

The Fifth Resolution on Insurance with Its Various Kinds and Forms

*All Praise be to Almighty Allah.
Blessing and peace be on His Prophet Muhammad
after whom there is no prophet, and on all those
who followed his way of guidance.*

The Islamic Fiqh Council during its 1st session held in Makkah Mukarramah, Saudi Arabia between 10-17 Sha'ban 1398H looked into the issue of insurance with its different kinds. It studied many Muslim scholars' writings in this regard as well as the resolution adopted by the Senior Scholars' Council in Saudi Arabia during its 10th session held in Riyadh on 4 Rabi Al-Aakhir 1398H on the prohibition of insurance with its various kinds.

After having detailed study and full deliberation on the issue, the Council decided with majority, the prohibition of insurance with all its kinds whether it be on life, business commodities or other kinds of finances.

The Council also decided unanimously its approval of the resolution adopted by the Senior Scholars Council in Saudi Arabia on permissibility of the co-operative insurance, instead of the prohibited commercial insurance, which was mentioned above.

The drafting of this resolution was assigned to a special committee.

Report of the Committee Assigned to Draft the Resolution of the Islamic Fiqh Council on Insurance

On the basis of resolution adopted by the Islamic Fiqh Council in its session held on Wednesday 14 Sha'ban 1398H to assign each of Sheikh Abdul Aziz Ibn Baz, Sheikh Muhammad Mahmood Al-Sawwaf and Sheikh Muhammad Ibn Abdullah Al-Subaiel to draft the resolution of the Council on insurance with its various kinds and forms.

The afore-said committee held its meeting and after deliberation, it adopted the following:

*All Praise be to Almighty Allah.
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who followed his way of guidance.*

The Islamic Fiqh Council during its 1st session held at the headquarters of the Muslim World League in Makkah Mukarramah, Saudi Arabia between 10-17 Sha'ban 1398H looked into the issue of insurance with its various kinds, after having been acquainted with many Muslim scholars' writings in this regard and also, having been acquainted with the resolution No. 55 adopted by the Senior Scholars' Council of Saudi Arabia during its 10th session held in Riyadh on 4 Rabi Al-Aakhir 1397H about the prohibition of the commercial insurance with its various kinds.

After the detailed study and full deliberation, the Council almost unanimously and with the exception of Sheikh Mustafa Al-Zarqa, decided to prohibit the commercial insurance with its various kinds, whether it is related to life, the commercial goods or some other kinds for the following reasons:

First: The commercial insurance contract is one of the contracts which are related to the possible financial compensation and which involve the great uncertainty, because the person seeking the insurance (insurance policyholder) cannot know about the time of contract, the amount of what he gives or takes. He may pay one or two instalments, then, a disaster may take place, so he would be entitled to what the insurer (insurance company) had committed.

The disaster may not take place at all, in that case, the insurance policyholder would pay all the instalments and he may not get any amount. Likewise, the insurance company cannot fix what he gives and takes regarding every contract separately. In one Hadith, Prophet Muhammad (peace be upon him) has been reported to forbid the sale of uncertainty.

Second: The commercial insurance contract is a kind of gambling, because there is uncertainty in such financial compensations such as loss for nothing that causes it and profit for nothing in exchange. The insurance policyholder may pay an instalment of insurance, then the accident takes place and the insurance company is faced with a loss by paying the full amount of insurance. The accident may not take place and in this case, the insurance company gets the benefit of insurance instalments for nothing to give in exchange.

If ignorance is involved, then it would become a gambling and come under the general prohibition of gambling, as Almighty Allah says: *“O you who believe! Intoxicants, gambling, (dedication of) stones, and (divination by) arrows are an abomination of Satan’s handiwork. Eschew such (abomination), that you may prosper. Satan’s plan is (but) to excite enmity and hatred between you with intoxicants and gambling, and hinder*

you from the remembrance of Allah and prayer. Will you not then abstain?” (Qur’an, 5: 90)

Third: The commercial insurance contract includes *Riba Al-Fadhl Wa Al-Nassa’* (usury based on unequal exchange and delayed payment). Hence, if the insurance company paid to the insurance policy holder, his inheritors or beneficiaries more than the amount that he paid to the insurance company, then it is *Riba Al-Fadhl* (usury of unequal exchange) and the insurance company makes that payment to the insurance policyholder after a period, then it is *Riba Al-Nassa*, and both the transactions are prohibited in the light of the textual provisions as well as the consensus of the Muslim scholars.

Fourth: The commercial insurance contract is a kind of the prohibited betting, because it has ignorance, uncertainty and gambling. That is why the Islamic Shari’ah has not permitted the betting except when the purpose is to support Islam. Prophet Muhammad (peace be upon him) has confined the permission of betting with a return to three things by saying: “There is no competition except in camel race, horse race and arrow contest.” Thus insurance does not come under this category and it has no similarity with it so it is prohibited.

Fifth: In the contemporary insurance contract, other’s money is taken for nothing to give in exchange, and to take such money in the contracts of commercial deals is prohibited because it comes under the general category of prohibition mentioned in the Qur’an: “*O you who believe! Eat not up your property among yourselves in vanities; but let there be amongst you traffic and trade by mutual goodwill.*” (Qur’an, 4:29)

Sixth: In the commercial insurance contract, there is an aspect of obligating what is not obligatory in the Islamic Shari’ah, as the insurance company does not create or cause the

accident, it merely concludes a contract with the insurance policyholder on guarantee of any accident in anticipation of its happening in exchange for an amount which the policyholder pays to it, while the insurance company does no specific work for the policyholder, so it is prohibited.

Those who allow the commercial insurance in all or some of its forms have presented certain arguments. The answer to their arguments is the following:

- a) The argument of reclamation is not valid, because interests in the Islamic Shari'ah are of three kinds; I) The kind which is approved by the Islamic Shari'ah is an evidence. II) The kind which the Islamic Shari'ah is silent about it and has neither approved nor disapproved, comes under the scope of *Ijtehad*. III) The kind which the Islamic Shari'ah has disapproved due to prevalence of its bad aspect over its good aspect.
- b) The argument that everything is originally permissible is not valid here, because evidences against contracts of the commercial insurance are based on the Qur'an and Sunnah.
- c) The argument that necessities validate the invalid, is not correct here because what Almighty Allah has allowed through permissible means of earning are many times more than what He has not allowed, so there is no necessity approved by the Islamic Shari'ah that can force the people to the insurance which Shari'ah has prohibited.
- d) The argument of general practice (*Urf*) is also not valid here, because it is not among the evidences of legislation, however, it can be a basis for application of rules and for understanding the meaning of textual phrases and people's expressions in their sayings and actions. Since evidences are clearly against

the insurance, there should be no consideration for such argument.

- e) The argument that contracts of the commercial insurance are the contracts of *Mudharabah* or in its meaning, is not valid, because the capital money in *Mudharabah* does not go out of its proprietor's ownership while the insurance policyholder's payment as per insurance contract goes out of his ownership to the ownership of the insurance company. In *Mudharabah*, the capital money is inherited by heirs of its owner in case of his death while in insurance the policyholder's heirs are entitled to the insurance money as per rule even if the policyholder did not pay except one instalment. In *Mudharabah*, profit is between the two partners at a certain rate while in insurance, profit or loss of the capital money is for the insurance company, and the policyholder will get the insurance money.
- f) The argument that contract of the commercial insurance is similar to clientage, is not valid, because it is a comparison with difference, and the difference here is that purpose of the insurance contract is the profit that involves uncertainty, gambling and ignorance, while the purpose of the clientage contract is the Islamic fraternity and cooperation in good and bad times. Whatever the material benefit is there, it is secondary.
- g) The argument that contract of the commercial insurance is similar to the obligatory undertaking, is not valid, because it is a comparison with difference. The difference here is that undertaking of credit, loan or bearing of loss comes under a pure beneficence and its fulfilment is a duty or a moral obligation, while the insurance contract is a commercial deal whose motive is material benefit.

- h) The argument that contract of the commercial insurance is similar to guarantee of the unknown and unnecessary is not correct, because it is too a comparison with difference. The difference here is that guarantee is a kind of donation, whose purpose is simply goodwill, while insurance contract is a contract of commercial deal whose first purpose is the material benefit, and if there is any goodwill, it is secondary.
- i) The argument that contract of the commercial insurance is similar to the road-danger guarantee, is not valid, because it is a comparison with difference as well, like the previous one.
- j) The argument that contract of the commercial insurance is similar to the retirement scheme, is not correct, because it is also a comparison with difference. In the retirement scheme, whatever is given as retirement pension is a right which the government has committed to its public and also it has taken into consideration the retired employee's services to his nation. The government has provided the employee with a scheme, taking into consideration his interests and needs, so the retirement scheme does not come under the financial deals between the state and its employees. Hence, there is no similarity between the retirement scheme and insurance which comes under the contracts of the commercial transactions and whose purpose is the policyholders' exploitation by the insurance companies through unlawful means, because what is given in the retirement scheme is a right which the government has committed to its public and which it pays to those who have served their nation in appreciation of their physical and mental contributions.
- k) The argument that contract of the commercial insurance is similar to the system of blood-money payment (*Aaqelah*), is not correct, because it is a comparison with difference. The difference here is that killer's family members commit the

payment of blood-money due to their relationship which calls for support and cooperation without expecting anything in exchange, while contract of the commercial insurance is an exploitation based on purely financial transaction without having anything to do with sentiments of goodwill and charity.

- l) The argument that contract of the commercial insurance is similar to the contract of guarding, is not correct, because it is also a comparison with difference. The difference here is that security is not a point of contracting in both cases. The point in the insurance is payment of instalments and insurance money while in guarding it is guard's work and his wage. In fact, security is an objective and outcome otherwise the guard would not deserve his wage in case the guarded object is lost.
- m) The argument that insurance is similar to deposit is not correct, because it is a comparison with difference, because the fee of deposit is in exchange for keeping something in custody, while in insurance, the policyholder's payment is not for any work done by the insurance company so insurance is different from deposit.
- n) The argument that insurance is similar to the deal of cloth merchants with weavers is not correct, because it is a comparison with difference. The difference here is that the cloth merchants' deal is based purely on cooperation, while the insurance is a commercial transaction, so comparison is not valid.

The Islamic Fiqh Council also decided unanimously to approve the resolution No. 51 adopted by the Senior Scholars' Council in Saudi Arabia on 4 Rabi Al-Aakhir 1397H on permissibility of the cooperative insurance instead of the prohibited commercial insurance for the following evidences:

First: The cooperative insurance comes under the contracts of donation with the purpose of cooperation to face the dangers and shoulder the responsibilities at the time of disasters and tragedies. Such cooperative insurance happens through contribution of individuals with cash amounts allocated to compensate those who are inflicted with damage and loss. The purpose of such cooperative insurance group is not to get any commercial profit from others' money. Their intension is only to divide the risks among themselves and cooperate on bearing the damages.

Second: The cooperative insurance is free from both kinds of usury (usury of unequal exchange and usury of delayed payment). The contracts of shareholders in the cooperative insurance group should not be usury-based and they would not utilize the accumulated instalments in the usury-based deals.

Third: Ignorance of the shareholders in the cooperative insurance group would not harm them, because they are donors so there is no question of risk, uncertainty and gambling, while the commercial insurance is a contract of the commercial and financial transaction.

Fourth: A group of shareholders or their representatives can invest the accumulated instalments to achieve the purpose, for which this cooperative insurance has been created. The Islamic Fiqh Council is of the opinion that the cooperative insurance should be in the form of a cooperative insurance company in view of the following:

- 1- Adherence to the concept of Islamic economy, which would allow individuals to carry out the various economic projects. The state's role should be only as a complementary element to

what individuals could be able to do and as a guide and monitor to ensure the success of these projects and their operations.

- 2- Adherence to the concept of cooperative insurance by which the shareholders would be independent in operation, management and execution of the entire project.
- 3- Training of people for the cooperative insurance through individual initiatives and personal incentives. No doubt, the participation of people in the management makes them more cautious and alert to avoid the risks which make them pay the necessary compensation, and subsequently lead to the success of cooperative insurance. If the risks were avoided successfully, the instalments would be less in future, and if the risks could not be avoided, the instalments may be more in the future.
- 4- The composite form of the company does not make the insurance as if it is merely a gift or grant from the state for its beneficiaries, it would also have its participation with them to support and protect them because they are the people of the real interest. It seems a more positive stand so that the shareholders may appreciate the state's role and at the same time would not abstain from their responsibility.

The Islamic Fiqh Council was of the opinion that the detailed provisions for working of the cooperative insurance should be prepared in view of the following bases:

1. The cooperative insurance company should have headquarters besides its branches in all cities. It should also have several departments according to the risks which would be covered, as well as the different categories and professions of the shareholders, for example, there should be a department for

health insurance, another for old age and other disabilities, or there should be a department for insurance of the street vendors, another for merchants, third for students, fourth for professionals such as engineers, medical practitioners, lawyers, etc.

2. The cooperative insurance company should have greater flexibility and keep away from the complicated methods.
3. The company should have a supreme council to decide its policies and programmes as well as to propose the necessary rules and regulations in accordance with the rulings of the Islamic Shari'ah.
4. The members selected by the government would represent the government in the council and members selected by the shareholders would represent them in the council. This way the council would enjoy the government's consent and would be secure from malpractice and failure.
5. If the risks exceeded the company's resources, it may require more instalments. In that case, the state and shareholders would bear this increase.

The Islamic Fiqh Council supports the suggestion of the Senior Scholars Council in its resolution that a panel of experts should prepare the detailed provisions of this cooperative insurance company.

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