

Independence and effectiveness of Shariah department officers to ensure Shariah compliance: evidence from Islamic banks in Bangladesh

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in Bangladesh

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Md. Kausar Alam

*BRAC Business School, BRAC University, Dhaka, Bangladesh and
Research Methodology Tools and Systems (rm2s), Dhaka, Bangladesh*

Mosab I. Tabash

College of Business, Al Ain University, Al Ain, United Arab Emirates

Oli Ahad Thakur

*Department of Business Administration, International Standard University, Dhaka,
Bangladesh*

Md. Mizanur Rahman

BRAC Business School, BRAC University, Dhaka, Bangladesh, and

M. Naim Siddiqui and Safiqul Hasan

Research Methodology Tools and Systems (rm2s), Dhaka, Bangladesh

Abstract

Purpose – The study aims to examine the independence and effectiveness of the Shariah department officers of the Islamic banks in Bangladesh as the Shariah supervisory board (SSB) provides the annual Shariah report and Shariah resolutions based on the reports of the Shariah department officers.

Design/methodology/approach – The study applied a qualitative case study to achieve the research objectives. Data were collected through face-to-face interviews with the regulators, Shariah supervisory boards, Shariah department executives, and experts from the central bank and Islamic banks of Bangladesh.

Findings – The study illustrates that Shariah department officers/Shariah officers in Bangladesh seem to lack independence and decision-making authority in accomplishing ex-post Shariah governance functions (i.e. Shariah audit, Shariah compliance and Shariah review) as well as ensuring Shariah compliance. The Shariah officers cannot work spontaneously on practical issues without any interference. The Shariah officers also have to answer to the management regarding their Shariah functions and are not allowed to come up with any opinions without the authority's authorization.

Research limitations/implications – The study has significant contributions to the central bank and Islamic banks in Bangladesh. This research suggests that regulators, SSB, and Islamic banks should focus on ensuring Shariah compliance and protecting the independence of Shariah department officers as they are mainly related to practical monitoring of Shariah issues. It also suggests that Shariah department officers should directly report to SSB rather than the management regarding Shariah's compliance and audit issues.

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Originality/value – This study is unique in the context of Bangladesh and the global context as a whole for Shariah department officers.

Keywords Shariah governance, Independence, Shariah department officers, Islamic banks, Bangladesh

Paper type Research paper

1. Introduction

In 1983 through the joint support of the people and government Islamic Banking system was initiated in Bangladesh (Hassan *et al.*, 2017). Currently, Bangladesh has ten full-fledged Islamic banks in operation (Bangladesh Bank, 2021). Moreover, conventional banks are opening Islamic banking branches to appeal the Muslim customers (Alam *et al.*, 2020a). Bangladesh Bank, the central bank of Bangladesh, outlined the Shariah governance (SG) guidelines in 2009 and other rules and regulations to monitor the Islamic banking industry (Bangladesh Bank, 2009).

However, to assist the Shariah supervisory board (SSB) in executing and monitoring the Shariah rules and regulations, Islamic banks in Bangladesh formulated a separate Shariah department containing several executives (Abdullah and Rahman, 2017). Islamic banks in Bangladesh do not have individual units for Shariah functions (for example, research, audit, compliance, and review units) rather than some officers under the Shariah department (Alam *et al.*, 2019; Abdullah and Rahman, 2017). Islamic banks in Bangladesh also have very few full-time Shariah department officers for monitoring the Shariah department's functions (Ullah, 2014). These officers monitor the overall operations of this department and send the report to the Shariah Secretary (Abdullah and Rahman, 2017). Additionally, SSB members do not monitor the activities of Islamic banks practically rather than evaluating reports provided by Shariah officers. The Shariah officers work as mediators with the SSB members and report to them. Therefore, their roles and functions are essential in executing SG functions (review, compliance, audit, reporting, and supervising) (BNM, 2019; IFSB, 2009).

Prior studies have examined the roles, power, functions, and independence of SSB members in the context of Malaysia (Hassan, 2012; Sori *et al.*, 2015; Zainal Abidin *et al.*, 2020) and Bangladesh (Alam and Miah, 2021). Hassan (2012) recommended that further research investigate the “independence and effectiveness” of the Shariah department officers as they perform a significant role in accomplishing SG functions. Hassan (2012) found that SSB had not effectively undertaken the Shariah review function of Islamic banks in Malaysia. The SSB issued the Shariah report based on the investigation by the bank's Shariah department officers. This shows that the Shariah department officers played a critical role in the Islamic banking industry. Moreover, earlier studies focused on the independence, effectiveness, and practices of Shariah audits and auditors (Khalid and Sarea, 2020; Khalid *et al.*, 2018) rather than focusing on the overall working activities of the Shariah department officers in ensuring Shariah compliance. Significantly, the SSBs make decisions based on the information sent by the Shariah officers (BNM, 2019; IFSB, 2009). Besides, SSBs in Bangladesh cannot work independently and effectively (Alam and Miah, 2021). Thus, if the Shariah officers are unable to work independently, it would affect Shariah's audit and review reports and the functions of SG. Therefore, the study aims to examine the process of ensuring Shariah compliance through the functions of the Shariah department officers of the Islamic banks in Bangladesh.

The study has numerous contributions to the prevailing SG literature, the regulatory authorities, and the Islamic banks of Bangladesh. Firstly, this study is the first to explore the ensuring process of Shariah compliance of the Islamic banks in Bangladesh, which has been unexplored for 40 years. Our study is different from prior studies because we have focused on the overall practical functions of Shariah department officers of the Shariah department while studies investigated the independence of the Shariah auditors in the global context (Khalid and Sarea, 2020; Othman and Ameer, 2015). Secondly, the study explored the practical scenario of the Shariah department officers in Bangladesh, which added literature in-country

context. The central bank should ensure the independence of Shariah department officers to do their work as prescribed in the Shariah guidelines. Thirdly, to examine the Shariah compliance ensuring process, the study used agency and legitimacy theories that suggest that Islamic banks shall continuously maintain Shariah compliance to perform business activities and demonstrate ultimate responsibility towards stakeholders. Shariah department officers cannot perform their functions independently, contradicting both theories. Thus, the Shariah department officers should have clear rules and responsibilities in performing their work.

Section 2 provides the literature review and theoretical notions concerning the Shariah governance framework (SGF). Section 3 illustrates the overall methodology of this investigation. Section 4 describes the findings and discussions. Finally, section 5 delivers the conclusion of the manuscript.

2. Literature review

2.1 Independence of Shariah department officers

Independence is a state of mind which means an individual auditor's activities are not impacted by external forces (Mardijuwono and Subianto, 2018). When people assess an audit service and try to trust the public accounting profession, the independence of a public accountant is the primary basis. Auditor independence is essential for a quality audit. Another essential factor is auditor professionalism. According to Baotham (2007), professional auditors relate with professional expertise and attitudes. Concerning the independence, concerned stakeholders focus on the functional independence of the Shariah auditors in ensuring the Shariah compliance process. Thus, Flint (1988) emphasized that independence must be ensured wider as it is the main feature of ensuring Shariah compliance. If the Shariah auditors lose their independence, it will impact the quality of the Shariah audit report and the decision-making of the investors and concerned stakeholders. Thus, it is one of the significant functions of Shariah auditors to assure the shareholders and stakeholders that all businesses and operations of the bank comply with Shariah principles. Therefore, the Shariah auditors need to closely monitor internal control elements and ensure the effectiveness of the processes for proper implementation of Shariah principles.

Therefore, by using the perception of agency and legitimacy theories, this study tests the Shariah compliance ensuring process of Shariah department officers in the Islamic banks. Agency theory is a relationship between managers and shareholders as agents and completing the functions on behalf of the principal (Jensen and Meckling, 1976; Fama and Jensen, 1983). Shariah officers are responsible for assisting SSB in monitoring the overall functions of the Shariah department (BNM, 2019; IFSB, 2009). Information asymmetry between shareholders and management causes the agency problem (Jensen and Meckling, 1976; Alam *et al.*, 2020b, 2021a). The audit functions of Islamic banks cannot get proper disclosure if the Shariah officers cannot fulfill their duties independently. The Shariah principles and overall financial statement picture are obstructed by the misinterpretation of information and Shariah's non-compliance. Thus, it would generate scope for the management to involve self-interest at the expense of shareholders (for example, Alam *et al.*, 2021a, b; Cline and Williamson, 2016) and mix the prohibited income that contradicts the Shariah principles and deceives the customers, people, and society. In addition, IFIs are responsible for the excellent management of deposits and funds efficiently and effectively. Moreover, throughout the periodical assessment, the practical Shariah audit function would confirm an effective internal control system for Shariah compliance in IFIs (Ab Ghani *et al.*, 2019).

Arens and Loebbecke (2011) stated that auditing is performed to evaluate the fairness of the financial statements that were created by the client management. The examination is conducted by an independent party to collect the evidence. The purpose of the audit is to give opinions about the financial statements and their viability in all material respects. The

general purpose of the audit is to express an opinion on the fairness of financial statements and check if cash flows generated through operations are in line with accepted accounting principles (Boynton and Johnson, 2006). The management of IFIs is responsible for the proper use of funds and capital and managing funds.

2.2 Effectiveness of Shariah department officers

Dar (2009) stated the scope of SGF on an ex-ante and ex-post basis. Dar (2009) explained the ex-ante aspects of Shariah compliance, including product development, legal documentation and product proposal, Shariah rulings, and dissemination of Shariah rulings. Secondly, Dar (2009) outlined the ex-post process of SG, which includes periodic and annual Shariah reviews. The SSB and the Shariah department officers play a crucial role in assuring the acceptability of the products and services through proper Shariah coordination and an active Shariah compliance review unit. The Shariah Secretary coordinates the works between the Shariah department and the SSB. Hasan (2011) assumed both Shariah compliance processes (i.e. ex-ante and ex-post process) enhance the reliability of IFIs. Similarly, the credibility of IFIs depends on the practical implementation of SGF (Hidayah, 2014).

Based on the Shariah executives' report, SSB gives their opinions on the ex-post Shariah compliance. SSB members are entirely reliant on the reports of Shariah officers in Bangladesh and the global context (BNM, 2010; IFSB, 2009). In this regard, monitoring procedures, general directive guidelines, controlling processes, or steps taken by the SSB are integral to the SG system (Elamer *et al.*, 2020a, b). Therefore, if the functions and activities are not effectively, efficiently, and independently done by the officers, it would impact the decision-making of SSB and Shariah compliance of the Islamic banks (Elamer *et al.*, 2020a, b; Albassam and Ntim, 2017; Elghuweel *et al.*, 2017). If the Shariah officers cannot perform their functions effectively, efficiently, and independently it will impact Shariah compliance. Therefore, this is important to examine the roles of the Shariah department officers in executing SG functions.

In the meantime, the legitimacy theory can be defined as confirming societies' norms and rules where the institution operates by implementing corporate societal guidelines in its governance structure (Suchman, 1995; Deegan and Unerman, 2006). Thus, an institution may lose its integrity if it fails to legitimate the social norms (Dowling and Pfeffer, 1975). However, legitimacy has been defined broadly by Suchman (1995, p. 571) as "an anchor-point of a vastly expanded theoretical apparatus addressing the normative and cognitive forces that constrain, construct, and empower organizational actors". To develop concerned stakeholders' confidence and trust, management has attained a reputation for developing several organizational mechanisms to uphold the legitimacy of business function (Tabash *et al.*, 2020; Khan *et al.*, 2013; Suchman, 1995; Ashforth and Gibbs, 1990). Islamic banks cannot generate value and acceptance from their stakeholder if they do not have religious legitimacy; the public will not be attracted to these sorts of banking services if it does not hold religious legitimacy (Alam, 2021a; Tabash *et al.*, 2020). Thus, the independence of the Shariah department officers is significant as the SSB depends on their activities. Religious viewpoint wants to have integrity, appropriate socio-political norms and spiritual compliance. Still, agency theory has limitations in the applications of conventional banks' operations as it puts its effort towards investors concerning obligation (Almutairi and Quttainah, 2017). Consequently, the study of Tabash *et al.* (2020) outlines the ethical legitimacy of the Islamic banks and their SG with negative findings.

3. Methodology

This paper aims to examine the process of ensuring Shariah compliance through the functions of the Shariah department officers of the Islamic banks in Bangladesh. Thus, we applied a

qualitative research method to explore the practical scenario. Following Merriam's (2009) perceptions, qualitative research permits the researchers to comprehend the experience of the participants and their actual meaning. A case study research design was applied to examine the independence of Shariah department officers of Islamic banks in Bangladesh. Also, Alam (2021a, b) stated that qualitative research and case study could explore the answer of "what" along with "how" and "why" more broadly and comprehensively. Further, qualitative research can explore more comprehensive and in-depth information regarding the independence of Shariah department officers of Islamic banks in Bangladesh.

This research has followed a similar strategy applied in previous studies, such as Alam *et al.* (2020a, b, c, d). In support, Alam (2021a, b) describes the overall data collection, analysis, and saturation process in developing a centralized SGF for Islamic banks in Bangladesh. To select the respondents, purposeful and snowball sampling tactic were used. The criteria for determining the respondents were years of service, experience, servicing banks, publications, and research (Alam, 2021b). SSB members have been chosen based on their expertise and services in the number of Islamic banks; regulators are from the policy development, implementation, research, and supervision departments, and experts have been selected as per their professional and practical experiences, accounting knowledge, and research publication in the field of Islamic banking and SG (Alam, 2021b). A list of interviewees consisting of SSB members, regulators, and Shariah department officers, and experts was formed as they are suitable for the study.

Seventeen members from SSB members, Shariah executive officers, Islamic banking experts, and regulators from the central bank and Islamic banks in the particular research area participated in the semi-structured interviews (Alam, 2021b; Alam *et al.*, 2020a, b, c, d, 2022, 2021a, b). The research topics and the questions were easy for the respondents to understand, and they gave detailed responses as they were experienced with practical banking and SG-related knowledge. Before conducting the interviews, an official letter has been sent, and each respondent is contacted personally. The overall interview sessions are arranged over one-and-a-half months. Sandelowski (1995) suggests the sample size of 10 among homogeneous people might be adequate for a qualitative study. In the homogeneous group, saturation occurs in the twelfth respondent (Guest *et al.*, 2006). Besides, earlier researchers suggest that 5–8 respondents are sufficient for homogeneity and up to 12 to 20 participants for a non-homogenous sample (Crabtree and Miller, 1999). We completed our interviews with 17 respondents as our data was saturated within 17 respondents (Alam, 2021b; Alam *et al.*, 2020a, 2021a, b). The study of Alam (2020a, b, c, d) illustrates the overall data collection and saturation process of the development of the centralized SGF for Islamic banks in Bangladesh. We saturated our data concerning responses, numbers, and information.

Interviews were taken lasting 45–90 min and recorded through the mobile phone. The respondents are assured their identities will not be revealed and disclosed publicly and in any publication. A letter is given to each respondent regarding their privacy before being interviewed. Symbolic names with codes were used to protect their privacy and identity. The regulatory respondents coded as "RA" (Regulatory Aspects), SSB members and Shariah department executives as "SP" (Shariah Practitioners), and experts concerning the Islamic banking and SG knowledge as "E" (Experts) (Alam, 2021b). The background of the respondents is given in Table 1.

The interviews' recordings are transcribed into the text accordingly and revised word by word for reasonable accuracy. We did not check the transcript of interviews with respondents. We applied NVivo 10 software for our data analysis as it is more suitable for large amounts of contextual data (Alam, 2021b; Patton, 2002; Gibbs, 2002). We have coded interviews by following thematic analysis through the NVivo software (Zamawe, 2015). We used this software for generating coding, categorizing, and theme development from the transcripts (Joffe and Yardley, 2004; Alam, 2021b). Later, we communicated with one of the

NVivo professionals to check our data analysis procedures. The expert also reviewed the overall data analysis and suggested proceeding to the next stage. The following section illustrates the discussions and findings of the research based on the data analysis.

4. Findings and discussions

Bangladesh has ten Islamic banks, and all of the Islamic banks have separate Shariah departments for monitoring the Shariah functions and Islamic banking activities on an ex-ante and ex-post basis. Islamic banks do not have individual units within the Shariah department though there are Shariah audit and Shariah research functions (Abdullah and Rahman, 2017). The Shariah department officers perform SG functions. Thus, we have investigated the ensuring process of Shariah compliance of the Shariah department officers as they are doing their tasks on behalf of the SSB members and directly related to the practical monitoring as the SSB roles and functions are advisory in Bangladesh’s context. However, we have applied NVivo software to generate the outcomes of the Shariah department officers in Bangladesh. We found two categories regarding the independence of the Shariah department officers of Islamic banks in Bangladesh. Figure 1 illustrates the theme and categories generated through NVivo analysis. The obtained categories are functional barriers of Shariah department officers and lack of independence to perform executives’ duties. The discussion part is as follows based on these two categories.

4.1 Functional barriers of Shariah department officers

In Bangladesh, all Islamic banks have a particular Shariah department that assists SSB in accomplishing the overall Shariah functions. Based on the suggestions forwarded by SSB, Shariah officers carry out their functions under the management’s infrastructure.

Sl	Cluster	Combination	Number	Year of experience
1	Regulators	Ex-governor, executive director and general manager	3	10–23
2	SSB members and Shariah department executives	SSB member and Shariah secretary, Shariah department executive	9	15–25
3	Experts professionals	CEO, Ex-CEO of several Islamic banks, academicians and Islamic banks consultants	5	9–40
	Total		17	

Source(s): Developed by the Authors’

Table 1.
Background information of the respondents



Figure 1.
Theme on independence of Shariah department officers

Source(s): Developed by the Authors

The Shariah officers conduct Shariah research, Shariah audit, and Shariah compliance review and prepare other documents based on the findings. The report is presented to SSB for acknowledgment and approval (Abdullah and Rahman, 2017). Later, SSB makes decisions and provides suggestions on the submitted documents. Based on the respondents' workflow and the responses, this research finds that Shariah department officers of the Islamic banks cannot function independently. This limitation of working independence impacts the Shariah departments' functions, directly related to the shareholders' rights and stakeholders' privileges. This incapable situation generates information asymmetry (Jensen and Meckling, 1976; Alam *et al.*, 2020b) and creates barriers to stakeholders' rights and interests (Alam *et al.*, 2021a, b; Freeman, 1994).

Management creates pressure on us to follow their orders in auditing functions. The SSB does not have controlling power. [SP #6] We think that the Shariah secretary should be independent. It should not be under the bank's management. [SP #7]

In addition, Shariah department officers have to follow the management's orders and commands due to institutional reporting. Sometimes, their actions and functions contradict the Shariah resolutions related to Shariah review, compliance, audit, and investments resulting from institutional bindings. These limitations oppose the concept of agency and legitimacy theories. As the officers cannot perform their roles appropriately, there are violations of stakeholders' goals and intentions (Alam *et al.*, 2021a, b; Cline and Williamson, 2016). These violations of Shariah deliver a negative legitimacy as per the legitimacy theory concept (Tabash *et al.*, 2020; Deegan and Unerman, 2006; Suchman, 1995). The responses from one of the SSB members are given below.

There has been an influence because the directors and the management are looking for the profit though Shariah officers have the objections. [SP #8] Sometimes we hear that the muraqibs do not audit the big clients and large investors. [SP #8]

More intensely, Hassan *et al.* (2017) and Alam *et al.* (2020b) stated that the Board of Directors (BOD) and the management use SSB as a showcase. Along with the SSBs, this research finds a similar notion the Shariah department officers also use as a showcase. The Islamic banks do that to maintain their Islamic identity as their functions are Shariah-based. This serious picture contradicts the viewpoint of legitimacy theory.

The management's view is that officers of Shariah department do not have any contributions in the development of Islamic banks rather than profit consumption and minimization. [SP #6] We (Shariah officers) are in a dilemma concerning their accountability to Almighty Allah and management. [SP #6]

Due to the dual banking system of our country, Islamic banks cannot truly practice Shariah, as opined by a respondent from his 25 years of practical experience. The Shariah department officers also see Shariah violations, but they cannot do anything because of the direct instructions from the authority.

The major issue is the dual banking environment of the country. Thus, we cannot blame only the SSB members. We see the violation of Shariah principles, but we are not refraining from that function. [SP #6]

The second sub-section illustrates the second sub-theme of the independence of the Shariah department officers.

4.2 Lack of independence to perform executives' duties

Moreover, the Shariah department executive, who has 25 years of experience, states that the Shariah secretariats are not independent in carrying out their duties; thus, the accountability of the employees is at stake. This finding contradicts the notion of agency theory (Jensen and

Meckling, 1976; Fama and Jensen, 1983). Previously, the system was better, but gradually the situation deteriorated.

Now, there is no independence of the Shariah secretariat. [SP #6] We are assisting the SSB members, but as a Shariah Secretary, we are not independent in practical functioning as we are working under the management.[SP #6]

The researcher went to one of the Islamic banks for data collection. The Shariah department executives replied that without any formal approval from the management, they are not allowed to give any information regarding Shariah issues. This denotes that they are not independent in accomplishing their functions and providing their views. Besides, the Shariah executives cannot express their opinions without the management's permission even though they are afraid about the session if they face any problems in the future or if there may be any reputational issues with the bank.

They do not influence directly, openly and publicly. [SP #6] But they may be influenced in practice. [E#1] There is an influence from the management but bank to bank, it varies. [RA #3]

Moreover, the BOD, Islamic banks, and management use the Shariah officers to protect the Islamic image and profit-making. Therefore, this situation generates a negative legitimacy in the Islamic banking industry (Tabash *et al.*, 2020; Deegan and Unerman, 2006; Suchman, 1995). One of the Shariah experts expressed as:

When the BOD or the management give us the instruction or address to do the activities to their directions and do not to reveal that issues then the Shariah principles are hampered. [SP #6]

Conversely, another respondent opines that previously, Islamic banks do not recruit many Shariah or qualified people. Still, they have been providing training and knowledge within the system and instructing the management to follow Shariah principles strictly. As a result, their Shariah compliance is better. At present, the situation is worsening day by day. The management should provide appropriate training and independence of the Shariah department officers in functioning their activities.

In my experience, I did not see that there are many madrasa backgrounds or qualified candidates, but when they were recruitment, they were being asked different questions regarding the Shariah, but they were not qualified. In their system, they train up, provide knowledge, and organize the Islamic banking system. They were directed and motivated by the top management that we will consider everything. Still, we will not consider or accept the Shariah violation. [SP #6]. I don't say it is not happening at all, but the ratio is not sufficient. [SP #7]

Due to the pressure, sometimes the Shariah officers do not conduct their audit functions properly, and sometimes they do inappropriately. This perception generates information asymmetry regarding Shariah's non-compliance amount (Jensen and Meckling, 1976; Alam *et al.*, 2021a, b)

Sometimes, we (SSB) hear that Shariah auditors do not conduct Shariah audits of large corporations or business clients. When we (SSB) ask the management about the issue, management says there may be a mistake, and we (management) shall crosscheck the issue. [SP #8]

Finally, to enhance independence and better Shariah compliance, the respondents suggested that the Shariah department officers should directly report to the SSB rather than management to ensure independence.

5. Conclusion and recommendations

The study has revealed the Shariah department officers are unable to perform their roles properly in ensuring Shariah compliance. They seem to have limitations in working and

controlling the post implementing functions and ensuring the Shariah compliance process. The Shariah officers are not allowed to disclose information about Shariah violations.

Our research has some policy and practical implications for the central bank and Islamic banks in Bangladesh as it outlines the concerns regarding the independence and effectiveness of Shariah department officers. The regulatory authorities can take proper initiatives to ensure Shariah compliance and protect the independence of the Shariah department officers of Islamic banks in Bangladesh by outlining the proper regulatory guidelines and reporting system. The regulators and concerned stakeholders need to ensure the appropriate working environment for the Shariah department executives to look after the Shariah compliance, auditing, inspections, reporting, and accurate disclosure issues of the Islamic banks. Second, as the Shariah officers are committed to serving banking by following Shariah principles and guidelines, it is requisite to ensure the independence of the Shariah officers. Third, the evidence of findings (absence of independence of Shariah department officers in accomplishing the Shariah functions) goes against the perceptions of agency and legitimacy theories which could be ensured by outlining robust SG guidelines.

This study is scoped in Bangladesh without adding other Islamic banking practices countries. However, the findings may differ in other jurisdictions and Islamic finance practicing countries, requiring further investigation. Further research can explore and make a comparison with other countries' contexts. There is also the possibility of doing a comparative study to check the independence of the Shariah officers. Researchers can also examine the independence of the other relevant industries Shariah department officers. Future research can also evaluate this research's findings by applying a quantitative methodology in Bangladesh and other jurisdictions.

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Appendix

- (1) What is your view regarding the independence of the Shariah department officers' functions?
- (2) Can you perform your works independently?
- (3) We have heard that BOD and management use SSB for accomplishing their interest, how about the Shariah officers?
- (4) There is a claim that management uses Shariah department officers as a showcase? How do you think about this showcase?
- (5) Do you think that recent changes in the BOD and management have resulted in independence of Shariah department officers?

Corresponding author

Md. Kausar Alam can be contacted at: kausarflorence@gmail.com

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