

Civilizations lean from each other; so do researchers!

Comparative Assessment of Different Models of Insurance

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1. Risks and Tragedies are Part of Life.

It is uncertain when one will be struck with a tragedy. But that everyone will be struck with them in his life, is ‘**certain**’. Qur’ān testifies to that in the following words:

وَلَنَبْلُوَنَّكُمْ بِشَيْءٍ مِّنَ الْخَوْفِ وَالْجُوعِ وَنَقْصٍ مِّنَ الْأَمْوَالِ وَالْأَنْفُسِ وَالثَّمَرَاتِ ۗ وَبَشِّرِ الصَّابِرِينَ

“We will surely put you to trial by means of some fear and hunger and by causing loss of property/income, life and crops. And give good tidings to those who remain patient in these trials” [02:155]

We will briefly discuss what implications this verse has for the subject during the lecture. It is quoted here to emphasize that everyone should be *sure* that tragedies are one his way. It is a part of Muslims’ belief and of non-Muslims’ experience that everyone should be sure that tragedies are one his way.

Individuals or their relatives may face insecurity or loss of income and provisions (for example due to unemployment or famine). Peoples’ homes or other property may suffer damage or theft. People may become ill and suffer pain and difficulty in meeting medical expenses. People may accidentally cause injury to others or damage to the property of others for which they may have to pay heavy compensations, people may suddenly pass away leaving their children in a difficult financial situation and so on. In many cases, the losses from such catastrophes are so huge that they are beyond the capacity of individuals. They can turn millionaires into paupers in matter of minutes. Therefore, everyone needs to protect himself from risk/adversities¹. This attitude is now commonly understood as seeking one or the other sort of insurance cover. Since the subject of this paper is insurance, it may be useful to mention what the term insurance employs and what not.

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¹ In this zero draft the fine distinction between risk and adversity is ignored for simplicity. That will be addressed in subsequent drafts.

Insurance is ...”a contract (policy) in which an individual or entity receives financial protection or reimbursement against losses from an insurance company. The company pools clients' risks to make payments more affordable for the insured”. (Investopedia).

Commercial insurance is the most well-known model of insurance but not the only one. We will mention some other exiting models and propose new model/arrangements for providing insurance coverage in subsequent section.

[More details will be given in the Seminar/Paper after the Seminar]

2. Types of Risks and their Relevance for Insurance

All risks are not of the same nature. Insurance is a technique that relates to management of risks. Risks are further divided into various types. It will be useful to mention various types briefly to understand what the function of insurance is².

Each type of risk needs different mechanisms to handle it. Broadly speaking, we can classify risks into three types:

2.1 Ordinary Risks

These are risks that are part of day-to-day business. The distinguishing feature of this type of risks is that they cannot be evaded and the taker of these risks can make either profit or loss. We can also call them entrepreneurial risks of business. While an individual or enterprise may end up in a loss; overall taking these risks adds to the wealth of a society. Due to the fact that uncertainty is part of life, this type of risks cannot be eliminated altogether. Measures can however, be taken to mitigate/manage such risks. Since these are potentially value-addition risks, elaborate risk management techniques are employed to face these risks. Broadly speaking there are three mechanism (or a combination of these). One is risk-sharing, as in case of the Islamic contract of *muḍārabah*. The second is risk-taking, i.e., bearing risk by the enterprise and then using various risk management techniques such as portfolio diversification. The third is risk-transfer. In this mechanism, an enterprise transfers/sells its risks to another entity, which is willing to bear these risks against a monetary consideration. The buying entity, normally an

² In the literature, different writers use different nomenclature for categorization of different types of risks. We are choosing the one given below tentatively. Another popular nomenclature is risk-bearing; risk-sharing (pooling); risk-transfer.

insurance company, specializes in this business and buys risks from several enterprises. Therefore, this mechanism is also called risk pooling. Just like financial intermediation generates many benefits, such specialization also generates many value adding benefits. Risk-pooling can be done in many ways . One of them is commercial insurance, the other is cooperative insurance and the Islamic model of insurance called *takāful* is also a way of handling risks through pooling them.

[More details will be given in the Seminar/Paper after the Seminar]

2.2 Speculative Risks

These are risks that are self-created with an intention to gain profit. It is known that this gain will be at the cost of someone else. The common example of this type is gambling, but all zero-sum games fall under this category. For individuals, these are avoidable risks. If someone does not want to play these games, he is safe from these risks and no special measures need to be taken. The society does not benefit from such risk-taking as this type of activity does not add to wealth of the society. On the contrary, these may, and often do, result in loss of lives and property. As such, measures need to be taken to regulate these activities in any society. In a Muslim society, they have to be forbidden altogether.

[More details will be given in the paper after the Seminar in due course of time]

2.3 Catastrophic Risks

These are risks that arise from tragedies and catastrophes that befall an individual or a group of individuals. Examples include accidents, diseases, deaths, epidemics, earthquakes, floods, and so on. These are the most serious type of risks as they normally cannot be avoided and cause huge losses which in most of the cases are beyond the capacity of an individual to bear. The distinguishing feature of this type of risk is that they result only in loss as compared to the first type which can result in both profit or loss. This is why they are also called ‘pure’ risks. For individuals, these are “uncertainties that are immeasurable”. However, with the advancement of knowledge, what is not measurable for an individual, may render itself to measurement for a group, though approximate. This was made possible by what is called the “Law of Large Numbers”. This law, basically belonging to the theory of probability, states that the average of outcomes obtained from a large number of experiments should be close to the expected average value, and will tend to become closer to this average as more experiments are performed. It is

this law which is at the back of insurance contract. With the help of actuaries, insurance companies can approximate the risk of a particular mishap fairly correctly.

[More details will be given in the paper after the Seminar in due course of time]

3. Methods to Cover Risks/Adversities

Searching for means to cover oneself against risks/adversities is a fundamental component of human behavior. They may not have heard the name of insurance, but from time immemorial individuals and communities have been taking steps to tackle them³. Some tragedies, like death, cannot be avoided. Others can. At least their occurrence can be minimized by taking precautionary steps and when tragedies befall one would want to be able to meet their consequences to the maximum extent possible. Even in case of death, pre-planning can lighten the financial burden on widows and orphans. Historically many ways were employed in this respect. The major ones are briefly described below:

[More details will be given in the paper after the Seminar in due course of time]

3.1 Attempts to Minimize Incidence of Risks

It is in the nature of individuals to try to avoid or at least minimize the incidence of risk. In many cases, this is instinctively built into the nature of human beings (even animals). For example, a baby instinctively draws its hand back from fire once it feels the heat. In other cases, conscious effort to avoid/minimize the incidence of risk are taken. For example, fire extinguishers are installed in vehicals, homes, factories etc. This attitude is highly encouraged by Islam. There are many *nusus* to that effect. Some of those are given in Annex-1. Here we quote two famous Aḥādīth.

- (1) Anas ibn Malik reported that someone asked, “O Messenger of Allah, shall I tie it (tether of my camel) and trust in Allah or untie it and place trust in Allah ?” He said: “Tie it and trust in Allah”. [Sunan Tirdidhi: 2516]
- (2) The Prophet said, "Cover your utensils and tie your water skins, and close your doors and keep your children close to you at night, as the Jinns spread out at such time and snatch things away. When you go to bed, put out your lights, for the mischief-doer (e.g. a rat or

³ Separate insurance contracts (i.e., insurance policies not bundled with loans or other kinds of contracts) were invented in Genoa in the 14th century (Wikipedia).

similar animal) may drag away the wick of the candle and burn the dwellers of the house." [Sahih Buhari: 3317]

Ata said, "The devils." (instead of the Jinns). A Hadith mentioned in Annex, implies this may mean "evils" (mosquitoes, flies, etc. that can cause epidemics).

Accumulating Personal Savings

Since times immemorial, individuals, being fully aware that adversities may happen to them or their families at any time, they do their best to keep some 'reserve' to be able to meet the adversities, if and when they occur. This is idiomatically stated as: 'Saving for the Rainy Day'. In most cases this can hardly meet even a sizable part of the needs for meeting the consequences of risks.

Assume every year 1 in 1,000 "normal" houses (worth \$100,000 each) incidentally burn down. An isolated individual who wants to be sure to replace the burnt house must save \$100,000 and keep this amount at hand. Now, consider a family where a single saving fund is set up to pay for the burnt houses: it is obvious that not all houses will burn down, since there is only a 1 in 1,000 chances for each one every year⁴. For instance, considering a family owning two houses with a independent risk of fire, while there is a 1 in 1,000 chance that every house will burn, the chance that both burn is a mere 1 in a million (= 1,000 x 1,000). 1 in a million is negligible; it is the level of safety usually sought for critical devices such as nuclear plants or airliners, since it is the smallest risk we can meaningfully ascertain. Hence, if the family owns two houses, it is likely that at most 1 fire will be experienced, hence one half of the amount required to buy back a house can be saved. Above 30 houses there is mathematical device (the central limit theorem) to compute the number of houses that will burn with a less than 1 in a million chance. The following table shows how much one need to save to be thus *almost sure* to replace the burnt house. As we can see, this amount is decreasing as the number of houses (or people in the family owning a house, or "insureds") grows. This is basically the kind of actuarial mathematics performed by actuaries.

⁴ It is important here to note that the risks must be 'independent' (from a statistical point of view). As a counter example, if all the houses are packed together, it is likely that a fire in one will light up the neighboring ones, and lead to greater damage. Now, if we consider houses distant enough to avoid fire contagion, the actuarial calculus enables us to compute the amounts provided in the table.

One can object here that 1 in a million is still too risky: choosing a higher level of confidence only raises slightly the price of insurance. For a 1 in 10,000,000 chance not to be able to pay back, every member of a 1,000,000 houses family would have to save \$115.1, for 1 in 100,000,000, necessary saving would increase to \$116.5. Hence, in a large *mutuality*, the amount to be saved increases slower, than the order of magnitude in certainty.

Another argument is that there is *nothing comparable to certainty*; hence there would be a radical difference between the first column (1 house) and the following ones. Remember probabilities are just a way to represent and compute uncertain things. A single house owner could experience repeating fires, but even a very prudent man would rule out this possibility *under normal circumstances*. This is just to illustrate that, at some point, we all neglect the possibility of very unlikely events, a consequence of the (controversial) Cournot's Principle (Shafer G. 2007. From Cournot's Principle to Market Efficiency, in Touffut ed., *Augustin Cournot: Modelling Economics*, Elgar.).

Number of houses	1	2	30	1,000	30,000	1,000,000	∞
Advance saving per house	\$100,000	\$50,000	\$3,334	\$600	\$180	\$113.5	\$100
Advance saving per million house	\$100,000,000,000	\$50,000,000,000	\$3,334,000,000	\$600,000,000	\$180,000,000	\$113,500,000	\$100m

From a more general point of view, infinity is not within our reach: very rare events, which would happen with an infinite number of trials, for the same reason a mutuality cannot have an infinite number of members. The table nevertheless contains a column figuring an infinite sign:

This is just to say that the amount necessary to save will ever decrease as the mutuality becomes larger, but the decrement becomes indefinitely small.

Zakāh

The capacity to bear the losses varies from individual to individual. Individual wealth and income are the most important determinants of this capability. Islam is a religion which places utmost importance to protect the weaker members of the society and to meet their basic needs. It has a large number of institutional arrangements to do that. The most important of these is Zakāh (compulsory charity). The details of this institution are well-known and there is no need to repeat them here. We will only like to note that covering risks and adversities falls within the purview of the eight categories on which zakāh money can be spent.

3.2 Type 1 Charity - Tabarru‘

Tabarru‘ is a one way transfer of value from one party to another. **There must not be any *quid pro quo***. The donor expects a reward only from Allah (SWT). It is disallowed even to keep an expectation of return from the recipient of the donation. There are many *nusus* supporting this which are given in Annexure-1. Here we quote one verse and one Ḥadīth.

وَلَا تَمُنُّنَّ تَسْتَكْبِرُ

“Do not bestow a favor, expecting (from the other party) more in return” [74:6]

Ibn 'Abbas :narrated The Prophet said, "He who takes back his gift is like the one who swallows his vomit". [Sahih Muslim:1625]

There are many contracts of this kind such as hiba (gift), general donations in cash or kind, etc.

[More details will be given in the paper after the Seminar in due course of time]

3.3 Type 2 Charity-*Manīḥah*

Manīḥah is another charitable institution in the Islamic system. **The difference between *tabarru‘* and *manīḥah* is that in case of *tabarru‘*, the ownership of the subject matter is transferred to the recipient. In case of *manīḥah* the ownership of the subject matter remains with the donor.** The recipients can enjoy some or all of the benefits arising from the subject matter for a certain period of time. The donor may also impose some conditions with respect to the subject matter of *manīḥah* upon the beneficiary, such as taking good care of the

subject matter. The scope of *manīḥah* is very wide. Muslims are encouraged to grant usufruct rights to others generously; especially when the subject matter is not in their usage (fully or partially; for a short period or long one). The type of assets, the usufruct of which can be granted to others is very wide, ranging from a free ride on one's car to free tenancy rights for hundreds of hectares of land.

Here we quote only three Ahādīth while many more are given in Annex 1.

عَنْ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: "أَتَدْرُونَ أَيُّ الصَّدَقَةِ أَفْضَلُ؟"، قَالُوا: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: "الْمَنِيحَةُ، أَنْ يَمْنَحَ أَحَدُكُمْ أَخَاهُ الدَّرْهَمَ، أَوْ ظَهَرَ الدَّابَّةِ، أَوْ لَبَنَ الشَّاةِ، أَوْ لَبَنَ الْبَقَرَةِ"

Abdallah narrated that Prophet (SAAW) enquired: “do you know which kind of charity is the best?”; we said, “Allah and His Prophet (SAAW) know better. Then the Prophet (SAAW) said: “granting the right of using his dirham, or rideable animal (mean of transport) or milk of goat or cow”.

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كَانَتْ لِرِجَالٍ مِنَّا فُضُولُ أَرْضِينَ، فَقَالُوا: نُؤَاجِرُهَا بِالثُّلُثِ وَالرُّبْعِ وَالنِّصْفِ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَرْضٌ، فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أَبَى، فَلْيُمْسِكْ أَرْضَهُ»

Jabir narrated: Some men had superfluous land and they said that they would give it to others to cultivate on the condition that they would get one-third or one-fourth or one half of its yield. The Prophet said, "Whoever has land should cultivate it himself or give it to his brother or keep it for himself”.

In another rendition of the same hadith it is stated:

عَنْ جَابِرٍ، قَالَ: سَمِعْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: "مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَهَبْهَا، أَوْ لِيُعْرِهَا"

Jabir said he heard the Prophet (SAAW) saying: “Whoever has (extra) land should give it to his brother as a gift or for temporary use (keeping its ownership with him).

Before moving to the next section, it may be useful to mention that in the Islamic theory of contracts, *mu'āmalāt* (contracts that govern the relationship among mankind), are “broadly” speaking, divided into two main categories: (i) *mu'āwadāt* (compensatory/exchange) and (ii) *tabarru'āt* (charitable). The governing principle in compensatory (exchange) contracts is “Value-Equivalence”, i.e., parites consider the “value” being given and taken is equal. In case of charitable contracts the governing principle is that it *must* be one-way transfer of value.

This is a useful categorization. However, like any generalization, all contracts cannot be put in either of the two boxes. There are notable exceptions. The most relevant for Islamic finance is

the contract of loan. It has elements of both *mu'āwaḍāt* and *tabarru'āt*. Giving a loan is *tabarru'* because the creditor allows the borrower using the money without getting any benefit in return. However, it is not 'pure' *tabarru'* because a *quid pro quo* is involved. The borrower guarantees to return the principal to the creditor. The ownership transfers to the borrower in the beginning and back to the creditor at the end of the contract. We will use this distinction later in our analysis of various models of insurance.

3.4 Cooperative Arrangements (Mutuals)

Cooperative contracts (mutuals) are distinguished from *tabarru'* contracts by the fact that a *quid pro quo* is *necessarily* involved. The two parties “mutually” benefit from each other. They are distinguished from commercial contracts by the fact that the governing spirit of mutuals is care and cooperation while in the case of commercial contracts the driving force is the profit motive. Islam does not disallow profit motive and most trade contracts are based on that. However, it disallows all exploitative practices and encourages care and cooperation. It is a fact of life that the human greed, quite often, turns the profit-motivated contracts into exploitation of the weaker party. Therefore, Islam prescribes behavioral changes to stop all kinds of exploitation.

[More details will be given in the paper after the Seminar in due course of time]

3.5 Commercial Insurance

This is the most widely used contract for insurance. It falls in the category of *mu'āwaḍāt*. Since most of the controversy in the field of insurance relates to this type, we will evaluate this contract in some detail in section 5.

3.6 Government Support

The state has a role to meet all needs of its citizens. Since, insurance has become a vehicle of providing many basic needs; several governments have started providing insurance coverage for health, life, unemployments etc., on regular basis and natural disasters when they occur. This falls in the general category of “social safety nets”, the pros and cons of which are well-known. Therefore, we will not dwell on this further at this point.

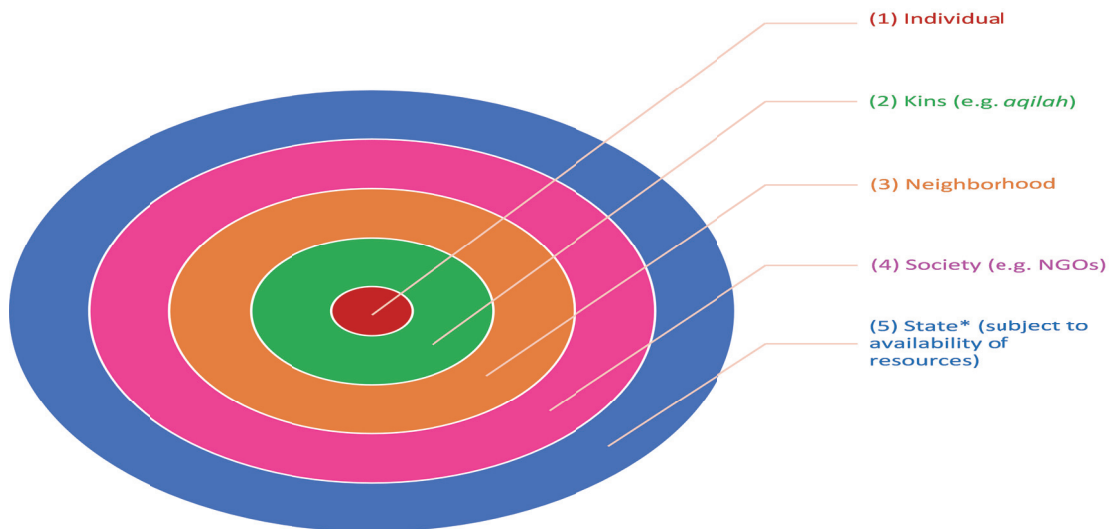
In case of huge catastrophies, international help is also needed. In this respect following facts are to be noted:

1. There are many International NGOs that play important role in such situations. Just to give two examples:
 - i) International Islamic Relief Agency based in Saudi Arabia
 - ii) Médecins Sans Frontières (Doctors Without Borders) which was awarded Nobel Prize for Peace in 1999.
2. Fraternal governments also provide help.
3. There are international “conventions” which oblige signatories to provide help. One such example is: the Paris Convention on Third Party Liability in the Field of Nuclear Energy (1960) supplemented by the Vienna Convention on Civil Liability for Nuclear Damage (1963).

[More details will be given in the paper after the Seminar in due course of time]

It may be instructive to note here that in an Islamic system there is a hierarchal structure for meeting *any* need. This is shown in the following figure:

Five Echelon-Structure for Meeting Needs



* State should play promotional/regulatory role in all. echelons.

** In case of huge catastrophes, International Relief Agencies, Governments and Agreements need to come into action.

There is a parallel in Western societies for this type of hierarchal structure of responsibility called the “Subsidiarity Principle”. Subsidiarity is a very old idea, which coincidentally is linked with the early beginnings of collective risk mitigation devices (CRMD⁵). The earliest known use of CRMD is the Code of Hammurabi (Mesopotamian King, 1754BC), which introduces different techniques for different uses (mainly: risk of being kidnapped for ransom by the enemy, profit and loss sharing in agricultural and commercial partnerships). Mitigation of kidnapping risk, as it is linked to the Kings’ service, introduces an interesting variant of subsidiarity or echelon-structure:

“If a man on a mission ordered by the King is captured by the ennemy, and a merchant pays his ransom, and brings him back to his place; if he have the means in his house to buy his freedom, he shall buy himself free: if he have nothing in his house with which to buy himself free, he shall

⁵ CRMD is a term meaning almost the same as insurance. Commercial insurance is the most well-known CRMD but not the only one. We will mention some other exiting models and propose new model/arrangements for providing insurance coverage.

be bought free by the temple of his community; if there be nothing in the temple with which to buy him free, the King's palace shall buy his freedom. His field, garden, and house shall not be given for the purchase of his freedom”

Although instances exist in the Western history (such as the communal movement in the Roman Empire), the explicit *principle of subsidiarity* was theorized only recently, at the beginning of the twentieth century. As stated in Pope Pie XI's *Quadragesimo Anno* (1931): “It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry.” (*Quadragesimo anno*, 79)

The main contributors to the expression of the principle of subsidiarity were catholic German philosophers, mainly Oswald von Nell-Breuning, although there are English-speaking and (dutch-speaking) protestant counterparts [the is stated as ‘(own) sphere sovereignty doctrine’ or *souvereiniteit in eigen kring*].

While not explicit at its beginning (in 1950), the doctrine of subsidiarity has become a building block of the European Union. For instance, in the Treaty of Lisbon version: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

4. The Essence of Insurance: Basic Concepts Explained

1 It is a contract of indemnity

Insurance is a contract of indemnity. The principle of indemnity dictates that the insured be compensated for a loss (say of property in case of property insurance), but not paid more than what the property was worth. For example, a lender who grants a mortgage on the security of a house has an “insurable interest” in that house, but only up to the amount outstanding on the loan. This is known as the “Principle of No Enrichment”

[More details will be given in the paper after the Seminar in due course of time]

2 It is based on “Law of Large Numbers”

With the advancement of knowledge, what is not measurable for an individual, may render itself to measurement for a group, though approximate. This was made possible by what is called the “Law of Large Numbers”. This law, basically belonging to the theory of probability, states that the *average* of outcomes obtained from a large number of experiments should be close to the *expected average value*, and will tend to become closer to this average as more experiments are performed. It is this law which is at the back of insurance contract. With the help of actuaries, insurance companies can approximate the risk of a particular mishap and hence the size of the “Indemnity Fund”.

[More details will be given in the paper after the Seminar in due course of time]

3 The Principle of “Insurable Interest”

Insurable interest, in turn, exists only when an insured person derives a financial or other kind of benefit from the continuous existence, without impairment or damage, of the insured object (or in the case of a person, their continued survival). A person has an insurable interest in something when loss of or damage to that thing would cause the person to suffer a financial or other kind of loss. Typically, insurable interest is established by ownership, possession, or direct relationship. For example, people have insurable interests in their own homes and vehicles, but not in their neighbors’ homes and vehicles.

[More details will be given in the paper after the Seminar in due course of time]

5. Assessment of Different Models of Insurance

In this lecture we will briefly present a comparative assessment of three models of insurance (i) Commercial insurance (ii) Cooperative or mutual insurance (Western Model) (iii) *Takāful* (including Islamic model of cooperative). In the next section we will present some new ideas. These are still in the form of “work in progress”. We present these to get feed back and then work on those to see what can emerge from these to meet the insurance needs of all citizens which as stated has become a *necessity* now.

Sharī‘ah has prescribed “Broad Principle⁶” to evaluate ANY contract to check whether its ‘*halāl*’ or ‘*harām*’. Those principles will be briefly explained and used to check “Sharī‘ah-Compliance” of any insurance model.

5.1 Assessment of Commercial Insurance⁷:

This is the most prominent model practiced in contemporary world including Muslim countries. Is Commercial Insurance Permissible in Islam? Many Sharī‘ah scholars have raised objections against the commercial insurance model. Before evaluating those objections, we have to understand the basics of the conventional insurance contract and practices to see if they violate any Sharī‘ah principles. Conventional insurance companies are generally classified as either *mutual* or *stock* companies. Mutual companies are owned by the policyholders, while stockholders, (who may or may not own policies) own stock insurance companies. In this section we evaluate the Stock Commercial Insurance Model. Mutuals will be discussed later.

Commercial insurance companies are profit-based. They make money in two ways: (i) through *underwriting*, the process through which insurers select what risks to insure and decide how much premium to charge for accepting those risks and (ii) by investing the premiums they have collected from the insureds.

The most difficult aspect of the insurance business is the underwriting of policies. Based on a wide assortment of data, insurers predict the likelihood that a claim will be made against their policies and price products accordingly. To this end, the industry uses actuarial science to quantify the risks they are willing to assume. Data is analyzed fairly accurately to project the rate of future claims based on a given risk. Actuarial science uses statistics and probability to analyze the risks associated with the range of perils covered. These scientific principles are used to determine the insurers overall exposure. At the end of a given policy, the amount of premium collected minus the amount paid out in claims is the insurer’s *underwriting profit*.

Insurance companies also earn *investment profits* on ‘*float*’. Float is the amount of money, at-hand at any given moment that an insurer has collected in insurance premiums but has not been paid out in claims. Insurers start investing premiums as soon as they are collected. This

⁶ Please see Iqbal, Munawar (2012) for further details.

⁷ This section heavily depends on, Iqbal, Munawar (2007) but has been further developed.

investment is normally undertaken on the basis of fixed interest rates. Insurance companies keep earning interest on pooled premiums until claims are paid out. Total profit of an insurance company is thus equal to:

Profit = Earned Premium + Investment Income - Claims Paid Out - Overhead Expenses.

Assessment of Commercial Insurance from a Shari‘ah Perspective:

The major objections against commercial insurance occurring in the writings of the opponents of commercial insurance and our assessment of their arguments is given below.

(I) Practice of insurance is against the concept of *tawakkul* (Trust in Allah)

Argument: A believer is expected not to feel depressed if something undesirable happens to him; rather he should take it in his stride in the spirit of submission to the Will of Allah. Insurance is against this spirit.

Counter Argument: *Tawwakul* does not mean that one should not try to remove perils or take steps to prevent accidents. Nor does it necessarily follow that he may not take intelligent measures for the reparation of likely losses in the event of any accident or calamity befalling him. Taking preventive measures and arranging beforehand for compensation for likely losses involved in cases of natural risk, whether done individually or collectively, is absolutely compatible with the belief in predestination and submission to the Will of Allah.

This is the right inference from an understanding of the practice of the Prophet (SAAW), his Companions and earlier generations of pious Muslims. It does not, moreover, make any difference whether the threat is to property, or to a person’s health and efficiency or his life. In the support of this inference the following evidence can be presented:

- (1) Someone asked: “O Messenger of Allah, shall I tie it (my camel) and trust in Allah or leave it untied and place trust in Allah”? He said: “Tie it, then trust in Allah”. [Sunan Tirmidhi: 2517]
- (2) The Prophet (SAAW) said, "Cover your utensils and tie your water skins, and close your doors and keep your children close to you at night, as the Jinns spread out at such time and snatch things away. When you go to bed, put out fires, for the

mischief-doer (e.g. a rat or similar animal) may drag away the wick of the candle and burn the dwellers of the house." [Sahih Bukhari: 3316]

Ata said, "The devils." (instead of the Jinns). A Hadith mentioned later, implies this may mean "evils" (mosquitoes, flies, etc. that can cause epidemics).

(II) Insurance involves gambling

Argument: Due to the element of 'chance' in all insurance contracts, some Islamic scholars hold that insurance business is a form of gambling which is prohibited in Islam.

Counter Argument: The element of 'chance' emerges from the nature of risk. All risks that one faces in life are not of the same kind. As explained above, a distinction must be made between three types of risks, viz: ordinary risks; speculative risks; catastrophic risks.

First, type of risk is part of normal course of business. Every economic activity involves uncertainty that generates risks. Some agents, called entrepreneurs take those risks. An enterprising person may make a profit or incur a loss in business. However, the fact that the society always has such enterprising people is testimony to the fact that, by and large, profit outweighs loss. Willingness to take such risks does not imply any moral evil. Rather, it is a need that no society can do away with. Islam recognizes it. It rather encourages such risk taking. A well-known principle of business contracts in Islam is: 'entitlement to profit is contingent upon liability of taking some risk'

The second type of risk which is also part of life arises from the possibility of occurrence of natural disasters and calamities. This is called 'pure risk', risk of loss without any hope of profit. People throughout the history have sought ways and means to protect themselves from the pure risk. It is this type of risk that is the essence of insurance. Islam encourages its followers to take precautionary and protective measures against such risks as mentioned in the two Aḥādīth reported above. Another is quoted below.

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، يَقُولُ: "عَطُّوا الْإِنَاءَ، وَأَوْكُوا السِّقَاءَ، فَإِنَّ فِي السَّنَةِ لَيْلَةً يَنْزِلُ فِيهَا وَبَاءٌ، لَا يَمُرُّ بِإِنَاءٍ لَيْسَ عَلَيْهِ غِطَاءٌ، أَوْ سِقَاءٍ لَيْسَ عَلَيْهِ وَكَاءٌ، إِلَّا نَزَلَ فِيهِ مِنْ ذَلِكَ الْوَبَاءِ"

Jabir b. 'Abdullah reported Allah's Messenger (may peace be upon him) as saying: Cover the utensils and tie the water-skin, for there is a night in a year when epidemic descends, and it does

not pass an uncovered utensil or an untied water-skin but with some of stuff causing that epidemic (virus) falling into it. [Tirmidhi:2516]

The third type of risk arises from uncertainties that are not part of everyday life. They arise from various types of ‘games’ that people create for themselves. These risks are unnecessary. They are unnecessary for the individual in the sense that if someone chooses not to participate in these ‘games’, he will face no such risk. They are also unnecessary for the society in the sense that they do not add any economic value to the wealth of the society.

It is the third type of risk that is the essence of gambling which is prohibited by Islam. As to the other two types of risks, both are a natural part of everyday life and must be reckoned and dealt with.

One could be tempted to think that gambling is no different from insurance as basically it looks the same to buy a ticket that gives a one in a million chance to win a prize and to pay a premium, which apparently offers the same prospect. The difference of course is in the *indemnity principle*: the insurance will pay only to refund a damage incurred, with no possibility to enrich through insurance. While gambling and insurance can be connected when insurance operators are not properly monitored (they could thus appeal to gambling instincts), there is now a clear distinction between both activities.

One question is why some States do tolerate gambling, which has many unpalatable side effects:

- some people experience gambling addiction, which can lead to ruin and it is not even excessive to say that problem gamblers would sell their children to continue gambling. See e. g. Dostoevsky, *The gambler*.
- gambling is an easy way to launder money which has been earned in unlawful ways. An indirect proof is that, since the Chinese PM has begun to tackle corruption, the turnover of casinos in Macau shrunk by more than 50%.
- fixing gambles is a very convenient activity for criminals, with much less risk than violent criminality. See for instance (on sports bets) Hill D., *The Fix: Soccer and Organized Crime*, McClelland & Stewart. April 13, 2010.

All these negative externalities should deter governments from offering or authorizing gambles. Since the Middle Ages, a limited form of gambling was authorized to fund public utilities (first known example : lottery is Sluis, Netherlands, in 1445 to fund the building of a new city gate). While there have been many attempts to terminate gambling, the Western government have indulged since the late 60's to a spree of gambling madness in order to collect taxes. On this matter see, Sauer, R. D. (2001), The political economy of gambling regulation. *Manage. Decis. Econ.*, 22:5–15. doi:10.1002/mde.996

Rose IN. 1991. The rise and fall of the third wave: gambling will be outlawed in forty years. In *Gambling and Public Policy: International Perspectives*. University of Nevada, Eadington WR, Or, for the most recent figures, Pradier P. C. 2015. Political Economy of Gambling. <https://finethics.hypotheses.org/>

(III) Insurance involves *ribā*

Arguments: Two arguments are advanced in this respect. (1) Insurance contract inherently entails *ribā* as the insured is promised an amount far in excess of what he will have deposited in installments before the occurrence of any accident.

(2) A big portion of profit of the insurance companies comes from interest income that they earn by investing the money collected through premiums.

Counter Arguments: (1) This opinion is based on the assumption that every incremental payment is *ribā*. This is an incorrect assumption. By definition, *ribā* (interest) relates to a contract of debt. Money paid as premium is not in the nature of a debt, and the payment of a claim does not amount to returning the debt with an incremental amount that may be considered *ribā*. The premium must be considered as the price of a service to be rendered. Furthermore, as against the interest-bearing loans, the amount of claim money received by the insured depends neither on the time period nor on the total money deposited in premium payments at the moment of occurrence of any accident. The amount actually depends on the extent of financial loss incurred in consequence of the accident. Therefore it does not have any constituent of *ribā*. (2) This is true that as practiced, a significant portion of the income of insurance companies comes from interest earned on investment of the float. Hence, such insurance business is unacceptable from an Islamic point of view. However, the factor of interest income enters into the insurance

scheme only *incidentally* at the point when the capital is to be profitably invested. It is not part of the insurance contract. Therefore, the contract cannot be declared void on the basis of this argument. However, **the practice needs to be corrected**. An Islamic insurance company needs to find avenues which do not involve interest for productive utilization of float money.

(IV) Insurance involves *gharar*

Arguments: The particular event against which insurance is bought is uncertain in many respects. The parties to the contract do not know at the time of contract, when the event will occur and whether it will occur at all. The insured person does not know at the time of contract how much compensation he will get because it depends upon the magnitude of loss due to the unpleasant event which is the subject matter of the contract. In other words there is uncertainty about what the insured person buys with the premium. The insurance company also does not exactly know how much money it will collect in premiums and how much it will pay out as compensation.

Counter Arguments: There is no doubt that insurance contract involves some *gharar*. However, jurists make a distinction between two kinds of *gharar*: *gharar fahish* (substantial) and *gharar yasir* (trivial). The first kind is prohibited while the second is tolerated⁸ since this may be unavoidable without causing considerable damage to one of the parties. In many cases, it is simply not possible to avoid uncertainty.

This is true that the insured person does not know how much compensation he will get because it depends upon the magnitude of loss due to the unpleasant event against which insurance policy is bought. This is also true that the parties to the contract do not know when the event will occur and whether it will happen or not. However, the “*illah* (rationale behind a ruling)” behind the prohibition of *gharar* is to avoid *post-facto* conflicts between the contracting parties. That is not the case in insurance contracts of this kind. Take the example of car-insurance. The insured person drives the car throughout the year. If he does not come across any accident, he can make no claim against the company and thus his premium money is kept by the insurance company. On the other hand, if he comes across a serious accident involving loss of life and property, the company covers all damages and compensations that need to be paid

⁸ Some schools of fiqh allow both types of *gharar* in *tabarru'āt*. Takāful models insurance use this permission in designing those models.

thereby saving him from the bad consequences of the event. But if nothing happens he is happier, because he does not have to contend with any misfortune. One may argue that a disagreement may arise between the insured and the insurer with respect to the amount of damage and hence the amount of compensation. We must however, note that the calculation of damages has been made near exact due to the presence of professional estimators. Moreover, the insurance contract is an *uberrima fides* (utmost good faith) contract. This means that all parties to an insurance contract must deal in utmost good faith, making a full declaration of all material facts. Under utmost good faith contracts if there is a violation, it is categorized as a material misrepresentation, a breach of a warranty, or concealment. In all such cases, contract enforcement, monetary damages or both may be claimed through courts.

In the case of an insuring agency the amount of money that it will receive from and give to the group of insured persons can be determined fairly exactly. This certainty is based on the law of large numbers which constitutes the basis for the calculation of premium rates and claims. Chances of error in these calculations are very slim. This would, at worst, involve *gharar yasir* which is not prohibited. **Some scholars have argued that in one sense, insurance actually decreases *gharar*. It turns an *unknown* cost for pure risk that everyone has to somehow manage, with a *known* cost of insurance, the premium to be paid.**

Just for the sake of argument, let us agree that the contract does involve *gharar fahish*. We believe that in the contemporary world, insurance of many kinds have become necessary. In many cases it has been made compulsory by governments. Even though *fuqahā'* who are against insurance, agree that once it is made compulsory by the governments, Sharī'ah obliges the individuals to abide by the law. We argue below that the Islamic alternative (*takāful*) being proposed is not "Sharī'ah-compliant". On this basis, until a Sharī'ah-compliant model is found, the presence of *gharar fahish* in insurance contracts becomes palatable.

More importantly, we believe that in the contemporary world, buying insurance has become a necessity. With no Sharī'ah-compliant alternative, yet available, "the Doctrine of Necessity", which is a well-known exception to general rules is applicable in this case.

We reiterate that this is *only* for the sake of argument. Otherwise, we agree with those scholars who believe that by collective estimation the element of *gharar* is minimized.

(V) Insurance involves *akl al māl bil bāṭil*

Arguments: (1) A Qur'ānic verse commands: "O you who believe! Do not devour your property among yourselves wrongfully, except that it be trading by your mutual consent" [Qur'ān 4: 29]. Now 'trade' is defined to be exchange of 'māl' with 'māl'. In an insurance contract the insured person pays the premium (which is *māl*) but what does he get in return? If the event did not happen, he can make no claim against the company and thus his premium money is wasted without any material benefit occurring to him. This amounts to *akl al māl bil bāṭil*. (2) One of the conditions of a genuine trade contract is that the delivery of the sold commodity to the buyer must be certain and should not depend on a contingency or chance. For example if A sells his car stolen by someone and the buyer purchases it under the hope that A will be able to find it; the sale is void.

Counter Arguments: Some scholars have pointed out that in an insurance contract what a person buys when he seeks insurance cover, is not the amount of compensation he receives when something happens to him or to his property. The money he receives goes towards meeting the consequences of the event. He does not get anything "net". This is what has been stated above as the "No Enrichment Principle". What he buys in fact is the peace of mind arising out of the sense of security and piece of mind that insurance against an event offers⁹. Though intangible, this is a definite return for the money he pays.

Some other scholars do not agree with this defense. They argue that the buyer of the policy does not buy the peace or security by the premium he pays; instead, he buys the amount of insurance. This is clearly indicated in the contract. The contract specifies that the premium is price for amount of compensation. It does not refer to peace or security as consideration of premium. This goes without saying that human emotions are not tangible property which is sold or purchased. No one can promise the other that he will provide him pleasure, peace of mind or tranquility. This is an undertaking which the undertaker is unable to fulfill.

This argument is in turn refuted. Human emotions may not be tangible property, but the Islamic definition of 'māl' which can be bought and sold may include intangibles. Examples are property rights, business goodwill and so on. People are willing to spend money for having security. They employ security guards, burglary alarms, hidden cameras etc. If security has 'value' and if anything having 'value' is considered 'māl', which is the case; then security can

⁹ Zarqa, Mustafa (1962).

form the basis of payment of premiums in an insurance contract. **The fact that the present insurance contracts do not mention security as the subject matter is not important in principle. It is implied, but can easily be made explicit.**

(2) The second objection also loses weight if we agree that what the insuree is paying for is the peace of mind arising from the sense of security. In that case, the moment one buys the insurance policy, the peace of mind is ‘delivered’ to him. The moment I buy car insurance, I get out of the fear that I may make an accident and be liable to make payments for the loss of life and property as a result of that accident which could have very seriously implications for me and my descendants..

(VI) Insurance violates Islamic law of inheritance

Argument: In life insurance, companies pay amount of policy (the sum covered) to the nominee(s) of deceased policy-holder instead of all the legal heirs, which is a violation of Islamic law of inheritance.

Counter Argument: The current practice is indeed incorrect but it can be easily amended. The amount given in case of sudden death must form part of the wealth of the deceased and Islamic rules of handling wealth of a deceased person must be applied. These are not only the rules of inheritance. These include payment of debts of the deceased, if any; implementation of the deceased’s will (to the extent it complies with the Islamic rules of *wassiyah*) and *then* applying the Islamic rules of inheritance, *in that order*.

This is very easy to solve. In the insurance contract someone from the family may be nominated as the beneficiary as a “wakeel (agent) with express condition that after receiving the money from the insurance company, he will distribute to according to the rules applicable to the wealth of a deceased.

This particular subject can be complicated by tax law (i. e. for Muslim living in the West). Ezzedine Ghlamallah made an interesting contribution on this subject to show how provision of life insurance contracts can be used to *reverse* the non-muslim inheritance law of Continental Europe and comply with Islamic law through life insurance.

Ghulamallah E. 2014. Conformité au droit musulman et au droit français, question(s) d'articulation(s): l'exemple de la clause bénéficiaire. *Les cahiers de la finance islamique*, 7, 119-130.

Conclusion on Commercial Insurance:

The issue is still being debated. At present a majority of Islamic economists including the present author tend to allow an insurance contract, modified in the light of the arguments mentioned above. However, many Islamic jurists are against it. Therefore, an Islamic alternative under the generic name of *takāful* has emerged. That is discussed in the next section.

5.2. Assessment of Mutuals

If we use the same criticisms as on commercial insurance, i.e.

- Is mutual insurance against *tawakkul*?
- Does mutual insurance involve gambling?
- Does mutual insurance involve *ribā*?
- Does mutual insurance involve *gharar*?
- Does mutual insurance involve *akl al māl bil bāṭil* ?
- Does mutual insurance violate Islamic law of inheritance?

While the first point makes no difference with commercial insurance, there is some difference for the rest. While commercial insurance implies a contract between a customer and a company, and this contract is basically a zero-sum game, mutuality is not distinct from its members. Hence, in mutual insurance, it is pointless to think of 'buying an insurance' as 'buying a lottery ticket', what matters is the prospect faced by the mutual community (or mutuality). In this respect, there is no gambling, nor *ribā*, nor *gharar*, nor *akl al mal bil bāṭil* in mutuality since mutuality pays to indemnize damage occurring to mutuality.

This is for the principle. Now the law usually arranges mutuality as a legal entity distinct from the members thereof, hence one could argue that the difference between mutuality and commercial insurance is *formal*. It must thus be remembered that mutuals are not joint-stock companies controlled by shareholders with limited liability but partnerships controlled by their members with unlimited liability. This means that, contrary to commercial insurance, the insureds are both the decision-makers and the payers (they do not just pay a premium in advance,

they are amenable to *supplementary member calls* in case the premium paid *ex ante* are not enough to cover indemnification of members). This effectively rules out gambling, ribā, gharar and akl al mal bil bāṭil.

The so-called Islamic Insurance model based on co-operation can learn a lot from the Western experience of mutuals because of the similarities between the two on conceptual level.

[More details will be given in the paper after the Seminar in due course of time]

5.3. Assessment of *Takāful*¹⁰

Takāful means mutual taking care of one another. Many Islamic scholars are of the view that while there is nothing wrong in seeking protection against sufferings nobody should make a profitable business out of the sufferings that naturally befall humanity. This has led to the development of Islamic insurance called *takāful* insurance. It is based on mutual cooperation in seeking protection against pure risks.

Three Islamic concepts provide the basis for *takāful* insurance. First is that Islam encourages Muslim to cooperate in all good deeds. Allah commands "Help ye one another in righteousness and piety" [Qur'ān 5:2]. The second is the concept of *al-'aqilah*, which literally means near of kin and technically refers to a tribal custom. According to this custom if any member of the tribe killed someone unintentionally, he was required to pay blood money, which was normally beyond the means of a single person. Therefore, the whole tribe would contribute towards its payment. Islam accepted this principle of reciprocal compensation and joint responsibility. Proponents of *takāful* insurance argue that people similarly exposed to some risk, car owners, can be considered to form an "*'aqilah*" and hence mutually indemnify one another.

The third is a specific form of cooperation called "nahd"

عَنْ أَبِي مُوسَى، قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ الْأَشْعَرِيِّينَ إِذَا أَرْمَلُوا فِي الْعَزْوِ، أَوْ قَلَّ طَعَامُ عِيَالِهِمْ بِالْمَدِينَةِ جَمَعُوا مَا كَانَ عِنْدَهُمْ فِي ثَوْبٍ وَاحِدٍ، ثُمَّ أَقْتَسَمُوهُ بَيْنَهُمْ فِي إِنَاءٍ وَاحِدٍ بِالسَّوِيَّةِ، فَهُمْ مِنِّي وَأَنَا مِنْهُمْ»

Narrated Abu Musa :

¹⁰ This covers both *takāful* and cooperative insurance models being presented as an Islamic alternative. In Islamic literature they are often used as alternatives.

The Prophet said, "When the people of Ash'ari tribe ran short of food during the holy battles, or the food of their families in Medina ran short, they would collect all their remaining food in one sheet and then distribute it among themselves equally by measuring it with a bowl. **So, these people are from me, and I am from them.** [Emphasis added by us]"

Nahd means pooling funds/materials by members of a group and making use of the pool as per the need of a member of the group without any regard of his contribution to the pool. [For example, travel companions may pool and then share the expenses of the journey even if the distribution is unequal.

It is obvious that simply replacing the commercial insurance contract with *takāful* contract cannot remove the uncertainties (*gharar*) in life. However, they are made palatable by splitting the premium into two portions, an investment portion and a *tabarru'* (donation) portion. The second portion being charitable is not subject to the laws of commercial contracts and *gharar* can be tolerated. This part is used for mutual indemnification of the policy holders. (Thus, removing the objection of *gharar* in conventional contract). The whole amount received in premiums is invested but unlike conventional insurance non-interest avenues of investment are used. Thus, removing the objection of *ribā* in the conventional insurance contract.

Presently three basic models of *takāful* are operational in different regions. These models are;

- i. *Muḍārabah* model
- ii. *Wakālah* model
- iii. *Waqf-Wakālah* model

The basic difference exists in the nature of contractual relationship between the *takāful* company and the participants. The management of *takāful* business is almost same in different models with only some minor variations. Therefore, we will not go into detailed explanation of these models here.

A general *takāful* company has in general the following features:

- The company is not the one who assumes risks or the one taking any profit. Rather, it is the participants, the policy holders, who mutually cover each other.

- All contributions (premiums) are accumulated into a fund. This fund is invested using Islamic modes of investment and the net profit resulting from these investments is credited back to the fund.
- All claims are paid from this fund. The policy holders, as a group, are the owners of any net profit that remains after paying all the claims. They are also collectively responsible if the claims exceed the balance in the fund.
- The relationship between the company and the policy holders is governed by the terms of either a *muḍārabah* contract or a *wakālah* contract. In the former case, should there be a surplus from the operations; the company (*muḍārib*) will share the surplus with the participants (*rabb-al-māl*) according to a pre-agreed profit-sharing ratio. In the latter case, the company charges a fixed fee for running the business and has no share in the profit. In both cases, if there is a net loss, policy holders may be called upon to make additional contributions. However, in practice *takāful* companies build reserves from undistributed profits in good years to cover for bad years.

A *takāful* company earns income from two sources: the return on shareholders fund and *wakālah* fee which is charged upfront from the contributions. Under *Wakālah* model, the *Wakālah* contract is used for managing the *takāful* underwriting operations while the *Muḍārabah* contract is adopted for investment of the Participants *Takāful* Fund (PTF).

In the event of loss or deficit in the PTF, the participants may be requested to pay higher contributions however; in practice the *takāful* operator provides an interest free loan (*qard ḥasan*) from the shareholders fund to cover the shortfall. The loan will be repaid from the future contribution.

Shari‘ah-compliance Issues in *Takāful* Model of Insurance

There are several issues of Shari‘ah-compliance in the *takāful* model. Briefly, these are:

- In principle, *takāful* is claimed to be based on *tabarru‘*, but the model violates the basic principle of *tabarru‘* contracts stated above that *tabarru‘* is a one-way transfer of benefit. Even an expectation of return benefit violates this principle.
- If the spirit is that of mutual cooperation, then the pricing of a *takāful* contract cannot be based on extent of coverage. The premium should be determined by the ‘ability-to-pay’

principle. That is a poor person will pay less than a rich person, yet receive the same coverage.

- It has been noticed that in case of health insurance, old people are either not provided insurance coverage, or they are charged higher premiums than younger participants. If the spirit is cooperation and *tabarru*‘, it should be the other way around.
- The distribution of surplus among the participants in proportion of their donation to PTF makes it a conditional gift which is not allowed according to majority view.
- Participants’ ownership rights on the *takāful* fund, although collective, raises the issue of payment of *zakāh* and share of inheritance for the heirs in case of death of a participant during the period of *takāful* cover.
- In case of short fall in the *takāful* fund, the operator undertakes to provide *qard ḥasan* from the shareholders fund which is not correct since a *wakā*l is not a guarantor. Provision of *qard ḥasan* to PTF, which is owned by a group of participants, and recovering that loan some time in future from the donations given by other participants is also questionable.

6. Meeting the Need of Insurance in Contemporary World According to Islamic Principles

Two points are clear to us:

- 1 Insurance is a need that must be provided to all members of the society
- 2 Insurance is a modern contract and it is open for ijtehad as there is no naṣṣ prohibiting this contract.

We will present statistical evidence and arguments that the so-called Islamic alternative whether called *takāful* or cooperative has serious limitations. Some of which have been mentioned above.

We think, that:

- (1) A “Manīḥah-Based” model of insurance will be more in line with Maqāṣid al-Sharī‘ah. We have given the definition and scope manīḥah in section 3. We have also collected several nusus that encourage this, from small daily matters like providing a free car ride to giving right of use of big extracts of land free of charge. The scope is very wide and Prophet’s (SAAW) instructions (especially the Ḥadīth relating to al-asha’ries) give us very clear concept what cooperation “really” means. Based on that the basic features of the Manīḥah-Based model would be that (i) the pricing of the insurance product

(premium) should be based on “ability-to-pay” criterion. That means that a poor person will get the same coverage paying little or no premium that a rich person will get by paying a higher premium. (ii) Similarly, the payment for losses (extent of indemnity) will be based on “ability-to-bear the loss” criterion. That means that a rich person will have a higher “deductible” than a poor person carrying similar policies.

While the model is appealing to us, it has some problems which we will tackle during our research such as free rider and moral hazard.

- Our initial thinking (subject to further refinements learning from comments and discussions) is that in order to handle these and similar other problems, it will be best to organize manṭah-based insurance companies using models similar to SMEs and micro-finance. Specifically, it is envisaged that a franchise-type arrangement whereby small insurance companies may be organized, say at city/village level, where the mutual feelings are the strongest. The “collective” of these insurance units may in turn re-insure with a country-wide mutual based on the same principles.
- We are also suggest a “Hybrid Model” of insurance. The idea behind this model is to combine all Sharī‘ah-compliant means to provide funds for giving insurance services to the individuals. In this respect the five-echelon structure presented in figure 1 will be employed. Each insured person will contribute as much as he can; then the ‘aqilah which may be defined along the lines suggested by Sheikh Mustafa Al-Zarqa will contribute. For example, university teachers in a city may be considered to be an ‘aqilah and form the small unit as described above. Then wealthy members of the society and NGOs may donate to the “Indemnity Fund”. If these sources are not enough for the indemnity fund, then subject to the availability of resources, the state may also contribute to the indemnity fund. It is hoped that by mobilizing all the five echelons the size of the indemnity fund will be sufficient to provide the necessary coverage. However, learning from the early history of the Islamic state and the saying of the Prophet (SAAW) if the insured can still not be fully covered then, they will bear the loss as a test from Allah (SWT) and be patient and satisfied with that. An example for that is the famous Ḥadīth relating to the case when the liabilities of a person are more than his assets, then the creditors get whatever his assets can provide

and they have no further claim.

“It is reported that at the time of Allah's Messenger (SAAW) a man suffered losses in fruits that he had bought and his debt increased. Allah's Messenger (SAAW) told (the people) to give him charity. They gave him charity, but that was not enough to pay his debts in full. Thereupon Allah's Messenger (SAAW) said to his creditors: "Take what is available and you do not have any further claim". [Muslim: 1556]

Western countries, similar arrangements are enforced in case of someone declaring bankruptcy. Since bankruptcies are thoroughly investigated and a comprehensive regulatory mechanism has been developed by Western governments to avoid “Bankruptcy Frauds” (which, by the way are wide spread due to immoral behavior), Muslim institutions can learn from the developments in this field made by Western countries and institutions as well as the huge literature on this subject published in Western media.

[More details will be given in the paper after the Seminar in due course of time]

7. Conclusions:

In the light of our presentation and assessment of various models, we conclude:

- 1 Civilizations learn from each other. Any useful contract prevalent in a non-Muslim society can be “adapted” by “cleansing” it from non-Islamic elements. The example of “adapting” the pre-Islamic *muḍārabah* contract by the Prophet (SAAW) is very instructive in this respect. In the field of covering risks adapting the institution of “‘aqilah” and some other practices is even more important for our research. In modern non-Islamic countries, the use of “mutuals” for insurance purposes may have great potential. [Mutuals are already being used in Muslim countries for various purposes including insurance. There is a huge scope to learn from Western experiences in this respect]
- 2 People may not have heard the name of insurance, but from time immemorial individuals and communities have been taking steps to tackle risks. At the time of the Prophet (SAAW), insurance as a contract did not exist. Therefore, there is no clear text in either Qur’ān or Sunnah to prohibit it. It is a matter which can (and should) be a subject of ijtehad in the light of Maqāṣid al-Sharī‘ah.

- 3 The process of ijtehad with respect to insurance contract(s) is underway since more than 25 years.

[In the full paper, we will comment on some of the fatāwá given in recent years (please see Annex 2) as well as the AAOIFI Standard.]

- 4 We argue that insurance coverage has become a need which must be fulfilled. Various models of insurance available, whether in Muslim or non-Muslim countries may have useful elements. Each model also has negative aspects. Both have been mentioned briefly. In our view, there is no need to stick to a single model. Any model, after making sure that it does not violate any of the “Basic Principles”¹¹, based on maqāsid al-Sharī‘ah may be employed. Some may be more useful in one setup/locality others in different circumstances. The wider the range of “Sharī‘ah-compatible insurance products” available the better it is.

¹¹ Please see Iqbal, Munawar (xxx).

Some Nusus on Insurance Related Matters

صحيح مسلم (١٥٠٧)

سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ، يَقُولُ: كَتَبَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «عَلَى كُلِّ بَطْنٍ عُقُولُهُ»

Jabir b. Abdullah (Allah be pleased with them) reported that Allah's Apostle (may peace be upon him) made it obligatory for every tribe (the payment) of blood-wit.

صحيح البخاري (٦٩١٠) صحيح مسلم (١٦٨١)

أَبَا هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: أَفْتَتَلْتُ امْرَأَتَانِ مِنْ هُدَيْلٍ، فَرَمَتْ إِحْدَاهُمَا الْأُخْرَى بِحَجَرٍ فَفَتَلَتْهَا وَمَا فِي بَطْنِهَا، فَاخْتَصَمُوا إِلَيَّ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، «فَقَضَى أَنْ دِيَةَ جَنِينِهَا غُرَّةٌ، عَبْدٌ أَوْ وَلِيدَةٌ، وَقَضَى أَنْ دِيَةَ الْمَرْأَةِ عَلَى عَاقِلَتِهَا»

Narrated Abu Hurairah :

Two women from Hudhail fought with each other and one of them hit the other with a stone that killed her and what was in her womb. The relatives of the killer and the relatives of the victim submitted their case to the Prophet who judged that the diyah (blood money) for the fetus was a male or female slave, and the Diya for the killed woman was to be paid by the 'Asaba (near relatives) of the killer.

قال البخاري: صحيح البخاري (١٣٧ /٣)

" لَمْ يَرَ الْمُسْلِمُونَ فِي النَّهْدِ بَأْسًا أَنْ يَأْكُلَ هَذَا بَعْضًا وَهَذَا بَعْضًا، "

Muslims see no harm in practicing *Nahd* by which some (the partners) may eat so much, and some may eat so much of the food (without measuring or weighing it).

صحيح البخاري (٢٤٨٣) صحيح مسلم (١٩٣٥)

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُمَا، أَنَّهُ قَالَ: بَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعَثًا قَبِلَ السَّاحِلَ، فَأَمَرَ عَلَيْهِمْ أَبَا عُبَيْدَةَ بْنَ الْجَرَّاحِ وَهُمْ ثَلَاثُ مِائَةٍ، وَأَنَا فِيهِمْ، فَخَرَجْنَا حَتَّى إِذَا كُنَّا بِبَعْضِ الطَّرِيقِ قَبِي الرَّادِ، فَأَمَرَ أَبُو عُبَيْدَةَ بِأَزْوَادِ ذَلِكَ الْجَيْشِ، فَجُمِعَ ذَلِكَ كُلُّهُ، فَكَانَ مَرُودِي تَمْرٍ، فَكَانَ يُقَوِّئُنَا كُلَّ يَوْمٍ قَلِيلًا قَلِيلًا حَتَّى قَبِي،

Narrated Jabir bin 'Abdullah :

"Allah's Apostle sent an army towards the east coast and appointed Abu 'Ubaida bin Al-Jarrah as their chief, and the army consisted of three-hundred men including myself. We marched on till we reached a place where our food was about to finish. Abu- 'Ubaida ordered us to collect all the journey food and it was collected. My (our) journey food was dates. Abu 'Ubaida kept on giving us our daily ration in small amounts from it, till it was exhausted. The share of everyone of us used to be one date only." I said, "How could one date benefit you?" Jabir replied, "We came to know its value when even that too finished." Jabir added, "When we reached the sea-shore, we saw a huge fish which was like a small mountain. The army ate from it for eighteen days. Then Abu' Ubaida ordered that two of its ribs be fixed and they were fixed in the ground. Then he ordered that a she-camel be ridden and it passed under the two ribs (forming an arch) without touching them".

صحیح البخاری (۲۴۸۴) صحیح مسلم (۲۷ و ۱۷۲۹)

عَنْ سَلَمَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: خَفَّتْ أَرْوَادُ الْقَوْمِ، وَأَمْلَقُوا، فَأَتَوْا النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي نَحْرِ إِبِلِهِمْ، فَأَذِنَ لَهُمْ، فَلَقِيَهُمْ عُمَرُ، فَأَخْبَرُوهُ فَقَالَ: مَا بَقَاؤُكُمْ بَعْدَ إِبِلِكُمْ، فَدَخَلَ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: يَا رَسُولَ اللَّهِ، مَا بَقَاؤُهُمْ بَعْدَ إِبِلِهِمْ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «تَادِ فِي النَّاسِ، فَيَأْتُونَ بِفَضْلِ أَرْوَادِهِمْ»، فَبَسِطَ لِذَلِكَ نِطْعًا، وَجَعَلُوهُ عَلَى النَّطْعِ، فَقَامَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَدَعَا وَبَرَكَ عَلَيْهِ، ثُمَّ دَعَاهُمْ بِأَوْعِيَّتِهِمْ، فَأَحْتَتَى النَّاسُ حَتَّى فَرَّغُوا، ثُمَّ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَأَنِّي رَسُولُ اللَّهِ»

Narrated Salama :

Once the journey food diminished and the people were reduced to poverty. They went to the Prophet and asked his permission to slaughter their camels, and he agreed. 'Umar met them and they told him about it, and he said, "How would you survive after slaughtering your camels?" Then he went to the Prophet and said, "O Allah's Apostle! How would they survive after slaughtering their camels?" Allah's Apostle ordered 'Umar, "Call upon the people to bring what has remained of their food." A leather sheet was spread and all the journey food was collected and heaped over it. Allah's Apostle stood up and invoked Allah to bless it, and then directed all the people to come with their utensils, and they started taking from it till all of them got what was sufficient for them. Allah's Apostle then said, "I testify that None has the right to be worshipped but Allah, and I am His Apostle" .

صحیح البخاری (۳۷۱) صحیح مسلم (۱۳۶۵)

عَنْ أَنَسِ بْنِ مَالِكٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ غَزَا حَيْبَرَ، (قصة صفيّة) فَأَصْبَحَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ غَرُوسًا، فَقَالَ: «مَنْ كَانَ عِنْدَهُ شَيْءٌ فَلْيَجِئْ بِهِ» وَبَسِطَ نِطْعًا، فَجَعَلَ الرَّجُلُ يَجِيءُ بِالتَّمْرِ، وَجَعَلَ الرَّجُلُ يَجِيءُ بِالسَّمْنِ، قَالَ: وَأَحْسِبُهُ قَدْ ذَكَرَ السَّوِيقَ، قَالَ: فَحَاسُوا حَيْسًا، فَكَانَتْ وَلِيمَةً رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

Narrated 'Abdul 'Aziz: Anas said, 'When Allah's Apostle invaded Khaibar, we offered the Fajr prayer yearly in the morning) when it was still dark. The Prophet rode and Abu Talha rode too and I was riding behind Abu Talha. The Prophet passed through the lane of Khaibar quickly and my knee was touching the thigh of the Prophet. He uncovered his thigh and I saw the whiteness of the thigh of the Prophet. When he entered the town, he said, 'Allahu Akbar! Khaibar is ruined. Whenever we approach near a (hostile) nation (to fight) then evil will be the morning of those who have been warned.' He repeated this thrice. The people came out for their jobs and some of them said, 'Muhammad (has come).' (Some of our companions added, "With his army.") We conquered Khaibar, took the captives, and the booty was collected. Dihya came and said, 'O Allah's Prophet! Give me a slave girl from the captives.' The Prophet said, 'Go and take any slave girl.' He took Safiya bint Huyai. A man came to the Prophet and said, 'O Allah's Apostles! You gave Safiya bint Huyai to Dihya and she is the chief mistress of the tribes of Quraiza and An-Nadir and she befits none but you.' So the Prophet said, 'Bring him along with her.' So Dihya came with her and when the Prophet saw her, he said to Dihya, 'Take any slave girl other than her from the captives.' Anas added: The Prophet then manumitted her and married her " .

Thabit asked Anas, "O Abu Hamza! What did the Prophet pay her (as Mahr)?" He said, "Herself was her Mahr for he manumitted her and then married her." Anas added, "While on the way, Um Sulaim dressed her for marriage (ceremony) and at night she sent her as a bride to the Prophet. So the Prophet was a bridegroom and he said, 'Whoever has anything (food) should bring it.' He spread out a leather sheet (for the food) and some brought dates and others cooking butter. (I think he (Anas) mentioned As-SawTq). So they prepared a dish of Hais (a kind of meal). And that was Walrma (the marriage banquet) of Allah's Apostle".

صحیح البخاری (۱۴۸۹ و ۲۶۲۳) صحیح مسلم (۱۶۲۰)

سَمِعْتُ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ، يَقُولُ: حَمَلْتُ عَلَى فَرَسٍ فِي سَبِيلِ اللَّهِ، فَأَضَاعَهُ الَّذِي كَانَ عِنْدَهُ، فَأَرَدْتُ أَنْ أَشْتَرِيَهُ مِنْهُ وَظَنَنْتُ أَنَّهُ بَائِعُهُ بِرُحْصٍ، فَسَأَلْتُ عَنْ ذَلِكَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: «لَا تَشْتَرِهِ وَإِنْ أَعْطَاكَ بِدِرْهَمٍ وَاحِدٍ، فَإِنَّ الْعَائِدَ فِي صَدَقَتِهِ كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ»

Narrated 'Umar bin Al-Khattab :

I gave a horse in Allah's Cause. The person to whom it was given, did not look after it. I intended to buy it from him, thinking that he would sell it cheap. When I asked the Prophet he said, "Don't buy it, even if he gives it to you for one Dirham, as the person who takes back what he has given in charity, is like a dog that swallows back its vomit".

صحیح البخاری (۲۶۲۱) صحیح مسلم (۱۶۲۲)

۲۶۲۱ - حَدَّثَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ، حَدَّثَنَا هِشَامٌ، وَشُعْبَةُ، قَالَا: حَدَّثَنَا قَتَادَةُ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْعَائِدُ فِي هَبْتِهِ كَالْعَائِدِ فِي قَيْئِهِ»

Narrated Ibn 'Abbas :

The Prophet said, "He who takes back his present is like him who swallows his vomit".

صحیح مسلم (۱۶۲۵)

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «أَيُّمَا رَجُلٍ أُعْمِرَ عُمرَى لَهُ وَلِعَقِبِهِ، فَإِنَّهَا لِلَّذِي أُعْطِيَهَا، لَا تَرْجِعُ إِلَى الَّذِي أُعْطَاهَا، لِأَنَّهُ أُعْطِيَ عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِيثُ»

Jabir b. 'Abdullah (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) as saying: Whoever a person is gifted a life grant, then it is for him (belongs to him and to his posterity, for it belongs to him who has been given it). It would not return to him who gave it for he conferred it as a gift (it becomes the property of the donee and as such) rules of inheritance will apply to it.

صحیح مسلم (۱۶۲۵)

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَضَى فِيمَنْ أُعْمِرَ عُمرَى لَهُ وَلِعَقِبِهِ فَهِيَ لَهُ بَتْلَةٌ، لَا يَجُوزُ لِلْمُعْطِي فِيهَا شَرْطٌ، وَلَا تَنْبَأُ»

Jabir b. 'Abdullah (Allah be pleased with him) reported that Allah's Messenger (may peace be upon him) commanded that whoever is conferred upon a life grant along with his descendants is entitled to make use of the property conferred so long as he lives and his successors (also enjoy this privilege). That (property) becomes the their defect belonging. The donor cannot (after declaring Umra) lay down any condition or make any exception.

سنن النسائي (۳۷۱۰)

عَنْ ابْنِ عَبَّاسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الْعُمْرَى جَائِزَةٌ لِمَنْ أُعْمِرَهَا، وَالرُّقْبَى جَائِزَةٌ لِمَنْ أَرْقَبَهَا، وَالْعَائِدُ فِي هَبْتِهِ كَالْعَائِدِ فِي قَيْئِهِ»

Ibn ' Abbas, who said: "The Messenger of Allah ﷺ said: "Umra (life-long gift) is permissible for the one to whom it is given, and Ruqba is permissible to the one to whom it is given, and the one who takes back his gift is like the one who goes back to his vomit." (Şahīḥ).

سنن الترمذي (٢١٣٢)

عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، يَرْفَعَانِ الْحَدِيثَ قَالَ: لَا يَجِلُّ لِلرَّجُلِ أَنْ يُعْطِيَ عَطِيَّةً ثُمَّ يَرْجِعَ فِيهَا إِلَّا الْوَالِدَ فِيمَا يُعْطِي وَلَدَهُ، وَمَثَلُ الَّذِي يُعْطِي الْعَطِيَّةَ ثُمَّ يَرْجِعُ فِيهَا كَمَثَلِ الْكَلْبِ أَكَلَ حَتَّى إِذَا شَبِعَ قَاءَ ثُمَّ عَادَ فِي قَيْئِهِ.

It is reported marfu by Sayyidina Ibn Umar (RA) and Ibn Abbas (RA) (that the Prophet (SAW) said,) "It is not lawful for a man who presents a gift to take it back, except a father (can take back) after giving to his son. And the example of one who presents a gift and afterwards demands it back is like the dog that eats excessively till it spews out and then returns to it to consume from it".

مسند أحمد (١٨٧٠٤) سنن الترمذي (١٩٥٧)

سَمِعْتُ الْبَرَاءَ بْنَ عَازِبٍ يَقُولُ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: "مَنْ مَنَحَ مَنِيحَةَ لَبْنٍ أَوْ وَرْقٍ أَوْ هَدَى زُقَافًا كَانَ لَهُ مِثْلُ عَتَقِ رَقَبَةٍ"

Sayyidina Bara ibn Aazib (RA) reported that he heard the Prophet (SAW) say "If anyone gives a minnah of milk or silver, or guides one who is lost then he will get reward for setting free a male slave or a female slave".

سنن الترمذي (١٦٢٧)

عَنْ أَبِي أُمَامَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "أَفْضَلُ الصَّدَقَاتِ ظِلُّ فُسْطَاطٍ فِي سَبِيلِ اللَّهِ، وَمَنِيحَةُ خَادِمٍ فِي سَبِيلِ اللَّهِ، أَوْ طَرَوْقَةٌ فَحَلٍ فِي سَبِيلِ اللَّهِ"

Sayyidina Adi ibn Hatim Tai reported that he asked Allah's Messenger " , Which sadaqah is excellent "?He said, Providing a slave in Allah's cause, or the shade of a tent, or a young camel in Allah's cause.

مسند أحمد (٤٤١٥)

عَنْ عَبْدِ اللَّهِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: "أَتَدْرُونَ أَيُّ الصَّدَقَةِ أَفْضَلُ؟"، قَالُوا: اللَّهُ وَرَسُولُهُ أَعْلَمُ، قَالَ: "الْمَنِيحَةُ، أَنْ يَمْنَحَ أَحَدَكُمْ أَحَاهُ الدِّرْهَمِ، أَوْ ظَهْرَ الدَّابَّةِ، أَوْ لَبْنَ الشَّاةِ، أَوْ لَبْنَ الْبَقَرَةِ"

صحيح البخاري (٢٦٣١)

سَمِعْتُ عَبْدَ اللَّهِ بْنَ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا، يَقُولُ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَرْبَعُونَ حَصَلَةً أَعْلَاهُنَّ مَنِيحَةُ الْعَنْزِ، مَا مِنْ عَامِلٍ يَعْمَلُ بِحَصَلَةٍ مِنْهَا رَجَاءَ ثَوَابِهَا، وَتَصَدِّقَ مَوْعُودِهَا، إِلَّا أَدْخَلَهُ اللَّهُ بِهَا الْجَنَّةَ»

Narrated 'Abdullah bin 'Amr :

That Allah's Apostle said, "There are forty virtuous deeds and the best of them is the Maniha of a she-goat, and anyone who does one of these virtuous deeds hoping for Allah's reward with firm confidence that he will get it, then Allah will make him enter Paradise".

صحيح البخاري (٥٦٠٨)

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «نِعْمَ الصَّدَقَةُ اللَّفْحَةُ الصَّوْفِيُّ مَنَحَةً، وَالشَّاةُ الصَّوْفِيُّ مَنَحَةً، تَعْدُو بِإِنَاءٍ، وَتُرْوَحُ بِأَخْرَ»

Narrated Abu Hurairah :

Allah's Apostle said, "The best object of charity is a she-camel which has (newly) given birth and gives plenty of milk, or a she-goat which gives plenty of milk; and is given to somebody to utilize its milk by milking one bowl in the morning and one in the evening".

صحيح مسلم (١٠١٩)

عَنْ أَبِي هُرَيْرَةَ، يَبْلُغُ بِهِ "أَلَا رَجُلٌ يَمْنَحُ أَهْلَ بَيْتِ نَاقَةٍ، تَعْدُو بِعَسٍ، وَتُرْوَحُ بِعَسٍ، إِنَّ أَجْرَهَا لَعَظِيمٌ"

It is narrated on the authority of Abu Hurairah (that the Messenger of Allah) said: Of course the person who gives to the family a she-camel as a gift, which gives milk, morning and evening equal to a large bowl ,its reward (the reward of the gift) is great.

صحيح مسلم (١٠٢٠)

عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ نَهَى فَذَكَرَ خِصَالًا، وَقَالَ: "مَنْ مَنَحَ مَنِيحَةً، عَدَتْ بِصَدَقَةٍ، وَرَاحَتْ بِصَدَقَةٍ، صَبُوحَهَا وَعَشُوقُهَا"

Abu Hurairah reported that the Apostle of Allah (may peace be upon him) forbade (to do certain things) and then he made a mention of certain habits and said: He who gives a she-camel as a gift, for him is the reward (of the gift) both morning and evening, a reward for drinking milk in the morning and a reward for drinking milk in the evening.

صحيح البخاري (٢٦٣٣)

حَدَّثَنِي أَبُو سَعِيدٍ، قَالَ: جَاءَ أَعْرَابِيٌّ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَسَأَلَهُ عَنِ الْهَجْرَةِ، فَقَالَ: «وَيُحْتَكَ إِنَّ الْهَجْرَةَ شَأْنُهَا شَدِيدٌ، فَهَلْ لَكَ مِنْ إِبِلٍ؟» قَالَ: نَعَمْ، قَالَ: «فَتُعْطِي صَدَقَتَهَا؟» قَالَ: نَعَمْ، قَالَ: «فَهَلْ تَمْنَحُ مِنْهَا شَيْئًا؟» قَالَ: نَعَمْ، قَالَ: «فَتَحْلُبُّهَا يَوْمَ وَرُدِّهَا؟» قَالَ: نَعَمْ، قَالَ: «فَاعْمَلْ مِنْ وَرَاءِ الْبَحَارِ، فَإِنَّ اللَّهَ لَنْ يَتْرَكَ مِنْ عَمَلِكَ شَيْئًا»

Narrated Abu Said: A bedouin came to the Prophet and asked him about emigration. The Prophet said to him, "May Allah be merciful to you. The matter of emigration is difficult. Have you got some camels?" He replied in the affirmative. The Prophet asked him "Do you pay their *Zakāh*?" He replied in the affirmative. He asked, "Do you lend them so that their milk may be utilized by others?" The bedouin said, "Yes." The Prophet asked, "Do you milk them on the day off watering them?" He replied, "Yes." The Prophet said, "Do good deeds beyond the merchants (or the sea) and Allah will never disregard any of your deeds."

سنن الترمذي (٢١٢٠)

عَنْ أَبِي أَمَامَةَ الْبَاهِلِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ فِي خُطْبَتِهِ عَامَ حَجَّةِ الْوُدَاعِ: "الْعَارِيَةُ مُؤَدَّاةٌ، وَالْمَنَحَةُ مَرْدُودَةٌ، وَالذَّيْنُ مَقْضِيٌّ، وَالرَّعِيمُ غَارِمٌ"

Sayyidina Abu Umamah Bahili narrated I heard Allah's Messenger (SAW) say during the sermon of the Farewell pilgrimage,He also said“ ,That which is borrowed is to be repaid,

and the minhah is to be returned, and the debt must be discharged, and the guarantor is responsible”.

صحیح البخاری (۱۵۲۳)

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: " كَانَ أَهْلُ الْيَمَنِ يَخْجُونَ وَلَا يَنْزَوِدُونَ، وَيَقُولُونَ: نَحْنُ الْمُتَوَكِّلُونَ، فَإِذَا قَدِمُوا مَكَّةَ سَأَلُوا النَّاسَ، فَأَنْزَلَ اللَّهُ تَعَالَى: { وَتَزَوَّدُوا فَإِنَّ خَيْرَ الزَّادِ التَّقْوَى } [البقرة: ۱۹۷]

Narrated Ibn Abbas :

The people of Yemen used to come for Hajj and used not to bring enough provisions with them and used to say that they depend on Allah. On their arrival in Medina they used to beg the people, and so Allah revealed, "And take a provision (with you) for the journey, but the best provision is the fear of Allah.

صحیح البخاری (۱۲۹۵) صحیح مسلم (۱۶۲۸)

عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، قَالَ: كَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَعُودُنِي عَامَ حَجَّةِ الْوَدَاعِ مِنْ وَجَعِ اسْتَدَّ بِي، فَقُلْتُ: إِنِّي قَدْ بَلَغَ بِي مِنَ الْوَجَعِ وَأَنَا ذُو مَالٍ، وَلَا يَرْتِنِي إِلَّا ابْنَتِي، أَفَأَتَصَدَّقُ بِثُلُثِي مَالِي؟ قَالَ: «لَا» فَقُلْتُ: بِالشَّطْرِ؟ فَقَالَ: «لَا» ثُمَّ قَالَ: «الثَّلَاثُ وَالثَّلَاثُ كَبِيرٌ - أَوْ كَثِيرٌ - إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَنْبَغِي بِهَا وَجْهَ اللَّهِ إِلَّا أُجِرْتَ بِهَا، حَتَّى مَا تَجْعَلَ فِي فِي امْرَأَتِكَ»

Narrated 'Amir bin Sad bin Abi Waqqas :

That his father said, "In the year of the last Hajj of the Prophet I became seriously ill and the Prophet used to visit me inquiring about my health. I told him, 'I am reduced to this state because of illness and I am wealthy and have no inheritors except a daughter, (In this narration the name of 'Amir bin Sad is mentioned and in fact it is a mistake; the narrator is 'Aisha bint Sad bin Abi Waqqas). Should I give two-thirds of my property in charity?' He said, 'No.' I asked, 'Half?' He said, 'No.' then he added, 'One-third, and even one-third is much. You'd better leave your inheritors wealthy rather than leaving them poor, begging others. You will get a reward for whatever you spend for Allah's sake, even for what you put in your wife's mouth.'

صحیح مسلم (۱۵۵۶)

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي ثِمَارٍ ابْتَاعَهَا، فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "تَصَدَّقُوا عَلَيْهِ"، فَتَصَدَّقَ النَّاسُ عَلَيْهِ، فَلَمْ يَبْلُغْ ذَلِكَ وَقَاءَ دَيْنِهِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِعَزْمَائِهِ: "خُذُوا مَا وَجَدْتُمْ، وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ"

Abu Sa'id al-Khudri (Allah be pleased with him) reported that in the time of Allah's Messenger (may peace be upon him) a man suffered loss in fruits he had bought and his debt increased; so Allah's Messenger (may peace be upon him) told (the people) to give him charity and they gave him charity, but that was not enough to pay the debt in full, whereupon Allah's Messenger (may peace be upon him) said to his creditors: " Take what you find, you will have nothing but alms.

صحیح البخاری (۴۵۷) صحیح مسلم (۱۵۵۸)

عَنْ كَعْبِ بْنِ مَالِكٍ، أَنَّهُ تَقَاصَى ابْنَ أَبِي حَدْرَدٍ دَيْنًا كَانَ لَهُ عَلَيْهِ فِي الْمَسْجِدِ، فَازْتَفَعَتْ أَصْوَاتُهُمَا حَتَّى سَمِعَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِي بَيْتِهِ، فَخَرَجَ إِلَيْهِمَا حَتَّى كَشَفَتْ سِجْفَتَ حُجْرَتِهِ، فَنَادَى: «يَا كَعْبُ» قَالَ: لَبَيْكَ يَا رَسُولَ اللَّهِ، قَالَ: «صَنَعَ مِنْ دَيْنِكَ هَذَا» وَأَوْمَأَ إِلَيْهِ: أَيِ الشَّطْرِ، قَالَ: لَقَدْ فَعَلْتُ يَا رَسُولَ اللَّهِ، قَالَ: «فَمُ فَاقْضِهِ»

Abdullah b. Ka'ab b. Malik reported from his father that he pressed in the mosque Ibn Abu Hadrad for the payment of the debt that he owed to him during the lifetime of Allah's Messenger (may peace be upon him). In this altercation their voices became loud, until Allah's Messenger (may peace be upon him) heard them, while he was in the house, so Allah's Messenger (may peace be upon him) came out towards them, and he lifted the curtain of his apartment and he called upon Ka'b b. Malik and said: O Ka'b. He said: At thy beck and call, Allah's Messenger. He pointed out with the help of his hand to remit half of the loan due to him. Ka'b said: Allah's Messenger, I am ready to do that, whereupon Allah's Messenger (may peace be upon him) said (to Ibn Abu Hadrad): Stand up and make him the payment (of the rest.)

صحيح مسلم (١٥٥٤)

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "لَوْ بَعْتُ مِنْ أَخِيكَ تَمْرًا، فَأَصَابَتْهُ جَائِحَةٌ، فَلَا يَجُلُّ لَكَ أَنْ تَأْخُذَ مِنْهُ شَيْئًا، بِمِ تَأْخُذُ مَالَ أَخِيكَ بِغَيْرِ حَقِّ؟"

Jabir b. Abdullah (Allah be pleased with them) reported Allah's Messenger (may peace be upon him) saying: If You sell fruits to your brother (and Jabir b. Ahduth reported through another chain of narrators: If you were to sell fruits to your brother) and these is a stricken with Calamity, it is not permissible for you to get anything from him. Why do you get the wealth of your brother, without jutification?

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

If the debtor is in straitened circumstances, then grant him respite till a time of ease. And if you were to write it off as an act of charity, that would be better for you, if only you knew. [Al-Baqarah; 2:280]

Annex-2

قرارات وتوصيات مجمع الفقه الإسلامي التابع لمنظمة المؤتمر الإسلامي ١ - ١٧٤ (ص: ١٠)

قرار رقم: ٩ (٢/٩)

بشأن

التأمين وإعادة التأمين

مجلة المجمع - ع ٢، ج ١/٥٤٥

إن مجلس مجمع الفقه الإسلامي المنبثق عن منظمة المؤتمر الإسلامي في دورة انعقاد مؤتمره الثاني بجدة من

١٠-١٦ ربيع الآخر ١٤٠٦ هـ / ٢٢ - ٢٨ كانون الأول (ديسمبر) ١٩٨٥ م

بعد أن تابع العروض المقدمة من العلماء المشاركين في الدورة حول موضوع التأمين وإعادة التأمين ،

وبعد أن ناقش الدراسات المقدمة ،

وبعد تعمق البحث في سائر صوره وأنواعه ، والمبديء التي يقوم عليها والغايات التي يهدف إليها ،

وبعد النظر فيما صدر عن المجمع الفقهي والهيئات العلمية بهذا الشأن ،

قرر ما يلي :

أولاً : أن عقد التأمين التجاري ذي القسط الثابت الذي تتعامل به شركات التأمين التجاري عقد فيه غرر كبير مفسد للعقد . ولذا فهو حرام شرعاً .

ثانياً : أن العقد البديل الذي يحترم أصول التعامل الإسلامي هو عقد التأمين التعاوني القائم على أساس التبرع والتعاون ، وكذلك الحال بالنسبة لإعادة التأمين القائم على أساس التأمين التعاوني .

ثالثاً : دعوة الدول الإسلامية للعمل على إقامة مؤسسات التأمين التعاوني وكذلك مؤسسات تعاونية لإعادة التأمين ، حتى يتحرر الاقتصاد الإسلامي من الاستغلال ومن مخالفة النظام الذي يرضاه الله لهذه الأمة .

والله أعلم

قرارات وتوصيات مجمع الفقه الإسلامي التابع لمنظمة المؤتمر الإسلامي ١ - ١٧٤ (ص: ٢٧٩)

قرار رقم: ١٤٩ (١٦/٧)

بشأن التأمين الصحي

إن مجلس مجمع الفقه الإسلامي الدولي المنبثق عن منظمة المؤتمر الإسلامي المنعقد في دورته السادسة عشرة بدبي (دولة

الإمارات العربية المتحدة) ٣٠ صفر - ٥ ربيع الأول ١٤٢٦هـ، الموافق ٩ - ١٤ نيسان (إبريل) ٢٠٠٥م.

بعد اطلاعه على البحوث الواردة إلى المجمع بخصوص موضوع التأمين الصحي، وبعد استماعه إلى المناقشات التي دارت حوله،

قرر ما يلي:

١. تعريف التأمين الصحي:

عقد التأمين الصحي: اتفاق يلتزم بموجبه شخص أو مؤسسة تتعهد برعايته بدفع مبلغ محدد أو عدد من الأقساط لجهة معينة على أن تلتزم تلك الجهة بتغطية العلاج أو تغطية تكاليفه خلال مدة معينة.

٢. أساليب التأمين الصحي:

التأمين الصحي إما أن يتم عن طريق مؤسسة علاجية، أو عن طريق شركة تأمين تقوم بدور الوسيط بين المستأمن وبين المؤسسة العلاجية.

٣. حكم التأمين الصحي:

أ - إذا كان التأمين الصحي مباشراً مع المؤسسة العلاجية فإنه جائز شرعاً بالضوابط التي تجعل الغرر يسيراً مغتفراً مع توافر الحاجة التي تُنزل منزلة الضرورة لتعلق ذلك بحفظ النفس والعقل والنسل وهي من الضروريات التي جاءت الشريعة بصيانتها. ومن الضوابط المشار إليها:

- وضع مواصفات دقيقة تحدد التزامات كل من الطرفين.
- دراسة الحالة الصحية للمستأمن والاحتمالات التي يمكن التعرض لها.
- أن تكون المطالبات المالية من المؤسسة العلاجية إلى الجهة مرتبطة بالأعمال التي تم تقديمها وليس بمبالغ افتراضية كما يقع في شركات التأمين التجارية.

ب - إذا كان التأمين الصحي عن طريق شركة تأمين إسلامي (تعاوني أو تكافلي) تزاوّل نشاطها وفق الضوابط الشرعية التي أقرها المجمع في قراره رقم ٩ (٢/٩) بشأن التأمين وإعادة التأمين، فهو جائز.

ج- إذا كان التأمين الصحي عن طريق شركة تأمين تجاري فهو غير جائز، كما نص على ذلك قرار المجمع المشار إليه أعلاه.

٤. الإشراف والرقابة:

على الجهات المختصة القيام بالإشراف والرقابة على عمليات التأمين الصحي بما يحقق العدالة ويرفع الغبن والاستغلال وحماية المستأمنين.

التوصيات:

يوصي مجلس المجمع بما يلي:

١. دعوة الحكومات الإسلامية والجمعيات الخيرية ومؤسسات الأوقاف إلى توفير التأمين الصحي مجاناً أو بمقابل مناسب لغير القادرين على الحصول على التأمين من القطاع الخاص.
 ٢. عدم استخدام البطاقات الصحية إلا من أصحابها لما في ذلك من مخالفة لمقتضيات العقود، وما تتضمنه من غش وتدليس.
 ٣. التحذير من إساءة استخدام التأمين الصحي كادعاء المرض أو كتمانها أو تقديم بيانات مخالفة للواقع.
 ٤. إدراج موضوع التأمين التعاوني (الإسلامي أو التكافلي) في دورات المجمع القادمة في ضوء ما توصلت إليه المؤتمرات والندوات الأخيرة والتطبيقات المتنوعة التي ظهرت بعد إصدار المجمع قراره السابق.
- والله أعلم

قرارات المجمع الفقهي الإسلامي للرابطة. مكة (ص: ٥)

قرار رقم: ٥ (١/٥) التأمين بشتى صورته وأشكاله.

الحمد لله، والصلاة والسلام على رسول الله، وعلى آله وأصحابه ومن اهتدى بهداه...
أما بعد:

فإن المجمع الفقهي الإسلامي قد نظر في موضوع التأمين بأنواعه المختلفة، بعد ما اطلع على كثير مما كتبه العلماء في ذلك، وبعد ما اطلع أيضا على ما قرره مجلس هيئة كبار العلماء في المملكة العربية السعودية، في دورته العاشرة المنعقدة بمدينة الرياض بتاريخ ٤/٤/١٣٩٨هـ من التحريم للتأمين بأنواعه.

وبعد الدراسة الوافية وتداول الرأي في ذلك، قرر المجلس بالأكثرية تحريم التأمين بجميع أنواعه، سواء كان على النفس أو البضائع التجارية أو غير ذلك من الأموال.

كما قرر مجلس المجمع بالإجماع الموافقة على قرار مجلس هيئة كبار العلماء من جواز التأمين التعاوني بدلا من التأمين التجاري المحرم والمنوه عنه آنفا، وعهد بصياغة القرار إلى لجنة خاصة.
تقرير اللجنة المكلفة بإعداد قرار مجلس المجمع حول التأمين:

بناء على قرار مجلس المجمع المتخذ بجلسته الأربعاء ١٤/شعبان/١٣٩٨هـ المتضمن تكليف كل من أصحاب الفضيلة الشيخ عبد العزيز بن باز، والشيخ محمد محمود الصواف، والشيخ محمد عبد الله السبيل بصياغة قرار مجلس المجمع حول التأمين شتى أنواعه وأشكاله.

وعليه فقد حضرت اللجنة المشار إليها وبعد المداولة أقرت ما يلي:

الحمد لله، والصلاة والسلام على رسول الله، وعلى آله وأصحابه ومن اهتدى بهداه...
أما بعد:

فإن المجمع الفقهي الإسلامي في دورته الأولى المنعقدة في ١٠ شعبان / ١٣٩٨هـ بمكة المكرمة بمقر رابطة العالم الإسلامي، نظر في موضوع التأمين بأنواعه، بعد ما اطلع على كثير مما كتبه العلماء في ذلك، وبعد ما اطلع أيضا على ما قرره مجلس هيئة كبار العلماء في المملكة العربية السعودية في دورته العاشرة بمدينة الرياض بتاريخ ٤/٤/٩٧هـ بقراره رقم (٥٥) من التحريم للتأمين التجاري بأنواعه.

وبعد الدراسة الوافية وتداول الرأي في ذلك، قرر مجلس المجمع الفقهي بالإجماع - عدا فضيلة الشيخ مصطفى الزرقا - تحريم التأمين التجاري بجميع أنواعه، سواء كان على النفس أو البضائع التجارية أو غير ذلك، للأدلة الآتية:

الأول: عقد التأمين التجاري من عقود المعاوضات المالية الاحتمالية المشتملة على الغرر الفاحش؛ لأن المستأمن لا يستطيع أن يعرف وقت العقد، مقدار ما يعطى أو يأخذ فقد يدفع قسطا أو قسطين ثم تقع الكارثة، فيستحق ما التزم به المؤمن، وقد لا تقع الكارثة أصلا فيدفع جميع الأقساط، ولا يأخذ شيئا، وكذلك المؤمن، لا يستطيع أن يحدد

ما يعطي ويأخذ بالنسبة لكل عقد بمفرده، وقد ورد في الحديث الصحيح عن النبي صلى الله عليه وسلم النهي عن بيع الغرر.

الثاني: عقد التأمين التجاري: ضرب من ضروب المقامرة لما فيه من المخاطرة في معاوضات مالية، ومن الغرم بلا جناية أو تسبب فيها، ومن الغنم بلا مقابل أو مقابل غير مكافئ، فإن المستأمن قد يدفع قسطا من التأمين ثم يقع الحادث فيغرم المؤمن كل مبلغ التأمين، وقد لا يقع الخطر ومع ذلك يغمم المؤمن أقساط التأمين بلا مقابل، وإذا استحكمت فيه الجهالة كان قمارا ودخل في عموم النهي عن المسير في قوله تعالى: (يا أيها الذين آمنوا إنما الخمر والميسر والأنصاب والأزلام رجس من عمل الشيطان فاجتنبوه لعلكم تفلحون) المائدة/٩٠، والآية بعدها.

الثالث: عقد التأمين التجاري: يشتمل على ربا الفضل والنسأ: فإن الشركة إذا دفعت للمستأمن أو لورثته أو للمستفيد أكثر مما دفعه من النقود لها، فهو ربا فضل، والمؤمن يدفع ذلك للمستأمن بعد مدة فيكون ربا نسأ، وإذا دفعت الشركة للمستأمن مثل ما دفعه لها يكون ربا نسأ فقط، وكلاهما محرم بالنص والإجماع.

الرابع: عقد التأمين التجاري: من الرهان المحرم، لأن كلا منهما فيه جهالة وغرر ومقامرة، ولم ييح الشرع من الرهان إلا ما فيه نصرة للإسلام وظهور لأعلامه بالحجة والسنان، وقد حصر النبي صلى الله عليه وسلم رخصة الرهان بعوض في ثلاثة، بقوله صلى الله عليه وسلم: (لا سبق إلا في خف أو حافر أو نصل) وليس التأمين من ذلك، ولا شبيها به، فكان محرما.

الخامس: عقد التأمين التجاري: فيه أخذ مال الغير بلا مقابل، وأخذ المال بلا مقابل في عقود المعاوضات التجارية محرم، لدخوله في عموم النهي في قوله تعالى: (يا أيها الذي آمنوا لا تأكلوا أموالكم بينكم بالباطل إلا أن تكون تجارة عن تراض منكم) النساء/٢٩.

السادس: في عقد التأمين التجاري: الإلزام بما لا يلزم شرعا، فإن المؤمن لم يحدث الخطر منه، ولم يتسبب في حدوثه، وإنما كان منه مجرد التعاقد مع المستأمن على ضمان الخطر على تقدير وقوعه مقابل مبلغ يدفعه المستأمن له، والمؤمن لم يبذل عملا للمستأمن فكان حراما.

وأما ما استدلل به المبيحون للتأمين التجاري مطلقا، أو في بعض أنواعه، فالجواب عنه ما يلي:

أ - الاستدلال بالاستصلاح غير صحيح، فإن المصالح في الشريعة الإسلامية ثلاثة أقسام: قسم شهد الشرع باعتباره فهو حجة، وقسم سكت عنه الشرع فلم يشهد له بإلغاء ولا اعتبار فهو مصلحة مرسله، وهذا محل اجتهاد المجتهدين، والقسم الثالث: ما شهد الشرع بإلغائه لغلبة جانب المفسدة فيه على جانب المصلحة.

ب - الإباحة الأصلية: لا تصلح دليلا هنا؛ لأن عقود التأمين التجاري قامت الأدلة على مناقضتها لأدلة الكتاب والسنة، والعمل بالإباحة الأصلية مشروط بعدم الناقل عنها، وقد وجد، فبطل الاستدلال بها.

ج - الضرورات تبيح المحظورات لا يصح الاستدلال به هنا، فإن ما أباحه الله من طرق كسب الطيبات أكثر أضعافا مضاعفة مما حرمه عليهم، فليس هناك ضرورة معتبرة شرعا تلجئ إلى ما حرمته الشريعة من التأمين.

د - لا يصح الاستدلال بالعرف، فإن العرف ليس من أدلة تشريع الأحكام، وإنما يبني عليه في تطبيق الأحكام وفهم المراد من ألفاظ النصوص، ومن عبارات الناس في أيمانهم وتداعيهم وأخبارهم وسائر ما يحتاج إلى تحديد المقصود منه من الأفعال والأقوال، فلا تأثير له فيما تبين تحريمه، وتعين المقصود منه، وقد دلت الأدلة دلالة واضحة على منع التأمين، فلا اعتبار به معها.

هـ - الاستدلال بأن عقود التأمين التجاري من عقود المضاربة، أو ما في معناه غير صحيح، فإن رأس المال في المضاربة لم يخرج عن ملك صاحبه، وما يدفعه المستأمن يخرج بعقد التأمين من ملكه إلى ملك الشركة، حسبما يقضي به نظام التأمين، وأن رأس مال المضاربة يستحقه ورثة مالكة عند موته، وفي التأمين قد يستحق الورثة نظاما مبلغ التأمين ولو لم يدفع مورثهم إلى قسطا واحدا، وقد لا يستحقون شيئا، إذا جعل المستفيد سوى المستأمن وورثته، وأن الربح في المضاربة يكون بين الشريكين، نسبا مئوية مثلا، بخلاف التأمين فربح رأس المال وخسارته للشركة وليس للمستأمن إلا مبلغ التأمين أو مبلغا غير محدد.

و - وقياس عقود التأمين على ولاء الموالاة عند من يقول به غير صحيح، فإنه قياس مع الفارق، ومن الفروق بينهما: أن عقود التأمين هدفها الربح المادي المشوب بالغرر والقمار وفاحش الجهالة، بخلاف عقد ولاء الموالاة، فالقصد الأول منه التأخي في الإسلام، والتناصر والتعاون في الشدة والرخاء وسائر الأحوال، وما يكون من كسب مادي فالقصد إليه بالتبع.

ز -

قياس عقد التأمين التجاري على الوعد الملزم عند من يقول به لا يصح؛ لأنه قياس مع الفارق، ومن الفروق أن الوعد بقرض أو إعارة أو تحمل خسارة مثلا، من باب المعروف المحض، فكان الوفاء به واجبا، أو من مكارم الأخلاق، بخلاف عقود التأمين فإنها معاوضة تجارية باعثها الربح المادي، فلا يغتفر فيها ما يغتفر في التبرعات من الجهالة والغرر.

ح - قياس عقود التأمين التجاري على ضمان المجهول، وضمن ما لم يجب، قياس غير صحيح، لأنه قياس مع الفارق أيضا، ومن الفروق: أن الضمان نوع من التبرع يقصد به الإحسان المحض، بخلاف التأمين، فإنه عقد معاوضة تجارية، يقصد منها أولا الكسب المادي، فإن ترتب عليه معروف فهو تابع غير مقصود إليه، والأحكام يراعي فيها الأصل لا التابع، ما دام تابعا غير مقصود إليه.

ط - قياس عقود التأمين التجاري على ضمان خطر الطريق لا يصح، فإنه قياس مع الفارق كما سبق في الدليل قبله.

ي - قياس عقود التأمين التجاري على نظام التقاعد غير صحيح، فإنه قياس مع الفارق أيضاً؛ لأن ما يعطى من التقاعد، حق التزم به ولي الأمر، باعتباره مسئولاً عن رعيته، وراعى في صرفه ما قام به الموظف من خدمة الأمة، ووضع له نظاماً راعى فيه مصلحة أقرب الناس إلى الموظف، ونظر إلى مظنة الحاجة فيهم، فليس نظام التقاعد من باب المعاوزات المالية بين الدولة وموظفيها، وعلى هذا لا شبه بينه وبين التأمين، الذي هو من عقود المعاوزات المالية التجارية التي يقصد بها استغلال الشركات للمستأمنين والكسب من ورائهم بطرق غير مشروعة، لأن ما يعطى في حالة التقاعد، يعتبر حقاً التزم به من حكومات مسئولة عن رعيته، وتصرفها لمن قام بخدمة الأمة كفاء لمعرفه، وتعاوناً معه جزاء تعاونه معها ببدنه وفكره، وقطع الكثير من فراغه في سبيل النهوض معها بالأمة.

ك - قياس نظام التأمين التجاري وعقوده على نظام العاقلة لا يصح، فإنه قياس مع الفارق، ومن الفروق أن الأصل في تحمل العاقلة لدية الخطأ وشبه العمد ما بينها وبين القاتل - خطأ أو شبه العمد - من الرحم والقربة، التي تدعو إلى النصرة والتواصل والتعاون، وإسداء المعروف، ولو دون مقابل، وعقود التأمين التجارية استغلالية تقوم على معاوضات مالية محضه، لا تمت إلى عاطفة الإحسان وبواعث المعروف بصلة.

ل - قياس عقود التأمين التجاري على عقود الحراسة غير صحيح، لأنه قياس مع الفارق أيضاً، ومن الفروق أن الأمان ليس محلاً للعقد في المسألتين، وإنما محله في التأمين الأقساط ومبلغ التأمين، وفي الحراسة الأجرة وعمل الحارس، أما الأمان فغاية ونتيجة، وإلا لما استحق الحارس الأجرة عند ضياع المحروس.

م - قياس التأمين على الإيداع لا يصح، لأنه قياس مع الفارق أيضاً، فإن الأجرة في الإيداع عوض عن قيام الأمين بحفظ شيء في حوزته يحوطه، بخلاف التأمين فإن ما يدفعه المستأمن لا يقابله عمل من المؤمن، ويعود إلى المستأمن بمنفعة، إنما هو ضمان الأمن والطمأنينة، وشرط العوض عن الضمان لا يصح، بل هو مفسد للعقد، وإن جعل مبلغ التأمين فيه مقابلة الأقساط كان معاوضة تجارية جهل فيها مبلغ التأمين أو زمنه فاختلف عن عقد الإيداع بأجر.

ن - قياس التأمين على ما عرف بقضية تجار البئر مع الحاكة لا يصح، والفرق بينهما أن المقيس عليه من التأمين التعاوني، وهو تعاون محض، والمقيس تأمين تجاري وهو معاوضات تجارية، فلا يصح القياس.

كما قرر مجلس الجمع بالإجماع الموافقة على قرار مجلس هيئة كبار العلماء في المملكة العربية السعودية رقم (١٥) وتاريخ ١٣٧٩/٤/٤ هـ من جواز التأمين التعاوني بدلاً عن التأمين التجاري المحرم والمنوه عنه آنفاً للأدلة التالية:

الأول: أن التأمين التعاوني من عقود التبرع التي يقصد بها أصالة التعاون على تفتيت الأخطار، والاشتراك في تحمل المسؤولية، عند نزول الكوارث، وذلك عن طريق إسهم أشخاص بمبالغ نقدية، تخصص لتعويض من يصيبه الضرر، فجماعة التأمين التعاوني، لا يستهدفون تجارة، ولا ربحاً من أموال غيرهم، وإنما يقصدون توزيع الأخطار بينهم، والتعاون على تحمل الضرر.

الثاني: خلو التأمين التعاوني من الربا بنوعيه، ربا الفضل و ربا النسيأ، فليست عقود المساهمين ربوية، ولا يستغلون ما جمع من الأقساط في معاملات ربوية.

الثالث: أنه لا يضر جهل المساهمين في التأمين التعاوني بتحديد ما يعود عليهم من النفع، لأنهم متبرعون، فلا مخاطرة، ولا غرر، ولا مقامرة، بخلاف التأمين التجاري فإنه عقد معاوضة مالية تجارية.

الرابع: قيام جماعة من المساهمين، أو من يمثلهم باستثمار ما جمع من الأقساط لتحقيق الغرض الذي من أجله أنشئ هذا التعاون، سواء كان القيام بذلك تبرعاً أو مقابل أجر معين.

ورأى المجلس أن يكون التأمين التعاوني على شكل شركة تأمين تعاونية مختلطة، للأمور التالية:

أولاً: الالتزام بالفكر الاقتصادي الإسلامي، الذي يترك للأفراد مسؤولية القيام بمختلف المشروعات الاقتصادية، ولا يأتي دور الدولة إلا كعنصر مكمل لما عجز الأفراد عن القيام به، وكدور موجه ورقيب، لضمان نجاح هذه المشروعات وسلامة عملياتها.

ثانياً: الالتزام بالفكر التعاوني التأميني الذي بمقتضاه يستقل المتعاونون بالمشروع كله من حيث تشغيله، ومن حيث الجهاز التنفيذي، ومسئولية إدارة المشروع.

ثالثاً: تدريب الأهالي على مباشرة التأمين التعاوني، وإيجاد المبادرات الفردية، والاستفادة من البواعث الشخصية، فلا شك أن مشاركة الأهالي في الإدارة، تجعلهم أكثر حرصاً ويقظة، على تجنب وقوع المخاطر التي يدفعون مجتمعين تكلفة تعويضها، مما يحقق بالتالي مصلحة لهم في إنجاح التأمين التعاوني إذ إن تجنب المخاطر يعود عليهم بأقساط أقل في المستقبل، كما أن وقوعها قد يحملهم أقساطاً أكبر في المستقبل.

رابعاً: إن صورة الشركة المختلطة، لا تجعل التأمين كما لو كان هبة أو منحة من الدولة للمستفيدين منه، بل بمشاركة منها معهم فقط، حمايتهم ومساندتهم، باعتبارهم هم أصحاب المصلحة الفعلية، وهذا موقف أكثر إيجابية، ليشعر معه المتعاونون بدور الدولة، ولا يعفيهم في نفس الوقت من المسؤولية.

ويرى المجلس أن يراعى في وضع المواد التفصيلية للعمل بالتأمين التعاوني الأسس التالية: الأول: أن يكون لمنظمة التأمين التعاوني مركز له فروع في كافة المدن، وأن يكون بالمنظمة أقسام تتوزع بحسب الأخطار المراد تغطيتها، وبحسب مختلف فئات ومهن المتعاونين، كأن يكون هناك قسم للتأمين الصحي، وثان للتأمين ضد العجز والشيخوخة... إلخ. أو يكون هناك قسم لتأمين الباعة المتجولين، وآخر للتجار، وثالث للطلبة، ورابع لأصحاب المهن الحرة المهندسين والأطباء والمحامين.... إلخ.

الثاني: أن تكون منظمة التأمين التعاوني على درجة كبيرة من المرونة والبعد عن الأساليب المعقدة.

الثالث: أن يكون للمنظمة مجلس أعلى يقرر خطط العمل، ويقترح ما يلزمها من لوائح القرارات، تكون نافذة إذا اتفقت مع قواعد الشريعة.

الرابع: يمثل الحكومة في هذا المجلس من تختاره من الأعضاء، ويمثل المساهمين من يختارونه، ليكونوا أعضاء في المجلس ليساعد ذلك على إشراف الحكومة عليها، واطمئنانها على سلامة سيرها، وحفظها من التلاعب والفسل. الخامس: إذا تجاوزت المخاطر موارد الصندوق بما قد يستلزم زيادة الأقساط، فتقوم الدولة والمشترون بتحمل هذه الزيادة. ويؤيد مجلس الجمع الفقهي ما اقترحه مجلس هيئة كبار العلماء في قراره المذكور بأن يتولى وضع المواد التفصيلية لهذه الشركة التعاونية جماعة من الخبراء المختصين في هذا الشأن.

والله ولي التوفيق. وصلى الله وسلم على نبينا محمد وآله وصحبه.

الرئيس: عبد الله بن حميد رئيس مجلس القضاء الأعلى في المملكة العربية السعودية.

نائب الرئيس: محمد علي الحركان الأمين العام لرابطة العالم الإسلامي.

الأعضاء: عبد العزيز بن عبد الله بن باز. محمد محمود الصواف. صالح بن عثيمين. محمد بن عبد الله السبيل. محمد رشيد قباني. مصطفى الزرقاء. محمد رشدي. عبد القدوس الهاشمي الندوي. أبو بكر جومي.

مخالفة الأستاذ الدكتور مصطفى الزرقاء:

إخواني الأساتذة الفضلاء أعضاء الجمع الفقهي... إني أخالف ما ذهبتم إليه من اعتبار التأمين الذي أسميته تجارياً بمختلف أنواعه وصوره حراماً، وميزتم بينه وبين ما أسميته تعاوئياً، وأرى أن التأمين من حيث إنه طريق تعاوي منظم لترميم الأضرار التي تقع على رؤوس أصحابها من المخاطر التي يتعرضون لها، هو في ذاته جائز شرعاً بجميع صورته الثلاث وهي: التأمين على الأشياء، والتأمين من المسؤولية المسمى (تأمين ضد الغير)، والتأمين المسمى - خطأً - بالتأمين على الحياة. وإن أدلتى الشرعية من الكتاب العزيز والسنة النبوية، وقواعد الشريعة ومقاصدها العامة، والشواهد الفقهية، بالقياس السليم عليها، ودفع توهم أنه يدخل في نطاق القمار أو الرهان المحرّمين، ودفع شبهة أنه ربا، كل ذلك موضح تمام الإيضاح في كتابي المنشور بعنوان (عقد التأمين، وموقف الشريعة الإسلامية منه) وأنتم مطلعون عليه، مع بيان حاجة الناس في العالم كله إليه. وقد بينت لكم في هذه الجلسة أيضاً، أن التمييز بين تأمين تعاوي وتجاري لا سند له، فكل التأمين قائم على فكرة التعاون على تفتيت الأضرار وترميمها، ونقلها عن رأس المصاب، وتوزيعها على أكبر عدد ممكن، بين عدد قليل من الأشخاص الذين تجمعهم حرفة صغيرة، أو سوق، ويتعرضون لنوع من الأخطار فيساهمون في تكوين صندوق مشترك، حتى إذا أصاب أحدهم الخطر والضرر، عوّضوه عنه من الصندوق الذي هو أيضاً مساهم فيه، هذا النوع الذي يسمى في الاصطلاح تبادلياً وسميته تعاوئياً (تعاوئياً) لا تحتاج إدارته إلى متفرغين لها، ولا إلى نفقات إدارة وتنظيم وحساب... إلخ. فإذا كثرت الرغبات في التأمين، وأصبح يدخل فيه الألوف، عشرات أو مئآت أو آلافها من الراغبين، وأصبح يتناول عدداً كبيراً من أنواع الأخطار المختلفة، فإنه عندئذ يحتاج إلى إدارة متفرغة، وتنظيم ونفقات كبيرة، من أجور محلات وموظفين ووسائل آلية وغير آلية... إلخ. وعندئذ لا بد لمن يتفرغون لإدارته وتنظيمه من أن يعيشوا على حساب هذه الإدارة الواسعة، كما يعيش أي تاجر أو صانع أو محترف أو موظف

على حساب عمله. وعندئذ لابد من أن يوجد فرق بين الأقساط التي تجي من المستأمنين، وبين ما يؤدي من نفقات وتعويزات للمصابين عن أضرارهم، لتربح الإدارة المتفرغة هذا الفرق، وتعيش منه، كما يعيش التاجر من فرق السعر بين ما يشتري ويبيع. ولتحقيق هذا الربح يبني التأمين الذي أسميموه تجارياً على حساب إحصاء دقيق، لتحديد القسط الذي يجب أن يدفعه المستأمن في أنواع من الأخطار، هذا هو الفرق الحقيقي بين النوعين. أما المعنى التعاوني فلا فرق فيه بينهما أصلاً من حيث الموضوع. كما إني أحب أن أضيف إلى ذلك: أن هذه الدورة الأولى لهذا المجمع الفقهي الميمون، الذي لم يجتمع فيها إلا نصف أعضائه فقط، والباقون تخلفوا أو اعتذروا عن الحضور لظروفهم الخاصة، لا ينبغي أن يتخذ فيها قرار بهذه السرعة، بتحريم موضوع كالتأمين من أكبر الموضوعات المهمة اليوم خطورة وشأناً، لارتباط مصالح جميع الناس به في جميع أنحاء المعمورة، والدول كلها تفرضه إلزامياً في حالات، كالتأمين على السيارات ضد الغير، صيانة لدماء المصابين في حوادث السيارات من أفدة تذهب هدراً إذا كان قائد السيارة أو مالكة مفلساً. فإذا أريد اتخاذ قرار خطير كهذا، وفي موضوع اختلفت فيه آراء علماء العصر اختلافاً كبيراً في حله أو حرمة، يجب في نظري أن يكون في دورة يجتمع فيها أعضاء المجمع كلهم أو إلا قليلاً منهم، وعلى أن يكتب لغير أعضاء المجمع من علماء العالم الإسلامي، الذين لهم وزهم العلمي، ثم يبت في مثل هذا الموضوع الخطير في ضوء أجوبتهم، على أساس الميل إلى التيسير على الناس عند اختلاف آراء العلماء، لا إلى التعسير عليهم. ولا بد لي ختاماً من القول بأنه إذا كانت شركات التأمين تفرض في عقودها مع المستأمنين شروطاً لا يقرها الشرع، أو تفرض أسعاراً للأقساط في أنواع الأخطار غالية بغية الربح الفاحش، فهذا يجب أن تتدخل فيه السلطات المسؤولة لفرض رقابة وتسعير لمنع الاستغلال، كما توجب المذاهب الفقهية وجوب التسعير والضرب على أيدي المحتكرين لحاجات الناس الضرورية، وليس علاجه تحريم التأمين، لذلك أرجو تسجيل مخالفتي هذه مع مزيد الاحترام لآرائكم.

دكتور مصطفى الزرقاء.

الرئيس: عبد الله بن حميد رئيس مجلس القضاء الأعلى في المملكة العربية السعودية.

نائب الرئيس: محمد علي الحركان، الأمين لرابطة العالم الإسلامي.

الأعضاء: عبد العزيز بن باز الرئيس العام لإدارات البحوث العلمية والإفتاء والدعوة والإرشاد في المملكة العربية السعودية، محمد محمود الصواف، محمد بن عبد الله السبيل، صالح بن عثيمين، محمد رشيد قباني، مصطفى الزرقا (مخالف)، محمد رشيد، عبد القدوس الهاشمي الندوي، أبو بكر جومي (بدون توقيع)