

Istisnā'- A Realistic Approach to the Concept in Islamic Finance and its Application to the Agricultural Sector in Pakistan

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Abstract:

Farmers predominantly belong to lower class of the society, particularly in developing and under developing countries. This actuality really put them on back-foot in every sphere of life, including their various agricultural activities. For instance, they always face problems to fulfil their agricultural requirement, both for crop and non crop activities, and hence, not in position to get utmost benefits from their efforts. Being citizens of a developing country, Pakistani farmers come across the identical situation. As they are Muslims, therefore, avoid securing interest based loan from the financial institutions. Islamic financial system provides an alternate to such interest based arrangement in the shape of various financing techniques. Among these, Istisnā' (manufacturing) is the most important one which can be used effectively for the fulfilment of various agricultural requirements. However, its role is more dominant in the satisfaction of non crop agricultural activities that is for example, manufacturing of some heavy agricultural machinery and equipments, installation of tube-wells and channels for appropriate irrigation system, construction of small houses for farmers in their lands etc. The present work discusses the theoretical background of this mode, available in the scholarly work of classical and contemporary Muslim jurists' work, followed by the description that how it can be used for financing various sectors of agriculture. Study reveals the transaction is equally viable for the development of all sectors of agriculture like local farming, fish farming, dairy farming, poultry farming, horticulture etc. The intended results

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can be achieved when the financial institutions apply the transaction in its true spirit and philosophies envisaged for it by Islamic commercial law, and not mere a source of earning profit.

Keywords: Istisnā', Islamic banks, Islamic financial Institutions, Agriculture, Farmers, Agricultural Financing, Rural Area, Islamic bank

1. Introduction:

Agriculture is one of the most important means employed by most of the developing countries to cater to their food requirements. In Pakistan, 43 percent of the labor force gets its livelihood from the agriculture sector; also contributing 23 percent to its GDP. However, the financial institution ignored this important sector and concentrated on other more profitable areas of business. The farming community comprises of the large, medium, and small farmers of which, as is usually the case in developing countries, own only a small share of cultivable area. The majority of the population, related to the agriculture sector, belongs to the poor class of society¹. In Pakistan, despite the fact that 60 percent of its population resides in rural areas,² no serious effort is made for the development of agriculture which has correspondingly gone down over the last few years.

As mentioned earlier, the large farmers, as is the case in most developing countries, have greater access to the cultivated area. This is evident from the fact that large farmers possess only 7% of farms and yet they have access exceeding 40% of cultivated area. The farm size is critical to higher production as greater cultivation excites investment, farm income, and productivity. Likewise, the small farmers are left bereft of these ancillary benefits. This woeful condition of the small farmers lead most of them into the below subsistence level category, comprising of 52% Pakistanis.³ It is this miserable condition of abject poverty whereby these small farmers are mostly in need of agricultural financing. When that is not forthcoming, their condition deteriorates more, ironically, further reducing their chances of acquiring financial assistance. A great majority of these small farmers are; therefore, require additional financial resource to cater to their needs; arising at different phases of the harvesting cycle. The cycle starts with the farmers requiring financial resources to procure fundamental agriculture inputs such as fertilizers, seeds, herbicides, ploughing tools etc. During the mid and end of the harvesting cycle, more funding is necessitated for the purchase of pesticides, and various agricultural tools.⁴ Since resources are required throughout, a vast majority of small farmers constantly struggle to make ends meet. To manage their operations, they have to borrow from different entities such as individuals, banks, other financial institutions, and government i.e., from both formal and informal credit sources.⁵

Islam strictly forbids *Ribā* (interest).⁶ To be *Sharī'ah* (Islamic Law) compliant, Muslim farmers, are forced to fulfil their agricultural needs from other sources of financing, acceptable and endorsed by Islamic financial system. The classical Muslim Jurists have carried out a lot of work on this, and emphasized on *Istisnā'* (manufacturing contract) to be the most relevant mode of financing for this purpose. The *Hanafi* jurists, in particular, have supported this mode. Notable among those have been Imām *Sarakhsi*⁷ who devoted a significant part of his work titled *Al-Mabsūt* on this mode.

Istisnā' arguably is the ideal mode of Islamic finance which is applicable, especially for non crop activities. Such mode of Islamic finance is not the most appropriate mode for crop activities, since its contract is concluded only where there is a definite demand already established.⁸ The description shows that this transaction's role is more dominant in the non crop sector and, hence, can be used for the development of local farming; particularly in the rural areas of the country where 62 percent of the country's population resides, and is directly or indirectly linked with agriculture for their livelihood.⁹ These areas remain mostly ignored in terms of financing by the Islamic banks and other Islamic financial institution.

The above discussion does not mean that *Istisnā'*'s application is limited only to local farming and is not extendable to other sectors of agriculture. It can be affectively used with the same potential for the development of livestock, fish farming, poultry farming and miscellaneous other areas of agriculture. This further increases its importance, even for middle and upper class of farmers; as all these sectors require a great deal of investment in the beginning of the business. While this provides a source of livelihood for the poor famers, it ensures a sound source of business for the middle and upper farming classes.

Of course, the Islamic financial institutions start interest in the investment of their liquidity and depositor's liquidity to the agriculture sector for the fulfilment of farmer's need through *Istisnā'*. The reason is the profitability of this transaction in the feasibility reports and past profit margin earned by the conventional financial institutions for similar projects discussed by contemporary Muslim Jurists for the transaction of *Istisnā'*. However a closer look at the performance of Islamic financial institutions reveals how they have ignored the non crop requirements of poor class of the society and focused more on those of middle and the upper class. The guideline issued by the State bank of Pakistan for financing agriculture through Islamic commercial transaction expose the same fact.¹⁰ There are many reasons behind this dilemma. The first reason is that local farming (which is the main agriculture activity of the poor class) is prone to many risks i.e., droughts, floods, hail storms, earthquakes, mudslides and a multitude of other mishaps,¹¹ which makes the Islamic banks reluctant to finance this important sector of agriculture. The second reason is that majority of farmers, related to local farming, are from the poor class of the society; who are not in position to pay instalments for manufactured

commodities as per the rules mentioned in the *Istisnā'*'s contract. The third reason is that unlike other agriculture sectors, local farming's activities are mostly located in the rural areas which usually have outreach issues for financial institutions to invest in the sector. The fourth reason is that majority of farmers in Pakistan are ignorant¹² making it difficult for the financial institution to deal and workout financial arrangements with them. The farmers lack the basic education and knowhow to comprehend the individual/institutions' rights and obligations mentioned in the contract, and as such are prone to violate major clauses that can have serious implications for the financial institutions.

From the above description the aims and purposes of this research article can be summarized as follow.

- a. The main criticism on contemporary *Istisnā'* is that it is not in compliance with the basic guidelines provided by the classical Muslim jurists. This paper strives to draw attention to and deliberate on the *Istisnā'* concept in the light of major contributions on the subject by notable classical jurists e.g. Abū al Walīd Muhammad ibn Ahmad Ibni Rushd, Abū Bakar ibn Mas'ūd Kāsānī, Imām-al-Shawkani, Ibn 'Ābidīn, and etc.
- b. The contemporary Muslim scholars have long dwelled on the question, how to apply the concept of *Istisnā'* in the modern Islamic banking? However, their line of argument is too general in nature and sidetracks the agriculture sector. The major aim of the paper is to discuss the applicability of the *Istisnā'* contract to the agriculture sector in general, particularly that of rural areas in Pakistan.
- c. The procedure discussed by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) relating to *Istisnā'* contract is very complex and hence not easily comprehensible by the uneducated and ignorant farmers. The paper endeavours to simplify the procedure without jeopardizing the original spirit of the contract.
- d. As discussed above, the Islamic banks are very hesitant to invest in the agriculture sector owing to its inherent risks. The present work provides solid arguments to satisfy the Islamic financial institutions regarding the viability of agriculture finance through the transaction of *Istisnā'*.
- e. The contract of *Istisnā'* has many similarities to the interest based finance, making it possible for the Islamic financial institutions to misuse it, particularly in the agriculture sector. Based on the same, the approach of customer agency is suggested that mandates the Islamic banks to appoint a farmer as its agent, other than the farmer who approaches to the bank as a customer. The issue related to farmer's remuneration, when he acts as an agent, is also discussed in details for the same purpose.

2. Literature Review:

The concept of *Istisnā'* was first introduced by Islam. It is said that the Holy Prophet (P.B.U.H.) once ordered for the manufacture of a ring of gold, and a barber to cut his hair.¹³ The evidence shows that this kind of a transaction was not only permitted by the Holy Prophet (P.B.U.H.), but was also practiced by

him. It can be inferred from the above example that the contract concluded by the Holy Prophet (P.B.U.H) with the manufacturer or with the barber must have had certain rules and regulations i.e. nature of the commodity to be manufactured, price and its nature, payment and its different modes, time for the delivery, place of delivery etc. This would suggest that a whole description/full fledged protocol was available regarding the contract of *Istisnā'* at the very beginning of Islam. With the passage of time, the nature of the contract changed and turned from a simple to a more complicated one. The *Fuqahā* (Islamic jurists) explained the concept further according to the various requirements of the time, keeping the basic principles in the contract. These jurists include Ābidīn, Kāsānī, Murginānī, Ibnī Qudāma, Ibnī Rushd, Sarakhsī, Ibn Hazm, etc.¹⁴ They devoted a separate chapter to the concept and discussed in minute details its basic philosophies, rules, and regulations etc. However, their discussion of the concept was a purely generic one and related to trade in general rather than specific sectors like agriculture. The reason may be that the environments in which they lived were not conducive for agriculture, and the people were in fact involved in local and international trade.¹⁵

The contemporary Muslim jurists discussed the contract of *Istisnā'* according to current requirements; however they relied entirely in their work on the rich literature available in the books of classical jurists with minute disparity in details. But it does not mean that they did not contribute to the literature of the concept. In the recent decades, with the emergence of Islamic banking and finance, they did a notable work on the concept and its application to different sectors of the society. These jurists include Muhammad Taqi Usmani,¹⁶ Wabhā-al-Zuhaylī,¹⁷ Muhammad Imran Ashraf Usmani,¹⁸ Muhammad Anas Zarqa¹⁹, Mirakhor, Muhammad Al-Bashir Muhammad Al-Amine,²⁰ Muhammad Faheem Khan,²¹ Ahmed Moheddin Ahmad²², Muhammad Tahir Mansori²³ and etc.

The contemporary scholars, related directly or indirectly to Islamic banking and finance, have not paid the required attention to the application of *Istisnā'* to the agriculture sector. The reason behind it is that Islamic agriculture finance is completely a new area of investment for Islamic financial institutions and, therefore, requires a lot of spade work to formalize the system. Certain scholars discuss the concept of *Istisnā'* in their research work but not as a separate discussion, for example Muhammad Khaleequzzaman²⁴ Muhammad A. Gulaid²⁵ Maulana Taqi Usmani²⁶, [Brian B. Kettell](#)²⁷, Monzer Kahf and M. Fhim Khan,²⁸ Ahmad Kaleem, Rana Abdul Wajid,²⁹ Magda Ismail Abdel Mohsin³⁰ Laurence M. Crane and David J. Leatham³¹, Adam B. Elheraika³² etc.

Some work is also done on the application of *Istisnā'* to the agriculture sector at the institutional level. In this connection some *Fatāwa* (verdicts) and guidelines are issued from different *Fatāwa* and Islamic Financial Institutions, respectively. For instance, the State Bank of Pakistan has issued a guideline on Islamic agricultural finance in which emphasis was given on the application of *Istisnā'* to various sectors of agriculture. Similarly, Bank Negara, a central Bank of Malaysia, also issued an academic document on *Istisnā'*.³³ The state Bank of Pakistan has issued a handbook on the application of Small and Medium Enterprises (SMEs) to agriculture sector.³⁴ However this document only traces the flow of the *Istisnā'* transaction, its accounting treatment, and risk management issues etc. A Fatwa is also issued by Al-Baraka Banking Group on *Salam* (advance payment sale) and *Istisnā'*.³⁵

3. Methodology:

The present work is purely qualitative in nature where the content analysis techniques has been used for the investigation of the issue i.e. the use of *Istisnā'* for financing agriculture. While following the methodology, the work has been divided into two parts; the first part where a strong theoretical background of *Istisnā'* is discussed with minute details, and the second part where the application of such theory is elaborated. The secondary data, used throughout the paper, is collected from books (particularly those of classical Muslim Jurists), online and printed journals, official website of the State Bank of Pakistan and other financial institutions, magazines, periodicals, reports of various organizations, and etc. In order to have a realistic approach to the concept of *Istisnā'*, the work of classical Muslim jurists is preferred more comparatively to that of contemporary jurists, owing to the fact that the previous is more reliable than the latter one. Similarly, the work of those jurists, among the contemporary jurists, is preferred who are more conversant with the field of agricultural finance. The official websites of financial institutions are more frequently used in order to get the updated data regarding their agricultural financing activities. The work of non-Muslim jurists on the issue is also resorted whenever deemed fit and necessary.

4. Theoretical Background of *Istisnā'*:

Istisnā' is an Arabic word which literally means "to ask someone to make or manufacture something". This word originates from "*Sana*" which means manufacturing. As far as the technical meaning of "*Istisnā'*" is concerned, the statements of *Fuqahā* vary considerably. According to Ibn 'Ābidīn, "It is a demand from a manufacturer to manufacture certain goods according to a given description".³⁶ A well renowned Hanafī jurist Imām Kāsānī defines it as "a

contract of something sold on guarantee in which the work is conditioned".³⁷ Wahbā-al-Zuhaylī, a contemporary scholar, defines it as "a contract concluded with a manufacturer to manufacture a specific commodity on guarantee"³⁸. All these definitions are confirming the same meaning by one way or another.

All jurists unanimously agree on the lawfulness and permissiveness while carrying out the *Istisnā'* contract. However, their viewpoints differ with respect to the way in which the permission was to be granted.³⁹

The majority of Hanafī jurists have ratified and approved the contract of *Istisnā'* as an exceptional case to the general principle of Islamic commercial law which strictly prohibits the sale of non-existent things. They made the contract permissible since its prohibition would have caused a difficulty to people which is against the basic principles of *Sharī'ah* that provides ease for the whole mankind. Imām Kāsānī states that *Istisnā'* is not permissible on the ground that it is a sale of commodity which is not in existence at the time of contract, and should, therefore, be considered as an exception to the general rule on the basis of *Istehsān* (public interest).⁴⁰ Imām Sarakhsī is of the same view.⁴¹

The Malikī school of thought did not pay any attention to the concept of *Istisnā'* and, hence, their view point regarding its permissibility is not to be found even in their famous book known as "Muwthā". Likewise, the Shaf'ī school of thought does not discuss such concept separately; although, they discuss some of its important aspects.

Keeping in view the above discussion, it can be easily concluded that only the Hanafī school of thought presents the concept of *Istisnā'* as a separate discussion and describes its rules and regulations thoroughly. Imām Kāsānī, a renowned Hanafī jurist and author of *Badai-al-Sanai' Tarteeb-al-Sharia'* has developed a good work in this connection.

Istisnā' contract is not binding in nature before the work is started by the manufacturer, at this stage either party can revoke it.⁴² This rule is based on the general principle of the contract of sale, according to which a party can revoke the contract before it leaves the place where it is concluded.⁴³ However, after the work is started, *Istisnā'* contract comes to an end as per the following cases:

- When the manufacturer completes his work and delivers the commodity to the customer, while the latter accepts it to be in accordance to the specifications laid down in the contract.⁴⁴
- When the manufacturer dies, automatically the contract of *Istisnā'* comes to an end. This rule is applicable when the contract includes specific performance and the legal heirs of the deceased are unable to perform the contract. However in the absence of the condition of specific performance in the contract, they have to perform the contract.

It is pertinent to mention that the contract of *Istisnā'* does not come to an end at the death of the customer, and his legal heirs have to accept the delivery of goods and make the payment.

5. Application of *Istisnā'* to the agriculture sector:

Istisnā' is one of the most important modes of financing in the Islamic financial system that has the inherent objective of cooperating in the development of the society by helping the poor people. In developing countries, majority of population related to agriculture sector belongs to the poor class of the society.⁴⁵ Being a developing country, the situation is not different in case of Pakistan. As mentioned earlier, nearly 60% of its population resides in the rural areas directly or indirectly related to the agricultural sector.⁴⁶ Consequently the phrase, "development of the society" predominantly means development of the agricultural sector. This discussion leads to the importance of *Istisnā'* in the agriculture sector.

Istisnā' can be effectively applied to the agricultural sector to help out the poor farmers, both in crop and non crop sectors. Unfortunately, the contemporary scholars, particularly those who are directly or indirectly related to the Islamic banks, did not pay the necessary attention to the application of such a contract to the agricultural sector. However, it cannot be denied that they thoroughly discussed the modern application of *Istisnā'* by the Islamic banks in a general way.⁴⁷ With the help of the same, its application can be extended to the agriculture sector. The financing and implementation of Islamic modes of financing to this sector requires greater detail from the *Sharī'ah* perspective. Due to this reason the classical jurists, i.e. Sarakhsī, Kāsānī, Jassās, Shawkāni etc.⁴⁸ pay a great attention to the agricultural sector and explain the concept of *Muzār'ha* (crop sharing) and *Musāqha* (irrigation) in separate chapters.

The contemporary scholars did not develop the ideas envisaged by the classical jurists. The reason is that the agriculture sector is prone to many risks i.e. bad weather, insect infestation, diseases, incidence of drought, floods, hail storm, earthquake, mud slides etc.⁴⁹ Some of the researchers describe other issues due to which financiers do not want to invest in such sectors. These concerns include seasonality of agricultural production; poor loan repayment patterns of agriculture lending; and the technical nature of the agriculture production system.⁵⁰ Recognizing the importance of the agriculture sector to the economy and for the salvation of the poor community, the work on the application of Islamic modes of financing to the agricultural sector was started. Currently, the applications for the agricultural sector include *Mushārah*, Diminishing *Mushārah* (partnership), *Mudārah*, *Musāqat*, *Muzāraat*, *Murābaha* (sale with profit), *Musāwamah* (bargaining), *Salam* etc. However, the application information of these modes provides only a broad skeleton without reference to the minute details. Unfortunately, *Istisnā'* is ignored even in this broad framework.

Due to this lack of interest from the scholars, the Islamic banks and other Islamic financial institutions too concentrated on other modes of Islamic finance ignoring the contract of *Istisnā'*

Mahmood A. Gulaid has recognizes this fact in the following lines,

“*Istisnā'* is unique in that it is predisposed to cater for the technology intensive input needs of the farm enterprise. It is sufficient to say that the potential for this mode to fill in the technological gap in the agriculture sector is great, unfortunately, not much use has hitherto been put to this very bright financing alternative in the contemporary agriculture”.⁵¹

The above statement clearly indicates that the contemporary scholars did not pay due attention to the applicability of *Istisnā'* to the agriculture sector. The guideline on Islamic Financing for Agriculture, issued by the State Bank of Pakistan, also did some effort to find out the applicability of *Istisnā'* to the agricultural sector, but that too ignored the details involved.⁵²

The *Istisnā'* mode of financing has a great potential for the development of agriculture. Unlike *Murābaha* contract which is more suitable for the middle and upper class of farmers, this contract is more beneficial to help out the lower class of farmers, although it has its own usefulness for the middle and upper class. In other words, it is more comprehensive in nature in term of its utility as compared to other modes of Islamic financial system.

As mentioned earlier, nearly 60 percent of Pakistani population resides in the rural areas, directly or indirectly related to the agricultural sector.⁵³ They usually have no money in the beginning of a season to buy the basic agriculture inputs of production e.g. seeds, fertilizers, herbicides, weedicides, insecticides, manual sprayers etc. Agriculture for these impoverished people provides a source of life than a source of business. In the rural areas, it employs 79.4 of rural women and 60.8 of rural men.⁵⁴ Because of lack of money, they prefer to buy something on instalment or deferred payment basis. Both these options are available to them in the shape of *Istisnā'* transaction which allows payment in instalments or deferred until the actual delivery of the product based on the consent of the contracting parties.⁵⁵ It is because of this peculiar characteristic that the farmers have a natural attraction for it.⁵⁶

There is another reason for the farmer's inclination towards the contract of *Istisnā'*. They get the required commodity through this contract, as the Islamic banks and other Islamic financial institutions, are bound to manufacture the agricultural commodity as per the specifications laid out by the farmers. This allows the farmers to acquire the required item according to the quality envisaged before entering into such a contract.

Another support that the contract of *Istisnā'* provides to the farmers is that sometimes they need agricultural commodities which are not available in the local market. They make a demand from the Islamic bank to produce or manufacture such commodities, at times from the raw material which is selected by these farmers themselves.

5.1 Application of *Istisnā'* to different areas of the agricultural sector:

Before embarking on the discussion as to how the Islamic bank and the customer conclude the contract of *Istisnā'*, it may be useful to first examine those areas of the agriculture sector to which the application of this contract can be extended. This will facilitate the understanding of the procedure, followed by the Islamic banks.

5.1.1 Application of *Istisnā'* to Local Farming:

As a basic principle of Islamic financial system, *Istisnā'* is mainly a contract for manufacturing. Imām Kāsānī is of the same view.⁵⁷ Following this principle it can be said that such contract cannot be concluded for natural goods or commodities.⁵⁸ In other words, it cannot be applied for financing fruit crops or for non-fruit crops activities. It means that such contract cannot be applied for financing wheat, paddy, sugarcane, cotton, potato, mustard, mung, tobacco, rapeseed, maize (Hybrid), Maize (local), Mash, canola, lentil, soybean, groundnuts, sunflower, pear, dates, etc. This description shows that *Istisnā'* contract has no role in the production of such natural products. This restriction minimizes the application of *Istisnā'* to the agriculture sector.

As stated earlier, *Istisnā'* is allowed only for such products which are not primary goods and are produced (manufactured) only where there is a specific, already established, demand.⁵⁹ Due of this limited applicability, the contemporary scholars do not pay the much attention to its application. It, however, does not mean that such contract has less importance for the agriculture sector. It is an established fact that our farmers, especially those who belong to the poor class and related to local farming, are facing a lot of problems to fulfil their agriculture needs.⁶⁰ Some of these needs are totally different from the basic agricultural requirements, and relate more to the non-crop activities than crop activities.

One of the major problems faced by the farmers of rural areas is related to watering their crops, including both fruit and non-fruit crops.⁶¹ Although Pakistan has rains in most places and has the monsoon season as well, but these rains alone cannot fulfil their needs owing to the very high water wastage in the country. The archaic method of flood irrigation wastes 50 to 60 percent of water.

⁶² Because of this reason, they need some alternative arrangements which can overcome their problems and educate them on water savings at the same time. This can be possible by entering into *Istisnā'* agreement. They can ask the Islamic financial institutions to construct for them water tanks, water pumps, tube wells, pipelines, channelizing water from reservoirs (Pakistan's agriculture depends on the gigantic network of canal-system;⁶³ some of the reports describe that nearly 85 percent of Pakistan's cropped area is irrigated by canals⁶⁴), creating small passages which can be used to water their fields crops etc.

Majority of our farmers are facing severe irrigation problems to supply water to their land through pipes or channels. Most of them need tube wells to overcome this problem. Along with the tube well, farmers also need of a proper system of

pipes and channels which can properly irrigate their crops. *Istisnā'* contract can help facilitate this link between the farmer and Islamic financial institution.

Similarly, farmers living in hot and cold areas are generally in need of permanent sheds to protect themselves from sun, heat and cold. Study reveals⁶⁵ that these sheds are very important for farmers who normally work from six to eight hours at a stretch in their field, both in summer and winter seasons, and need to take rest and respite from weather. Moreover, most farmers' houses are remotely located from their fields, making it difficult for them to move necessary equipment, back and forth, like rake, hoe, fork, shovel, spade, hand fork, trowel, wheel barrow, and watering can etc. These sheds come handy for storage purposes as well. Farmers also use these permanent sheds or rooms to keep their fruits or crops to protect them from the bad weather, increasing their shelf life.

In hilly areas, the source for irrigation for farmers is not the river water but the cold springs which are excessively available in those areas. For them it is necessary to have a proper system of channels and canals for the regular supply of water to their fields. In the absence of such facility, their production levels reduce manifold. The Islamic banks and other Islamic financial institutions can help the farmers of these area by entering into an *Istisnā'* contract with them.

5.1.2 Application of *Istisnā'* to livestock:

Live stock is the major component of the agricultural sector in Pakistan and, hence, too much importance is given to the sector by Islamic banks. The government of Pakistan, since last two years, worked for the development of this sector and achieved solid results and resultantly it witnessed a marginally higher growth of 4.04 percent against the growth of 3.97 percent last year.⁶⁶ The Islamic banks can also help farmers in rearing their livestock through *Istisnā'*. They can conclude such contract for the installation of milk storage chilling tanks, refrigeration plants, milk carrying containers, refrigerated meat storages and refrigerated containers, distribution vehicles such as motorcycles, pickups, refrigerated vans, construction or procurement of permanent sheds, water tanks, water pumps, tube wells and generators, fencing and enclosures, establishment of slaughter houses⁶⁷ for cows, sheep, buffaloes, goats, installation of tube wells, turbines, sprinkle or drip irrigation system, animal sheds, refrigerated storage, and fencing slaughter house water management etc.⁶⁸.

5.1.3 Application of *Istisnā'* to fish farming:

Pakistan has total coastline of 1,120 km covering Mekran (Balochistan) as well as the coast of Karachi (Sindh) and a total fishing area of approximately 300,270 sq. Km.⁶⁹ Because of the viability of this sector, the government of Pakistan has taken some solid steps for its development in the last few years. Because of this reason, fisheries sector witnessed a growth of 1.78 percent against the growth of 1.94 percent last year.⁷⁰ *Istisnā'* can also be applied for the effective development of fish farming by the construction of cold storage, chilling or

freezing plants, fish storage centre, pickups, vehicles, life boats, and fish or shrimp hatcheries etc.⁷¹

5.1.4 Application of Istisnā' to poultry farming:

Istisnā' is also effective in its implementation to the poultry farming. It can be used for the construction of broiler, layer, breeder and hatchery farms, feed mills, control seeds, automatic drinkers, tube feeders, generators, ventilators, table or breeder eggs storage refrigeration plants, transport vans, eggs and poultry carrying vans, distribution vehicles such as motorcycles, pickups, deep freezers, slaughtering and de-feathering machines etc.⁷²

5.1.5 Miscellaneous applications of Istisnā' to the agricultural sector:

The contract of *Istisnā'* can also be used for other purposes like dairy farming, establishment of green houses, construction of cold storages, construction and improvement of live stocks laboratories, setting up seeds processing and milk chilling units, installation of fruit and vegetable machines etc.⁷³

All these agricultural needs can be fulfilled by the Islamic banks by entering into a sub-contract with the construction company. They can enter into a parallel *Istisnā'* with a construction company after signing the contract of *Istisna'* with a farmer. . In this case, it is necessary that both the contracts should be independent of each other, which means that the rights and obligations created by one contract should not be affected by the rights and obligations of the other.⁷⁴ In such a situation, the Islamic bank expresses (after a request for construction by the farmer) its desire to order for the manufacture of the commodity (same which is required by the farmer) with another party. The specifications mentioned in the parallel *Istisnā'* must be the same mentioned in the first contract with the farmer. It is, however, not necessary that the time of delivery and price in the second contract is the same as in the previous one; since that would inconvenience the bank. Once the commodity is manufactured, it will be delivered to the bank directly or to any other party on its behalf decided mutually in the contract.⁷⁵ The Guidelines on Islamic financing for Agriculture, issued by the State Bank of Pakistan, provides the same procedure which says that in case of *Istisnā'*.⁷⁶

6. Steps to be taken by the Islamic Banks and Farmers for the conclusion of Istisnā'

- A farmer expresses his desire to buy a commodity and concludes an *Istisnā'* contract with the Islamic bank. He gives some specifications for the required commodity which include its type, kind, quality, and quantity etc. Besides this, the price of the commodity, date of delivery, place of delivery must be mentioned in the contract. The Accounting and Auditing Organization for Islamic Financial Institutions adopts the view of Imām Abu Yousaf and Imām Muhammad which emphasis that the time for the completion of work and delivery should be fixed. However, according to Imām Abu Hanifa the time for

the completion and delivery should not be fixed.⁷⁷ for the delivery and completion of work in the parallel *Istisnā'* contract.⁷⁸

- Once the farmer expresses his decision to purchase the commodity, the Islamic bank will order the manufacture of the commodity which it had undertaken to manufacture in the first *Istisnā'* contract. At this stage it is necessary that the specifications mentioned in the first contract are also stated verbatim in the second contract. According to the classical jurists, *Istisnā'* contract can be concluded for the production of items having unique description.⁷⁹ This principle can be used very beneficially for the agricultural sector. Study shows that in agricultural sector, the different tools required by a farmer are very peculiar in nature, having a unique description. These tools are very important for the sustenance of agricultural produce and are used frequently throughout the year. These include rake, hoe, hand fork, trowel, shovel, spade, watering can, wheel barrow etc. These are called gardening tools and can be used in preparing soil in the spring, weeding, planting, turning the compost pile, or cleaning up in the fall.⁸⁰ The Islamic banks and financial institutions can provide all these tools to a farmer by way of *Istisnā'* contract. In such a situation the Islamic bank can buy these items, through parallel *Istisnā'* from a supplier, which will manufacture these tools according to the specifications mentioned by the farmer in the first *Istisnā'* contract.⁸¹ While this methodology facilitates the farmers, it also carries a great potential of profit for the Islamic banks.
- It is also suggested that the Islamic bank may appoint a farmer, of a particular area, to conclude *Istisnā'* contracts on its behalf with the other farmers of that area. The advantage of this agency is that the officials of the Islamic bank will not have to participate actively in the business dealings in this area and can instead spend time on other viable activities. Secondly, the agent of that area will know better about the financial ability of a farmer, and by this way, the risk of default will minimize. Islamic bank can give a particular share to such agent as a remuneration of his work. He will not only represent the Islamic bank in the *Istisnā'* contract, but will also act as its agent in all other commercial transactions.
- When the agricultural commodity, required by a farmer, is manufactured or constructed or produced, then there is no need for a farmer and Islamic bank to renew the offer and acceptance for the sale of the required commodity.⁸² At this particular point the difference between *Istisnā'* and *Murābaha* transaction arises. In the latter case the actual sale or purchase of the required agricultural commodity must take place. So, it is easier for an illiterate farmer to understand the procedure of *Istisnā'* as compared to that of *Murābaha*.
- It is permissible for the Islamic banks to appoint the farmer as their agent by concluding a separate and independent contract of agency with them. This is the most suitable way especially when the contract of *Istisnā'* is applied for house financing or even project financing. The reason is that it is an extremely difficult job for the Islamic bank to supervise the manufacturing or construction process itself, and its practical involvement is not possible in the real sense. It is the duty of the farmer, after being appointed as an agent of the bank, to supervise the manufacturing or construction process to ensure that the manufacturer or constructor is working as per requirements, and the commodity

is produced according to the specifications mentioned in the contract. After being appointed as an agent, the farmer can take two types of charges from the Islamic bank:

- a) Charges for the agency contract. It is in conformity with the Islamic commercial law whereby charges can be taken for agency.⁸³
- b) Additional charges pertaining to the cost of supervision of an *Istisnā'* contract. It, however, depends upon the provision of the contract that which party will bear the additional cost of supervision.

Some of the scholars, particularly those who are directly or indirectly related to the Islamic bank, may criticize the above idea for one reason or another. However, if it is desired to establish an Islamic bank with its real spirit, then it is compulsory to apply the concept of *Sharī'ah* in totality. It is not appropriate to apply only those concepts which are beneficial for Islamic banks, while ignoring those which go against.⁸⁴

- When the required commodity is produced, then before delivery, the commodity will remain at the risk of the Islamic bank, but when the possession is transferred to the farmer, which may be actual or constructive, then risk will also be transferred to him.⁸⁵ It is clear that transferring of authority from the Islamic bank to the farmer to use the property or utilize it or consume it, will be considered constructive possession.
- It is the duty of Islamic bank to deliver the commodity on the due date (if it is mentioned in the contract because in the beginning it was suggested that in the contract between the Islamic bank and the farmer, the time should not be fixed, while in parallel *Istisnā'* contract which is between the Islamic bank and a seller, the time needs to be fixed) and not before that because according to Islamic commercial law, if the manufactured goods are delivered before due date, the farmer can refuse to accept the delivery which in this case may create problems for the Islamic bank. However, there has to be some logic for such refusal.⁸⁶

7. Conclusion and Suggestions:

The contract of *Istisnā'* is the transaction available in the early development of Islamic law and its jurisprudence. The continuous practice of the transaction by the Holy Prophet (P.B.U.H) can be cited as a solid argument in this connection. It was applied in very general and simple commercial transactions, mostly at individuals' level. Similar was the case of its rules and regulations. However, its applicability to the agriculture sector is not evident from the legal history of Islam. The cause for this may be attributed to the lack of proper environment for agriculture as the Arab soil was not fertile and hence not suitable for agricultural activities.

The classical Muslim jurists extended the concept of *Istisnā'* regarding its rules and regulations, as per the needs of times. They devoted a separate chapter to the concept in their work and illustrated its practical applicability through presumed cases. The literature of *Istisnā'* became too rich at the time of these jurists and, hence, paved a way for its comprehensive applicability to each and every

commercial transaction that contains manufacturing. However, their work too does not contain application of the concept to the agriculture sector.

The contemporary Muslim Scholars discussed the concept of *Istisnā'* with minute details. However, it may not be wrong to say that they did not contribute to the literature too much and relied mostly on the work of classical Muslim jurists for the description of the concept. It, however, needs to be admitted that they did a wide-ranging work on its relationship with Islamic banking. They designed structure for *Istisnā'*, defined it in banking terms, formulated its special rules and regulations fit for banking purposes, identified its areas of application, and its benefit for the general public in society etc. Some of these scholars wrote comprehensive books on *Istisnā'* and Islamic banking. They also did a good work on the application of *Istisnā'* to different agricultural sectors i.e. live stock, poultry farming, dairy farming, and fish farming etc. However, their work was not comprehensive enough in this latter sense and can be criticized on different ground, mentioned earlier..

The contract of *Istisnā'* can be applied very effectively to agriculture sector for non crop activities. This type of Islamic finance must be applied to all agricultural sectors without any sort of distinction. However, in Pakistan concentration should be made on local farming, particularly that of rural areas, which is the hub of the majority of poor farmers in the country. It is pertinent to mention that the financial institution should treat this sector of agriculture through special financing schemes, different from that of other sectors in term of profit ratio on the commodity, procedure of the transaction, payment of collaterals, appointment of the customer as an agent for the purchase of the commodity, periods for instalments, amount payable in each instalment, recovery procedure etc. As a policy issue, whenever the Islamic banks want to appoint a farmer as its agent for the purchase of the commodity, the remuneration for agency must be given to him. Such cost on farmer's remuneration, however, should not be included in the cost of the commodity under any circumstances. The financial institution must purchase the commodity from the manufacturer on subsidized price. Such discounts, of course, must be passed to the farmer and, hence, the price may be decreased further. It is the duty of the State to provide subsidies on agricultural commodities manufactured under *Istisnā'* transaction.

Most farmers reside remotely from their fields, and some of them do not even have their own house but live on rent. In order to solve both these problems, the contract of *Istisna'*, in the view of researchers, is the best solution because according to a well established principle of Islamic commercial law, it is permissible to draw up an *Istisnā'* contract for real estate developments on designated land own by the final purchaser.⁸⁷ While applying this principle, along with the principle that the price of *Istisnā'* contract may be in the form of cash or tangible goods or the usufructs of an asset for a particular duration, a farmer can request the Islamic bank to construct a house on the land owned by

him. When the construction of the house is completed, the farmer will transfer its usufructs (residence) to the Islamic bank, as a price for *Istisnā'* contract. After this, the Islamic bank will lease the house to the farmer on rent for a particular period of time.

If the transaction is applied in its real philosophy as discussed by the classical and contemporary Muslim jurists, it will turn the transaction viable not only for Islamic banks and financial institutions but also for the poor farmers of this country, especially those residing in the rural areas.

End Notes:

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- ⁴ Lutfullah Saqib .*Financing Agriculture Through Islamic Commercial Transaction*, (Germany, Lambert Academic Publishing .First Edition 2011), p.10
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- ⁶ *Sharī'ah* strictly prohibits interest based loans. There are so many verses of the Holy Qur'ān and Hadith of the Holy Prophet (saw) that confirms this prohibition. For instance in the Holy Qur'ān Allāh, the exalted, says “O YE WHO BELIEVE! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers. IF YE DO IT NOT, take notice of war from Allah and His apostle .But if ye turn back ye shall have your capital sums: deal not unjustly and ye shall not be dealt unjustly. (Qurān 2:278-279). From Jābir, may Allāh be pleased with him, said: “The messenger of Allāh(saw) has cursed one who charges Ribā, he who gives it, one who records it, and the two witnesses; and he said , “They are equal” it is related by Muslim. In Al Bukhārī there is a similar tradition from Abū Juhayfah).
- ⁷ Imām Abū Bakar Muhammad ibn Abī Sahal Sarakhsī was a prominent jurist of the Hanafi School in the 11th century .He was also known as “Shams ul al-A'imma ("the sun of the leaders").He was in prison for more than 15 years due to his juristic opinion against the ruler of the time. The mentioned book is a collection of his lectures delivered by him to his disciples while he was in prison. It is a very comprehensive book, spread over 30 volumes, contains detailed discussion of *Ibadat* and *Muamalat*. He discusses all their related issues in very details and tries to elaborate each and every single issue with practical examples from daily life. His work can be affectively used for introducing new methodology in the field of research related Islamic jurisprudence. He also has a book on the principle of Islamic jurisprudence which is an evidence of

his intellectual capacity both in Islamic Law and its jurisprudence. He is considered an authority by the classical and contemporary jurists and weightage is always given to his jurisprudential verdicts.

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- ¹⁶ See for example his work Muhammad Taqi Usmani, *An Introduction to Islamic Financial System*, (Karachi :Maktaba Maariful Qurān, Edition August 2008) .
- ¹⁷ See for example his work Wahbā-al-Zuhaylī, *Al-Fiqhu-al-islāmi –Wa-Adilatuhu*, (Iran, Nashr Ihsan, 3rd Edition),
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- ⁷⁶ *Guidelines on Islamic Agricultural Finance*, issued by Agricultural Credit Department Islamic Banking Department of State Bank of Pakistan, p.5. [http:// www.sbp.org.pk/guidelines/IslamicAgriculture/Guidelines-Islamic-Financing-Agriculture-01-09-2008.pdf](http://www.sbp.org.pk/guidelines/IslamicAgriculture/Guidelines-Islamic-Financing-Agriculture-01-09-2008.pdf)(accessed July 15,2012)
- ⁷⁷ Wahbā-al-Zuhaylī, *Al-Fiqhu-al-islāmi –Wa-Adilatuhu*, vol.5.p.3644; . *Istisnā' Contract in Islamic Fiqh*, Publication Series of Tadamon Islamic Bank, Shaban.1412, February.1992, Issued by the Fatawa and Research Department p.17. Muhammad Taqi Usmani, An introduction to Islamic Financial system, p.197
- ⁷⁸ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English Version, *Istisnā' and Parallel Istisnā'*, Shari'a Standard No.11,Rule.7/1,p.186.
- ⁷⁹ Abū Bakar ibn Mas'ūd Kāsānī, *Badā'-al-Sanā' fī Tartyb-al-Sharā* Kitāb-al-Būyū'vol.5, p.4
- ⁸⁰ Steve Masley , *Gardening Hand Tools Every Gardener Needs*, [http:// www.grow-it-organically.com/gardening-hand-tools.html](http://www.grow-it-organically.com/gardening-hand-tools.html)(accessed July 21, 2012)
- ⁸¹ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English Version, *Istisnā' and Parallel Istisnā'*, Shari'a Standard No.11,Rule.7/1,p.186.
- ⁸² Ibid ,Rule.2/2/2,p.179.
- ⁸³ Wahbā-al-Zuhaylī, *Al-Fiqhu-al-islāmi –Wa-Adilatuhu*,, vol-5, p.4058.
- ⁸⁴ It is an established principle of *Sharī'ah* that when a particular concept of Islamic law is applied then its all rules and regulations must be applied as a whole and it is not permissible to follow only those rules which are beneficiary at a particular time or particular place and leave the others .In this regard the Holy Qurān states very clearly “Do you, then, believe in part of the Book and disbelieve in part? Al Qurān” [2:86]

⁸⁵ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English Version, *Istisnā' and Parallel Istisnā'*, Shari'a Standard No.11, Rule.6/4, p.185

⁸⁶ Ibid Rule.6/3, p.185

⁸⁷ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010, Bahrain, English Version, *Istisnā' and Parallel Istisnā'*, Shari'a Standard No.11, Rule.3/1/8, p.181. Mujeeb Baig, ISTISNA AS MODE OF FINANCING, [http://www.alhudacibe.com/...%20Istisna%20\)/Istisna%20by%20Mujeeb%20Baig.ppt](http://www.alhudacibe.com/...%20Istisna%20)/Istisna%20by%20Mujeeb%20Baig.ppt) (accessed July 21, 2012)