

PRIMARY RESEARCH

## Evaluation of Contemporary *Takāful* Practices from the Perspective of *Maqāṣid-al-Sharī'ah*

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### Abstract.

**Purpose:** Insurance has always been a matter of concern among Islamic scholars owing to its involvement in interest, *gharar*, gambling, and other prohibited elements. *Takāful* has been introduced, as a Sharī'ah compliant alternative to conventional insurance. However, Sharī'ah scholars and economists have reservations and doubts regarding the current practices of *takāful* with regard to *maqāṣid-al-Sharī'ah*.

**Methodology:** The current study has examined as to how far the current *takāful* practices are in conformity with the objectives of Sharī'ah relevant to Islamic finance and *takāful*. For this purpose, at first place, the study identified the related objectives of Sharī'ah through utilizing the classical and contemporary writings on the subject. For the current study, the important objectives of Sharī'ah i) *ḥifẓ al-dīn*, ii) *ḥifẓ al-māl*, iii) establishment of justice, fairness and equity, and iv) social welfare and wellbeing of the society, have been selected, as they are very close to and directly linked with the Islamic finance.

**Findings:** The paper finds that current *takāful* practices meet, to a greater extent, requirement of a valid or Sharī'ah compliant transaction. However, these *takāful* institutions have failed to achieve the desired objective of Sharī'ah related to financial dealings. *Takāful* institutions lack transparency and fairness in their transactions. Moreover, many unethical practices have been reported on part of *takāful* agents.

**Significance:** The study is unique in its nature as *takāful* practices have not been analyzed against these four specific *maqāṣid* of Sharī'ah. The study may open a discussion on the objectivity of *takāful* institutions in the context of Pakistan. The study would also help *takāful* institutions in reformulating their policies in the light of objectives of Sharī'ah.

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## INTRODUCTION

Insurance has always been a subject of great criticism by the Sharī'ah scholars and experts of Islamic finance. The Sharī'ah scholars have overwhelmingly declared it unlawful because it involves elements such as interest (*ribā*), games of chance and gambling (*qimār* and *maysir*), uncertainty (*gharar*), transferring risk as a commercial contract and this unlawful appropriation of other's wealth and other prohibiting elements (Khan et al., 2010). As an alternative to insurance, *takāful* has emerged in the recent past to provide Sharī'ah-compliant risk coverage, which is now mainly being practiced in both the Muslim and non-Muslim world (Noordin et al., 2014).

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

This raised a strong need to analyze the contracts and operations of *takāful* on the touchstone of *maqāṣid-al-Sharī'ah*. Hence, the objective of this study is to explore and identify the objectives of Sharī'ah relevant to *takāful*, and to examine, how far the current *takāful* practices are in conformity with these objectives. To achieve this purpose, the study first identifies the objectives of Sharī'ah pertaining to Islamic finance and especially *takāful* by consulting the classical and contemporary writings on *maqāṣid-al-Sharī'ah* in respect of Islamic finance. For the current study, four important objectives of Sharī'ah i.e. i) protection of faith (*ḥifẓ al-dīn*), ii) protection of wealth (*ḥifẓ al-māl*), 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 *takāful* 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 *takāful*, its fundamental principles and current *takāful* practices. Section 2 provides a systematic review of available literature on *takāful* and identification of gap. Section 3 deals with the identification of objectives of Sharī'ah relevant to *takāful*, and analyses *takāful* practices against these objectives.

## **TAKĀFUL CONCEPT AND CURRENT PRACTICES**

### **Concept and Fundamentals of *Takāful***

The literal meaning of *takāful* is mutual assistance or mutual guarantee (Kallil, 2014). Technically, it has been defined in a number of ways highlighting different features of *takāful*. 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 et al. (2019) and Dusuki and Irwani (2010), *takāful* 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 *takāful* 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). *Takāful* has been defined by Malaysian *Takāful* 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."

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 Qur'ānic 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 Qur'ān, 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 Qur'ānic verses. Qur'ān 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 *takāful* 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 et al., 2015).

### **Current *Takāful* Practices**

*Takāful* as a modern concept became a subject matter of debate and discussion among Shari'ah 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 *takāful* and should also fulfil the needs of modern society (Ahmed, 2010). So, they provided a *takāful* 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 Sharī'ah scholars and economists attempted to provide viable and practical *takāful* models in the modern world. In the beginning, scholars presented a non-business oriented *ta'āwunī* 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. *Takāful* is currently practiced through *mudārabah*, *wakālah*, and *waqf wakālah* models. In all three, the *takāful* company conducts the business for profit while the policyholders agree to indemnify the defined risks of the members from the pooled contributions. In family *takāful*, *takāful* 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 (*Takāful* pool) of all policyholders for the purpose of indemnification to those who may face any catastrophe. In case of general *takāful* models, the contribution is pooled in the joint fund only. In *mudārabah takāful* model, *takāful* operators, serving as manager, invests both the funds on the basis of *mudārabah* and get their share in the profit as *mudārib* (manager of the fund) (Billah M. M., 2019). Whereas, in *wakālah* model, funds are managed and invested by *takāful* operators as wakeel (agent) of the policyholder for which they charge *wakālah* or agency fee (Pimada & Sukmana, 2016). In the *waqf wakālah* 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 *takāful* operators charge *wakālah* fee for bearing the responsibility of management (NuHtay & Salman, 2013). The common element in all these models is the concept of donation and Sharī'ah compliant investment.

## LITERATURE REVIEW

*Takāful* 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 *takāful*, comparison with insurance, its performance, and analysis of its practices. However, there are very few studies that have conducted Sharī'ah analysis of *takāful* from the perspective of objectives of Sharī'ah. In one of such studies, Aziz and Mohamad (2013) have tried to link *takāful* products with the objectives of Sharī'ah. The study contends that *takāful* products help in the realization of *maqāṣid-al-Sharī'ah*. They asserted that health *takāful* provides protection to those covered under a policy, whereas life *takāful* 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 *takāful* and investment plans provide protection and augmentation of wealth (*mal*), which is an objective of Sharī'ah. *Takāful* 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 Sharī'ah. Abdullah S. (2015) is of the view that the compensation provided to policyholders in family *takāful* in case of any misfortune serves the objective of *ḥifẓ al-nafs*. Moreover, *takāful* also achieves the objectives of *ḥifẓ al-'aql*, *ḥifẓ al-nasal* and most importantly *ḥifẓ al-māl* through their diversified products.

Harun and Abdullah (2018) believe that through the adoption of Sharī'ah principles and Sharī'ah governance, *takāful* institutions should be able to achieve the objectives of Sharī'ah. They pointed out various Sharī'ah principles for *takāful*, such as: the permissibility of business and its purpose, transactions should be free from *ribā* 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, *takāful* institutions can achieve *ḥifẓ al-dīn* and *ḥifẓ al-māl*. According to Ahmed (2010) *takāful* achieves the *maqāṣid-al-Sharī'ah* related to Islamic finance in two ways. Firstly, the very concept of *takāful* is consistent with the objectives of Lawgiver. Secondly, as *takāful* operations are free from prohibited elements, it implicitly achieves the objectives of Sharī'ah that are preservation of faith and protection of wealth. After comparing both set of systems Mahmood, (1991) contemplates that *takāful* meets the desired objective of Sharī'ah in the form of protection of faith. He pointed out various prohibited practices in insurance, which are not to be found in *takāful* practices.

Signifying the importance of *takāful* in the Islamic finance industry, Fisol et al. (2017) have examined *takāful* industry and its products as to whether they are based on *maqāṣid-al-Sharī'ah* or not. They have narrowed down the essential objectives into three levels namely, necessities, needs and embellishments. They argue that *ḥifẓ al-dīn* is necessity which has been achieved by *takāful* through establishment of Sharī'ah compliant alternate to insurance. At its second level, the development of *takāful* 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 *takāful* meets the objectives of *ḥifẓ al-naḥs*, *ḥifẓ al-naṣl*, *ḥifẓ al-māl*. At third level, *takāful* serves as embellishments where the *takāful* products are beyond daily activities. Products such as plans for higher education or marriage of children, or *takāful* product covering the damage to vehicles or some specific asset, fulfills the third category of objectives of Sharī'ah.

Malkawi (2013) states that presence of Sharī'ah governance in *takāful* institutions helps in assurance of healthy Sharī'ah compliant environment in these institutions. Not only the staff of *takāful* institutions, but also the policyholders become more faith sensitive, which results in realization of objective of Sharī'ah related to faith. Abdullah (2012) holds the opinion that *takāful* operators are able to achieve the objectives of Sharī'ah 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 (Qur'ān 05:02). Dikko and AbdulGhani (2015) have assessed the importance of *takāful* in the achievement of the objectives of Sharī'ah. They support the view that *takāful* helps in the attainment of objectives of Sharī'ah in form of protection, cooperation, assistance, and *maṣlahah* (securing benefits and repulsion from harm), provided that *takāful* industry works in its true spirit. According to them, this would only be possible if *takāful* industry is predominant over insurance industry. Otherwise, *takāful* entities would be inclined to follow the attributes and practices of the insurance industry.

Although literature claims that *takāful* achieves the objectives of Sharī'ah through its products and Sharī'ah-compliant practices, however, studies contend that mere Sharī'ah

compliance of transactions is not the only objective of Sharī'ah. According to Daud (2012), *takāful* companies, being considered as an Islamic alternative to insurance, should not only be complying to the Sharī'ah principles of transactions but they should also meet the objectives of Sharī'ah. Abubakar (2016) argues that an institution that claims to be Sharī'ah-compliant should also fulfil the objectives of Sharī'ah, as the two aspects cannot be separated from each other. *Takāful* contracts and procedures, being free from prohibited elements, do not reflect the only and ultimate goal of Sharī'ah. 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 *takāful* 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 Sharī'ah amplifies the responsibility of *takāful* institutions towards its stakeholders.

The above literature review reveals that available studies predominantly deal with *takāful* products in theoretical perspective and contend that the designed products aim to realize Sharī'ah objectives. However, based on the knowledge of this researcher, there is no study available that examines the practices of *takāful* institutions from the context of five primary *maqāṣid-al-Sharī'ah*. Moreover, no study has considered specific *maqāṣid* 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 Sharī'ah compliance of products does not tantamount to the achievement of objectives of Sharī'ah.

### SECTION 3: MAQĀṢIDAL-SHARĪ'AH AND THEIR REALIZATION IN TAKĀFUL: AN APPRAISAL

*Maqāṣid-al-Sharī'ah* 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 *maqāṣid*, wellbeing, benefit or *maṣlaḥah* 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 Sharī'ah.

The Muslim Scholars generally describe *maqāṣid-al-Sharī'ah* in the context of essential benefits of mankind as well as rationale and wisdom behind particular Sharī'ah rulings. The former may be termed as macro-objectives of Sharī'ah, whereas the latter is the micro-objectives of Sharī'ah. 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 *ribā*, *gharar*, *qimār*, *maysir* etc? Thus, the term '*maqāṣid-al-Sharī'ah*' is used to convey the above two meanings. Based on Ghazali's theory of *maqāṣid*, the Muslim scholars and thinkers have defined *maqāṣid-al-Sharī'ah* in a number of ways, highlighting the important and distinct characteristics of *maqāṣid*. A prominent scholar Dr. Ahmad al-Raysuni defines *maqāṣid-al-Sharī'ah* as "the ends sought behind the enactment of each of the rulings of Sharī'ah and the wisdom and rationale underlying these rulings" (Al-Raysuni, 1996). It is evident from this definition that Raysuni has described *maqāṣid-al-*

Sharī'ah in the context of both macro and micro-objective. Another expert of the science of *maqāṣid*, Dr. Nurruding Mukhtar Khadimi defines *maqāṣid* as the purposes and objectives of Sharī'ah rulings regardless of whether these are general objectives or objectives of a particular ruling (Al-Khadimi, 2001). This also shows that the phrase *maqāṣid-al-Sharī'ah* is used in the context of grand and essential interests as well as the purposes of particular and individual Sharī'ah rulings.

The theory of *maqāṣid* and objectives of Sharī'ah 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 *maqāṣid* 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 Sharī'ah govern, directly or indirectly, all the branches and spheres of Islamic law, including *fiqh al-mu'āmalāt*. Besides, some specific *maqāṣid*, especially *maqāṣid* of Islamic economic and financial system have also been identified by the Sharī'ah 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 *maqāṣid* as the objectives of Islamic finance. These are: i) *ḥifẓ al-māl*: protection and augmentation of wealth in *ḥalāl* 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 Sharī'ah in transactions to avoid any stratagems (*ḥiyal*), 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 *maqāṣid-al-Sharī'ah* relevant to *takāful*, are being realized.

### ***Ḥifẓ al-Dīn***

*Ḥifẓ al-dīn* is prime objective of Sharī'ah. For the protection and preservation of religion, Islam has given us a system of creed and belief ('*aqā'id*'), a system of '*ibādāt*' (rituals), and a code of commercial and non-commercial exchanges. '*ibādāt*' have been prescribed in order to strengthen the relationship of an individual with his creator. Lawful earning or earning through *ḥalāl* methods, as per the code of exchanges, is closely related to *ḥifẓ al-dīn*, because *ḥalāl* is a prerequisite for righteous act. The Qur'ān 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 *ribā* (interests), *gharar* (uncertainty that may lead to usurpation of others' property), *qimār* (gambling), *maysir* (games of chance). Qur'ān 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, *ḥadīth* 764]. Similarly, it is also unlawful to trade in the commodities declared by Qur'ān 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 *ahadīth*, it is evident that indulging in *ribā*, *gharar*, *qimār*, 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 *takāful* is designed to protect the faith and religion by avoiding all these prohibited acts and transactions.

In the realm of Islamic finance, *takāful* has been introduced as an alternative to insurance in which *ribā*, *gharar*, *qimār* are frequently practiced (Noordin et al., 2014). It focuses its operations on lawful business and its contracts and transactions must be free from the prohibited elements (Harun & Abdullah, 2018). *Takāful* companies make investment in Islamically permissible avenues. Thus, it achieves the objective of *ḥifẓ al-dīn* by not involving in fundamental prohibitions prescribed by Sharī'ah (Abdullah, 2012).

Practically, it may be that *takāful* operators which try to compete with their counterparts in order to gain market share, resulting in severe Sharī'ah violations (Bhatti, 2010). To retain the existing and attract new customers, *takāful* operators negate the profit and loss sharing principles in *muḍārabah* contract between policyholders and *takāful* operator, under *muḍārabah takāful* model. These *takāful* 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 *takāful* plans. One of the *takāful* products provided by a *takāful* 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 *takāful* operator of the previous year's contribution (*efuhemayah takāful*, 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 *muḍārabah* or *mushārah* transactions, no fixed increase can be guaranteed for *rabb al-māl*. Such increase, even under the cover of compensation for inflation, is nothing more than *ribā*. This is similar to the practice where *muḍārib* gives the *rabb al-māl* a fixed return regardless of the fact that profit is actually realized or not (*efuhemayah takāful*, 2021). It has also been observed that *takāful* companies invest in Islamic mutual funds that deal, sometimes, in controversial transactions and securities, such as commodity *murābahah* and so-called Islamic commercial papers.



NuHtay and Salman (2013) argues that the contribution made by policyholders in *takāful* 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 Sharī'ah. In modified *wakālah* model, *takāful* operators receive a share from underwriting surplus in addition to *wakālah* fee, which amounts to Sharī'ah violation.

### ***Hifẓ al-Māl***

*Hifẓ al māl* 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 *ḥadīth* 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 *zakāh* (Tirmidhi: *ḥadīth* 641). Similarly, Islam considers the struggle for earning livelihood as a religious obligation and an act of worship, like, prayer, fasting, *ḥajj* etc. Qur'ān 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 *takāful* (Abdullah, 2015). *Takāful* institutions offer a variety of products that are designed to increase the wealth of policyholders. Similarly, *takāful* 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 *takāful* 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 Qur'ān 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 *ribā*, *gharar*, *qimār*, *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 *takāful* institutions is based on the objective of *hifẓ al- māl*. *Takāful* institutions, through their products, can protect the assets and property of their policyholders.

Although *takāful* has been designed primarily to protect the wealth of participants, nonetheless, in many cases, this objective is badly frustrated in *takāful*. *Takāful* operators hire staff with little knowledge regarding *takāful* 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 *rabb al-māl*, here the *takāful* participants, who have been deprived of an income due to the negligence

of *mudārib* i.e., *takāful* operator. Ideally, if such an event happens due to negligence or misconduct of *mudārib*, the loss should be borne exclusively by the *mudārib* i.e., *takāful* company. Similarly, *ḥifẓ al- māl* is also violated through charging exorbitant fees, commissions, deductions from his contribution.

*Takāful* 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, 2016). It has also been observed that *takāful* operators use tactics through which the claims are not given easily and in a reasonable time (Haron et al., 2011). In the modified *wakālah* model, *takāful* operators receive, besides *wakālah* 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 *takāful* has failed to protect the wealth of its policyholders.

### 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 Qur'ān 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 Qur'ān 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 Qur'ān 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 *takāful*, 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 *takāful* institution to the policyholders.

With the current commercialized nature of *takāful*, of course, the values of justice, fairness and equity seem to be marginalized in the operations of *takāful* institutions (Pasha & Hussain, 2013). These institutions generally design their contracts in such a way that *takāful* 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 *takāful* 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 *takāful* 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 *takāful*, resulting in refusal of claims when the actual loss occurred (Aziz et al., 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 *takāful* 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 *takāful* 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 *takāful* entities to disclose vital information to them (Askari et al., 2010). It is the fiduciary responsibility of *takāful* operators. On the contrary, *takāful* operators in fact protect the rights of shareholders of *takāful* companies, which is a conflict of interest and injustice towards policyholders (Muhamat et al., 2012). Policyholders have no say in *takāful* operator's decision making with regard to *wakālah* fee and share in underwriting surplus (Kassim, 2010). As a result, *takāful* operators charge exorbitant *wakālah* fee, as high as 40% on every contribution made (Htay & Zaharin, 2011). In Banca *takāful*, around 80% of the total contribution is deducted as a fee in the first year.

*Takāful* institutions have modified the original *wakālah* model just to lay their hands on underwriting surplus, which should only be distributed among the policyholders (Pimada & Sukmana, 2016). Although, *takāful* 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, *takāful* policyholders who are the major contributors, receive a negligible portion of revenue. It seems that due to the diversion of *takāful* institutions' objective towards profiteering, they appear to have ignored the essential Shari'ah requirements of justice, equity, and fairness in their dealings.

### **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 Qur'ān attributes the ownership of *māl* 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 *ḥadīth* 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, ḥadīth* 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 *takāful* 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 et al., 2019).

Another very significant aspect of communal wellbeing is the eradication of concentration of wealth. Islam greatly emphasizes the importance of circulation of wealth. Qur'ānic verses have been revealed where the concentration of wealth has been discouraged. Qur'ān 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. *ribā*, *gharar*, *qimār*, *maysir*, monopolies, cartels etc. *Takāful* 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 Sharī'ah. The main beneficiaries of *takāful* institutions are shareholders (Kassim, 2010). The *takāful* companies generally do not contribute in the enhancement of the social wellbeing of society. The charities disbursed by the *takāful* companies do not qualify to be corporate social responsibility on the part of *takāful* company.

## CONCLUSION

*Takāful* has been developed as an alternative to insurance which has been held by Sharī'ah scholars as prohibited due to the involvement of *ribā*, *gharar*, *qimār*, *maysir*, and other prohibited elements. *Takāful* 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.

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

If we examine current *takāful* practices on the touchstone of *maqāṣid*, we observe that *takāful* has largely failed in realization of *maqāṣid*. There are number of practices that violate, wholly or partially, the objectives of *ḥifẓ al-dīn*, *ḥifẓ al-māl*, justice and fairness in dealing, and social wellbeing of the society. For example, *takāful* operators sometimes give profit to policyholders even if the profit has not been realized, which is a sort of *ribā* (Dikko & Ghani, 2015). Similarly, in *takāful* 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 *ribā*. The funds of *takāful* are invested sometimes in mutual funds that also contain controversial securities from Sharī'ah

perspective, such as commodity *murābahah*, so called ‘Islamic commercial papers’, which clearly violates the objective of *ḥifẓ al-dīn*. *Takāful* agents are reported to be involved in unethical practices and tactics to avoid the payment of claims. Similarly, heavy expenses, fee and deductions charged from the policyholder, not giving the due share to policyholders, frustrates the objective of *ḥifẓ al-māl* and the values of justice, fairness and equity. The *takāful* companies do not contribute to the enhancement of the social wellbeing of society. The sole objective of *takāful* institutions is profit maximization, and their main beneficiaries are the group of shareholders. Thus, *takāful* aids in the concentration of wealth in a few hands of the rich (Noordin, Muwazir, & Madun, 2014).

The study concludes that current *takāful* needs to be based on *maqāṣid* rather than on compliance in letter with the contracts’ requirement. In this way, the *takāful* industry can achieve Sharī‘ah legitimacy as well as the confidence of faith sensitive customers.

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