CHAPTER – IV

LIFE INSURANCE

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LIFE INSURANCE

A. Under Common Legal System

Uncertainty is the only certainty in life. Birth and death are the only definite, certain events of life, everything else in life are uncertain, and wherever there is uncertainty there is an involvement of risk.

If the breadwinner of family dies, the income of the family ceases. If the breadwinner does not die, but retires from service, even then the regular income of the family ceases. The life insurance is meant to cover both the contingencies of life that is death or survival. The needs for life insurance are different. They vary according to contingency provided for according to age, according to family size and accordingly each plan of insurance provides for a different kind of need.

History of Life Insurance

Historically the first insurers of life were the marine insurance underwriters who started issuing life insurance policies on the life of master and crew of the ship, and the merchants. The underwriters issued annuities and pension for a certain period or for life to provide relief to widows on the death of their husbands. The first life insurance policy was issued on 18 June 1583, on the life of William Gibbons for a period of 12 months.

It was in the 18th century, that societies started to be formed for issuing life insurance policies. Out of such societies, The Amicable Society (1705), The Equitable Life Assurance Society (1762), The Westminster Society (1792) were some of the important societies. The premium rates were fixed in view of reputation and the health condition of the insured.¹

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¹ See Bodla, B.S., Garg, M.C., Singh K.P. Insurance Fundamentals, Environment and Procedure, 1st edition, Deep and Deep Publishers, New Delhi, 2005, p.113
Life Insurance in India

For the first time in the history of India in 1818, a British firm called Oriental Life Insurance Company was formed in Calcutta. This was followed by the establishment of the Bombay Life Assurance Company in 1823 in Bombay, the Madras Equitable Life insurance Society in 1829 and the Oriental Government Security Life Assurance Company in 1874. Prior to 1871 in the eyes of Britishers Indian lives were considered to be sub-standard so they charged an additional premium of 15% to 20%. In 1871, Bombay Mutual Life Assurance Society was the first one to charge the normal rates for Indian lives.²

The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life insurance business in India. In 1928 the Indian insurance companies Act was enacted to enable the government to collect statistical information about both life and general insurance business. In 1938, all the previous legislations were consolidated and amended by the Indian Insurance Act of 1938 with a view to protect the interest of public.

In order to adopt the changes that had taken place in insurance sector an amendment was brought in the Indian Insurance Act in 1950. These changes included the requirement for equity capital for companies in the life insurance business, celling on share holding in such companies, controls on investments, submission of periodical returns relating to investment. The Act has further been amended in 1999 (effective since April 2000) which today remains the main instrument of regulation of the insurance business in India.³

Formation of the Life Insurance Corporation of India

By 1956, around 154 Indian insurers, 16 foreign insurers and 75 provident societies were carrying on Life Insurance business in India. For the purpose of carrying out the management of Life Insurance, business of 245

³ See Bodla, B.S., Garg, M.C., Singh, K.P., op.cit, p. 189.
Indian and Foreign insurers and provident societies The Life insurance Corporation (hereinafter LIC) was formed on 1st September, 1956 by an act of Parliament i.e. Life Insurance Corporation Act, 1956 hereinafter called the Act with capital contribution of Rs. 50 million.

The then Finance Minister Mr. C.D. Deshmukh while signing the bill for nationalization outlined the following objectives of LIC:

"To conduct the business with utmost economy with the spirit of trusteeship to charge premium not higher than warranted by strict actuarial considerations, to invest the funds for obtaining maximum yield for the policyholders consistent with safety of capital, to render prompt and efficient service to policyholders, thereby making Insurance widely popular."  

**Conceptual Framework of Life Insurance**

Life insurance is a business proposition resting on the combined operation working of the law of morality and interest. The most essential thing for the working of life insurance is to fix the amount of contribution to be made by each of the policyholder as per the age so that the fund should be sufficient to meet the requirement of the claim. The principle of Probability of death or law of morality is used for this purpose. The policyholders are required to pay cost of claims as well as such sums, which are able to meet the expenses of the organization. Thus, the life insurance is a co-operative device to share the loss.

The best explanation of the meaning of Life insurance contract has been given in *Dalby vs. India & London Life Assurance Co.* where the court observed that a contract of life is not a contract of indemnity. A policy of insurance on life is not a contract to indemnity like a fire or marine insurance policy, but is a contract to pay a definite sum in consideration of annuity paid during the life. The contract commonly called life insurance, when properly considered is

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6. (1854) 15 CB 365: 139 ER 465.
a mere contract to pay a certain sum of money on the death of a person in
consideration of due payment of a certain annuity for his life, the amount of
the annuity being calculated in the first instance according to the probability
of life.

The researcher may further submit that a contract of life insurance is
that in which one party agrees to pay a given sum of money upon the
happening of a particular event contingent upon the duration of human life in
consideration of immediate payment of a smaller sum or other equivalent
periodical payments.

**Definition of Life Insurance**

1. According to Section 2(11) of Indian Insurance Act of 1938:-

   “Life insurance business is the business of effecting contract upon human
   life.”

2. “The Life insurance contract embodies an agreement in which broadly
   stared, the insurer undertakes to pay a stipulated sum upon the death
   of the insured or at some designated time to a designated beneficiary.”
   
   - J.H. Magee

3. “Life insurance Contract may be defined whereby the insurer, in
   consideration of a premium paid either in lumpsum or in periodical
   installments, undertakes to pay an annuity or a certain sum of money
   either on the death of the insured or on the expiry of a certain number
   of years.”

   - R.S. Sharma

4. “A contract of life insurance is that in which one party agrees to pay a
given sum on the happening of a particular event contingent upon the
duration of human life in consideration of the immediate payment of a
smaller sum or certain equivalent periodical payments by another.”

   - Bunyon
5. "Life insurance is a contract providing for payment of sum of money to the person assured or failing him to the person entitled to receive the same on the happening of some event."

- R.K. Garg

Although there is no exhaustive statutory definition of life insurance but it has been defined by the Supreme Court in LIC of India Vs. Vishwanathan Verma. In this case Apex Court has held that "Life insurance is a contract of insurance whereby the insured agrees to pay certain sums, called premiums, at a specified times and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified way upon happening of a particular event contingent upon the duration of human life".

From the above definitions, we may conclude that life insurance is a contract by which the insurer in consideration of a premium undertakes to pay a certain sum of money on the death of the insured or on the expiry of the fixed period.

**Essentials of Life Insurance Contract**

The essentials of life insurance contract are as follows:-

1. It is a contract relating to human life.
2. It must provide for payment of lumpsum amount.
3. The amount to be paid after expiry of certain period or on the death of assured.

**Rationale of Life Insurance**

The very rationale of the assured in taking policies from the Life Insurance Corporation (LIC) is to safeguard the interest of his dependant's i.e.; wife and children, as the case may be, in case of premature death of the

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assured because of the happening of any contingency. The nominees of the assured cannot be deprived of the dues payable under the policies.\textsuperscript{8}

**Nature of Life Insurance Contract**

All contracts of insurance, except life insurance contracts are contracts of indemnity because life insurance provides an assurance to the insured to pay certain sum of money in lieu of premium on the death of the insured or on the maturity of policy whichever is earlier.

Life insurance, generally referred to as life "assurance", insures the insured against the happening of certain event i.e. death etc. The life insurance contract can be described as "contingent contracts" because the loss of life cannot be compensated and only a specified sum of money is paid if the insured dies.\textsuperscript{9}

Life insurance is therefore in the nature of a contingency insurance. It does not provide indemnity. It provides for a payment on a contingent event. The sum to be paid is not measured in terms of loss. The policy states the amount payable. The sum undertaken to be paid becomes payable irrespective of the value of the life or limb lost.

The Supreme Court explained the nature of life insurance in *Chandulal Harjivandas Vs. CIT*.\textsuperscript{10} In this case the subject matter of the contract was the insurance on the life of the assessee who was a minor. The contract of insurance on behalf of the assessee was entered into between his father and the LIC (as the assessee was then a minor). The contract of insurance provided that the assessee was not entitled to the benefit of the policy till he adopted the contract on the date of his attaining majority.

It was held that contract of life insurance as a whole deals with the life of the assessee. The important point to notice was that if the assessee adopt

\textsuperscript{10} AIR 1967 SC 816.
the policy upon attaining majority the corporation becomes liable to pay the sum assured to the assessee on the stipulated date of maturity provided the assessee was alive. The Life Insurance Corporation will also be liable to pay the amount assured if the assessee dies before the stipulated date of maturity but on or after the deferred date. The insurance on the life of the assessee was the main intention of the contract and the other clauses relied are merely ancillary or subordinate to that main purpose.

Thus, Life insurance in a broader sense consists of any contract in which one party agrees to pay a given sum upon happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another party.

From the above it can be concluded that the nature of life insurance contract has the following attributes:-

1. **Unilateral Contract**: Life insurance contract is a unilateral contract as only one party to the contract makes legally enforceable promise. Normally contracts are bilateral i.e. each party to the contract makes an enforceable promises to the other party. As the life insurance contract is unilateral in nature only insurer makes an enforceable promise. The insured cannot be forced to pay the subsequent premium, the insurer can only repudiate the contract of payment of full policy amount, but he shall be liable to pay the part of the policy amount according to the terms and conditions of the contract.

2. **Conditional Contract**: Life insurance contract is a conditional contract as it is subjected to certain terms and conditions. It puts burden of proof on one party to fulfill certain conditions before the proof of death or of disability. It is also dependent on the timely payment of premiums. If this condition is not fulfilled, the insurer is relieved of his basic promise of paying the sum assured but is bound to perform other subsequent conditions i.e. payment of surrender values etc.
3. **Aleatory Contract:** Life insurance contract is a Aleatory contract as there is no mutual exchange of equivalent monetary value. It only covers a contingency on the happening of which payment is made.

4. **Contract of Adhesion:** Life insurance is a contract of adhesion i.e. the terms and conditions of a contract are not arrived by mutual negotiations between the parties, the insurer decides the terms and conditions.\(^{11}\)

**Parties to the Life Insurance Contract**

There are four parties to the life insurance contract, which are as follows:

1. **Applicant:** An applicant for a life insurance policy is the person who fills out the application and requests the company to issue the policy.

2. **Policy Holder:** The policyholder is the person who owns the policy, pays the premium and can exercise all the rights under the contract.

3. **Beneficiary:** The beneficiary is the one who will receive the proceeds in the event of death.

4. **Insured:** Insured is the person on whose life the policy is written.\(^{12}\)

**Principles of Insurance**

There are certain specific principles, which are of immense importance to the contract of life insurance. These are as follows:

1. **Principle of utmost good faith-**

   Utmost good faith is defined as a positive duty voluntarily to disclose accurately all the material facts to the risk being offered, whether requested or not.

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\(^{11}\) See Mishra, M.N, *op. cit*, p. 2.

In life insurance contract, the nature of the subject matter of a product is an intangible one and the circumstances surrounding the subject matter are known by one of the parties namely the proposer. As, only the proposer knows all the material facts about the risk being proposed, the law imposes a greater duty of disclosures on both the parties to an insurance contract than to the other commercial contracts. This is known as the principle of utmost good faith. The crux of the doctrine of utmost good faith was given in the case of Rozenes Vs. Bowen.

As the underwriter does not know anything as the man, who comes to him to ask him to insure knows everything it is the duty of the assured to make a full discloser to the underwriter without being asked of all material circumstances. This is known as the contract of utmost good faith.

2. The Principle of Insurable Interest-

The principle of insurable interest is an important condition for a valid life insurance contract. A person taking a life insurance policy must have an insurable interest in the life of the insured person at the time of taking the policy. It may or may not be present at the time of death of the person whose life is insured or at the time of making claim on maturity. For instance, an employer has insurable interest in the lives of his employees, a banker has an insurable interest in the properties mortgaged to it against a loan.

Insurable Interest in Life Insurance

The following persons may have an insurable interest in the subject matter under the life insurance-

1. A person has an unlimited insurable interest in his own life.
2. A husband in the life of his wife.
3. A wife in the life of her husband.
4. A father in the life of his son and vice-versa.
5. A creditor in the life of a debtor to the extent of the amount of debt.
6. A partner in the life or lives of his co-partner or co-partners.

14. E.R. 1928
7. An employer in the lives of his employees or servant.
8. An employee, employed for a specified period in the life of his employer.
10. Insurance company in the lives of insured’s for re-insurance purposes.15

3. **The Principle of Indemnity**

The principle of indemnity means to make good the loss and nothing more than the actual loss. In accordance with the principle of indemnity, the insured’s actual loss is indemnified on the occurrence of certain event.

The principle of indemnity does not apply to life insurance contract and other personal insurance because loss of individuals life cannot be measured in terms of money. In other words, the contracts of life insurance are not based on the principle of compensation in money terms. As such under the contracts of life insurance a fixed sum is agreed to be paid either on the expiry of a certain period or on the death of the insured. These are therefore called “contingent contracts.”

4. **The Principle of Subrogation**

The principle of subrogation is defined as the insurers right to receive the benefits of all rights of the assured against third parties, which if satisfied, will extinguish or diminish the ultimate loss sustained.

The basic idea behind the principle of subrogation is to safeguard the interests of the insurers. If it had not been in operation, the insured might be enabled to collect more money than actual loss and such making profit, and the wrong doers might have escaped their liability. Whenever the act is against the rule of subrogation, it amounts to be against the public policy. Therefore, the common law requires the principles of subrogation to be applied to all contracts of indemnity.16

5. **The Principle of Contribution**

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Contribution is defined as the right of an insurer who has paid a loss under a policy to cover a proportionate amount from other insurers who are liable for the loss. When a person gets a subject matter insured with one or more insurers i.e. "Double insurance" whereby in the event of damage, he cannot claim anything more than the total loss from all the insurers together. As per the principle of indemnity, the insured cannot be restored to a better position than before the loss. In such cases the total loss suffered by the insured is contributed by different insurers in the ratio of the value of policies issued by them for the same subject matter. In case the insured likes to collect the amount of loss from one particular insurer, the insurer paying or indemnifying the total loss will also collect it from other insurers with whom the insured has insured the same subject matter, in accordance with the proportion of their insured amount.\textsuperscript{17}

6. **The Principle of Proximate Cause**

The Principle of Proximate cause means the active and efficient cause that sets in motion a chain of events which brings about result without the intervention of any force started and working activity from new and independent source.

The term proximate cause means nearest or immediate cause. It is helpful in deciding the actual cause of loss when a number of causes have contributed to the occurrence of loss. In other words while deciding the liability of the insurer the nearest or proximate cause and not the remote cause of the loss is to be taken into account.\textsuperscript{18}

7. **The Principle of Mitigation of Loss**

The Principle of mitigation of loss means to minimize or decrease the severity of loss. Under this principle it is prescribed that whenever the insured event occurs it shall be the duty of the insured to take all such steps to minimize the loss as would have been taken by any person who is not

\textsuperscript{17} Ibid, pp. 114-115.

\textsuperscript{18} Ibid, p. 116.
insured. As such it is the duty of the insured to act to minimize the loss. The total rational behind the principle of "mitigation of loss" is that the insured should not become careless and passive at the time of loss simply because his property is insured. Therefore, he must act like any uninsured prudent person.

It is quite evident that the insured, as a prudent person, should risk his own life to save property which is getting damaged or destroyed in order to minimize the loss. All that is expected is that he must act reasonably, in the event of loss, to make the loss minimum as far as possible. The principle of mitigation checks on the behaviour at the time of loss. The principle is not limited to the time of occurrence of loss but it is extended to the validity period of the policy. After insuring the subject matter with the insurer, the insured tends to become careless and negligent; that is why, every insurer in consideration of agreeing to indemnify the loss, expects a genuine behaviour during the period of the policy especially at the time of occurrence of loss.

Operational Mechanism under Life Insurance Contract

The operational mechanism under life insurance contract is as follows:

1. **To Fill Proposal Form:** The life insurance policies are taken through an authorised agent of the company. The insured is required to fill up the proposal form which can be obtained free of charge from the company. All the information is given in the form. The proposal form should be filled very carefully and signed by the insured. Some of the vital information given in the form are as under:

   a) Name
   b) Address
   c) Policy amount
   d) Date of birth
   e) Mode of premium payment
   f) Age in years and date of birth
   g) Type of policy required
   h) Name of the nominee
   i) Family history etc.
2. **Medical Examination**: The insured has to undergo a medical check up by the doctors appointed by the company. The doctor is to report about the general health of the person whose life is to be insured. The insurance company is at liberty either to accept or reject the proposal on the basis of the doctor's report.

3. **Agent Report**: The agent helps the insured in explaining the technical terms. He advises him regarding the type of policy suitable for a particular person. He tells him the rate of premium, keeping in view the period of insurance, type of policies, mode of payment and the sum assured etc. in his report the agent states the name, income, occupation, period of acquaintance with the insured etc. The agent is supposed to give impartial and correct information about the insured on the basis of this report and the medical report the insurer makes an assessment of risk.\(^\text{19}\)

4. **Proof of Age**: The insured is required to submit the proof of his age. It may be a copy of school certificate or any identity as prescribed by government norms. The premium in life insurance is fixed on the basis of age of the insured.\(^\text{20}\)

5. **Acceptance of the Proposal**: The Insurance Company is to make an assessment of the risk on the basis of the information in the proposal form and the reports of the doctor and the agent. If the life proposal is found insurable then the insurance company accepts it.

6. **Payment of Premium and Commencement of risk**: When the insurance company accepts the proposal, insured is asked to deposit the premium. As soon as the premium is paid, the contract becomes complete and the life risk is said to have commenced.

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\(^\text{20}\) Id.
7. **Issue of Insurance Policy:** After completing all the above formalities the Insurance Company sends the original policy after it is being properly signed and stamped. The policy contains all detail terms and conditions of the insurance contract like:

   a) Insured name, address, profession and age.
   
   b) Insured amount, premium amount and mode of payment.
   
   c) Type of insurance policy taken.
   
   d) Other terms and conditions relating to the insurance policy.

**Conditions of Life Insurance Contract**

Generally the life insurance contract is governed by the terms and conditions mentioned at the back of the policy. There are different kinds of policies, so terms and conditions of every policy will be different. Conditions of standard policy are discussed herewith:

1. **Proof of Age:** The premium and the sum assured being calculated on the age of the life assured. It is very important that it should be correct. For this company requires the proof of age from the assured who should produce it with the proposal or immediately thereafter. The company does not withhold the issue of the policy for want of it. Nevertheless, in the absence of proof of age the company does not admit any claim unless the age is proved to its satisfaction.\(^{21}\)

2. **Commencement of Risk:** The risk under the policy commences on the date of receipt of the first premium in full or from the date of the corporation letter of acceptance whichever is later. The second installment of the premium falls due on a date calculated from the above date of commencement of risk. If the acceptance later is conditional one, the risk will commence on the fulfillment of that condition. If the premium is paid by cheque the risk commences from

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\(^{21}\) See Mishra, M.N., *op. cit*, p. 52.
the date when the amount of cheque is credited in the company's account.\textsuperscript{22}

3. **Payment of Premium:** Premium has to be paid at the beginning of each policy year. There are different premium rate for different types of policies. Ordinarily the premium is paid annually, but for the convenience of the assured it can also be made payable half yearly, quarterly or even monthly.\textsuperscript{23}

4. **Days of Grace:** One month but not less than 30 days of grace is allowed for payment of yearly, half yearly or quarterly premiums and 15 days of monthly premiums. If death occurs within that period and before the payment of the premium is done the policy will remain in force and will remain valid and the assured will be paid the insured amount after the deduction of the said premium.

5. **Revival of Discounted or Lapsed Policies:** When the premium is not paid within the days of grace, the policy lapses but can be revived during the life time of the life assured, but within a period of five years from the due date of the first unpaid premium and before the date of maturity. There are two schemes under which policy is revived:
   a) Ordinary revival scheme
   b) Special revival scheme

6. **Guaranteed Surrender Value:** The policy can be surrendered for cash after the premium have been paid for atleast five years or to the extent of one-fifth of the total number of stipulated years in the policy provided that such one fifth exceeds three full years premium. The minimum surrender value allowable under this type of policy is equal to 30\% of the total amount of the mentioned premium paid excluding

\textsuperscript{22} See Garg R.K., *op. cit*, p. 134.
\textsuperscript{23} Ibid, p. 135.
the premium for the first year and all extra premiums and or additional premiums for accident benefit that may have been paid.

Types of Life Insurance Policy:

There are different types of life insurance policies as one policy cannot be regarded as the best policy for all the policyholders due to difference in cost elements of investments, protection, requirements of the policy holders and availability of the policy. Following are the different kinds of policies:

1. Policies on the basis of Duration of time: The life insurance policies on the basis of duration are as follows:

   (A) Whole Life Policy: Whole life policies are issued for whole life. It means that the policy amount will be paid at the death of the life assured. Under this policy, the assured cannot get the policy amount during his lifetime, only his dependents will get the advantages of this policy. There are different kinds of whole life policies:

   (i) Ordinary whole life Policy: Under this policy premium is payable throughout the lifetime of assured and the polices money shall be payable after the death of the assured. This policy provides full protection in the sense that the family received a lump sum amount after the death of the assured.

   (ii) Single Premium whole life Policy: Under this policy the total amount of premium is paid at one time by the assured. This policy suits to those person who get windfall income from lotteries or gambling.

   (iii) Limited Premium Payment Whole Life Policy: in this type of policy, the insured is required to pay premium for a fixed period or up to the retirement. Here the insured is required to pay premium for a selected period of years or up to his death.

Nevertheless, the assured sum will be payable only after his death.

(B) Endowment Policy: Under the endowment policy money shall be payable to the assured if he is alive up to the term of insurance or to his nominee in the event of his early death. There are different kinds of endowment policies:

(i) Ordinary Endowment Policy: Under this policy amount becomes payable, on the expiry of the term of insurance contract or in case of death of the assured before maturity. The assured is required to pay premium throughout the term of insurance or upto death. This policy provides an ideal combination of both the family protection and the investment.

(ii) Pure Endowment Policy: Under this policy, the sum assured is payable to the life assured if he survives till the term of policy. Nothing being payable if death occurs before the term expire. It is suitable to those persons who do not feel any need of family provision after their death. This type of policy has the element of investment only.

(iii) Double Endowment Policy: Under this policy amount payable to the insured is double the amount of sum assured, if the assured survives upto the term of policy. In case the assured dies during the terms of policy, only sum assured is payable to his nominee or his family. The investment element is higher than the protection element in this policy.25

(C) Term Insurance Policy: Term insurance policy are for a short period of time. This policy provides life insurance protection for a limited period of time from three months to seven years. The sum assured is payable only in the event of death of the life assured during the insured period and nothing is payable in case of assured's

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survival. The main purpose of the policy is to provide the temporary protection as that of a properly insurance policies do.

(i) **Convertible-Term Policy:** Under this policy, facility is given to insured to convert it into whole life or endowment policy. If the option of conversion is exercised, a new policy under the limited payment life policy endowment will be issued as the case may be subject to the rates of premium, terms and conditions prevailing on the date of conversions. Proposal for policies under this scheme will be entertained only from persons in Government and semi-Government service or in the service of reputed commercial firms.

(ii) **Diminishing Terms Policy** - This is an insurance policy mainly taken for loan transactions. An important characteristic of this policy is that policy money goes on diminishing year after year as the payment of premium is continued. The terms of policy are such that the insurance company is required to pay a certain sum of money to the third party in case of assured's earlier death.

(iii) **Renewable Term Policy** - This policy is renewable at the expiry of terms for an additional period without medical examination. The premium rate will increase according to the advancement of age. This policy is suitable for those whose health are deteriorating and will be able to enjoy the benefits of insurance at an advanced age of their life. The insured has an option to renew it as many times till he has not crossed the age of 55 years.

2. **Policies on the Basis of Method of Premium Payment:** There are different types of policy based on Premium payment as-

   (i) **Single Premium Policy** - Under this policy premium is paid at the beginning of the policy. The Premium under this policy is
the highest. The protection element is totally absent in this policy where as investment element is very high.

(ii) **Level Premium Policy**: Under this policy regular and equal premium are paid at a definite gap of time. The equal installment may be paid monthly, quarterly, half yearly and yearly. Level premium policy suits the requirements of different types of the policy holders.26

3. **Policies on the basis of Participation in Profit**: Policies on the basis of participation in profit are as follows:

(i) **Without Profit Policies**: Under this policy the holders are not entitled to share the profit of the company. These policyholders get only the sum assured. The rates of premium paid on this policy are lower.

(ii) **With Profit Policies**: Under these policies the holders are entitled to share the profit of the company. The policy holders can share only the profit and not the loss, therefore they cannot be treated as co-owner of the company. They are entitled to get the share of profit it means, the bonus only when there is profit. In this policy there is no guarantee that the insured will get something by way of profit every year.27

4. **On the Basis of Number of Lives covered**: The policy me be as under:-

(i) **Single life Policy**: Under those policies, only single individual is insured. This policy insures only one life. The policy may be issued in one’s own life as well as in others life also. The policy amount is payable only when the assured event occurs.

(ii) **Multiple life Policies**: In this type of policy more than one lives is insured it may be:

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27. Ibid, p. 146.
a) **Joint Life Policy**: These policies cover two or more lives and the policy amount is payable on the first death. These policies are suitable to the partners of a firm and to a couple.

b) **Last Survivorship Policy**: Under these policies amount is payable at the last date so long as any one of the insured is alive, no payment is made.

5. **On the Basis of Payment of Claims**: The policy amount may be paid as under:

   (i) **Lumpsum Payment Policies**: Under these policies, policy amount is paid in lumpsum according to the term and conditions of the policy.

   (ii) **Installment Payment Policies**: Under these policies, the policy amount is payable in installments. It is suitable to those whose earning capacities are reduced to minimum in old age. Under these policies he may continue to get upto a fixed period or upto death or both.

6. **Annuity**: Annuity may be defined as a contract under which the insurance company agrees, in consideration of a certain payment, to pay, to the person who makes the payment in a fixed income. The person during whose life the annuity is paid is called the annuitant. The price of the annuity paid by the annuitant at the beginning of contract is called premium. The regular payment to be made by the insurance company is called annuity. The annuity is suitable to those who do not want to leave amount for others but want to use their money during their lifetime.  

7. **Non-Conventional Policies**: The life insurance companies have introduced several non-conventional policies to meet the requirement of public. The important things about these are that they provide
protection in cases of early deaths or if the policyholder lives too long. Some important policies under this head are as follows:

(1) **Jeevan Mitra:** This policy can be issued to male as well as female lives. Only standard lives and sub-standard lives class I, II and III can be considered for benefits under this plan. This plan will not be provided to those who are engaged in hazardous occupations. The policy will be issued to all eligible lives between 18 to 50 years. The maximum age at maturity is limited to 70 years. The policies are issued for the terms of 15 to 30 years only. The premiums are payable for the selected term of the policy or until death, if it occurs within the selected term.

(2) **Jeevan Saathi:** The policies under this plan are issued on the lives of husband and wife. The sum assured will be payable on the first death and again on the death of the survivor during the term of the policy. Vested bonuses would also be paid along with the sum assured or on second death if it occurs earlier. If one or both the lives survive to the maturity date the sum assured along with the vested bonuses would be payable on maturity date. This policy will be issued for a term of 15 to 30 years only subject to the condition that age of the older life at maturity shall not be more than 70 years.

(3) **Jeevan Mitra:** Jeevan Mitra Policy provides, besides the benefit of Endowment Assurance Policy, additional insurance cover equal to sum assured in the event of death during the term of the policy so that the total insurance cover is twice the basic sum assured. Bonus is reckoned on the basic sum assured at rates applicable to endowment Assurance. The Plan is allowed for terms 15 to 30 years.29

**Importance of Life Insurance**

The importance of life insurance can be viewed from three angles—Individual, business and society.

1. Individual

a) **Family Protection**: Life Insurance contract protects the family interest. There are certain special requirements of the family which are fulfilled by the earning member of the family. If the member becomes disable to earn the income due to old age or death, these needs may remain unfulfilled and the family will suffer. The life insurance provides safety and security against the loss of earning at death or in old age.

b) **Surrender Value and Facilities for loan**: When the insured is unable to pay the premium on his policy, he can surrender his policy and can get surrender value with this. The contract comes to an end and the insured will get the cash without any liability to pay any further premiums. The insurance company may grant loan to the policy holder on the security of life insurance policy.

c) **Regular Source of Income for old age**: The Provision for old age is required where the person is surviving more than his earning period. In old age income comes down while expenditure increases. The life insurance provides old age funds along with protection of the family by issuing various policies.

d) **Provision for children**: There are many family needs, say education for children, daughter’s marriage and needs for settlement of children. Insurance helps in meeting these requirements. Multipurpose policies, education and marriage policies are better policies for these needs.

e) **Exemption from Income Tax**: Under Indian Income Tax Act 20% rebate is given in income tax on the amount, which the insured has paid as premium on the life insurance policy taken by him.

2. Business:

a) **Increase of Trade Credit**: On the security of life insurance policy loan can be taken for business purpose. Life insurance corporation provides credit facilities to big industrial houses. The insured persons are getting
more loan due to certainty of payment at their death. The insurance policies are the best collateral and adequate loans may be granted by the lenders.

b) **Business Firmness:** Partnership business may discontinue at the death or retirement of any partner because the firm has to pay to the legal heir of the deceased and to retiree partner, his share in the firm. But the insurance policy provides adequate funds at this time.

c) **Welfare of Employees:** The welfare of employee is the responsibility of the employer. Therefore, the employer has to look after the welfare of the employees. These requirements are easily met by the life insurance, accident and sickness benefit and pension which are generally provided by group insurance. The employer generally pays the premium for group insurance. With this employees will work to their maximum capacities to complete their job when they are assured of the above benefits.

d) **Safety from Embezzlement of Funds:** Insurance Company issues a policy that indemnifies the employer against direct economic loss that he may suffer through acts of fraud or dishonesty by an employee in the course of his employment. This type of insurance policy provides safety to the business man from embezzlement of funds from the business.

e) **Safety of Paid loan:** A creditor can safe his debt by taking a policy on the life on his debtor. The insurance company will pay the debt in case the debtor dies without paying his debt.

3) **Society:**

a) **Helps in Capital Formation:** The element of investment, regular savings, capital formation and return of the capital are observed in life insurance.
b) **Helps in providing employment**: The expansion in the field of insurance provides employment to many. Thus to some extent the insurance companies can solve the problems of unemployment.

c) **Reduction in Inflation**: The insurance helps in reducing the inflation by two ways:

(a) by extracting money in supply to the amount of premium collected; and

(b) by providing sufficient funds for production to narrow down the inflationary gap.

**Growth of Life Insurance in India**

**Premium**

Life insurance industry recorded a premium income of Rs.2, 91,605 crore during 2010-11 as against Rs.2, 65,447 crore in the previous financial year, registering a growth of 9.85 percent. Whereas the private sector insurers posted 11.04 per cent growth whereas compared to 23.06 percent in previous year in their premium income. LIC recorded 9.35 per cent growth whereas 18.30 per cent in previous year.

While renewal premium accounted for 56.66 per cent (58.60 per cent in 2009-10) of the total premium received by the life insurers, first year premium contributed the remaining 43.34 per cent (41.40 per cent in 2009-10). During 2010-11, the growth in renewal premium has been 6.22 per cent (15.69 per cent in 2009-10). By comparison, the growth in first year premium was higher at 15.00 per cent during 2010-11 but there is significant decline in growth in comparison to the previous year figure (25.84 per cent in 2009-10).

Further bifurcation of the first year premium indicates that single premium income received by the life insurers recorded 26.99 per cent growth during 2010-11 (31.05 per cent in 2009-10). Single premium products continue to play a major role for LIC as they contributed 24.94 per cent of LIC's total premium income (24.36 per

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cent in 2009-10). In comparison, the contribution of single premium income in total premium income has surged to 13.28 per cent for private insurance companies during 2010-11 (4.84 per cent in 2009-10).

The growth of the regular premium has stood only at 5.30 per cent in 2010-11, against 21.91 per cent growth in 2009-10 with the private insurers witnessing negative growth (-19.88 per cent). The LIC continued with high growth in the regular premium the same stood at 38.50 per cent in 2009-10.

Unit-linked products (ULIPs) witnessed 5.64 per cent decline in premium income from Rs.15.521 crore in 2009-10 to Rs.1,09,002 crore in 2010-11. On the other hand, the growth in premium income of traditional products was at 21.80 per cent, with premium income increasing to Rs.1,82,603 crore as against Rs.1,49,926 crore in 2009-10. Accordingly, the share of unit-linked products in total premium considerably declined to 37.38 per cent in 2010-11 as against 43.52 per cent in 2009-10.31

Table

Premium Underwritten by Life Insurers

(In Rs. Crore)

<table>
<thead>
<tr>
<th>Insurer</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regular Premium</td>
<td></td>
</tr>
<tr>
<td>LIC</td>
<td>26184.48 (36.80)</td>
<td>36265.36 (38.50)</td>
</tr>
<tr>
<td>Private Sector</td>
<td>34529.67 (12.61)</td>
<td>27664.19 (-19.88)</td>
</tr>
<tr>
<td>Total</td>
<td>60714.15 (21.91)</td>
<td>63929.55 (5.30)</td>
</tr>
<tr>
<td></td>
<td>Single Premium</td>
<td></td>
</tr>
<tr>
<td>LIC</td>
<td>45337.42 (33.19)</td>
<td>50746.99 (11.93)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Private Sector</th>
<th>Total Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3842.34</td>
<td>11704.46</td>
</tr>
<tr>
<td></td>
<td>(10.13)</td>
<td>(204.62)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>49179.76</strong></td>
<td><strong>62451.45</strong></td>
</tr>
<tr>
<td></td>
<td><strong>31.05</strong></td>
<td><strong>26.99</strong></td>
</tr>
</tbody>
</table>

**First Year Premium**

<table>
<thead>
<tr>
<th>LIC</th>
<th>71521.90</th>
<th>87012.35</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(34.49)</td>
<td>(21.66)</td>
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<tr>
<td>Private Sector</td>
<td>38372.01</td>
<td>39368.65</td>
</tr>
<tr>
<td></td>
<td>(12.36)</td>
<td>(2.60)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>109893.91</strong></td>
<td><strong>126381.00</strong></td>
</tr>
<tr>
<td></td>
<td><strong>25.84</strong></td>
<td><strong>15.00</strong></td>
</tr>
</tbody>
</table>

**Renewal Premium**

<table>
<thead>
<tr>
<th>LIC</th>
<th>114555.41</th>
<th>116461.05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(10.03)</td>
<td>(1.66)</td>
</tr>
<tr>
<td>Private Sector</td>
<td>40997.93</td>
<td>48762.94</td>
</tr>
<tr>
<td></td>
<td>(35.10)</td>
<td>(18.94)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>155553.34</strong></td>
<td><strong>165223.99</strong></td>
</tr>
<tr>
<td></td>
<td><strong>15.69</strong></td>
<td><strong>6.22</strong></td>
</tr>
</tbody>
</table>

**Total Premium**

<table>
<thead>
<tr>
<th>LIC</th>
<th>186077.31</th>
<th>203473.40</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(18.30)</td>
<td>(9.35)</td>
</tr>
<tr>
<td>Private Sector</td>
<td>79369.94</td>
<td>88131.60</td>
</tr>
<tr>
<td></td>
<td>(23.06)</td>
<td>(11.04)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>265447.25</strong></td>
<td><strong>291604.99</strong></td>
</tr>
<tr>
<td></td>
<td><strong>19.69</strong></td>
<td><strong>9.85</strong></td>
</tr>
</tbody>
</table>

Note: Figure in brackets indicates the growth (in percent)

Source: Insurance Regulation Development Authority (IRDA) Report, 2010-11

The table above reflects the collection of premium done by life insurance industry operating in India.
Market Share of Life Insurance

On the basis of total premium income, the market share of LIC declined marginally from 70.10 percent in 2009-10 to 69.78 percent in 2010-11. Accordingly, the market share of private sectors insurers has gone up marginally from 29.90 percent in 2009-10 to 30.22 percent in 2010-11.

The market share of private insurers in first year premium was 31.15 percent in 2010-11 (34.92 percent in 2009-10). The same for LIC was 68.85 percent (65.08 percent in 2009-10). However, in renewal premium, LIC had a higher share of 70.49 percent (73.64 percent in 2009-10) when compared to 29.51 percent (26.36 percent in 2009-10) share of private insurers.32

The above values can be witnessed by the table below and the Area Graph.

Table

Market Share of Life Insurers

(In per cent)

<table>
<thead>
<tr>
<th>Insurer</th>
<th>2009-10</th>
<th>2010-11</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Regular Premium</td>
<td></td>
</tr>
<tr>
<td>LIC</td>
<td>43.13</td>
<td>56.73</td>
</tr>
<tr>
<td>Private sector</td>
<td>56.87</td>
<td>43.27</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>100.00</td>
</tr>
<tr>
<td></td>
<td>Single Premium</td>
<td></td>
</tr>
<tr>
<td>LIC</td>
<td>92.19</td>
<td>81.26</td>
</tr>
<tr>
<td>Private sector</td>
<td>7.81</td>
<td>18.74</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>100.00</td>
</tr>
<tr>
<td></td>
<td>First Year Premium</td>
<td></td>
</tr>
<tr>
<td>LIC</td>
<td>65.08</td>
<td>68.85</td>
</tr>
<tr>
<td>Private sector</td>
<td>34.92</td>
<td>31.15</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>100.00</td>
</tr>
</tbody>
</table>

In life insurance business, India ranked 9th among the 156 countries, for which data are published by Swiss Re. During 2010-11, the estimated life insurance premium in India grew by 4.2 percent (inflation adjusted). However, during the same period, the global life insurance premium expanded by 3.2 percent. The share of Indian life insurance sector in global market was 2.69 percent during 2010, as against 2.45 percent in 2009. In the light of above discussion and analysis of data, it is submitted that life...
insurance provides protection to the family at the premature death or gives adequate amount at the old age when earning capacities are reduced. The life insurance is not only a protection but is a sort of investment because certain sum is returnable to the insured at the death or at the expiry of a period. So life insurance is a protection for dependents.
B. Under Islamic Legal System

A life insurance policy under Islamic Law does not undertake to insure one’s own life, but it is a financial transaction undertaking to protect widows, orphans and all other dependents of the deceased from future unexpected risks, based on the working practices of life insurance policies under the common legal system. Many Muslims and some Islamic scholars, oppose the idea of life insurance. The basic purpose of life insurance policy under Islamic law is not to insure one’s own life but it is a financial transaction, based on the principles of mutual co-operation to protect the interest of widows, orphans and all other dependents of the deceased from future financial risk. It does not involve the ingredients of riba, but operates along the lines of the principles of the al-mudarbah financial techniques as prescribed under Islamic economic system.33

Conceptual Framework of Life Insurance under Islamic Law

Concept of life insurance under Islamic Law is quite different from the one, which is practiced under common legal system. Under Islamic Law, life insurance policy works upon the principle of al-Mudarabah and mutual co-operation. The nominee under life insurance policy is not an absolute beneficiary but only a trustee who receives the benefits and allocate them among the heirs of deceased as per the principles of inheritance and bequest. Where the assured is still alive upon the maturity of the policy period, he has a right to claim from the insurer the paid premiums, the share of profits made over the paid premiums, plus bonus and dividends as per the company’s policy. But in case the assured dies at anytime before the maturity of the policy, the claim of nominee includes all the paid premiums, the share of profit made over the paid premiums, bonus and dividend as per the company’s policy along with contribution made from the company’s charitable fund as per the financial condition of the beneficiary of the assured.

As regards the insurable interest in life insurance policy under Islamic law, the policyholder himself has an insurable interest if he is alive upon the expiry of the policy period. If the assured dies at any time within the policy period, the insurable interest is to be vested only in heirs of assured as per the principles of *al-mirath* (inheritance) and *al-wasiyyah* (bequest).

**Rationale**—To have a life insurance policy does not mean that one has insured his own life, but it is a financial transaction for the protection of certain helpless people in the society. The rational behind having a life insurance policy under Islam may be summed up as follows:

1. It is one of the ways of providing a material safeguard for offsprings and is thus in line with the saying of the Holy Prophet (PBUH) who is reported to have said;

   "*it is better for you to leave your off spring wealthy than to leave them poor asking others for help...*"\(^\text{35}\)

2. To have a life insurance policy is a future material security for widows and other dependents of the diseased. The Holy Prophet (PBUH) in fact encouraged providing the security for widows and poor persons as he highlighted in one of his traditions. "*The one who looks after and works for a widow and for a poor person, is like a warrior fighting for the cause of Almighty Allah or like a person who fasts during the day and prays throughout the night.*"\(^\text{36}\)

3. Life insurance policy guarantee a future material protection for orphans and it is again justified by the saying of the Holy Prophet (PBUH) and the person who looks after an orphan and provides for him will be in paradise like this putting his index and middle fingers together.\(^\text{37}\)

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34. See Billah Ma’sum Mohd, *op.cit*, pp. 288-89
35. Narrated by Saad Bin Abi Waqaas (R)
36. Narrated by Safawan Bin Salim (R)
37. Narrated by Sohail bin Saad (R)
To have a life insurance policy is like taking an initiative towards reducing poverty rates and contributing towards a reasonable comfortable life without such difficulties. It is thus, justified by the Quranic principle whereby Almighty Allah advised the creatures to seek from Him for the comfortable life. Almighty Allah says to the effect:

“Our Lord! Give us a comfortable life in this world and a comfortable life in the hereafter”

Finally, having a life insurance policy is like taking an initiative towards ensuring a self reliant society without facing hardship and difficulties, and of course, an economic growth in society which may result in the elimination of hardship and bring about a comfortable standard of living in the society. It is thus in line with the Quranic principle. Whereby Almighty Allah himself prefers on easy life for the creatures rather then having difficulties. Almighty Allah “intends an easy life for all of you while he does not want you to be in difficulties”.

Principles of Life Insurance

It is, already clear that a life insurance policy under Islamic Law is quite different from the one, which is practiced under common legal systems. Here I wish to propose the following basic governing principles for the Islamic model of life insurance.

1. At the time of entering into a life insurance agreement, the assured must have a sincere intention that a policy will not lead to gain but should look towards protection of offsprings, wife and other dependents from unexpected future risk. Simultaneously, he also has to put his trust in Almighty Allah for betterment of those dependents future lives. Such initiative is thus in line with the advice of the Holy

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38. II:201  
39. V:3
Prophet who told a Bedouin Arab who left his Camel untied trusting to the will of Almighty Allah.

"Tie the Camel first, then put your trust in Allah".40

2. The life insurance policy should not be involved with riba but must be based upon the principle of the Al-Mudarabah, an Islamic financial technique, whereby the insurer as well as the assured or his beneficiaries share the profits, bonus and dividends accordingly.

3. In case of assured’s death at any time during the policy period, the beneficiaries of the assured will get only paid premiums, bonus and dividend accordingly, plus a donation from the company’s fund as per the beneficiaries financial condition.41

4. In a case where the assured is alive upon the expiry of the policy period, the assured can only claim from the company the paid premiums, a share of the profits made over the paid premiums, plus bonus and dividends according to the company’s policy.

5. The nominees in a life insurance policy do not need to be an absolute beneficiaries but a mere trustee who is under a duty to receive the benefits from the insurer and distribute them among the heirs of the assured as per the principle of inheritance and bequest. Hence the nominees fall into the category of heirs of the assured, he/she is also entitled to a share accordingly.

6. The agent in a life insurance policy shall not be paid out of the paid premiums by the assured but to be paid out of the share of the profit made over by the paid premiums by the company itself.

7. With regards to the investment of the paid premiums Adil Salahi is of the view that the company is under an obligation to invest the paid premiums in a lawful business which is free from the elements of riba.

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40. Narrated by Al-Tirmizi and Ibn Majah
41. See, Billah Ma’sum Mohd, op. cit., p. 293
gambling and all other forms of unlawful transactions i.e. against the divine principles of Islam.\textsuperscript{42}

8. The insurable interest in a life insurance policy should be presented either to the assured himself or to the heirs of the assured as per the principle of inheritance and bequest.\textsuperscript{43}

Generally, different people have different opinions and thoughts about the application of life insurance in a Muslim society. Many Islamic scholars oppose the contract of a life insurance, based on Islamic principles, while some are of the opinion that life insurance is not prohibited in Islam.

**Grounds Against Validity of Life Insurance Under Islamic Law**

1. Many Islamic Scholars such as Mufti Mohammad Bakheet, Mohd. Musa, Ali Khafeef, Yusuf Musa, Shaikh Shaukat Ai are of the view that general insurance is permissible but life insurance is not permissible, as life insurance involves unlawful elements of Maisir (gambling), and gharar (uncertainty) and also clashes with once fate.\textsuperscript{44}

2. Islamic scholars opine that whole idea of insurance business is based on riba (interest) which is strictly prohibited by the verses of the Holy Quran (2:25) and many Sunnah of the Holy Prophet.\textsuperscript{45} As in the life insurance, the beneficiaries of the assured will gain more than the assured has paid to the insurer in the event of his death, and therefore, such additional gain is considered as riba (interest).\textsuperscript{46}

3. The concept of life insurance exceeds the power of Allah in determining ones destiny of death and future happening and earnings. Once the assured enters into a life insurance contract, the assured will pay the premiums with the intention that his beneficiaries will earn a

\textsuperscript{42} Id.

\textsuperscript{43} See, Billah Ma'sum Mohd, *op. cit*, p. 294

\textsuperscript{44} See Prof. Rashid, S.K., *Insurance in Islamic Law*, p. 8

\textsuperscript{45} Dr. Muslehuddin, Mohammad, *Insurance and Islamic Law*, 3rd Edition, Markazi Maktaba Islami, Delhi, 1976, p. 143

\textsuperscript{46} Prof. Rashid, S.K. *op. cit.*, p. 9
huge amount of money upon his death. In such a case assured is pre-determining his death as well as the earnings of his beneficiaries, such a concept seems to interfere the powers of Almighty Allah. As Allah is the only one who knows the determines one’s destiny of life and death also what one will earn tomorrow. Hence no one can pre-determine any ones life, death or future as Almighty Allah says in Holy Quran:

"Nor does any one know what it is that he will earn on tomorrow nor does anyone know in what land he is to die. Verily with Allah is full knowledge and He is acquainted with all things." 47

4. Life insurance is against the principles of inheritance and bequest. The rational behind this is that under life insurance, the assured deposits premiums that will be obtained by the beneficiaries upon his death in such a situation the assured is the one who determines the respective beneficiaries who may gain money upon his death. Such a life insurance policy is against the principles of inheritance and bequest. As per Islamic law, the property has to be distributed accordingly among the legal heirs and to whom the bequest has been made. Therefore, the assured cannot determine the beneficiaries himself. 48

5. It contains the element of gambling. In a gamble the gambler pays a certain amount of money and subsequently hopes for a chance to gain an additional large amount of money. 49 Any transaction involving such element of gambling is prohibited in the Sharia’h, as Almighty Allah says to the effect:

"...They ask thee concerning wine and gambling say in them is a great sin..." 50

47. XXXI:34
48. Prof. Rashid, S.K., op. cit, p. 10
50. Il: 201
Similarly in a life insurance policy the assured always hope for a chance to gain, which is in the same nature as gambling and thus is prohibited in the Islamic Sharia’h.

6. Life insurance inducts the essential of gharar (uncertainty) and as per Islamic law any transaction which involves the elements of ignorance and uncertainty is considered to be not valid as it leads to dispute among parties.\(^5\)

These are some of the reasons and arguments of Islamic scholars who are against the implementation of life insurance under Islamic law. The sound reason of opposing the policy of life insurance is that it is unsafe, hazardous, unfair and uncertain and thus it would not be allowed in Islam at all.

**Arguments in favour of Life insurance**

"It is better for you to leave your off-spring wealthy than to leave them poor, asking others for help..."\(^5\)

Islam always emphasizes the practical aspects of life. As Islam is ad-din (scope is very wide) and it has already been prove that there is no single aspect of human life which cannot be solved by the Holy Quran and the fact that Islam is the religion which is comprehensive in nature and always concerned about the welfare and development of people. The overall idea of life insurance circles around protecting the welfare of particular members of one’s family from future risks which might occur after one’s demise. That is the reason why the concept of life insurance is not clearly against the Islamic principles. As such, here are the following responses and the view of some Islamic Scholars who support the institution of life insurance.\(^53\)

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51. Prof. Rashid, S.K, *op. cit* P.10
1. Life insurance does not incorporate the element of Maisir (gambling). The reason is that the concept of Maisir (gambling) is “hoping for a chance to gain something” whereas the concept of life insurance works around a transaction of depositing a certain amount of money to a particular company with the intention of helping the depositors family against future risks after the demise of the depositor. Thus, the element of gambling does not exist here.\textsuperscript{54}

2. Life Insurance does not incorporate the elements of gharar (uncertainty). The reason is that the idea of a gharar transaction is that the subject matter of the contract is unknown. Whereas, on the other side the subject matter of life insurance is the death of the assured and it is known, to everybody that one day everyone will die sooner or later in accordance with the will of Almighty Allah.

3. The logic of life insurance also does not exceed the power of Allah in determining one’s destiny of death and future earnings. This is because the logic of life insurance is not to pre-determine one’s death in the future, which is determined by Almighty Allah, it is only to take the necessary steps in protecting one’s family from future financial risks, which may occur after death. The Prophet Mohammad (PBUH) encouraged the people to take the necessary steps against future risks as seen in the following hadith narrated by Abu Hurairah (R), the Holy Prophet (PBUH) is reported to have said-

“Whoever solves for a Muslims a problem out of his (various) problems in the world, Allah will solve for him one problem out of his (various) problems in the hereafter, and whoever takes an initiative to lighten one’s financial difficulties, Allah will lighten his difficulties in the world and the hereafter…”\textsuperscript{55}

\textsuperscript{54} Id.
The Holy Prophet also described the significance of looking after Orphans as seen in the following hadith Narrated by Sahl Bin Saad (R), the Holy Prophet (PBUH) is reported to have said:

"I and the person who looks after an orphan and provides for him, will be in paradise like this “putting his index and Middle finger together.”\(^{56}\)

Again the Holy Prophet (PBUH) stressed the significance of taking care of welfare of widows and the poor in the following hadith narrated by Safwan Bin Salim (R), the Holy Prophet (PBUH) is reported to have said:

"The one who looks after and works for a widow and for a poor person, is like a warrior fighting for Allah’s cause or like a person who fasts during the day and prays all the night."\(^{57}\)

So, it is crystal clear that the whole logic of life insurance is not to pre-determine ones' destiny of death and future earnings, but only to believe in ones' death which will occur in accordance with the will of Almighty Allah but also to take the necessary steps towards protecting ones family from future financial risks and problems which might occur after ones 'death.

4. The concept of life insurance under Islam does not clash with the principle of inheritance and bequest. The reason behind this is that life insurance does not deprive legal heirs from receiving their share from the deceased property by inheritance or bequest. The actual idea of life insurance is to deposit money to the insurer in advance with a view to protecting the assureds' family from future financial risks, which may occur after the demise of the assured. In life insurance under Islamic law, the assured nominates a particular person as nominee who receives the benefit of the policy after the death of the assured on behalf of all the heirs of the assured.

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56. Sahih al Bukhari, op. cit, Hadith No. 34
57. Ibid, Hadith No. 35
The nominee in this case acts as a mere agent, who receives the benefit of the policy and distributes it among the heirs accordingly. In a Pakistani case, it was held that the nominee in a life insurance policy is nothing more than mere agents who receive the benefit of the policy on behalf of all the heirs.\textsuperscript{58} The National Council for Muslim Religious Affairs in Malaysia, issued a Fatwa in 1974 that the nominee of life insurance would receive the benefit of the policy on behalf of all heirs, so, under Islamic Law, the nominee is like a mere agent who receives the benefit of the policy and he is entitled only to a share according to the principle of inheritance and bequest. Hence, the concept of life insurance under Islam is to protect the assured's family from future financial risks which does not deprive the legal heirs from receiving their respective shares by way of inheritance and bequest once the assured dies. Hence, the claims that the concept of life insurance is against the rule of inheritance and bequest is entirely rebuttable. \textsuperscript{59}

5. The concept of life insurance is not against one's taqdeer (fate). The reason behind this is that life insurance is not going to determine the family's fate in future, something to do with pre-determining one's death. The fact is that when the assured pays the premiums to the insurer, the logic of this transaction is to save his family from any tragedy or financial risks which may occur is future. Islam fully supports all Muslims in leaving something for their children to protect them from future financial risks, and this is the real idea of life insurance.

6. Life insurance does not incorporate the element of riba (interest). The reason is that riba occurs when a person gives or deposits a certain sum of money and later demands an additional amount apart from the original amount deposited. In life insurance, the assured pays the premiums not with the intention of demanding an additional amount

\textsuperscript{58} Karim vs Hanifa, PLD (1970), Karachi, 683.
\textsuperscript{59} See Billah Ma'sum Mohd, \textit{op. cit}, p. 319
apart from the one deposited earlier, but with the intention of helping the assured’s family financially in the future after the death of the assured.\textsuperscript{60} This concept is based on the principle of mutual co-operation which has been commanded by Allah – Allah says to this effect: “Help one another in righteousness and piety…”\textsuperscript{61}

So, the real purpose of life insurance is to help the decease’s family and to protect them from future financial risks. No doubt, it is a form of helping each other in the righteous and pious way as enshrined in the above verse, and as such, the operation of life insurance is not a riba, but rather a form of good deed which has been commanded by Allah.

From the above responses, it is now clearly understood that the concept of life insurance is not contrary to the divine principles of the Holy Quran and the Sunnah.

Thus, the logic of life insurance is a “contract between the holder of a policy and an insurance company whereby the company agrees, in return for premiums payments, to pay a specified sum to the designated beneficiary upon the death of the insured”.\textsuperscript{62}

So, in order to dispose of all the misconceptions which have surrounded life insurance for a very long time, Muslims have a look at the concept in a wider sense and concentrate on applying it to meet the needs of society today. As such, there are some recommendations on this issue.

1. It is the duty of the father of a family to take effective measures in advance for the well-being of children and wife. This includes providing them with adequate means to acquire future education, food, clothing, shelter, health and other important necessities. A father should not leave them in a state of poverty, begging for help of others. The Prophet (PBUH) is reported to have said:

\begin{itemize}
\item \textsuperscript{60} Ibid, p. 318
\item \textsuperscript{61} V:2
Narrated by Sád Bin Abi Waqqas (R): “I was stricken by an ailment that led me to the verge of death. The Prophet (PBUH) come to pay me a visit. I said ‘O Allah’s Apostle! I have much property and no heir except my single daughter, shall I give two thirds of my property in charity? He said ‘No’ I said Half of it? He said ‘No’ I said one third of it? He said (you may do so) though one third is also too much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help.”

2. It is one of the most significant deeds in Islam to take care of the welfare of orphans, widows, and the poor. This has been made clear from various Hadiths cited(supra). The Holy Prophet (PBUH) encouraged the Ummah to look after the welfare of the Orphans, widows and the poor. In fact, the whole idea of life insurance is also to sustain the welfare of these unfortunate members of society. So, it is again proved here that the logic of life insurance is not contrary to the Islamic principles.

3. Unpredictability, accidents and tragedies have become part and parcel of life. Many people have lost dear ones through diseases, road accidents, natural disasters and so on. If we think over this, our minds will be haunted by various questions, what will happen to the deceased’s family, especially if the family is depending heavily on the income of the deceased? Who is going to look after the welfare of the family? And what is going to happen to the future of that family if nobody comes to their help? Allah no doubt the sole creator and sustainer for his creatures, but then, He has also commanded mankind to strive hard within their abilities to achieve anything that they wish for in their lives. Only after striving hard could they then leave their fate to be decided by Almighty Allah.


64. See Billah Ma’sums Mohd op. cit., p. 321
Allah has strongly prohibited the people from purposely letting themselves fall in to self destruction. Allah says to this effect: "...and make not your own hands contribute to (your) destruction."^65

So, Allah has commanded us to strive to the best of our abilities achieve our aim and not to let ourselves fall in to destruction. It is thus our duty to ensure that the welfare of our family will be safeguarded in future, especially after our demise, by the will of Allah. This is the main objective of life insurance whereby the assured deposits a certain amount of money to the insurance company with the intention of safeguarding his family from any future risks or destruction. Thus, it is again proven here that life insurance is indeed in accordance with Islamic provision.^66

4. Allah does not want his creatures to be in difficulties. As such the aim of the life insurance policy is to protect the assured's family from any kind of difficulties which may occur after his death. The idea is indeed in line with the following verse when Allah says in the Holy Quran:

"...Allah intends every facility for your, He does not want to put you in difficulties..."^67

Moreover, the life insurance policy is no doubt, one of the means of ensuring a prosperous life for Orphans and widows in the world. Allah has also taught us to seek a prosperous life in this world and the hereafter. He says to this effect "Our Lord! Give us good in this world and good in the Hereafter..."^68

I, sincerely believe that the above analysis has given us clear picture on the validity of life insurance under Islam. It is now our duty how to utilize Islamic principles in applying life insurance in a perfect manner. As it is much needed in the contemporary world to solve various

^65. II:195
^66. See Billah Mu'sum Mohd, op. cit., p. 321
^67. II:185
^68. II:201
problems faced by the Orphans and Widows. With the help of the principles of life insurance, these unprivileged class of society can be released from the hardships and difficulties by the Blessings of Allah. Such application will also allow these widows and Orphans to see their future with renewed confidence and hope.

Submissions

Lastly, with all humbleness it can be submitted that there are various ways by which the application of life insurance in society can be made a reality:

(1) There is no iota of doubt regarding the validity of the application of life insurance based on Islamic principles. This is because the idea of life insurance embodies the element of mutual co-operation, help and shared responsibilities towards safeguarding the welfare of orphans and widows which is enjoined in the teaching of Islam, as seen in the verses of the Holy Quran and the Sunnah of the Prophet (SAW). As such, Muslims may avoid questioning the validity of life insurance, and also any form of negative feelings towards its validity and application.

(2) It must always be ensured that no aspect of life insurance involves riba (interest) as it has been strictly prohibited in the Holy Quran. For instance, when the assured enters into the life insurance policy, he should not put any clause which allows the beneficiary to demand an additional amount apart from whatever has been paid by the assured, nor should there be any clause allowing the insurer to invest the deposited money in any transaction which involves interest or riba.

(3) The assured must be very honest and sincere in entering into a life insurance policy that it is one of the sources to sustain the life of his family, safeguarding them from any future risks and difficulties, which

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may occur once the assured dies. He must also be free from any kind of hope for a chance to gain something in future, as to help safeguarding the welfare of orphans and widows is indeed a good deed and such good deeds must be free from any negative intentions or feelings. Allah (SWT) says “They ask thee concerning orphans, say: The best thing to do is what is for their good.”

Hence, the policy of life insurance is also a kind of maintenance in advance for the family (i.e. the orphans and the widows) of the assured. However, there is no provision in Islam preventing people from providing maintenance for their dependants.

(4) It is also the right moment for the whole Muslim Ummah, to trace all the relevant provisions from the Holy Quran and the Sunnah and to deliberate on these provisions based on the principles of Masalih al-Mursalah (public interest). Such a move is important to ensure that people will obtain proper guidance in applying for the life insurance policy. Such a move will also encourage hopes of removing difficulties and hardships of orphans and widows.

Proposed Procedures

For the purpose of applying life insurance in our daily lives based on the Islamic principles, the following procedures are hereby proposed:

(1) In a life insurance policy, there must be at least three parties, i.e. the assured, the insurer and the nominee(s) on behalf of the beneficiaries.

(2) There will be an agreement between the assured and the insurer that the assured will continue to pay the premiums (the sum and period of the payment being in accordance with the agreement). There must also be a clear understanding between the parties to the agreement that in

70. II:220
case of the death of the assured before the ending of the period of the policy, the insurer will pay back to the designated nominee(s) the whole amount of money which has so far been paid by the assured, plus the share of the profit which has been gained over the paid premiums, together with a reasonable amount of money taken from the Charitable Fund, which must be in accordance with the financial status of the assured's family. (For instance, if the family is financially weak and unstable, the amount taken from the Fund will be bigger, but if it is financially strong and stable, the amount will definitely be smaller). Such policy is actually based on the concept of mutual cooperation which has been commanded by Allah in verse.72

(3) There must be a common understanding between the parties to the agreement that the nominee(s) is like a mere agent/trustee to act on behalf of all the heirs of the assured, thus he has no right to receive the benefit of the policy absolutely, but only the portion according to the Rule of mirath (inheritance) or wasiah (bequest).

(4) In the case of the assured not dying within the agreed period of the policy, the assured is, thus, entitled to recover the whole amount of the premiums, which he has paid during that particular period, together with the agreed share of the profit made over the paid premiums.

(5) It must always be remembered that the assured must be sincere in paying the premiums, i.e. with the intention of creating a fund for the future welfare of his family. He must not hope to gain any additional amount besides the premiums paid, nor can he hope for an opportunity to gain.

(6) Finally, the insurer must also be careful not to make any profit over the premiums through an illegal investment or transaction, which is prohibited by the Holy Quran and the Sunnah.

72. V:2—"Help one another in righteousness and piety."
These are the possible suggestions regarding proposed procedures in implementing life insurance which are based on the Islamic principles in society today. May Allah give us the guidance in understanding the Islamic provisions in the correct manner, and also give us the strength to put them into practice in every aspect of our lives.

Life Insurance Under Islam (Family Takaful) vs. Life Insurance under Common Law

The basic difference between the life insurance under common legal system and a model suggested for Islamic life insurance by the researcher are as follows:

1. A life insurance policy under the conventional system evolves around the element of ‘Riba’, whereas an Islamic model of life insurance policy is totally free from the elements of ‘Riba’, for it is operated based on the principle of ‘al-Mudhrabah financing technique.  

2. In a conventional system of life insurance policy, the nominee (s) is an absolute beneficiary(s). Suffian J. in Re Man bin Mihat gave a verdict that, the nominee(s) Inter Alia in a life insurance policy takes absolutely and exclusively the benefits of the policy. In contrast, the nominee in a life policy under the Islamic model is not an absolute beneficiary(s), but a mere trustee who is in a position to receive the benefit over the policy on behalf of the assured’s heirs, and distribute it among them according to the principle of al-Mirath (inheritance) and Wasiyyah (Bequest). In Karim v. Hanifa the High Court of Karachi ruled out that, the nominee(s) in a life insurance policy is nothing more than a mere agent. The National Council for Muslim Religious Affairs in Malaysia, also issued a Fatwa to the same effect in 1979 that, the nominee(s) in a life insurance is a mere trustee who is supposed to receive the benefit over the policy.

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74. (1965) 2, MLJ, p. 1.
75. (1970) PLD 783.
and distribute it among the heirs of the deceased, according to the principles of *al-Mirath* and *al-Wasiyah*.

3. Idea of a conventional designed life insurance policy is that, if the assured dies at any time before the maturity of the policy, the nominee(s) is entitled to maturity of the policy, the nominee(s) is entitled to recover from the insurer the whole amount agreed in the policy. While, if the assured is still alive upon the expiry of the policy period, he is also entitled for the whole amount agreed in the policy plus the interest, dividends and bonus, subject to the company’s policy. On the contrary, in the paradigm of an Islamic Model of life insurance policy is that, if the assured dies at any time before the policy matures, the beneficiary(s) is entitled from the insurance company to the whole amount of paid premiums, the bonus and dividends according to the company’s policy, a share of profits made over the paid-premiums, plus a donation from the company’s charitable fund according to the financial status of the beneficiary(s) (i.e. if the beneficiary(s) is financially in good condition the amount will be small, but if the beneficiary(s) is financially weak or unstable the amount could be bigger). Such transaction is considered as a mutual cooperation towards the welfare of the helpless people in a society, and is thus in line with the Quranic principle. *Allah*(swt) says to the effect:

“...*Cooperate among yourselves in righteousness and piety...*”

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However, in the case where the assured is still alive upon the expiry of the maturity period, he is entitled from the company the whole amount of paid-premiums, a share of profit made over the paid-premiums according to the principle of ‘*al-Mudharabah*’, bonus and dividends, according to the company’s policy.

4. In the operation of a life insurance policy under the conventional system, the payments for the agents are to be paid out of the assured’s
paid-premiums, whereas under the Islamic model of a life insurance policy, the agents work for the company, and thus, they should be paid by the company itself. This means that, the payment for the agents could include a share of profits made over the paid premiums, plus dividends and bonus according to the company’s policy.

5. With regard to the insurable interest under the conventional system, it is usually vested to the policyholder himself should he be alive upon the expiry of the policy period. However, in the case of the death of the assured within the period, the insurable interest is to be vested to husband and wife, parents or children, the benefactor or beneficiary or servant, company and director, trustee and employee, partners, mortgagor and mortagee.\(^ {77} \)

In contrast, under the Islamic model, the insurable interest is to be vested to the assured himself or to his heirs according to the principles of ‘al-Marath’ and ‘al-Wasiyyah’.

It is very humbly submitted that life insurance under Islam or family takaful is not against virtue or piety. It does not mean that one has insured one’s life. As the central idea of life, insurance under Islam is a financial transaction that relies on the principles of mutual cooperation. It aims to undertake a responsibility towards safeguarding widows, orphans and other dependents of the deceased (assured), from future financial risks, it needs to advocate again that it does not involve the elements of ‘Riba’ but is operated along the lines of the following principles of the ‘al-Mudharabah’ financial technique, while neither clashing with the principles of ‘al-Mirath’ nor with the principles of ‘al-Wasiyah’. Life insurance under Islam the nominee is not an absolute beneficiary but a mere trustee, who is under a duty to obtain benefits of the policy, and distribute them among the heirs of the deceased (assured), according to the principles of ‘al-Mirath’ and ‘al-Wasiyyah’.

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\(^ {77} \) See Khuan, Lee Kam, Life Insurance in Malaysia, life insurance association of Malaysia, Kualalumpur, 1986, p. 63.