



PAK-QATAR FAMILY TAKAFUL

PRELIMINARY REFLECTIONS ON ISLAMIC BANKING & TAKAFUL

By: Farhan Noor

A common man is rightly confused. At first, he was introduced to Islamic Banking. Despite all efforts to make him see the *difference*, he left scratching his head, bewildered. While at it, Takaful made its entrance. Now Takaful has set about to answer those same questions—questions such as what it is, how is it Shari’ah-compliant, and what can it do for him? This article is not another attempt to generate convincing answers. That—the what, the how, and the why—can be found in the academic books. What is described here is the frame-of-mind required to approach this subject. If we can right our worldviews and fine-tune our perspectives, we can have a better understanding and appreciation, and eventually the experience of new patterns of thoughts and practices. Here, the Islamic Finance industry is the case in point. Our objective is to renovate our mindsets and replace conventional spectacle lens. Only from there, and then, we will be able to see clearly and move forward.

1. Therefore, firstly, being Shari’ah-compliant, or “Islamic”, or Halal and Ethical for that matter, does not connote or entail anything except the fact that the same does not contravene the teachings of Islam. The practice of and involvement with Islamic Banking or Takaful is therefore (for that matter) neither in the level of fardh nor Sunnah, or Makruh, or Haraam. It in fact falls in the category of Mubah—a category which stands neutral on any given matter and has no rewards or punishments for its performance or avoidance. It is like choosing apples over grapes. Two important points:
 - a. You are absolutely free to reject Islamic Banking and Takaful without the fear of incurring Allah’s (SWT) Wrath. It is after all, simply Mubah! However, to participate in its conventional counterpart, a system which sponsors Riba (Interest), and Gharrar (excessive uncertainty), and Qimar (gambling), to name just three, all against which there are clear prohibitions, is not acceptable. In other words, there is no compulsion in embracing (or rejecting) this Shari’ah-compliant way of financing as long as one stays safe from the forbidden elements. But can you? If not, then there *is* at least a system which claims to be free from it!
 - b. Intentions can actually change the status of Mubah to Fardh or Haraam and can therefore earn you reward or punishment as a result. To support a system such as Takaful which is certified “Islamic” by some of the most prominent and leading Shari’ah Scholars, for the sake of Allah (SWT) alone, as part of an effort to live Riba-free, will Insha’Allah earn you rewards from Him.
2. There are two tiers to an Islamic Financial Institution: one is the business model and the other is the practitioners implementing that model. The title “Shari’ah-compliance”, in this context, refers, implies, and concerns the former and not the latter. The practitioner’s belief or values or practices have no bearing or impact on the permissibility or the impermissibility of the business model in question, in Islam. The focus of debate should be the business model, not the Hijabless receptionist. One point:



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- a. However this does have an implication. Shari'ah, in reality, is not limited to any particular aspect of life, or work. It encompasses and is applicable on both individual and collective life activities. To call Islamic Banking or Takaful "Shari'ah-compliant" and then to limit its scope within the boundaries of business model, is therefore unacceptable. If the industry practitioners are non-practicing Muslims and are involved in activities prohibited in Islam as prohibitive as free intermingling of sexes, and then to pretend and plead compliance to "Shari'ah" is unacceptable. Islamic Banks and Takaful should instead refer their case as "Riba-free Banking" or Halal financial intermediation.
 - b. The prevalent practices in Islamic Finance is of "acceptable level", if one, for the sake of perspective, broadly categorize it into acceptable, satisfactory, and desirable levels, desirable being the one closest to the vision of Islamic Economics System.
3. Islam is a strictly process-oriented religion as opposed to being result-driven. The emphasis is not only on the intention but also on the effort put in by the individual. This is an important point. Many amongst us wrongly pass out judgments on the results, the face value, the conclusions, the outcomes, the end of an action without considering the process or work content involved in reaching it. The only factor differentiating the birth of a child one from wedlock and other from out-of-it is a mere offer and acceptance contract called the Nikah Naamah. This Nikah Naamah is what distinguishes between the two same results (birth of the child) rendering one form of birth permissible while the other impermissible. Moreover, what constitutes an animal sacrifice acceptable in Islam and its food fit for consumption (Halal) is the lone attributed proclamation during the act of slaughter. This proves that processes count, not results. Similarly, the Prophet Muhammad (peace be upon him) was asked to only "deliver the message" and not to "kill yourself in grief over them" (when they disregard your declaration). Two points:
 - a. The same principle holds true when judging Islamic Banking or Takaful. Just because conventional car financing scheme and Ijara or life insurance and Family Takaful looks the same on the surface, it does not necessarily mean that the two therefore must be identical in its processes also. It may or may not be, for which you need to read its respective literature. The argument that conventional and Islamic financing "looks" the same is therefore invalid.
 - b. Islamic Economic system is means to an end, not the end unto itself.
4. The Deen of Islam is divided into Ibadaat and Mu'amulaat. One golden rule worth remembering is that the former comes prescribed with a list of *do's* whereas the later with a list of *don'ts*. In Ibadaat, all besides which has been listed is considered Haraam whereas, on the contrary, all besides which have been listed in Mu'amulaat is considered Halal. In simple words, in matters of financial dealings, Allah (SWT) has given us a list of don'ts in Riba, in Gharrar, in Qimar, etc., and have left the field wide open for human ingenuity and intellect to play around. On the other hand, in matters of Ibadaat, Allah (SWT) has taught us



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exactly how to worship him right to the minute detail, deviation from which will give rise to the despicable Biddah. One point:

- a. The existing Shari’ah compliant system/products—be it in banking, be it in Takaful—are “man-made” products, meaning that we have developed it, and not Islam. We were allowed to develop these products because, as explained earlier, it is a matter of Mu’amulaat (and also Mubah), and as such as long as one does not indulge in Riba and co., one is free to innovate to mind’s and heart’s content. This fact is best exemplified in the number of Takaful models in operation in the world: there is the Modarabah Model, the Wakala Model, the Modarabah-Wakala Model, and the Wakala-Waqf Model. Therefore, there is no reason to become confused or skeptical if one country is following a different Takaful model from another. Perhaps now you would understand why there is this constant hue and cry for product innovation and creativity within the Islamic Finance industry.
5. Just as one should not become skeptical over the differences in approach to Takaful, one should also not feel burdened over conflicting fatwas. The logic is simple. The issue of Shari’ah-compliant financing is an issue of Ijtehad/Qiyas (Analogy). In Ijtehad, there is room for discussion and debate, and ultimately disagreement. For Ijtehad to qualify or fail, the majority opinion is generally held sacred. An important point though:
 - a. According to the Shari’ah, in matters of Ijtehad, a person may prefer the fatwa of one Scholar over that of another’s but without resorting to unfounded criticism and revolt of the contradicting one. One should in fact follow the fatwa of the Scholar whose level of knowledge and expertise in Shari’ah, professional background in the related field, and Taqwa we most trust and hold dear.
 6. If Islamic Banking or Takaful is not “Islamic”, and is in fact Haraam, both the Shari’ah Scholars and the consumer of this system would be free from sin—if—and only if—the Scholars were honest, sincere, and true with their convictions. This makes sense. A judge may pass a wrong verdict, but if that decision was driven by Truth, Allah (SWT) will not hold him accountable for his mistake. A doctor can also fail a person’s health with his treatment. Again, if it was an honest mistake, there would be no blame or charge on him. Similarly, a Shari’ah Scholar, to the best of his knowledge and intentions, may also authorize an Islamic financial product to be Shari’ah-compliant and Halal which the case may not be, and in which situation, he will not be penalized with sin. One point:
 - a. A consumer’s responsibility is to exercise reason and faith in the ruling of the Shari’ah Scholars with regard to the permissibility of Islamic Banking and Takaful in Islam. If he errs, he will not incur sin. If Shari’ah Scholar errs, by way of an honest mistake, he too will be free from any divine transgression.

Seeing things differently is a challenging proposition one which requires knowledge, and Faith. Not everything is *art* and *science*; there is *revelation* as well. Islamic Finance, being a subset of Islamic Economic System, which in return is founded on indigenous social sciences, besides



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empirical sciences, starkly differs from its conventional counterpart. It is this paradigm which contributes towards the development of a frame-of-mind necessary to approach the study of Islamic Banking and Takaful, otherwise, confusion will continue to abound. Subscribing to this position will greatly remove misapprehensions and moreover influence sympathy. This, however, is not the end, but the means to an end. In reality, it is just the beginning. Regard this as a stepping stone. In actual, one cannot do away with the academic books in favor of this, for that would be blind faith. If there are two things this industry doesn't need, those two things would be blind faith and baseless criticism.

May Allah bestow us with the knowledge of His Deen and the strength to act upon it; Amen.

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