

YAQEEN INSTITUTE FOR ISLAMIC RESEARCH

# 40 HADITHS ON SOCIAL JUSTICE

## LECTURE NOTES

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# Chapter 24: Insurance Companies and Vulnerable Citizens

## The Concept of Gharar and Uncertainty in Islam

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Abu Huraira (Allah be pleased with him) reported that Allah's Messenger (ﷺ) forbade a transaction determined by throwing stones, and the type which involves some uncertainty.

[Sahih Muslim]

عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْحَصَاةِ وَعَنْ بَيْعِ الْغُرَرِ

[صحيح مسلم]

### Introduction

- Gharar is uncertainty and most often falls into the discussion of insurance. The concept of lending in Islam falls under charity, not business. The goal in Islam is to end exploitation of the vulnerable. Islam discourages wealth maximization that arises from taking advantage of vulnerable people.
- In a hadith we learn that the Prophet (s) forbade transactions that are determined by the throwing of stones or transactions that involve uncertainty.
- Gharar means deceptive uncertainty. Gharar is an unacceptable level of ambiguity. It's meant to decrease disputes, to prevent people from getting cheated. Gharar means danger, exposure to destruction, excessive risk, deception, and uncertainty. In financial transactions it refers to fraud through uncertainty.
- You might go into it not knowing what you're getting into and it's prohibited. When someone doesn't know what's in store for him at the end of the trade, it's a combination of risk taking and devouring of the property of one party by the other. Investment is different from this. There is going to be risk but there has to be some level of investment from both parties.

### What is Gharar?

- What is gharar? There could be uncertainty in the value of the subject matter. There could be gharar on the time of payment, or on the quantity or quality. There could be uncertainty on its existence (an unborn animal). There could be uncertainty on ownership or availability (you can't sell something you don't own, unless you're certain you can deliver). There's gharar that's acceptable and gharar that's unacceptable. If I'm selling you an iphone but not telling you which model it is, that's impermissible. I have to be as specific as possible.
- Three rules of gharar:
  - The gharar has to be significant for it to be impermissible. If it's slight then it doesn't hinder the validity of the contract.
  - The gharar has to exist in what is contracted itself. If there is uncertainty about an added bonus, that's okay.
  - The contract must not be warranted by a need. The harm in gharar is less than that in riba. Car insurance and health insurance is permissible because you can't afford to get sick in this country without insurance.
- When it comes to unforeseen circumstances, that's when there would be government social security built in. It was the government's responsibility. The islamic mode is based on unity and participation. There is no profit to be made off of this.

### Insurance

- Insurance is permissible if the insurer provides profit shares instead of fixed amounts.
- If you think about the way big insurance companies function today, less than 3% of that which goes to insurance companies comes back to people paying. Companies are profiting off of people's vulnerabilities. It's circulation amongst big companies. For one person to experience financial benefit, another has to experience financial loss. There's the selling of ambiguity. Gharar is pure risk and uncertainty. Riba is usury. If you think about insurance and the way it functions today it's worse than gambling in a way. At best you just receive a replacement of what you put in. It creates an atmosphere of cheating and deception. Insurance companies try not to

pay back anything. They have to scrutinize the claims very closely. They may deny benefits to those that deserve them. They'll be others who cheat the insurance companies and falsify claims. There's lying and cheating on both sides.

- There is also an ambiguity that you don't know what you're getting in return. This creates major social injustices.
- Cooperative insurance is a solution. Since there's no profit there's no exploitation of people. Islam encourages that the consequences of hardship be shared. Insurance features fixed payments for uncertain returns. The uncertainty is the problem. Mutual insurance companies are closer to what's acceptable in the islamic model.
- Warranties are permissible, but a third party offering you a warranty is not permissible.

### Conclusion

- "The Question of Insurance" is a good article to read.
- Also: Hania Masud's "Takaful: An Innovative Approach to Insurance and Islamic Finance."
- And: "Fatwah and its Role in Regulatory Capture." - what is needed is not more Islamization but better use of islamic law to create equitable, just, and fair markets for all stakeholders.