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THE UNDESIRABLE ISSUES IN THE INSURANCE
PRACTICES CAN BE RESOLVED
BY INTRODUCING *TAKĀFUL* IN INDIA:
THE VIEWS OF ISLAMIC FINANCE EXPERTS

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Abstract

Takāful (Islamic insurance) has been introduced as an alternative to conventional insurance in order to avoid interest, uncertainty, gambling and investment in Sharī'ah non-complaint elements. These elements are prohibited in Sharī'ah (Islamic law) based on their unethicity. Takāful, on the other hand, is based on the concepts of solidarity, brotherhood, and mutual cooperation. It is an ethical product not meant for any religious group or community. Participating in takāful means helping oneself and other fellow human beings in case of financial loss due to misfortune. Participation in takāful can promote a caring and sharing community. The objective of this research is to explore the perceptions of Islamic finance experts towards the issues of unethicity inherent to insurance in India. A combination of convenient sampling and purposive sampling method is employed for choosing the Islamic finance experts as the interviewees. Interview method is used to assemble the major findings for this research. The total of eighteen interviews have been coordinated and all of them are male. The interview results from the Islamic finance experts reveal that the current insurance practices involve Sharī'ah non-compliant activities and unethical business practices, mainly due to interest, uncertainty, gambling and investment in Sharī'ah non-complaint business activities. Based on their opinion, the undesirable issues can be resolved if takāful is offered and the operators abide by the Sharī'ah requirements. By cause of its great advantages, Takāful is not solely for the Muslims.

In addition to offering the guarantee and security that conventional insurance does, takāful contains an added feature particularly the fact that takāful is free from uncertainty, usury, and gambling. This research focuses on how unethical issues in insurance can be resolved by introducing takāful in India. Thus, the findings of this research contribute to the existing literature, insurance operators and regulators.

Keywords Insurance, *Takāful*, Unethical Issues and Islamic Finance Experts

1.0 Introduction

By nature, man is perpetually exposed to risks due to his incapacity to predict or control the future by reason of his limited knowledge and his limited ability to avoid unfortunate events. In the context of insurance, risk is defined as an unfavourable exposure to misfortune. These unfortunate events may be in the form of deterioration of health, accidents, natural disasters, and economic loss. Allah (ﷻ) has blessed every individual with ‘*aql* (intellect) to compensate for the limited capacity and knowledge we have as humans. ‘*Aql* is essential in deciding the best course of action to be chosen to mitigate the impacts of misfortune. In the event of misfortune, the financial loss can be minimised by subscribing to insurance. An insurance policy promises to deliver financial assistance to the policy holders on certain agreed upon terms and conditions, by allowing them to make claims, as and when they arise¹.

Islām encourages a responsible and helpful society and does not rule out the idea of insurance². However, conventional insurance comprises of elements prohibited in Islām like interest, uncertainty, gambling, and investment in *Sharī’ah* non-compliant business

¹V.N. J. Petrus, *The Development of the Principles of Insurance Law in the Netherlands from 1500 to 1800*. Vol. 1. UitgeverijVerloren, 1998.

²S.A. Salman, "Contemporary Issues in *Takāful* (Islamic Insurance)." *Asian Social Science*, 10(22), (2014), 210.

activities. These activities are prohibited in Islām due to their unethically and injustice^{3,4,5}.

Interest is prohibited in Islām as it leads to unfair distribution of wealth which is hurtful to a healthy socio-economy⁶. Interest is earned by the lender without worrying about the financial situation of the borrower as the latter is bound to pay the predetermined amount of interest. This leads to concentration and circulation of money within the class of people who already have surplus money and are relatively well-to-do, thus increasing the gap between the rich and the poor. This results in hatred and jealousy in the community.

Uncertainty is not a fair business practice because it favours one party at the expense of the other and can result in dispute and unethical consequences^{7,8}. Nowadays, many international and local governing bodies are emphasising the issue of information asymmetry, i.e. managers have more information about the company compared to the outside shareholders. Due to information asymmetry, investors are not well informed about the actual performance of the company and consequently causing uncertainty in their investment. It is unfair and unjust to the investors because they are the real owners of the companies. The requirement of full disclosure becomes mandatory for public listed companies to reduce information asymmetry, minimise uncertainty, and enhance transparency. In Islām, full information disclosure to enhance transparency has been highlighted in the following:

“And cover not truth with falsehood, nor conceal the truth when ye know (what it is)” (Qur’ān, 2: 42).

³R. Hassan, *Islamic Banking and Takāful*. Pearson Malaysia Sdn. Bhd, 2011.

⁴P. Camille. "Understanding *Ribā* and *Gharār* in Islamic finance", *Journal of Islamic Banking and Finance*, 2(1), (2014), 249-259.

⁵N. Kasim, N.N. Sheila and S.A. Salman, "The Religious Perspective of *Takāful* as Ethical Insurance", *Mediterranean Journal of Social Sciences*, 7(4), (2016), 96.

⁶A. Rufai, "The Adverse Impact of Riba on Individual and Society: A Concise and Comprehensive Study", e-Bangi, 11(1), (2014).

⁷M.H. Kamali, *Islamic Commercial Law: An Analysis of Futures and Options*. Islamic Texts Society, 2000.

⁸M. Dien, *Islamic Law: From Historical Foundations to Contemporary Practice*. (Edinburgh: Edinburgh University Press), 2004.

Gambling is a consequence of uncertainty because gambling is winning by chance⁹. The winner does not need to exert effort (*iwad*) in gambling and relies on the chance of luck. Insurance practice involves gambling because the insurance operator can make profit or not depending on the occurrence of claims. By looking at this practice, the gain of one party is at the loss of another and gain or loss depends on the occurrence of future events, i.e. chance. Thus, gambling has been prohibited in Islām.

The premium received by the insurance operator is invested in income generating activities like investment in short-term deposits or buying the shares of companies. Conventional insurance operators are free to invest anywhere they like as they do not have to comply with *Shari'ah* requirements. They may end up investing in interest-bearing loans and liquor businesses which are prohibited by *Shari'ah*¹⁰.

The practice of insurance involves interest, uncertainty, gambling and involvement in prohibited elements¹¹. Thus, *Shari'ah* scholars unanimously agreed on the prohibition of insurance. This has forced Muslim scholars to think of an alternative insurance structure that is not prohibited in Islām. The prohibition of conventional insurance led to the birth of *takāful* (Islamic insurance).

Takāful is based on the concept of *tabarru'* (donation) and *ta'āwun* (cooperation) where each and every member of the *takāful* policy collectively share the risk^{12,13,14,15,16}.

⁹M. Iqbal, General *Takāful* Practice: Technical Approach to Eliminate Gharar (Uncertainty), Maisir (Gambling), And Riba'(Usury). GemaInsani, 2005.

¹⁰S.A. Salman and N.N. Sheila, "Insurance in the Light of Religious Teaching and Ethics: A Case Study of India", *Middle-East Journal of Scientific Research*, 19(2), (2014), 299.

¹¹R. Hassan, S.A. Salman, S. Kassim and H. Majdi, "Awareness and Knowledge of *Takāful* in Malaysia: A Survey of Malaysian Consumers", *International Journal of Business and Social Science*, 9(11), (2018).

¹²M.M. Billah, "*Takāful* (Islamic Insurance) Premium: A Suggested Regulatory Framework", *International Journal of Islamic Financial Services*, 3(1), (2001).

¹³R.C. Maysami and J.W. John, "Evidence on the Relationship between *Takāful* Insurance and Fundamental Perception of Islamic Principles", *Applied Financial Economics Letters*, 2(4), (2006), 229-232.

¹⁴N.N. Sheila and S.A. Salman, "Viability of Islamic Insurance (*Takāful*) in India: SWOT Analysis Approach", *Review of European studies*, 5(4), (2013), 145.

Acknowledging its great benefits, *takāful* is not exclusively for Muslims. In addition to offering the assurance and protection that conventional insurance does, *takāful* includes additional attractive features particularly the fact that *takāful* is free from uncertainty, usury, and gambling. This makes *takāful* more attractive compared to conventional insurance. Furthermore, *takāful* opens the door to potential Muslim customers because most of the Muslims in India steer away from conventional insurance due to the prohibited elements, whereas *takāful* is *ḥalāl*-certified (permissible), making it acceptable in Islām. Another unique feature of *takāful* as compared to conventional insurance is that when there is a surplus then all parties, including the insured, are expected to share it with the *takāful* operators. Kasim et al. reckoned that this additional benefit serves as a differentiating criterion between *takāful* and conventional insurance¹⁷.

This paper is organized in five sections. Section two is dedicated for *Sharī'ah* framework of *takāful* and the views of *Sharī'ah* experts. Section three discourses about research methodology and section four discusses the findings and last section concludes the paper.

2.0 *Sharī'ah* Framework of *Takāful*

The word "*takāful*" is not mentioned in the *Qur'ān*. However, its notion, idea and concept such as cooperation and mutual cooperation¹⁸ and helping the needy is encouraged in the *Qur'ān*,

¹⁵O. Faruk and R. Arafatur, "Measuring Efficiency of Conventional Life Insurance Companies in Bangladesh and *Takāful* Life Insurance Companies in Malaysia: A Non-Parametric Approach", *Management Studies and Economic Systems*, 54(2648), (2015), 1-16.

¹⁶S.A.Salman, H. Majdi and N.N. Sheila, "Viability of Introducing *Takāful* (Islamic Insurance) in India: Views of Politicians", *Banking and Finance Law Review*, 32(2), (2017), 389.

¹⁷N. Kasim, N.N. Sheila and S.A. Salman, "Risk-Sharing and Shared Prosperity Through *Takāful*", *Middle-East Journal of Scientific Research*, 23(11), (2015), 2713-2721.

¹⁸T.O. Yusuf and B. Abdur Rasheed, "Takāful in Nigeria: Penetration Challenges and Way Forward", *Journal of Islamic Economics, Banking and Finance*, 113(3170), (2015), 1-16.

Hadīth (Prophet's sayings), and legal maxim. The fundamentals of *takāful* are built on some verses of the *Qur'ān* as well as the sayings of Prophet Muhammad (ﷺ). The following verses and sayings confirm the need of *takāful* and its legality:

..Help ye one another in righteousness and piety, But help ye not one another in sin and rancor... (Qur'ān 5:2)

...Allah intends every facility for you; he does not want to put to difficulties... (Qur'ān 2:185).

...O ye who believe! Eat not up your property among yourselves in vanities: But let there be among you traffic and trade by mutual good-will (Qur'ān 4:29).

When the historical development of *takāful* is examined, the Prophet (ﷺ) approved the practice of *aqīlah*, as evidenced by the following practices:

Once two women from the tribe of Huzail clashed when one of them hit the other with a stone, which killed her and also the foetus in the victim's womb. The heirs of the victim brought an action to the court of the Holy Prophet (ﷺ), who gave a verdict that the compensation for the infanticide is freeing of a male or female slave while the compensation for the killing the woman is the blood money (diyat), which is to be paid by the 'aqīlah' (the paternal relatives) of the accused (Sahih Al-Bukhari).

It was reported from the Prophet (SAW) as thus: '*Allah will always help His servant for as long as he helps others*' (Narrated by Imam Ahmad bin Hanbal and Imam Abu Daud). In addition, the first Islamic constitution prepared by the Prophet (SAW) in 622 A.C. includes the concept of social insurance which is founded on *aqīlah*, as seen in the following.^{19,20}

¹⁹M.M. Billah, *Islamic and Modern Insurance*. Selangor: Ilmiah Publishers (2003).

²⁰H. Ab Ghani and L. Salman, "Does Darura Concept Still a Dispensation to *Takāful* Operators in Malaysia." In A paper presented at the International Conference on

“The immigrants among ‘Quraish’ shall be responsible for their word and shall pay their blood money in mutual collaboration.”

“The immigrants among the Quraish shall be responsible for releasing the prisoners by way of paying their ransom, so that the mutual collaboration among the believers be in accordance with the principles of goodness and justice.”

“The society shall be responsible to establish a joint venture with a mutual understanding towards providing necessary aid and help for the needy, ill and poor.”

“Sa’d Bin Abi Waqqas, may Allah (ﷺ) be pleased with him, reported: “The Holy Prophet Muhammad (p.b.u.h) said: To leave your heirs rich better than to leave them poor, begging from people”.

To sum up, from the above verses of Qur’ān and sayings of the Prophet, it can be concluded that mutual help, helping poor and caring for others is encouraged in Islām. *Takāful* is based on ethics, mutual help, cooperation, brotherhood and solidarity. So, it can be said that *Takāful* is in line with *Sharī’ah* i.e. Qur’ān and Hadith.

2.1 Takāful: Sharī’ah Scholars Point of View

Mulhim and Sabbagh²¹ make issue the *Sharī’ah* compliant nature of cooperative insurance. Some scholars have permitted and legitimised it, but others have prohibited it. The supporters of the cooperative insurance justify why they believe that it is *Sharī’ah* compliance. Islamic Jurisprudence Council held in Makkah on 10 *Sha’bān* 1398 A.H. supported this view. Mulhim and Sabbagh (n.d.) further mention that cooperative insurance is free from uncertainty (by referring to Hussein Hamed), it is based on the mutual cooperation (by referring to Mustafa Al-Zarqa), the principle of cooperation (by

Empowering Islamic Civilization in the 21st Century. 2015.

²¹A.S. Mulhim and A. Sabbagh, “The Islamic Insurance Theory and Practice.” Retrieved on 18th July 2015 from <http://www.albaraka.com/media/pdf/ResearchStudies/Book-Islamic-Insurance.pdf>.

referring to Ahmed Sa'id Sharafeddin), cooperation and donation (by referring to Mohamed Shawqi Al-Fanjari). Mulhim and Sabbagh further mention that small group of *Sharī'ah* scholars do not support that cooperative insurance is *Sharī'ah* compliant by stating that it involves the interest practice based on *nasi'a* (on credit) and *fadil* (surplus). *Nasi'a* is incurred due to the time difference the payment of premium and the receiving claims. *Fadil* is incurred because the participants pay the contribution which is normally lesser amount than the claims received. It still has the nature of gambling because the contribution payment is based on the contingency, i.e. the participants are uncertain whether the accidents will occur or not and if there is no accident, he will lose his contribution and if there is an accident, he will gain since the claimable amount is more than the contribution. Mulhim and Sabbagh provide their view and they believe that cooperative insurance is *Sharī'ah* compliant.

Some of the *Sharī'ah* scholars believe that cooperative insurance is *Sharī'ah* compliant because it is based on the contracts of donations (Wihba Al Zuhaili and Al-Saddik Mohammad Al-Amin Al-Dareer) and cooperation for good and righteous deeds (Wihba Al Zuhaili, Mohammed Abu Zahra, Sa'id Sharafeddin and Mohammad Shawki Al-Fanjari). Abdallah Naseh Alwan adds that for the cooperative insurance to be *Sharī'ah* compliant contribution should be based on donation; investment should be done in the *Sharī'ah* compliant way, and claims should be paid out of the group's money.

According to Hassan²² and Billah²³, they categorise the opinions of *Sharī'ah* scholars into three groups. The first group mentions that insurance practice is lawful as long as it is free from the practice of interest. The scholars who support this view are Shaikh Mohammad Abduh, the Hanafi lawyer Shaikh ibn Abidin, Mohammad Taqi Usmani, Shaikh Mahmud Ahmad, Mustafa Ahmad Zarqa, Sayed Mohammad Sadeeq Al Ruhani, Ibrahim Tahawi, Ahmad Taha Al Sanusi, Yusuf Musa, Mohammad Al Bahi, Ali Al Khafif, Zafar Shahidi, Mohammad Nejatullah Siddiqi, Mohammad Muslehuddin, MA Mannan, Ali Jamaluddin Awas and Ayatullah

²²Ibid.

²³M.M. Billah, Applied *Takāful* and Modern Insurance, Law and Practice, Petaling Jaya, (2007).

Khomeni. The second group accepts the general insurance and its practices but reject life insurance because the latter one involves the elements of gambling and uncertainty which are against *mirāth* (inheritance) and *wasīyah* (will). This view is accepted by the Muslims League Conference held in Cairo in 1965 and in the seminar held in Morocco on May 6, 1972. The *Sharī'ah* scholars who accept this view are Abdur Rahman Isa, Ahmad Ibrahim, Mohd Musa, Mufti Mohammad Bakheet, Mohammad Abu Zahra and Shaikh Al Azhar Shaikh Jad Al Haq Ali Jad Al Haq. The third group rejects any practice of insurance because it involves interest, gambling and uncertainty and this view is supported by Mustafa Zaid, Abdullah Al Qalqeeli and Jalal Mustafa Al Sayyad.

3.0 Research Methodology

The objective of this research is to explore the perceptions of Islamic finance experts towards the issues of unethicity inherent to insurance in India. The total number of 18 male candidates are interviewed for this research. The results of the interview were collected by face-to-face interviews, phone or emails. Out of 18 respondents, 12 were interviewed face to face while the rest were contacted through phone calls or emails. The two interviews conducted through emails with overseas candidates were further reinforced by calling them over the phone. Only eight interviewees allowed recording of the interviews while the rest refused on various grounds. Both convenient sampling and purposive or judgemental sampling method is employed for choosing the *Sharī'ah* finance experts and their interview results were analysed through thematic approach. Coding is used to simplify the presentation of the interview results²⁴²⁵. For example, each Islamic finance expert is assigned as “IFE” and thus, “IFE 1” refers to the Islamic finance expert number 1, “IFE 2” refers to the Islamic finance expert number 2 and etc.

3.1 Profile of Islamic Finance Experts

The total number of 18 interviewees are chosen and all of them are male. Among the experts' 12 hold a master's degree, five hold a PhD

²⁴Ibid p.2713

²⁵Ibid p.389

degree and one Mufti. One of master’s degree holder has three master’s degree. 10 of the interviewees graduated from well-known Islamic universities while 8 graduated from other universities. Eight of the candidates are carefully chosen for interview owing to their status in Islamic finance locally and globally and their dynamic participation and massive experience. One of interviewees, has more than 30 years of experience in Islamic finance, while four of them fall between 6-10 years’ experience. Six of them fall among 1-5 years’ experience and three of them are not presently guiding any Islamic financial institutions. They have been included in the sample due to their knowledge and expertise in the Islamic finance. Four of them do not give out any clear information.

4.0 Findings

4.1 Current Practices of Conventional Insurance

Table 1: Current Practices of Conventional Insurance

Current Practices of Conventional Insurance	Islamic finance Experts																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
<i>Sharī’ah</i> non-compliance	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Involvement in <i>Sharī’ah</i> non-compliant businesses	√	√	√			√	√		√	√	√	√	√	√	√	√		√
Risk transfer	√	√	√	√	√				√	√	√	√	√	√	√		√	√
Unethical practices	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√

4.1.1 Sharī’ah Non-compliance

First interview question asked to the Islamic financial experts is (Q1) “What are the opinions of Islamic finance experts on the current practices of conventional insurance”. The purpose of this question is

to know their perception on insurance industry. All the interviewees collectively believe that the insurance practices are not in line with *Sharī'ah* by giving different reasons and this is the first view. One of them (IFE 7) mentions:

“Insurance contract is invalid contract in Islamic law because it is based on the contract of exchange between the premium and potential claims. In addition, the underlying substance of the contract is uncertain, i.e. for what the premium is paid”. (IFE 7)

It seems that in insurance practice, there is an exchange of money as a premium currently to money in the future claim. It resembles the practice of interest. Normally, if there is any claim, the claims are more than the premium paid. Consequently, the smaller amount of premium is exchanged to get the larger amount of the claims. IFE 14 also mentions:

“Conventional insurance is against the Sharī'ah because of it have three prohibited elements, interest, gambling and uncertainty. It is based on the risk transfer, rather than risk sharing type of contract”. (IFE 14)

Conventional insurance involves interest, uncertainty and gambling and it is not permissible under *Sharī'ah*. There are many evidences in the primary sources of *Sharī'ah* which prohibit them and explain why they are prohibited. One of the reasons is they can undermine socioeconomic justice.

Regarding the uncertainty, IFE 18 states that:

“The underwriting process and the use of the probability to determine how much the premium supposed to be paid by the insurance policy holders is unfair because it involves uncertainty and their way of premium determination cannot be justified”.

The measurements like family medical history used in the underwriting process are discriminating factors in determining the premium. It is uncertain whether you will have cancer because your

mum passed away with cancer. Using the probability and complicated statistical methods by the actuaries makes insurance to be involved in the uncertainty. It is not fair to charge higher premium amount to you because you are in the higher risk group exposed to health due to family health history. Sometimes, you might not be allowed to buy insurance because of the results of underwriting process or you must pay excessive amount of premium. So, insurance seems to provide the protection to the groups of people who are less needed. It might neglect the people who need insurance. These situations can bring the insurance to be unethical because of the profit motive by the insurance operators, i.e. minimising the claims compared to the amount of premium earned. There is very limited consideration on the needs of the society.

Regarding the gambling nature of insurance practice which makes the practice *Sharī'ah* non-compliant, one of them (IFE 8) mentions:

“Insurance is like a gambling game since it cannot provide the situation which has win-win situation for both involved parties. One party’s loss will be the gain for another party. For instance, if there is a claim, the insured normally gets the financial compensation more than the premium that they pay. So, it will be the gain for the insured and the loss for the insurer”. (IFE 8)

Another one (IFE 3) expresses his concern regarding gambling as follows:

“Insurance has the gambling nature which is one party can win at the expense of another party. For instance, once the policy holders are losing premium, it becomes the profit for the operators. Similarly, when the insurance operators must pay the claims, it becomes the expenses to the operators and the amount of the claim is usually much more than the premium received by the insurance operators from that policy holders. So, it creates the hatred and unhealthy business environment. This practice is forcing to the policy holders to make the false claims and the insurance operators to charge more

premium for the purpose of prudence". (IFE 3)

Insurance can be termed as a business of chance because the operators can make profit if they pay no or lesser amount of compensation, compared to premium earned. To save themselves, they use sophisticated statistical methods in the underwriting process to determine the premium. If they can correctly determine the amount of premium which is more than the expected compensation to be paid in the case of claims made by the policy holders, they will be profitable. Otherwise, they will be out of the business. So, if the chance is favourable to the policy holders, the operators will be at loss and if the chance is pro to the operators, the policy holders will lose their premium. In most situations, the operators try to ensure their profitability. So, its nature is more than gambling because in gambling, win or loss is 50% and nobody has control over it. However, in insurance, the operators have the upper hands since they set the premium price and the policy holders are asked to pay for it. It makes the insurance business unethical.

4.1.2 Involvement in Sharī'ah Non-Compliant Businesses

The second view is related to investment and most of the interviewees highlighted that insurance operators make their investment in the business activities which are not in line with *Sharī'ah*. This makes the insurance industry prohibited from the Islamic perspective.

Regarding, i.e. *Sharī'ah* non-compliant investment, IFE 7 states that:

"Islām encourages the business to earn profit as long as it is not at the expense of the society. Taking care of the welfare of the society is one of the aims of the Sharī'ah. If the insurance operators are investing in Sharī'ah non-compliant businesses, it cannot be ethical at all because it is supporting the growth of unethical businesses which are not good to the society directly or indirectly". (IFE 7)

Sharī'ah does not simply reject any business activity as *Sharī'ah* non-compliant without any reason. For instance, *Sharī'ah*

non-compliant businesses in alcohol and gambling bring harm to the society. Making investment in the non-*Sharī'ah* compliant businesses encourages more harm to the society. Although it might be more profitable to invest in the non-*Sharī'ah* compliant business activities compared to the *Sharī'ah* compliant investment, it will have negative impacts on the society.

“Insurance operators are not necessary to invest in the Sharī'ah compliant business activities. If they invest in certain food and beverage industry sectors, where the companies are trading or producing prohibited items such as alcohol, pork products, or other meat that's not slaughtered according to Sharī'ah law, the income generated will not be in line with”. (IFE 9)

According to IFE 15,

“Insurance operators mainly invest their capital in corporate bonds and other financial institutions which pay the interest”. (IFE 15)

Since there is no restriction on the insurance companies invest, their capital as long as they invest in the stable income producing investment such as government bonds which bear the interest, it might invest in *Sharī'ah* non-compliant business activities which is the major flaw from the Islamic perspective. The insurance industry in India is highly regulated and they can invest in the safe business activities and thus, the government bond is the best choice for them since they do not need to worry about default although the interest rate offered is not as high as the interest rate from the corporate bond or the return from risky businesses. This situation makes the insurance industry invest in the fixed interest rate return generating activities.

4.1.3 Risk Transfer

The third view is the risk transfer nature of insurance practices. It is also supported by almost of the interviewees and one of them (IFE 10) mentions:

“In insurance, the insured transfers their risk to the

insurer and again the insurer tries to transfer their risk to the reinsurance operators. The contract is not created based on the mutual help whereby the policy holders are contributing the money to help the other policy holders when they face with the peril. Thus, contractual relation in insurance is based on risk transfer rather than risk sharing. It brings the atmosphere of selfishness to protect themselves, rather than helping others". (IFE 10)

Insurance is an extremely risky business as it increases overall risk in society instead of reducing it. It is selling and buying risk contract because the policy holders dare not to bear the risk and buying the protection from the insurance operators. The risks are absorbed by the insurance operators by taking the premium from the policy holders. In other words, there is the chain of risk transfer among the insurance policyholders, insurance operators and reinsurance operators. Policy holders transfer their risk to the insurance operators by paying premium and the insurance operators accept the risk. Thus, the insurance premium is the charge imposed on the policy holders by the insurance operators which is supposed to be enough to cover their operating expenses and reinsurance expenses as well as to maximise their profit. Similar to the relationship between the policy holders and insurance operators, reinsurance contract is created for the insurance operators to transfer their risk on the reinsurance operators. Hence, the profit earned by the insurance and reinsurance operators are based on risk trading by selling and buying risk as a commodity among the involved parties. It is not based on the risk sharing and risk transfer is not in line with *Sharī'ah*.

4.1.4 Unethical Practices

The fourth view is related to the unethicity of insurance practices and one of them (IFE 15) mentions:

"Insurance companies used unethical means to maximise their profits such as rejecting the valid claims, deferring the payment for the claims until consumers give up or die, to increase their profits including, denying valid claims, delaying payments until

consumers give up or die, confusing policyholders with contracts that are difficult for them to understand and discriminating against the policy holders who are in need of insurance and not affordable". (IFE 15)

Insurance is against the ethos of Islām because insurance products are pro profit, rather than to the needs of the society. The profit oriented mind removes the ethical business practices of the insurance industry and the observation about corporate social responsibility is limited. They further provide their opinions on the existence of unethical business practices in insurance and the sources of the existence of unethical practices in insurance are *Sharī'ah* non-compliant investment, interest, uncertainty, gambling, lack of sharing the benefit and influence of western practice.

Regarding the interest, IFE 1 states that:

"Most of the insurance operators are investing in the interest-bearing bond rather than in equity. From the Islamic aspect, interest is prohibited due to injustice. Thus, it is not an ethical investment if that investment is earning interest". (IFE 1)

Involvement in interest is legal within the context of Indian business environment, however, it is not ethical since it is more pro to the rich, rather than the need and the poor. Interest is a tool that has the motive to accumulate wealth among the wealthy people. It does not consider the need and economic situation of less fortunate people.

Regarding lack of sharing the benefit, IFE 18 states that:

"First, the premium is charged very high to ensure that insurance operators can make profit. At the same time, that profit is not shared with the policy holders and so it is not fair to the policy holders". (IFE 18)

It is true because in insurance, there is no surplus sharing like *takāful* and hence, there is no sign of caring and sharing practice for the betterment of society.

Influence of western practice is another source of unethical nature. According to IFE 15, management focuses on profit maximisation without considering the needs of the society since

almost all of the products are not designed to be affordable to the lower income people. In addition, IFE 16 mentions that since the insurance industry is originally started by the British during colonisation period in India and hence, their way of handling is still influencing the current practice, for instance, profit oriented minded way of conducting the insurance business.

Based on these two interviewees, the current insurance industry has limited concentration on the need of Indians and concentrating on the upper and middle classes who can pay the higher premium. Since India is a developing country and most of the population are poor, to assist the majority, ethical and social consideration should be injected into the current insurance practices.

This subsection has explained the views of Islamic finance experts on the current insurance practices. The next subsection will highlight the views of Islamic finance experts on how to eliminate or reduce *Sharī'ah* and unethical issues.

4.2 Overcoming the Undesirable Issues in the Insurance Practices

Table 2: Overcoming the undesirable issues in the insurance practices

Overcoming <i>Sharī'ah</i> Issues	Islamic finance Experts																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
a) Compliance with <i>Sharī'ah</i> or <i>takāful</i>	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
b) Code of ethics	√										√		√					√
c) Role of regulatory body		√		√			√											

d) Payment of fee to the agents, rather than purely based on commission					√					√									√	
---	--	--	--	--	---	--	--	--	--	---	--	--	--	--	--	--	--	--	---	--

To overcome the *Sharī'ah* issues in the insurance practices, all the interviewees unanimously agree that the possible solution is to comply with *Sharī'ah* requirement and replace the conventional insurance with *takāful*. The concept of insurance is not against Islām but its practice is against with *Sharī'ah*. In Islām, something is not in line with *Sharī'ah*, it will incur unethical consequences. The objective of *Sharī'ah* is to mould our conducts in all aspects of our ritual and daily life activities to ensure that we can stay in the harmonious environment and society. The requirement for compliance with *Sharī'ah* does not make *takāful* operators unprofitable or run at loss because Islām encourages trading and business activities provided that all the activities are within the boundary of *Sharī'ah*. In addition, one of the objectives of *Sharī'ah* is to fulfil the basic need of the society.

Since *takāful* has been introduced as an alternative to conventional insurance, the problem will be solved upon introducing *takāful*. By introducing *takāful*, the main prohibited elements such as interest, uncertainty and gambling will be eliminated. Moreover, *takāful* will avoid investing in prohibited business activities. IFE 17 mentions:

“Profit oriented minded may drive takāful to deviate from the original concept of takāful, i.e. mutual help and cooperation among the participants and the role of the takāful operators, i.e. coordinator and trustee of the takāful risk funds, i.e. the fund from which the claims are paid out to assist the participants”. (IFE 17)

The contract used in *takāful* differs completely from conventional insurance because the former is based on risk sharing while the latter is based on the exchange of risk. With that, *takāful* will be able to

promote the solidarity and brotherhood among the society as well as practice of mutual and cooperative concept in the community.

In the case of overcoming the unethical issues in the current practice of conventional insurance, all the interviewees believe that if there is *Shari'ah* compliance and *takāful*, most of the unethical issues will be resolved.

Moreover, *takāful* is based on mutual cooperation which can bring the society together and inject the harmonised atmosphere and consider the needs of society for the long-term success and sustainability of the insurance operators. Consequently, unfairness and unethical practices can be minimised.

However, they suggest factors in order to have the ethical atmosphere. They are introducing code of ethics (four interviewees), increasing role of regulatory body (three interviewees) and adopt fee based remuneration for agents (three interviewees).

Code of ethics should be introduced and emphasised by the top management in order to create the awareness among the employees. IFE 18 specifically mentioned:

“Top management should be given attention to the ethical behaviour of the employees, otherwise the reputation of the companies will be negatively affected. Continuous monitoring on the ethical code of conducts of employees can prevent the potential unethical conducts in the companies”. (IFE 18)

Introducing a code of ethics is not sufficient to create an ethical business environment. Employees should be given proper training and there should be a system of punishment and taking actions against the employees who do not observe the ethical code. In addition, it should be easily obtained by the employees and uploaded on the website so that the public is aware of the ethical practice of the company.

This code of ethics will be strengthened if the regulatory body instructs the companies to abide by the ethical code of conduct.

Regarding the role of regulatory body, out of three interviewees, two mentioned its important role:

“If the Indian history is examined, insurance industry is

nationalised due to the unethical practices of insurance operators. Again, it is privatised due to the inefficiency in the hands of the government. In the current states, the government still plays the significant role in the insurance industry because there is only one reinsurance company wholly owned by the government and most of the insurance premium goes to the government owned insurance operators. So, history evidences that the government must interfere to achieve the targeted mission". (IFE 2)

Ethical observation is more important nowadays in India because recently, opening more foreign direct investment in the Indian insurance industry shows how the government is seeking to boost the industry. Thus, regulators focus attention on unethical issues and take concrete remedial action.

The fifth suggestion is related to remuneration for the agents. IFE 5 mentions:

"Based on the current practice, the agent does not have any basic salary and their remuneration is totally coming from the commission. They will concentrate to get more new policy holders to meet their targeted income. They might persuade the potential policy holders by not disclosing the material information that will make the policy holders' decision to decline buying the product. This creates unethical practice. In order to eliminate or reduce it, the agent should be paid the basic salary and then commission can be added on it, depending on the performance of the agent". (IFE 5)

The agents are the main employees because most of the insurance products are direct selling products. They have the most interactive employees with the potential policy holders and they are the most active people to persuade the potential policy holders to buy the products. Since their roles are crucial to the operators, they should be paid the basic salary in addition to the commission they earn. By practising that, to some extent, the unethical behaviour of agents can be minimised.

5.0 Conclusion, Suggestions and Recommendations

Shari'ah finance experts express their views on the current practices of insurance industry in India, about how *Shari'ah* related and unethical issues can be tackled in India. They generally believe that the current insurance practices involve in *Shari'ah* non-compliant activities and unethical business practices, mainly due to interest, uncertainty, gambling and investment in *Shari'ah* non-compliant business activities. Based on their opinion, the undesirable issues can be resolved if *takāful* is offered and the operators abide by the *Shari'ah* requirement.

However, considerable effort will need to be taken by the government, regulators, *Shari'ah* scholars and others to raise the awareness of *takāful* to support *takāful* industry so that it can live up to its potential. There should be some seminars, talks or workshops opened to the public to create the awareness and important of education in their lives. In addition, there should be more budget allocated for education to help the students who are in need. The youth are the leaders of the future and hence, education must be the first thing to be emphasised on. Apart from the awareness, the education level can play a significant role in influencing the decisions of the potential participants. If the insurance operators plan to offer the *takāful* products, they should focus on the ethicality of the products as well as look at the education background of the potential participants.

In the current situation, due to poverty, the youth start working without going to school. Parents cannot afford to send their children to school and there is lack of having the basic necessity such as food, clothing and shelter. Poor people's kids are brought up without proper education. Due to be a highly populated country, the majority are poor. Education is one of the ways to uplift the society and to disseminate knowledge to decide what is right or wrong as well as what is suitable or not. If the public is lacking education, it is not good for the country. So, in order to make people understand the insurance or *takāful* education should be the first step. Thus, the government must seriously consider the education of the young generation.

Moreover, *takāful* in India is an untapped market and there is

very high opportunity for the *takāful* operators to grow faster. Introducing *takāful* will invite foreign direct investment, especially for the Muslim investors who are looking for *Shari'ah* compliant investment. In addition, once *takāful* industry has started it should show its ethicality and transparency to gain more participants. It will be a big responsibility for the agents in promoting the products and the top management should provide adequate training to all the employees to ensure that all the employees understand the importance of ethics and the features and nature of the products. They are responsible to communicate with the potential participants in order to explain which product the best suit based on the situations, for instance, financial position and health or age, of the participants.

Also, the role of government and regulators is significant for the long-term survival of the industry. They are the law makers and the political will is important for the industry to grow further. If people do not know about the products, they will not buy and hence understanding about the product is essential for the potential policy holders to make the decision. *takāful* operators should take advantages on high Muslim population as a first step to enter into the market. Moreover, Indian economic section is booming and hence, this is the right time for the *takāful* operators to introduce it since, and the better economic situation has the positive impact on the insurance sector. Amending the existing law is essential to start the operation activities for *takāful*. It should be promoted as a cooperative product rather than *takāful* as a religious product to persuade the participation from the non-Muslims faster. Since India has plenty of *waqf* assets, it should be fully utilised for the beneficiaries and in this sense, *waqf* model can be used.

TRANSLITERATION TABLE

CONSONANTS

Ar=Arabic, Pr=Persian, OT=Ottoman Turkish, Ur=Urdu

Ar	Pr	OT	UR	Ar	Pr	OT	UR	Ar	Pr	OT	UR	
ء	ب	پ	پ	ز	ز	ز	ز	گ	—	g	g	g
ب	ب	ب	ب	ژ	—	—	ř	ل	l	l	l	l
پ	پ	پ	پ	ژ	—	zh	j	م	m	m	m	m
ت	ت	ت	ت	س	s	s	s	ن	n	n	n	n
ث	—	—	ṭ	ش	sh	sh	ş	ه	h	h	h ¹	h ¹
ث	th	th	th	ص	ş	ş	ş	و	w	v/u	v	v/u
ج	j	j	c	ض	ḍ	ḍ	ḍ	ی	y	y	y	y
چ	—	ch	çh	ط	ṭ	ṭ	ṭ	ة	-ah	—	—	-a ²
ح	ḥ	ḥ	ḥ	ظ	ẓ	ẓ	ẓ	ال	al ³	—	—	—
خ	kh	kh	kh	ع	‘	‘	‘	—	—	—	—	—
د	d	d	d	غ	gh	gh	ğh	—	—	—	—	—
ڈ	—	—	d	ف	f	f	f	—	—	—	—	—
ذ	dh	dh	dh	ق	q	q	q	—	—	—	—	—
ر	r	r	r	ك	k	k/g	k/ñ	—	—	—	—	—

¹ – when not final

² – at in construct state

³ – (article) al - or l-

VOWELS

	Arabic and Persian	Urdu	Ottoman Turkish
Long	ا	ā	ā
	آ	Ā	—
	و	ū	ū
	ي	ī	ī
Doubled	ي	iy (final form ī)	iy (final form ī)
	و	uww (final form ū)	uvv
	و	uvv (for Persian)	uvv
Diphthongs	و	au or aw	ev
	ی	ai or ay	ey
Short	ا	a	a or e
	ا	u	u or ū
	ا	i	o or ö
	ا	i	i

URDU ASPIRATED SOUNDS

For aspirated sounds not used in Arabic, Persian, and Turkish add h after the letter and underline both the letters e.g. جھ jh گھ gh

For Ottoman Turkish, modern Turkish orthography may be used.

AL-SHAJARAH

Special Issue

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