

Juristic Study of Insurance

Mohammad Ghorbani¹ and Alireza Rajabzadeh^{1*}

¹Department of Law, Kar Higher Education Institute, Qazvin, Iran

Received: Nov. 2014 & Published: Jan. 2015

Abstract: Material and spiritual welfare of human including Muslim or non –Muslim is the permanent view of Islam and for this reason; it has applied insurance as a base for supporting the loss bearers. It can be said that this legal establishment is based on social cooperation and evolution and share of each person in loss and profit of other people in society. On this basis and considering importance of insurance in Islamic jurisprudence and Islam, this paper has studied place and condition of insurance in Islamic jurisprudence. Results of this research showed that view of the Shiite jurists about confirmation of legality and expression of juristic order of insurance contract can be classified into two categories: The first class is the jurists who don't regard insurance as independent contract and regard it legitimate by comparing and inserting it in addition to other legitimate confined contracts such as gift with return, conveyance, risk, reward contract etc. as legitimate, for example, juristic opinion of Ayatollah Khomeini about insurance. The second classes are the jurisprudents who have accepted insurance as independent contract. There is difference of opinion about confinement of contracts and exclusivity of the transactions like worships among the jurisprudents.

Keywords: insurance, jurisprudence, Islam

1. Introduction

Insurance is regarded as an effective and efficient leverage in risk aversion by the farmers and support of this section. This necessity is so high that there is high emphasis on support of the manufacturers and promotion of their security and reduction of production risks. There are abundant words for human in Quran and Islamic book as if you see all things in the world for him, as if the world is the human and all laws of the world are applicable to him. Islam law replies on dignity of human and his real prestige in its extensive range whether it relates to person or family or government or security or exchange, commerce and agriculture and management (Khomeini, 1980:55).

The primary form of insurance particularly among the Sunnite people opposed to laws of Islamic law. The first Sunnite jurisprudent was Ebn Abedin, Hanafi jurisprudent gave order about limit of the marine insurance contract. Generally, study of the works of Sunnite people shows that attitude of the Sunnite people to the insurance issues has been negative and this attitude has changed gradually. These insurance disputes are less abundant among the Shiite

jurisprudents. Among them, the late Seyyed Kazem Tabatabaei Yazdi was the first person who mentioned issue of insurance as the cases of civil liability (Shahidi, 2006: 29-30).

Generally, it should be mentioned that insurance is the issue which cannot be ignored due to its importance in human societies whether among Sunnite jurisprudents or Shiite jurisprudents and despite the oppositions between two religions, one should seek to find a solution which provides the opportunity for progress of these protective tools. This paper attempts to study place of insurance in Islamic jurisprudence and study what are the place, conditions and sanction of insurance in theoretical fundamentals of Islam and Islamic jurisprudence.

2- Definition of main concepts

Concept of insurance: Imam Khomeini has said in issue 1131: insurance is the contract between the insured and insuring institute or company which accepts insurance and this contract needs offer and acceptance like other contracts and the conditions which are valid in other contracts are also valid in this contract and this contract can be enforced with any word and language (Moosavi Khomeini, 1999:562).

Insurance is the contract between insured and the insuring company and it aims to compensate for the incurred damages on human or an object against the money which it pays to that company or per son and this is an independent transaction or contract which is true with the conditions which emerge in the future problems whether the insurance relates to merchandises or building, automobiles or insurance of employees and workers or life insurance and the like which are common in custom of the reasonable people (Makarem Shirazi, 2005: 490).

Concept of jurisprudence: Islamic jurisprudence means the juristic sources, juristic rules and judgments of the jurisprudents. In other words, the juristic rules which have been extracted from text of verses, narrations and sometimes from the principles accepted by the jurisprudents and indicate principles governing relations of citizens.

Nature of insurance contract from the viewpoint of jurisprudents

View of the Shiite jurists about confirmation of legality and expression of juristic order of insurance contract can be classified into two categories:

The first class is the jurists who don't regard insurance as independent contract and regard it legitimate by comparing and inserting it in addition to other legitimate confined contracts such as gift with return, conveyance, risk, reward contract etc. as legitimate, for example, juristic opinion of Ayatollah Khomeini about insurance. The second classes are the jurisprudents who have accepted insurance as independent contract. There is difference of opinion about confinement of contracts and exclusivity of the transactions like worships among the jurisprudents.

Record of this discussion has not been specified by the jurisprudents because needs of societies were usually fixed and equal in the past and new contracts had occurred less frequently to discover attitude of the previous jurisprudents about modernized contracts (Jamali Zadeh, 2001: 320). Confinement of contract means that all parts of the contracts are contractual in the holy verse of (Maede, 1) and only include the contracts and transactions which have been common at time of legislator in Saudi Arabia. Most of the previous scientists believed in

exclusivity of the titles of transactions and said that only transactions and exchanges which the Islamic law has defined and for which it has determined limits, specifications and conditions are recognized formally and other forms of transaction are null and void (Mirzaye Ghomi , 1986:463). Although insurance can be regarded as one of the confirmed and definite legal contracts according to some scholars, the insurance contract is not completely included in the contracts available in juristic books without any doubt and cannot follow name and framework of the conditions and rules, its aspects may be common in some cases (Afsari, 1999:71).

3- Evidence of the proponents and opponents of insurance contract

Generally, view of the Islamic jurisprudents about insurance contract is different. Some agreed and some others disagreed.

3-1- Proponents of insurance contract

Proponents of legality of insurance contract in which most Shiite jurisprudents are included include three groups:

First group: this group regards insurance contract as conforming to one of the jurispudent definite contracts. There is disagreement among the non-Muslim lawyers on independence of insurance contract or its conformity with one of the definite contracts.

Here, we refer to some of these contracts:

- A- Insurance and liability: considering the definition of insurance and customary interpretation of insurance nature which regards insurance custom as guarantee and considering the common meaning of liability which is a type of obligation , some jurisprudents (Imam Khomeini , Tahrialvasileh: 476) has compared insurance with pledge contract and regarded the pledge contact as the closest contract to insurance and regarded insurance order as valid as the pledge contract and judged about its legality(Jamalizadeh: 414).
- B- Insurance and conveyance: Ayatollah Golpayegani has regarded insurance as conforming to conveyance and believes that if a person has conveyed a price to insurance company and makes condition that the insurance company will compensate for the incurred damage in case of damage on life or

property, car or his house , such conveyance will hold valid with this condition and is binding(Golpayegani, Toziholmasael: 488).

C- Insurance and dormant partnership : this contract is similar to insurance contract with this difference that premium shall be paid in insurance contract but premiums shall be added to capital through the dormant partnership and in case of accident , damage will be paid out of capital or profit of the company. In case of no accident, the dormant partner can avoid paying the said amount. Sheikh Mohammad Abdeh , the well-known Egyptian jurispudent has regarded life insurance as the instances of dormant partnership contract and announced it permissible and legitimate (Alsanhoori Alvasit, 1087).

D- Insurance and gift: Some other jurisprudents regard insurance contract as corresponding to a gift with return. it means that the insurer give a price to the ownership of the insurer provided that the insurer pays the said price to the ownership of the insured or his/her family in case of accident or property or life loss.

The second group of proponents: This group referring to some special legal institutions which are available in Islam legal system and comparing it with insurance institution has tried to prove insurance thought on the advent of Islam and before it. On this basis, they have regard insurance legitimate.

A- Avaghel system: True prophetic tradition implies stability of this legal and jurisprudent institution and different Islamic religions have accepted it. Ebn Abedin in the Almaaghel Book says about rejection of Mokhtar. The non-intentional offender pays blood money due to guilt in taking care of the murderer. Before the period of legislator, this habit was common among the people even in payment of damage resulting from fire, robbery and the like (Ebn Abedin , Almaaghel Book : 410).

B- Khatarol-Tarigh liability: according to some jurisprudents , in case a person tells another one that this road is safe and if a person damages your property , I will be liable , in that case , he will be liable to pay the incurred damage. The insurance contract is a

type of guarantee by the insurer against the potential events and therefore, it is legitimate.

C- Third group of proponents: this group of proponents has regarded insurance legitimate in different ways. to prove its legitimacy , they have relied on these reasons:

A- Juristic preference: Based on this rule, where one can no longer infer the legitimate order with analogy or general rule or another reason, one can select an opposing order for the issue based on a special interest and although there is probability of deception, usury etc. in insurance contract, one can believe in legitimacy unlike social interests.

B- Considerations of public interests: some other Sunnite people have not included any type of interest in this rule and believe that insurance contract is one of the unnecessary interests due to gambling, deception etc. and the Islam law has ordered its revocation (Erfani , 1992:169).

3-2- Opponents of insurance contract

Some jurisprudents believe that in case a contract has condition for validity of contracts, it will be regarded as contract whether such contract is on the advent of Islam or has been created later. Although insurance is one of the modernized and new contracts, the said contract is illegitimate due to nonconformity of insurance with one of the contracts known in Islamic jurisprudence considering that it is not qualified for validity of contracts and is not similar among the definite contracts.

Other jurisprudents believe that since there is probability of ignorance of the considerations, suspension, deception and usury in the insurance contract and this contract includes "معدوم به معامله", "consuming the property of others for no good reason", "unidirectional vindication and struggling with destiny and vis divina , a type of gambling , betting and mental incapacity contract and most of the jurisprudents have regarded it illegitimate , therefore, such contract is illegitimate and null and void.

In summary, the opponents rely on two cases about illegality of insurance:

1- Non-conformity with contracts: some believe that legitimate contracts are confined and definite and insurance contract doesn't conform to any of them.

2- The presence of defects: some others believe that illegitimacy of insurance is due to the defects which are available in this contract and is denied by the legislator.

3. Conclusion

God's prophet (PBUH) considered individual and social life of people important and wherever he saw that this behavior or transaction or tradition of the people was not true, he advised the m and corrected it. Therefore, any transaction which was not prohibited by Islamic law is legitimate and no entrance of prohibition is due to the fact the Islamic law has signed it and conditions of such transaction are the same as the general conditions and special conditions of each transaction such as sale and lease relate to themselves (Mirzaye Ghomi, 1986:368). Therefore, we conclude that insurance contract and its types and such legal actions were regarded null and void by most old jurists but all of the contemporary jurists believe that such contracts are fully valid and are effective like other contracts. In fact, it can be said that any transaction which is not contrary to the evident legitimate orders will be permissible and true and the modernized issues should not necessarily conform to Islam law on the advent of Islam and some centuries after it but disagreement is enough.

Generally, jurists had different views about insurance. Some of them agreed on insurance and some disagreed on them.

Theory and argument of the proponents of insurance contract: According to this group, insurance is one of the modernized and new contracts. Some of them have compared insurance contract with one of the definite juristic contracts and other Islamic undefined contracts and some others have compared insurance contract with some institutions and legal actions and justified legitimacy of the insurance contract by relying on the evidence in inference of the orders. Some also believe that it is not necessary to compare insurance contract with one of the definite or undefined Islamic contracts because the sacred legislator have not confirmed people to the codified and defined juristic contracts and doesn't prevent the modernized contracts required for society. Therefore, any contract which is common among the people is obligation and such contract

is binding unless there is clear limit for the concluded contract.

almost all Sunnite and Shiite jurists regard social insurance and cooperation as legitimate. The most important defined and undefined contracts and also legal actions and the institutions which were compared with the insurance contract include pledge contract, reward contract, guard contract, dormant partnership etc.

References

1. Holy Quran
2. Ebn Abedin, المختار در علی المختار رد, Vol. 5, P. 410
3. Afsari, Salem, Insurance from the viewpoint of Islam, M.A. thesis, Jurisprudence and the Fundamentals of Islamic Law, University of Tehran, 1999, P. 7.
4. Jamalzadeh, Ahmad. Juristic study of insurance contract, Islamic Advertisement Office Publication of Theological School, Qom, first edition, 2002.
5. Khamenei, Seyed Mohammad. Insurance in Islam law. Islamic Culture Publication Office, first edition, 1980.
6. Alsanjori, Abdol razagh, Alvasit, Vol. 7, part II, p. 1187
7. Shahidi, Mahdi. Formation of contracts and obligations. First volume, Majd Scientific and Cultural Complex. Fifth edition, 2006.
8. Erfani, Tofiq. Insurance contract in Islam and Iran law. Keihan Publication Organization. First edition. 1992.
9. Golpayegani, Mohammad Reza. Toziholmasael, Qom Daralghoran Publication. P. 488. Issue 2855.
10. Makarem Shirazi, Naser, Resaleh Toziholmasael, 2005. P. 49.
11. Moosavi Khomeini, Rohollah. Resaleh Toziholmasael, 1999.
12. Mirzaye Ghomi, Shattatol-Jame, first edition, Tehran, Keihan Publication, 1986.