

The Impact of Legislative Environment on the Development of Islamic Banking: A Comparative Study between Malaysia and Afghanistan

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Abstract

This article examines the impact of the legislative environment on the development of Islamic banking through a comparative analysis study of Malaysia and Afghanistan context. The problem statement highlights how differing legal frameworks in both countries affect the growth and effectiveness of Islamic banking systems. The research objective is to assess how Malaysia's well-established legal environment has facilitated the development of Islamic banking, compared to Afghanistan's evolving legal landscape.. The study employs an analytical and comparative approach to examine key legislative and regulatory differences, focusing on factors such as market penetration, operational efficiency, and Shariah compliance. The findings reveal that a supportive legal and regulatory structure is essential for the success of Islamic banking, suggesting that Afghanistan could improve its legislative framework by adopting best practices from Malaysia's experience.

Keywords: Legislative Environment, Development, Islamic Banking, Malaysian experience, Afghanistan.

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Introduction

In the name of Allah, The Most Compassionate, The Most Merciful. All praise is due to Allah, the Most Praiseworthy, and the Most High. May His peace and blessings be upon our beloved Prophet Muhammad (peace be upon him), his family, his companions, and all of his sincere followers.

It is clear to all that Environment and cultures play a significant role in the development of various sectors in any country. A society with a strong and positive culture influences multiple aspects of life, such as education, technology, social dynamics, and political systems. Conversely, if the culture is lacking, it can have adverse effects. In societies where people engage in creative thinking, it positively impacts decision-making at both social and individual levels, allowing them to overcome crises and challenges. This is a key reason why developed countries have successfully managed their challenges.

In particular, the legislative environment can greatly influence development in various ways. Below are some key aspects:

- **Regulation and Compliance:** Legislation establishes rules and regulations that govern businesses and organizations. These regulations often aim to protect public interests, promote fair competition, ensure consumer safety, and safeguard the environment.
- Legislative environment can help in public awareness in any society and it can conducive to a developed society.
- Legislative environment can save the society from anarchy and oppresses and unjustness.

So therefor we need more hard working to attract the attention of our people to this important issue, and this will help us to come over on difficulties and challenges which we are facing with, the new government of Aghanistan has announced to all banks that they must change to Islamic banks, but if they want to convert to Islamic banking system what the challenges that they will face with, this is the significance of this study and this study will try to present good solutions for these challenges

Problem statement

The development and prosperity of Islamic banking largely depend on robust legislative frameworks. A lack of such frameworks poses a significant obstacle to growth. In Afghanistan, the Islamic banking system faces numerous challenges, with the absence of a strong legislative framework being one of the most critical. Many specialists and scholars in this field have highlighted this issue (Dhariri, 2019, p. 8). The Afghan government announced three years ago that all conventional banks and the

entire banking system must transition to Islamic banking. However, there has been little to no progress or development in this area (Naseh, 2024, p. 60).

In contrast, Malaysia has developed a highly advanced Islamic banking system, primarily due to its supportive legislative environment. By studying the Malaysian experience, Afghanistan can gain valuable insights and identify practical solutions to the challenges faced in its Islamic banking sector.

Research Questions

1. What are the consequences of the absence of a legislative framework related to the legal environment on Islamic banking activities?
2. What role does the legislative framework play in the development of Islamic banking in Malaysia?
3. What will be the impact of applying Malaysia's experience to Afghanistan's Islamic banking system?

Research Objectives

1. To explain the consequences of the lack of a legislative framework on Islamic banking development.
2. To understand the role of legislative frameworks in Malaysia's Islamic banking experience.
3. To assess the potential impact of implementing Malaysia's experience in Afghanistan.

Research Significance This study holds importance for several reasons:

1. Afghanistan is an Islamic country where the population desires to implement Islamic economic principles.
2. Poverty is a significant challenge in Afghanistan, and Islamic banking could help alleviate this issue.
3. Malaysia is a highly developed country, and Afghanistan can benefit from learning about its Islamic banking experience.

Research Background

Islamic banking holds great significance in Muslim societies as it aligns financial practices with Shariah principles, offering an ethical alternative to the conventional banking system, which is often seen as contradictory to Islamic beliefs. Over the years, numerous Muslim scholars have contributed to developing Islamic banking systems, which have now grown to include over 700 institutions worldwide.

In Afghanistan, the journey of Islamic banking has been relatively recent and faced many challenges. The first Islamic bank in the country, *Islamic Bank of Gulabuddin Shirzai*, was established in 1372 with an initial capital of three billion Afghanis. However, due to financial instability and security issues, the bank could not secure a license in 1382, leading to its closure (Dhariri, 2019, p. 10).

A major development occurred in 2009 with the establishment of *Bakhtar Bank*, a private institution initially operating as a conventional bank. With the government's approval, Bakhtar Bank played a significant role in providing financial services. However, recognizing the widespread preference for Shariah-compliant banking, a transformative shift began in 2015 when a specific Islamic banking law was introduced. *Bakhtar Bank* conducted a survey and found that 80% of the Afghan population preferred Islamic banking over conventional banking. This finding highlighted the urgent need for Islamic financial institutions in Afghan society. Consequently, the committee worked towards converting Bakhtar Bank into a fully Islamic bank, which officially transitioned in 2016 (Brochure, 2019, p. 2).

Despite these developments, Islamic banking in Afghanistan faces numerous challenges. Key issues include the lack of comprehensive and specific legislative frameworks tailored to Islamic finance, insufficient expertise in the field, limited product offerings, and inadequate public awareness. The current legal framework, introduced by the previous government, provides only general guidelines and lacks detailed provisions for Islamic banking operations. Additionally, the limited range of financial products fails to address the diverse needs of the population, hindering financial inclusion.

To overcome these challenges, it is imperative for Afghanistan to draw lessons from leading countries with well-established Islamic banking systems, such as Malaysia. By studying their legislative, regulatory, and operational practices, Afghanistan can identify effective solutions to bridge the gaps and foster the growth of Islamic banking in the country.

Research Methodology This study employs a qualitative and descriptive research approach, relying on document analysis and various sources such as publications, bank websites (including state-owned, foreign, and private banks), international organization websites, online databases, policies, manuals, books, articles, and working papers. These sources provide information on the legislative environment in both Afghanistan and Malaysia, helping identify effective solutions to the poverty issue Afghanistan faces.

Additionally, interviews will be conducted with specialists from both countries, particularly focusing on Afghanistan, due to the limited availability of research. These interviews will offer valuable suggestions and support for the research.

A comparative analysis will also be used to assess the legislative and financial instruments of both countries. This comparison will help determine which aspects of Malaysia's experience could contribute to the development of Afghanistan's banking sector and address its challenges.

Literature review

Many studies have explored the impact of the legislative environment on Islamic banking in Malaysia. Some notable studies include:

- **Regulatory Framework for Islamic Financial Institutions: Lessons from Malaysia and Indonesia.** Published in 2019 by Fazlurrahman Syarif (MBA Islamic Banking and Finance, Bangor University, UK).
- **History of the Establishment and Development of Islamic Banking in Malaysia** Published in 2019 by Fathullah Asni (Kolej Universiti Islam Perlis).
- **أثر الإطار التشريعي في تطور الصيرفة الإسلامية بماليزيا** Published in 2019 by Naaim Hank (University of Malaya, Malaysia).

- **Insight:** the legal and regulatory framework governing Islamic finance and markets in Malaysia. Published in 2022 by Adnan Sundra and low. (LEXOLOGY)
- **Exploring the Challenges of the Historical Development of the Islamic Banking System in Afghanistan Using Document Analysis** Published in 2020 by Khatera Naseri (Institute of Islamic Banking and Finance, International Islamic University Malaysia).
- **Faithful finance: unlocking banking Islamization in Afghanistan.** Published in 2023 by Mustafa Disli, Ahmad khalid Hatam and Shakir Jalaly. (Economies. College of Islamic studies, Hamad Bin Khalifa University, Qatar).
- **Title Potential of Islamic Finance Development in Afghanistan: How can Islamic banking contribute?.** Published in 2024 by Muzhan sadat and Mariam Rostamian. (KBTU BUSNINESS SCHOOL)
- **Islamic Banking and its Applications in Afghanistan,** Published in 2019 by Abdul Maboud Dhariri . Riyast Information and Public Relations Academic Sciences Afghanistan

While these studies offer valuable insights into Malaysia's experience and the Islamic banking system in Afghanistan, my research is unique in its comparative approach. It focuses specifically on the impact of the legislative environment on the development of Islamic banking in both Malaysia and Afghanistan.

History and Development of Islamic Banking Legislation in Malaysia:

The history of development of Islamic banking in Malaysia is so long which is impossible to mention all of it in this small article, because Malaysia has developed from an economy based on agriculture, to an advanced and diversified economy and a strong exporter. And this development has many sides for example political development, social development, scientific development, economic development so I will try to highlight the main points in Islamic banking Insha'Allah:

Most of researchers consider the Lembaga Tabung Haji (LTH) as the world's first Islamic financial institution and the best model, and this institution was established in 1969, it aimed to enable Muslims to save money gradually to fulfill the expenditure of the Pilgrimage and engage in

the field of capital financing in corporate, commercial, plantation and real estate that are shariah compliant.

The Muslims of Malaysia were facing complications, because they could not deal with conventional banks, so they expressed desire for Islamic bank in Malaysia. In 1980 the Bumiputera Economic congress approved a proposal to request the government to set up an Islamic bank to collect and invest Muslims money in field of halal and profitable investment. (Asni,2019,p.308)

Therefore, on 1 March 1983 the first Islamic bank established in Malaysia which is called bank Islam Malaysia Berhad (BIMB). And BIMB sets its corporate objectives as follows:

“The corporate goal of the bank is to provide banking facilities and services based on principles, roles and practice of Islam to all races and people of this country. These principles, roles and practices are based on Islamic Muamalat laws relating to banking and finance matters. The banks efforts to provide these facilities and services will be carried out taking into account the areas of expertise and its ability to grow and progress continuously from time to time”

BIMB was established with a capital of RM500 million. The establishment of this bank and creation of several Islamic financial instruments until the late 1980s was the first phase of the implementation of the Islamic banking system in Malaysia.

While in the 1990s, it was the second phase of the development of the Islamic banking system which brought this system from the periphery of the banking system in Malaysia to the mainstream system, in this system they had allowed conventional financial institutions to offer Islamic banking products. So all kind of banks and finance companies were eligible to participate in this action. After two months all banks attracted 4,146 depositors and raised 30 million deposits. (Asni,2019,p.308).

On October 1999, Bank Muamalat Malaysia Berhad (BMMB) was established as the second banking sector to meet the increasing demand of the public on Islamic banking services. The Bank was formed as a result of the combined Bank Bumiputera Malaysia Berhad (BBMB) and bank of commerce Malaysia Berhad (BMMB), which has a total of 1000 employees

at the beginning of its establishment, has operated in 40 branches nationwide including in Sabah and Sarawak, headquartered in Kuala Lumpur. It has started its operations with a shareholders' fund of RM30 million and acquisition of SPI's assets of RM3 Billion from bank Bumiputera Malaysia Berhad, BBMB and bank of commerce (M) Berhad. From the point of ownership of the stock, commerce Asset- Holding Berhad (CAHB) has allocated 30 percent of its shares in BMMB, while the rest is wholly owned by the Malaysian government.

On 5 May 1993 the Bank Rakyat started Islamic products and it started it in four branches. They were using Islamic operations without any element of riba. At the end of 1995, 40 Bank Rakyat branches were fully operational in Islamic banking.

On 6 November 2017, MBSB Bank Berhad was established which is the 4th Islamic bank in Malaysia. MBSB Bank Berhad formerly known as Asian Finance Bank Berhad (AFB) has been granted a license by Bank Negara Malaysia.

The established Islamic banks are following the BIMB model. It is now recorded by BNM (2019) that 16 banks are offering Islamic banking scheme which comprises Islamic and conventional banks. The Islamic banking scheme is offered by most banks in Malaysia as there is a high demand for Muslims and non-Muslims in Malaysia. Besides, the privilege of Islamic banking scheme has become a factor in the development of Islamic banking in Malaysia where there is an element of profit and loss sharing in every banking transaction. This makes that whatever natural risk is not only borne by one party solely as in conventional banking scheme, but it is borne by both parties, i.e. bank and customer. This factor has led Islamic banking scheme to attract banks and communities with various religious and racial backgrounds to participate.

Legal Frameworks Regulating Islamic Banks in Malaysia:

As we know Islamic banking is a rapidly growing system in the modern world especially in Muslim societies, because the conventional banks are against of Muslims ethics so therefore Muslim people do not deal with it, and they are so interested in Islamic banks, in the other hand Islamic banking system based on sharia and has achieved a lot of successes during

a few decades and this cause that a lot of non-Muslims deal with Islamic banks too, but if we see the Islamic banking system has developed in those countries which countries have a good legal and regulatory framework, it means that the legal and regulatory framework plays a significant role in improving efficiency, increasing stability, lessening risk and promoting of banking and economy.

The regulatory framework for the Islamic financial institutions can be classified mainly into three forms; Fully Islamic, Dual systems and Neutral or partial inclusion. Fully Islamic means those countries only accept banking and financial institutions which are based on Sharia principles and they prohibit conventional financial institutions for example Pakistan followed fully Islamic system up to 2001. In dual system, the countries allow the conventional finance to operate along with Islamic finance. Example: Bahrain and Malaysia, Neutral system maintains fair and unbiased nature: it does not favor the Islamic finance (syarif, 2019,p.2).

As we know, the Islamic banking system is highly developed in Malaysia. To understand this, we will briefly explore the phases of regulatory development in the Islamic financial industry:

1. **Foundational Phase (1983–1992):** This phase can be regarded as the publication and establishment phase for Islamic financial regulations. Between 1983 and 1992, Malaysia laid the groundwork for the Islamic financial industry by formulating and implementing specific regulations governing Islamic banking operations, Takaful, investments, and other financial activities.

During this period, two landmark developments took place:

- **The establishment of the first Islamic bank in 1983:** Bank Islam Malaysia Berhad (commonly known as Bank Islam).
- **The introduction of the first Islamic Takaful Company in 1984:** Syarikat Takaful Malaysia Berhad, later renamed Malaysian Takaful Institution (as referenced on the Takaful Malaysia website).

This phase was pivotal in shaping the Islamic financial ecosystem in Malaysia, laying a strong foundation for subsequent growth and development.

2. The Regulation and Implementation Phase (1993–2000)

This phase, spanning from 1993 to 2000, marked significant progress in the development of financial institutions and the acceleration of market activities. During this period, regulations permitted conventional banks to offer Islamic banking operations. As a result, in 1993, several banks, including Bank Bumiputra Malaysia Berhad (BBMB), United Malayan Banking Corporation (UMBC), and Maybank, introduced Islamic windows, enabling them to cater to customers seeking Shariah-compliant financial services (Hank, p. 256).

Moreover, this phase witnessed the establishment of the second Islamic bank in Malaysia, Bank Muamalat. This development further strengthened the Islamic banking sector and highlighted the country's commitment to expanding Shariah-compliant financial solutions.

3. International Expansion Phase (2001–2010):

This phase, spanning from 2001 to 2010, marked a significant effort by Malaysia to position its Islamic financial framework on a global platform. The aim was to create an internationally recognized framework that aligned with global financial industry standards while enhancing the growth and competitiveness of Malaysia's Islamic financial sector.

During this phase, a strategic approach was adopted to strengthen and expand Islamic finance in Malaysia:

- **Attracting foreign investment:** The National Bank (Bank Negara Malaysia) facilitated foreign participation by granting licenses to international institutions. This strategy attracted prominent entities such as:
 - Al Rajhi Bank in 2004.
 - Kuwait Finance House (Malaysia) Berhad (KFH Malaysia).
 - Qatar Investment Authority.

These initiatives fostered international collaboration and investment, further enhancing Malaysia's position as a hub for Islamic finance.

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Additionally, two critical institutions were established during this period to reinforce the global infrastructure of Islamic finance:

1. **The Islamic Financial Services Board (IFSB) in 2002:** An international council responsible for setting prudential standards for the Islamic financial industry, ensuring its alignment with global best practices.
2. **The International Islamic Liquidity Management Corporation (IILM) in 2010:** This institution was established to address liquidity management, providing an essential infrastructure for the Islamic financial system.

This phase represented a significant movement toward integrating Malaysia's Islamic finance sector with the global financial system, enhancing its international presence and influence.

3. Leadership and Liberalizing Financial Operations Step (2011–2017)

During this phase, Malaysia achieved a leading position in Islamic banking. Significant advancements were made in Sukuk promotion, the investment funds market, as well as education and research in the Islamic financial industry.

A notable milestone during this period was the enactment of the *Islamic Financial Services Act (IFSA)* in 2013. This law replaced the earlier *Takaful Act* of 1984 and the *Islamic Banking Act* of 1983, providing a comprehensive legal framework for the Islamic financial sector.

A. Shariah Governance

Islamic banks, like conventional banks, are subject to central bank oversight. However, Islamic banks require additional Shariah governance to ensure their operations align with Shariah principles. Malaysia has made significant achievements in this area:

B. Shariah Advisory Council (SAC) in Bank Negara Malaysia (BNM):

Established in 1997, the SAC is the highest Shariah authority for Malaysia's Islamic financial system. It comprises ten members who are experts in both

Shariah and Islamic finance. The SAC ensures that all activities of Islamic banks comply with Shariah guidelines.

All regulations issued by the SAC are binding, and Malaysian courts are required to implement its rulings (Hank, 2019, p. 162).

C. Relationship between Bank Negara Malaysia and SAC in Setting Standards:

Following the introduction of the *Islamic Financial Services Act* in 2013, Bank Negara Malaysia (BNM) worked closely with the SAC to develop standards for Islamic banking.

The SAC holds monthly meetings to address emerging issues and develop standards across various areas. For instance, they have formulated guidelines based on key principles of Islamic finance, including profit and risk sharing, transparency, full disclosure, governance, and innovation rooted in justice and Shariah values.

Conclusion

Malaysia's leadership in Islamic banking and finance did not happen by chance. It was the result of sustained efforts by stakeholders, including regulators, researchers, and industry practitioners, who worked collaboratively towards this goal. The synergy between legislation, Bank Negara Malaysia, the Shariah Advisory Council, and other contributors has been instrumental in positioning Malaysia as a global leader in Islamic finance.

History and Development of Islamic Banking Legislation in Afghanistan:

As we know Afghanistan is an Islamic country and more than 99% populations are Muslim so therefore the third article of Afghanistan constitution said:

“در افغانستان هیچ قانون نمی تواند مخالف معتقدات و احکام دین مقدس اسلام باشد”

“In Afghanistan it is not allowed to any law to be contrary to Islamic beliefs and rulings”.

In Muslim societies Muslim people do not accept to deal with conventional banks, because they believe that the interests which presented by these banks is haram (prohibited) in Islam. In the other hand no one can deny the role of banking, especially the changing which happen through this system in new economic world therefore they said no banks no economy.

As we know banks play a significant role in economic development of any country. Therefore, the specialists of economy say: there is no economy without banks.

The research shows that there was not bank in Afghanistan before of 1312. But there was a stock company which was established by Abdul majeed zabali, in 1311. after that in 1312 The government of Afghanistan has established the first bank by the name of (Afghan MILI bank), this bank had total 9/6 million Afghanis, the 28% of it was belong to the government and 72% of it was belong to privet sector. This bank has created bank notes in the first time in Afghanistan.

In 1318 Afghanistan bank established with 120 million afghanis capital, the 75% of this capital belongs to the government and 25% of it belongs to bank Milli, and In 1333 Pashtanai bank established with 120 million afghanis capital, and step by step the capital was increased in 1363 to one billion afghanis

In 1333 the agriculture development bank established with 150 million afghanis capital, to support agriculture sector and farmers. But after a few years it could not provide the terms of relicense so it got out from the banking system of the country.

In 1335 industrial development bank established with 200 million afghanis capital, to support government and privet industrial. But after a few years it got out from the banking system of the country. (Zariri,2019,p.10).

In 1372 an Islamic bank with the name (Islamic bank of gulabu aldeen sheerzai) established with the three billion afghanis capital, it was the first Islamic bank in Afghanistan.

But unfortunately, in 1382 because of none safety and financial challenges this bank could not get the license so it stopped the work (Zhariri,2019,p.10).

The government of Afghanistan in 1933, had established a bank which is called "Afghan Milli Bank" or the National Bank of Afghanistan, it initially assumed some functions of the central bank until 1939. Its activities included issuing banknotes for the first time, expanding its operations, and establishing the Bank of Afghanistan in 1939. The Bank of Afghanistan's main functions were issuing banknotes, supervising banks, enforcing laws related to transactions, regulating the country's finances, and striving for currency stability. Subsequently, in 1954, the "Pushtani Tijari Bank" or Pushtani Commercial Bank was established. However, all these banks and others were conventional (shuban,2016,p. 272).

Totally there were eight banks some of them were playing role as a central bank of the country, and some of them were working in privet sector, some of them were working in agriculture and industrial sectors, but in 2003 when the new system of government and banking established in the country we got many kind of banks for example:

1. The central bank (da Afghanistan bank)
2. Commercial government's banks, bank Milli Afghanistan, Pashtanai bank.
3. The privet internal banks, Kabul bank, Azizi bank.
4. The external banks, microfinance bank, Afghanistan international bank, arian bank.
5. External banks branch's habib bank, milli bank of Pakistan, the milli bank of Panjab, falah bank. (Zariri,2019,p.10)

But as I mentioned before Afghanistan is a Muslim country and all populations are Muslims and as we know the conventional banks transections and services contain interest, gabling, gharar, future contracts, options, etc. which are prohibited in shariah so the best solution for this is Islamic economic system especially Islamic banking system.

Therefore, Most of Muslim countries have Islamic banking systems and most of them have developed their Islamic banking systems which have a lot of products and services and solved the majority needs of their societies, but unfortunately in Afghanistan we do not have a good and developed Islamic banking system.

In 2003, after the fall of the Taliban regime and the establishment of democracy in Afghanistan, there was a radical shift in relations with other countries, including financial and other fields. The Central Bank of Afghanistan, called "Da Afghanistan Bank," was established in 2003 as an independent central bank. And with this bank we had good news about Islamic windows in many banks in our country, for example the Meezan Bank Window, Kabul New Bank Window, Afghan United Bank Window, Bank Melli Window, Ghazanfar Bank Window, Bank-e-Millie Afghanistan Window, and the Al-Falah Bank Window (Zariri,2019,p.10).

In 2015, a specific banking law was introduced, presented to the parliament but was not approved. Therefore, it was issued by the President of the Republic, Ashraf Ghani Ahmadzai. The law consists of 15 chapters and 178 articles, but it is a general law and not specifically focused on Islamic banking. However, there is one chapter, Chapter Seven, which addresses Islamic banking, and explained Islamic banking expressions and more some important services.

As we know Islamic banking plays a significant role in Afghanistan's financial system. It provides an alternative financial framework based on Sharia principles, catering to the needs of Muslims who prefer Islamic financial products and services. Islamic banking promotes ethical practices, profit sharing, and asset-based financing, contributing to financial inclusion and stability in Afghanistan.

Afghanistan is one of the countries that has experienced prolonged wars. It endured forty years of devastating conflicts. It was initially occupied by the communist forces from Russia, but they were later defeated by the mujahideen. Unfortunately, after the mujahideen took power, they fought amongst themselves, which paved the way for the Taliban to seize control of most cities in the country. However, due to their lack of political experience, refusal to accept other Islamic and nationalist parties, and harboring extremist groups like Osama bin Laden's Al-Qaeda, the Taliban

facilitated the arrival of the Americans and their allies. In 2001, the Americans entered Afghanistan, overthrew the Taliban regime, caused the deaths of thousands of people, and destroyed the country. The situation stabilized for a few years, but since then, we have witnessed ongoing intense wars that continue to escalate.

These wars have affected all aspects of life in the country, leading to a lack of stability, proper education, and a sound economy. The banking sector, which is a crucial part of the economy, existed long ago but was significantly impacted by these wars. Some banks became dysfunctional, while others continue to face various challenges. In 2001, after the overthrow of the Taliban regime and the arrival of the Americans, the situation changed slightly in terms of politics, education, economy, and the legal system. A new republic government was established, and a constitution and laws were implemented in various fields. Later on, a specific law for banking was introduced in 2016, but it was a general banking law and not specific to Islamic banking, despite being mentioned.

Islamic banking in Afghanistan

As it mentioned before in 1993, the first Islamic bank in Afghanistan was established, named "Da-Gulab Al-Din Shirzai Islamic Bank." It was the first Islamic bank founded in Afghanistan and operated in the private sector for several years. Unfortunately, in 2003, due to civil wars, instability, and financial crises, this bank could not continue its operations.

In 2009, a private bank named "Bakhtar Bank" was established within the country with the government's approval. Initially, this bank operated in the field of conventional banking until 2016, providing valuable and significant services. It achieved remarkable accomplishments, gaining a prominent position among Afghan banks. As I mentioned before in 2015 when the specific law was introduced, in fact it was a huge changing in banking sector in the country, before of this period, the concept of Islamic banking emerged because the majority of people did not engage with conventional banks. Therefore in 2015, a committee conducted a statistical survey and found that 80% of the population wanted Islamic banking. This led the committee to realize the urgent need for an Islamic bank in Afghan society. Consequently, the committee worked towards transforming Bakhtar Bank into a fully Islamic bank.

In April 2018, Bakhtar Bank obtained the first banking license for Islamic banking from the Central Bank of Afghanistan. A significant meeting was held on April 24th at the Serena Hotel, attended by senior government officials, parliament members, scholars, and traders, where the bank was officially inaugurated and began providing Islamic banking services (brochure,2019, p.2).

Legal Constraints and Laws Governing Islamic Banks in the Afghan Context:

As we know Afghanistan has facing war for many decades and it effected every side of life, therefore the Regulatory side of Islamic banking system effected by war as well, according to law Afghanistan has Published many kind of laws decades before there was a very good law system in the time of republic government but unfortunately when Islamic Emarat took the government they frustrated constitution and all laws, and they announced that Islamic sharia is our law so we do not need law, according to the Islamic banks they announced that all conventional banks must change to the Islamic banks and all Islamic banks products must take from hanafi mazhab it will be Mazhab Hanafi based banks (Sharif,2023).

This decision of Islamic Emarat cased many challenges for Islamic banking system in Afghanistan for example:

Lack of the Islamic banking law, lack of specialists of Islamic banking, lack of special court for Islamic bang system, lack of public awareness, lack of stability, lack of Islamic scholars council, and, the economic sanctions, ETC (Naseh,2024).

It is supper difficult to collect information from different Hanafi Fiqah books, especially for those people who are not specialist of Islamic banking system, in other hand it is too difficult to salve modern Islamic banking system with old Feqah issues because this is the principle of Allah (sunnah kauniah):

" لا تتسع مرحلة سابقة لمرحلة لاحقة "

The past time stage cannot cover the new stage.

So therefore, we have many scholars and many councils that work to find a good solution for new issues which is Muslim societies facing with. We considered it a comprehensive Ijtehad.

According to the law of banking in Afghanistan During the era of the Republic government,

In the year (2003 AD) after the Taliban government was overthrown by the Americans, and democracy roled in the country, and a radical shift occurred in relations with countries in the field of finance and other fields, and the constitution was legislated as well as other laws in various fields, and in the year 2003 AD the Bank of Afghanistan was known as (D Afghanistan Bank) is the central and independent bank in the country, and Islamic windows have been established in many Afghan banks, including the Muwand Bank window (the Muwand Bank), the Nawa Kabul Bank window (the New Kabul Bank), the Afghan United Bank window (the Afghan United Bank), the Afghan United Bank window. Milli (National Bank), Ghazanfar Bank Window (Ghazanfar Bank), Bin Milli Afghanistan Islamic Window (International Bank Afghanistan), as well as Al-Falah Bank Window (Al-Falah Bank).

In 2015 AD, a special law on banking was enacted and presented to the People's Assembly, but it was not approved. Therefore, it was issued by the President of the Republic, Ashraf Ghani Ahmadza, and it includes 15 chapters and 178 articles, but it is a general law and not specific to Islamic banking. Rather, there is one brief chapter, which is Chapter Seven talks about Islamic banking,

So now it is a good opportunity to write and publish a good law for Islamic banking system in Afghanistan, because there is a good security and safety and the Islamic Emarat want to change all conventional banks to Islamic banks.

Comparative Analysis between the Two Legislative Environments:

According to the comparative analysis between the two legislative environments in Malaysia and Afghanistan there are some similarities and some differences we will focus on these sides briefly:

1. Similarities between both environments

There are many similarities between Malaysia and Afghanistan legislative environments for example both of these countries are Muslims so both of them are following Islam and Islamic law, the majority residents both of these countries are Muslims, sharia is the basis for each law in both them, people of both of them are dealing with Islamic banking system, the governments of both countries are supporting Islamic banking, Malaysian government has been supporting Islamic banking system and this is the main point for Islamic banking success in Malaysia, in another side the new government of Afghanistan is trying to make a good environment for Islamic banking therefore the government has announced at the beginning that all conventional banks should change their systems to Islamic banking systems.

2. Differences between both environments;

As they have a lot of similarities they have differences as well, for example Malaysia has different religions like Chinese and Hinduism but in Afghanistan the 99% Populations are Muslims, majority of Malaysians are educated people but in Afghanistan majority are uneducated people, Malaysia has stability in different areas for decades but in Afghanistan unfortunately there is no stability for more than four decades, Malaysia has been practicing Islamic banking system for many decades, but it is new in Afghanistan, there the majority of Afghan people do not deal with banks, Malaysia has a very developed system in technology, but Afghanistan does not have it.

1. Malaysia has different religions;

It is clear that the majority of Malaysia populations are Muslims but in the other side there are none Muslim as well, this is a fact that Islamic banking is very developed in Malaysia, so therefore none Muslims deal with Islamic banks as well (Ashurof,2023) .

In Afghanistan there are 99% of Populations are Muslims, but even that the majority of the people do not deal with banks which has many reasons.

2. Islamic banking system is very developed:

The Islamic banking system has been published in Malaysia for many decades before, so therefore Malaysia has a very developed Islamic banking system, but according to Afghanistan Islamic banking system is a new system therefore the majority of our people do not deal with banks, because most of them do not know the significances of banking system, in the other hand there was war for many decades the society did not get the chance to work and get public awareness in this area, many time Islamic banking stopped it's working because of war and unsustainability in the country.

3. Malaysia has developed education system:

According to the education which plays significant role in development of any society, Malaysia is different from Afghanistan, because Malaysia has a very developed education system and people of this country are educated with a big percentage, but regarding to Afghanistan we can say that education system is very weak and minority of the people are educated.

4. Malaysia has developed infrastructure:

It is very clear that development of Islamic banking is associated with a good infrastructure at any country, therefore Malaysia has a very good and strong infrastructure and that is caused this developed Islamic banking in Malaysia, but in another side according to Afghanistan there is no infrastructure to help the Islamic banking system (Sawalihi,2023).

5. Malaysia has banking law:

As we know the law can play a significant role in development of Islamic banking in a country, there Malaysia has a very good law for Islamic banking and this is the reason for development in this country. According to Afghanistan this is a big challenge that Islamic banks face with. Because there is no law, only we have one law about banking which has mentioned one chapter about Islamic banking and it has a few articles.

6. Malaysia has many research centers:

It is a proven fact that research centers play good role in development of any country, and knowledge is the best capital in the new world, therefore the developed countries pay attention to this area, they spend more and

more capital in publishing of research centers, and therefore Malaysia published many research centers about Islamic banking. In 2005 the central bank has published an international center for learning of Islamic finance. According to Afghanistan unfortunately there is no research center and people do not pay attention to this issue,

The Malaysian experience can help us in many areas for example we can learn from this experience in banking law's area, reform area, financial inclusion area, sukuk and Islamic insurance (Takaful) areas (Salim,2023).

So, these points which have been mentioned above they play a significant role in development of any banking system but especially in Islamic banking system.

According to the legislative environments between both of these countries, we can say that Malaysia has a comprehensive legislative environment for Islamic banking

Conclusion

This study explores the impact of legislative environment on the development of Islamic banking in Afghanistan, using document analysis since. The comparative analysis between Malaysia and Afghanistan reveals that the success of Islamic banking heavily depends on a well-structured legislative and regulatory environment. Malaysia's comprehensive and evolving legislative framework, aligned with Shariah principles, has allowed it to establish itself as a global leader in Islamic finance. In contrast, Afghanistan's Islamic banking sector faces significant challenges due to its nascent and fragmented regulatory infrastructure. The study concludes that for Islamic banking to thrive in Afghanistan, it must adopt a more robust and cohesive legislative framework, drawing lessons from Malaysia's experience. By doing so, Afghanistan can unlock the potential of its Islamic banking sector and provide more efficient financial solutions aligned with Shariah principles.

Recommendations

to improve Islamic banking and financial practices in Afghanistan, several recommendations are provided:

1. **Educational Initiatives:** Universities, the government, and financial institutions should collaborate to organize workshops, seminars, and conferences focused on Islamic banking and finance. These initiatives can raise public awareness and understanding of Islamic financial products and services.
2. **International Exchange Programs:** Institutions should initiate exchange programs with countries known for their leadership in Islamic banking, such as Malaysia and the UAE. These programs would allow Afghan professionals to learn from successful models and bring valuable knowledge back to Afghanistan.
3. **Collaborative Research:** Research collaborations between local and international scholars, as well as the establishment of dedicated Islamic finance research centers, will provide the academic foundation needed to develop and innovate within the field.
4. **Government Support:** Stronger support from the government, including reforms to legislative frameworks, is essential for creating a conducive environment for Islamic banking. This includes passing specific laws and regulations that encourage the growth of Islamic financial institutions.

By following these steps, Afghanistan can build a robust Islamic banking system that aligns with both Sharia principles and modern financial practices, encouraging greater public participation and financial inclusion.

To deal with Islamic banks and increasing their knowledge about Islamic banking and finance.

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Conflict of Interests

The authors declare no competing interests such as financial or personal relationship, regarding the writing of this article.

Authors' Contributions:

The researchers designed the study, gathered the literature, and wrote the article. They confirm that there are significant issues and challenges hindering the development of Islamic banking in Afghanistan. The study aims to fill this gap and contribute to the development of the Islamic banking system. Specifically, it offers valuable insights and solutions by learning from leading countries in this field, with a focus on Malaysia as a key example.

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Interviews

- An interview with usuf salim the director of Islamic banking and finance services department, central bank of Afghanistan, 2022.
- An interview with muhebbullah sharif the shariah adviser of Islamic bank of Afghanistan.
- An interview with Ashurov sharofiddin, associate professor at IIUM.
- An interview with Younis Al-Sawalihi, Deputy Director of the Scientific Research Department at the International Shari'ah Research Academy in Islamic Finance (ISRA), and Shari'ah Advisor at Amanah Bank, 2023

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