

Salam and Istisna: From Current Issues to an Ideal Model for Islamic Banks in Pakistan

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Abstract

This research intended to explore issues in the existing application of Salam and Istisna by Islamic banks in Pakistan. For this purpose, the respective model agreements devised by the State Bank of Pakistan and by two Islamic banks for Salam and Istisna were examined on the basis of content analysis. Resultantly, some issues were identified in the description of these modes, customer responsibilities, and goods receiving by the banks under these modes. The expert opinion of *Shari'ah* scholars was explored through interviews to analyse those issues. The content analysis of the interviews confirmed that leaving an unlimited time to confirm the fitness of the goods to be delivered in Salam and Istisna, could create *gharar* (uncertainty) in the transaction. However, accepting the goods without examining is considered a practical issue. Shifting the ownership related responsibilities of the goods to the customer (the seller) by the bank after receiving the goods created a serious *Shari'ah* issue in the current practice of Salam and Istisna. Moreover, there appeared an ethical problem on the part of the Islamic banks owing to following a non-standardized approach in respect of these modes. These findings may prove a step forward towards improving the prevailing application of Salam and Istisna. Therefore, the study proposed an alternative process for the application of trading modes in their true spirit through the Zarie Taraqqiati Bank Bank Limited (ZTBL).

Key words: Salam, Istisna, *Shari'ah* related issues, model agreements.

KAUJIE Classification:

JEL Classification:

1. INTRODUCTION

The current modified form of Islamic banking in Pakistan emerged with the issuance of *Policies for Promotion of Islamic Banking by State Bank of Pakistan* (in January 2003). However, little attention has been paid so far to the forward sales, Salam and Istisna, as Islamic modes of financing in order to explore their conformity or non-conformity to the requirements of *Shari'ah*. To address this area, therefore, this research examines the implementation of Salam and Istisna on the basis of the contract documents used by the Islamic banks in Pakistan. It aims to identify misgivings/issues in the contemporary practices of Salam and Istisna. Subsequently, the issues identified in the current practice are examined in the light of the expert opinion of the *Shari'ah* scholars. The opinion of *Shari'ah* scholars is solicited through direct interview in order to explore the true *Shari'ah* position regarding such issues in the contemporary practices of Salam and Istisna.

As the Islamic financing is extended on the basis of certain terms and conditions that constitute a contract document. Therefore, the principal documents devised by the SBP and two Islamic banks for Salam and Istisna are examined for the purpose of identifying misgivings/issues in these modes of Islamic financing. These issues are then examined in the

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light of the expert opinion of *Shari'ah* scholars directly solicited through interviews in order to explore the true *Shari'ah* position regarding such issues in the contemporary practices of these modes. Precisely, this study intends to answer the following research question:

- 1) What are the misgivings/issues in the contemporary practices of Salam and Istisna that may be observed in the contract documents being used; and
- 2) What is the opinion of *Shari'ah* scholars regarding such issues to make the practice of Salam and Istisna, *Shari'ah* compliant?

It is pertinent to mention that Salam and Istisna are two exceptional modes of sales where general rules of existence of commodity/asset, and being in the ownership and risk of the seller are relaxed. This relaxation is subject to some conditions fulfilment of which excludes off the possibility of *riba* and *gharar*. This is to facilitating the small farmers and destitute skilled people, and also to provide finance to the production sector according to the potential of an economy (Ayub, 2018). These modes of sale have good scope for application in Pakistan due to two reasons. One, Pakistan has an agrarian economy accommodating a large number of small farmers. Two, a good number of people are living below the poverty line including skilled labourer. However, these Islamic modes of financing are little applied by Islamic banks in Pakistan.

The current study initially explores the issues in the contemporary practices of Salam and Istisna on the basis of the principal documents suggested by the SBP and used by the banks, and then solicits the expert opinion of *Shari'ah* scholars regarding these issues. Therefore, the findings of this research may prove helpful in improving the prevailing application of Salam, Istisna, and similar Islamic modes of financing on the basis of consolidated opinion obtained from the contemporary *Shari'ah* scholars.

The rest of the paper is organized in five sections. Section 2 reviews the existing literature regarding Salam and Istisna. Section 3 gives details of the research methodology applied during this research. Section 4 is dedicated to content analysis of the model agreements for identifying issues in the prevailing practices of Salam and Istisna. Thus, section 4 may be considered a unique and important part of this research and a valuable contribution to the body of knowledge. Section 5 covers analysis of the interview data and discussion of the results. Section 6 concludes the findings of research and presents ZTBL as an ideal model for implementation of Salam, Istisna and Murabaha.

2. LITERATURE REVIEW

Salam and Istisna are two exceptions to the general principle of *Shari'ah* permissible sale (Usmani, 2007, p. 185; Muhammad & Chong, 2007; Zaabi & Saif, 2010). Salam is a distinct type of valid sale in which the object of the sale does not exist (Zaabi & Saif, 2010), however the price is paid in advance in full at the time of the execution of the sale agreement. In response, the seller undertakes to provide the specified object of sale at a specific future date (El-Gamal, 2000, p.17; Borhan, 2002; Muhammad & Chong, 2007; Usmani, 2007, p. 186; Kaleem & Abdul Wajid, 2009; Zaabi & Saif, 2010). A minimum period of 15 days may be required for supply of the object of sale by the seller (Zaabi & Saif, 2010). The prophet (pbuh) advised the Muslims involved in Salam contract that "specify a known volume or weight, and a known term of deferment" (El-Gamal, 2000, p.17).

Salam is primarily meant to facilitate the "small farmers who need money to grow their crops and feed their family up to the time of harvest" (Usmani, 2007, p. 186). Farmers can sell the future crops against immediate payment of the sale price by the buyer (bank) and supply the product after harvesting (Askari & Krichene, 2014). Nevertheless, Salam can be implemented in "all commodities, metals, animals and livestock, produce and manufactured

goods” provided they are fungible and generally available in the market at the time settled for delivery. The supply of the object of sale may be made in installments but at known times (Zaabi & Saif, 2010).

If the seller fails to supply the goods in time, the buyer is allowed to “either take back the paid prices with no increase, or wait until the goods become available”. It is clear that in such cases only the original price can be taken back without any increment apparently losing the profit. In order to minimize the “credit risk, the bank may ask for a financial guarantee, mortgage, post-dated cheques, or third-party guarantee” (Hussain, Shahmoradi, & Turk, 2015).

Istisna came into being on the basis of analogy (*qiyas*) from Salam, which may be translated as “commission to manufacture” (El-Gamal, 2000, p.17). In Istisna, one party (the buyer) gives an order to another party (the seller) to manufacture some goods as per requisite specifications to be delivered to the buyer at a future date. The agreed price may be paid either in advance or after the goods are manufactured. The price may also be paid in installments as per mutual consent of the seller and the buyer (Zarqa, 1997; El-Gamal, 2000, p.17; Borhan, 2002; Akhtarzaite, 2006; Muhammad & Chong, 2007; Usmani, 2007, p.195, 199). The price is usually fixed in this case lower than the cost of similar but already available or “finished product” (El-Gamal, 2000, p.17).

Istisna is a distinguished type of “forward contract” allowing both the buyer and the seller to meet their obligations in future. No exchange may take place “on the spot or at the time of contracting”. Theoretically, the Istisna agreement is concluded straight between the buyer (end user) and the seller (the manufacturer), however practically as a mode of financing it becomes a “three-party contract, with the bank acting as intermediary”. A customer requests a bank to finance the manufacture of specific goods. The bank (as seller) agrees to get manufacture the desired goods and sells it to the customer. It is the first contract. Then the bank (as a buyer) orders and pays either the full amount or in installments to the manufacturer (as seller) to prepare the specific goods as per requirements of the customer in the first leg. It is the second contract. In the first Istisna’ contract, the customer (buyer) commits to pay the price to the bank in installments as per agreed schedule (Hussain, Shahmoradi & Turk, 2015). However, Istisna is not generally used in practice by Islamic banks (Samad, Gardner, & Cook, 2005).

Salam and Istisna have not been so popular in use. The previous research is found lacking in examining the procedures through which these modes are practically implemented. This research is an effort to fill the gap.

3. METHODOLOGY

This research is primarily an exploratory study falling in the realm of qualitative research. However, it presents a combination of both exploratory and descriptive research (Eid, 2012, p.244) owing to the overlapping nature of both (Neuman, 2014, p.38). The research is conducted on the basis of inductive approach collecting and analyzing the data iteratively for obtaining the final results of the research (Saunders et al., 2009, p.123-124).

Issues in contemporary practices of Salam and Istisna have been observed and analyzed within the actual context (Sekaran, 2006, p.27; Saunders et al., 2009, p.126) on the basis of the related model agreements developed by SBP and the two Islamic banks for these two financing modes. These agreements have been analysed to get the true information regarding the actual practices of these Islamic modes of financing (Ullah, 2012, p.37) for identifying issues and preparing a list of open-ended questions for gathering further

information from a diverse group of *Shari'ah* scholars through interviewing, which constitutes the second phase of this study.

3.1 Population, Sample and Sampling Techniques

For this research, the related model agreements/documents of the State Bank and the Islamic banks in Pakistan, and not the “people” actually constituted the population (Bryman, 2012, P.11) in the first phase of the study. These documents were analyzed (Bowen, 2009) in order to retrieve the true information regarding the actual practices of the related modes for identifying issues and preparing a list of open-ended questions for gathering further information from a diverse group of *Shari'ah* scholars through interviewing, which constitutes population for the second phase of this study.

The model agreements developed by SBP for Salam and Istisna were available on the SBP website. With regard to the Islamic banks, the principal documents being used by the two Islamic banks have been taken using purposive sampling, a non-probability sampling technique. Purposive or judgmental sampling is meant for “special situations” and is appropriate for “exploratory research”. It is applicable to “content analysis” to examine agreements/documents in order to identify the issues (Neuman, 2002, p.273-274) in the contemporary practices of Salam and Istisna. Other Islamic banks and the conventional banks operating Islamic banking branches either did not respond or refused to share their documents on the pretext of the so-called confidentiality. Therefore, research was conducted on the basis of documents used by two Islamic banks in addition to the State Bank’s model agreements, as in the past also research was conducted on the basis of only two Islamic banks (Samad, Gardner, & Cook, 2005).

Based on the analysis of the model agreements/documents, a list of open ended questions was prepared for obtaining the expert opinion of a diverse group of *Shari'ah* scholars and experts regarding the issues in the contemporary practices of the said modes of Islamic financing. Therefore, the opinion of 30 *Shari'ah* scholars selected on the basis of purposive sampling from almost all over the country was sought. The respondents included banks’ *Shari'ah* board members, *muftis* associated with religious madaris, and academician/researchers. Similar sample size was also used by previous research (Zamil, 2014, p.207). Even a smaller number of respondents i.e. only 23 (Ahmed, 2006) were contacted for collecting primary data in previous research.

3.2 Data Collection and Analysis

Initially the model agreements developed for the implementation of Salam and Istisna were downloaded from the SBP website. Similarly, copies of the model agreements were collected from the two Islamic banks (IB-I, IB-II). Previously, researchers (Ahmed, 1993; Shah & Niazi, 2009) used annual reports, brochures, accounting opening forms and other promotional booklets of different Islamic banks for appraising the practices of Islamic banks.

The said model agreements were analysed through qualitative content analysis (Saunders et al., 2009, p.117) in order to explore the possible problems in the prevailing practices of Salam and Istisna. Resultantly, a list of 5 open-ended questions was formulated for soliciting the expert opinion of *Shari'ah* scholars and researchers as indicated earlier. Semi-structured interviews were conducted in this phase of the research following the precedents of previous researchers (Ullah, 2012, p.5; Zamil, 2014). Incidentally, this whole phenomenon appeared “inductive” (White & Marsh, 2006). Interviews were conducted face to face on the basis of prior appointments arranged with the respondents. Each interview was covered in an average time of 30 to 40 minutes with a detailed discussion. The interviews were audio recorded in order to cover the contents in detail.

3.2.1. Overview and Use of Content Analysis

Content analysis is a “flexible research method” applicable to many research problems in various fields of studies (White & Marsh, 2006). It is used for the “subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns” (Hsieh & Shannon, 2005). Coding is a procedure of selectively converting a larger “text to categories consisting of a word, set of words or phrases”, that the researcher can conveniently use to indicate “the research question” (Weber, 1990, p.118; Carol et al., 1994 – 2012; Coffey & Atkinson, 1996).

However, in the present qualitative research, coding was not the preliminary “foci”, instead identifying the issues in the contemporary practices of Salam and Istisna was the primary question of interest. Nevertheless, the content analysis is a “flexible research method” and can be adjusted according to the “unique needs of research questions and strategies” (White & Marsh, 2006). Therefore, primarily Salam and Istisna were selected as the principal area of interest for the purpose of this study. Thus, the model agreement/documents of these modes were read and re-read iteratively in order to identify the clauses/sections that could create misgivings about their *Shari’ah* position. Such misgivings/issues identified in the documents were stated in the form of open-ended questions and were coded as Q.1, Q.2, ..., Q.5 (Erlingsson & Brysiewicz, 2017) for soliciting the expert opinion of *Shari’ah* scholars through interviews making the whole “process inductive” (White & Marsh, 2006). A total of 5 codes were created.

It is worth mentioning that in qualitative content analysis “individual themes” are typically considered as “the unit for analysis”, which may be stated in a “single word, a phrase, a sentence, a paragraph, or an entire document”. Accordingly, a code can be assigned to a “text chunk of any size” if the specific “chunk represents a single theme or issue of relevance” to the “research question”. In this research, the model agreements/documents were therefore used as the primary “unit of analysis” (Zhang & Wildemuth, 2016), which may also be called the “meaning unit” (Erlingsson & Brysiewicz, 2017).

In the second phase of the study, the data collected through interviews were analyzed using content analysis technique again. Thus, the qualitative content analysis enabled the researcher to “keep track of the developing concepts” evolving questionnaire and providing foundation for the next phase of data collection for the study i.e. interviewing the *Shari’ah* scholars from various corner of the country literally making a workable model for this study (White & Marsh, 2006). The interviews were initially transcribed in to text systematically. Then the already defined codes (Q.1, Q.2, ..., Q.5) were created in NVivo and the respective responses were fed to the respective codes for further analysis. However, it is important to note that NVivo is not primarily meant to analyse the data, but to facilitate the analysis process (Zamawe, 2015). The NVivo produces the sentiments’ analysis on the basis of contents of the text of interviews, which may not necessarily communicate the true message. Therefore, the researcher qualitatively analysed and interpreted the contents of the interviews’ data. Resultantly, the misgivings/issues identified in current practices of Salam and Istisna were either clarified as “no *Shari’ah* issue” or confirmed as “*Shari’ah* issue” or declared “controversial” where a noticeable difference of opinion was observed among the *Shari’ah* scholars.

Figure 1, schematically summarizes the process of data collection and analysis adopted in this research.

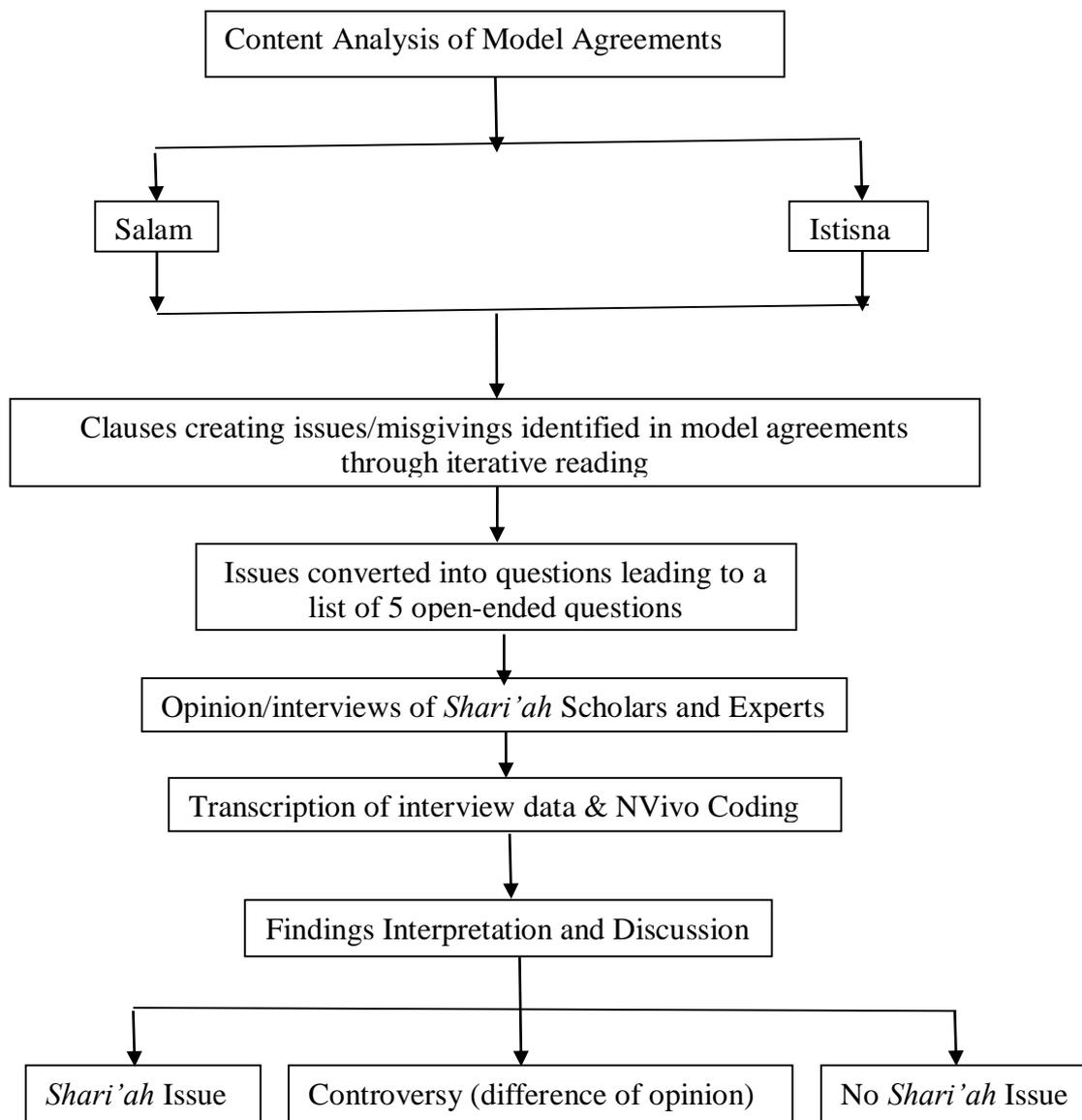


Figure: 1. Schematic Diagram of Qualitative Content Analysis

4. CONTENT ANALYSIS OF THE MODEL AGREEMENTS

Financing under all Islamic mode of financing is primarily described as a ‘financing facility’ and is defined as “financial accommodation within the meaning of the term ‘finance’ under the “*Financial Institutions (Recovery of Finances) Ordinance 2001*”. Regarding Salam and Istisna as well, it is stated that the transaction(s) contemplated in the respective agreements and/or in pursuance thereof shall be a financial accommodation within the meaning of the term 'finance' under the Ordinance of 2001 (IB-II, Master Salam Agreement; IB-I, Master Istisna Agreement).

Further, the ‘Salam/Istisna facility’ means the total facility amount to be made available to the customer (seller/manufacture) by the bank for the delivery/manufacturing of the goods. The Salam/Istisna facility may be availed by the customer in a series of Salam/Istisna transactions provided that the total amount released by way of the Salam/Istisna facility shall not at any time exceed the maximum limit approved (IB-II, Master Salam Agreement, Clause, 1.2; IB-II, Master Istisna Agreement, Clause, 1.02).

Theoretically, the buyer in Salam has to pay the full price to the seller in advance i.e. at the time of the contract of sale (Usmani, 2007, p. 186). On the other hand, in Istisna the mutually agreed price stated in absolute and explicit terms can be delayed or paid in advance, may be in full or in instalments as the parties may agree (SBP, 2004). There are also certain other essential differences between Salam and Istisna. The object of Istisna is always a manufacturing object, whereas Salam can be undertaken in any objects including manufactured goods the units of which might be available in the market. Similarly, in Salam, the agreement cannot be cancelled unilaterally, however in Istisna, the contract can be cancelled before the manufacturing process is started. In Salam, the time of delivery must be fixed, whereas it may not be fixed in Istisna (Usmani, 2007, 196).

The buyer is not allowed to sell or transfer the ownership in the goods to any person before taking the possession (physical or constructive) of the goods. However, the bank (buyer) can enter into a parallel Salam/Istisna contract with another buyer (third party) independent of the original Salam/Istisna contract. In the first Salam/Istisna contract the bank is the buyer and in the second (parallel) Salam/Istisna contract the bank is seller (SBP, 2004).

In Salam and Istisna, the “goods” are said to be at the risk of the customer (seller/manufacture) until they are delivered to the bank at the “point of delivery” and are accepted by the bank and a “Goods Receiving Note” is issued, shifting all risks in respect of the goods to the bank (SBP, Model Salam Agreement, Clause, 2.02; SBP, Model Istisna Agreement, Clause, 2.05; IB-I, Master Istisna Agreement, 3.07; IB-II, Master Salam Agreement, Clause, 2.02; IB-II, Master Istisna Agreement, Clause, 2.02). The customer (seller/manufacture) is responsible for any defects that would appear in the goods due to “any manufacturing fault or any other reason attributable to the manufacturing of the goods or any acts or omissions of the customer” (IB-I, Master Istisna Agreement, 3.08). Further the goods, if required by the bank, are to be stored at a storage facility/warehouse at the cost of the customer (seller/agent). It means that the responsibility of safe keeping/storage of the goods is also shifted to the customer (seller/agent).

If the goods delivered by the customer (seller/manufacture) do not meet the prescribed “specifications and /or any defect, whether apparent or latent”, is found in the goods “at the time of delivery or within six months/ any time after the delivery” of the goods; the bank (buyer) can: (a) either return the goods and asks the customer (seller/manufacture) to refund the contract price; or (b) ask the customer (seller/manufacture) to provide new goods devoid of defect from his/her own resources (IB-II, Master Salam Agreement, Clause, 2.0; IB-II, Master Istisna Agreement, Clause, 2.03).

It is worth noting that at the time of receiving the goods, the bank (buyer) issues a “Goods Receiving Note” after satisfactorily examining the manufactured goods, which theoretically shifts the risk from the seller/manufacture to the bank (buyer). Further, at the time of handing over the goods to the bank (buyer), the customer (seller/manufacture) also issues a “Goods Conformity Certificate” certifying that “the goods are of the same quality and description in terms of the specifications agreed, are of merchantable quality and of the same quality as are being already delivered under the same trade name and are free from any defects”. Moreover, the bank, (itself or through any competent representative), inspects “the goods at the place of delivery and upon satisfactory inspection” issues “the Goods Receiving Note in favor of the seller” transferring “all risks in respect of the goods” to the bank/buyer (IB-II, Master Salam Agreement, Clause, 2.02). However, conversely, it is also said that the goods are “not inspected by the bank or its representative and their acceptance” is “conditional upon the same being in order in every respect including specifications and quantity”, etc. (IB-I, Master Istisna Agreement, 3.07). It is pertinent here to refer to Murabaha

for the sake of understanding the Islamic banks' approach towards ownership related responsibilities. In Murabaha, where the bank is seller and the customer is buyer, the bank sells the goods "without any responsibility for any defect and without any warranty relating to the condition or suitability or efficacy of the goods" (IB-II, MMFA, Clause 3.1; IB-I, MMFA, Clause, 6).

Thus, on the basis of the forgoing discussion, it becomes imperative to explore the following issues in the current practices of Salam and Istisna in Pakistan.

- 1) Islamic banks extend financing facilities in the name of 'Salam/Istisna facility' defined as "financial accommodation within the meaning of the term 'finance' under the Financial Institutions (Recovery of Finances) Ordinance 2001". Can such facilities be called Islamic modes of financing?
- 2) Do the *Shari'ah* principles allow binding the customer (seller/manufacturer/trader) responsible for "any misspecification/ all apparent/ latent defects" after six months/any time after the goods delivered and already accepted by the bank (buyer) at the time of delivery?
- 3) Do the *Shari'ah* principles allow accepting the goods and issuing the "goods receiving note" without inspecting/examining them (goods) at the time of delivery?
- 4) Do the *Shari'ah* principles allow binding the customer (seller/agent) for providing the storage/warehouse facilities and safe keeping of the goods, at his/her cost, after selling the goods to the bank?
- 5) Do the *Shari'ah* principles allow such contradiction in the approach of the bank always shifting the risk to the customer? Precisely, do the *Shari'ah* principles allow the bank to sell "without any responsibility on the part of the bank for any defect and without any warranty relating to the condition or suitability or efficacy of the goods", etc., (i. e. Murabaha); and buy without any responsibility for "any misspecification/ all apparent/ latent defects" even after six months/any time after the goods received by the bank (Salam, Istisna)?

5. ANALYSIS AND DISCUSSION

The data collected through interviews were first analyzed through NVivo software. The results classified the sentiments into four categories including very negative, moderately negative, moderately positive and very positive after analyzing the contents of the text of interview data. Thus, the NVivo results may not essentially confirm the findings of the researcher. Therefore, it is important to note that NVivo is not primarily meant to analyse the data but to facilitate the analysis process (Zamawe, 2015); analysis must be undertaken by the researcher. Table 1 shows result of sentiment analysis of the 5 questions (codes).

Table 1: NVivo Result- Sentiment Analysis

Category	A: Very negative	B: Moderately negative	C: Moderately positive	D: Very positive
Q.1	5	8	9	3
Q.2	13	9	9	8
Q.3	8	6	4	3
Q.4	5	5	16	3
Q.5	6	11	5	5

The software also summarized the number of responses to the respective questions in four categories including mixed, negative, neutral, and positive categories. The summary of responses is shown in table 2.

Table 2: NVivo Result- Summary of Responses

Category	A: Mixed	B: Negative	C: Neutral	D: Positive
Q.1	7	5	14	4
Q.2	10	9	6	5
Q.3	10	12	4	4
Q.4	5	3	9	13
Q.5	6	10	11	3

An analytical summary of the interviews is presented below.

As far as the issue of definition is concerned, the responding scholars can be divided in three groups. One group rejected defining Salam and Istisna as modes of Islamic financing on the basis of Financial Institutions (Recovery of Finances) Ordinance 2001 as “financial accommodation”. This group of scholars suggested a separate statutory framework for proper implementation of Salam, Istisna and other Islamic modes of financing. Relevant excerpt from one of the interviews is:

These definitions create doubt in the mind of the people and it is better to use some Islamic nomenclature”.

However, according to the second group of scholars, definition of these modes of Islamic financing was not a matter of serious concern. One of the responding scholars said while explaining, “*This definition is not an issue. Try to understand that debt is created in all the Islamic modes of financing, which may be collected through the application of this Ordinance”.*

The third category of responding scholars chose to remain indifferent owing to lack of knowledge about the effects of this legal aspect regarding Islamic modes of financing. Relevant excerpt from one of the interviews is, “*No such idea, why and how it is defined in the said ordinance. However, they should have a separate identity and legal framework distinguished from the conventional banking”.*

According to table 2, the NVivo classified 7 respondents to Q.1 in mixed category, 5 respondents in negative, 14 respondents in neutral and 4 respondents in positive category. However, according to table 1, the sentiment analysis of the interviews’ text, placed 5 expressions in very negative category, 8 in moderately negative, 9 in moderately positive and 3 expressions in very positive category.

In response to question 2 regarding the responsibility of the customer (seller/manufacturer/trader) for “any misspecification/ all apparent/ latent defects” after six months/any time after the goods delivered to the bank (buyer), the respondent unanimously agreed that buyer was allowed to take time for confirming the suitability and acceptability of the goods delivered and retained the option of *khiyar e aib*. However, a difference of opinion was observed regarding the time duration allowed for availing the option of *khiyar e aib*. Majority of the scholars were of the opinion that a limited and precisely defined time could be retained. Some respondents mentioned it to be up to three days. However, some other scholars disclosed that no time limit was mentioned in the book of *fiqh*.

Nevertheless, leaving an unlimited time to observe/decide about the fitness of goods received creates *gharar* (uncertainty) in the transaction and can lead to certain other issues. For instance, in a longer period like six months or unlimited time, the goods may become defective or obsolete due to certain other reasons. In such situation it may become difficult to decide whether the defect occurred due to any negligence of the seller or after the delivery of

goods to the buyer. Such *gharar* (uncertainty) is completely prohibited in *Shari'ah* (Usmani, 2007, p.89; Ayub, 2013, p.57-58) and is better to be considered an important issue.

According to table 2, the NVivo classified 10 respondents to Q.2 in mixed category, 9 respondents in negative, 6 respondents in neutral and 5 respondents in positive category. However, according to table 1, the sentiment analysis of the interviews' text, placed 13 expressions in very negative category, 9 in moderately negative, 9 in moderately positive and 8 expressions in very positive category.

In response to the question 3 regarding accepting the goods and issuing the "goods receiving note" without examining them at the time of delivery, majority of the scholars suggested that the examination of the goods by the buyer (bank) was important. Accepting the goods without examining and shifting the responsibility for any defect apparent/latent to the seller for an unlimited time was not considered correct. A *Shari'ah* scholar said, "*The bank must do complete inspection and only then the receipt may be issued*"

The NVivo results of question 3, as shown in table 2, placed 11 respondents in mixed category, 11 in negative category, 4 in neutral and 4 in positive categories respectively. According to the result of sentiment analysis given in table 1, 8 expressions were classified very negative, 6 moderately negative, 4 moderately positive and 3 expressions were classified very positive.

Thus, accepting the goods and issuing the "goods receiving note" without examining them at the time of delivery and shifting the responsibility for any defect apparent/latent to the seller for an unlimited time is a practical issue that can lead to numerous practical problems.

In response to the question 4 regarding the responsibility of storage/warehouse facilities and safe keeping of the goods, it was unanimously agreed that after delivery of the goods by the customer, all the ownership related responsibilities of the goods including the storage/warehouse and safe keeping of the goods would shift to the buyer (bank). It is actually the responsibility of the owner (banker) and shifting these responsibilities to the customer creates a *Shari'ah* issue. However, few of the scholars suggested that if the customer voluntarily agreed to provide such services to the bank, then there would be no *Shari'ah* issue.

According to table 2, the NVivo classified 5 respondents to Q.4 in mixed category, 3 respondents in negative, 9 respondents in neutral and 13 respondents in positive category. Nevertheless, according to table 1, the sentiment analysis of the interviews' text, the software reported 5 expressions in very negative category, 5 in moderately negative category, 16 in moderately positive category and only 3 in very positive category, on the basis of sentiments observed in words. However, this classification of the sentiments made on the basis of expressions can be attributed to the limitation of the software.

Question 5 was intended to investigate the contradiction in the approach of the bank always shifting the risk to the customer. In case of *Murabaha*, the bank sells "*without any responsibility on the part of the bank for any defect and warranty relating to the goods*", and in case of *Salam* and *Istisna*, the bank buys without any responsibility for "*any misspecification/ all apparent/ latent defects*" even after six months/any time after the goods are received by the bank. However, every businessman is allowed to protect his/her interest and bank is also a business organization. The terms and conditions if agreed to by the customer with his / her free consent and they were otherwise not against the *Shari'ah*, so it would not be a *Shari'ah* issue. A *Shariah* scholar said in this regards, "*It is actually a deal between two parties. The bank is the stronger party like elephant and the customer is weaker*"

party like a goat and therefore coercive conditions are imposed. However, if the customer agrees then there are no restrictions from *Shari'ah* point of view". However, according to some scholars, there appeared a moral or ethical problem on the part of the Islamic banks that they did not follow a standardized approach. Few of the scholars criticized this attitude as an exploitation tool used by the Islamic banks suggesting standardization as a means towards justice to both the parties and a step towards achieving the *Maqasid e Shari'ah*. Therefore, it was suggested that Islamic banks must set and implement a standard approach applicable to the seller or buyer alike and treating the seller and the buyer in the same way irrespective of the fact that it is a bank or a customer.

The above may imply that the contradiction in the approach of the bank always shifting the responsibility to the customer is not considered a *Shari'ah* issue by the contemporary scholar. However, it appears an ethical problem on the part of the Islamic banks that they do not follow a standardized approach. It indicates exploitation of the customer on the part of the Islamic banks, which is against the principles of justice.

According to table 2, the NVivo classified 6 respondents to Q.5 in mixed category, 10 respondents in negative, 11 respondents in neutral and 3 respondents in positive category. However, according to table 1, the sentiment analysis of the interviews' text reported 6 expressions in very negative category, 11 in moderately negative category, 5 in moderately positive category and only 5 in very positive category, on the basis of sentiments observed in words.

6. CONCLUSION AND RECOMMENDATIONS

This research examined the model agreements of Salam and Istisna as suggested by the State Bank of Pakistan and used by Islamic banks, and identified five misgivings/issues in the current use of Salam and Istisna. Detail has been given in section 4. These issues were subsequently examined in the light of opinion obtained from the *Shari'ah* scholars and the experts. The detail has been discussed in section 5. Summarily, it is observed that the Islamic banks always shift the responsibility regarding safety or any defect to the customer, whether he/she is buyer or seller. As seller in Murabaha, the bank sells "without any responsibility on the part of the bank" and as buyer in Salam/Istisna, buys without any responsibility for "any misspecification/ all apparent/ latent defects" even after six months/any time after the goods received by the bank. In Salam and Istisna, the bank requires the customer (seller) to provide the storage/warehouse facilities and keep the goods safe, at his/her cost, even after delivering the goods to the bank, against the principles of *Shari'ah*.

In order to eliminate such anomalies from the practices of Salam and Istisna, Islamic banks need to bear the ownership related risk and practically observe the true implementation of Islamic modes of financing. For this purpose, this research suggests that the Zarai Taraqqiyati Bank Limited (ZTBL) [the public sector bank working for financing the Agriculture sector in Pakistan] may adopt the trade related modes to serve as an ideal institution for implementation of Salam, Istisna and even Murabaha in their true spirit. The proposed model may prove a step forward towards true Islamic banking.

The ZTBL can even establish true Musharaka arrangement with some entrepreneurs for promoting livestock, poultry, or other such projects. The case of ZTBL sounds fit on the basis of the requisite expertise as well because it already hires qualified agriculture graduates. Therefore, it is a suitable institution for the true application of Murabaha for input financing and Salam for marketing of the agricultural products. It may have its own godowns/storage houses for the goods being sold or purchased under Murabaha or salam. This bank already provides financing to farmers for seeds, fertilizer, live stocks, tube wells, tractor, and other

agriculture machinery, etc. Thus, the bank can sell/provide such goods (seeds, fertilizer, etc.) to the farmers on deferment basis (on Murabaha basis) instead of providing funds. For this purpose, the bank can make arrangement with the suppliers of seeds, fertilizer, etc. for supplying the requisite quantity and quality at appropriate time. It can be easily managed as such goods are required on seasonal basis. Similarly, it can buy the agriculture output in advance on the basis of Salam. However, the bank needs to make agency arrangements with third parties under the supervision of bank's officials to take delivery and sell the same to actual buyers in the market instead of appointing the same seller/supplier as agent. Islamic banks themselves, or their subsidiaries for trading can also establish their godowns/storage houses for the purpose of Salam and Istisna. This arrangement is shown in figure 2 as a model Islamic bank.

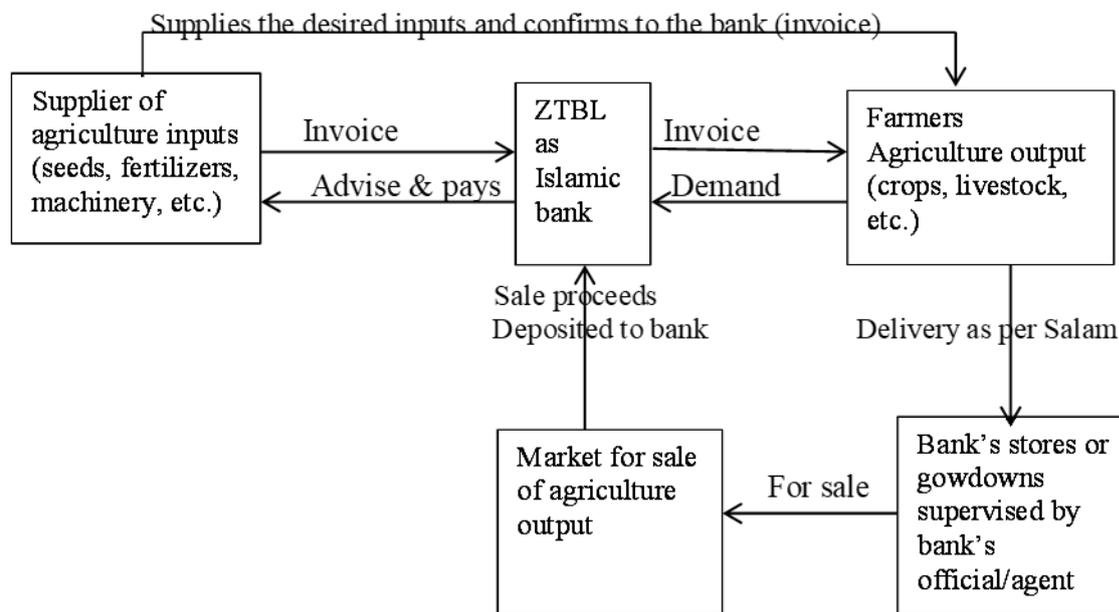


Figure 2: ZTBL working as Model Islamic Bank

It is however important to note that this whole arrangement is based on real trade transactions involving Murabaha, Salam, Istisna or even Ijara. Therefore, the relevant statutes including BCO, 1962, Financial Institutions Recovery of Finance Ordinance, 2001, and such other statutes need to be appropriately modified in order to enable the Islamic banks to deal in actual trading transactions.

It is worthwhile to mention that the unavailability of a larger number of model agreements/documents may limit the generalizability of the findings of this research for all the Islamic banks. Thus, a larger pool of data may produce more reliable results. Furthermore, the current research introduces an ideal model for Islamic banking practicing Salam, Istisna and even Murabaha in their true spirit. The proposed model can be further developed for Islamic banks for proper implementation by them after an in depth analysis of the operations of the ZTBL.

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