

Sharīḥ Appraisal of Conventional Insurance and Takāful: Sharīḥ and Ethical Issues

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Abstract

Contemporary Islamic insurance (*Takāful*) is an alternate to the conventional insurance. Although justification has been given by scholars in favour of conventional insurance however majority of Scholars (*fuqaha*) are against conventional insurance. Due to the presence of uncertainty (*Gharar*), Gambling (*Maysir*), interest (*Ribā*) and unlawful appropriation of others property (*Akl-l-Māl-Bil-Batil*) in conventional insurance, it is not fitted in Islamic framework. Alternatively *Mudārabah*, *Wakālah* and *Waqf-Wakālah* models are used for Islamic insurance in different parts of the world. Conventional insurance is different from Islamic insurance in the sense of contract formation, nature

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of capital, business apprehensions and investment strategies. Although lot of work has been done for Islamic insurance but yet there are some issues which needs to be addressed in order to develop consensus on one practicable model, formation of regulations and some other *Shari'ah* and ethical concerns.

Keywords: Conventional, Insurance, Islamic insurance, *Takāful*, *Shari'ah*.

1. Introduction

Islam is a religion of complete code of ethics. There are two main streams of commands in Islam, one is for *Ibadat* and second is for *Muamalat*. Being a commutative contract, insurance comes under the umbrella of the commands of *Muamalat*. Insurance is a risk transfer instrument in which risk is shifted to insurance companies which handle the risk by spreading it over a large number of people or firms (The Insurance Association of Pakistan, 2013). Minimizing the risks and maximizing the benefits is an important objective of general public. Thus, both conventional insurance and Islamic insurance (*Takāful*) are the tools to hedge the risks. Both tools are devices to transfer or share the burden of risk.

In contemporary scenario Insurance is compulsory in many countries of the world. Its importance in countries where law and order situation is not good is more important for the purpose of investment and in result for sustainable growth of economy. Developed and many developing countries are benefiting from the bounties of conventional insurance whereas many Muslims cannot take advantage of this instrument due to not acceptability of this contract by *Shari'ah* (Islamic Law). Islam does not prohibit to take precautionary measures for future potential risks rather it encourages (Qureshi, 2011). Islam is not against the concept of insurance but it does not accept the way of working of conventional insurance.

There has been divergence of opinion on permissibility of conventional insurance contract among Islamic scholars. The reason of divergence is the difference of understanding and opinion on

the immersion of some factors i.e. *Ribā*, *Gharar* and *Qimār* in conventional insurance (khan, 2011). In this paper it is attempted to delineate the contracts of conventional and Islamic insurance, the reasons for the divergence of opinions, models used for Islamic insurance. Some issues regarding Islamic insurance are also highlighted and the recommendations for possible improvements are given.

2. *Sharīl ah* Appraisal of Conventional Insurance

Being a first scholar in Muslim world, Ibn Abidin (1784-1836) discussed Insurance contract in its sense and legal features (Klingmuller, 1969). The process of appraisal and Islamicity of insurance had started from the instigation taken by him. The process of consensus had been started since then and as a result several Islamic insurance companies have stated their operations in different part of the world in second half of the twentieth century since 1979, (Anwar, 1994; Fisher & Taylor, 2003).

2.1 Muslim Jurists on Conventional Insurance

The opinion of Muslim Jurists is divided on the permissibility of conventional insurance as per Islamic law (*Sharīl ah*). Islamic Scholars (*Fuqaha*) gave fatwas regarding conventional insurance contract. Hanafi (One of Islamic school of thought) scholars declared co-operative insurance legal and other forms are not permissible by *Sharīl ah* because of the elements of *Ribā* and *Gharar*. *Maliki's* (another Islamic school of thought) considered life insurance contract as illegal and others contracts as legal. *Shafi's* declared all conventional insurance contracts not compatible with *Sharīl ah*. *Hanbalis* as well considered insurance contract not harmonious with *Sharīl ah* (Mankabady, 1989).

There are basically three different opinions of Muslim Jurists on insurance.

First view is that the insurance practice is lawful provided that it does not involve interest (*Ribā*)³. There are some other scholars who endorse general insurance but raise objections to life insurance as it

³. *Ribā* literally means something over and above the principal amount (normally called interest). This viewpoint is shared by Shaikh Mohammad 'Abduh, the Hanafi lawyer Shaikh Ibn Abidin, Mohammad Taqi Amini, Shaikh Mahmud Ahmad and Ayatullah Khomeni. (Khomeni, 1979; Siddiqi, 1980)

involves the elements of *Maysir*⁴ (gambling) and *Gharar*⁵ (uncertainty in the price/delivery of subject matter of a contract) and it contrasts with the Islamic law of inheritance (*Mīrath*) and will of the deceased (*Wasīyah*). This point of view was approved by the scholars in international conference held in Cairo (1965) and Morocco (1972)⁶. A third group of scholars clearly rejects the contemporary form of insurance on the basis that it involves the factors like *Ribā*, *Maysir* and *Gharar* which are clearly prohibited by Islamic law (*Sharīʿah*)⁷.

In other words, those who reject the conventional insurance, object it due to its involvement of uncertainty in the price/delivery of subject matter of a contract, gambling, interest, violation of Islamic law of inheritance and unlawful appropriation of other's property (*Akḥl-ḥal-Māl-Bil-Batil*) (Rashid, 1993). These factors in conventional insurance contradict the Islamic law of transactions.

First factor is *Gharar* (uncertainty). In conventional insurance contract, uncertainty of payment is accepted as promised in the contract and the amount and time of payment in case of mishap are not defined. Therefore *Gharar* is involved in three ways (i) uncertainty about occurrence of an event in number of times (ii) uncertainty about the amount of indemnity, and (iii) the timing of occurrence of event.

The condemnation of the *Gharar* is given in a *mutwatir* (chained) *Ahadith*, as narrated by Hazrat Abu-Huraira (R.A) "the Holy Prophet (PBUH) forbade the sale by stone throwing and the sale of *al-gharar*" (*Sahīh al- Mḥslim*)

⁴. *Maysir* basically means a game of chance that was common in pre-Islamic times among the Arabs. In the broader sense the term means any action aimed at an easy material gain without investing work or capital.

⁵. *Gharar* constitutes uncertainty in the price/delivery of subject matter of a contract, or any speculative risk. For example, sale of a bird which is in the air, is not allowed, because it is not certain whether the seller can hunt the bird or not, thus the delivery of subject matter of contract is uncertain.

⁶. This viewpoint was supported by Abdur Rahman 'Isa, Ahmad Ibrahim, Mohammad. Musa, Mufti Mohammad Bakheet and Mohammad Abu Zahra. (Rashid, 1993)

⁷. The scholars whose are in favour this view point are Mustafa Zaid, 'Abdullah al-Qalqeeli and Jalal Mustafa al-Sayyad (Billah P. D., 2011).

Hazrat Ali (R.A) reported that, “The Holy Prophet (PBUH) forbade forced purchase from a needy person and purchase of *al-Gharar* and purchased of fruit before it reaches maturity” (*Abu-Daud*)

Hence, due to the clear condemnation of *Gharar*, the contract of insurance is not accordance with *Sharīʿah* rulings and not allowed. Supporter of the conventional insurance argued that *Gharar* is involved only on an individual level rather collective level because it is scientifically determined on collective level by using statistics. Therefore, it is irrational to prohibit it due to *Gharar* on individual level (Siddiqi, 1985).

It is also argued that *Gharar* should be overlooked under the doctrine of necessity (*darura*) and public interest (*masalahah*). According to Siddiqi (1985) present system of the creation of wealth and business activities could not be smoothly ran without existing of insurance. Another argument in favour of insurance is that this tool is to hedge risk through personnel means rather to put burden on society. Some others argued that subject matter of the insurance is certain and there is no *Gharar* because the subject matter is predefined either that is property or life. Life is given by *Allah* (SWT) and certainly will end by the will of *Allah* (SWT). *Allah* (SWT) says in Qurʿān ;

“Every soul will taste death.....” (3:185)

Thus, the allegation of *Gharar* raised on insurance contract is not valid.

Second factor is *Maysir* (gambling). Participants contribute small sums with the hope of gaining larger sums. In other words they are betting for gaining large sums in case of event occurs. Premiums paid by the participants are lost, when events do not occur. If claims are more than premium then the insurance company is in shortfall. Act of gambling is strictly prohibited in Islam, as *Allah* (SWT) ordain,

“They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit." And they ask you what they should spend. Say, "The excess [beyond needs]." Thus *Allah* makes clear to you the verses [of revelation] that you might give thought.” (2:219)

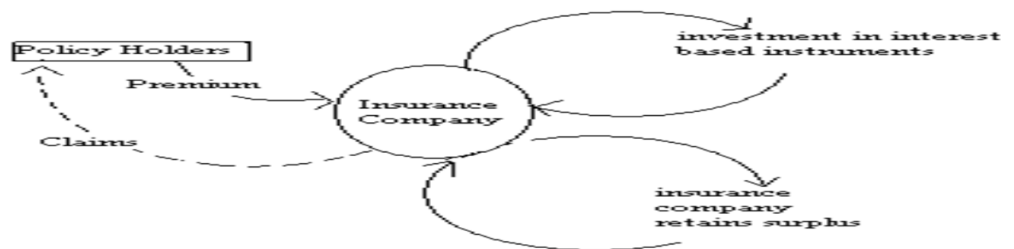
Therefore the contract of conventional insurance does not lie in the sphere of *Sharīʿah* and not allowed to be observed.

Counter arguments given by supporters of conventional insurance is that the bettor willfully take risk which actually not exist. If risk exists, then it does not relate him specifically i.e. bets on cards & purchasing of lottery tickets. Another difference between gambling and insurance is that bettor clearly betting for profit while insurer only wants to hedge risk in case of uncertain event. In gambling, one party gets zero sum in return but in insurance contract, even in the case of not occurrence of an event, insured at least get peace of mind in return. Moreover, gambler can easily avoid risk while in insurance the risk is embedded in contract. Insured seeks risks hedging while gambler seeks profit (Siddiqi, 1985; Zaman, 1988).

Third factor is *Ribā* (interest) that is resulting as earnings are paid to the insured on claims (Lian & Aziz, 2006). *Ribā* accrues to the insured when the indemnity is more than the premiums, and to the insurers when indemnity is nil or less than the premiums. Insured received zero amount, less than or more than premium in case of (i) withdrawal of policy(ii) default on payment of premium (iii) not occurrence of event (iv) contract becomes void. On other side, normally, companies make interest based deposit, investments in bonds and other non *Sharīʿah* compliant investment avenues (Swartzl & Pieter, 2010).

In conventional insurance usually there is simple exchange of money with money, in case of mishap or giving lump sum on the time of maturity of contract (Arrow, 1992). A simple model of conventional insurance is given below:

Figure 1: Model of Conventional Insurance



Source: Mubbsher et al. (2011)

In this model on 1st step policy holders pay premium to company. Insurance company invests premiums in lucrative investment avenues

including interest based instruments. Company fulfills the claims from investments returns.

Thus, *Ribā* is clearly involved in contract of conventional insurance, which is firmly prohibited in *Sharīʿah*. It is ordered In *Qurʾān* and in a number of *Ahādīth* to not involve in *Ribā* based activities. *Allah* (SWT) says in *Qurʾān*,

“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But *Allah* has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with *Allah*. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein.” (2: 275)

Supporters of the conventional insurance claim that *Ribā* is not involved in insurance contract because premiums are not a loan and the indemnity by the insurer is also not a return of loan. Compensation received by insured is not for the elapse of time. The amount of the compensation is also not predetermined rather it depends on extent of peril, which is not *Ribā* (Siddiqui, 1985). Moreover, it is argued that in *Ribā* transaction primary purpose is monetary gain while the purpose of insurance policy is the protection rather to robust the financial position (Zaman, 1988). *Ribā*, in conventional insurance contract is incidental which is not embedded in contract.

Fourth factor is the violation of Islamic law of inheritance (*Mīrath*) in life insurance, because the compensation is given to the nominees and not to the legal heirs. In *Qurʾān* *Allah* (SWT) says,

“..and a compensation payment presented to the deceased's family..” (4:92).

Therefore compensation should be distributed among legal heirs.

Counter argument is that the nominee role is just as a trustee and not absolute beneficiary, therefore he is liable to distribute the amount among legal heirs.

Fifth factor is the unlawful appropriation of others' property (*Akīl-Māl-Bil-Batil*), i.e. if no loss occurs, then all premiums are kept by the insurer in general insurance contract. *Allah* (SWT) says in Qur'ān ,

“And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]” (2:188)

It is clearly ordained to not consume other property illegally; therefore contract of conventional insurance is not valid according to *Sharī'ah*.

Author could not find any argument against this assertion, from the supporters of the conventional insurance. In author's opinion, they may argue that insured at least gain peace of mind in return.

Indeed, the arguments given by the supporter of conventional insurance, the matter is not yet clear. In case of *Ribā*, there is simply exchange of money with money probably in unequal amounts, no matter what are the intentions of concerned parties. In general insurance, probably the indemnity is unequal and in life insurance compensation are predefined and more than the premium amount, therefore it clearly comes under the definition of *Ribā*.

In case of *Gharar*, supporters' justify it under the umbrella of *darura* and *masalahah* (public interest). Counter argument is that if a choice is available which fulfill the need and is accordance with *Sharī'ah* then the question of *darura* and *masalahah* no more exist. Through the business of insurance, individuals and entities transfer the burden of uncertainty to the insurer, for an agreed price called the “premium”, in return, the insurer provides financial compensation to the insured, if a specified loss occurs (Khan, 2003). By definition it is an exchange contract, thus *Gharar* is not acceptable in insurance. In case of unlawful appropriation of other property, peace of mind is valid only when other party physically gives any service or product in return but in insurance contract, there is no such arrangement.

Due to above mentioned factors the Islamic *Fiqh* Academy (1985) has declared the conventional insurance contract as prohibited according to

Sharīʿah. Likewise, the Council of Islamic Ideology of Pakistan (1984) stated that the current forms of insurance are contradictory with the Islamic commands. Similarly, *Majlis Fiqhi Islami*, declared commercial insurance in all its form *haram* (Anwar, 1994). Thus, there exists a need for alternative *Sharīʿah* compliant insurance model.

3. Historical Context of Insurance and *Takāful*

Insurance has a rich and remarkable history. Its history spreads over several periods of human civilization. As everything in its start is simple so insurance has no exception. As industry developed, the need of insurance felt and in result insurance institution was invented.

Insurance has existed for many centuries due to its prime importance. Some historians trace the origin of insurance to 215 CE, when the Roman government transferred its all risks to the military which arisen from enemy attacks, natural disaster and for supplies carried on their ships (Fisher, 2009). Modern insurance can be traced back to the beginning of 16th century (Lim & Idris, 2010). It was initiated in Italy & progressively spread over to other parts of Europe (The Insurance Association of Pakistan, 2013).

Like other people Muslims since early time have been exposed to the prospect of risk. Although Muslims believe in fate (*Qadha-o-Qadr*)⁸, but Islam does not prohibit Muslims to find ways to keep away themselves from risks such as disasters, death, losses and damages through fire, accident, earthquake and business failures. Rather it encourages that one should try to minimize financial losses for oneself and his/her family. Protection of property is one of the objectives of *Sharīʿah* [Al-Atar, 1983; Aziz & Mohamad, 2013; Nyazee, 2008]

In contemporary scenario insurance becomes a need for societies i.e. in international trade, banks do not facilitate until goods are insured. Therefore, it is equally important for Muslim societies for smooth running of business and economy (Anwar, 1994).

⁸. According to Islamic faith, Muslims in general shape their lives through their own deeds. However there are certain spheres of life, such as birth, death and provision of life, which are considered as predetermined. The outcomes of different deeds in life are usually interpreted as fate.

3.1 Insurance in Islamic Framework

A concept of *Aqilah*, that means a risk sharing mechanism in which community members pool their share of blood money (*Dīyat*) existed before the time of the Holy Prophet Muhammad (S.A.W), which was also endorsed by the Holy Prophet. Some scholars consider this institution as the origin of Islamic insurance (Pasha, 2011). Some others traced its roots in the beginning of second century of the Islamic era (Ali, 2010). In 19th century, Ibn Abidin (1784-1836) a Hanafī jurist explained the idea, meaning and legal entity of insurance contract (Klingmuller, 1969).

In 1906, an Egyptian Mufti Muhammad Bakheet, endorsed the concept of insurance which, among others, was given by Ibn Abidin. During 20th century, a renowned Muslim jurist, Muhammad Abduh, issued two '*fatwas*' stating that an insurance contract based on '*al- mudārabah*' financing method and another contract which is like endowment, are Islamically legal (Pasha, 2011). To consider insurance as an Islamic approach of risk sharing, efforts were made in the late 1970s. The first Islamic insurance (*Takāful*) company, namely the Islamic Insurance Company Limited, was established in Sudan in 1979 (Anwar, 1994).

Figure 2: Geographical Spread of *Takāful* Companies

Source: Financial Stability Review 2009

The global
Takāful

contributions, which were \$9.15 billion in 2010 and \$12 billion in 2011, are expected to touch \$25 billion by 2015. Muslims are 20 percent of the world's population but *Takāful* has one percent share in the world insurance

business that underlines the need for immediate legislation and ambitious penetration (Report by Pakistan Economy Watch, 2012).

As we discussed above, practice of *Takāful* was endorsed by the Holy Prophet Muhammad (PBUP). As the industry and trade grew, need for insurance became important. *Sharīʿah* has no objections to the concept or objectives of insurance. The objections of Muslim jurists are raised on the way, it operate.

In order to understand the concept of insurance in Islam we have to seek guidance from the basic sources of Islam, namely *Qurʾān* and *Sunnah* of the Holy Prophet (PBUH). First we discuss the concept of Islamic insurance in *Qurʾān* and *Ahādīth* and then we illustrate different models used in *Takāful* developed by *Sharīʿah* experts.

3.2 Qurʾān & Sunnah on Insurance

Islam acknowledges the existence of uncertainty and risk in human life and emphasizes on the patience in difficult situations. In *Holy Qurʾān Allah (SWT)* says:

"Be sure we shall test you with something of fear and hunger, some loss on goods, lives and the fruits (of yours toil), but give glad tidings to those who patiently persevere". (*Qurʾān : Al-Baqara, 155-156*).

In such situations Islam stresses the need for cooperation, as *Allah (SWT)* says:

"And help one another in righteousness and piety and do not help one another in evil deeds and enmity" (*Qurʾān : Al Mai'dah, 2*).

Thus, cooperation is stressed for good and not for evil deeds. The norm of helping each other in difficulty is blessed in Islam. In another place it is encouraged to help each other, if someone is in difficulty and *Allah (SWT)* blessed those who relieve other from pain. Holy Prophet (PBUP) said:

"He who relieves someone in difficulty will be relieved by Allah in this life and in the Hereafter. And he who protects a Muslim will be protected by Allah in this life and in the Hereafter. Allah helps his slave as long as the slave helps his brother..." (Reported by *Muslim*, Volume No.4, *Ahādīth* No. 2699).

Managing assets and wealth in good manners to secure present and future requirement against various risks is a blessed deed in Islam. Prophet Muhammad (PBUH) said:

“Allah (S.W.T.) blesses those who acquire wealth in good manner, then the wealth is spent accordingly and the remaining is saved for future use when risk occurs.” (*Sahīh al-Bukharī and Muslim*)

Similarly, protecting posterity from the risk of poverty is duly emphasized in Islam. Prophet Muhammad (PBUH) stated:

“Verily, it is better for you to leave your off-springs wealthy than to leave them poor, asking others for help” (Reported by *al-Bukhari*, Volume No.4, *Ahādīth* No. 2742).

As discussed earlier protection of property (*Mall*) is one of the important objectives of *Sharīʿah* and *Takāful* is a mean for protection. It is clear that one should not only adopt but is encouraged to adopt all islamically permissible (*Halal*) means to protect oneself and his/her family from future potential risks and losses. One possible way is to buy an insurance policy. Muslim jurists purpose a scheme, named *Takāful* which is based on the idea of joint cooperation. Thus, the way of mutual responsibility could be considered as Islamic alternative for conventional insurance. The main idea of Islamic insurance is that it is a contract of joint responsibility and mutual co-operation among different parties to protect each other from future risk [Khan, 2003; Pasha, 2011]. The *Tankful* Act 1984 of Malaysia defines *Takāful* as a scheme which is based on brotherhood, unity and mutual cooperation which provides mutual financial support and help to the participants in case of unexpected losses. The participants jointly agree to pay for specific purpose.

Takāful is an alternative to conventional insurance, it follows *Sharīʿah* laws which are based upon the idea of social unity, collaboration and joint indemnification of losses of the participants. It is covenant among different persons who decide to mutually bear the risk or losses that may inflict upon any of them out of the fund they donated for this purpose (Maysami et al. 1997). In *Takāful* it is also considered to eliminate all un-Islamic elements which we discuss above like interest, uncertainty, gambling and violation of law of inheritance. *Takāful* is basically circle of

mutuality like mutual help, shared responsibility and joint protection from damages. In *Takāful* the company which is running the scheme is not an insurer but a service provider and it is merely an institution which provides the entrepreneurial and administrative skills required to bring the participants together to collect and invest the contributions and to process the claims (Mahmood, 2011).

4. Prevailing Models of Islamic Insurance (*Takāful*)

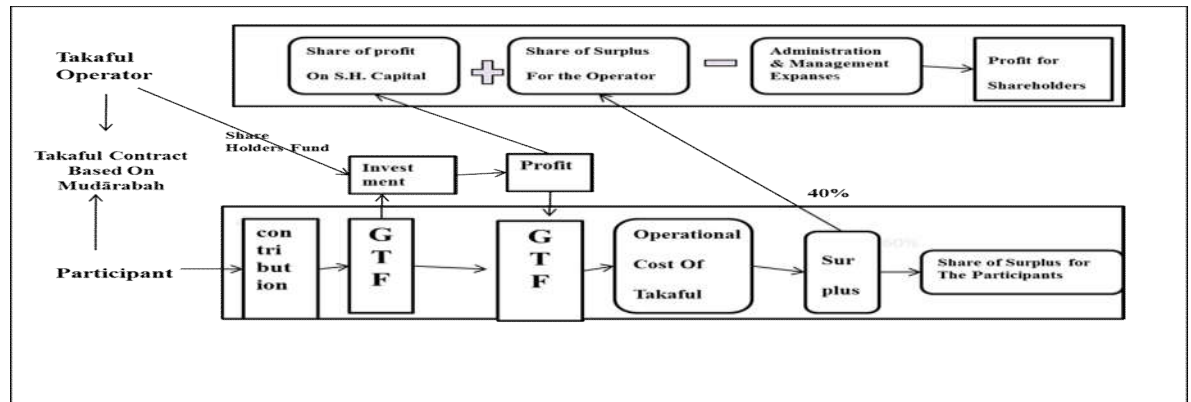
Takāful operations are based on different models including *Mudārabah* (profit and loss sharing) model of Malaysia, *Wakālah* (principal-agent) model of Middle East/South Africa and *Wakālah-Waqf* (endowment fund sum principal-agent) model of Pakistan.

4.1 *Mudārabah* Model

In this model all contributors are agreed to share profits/loss from the joint responsibility (Maysami et al. 1997). The operators take salary from profits of the company and are not entitled for commission. Same rules apply for the management of the company (Billah, 1996). Rules for sharing of profit and loss are determined in advance between participants and operator.

Figure 3: *Mudārabah* Model of *Takāful*

Note: GTF= General *Takāful* Fund, S.H= Share Holders



Sources: Wahab et.al. (2007); Khan (2013)

In this model the contract between participants and *Takāful* operators is based on *Mudārabah*. Participants gave contribution in General *Takāful* fund and contributions are invested by the *Takāful* operator on *Mudārabah* basis. *Takāful* operator takes profit share from investment. Claims are fulfilled from General *Takāful* fund.

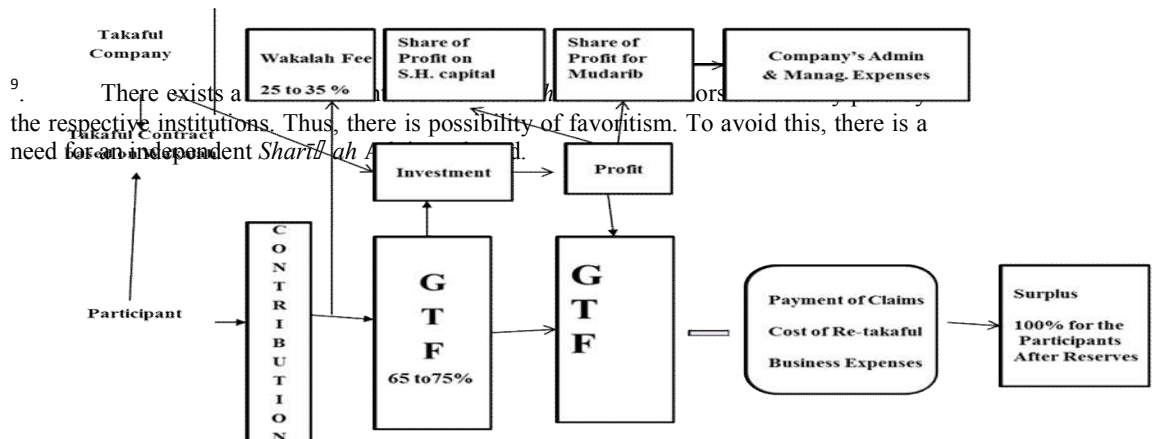
The sharing ratio of profits is approved in advance by the *Sharīʿah* advisors⁹. Usually shareholders bear all expenses under *Mudārabah*. In above mentioned model, there are some *Sharīʿah* based concerns raised by Muslim jurists. Their point of view is that *Mudārabah* is a commercial contract, which is not appropriate for a donation (*Taburru*) based scheme. In this contract donation given by the participants cannot become capital for *Mudārabah* at the same time. Surplus is distributed among the participants according to their contributions, which resembles a conditional gift (*Hiba bis-Sawab*) which is contradictory to *Sharīʿah* rules (Khan, 2013). Due to these limitations this model is not very acceptable among *Sharīʿah* scholars. Thus, another model was formed to overcome these flaws.

4.2 *Wakālah* Model

Wakālah model is developed to overcome the drawbacks of *Mudārabah* model. In this model there is a *Wakālah* contract between *Takāful* operator and participants. *Takāful* operator deducts a *Wakālah* fee from the contributions made by policyholders. The differential of the policyholder fund (investment) and net of the management fee or expenses go to the contributors. *Wakālah* fee covers the total business costs and salaries, which is taken from contributions of the operator. The *Wakālah* fee is decided on one year advance basis by the *Sharīʿah* Advisors of the company (Wahab et al. 2007).

Figure 4: *Wakālah* Model of *Takāful*

Note: GTF= General *Takāful* Fund, S.H= Share Holders



Sources: Khan (2013); Wahab et.al. (2007)

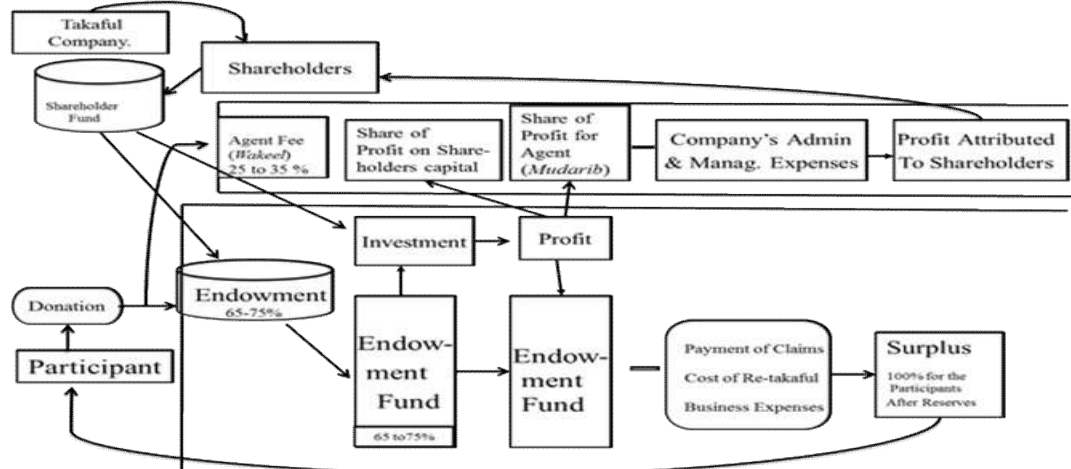
In this model the contract between participants and *Takāful* operators is based on *Wakālah*. Participants contribute in General *Takāful* fund and contributions are invested by the *Takāful* operator on *Mudārabah* basis. *Takāful* operator takes profit share from investment and *Wakālah* fee from contributions. Claims are fulfilled from General *Takāful* fund.

Although this model is refined and it is better than *Mudārabah* model but still there are some *Sharīʿah* concerns on this model. First concern, similar to first model, is that surplus is distributed among participants on the basis of their contributions, i.e. conditional gift (*Hiba bis-Sawab*) not permissible in *Sharīʿah*. Second is the provision of *Qard-e-Hasan*, which is provided by the shareholders fund in case of deficit, which is not correct when operator operates as a *Wakeel* (agent) and not as a guarantor.

4.3 Waqf-Wakālah Model

Waqf-Wakālah Model is being practiced in Pakistan by different *Takāful* companies. In this model, on first stage a *Waqf* fund (endowment) is formed by operator as a distinct legal entity. The amount given to *Waqf* fund is considered as a donation (*Taburru*). The basic purpose of this fund is to provide support to participants in case of certain losses according to the rules of the *Waqf* fund (Wahab et al, 2007).

Figure 5: *Waqf-Wakālah* Model of *Takāful*



Sources: Wahab et.al. (2007);Khan (2013); Janjua & Akmal, (2014)

In this model at first *Waqf* fund (endowment) is created by the shareholders. Participants contribute to *Waqf* fund. *Takāful* operator works as a *Wakeel* (agent) of *Waqf* fund. *Takāful* operator makes investments of *Waqf* fund on *Mudārabah* basis. *Takāful* operator takes profit share from investment & *Wakālah* fee from contributions. Claims are fulfilled from *Waqf* fund.

Waqf-Wakālah is a modified form of *Wakālah* Model. In this model participants and operator have direct relationship with the *Waqf* fund. The operator acts as agent or legal representative (*Wakeel*) of the *Waqf* fund and on other side one sided donations are paid by the participants to *Waqf* fund without condition. The main advantage of this model is that it resolves the issue of *Gharar* in this contract because in donation contract *Gharar* is acceptable (Khan, 2013).¹⁰

5. Issues in Islamic Insurance (*Takāful*)

The above mentioned models of *Takāful* are being used in different parts of the world. Although lot of efforts have been made to resolve the

¹⁰. Main features of each model has been discussed here, detail of each model is not given, reader can consult other sources for details of each model i.e. (Wahab et.al. 2007)

issues but still it requires efforts to have consensus on one *Takāful* model (Wahab et.al. 2007).

As *Takāful* industry is growing rapidly it needs regulation according to the contemporary scenario but prevalent regulations do not fulfill the requirement of the developing industry. There is another important concern about this industry is that the operators keep their interest before the interest of the participants while choosing model for *Takāful*. Operators choose that model in which they feel comfortable and will be beneficial for the shareholders. Difference of opinion is also there among *Sharīʿah* scholars that whether net underwriting surplus be treated as *Mudārabah* profit or not (Htay & Salman, 2013). Objections have been raised by *Fiqhi* scholars on option of *Qard-e-Hasan* in case of shortfall of fund from Shareholders in *Mudārabah* model (Sheila & Zaharin, 2012).

Concept of *Qard-e-Hasan* is a benevolent loan¹¹. Therefore, in case of deficit, stockholders do not like to give this loan to fulfill deficit of *Takāful* Company (Htay & Salman, 2013). Apart from that, another issue which has been raised on *Takāful* is about the donations just for the benefit of donators (conditional donation), which is not justifiable (Janjua & Akmal, 2014).

6. Conventional versus Islamic Insurance (*Takāful*)

Seemingly, conventional and Islamic insurance seems alike to each other but in reality arrangement of both contracts are totally different. Conventional and Islamic insurance companies are running their operations in different countries and as well in Pakistan. *Takāful*, companies follow *Sharīʿah* doctrines whereas conventional insurance followed western common law.

Apart from that, in conventional insurance the position of contract between insurer and insured is exchange contract while in Islamic insurance it is donation contract. In Islamic insurance contributions (premiums) comes under the ownership of *Waqf* fund while in conventional insurance, it is the ownership of the company. In conventional insurance

¹¹. Whenever borrower feel easy, he returns it to lender otherwise lender will not demand it in case of hardship of borrower.

claims are paid from underwriting funds and shareholders' equity whereas in Islamic insurance claims are fulfilled from underwriting fund and *Qarz-e-Hasan*. In conventional, being owner of the premium investment is made by shareholders funds but in Islamic insurance investment is made by the *Waqf*, shareholders and participants fund [khan, 2013; Janjua & Akmal, 2014].

Islamic insurance companies only give insurance cover to *Sharīʿah* compliant business and invest in only *Sharīʿah* compliant avenues. Whereas conventional insurance companies only follow prudential regulations while making investments and providing insurance cover to business. In conventional insurance, participants transfer their risk to the insurer and insurer fulfills the claims from its own pocket, because the premium paid by the participants becomes property of the insurer. Whereas in Islamic insurance (*Takāful*), risk is shared among the participants. In case of loss not the *Takāful* operator but the participants support each other. *Takāful* operator provides only administrative & entrepreneurial skills (khan, 2013). Islamic insurance is a risk sharing mechanism however in conventional insurance, it is risk transfer.

7. Conclusion & Recommendations

Although conventional insurance is very old like conventional banking but this doesn't mean that Islamic insurance cannot compete with the conventional framework. The idea of Islamic insurance rooted fourteen centuries ago since the arisen of Islam on the shore of Arab land. Modern framework of Islamic insurance is performing well parallel to conventional framework since its inception in 1979.

Having different level of understanding, educational background and inclination toward specific ideas, there have been difference of opinions on the permissibility of conventional insurance in an Islamic framework. Majority of *fuqha* is on the opinion that conventional insurance contract is not fitting in the frame of Islamic commands (*Sharīʿah* rulings) due to the factors of uncertainty, interest, gambling, violation of Law of inheritance and unlawful appropriation of others property.

Therefore, in line with the importance and necessity of insurance in contemporary scenario, an Islamic alternative of insurance named *Takāful*

has been devised within the framework of Islamic injunctions. Islamic principal are strong to fulfill the need and to support the global economy (Ahmad, 2010). Different models of Islamic insurance like *Mudārabah*, *Wakālah* and *wakālah-Waqf* model has developed and are implemented in different parts of world including Muslim and non-Muslim states.

Working of conventional and Islamic insurance is totally different to each other. Contract formation, investment strategy, regulatory framework, policy for proving insurance covers is different in both schemes. Thus, Islamic insurance is expected to become strong competitor to conventional insurance. According to Khan (2013) the efficiency of Islamic insurance industry was better than conventional insurance industry in Pakistan.

Even though, lot of efforts has been made to device an alternative tool of insurance within the injunctions of *Sharīʿah*, but yet there are some issues in Islamic insurance, which needs to be resolved. The main issue is to develop a consensus among *fuqha* on one Islamic insurance model which fulfill the needs of participants, shareholders and also suitable for Muslims and non-Muslims as well. Then, there is a need of regulatory framework which fulfills the requirement of developing industry.

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