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WHY DIFFERENT TAKAFUL MODELS IN THE WORLD?

During the 2nd Asian Conference on takaful, held recently in Singapore on March 26-27 2007, a question manifested itself regarding the different takaful models existing in the world market. Some takaful technicians expressed a desire towards a standardisation of takaful products as this will avoid confusion, facilitate regulation, open avenues for better underwriting etc. While the positive points are most welcome, the other side of the coin is that takaful is meant to be an Islamic phenomenon and should be viewed through the prism of *fiqh* and socio-cultural context. This article is an attempt to look into and analyse the *raison d'être* of the different takaful models that exist.

One should realise that takaful per se is not a product, and thus should not be equated with conventional insurance. It is aptly described as a system, rather than a product, which aims at the joint-guarantee between the contributors in a risk-covering scheme. It is inspired from the *'aqilah* and *diyah* systems whereby people of a given tribe would come to the financial rescue of one of its members should he face an unexpected liability such as paying for the blood money (*diyah*).

We should not lose focus of the source of the inspiration of takaful. It is primarily to spread a risk to alleviate financial burden when it inflicts a person in a spirit of humanism. Unfortunately in our contemporary commercial ethos this benevolence has lost its value. Unlike in the past, presently money is contributed in advance. This element of philanthropy and benevolence should also be reflected in takaful to differentiate it with conventional insurance, which is a pure tug of war between maximising the premium to be paid and minimising the compensation to be paid. If one adulterates this spirit underpinning takaful and treats it as a pure regulated and standardised commercial venture then the Shari'ah spirit may be dishonored. This Shari'ah spirit can only manifest itself if people are empowered to devise their own system within the ambit of Shari'ah.

The different models in fact create a space to reactivate the juristic acumen, which has lost its inertia for the last couple of centuries. For any legal system to survive, especially in an era of globalisation and universalism, one should allow the system to evolve. This evolution is in turn influenced by many external factors such as politics, schools of law, tax implication etc, which differ from country to country. For instance, many multinational banks offer different home financing products in different jurisdictions. May be in one country *Ijarah* (lease) will best suit everybody while in another country the *Murabaha* (differed payment). This shows the versatility of Islamic law. The same spirit should prevail for takaful.

Islamic finance can be viewed as a contractual accommodation to eliminate *riba* (interest), *gharar* (uncertainty), *maysir* (gambling) and other elements contrary to the principles of Shari'ah. But unfortunately in some cases what is being observed is that this contractual accommodation is being done at the expense of replicating conventional products. This should not be the case, a change in mind set is required because Islamic financial products should have its own features ultimately. One cannot replicate these products on the basis of Islamic law and then try to standardise the Islamic products

developed on the premise of conventional products. Standardisation is good in a way as it brings in more certainty. However, one should ponder on Imam Malik's attitude towards standardisation of Islamic law when Ibn Muqaffa asked the caliph of that time to standardise Islamic law. The great Imam was called upon to shoulder this Herculean task, but he refused on the basis that the jurisprudence developed by other mujtahidun also had their proofs from Shari'ah. Hence one cannot accept only what Maliki school of law. In other words Islamic law must preserve its legal elasticity. By standardising Islamic finance one will lose the legal beauty inherent in Shari'ah. Such beauty is encapsulated in the prophetic dictum "*difference of opinion among my ummah is a blessing*". Therefore by accommodating various models different branch of fiqh is revived.

What is important to consider is the concept of the sanctity of the contract, which is the spinal cord of commercial transactions. As long as the takaful documents are contractually sound there should be no confusion and apprehension. Furthermore, the technicians working in takaful companies should know what are the technical aspects that need to be standardised. For example tax issue on a given model or accounting principle on a given model can be standardised irrespective of the model one adopts. The technical aspects cannot be a rod in the wheel for enhancing Islamic law which offers a wide variety of products. This in turn is a benefit for the ummah. It is the duty of the technicians to come to term with the Islamic law as it is their duty to learn their work. Regarding the layman even standardised conventional products is Greek for them!

If you would like more information on ICMIF and its services to the takaful sector, please contact Sabbir Patel (sabbir@icmif.org), or visit www.takaful.coop.

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