

**THE CONCEPT OF *ISTIṢNĀ'* IN
ISLAMIC COMMERCIAL LAW (*SHARĪ'AH*) AND ITS
POSSIBLE ROLE IN THE DEVELOPMENT OF LOCAL
FARMING IN PAKISTAN
(*ISTIṢNĀ'* BASED MODEL FOR
FINANCING AGRICULTURE)**

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Being typical Muslim, the Pakistani farmers, particularly those living in rural parts, always dodge interest based loan – an economic activity that is rigorously prohibited by *Sharī'ah*. Islamic commercial law, on the other hand, offers, as an alternate way, the concept of *Istiṣnā'* – a manufacturing contract – for the accomplishment of various agricultural needs. The present work, therefore, aims to prove that how this typical contract can be meritoriously applied in such a way to overcome financial problems of farming community, predominantly of those living in rural areas of the country. To achieve this, an *Istiṣnā'* based model is proposed in the light of the theoretical framework, settled for it by the classical and contemporary Muslim jurists. To establish the viability of the model, the focused group research technique of qualitative research is used. While following this, two hundred (200) local farmers, both from urban and rural, are interviewed. Finding shows that the contract of *Istiṣnā'* can be effectively used for the fulfillment of various agricultural needs – both for crop and non-crop sectors. The suggestions, received from the collected data, are inculcated in the model for the enhancement of its practical utility at ground level.

Keywords: *Istiṣnā'*, Islamic commercial law, Agriculture, *Sharī'ah*, Farmers, Financing, Islamic bank, Financial institution.

Introduction

Agriculture is one of the most important sources of food for human on this earth since its very inception. A man when gets up early in the morning from his bed, at dawn, has used many agricultural commodities, by one way or another, till dusk. The same importance of agriculture in human's life has been recognized by many scholars of the field.¹ While having such significance, the development of such sector is indispensable for raising life standard, both at individual and collective level. The state's responsibility, in this connection, is primary in nature, followed by other informal sectors of the society. Of course, the governments, of various countries, have taken some concrete steps for enriching agricultural activities; however, the intended objectives are yet not achieved.

Being a dynamic agricultural country the governments of Pakistan, too, has taken some initiatives for the development of agricultural sector, both at crop and non-crop levels. While following this, the Central Bank (The State Bank of Pakistan) has offered some guidelines for financing agriculture and its various subsectors; including local farming, horticulture, dairy farming, livestock, poultry farming, fish farming, etc. The Guidelines for Horticulture Financing,² Guidelines for Poultry Financing,³ Guidelines for Fisheries Financing,⁴ Guidelines for Livestock Financing,⁵ Guideline for Financing Scheme for Small Farmers,⁶ Guideline on Frequently Asked Questions (FAQs) On Agri Financing,⁷ Handbook on Best Practices in Agri/Rural Finance,⁸ Prudential Regulations for Agriculture Financing,⁹ etc. are the well notorious among these. All financial institutions, both banks and other financial institutions, are asked to finance agriculture sector; according to the standards mentioned in these guidelines. However, active involvement of the financial institutions, in financing agriculture, has not achieved the required objectives, envisaged by the State Bank from the issuance of guidelines. Many reasons can be held responsible in this regard, however, the charging of interest on agricultural finance has occupied the first place, owing to fact that majority of farmers are typical Muslims and , therefore, avoid interest based agricultural loans. Interest, an economic activity that is strictly prohibited by *Shari'ah* (Islamic Law), is not a preferred choice for such farmers – under any stretch of explanation from any corner.¹⁰ In order to cope with the situation, the

transaction of *Istiṣnāʿ* (manufacturing contract) – a typical type of manufacturing contract in Islamic commercial law – can be used a suitable alternate for fulfilling farmers' needs, both for crop and non-crop activities. Indeed, this financing mode of Islamic finance, by its nature, is not so effective as for as the crop sector is concerned, however, the non-crop activities of agriculture i.e. manufacturing of heavy agricultural machinery, transport, irrigation etc., can be benefited more through its application.¹¹

The suitability of *Istiṣnāʿ* for financing agriculture is more comparatively to other modes of Islamic finance like *Murābahah* (sale with cost plus profit), *Musāwamah* (bargaining contract), *Salam* (advance payment sale), *Mushārahah* (partnership), *Diminishing Mushārahah* (partnership that comes to an end at sale), *Musāqah* (watering contract), and *Muzārah* (share cropping), etc. There are many reasons behind this aptness. Firstly; by entering into this type of transaction with manufacturer, a farmer can get the commodity of his good choice, both in terms of quality and quantity. This facility, on the other hand, cannot be entertained by buying the same commodity from the local market. Secondly, he (the farmer) is not supposed to pay the price on immediate basis rather he has to pay the same on installment basis – the most likely mode of payment for the farming community. Thirdly, and above all, the transaction is the only one mode of Islamic finance that can be used for the improvement of irrigation system; and no alternative can be found in this connection. This peculiarity, undeniably, further increases its importance in agricultural financing.

The present paper has some inbuilt objectives; be cared in the whole discussion. The basic purpose is to trace out the real theoretical background of *Istiṣnāʿ*, envisaged by Muslim jurists-classical and contemporary. Such theory has to be enshrined in the proposed model for financing agriculture, particularly local farming in rural areas. Additionally, the present work aims to find out the inevitable requirements of agriculture, both for crop and non-crop sectors, followed by their fulfilment through the operation of *Istiṣnāʿ*'s based proposed model. Unlike the works on the issue in the past, the proposed model has to be tested at ground level in order to affirm its viability. Moreover, the difficulties hallowed in the previous models of *Istiṣnāʿ*, are rooted out in this work.

The work also has some engrained limitations. For instance, the theoretical work on *Istiṣnāʿ*, produced by the classical Muslim jurists, has not studied with minute details, owing to the fact of space constraints. Furthermore, the work is purely conducted for the development of agriculture sector in Pakistan, particularly local farming and, thus, the proposed model can be applied generically across the world. Some inevitable changes, then, must be incorporated in the basic structure and mechanism of such before applying it to a particular country's agriculture. Likewise, the proposed model is designed for financing local farming and its various activities and other sectors of agriculture like poultry farming, fish farming, livestock, dairy farming, horticulture etc. are unnoticed in this regard. The reason is that a major chunk of farming community in the country belongs to local farming, predominantly in rural areas of the country.

Methodology

The present work is qualitative in nature where its two famous techniques i.e. content analysis and focused group methods are followed for the investigation of the issue. While following the former, the contents available, in the shape of secondary data, on the concept of *Istiṣnāʿ*, has been critically analyzed. Here the data is outlined from the work of classical and contemporary Muslim jurists. The research work of non-Muslim jurists on the concept of *Istiṣnāʿ* is also resorted and regarded at various places. However, the work of classical Muslim jurists is preferred more comparatively to the work of contemporary Muslim and non-Muslim jurists. The reason is, of course, the reliability of such work – for the classical Muslim jurists' work carries the best interpretation of various *Sharīʿah*'s concepts. The typical and online libraries are frequently used in this connection. The secondary data, in the present research, is also mark out from those journals which are related to the field of Islamic banking and finance. The official website, predominantly that of the State Bank of Pakistan, is extensively used for the purpose to obtain the updated data. In order to check the viability of *Istiṣnāʿ* based model, the focused group technique (of the qualitative research) has been used where two hundred (200) local farmers (of the country)

are interviewed. In this regard, the proposed model is first explained to the farmers in a lay man's language for the purpose to make them understand. This is followed by the open group based discussion of farmers with each other – an indispensable approach for the better understanding of the proposed *Istiṣnā'* based model. Being very much illiterate, they are then interviewed through a very simple way i.e. without using the official and technical language. Their views, regarding the proposed model, are recorded and reduced into writing. At this stage, various themes have been developed on the basis of such views. The model is then critically analyzed in the light of collected data through thematic analysis. The necessary modifications and adjustments, in the model, are made at this very stage (without compromising the basic principles of Islamic commercial law) for the purpose to establish its practicability and sustainability beyond any thin glare of doubt.

Theoretical Background of *Istiṣnā'*

'Istiṣnā' is an Arabic word originates from “*Ṣana*” which means ‘manufacturing’, while regarding its technical meaning; the statements of *Fuqahā* vary considerably. Imām Kāsānī, a well renowned jurist of the Hanafī school, defines *Istiṣnā'* as “a contract of something sold on guarantee in which the work is conditioned”.¹² In the view of Imām Ibn 'Ābidīn, “It is a demand from a manufacturer to manufacture certain goods according to a given description”.¹³ Maulana Muhammad Taqi Usmani, a contemporary scholar, defines *Istiṣnā'* as “to order a manufacturer to manufacture a specific commodity for the purchaser”.¹⁴ Among these definitions the one which is produced by Imām Ibn 'Ābidīn, the latest Hanafī jurist, is more comprehensive in nature; for it tells about the basic principles envisaged by *Sharī'ah* for the contract of *Istiṣna*. Like other commercial transactions, Islamic commercial law has, of course, described some rules and regulations for the contract of *Istiṣnā'*. Being a typical kind of sale, some of its rules are similar to those of general sale while others are special in nature and solely sanctioned by *Sharī'ah* for it. In the coming lines only the special rules will be focused in details – for the general rules are well established and known and, hence, need not to be discussed.

Firstly, in the contract of *Istiṣnāʿ*, the manufacturer is required to manufacture the object from his own raw material; owing to the fact that the subject matter of the contract is the object itself, and not the work done by the manufacturer.¹⁵ This rule puts a demarcation line between the contracts of *Istiṣnāʿ* and *Ijārah* (personal services) where the subject matter is the work; done by the manufacturer. In this latter case, the material is provided by the orderer. Imam Kāsānī, while clarifying the statement, gives the example that if the orderer provides the blacksmith a piece of iron to make him a known vessel for an agreed fee, or provided a piece of leather to a cobbler to make him a shoe for a known fee, then this is permissible but there is no choice (law of option) in it, and hence it is not *Istiṣnāʿ* but *Ijārah*.¹⁶ Secondly, *Istiṣnāʿ* contract is not binding in nature before the work is started by the manufacturer, at that stage either party can revoke it unilaterally.¹⁷ This rule is based on the general principle of the contract of sale, according to which a party can revoke the contract before he leaves the place where it is concluded.¹⁸ In Islamic law, this place is typically called '*Majlis ul 'Aqd*'. By the same token, when the manufacturer dies, spontaneously the contract of *Istiṣnāʿ* 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. But it is appropriate to mention that the contract of *Istiṣnāʿ* 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. Nevertheless, in the researchers' viewpoint this rule should not be followed strictly and some flexibility needs to be shown according to the specific circumstances that may arise. Thirdly, *Istiṣnāʿ* contract is very flexible regarding the aspect of payment. It is neither obligatory in this contract that the price is to be paid in advance, nor is it required that the price should be paid at the time of delivery.¹⁹ Hence, the price may be totally or partially advanced or totally or partially deferred, or paid in instalments, or any other way on which the parties agree.²⁰ Both the parties may fix the time for payment at the time of the contract. Fourthly, unlike as a rule of general sale, the time of delivery may not be fixed in an *Istiṣnāʿ* contract, and therefore, the commodity may be delivered at any time. The question arises whether the orderer has the right to reject it at that time. The

jurists have different opinion in this connection. According to Imam Abu Hanifa, the purchaser (customer) has the right to reject the commodity after inspection if it is not according to the specifications laid down in the contract. He cites that since *Istiṣnāʿ* is a sale; the law of option can be applied to it; just like a normal sale transaction. However, according to Imām Abū Yūsuf, if the commodity is according to the specifications, agreed upon by the contracting parties, then the purchaser is bound to accept the commodity and has no other option.²¹ Fifthly, for the validity of *Istiṣnāʿ* it is necessary that the subject matter is non-existent at the time of contract. The reason is that purpose of such contract is to manufacture something and an exception to this rule is strictly prohibited.²² If the commodity is already in existence, and there is no need to manufacture it, then the justification for *Istiṣnāʿ*'s permissibility loses its ground. In the latter situation, the contract of *Salam* is the most suitable to be applied. Sixthly, the *Istiṣnāʿ* is not binding in nature, and therefore, can be revoked by either party without the consent of the other before the manufacturer starts the work.²³ *Majallah al-Aḥkām al-Adīliyyah*, however, does not accept the view point of Hanafī school of thought regarding the non-binding status of *Istiṣnāʿ*.²⁴ The approach of *Majallah*, yet, sounds more logical though because it is in the interest of both parties to a contract.

***Istiṣnāʿ* as a Financing Tool for Agriculture**

Istiṣnāʿ arguably is the ideal mode of Islamic finance which is applicable, principally, for non-crop activities. Such mode of Islamic finance is not, therefore, the most appropriate mode for crop activities – since this contract is concluded only where there is a definite demand already established.²⁵ Following this principle, it can be said that such contract cannot be concluded for natural goods or commodities.²⁶ In other words it cannot be applied for financing fruit crops or non-fruit crops activities.²⁷ The description shows that this transaction's role, by its very nature, is more dominant in the non-crop sector, and hence, can not be used for the development of local farming; particularly in the rural areas of the country – a major chunk of the population i.e. 62 percent of the country's population resides in rural parts and is directly or indirectly linked with agriculture for their livelihood.²⁸ These areas, of course, remain mostly

ignored in terms of financing by the Islamic banks and other Islamic financial institution.

The above discussion does not mean, by any way, that *Istiṣnā'*'s application is limited only to non-crop agricultural activities and, thus, it can not be used for the solution of other agricultural problems; confronted by farmer. For example, one of the major problems faced by the farmers of rural areas is related to the issue of watering their crops, including both fruit and non-fruit crops.²⁹ Although Pakistan has rains in its most places and, has also the monsoon season as well, but these rains alone cannot bear out 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.³⁰ Because of this reason, they need some unconventional arrangements which can overcome their problems, and educate them on water savings at the same time. This can be possible by entering into *Istiṣnā'* based arrangements. They can ask, for example, the Islamic banks and other Islamic financial institutions for the construction of water tanks, water pumps, tube wells, pipelines, channelizing water from reservoirs (Pakistan's agriculture depends on the gigantic network of canal-system;³¹ some of the reports describe that nearly 85 percent of Pakistan's cropped area is irrigated by canals),³² creating small passages which can be used to water their fields crops etc. Majority of our farmers, on the same way, 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 a proper system of pipes and channels that can properly irrigate their crops. These problems are rectified by majority of farmers in the interview sessions, conducted in the present work. The following graphical presentation confirms the same.

Istiṣnā' contract can help farmers in the solution of such problem where they can enter with the Islamic bank or Islamic financial institution for water management arrangements. Similarly, farmers living in hot and cold areas are generally in need of enduring sheds to

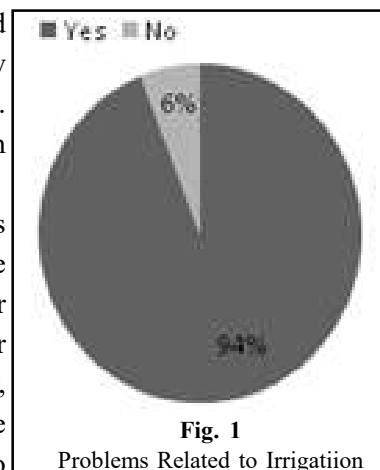


Fig. 1
Problems Related to Irrigation

protect themselves from sun, heat and cold. Study makes known that these sheds are very significant for farmers who normally work from six to eight hours daily at a stretch in their field, both in summer and winter seasons – need 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 is not the river's water but the cold springs; excessively available in those areas. It is indispensable, for them, 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 – in most severe case may cause food shortage at a particular locality. The Islamic banks and other Islamic financial institutions can help out farmers of such areas through the conclusion of *Istiṣnā'* contract with them.

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 *Istiṣnā'*, 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 *Istiṣnā'* contract for real estate developments on designated land owned by the final purchaser.³³ While applying this principle, along with the principle that the price of *Istiṣnā'* 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 or financial institution to construct a house on the land owned by him (the farmer). When the construction of the house is completed, the farmer has to transfer its usufructs (residence) to the Islamic bank, as a price for *Istiṣnā'* contract. After this, the Islamic bank has to lease the house to the farmer on rent for a particular period of time.

Istiṣnā' can be affectively used, with the same potential mentioned above, for the development of livestock,³⁴ fish farming,³⁵ poultry farming³⁶ 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 at the inception of the business. This mode of Islamic finance is, then, equally viable for all individuals. While this provides a source of livelihood for the poor farmers, it ensures a sound source of business for the middle and upper classes of farming communities. The following *Istisnā'* based models can be effectively used for the fulfillment of farmers' requirements mentioned in the previous passages.

***Istisna* Based Model**

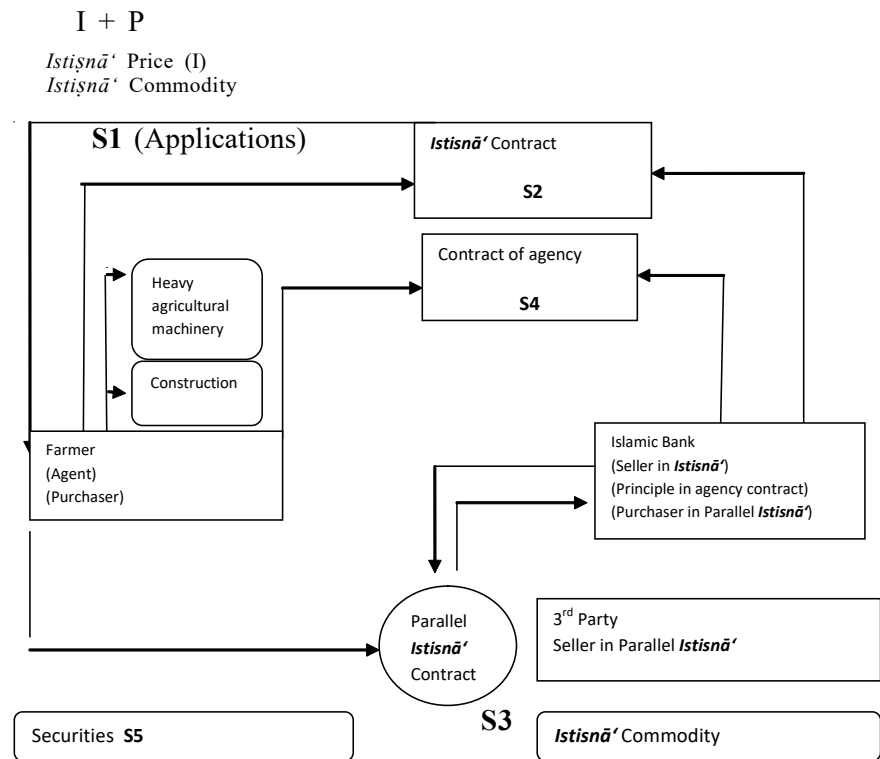


Fig. 2
Istisnā' based model 1

It is pertinent to mention that Islamic banks and other Islamic financial institutions are financial institutions by origin and, therefore, it is almost impossible for them to manufacture the required agricultural

commodity (demanded by a farmer) by themselves. In order to cope with the situation, the Islamic bank may also conclude *Istisna* contract with a manufacturer to manufacture a commodity of the same description, mentioned in the previous *Istisnā'* contract concluded with the farmer. It is, however, not necessary that the time of delivery and price in the second contract must be 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.³⁷ This arrangement is typically known as parallel *Istisnā'*.

However, in the view of some researchers this type of arrangement (parallel *Istisnā'*) is not beneficial particularly for lower class of farmers; owing to many reasons. Firstly, the farmers have to give higher price for the commodity as there are two prices i.e. the price paid by the Islamic bank to the manufacturer and the price paid by the farmers to the Islamic bank, and the difference between these two prices is the benefit of the Islamic bank. Due to the inclusion of a separate contract, price of the commodity increases and for this reason it is not wrong to say that parallel *Istisnā'* contract is not in the interest of poor farmers.³⁸ Secondly, the degree of risk for a farmer increases in the parallel *Istisnā'* contract as compared to direct *Istisnā'* contract. It is quite possible that the manufacturer or construction company may not manufacture the required commodity or the required building within the stipulated time period which is mentioned in the contract. Under such circumstances, the Islamic bank cannot buy the required commodity from the local market as usually the *Istisnā'*'s commodity is manufactured by order. These are not primary goods as mentioned earlier, but produced when there is a specific, already established demand.³⁹ In this case, the farmer may face the consequences for the default of others (manufacturer); whereas the bank can recover its loss through penalty clause – an unjust tool which is used as a risk minimization technique.⁴⁰ Thirdly, the contract of parallel *Istisnā'* brings complexity in the procedure which can create difficulty for an illiterate farmer (majority of farmers in Pakistan are illiterate and ignorant).⁴¹ But it does not mean that its application should be entirely ruled out for the agricultural sector, rather it should be limited only to those commodities which cannot be manufactured without a particular company. For example, if a farmer requests the Islamic bank for manufacturing a tractor or

motorcycle or pickup or refrigerated van, then in such a situation, the bank has no alternative except to go for parallel *Istiṣnā'* with a manufacturing company of such vehicles.⁴² For the common construction requirements e.g. buildings, bridges, factories, tube wells, permanent sheds, water channels and pipelines, digging wells other than tube wells, fencing and enclosures, establishment of slaughter houses, water tanks, water pumps etc., the financial institutions are supposed to have their own construction company and expert contractors to discharge the task. However, in the researchers' point of view this arrangement is more hypothetical in nature, particularly, in the scenario of contemporary business techniques.

Steps Involved in the Model of *Istiṣnā'*

Of course, each and every financial institution, has its own procedure for the provision of financing facility, however, in case of *Istiṣnā'* the following steps must be adhered.

S1: A formal request from the farmer to the financial institution for the conclusion of *Istiṣnā'* contract. The application must be wide-ranging in nature, meaning there by, covering all aspects of the contract precisely and evidently. These aspects include, in the broad sense, quality and quantity of the commodity, nature of the price or modes of payment, place of delivery, time of delivery, nature of required securities, etc.

S2: Unlike the contract of *Murābaḥah*, the contract of *Istiṣnā'* is concluded at the second phase through formal offer and acceptance. It means all conditions, involved therein, become binding in nature on the parties; the violation of which is tantamount to breach and subsequent remedies.

S3: As the bank acts as a mediator, therefore, it concludes a parallel *Istiṣnā'* contract with a manufacturing company, asking the same to manufacture the commodity according to the specifications mentioned in the first contract.

S4: Customer agency appears at this stage where the farmer has to receive the commodity from the manufacturer on behalf of the bank. Technically, it is called constructive possession of the bank.

S5: At this stage, all types of required securities are furnished.

**Procedure for Agricultural *Istiṣnāʿ*
(Trail of the Proposed model at Ground Level)**

There is a detailed procedure, mentioned in the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) for the contract of *Istiṣnāʿ*'s. According to this document, a farmer must give some specifications of the required commodity while entering into a formal contract with the Islamic bank. These specifications include type, kind, quality, and quantity etc of the commodity. In addition, the price of the commodity, date of delivery, place of delivery must be mentioned in such contract. The clearance of all these specifications is declared mandatory by Islamic commercial law; in order to avoid any future dispute between the contracting parties. At the conclusion of this step, the Islamic bank orders (in the shape of another *Istiṣnāʿ*' contract other than the one which is concluded with the farmer) the manufacture to manufacture the required commodity; which it has undertaken to manufacture in the first *Istiṣnāʿ*' contract (with the farmer). At this phase, it is necessary that the specifications mentioned in the first contract are also stated verbatim in the second contract. When the required commodity is produced, then before delivery, the commodity remains at the risk of the Islamic bank, but when the possession is transferred to the farmer, which may be actual or constructive in nature, then, consequently, risk also transfers to him.⁴³ It is clear that transferring of authority from the Islamic bank to the farmer to use the property, utilization, and consumption are to be considered constructive possession. In addition, 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 or purchase of the required commodity.⁴⁴ At this particular point the variance between *Istiṣnāʿ*' and *Murābahah* transaction arises at the spot. In the latter case, the actual sale or purchase of the required agricultural commodity must take place. So, it is, therefore, easier for an illiterate farmer to understand the procedure of *Istiṣnāʿ*' as compared to that of *Murābahah*. It is the duty of Islamic bank to deliver the commodity on the due date and not before that; as according to Islamic commercial law, if the manufactured goods are delivered before the 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.⁴⁵

As mentioned earlier that *Istiṣnā'* is a kind of normal sale transaction with some peculiar characteristics. Like regular sale, it is not necessary in this contract that the price must be paid in advance, nor is it necessary that the price should be paid at the time of delivery.⁴⁶ Hence, the price may be totally or partially advanced or totally or partially deferred, or paid in installments, or any other way at which the parties agree.⁴⁷ However, majority of farmers opt to pay in installments for the reason of their meager economic conditions. The data received through empirical research displays the same fact. The resulting graphical presentation may describe the whole picture accurately.

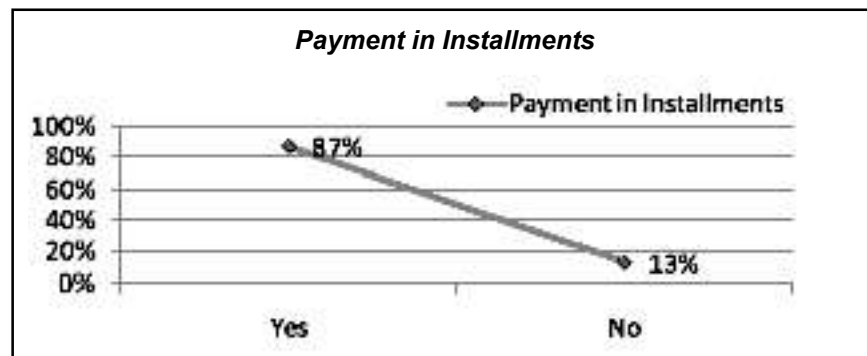


Fig. 3
Payment in installments

The statistics clearly indicates that 87% of farmers like to pay in installments rather than on spot, owing to the fact of their meager economic condition-mentioned earlier in the present work. However, the Islamic financial institutions are supposed to keep the number of installments more comparatively to those kept by the conventional financial institutions. This tendency (for delayed payment) is very much advantageous for the financial institutions, as in this case, the charged price for commodity is usually more than the one charged on spot. However, being a sector dominated by the poor class; the financial institutions are advised not to charge too much profit from farmers

and relaxation should be awarded, in this regard, to the best possible extent. They are also advised to eliminate or reduce the collaterals and other securities, required against the price to be paid by farmers.⁴⁸ These requirements are, more often than not; bring difficulties for farmers to get financing facility from financial institutions. Majority of farmers show their disinclination to accept securities in the *Istiṣna* 'contract. The following graphical presentation authenticates the same fact.

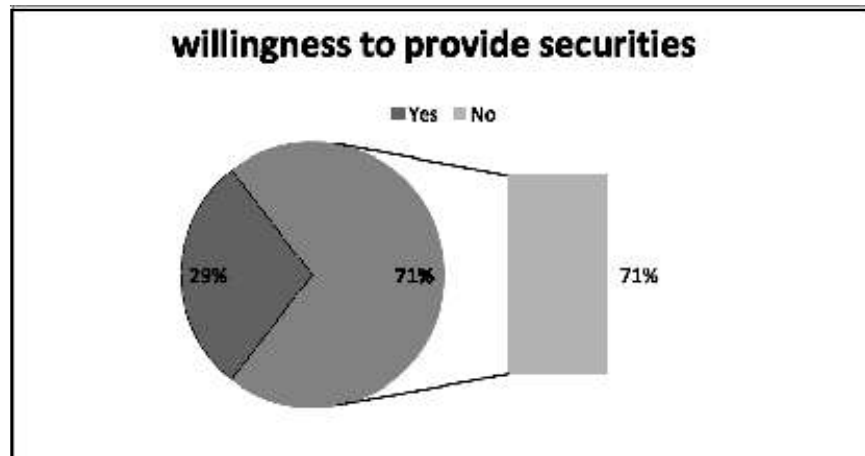


Fig. 4

Willingness to provide securities

The data clearly indicates that 71% of farmers are against the requirements of collaterals while 29% favor the same. This fact, indeed, confirms that majority of farmers belong to the lower class of the society and, therefore, are not in position to pay securities required by the financial intuitions. These institutions are, hence, required to revisit their financing techniques. Unlike the previous groups, the latter group belongs to middle and upper class of farmers, and therefore, having the ability to furnish securities.

It is permissible for the Islamic banks and financial institutions to appoint the farmers 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 *Istiṣnā'* is applied for house financing or

even project financing. The potential reason may be that it is an extremely difficult job for the Islamic bank to supervise the manufacturing or construction process itself, and its practical involvement is almost impossible 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; ensuring that the manufacturer or constructor is working as per wants of the contract, and the commodity is produced according to the specifications mentioned therein.⁴⁹ However, the empirical data, received from the respondents, shows that majority of farmers are not willing to opt customary agency – for one reason or another. The following graphical production may draw the whole picture, accurately.

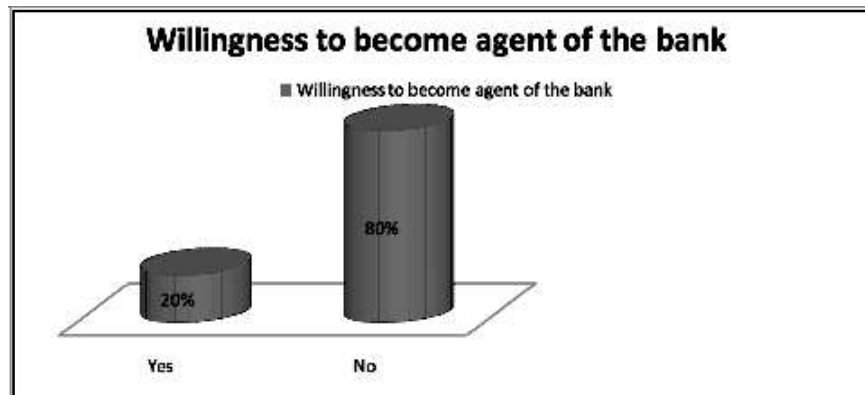


Fig. 5

Willingness to become agent of the bank

The data clearly indicates that 80% farmers are not ready to become agents of the banks (as far as the contract of *Istiṣnāʿ* is concerned). The reason behind this approach is the illiteracy of the farmers, predominantly of those living in rural areas of the country, as mentioned in earlier pages of the present work. However, there are many other reasons that can be held responsible for the lack of farmers' interest. Firstly, unlike *Salam* the subject matter in the contract of *Istiṣnāʿ* is always a particular commodity, required to be manufactured by a manufacturer. In case of agriculture, such commodities are usually manufactured in industries that are not usually in the access of farmers. Secondly, such industries

manufacture commodities according to approved standards of quality, and therefore, there is no need to ensure that the commodity is produced according to the specifications mentioned in the contract. Thirdly, in the transaction of *Istiṣnā'* the structure of agency contract is complex in nature, and hence, challenging for an illiterate farmer to apprehend it. Fourthly, and most importantly, according to Islamic commercial law an agent can charge fee for his agency.⁵⁰ The Islamic banks and other Islamic financial institutions are not ready to pay such fee, while the farmers, on the other hand, are not ready to provide services free of cost.

Conclusion and Policy Recommendation

Agriculture is not only a key source of food and employment but also a birthplace for the enhancement of human life standards. All classes of society i.e. lower, middle and upper class are associated to it by one way or another. The latter group usually faces very meager economic conditions and, therefore, are not in position to purchase basic agricultural inputs. They are, therefore, in tense need to be financially backed. In Pakistan, such financial aid is provided by various sources, known as formal and informal sources. The previous sources include banks and other financial institutions, that by large, provide financing facility on interests bases which is austere prohibited by *Sharī'ah*. As a substitute, Islamic finance offers various modes for financing agriculture, among which *Istiṣnā'* is the most appropriate and the important one. As mentioned earlier that majority of farmers, particularly those living in rural areas of Pakistan, are not in position to buy basic agricultural tools i.e. like rake, hoe, fork, shovel, spade, hand fork, trowel, wheel barrow, and watering can etc. All these tools can be easily manufactured through *Istiṣnā'* based transaction. This typical type of contract also can be applied, primarily, for manufacturing agricultural commodities, required by the farming community. These commodities include, not exhaustively, cultivator, cultipacker, chisel plow, harrow, spike harrow, plow, spading machine, stone removal implement, subsoiler, rotator, broad cast seeder, planter, plastic mulch layer, potato planter, seed drill, air seeder, transplanted, like fertilizer spreader, terragator, liquid manure, manure spreader, sprayers, etc. in addition to this, the farming community also requires vehicles for

transportation, houses construction, machinery for tube wells etc. All these can also be funded through the same transaction. In addition, sheds required by the farmers in their field for keeping their agricultural yield, can also be constructed through this typical transaction of Islamic commercial law. To achieve the intended objectives, the contract of *Istiṣnāʿ* should be applied with its true theoretical background, envisaged by the classical Muslim jurists in their prominent work. Deviation from the original theory, by any stretch of explanation, may cause failure of the required results of such transaction. The discussion has enshrined some ideas, about the in-depth understanding of farmers' community requirements and problems, in researchers' mind-compelling the same to recommend some policy principals for financing agriculture, particularly, in financing local farming. Following this, 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 after the farmers purchase the commodity, appointment of the customer as an agent for the purchase of the commodity, periods for installments, amount payable in each installment, recovery procedure etc. The financial institution must purchase the commodity from the manufacturer on subsidized by price. Such discounts must be passed to the farmer and, hence, the price may be decreased further, accordingly. In addition, the State is under obligation to provide substantive subsidies on agricultural commodities, manufactured under *Istiṣnāʿ* transaction. However, the commodities which are used in the local farming should be subsidized on priority basis. If the transaction is applied in its real philosophy, it will turn the transaction viable not only for Islamic banks and financial institutions but, at the same time, also for the poor farmers of this country, especially those residing in the rural areas.

Notes and References

1. It is rightly said by Kierra DeCamp, Pleasant Hill FFA, Pleasant Hill that whenever a person gets up early in the morning and before his feet hit the floor, an industry we all take for granted becomes a part of our life i.e. agriculture. For example the sheet on our bed, the eggs of breakfast in our plate, the white milk

which we have in a glass in front of our twin eyes, and the clothes at our back are all exist because of agriculture. The times we walk towards the shower room, the floor which we use for walking, the soap, shampoo, conditioner and even the towel which are used therein etc. are the outcomes of agriculture by one way or another. In addition, whenever we style our hair, brush our teeth, apply our make up, and start our car, we have already used hundreds of modern agricultural products. In short without agriculture we would be inconvenienced, naked, malnourished, unprotected, and most important hungry ... (Kierra DeCamp, Pleasant Hill FFA, Pleasant Hill, Ill, *The Importance of Agriculture in Everyday Life*, <http://www.growmark.com/.../Illinois%20Winning%20Essay.pdf> (accessed: 28th February, 2014).

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3. *Guidelines for Poultry Financing*, Agricultural Credit Department, State Bank of Pakistan, <http://www.sbp.org.pk/acd/2007/Draft-Guidelines-Poultry-Financing.pdf> (accessed: 28th February, 2014).
4. *Guidelines for Fisheries Financing*, Agricultural Credit Department, State Bank of Pakistan, <http://www.sbp.org.pk/acd/2007/Guidelines-for-Fisheries-Financing.pdf> (accessed: 28th February, 2014).
5. *Guidelines for Livestock Financing*, the Agricultural Credit Department, State Bank of Pakistan, http://www.sbp.org.pk/acd/2006/Guidelines_Livestock_C1.pdf (accessed: 28th February, 2014).
6. Financing Scheme for Small Farmers, Agricultural Credit Department, State Bank of Pakistan (accessed: 28th February, 2014).
7. *Frequently Asked Questions (FAQs) on Agri Financing*, Agricultural Credit Department Islamic Banking Department, State Bank of Pakistan, http://www.sbp.org.pk/acd/ACD_FAQs.pdf (accessed: 28th February, 2014).
8. *Handbook on Best Practices in Agri/Rural Finance*, Agricultural Credit Department, State Bank of Pakistan, pp. 15-16, <http://www.sbp.org.pk> (accessed: December 25, 2012).
9. *Prudential Regulations for Agriculture Financing*, (Updated on 29th January, 2014), Agricultural Credit & Microfinance Department, State Bank of Pakistan, p. 6, <http://www.sbp.org.pk/publications/prudential/prs-agriculture.pdf> (accessed: 26th March, 2014).
10. *Shari'ah* strictly prohibits interest based loans. There are many verses of the Holy Qur'ān and *Hadīth* of the Holy Prophet (ﷺ) that confirms this prohibition. For instance, in the Holy Qur'ān Allah, 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 (Qur'ān, II:278-279). In another verse the Lord of Universe says "That they took *Riba* (usury), through they were forbidden and that they devoured men's substance wrongfully. We have prepared for those among men who reject faith a grievous punishment" (Qur'ān, IV:161). From Jabir, may Allah be pleased with him, said: "The messenger of Allah (SAW) has cursed one who charges *Riba*, he who gives it, one who records it, and the two witnesses;

- and he said, “They are equal” (*Muslim Sahih*, Chapter on *Riba*, *Hadīth* No. 1598).
11. See for further details *Guidelines on Islamic Finance for Agriculture*, the Agricultural Credit Department, Islamic Banking Department, State Bank of Pakistan, <http://www.sbp.org.pk/guidelines/IslamicAgriculture/Guidelines-Islamic-Financing-Agriculture-01-09-2008.pdf> (accessed: 28th February, 2014).
 12. Abū Bakr ibn Mas‘ūd al-Kāsānī, *Bādā’i‘al-Sanā’i‘*, 1st Edn., Beirut, Dār al-Fikr, Lebanon, 1996, Vol. V, p. 213.
 13. Ibn ‘Ābidīn, *Radd al-Muhtār*, Vol. VI, Beirut, Dār al-Fikr, 2005, Vol. 4, p. 221.
 14. Muhammad Taqī Usmani, *An Introduction to Islamic Finance*, Karachi, Maktaba Ma‘arifūl Quran, Edition August 2008, p. 195.
 15. Abdullah bin Mahmud bin Muwduḍ al-Musilī al-Hanafī, Karachi, Qadimi Kutub Khana, *Kitāb al-Būyū‘*, Vol. II, p. 46.
 16. Kāsānī, *Bādā’i‘al-Sanā’i‘*, Vol. V, p. 5.
 17. Kāsānī, *Bādā’i‘al-Sanā’i‘*, Vol. V, p. 4; Muhammad Taqī Usmani, *An Introduction to Islamic Finance*, p. 196.
 18. Ibn Qudāmah al-Maqdisī, *Al-Kafī*, 5th Edn., Beirut, Al-Maktab al-Islāmī, 1988. *Kitāb al-Būyū‘*, Vol. II, p. 43.
 19. *Istisnā‘*, Contract in Islamic Fiqh, Publication Series of Tadamon Islamic Bank, Shaban, 1412, February, 1992, Fatawa and Research Department, p. 17.
 20. Muhammad Faheem Khan, *Islamic Future and Their Markets, with special Reference to their Role in Developing Rural Financial Market*, Paper No. 32, p. 41.
 21. Kāsānī, *Bādā’i‘al-Sanā’i‘*, Vol. V, p. 5.
 22. Shawkani, *Nayl al-Awtar*, Dār Ehiā al-Tourath al-‘Arabī, 1st Edn., 2001, Vol. V, pp. 174-175.
 23. Kāsānī, *Bādā’i‘al-Sanā’i‘*, *Kitāb-al-Istisnā‘*, Vol. V, p. 4; Muhammad Taqī Usmani, *An Introduction to Islamic Finance*, p. 196.
 24. *Majallah al-Ahkām al-‘Adaliyyah*, the civil code of the Ottoman Empire (Hanafī), Section 392.
 25. Muhammad Faheem Khan, *Islamic Future and their Markets, With Special Reference to their Role in Developing Rural Financial Market*, Islamic Development bank, Islamic Research and Training Institute, Paper No. 32, p. 41.
 26. *Ibid.*, p. 41.
 27. 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, loquat strawberry, plum, tea, apple, guava, papaya, pomegranates, almond, palm, coconut, olive oil, litchi, cherry, mango, zizi, apricot, melon, banana, water melon, peach, mush melon, citrus etc.
 28. Omer Farooq, *Pakistan Economic Survey 2009-10*, Government of Pakistan Ministry of Finance, Chapt. 2, p. 13. <http://www.finance.gov.pk/> (accessed July 6, 2012).
 29. *Ibid.*, pp. 124-125.
 30. Mohsin Ali, *Agriculture Problems in Pakistan and their Solutions*, March 1st

- 2010, <http://www.einfopedia.com/agriculture-problems-in-pakistan-and-their-solutions.php> (accessed July 13, 2012).
31. M. Sharif Zia, Tariq Mahmood, Mirza B. Baig and M. Aslam, *Land and Environmental Degradation and Its amelioration for Sustainable Agriculture in Pakistan*, Quarterly Science, Vision, Vol. IX, Nos. 1-2 (Jul-Dec, 2003) and Nos. 3-4 (Jan-Jun, 2004), p. 1.
 32. *Pakistan's Food and Agriculture Systems*, Nathan Associates Inc. for review by the United States Agency for International Development, 2009, p. 5, http://pdf.usaid.gov/pdf_docs/PNADO507.pdf (accessed July 13, 2012).
 33. *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010*, Bahrain, English Version, Istisna 'and Parallel Istisna', 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> (accessed July 21, 2012).
 34. 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. *Pakistan Economic Survey 2011-12*, Highlights p.1. http://www.finance.gov.pk/survey/chapter_12/highlights.pdf - Cached (accessed July 15, 2012). The Islamic banks and other Islamic financial institutions 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 houses *Guidelines on Islamic Agricultural Finance*, Islamic Banking Department, State Bank of Pakistan, p. 5, 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. Muhammad Khaleequzzaman, *Islamic Modes for Agricultural Financing Products – Murābahah and Salam*, Al-Huda Training Programme, 2008. <http://www.alhudacibe.com/.../...> (accessed July 15, 2012).
 35. 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. (Fishing Industry in Pakistan, Overview, <http://www.pakistanfishing.com/fishing-info/fishing-industry-in-pakistan> (accessed July 15, 2012) 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, *Pakistan Economic Survey 2011-12*, Highlights p. 1. http://www.finance.gov.pk/survey/chapter_12/highlights.pdf - Cached (accessed: July 15, 2012). *Istisnā'* can also be applied for the effective development of fish farming. This can be done by the construction of cold storage, chilling or freezing plants, fish storage centre, pickups, vehicles, life boats, and fish or shrimp hatcheries etc. *Guidelines on Islamic Agricultural Finance*, Islamic Banking Department, State Bank of Pakistan, p. 6.

36. *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., *Guidelines on Islamic Agricultural Finance*, Islamic Banking Department, State Bank of Pakistan, p. 5.
37. Ezzedine Mohammad Khoja, *Instruments of Islamic Investments*, Dallah al-Baraka Group Research & Development Department Instruments of Islamic Investment, <http://www.iefpedia.com/english/wp.../Instruments-of-Islamic-Investments.pdf> (accessed July 15, 2012).
38. Lutfullah Saqib, *Financing Agriculture Through Islamic Commercial Transaction*, p. 127.
39. Muhammad Faheem Khan, *Islamic Future and Their Markets, with Special Reference to their Role in Developing Rural Financial Market*, Paper No. 32, p. 41.
40. Aniss Boumediene, *Is Credit Risk Really Higher in Islamic Banks?*, *The Journal of Credit Risk*, Vol. VII, No. 3, Fall 2011, p. 103.
41. Mohsin Ali, *Agriculture Problems in Pakistan and their Solutions*, March 1st, 2010, <http://www.einfopedia.com/agriculture-problems-in-pakistan-and-their-solutions.php> (accessed: July 13, 2012).
42. Lutfullah Saqib, *Financing Agriculture Through Islamic Commercial Transactions*, p. 128.
43. *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 2010*, Bahrain, English Version, *Istisna' and Parallel Istisnā'*, *Shari'ah Standard No. 11, Rule 6/4*, p. 185.
44. *Ibid.*, Rule 2/2/2, p. 179.
45. *Ibid.*, Rule 6/3, p. 185.
46. *Istisnā' Contract in Islamic Fiqh*, Publication Series of Tadamon Islamic Bank, *Shaban*, 1412, February, 1992, Fatawa and Research Department, p. 17.
47. Muhammad Faheem Khan, *Islamic Future and their Markets, With Special Reference to their Role in Developing Rural Financial Market*, Paper No. 32, p. 41.
48. These collaterals are of a wide variety i.e. real estate, automobiles, cash accounts, investments, insurance policies, valuables and collectables, future payments, gold, ornaments etc. Most of the financial institutions prefer primary collaterals (liquid assets) over secondary collaterals (illiquid assets) as the liquidation value of an asset decreases as the asset becomes more illiquid, Johan F.M. Swinnen and Hamish R. Gow, *Agricultural credit problems and policies during the transition to a market economy in Central and Eastern Europe, Food Policy*, 24, 1999, pp. 21-47, www.ruralfinance.org/.../1217526012269_agricultural_credit_problems_in_ECA_region.pdf (accessed: March, 2013). However, in case of agriculture sector, the immovable property is favored by the financial institutions. In some countries' financial institutions, the required value of such collaterals is very high and hence beyond the reach of farmers. Majority of these farmers possess the lands as tenants and hence not legally authorized to mortgage such lands and very

few of them have their own land, *Improving Agricultural Microfinance Barriers to the Supply of Agricultural Lending in the Philippines*, Final Draft April, 2009. This study was undertaken by the Innovations for Poverty Action (IPA) with support from the Hanns Seidel Foundation/Germany (HSF) which is financed by the Federal Ministry of Economic Cooperation and Development (BMZ) under the joint project: "Microfinance Capacity Building Program," in partnership with the Ninoy and Cory Aquino Foundation (NCAF), formerly the Benigno S. Aquino, Jr. Foundation (BSAF), and the PinoyME Foundation (PMF). [http:// www.poverty-action.org](http://www.poverty-action.org) (accessed: January, 2013). The report of Agricultural Census 2000 shows that only 37 percent farmers of the rural areas have their own land while 61 percent of these land-owning households owned fewer than five acres, or 15 percent of total land, Mazhar Arif, *Agriculture And Food Security In Pakistan*, Thematic Paper, p. 13.

49. Lutfullah Saqib, *Financing Agriculture Through Islamic Commercial Transactions*, p. 133.
50. Wahbah-al-Zuhayli, *Al-Fiqh-al-Islāmī wa-Adilatuhkī*, Vol. V, p. 4058.