The Establishment Of Islamic Banks In Nigeria, The Controversies It Generated: Understanding The Operational Principles Of Islamic Banking

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ABSTRACT

The emergence of Islamic banking and finance has generated a lot of controversies among Nigerians in recent times. The controversy is apparently caused by lack of understanding of the concept of Islamic banking and how the system operates. The opponents of the system mainly hinged their arguments for opposing the system on what they called: "introduction of religion into banking and illegal exclusion of non-Muslims from non-interest banking." This unnecessary opposition is ignited by the failure of the appropriate authority in Nigeria to properly enlighten Nigerians particularly the non-Muslims on what Islamic banking is all about; who could be the customer of the bank and whether certain section of the society is excluded from its operations. This paper is an effort to provide knowledge on the shari'ah principles which underlie the operations of Islamic banks the world over and whether Islamic bank excludes certain section of the Nigerian society from its operations. The paper also highlights the provision of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) which preserved the right of all Nigerian to derive benefit from any economic out-fit in the country.

Introduction

The Islamic banking system is defined as a banking system whose principles underlying its operations and activities are founded on Islamic rules. This means that all operations of the Islamic bank, that is, transaction involving either deposits or financing, must be based on shari'ah principle. Such principles also cover other banking transactions like money order transaction, letter of guarantee, letter of credit and foreign exchange (Haron and Wan Azmi, 2009). The main factor that distinguishes Islamic bank from conventional banks is that all transactions are administered without involving elements of *riba* (interest). This is due to the fact that Islam forbids the giving or receiving of *riba.* A financial institution cannot be regarded as an Islamic banking institution if its operation involves elements of *riba.* The business management of the bank is based on the concepts of justice and fairness

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in the interests of society as a whole. The bank is also founded on rulings set in the Qur'an and Hadith.

It is argued by the proponents of Islamic banking that in today's world, the economic system that is based on interest has resulted in concentrating the wealth in the hands of selected few, creating monopolies and further widening the gap between the affluent and the poor (Nasim, 2004). The fact that today ten most richest men in the world have more wealth than forty -eight poorest countries of the world is relied by the supporters of the Islamic banking as a testament to the fact that the current economical set up is unjust and has failed to distribute the wealth proportionately, thus leading to the downfall of humanity (Usmani, 2002).

The Nigerian federal government through the Central Bank of Nigeria (CBN), recently approved the introduction of the Islamic banking product into the Nigerian Banking system. Amazingly, the disposition of the Central Bank is perceived by some group as a way of promoting Islamic religion in the country. This generated a heated and a serious debate that includes threat of legal battle and war-fair from both side of the argument. This paper provides knowledge on the shari'ah principles which underlie the operations of Islamic banks the world over and whether Islamic bank excludes certain section of the Nigerian society from its operations. The paper also highlights the provision of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) which preserved the right of all Nigerian to derive benefit from any economic out-fit in the country.

Features of Islamic Banking

Islamic banking has the same purpose as the conventional banking except that it operates in accordance with the rules of sharia'h known as *Fiqh al-muamalat* (Islamic rules of transaction). The basic principle of Islamic banking is the sharing of profit and loss and the prohibition of *riba* (interest). Among the common Islamic concepts used in Islamic banking are profit sharing (*mudarabah*), safe keeping (*waqf*), joint venture (*musharaka*), cost plus (*murabaha*), and leasing (*ijara*). Transactions, instruments and contracts under this type of services are non-permissible if they involve: interest, uncertainty or ambiguity relating to the subject matter, gambling, speculation, unjust enrichment, exploitation/unfair trade practices; Dealings in pork, alcohol, arms and ammunition, pornography, products and goods or services which are not compliant with Islamic rules and principles (Salar, 2008).

Some of the salient features of Islamic banking were succinctly put by Mr. Ishrat Husain, the former Governor of State Bank of Pakistan, in the following words:

One of the most distinguishing features of Islamic banking is that being part of a faith-based system, it is obligatory on Islamic banks to abstain from pursuing activities that are detrimental to the society and its moral values. Thus Islamic banks are not allowed to invest in casinos, nightclubs and breweries, etc.

Another distinguishing feature of the Islamic banking is that in addition to the rules and regulations applicable to the conventional banks, the Islamic banks have to go through another test, i.e. to fulfil exhaustive requirements to be Shari'ah-compliant. This requires that the clients of Islamic banking must have business that should be socially beneficial for the society creating real wealth and adding value to the economy rather than making paper transactions. Therefore, a stringent Know Your Customer (KYC) policy is inherently an inbuilt requirement for an Islamic bank since the Islamic bank has to know the customer and his business before getting into a socially responsible Shari'ah-compliant transaction. Know Your Customer is the first line of defence against money laundering in any banking system.

Third, by their very nature, Islamic mode of financing and deposit taking discourages questionable undisclosed means of wealth that form the basis of money laundering operations. The disclosure standards are stringent because the Islamic banks require customers to divulge the origins of their funds in order to ensure that they are not derived from un-Islamic means e.g. drug trade, gambling, extortion, subversive activities or other criminal offences. On the financing side, the Islamic banks must ensure that funds are directed towards identifiable and acceptable productive activities. Most Islamic financing modes are asset backed, i.e. they are used to finance specific physical assets like machinery, inventory, equipment, etc.

Fourth, the role of the bank is not limited to a passive financier concerned only with timely interest payment and loan recovery. The bank is a partner in trade and has to concern itself with the nature of business and profitability position of its clients. In the case of loss in business, the Islamic financier has to share that loss. To avoid the loss and reputation risk, the Islamic banks have to be extra vigilant about must of their clientele' (Salar, 2008).

The Concept of *Riba* in Islam

In the past, there have been disputes among Muslim scholars as to whether *riba* as spoken by the Muslims refers to the English term "interest" or "usury". If we examine the meaning of the terms "interest" and "usury" as held today, interest is

money which is paid at a fixed rate (usually in percentage form) against a particular loan. Usury is the act of lending money at an exceedingly high interest rate, and this rate is usually regarded as illegal by law (Haron and Wan Azmi, 2009). Based on these definitions, there is clearly a major difference in meaning between interest and usury. This has led some scholars to believe that what Islam forbids is usury and not interest. They claimed that interest paid on loans for investment in productive activities does not contravene the Qur'an for the Qur'an refers only to usury on non-productive loans which prevailed in pre-Islamic times when people were not familiar with productive loans and their effects on economic development (Haron and Wan Azmi, 2009).

There is a general consensus among Muslim scholars and *ulama* that the word *riba* encompasses both interest and usury. This simply means that in Islam there is no such thing as acceptable *riba* and extreme *riba* does not exist from the legal perspective. *Riba* is considered *riba* regardless of the amount involved (Haron and Wan Azmi, 2009). The Islamic research college, University of Al-Azhar, Egypt at its second annual conference in 1965 had discussed matters related to *riba* and banking operations. A resolution was reached whereby it was determined that interest imposed by banks on all types of loans constitutes *riba,* regardless of whether the loan is for consumption or production or whether the amount involved is big or small. All types of interest without exception are regarded haram or unlawful (Homoud, 1985).

Prohibition against *Riba* in the Quran and Hadith

The prohibition of *riba* is not only revealed in various verses of the Quran, but also in several hadith. The prophet Muhammad (p.b.u.h.) clearly condemned the accepter and provider of *riba.* The prohibition of *riba* in the Qur'an developed gradually and appeared in four revelations. The first revelation is in surah *ar-Ruum,* the second in surah *an-Nisaa,* the third in Surah *Aal-Imran* and the fourth in surah *Al-Baqara*

Allah has said in *Surahtul ar-Ruum:*

'And that which you give in riba (to others), in order that it may increase (your wealth by expecting to get a better one in return) from other people's property*, has no increase with Allah'* (Q30:39).

Further, Allah (s.w.t.) says in Surah *an-Nisa:*

'That they took interest, though they were forbidden; and that they devoured men's substance wrongly- We have prepared for those among them who reject faith a grievous punishment' (Q4:161).

This revelation in *Surah an -Nisa* generated some misunderstanding among the scholars as to whether the prohibition is directed to Muslims or to the Jews in Madinah. The argument that the prohibition is directed to Muslims rather than the Jews seems to be stronger as because the discontentment with *riba* first occurred while Prophet Muhammad (p.b.u.h.) was still in Makkah and there were very few Jews in Madinah at that time (Ahmad and Hassan, 2007). Besides, the Jews in Madinah were mostly involved in the agricultural sector and not in the commercial sector (Ahmad and Hassan, 2007).

An express prohibition follows in Chapter *'Al `Imran* (The Family of Imran), which mentions *riba* and bans it, for the first time:

O you who believe! Eat not riba (usury) doubled and multiplied, but fear Allah that you may be successful' (Qur'an 3:130)

The above verse shows that the prohibition is for all kinds of *riba*. "Doubled" and "multiplied" the verse, however, have created some anomalies among Muslim jurists and scholars. Some interpreted it to mean that it only refers to *riba* which is doubled and multiplied. Nevertheless, the majority of renowned scholars have made the resolution that the amount of *riba* has no role in determining whether or not it is haram (Unlawful by religion, and sinful) (Haron and Azmi, 2009).

The last verse that was revealed about the prohibition of interest was the saying of Allah in *Surah al-Baqarah:*

'Those who devour usury will not stand except as stand one whom the evil one by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are companions of the Fire: They will abide therein (for ever)' (Q 2:278-279).

The proscription of interest is also cited in no uncertain terms in the *Hadith.* The Prophet condemned not only those who take interest but also those who give interest and those who record or witness the transaction, saying that they are all alike in guilt (Sidiqi, undated). In a Hadith narrated by Abu Hurarah:Allah's Messenger (p.b.u.h.) said:

"On the night of Ascension I came upon people whose stomachs were like houses with snakes visible from the outside. I asked Gabriel who they were. He replied that they were people who had received interest" (Chapra, 1992).

In another Hadith narrated by Samura bin Jundab, the prophet (p.b.u.h.) said:

'This night I dreamt that two men came and too me to a Holy land whence we proceeded on till we reached a river of blood, where a man was standing, and on its bank was standing another man with stones in his hands. The man in the middle of the river tried to come out, but the other threw a stone in his mouth and forced him to go back to his original place. So whenever he tried to come out, the other man would throw a stone in his mouth and force him to go back to his former place. I asked who is this? I was told, the person in the river was a riba eater.' (Khan,1986).

Imam Muslim also reported that the Prophet (Peace Be upon Him) said:

'The messenger of Allah cursed the eater of riba, (usury/interest) and the one who feeds it'

Imam At-Tirmidhi and other scholars of *hadith* added to this *hadith* from another narration: "*and its witness and its writer*" (Sidiqi, undated).

Imam Ahmad reported in an authentic *hadith* that the Prophet (p.b.u.h.) said:

'Dirham (the smallest coin like a penny) of interest eaten by a man with knowledge is more severe than thirty-six acts of fornication or adultery' (Chapra, 1992).

Islam offers a definite guidance which forbids Muslims from dealing with *riba.* The prohibition of *riba* is clearly stated in the Qur'an and *Hadith.* Guidance given by both sources had prevented any serious conflicting views on *riba* among Muslim scholars. All scholars agreed that *riba* is illegitimate or haram regardless of the size of the loan. Additionally, all types of *riba* are considered illegal regardless of whether they originate form productive loans or consumption loans.

The Concept of Usury among the Christians

Initially, Christians were clearly forbidden from taking interest as evidence by the following verses of the Old Testament

From the King James Version

'If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury. (Exodus 22:25)

*Take thou no usury of him, or increase: but fear thee God; that thy brother may live with thy' (*Leviticus 25:36).

*'Thou shalt not give him thy money upon usury, nor lend him thy victuals for increase' (*Leviticus 25:37).

*'Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of anything that is lent upon usury' (*Deuteronomy 23:19).

'Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury: that the LORD thy God may bless thee in all that thou settest thine hand to in the land whither thou goest to possess it'

'If thou lend money to any of my people, even to the poor with thee, thou shalt not be to him as a creditor; neither shall ye lay upon him interest' (Exodus 22:25).

'And if thy brother be waxen poor, and his means fail with thee; then thou shall uphold him: as a stranger and a setller shall he live with thee. Take thou no interest of him or increase; but fear thy God; that thy brother may live with thee. Thou shalt not give him thy money upon interest, nor give him thy victuals for increase' (Leviticus, 25:35-37).

'Thou shall not lend upon usury to thy brother, usury of money, usury of victuals, and usury of anything that is lent upon usury (Psalm 15:5). He that puteth not out his money to usury, nor taketh reward against the innocent, he that doeth these things shall never be moved' (Deuteronomy 23:220).

However, nowhere in the New Testament one would explicitly find direct evidence on the prohibition of interest. However, some interpret verses 6:34-35 in the chapter Luke as a condemnation of the practice of taking interest. (Catholic Encyclopedia, 1912 Vol:15)

'And if you lend to those from whom you expect repayment, what credit is that to you? Even sinners lend to sinners, expecting to be repaid in full'

'But love your enemies, do good to them, and lend to them without expecting to get anything back. Then your reward will be great, and you will be sons of the most High because He is kind to the ungrateful and the wicked.' (Luke 6:34-35 P.767).

Due to the absence of explicit prohibition, there emerged various conceptions and interpretations by the Christian's priests, intellectuals and scholars as to whether or not it was permissible for Christians to charge or collect interest. The various conceptions are categorized into three major groups namely; the 1st to 12th century Christian Priests, the 12th to 16th century scholars and the 16th to 19th century reformists. Each of these selected groups had differing views on interest loans and the way in which these groups described and discussed the concept of interest also differed (Haron and Wan Azmi, 2009).

The first group prohibited the taking of interest and made such practice illegal. For example ST Basil one of the priests of the early Christianity regarded the sin of interest as an act of inhumanity. ST. Gregory of Nyssa condemned the practice of taking interest on the grounds that the apparent kindness shown by the creditors through rendering help in the form of a loan was actually not genuine, for the loans rendered to the poor would in reality bring the poor to the ruin, those rendering the loan merely wished to accumulate gold for themselves without contributing any benefit to others. He also likened usury to attacks made on victims who were already wounded (Noonan, 1957).

The condemnation of interest by the early Christian church gained momentum during the 9th century. All the priests were required to forbid Christians from taking interest and to punish those who disobeyed. In fact, the cannon issued in the third conference of the council of Lateran in the year 1179 denied Christian burial to all manifest usurers. The Council of Lyons II in 1274 ordained that no society, companies, organizations or individuals should allow foreigners who practiced interest to rent their houses. The peak of the protest occurred in 1311 when the council of Vienna declared that civil laws had no influence, and those who did not consider interest as sinful were regarded as people who had deviated from the Christian faith (Noonan, 1957).These were the views of the early Christians of 1st to 12 century on interest.

However, the second group wanted what they termed legalized interest to be permitted; the following are the major issues which were resolved by the scholars: first, the intention or action to acquire profit through lending was regarded as a sin and injustice. Secondly, the taking of interest from a loan is permitted. However, whether or not it was illegal depended on the intention of the creditor. Interest was considered legal if the interest was paid to the lender as compensation for granting a loan for benevolent purposes. The scholars declared the right of the creditor to seek compensation in advance, but bad debt risks could not be used as grounds for permitting the creditor to receive interest (Noonan, 1957).

The third group legalised interest in Christianity. Soon after the church legalized the taking of interest in 1836, discussions on the legality of interest discontinued. Nevertheless certain groups still strived to make it illegal. The last priest who wanted interest illegalized was father Jeremiah O' Callaghan. However, he did not succeed in his efforts and the fight was considered an individual battle since he did not receive support from the catholic missionaries or the church. (Nelson, 1949)

In conclusion, Islam is not the only religion which prohibits it followers from taking *riba.* Christianity, during the early years, never condoned their follower's acceptance of interest. In fact, the Christian Church regarded the acceptance of interest as a serious sin.

Modes of Operation of Islamic Banking System

To keep up with this modernized community, and to compete with their fellow-competitors, Islamic banking has introduced and refined some alternative Islamic financing products, to the ones available in the conventional markets, in order to carter for the Muslim community around the globe. These products are open to anyone, whether a Muslim or non-Muslim, to take advantage of these products, as long as they comply with the requirements and precept of shari'ah. Islamic banks provide financing using two methods. The first is based on profit-sharing and the second deals with modes, which rely on fixed return (mark up) and often conclude in creating indebtedness of the party seeking finance.

The Islamic modes of finance are unique as the debt related with financing using mark-up modes results from real commodity sale/purchase operations, rather than the exchange of money for interest bearing debt. Furthermore, unlike the conventional debt, such debt is not marketable except at its normal value. The whole idea behind the profit and loss sharing is seen as an innovation, a modern trend if you like it, and it is aspired that it will bring several merits to the industry of investment and finance, thus benefiting the community at large.

The main financial instruments generally used by the Islamic banks are *murabahah, mudarabah, musharakah, ijarah, qard hasan and wadi'ah*

(a) Murabahah

In Islamic banking practice, one of the commonest instruments of credit for businesses is the *murabahah*. The word is derived from the Arabic root *ribh*, meaning gain, profit. In English the word is often translated *-up Mark* or *Cost-plus financing*. It concerns a contract of re-sale: the bank purchases a commodity required by its client. The bank then resells the property at a higher price defined at the moment of contract. This price includes the bank's gain payable within a certain time. *Murabahah* in this manner is permissible (Qasmi, 2008).

This transaction is based on honesty. The bank, in all circumstances, must tell the actual cost. Some particular expenses like transportation charges may be included in the cost. For example if a client needs a generator and it costs $1000 and $100 is spent for transportation purpose, then the actual cost would be $1000. In this situation the extra expenses should not be merged with the cost of the item, i.e. the bank would not say that the price of the item is $1100 but it is better to say that the cost (price including extra expenses) of the item is $1100. The bank then add it profit to the item based on their agreement and the client may make the payments install mentally. .

In this connection, it should also be kept in mind that, generally while purchasing goods in bulk or purchasing an item from a wholesale dealer the buyer gets some discount, concession and/or commission. If the selling price of an item is $10,000 and 10% commission is given on the same, then the buyer (first party) is required to pay $9, 000. Consequently the person, who is executing *bay al-murabahah* and getting profit on the cost of the item, should not tell the cost of the same as $10,000 but must tell the cost to be $9,000. The level of honesty which is the basis of *aqd-murabahah* demands transparency (Qasmi, 2008). The payment for the item may be made in cash or install mentally. .

Another important point needing consideration relates to practices of the banks and financial institutions. The financial institutions, generally, do not store the goods in a shop but purchase the same from the market. After finalizing the cost and profit agreement, they sell the required item or commodity to the buyer i.e. the client.

Though the mark-up may seem to be just another term for interest as charged by conventional banks, its legality is not questioned by any of the schools of Islamic law. What makes the transaction Islamically legitimate in *fiqh* is that the bank first acquires the asset for resale at profit, so that a commodity is sold for money and the operation is not a mere exchange of money for money (Wilson, 1983,). In the process the bank assumes certain risks between purchase and resale; for example, a sudden fall in price could see the client refusing to accept the goods. That is, the bank takes responsibility for the goods before it is safely delivered to the client. The services rendered by the Islamic bank are therefore regarded as quite different from those of a conventional bank which simply lends money to the client to buy the good. In a nutshell, the mark-up is not in the nature of an additional amount paid on the principal amount of a loan but is in the nature of a profit charged in a trade transaction, with attendant risks attached. (Lewis, 2008). It is the associated risk-taking that legitimizes the reward. As the Prophet said 'profit accompanies liability for loss' (Vogel and Hayes, 1998). This *hadith* means that one can earn profits (*al-kharaj*) from possession of property only if one also assumes the risk of loss (*al-daman*) *(Lewis, 2008).*

(b) **Mudarabah**

Mudarabah is a limited liability contract between two or more parties in which one party provides capital to other(s) to start a joint venture to share in profits, according to a mutually agreed upon ratio. The loss, if incurred, is borne by

the capital provider. *Mudarabah* is a sort of partnership between a financing partner and a managing partner. The financing partner entrust his capital to the managing partner, who in turn contributes his knowledge and entrepreneurial skills to the project. The financing partner is not involved in the actual management of the partnership. This makes such a financing the preferred form of partnership for banks. Profits are shared in a pre-determined ratio, and losses are borne by the financing partner, unless they were caused by the misconduct of the managing partner. Partners agree on a pre-determined share of the result. The exact amount of profit the financing partner receives may not be fixed, because that would simply be interest in disguise. In the event of a loss, the financing partner bears the loss, while the managing partner loses his effort and time. (Salar,2008)

Therefore, *mudarabah* is a commercial association in which a money-owner (*rabb al-mal)* entrusts a sum to a manager *(mudarib, amil)* who trades with it and shares with the original owner a determined share of the profits when he returns the capital. It is a trust relationship (amanah) combined with work and it becomes an association with sharing of profits. It resembles a real contract of association but with this difference that there is neither common capital contribution nor co-management. Here the original owner of the money risks his capital while the agent expends his time and effort. (Salar, 2008).

Equity financing and investment deposits with Islamic banks are examples of *mudarabah.* In the latter case, the depositors are the financing partners, whereas the Islamic bank is the managing partner. The bank actively invests the deposits. The bank, in turn, then becomes the financing partner, whereas the client receiving the bank's finance is the managing partner. Thus, there is a two tier trust-financing relationship between the depositors and bank on the one hand, and the bank and the entrepreneur on the other. Further, it is accepted that the borrower may have to carry the administrative costs of the service provided by the bank (Salar, 2008).

(c) Musharakah

This mode of finance is similar to a joint venture. Under this mode, the bank and the client enter into partnership agreement in respect of a project or deal, and both share in the profits in a predetermined ratio. Such a partnership is normally for a limited duration, formed to carry out a specific project. Profits are divided on a pre-determined basis, and the losses, if any are shared in proportion to the capital contribution. Participation in a musharakah can either be in a new project or by providing additional funds for an existing one (Ismail, 2009).

Musharakah may be translated as "financing by participation". It concerns a contractual firm set up for the joint exploitation of capital, with joint participation in profit and losses. Typically, a client with a specific business project submits his

proposition to a bank and asks for a share of capital to raise the project. The bank provides the necessary capital and liquid assets on the conditions that:

1. The profits will be shared by the contracting parties in a proportion agreed at the time of the contract; and
2. Any losses will be exactly proportionate to the share of each of the parties in the capital of the partnership (Usmani, 2008).

The contract between the partners is fiduciary and may be of two kinds. It may be based on a general agreement to act in mutual interest (*shirkat mufawada)* or it may contain a number of clauses concerning such things as the agreement, the amount of capital, and the orientations of the society *(shirkat al- inan*).

There may be a *musharakah* with no determined time-limit which facilitates long-term projects, or a decreasing *musharakah (mutanaqisa)* in which the bank's share is progressively reduced, the shares being reallocated little by little to the entrepreneur who finally becomes the sole owner of the capital. The *musharakah* contract is often used in import credits, but it can also be applied to agriculture or industry.

(d) ***Ijarah***

Ijarah means a contract to lease or rent or hire. The actual meaning of *ijarah* is therefore a contract or sale involving the use of property owned by a different party. In the context of Islamic banking, *ijarah* can be defined as a process by which "usufruct of a particular property is transferred to another person in exchange for a rent claimed from him/her". In many respects, *ijarah* resembles leasing as it is practiced in today's commercial world.

The distinguishing feature of this mode is that the assets remain the property of the Islamic bank to put them up for rent every time the lease period terminates so as not to remain unutilised for long periods of time. Under *ijarah*, the bank or the leasing company assumes the risk of recession or diminishing demand for the assets. Elaborate principles have been laid down in respect of the conditions which may be agreed between the parties (Haron and Wan Azmi, 2009).

Under *ijarah*, it is possible to hire out very costly goods like industrial material, aeroplanes, boats, which enable the customer to avoid paying the full capital cost. The bank buys the property and becomes the owner. The client may sometimes become the owner at the end of the hiring period on previously-agreed conditions if the contract is of hire- purchase.

(e) Qard Hasan

In Malaysia this principle is termed *al-qardhul,* in Iran as *qard al-hasan* and in Pakistan as *qarz-e-hasna*. It is a benevolent loan that obliges a borrower to repay the lender the principle sum borrowed. The borrower, however, has the discretion to reward the lender by paying any sum over and above the principle amount borrowed.

This principle is the only form of loan permitted by shari'ah and is meant for social and economic justice. Allah (s.w.t.) says in Surah al Hadid, verse 11, that:

Who is he that will give loan to Allah a beautiful loan? For (Allah) will increase it manifold to his credit, and he will have (besides) a liberal reward. (Quran 57:11). The Noble Qur'an has enjoined the believing Muslims to live up to social responsibilities through the instrumentality of Qard Hassan because it is more rewarding (Q 2: 245).

The *qard hasan* principle has indeed been used widely by Islamic banks in fulfilling their social responsibility. For instance, Jordan Islamic bank uses this principle to help clients who are faced with financial difficulties. This type of financing is also used to promote and aid micro enterprises (Haron and Wan Azmi, 2009). So, irrespective of religious affiliation, the benefits of this product cannot be quantified.

(f) The Wadi'ah Principle

Wadiah or "trusteeship" in Islamic banking system is an agreement whereby a customer deposits his money or other items with the bank for safe keeping and the bank must seek permission from the customer to use the deposit at the bank's own risk as long as the funds remain with the bank. The customer may withdraw in whole or in part the deposit at any time he desires and the bank guarantees to honour such request. In Malaysia, this principle has been extended and is termed *al-wadiah yad dhamanah,* which means safe keeping with a guarantee (Haron and Wan Azmi, 2009). This concept refers to deposit made by an owner for safe keeping by someone else. *Wadiah* involves the safekeeping of money, among other items where the custodian act as a guarantor and thus, guarantees to pay or return the full amount of the deposit or part of it when requested. The depositor will not receive any profit, but the Islamic bank may provide gifts or *hibah* to the depositor as a token of appreciation and gratitude for his deposit (Haron and Wan Azmi, 2009).

Relationship between Islamic Banks and Their Customers

Although, Islamic bank operates on the same model with the conventional bank, in term of the creation of deposit facilities, such as deposit account, current account, saving account, investment account etc. for the convenience of its customers, however, its practices differ from the conventional practice as regards the contracts that govern the relationship between the bank and the customers. The relationship between the depositors and the bank under the conventional banking system is a 'debtor-creditor relationship' whereas in the Islamic banking system, the relationship between the depositor and the bank is 'investor-entrepreneur relationship', that is, a partnership relationship (Ibitoye and Ajayi, 1999).

Thus, while interest is paid to a depositor on his deposited money in the conventional bank, the profits that accrue or loss that is incurred from the partnership of the 'invested fund' of the depositor in the Islamic bank is shared between the bank and the customer. Mostly the contract between a depositor and a bank under Islamic banking system is *al-mudarabah* contract and other modes of contract discussed above.

The relationship between the Islamic bank and the users of its funds on the other hand depends on the principle used in rendering a particular facility, that is, whether the facility is based on profit sharing, sale and purchase, fees and fixed payments, or services provided free of charge. If the profit-sharing (*mudarabah or musharakah*) principled is used, then the relationship is that of a partners or investor entrepreneur. If the sale and purchase principle is used, then the relationship is of a trader and his customer. For facilities based on the principle of charges and fees, the relationship is that of employer and employee or employer and his representative. In the case of a free of charge services, the relationship of a party who possesses something which he wishes to give out and the party who wishes to receive it (Haron and Wan Azmi, 2009).

Issue of Discrimination against Non-Muslims in the Services of Islamic Banks

The opponents of Islamic banking have expressed the fear that the Islamic banking will exclude the non-Muslims in its services. In reality, the worry is a mere lack of understanding of the operations of the Islamic law of transaction. The Islamic law of transaction '*al-muamalat',* of which Islamic banking is a branch does not, in any way, precludes non-Muslim from transacting under its purview (Olayemi, 2012). It is a wrong notion that Shari'ah banking is open only to Muslims. 'It is true that it provides a platform for Muslims to do their banking according to what the Quran says; no interest. It does not mean that non -Muslims cannot also use the facility. In fact, the Bible as discussed above under the Old Testament, interest was prohibited because it has always been destructive (Adegbite, 2011).

Contemporary practice of Islamic banking across the world shows that the bank is an institution which renders its services to the general public, irrespective of their religious profession, association or inclination. For example, one of the countries that boast the most developed product of the Islamic banking in the world today is the United Kingdom 'UK.' (Ainley etal, 2007).The country is only second to Malaysia in this respect despite the fact that the majority of the populations of the country are Christians (Olayemi, 2012). Similarly, although, the Muslims in Malaysia outnumbered the non-Muslims, as they constitute the 60.4% of the total population

however, there are other major religious groups in the country. These include Christianity, the Buddhism, Hinduism and the others (www.web-archive.org).

If Islamic banking is meant to serve only the Muslim communities, how would these countries emerge as global centers of Islamic banking? All the members of the various religious groups in these countries are strong participants in the Islamic banking system, irrespective of their religious diversity. They participate as depositors, investors and employees of the bank. In fact, this is what culminates into the rapid growth and development of the Islamic banking system in the world today. (Olayemi, 2012)The Islamic banking practice in Nigeria cannot be different from the other practice of the world. It will give equal opportunity to all Nigerians. This has clearly been reiterated by Babagana Bintube, the Managing Director of JAIZ International Bank Plc in Nigeria, he said:

"Our shareholders, our staff, our vendors, our contractors are diversified coming from different part of the country. Our shareholders, who started coming on board cut across the six geo political zones of the country, it is not an exclusive bank it is open to all. As a matter of fact we have Pastors and Bishops who are shareholders of the Bank"(www. Ngrguardiannewspaper.com of 14//10/2012).

In a nutshell, Nigerians, whatever their religion might be, should be rest assured that the Constitution of the Federal Republic of Nigeria, 1999, (as amended) has preserved their right to derive benefit from any economic out-fit in the country. The Section [16 (1) (d)] of the Constitution preserves this right '*without prejudice to the right of any person to participate in area of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy'* Therefore, no Nigerian shall be deprived of the benefits of the Non-Interest financing system of the Islamic banking system, in term of investment, deposit, financings, employment etc. What Islamic bank stands for is the realization of the principles of equity, justice and fairness, and most essentially the safeguarding of the economic system from derailing through the interest based practices.

Conclusion

In contrast to the conventional bank, Islamic bank is founded on both profit and religious factor. Hence, while performing its banking businesses in accordance with shari'ah Islamic bank is also expected to make profits from its operations. As entities based on religious doctrine, Islamic banks must conform to the philosophies and business principles as highlighted in the Qur'an and hadith. Banking operations must be in consonance with Islamic teachings. Factors such as justice, equality, trust,

honesty, non-prejudice, mutual gain, non-wastage and fulfilling of responsibility are matters that must be adhered to by Islamic banks.

Since the giving and receiving of *riba* is forbidden, Islamic banks operate on principles that are permissible in Islam. These principles include *mudharaba, muharabah*, *ijara musharakah* etc. the use of profit loss sharing principles is greatly advocated, because of its high benefits in enhancing the economy of Muslims as a whole. The existence of variety of applicable shari'ah principles enables Islamic banks to offer total banking products and services. Hence customers in most Islamic countries have the choice of whether to obtain Islamic banking services or otherwise. The status and type of relationship between the customer and the Islamic banks, however depends on the shari'ah principle applied in the service concerned.

All the members of the various religious groups in Nigeria should strongly participate in the Islamic banking system, irrespective of their religious diversity as found in other jurisdictions. They should participate as depositors, investors and employees of the bank. The Islamic banking practice in Nigeria cannot be different from those practiced in other places of the world. It will give equal opportunity to all Nigerians.

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