

# ‘Fatwa Repositioning’: The Hidden Struggle for Shari’a Compliance Within Islamic Financial Institutions

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**Abstract** Islamic Financial Institutions (IFIs) have recently witnessed remarkable growth driven by their holistic business model. The key differentiator of IFIs is their Shari’a-based business proposition which often requires some financial sacrifices, e.g. being ethical, responsible and philanthropic. It also requires them to refrain from investments in tobacco, alcohol, pornography or earning interest. For IFIs’ sponsors and managers, however, the key motivational factor for entering the Islamic financial market is not the achievement of Shari’a objectives through the holistic business model, but rather the urge to tap this highly profitable market where customers are inclined to pay a premium for Shari’a compliance. In order for IFIs to be accepted by the market, their financial instruments need to be approved by Shari’a scholars, known for their integrity and expertise in Shari’a. One can therefore expect potential tensions between IFIs’ managers and Shari’a scholars. The purpose of this research is to probe the hidden struggle between managers and Shari’a scholars in pursuit of their respective objectives. The study investigates this phenomenon using

grounded theory as a methodological framework based on data collected from three IFIs from two countries. The findings reveal that Shari’a scholars and managers of IFIs have divergent objectives, which creates incongruence of objectives at the strategic level. The findings illustrate the tension and latent struggle for Shari’a compliance, which has been termed as ‘Fatwa Repositioning’ resulting in four possible consequences: deep, reasonable, minimum and superficial Shari’a compliance. Fatwa Repositioning is the core category of this study, which exhibits how managers and Shari’a scholars struggle to position the Shari’a compliance of their institutions so as to best serve their respective objectives. Interestingly, Shari’a scholars are seemingly not always in control of what they are supposed to be controlling, i.e. Shari’a compliance.

**Keywords** Islamic Financial Institutions · Fatwa Repositioning · Shari’a compliance · Shari’a governance · Shari’a scholars · Shari’a objectives

## Introduction

Since their emergence, Islamic Financial Institutions (IFIs) have experienced remarkable growth triggered by increasing Islamic awareness (Chong and Liu 2009) and IFIs’ holistic business model. Although all these factors have contributed towards IFIs’ significant ascendancy and growth, their marketing slogans are based on their holistic business model which allows them to maximize shareholders’ wealth, only if doing so does not violate Shari’a principles and leads to the achievement of Shari’a objectives. However, compliance with Shari’a principles requires some financial sacrifices for IFIs, particularly

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when it comes to refraining from specific investments (e.g. in tobacco, alcohol, pornography) despite the high profitability of such investments. Shari'a also imposes restrictions on interest-bearing transactions which may cause IFIs' short-term liquid assets to lay idle thereby decreasing profit margins. Furthermore, they would be expected to invest in profit-and-loss sharing (PLS) products which are riskier than traditional financial loans. Although such investment criteria could be good for the long-term financial prospects of IFIs, conventional profit-oriented managers may struggle with them. For IFIs' sponsors and managers, the key motivational factor of entrance into this market is not their desire to achieve Shari'a objectives through the holistic business model but the desire to tap this highly profitable market where customers are willing to pay a premium for Shari'a compliance (Lee and Ullah 2008, 2011; Ullah and Jamali 2010). Therefore, as one might expect, a purely management-controlled IFI could not be a financial institution of choice for Muslim customers. In order for the IFI to be accepted by the market, it needs to be supervised/certified by Shari'a scholars who are known for their integrity and expertise in Shari'a scholarship. Thus, Shari'a scholars constitute a concrete and integral governance part of IFIs in the form of Shari'a boards/advisors/consultants- often referred to as a Shari'a governance system. The responsibility of this system is to ensure IFI's compliance with Shari'a principles (IFSB 2009). Given this scenario, one might expect that Shari'a compliance is dictated by Shari'a scholars and that managers ultimately obey it. However, it is also natural to expect potential tensions between IFI managers, whose primary goal is to maximize shareholders' wealth, and Shari'a scholars who are supposed to be guarding and promoting Shari'a principles and objectives within the same institution.

This paper aims to explore the factors creating the phenomenon of Fatwa Repositioning, which is the covert skirmish for adjusting the level of Shari'a compliance by Shari'a scholars and managers in order to achieve their respective objectives.

Using grounded theory (GT) (Glaser and Strauss 1967; Strauss and Corbin 1990, 1998; Corbin and Strauss 2008) and in-depth interviews with a wide range of respondents across three different cases as well as a regulator, we explore the diverging priorities and objectives of Shari'a scholars and IFI managers. The study uncovers intricate phenomena that lead to the divergence of objectives, which affect the level of IFIs' Shari'a compliance and profitability. In the process, our study makes a number of novel and substantive contributions. First, the research contributes to the Islamic finance literature documenting the intricate dynamics and tensions revolving around Shari'a scholars and management within Islamic financial

institutions. It highlights how the pursuit of divergent objectives through the same institution is invariably complex, delicate and that latent struggles and conflicting objectives between management and Shari'a scholars could be detrimental to the viability of the Islamic finance industry over the long term. The study also makes an interesting methodological contribution, documenting the use of GT within the context of a novel research question, where existing data and literature are generally scant.

There now follows a brief overview of Islamic finance in order to set the context for this study. The methodology is then explained followed by a series of sections outlining the output from the open, axial and selective coding activities. The paradigm model of 'Fatwa Repositioning' is then presented as a mechanism to bring together the various strands of GT coding, and the main implications are highlighted in closing towards the end of the paper.

## An Overview of Islamic Finance

The history of Islamic finance goes back 1400 years to the start of Islamic religion. There is evidence of a free market economy and mercantilism in the mediaeval ages during the golden period of the Islamic caliphate (Postan et al. 1987) where business was conducted according to Shari'a principles. Some researchers have termed this period as the age of "Islamic capitalism" when Baghdad was the "commercial metropolis" (Labib 1969, p. 81) of the Islamic world. According to Labib (1969), this capitalist system grew to a sound monetary economy with Dinar as the trading currency. The present "institutionalized form" (Lee and Ullah 2007, p. 1) of Islamic banking started in the mid-twentieth century. There are varying views on the birth of the current Islamic banking system, but scholars agree on Egypt and Malaysia as the birthplaces of modern Islamic banking (Erol and El-Bdour 1989; Kahf et al. 2005). This was followed by a number of milestone developments in the 1970s, e.g. the foundation of Dubai Islamic Bank as the first full-fledged Islamic commercial bank and the formation of the Islamic Development Bank (Iqbal and Molyneux 2005). Further developments were seen in a number of Muslim majority countries like Pakistan, Sudan, Egypt, Malaysia, and Kuwait, in terms of Islamization of the banking industry (Iqbal and Molyneux 2005; Khan and Bhatti 2008).

Being considered as "wishful thinking" in its early years (Iqbal and Molyneux 2005, p. ix) and in the context of sceptical voices and worries in relation to its sustainability in the presence of a well-established conventional banking system, the Islamic finance industry has proven to be a practical alternative to the conventional system over the last 20 years. The total assets managed by IFIs have

grown to US\$3 trillion, where double-digit growth continues unabated and is expected to raise the asset level of the industry further in the next couple of years. Some researchers argue that a major reason behind the growth of this sector is the demand for Shari'a-compliant products (Abdullah and Kassim 2009; El Qorchi 2005; Lee and Ullah 2011; Revelli and Viviani 2015; Ullah and Lee 2012). Yet some others claim that the competitiveness of some of the Islamic financial products has paved the way for the industry's rapid expansion, making it attractive to both Muslim and non-Muslim clientele alike (El Qorchi 2005).

Shari'a not only provides a list of Shari'a objectives but also a number of principles for IFIs to adhere to which could help them achieve those objectives. Islamic finance is a subset of an Islamic economic system whose goal is public welfare and social justice (Dusuki and Abdullah 2007). The products developed by IFIs are scrutinized based on a set of principles that restrict the free hand of entities in pursuing the profit motive. Firstly, prohibition of *Riba* (interest) is the most prominent and widely discussed principle of Islamic finance distinguishing it from conventional finance. The literal meaning of *Riba* is 'excess' which technically means any excess amount paid/received for the borrowed/lent money (Khan and Ahmed 2001; Obaidullah 2005). Secondly, Islam prohibits *Qimar* (gambling), *Gharrar* (excessive risk) and *Maysir* (speculation). Transactions involving gambling and speculations are banned because they "tend to concentrate wealth in the hands of a few" (Usmani 2002, p. xiv). Business transactions that exclude *Gharrar* are "designed to prevent the weak from being exploited and, thus, a zero-sum game in which one gains at the expense of another is not sanctioned" (Chong and Liu 2009, p. 128). Thus, IFIs are required to avoid investments in any business or transaction involving gambling and excessive risk/uncertainty and speculation. Thirdly, certain business sectors are considered to be naturally harmful to society and therefore categorized as *Haram* (prohibited). Such business sectors include alcohol, tobacco, pornography, pork, arms etc. (Usmani 1998; Usmani 2002). Again, the reasons for avoiding these business sectors are their associated contributions towards social problems.

The robustness of IFIs in the recent financial crisis is partly due to their adherence to these fundamental principles. A Moody's report claimed that the reason for Islamic banks' strong resilience to the recent global financial downturn was their adherence to a rather conservative investment policy based on the above principles (Hassoune 2008). The ability of IFIs to weather the storm is embedded within the core principles of Islamic banking whereby both speculation (*Maysir*) and interest (*Riba*) are prohibited. Other reports have also supported the claim that IFIs have

remained intact from the severe impacts of the 2007–2009 financial crisis (Yeates 2008) in which some of the world's major financial institutions collapsed.

Islamic finance derives its principles from Shari'a *Muamala't*, the Islamic commercial jurisprudence. Muslims' dealings with fellow human beings are deeply intertwined with Islam's basic beliefs, values and objectives. In fact, Shari'a "reflects the holistic view of Islam, which is a complete and integrated code of life" (Dusuki and Abdullah 2007, p. 30). Perhaps Imam Al-Ghazzali, as quoted in Chapra (2000, p. 118), introduced the best comprehensive definition of Shari'a objectives:

The objective of the Shari'a is to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*mal*). Whatever ensures the safeguard of these five serves the public interest and is desirable.

There is a strong affinity between Shari'a objectives and the recent ascendancy of corporate social responsibility (CSR) (Ullah et al. 2014). Shari'a objectives address the issue of responsibility of not only businesses but also individuals in a rather wider and more holistic way (Dusuki 2008a, b). In fact, all the major religions prioritize public good against personal gains. From an Islamic religious perspective, one's wealth is considered as a trust from Allah and therefore, it should be used to relieve fellow human beings from their troubles and avoid any uses that would involve damaging others for personal gains.

As Shari'a objectives prioritize public good over personal or corporate goals, one might expect that IFIs should prioritize Shari'a objectives over corporate profiteering. However, capitalist economists argue that the sole reason for corporate existence is the maximization of shareholders' wealth (Friedman 1967, 1970). Therefore, a potential conflict over transitional and ultimate objectives or goals seems obvious in the case of IFIs where they have to reconcile two potentially divergent objectives assigned to two different pillars of the basic governance mechanism of Islamic Financial Institutions, i.e. Shari'a scholars and managers. The purpose of this paper is to investigate the determinant factors that lead to the phenomenon of Fatwa Repositioning, which is the latent struggle for positioning and repositioning of Shari'a compliance by Shari'a scholars and managers in order to achieve their respective objectives.

It is pertinent to mention here that the Shari'a-compliance process takes place in three distinct steps, i.e. (i) the issuance of a religious verdict (*fatwa*) for launching a new product/service, (ii) implementation of the verdict and (iii) verification of the implementation according to the instructions given by the verdict issuing authority. The

Shari'a board or advisor, as the case may be, issues the verdict. In some cases, especially when considering conventional banks with Islamic banking windows, such verdicts are obtained from Shari'a consultancy firms and implemented by the bank's management. However, the Islamic Financial Services Board (IFSB) recommends the establishment of an Internal Shari'a Compliance Unit (ISCU) comprised of Shari'a experts who oversee the implementation of the verdicts. IFSB also endorses the establishment of an Internal Shari'a Audit Unit (ISAU), which reviews the implementation of the verdicts and points out discrepancies (IFSB 2009). It is at this point that potential discrepancies are detected and respective profits given to charities.

## Methodology

The methodology adopted in this study is GT (Corbin and Strauss 2008; Glaser and Strauss 1967; Strauss and Corbin 1990, 1998) which "...reveals the underlying processes of what is going on in a substantive area of study" (Lowe 1998, p. 106). Developed by Glaser and Strauss (1967); this methodology generates theory systematically from data through iterative loops of inductive and deductive thinking. It is a research method used for the investigation of spoken and written data to generate codes (Greener 2008) to build a new theory using qualitative data (Glaser 2001, 2003).

Grounded Theory (GT) analysis is based on three interwoven steps and does not require the formulation of an a priori research framework based on a rigorous literature review at the beginning of the research, but rather starts with data collection and analysis after the broader area of research is identified. Data collection is then guided by theoretical sampling which is a process of data collection whereby the researcher concurrently collects and analyses data and decides what data to collect next and where to find it, in order to develop the emerging theory.

The research data was collected from several rounds of interviews, annual reports and internal documents of three IFIs and a regulatory body located in two countries, i.e. Pakistan and United Arab Emirates (UAE). Interviews were primarily conducted face-to-face with respondents. Repeat interviews were conducted via telephone and clarifications or additional explanations were also sought through emails. Respondents included Shari'a scholars, managers, employees and customers of the three cases and key officers from a regulatory body. It is noteworthy that the selection of the three cases, the regulator and the different respondent groups within each case was guided by theoretical sampling (Corbin and Strauss 1990; Glaser

and Strauss 1967; Strauss 1987; Strauss and Corbin 1990, 1998). Further data triangulation was attained by collecting data from the annual reports and Islamic banking manuals of the selected institutions. A summary of the interviews completed for this research is provided in Table 1.

For the purpose of this study, anyone with assigned business targets and direct/indirect involvement with Shari'a scholars is included in the category of 'managers'. This includes the chief executive officer, heads of departments and branch managers. As the Board of Directors (BoD) is also engaged with Shari'a scholars on various matters, the term 'management' as used in this paper also encompasses the BoD. Similarly, a Shari'a scholar is any person whose job is ensuring Shari'a compliance of the IFIs. This category includes members of the Shari'a board, Shari'a advisors, Shari'a auditors and anyone working under the direct command of Shari'a boards and advisors. The study makes frequent reference to these two groups.

GT analysis follows a familiar pattern in most qualitative research approaches, namely making use of data reduction, categorization and data display techniques. The first stage, open coding, aims to fragment the data into concepts which relate to events, objects, happenings or actions/interactions (Strauss and Corbin 1998); each concept being ascribed an open code. Where codes are taken verbatim from respondents, these are known as 'in vivo'; otherwise the analyst must draw on a wide vocabulary in order to provide meaningful and descriptive labels. Subsequent grouping of concepts into categories, each with their dimensional range, extends the data reduction and categorization process. Throughout the coding, the analyst uses a constant comparison between existing codes and newly emerging themes and concepts, thereby building theoretical sensitivity and informing further theoretical sampling and data collection activities (Strauss and Corbin 1998). A summary of the open codes identified in this research is given in Table 2. Open coding in this research started with the first interview conducted with the Shari'a advisor of Case I. The emerging open codes were then traced in the interviews with the Shari'a Research Officer of Case I and a manager of Case II. Six interviews were conducted in the first round. The researchers then carefully completed the open coding of all the six interviews producing more than 50 open codes. However, the number of open codes grew to more than 350 at the end of the fourth round of interviews. At this stage the number of interviews had gone above 50 which included interviews with a number of key stakeholders like managers, regulators, customers and employees.

Once the analyst identifies some significant themes emerging in the open codes, a further stage of coding can begin which looks at identifying relationships between

**Table 1** Interview schedule

Respondent group	Number of respondents interviewed	Number of concepts mentioned
Managers	15	234
Shari'a scholars	14	486
Regulators	6	135
Customers	8	78
Total	43	933

**Table 2** Schedule of open codes

Open code	Description	The pursuing party	
		Managers	Shari'a scholars
Social welfare	The health and happiness of the society as a whole, which advocates trade-off of personal benefit for the greater good of the society	No	Yes
Ethical investments	Avoiding investment areas that can cause damage to the society and are often marked as <i>Haram</i> by Shari'a, e.g. tobacco, alcohol, pornography, gambling, speculative markets and interest-based industries	Yes	Definitely yes
Fairness and justice	Giving others what one wants for him/herself and avoiding harming others (physically, financially and emotionally) for one's personal incentives	No	Yes
Philanthropy	Charitable contributions to the society, both voluntary and mandatory, e.g. Zakat	No	Yes
Unity principle	Everything in the universe belongs to God, who is its ultimate owner that mankind is a mere temporary guardian of God's property. Thus, wealth and property should be used for the greater benefit of the mankind	No	Yes
Profiteering	For the managers and owners of IFIs, profit maximization is the main relevant reason of existence	Definitely Yes	Yes, but within limits
Secured investments	Despite the risk-sharing nature of Islamic financial instruments, Islamic bank managers want their investment to carry minimal risk	Definitely yes	Yes, with reluctance
Conventional reciprocity	The urge to find an Islamic alternative for every conventional banking product/service	Definitely yes	Yes, with reluctance

open codes at the dimensional level. These axial codes are often at a more abstract/conceptual level and are the 'stepping stones' towards developing the final theoretical framework. Strauss and Corbin (1990, 1998) provide a number of data display tools to assist with axial coding such as the 'paradigm model' and 'mini-frameworks'. A list of the axial codes identified in this research is given in Table 3. In fact, axial and even selective coding started as soon as the first few codes emerged. When the analysis of the first six interviews (first round of interviews) was completed, the researchers had more than 50 open codes and a handful of axial codes. It was noted that the whole process of GT analysis was highly dynamic and iterative which required frequent revisits between the different coding stages and data. After analysing the fifty plus interviews, a total of more than fourteen key axial codes had emerged that could be incorporated to make sense of the hidden phenomenon. The process was long and tiring, involving frequent returns to open codes, which were printed on A4 size paper and posted on a big wall in order to make the iterations easier.

The last and final stage in GT analysis is the selective coding, where a single higher level abstract category is identified that explains the central phenomena and is related to the majority of axial (and open) codes (Corbin and Strauss 1990, 2008; Strauss and Corbin 1990, 1998). This category can either be picked up from the open or axial codes or it can be a whole new term that explains the underlying phenomenon in the best possible way and is called the 'core' category which actually forms the GT. Strauss and Corbin (1990, 1998) provide a number of integrative tools and diagrams to assist the analyst in selective coding. Selective coding and, in fact, the other two stages of GT cannot be separated from each other during actual analysis. They naturally happen and develop together. Selective coding, in this study, started after the first few interviews were coded. The researchers had, in fact, developed the first version of the paradigm model after the initial analysis of the first six interviews conducted in the first round. The core category at that time was 'goal divergence'. However, the final core category had changed significantly from the first to the tenth version of the



**Table 3** Schedule of axial codes

Open code	Axial codes	Description	The pursuing party	
			Managers	Shari'a scholars
Social welfare Ethical investments Fairness and justice Philanthropy Unity principle	Shari'a objectives	Shari'a objectives conform to the principles that every human being has the right to life, intellect, property and dignity, which should be protected at all costs and that public interest should be prioritized over private profit making motives	No, but have to give up on certain aspects	Yes
Profiteering Secured investments Conventional reciprocity	Business objectives	Business objectives form the core of business philosophy for managers and investors, who expect this to be achieved through Islamic banking	Yes	Yes, but subject to constraints

paradigm model. Selective coding was, indeed, a very tiring process because of the heavy focus on abstraction. It took a number of attempts on the story line and the paradigm model before arriving at the core category representative of the hidden social phenomenon. Although the phenomenon had become clear towards the end of the analysis, finding the right labelling was tricky and involved much reflection and introspection and required a number of meetings and rigorous discussions between the researchers. The core category was finally named as 'Fatwa Repositioning' with a full consensus.

The data collection was conducted by the first author, but the second and third authors were deeply involved in the analysis, coding and refinement of the emerging theory. Every open and axial code was rigorously discussed and debated in regular meetings. There were disagreements on naming some of the axial codes and the core category in particular, which took a considerable amount of time and a number of meetings to arrive at. The disagreements were resolved by going back to the source data, reconsidering and refining the codes and consulting the relevant literature. It also required conducting repeat interviews with some of the key respondents to seek clarifications.

As GT treats the researchers themselves as the research instruments (Glaser and Strauss 1967), the researchers' bias is an important factor that has to be reported and explained in any GT study. We have to admit that potential bias existed at the beginning of the study because two of the researchers came from predominantly Islamic countries and had affinities to the Islamic banking system. The first author was more supportive of the Islamic banking concept as he had previously worked in this area. However, this

bias was greatly eliminated by the second author who had no background in Islamic banking, but had significant experience in GT research. He constantly questioned the other authors' emerging codes and advised going back to the data, repeating interviews and consulting the relevant literature. Thus, potential bias was significantly reduced towards the end of this study.

### Justification for GT Methodology

Although the emergence of Islamic finance has triggered research in different areas of the field, the issue of how Shari'a compliance works within Islamic banks has remained relatively untouched. One can find some literature on what Shari'a compliance should actually deliver (Dusuki 2008a, b; Dusuki and Abdullah 2007; Dusuki 2008a, b; Maali et al. 2006; Wilson 1997) but there has been limited research on the role of the Shari'a scholars and managers in the pursuit of Shari'a compliance. The researchers could not find sufficient academic literature for building a research framework and using certain research methodologies, e.g. case study which "benefits from the prior development of theoretical propositions to guide data collection and analysis" (Yin 1994, p. 13). Even though the selection of a particular research methodology is influenced by a number of factors including the researcher's background and experience, one important factor that steers the choice of a particular methodology is the nature of the research question (Strauss and Corbin 1990) because "Some areas of study naturally lend themselves more to the qualitative type of research" as they are intended to "uncover and understand what lies behind any phenomena about which little is yet known" (Strauss and Corbin 1990,

p. 19). Given that GT requires no prior research framework (Glaser and Strauss 1967), it was the most suitable methodology for this research topic because of the lack of literature in this area. Furthermore, the research topic is deeply intertwined in social intricacies. Therefore, the researchers were confident that quantitative research methods and even some qualitative research methods were not suited for this research topic. It was felt that GT, which is a qualitative research methodology, was the most appropriate method in this case because it developed a research framework from analysing field data (Glaser and Strauss 1967).

### The Discovery of Fatwa Repositioning

This section explains the open, axial and selective codes and grounds them in data. Table 1, above, shows that a total of 43 respondents were interviewed in addition to soliciting annual reports, manuals and internal documents of the three IFIs. We identified a total of 933 concepts, which were refined into the open codes illustrated in Table 2 below.

#### Social Welfare

Shari’a scholars consider social well-being as highly relevant to Islamic banking and thus accord it a significant importance in Islamic banking practices. As a Shari’a scholar’s duty is to align the bank’s practices with Shari’a objectives, they have an extensive sense of responsibility for delivering social welfare. They also have a considerable tendency to forgo banks’ profits for social welfare purposes by taking on projects having a high social impact. There have been instances where the Shari’a scholars have convinced the banks’ management to take on projects with positive social impacts, despite their risky cash flows.

The concept of Islamic banking is not only to benefit those directly involved, but also the community and the whole society...In spite of the problems and reduced profit margins; we made an investment in a project because of its benefit to the society. (Shari’a Research Officer, Case II)

From an Islamic perspective and from my point of view, it is part of the corporate role to ensure that society is looked after. (Shari’a Advisor, Case I)

Managers, on the other hand, believe that social welfare is only slightly relevant to their business and thus allocate it minimal importance. They do not feel themselves responsible for delivering social welfare through Islamic banking.

Thus, they are not in favour of sacrificing banks’ profits and other business objectives for this purpose. For example, a manager in one of the cases opposed a risky but high social impact investment proposal put forward by the Shari’a scholars until a third party, a group of affluent individuals, agreed to guarantee the principal amount.

The management did not agree on this so we made some arrangements; we asked some rich individuals to become a third party guarantor. They agreed to guarantee the principal amount in case there was loss in this transaction. (Shari’a Research Officer, Case II)

People may call it non-profit but we are indeed profit-making entities. So we have to be competitive. (Head of Investments, Case III)

Thus, there is a clear gap between the two parties’ approaches to social welfare. Because Shari’a scholars do not have authority to promote Shari’a objectives beyond the minimum Shari’a-compliance level, they are unable to advocate social well-being as an essential element to achieve ultimate Shari’a objectives.

The result is that social well-being receives only a slight consideration in terms of its implementation in the banks’ practices. Management has more power to influence decisions and outcomes than Shari’a scholars, who yield to management-promoted business objectives.

#### Ethical Investments (EI)

The concept of ethical investment is deeply embedded in Shari’a principles because it constitutes one of the key elements of Shari’a objectives. For Islamic banks, ethical investment means avoiding investment areas that can cause damage to the society and are often marked as *Haram* by Shari’a, e.g. alcohol, pornography, gambling, interest-based transactions, etc. Shari’a scholars believe EI is extremely relevant to Islamic banking and that they would never explicitly compromise on it. They feel themselves ultimately responsible for making sure the banks abide by the Shari’a principles in this regard and, therefore, they would reject any transaction involving any of the above-mentioned prohibited sectors, even if highly profitable. Shari’a scholars’ decisions in this regard are final and binding because they have full authority to approve or disapprove any such transaction.

IFIs do not deal in any transaction that is harmful to the society. You imagine something that is harmful to the society, take it to the Islamic bank and the Shari’a board will reject it... Islamic banks will not enter into transactions dealing in weapons, alcohol, tobacco,

etc. because these things are not good for the society... Islamic banks will not invest in anything harmful for humans or for animals. (Shari'a Research Officer, Case I)

Managers also recognize ethical investments as highly relevant to Islamic banking. However, they accept only a moderate responsibility for compliance with it. Managers may try to use covert means such as misrepresentation and overt pressure, such as to influence Shari'a scholars and seek concessions from them in some cases. On the other hand, Shari'a scholars have the option to resort to confrontation with managers in case they do not abide by the ethical investment principles put forth by the Shari'a scholars.

... The way I look at it is from the business side. My objective is to make business. Of course, I do the first line of defense and do not undertake transactions that I know are not compliant with Shari'a because I do not want it to be kicked out by the Shari'a scholars. (Head of Investments, Case III)

### Fairness and Justice

Shari'a scholars appeared to accept responsibility for the unfair distribution of profits between banks and depositors because Shari'a emphasizes upholding fairness and justice at all times without any discrimination, especially with information-deficient and weak parties, e.g. customers, employees and the community. Customers have primary importance because of their shared risk and no managerial authority over the use of their deposited funds. Thus, the concepts of fairness and justice advocates that banks should only transfer an amount of risk and return to depositors that are fair and just.

As the guardians of Shari'a principles within Islamic banks, Shari'a scholars believe fairness and justice are highly relevant concepts for Islamic banking. They also feel it is their responsibility to uphold these principles in Islamic banks in order to safeguard the interests of the weak stakeholders. Shari'a scholars are also inclined to sacrifice the banks' profits for ensuring highest standards of fairness and justice. However, they have limited authority, which makes it difficult for them to deliver it to the best possible extent.

Depositors have great expectations from us... [Therefore] it is our responsibility...to give them Halal [permitted] profit and to protect their rights. We are doing our best to give them Halal profits, but we do not have the powers and involvement to protect their rights, e.g. their due share of the profits. We do

feel ourselves responsible to protect their rights because they trust us. (Shari'a Advisor, Case II)

For the management, on the other hand, 'fairness and justice' has moderate relevance because of their focus on business objectives. Thus, the delivery of 'fairness and justice' is not of utmost importance for them.

Our system is fair and just... we have set criteria of 40 % return on equity and we transfer the excess to the depositors. (Head of Islamic Banking Dept., Case II)

However, the term 'fairness and justice' has no clearly defined boundaries and thus management can use their power to redefine the term by influencing the Shari'a scholars, who may give up their stance on the concept and its practical implementation.

### Philanthropy

Shari'a scholars consider charitable contributions as highly relevant and important because they believe it is their utmost responsibility to ensure banks pay the required charities. Shari'a scholars are stringent in allocating profits from Shari'a-repugnant transactions to charity as such profits make the whole profit *Haram* if not taken out. They are also ready to sacrifice any amount of banks' profits in case of spotting Shari'a-repugnant transactions.

Zakat allocation and disbursements are restricted to divine guidance...nobody can add or subtract anything in this...Shari'a board decides where the Zakat fund goes. (Head of Shari'a Dept., Case III)

Recently, we gave a huge amount of profit in charity due to a minor Shari'a issue in that transaction. (Manager Operations, Case I)

The managers interviewed accord moderate relevance and importance to charitable contributions in Islamic banking. However, management's authority is very low in this regard. However, managers resort to a number of coercive strategies to influence Shari'a scholars because they do not want profits from Shari'a-repugnant transactions to be given to charity. Some Shari'a scholars may yield to this pressure and become lenient with management while others strictly adhere to what they feel is right.

Management also sometimes asks us not to give profits to charity. In some cases, when the management really insists on us not to do something, we become lenient because there are only two options in that case; either to quit or to obey. (Shari'a Research Officer, Case III)



## Unity Principle

The unity principle proclaims that everything in the universe belongs to God who is the ultimate owner of any property. The use of wealth and property have been granted to humankind in different proportions and that God's property should never be used for the exploitation of fellow human beings rather it should be used for the benefit of humankind to earn the *will of God*. Thus, the overall public good gets priority over personal objectives of wealth maximization. Shari'a scholars feel that Islamic banks have to comply with this principle to safeguard the public interest and to promote equality.

He [God] sent Adam and his wife as carers/guardians of this earth.....to populate it...take care of it and whatever lives on it, whether plants or the animals or the mountains and all creatures that Allah has created...we have been given a hand on them to utilize them but there are rules of utilizing. (Head of Shari'a Dept., Case I)

The first objective is to earn the will of God. (Shari'a Research Officer, Case II)

According to Shari'a scholars, the unity principle is extremely relevant and important in the Islamic banking industry as it is a means of realizing the objectives of Islamic economics, also known as Shari'a objectives. They believe the unity principle is partly addressed by the proper implementation of the aforementioned codes.

Ethical Investments (EI)', 'Fairness and Justice' and doing some 'Philanthropy'. However, Shari'a scholars feel a sense of responsibility to convince managers in relation to sacrificing parts of business objectives to go one step further for the greater good of the society, e.g. offering interest-free loans to needy people. However, they do not have any authority to force management to take on further actions in this regard. In one of our cases, Shari'a scholars have been able to convince managers to grant interest-free loans to needy customers.

Qardh Hassan [interest-free loan] is paid in small amounts to depositors for personal genuine needs...we give up-to 10,000 [local currency] to needy account holders for their education, marriages, treatment etc. (Shari'a Research Officer, Case I)

Managers assign moderate relevance and importance to the unity principle as they believe the minimum Shari'a-compliance level is enough contribution to the society. They may feel a slight responsibility to take on a wider coverage than the minimum Shari'a-compliance level in case they have stronger Shari'a boards and eternal sensitivity. However, managers normally do not agree to

sacrifice business objectives for the realization of the unity principle. Furthermore, managers have full authority to do anything after the minimum Shari'a-compliance level is achieved.

There are three levels, I can say; one is the desired which leads to the fulfilment of Shari'a objectives (Maqasid Al-Shari'a), second is the permitted which meets the minimum Shari'a requirements and the third is prohibited (Haram). We are currently on the permitted level and sometimes the management may force the Shari'a advisors to go to the prohibited area, but this rarely happens. (Shari'a Research Officer, CASE III)

## Profiteering

Like any other business entity, shareholders' wealth maximization is the single most important objective of IFIs. Managers believe that profit maximization is the main relevant and important reason of existence for Islamic banks. They also exhibit a significant level of willingness to sacrifice 'fairness and justice' for having a greater financial gain and are annoyed by situations where the Shari'a scholars hinder high-yielding investment opportunities. Thus, some managers may resort to different covert pressures on Shari'a scholars to get their approval.

People may call it non-profit but we are indeed profit-making entities....we have investors who are looking for profits...management has business targets while Shari'a scholars are only concerned with Shari'a compliance...we are frustrated when the Shari'a scholars reject our proposals on which we have spent lots of time. (Head of Investments, Case III)

Shari'a scholars, on the other hand, do not refute profit maximization, but they want it to be pursued after Shari'a objectives are met. Thus, they understand the significant relevance of profiteering. Shari'a scholars are highly frustrated by the situation where management uses a number of covert and overt means to manipulate them and seek concessions on minimum Shari'a-compliance levels.

Shari'a compliance is also determined by the mentality of the management; they are not really interested in it, they are just interested in profits... The majority of the sponsors of Islamic banks also have conventional banks so they don't care if their profits come from Islamic banks or interest-based Haram sources. They just need profits. (Shari'a Research Officer, Case II)

Regulators understand this power play between management and Shari'a scholars and that management can use

a number of means to pressurize Shari'a scholars. Therefore, they are taking *ex-ante* and *ex-post* regulatory measures to safeguard Shari'a scholars and take the industry to better Shari'a-compliance levels. These measures include assessing the commitment and orientation of new entrants and then providing full protection to Shari'a scholars against management's influence. However, the *ex-ante* regulatory control mechanisms are weaker than the *ex-post* controls.

The prime motive of the entrants to this market is to tap the market... The regulator's role in this case is to assess the orientation and mentality of the sponsors. Thus, we check the past record of the sponsors and ask them questions to evaluate their commitment to the industry. (Director and Joint Director, Regulator)

### Secured Investments

The prohibition of payment and receipt of interest leaves Islamic banks with the recommended option of risk-return-sharing mechanisms, i.e. *Musharakah* and *Mudharabah*. Islamic banks are expected to share risk and return on deposits and investments. However, like other financial institutions, Islamic banks need steady cash flows. Thus, risk-return-sharing instruments are not the managers' favourite. They believe that secured investments are a highly relevant and important feature of banking.

Shari'a insists on profit sharing instruments such as *Musharakah*, *Mudharabah*, but you don't see them much practiced by the Islamic banks. Rather what you see are asset-backed instruments like *Ijarah* and *Murabahah*, which I think, have been picked up for convenience, security and fixed returns. Therefore, the real essence of risk-sharing has largely been diluted. I feel that has posed the real divergence in the sense that how we pursue the business from a Shari'a perspective and from a profit and management perspective... (Head of Investments, Case III)

In contrast, Shari'a scholars believe that real risk-sharing Islamic financial instruments, e.g. *Musharakah* and *Mudharabah* are essential for achieving Shari'a objectives. However, they also feel themselves somewhat responsible for making sure banks' investments are secured to ensure the continuity of business. Therefore, Shari'a scholars agree to some extent to sacrifice Shari'a objectives and allow the banks to pursue only secured Islamic financial instruments such as *Murabahah* and *Ijarah*. Regulators also believe that Shari'a objectives cannot be achieved without proper implementation of risk-sharing instruments. However, both regulators and Shari'a scholars agree with management's stance that the societal environment is not

conducive for *Musharakah* and *Mudharabah* because of the widespread mistrust. Still, the situation is frustrating for Shari'a scholars and regulators to a significant extent because they are trading-off Shari'a objectives.

Islamic banks cannot go towards the real essence of Islamic banking, i.e. *Musharakah* and *Mudharabah* because our society is not conducive for this. There is a complete trend of cheating amongst the public. So Islamic banks cannot do anything alone, there needs to be a complete Islamic system in place. See, a profitable business does not want to share its profits with an Islamic bank. (Joint Director, Regulator)

As a result, the bulk of Islamic financial transactions are carried out through secured instruments. No matter which product is applied, the cost of funds is calculated on a conventional basis and according to the prevailing interest rates in the market.

Islamic banks are not ready to take business risk [based on *Musharakah* and *Mudharabah*]; they need known cash flows in order to compete with conventional banks. However, there are some people who think out of the box and want to serve the industry. (Director, Regulator)

### Conventional Reciprocity

Like their conventional counterparts, Islamic banks are financial intermediaries serving the same economic purpose, thus facing strict competition from seasoned conventional banks. Therefore, it is very important for the managers of Islamic banks to pursue a competitive strategy and develop innovative products which are similar to conventional banks in order to stay viable and competitive in the market. They develop products that are similar to those of conventional banks to meet customers' banking needs. They also have a significant tendency to sacrifice Shari'a objectives and, sometimes, the minimum Shari'a-compliance requirements for this purpose. The dissatisfaction of management increases when Shari'a scholars reject such products and proposals. Therefore, they resort to coercive means to force Shari'a scholars to give concessions on the minimum Shari'a-compliance levels.

The main issue in Islamic banking is the desire for Islamic alternatives of conventional products. For example, if conventional banks offer car financing, the management of Islamic banks wants to do the same thing in an Islamic way. Thus the Shari'a advisor is asked to Islamize the car financing. Also,

you cannot ask for down payment in Islamic banking. Thus the banks have changed the name from down payment to security deposit. Islamic banks try to offer exactly the same products as the conventional banks do. This is a kind of Shari'a engineering which is done through juristic ruses (Hila's). (Credit Administration Office, Case I)

Shari'a scholars believe they are not responsible for finding alternatives for all conventional banking practices and are, thus, not willing to sacrifice the minimum Shari'a-compliance levels. Therefore, they can also resort to exerting minor pressure to counter management's pressure.

...they [managers] ask us to find ways to make all conventional products Shari'a compliant which is not always possible. Then they say, Let us stop Islamic banking if this is not possible. (Shari'a Advisor, Case II)

Regulators are aware that the eagerness of Islamic banks to offer Islamic versions of all the conventional products is posing a threat to the Islamic banking industry in the long run. However, they have taken only an observatory stance on this issue and have left it for the managers and Shari'a scholars to resolve. However, in some extreme cases, regulators ban certain types of products or structures, which gives a sense of relief to Shari'a scholars.

Management may want to Islamize the conventional banking system by changing names but this model is not sustainable at all, because Islamic finance has its own ground and this system cannot be established on the grounds of other systems. (Director and Joint Director, Regulator)

Ultimately, Islamic banks actively pursue conventional reciprocity as a key business strategy where Shari'a scholars are forced to find ways to put an Islamic tag on conventional products. Shari'a scholars may approve such deviations under the justification of 'primitive stage of the industry'.

### Consolidating the Open Codes into Higher Level Abstract Categories

The next level of analysis/discovery is to combine the open codes into axial codes using constant comparison, theoretical sensitivity, flip-flop technique and other GT tools (Strauss and Corbin 1990, 1998). The axial codes developed in this research are; (1) Shari'a objectives, which are taken care of by the Shari'a scholars and (2) business objectives catered for by the managers. A summary of the axial codes is provided in Table 3 below.

### Shari'a Objectives

Five open codes namely 'Social Welfare', 'Ethical Investments', 'Fairness and Justice', 'Philanthropy' and 'Unity Principle' were identified to have similarities with each other based on their properties and dimensions. It was also found that Shari'a scholars are always in a struggle to defend and promote these values. Therefore, these codes have been combined into a higher level abstract axial code called 'Shari'a objectives'. Management, in contrast, sticks to a narrow coverage of Shari'a objectives and tries to bring down Shari'a scholars to or below the minimum Shari'a-compliance threshold wherever possible. Thus, managers are not willing to sacrifice profits for Shari'a objectives wherever and whenever possible. Shari'a scholars are able to convince management of this trade-off only on rare occasions depending on the powers of Shari'a scholars in each bank.

I have personal reservations... the role of Shari'a board and Shari'a advisors should not be restricted to just giving Shari'a clearance on products. It should also have the authority to look into all things, e.g. how does the bank share its profits with the depositors? Is it fair and just from Shari'a point of view? However, we [Shari'a scholars] are not allowed to have a say in this because the concept of Shari'a committee is just to approve products from Shari'a point of view. (Shari'a Research Officer, Case II)

Therefore, the practical implementation of Shari'a objectives varies across the different areas captured in the open codes.

### Business Objectives

There are three open codes, i.e. 'Profiteering', 'Secured Investments' and 'Conventional Reciprocity' that can be combined together based on their properties and dimensions to form a higher order abstract category named here as 'business objectives'. All three open codes are highly important for management, the party keenly interested in achieving 'business objectives'. This may require pushing Shari'a scholars to approve what promotes business objectives. Resistance from Shari'a scholars frustrates management personnel, especially when Shari'a scholars turn down highly profitable proposals.

The powers of Shari'a scholars are restricted so they are unable to stand in strong opposition to management except in areas where they have clearly prescribed authority.

There is a huge pressure on the Shari'a department to find alternatives to conventional products. Shari'a advisors have provided much flexibility in this regard

which has even been objected to. The Shari'a advisors may offer leeway during policymaking, but once the policies are made, they are followed strictly. (Credit Administration Officer, Case I)

The power play generally gives an upper hand to managers over Shari'a scholars leading to a compromise on broader Shari'a objectives. Regulators seem to be maintaining a neutral stance, because they understand the importance of the interests of both parties.

Shari'a compliance is very important, but the managers are not prepared for it. They see Islamic banking as a new business proposition and they want return on investment. Shari'a compliance is not their prime motive. (Deputy Director, Regulator)

### Intervening Conditions

The phenomenon of Fatwa Repositioning is affected by the presence of intervening conditions, which are the "broad and general conditions...[that] include time, space, culture, economic status, technological status, career history, and individual biography" (Strauss and Corbin 1990, p. 103). This study identified the following conditions that intervened in and affected the core category.

### Educational Disparity

The majority of the Shari'a scholars working in Islamic banks are Muftis, possessing higher degrees in religious education. They also are well versed in the Arabic language, which is the medium of instruction in religious schools and the language of Shari'a law. Still their fluency in English, the business language of Islamic banks, is relatively modest. Thus, Shari'a scholars have problems understanding the business intricacies written and communicated in the English language. Secondly, the majority of the Shari'a scholars do not have formal business/finance education and are, thus, not proficient in understanding the banking and finance world.

.....the Shari'a scholars have the knowledge of Shari'a but when it comes to business and legal issues, they tend to have a lesser understanding. They also lack the understanding of time-value, risk management, the urgency of how the business world works and so and so forth...language is also a problem. All our transactions are in English, but the Shari'a scholars will have to translate all the proposals into Arabic and then comment. (Head of Investments, Case III)

On the other hand, a vast majority of managers do not have any formal degrees in religious education but possess strong backgrounds in business education. Managers are fluent in English but are unfamiliar with Arabic except where Arabic is their mother language. Thus, management understands the business world but lacks proficiency in Shari'a law, which leads to a lack of their understanding of Shari'a principles and their proper implementation.

...managers of the Islamic banks come from conventional business schools where they don't have much of a Shari'a background. (Head of Shari'a Dept., Case I)

The diverging educational backgrounds of the two parties instil diverging mentalities and approaches in the two parties.

### Experience Disparity

Islamic banks hire managers who have extensive exposure to conventional banking practices in order to ensure smooth and competitive running of the banks. Therefore, managers are very good at understanding and running the banking business, however, they do not have exposure to the environment Shari'a scholars have dealt with throughout their lives. On the other hand, Shari'a scholars have no exposure to conventional banking because they believe working for a conventional bank is *Haram*. However, the majority of the Shari'a scholars working in Islamic banks have been affiliated with religious schools and other religious organizations for an extended period of time, which has shaped their thinking patterns.

Islamic banks' management is composed of people who have more than 20 years of experience in the conventional banks and it is very difficult to convince them of the concept of Islamic banking. (Deputy Director, Regulator)

...most of them [management] come from conventional background. They try to work and run their business and achieve their targets. So their conventional background and behaviour is a big problem. (Shari'a Research Officer, Case II)

These diverging backgrounds of management and Shari'a scholars nurture two diverging mentalities.

### Self-interest

Shari'a scholars and managers are attracted to Islamic banks for personal incentives, which influence the behaviour of the beneficiaries. One Shari'a scholar called management "economic migrants" when referring to their

absolute pursuit of financial benefits and disconnect from Shari'a objectives.

Most of the human resources for Islamic banks come from conventional banks for better pay and perks. (Joint Director, regulator)

The management of Islamic banks are economic migrants; they do not come for religious reasons...but for better salaries. (Shari'a Advisor, Case II)

Shari'a scholars also receive lucrative compensations for a nominal role. Their financial and non-financial incentives are attractive enough to affect their behaviour to some extent. Therefore, Shari'a scholars might, at times, yield to management's pressure and show some sort of leniency in relation to Shari'a objectives, as they want to stay in the job and earn their living.

One reason some Shari'a advisors are tempted to be lenient is their job, compensation, promotion and other perks which are determined by the management. If they become very strict, there are chances that they will not get good benefits. (Shari'a Research Officer, CASE III)

Consequently, self-interest influences Shari'a scholars and managers to ignore deeper Shari'a compliance.

### **Eternal Reward/Punishment**

Shari'a scholars believe their work is a religious duty. A right verdict can earn them reward [heaven] and a deliberate wrong verdict will result in punishment [hell]. Therefore, there is a strong connection between their job and religious fidelity. However, the eternal rewards and punishments are expected to be in the unforeseen future and might be subject to trade-off to worldly reward and punishment.

...the responsibility of a Mufti is very big. He should use all his efforts before declaring something Halal or Haram... you make hasty decisions, you may declare something Halal which Allah has prohibited...that it is a big sin. (Shari'a Research Officer, Case I)

Managers also have varying degrees of religious fidelity, which can be the motivation of some of them for joining Islamic banks. However, their eternal sensitivity is much weaker than those of Shari'a scholars. Some managers even consider Shari'a as obsolete rather than a source of guidance.

### **External Shari'a Scholars' Pressure**

The Shari'a scholars' community has long been opposing the western banking system introduced during colonial

periods; they prohibited Muslims from any kind of dealings with banks including employment and safekeeping of deposits. Some scholars have not even opted to join and support the Islamic banking industry in its current form. This study refers to such Shari'a scholars as external. They are posing a constant pressure on Islamic banks' management and especially those Shari'a scholars that are working in the industry, i.e. the internal Shari'a scholars.

Indeed, external Shari'a scholars exert a greater pressure on internal Shari'a scholars...there are two types of external Shari'a scholars; (1) those that understand and agree with Islamic banks and (2) those that do not agree with it or have some reservations. The pressure of non-agreeing external Shari'a scholars is much higher than the agreeing. (Shari'a Research Officer, Case II)

Thus, external Shari'a scholars influence Shari'a scholars and managers towards higher levels of Shari'a compliance.

### **Regulatory Controls**

The Islamic finance industry has seen bolstering regulations with its rapid developments. A number of countries have set up separate regulatory departments for IFIs in their central banks. Non-compliance with regulations is obviously a high reputation threat to the banks and therefore management abides by the regulatory requirements. Therefore, Islamic banks' management is highly sensitive to regulatory pressure, which has a positive impact on Shari'a compliance.

We have our own Shari'a board which has the power to determine Shari'a compliance of products and its decision cannot be challenged. At the institutional level, we require all the institutions to appoint, with the approval of the State Bank of Pakistan, a Shari'a advisor based on our 'proper and fit' criteria..... Our Shari'a board also conducts Shari'a compliance inspections of Islamic banks as part of our regulatory inspections...we have ensured the independence of Shari'a advisor...So we provide proper protection to the Shari'a advisors otherwise they can be subject to management's pressure. (Additional Director, Regulator)

In general, regulatory controls give an upper hand to Shari'a scholars to exercise their powers and make efforts for Shari'a compliance, but these also restrict their authority in the overall affairs of the financial institutions.

## Depositors' Expectations

Religious influence in Muslim communities is so strong that it has permeated and merged into the cultural norms. Therefore, Shari'a scholars are highly respected in those communities and their views, whether on spiritual or worldly matters, are highly regarded because of their religious knowledge and devotion to it. Thus, Islamic banks' depositors have a blind trust in the integrity of Shari'a scholars. They expect Shari'a scholars' presence in Islamic banks ensures Shari'a compliance and the achievement of 'Shari'a Objectives'. Thus, the presence of a high-market-stature Shari'a scholar in Islamic banks boosts depositors' confidence. This blind trust of depositors builds a potential pressure on Shari'a scholars to be more meticulous on Shari'a matters.

I trust that this bank's Shari'a compliance because it has some famous names who work in this bank's Shari'a department. I trust those Shari'a scholars. This is a matter of trust. I believe that this bank is 100 % Shari'a compliant. (Depositor, Case II)

There are many depositors who see a few things when deciding to open an account with a bank. First, they see who the Shari'a board members are. Secondly, who is the Shari'a advisor? (Shari'a Research Officer, Case II)

Thus, depositors' expectations influence Shari'a scholars to exert more efforts in enhancing Shari'a compliance in their respective institutions.

## Shari'a Reputation Risk

If a violation of Shari'a principles leaks out to the public, especially the depositors, the bank's reputation will be affected thereby reducing its market share. Therefore, it is in the interest of the management not to pressurize Shari'a scholars beyond a certain extent and thus safeguard their reputation. Shari'a scholars can also write a negative review of certain managerial practices and thereby damage a managers' personal reputation. Exposure to reputation risk is one reason why Islamic banks try to have high-market-stature Shari'a scholars on their Shari'a boards.

Moreover the IFIs are exposed to reputation risk and therefore they will rely on renowned scholars. (Shari'a Advisor, Case I)

Thus, Shari'a reputation risk converges the efforts of Shari'a scholars and managers towards better Shari'a compliance.

## Action/Interaction Strategies

Managers and Shari'a Scholars use the following action/interaction strategies in order to shape the consequences of the phenomenon in their favour.

### Strategies Used by Management

#### *Coercion*

Coercion is used by management within Islamic banks for forcing Shari'a scholars to become lenient on Shari'a objectives. The threat of firing can be used as a convenient tool against Shari'a scholars where there is no or minimal regulatory protection for Shari'a scholars. It becomes a less useful tool in highly regulated countries. On the other hand, the threat to close down Islamic banking operations is a useful tool in banks where Islamic banking is in the form of window-operations while the rest of the bank is conventional. It is also used as a coercive strategy by management of the banks that run Islamic banks as subsidiaries. However, it is again less likely that management will actually exercise closure threat because of their huge investment at stake.

They even threaten our jobs! Once the bank asked me to consider a structure, which I found repugnant to Shari'a, and I rejected it. Then I got a phone call from the president saying, 'I need you to approve the structure. I will call you after 5 min and I need a positive answer otherwise I will take my action'. I told him, 'What action are you taking after 5 min? You can take that action now because my answer will be the same after 5 min. Are you going to fire me? I have got offer letters from other banks in my drawer'. (Shari'a Advisor, Case II)

#### *Controlling*

The controlling strategies start from the time of hiring of Shari'a scholars where management prefers to hire lenient scholars, by limiting their authority to product approval only. Shari'a scholars are further controlled by confining their involvement only in areas where they have authority and are kept away from administrative matters. Thus, management achieves enough freedom to promote their business objectives under the Islamic name.

However, the managers' controlling strategies are constrained by regulators who set the criteria for the appointment and independence of Shari'a scholars. Once nominated by the management, the Shari'a scholars have to be approved by the regulators. This restricts the managers' freedom of choosing their Shari'a scholars. In addition,

regulators also specify the authority of Shari'a scholars within the banks. Although the Shari'a scholars' authority is full and final in the product-approval stage, its range does not extend to other banking areas and the achievement of Shari'a objectives becomes difficult.

...banks would like to have lenient Shari'a advisors at the time of appointment. (Head of Islamic Banking Dept., Case II)

...It [regulator] has restricted the Shari'a scholars' role in the general affairs of the bank. For example, depositors and employees expect us to protect their rights but we are not allowed to get involved in such affairs. Shari'a advisors' role is very limited while they need to get involved in each and every aspect of the organization in order to make it fully Shari'a compliant. (Shari'a Advisor, Case II)

### *Avoidance*

Avoiding a Shari'a board may be desirable to management in order to reduce the powers of Shari'a advisors, but still it is a tool for enhancing the legitimacy of the banks. One could argue that management would be inclined, in certain cases, to avoid the most stringent Shari'a scholars on their boards in order to reduce Shari'a scholars' influence on the banks.

Our Shari'a board is not the same [as strong as it was before]; it has been changed... Shari'a board is not compulsory for Islamic banks in our country that's why banks are not interested in the formation of their own Shari'a boards. (Shari'a Research Officer, Case II)

Avoiding Shari'a audit, on the other hand, is more likely to be practiced by Islamic banks because most of the Shari'a-repugnant transactions are pointed out during such audits. This has a significant impact on the banks' profitability and reputation in some cases. However, strict regulatory requirements of Shari'a audits in some jurisdictions make it difficult for Islamic banks to avoid it. It is more likely to be exercised in areas where such audits are not a regulatory requirement.

In some jurisdictions, the minimum requirement to have at least one Shari'a scholar as advisor in the institution and there is no requirement for him/her to be present full-time in the bank, makes it attractive for the management to give a free hand to Shari'a scholars in terms of their working hours. This paves the way for management to misrepresent some pieces of information and get Shari'a scholars' approval given his/her limited time at the banks.

'Fatwa shopping', the concept of searching for lenient Shari'a scholars, is easy in areas with no regulatory controls where banks hire the services of Shari'a consultancies rather than having their own Shari'a advisors. Fatwa shopping in its literal meaning, however, might be very rarely observed in banks with their own Shari'a departments and Shari'a boards.

If he doesn't give it to us, we phone up another scholar, offer him a sum of money for his services and ask him for a fatwa. We do this until we get Shari'a compliance. (Investment Banker, Dubai: Quoted BBC Article)

As a consequence of the use of avoidance strategies, Shari'a scholars are kept away from some key issues where the business objectives are at risk. Excessive use of avoiding strategies leads to superficial Shari'a compliance.

### **Strategies Used by Shari'a Scholars**

#### *Confrontation*

Although Shari'a scholars do not resort to confrontation very often, the threat largely regulates managers' behaviour. This is because of the potential impact on management and the overall institutions in case confrontational strategies are exercised. The strategies can be used against individual bank managers or the management as a whole depending on circumstances. However, punitive actions are particularly taken against individual managers. Therefore, managers try to be vigilant at the individual level. Shari'a scholars can also nullify transactions if executed against their instructions and, thus, allocating the related profits to charity. The exercise of such strategies will most likely affect a group of managers, e.g. a whole branch. Complaints to regulators or shareholders can be made against management in case of extensive use of avoidance and coercion against Shari'a scholars. However, only those Shari'a scholars can likely resort to confrontation who have a strong hierarchical support or have access to a strong regulatory framework.

Recently we gave a huge amount of profit in charity due to a minor Shari'a issue in that transaction. (Manager Operations, Case II)

The probability of Shari'a scholars resorting to confrontation makes managers submit to Shari'a scholars' authority leading to better Shari'a-compliance levels.

#### *Compromising*

Shari'a scholars rely on their predecessors' decisions when faced with pressure from management. In some instances,

Shari'a scholars approve and defend some of the Islamic banks' Shari'a-repugnant practices by invoking the young age of the industry. Shari'a scholars also resort to juristic ruses and even 'fatwa manufacturing', in rare instances, when facing intense pressure from management to get something done. This happens especially when banks try to find alternatives for all conventional banking practices. Although pure fatwa manufacturing may be rare to observe, the use of juristic ruses is widely present.

Compromising strategies are exercised when the pressure from management is high and unavoidable. Different compromising strategies are used in different situations. The result of excessive use of compromising strategies would be superficial Shari'a compliance. The current use of these strategies has made Islamic banking oscillate between superficial and minimum-required Shari'a-compliance levels.

A respondent who kindly agreed to comment on the analysis remarked on this issue in the following words.

Some Sharia scholars show some leniency at times to maintain good relationships with managements.  
(Head of Shari'a Dept., Case III)

#### *Seeking Hierarchical Backing*

The banks' own Shari'a boards are the first points of refuge for Shari'a scholars in the case of undue management pressure. As Shari'a boards are generally more independent and hence more powerful than the in-house Shari'a scholars, the in-house Shari'a advisors forward matters to the Shari'a board in case they feel pressured by the management. This influences managers not to coerce Shari'a scholars in order to avoid issues being raised with the Shari'a board. Therefore, Shari'a advisors refer to uncertain situations or instances where they are pushed by management to seek expert advice from the Shari'a board and counter managers' pressure.

The Shari'a advisor is the bank's employee who can be pushed for something, but his pressure is released by the Shari'a committee, especially the one that works without any compensation and also includes strong external scholars. This is the main benefit of the Shari'a committee. (Shari'a Research Officer, Case II)

If the conflict is not resolved by taking it to the Shari'a board, it is then forwarded to the Shari'a board of the regulator, if any, whose decision then becomes a regulatory standard binding on all parties.

The existence of a strong hierarchical backing to Shari'a scholars empowers them to counter managers' pressure and avoid *Haram* transactions. It also leads banks closer to deep Shari'a compliance and Shari'a objectives.

#### *Separation*

Separation/resignation from the institution or even the Islamic banking industry is the last option Shari'a scholars have in case they are not satisfied with the banks Shari'a compliance. There have been instances of such separations.

The extreme action Shari'a advisors can take is to resign and this has happened in some banks. Some may also go out and start whistle-blowing, but this is rare because people will question his/her integrity.  
(Shari'a Advisor, Case II)

A silent separation from the bank probably helps managers to appoint new Shari'a scholars who might be more lenient and willing to work on their terms. However, if the resigned Shari'a scholar starts whistle-blowing, it can be a great risk to the banks' reputation and legitimacy. Therefore, managers are reluctant to push Shari'a scholars to the point of no return. If they do, they will make sure he/she leaves the bank happily.

#### **The Core Category: Fatwa Repositioning**

Although, the two objectives, i.e. Shari'a and business objectives could be achieved concurrently in most circumstances, they might be conflicting at times leading to a sacrifice of one to achieve the other. Furthermore, the wardens of the two objectives are two different parties, i.e. Shari'a scholars for Shari'a objectives and managers for business objectives. Despite Shari'a compliance being their main advertising theme, IFIs' prime motive is to tap the market of the religious Muslim clientele. The two parties have different backgrounds, varying and different degrees of eternal, external/internal pressures and self-interest. These intervening conditions sometimes cause an increase in the divergence between the two objectives, but they could also reduce the gap at times. The background of the two parties further strengthens this attitudinal difference. In addition, there are some external pressures, e.g. pressure from regulators, depositors and external Shari'a scholars which force the two parties towards deeper Shari'a compliance. On the other hand, depositors' pressure is largely on Shari'a scholars forcing them to push for deeper Shari'a compliance. Similarly, the pressure from external Shari'a scholars also works mainly on internal Shari'a scholars forcing them to strive for and achieve higher levels of Shari'a compliance.

There are apparently more intervening conditions influencing Shari'a scholars towards deeper Shari'a compliance than the ones influencing managers towards lesser compliance. Furthermore, some of the conditions, e.g. eternal pressure also pull managers towards deeper Shari'a



compliance. However, managers' overall focus on business objectives is strong enough to repel all these pressures and compel them to seek business objectives even at the cost of minimum Shari'a compliance whenever possible. Therefore, the two parties are in a constant *latent struggle* for safeguarding their assigned objectives.

The Shari'a job is often conflicting with the business side of the bank. It is the same as with risk management. The business department sends us proposals, but we reject them based on risk involved. Similarly, the Shari'a department rejects proposals based on Shari'a issues. However, the difference is that if a business proposal is taken forward against the instructions of the risk management department, there can be huge financial costs for the business at the end. On the other hand, Shari'a non-compliance does not have direct financial consequences for the bank if the Shari'a advisor approves it. Therefore, the management is often in struggle of convincing the Shari'a advisor to approve such proposals. The CEO often asks the Shari'a advisor to 'find ways' to launch new products. (Head of Risk Management, Case I)

Managers' business objectives under the title of Islamic banking cannot be easily achieved without certification from Shari'a scholars, because the products and services of Islamic banks would have little or no legitimacy without the support of Shari'a scholars, who apparently drive the public opinion in religious Muslim communities. Therefore, managers are willing to accommodate Shari'a scholars' opinions and their nominal supreme authority in some cases to ensure their presence and support. Once Shari'a scholars agree on the minimum Shari'a-compliance level, managers start their struggle to reverse the fatwa back towards the business objectives along the continuum. This struggle could either be in the form of financial reengineering of fatwas or noncompliance with Shari'a scholars' instructions during actual implementation, or even forcing Shari'a scholars to issue rather lenient fatwas for the smooth achievement of business objectives.

On the other hand, Shari'a scholars apparently consider their jobs as a form of discharging a religious duty for they expect to be rewarded for it in the eternal life. Their ultimate desire is to take Shari'a compliance to the levels of Shari'a objectives. The self-interest could also be a factor for some Shari'a scholars to stay on board with Islamic banks and earn reputation/status and monetary incentives. Therefore, Shari'a scholars are interested in the continuity of the industry, which at times requires their lenience on Shari'a objectives and principles.

The two parties, then, resort to different strategies to reposition the fatwas towards their respective objectives along the continuum. Shari'a scholars who have some sort

of conventional background and rather weak sensitivity to eternal reward/punishment might be inclined to compromise, in the absence of weak internal, external and regulatory pressures, thereby adopting a lenient approach towards Shari'a compliance. One core reason for adopting compromising strategies by the Shari'a scholars is the excuse of primitiveness of the industry. They approve some Shari'a-repugnant products with the expectations of rectifying them later. The compromising scenario becomes more obvious in the case of the Islamic-window of conventional banks where managers' backgrounds are significantly conventional and are not sensitive to eternal reward/punishment. In such situations, the overall Shari'a compliance becomes *superficial*. Other Shari'a scholars with a strong religious background and strong eternal pressure resort to confrontation with management in the presence of a strong regulatory framework coupled with significant internal and external pressures. Such Shari'a scholars try to ensure the achievement of *minimum Shari'a compliance*. If such Shari'a scholars are reinforced by managers who are sensitive to eternal reward/punishment and having significant religious backgrounds, the resultant banking could be *reasonably Shari'a compliant* in the context of a strong regulatory framework and religiously oriented sponsors. In the absence of a substantial regulatory framework and the presence of a strong eternal pressure coupled with internal and external pressures, some Shari'a scholars make recourse to separation from the Islamic banks when management does not observe the minimum Shari'a compliance.

There appears then to be a continuous struggle for positioning and repositioning of Shari'a compliance and the issued *Fatwas*, which leads us to the identification and naming of the core category, i.e. *Fatwa Repositioning'*. Once the initial positioning is agreed upon, the managers' latent struggle for repositioning the fatwa back towards business objectives begins. This could either be in the form of malpractices during the implementation of the fatwas or in the form of combining two or more issued fatwas to manufacture a desired position. Managers can also use a number of strategies, e.g. avoidance, controlling and coercion to bring Shari'a scholars to a favourable position. On the other hand, the Shari'a scholars' desired target is to achieve ultimate Shari'a objectives, but they agree to move to the minimum Shari'a-compliance levels under the guise of the primitiveness of the industry and Shari'a compliance in general. In addition, the remuneration, prerequisites and status of Shari'a scholars may tempt some of them to be lenient, with the expectation to take Shari'a compliance gradually towards Shari'a objectives. Once they issue fatwas that meet only the minimum Shari'a-compliance levels, they start a struggle not only to move it towards a reasonable level but also onwards to a deeper level of

Shari'a compliance. This may need, at times, the recalling of a previously issued fatwa, or restructuring it with more restrictions and contractual steps. Shari'a scholars are also in a constant overt struggle to prevent managers from repositioning the fatwa from minimum Shari'a compliance to a superficial level along the continuum of Fatwa Repositioning. This may necessitate them to monitor managers in the form of Shari'a audits and investigate dubious transactions. This often results in a confrontation with managers. For example, Shari'a scholars can recommend punishment for the responsible managers and nullify a complete transaction, giving its profits to charity or even making complaints to the regulators, BoD and shareholders.

### The Paradigm Model

The paradigm model is an “analytic strategy for integrating structure with process” (Corbin and Strauss 2008, p. 87). It is a key tool for establishing and validating the relationships between the core category and other axial codes that constitute the causal and intervening conditions, action/interaction strategies and consequences (Corbin and Strauss 2008; Strauss and Corbin 1990). All these relationships hold in the presence of certain contextual factors, which affect the core and axial categories.

The paradigm model of this study is presented in Fig. 1. The causal conditions, i.e. Shari'a and Business Objectives are listed in the left and rightmost boxes. These conditions lead to the emergence of the core category of Fatwa Repositioning, which is listed on the continuum. When the phenomenon is subjected to the intervening conditions and the action/interactional strategies, it results in the different variations of Shari'a compliance, which are listed in the boxes along the continuum. The intervening conditions, listed in box 1 and 2 of Fig. 1, start affecting the core phenomenon, positively or negatively, after it is established by the causal conditions. The intervening conditions that catalyse the repositioning of Shari'a compliance towards lower levels are listed in box 1 and the ones that move the Shari'a compliance towards deeper levels are listed in box 1. For example, self-interest is an intervening condition that helps the repositioning of Shari'a compliance towards lower levels, because of the existence of Shari'a scholars who enjoy their perks and are willing to compromise in order to maintain good relationships with managers and thus retain their jobs. A Shari'a scholar with higher self-interest would be easily intimidated by the financial and non-financial compensation offered by the IFI and thus willing to compromise on Shari'a objectives. On the other hand, Shari'a scholars who are less taken by self-interest would resort to confrontation when they are not satisfied with the practices of the IFIs. Self-interest can affect the

behaviour of managers in a similar way. Managers, of course, are more concerned with their incentives, which are tied to their business targets, and thus they would not be so worried if their objectives are achieved at the expense of Shari'a compliance. Educational and experience disparities are the intervening variables that increase the chances of conflicts between the two parties, as they do not understand each other because of the divergent background. Consequently, managers who are nurtured in a conventional interest-centred education and experience, believe that business objectives are more important while Shari'a scholars often believe that IFIs exist only for the achievement of Shari'a objectives. Regulatory control is an intervening condition that can work both ways. It ensures the minimum level of Shari'a compliance by giving authority to Shari'a scholars over the Shari'a-compliance process and ensuring their independence. However, it also restricts Shari'a scholars' role to product approval only, thus giving freedom to managers to operate in other areas, e.g. social responsibility and fair profit distribution to depositors. The remaining intervening conditions influence both parties towards better Shari'a compliance.

Once the latent struggle for Fatwa Repositioning is created by the causal conditions and moderated by the intervening conditions, the two parties, i.e. Shari'a scholars and managers resort to various actions/interactional strategies, listed in box 3 and 4 of Fig. 1, to tilt the phenomenon in their favour. The strategies that managers use are Controlling, Avoidance and Coercion while those used by Shari'a scholars are Compromising, Confrontation, Separation and Seeking Hierarchical Backing. Figure 1 indicates that all of the managers' strategies, listed in Box 1, are focused only on moving Shari'a compliance to the lesser level, as indicated by the dotted arrows. However, Shari'a scholars' strategies can be divided into two groups; the ones that lead to better Shari'a compliance and vice versa. For example, when Shari'a scholars yield to managers' coercion and start compromising on Shari'a objectives, Shari'a compliance is repositioned towards lower levels. Similarly, with the resignation of a stringent Shari'a scholar (who does not yield to managers' coercions and controlling efforts and opts to resign instead of compromising), managers get a chance to replace him with a lenient scholar, who will easily compromise on Shari'a objectives. This constant fatwa repositioning yields the different levels of Shari'a compliance, which vary from superficial to deep Shari'a compliance as illustrated in Fig. 1.

It is relevant here to mention that GT is a process (Corbin and Strauss 2008) and not a static combination of variables that would always stay the same. Therefore, any change in the causal and intervening conditions would lead to a corresponding change in the action/interactional

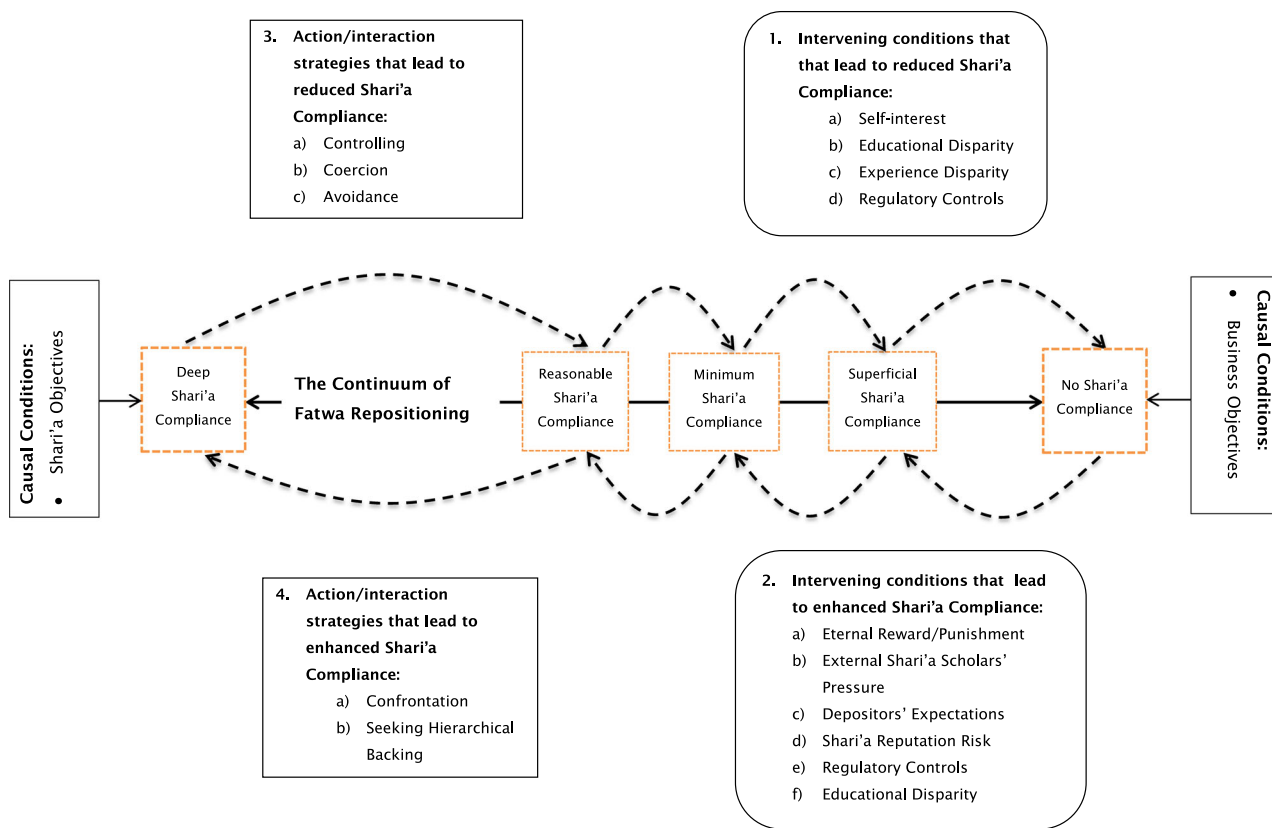


Fig. 1 The paradigm model—Fatwa repositioning and the struggle for control in IFIs

strategies and the resulting consequences. This change can start from any point, i.e. a sudden change in intervening conditions would change strategies and consequences. Just as an example, if an IFI starts hiring managers who not only have business degrees, but also meet a certain level of religious training, those managers would not coerce Shari'a scholars but would rather facilitate their work. Thus, the combination and intensity of causal conditions would be altered.

As per Fig. 1, there are four possible consequences to Fatwa Repositioning, namely deep, reasonable, minimum and superficial Shari'a compliance.

Deep Shari'a compliance could be achieved when managers are submissive to Shari'a scholars' authority and Shari'a scholars are confrontational in the context of strong hierarchical backing and a robust regulatory framework. It is an ideal state which could be achieved when the ultimate objective of all stakeholders, chiefly managers and sponsors, is the will of Allah. Hence, one would be inclined to not only forgo his/her profits, but also capital for the greater public benefit and social well-being. It therefore is very difficult to achieve in practice in the presence of profit maximization as a key motivator for some stakeholders.

On the other extreme, Shari'a compliance is only superficial (and hence limited to the use of Arabic names

for conventional products in some extreme cases) when managers use avoidance, controlling and coercive strategies when dealing with compromising and cooperative Shari'a scholars. This scenario is more prominent where the banks are not fully Islamic and there is little or no hierarchical backing available to Shari'a scholars. In such cases, sponsors and managers do not consider Islamic banking as anything more than another profitable project that needs to be tapped before it dries out. Superficial Shari'a compliance is one of the two widely present outcomes of the present-day combination of all the variables, strategies and context. Shari'a compliance could be called superficial when conventional banking products are replicated by only changing the terminology to Arabic. Sometimes managers manufacture this position by combining two fatwas to engineer a conventional product that would otherwise have been rejected by Shari'a scholars in composite.

The third consequence which is also widely present in today's IFIs is minimum Shari'a compliance. This is the lowest level of Shari'a compliance that managers must agree on before they get Shari'a certification from Shari'a scholars. This is where most Shari'a scholars issue Shari'a-compliance certification to their respective instructions. As discussed above, managers can then reengineer these

permissible positions to superficial Shari'a compliance if they need to. The present scenario in our cases is that Shari'a compliance wavers between superficial and minimum levels. Some scholars (El-Gamal 2006) claim that even the minimum Shari'a-compliance position is in fact superficial because Shari'a scholars know the ultimate consequences of those structures. They approve them with the excuse that they represent the form of mediaeval Islamic contracts.

The fourth and in fact rarely occurring consequence of this interplay of variables and strategies is what has been termed as 'reasonable Shari'a compliance'. This is one step above the minimum Shari'a compliance on the continuum which is reached when Shari'a scholars are assertive, and managers and sponsors have somewhat religious backgrounds. In this case, the IFI's focus could change from debt-like instruments towards profit and loss sharing (PLS) mechanisms. Shari'a scholars could also compel managers to issue Qardh-i-Hasana (interest-free loans) to some needy people. Shari'a scholars are often in a struggle to move the Shari'a-compliance level from superficial back to minimum and then further to reasonable in order to address the strong criticism they face from external Shari'a scholars and intellectuals.

## Concluding Remarks

Dar (2011) asserts that procurement of a fatwa is easy for banks, but the real Shari'a-compliance test begins with its implementation and execution. It requires the existence of an Internal Shari'a Compliance Unit (ISCU) to monitor the contracts at the time of implementation and an Internal Shari'a Audit Unit (ISAU) to conduct Shari'a audits of the contracts. The tedious job of the banks is to face Shari'a audits because the contracts are nullified and profits apportioned to charity in case discrepancies are detected. Several researchers claim the existence of "anecdotal evidence that some conventional banks (especially investment banks) do not go through the painful process of booking Islamic financial products in line with strict Shari'a requirements. Instead, they may obtain a fatwa on the structures of the products which they use to replicate conventional products" (Dar 2011, p. 11). Such banks do not like to have Shari'a-compliance and audit systems (internal or external) in place to monitor their adherence to the fatwa and the instructions given by the Shari'a scholars. Furthermore, some banks are "averse to the idea of having a strong Shari'a department within and prefer to outsource this function" (Dar 2011, p. 11). The non-existence of Shari'a audit in many Islamic banks has been identified as a serious loophole in the current system (Singh 2009). Singh asserts that *ex-ante* Shari'a compliance is observed by

almost all Islamic banks but the *ex-post* compliance is nearly non-existent in the majority of Islamic banks.

As discussed above, managers try to avoid strict Shari'a supervision and audit. However, their struggle does not stop here because they also seek religious verdicts that meet their needs. In other words, managers do not focus on making their products Shari'a compliant; rather they seek Shari'a certification for their banking products. This is another loophole in Islamic banking identified in existing literature and termed as 'fatwa shopping' (Farook and Farooq 2011; Foster 2009; Hosen 2008). Although not specifically referring to the prevailing practices in Islamic banking, Hosen (2008, p. 164) defines fatwa shopping as "the process of searching Islamic websites for suitable religious opinions". He further continues that "dissatisfied questioners may approach another scholar for a second (or even a third or fourth) opinion until they get the one they want". Interestingly, Foster (2009) found very similar practices by Islamic bankers. He has quoted a Dubai-based investment banker as saying "If he [the first Shari'a scholar] doesn't give it [fatwa] to us, we phone up another scholar, offer him a sum of money for his services and ask him for a fatwa. We do this until we get Sharia compliance". The phenomenon presented by this quote is a nice illustration of fatwa shopping because the banker admits offering a monetary compensation for a convenient fatwa that suits his/her needs. It apparently highlights the phenomenon of purchasing Shari'a compliance for a lump sum of money. Some scholars also assert that bankers do not select Shari'a scholars on the basis of their competence in Shari'a and banking fields, but rather on the basis of their leniency in issuing fatwas. For example, Al-Jarhi writes that "those [Shari'a scholars] who charge less for their services and are willing to provide more convenient opinions [fatwas], from the point of view of shareholders, will be chosen [by management] over the more knowledgeable" (as cited by Farook and Farooq 2011, p. 19). There is ample evidence that Islamic bankers consider Shari'a Supervisory Boards (SSB) as a formality rather than an active controlling body. The professional use of fatwa shopping for personal gains especially in the emerging field of Islamic finance, has been lamented by some researchers (Farook and Farooq 2011). Some believe that the existence of fatwa shopping as portrayed by Foster (2009) may be an exaggeration of the phenomenon, but still agree with the general perception of this potential hurdle and consider it as a handicap for the industry in the long run.

When one hears about IFIs, what comes to mind is that compliance with Shari'a principles is the foremost important priority for such institutions. Secondly, Shari'a compliance may be seen as a straightforward and an absolute mechanism in the presence of Shari'a scholars on board with IFIs. This research however, reveals that the reality is

much more complicated than what it appears to be from the outside. In fact, the business and Shari'a objectives are not necessarily aligned, and there are two separate parties, i.e. managers and Shari'a entrusted as guardians to promote business and Shari'a objectives, respectively, which leads to a hidden struggle and conflict of objectives. The core emerging category in this research is Fatwa Repositioning, which captures the essence of the ongoing negotiation phenomenon in the context of IFIs between managers seeking to meet their business objectives and Shari'a scholars who are constantly challenged to preserve the essence and integrity of Islamic banking.

To gain more insights into this phenomenon, it is important to understand that behind the façade of Islamic banking, there is tension between two conflicting objectives, i.e. business and Shari'a objectives assigned to two different parties within IFIs. The mere presence of these different objectives creates the necessary conditions to ignite a conflicting struggle between the parties. Shari'a scholars would ideally want to achieve the deepest levels of Shari'a compliance in the absence of any opposing force or pressure (posed by managers) while managers would strive for maximizing business interests in the absence of any restrictions (imposed by Shari'a scholars). It is here that the broader contextual factors and intervening conditions that we have identified in this paper start to play their role. For example, the wider the educational and experience disparity between the two parties, the stronger the struggle and vice versa. Similarly, there is the obvious existence and salience of depositors' and employees' expectations, pressure from external Shari'a scholars, strict regulatory controls and, most importantly, the degree of sensitivity to eternal reward/punishment which all play a role in the intensity of this struggle. These are interesting moderating variables that will be worth exploring in future research pertaining to this important topic.

In summary, our research uncovers a considerable disconnect between management and Shari'a objectives. On the one extreme, the foremost objective of Islamic banks' sponsors and managers is to capitalize on the banking market of conservative Muslim customers who would otherwise not patronize conventional banks. In extreme cases, they are not interested in Shari'a compliance, but still need a Shari'a certification from renowned Shari'a scholars in order to attach Islamic legitimacy to their products. On the other hand, Shari'a scholars predominantly join Islamic banks with the motivation to serve a religious cause. Shari'a scholars consider their jobs with Islamic banks as an act of worship for which they expect a reward in the eternal life. For that reason, their utmost preoccupation and struggle is to make sure Shari'a stays at the core of IFIs' products so as to achieve Shari'a objectives. Therefore, there is obviously a clear disconnect

between managers and Shari'a scholars in relation to the basic existential question of what Islamic banks should essentially stand for.

What also comes to mind is that compliance with Shari'a principles is the foremost important aspect of IFIs and that profiteering is always relegated to secondary importance. Therefore, while Shari'a scholars and managers of IFIs appear to be in the same camp when seen from the outside, our research however, reveals that the reality is much more complicated. In fact, Shari'a scholars and managers of IFIs work towards different sets of objectives, which puts these parties in a somewhat competing and conflicting situation. Even though Shari'a scholars are believed to be the final authority when it comes to Shari'a certification of IFIs' transactions, operational contingencies may force them to sacrifice or compromise on their desire to achieve Shari'a objectives through IFIs. Consequently, the transactions of IFIs boil down from Shari'a based to merely Shari'a compliant. Managers may also cross the limits of Shari'a compliance and enter into transactions that do not meet minimum Shari'a requirements, while Shari'a scholars are in a struggle to bring them back into the sphere of Shari'a compliance. Thus, the level of Shari'a compliance is constantly positioned and repositioned depending on the specific causal and intervening conditions and contextual factors under consideration.

Our study makes important theoretical, practical and methodological contributions. It is the first of its kind that explores the hidden struggle for Shari'a compliance between Shari'a scholars and managers within IFIs. Although some studies have addressed the issue of Shari'a supervision and governance in Islamic banking (Al Sharif 2008; Baali 2008; Dar 2011; Farah 2008; Garas and Pierce 2010; Singh 2009; Sultan 2007; Wislon 2009; Wright 2006; Zaidi 2008), there has been no empirical study addressing the relationship between Shari'a scholars and managers and the mechanics of Shari'a compliance. Therefore, this study is the first to address and uncover this particular phenomenon empirically. The research also contributes to the mainstream literature on organizational control. It concludes that Shari'a scholars are significantly 'not in control' of the Shari'a-compliance process despite their legal power and authority. Thus, the phenomenon of organizational control is much more complicated in IFIs compared to conventional financial institutions and other corporate bodies.

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