, no harm should be afflicted by the transaction parties onto the scribe and witness, and in fact, scribes and witnesses should be immune and secure and should be free from any act that harms them because harming them is equal to the disobedience of the divine order and leads to wickedness in transactions. Finally, the benefit of deed execution is that it guarantees the execution of justice and enhances the confidence of witnesses when they are testifying and prevents pessimism and suspicion among citizens. This will certainly help organize the economic relations and lead to a healthy economy. Expression of the rules and regulations of business, economy, and recordation in the longest verse of the *Qur'ān* indicates the importance of healthy economic relations for Islam.

### **References**

1. *The Noble Qur'ān*
2. 'Āmilī, M. (1991), *Al-Durūs al-shar'īyyah fī fiqh al-Imāmīyyah*. Qom, the Office of Islamic Publications.
3. Anṣārī, M. (1993), *Kitāb al-makāsib*. Qom, Dehāqānī Publications.
4. Ardībīlī, A. (1982), *Majma' al-Fā'idah wa al-Burhān fī sharḥ Irshād al-Adhhān*. Qom, the office of Islamic Preaching Publications.
5. Fāḍil Jawād, J. (1988), *Masālik al-afhām ilā Āyāt al-aḥkām*. Tehran, Murtaḍawīyyah Publications.
6. Fāḍil Miqdād, M. (2005), *Kanz al-'irfān fī fiqh al-Qur'ān*. Tehran, Murtaḍawīyyah Publications.
7. Fakhr Rāzī, M. (1999), *Mafātīḥ al-ghayb*. Beirut, Dār Iḥyā' al-Turāth al-'Arabī.

7. Feīd, A. (1991), *A comparative study of general penal laws in Islam*. Tehran, Mīzān Publications.
8. Gurjī, A. (2004), *Legal injunctions of the Qur'ān*. Tehran, Mīzān Publications.
9. Hillī, Ḥ. (1990), *Tadhkirah al-fuqahā'*. Qom, Mu'assisah Āl al-Bayt (a).
10. Ḥurr 'Amilī, M. (1995), *Wasā'il al-Shī'a ilā taḥṣīl masā'il al-sharī'ah*. Qom, Mu'assisah Āl al-Bayt (a).
11. Jaṣṣāṣ Rāzī, A. (1994), *Aḥkām al-Qur'ān*. Beirut, Dār al-Kutub al-'Ilmīyyah.
12. Jawādī Āmūlī, A. (2007), *Tafsīr tasnīm*. Qom, Isrā' Publications.
13. Khazā'ilī, M. (1982), *Aḥkām al-Qur'ān*. Tehran, Jāwīdān Publications.
14. Khurāsānī, M. (1994), *Kifāyah al-uṣūl*. Qom, The Institute of Islamic Publications.
15. Mudīr Shānechī, K. (2006), *Legal injections of the Qur'ān*. Tehran, SAMT publications.
16. Muntazirī, Ḥ. (1994), *Nahāyah al-uṣūl*. Tehran, Tafakkur Publications.
17. Mūsawī Khumeinī, R. (2000), *Tahrīr al-wasīlah*. Qom, Dār al-'Ilm.
18. Muẓaffar, M. (1984), *Uṣūl al-fiqh*. Qom, Dānesh Publications.
19. Najafī, M. (1943), *Jawāhir al-kalām fī sharḥ sharāyī' al-Islām*. Beirut, Dār Iḥyā' al-Turāth al-'Arabī.
20. Qurṭabī, M. (1991), *Al-Jāmi' li aḥkām al-Qur'ān*. Beirut, Al-Risālah Institute.
21. Shahrī, Gh. (2010), *Deeds and real-estate registration laws*. Tehran, Jahād Dāneshgāhī Publications.
22. Ṭabrisī, F. (1993), *Majma' al-bayān li 'ulūm al-Qur'ān*. Tehran, Nāṣir Khusru Publications.
23. Id. (1998), *Tafsīr jawāmi' al-jāmi'*. Tehran, the University of Tehran Press and the Qom Ḥawzah management.
24. Ṭūsī, A. (1911), *Al-Tibyān fī tafsīr al-Qur'ān*. Lebanon, Dār Iḥyā' al-Turāth al-'Arabī.

