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INSURABLE INTEREST IN THE LIFE OF ANOTHER PERSON UNDER THE NIGERIA INSURANCE ACT, 2003: AN ISLAMIC LAW INTERPRETATION

Abdullahi Saliu Ishola*, Ridwan I. O. Olagunju** and Khalid Ishola Bello***

ABSTRACT

By section 56 of the Nigeria Insurance Act, 2003, when there is a legal relationship making a person responsible for the "maintenance and care" of another under Islamic law, a person would have insurable interest in the life of the other. For the section to be properly understood, it is imperative to delineate the scope of the relationship that may make one responsible for the "maintenance and care" of another under Islamic law. Islamic law is explicit on such relationship as discussed under the subject of Nafaqah (maintenance). This paper thus critically analyses the Islamic law provisions on the relationship creating maintenance duties, for the understanding of the insurable interest in the life of another under the Nigeria Insurance Act. Such understanding can also be good precepts for developing the Islamic Life Insurance Product (ILIP) or Takaful Product of Insurable Life Interest (TPILI) through the concept of Nafaqah at the domestic and global level.

Key Words: Insurable Life Interest, Insurance Act, Islamic Law, Nafaqah, Nigeria and Takaful

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I. INTRODUCTION

The general principle of the insurance law in Nigeria is that no one has insurable interest in the life of another person.¹ Insurable interest is a fundamental condition for creating any valid contract of insurance² and “insurable interest must be present in all contracts of insurance”.³ For this reason, the attitude of courts in the country is to refuse to enforce any such contract that is devoid of insurable interest by the insured in the subject of insurance.⁴ Naturally, an individual may be attracted or attached to an object or a fellow human being and wishes that same is well protected. To achieve the wish, he may be prompted to insure such object or person. While such gesture may be highly laudable, the law insists that such a person must be legally connected to such object or person⁵ for him to be justified in insuring it. Whether a person would be adjudged as having or lacking insurable interest in the subject of insurance depends on the legal system in each country.⁶ To this end, exceptions have been created to the principles of lack of insurable interest in the life of another person under the Nigeria insurance law.⁷

Accordingly, to reflect the societal reality in its insurance law and practices, Nigeria now recognises the legal relationship that makes a person responsible for the “maintenance and care” of another person under Islamic law as one of the bases

¹ See section 56, *Insurance Act 2003, CAP I-17, Laws of the Federation of Nigeria (LFN) 2004*

² H. R. Light, *The Legal Aspects of Business* (London: Sir Isaac Pitman & Sons, Ltd: Fifth Edition, 1958) pp. 264 - 265

³ Keith Abbot and Norman Pendlebury, *Business Law* (London and New York: Continuum, 1996) p. 200

⁴ For general attitude of courts to enforcement of insurance claim in the country, see A. L. A. L. Balogun, “The Role of Courts in the Settlement of (Insurance) Claims: Is there Need for a Small Claims Courts and Arbitration Clause”, *Law Reform Journal*, Issue No. 5, July 1986, pp. 129 – 144.

⁵ In law, for someone to be legally connected to any person or object, he must have rights to claim from or have duties towards the object or person.

⁶ H. A. Umezurike, “Insurable Interest in Four Commonwealth Countries: Nigeria, Australia, Canada and New-Zealand”, *Nigerian Journal of Public Law* Vol. 2, No. 1, 2009, pp. 326 – 337 at p.328. For a study on the subject in Ethiopia, see Ezra L. Desalegne, “Some Issues Relating to Life Insurance under the Ethiopian Commercial Law”, *Journal of African Law*, Volume 52, Number 2, 2008, pp. 190 - 217

⁷ Thus, circumstances when a person would be able to insure the life of another are now well spelt out. One of such circumstances is indeed the focus of this study.

for insurable interest in the life of another.⁸ This is enacted as section 56 of its extant 2003 *Insurance Act*⁹. Due to the general term in which “the legal relationship” has however been expressed under the section, it has become imperative for the scope of the relationship that may make one responsible for the “maintenance and care” of another under Islamic law to be delineated, for proper interpretation of the section. For lack of such clear guide, the section is already being interpreted as ambiguous and as merely relying on less legal basis to ground non-personal life insurable interest because “maintaining the less fortunate ones under the Islamic or Customary Law is assumed by moral persuasion only”.¹⁰

Islamic law is very clear on the relationship that would make a person responsible for the “maintenance and care” (*Nafaqah*) of another and the responsibility is rather assumed on legal grounds than mere “moral persuasion”.¹¹ This paper thus undertakes the task of analysing the Islamic law provisions on the forms of relationship creating maintenance duties, for the understanding of insurable interest in the life of another under the Nigerian *Insurance Act*. Such understanding can also be good precepts for developing the Islamic Life Insurance Product (ILIP) or *Takaful* Product of Insurable Life Interest (TPILI) through the concept of *Nafaqah* at the global level.

II. CONCEPT OF INSURABLE INTEREST

Given the comparative approach of this study, the concept of insurable interest is examined from the perspectives of the conventional Insurance Law and the Islamic Insurance Law (*Takaful*) respectively.

1. *Insurable Interest in the Conventional Insurance Law*

In its simplest term, insurable interest connotes that the insured must stand to lose something if the risk envisages against the subject of insurance occurs just as he

⁸ As at 1986 when the 1976 Insurance Act was still in existence, such exceptions were not yet recognised. For this reason, an affirmative call was made during a National Seminar organized by the Nigerian Law Reform Commission in 1986 to the effect that “there is an urgent need to redefine insurable interest to take into account the African extended family situation. It is suggested that insurable interest should be satisfied by natural affection, blood ties and affinity”. See M. G. Yakubu and G. T. Mukubwa, “The Need for A Comprehensive Reformation of Insurance Law and Practice in Nigeria”, *Law Reform Journal*, Issue No. 5, July 1986, pp. 9 – 22 at p.18.

⁹ CAP I-17, *Laws of the Federation of Nigeria (LFN)* 2004

¹⁰ H. A. Umezurike, p.330.

¹¹ The discussions below clarify this very well.

must stand to benefit if such risk does not occur.¹² Accordingly, it is opined that, “you are not entitled to insure another man’s property, or another man’s life, unless you have some definite financial interest in it”.¹³ Insurable interest is generally defined as follows:

Insurable interest constitutes the legal right insure arising out of a financial relationship recognised at law between the insured and the subject matter of insurance in such a way that insured stands to benefit from the continued existence of the subject matter of insurance or be prejudiced by its damages, loss or destruction.¹⁴

The essence of insurable interest therefore is that, as much as it may be good for one to be one’s brothers’ keeper, one should not legally be allowed to protect what is not of concern to him. It should be mentioned that under the Common Law, as also applicable in Nigeria, lack of insurable interest cannot invalidate or nullify a contract of insurance.¹⁵ Thus, at Common Law, insurable interest is generally not required for the validity of the contract of insurance except in circumstances where exceptions have been created to it.¹⁶ It is thus necessary to clarify the position of Islamic law.

2. *Insurable Interest Under Islamic Law*

An understanding of the concept of insurable interest under the conventional insurance law should only leave one with the further inquiry of knowing whether insurable interest is required under the Islamic Insurance (*Takaful*) or not. In essence, the connotation of the insurable interest in *Takaful* may not be interpreted differently, but the position of Islamic law on it should be clarified.¹⁷ Islamic law frowns at the habit and attitude of getting oneself involved in matters that do not concern one. Such a habit has even been relegated to the point of constituting a

¹² Okore C. J., *Business Law for ICAN and CITN Examinations* (Lagos: Foursquare Press, First Edition, 2012) p. 290.

¹³ H. R. Light, p. 265

¹⁴ P. O Akinjobi, *Fundamentals of Insurance* (Ilorin: SMS Publishers, 2002) p. 133 cited in Muftau Abdulrauph, *A Study of Islamic Windows in Conventional Insurance Companies in Nigeria* (Masters Dissertation Submitted to the Department of Religions, Faculty of Arts, University of Ilorin, Ilorin – Nigeria, July 2014) p. 26

¹⁵ A. L. A. L. Balogun, p.134; Keith Abbot and Norman Pendlebury, p. 200

¹⁶ Keith Abbot and Norman Pendlebury, p. 200

¹⁷ This becomes imperative in view of the general position of the Common Law earlier noted by which insurable interest is not required for validity of the contract of insurance.

flaw to the religious standing of a Muslim. On this, Prophet Muhammad sounded a warning as related as follows:

On the authority of Abu Hurayrah (may Allah be pleased with him) who said: the Messenger of Allah (may the blessings and peace of Allah be upon him) said: 'Part of someone's being a good Muslim is his leaving alone that which does not concern him'.¹⁸

Since the essence of insurable interest is for one not to be allowed to get involved in what one has no interest in, the above *Hadith* can be relied upon as founding a basis for insurable interest for a valid Islamic Insurance contract. Thus, it has been opined that,

The *Hadith* can also imply that we should not force ourselves to assist or help others. At times, we try to intervene into other's affairs under the pretext of helping them. If people do not express or show any need for our help, we should not render it or force it on them, for there are many other people outside there who need our help and beg for it. Those are the ones who deserve our assistance".¹⁹

Similarly, it is not legally permitted for one to carry the burden of another person. The Qur'an is very explicit on this. The concept of *Walā Taziru Wāziratun Wizra Ukhrā* (ولا تزر وازرة وزر اخرى) very well supports the requirement for insurable interest under the *Takaful*.²⁰ Very instructively, the Qur'an declares thus:

¹⁸ Hadith 12 of the *Forty Hadths of An-Nawawi Collections*. For this translation, see Yushau Sodiq, 40 *Hadith: An Explanation* (Houston, TX: J. S. Printing, 2001) p. 95

¹⁹ Yushau Sodiq, p. 97

²⁰ On this, see Q23: 62; 7: 42; 6: 164; 17: 15; 35: 17; 39: 7; 53: 38. In some quarters, it is believed that this principle substantially relates to crimes and not contractual transactions. However, its application to contractual transactions can be seen in the contract of agency (*wakālah*). While providing exegesis of Chapter 6: Verse 164, Imam Al-Qurtabi noted this principle is a subject of controversy among the jurists with regards to whether the Principal is bound by acts of the Agent carried out outside the terms of his agency. According to Imam Maliki and his disciples, the Principal is bound by all done by the Agent thereby rejecting application of this principle to such contractual transaction. This view is also held by Abu Yusuf and Muhammad Bin Hassan of the Hanafi School. But, Abu Haneefah, applying this principle, posits that steps taken beyond the terms of the agency would be binding on the agent and not the principal. With this, one cannot validly claim that the principle is not applicable in contractual transactions. Al-Qurtabi A.A., *Tafsir Al-Qurtabi Al-Jami' Li Ahkām Al-Qur'ān* (3rd ed., Dar At-taqwah, Cairo-Egypt, 2008).

“If one heavily laden should call to bear his load, not the least portion of it can be carried, though he is nearly related”.²¹

Strictly again, it is prohibited for a Muslim to share the religious practices of non-Muslims in exchange for their observance of the religious rites of the Muslim. This is because the Muslim has no insurable interest in matters of religion of the non-Muslim and vice-versa.²² It is thus deducible that without insurable interest, no *Takaful* contract would be valid. How such insurable interest can be assessed to exist has been analysed in another study.²³ As it appears in this study, one of such likely circumstances is what the Nigerian law has recognised. Thus, with *Nafaqah* relationship, the Nigerian law recognises insurable interest in the life of another, as explained below. But, before then, it is necessary for the nature of life insurable interest in the country to be examined.

III. LIFE INSURABLE INTEREST IN THE NIGERIA INSURANCE LAW

Life insurable interest is the insurable interest that will legally justifies insuring the life of any person. It is the insurable interest necessary for any contract of life insurance to be valid. Generally, a person can only have life insurable interest in his own life alone. This is also the general statutory position of the law in Nigeria.²⁴ To this end, the *Insurance Act* declares thus:

A policy of insurance made by a person on the life of any other person or on any other event whatsoever shall be null and void where the person for whose benefit, or on whose account the policy of insurance is made has no insurable interest in the policy of insurance or where it is made by way of gaming or wagering.²⁵

As the law stands in Nigeria, life insurable interest may be classified into two, “personal life insurable interest” and “non-personal life insurable interest”.²⁶ While the former is the general rule, the latter is the exception. For the exceptional

²¹ Q35: 18

²² See Q109

²³ See Yusuf Abdul Azeez and Abdullahi Saliu Ishola, ‘Insurable Interest in Takaful: A Theoretical Contrivance for Islamic Insurers’ (2016) 6 *International Journal of Economics and Financial Issues*.

²⁴ It should be remembered that insurable interest is not relevant under the Common Law of Insurance as applicable in Nigeria like in other Common Law jurisdictions.

²⁵ Section 56 (1), *Insurance Act*

²⁶ The “personal life insurable interest” connotes the right of an individual to insure his own life while the “non-personal life insurable interest” implies the right to insure the life of another person.

circumstances under which non-personal life insurable interest applies, the Act provides further:

A person shall be deemed to have an insurable interest in the life of any other person or in any other event where he still stands in any legal relationship to that person or other event in consequence of which he may benefit by the safety of that person or event or be prejudiced by the death of that person or the loss from the occurrence of the event.

To bring the legal relationship mentioned in the above section in tune with the local reality in the country, the section further declares that:

In this section, "legal relationship" includes the relationship which exists between persons under customary law or Islamic law whereby one person assumes responsibility for the maintenance and care of the other.²⁷

In interpreting the consequence of making "the relationship which exists between persons under customary law or Islamic law whereby one person assumes responsibility for the maintenance and care of the other" to include the legal relationship that would justify non-personal insurable interest, Umezurike expresses the view that,

This section would appear to give legal significance to the moral obligation under the Nigerian Customary and Islamic Laws where an affluent member of the society assumes the responsibility of maintaining the less fortunate ones especially in the extended family system. It means that once you assume the responsibility of maintaining a relation, however distant the relationship is, the relation acquires an insurable interest on your life since your existence would benefit, and your death, prejudice him. It is however difficult, to quantify in monetary terms the nature and extent of insurable interest where one, as in the customary and Islamic set up assumes the maintenance of another, in the absence of enforceable legal or contractual obligation. Maintaining the less

²⁷ Section 56 (2) and (3), *Insurance Act*

fortunate ones under the Islamic or Customary Law is assumed by moral persuasion only.²⁸

The long submissions of Umezurike quoted above bring the significance of this study into the fore. His concern represents the average constraint to be expected from those who are not learned in Islamic law. He might have been influenced by his feeling that Islamic Law is merely morally based as Customary Law is believed to be.²⁹ Again, what section 56 has provided is easy to be interpreted from Islamic law perspective. No difficulty therefore arises in assessing the insurable interest which one may claim in the life of another if one is in the position to maintain another person as stipulated under Islamic law. As it pertains to Islamic law, the section cannot be correctly interpreted to mean that what it has done is merely "to give legal significance to the moral obligation under the Nigerian Customary and Islamic Laws where an affluent member of the society assumes the responsibility of maintaining the less fortunate ones especially in the extended family system".³⁰ A look at the maintenance relationship in Islamic law that could justify non-personal life insurable interest thus becomes apt to be examined at this stage. Such obligation is however a legal responsibility with enforceable set ups rather than being assumed by "moral persuasion only" as erroneously postulated by Umezurike.

IV. MAINTENANCE RELATIONSHIP IN ISLAMIC LAW JUSTIFYING NON-PERSONAL LIFE INSURABLE INTEREST IN NIGERIA

From the preceding analyses, for section 56 of the Nigeria *Insurance Act* to be correctly interpreted from the Islamic law perspective, the various forms of relationship that would make a person to assume maintenance of the other must be

²⁸ Umezurike, p.330

²⁹ Until recently, it was erroneously conceived that Islamic law is Customary law. This has made many legal writers to approach Islamic law issues in the same or similar manners as Customary Law. This might have influenced Umezurike in arriving at his wrong conclusions on the nature of maintenance obligation under Islamic law, equating it with the position under customary law. The error of perceiving Islamic law as customary law is indeed changing in the country, and it is no longer excusable for anyone to still treat Islamic law as customary law. On this, see A A Oba, "Islamic Law as Customary Law: The Changing Perspective in Nigeria," *The International and Comparative Law Quarterly* 51, no. 4 (2002): 817-50, <http://www.jstor.org/stable/3663189>.

³⁰ Umezurike, p.330.

clarified. This is what is examined under this segment of the study. Such forms of relationship are therefore expounded one after the other.

1. *Maintenance of Wife by Husband*

In virtually all legal systems the world over, some rights and duties do arise because of marriage between a man and a woman.³¹ In Islamic law, rights of the wife to maintenance by the husband is well established. As such, it may require no further exposition when compared with the provisions on the issue in other legal systems.³² Maintenance of the wife by the husband is a legal right of the wife and not a mere moral responsibility of the husband and neither is it a matter of moral persuasion. The Qur'an dwells so much on this in so many of its verses.³³ For instance, Allah says:

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means. Therefore, the righteous women are *Qānīnat*, and guard in the husband's absence what Allah orders them to guard. As to those women on whose part you see ill conduct, admonish them, and abandon them in their beds, and beat them, but if they return to obedience, do not seek a means against them. Surely, Allah is Ever Most High, Most Great.³⁴

In Islamic jurisprudence, the assertive control and benefit a husband enjoys over and from his wife respectively have been explained to be hinged on the discharge of his own marital duties which include maintenance of the wife.³⁵ Maintenance of the wife by the husband covers provisions of necessities such as food, wears, shelter and medical bills.³⁶ In all these, Islamic law enjoins the husband to be

³¹ See the dictum of Scrutton L.J in the case of *Palace v. Searle* (1932)2 K.B, 297

³² For instance, while Islamic law allows an unmaintained wife to take from her husband's money what she reasonably needs for her sustenance at any particular time without having to satisfy a pre-condition of not having money herself, a similar position in common law, i.e. allowing such a wife to ask for supply of necessities on the pledge of her husband's credit, is unacceptable unless it can be proved that she has no enough money herself. See *Bibiefield v. Berens* (1952)2, Q.B, 770, A.C

³³ Such as; Q2:233-236

³⁴ Q4: 34

³⁵ Ridwan I. O, "Concept of Maintenance: A Legal Analysis on Tripartite Comparison", *Kogi State University Bi-Annual Journal of Public Law*, Vol. 3, No. 2, 2010 p. 313

³⁶ Ismail M.B., *Al-Fiqh Al-Wādhīh Min Al-Kitāb Wa As-Sunnah 'ala Al-Madhāhib Al-arba'h* Vol.2 (Cairo-Egypt, 1997) p.61

responsible in accordance to his capacity.³⁷ This implies that there is no uniform quantum of maintenance by all husbands. The golden rule therefore is for the affluent to be magnanimous in spending while the average husband does as he can.

The right of maintenance of the wife by the husband is so sacrosanct that the Maliki School insists on its discharge regardless of the wife's state of wealth. Where a husband refuses to discharge this duty, an Islamic court has the power to force him to do so. Where he disregards the court's order, the wife is entitled to dissolution of marriage (*Khul'u*) on account of lack of maintenance. The Nigerian case of *Abba Musa v Jungunduin*³⁸ demonstrates this position of the law. Also, Islamic law allows an unmaintained wife to satisfy her needs from her husband's wealth even without his consent.³⁹ However, a wife's right to maintenance is forfeited when she becomes recalcitrant or disserts her husband. This position is supported by the *Ijma'* (consensus) of the entire Muslim Jurists.⁴⁰

What can be inferred generally from the foregoing is that the husband has insurable interest in the life of his wife under the Nigeria Insurance Act and vice-versa. However, if we are to go by the standard of having something to gain or lose required for possession of insurable interest in terms of the maintenance duty, one may be more inclined to posit that it is the wife alone, rather than the husband as well, that has insurable interest in the life of the husband based on the maintenance relationship between them. For this reason, given the financial status or the receiving position of the wife in that legal relationship, the wife has an insurable interest in the life of her husband and is thereby entitled to insure the life of the husband.

2. Maintenance of Child by Parents and Vice-Versa

A couple is responsible for the procreation in their matrimony. This, first and foremost, presupposes parents' duty to take care of the wards. A legal provision in the Qur'an calling for the need to discharge this duty always can be gleaned from many verses. One of these is where Allah commands thus:

³⁷ Q65:7

³⁸ (1961). This case, among others, establishes the right of an unmaintained wife to petition a court of law for dissolution of marriage and that the maintenance should be in line with the capacity of the husband.

³⁹ Al-Asqalani I. H., *Fath Al-Basri: Sharh Sahih Al-Bukhari*, Hadith No. 5359 (Dar Al-Bayan Al-Arabi, Cairo-Egypt) p.579

⁴⁰ Ismail M. B., p.61

Mothers should breastfeed their children for two complete years before weaning.⁴¹

Here, though the direct command from Allah appears to have bearing only on the breastfeeding, but, as pointed out by Imam Qurtabi in his book⁴² on the exegesis of the Glorious Qur'an, this is to emphasise a part out of the whole for the importance of the part mentioned, i.e., the early years of the existence of a newborn baby on earth. As such, the parents are still under obligation to fend for their wards continuously till they can fend for themselves. This is the time one is said to reach "*ashuddah*" i.e., age of maturity⁴³ in the language of the Qur'an.⁴⁴

Express mention of the mother alone in the preceding verse on the need to breastfeed wards for two years does not charge her solely with the responsibility of child maintenance. The obligation is heavily that of the father who should make adequate provisions for his wife for her to do well in the nourishment of the baby being breastfed. The famous saying of the Prophet Muhammad (SAW) narrated by Aishah, May Allah be pleased with her, on the encounter of the Hind, the wife of Abu-Sufyan with the Prophet (SAW) is very apposite on the parents' obligation to maintain their wards before they become mature people of means. Hind reported her husband's failure to maintain her and her child to the Prophet who then allowed her to take from the husband's wealth, even without the husband's knowledge, what would be reasonably sufficient for her and the child.⁴⁵

On the other hand, however, the parents too are to be maintained in turn by their wards later in life. This duty is even more obligatory for the children when their parents advance in age or become so senile that they can no longer engage in any activity for their sustenance. Jurists have often referred to provisions of the Qur'an⁴⁶ on the need for man to obey Allah's commandment on nicety to his parents coming second after the obligation of man to worship Allah alone. In this regard, a child enjoys insurable interest in the life of his father when he still bears

⁴¹ Q2:233

⁴² Al-Qurtabi A.A., *Tafsir Al-Qurtabi Al-Jami' Li Ahkam Al-Qur'an* (3rd ed., Vol. 2, Dar At-taqwah, Cairo-Egypt, 2008) pp. 118-123

⁴³ Studies and Research Office, *The Dictionary: Arabic-English* (2nd ed., Dar Al-Kutub Al-ilmiiyyah, Beirut, Lebanon, 2005) p.75

⁴⁴ Q46:15

⁴⁵ Al-Asqalani I.H., (Hadith No. 5364.) p. 583

⁴⁶ Such as Q17:13 and Q31:15

the *Nafaqah* obligations to maintain the child. Similarly on the other hand, when parents (either or both) have come under the maintenance of the child due to some circumstances, the parents also assume the right to insure the life of the child and thereby bearing insurable interest in the life of the child at that moment.

3. *Maintenance of Subjects by Leaders*

In Islam, the welfare and maintenance of the subjects on the leaders is one of the core functions of those in the position of authority. This explains why occupying such position implies an expression of willingness to serve rather than to be served. A popular saying of the Prophet (SAW) narrated by ‘Umar, capturing the obligatory nature of this responsibility goes thus:

Each and every one of you is in the image of a shepherd, rearing animals, and you are going to be queried on the welfare of the subjects under you; the *Imām* (leader of a community) is a shepherd and shall be queried about the welfare of his people, man is a shepherd over his household and shall be queried about their welfare, a woman is a shepherd in her husband’s home and shall be asked how she goes about her roles thereat and a servant is a shepherd over the property of his master and he shall be queried on how he manages such.⁴⁷

The above prophetic saying makes it mandatory on the rulers to make welfare of their subjects take position of primacy in mind. Caliph ‘Umar b. Al-Khattab, in his characteristic show of exemplary leadership, had the habit of directing distribution and circulation of national wealth to all and sundry during his entire blessed days in office. For instance, he was reported⁴⁸ to have one day sent an emissary to deliver the sum of four hundred Dinars to Abu-‘Ubaydah, the son of Jarrah. The money was the latter’s portion out of a colossal sum from ‘Umar under the national wealth distribution scheme. The emissary delivered the message and waited for a while

⁴⁷ Sahaih Bukhari (vol. 9/2) Hadith No.2751, Sahih Muslim, (Vol.8/6) Hadith No.4755 or in Musnad Al-imam Ahmad, (Vol. 121/2) hadithy No. 6026

⁴⁸ Zaky A.S., Rajab A., Na’ nau A. and Sanbaty A.M., *Al-Mutala‘at Al-Azhariyyah Lis-Saff Al-Awwal Ath-Thanawi* (Qitau Al-Ma‘ahid Al Azhariyyah, Cairo-Egypt, 2007-2008) pp.12-13

with Abu-ʿUbaydah to watch, as already instructed by ʿUmar, how the said amount of money was going to be expended by the recipient.⁴⁹

Abu-ʿUbaydah collected the money and, after paying for Allah's further blessings on the Caliph, called on a girl in his house whom he sent in turn to distribute some portions of his share such as five and seven Dinars to other deserving persons. Abu-ʿUbaydah disbursed the money in this manner till the entire sum, meant for his own upkeep with his family, almost exhausted. Caliph ʿUmar's emissary returned home and gave full report. He was further sent to Muadh, the son of Jabal, to give him similar amount of money for his own upkeep too. The emissary delivered the second message and came back home after having watched and noted that Muadh too circulated the money to others around him as Abu-ʿUbaydah had earlier done.⁵⁰ Caliph ʿUmar was informed of this and the instant reaction from him went thus:

They are very cooperative among themselves as brothers. May Allah be pleased with them all.⁵¹

It must be emphasised that even though the above are duties upon the leaders for which they are answerable before Allah and liable for their failures to discharge the responsibilities as required of them, those duties do not however confer corresponding rights on the subjects which they can enforce. In other words, such rights are not justiciable. They therefore do not confer insurable rights on the citizens in the life of the subject.

4. Maintenance of Poor Members of the Society by the Rich Ones

Under normal circumstances, a mature man in Islam is ordained to work to earn for his livelihood by himself.⁵² It is for this reason that importance is attached to every lawful⁵³ and productive work i.e., '*amal ṣāliḥ*'. To this extent, no one is permitted, all things being equal, to become a parasite on relatives or even the state.⁵⁴ The express permission of business activities which Islam grants even during the

⁴⁹ Al-Qurashi G.A., *Awwaliyyat Al-Faruq As-Siyasiyyat* (1st ed., maktabah Al-Haramain, Riyadh, 1983) pp.355-364

⁵⁰ Ibid

⁵¹ Zaky A.S., Rajab A., Naʿnam A. and Sombaty A.M., pp. 12013

⁵² See Q62:10, Q19:93, Q94:7 and Q9:105 among others.

⁵³ Q4:12

⁵⁴ Al-Faruqi I.R., "Is the Muslims Definable in Terms of His Economic Pursuits?" in Khurshid Ahmad and Zafar Ishaq Ansari (eds.) *Islamic Perspectives* (Islamic Foundation, Leicester, 1979) p.155

pilgrimage,⁵⁵ a period of extreme religious devotion to the Creator, is to underscore the importance of one's engagement in any lawful and productive activity for the purpose of livelihood. In fact, it has been said that the abrogation by a Qur'anic provision⁵⁶ that the obligatory status of the late-night worship (*Ṣalāh At-Tahajjud*) is for man to have conserved energy and vigour to go about his business engagements, among others.⁵⁷

The inequality in terms of wealth is a natural fact of life and something in accord with the wisdom of Allah⁵⁸ without fostering any envy, grudge, or jealousy towards those who have more of it. The responsibility of taking good care of the poor members of the society in Islamic law is placed on both the government and the rich in the society.⁵⁹ On this, Akhtar observes: "The economic welfare of the masses depends vitally upon the way the total national income is distributed among people".⁶⁰

Money taken from the few wealthy members of the society constitutes part of what makes up the national income distributable to all. Relating with the wealthy in this form does not in any way amount to usurping or expropriating their lawfully earned riches.⁶¹ It is rather a form of complementary and mutual assistance⁶² which Allah, the Divine-Law Giver, enjoins in several verses of the Qur'an.⁶³ The rationale behind the spirit of wealth circulation is to eliminate poverty in the society. Poverty can only be eliminated when the welfare of the poor is given regular and adequate concentration by the ruling class.

⁵⁵ Q2:198

⁵⁶ Q73:20: The *Tahajjud* or the late-night prayer was obligatory in the early Islamic period, but its obligatory status was later abrogated. See Al-Baidhawi A.U., *Anwar Al-Tahzil Wa Asrar Al-Ta'awil* (Al-Matba'ah Al-Maymiyyah, 1902).

⁵⁷ Ibid

⁵⁸ See Q4:7, Q43:32, Q16:17, Q6:165 and Q4:3

⁵⁹ Q2:254 and Q59:7

⁶⁰ Akhtar W., *Economics in Islamic Law* (1st Edition, Kitab Bahrain, New Delhi-India, 1992) p.4

⁶¹ Famjari M.S., *Al-Islam Wa Tawzi' Ath-Tharwah Wad-Dakhu'* (Kitab Al-Buhuth Al-Islamiyyah-Hadha Huwa Al-Islam, Vol.2, Al Idarah Al-'Ammah Li Shuhun Majlis Al-Mujamma'i Wa Lijanihi, 2002). P 1214

⁶² Ibid

⁶³ Such as Q2:254, Q3:180, Q24:33 and Q70:24-25

To a great extent, one may say that prescription of some money generating policies and institutions in Islam such as *zakah*,⁶⁴ *Khums*,⁶⁵ *Ushr*,⁶⁶ *Kharaj*,⁶⁷ *Jizyah*,⁶⁸ and *Ushur*,⁶⁹ among others, is there majorly to constitute a sure source for creating a pool of wealth to be conveniently distributed to all indigent members of the society. Whenever the money collated from *zakah* or any other source is insufficient to satisfy the reasonable needs of the needy, Islam encourages and even mandates the very wealthy members in the community to voluntarily make handsome donations to save the situation.⁷⁰ In fact, this requirement is so emphatic that rulers in Islamic states are mandated to employ force when some members refuse to donate in this wise.⁷¹ It is on record that Caliph 'Umar bn Al-Khattab employed similar force on some of the affluent when famine raged at a particular period during his tenure.⁷² According to Ismail Abubakar,⁷³ this mandatory duty of the affluent is informed by a saying of the Prophet (SAW)⁷⁴ that "Muslims are brothers among themselves; none of them should let down or abandon another". The author's conclusion thus suggests that a wealthy man who refuses to make this voluntary donation in the circumstance would be said to have handed over the indigent to poverty, hunger, disdain, and desertion.⁷⁵

⁶⁴ *Zakah* is one of the five pillars of Islam, and it is an obligation attached to wealth in possession of a Muslim. It is majorly to take care of the less privileged. See: Abu Aziz S.Y., *Al-Fiqh Al-Muyassar Wa Adillatuhu Min Al-Qur'ān Wa-Sunnah* (Dar At-Tawfiqiyyah Li-Turath, Cairo, 2009) pp. 175-176

⁶⁵ This is the one-fifth or 20% of the wealth accruing from war booty. See Q8:41. The same percentage from *Rikaz* i.e. property found hidden or buried underneath the surface of the earth, whether in the shape of treasure or a mine.

⁶⁶ *Ushr* stands for one -tenth of the agricultural products which shall be paid by foreigner-owner to the collective treasury of the community upon harvesting.

⁶⁷ *Kharaj* is a tax on lands conquered by Muslims and left with the native owners.'

⁶⁸ For *Jizyah*, it is a tax imposed on the person of a '*dhimmi*' i.e. non-Muslim citizens of an Islamic state. *Jizyah* is also payable by non-Muslim States with whom truce is made on the condition that they will pay same.

⁶⁹ *Ushur* refers to the percentage which merchants are required to pay off their merchandise when it exceeds a prescribed limit. An appointed officer called '*Ashir*' collects this every time a merchant enters or exists at the border check-post. It is 2 ½% for a Muslim merchant, while 5% and 10% are collected respectively from a non-Muslim in an Islamic State and a non-Muslim affiliated to a belligerent state (*harbi*)

⁷⁰ Ismail M.B., (Vol. 1) P.517

⁷¹ Ibid

⁷² Ibid

⁷³ ibid

⁷⁴ Transmitted by Bukhari

⁷⁵ Ismail M.B., p.517

To encourage the affluent towards virtuous spending, the Islamic theory of ownership makes the rich realise that they are not the ultimate owners. Rather, the ultimate ownership of money and all other things resides in the Almighty Allah who creates man,⁷⁶ provides for him⁷⁷ and nourishes him.⁷⁸ According to the Quran, Allah alone, and no one else, is the real owner of all that is in the universe.⁷⁹

The Qur'an thus declares expressly that:

And to Allah belongs all that is in the heavens and that is in the earth, that He may require those who do evil with that which they have done (i.e., punish them in Hell) and reward those who do good, with what is best (i.e. paradise)⁸⁰

When one therefore stands in the relationship of the rich and the poor, responsibility of maintenance becomes possible under Islamic law. In interpreting the insurable interest in the life of another person under the Nigerian *Insurance Act*, from the Islamic law purview, the poor Muslim could validly claim insurable interest in the life of his rich Muslim brother. This would be in tune with the goal of collective duty of care in Islamic law. A look at the various circumstances where Islamic law has institutionalised collective duty of maintenance towards one and another is therefore also relevant to this study, notwithstanding that the duty is ordinarily a benevolent one.

5. Sundry Maintenance Relationship Measures in Islamic Law

At times, a capable labour force may fall victim of predestined unemployment, which may either be due to lack of work at all or that the available work is not befitting his skill and strength, or he is short paid for the available one. There are some other people who are weak or physically challenged and thus become perpetually incapable to undertake any income generating venture. Hence, Islam makes it a duty on the community to cater for the economic and financial needs of such persons. As for the capable ones, the community must provide empowerment through job creations that befit different categories of unemployed human resources

⁷⁶ Q96: 2

⁷⁷ Q67:20

⁷⁸ Q67:15

⁷⁹ Q5:52:2, Q63:7, Q65:12 and Q78: 37

⁸⁰ Q53:31

among her citizens. They are to be properly trained and supported with needed material resources.⁸¹

However, if this is invisible, the community is to provide for their basic needs like food, shelter, cloth, and health services. This is pointed out in the verse: وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَّعْلُومٌ. لِلسَّائِلِ وَالْمَخْرُومِ (And those in whose wealth there is a known right, for the beggar who asks, and for the unlucky who has lost his property and wealth, (and his means of living has been straitened)).⁸²

As proposed by Shafi^c scholars, a Muslim community must provide for its poor person, each, through Zakah fund. Those who have skills in certain profession must be provided with modern equipment, such as modern agriculture machinery for the farmer and merchant with sufficient capital to grow his business. This would consequently uplift the status of those people and elevate them from being dependant to become financially buoyant to support other people in the subsequent years. People with pressing challenges such as victims of natural disaster that require emergent attention should have their problem solved from public treasury. They are to be treated under the share of *Al-Gharimin* from Zakah fund.⁸³

Good examples were recorded for Umar bn Abdul-Aziz when he ordered his governors to pay off debts incurred by every Muslim, dead or living, and to aid poor bachelors that intended marriage, from the public account.⁸⁴ This is in line with what was reported from the Prophet who said:

أنا أولى بكل مؤمن من نفسه فمن ترك مالا فلورثته ومن ترك ديناً أو ضياعاً فإلي وعلي

I am more dutiful to every Muslim than himself; whoever (at point of death) left property in for his heirs and whoever left debt and dependants; they are to be brought to me and levied against me.⁸⁵

⁸¹ Y.A. Al- Qaradawi, *Dawru-l-Qiyam*, pp.380 and *Mushkilatu-l-Faqr* 5th edition Wahbah Publication, pp.35-49

⁸² (Q70:24-25, 9:103).

⁸³ Y.A Al-Qaradawi, *Fiqhu-z-Zakat*, 21st Edition Vol. 2, pp. 603-619

⁸⁴ Y.A. Al- Qaradawi, *Dawru-l-Qiyam*, p.383

⁸⁵ Reported by Bukhari and Muslim on the authority of Abu Hurayrah

Umar bn Khattab was also reported by Ibn Sa'd to have created a special store to cater for poor travellers.⁸⁶ To ensure that every member of the Islamic state is maintained in all conditions, Islamic law has institutionalised some sources of funding for insuring the life of every citizen. An understanding of these sources is very relevant in appreciating the collective maintenance duty in Islamic law. Some of the sources are discussed below.

- a. **Zakah:** - This is a very significant source of funding in Islamic insurance. It is a financial obligatory due based on certain amount called *nasab*⁸⁷ as a means to purify them and their wealth. This is taken from the wealth of the rich and disbursed to one of the eight people mentioned in the verse below:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ
وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

As-Sadaqât (here it means Zakât) are Only for the Fuqarâ' (poor), and Al-Masâkin (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islâm); and to free the captives; and for those In debt; and for Allâh's Cause (i.e. for Mujâhidûn - those fighting In the Holy wars), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allâh. And Allâh is All-Knower, All-Wise. (Q9:60).

The amount to be paid from agricultural products is one-tenth (1/10) or one-twentieth (1/20) based on method of water supplying. This is mentioned in this verse:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِمَّنْ طَبَّاتٍ مَّا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ

(O You who believe! spend of the good things which You have (legally) earned, and of that which we have produced from the earth for you,... (Q2:267).

Drawing an analogy from the above, it can be opined that the same amount is to be paid from proceeds of factory, institutions, naval, land and air traffic establishments. In addition, one-fortieth (1/40) is to be paid from capital of a business and its equivalent from animal products. This is an annual obligatory due

⁸⁶ Ibn Sa'd, *Tabaqat*, Beirut, Vol.3 p.283

⁸⁷ Nisab is the minimum of wealth on which zakah is due/obligatory

based on lunar calendar from cash fund or based on the period of harvest on farm product with fulfilment of *nasab* requirement.⁸⁸

Zakah, as a maintenance scheme, is not based on personal moral disposition or persuasion and it is not a voluntary almsgiving; rather it is a legal obligation, specifications of which have been determined, such as amount to be paid, time of payment as well as the beneficiaries. It is ranked next after the testimony and five daily prayers. The required amount is made affordable such as 2.5% from wealth and revenue of business, 5% from farm products through irrigation system and 10% of farm products watered by rain and 20% from the natural resources.⁸⁹

There is another annual obligatory due made on festival day after Ramadan fasting. This does not require any *nasab* requirement as in other Zakah mentioned earlier. This is made from common food of each community at quantity of *Sa'* or two and half kilograms.⁹⁰ It is called *Zakah al-Fitr*. It is another maintenance arrangement in Islamic law which is equally not premised on a moral persuasion but legal stipulations.

b. Other Public Revenue

Apart from Zakah, the state must have other income generating sources. This may include establishment and promotion of manufacturing companies, agricultural investment, and good use of natural resources. This would enable the state to make provisions for the poor and the less privileged among the people coupled with the provision of formidable defence from external forces and maintenance of peace and order within her territory. Such provisions must not be limited to Muslims alone but must also extend to non-Muslim citizens and residents under the Islamic authority. According to Abu Yusuf, the great disciple of Abu Haneefah, 'Umar bn Khattab was reported to have included a Jew resident of Madinah in the monthly payroll from the public treasury to prevent him from habitual begging for survival.⁹¹ In the report of Al-Baladhiri, Umar also ordered that some leprous Christians/Christian lepers be given a proportion from Zakah revenue.⁹² Relying on

⁸⁸ Y.A. Al-Qaradawi, *Dawru-l-Qiyam*, p.385-386

⁸⁹ Y.A. Al-Qaradawi, *Dawru-l-Qiyam*, pp.387-388

⁹⁰ Y.A. Al-Qaradawi, *Dawru-l-Qiyam*, p.386

⁹¹ Abu Yusuf, *Al-Kharaj*, 2nd edition, As-Salafiyyah print, p. 126

⁹² Ta'rikh Al-Baladhiri p.177

this precedence, 'Umar bn AbdulAziz was said to have included the following in his presidential letter to his governor of Basra:

وانظر من قبلك من اهل الذمة قد كبرت سنه ، وضعفت قوته ، وولت عنه
المكاسب ، فأجر عليه من بيت مال المسلمين ما يصلحه⁹³

Look for non-Muslim resident among you, who has grown old, become weak and has no sources income; pay him from Muslim public purse what could be enough for him.

In a letter to Iraq, Khālīd bn Walīd wrote:

وجعلت لهم ايما شيخ ضعف عن العمل، او اصابته آفة من الآفات او كان غنيا
فاقتقر، وصار اهل دينه يتصدقون عليه طرحت عنه جزيته، وعيل من بيت مال
المسلمين ما أقام بدار الهجرة ودار الإسلام⁹⁴

Every old man who could not work, or disaster has infected him or rich who suddenly become poor, and his people do aid him, relieve him of tax and pay him and his family from public treasury so long they stay under the Islamic state.

c. **Philanthropy/ Charity: –**

Perhaps, the above two services may be insufficient as of increase in the number of the needy and poor. Islam calls on individuals who have enough resources to come to the aid of the poor and the needy as reported in the case of Al-Ash'ariyun. However, if negligence is noticed in the part of the rich towards assisting the poor, Islam further makes it mandatory on the government to enforce/task the rich among its subjects with philanthropical services/ commodity development services, with special focus on the welfare of the poor in the community. This is what was reported from the Prophet who declared that: ⁹⁵ (Verily, there is other due in the wealth other than zakah). This is like what is contained in the verse below:

وَأَتَى الْمَالَ عَلَىٰ حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي
الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ

... and gives his wealth, In spite of love for it, to the kinsfolk, to the orphans, and to *Al-Masākīn* (the poor), and to the wayfarer,

⁹³ Abu Ubayd, *Al-Amwal*, A-s-Sunnatu-l-Muhammadiyah Publication, p.47

⁹⁴ Abu Yusuf, *Al-Kharaj*, 2nd edition, As-Salafiyyah print, p. 126

⁹⁵ Reported by At-Tirmidhi on the authority of Fatimah bnt Qays, see *Fiqhu-z-Zakat* 21st edition, 2/1020

and to those who ask, and to set slaves free, performs As-Salāh (Iqāmah-aṣ-Ṣalāh), and gives the Zakāh,.. (Q2:177)

In the above verse, zakāh and philanthropical charity are mentioned separately. Another approach introduced by Islam to eradicate poverty is seen in the various forms of expiation levied against certain crimes such as: *Yamin* (oath), *Zihār* (likening/equating one's wife to one's mother), sexual intercourse during the day of Ramadan, ransom as alternative to fasting and sacrifice in the Hajj operation. In addition, the Qur'an and the Sunnah call for voluntary almsgiving and promises compensations in this world and the world to come.⁹⁶ On this note, Qur'an praises Madinah Muslims for their hospitality for Meccan immigrants.⁹⁷ For instance, Al-Bukhari reported the care of Sa'd bn ar Rabi' and Abdul-Rahman bn Awf as follows:

لما قدموا المدينة أخی رسول الله صلى الله عليه وسلم بين عبد الرحمن وسعد بن الربيع قال لعبد الرحمن إني أكثر الأنصار مالا فأقسم مالي نصفين ولي امرأتان فانظر أعجبهما إليك فسمها لي أطلقها فإذا انقضت عدتها فتزوجها قال بارك الله لك في أهلك ومالك أين سوقكم فدلوه على سوق بني قينقاع⁹⁸

Abdur Rahman bin 'Auf said, "When we came to Medina as emigrants, Allah's Apostle established a bond of brotherhood between me and Sa'd bin Ar-Rabi'. Sa'd bin Ar-Rabi' said (to me), 'I am the richest among the Ansar, so I will give you half of my wealth and you may look at my two wives and whichever of the two you may choose I will divorce her, and when she has completed the prescribed period (before marriage) you may marry her'. Abdur-Rahman replied: 'May Allah bless you, your family'. 'Is there any marketplace where trade is practiced?' He replied: 'The market of Qainuqah'.

Islam also establishes endowment (al-Waqf) as another means to alleviate poverty and as a channel for unending compensation from Allah. It is reported in the *hadith* that:

⁹⁶ Among such verses are: Q 2:274, 2: 268, 3:133-134, 34:39, 90:11-16, 76: 8-9, 3:92.

⁹⁷ Q59:9

⁹⁸ Bukhari, kitabu-l-Bay'

إذا مات الإنسان انقطع عنه عمله إلا من ثلاثة إلا من صدقة جارية أو علم ينتفع به
أو ولد صالح يدعو له⁹⁹

When a man dies, his record of good deeds ceases except in any one of the three: continuous charity, knowledge that benefits others, and righteous child who prays for him (parent).

On this note, Islam encourages the Muslim community to embark on traditional insurance among her people. This can be done through special donations or reservation of some items or money as jointly owned/community property or fund to cater for any eventuality that may occur to an individual member or the community at large. For instance, the needs of the poor, debtors, orphans, widows, and others could be attended to from that account. This can be achieved through the institution of a contingency Waqf.¹⁰⁰

The above does not imply that selected people would continue to be rich while some are inherently poor. However, different approaches are made to reduce exorbitant gap that could exist in socio-economic status of people of the same community.¹⁰¹

The rich are also charged to aid the less privileged in the community. This was exemplified by the Prophet upon the distribution of booties of war among his followers where he considered the poor to be more important and qualified to the resources than the well-to-do among Al- Ansar. He said:

فقال رسول الله صلى الله عليه وسلم للأنصار: "إن إخوانكم من المهاجرين ليست لهم أموال، فإن شئتم قسمت هذه وأموالكم بينكم وبينهم جميعاً، وإن شئتم أمسكتكم أموالكم، وقسمت هذه فيهم خاصة" قال: فقالوا: لا، بل تقسم هذه فيهم، واقسم لهم من أموالنا ما شئتم،¹⁰²

Verily, your brothers among the immigrants have no wealth; if you wish, I share this (booty) and your wealth

⁹⁹ Reported by Muslim on the authority of Abu Hurayrah.

¹⁰⁰ Nor Asiah Mohamad, Muhammad Laeba, Hisham Zaki El Tibli, "The Prospect of Waqf Al 'Awaridh in the Contemporary Waqf Eco-System: A case of Malaysia", *Journal of Economics and Business Aseanomics* 7(2) 2022 047-057.

¹⁰¹ Y.A. Al- Qaradawi, *Dawru-l-Qiyam*, p.411.

¹⁰² Yahya bn Adam, *Al-Kharaj*, 2nd edition, As-Salafiyyah print, p. 35, 1347 AH

among you all together, or you hold your wealth and share this among them alone. The Ansar replied: 'no but share this among them and give them from our wealth as you wish''.

This position of the Prophet is in line with the verse below:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ
وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

What Allah gave as booty (*Fai'*) to his Messenger from the people of the townships, - it is for Allah, his Messenger, the kindred, the orphans, Al-Masākin (the poor), and the wayfarer, In order that it may not become a fortune used by the rich among you.

Therefore, the state ought to take it as obligations to design a measure through which the economic gap among her citizens is brought to a minimum level. This would indeed reduce poverty and curb crimes. Apart from the institution of zakah, Islam also levies Muslims with other financial responsibilities at different degrees of obligation. These are to be taken from excess of resources called *'afwu* in the Qur'an. Degree of obligation and quantity to be taken depend on the nature of prevailing situations. Individual and government should make regular awareness to that effect without any enforcement or punishment attached to it. The Prophet, while commending Al-Ash'ari tribe/clan tribe said:

إن الأشعريين إذا أرموا في الغزو ، أو قل طعام عيالهم بالمدينة جمعوا ما كان
عندهم في ثوب واحد ثم اقتسموه بينهم في إناء واحد بالسوية فهم مني وأنا
منهم.¹⁰³

When Ash-Sharites have widows resulting from war or they experience shortage of food for their household in Madinah, each will donate what he has into the same container and re-share it on equal bases. They are with me and I am with them.

This was done on mutual understanding and as a communal responsibility among them without any law enforcement agent. The same understanding was preached by

¹⁰³ Reported by Bukhari and Muslim on the authority of Abu Musa

the Prophet which was exemplified in the distribution of meat of sacrifice animal. He said:

كنت نهيتكم عن لحوم الأضاحي فوق ثلاث لیتسع ذر الطول علی من لا طول له
فكلوا ما بدا لكم وأطعموا وأدخروا¹⁰⁴

I have once forbidden you from (keeping) meat of sacrificial animal beyond three days for those who have should share with those who do not have. Hence, consume what you have and preserve some.

In an Islamic community, the needy and the poor must have access to the following necessities of life: proper feeding, clothing, and medical treatment to be voluntarily made available by the well-to-do individuals in the community. Awareness campaigns must be frequently carried out by individuals, organisations, and government in that regard as mentioned in the Qur'an:

أَرَأَيْتَ الَّذِي يُكَذِّبُ بِالدِّينِ . فَذَلِكَ الَّذِي يَدْعُ الْيَتِيمَ . وَلَا يَحْضُ عَلَى طَعَامِ الْمِسْكِينِ .

Have you seen Him who denies the Recompense? 2. that is He who repulses the orphan (harshly), and urges not the feeding of Al-Miskīn (the poor),¹⁰⁵

V. CONCLUSION

In allowing a person to insure the life of another, the Nigerian *Insurance Act* adopts the "legal relationship" theory in determining who can insure the life of another. To be sure that the "legal relationship" is not interpreted without reference to some common societal relationship, the Act goes further to recognise any relationship placing one in the position of maintaining and caring for the other under either Customary law or Islamic law as a legal relationship justifying insurable interest in the life of the other. For the intention of the lawmaker to be properly interpreted from the Islamic law perspective, there is need for the various forms of relationship that put a person in the position of maintaining another person in Islamic law to be clearly spelt out.

Against the above backdrops, this study has explored the principles of maintenance in Islamic law (*Nafaqah*) towards interpreting the section. Through this, it has been revealed that, in many circumstances, every person would find himself in the

¹⁰⁴ Reported by At-Tirmidhi on the authority of Buraydah and verified it to be *hasan sahih*

¹⁰⁵ Q107: 1-3, 89:17-18, 74:44 and 69:33-34

position of maintaining some other persons. Despite this, Islamic law is still very clear on circumstances when it would become legally mandatory for one to maintain another other than on moral grounds. Such circumstances, as disclosed in this work include: (1) the relationships of husband and wife; (2) parents and children; (3) the rich and the poor; and (4) the collective maintenance relationship that may exist between members of the society at large. While both relationships (1) and (2) do in clearcut impose legal duties and thereby confer insurable interest, other relationships do not ordinarily command legal duties which can thereby confer insurable interest. Therefore, such latter relationships would have to be critically examined on a case-by-case bases to determine if they can truly confer insurable interest.

From the study, it has become manifest that for section 56 to be properly appreciated from Islamic law perspective, the Islamic legal provisions on the duty of maintenance must be adopted. Again, the paper has also demonstrated that the maintenance relationship in Islamic law is a legal matter that can give rise to enforceable rights. Therefore, it would not serve the proper interest of section 56 of the Nigeria *Insurance Act* for relationship justifying maintenance duty in Islamic law to just be glossed over or be interpreted on mere assumptions lacking in sound legal knowledge. Further still, the Nigeria *Insurance Act* has given statutory flavour to the propriety of approaching assessment of insurable interest generally and non-personal life insurable interest from the perspective of *Nafaqah* principles. Further research exertion in this regard may therefore be a worthwhile great service to the Islamic Insurance Industry (*Takāful*). This study has also demonstrated that, under the Nigerian law, Islamic law can be invoked in aid for a proper legislative interpretation.