
A Theoretical Study of Salam and Istisna' in the Light Of Islamic Jurisprudence

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Abstract- Islam does not allow any transaction and business unless it fulfills the requirements directed by the law of Islamic jurisprudence. Islamic jurisprudence has explained different forms of business transactions. The scholars of jurisprudence have defined and explained Salam (Derivatives) and Istisna (Manufacturing) in the texts of jurisprudence. This two principles are focused in this study in the light of fiqh (Jurisprudence) texts. Salam can be connoted as derivatives. It is an agreement in which advance payment is made for goods to be delivered later on. The seller agrees to provide some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract. Also Istisna is a similar form of business when it applied in the manufacturing field. Istisna means manufacturing. It is a contract between two parties to run a project of manufacturing or construction. This study is highly relevant because both Salam and Istisna play a major role in the functions of modern Islamic banks.

I. INTRODUCTION

Salam contract is a mode of sale which has a broad application in Islamic banking. *Salam* and *Istisna'* (which is being discussed later) are two exceptional cases in sale contract as directed by Islamic jurisprudence. Both are two kinds of sale where a commodity is transacted before it comes into existence. Because, the sale contract, in the parameter of Islamic jurisprudence, have three basic conditions. They are;

1. The commodity must be existed at the time of contract.
2. The seller should have acquired the ownership of that commodity.
3. The ownership should be bagged by the seller either physically or constructively.

Salam and *Istisna'* are not included in the ambits of these three conditions. Therefore, both have their own conditions and rulings. It is also important that *Istisna* contracts are generally agreed in manufacturing businesses .

A. Meaning and Definition of Salam

The word *Salam* is the root form of Aslama and Sallama which means to entrust. It was christened so because, the capital is entrusted to the contractor at the time of contract itself. The word Salaf is also used often in lieu of *Salam*. Salaf is the root form of Aslafa and Sallafa. It was named to *Salam* for anticipating the payment of capital or price before the delivery of the commodity.¹

In the *salam* transactions, the seller agrees to provide some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract. It is essential to know the quality of the goods intended to be purchased. The subject matters of this sale are goods and cannot be gold, silver, or currencies based on these metals.

An example of *Salam* transaction is listed below:

Islamic bank provides 20 million rupees in advance and gives it to a timber company to purchase the furniture for an academic institution within a year. The client gives the furniture to the bank on the fixed time. The

¹Dr. Wahabat Zuhaili, *Al-Fiqh al-Shafi' al-Muyassar*, (Damascus: Dar al-Fikr, 2008), Vol. 1, p. 514

client can take the benefit of the amount which he got in advance and the bank can receive the material on the price of last year which is much lower than the current rate.

As some major reliable sources indicate, *Salam* is the term coined by the people of Hijaz whilst *Salaf* is the term coined by the people of Iraq. Technically, *Salam* is a sale of commodity by giving its hints in detail which is not available at the time of the termination of the sale; but will be handed over before the fixed date. The *Salam* contract is permissible to the price of commodity as lump-sum in that time itself or as deferred price.

B. Description of *Salam* and its Evidence

In Islamic banks and Islamic finance institutions, the *Salam* contract is an ideal for agricultural financing. The basis of *Salam* in Islamic jurisprudence is upon the *Sunnah* and the Consensus. It is permissible in all schools of Islamic law. When the Prophet reached *Madina* after *Hijra* (migration), he saw the people paying in advance the price of fruit or dates to be delivered over one, two or three years. But, such sale was carried out without specifying the quality, measure or quantity of the commodity or the time of delivery. Then, the prophet ordered: “whoever pays money in advance for fruit to be delivered should pay it for a known quality, specified measure and weight of course along with the price and time of delivery.”

C. Wisdom Behind the *Salam* Contract

The basic aim of *Salam* contract is to meet the needs of the small farmers who needed money to grow their crops and to feed their family upto the time of harvest. After the prohibition of interest, they couldn't take usurious loans. Therefore, it was allowed for them to sell the agricultural products in advance.

D. Pillars of *Salam*

Salam contract has three pillars. They are:

1. *Maslim* or *Rabb al-Salam* (buyer)
2. *Maslam Ilaihi* (seller)
3. *Maslam Feehi* (purchased commodity)
4. Capital or Cash price
5. Offer and acceptance.²

E. Conditions of its Authenticity

For the authenticity and proper conduct of *Salam* contract, two conditions are needed to observe carefully. They are:

1. It is necessary to be the words of offer and acceptance altogether with no interruption of long silence or trivial matters.
2. The buyers should be got self-reliance in transacting with his property. So, *Salam* contract is permissible for a blind person who knows the things alright; it is as if he became blind later after being a visible person. Otherwise, if he is blind inborn, then *Salam* is not allowed for him.³

F. Conditions of *Salam*'s Validity

Besides the conditions for its authenticity, the *Salam* contract owes to other three conditions to make the contract valid and void less. They are:

1. To pay the full cash price in advance to the seller at the time of effecting the sale. This is necessary, because, in the absence of full payment by the buyer, it will be equivalent to the sale of a debt against a debt.
2. It is necessary to specify the place of delivery of the commodity if it is loaded with delivery expenses. If not, it is not necessary.
3. The determination of the exact date of the delivery is not necessary. But, if he specifies a stipulated date for *Salam*, then it is mandatory to know the exact to know the exact date.⁴

²Abu Bakker Bin Muhammad Al-Sayyid Al-Bakri, *Hashiyathu I' anat al-Twalibeen*, (Kerala: Maktabtu Isha'thu Islam), Vol. 3, p. 26

³Al-Shirazi.*Al-Muhadhab*, p. 515

G. Conditions of Purchased Commodity

There are four conditions for the purchased commodity in *Salam* Contract. They are:

1. To explain its item, quantity and its mode. Also, it is necessary to define all the traits specified with it like in powders, juices, animal, meat, iron, stones, grasses etc. Therefore, *Salam* is not allowed in jewels and mixed particles.
2. It is necessary to know its measure in quantity and weight.
3. The commodity should be debt.
4. The commodity must be capable of easy delivery at the time of mandatory delivery.⁵

In fact, *Salam* is a mode of sale contract. Because, the terms of offer and acceptance of *Salam* is also in allowed in the terms of sale itself.⁶

I. ISTISNA' (Manufacturing)

Istisna' is another mode of sale contract which is an exceptional case in sale like *Salam*. It is another kind of sale where the commodity is transacted before it comes into existence. But, this is not allowed by all schools of Islamic law. As for Imam Al-Shafi', the *Istisna'* type of contract is not permissible. anyhow, it is a Shariah mode of financing widely applied in Islamic banks and other Islamic finance institutions to finance the construction of buildings, villas, residential towers, and manufacturing of aircrafts, ships, machines, etc.⁷

A. Meaning and Definition

The term *Istisna'* is derived from the root word Sana'th which means to manufacture. Its lexical meaning is to seek someone to manufacture whereby the seeker invited another to manufacture some goods for him. Technically, it is a contract to purchase an asset that may be manufactures later on for a definite price according to agreed specifications between the parties.⁸

Henceforth, the *Istisna'* contract compels the manufacturer to manufacture the goods. However, before the commencement of the work, anyone of the parties can cancel the contract by giving an indication to his partner. Nevertheless, after the commencement, any person in the parties cannot cancel the contract unilaterally.

Istisna plays a major role in the infra structure development of a country in the present scenario . The client requests the bank to manufacture some equipment within a certain period of time and the bank gives this contract to a manufacturing or construction company. The bank buys these equipments or projects from the manufacturing company and sells the item to the client when the work is completed at a profit on a deferred payment basis. For example a state government (client) approaches Islamic bank to build twenty five fly-overs in a city within one year. The bank receives this order and gives it to a construction company. The bank enters in to one agreement with the government and another agreement with the construction company. The bank can buy the fly over from the company when the work is completed and then give it to the government on the basis of predetermined cost plus the profit.

b. Conditions of *Istisna'*

1. The commodity of *Istisna'* contract should be of the common use among the people like jewellery, shoes, etc. If it is of the rare usage, then *Istisna'* could not be held in it.
2. No specific period of deferment should be determined.
3. The commodity of the contract should be well defined unambiguously in its quality, quantity and other related characteristics.

⁴*Ibid.* 516-517

⁵*Ibid.* 517-519

⁶Al-Shirazi. *Al-Muhadhab fi Fiqhil Imam Shafi'*, 280

⁷*Istisna*, <<http://www.sib.ae/en/real-estate/major-real-estate-products/Istisna'-2.html>>, (accessed on 5 December 2013)

⁸A. A. Akhtarazait, *Istisna' Contract as an Instrument in Modern Islamic Finance. National seminar in Islamic Bank and Finance* (2006) p. 6

4. The price should be known at the time of termination of the contract.
5. The manufacturer must construct the goods with his materials.

If the buyer supplies the raw material for the manufacture, it is then *Ijarah* not *Istisna'*. It is not permitted for the manufacturer to determine in the contract of *Istisna'* that he will not be subjected for the any apathies. The reason for this prohibition is that *Istisna'* is a sale contract of specified goods to be delivered in future.⁹

c. Differences between *Istisna'* and *Salam*

1. The subject matter of *Istisna'* should be always related to manufacturing, while *Salam* could be anything with no condition.
2. In *Salam*, it is necessary to pay full price in advance unlike *Istisna'*.
3. The *Salam* contract cannot be cancelled unilaterally, while the *Istisna'* contract can be cancelled before the manufacturer starts the work.
4. The time of delivery should be defined in *Salam* while it is not necessary in *Istisna'*.¹⁰

CONCLUSION

In Short, '*Istisna'* sale' contract whereby the sale of non-existing goods which is to be manufactured in future is allowed on certain conditions. It is treated as valid by the principle of equity (*Istihsan*) and on the basis of customary practice (*Urf*). Both of these financial instruments play a role in the growth and development of Islamic finance. Both are based on certain agreements and rules. Definitely These rules and regulations of the arguments will accelerate the trusts of the business in general.

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⁹Ibn A'bideen, Muhammed Ameen. *Hashiyathu Radhil Mukhtar Ala Al-durril Mukhtar SharahuTanveeril Absar Fi Fiqhi Madhabi al-Imam Abi Hanifah Al- Nuhman* (n.d, Damascus: Dar al-Fikr), Vol. 5, p.353

¹⁰Muhammed Z & Chong R, *The Contract of Bai' al-Salam and Istisna' in Islamic Commercial Law: A Comparative Analysis*, p. 23