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UNIVERSITY OF SOUTHAMPTON

FACULTY OF BUSINESS AND LAW

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**Fatwa Repositioning: the hidden struggle for Shari'a compliance within
Islamic Financial Institutions**

by

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Thesis for the degree of Doctor of Philosophy

May 2012

ABSTRACT

Islamic Financial Institutions (IFIs) have recently witnessed remarkable growth triggered by an increasing Islamic awareness, rising oil revenues in the Gulf and IFIs' holistic business model. The key selling factor, however, 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. On the other hand, for IFIs' sponsors and managers, the key motivational factor of entrance into the Islamic financial market is not their desire for achieving Shari'a objectives through the holistic business model but rather the desire 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, they need to be certified 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, thus, to probe the struggle for achieving a high level of Shari'a compliance in the presence of a desire for business objectives within Islamic banking.

The research explores the following questions. Firstly, who determines and defines Shari'a compliance? In other words, is it the Shari'a scholars who dictate Shari'a compliance or managers or an alliance between the two? Secondly, what are the various levels of Shari'a compliance within IFIs? Thirdly, what causal and intervening factors determine the level of Shari'a compliance within IFIs? Fourthly, what strategies are adopted by Shari'a scholars and managers to tackle this phenomenon? Lastly, what is the prevailing level of Shari'a compliance in IFIs in the present scenario? The study explores these questions using Grounded Theory (GT) as a methodological framework. The choice of GT for this research was triggered by two factors; i) non-availability of sufficient literature in this area and ii) the entwinement of the related hidden phenomena with deep social intricacies. Data, which was steered by theoretical sampling, consists mainly of in-depth interviews with a number of key stakeholders from three significant cases and a regulatory body.

The findings reveal that Shari'a compliance is a complex process and is determined by a combination of religious, social, ideological, structural, regulatory and self-interest forces. Though Shari'a scholars can apparently be seen as the supreme authority in defining, dictating and implementing Shari'a compliance, the practical phenomenon is opaque because of the managers' substantial 'invisible hand' in the whole process. While many Shari'a scholars employ considerable efforts in making their respective institutions genuinely Shari'a-compliant, managers, on the other hand, try to tap the market with the tag of Shari'a certification obtained from Shari'a scholars. This involves the exercise of a number of strategies e.g. avoidance, controlling, coercion, compromising, confrontation and separation on the part of the two parties. As a result, the study illustrates that Shari'a compliance is not an absolute term. Rather it is constantly being positioned and repositioned- termed as **fatwa repositioning** in this study- by the combination and intensity of the above-mentioned forces and strategies. It varies from 'superficial' to 'reasonable' levels on a continuum with two extremes; 'deep' and 'no' Shari'a compliance.

The research has three main implications: theoretical, methodological and practical. On the theoretical side, the research contributes to the Islamic finance literature in particular and organizational control literature in general. The study claims that organizational control is much more complex in IFIs because of the struggle for achieving divergent objectives (pursued by different authorities) through the same institution. There is a latent struggle between the two parties to control each other. Interestingly, Shari'a scholars are generally not in control of what they are supposed to be controlling i.e. Shari'a compliance. On the methodological front, the study suggests some new analytical techniques e.g. a snapshot view of the coding framework and a combination of manual and computer-assisted analysis. From a practical standpoint, the study suggests that Islamic banking is currently in a critical stage. It can either become a viable alternative to the conventional banking system by genuinely incorporating Shari'a objectives into its business model or pave its way to collapse by its existing struggle to achieve business objectives through Shari'a certification from Shari'a scholars.

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Declaration of Authorship

I, Shakir Ullah, declare that the thesis entitled “Fatwa Repositioning: the hidden struggle for Shari’a compliance within IFIs” and the work presented in the thesis are both my own, and have been generated by me as the result of my own original research. I confirm that:

- This work was done wholly or mainly while in candidature for a research degree at this University;
- Where any part of this thesis has previously been submitted for a degree or any other qualification at this University or any other institution, this has been clearly stated;
- Where I have consulted the published work of others, this is always clearly attributed;
- Where I have quoted from the work of others, the source is always given. With the exception of such quotations, this thesis is entirely my own work;
- I have acknowledged all main sources of help;
- Where the thesis is based on work done by myself jointly with others, I have made clear exactly what was done by others and what I have contributed myself

Signed:

Date:.....

Publications Related to the Study

Parts of this work (directly or indirectly related) have been published or submitted for review as:

- Ullah, S and Lee Kun-ho, "*Do Customers Patronize Islamic Banks for Shari'a Compliance?*", International Journal of Islamic and Middle Eastern Finance and Management, Submitted 2011
- Ullah, S.; Jamali, D. and Harwood, I.A, "*Socially Responsible Investment: insights from Shari'a Departments in Islamic Financial Institutions*", Business Ethics: A European Review, Submitted 2011
- Kun-ho Lee and Shakir Ullah, "*Customers' Attitude toward Islamic Banking in Pakistan*", International Journal of Islamic and Middle Eastern Finance and Management, Vol. 4, Issue 2, 2011, pp. 131-145
- Shakir Ullah & Dima Jamali, "*Institutional Investors and Corporate Social Responsibility- The Role of Islamic Financial Institutions*" International Review of Business Research Papers, Vol. 6, Issue 1, 2010, pp. 619-630

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With Regards,

Shakir Ullah

Definitions and abbreviations

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
BCBS	Basel Committee of Banking Supervision
BoD	Board of Directors
CSB	Central Shari'a Board
CSR	Corporate Social Responsibility
DFM	Dubai Financial Market
EI	Ethical Investment
F&J	Fairness and Justice
FSCB	Fatwa and Shari'a Control Board
FSSB	Fatwa and Shari'a Supervisory Board
GT	Grounded Theory
HR	Human Resource
IAIB	International Association of Islamic Banks
IB	Islamic Banking
IFI	Islamic Financial Institutions
IFSB	Islamic Financial Services Board
ISAU	Internal Shari'a Audit Unit
ISCU	Internal Shari'a Compliance Unit
KSA	Kingdom of Saudi Arabia
M&A	Mergers and Acquisitions
NIT	National Investment Trust
NWFP	North West Frontier Province
OIC	Organization of Islamic Cooperation
PLS	Profit-and-Loss Sharing
SAF	Shari'a Advisory Forum
SB	Shari'a Board
SBP	State Bank of Pakistan
SC	Shari'a Committee
SCAD	Shari'a Control and Audit Division
SRI	Socially Responsible Investments
SSB	Shari'a Supervisory Boards
SSC	Sharia Supervisory Committee
TOR	Terms of Reference
UAE	United Arab Emirates

Chapter 1: Introduction to the Thesis

1.1 Background Scene

The emergence of Islamic Financial Institutions is a few decades old phenomenon (Dar and Presley, 2000a) which has recently witnessed remarkable growth triggered by increasing Islamic awareness (Chong and Liu, 2009), bulging oil revenues in the Gulf and IFIs holistic business model (Lee and Ullah, 2007). Though all these factors carry their own contributions towards IFIs' growth, the key selling factor is their holistic business model, which allows them to maximize shareholders' wealth only if doing so does not violate Shari'a principles in the first place and leads to Shari'a objectives (See Section 2.3 below) in the second place. However, compliance with Shari'a principles requires some financial sacrifices for the institutions e.g. refraining from investments in tobacco, alcohol, pornography, interest etc. despite their high profitability. Shari'a also imposes restrictions on interest-bearing transactions which may lend 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. Though such investment criteria could be good for the long-term financial prospects of IFIs, managers- whose aim is to increase profits- may not welcome them. For IFIs' sponsors and managers, the key motivational factor of entrance into this market is not their desire of achieving 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, 2011). Therefore, as one might expect, a purely management controlled IFI could not be a financial institution of choice for Muslim customers. In order for it 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 governance part of IFIs in the form of Shari'a boards/advisors/consultants- often referred to as 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 managers ultimately obey it. However, it is also natural to expect potential tensions between IFIs' managers, whose primary goal is to maximize shareholders' wealth, and Shari'a scholars who are supposed to be observing the Shari'a principles and objectives within the same institution.

The purpose of this research is, thus, to investigate the struggle for Shari'a compliance between managers and Shari'a scholars within IFIs. The study will uncover intricate phenomena that have remained untouched from empirical scholarly research. It will

explore questions like; who sets the definitions of Shari'a compliance? What are the different levels of Shari'a compliance? What factors affect the level of Shari'a compliance and the strategies that are adopted by Shari'a scholars and managers to inflict the phenomenon in their favour? It will also shed light on the current Shari'a compliance levels in IFIs.

The next section explains the focus of the research in more detail followed by a section on setting the scope and boundaries of the research. Section 1.4 explains why this particular topic is worth studying. The methodology adopted for this study has been briefly touched in section 1.5. The next section then lays down the structure of the whole thesis. The final section summarizes the chapter.

1.2 Focus of the Research

This research focuses on the role of Shari'a scholars and managers in the Shari'a compliance of IFIs. The presence of Shari'a scholars in corporate governance structure is unique to IFIs. Their responsibilities are to devise Shari'a rulings for IFIs and ensure IFIs' compliance with such rules/principles. A sound Shari'a governance system should not only ensure minimum levels of Shari'a compliance which, if rightly implemented by IFIs, encompasses the western domain of Corporate Social Responsibility (Dusuki, 2005, Dusuki, 2008b, Wilson, 2006, Graafland et al., 2006, Beekun, 1997, Rice, 1999, Wilson, 1997) but also leads IFIs towards Shari'a objectives. Thus, Shari'a scholars, who constitute the Shari'a governance system, should ensure that IFIs' business models are not only clean from all kinds of *Haram* (prohibited) activities but also lead to overall public good. Shari'a scholars should do so even at a financial cost to IFIs. However, this could be conflicting, on a number of occasions, with the business objectives pursued by managers thereby leading to implicit and explicit skirmishes. This study, thus, focuses on the latent struggle for Shari'a compliance. It looks into the ways/strategies for eliminating/minimizing the conflicts and levels of compromises between managers and Shari'a scholars. It also encompasses the intervening and contextual variables directly and indirectly influencing this phenomenon. Eventually, the study portrays the prevailing level of Shari'a compliance as a result of the hidden interplay of forces between the two parties. The study examines the underlining problems faced by the Shari'a scholars in discharging their responsibilities. Therefore, the research explores the following research questions. Firstly, who determines and defines Shari'a compliance? In other words, is it the Shari'a scholars who dictate Shari'a compliance or managers or an alliance between the two? Secondly, what are the various levels of Shari'a compliance within IFIs? Thirdly, what causal and intervening factors determine the level of Shari'a compliance within IFIs? Fourthly, what strategies are adopted by Shari'a scholars and managers to tackle with this

phenomenon? Lastly, what is the prevailing level of Shari'a compliance in IFIs in the present scenario?

1.3 Scope of the Study

Even though data for this research has been collected from a wide range of respondents across three different cases and a regulator, the scope of the study is mainly limited to the struggle for Shari'a compliance between managers and Shari'a scholars within IFIs. 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 thesis also encompasses BoD. Furthermore, many scholars put top officers and BoD in the management group (Berle and Means, 1968, Mizruchi, 1983). 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.

1.4 Importance of this Study

Islamic finance has emerged as an important business sector within the financial industry over the past few decades with the very first institutions appearing in Egypt and Malaysia (Lee and Ullah, 2007). This industry was hardly visible to the international world at the time it was gearing up in the 1970s and 80s. Yet, after three decades, the industry has now become the focus of international attention from multinational financial corporations, researchers and governments. Islamic finance came into the spotlight after the recent financial crises due to its resilience to the financial shocks. It is believed that the resilience of Islamic banking to the financial crisis was mainly due to its adherence to some fundamental principles (Yeates, 2008) stemming from its unique Shari'a governance system. Though the bulk of academic literature on Islamic finance addresses its theoretical side, many areas of this embryonic industry are still awaiting further academic and empirical research and verification. Especially the area of how Shari'a compliance actually works within IFIs has remained hardly touched upon in scholarly writings. Most of the work around this area is either comprised of guiding principles/standards (IFSB, 2009, IFSB, 2006, Yaquby et al., 2005, AAOIFI, 2010) or of theoretical work on how Shari'a compliance should be with highly normative overtones (Zaidi, 2008, Wislon, 2009, Sultan, 2007, Garas and Pierce, 2010, Farah, 2008, Al Sharif, 2008, Baali, 2008). There, apparently, are no empirical documentations or academic writings on how Shari'a

compliance actually works within IFIs and that what key influencing factors/variables strengthen or weaken Shari'a compliance.

Therefore, the researcher felt it important to understand the structure and dynamics of IFIs in practice with particular focus on Shari'a governance system and the position of Shari'a scholars, who are presumed to be the guardians of Shari'a principles/objectives within their organizations. The researcher also realized the importance of fleshing out the factors at play that might positively or negatively affect the performance and independence of the Shari'a scholars while working with managers. This study has tried to unfold the phenomenon of the hidden struggle for Shari'a compliance between Shari'a scholars and managers by collecting data from key stakeholders and thereby grounded the findings in the data. It has also investigated whether IFIs really pursue the 'holistic approach' (Dusuki, 2008b p. 13) of doing business or just sell business objectives with holistic brandings. Therefore, the study carries significant importance by empirically examining an important, previously untouched, area.

1.5 Methodology

The methodology adopted in this study is Grounded Theory (GT) (Glaser and Strauss, 1967, Strauss and Corbin, 1998, Strauss and Corbin, 1990, Corbin and Strauss, 2008) which is best suited for exploring research areas with little literature and complex social phenomena. This methodology is based on three intermingled steps i.e. open, axial and selective coding. It does not require the formulation of a research framework based on rigorous literature review at the beginning of the research, rather it starts with data collection and analysis after the broader area of research is identified. Data collection is guided by theoretical sampling where every next chunk of data is collected from sources identified in the light of the themes emerging from the analysis of the previous data.

The research data consists mainly of interviews conducted face-to-face with respondents from three different cases and a regulatory body located in two different countries i.e. Pakistan and United Arab Emirates (UAE). Respondents include Shari'a scholars, managers, employees and customers of the three cases and top-level 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. Furthermore, it is important to mention here that this research is not a case study. The collection of data from three different cases is not for the purpose of cross-case comparison but rather for capturing variations of the emerging phenomenon. A complete separate chapter (Chapter 4) has been dedicated to the explanation and justification of using GT methodology in this research.

1.6 Structure of the Thesis

The thesis consists of nine chapters. The first chapter introduces the thesis in a brief way. It outlines the background of the research and explains the focus, scope and importance of the study. A brief overview of the methodology is also provided in this chapter. However, there is a complete chapter on methodology which explains it in more detail. The second chapter presents a brief overview of Islamic banking literature in general encompassing topics like a historical perspective, objectives of Shari'a, the role of Islamic banks in realizing Shari'a objectives, principles and instruments of Islamic finance and an overview of the current regulatory and governance frameworks in place. Though these topics have been explored in light of the available literature, a whole range of relevant literature has been explored in Chapter 8 after the analysis. Chapter 3 explores the organizational structures of the three cases under consideration. Every case has been introduced in this chapter followed a brief overview of their ownership and governance structures. This chapter finally draws a comparison between the three cases in terms of the governance and regulatory structures. Chapter 4 explains and justifies the methodology used in this research. It systematically starts from providing a background of the research and positions the research questions in the particular philosophical paradigm and research approach. The history and procedures of GT are also explained here in considerable detail. However, there are frequent references to GT in the analysis i.e. Chapters 5, 6 and 7. Finally, the chapter not only justifies the use of GT in this research but also sheds light on the criticisms some researchers, mainly positivists, have on this methodology.

The next three chapters i.e. Chapters 5, 6 and 7 consist of the actual GT analysis. Open coding has been explained in Chapter 5. It contains a detailed analysis and discussion of forty open codes that have been used in reaching at the core phenomenon i.e. fatwa repositioning. Chapter 6 contains axial codes which stitches back the open codes to build grounds for the next integrative part of the analysis. This chapter discusses and explains a total of fourteen axial codes. The last chapter of analysis contains selective coding which is the process of integrating the axial codes in order to arrive at the core phenomenon. It starts from the story line followed by the identification of the core category and then integrating it to the rest of the axial codes through the paradigm model (Strauss and Corbin, 1990). The chapter also uses the conditional consequential matrix to position the newly developed theory in the macro and micro environment. Finally, it refines the theory by filling in any gaps in the open, axial or selective coding and verifying the theory from some of the key respondents.

Chapter 8 positions the emergent theory in extant literature in the area of Islamic banking and organizational control. This is where the bulk of literature related to the newly developed GT has been explored. The last chapter concludes the research by summarizing the key findings and providing specific practical recommendations. It also gives detailed theoretical and methodological recommendations. Suggestions for further research are also provided in this chapter.

Summary

Islamic finance has grown significantly over the past few decades. However, managers, Shari'a scholars, regulators and intellectuals still do not agree on the exact application of Shari'a principles to this industry. This thesis uncovers the struggle that managers and Shari'a scholars make to tilt Shari'a compliance in a way more favourable towards their objectives. This chapter introduces the research, its background, focus, scope, importance methodology and structure.

Chapter 2: A Contextual Overview of Islamic Banking

2.1 Introduction

The modern capitalist world view has separated religion from political and economic spheres of life (Rice, 1999), however, some literature has found a strong link between business and faith in many countries (Giacalone and Jurkiewicz, 2003, Cavanagh and Bandsuch, 2002, Angelidis and Ibrahim, 2004). The recent ascendancy of the Islamic financial services industry– the application of Shari’a principles to financial practices– is an evident example of the practicality of this link. Some studies have been conducted on this association in Christianity (Jones, 1995, Lee et al., 2003) and Judaism (Pava, 1997, Pava, 1998) although there is no practical application of the principles of these two religions to modern business transactions except a few faith-based funds e.g. Roman Catholics’ Ave Maria Rising Dividend. We have detected, nevertheless, a limited but rising awareness regarding Islamic business ethics in recent scholarly research (Rice, 1999, Graafland et al., 2006, Beekun, 1997, Wilson, 2006, Wilson, 1997).

Islam is a religion that guides every aspect of life including spirituality, business and social justice by encompassing an entire socioeconomic system (Rice, 1999). Being based on clear ethical principles, it restricts a number of business transactions e.g. interest, pornography, gambling, speculation, and alcohol with the justification for such restraints anchored in considerations of social justice, equitable distribution of wealth and overcoming social evils (Usmani, 2002b). While the capitalist system is based on personal interests and stresses that every possible action should be taken for achieving the monetary interests of the owners of a particular business entity (Fama, 1980, Fama and Jensen, 1983), there is a great emphasis on trusteeship (*Amanah*) in Islamic teachings and the business is considered as a sacred trust with the managers. Therefore, managers are expected to act in the owners’ best interests and not indulge in any activity that can harm the owners. But this does not mean that owners and managers are allowed to use every means in pursuit of profit maximization. Even though the right to personal property and profit-making is not negated in Islam, the Islamic religion does not allow these objectives to be achieved at the expense of other stakeholders (Beekun and Badawi, 2005) and unnecessary claims on resources are to be minimized (Chapra, 1992).

This chapter starts with a brief history of modern Islamic banking followed by a section on Shari'a objectives. Section 4 then explains the fundamental principles of Islamic finance that lead the realization of Shari'a objectives. The next section explains some of the widely used Islamic financial instruments that are based on the principles of Islamic banking. The final section gives details of the current regulatory and governance paradigms of IFIs.

2.2 Historical Perspective

The history of Islamic finance goes back 1400 years to the start of Islamic religion. There is evidence of free market economy and mercantilism in the medieval ages during the golden period of the Islamic caliphate (Postan et al., 1987) where business was done 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-20th 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). Concurrently started in 1963, the Mit-Ghamr Savings Bank of Egypt and the Tabung Haji of Malaysia were the early financial institutions that started working according to Islamic principles. While the Mit-Ghamr Savings Bank did not publicly disclose its Islamic identity due fears of crackdown from the then secular Egyptian government, Tabung Haji received encouragement and support from the Malaysian government (Kahf et al., 2005).

This was followed by a number of milestone developments in 1970s triggering the double digit growth of the industry. These early developments include the foundation of Dubai Islamic Bank as the first full-fledged Islamic commercial bank and the formation of Islamic Development Bank (Iqbal and Molyneux, 2005). Matching with the concurrent foundation of the earliest institutions in Egypt and Malaysia, these two institutions were both incorporated in 1975 in Dubai and Jeddah respectively. This was followed by the formation of Kuwait Finance House and Faisal Islamic Bank of Sudan in 1977 and Dar Al-Maall Al-Islami in 1980 (Khan and Bhatti, 2008). Further developments were seen in a number of Muslim majority countries like Pakistan, Sudan, Egypt, Malaysia, Kuwait etc. in terms of Islamization of the banking industry (Iqbal and Molyneux, 2005, Khan and Bhatti, 2008). Pakistan is believed to be the first country that formally started the Islamization process of its banking industry in the 1980s by transforming some of the government-owned institutions, National Investment Trust (NIT), to operate according to profit-and-

loss system instead of interest-based system. However, this new Islamic financial system faced a lot of criticism from Shari'a scholars and academics in its first 10 years leading to a comprehensive decision of the Shari'a Appellate Court in 1991 (Zaher and Hassan, 2001). Though this decision was a historical milestone in reformatting the banking system in line with Shari'a principles, it remained un-implemented due to frequent political changes in 1990s. Islamic banking in Pakistan has witnessed noticeable growth only after the year 2000 with the emergence of private Islamic banks in the market.

Being considered as a "wishful thinking" in its early years (Iqbal and Molyneux, 2005, p. ix) surrounding the worries of its sustainability in the presence of a well-established conventional banking system, the Islamic finance industry has proved to be a practical alternative to the conventional system over the past 20 years. The total assets currently managed by institutions operating according to Shari'a principles range between US\$ 700 billion to US\$ 1 trillion. These assets are expected to reach US\$ 1.6 trillion by the year end 2012 (Khan and Bhatti, 2008, Richter, 2009). Although the total assets of IFIs represent a very small percentage of the banking sector, the average annual growth rate of around fifteen to twenty percent is promising (Yeates, 2008). Khan and Bhatti (2008, p.708) claimed that the recent developments in the industry are making it a "truly viable and competitive alternative to the conventional system". The key factors contributing to the growth of Islamic finance are the soaring oil prices and the resulting economic growth in the oil-rich Middle Eastern world, innovation and a favourable attitude towards Islamic banking from the regulators worldwide (El Qorchi, 2005, Khan and Bhatti, 2008). Some researchers argue that a major reason of the growth of this sector is the demand for Shari'a compliant products (Abdullah and Kassim, 2009, El Qorchi, 2005, Lee and Ullah, 2011). Yet some others claim that the competitiveness, itself, 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 investors alike (El Qorchi, 2005).

2.3 Shari'a Objectives (Maqasid Al-Shari'a)

Islam is a versatile religion guiding Muslims private spiritual and worldly lives. Shari'a embodies the Islam's worldview defining an ethical system governing all facets of life including personal, political, social, economic etc. Therefore, a Muslim's dealings with fellow human beings are deeply intertwined with Islam's basic beliefs, values and objectives. In fact it "reflects the holistic view of Islam, which is a complete and integrated code of life" (Dusuki and Abdullah, 2007, p.30). It is thus imperative to understand what objectives Shari'a wants to achieve by regulating all aspects of life.

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 public interest and is desirable.”

It is clear from the definition that Shari'a objectives give key prominence to human dignity and prosperity. Shari'a is thus a set of rules designed to protect humanity and expedite the thriving of human life in this world and a reward for good acts in the hereafter. The Shari'a objectives could be achieved through a transparent system of fairness and justice, elimination of prejudice and promotion of cooperation of support across families and societies (Dusuki and Abdullah, 2007). Shari'a objectives could be achieved through Maslahah– a juristic tool for promoting public good and preventing harm. Most Islamic jurists allow Maslahah to be used as a source of Shari'a when issuing fatwa's on emerging issues (Dusuki and Abdullah, 2007). The use of Maslahah is allowed to promote only public good. It should not be used for individual benefit. On the contrary, Maslahah should be exercised to stop a personal gain in order to prevent public harm. For example, a company should not be allowed to benefit from an environmentally disastrous project because of its public harm. However, it is possible that some Shari'a scholars may use Maslahah to give a benefit to Islamic banks while ignoring a wider public good. Therefore, some jurists, like Imam Al-Ghazzali, do not consider it as a source of Shari'a rulings. He also restricts its use to necessary public good only. Al-Raysuni (1992) quoted Imam Al-Ghazzali as saying:

“Maslahah is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals..... What we mean by Maslahah, however, is the preservation of the Shari'a objectives.”

The recent attention in the western world towards making corporations responsible to society partly resemble to what we call Shari'a objectives. However, Shari'a objectives address the issue of responsibility of not only businesses but also individuals in a rather wider and holistic way (Dusuki, 2008b). In contrast to western corporations where social responsibility is undertaken as a result of governments' and stakeholders' pressure, IFIs derive this urge from the very principles of Shari'a which establishes that a responsible behaviour would attract reward and irresponsible behaviour would attract punishment in the hereafter. Islam considers an individual as the vicegerent (Halifax) of Allah on this

earth who is supposed to prioritize public good against personal gains in order to attain Shari'a objectives. One's wealth is considered as a trust from Allah and therefore, it should be used to relieve fellow human beings from the troubles let alone damaging others for personal gains.

Emphasis on justice and balance (referred to as *adl* and *qist* in Qur'an) in every aspect of life are explicitly mentioned in the Qur'an¹ e.g. the Qur'an says "... Be fair for God loves those who are fair (and just)". The Qur'anic verse "Be just! For justice is the nearest to piety" (Qur'an, 5: 80) can be interpreted in this context. On another occasion the Qur'an says "Dealt not unjustly and ye shall not be dealt with unjustly" (Qur'an, 2: 279). The above verses also imply that all other stakeholders get what is just for them e.g. customers are entitled to fair prices, quality goods, information disclosure and employees are entitled to salaries, health benefits, education, share in the profits. Similarly, the environment is a natural resource that belongs to all inhabitants and therefore, companies are not allowed to exploit it for their private monetary benefits because doing so is an injustice to other claimants including animals.

2.4 The Role of IFIs in Realizing Shari'a Objectives

As discussed above, Shari'a objectives prioritize public good over personal or corporate goals. Thus one might expect that IFIs should not only achieve Shari'a objectives themselves but also seek them with other companies through their investments. In contrast, capitalist economists argue that the sole reason for corporate existence is maximization of shareholders' wealth (Friedman, 1970, Friedman, 1967). They further argue that market forces should decide the optimal allocation of scarce economic resources. According to the free market view of modern business, corporations can even deal with drugs, weapons, pornography if that increases their profits despite their severe consequences on societies. On the other hand, IFIs are not allowed to indulge even in tobacco, alcohol, weapons, pornography gambling, hoarding and speculations because of their harmful effects on societies. Thus an IFI would straightaway turn down an investment proposal in, say, a tobacco company even if its return is comparatively much higher than other available options. Thus the "ethical principles of Islam do influence the decision-making process in a business situation where such decisions may not be in conformity with decisions made in the economic interests of the firm" (Uddin, 2003 p. 26) and thus Islam advocates "overall human well-being through socioeconomic justice". Beekun and Badawi (2005 p. 135) argue that the "corporation as a fictitious entity does not diminish the responsibility of its owners and managers for its actions". IFIs are discouraged to

¹ Qur'an is the Holy Book of Islam

invest in a company that goes against Shari'a objectives. In such circumstances, where the company is involved in activities violating Shari'a objectives, IFIs have two options; i) force the company to align its activities with the broader stakeholder criteria or ii) sell the shares of this particular company and invest in firms that are more socially responsible and are meeting Islamic securitization criteria.

2.5 Fundamental Principles of Islamic Finance

Shari'a not only gives a list of Shari'a objectives but it also furnishes a number of principles for IFIs to adhere to which could help them achieve those objectives. Islamic finance is a subset of Islamic economic system whose goal is public welfare and social justice (Dusuki and Abdullah, 2007). Islam allows capitalism in the form of recognizing market forces of demand and supply, access to private property and the profit motive but these are subject to some restrictions namely the prohibition of interest, gambling, speculations, hoarding, dealing with alcohol, arms, tobacco, pornography etc. (Usmani, 2002b). Usmani also argues that the very purpose of these restrictions is to maintain justice and equality within societies. The products developed by IFIs are scrutinized based on a set of principles that restricts the free hand of entities in pursuing the profit motive. These principles are briefly discussed below.

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 (Obaidullah, 2005, Khan and Ahmed, 2001). Though Islamic scholars unanimously agree that any predetermined interest rate on loan constitutes *Riba*, the subject is still subject to debate. Islamic finance researchers argue that *Riba* leads to unequal distribution of wealth by rewarding the lender by keeping him/her intact from the associated risks of investments and oppressing the borrower by shifting all risks on to him/her (Sultan, 2007, Usmani, 2002b). Chong and Liu (2009) assert that *Riba* refers to the doubling of debt after failure to pay on its due date in Medieval Arabic practices which could lead to the slavery of the debtors. They, however, argue that prohibition of *Riba* is not relevant in the existence of bankruptcy laws in modern societies, which protect debtors from slavery. This goes against Shari'a objectives and is, therefore, not allowed to IFIs to deal with. The strict prohibition of *Riba* is derived from a number of Qur'anic verses (2:275–280, 3:130, 4:161, and 30:39) that condemn its receipt and payment in very strong words. Therefore, Shari'a scholars do not allow IFIs to deal in any interest-based transaction.

The argument put forth against interest is that it imbalances the distribution of wealth within societies (Usmani, 2002b) and concentrating it in the hands of a few. This view has also been endorsed by western economist like Robertson (1998, p.54) who said that

“Would it be desirable and possible to limit the role of interest more drastically than that, for example by converting debt into equity throughout the economy? This will be in line with Islamic teachings and with earlier Christian teachings, that usury is sin.”

In fact, the key emphasis in developing Islamic financial instruments, discussed in the next section, is to engineer them in such a way as to avoid interest. It is however difficult to develop Islamic financial products purely based on Shari’a principles and yet meeting the banking needs of the bankers and managers. Therefore, some researchers strongly criticise Islamic financial products for being overburdened with unnecessary contracts and away from Shari’a objectives (El-Gamal, 2006).

Secondly, Islam prohibits *Qimar* (gambling), *Gharrar* (excessive risk) and *Maysir* (speculation). Transactions involving gambling and speculations are banned for similar reasons discussed in the above paragraph i.e. these mechanisms “tend to concentrate wealth in the hands of a few” (Usmani, 2002b). 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). One reason for this prohibition is that Islam insists on investments in real assets while gambling locks capital in hypothetical assets that do not lead to economic development. Furthermore, they lead to so social problems. Modern research has proved that addictive gambling leads to “financial breakdown, impaired relations with family and friends” in addition to alcoholism and physical harm (Bergh and Kühlhorn, 1994, p.275). Gambling also includes elements of *Gharrar* in the sense that the potential outcome is uncertain. *Gharrar* excludes transactions like options and forwards. Similarly, speculations lead to hoarding and bubble markets that collapse leading to financial crises. Thus, IFIs are required to avoid investments in any business or transaction involved gambling and excessive risk/uncertainty and speculations.

Third, certain business sectors are considered to be naturally harmful to the society and therefore categorized as *Haram* (prohibited). Such business sectors include alcohol, tobacco, pornography, pork, arms etc. (Usmani, 1998, Usmani, 2002b). This is not an exhaustive list; any business sector that leads to potential damage to public/social interest is not allowed to be undertaken by IFIs. Again, the reasons for avoiding these

business sectors are their associated contributions towards social problems (Caetano et al., 2001).

These are the fundamental principles that each financial institution has to observe. The pliability of IFIs to the recent financial crisis is partly due to their adherence to these fundamental principles. The recent Moody's report claims that the reason for Islamic banks' strong resilience to the recent global financial debacle 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: both speculation (Maysir) and interest rates (Riba) are prohibited. The sub-prime crisis was driven by a number of factors leading to the accumulation of risks, which were again magnified through the use of complex, often highly structured financial products. Such products are ruled out from the portfolio of IFIs based on their tussle with the above-mentioned principles. Some other reports have also supported the claim that IFIs have remained intact from the severe impacts of the financial crisis (Yeates, 2008) in which world's financial giants collapsed.

2.6 A Brief Overview of Islamic Financial Instruments

The fundamental principles of Islamic finance are transformed into a number of distinct Islamic finance products that are said to be based on these principles. As against conventional banks that have no restrictions on their operations, the products of Islamic banks need to be developed in conformity with the Shari'a principles for achieving Shari'a objectives. In order to comply with Shari'a principles, IFIs' products need to be clear from interest, gambling, speculations, alcohol, weaponry etc. Some of these products are discussed in this section.

Musharakah and Mudharabah: Musharakah is a financial instrument based on Shari'a rules whereby two or more partners invest in a business on profit-and-loss basis (Khan and Ahmed, 2001). The venture is financed and managed by all the partners together. However, it is also possible that one partner is appointed as manager who receives compensation for his/her services. Although the ideal profit sharing ratio is the one based on the ratio of investment, it is not a strict Shari'a requirement and the profit sharing ration can be decided on mutual consent (Usmani, 2002b). This element of mutual consent is subject debates as Islamic banks normally set their returns in a way that it always equals conventional interest (Chong and Liu, 2009). However, loss sharing is strictly based on the ratio of investment. One important aspect of Musharakah is that the money should be materialized into real assets having intrinsic utility (Usmani, 2002b). Usmani also explains that Musharakah is terminated by the death or insanity of any

partner. If any partner decides to leave the Musharakah after giving a due notice to all partners, it should lead to its termination. These termination patterns of Musharakah ventures, especially those involving long-term investments, are the serious loopholes in the structure. However, Usmani suggests that some conditions could be introduced in Musharakah to avoid these drawbacks.

Mudharabah instrument is a financing arrangement whereby one party, *rabb-ul-mal* or the capital provider, invests his/her capital while the other party, *Mudharib* or manager, runs the concerned business. It is distinct from Musharakah in a number of ways (Usmani, 2002b). Firstly, the capital provider does not have any managerial role in Mudharabah. This enhances the agency problem as compared to Musharakah where both partners can take on managerial roles. Secondly, the manager is not entitled to any compensation for his/her managerial services. Thirdly, any business loss is completely borne (Khan and Ahmed, 2001) which further amplifies the agency problem. The basic concept of loss sharing is the same in Musharakah and Mudharabah i.e. the capital bears the loss not the individuals. Even though the Mudharib does not go unpunished in case of losses, his/her liability is limited only to his/her time and efforts (Sundararajan and Errico, 2002). Fourthly, the liability of the capital provider is limited only to the amount of invested capital while that of the manager is either limited or unlimited depending on the nature of the business. Sixthly, the assets of the business are owned by the capital provider so the manager cannot benefit from any appreciation in asset values.

Some other instruments derived from Musharakah and Mudharabah are also available. These include Diminishing Musharakah, a kind of Islamic financial lease, and Musharakah–Mudharabah which is a combination of different features of the two instruments (Usmani, 1998, Usmani, 2002b). As discussed earlier, the risk-sharing conception is inherent in the Islamic finance system which exposes IFIs to additional risks and challenges. These challenges are intensified when the different Islamic modes of financing are combined to develop new products nature (Sundararajan and Errico, 2002).

Musharakah and Mudharabah instruments constitute both sides of the balance sheet of IFIs. The liability side of the IFI consists of a special form of Mudharabah² called un-restricted Mudharabah which gives it the right to invest the money wherever and however

² The Bank of Khyber, Pakistan is one such example that accepts deposits on Un-restricted Mudharabah basis.

it wants. If the deposits are accepted on Musharakah³, the right of management is transferred to the bank in the account opening form. The banks further invest the money in a number of instruments including Musharakah and Mudharabah which constitute the left-hand side of the balance sheet. Even though the bank may invest their funds in Restricted Mudharabah, where the funds are used in a specified business by a specified entrepreneur, it still does not have to representation on the board exposing the bank to moral hazards of the entrepreneur. This is one reason Mudharabah constitutes a negligible percentage of the left-hand-side of IFIs' balance sheets. As against Mudharabah, Musharakah gives the bank the right to actively participate in the management of the enterprise and influence its decisions.

Despite the proximity of these two financial instruments to the Islamic economic system, one can hardly find institutions offering them. This is probably due to risk-averse nature of the banking institutions and lack of trust and honesty in the general. Also, as the bank is required to be an active managing partner in Musharakah, it is hard for it to manage a large number of businesses. However, some large-scale projects have been financed using Musharakah and Mudharabah instruments. Diminishing Musharakah is also widely practiced.

The ideal products in the very proximity of Shari'a principles are Musharakah and Mudharabah. Some researchers argue that Musharakah and Mudharabah are "the real and ideal instruments of financing in Shari'a" (Usmani, 2002b) because of the ultimate risk-sharing nature and purity from Riba of these products.

Murabahah: Murabahah is the widely practiced Islamic financial instrument. It literally refers to a sale agreement with a known profit (Usmani, 1998, Usmani, 2002b, Khan and Ahmed, 2001). Thus, the purchase price of the commodity is disclosed to the buyer at the time of sale. For a Murabahah transaction to be Shari'a compliant, it has to meet certain requirements. Firstly, the subject of sale must be legal and Shari'a compliant. Secondly, it must be in the ownership of the seller at the time the Murabahah agreement is signed. Banks, however, do not deal in trading of real commodities. Therefore, banks manufacture a Murabahah transaction, at least in the documents, after a request is received from a customer. Thus, they reengineer the Murabahah into a debt-like banking product by imposing unnecessary and costly contractual steps (El-Gamal, 2006). Originally, a sales transaction, Murabahah is used by IFIs as an instrument for financing where the underlying asset is sold to the buyer on deferred payments with known profit margin. The

³ Meezan Bank, Pakistan, is example of a bank accepting deposits on Musharakah basis

financier appoints the buyer as its agent who buys the underlying asset on the financier's behalf and the ownership is then transferred to the buyer in a separate agreement. The banks usually calculate their profit margin using the inter-bank interest rate as the benchmark. Thus, their return is pretty much the same as conventional interest rate charged by other banks. Additionally, the bank is not involved in the actual purchase process and the purchase and transfer of ownership from the supplier to the bank and then to the ultimate buyer is limited to paper.

Ijarah: Ijarah is an operating lease arrangement between two parties (Usmani, 1998, Usmani, 2002b, Khan and Ahmed, 2001, Lee and Ullah, 2007) compliant with Shari'a principles. The prominent feature of Ijarah is that the underlying asset remains in the sole ownership of the financier who is taking the potential ownership related risk (El Qorchi, 2005) e.g. theft, natural damage and major repairs. However, the Ijarah contract can be modified to include the gradual or one-off-payment sale of the underlying asset by the financier to the other party.

Salam and Istisna: These are the two Islamic financial instruments that allow the deferred delivery of the underlying asset. The price and quality are negotiated at the time of agreement and the full payment is made (Usmani, 2002b, Usmani, 1998, Iqbal and Mirakhor, 1987, Sundararajan and Errico, 2002). Salam is used to finance agricultural products while Istisna is suitable for manufacturing commodities.

2.7 Regulatory and Governance Paradigms of IFIs

Conventional Governance Paradigms

Islamic banks perform the same functions as conventional banks. Thus, they are regulated by the same broader set of governmental regulations that confine banks to certain requirements, guidelines and restrictions. In fact banks are subject to rather more strict regulations as compared to other corporations because any failure in the banking sector can have a drastic spill over effect on the whole economy. Banking regulations serve a number of purposes (Santos, 2001). Firstly, banking regulations are prudential in nature targeted at reducing the banks' risk and protecting depositors. Secondly, they reduce banks' systematic risk to avoid bank runs. Thirdly, regulations are targeted at minimizing and stopping the misuse of banks, for example, for criminal purposes. Lastly, banking regulations direct the flow of credit to desired sectors. In order to do routine banking businesses, Islamic banks are subject to governmental regulations to achieve the above-mentioned purposes. The specific banking regulations applicable to Islamic banks are regarding capital, reserve and governance, reporting and disclosure (Khan and Ahmed, 2001).

In order to comply with the regulatory requirements and carry out the normal banking business, Islamic banks should have, just like their conventional counterparts, a sound governance system in place (IFSB, 2006) as endorsed by Basel Committee of Banking Supervision (BCBS). Islamic banks are required to “establish a comprehensive governance policy framework which sets out the strategic roles and functions of each organ of governance and mechanisms for balancing the IIFS’s accountabilities to various stakeholders” (IFSB, 2006, Part 1, Principles 1.1). Therefore, Islamic banks have boards of directions, appointed by the shareholders, governance committees, audit systems, chief operating officers and top managerial positions. The responsibility of the conventional governance paradigm is to ensure the banks remain financially viable and profitable business entities within the regulatory boundaries.

Shari’a Governance Paradigms

IFIs are financial entities, which are required to comply with Shari’a principles in addition to having conventional governance mechanisms in place. Such mechanisms include compliance with standards set out by international bodies and local Shari’a regulatory frameworks prepared and enforced in different countries. In fact the first few IFIs did not have Shari’a scholars on board but some later on started to consult Shari’a scholar for guidance on Shari’a issues (Kahf et al., 2005). However, the existence of a formal Shari’a supervision later on became a necessary legitimization tool for IFIs. Without any such formal system these days, IFIs would have little legitimacy and credibility. Rammal (2006, p.205) mentioned that “the presence of a Shari’a board in Islamic banks was determined as a pre-requisite for admission into the International Association of Islamic Banks (IAIB) which compelled IFIs to have a formal Shari’a supervision system in place. Modern IFIs are also required/expected to have Shari’a audit and compliance divisions in addition to having Shari’a boards/advisors within the banks. These mechanisms are discussed below.

International Standard Setting Bodies

Three main international bodies set Shari’a compliance standards for IFIs. Perhaps the most prominent of these bodies is the industry sponsored AAOIFI, based in Manama Bahrain. The standards issued by this body are called AAOIFI standards. One such set of standards issued by AAOIFI is the Accounting, Auditing and Governance Standards containing twenty-three Accounting Standards, 5 Auditing Standards, 6 Governance Standards and two codes of ethics. Another set of AAOIFI standards is Shari’a standards that contain forty-one standards on Shari’a compliance. The fresh versions of these standards were released in 2010. Though AAOIFI standards are comprehensive, they are not mandatory in all jurisdictions (Wislon, 2009). For example, they are mandatory in Bahrain, enforced by the State Bank of Pakistan (SBP) after some amendments and not

mandatory in UAE. However, Islamic banks are increasingly adopting AAOIFI standards because of their impact on the banks' credibility and legitimacy.

IFSB is another such body that sets standards and guidelines for IFIs. This body is based in Kuala Lumpur and is sponsored by Bank Negara– the central bank of Malaysia. It has issued a number of standards/guidelines related to governance, Shari'a governance and ethical practices of IFIs. Again, these standards are not mandatory on IFIs but different countries and banks have adopted them voluntarily (Wislon, 2009). The third and last credible standard setting body for IFIs is the OIC (Organization of Islamic Cooperation) sponsored Fiqh Academy based in Saudi Arabia. Though the objective of this academy is to issue fatwa's on all Shari'a issues, most of its fatwa's so far are related to the Islamic finance industry.

Local Regulatory Frameworks

Local regulatory frameworks refer to the country-wise regulatory control mechanism specifically designed for IFIs. Wislon (2009) had drawn a comprehensive comparison of such frameworks across countries. These frameworks vary across countries. For example Malaysia, Sudan and Pakistan have Shari'a boards of the central banks that issue fatwa's related to emerging issues. They make amendments in AAOIFI and IFSB standards/guidelines, if necessary, and then enforce them on Islamic banks within their jurisdictions. Central Shari'a boards not only facilitate Shari'a compliance across Islamic banks in their countries, they also work a stage for the settlement of disputes between Islamic bank managers and Shari'a scholars. Bahrain, on the other hand, does not have any central Shari'a governance mechanism. However, it is mandatory for Islamic banks in the country to adhere to AAOIFI standards. On the other extreme, UAE neither has central Shari'a governance mechanisms nor makes AAOIFI and IFSB standards mandatory for Islamic banks within the country. Islamic banks are free to determine their own Shari'a governance mechanisms. Such frameworks give enough space for some Islamic banks to shop for fatwa's that give them more and easy financial gain rather than better Shari'a compliance.

Organizational Level Shari'a Governance Systems

Shari'a governance normally refers to, within the communities of academics and practitioners, all the mechanisms and systems within organizations that ensures the organization's compliance with Shari'a principles. IFSB (2009) defines Shari'a governance system as "the set of institutional and organizational arrangements through which [IFI] ensures that there is effective independent oversight of Shari'a compliance....." This definition clearly does not encompass Shari'a compliance mechanisms at country and

international levels. An organizational level Shari'a compliance system consists of a Shari'a board or Shari'a advisor, Shari'a compliance unit and Shari'a Control and Audit Unit. These are discussed below.

Shari'a Board/Advisor

The Shari'a board / advisor is the first and most important pillar in an IFIs' Shari'a governance system. It has a number of duties but the most important of all is to issue relevant Shari'a resolutions/fatwa's on Shari'a related issues of IFIs. Though such fatwa's are issued at the request of the banks' management, Shari'a boards/advisors can issue resolutions on matters they realize are important and related to Shari'a (Lahsasna, 2010). Shari'a board is a highly recommended vehicle for Shari'a governance (IFSB, 2006, AAOIFI, 2010) which consists of three or more Shari'a scholars. The board issues Shari'a pronouncements based on a consensus which reduces the chances of management pressure. However, a recent publication of IFSB says the establishment of a full Shari'a board depends on the size and complexity of the organization (IFSB, 2009). It also leaves it to the discretion of local regulatory authorities to decide on whether Islamic banks should set up full-fledged Shari'a boards or appoint single Shari'a advisors as part of their Shari'a governance system. In Pakistan, for example, the central bank requires IFIs to appoint at least one Shari'a advisor while the matter of setting up a Shari'a board is left to the discretion of individual banks. Shari'a boards/advisors have the authority to access confidential information of the banks. Management is also obliged not only to provide all the relevant details to Shari'a board/advisor but also to assist them in seeking further clarifications/information if needed (Lahsasna, 2010, IFSB, 2009). This body has the authority to reject any proposed structure if found not compliant with Shari'a. It can also nullify transactions after their execution and allocate the corresponding profits to charity. The pronouncements of Shari'a board/advisor are considered unchallengeable; however, exceptional disputes with managers could be referred to regulators or central Shari'a board.

Internal Shari'a Compliance Unit (ISCU)

Obtaining Shari'a pronouncements from the Shari'a board/advisor is the first part of the Shari'a governance system. Proper implementation of such pronouncements should ultimately follow. Therefore, part of the Shari'a governance system role is to disseminate the pronouncements to all relevant parties for implementation. IFSB (2009) recommends the appointment of an ISCU or a Shari'a compliance officer to carry out this task. Though ISCU is part of management, it also has to report to Shari'a board/advisor to ensure the pronouncements are properly implemented.

Internal Shari'a Audit Unit (ISAU)

This is probably the last but yet very important pillar in the Shari'a governance system. Its purpose is to look at the transaction after being implemented and identify any breach of the Shari'a pronouncements during implementation. The functions performed by ISAU are similar to that of internal auditor. However, the difference is that ISAU identifies loopholes in Shari'a compliance and report them to the Shari'a board/advisor instead of the audit committee (IFSB, 2009).

External Shari'a Audit

In addition to internal Shari'a compliance and audit units, discussed above, IFSB (2009) recommends an annual Shari'a to verify Shari'a compliance has been properly implemented and audited. This audit is ideally carried out by the Shari'a board/advisor that issued the initial Shari'a pronouncements/fatwas. It could be facilitated by the central bank. Alternatively, the IFI can appoint an external Shari'a audit firm to carry out this task.

In summary, IFIs are subject to dual governance systems i.e. the traditional governance and Shari'a governance as illustrated in Table 2.1 below.

Table 2.1: Dual Governance System of IFIs

Functions	Traditional Governance Tools	Shari'a Governance Tools
Governance	BoD	Shari'a Board/Advisor
Control	Internal Auditor External Auditor	International Shari'a Audit Unit External Shari'a Audit
Compliance	Regulatory financial compliance officer/unit/department	ISCU

Source: Adapted from IFSB (2009)

2.8 Summary

Islam is more than a religion that guides every aspect of life and so the IFIs are expected to consider the Islamic ethical values in their investment decisions. As Islam seeks to protect the rights of both primary and derivative stakeholders, IFIs have to seek investments in companies that respect the due rights of all the stakeholders and are not involved in any kind of exploitation. IFIs are bound to observe the principles of trust (Amanah), equity, balance and fairness (adl and qist), benevolence and excellence (Ihsan) in their own operations but also scrutinize the operations of their portfolio companies on the basis of these criteria. It is argued in turn that these Islamic ethical principles have a great affinity to the concept of Corporate Social Responsibility (CSR). Although IFIs currently manage a very small proportion of the world's wealth, this sector has

experienced steady growth in the past few years and is thereby attracting more attention from the global financial community. Therefore the article argues that IFIs can make a difference in the long run by catalysing and mainstreaming the CSR agenda.

Chapter 3: Overview of the Three Cases

3.1 Introduction

Given that the purpose of this study is to unfold the hidden struggle between Shari'a scholars and managers for positioning Shari'a compliance within Islamic banks, the researcher selected three Islamic banks– guided by theoretical sampling– as cases for the study. Though GT research can be conducted on a single case, the nature of this study was such that it required data from slightly different cases in order to capture the variations and dynamism of the phenomenon. One case was initially selected for the study with the expectations that a whole grip on the phenomenon would be obtained from in-depth interviews with this case. However, it was soon realized that one case was not sufficient for capturing all the dynamics of the phenomenon because of the particular organizational structure (discussed below) of the case and its regulatory environment. Thus the sampling was then extended to include another case (Case II) with a different organizational structure and regulatory framework. The theoretical sampling was later on extended to include a third case for the same reason of capturing more variations in the phenomenon.

It however is important to mention at this point that this is not a case study. Therefore, the analysis is not based on cross-case comparisons (Yin, 2008). It is a pure GT study that explores a hidden social phenomenon (Corbin and Strauss, 2008). While reading the thesis, one should keep in mind that the three cases have been selected for capturing variations only. There would be minor references to the different cases during analysis. However, that should not be taken as any kind of cross-case analysis. This chapter primarily focuses on the ownership and governance structures–these were found to be relevant to the phenomenon under study– in the three cases. Furthermore, the identity of the three cases and all interviewees has been kept completely anonymous at the request of the respondents. Section 3.2, below, summarizes Case I followed by a summary of Case II and Case III in sections 3.3 and 3.4 respectively.

3.2 Case I

This case was the first to be selected for data collection. The purpose selection of this case was based on its long and successful history in the field of Islamic banking. It was the first private commercial Islamic bank where the sponsors and key managers are said to be keenly interested in Shari'a compliance themselves (Kahf et al., 2005). Furthermore, the bank's Shari'a scholars have significant authority in formulating its strategic

objectives. Therefore, this case was thought to be the best place for investigating the struggle for Shari'a compliance.

3.2.1 Introduction:

Case I was the first private commercial bank in the world launched in Dubai in 1975, the same year when the foundation stone of Islamic Development Bank was laid down. Currently, Case I is listed on Dubai Financial Market (DFM) as a public joint company and is the largest Islamic bank in the UAE in terms of market capitalization. Its operations are not limited to UAE market; it owns wholly owned subsidiaries in Pakistan and Jordan. In addition, it has a representative office in Turkey and possesses stakes in an Islamic bank in Sudan.

Since its inception, CASE I has been keenly committed to the implementation of Shari'a principles in its operations. Its commitment has been evident from the fact that the Fatwa and Shari'a Supervisory Board of Case I is ranked above the BoD in terms of authority in Shari'a matters. The bank claims to be a pioneering institution in terms of adherence to Shari'a principles, technology and innovation. It is the largest Islamic bank in UAE and claims itself, according to its website, as the leader in the field of Islamic banking.

CASE I has grown significantly since its launch in terms of branching network and financial strength. In addition to the cross-border operations, CASE I has established sixty-four branches in UAE. The extensive branching network reveals the banks focus on customer satisfaction through access. Its good performance is evident from the fact that it has won a number of awards from national and international bodies. It won thirty-four awards in 2008 alone reaffirming its sound performance in different areas of banking operations. It was given the "Best Islamic Bank" award by the Banker Middle East magazine for the fourth consecutive year in 2008 (AMEInfo, 2008a). The Banker (Financial Times) gave it the "Bank of the Year" award in 2006 (AMEInfo, 2006). These awards indicate CASE I's adherence to conventional banking standards in addition to compliance with Shari'a principles.

3.2.2 Ownership Summary

Case I is a joint public company with two majority stockholders i.e. The Ruler of Dubai and Saleh Saeed Ahmad Lootah. These two owners collectively own more than one third of the bank's stock. Some other prominent shareholders are Paramount Portfolio Associates, Frankfurt-Trust Investment-Gesellschaft and Batterymarch Financial Management Inc. A number of mutual funds have also got ownership interests in this case. It is clear that the majority of its ownership is diffused in which case its policies are mainly steered by the top two shareholders, the Ruler of Dubai being the most powerful. Though the bank is a

joint stock company, the Ruler of Dubai with controlling stakes makes it somewhat government-owned company which might be considered as a plus point for the bank as the government would be there to rescue it in case of financial distress.

3.2.3 Governance Structure:

Being an Islamic Financial Institution, the governance structure of the case is slightly different from conventional organizations. In addition to the BoD, the bank has an additional board called the Fatwa and Shari'a Supervisory Board (FSSB). While the BoD is responsible for dictating business objectives to the bank, the FSSB is responsible for Shari'a compliance of the banking operations.

The reporting requirements of IFSB for the Shari'a boards mention that it "shall report administratively to the BoD" evidently enhancing the independence of Shari'a scholars from executive management (IFSB, 2009, p. 24). However, the FSSB of Case I is one step ahead of this requirement as it reports to the general body and is considered above the BoD in terms of powers and authority. According to the bank's website, the decisions of FSSB are binding on the BoD and management. This obviously makes FSSB an independent governance body in terms of its working and reporting. A detailed discussion on FSSB is provided in the following subsection.

3.2.3.1 Fatwa and Shari'a Supervisory Board

The board that governs the Shari'a aspects of Case I is called Fatwa and Shari'a Supervisory Board (FSSB) which consists of five prominent Shari' Case I aims to recruit high calibre Shari'a scholars having good reputation in the market. This is evident from the fact that the Chairman of the FSSB of Case I holds twenty-nine Shari'a board positions across different institutions and countries (Unal, 2009). Though this may reflect Dr. Hassan's good reputation in the market, occupying so many positions raises serious questions on the amount of time such board members can actually give each institution.

The IFSB (IFSB, 2009, p. 24, footnote. 28) gives the BoD the authority to appoint Shari'a board members in which case one may question Shari'a board's independence. Case I, however, has adopted a further scrutiny step in the appointment of its FSSB members by making it mandatory to seek shareholders' approval for the nominated Shari'a board members at the general meeting. This is to ensure FSSB's independence, especially from the influence of executive management. The BoD may, however, wish to delegate the power to another party - for example, the Nomination Committee or the CEO to appoint FSSB members.

The role of the FSSB is to make sure all transactions are compliant with Shari'a principles and to declare certain transactions void, even after their execution, if found contradictory to Shari'a principles. IFSB strongly recommends the independence of Shari'a board by saying that "no individual or group of individuals shall be allowed to dominate the Shari'a board's decision-making" (IFSB, 2009 p. 15). In line with this recommendation, clause 78 of the CASE I's Memorandum and Article of Association holds the BoD obliged to obey the decisions of the FSSB whether secured unanimously or by majority consensus.

According to the bank's website FSSB is responsible for supervising transactions for Shari'a compliance, development of new products Shari'a compliance analysis of existing situation before launching new products, Shari'a compliance of products/proposals submitted by management, identification of breaches of Shari'a compliance before and after transactions, analysis of administrative decisions that may require FSSB's approval, training of bank's staff, preparation of annual Shari'a compliance report for BoD and for the annual report.

The BoD also appoints a Shari'a supervisor who is present full-time at the bank and is responsible for ensuring Shari'a compliance on a daily basis. Also, a Shari'a auditor checks Shari'a compliance under the supervision of the Shari'a scholars. IFSB recommends the appointment of both Shari'a supervisor and Shari'a auditor (IFSB, 2009)

3.2.3.2 Board of Directors

The BoD of Dubai Islamic Bank consists of eight members. Al Shaibani is the present chairperson of the BoD who was appointed to this office on March 2008 at the annual general meeting of the bank (AMEInfo, 2008b). Sheikh Khaled Bin Zayed Al Nahyan was named as the vice chairperson of the BoD at the same meeting. Both the chairperson and the vice chairperson belong to the royal family, which is not astonishing given the majority stake of the Ruler of Dubai in the bank.

3.3 Case II

As discussed above, the organizational structure and regulatory environment of Case I is unique. That became a hurdle in the search for variations. The theoretical sampling revealed that data should be collected from another case which is partly conventional and partly Islamic and where Islamic banking is a subsidiary of the overall conventional bank. Furthermore, the case was expected to be working in a country with a separate regulatory

framework for Islamic banking. Case II was the best place for seeking such further variations and saturation of the existing codes. Details of Case II are discussed below.

3.3.1 Introduction

Case II was set up in 1991 as a conventional public sector banking institution by the government of Khyber Pakhtoonkhwa, Pakistan. The bank is headquartered in the city of Peshawar and currently operates forty-one branches across the country. It is a predominantly a government-owned bank where the chief secretary of the provincial government is always the chairperson of the BoD. Most of the board members and key managers are appointed by the provincial government.

Case II started Islamic banking operations in November 2003 by fully Islamizing one branch. The then provincial ruling party, Mutahida Majlis-e-Amal, initiated the launch of the Islamic banking operations in this bank. Though the bank's website reported to fully convert to an Islamic bank by the year 2006, it, still, is predominantly a conventional bank with Islamic banking as a subsidiary business. Only eighteen out of the forty-one branches are currently operating as dedicated Islamic banking branches, the remaining twenty-three branches are still conventional. Even though about half of the bank's branches are dedicated to Islamic banking operations, there is no mention of any commitment to Islamic banking in the mission statement of the bank. The bank's mission is "to increase shareholders' value and provide excellent service and innovative products to customers through effective corporate governance, friendly work environment, and contributing towards an equitable sub-economic growth". This mission statement is very old and has not been changed after the introduction of Islamic banking into its operations. However, the vision of the bank is "to become a leading bank providing efficient and Dynamic Banking Services in both Islamic and Conventional Sectors". The bank's focus on 'equitable and sub-economic growth' is, in fact, an important element of Shari'a objectives. In addition to the overall organizational vision and mission statements, the bank has separate visions and missions for Islamic banking operations on its website. The Islamic banking mission is "to translate true Islamic economic principles into practice, with firm beliefs to establish an economic system based on the Final Revelation [Quran]. By partnering with [our] customers in Halal earnings by employing best business practices, the latest financial services technologies and placing [our] trust in Allah we are confident of our success in achieving constant economic growth, creation of job opportunities and poverty alleviation". Carefully analysing this mission reveals that the bank's Islamic banking is keenly interested in Shari'a objectives. However, this mission is conflicting with the overall organizational mission.

3.3.2 Ownership:

Case II was established as a public sector bank owned by the government of North West Frontier Province (NWFP), now called Khyber Pakhtoonkhwa but was later on listed in Karachi Stock exchange in 2006 but offering less than 50% of its shares to the public (Ali, 2006). The provincial government is still the majority shareholder.

3.3.3 Governance Structure

It is a regulatory requirement on IFIs in Pakistan to have a Shari'a governance mechanism in place in addition to the tradition governance system. Case II, being a financial institution in Pakistan, is therefore subject to this dual governance mechanism discussed below.

3.3.3.1 Board of Directors:

The bank has nine board members out of which four members are nominated by the provincial government, 3 members are elected by the shareholders, one director is nominated by the foreign equity holders and the ninth member is the Managing Director of the bank. The provincial chief secretary is the chairperson of the BoD.

3.3.3.2 Sharia Supervisory Committee

The Shari'a board in Case II is called Sharia Supervisory Committee (SSC) bearing the same status as the FSSB of Case I. It is comprised of five members nominated by the BoD and verified by the shareholders. They are paid by the bank except for one member, Syed Muhammad Abbas, who is not claiming compensation for his services due to his concerns about the bank's potential divergence from Shari'a principles in some areas. He is a religiously committed person who still feels that the bank's operations are not free from interest.

In addition to the SSC, the bank employs four full-time Shari'a experts who oversee the banks day-to-day compliance with Shari'a principles, conducting Shari'a audits and training the bank's staff on Shari'a matters.

3.4 Case III

It was after the analysis of the second round of interviews that the researcher was convinced, through theoretical sampling, to seek further data from yet another case with a different organizational set-up. This time a case was selected which was initially

incorporated as a conventional bank and later on fully converted to an Islamic bank. Case III was the perfect match to meet these requirements. Details of Case III are given below.

3.4.1 Introduction

Case III was founded in 1975 by the ruler of the State of Sharjah in the UAE. It was initially a conventional bank and served as the central bank of Sharjah. The bank was fully converted from a conventional bank to an Islamic bank in 2002 and it still enjoys the status of the central bank of Sharjah. The branching network of the bank is spread across the country.

Case III claims to be playing a ‘social and economic role in the community’ by supporting a number of social organizations. It further claims that its role in social development is proactive as it identifies venues for social development and then supports those venues either in the form of charity or investment. It also claims strict adherence to the “moral, social and religious beliefs [of Islam] to meet the needs and requirements of a wide and diversified customer base”.

Two of the bank’s core values are ‘Fairness’ and ‘Trust’ which are amongst the core elements of Shari’a objectives (Wilson, 2006, Graafland et al., 2006, Dusuki, 2005, Dusuki, 2008b). However the definition of ‘fairness’ found in the Islamic finance literature is wider than what the bank claims this term stands for. The website of the bank reports that its core focus is “to be the bank of choice, delivering creative solutions based on the Islamic principles of partnership, trust and fairness for all”. However, most of the bank’s investments are not partnership [Musharakah/Mudarabah] based (SIB, 2012a).

Case III is a prominent player in the UAE’s banking sector. It has won a number of awards from national and international bodies including the Wachovia ‘Best Bank in the UAE’ award (Phillips, 2010) for two consecutive years in 2005 and 2006.

3.4.2 Governance Structure

Like Case I and II, this case also has dual governance structure. A traditional governance system consisting of the BoD and top management governs strategic business aspects of the bank while Shari’a aspects are governed by the Shari’a governance system consisting of a Shari’a board and a related Shari’a department. Details of are given below.

3.4.2.1 Board of Directors

The BoD of Case III consists of eight members. In addition to other governance functions, the BoD works to “balance the interests of... shareholders, customers, employees and the

community[ies]" (SIB, 2012b). This function of the BoD is in line with the bank's mission statement and core values.

3.4.2.2 Fatwa and Shari'a Control Board

The Shari'a board of Case II is called Fatwa and Shari'a Control Board (FSCB) synonymous to the FSSB of Case I and the SSC of the Case II. It consists of three members. The FSCB is nominated by the BoD and then verified by the general assembly of the bank. It is an independent body and its members do not have any kind of ownership stake in the bank. However, just like the Shari'a boards of Case I and II, members of FSCB are paid by the bank for their services. The rulings issued by FSCB are claimed to be binding on the management.

FSCB is responsible for giving Shari'a opinion on new products, answering Shari'a related questions, Shari'a supervision of transactions, new product development, nullifying Shari'a-repugnant transactions, training the bank's staff on Shari'a matters, writing a Shari'a report on annual bases to be included in the bank's annual report and reviewing Shari'a audit reports (SIB, 2012c).

3.4.2.3 Shari'a Control and Audit Division

The Shari'a Control and Audit Division (SCAD) is an independent department within the bank responsible for the day-to-day Shari'a supervision of the bank's transactions. It is a link between the management and the FSCB. This department is independent of the bank's management and reports to the Shari'a board. The compensations and promotions of its employees are determined by the Shari'a board. These measures insure the independence of this department. SCAD is responsible for the implementation of the rulings issued by FSCB, conducting Shari'a audit of the bank's operations, submitting quarterly reports to FSCB and training the bank's staff on Shari'a matters (SIB, 2012d).

3.5 Comparison between the Three Cases

The selected units of analysis make an interesting combination with two extreme cases and one case can be categorized as lying in the middle position in terms of their organizational structures and the authority of their Shari'a scholars. On the one hand, Case I was established as a fully Islamic bank in 1975 with the motivation to provide Shari'a compliant services. The establishment of this entity was possible due to the founding sponsors' commitment to the cause of Shari'a compliance (Kahf et al., 2005). It is still regarded as the best Islamic bank not only in the UAE but also across the globe (as reported by most interviewees) for its strict adherence to Shari'a principles. The bank's commitment to Shari'a compliance is apparent from the fact that its FSSB is elected by

the general assembly and is ranked above the BoD in terms of powers. It is also independent from the management and BoD in case of reporting as FSSB reports directly to the general assembly.

On the other hand we have the Case II which was established in 1991 by a provincial government with the ultimate mission of value maximization for shareholders. It was partially converted to Islamic banking in 2003 with the aim to fully transform into Islamic banking by the year 2006 which did not happen until 2012. Rather more than 50% of the branches are still conventional. The mission statement still focuses on value maximization for shareholders and there is no mention of Islamic banking in this statement. Furthermore, the bank's SSC is nominated by the BoD and then verified by the general assembly. In terms of the line of authority, the SSC reports to the BoD in the first place. Even though this makes the SSC independent from the ultimate executive management, it is still working under the BoD whose mission is shareholders' value maximization. This situation raises questions on the SSC's true independence. Given the fact that the Managing Director of Case II is also a member of the BoD, one can even question the independence of the SSC from the executive management. One member of SSC refused to claim compensation from the bank for his services due to his concerns on the bank's Shari'a compliance.

The third case, categorized as lying between the two extremes, is Case III. It was founded in 1975 as a conventional bank with the mission to increase shareholders' value but it was then fully converted to an Islamic bank in 2002 by the same chairman of the BoD who founded it as a conventional entity. The bank's new vision and mission statements frequently refer to Shari'a objectives.

Furthermore, Case I and III are located in a country where there is not a separate regulatory framework for Islamic banking. In other words, Islamic banks are free in establishing Shari'a governance mechanisms of their liking. One may expect that these two cases have a loose Shari'a governance system because of this freedom. However, their systems are amongst the most sophisticated in the industry. This is probably because of the sponsors' commitment to Islamic banking and also because they need stronger legitimacy in a country where there are no central controls for Shari'a governance. Case II, on the other hand, is located in a country with a separate regulatory framework for Islamic banking. This case has to meet all regulatory requirements set out by the central bank. One might expect its Shari'a governance mechanism to be very strong but in fact it is not because it needs to meet only minimum regulatory requirements to obtain legitimacy.

Table 3.1: Overview the Three Cases

Shari'a Board Reporting to	General assembly	BOD	General assembly
Appointment of Shari'a Board Members	Elected by the general assembly	Nominated by the BOD, Verified by general assembly	Nominated by the BOD, Verified by general assembly
Number of Shari'a Board Members	3	5	3
Number of the BOD Members	8	9	8
Ownership	The government of Dubai, UAE is the majority shareholder	Government of Pakhtoonkhwa Province, Pakistan, is the majority shareholder	Government of Khyber Government of Sharjah, UAE, is the majority shareholder
Branches	64	41	22
Operations (National/Cross Borders)	Cross National	National	National
Level of Conversion	N/A	Partially	Fully
Converted into Islamic Banking	N/A	2003	2002
Founded as	Fully Islamic Bank	Established as a conventional Bank and then Partially Converted to Islamic	Established as a conventional Bank and then Fully Converted to Islamic
Year of Foundation	1975	1991	1975
Location	Dubai, UAE	Peshawar, Pakistan	Sharjah, UAE
	Case I	Case II	Case III

3.6 Summary

The selection of three different cases for this study was guided by theoretical sampling which is an important aspect of GT. The three cases are located in two different countries. One is subject to meeting minimum regulatory requirements for Shari'a compliance certification while the other two are free to determine their own Shari'a compliance mechanisms. Case I and II, have adopted AAOIFI standards on voluntary bases while Case III is legally required to do so because of the regulatory framework of the country of its operations. Furthermore, there seems to be sponsors' interest in Islamic banking in Case I and II while the sponsors of Case III do not seem to be much bothered by it.

Chapter 4: Methodology

4.1 Introduction:

This research falls under the canons of qualitative research more inclined towards the interpretative paradigm (Greener, 2008). Qualitative research is defined as “any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification” (Strauss and Corbin, 1990, p. 1). Greener also explains that there are a number of research methodologies like “discourse analysis, unstructured interviews to investigate perceptions and construction of reality by “actors” in organizations” (Greener, 2008, p. 35) that can be used to conduct interpretative research. The selection of a particular research methodology is mainly driven by the research question and research philosophy (Greener, 2008, Corbin and Strauss, 1990, Glaser and Strauss, 1967) that a researcher adheres to.

Given the qualitative and relatively un-investigated nature of the research area addressed in this study, the researcher adopted GT (Glaser and Strauss, 1967) as methodology. This chapter, later on, explains GT procedures and justifies its use for this particular investigation. However, repeated reference will also be given to the GT methodology throughout the analysis section because the write-up of analysis is itself, very interactive with the methodology. The next section of the chapter will restate the background and objectives of the research to refresh the reader. The GT procedures are then discussed after that. The discussion on GT procedures is rather short in this chapter as there will be frequent explanations and discussions on the methodology in the analysis. Following this is a brief historical background of GT followed by a critical review of the methodology. The last section justifies the use of GT in this particular research.

4.2 Background of this Research

The concept of Islamic banking and its unique organizational structure has become an imperative research area for scholars. Though, the field of Islamic banking, itself, has recently attracted researchers’ attention. An increasing volume of research has focused on Shari’a compliant banking products and services. However, there is little research on how Shari’a compliance is actually developed and maintained within and outside Islamic banks. Given the basic objectives (eradication of the disparities in wealth distribution, exploitation and other kinds of social injustice) of Islamic finance, one can argue that it has a greater propensity to go beyond the conventional boundaries of profit maximization towards the broader well-being of the society (Ullah and Jamali, 2010).

Due to their role as Shari'a-compliance monitors, the Shari'a advisors and members of the Shari'a Supervisory Boards (SSB) are the primary actors responsible for ensuring the achievement of Shari'a objectives through Islamic banking. On the other hand, managers' job is to maximize shareholders' wealth. Thus, there are in a struggle to achieve business objectives through Islamic banking. The purpose of this study is to investigate the hidden struggle of Shari'a scholars and managers for the achievement of their respective objectives. The dearth of literature in this particular area is the reason for addressing it through GT without any research framework and theoretical positioning.

Research Philosophy and Paradigm

This study is exploratory in nature interpreting and understanding complex social actions (Weber, 1947) and thereby adding to the existing knowledge base. The research is not based on a theoretical framework, rather it has been led by the data (Maylor and Blackmon, 2005) to develop a new theory. As the findings are a product of what the respondents thought of the reality, GT research is based on the subjective ontological position of phenomenology (Corbin and Strauss, 2008). Being defined as a set of beliefs (Kuhn et al., 1970) that directs the researcher's methodology, a research paradigm is important in formulating a methodological background for a study. Although realistic research paradigm is widely used in scientific research, it is not equally applicable to social science research where the social reality cannot be easily separated from the researcher (Kant, 1990). This is why the "qualitative methods are increasingly accepted in social sciences and business research as this branch of enquiry differentiates itself from a scientific positivistic paradigm" (Greener, 2008). The struggle for Shari'a compliance within Islamic banks is associated with the players involved, Shari'a scholars and managers, and cannot be separated from them; therefore, the most suitable research paradigm for this study is the interpretative paradigm. Using qualitative research method (Greener, 2008), the interpretative paradigm produces rich qualitative data by using small samples (Hussey and Hussey, 1997).

Research Approach

Using the research onion developed by Saunders et al. (2007), the researcher has followed the inductive approach in interpretivistic research philosophy where the existing Shari'a compliance processes in IFIs have been explored with particular focus on the role of the Shari'a scholars and managers in this process. This involved a 'digging into data' approach to find out what was going on (Glaser and Strauss, 1967) in that particular setup. Thus the whole study is based on what the data revealed. The themes collected during the initial data collection were followed until saturation.

4.3 Overview of GT

GT (Glaser and Strauss, 1967, Strauss and Corbin, 1990) is a qualitative research methodology which basically answers the question, "What is going on?". Developed by Glaser and Strauss (Glaser and Strauss, 1967), this methodology generates a theory systematically from data through inductive and deductive thinking. It is a research method used for the "investigation of what is said or written (inductive) and produces codes of data" (Greener, 2008) to build a new theory using qualitative data (Glaser, 2001, Glaser, 2003).

The core of GT lies in the very importance given to detailed qualitative analysis of data. Therefore, it is important for the researcher to listen to the minute fine points in the data which is possible when the data is investigated in great detail using micro analysis (Strauss and Corbin, 1998), the concepts are developed and linked together to form codes and which ultimately lead to the final theory generation. The micro analysis needs the systematic analysis of data through open, axial and selective coding (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Glaser and Strauss, 1967). Unlike the other research methodologies which involve a research framework followed by data collection and then the analysis, GT starts with data collection and analysis and finally framing the research to form a theory. The stages of data collection and analysis are "tightly interwoven processes" (Strauss and Corbin, 1998, p. 59) that occur side by side with each other. The analysis starts as soon as the first interview data is collected. The first analysis then steers the rest of the data collection and analysis referred to as 'theoretical sampling' (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Strauss, 1987, Glaser and Strauss, 1967, Corbin and Strauss, 1990).

The first step in GT analysis is the open coding of the first few interviews involving either word-by-word or line-by-line analysis of the transcripts. This detailed analysis has been referred to as micro analysis by Strauss and Corbin (1998). The whole coding process plays a vital role in theory development. Strauss and Corbin (1998) define coding as "the operations by which data are broken down, conceptualized and put back together in new ways. It is the central process by which theories are built from data" .

Historical Perspective of GT

Founded by two sociologists Barney Glaser and Anselm Strauss (Glaser and Strauss, 1967), GT has undergone numerous developments throughout its four decades history. Even though the founding authors belonged to different research backgrounds, they decided to present GT as a new research methodology in the field of social sciences after their research on dying patients where they used it to dig into a new undiscovered social reality. Strauss had a background in qualitative

research due to his affiliation with the University of Chicago where he was influenced by the work of symbolic interactionists like George Herbert Mead (1934), Charles Cooley (1918) and Herbert Blumer (1969). The concept of symbolic interactionism means that human beings react to social phenomena according to the meanings they attach to it and that “persons are actors who take an active role in responding to problematic situations” (Strauss and Corbin, 1990, p. 9). Thus social really is not something which can be separated from the players rather it is imbedded in them. This influence of symbolic interactionism may be one of the reasons the founders of GT attached high importance to the respondents’ views where they felt the “ need to get out into the field to discover what is [was] really going on” (Strauss and Corbin, 1990, p. 9). Glaser, in contrast, belonged to the quantitative research background from Columbia University where the tradition of empirical research in theory development was common. Working together with Strauss, Glaser felt the need for continuous comparison of data to identify concepts and find relationships between them (Strauss and Corbin, 1990). This combined the interests of the two founders of GT to give prime importance to data and wrote a book on their methodology later on.

After writing their first book on GT the two authors started to write independently or in collaboration with other authors on the methodology. The first independent writing that appeared after the original 1967 book was by Glaser (1978) which was primarily based in the researcher’s theoretical sensitivity to the hidden meanings in the data. This was followed by Strauss (1987) who wrote on qualitative analysis focusing on GT as a methodology. Strauss then started to work together with Corbin to write a new book on GT outlining a step-by-step process for new users of grounded theory. The title of this book was ‘Basics of qualitative research: GT procedures and techniques’ (Strauss and Corbin, 1990). It was from this point onward that differences between the two founding authors started to emerge in the use of GT. Glaser seemed to be unhappy with the rather rigid instructions on the methodology stipulated by Corbin and Strauss (1990) and wrote a book in 1992 (Glaser, 1992) in response to Strauss and Corbin (1990). Glaser rebuked Strauss and Corbin in this book and termed their work as forcing theory while he himself adhered to the emergence of theory rather than forcing it through rigid step-by-step process. This rift on the GT methodology between the founding authors has shattered researchers’ confidence a bit but still it is one of the main research methodologies used in social science research. Some researchers have termed this split between Glaser and Strauss as an evolutionary divergence due to independent work for a prolonged period after their first publication (Harwood, 2001, p. 67). Strauss and Corbin published the second edition of their 1990 book in 1998 (Strauss and Corbin, 1998) and third edition in 2008 (Corbin and Strauss, 2008).

It is natural for new researchers to have certain steps to follow in their research. Therefore, this research follows the series written by Strauss and Corbin (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Corbin and Strauss, 2008) because of the rather descriptive procedures laid down by them.

GT Procedures

As against most mainstream research methodologies, grounded does not begin with a theoretical framework. It rather starts off with jumping into the field and collecting the first few interviews after the research topic is carefully selected. The first interviews are coded openly for finding important concepts which are sought after in the coming interviews. The next phases of interviews are then directed by the analysis of the first few instances of data because the first few concepts tell the researcher where to seek further enrichments and variations of the initially identified concepts. Therefore, the sampling technique used in GT is called theoretical sampling (Strauss and Corbin, 1990). It is vital for a grounded theorist to seek the phenomena (in the next data collection phase) that have already emerged. This practice needs creative and theoretical questioning. A researcher can ask good questions only if he/she is theoretically sensitive to the subtleties in the data. Therefore, theoretical sensitivity is a key element of GT methodology frequently discussed by the founding authors (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Glaser and Strauss, 1967).

Abstraction to the open codes is added in the next stages of analysis called axial and selective coding, respectively. The separation of open, axial and selective coding into the three different stages/chapters is done only for convenience purposes though in reality the three stages are interwoven and overlapping throughout the analysis.

Open Coding

Open coding is the first step in the analysis which can be regarded as identification and naming of important phenomena/concepts (Strauss and Corbin, 1998). Related concepts are then grouped together in the initial stage of abstraction to form open codes. These open codes are then traced in the rest of the data collection through theoretical sampling until they reached a point of saturation. The tracing is mainly done through the process of constant comparison between the existing codes and newly arising concepts from further analysis (Glaser and Strauss, 1967). This process also demands the use of creative and theoretical questioning and theoretical sensitivity in each of the remaining phases of interviews and analysis to trace the existing codes and seek new concepts (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Glaser and Strauss, 1967).

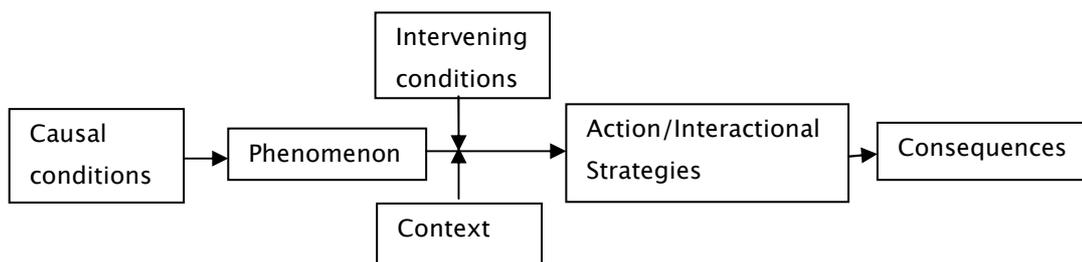
The phenomena are not only compared with new data but they are also constantly compared with each other to identify relationships. This comparison is a key element in the GT process referred to by Glaser and Strauss (1967) as the “constant comparative method of analysis”.

Open coding in this research started with the first interview conducted with the Shari’a of Case I. The emerging open codes were then traced in the interviews with Shari’a Research Officer of Case and Shari’a scholars of and a manager of Case II. Six interviews were conducted in the first round. The researcher then carefully completed the open coding of all the six interviews producing fifty plus open codes. However, the number of open codes soared up to more than 350 at the end of the 4th round of interviews. At this stage the number of interviews had gone above fifty which included interviews with a number of key stakeholders like managers, regulators, customers and employees.

Axial Coding

The next step in GT analysis is to stitch the data back “together in new ways after open coding by making connections between codes.....utilizing a coding paradigm that involves conditions, context, action/interactional strategies and consequences” (Strauss and Corbin, 1990, p. 96). Indeed the paradigm model (Figure 4.1) is a key tool for axial and selective coding (Strauss and Corbin, 1990, Corbin and Strauss, 2008). This process is called axial coding. The separation between open and axial coding and even the selective coding is not obvious during the actual analysis because these processes are occurring at the same time.

Figure 4.1: Illustration of the Paradigm Model



Source: Adapted from Strauss and Corbin (1990)

This is an iterative process and involves revisiting the open coding process (Strauss and Corbin, 1990, p. 98) and even to the previous coded data. It is at this point of analysis that the researcher starts to make sense of the data. Goulding (2002) says that axial coding is a refined method of coding data for detecting related incidents. In fact these relationships should be based on the properties and

dimensions of the codes (concepts). Strauss and Corbin (1998) define this process as seeking relationships between codes based on their properties and dimensions. The process is inductive in the sense that the researcher peeps into the data to find some concepts and relationships. Then these initial concepts are followed in further analysis to strengthen them through the deductive process. It is because of this property of induction and deduction that Strauss and Corbin (1990, p. 114) write that axial coding is a “complex process of inductive and deductive thinking”. Significant axial categories are developed in this way that later on contribute to the “main theme of the research” (Strauss and Corbin, 1990, p. 146).

As discussed earlier, theoretical sensitivity is a key element of GT methodology. It is required in the process of selective coding. The researcher needs to be theoretically sensitive to the minute meanings hidden in the respondents' statements in order to spot the categories and find their relationships with each other and the open codes. Corbin and Strauss (2008, pp.65–85) suggest a number of techniques to help in the development of axial codes. However, the researcher found some of the suggested techniques more useful than others and subsequently used them often. The techniques often used in this research and frequently referred to in chapters 5, 6 and 7 include i) asking smart questions during analysis and interviews to unfold the hidden intricacies, ii) making comparisons between axial–axial, axial–open and open–open codes for reaching saturation and detecting relationships, iii) looking at the different meanings of words, iv) flip–flopping codes and concepts to find their properties and dimensions, v) waving the red flag in order to remind oneself of the unintentional bias so that it is avoided, vi) looking at the language and emotions of respondents and vi) searching for negative cases. These techniques have also been used in selective coding.

Though axial coding has been written in a separate chapter (See Chapter 6), it was not possible to separate the two in the actual analysis. 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 researcher had more than fifty open codes and a handful of axial codes. It was noted that the whole process of GT analysis was highly dynamic re–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 (See Chapter 7) had emerged that could be incorporated to make sense of the hidden phenomenon. In fact it was a long and tiring process the researcher went through. It was at this stage that the researcher passed through a number complete–halt days and weeks a few times. It involved so many and frequent returns to open codes that the researcher could not manage them. Finally, a creative idea came to

mind; the open codes were printed on A4 size paper and posted on a big wall to make the re-iterations easier. This technique made the process much easier and productive. A picture of the wall with codes has been given in Appendix V.

Selective Coding

This is the last step in GT analysis where the core phenomenon is identified and related to the axial codes. The relationships are then verified and gaps, if any, are filled. Strauss and Corbin (1990, p.116) define selective coding as “the process of selecting the core category, systematically relating it to other codes, validating those relationships, and filling in codes that need further refinement and development”. It is at this stage that the GT emerges in a coherent way. Selective coding is an important step because “if theory building is the goal of the research project, then findings should be presented as a set of interrelated concepts, not just a listing of themes” (Strauss and Corbin, 1998, p. 145). In their subsequent edition, the same authors define selective coding as “the process of integrating and refining the theory” (Strauss and Corbin, 1998, p. 143). The two definitions basically convey the same message but the latter seems to be more abstract and at a higher level.

There are a number of analytical techniques that can be used during selective coding for reaching full abstraction and integration. The techniques used by axial coding are also useful in selective coding. Particularly, the paradigm model discussed above is also a key tool in selective coding because it is “an analytic strategy for integrating structure with process” (Corbin and Strauss, 2008, p.87) and establishing relationships. The paradigm model has been used and frequently referred to in chapter 7 so the researcher has intentionally avoided extensive details of the model in this chapter. Some other useful techniques for achieving theoretical integration are i) writing a storyline, ii) moving from descriptive story to theoretical explanation, iii) using integrative diagrams and v) reviewing and sorting through memos (Corbin and Strauss, 2008, pp.103–109). These techniques have been used as and when necessary in chapter 7.

As discussed frequently in this chapter and also chapter 06 and 7, 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 started after the few interviews were coded. The researcher 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 raw 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 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. Though the phenomenon had become clear towards the end of the analysis, it was hard to name it in the best possible abstract way. The last two brainstorming sessions with supervisor proved to be instrumental in resolving this issue. The core category was finally named as 'Fatwa Repositioning', discussed in greater detail in chapter 7.

Data

Any qualitative research including GT is flexible in using "many alternative sources of data" including "interviews, observations, videos, documents, drawings... [etc.]" (Corbin and Strauss, 2008, p.27). A research can use any combination of these sources depending up their suitability to the particular research question and the availability of data from those sources. Amongst all the sources of data for qualitative research, interviews are a widely used and productive method recommended by qualitative researchers (Strauss and Corbin, 1990, Corbin and Strauss, 2008, Yin, 2008, Yin, 1994, Saunders et al., 2007, Greener, 2008). This research has mostly relied on interviews as the main source of data. This was not only natural to GT research but also the richest source of data in this particular area. However, the researcher also used some other sources of data e.g. seminars, focus group discussions, newspaper articles, internet forums, televised programs and informal chats with industry players. Attending related conferences and panel discussions during the course of the study proved to be valuable in this regard.

Sampling

Data collection in GT research is guided by theoretical sampling. It is a "method of data collection based on concepts/themes derived from data..... [to collect the next chunk of data] from places, people and events that will maximize opportunities to develop concepts in terms of their properties and dimensions, uncover variations and identify relationships between concepts" (Corbin and Strauss, 2008, p.143). The concepts and codes emerged from the analysis of the first chunk of data tell the researcher where to look for other relevant data that could saturate the existing codes and seek further concepts. Shari'a scholars from Islamic banks were at first selected as the relevant respondents for this research. That is why the interviews were conducted only with Shari'a scholars in the first round. The concepts and codes emerged from the first set of interviews revealed that the banks' management and employees were the next and most important sets of respondents for further developments. Therefore, the second round of were conducted with managers, employees and Shari'a scholars of the selected cases. It became obvious after the analysis of the second round of interviews that

two other stakeholder groups, customers and regulators, must be interviewed in order to fill the gaps and seek clarifications. It required a third round of interviews. Thanks to Terry Williams, Head of the School of Management, University of Southampton, who was kind enough to sponsor this emergency data collection trip.

Transcription and Analysis

Most interviews were conducted face-to-face in respondents' offices. The respondents of Case I and III and their customers were interviewed in English in which case neither the interviewer nor the interviewees were native speakers of English. This raised issues as the respondents were unable to express their true feelings in some situations. However, the interviews were conducted in a very friendly environment which reduced the language problem to some extent. These interviews were then directly transcribed into English by the interviewer. In contrast, interviews with Case II, its customers and the regulators were conducted in the local language of both the interviewer and the interviewees. Though this reduced the language issue during the interviews, this situation posed a challenge during transcription. Since the transcription was done directly into English from the audio recording of the interviews, it was hard to find relevant words and sentences for the exact jargon used by the respondents. The effect of this problem was reduced by consulting a dictionary and exerting systematic efforts at accurate translation.

The initial interviews were tape-recorded, transcribed word-by-word and then coded using NVIVO (qualitative research software) generating certain important concepts. However, the transcription of the second and third round of interviews was selective where only relevant parts were transcribed. While the researcher was constantly looking for new concepts, the initial concepts were constantly compared with new emerging concepts. This involved looking back and making changes to the existing codes and concepts.

4.4 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, 2008b, Dusuki and Abdullah, 2007, Maali et al., 2006, Wilson, 1997, Dusuki, 2008a) but there has been no research on the role of the Shari'a scholars and managers in the pursuit of Shari'a compliance. The researcher could not find enough 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). "Some areas of study naturally lend themselves more to the qualitative type of research" because 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 is a research methodology where the researcher goes to the field with no research framework in hand (Glaser and Strauss, 1967), it came out as the best suitable methodology for this research topic because of non-availability of literature in this area which could otherwise be used to develop a research framework. The researcher could not find a single study addressing the struggle for Shari'a compliance between managers and Shari'a scholars in Islamic banks. Given this scenario, it was hard to set up a hypothesis for testing. It is also worth mentioning that after doing some initial analysis of the first few interviews, the researcher realized he had to extend the theoretical sampling (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Glaser and Strauss, 1967) to managers, employees, customers and regulators. Thus asking the same questions from different sets of respondents, having completely different views and understanding of the same issue, would have not made any sense. To put it another way, Shari'a scholars who are well-equipped with religious knowledge and are supposed to oversee the religious aspects of the organization, would have a completely different stand on Shari'a compliance than managers who were trained in conventional profit maximization aspects of business operations.

Therefore, the researcher was confident that quantitative research methods and even some qualitative research methods could not be appropriately used in this research area. 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).

4.5 A Critical View of GT

A number of authors argue in favour of GT presenting it as a sound research methodology for qualitative research. For example Greener (2008) writes that GT is useful "to probe deeper levels of values and social definitions" because it "looks for theory through a structured method of investigation". This argument suggests that GT is a favourable methodology where delicate information on social phenomena is needed. This deeper investigation can later be used to develop a framework for future researches. George Allen, who conducted a study using GT, wrote a critical review on GT (Allan, 2003) recommending it as a "powerful way to

collect and analyse data and draw meaningful conclusions". Strauss and Corbin (1990) argue that "GT is a scientific method" which meets the criteria of "significance, theory observation compatibility, generalizability, reproducibility, precision, rigor and verification" . These criteria make the foundation of scientific research methods and hence they classify GT methodology as scientific. One founder of the GT claimed in his later publication that it is a comprehensive research methodology covering all aspects of scientific research (Glaser, 1998).

In spite of significant support from the academic community, GT has been criticised by a number of authors. Even though some authors criticise it because of the associated limitations of the methodology (Allan, 2003), many others rebuke it just because of their pure quantitative orientation. In many cases "the disputes among grounded theorists and critiques result from where various authors stand between interpretive and positivist traditions" (Charmaz, 2006, p. 129). Those who are on the positivist end of the continuum are more critical of GT while those at the other end of the continuum are supportive of GT. Some authors rebuke GT claiming that it ignores some research aspects they are best suited for quantitative methods. For example Layder (1998) writes that GT is "committed epistemologically (the validity of knowledge) and ontologically (its view on social reality) to denying the existence of phenomena that are not only and simply behavioural" . This objection does not seem to be very logical because GT is used to uncover social phenomena which are always behavioural in nature. Layder also claims that GT is weak in 'theory-testing' but this claim also does not look to be convincing given the fact that the aim of GT is not to test existing theories but rather to generate new theories (Glaser and Strauss, 1967).

The conclusion is that GT may not be a good choice in some areas of research but it is the best choice in other situations. The whole choice in the selection of GT depends on the nature of the research question and existing literature in that area. The researcher believes that GT is the best methodology for the research question addressed in this study. Although criticised by some authors, this methodology is useful where the researcher knows little about the situation and extracts everything from the data without any preconceived hypothesis (Glaser and Strauss, 1967).

4.6 Summary

Given the fact that this particular research topic was to investigate a phenomenon deeply entwined with social intricacies and that it had remained almost untouched so far, deemed this topic an appropriate area to be examined using GT as the research methodology. GT is a qualitative social science research methodology relying on subjective research philosophy and interpretative paradigm. Though the

research process could be divided into three stages i.e. open, axial and selective coding, the actual analysis is deeply iterative between the stages where the last stages with the first one and the first practically end after the last stage is completed. This methodology mainly relies interviews as the main source of data by other sources e.g. internal memos, minutes of meetings; annual reports and other organization communications can be used as data. Furthermore, data collection is guided by theoretical sampling. Despite being criticised by some quantitative researchers, the methodology is one of the widely used techniques for examining the social sciences phenomenon.

Chapter 5: Open Coding

5.1 Introduction

Open coding is the first stage in GT analysis and the first chapter in writing the analysis section where the qualitative data are broken down into identifiable concepts which are “labels placed on discrete happenings, events and other instances of phenomena” (Strauss and Corbin, 1990, p.61). Each concept is then constantly “compared with other concepts for similarities and differences” in order to develop higher-level descriptive concepts (Corbin and Strauss, 2008, p.73) called open codes. During the analysis, 310 open codes were identified and labelled. However, the subsequent phases of analysis i.e. the axial and selective coding revealed that only forty open codes were relevant to the emerging core phenomenon. Therefore, this chapter explains only those relevant open codes.

One important step at this stage of the analysis is to explain open codes in terms of their properties and dimensions. Properties are the characteristics of open codes that explain and position them across a dimensional range. They are used for axial comparison of open codes in the next stages of analysis in order to reach higher levels of abstractions. For the purpose of ease of understanding and bringing smoothness into the flow of writing, the properties and dimensions have been presented in tabular form before each open category. A complete list of the forty codes and their properties and dimensions is given in Appendix IV. A detailed discussion of the forty codes now follows.

5.2 Description of the Open Codes

A detailed description an analysis of the open codes is given below.

5.2.1 Social Welfare

Open Code	Properties	Dimensions
Social Welfare	Relevance	High/Low
	Importance	High/Low
	Profitability Trade-off	High/Low
	Feeling Responsibility	High/Low
	Implementation	High/Low

This open code was developed by constantly comparing concepts for similarities (Corbin and Strauss, 1990, Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). The similar concepts that gave rise to this open code were ‘community benefit’, ‘looking after the society’, ‘taking on risky investments

for community welfare' and 'social well-being'. These concepts were gathered under one open code i.e. 'Social Welfare'.

Social welfare represents the health and happiness of the society as a whole. This is a key concept in Islamic banking which advocates trade-off of personal benefit, theoretically, for the greater good of the society. It is an outcome of social 'Fairness and Justice'– the building blocks of the Islamic economic system. Therefore, one might expect Islamic banks to promote social welfare at all levels in their practices. However, this scenario does not represent the ground reality in Islamic banking. PLS mechanisms are not extended to customers generously.

“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 less profits; we made an investment because of its benefit to the society.” (Shari’a Research Officer, Case II)

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 Shari’a scholars’ duty is to align the banks’ 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 convinced the banks’ management to take on projects with positive social impacts despite their risky cash flows.

“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 allocates it a minimal importance. However, 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, management in one of the cases opposed a risky but high social impact investment proposal put forth by the Shari’a scholars until a third party, a group of affluent individuals, agreed to guarantee the principal amount.

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

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

Thus, there is a clear gap between the two parties’ approaches to social welfare. This gap is narrower in terms of overall importance allocated by the parties to this concept but it widens when it comes to a sense of responsibility to deliver it. Because Shari’a scholars do not have authority to promote Shari’a objectives beyond the minimum Shari’a-compliance level i.e. *Halal* and *Haram* limits, they are unable to advocate social well-being as an essential element to achieve ultimate Shari’a objectives. Therefore, Shari’a scholars try to shift the responsibility of social well-being from corporate shoulders to other entities such as government.

“IFIs play their own role in social well-being but it’s not the job of IFIs alone; governments have to play their role.” (Shari’a Advisor, Case I)

The result is that social well-being receives only slight consideration in terms of its implementation in the banks’ practices. Management has more power to influence Shari’a scholars, who yield to management-promoted business objectives. However, management would not have any objection to promoting and implementing social welfare measures if they do not hinder ‘Business Objectives’.

5.2.2 Ethical Investments (EI)

Open Code	Properties	Dimensions
Ethical Investments (EI)	Relevance	High/Low
	Coverage	Wide/Narrow
	Sense of Responsibility	High/Low
	Trading-off Profitability	High/Low
	Authority	High/Low
	Implementation	High/Low

This code emerged through constant comparison of incidents that were much in line with the ethical investment literature (Beekun and Badawi, 2005, Hussein and Omran, 2005, Siddiqi, 2008). The similar concepts identified and grouped to form this open code were refraining from investing in ‘tobacco’, ‘alcohol’, ‘arms’, ‘pornography’ etc. Therefore, the name of the code was adapted from literature. However, some differences with the western EI concept were also noted. For example, environment is not considered as an important EI aspect by our cases. Though Friedman’s (Friedman, 1970, Friedman, 1967) free market theory strongly insists on pure self-interest, companies these days are yielding to pressure groups

to take social factors into account in making ethical investment decisions. 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, EI means avoiding investment areas that can cause damage to the society and are often marked as *Haram* by Shari'a. Thus, Islamic banks are prohibited from having stakes in tobacco, alcohol, pornography, gambling, speculative markets and interest-based industries. 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 Shari'a principles in this regard and, therefore, they would reject any transaction involving any of the above prohibited sectors even if highly profitable. Shari'a scholars' decision in this regard is final and binding because they have full authority to approve or disapprove any such decision.

"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 SRI's (Socially Responsible Investments) high relevance to Islamic banking however; they accept only a moderate responsibility for compliance with it. They subscribe to 'Business Objectives', which they believe should be achieved at minimum possible level of Shari'a compliance. Managers also have a moderate level of willingness to sacrifice business objectives for SRI. This is because of Shari'a scholars' full and managers' nil authority in this respect. Thus, management is submissive to Shari'a scholars in this aspect of Islamic banking. However, management's observance of Shari'a scholars' verdicts is not because of their spiritual commitment. Rather it is because not doing so can lead to the nullification of the transactions and forfeiting the profits (See Section 5.2.30). Managers may try to use covert means such as misrepresentation and overt pressure such as 'Firing Threat' 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 EI principles put forth by the Shari'a scholars.

"Of course in what we do as a business, we try to be socially responsible in terms of not investing in unacceptable industries... 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 defence 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 and I don't want to waste my time." (Head of Investments, Case III)

Consequently, implementation of EI is significant and meets the above–minimum Shari'a compliance level. Furthermore, EI coverage in Islamic banks is limited to avoiding the *Haram* sectors and does not encompass environmental issues, which are hotly debated in western literature under EI and SRI headings.

5.2.3 Fairness and Justice

Open Code	Properties	Dimensions
Fairness and Justice (F&J)	Relevance	High/Low
	Coverage	Wide/Narrow
	Importance	High/Low
	Feeling Responsibility	High/Low
	Trading–off Profitability	High/Low
	Authority	High/Low

This code refers to an important element of 'Shari'a Objectives'. It was developed mainly by "looking at [the] language"(Corbin and Strauss, 2008, p.82) respondents used and the emotions they expressed. For example, 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. It means giving others what one wants for him/herself and avoiding harming others (physically, financially and emotionally) for one's personal incentives. For example depositors, employees and the community are the key information–deficient stakeholder groups of Islamic banks and thus it is the banks' responsibility to sustain a high level of 'fairness and justice' with all of these parties. Depositors have primary importance because of their shared risk and no authority in the banks. Thus, the concept of F&J 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' is a highly relevant concept of Islamic banking. They also feel it is their responsibility to uphold this concept in Islamic banks in order to safeguard the interests of the weak stakeholders. Therefore, they give it a high level of importance and try to deliver fairness and justice to those stakeholder groups who have vested their trust in Shari'a scholars and are out of the banks' operational circle (See Section 5.2.15). Shari'a scholars are also inclined to sacrifice banks' profits for ensuring higher standards of fairness and justice. However, they

have limited authority and confined involvement, which makes it difficult for them to deliver F&J 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 in 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 contrary, ‘fairness and justice’ has moderate relevance because their assignment is realizing ‘Business Objectives’. Thus, the delivery of ‘fairness and justice’ is not of utmost importance for them. They feel it carries intermediate importance. However, they do not feel it is their responsibility to deliver ‘fairness and justice’ to weaker parties beyond the minimum legal transparency requirements.

“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 powers to redefine the term by exerting influence on Shari’a scholars. Thus, Shari’a scholars may give up their stance on the concept and its ending practical implementation in Islamic banks’ practices is limited and is a representative of mainly management’s stance.

5.2.4 Philanthropy

Open Code	Properties	Dimensions
Philanthropy	Relevance	High/Low
	Importance	High/Low
	Sense of Responsibility	High/Low
	Profitability Trade-off	High/Low
	Authority	High/Low
	Implementation	High/Low
	Philanthropic Use	High/Low
	Instrumental Use	High/Low

This code emerged through constantly comparing incidents with each other (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). The term ‘philanthropy’ has been used to describe the phenomenon more abstractly and concisely. The incidents and events respondents referred to were

'Zakat', 'Charity' and 'default obligation amount'. Unlike conventional banks and other corporations where charitable contribution to the society is voluntary and often used for instrumental purposes, there is at least one type of mandatory charity, Zakat [a fixed percentage of one's accumulated wealth] on Islamic banks. A second major source of charity is forfeited profit, which is the profit from accidental or deliberate Shari'a-repugnant transactions. In addition, Islamic banks are not allowed (restricted by Shari' scholars) to refinance advances with customers so they punish late-paying customers by charging them a default obligation amount as a penalty, which cannot be taken as profit by the banks but is rather allocated to charity funds. Shari'a scholars essentially prescribe the rules for philanthropic contributions. However, management is not bound to make charitable contributions other than those discussed above.

Shari'a scholars consider charitable contributions as highly relevant to the prescribed levels and thus they give it a very high importance because they believe it is their utmost responsibility to ensure banks collect and pay the required charities. Shari'a scholars are stringent in allocating profits from Shari'a-repugnant transactions to charity as it will make the whole profit *Haram* if it is not taken out. They are also ready to sacrifice any amount of banks' profits and pool it into the charity funds in case the transactions are identified to be against Shari'a principles. They can do so because their authority is full and final in this case.

"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)

"As far as Shari'a compliance is concerned, I think that is fine because no one can interfere with it. Recently, we gave a huge amount of profit in charity due to a minor Shari'a issue in that transaction." (Manager Operations, Case I)

Managers accord moderate relevance and importance to charitable contributions in Islamic banking. They feel a slight responsibility to comply with Shari'a principles in giving away profits to charity. However, management's authority is very low in this regard and they have to submit to Shari'a scholars' decisions in the case of the above-mentioned sources of charity. Any other charitable contribution is at the sole discretion of management where Shari'a scholars have no influence. Managers also resort to a number of coercive strategies to influence Shari'a scholars because they do not want profits 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)

Managers have to comply if Shari’a scholars stick with their stance on the above charity sources. Thus, the overall observance of charitable contributions is significantly high. Though the beneficiaries of the Zakat fund are prescribed in Shari’a and are predominantly consumed in philanthropic causes, management might use the forfeited profits and default obligation amounts for instrumental purposes.

It however, is interesting to note that some Shari’a scholars yield to managerial pressure and refrain from allocating large sums of money to charity especially in the case of Shari’a–repugnant transactions.

“I met a scholar or two who do not tend to allocate big amounts of non-Sharia-complaint transactions to charity” (Shari’a Advisor, Case III)

5.2.5 Unity Principle

Open Code	Properties	Dimensions
Unity Principle	Relevance	High/Low
	Importance	High/Low
	Coverage	Wide/Narrow
	Feeling Responsibility	High/Low
	Trading-off Profitability	High/Low
	Authority	High/Low
	Implementation	High/Low

It took a bit of thinking to struggle to name this code as there was a chain of similar incidents but the researcher found it a little hard to name it. Therefore, an analytical tool named by Corbin and Strauss (2008, p.80) as “drawing upon personal experience” was used coupled with seeking guidance from existence literature (Dusuki and Abdullah, 2007). A Red flag (Corbin and Strauss, 2008) was constantly waved at this time because the use of personal experience and literature can introduce bias to GT. Luckily, the code is well-grounded in data and the chances of bias are minimal.

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 has been granted to humankind in different proportions. The unity principle says 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*. It dictates that 'fairness and justice', 'social well-being' and 'philanthropy' must be observed even at one's own expense. Thus, the overall public good gets priority over personal objectives of wealth maximization. Islamic banks are expected to comply with this principle to safeguard public interests 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)

"Zakat is paid to earn the will of God... The implementation of the Islamic economics system will balance the distribution of wealth. ... As Islamic banking system is a part of the Islamic economics system, therefore, 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 covered by the proper implementation of the aforementioned codes i.e. 'Social Welfare', 'Ethical Investments (EI)', 'Fairness and Justice' and doing some 'Philanthropy'. However, Shari'a scholars feel a sense of responsibility to convince managers on 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 on taking on further actions in this regard. In one of our cases, Shari'a scholars have been able to convince managers on granting 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 but they believe the minimum Shari'a compliance level is enough contribution to the

society. They may feel slight responsibility to take on a slightly wider coverage than the minimum Shari'a compliance level in case they have stronger Shari'a boards and eternal sensitivity (See Section 5.2.12 below) to the essence of Islamic banking. 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 (Jail) 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)

Therefore, the resulting implementation of the unity principle is observable in some Islamic banks. However, the majority of Islamic banks' management wants to trim down the minimum Shari'a compliance to meet the business objectives. Therefore, Shari'a scholars, in the majority of cases, are only struggling to ensure the minimum Shari'a compliance level and there is little or no effort for the recognition of the unity principle.

5.2.6 Profit Maximization

Open Code	Properties	Dimensions
Profit Maximization	Relevance	High/Low
	Importance	High/Low
	Trade-off of Shari'a	High/Low
	Frustration	High/Low
	Use of Covert Means by Management	High/Low
	Ex-ante Regulatory Controls	High/Low
	Ex-post Regulatory Controls	High/Low
	Implementation	High/Low

This is an in-vivo because the exact words used by respondents. The concepts used identified were 'profits', 'profitability' and 'profit maximization'. The primary tool used here is the constant comparison of incidents and respondents' emotions (Corbin and Strauss, 2008). 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 reason of existence for Islamic banks and thus they assign a high level of importance to it. They also exhibit a significant

level of willingness to sacrifice 'Fairness and Justice' with some stakeholders 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 certain levels of Shari'a objectives are met. Thus, they understand the significant relevance of profiteering but do not consider it extremely important. They assign medium-level importance to profitability, believing it should not be achieved at the expense of Shari'a objectives, and thus are not willing, at least apparently, to engage in the trade-off. 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. They do not have any covert means to influence managers, however, they can use their legal authority (See Section 5.2.23) to influence managers and compel them to meet the minimum Shari'a compliance level.

"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 has 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 level. 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 weak and more unreliable 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)

“.....we require Islamic banks to have a Shari’a compliance and Shari’a review mechanism both of which have a dotted reporting line to the Shari’a advisor.....our Shari’a board also conducts Shari’a compliance inspections of Islamic banks as part of our regulatory inspections.” (Additional Director, Regulator)

These measures control managers’ thirst of profit maximization at the cost of Shari’a compliance. Still, profit maximization is actively pursued in Islamic banks. Shari’a scholars are struggling with implementing the minimum Shari’a compliance level but that also becomes difficult at times. Therefore, they sometimes compromise on the minimum Shari’a compliance standards. This greed for profit is a potential existential threat to the essence of Islamic banking industry in the long run, which is strongly realized by Shari’a scholars and regulators.

A Shari’a scholar, who read the whole analysis of this study, commented on the issue of compromising on minimum Shari’a compliance in the following words.

“This is true and happening at times.” (Head of Shari’a Dept., Case III)

5.2.7 Secured Investments

Open Code	Properties	Dimensions
Secured Investments	Relevance	High/Low
	Importance	High/Low
	Feeling Responsibility	High/Low
	Trade-off of Shari’a	High/Low
	Frustration	High/Low
	Regulatory Controls	High/Low
	Implementation	High/Low

This is an “in-vivo” code (Strauss, 1987, p.33) taken from interviews with managers. It was then saturated through constantly comparing it with other incidents. 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 investing sides. However, like other financial institutions, Islamic banks need steady cash flows. Thus, risk–return sharing instruments are not managers’ favourite.

Islamic banks' management believes that secured investment is a highly relevant and important feature of banking. One of managers' responsibilities is to make sure that minimum possible risk is undertaken by the banks. Secured investments are thus very important for management's business objectives that they pursue even at the expense of Shari'a objectives. Managers are not frustrated in this regard because Shari'a scholars do not impose significant restrictions in this case.

"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)

On the contrary, 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 Like 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 is carried out through secured instruments. Managers, Shari'a scholars and regulators believe that only risk-sharing instruments can realize optimal Shari'a objectives while Murabahah and

Ijarah meet only the minimum Shari'a requirements. The main hurdle in this case is the absence of a conducive societal structure based on honesty and integrity. Thus, banks are reluctant to indulge in risk-sharing ventures with customers who may not show the actual profit-and-loss positions of their businesses. Furthermore, Islamic banks use the same pricing tools of the conventional banking even in risk-sharing products. No matter which product is applied, the cost of funds is calculated on 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)

A respondent, who kindly agreed to read the analysis after it was completed, commented that “Sharia Board members should impose limits for the secured investment portfolios. I came to know the Tawarruq [an Islamic banking instrument] portfolio in a bank in Kingdom of Saudi Arabia (KSA) reaches 70% of the entire business pool of the bank, which is unacceptable and unjustifiable. However, even in PLS sharing products, the Islamic bank takes securities that mitigate any risk which is against the principles of those products. In PLS products, the bank may take security to cover its share only in case the client failed in the management due to its misconduct and gross negligence. Whilst, the bank takes security that covers the entire value of the project” (Head of Shari'a Dept., Case III)

5.2.8 Islamization of Conventional Products

Open Code	Properties	Dimensions
Islamization of Conventional Products	Relevance	High/Low
	Importance	High/Low
	Feeling Responsibility	High/Low
	Trade-off of Shari'a	High/Low
	Use of Covert Means	High/Low
	Frustration	High/Low
	Regulatory Controls	High/Low
	Implementation	High/Low

This code also emerged through constant comparison of incidents. Mainly Shari'a scholars and regulators describe managers' ultimate pursuit of Islamization of conventional products as a potential risk for the Islamic banks. 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 come up with products very similar to conventional banks to stay competitive in the market.

The managers' job is to achieve 'Business Objectives' of the banks and thus they believe it is extremely relevant and important for Islamic banks to remain competitive with conventional banks in terms of products, services and returns. They are responsible for coming up with products very 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 to develop competitive products. The dissatisfaction of management increases when Shari'a scholars reject such products and proposals. Therefore, they resort to coercive means, including 'Firing Threat' and 'Closure Threat', 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. Thus 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 also feel the relevance and importance of providing all banking services offered by conventional banks. However, they believe they are not responsible to find 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 levels of pressures to counter management's pressure. Shari'a scholars are willing to sacrifice broader Shari'a objectives; however, the situation is highly frustrating for them when management seeks Islamic alternatives of conventional products that require concessions in minimum Shari'a compliance levels.

".....they [management] sometimes push us to approve certain structures. They even threaten our jobs and even the Islamic banking operations of the bank. 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 asking to approve the structure.....they 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 threat to Islamic banking industry in the long run. However, they have taken only observatory stance in this issue and have left the issue for the managers and Shari'a scholars to resolve. However, in some extreme cases regulators ban certain types of structures on Islamic banks, which give a 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 ground of other systems....." (Director and Joint Director, Regulator)

At the end of the day, Islamic banks actively pursue conventional competitiveness as a key business strategy where Shari'a scholars are forced to find ways (See Section 5.2.34) and put an Islamic tag on conventional products. Shari'a scholars may approve such things with the excuse of 'primitive stage of the industry' (See Section 5.2.33 for more details on the use of this excuse).

5.2.9 Educational Disparity

Open Code	Properties	Dimensions
Educational Disparity	Religious Education	High/Low
	Conventional Education	High/Low
	Arabic Fluency	High/Low
	English Fluency	High/Low
	Mentality-Secular	High/Low
	Mentality-Religious	High/Low
	Frustration	High/Low

This open code emerged by constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). A number of key respondents including, managers, Shari'a scholars and regulators referred to this phenomenon as highly important causing increased diversion between Shari'a scholars and managers. An organization's Human Resource is required to have

qualifications in the relevant fields to make sure a smooth and professional functioning of organizations. As Islamic banks are business entities based on religious principles, their Human Resource needs to be sufficiently versed in two types of education– religious and business. However, not all those affiliated with Islamic banks are versed with the two educational types at the same time. Rather there is a prevailing split in educational types of two important Human Resource groups, managers and Shari'a scholars, within Islamic banks.

The majority of the Shari'a scholars working in Islamic banks are Mufti's, possessing PhD equivalent degrees in religious education. Some also have a background in conventional business education however, a vast majority lack sound business educational background necessary to run financial institutions. 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 low. Thus, Shari'a scholars have problems understanding the business intricacies written and communicated in the English language.

“Second is education. The majority of the Shari'a scholars has 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. So these again have caused a bit of divergence.....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. Even there are issues with translations. They come back with lots of questions and then we try to clarify them. So it takes lots of time which makes us frustrated.” (Head of Investments, Case III)

The discrepancy widens when it comes to management's background in religious education. A vast majority of managers does not have any formal degrees in religious education but possess sound 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. Thus, Shari'a scholars have predominantly religious mentalities while management have secular attitudes; some even deem Shari'a as obsolete. This situation increases the frustration of the two parties. Shari'a scholars complain that managers do not understand the tacit logic and mechanisms of Shari'a while managers think Shari'a scholars hardly understand their business proposals taking a long time in reading and understanding them. Thus, managers view Islamic bank as a new market for achieving 'Business Objectives' while Shari'a scholars view it from a holistic point of view as a tool for realizing 'Shari'a Objectives'.

"The mind-set of the Islamic management is not supportive of Islamic banking because most of their Human Resource has conventional education and experience there is a need to change their mind-set.....secondly, the problem is with the Shari'a scholars; they often don't know about banking practices so this creates a gap. This gap can be bridged by training those Shari'a scholars that come from the Madrasas [Religious schools]." (Joint Director, Regulator)

5.2.10 Experience Disparity

Open Code	Properties	Dimensions
Experience Disparity	Religious Exposure	High/Low
	Business Exposure	High/Low
	Mentality-Secular	High/Low
	Mentality-Religious	High/Low

This open code came out as a result of constant comparison of incidents (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Managers, Shari'a scholars and regulators constantly talked about different backgrounds of managers and Shari'a scholars.

Analogous to 'Educational Disparity', Shari'a scholars and management also come from different types of practical backgrounds. 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 in understanding and running the banking business however, they do not have any 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* but they are familiar with the rest of the business world to some extent. However, the

majority of the Shari'a scholars working in Islamic banks has been affiliated with religious schools and other religious organizations for an extended period of time, which has moulded 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. I was personally not convinced when I first joined this department but when I went deeper and deeper into the nature of the Islamic transactions; I realized that they were different." (Deputy Director, Regulator)

The work backgrounds of management and Shari'a scholars nurture two diverging mentalities– secular and business. Thus, it becomes difficult for Shari'a scholars to convince management of the long-term benefits and social effects of Islamic contracts and vice versa. However, Shari'a scholars understand and realize the importance of 'Business Objectives' largely and are inclined to give concessions. Largely, managers view Islamic banks as a means of realizing 'Business Objectives' and Shari'a scholars see it as a way to achieve 'Shari'a Objectives'.

"...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)

5.2.11 Self-interest

Open Code	Properties	Dimensions
Self-interest	Monetary Incentives for Joining Islamic bank	High/Low
	Value of Incentives	Big/Small
	Based on Business Targets	High/Low
	Determines Behaviour	High/Low

This code was important but hard to conceptualize because respondents did not explicitly admit the role of self-interest in affecting their behaviour and strategies. It was through a close look at the language and emotions (Corbin and Strauss, 2008) of the respondents that gave rise to this code.

Shari'a scholars and management are attracted to Islamic banks for a number of reasons. One main reason for joining Islamic banks is personal incentive, which moulds 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 top and middle level management of Islamic banks is attracted from conventional banks (also see 'Experience Disparity') by offering them higher pay and perks. Because they are expert in the banking business, they are given business targets to meet while working in consultation with Shari'a scholars. The financial and non-financial incentives of management are based on their achievement of business targets. Therefore, they have a high level of commitment to business objectives and strive to achieve them even at the expense of Shari'a compliance.

"The mind-set of the Islamic management is not supportive of Islamic banking because most of the human resources for Islamic banks come from conventional banks for better pay and perks. Thus there is a need to change their mind-set." (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)

For Shari'a scholars, monetary incentives play a moderate role in attracting them to work in the banks. They get lucrative compensations for a nominal role but still they do not consider themselves as economic migrants because they would not opt to work for a conventional interest-based bank. Furthermore, the values of their monetary and non-monetary incentives are not based on business targets. However, their financial and non-financial incentives are attractive enough to affect their behaviour to some extent. It is also notable that the prominent Shari'a scholars are heads and members of a multitude of Sharia Boards which is beyond their capability. This questions the notion that Shari'a scholars are not much attracted towards monetary incentives. 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.

"The Shari'a board does not get any benefit for approving or declining the structure; they just give their fair opinion about it from a Shari'a perspective." (Head of Shari'a Dept., Case III)

"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)

However, there are minor chances that Shari'a scholars would actually compromise on Shari'a compliance purely for their personal gains because of their strong

sensitivity to eternal pressure. The majority of the Shari'a scholars are committed to the development of the industry and presenting it as an alternative to the conventional banking system so some of them work for Islamic banks even without compensation.

“Shari'a scholars are not concerned with the business and profitability of the bank; some of them don't even take their salaries. They just want to make the system successful. Therefore, their decisions regarding Shari'a issues are fair and not taken under management's pressure.” (Manager Operations, Case I)

5.2.12 Eternal Reward/Punishment

Open Code	Properties	Dimensions
Eternal Sensitivity	Reason for Joining the Bank	High/Low
	Level of Spiritual Commitment	High/Low
	Sensitivity	High/Low
	Adherence	High/Low

Incidents like 'hell', 'haven', 'sin' and 'responsibility' were abstracted into this code through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). The prime motivation for Shari'a scholars, as proclaimed by them, is to discharge a religious responsibility by serving the Islamic finance industry. They believe their work equals religious rituals if performed properly. They are highly sensitive to the eternal consequences of their actions because they believe their verdicts are considered as signing on behalf of Allah [God]. 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 and they try to adhere to the letter and spirit of Shari'a principles. There is a dotted line of authority between Shari'a scholars and Allah. This line of authority is the prime self-regulatory mechanism imposed on Shari'a scholars. Furthermore, their religious verdicts are highly regarded by all stakeholders who have a blind trust in Shari'a scholars. It gives them an additional pressure to keep their integrity and maintain public's confidence in their verdicts. Therefore, spiritual commitment is a strong corrective force on Shari'a scholars to make decisions that are compliant with Shari'a principles even if they are at the cost of lower profits for the banks or are against their own material interests. 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)

"Shari'a scholars are more concerned with the righteousness of what they are doing because they will be judged in the hereafter. Declaring something Halal or Haram is a big decision and he has to put himself in that position... issuing a fatwa means signing on behalf of Allah." (Head of Shari'a Dept., 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. Therefore, they are not much sensitive and committed to Shari'a principles in their work. Thus, their overall adherence to Shari'a is also low as compared to Shari'a scholars.

"Shari'a advisors are well educated in Shari'a and their awareness is better than other people. Therefore, sensitivity to eternal force becomes a code of ethics for them. This also makes them more aware of the concept of self-accountability." (Director and Joint Director, Regulator)

5.2.13 External Shari'a Scholars' Pressure

Open Code	Properties	Dimensions
External Shari'a Scholars' Pressure	Intensity	High/Low
	Exposure	High/Low
	Reputation Risk	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

It was not until the last interview that this code was developed. This tool used for the discovery of this tool was "flip-flop technique" (Corbin and Strauss, 2008, pp.79–80). When the existence of a pressure from international Shari'a scholars was discovered (See Section 5.2.17), the researcher became sensitive to the existence of any such pressure from Shari'a scholars who were currently not working with Islamic banks. In fact a final telephonic interview was conducted to find out about the pressure from external Shari'a scholars.

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 with interest-based banks. However, modern business transactions were impractical without banking services and thus Shari'a scholars came under intense pressure to present an alternative to the western banking system. This triggered a move to Islamize the banking system in the early 1940s, which was supported by some Shari'a scholars that resulted in the present form of Islamic banking. However, some Shari'a scholars were and are still not convinced by the concept of banking in Islam. These scholars have not 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 supporting the industry i.e. the internal Shari'a scholars.

The intensity of this pressure is very high on internal Shari'a scholars who have a significant exposure to it because only Shari'a scholars can comment on other Shari'a scholars verdicts. This exposes the internal Shari'a scholars and the whole Islamic banking industry to a very high reputation risk in case the external Shari'a scholars come up with verdicts against the Islamic banking system currently in place. Therefore, Shari'a scholars are highly sensitive to this pressure, which has a positive impact in the sense that it forces them to be more careful in issuing verdicts and realizing wider 'Shari'a Objectives'. However, it has a medium range negative impact because it restricts innovation and research in the Islamic banking industry.

"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. Therefore, internal Shari'a scholars are extremely careful because they do not want to provide them further reasons for objections. Many of their objections are regarding making the system ideal and we are working on that. The current system is being continuously modified due the pressure of those external Shari'a scholars. Internal Shari'a scholars are trying to make this system more acceptable to the external Shari'a scholars in order to build consensus. We are more careful because we suspect the documents can reach the external Shari'a scholars who can check them and raise objections." (Shari'a Research

Officer, Case II)

Managers, on the other hand, face very little pressure from external Shari'a scholars because they do not belong to the concerned party. Their exposure to such pressures is also very low and that is why this pressure does not affect management' reputation considerably because they are not the ones issuing Shari'a compliance certifications. However, they are fairly sensitive to this pressure because it can greatly affect the whole industry. This pressure has a fairly positive impact on management' behaviour and consequently they are inclined to cooperate with international Shari'a scholars.

5.2.14 Regulatory Controls

Open Code	Properties	Dimensions
Regulatory Pressure	Intensity	High/Low
	Exposure	High/Low
	Reputation Risk	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

Existence of regulatory pressure and a need for such pressure in cases where it did not exist was evident from the very first few interviews. The code was saturated through constant comparison of incidents (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) in the following interviews.

The Islamic finance industry has seen increasing regulations with its rapid developments. A number of countries have set up separate regulatory departments for IFIs in their central banks. The purpose of the regulatory bodies is to promote Islamic banking in a sustainable way and ensure better Shari'a compliance. Therefore, the intensity of the regulatory pressure is mainly against the management. The exposure of management to this pressure is also very high because regulators have access to all their details. Noncompliance 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 results in a positive impact towards better 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 SBP, 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)

However, the development of the industry is also a key priority of regulators so they restrict Shari'a scholars' involvement in the banks, which has a slightly negative impact on Shari'a compliance. Shari'a scholars also complain about this restrictive role of regulators and consider it as a hindrance towards Shari'a compliance.

"Regulator's role in the financial system is dual; i) to facilitate the development of the industry and ii) consider its impact on the sustainability of the whole economy. Therefore, we have adopted a balanced approach.....we cannot authorize Shari'a advisors to get involved in all issues of bank including employees and customers' rights." (Director, Regulator)

On the other hand, the intensity of regulatory pressure is not very high on Shari'a scholars as compared to management. However, they are still fully exposed to it and consider it as the second strongest pressure after 'Eternal '. Furthermore, Shari'a scholars are also exposed to serious reputation risk if their behaviour is not in conformity with regulations. However, there are minor chances that Shari'a scholars would compromise on Shari'a compliance below the minimum regulatory requirements and therefore they are only slightly sensitive to regulatory pressure. Because the regulations are mostly in favour of Shari'a scholars, it gives them an edge that has a positive impact towards better Shari'a compliance.

"Still, I can say that many people in the management are interested in fatwa shopping but the chances are very limited in Pakistan because the regulations of SBP are very stringent in this matter." (Shari'a Research Officer, Case II)

5.2.15 Depositors' Expectations

Open Code	Properties	Dimensions
Depositors' Expectations	Intensity	High/Low
	Exposure	High/Low
	Reputation Risk	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

Incidents like 'blind trust', 'responsibility to provide Halal profits for depositors' etc. triggered the emergence of this code. The code was saturated by constantly comparing incidents (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998).

Religion's influence in Muslim communities is so strong that it has mingled 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.

Shari'a scholars' are exposed to a medium-level intensity of depositors' pressure because depositors as common folk are not aware of the intricacies of banking operations and the corresponding Shari'a principles. They, rather, have a strong belief or faith that Shari'a scholars' presence in Islamic banks makes them Shari'a compliant. If depositors become aware of any Shari'a-repugnant decisions issued by Shari'a scholars, it can have grave consequences on Shari'a scholars and banks' reputations. Another reason for Shari'a scholars' sensitivity to depositors' pressure is the fact that they take responsibility of providing Halal banking services to all customers. Any carelessness in this regard will lead to their accountability in the hereafter according to the Hadith that, "he who introduces some evil practice in Islam which is subsequently followed (by others) would be required to bear the burden of those who followed this (evil practice) without theirs' being diminished in any respect" (Sahih Muslim: 6466). Therefore, Shari'a scholars are highly sensitive to depositor's pressure and are constantly trying to give them Halal profit

and secure their rights (See Section 5.2.3). Management, on the other hand, is not exposed to any significant pressure from depositors.

“I trust that this bank is Shari’a compliant because they gave 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)

This situation has two obvious consequences; on the one hand, it increases Shari’a scholars’ power to counter management pressure while on the other hand, it gives the bank the opportunity to capitalize on the influence of high-stature Shari’a scholars in their banks to reap profits. A bank with a high-stature Shari’a scholar and the ability to manipulate him/her would have more profitability.

5.2.16 Employees’ Expectations

Open Code	Properties	Dimensions
Employees’ Expectations	Intensity	High/Low
	Exposure	High/Low
	Reputation Risk	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

This code also emerged through constantly comparing incidents (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Though Shari’a scholars are not involved in management and HR-related issues of the banks, employees (lower level) expect that Shari’a scholars would protect their rights and ensure ‘Fairness and Justice’, which is an important pillar of ‘Shari’a Objectives’. Thus, employees view the Shari’a department, as an internal judicial system for resolving employee grievances.

This builds a pressure on Shari’a scholars to take steps for endorsing ‘Fairness and Justice’ in Islamic banks. Though Shari’a scholars’ exposure to employees’ pressure is significant, its intensity is low because employees understand Shari’a scholars’ limited authority involvement. That is why it poses a small reputation risk to Shari’a scholars. However, Shari’a scholars are significantly sensitive to this

issue and would step up to resolve employees' grievances brought to their attention. Still, they refrain from proactive involvement in administrative issues. When any dispute is brought to the notice of Shari'a scholars, they would recommend a course of action to the top management if they feel a certain employee has been dealt with unfairly. In most cases, management respects this recommendation and the grievances are resolved accordingly. However, management can reject the recommendation because of its non-binding nature. Thus, some Shari'a scholars would prefer avoiding proactive involvement in such issues in order to escape humiliation.

"Employees do have expectations from us but our involvement is very limited in that area. We should have a say in Human Resource (HR) practices in order to go one step further towards Shari'a compliance [objectives]." (Shari'a Advisor, Case II)

"Employees and customers have more expectations from Shari'a scholars but, you know...their authority is limited." (Head of Investments, Case III)

Regulators have given Shari'a scholars full authority in other areas e.g. product approval which can be capitalized by Shari'a scholars to force management to ensure a considerable level of 'Fairness and Justice' with all stakeholders including employees.

"Regarding the expectations of depositors, customers and employees, I would say Shari'a advisors are not aware of the safeguards we have given them against the management. They have got powers but they may not know about it." (Additional Director, Regulator)

Though managers deal with employees' issues, the formalized procedures reduce 'employees' pressure' on them and thus they are not much sensitive to it. At the end, employees' pressure plays some role in promoting better Shari'a compliance within Islamic banks.

5.2.17 Internal Shari'a Scholars' Pressure

Open Code	Properties	Dimensions
Internal Shari'a Scholars' Pressure	Intensity	High/Low
	Exposure	High/Low
	Reputation Risk	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

Shari'a scholars that are associated with Islamic banking industry are categorized as internal for the purpose of this study. A number of Shari'a scholars work across different Islamic banks who share their developments at different forums, which increases their awareness of developments taking place across banks and countries. Hence, Shari'a scholars are sensitive to the potential condemnation from other internal Shari'a scholars in case of compromises on Shari'a within their own banks. As a result, Shari'a scholars are more stringent in their decisions and scrutiny. However, the relationship between internal Shari'a scholars also has a different and a friendly face. They have a profound respect for their predecessors, teachers and colleagues. Thus, Shari'a verdicts issued by other Shari'a scholars are recognized as such even if one might not fully agree with them.

Though there is only a medium-level intensity of this pressure on Shari'a scholars, the exposure is very high because they know about the developments taking place in the industry. However, the potential reputation risk is not extremely high as internal Shari'a scholars are not inclined to expose each other. Still the reputation risk is significant and there is a significant level of sensitivity amongst Shari'a scholars to this pressure. The positive impact of this pressure on Shari'a scholars is that it leads to better Shari'a compliance and harmonization across institutions and countries but the downside is that it increases stagnation in the industry by hindering new research and developments.

"Peer pressure does exist but it is positive in the sense that a wrong decision can create condemnation from other peers while it is negative in the sense that the Shari'a scholars often do not reject their teachers' point of view even if they feel it is wrong. This is because of the tremendous respect Shari'a scholars have for their teachers. This aspect hinders innovation and research in the field. However, it is a way towards greater harmonization." (Shari'a Advisor, Case II)

“The issue of peer pressure is negative and positive at the same time. The Shari’a advisors are compelled to follow the big names (renowned Shari’a scholars). If their opinion is in line with the big names, they are happy but they are frustrated if this is not the case.” (Director and Joint Director, Regulator)

Managers, on the contrary, are not exposed to this type of peer pressure. Thus, their reputation is not at stake, which lead to lesser sensitivity to this pressure. Therefore, its positive and negative impacts on management are also non-significant. Internal Shari’a scholars’ pressure has two fold effects. On the one hand, it promotes a meticulous approach amongst Shari’a scholars and forces them to take decisions that are more in line with Shari’a principles but on the other hand, it promotes stagnation as the decisions of other Shari’a scholars are accepted and respected. This also paves the way for Shari’a scholars to compromise on certain Shari’a issues under pressure from management.

5.2.18 Shari’a Reputation Risk

Open Code	Properties	Dimensions
Shari’a Reputation Risk	Intensity	High/Low
	Exposure	High/Low
	Sensitivity	High/Low
	Positive Impact	High/Low
	Negative Impact	High/Low

The flip-flop technique (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) was used to discover and saturate this code. For example, when it was discovered that CEOs were willing to take action against managers, on the recommendation of Shari’a scholars, who were found non-cooperative with Shari’a scholars, the researcher became sensitive to the existence of a reputation risk to the bank in case action was not taken against those accused. Managers use different strategies to influence Shari’a scholars for the maximization of their ‘Business Objectives’. However, 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. This issue can become very serious when the Shari’a scholars start whistle-blowing regarding the Shari’a-repugnant practices of their own banks. Therefore, it is in the interest of the management not to force Shari’a scholars beyond a certain extent and thus save their reputation. Shari’a scholars can also write a negative review of certain managerial practices and thereby damage 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))

The overall intensity of reputation risk for Islamic banks is only moderate because of the moderate exposure to this risk. The exposure is moderate because the internal concerned parties i.e. Shari'a scholars, regulators and employees are less likely to expose any internal Shari'a compliance issue to the public. However, management is extremely sensitive to this risk because of its extreme consequences once exposed. The positive impact of this potential risk is that it makes management more submissive to Shari'a scholars and thus Shari'a compliance is improved.

"Sponsors are often very cautious about Shari'a compliance because their reputation is at stake." (Shari'a Advisor, CASE III)

5.2.19 Organizational Legitimacy

Open Code	Properties	Dimensions
Organizational Legitimacy	Shari'a Objectives	High/Low
	Profitability	High/Low
	Regulatory Pressure	High/Low
	Other Stakeholders' Pressure	High/Low

When it was starting to emerge that Shari'a and business objectives were potentially conflicting, the research became more sensitive (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) to find whether managers took Shari'a scholars on board for seeking their genuine guidance on Shari'a issues or just for seeking legitimacy for their banks. It was found that organizational legitimacy was a key factor for managers to have Shari'a scholars on board and accept their verdicts even if they were against business objectives at times.

Islamic banks, as the name suggests, are financial institutions that are supposed to adhere to Shari'a principles in their operations. Therefore, Shari'a compliance is the one and only factor that gives Islamic banks the necessary organizational legitimacy. Regulators exert a significant pressure on Islamic banks' management to comply with the Shari'a requirements stipulated by Shari'a scholars in order to maintain their legitimacy and safeguard the industry from a collapse. However, the

extreme pressure for organizational legitimacy comes from other stakeholders i.e. external Shari'a scholars, depositors and the public.

“The main reason for establishing an Islamic bank is to safeguard the Muslims from indulging in Shari'a-repugnant transactions, particularly, in their financial arrangements.” (Shari'a Advisor, Case II)

As the Shari'a scholars grant organizational legitimacy to Islamic banks, management give the necessary weight to Shari'a scholars' opinions and become submissive. However, managers are not concerned with actual Shari'a compliance of the bank. Rather they seek only a clearance from Shari'a scholars in order to legitimize their products and services. Islamic banks' products and services are considered legitimate so long as Shari'a scholars approve them. Therefore, managers would even pressurize Shari'a scholars to get this clearance or Shari'a certification.

“Shari'a noncompliance does not have direct financial consequences for the bank if it is approved by the Shari'a advisor. Therefore, the management is often in the 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)

5.2.20 Firing Threat

Open Code	Properties	Dimensions
Firing Threat	Intensity	High/Low
	Regulatory Protections	High/Low
	Sensitivity	High/Low
	Impact	High/Low

This code emerged first in an interview with a Shari'a scholar. However, it is not in-vivo code (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) as the exact words he used were ‘they even threaten our jobs’. Therefore, the given name has been abstracted to make it concise.

Managers sometimes become furious if Shari'a scholars reject their proposals because of some Shari'a concerns. In this scenario, management often exert pressure on Shari'a scholars to make them lenient on Shari'a matters and approve their structures. Threatening to fire Shari'a scholars is one type of such pressures.

“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 minutes and I need a positive answer otherwise I will take my action.’ I told him, ‘What action are you taking after 5 minutes? You can take that action now because my answer will be the same after 5 minutes. Are you going to fire me? I have got offer letters from other banks in my drawer.’” (Shari’a Advisor, Case II)

Though the firing threat is quite significant but Shari’a scholars are highly protected by regulators and therefore, they are not very sensitive to this threat. The regulatory protections include; i) a fixed term of appointment, ii) ability to report conflicts to regulators and iii) a serious disciplinary reason provided by management for firing Shari’a scholars. The sensitivity of Shari’a scholars to firing threat is also decreased by the fact that there is a scarcity of Shari’a scholars in the market. Additionally, management is aware that Shari’a scholars can issue a verdict against their banks if they are fired for their strict adherence to Shari’a. Such a verdict can result in a complete collapse of the bank. Thus the management’ firing threat is not a very useful pressure tool to be used against Shari’a scholars.

“.....Shari’a advisors’ term of appointment is at least three years.....they cannot be prosecuted if they give some adverse ruling.....they are also authorized to make complaints to the regulator. So we provide proper protection to the Shari’a advisor otherwise they can be subject to management’s pressure.” (Additional Director, Regulator)

However, some Shari’a scholars may still give up at times but the majority do not easily yield to this threat and deny approving structures that they think are against the Shari’a principles.

5.2.21 Closure Threat

Open Code	Properties	Dimensions
Closure Threat	Intensity	High/Low
	Regulatory Protections	High/Low
	Sensitivity	High/Low
	Impact	High/Low

This code is also in-vivo (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998).

In case of serious conflicts with Shari'a scholars, management can threaten to wind up the Islamic banking business. This threat is more serious in banks that are not fully Islamic but operate Islamic banking windows. Such banks view Islamic banking as a kind of investment project and would be ready to wind it up if it ceases to be profitable.

"...they [management] sometimes push us to approve certain structures. They even threaten to stop the Islamic banking operations of the bank." (Shari'a Advisor, Case II)

Shari'a scholars feel a moderate level of intensity of this threat but there are no regulatory protections to them in this case as the management are free to take the closure decision. However, it is less likely that management would actually close Islamic banking because of stringent Shari'a scholars and therefore, Shari'a scholars are only moderately sensitive to this threat. Still Shari'a scholars want a sustainable and gradual development of Islamic banking; they may sometimes yield to this threat and approve products that are not Shari'a compliant. Such products are mostly approved by a consensus amongst Shari'a scholars so there is little pressure from the internal community of Shari'a scholars.

5.2.22 Appointment of Shari'a Scholars

Open Code	Properties	Dimensions
Appointment of Shari'a Scholars	Role of Regulator or General Body	High/Low
	Role of Bankers	High/Low
	Role of Existing Shari'a Scholars	High/Low
	Overall Independence	High/Low

This code emerged through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). In countries where there is a central governance mechanism for Islamic banks, the regulators lay down the procedures for the appointment of Shari'a scholars, their tenure and dismissal procedures. For example in Pakistan, Shari'a advisors are nominated by the management and then approved by the central bank. The approval by the central bank is to ensure Shari'a scholars meet the minimum competence and are independent. In other countries where a central regulatory mechanism is not in place, Shari'a scholars are nominated by the management and approved by the general body. The management cannot dismiss them without taking approval of

the general body. This appointment procedure enhances Shari'a scholars' independence from the managers' undue influence.

"As part of our regulatory framework, we have ensured the independence of Shari'a advisor. For example his term of appointment is at least three years, he is appointed by the BoD after our approval." (Additional Director, Regulator)

"It is worth mentioning that the BoD nominates Shari'a board members and shareholders approve this nomination" (Head of Shari'a Dept., Case III)

However, management can nominate the kind of person they would like to have and get him/her approved by the regulator or general body. Similarly, in non-regulated countries e.g. UAE, it is not a requirement for banks to follow a certain procedure in appointing and dismissing Shari'a scholars.

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

"Fatwa shopping happens when there is no centralized system of governance and the institutions appoint their Shari'a committees or appoint a Shari'a consultant. Then they get a fatwa which suits their interests." (Shari'a Advisor, Case I)

In some constituencies, it is not compulsory on management to appoint full-time Shari'a scholars. In that case, management hires the services of Shari'a consultancies on case-to-case bases. Different Shari'a consultancies compete with each other for business objectives and it becomes much easier for management to shop around for a fatwa that meets their needs. Thus, management can nominate a Shari'a scholar who is lenient and does not create much trouble for them.

"Fatwa shopping is impossible in banks where there is a full-time Shari'a advisor; however, there are chances of fatwa shopping in banks that hire the services of Shari'a advisory firms. Such banks may look for lenient Shari'a advisors. Such banks also try to avoid Shari'a boards and Shari'a audits." (Shari'a Advisor, Case II)

Thus, regulators general bodies have a moderate role, if any, in the appointment of Shari'a scholars while the role of management is significant. However, a pre-existing Shari'a department of Shari'a board always plays a significant role in the appointment of new Shari'a scholars and thereby balancing the management' role. Overall, the independence of Shari'a scholars can be ranked as moderate due to the interplay of the factors discussed in this section.

5.2.23 Avoiding Shari'a Board

Open Code	Properties	Dimensions
Avoiding Shari'a Board	Intensity	High/Low
	Regulatory Requirement	High/Low
	Effect on Controlling Shari'a Advisors	High/Low
	Effect on Business Objectives	High/Low
	Effect on Legitimacy	High/Low

This is an important code but the concept was not mentioned directly by the respondents. Rather the discovery of this code was done looking at the language and emotions of respondents (Corbin and Strauss, 2008). Shari'a board is an independent body of Shari'a scholars that oversees Islamic banks' operations and manage their Shari'a departments. Shari'a scholars use the Shari'a board as an advantage to counter managers' pressure. For example, he/she can forward certain issues to the Shari'a board in case of pressure from management. The decision of the Shari'a board is binding on management, which reduces the tension of the Shari'a scholars. Therefore, some banks would prefer to avoid having a Shari'a board in order to minimize Shari'a scholars' influence.

"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)

Given that the Shari'a board is much stronger than "other types of supervision such as Shari'a consulting firms and Shari'a advisors" (Garas and Pierce, 2010, p.386) and that it is not a mandatory requirement on banks, management feels moderate intensity for avoiding it because the Shari'a board increases the legitimacy and credibility of the banks amongst their stakeholders especially depositors. Therefore it is more likely for management, in our cases, to reduce the involvement of Shari'a board e.g. reduce the number of annual meetings rather than abandoning it. Management would also reduce Shari'a board's influence by selecting lenient Shari'a scholars onto the board.

Ultimately, managers' have incentives in avoiding a powerful Shari'a board. It is the responsibility of regulators to make sure proper Shari'a supervisions are in place in every Islamic bank.

"This [avoiding Shari'a Board (SB)] is happening due to the lack or regulations that should be imposed by regulatory bodies." (Head of Shari'a Dept., Case III)

5.2.24 Authority of Shari'a Scholars

Open Code	Properties	Dimensions
Authority of Shari'a Scholars	Product Approval	High/Low
	Employees' Issues	High/Low
	Depositors' Issues	High/Low
	Other areas	High/Low

This code was also a result of the constant comparison tool (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) where incidents of Shari'a scholars' authority in different areas were noted and saturated. The purpose of Shari'a scholars' appointment into the banks is to make them Shari'a compliant and achieve Shari'a objectives. However, Shari'a scholars are authorized only to approve or disapprove products from the Shari'a point of view. This authority is full and final in product approval but it does not extend to other matters of the bank. In some cases, Shari'a scholars are even not aware of how their approved products are actually implemented. Thus, Shari'a scholars are kept completely away from administrative and operational matters. However, they feel a sense of responsibility to protect depositors and employee interests and make all aspects of the banks Shari'a compliant in order to achieve Shari'a objectives but management and regulators argue that authorizing Shari'a scholars to have a say in all matters of the bank would distort the whole system.

"...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)

"It is not right to give Shari'a advisors the authority to deal with employees' issues but they can use their influence if they want." (Head of Islamic Banking, Case II)

Thus, Shari'a scholars have ultimate authority in product approval but have only slight informal authority in areas concerning employees and depositors' rights. Shari'a scholars are not authorized to have a say in all other administrative areas.

“Employees and customers have more expectations from Shari’a scholars while their authorities are limited.” (Head of Investments, Case III)

“Our Shari’a board is completely out of the administrative matters...the Terms of Reference (TOR) of the Shari’a board and Shari’a committee states that they will not have any involvement in administrative matters.” (Shari’a Advisor, Case II)

This scenario gives management the advantage to use Shari’a scholars only as a Shari’a certification authority while maintaining a space for them in other areas; even in the operationalization of those Shari’a certifications. It appears as if the authority of Shari’a scholars is systematically reduced despite the increasing regulations and standardization.

“Earlier Sharia Boards were involved in all matters in the bank. Management orientation to control over all matters besides Sharia Boards’ vulnerability created the current situation.” (Head of Shari’a Dept., Case III)

5.2.25 Involvement of Shari’a Scholars

Open Code	Properties	Dimensions
Involvement of Shari’a Scholars	Product Approval	High/Low
	Employees’ Issues	High/Low
	Depositors’ Issues	High/Low
	Other areas	High/Low

Saturated through constant comparison, involvement of Shari’a scholars is essentially an in-vivo (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) code that emerged through interviews with Shari’a scholars, managers and regulators. Besides limiting Shari’a scholars’ authority to the product approval level only, management also tries to limit their level of involvement in administrative matters of the banks where Shari’a scholars do not have descriptive authority but might be able to influence certain things. Therefore, much of the managerial aspects that might be conflicting with Shari’a objectives are not brought to the attention of Shari’a scholars.

Because of their full authority in product approvals, Shari’a scholars’ involvement is very deep in this area. They can ask for any possible detail regard any product they are approving. However, managers have controlled their involvements in other areas like exercising fairness and justice with depositors and employees.

However, Shari'a scholars use their ultimate authority and involvement in product approvals to expand their involvement in other areas.

"...we don't have the powers and involvements to protect depositors' rights...Employees have expectations from us but our involvement is very limited in that area. We should have a say in HR practices in order to go one step further towards Shari'a objectives. " (Shari'a Advisor, Case II)

"But we are not allowed to have a say in this [profit sharing with depositors] because the perceived role a Shari'a committee is only the approval of products from a Shari'a point of view. They say that the profit-and-loss distribution is a management' issue and is not concerned with Shari'a ...I think this is also the responsibility of Shari'a advisors and Shari'a boards to safeguard the customers whether depositors or clients..." (Shari'a Research Officer, Case II)

Consequently, managers predominantly control Shari'a scholars' involvement in the banks collective affairs, which in turn makes it difficult for Shari'a scholars to achieve Shari'a objectives.

5.2.26 Avoiding Shari'a Audit

Open Code	Properties	Dimensions
Avoiding Shari'a Audit	Intensity	High/Low
	Regulatory Requirement for SA	High/Low
	Effect on Controlling Shari'a Advisors	High/Low
	Effect on Business Objectives	High/Low

Shari'a scholars approve new structures before they are launched and bank's compliance with the approved structures is later on verified through a Shari'a audit conducted by Shari'a scholars and regulators. Transactions that are found, during Shari'a audit, to be in violation of the initial approved structures are nullified and the corresponding profits given to charity. Because this hinders the achievement of business objectives, management is always keen on avoiding such circumstances. One way to escape from the nullification of transactions is to avoid Shari'a audit wherever possible.

"Once we had a discussion about the danger surrounding Islamic banking and finance industry and I was asked where the danger is? I replied 'it is the management'. Some Islamic banks even don't have

Shari'a control [Audit] divisions; they want some space!" (Head of Shari'a Dept., Case III)

Avoiding Shari'a audit moderately controls Shari'a scholars influence and leads to better achievement of business objectives, at least in the short run. Therefore, the management's tendency to avoid Shari'a audit is quite intense. However, it is relatively difficult in banks with formal regulatory controls and/or stronger Shari'a boards. Avoiding Shari'a audit is a sort of insulation of managerial practices from Shari'a scholars. If management succeeds in avoiding a formal Shari'a audit of their transaction, they would save large sums of money from Shari'a-repugnant transactions that would otherwise have ended in charity funds.

"Without Sharia Audit, Sharia Board will never know to which extend the bank is following their resolutions. This is the Sharia Board responsibility to compel the banks' management to appoint a Sharia Controller, but some boards do not force that. If you look at the title of the Sharia Board "Fatwa and Sharia Supervisory Board" you find, its members are concerned about the fatwa part and supervising the implementation part. To conduct audits of their verdicts requires a resident controller and Sharia department that report to them, since the board is a consultancy and independent body. Sharia department's reports give the Sharia Board the idea about to which extends the bank followed the Sharia principles and rules." (Head of Shari'a Dept., Case III)

5.2.27 Avoiding Full-time Shari'a Scholars

Open Code	Properties	Dimensions
Avoiding Full-time Shari'a Scholars	Intensity	High/Low
	Regulatory Requirement	High/Low
	Effect on Controlling Shari'a Advisors	High/Low
	Effect on Business Objectives	High/Low

This code was discovered by constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) of events for similarities and differences. The regulatory requirement on Islamic banks in some countries is to have at least one Shari'a scholar as an expert advisor. Though banks appoint a Shari'a scholar according to regulatory requirements, they give him/her liberty of choosing his/her time commitments. This gives Shari'a scholars the incentive to seek other engagements and enjoy their honorary positions in the banks. Some Shari'a scholars, therefore, visit the banks only once a week for just a few hours and sign the bundles of papers waiting for them on their tables. This gives

managers the opportunity to misrepresent some information and avoid strict Shari'a checks on their proposed investment structures.

“One major issue is the time commitment by the Shari'a advisors to their banks. Most of them engage themselves side activities and are not giving full-time commitment to their banks. They are doing just a part-time job in the banks.” (Deputy Director, Regulator)

“In [country], Shari'a advisors are not required to work full-time in the bank so they have other side jobs and come just once a week to the bank. It is completely impossible for a Shari'a advisor to read all the documentation during this time commitment and there are enormous chances that they will just sign the documents without reading them. This gives management the opportunity to misrepresent information.” (Shari'a Advisor, Case II)

Because full-time commitment is not a regulatory requirement in some countries, managers are moderately inclined to give a freedom to Shari'a scholars to choose their working hours. It gives managers the opportunity to avoid strict checks and balances from Shari'a scholars. It also makes misrepresentation very easy for management to commit.

Additionally, in countries, where having a Shari'a board/advisor is not a regulatory requirement, some Islamic banks are turning towards Shari'a consultancies to seek Shari'a certification for the products of their choice. This raises serious questions on the authenticity of those fatwas because Shari'a consultancy firms are business entities after all.

“Worth mentioning the recent trend that some of the Sharia scholars are establishing their own firms that provide Shari consultancy. Seeking more lawful income is Halal but this leads to conflict of interest in particular cases. I have some examples in this concern.” (Head of Shari'a Dept., Case III)

5.2.28 Fatwa Shopping

Open Code	Properties	Dimensions
Fatwa Shopping	Intensity	High/Low
	Regulatory Requirement	High/Low
	Effect on Controlling Shari'a Advisors	High/Low
	Effect on Business Objectives	High/Low

The concept of fatwa shopping was not noticed until the second round of interviews when the research came across the concept of fatwa manufacturing (See also Section 5.2.34). Because manufactured goods are supposed to have a market, the research then became sensitive to the existence of the concept of fatwa shopping which was discovered by the flip-flop technique (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Though, respondents never admitted involvement in either fatwa manufacturing or shopping, it was clear from their language (Corbin and Strauss, 2008) that the phenomenon existed.

A bank with its own Shari'a board and internal Shari'a department has more restrictions imposed on activities regarding Shari'a compliance. Therefore, some banks are interested in hiring the services of Shari'a consultancy firms rather than having their own boards and advisors. This makes it easy for banks to shop around (which would have been hard in case of a dedicated Shari'a department) and find the consultants that would put an Islamic tag to their desired structure. Fatwa shopping is more likely in countries with no central Shari'a governance regulations and in those banks that operate Islamic banking window-operations or issue only certain Islamic products.

"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)

However, fatwa shopping in its literal meaning is very difficult in banks with their own Shari'a boards/advisors. Furthermore, strong regulatory mechanisms also reduce the chances of fatwa shopping. In such cases, the only option with management is to get approval from their own Shari'a scholars therefore they resort to other influential strategies (See Section 5.2.20, 5.2.21, 5.2.22, 5.2.23, 5.2.25 and 5.2.27) for the approval of their proposed structures.

"Fatwa shopping is impossible in banks where there is a full-time Shari'a advisor; however, there are chances of fatwa shopping in banks that hire the services of Shari'a advisory firms." (Shari'a Advisor, Case II)

"Fatwa shopping is very difficult in Pakistan because SBP's regulations are very strict on this. However, banks would like to have lenient Shari'a advisors at the time of appointment." (Head of Islamic Banking, Case II)

Though fatwa shopping could be an effective tool for controlling Shari'a scholars and achieving business objectives, management in our cases does not feel the need for shopping-around for it because of having own Shari'a boards and departments.

5.2.29 Punitive Actions against Management

Open Code	Properties	Dimensions
Punitive Actions Against Management	Frequency	High/Low
	Regulatory Authority	High/Low
	Implementation	High/Low
	Potential Effect	High/Low

This code was discovered through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). It is important for managers to get their proposed structures approved from Shari'a scholars quickly. In order to avoid undesirable delay and possible rejection by the Shari'a scholars, some managers might technically twist some pieces of information and present them in a form that is more likely to be approved by the Shari'a scholars. Managers do so because i) they have business targets to meet and ii) they are not spiritually committed enough to Shari'a compliance. If the Shari'a scholars either before approval or during Shari'a audits trace such misrepresentation, they can recommend punitive actions e.g. stopping promotion or even dismissal against those responsible. Though Shari'a scholars are not authorized to take such actions against managers, their recommendations are mostly implemented in order to stop them from taking further actions. Therefore, management recognizes this potential risk while dealing with Shari'a scholars.

"I can't give you examples but it happened in some institutions where individual managers intentionally misrepresented information and the Shari'a board consequently asked the CEO to dismiss them. It did and will happen." (Head of Shari'a Dept., Case I)

Though the frequency of such punitive actions taken against management is low, their implementation is significant in the case of strong recommendation from Shari'a scholars. Therefore, managers consider it a potential threat to their career and are careful in committing any misrepresentation.

5.2.30 Nullification of Transactions

Open Code	Properties	Dimensions
Nullification of Transactions	Frequency	High/Low
	Regulatory Authority	High/Low
	Implementation	High/Low
	Potential Effect	High/Low

This code was arrived at through constant comparison of incidents in various interviews (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). As discussed above in Section 5.2.29, direct misrepresentation is difficult and more risky for management. However, chances are there for managers to implement the structure approved by Shari'a scholars with some modifications. Managers are also clever enough to hide such modifications in proper documentations in order to escape from Shari'a audit. However, Shari'a scholars track these tricks occasionally. If a transaction is found to be Shari'a-repugnant after being fully or partially executed, Shari'a scholars have the authority to declare that transaction as void, and allocate the profits to charity. Though the authority of Shari'a scholars is final and binding in this case, managers do not easily compromise on profits being given to charity. They might, therefore, resort to other strategies to prevent such incidents.

“As far as Shari'a compliance is concerned, I think that is fine because no one can interfere with it. 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 regulatory authority of Shari'a scholars is full and final in declaring transactions void. Furthermore, Shari'a scholars are protected from being sued by management in case they nullify a legitimate transaction. Consequently, Shari'a scholars easily and quickly nullify transactions for Shari'a-repugnance issues. This works as an effective force against managers and compels them on carefully implementing structures as directed by Shari'a scholars. However, the frequency of such instances is low.

“...If they [management] don't observe Shari'a compliance, their profit goes to charity which they don't want.....” (Shari'a Advisor, CASE III)

5.2.31 Complaints to Regulators/General Body

Open Code	Properties	Dimensions
Complaints to Regulators/General Body	Frequency	High/Low
	Regulatory Authority	High/Low
	Implementation	High/Low
	Potential Effect	High/Low

The discovery of this code was also done through constant comparison of similar events across a range or respondent interviews (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Shari'a scholars normally report to BoD, thereby bypassing the managers with whom they have their routine interactions. In some institutions, e.g. our Case I, the Shari'a board even bypasses the BoD and reports directly to the general body. However, in other institutions, like our Case II, the Shari'a board reports to both the BoD and the general body, as well as to the regulators. This peculiar reporting line gives extra power to Shari'a scholars. They can report on the management's behaviour to the regulators, shareholders and even publish their concerns in the banks' annual reports.

*"[Case I] is the first Islamic bank in the world and our Sharia board is very strong...our Shari'a board is more powerful than the BoD."
(Head of CSR, Case I)*

"Shari'a advisors' authority in Pakistani banks is more than that of management" (Shari'a Research Officer, Case II)

*"If any dispute arises between BoD and the Sharia board in terms of decisions or fatwas, an extraordinary general body meeting shall be called to settle it. So both boards are reporting to shareholder."
(Head of Shari'a Department, Case III)*

Though Shari'a scholars have full authority to report their concerns to the regulators and shareholders, the actual frequency of such reporting is low. Still, this authority of Shari'a scholars is a strong force against managers. Therefore the resulting impact is significant in favour of Shari'a scholars and hence Shari'a compliance.

5.2.32 Reactive Involvement of Shari'a Scholars

Open Code	Properties	Dimensions
Reactive Involvement of Shari'a Scholars	Frequency	High/Low
	Regulatory Authority	High/Low
	Implementation	High/Low
	Potential Effect	High/Low

Looking closely at the language and emotions of Shari'a scholars paved way for the emergence of this code (Corbin and Strauss, 2008) Shari'a scholars are expected to expand their involvement in the management affairs of the banks in order to make every aspect of the bank Shari'a compliant and achieve Shari'a objectives (See Section 5.2.15, 5.2.16, 5.2.135.2.12). However, the existing situation in Islamic banks depicts that they refrain from getting involved in such issues proactively. They get involved in issues other than product approval only when approached. In the majority of cases, Shari'a scholars do not have formal authority to resolve such issues. However, they recommend the necessary action. The top management often takes actions according to these recommendations depending on the nature of the issues. For example, a dispute between an employee and the bank was brought to the Shari'a scholars of Case I where they recommended actions in favour of the employee and the bank acted accordingly. However, the bank would not pay attention to Shari'a scholars' recommendations outside their prescribed boundaries if such recommendations require a compromise on the profitability or security of investments.

"...But when the matter comes [presented to Shari'a scholars], it is attended quickly. We can take proactive action only on the Shari'a non-compliant situation [which comes under their prescribed authority]." (Shari'a Research Officer, Case I)

"An employee brought such a case [dispute with bank] to the Shari'a committee and we gave recommendations in favour of the employee.....but what are the boundaries of such actions? These boundaries have not yet been set in the present banking system. I will tell you that the purpose of Islamic banking is not only to Islamize the business transactions but to Islamize all our agreements whether with employees, depositors or clients." (Shari'a Research Officer, Case II)

Because Shari'a scholars do not have authority to extend their involvement into areas other than product approval, they do not take any proactive actions when they spot instances of injustice and thus Shari'a objectives are compromised. Even

the frequency and intensity of their reactive approach is very low. Therefore, management moderately accommodates the reactive recommendations of Shari'a scholars.

5.2.33 Excuse of Primitiveness

Open Code	Properties	Dimensions
Excuses of Primitiveness	Frequency	High/Low
	Intensity	High/Low

Incidents and events noticed in interviews with Shari'a scholars lead to the development of this code through constant comparison with other interviews (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998).

Some Shari'a scholars allow the banks to conduct Shari'a-repugnant practices on the pretext of the early stage of Islamic banking industry where things are expected to be imperfect. They argue such practices would gradually disappear and the industry would become fully Shari'a compliant. Though some of the practices have gradually been minimized with the passage of time (e.g. the elimination of Tawarruq in Pakistan), others have become the norm in the industry (e.g. the predominant presence of Murabahah). These excuses are normally not used individually rather the whole Shari'a scholars' community in a country allows such things to happen while the same excuse might not be acceptable in other jurisdictions. Individual Shari'a scholars under the management pressure also use the excuses on a small scale.

"...You always have to keep in mind that IFIs are still in their early stage...they have not reached the level where they should be. There are many things that should be done but we are not doing them right now." (Head of Islamic Banking, Case II)

The frequency of using primitiveness excuses by Shari'a scholars is very high though the intensity is very low because they themselves do not feel comfortable with such excuses. The excuses are predominantly used to absorb management pressure and resort to compromises on certain Shari'a aspects.

"I believe the scholars shouldn't allow any product that is repugnant to Sharia on the basis of primitiveness. Some scholars find 'other ways' to approve non-Sharia complaint product." (Head of Shari'a Dept., Case III)

5.2.34 Juristic Ruses and Fatwa Manufacturing

Open Code	Properties	Dimensions
Juristic Ruses and Fatwa Manufacturing	Frequency	High/Low
	Level	High/Low

The use of the term 'Fatwa Manufacturing' was first noticed in an informal talk with a researcher in the field of Islamic finance. The research was not initially convinced with this phenomenon. However, a red flag was waved (Corbin and Strauss, 2008) at this point because not doing so could bring in bias to the study. The phenomenon was then traced in the following interviews through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) and it was found that fatwa manufacturing existed. However, the names used were different. So, in fact the code is in-vivo. It also triggered the identification of another code called fatwa shopping through the use of flip-flop technique (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Islamic banks' managers are always keen on issuing banking products competitive with the conventional industry. Such products might have minor or serious Shari'a compliance issues. Some Shari'a scholars especially in banks that hire Shari'a consultants might approve such products by finding ways through documentations or other means. This practice is referred to as the use of juristic ruses. In some cases, the juristic ruses can be justified from the Shari'a point of view but the scholars would have not used them had they been pressure-free. The extreme use of juristic ruses can be termed as fatwa manufacturing where the fatwa is manufactured with least evidence from Shari'a sources.

"I have not observed any case of fatwa manufacturing over the course of my employment but there might be some Shari'a scholars who are lenient in their approach. They may try to find Hillas [juristic ruses] for certain structures when under pressure from management. However, this situation is very rare and those less concerned with their eternal life may practice it." (Shari'a Advisor, Case II)

The frequency of using juristic ruses in Islamic banking is significant. However, some ruses are strongly supported by some form Shari'a sources or evidence from medieval contract forms while others are weakly supported. The weaker the support for a juristic ruse the nearer it becomes to fatwa manufacturing.

"The issue of fatwa manufacturing is not pure manufacturing but some Shari'a advisors are more flexible than others. Some people might call this leniency as fatwa manufacturing. However, this

leniency does not mean that the limits of Shari'a are crossed. This means he/she finds ways (Hillas) in order to develop certain products that management want. There are certain conditions that need to be met to find Hillas. If these conditions are not met, Hilla cannot be found." (Shari'a Research Officer, Case II)

When faced with pressure from management for approving their competitive products, Shari'a scholars often resort to the use of juristic ruses or even fatwa manufacturing and thereby compromising on Shari'a objectives.

5.2.35 Shari'a Board

Open Code	Properties	Dimensions
Shari'a board	Independence	High/Low
	Regulatory Requirement	High/Low
	Stature of Members	High/Low
	Compensation	High/Low
	Power	High/Low

Reference to Shari'a board was noticed in a number of interviews with manager, Shari'a scholars and regulators. The constant comparison of these incidents (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) lead to the identification of Shari'a board as a key place of refuge for Shari'a scholars when facing pressure from management. Though not a legal requirement in some countries, banks appoint a few Shari'a scholars to work as members of the SB or Shari'a Committee (SC) that meets a few times. This body of jurists is comparatively more independent than the in-house Shari'a scholars because the members are highly renowned and some even do not claim compensation for their services. SB is normally an external monitoring body outside the organizational hierarchy and reporting directly to the general body. However, the in-house Shari'a departments, normally consisting of a single Shari'a advisor who is subject to the frequent dealings with management and thereby facing pressure, oversees the routine banking operations. In case of conflicts between the internal Shari'a scholars and management, the issue is forwarded to the SB whose decision is final and binding on both parties. Thus, the Shari'a advisor capitalizes on the SB's power and independence to relieve the pressure they get from the managers.

"The Shari'a advisor is the bank's employee who can be pushed for some 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)

Though having a SB is not a regulatory requirement on Islamic banks in many countries including the countries where the cases under consideration exist but banks are inclined to have it because of the increased legitimacy it brings with it. It is composed of Shari'a scholars of high-market-stature and repute. In most cases, Shari'a board members are given significantly high-level of monetary and non-monetary compensation but still some SB members work without any compensation. In any case, Shari'a board is much more independent and powerful than the in-house Shari'a scholars and thus SB's decisions are respected.

"...our SB is more powerful than the BoD and our BoD also wants Shari'a compliance so they support the decisions of the Sharia board." (Head of CSR, Case I)

The in-house Shari'a scholars utilize the independence and power of SB to counter managers' pressure and undue influence. The power vacuum is intensely felt by Shari'a scholars of Islamic banks that do not have SBs. One Shari'a advisor from a different case that does not have a SB put it this way:

"...the pressure is more on a single Shari'a advisor... I would be much relieved if there was a SB because then the decision will be made by consensus and it will be difficult to convince three persons rather than one." (Shari'a Advisor, Case III)

5.2.36 Central Shari'a Board (CSB)

Open Code	Properties	Dimensions
Central Shari'a Board	Stature of Members	High/Low
	Compensation	High/Low
	Independence	High/Low
	Power	High/Low
	Support to Shari'a Scholars	High/Low

CSB has been referred to by respondents using different names e.g. 'central board', 'central Shari'a board' and 'central Shari'a committee'. These incidents and their use in proper context was used through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) to identify CSB as a final place of refuge for Shari'a scholars when pressure from managers is very high.

Some jurisdictions have CSBs at the central banks that set countrywide regulatory standards for Islamic banks. The CSB revises the standards set out by international

standard setting bodies, e.g. AAOIFI, and tailors them according to their countries' requirements and the dominant school of thought. It also works as a point of supreme authority for Islamic banks in case of conflicts arising between Shari'a scholars of individual banks and their management. The decision of the central board, which is naturally in favour of the Shari'a scholars, is final and binding on both parties.

"I don't think that they [management] can afford these kinds of conflicts as there are very clear instructions from the central board in this regard. But you can say that they are trying to do so, intentionally or unintentionally....." (Shari'a Research Officer, Case II)

There is no CSB in the jurisdiction of two of our cases. The only such external body they rely on is the Shari'a Advisory Forum (See Section 5.2.37). Though this forum recommends actions and strategies in their meetings, they are not binding on individual banks. The vacuum of a powerful CSB is clearly felt by the Shari'a scholars of those cases.

"We don't have a CSB but the Shari'a scholars have set up a committee where they meet and discuss certain issues and then send their recommendations to all Shari'a boards and the CEOs of the banks. However, I feel there should be a regulatory body that makes sure there are procedures and processes followed in each bank..." (Head of Shari'a Dept., Case I)

The members of the CSB are not only well-reputed but are also completely independent from the clutches of banks because they are not paid by the banks. Therefore, CSB's are highly independent and powerful and they support the Shari'a scholars of individual banks to a significant extent. Therefore, the Shari'a scholars use it to diffuse management's undue pressure. In jurisdictions where there are no CSB's, the supreme authority is usually given to the Shari'a boards of individual banks and any serious conflicts between management and Shari'a scholars are resolved in the general body meeting.

5.2.37 Shari'a Advisory Forum

Open Code	Properties	Dimensions
Shari'a Advisory Forum	Regulatory Support	High/Low
	Stature of Members	High/Low
	Compensation	High/Low
	Independence	High/Low
	Power	High/Low

The use of Shari'a supervisory forum as a place for sharing ideas and diffusing managers' pressure by Shari'a scholars was identified through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). Shari'a scholars often set an informal Shari'a Advisory Forum (SAF), which is also supported and facilitated by the CSB in case it exists in the country. Emerging issues related to Shari'a compliance are discussed in SAF and recommendations given. Individual Shari'a scholars use the forum as a platform for raising conflicts they face with managers. Though its decisions and recommendations are not legally binding on Islamic banks, it is more likely they will be enforced by CSBs if strongly recommended by SAF.

"I would say Shari'a advisors are not aware of the safeguards we have given them against the management though we regularly interact with them via the SAF." (Additional Director, Regulator)

"...the Shari'a scholars set up a committee where they meet and discuss certain issues and then send their recommendations to all Shari'a boards and the CEOs of the banks." (Head of Shari'a Dept., Case I)

The fact that SAF's get significant support and facilitation from regulators and that the members do not receive any compensation from their banks for being part of such forums ensures the independence of the forum and induces a pressure-free environment for open discussions on Shari'a related issues. The forum is moderately empowered because of the probability that the recommendations can become regulatory standards and that such recommendations represent the voices of the whole Shari'a community that can build a strong pressure. Therefore, SAF is an important tool that can be used by Shari'a scholars to counter and balance the pressure they are facing from management.

"...the standards are first reviewed by the Shari'a advisors' forum, they give their recommendations. Then those recommendations are

*finalized by the Shari'a board of the SBP and notified after approval.”
(Additional Director, Regulator)*

5.2.38 Resignations

Open Code	Properties	Dimensions
Resignations	Frequency	High/Low
	Eternal Sensitivity	High/Low

This is an in-vivo (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) code and the term was used by Shari'a scholars. The pressure Shari'a scholars face from management for approval of certain structures that Shari'a scholars are not comfortable with sometimes becomes very intense and forces Shari'a scholars to quit their jobs rather than compromise on their principles. Some Shari'a scholars are naturally stringent who strive to Islamize all aspects of their banks and are not willing to compromise on issues some may consider as minor. Such Shari'a scholars are highly sensitive to the eternal consequences of their decisions and therefore they opt to resign from the organizations. However, there have been only a few instances of such resignations of Shari'a scholars.

“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)

“...there are only two options in that case; either to quit or to obey. Some Shari'a advisors quit in such situations and there have been instances of resignations...” (Shari'a Research Officer, Case III)

It is also possible that those who resign from Islamic banks because of non-supportive behaviour from management would go out and start whistle-blowing against the banks. However, it would be unlikely in cases where the scholar has served the bank for an extended period because it would question his/her own integrity.

“...even in some cases, the Shari'a advisors have resigned because of this pressure.” (Shari'a Research Officer, Case II)

5.2.39 Regulatory Framework

Open Code	Properties	Dimensions
Regulatory Framework	Existence Central Shari'a Board	High/Low
	Enforcement of AAOIFI Standards	High/Low
	Shari'a Audit by Central Bank	High/Low
	Protection to Shari'a Scholars	High/Low
	Appointment Procedure of SCs	High/Low

This code was discovered through constant comparison (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) and noticing the language and emotions of respondents (Corbin and Strauss, 2008). Banking is one of the highly regulated industries in any country because of its risk exposure and its potential impact on the economy. Islamic banks, proclaiming alignment of their operations with Shari'a principles, need a further layer of regulatory framework in addition to the one applicable to the banking sector in general. Such a framework for Islamic banks includes but not limited to the existence of a CSB, normally at the central bank, enforcement of AAOIFI standards, having a proper Shari'a audit and control mechanism, protection of Shari'a scholars and monitoring their appointment and dismissal procedures. This assists Shari'a scholars in achieving deeper or at least minimum Shari'a compliance in their banks. Therefore, Shari'a scholars of banks operating in countries with separate Shari'a regulatory frameworks feel safer and stronger. There are fewer chances of undue managerial pressures and fatwa shopping in such banks.

"The regulations in Pakistan are very stringent which do not leave any room for fatwa shopping." (Shari'a Advisor, Case III)

"The regulations made in Pakistan are excellent, they are very good... very different from the outside world. Shari'a advisors' authority in Pakistani banks' is more than that of management. His contact is only with the BoD. Any conflict between a Shari'a advisor and BoD is forwarded to SBP and SBP's Shari'a board will decide whether it's in accordance with Shari'a or not." (Shari'a Research Officer, Case II)

The regulatory frameworks for Islamic banking in Pakistan as well as Malaysia are well-developed but he also claims that the overall regulatory framework for IFIs in other countries is severely deficient. IFIs' managers also feel the pressure of regulatory framework. In turn, they use soft approaches in their dealings with Shari'a scholars. In other words, managers in such cases use less coercion and more avoidance and controlling when needed. The use of such strategies compels

Shari'a scholars not to fully utilize their powers granted through the regulatory frameworks.

"If you look at the role of our Shari'a board or Shari'a advisors, I think the main role is theirs'. SBP has given lots of rights to them and has made them very empowered but exercising the power is also an issue." (Head of Islamic Banking, Case II)

The existence of a sound regulatory framework also enhances stakeholders' confidence especially depositors' on the Islamic banking system. Thus banks can still maintain their legitimacy by meeting only the minimum Shari'a requirements e.g. having at least one Shari'a advisor.

Interestingly, two of the cases analysed in this study are operating in a country with no such regulatory frameworks. They neither have a CSB nor a central Shari'a audit system. There is no regulatory protection to Shari'a scholars and their appointment procedure is at the discretion of the banks themselves. In addition, the adoption of AAOIFI standards is not mandatory in these two cases. IFIs in such constituencies have been subject to a great deal of criticism e.g. the existence of fatwa shopping (Foster, 2009) in such countries. Therefore, individual banks use other means to enhance their legitimacy e.g. a more independent and powerful Shari'a board, internal Shari'a audit and control system etc.

"We don't have a central regulatory body in Dubai and every bank is independent. But if we do have such a system, the customers will feel more confident." (Head of CSR, Case I)

"The regulators have to come up with legislations to streamline the industry. We have many discrepancies amongst the Islamic banks in terms of Sharia resolutions and practices, which will not help in the industry's development. We have to have a supreme Shari'a board like in Sudan in each country, or rather, all Islamic banks should agree on applying AAOIFI standards." (Head of Shari'a Dept., Case III)

Case II, however, is operating in a country with a sound regulatory framework for Islamic banks. Thus, Shari'a scholars have the backing of the CSB and the banks are subject to audit and inspection from the central bank. The Shari'a scholars are also well protected by the regulations and their appointment and dismissal is not at the discretion of management. However, such regulations are also sometimes considered restricting by Shari'a scholars themselves because they confine their authority only to certain areas of the banks e.g. product approval while Shari'a

scholars seek wider involvement (See Section 5.2.25 above) in the affairs of their banks to make them better Shari'a compliant.

“At the central bank level, 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 Shari'a advisor, with the approval of the SBP, based on our ‘proper and fit’ criteria.....we are following AAOIFI standards with our own amendments...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. For example his term of appoint is at least three years, he is appointed by the BoD and reports to the BoD. In addition, Shari'a advisor cannot be prosecuted if he gives some adverse ruling for example giving a Halal profit into charity. Shari'a advisor is also authorized to make complaints to the regulator if he/she is not happy with the management. So we provide proper protection to the Shari'a advisor otherwise he/she can be subject to management's pressure.”
(Additional Director, Regulator)

5.2.40 Sponsors' Orientation

Open Code	Properties	Dimensions
Sponsors' Orientation	Muslims	High/Low
	Religiousness	High/Low
	Secularism	High/Low
	Religious Motives for Islamic Banking (IB)	High/Low
	Material Motives for IB	High/Low

This is an in-vivo code (Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998) taken from interviews with Shari'a scholars and regulators. The majority of Islamic banks today do not have a diffused ownership structure, rather the stocks are held by a few individuals or groups especially in the cases selected for this study. Therefore, the orientation of sponsors is a key factor in determining the direction of the banks especially its approach toward Shari'a compliance. The first and most important factor is the sponsors' religion. The commitment to Islamic banking of non-Muslim sponsors, as in case of some multinational banks, who do not themselves subscribe to the religion could be questionable. Even if the sponsors are Muslims, the degree of their religiousness and secularism affects their commitment to the cause of Islamic banking and deeper Shari'a compliance. Religious Muslim sponsors' motive to start Islamic

banking could be the provision of Shari'a compliant banking services to the community even if that comes at their economic cost at times. On the other hand, the secular sponsors' prime motive is tapping the emerging Islamic banking market rather than their commitment to Islamic banking itself. Orientation of sponsors has been identified by the respondents as a very important factor in determining the future and sustainability of Islamic banking industry.

“Basically the main issue with Islamic banks is the sponsors and BoD, their role is crucial and their approach is crucial. If Shari'a compliance is their prime intent, they will appoint Shari'a advisors of good repute but if their prime motive is profit, I think their Shari'a advisor would not be that much effective. If you look at the multinational banks, they have high profile names on their Shari'a boards. But what support is provided to them to implement Shari'a compliance. They are consulted only on the crucial issues at the product development level but on an operational level, they are kept at a distance. In Pakistan, they have not even defined the Shari'a advisors' role clearly.” (Additional Director, Regulator)

The sponsors of the cases under consideration are Muslims. In two of the cases the owners are having a personal interest in Shari'a compliance. Therefore, they have given sufficient powers the Shari'a scholars for directing their banks. However, the orientation of the sponsors of Case II is driven by economic motives rather than Shari'a compliance. It is clear from the fact that Islamic banking is only a subsidiary operation of this bank. The bulk of its business is coming from its long-established conventional banking. Shari'a scholars and regulators in general frequently complain from the orientation of sponsors claiming their only objective is the business objective, which has to be controlled.

“Islamic banks' sponsors also have conventional banks so they don't care if their profits from the Islamic banks are coming from interest or other Haram sources. They just need profits.” (Shari'a Research Officer, Case II)

“I know a CEO of a big Islamic bank in the UAE who does not believe in Islamic banking and finance and he does not disguise that although he is a Muslim.” (Head of Shari'a Dept., Case III)

5.3 Summary

Open coding is the first stage in the GT analysis. It starts as soon as the first chunk of data is at hand. It is the process of analysing data for the identification of concepts and codes that are important. However, one is not sure at the initial

stages of which emerging codes are going to contribute to the final core phenomenon. Therefore, the number of open codes could be very high some of which later on merge together. It becomes clear at the later stages of analysis which open codes will become part of the core category. This chapter focuses only on those relevant codes which are forty in total. As this chapter is the first in writing GT analysis, the open codes do not really give a clear understanding to the reader of the core phenomenon and one has to go through the axial and selective coding in order to understand the emerging theory.

Chapter 6: Axial Coding

6.1 Introduction

Axial codes are drawn through the second stage of GT analysis called the axial coding (Strauss and Corbin, 1990, pp.96–115). As discussed earlier, the partition of the GT process into different stages is only for the purpose of structuring the writing while in reality all stages entwine during analysis. This stage is the process of establishing relationships between open codes based on their similarities and differences in their properties and dimensions to combine them into higher-level abstract concepts called axial codes. Thus, it stitches back the data, fractured during open coding, into more abstract and meaningful codes. Strauss and Corbin (1990) suggest the use of paradigm model as a key tool for establishing these relationships during the axial coding stage of analysis. Therefore, the paradigm model is used in this and the next chapter as the main analytical tool. This chapter, however, only incorporates the results of paradigm model in each axial code in the form of statements while the next chapter, selective coding, incorporates it completely, explaining all the parts step-wise in order to explain the process of discovery of the core category.

Though this chapter puts the open codes discussed in chapter 5 into a higher level of abstraction, the analysis is still premature and one cannot have an understanding of the central phenomenon before reading the next chapter which relates the axial codes with the core category by the process of selective coding. Therefore, this chapter can be seen as the preparation for building the GT in the next chapter. Furthermore, as this chapter is based on the open codes discussed in the previous chapter, there is some sort of repetition of information, which is kept to the minimum possible.

Two of the open codes i.e. regulatory framework and sponsors' orientation (See Section 5.2.39 and 5.2.40) have themselves the richness and development to stand for axial codes. Therefore, they are not discussed in this chapter but are directly incorporated into the integration process in the next chapter. Each axial code starts with a mini take containing the name of the code in the first column and corresponding open codes in the second column. It is noteworthy here to mention that the grouping of open codes under particular axial codes has been done through dimensional comparison utilizing the paradigm model (Strauss and Corbin, 1990).

6.2 Axial Codes

A detailed description of the axial codes and their association with relevant open codes is presented below.

6.2.1 Shari'a Objectives

Axial Category	Open Codes
Shari'a Objectives	Social Welfare
	Ethical Investments (EI)
	Fairness and Justice (F&J)
	Philanthropy
	Unity Principle

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. For example all the codes represent important aspects of Shari'a that emphasize public good over personal gains. 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'.

The dimensional analysis of these open codes indicates that the relevance of 'Shari'a objectives' is mainly recognized by Shari'a scholars and thus they attribute them a high-level importance while management recognizes a low level relevance and importance of these objectives. The responsibility to advance Shari'a objectives within Islamic banks is also strongly felt by Shari'a scholars while management does not have a significant sensitivity to them. Therefore, Shari'a scholars are seeking a wider coverage of 'Social welfare', 'Fairness and Justice', 'Philanthropy' and 'Unity Principle' in all banking areas. They are also inclined to sacrifice banks' profits for Shari'a objectives if possible. Management, on the contrary, 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 level 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. For example in case of 'Ethical Investments (EI)', management cannot undertake any investment project without the approval of Shari'a scholars. Shari'a scholars are also fairly stronger in 'Philanthropy' where they can support Shari'a objectives. However, Shari'a scholars have little influence in the other open codes where they do not have significant influence and authority.

"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 open codes. For example, the open codes 'Ethical Investments' and 'Philanthropy' are practically implemented to considerable levels in the operations of IFIs while 'Fairness and Justice', 'Social Welfare' and 'Unity Principle' are left mainly to managers' discretion.

In summary, Shari'a scholars strive to pursue Shari'a objectives to the maximum possible extent. However, achievement of Shari'a objectives requires some compromises on business objectives, which is not what managers would like to have because of their focus on business objectives. This creates a potential conflict and divergence of objectives between the two key parties within Islamic banks.

6.2.2 Business Objectives

Axial Category	Open Codes
Business Objectives	Profit Maximization
	Secured Investments
	Islamization of Conventional Products

There are three open codes that can be combined together based on their properties and dimensions to form a higher order abstract category named here as 'business objectives'. These open codes are 'Profit Maximization', 'Secured Investments' and 'Islamization of Conventional Products'.

The clustering of these open codes into a single axial category is justified by looking at their properties and dimensions and relating them through the paradigm model. All the three open codes are highly important for the management, the party keenly interested in achieving 'business objectives'. This may require pushing Shari'a scholars to approve what achieves business objectives. Resistance from Shari'a scholars frustrates management personnel especially when Shari'a scholars, on the grounds of Shari'a-repugnance issues, turn down highly profitable proposals.

Shari'a scholars work as an opposing force in these cases as they try to control management's extreme struggle for 'business objectives'. This does not mean business objectives are always against Shari'a principles. The reason for Shari'a scholars' opposition to 'business objectives' is that it requires, at times, the sacrifice of Shari'a Objectives for which Shari'a scholars are responsible to protect and promote. However, the powers of Shari'a scholars are restricted so they are unable to stand as a strong opposition to management except in areas where they have clearly prescribed authority. Shari'a scholars can use this authority to meet the minimum Shari'a compliance requirements of the banks but the broader Shari'a objectives remain unattended. There is a deep sense of frustration amongst the Shari'a scholars for compromising on 'Shari'a Objectives'. The gap between the stance of management and Shari'a scholars is wider in 'Profit Maximization' and 'Islamization of Conventional Products' which leads to a divergence of priorities and increased conflicts. However, there is a narrow gap between the two parties on 'Secured Investments', which makes it easy to seek consensus.

"There is a huge pressure on Shari'a department to find alternatives to conventional products. Shari'a advisors have given many relaxations in this regard which have even been objected upon. The Shari'a advisors give relaxations during policymaking but once the policies are made, they are followed strictly. The relaxation is in the sense that if something is not allowed in the Hanafi School of thought and there is a pressure from management, the Shari'a department may approve it on the basis that it is allowed in the Shafi'i school of thought." (Credit Administration Officer, Case I)

The power play gives an upper hand to managers over Shari'a scholars leading to a compromise on broader Shari'a objectives while business objectives often get first priority. However, management would not complain if business objectives could be met in a Shari'a compliant way. The prolonged continuation of the pursuit of business objectives at the cost of Shari'a objectives is a threat to the true essence of Islamic banking and an existential threat to the Islamic banking system itself. Regulators seem to be on neither side because they understand the interests of both parties are important. Thus, regulators make the necessary regulation to make sure that only the minimum Shari'a requirements are met. However, the broader Shari'a objectives are neglected.

"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)

*“The current system is not sustainable because it does not have its own footings, it is just a replica of the conventional system. “
(Director, Regulator)*

6.2.3 Diverging Backgrounds

Axial Category	Open Category
Background Divergence	‘Educational Disparity’
	‘ Experience Disparity’

The open codes that can be grouped together to form this abstract axial code are ‘Educational Disparity’ and ‘Experience Disparity’. These open codes have similarities on the bases of their properties and dimensions. They are caused by some conditions and lead to certain consequences. Managers and Shari’a scholars subscribe to different types of credence built through diverging educational and work backgrounds. For example managers have higher degrees in secular business education. These degrees are earned in English, the business language of most Islamic banks, which gives them upper hand to have better business communications. Furthermore, the top management of Islamic banks is composed of professional management having years of experiences in conventional banks. Thus the only system they trust is the conventional banking in which they are expert and have tested it for a long time. It changes their behaviour toward Islamic banking. So most of the top-level managers believe that Shari’a is obsolete and should not be used as a guiding yardstick for modern business operations.

“The prime motive of the entrants to this market is to tap the market. Their intention is not Shari’a compliance...thus; we check the past record of the sponsors and ask them questions to evaluate their commitment to the industry. However, this is sometimes very subjective because you never know others’ intentions and you can’t deny somebody’s legitimate application on the bases of his/her intentions.” (Director and Joint Director, Regulator)

Most Shari’a scholars, on the contrary, have higher degrees in religious education with some also having some level of secular education. They are good in understanding and communicating in Arabic– the language of Shari’a– but majority have problems with English, the business language of Islamic banks. The conviction of Shari’a scholars is thus more inclined toward the holistic approach to business where Shari’a objectives are given priority over business objectives.

“There are two mindsets of people; one is that say Shari’a is obsolete and they totally disregard it and on the hand some people are so stringent on Shari’a that they don’t even want to revisit the verdicts of the previous scholars and Imams. They don’t understand that when those verdicts were issued, those were according the practices of that time. Today, practices have changed so there should be changes in the verdicts.” (Shari’a Advisor, CASE III)

Consequently, Shari’a scholars and managers are at the opposing extremes on the dimensions of the properties of all relevant open codes. One party strives for Shari’a objectives with willingness for some concessions while the other party focuses on business objectives even at the expense of Shari’a objectives if possible. Some managers even consider Shari’a as obsolete. They think it should only be used as a tag to capitalize the market, while Shari’a scholars believe Shari’a is a set of divine instructions, and should be used as a guide in every aspect of the business. Thus, management tries to come up with products that are competitive with conventional banks in the market but wrapped in Shari’a packaging in order to sell them in the Islamic market. Conversely, Shari’a scholars try to make the products essentially Shari’a compliant and achieve Shari’a Objectives. However, a fair level of compromise on Shari’a objectives can be seen in Islamic banks because Shari’a scholars give a fair level of importance to business objectives and are ready for some sacrifice of broader Shari’a objectives if minimum Shari’a compliance is achieved.

6.2.4 Cognitive Forces

Axial Category	Open Codes
Cognitive Pressures	Self-interest
	Eternal Reward/Punishment

Shari’a scholars and managers are subject to two different types of cognitive forces namely ‘ Self-interest ’ and ‘Eternal Reward/Punishment’. These forces have been integrated form an axial code, cognitive forces because they represent the internal strife the two parties are going through. The two pressures, though, affect Shari’a scholars and managers in the same directions; their intensity over the two parties is different. Moreover, the pressures act towards different ends; one leads to Shari’a objectives while the other tilts more towards business objectives.

Self-interest pressure is stronger on management because their financial and non-financial benefits are associated with business targets. Shari’a scholars, on the other hand, do not have business targets to achieve. Additionally, the supply of

Shari'a scholars in the market is very low currently so they can easily get jobs. Therefore, they are not much affected by the self-interest pressure. However, they receive attractive packages from the banks they work for. So, they are interested in the continuity of the system. Additionally, management can informally associate Shari'a scholars' benefits with their leniency. Thus, self-interest builds a slight pressure on some Shari'a scholars and they may thus compromise on Shari'a objectives in rare cases.

"One reason some Shari'a advisors are tempted to be lenient is that 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. But the thing is that there is a scarcity of Shari'a advisors in the market, if they are fired from one bank, they can easily get a good job at another bank. So the chances for temptations for monetary benefits are very small. Some Shari'a advisors who do not have a big name in the market may be influenced by monetary benefits." (Shari'a Research Officer, Case III)

On the contrary, Shari'a scholars are subject to a very high-level of eternal reward/punishment because of their firm beliefs in the hereafter-accountability. This belief is strongly related to Shari'a scholars' religious education and background. In most cases, the eternal pressure is strong enough to override the self-interest factor completely leading to their resignations from Islamic banks when subject to management's undue influence to compromise on Shari'a objectives. Managers are also subject to moderate level of eternal reward/punishment force but that varies from individual to individual. Those working in the high cadre of Islamic banks are not so sensitive to eternal force and are mainly led by their self-interest. Management may not be convinced with the idea of Islamic banking at all but is still present in the industry for profiteering, which creates an internal cognitive dissonance.

"I personally think that the strongest force on a Muslim and a Shari'a scholar is the life hereafter". (Shari'a Research Officer, Case II)

Consequently, the high self-interest drive of management drives them to achieve business objectives as much as they can, especially in the absence of strong eternal pressure. Managers, who are subject to eternal pressure due their religious background, might be willing to submit to Shari'a scholars' decisions and trade-off business objectives for Shari'a compliance. On the other hand, the high sensitivity of Shari'a scholars to eternal reward/punishment drives them to struggle for the achievement of Shari'a objectives even if that means a trade-off of

self-interest for many. However, there might be very few instances where Shari'a scholars trade-off Shari'a objectives purely for their self-interest.

6.2.5 External Pressure

Axial Category	Open Codes
External Pressure	External Shari'a Scholars' Pressure
	Regulatory Controls
	Depositors' Expectations

There are three main pressure groups outside Islamic banks. The abstract axial code used to represent this pressure is 'external pressure'. The powers and influences of these pressure groups are strong enough to affect the behaviour of Shari'a scholars and managers. The open codes that lead to the development of external pressure are ' External Shari'a Scholars' Pressure', ' Regulatory Controls' and 'Depositors' '. These open codes represent distinct groups of stakeholders that construct varying levels of pressure on Shari'a scholars and managers to induce them not only towards the achievement of minimum Shari'a compliance levels but also beyond it towards 'Shari'a Objectives'.

External Shari'a scholars form the strongest pressure because of their reservations on the current form of Islamic banking. They not only criticise Islamic banks but also the Shari'a scholars working for these banks. A collective rebutting of all external Shari'a scholars of the current Islamic banking system can lead its collapse. Therefore, both managers and Shari'a scholars are sensitive to this pressure. They are in a struggle to overcome the objections put forth by external Shari'a scholars in order to avoid a full-scale tussle with them. It is noteworthy that this pressure is much stronger on Shari'a scholars than managers because they are responsible for the banks' Shari'a compliance. Regulatory pressure is predominantly against the management and in favour of Shari'a scholars ensuring minimum Shari'a compliance in Islamic banks. However, Shari'a scholars still believe regulators are restricting their involvement in the banks which in turn hinders the achievement of broader Shari'a objectives. Regulatory pressure also works as a check and balance mechanism on Shari'a scholars to some extent.

"Second is the pressure of external Shari'a scholars, third, regulators...depositors do not have a direct pressure but we feel responsible to provide them Shari'a compliant services." (Shari'a Research Officer, Case II)

"Depositors have great expectations from the Shari'a scholars. They are often interested in finding who the Shari'a advisor is and then

they have blind trust on him/her. Therefore, it is our responsibility not only to give them Halal profit but also to protect their rights.”
(Shari’a Advisor, Case II)

Depositors’ pressure is an indirect pressure because they are not aware of how the Islamic banking system works; they just have a blind trust on the Shari’a scholars. It is actually this blind trust that builds a pressure on Shari’a scholars. Furthermore, Shari’a scholars also feel themselves responsible for providing Shari’a-compliant services to depositors which increases the pressure on them. Managers are not subject to any significant pressure from the depositors.

“I trust that this bank is Shari’a compliant because it has some famous names in its Shari’a department. I trust those Shari’a scholars. This is a matter of trust.” (Depositor, Case II)

A respondent commented on this issue in the following words after he read the analysis and findings. He was referring to the collective expectations of all depositors, employees and the public masses.

“People keep high expectation on the Sharia scholars, looking at them as kind of angles at some times. My opinion the scholars are eventually human being. All types of human behaviours are expected to be discharged by them.” (Head of Shari’a Dept., Case III)

6.2.6 Internal Pressures

Axial Category	Open Codes
Internal Pressure	Internal Shari’a Scholars’ Pressure
	Employees’ Expectations

Internal pressure is posed by two parties derived from two open codes i.e. ‘ Internal Shari’a Scholars’ Pressure’ and ‘ Employees’ ’. Both of these groups are internal to the Islamic banks and are aware of the developments taking place across different banks. Their pressure is not due to any legal authority but they still can influence the management and Shari’a scholars’ behaviour.

Both Shari’a scholars and managers are subject to different degrees of internal pressures, which push both parties in the same direction- toward Shari’a objectives. Internal Shari’a scholars are well acquainted with the developments taking place in different banks because many of them work for a number of banks at the same time. They also meet via the SAFs to discuss new developments (see Section 5.2.37 above). Therefore, they can easily pinpoint any fatwa manufacturing/shopping taking place in any bank. This pressure works against the

management and in favour of Shari'a scholars because it gives Shari'a scholars leverage to use their group power for handling managers' pressure. It also compels Shari'a scholars to stay more meticulous in their Shari'a verdicts because such verdicts are prone to be easily caught by internal Shari'a scholars.

Though employees' pressure is not very strong, it still largely exists, forcing Shari'a scholars and managers towards Shari'a objectives. The expectation of employees from Shari'a scholars incites them to work more closely with management for proper implementation of F&J within the banks in order to justify the banks' Islamic faces.

"As an employee of the bank, I expect the Shari'a advisor to give me justice when there are conflicts with management but I know that the Shari'a advisor does not have the authority to deal with HR issues."
(Employee, Case I)

"Fourth pressure group is the internal Shari'a scholars. Then teachers and colleagues, however these pressures are very small" (Shari'a Research Officer, Case II)

However, internal pressure is much weaker than external pressure because internal Shari'a scholars are not likely to expose each other and employees understand the limited authority and involvement (See Section 5.2.25, 5.2.24) of Shari'a scholars.

6.2.7 Compliance Force

Axial Category	Open Codes
Compliance Force	'Shari'a Reputation Risk'
	'Organizational Legitimacy'

Two open codes constitute the higher order abstract category called 'compliance force'. The grouping of the two codes i.e. 'Shari'a Reputation Risk' and Organizational Legitimacy' under the 'compliance force' is due to the fact that they compel managers to maintain the minimum Shari'a compliance.

Islamic banks face a serious Shari'a reputation risk that management always prefers to avoid. The desire to avoid Shari'a reputation risk forces management to become submissive to Shari'a scholars' decisions in some areas and sacrifice business objectives to a certain extent for achieving and maintaining minimum Shari'a compliance levels. Additionally, Islamic banks derive their operational legitimacy from Shari'a. Any noncompliance with Shari'a principles can easily invalidate the banks' legitimacy. Therefore, the need for maintaining

organizational legitimacy forces management to obey Shari'a scholars' decisions and opinions.

"Of course I do the first line of defence and don't undertake transactions that I know are not compliant with Shari'a." (Head of Investments, Case III)

"At the end of the day, when it [noncompliance with Shari'a] is pointed out in the Shari'a audit, the profit goes to charity. Thus there will be no financial benefit for the bank and yet its reputation will be damaged." (Shari'a Advisor, Case II)

Consequently, Shari'a scholars capitalize on managers' need for legitimacy and reputation to pursue their efforts for deeper Shari'a compliance in all areas of the banking including the provision of F&J to depositors and employees. However, managers only maintain minimum or superficial Shari'a compliance in order to maintain their legitimacy and avoid reputation risk.

6.2.8 Coercion

Axial Category	Open Codes
Coercion	' Firing Threat'
	'Closure Threat'

There are two open codes grouped together to form an axial category called 'coercion'. The use of this abstract name is appropriate here because firing and closure both constitute threats that can be used as a strategic tool to force the other party for compliance with ones' own terms.

Coercion is used by management within Islamic banks for forcing Shari'a scholars to become lenient on Shari'a objectives and yield to managers' business objectives. Firing threat 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, closure threat 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.

In the cases under consideration in this study, the use of coercive pressure has been observed in only one case where Islamic banking is run as a side business by

a big conventional bank. In the full-fledged Islamic banks, the respondents have not identified the use of coercive pressure as a potential threat.

As a consequence of coercion, some Shari'a scholars may become cooperative while others become confrontational. Some Shari'a scholars may even opt to resign in such scenario. Cooperation of Shari'a scholars in the face of such coercion leads to superficial Shari'a compliance while confrontation ensures at least minimum Shari'a compliance. Resignation of Shari'a scholars in such cases may give managers the option to hire more a lenient Shari'a scholar who might even approve superficial Shari'a compliance.

"In some cases, when the management really insists us not to do something, we become lenient because there are only two options in that case; either to quit or to obey. Some Shari'a advisors quit in such situations and there have been instances of resignations. But some still stay for the Maslihat that if they quit, the management will bring in someone else who will be lenient event more. So if a strict Shari'a advisor quits in such situations, it gives management the chance for fatwa shopping." (Shari'a Research Officer, Case III)

6.2.9 Controlling

Axial Category	Open Codes
Controlling	'Appointment of Shari'a Scholars'
	'Authority of Shari'a Scholars'
	'Involvement of Shari'a Scholars'

The open codes constituting 'controlling strategies' are 'Appointment of Shari'a Scholars', ' Authority of Shari'a Scholars' and 'Involvement of Shari'a Scholars'. The grouping of these open codes into a higher order abstract category is that these are managers' tactics to control Shari'a scholars.

The controlling strategies start from the time of hiring of Shari'a scholars where management prefers to hire lenient scholars. Secondly, their authority is made limited to product approval only so that they do not become a hurdle in the way of business objectives. Shari'a scholars are further controlled by confining their involvement only into 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. Additionally, regulators also specify the authority of Shari'a scholars within the banks. Thus banks are controlled to some extent. Though, Shari'a scholars' authority is full and final in product approval, its range does not extend to other banking areas and the achievement of Shari'a objectives becomes difficult. However, Shari'a scholars can use their ultimate authority in certain areas to expand their involvement in other areas.

Referring to the frequent use of controlling strategies over internal Shari'a scholars, a respondent commented in the following words after he read the analysis.

"In my humble opinion, the model of the internal Sharia Advisor is useless and does not achieve the purpose of Sharia controlling." (Head of Shari'a Dept., Case III)

6.2.10 Avoidance

Axial Category	Open Codes
Avoidance	'Avoiding Shari'a Board'
	'Avoiding Shari'a Audit'
	'Avoiding Full-time Shari'a Scholars'
	'Fatwa Shopping'

The open codes collectively forming 'Avoidance' Strategies are 'avoiding Shari'a board', 'Avoiding Shari'a Audit', 'Avoiding Full-time Shari'a Scholars' and 'fatwa shopping'. Managers use these strategies frequently to escape Shari'a scholars' strict supervision and reduce their involvement in the affairs of the banks and thereby pursue their business objectives.

Avoiding the 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. Banks rather try to have the well-reputed names on their Shari'a boards to attract greater legitimacy. Therefore, all the cases under consideration in this study have their own Shari'a boards that supplement the internal Shari'a departments. However, one could argue that management would be inclined, in certain cases, to avoid the most stringent Shari'a scholars on their board in order to reduce Shari'a scholars' influence in on the banks.

“Well, you have to choose prominent Shari’a scholars otherwise the people will not trust your business.” (Shari’a Research Officer, Case I)

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 great impacts on 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 regulatory requirements. Shari’a audit is a regulatory requirement in the jurisdictions of one of our cases while the Shari’a boards of the other two cases are strong enough to enforce it to a great extent. Therefore, the chances are limited for management to escape Shari’a audit.

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

Fatwa shopping, again, 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.

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.

6.2.11 Confrontation

Axial Category	Open Codes
Confrontation	‘Punitive Actions Against management’
	‘Nullification of Transactions’
	‘Complaints to Regulators/General Body’

The open codes contributing to Shari’a scholars’ ‘confrontation’ with management are summarized above. These strategies give a levy to Shari’a scholars who can use them to influence management not only to maintain minimum Shari’a compliance but also achieve reasonable Shari’a compliance levels.

Though 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 individual levels. The second strategy can be used to cancel transactions after being executed. Thus 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 strong regulatory framework.

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

6.2.12 Compromising

Axial Category	Open Codes
Compromising	'Internal Shari'a Scholars' Pressure'
	'Excuse of Primitiveness'
	'Juristic Ruses and Fatwa Manufacturing'
	'Reactive Approach of Shari'a Scholars'

Four open codes that can be combined to form the axial category named as 'Compromising'. These open codes give Shari'a scholars the justification to compromise on certain Shari'a compliance issues in order to maintain the status quo.

Though the pressure from internal Shari'a scholars can be considered as a positive stimulus towards better Shari'a compliance, it is also a source for Shari'a scholars to compromise on issues they might not be quite comfortable with from Shari'a point of view. Therefore, 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 Islamic banks' Shari'a-repugnant practices by invoking the ruse of the young age of the industry. Shari'a scholars themselves do not feel comfortable with such practices of the banks, allowed by them, and are trying to gradually eliminate them. However, some of the practices are increasingly practiced by Islamic banks.

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. Though pure fatwa manufacturing may be rare to observe, the use of juristic ruses is widely present. However, some juristic ruses are strongly supported by evidence from Shari'a sources while others are weak.

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)

6.2.13 Seeking Hierarchical Backing

Axial Category	Open Codes
Seeking Hierarchical Backing	'Shari'a Board'
	'Central Shari'a Board'
	'Shari'a Advisory Forum'

The open codes that form the axial category named 'Seeking Hierarchical Baking' are 'Shari'a Board', 'Central Shari'a Board' and 'Shari'a Advisory Forum'. The codes provide a significantly strong backing to Shari'a scholars to pawn the pressure they are facing from managers. 'Seeking Hierarchical Backing' is an effective strategy to counter managers' coercion and avoidance strategies.

The banks' own Shari'a boards are the first points of refuge for Shari'a scholars in the case of undue management pressure. Shari'a boards are normally more independent and hence more powerful than the in-house Shari'a scholars. Therefore, managers feel the pressure and do not want to exert pressure on Shari'a scholars significant enough to force them on taking the issue to Shari'a board. A Shari'a board's decision is binding on all parties and normally in favour of Shari'a scholars. It relieves Shari'a scholars even if its decision is in favour of management because in the case of a decision of the Shari'a board on a certain issue, Shari'a scholars' feeling of sole eternal responsibility is relieved. Therefore,

Shari'a advisors refer uncertain situations or instances where they are pushed by management to seek expert advice from the Shari'a board and counter managers' pressure.

If the conflict is not resolved by taking it to the Shari'a board, it is then forwarded to the CSB, if any. The CSB's decision then becomes a regulatory standard binding on all parties. However, there are fewer chances of a conflict between Shari'a scholars and management being taken to the CSB because managers would not like to take an issue that far. This is a strong force against management and in favour of Shari'a scholars. The mere existence of the possibility of conflict being referred to the CSB compels managers to cooperate with Shari'a scholars and become submissive to their verdicts.

Though the recommendations of the SAF do not have binding status, regulators can enforce them in case the forum is facilitated by it. Even the non-binding recommendations of SAF carry a significant weighting. Therefore, Shari'a scholars use the forum to balance the pressure they face from management because managers do not want a situation where a conflict is referred to the forum.

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

6.2.14 Separation

Axial Category	Open Codes
Separation	'Resignations'

There is only one open category, 'Resignations' that makes up the axial category named here as 'Separation'. Separation from the Islamic bank 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. Some Shari'a scholars do not claim compensations from the Islamic banks they serve because they still feel their operations are un-Islamic but they continue to work with the banks in a hope to gradually Islamize it.

"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 a bit 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 (also see Section 5.2.18 and 5.2.19). Therefore, managers are reluctant to push Shari'a scholars strong enough to compel them on separation from Islamic banks. If they do, they will make sure he/she leaves the bank happily.

6.3 Summary

This chapter functioned as a stitching-back tool for putting the open codes back together in a more logical manner using the paradigm model and other analytical tools of GT. The forty open codes, discussed in the previous chapter, were integrated into a total of fourteen selective codes. This process did not happen as a stand-alone step in the actual analysis. Rather it started with the analysis of the very first interviews. Therefore, the unsophisticated axial codes started to appear in the initial stages of analysis which gradually saturated over the course of 3 year analysis. This chapter represents the most sophisticated form of the axial codes. However, one cannot understand the core phenomenon by reading through this chapter. It is in reality a preparation for the next chapter where these axial codes will be further integrated around a single code known as the core category.

Chapter 7: Selective Coding

7.1 Introduction

The previous two chapters presented the first two stages in the GT analysis. However, there was no mention of the central phenomenon. This chapter accomplishes the identification of the core category, its integration with the open and axial codes and finally validating the resulting relationships through the process of selective coding (Strauss and Corbin, 1990).

In the first step of selective coding, a story line was written that best described the core phenomenon under consideration. This helped to condense the whole analysis into a few paragraphs leading to the identification of the core phenomenon. Strauss and Corbin (Strauss and Corbin, 1998, Strauss and Corbin, 1990) point out that the story line may reveal the existence of more than one core category. However, they emphasize the selection of one category as the core for the emergence of GT while systematically relating the other categories to the core. This study did not come up with multiple categories that could strongly compete for being the core. However, the identification of the single core category was a gradual development over the whole length of analysis involving lots of brainstorming exercises. In fact, the identification and integration of the core category passed through a number of developmental stages over a span of two and a half years of rigorous analysis. It also took a number of attempts on the story line and the paradigm model before the core category emerged.

The core category was then related to the axial codes by means of the paradigm model (Strauss and Corbin, 1998, Strauss and Corbin, 1990) – the key tool used for the integration process in this chapter. The researcher then visited the raw data repeatedly to seek validation for the relationships established through the paradigm model. Repeat interviews with key respondents were also conducted to validate the core category and its relationship with the axial codes as established through the paradigm model. Finally, the conditional/consequential matrix (Corbin and Strauss, 2008, pp 90–95) is used to put the whole phenomenon in macro and micro contexts and to elaborate the changing nature of the GT with changing macro and micro factors. The following headings will take us through the significant steps of the selective coding journey.

7.2 The Story Line

Islamic banks are business entities with dual objectives; business and Shari'a. Although, the two 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. Islamic banks though focus on Shari'a compliance as their main advertising theme; the prime motive of sponsors and managers is to tap the market of the untapped religious Muslim clientele. The two parties have different backgrounds, varying and different degrees of eternal, external and internal pressures. These differences sometimes cause an increase in the divergence between the two objectives but they could also reduce the gap at times. For instance, Shari'a scholars are exposed to a high degree of eternal pressure so they view Shari'a as the supreme law while managers do not feel significant eternal pressure and some may even consider Shari'a as obsolete. The background of the two parties further strengthens this attitudinal difference. For example, Shari'a scholars are deeply nurtured in Islamic education, studying and teaching, while managers are conventionally educated possessing extended experience in conventional banking. In addition, there are some external pressures e.g. pressure from regulators, depositors and external Shari'a scholars which force the two parties toward deeper Shari'a compliance. However, the two parties are subject to varying levels of external pressures. For example, regulatory pressure is normally against management and in favour of Shari'a scholars, thereby moving managers towards Shari'a objectives along the continuum and providing an 'anchor' for Shari'a scholars to stick to higher levels of Shari'a compliance. On the other hand, depositors' pressure is largely on Shari'a scholars forcing them to struggle for deeper Shari'a compliance. Similarly, the pressure from external Shari'a scholars also works mainly on internal Shari'a scholars forcing them to achieve higher levels of Shari'a compliance. However, it also forces managers to partially sacrifice business objectives and cooperate with Shari'a scholars for better Shari'a compliance. Employees of non-managerial cadre and Shari'a scholars associated with the Islamic banking industry build an internal pressure mainly on Shari'a scholars. For example, employees' expectations of Shari'a scholars for being the guardians of justice and Shari'a scholars' exposure to the scrutiny of other Shari'a scholars force them to be more meticulous in fatwas.

There apparently are more forces on Shari'a scholars driving them towards deeper Shari'a compliance than the forces on managers driving them towards business objectives. Furthermore, some of the pressures drive 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 the 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 noncompliance does not have direct financial consequences for the bank if the Shari’a advisor approves it. Therefore, the management is often in the 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)

The question is why managers of Islamic banks would like to have an opposing force in the form of Shari’a scholars to hinder their business objectives? The answer is that managers’ business objectives under the title of Islamic banking cannot be easily achieved without certification from Shari’a scholars. The products and services of Islamic banks would have little 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’ opinion and their nominal supreme authority in some cases to ensure their presence and support. A blatant non-submissiveness of managers to Shari’a scholars’ supreme authority can raise a serious Shari’a reputation risk for the Islamic banks. These two forces i.e. the need for legitimacy and avoiding Shari’a reputation risk induce managers to stay back from their pure materialistic business objectives and move along the continuum towards the minimum Shari’a compliance levels, at least. The story does not stop there. 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. However, as discussed above, they compromise on Shari’a objectives agreeing with managers on the minimum or even superficial Shari’a compliance

levels with the expectations that Islamic banks would gradually move towards Shari'a objectives with time. 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. Commenting on this particular issue, one respondent, who read the whole analysis, said that this is "true and it happens" (Head of Shari'a Dept., Case III). Therefore, Shari'a scholars are interested in the continuity of the industry, which at times requires their lenience on Shari'a objectives and principles. However, Shari'a scholars are highly sensitive to the eternal rewards and punishments in addition to the external and internal forces pushing them to achieve broader Shari'a objectives. Thus, they are in a continuous struggle not only to maintain minimum Shari'a compliance but also to take Shari'a scholars towards Shari'a objectives on the continuum. Shari'a scholars can also recall their fatwas, which managers used to engineer pure interest-based products. Therefore, there is a constant struggle to reposition fatwa's already issued by Shari'a scholars.

The two parties' then resort to different strategies to reposition the fatwa's towards their respective objectives along the continuum. Shari'a scholars having 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. 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 with managers 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 strong eternal pressure coupled with internal and external pressures, some Shari'a scholars recourse to separation from the Islamic banks when management does not observe the minimum Shari'a compliance.

In situations where internal and external pressures are non-significant and where a sound regulatory framework is absent, managers of Islamic banks (especially the

Islamic–windows of conventional banks) with a strong conventional background and a self–interest drive, would resort to avoidance strategies in the first place leading to only superficial Shari’a compliance. When such banks are legally required to have Shari’a scholars on board, due to external pressures, managers try to control Shari’a scholars in addition to the efforts of avoidance. Managers in such cases can also resort to coercion when significant business interests are at stake and Shari’a scholars are not compromising on the minimum level of Shari’a compliance. On the other hand, when the internal and external pressures are strong and Shari’a scholars are non–compromising, managers become submissive to the decisions of Shari’a scholars in the context of a sound regulatory framework and religiously oriented sponsors. Such a scenario can lead to deep Shari’a compliance.

7.3 Identification of the Core Category: Towards a GT of Fatwa Repositioning

As mentioned in Section 7.1 above, the identification of the core category is the second step, after the story line, in selective coding. The story line is a mere tool for this identification. Although, the broad phenomenon had largely become apparent after analysing the third round of interviews toward the end of the second year of the study, it was not easy to name the core category. In fact, the researcher was in a constant struggle to identify a core category which met the criteria proposed by Corbin and Strauss (2008, p.105). These criteria suggest that the core category must be abstract, found frequently in the data, must be logical and consistent with the data, must be abstract enough to lead to the development of a more general theory and should grow in–depth and explanatory powers to explain the relationships with other categories. It was not an easy task, indeed, to identify a core category meeting all these criteria. It took a number of attempts on the story line and the paradigm model before the core category became clear with which the researcher finally felt satisfied. In fact, the last two brainstorming sessions with supervisors were key triggers for finally naming the core category. It was later verified by constant comparison with data and through repeat interviews (Strauss and Corbin, 1998, Strauss and Corbin, 1990, Corbin and Strauss, 2008).

Table 7.1: Properties and Dimensions of the Core Category

Properties	Dimensions
Frequency	High/Low
Intensity struggle by management	High/Low
Intensity struggle by Shari'a scholars	High/Low
Managers' struggle	Overt/hidden
Shari'a scholars' struggle	Overt/hidden
Struggle for control	High/Low

The core category in this study, used to explain the key GT question of 'what is going on here?', has been named '**Fatwa Repositioning**'. Shari'a scholars and managers are in a constant struggle to position and reposition the fatwas in such ways that advocate what they call their objectives i.e. Shari'a and business objectives respectively. As mentioned in the story line, managers would not have hesitated to exclude Shari'a scholars from the governance system of their institutions if they could achieve their business objectives without a certification from Shari'a scholars. Thus, managers need Shari'a scholars on board for the necessary legitimacy and reputation. This induces them to stay a little bit back from their pure materialistic business objectives and move along the continuum toward at least the minimum Shari'a compliance level– a point where Shari'a scholars will agree on the initial fatwa positioning. Once the initial positioning is done, the managers' latent struggle for repositioning the fatwa back toward business objectives begins. This could either be in the form of malpractices during the implementation of the fatwa's or in the form of combining two or more issued fatwa's 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 on the excuse of primitiveness. Additionally, the remuneration, perquisites and status of Shari'a scholars are associated with their jobs with Islamic banks tempting some of them to be lenient. However, they expect to take Shari'a compliance gradually towards Shari'a objectives. Once they issue fatwa's 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 deep 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 superficial or even below. This may need them to keep an eye on managers in the form of Shari'a audits and investigating 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.

“In some cases, when the management really insists us not to do something, we become lenient because there are only two options in that case; either to quit or to obey. Some Shari’a advisors quit in such situations and there have been instances of resignations, I would say 5%, but some still stay in the Maslihat [public good] that if they quit, the management will bring in someone else who will be lenient event more. Therefore, if a strict Shari’a advisor quits in such situations, it gives management the chance for fatwa shopping. I can say that 95% of the transactions are Shari’a compliant and the Shari’a advisors “find ways” [juristic ruses] for the remaining 5%. 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 (Jaiz) which meets the minimum Shari’a requirements and the third is prohibited (Haram). We are currently on the permitted level and sometimes the management forces Shari’a advisors to go the prohibited area but this rarely happens.” (Shari’a Research Officer, Case III)

7.4 The Paradigm Model

The paradigm model, summarized in tabular form in Table 7.1 and figuratively illustrated in Figure 7.2, is a GT “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 (Strauss and Corbin, 1990, Corbin and Strauss, 2008). All these relationships hold in the presence of certain contextual factors, which affect the core and axial categories. The causal conditions in this study are i) Shari’a objectives and ii) Business Objectives. The model then relates the core category to the intervening conditions i.e. the codes that affect the central phenomenon, positively or negatively, after it is established by the causal conditions. In this study, the intervening conditions are Background Divergence, Compliance Force, Cognitive Force, Internal Pressures and External Pressures. This whole phenomenon is then explained in the context, regulatory framework and sponsors’ orientation, in which it takes place. The two parties i.e. Shari’a scholars and managers then use various action/interactional strategies 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. The phenomenon then leads to certain consequences based on the intensity of the causal and intervening conditions and the use of the action/interaction strategies by different parties. Thus, the consequent Shari'a compliance is deep, minimum or superficial. The consequence of the balance of forces in their current form reveals that Shari'a compliance dithers between superficial and minimum levels.

Table 7.1: Positioning Codes on the Paradigm Model

Axial Codes	Position on Paradigm Model
Regulatory Framework	Contextual Factors
Sponsors' Orientation	
Shari'a Objectives	Causal Conditions
Business Objectives	
Background Divergence	Intervening Conditions
Cognitive Pressures	
External Pressures	
Internal Pressures	
Avoidance	Action/Interactional Strategies used by Management
Controlling	
Coercion	
Submission	
Compromising	Action/Interactional Strategies used by Shari'a Scholars
Confrontation	
Separation	
Deep Shari'a Compliance	Consequences
Minimum Shari'a Compliance	
Superficial Shari'a Compliance	

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 contextual factors would lead to a corresponding change in the causal and intervening conditions, action/interactional strategies and consequences. This change can start from any point i.e. a sudden change in intervening conditions would change strategies and consequences. Thus, the combination and intensity of causal conditions would be altered. However, the change in contextual factors, at least in this study, brings about an abrupt change in the whole process. This process dynamism has been grasped in the coming topics starting from contextual conditions.

7.4.1 Contextual Factors

Strauss and Corbin (1990, p.101) define context as “the particular set of conditions within which the action/interactional strategies are taken to manage, handle, carry out and respond to a specific phenomenon”. The phenomenon addressed in this study is taking place in the existence of two broad contextual factors. It is hard to separate the phenomenon and the integrated axial codes from the context as it is affecting every code from all angles. Though it can be claimed that the current form of the phenomenon is not directly affected by contextual factors because these factors are pre-set and do not change easily. However, any change in the contextual factors would greatly alter the phenomenon and the integrated axial codes.

The two contextual factors identified in this study are; regulatory framework and sponsors’ orientation. It is noteworthy that the respondents, especially Shari’a scholars and regulators, view these factors as conflicting with each other. On the one hand, sponsors’ current orientation is seen highly opposing towards Shari’a objectives.

“The prime motive of the entrants to this market is to tap the market. Their intention is not Shari’a compliance. Thus they obtain an Islamic tag from the regulator in the form of licence and from the Shari’a advisors in the form of a fatwa and use these two tags to tap the market.” (Director, Regulator)

On the other hand, Shari’a scholars view the existence of a country-level Shari’a regulatory framework as a highly favourable tool for controlling managerial pressure. It also builds stakeholders’ confidence in this system.

“...many people in the management are interested in fatwa shopping but the chances are very limited in our country because the regulations of central bank are very stringent in this matter.” (Shari’a Research Officer, Case II)

It is important to note that contextual factors affect all the parts of the paradigm model starting from the causal conditions. For example if sponsors’ orientation is religious and a sound regulatory framework is in place, the fatwa’s are positioned more towards Shari’a objectives. The religious minded sponsors and regulators would further affect the intervening variables in such a way as to make them more in favour of Shari’a compliance e.g. appointing religious minded people to the top management. On the contrary, secular minded sponsors would try to position the fatwa’s towards business objectives, in the absence of a sound regulatory framework. If the Shari’a scholars, in this case, are highly sensitive to eternal

cognitive pressure, the gap between the two objectives would be wider leading to confrontation and resignations. A third scenario would be the combination of religious minded sponsors in the absence of a regulatory framework. In such a case, the balance would still be tilted towards Shari'a objectives. In the fourth scenario, where a sound regulatory framework is in place and sponsors are secular minded, the struggle for Fatwa Repositioning would be moderate. The use of confrontation, avoidance and controlling strategies would be more in practice in such a case.

It is interesting to note that the contextual conditions not only affect the causal conditions but they also affect the combination, intensity and number of intervening variables, action/interactional strategies and the resulting consequences, which range from deep to superficial Shari'a compliance.

7.4.2 An Overview of the Causal Conditions

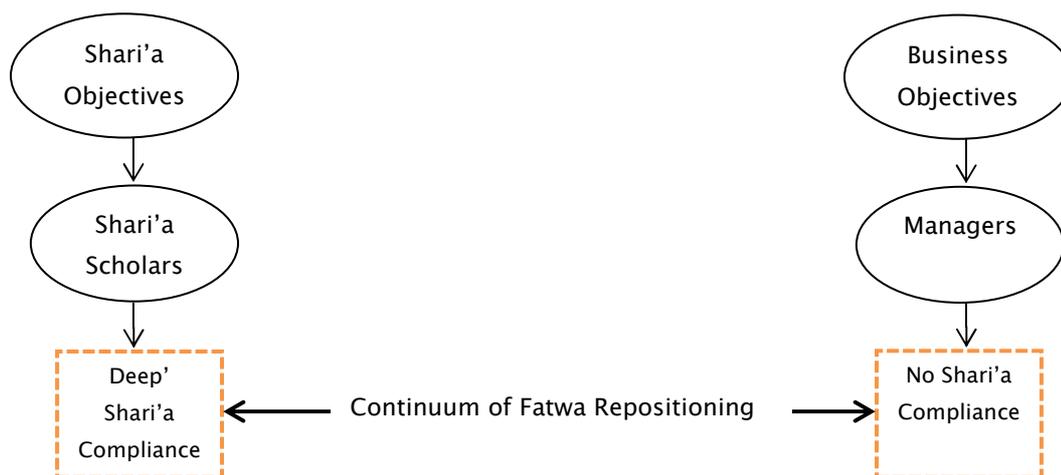
Causal conditions are the "events or incidents that lead to the occurrence or development of a phenomenon" (Strauss and Corbin, 1990, p. 100). The fact that Islamic banks aim to achieve business objectives in a Shari'a-compliant way often leads to a potential conflict between Shari'a scholars and managers. This incompatibility of the two objectives makes up the necessary conditions to lead to a situation where each party is in a constant hidden struggle for positioning Shari'a compliance along the continuum as closer to their objectives as they can.

"On the one side the Shari'a principles tell you to be equitable, fair and transparent and sharing risk but on the other hand we have investors who are looking for profits and protection of their investments. So obviously, there is a divergence." (Head of Investments, Case III)

However, the two objectives are essentially complementary to each other because one cannot be achieved without the other. Managers, interested in tapping the Islamic banking market, are in dire need of legitimacy for their products and services. Shari'a scholars, who drive public opinion in Islamic communities, grant this legitimacy to the Islamic banks. Managers are willing to accommodate Shari'a scholars' verdicts to get the Shari'a-compliance certification. Shari'a scholars on the other hand want the continuity of the system hoping for its convergence towards Shari'a objectives in the long run. This urge for continuity is reinforced by Shari'a scholars' assorted self-interest. Therefore, they also willing to be lenient with managers and allow structures and instruments that might be merely stratagems. Thus, there is obviously an initial movement along the continuum

from both ends towards the minimum Shari'a compliance level. The pursuit of business and Shari'a objectives through the same organization by different parties make the necessary conditions for a wider fatwa repositioning struggle. Thus, from the very start, an IFI "is torn between the market success of emulating conventional structures and developing genuinely Islamic structures that reflect its spiritual ethos" (Agha, 2012).

Figure 7.1: Causal Conditions



7.4.3 Intervening Conditions

The phenomenon of Fatwa Repositioning and the corresponding action/interactional strategies are largely affected by a set of intervening conditions listed in Table 7.1. These conditions act to either facilitate or constrain the action/interactional strategies taken within a specific context (Strauss and Corbin, 1990, p. 103). In our case, they affect the two parties i.e. Shari'a scholars and managers in different ways and thus the resulting effect is either an accelerated or decelerated struggle for Fatwa Repositioning on the part of both managers and Shari'a scholars. They then adopt necessary action/interactional strategies to cope with the situation. For example, the parties' divergent backgrounds instil a belief that their assigned objectives are the only ends to be achieved through Islamic banking. Thus, Shari'a scholars, nurtured in a religious background, want to achieve deeper Shari'a compliance while managers, nurtured in a conventional banking background, try to maximize shareholders' wealth. On the other hand, eternal pressures work both ways on both parties. Though the sensitivity to eternal reward/punishment is much stronger for Shari'a scholars driving them toward deeper Shari'a compliance, it still exists to some extent in Muslim managers compelling them to cooperate with Shari'a scholars for better Shari'a compliance. However, managers are affected by this pressure to a much lesser degree as compared to the Shari'a scholars. At the same time, both parties

have their material interests attached to Islamic banks as they draw attractive compensations and are entitled to perquisites, which depend on the financial performance of the banks.

“Managers and the regulators are also sensitive to eternal forces but this might be the case that Shari’a advisors are more vocal on this issue. However, Shari’a advisors are well educated in this area and their awareness is better than others. Therefore, sensitivity to eternal force becomes a code of ethics for them. This also makes them more aware of the concept of self-accountability.” (Director, Regulator)

The self-interest force is much stronger on managers whose material benefits are directly related to the financial performance of the banks. This may induce some managers to use avoidance and coercive strategies to achieve the financial objectives of the banks. Shari’a scholars, who are subject to a strong eternal force, claim to be unaffected by self-interest. However, self-interest still affects Shari’a scholars to some extent forcing them to resort to compromising strategies and help managers in achieving business objectives. External Pressure is predominantly on Shari’a scholars but also affect managers to some extent. This induces managers to be less coercive and Shari’a scholars to be more confrontational. Nonetheless, the positive effect of external pressure helps in the repositioning of Shari’a compliance more towards Shari’a objectives on the continuum. It forces the two parties to work more symbiotically to achieve better Shari’a compliance. Internal pressures predominantly work on Shari’a scholars forcing them to be more meticulous in their verdicts and work hard for deeper Shari’a compliance.

7.4.4 Action/Interactional Strategies

The two diverging objectives sought after in Islamic banks by two different parties, affected to different and varying levels by the intervening variables, result in the use of “purposeful [and] goal oriented” (Strauss and Corbin, 1990, p. 104) action/interactional. For example, some Shari’a scholars with a secular background, less sensitive to eternal cognitive pressures would be more inclined to compromise on Shari’a objectives in the presence of weak external and internal pressures and secular minded managers.

“They may try to find Hila’s [ruses] for certain structures when they are under pressure from management. However, this situation is very rare and those who are less concerned with their eternal life may practice it.” (Shari’a Advisor, Case II)

“One reason some Shari’a advisors are tempted to be lenient is that their job, compensation, promotion and other perks are determined

by the management. If they become very strict, there are chances they will not get good benefits. (Shari'a Research Officer, Case III)

On the other hand, Shari'a scholars with a strong religious background and eternal cognitive force, strong internal and external pressures and having strong hierarchical support would resort to confrontation if managers try to either avoid or control them. A Shari'a scholar told one best example of such confrontation:

"...they [managers] sometimes push us to approve certain structures. They even threaten our jobs and even the Islamic banking operations of the bank. Once the CEO 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 minutes and I need a positive answer otherwise I will take my action'. I told him, 'What action are you taking after 5 minutes? You can take that action now because my answer will be the same after 5 minutes. Are you going to fire me? I have got offer letters from other banks in my drawer'." (Shari'a Advisor, Case II)

If managers also use coercion in addition to avoiding and controlling Shari'a scholars, who have strong religious backgrounds, facing strong eternal cognitive force, strong internal and external pressures, weak hierarchical backing and weak regulatory framework, can resort to separation from the particular bank or even quitting the Islamic banking industry. Resignation of Shari'a scholars from Islamic banks could also depend on how they view the bank before they join it and how they find it in practice after joining.

"Even in some cases, the Shari'a advisors have resigned because of this pressure." (Shari'a Research Officer, Case II)

Managers, on the other hand, avoid, control or coerce the confronting Shari'a scholars, sometimes even forcing them to resign (as elaborated in the above quotes). However, those managers that have some religious education background and are sensitive to the eternal cognitive force may submit to the majority of Shari'a scholars' decisions, especially if Shari'a scholars have a strong religious background, high sensitivity to eternal cognitive pressures and have strong hierarchical support within a sound regulatory framework.

"Shari'a advisors' authority in Pakistani banks' is more than that of management." (Shari'a Research Officer, Case II)

"Shari'a advisors are not aware of the safeguards we have given them against the management though we regularly interact with them via the Shari'a advisors' forum. They have got powers but they

may not know about it. Secondly, it depends on their own standing and stature within the industry.” (Additional Director, Regulator)

7.4.5 Consequences

The interplay between the strategies used by Shari’a scholars and managers, which is moulded by the combination of causal and intervening conditions in the presence of contextual factors, leads to certain consequences of the phenomenon. This study identifies four possible consequences i.e. deep, reasonable, minimum and superficial Shari’a compliance. It also elaborates the consequence shaped by the current scenario.

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 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.

“Unlike the conventional banks, Islamic banks have other objectives than achieving targets and making profit. Those objectives really depend on the orientation of those banks’ management; if management is really keen in those objectives, and believe in contributing to social welfare, Islamic banks will be contributing effectively.” (Head of Shari’a Dept., Case III)

On the other extreme, Shari’a compliance is only superficial- only limited to the use of Arabic names for conventional products in some extreme cases- when managers use avoidance, controlling and coercive strategies over 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 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. For example, it is possible to combine two separate Salam contracts to manufacture a forward contract which is not allowed in Shari’a.

“The conventional banks that have started Islamic banking windows mostly just look for profits by tapping the Islamic banking market. They form a Shari’a board but do not have a Shari’a audit and control system. How do we know they apply the structures and agreements correctly without violating Sharia standards? They get Shari’a certification from Shari’a advisory firms and then implement the structures as they want.” (Head of Shari’a Dept. Case III)

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 medieval Islamic contracts.

“I can say that 95% of the transactions are Shari’a compliant and the Shari’a advisors “find ways” for the remaining 5%. 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 (Jaiz) which meets the minimum Shari’a requirements and the third is prohibited (Haram). We are currently on the permitted level and sometimes the management force the Shari’a advisors to go the prohibited area but this rarely happens.” (Shari’a Research Officer, Case III)

The forth 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 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.

“Shari’a compliance is good in our bank partly due to the market reputation and assertive nature of our Shari’a advisor. If there is a

small issue, our Shari'a advisor exaggerates it and therefore, the management is afraid of him and thus very careful." (Shari'a Research Officer, Case II)

7.4.6 The Paradigm Model at a glance

Though the above discussion is mainly around the paradigm model, it is in this section that a complete paradigm model is graphically presented to encompass all the relationships.

Figure 7.1 illustrates that the causal conditions make the relationship between Shari'a scholars and managers conflicting in the first place leading to a continued hidden struggle for fatwa repositioning. For Shari'a scholars, the desired position is deep Shari'a compliance that can realize Shari'a objectives while managers' priority is shareholders wealth maximization. This is where each party would ideally like to position the fatwas, which is hard to achieve in practice. Thus managers are willing to move along the continuum to a minimum level of Shari'a compliance where business objectives are reasonably achievable and where Shari'a scholars are also willing to issue Shari'a certification. Shari'a scholars also move along the continuum to this position with the expectations to reposition the fatwas in the future back towards deep or at least reasonable Shari'a compliance levels. The compelling force for Shari'a scholars to agree with the initial fatwa positioning at minim/superficial Shari'a compliance is their compromising strategy. On the other hand, managers stay back from their pure materialistic business objectives and move to the minimum/superficial Shari'a compliance level because of their need for legitimacy and sensitivity to eternal reward/punishment.

The intense struggle for Fatwa Repositioning starts after the initial positions are established. The Managers' struggle is threefold. Firstly, they try to hold Shari'a scholars on the minimum/superficial levels where they have already agreed. Secondly, they struggle to reposition fatwas initially positioned at reasonable or minimum Shari'a compliance levels to the superficial levels if they are contradictory with business objectives. Thirdly, managers manufacture a superficial Shari'a compliance position by merging two or more fatwas when Shari'a scholars are not willing to move to the superficial levels. The intervening condition that may induce managers to move to superficial or even no Shari'a compliance levels is their strong secular background. Managers can use a number of strategies e.g. avoidance, controlling and coercion in this entire struggle. The excessive use of compromising strategies by Shari'a scholars can help managers to succeed in their struggle to reposition the fatwas to the superficial levels. The separation of Shari'a scholars from Islamic banks can also, at times, lead managers to hire lenient Shari'a scholars making it easy for them to reposition the fatwas into the superficial positions.

On the contrary, a number of intervening conditions i.e. internal and external pressures and sensitivity to eternal reward/punishment force Shari'a scholars to reposition fatwas from superficial Shari'a compliance to minimum, from minimum to reasonable and even deep Shari'a compliance levels. Shari'a scholars can resort to a number of strategies e.g. seeking hierarchical backing, confrontation with managers or even separation from Islamic banks in order to reposition Shari'a compliance towards their favourable position along the continuum. Furthermore, background divergence is a strong intervening variable forcing Shari'a scholars to move back from superficial Shari'a compliance not only to minimum but also to reasonable and deep Shari'a compliance levels. For managers, it is mainly the reputation risk of banks in addition to internal and external pressures which forces them to obey Shari'a scholars and reposition some fatwas towards deep Shari'a compliance.

It is worth mentioning here that the repositioning of a fatwa towards a higher level of Shari'a compliance is relatively difficult because managers rush to normalize a lenient fatwa in their banks once issued. It becomes a precedent in the whole industry and Shari'a scholars then refer to such lenient fatwas when they face pressure from managers. The bottom line is though, there is a struggle from the side of Shari'a scholars to reposition Shari'a compliance from superficial and minimum levels back towards reasonable levels but that struggle is hardly productive. An interviewee in the validation phase, commented on this phenomenon in the following long quote.

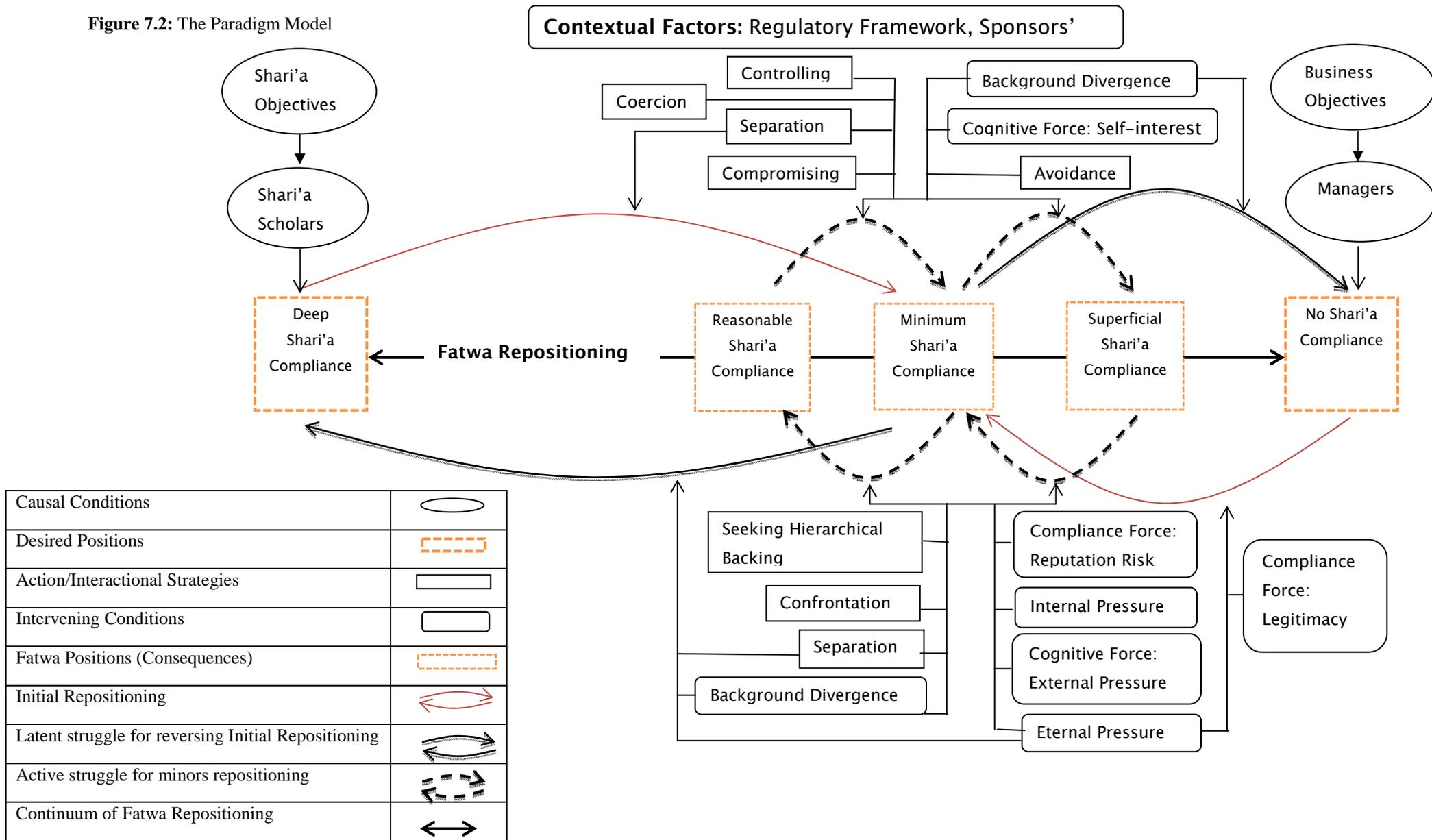
"I believe it is unexpected to change practices and products approved and given under the lenient policy adopted by some scholars regardless of the reasons of this leniency (as may be adopted for the sake of the industry's development), where, I don't think the managers will agree to change and/or stop applying any product that are once approved by the Sharia Board.

For example, there was a product approved during the conversion of a conventional bank into Islamic bank. That product was approved by Sharia Board as a solution to transform some conventional deals into Islamic, and the product itself was not purely Sharia-compliant. Now some years since the conversion, this bank still uses the same product. Their excuse is like 'we can't easily stop our service to customers'.

Moreover, I have seen some scholars issue some resolutions on an exceptional basis for specific cases, afterwards, this exceptional fatwa becomes a standard and not an exception.

I believe the primitiveness excuse age has over. Now the Islamic banks are robust entities. Shari'a boards should, accordingly, adopt a strict policy in terms of products and services." (Head of Shari'a Dept., Case III)

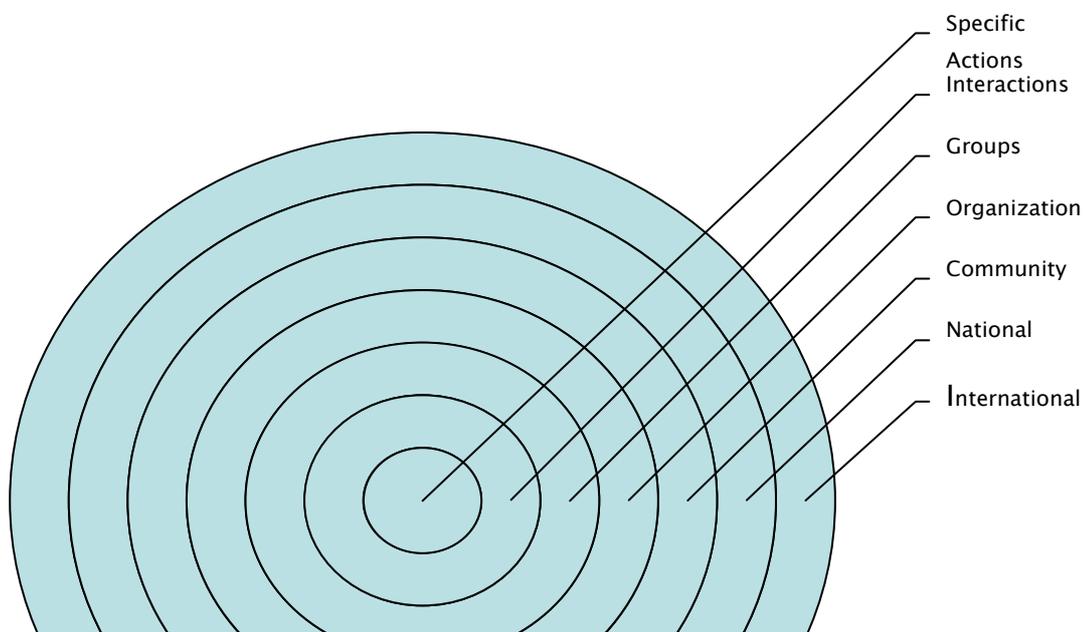
Figure 7.2: The Paradigm Model



7.5 The Conditional Consequential Matrix

Though the paradigm model is a useful tool for integration and introducing a structure to the process, it does not “explain the varied dynamics and complex ways in which conditions, inter/actions and consequences can coexist and impact upon each other” (Corbin and Strauss, 2008, p.90). Another useful tool for addressing this shortcoming of the paradigm model is the conditional/consequential matrix (Corbin and Strauss, 2008, pp.90–95, Strauss and Corbin, 1990, pp.158–176). The idea of this matrix is that “conditions and consequences are connected through action/interactional/emotional responses” (Corbin and Strauss, 2008, p.91) and that they are a combination of micro and macro conditions.

Figure 7.3: The conditional Consequential Matrix



International: Country’s and organization’s subscription to international Shari’a standard setting bodies like AAOIFI and IFSB

National: Shari’a regulatory framework

Community: Blind trust on Shari’a scholars

Organization: Shari’a Advisor, Shari’a Board, Shari’a Audit System

Groups: Shari’a Scholars, Managers, Shari’a Advisory Forums

Interactions: Communications and negotiations between Shari’a scholars, managers, directors and regulators

Specific Actions/Strategies: Compromising, confrontation, separation, avoidance, controlling, coercion, submission

Source: Adapted from (Corbin and Strauss, 2008, p 94)

The conditional consequential matrix given in Figure 7.3 explains how the macro and micro conditions affect the core phenomenon identified in this study. Most of this dynamism has been discussed sequentially in the detailed description of the paradigm

model. However, the graphical illustration of the matrix clarifies the relationships. The international macro factors relevant to our phenomenon are the country/organization's adoption of international Shari'a standards set by bodies like AAOIFI and IFSB. Observation of these standards is not mandatory for countries or individual banks. However, if a country adopts the standards, they become mandatory for individual banks. Other countries can either adopt the standards with amendments, as in Pakistan, while some leave it to the banks' discretion. In a country where there is no Shari'a regulatory framework in place, the adoption of these standards becomes important as they increase legitimacy of the banks. All the three cases of this study have adopted AAOIFI standards; two of them voluntarily and one through the enforcement of the central bank. The macro factors affect the contextual factors, causal conditions and all other elements of the paradigm. The second macro element of the matrix is the national level existence of a Shari'a regulatory framework. The existence of this framework enhances stakeholders' confidence by narrowing down the gap between Shari'a and business objectives. On the community level, it boils down to Shari'a scholars' integrity, their school of thought and the resulting blind trust of the public on them.

The existence of Shari'a board, audit system and other Shari'a compliance mechanisms are the organizational level factors of the matrix. The group dynamics i.e. Shari'a scholars and managers work on the sub-organizational levels which leads to interactions between the two parties. The final specific actions are the action/interactional strategies.

7.6 Refining the Theory

Refining the theory began soon after the its initially development. GT is refined by “a) reviewing the scheme for internal consistency and for gaps in logic, b) filling in poorly developed categories and trimming excess and c) validating the scheme” (Corbin and Strauss, 2008, p.109). The internal consistency check in this study has been done repeatedly throughout the whole process of theory development by constantly going back to interviews and notes in order to remove any possible inconsistencies. Similarly, attention was paid to the open and axial codes which were found relevant to the emerging theory but still poorly developed. The identified gaps were filled in by revisiting the existing data and also collecting more data. An important open code, external Shari'a scholars' pressure, which was identified by this method, was poorly developed and the researcher had to conduct a last minute telephonic interview to fill the gap. The irrelevant open codes were also dropped out of the emerging theory. Validation was done by revisiting the existing data and including the relevant quotes in the selective coding and by conducting repeat interviews. Relevant supporting quotes from existing data and repeat interviews have been included in the above discussion in appropriate occasions. Once the three analysis chapters were completed, a copy of the

whole analysis was sent to some of the key respondents in all three cases for validation. The respondents agreed with the picture presented by the theory. Below are some quotes from those who responded:

“I read through the analysis and the paradigm model and found it extremely useful and according to my experience it reflects the ground realities.” (Shari’a Research Officer, Case II)

“Your model is great. You are the first person looking at Islamic banks from this angle. Mr Ansari [referring to a critique of Islamic banking], from Ernst & Young, will be very pleased with your work because he is also very critical on some of the practices of Islamic banks.” (Head of Islamic Banking, Case II)

“Your model is very right and I don’t have much to add. I feel this is what is happening in the whole industry.” (Head of Investments, Case III)

7.7 Summary

The story line puts the whole scenario in a summarized way, consolidating the whole scenario into a few paragraphs which helped identify the core category i.e. fatwa repositioning. After naming and explaining the core category, the paradigm model was used to establish relationships between the codes. The axial codes were thus grouped into causal conditions, intervening conditions, action/interactional strategies and consequences. The conditional consequential matrix was then used to explain the phenomenon within the macro and micro context. Finally, the theory was refined by removing inconsistencies, filling gaps in poorly developed categories and then validating the theory from some key respondents. Respondents who read the analysis and replied back to the researcher significantly agreed with the theory and testified to the existence of the phenomenon in the Islamic banking industry.

Chapter 8: Positioning the Theory in Literature

8.1 Introduction:

A Literature review has a unique place in GT research. As against other research methodologies where a comprehensive literature review is conducted at the beginning of the research in order to identify key variables and develop a research, literature review, in GT, it is conducted after the analysis is completed and theory generated. The purpose of the literature review is to position the emergent GT in extant literature and to show whether the theory is supported by previous research and to what extent. However, Strauss and Corbin (1990, pp. 48–60) point out to different types of literature: technical i.e. research studies, books, professional writings etc. and nontechnical i.e. biographies, diaries, records, catalogues etc. The authors also explain the uses of both literature types in GT. For example, they consider nontechnical literature as data that should be used to supplement interviews while technical literature is used as “background material against which one compares findings from actual data gathered in GT studies” (Strauss and Corbin, 1990, p.48). In a GT study the theory is explained in the framework that actually develops during the research. Moreover, a comprehensive literature review cannot be conducted before analysis in the case of GT because the theory is led by the data and one does not know where the theory is going to end. Therefore, there is no way to identify the relevant literature in advance. However, one “can incorporate seemingly relevant elements of previous theories but only as they prove themselves to be pertinent to the data gathered in the study (Strauss and Corbin, 1990, p.50). This incorporation has been done in this study during analysis where the abstract names of some codes have been picked from literature. Thus, the purpose of literature is not the development of a framework but the comparison and the positioning of the theory developed during the study with existing literature. For this reason, a comprehensive review of relevant literature is conducted only after the theory is developed.

The purpose of this chapter is to compare the GT of Fatwa Repositioning with existing Islamic banking literature relevant to Shari’a compliance and the role of Shari’a scholars, managers and regulators. Academic literature addressing the role of Shari’a scholars and their relationship with other stakeholders, however, is very limited. This chapter also tries to position the newly developed theory in organizational control literature. The next section reviews the literature on Shari’a scholars’ dual impact on Islamic banks following by managers’ tendency to escape strict Shari’a supervision. Section 8.4 then tweets literature managers’ quest for friendly fatwas. Possible conflict of interest on the parts of Shari’a scholars is then explored in the next section. Section

8.6 untwines literature on the scarcity of Shari'a scholars and the related danger of Shari'a concentration. The next section discusses the knowledge deficit of Shari'a scholars related to the actual banking business. It also explores managers' knowledge about Shari'a issues. Section 8.8 addresses the form-above-substance approach adopted by Islamic banks followed by another section the gap between theory and practice. The next section then explores the recent row between external and internal Shari'a scholars. The last section then positions the theory in organizational control literature.

8.2 Shari'a Scholars' Dual Impact on Islamic Banks

Research suggests that Islamic banks benefit from Shari'a scholars in a number of ways but there are also costs, by being a restrictive force, associated with having Shari'a scholars on board (Baali, 2008, Al Sharif, 2008, Farah, 2008). Perhaps the most comprehensive work done on Shari'a supervision and the dual role of Shari'a scholars in Islamic banks has been done by Garas and Pierce (2010). These authors enlist the benefits and costs associated with Shari'a scholars' existence in IFIs. The key benefit Islamic banks derive from Shari'a scholars is organizational legitimacy (Garas and Pierce, 2010, p.389). Shari'a scholars grant legitimacy to the banks right from their inception to the formulation, implementation and audit of contracts, distribution of income between shareholders and investment account holders and finally writing a section on Shari'a compliance of the banks in their annual reports. Garas and Pierce (2010) further explain that banks need Shari'a scholars because of their religious, social and economic positions coupled with legal and governance requirements. Religious position is derived from Shari'a scholars' in-depth knowledge of Shari'a, thereby guiding managers on how to formulate and implement Shari'a-compliant banking transactions. Shari'a scholars derive their social position from the strong respect their communities give them. They are the drivers of public opinion in Muslim communities (Kahf et al., 2005) whereby people blindly trust (See Section 5.2.15) on renowned Shari'a scholars. This leads to the economic power of Shari'a scholars because Islamic banks' profitability depends on Shari'a certification granted by Shari'a scholars. Additionally, it is a legal requirement on Islamic banks in most Muslim countries to have Shari'a scholars on board in order to ensure Shari'a compliance (See Section 2.7). This gives Shari'a scholars a legal power. Lastly, most Islamic banks also articulate in their articles of associations to have Shari'a scholars in the banks for Shari'a supervision which gives Shari'a scholars a governance power. Thus Shari'a scholars derive their influence from a number of positions which is in turn utilized by Islamic banks to maintain legitimacy. The Shari'a scholars' role in granting legitimacy to Islamic banks has been discussed in section (See Section 5.2.19) in this study. The findings of this studying are in line with the existing literature discussed in this

section. This study suggests that the need for legitimacy is the main reason for Islamic banks to have Shari'a scholars on board.

On the other hand, Shari'a scholars' existence in Islamic banks is not without costs. For example, they can "cancel any product or investment that does not comply with Shari'a principles, which sometimes deprives the IFI from potential investment and reduces its market share" (Garas and Pierce, 2010, p.390). This issue has been addressed in this study in section 5.2.30 of the analysis. Garas and Pierce (2010) also elucidate the negative impact of a fatwa issued by Shari'a scholars against the bank in case of Shari'a noncompliance. They argue that such a fatwa would easily shatter the stakeholders' confidence and damage bank's reputation (See Section 5.2.18). The above authors also consider the fixed remuneration (which is not based on the banks' financial performance) of Shari'a scholars as a cost to IFIs.

Though the existing literature addresses the costs and benefits of Shari'a scholars to Islamic banks, it fails to address their specific role and potential consequences of their active assumption of such role. This is what has been a significant part of the core phenomenon of this study. What is going on in here is that managers always struggle to extract the benefits from Shari'a scholars' existence on board with them but they are not ready for the costs. As against (Garas and Pierce, 2010), this study suggests that financial and non-financial remuneration of Shari'a scholars is not considered a significant cost by management. Rather, it is used as a means to control Shari'a scholars and obtain Shari'a certification from them. However, the Shari'a scholars' authority to reject proposals and nullify transactions is seen by management as a highly negative force/cost leading to a situation of conflict between the two parties. Consequently, managers try to avoid, control or coerce Shari'a scholars in order to reduce their negative forces/costs. In response to the strategies adopted by managers, Shari'a scholars become compromising, confrontational or in some cases they just resign from their positions.

8.3 Escaping Strict Shari'a Supervision

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, of the bank, issues the verdict. In some cases, especially conventional banks with Islamic banking windows, such verdicts are obtained from Shari'a consultancy firms and implemented by the bank's management. However, IFSB recommends the establishment of an ISCU comprised of Shari'a experts who oversee the implementation of the verdicts. IFSB also endorses the establishment of an ISAU which reviews the implementation of the verdicts and point out discrepancies (IFSB, 2009). It

is at this point that potential discrepancies are detected and respective profits give to charities (See Section 5.2.30).

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 ISCU to monitor the contracts at the time of implementation and an ISAU to conduct Shari'a audits of the contracts. The tedious job of the banks is to face Shari'a audit 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 take the pain of booking Islamic financial products in line with strict Shari'a requirements. Instead, they may obtain a fatwa on the structures of the products 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 keep an eye on their adherence to the fatwa and the instructions given by the Shari'a scholars. 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). This phenomenon supports two of the key concepts identified in this study i.e. avoiding of Shari'a board and Shari'a audit (See Section 5.2.23 and 5.2.26). 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 majority of Islamic banks.

8.4 The Quest for Friendly Fatwa

As discussed in the above section, managers' try to avoid strict Shari'a supervision and audit. However, their struggle does not stop here because they also seek fatwas 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 by existing literature. This practice has been termed as fatwa shopping in this research (See Section 5.2.28) and some other studies (Farook and Farook, 2011, Hosen, 2008, Foster, 2009). Though 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 phenomenon practiced 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 much better

example 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 bases of their competence in Shari'a and banking fields but rather on the bases 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 Farook (2011, p.19)). There is ample evidence that Islamic bankers consider SSB as a formality rather than an active controlling body (Warde, 2000). 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 Farook, 2011). However, they believe the existence of fatwa shopping as portrayed by (Foster, 2009) is an exaggeration of the phenomenon but still agree with the perception and consider it as handicap for the industry in the long run.

This study clearly supports existing literature on the existence of the phenomenon of fatwa shopping but it also comes up with interesting variations. The study suggests that fatwa shopping can be exercised by financial institutions that do not have their own dedicated Shari'a boards and appointed Shari'a advisors. In that case, managers are free to develop a product, shop for a fatwa, often from Shari'a consultancy firms, to package it in Shari'a compliance and then sell it in the market with that Shari'a certification. On the other hand, banks with their own Shari'a boards/advisors cannot exercise fatwa shopping in the sense as portrayed in the above literature because of the requirement that products have to be approved by the institutions' own Shari'a boards/advisors. In other words, banks with an internal Shari'a compliance system are less likely to get involved in fatwa shopping as compared to those who purchase it from the market. Therefore, this study agrees with Farook and Farook (2011) that the image of fatwa shopping portrayed by (Foster, 2009) is an exaggeration and does not represent a widespread phenomenon. This study also claims that managers can resort to other strategies e.g. avoiding, controlling or even coercing Shari'a scholars in order to get a fatwa that suits their needs. This is where the potential existence of fatwa manufacturing and use of juristic ruses starts to emerge. Though fatwa manufacturing and the use of juristic ruses has been identified as an important phenomenon in the Islamic banking industry, the literature is very scarce in this area. Therefore, it could be an interesting topic for researchers to investigate in the future.

8.5 Conflict of Interest

The job of Shari'a scholars is to issue independent Shari'a opinions on the products, services and other operational activities of IFIs. However, one can question the independence and impartiality of such opinions when Shari'a scholars' personal

interests are associated with such opinions (Wright, 2006, Ghoul, 2008). This issue has been discussed in this research in section 5.2.11. Farook and Farook (2011) have discussed this issue in greater detail. They have questioned the perceived and actual independence of Shari'a scholars who receive mammoth monetary compensations, even based on the basis points per fund in some situations, for issuing Shari'a compliance certifications to IFIs. A clue of Shari'a scholars' compensation can be deduced from a statement of Sheikh Hassan, Chairman of the Shari'a board of one of our cases, where he claimed that a fee of US\$300, 000 for a complex transaction was not something unusual for top ranking Shari'a scholars (Wright, 2006). Wright (2006) also reports that Shari'a scholars' annual retention fee, to attend quarterly meetings, for an international bank is in the range of US\$100,000 to US\$250,000 in addition to first class air-tickets and 5-star hotel accommodation. This essentially translates into enormous compensation when a single Shari'a scholar serves more than seventy board positions (Unal, 2009). Additionally, much of the hard work is done by lower-rank individuals. Some Shari'a scholars even do not have enough time to review all the documents in detail (Farook and Farook, 2011). This is quite in line with the remarks of one respondent who commented on the analysis. He said that:

“All the eminent scholars who are supervising most of the Islamic institutions worldwide are quite busy and they barely find time to the product approval process itself!! I just wonder, those scholars taught us that work is AMANAH [sacred trust], and we should perform our jobs appropriately since we are getting paid. The question is why they sign new contracts with new IFIs when they do not have enough time for that?”
(Head of Shari'a Dept. Case III)

Questioning Shari'a scholars independence, Rammal (2006, p.6) claimed that “since SSB members receive remuneration from the financial institution, there seems to exist a potential for conflict of interest. The concern is that members of the SSB may legitimize dubious operations to ensure that they remain active on the board”. Interestingly, Shari'a scholars' compensations go unreported in IFIs' annual reports which can increase suspicions regarding the independence of Shari'a scholars and the Shari'a costs of Islamic finance that are transferred to clients to earn Shari'a arbitrage (El-Gamal, 2006, El-Gamal, 2005, Agha, 2012). Referring to this phenomenon, an interviewee responded in these words:

“This is actually happening!! In the Sharia Audit department, when we review the transactions' documentation of capital market products to give our Sharia opinion thereon, we find so many non-Sharia-compliant clauses or even the structure itself is not fully in line with Sharia guidelines, and usually we find a Sharia Certificate attached to the documents regarding the same transaction signed by prominent scholars

(high profile scholars). This apparently means they did not review the documents.” (Head of Shari’a Dept. Case III)

Despite the serious questions raised about the relationship between Shari’a scholars’ independent juristic opinions and their huge compensations drawn from the same institutions they serve, the scenario presented by this research has some variations. On one hand, this study discusses the impact of self-interest pressure on Shari’a scholars’ leniency in their verdicts. The extreme scenario can force some Shari’a scholars to adopt compromising strategies (See Section 6.2.12) leading to excessive use of juristic ruses and fatwa manufacturing (See Section 5.2.34). On the other hand, the study suggests that self-interest pressure on most Shari’a scholars is minimal and that there would be rare instances where Shari’a scholars resort to fatwa manufacturing purely for the pursuit of their self-interest. The study claims that eternal pressure (See Section 5.2.12) is the primary force driving Shari’a scholars’ independence and strictness in their Shari’a verdicts. One respondent who commented on the whole analysis, explicitly talked about a serious conflict of interest in cases where Shari’a board members of Islamic banks have consulting contracts with the same banks through their Shari’a consultancy firms.

“Some Sharia scholars who have setup their own Sharia consultancy firms concluding contracts with the bank that they supervise and are chairpersons, in some cases, on their Sharia boards!! In this case a conflict of interest definitely will arise.” (Head of Shari’a Dept., Case III)

8.6 Scarcity of Shari’a Scholars and the Danger of Shari’a Concentration

The limited supply of qualified Shari’a scholars has been identified in literature as “one of the foremost challenges faced by the Islamic finance industry” (Farook and Farook, 2011, p.1). As a result, Shari’a compliance has become highly concentrated in the hands of a few to the extent that the top 50 Shari’a scholars represent more than 70% of board positions across IFIs (Wright, 2006). Perhaps Unal (2011) conducted the most comprehensive study on this subject. He revealed an astonishing fact that the top Shari’a scholars occupy a number of positions up to the extent that two Shari’a scholars have representations on eighty-five institutions each. If this is coupled with their positions in standard setting bodies, unions, governments etc., the top 3 Shari’a scholars occupy 101, 95 and 86 positions respectively. This concentration of Shari’a scholarship in the hands of a few boils down to the issue of time management and paying attention to each and every Shari’a aspect of their respective institutions. Considering four meetings each year per institution, the top Shari’a scholar, Abu Ghuddah- having 101 positions in total (Unal, 2011), is supposed to attend 404 meetings in a year which is absolutely unrealistic given the fact that each meetings

takes a day in addition to travel timings and that there are around 300 working days in a year.

Though literature associated the concentration of Shari'a scholarship mainly focuses on the shortage of Shari'a scholars in the market (Farook and Farook, 2011, Wright, 2006), this study identifies varied aspects of this problem. Firstly, it reveals that institutions use the shortage of Shari'a scholars as an excuse to limit their representation on their institutions (See Section 6.2.10) which makes it easy for them to avoid close Shari'a supervision. It increased the chances for managers to easily package the products of their choice in Shari'a and sell them to clients who have blind trust on those providing the Shari'a packaging. Secondly, IFIs want to retain Shari'a scholars with high-market-stature and social acceptability which increases their legitimacy and thereby market share. Therefore, most IFIs are keen to have those few famous names on their Shari'a boards leading to the increased concentration of Shari'a scholarship into the hands of a few. However, a long-term risk- the general perception that Islamic banks use prominent Shari'a scholars for Shari'a window dressing- is also potentially associated with Shari'a concentration as quoted from an Islamic banker by Wright (2006),

"If the same names keep coming up, it starts to look like window dressing".

One other reason for Shari'a concentration is the need for international acceptability and avoiding cross-border Shari'a risk- faced when IFIs operate in different countries with different schools of thought (Mudharib). For example, Malaysian Islamic financial products are often not acceptable in the Middle East because of the relatively lenient school of thought (Shafi'i) followed by Malaysian Muslims. Therefore, IFIs with cross-border operations employ the renowned Shari'a scholars from their target markets as Wright (2006) quoted a Malaysian Islamic banker,

"I'll have a guy from Saudi on my committee, a guy from Bahrain if I want to get a product internationally respected; you know these are the names you need to have".

Consequently, managers of IFIs receive two fold benefits from Shari'a concentration; i) greater legitimacy and ii) loose Shari'a supervision.

8.7 Capacity Gap

It has often been mentioned in extant literature that Shari'a scholars lack expertise in the banking sector (Farook and Farook, 2011, Karim and Archer, 2007, El Tiby, 2011, Grais and Pellegrini, 2006b, Grais and Pellegrini, 2006a, Ghoul, 2008) which makes it easy for bankers to get Shari'a certification from jurists by reengineering the complex

financial products in a way that seems Shari'a compliant (El-Gamal, 2005, El-Gamal, 2006). Karim and Archer (2007) asserted that in many cases Islamic banks did not select Shari'a scholars based on their knowledge and expertise in the areas of banking and Shari'a but exclusively on their market reputation. Bankers receive two kinds of benefits from such Shari'a scholars. Firstly, they capitalize their reputation and the associated blind trust of the stakeholders to enhance their legitimacy. Secondly, bankers can easily avoid Shari'a scholars' strict supervision because such Shari'a scholars are not experts in the complex intricacies of financial products the process of reengineering. Farook and Farook (2011) quite agree with (El-Gamal, 2006) by arguing that Shari'a scholars without formal banking education issue verdicts that are contrary to Shari'a principles. This is probably the reason some bankers claim they only changed the wordings of their proposed structures in order to clear Shari'a compliance checks (Wright, 2006) because Shari'a scholars that granted the Shari'a clearance perhaps did not understand the hidden structures.

This study agrees with the existing literature on the subject that Shari'a scholars' expertise is not sound in the areas of banking and finance (See Section 5.2.9 and 5.2.10). However, there are a number of dimensions to this problem addressed in this research. Firstly, managers though benefit from Shari'a scholars' weak understanding of complex financial products by doing misrepresentation, nevertheless they also feel it is a potential problem for them because Shari'a scholars take a lot of time to approve the structures and question self-explanatory things. It is because of Shari'a scholars' shallow knowledge in the banking sector that they sometimes reject Shari'a compliant proposals. This study also identifies another interesting dimension of capacity gap, which has not been addressed in the existing literature. It claims that the confusions and conflicts also arise from managers' shallow knowledge of the Shari'a issues. Thus, they develop proposals according to their own understanding of the underlying Shari'a principles, which are rejected when subjected to a full scrutiny of Shari'a scholars. Yet another aspect of the capacity gap is the language. Shari'a scholars are fluent in Arabic but weak in English and the reverse is true for most managers. This becomes a significant barrier considering the fact the banking business is normally done in English.

8.8 Form-over-substance Approach

IFIs are often blamed by adhering to the debt-like medieval contract forms rather the Shari'a objectives. They use these contract forms in such ways as to replicate conventional banking products with some additional steps and costs (Chong and Liu, 2009). Islamic financial products are comparatively costlier than their conventional counterparts (Arnold, 2009) "partly because of relative inefficiency, and partly to cover otherwise unnecessary jurist and lawyer fees" (El-Gamal, 2006, p.1). Some researchers openly criticise Islamic banking for their form-over-substance oriented approach

calling it as a rather expensive copy of conventional banking. Perhaps the most vocal opponent of Islamic banking in this regard is El-Gamal who has written an article and a book on this topic (El-Gamal, 2006, El-Gamal, 2005). Muslims are often willing to pay a premium for these products if they are endorsed by Shari'a scholars (Lee and Ullah, 2011, Gerrard and Cunningham, 1997). El-Gamal claims that Shari'a arbitrage takes place when SB approved Islamic banking products are sold at a premium to Muslims, who are willing to pay a premium, in a captive market allowing Islamic banks to stay profitable despite additional legal and juristic costs (El-Gamal, 2005). This supports our findings that customers, especially, depositors have a blind trust in Shari'a scholars.

El-Gamal's main assertion is that the current form of Islamic banking does not serve but rather violates the Islamic spirit because they only represent the forms of symbolic Islamic contracts. It adds inefficiencies to transactions and thereby increases costs. He further argues that the form-over-substance approach of Islamic banks and some of their assets-based products expose the industry to potential abuse. Thus, it accrues potential religious and worldly harm rather than any benefit. He suggests that the industry should be grounded in Islamic spirit in order to develop and deliver intrinsic benefits (El-Gamal, 2005). He even suggests the removal of the word "Islamic" from Islamic finance in order to open it up for other communities and prevent the exploitation of the captive market (El-Gamal, 2006). Referring to Martin Luther's speech and a subsequent question by a cobbler, El-Gamal (2006, p.1), strongly asserts that Islamic banks must preserve the Islamic spirit by being efficient and fairly priced rather than costly by adding some unnecessary operational steps and purchasing an Islamic tag from Shari'a scholars. However, some authors argue that people call Islamic finance as a "sham" because they do not find it any different from conventional banking (Agha, 2012). Further arguing, the same author asserts that "some of this criticism is unfair and due to a lack of understanding of the difference in the actual risk profiles between the two (e.g. in an Islamic Ijarah project/property finance transaction, the financier assumes the risk of loss of the asset, which is remarkably different from a conventional mortgage where the mortgagee (bank), as a lender rather than an owner, does not assume such risk of loss). However, in other products such criticism is warranted." However, a Shari'a scholar from one of the case who went through all the analysis after it was completed largely agreed that Islamic banks minimize the difference between Islamic and conventional products, especially in dealing with depositors.

"Sharia Boards should protect the depositors' rights, which are in the Islamic banks' management's hands. Simply the Islamic bank is giving a rate on deposit that revolves around the market prevailing rate and not based on the business yield." (Head of Shari'a Dept. Case III)

Though one may argue that El-Gamal is overly critical of Islamic banks but his claims and assertions significantly coincide with the findings of this study. After the core phenomenon is established, each of the two party resorts to their overt and covert strategies to achieve their objectives. The balance of these strategies in the presence of the contextual factors and intervening conditions then determines the resulting Shari'a compliance levels. This study suggests that the present form of Islamic banking is still far from the Shari'a objectives (deep Shari'a compliance) fluctuating between superficial and minimum Shari'a compliance. El-Gamal (2006, p.2) calls this superficial Shari'a compliance as "form-above-substance" approach. In his first chapter El-Gamal (2006) illustrates how easily Islamic bankers get approval from Shari'a scholars on components of their developed structures and reengineer them so as to make the composite a virtually conventional banking product with exactly the same returns. El-Gamal (2006, p.87) graphically illustrates the reengineering process bankers adopt to manufacture a forward contract (prohibited by many jurists) from the permitted structure of *Salam*. He further explains that the only thing Shari'a scholars add to the structure is a bunch of unnecessary contracts that increase the transaction costs and decrease efficiency. In fact, the many complicated steps used in synthesizing the forward contract from *Salam* are taken to satisfy the Shari'a scholars' demands who would otherwise not approve a simpler and more efficient conventional forward contract.

The central phenomenon in this study pretty much supports El-Gamal's assertions. For example it reveals that Islamic banks' managers intelligently manufacture conventional financial structures in such a way as to make it easy for them to get a Shari'a packaging from the jurists. In doing so, managers are willing to introduce additional steps or documentations into the structure so as to meet the scholars' objections. However, their main concern is to make the structure as similar to conventional products as possible in order to stay competitive and meet regulatory requirements.

However, the literature is silent on how Shari'a scholars struggle to incorporate Shari'a objectives into the core of newly developed products and existing structures. The central phenomenon of this study highlights this aspect in detail. What happens is that Shari'a scholars try to embed Shari'a objectives in the banking products and they do succeed in some instances. Still in most cases Shari'a scholars fail to package Shari'a objectives in banking products but rather help managers in preparing Shari'a packaging for conventional products. This is because the proposals are initiated by managers who start it essentially from a conventional product and ask Shari'a scholars to find their Islamic alternatives. Shari'a scholars then rush to either find a Shari'a compliant alternative or search for juristic ruses to make the proposed structures appear, at least mechanically, Shari'a compliant. Conversely, if the proposals are to be initiated by Shari'a scholars, would be grounded in Shari'a objectives. Those proposals

are then forwarded to managers to find their banking alternatives. In that way, the Shari'a objectives would become the core of products and Islamic banking would come closer to deeper Shari'a compliant. Unfortunately, this is not what is ultimately happening in Islamic banking.

8.9 The Gap between Theory and Practice

A number of books have been written on the idea of Islamic banking and finance. Most of these books, especially the ones written by Shari'a scholars working in this industry, start with an offensive strategy attacking the drawbacks of the conventional banking system and propagating the benefits of an Islamic alternative (Ayub, 2007, Beekun, 1997, Chapra, 1985, Chapra, 2000, Haniffa, 2001, Lahsasna, 2010, Usmani, 1998, Usmani, 2002a, Usmani, 2002b, Usmani, 2009a). For example one author who is Shari'a advisor and SSB member of one of the leading Islamic banks in Pakistan writes in the very preface of his book that:

“The world economic system, that is based on interest, has resulted in concentrating the wealth in the hands of selected few creating monopolies and widening the gap between the rich and the poor. In contrast, Islam encourages circulation of wealth and regards its role as important to an economy as the flow of blood to our human body...economic justice requires a viable economic system supported by an efficient banking system. Interest-based banking has proved to be inefficient as it fails to equitably distribute wealth which is necessary for the well-being of humankind. On the other hand, Islamic banking is efficient and ensures equitable distribution of wealth thus laying foundation for an inflation-free economy and socially responsible banking (Usmani, 2002a).

These authors primarily argue that Islamic banks are distinguished, and probably clean from the above-mentioned drawbacks associated with conventional banking. They claim that Islamic banks' operations are free from interest and based on risk-sharing instruments, Musharakah and Mudharabah thereby leading to more equitable distribution of wealth. This claim, however, is far from reality in the practices of Islamic banks. The percentage of Islamic banks' investments in Musharakah and Mudharabah instruments has not yet reached double digits globally. The bulk of the Islamic banks' transactions is carried out in debt-like-instruments e.g. Murabahah, Salam, Istisna, etc. Chong and Liu (2009) conducted an empirical study comparing Islamic and conventional banks in Malaysia. They found that only an insignificant portion of Islamic banks' investments was actually PLS-based and that their deposits were not free from interest. Dar and Presley (2000b, p.1) claim that “almost all theoretical models of Islamic banking are either based on Mudarabah or Musharakah or both, but to-date actual practice of Islamic banking is far from these models. Nearly all Islamic banks,

investment companies, and investment funds offer trade and project finance on mark-up commissioned manufacturing, or on leasing bases. PLS features are marginally in the practice of Islamic banking and finance". This gap between theory and practice was probably one of the key reasons that some renowned external Shari'a scholars issued a fatwa against the industry. It claimed that:

"the scholarly architects of existing Islamic banking, and the people associated with existing Islamic banking, accept the fact that the foundations of Islamic banking are Shirka [partnership] and Mudharabah, whereas existing Murabahah and Ijarah [instruments] are merely stratagems that were conditionally declared permissible and feasible (qabil-i-amal) for a limited time and interim period. Existing Murabahah and Ijarah are not the permanent foundations of Islamic banking in general (bil ittifaq). In fact, on the basis of being interest-based stratagems, making them permanent foundations is impermissible and against Shari'a" (Ghias, 2011, p.5).

El-Gamal (2006) also strongly rebukes the existing form of Islamic banking for these reasons and strongly criticises Shari'a scholars for being merely profit-maximizing tools of capitalist bankers. Some other scholars also criticise the industry similar reasons. For example (Rammal, 2006, p.204) claims that "IFIs are essentially providing interest-bearing products under the guise of profits and markups and are justifying these with the help of SSBs". This is very much in line with the findings of this study, which suggests that Shari'a scholars certify Islamic banks' products even if they are superficially Shari'a-compliant. This superficial Shari'a compliance in the form of Murabahah and Ijarah was termed as "deception" and "stratagem" by a group of external Shari'a scholars in their collective fatwa against the current practices of Islamic banks (Ghias, 2011). When faced with extreme criticism from external Shari'a scholars through this collective fatwa, the chairperson of AAOIFI's Shari'a board, who was criticised in this fatwa for supporting Islamic banking, personally admitted that only PLS-based instruments were desirable Islamic banking instruments. He also expressed his discomfort with Islamic banks' focus on debt-like instruments (Usmani, 2009a).

Furthermore, Usmani (2002a) claims in the introduction of the book that everything in the universe belongs to Allah and that Muslims are expected to use Allah's property for the welfare of human beings as accumulation of wealth is not ultimate goal of a Muslim's life. This interesting claim, which has been used to defend the social supremacy of Islamic banking represents important elements of Shari'a objectives i.e. the unity principle, philanthropy, being ethical, social welfare and fairness and justice (See Section 5.2.15.2.2, 5.2.3, 5.2.4 and 5.2.5). Our analysis, however, reveals that Shari'a objectives are rarely considered in Islamic banking practices and that Shari'a

compliance oscillates between minimum and superficial levels. This study claims that managers do not give priority to Shari'a objectives over shareholders' wealth maximization and that Shari'a scholars do not push them hard in this area. Managers not only search for convenient fatwas but also distorts after they obtain it. (Dar, 2011, p.11) noted that "whilst procurement of fatwas on the structures of Islamic financial products is a relatively easier job for the institutions, the real tedious task is to ensure that the institutions remain Shari'a compliant in their operations and execution of contracts". In other words, managers are always in a struggle to first obtain a lenient fatwa then further reposition it to match their desired products.

8.10 The row between External and Internal Shari'a Scholars

The criticism of external Shari'a scholars is a strong external pressure not only on internal Shari'a scholars but also on managers. Though, external Shari'a scholars had been feeling discomfort with the Islamic banking system for a long time, the rift emerged when a fatwa against Islamic banking in Pakistan appeared in a newspaper (Jang, 2008). A detailed version of this fatwa was then published in the form of an article (Jāmi'a-Ulūm-Islāmiyya-Banūrī-Town, 2008) which touched almost all aspects of Islamic banking. The fatwa created rumours and suspicions regarding the industry especially because it was signed by some renowned Shari'a scholars in the country including Mawlana Salimullah Khan, one of the living teachers of Mufti Taqi Usmani—called the architect of Islamic banking in this fatwa. Briefly, the fatwa declared the existing Islamic banking system as against Shari'a and even worse than conventional banking. It claimed that Islamic bankers had not only deviated largely from Islamic finance theory but also used Islamic contract forms inappropriately for achieving their business objectives. It also claimed that the proponents of Islamic banking e.g. Mufti Taqi Usmani, intellectuals in academia and even some bankers themselves had expressed their discomfort with the existing system. It strongly criticised the widespread use of Murabahah and Ijarah— the debt-like instruments— in Islamic banking by saying that these instruments were "merely stratagems" (Ghias, 2011, p.9). It even strongly urged the internal Shari'a scholars to withdraw their support from the system and acknowledge their mistakes. Agha (2012) also endorses this argument by saying that "Shari'a scholars have largely done well in handling the inexorable demands placed on them and heavy pressure to yield to structures that are cleverly crafted to appear compliant but lack substantive compliance."

This fatwa shattered stakeholders' confidence not only in Pakistan but around the world. People started to approach the internal Shari'a scholars asking for clarification on this issue. Therefore, the internal Shari'a scholars, especially those directly criticised in this fatwa, had to respond. Mufti Taqi Usmani even came up with a couple of books on the issue defending the Islamic banking industry (Usmani, 2009a, Usmani,

2009b). He clarified that his presence on the Shari'a boards of some Islamic banks was only advisory and did not represent his ownership interest in those entities. Usmani disagreed with the collective fatwa on the grounds that he was not consulted with before issuing the fatwa. Furthermore, he claims that "ninety per cent of the objections [raised in the collective fatwa] did not represent the reality on the ground i.e. the subject of objection did not exist [translated from Urdu by the author of this research]" (Usmani, 2009b, p.33). It was because, Usmani claims, the issuers of the fatwa did not investigate the practices of Islamic banking thoroughly before issuing the fatwa. Though most part of the book tries to defend the current system, it agrees with some of the key objections e.g. the widespread use of Murabahah and Ijarah almost non-existence of pure PLS mechanisms in Islamic banking. Though, Usmani admitted that the existing practices of Islamic banks could not achieve the objectives of an Islamic economic system, he asserted that the minimum Shari'a compliance was a success in itself. He states that "the existing practices are permissible [in Shari'a] but this is neither our final destination nor enough for reaping the benefits of an Islamic economic system [translated by the author]" (Usmani, 2009b, p.36).

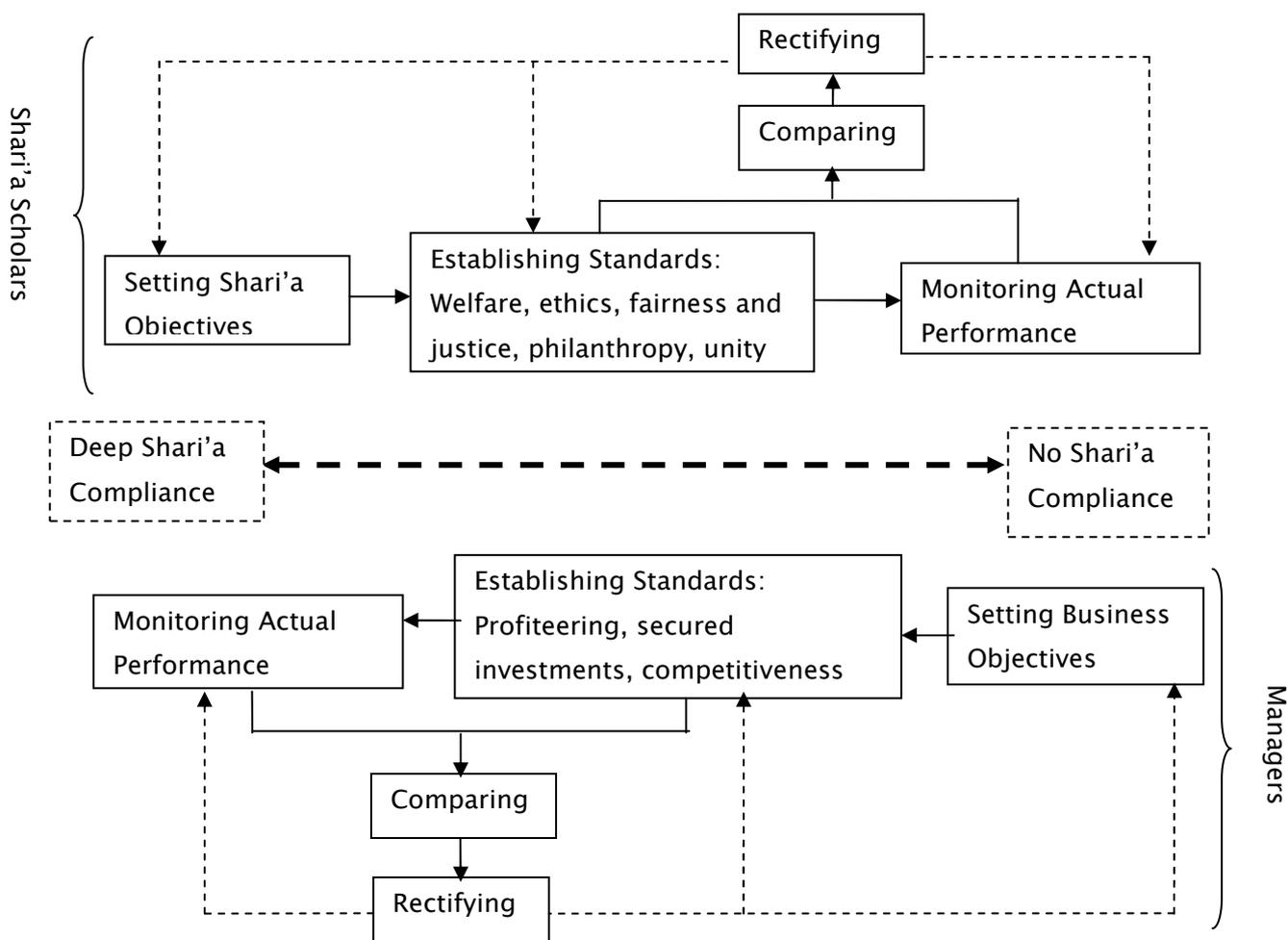
These responding fatwas helped to calm down the situation but did not completely override the objections. Nonetheless, this row proved to be a positive pressure on managers and Shari'a scholars to enhance Shari'a compliance levels in their respective institutions. It was after this row that Islamic bankers and internal Shari'a scholars recognized external Shari'a scholars as the strongest external force. Consequently, efforts are now made in the Islamic banking sector to move its practices from superficial Shari'a compliance to at least minimum or even reasonable levels on the continuum of 'Fatwa Repositioning'.

8.11 Positioning the Theory in Organization Control Literature

An organization is the "collective bending of individual wills to a common purpose" (Clegg et al., 2006, p.2). Thus, it operates to achieve short-term and long-term objectives which are used as yardsticks for measuring organizational performance. There is a need to have solid control measures to keep the organization progressing towards its goals. Mullins (2010) says that an integral part of individual and organizational relationship is the process of maintaining order and control for achieving organizational objectives. The author further specifies five stages in organizational control namely i) setting objectives at the planning stage, ii) establishing standards for performance, iii) monitoring actual performance, iv) comparing the actual performance with standards and measuring the deviations and finally v) rectifying the deviations by taking corrective actions. This process is straightforward with unipolar organizations i.e. organizations with a single set of coherent and converging objectives e.g. shareholders' wealth maximization.

Furthermore, these objectives are assigned to managers whose interests are in turn aligned with shareholders' interests (Fama, 1980, Jensen and Meckling, 1976). However, the phenomenon becomes much more complicated in IFIs with two separate, often conflicting, sets of objectives i.e. business and Shari'a objectives, assigned to two distinct authorities within the institutions– managers and Shari'a scholars– with diverging backgrounds. Thus, not only the two objectives are restrictive of each other but also the two responsible parties differ in their backgrounds. The process of organizational control in the context of IFIs has been given in Figure 8.1 below. The figure has been adapted from Mullins (2010, p.668) which explains the core phenomenon identified in this study, Fatwa Repositioning, quite well. As illustrated by the figure, managers and Shari'a scholars initially come up with their own specific objectives they want to achieve through IFIs. This is followed by establishing standards for measuring performance. Interestingly, the objectives of the two parties and their respective standards are conflicting e.g. one may need to sacrifice profits for being ethical. Each party then uses the same IFI for achieving these conflicting objectives and monitors actual performance. When the actual performance is found to be deviating from the standards and objectives, each party then makes necessary changes/amendments in the standards or performance monitoring tools or even in the objectives. For example, when found unrealistic, Shari'a scholars may loosen their standards on philanthropic activities or welfare etc. focusing on essentials only e.g. not investing in alcohol. Similarly, managers may forgo some of their lucrative investment options in order to comply with unavoidable Shari'a standards. Each party can also tighten the monitoring process in order to stop the other party from abuse. For example, it is normally the responsibility of branch managers to spot and avail investment opportunities and forward the cases to the Shari'a scholars for approval. However, when Shari'a scholars get suspicious of the activities of managers, they visit clients themselves and collect information, which sometimes leads to the nullification of transactions.

Figure 8.1: Organizational Controls Exercised by Managers and Shari’a Scholars



Source: Adapted from Mullins (2010, p.668)

The result of these control and counter-control measures by the two parties is that Shari’a compliance is negotiated with silent voices and a constant struggle continue on both sides to subdue the other and achieve their respective objectives to the maximum possible extent.

8.11.1 Who is ‘in Control’ and who is ‘not in Control’?

It would be interesting here to investigate who is in control and who is not. Streatfield (2001) figuratively illustrates what “in control” and “not in control” means. He claims that someone is in control in an organization when i) action is intended/selected/designed, ii) it is taken in relation to a known/predictable/certain/stable/regular outcome, iii) it involves detecting and correcting deviations and iv) produces conformity or consensus. If not so, then one is not in control. Table 8.1 illustrates this phenomenon.

Table 8.1: The Paradox of Control in first line management

"In control"	"Not in Control"
<i>Management Action is:</i> Intended/selected/designed	<i>Management Action is:</i> Evoked/provoked response
<i>Taken in relation to:</i> Known Predictable/certain Stable Regular	<i>Taken in relation to:</i> Unknown Unpredictable/uncertain Unstable Irregular
<i>Involving:</i> Detecting/correcting deviations	<i>Involving:</i> Amplifying deviations
<i>Producing:</i> Conformity/consensus	<i>Producing:</i> Diversity/conflict

Source: Streatfield (2001, p.24)

If the controlling powers of managers and Shari'a scholars are measured on these yardsticks, one may conclude that managers have more control on the process of Shari'a compliance. For example, every new product/proposal is selected/designed by managers while Shari'a scholars' response is mostly evoked/provoked when the proposal is submitted to them. Thus, managers know from the very start what they want to achieve from the new product/proposal. Similarly, managers take action in relation to known/predictable outcomes while Shari'a scholars are not much aware of the exact consequences especially in the case of new products. Furthermore, managers correct deviations, sometimes by just changing the terminology to Arabic, in the proposal after Shari'a scholars raise objections. On the other hand, Shari'a scholars detect and amplify those deviations. The ultimate objective of managers is to seek conformity of the product/proposal with what they initially developed while Shari'a scholars introduce some changes and diversity into them. Further literature on managerial control also supports these claims. Shari'a scholars' position in IFIs is supervisory and they have legal control/power just like BoD but, as "most organization theorists believe that the BoD.....are dominated by management" (Mizruchi, 1983, p.426), Shari'a scholars are also controlled by managers. In line with (Pfeffer, 1972, p.426) who claimed that BoD is a "management tool in running a business", SSB can be yet another and more useful tool for management and even BoD- some researchers define management as the BoD and senior management (Berle and Means, 1968)- for achieving their business objectives through Shari'a tagging. Management sees SSB as a

mediating tool between the bank and society. Thus, despite Shari'a scholars' legitimate power and authority, the effective control rests with management.

8.11.2 Type of Power and Controls Used by Shari'a Scholars and Managers

Buchanan and Huczynski (2010, p.694) define power as "the capacity of individuals to overcome resistance on the part of others, to exert their will, and to produce results consistent with their interests and objectives". They further claim that the use of tactics and techniques for exercising power is actually politics. Members of an organization possess/exercise different types of powers. Etzioni (1975) divides organizational power into three broad categories namely coercive, remunerative and normative. While coercive power relies on threats in order to control the behaviour of the other party, remunerative power involves material rewards e.g. salaries etc. Normative power depends on symbolic rewards e.g. prestige. Looking back at the action/interaction strategies adopted by Shari'a scholars and managers in order to cope with the phenomenon of Fatwa Repositioning, one can deduce that all the three powers are possessed and exercised mainly by managers. For example, when managers are not happy with certain decisions taken by Shari'a scholars, they use coercion to threaten their jobs, promotions etc. Coercive powers can also be used by Shari'a scholars to some extent when they threaten to report managers' non-cooperation to the shareholders or regulators. However, Shari'a scholars face coercion more frequently than they exercise it themselves. Similarly, it is the BoD/managers that decide Shari'a scholars' remuneration and other benefits. Thus, managers can use it as leverage to somewhat control the process or Shari'a compliance. Shari'a scholars may yield to this power because of their self-interest and thereby compromise on some aspects of Shari'a objectives. On the other extreme, Shari'a scholars possess significant normative powers because of their social status and integrity. This social prestige is a significant card Shari'a scholars can play to control the process of Shari'a compliance.

A further detailed classification of power categorizes it into five categories i.e. reward, coercive, referent, legitimate and expert (Buchanan and Huczynski, 2010, p.696, Mullins, 2010, p.678). The first two of these powers are possessed primarily by managers while the last three are mainly possessed by Shari'a scholars in the case of Shari'a compliance. Thus, Shari'a scholars possess substantial powers but they need to exercise them properly and to the full extent. It was mentioned by one respondent (manager) that Shari'a scholars lack the ability to exercise their powers.

"The thing is that the holder of the power should have the capabilities to take the decisions and take them on time and then implement them. But this remains an issue here. Because the Shari'a advisors, here, are qualified from religious schools and they don't have that aptitude for

decision-making... this, I think, is an issue.” ((Head of Islamic Banking, Case II)

Thus, one can conclude that Shari’a scholars have sufficient powers when it comes to Shari’a compliance but managers are more political– they use the tactics to use their powers and overcome Shari’a scholars (Buchanan and Huczynski, 2010). Consequently, the level of Shari’a compliance oscillates between superficial and minimum levels which are closer to business objectives, pursued by managers, on the continuum of ‘Fatwa Repositioning’.

8.12 Summary

The theory developed in this study draws considerable support from the existing literature in the field of Islamic banking and finance. It is evident that the presence of Shari’a scholars on board with Islamic banks is mainly for legitimacy purposes and not for actually seeking their expert advice and opinions. Managers often struggle for a lenient fatwa and try to escape strict Shari’a supervision and audit. Shari’a scholars’ self-interest could motivate Shari’a scholars at times to exhibit that leniency to managers. The present Islamic banking industry mostly relies on medieval contract forms rather than their essence and that is why it is being criticised by not only intellectuals but also external Shari’a scholars. Organizational control literature also fits into the phenomenon of fatwa repositioning. It reveals that though Shari’a scholars have referent and legal powers, managers are more political in their approach and consequently, the process of Shari’a compliance is controlled by managers.

Chapter 9: Summary, Conclusions, Recommendations and Contributions

9.1 Introduction

This is the last chapter of the thesis which summarizes the key findings of the research, concludes the key points, gives recommendations and presents its theoretical and methodological contributions. The next section presents a summary of the key findings followed by a section on conclusions and recommendations. Theoretical contributions are then presented in section 9.4 which outlines the main contributions of the research to existing literature in Islamic finance in particular and extant literature in the area of organizational control in general. The methodological contributions are presented in section 9.5. The last section gives suggestions and recommendations for further research.

9.2 Summary of the Key Findings

When one hears about IFIs, it comes to mind that compliance with Shari'a principles is the foremost important thing 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 level of Shari'a compliance is constantly positioned and repositioned depending on the causal and intervening conditions and contextual factors. The core category in this research i.e. fatwa repositioning refers to this phenomenon. It all starts with two conflicting objectives i.e. business and Shari'a objectives assigned to two different parties within IFIs. This makes up the necessary conditions to ignite a conflicting struggle for positioning Shari'a compliance. Shari'a scholars would ideally want to achieve the deepest levels of Shari'a compliance in the absence of any opposing force (posed by managers) while managers would strive for maximizing business interests in the absence of any restrictions (imposed by Shari'a scholars). However, neither of these positions is possible in practice and each party has to move along the continuum of fatwa repositioning to a point where they reach an initial consensus. This point is somewhere between minimum and superficial Shari'a compliance. However, this is not the beginning of the end but rather the end of the beginning of a hidden struggle for Shari'a compliance. It is here that the broader contextual factors and intervening conditions 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, an obvious existence of depositors' and employees' expectations, pressure from external Shari'a scholars, strict regulatory controls and, most importantly,

sensitivity to eternal reward/punishment pushes Shari'a scholars to increase their struggle for repositioning Shari'a compliance from superficial to minimum and even reasonable levels. These forces also induce managers to some extent to move towards higher Shari'a compliance levels along the continuum. However, the most important intervening variable which compels managers to cooperate with Shari'a scholars is their need for legitimacy and avoiding Shari'a reputation risk. Managers cooperate with Shari'a scholars at the beginning because they need legitimacy. They continue to cooperate with Shari'a scholars after the initial legitimacy is achieved because of the banks' exposure to Shari'a reputation risk in case of non-cooperation. On the other hand, the intervening variable that might force Shari'a scholars to compromise on Shari'a objectives is their self-interest drive which is also a key motivator for managers to move Shari'a compliance towards business objectives along the continuum.

In order to reposition Shari'a compliance towards their favourable levels along the continuum, Shari'a scholars and managers use a number of strategies to control each other. For example, managers can use avoidance, controlling and even coercive strategies to keep Shari'a compliance on a level favourable to their business objectives. When managers use these strategies frequently, Shari'a scholars may either resign from the banks or compromise on Shari'a objectives. They also seek hierarchical backing or become confrontational when facing pressure from managers that they do not want to accommodate.

Depending upon the combination of contextual factors, intervening conditions and the action/interactional strategies, the consequent Shari'a compliance could either be superficial, minimum, reasonable or deep. Though it seems somewhat unrealistic to achieve deep Shari'a compliance through the current Islamic banking system, it is even impossible to establish an IFI with no Shari'a compliance. In practice, Shari'a compliance moves back and forth between superficial and minimum levels rarely reaching the reasonable level.

9.3 Conclusions and Recommendations:

9.3.1 A Complete Disconnect between Shari'a and Business Objectives

At present, there seems to be a complete 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. They are not much interested in Shari'a compliance but still need a Shari'a certification from renowned Shari'a scholars in order to attach the Islamic legitimacy to their products. On the other hand, Shari'a scholars predominantly join Islamic banks with the motivation to serve a

religious cause. Nearly all 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 struggle is to make Shari'a as 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 on what Islamic banks should essentially stand for.

This disconnect is the basic problem from which many other problems stem and grow. For example managers would not have to shop for a fatwa and Shari'a scholars would not have to manufacture it in the absence of this disconnect. Similarly, there would have been no need for coercion, avoidance, controlling, confrontation and resignations for either of the parties. In order to avoid this conflicting situation, there should be strict regulatory controls to make sure bankers do not exploit the essence of Shari'a compliance for their material gains and that Shari'a scholars do not manufacture fatwas that suit bankers' needs. The purpose of establishing IFIs should not be the achievement of business objectives through Shari'a compliance but rather the achievement of Shari'a objectives through a just and equitable business proposition.

9.3.2 Normalization of the Debt-like Instruments and IFIs' Convergence to Conventional System

Given the fact that the managers' focus is on business objectives, they want Shari'a scholars to produce an Islamic alternative for each and every conventional banking product. Shari'a scholars struggle to come up with such alternatives because they argue that Islam has a solution/alternative for everything. In some cases the alternatives are quite in line with Shari'a objectives e.g. the Musharakah and Mudharabah based investment mechanisms. However, such instruments are not managers' favourites because of their inherent risk. Therefore, managers always force Shari'a scholars to endorse the debt-like Islamic contracts, Murabahah, Ijarah Salam, Tawarruq, etc., which produce the same or similar results as conventional loans. Managers can further reengineer such instruments to manufacture the products of their choice and make them as similar to conventional banking products as possible.

Interestingly, most Shari'a scholars initially approved such products with the excuse of the primitive stage of the industry and with the expectations to gradually eliminate such mechanisms from IFIs' practices (Ghias, 2011). While responding to objections from external Shari'a scholars Muhammad Taqi Usmani, clearly expressed his discontent with the prevailing practices of Murabahah in Islamic banking (Usmani, 2009a). He also emphasized that Musharakah and Mudharabah were the true Islamic products that could contribute to the Shari'a objectives. However, these true Islamic products represent not more than a few percent of the bulk of Islamic banks' investments (SBP, 2009).

In fact the structures initially approved by Shari'a scholars with the expectations of gradually replacing them with other products closer to the Shari'a objectives, have become normalized within the industry. New Shari'a scholars defend such products rather than questioning them. Shari'a scholars and managers are increasingly adopting them without any feeling that they do not represent the true Islamic banking products. This trend is causing the Islamic banking industry to gradually converge to conventional practices. The new-born industry is thus fighting for its identity and uniqueness at a very early age (Agha, 2012).

Referring to the growing phenomenon of this normalization, a respondent commented in the following words after reading through the analysis.

“Any exception and excuse are becoming a norm. I don't think the secured products (Murabahah or Ijarah) application will be minimized in the future. As long as the IFI managements have been given this advantage, they will never compromise on it.” (Head of Shari'a Dept., Case III)

9.3.3 Seeking Historical Evidence Rather Than Rational Judgment

Shari'a has been subject to interpretations (Ijtihad) by Shari'a experts for the past fourteen hundred years (Al-Allaf, 2003). The interpretations are meant to find scholarly solutions for emerging issues not directly addressed in the Quran and prophetic traditions. These interpretations or newly issued fatwas carry the limitations of the times they were interpreted in. However, it is a tradition in Shari'a scholarship that new fatwas are issued in line with those issued historically by previous Shari'a scholars even if they are contradictory to one's own understanding and rationale.

Islamic banking has ultimately adopted this approach of finding historical evidence for new emerging issues. Shari'a scholars try to bring Islamic banking in line with those historical interpretations and fatwas that do not represent the practices of today. Consequently, Islamic banking has become a nexus of costly and inefficient contracts (El-Gamal, 2006). More importantly, this approach normalizes the fatwas issues by Shari'a scholars during the early ages of modern Islamic banking with the intention to gradually eliminate them. New Shari'a scholars feel safe to endorse these products with little or no feeling of guilt or wrong-doing. The ultimate result of disconnect between Shari'a and business objectives, the unconscious normalization and convergence, and the tendency of Shari'a scholars to issue new fatwas in line with historical evidence have led Islamic banking toward superficial Shari'a compliance. This means that contracts are Shari'a compliant at least in their form because they have historical support but they do not realize the essence of the Shari'a

principles/objectives. Thus, Islamic banking has become a bundle of rules which under-include the principles.

In order to avoid this problem, Shari'a scholarship should be liberated from the tradition of historical evidence. Every emerging issue should be researched from scratch and positioned in the two main sources of Fiqh i.e. Quran and Sunnah. Shari'a scholars and intellectuals should be allowed to critically analyse the previous fatwas and reject them if they do not fit current circumstances or contradict rationale.

9.3.4 Managers-Initiated Products

The current move in Islamic banking is management-triggered, meaning that all banking practices are initiated/proposed/developed by managers whose ultimate goal is to make them as similar to conventional banking as possible. Such proposals are then forwarded to Shari'a scholars who make the necessary additions/subtractions in the proposals to make them appear Shari'a compliant and return them back to managers with Shari'a certification attached to them. Referring to this phenomenon, the chairman of AAOIFI's Shari'a board was quoted as saying,

"There are two approaches; one is that whatever is available in conventional financial institutions should be available in Islamic institutions as well, with certain modifications. I do not adhere to that approach. The Islamic banking system has its own philosophy, and because of it we cannot bring about an alternative for all the products that are being used" (Wright, 2006).

Interestingly, almost all such proposals presented to Shari'a scholars for approval finally get through with some modifications which might at times be only changing the terminology from English to Arabic (Wright, 2006). As such additions/subtractions often add inefficiencies to the banking practices (El-Gamal, 2006, El-Gamal, 2005), managers even try to minimize their effects during the implementation phase. Consequently, the Islamic banking practices are essentially established on conventional banking grounds and Shari'a is often used as packaging. This is perhaps the reason AAOIFI Shari'a board's chairman expressed his discontentment with this approach in the above quotation. However, this is the prevailing norm in the Islamic banking industry. This study not only confirms the widespread existence of the phenomenon (See Section 5.2.8) but also reveals it as a key reason of why Islamic banking is far from deep Shari'a compliance.

In order to overcome this problem, this study proposes the reverse engineering of the current prevailing practices i.e. banking practices be initiated by Shari'a scholars in consultation with academia and professionals in the field of finance and banking. Such

practices would ultimately be grounded in the essence of Shari'a. These are then forwarded to bankers to find banking alternatives for them. It would change the extant banking practices significantly and give birth to a new era of banking truly grounded in Islamic principles encompassing deeper Shari'a compliance. Given the fact that Shari'a may not have solutions for all prevailing banking practices, Islamic banking would take a whole new direction and redefine banking and finance under the Shari'a umbrella. In other words, the Islamic banking industry would establish and strengthen its own unique identity. The industry would attract a whole new market of Muslim clientele who currently see no difference between Islamic and conventional banking.

9.3.5 Harmonization and Standardization

Shari'a compliance varies from country to country, institution to institution and even scholar to scholar. The country-wise variations are due to the fact that different countries adhere to different schools of thought even within the Sunni sect of Islam i.e. *Hanafi, Hanbali, Shafii, Maliki* (El-Hawary et al., 2007, Ghoul, 2008). Institution wise differences within countries are due to the group of Shari'a scholars associated with each institution. The orientation of sponsors is also a factor for the institution wise difference in Shari'a compliance across IFIs. Different Shari'a scholars have their own understanding and interpretations of Shari'a rules leading to variations across Shari'a scholars.

This lack of standardization has disadvantages. Firstly, it increases Shari'a risk especially in the case of cross-country dealings because the products approved by the Shari'a scholars of one country might not be acceptable to those of the other country. In some cases, the products of one institution are not acceptable to another institution even within the same country belonging to the same school of thought. Therefore the variations between Shari'a interpretations pose a significant Shari'a risk for Islamic banks and customers (Ghoul, 2008). Secondly, it paves way for fatwa shopping. Managers can find Shari'a scholars who have very liberal interpretations of Shari'a principles making it easy for banks to find a fatwa that meets their needs (Foster, 2009). Thirdly, it is a hurdle in creating trained HR pool for Islamic banks because employees have to learn different Shari'a interpretations when they move across different banks and countries. This also leads employees and managers to make unintentional mistakes while implementing Shari'a rulings. However, bankers and regulators insist the existence of internationally defined Shari'a standards to make the oversight easy and streamlined (Zaidi, 2008) and minimize Shari'a risk.

Zaidi (2008) claims that Shari'a scholars' stance on standardization is a bit different. Firstly, Shari'a scholars feel Shari'a standards cannot be internationally standardized due to the differences amongst different schools of thought. Secondly, it would limit

the role of *Ijtihad* (the practices of finding juristic solutions for emerging issues) which is the ultimate source of innovation in Islam. Some Shari'a scholars may also oppose the move towards standardization because it would reduce their demand thereby decreasing the earnings of the few scholars in the cartel (Wright, 2006).

This research recommends a harmonized and standardized approach to Shari'a compliance across institutions and countries in order to streamline the industry and overcome most of the criticism the Islamic finance industry faces today. Positive steps have already been taken in this regard by the establishment of AAOIFI and IFSB. These institutions have brought in jurists from different schools of thought together with academicians and practitioners to develop international standards for the industry. The standards must then be made mandatory on all IFIs which, unfortunately, is not the case presently. The advantage of this approach is that structures would become grounded in Shari'a and intellectual grounds and bankers would have to mould their banking according to the structures. It would overcome the currently prevailing practices where structures are grounded in banking and Shari'a scholars' role is to provide a Shari'a coating for them. Rather it would be the opposite i.e. bankers would have to provide banking alternatives for structures grounded in Shari'a and intellectual expertise thereby bringing the Islamic finance industry closer to the Shari'a objectives. Additionally, a standardized approach to Shari'a compliance would automatically minimize the impact of the perceived shortage problem of Shari'a scholars (Ghoul, 2008).

9.4 Theoretical Contributions

The theoretical contributions of this research are two-fold. Firstly, it adds to the body of existing literature on Islamic finance. Secondly, it contributes to current literature on organizational control in the particular context of IFIs. These contributions are discussed below.

9.4.1 Contributions to Islamic Finance Literature:

This study is the first of its kind in the area of Islamic banking. It explores the hidden scuffle for Shari'a compliance between Shari'a scholars and managers within IFIs. Though some recent studies have addressed the issue of Shari'a supervision and governance in Islamic banking (Baali, 2008, Al Sharif, 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 only one addressing this particular phenomenon empirically. Furthermore, the methodology adopted in this research i.e. GT is particularly suited for this particular

research because of the scarcity of literature in this area (as discussed in Section 4.4). Thus GT adds further uniqueness to the study.

The bulk of existing literature on Shari'a compliance mainly focuses on what Shari'a compliance is and what additional organizational mechanisms/structures should be present to make sure that an institution is Shari'a compliant. This study goes one step further investigating how the existing Shari'a compliance mechanisms work in practice. It identifies the macro contextual factors and intervening conditions that affect Shari'a compliance in practice. It also predicts the possible variations in the levels of Shari'a compliance in case the contextual factors or intervening conditions are changed.

The study claims that the process of Shari'a compliance is not straightforward but complicated and dynamic. Islamic banks bravely advertise their Islamic identity but hardly adhere to its essence. Agha (2012) rightly claims that "Islamic finance, a faith-based system of ethical finance, is growing while it continues to struggle for its identity: it is torn between the market success of emulating conventional structures and developing genuinely Islamic structures that reflect its spiritual ethos". Managers of IFIs are in a constant struggle to obtain the most lenient fatwa in order to wrap their conventional banking practices in Islamic packaging. This study also identifies the existence of a wide gap between theory and practice of Islamic banking. In order to become a sound alternative of conventional banking, IFIs must bring the theory of Islamic finance into practice.

9.4.2 Contributions of Organizational Control Literature

This research has positioned the theory within 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. There are two key players, executive managers and BoD, who struggle for control in the mainstream corporations. This research, however, claims that there are three players i.e. executive management, BoD and Shari'a scholars in this struggle for control in case of IFIs. On the one hand, BoD strives to align managers' interests with the interests of the shareholders but on the other hand, they team up with the same managers against Shari'a scholars to achieve the business objectives through Shari'a legitimization. Thus the phenomenon of organizational control is much more complicated in IFIs as compared to conventional financial institutions and other corporate bodies.

The study also argues that the effective power and control stays with executive management who marginalize Shari'a scholars in the same way as they marginalize the BoD. In fact Shari'a scholars are rather more side-lined when one looks at the BoD and

executive management as one team safeguarding business objectives and Shari'a scholars as a competing team preserving Shari'a objectives.

9.5 Methodological Contributions

This research has developed two aspects of methodological contribution. Firstly, it gives general suggestions/recommendations on the existing GT tools and their effectiveness. Secondly, the study presents specific contributions towards the GT methodology. These are discussed in turn below.

9.5.1 General Suggestions/Recommendations on Existing GT Tools

While going through the early work on GT (Glaser and Strauss, 1967), the researcher found it too descriptive which made it difficult for a fresh researcher to take specific guidance from the text and conduct an independent investigation. In contrast, the researcher felt more comfortable with a later text (Strauss and Corbin, 1990) which was more prescriptive and convenient for a new researcher. This book prescribes a number of tools and stresses that the extensive use of such tools would lead to the development of a more robust GT. Furthermore, it explains how to use different tools in different stages of the analysis. Though it appeared in the initial stages of this research that such a prescriptive book would make things easier and more structured, it became clear at later stages that some of the tools were very restrictive especially if one had to use them in the exact stages of analysis as prescribed by the authors. The text, for example, claims that the paradigm model is a necessary tool for axial coding. However, the researcher found it extremely restrictive when the paradigm model was forced into the analysis during this stage. It was not possible to analyse and explain the fourteen axial codes using the paradigm model where each code had to be analysed through causal and intervening conditions, context, strategies and consequences. Instead a liberal use of the paradigm model (as one can see in chapter 6) was found to be more creative and easy to use. Furthermore, some other tools, e.g. the flip-flop technique, were found useful at this stage. The paradigm model was actually found to be more beneficial in selective coding even though Strauss and Corbin (1990) endorse it as just one of the many tools at this stage. This study uses the paradigm model as the key analytical tool in selective coding stage. This is probably one of the reasons that the authors have refrained from a more prescriptive use of the tool in the later editions of the book (Strauss and Corbin, 1998, Corbin and Strauss, 2008).

Therefore, this study questions the usefulness of some of the prescriptive analytical tools of GT especially if one has to force them in their recommended places. It argues that a researcher should have some liberty to choose the tools and use them as deemed most appropriate in a particular situation.

9.5.2 Specific Contributions to GT Research Methodology

Individual vs. Group Work on GT Study

While deeply involved in axial and selective coding, the researcher realized having enhanced sensitivity to the hundreds of open codes already developed. The whole research context i.e. the respondents, interview locations, emotions and cases were visualized during the constant comparison process (Corbin and Strauss, 1990, Corbin and Strauss, 2008, Strauss and Corbin, 1990, Strauss and Corbin, 1998). The researcher then imagined a scenario and its potential effect on the constant comparison where the interviews had not been conducted by the researcher himself. It was concluded that much of the sensitivity and virtual engagement with the data and respondents could have been lost in that case. It would have a strong negative impact on the richness of analysis because of the disappearance of respondents' emotions (Corbin and Strauss, 2008). The engagement with data is reduced significantly even when only the transcription of interviews is not done by the researcher him/herself. In fact the transcription of only one interview, in this research, was outsourced by the researcher which brought about a substantial decrease in sensitivity. The impact was so crucial that the researcher had to re-transcribe the interview himself in order to find the missing links.

This raises questions about the possibility of doing GT research in a group where different researchers contribute to different tasks i.e. interviews, transcription, analysis, etc. This research claims that much of the actual groundedness would be lost if such an approach is adopted in GT research. It is natural that a transcriber-, who is a different person than the one conducting the interviews, would slip on some key concepts especially when the transcription is selective. Increasing groundedness would be lost when the further steps are done by yet even different individuals. Furthermore, same data have different meanings for different people leading to different stories (Strauss and Corbin, 1998). Therefore, this research concludes that GT research is essentially a long-term one-to-one relationship that strengthens with the passage of time thereby increasing sensitivity, groundedness and richness. The central category developed by a single researcher would be a much better representation of the phenomenon than the one developed by a group of researchers each engaged in different steps in the study.

However, this research proposes alternative techniques for transforming the negative impacts of group research into positive ones. If GT research has to be done in a group, the interviews must be video-recorded and transcribed word-by-word. The coders must then watch the interviews a couple of times before embarking on coding. If the data is coded, let suppose, by two different persons, they must first code all the

interviews independent from each other and then cross-compare their work, pinpoint differences and resolve them. Though these measures can increase the robustness of the research, it diminishes the benefits of team work where the task is done by a group of people in order to do it quickly.

Snapshot Visualization

It is natural in GT research that the three analytical steps i.e. open, axial and selective coding continue simultaneously where the researcher goes back and forth between all the stages. This back and forth movement is easy in the beginning because of comparatively fewer open and selective codes. However, as the research progresses and a considerable number of open codes emerge, it becomes hard to visualize the codes for constant comparison. For example more than 350 open codes had emerged towards the end of this research and it was not possible to remember, visualize or summarize them on a sheet of paper which could have greatly facilitated the constant comparison. This was the most tedious and tiring time when the researcher was sitting in front of the computer screen and having all the codes printed on paper. Still, there was no way out of it. It all seemed like finding a needle in the haystack. This was the first of many times when the researcher was almost hanged and felt the real anxiety of doing GT research. At this point, an emergency meeting was arranged with his supervisor which turned out to be very encouraging and a huge moral support by confirming this anxiety as a natural occurring in PhD research especially for those doing GT. Despite the revitalizing encouragement from supervisor, there was no magic to overcome that pile of open codes and dig out the hidden diamond of the core phenomenon.

Luckily, the researcher came up with an innovative idea of pasting all the open codes on to a big wall (a picture has been given in Appendix VI). This technique was an enormous help in making the comparison and arriving at the axial and selective codes. It was like a snapshot visualization of the whole universe of open codes. It became so easy to navigate through the open codes, identify the links between codes, change the existing links, develop new relationships and come up with a more robust set of axial codes.

Therefore, this research strongly encourages the snapshot visualization of open codes for quick and effective comparisons.

Use of Computer-Assisted Qualitative Data Analysis Software (CAQDAS)

The recent surge in technological development has also contributed to professional and academic analysis of qualitative data. Some of the commonly used software are QSR NVIVO, Atlas.ti, MAXQDA, etc. The use of such software is becoming increasingly

popular in academic research. This popularity can be predicted from the fact that even Corbin and Strauss have shifted their focus from manual analysis to the use of CAQDAS in the latest edition of their book (Corbin and Strauss, 2008). However, the uses of software and manual methods have their own merits and demerits. As this research has been done by a combination of the two, it recommends ways of utilizing the better of the two approaches.

This study concludes that though CAQDAS are very helpful in doing, managing and retrieval of open codes, memos and the data itself, they restrict creativity and sensitivity when the research proceeds towards axial and selective coding. It was very easy and manageable at the initial stages of the research when the researcher used QSR NVIVO for open coding, recording memos and even doing the initial comparisons. The researcher continued with using the software even when his supervisor used to gently recommend giving a try to manual analysis having bundles of papers in front. However, when the number of open codes went over 200 and the focus of analysis shifted more towards axial and selective coding, the use of software started to prove itself a burden. It significantly restricted creativity and conceptual development though it all went unrealized until the researcher got stuck a few times and was forced to shift the analysis to pen-and-paper from the computer screen. This opened new horizons for creative analysis e.g. the snapshot visualization making constant comparisons lot easier and productive.

Therefore, the research suggests that that software be used for breaking the data down to open codes, recoding memos, managing data conducting some basic comparisons. However, one should shift to manual analysis when the focus shifts more towards axial and selective coding. It is still recommended that the actual codes and data be maintained and managed through the software which makes retrievals very convenient.

9.6 Suggestions for Further Research

The fact that this research is unique of its kind in this area, opens a wide range of areas for prospective researchers. Firstly, as this research concludes, there is considerable application of juristic ruses in the field of Islamic finance. Therefore, there is a need for extensive research on how Shari'a scholars use juristic ruses/stratagems and to investigate the particular circumstances and context under which Islam allows the use of such stratagems. For example Agha (2012) asserts that the use of stratagems is allowed only in the situations of extreme necessity e.g. life and death. He laments the use of stratagems for business objectives. This area needs to be properly investigated to clearly identify the situations where stratagems are permissible under Shari'a rules.

Secondly, one can quantitatively investigate the relative importance of business and Shari'a objectives as seen by Shari'a scholars and managers. The research could be conducted by collecting survey data using the variables identified in this research. For example the importance of social welfare, ethical investment, fairness and justice, philanthropy and unity principles could be used as variables to measure Shari' objectives and profit maximization, secured investment and Islamization of conventional products could be used as variables for business objectives. One can even use some other variables from other theories to develop a better theoretical framework. This can either prove or disprove an essential portion of the theory developed in this study. Similarly, there is scope to investigate the intervening conditions and contextual factors in a similar manner.

Thirdly, this study suggests new research around the area of nominal and effective power and control of Shari'a scholars and managers in the IFIs. This area could be further investigated using GT because it is deeply entwined in social intricacies. However, one could also conduct a cross-case analysis to measure the relative power and control scenarios across cases and even countries. A quantitative study would also be plausible to further explore this area.

Appendices

Appendix I: List of Respondents

S. No	Respondent	Number of Concepts Mentioned	Total References	Created On
1	Customer	36	56	11/03/2010 15:13
2	Customer	5	13	19/02/2010 07:56
3	Customer	9	9	11/03/2010 15:13
4	Customer	16	22	11/03/2010 15:13
5	Customer	2	3	06/10/2010 13:32
6	Customer	2	2	06/10/2010 13:32
7	Customer	5	7	06/10/2010 13:32
8	Customer	3	3	06/10/2010 13:32
9	Manager	22	33	11/03/2010 15:13
10	Manager	25	38	11/03/2010 15:13
11	Manager	21	26	06/10/2010 13:32
12	Manager	14	15	20/10/2010 15:57
13	Manager	15	16	20/10/2010 15:57
14	Manager	11	14	06/10/2010 13:32
15	Manager	20	23	06/10/2010 13:32
16	Manager	27	31	06/10/2010 13:32
17	Manager	9	9	20/10/2010 15:57
18	Manager	8	8	06/10/2010 13:32
19	Manager	5	5	06/10/2010 13:32
20	Manager	2	4	20/10/2010 16:00
21	Manager	13	14	20/10/2010 15:57
22	Manager	16	24	11/03/2010 15:13
23	Manager	26	43	04/08/2009 11:26
24	Manager- Repeat Interview	29	51	11/03/2010 15:13
25	Regulator	20	27	06/10/2010 13:32
26	Regulator	22	31	06/10/2010 13:32
27	Regulator	6	6	20/10/2010 16:00
28	Regulator	26	29	20/10/2010 16:00
29	Regulator	9	9	30/03/2010 11:36
30	Regulator	5	5	20/10/2010 16:00
31	Regulators- Group Interview	47	53	20/10/2010 16:00
32	Shari'a Scholar	36	50	06/10/2010 13:32

33	Shari'a Scholar	52	103	20/09/2009 03:24
34	Shari'a Scholar	73	107	05/10/2009 03:35
35	Shari'a Scholar	39	97	11/03/2010 15:13
36	Shari'a Scholar	38	56	20/10/2010 16:00
37	Shari'a Scholar	15	20	30/04/2010 09:36
38	Shari'a Scholar	30	40	05/10/2009 01:25
39	Shari'a Scholar	16	22	04/05/2010 10:25
40	Shari'a Scholar- Repeat Interview	33	58	02/10/2009 23:48
41	Shari'a Scholar- Repeat Interview	4	4	16/06/2011 13:29
42	Shari'a Scholar- Repeat Interview	80	182	03/10/2009 22:04
43	Shari'a Scholar- Repeat Interview	8	14	20/10/2010 16:00
44	Shari'a Scholar- Repeat Interview	41	66	30/03/2010 12:07
45	Shari'a Scholars - Group Interview	21	28	06/10/2010 13:32

Appendix II: Sample Extracts from Interviews

Name: Shari'a Advisor Case I

Created On: 02/10/2009 23:48:42

Created By: SU

Modified On: 19/02/2010 07:34:35

Modified By: SU

Size: 8 KB

Interviewer: Could you please introduce yourself first?

SAMAD SB: My name is Samad and this is my fourth year here, working as Deputy Shari'a Advisor. I am qualified from religious school and then earn LLB (Shari'a) from International Islamic University, Islamabad. I did LLM from Kingston University, London, after that.

Interviewer: Alright. My research is on CSR in IFIs, especially looking at the role of Shari'a Board in it. From that perspective, I will ask you that which stakeholders do you consider for the Islamic bank and who is more important?

SAMAD SB: The basic job of Shari'a board or Shari'a advisors is to see every transaction from the Shari'a point of view and make sure that there are no Haram transactions. Although the involvement of the Shari'a board in the banks' activities is limited, it is very important in each and every activity of the bank. Because there are Shari'a compliance issues and people even object the internal environment and out of the branch. These are minor issues but people, especially the religious people, consider them. They consider the Pardah of women working in the bank, the behaviour of the staff etc. I have seen some people who did not enter the bank; they returned from the door when they were not satisfied with the outlook of the branch.

Interviewer: Have you taken steps on these issues because these are customers' demands.

SAMAD SB: My point is that the role of Shari'a board should not be limited to transactions. They should scrutinize everything from the Shari'a point of view. But unfortunately there is no such involvement till now. Some banks argue that these things are not related to transactions but still people consider them.

Name: Head of Investments, Case III

Created On: 11/03/2010 15:13:49

Created By: SU

Modified On: 24/03/2010 15:56:44

Modified By: SU

Size: 5 KB

My name is Anver Jalaldeen and I graduated from the US in finance and economics. Then I worked in a couple of investment firms as a specialist in mutual funds and senior financial analyst undertaking Mergers and Acquisitions (M&A) and corporate hedging. Now I have been working with Islamic banks for more than seven years. I look after the investment department here at SIB looking after proprietary investment and structured finance. I am also dealing with equity investments.

As far as your question regarding divergence is concerned; Yes, there is indeed divergence because, first of all, in education our industry is not as competitive as the conventional industry. People may call it non-profit but we are indeed profit-making entities. So we have to be competitive. On the one side the Shari'a principles tell you to be equitable, fair and transparent and sharing risk. But on the other hand we have investors who are looking for profits and protection of their investments. So obviously there is a divergence. Shari'a insists on profit sharing instruments such as Musharakah, Mudarabaha but you don't see them much practiced by the Islamic banks. Rather what you see are asset-backed instruments like Ijarah and Murabaha which I think have been picked up for convenience and security and fixed returns. So the real essence of risk-sharing has been taken away to a great extent. I feel that has posed the real divergence in sense that how we pursue the business from a Shari'a perspective and from and profit and management perspective.

Of course what we do as a business, we try to be socially responsible in terms of not investing in unacceptable industries. As an industry to go forward, we need to change certain things. We are supposed to invest in small businesses and make partners. These are the sort of things we need to do to call ourselves as pure Islamic banks.

Second is education. Generally speaking, majority of 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. So these again have caused a bit of divergence.

Name: Customer**Created On: 06/10/2010 13:32:11****Created By: SU****Modified On: 20/10/2010 17:13:47****Modified By: SU****Size: 2 KB**

I have come to this bank on referral. I have come here because my friend, who is working here, asked to open an account here. I have another interested-based account in another bank. I don't care if the bank is Shari'a compliant. The staff is friendly here. It also gives me some satisfaction that this bank is Shari'a compliant.

Name: Joint Director, Regulator**Created On: 06/10/2010 13:32:11****Created By: SU****Modified On: 21/10/2010 12:12:26****Modified By: SU****Size: 3 KB**

The basic issue is the mind-set wither that of the banker or the customer. Until and unless their mind-set does not treat Islamic banking differently, the industry cannot reach its ultimate success. Both the parties need to understand that the Islamic modes of transactions are essentially different from the conventional modes. Currently, the bankers and the customers say there is not difference between the Islamic and conventional modes and when they don't feel the difference, they don't care of following the correct procedures.

The mind-set of the Islamic bankers is not supportive of Islamic banking because most of the HR for Islamic banks come from conventional banks for better pay and perks. Thus there is a need to change their mind-set.

This problem stems from the lack of awareness/training on the part of both customers and bankers. These people have lots of objections on Islamic banking but if you ask them to explain the concept of Murabah or Musharakah, they don't know about it.

Secondly, the problem is with the Shari'a scholars; they often don't know about banking practices so this creates a gap. This gap can be bridged by training those Shari'a scholars that come from the Madrasas (Religious schools).

Appendix III: List of Open Codes/Concepts

Codes/Concepts	
Appointment of SB	Deep Rooted Problem
Approval Process	Default Obligation Amount
Assertiveness of SA	Demand Driven
Availability of Sharia Board	Depositor as Primary Stakeholder
Avoiding Shari'a Board	Depositors Bear More Loss but less Profit
Awareness	Depositors Interests
Background	Depositors' Protection is SB's Responsibility
Belief in the System	Designation
Big names	Development of the Industry
Blacklisted Countries	Dharar
Blind Objections	Difference behind the screen
Blind Trust on SB by Depositors	Differences in People and Institutions
BoD Superior to SB	Different Backgrounds lead to conflicts
Bridging Shari'a and Management	Diluted CSR
Business Targets	Discrimination is Sin
Capacity Building	Dispute Resolution
Central Control for better Shari'a Compliance	Distribution of Wealth
Central Shari'a Board	Distribution of Zakat
Chances of Deception	Diversity in Regulations
Charity	Diversity in SC Opinions
Charity as Responsibility of Islamic banks	Driving Force
Clients Bad CSR reputation affects Bank's reputation	Dual Responsibilities- to God and to Others
Comments on Model (Paradigm)	Due Diligence of SA
Commitment- Management	Duties and Responsibilities
Commitment to Other Stakeholders	Economic Migrants
Commitments to God	Education- Management
Community	Employees as Key Stakeholders
Compensation of SB	Employees as Management Matter
Competence of Management	Employees' Expectations from Shari'a Scholars
Confidence in Conventional System	Enforceability by Shari'a Board
Confidentiality of Others activities	Environment
Conflict of Interest	Equitable and Fair- Shari'a Principle

Conflicts between Mgt. & SB	Equity Participation is more Profitable
Consequences	Equity Participation
Conspiracies	Equity Participation Avoided by Mgt.
Constitutional Support	Escaping Environmental Issues
Consultancy Services	Eternal Consequences
Consumption of Natural Resources	Ethical
Control Systems	Ethical Marketing
Country-wise differences	Exclusion of SB from Important Issues
Critiques on IF System	Expectations from Shari'a Board
CSR as a Natural Expectation from IFIs	Expenses-Depositors
CSR as a Subset of Shari'a	Experience
CSR as an Externality of IFIs	External Shari'a Scholars' Pressure
CSR audit depends on the nature of engagement of the bank with the company	Fair Competition
CSR Definition	Fair Treatment of Employees
CSR is done under the supervisions of the Shari'a Department	Faith-sensitive Customers
CSR is Inherent	Fatwa Manufacturing
CSR is Relative	Fatwa Manufacturing for Maslahah
CSR is very important	Fatwa Shopping
CSR Screening in Mudharabah and Musharakah	Feel the difference
Culture of Shari'a Compliance	Final Authority
Customers Cheating	Finding Ways
Damage to Basic Concept of Islamic Banking	Fiqh Can be Developed further
Firing Management Personnel for Misrepresentation	Limited Authority
Forfeited Profits	Limited Exposure to Environmental Issues
Freedom of Choice	Limited Involvement
Frustration of Management	Long Time Taken in Approval by Shari'a department
Frustration of SB Members	Management Not Interested in Shari'a
Full-fledged IBs Vs. Islamic-windows	Management's Pressure
Gap- Knowledge	Mandatory and Discretionary CSR
Gharrar and Qimar	Maqasid-i-Shari'a
Gifts	Market Stature of SA
Goal Divergence	Maslahah
Goals of Islamic Economic System	Matter of Priorities

Going against the Tide	Meeting Bare Minimum
Govt. Responsible for CSR Standards	Meeting Minimum Legal Requirements
Gradual Developments in Shari'a compliance	Mgt. Not Bound to SB on every Recommendation
Grey Area	Mind-set
Grey Areas	Misrepresentation
Grounded in Fiqh	Misuse of Fatwa
Hierarchy of Shari'a Scholars	Monetary Interests of Shari'a Boards
Holistic CSR	Moral and ethical
How profit is generated	Need for CSR Rating Agency
Huge gap in depositors' side	Need for Expanding SB's involvement
I am confused	Negative List of Industries
Idealism Vs. Reality	Nepotism is Haram
Independence of SB	New Shari'a Scholars prone to Fatwa Manufacturing
Indifference because of no Difference	No Concern for Employees Issues
Indiscriminate Help	No CSR Screening in Murabahah
Individual Vs. Institutional Responsibility	No CSR Screening of Suppliers
Individuals' Responsibility	No Difference bet Islamic and Conventional [Replica of Con]
Infant Industry	No Equity Financing
Innovation in Shari'a	No Exploitation
Institutionalized Shari'a compliance	No Harm to Society
Instrumental Use of CSR	No Involvement in Environmental Issues
Intention	No Proactive Role in HR Matters
Interest is harmful	No Shari'a Requirement for Others' Actions
Investment Policy	Nominate Contracts
Involvement in Mgt. Matters will lead to conflicts	Objections on Islamic banking
Involving from the Start	Organizational Legitimacy
Islamic Code of Conduct for Employees	Orientation- Customers
Islamic CSR Precepts are Wider than Western	Orientation of the Management
Islamic Outlook of the Bank	Own Grounds of IF
Islamizing Conventional Banking	Paid Advisors are pushed by Mgt.
Isolated IF System	Paper marriage
Jo Creation	Peer Pressure
Job Switching	Penalty for Misrepresentation
Juristic Ruse (Hillah)	Perks

Justice	Personal Vs. Institutional Priorities
Khilapha	Policing Role of Shari'a
Known cash flows	Power of SB
Lack of Commitment of Management	Primitive Status of Industry
Lack of Credibility	Priorities of SB
Lack of Shari'a Scholars	Proactive Approach in Shari'a compliance issues
Lack of Standardization	Profit Motive
Lack of Trust in Management	Profit Subject to Restraints
Language as a Problem	Prohibited Industries
Limitations in Screening Suppliers	Proper Use of Charity
Purification of Income	Shari'a Scholars as Guardians of CSR
Qard Hasana	Shari'a Seen as an Obstacle
Reaching to Deserving People	Silent Contributors
Reactive Approach in CSR issues	Single Sharia Advisor
Real Islamic Investment	Social Boycott
Recommendation Vs. Enforcement	Social Impact of Investments
Recommendations	Social Screening of Suppliers
Regulator- Ex-ante controls	Sponsors are Cautious
Regulators- CSR	SRI
Regulators- Environment	SRI Screening is Impractical
Regulators of IBs	SSB as CSR Governing Body
Regulatory Pressure	SSB's Independence
Regulatory Role of Sharia (Substantive CG)	Stakeholders
Relieving Pressure from Management	Stringent Shari'a scholars
The reputation of Shari'a scholars	Subset of Islamic Economic System
Reputation Risk	Suppliers' CSR screening not a Shari'a obligation
Resignation of Shari'a scholars	Suspicious Transactions
Respect for the previous verdicts	Sustainability
Responsibility of Investee companies	Taking into confidence
Rich People get the direct benefit	The Danger
Rigorous Product Approval Procedures	The Will of God
Room for Development on HR issues	Thinking out of the box
Routine Duties	Third Party Guarantee
SA Assertiveness	Time Commitment by SA
SA Market Stature	Tokenism
Sacrifice for Shari'a compliance	Top-to-bottom Vs. Bottom-to-top Approach
Safeguarding Outside Parties	Trusteeship

SB as Final Authority in HR Disputes	Underestimated Importance of Shari'a Compliance
SB Own Vs. Rented	Undue Influence
SB Should Pursue SRI	Unity Principle
SB Superior to Management	Universities-Industry Linkage
Scope of Shari'a Involvement	Vague Boundaries of Authorities
Screening In Mudharabah and Musharakah	Vague Definition of CSR
Screening Transactions for Shari'a Compliance	Verification of Information
Secured Investments	Vigilant Shari'a Dept.
Selecting Suppliers	Voluntary Trade-off
Self-interest of SA	Western CSR Precepts
Self-review by SA	Will of God as the Goal of Islamic Economic System
Sense of Responsibility for SRI	Working for Islamic Bank is Ibadah
Serving Communities where IFIs don't operate	Zakat
Shareholders as Primary Stakeholders	
Shareholders Equal to Depositors	
Shareholders Secondary Stakeholders	
Shari'a Advisors Full-Time	
Sharia advisory firms!! A profit-making organization!	
Shari'a Advisory Forum	
Shari'a Arbitrage	
Shari'a Audit	
Shari'a Audit External	
Sharia Audit Internal	
Shari'a Audit of CSR Activities	
Shari'a Benches (boards)	
Shari'a Board	
Shari'a Gurus	
Shari'a Objectives	

Appendix IV: The Coding Framework

Axial Categories	Open Categories	Properties	Dimensions		
Shari'a Objectives	Social Welfare	Relevance	Low	/	High
		Importance	Low	/	High
		Profitability Trade-off	Low	/	High
		Sense of Responsibility	Low	/	High
		Authority	Low	/	High
		Implementation	Low	/	High
	Ethical Investment (EI)	Relevance	Low	/	High
		Coverage	Narrow	/	Wide
		Sense of Responsibility	Low	/	High
		Trading-off Profitability	Low	/	High
		Authority	Low	/	High
		Implementation	Low	/	High
	Fairness and Justice (F&J)	Relevance	Low	/	High
		Coverage	Narrow	/	Wide
		Importance	Low	/	high
		Feeling Responsibility	Low	/	High
		Trading-off Profitability	Low	/	High
		Authority	Low	/	High
		Implementation	Low	/	High
	Philanthropy	Relevance	Low	/	High
		Importance	Low	/	high
		Sense of Responsibility	Low	/	High
		Profitability Trading-off	Low	/	High
		Authority	Low	/	High
		Implementation	Low	/	High
Philanthropic Use		Low	/	High	
Instrumental Use		Low	/	High	
Unity Principle	Relevance	Low	/	High	
	Importance	Low	/	high	
	Coverage	Narrow	/	Wide	
	Feeling Responsibility	Low	/	High	
	Trading-off Profitability	Low	/	High	
	Authority	Low	/	High	
	Implementation	Low	/	High	
Business	Profit	Relevance	Low	/	High

Objectives	Maximization	Importance	Low	/	High	
		Trade-off of Shari'a	Low	/	High	
		Frustration	Low	/	High	
		Use of Covert Means by Management	Low	/	High	
		Ex-ante Regulatory Controls	Low	/	High	
		Ex-post Regulatory Controls	Low	/	High	
		Implementation	Low	/	high	
	Secured Investments	Relevance	Low	/	High	
		Importance	Low	/	High	
		Feeling Responsibility	Low	/	High	
		Trade-off of Shari'a	Low	/	High	
		Frustration	Low	/	High	
		Regulatory Controls	Low	/	High	
		Implementation	Low	/	High	
	Islamization of Conventional Products	Relevance	Low	/	High	
		Importance	Low	/	High	
		Feeling Responsibility	Low	/	High	
		Trade-off of Shari'a	Low	/	High	
		Use of Covert Means	Low	/	High	
		Frustration	Low	/	High	
		Regulatory Controls	Low	/	High	
	Implementation	Low	/	High		
Background Divergence	Educational Disparity	Religious Education	Low	/	High	
		Conventional Education	Low	/	High	
		Arabic Fluency	Low	/	High	
		English Fluency	Low	/	High	
		Mentality-Secular	Low	/	High	
		Mentality-Religious	Low	/	High	
		Frustration	Low	/	High	
	Experience Disparity	Religious Exposure	Low	/	High	
		Business Exposure	Low	/	High	
		Mentality-Secular	Low	/	High	
		Mentality-Religious	Low	/	High	
	Cognitive Force	Self-interest	Monetary Incentives for Joining Islamic bank	Low	/	High
Value of Incentives			Small	/	Big	
Based on Business Targets			Low	/	High	

		Determines Behaviour	Low	/	High	
	Eternal Reward/Punishment	Reason for Joining the Bank	Small	/	Big	
		Level of Spiritual Commitment	Low	/	High	
		Sensitivity	Low	/	High	
		Adherence	Low	/	High	
External Pressure	External Shari'a Scholars' Pressure	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
		Positive Impact	Low	/	High	
		Negative Impact	Low	/	High	
	Regulatory Controls	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
		Positive Impact	Low	/	High	
		Negative Impact	Low	/	High	
	Depositors' Expectations	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
Positive Impact		Low	/	High		
Negative Impact		Low	/	High		
Internal Pressure	Employees' Expectations	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
		Positive Impact	Low	/	High	
		Negative Impact	Low	/	High	
	Internal Shari'a Scholars' Pressure	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
		Positive Impact	Low	/	High	
Negative Impact		Low	/	High		

Compliance Force	Shari'a Reputation Risk	Intensity	Low	/	High
		Exposure	Low	/	High
		Sensitivity	Low	/	High
		Positive Impact	Low	/	High
		Negative Impact	Low	/	High
	Organizational Legitimacy	Shari'a Objectives	Low	/	High
		Profitability	Low	/	High
		Regulatory Pressure	Low	/	High
		Other Stakeholders' Pressure	Low	/	High
Coercive Strategies of Management	Firing Threat	Intensity	Low	/	High
		Regulatory Protections	Low	/	High
		Sensitivity	Low	/	High
		Impact	Low	/	High
	Closure Threat	Intensity	Low	/	High
		Regulatory Protections	Low	/	High
		Sensitivity	Low	/	High
		Impact	Low	/	High
Controlling Strategies	Appointment of Shari'a Scholars	Role of Regulator or General Body	Low	/	High
		Role of Bankers	Low	/	High
		Role of Existing Shari'a Scholars	Low	/	High
		Overall Independence	Low	/	High
	Authority of Shari'a Scholars	Product Approval	Low	/	High
		Employees' Issues	Low	/	High
		Depositors' Issues	Low	/	High
		Other areas	Low	/	High
	Involvement of Shari'a Scholars	Product Approval	Low	/	High
		Employees' Issues	Low	/	High
		Depositors' Issues	Low	/	High
		Other areas	Low	/	High
Avoidance Strategies	Avoiding Shari'a Board	Intensity	Low	/	High
		Regulatory Requirement	Low	/	High
		Effect on Controlling Shari'a Advisors	Low	/	High
		Effect on Business Objectives	Low	/	High
		Effect on Legitimacy	Low	/	High

	Avoiding Shari'a Audit	Intensity	Low	/	High	
		Regulatory Requirement for SA	Low	/	High	
		Effect on Controlling Shari'a Advisors	Low	/	High	
		Effect on Business Objectives	Low	/	High	
	Avoiding Full-time Shari'a Advisors	Intensity	Low	/	High	
		Regulatory Requirement	Low	/	High	
		Effect on Controlling Shari'a Advisors	Low	/	High	
		Effect on Business Objectives	Low	/	High	
	Fatwa Shopping	Frequency	Low	/	High	
		Regulatory Requirement	Low	/	High	
		Effect on Controlling Shari'a Advisors	Low	/	High	
		Effect on Business Objectives	Low	/	High	
Confrontational Strategies	Punitive Actions Against Management	Frequency	Low	/	High	
		Regulatory Authority	Low	/	High	
		Implementation	Low	/	High	
		Potential Effect	Low	/	High	
	Nullification of Transactions	Frequency	Low	/	High	
		Regulatory Authority	Low	/	High	
		Implementation	Low	/	High	
		Potential Effect	Low	/	High	
	Complaints to Regulators/ General Body	Frequency	Low	/	High	
		Regulatory Authority	Low	/	High	
Implementation		Low	/	High		
Potential Effect		Low	/	High		
Compromising Strategies	Reactive Approach of Shari'a Scholars	Authority	Low	/	High	
		Frequency	Low	/	High	
		Intensity	Low	/	High	
		Implementation	Low	/	High	
		Potential Effect	Low	/	High	
	Excuse of Primitiveness	Frequency	Low	/	High	
		Intensity	Low	/	High	
Juristic Ruses and	Frequency	Low	/	High		

	Fatwa Manufacturing	Level	Low	/	High	
	Internal Shari'a Scholars' Pressure	Intensity	Low	/	High	
		Exposure	Low	/	High	
		Reputation Risk	Low	/	High	
		Sensitivity	Low	/	High	
		Positive Impact	Low	/	High	
		Negative Impact	Low	/	High	
Seeking Hierarchical Backing	Shari'a Board	Independence	Low	/	High	
		Regulatory Requirement	Low	/	High	
		Stature of Members	Low	/	High	
		Compensation	Low	/	High	
		Power	Low	/	High	
	Central Shari'a Board	Stature of Members	Low	/	High	
		Compensation	Low	/	High	
		Independence	Low	/	High	
		Power	Low	/	High	
		Support to Shari'a Scholars	Low	/	High	
	Shari'a Advisor Forum	Regulatory Support	Low	/	High	
		Stature of Members	Low	/	High	
		Compensation	Low	/	High	
Independence		Low	/	High		
Power		Low	/	High		
Separation Strategies	Resignations	Frequency	Low	/	High	
		Eternal Sensitivity	Low	/	High	
Regulatory Framework	Regulatory Framework	Existence Central Shari'a Board	On	/	Off	
		Enforcement of AAOIFI Standards	On	/	Off	
		Shari'a Audit by Central Bank	On	/	Off	
		Protection to Shari'a Scholars	On	/	Off	
		Appointment Procedure of SCs	On	/	Off	
Sponsors' Orientation	Sponsors' Orientation	Muslims	On	/	Off	
		Religiousness	Low	/	High	
		Secularism	Low	/	High	
		Religious Motives for IB	Low	/	High	
		Material Motives for IB	Low	/	High	

Appendix V: Snapshot of the Open Codes

76	Exclusion of SB from Important Issues	Govt. Responsible for CSR Standards	116	Job Creation	136	Need for CSR Rating Agency	156	Priorities of SB	176	Rich People get the direct benefit	196	Shari'a Advisors	216	Suppliers' CSR screening not a Shari'a obligation
77	Exercising Power	Gradual Developments in Shari'a compliance	117	Justice	137	Need for Expanding SB's involvement	157	Proactive Approach in Shari'a compliance issues	177	Rigorous Product Approval Procedures	197	Shari'a advisory firms!! A profit making organization!	217	Suspicious Transactions
78	Expectations from Shari'a Board	Grey Areas	118	Khilapha	138	Negative List of Industries	158	Profit Motive	178	Room for Development on HR issues	198	Shari'a Audit	218	The Danger
79	Expenses-Depositors	Grounded in Fiqh	119	Lack of Credibility	139	Nepotism is Haram	159	Profit Subject to Restraints	179	Routine Duties	199	Shari'a Audit External	219	The Will of God
80	Experience	Holistic CSR	120	Lack of Standardization	140	No Concern for Employees Issues	160	Prohibited Industries	180	Sacrifice for Shari'a compliance	200	Shari'a Audit Internal	220	Third Party Guarant
81	Fair Competition	How profit is generated	121	Lack of Trust on Management	141	No CSR Screening in Murabaha	161	Proper Use of Charity	181	Safeguarding Outside Parties	201	Shari'a Audit of CSR Activities	221	Tokenism
82	Fair Treatment of Employees	huge gap on depositors' side	122	Language as a Problem	142	No CSR Screening of Suppliers	162	Purification of Income	182	SB as Final Authority in HR Disputes	202	Shari'a Compliance is Demand Driven	222	Trusteeship
83	Fatwa Manufacturing	I am confused	123	Limitations in Screening Suppliers	143	No Equity Financing	163	Qard Hassanah	183	SB is Independent	203	Shari'a Gurus	223	Undue Influence
84	Fatwa Shopping	Idealism Vs Reality	124	Limited Authority	144	No Exploitation	164	Reaching to Deserved People	184	SB Should Pursue SRI	204	Shari'a Objectives	224	Unity
85	Final Authority	Independence of SB	125	Limited Exposure to Environmental Issues	145	No Harm to Society	165	Reactive Approach in CSR issues	185	SB Superior to Management	205	Shari'a Scholars as Guardians of CSR	225	Unity Ph
86	Fiqh Can be Developed further	Indiscriminate Help	126	Limited Involvement	146	No Involvement in Environmental Issues	166	Real Islamic Investment	186	Scope of Shari'a Involvement	206	Shari'a Seen as an Obstacle	226	Vague Bound
87	Forfeited Profits	Individual Vs Institutional Responsibility	127	Long Time Taken in Approval by Shari'a department	147	No Proactive Role in HR Matters	167	Recommendation Vs enforcement	187	Screening In Mudharabah and Musharakah	207	Social Boycott	227	Vague D
88	Freedom of Choice	Individuals' Responsibility	128	Management Not Interested in Shari'a	148	No Shari'a Requirement for Others' Actions	168	Recommendations	188	Screening Transactions for Shari'a Compliance	208	Social Impact of Investments	228	Verifi
89	Frustration of Management	Infant Industry	129	Mandatory and Discretionary CSR	149	Organizational Legitimacy	169	Regulators- CSR	189	Selecting Suppliers	209	Social Screening of Suppliers	229	Volunt
90	Frustration of SB Members	Instrumental Use of CSR	130	Matter of Priorities	150	Orientation of the Management	170	Regulators- Environment	190	Sense of Responsibility for SRI	210	SRI	230	Western
91	Full-fledged IBs Vs Islamic Windows	Interest is harmful	131	Meeting Minimum Legal Requirements	151	Paid and Unpaid SCs	171	Regulators of IBs	191	Sensitivity of Scholars to Eternal Consequences	211	SRI Screening is Impractical	231	Will of
92	Gharrar and Qimar	Investment Del	132	Mot. Not Bound to SB										

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