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ISLAMIC PERSPECTIVE ON INSURANCE: CONCEPT, ISSUES AND PROSPECTS

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ABSTRACT:

As a global phenomenon, Islam influences every aspect of human life, whether that be personal or social and economic. Since, long Muslims have tried to lead their lives as per Islamic rules especially pertaining to business aspects which confirm to the rules of equality, cooperation, responsibility and sharing the burden, as today's business life is full of uncertainties, hence insurance system comes to rescue. However, due to different aspects which do not confront with Islamic principles, the conventional system has been criticized by Muslim scholars and Islamic insurance (*Takaful*) is presented as an alternative, as it can be used as a replacement for conventional insurance having its foundations in Islamic principles of brotherhood, solidarity, cooperation, elimination of *riba* and proper risk management. This article will provide a brief overview of *takaful* system, its distinctive features, historical background, issues faced by the *takaful* system and how Pakistan has legislated in this behalf. A comparative analysis of both, *takaful* and conventional insurance will also be provided.

INTRODUCTION

Insurance provides the means for people to transfer the burden of uncertainty (of financial loss) to the insurer, for an agreed financial consideration, called the 'premium'. In exchange the insurer promises to provide financial

compensation to the insured should a specified loss occur with fixed premium, the insured is certain that he will not have to pay more for the year. The Islamic financial contracts not only need to afford the different parties a feasible profit but also comply with Sharia. The word '*Takaful*' comes from Arabic '*Kafalah*' meaning guarantee i.e. a joint guarantee and mutual protection. There have been two main developments in Islamic finance namely, Islamic banking and Takaful, during the recent past. The main aim of this chapter is to discuss some features and models of Takaful system for those who are not familiar with the terminology and want to get themselves acquainted with the basics of takaful system. Takaful is based on Sharia principles and is presented as an alternative to the commercial insurance. Muslim scholars consider conventional insurance system as unlawful due to presence of haram i.e. investment in forbidden assets like alcohol etc, *maisir*, *riba* and *gharar*. Where gambling is basically al-maisir, which means a game of haphazard in all matters, particularly a game of chance by means of divinatory arrows. Gambling is of two categories; a game of chance that is partaken in with a view of sports (fun) and the game of chance which involves gambling. Gambling means all dealings in which people are required to make a bet and every-dealing which involves some aspect of gambling is maisir (SECP-Website). Whereas, interest; *riba* (literally meaning 'an addition to' or 'excess') in conventional literature, interest is seen as the time value of money, however, money in Islam is seen simply as a medium of exchange-with no intrinsic value in itself-so it is impermissible to lend money and earn a guaranteed rate (interest) on the money and uncertainty; Al-gharar means deception, uncertainty, risk, hazard and deceit. Its origin can be divided into two categories; *tadlis* (cheating in business) and *ghabn* (to deceive). Major objection on insurance is risk i.e. *gharar*, as scholars are of the view that it is the God, who only knows what is not known to us and that's why gambling is forbidden as well as future dealings in this regard, only *mudarabah* and *musharaka* are treated as lawful means to deal with risks (Khorshid, AAR. 2001). Whereas, *riba* is increase and refers to the practice of money lending at interest rate which is exorbitant, hence declared illegal by Islam as it is unjustifiable increase in capital without compensation. It was a well known and well-established practice in pre-Islamic Arabia, which was declared haram by the holy Quran. It must be kept in mind that all sort of profits, such as emerging from sales etc, are not prohibited by Quran, it is the profit on debts which is abandoned i.e. multiplying or doubling of the debt is haram (Khorshid, AAR. 2001). However, takaful is a sort of a shared responsibility which is based on co-operation, mutual responsibility and mutual protection and also avoids the *gharar* and *riba*. It is a sort of cooperative insurance in which a common pool is established where profit is not the main purpose but to bear each other's burden is important.

Insurance System: Origin and Development

Scholars trace back the origin of insurance from the Hammurabi's Code 1750 BC and then to inhabitants of Rhodes, developing 'general average' rule where merchants shipping goods used to pay proportionately divided premium in order to secure loss from wreckage. Further in 600 AD, Greek and Romans became 'benevolent societies' by providing health and life insurance. In

History of English Law, Holdsworth (1925) traces back number of contracts modeled on insurance stipulations. People also claim that Jewish people established insurance system when they were exiled from France in 1182 (Duer, J. 1945, p-30). As per Park, a group of merchants from Italy in 13th century introduced the concept of insurance to the world (F. Hildyard. 1842). Whereas, Dickson (1960) states, “during 17th century insurance contracts were found in London” (Dickson, PGM. 1960, p-324). Trade between Babylonian traders and Chinese is also quoted as beginning of insurance system. These types of contracts were introduced to Arabs from the West during 19th century, as foreign pacts, which motivated Muslim scholars to look into this matter closely, using Islamic jurisprudential methods from its critical analysis and describing it as per Sharia law. Takaful tries to reinforce Islamic pillars of cooperation for common good; assistance in need; division of losses and liabilities through community pool system and elimination of uncertainty.

CONCEPTUAL FRAMEWORK OF TAKAFUL SYSTEM:

The roots of takaful are traced back to *kafala* (an Arabic word) meaning guarantee; help or taking care of someone’s needs. It is based on principles of *ta’awun* (mutual assistance) and *tabarru* (voluntary contribution), where participating group collectively shares the risk by making contributions into a common fund through a guarantee to jointly protect/reimburse each other in case of loss/damage, as per the contract they have entered into, the pact is based on solidarity, brotherhood, cooperation and mutual responsibility towards each other. People trace back its history from Prophetic (PBUH) period where concept of a shared responsibility was introduced in the shape of ‘*Aaqilah*’ system among emigrants of Mecca and the *Ansar* of Madina. The view of the scholars is that insurance must conform with the maqasid-e-Sharia (objectives) i.e. giving benefit to community and preventing harm. The objectives are life, religion, property, lineage and intellect. The word used for insurance is *Ta’min* i.e. security, protection, guarantee or safeguard (Khorshid, AAR. 2001).

Basic Principles of Takaful

The principle of ‘*bear ye one another’s burden*’ is behind the whole system of takaful. The following are the fundamentals of takaful system: -

- (i) Cooperation, which is based on Sura Al Maida: 2, ‘*Help one another in al-birr and in al-taqwa; but do not help one another in sin and transgression*’. And Hadith narrated by Imam Hanbal and Imam Daud as, ‘*Allah will always help his servant for as long as he helps others*’.
- (ii) Responsibility, which is based on Hadith narrated by Imam Bokhari and Imam Muslim as, ‘*One true Muslim and another true Muslim is like a building whereby every part in it strengthens the other part*’ and Hadith like, ‘*The place of relationships and feelings of people with faith between each other, is just like the body; when one of its parts is afflicted with pain, then the rest of the body will be affected*’.
- (iii) Mutual Protection, which is based on Hadith narrated by Imam Hanbal as, ‘*By my life, which is in Allah’s power, nobody will enter Paradise if he does not protect his neighbor who is in distress*’.

- (iv) Losses are divided through community pool system
- (v) Elimination of uncertainty with respect to compensation and subscription
- (vi) No one can get advantage at the cost of others
- (vii) Eligible beneficiaries here are legal heirs only, to provide them financial protection

Hence, under the takaful system policy holders cooperate for mutual benefits and the element of contribution is at the foundation of whole system, where subscription is paid to help the needy one and elimination of *riba*, *maisir* and *gharar* is at the very core of the whole system. All the share losses and liabilities are born jointly and promise to indemnify each other by the participants and due to an agreement, uncertainty is eliminated. There is mandatory constitution of Sharia Supervisory Board and separate Participant's Takaful Fund, hence all investments are as per Sharia. It is founded on the principle of separation between the funds and operations of shareholders, thus passing the ownership of the takaful fund and operations to the policyholders. The premium collected is considered as donations and constitutes the takaful fund for the reimbursement of claims. Here after a year, the expenses are deducted and remaining amount (surplus) is distributed / returned to policyholders through dividends or distributions and insurance company does not retain the surplus. The shareholders, who manage the company, are responsible for the investment of takaful funds comprising surplus, reserves and provisions. Remember that this is done by shareholders on behalf of policyholders and there is reward on the investments through a certain percentage in shape of profits.

Takaful contract gives solidarity when there is a tragedy regarding business loss and human life. Takaful partners (policy holders) pay premium in order to indemnify and assist each other and share the profits earned from business of the company, the business done by the company from their premium paid/subscription funds. The contribution is normally divided into two parts i.e. (a) donations to indemnify mortality liability or losses of fellow takaful partners and (b) investment. A clause of *tabarru* is added in insurance contract, stating the percentage of amount going into contribution and percentage of amount going into business; now after investment of both, returns are distributed on *mudarabah* principle among participants and takaful operators. Now profit earned is also credited to two separate accounts i.e. protection part of the policy and investment/savings part of the policy. In the saving part the profit after expenses are paid to policy holders (Ayub, M. n.d.). Hence, the basic structure of scheme involved in takaful, involves participants asking an operator to perform necessary functions as discussed above through different models, as agreed upon (Jaffer, S et al. 2010).

Models of Takaful System

The companies, which provide this sort of insurance, usually divide the contribution of the policy holders into two heads; (a) one in investment and (b) other in shape of donation to meet losses of other participants. In takaful, two simultaneous accounts are run and profit is distributed between the

policyholders, this profit goes onto two accounts; (i) in savings and investments; (ii) in protection for losses of all. This system may take following three major models:-

- (a) *Mudabah Model* which talks of share in profit where policy holders get profit only when the company gets profit. The system is usually used in Far Eastern countries.
- (b) *Wakalah Model* is an agency model, where surplus of policy holders after net management fee and expenses, goes to the policy holders.
- (c) *Wakala-Waqf Model* which involves waqf motives with agency
- (d) *Hybrid Model* in which combining of wakalah and mudarabah is there and is used in UAE, Bahrain and Middle Eastern states
- (e) *Waqf Model* where a part of capital is irredeemable, usually used in South Africa and Pakistan.

A new model by combining the first two can also be implemented. In these models, in order to eliminate uncertainty a concept to contribute or donate is incorporated into original contract, where the participant promises to contribute a definite portion of his contribution to common pool, in order to fulfill his joint guarantee for any loss to fellow participant/s. In the first model, profits are given to the policy holders only if company earns profit and rate of profit and expenses are predetermined. In second model, the surplus is invested and management fee is charged from the contribution. In third model a waqf is established, where operator is agent/wakeel of the fund and participants pay contributions to waqf, to be used for benefit of all. Now combined fund is invested and profits will again be deposited into same fund and losses are also paid from this fund.

Legislation Relating to Takaful in Pakistan

'*The Takaful Rules 2012*' provide legislative acknowledgment to the takaful system. The rule 2 illustrates as many as 25 terminologies regarding takaful system. In Pakistan takaful business cannot be carried on by a person as takaful operator, unless he obtains a certificate of registration from the Security and Exchange Commission of Pakistan (SECP) and using the word takaful without written permission of the Commission is not allowed. The Rules describe two major types of takaful i.e. family takaful and general takaful. There are detailed provisions about participant's takaful fund, *qarz-e-hasana*, participant's investment fund and window takaful operator i.e. the registered insurer authorized to carry on both takaful and conventional insurance business. The takaful operator is bound to maintain proper books and records of its business. The Rules give guideline for investment as per Sharia and with certain limitations, investments can be made in the areas like Sharia compliant government securities, immovable properties, joint stock exchange companies, redeemable capital and payment of excess funds with banks and Islamic financial institutions.

Takaful operator is bound to ensure re-takaful and reinsurance arrangements of fund. A Sharia compliance auditor must be appointed for audit purposes by the operator. Also every takaful operator is under obligation to appoint a

Sharia Advisor for approval of different products, documentations, operational practices and investments. The Commission has power to appoint a Central Sharia Board for advice on any aspect of takaful operations.

Takaful Products and Services

Different takaful providers have introduced many products and services under the system. They may range from insuring property to a business to property takaful, marine and air takaful, takaful covering motor vehicles, travelling takaful including Hujj and Umra coverage, money takaful, machinery takaful and accidents and health takaful etc. Sometimes companies also provide customized services and products to major corporate clients, as per their needs and demands. These above mentioned packages usually cover loss and damages due to any of the perils ranging from fire and lightening, riot and strikes, explosions, earthquake and aftermaths, rain, flood and storm, burglary, theft and snatching and accidents etc.

Benefits of Takaful

Major benefits and advantages of takaful include insurance coverage and protection benefits, mobilization of savings, *Halal* investment opportunity, participation in the economy in a collective way, as well as having an opportunity in the shape of doing charitable work and good deeds.

Takaful Fatawa

Many scholars assert that takaful complies with Sharia as well as, Quranic doctrine of cooperation especially verse 2 of Al-Maida (5) alongwith few examples from Sunnah narrated by Jabir Bin Abdullah and Abu Musa Al-Ashari narrated in *Sahih-Bukhari*. Numerous resolutions by eminent Sharia scholars have declared that takaful is fully consistent with Sharia principles. Few of these are Council of Saudi Ulema (1397AH/1977 CE) Resolution; Fiqh Council of Muslim World League (1398/1978) Resolution; Fiqh Council of Organization of Islamic Conference (1405/1985); Islamic Fiqh Week Conference, Damascus 1961; Second Conference of Muslim Scholars, Cairo 1965; Symposium on Islamic Jurisprudence, Libya 1972; First International Conference on Islamic Economics, Mecca 1976 and the Islamic Conference, Mecca 1976.

Takaful And Conventional Insurance: Comparison

In both different key legal principles are adopted to minimize problem of moral hazard and both tend to avoid misrepresentation and concealment of warranty. The conventional insurance works on the principles of indemnity, good faith, mitigation, subrogation, insurable interest and proximate cause. Whereas, Muslim scholars have divergent views on insurance, where interest if present, they consider interest as *riba* and declare it unlawful; further consider many aspects of conventional insurance are a form of *gharar* (uncertainty) too. Hence, commercial insurance has many features, out of

which few are Sharia compliant and some are not. Whereas, Islamic insurance has following principles: -

1. Insurance is treated as obligatory contract binding both parties
2. Insurance contracts are considered as those for financial reimbursement
3. Here insurance contracts are time bound as time is an essence of contract
4. It is civil as well as, submission (take it, or leave it) contract
5. The contract here is a probable contract, where everything is certain
6. Contract is based on utmost good faith
7. Contract consists of parties, wording, subject matter which includes risk, premium and compensation amount.

The Takaful system has few distinctive features when it comes to a comparison with conventional insurance (Dahnoun, M & Dr. Alqudwa, B. 2018) i.e. (a) there are two contracts in commercial insurance whereas, in Takaful the operator is an administrator of takaful fund, also manages the funds alongwith invests those funds as per Sharia principles; (b) in takaful *tabarru* contracts (agreement to relinquish a sum of contribution) are also a distinctive feature such as, done in waqf model of takaful and (c) Sharia advisory board in takaful system, reviews takaful operations and supervise takaful products as far as, Sharia compliance is concerned.

Those who declare commercial insurance unlawful, give their opinion on the basis of four elements which make them illegal i.e. uncertainty, gambling, taking money unjustly and interest. Whereas, those who treat commercial insurance as permissible give different arguments i.e. they treat commercial insurance as a new system within Islam, they make analogy of insurance contract with those of loyalty contracts and risk contracts. This Islamic insurance system differs from conventional insurance in these ways i.e. (a) there are two parties (insurer and policy holder) in conventional insurance, while three in takaful (company, policy holder and the pool); (b) in conventional insurance, the premium is in the ownership of company, while this is not the case in takaful; (c) number of contracts in conventional insurance is one, while many in takaful; (d) in conventional insurance pool is not legal identity, while the pool is a legal identity in takaful; (e) there is only one relation in conventional insurance, while many at different stages in takaful; (f) conventional insurance includes an element of *al-gharar* (uncertainty) which is not so in takaful model; (g) conventional insurance is a form of gambling whereas; takaful is based on the principle of trusteeship and co-operation; (h) there is no chance of *riba* in takaful, which is evident in conventional insurance; (i) conventional insurance companies are motivated by the desire for profit, while in takaful non-profit making is main aspect; where shareholders are not entitled to share in profits of business, they can only charge fee for services rendered; (j) in conventional insurance policy, the agents' payments are paid out of the insured's paid premiums; whereas in takaful model, the agent works for the company and is paid by the company; (k) in takaful system, in case of death of insurer the insurable interest goes to the heirs according to the principles of inheritance; whereas in conventional

insurance the insurable interest is paid to the beneficiaries, who may include family, servants, partners, mortgagors etc; (l) in conventional insurance, the policy holders have no right to vote in the election of the directors of the company; whereas, this is available to all participants who pay certain stipulated amount of premiums (contributions); (m) there is a built in method to check policies pertaining to pricing, as ordained by insurance companies, which makes it incumbent upon the takaful operator to distribute the surplus back to takaful participants according to their proportion of contributions, which is not present in case of conventional insurance and (n) in conventional insurance principles of contract are followed; whereas, principles of mutual cooperation are at the very roots of takaful system.

Issues with Takaful Industry and Prospects:

Few key issues faced by takaful industry are as under: -

1. Consumer awareness is lacking, which is a major hurdle in the expansion of takaful system, as general people are not aware of pros and cons of takaful system.
2. Human resource issues are many especially pertaining to Sharia expertise of all those who are involved in policy making as well as, who are at the forefront of the takaful system.
3. Sharia scholars with requisite experience are less and there is scarcity of training and education of those who intend to get expertise in this regard.
4. There are many governance issues in corporate sector pertaining to takaful specific industry.
5. Suitable assets to invest in are short and fewer options are available to the takaful operators in this regard.
6. Centralized regulations are lacking coupled with there are divergent regulatory approaches which make the understanding of takaful system more complicate and things become intricate for the ones who intend to invest or do business with such companies.
7. Different Sharia interpretations leading to lack of standardization create many problems both for the company and the consumer.
8. Adoption of capitalistic policies i.e. free market economy is also an issue for the expansion of takaful system.
9. Weak political resolve in this regard is also an issue.

The challenges faced by this industry are many ranging from technical to regulatory and the need of the time is to create awareness among masses and a holistic approach is to be taken by the government, Sharia experts, companies involved and institutions which are regulating the whole takaful system so that the issues be resolved or at-least bring them to the minimum. There is a need for continuous research and development of Islamic insurance instruments by companies, Sharia experts as well as, economic and financial experts. Key principles regarding businesses are given by Sharia, yet details are left for the policy makers, which make it more complicated and intricate, when it comes to new financial products and transactions, need is to work on these aspects to bring these in par with contemporary commercial needs. There is also a dire need to harmonize the rules and products among Islamic states in order to

have a standardized inter-companies and inter-state cooperation. Also, there needs to be dissemination of better information to the general public about products and services available in this regard, as people only think of *riba*, when it comes to Islamic insurance and finance, there are lot other aspects involved, which need to be told to the public at large (Khorshid, AAR. 2001). Further, people need to have accurate and exact information about rules, products, regulations and options in insurance. In order to have sound system of *takaful* in Pakistan particularly and Islamic states in general, the technical personnel as well as, information should be exchanged on regular basis. Also, most of the *takaful* operators are working at local level, they need to explore and expose themselves to international markets too. It is also recommended that if *halal* investment sources are identified at international level the *takaful* operators will have chance to improve their competitiveness and results in terms of returns on investments (Al-Amri, K. 2015). Last but not the least, the educational institutions which deal with studies pertaining to management, law and economics, should start playing their role by either starting specialized degrees in collaboration with the stakeholders and policy makers responsible for *takaful* system or at least disseminate knowledge through short courses, diplomas, workshops and seminars. The market is very vast, the need of the time is to tell the general public about the benefits of *takaful* insurance and give them an opportunity to have a comparative understanding of both conventional and Islamic insurance and once it is done, and then let the people decide which is better for them. It is obvious that once people will have clear cut and accurate picture in front of them, they will opt for the *takaful* system.

CONCLUSION

Creation of a society which is free from exploitation, when it comes to economy, is one of the objectives of Islamic economy and to uplift the entire society as a whole i.e. the welfare of people. Therefore, the *takaful* system is not in contradiction to Islamic principles, as it serves public interest; ensures and safeguards the welfare of people within the bounds of Sharia. Hence, *takaful* system provides an alternative to conventional insurance to those who want a *riba* free transaction. The *takaful* market is growing rapidly and all cautious people are opting for it. Many companies are providing *takaful* insurances but need of the time is to educate people about the basic concepts involved in Islamic financing, as majority of insurance agents offering these policies are themselves not fully conversant with the concept. It is good to see that *takaful* operators are also catering non-Muslim communities and have started to realize the importance of ethical guidelines and transparency of their products. Many states like Malaysia, Bahrain, Saudi Arabia and Pakistan have established regulatory frameworks for *takaful* business. So, there is a dire need that expertise be developed in this branch of Islamic financing so that better results can be achieved in an effective and efficient manner.

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