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Testing *Shariah* Approvals Issued by the *Shariah* Boards of Islamic Banks against *Fatwa* Parameters to Determine their *Shariah* Status

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Abstract

Depending on the prescribed regulations in different countries, Islamic banks (IBs) are bound to attain *Shariah* approvals for their operations from their respective *Shariah* boards (SBs). This is also the prerequisite for introducing their products and services and it can be counted as part of their *Shariah* governance framework (SGF). SBs are responsible to prevent any violation of *Shariah* principles and to maintain a degree of consistency in the operations of IBs. *Shariah* approvals issued by SBs play a significant role in building the trust of customers regarding matters related to *Shariah* compliance. The term ‘*Shariah* Approval’ is used for the *Shariah* rulings issued by the SBs of IBs, although its use remains ambiguous. A serious question may be raised about the juristic status of this term. Thus, the main objective of this paper is to determine the juristic status of *Shariah* approvals by identifying the features of *Fatwa* to know if all these approvals can be considered a form of *Fatwa*. For this purpose, a qualitative analytical approach was used. From four prominent manuals of *Fatwa* principles, the parameters of *Fatwa* were extracted and applied on *Shariah* approvals. The study found that *Shariah* approvals act as *Fatwa* because they announce the permissibility of Islamic banking operations, products, and services with the due signatures of *Shariah* advisors. It was also found that *Shariah* approvals do not fulfill the prerequisites of *Fatwa*. The paper also draws the attention of regulators that detailed *Fatawa* are missing for IBs. Rather, only *Shariah* approvals are found which state that all matters of IBs are *Shariah* compliant and lawful, but without any evidence and reference from the Qur'an, Sunnah, and the books of jurists. These inefficient short *Fatawā* defame Islamic banking and hurt the public trust regarding its *Shariah* compliance.

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Keywords: AAOIFI, *Fatwa*, certificate of *Shariah* compliance (CSC), *Shariah* approval, *Shariah* governance

Introduction

Shariah approval in Islamic finance is a legal device through which a competent *Shariah* scholar(s) extracts *Shariah* rulings on ambiguous matters based on selected Islamic sources. This is achieved through the process of *Ijtihad* in the light of the principles of Islamic jurisprudence. *Shariah* compliance of all Islamic banking operations, as well as the designing and launching of their products and services, is essential for establishing their legitimacy. *Shariah* board (SB) of an Islamic bank (IB) is made up of a few Muftīs / *Shariah* scholars capable of giving *Fatwa* on *Shariah* matters and approving the *Shariah* compliance of Islamic banking operations, products, and services. *Shariah* approvals are considered as the license of legality for IBs.

The reputation of IBs is based on the *Shariah* opinions of their SBs (Dar et al., [2013](#); Haron et al., [2015](#)). Hence, IBs seek *Shariah* opinion from the competent authority to remove any doubts regarding the *Shariah* compliance of their operations. It is the duty of IBs and Islamic financial institutions (IFIs) to seek *Shariah* opinion from their SBs about their operations (Accounting and Auditing Organization for Islamic Financial Institutions [AAOIFI], [2018](#)). The SB of an IB issues a one-page certificate of *Shariah* compliance (*Shariah* approval), duly signed by its members. It also issues a conclusive certificate that announces the *Shariah* compliance of all Islamic banking operations and offers of the respective bank. This certificate is attached with all of its product manual(s) and annual reports. To win the trust of customers, copies of the Certificate of *Shariah* Compliance (CSC) are also posted on notice boards in the various branches of the bank. Muslims are very conscious of the *Shariah* compliance of Islamic banking products, services, and operations (Al-Hassan, [2007](#); Khan, [2010](#); Fada & Wabekwa, [2012](#); Shawamreh, [2013](#); Azmat et al., [2014](#)). Customers consider the above certificate as *Fatwa* issued by *Shariah* scholars.

The *Fatwa* of *Shariah* advisor plays a vital role in ensuring that Islamic financial principles are being followed by IBs and IFIs in the true spirit of the *Shariah* (Laldin et al., [2012](#)). *Shariah* approval issued by the SB also fulfils the same role. At this stage, when the Islamic banking and financial

industry has matured and spans six decades, it has become necessary to make its *Sharia* compliance undoubtable. This is not possible without determining the juristic status of *Shariah* approval and its compliance with *Fatwa* parameters.

The question is whether *Shariah* approval comprises a *Fatwa*. If it is not a *Fatwa*, then what is its status in Islamic jurisprudence? Literature on Islamic banking and finance is silent in this regard. Hence, the basic objective of this paper is to find out the juristic status of *Shariah* approval by SBs in Islamic jurisprudence.

Literature Review

Literature is silent regarding the juristic status of *Shariah* approvals in Islamic jurisprudence. However, it seems necessary to briefly review the literature regarding the discussion of the role and importance of *Shariah* approvals in Islamic banking. Then, it would be easy to determine their juristic status.

The distinction between Islamic and conventional banks lies mainly in the commitment of the former to social justice. To achieve this distinction, IBs are required to adhere to the rules of the *Shariah* in terms of earning a just and fair income based on the profit and loss sharing mechanism, the distribution of which should be equitable (Mollah & Zaman, 2015). In Islam, income must not be earned using any *haram* (prohibited) means, such as *riba* (interest), gambling, and fraud. So, in order to reflect these attributes in the operations of IBs, the SBs of these banks have *Shariah* advisors who play a vital role in enabling them to contribute to social justice. The main role of SBs is to ensure that IBs do not indulge in any form of *haram*, that is, prohibited activities. In short, IBs cannot run their businesses in a *Shariah* compliant manner without the approval of their SBs (Aldohni, 2008).

SBs are a significant component of the *Shariah* governance framework (SGF) of IBs. They prevent IBs from charging and paying interest or engaging in speculations. They also provide “multi-layer” governance by creating an additional layer of monitoring and restrictions on the operations of IBs. Moreover, SBs restrict the board of directors and management from aggressive lending and risk-taking actions. Hence, the overall theme of Islamic banking is adherence to ethical behavior by adopting a profit and loss sharing system and foregoing interest (Mollah & Zaman, 2015). This

spiritual foundation ensures that IBs and their senior management stay away from unethical practices and operations. SBs approve that the products, services, and other operations of IBs are *Shariah* compliant and hence, can be offered or launched (Ullah et al., [2018](#)). It indicates that the *Shariah* approvals of SBs act as the license of legality for IBs to offer their products and services and run their operations.

Depositors and investors are very conscious about the *Shariah* compliance of the products, services, and operations of IBs. Al-Hassan ([2007](#)), in their study of the account holders' perceptions of IBs in Pakistan, found that the majority of the respondents of his research were not confident about the *Shariah* compliance of the Islamic banking operations. They were doubtful about the status of IBs regarding their *Shariah* compliance. Fada and Wabekwa ([2012](#)) also confirmed this finding keeping in view that 33.58% of their respondents opined that Islamic banking is not religion bound in Nigeria. Hassan and Ahmed ([2002](#)) also found that the customer and employees of IBs have negative perceptions about the *Shariah* compliance of their operations because they are of the view that Islamic banking is nothing except a replica of conventional banking. They also believed that interest, which is strictly prohibited (*haram*) in Islam, still remained in practice. Khan ([2010](#)) said that the crux of the heavy criticism on the *Shariah* compliance of Islamic financial products is that Islamic finance is increasingly imitating the operations of conventional finance. He further said that IBs look for *Shariah* experts who are willing to approve the de facto conventional products as *Shariah* compliant in the Persian Gulf region and Pakistan.

Such negative perceptions about Islamic banking are caused by the carelessness of the *Shariah* departments of IBs. That is why the majority of the contemporary *Shariah* scholars denounce the contemporary practice of Islamic finance as non-Islamic (Khan, [2010](#)). According to El-Gamal ([2007](#)), Islamic financial products must comply with *Shariah* requirements; however, the substance, spirit, and higher objectives of the *Shariah* are being ignored in their designing. According to Siddique and Iqbal ([2016](#)), instead of paying attention to the alarming drift of Islamic finance towards conventional finance (the result of undesirable permissibility and controversial contracts), an ingenious argument is presented that *Shariah* permissibility rests upon procedures, not outcomes. This procedural compliance and insistence on form but not the substance shows careless

transgression on the part of SBs. Ahmad ([2014](#)) said that the *Shariah* department and the SBs of IBs play a key role in sustaining the Islamic nature of these banks and need to be strict in approving their products as *Shariah* compliant. Specifically, the SB of an IB is directly responsible to ensure that the Islamic banking products comply with *Shariah* principles as well as the higher objectives of the *Shariah*.

Public perception of IBs and IFIs is determined by the *Shariah* compliance of their products, services, and operations, whereas *Shariah* compliance depends upon the *Shariah* approvals issued by *Shariah* advisors or SBs. SBs sit at the tapered peak of the *Shariah* compliance pyramid (Gaunaurd et al., [2010](#)). The consumers of Islamic financial products rely on their SBs and individual *Muftīan* regarding the Islamicity of the various products developed by IFIs (Shawamreh, [2013](#)). Hassan et al. ([2010](#)) stated that public confidence is a critical element of the respective profiles of IBs and IFIs. According to a survey conducted in Malaysia, all respondents unanimously agreed that SBs play a significant role in this regard. According to Al-Khamees ([2013](#)), IFIs are required to incorporate a religious panel in their organizational structure in the form of an SB to win the trust of their Muslim clients. It plays a key role in ensuring and enhancing the credibility of the IFIs and also has the authority to approve the *Shariah* compliance of the financial products (Wardhany & Arshad, [2012](#)). Only an SB can approve a financial instrument or product as *Shariah* compliant and can certify that all operations of an IFI are in line with the *Shariah* principles (Al-khamees, [2013](#)). It also reviews the transactions and actions of IFIs to ensure their adherence to Islamic law (Malkawi, [2013](#)). Alamad ([2017](#)) stated that *Shariah* Supervisory Committee (SSC) certifies all financial transactions and operations of IFIs as *Shariah* compliant. *Shariah* approval by SB alleviates the concerns of the *Shariah* conscious investors by declaring that the products of an IFI are *Shariah* compliant (Azmat et al., [2014](#)).

A solid *Shariah* governance and audit framework enhances the confidence of the stakeholders of IBs and minimizes the *Shariah* non-compliance risk (Shafi et al., [2010](#)). It also helps in protecting the Islamic banking and financial industry from losing its unique identity and diverting from its main objectives and role, that is, providing financial stability as the model for a resilient financial system (Moghul, [2017](#)).

Islamic banking performance and the associated risks are dependent upon the customer base. To raise their customer base, IBs seek *Shariah* opinion from the competent authority to remove any doubts regarding the *Shariah* compliance of their operations (Ashra & Lahtasna, 2017). Muslims mostly make their decision regarding bank selection by looking at the *Shariah* compliance repute of the respective IBs (Khattak & Rehman 2010; Abduh & Omar, 2012; Nawi et al., 2013; Polat et al., 2014). The reputation of IBs is based on the credibility of their respective SBs' *Shariah* opinions (Dar et al., 2013; Haron et al., 2015). The *Shariah* opinions of SBs may also adversely affect the performance of IBs and result in the loss of the stakeholders' confidence (Garas & Pierce, 2010). Rahajeng (2012) concluded that competent SBs play a vital role in enhancing the efficiency of IBs as a whole. Good *Shariah* governance ensures the dynamic growth of the Islamic financial industry (Shahzad et al., 2017). However, growth also raises questions regarding the *Shariah* compliance of the IFIs. It was found that tremendous growth and innovation in Islamic banking and finance has raised issues regarding the *Shariah* compliance of the products and services offered by IFIs (Malkawi, 2013; Khan & Shah, 2015).

Availability of *Fatwa* in Islamic Banking in Pakistan

In the context of the Pakistani Islamic banking system, *Shariah* advisors do not issue detailed *Fatwa* based on arguments and evidence on a regular basis. Although CSV is found, duly signed by the *Shariah* advisors, which affirms the *Shariah* compliance of Islamic banking products and services. Sometimes, a two-page introductory essay is written to the extent of deposits, duly signed by *Shariah* advisors and declaring their *Shariah* compliance. These pages are usually posted on notice boards in all branches to show the customers that their operations, products, and services are *Shariah* compliant. Customers, either laymen or well-educated individuals, perceive them as the *Fatawā* of *Shariah* advisors. IBs publish their annual financial reports and add a conclusive CSV duly signed by *Shariah* advisors that affirms the *Shariah* compliance of all its operations, products, and services. Hence, these *Shariah* approvals/CSCs/CSVs are considered as *Fatawa* in the Islamic banking world. Whereas, separate detailed *Fatawa* on Islamic banking products and services are not available.

From the above discussion, it becomes clear that *Shariah* approvals of SBs play a vital role to enhance, regulate, and supervise the development of the Islamic banking and finance industry.

Shariah Approvals and Islamic Jurisprudence

Procedure of Shariah Approval

There is a two-part procedure of obtaining *Shariah* approvals. The first part is known as “product document”. It is prepared by the product management and *Shariah* structuring department of IBs. It is written in English and explains all aspects of the product; however, it does not provide a single reference from any of the *Shariah* sources. A product document is basically considered a question (petition). This document is sent to 14 officers of 11 different departments to obtain their signature.¹ The length of product document is normally 40-50 pages. It explains the product structure. Finally, the CEO or President of the respective IB signs it and sends it to its SB for *Shariah* approval. The second part of the *Shariah* approval is the Certificate of *Shariah* Vetting (CSV). It is a single-page document which consists of a few words certifying that the presented document of product is *Shariah* compliant and there is no violation of *Shariah* principles in it. This document is duly signed by the SB members of the respective IB.²

Al-Takyīf al-Fiqhī of Shariah Approval

In Islamic jurisprudence, every novel issue is examined on the basis of the Qur'an, Sunnah, and consensus. Occasionally, the legal status of the new issue is determined through *Qiyās* (analogy) when a similar case has been elaborated previously in the Quran, Sunnah, and *Ijma*, although no direct reference can be found to the issue in question. The process through which such analogy is made for the newly emergent case is called *al-Takyīf al-Fiqhī* (Islamic legal characterization) (Al-Qaradawi, 1994).

Shariah approval is a piece of paper which declares that all operation(s), product(s), and service(s) of an IB are compliant with the *Shariah* principles and do not violate or contradict any of them. It is also known as the Certificate of *Shariah* Compliance (CSC) or Certificate of *Shariah* Vetting (CSV) in the Islamic banking and finance industry. All these terms or labels are alien to Islamic jurisprudence. These terms have not been used in the Quran, Sunnah, and the consensus, as well as in the modern academic and research world of Islamic jurisprudence. However, examining the

¹ The numbers may vary bank to bank.

² All this information has been collected from practical procedure being practiced in IBs and SGF of SBP, 2018.

procedure, role, and function of *Shariah* approval clarifies that it resembles the Islamic concept of *Fatwa*. The management prepares a product manual that explains the complete structure of the new product and submits it to their respective SB in order to obtain the license of permissibility. This procedure is similar to obtaining a *Fatwa* because a proper *Istiftā* (question/petition) is submitted to the *Muftī* to get the *Shariah* opinion on it. Hence, it becomes clear that the product manual submitted to an SB is actually an *Istiftā*. Consequently, the response of SB should be decreed as a *Fatwa*.

Juristic Status of Shariah Approval

Fatwa is an Arabic word. Researchers have used various terms to translate Islamic juristic terms from Arabic into English; however, no one has translated *Fatwa* as ‘*Shariah* approval’, ‘Certificate of *Shariah* Compliance (CSC)’, or ‘Certificate of *Shariah* Vetting (CSV)’. Scholars usually translate *Fatwa* with the terms ‘legal opinion’, ‘legal resolution’, and ‘*Shariah* opinion’. AAOIFI has spared a separate standard on the *Shariah* principles of *Fatwa* with the title: *Stipulations and Ethics of Fatwa in the Institutional Framework* (AAOIFI, 2018). The original standard is in the Arabic language where the word *Fatwa* and *Muftī* are used. *Shariah* approvals or the other above mentioned terms are not used even in the English version of this standard. Rather, it uses the transliteration of the Arabic terms *Fatwa* and *Muftī*.

Now, the question remains how the terms *Shariah* approval/CSC/CSV evolved in the Islamic banking and finance industry? The AAOIFI *Shariah* Standard and the SGF of the central banks of various countries make it mandatory for the IBs to seek approval from their SBs regarding the *Shariah* compliance of their operations and offerings. In English versions, usually, the word ‘approve/approval’ is used in regulations and clauses relevant to IBs and IFIs. SB approves and issues a certificate of *Shariah* compliance known as ‘*Shariah* approval’. According to the SGF of the State Bank of Pakistan (SBP), all products to be offered and/or launched by the Islamic banks shall have prior approval from the SB. The SB shall review and approve all the procedure manuals, product programs/structures, process flows, related agreements, marketing advertisements, sales illustrations, and brochures so that they are in conformity with the rules and principles of *Shariah* (Ullah et al., 2018). It also says that the SBs shall also specify the process/procedures to be adopted for changing, modifying, or revisiting

Fatāwá, rulings, and guidelines previously issued by them (Ullah et al., 2018).

The original Arabic version of AAOIFI's SS. 29 says: Originally, *Fatwa* is a collective duty that can be discharged by any one of those who are able to do it. *Fatwa* could, however, become the personal duty of the individual if he happens to be the only one in the community who is eligible to issue it. The board has to provide *Fatwa* to the Institution by virtue of their relationship. It is the duty of the Institution to seek *Fatwa* on incidences that actually occur or are expected to occur. It should also seek *Fatwa* for every operation that it intends to pursue (AAOIFI, 2018).

Examining the above clauses makes it clear that it is the duty of the board of *Muftīs* (*Shariah* advisory board) to issue *Fatwa* regarding each and every operation of IBs and IFIs. Another clause of the standard says: The Institution is obliged to follow the *Fatwa* once it is issued regardless of whether it meets the satisfaction of the management or not. This obligation holds true when the *Fatwa* entails enforcement or prohibition of a certain act. When the *Fatwa* entails the permissibility of the act in question, the institution has the right to refrain from following it, if it believes that for practical needs it has to do so (AAOIFI, 2018).

It is generally accepted that a *Fatwa* is non-binding. The petitioner (*Mustaftī*) can either reject or accept it. On the contrary, *Shariah* approval is binding and IBs are bound to accept it. It proves that *Shariah* approval is not a *Fatwa*. Arguably, *Shariah* approval in its nature remains non-binding for IBs. It is the regulatory authority, such as the central bank, that makes it mandatory for IBs to act upon the decision made by their respective SBs in order to stop the practice of *Fatwa* shopping (Hassan, 2010). Even, AAOIFI makes *Fatwa* binding upon IBs (AAOIFI, 2018). It remains clear that declaring it binding is an additional condition imposed by regulators and it does not affect the status of *Shariah* approval. The above discussion establishes that *Shariah* approvals are considered as *Fatwa* by Pakistani IBs and no separate *Fatwa* is available other than them. Hence, it is necessary to determine whether *Shariah* approvals/CSV/CSC meet the criteria of *Fatwa* set by Islamic jurists.

Adab al-Muftī wa al-Fatwa* and Parameters of *Fatwa

What are the prerequisites of *Istiftā*, *Mustaftī*, *Fatwa*, and *Muftī*? How to compose an *Istiftā* and *Fatwa*? What would be their methodology and

format? All these questions and other important aspects of *Fatwa* constitute a special category of the subject called *Adab al-Muftī wa al-Fatwa* (Manuals for the *Muftī* and *Fatwa*). These manuals answer such questions (along with others) in detail and prescribe qualifications for *Istiftā*, *Mustaftī*, *Fatwa*, and the *Muftī*.

To check the compatibility of *Shariah* approvals, the above aspects would be extracted from the *Iftā* (*Fatwa* issuance) manuals mentioned above. For this purpose, we focused on four *Iftā* manuals particularly as the criteria to test the compliance of the *Fatawā* related to Islamic banking with *Iftā* principles. Selected manuals included *Adab al-Fatwa wa al-Muftī wa al-Mustaftī* by Ibn al-Salah (643H), *Aadāb al-Fatwa wa al-Muftī wa al-Mustaftī* by Abu Zakariyah Yahya al-Nawawi (676 H), *Usul al-Iftā wa Ādābuhu* by Muft M. Taqi Usmani (2011), and AAOIFI *Shariah* Standard No. 29 titled “Stipulations and Ethics of *Fatwa* in the Institutional Framework” (AAOIFI, 2015).

We cannot ignore AAOIFI *Shariah* standards because these standards are the epitome of the collective efforts of the *Shariah* scholars. These collective efforts were made to find the solutions to contemporary problems or those problems of the past that demand rethinking and research in the changing circumstances. AAOIFI is the distinguished institution that develops standards specific to Islamic banking and financial intuitions. It also spares a special *Shariah* Standard no. 29 on the ethics of *Fatwa*. Moreover, it is inclusive of classical as well as modern manuals.

Extraction of the Parameters of *Fatwa*

From these above mentioned manuals of the principles of *Fatwa*, we can extract five common parameters of *Fatwa*: *Istiftā*, *Mustaftī*, *Muftī*, format of *Fatwa*, and methodology of *Fatwa*.

Iftā and *Istiftā* are also Arabic words derived from the same root as *Fatwa*. *Iftā* is the process of *Fatwa* issuance and *Istiftā* is asking for *Fatwa* (Al-Qardawi, 1988). The person who poses a question to the *Muftī* for his legal opinion is known as *Mustaftī* (Masud, 2009) and his question is called *Istiftā*. A *Mufti* is a jurist who is asked to deliver *Shariah* rulings on different issues in light of the *Quran*, *Sunnah*, *Ijma*’, and *Qiyas*. A *Mufti* is considered as a “Signatory on the behalf of Allah Almighty” (Ibn Al-Qayyim & Bin-Abubakar, 751H, p.1053). According to Imam Al-Shatibi (1997), a *Mufti* is the successor of the Holy Prophet (SAWW) among the *Ummah*.

Iftā (issuance of *Fatwa*) comprises three steps: firstly, a *Mustafī* (petitioner) submits a question to the *Muftī*. Secondly, in light of the submitted question, the *Muftī* attempts to find strong evidence from primary sources including *Qurān*, *Hadīth*, and *Ijmā'*, as well as secondary sources including *Qiyās*, *Maṣlahah*, and *Maqāṣid al-Sharī'ah*. Then, he formulates his own opinion regarding the permissibility or impermissibility of the issue in question. This is the proper procedure of *Iftā*. It can be said that the presentation of the petition (*Istiftā*), legal opinion (*Fatwa*) given by the *Muftī*, and the way evidence (*Dalā'il*) is presented about the given opinion altogether constitute the proper format of *Fatwa*. This format is considered as the prerequisite for a credible *Fatwa*. Thus, classical and modern *Fatāwā* manuals both adhere to this specific format. After presenting the historical evolution of *Fatwa* and its format, this paper analyzes the contemporary *Fatāwā* about IBs and IFIs and also highlights the issues in the context of their format.

The permissibility of all the operations of IBs and IFIs depend upon the *Fatwa* of the *Mufti*. If he confirms their operations as *Shariah* compliant they would be considered permissible, otherwise not. Such influence of the *Mufti* makes his role critical in Islamic banking and finance, especially in this age where financial issues have become more complex and arcane that are subject to *Ijtihad*. This high status requires the *Mufti* to be broad in his vision, sincere, act as a facilitator to the people, hard and fast about *halal* and *haram*, impregnable in his decisions, soft and polite in his behavior, and flexible according to the time, place, culture, custom, and situation. He must conduct good research, analyze the matter in depth, and must not be hasty in giving a *Fatwa* (Al-Nawawī, 1996). *Mufti* is also responsible to assess the role of the *Mustafī* before addressing his question; otherwise, it may signal a significant break with the true nature of *Iftā* (Mallat, 1996).

Fatwa manuals insist that *Istiftā* must be written in a clear language. If it is not clear or lacks necessary information, then the *Muftī* should ask questions from the *Mustafī* before issuing him a *Fatwa* (Masud, 2009). *Iftā* manuals suggest that the *Muftī* must cross-examine the *Mustafī* about the matter, explicate the *Istiftā* accordingly, and then issue the *Fatwa*, if he finds the *Istiftā* elusive (Al-Nawawī, 1996). It is because there is still a high probability that new information may lead toward different or opposite answers.

Fatwa includes two distinct parts: the question and the response. As a rule, both can be formulated orally or in writing, though the written form is recommended by the classical doctrine and jurists and currently remains the standard practice. Although no classical jurist used the term *format of Fatwa* directly while writing their *Ifta* manuals, they have discussed it indirectly. They advised the *Mufti* to give his opinion according to the presented petition along with detailed evidence and reasoning, if necessary. They portrayed a specific form of *Fatwa* where *Istifta* appears on the top of the page and the text of the *Fatwa* appears below it. They also gave considerable importance to the contents of the text of *Fatwa*. Al-Nawawi wrote in detail about the format of the written *Fatwa* on paper (*ruq'ah*). He said that a written *Fatwa* should be readable, clear, and should contain no blank space. Words should not be over-written or stuck-out. Generally, a *Fatwa* comprises the *Istifta*, the opinion given by the *Mufti*, and the representation of supportive evidence (*Dala'il*) (Hallaq, 1994). How to write *Istifta* and *Fatwa*, how to present evidence, what would be the order of evidence, and many other questions in this regard remain the focus of jurists.

Regarding the methodology of *Fatwa*, AAOIFI *Sharī'ah* Standard prescribes that the *Fatwa* should be clearly stated, so that it may not be misunderstood by the layman or taken to mean different things by those who have bad intentions. When there is more than one *Fiqh* opinion on the same issue, the board should declare the specific opinion that it subscribes to. If the issue is controversial, then the board needs to explain the reason behind its choice. When the *Fatwa* has more than one aspect, all such aspects need to be clearly indicated. In principle, mentioning the proof is not a necessary condition for issuing a *Fatwa* and the *Mustaftī* institution has no right to impose it as a condition for accepting it. However, the board has to refer to the bases of its *Fatwa* (AAOIFI, 2018). Regarding quoting evidence in *Fatwa*, jurists have two views. According to Al-Nawawi (676H), Al-Saymari (386H) said that it is not appropriate to mention the reasoning (*Dalil*) of each *Fatwa* for a layman *Mustafti* but it should be mentioned if the *Mustafti* is a jurist and scholar. Al-Nawawi (676H) added that it is better to mention *Hujjah* (evidence) in *Fatwa* if the latter is based on *Nass* and is clear and concise. According to Ibn Al-Qayyim (751H), the *Mufti* should mention the evidence of *Hukm* (ruling) and its sources as far as he can and should not give his opinion without it. Table 1 presents the parameters of *Fatwa*, their definitions, and contents.

Table 1*Parameters of Fatwa*

Parameter	Definition	Contents of the Parameter
<i>Istiftā</i>	<i>Istiftā</i> is the question /petition which contains all relevant information about the inquiry.	Contents of the petition Language of the petition Terminologies used in the petition contained information
<i>Mustaftī</i>	The entity that poses a question to the <i>Muftī</i> for his legal opinion, also known as the petitioner.	Presentation of petition Disclosure of information Ambitions of petitioner Background of petitioner
<i>Muftī</i>	<i>Muftī</i> is the person who performs the duty of the vicegerent of Holy Prophet (ﷺ) in giving his legal opinion on various matters with respect to permission and prohibition.	Deep analysis of the case Behavior: Patience <i>versus</i> hastiness and biasness <i>versus</i> neutrality
Format of <i>Fatwa</i>	Format of <i>Fatwa</i> indicates the order of the text of <i>Istiftā</i> and <i>Fatwa</i> . Literature suggests that <i>Muftī</i> 's opinion must be written after the text of <i>Istiftā</i> .	Existence of the petition Order of <i>Istiftā</i> and <i>Fatwa</i>
Methodology of <i>Fatwa</i>	Methodology of <i>Fatwa</i> indicates the basic source of <i>Fatwa</i> : if it is primary or secondary or any other source. Moreover, it also explicates the rationale provided for the adopted source?	<i>Fatwa</i> Primary Sources: Quran, Sunnah, Ijma' Secondary: <i>Qiyas</i> , <i>Istihsan</i> , <i>Maslaha</i> , and <i>Mursalah</i> Other sources: <i>darurah</i> , <i>hajjah</i> , <i>hilah</i> , or <i>talfiq</i> Presentation of evidence Quotation of <i>Ijma'</i> and opinion of other jurists Avoiding illegal methods Rationale about the adopted sources

Data

Table 2 presents ten (10) Islamic banking products whose *Shariah* approvals are considered for the application of the above mentioned parameters of *fatwa*.

Table 2

Islamic Banking Product

1	Running <i>Mushārah</i>
2	Diminishing <i>Mushārah</i> – House Financing
3	<i>Salam</i> and Parallel <i>Salam</i> – Agri Finance
4	Currency <i>Salam</i>
5	<i>Ijārah</i> Muntahiya Bittamlik – Vehicle
6	<i>Istiṣnā'</i>
7	<i>Murābahah</i> to Purchase Order
8	Import <i>Musāwamah</i> Finance
9	<i>Tijārah</i> Export Finance
10	Deposits – Current A/C, Saving A/C, and Investment A/C

For this purpose, five (5) full-fledged IBs and standalone Islamic branches of ten (10) CBs were selected as sample (Table 3).

Table 3

List of Islamic Banks

Sr.	Conventional Standalone IBs	Sr.	Full-fledged IBs
1	Faysal Bank	1	Meezan Bank
2	Askari Bank	2	Bank Islami
3	Bank Al-Falah	3	Al Baraka Bank
4	National Bank	4	Dubai Islamic
5	United Bank	5	Burj Islamic Bank
6	Standard Charter Bank		
7	Bank of Khyber		
8	Bank Al-Habib		
9	MCB		
10	HBL		

Application of *Fatwa* Parameters in *Shariah* Approvals

The current study found that the product manual submitted to an SB resembles an *Istiftā*. It indicates that *Istiftā* exists but remains beyond the

access of researchers and scholars. Its language was found to be simple, clear, elaborate, and understandable. It provided some information regarding the case presented but the information remained inadequate. Analyzing the product manual (*Istiftā*), it seems that the management of the IBs (*Mustaftī*) rained brief and to the point in describing the matter. However, it did not provide complete information in many cases. No deep analysis was made by *Shariah* advisors (*Muftīs*). They did not provide any interpretations in their *Shariah* approval. It seems that they just read and issued the CSV. Their behavior seemed hasty and biased toward their employer, that is, their respective IB (*Mustaftī*). The format of *Shariah* approval was found compliant with *Fatwa* since the response of *Shariah* advisors was incorporated in it, although it remained inaccessible for researchers and scholars. Hence, it was concluded that the methodology of *Shariah* approval does not meet the criteria set for the methodology of *Fatwa*. Indeed, almost all *Shariah* approvals do not provide any details about the references, evidence, reasons, justifications, and arguments related to the decision made by the respective SBs. Table 4 provides the overall summary of the findings of the application of *Fatwa* parameters on the *Shariah* approvals of Islamic banking products.

Table 4

Application of Fatwa Parameters in Shariah Approvals

Parameters	Contents of the Parameter	Findings
Question / Petition (<i>Istiftā</i>)	Existence of the petition	Exists but remains inaccessible for researchers and <i>Muftīs</i>
	Contents of the petition	Inconclusive
	Language of the petition	Simple
	Terminologies used in the petition	Understandable
The petitioner (<i>Mustaftī</i>)	Contained information	Insufficient
	Presentation of the petition	Brief and short
	Disclosure of information	No complete information but only in few cases
	Ambitions of the petitioner	In a hurry to secure CSV

Parameters	Contents of the Parameter	Findings
<i>Shariah</i> Advisor / SB (<i>Muftī</i>)	Deep analysis of the case	No
	Interpretation of texts	No
	Behavior: Patience vs. hastiness, and biasness vs. neutrality	Hasty and biased
Format of <i>Shariah</i> Approval	Existence of the petition	Exists, but remains inaccessible for researchers and <i>Muftīs</i> .
	Order of the petition, and <i>Shariah</i> approval	Exists but separately
Methodology of <i>Shariah</i> Approval	Primary Sources of <i>Fatwa</i> : Quran, Sunnah, <i>Ijma'</i>	Not mentioned
	Secondary: <i>Qiyas</i> , <i>Istihsan</i> , <i>Maslaha</i> , and <i>Mursalah</i>	Not mentioned
	Other sources: <i>Darurah</i> , <i>Hajah</i> , <i>Hilah</i> , or <i>Talfiq</i>	Not mentioned
	Presentation of evidence,	No
	Quotation of <i>Ijma'</i> and opinion of other jurists	No
	Rationale about the adopted sources	No

Running *Musharakah* (RM): Application of *Fatwa* Parameters

Shariah approvals of the running *Musharakah* (RM) product were examined for the purpose of this research. Set against the parameters of *Fatwa*, it was found that the contents of the petition (*Istiftā*) remain ambiguous. Hence, the petition does not present complete information, rather it conceals some of it. The petition submitted to the respective SB does not present a clear picture of RM. *Sharī'ah* advisors also did not discuss these issues in detail while issuing *Shariah* approval. Critics such as Ayub (2016), Siddique (2017), and Siddique and Siddique (2022) have raised many questions and highlighted various issues regarding the violations of the *Shariah* principles of *Shirkah*, although *Shariah* approval regarding RM overlooks these issues. It is the duty of the members of SBs

of IBs to issue *Shariah* approvals with solid evidence. Siddique and Siddique (2022) empirically analysed and confirmed that the contemporary practice of RM does not comply with the *Sharī'ah* principle of *Shirkah* as understood by classical Islamic jurists. Based on its existing structure, RM does not help to improve the distribution of wealth because it is merely a replica of conventional running finance.

It is recommended that if a written question presented to the *Muftī* asking for his *Fatwa* does not convey complete information, then he must give it back to the *Mustaftī*, advising him to elaborate it. If an illiterate *Mustaftī* explains the case and requests the *Muftī* to add the missing information in *Istiftā*, then the *Muftī* must do it. The submission of such an ambiguous petition shows that petitioner management of IBs is intended to get *Sharī'ah* approval at any cost. *Muftī* is also responsible to assess the role of *Mustaftī* before addressing his question; otherwise, it may signal a significant break with the true nature of *Iftā* (Mallat, 1996). It is unfortunate that the concerned SB neither raised these questions nor did they analyze it by themselves and issued CSV in favor of launching an RM product.

The analysis revealed that RM has used an illegitimate ploy to determine the rate of return and to give almost the entire share of the rate of return to the corporate client at the second level.³ Moreover, the analysis also showed that the flow of profit is biased toward the corporate class, akin to how it is practiced in conventional banking. According to Ayub (2016), one RM contract entered into by the premier bank with a company during 2008-09 revealed that the bank contributed 75% of the total RM investment. Although the company, with only 25% investment took 97.5% of the *Mushārah* profit, thus gave only 2.5% of the profit to the bank, despite the fact that the ceiling rate agreed at that time was 14.4% (1.00% over the KIBOR of 13.40%). Consequent to the above situation, RM is causing the unjust distribution of wealth and making the rich richer.

The format of *Sharī'ah* approval was also found non-compliant with the format of *Fatwa* as the petition was missing in CSV. The methodology used in the *Sharī'ah* approval of RM was ambiguous. The opinions of jurists were misinterpreted. The adopted profit distribution mechanism is against

³ For detail see, Siddique, M. A. (2016). Practice of Running Musharakah in Pakistani Islamic Banks: An Analytical Study in the Light of Shariah Principles. *Fikr-O-Nazar*, 54(04), 53-110.

the unanimously established *Sharī'ah* principle, as discussed above. It also involves the illegal trick of gifting the profit to the corporate sector (see Ayub, 2016; Ullah et al., 2018; Islamreigns, 2019; Akram, 2019). All these fact show that the management of the concerned IB seemed determined to get *Sharī'ah* approval at any cost. *Sharī'ah* scholars were seemingly under pressure to issue CSV without properly analyzing the form and substance of the product. Table 5 presents the findings in tabular form.

Table 5

Running Musharakah: Application of Fatwa Parameters

Parameters	Focus of Parameters	Findings
Question/ Petition	1. Existence of the petition	It is expected that the petition exists but remains inaccessible. What has been presented is just a PowerPoint document.
	2. Contents of the petition	Inconclusive
	3. Language of the petition	Ambiguous language
	4. Terminologies used in the petition	Understandable
	5. Contained information	Insufficient
Petitioner	1. Presentation of the petition	Brief and very short
	2. Disclosure of information	Conceals information
	3. Ambitions of petitioner	In a hurry to secure CSV
<i>Sharī'ah</i> Advisor/ <i>SB</i>	1. Deep analysis of the case	No
	2. Interpretation of texts	No
	3. Behavior: Patience vs. hastiness and biasness vs. neutrality	Hasty and biased

Parameters	Focus of Parameters	Findings
Format of <i>Sharī'ah</i> Approval	1. Existence of the petition	It is expected that the petition exists but remains inaccessible. What has been presented is just a PowerPoint document.
	2. Order of the petition, and <i>Sharī'ah</i> approval	<i>Sharī'ah</i> approval does not contain petition.
Methodology of <i>Sharī'ah</i> Approval	1. Primary Sources of <i>Fatwa</i> : Qurān, Sunnah, <i>Ijmā'</i>	Not mentioned
	2. Secondary: <i>Qiyās</i> , <i>Istihsān</i> , <i>Maṣlaḥah</i> , <i>Mursalah</i>	Not mentioned
	3. Other sources: <i>Ḍarūrah</i> , <i>Hājah</i> , <i>Hīlah</i> , or <i>Talfīq</i>	Illegal trick involved in profit rate fixing in 2 nd level of profit determination.
	4. Presentation of evidence	No
	5. Quotation of <i>Ijmā'</i> and opinion of other jurists,	No
	6. Rationale about the adopted sources	No

Conclusion

Shariah approvals play a key role in Islamic banking. IBs need them to run their operations, as well as to launch new products and services. As far as their procedure, role, and importance are concerned, they resemble a *Fatwa*. When tested against the parameters of *Fatwa*, it was found that *Shariah* approvals do not comply with the principles of *Fatwa* set by classical Islamic jurists, as well as AAOIFI's *Shariah* Standard no. 29. *Shariah* advisors issue the license of legality without mentioning, quoting, and referring to the sources of their *Fatwa*. They do not analyze the various dimensions of product manuals in their *Shariah* approvals. Instead, they only write that they found the product *Shariah* compliant and it does not violate any *Shariah* principles. Whereas, the majority of researchers and

scholars criticize IBs for violating and circumventing the *Shariah* principles.

Shariah advisors consider themselves free from the liability of issuing detailed *Fatwa* based on solid arguments, evidence, references, and juristic discussion on various aspects of the financial products and services about which the *Fatwa* is being issued. Islamic banking products such as running *Musharakah*, currency *Salam*, *Murabaha* to purchase order, and *Ijarah Muntahiya bittamlik* remain much debated by critics who raise a lot of *Shariah* objections regarding these products (see Nyazee, 2009, Ayub, 2016; Javaid et al., 2018; Ullah et al., 2018; Islamreigns, 2019; Akram, 2019; Siddique & Siddique, 2021). Unfortunately, no separate detailed *Fatawā* exist for Pakistani IBs except *Shariah* approvals/CSVs/CSCs. It becomes necessary for a regulatory body such as SBP to update its SGF and make it mandatory for the SBs to issue detailed *Fatawā* for Islamic banking operations, products, and services. Otherwise, the issuance of *Shariah* approvals is damaging trust in *Shariah* advisors as well as the *Shariah* compliance of Islamic banking.

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