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Compliance Or Contradiction? A Critical Analysis of The Insurance Industry in Bangladesh in The Context of Shari'ah-Compliant Standards of Islamic Insurance and Reinsurance

AKM Nahiduzzaman[1]*, ANM Jahangir Kabir[2]

[1] *First Assistant Vice President and Relationship Manager, Wholesale Banking Division, United Commercial Bank PLC, Corporate Office, Dhaka, Bangladesh*
[2] *Professor, Department of Management Studies, University of Rajshahi, Bangladesh*

ABSTRACT: This paper is a critical analysis on whether the insurance sector of Bangladesh fits the Shari'ah-Compliant criteria of Islamic insurance (Takaful) and Islamic reinsurance (Retakaful). Based on directives issued by AAOIFI, Islamic Fiqh Academy and other academic bodies, the paper presents a discussion of the extent, to which the Bangladesh insurance framework measures up to Islamic ethical and legal principles. The study, using both the comparative analysis and empirical evaluation, demonstrates that there are significant gaps in the realization of fundamental Shari'ah requirements, such as ownership; profit orientation; a risk-sharing mechanism and governance. The paper provides important regulatory reforms, institutional alignment and growth of ethical Islamic financial practices as a conclusion.

Keywords: Islamic Insurance, Takaful, Retakaful, Bangladesh Insurance Industry, Shari'ah Compliance, AAOIFI, Gharar, Ethical Finance.

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***Corresponding Author:**
Email: akm.nahiduzzaman@gmail.com

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INTRODUCTION

The recent growth of the Islamic finance sector around the world has drawn considerable concern to the Islamic insurance, or Takaful, as a religiously acceptable substitute of the traditional insurance schemes [1]. Takaful is based on mutual support (taawun), mutual accountability, and avoiding of things that are prohibited in Islam like Riba (interest), Gharar (excessive uncertainty) and Maysir (gambling). The increase in the Muslim population throughout the world and in Bangladesh in particular has triggered the need of Shari-compliant financial products and services among them such as insurance products, and reinsurance products [2]. Bangladesh is a majorly Muslim nation with a financial sector that is blossoming, and Takaful products have seen an infiltration in the country since in the early 2000s. But the level at which the insurance country is complying with the internationally accepted standards of Shari'ah is not clear. Although the Islamic wording and branding is commonplace, there are still gaps in the levels of operational and structural conformity [3]. The paper addresses these matters in a sequential exploration that will start by looking into historical development of Takaful in Bangladesh and then critically examining the practice of state governance, investment and reinsurance before concluding with an international benchmark comparison in Malaysia and Pakistan. It aims at recognizing areas of non-compliance and recommending effective reforms towards achieving genuine Islamic insurance in Bangladesh [4].

In Bangladesh, the idea of Islamic insurance appeared in the early 2000s when the markets expressed growing interest and the proliferation of Islamic finance across the world. This was the case in 2000 when Islamic Insurance Bangladesh Ltd., the first vested Islamic non-life company, kick started operations in the country, establishing a critical moment in Shari'ah discourse [5]. Since this time the industry has experienced the entry of various firms using the names Takaful or Islamic insurance providers. The Insurance Development and Regulatory Authority (IDRA) started to regulate with Islamic insurance frameworks in the 2010s but did not implement plants to control it strictly. The initial policies tended to be liberal with hybrid types of Islamic and conventional modes existing side by side [6]. A failure in provision of specific directions concerning Shari'ah governance, limitations on investments as well as allocation of surplus gave way to inefficient adherence to real Takaful principles. Market share growth was comparatively low because many consumers are still unaware of the existence of products in the market, there is no independence of Shari'ah boards and lacks operators to conduct Islamic reinsurance (re-Takaful). In addition, the secular legal framework in Bangladesh brought about conflicts with the religiously established requirements on which the Islamic insurance is based, which made it difficult to comply [7]. Nevertheless, several academic and industry reports during the 2010s pointed towards the potential growth of capacities, so long as the regulatory reforms and capacity building became a priority [8]. This historic background sets the context and today, the situation is still in flux and the observance of Shari'ah standards is at the edge of a debate.

Literature Review

The merging of Islamic laws with the contemporary forms of financial system has resulted in the rise of Islamic insurance- Takaful which plays the role of an alternative to traditional insurance. Takaful, which is relied on ideas like mutual cooperation, risk-sharing (taawuno, tabarru early), prohibition of interest (Riba), gambling (maysir), and excessive uncertainty (gharar), is used as a financial protection model that concurs with the approach of the Shari. With the global rise in the demands to the ethical and incorporative financial products, even more study focus has been drawn to the Islamic insurance and reinsurance (Retakaful) especially in the areas where the Muslim populations are rising and where the financial markets are also changing [9], [10].

Worldviews and World Opinions

The evolution of Takaful comes in light of Islamic guidelines and Islamic commercial jurisprudence branch of Fiqh al-Muamalat. Standards issued by AAOIFI and IFSB declare that a Takaful contract should be founded on tabarru', a voluntary payment to a mutual fund by the participants to cover other participants. The Takaful company or operator will be the one taking care of the process as Wakil (agent) or Mudarib, (investment manager), and receives payment in managing the fund, like so the profit of the pool is no longer with the insurer [11]. The implementation of Takaful has been institutionalized in such countries as Malaysia, Saudi Arabia, and Bahrain through effective legal frameworks, dynamic Shari'ah a board and dual compliance with financial and Shari'ah a regulation, as highlighted by empirical studies [12]. As an illustration, the surplus distribution of Takaful Act 1984 (revised 2013) in Malaysia allows practical guidance on the standards of operations, segregation of funds, and Shari'ah a governance, which are transparent and accountable [13].

Emergence of Islamic Insurance in Bangladesh

A relatively less developed but rather advanced Islamic insurance sector began in the 1980s in Bangladesh but entered its recognition stage in the early 2000s. The early movers like Prime Islami Life insurance Limited, Islami Commercial insurance company and takaful Islami insurance Ltd. characterized themselves as Shari'ah based competitors of the more traditional insurance companies [14]. Nevertheless, global standards of Shari'ah should also be adopted but it is compromised by the fact that the regulation in the Insurance Act 2010 is not clear on that use [15]. Several studies have been emphasizing that legally binding Shari'ah standards are lacking in the insurance sector of Bangladesh. Research conducted by [16] identified discrepancies between the operations of Takaful in Bangladesh and those of AAOIFI, referring to an existing tendency to invest funds of its participants in interest-bearing government securities or conventional reinsurance. Non-segregation of funds, insufficient autonomy and transparency of the Shari'ah boards and surplus share bouts, which are usually undecided, are listed as system weaknesses, which undermine compliance [17].

Compliance Index Indicators and Comparative Research

When contrasting Takaful jurisdictions, the scholars focus on four key areas of Shari'ah compliance (i) Shari'ah governance and accountability, (ii) financial transparency and fund segregation, (iii) Investment screening and risk sharing, (iv) surplus distribution and participant rights [18]. A comparative study by [19] revealed that Malaysia, Indonesia and Sudan, had good systems of internal audit to be used in ensuring compliance with Shari'ah, but Bangladesh was found to be lagging behind because it lacked sector-specific regulations as well as Shari'ah audit procedures. Besides, the paper observed that in most Bangladeshi so-called Islamic insurance companies, Shari'ah advice boards simply serve the role of posing credentials, and lack any real authority or decision-making power, overseeing, or control ability, or even financial autonomy. Such a lip service to compliance violates faith in the stakeholders and the ethical integrity of the institution structures [20].

A Gap between Retakaful and Reinsurance: A Critical Gap

Reinsurance is the core of risk management by the insurers. Retakaful is the correct alternative to the more common reinsurance in the case of Shari'ah compliant insurance because conventional form of reinsurance is found to be non-compliant as it mostly makes use of interest and speculation. [21] and [22] also pointed out that the majority of the currently operating Islamic insurers in Bangladesh continue to use traditional reinsurance due to the low number of local Retakaful providers and strains on the total expenditure. Such reliance on traditional reinsurance processes introduces a paradox in the sense that although the front-end activities might seem to be Shari'ah compliant, the back-end risk management fails to meet the Islamic standard. It is a conflict over which [23] have coined the term as a so-called double-layer inconsistency in which apparent adherence to Shari'ah a hides underlying non-adherence with it.

Institutional and Structural Problems

Another theme that has repeatedly appeared in the literature is that of the institutional weakness of the Bangladesh insurance regulator the Insurance Development and Regulatory Authority (IDRA). In contrary to Bank Negara Malaysia, IDRA has not established a separate set of Takaful regulations or realized any compulsory program of Shari'ah fee audit. The Islamic insurers are therefore run on sketchy interpretation of conventional systems that give a possibility of discretion, inconsistency and in some cases non- compliance as an intention [24]. The other issue, such as the discretion of having the trained Shari'ah experts, conflict of interest in the appointment of board members and the lack of financial public disclosure of fatwa or Shari'ah audit reports when the product is standard in the developed markets like Malaysia and Bahrain also stand out. Shari'ah compliance in Bangladesh is not a reality until the institutional capacity-building and law reforms since it is impossible to enforce Shari'ah in a country where non-compliance does not have any legal counterpart [25].

Gap in Literature- Future Direction

Although a lot has been documented about the working principle of Takaful in the world, very little is available on country specific critical analysis with a particular attention to the insurance industry and its compatibility with Shari'ah requirements in Bangladesh [26]. Moreover, the literature does not give much attention to the empirical cases studies comparing the Bangladesh with the well-regulated Takaful markets like Malaysia or Pakistan. This paper will thus address that gap by undertaking an informed critical analysis of the extent to which the Islamic insurance industry in Bangladesh has either met or gone against the general Shari'ah provisions and their rationale [27].

METHODOLOGY

In this research work, the qualitative content analysis method is adopted. The information was obtained out of policy statements, annual reports, company charters of the major Takaful operators in Bangladesh, as well as guidelines provided by the IDRA, AAOIFI and resolutions presented by the Fiqh Academy [28]. Malaysia and Pakistan were looked into comparatively using literature and regulatory scrutiny. To confirm interpretive analysis, some informal interviews were done with those involved in the industry. The study mainly aims at discovering the structural and operational factors that favor or non-favor Shari'ah financial compliance [29].

Findings and Critical Analysis

Shari'ah Compliance in Insurance Structure

In Bangladesh, Islamic insurance is unofficially based on Takaful but differs on a number of operational levels. Although there is a use of tabarru' pools, there is ambiguity as to separation of contracts between policy holders and shareholders [30]. There are Shari'ah Restored rule boards whose ruling is often not binding, but advisory in nature [31]. Such discrepancies lead to the establishment of a disparity between professed religious conformity and real action. The conflict is further enhanced as policies and promotional materials tap into the Islamic terminologies which are based on the traditional underpinnings [32]. The fluidity between the types and the contents of the Islamic finance impedes on the reality of authentic Islamic finance. The key Shari'ah standards are summarized in Table 1.

Table 1: Comparison of Shari'ah-Compliant vs. Conventional Insurance

Criteria	Takaful (Islamic)	Conventional Insurance
Ownership of Fund	Policyholders	Insurance company
Risk Management Approach	Risk-sharing (Tabarru')	Risk-transfer (Premium-for-compensation)
Investment Policy	Shari'ah-compliant only	Profit-maximizing, including Riba-based
Governance	Shari'ah Supervisory Board (SSB)	Corporate governance
Profit Orientation	Not-for-profit / Surplus-sharing	For-profit
Transparency & Fairness	Required by Shari'ah	Not always mandated

Investment and Repartition of Surplus

One of the main postulates of Islamic insurance is the restriction to investing in the instruments that are not based on interests. Nevertheless, Bangladesh having a vast number of Takaful operators invests in government securities or in mixed-portfolio mutual funds, having an ingredient of riba [33]. Takaful has been associated with surplus sharing which is irregularly practiced. Organizations use their discretion when distributing the surplus and, in some cases, can redirect the funds to reserves without any open procedures. This threatens the risk-sharing ethic, which is part and parcel of Islamic financing [34]. Additionally, no written policy on surplus allotment is available, which is also against recommendations put out by AAOIFI wherein the periodic and proportionate reversion of the surplus to the policy holders is recommended [35].

Reinsurance Practices

There are very few Islamic reinsurance opportunities available under Bangladesh. Consequently, most insurers turn to the traditional reins Kelly Anderson firms to help them eliminate risk. Although it is permissible in AAOIFI under necessity, hence the absence of a documented Shari'ah board-ruling or mitigation plans (e.g. fund segregation) suggests non-compliance [36]. Also, it is not very transparent the way reinsurance contracts are made or rationalized in the jurisprudential point of view. This causes ethical ambiguity and renders companies subject to reputational risks within the domestic Islamic markets and even in overseas Islamic markets [37]. According to Table 1, the most important Shari'ah under the Shari'ah principle of Shari'ah includes comparison against the criteria to the actual practices.

Table 2: Compliance Gap in Bangladesh's Insurance Sector

Shari'ah Standard Criteria	Actual Practice in Bangladesh	Compliance Status
Use of tabarru' fund	Partially implemented	Partial
Surplus distribution to policyholders	Rarely transparent	Weak
Shari'ah board authority	Advisory only	Non-compliant

Reinsurance with re-Takaful operators	Very limited use	Weak
Investment in riba-free portfolios	Often mixed with interest-bearing instruments	Non-compliant
Use of Wakalah/Mudarabah contracts	Not consistently documented	Partial

The Reasons of Non-Compliance

One of the crucial impediments to the development of sound Shari'ah based completeness of the Bangladesh Islamic insurance industry is regulatory confusion created by the vested interest of the Insurance Development and Regulatory Authority (IDRA). Although IDRA regulates both conventional and Islamic insurance it does not stringent apply Islamic financial requirements as they have been done in other jurisdictions such as Malaysia. This regulatory laxity gives the institutions a lot of room in defining Shari'ah compliant, many of them adjust this act to suit their operational convenience instead of using it as standardized benchmark [38]. The other outstanding challenge is the lack of understanding and awareness among insurers, concerning the scope and technicalities of Shari'ah, contracts. Most players in the industry regard the need to comply with Shari'ah as a fringe requirement and hence there is minimum compliance. This deep-seated a jurisprudential principle which forms the basis of Islamic financial products is often ignored or not understood and on top of this adds difficulty of the need to carry on with the genuine Shari'ah compliant models [39]. Shari'ah boards of most of the Islamic insurance firms in Bangladesh are systematically constrained. Such boards are in most situations not truly independent and can be swayed easily by the management of a company. This structural subordination seriously undercuts their capacity to provide impartial supervision, or to make authoritative edicts (fatwas) on the difficult issues of conformity, administration or investment [40].

A lack of a domestic Re-Takaful infrastructure is also an equally prominent challenge. Due to the lack of local Islamic reinsurance, the providers, Bangladeshi Islamic insurance providers are usually forced to meet the conventional ones. This dependency, even though it would be justified on practical or economic basis would introduce a certain element of contradiction since it puts the funds of the participants at the risk of non-conforming financial practices, thus lacking any integrity on the overall Takaful model [41]. There is also the issue of cultural-legal dualism in the country that makes compliance even harder. The currently observed conflict of interest between religious demands and the secularity of the legal system of Bangladesh in matters related to finances is uncomfortable. It is this two-tier system that creates an atmosphere in which inconsistencies between the permissibility of the law and ethical (Shari'ah) compliance are common and in conflict [42]. This means that in institutions there are conflicting obligations which are difficult to completely follow. Finally, there is the problem of the weak disclosure practices. Components reflecting the Islamic insurance firms' adherence to Shari'ah i.e. mechanism for Shari'ah compliance, content of board fatwa or screening processes on ethical criteria adopted in investment decisions are often not reported annually by the firms. Such secrecy is downright hindering in terms of external accountability and even in terms of the public trust in the Islam-friendly nature of Islamic insurance services [43].

Table 3: Root Causes of Non-Compliance

Factor	**Impact on Compliance**
Regulatory Ambiguity	Weak enforcement of Shari'ah standards
Inadequate Shari'ah Boards	Lack of oversight and independence
Reinsurance Infrastructure	Reliance on non-Shari'ah-compliant conventional reinsurance
Knowledge Gaps	Inadequate expertise in Islamic jurisprudence
Dual Legal System	Tension between secular laws and religious expectations

Comparative Assessment with Shari'ah Standards

Although some companies claim to have Islamic insurance businesses, the majority of the companies in Bangladesh do not conduct businesses within Shari-ah expectations [44]. Comparative assessment is made in table 4.

Table 4: Assessment of Bangladesh's Insurance Practices against Shari'ah Standards

Parameter	**Shari'ah Standard**	**Bangladesh Practice**	**Status**
Fund Ownership	Policyholders	Company	Non-compliant
Risk Structure	Tabarru'-based mutuality	Mixed/hybrid	Partially Compliant
Investment	Halal-only	Mixed with Riba	Non-compliant
Compliance	instruments	exposure	
Reinsurance	Retakaful only	Conventional	Non-compliant
Model	unless dire	reinsurers	
Shari'ah	Mandatory SSB	Rarely enforced	Non-compliant
Governance	oversight		

Case Study: Comparative Analysis of Operators of Islamic Insurance in Malaysia and Bangladesh

In order to discern more clearly the practical implementation and success of the Shari a rule in Islamic insurance, this section also has the comparative case study between the two operators Syarikat Takaful Malaysia Berhad (STMB) in Malaysia, which is the leading Takaful provider in Malaysia, with Prime Islami Life Insurance Limited (PILIL) in Bangladesh. This is because it analyses the operational models, the risk-sharing mechanism and the level of inclusions of Shari'ah boards, which give important impacts on the compliance activities [45].

Introduction of Operators

Syarikat Takaful Malaysia Berhad: (Malaysia)

STMB was established in 1984 and it was the first company to introduce Takaful in Malaysia and functions in a dual-window system (General and Family Takaful). It is a strictly compliant company with the law of the Malaysian Takaful Act 1984 (amended 2013) and under the supervision of Bank Negara Malaysia. It applies both Wakalah and Mudarabah modes and surplus allocation is done as per ratios agreed earlier. STMB operates a complete and active Shari'ah goodness Supervisory Board (SSB) which has financial and legal scholars taking part in procedure of oversight [46].

Prime Islami Life Insurance Limited (Bangladesh)

PILIL is a Shari'ah stars-based life insurance corporation in Bangladesh. It claims to be an Islamic insurer but the regulatory constraint by the Insurance Act 2010 and the lack of proper guiding by the Insurance Development and Regulatory Authority (IDRA) prevent the process of being fully compliant. It purports to be compliant with Shari'ah a requirement; nonetheless it does not have a strong system of financial segregation, central Shari a auditing and formal surplus-sharing. Its Shari'ah board serves as an advisory group other than a regulatory agent [47].

Operational Model Comparison

Table 5: Operational Comparison between Malaysia and Bangladesh

Feature	**STMB (Malaysia)**	**PILIL (Bangladesh)**
Model Used	Wakalah + Mudarabah	Wakalah-like, but not standardized
Surplus Distribution	Yes, clearly defined	Rarely practiced
Fund Segregation	Fully segregated (Participants' & Operator)	Limited segregation

Shari'ah Governance	Active Shari'ah Supervisory Board	Advisory Board with limited authority
Regulatory Oversight	Strong (Bank Negara Malaysia)	Weak (Limited IDRA involvement)
Investment Compliance	Shari'ah-compliant portfolio	Partial compliance, unclear transparency
Retakaful Practices	Uses Islamic Reinsurance (Retakaful)	Often resorts to conventional reinsurance

Analysis

There is high concomitance between STMB and AAOIFI and IFSB standards as full risk-sharing, transparency and stakeholder empowerment are exhibited. The bi-models enable the risk to be transferred, as well as returns of surplus that creates increased mutuality. In the meantime, PILIL does not have such effective mechanisms and this is because of certain deficiencies in regulation, poor enforcement of Shari, and inertia [48].

Mechanism of Risk-Sharing

In Malaysia, STMB has its operation established on Tabarru'(donation) system in which policyholders pay into a common pool to insure each other. The pool is used to cover claims and excesses are shared amongst the participants after wakalah fee has been factored in. This promotes both ethical, as well as inclusive financial operations. By contrast, PILIL is more of a hybrid product that resembles traditional life insurance and tends to provide, out of "surplus", not earned surplus, so-called "bonuses", unspecified principles of risk-sharing. Tabarru concept application is inconsistency and many times, there is no formal audit or fatwa on management of surplus [49].

ASEAN Role of Shari'ah Boards

STMB has its Shari a Supervisory Board (SSB) with supervision authority over the entire area of business which includes investment, underwriting, surplus, marketing and product design. Periodical audits and reviews publish. Although PILIL has a Shari'ah council, it does not regularly disclose fatwas, audit reports and statements of compliance. Very few signs of training, financial freedom, and regulatory authority in its Shari'ah board have been given [50].

Lessons and Implications

The case of Malaysia is an exclamation mark to the relevance of a well-intergraded regulatory mechanism, supervision, and internal compliance culture. The weaknesses of Bangladesh can be attributed to regulatory uncertainty, unenforceable Shari ad standards, and bad governance as the main barriers. Structural changes are required to make the adherence in Bangladesh more practical: The Shari'ah board should be empowered, thus older IDRA instructions should be revised, and financial sagely should be made compulsory.

CONCLUSIONS

The quality of the Islamic insurance (Takaful) and the Islamic reinsurance (Re- Takaful) industry in Bangladesh is a complicated situation in that it partly complies with Shari'ah - compliant guidelines. Although a number of institutions self-identify themselves as Islamic insurers, their business structures tend to demonstrate the reliance on the hybrid scheme that can combine principles of Shari'ah based insurance with common insurance processes. Remarkably, most insurance companies purchase interest-bearing assets or engage in regular reinsurance because the Re-Takaful structure is not fully operational in the country. This structural contradiction negates the underlying ethos of Takaful that is built on risk-sharing, mutual cooperation and absence of gharar (excessive uncertainty), maysir (gambling) and riba (interest). The absence of intense monitoring means by the Insurance Development and Regulatory Authority (IDRA) and a minimal state of the Shari'ah governance and effective monitoring by the community keeps the scenario more theoretical than actual.

Compared to the global standards established by such countries as Malaysia and some of the GCC states, where the Islamic insurance and reinsurance businesses are run on the premises of strict Shari'ah Incentives control and with a clearly statutory framework in place, Bangladesh remains way behind. An example as that of Malaysia requires separation of Takaful and conventional funds, thorough surplus-sharing policies, active Re-

Takaful players and effective and in-depth Shari'ah Ah boards (independent and technically expert). However, the Islamic insurers in Bangladesh are also usually restricted by the lack of independence in Shari'ah reporting being non-independent Shari'ah units, no strong disclosure on fatwas or investment procedures and the absence of existence of local ReTakaful Banks, making them rely on the traditional reinsurers, which conflicts with the nature of the enterprise, that is, Islamic. The follow-on question is: Is the Islamic insurance business of Bangladesh truly Shari'ah compliant or is it qurban (sacrifice) because it is under a religious cloak and imitating the fundamentals of the traditional insurance? Based on this critical analysis, it can be observed that a systemic discrepancy exists between the scope of Islamic insurance industry in Bangladesh between what is stated to be Shari'ah and what is followed into practice. The sector is overwhelmed with issues of hybrid models, interest-based investments, un-transparent surplus management and poor governance and other traditional reinsurance. In comparison with Malaysia and Pakistan, Bangladesh falls behind in regulatory enforcement, in Shari'ah luggage infrastructure, and in institutional maturity.

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