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) hifz al-dīn, ii) hifz 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 (qīmār and maysir), uncertainty (gharār), 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 (Bhattty, 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 (ḥifż-al-dīn), ii) protection of wealth (ḥifż-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 Shari‘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‘awunī 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 muḍārabah, 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 muḍārabah takāful model, takāful operators, serving as manager, invests both the funds on the basis of muḍārib (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 Shari‘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 Shari‘ah analysis of takāful from the perspective of objectives of Shari‘ah. In one of such studies, Aziz and Mohamad (2013) have tried to link takāful products with the objectives of Shari‘ah. The study contends that takāful products help in the realization of maqāsid-al-Shari‘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 Shari‘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 Shari‘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 ḥifż- al-nafs. Moreover, takāful also achieves the objectives of ḥifż- al-‘aql, ḥifż al-nasal and most importantly ḥifż 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-nafs, ḥifẓ al-nasl, 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 mašlaḥah (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 fulfill 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 maṣlahah 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 ṭabā, ghurar, 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 Youusuf 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 *fiqḥ 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 ḥadīth, 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 Shari‘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 Shari‘ah violations (Bhatty, 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 mushārakah 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 murābaḥah 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 of 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.

Ḥīfẓ al-Māl

Ḥīfẓ 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, hajj 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, qīmār, 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 ḥīfẓ 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 Qurʾān 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 Qurʾān 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 Qurʾān 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
serving agents of takāful were found to be involved in unethical practices, to sell polices 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 Sharī‘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 *Sharīʿah*. 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 *Sharīʿah* 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 *Sharīʿah* legitimacy on account of non-realization of a number of objectives of *Sharīʿah*. They assert that the emphasis of current *takāful* is on compliance with the requirement of a valid contract rather than the objectives of *Sharīʿah*. Thus, they assert that many *takāful* practices have frustrated the spirit of *Sharīʿah* 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 *Sharīʿah*
perspective, such as commodity murābahah, so called ‘Islamic commercial papers’, which clearly violates the objective of hifż 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 form the policyholder, not giving the due share to policyholders, frustrates the objective of hifż 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.

REFERENCES


