

An Introduction to the Origins, Evolution and Types of the Prevalent Insurance and Rulings of Islamic Law

Dr. Saleem Khan¹, Fawad Ali², Dr. Zafar Hussain³, Dr. Muhammad Ayaz⁴, Dr. Mian Asadullah⁵, ¹Lecturer, Department of Islamic Studies, University of Peshawar, Peshawar, Pakistan, ²PhD. Research scholar, Faculty of Usool ud Deen/Department of Hadith, International Islamic University, Islam Abad, ³Assistant Professor, Department of Islamic Theology, Islamia College University, Peshawar, Pakistan, ⁴Assistant Professor, Department of Islamic Studies/ Pakistan Studies, University of Agriculture Peshawar, Pakistan, ⁵Assistant Professor, Islamic Studies, Higher Education Department KPK, Pakistan Email: ¹saleemkhanisl@uop.edu.pk, ²fawad085@gmail.com, ³zafar.hussain@icp.edu.pk, ⁴Muhhammad.ayaz@aup.edu.pk, ⁵mianasadullah1234@gmail.com,

This article investigates prevalent insurance with its origin, development, types and detailed review of pertinent Shari'ah rulings. The purpose of the article is to highlight the validity of modern insurance in light of the Shari'ah rulings. Hence, it discusses the definition of insurance, such as, being a process of giving something into someone's protection. This insurance has been described with historical development from early Muslim jurists to modern scholars to present modern concept of Islamic insurance. Moreover, the article encompasses types of insurance with explanation. Besides, a detailed review of Shari'ah rulings has been presented serving to identify defects in modern insurance. Hence, it concludes that modern insurance has elements of Riba, Gambling and Gharrar. Therefore, such insurance is invalid in light of Shari'ah. In contrast, Muslim concept of insurance as conferred from the early centuries of Muslim societies, such as Daman Khatar al-Tariq and Daman Al-Dark etc are valid however, in modern insurance they have been redesigned with elements of Riba and Gambling which makes them invalid.

Keywords: *Islam and Modern Insurance, Riba, Usury, Gambling, Shari'ah rulings.*

Introduction:

Human life is prone to uncertainties ever since inception. Accidents have surrounded him from all dimensions. In everyday life accidents have become a part of human life envisaging financial, human and sometimes both kinds of losses. So, efforts are evident in every era to ensure protection against these incidents and to compensate the financial loss so caused. Hence, various measures and methods were used. Among others, one of the measures and methods is the prevailing insurance system, which was adopted to compensate the financial loss caused by the risks. With the passage of time, its usefulness and popularity continued to increase and it started getting acceptance from all sides, and gradually this system started to strengthen its roots in most of the countries of the world until it became a part of every small and big trade from international to national level, even in some countries many forms of life insurance have been made legally mandatory for every citizen.

In the context of the basic concept of insurance, its necessity and usefulness is one of the prominent aspects, and we find examples of this basic concept from the early centuries of Muslim societies, such as Daman Khattar al-Tariq and Daman Al-Darak etc. However, the process that has been adopted for the prevailing insurance contains many aspects that are against the Shari'ah Law (usury, gambling, gharar), due to which the scholars declared it illegal and prohibited for Muslims according to the Shari'ah law, and invited all Muslims to avoid it.

Meanings and Definitions of Insurance:

Literal Meaning of Insurance:

Insurance is an English word. In Arabic language the root word for Insurance is "Al-Tamin", which means: to make responsible, to assure, and to give something in someone's protection. ¹

Idiomatic Meaning of Insurance:

Since the prevalent insurance began in the 14th century AD, hence we didn't find it in the ancient books of Islamic jurisprudence. Also, even after the beginning, since this contract was not common among Muslims, the jurists of that time also did not comment on it. However, as a result of the Industrial revolution in the 20th Century AD, when this insurance became inevitable even for Muslims, people started asking the jurists about its Shari'ah status.

Therefore, the jurists drew attention to this thereafter taking a detailed analysis of all the aspects of insurance and the prevalent cases, explained its Shari'ah rulings to the people.

In the beginning, Allama Ibn Abidin Al-Shami evaluated the prevalent insurance in light of Islamic law, hence found it to be contradictory to the rules and regulations laid down by Shari'ah. consequently, gave a fatwa of its illegitimacy and invited Muslims to avoid this insurance. However, Allama Ibn Abidin Al-Shami also did not argue with the definition of

insurance and other details. Contemporary jurists have given different definitions of insurance. The main reason for which was that some people have defined it keeping in mind the system and theory of insurance. While some others have mentioned the definition of insurance keeping in mind the insurance contract. Therefore, there is a significant difference between the two types of definitions, which are briefly mentioned below.

Idiomatic definition of Insurance (Based on System and Theory):

First definition:

" تعاون منظم دقيقا بين عدد كبير من الناس معرضين جميعا لخطر واحد، حتى اذا تحقق الخطر بالنسبة الى بعضهم تعاون الجميع في مواجهته ، بتضحية قليلة ببذلها كل² منهم ، يتلافون بها اضرارا جسيمة تحيق بمن نزل الخطر به منهم "

(Translation)

It is such an organized and precise kind of cooperation among large number of people who are exposed to common risk. In case of a loss caused due to such a risk all of the people cooperate by supporting, the one who has suffered the loss, bit by bit resulting in compensating the great loss.

Second Definition:

" نظام لتوزيع الخسائر المالية ، التي تلحق بالفرد في حياته أو أمواله وممتلكاته ، على مجموعة من الافراد الذين يساهمون معه في تكوين رصيد مالي لهذا الغرض "³

(Translation)

Insurance is a system that compensates a person against financial losses to his life, property and belongings. In case of financial losses, these are equally distributed among those who participate with this organized system for creating/maintaining financial balance.

Third Definition:

"التأمين : التزام طرف لآخر بتعويض نقدي يدفعه له أو لمن يُعيّنه ، عند تحقق حادث احتمالي مبين في العقد، مقابل ما يدفعه له هذا الآخر من مبلغ نقدي في قسط او نحوه"⁴

(Translation)

Al- Taamin (Insurance) is a contract in which one party undertakes to pay a cash/financial consideration to the other party or his nominees at the time of occurrence of the potential risks specified in the contract subject to the payment of the predefined instalments to the first party.

Idiomatic Definition of Insurance (Based on contract)

First definition:

التأمين : عقد يلتزم المؤمن بمقتضاه أن يؤدي الى المؤمن له أو الى المستفيد الذي اشترط التأمين لصالحه مبلغاً من المال أو ايراداً مرتباً ، أو أي عوض مالي آخر في حالة وقوع الحادث أو تحقق الخطر المبين في العقد، وذلك في نظير قسط أو أية دفعة مالية أخرى يؤديها المؤمن له للمؤمن " 5

(Translation)

Insurance is a contract in which the insurer undertakes to cover the risks mentioned in the contract in the event of occurrence. In case of its occurrence to the insured person or beneficiary of the insurance policy, the insurer (Insurance Company) will pay a lump sum amount or any other financial compensation mentioned in the insurance contract to the insured person or his beneficiary. Provided that in return, the policyholder will pay the premium or any other financial installment to the insurer (Insurance Company).

Second definition:

(التأمين) عقد يلتزم أحد طرفيه وهو المؤمن قبل الطرف الآخر وهو المستامن أداء ما يتفق عليه عند تحقق شرط أو حلول أجل في نظير مقابل نقدي معلوم " 6

(Translation)

Al- Taamin (Insurance) is a contract in which one party to the contract (such as the guarantor) undertakes to pay the other party at the time of fulfillment of the (specified) conditions or on the expiry of the (specified) period shall be compensated as agreed in the contract. Provided that in return, the second party will pay a known and fixed amount of cash to the first party.

The crux of the definitions:

Insurance is a procedure, in which an individual or organization transfers the future risk of financial loss caused by possible future events in life and financial risks (accident, illness and death etc.) to another party (insurance company). The second party (the insurance company) accepts this potential risk in return for a premium, and guarantees to the first party that it will compensate the financial loss caused by certain types of risks that occur.

Like every contract, there are two parties in an insurance contract, in which the party who buys the insurance policy is called the "insured" or the policy holder. The party, who assumes the risk and provides financial security, will be called "Mo`omin" or Insurer or Insurance Company. The amount paid by the insured person/institution to the insurance company is called premium and the financial loss that the insurance company assures against the premium is called Sum Assured or Sum Insured. Similarly, an insurance policy/insurance contract is in the form of a written document, which contains the terms and conditions that reflect the agreement of the agreed parties.⁷

Relevance in the literal and idiomatic sense of insurance:

The literal meaning of insurance is to assure, and since the insurance company is responsible for the risks incurred by the insured person/organization. It assures compensation for financial losses, hence it is called an insurance company. ⁸

Origin and development of modern-day insurance:

Ever since man has stepped into this world, there is always a threat to his life and property. They fear the occurrence of risky events or accidents. So, in every age, people made various arrangements to protect themselves from dangers or risks. Hence variations have been found based on methods and names of those arrangements from place to place and time to time. So, one of the popular arrangements in the modern era is the insurance, which started in the early fourteenth century AD in the form of marine insurance in Al-Andalus.

Initiation of Marine Insurance

As mentioned above, in the early 14th century AD, marine insurance is traditionally said to have originated in Al-Andalus and was necessitated by the fact that people often traveled by sea from one country to another for the purpose of trade. They used to send goods etc. from one city to another, but in sea trade, there was always a risk that the goods would sink somewhere or be forcibly taken away by pirates, etc. So the solution to this problem was that if a person's merchandise was lost at sea, all the merchants together would pay him a certain amount every month or every year as his support. This movement developed into the prevailing insurance of ships in which each member pays a fixed sum to cover certain types of damage in the event of certain perils.⁹ This system gradually gained popularity among the people. Even at the level of the country, rules were made and legislation was made for it.

Therefore, the most important legislation for marine/marine insurance was enacted in Barcelona in 1435, known as the "Ordonnance de Barcelona". ¹⁰

It is also said that marine/marine insurance originated with the Italian arms merchants, who used to ship arms from one country to another by sea, and with a view of protection against the dangers of the route, they introduced insurance.¹¹

In present times, Marine insurance applies to all forms and types of transportation, be it land, sea or Aerial. However, due to the historical background, it is still called as Marine Insurance. After the success and popularity of marine/marine insurance, gradually insurance of other items also started, which is briefly described below.

Initiation of fire Insurance

Fire insurance started after a great fire in London in 1666 destroying about 13 thousand houses, 87 churches and dozens of public and government buildings. Therefore, this accident forced people to think that there should be some arrangement to deal with the risks that occurred,

which would make it possible to recover the financial loss during the crisis and difficult times. So this incident became the forerunner of fire insurance. Over time, losses due to other hazards like earthquakes, riots, floods and storms etc. also became a part of it.¹²

Initiation of Car Insurance

Shortly after marine and fire insurance, motor (vehicle) insurance began. The first motor vehicle hit the roads in London in 1898. At that time the roads were not crowded. Still there was a risk of accident. Therefore, in 1898, insurance companies began to provide cover (protection and rescue by insurance) for financial compensations for car accidents.

Beginning of Life insurance

There are different traditions related to the beginning of life insurance, according to some, it started in Egypt, while some others have copied its origin from Italy, that the people there used the basis of mutual aid and cooperation. Various organizations and societies were formed, for example, formal organizations were formed for the management of funerals and burials, which collected contributions from participants and in case of anyone's death the organization/society would pay for the funeral expenses. These societies had created pools/funds to control the expenditure in which each participant used to collect a specified installment.¹³ According to Peggy Mace:

“The first life insurance policy is evidenced by William Gabon of London on June 18, 1583. Gabon used to dry meat and fish by salt in London. He bought a one-year policy from Alderman Richard Martin and died before the year was up. At first the company refused to pay the money, but after some legal wrangling, Merton won his money.”¹⁴

Types of modern Insurance

Various classifications of prevalent insurance have been described from different aspects and dimensions. Basically there are two popular types, which are as follows.

1. General Insurance

General insurance provides protection against potential risks to assets such as vehicles, buildings and machinery etc. Therefore, the person who needs protection from the insurance company for his assets provides the required coverage and other necessary information to the insurance company through a proposal form. The insurance company thoroughly checks all the information provided by the applicant, the coverage required and the nature of the potential risks. If the coverage required by the applicant is acceptable to the insurance company, it undertakes to the applicant by means of a written document that during a certain period (e.g.) in case of possible loss of the required asset, in such event it will provide financial assistance to the applicant provided that the applicant first pays a fixed premium to the insurance company for the required coverage. After paying the installment, the entire amount becomes the property

of the company. Now if there is no loss to the insured person during the said period, then his policy lapses at the end of the agreed period, and the Insurance company gets the premium paid. None of the money is refundable in the said scenario.

Following are the popular types of general insurance.

i. Marine Insurance

A type of general insurance designed to provide coverage for the transportation of goods either on the ocean or by land as well as damage to the waterborne instrument of conveyance and to the liability for third parties arising out of the process. The two branches of marine insurance are ocean marine (primarily water-based exposures) and inland marine (primarily land-based exposures).

ii. Fire Insurance

Fire insurance is a type of general insurance that covers losses and damages caused by fire.

iii. Asset Insurance

Assets Insurance includes vehicles insurance, machinery insurance, buildings and equipment insurance etc.

2. Life Insurance/Family Insurance

Life Insurance or Family Insurance is the loss caused by possible threats to human life which is compensated in form of financial support. In Life Insurance, the applicant provides all the necessary information/data required by the insurance company through a proposal form. The insurance company thoroughly checks all the information provided by the applicant, the financial support required and the nature of the potential risks (Underwriting). If the insurance company accepts the applicant's proposal, it enters into an agreement with the applicant through a written document that if the insured person dies or becomes disabled within a specified period. Then the insurance company will pay the Sum Insured to the insured person or his nominee. Provided that he first pays the specified installments (premium) to the insurance company in return. Therefore, after paying the installment, if the insured person gets a disability within the specified period. So, the amount received in the form of financial support from the insurance company will be given to the insured himself, however, if the insured person dies during the specified period, then in such a case the sum insured will be given to his nominee. Then in such a case the sum assured will get to the nominated person. And if the insured does not die during this period, then the policy will also lapse at the end of the period, and the insured person will pay as many installments to the insurance company for the purpose of protection. Yes, none of it will be returned to the insured person.¹⁵

A detailed review of Shari'ah Rulings of the Prevalent Insurance:

As mentioned above, current insurance is one of the modern contracts, which was inked by Allama Ibn Abidin Al- Shami for the first time.

It is not found in the esteemed works of the early jurists. Since this contract was not customary in their time, so to find out its Shari'ah ruling, we must first determine that the contract that exists between those entering into the current insurance. What type of contract is he entering into? What are the rules and regulations described by Shari'ah for him? Therefore, first of all, we have to refer to the definition of contract and its types, so that the Shari'ah ruling of insurance can be clarified.

Meaning and understanding of contract

Literal Meaning of Contract:

The word `uqd (عقد) is an Arabic word, which literally means "to bind something" or "to tie something in a knot" or "covenant" etc. The word (حل) "solve" is its antonym.

Terminological meaning of Contract

The jurists have defined the term "Uqd" as follows: "In Shari'ah, an agreement with consent and acceptance on reciprocal basis is called contract." As Allama Jurjani has also explained the definition of Uqd in the following words in his book "Kitab al-Tarifat"

"العقد : ربط اجزاء التصرف بالايجاب والقبول شرعاً " ¹⁶

(Translation)

"In Shari'ah, an agreement with consent and acceptance on reciprocal basis is called contract."

Types of Contract

Uqd has got many kinds, but the jurists have described two types of Uqd in terms of compensation, which are as follows:

- Indemnification contract
- Contract of Donation

Definition of Indemnification Contract

According to the jurists, a contract of compensation is a contract in which someone is made the owner of property or profit in exchange for some property or profit. Therefore, in the light of the definition under consideration, the following forms of contract of indemnity are formed:

- Ownership of goods for goods
- Ownership of profit in exchange for property
- Ownership of profit for profit
- Owning property for profit

Definition of Contract of Donation:

A contract of donation is a contract in which someone is made the owner of a property or benefit without any consideration, such as giving something as a gift to someone, or Bestowing something to someone, etc. So these are all contracts of donation as other part is made the owner of property or benefit free of cost.

The jurists have mentioned the following contracts as sub-types of donation contract.

- Hiba (Gift)
- Complimentary loan of an object
- Deposit
- Advocacy
- Sponsorship
- Mortgage
- will¹⁷

A Jurisprudential Review/Analysis of the prevailing Insurance Business Model

In conventional insurance, the contract is between the insurance company and the policy holder.

The holder takes the insurance policy from the insurance company to compensate for his desired loss, for which he pays a certain amount as a premium and in return for the same premium, the insurance company promises the policy holder to compensate the loss through the Sum Assured/Insured as per the conditions in case of loss at the time of need.

So in this contract, the policy holder makes the insurance company owner of the premium, and the insurance company in return for the insurance policy.

The holder will own the Sum Assured/Insured in case of loss as per the stipulated rules and regulations.

Hence both the premium and the sum assured are property of owner in the prevailing insurance due to entering into the contract of compensation. According to the insurance books, it is clear that the insurance contract is actually a commutative contract, in which the insurance premium is the price, while in case of loss; the Sum Assured/Insured is the subject matter and policy holder is a Buyer.¹⁸

An Explanation of the Shari'ah Defects found in the Prevailing Insurance Business Model

In light of the above-mentioned details, it has been proved that in the prevailing insurance, compensation for financial loss is paid in lieu of premium.

For the contract that comes into existence between the insurance company and the policy holders, its Shari'ah status is a contract of indemnity thereby invoking all the Shari'ah rules on it.

Therefore, considering the above-mentioned contract of prevailing insurance, it is known that on the basis of the contract of compensation, there are following three basic Shari'ah defects:

- Riba (Interest)
- Gambling
- Gharar

a. Requisite of Interest in prevalent insurance

In the light of the above specifications, it is clear that the contract between policy holder and the company in prevailing insurance is an indemnity contract, due to which interest/riba is required in this contract, the details are going to accrue in the following lines. However, before that a brief definition of interest and its types of interest found in the prevailing insurance are described.

Meaning of Riba/Interest:

Literal Meaning of Interest:

The Arabic word '*riba*' means 'excess,' 'increase,' 'addition,' 'expanse,' or 'growth.'¹⁹

Terminological Meaning of Interest:

Riba is an Arabic word that can be roughly translated as "usury", or unjust, exploitative gains made in trade or business under Islamic law. It implies any excess compensation without due consideration (consideration does not include time value of money)²⁰

In other words, *riba* is money paid at a particular rate of increase over time for the use of money lent, or for delay in debt repayment beyond a loan or debt's specified life.

Since Usury/Riba is the name of absolute excess, however, it is obvious that it cannot refer to all types of excesses. Rather it refers to a specific type of excess which is prohibited by Shari'ah, otherwise absolute excess is also found in Bai Murabahah.

Types of Riba/interest:

There are two types of Riba/interest as follows:

- (A): Riba al-Qur'an
- (B): Riba al-Hadith

(A) Definition of Riba al-Qur'an

Riba al-Quran (ربا القرآن) is a type of riba associated with lending and borrowing (i.e., received in lending or paid in borrowing). It is a type of riba that constitutes an excess amount, pecuniary or non-pecuniary, over and above the principal (asl al-qardh) in a loan (qardh) that a borrower pays to the lender along with principal based on a precondition in the contract (Uqd) or customary practices (urf). Riba al-Qur'an also constitutes any excess amount paid for extension of a loan's maturity date. Riba al-Qur'an is also called "Riba al-Nasiyah", "Riba al-Dain" and "Riba al-Jahiliyyah".

(B) Definition of Riba al-Hadith

Riba al-Hadith (ربا الحديث) is a type of riba associated with trading of goods that belong to the same genus and kind in different quantities. This riba which is mentioned in Hadith/sunnah (traditions of the Prophet, peace be upon him) arises as a result of an excess in one of the counter values over the other in a transaction involving two similar ribawi items (commodities susceptible to riba). Riba al-Hadith is also called Riba al-Naqd and Riba al-Fazal.²¹

The crux of the definition is:

When there is an exchange of two similar ribawi items, for example, wheat is exchanged for wheat, or dates are exchanged for dates, etc. then the Sharia has stated following two conditions for it:

- 1) Both the commodities must be equal in value, for example, if there is one kilogram of wheat on one side, then there must be one kilogram of wheat on the other side.
- 2) The exchange of both commodities must be on the spot. (Hand to Hand).

If any one of the above two conditions is not fulfilled, then the case of "Raba-ul-Hadith/Raba-ul-Fazl" will be invoked.

Description of Riba / Usury in the prevalent insurance

In the prevailing insurance contract, both the price (premium) and subject matter (claims) are in the same currency, for which both the above-mentioned conditions must be met.

However, in practice both the conditions seem to be lacking in the case of prevalent insurance. As there is no equality between premium and claims (as the premium given by the participants to the insurance company is usually lower than the Claim), neither the premium or claims are paid on the spot. Thus, this case becomes invalid rendering into Riba al-Hadith/Raba al-Fazl.

As a result, the prevalent insurance includes Riba al-Hadith/Raba al-Fazl which is unlawful and prohibited according to Islamic Law, and thus, it is necessary for every Muslim to avoid the prevalent insurance.

(B). Elements of Gambling in Prevalent Insurance

Before proving the elements of Gambling in prevalent insurance the definition of Gambling may be considered first:

Meaning of Gambling

Gambling is the betting or staking of something of value with consciousness of risk and hope of gain, on the outcome of a game, a contest or an uncertain event whose result may be determined by chance or accident or have an unexpected result by reason of the bettor's miscalculation.²² The definition of gambling in "Mujam Lughat al-Fuqaha is mentioned as follows:

القمار: " تعليق الملك على الخطر، والمال من الجانبين " و كل لعب يشترط فيه أن يأخذ الغالب من المغلوب شيئاً²³.

(Translation)

Keeping the ownership on risk while the wealth is from the parties (both sides).

Likewise, any game in which a bet is made that the winner will receive something from the loser is gambling.

Description of Gambling in Prevalent Insurance

All policies of General Insurance include gambling. For example, in General Insurance the policyholder insures his car with an insurance company for a year and in return pays the insurance company a fixed premium (usually the car's value) up to a maximum of 3% of the price).

In case of any damage to the vehicle, or any theft etc. during the stipulated period, the policy holder approaches the insurance company for compensation of loss. The insurance company compensates the loss as per the stipulated rules and regulations. In this case, the insurance company suffered a loss, as it compensated the policyholder for a higher loss in return for a lower premium. On the contrary, in the above case, the policyholder benefited, as it paid less for the loss and received more money from the insurance company in lieu of premium. However, if there is no damage to the vehicle during the stipulated period, the insurance policy will lapse at the end of the year, and the policy holder will not be able to approach the insurance company for compensation of any kind of loss after the year. So in this case, the policyholder suffered a loss, as the policyholder did not receive anything from the insurance company in return for the premium he paid to the insurance company, as his premium was completely lost. On the contrary, in the above case, the insurance company benefitted, as it became the owner of the premium without any consideration.

(C). Elements of Uncertainty in Prevalent insurance

Before proving the elements of Gharar/Uncertainty in prevalent insurance the definition of Gharar/Uncertainty may be discussed.

Meaning of Gharar /Uncertainty:

Literal Meaning of Gharar /Uncertainty:

Gharar is an Arabic word that is associated with uncertainty, deception, hazard, chance or risk.²⁴ The Arabic root for Gharar means deception - but in practice the term is used quite widely.

Terminological Meaning of Uncertainty:

According to Al-Qarafi, the definition of Gharar is "that which has a pleasant appearance and a hated essence". The origin of gharar can be divided into two categories, namely: taddis (cheating in business) and ghabn (to deceive), as noted by the Encyclopedia of Jurisprudence.²⁵ In the same way, Allama Ibn Al-Hamam's account of Gharar as is as follows:

والغرر : ما طوي عنك علمه ،²⁶

Gharar (غرر) is that, the knowledge of which is hidden from you.

Description of Gharar/Uncertainty in Prevalent Insurance

As mentioned above that the insurance contract is a compensation contract, therefore all the rules of the compensation contract (Sale Purchase) must be applicable to it. As per Shari'ah, it is mandatory for a sale purchase contract that the price and subject matter, as well as the time of its delivery, must be known and determined to the contracting parties. While in the prevailing insurance the subject matter of the insurance contract (Sum assured) not known to the policy holder at the time of executing the contract, nor he knows about its delivery time. Due to the occurrence of a specific type of financial loss in future is not known and determined to the contracting parties at the time of contract. Hence, this type of gharar/uncertainty in the subject matter of a sale contract invalidates the whole contract and makes it unlawful and forbidden as per Islamic law of contracts. Allama Ibn Abidin al-Shami has mentioned the same in his famous book "Rad ul-Mukhtar Ala al-Dur al-Mukhtar":

اعلم أن البيع بأجل مجهول لا يجوز إجماعاً سواء كانت الجهالة متقاربة كالحصاد والدياس مثلاً أو متفاوتة كهبوب الريح وقدم واحد من سفره.²⁷

(Translation)

It should be noted that a sale with ignorance is not permissible in Shari'ah, whether it is with negligible ignorance, such as suspending payment with the harvesting of wheat, etc., or with major ignorance, such as suspending payment with the blowing of the wind or someone return from travel.

In the light of aforementioned details, we can say that the element of gharar/uncertainty exists in the prevailing insurance, since the subject matter of the insurance contract as well as the

time of its delivery, not known to the policy holder (buyer) at the time of execution of the insurance contract. This gharar/uncertainty found in the contract of compensation invalidates it and makes it forbidden as per Shari'ah principles.

Opinions and Fatwas of Contemporary Scholars Regarding Prevailing Insurance

Allama Ibn Aabidin Al-Shami was the first Islamic scholar wrote the Shari'ah status of the prevailing insurance in detail in his famous book "Rad ul-Mukhtar Ala al-Dur al-Mukhtar".

وبما قررناه يظهر جواب ما كثر السؤال عنه في زماننا: وهو أنه جرت العادة أن التجار إذا استأجروا مركبا من حربي يدفعون له أجرته، ويدفعون أيضا مالا معلوما لرجل حربي مقيم في بلاده، يسمى ذلك المال: سوكرة على أنه مهما هلك من المال الذي في المركب بحرق أو غرق أو نهب أو غيره، فذلك الرجل ضامن له بمقابلة ما يأخذه منهم، وله وكيل عنه مستأمن في دارنا يقيم في بلاد السواحل الإسلامية بإذن السلطان يقبض من التجار مال السوكرة وإذا هلك من مالهم في البحر شيء يؤدي ذلك المستأمن للتجار بدله تماما، والذي يظهر لي: أنه لا يحل للتاجر أخذ بدل الهالك من ماله لأن هذا التزام ما لا يلزم.²⁸

(Translation)

And what we have proved clearly answers the question, about which people in our time often asked and that is: it has become customary among people that when merchants hire a boat/ship from a Harbi, then they pay him his wages, and (along with) a certain sum of money to another Harbi who resides in their country. The said sum of money is called "Saukarah" and this is given on the condition that the goods in the boat, if lost by fire, drowning or theft, then that person shall be a guarantor of the lost in lieu of such property and in our country he has a nominee, who resides on the shores of the Islamic kingdom with the permission of the king, and receives Saukarah from the merchants, and if any of the merchant's property is lost in the river, then he gives full payment to merchants. Therefore (in this matter) according to me, it is not legal for a merchant to take compensation for his loss, as (taking more money from the merchant and promising that if your property is destroyed, I will pay you for it renders a non-mandatory commitment mandatory. (And it's not permissible as per Shari'ah).

In the same way, Allama Sheikh Muhammad Bakhit Al-Mu'ta'i al-Masri (who was the first among contemporary scholars to write on this subject after Allama Ibn Aabidin Shami) also called the current insurance similar to gambling and rahan-i-moharramah and declared it illegitimate and prohibited.²⁹

Similarly, Ustad Sheikh Muhammad Madani (who is the dean of the Faculty of Al-Sharia of Al-Azhar University of Egypt) also stated that:

ان مسألة التامين على الحياة والسندات والتعامل مع البنوك ينبغي أن لا تترك لفرد يفتى فيها، بل يجب أن يجمع لها المختصون وأهل الفكرة مع العلماء ورجال الاقتصاد في مختلف النواحي ليدرسوها دراسة عميقة، و يخرجوا برأى مجمع عليه، فان هذا وحده هو الذي يستطيع أن يناهض الاجماع المشهور لدى العلماء على التحريم - وبغير هذا سيظل الناس منقسمين : منهم يحرم اتباعا للمأثور والمشهور، ومنهم من يبيع رغبة في التيسير والمسايرة للتطور.³⁰

(Translation)

The matter of life insurance, certificates and working with banks, it is appropriate that no individual should give a fatwa about it alone, but it is necessary that Specialists in different parts of the world, intellectuals, scholars and experts in the field of economics should gather and study them in depth for the aforementioned issues to draw a consensus opinion from it. As this is the only way, through which the consensus of (contemporary) scholars on the sanctity of insurance can be obtained. Otherwise, people will be divided without it, someone will be convinced of its sanctity by following the famous sayings, while someone will choose to say its permissibility in view of ease and convenience.

Conclusion

Due to the basic concept of insurance, no one can deny the importance and need of insurance for humanity in the current modern world. We find examples of this basic concept from the early centuries of Muslim societies as well, such as Daman Khatar al-Tareeq and Daman Al-Darak etc. However, the process that has been adopted for prevailing insurance is not correct according to Islamic Law since the contract between the insurance company and the policy holders in prevailing insurance is the contract of compensation which contains many Shari'ah prohibited elements such as usury, gambling and gharar/uncertainty. Whatever a contract contains, such elements are considered unlawful and forbidden in Islamic Law. Therefore, due to these aforementioned reasons, the Shari'ah scholars and Islamic jurists declared the prevailing insurance unlawful and forbidden for all Muslims.³¹

References:

- ¹ D. Ahmed Mukhtar Abdul Hameed Umar (1424 AH), *Mujam ul-Laghga Al-Arabiya Al-Mu`asarah*, Aalim ul-Kutub, Beirut - Lebanon, (1429 AH - 2008 AD) , (122/ 1)
- ² Abdul Raziq Al-Sinhuri, *Al-Wasit fi Sharh Al-Qanoon Al-Madani*, Dar ul Ihya Al-Turath – Beirut, (1991 AD), (1080/7)
- ³ D. Sulaiman bin Ibrahim bin Sunyan, *Al-Ta`meen Wa Ahkamuhu*, Dar Ibn Hazm, (1424 – 2003 AD), P. 40
- ⁴ D. Sulaiman bin Ibrahim bin Sunyan, *Al-Ta`meen Wa Ahkamuhu*, Dar Ibn Hazm, (1424 – 2003 AD), P. 40
- ⁵ D. Ahmed Mukhtar Abdul Hameed Umar (1424 AH), *Mujam ul-Laghga Al-Arabiya Al-Mu`asarah*, Aalim ul-Kutub, Beirut - Lebanon, (1429 AH - 2008 AD) , (28/1)
- ⁶ D. Ahmed Mukhtar Abdul Hameed Umar (1424 AH), *Mujam ul-Laghga Al-Arabiya Al-Mu`asarah*, Aalim ul-Kutub, Beirut - Lebanon, (1429 AH - 2008 AD) , (28/1)
- ⁷ Harriett E.Jones & Steven R.Silver, *Loma 280: Principles of Insurance*, Loma Education & Training Atlanta, Georgia – USA, 2011, P.21
- ⁸ Mufti Muhammad Shafi Al-Usmani, *Jawahir ul Fiqh*, Maktabah Darul Uloom Karachi, (2010 AD), (455/4)
- ⁹ Mufti Muhammad Shafi Al-Usmani, *Jawahir ul Fiqh*, Maktabah Darul Uloom Karachi, (2010 AD), (482/4)
- ¹⁰ Mustafa Ahmad Al-Zarqah, *Nizam ul Ta`meen Wa Haqiqatuhu Wa Al-Raio Al-Shari Fih*, Beirut, (1414 AH – 1984 AD), P. 41
- ¹¹ Mufti Muhammad Shafi Al-Usmani, *Jawahir ul Fiqh*, Maktabah Darul Uloom Karachi, (2010 AD), (482/4)
- ¹² Niels Viggo Haueter, *A history of Insurance*, Editing and reallsation By Swiss Re Corporate History, (2013 AD). P.11
- ¹³ D.Abdul Latif Mahmood Al Mahmood, *Al Ta`meen Al Ijtimai Fi Zao Al-Shariah Al-Islamia*, Dar ul- Nafayis, Bairut, (Edition: 1st, 1994 AD), P.222
- ¹⁴ Constance Jordan & Karen Cunningham, *The Law in Shakespeare*, Plaggrave Macmillan, (1st Edition -2007 AD), P.140
- ¹⁵ D.Abdul Latif Mahmood Al Mahmood, *Al Ta`meen Al Ijtimai Fi Zao Al-Shariah Al-Islamia*, Dar ul- Nafayis, Bairut, (Edition: 1st, 1994 AD), P.(39 – 47)
- ¹⁶ Ali bin Muhammad bin Ali al-Zain al-Sharif al-Jurjani (816 AH), *Kitab ul-Ta`rifaat*, Dar ul-Kutub al-Elmiya, Beirut-Lebanon, (Edition:1st, 1403 AH-1983 AD), P. 153
- ¹⁷ Kuwaiti Encyclopedia of Jurisprudence, Ministry of Awqaf and Islamic Affairs – Kuwait, Dar ul-Salasil – Kuwait, (1427 AD), (234/30)
- ¹⁸ Harriett E.Jones & Steven R.Silver, *Loma 280: Principles of Insurance*, Loma Education & Training Atlanta, Georgia – USA, 2011, P.24
- ¹⁹ Muhammad bin Mukarram bin Manzoor (711 AH), *Lisan ul Arab*, Dar Sadir, Bairut, (304/14)
- ²⁰ Muhammad Abdul Raruf Al-Manawi, *Al-Tawqeef Ala Muhimmat Al-Ta`rif*, Dar-ul-Fikr, Bairut, (Edition: 1st, 1410 AH), P.354
- ²¹ Abu Essa Muhammad bin Essa Al-Tirmizi (279 AH), *Sunan ul Tirmizi*, Mustafa Al-Babi Al-Halabi, Egypt, (Edition: 1st, 1975 AD), (533/3)
- ²² www.britanica.com



- ²³ Muhammad Rawas Qala`ji - Hamid Sadiq Qanibi, *Mujam Lughat ul Fuqaha, Dur-ul-Nafais* for printing, publishing and distribution, (Edition: 2nd, 1988 AD), (369/1)
- ²⁴ www.investopedia.com
- ²⁵ *Encyclopedia of Jurisprudence*, (vol.21, CDROM version, Cairo: Harf, 1998)
- ²⁶ Ibn-ul-Hummam Kamal-ul-din Muhammad bin Abdul Wahid, *Fath-ul-Qadir, Mauqi-ul-Islam*, (263/15)
- ²⁷ Muhammad Ameen bin Umar bin Aabideen Al-Shami, *Rad-ul-Muhtar Ala al-dur al-Mukhtar*, Dar-ul-Fikar, Bairut, (Edition: 2nd, 1992 AD), (82/5)
- ²⁸ Muhammad Ameen bin Umar bin Aabideen Al-Shami, *Rad-ul-Muhtar Ala al-dur al-Mukhtar*, Dar-ul-Fikar, Bairut, (Edition: 2nd, 1992 AD), (170/4)
- ²⁹ Mustafa Ahmad Al-Zarqah, *Nizam ul Ta`meen Wa Haqiqatuhu Wa Al-Raio Al-Shari Fih*, Beirut, (1414 AH – 1984 AD), P. 25
- ³⁰ Mustafa Ahmad Al-Zarqah, *Nizam ul Ta`meen Wa Haqiqatuhu Wa Al-Raio Al-Shari Fih*, Beirut, (1414 AH – 1984 AD), P. 26
- ³¹ Mustafa Ahmad Al-Zarqah, *Nizam ul Ta`meen Wa Haqiqatuhu Wa Al-Raio Al-Shari Fih*, Beirut, (1414 AH – 1984 AD), P. 25