# Hamidullah on Mutuality based Islamic Insurance

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**Abstract**

Dr. Muhammad Hamidullah (1908-2003) is well-known for discovery, editing and bringing in light a number of rare and invaluable Islamic manuscripts. A significant aspect of his contribution is his pioneering writings on Islamic Economics. He authored more than a dozen essays related to Islamic economics. He is the first to use this term as early as 1936 in his work "Islam's Solution to the Basic Economic Problems – the Position of Labour". He is also pioneer writer on mutuality-based Islamic insurance, now known as '*takāful*'. After surveying the development of Islamic insurance, the present paper studies and evaluates Dr Hamidullah's contribution to mutuality-based insurance**.**

## Introduction

Dr. Muhammad Hamidullah (1908-2003), the last citizen of Hyderabad as he is sometimes called, spent major part of his life in Paris, engaged in research and academic works and died in Jacksonville (USA). Hamidullah's major areas of interest, *sīrah* (biography of the Prophet), history of the codification of *ḥadīth*, and Muslim International Law are known to all. But very few know that he was also among the early writers on Islamic economics. He authored more than a dozen of papers on Islamic Economics. It was he who coined the term "Islamic Economics" (*Hamidullah*, 1936, p. 217). He was also first to write on mutuality-based Islamic insurance. The present paper notes Dr. Hamidullah's objection on the conventional insurance discusses his model of mutuality-based *takāful*. At the ends it shows the relevance of these ideas.

***Contributions to Islamic Insurance:*** Hamidullah is among the pioneer writers on Islamic economics. He is also pioneer writer on mutuality-based Islamic insurance. Perhaps he was first to write on Islamic insurance in English as early as 1946' and he was first to point out basis of Islamic mutual insurance in *maʿāqil* provision of early Arab-Islamic system which was based on mutual cooperation. In his treatise "Islam and communism" (first published in 1950), Hamidullah wrote a brief note: "From the time of the Prophet, we come across a sort of social insurance of the community, insurance against tort entailing payment of damages beyond individual capacities. This insurance was called *maʿāqil*" (Hamidullah, 1981, p. 20).[1] The next year he explained the idea in an article entitled "Islamic Insurance".[2] He discussed it again in his paper "Haidarabad's Contribution to Islamic Economics" (Hamidullah, 1955b, pp.

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73-78). And finally he wrote a section on social security in the Chapter on "the Economic system of Islam" in his famous book *Introduction to Islam* (Hamidullah, 1957).

Before we examine in details Dr. Hamidullah's views on Islamic insurance it is worthwhile to note briefly provisions of insurance in early Islamic system and survey its development in the past. This will provide a background for better appreciation of his ideas on the subject**.**

## Provisions of insurance in early Islamic System

Protection of property and riches is among the objective of Sharīʿah.[3] In Islam there are various provisions that aim to safeguard them. For example:

***Zakah*** is the most important source of social security in Islam. It is levied on every adult Muslim who is in possession of minimum exemption limit of assets (*niṣāb*). The Prophet (peace be upon him) said that it should be collected from the rich and reimbursed on their poor.[4] While there are enough reasons that zakah payment will have favourable effect on the growth of the property of *zakah* payers,[5] it works for the poor as social security and helps the *zakah* receivers in several ways.

***Sadaqat al-fiṭr*:** It is obligatory on every Muslim, male or female, minor or major. Every individual has to pay it on behalf of himself and his dependents if he has more than subsistence for himself and his dependents on the night of *Eid al-fiṭr.*[6] *As* against *zakah,* there is no prescribed minimum exemption limit *(niṣāb)* for *ṣadaqat al-fiṭr.* Thus, *ṣadaqat al-fiṭr* is obligatory on even those who may themselves be legally reckoned as poor but they pay to those who are poorer. In this way it is directed towards the poorest of the poor. It is security for the need fulfillment of the poor on the day of festival.

***Endowment* (*waqf*):** It may be defined as taking the corpus of any property from personal ownership, transferring it permanently to the ownership of Allah and dedicating its usufruct to others. *Waqf* has been used extensively to provide lodging, clothing, water resources, health care, education, etc. Permanence and irrevocability are two essential characterization of *awqaf.*[7] At present it has been proposed by some scholars like Mufti Taqi Usmani to organize Islamic insurance on the basis of *waqf.*

***Khilt* (mixing up available means):** This is a mutuality based method of sharing by mixing together whatever little food, drink and other necessities of life the members of a community have and sharing equally irrespective of their contribution. This is known from a *ḥadīth* in which the Prophet (pbuh) praised the people of Ashʿarī tribe who used to practice it at the time of difficulties.[8]

***Maʿāqil* :** The *ʿāqilah* is a clan committed, by an unwritten law of the Arabs originating in the early stages of Islam, to pay blood money for each of its members. If somebody unintentionally commits a murder, and the granting of blood money became the clan's final verdict, then that blood money would be spread across his *ʿāqilah* (the supportive clan). This system is referred to as *maʿāqil.* Usually the *ʿāqilah* would collect the needed sum for compensation after the defendant had committed the crime. It is reported that Caliph Umar initiated deduction in advance from every soldier's salary for future *diyah* claims, thus making the combat unit the *ʿāqilah* of the soldier.[9] The same is understood from Hamidullah's (1969) statement that "in the time of the caliph 'Umar, the branches of insurance were organized on the basis of the profession, civil or military administration, to which one belonged (or even of regions)". As noted above and will be discussed in details below, Dr. Hamidullah suggested his model of mutuality-based insurance on the pattern of *ʿāqilah*.

In his article "Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century", Rispler-Chaim includes *ḍamān* (guarantee), *ḍamān khaṭar al-ṭarīq* (a guarantee against travel hazards), *walā' al-muwālāt*, *diyah*, *muḍārabah* and *jizyah* among the transactions and institutions which functioned in a way similar to certain types of insurance.[10]

**Modern development of Islamic Insurance**

Modern insurance, now called in Arabic as "*ta'mīn*", was mentioned for the first time in Islamic sources under the name *sūkarah* (security), by the Hanafi jurist Ibn ʿAbidin (1783-1836) in the 19th century. In the year 1240H (1824/1825) his opinion was sought about a kind of insurance in which one party gets protection from risk of robbery or piracy on payment of premium. Ibn ʿAbidin tried to solve the problem within the framework of opinions expressed by the past jurists (*Majmūʿah* 2: 177-8). As he was opposed to *ijtihād* (fresh and creative thinking), he did not think over the problem of insurance independently. Had he done so, he must have reached to some of the conclusions to which scholars of twentieth century did in their discussion of *ta'mīn*.

Rifāʻah Rāfiʻ al-Tahtāwī (1801-1873), an Egyptian Azharite scholar, who lived in France for five years during 1826-31, in his account of people and economy of Paris he mentions insurance which is called by him as "partners in guarantee" (*al-shurakā' fi'l-ḍamān*). This association guaranteed to help those who contributed to it in case of a calamity or accident (*Takhlīṣ*, p.149). It is not clear how *al-shurakā' fi'l-ḍamān* functioned and what was al-Tahtāwī's stand regarding insurance. However the term indicates that it might have been mutuality-based insurance which is considered at present by majority of *ʿulamā* as the only permitted form of insurance in Islam.

At the end of the 19th century the first insurance company in the Islamic world was founded in 1890 in Egypt (Rispler-Chaim, 1991, p.158) and to promote its business the company wanted to get a *fatwā* from Abduh (at that time the grand mufti of Egypt). There is no mention of the word 'insurance' in its query. It was presented as a form of investment. It means that people had doubt about the Islamicity of the functioning of the company and they did not show enthusiasm towards it. Perhaps the manager of the company tried to get the *fatwā* to convince people regarding the legitimacy of its functioning. The questionnaires are very brief and so the reply of Abduh. It is not very explicit that it was a matter of life insurance (although it appears to be so). The query is simply in terms of installments contributed for a specific period for investment purpose based on *muḍārabah* technique, and at the end of the period the whole amount plus the profit is paid to the contributor if he is alive, otherwise it is paid to the inheritors or nominated person. No question of uncertainty, *riba* or gambling has been raised, which are raised these days. There is no reference to losses if happened in the investment. It is also not made clear whether the profit will be a fixed amount or a ratio of it. Again, it is not clarified if the amount to be paid after expiry of the period will be the total amount determined at the beginning of the contract or only the total of paid installments. There are indications that it was not a simple *muḍārabah* partnership. It was a new issue of insurance. The *muftī* also did not ask clarification of those norms which are prescribed in our time. Perhaps people were not so awakened about various Sharīʿah issues involved in the insurance. As simple was the question, so was the reply.[11] However, during the first half of twentieth century most of ʿ*ulamā* considered insurance as un-Islamic. They prohibited all kinds of it (al-Dasuqi, 1967 p. 83). But they did not present in this period a satisfactory substitute to conventional insurance.

With the political, intellectual and economic awakening after mid twentieth century, expression of individual opinion and collective debate started on the institution of insurance in Islam. By organizing the Week of Islamic Jurisprudence in 1961 and fixing the topic of Islamic insurance as one of its themes, it brought the subject of insurance into focus. Many top Muslim scholars, such as Mustafa Zarqa, Abu Zahrah, Abd al-Rahman Isa, Ali al-Khafif, Siddiq al-Darir, participated in the discussion. They were sharply divided on the issue. While majority of them discarded life insurance, they accepted in principle the other kinds of insurance. However, they rejected the conventional insurance because of its involvement of *ribā* (interest), *gharar* (excessive uncertainty), *maysir* (gambling) and *jahālah* (ignorance) (*Usbūʿ al-Fiqh al-Islāmī*, 1963). Two minority extremes were also found – one which rejected insurance altogether considering it violation of *taqdīr* (destiny), *tawakkul* (trust in Allah), *ribā'l-faḍl* and *ribā'l-nasī'ah* and violation of inheritance law, while the other minority refuted these objections and accepted all kind of insurance provided the element of *ribā* (interest) and *gharar fāḥish* (extreme uncertainty) were eliminated.[12] We find that in the discussion of various seminars and conferences that held one after another (International Fiqh Academy of OIC, International Fiqh Academy of Muslim World League, Council of Great Scholars of Saudi Arabia, etc.) and writings of various scholars and ʿ*ulamā* mostly the same arguments and counter arguments have been repeated.

Broadly speaking insurance has been classified into three categories - Commercial insurance which is run by joint stock companies with the motive of profit, Social insurance whereby the state protects workers from dangers to which they are exposed as part of their work, and mutual insurance which a group of individuals or associations organize to compensate themselves if they face losses. Now majority of scholars prohibit commercial insurance – including life insurance – because of its involvement of interest, *gharar* and *maysir* (Uways n.d. p. 98). As far the second and third types of insurance are concerned, there is near-consensus on permissibility if they are based on Sharīʿah principles (al-QurahDaghi n.d. p. 15; El-Gamal 2006).

In the Muslim scholars conference held in Cairo in the year 1385 A.H. (1965 AD), and the one held in 1392 A.H. (1972 AD) legal advisory opinions were given while permitting mutual cooperative insurance. These matters were also approved by the first international conference on Islamic economics organized by King Abdulaziz University at Makkah al-Mukarramah in 1976 (Saqar, 1980, pp. 553-554). The same was confirmed by a *fatwā* issued by the *Hay'at Kibār al-ʿUlamā* (higher council of Saudi Arabian ʿ*Ulamā*) in 1974, as well as by a *fatwā* of the Fiqh Academy of the Muslim World League in the following year and by a *fatwā* issued by Jeddah based Islamic Fiqh Academy of the Organization of Islamic Conferences in 1985. For us it will suffice to note here the ruling of the Islamic Fiqh Academy of the Organization of Islamic Conference (O.I.C.), now Organization of Islamic Cooperation:

> 1. The commercial insurance contract, with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major elements of deceit, which void the contract and therefore is prohibited (*ḥarām*) according to Shariah.

2. The alternative contract which conforms to the principle of Islamic dealings is the contract of cooperative insurance, which is founded on the basis of charity and cooperation. Similarly is the case of reinsurance, based on principles of cooperative insurance.
3. The academy invites the Islamic countries to exert effort toward establishing cooperative insurance institutions and cooperative entities for reinsurance, in order to liberate Islamic economy from exploitation, and put an end to the violations of the system which Allah has chosen for this Ummah (Islamic Fiqh Academy (2000).

At present bulk of discussion on Islamic insurance revolve around the questions how to remove *gharar* and *jahālah*, how to make it perfectly cooperative and mutual, how to utilize its idle fund, how to meet deficit, what to do with the surplus, and how to arrange re-insurance. Following is a brief account of each:

***How to remove gharar and jahālah*:** Uncertainty is inherent to insurance. It cannot be imagined without uncertainty. This requires that the insurance should be based on such a provision where *gharar* and *jahālah* are not effective. Three way outs have been suggested: consider the contribution and help to the affected person as *tabarruʿ* (voluntary donation) on the pattern of Maliki school according to which *gharar* is not injurious to an act of *tabarruʿ*. *Hibat al-thawāb* (gift in return of gift) is another way. Contributors to insurance fund gift the money in return of money that they would receive. This is accepted by some Hanafi jurists. A third way to avoid *gharar* in *takāful* is to establish a *waqf* for it. It may be noted that no provision is free from criticism and the effort is still going on to find an agreeable alternative (al-QurahDaghi 2011, 15).

***How to make Islamic insurance perfectly cooperative and mutual*:** Efforts and suggestions are made to establish a really speaking mutual cooperative insurance. In many cases joint stock companies or banks establish *takāful* insurance as their subsidiaries which were not owned by the contributors. In mutual *takāful*, the contributors themselves should be owner of the establishment. In Saudi Arabia Bank al-Jazirah has done it by establishing a mutual insurance company and working for it as an agent.

***How to utilize its idle fund*:** Generally two ways are suggested for utilization of idle fund. Since there may not be expertise of investment who can utilize the funds available with a *takāful* company, it can hire an experienced skilled firm for investment of *takāful* fund on the basis of *wakālah* charging a fee for it. Another possible way is to make a contract with such a company to utilize the available fund on the basis of partnership acting as *muḍārib* for the *takāful* company (Obaidullah 2005).

***How to meet deficit*:** Deficit in the *takāful* fund is also a worrisome issue. Recently in a seminar al-QurahDaghi (2011, pp. 34-5) has dealt this topic and suggested the following possibilities for consideration:

1) The *takāful* concern may borrow money through a permissible way.
2) The members should be required to contribute to meet this deficit.
That is also the spirit of mutuality.

3) The *takāful* companies should establish a fund to meet such emergencies.
4) A third party may take the guarantee to help in such a situation.
5) The agreement may be concluded with the re-insurance company to bear such risks.

***What to do with the surplus*:** It is not only deficit but the surplus fund also which is left after meeting all the obligations is a problem. Who should take it or how it should be utilized? The Islamic International Foundation for Economics and Finance (IIFEF) organized a workshop in 2011 in which one of the themes was application of insurance deficit and surplus (al-Qari, 2009; Haydar, 2009). In the opinion of Khorshid (2004, p. 70) the main feature of mutual insurance and commercial interest is that in *takāful* the insured have, a proportional interest in the surpluses while, in commercial insurance, the surpluses go to the owners of the enterprise who are the shareholders.

***How to arrange re-insurance*:** Like insurance, reinsurance has also been a theme of discussion among the *ʿulamā* and scholars. Many think that the re-insurance will also be established on the pattern of *takāful*. Naturally the same controversies have to be resolved in case of re-insurance as well (al-Khalifi, 2011, pp. 45-7).

## Hamidullah's model of mutuality-based Islamic insurance

In this section we shall see the model of insurance which Dr. Hamidullah presented more than half a century ago. In view of his ideas being scattered and generally remaining unnoticed, we think that it would be useful to give lengthy citations from his works, so that the reader could know his ideas in his own words. To Hamidullah (1951, p. 45) "Insurance essentially means the distribution of a burden or hardship over as large a number of people as possible, thus lessening the burden of each as much as practicable so that none of them feels it".

According to him early Muslims needed only protection from payment of blood money and ransom from captivity. Their other life requirements were so simple that they did not feel need for general insurance. They needed insurance against risks involving heavy charges such as captivity and assassination. He says:

> Among the Arabs at the commencement of Islam, daily ailments were unknown and the cost of medical care was practically nothing. The average man built his house with his own hands, and did not pay even for the major part of the material. Thus, it is easy to understand why one had no need of insurance against sickness, fire etc. On the contrary, insurance against captivity and against assassination were a real need. Already in the time of the Prophet, this point had received attention, and certain dispositions were made which had the elasticity of further development and adaptation to circumstances "(Hamidullah, *Introduction to Islam* P. 128).

It was so urgent a matter that when the Prophet (pbuh) reached Madinah, he paid attention to it and in the first year of his migration, he made provisions for it in the Constitution of the City-State of Medina. He based this insurance on the *maʿāqil* system. It worked in pyramidal hierarchy. Hamidullah gave its *modes operandi*:

If someone was made a prisoner of war by an enemy, payment of ransom was needed to procure his liberation. Similarly, all bodily torts or culpable homicides required payment of damages or blood money. This often exceeded the means of the individual concerned, prisoner or criminal. The Prophet organized insurance on the basis of mutuality. The members of a tribe could count on the central treasury of their tribe, to which everybody contributed according to his means. And if the treasury of the tribe proved inadequate, other related or neighbouring tribes were under obligation to render aid. A hierarchy was established for organizing the units into a complete whole" (Ibid.).

This hierarchy was to reach to the state.

"If somebody was found guilty of involuntary homicide, and was unable to pay the blood money required by law out of his own means, the government came to his help under this heading of the budget, as is evidenced by several cases of the practice of the Prophet" (Ibid. p. 129).

He further says:

"Later in the time of the caliph 'Umar, the branches of insurance were organized on the basis of the profession, civil or military administration, to which one belonged (or even of regions). Whenever needed, the central or provincial government came to the succour of the branches (Ibid.).

Dr Hamidullah is against the conventional insurance. To him it "falls under the same prohibition as interest. One sided risk and gain without proportionate responsibility in such a commercial contract are reasons thereof" (Haidarabad's Contribution p. 76). At another occasion he likens it with the game of chance. He observes:

Without entering into technical details, it may be pointed out that capitalistic insurance, in which the insured person does not participate in the benefits of the company in proportion to his contributions, is not tolerated in Islam as this would constitute a form of game of chance (Hamidullah, *Introduction to Islam* P.129).

He is in favour of "an insurance company, not on capitalistic but mutuality basis" (Haidarabad's Contribution p. 76), as the system of insurance organized by the Prophet was also based on mutuality. According to Hamidullah

"Insurance signifies essentially the repartition of the burden of an individual on as many as possible, in order to lighten the burden of each. Instead of the capitalistic companies of insurance, Islam preferred organising insurance on the basis of mutuality and cooperation, aided by a pyramidal gradation of the branches culminating in the central government" (Hamidullah, *Introduction to Islam* P.129).

In his note on "Islamic Insurance", Dr. Hamidullah presents an example of mutual insurance that was in practice in Hyderabad state:

> From time immemorial the Hyderabad cavalry of Naẓm Division has retained it under the name of the "'*Ahdi* System".[13] It was necessitated on account of the fact, that on first employment the Government supplied the soldier with a horse, yet, if it died, the soldier had to replace it at his own expense. Of course this was beyond his capacity. So they paid to the common pool a small sum of, say, two rupees annually. The thousands of rupees thus collected were utilized for all accidents against which the contribution insured the horseman (*Islamic Review*, March-April 1951, pp. 45-46).

On the same pattern he recommended formation of a mutual insurance company for increasing number of motorists in Hyderabad which was basically suggested in 1946, by an expert body consisting of those well-versed in insurance business and those who knew Muslim legal and economic theories thoroughly. The body was set up by the Economic Committee of the 'Osmania Graduate Association. Following was its suggestion:

> Let us begin with insurance against motor accidents. Supposing of the 20,000 motor cars in the city of Hyderabad only one thousand insured with us. The accidents causing damage to cars of our 1,000 clients might be 25 per annum, demanding a sum of Rs. 5,000 for repairs. If the admission fee was fixed at Rs. 6 and the premium to be paid by our clients at only Rs. 8 per *mensem*, the annual income would be Rs. 6,000, which may cover not only the cost of repair but also working expenses of the office, along with one year's income as a reserve in hand through the admission fee. Even these annual six thousand rupees need not lie idle, but should be invested in profitable concerns provided they are interest-free and allowable under Muslim laws of company and partnership (Ibid.).

However, this could not be experimented because of political upheaval.

Dr. Hamidullah does not ignore the possibility of nationalization of insurance business by the state:

> It goes without saying that these elements of mutual aid could insure against all kinds of risks, such as accident of traffic, fire, loss in transit, and so on. Also, it goes without saying that the insurance business is capable of being "nationalized" for all or certain kinds of risks (i.e. temporary motives such as the dispatch of parcels, etc. (Hamidullah, *Introduction to Islam* P.129).

Hamidullah has discussed not only mutuality-based insurance but he has also elaborated how Islamic banking can be established on the basis of 'mutual co-operation' (Hamidullah, 1955a). However, this is not our theme at this time.[14]

According to Hamidullah, Western insurance works "through speculating and gambling and taking risk in expectation of greater benefits", where "the risk is one-sided, i.e., on the side of the company". On the contrary, Islamic insurance operates "in a spirit of mutuality, fellowship and avoidance of one-sided risks". Islam is against the contract that is "based on one-sided risk" (ibid.). Islamic provisions of insurance "were called *maʿāqil,* and concerned mainly insurance against tort and legal damages" (Hamidullah, 1951, p. 45).

He notes that in January, 1950, just before the General Election, the Labour Party's proposed for mutualisation of insurance. But the precarious Labour majority left this proposal in abeyance. He expressed his hope that Pakistan would present such a model (ibid.).

To Hamidullah "Insurance essentially means the distribution of a burden or hardship over as large a number of people as possible, thus lessening the burden of each as much as practicable so that none of them feels it" (ibid.). He was first to introduce to English readers a model of Islamic insurance based on mutuality and risk-sharing.[15] As noted earlier, perhaps he was motivated to write upon Islamic insurance by the existence of such a system in Hyderabad and unfinished joint effort of Hyderabad's Majlis-e ʿUlamā and Economic Committee of the 'Osmania Graduate Association. We have seen above, before its theoretical presentation its simple shape was already in practice in Hyderabad state while in rest of Islamic world mutuality based insurance was established much later first time in Sudan in 1979 (Lal-Din, Muhammad Akram and Buharawah, Sa`id 2011).

Hamidullah criticized the conventional insurance on the same basis on which most of *ʿulamā* rejected it – *ribā* (interest), *gharar* (excessive uncertainty) and *maysir* (game of chance). As noted above, much before our contemporary *ʿUlamā*, Hamidullah suggested establishment of insurance on the basis of mutuality as an alternative of conventional insurance. In spite of so many discussions individually and collectively no commonly acceptable substitute could be found. There is near consensus that mutuality is the way of Islamic insurance.

## Reciprocal inter-insurance exchange vs. mutual insurance

The model of mutual insurance which had existed in Hyderabad and which was reported by Hamidullah is known in the insurance terminology as "reciprocal inter-insurance exchange".[16] There is no difference of opinion on its permissibility among the Muslim scholars. But the term "reciprocal inter-insurance exchange" is not very common among the writers on Islamic insurance. Being a form of mutual insurance, a few writes have called it as the simple mutual insurance. Hamidullah presented both models of insurance – simple and compound without making any distinction between the two. His example of "*ahdi* system" and motorist union comes under "reciprocal inter-insurance exchange" or simple mutual insurance while his general explanation refers to compound mutual insurance. Hamidullah puts both types of insurance – simple and compound – in the same category. However, the detailed description of Islamic insurance which he presented comes under mutual insurance.

***Advantage of Mutuality***: Flexibility and focus upon the policyholder are the two important advantages of a reciprocal insurance arrangement. It is owned by members and controlled by members, and can be structured as desired. Generally operating profits from reciprocals are retained for future liabilities and expansion. Mutual and mutuality being known all over the world, has set rules and regulation. Thus, to base the Islamic insurance on mutuality and use the term mutual will be internationally advantageous. El-Gamal (2006, p. 153) sheds light on some other advantages of Mutuality as he observes: "the mutual structure of insurance companies serves other (more direct economic) interests: Managers of a stockholder-owned insurance company answer to the stockholders, and hence aim to maximize profits, which translates into seeking loss ratios that are not advantageous to the insured. In contrast, shareholders of mutual insurance companies are themselves the insured parties, and hence managers will aim to provide them with better insurance value for their premiums. There is indeed a well-documented empirical regularity of mutual insurance companies providing better loss ratios for the insured parties". Some Western writers do not consider a reciprocal inter-insurance exchange as a "mutual insurance company" because the former is an unincorporated association of subscribing members who exchange contracts of indemnity with each other while the latter is generally "incorporated". Dr. Hamidullah does not go in such details.

***Problem of terminology:*** As noted in preceding pages, the word for insurance in modern Arabic is "*ta'mīn*" which is in the sense of Italian term *siguare* and the Turkish *sigorta* meaning security or *securité*. Islamic insurance is called as "*al-Ta'mīn al-Islāmī*", or " *al-Ta'mīn al-Taʿāwunī* ". But now a single word "*al-takāful*" is used for all kinds of Islamic insurance which has the meaning of mutual sponsorship. Still sometimes some other terminology is used to give an impression of having a different concept of Islamic insurance while in reality it remains the difference of terminology only. Dr. Hamidullah used the word 'mutual 'and' mutuality' along with the term 'Islamic insurance'. He also used the word "*maʿāqil*" a term of early Arab-Islamic origin which has the meaning of being tied within close relation. However, as the Arabian proverb says there is no problem to use any terminology so far connotation is one and clear and it is not meant to confuse others.

***Use of Fund and Distribution of surplus***

As indicated in preceding pages, investment of *takāful* fund and distribution of its profit or surplus amount is one of the hottest topics of Islamic insurance. Basically as an organization of mutual cooperation, Hamidullah thinks that there is no harm to invest the collected amount in some economically profitable activities so that the capital is enhanced:

> "Such a branch could engage in commerce with the help of unutilized funds remaining at its disposal, so that the capital is augmented. A time might come, when the members of a branch could be fully exempted from paying further contributions, or might even receive amounts of the profits of commerce" (Hamidullah, 1969, P.129).

Thus, he does not enter into a discussion whether the mutuality based Islamic insurance is an act of exchange (*muʿāwaḍah*) or voluntary donation (*tabarruʿ*), and whether a *gharar* is involved that might incur the deal as invalid. Perhaps he thinks the element of *gharar* is so insignificant that it would not lead to a dispute or result a big loss to any party – contributors or beneficiary. It is its nature of mutuality that makes the *gharar* tolerable. This *gharar* becomes effective and turns into a game of chance if the insurance is organized by a capitalist to earn profit who deprives the policyholder from profit or surplus of insurance company. He says:

> "Without entering into technical details, it may be pointed out that capitalistic insurance, in which the insured person does not participate in the benefits of the company in proportion to his contributions, is not tolerated in Islam as this would constitute a form of game of chance" (Ibid).

In the above passage by capitalistic insurance he means conventional commercial insurance in which profit goes to stockholders. As far policyholders are concerned, they get only compensation for losses incurred.

## Concluding remark

At the conclusion we may note that since Hamidullah initiated his discourse on Islamic insurance, though substantial advancement has been made throughout these years in terms of re-insurance schemes, various provisions of meeting deficits, suggestions regarding the use and distribution of insurance surplus, different interpretations of relations between contributors and beneficiaries, and clarity of related concepts, the overall ideas remain the same. Elimination of *riba*, *maysir*, *gharar fāḥish* from *takāful* is still regarded the most important element of Islamic insurance. Mutuality is considered as the most accepted method. Augmentation of insurance fund through investment methods is justified. Sharing in benefits of insurance - monetary or qualitative - is generally allowed. On all these issues Hamidullah offered insights. Of course he did not engage in hair splitting. That is how we can benefit from his ideas.

## End notes

1. Its revised edition was published at Paris in 1975 which was republished from Hyderabad in 1981.
2. See *Islamic Review*, London, vol. 39, nos.3-4, March-April 1951, 45-46.
3. Al-Ghazali, Abu Hamid Muhammad b. Muhammad (1322 H), *al-Mustaṣfā min Uṣul al-Fiqh*, Boulaq: Al-Amiriyah Press, vol. 1, p. 287; Ibn Taymiyah, *Majmūʿah al-Rasā'il wa'l-Masā'il*, Beirut: al-Dar al-Ilmiyah, vol. 4-5, pp. 174-175; al-Shatibi, Abu Ishaq (n.d.), *al-Muwāfaqāt fī Uṣūl al-Fiqh*, Cairo: al-Maktabah al-Tijariyah al-Kubra, vol 4, pp. 27-30.
4. al-Bukhari, Muhammad b. Isma`il (1987), *al-Jāmiʿ al-Ṣaḥīh*, Cairo: Dar al-Sha`b. vol. 2, p. 131, *ḥadīth* no. 1395.
5. See for details Faridi, F. R. (1980), Zakah and Fiscal Policy, in Khurshid Ahmad, *Studies in Islamic Economics*, Jeddah: ICRIE, King Abdulaziz University, pp. 119-130.
6. al-Bukhari, (1987), *al-Jāmiʿ al-Ṣaḥīh*, vol. 2, p. 161, hadith no. 1503, 1504.
7. Hashmi, Sherafat Hussain, "Management of Waqf: Past and Present", in: Hasmet Basar (ed.) *Management and Development of Awqaf Properties,* Jeddah, Islamic Research and Training Institute, IDB, 1987, p. 19.
8. al-Bukhari, *al-Jāmiʿ al-Ṣaḥīh*, vol. 3, p. 181, *ḥadīth* no. 2486.
9. This has been stated by Rispler-Chaim (1991, p. 146) with reference to Afzalur-Rahman, *Banking and Insurance,* 1st edition, London 1979, p, 73.
10. For details refer to Rispler-Chaim, 1991, pp. 144- 150, 153-155.
11. Abduh's *fatāwā* dated 1.2.1319/6.5.1901, and dated 3.12.1320/7.3.1903, have been quoted by Imarah (1993) in *al-Aʿmāl al-Kāmilah li-Muḥammad ʿAbduh* part 2: 503-504.

12. The proceeding of the *Usbūʿ al-Fiqh al-Islāmī* (Islamic Jurisprudence Week) which was published in 1963 included papers of the following scholars on Islamic insurance:

Mustafa Ahmad al-Zarqa, Muhammad al-Qalqili, Muhammad al-Amin, Abd al-Rahman Isa, Bahjat Ahmad Hilmi, and Muhammad Umaruddin.

13. An "*ahdi* system" seems to be a system of covenant (*ʿahd*) which the new recruits made that he would maintain the horse supplied to him and replace it if lost.
14. This is an idea which still awaits scholars to ponder upon. Among the modern scholars El-Gamal (2006) has strongly advocated it. According to Hamidullah in the mutuality based banking system "members paid a small percentage monthly towards expenses of the establishment, like stationery (the staff consisting of honorary workers). The surplus of this was preserved as reserve fund, to cover unforeseen losses. This reserve fund was later put to enhanced utility: a store as organized on commercial basis, where members of the society purchased on credit their requirements in non-perishable goods. The benefit was used to remunerate the workers and also to strengthen the reserve fund further." (Haidarabad's Contribution … p. 75).
15. At present there is no dearth of writing on Islamic insurance in English. But it took about 25 years since Hamidullah first wrote on Islamic insurance in 1946 to appear another work in English on the topic of Insurance by Muslihuddin Siddiqi (1969). Interestingly, he also belonged to Hyderabad.
16. It has been defined as "an insurance company owned entirely by its policyholders. Any profits earned by a mutual insurance company are rebated to policy-holders in the form of dividend distributions or reduced future premiums.." http://en.wikipedia.org/wiki/Reciprocal_inter-insurance_exchange
Accessed on 25. 09. 2013.

## Bibliography


Afzalur-Rahman (1979), Banking and Insurance: Economic Doctrines of Islam, London: Muslim Schools Trust, vol. IV.

Ahmad, Khurshid (editor) (1980), *Studies in Islamic Economics*, Jeddah: ICRIE, King Abdulaziz University.

al-Bukhari, Muhammad b. Isma`il (1987), *al-Jāmiʿ al-Ṣaḥīh*, Cairo: Dar al-Sha`b.

al-Dasuqi, Muhammad al-Sayyid (1965), *al-Ta'mīn wa Mawqif al-Sharīʿat al-Islāmīyah minhu* (Insurance and the stand of Islamic *Sharīʿah* about it), Cairo: al-Majlis al-Ala li al-Shuun al-Islamiyah.

Faridi, F. R. (1980), Zakah and Fiscal Policy, in Khurshid Ahmad, *Studies in Islamic Economics*, Jeddah: ICRIE, King Abdulaziz University.

El-Gamal, Mahmoud (2006), *Islamic Finance – Law , Economics, and Practice*, New York: Cambridge University Press.

Hamidullah, Muhammad (1955a), "A Suggestion for an Interest- free Islamic Fund", *Islamic Review*, London, Vol. . 43, no.6. june.1955, pp.11-12.

___________ (1936), "Islam's Solution of the Basic Economic Problems – the Position of Labour", *Islamic Culture*, Hyderabad (Deccan), 10(2), April, pp: 213-33, 45-46.

___________ (n.d.), "Islamic Insurance," *The Muslim Year Book, India and Who's who with complete information on Pakistan, 1948-49*, Compiled by S. M. Jamil with the assistance of Moinuddin Khan, Bombay: The Bombay Newspaper Co., Limited, pp. 489-91 (the article first published in 1946).

___________ (1388H/1969), "The Economic System of Islam" in *Introduction to Islam*, Paris, Centre Culturel Islamique (New Enlarged edition), (first published in 1957), pp. 121-133.

___________ (1951), "Islamic Insurance", *Islamic Review*, London, 39(3-4), March-April, 43(6). june, pp: 11-12.

___________ (1955b), "Haidarabad's Contribution to Islamic Economics", *Die Welt des Islams,* IV. Pp. 73-78, Leiden.

___________ (1981), Islam and Communism – A Study in Comparative Thought, Paris, 1975, 20p. (First published in 1950, Second Edition Paris 1975; Fourth print Hyderabad Deccan 1981).

Haydar, Haytham Muhammad, 2009, " *al-Fā'iḍ al-Ta'mīnī li Sharikāt al-Ta'mīn al-Islāmī*" (Insurance surplus of the Islamic insurance companies), Paper presented to the Forum of *al-Ta'mīn al-Ta`awuni*, held at Riyadh during 20-22 January 2009.

Ibn Abidin, Muhammad Amin (n.d.) *Majmūʿah Rasā'il Ibn ʿAbidīn*, Part 2, n.p.

Imarah, Muhammad (editor) (1993), *al-Aʿmāl al-Kāmilah li-Muḥammad ʿAbduh*, Beirut and Cairo: Dar al-Shuruq, vol. 2.

Islamic Fiqh Academy (2000), *Resolutions and Recommendations of the Council the Islamic Fiqh Academy* 1985-200, Jeddah: IRTI/IDB and Islamic Fiqh Academy

al-Khalifi, Riyad Mansur, 2009, *Taqyīm Taṭbīqāt wa Tajārib al-Ta'mīn al-Takāfulī al-Islāmī* (Evaluation of the mutual insurance experiences), Paper presented to the Forum of al-Ta'mīn al-Taʿāwunī, held at Riyad during 20-22 January 2009.

Khorshid, Ali, (2004), Islamic Insurance, London and New York: Routledge

Lal-Din, Muhammad Akram and Buharawah, Sa`id 2011), "*Tajribah al-Ta'mīn al-Taʿāwunī al-Mālizīyah*, in: International Foundation for Economics and Finance (IIFEF), *al-Multaqā al-Thālith li-'l-Ta'mīn al-Taʿāwunī* (Proceedings and papers), held at Riyadh during 12-13Muharram 1433 corresponding 7-8 Dec. 2011.

al-Lajnat al-Daimah li'l-Buhuth al-ʿIlmiyah wa'l-Ifta' (1974), *Baḥth ʿan al-Ta'mīn* (a Research on insurance), al-Riyad: al-Amanat al-ʿAmmah li Hay'at Kibār al-ʿUlamā.

al- Majlis al-A`la (1963), *Uṣbūʿ al-Fiqh al-Islāmī wa Mahrajān Ibn Taymiyah* Week of Islamic Jurisprudence and celebration of Ibn Taymiyah), Cairo. al- Majlis al-A`la.

Obaidullah, Mohammed (2005), Islamic Financial Services, Jeddah, Scientific Publishing Center, King Abdulaziz University.

al-Qari, Muhammad Ali, 2009, *al-Fā'iḍ al-Ta'mīnī* (Insurance surplus), Paper presented to the Forum of *al-Ta'mīn al-Taʿāwunī*, held at Riyad during 20-22 January 2009.

Rispler-Chaim, Vardit (1991), Insurance and Semi-Insurance Transactions in Islamic History Until the 19th Century, *Journal of the Economic and Social History of the Orient*, Vol. 34, No. 3, pp.142-158.

Saqar, Muhammad Ahmad (editor) (1980), *al-Iqtiṣād al-Islāmī: Buḥūth mukhtārah min al-Mu'tamar al-ʿAlamī al-Awwal li'l-Iqtiṣād al-Islāmī*, Jeddah: al-Markaz al-ʿAlamī li Abḥāth al-Iqtiṣād al-Islamī, KAU.

Siddiqui, Muslihuddin, (1969), Insurance and Law, Delhi.

al-QurahDhaghi, Ali (n.d.), "*al-ʿAjz fī Ṣundūq al-Ta'mīn wa Wasā'il ʿIlājihi*" (Deficits in the insurance fund and the means to meet them), in: International Foundation for Economics and Finance (IIFEF), *al-Multaqā al-Thālith li-'l-Ta'mīn al-Taʿāwunī* (Proceedings and papers), held at Riyadh during 12-13 Muharram 1433 corresponding 7-8 Dec. 2011.

al-Tahtawi, Rifaʿah Badawi Rafiʿ (1834), *Takhlīṣ al-Ibrīz fī Talkhīṣ Bārīz* (Customs and Manners of the Modern French), Boulaq (from Cairo in 1905).

Uways, Abd al-Halim (n.d.), *Mushkilāt al-Iqtiṣād al-Islāmī fī Dauw Sharīʿat al-Islāmīyah* (Problems of Islamic Economics in the light of Islamic *Sharīʿah*), Jeddah: al-Shirkat al-Saudiah li'l-Abhath wa'l-Taswiq.