

Evaluation of Contemporary Takaful Practices from the Perspective of Maqasid al-Shariah

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Abstract

Insurance has always been a matter of concern among scholars owing to the involvement of interest, gharar, gambling, and other prohibited elements. Takaful has been introduced, around four decades ago, as a Shariah-compliant alternative to insurance. Takaful is one of the fast-growing sectors in Islamic finance industry. Despite the growth, *Shariah* scholars and economists have reservations and doubts regarding the *Shariah* compliance of current practices of takaful with regard to *Maqasid al-Shariah*. Hence, the objective of this study is to examine how far the current takaful practices are in conformity with the objectives of Shariah relevant to Islamic finance and takaful. For this purpose, at first place, the study identifies the objectives of Shariah pertaining to Islamic finance and takaful, through utilising the classical and contemporary writings on the subject. For the current study, four important objectives of Shariah i) protection of faith (*hifz al-din*), ii) protection of wealth (*hifz al-mal*), iii) establishment of justice, fairness, equity, iv) and social welfare and wellbeing of the society, have been selected, as they are very close to and directly linked to the Islamic finance. The current takaful practices have been analyzed against these objectives with the help of a literature review. The paper asserts that current takaful practices meet, to a greater extent, requirement of a valid transaction, but have failed to achieve the desired objective of *Shariah* related to coverage against various risks .

Keywords: Takaful, Islamic finance, *Maqasid al-Shariah*, *Shariah* compliance

INTRODUCTION

Insurance has always been a subject of great criticism by the *Shariah* scholars and experts of Islamic finance. The *Shariah* scholars have overwhelmingly declared it unlawful because it involves elements such as interest (*Riba*), games of chance and gambling (*Qimar and Maysir*), uncertainty (*Gharar*), transferring risk as a commercial contract and this unlawful appropriation of other's wealth and other prohibiting elements (Khan, Rafiq, Ameen, & Ullah, 2010). As an alternative to insurance, takaful has emerged in the recent past to provide *Shariah*-compliant risk coverage, which is now mainly being practiced in both the Muslim and non-Muslim world (Noordin, Muwazir, & Madun, 2014).

Takaful industry has expanded fairly over the last few years, representing one of the fast-growing sectors in the global financial system. Its growth has been estimated at the rate of 10% in the Muslim world, with the assets reaching up to USD 51 billion by the end of 2019, capturing around 2% share out of the total assets of the Islamic finance industry (Islamic Finance Development Report, 2020).

Despite this phenomenal growth, many *Shariah* scholars and economists have reservations and doubts regarding the current practices of takaful, regarding the realization of *Maqasid al-Shariah* (Salman, 2014). These scholars contend that takaful industry has ignored the high purposes of *Shariah* and the values of benevolence, mutual help, mutual solidarity, social wellbeing of the society, as contemplated and practiced in early structures of takaful (Muhamat, et al., 2012). The takaful agreements lack required fairness, equity, and transparency, as a result of which the contract greatly tilts towards the takaful operator rather than the policyholders (Bhatty, 2010).

This raised a strong need to analyze the contracts and operations of takaful on the touchstone of *maqasid al-Shariah*. Hence, the objective of this study is to explore and identify the objectives of Shariah relevant to takaful, and to examine, how far the current takaful practices are in conformity with these objectives. To achieve this purpose, the study first identifies the objectives of Shariah pertaining to Islamic finance and especially takaful by consulting the classical and contemporary writings on *Maqasid al-Shariah* in respect of Islamic finance. For the current study, four important objectives of Shariah i.e. i) protection of faith (*hifz al-din*), ii) protection of wealth (*hifz al-mal*), iii) establishment of justice, fairness and equity, iv) and social welfare and wellbeing of the society, have been selected, as they are very close to and directly linked with the Islamic finance. The current takaful practices have been analyzed, with the help of a literature review, against these four objectives. The study has been divided into three sections. Section 1 deals with the conceptual framework of takaful, its fundamental principles and current takaful practices. Section 2 provides a systematic review of available literature on takaful and identification of gap. Section 3 deals with the identification of objectives of Shariah relevant to takaful, and analyses takaful practices against these objectives.

SECTION 1: TAKAFUL CONCEPT AND CURRENT PRACTICES

1.1. Concept and Fundamentals of Takaful

The literal meaning of takaful is mutual assistance or mutual guarantee (Kallil, 2014). Technically, it has been defined in a number of ways highlighting different features of takaful. AAOIFI defines it as an agreement among a group of people to handle some injury arising from some specific risk. Islamic Financial Services Board (IFSB) (2009) also considers it a joint agreement between group members to support each other in case of some loss due to a risk. According to Billah, GhulamAllah, & Alexakis (2019) and Dusuki & Irwani (2010), takaful is a “cooperative insurance with the mutual agreement”, which is meant for providing indemnification against the risk to life and property of individuals. On the other hand, there are views in which takaful is considered not only a system of mutual indemnification of losses, but also a mechanism that contains the values of mutual benefit, shared responsibility, and mutual solidarity (Ayub, 2007). Takaful has been defined by Malaysian Takaful Act, 1984, in the following words:

“a scheme based on brotherhood, solidarity and mutual assistance which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose.”¹

Securities and Exchange Commission of Pakistan (SECP) endorses this view by describing it as a system for safeguarding the participants against a defined risk that is based on brotherhood, mutual assistance or cooperation, shared responsibility and solidarity. This is based on a number of Quranic and Prophetic teachings that enjoin upon the Muslims to help each other. A true Muslim is the one who is always available to help his brother in catastrophe and miserable condition. In fact, society has a responsibility and obligation towards less fortunate and deprived segments of society. As such, the financial institutions, like any rich individual, have an obligation towards the poor (Siddiqui, 2009), in the shape of social and corporate responsibility.

According to the Quran, the share of poor in the wealth of the rich is the former’s right, not a favor or benevolence from the rich. The concept has been emphasized in a number of Quranic verses. Quran says: “*In their wealth, there is a due share of the needy who asks and who is prevented from asking*”(17:24).

From the above, one may conclude that takaful is a system of risk mitigation that is anchored in the Islamic ideals of joint indemnity, shared responsibility, joint guarantee, mutual support and unity among the participant (Salman, Rashid, & Nu Htay, 2015).

¹ Malaysian Takaful Act, 1984

1.2. Current Takaful Practices

Takaful as a modern concept became a subject matter of debate and discussion among *Shariah* scholars in the last four decades of 20th century. These scholars tried to develop such a risk-sharing system that should be based on the notions of early institutions and practices of takaful and should also fulfil the needs of modern society (Ahmed, 2010). So, they provided a takaful system that not only followed the fundamental economic prohibitions but also fulfilled the socio-economic values, such as mutual help, brotherhood, mutual benefit and solidarity as enshrined in the teachings of Islam (Daud, 2012).

Like Islamic banking, many *Shariah* scholars and economists attempted to provide viable and practical takaful models in the modern world. In the beginning, scholars presented a non-business oriented *Taawuni* model, as in the case of ‘*mutuals*’ in the West and America (Akhter, 2010), which lost its acceptance by the business-oriented corporate world, giving way to business-oriented management models. Takaful is currently practiced through *mudarabah*, *wakalah*, and *waqf wakalah* models. In all three, the takaful company conducts the business for profit while the policyholders agree to indemnify the defined risks of the members from the pooled contributions. In family takaful, takaful contribution is divided into two funds. A Major portion of the contribution goes to policyholders’ investment fund, while the remaining amount is pooled to joint fund (Takaful pool) of all policyholders for the purpose of indemnification to those who may face any catastrophe. In case of general takaful models, the contribution is pooled in the joint fund only. In *mudarabah* takaful model, takaful operators, serving as manager, invests both the funds on the basis of *mudarabah* and get their share in the profit as *Mudarib* (manager of the fund) (Billah M. M., 2019). Whereas, in *wakalah* model, funds are managed and invested by takaful operators as *wakeel* (agent) of the policyholder for which they charge *wakalah* or agency fee (Pimada & Sukmana, 2016). In the *waqf wakalah* model, the company creates a *waqf* fund, where policyholders become a member by contributing to that pool. The purpose of that *waqf* fund rests with the provision of compensation in case of defined loss. The takaful operators charge *wakalah* fee for bearing the responsibility of management (NuHtay & Salman, 2013). The common element in all these models is the concept of donation and *Shariah* compliant investment.

SECTION 2: LITERATURE REVIEW

Takaful contains a very significant place in the Islamic finance industry. It has been in operation for around four decades. A lot has been written on the concept of takaful, comparison with insurance, its performance, and analysis of its practices. However, there are very few studies that have conducted *Shariah* analysis of takaful from the perspective of objectives of *Shariah*. In one of such studies, Aziz & Mohamad, (2013) have tried to link takaful products with the objectives of *Shariah*. The study contends that takaful products help in the realization of *Maqasid al-Shariah*. They asserted that health takaful provides protection to those covered under a policy, whereas life takaful provides financial protection to the client’s family in case of bread earner’s death or permanent disability. Thus, it satisfies the notion of protection of life (*nafs*) and protection of family (*nasl*). Similarly, general takaful and investment plans provide protection and augmentation of wealth (*mal*), which is an objective of *Shariah*. Takaful education plans are purchased for meeting the expensive tertiary or higher education. As a result, protection of intellect is achieved that is also an objective of *Shariah*. Abdullah S. (2015) is of the view that the compensation provided to policyholders in family takaful in case of any misfortune serves the objective of *hifz al-Nafs*. Moreover, takaful also achieves the objectives of *hifz al-Aql*, *hifz al-Nasal* and most importantly *hifz al-mal* through their diversified products.

Harun & Abdullah (2018) believe that through the adoption of *Shariah* principles and *Shariah* governance, takaful institutions should be able to achieve the objectives of *Shariah*. They pointed out various *Shariah* principles for takaful, such as: the permissibility of business and its purpose, transactions should be free from *riba* and *gharar*, no gains from speculation (*maysir*), money should not be used to earn more money. The study indicates that if these principles are followed, takaful institutions can achieve *hifz al-din* and *hifz al-mal*. According to (Ahmed, 2010) takaful achieves the *maqasid al Shariah* related to Islamic finance in two ways. Firstly, the very concept of takaful is consistent with the objectives of Lawgiver. Secondly, as takaful operations are free from prohibited elements, it implicitly achieves the objectives of *Shariah* that are preservation of faith and protection of

wealth. After comparing both set of systems Mahmood, (1991) contemplates that takaful meets the desired objective of *Shariah* in the form of protection of faith. He pointed out various prohibited practices in insurance, which are not to be found in takaful practices.

Signifying the importance of takaful in the Islamic finance industry, Fisol, Othman, Cheumar, & Ahmad (2017) have examined takaful industry and its products as to whether they are based on Maqasid al *Shariah* or not. They have narrowed down the essential objectives into three levels namely, necessities, needs and embellishments. They argue that *hifz al-din* is necessity which has been achieved by takaful through establishment of *Shariah* compliant alternate to insurance. At its second level, the development of takaful products relating to health, family, assets, business, and earning, is a need as lack of these will affect the daily life of individuals and society. Thus, through these products takaful meets the objectives of *hifz al-nafs*, *hifz al-nasl*, *hifz al-mal*. At third level, takaful serves as embellishments where the takaful products are beyond daily activities. Products such as plans for higher education or marriage of children, or takaful product covering the damage to vehicles or some specific asset, fulfills the third category of objectives of *Shariah*.

Malkawi (2013) states that presence of *Shariah* governance in takaful institutions helps in assurance of healthy *Shariah* compliant environment in these institutions. Not only the staff of takaful institutions, but also the policyholders become more faith sensitive, which results in realization of objective of *Shariah* related to faith. Abdullah (2012) holds the opinion that takaful operators are able to achieve the objectives of *Shariah* i.e. protection of life, by providing protection against any mishap through mutual assistance and risk-sharing. The norms of mutual cooperation and risk-sharing is itself desired by the Lawgiver as He asks to help one another in the acts of righteousness and piety (Al-Quran 05:02). Dikko & AbdulGhani (2015) have assessed the importance of takaful in the achievement of the objectives of *Shariah*. They support the view that takaful helps in the attainment of objectives of *Shariah* in form of protection, cooperation, assistance, and *maslahah* (securing benefits and repulsion from harm), provided that takaful industry works in its true spirit. According to them, this would only be possible if takaful industry is predominant over insurance industry. Otherwise, takaful entities would be inclined to follow the attributes and practices of the insurance industry.

Although literature claims that takaful achieves the objectives of *Shariah* through its products and *Shariah*-compliant practices, however, studies contend that mere *Shariah* compliance of transactions is not the only objective of *Shariah*. According to Daud (2012), takaful companies, being considered as an Islamic alternative to insurance, should not only be complying to the *Shariah* principles of transactions but they should also meet the objectives of *Shariah*. Abubakar (2016) argues that an institution that claims to be *Shariah*-compliant should also fulfil the objectives of *Shariah*, as the two aspects cannot be separated from each other. Takaful contracts and procedures, being free from prohibited elements, do not reflect the only and ultimate goal of *Shariah*. These contracts should rather, seek to realize the protection of stakeholders' interest, including the social welfare of the society. Zahid (2010) is of the view that takaful institutions are also required to protect the rights of stakeholders who are associated with them, i.e., policyholders, employees, and society. The intervention of objectives of *Shariah* amplifies the responsibility of takaful institutions towards its stakeholders.

The above literature review reveals that available studies predominantly deal with takaful products in theoretical perspective and contend that the designed products aim to realize *Shariah* objectives. However, based on the knowledge of this researcher, there is no study available that examines the practices of takaful institutions from the context of five primary maqasid al-*Shariah*. Moreover, no study has considered specific maqasid like i) establishment of justice, fairness, and equity, and ii) social welfare and wellbeing of the society. This leaves a gap in the existing literature, which the current study has tried to fill. The study is based on the premise that mere *Shariah* compliance of products does not tantamount to the achievement of objectives of *Shariah*.

SECTION 3: MAQASID AL-SHARIAH AND THEIR REALIZATION IN TAKAFUL: AN APPRAISAL

Maqasid al-Shariah generally refer to grand and essential benefits to mankind upon which their prosperity and wellbeing in this world and success and salvation in the next world rests. According to Imam Ghazali, a renowned jurist discussing *Maqasid*, wellbeing, benefit or *maslahah* of an individual lies in safeguarding his religion, life, progeny, intellect and wealth. Thus, these are essential benefits of mankind, the high purposes and objectives of *Shariah*.

The Muslim Scholars generally describe *maqasid al-Shariah* in the context of essential benefits of mankind as well as rationale and wisdom behind particular *Shariah* rulings. The former may be termed as macro-objectives of *Shariah*, whereas the latter is the micro-objectives of *Shariah*. The micro-objectives generally provide an answer to the question as to why a particular ruling has been provided. For example, what is the rationale and wisdom behind the prohibition of *riba*, *gharar*, *qimar*, *maysir* etc? Thus, the term ‘*maqasid al-Shariah*’ is used to convey the above two meanings. Based on Ghazali’s theory of *maqasid*, the Muslim scholars and thinkers have defined *maqasid al-Shariah* in a number of ways, highlighting the important and distinct characteristics of *maqasid*. A prominent scholar Dr. Ahmad al-Raysuni defines *maqasid al-Shariah* as “the ends sought behind the enactment of each of the rulings of *Shariah* and the wisdom and rationale underlying these rulings” (Al-Raysuni, 1996). It is evident from this definition that Raysuni has described *maqasid al-Shariah* in the context of both macro and micro-objective. Another expert of the science of *maqasid*, Dr. Nurruding Mukhtar Khadimi defines *maqasid* as the purposes and objectives of *Shariah* rulings regardless of whether these are general objectives or objectives of a particular ruling (Al-Khadimi, 2001). This also shows that the phrase *maqasid al-Shariah* is used in the context of grand and essential interests as well as the purposes of particular and individual *Shariah* rulings.

The theory of *maqasid* and objectives of *Shariah* became a subject matter of an intellectual debate in the second half of 20th century. Many prominent Muslim scholars such as Allama Tahir Ibn-Ashur, Dr. Ahmed al-Raysuni, Dr. Yousuf Hamid al-‘alam, Allama Muhammad al Ghazali, Dr. Jamal Atiyya, Dr. Nur Khadimi, Allama Yousuf al Qardawi, and many others contributed in this debate (Mansoori, 2020). These scholars have introduced many new *maqasid* which include, among others, human dignity, fundamental rights and liberties, elimination of poverty, establishment of justice, peace and security, social welfare, equitable distribution of wealth, human fraternity and cooperation among members of human community.

As a general rule and guiding principle, the traditional five objectives of *Shariah* govern, directly or indirectly, all the branches and spheres of Islamic law, including *Fiqh al-Muamlat*. Besides, some specific *maqasid*, especially *maqasid* of Islamic economic and financial system have also been identified by the *Shariah* scholars and Muslim economists (Chapra, 2016). In their view, justice, equity, collective and general wellbeing of society, along with benevolence and efficiency are the ideal goals of Islamic financial system (Siddiqui, 2009). Based on the current writings of Muslim jurists and economists, some contemporary authors have also attempted to identify *maqasid* as the objectives of Islamic finance. These are: i) *Hifz al Mal*: protection and augmentation of wealth in *halal* manner, ii) Justice and fairness in distribution of returns on investment, iii) circulation of wealth (financial inclusion), iv) Fair and transparent financial dealings, v) fulfilment of social needs and comprehensive communal prosperity to enhance the social wellbeing, vi) Linking of financial activity with the real sector, value addition activity, vii) fulfilment of the form and substance of *Shariah* in transactions to avoid any stratagems (*hiyal*), and to maintain the real spirit and objective of Islamic law in a transaction (Mansoori, 2020). In the following, the study will investigate to what extent the *maqasid al-Shariah* relevant to *takaful*, are being realized.

3.1. Hifz al-Din

Hifz al-din is prime objective of *Shariah*. For the protection and preservation of religion, Islam has given us a system of creed and belief (‘*aqaid*), a system of *iabadat* (rituals), and a code of commercial and non-commercial exchanges. *Ibadat* have been prescribed in order to strengthen the relationship of

an individual with his creator. Lawful earning or earning through halal methods, as per the code of exchanges, is closely related to *hifz al-din*, because *halal* is a prerequisite for righteous act. The Quran says “O messengers partake of the things that are clean, and act righteously, I know well all that you do” (23:51). Unlawful earnings cause the termination of one’s ties with Allah.

As such, Islam explicitly prohibits *riba* (interests), *gharar* (uncertainty that may lead to usurpation of others’ property), *qimar* (gambling), *maysir* (games of chance). Quran says, “O you who have believed, take not doubled and redoubled interest and fear Allah that you may be successful” (3:130); and that -- Allah has made buying and selling lawful, and interest unlawful (2:275). Abu Hurairah (R.A) narrated: “The Messenger of Allah (PBUH) prohibited (sale by pebbles) sales of ‘whatever a pebble thrown by the seller hits,’ and sales in which there is chance or uncertainty (*Gharar*).” [Sahih Muslim, Hadith 764]. Similarly, it is also unlawful to trade in the commodities declared by Quran and Sunnah as impermissible. A Muslim is not allowed to make his livelihood through the business of prohibited commodities, such as interest-based investment instruments, wine, pork, musical instruments, etc. From the above verses and *ahadith*, it is evident that indulging in *riba*, *gharar*, *qimar*, based transactions, and earning from prohibited means is a great sin, an act of disobedience, and commission of these acts destroys the faith and religion and relationship with Allah. Islamic banking and *takaful* is designed to protect the faith and religion by avoiding all these prohibited acts and transactions.

In the realm of Islamic finance, *takaful* has been introduced as an alternative to insurance in which *riba*, *gharar*, *qimar* are frequently practiced (Noordin, Muwazir, & Madun, 2014). It focuses its operations on lawful business and its contracts and transactions must be free from the prohibited elements (Harun & Abdullah, 2018). *Takaful* companies make investment in Islamically permissible avenues. Thus, it achieves the objective of *hifz al-din* by not involving in fundamental prohibitions prescribed by *Shariah* (Abdullah D. S., 2012).

Practically, it may be that *Takaful* operators which try to compete with their counterparts in order to gain market share, resulting in severe *Shariah* violations (Bhatty, 2010). To retain the existing and attract new customers, *takaful* operators negate the profit and loss sharing principles in *mudarabah* contract between policyholders and *takaful* operator, under *mudarabah* *takaful* model. These *takaful* operators not only give a fixed profit amount to their policyholders, knowingly, but also share profit with them even when it is not realized yet (Dikko & Ghani, 2015).

Another potent issue is the practice of giving inflation-indexed increases to the policyholders in some *takaful* plans. One of the *takaful* products provided by a *takaful* company provides that “all the plans will have a unique feature of protecting the benefits against the effects of annual inflation. Under this option the contribution will increase by the percentage as provided by *takaful* operator of the previous year’s contribution (efuhemayahtakaful, 2021)” This indexation option suggests that the contribution of policyholder will automatically increase by 5 say percent according to prevailing inflation and the contribution of policyholder will automatically increase by 5 percent. However, in *Mudarabah* or *musharakah* transactions, no fixed increase can be guaranteed for *rab al-mal*. Such increase, even under the cover of compensation for inflation, is nothing more than *riba*. This is similar to the practice where *mudarib* gives the *rab al-mal* a fixed return regardless of the fact that profit is actually realized or not (efuhemayahtakaful, 2021). It has also been observed that *takaful* companies invest in Islamic mutual funds that deal, sometimes, in controversial transactions and securities, such as commodity *Murabaha* and so-called Islamic commercial papers.

(NuHtay & Salman, 2013) argues that the contribution made by policyholders in *takaful* fund, in the form of *tabarru* (donation), with the intention to get compensation in case loss, and share in surplus, makes it a conditional donation, which is not permissible in *Shariah*. In modified *wakalah* model, *takaful* operators receive a share from underwriting surplus in addition to *wakalah* fee, which amounts to *Shariah* violation.

3.2. Hifz al-Mal

Hifz al-mal in its literal context, refers to protection or safeguard of wealth; however, it is not confined to its protection only but also refers to augmentation and growth. Islam discourages that wealth should

remain idle and unexploited; rather it encourages and persuades the holder of wealth to invest it so that the wealth is augmented, which ultimately benefits the whole community. In a hadith of Holy prophet (PBUH) directed the guardians of orphans to invest their properties and trade with it, so that it is not eaten up by the zakat (Tirmidhi: Hadith 641). Similarly, Islam considers the struggle for earning livelihood as a religious obligation and an act of worship, like, prayer, fasting, hajj etc. Quran says:

“And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah, and remember Allah often that you may succeed.” [62:10]

The objective of augmentation of wealth is realised in the current Islamic finance and takaful (Abdullah S. , 2015). Takaful institutions offer a variety of products that are designed to increase the wealth of policyholders. Similarly, takaful fund is also not left unutilized by these institutions; all the funds of policyholders are invested (Harun & Abdullah, 2018) for augmentation of wealth. The investments are made in Islamically permissible business, and the earning is shared between the participant and the takaful operator in pre-agreed ratio of profit (Aziz & Mohamad, 2013).

Besides the augmentation of wealth, Islam also emphasises the sanctity of wealth and its protection. In the eye of Islam, wealth is as sacred as human life and honor. The messenger of Allah (PBUH) said: “the wealth and life of a Muslim is prohibited unto another Muslim”. The Quran strictly prohibits the devouring properties of other persons. It says, “Do not consume others properties wrongfully but only [in lawful] business by mutual consent” (4:29). Therefore, Islam prohibits *riba*, *gharar*, *qimar*, *maysir*, stealing, fraud, deception, hoarding, monopoly, etc., because they are means to usurp others’ properties wrongfully. Moreover, it has prescribed punishments for the one who tries to appropriate others’ property by wrongful means. Thus, Islam protects the wealth and property of a Muslim individually and in society by prohibiting these elements. The very existence of takaful institutions is based on the objective of *hifz al-Mal*. Takaful institutions, through their products, can protect the assets and property of their policyholders.

Although takaful has been designed primarily to protect the wealth of participants, nonetheless, in many cases, this objective is badly frustrated in takaful. Takaful operators hire staff with little knowledge regarding takaful principles, resulting in undertaking irregular transactions. (Fadun, 2014). Any income generated from irregular transactions is credited into a charity account and used for charitable purposes. This is certainly a loss for *rab al-mal*, here the takaful participants, who have been deprived of an income due to the negligence of Mudarib i.e., takaful operator. Ideally, if such an event happens due to negligence or misconduct of Mudarib, the loss should be borne exclusively by the *mudarib* i.e., takaful company. Similarly, *hifz al-mal* is also violated through charging exorbitant fees, commissions, deductions from his contribution. Takaful operators charge heavy expenses involved in the indemnification process. Unjust fee is charged from policyholders on account of expenses, which is as high as 80% percent of the contribution, in some cases (Ahmed A. , 2016). It has also been observed that takaful operators use tactics through which the claims are not given easily and in a reasonable time (Haron, Ismail, & Razak, 2011). In the modified wakalah model, takaful operators receive, besides wakalah fee and profit on investment, a share from underwriting surplus, which solely belongs to the policyholders (Ali, 2016). These practices are tantamount to the wrongful appropriation of policyholders’ property. Thus, it indicates that takaful has failed to protect the wealth of its policyholders.

3.3. Establishment of Justice, fairness and Equity

Justice occupies a pivotal position in the Islamic legal, social, and economic systems. The establishment of justice in society is the main goal and purpose for which Allah has sent His messengers. The Quran says:

“Indeed We sent Our Messengers with Clear Signs, and sent down with them the Book and the Balance that the people may maintain [their affairs] in justice.” (57:25).

The Quran also says:

“Indeed, Allah orders justice and kindness and giving [help] to relatives and forbids immorality and evil and oppression. He admonishes you that perhaps you will be reminded.” (16:90).

The Quran uses the term *‘Adl* (justice) in a comprehensive and broader perspective. In Islam, justice includes legal justice, social justice, and economic justice. Economic justice is considered the most important form of justice. It requires that wealth should not be concentrated in the few hands of the rich, rather it should be circulated among all the people living in the society (Hassan & Shah, 2019). It plays a very significant role in the Islamic financial system. In the realm of Islamic finance, banking and takaful, scholars have prescribed a number of indicators to measure the level of justice. Some of the indicators, to measure the degree of justice in a particular financial institution are i) distribution of returns between the customer and financial institution, ii) pricing of policies for individual customers and corporate customers, iii) just and non-exploitative terms of the contract, iv) justified expenses charged from the customers and v) benefits provided by takaful institution to the policyholders.

With the current commercialized nature of takaful, of course, the values of justice, fairness and equity seem to be marginalized in the operations of takaful institutions (Pasha & Hussain, 2013). These institutions generally design their contracts in such a way that takaful operator shares only in profit, while the losses are borne by the policyholders only (Maysami & Kwon, 2001). The low-income group is not entertained by takaful operators as they do not bring good business opportunities (Iqbal, 2014). Numerous disputes were reported to the regulator on account of fraud and disclosure issues (Barakah & Alsaleh, 2011). The policy selling agents of takaful were found to be involved in unethical practices, to sell policies and also to reduce the payment of claims. Agents were reported to enter wrong credentials of policyholders’ illness in family takaful, resulting in refusal of claims when the actual loss occurred (Aziz, Ghani, & Shaari, 2016).

It is very crucial for the Islamic financial institutions to allow the stakeholders to view and analyze the information pertaining to their interest (Ginena & Hamid, 2015). Although takaful operators might be disclosing usual information pertaining to financial performance with the policyholders, as required by regulator, however, they are found in concealing the material information. In banca takaful product, a majority portion from the policyholder’s contribution is deducted as the operator’s fee in the first two or three years of the policy, yet the policyholder is not informed about the breakup of that fee. Moreover, the allocation of this donation to different heads is also not disclosed to policyholders (Ayub, 2014).

Being the manager of depositors’ fund, it is the prime responsibility of takaful entities to disclose vital information to them (Askari, Iqbal, Krichenne, & Mirakhor, 2010). It is the fiduciary responsibility of takaful operators. On the contrary, takaful operators in fact protect the rights of shareholders of takaful companies, which is a conflict of interest and injustice towards policyholders (Muhamat, et al., 2012). Policyholders have no say in takaful operator’s decision making with regard to wakalah fee and share in underwriting surplus (Kassim, 2010). As a result, takaful operators charge exorbitant wakalah fee, as high as 40% on every contribution made (Htay & Zaharin, 2011). In Banca takaful, around 80% of the total contribution is deducted as a fee in the first year.

Takaful institutions have modified the original wakalah model just to lay their hands on underwriting surplus, which should only be distributed among the policyholders (Pimada & Sukmana, 2016). Although, takaful operators receive substantial amount as fee and profit on investment, yet they take share from underwriting surplus, sometimes as high as 90% and only 10% is distributed among all policyholders (Ali, 2016). As a result, shareholders with less capital receive major portion of revenue, whereas, takaful policyholders who are the major contributors, receive a negligible portion of revenue. It seems that due to the diversion of takaful institutions’ objective towards profiteering, they appear to have ignored the essential *Shariah* requirements of justice, equity, and fairness in their dealings.

3.4. Social Welfare and Wellbeing of The Society

Islam lays great emphasis on the achievement of comprehensive communal prosperity. It instructs the society to support less fortunate segment of the society. In many places the Quran attributes the ownership of mal to Allah. It says: “And give to them from the wealth of Allah which He has given you”. (24:33). The rich, whether individuals or institutions, holds this obligation towards the poor

segment of the society. The responsibility of the rich towards the poor, has been emphasized by a hadith narrated by Companion Ali (R.A). He says Holy Prophet (P.B.U.H) said:

“Allah has made obligatory on the rich to provide the poor with what is adequate for them and if the poor are hungry or naked, this is only due to the fact that the rich have deprived them of their right” (Bahaqi, Al-Sunan al Kubra, Hadith 13585).

The above instructions are equally applied to the financial institutions that do business and earn huge profits. This implies that the Islamic banks and takaful companies should allocate some of their profits to meet the needs of society in order to achieve overall welfare and wellbeing of the society (Shinkafi, Yahaya, & Sani, 2019).

Another very significant aspect of communal wellbeing is the eradication of concentration of wealth. Islam greatly emphasizes the importance of circulation of wealth. Quranic verses have been revealed where the concentration of wealth has been discouraged. Quran says: *“...so that it (wealth) may not merely circulate between the rich among you...”* (59:7). Therefore, Islam has prohibited all the elements which aid in the concentration of wealth i.e. *riba*, *gharar*, *qimar*, *maysir*, monopolies, cartels etc. Takaful operators might have achieved this requirement by not involving in these prohibited elements, but on the other hand, they operate solely on the agenda of maximization of profit for themselves (Muhamat, et al., 2012). Thus, the wealth is concentrated in the hands of rich, which is not desired by *Shariah*. The main beneficiaries of takaful institutions are shareholders (Kassim, 2010). The takaful companies generally do not contribute in the enhancement of the social wellbeing of society. The charities disbursed by the takaful companies do not qualify to be corporate social responsibility on the part of takaful company.

CONCLUSION

Takaful has been developed as an alternative to insurance which has been held by *Shariah* scholars as prohibited due to the involvement of *riba*, *gharar*, *qimar*, *maysir*, and other prohibited elements. Takaful was originally conceived to be a system based on mutual benefit, shared responsibility, solidarity, brotherhood etc. However, the corporate world felt that a purely cooperative non-business model was not suitable for them in terms of the growing multifarious needs of the industry (Akhter, 2010). The concept of mutual cooperation lost its acceptance, giving way to business-oriented management models without care for the social and equity-related aspects.

Takaful industry has achieved visible growth, but many scholars entertain a doubt about its *Shariah* legitimacy on account of non-realization of a number of objectives of *Shariah*. They assert that the emphasis of current takaful is on compliance with the requirement of a valid contract rather than the objectives of *Shariah*. Thus, they assert that many takaful practices have frustrated the spirit of *Shariah* and the objectives relevant to Islamic finance and takaful (Haron, Ismail, & Razak, 2011).

If we examine current takaful practices on the touchstone of *maqasid*, we observe that takaful has largely failed in realization of *maqasid*. There are number of practices that violate, wholly or partially, the objectives of *hifz al-din*, *hifz al-mal*, justice and fairness in dealing, and social wellbeing of the society. For example, takaful operators sometimes give profit to policyholders even if the profit has not been realized, which is a sort of *riba* (Dikko & Ghani, 2015). Similarly, in takaful plans, an inflation indexed increase of say 5 percent is given to the participant every year, and the contribution increases automatically. This is an increase in capital under cover of indexation, that is also a form of *riba*. The funds of takaful are invested sometimes in mutual funds that also contain controversial securities from *Shariah* perspective, such as commodity murabahah, so called ‘Islamic commercial papers’, which clearly violates the objective of *hifz al-din*. Takaful agents are reported to be involved in unethical practices and tactics to avoid the payment of claims. Similarly, heavy expenses, fee and deductions charged form the policyholder, not giving the due share to policyholders, frustrates the objective of *hifz al-mal* and the values of justice, fairness and equity. The takaful companies do not contribute to the enhancement of the social wellbeing of society. The sole objective of takaful institutions is profit maximization, and their main beneficiaries are the group of shareholders. Thus, takaful aids in the concentration of wealth in a few hands of the rich (Noordin, Muwazir, & Madun, 2014).

The study concludes that current takaful needs to be based on *maqasid* rather than on compliance in letter with the contracts' requirement. In this way, the takaful industry can achieve *Shariah* legitimacy as well as the confidence of faith sensitive customers.

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