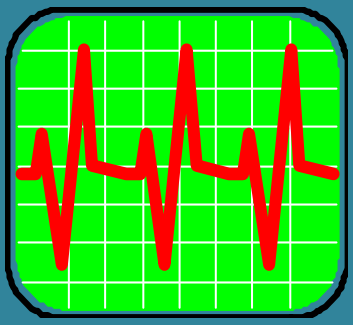
MEDICAL INSURANCE

AND THE SHARIAH



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MENTAL DERANGEMENT CAUSED BY RIBA

"THEY WHO DEVOUR RIBA DO NOT STAND EXCEPT AS ONE WHO HAS BEEN DRIVEN TO INSANITY BY THE TOUCH OF SHAITAAN. THAT IS SO BECAUSE THEY SAY: 'VERILY, TRADE IS LIKE RIBA.' BUT ALLAH HAS MADE LAWFUL TRADE AND MADE HARAAM RIBA."
(Baqarah, Aayat 275)

"ALLAH ELIMINATES RIBA AND INCREASES SADAQAAT. AND, ALLAH DOES NOT LOVE THE CRIMINAL UNBELIEVERS."
(Baqarah, Aayat 276)

Table of Contents

MEDICAL INSURANCE

The term, *Medical Aid,* to describe the prevailing medical schemes is a misnomer. If this term is an appropriate designation for the medical schemes in vogue, then by the same token it will be correct to describe all varieties of insurance as *Aids.* Fire Aid, Theft Aid, Life Aid, Riot Aid and a million other Aids instead of Fire Insurance, etc. will then all be proper designations for the numerous insurance schemes which have been imposed on the dumb masses by the capitalist riba system. Although the variety of insurance schemes is not described as schemes of *Aids* like *Medical Aid,* all schemes of insurance are truly 'Aids' – spiritual Aids. Like the physical variety of *Aids,* the epitome of all venereal diseases, insurance is spiritual *Aids,* a combination of *Riba* (Interest) and *Qimaar* (gambling) in terms of the Shariah.

There is no difference between medical insurance (dubbed medical aid) and all other forms of conventional insurance. A Muslim secular lawyer who believes himself to be an expert of the Four Math-habs, has presented an insipid, incongruent and baseless essay in an abortive attempt to get medical insurance licensed by the Ulama. We propose in this discussion to show the fallacy of his legless and incongruent arguments.

The lawyer who is supposedly a Hanafi, unable to locate even a straw of evidence in the Hanafi, Hambali and Shaafi' Math-habs for his imagined concoction, believes that the Maliki Math-hab offers some scope for his ludicrous theory of permissibility of medical insurance. Unable to find the slightest shred of evidence in the Hanafi Math-hab or in any of the other two Math-habs, the decrepit 'Hanafi' lawyer searched in the darkness in the fields of the Maaliki Math-hab. The manner in which he has presented the basis for his fallacious theory illustrates his total incompetence and lack of understanding of Maaliki Fiqh. In fact, he has made a

ludicrous spectacle of himself by exhibiting his inability to understand even the nature of current medical schemes. Either he is shockingly ignorant of what really a medical scheme is or he is guilty of perpetrating flagrant suppression of the truth by his presentation of a warped concept which explains almost nil of the medical scheme which he endeavours to foist on Muslims.

Firstly, a Hanafi, especially a layman like the lawyer, has absolutely no licence to dabble in the Maaliki Math-hab. In fact he has no latitude for dabbling in even Hanafi Fiqh. Without even a need for perusing his arguments which he delusively believes to be compatible with the Maaliki Math-hab, his contention has to be dismissed on the grounds of the fundamental violation which the Hanafi committed in resorting to another Math-hab for substantiation of a theory which his *nafs* has spawned. Thus, he has absolutely no grounds whatsoever for the *baatil* claim that insurance or medical insurance is permissible.

Be that as it may. We shall, nevertheless, apprehend him on even the 'Maaliki' turf where he has become entangled in a mire of self-deception and confusion.

THE PRINCIPLE OF TABARRU'

According to the Maaliki Math-hab there is a principle known as *Iltizaamut Tabarru',* which means the imposition of a donation/gift/favour as an incumbent obligation on oneself. It is a pledge or a vow or a promise of executing an act of virtue such as a gift, charity, etc., e.g. a person imposes on himself to give a donation to Zaid. Once he has voluntarily imposed on himself the act of charity, it then devolves on him as an obligation which he has to discharge.

Having stumbled on the *Tabarru'* principle in the Maaliki books, the 'Hanafi' lawyer with his short-sighted oblique vision deluded

himself with his imagination which constrained him to theorize the permissibility of Medical 'Aids' – the epitome of all forms of venereal disease – or medical insurance. Having torn this principle totally out of its context, the 'Hanafi' lawyer very clumsily structured his permissibility of medical insurance on the basis of the figments of his self-deception, namely, the Maaliki principle of *Tabarru'* which in his imagination constitutes an incontrovertible basis for the permissibility of medical insurance. Thus, presenting his *nafsaani* opinion, he avers:

"The scheme is based on the principle of compulsory donation according to that which the Maalikiyyah have mentioned, not (on the basis of) a mutual contract of exchange."

He arrived at this position by making arbitrary, self-deceptive assumptions. Thus, he claims that:
1) On the basis of the Maaliki principle (of Tabarru'), the contributions (payments) made by the members of the medical insurance scheme are unilaterally self-imposed acts of incumbent *Tabarru'* (gifts/donation).

2) The contributions (payments) by the members in terms of the rules and regulations of the medical insurance scheme are unilateral impositions – from only one side, namely the members.

3) In the event of calamity/sickness, the benefits provided by the medical insurance scheme are likewise acts of *Tabarru'* in terms of the rules and regulations of the scheme.

4) The contributions by members and the benefits (medicine, medical services, etc.) by the medical insurance scheme are pure gifts *(Tabarru' Mahz).*

5) There is no contract *(Aqd)* between the contributors and the medical insurance scheme, since the whole scheme is based on the principle of pure donation / gift / favour *(Tabarru').*

7) The medical insurance scheme is not a contract of exchange. The contributions made by members are pure gifts, nothing being received in exchange. Similarly, the medical benefits provided by the scheme are pure gifts of love without anything being received in exchange.

8) In terms of the rules and regulations of the medical insurance scheme the medical benefits provided by the scheme are awarded to members without a single condition or stipulation. The medical benefit is a pure gift of love and altruism made by men with philanthropic ideals.

9) Both parties, i.e. the contributor (the one who makes payments to the medical insurance) and the medical insurance scheme, do not have gain/profit as an objective. They do not have any idea of gain since the payments by the contributors are pure, total and perfect donations, while the provision of medical benefits by the insurance company is similarly pure and perfect gifts/donations unencumbered by even a single condition or stipulation.

10) There is absolutely no relationship between the payments by the contributors and the medical benefits provided by the medical insurance company.

Every person who has the slightest or a vague idea of what medical insurance is will understand that not even the dullest donkey will accept any of the aforementioned claims made by the 'Hanafi' lawyer who clumsily labours to walk along two diverging paths (Math-habs). Only an insane person, or a man devoid of intellect (a moron) or a thoroughly dishonest deceit having a

nafsaani agenda will accept the ten averments in the aforegoing synopsis of the *baatil* essay of the 'Hanafi' lawyer who peddles the idea of his 'expertise' in Maaliki Fiqh.

THE RULES OF MEDICAL SCHEMES

Let us now see what the medical scheme itself says. The Model Rules for Medical Schemes registered under the Medical Schemes Act, state among the objects of the scheme:

"To undertake liability, in respect of its members and their dependants, in return for a contribution or premium."

The Council For Medical Schemes states in its explanatory memorandum to the Model Rules:
"Accordingly, reciprocal rights and obligations are observed in this regard……. The business of a medical scheme is defined as follows: '....the business of undertaking ***liability in return for a premium or contribution to make provision for the obtaining of any relevant health service……****"*

The medical scheme states unequivocally that the medical benefits which are provided are *'in return for a contribution or premium'*. Furthermore, there are legally incumbent reciprocal rights and obligations. This totally negates the *Tabarru' Mahz* claim of the 'Hanafi' lawyer.

The members of any medical insurance scheme enter into a contract with the medical insurance company with only one motive, viz., the acquisition of medical benefits in the event of indisposition. The idea of *Tabarru'* or donation or gift or charity is furthest from the minds of the members and those who operate the medical insurance scheme. As mentioned earlier, not even the dullest donkey accepts that the payments are donations by the

members, and the medical benefits are gifts of love made by the medical insurance company.

It is downright stupid to expect people to believe that there is absolutely no relationship between the paying members and the medical insurance company which provides medical benefits in the event of sickness. Only *compound ignorance* constrains a man to state with audacity and perversity that the members of a medical scheme are total strangers to the medical insurance company, there being no relationship between the two parties; that the members make occasional donation out of the blue, expecting nothing in return; that the medical benefits are gifts of love made without consideration of any contributions, and that there exists no relationship between the parties of the contract.

It truly boggles the mind and staggers the imagination to think that a secular lawyer has sunk to such a low ebb of intellectual density and incapacity that he brazenly denies the existence of a contract of exchange *(Aqd-e-Mu'aawadhah)* between the paying members and the medical insurance company. It is totally unexpected of a lawyer to fritter away and offer absolute twaddle as juridical substantiation for the boggle of *tabarru'* which he has deceptively tendered to justify the haraam, *riba-qimaar* medical insurance contract. He compounds the ludicrousness of his fallacious arguments with his naked denial of the existence of an incumbent contract entered into voluntarily by the parties.

Although he accepts the capitalist secular concept of the medical scheme being a 'legal entity' or a legal donkey having contractual powers, rights and obligations – a stupid assumption on which he basis his entire argument in favour of medical insurance – he conveniently casts a blind eye on the binding legal contract between the paying members and the legal donkey, which is an incumbent legal relationship which sustains the medical scheme. His ridiculous denial of the existence of a contract exhibits the

degree of irrationality which he has adopted in the crave to justify medical insurance and to plead for the issuance of a Shar'i licence of permissibility.

The contributor to a medical insurance scheme makes payments exclusively in expectation of medical benefits should he/she be overtaken by a calamity of sickness in the future. In lieu of his contributions, the medical insurance company is legally bound to honour its commitment of providing medical benefits in terms of the conditions and stipulations of the mutual contract.

It is only a mule-head which will deny that the medical benefits are in exchange of the monthly payments / premiums, and the latter are made by contributors solely for the purpose of gaining the former. The claim that the monthly payments and the medical benefits given in exchange are acts of pure love and donation is arrant nonsense, the effect of blind stupidity.

SELF-DELUSION

The 'Hanafi' lawyer advises with incredible audacity that we should legalize medical insurance by a trick of self-deception in which it should be imagined that the insurance premiums are pure acts of *Tabarru'* – gifts of love and donation, philanthropically contributed without stipulation of any gain or profit in lieu. He has invented a new bizarre principle for legalization of haraam, namely, *imagination.* Haraam may be transformed into halaal on the basis of this 'principle' of self-delusion.

On the basis of this absurd 'principle', it will be valid in the *nafsaani math-hab* of the lawyer to legalize all haraam insurance by simply telling yourself that the premiums you are paying are pure donations or gifts of love, and likewise are the monetary and other benefits/payments which insurance companies reluctantly

make when calamity strikes the insured person. On the basis of the 'principle' of imagination, zina will be transformed into lawful sexual indulgence by imagining that the woman with whom fornication is being committed is one's wife. On the basis of this absurd satanic 'principle' of imagination, the proceeds of gambling will be 'halaal' by imagining it to be 'profit'. On the basis of the lawyer's 'principle' of imagination, every prohibition of the Shariah could be transformed into a 'permissibility'. The insanity or at least the mental derangement of the person who spawns such a device of Satanism should be self-evident.

CONDITIONS, RULES AND REGULATIONS OF THE CONTRACT

For those unacquainted with the concept of medical insurance, we quote at random from the model contract of such a scheme. These random citations are merely to illustrate the existence of a binding contract between members and the medical insurance company which undertakes to provide medical benefits *in lieu* of the regular monetary payments of its members should the calamity of sickness strike.

BINDING

* "*Every member will, on admission to membership, receive a detailed summary of these rules which shall include contributions, benefits, limitations, the member's rights and obligations. Members and any person who claims any benefit under these Rules or whose claim is derived from a person so claiming are bound by these Rules as amended from time to time.*"

MEMBERSHIP

** "Every member shall be furnished with a membership card, containing such particulars as may be prescribed. The card must be exhibited to the supplier of a service on request. It remains the property of the Scheme on termination of membership."*

RIGHTS OF THE CONTRACT

** "The Scheme shall not be held liable if a member's rights are prejudiced or forfeited as a result of the member's neglecting to comply with the requirements of this rule."*

** "A member whose employment is terminated for reasons related to the operational requirements of the employer may, in the discretion of the Board, be allowed continued membership for a period of up to six months after termination of employment, provided that if such member should obtain alternative employment, his/her membership shall terminate with immediate effect."*

** "All rights to benefits cease after the last day of membership."*

PAYMENTS

** "If a member fails to pay amounts due to the Scheme, his/her membership may be terminated as provided in these rules."*

**** "The total monthly contributions payable to the Scheme by or in respect of a member are as stipulated in Annexure A. It shall be the responsibility of the member to notify the Scheme of changes in income that may necessitate a change in contribution in terms of Annexure A hereto."***

By what stretch of imagination, Islamic or secular logic could it be claimed that these contributions are unilateral and voluntary donations made without *Aqd-e-Mu'aawadhah* (contract of exchange) when a host of rules and regulations governs the payments? The items of mutual exchange subject to a well-defined haraam contract are clearly specified. The mutual rights and obligations devolving on the parties in terms of the contract are the necessary consequences of a mutual monetary contract of exchange. Even Shaitaan mocks the averment that the monthly payments and the medical benefits in exchange for these contributions are *Tabarru' Mahz* (pure donations and gifts of love) which do not arise from a monetary contract governed by a host of rules and regulations, in the same way as he (Shaitaan) had mocked Fir'oun when he attributed godhood to himself.

SUSPENSION OF MEDICAL BENEFIT

**** "Contributions shall be due monthly in advance and be payable by not later than the 3rd day of each month. Where contributions or any other debt owing to the scheme, have not been paid within thirty days of the due date, the Scheme shall have the right --***

i) to suspend all benefit payments in respect of claims which arose during the period of default; (ii) to give the member written notice that if contributions or such other debts are not paid within 21 days of posting of such notice, membership may be cancelled."

The contract stipulates a due date for payments – the so-called gifts and donations of love) on which hinges the validity and subsistence of the haraam Riba-Qimaar contract. Furthermore, the medical insurance company regards all future payments as debt owing to it. It has the legal right of claiming the contributions and to debit the provision of medical benefit which is the *only* objective of the haraam scheme.

How does a donation or an intended gift of love become a debt on the 'donor'? But for the *juhhaal* who are so much enamoured with the capitalist riba system, the transformation is instantaneous. Simply employ the 'principle' of imagination. Just imagine that you are making a voluntary gift *(Hadyah/hibah)* of *muhabbat* (love) to the insurance company whose love, affection and awe have overwhelmed your heart

INTEREST

** "In the event that payments are brought up to date, and provided membership has not been cancelled in accordance with rule 13.2.2, benefits shall be reinstated without any break in continuity subject to the right of the Scheme to levy a reasonable fee to cover any expenses associated with the default and to recover interest on the arrear amount at the prime overdraft rate of the Scheme's bankers. If such payments are not brought up to date, no benefits shall be due to the member from the date of default and any such benefit paid will be recovered by the Scheme."*

Default in payments by the member entitles the insurance company in terms of the mutual contract of exchange to demand the 'debt' and to charge interest as well. Does the Maaliki Math-hab permit levying interest on donations? Does the Maaliki Math-hab empower the 'Hanafi' lawyer who presents his absurdity of the *Tabarru'* principle to legalize the denial of medical benefits which the devil's insurance company has supposedly imposed on itself as a pure donation without the encumbrance of a monetary contract of exchange? Just how does the *prime overdraft rate of interest* blend with the Maaliki principle of *Iltizaamut Tabarru'*? And what is the justification in terms of the Maaliki Math-hab or any other Math-hab which permits the medical insurance company to cancel its self-imposed incumbency of providing the *tabarru'* of medical benefits to the member?

Any moron will understand that in terms of the rules of the mutual contract, the medical insurance company has the right to deny medical benefits to the ailing member purely on the basis of him having defaulted in his monthly payments which the 'Hanafi' lawyer wishes people to believe are gifts of love.

EMPLOYER'S RELATIONSHIP

* *"The liability of the employer towards the Scheme is limited to any amounts payable in terms of any agreement between the employer and the Scheme."*

The insurance Scheme further imposes liability on the employer of members contracted to the medical insurance company. The contract entitles the insurance company to extract payment from the employer, and to deny medical aid to the dying member despite it (the company) having pledged to uphold the supposedly self-imposed 'donation'. In the light of the lawyer's convoluted understanding of the *Iltizaam* principle of the Maaliki Math-hab, the logical consequence is that the member has a legal right to demand medical benefits from the insurance company even if he does not make any payments because the company has undertaken the responsibility of making donations of love to him/her. Shaitaan's Insurance Company may therefore not renege.

The *Iltizaam* principle makes the provision of benefits binding. But is there reality to this fiction spawned by a deranged mind hallucinating in self-imposed delusion? It is clearer than daylight that the reciprocal assumption of liabilities (contributions and medical benefits) are on the basis of a binding relationship in terms of a binding contract, not on the basis of a vow/pledge, in the same way as payment of interest is legally binding on a bank-loan and prostitution-fees legally binding for conducting an adulterous relationship with a licensed prostitute. These payments are not the

effects of *Tabarru'* –donations of love – but are the haraam consequences of haraam relationships spawned by haraam contracts.

REFUND

* *"Upon the death of the member, the balance due to the member will be transferred to his/her dependants who continue membership of the Scheme or paid into his/her estate in the absence of such dependants."*

A member's contributions are held in a personal medical savings account (PMSA). The insurance scheme allocates to the PMSA an amount which does not exceed 25% of the gross contributions made by the member. If on the death of the member there is a credit balance in his PMSA, it is transferred to his estate. The contributions made by the member are not regarded as donations to the Scheme. Despite the Scheme being a legal donkey in terms of the law (described as a 'legal person' by the 'Hanafi' lawyer), it does not become the owner of the funds, hence any credit amount in the PMSA is refunded to the member's estate for distribution to his heirs.

While the 'Hanafi' lawyer claims that the contributor makes a donation which becomes the property of the medical scheme, the latter states with clarity in its constitution/rules and regulations:
* *Should a member terminate membership of the Scheme and not be admitted as a member of another medical scheme or be admitted to membership of another medical scheme or option which does not provide for a PMSA, the balance due to the member must be refunded to the member not later than 4 months after termination of membership, and subject to applicable taxation laws."*

Clearly, the contributions are not regarded as donations by the parties. If a member terminates his membership, he is entitled to a refund if there is a credit balance in his savings account in terms of the rules of the medical insurance contract. Thus the *tamalluk* and *tamleek* contention which the 'Hanafi' lawyer has postulated for the donkey is unequivocally rebutted by the donkey itself. The refund is evidence for retention of ownership by the members.

SAVINGS AND DEBT OF MEMBERS

* *"On termination of membership, the funds in the membership's PMSA may be used to offset any debt owed by the member including outstanding contributions."*

This stipulation of the mutual *Aqd-e-Mu'aawadhah* (Contract of Exchange) negates the idea of the member's payments being donations or gifts of love. The contributions are held as savings and any debt which the member owes the Scheme including outstanding contributions will be deducted and the balance transferred to the member's estate or to the member or to the other medical scheme he has joined.

THE INTER-RELATIONSHIP OF THE PARTIES

The 'Hanafi' lawyer fishing and groping in the darkness in Maaliki waters, emphatically claims that there is no relationship whatsoever between the contributors and the medical insurance scheme. Although there is really no need to produce evidence for this ridiculous absurdity, we shall nevertheless cite from the Memorandum of the Council of Medical Schemes.

LEGAL RELATIONSHIP

* *"Members furthermore have an obligation to pay the relevant contribution which entitle them to have access to the benefits and rights flowing from the* ***legal relationship*** *with the scheme."*

The payments made by the member in terms of the mutual contract of exchange confer on him a number of rights in addition to the primary claim of medical benefits in the event of sickness. There is a legally binding relationship between the contributing members and the medical insurance scheme. To aver that there is no relationship between the payments of the members and the medical benefits acquired from the medical insurance scheme is a travesty of intelligence. The man makes a mockery of his own intelligence in his absurd endeavour to convince people that the payments of members are not for future medical benefits, and that the medical benefits are not in lieu of the contributions.

The binding and imperative legal relationship between members and the medical insurance scheme is stated with great clarity in the following statement of the Council For Medical Schemes:

"The model rules serve as a guide to stakeholders for complying with the Act, regulations framed there under, common law provisions, sound corporate governance practices and various internal policy decisions which provide clarity on matters affecting the relationship between the scheme and the member in a practical manner."

This is indeed a far, very far cry from the imagined non-existence of any relationship between the parties in a medical scheme. Further clarifying the relationship, it is said: *"The main objective is to provide a consistent sequence of logical rules which govern the* ***legal relationship between the medical scheme and its members.****"*

CONTRIBUTIONS

While a donation is made freely and voluntarily by a donor without outside determination and imposition, the amount of the payments of members are prescribed and imposed by the Board of the medical insurance scheme. Confirming this fact, the Council of Medical Schemes states:

* *"Contributions may only be determined on the basis of income or number of dependants of the member whilst waiting periods and late joiner penalties are the only measures applied to avoid adverse selection……."*

The contributor is supposed to be a donor in the ludicrous theory of the lawyer. However, this imagined donor has no right to 'donate' whatever he wishes. The amount of money and the continuity of contributions are decided and imposed by the operators of the medical scheme. The contributor does not impose the amount, etc. on himself. The other party prescribes, determines and imposes. Only the insurance company makes the rules and regulations which the member has to incumbently accept.

THE CONTRACT

Although the lawyer denies the existence of a contract between contributors and the medical insurance company and intransigently asserts that there are absolutely no conditions to be observed, the Council For Medical Schemes, states:

* *"The nature of the **contract** between the Scheme and its members ….."*

Only an ignoramus will make the preposterous claim that there is no contract between the parties, and that the payments of members are acts of pure donation, and so are the medical benefits provided

by the Scheme. Plodding the path of *jahaalat*, the lawyer avers that:

a) The medical aid scheme is based on pure *Tabarru'* .
b) There is no exchange transaction between the parties.
c) There are totally no conditions and stipulations governing the provision of medical benefit to contributors.
d) There is absolutely no relationship between the imagined 'donation' of the contributor and the imagined 'donation' of the medical insurance conglomerate.

The total denial of the existence of an *Aqd-e-Mu'aawadhah* (a contract of exchange) illustrates the compound ignorance of the one who labours to legalize medical insurance by an abortive mismanipulation of the Maaliki Math-hab. This absurd denial of the reality of the existence of the incontrovertible facts of contract, relationship and payment between two parties demonstrates the irrationality of the lawyer. The notion he seeks to foist is a canard to hoodwink simpletons and those of shallow knowledge in both the Deeni and secular fields. The denial of the existence of a binding legal contract between the parties truly strains credulity. The notion which is being peddled is not only fatally flawed, it is in fact a conspicuous falsity which the lawyer hoped would go by undetected.

THE MEDICAL INSURANCE SCHEME

The 'Hanafi' lawyer in his essay, obsequiously labouring to promote the *baatil* and corrupt principles of capitalist economics, has failed to present even a decent outline of a medical insurance scheme, leave alone a detailed dissertation which is necessary for enabling an unacquainted Mufti to issue a correct Shar'i ruling. Based on the grossly deficient explanation, the respected Mufti Saheb of the Springs Daarul Uloom issued a *fatwa* which is

completely at variance with the lofty pedestal of *Ifta'*. Insha'Allah, we shall discuss his fatwa further on.

The lawyer has presented a smattering of detail regarding the medical insurance scheme while the rules and regulations governing the insurance scheme constitute a bulky document. Without being versed on an issue, it is impossible for a Mufti to formulate a fatwa merely on the basis of the paucity of information which the deficient grossly deficient 'research' of the lawyer offers.

THE LEGAL DONKEY

In order to hoodwink learned men with superficial knowledge and shallow comprehension, the lawyer has presented a *legal donkey* as the primary basis for the 'validity' and 'permissibility' of the medical insurance scheme. Without the phantom of the legal donkey, the whole *baatil* essay will not even take off by a kick-start. It will crumble at the very outset. It was therefore deemed imperative to construct the medical insurance concept on the basis of the legal donkey bogle which the lawyer terms a 'legal entity' or a 'legal person'. Denuding himself of Islamic rationality and lapsing into self-delusion, he arbitrarily, without the slightest Shar'i substantiation, presents the phantom of a 'legal' donkey on which he structures his entire fallacy, then offers it (his primary basis of the legal donkey) as if it is an axiomatic principle of Islamic Jurisprudence.

For presenting his utterly baseless case of permissibility, the lawyer had no option but to introduce the fiction of the 'legal person', hereinafter called legal donkey. With regard to the concept of the legal donkey vis-à-vis the medical insurance scheme, the lawyer avers that the latter is a 'legal person', and as such has contractual capacity, can own and can grant ownership to others.

Every simple minded Muslim is aware that in terms of the Shariah that only sane adults – real persons – persons with brains intact, blood, flesh and bones – are empowered to contract, transact, become owners and make others owners. A piece of paper, a stone, a donkey, a minor and an insane person despite having *Rooh* (soul), and despite being human beings, have no power of contractual capacity. These items and persons cannot assume obligations. They cannot contract.

While the capitalist riba system has invented the fiction of the 'legal entity' which in the imagination of the riba-drunk capitalists can contract and transact like real human beings, the Shariah does not recognize such a weird donkey. Islamically it is absolutely bizarre to present a concept of a piece of paper which the 'legal entity' is, as a being with contractual capacity, rights, duties and obligations.

The colonization of Muslim brains by the western intellectual and political masters has corrupted the mental ability of Muslims. Thus, all practices which are spawned by the west are obsequiously and automatically deemed by venal Muslim modernists to be products of enlightenment which have to be incumbently adopted and emulated. Not an eyebrow is raised in even Ulama circles of this era when the shaitaani principles and practices of the capitalist economic system are offered to the community.

Muslims, even Ulama, are unable to comprehend, because of self-imposed intellectual blindness, that the Qur'aan brands these principles as acts of Satanism and their originators as men whose brains have been satanically deranged on account of their lust for *Riba.* Stating this satanic derangement of the brains, the Qur'aan declares: *"Those who devour riba, do not stand except as one who*

has been driven to insanity by the touch (spell) of Shaitaan." – Baqarah, Aayat 275

There is therefore no wonder, no surprise that people who are supposed to be intelligent and enlightened inventing a phantom donkey and ascribing legality, human rights, obligations and contractual capacity to it. What is surprising, shocking and lamentable is the acceptance of this ludicrous fiction by even Muftis of this era. Truly, they all are participants in a pantomime of satanically deranged intelligence.

There is no Math-hab of Islam which recognizes this fallacy of the riba-capitalists. Since capitalists, according to the Qur'aan Majeed, are mentally deranged, having been driven to near insanity by the touch of Shaitaan, (Surah Baqarah, Aayat 275), they are unable to comprehend the absurdity, stupidity and weirdness of their fictitious legal donkey which the 'Hanafi' lawyer seeks to foist among Muslims.

The lawyer in presenting his argument in favour of medical insurance, states as the 'first element': "According to law, the medical scheme is regarded as a legal person. Therefore, it (the legal donkey) can own and grant ownership while it has legal obligations. Among its (the legal donkey's) duties is that it awards medical benefit to the participants in accordance with (its – the legal donkey's) rules and regulations.

Having tendered the postulate of the legal donkey, the lawyer summarily proceeds to erect the structure of his lopsided syllogism to 'prove' the permissibility of medical insurance. He dwells in the misconception that everyone is dumb and stupid to accept the premises of his syllogism, which he arbitrarily doled out without furnishing the slightest shred of Shar'i evidence for the validity of his very first and major premise in his syllogism. His major

premise of the validity of the fictitious donkey who can own and grant ownership and have contractual capacity is rejected with contempt.

Before he can proceed any further with his argument in favour of permissibility, it incumbently devolves on him to establish the validity of his legal donkey which all Math-habs of the Shariah, with zero exceptions, outrightly reject.

We have explained the Shar'i invalidity of the capitalist legal donkey concept in our book, *The Concept of Limited Liability.* Write to us for a copy of this book. After presenting his bizarre and fallacious premises of the legal donkey, the lawyer proceeds with his argument as if the legal donkey is a recognized Shar'i principle constituting a valid premises in a syllogism to prove a contention. But, since this very first and major premise of the lawyer is totally rejected by the Shariah, his entire argument falls flat from the very inception.

The lawyer's contention is that the members of a medical insurance scheme are donors, and their contributions are pure gifts of love unencumbered by any condition, restriction or stipulation whatsoever. We have already shown that this contention is bizarre bunkum excreted by a riba-intoxicated brain enamoured with the kuffaar capitalist cult. Nevertheless, for the purpose of pursuing this argument to the end of demolition, we shall momentarily assume that the contributions are 'pure donations'. While this argument has no validity in all four Math-habs, we shall pursue it in terms of the Maaliki Math-hab since the lawyer has hallucinated that this Math-hab condones the weird capitalist drivel for which he displays a peculiar penchant.

If we are to assume the payments of the contributors to be *Tabarru' Mahz* (pure donation or *hibah),* then it is imperative for

the validity of the donation in terms of the Maaliki Math-hab that the *mauhub lahu* (the recipient of the donation – the donee) be a being who has the capacity of ownership. The being to whom the gift is made must be able to become the owner of the gifted item. Thus, a gift made to even a real donkey is not valid. To a greater degree will the gift be invalid if it is made to a fictitious donkey or the capitalist 'legal person' who is a phantom devoid of real human existence. A gift cannot be made to the wind or to the sun or to a dead person. These objects lack ownership capacity.

Since the legal fictitious donkey is not a living and a real human being, the supposed donations made by the contributors to the medical insurance scheme (the legal donkey) are not valid. The 'Hanafi' lawyer clumsily and stupidly attempts to overcome this insoluble problem by imagining the legal donkey to be a real human being, hence he arbitrarily claims that the legal donkey has the power to become an owner and to make others owners. But neither the Maaliki Math-hab nor any other Math-hab upholds the ridiculous notion of the legal donkey. The claim of the contributions being gifts is therefore palpably baseless. A man scuppers all semblance of intelligence with donkey claims, especially if the donkey happens to be the illegitimate offspring of satanically inspired brains.

WHAT IS A DONATION?

Hibah (a gift or donation) according to the Maaliki Math-hab is: *"To make a human being the owner of property without receiving anything in return."* If the item is given in consideration of receiving something in return, then according to the Maaliki Math-hab, the transaction becomes a sale. It will not be an act of *Tabarru'.*

Every sane person understands that the sole objective of members who make contributions to a medical scheme is to receive in return medical benefits when sickness befalls them. The constitution of the medical aid scheme categorically declares this objective. The members are fully cognizant of the 'return', and so are the operators of the Scheme, and so is the whole world. Only a moron, due to the density of his brains and viscosity of his intellectual perception, may attach credence to the absurdity that members are making gifts and are not expecting anything in return for their so-called 'donations of love'.

Neither the payments of members nor the medical benefits granted by the medical insurance entity come within the scope of the definition of any class of *Tabarru-aat* (gift, donation, sadqah, etc.).

The intentions of the parties in the medical insurance relationship, the understanding of the parties, the scores of rules and regulations governing the relationship, and the mutual exchange of payments and medical benefits, are the basis on which the whole scheme is structured, and the fiscal control and supervision makes balderdash of the 'donation' claim. If hallucination has the potential of transforming a haraam *riba-qimaar* fee (the contribution of the member) and the *riba-qimaar* award (the medical benefit) into donations, then by the same token hallucination and imagination can transform interest into profit, a prostitute into a wife, liquor into milk, the proceeds of gambling into profit, and all haraam activities into halaal ventures. This is precisely the understanding of those whom the Qur'aan says are *'driven to madness by the touch of shaitaan'.*

The lawyer with his self-contradictions negates his own claim of *tabarru'.* While he states unequivocally that the payments and the medical benefits are *tabarr-aat,* the one having no relationship

with the other, he incongruently avers: *"From among the obligations (of the legal donkey) is that it gives medical benefit to the participants (the paying members) in accordance with the rules and regulations (which the legal donkey has imposed on itself)."*

Despite the supposed or imagined non-relationship between the parties of the legal donkey, the lawyer is constrained to concede that among the legal obligations devolving on the legal donkey is that it (the fictitious donkey) awards medical benefits to the paying members, and such benefits will not be in terms of the Shariah, but will be in accordance with the rules and regulations which the government has imposed on the legal donkey. Obviously, neither payments by members nor awards of medical benefit by the legal donkey can be in terms of the Shariah since both these items of exchange in the mutual contract *(Aqd-e-Mu'aawadhah)* are tendered in haraam, baatil riba and qimaar ways.

When someone is given a donation/gift, he becomes the owner thereof and is free to utilize it as he deems fit. There is no legal obligation on the donee to utilize the donation in a specific way and for a specific person specified by someone other than the donee himself. The lawyer contends that the payments of the members are pure *Tabarr-aat* and the legal donkey has the ability to assume ownership *(tamalluk)* and even bestow ownership *(tamleek).* But the law constrains the legal donkey to channel the contributions in a specific manner and avenue. Restraints are imposed from the outside on the donkey.

ABSOLUTE NEGATION OF TABARRU'

The arguments presented by the lawyer illustrate his lack of understanding of the Shar'i concept of *Tabarru',* and to a greater extent display his befogged comprehension of Maaliki principles.

While he asserts that the payments made by members are pure donations of love, he contradicts himself with his averment:

"In the state of suspension or abstention from making payments (to the donkey) by the member on the agreed due dates, the Scheme (i.e. the hallucinatory donkey) has the right to cancel the membership (of the contributor)."

Note the following in congruencies stemming from this right conferred to the donkey:

* The phantom donkey is empowered by law to renege from his self-imposed obligation of providing donations to Zaid, Bakr and Amr if these latter three hallucinatory 'donors' either fail to pay on due date or terminate their payments. On which principle of the Maaliki Math-hab is the donkey allowed to withhold making donations of medical benefits to the three non-paying members? In terms of the claim of the lawyer, the Maaliki Math-hab permits Zaid, Amr and Bakr to institute legal action to compel the donkey to grant them the donations which it (the donkey) has imposed on itself as an incumbent obligation. But, the capitalist law gives the donkey the right to terminate its 'donations' to members if there is an interruption or cessation of the payments in lieu of the expected 'donations' by the donkey.

* In addition to withholding of donations by the donkey being counter to the Maaliki principle of *Iltizaamut Tabarru'*, it also confirms that there is a binding relationship between the payments of members and the uncertain future medical benefits, as well as a relationship of reciprocal rights and obligations between the donkey and its members. Termination of the mutual relationship leads to cancellation of the supposedly self-imposed *Tabarru'* in terms of the rules and regulations of the donkey's scheme.

* *Tabarru-aat* are not encumbered with membership of an organization, least of all if the entity is a non-existing donkey spawned by hallucination. But in order to qualify for the imagined 'gifts' which the donkey may make in future, depending on the incidence of calamity and misfortune, the contributor has to maintain a perpetual relationship with the donkey, and there has to be continuity in his payments to the donkey. Which principle of the Maaliki Math-hab requires the donor to have a perpetual monetary relationship in which he is required to sustain continuity of payments to the donee to enable the latter to discharge its obligation of self-imposed *Tabarru'* ?

In the Maaliki principle of *Iltizaam* (self-imposition) an entangling alliance which produces gain is not a requisite whereas the relationship between a medical scheme and its members is the fundamental basis of this insurance system. The conventional medical insurance scheme cannot come into being without this imperative relationship. On the contrary, the act of *Iltizaamut Tabarru'* according to the Maaliki Math-hab is a one-sided, unilateral self-imposition by a living, sane, adult human being, not by a fiction spawned by hallucination.

* The existence of a binding relationship which the lawyer stupidly denies, is conceded in this self-contradictory affirmation.

* Cancellation of membership in the wake of payment default by a member, with its necessary corollary of denial of the 'pledged' medical benefit is resounding evidence for the contention that the benefit provided by the medical insurance scheme is not *Tabarru'* as is absurdly claimed, but is the consequence of a contract of reciprocal rights and obligations, and is forthcoming solely in return of a monetary payment which assigns this scheme to the *Mu'aawadhah* category in which the fundamental element is bilateral exchange.

DOES A CONTRACT EXIST?

Brazenly, irrationally and in conflict with reality and fact, peddling a glaring falsity, the lawyer states: *"Since this venture is based on the principle of pure favour (donation, gift, kindness) – Tabarru' Mahz – this scheme is permissible because of the non-existence of a contract between the two parties…."*

It has been shown with clarity that the medical scheme cannot exist without a contract between members and the donkey fiction. If there is no contract with members, the medical insurance scheme is inoperable. The conspicuous reality known to every Tom, Dick and Harry is that mutual contract is a bulky document with scores of reciprocal rights and obligations which are legally binding on the parties. Infringement of the rules of the contract has real and legal consequences. The attempt to categorize this insurance contract as *Tabarru' Mahz* is ludicrous in the extreme and displays the compound ignorance of the one who denies reality and postulates falsity as fact.

The attempt to deny the self-evident reality of the existence of a legally binding contract is truly venal. In fact, it is flagitious in both Islamic and secular law. There is no need to labour this point of palpable nonsense tendered by the lawyer.

OWNERSHIP OF THE FUNDS

Peddling another stupidity, the lawyer avers: *"The contributors in this scheme do not strive for profit, and their contributions are regarded as absolute gifts without any condition or stipulation, hence ownership (of the contributors) thereof (i.e. of the contributions) is eliminated, and transferred to the ownership of the medical scheme according to the law and the Shariah."*

While the kuffaar capitalist law does uphold the right of ownership of a legal donkey (the so-called legal entity), it does not regard the contributions as 'absolute donations'. The payments are categorically stated in the donkey's constitution to be 'in return' for future medical benefits. The lawyer has failed in his comprehension of even the nature and attributes of the medical legal donkey, hence he proclaims the drivel of 'absolute donations bereft of all conditions'.

The medical scheme holds in trust the contributions of the members and augments these with interest. The Board of the legal donkey consists of 'trustees', and the funds are held in savings accounts. On termination of membership or death of a member, the money in the savings account held in the name of the member is refunded. The scheme or the fictitious donkey does not in reality become owner of the contributions as claimed by the lawyer regardless of what the creators of the legal fiction assert.

As far as the Shariah is concerned, the lawyer's claim is absolutely preposterous and false. There is no concept of ownership for a donkey in the Shariah of any Math-hab. It is palpably false to claim that the contributions are transferred into the ownership of the donkey in terms of the Shariah.

Both Islamic Law (the Shariah) and secular law which gave birth to its illegitimate donkey deny the ownership claim, hence the fallacy of the contributions and medical benefits being donations is glaringly evident.

THE LAWYER'S PROBLEM

The secular lawyer's rapturous obsession with capitalism has created in him an inordinate craving for gaining Islamic accommodation for the riba mechanisms, schemes and systems of the kuffaar capitalist system. It has thus been observed that his

penchant is to make a haphazard, deficient study of the *kutub* of the Shariah, especially of Maaliki books, on the basis of his defective expertise, in his quest for discovering some grounds for permissibility for the haraam capitalist systems. His objective is not to scale the practice on the standard of the Shariah, for he lacks that expertise, *taufeeq* and even the motive. On the contrary, after having selected a scheme which he desires to promote, he clumsily browses through the *kutub* in the hope of stumbling on some straw which may possibly assist him to sustain the haraam act of his desire.

He has presently selected medical insurance for promotion. In his search for Shar'i proofs to vindicate his hallucinated 'permissibility' of medical insurance, he stumbled on the Maaliki principle of *Iltizaam.* In fact he gleaned it from one of the works of Mufti Taqi Saheb. While he has remembered this principle, he has conveniently or ignorantly overlooked the manner and conditions for the validity of this principle's operation. He extracts the principle from its substratum, encumbers it with a host of capitalist riba, faasid and baatil conditions, rules and regulations, then deludes himself into believing that he has sustained the haraam capitalist scheme which is untenable in terms of all Math-habs.

The *Iltizaam* principle according to the Maaliki Math-hab, is a simple issue unencumbered by the plethora of corrupt stipulations which constitutes the rules of a medical insurance scheme. According to this principle, if a man imposes on himself an obligation to give Sadqah, for example, then he is required to honour that pledge which he has made with Allah Ta'ala. In some cases, an Islamic court can compel him to honour his pledge.

In so far as honouring pledges, vows and oaths, there is consensus of all Math-habs on incumbency. In other words it is *Waajib* to honour vows and pledges. However, the difference

according to the Maaliki Math-hab is that in some cases the pledge/promise can be legally enforced, while according to the other Math-habs, a promise creates moral consequences. Despite being *Waajib*, it is not legally enforceable. This is the only difference. Whether a promise can be enforced legally or not, is of small or no concern to a true Muslim. If a pledge cannot be legally enforced, it does not detract from its importance and from the villainy of dishonouring the promise. In all cases it may not be dishonoured without valid reason.

Let us revert to the Maaliki principle of *Iltizaam*. The lawyer having seen, read or heard about its existence, imagined in it a basis for justifying haraam riba-qimaar medical insurance. He dwells in the colossal deception of the operation of this principle under the oppressive yolk of a plethora of haraam capitalist conditions. This principle cannot flourish or operate in a substratum cluttered with factors which in entirety expunge and eliminate it.

CONVOLUTING THE MAALIKI PRINCIPLE

In another audacious and palpably false claim, the lawyer arbitrarily claims:

"On the basis of the Maaliki principle payment of the contributions by the contributors according to the rules (of the donkey) is a (self) imposition of a donation because it is from one side (i.e. by the members without a contract of exchange)."

This stupidity and absurdity have already been exposed and neutralized. The lawyer, while making his baseless claim, presents not a shred of evidence in terms of the Maaliki Math-hab to substantiate the drivel he has alleged. He arbitrarily and ludicrously claims that there is no contract and that the contributions are gifts of love motivated by philanthropic ideals.

But this is arrant nonsense. According to the Maaliki Math-hab, the relationship is a plain *Aqd-e-Mu'aawadhah* (contract of exchange) which is haraam due to the numerous haraam, baatil, and faasid conditions which constitute the bones, blood and flesh of the donkey-scheme.

None of the parties has imposed on himself/herself gifts of love. It is a blatant lie to make this claim. The payments by members and the medical benefits by the insurance company are the effects of mutual exchange. The Maaliki Math-hab defines *Hibah* (donation/gift): *"Tamleek without anything in exchange."* That is, an item is given to someone without receiving anything in return. In fact, if *thawaab* (reward in the Aakhirah) is expected, then the gift will be Sadqah.

The Maaliki Math-hab, and all other Math-habs, stipulate that the *Mauhoob lahu* (the one to whom the gift is made) should be qualified for *Tamleek***,** i.e. be able to assume ownership. Only a human being can assume ownership. Only a human being can be made an owner of something, not a stone nor a donkey nor a piece of paper such as a document which is the legal entity of the capitalist system. A legal entity is a fiction which the Shariah does not accept. *Tamalluk* (assuming ownership) and *Tamleek* (making someone else the owner) cannot be ascribed to a donkey or to the legal entity of the capitalist system. Thus, a 'legal entity' (the donkey) can neither own nor grant ownership to anyone. The contention of the lawyer is therefore manifestly absurd drivel.

The mas'alah of *Iltizaam* which the lawyer has made the fundamental basis for his corrupt view of permissibility of the riba-qimaar medical insurance, is a simple act of charity which a man imposes on himself. There is no bulky constitution cluttered with corrupt stipulations encumbering the vow / pledge or self-imposition of the charitable act. For example, a man vows to give

R1,000 to Zaid. He is obliged to honour his vow and give Zaid the R1,000. There is nothing he gains in return from Zaid. There is no plethora of *faasid* conditions to observe. Zaid is not obliged to reciprocate in any way whatsoever to gain the promised R1,000. There is absolutely no semblance of the medical insurance with this type of simple vow by means of which someone assumes an obligation.

There is no scope whatsoever in the Maaliki Math-hab or in any Math-hab for permissibility of medical insurance in its present form. The lawyer's entire basis is corrupt and baseless. His argument of *Tabarru'* is absurd and devoid of Shar'i substance. In medical insurance there is no act of *Tabarru'*, neither by the members who pay contributions nor by the insurance company which provides medical benefits. The *Tabarru'* claim is nullified by a binding contract of exchange – a contract of reciprocal rights and obligations – a contract loaded with *baatil* conditions and stipulations. The mutual exchange, even if we have to assume is unencumbered with haraam conditions, negates the *Tabarru'* claim.

The fallacy of the legal donkey is sufficient for dismissing the case of the lawyer. In view of this fallacy, there is really no need to consider his other arguments.

MEDICAL INSURANCE – THE SHARIAH'S VIEW

According to the Shariah, there are two fundamental factors of prohibition in all insurance schemes in vogue: *Riba (interest)* and *Qimaar* (gambling).

In the event of the insurance company making payment to the policy-holder, either more or less than the premiums is paid. This is *Riba.* Payment by the insurance company hinges on an uncertain

future development, e.g. fire, theft, illness, etc. If these events do not occur, the policy-holder receives no payment. If the uncertain event occurs, he receives payment. This is *Qimaar*.

In medical insurance, the medical benefit is acquired only if and when sickness befalls. This is *Qimaar*. Payment made by the medical scheme, whether for the benefit or when making a refund if membership is terminated or death occurs, is not equal to the premiums paid by the member. This is *Riba.*

Since both factors of prohibition govern medical insurance, the latter is haraam. All medical aid schemes in vogue are based on these two factors.

THE FATWA OF THE SPRINGS DARUL ULOOM

The respected Mufti who issued his fatwa of permissibility has not reflected. It is clear from his comments that he is unaware of the constitution and working of medical schemes in this country. He has further displayed gross inability by accepting the validity of the legal person concept. He has maintained that there is no contract between the members and the medical scheme. On this utterly fallacious basis has he claimed that there is no *qimaar* involved, and that the contributors are givers of charity.

He also maintains that the operators of the scheme are the employees and the *wukala* (agents) of the legal person. This view is truly shocking. The Mufti Saheb has presented this view without having applied his mind to the *Arkaan* of *Ijaarah* and *Wakaalat.* He has not adduced any Shar'i evidence or basis for any of his claims. He has merely stated his opinion without Shar'i substantiation.

He accepted the legal donkey to be a valid person purely on the basis of the lawyer's claim. There is absolutely no Shar'i grounds for this fiction.

For people to be employees according to the Shariah, there have to be employers. The Mufti Saheb has not even reflected on the Shariah's concept of *Ijaarah.* His claim that the operators of the scheme are employees, is baseless. Who are the human employers who have employed them and paying them salaries? A man cannot be employed by a fictitious person or a legal donkey. *Aqd-e-Ijaarah* (Contract of Hiring) is valid only between a human employer and a human employee, not between a fictitious person and a real person.

Concluding his fatwa, the Mufti Saheb tenders a preposterous suggestion. He says: *"I wish that the following condition be added (to the contract): 'At the end (i.e. in the event of the scheme's dissolution) the assets of this company (the medical scheme) will be distributed to the Fuqara, and not to the operators of the scheme.' With this condition the issues of Zakaat and Miraath (Inheritance) will be solved for the Mutabarrieen (the givers of the charity)."*

This averment is truly lamentable coming from a Mufti. This suggestion reveals that the Mufti Saheb is totally unaware of what a medical scheme is and how it operates. The essay of the lawyer pertains to medical schemes as they exist and function presently. It is not a question of a medical scheme in the making or how such a scheme should be structured for acceptance by the Shariah.

Every medical scheme in existence is a kuffaar capitalist scheme. Every such scheme has been formulated by non-Muslims and is legally governed by governmental laws. Every medical scheme has its peculiar kuffaar constitution which does not provide scope for

Zakaat, Miraath, distribution to Fuqara, and other Shar'i requisites. The operators of all medical schemes are non-Muslims and in the event of dissolution, the rules of the scheme's constitution will apply. Thus the Mufti's Fuqara-distribution suggestion to overcome the erroneously perceived Zakaat and Miraath imbroglio staggers the imagination. What affinity and relationship exist between the non-Muslim legal donkey and the Shariah's laws of Zakaat and Miraath? It is ridiculous to suggest to the non-Muslim operators of medical schemes already regulated by laws, to amend their constitutions to incorporate Shar'i rules to overcome the constraints of Zakaat and Miraath.

The question which confronted the Mufti Sahib is a practical issue in which people are participating. It is not a scheme to be formulated for the future, hence the Mufti Sahib's suggestion besides being superfluous is ridiculous since all these schemes are controlled by non-Muslims, and governed by legally binding constitutions with a plethora of *faasid* and *baatil* stipulations.

The Mufti Saheb has presented nothing, but his personal opinion which cannot be sustained on any Shar'i ground. He has arbitrarily, without Shar'i ground, accepted the following fallacies as the basis for his personal opinion:

- Validity of the legal person concept
- That the assets of the medical scheme are not the property of anyone.
- No one benefits from the profits acquired by the medical scheme.
- The operators of the scheme are employees of the legal fictitious 'person'.
- The operators are the agents of the fictitious 'person'.

All these claims are baseless and fictitious. Following the lead of the lawyer, the Mufti Sahib shares his opinion of the validity of the aforementioned fictitious factors which constitute the basis of his

fatwa of opinion. The Shariah is not the product of a man's opinion, be he a great Mufti. It is imperative for the Mufti Saheb to apply his mind correctly, to research the various chapters in the kutub applicable to this issue, and to reflect before issuing a fatwa. Since this is a practical issue, it was highly improper for the Mufti Sahib to have commented as it is clear that he lacks in entirety understanding of medical schemes. He has misdirected himself with the presentation of his personal opinion as a 'fatwa' unsubstantiated by a single proof of the Shariah.

When a Shar'i fatwa is formulated on the basis of corrupt kuffaar concepts, principles and practices, then the Mufti becomes bogged in a mire of confusion and in congruencies. Consider the present baseless fatwa in question. The respected Mufti Sahib accepted the capitalist concept of a legal person, which has been termed *shakhs qaanuni,* to be valid. The logical consequence of this acceptance is the acceptance of all the rights, obligations and powers which this concept confers to the *shakhs qaanuni.*

The lawyer states with clarity in his essay that the *shakhs qaanuni* (the legal donkey) can own *(tamalluk)* and can grant ownership *(tamleek).* The corrupt capitalist riba system envisages contractual ability and capacity for the legal donkey which it has illegitimately spawned.

By recognizing the *shakhs qaanuni*, the Mufti Sahib has acknowledged all the rights, obligations and powers which capitalism ascribes to its legal donkey. It will be illogic and self-contradictory to accept the validity of the legal entity and in the same breath deny its attributes and the concomitant consequences arising from such recognition.

In view of the Mufti Sahib's recognition of the legal donkey as a valid being who can contract and transact, he has conceded the

donkey's ability of *tamalluk, tamleek* and *zimmah maaliyyah* which the lawyer states unambiguously in his essay. It follows as a logical consequence of the Mufti's recognition that the ownership of the contributors is extinguished since the legal entity becomes the owner thereof. Thus, the questions of Zakaat and Miraath simply do no arise because the contributors, in terms of the version of the Mufti Saheb, do not remain the owners of the money which they contribute to the medical scheme. It is for this reason that the Mufti's penultimate suggestion is preposterous and lamentable. His suggestion is irrational and baseless in view of him having conferred validity of existence to the silly document which capitalism terms 'legal entity' or 'legal person' or legal donkey.

The contributions, in terms of the Mufti's fatwa, enters into the ownership of the legal donkey. The *tamalluk* of the legal donkey extinguishes the ownership of the supposed donors. Thus, there is no need for the suggestion the Mufti Sahib made. Zakaat is inapplicable to the wealth of the *kaafir* legal donkey, and it is unrelated to the alleged donors because in terms of the Mufti's fatwa, the logical consequence of offering recognition to the donkey is the extinguishment of the ownership of the contributors. The Mufti's labelling the contributors as *Mutabarri-een* (donors who retain ownership) is therefore illogic, to say the least.

In having conferred validity to the legal donkey, the Mufti Saheb has overlooked, ignored or forgotten completely the Shariah's principles of *Aql (Sanity)* and *Buloogh (Majority / Adulthood).* These are imperative requisites for contracting and transacting. These attributes are found only in a human being. An insane person and a minor have no contractual capacity. Their dealings are not valid. A fictitious being termed legal entity has absolutely no scope for existence in the Shariah.

While the suggestion of distribution of the assets to the Fuqara in the event of dissolution of the scheme is palpable nonsense in relation to the *kaafir shakhs qaanuni* which has been accorded validity and recognition by the Mufti Sahib, it is proper if related to a Waqf institution, which obviously the kuffaar medical schemes are not.

We advise the Mufti Sahib to correctly research medical insurance schemes. He will then not fail to discern the spiritual 'Aids' with which all these fictitious donkeys fester. He should study the constitutions, rules, regulations and the binding contract of exchange which exists between the members of the scheme and the operators of the scheme. We are sure he will then understand the error of his fatwa.

We urge the respected Mufti Sahib to apply his mind to this issue to enable him to review his fatwa and correct the grievous error he has committed by having accepted as valid a stupid, ludicrous phantom which has absolutely no reality in the Shariah. On the other hand, a dead donkey has some reality. Its skin is valid for human use and its flesh, if *thabah* is effected, is halaal for animal use.

THE FALLACIOUS BASIS

A cursory glance at the medical aid essay of the lawyer establishes that he has based his *baatil* view of permissibility on two fallacies:

1) A 'legal person' with contractual power.
2) Member contributions and medical benefits by the insurance company are donations.

He presents the first fallacy as if it is an established and an accepted Shar'i reality. It is an arbitrary postulate or a figment of his imagination for which he has miserably and grossly failed to adduce the slightest Shar'i substantiation of any Math-hab. He had merely hoped that his arbitrary presentation of the fictitious donkey would be accepted as a valid basis by some Muftis who will not apply their minds to scrutinize the fictitious drivel.

In his abortive bid to trade his second fallacy, the lawyer resorted to two gimmicks:

a) The Maaliki principle of *Iltizaam* with its consequence of making self-imposed vows and promises legally enforceable.
b) An absurd 'principle of imagination' which he, himself conjectured and conjured to bamboozle people who do not apply their minds.

We have already discussed the fiction of his first fallacy and shown that in Islam there is no fictitious 'person', no ghost and no donkey, dead, alive or fictitious, which could be draped with the mantle of rights, obligations and contractual capacity. This issue, as mentioned earlier, has been explained in greater detail in our book, *The Fallacy of Limited Liability and the Shariah.* In short, the absurdity and rejection of the first fallacy by the Shariah is self-evident. The Shariah simply does not recognize this sort of capitalist bunkum spawned to deceive, crook and defraud.

Regarding (a) of the second fallacy above, namely, the Maaliki principle of *Iltizaam,* the lawyer has only succeeded in exhibiting his total lack of understanding of the Shariah's view pertaining to vows, promises, pledges and the like. To sustain his contention that the payments and awards are voluntary gifts of love, albeit incumbent and legally enforceable, his *jahaalat* constrained him to fish in the waters of the Maaliki Math-hab.

Groping in the darkness in the waters of that Math-hab, he stumbled on the *Iltizaam* issue. In his imagination he then believed that he had achieved his goal partially. Partially because he still had to unearth from somewhere a basis to sustain the claim that the contributions and the medical benefits are *Tabarru'*. Only then would the *Iltizaam* principle become operable.

But, if his thinking was not so clogged with confusion, he would have realized that there was no need for him, a professed 'Hanafi', to travel the distance to the Maaliki Math-hab to extract some straw which could be presented as a basis. For his *Iltizaam* theory, he could have taken the short-cut route to the Qur'aan and formulated the desired *'Iltizaam'* theory on the basis of numerous aayaat which command that pledges and promises be honoured. The Qur'aan and the Ahaadith are replete with such commands and exhortations. Furthermore, from beginning to end, the theme and spirit of the Qur'aan Majeed is honesty and fulfilment of pledges. To this he could have added the rulings of his own Hanafi Math-hab. All Math-habs are unanimous in ruling the incumbency of honouring promises. Every Math-hab emphasises the *Wujoob* of honouring pledges.

The only difference on the *Iltizaam* mas'alah with the Maaliki Math-hab is of a technical nature. While all Math-habs unequivocally aver that honouring pledges and promises is *Laazim* and *Waajib*, the Maaliki Math-hab states that promises may be legally enforced as well. If the medical insurance payments and awards were truly *Tabarru-aat*, there would not be the need to invoke the Maaliki principle of *Iltizaam.* On the basis of the Qur'aan, Hadith and the rulings of our own Math-hab, a ruling of permissibility would be forthcoming. The difference with the Maaliki Math-hab would remain on only the issue of legal enforcement. But such difference would not affect the ruling of permissibility.

The basis for the *hurmat* (prohibition/being haraam) of medical insurance is unrelated to the *Iltizaam* mas'alah. This rule comes into operation only in relation to legal enforcement. It is not the Hanafi rejection of the Maaliki principle of *Iltizaam* which renders medical insurance haraam. Medical insurance is haraam on account of *Riba* and *Qimaar* as has been mentioned earlier.

The lawyer's case and argument in justification of medical insurance are *baatil* because his basis is fallacious. He structures one fallacy on another fallacy to produce a third fallacy. These fallacies have, Alhamdulillah, been laid bare and neutralized.

The trick, in his imagination, would work only if the member-payments and medical benefits could be palmed off as *Tabarru-aat* (gifts and donations of love). But, even in Maaliki waters he could not discover a semblance of a basis to sustain the glaringly fallacious contention of these payments and benefits being gifts of love made by the parties of the medical insurance scheme.

The only option he had was to commit mental forgery and fabricate his 'principle of imagination'. In terms of this imaginary principle of baseless conjecture, the payments and benefits are transformed into *Tabarru-aat.* One simply has to *imagine* the payments to be gifts/donations, and convince oneself and others by perpetration of self-deception compounded with pettifogging that the payments and awards are indeed *'tabarru-aat'.* However, every sane person who does not cherish a corrupt motive will not be able to accept by any stretch of imagination that payments and benefits which are binding by a bilateral contract securely tethered by a myriad of conditions and stipulations, all legally binding, are pure gifts and donations.

CONCLUSION

A medical scheme in its present form is an insurance contract between clients (called members) and the 'legal entity' called the medical scheme. The contract is a bulky document consisting of scores of conditions, and is legally binding. Members make regular payments in expectation of gaining the profit of medical benefits in the event of future sickness. Thus, the medical benefit provided is directly and inextricably related to the monetary contributions of the members of the scheme. The medical benefits provided are in return of the payments. The consequence of termination of membership or defaulting in payments is cancellation of medical benefits. All forms of medical aid schemes presently in vogue are therefore haraam.

The contributions held by the operators of the medical scheme remain the property of the contributors. Any excess over and above the premiums paid by the members is *riba* which is *Waajibut Tasadduq* (has to be compulsorily given to charity).

Voluntary participation in a medical scheme is haraam. Anyone who has suffered the misfortune of having joined a haraam medical scheme should terminate his membership, repossess the amount he has paid into the scheme, and distribute the excess to the poor.

MUFTI RADHAUL HAQ'S FATWA ON MEDICAL INSURANCE AND OUR RESPONSE

MUFTI RADHAUL HAQ'S FATWA

Medical Aid *The Islamic Perspective*
(All comments in italics by Mujlisul Ulama)

There are many medical aid schemes. Some in my humble opinion may be permissible while others are not. In this fatwa I am only discussing that scheme where a certain fee is paid to a medical aid company in return for which they take responsibility of the client's hospitalization or medical expenses. In these instances the amount under normal circumstances is paid directly to the hospital people who have provided the necessary treatment.
COMMENT: Payment of the medical fees/expenses by the medical insurance company is based on two factors – (1) Regular monthly payments by the member of the medical scheme. (2) The uncertain event of future sickness. Due to these two factors, the element of Qimaar (gambling) is categorically confirmed in the contract between the paying member and the medical scheme.

This particular type of scheme ought to be permitted in our Shariah, based on it being an Ijarah contract between a member and scheme. The Ijaarah works in this manner that the member pays a fixed and mutually agreed amount monthly and the scheme takes responsibility for his treatment and well-being. (*COMMENT: This claim is baseless. The agreement is not an Ijaarah (hiring) contract. At the time of the contract, the only two contractors are the paying member and the medical insurance company. The insurance company is not hired by the member. The member simply pays a monthly fee in lieu of which the insurance company has to provide medical benefits if sickness afflicts the member in*

the future. If he is not a victim of sickness, then there is no medical or monetary benefit for him. The insurance company simply swallows all the money he has paid exactly in the same way as a bookie does at a race course when the backed horse loses the race. Only in the event of sickness afflicting the member, does the insurance company pay for the provision of medical benefits. When a pharmacy supplies tangible medicine to the member, there is no Ijaarah involved. The company pays for medicine which the pharmacy supplied to the member. If payment is in lieu of medical services by a doctor, the Ijaarah is between the medical practitioner and the insurance company, not between the member and the company. This Ijaarah contract is entirely a different contract, apart from the contract between the member and the medical insurance scheme.) There are two examples in Shariah with regards to this that presently come to mind. It has been a long standing for centuries in the villages, towns and cities of the Indo-Paak subcontinent that barbers, carpenters and blacksmiths etc. take responsibilities for the respective needs of the people, and the people in return pay them a stipulated amount of grain or cash at the time of harvest. The trend is still prevalent in Afghanistan, India, (Deoband, Thanabawwan, Saharanpur, etc.) and many other places. So, for example, the barber takes the responsibility of maintaining the hair of a family which is unspecified and unknown, but this ambiguity does not lead to arguments and disputes, and in return the family pays them for the service at the time of harvest by giving them a stipulated amount of grain or cash, immaterial as to whether they had requested his services or not and immaterial of the amount of times he was summoned. Similarly, in medical aid too, the company takes responsibility of treatment which is unspecified and uncertain, but it does not lead to arguments and disputes. *<u>COMMENT:</u> While there is ambiguity (jahaalat) in these examples, there is no Qimaar. The factor of prohibition in medical insurance is Qimaar. Ambiguity (Jahaalat) has not been presented as the factor of prohibition In the example*

of the barber/blacksmith, the Ijaarah is specifically between the one who pays and the one who provides the service. While there is some ambiguity if the exact time of the service is not stipulated, the service is not an unsure future event, namely cutting the hair of the payer, for example. Furthermore, the nature of hair-cutting is known and precise. Even the ambiguity is irrelevant. But this is not the case of future sickness. This is further explained in our response at the end of this Fatwa.

Hiring a wet nurse for infants is unanimously permissible. Here too, one party takes responsibility for breastfeeding etc. while the other party pays her for her service. The period, quantity, and number of times the baby will require breastfeeding are all unspecified, but this ambiguity does not lead to disputes, therefore rendering this practice lawful according to all the fuqaha.

- A point worth noting here is that there are only two types of Ajeers (employees) in the Shariah:

(1) Ajeer-Khas: A person who works for a particular employer such as a teacher, office worker, domestic worker etc.

(2) Ajeer-Mushtarak: A person who offers his services to the public such as a tradesman, taxi driver, porters, or tailor, etc.

Now the objection that may arise here is that the party taking responsibility of treatment in the medical aid scheme is regarded as an Ajeer-e-mushtarak or an Ajeer-e-khass? If they are regarded as Ajeer-e-khass, then how is it that they can accept responsibility for the treatment of others as well, as an Ajeer-e-khass cannot accept work from others? This can be seen from the text of Shami, vol. 6, pg 64:

On the other hand, if they are regarded as Ajeer-e-mushtarak, then they only have the right to be paid after working, treating etc. whereas the Medical Aid schemes demand payments timeously even if there was no need to treat a member for that particular month?

- The answer to this objection is, that some Fuqaha (jurists) have combined Ajeer-e-khass and Ajeer-e-mushtarak in some instances, for example, if a Murdhia (wet nurse) breastfeeds the infant at her own house, then she will still be regarded as an Ajeer-e-khass and an Ajeer-e-mushtarak, i.e. she will still be paid for her services even though she breastfeeds other children as well, as can be seen from the text of Fathul-Mueen, the commentary of Kanz vol. 3, pg. 354,

So whether the services of the Medical Aid schemes are utilized or not (as in some months they might have been no need for treatment) they will still be entitled to receive payments as an Ajeer-e-khass, and they could accept work from others as well, as an Ajeer-e-mushtarak.

- In Ahsanul –Fatawa, vol. 7, pg. 25, Mufti Rasheed Ahmed Ludwyanwi R.A. has briefly stated the impermissibility of Medical Aid. It is possible that Hazrat Mufti Sahib R.A. has given this ruling based on the ambiguity and uncertainty of the services provided by the Medical Aid. Yet on another occasion, Hazrat Mufti Sahib has stated the permissibility of such a transaction if it does not lead to disputes. This can be seen from the following question posed to Hazrat Mufti Sahib with regards to the impermissibility of a person giving roti as payment to a person in return for him making

> roti for him, as the payment of roti is ambiguous and unspecified here. In reply to this Hazrat Mufti Sahib stated that if this ambiguity of Ujrat (payment) does not lead to dispute, then it would not cancel and nullify the Ijaraah contract. (Ahsanul-Fatawa vol 7, pg 313.)

This ruling "that ambiguity which does not lead to disputes does not nullify a transaction" has been mentioned by many jurists as can be seen in the following text of Fatawa Alamgiriya, vol.4, pg 441:

Hazrat Moulana Anwar Shah Kashmiri R.A. has mentioned a very valuable point in Faydhul Bari the commentary of Sahi-ul Bukhari, vol 3, pg 289:

The gist of this that when a transaction does not involve breaking any of the commandments of Allah (Subhanahu Wa Ta'ala) and is free from all types of Shar`i prohibitions, then it cannot be nullified merely on the basis of ambiguity and uncertainty until and unless this ambiguity does actually create disputes.

Presently there are many other schemes similar to that of Medical Aid which have become very common nowadays. An example of this is the security companies. People in order to protect their cars, properties, etc. from theft make an agreement with a security company that every month we will pay you so much if you take responsibility for our security. Then if the car etc. gets stolen, the company tracks it down by means of their tracking devices and makes an effort to return it to the owner. In this case too, the service and security a person gets in return for his monthly payments is unspecified, and sometimes for years the need does not arise to take service from such companies, but due to it not leading to disputes, such schemes are permissible. Similar to these schemes is the nature of Medical Aid.

- There is another side to the issue of Medical Aid. Some of these companies generally operate on the non profit bases and regard their services as a favour with the intention of benefiting and treating its members. Based on this clause, this scheme could also be regarded as a tabaru-e- mashroot, i.e. the scheme will from their own side treat and benefit people with the condition that they contribute a certain stipulated amount to their cause. Further insight on this topic can be found in Imdadul Ahkaam, vol. 3 pg. 386 and pg. 606.

In conclusion, whether we regarded this contract as Ijarah or Tabaru-e-mashroot, a scheme of this nature is permissible and it would be permissible for one to take benefit from such schemes.

- At this juncture, another question that generally arises is that even if such a transaction is termed Ijarah or Tabaru-e-mashroot, in both cases Medical Aid companies generally are involved in haraam dealings such as re-insurance, bank interest etc. so what would be the ruling with regards to taking benefits and treatment from such a company whose income comprises Haraam?

  The answer to this is that generally in non-Muslim countries Medical Aid companies belong to non-Muslims, and there are three different opinions of our pious predecessors with regards to the business dealings of non-Muslims.

Imam Zufar R.A says that those dealings of a kafir (non-Muslim), zimmi (kafir living in Darul Islam) of harbi (living in Darul Harb) which are contrary to the Shariah are fasid (null and

void). Therefore for Muslims to accept that money or goods which the Kuffar have earned through haraam means (gambling, interest, sale of alcohol etc.) would not be permissible.

Imam Abu Yusuf and Imam Muhammad R.A. say that those dealings of a harbi done in Darul Harb, which are contrary to shariah, would not be termed null and void as they have not subjected themselves to Islamic law. Yes, those zimmies who live in a Muslim country, their dealings could be scrutinized, if they do not conform to Islamic law then they could be regarded as null and void and it would not be permissible for Muslims to accept money from them that they earned in such transactions. For example, if they earned any money by means of interest, then it would not be permissible for Muslims to utilize it. Imam Abu Haifa R.A. says that non Muslims, whether living in Darul Harb or Darul Islam, are not bound to Islamic law without accepting and agreeing to abide by it. This is because the harbies are not residing in Darul Islam and thus, are not subjected to its laws, and those zimmies living in Darul Islam have also not subjected themselves to those Islamic laws which are in contradiction to their own religion or customs, and neither have they made it necessary upon themselves to abide by Islamic law. Therefore those dealings of theirs which are contrary to Islamic Law will not be nullified, and it would be permissible for Muslims when dealing with them to receive as payments that money which they earned in these Haraam transactions. Yes, should the zimmies in dealing with Muslims agree to abide by a condition which conforms to Islamic law or they sign an agreement accepting to abide by it, then in such a case going against this agreement would nullify the zimmies' transactions. Thus, in this case for Muslims to take or consume from such dealings would not be permissible. Those Kuffar living in non Muslim countries are similar to harbies, therefore their dealings which confirm to their laws would not be regarded as null and void and it would be permissible for Muslims to take and

utilize the profits earned from them. Hazrat Moulana Zafr Ahmed Usmani R.A. has thrown light with great detail on this subject and this fatwa was also reviewed by Hazrat Moulana Ashraf Ali Thanwi R.A. as can be seen from the contents of the Fatwa.

4. In the event where a Medical Aid company belongs to a Muslim and his overall income is halaal, then too, for other Muslims to take benefit and treatment from him would be permissible as can be seen from the text of Fatawa Khaniya, vol. 3; pg 400

The gist of this text is that if the Muslim's Medical Aid company's halaal income be more than their haraam income, then there is no problem in dealing with them and receiving treatment from their scheme. On the other hand, if the haraam overwhelms the halaal income and it is a Muslim company, then to deal with them would not be permissible.

And Almighty Allah Knows Best

Translation of Urdu Fatwa written by:

Hazrat Mufti Razaul Haq Saheb D.B.

Sheikhul Hadeeth of Darul Uloom Zakariyya

OUR RESPONSE

ASSALAMU ALAIKUM

Your fax pertaining to the medical aid question has been received. In our opinion, a new issue should be decided on the basis of the principles of the Shariah and the *Juziyaat* of the Aimmah-e-Mujtahideen. The new issue should not be based on an existing practice which itself is in need of Shar'i *daleel* for its permissibility. For example, the practices of barbers and blacksmiths in the Indo-Pak sub-continent, should not be cited as *daleel* for the permissibility of medical aid. What is accepted in the *Urf* of India and Pakistan is not necessarily permissible nor is it necessary that such practices in those countries are based on sound Shar'i *dalaail.* If there is evidence of the Shariah for such practices, then the Shar'i *dalaail* should be presented, not the practice which itself is *Muhtaaj* of daleel.

Also, a *mansoos juz`i mas`alah* which is *khilaaf-e-qiyaas* should not be presented as the *Mustadal* or the basis in *Qiyaas.* Among the requisites for valid *Qiyaas* is that the *Asl* should not be in conflict with rationality, e.g. *Qahqahah fis Salaat* breaks Salaat and wudhu. Citing this irrational *Nass* to extend the same *hukm* to gheebat, and to conclude that since gheebat is worse than *Qahqahah,* to a greater degree will *Gheebat fis Salaat* break Wudhu, is incorrect. This type of qiyaas is *Faasid.*

The mas`alah of the wet nurse is an improper *mustadal* for medical aid. There is a big difference between the wet nurse mas`alah and the medical aid question. While there is no element of prohibition *(sabab-e-hurmat)* in hiring a wet nurse to breastfeed a baby, there are two very grave elements of prohibition in the medical aid scheme. These are *Qimaar* and *Riba.* There is neither *riba* nor *maisar (qimaar)* in hiring a wet nurse. It is a simple *Aqd-e-Ijaarah* in which the *manfa`at* and *ujrat* are known

notwithstanding the *insignificant jahaalat* (ambiguity). Such ambiguity which does not lead to dispute, does not render a transaction haraam. The nurse becomes entitled for payment only after rendition of the service. On the contrary, the medical aid contract stipulates that the company is entitled to payment prior to rendition of service, and even if there is absolutely no service.

Furthermore, whereas the exact nature of the nurse's service (breast-feeding milk to the infant) is known and definite, nothing is known of the service to be possibly rendered in the future in relation to medical aid. While payment of the wage to the nurse is arranged and fixed for a definite service which MUST compulsorily take place on a daily basis, payment of premiums (monthly instalments) to the medical aid company is for imaginary services dependent on future unsure events. One may fall sick or not. If one becomes sick, there will be services otherwise not. The dimension of *qimaar* is thus introduced in the medical aid contract. The benefit is suspended on a future uncertain event.

Moreover, whereas the nature of breast feeding is specified and known at the time of the *Aqd-e-Ijaarah*, nothing is known of the type of the eventuality of the sickness (it may happen or not) nor of the type of treatment which in turn depends of the sickness and type of sickness coming into existence. With such clear differences between the *Maqees Alayh* (the nurse mas'alah) and the *Fara'* (medical aid), this is a glaring example of *Qiyaas ma-al Faariq.* It is simply untenable.

The venerable Mufti Saheb, in his analogy has developed his ruling on an erroneous middle term *(Hadd-e-Ausat).* His reasoning is that hiring a wet nurse is permissible despite the *jahaalat* of the *Ma`qood Alayh.* Just as there is *jahaalat* in the *Ma`qood Alayhi* in the wet nurse mas`alah, so too is there *jahaalat* in the benefits/services of medical aid. But, in view of the fact that the

jahaalat in the wet nurse case is not *mufzi ilat tanaazu'* (not leading to dispute), hence permissible, so too should be the ruling in the medical aid issue because the ambiguity of the service/treatment at the time of the *Aqd* is likewise not *mufzi ilat tanaaz*'.

The honourable Mufti Saheb has overlooked the fact that the acceptability of an ambiguity which does not lead to dispute is a principle by itself. A *jahaalat* which is accepted in *Urf* does not render a transaction haraam. While this principle to which he refers is accepted, he overlooks the fact that the *hurmat* of medical aid is not structured on the factor of *jahaalat.* It is not being claimed that medical aid is unlawful because of *jahaalat.* There is, therefore, no need to present *dalaail* to substantiate the validity of the principle of acceptable *jahaalat* which does not lead to dispute. This principle has not been challenged.

In the wet nurse question there is a degree of ambiguity in the service offered. But this *jahaalat* does not lead to dispute. The *ghayaat* of the wet nurse's service is proper breastfeeding. The infant should not be left hungry. This end in view is known. Whether this ultimate purpose is achieved in breastfeeding twice a day or thrice a day or five times a day, is immaterial. This degree of ambiguity is tolerable and accepted in society. Furthermore, the *dhuroorah* for tolerating the little *jahaalat* in the *Ma`qood Alayh* in the nurse mas`alah is real and overwhelming because there is no way in which the quantity of milk and the number of times to breastfeed can be specified with exactitude.

With regard to medical aid, the *hurmat* is based on *Riba* and *Maisar* just as in insurance. There is no need to discuss the principle of acceptable ambiguity since it has not been contended that medical aid is haraam on the basis of *jahaalat* of the *Ma`qood Alayh.*

The *Ajeer-e-Khaas – Ajeer-e-Mushtarak* argument in relation to medical aid is fallacious. It is a valid argument in relation to the wet nurse because of the irrefutable fact that she is truly an *ajeer* (employee). She will be paid her wage only if she performs the function for which she is employed. It is not a question of 'to feed or not to feed'. She simply has to breastfeed, and she is entitled to her wage only after rendering the service, not before. On the contrary, the medical aid company is not an employee. The *baatil* contract entitles it to regular advance payments even if there will be no service rendered. And, above all, the future service hinges on an uncertain event, which may or may not come into reality. While in medical aid advance payment is made for possible future service, the wet nurse becomes entitled to her wages at the end of the term after rendering a definite service, a service which is not suspended on a future uncertain event. The nurse is daily engaged in the execution of service, not so the medical aid. The chasm between these two issues is unbridgeable, hence the one cannot constitute a basis for the other's permissibility.

The honourable Mufti Saheb states: *"So whether the services of the Medical Aid Schemes are utilized or not they will still be entitled to receive payments as an Ajeer-e-khaas."* We do not agree with this supposition. The wet nurse always renders service. The question of her not rendering service on some days simply does not arise. She is paid for services, not for non-rendition of service as the medical aid companies are paid. There is no basis in the Shariah for stipulating in a contract that the worker has to be paid for 'not rendering service'. The *Ajeer-e-Khaas* is paid for his time even if there are no services. The two fundamentals in the contract of the *Ajeer-e-Khaas* are time and service. On the other hand, in medical aid both these essentials are absent. There is neither service nor time. But the medical aid gets paid timeously in advance. When the insured is not sick, the medical aid's time is not devoted to the insured one. But the *Ajeer-e-Khaas* has to be

incumbently in the employ of the employer for his full duration of time regardless of service. This analogy is also utterly baseless. The differences are too wide.

In our understanding Mufti Rasheed Ahmed Ludhyani (rahmatullah alayh) did not base the impermissibility ruling on 'ambiguity and uncertainty' as is mentioned in the fatwa. He based the impermissibility of medical aid on *Riba* and *Maisar* as is the case with insurance.

The venerable Mufti Saheb states: "*Yet on another occasion, Hazrat Mufti Sahib (Mufti Rashid Ahmed) has stated the permissibility of such a transaction if it does not lead to disputes."* This statement is misleading because Mufti Rashid Ahmed did not relate it to medical aid. "Such a transaction" mentioned in the abovementioned statement creates the impression that Mufti Rashid Ahmed had said that medical aid is permissible because the ambiguity in this case does not lead to dispute. But this is incorrect. The '*such a transaction'* refers to an entirely different issue-the issue of paying a person with bread for baking bread. This has absolutely no truck with the medical aid issue. As mentioned earlier, the bone of contention is not the factor of ambiguity *(jahaalat).* The issue relating to medical aid is *riba and maisar*. The fact that Mufti Rashid Ahmed states the impermissibility of medical. aid in the chapter of *Riba wal Qimaar,* should be adequate indication *(qareenah)* that he had based the impermissibility on these two factors *(riba and qimaar).* The element of *jahaalat* does not feature in the prohibition of medical aid. It is highly misleading for the honourable Mufti Saheb to state the two mas`alahs so ambiguously, creating the impression that Mufti Rashid Ahmad had at one time said that medical aid is permissible, then at another time, not permissible. The "such transaction" which is permissible, refers to the 'roti' mas`alah. It has no relationship with medical aid.

The honourable Mufti Saheb in the endeavour to justify medical aid states: "*This ruling 'that ambiguity which does not lead to dispute does not nullify a transaction' has been mentioned by many jurists as can be seen in the following text of Fatawa Alamghiriya...".* This statement is superfluous in view of the fact that the *hurmat* of medical aid, as mentioned earlier, is not based on it.

The comment of Maulana Anwar Shah Kashmiri (rahmatullah alayh) does not in any way assist the argument for permissibility of medical aid. What relationship is there between borrowing a camel and medical aid? Commenting on the statement of Hadhrat Anwar Shah Saheb, the honourable Mufti Saheb says:
"The gist of this text is that when a transaction does not involve breaking any of the commandments of Allah (Subhaanahu Wa Ta`ala) and is free from all types of Shari prohibitions, then it cannot be nullified merely on the basis of ambiguity and uncertainty until and unless this ambiguity does actually create disputes."

The honourable Mufti Saheb has merely stated the obvious. It goes without saying that when not a single commandment of Allah Ta'ala is violated and the transaction is *'free from all types of Shari prohibitions',* then obviously it is permissible. There can be no reason for inferring impermissibility for such a transaction. Regarding the *jahaalat* factor, I have already explained it earlier on. No one, to the best of my knowledge, brands medical aid haraam on the basis of *jahaalat.* It appears that the venerable Mufti Saheb has understood that the factor of prohibition for medical aid has been contended to be *jahaalat.* He, therefore, emphasises only this aspect without making the slightest reference to the real elements of prohibition.

Keeping in mind "the gist of this text" mentioned by the honourable Mufti Saheb, it has to be contended that in medical aid there are undoubtedly factors which "break the commandments of Allah Ta'ala". Hence, medical aid is not "free from all types of Shar'i prohibitions." Medical aid is structured on the basis of *riba* and *qimaar*.

The honourable Mufti Saheb then endeavours to justify medical aid on the basis of contracts with security companies who offer services such as recovering stolen vehicles, etc. This argument is baseless. The question of security company services is *Muhtaaj* of *Daleel* for permissibility. Like medical aid, it too is a new development which requires a Shar'i *mustadal* for permissibility or impermissibility. It does not constitute a valid *Maqees Alayh* for extension of a *hukm*. It is not a *Mansoos Alayh* act which could be presented as a basis for legalizing a new development.

If paying for the services offered by security companies is lawful, then obviously there should be a Shari *mustadal* on which the permissibility is based. We are not saying that it is haraam to acquire security services from a company. We are only averring that this issue is not *Nass* and cannot be presented as a basis for legalizing medical aid. If it is proved that *qimar and riba* exist in this type of contract as well, then on this basis the *hukm* of *hurmat* will also apply to it.' Then perhaps it could be made permissible on the basis of some other Shar'i principle. But that is a different issue. At this juncture it will suffice to say that the honourable Mufti Saheb should first explain the basis of the permissibility of hiring the security services of a company. Then, it should be examined if medical aid could be based on it in an analogy. There should be commonality of factors between the new mas`alah and the example presented as the basis for permissibility. Differences in the reality and nature of the two will render the analogy fallacious. If the one mas`alah is an *Aqd-e-Ijaarah* and the other an

act of *Riba and Maisar,* then the example is baseless and cannot be cited as a *Maqees Alayh* or a *Mustadal.*

Furthermore, Hadhrat Mufti Saheb did not reflect sufficiently on the two issues, viz., company security service and medical aid. The service offered by the security company is not imaginary or temporary. The service is continuous from the very day the company is hired for its services. The payment made monthly to the company is not for 'no work' as is the case with medical aid. In his explanation, the honourable Mufti Saheb has understood that the only time that the company offers its service is when the vehicle gets stolen. Now it begins its tracking operation. This is not so. The vehicle is perpetually being tracked and monitored. The physical devices installed are connected with the company's apparatus which is maintained at their headquarters.

When the alarm goes off, at a premises, the company sends out its personnel to check, etc. This is part of the service. It is not the whole of the service. Even when the vehicle has not been stolen, it is under the surveillance and monitoring system of the company.

On the other hand, the medical aid company is paid monthly for absolutely no service. And, perhaps it will not be called to render service for years. Meanwhile it is being paid continuously for absolutely no service. It does not have to monitor the insured person. It has absolutely no connection with the person other than collecting monthly instalments from him. While the deal with the security company is an *Aqd-e-ljaarah,* the deal with a medical aid company is plain haraam insurance structured on *Riba* and *Qimaar.*

Security companies also hire the equipment. The monthly instalment will thus be rental for the equipment as well. And, if the equipment is purchased, the company provides 24 hours

monitoring. If the alarm goes off at any time, the owner of the property is immediately notified. While the security firm provides real and constant service, the medical company provides service only in the event of something untoward happening in the future. No sickness, no service, but payment continues.

If, for example, the agreement with the security company should stipulate that the client has to make regular monthly payments and the benefit of such payments will be only the service of answering the call of the client when his premises is burgled or his vehicle is stolen or is in the process of being stolen, then it will not be permissible. It will then cease to be an *Ijaarah* contract. In this contract the company does not monitor the premises. The alarm system is not connected with the company's monitoring system. The company does absolutely nothing. Only if the premises is burgled or the vehicle stolen, they will offer their services after being notified by the client. This type of agreement will undoubtedly be haraam on the basis of *qimaar* since the future service is suspended on an uncertain event which may or may not happen. In this type of arrangement, the *hurmat* is not the *jahaalat* which can lead to dispute. The element of prohibition is *qimaar*. But conventional security companies do not operate on such a basis. They offer a 24 hour service of monitoring and surveillance. If the alarm goes off in the house/shop, the company notifies the client and immediately hastens to the affected premises.

The honourable Mufti Saheb cites a text from *Faidhul Baari* of Hadhrat Anwar Shah Kashmiri (rahmatullah alayh). But there is no resemblance between the mas`alah of *Istiqraadhul haiwaan -IH-* (borrowing an animal) and medical aid. The *illat* of prohibition in the *IH* mas`alah according to Allaamah Kashmiri is ambiguity which leads to dispute. Although this is the ruling of the Hanafi Math-hab, according to Allaamah Kashmiri, if the *illat of munaaza-ah* (dispute due to uncertainty) is not found, then *IH* will

be permissible. He, however, clarifies that this principle of *Jawaaz inda intifaa-il illat* (permissibility when the *illat* is non-existent) can be applied only to *Ghair Mansoos* practices. Thus, he states: "*Then, this (principle) applies to such practices regarding which there is no categorical (Nass) prohibition narrated from the Shaari' i.e. (Rasulullah sallallahu alayhi wasallam), and similarly there is no verdict of Qiyaas-e-Jali. Otherwise (i.e. if there is such narration of Nass of prohibition), then there is no scope whatsoever for permissibility."*

In other words, in *Mansoos Alayh ahkaam* the non-existence of the *illat* of prohibition will not cancel the prohibition. Thus, while this principle will operate in the practice of *IH;* it will not function in the mas`alah of *Bay`ul haiwaan bil haiwaan nasiatan* (selling an animal for an animal on credit) because the latter prohibition is *Mansoos Alayh*, Rasulullah (sallallahu alayhi wasallam) himself having prohibited it. But, in the *Istiqraadh* mas`alah the principle can be invoked because the prohibition in that case is not *Mansoos.*

Viewing medical aid in the light of the *ibaarat* of Allaamah Kashmiri, which the honourable Mufti Saheb tendered for permissibility, the following facts should be borne in mind:

- The *illat* of prohibition in the *Istiqraadhul haiwaan* mas`alah is *Munaaza`ah.*
- The *illat* of prohibition in medical aid is *Riba and Qimaar,* not *Munaaza 'ah.*
- In the *Istiqraadh* mas`alah the prohibition is transformed into permissibility on the basis of *intifaa-e-illat* (negation of the cause of prohibition).
- In the medical aid mas`alah *intifaa-e-illat* does not occur. It is therefore preposterous to cancel the ruling of prohibition while the *illat* of prohibition endures in the medical aid practice.

The honourable Mufti Saheb has erred in his fatwa in view of the error in his understanding of the *illat* of prohibition. Whereas he has understood the *illat* to be *jahaalat* leading to dispute, the actual *illat of prohibition is Riba and Qimaar*. There is no support for the honourable Mufti Saheb's view in the *ibaarat* of *Faidhul Baari*.

With regard to *Tabarru` Mashroot* basis, we have been unable to locate the explanation in *Imdaadul Ahkaam*, Vol. 3 pages 386 and 606. On these pages there is no mention of this topic, nor anywhere in the entire *Baab*. Medical aid companies are not non-profit institutions. They are primarily *riba* and insurance enterprises. If there is a charitable organisation offering medical aid, then its terms and conditions should first be studied before a fatwa is issued. The honourable Mufti Saheb has provided scant information, hence we cannot discuss medical aid from the '*Tabarru'* perspective.

Medical Aid schemes are nor *Tabarru'* enterprises in the field for philanthropic ideals. They are pure institutions of insurance – *Riba* and *Qimaar – "Driven to insanity by the touch of shaitaan."* – Qur'aan.

MENTAL DERANGEMENT CAUSED BY RIBA

**"O PEOPLE OF IMAAN!
FEAR ALLAH AND ABANDON
WHAT
REMAINS OF RIBA IF INDEED
YOU ARE MU'MINEEN."
(Baqarah, Aayat 278)**

**"AND, IF YOU DO NOT DESIST (from riba)
THEN TAKE NOTICE OF WAR FROM
ALLAH AND HIS RASOOL."
(Baqarah, Aayat 279)**

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