

THE LIMITATIONS OF THE INSTITUTION OF FATWA AND THE NEED FOR ISLAMIC ECONOMIC THINK TANKS

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Overview

- An Introduction to *Fatwa* and *Qada*
- The role of Sharia Boards
- Rules governing Ifta (Classical and Modern)
- The Mufti and the State
- Application to SRI case studies:
 - Sharia screening rules
 - AAOIFI CSR Standard
- The role of Islamic economic think tanks in making policy recommendations
- Conclusions

An Introduction to *Ifta* and *Qada*

- *Ifta* (v) – *Fatwa* (n): the act of informing a questioner of a religious ruling arrived at by exercising proper scholarly judgment based on an acceptable proof (according to the rules of Islamic jurisprudence)
 - Mufti: a Qualified Muslim Jurist who performs the act of *Ifta* in response to a question (Sharia board member)
 - Not legally binding. Morally binding if the questioner believes it is true.

- *Qada* (adjudication): to establish a matter subject to dispute and scholarly judgment as permissible, obligatory, or prohibited in a manner seeking to achieve a legitimate worldly benefit
 - Qadi/ruler: a Qualified Muslim Jurist who performs that act of *Qada* (court judges, regulators, policy makers)
 - Legally binding. Mufti not allowed to negate it.

Ifta vs Qada

Qada (Legal Judgment)

- “the representative of the ruler”
- Executive power
- Legally and morally binding
- Rules: Obligatory, permissible, prohibited

Ifta (Legal Opinion)

- “the translator of the ruler”
- No executive power
- Morally binding if questioner believes it is correct
- Rules: Obligatory, permissible, prohibited,
Add: recommended, disliked

The role of Sharia Boards

- Serve as Mufti for an Islamic Financial Institution
- Typically regulators mandate that the institution not promote a product without the approval of their Sharia board
- Supervise the implementation of offerings through Sharia Audit function
- Unique role that does not fit nicely into Mufti/Qadi categorization.

AAOIFI on Sharia boards

AAOIFI Sharia Standard No. (29) states that:

- 6/1 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 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....however, rejection of the board Fatwa should be reported to the General Assembly of the institution.**

Rules governing Ifta - Qualifications

- Qualifications:
 - Integrity
 - Mastery of Sources of Islamic law and ancillary sciences required to interpret the primary texts
 - Applied legal experience
 - High social intelligence
 - Patience
 - Independence

AAOIFI on Qualifications

“Stipulations and Ethics of Fatwa in the Institutional Framework” regarding conditions on Muftis working in the context of an Islamic Financial Institution:

- 5/1: A board member shall be **well versed in Fiqh** (Islamic Jurisprudence), well informed of the contributions of diligent Fiqh scholars, and **has the ability to use the Shariah-accepted methods of deriving reasonable rulings on emerging issues**. He shall also be known for his **discernment, cautiousness and knowledge about the circumstances and traditions of people, and should always remain alert against the different means of human misbehavior**. Competence in Fiqh is usually manifested by the **vast reputation** of the scholar or his distinguishable contributions especially in the area of financial transactions performed by institutions.

Rules governing Ifta – Due Diligence

- Determine if the issue is subject to a judicial judgment
- Understand the issue well including the meaning of all terms used, especially if terms of art are used or terms from a foreign environment
- Understanding the general Sharia ruling applicable
- Ascertaining the applicability of the general Sharia ruling to the situation
- ** This process relies heavily on the transparency and integrity of the questioner.

AAOIFI on transparency

AAOIFI Sharia Standard No. (29) :

- 6/2 Fatwa should be sought again if there are new developments that should be presented to the Board. New developments may include change or improvement of conception, occurrence of new circumstances, or non-existence of some of the underlying reasons for the previous fatwa.

Rules governing Ifta – procedure

Primary Sources

- Explicit meanings from primary sources
- Consensus of Jurists
- Clear Analytical Deduction
- Non-explicit meanings from primary sources

Secondary Sources

- Istihsan (Juristic Approbation)
- Istislah (benefit analysis)
- Others...

Rules governing Ifta – AAOIFI on procedure

AAOIFI Sharia Standard No. (29) as follows:

- 7/1 Fatwa should basically be founded on what has been **explicitly stated in the Quran and the Sunnah** along with what has been supported by **Ijma (consensus of Fuqaha)** or **proven by Qiyas (analogical deduction)**. **After resorting to the preceding sources**, the judgment of the Mufti with regard to the different viewpoints of the Fuqaha (scholars of Fiqh) ie. **Istihsan (Sharia approbation)** and **Maslaha Mursala (public interest)** may be considered as the basis for issuance of Fatwa.

The Mufti and the State

- No Duty to comply:
 - Oppression: Mufti should support the judgments and policies of the state as long as they are not clearly oppressive
 - State acting as mufti: Fatwas issued by state authorities are generally non-binding on Muftis
- Duty to comply:
 - Judicial Judgments, laws, and policies are binding on everyone, including Muftis
- Duty to advise:
 - There is a general command to advise those in positions of influence which includes religious and political leadership

SRI Case Studies – Stock Screening Standards

- Prohibited businesses lines: (agreed upon)
 - Conventional financial services, gambling, pornography, etc...
 - Prohibited based on primary sources
- Financial screening ratios: (difference of opinion)
 - Conventional debt/company value < 30%
 - Impermissible revenue/ret income < 5%
 - Cash plus receivables < 50%
 - Prohibited based on secondary sources
- Shareholder activism (difference of opinion)

SRI Case Studies – AAOIFI CSR Standard

Binding – Institution SHALL establish policies for:

- Policy for screening clients:
 - Screen clients based on approved and disclosed criteria
- Responsible dealings with clients
 - Sharia compliant contracts
 - Ethical marketing
 - Considerations of payment difficulties
- Policy for prohibited earnings
 - Due diligence
 - Disposal
- Policy for employee welfare
 - Rights/obligations
 - Fair treatment
- Mandatory Disclosure should be made for all of these

Non-Binding – Institution May establish policies for:

- Screening clients:
 - Client investments, AML, CSR, Effects on: Environment, economy and society
- Employee welfare:
 - Equal opportunity, Merit based, Long term incentives, Child labor, Class / race barriers, Expected behavior
- Qard hasan
- Reduction of adverse impact on environment
- Social, development, and environment based investment quotas
- Par excellence customer service
- Micro and small business and social savings and investments
- Charitable activities

Need for Islamic Economics Think Tanks

- Think tanks are public-policy research analysis and engagement organizations that generate policy-oriented research, analysis, and advice on domestic and international issues, thereby enabling policymakers and the public to make informed decisions about public policy.
- Collaboration between Muftis and other professionals to present policy papers
 - In spirit of “duty to advise” – Muftis
 - Assist policy makers – spirit of duty to maximize benefit
- Papers would be informed by Islamic moralities
- These papers can be adopted by state actors and mandated (SRI considerations) or can be adopted by private actors and mandated in business decisions (Responsible investment commitment)

Thank you

- Thank you
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