

Homage Paid to Shaykh Baha' al-Din Zakariyya by Non Muslim Writers

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Islam was propagated in Indian sub-continent by saints who had either migrated here from Islamic centres or had been trained by the spiritual guides of different Sufi orders residing in Islamic lands. These mystics belonged to Naqshbandi, Qadri, Chishti, and Suhrawardi Orders. The preaching efforts by Sufi saints resulted in the conversion of a large number of people to Islam. Among such mystics Hadrat Shaykh Baha' al-Din Zakariyya Multani, occupy a remarkable place. He dedicated the whole of his life for the preaching of Islam.

This great Sufi was born at Kot Karor near Multan in 566 A.H. He was a lineal descendant of Asad, the son of Hashim, the great-grandfather of the Holy Prophet (Upon whom be peace and greeting). His father died when he was twelve years of age. After completing his study of the Holy Qur'an according to its seven methods of recitation at Kot Karor, he visited the great centres of Muslim learning in Khurasan, Bukhara, Madinah, and in Palestine. He learnt Hadith with an eminent traditionist, Shaykh Kamal al-Din Yamani at Madinah and he was employed as an attendant at the mausoleum of the Holy Prophet (Peace be upon him) for 5 years. After visiting the graves of the Israelite Prophets in Palestine, he reached Baghdad and became a disciple of Shaykh Shihab al-Din, Suhrawardi. At that time he was, as his master said, 'a dry wood ready to catch fire', and so after seventeen days' instruction, the latter appointed him his successor and ordered him to set up a Suhrawardi Khankah in Multan. He complied with the order of his master and worked in Multan for more than half a century and died in Multan on 7 Safar 661/21 December 1262. ⁽¹⁾

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8. See Nabīl Sālih. *Unlawful gain and legitimate profit in Islamic Law*, p.126.
9. Muhammad Anwar. *A Comparative Study of Insurance and takāful*. Islamabad: Pakistan Institute of Development Economics. 1994, p. 14.
10. See Chaudry Muhammad Sadiq, *Islamic Insurance (takāful) concept and practice*, *Encyclopaedia of Islamic Banking and Insurance*, pp.197-208.

REFERENCES:

1. *Parkington and Anthony On Insurance Law*. London: O'Dowd Sweet & Maxwell 17th Edition, 1981. p.3.
2. See M.A. Chishti, *Islam and Insurance: Alternative options*, paper presented at Senior Officers Training Programme held in Islamabad on Feb.24th. 1992.
3. See Mufī Muhammad Shafī, *Bīmah Zindagī*. Karachi. Dār al-Isha'at: Abul A'lā Mawdūdī. *Ma'āshiyāt-e-Islām*. Lahore: Islamic Publications.1988; Hussain Hāmid, *Hukm al-Sharī'ah al-Islāmiyyah fī 'uqūd al-Tāmīn*. Cairo:1976; Muhammad Siddīq Darīr, *al-Gharar wa Atharuhū fī al-'Uqūd*, Cairo:1967; Zuhaylī, *al-Fiqh al-Islamī wa adillatuhū*, vol.4, p.671; Muslihuddīn, *Insurance and Islamic law*, Lahore: Islamic publications.1978. See *Majallah al-Buhūth al-Islāmiyyah*, Riyadh, vols. 19-20, 1987, Pakistan :Council of Islamic Ideology, Report on Islamic Insurance system.1992.
4. Hussain Hāmid, *Hukm al- Sharī'ah al-Islāmiyyah fī 'uqūd al-Tāmīn*, pp.84-86; Darīr, *al- Gharar wa Atharuhū fī al-'Uqūd*, p.65; *Majallah al-Buhūth al-Islāmiyyah*, Riyadh, vols. 19-20, 1987.
5. See Mustafā Zarqā, *'Aqd al-Ta'mīn wa Mawqif al-Sharī'ah Minhu*, Damascus: University Press.1381/1962. Muhammad Nejatullah Siddiqi, *Insurance in an Islamic Economy*, Leicester: The Islamic Foundation 1984. M.A.Chishti, *Islam and Insurance Alternative options*, Islamabad: International Institute of Islamic Economics,1992.
6. See Mustafā Zarqā, *Nizām al-Ta'mīn wa Mawqif al-Sharī'ah Minhu*, Paper presented at first International Conference on Islamic Economics, Makkah. 1976.
7. See Chaudry Muhammad Sadiq, *Islamic Insurance (takāful) concept and practice*, *Encyclopaedia of Islamic Banking and Insurance*, p.198, London: Institute of Islamic Finance and Banking, 1995.

- *Gharar* refers to lack of knowledge about the material terms of contract.
- *Gharar* takes place when it is not known whether the subject-matter exists or not, or if it exists, whether it can be handed over to the buyer or not.
- Following are some forms of *gharar* contract:
 - Uncertainty regarding the existence of the subject-matter
 - Inability to deliver the object of sale.
 - Lack of knowledge with regard to necessary characteristics of the subject-matter.
 - Want of knowledge with regard to the time of performance of contract.
- Some traditional types of *gharar* are:
 - Two sales in one transaction
 - Earnest money sale
 - *Bay' al-munabadhah* (Throw Sale)
 - *Bay' al-mulāmasah* (Touch Sale)
 - *Bay' al-hasāt* (Sale taking place through pebbles)
 - Contingent contract.
- *Gharar* affects commutative contracts meant for alienation of property for consideration such as sale, hire. It does not affect gratuitous contracts such as *waqf*, donation, gift.
- The Modern insurance contract is a contract of *gharar*. The element of uncertainty and lack of knowledge inherent in the insurance relates to the occurrence of the event, i.e., the subject matter of contract, the acquisition of amount of insurance, its quantity and time of payment.

received as *tabarru'* then no return should be given to participants. If the surpluses accumulate, then the regulatory body can decide to reduce the amount of premium for next periods. It will indirectly help the policy holders.

Sharī'ah appraisal of takāful business

The *takāful* business of Malaysia is satisfactory from *Sharī'ah* point of view. It is constructed on the Islamic concepts of *mudārabah* and *tabarru'*. It is also free from the element of *ribā*, because the participant or the policy holder does not get a fixed return on P.A. (Participant's Account), instead he gets a varied income. His capital is subjected to the principle of profit and loss sharing as enunciated in the tradition of the Holy Prophet (peace be upon him) "profit goes side by side with the risk". The amount accumulated in P.A. is invested in various forms of business strictly in accordance with Islamic techniques of financing and investment.

As regards participants in special account, this is the same fund which has been designated as *waqf* by the *Ulamā* of Indo-Pakistan. Being a contract of donation, any uncertainty about the *takāful* benefits to be earned by any participant, does not affect the validity of contract. A contract of donation with *gharar* and *jahl* is permissible in the *Sharī'ah*. Thus a participant who dies or suffers from total disability in the fifth year of participation, is entitled to get his capital and profits along with five yearly installments from participants special account i.e. from donation fund. This benefit is lawful and does not form *ribā* because it has been paid as donation to him. The Muslim Jurists are unanimous on the point that *gharar* (uncertainty), invalidates the exchange contracts only and not the contracts of donation. They say that the donation of stray or unidentified animal, or fruit before its benefits are evident, or usurped thing is permissible but their sale is unlawful. From this we may conclude that *takāful* provides an Islamic alternative to the present Insurance business.

Conclusion

The preceding discussion may be summarised as follows:

defined loss or damage arising from a catastrophe or disaster affecting his property or belonging.

As the *mudārib*, *Sharikat Takāful* Malaysia invests the Fund. All returns on the investment are pooled back to the fund. In line with the virtues of mutual help, shared responsibility and joint guarantee as embodied in the concept of *takāful*, compensation or indemnity is paid to any participant who suffers a defined loss. Other operational costs for managing the general *takāful* business such as the cost of arranging re-*takāful* program and setting up of reserve is also deducted from the fund.

A participant who wishes to participate in a general *takāful* scheme such as Motor *takāful* to cover his motor vehicle, Fire *takāful* to cover his house from loss or damage against fire or Public liability *takāful* to cover against his third party liability, pays a certain sum of money called *takāful* contributions. The amount of *takāful* contribution varies according to the value of property or asset to be covered under the scheme. If no claims are made or incurred and after deducting all the operational costs, the fund registers a surplus, it is shared between the participants and *sharikat takāful* Malaysia according to an agreed ratio such as 6:4: 5:5. Profits attributable to the participants are paid on expiry of their respective general *takāful* schemes provided they have not received or incurred claims during the period of participation.

The general *takāful* business is different from family *takāful* as all the payments are credited to only *tabarru'* account, and not divided into two separate accounts. After deducting all administrative costs and claims if this account shows some surplus (or profit) it is distributed among the policy holders as well. The problem here is that if the contributions of participants are *tabarru'*, then he should not get any profit on it, and if it is considered as a loan then the surplus amount earned by him, will amount to *ribā*. Therefore, the company should divide the available funds into two separate accounts as in case of family *takāful*. If due to short period of policy it is not possible to make investment and earn some profit, and whole contribution is

to be paid by the Participant should he survive until maturity).

(iii) From Group Family *Takāful* Account. RM 15,000.00
 Total *Takāful* Benefit. RM 25,290.00

(b) If Participant suffered bodily injury arising from accident, such as loss of arm or leg (rates of benefit fixed according to scale of disability or injury), then the amount of *takāful* benefits payable will be made from Group Family *Takāful* Account only, as follow: 50% x 15,000.00 RM 7,500.00

Case No 4

In event that the Participant is hospitalized:

Based on the same example, should the Participant be warded into any hospital for a period of 5 days the *takāful* benefit will be made from Group Family *Takāful* Account as follows:-

30 x 5 days. RM 150.00

General *Takāful* Business

General *takāful* schemes are basically contracts of joint guarantee, on a short-term basis, based on the principle of *mudārabah*, between a group of participants to provide mutual compensation in the event of a defined loss. The schemes are designed to provide protection to both individuals and corporate bodies against any material loss or damage consequent upon a catastrophe or disaster inflicted upon properties, assets or other belongings of its participants.

In consideration for participating in the various schemes, participants agree or undertake to pay *takāful* contributions as *tabarru'* for the purpose of creating a defined asset as illustrated in the 'General *Takāful* Fund'. It is from this Fund that mutual compensation would be paid to any participant who suffers a