

## A COMPARATIVE STUDY OF COMMERCIAL CAPACITY IN THE LEGAL SYSTEMS OF AFGHANISTAN AND EGYPT

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**Abstract.** *Legal capacity, defined as an individual's competence to acquire rights and bear obligations, is recognized as a fundamental principle in all legal systems. This study conducts a comparative analysis of commercial capacity within the legal frameworks of Afghanistan and Egypt. The central question of the research is whether the rules governing capacity in commercial matters are similar to those applied in civil affairs, or whether there are fundamental differences between the two domains. The aim of this study is to analyze and compare the concept of commercial capacity in the two legal systems and to examine whether legally incapacitated individuals are permitted to engage in commercial activities. The research adopts a descriptive-analytical method and is based on legal sources from both countries. The findings reveal that although the foundational principles of capacity are similar in both legal systems, there are notable differences in how these principles are applied. In particular, individuals under legal incapacity are not allowed to independently engage in commercial activities, even with the permission of a guardian or curator. Moreover, guardians or curators are also prohibited from conducting commercial activities on behalf of those under their care. This study is significant because a comparative examination of these laws can enhance the understanding and application of capacity rules in commercial matters in both countries.*

**Keywords:** *Civil capacity, commercial capacity, legally incapacitated persons, guardian, curator, Afghan law, Egyptian law, principle of freedom of commercial activity.*

### Introduction

Capacity, in general, refers to an individual's legal competence to acquire rights and bear obligations. This concept is regarded as a fundamental principle in many legal systems. Capacity is commonly divided into two main categories: **passive legal capacity** (the ability to acquire rights) and **active legal capacity** (the ability to exercise those rights). In various legal systems, including those of Afghanistan and Egypt, these two forms of capacity play a critical role in determining an individual's ability to engage in legal acts, including commercial transactions. Under Afghan law, Article 956 of the Civil Code stipulates that every individual possesses passive legal capacity from birth. However, to exercise rights and engage in commercial transactions, one must also possess active legal capacity, which depends on reaching the age of majority and having sound mental judgment. Individuals under the legal age (18 years) or those lacking full mental discernment are considered legally incapacitated (**mahjoor**) and cannot independently engage in commercial activities. Even when represented by a guardian or curator, such activities are subject to strict legal limitations and specific conditions. Similarly, in Egyptian law, capacity is also divided into passive and active categories. According to Article 48 of the Egyptian Civil Code, individuals under the age of 18 who have not reached the age of majority lack active legal capacity and cannot independently enter into commercial transactions.

Upon reaching the age of 18, a person acquires full active legal capacity and may engage in commercial activities. As in Afghanistan, individuals under legal incapacity in Egypt are not allowed to conduct commercial activities independently, and guardians or curators may only act on their behalf under exceptional circumstances permitted by law. The main objective of this research is to examine and compare the rules governing commercial capacity in the legal systems of Afghanistan and Egypt to determine whether the principles of capacity in commercial matters align with those in civil matters, or if there are significant differences in how these capacities are treated in both domains. The study focuses particularly on the conditions and restrictions applicable to legally incapacitated individuals and the role of guardians or curators in commercial transactions.

### **Literature Review**

Previous studies have primarily focused on legal capacity in the domains of civil and family law, with limited attention paid to commercial capacity, particularly from a comparative perspective. For example, Kaviani (2014) emphasized the importance of legal capacity as a key condition for the validity of commercial transactions in his study of negotiable instruments law, findings that align with this research's emphasis on active legal capacity.

Stanekzai and Nasih (2019), in their work on commerce in the Islamic world, examined legal capacity from an Islamic jurisprudential perspective, highlighting the significance of puberty and mental soundness—an approach consistent with the present study's focus on age and mental condition in determining commercial capacity.

Moreover, Pakdaman (2010), in his work on commercial company law, indirectly referenced the limitations imposed on legally incapacitated persons in engaging in business activities, which corresponds with this study's findings. Similarly, Nouri (2009), in his translation of the Egyptian Civil Code, distinguished between passive and active legal capacity and emphasized that individuals under 18 lack active capacity and cannot independently engage in commercial activity—a point also analyzed in this research. In summary, while prior studies have addressed legal capacity in general, this research seeks to fill the existing gap by focusing on commercial capacity and its comparative application in the legal systems of Afghanistan and Egypt.

### **Research Questions**

1. Are the rules governing legal capacity in commercial matters similar to those in civil matters in the legal systems of Afghanistan and Egypt?
2. How is the status of legally incapacitated individuals and their ability to engage in commercial activity defined in both countries?
3. Can a legal guardian or curator engage in commercial activities on behalf of an incapacitated individual?

### **Research Methodology**

This research is conducted through a descriptive-analytical method, using available legal sources from Afghanistan and Egypt to analyze and compare the rules of commercial capacity in both countries.

### **Findings**

The study's findings indicate that while the foundational principles of legal capacity in commercial and civil matters are similar in both Afghanistan and Egypt, the key differences lie in their application. Notably, incapacitated individuals cannot independently engage in commercial activities even with the permission of a guardian or curator, and guardians or curators themselves are also prohibited from conducting such activities on their behalf.

#### **1: The Principle of Freedom to Engage in Commercial Activities**

One of the fundamental human rights is the freedom to choose and engage in commercial activities. Based on this principle, all natural persons have the right to become merchants and conduct commercial operations. However, due to the limitations required by economic and commercial order and the necessity to safeguard the rights of third parties, this freedom may be subject to restrictions. These limitations primarily exist because individuals who lack legal capacity cannot independently engage in commercial activities or be recognized as merchants (Kaviani, 2014: 150).

The freedom to conduct commercial activities is emphasized in the legal systems of various countries. Article 30 of the Constitution of Afghanistan clearly states: *"Every Afghan has the right to choose any occupation they desire, provided it does not conflict with the provisions of the sacred religion of Islam, public interests, and the rights of others."* This article explicitly outlines three essential elements: freedom of work, the right to choose an occupation, and non-discrimination. Restrictions on the freedom to choose a profession and engage in commercial activities are based on opposition to Islamic Sharia, contradiction with public interests, and violation of the rights of third parties.

Furthermore, the Afghan Civil Code addresses the issue of legal capacity to conduct commercial activities. According to Article 2 of the Afghan Civil Code, individuals who are of legal age and possess mental capacity may engage in commercial activities and assume responsibility. Persons lacking legal capacity (such as minors or individuals with mental disorders) are not permitted to independently participate in commercial transactions.

According to Article 3 of the Afghan Commercial Code, a merchant is defined as someone who engages in commercial activities permanently and independently. This law establishes various conditions for initiating and conducting commercial activities and, particularly for the protection of third-party rights and the maintenance of economic order, outlines specific rules for the registration of companies and commercial operations.

Additionally, Afghanistan's commercial regulations stipulate conditions for imports and exports, compliance with health, environmental, and tax laws in relation to commercial activities. These regulations aim to provide a free environment for trade while ensuring the protection of public rights and adherence to legal principles (Stanekzai, 2019: 187).

The Constitution of Egypt also strongly emphasizes the freedom to engage in commercial activities. Article 66 of the Egyptian Constitution states:

*"Every individual has the right to choose the profession they are interested in, provided it does not violate public morals or the rights of others."*

Similarly, Egyptian Commercial Law allows any natural person with legal capacity to engage in commercial activities, freely choose their profession, and establish companies or carry

out commercial transactions. These principles are reiterated throughout various Egyptian laws, granting individuals the right to trade legally within the framework of the law.

The Egyptian Civil Code, like that of Afghanistan, sets out certain restrictions on legal capacity for engaging in commercial activities. According to this law, individuals who have reached legal age and possess mental competence may independently enter into commercial contracts, while those lacking legal capacity may not. Likewise, Egyptian Commercial Law establishes similar principles for initiating commercial activities and company registration. Specifically, Article 10 of the Egyptian Commercial Code directly addresses the issue of commercial capacity, stating that anyone who meets legal requirements may engage in trade, provided such activities conform to national laws and regulations.

Moreover, Egypt's commercial regulations, similar to those in Afghanistan, include laws concerning company registration, export and import, and compliance with health and tax standards. These laws are designed to protect public interests, uphold individual rights, and maintain the country's economic order (Eskini, 2010: 243).

In both Afghanistan and Egypt, the freedom to engage in commercial activities is subject to specific legal conditions. Generally, individuals who lack legal capacity are prohibited from conducting commercial operations. These limitations are essential to prevent the infringement of third-party rights and to ensure economic and social order.

## **2: Rules of Legal Capacity for Conducting Commercial Activities**

The legal status of a merchant consists of a set of legal rules that apply to merchants and determine their inherent rights and obligations. A merchant's legal capacity refers to their ability to hold rights and assume obligations in the sphere of commerce. In this context, *status* and *capacity* are distinct concepts. Legal *status* refers to a person's legal position and is comprised of characteristics that the law attributes legal consequences to, whereas *capacity* relates to a person's eligibility to acquire rights and duties.

Given the general principle that all individuals may exercise their rights and obligations within the bounds of law and legitimacy, all natural persons are in principle eligible to become merchants and engage in commercial activities. However, there are exceptions under which certain individuals lack the capacity to act as merchants or to engage in commercial operations (Rasuli, 2014: 159).

Under Afghan law, minors—defined as individuals who have not reached the age of maturity—except in cases where legal disability has been lifted, cannot be classified as merchants and are prohibited from conducting commercial transactions. The age of minority is determined according to national legislation. Article 121 of the Afghan Civil Code states: "*The age of maturity is 18 for boys and 16 for girls.*" Therefore, individuals who have not reached this age are considered legally incapacitated to engage in commercial activities.

Article 127 of the Afghan Civil Code further clarifies that: "*Persons who have not reached legal age or who are mentally incompetent are not allowed to independently exercise their legal rights.*" Accordingly, such individuals are limited to managing their daily life affairs and are prohibited from engaging in high-risk activities like commerce.

A similar legal position exists in Egyptian law. According to Article 48 of the Egyptian Civil Code, individuals under the age of 18 are subject to the guardianship of their legal guardian and are prohibited from engaging in commercial activities unless their legal disability is lifted.

This incapacity is absolute, and no authority can grant them permission to engage in such activities. Legally incapacitated individuals are permitted only to perform routine personal tasks and are barred from engaging in inherently risky activities such as trade (Erfani, 2009: 234).

These legal restrictions in both Afghan and Egyptian law are implemented because commercial activities typically entail serious responsibilities and risks, which individuals lacking legal capacity are not adequately prepared to handle.

### **2.1 Afghanistan's Legal Framework**

In Afghanistan, the conduct of commercial activities requires general legal capacity, as explicitly outlined in the Civil Code. According to Article 121 of the Civil Code, the parties to a contract must possess legal capacity, meaning any person who is mature (*baligh*), sane (*aqil*), and discerning (*rashid*) is legally capable of engaging in commercial acts. Non-discerning minors lack the intent and will necessary to conduct legal acts, and therefore, their commercial activities must be carried out through legal representatives such as guardians or custodians.

Similar rules apply to discerning minors (*rashid*) and legally incompetent adults (*safih*).

According to Article 127, such individuals may only engage in commercial activities under the supervision of a legal guardian, and their transactions require the guardian's explicit approval.

Article 127 further affirms that minors are deemed legally incapable of entering into commercial contracts unless their legal disability is removed by their guardian or custodian. In such cases, only limited and non-risky activities, such as small crafts or trades, may be recognized under the supervision of the guardian. However, for larger commercial activities that involve significant risks and obligations, the involvement of minors and incapacitated individuals must follow specific laws and be conducted under their legal representatives' supervision.

Article 129 of the Civil Code states that if a legally incapacitated person undertakes a commercial transaction, that transaction is considered invalid unless ratified by the individual's legal representative. Consequently, most incapacitated persons cannot independently participate in commercial dealings.

If a business or commercial enterprise is inherited by an incapacitated individual, it must be managed by their legal representative—guardian, custodian, or trustee. This matter is addressed in Article 662 of the Afghan Civil Code, which explicitly states: "*If the administration of a ward's property is necessary, the guardian or custodian is authorized to carry out such management.*"

### **2.2 Egypt's Legal Framework**

Egyptian law adopts a similar stance regarding commercial capacity. According to Article 48 of the Egyptian Civil Code, legal capacity is a prerequisite for conducting any form of commercial activity. Persons lacking legal capacity—such as minors and non-discerning individuals—are not allowed to engage in trade.



This article emphasizes that since commercial activities involve serious responsibilities and risks, those who are legally incapacitated cannot be held accountable for such responsibilities.

Article 53 further stipulates: *"Individuals who have not reached legal age are generally considered incapable of entering into commercial contracts, except in specific cases where their legal guardian grants explicit permission."* It also emphasizes that for large-scale commercial activities, transactions are valid only with the approval and supervision of the legal guardian. Otherwise, such transactions have no legal validity. Article 58 of the Egyptian Commercial Code specifically notes that legally incapacitated individuals cannot be recognized as merchants. Their commercial activities must be conducted under legal supervision, and any resulting financial responsibilities must be assumed by their guardian or custodian. The incapacitated individual themselves cannot be held liable.

### **3: Legal Capacity for Partnership in Commercial Companies**

The general rules governing legal capacity in commercial activities apply broadly to all types of business transactions. However, when it comes to participating as a partner in commercial companies and the responsibilities arising therefrom, the issue must be addressed specifically.

The fundamental principle is that all natural persons may become partners in any form of commercial company. Nonetheless, a distinction must be made between **partnership-based companies** and **capital-based companies**.

- In **partnership-based companies**, the identity and personal characteristics of the partners play a central role. In these types of companies, should the company be dissolved or declared bankrupt, creditors are entitled to claim their dues directly from any of the partners. Generally, shares in such companies are not transferable, and these companies are considered closed in nature. General partnerships, limited partnerships (non-stock), and partnerships limited by shares fall under this category.

- In contrast, **capital-based companies** prioritize the amount of capital invested rather than the personal relationships between shareholders. In these companies, a shareholder's liability is limited to the extent of their capital contribution. Once the capital is contributed, the shareholder's liability ends. The identities of shareholders bear little significance, and changes in membership do not require the consent of other shareholders. Decision-making authority lies with the general assembly, which comprises the company's shareholders.

Capacity of Minors and Legally Incapable Persons:

According to the laws of Afghanistan:

- **Non-discerning minors** (those who have not reached the age of maturity) may not independently become partners in commercial companies. They may participate only through their legal representatives (e.g., a guardian or custodian) and exclusively in capital-based companies.

- **Discerning minors** (those who have reached maturity and possess mental capacity) may become partners in commercial companies if they obtain a specific authorization from the court.

- In **partnership-based companies**, non-discerning minors may not become partners, even though legal representation. However, discerning minors who have obtained court authorization may lawfully enter into such partnerships (Samadi, 2017: 321).

- **Legally incapable adults** (such as those under guardianship due to mental incapacity) may only be represented in commercial companies by their legal guardians. These individuals lack the legal will to independently enter into business partnerships.

According to **Article 1014 of the Afghan Civil Code**, persons who have attained the legal age and are mentally competent may independently engage in commercial transactions.

Moreover, **Article 3 of the Afghan Commercial Code** provides that in capital-based companies, such as joint-stock companies or limited liability companies, shareholders are only liable up to the amount of their investment.

**Article 5** of the same code stipulates that general partnerships, mixed partnerships, and relative partnerships are personal in nature, and their partners bear unlimited liability.

Additionally, **Article 25 of the Afghan Civil Code** affirms that husbands and wives have full legal capacity to manage their own property independently, unless such conduct contradicts family interests.

#### Comparative Insight: Egyptian Law

According to **Article 54 of the Egyptian Civil Code**, persons with full legal capacity may engage in commercial activities independently. **Article 14 of the Egyptian Commercial Law** similarly establishes that in capital-based companies such as joint-stock companies, shareholders are only liable for the amount of capital they contribute. Personal relationships between shareholders bear no legal consequences regarding the company's debts.

Furthermore, **Article 6 of the Egyptian Commercial Law** classifies general partnerships and limited partnerships as personal companies, where partners are personally and indefinitely liable for the company's obligations.

**Article 63 of the Egyptian Civil Code** stipulates that if minors participate in commercial activities, their legal guardians must supervise them. Discerning minors may engage in partnerships if they obtain court authorization under special circumstances. Both Afghan and Egyptian legal systems recognize that minors may participate in commercial companies—particularly in capital-based companies—provided they act through their legal representatives or with court authorization. However, in partnership-based companies where liability is unlimited, the participation of minors is only permissible under strict judicial oversight and legal guardianship (Nazeer, 2019: 213).

#### **4: Rules Governing Commercial Activity by Spouses**

Under Afghan law, **Article 25 of the Afghan Civil Code** affirms that both husband and wife have the right to manage and dispose of their own property independently, without requiring the consent of the other party. Accordingly, a woman is entitled to freely manage her assets and engage in economic activities of her choosing. However, if the profession or occupation a woman chooses contradicts family interests or undermines the dignity of the husband or herself, the husband may be permitted to object to her engagement in such work. In such cases, restrictions may be imposed on a woman's employment, justified by the need to safeguard family welfare and uphold the honor and dignity of both spouses.

Similarly, under Egyptian law, Article 44 of the Egyptian Civil Code stipulates that a woman has full autonomy over her property and faces no inherent restrictions on engaging in commercial activities. Nevertheless, if such activities are deemed incompatible with the family's best interests or damaging to the husband's reputation, the husband may be legally entitled to object. These limitations are not intended to establish male superiority over women, but rather aim to preserve familial integrity and mutual respect.

In conclusion, neither Afghan nor Egyptian legal systems impose an outright prohibition on women engaging in commerce. Women may freely participate in commercial endeavors, provided that such activities do not conflict with family interests or adversely affect the reputation and dignity of either spouse.

## **7: Legal Prohibitions and Restrictions**

In both Afghanistan and Egypt, legislators have established certain conditions and prohibitions regarding the conduct of commercial activities. These legal frameworks aim to safeguard public economic order and protect the rights of third parties.

### **1.7 Special Conditions for Engaging in Certain Commercial Activities**

Under Afghan law, Article 57 of the Afghan Commercial Code stipulates that specific conditions—such as possession of educational qualifications, a minimum age requirement, and registration in commercial registries—are necessary to engage in certain types of commercial activity. For instance, some professions may require registration with the commercial registry and the acquisition of special licenses from competent authorities. These prerequisites are considered qualifying conditions, intended to ensure the individual's competence for engaging in commerce, but do not imply a lack of legal capacity. Similarly, Article 3 of the Egyptian Commercial Code requires individuals to obtain special licenses from relevant authorities for specific commercial undertakings. These provisions are not prohibitive in nature but rather function as legal requirements for entry into regulated areas of commerce.

#### **2.7: Prohibitions for Certain Individuals**

Both Afghan and Egyptian legal systems impose restrictions on individuals with special legal statuses, such as those under guardianship (due to lack of legal capacity), individuals declared bankrupt, or those deprived of civil rights due to the commission of certain crimes.

In Afghanistan, Article 7 of the Commercial Code specifies that individuals who are legally incapacitated or bankrupt are prohibited from managing businesses or participating in commercial activities. These prohibitions are enacted to maintain public order and protect the rights of third parties.

Likewise, under Article 23 of the Egyptian Commercial Code, individuals convicted of specific offenses—such as embezzlement, theft, fraud, or similar crimes—may be barred from engaging in commercial activity as part of the deprivation of civil rights.

Both legal systems also provide for complementary criminal penalties, whereby individuals may be temporarily prohibited from engaging in certain professions, including commercial activities, as a result of committing certain crimes.

For example, Article 52 of the Afghan Penal Code allows for individuals convicted of particular offenses to be disqualified from engaging in specified trades or professions for a fixed



period. This is particularly relevant in cases involving economic and financial crimes that disrupt commercial or economic order.

Similarly, Article 58 of the Egyptian Penal Code authorizes the imposition of supplementary penalties, including disqualification from commercial activity, particularly in cases involving economic crimes or offenses that threaten social order.

### **3.8: Observance of Special Conditions in Government-Related Commercial Activities**

In addition to general requirements, individuals seeking to participate in **government tenders or auctions** must meet specific conditions, which may include academic or professional qualifications.

Under Article 79 of the Afghan Public Accounts Law, eligibility criteria for participation in public procurement processes are determined by the relevant authorities, and failure to meet these criteria may result in exclusion from such opportunities.

Similarly, Article 21 of Egypt's Law on Public Procurement sets out specific eligibility requirements for participants in government tenders. These typically include legal capacity, technical and financial competence, and compliance with particular government regulations.

Thus, both Afghanistan and Egypt impose legal restrictions on individuals lacking legal capacity, such as those under guardianship or declared bankrupt, to prevent violations of third-party rights and maintain economic order. Moreover, supplementary penalties, including disqualification from commercial activity, may be imposed on individuals convicted of economic crimes. In the context of public procurement, compliance with specific legal, technical, and financial criteria is mandatory, ensuring that only qualified individuals and entities participate in these regulated sectors (Bagheri, 2003: 234).

### **8: Foreign Nationals and Commercial Activities**

Certain commercial activities are reserved exclusively for nationals of a country, and individuals who do not possess that nationality may be restricted from engaging in such activities. In both Afghan and Egyptian legal systems, specific business operations are considered the exclusive rights of the country's citizens, thereby excluding foreign nationals from participating in them.

Under the Afghan legal framework, Article 4 of the Law on Private Investment stipulates that any commercial activity by foreign nationals is contingent upon compliance with specific conditions and obtaining special permits issued by competent authorities. The law imposes restrictions on foreign investment in particular sectors, especially those deemed sensitive, such as defense and security. Nevertheless, foreign nationals are permitted to engage in a wide range of economic and commercial sectors, benefiting from legal privileges aimed at facilitating investment and business operations.

Similarly, under Egyptian law, Article 32 of the Investment Law explicitly states that foreign nationals may participate in commercial activities, provided they adhere to relevant regulations and conditions. However, in certain cases where the Egyptian legislator has imposed restrictions—particularly in critical and sensitive economic sectors—foreign nationals may be prohibited from engaging in specific business operations. These restrictions primarily serve to protect national interests and economic security.

### **8.1: Commercial Activities by Foreign Nationals in Afghanistan**

In the Afghan legal system, foreign nationals are required to obtain specific licenses in order to engage in certain economic and commercial sectors. According to Article 5 of the Afghan Investment Law, foreign investors are free to operate in areas such as services, manufacturing, and trade, provided that they obtain the necessary licenses from relevant authorities. In many cases, foreign investment is treated on an equal footing with domestic investment, as long as the applicable laws and regulations are observed.

### **8.2: Commercial Activities by Foreign Nationals in Egypt**

Under Egyptian law, Article 8 of the Investment Law allows foreign nationals to operate in various sectors of the economy, conditional upon compliance with legal requirements and acquisition of proper licenses. In certain exceptional cases—particularly those involving national security or the protection of the domestic economy—foreign nationals face restrictions. For instance, Article 23 of the Egyptian Investment Law outlines limitations on foreign investment in sensitive sectors such as defense industries and nuclear energy.

### **8.3: Commercial Business through Corporate Establishment**

In Afghanistan, foreign nationals are permitted to establish commercial companies, albeit under specific legal conditions. According to Article 6 of the Law on Company Registration, foreign nationals must complete formal registration procedures and obtain necessary approvals from the Ministry of Commerce and Industry. This process includes compliance with regulations regarding the type of company and its registration with the official corporate registry.

Similarly, under Article 7 of the Egyptian Commercial Law, foreign nationals may establish commercial companies. However, depending on the type of company and the field of activity, they must fulfill specific conditions, such as obtaining a residence permit or commercial registration card. These rules particularly apply to nationals from non-European Union countries. For EU citizens, some of these restrictions have been waived. Generally, foreign nationals are allowed to establish and operate commercial enterprises in Egypt, provided they comply with host country regulations.

### **8.4: Reciprocity in Foreign Trade Practices**

In both Afghanistan and Egypt, foreign trade involving foreign nationals is sometimes governed by the principle of reciprocity. This means that if a foreign country allows Afghan or Egyptian nationals to engage in commercial activities within its borders, reciprocal rights may be granted to that country's nationals in Afghanistan or Egypt. This principle is usually formalized through bilateral treaties and international trade agreements (Center for Trade Dispute Resolution, 2015: 235).

### **8.5: Restrictions and Prohibitions on Foreign Nationals**

The legal systems of Afghanistan and Egypt impose restrictions on foreign nationals in certain commercial sectors for security, economic, or political reasons. These restrictions often apply to strategic sectors such as defense industries, oil and gas, and critical mineral resources. Additionally, if commercial activity by foreign nationals is found to be contrary to public interest, further limitations may be enacted.

In conclusion, international trade and cross-border economic exchange constitute a significant portion of global economic relations today.

However, given the sovereignty of legal systems, commercial laws and regulations can vary significantly from one country to another. This article aims to highlight the key legal differences between Afghanistan and Egypt regarding commercial rights and activities of foreign nationals (Niazi, 2015: 140).

### **9: Commercial Capacity and Comparison of Laws in Afghanistan and Egypt**

Both the laws of Afghanistan and Egypt establish specific conditions for commercial capacity, yet there are significant differences in this regard. In Afghanistan, the laws permit individuals who are of legal age and have legal competence to engage in commercial activities. According to Article 64 of the Afghan Civil Code, individuals must have legal capacity and reach the age of maturity to participate in commercial affairs. However, in Egypt, in addition to similar laws, there are specific restrictions on certain individuals, such as bankrupt individuals or those under legal guardianship, who are prohibited from participating in commerce. Under Article 48 of the Egyptian Commercial Code, individuals who have been declared bankrupt or are legally incapacitated cannot engage in commercial activities.

These differences reflect varying perspectives on commercial capacity and the definition of the necessary qualifications for individuals in each country. In Afghanistan, the legal system focuses more on individual legal capacity, while in Egypt, in addition to legal capacity, the social and financial status of individuals also plays a significant role.

#### **9.1: Foreign Nationals' Commerce**

Another issue that requires examination is the trade laws concerning foreign nationals in both countries. Unlike some countries, Afghanistan does not prohibit foreign nationals from engaging in many commercial activities. The conditions for foreign trade in Afghanistan are primarily limited to obtaining the necessary licenses and adhering to relevant laws. Article 1 of the Afghan Commercial Code explicitly states that foreign nationals can engage in commerce in Afghanistan if they obtain the necessary permits.

In contrast, Egypt regulates foreign nationals' trade under specific conditions based on the type of company and the nationality of the investor. According to Article 43 of the Egyptian Commercial Code, the nature of the relationship between the foreign national's home country and Egypt in terms of trade affects the regulations. Particularly, in Egypt, the principle of reciprocity between the two countries is a decisive factor in determining whether foreign investment or commercial activity will be accepted.

This highlights the significant differences in the commercial policies of various countries, indicating that international trade laws should be flexible to meet the economic needs and policies of individual countries (Rezaei, 2008: 320).

#### **9.2: Restrictions and Prohibitions**

The restrictions in each country in the field of commerce are crucial to maintaining economic order and public rights. In Afghanistan, in addition to laws concerning commercial capacity, certain businesses require special permits, and failure to comply with these regulations could render an individual's commercial activity illegal. According to Article 17 of the Afghan Commercial Code, failure to adhere to registration and licensing requirements results in the commercial activity being deemed unauthorized.

In Egypt, in addition to legal conditions for starting commercial activities, some individuals are prohibited from continuing their business activities due to criminal convictions or their social status. According to Article 23 of the Egyptian Penal Code, individuals who have been deprived of social rights due to committing economic or social crimes are prohibited from engaging in commercial activities, and if convicted of specific crimes such as embezzlement, fraud, or corruption, they are barred from commercial activities.

This issue is primarily aimed at preserving public order and economic justice. The differences in this area show that each country strives to regulate rules and regulations to prevent exploitation in business sectors and create an environment conducive to economic balance.

Ultimately, a comparative analysis of the commercial laws of Afghanistan and Egypt leads to the conclusion that both countries have tailored their laws to meet their specific economic and social needs. Although there are similarities in regulations concerning commercial capacity and foreign trade, significant differences exist, especially concerning trade restrictions and prohibitions. While Afghanistan places more emphasis on individual rights and legal capacity, Egypt also takes into account social aspects and the economic status of individuals. These differences can influence international trade and how nationals from different countries interact in commerce (Pakdaman, 2019: 322).

#### **10: Argument**

The issue of commercial capacity within the legal systems of Afghanistan and Egypt, particularly when considering its legal, social, and protective dimensions, is one that requires a multidimensional and comparative analysis. Examining this concept within a comparative framework is not only useful for better understanding the similarities and differences between the two legal systems, but it can also provide the foundation for reforming and optimizing existing laws.

In previous studies, the principles of civil and commercial capacity have generally been examined separately, with a primary focus on age and mental competence as essential prerequisites. This view aligns with the general legal principles that capacity is necessary for the proper execution of rights and fulfilling obligations. For instance, in some sources, such as the Afghan Civil Code (Article 956) and the Egyptian Civil Code (Article 48), it is emphasized that legal capacity is achieved upon reaching the legal age and possessing full discernment.

There are also studies that examine the role of legal guardians (such as a custodian or guardian) in performing legal activities on behalf of those who are incapacitated. These studies show that, in most cases, even with the permission of a guardian, limitations exist regarding entering into commercial transactions. This approach reflects a protective view in legal systems against the exploitation of those who are incapacitated.

Some analyses also highlight the importance of the differences between civil and commercial rules. In this view, commercial capacity, due to the high-risk and dynamic nature of commercial transactions, requires stricter conditions compared to civil transactions. Therefore, an individual's participation in the commercial market should be accompanied by full intellectual competence, maturity, and the ability to understand the economic consequences.

However, in this study, several key points are emphasized:

a. **Application of Capacity Principles in Both Systems:** The findings indicate that while the fundamental principles of capacity are similar in Afghanistan and Egypt, there are differences in the implementation of these principles, particularly regarding those under guardianship. In both countries, individuals under guardianship cannot independently or through representation engage in commercial activities, even with permission from a guardian.

b. **Protective Approach Toward Incapacitated Individuals:** The legal systems of both countries adopt a protective approach toward individuals lacking capacity to prevent economic and legal harm. These limitations are legally justifiable, but they may, in some situations, deprive individuals of growth opportunities.

c. **Need for Gradual Reform and Smart Policy Making:** Given economic and social changes and the development of commercial markets, reviewing certain capacity limitations, along with establishing supervisory mechanisms, could help reduce conflicts between protecting incapacitated individuals and enabling their effective participation in economic activities.

Considering the various legal, social, and protective dimensions of commercial capacity, it is not sufficient to rely solely on age-related rules or traditional concepts of capacity. As previous studies have also shown, a comprehensive, flexible, and comparative approach to legal policymaking can improve commercial capacity systems in Islamic countries. Continued research and the development of regulations aligned with social and economic realities are crucial for improving the legal system's efficiency.

## **11: Conclusion**

This research has analyzed and compared the rules of commercial capacity within the legal systems of Afghanistan and Egypt, leading to important findings that significantly impact the understanding of the application and differences between these two legal systems. The first significant finding is that, in both countries, the general principles of commercial capacity align with civil capacity. This means that individuals must have legal capacity to engage in commercial activities. Those who lack capacity, such as minors or individuals who are mentally incapacitated, cannot independently participate in these activities and may only do so with special court authorization or under the supervision of a legal guardian. This similarity in both countries reflects a protective approach to prevent commercial exploitation of individuals who lack capacity. Regarding specific restrictions for incapacitated individuals, both Afghanistan and Egypt have similar laws that prevent individuals without legal capacity from engaging in commercial activities. Even with the permission of a guardian, these individuals cannot independently conduct commercial activities, reflecting a protective approach to prevent erroneous decisions in business matters. Another aspect of this study addresses the legal restrictions on certain commercial activities. These restrictions are necessary conditions for qualifying for specific commercial activities and are put in place to protect the public and economic interests of the countries. These restrictions are particularly relevant in certain sectors and sensitive industries, with the goal of maintaining public order and preventing high-risk commercial activities. Regarding foreign nationals' commerce, differences were observed between the laws of Afghanistan and Egypt. In Afghanistan, foreign nationals must comply with relevant laws and obtain necessary permits to participate in commercial activities, while in Egypt, foreign trade laws are influenced by reciprocal relationships between countries and



depend on international agreements. These differences can impact the process of attracting foreign investment. Additionally, both Afghanistan and Egypt have accepted the principle of equality of commercial rights for spouses and there is no prohibition on one spouse engaging in business without the other's consent, except in certain legal cases where restrictions may apply to one spouse. The final significant finding of this research is that both Afghanistan and Egypt aim to facilitate trade and attract foreign investment. By creating favorable conditions for international trade and investment, these countries strive to improve their economic growth and expand their domestic markets. Ultimately, the conclusion of this research indicates that despite many similarities in the principles of commercial capacity in Afghanistan and Egypt, there are differences in the application of these principles and the existing trade restrictions in both countries. These differences, particularly in foreign nationals' commerce and family law regulations, are noteworthy. At the same time, this research shows that both countries have adjusted their laws to create a favorable environment for trade and foreign investment to facilitate economic and commercial development. These findings can be useful at the international level for understanding commercial capacity laws and enhancing trade relations between countries.

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